

RESOLUTION NUMBER R- 314934

DATE OF FINAL PASSAGE MAY 23 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO ADOPTING FINDINGS FOR AND APPROVING
VESTING TENTATIVE MAP NO. 2468440, PUBLIC RIGHT-
OF-WAY VACATION NO. 2468433, AND PUBLIC SERVICE
EASEMENT VACATION NO. 2610071 ALL RELATED TO
BDM MIXED USE PROJECT - PROJECT NO. 673818.

WHEREAS, BDM Investments LLC, a California Limited Liability Company,
Subdivider, and Alisa S. Vialpando, Engineer, submitted an application to the City of San Diego
for a Vesting Tentative Map No. 2468440, Public Right-of-Way Vacation No. 2468433 and
Public Service Easement Vacation No. 2610071 for the construction of mixed-use residential and
commercial project consisting of three to four level multi-family residential buildings with 430
dwelling units that total 442,230 square feet of which 52 dwelling units will be affordable to low
income households with rents at 30% of 60% of Area Median Income, 6,000 square-feet of
commercial uses, and associated improvements. The project site is located south of Otay Mesa
Road, east of Emerald Crest Court, southwest of Corporate Center Drive, and north of State
Route 905 (APN No. 645-410-0300 to 645-410-0900). The property is legally described as lots
1, 2, 3, 4, 5, A, B, and C of Handler Commercial, in the City of San Diego, County of San Diego,
State of California, according to Map thereof of No. 16340, filed in the Office of the of the
County Recorder of San Diego County, May 7, 2019, as File No. 2019-7000180 of Official
Records; and

WHEREAS, the Map proposes the subdivision of a 13.44-acres site into four residential
lots and one commercial lot; and

WHEREAS, the project complies with the requirements of a preliminary soils and/or geological reconnaissance report pursuant to Subdivision Map Act sections 66490 and 66491(b)-(f) and San Diego Municipal Code section 144.0220; and

WHEREAS, on May 23, 2023, the City Council of the City of San Diego considered Vesting Tentative Map No. 2468440, Public Right of Way Vacation No. 2468433 and Public Service Easement Vacation No. 2610071 pursuant to San Diego Municipal Code section(s) 125.0440, 125.0430, 125.0941, 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, on March 30, 2023, the Planning Commission of the City of San Diego considered Vesting Tentative Map No. 2468440, Public Right of Way Vacation No. 2468433 and Public Service Easement Vacation No. 2610071, and pursuant to Resolution No. 5241-PC, the Planning Commission voted to recommend City Council approval of the map; 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 that it adopts the following findings with respect to Vesting Tentative Map No. 2468440, Public Right of Way Vacation No. 2468433 and Public Service Easement Vacation No. 2610071:

Findings for a Tentative Map – SDMC Section 125.0440:

- 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 is consists of the development of 430 multi-family residential dwelling units in three to four level buildings, including 6,000 square feet of commercial uses, and associated site improvements at a site located at the southeast corner of Emerald Crest Court and Otay Mesa Road in the northwestern area of the approved Otay Mesa East Project (Project No. 108628) area, within the Southwest District of the Otay Mesa Community Plan (Community Plan) area. The surrounding area is developed with a variety of uses, including residential to the west and northwest, industrial to the east and north, open space to the north, and commercial to the northeast.

A Vesting Tentative Map (VTM) is required to consolidate and subdivide 13.44 acres into four residential lots and a commercial lot, a public right-of-way vacation, and a public service easement vacation. The VTM for the project was reviewed by staff and determined to be in compliance with the SDMC and Subdivision Map Act.

The project requires a Community Plan Amendment to change the land use designation from Community Commercial – Residential Prohibited to Community Commercial – Residential Permitted, and a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The subdivision (consolidation of the lots) supports a land use that is consistent with the Community Plan and General Plan and is compatible with the adjacent land uses. Amending the Community Plan to Community Commercial – Residential Permitted provides a land use designation that is consistent with the land uses within the Southwest District. The General Plan Village Propensity map identifies the site as medium to high propensity range, and the project is consistent with the prescribed range. The new homes will help meet the need for housing in the community, including providing 52 affordable housing units for low-income households with rents at 30% of 60% of Area Median Income. The project will also provide residential development within a Transit Priority Area (TPA), locating new residents in close proximity to transit and commercial services.

The project is consistent with the Community Plan policies that address housing, including Policy 2.2-3 which recommends developing homes that are sized (studio, one, two and three-bedroom units) to meet the household family sizes in demand in the Otay Mesa community. The project is consistent with Policy 2.2-5 which recommends developing housing at different density ranges to provide housing affordable to all income levels and Policy 2.2-6 which promotes affordable housing development through the provision of a variety of housing types. In addition, 6,000 square feet of commercial space will be developed which is consistent with Community Plan Policy 2.3-2 that recommends maintaining commercial areas in Otay

Mesa to support the development of retail, office, and other commercial services to serve surrounding areas.

As previously mentioned, the project site is located within the Southwest District of the Otay Mesa community which envisions village style development that are primarily residential with a mixed-use center for civic and neighborhood serving commercial uses and services. Community Plan Policy 4.1-8 in the Urban Design Element recommends that residential uses within the Southwest District minimize exposure from noise, traffic and air quality impacts associated with State Route (SR) 905 through the orientation of buildings and site planning, the design of buildings, landscape treatments, and distance separation. The project implements this policy by locating the surface parking area to the south along SR-90 and siting buildings away from the southern property line by no less than 100 feet along with a double row of evergreen trees within the surface parking area and incorporating trees with large shrubs along the southern perimeter of the project site. In addition, the noise study prepared for the project concluded that future noise levels could be further attenuated with upgraded building facade elements (i.e., windows, walls, doors, and/or exterior wall assemblies) with Sound Transmission Class (STC) ratings of 35 or higher which the projects implements.

Community Plan Policy 4.3-3 which addresses architectural details recommends that buildings and street frontages be developed with architectural interest adjacent to the public right-of-way and to include design features such as facade step backs, articulation, off-setting planes, unique roof forms, and varied building elevations. The project implements this Community Plan policy by incorporating painted stucco surfaces with a variety colors, varying setbacks, balconies with metal railings, and offsetting planes and building articulation on all building elevations. The project implements Community Plan Policy 4.3-7 related to creating visual and physical linkages within the project site through a unified landscape theme. The project includes landscaping that is consistent with the design recommendations of the Community Plan by incorporating a mix of low water use and climate appropriate plants that are adapted to the climate of the region. A range of 24-inch evergreen trees within the surface parking areas will provide shade and minimize heat gain. The project also includes 24-inch box Brisbane Box trees along Otay Mesa Road. The project will also install accents trees, evergreen screening trees, shrubs, grasses, and artificial turf recreational areas. Street trees will be planted along Otay Mesa Road, including shrubs, grasses, and landcovers.

Along the southern frontage of the project adjacent to the Caltrans right-of-way, the project includes screening with solid walls and fencing. Areas exposed to SR-905 will provide 100 percent screening in the form of evergreen plantings that will be distributed throughout the area. The eastern frontage of the project along Corporate Center Drive will include native trees and plants due to its proximity to the adjacent Multi-Habitat Planning Area (MHPA). Boulders will also be installed to discourage entry into the MHPA. Along the project western frontage of Emerald Crest Court, 24-inch box silk trees will be planted to match street improvements and landscape plans prepared along the western half of Emerald Crest Court adjacent to the residential development.

Community Plan Policy 4.2-1 related to pedestrian movement, sidewalks, and streets recommends that pedestrian-oriented design principles be implemented at the project level to

activate the street and promote walkability. The project implements this Community Plan policy by including sidewalk connections between buildings, the onsite amenities and the public sidewalks to enhance pedestrian connectivity. The project will also provide non-contiguous sidewalks and landscaped parkways along Otay Mesa Road that connect to the project's internal streets, walkways, and transit and bike facilities. Pedestrian access across the site will be accommodated by a six-foot-wide concrete paseo and interior streets and walkways that provide residents access to the centrally located community pool, several courtyards, tot-lot and fenced dog run that lead into commercial area through the project's interior streets and walkways to connect the residential and commercial areas.

The project design is compatible with the Transit Priority Area (TPA) designation of the site. The closest transit stop is located at Otay Mesa Road and Corporate Center Drive is approximately 400 feet from the project site, and a Caltrans park and ride lot is located a half mile west at the terminus of Otay Mesa Road. The project site is located in close proximity to Metropolitan Transit System (MTS) Routes 905 A and B with planned high frequency transit service which connects the site to employment areas within Otay Mesa, including the Ocean View Hills Corporate Center and Otay Corporate Center South.

Community Plan Policy 3.4-1 (a) in the Mobility Element recommends the refinement and implementation of the Bicycle Master Plan in the Community Plan by developing bicycle facilities that implement internal connectivity to activity areas within the community and links to the regional bicycle network. An existing Class III shared bicycle facility is located on Otay Mesa Road and can be accessed from the project site. The Community Plan recommends a future Class II bicycle lane for Otay Mesa Road. The project will provide this improvement by developing an 8-foot Class II bike lane along Otay Mesa Road and by installing bike racks in front of the commercial building along Emerald Crest Court.

The project complies with the Conservation Element goal of implementing urban runoff management techniques. The project will implement this goal by providing drought-tolerant landscaping and a five-foot deep water detention basin to capture stormwater run-off. The detention basin will be located between the commercial and residential buildings and will be surrounded by a five-foot tall tubular steel fence atop a 6.5-foot retaining wall installed for safety purposes. The project will also implement Conservation Element policies related to energy efficiency and energy saving technology by installing a total of 64 residential electrical vehicle charging stations and one for the commercial area.

In addition, the project complies with the General Plan policies that strive for balanced communities and provide for a variety of housing types and sizes with varying levels of affordability in residential and village developments and different types of land uses within a community to offer a diverse mix of uses. The project includes affordable housing opportunities consistent with the policies in the General Plan and the City's Housing Element, including:

- Providing affordable housing throughout the City so that no single area experiences a disproportionate concentration. (LU-H.2)

- Maintaining or increasing the City's supply of land designated for various residential densities as community plans are being prepared, updated, or amended. (LU-C.3)
- Seek attainment of community balance with respect to utilization of affordable housing resources. (HE-1.1)
- Encourage location of affordable housing opportunities throughout all areas of the City by encouraging mixed-income development. (HE-1.8)

Amending the Community Plan to the Community Commercial – Residential Permitted land use designation provides a designation that is consistent with the policies in the Land Use Element, including:

- Integrating a variety of housing types within village and residentially designated areas with multi-modal access from the villages to the employment centers in the eastern portion of Otay Mesa. (2.2-2)
- Include in all residential developments housing units that are sized to meet the household family sizes anticipated in Otay Mesa. (2.2-3)
- Developing housing at different density ranges to provide housing affordable to all income levels. (2.2-5)
- Promote affordable housing development through the provision of a variety of housing types, including flats, townhomes, smaller-lot single-family homes, and other types of housing that are affordable in nature. (2.2-6)

As previously mentioned, the project requires a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The project was designed to comply with the CC-3-6 Zone requirements for density (1000 square feet/dwelling unit; 430 units proposed on a site that allows 586 units), height (varies up to 47 feet) that is below the 65-foot height limit, and floor area ratio (.75) that does not exceed the maximum requirement (2.3). Staff has reviewed and approved deviations from the SDMC requirement for front, side, and minimum street frontage setbacks and has determined that the deviations do not adversely impact the project site or surrounding land uses.

The subdivision supports a land use that is consistent with the Community Plan and General Plan, including policies that strive for balanced communities, promotes mobility options, and implements conservation policies related to energy efficiency and energy saving technology. The project will provide market rate and affordable housing with varying price points, including residential and commercial uses in close proximity to transit and employment opportunities. Therefore, the project subdivision design and related improvements will be consistent with the policies, goals, and objectives of the Otay Mesa Community 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.

A Vesting Tentative Map (VTM) is required to consolidate and subdivide 13.44 acres into four residential lots and a commercial lot, a public right-of-way vacation, and a public service easement vacation. The VTM for the project was reviewed by staff and determined to be in compliance with the SDMC and Subdivision Map Act.

The project also requires a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The project was designed to comply with the CC-3-6 Zone requirements for density (1000 square feet/dwelling unit; 430 units proposed on a site that allows 586 units), height (varies up to 47 feet) that is below the 65-foot height limit, and floor area ratio (.75) that does not exceed the maximum requirement (2.3). Staff has reviewed and approved the following deviations for setbacks:

Municipal Code Regulation	SDMC Language	Required	Proposed Deviation
Table 131.05E	Minimum Street Frontage	25 feet	The proposed Lot 5 has zero street frontage
Table 131.05E	Front Setback Requirement	Maximum of 10 feet	Proposed set back is 30 feet 5 inches along Emerald Crest Court and 182 feet 10 inches along Corporate Centre Drive
Table 131.05E	Street Side Setback	Maximum of 10 feet along Otay Mesa Road	Proposed set back is 38 feet 9 inches along Otay Mesa Road

The front setback development regulation in SDMC Table 131- 05E requires a front setback of a maximum of 10 feet. The project includes a setback of 30 feet 5 inches along Emerald Crest Court and a setback of 182 feet 10 inches along Corporate Centre Drive. In addition, the side setback development regulations in SDMC Table 131-05E requires a side setback of a maximum of 10 feet. The project includes a setback of 38 feet 9 inches along Otay Mesa Road. The front and side setback deviations allow for the buildings to be configured on the site to allow adequate vehicular access and landscaping, and to comply with the City's storm water requirements.

The project also includes a deviation to allow Lot 5 to be developed without street frontage. The proposed lot configuration requires a deviation from the minimum street frontage requirement of 25 feet for the CC-3-6 Base Zone, per SDMC Table 131-05E. The design for the lots is consistent with the CC-3-6 Zone. The deviation allows for shared access to each parcel to facilitate the orderly development of the site. Access to the site will be implemented through a shared-access agreement that will be recorded against each parcel.

The VTM for the project was reviewed by staff and determined to be in compliance with the SDMC and Subdivision Map Act. Therefore, 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.

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

The project requires a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The project was designed to comply with the CC-3-6 Zone requirements for density (1000 square feet/dwelling unit; 430 units proposed on a site that allows 586 units), height (varies up to 47 feet) that is below the 65-foot height limit, and floor area ratio (.75) that does not exceed the maximum requirement (2.3). Staff has also reviewed and approved deviations from the SDMC requirement for front, side, and minimum street frontage setbacks and has determined that the deviations do not adversely impact the project site or surrounding land uses.

The entire 13.44-acre site was graded in 2020 except for a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA. The project site does not contain any vernal pools and is not within the City's Vernal Pool Habitat Conservation Plan area.

The project site is in an area served by existing public services and utilities. Staff has reviewed and accepted a preliminary geotechnical report prepared for the site that concluded that the project adequately addresses the site's soil and geologic conditions, and drainage for the project complies with the City's drainage regulations and standards. The project permit also requires compliance with the City's ESL regulations and MHPA land use adjacency guidelines.

An Addendum to the Community Plan Update Final Program Environmental Impact Report (No. 30330/304032; SCH No. 2004651076) has been prepared for the project. Staff determined that only minor technical changes or additions are necessary, and that no changes in circumstances have occurred, and no new information of substantial importance has manifested, which would result in new significant or substantially increased adverse impacts as a result of the project. Therefore, the site is physically suitable for the type and density of development.

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 will not result in environmental damage or injure fish or wildlife or their habitat. The entire 13.44-acre site was graded in 2020 except for a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA.

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

The design of the project will not be detrimental to the public health, safety, and welfare. The entire 13.44-acre site was graded in 2020 except for a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA.

The project site is in an area served by existing public services and utilities. Staff has also reviewed and accepted a preliminary geotechnical report prepared for the site that concluded that the project adequately addresses the site's soil and geologic conditions, and drainage for the project complies with the City's drainage regulations and standards.

The project permit also contains specific requirements to ensure compliance with the regulations of the Land Development Code, including those adopted to protect the public health, safety and welfare. Permit requirements includes securing a valid Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; granting an avigation easement to the City for the purposes of aircraft operations, noise and other effects caused by the operation of aircraft; requiring a geotechnical report to address the construction plans; construction of a City standard ramps, driveways, sidewalks, curbs and gutters for the project; obtaining an Encroachment Maintenance Removal Agreement for landscaping and private improvements adjacent to the site; implementing storm water construction best management practices (BMPs), including a Maintenance Agreement for ongoing permanent BMP maintenance; obtaining a Hold Harmless Agreement for the public storm drain connecting to a private storm drain; maintenance of all landscape improvements; compliance with the City's ESL regulations and MHPA land use adjacency guidelines; ensuring no temporary or permanent construction impacts to the adjacent open space; widening Emerald Crest Court between Otay Mesa Road and the southern property boundary with a 60-foot curb to curb in an 80-foot ROW as a four lane undivided roadway; construction of the south leg at the existing signalized intersection of Corporate Center Drive and Otay Mesa Road as a three lane undivided roadway and associated improvements (i.e., traffic signal modification, restriping, etc.); removal of the existing K-Rail and fence along Otay Mesa Road between Emerald Crest Court and Corporate Center Drive and replacement with a raised

median; maintenance of transportation amenities; installing appropriate private back flow prevention devices on each water service; constructing all public water facilities, per the City's water design regulations and standards; all private water and sewer facilities shall be designed to comply with the requirements of the California Uniform Plumbing Code; and granting a water easement for the above ground water meters and public water main, as shown on the Exhibit A. Therefore, the design of the subdivision or the 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.

A Vesting Tentative Map (VTM) is required to consolidate and subdivide 13.44 acres into four residential lots and a commercial lot, a public right-of-way vacation, and a public service easement vacation. The VTM for the project was reviewed by staff and determined to be in compliance with the SDMC and Subdivision Map Act.

The public ROW vacation consists of vacating Corporate Center Drive south of Otay Mesa Road since it provides access to the project site only and there is no present or prospective public use as access to any other property within the vicinity. The Mobility Element of the Community Plan will be amended to reflect the classification change. The project will also dedicate additional public ROW along Otay Mesa Road to provide adequate public access which is consistent with the Community Plan.

The project also includes a public service easement vacation for storm water storage and drainage easements on the project site. These easements were granted to a previous development, however, are not currently used for their intended purpose and are not required or necessary for the project. The easement vacation will not result in any adverse drainage impacts. Staff has reviewed and accepted a drainage report prepared for the site that concluded that the project complies with the City's drainage regulations and standards. Therefore, 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.

7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities.

The design and layout of the proposed subdivision and buildings provides for optimum solar orientation that allows for future passive heating and cooling opportunities in the Otay Mesa community. The design of the residential units and adjacent commercial uses includes features that provide future passive or natural heating and cooling improvements, including side and rear setbacks that will facilitate the passage of air and penetration of sunlight between buildings. The project also consists of landscaping such as canopy trees and other ornamental trees throughout the project that will mitigate heat gain and provide for an attractive landscape environment. 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 project consists of the development of 430 multi-family residential dwelling units and 6,000 square feet of commercial uses at a site located at the southeast corner of Emerald Crest Court and Otay Mesa Road in the northwestern area of the approved Otay Mesa East project (Project No. 108628) area, within the Southwest District of the Otay Mesa Community Plan (Community Plan) area. Of the 430 residential dwelling units, 52 dwelling units will be affordable to low-income households with rents at 30% of 60% of Area Median Income. The project site is in an area served by existing public services and utilities.

The project complies with the General Plan policies that strive for balanced communities and provide for a variety of housing types and sizes with varying levels of affordability in residential and village developments and different types of land uses within a community to offer a diverse mix of uses. The project includes affordable housing opportunities consistent with the policies in the General Plan and the City's Housing Element, including:

- Providing affordable housing throughout the City so that no single area experiences a disproportionate concentration. (LU-H.2)
- Maintaining or increasing the City's supply of land designated for various residential densities as community plans are being prepared, updated, or amended. (LU-C.3)
- Seek attainment of community balance with respect to utilization of affordable housing resources. (HE-1.1)
- Encourage location of affordable housing opportunities throughout all areas of the City by encouraging mixed-income development. (HE-1.8)
- Integrating a variety of housing types within village and residentially designated areas with multi-modal access from the villages to the employment centers in the eastern portion of Otay Mesa. (2.2-2)
- Include in all residential developments housing units that are sized to meet the household family sizes anticipated in Otay Mesa. (2.2-3)
- Developing housing at different density ranges to provide housing affordable to all income levels. (2.2-5)
- Promote affordable housing development through the provision of a variety of housing types, including flats, townhomes, smaller-lot single-family homes, and other types of housing that are affordable in nature. (2.2-6)

The entire 13.44-acre site was graded in 2020 except for a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area

(MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA. Therefore, 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.

BE IT FURTHER RESOLVED, that portions of Corporate Center Drive, located within the project boundaries as shown in the Vesting Tentative Map shall be vacated and public service easements shall be vacated, contingent upon the recordation of the approved Final Map for the project. The project site currently contains storm water storage and drainage easements that were granted to a previous development which will be vacated and storm water from the new project will be processed in accordance with the project's accepted drainage study and that the following findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference:

Findings for Public Right-of-Way Vacations – SDMC Section 125.0941:

1. There is no present or prospective public use for the public right-of-way either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated. (San Diego Municipal Code § 125.0941(a)).

A Vesting Tentative Map (VTM) is required to consolidate and subdivide 13.44 acres into four residential lots and a commercial lot, a public right-of-way vacation, and a public service easement vacation. The VTM for the project was reviewed by staff and determined to be in compliance with the SDMC and Subdivision Map Act.

The public ROW vacation consists of vacating Corporate Center Drive south of Otay Mesa Road since it provides access to the project site only and there is no present or prospective public use as access to any other property within the vicinity. The Mobility Element of the Community Plan will be amended to reflect the classification change. The project will also dedicate additional public ROW along Otay Mesa Road to provide adequate public access which is consistent with the Community Plan. Therefore, there is no present or prospective public use for the public right-of-way either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.

2. The public will benefit from the action through improved use of the land made available by the vacation. (San Diego Municipal Code § 125.0941(b))

The public will benefit from the ROW vacation which will provide additional private land to the tax base and facilitate the development of a mixed-use housing and commercial project, which are land uses that are supported by the Community Plan and General Plan. The vacation will also remove any public maintenance and liability obligations to the City. Therefore, the public will benefit from the action through improved use of the land made available by the vacation.

3. The vacation does not adversely affect any applicable land use plan. (San Diego Municipal Code § 125.0941(c))

The ROW vacation will provide additional private land to the tax base and facilitate the development of a mixed-use housing and commercial project, which are land uses that are supported by the Community Plan and General Plan. Therefore, the vacation does not adversely affect any applicable land use plan.

4. The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation. (San Diego Municipal Code § 125.0941(d))

The public ROW vacation consists of vacating Corporate Center Drive south of Otay Mesa Road since it provides access to the project site only and there is no present or prospective public use as access to any other property within the vicinity. Therefore, the public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.

Findings for Public Service Easement Vacations – SDMC Section 125.1040:

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

The project includes a public service easement vacation for storm water storage and drainage easements on the project site. These easements were granted to a previous development, however, are not currently used for their intended purpose and are not required or necessary for the project. The easement vacation will not result in any adverse drainage impacts. Staff has reviewed and accepted a drainage report prepared for the site that concluded that the project complies with the City's drainage regulations and standards. Therefore, there is no present or prospective public use for the easement, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.

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

The public will benefit from the easement vacation which will additional private land to the tax base and facilitate the development of a mixed-use housing and commercial project, which are land uses that are supported by the Community Plan and General Plan. The easement vacation will also remove any public maintenance and liability obligations to the City. Therefore,

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

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

The easement vacation will provide additional private land to the tax base and facilitate the development of a mixed-use housing and commercial project, which are land uses that are supported by the Community Plan and General Plan. Therefore, the vacation is consistent with any applicable land use plan.

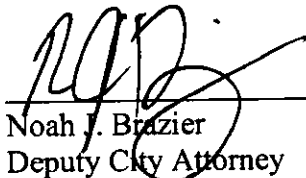
4. The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the vacation or the purpose for which the easement was acquired no longer exists.

The project includes a public service easement vacation for storm water storage and drainage easements on the project site. These easements were granted to a previous development, however, are not currently used for their intended purpose and are not required or necessary for the project. The easement vacation will not result in any adverse drainage impacts. Staff has reviewed and accepted a drainage report prepared for the site that concluded that the project complies with the City's drainage regulations and standards. Therefore, 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.

BE IT FURTHER RESOLVED, that the that based on the Findings hereinbefore adopted by the City Council, Vesting Tentative Map No. 2468440, Public Right of Way Vacation No. 2468433 and Public Service Easement Vacation No. 2610071 are hereby granted to BDM Investments LLC subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Noah J. Brazier
Deputy City Attorney

NJB:nja
05/02/2023
05/30/2023 Cor. Copy
Or. Dept: DSD
Doc. No. 3292822
Attachment: Vesting Tentative Map Conditions

CITY COUNCIL
CONDITIONS FOR VESTING TENTATIVE MAP NO. 2468440
BDM MIXED-USE – PROJECT NO. 673818

ADOPTED BY RESOLUTION NO. R- 314934 ON MAY 23, 2023

GENERAL

1. This Vesting Tentative Map will expire June 20, 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 Final Map unless otherwise noted.
3. Prior to the recordation of the Final Map, taxes must be paid on this property pursuant to Subdivision Map Act section 66492. To satisfy this condition, a tax certificate stating that there are no unpaid lien conditions against the subdivision must be recorded in the Office of the San Diego County Recorder.
4. The Vesting Tentative Map shall conform to the provisions of Site Development Permit No. 2468436, Neighborhood Development Permit No. 2576649, Vesting Tentative Map No. 2468440, Public Right-Of-Way Vacation No. 24668433, and Public Service Easement Vacation No. 2610071.
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 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 Subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City and/or any Indemnified Parties harmless. City may participate in the defense of any claim, action, or proceeding if City both 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

6. The Subdivider shall obtain a bonded grading permit for the grading proposed for the project. All grading shall conform to the requirements of the City of San Diego Municipal Code (SDMC) in a manner satisfactory to the City Engineer.
7. The drainage system for this project, per approved Exhibit "A", will be subject to approval by the City Engineer.

8. Prior to issuance of the first building permit, the Subdivider shall underground existing and/or proposed public utility systems and service facilities in accordance with the SDMC.
9. Prior to issuance of the first building permit, per the City of San Diego Street Design Manual-Street Light Standards and Council Policy 200-18, the Subdivider will be required to install new streetlights, per approved Exhibit A adjacent to the site on Otay Mesa Road and Emerald Crest Court, satisfactory to the City Engineer.
10. Development of this project shall comply with all stormwater construction requirements of the State Construction General Permit, Order No. 2009-0009DWQ, or subsequent order, and the Municipal Storm Water Permit, Order No. R9-2013-0001, or subsequent order. In accordance with Order No. 2009-0009DWQ, or subsequent order, a Risk Level Determination shall be calculated for the site and a Storm Water Pollution Prevention Plan (SWPPP) shall be implemented concurrently with the commencement of grading activities.
11. Prior to issuance of a grading permit, the Subdivider shall submit a copy of the Notice of Intent (NOI) with a valid Waste Discharge ID number (WDID#) to the City of San Diego as a proof of enrollment under the Construction General Permit. When ownership of the entire site or portions of the site changes prior to filing of the Notice of Termination (NOT), a revised NOI shall be submitted electronically to the State Water Resources Board in accordance with the provisions as set forth in Section II.C of Order No. 2009-0009-DWQ and a copy shall be submitted to the City.

WATER & SEWER DEVELOPMENT

12. The Subdivider shall process encroachment maintenance and removal agreements (EMRA) for all private sewer facilities within the public right-of-way.
13. Prior to the recordation of the Final Map, the Owner/Permittee shall assure by permit and bond, the design and construction of all public water mains and sewer facilities as required in the accepted water and sewer studies for this project in a manner satisfactory to the Public Utilities Department and the City Engineer. The water and sewer facilities, as shown on the approved Exhibit A, may require modification based on the accepted water and sewer studies and final engineering.

MAPPING

14. Prior to recordation of the Final Map, a certified copy of the approved City Council resolution to vacate a portion of Corporate Center Drive shall be recorded at the San Diego County Recorder's Office.
15. Prior to the expiration of the Tentative Map, if approved, a Final Map to consolidate and subdivide the property into five lots shall be recorded at the San Diego County Recorder's Office.
16. The Final Map shall be based on 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 Final 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 Final Map in accordance with Section 144.0130 of the City of San Diego Land Development Codes.

17. All subdivision maps in 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.
18. 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 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 distances shall be shown on the map.
19. Prior to the recordation of the Final 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 it is paid or posted at the County Clerk of the Board of Supervisors Office and supply proof prior to the recordation of the Final Map.
20. Prior to the recordation of the Final Map, all private streets and drives shall be shown with bearings and distances along the centerline and width of the streets shown on a non-title sheet on the Final Map. The street names shall be submitted to BDR-Street Name Coordinator for approval and published on the Final Map.
21. The Easements as shown on the Vesting Tentative Map exhibit will be vacated pursuant to Section 66434 (g) of the Subdivision Map Act.

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 § 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 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 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 right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer (San Diego Municipal Code § 142.0607).

Passed by the Council of The City of San Diego on MAY 23 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 MAY 23 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.

DIANA J. S. FUENTES
City Clerk of The City of San Diego, California.

By , Deputy

(Seal)

Office of the City Clerk, San Diego, California

Resolution Number R- 314934