



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: July 14, 2010

REPORT NO. PC-10-052

ATTENTION: Planning Commission, Agenda of July 22, 2010

SUBJECT: COSTA VERDE (NORTH & SOUTH) - PROJECT NO. 206871.
PROCESS FOUR.

REFERENCE: San Diego Municipal Code: Chapter 14, Article 2, Division 13: The
Inclusionary Affordable Housing Regulations.
<http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02Division13.pdf>

OWNER/
APPLICANT: Costa Verde North Village, LLC/Costa Verde Developers, LLC.

SUMMARY

Issue(s): Should the Planning Commission approve an Inclusionary Housing Ordinance Variance for the Costa Verde North and Costa Verde South condominium conversion projects?

Staff Recommendation: APPROVE Variance Nos. 758951 (North) and 758755(South).

Community Planning Group Recommendation: On June 15, 2010, the project was presented to the University Community Planning Group. The Group did not take a formal action on the project, however the applicant is expected to return to the Group on July 13, 2010, after the printing of this report.

Environmental Review: This activity is adequately addressed in Mitigated Negative Declaration No. 85-0783, Mitigated Negative Declaration No. 87-0991, and Addendum (to Mitigated Negative Declaration No. 87-0991) No. 89-1403, and is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of CEQA review as defined in State CEQA Guidelines Section §15378(c). Pursuant to Section (15162) of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review. Additionally and alternatively, this activity falls under the previous categorical exemption from CEQA pursuant to CEQA Guidelines, Section 15301(k) (Existing Facilities).

Fiscal Impact Statement: All costs associated with the processing of this Variance are funded through a trust fund account maintained by the applicant. If the Variance is approved, an affordable housing in-lieu fee of \$2,276,858.50 will be paid by the applicant



prior to the sale of the first condominium unit, on a project by project basis. If the Variance is not approved, fiscal impacts associated with the potential gain or loss of affordable housing in-lieu fees cannot be determined at this time as the in-lieu fee rate is adjusted annually.

Code Enforcement Impact: None.

Housing Impact Statement: Both the Costa Verde North and Costa Verde South Condominium Conversion Tentative Maps have been conditioned to meet the requirements of the City's Inclusionary Housing Ordinance. As such, both projects have the option to either pay an in-lieu fee, or to set aside 10 percent of the units as affordable to households earning 100 percent of the area median income. If the Variance is not approved, housing impacts associated with the potential gain or loss of affordable housing in-lieu fees cannot be determined at this time as the in-lieu fee rate is adjusted annually.

BACKGROUND

Costa Verde North is an existing 651-unit residential development project located on 9.1 acres at 8720-8950 Costa Verde Boulevard, within the University Community Planning area (Attachments 1-3). This project was constructed in 1999. The 651 residential units are accommodated within four 4-story buildings, and include 331 one-bedroom units; 308 two-bedroom units; and 12 three-bedroom units.

Costa Verde South is an existing 606-unit residential development project located on 8.6 acres at 8510-8550 Costa Verde Boulevard, within the University Community Planning area. This project was constructed in 1999. The 606 residential units are accommodated within five 4-story buildings, and include 283 one-bedroom units; 303 two-bedroom units; and 20 three-bedroom units.

Costa Verde North and Costa Verde South were constructed and are operated as luxury apartments. Applicants' Variance applications describe the projects as "luxury apartments with well-above-poverty rents. Each project contains everything from full-size washers and dryers to a sporting club with an indoor racquetball court. Rents range from \$1,035.00 per month for the smallest unit to just under \$2,500.00 per month for a three-bedroom unit."

On June 5, 2008 and October 13 2008, both the Planning Commission and the City Council respectively (on appeal) approved Tentative Maps to convert the Costa Verde North and Costa Verde South projects to condominiums (Attachment 4). The approved Tentative Maps included a condition requiring that 10 percent of the units be set aside as affordable (Attachment 5). The Applicants challenged this requirement in the Tentative Maps in San Diego Superior Court. The Superior Court determined that the Tentative Map condition to provide affordable units was contrary to law, and the condition must instead provide the applicant with the option to either provide affordable units or pay an in-lieu fee to satisfy the Inclusionary Housing Ordinance.

DISCUSSION

The City's Inclusionary Housing Ordinance (Municipal Code Section 142.1304) allows applicants for residential projects to seek relief from the provisions of that ordinance through a process entitled "Variance" (Attachment 6). This procedure allows the Planning Commission (Process 4) to approve Variances on a case-by-case basis if the findings can be met.

The Request: The Applicants are requesting a Variance to defer payment of the in-lieu fee to first sale, at the rate in effect on the date the Costa Verde projects' applications were deemed complete, the sum of which is \$2,276,858.50,

The Inclusionary Housing Ordinance in effect at the time Costa Verde's applications were deemed complete set the in-lieu fee at \$1,171,920.75 for Costa Verde North and \$1,104,937.75 for Costa Verde South, for a total in-lieu fee of \$2,276,858.50 for both projects. Under the Inclusionary Housing Ordinance, that fee is due at Final Map.

Alternatively, the Inclusionary Housing Ordinance and adopted Procedures Manual allows applicants the option to delay payment of the in-lieu fee until sale of the first unit. When payment of the in-lieu fee is deferred, the in-lieu fee is subject to adjustment based on the current rate in effect at the time of the first retail sale. The in-lieu fee rate is adjusted annually.

Costa Verde's request to delay payment of the in-lieu fee until sale of the first unit is allowed by the Housing Commission's Inclusionary Housing Procedures Manual and does not require a Variance (Attachment 7). When payment of the in-lieu fees are deferred to first retail sale of units, the applicant and Housing Commission enter into an agreement affecting real property and deed of trust, recorded against the property. Applicants and the Housing Commission will execute and record such an agreement, as approved by the CEO of the Commission. A Variance is required by Applicants' request to defer payment of the in-lieu fee fixed in the amount determined at the date the projects were deemed complete (i.e. \$2,276,858.50). The Variance would also be recorded against the Properties.

City staff has reviewed the Variance request and believe all of the required findings for approval can be met as discussed below:

Approval Findings:

1. Special circumstances, unique to that development justify the grant of the variance:

Special circumstances exist in that Applicants started the process of condo conversion at a time when the Inclusionary Ordinance was in transition. The projects are not subject to the current version of the Inclusionary Ordinance, which requires that projects containing more than twenty units provide affordable units on-site (See San Diego Municipal Code §142.1306(c)). This requirement was not in effect at the time the Costa Verde projects' applications were deemed complete (See Cal. Gov. C. §66474.2(a)).

The extraordinary size of these projects and the fact that the units are considered luxury apartments further evidences the special circumstances applicable to the Costa Verde projects. The Costa Verde projects consist of two adjacent projects each containing over 600 units. Since May of 2002, approximately 660 projects containing over 18,300 units have been approved for conversion from apartments to condominiums in the City. The average size of condo conversion projects in the City over this time period is 27 units. Less than 3% of those condo conversion projects are larger than 200 units. In this time period, there have only been 4 condo conversion projects that are larger than 500 units, two of which are these Costa Verde projects. This equates to less than 0.5% of the total condo conversion projects processed by the City consisting of over 500 units. The sheer size of the Costa Verde projects creates special circumstances that are unique to these projects, justifying the variance. The likelihood of this type of variance being applied to other projects, in the future, is remote.

2. The development would not be feasible without the variance:

Based on the decline in condominium values and the substantial financial hardship, discussed below, if the entire in-lieu fee of \$2,276,858.50 were paid at final map, the Costa Verde projects could be rendered infeasible by substantial hardship if the Variance were not granted.

3. A specific and substantial financial hardship would occur if the variance was not granted:

The Costa Verde Projects would suffer a specific and substantial financial hardship if the Variance was not granted because the sheer size of the projects and amount of the in-lieu fee. Applicant's Attachment A to the Variance applications states it most succinctly:

The ongoing real estate depression has had a materially adverse impact on San Diego housing prices. The price of a median home in San Diego fell by 37.2%, from \$517,500 in November 2005, shortly after the Costa Verde projects' applications were deemed complete September 2009. The downturn has had a tremendous impact on condominium values in the project's market...the median price for similar units in University City has dropped from around \$500,000 in 2005 to about \$200,000 today, a roughly 40% decline. In addition, converted units are not likely to be sold any time soon.

Importantly, the applicant has also stated that payment of the \$2,276,858.50 in-lieu fee would cripple Applicants' cash flows, would take over 10% of projected maximum gross rents and over 100% of project net profits for an entire year. This certainly constitutes a substantial financial hardship.

4. No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.

Based on the unique nature and immense size of the Costa Verde projects, there are no viable alternatives that would not effectively render the projects infeasible. No alternatives exist that

would be more effective in attaining the purposes of the Inclusionary Housing Ordinance than the payment of the in-lieu fee of \$2,276,858.50, even when such payment is deferred until first retail sale. Since the units in question are luxury apartments, generally larger and containing additional amenities, the conversion of these units is different than the normal conversion of apartments to condominiums. Therefore, payment of an in-lieu fee at first retail sale at the amount determined at the projects' deemed complete date, would be very effective in attaining the purposes of the Inclusionary Housing Ordinance while mitigating the hardship to the developer.

Or:

No variance, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.

Since a Variance is supported by the four (4) findings discussed above, the variances need not be processed nor considered under this provision of the Inclusionary Housing Ordinance.


Conclusion:

The average condo conversion project in the City of San Diego contains 27 units. Only five condo conversion projects in the past 8 years, including the 2 Costa Verde projects at issue, exceed 500 units. The Costa Verde projects are unique and based on current market conditions, sale of the units is predicted to take several years to complete. The in-lieu fee applicable to the projects at the date the projects' applications for conversion were deemed complete is \$2,276,858.50. Deferral of the in-lieu fee is already permitted by the Housing Commission's Inclusionary Housing Procedures Manual. Based on the nature of the units and the sheer number of units at the projects, Applicants' request for a Variance to defer payment of the in-lieu fee they could pay at final map to first retail sale is justified and reasonable.


ALTERNATIVES:

1. APPROVE Variance Nos. 758951 (North) and 758755(South), with modifications.
2. DENY Variance Nos. 758951 (North) and 758755(South), if the findings required to approve the project cannot be affirmed

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department



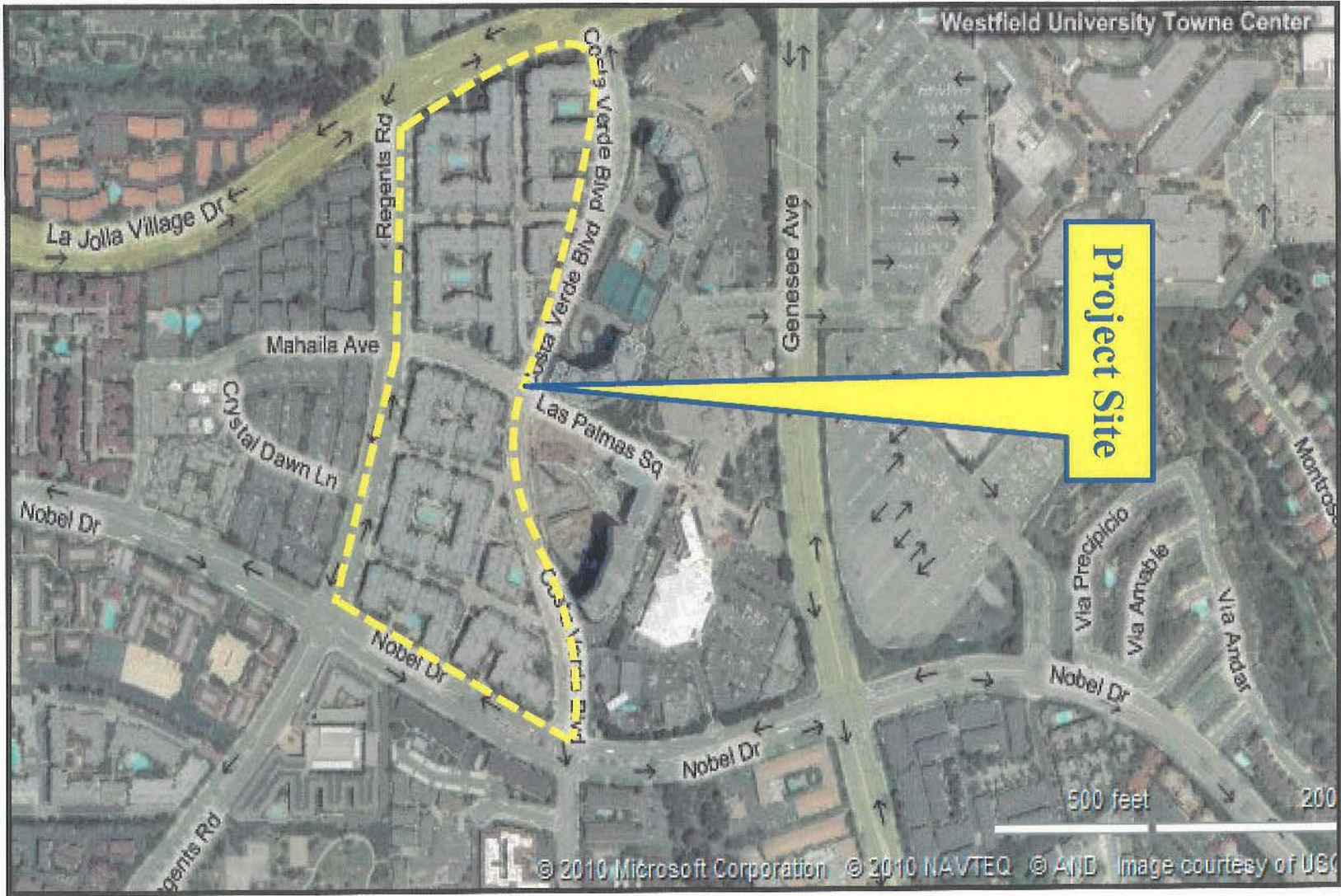
Jeannette Temple
Project Manager
Development Services Department



Carrol M. Vaughan
Executive Vice President and Chief Operating Officer
San Diego Housing Commission

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Approved Tentative Map Plans
5. Approved Tentative Map Resolutions with Conditions
6. SDMC Section 142.1304~Inclusionary Housing Regulation Variances
7. Inclusionary Housing Procedures Manual from Housing Commission (Page 7 is relevant)
8. Draft Variance Permits with Conditions
9. Draft Variance Resolutions with Findings
10. Ownership Disclosure Statement
11. In-lieu Fee Rate Table
12. Property Photographs



Aerial Photo

COSTA VERDE -8510-8550, and 8720-8950 COSTA VERDE BOULEVARD
PROJECT NO. 206871



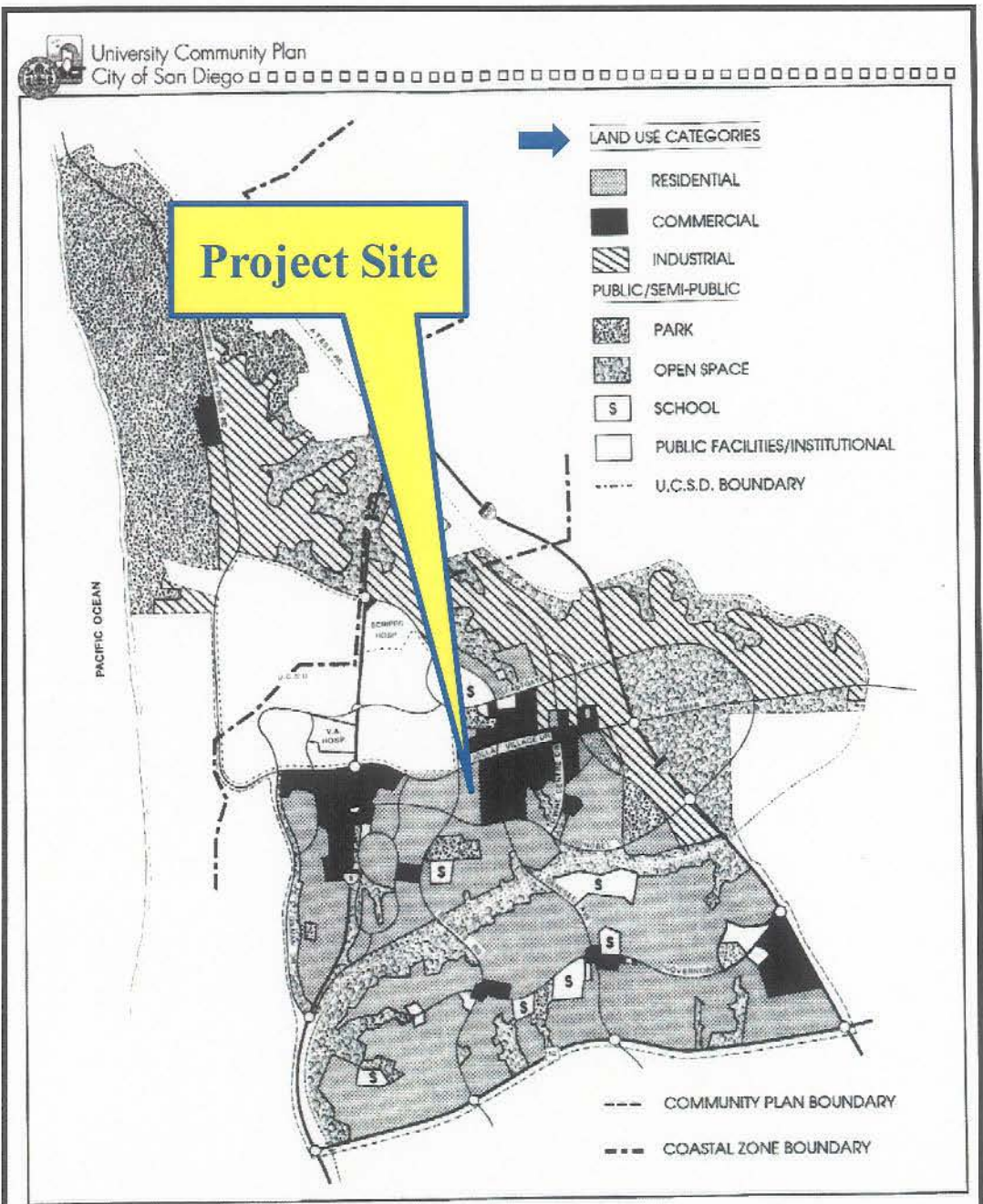


Figure 4

GENERALIZED LAND USE PLAN

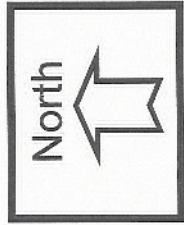
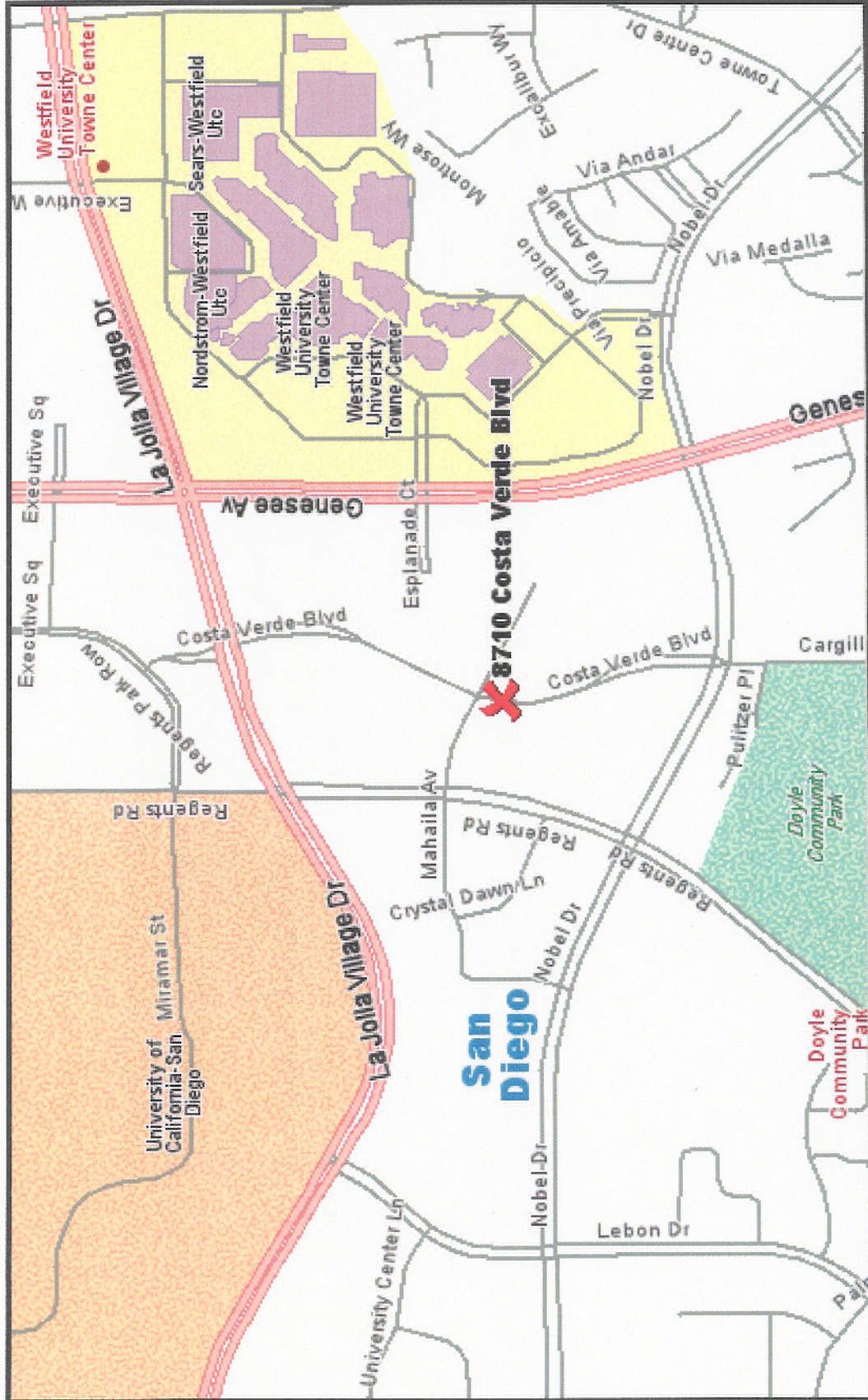
4



Land Use Map

COSTA VERDE -PROJECT NO. 206871
8510-8550, and 8720-8950 COSTA VERDE BOULEVARD





Project Location Map

COSTA VERDE -PROJECT NO. 206871

8510-8550, and 8720-8950 COSTA VERDE BOULEVARD



DEVELOPMENT SUMMARY

PROJECT SUMMARY
GENERAL NOTES

LEGAL DESCRIPTION

LEGAL DESCRIPTION
CONDOMINIUM NOTE

GRADING NOTES

GRADING NOTES
PUBLIC UTILITIES

PROJECT TEAM

PROJECT TEAM
OWNER/APPLICANT

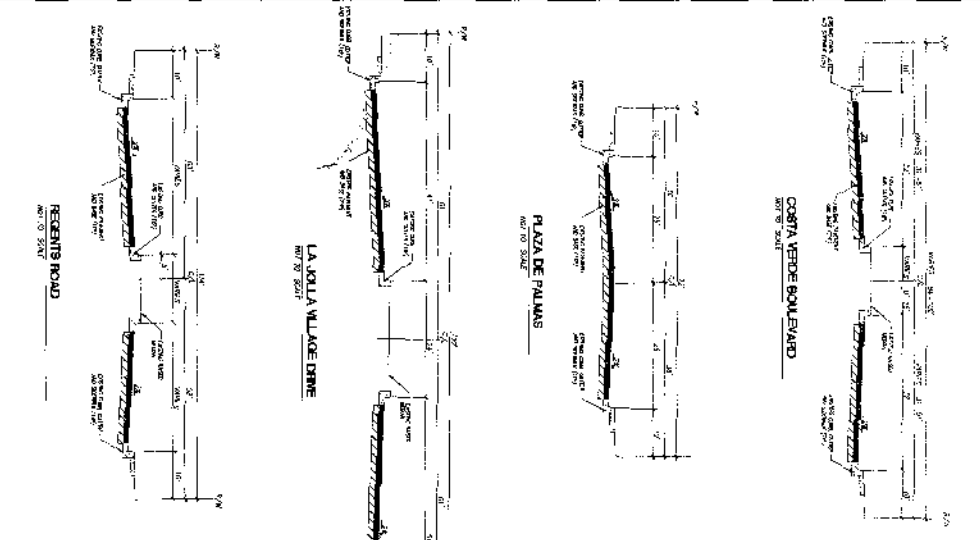
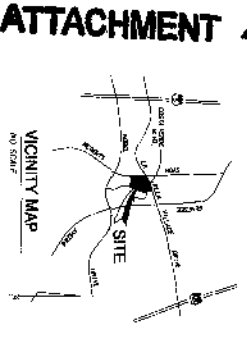
ENGINEER

ENGINEER
PROJECT ADDRESS

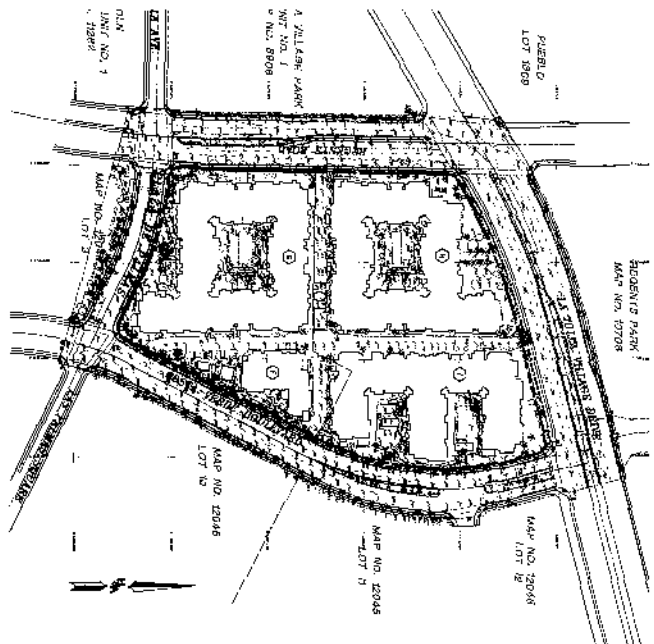
TENTATIVE MAP CONDO CONVERSION

TENTATIVE MAP CONDO CONVERSION
CITY OF SAN DIEGO, CALIFORNIA

ATTACHMENT 4 -



TENTATIVE MAP/CONDO CONVERSION
COSTA VERDE NORTH
CITY OF SAN DIEGO, CALIFORNIA



Professional seal and signature block for the architect, including name, title, and contact information.

GENERAL DESIGN NOTES

- List of general design notes detailing construction requirements, materials, and standards for the project.

UNIT MIX SUMMARY

Table showing unit mix summary with columns for unit type, area, and count.

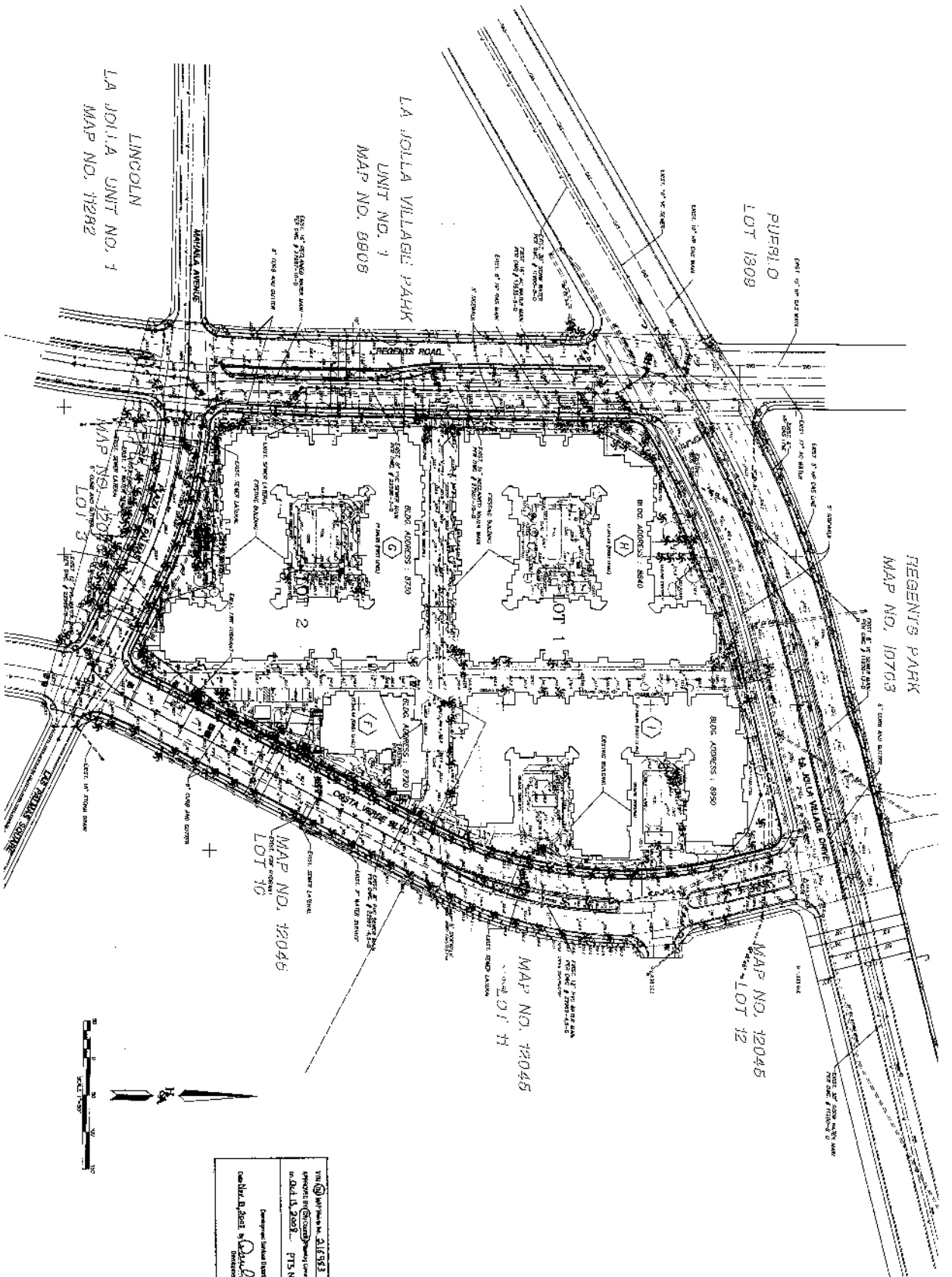
Table showing building statistics with columns for building name, units, and other metrics.

Table showing parking requirements with columns for parking type, units, and total spaces.

Table showing parking summary with columns for total required parking and other details.

Table showing potential parking with columns for potential spaces and other information.

Professional seal and signature block for the engineer, including name, title, and contact information.



LINCOLN
LA JOLLA UNIT NO. 1
MAP NO. 11282

LA JOLLA VILLAGE PARK
UNIT NO. 1
MAP NO. 8808

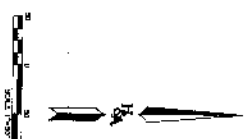
PUEBLO
LOT 1309

REGENT'S PARK
MAP NO. 10703

MAP NO. 12045
LOT 10

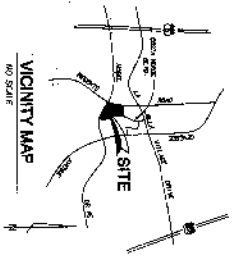
MAP NO. 12045
LOT 11

MAP NO. 12045
LOT 12

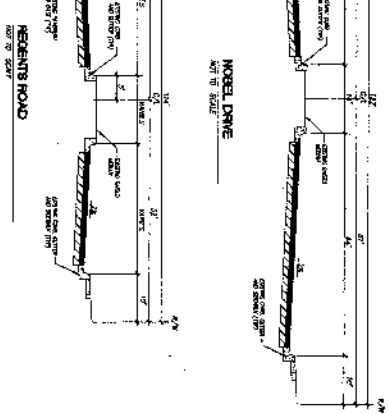
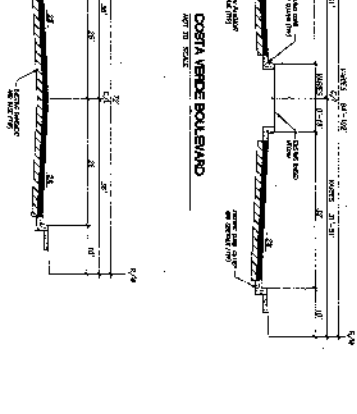
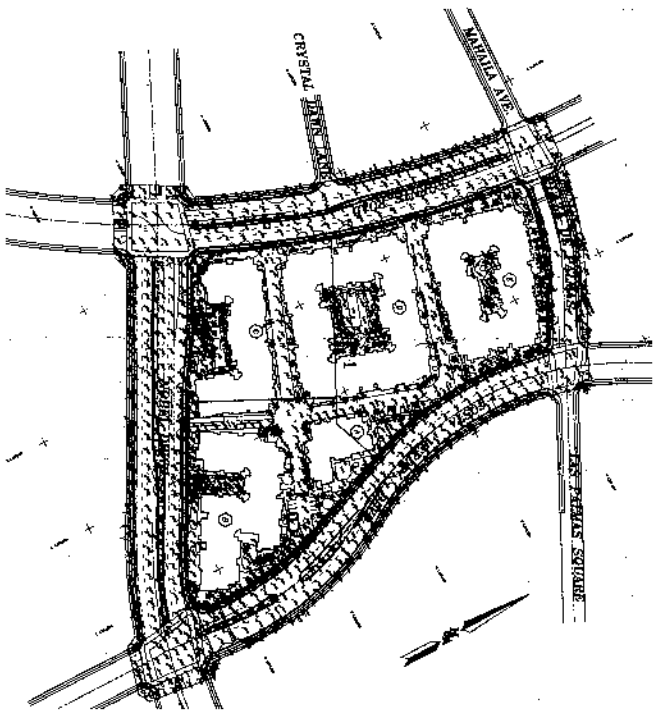


THE CITY OF SAN DIEGO OFFICE OF THE CITY CLERK 125 N. MARKET STREET SAN DIEGO, CALIFORNIA 92101 REGISTRATION NO. 123456789 REGISTERED PROFESSIONAL ARCHITECT DATE: 12/15/2011	Prepared by: HUNKAR ENGINEERS 1500 LA JOLLA VILLAGE DRIVE SAN DIEGO, CALIFORNIA 92161 TEL: 619-594-8800 FAX: 619-594-8801 WWW.HUNKAR.COM
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PREPARED BY: HUNKAR ENGINEERS 1500 LA JOLLA VILLAGE DRIVE SAN DIEGO, CALIFORNIA 92161 TEL: 619-594-8800 FAX: 619-594-8801 WWW.HUNKAR.COM	TENTATIVE MAP, CONDO CONVERSION COSTA VERDE NORTH CITY OF SAN DIEGO, CALIFORNIA	SHEET 2 OF 4
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TENTATIVE MAP/CONDO CONVERSION COSTA VERDE SOUTH CITY OF SAN DIEGO, CALIFORNIA



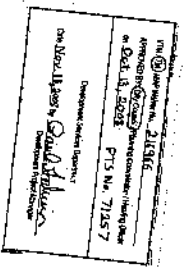
LEGEND

- PROJECT BOUNDARY
- EXISTING BOUNDARY
- PROPOSED BOUNDARY
- EXISTING CURB
- PROPOSED CURB
- EXISTING DRIVE
- PROPOSED DRIVE
- EXISTING SIDEWALK
- PROPOSED SIDEWALK
- EXISTING STREET LIGHT
- PROPOSED STREET LIGHT
- EXISTING SIGN
- PROPOSED SIGN
- EXISTING UTILITY
- PROPOSED UTILITY
- EXISTING LANDSCAPE
- PROPOSED LANDSCAPE
- EXISTING FENCE
- PROPOSED FENCE
- EXISTING WALL
- PROPOSED WALL
- EXISTING POOL
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- PROPOSED SIGN
- EXISTING UTILITY
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- EXISTING FENCE
- PROPOSED FENCE
- EXISTING WALL
- PROPOSED WALL
- EXISTING POOL
- PROPOSED POOL
- EXISTING TANK
- PROPOSED TANK

GENERAL DESIGN NOTES

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN DIEGO ORDINANCES.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA BUILDING CODE.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA FIRE CODE.
4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA PLUMBING CODE.
5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA ELECTRICAL CODE.
6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA MECHANICAL CODE.
7. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA GAS CODE.
8. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA PEST CONTROL CODE.
9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL CODE.
10. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA HISTORIC PRESERVATION CODE.
11. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA LAND USE CODE.
12. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA ZONING CODE.
13. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA COMMUNITY DEVELOPMENT CODE.
14. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA HOUSING CODE.
15. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA TENANT PROTECTION CODE.
16. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA EMPLOYMENT RELATIONS CODE.
17. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA LABOR CODE.
18. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA WAGE ORDER.
19. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA LABOR RELATIONS ACT.
20. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA LABOR RELATIONS BOARD DECISIONS.

KEY MAP



UNIT MIX SUMMARY

UNIT TYPE	PERCENT	TOTAL
1-BED	15%	15
2-BED	35%	35
3-BED	50%	50
TOTAL	100%	100

PARKING SUMMARY

TYPE	PERCENT	TOTAL
1-BED	15%	15
2-BED	35%	35
3-BED	50%	50
TOTAL	100%	100

DEVELOPMENT SUMMARY

TYPE	PERCENT	TOTAL
1-BED	15%	15
2-BED	35%	35
3-BED	50%	50
TOTAL	100%	100

PROJECT SUMMARY
THIS PROJECT IS AN EXISTING BUILDING BEING CONVERTED TO CONDO UNITS. THE EXISTING BUILDING WAS ORIGINALLY DESIGNED AS A SINGLE-FAMILY RESIDENCE. THE PROJECT IS LOCATED AT THE CORNER OF AVENIDA DE LA CALLE AND AVENIDA DE LA PLAZA IN COSTA VERDE SOUTH, SAN DIEGO, CALIFORNIA.

GENERAL NOTES
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN DIEGO ORDINANCES.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA BUILDING CODE.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA FIRE CODE.
4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA PLUMBING CODE.
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LEGAL DESCRIPTION
THE PROPERTY IS DESCRIBED AS FOLLOWS: TRACT 1, COSTA VERDE SOUTH, SAN DIEGO, CALIFORNIA, AS SHOWN ON THE TENTATIVE MAP/CONDO CONVERSION ATTACHED HERETO. THE PROPERTY IS BOUND BY AVENIDA DE LA CALLE TO THE NORTH, AVENIDA DE LA PLAZA TO THE SOUTH, AVENIDA DE LA ESCUELA TO THE EAST, AND AVENIDA DE LA PARKE TO THE WEST.

CONDOMINIUM NOTE
THIS PROJECT IS A CONDO UNIT DEVELOPMENT. THE CONDO UNITS SHALL BE CREATED BY THE CITY OF SAN DIEGO. THE CONDO UNITS SHALL BE BOUND BY AVENIDA DE LA CALLE TO THE NORTH, AVENIDA DE LA PLAZA TO THE SOUTH, AVENIDA DE LA ESCUELA TO THE EAST, AND AVENIDA DE LA PARKE TO THE WEST.

GRADING NOTES
1. THE GRADING SHALL BE IN ACCORDANCE WITH THE CITY OF SAN DIEGO ORDINANCES.
2. THE GRADING SHALL BE IN ACCORDANCE WITH THE CALIFORNIA GRADING CODE.
3. THE GRADING SHALL BE IN ACCORDANCE WITH THE CALIFORNIA EROSION CONTROL CODE.

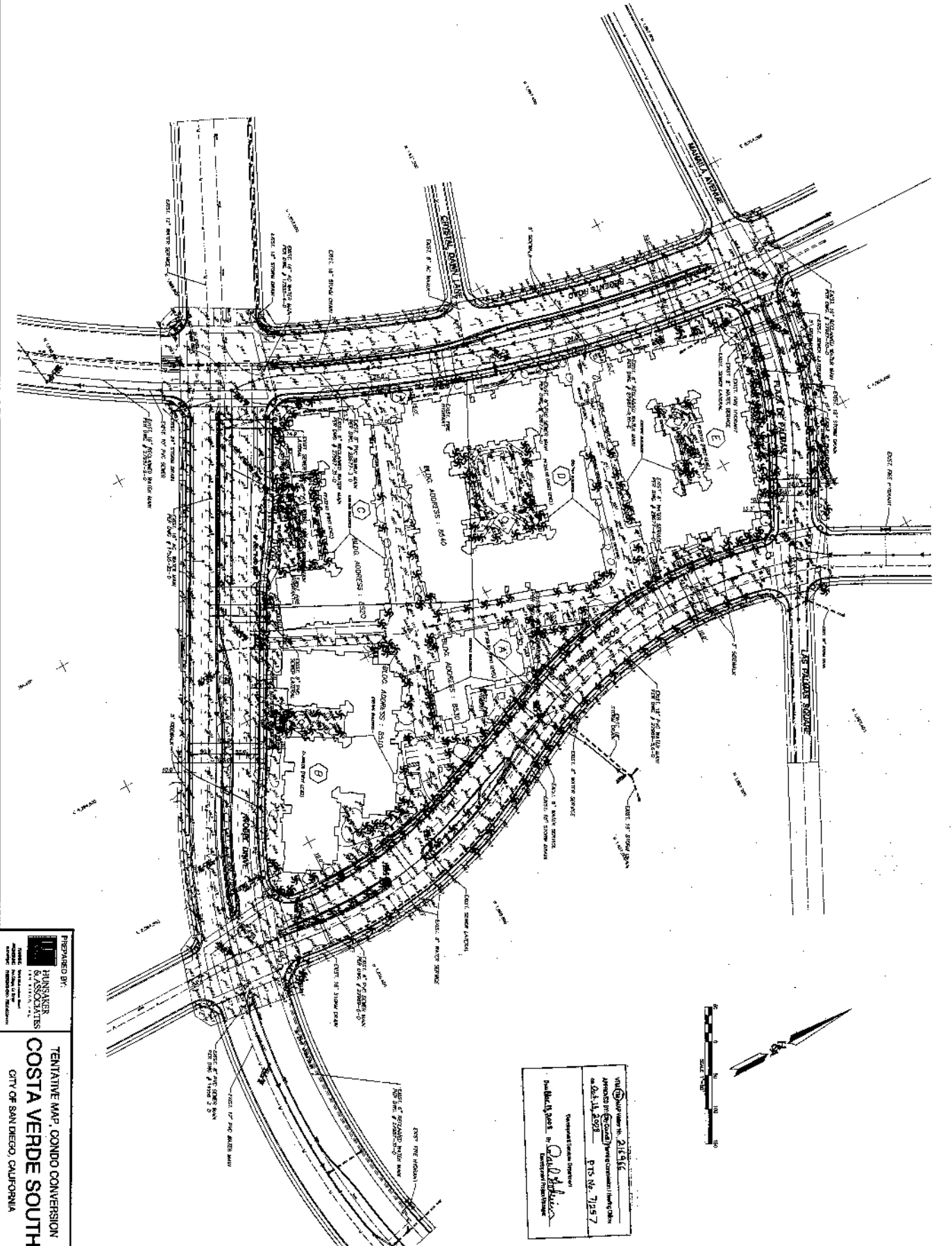
PUBLIC UTILITIES
1. ALL PUBLIC UTILITIES SHALL BE IN ACCORDANCE WITH THE CITY OF SAN DIEGO ORDINANCES.
2. ALL PUBLIC UTILITIES SHALL BE IN ACCORDANCE WITH THE CALIFORNIA PUBLIC UTILITIES CODE.
3. ALL PUBLIC UTILITIES SHALL BE IN ACCORDANCE WITH THE CALIFORNIA WATER SUPPLY CODE.

PROJECT TEAM
ARCHITECT: [Name]
ENGINEER: [Name]
PLUMBER: [Name]
ELECTRICIAN: [Name]
MECHANICAL: [Name]
GAS: [Name]
PEST CONTROL: [Name]
ENVIRONMENTAL: [Name]
HISTORIC PRESERVATION: [Name]
LAND USE: [Name]
ZONING: [Name]
COMMUNITY DEVELOPMENT: [Name]
HOUSING: [Name]
TENANT PROTECTION: [Name]
EMPLOYMENT RELATIONS: [Name]
LABOR: [Name]
WAGE ORDER: [Name]
LABOR RELATIONS ACT: [Name]
LABOR RELATIONS BOARD DECISIONS: [Name]

PREPARED BY: [Name]
DATE: [Date]
CITY OF SAN DIEGO: [Name]

TENTATIVE MAP/CONDO CONVERSION COSTA VERDE SOUTH CITY OF SAN DIEGO, CALIFORNIA

SHEET 1 OF 5



Prepared by: **211816**
 Approved by: **211816**
 Date: **06/11/2011** PLS No. **71257**
 Prepared by: **Carl Phillips**
 Date: **06/11/2011**

PREPARED BY:
HINSHAW
& ASSOCIATES
 ARCHITECTS
 1000 AVENUE OF THE STARS
 SUITE 1000
 COSTA MESA, CALIFORNIA 92626
 TEL: 714.440.1000
 FAX: 714.440.1001
 WWW.HINSHAWANDASSOCIATES.COM

TENTATIVE MAP, CONDO CONVERSION
COSTA VERDE SOUTH
 CITY OF SAN DIEGO, CALIFORNIA

SHEET **2**
 OF **5**

(R-2009-504)
COR. COPY

RESOLUTION NUMBER R- 304230

DATE OF FINAL PASSAGE OCTOBER 13, 2008

COSTA VERDE NORTH TENTATIVE MAP NO. 216983,
PROJECT NO. 71264 -APPEAL PAUL ROBINSON ON
BEHALF OF COSTA VERDE NORTH VILLAGE, LLC. AND
BRIGGS LAW CORPORATION ON BEHALF OF CITIZENS
FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL
DEVELOPMENT AND THE AFFORDABLE HOUSING
COALITION OF SAN DIEGO COUNTY.

WHEREAS, Costa Verde North Village, LLC, Applicant/Subdivider, Hunsaker & Associates, Inc., Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map, No. 216983) to allow the conversion of 651 existing residential units to condominiums to be known as the Costa Verde North Project [Project], located at 8720-8950 Costa Verde Boulevard, which is bounded by Plaza de Palmas to the south, Regents Road to the west, Costa Verde Boulevard to the east and La Jolla Village Drive to the north, legally described as Lots 1 and 2 of Costa Verde, according to Map thereof No. 12045, in the RS-1-14 zone and within the University Community Plan area; and

WHEREAS, the Map proposes the subdivision of a 9.17-acre site into one lot for a 651-unit residential condominium subdivision; and

WHEREAS, the project is exempt from environmental review pursuant to Section 15301 of the California Environmental Quality Act [CEQA] on the basis that the facilities are existing;
and

WHEREAS, a preliminary soils and geological reconnaissance report are waived by the City Engineer pursuant to the Subdivision Map Act and Section 144.0220 of the Municipal Code of the City of San Diego; and

(R-2009-504)
COR.COPY

WHEREAS, the subdivision is a condominium project as defined in Section 1350 et seq. of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The total number of condominium dwelling units is 651; and

WHEREAS, on June 5, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 216983, and voted 6-0 to approve the project; and

WHEREAS, Paul Robinson, on behalf of the applicant/subdivider, Costa Verde North Village, LLC, appealed the Planning Commission decision to the Council of the City of San Diego. The applicant asserted that the project should be allowed to pay an affordable housing in-lieu fee as opposed to being required to provide onsite affordable housing, as conditioned by the Planning Commission; and

WHEREAS, Cory Briggs, on behalf of the Citizen's for Responsible Equitable Environmental Development and the Affordable Housing Coalition of San Diego County appealed the Planning Commission decision to the Council of the City of San Diego, asserting: the project is not exempt from CEQA; approval of the Tentative Map violates the San Diego Municipal Code and the State Subdivision Map Act by not proceeding in the manner prescribed by law, not making all necessary findings, and not supporting the findings with sufficient evidence; and the project is inconsistent with the Housing Element; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

(R-2009-504)
COR.COPY

WHEREAS, the matter was set for public hearing on October 13, 2008, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego, that it adopts the following findings with respect to Tentative Map No. 216983:

1. The proposed subdivision complies with the applicable zoning and development regulations of the San Diego Municipal Code and Land Development Code [SDMC/LDC] section 125.0440(b).
2. 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/LDC section 125.0440(h) and Subdivision Map Act Section 66412.3).
3. Each of the tenants of the proposed condominium project has received, pursuant to State Map Action Section 66452.9, written notification of intention to convert at least 60 days prior to the filing of a tentative map (SDMC/LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)).
4. The project has been conditioned that the Subdivider will give each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the Subdivision Map Act (SDMC/LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)).
5. The project has been conditioned that the Subdivider will give each tenant 10 days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request (SDMC/LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)).
6. The project has been conditioned that the Subdivider will give each tenant of the proposed condominium project written notification within 10 days of approval of a final map for the proposed conversion (SDMC/LDC section 125.0444 and Subdivision Map Act Section 66427.1(b)). If the subdivider chooses to provide affordable housing units, the subdivider shall enter into an affordable housing agreement with the Housing Commission, prior to recordation of the Final Map.
7. The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project 180 days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion (SDMC/LDC section 125.0444 and Subdivision Map Act Section 66427.1(c)).
8. The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially

(R-2009-504)
COR.COPY

offered to the general public or terms more favorable to the tenant, which notice shall be provided within 5 working days of the issuance of the Subdivision Public Report. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right (SDMC/LDC section 125.0444 and Subdivision Map Act Section 66427.1(d)).

9. The project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or low income housing (SDMC/LDC section 125.0444(b)).

10. For any project that was developed to provide housing for the elderly, disabled or to provide low income housing, provisions have been made to perpetuate the use for which the project was developed (SDMC/LDC section 125.0444(c)).

11. Each of the tenants of the proposed condominium project has received written notification of the project application for the condominium conversion within 10 days after the application was deemed complete (SDMC/LDC section 125.0431(a)(3)).

12. The project has been conditioned that the Subdivider will give each person applying for the rental of a unit in such residential real property written notification that the project application for the condominium conversion was deemed complete (SDMC/LDC section 125.0431(a)(3)).

13. The project has been conditioned that the Subdivider will give each tenant a notice of termination of tenancy 60 days prior to being required to vacate the property. (SDMC/LDC section 125.0431(a)(4)).

14. A Building Conditions Report has been prepared in accordance with the Land Development Manual by a registered architect or engineer licensed by the State of California (SDMC/LDC section 144.0504(b)).

15. The project has been conditioned that the Subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (SDMC/LDC section 144.0504(c)).

16. The project has been conditioned that the Subdivider will provide a relocation assistance payment to all tenants of the project whose tenancy has terminated due to the condominium conversion. (SDMC/LDC section 144.0505).

17. The project has been conditioned for the Subdivider to complete the physical improvements as outlined in Land Development Code Section 144.0507, to the satisfaction of the City Engineer prior to final map approval.

18. The project has been conditioned for the Subdivider to satisfy the inclusionary housing requirements on-site in accordance with Land Development Code section 142.1306. (SDMC/LDC section 144.0508).

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

(R-2009-504)
COR.COPY

BE IT FURTHER RESOLVED, that the appeal of Paul Robinson, on behalf of Costa Verde North Village, LLC, in which the applicant asserted that the project should be allowed to pay an affordable housing in-lieu fee as opposed to being required to provide onsite affordable housing, as conditioned by the Planning Commission, is denied and the decision of the Planning Commission is sustained; however, the language on defense and indemnity as provided in Mr. Robinson's letter on behalf of Costa Verde Developers, LLC, is made a part the Tentative Map in lieu of the language that currently exists.

BE IT FURTHER RESOLVED, that the appeal of Cory Briggs, on behalf of the Citizen's for Responsible Equitable Environmental Development and the Affordable Housing Coalition of San Diego County, in which it was asserted that the project was not exempt from CEQA; approval of the Tentative Map violated the San Diego Municipal Code and the State Subdivision Map Act by not proceeding in the manner prescribed by law, not making all necessary findings, and not supporting the findings with sufficient evidence; and the project was inconsistent with the Housing Element, is denied.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon Thomas
Shannon Thomas
Deputy City Attorney

MG:ST:als:pev
10/24/08
02/18/09 COR.COPY
Or.Dept:DSD
R-2009-504
MMS #6401

CONDITIONS FOR TENTATIVE MAP NO. 216983

COSTA VERDE NORTH - PROJECT NO. 71264

ADOPTED BY RESOLUTION NO. R-304230 ON OCTOBER 13, 2008

GENERAL

1. This Tentative Map will expire October 13, 2011.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
3. Prior to the Tentative Map expiration date, a Final Map to consolidate the existing lots into one lot shall be recorded in the Office of the County Recorder.
4. Prior to the issuance of the Final Map, taxes must be paid on this property pursuant to section 66492 of the Subdivision Map Act. A tax certificate, recorded in the office of the County Recorder, must be provided to satisfy this condition.
5. The Final Map shall conform to the provisions of Planned Residential Development Permit No. 91-0452.
6. Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided for in Government Code §66499.37. City shall promptly notify the 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 City fails to cooperate fully in the defense, the 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. The subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.
7. The Subdivider shall provide a Notice of Tenants Rights and Notices for Condominium Conversion, consistent with the Land Development Manual to be provided as follows:
 - a. For existing tenants, within 10 days of the project application for the *condominium conversion* being deemed complete; or

- b. For prospective tenants, upon application for the rental of a unit in the proposed *condominium conversion*.
8. The Subdivider shall provide each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the State Map Act.
 9. The Subdivider shall provide the tenants a Notice of Application for a Public Report at least 10 days prior to the submittal to the Department of Real Estate (DRB), pursuant to Section 66427.1(a) of the Subdivision Map Act.
 10. The Subdivider shall provide each of the tenants of the proposed condominiums written notice of intention to convert at least 180 days prior to termination of tenancy due to the conversion or proposed conversion in conformance with Section 66427.1(c) of the Subdivision Map Act. The provisions of this subdivision shall not alter nor abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1 and 1941.2 of the Civil Code.
 11. The Subdivider shall provide each of the tenants of the proposed condominiums notification of their exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, in conformance with Section 66427.1(d) of the State Map Act. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report, pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.
 12. The Subdivider shall provide the tenants of the proposed condominiums with written notification within 10 days or approval of a Final Map for the proposed conversion, in conformance with Section 66427.1(b) of the Subdivision Map Act.

AFFORDABLE HOUSING

13. Prior to the recordation of the Final Map, the Subdivider shall enter into an affordable housing agreement with the Housing Commission to provide affordable housing units (10 percent of the total) in compliance with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code).
14. Prior to the recordation of the Final Map, the Subdivider shall demonstrate conformance with the Municipal Code provisions for Tenant Relocation Benefits

(Chapter 14, Article 4, Division 5), to the satisfaction of the Development Services Department and the Housing Commission.

15. The Subdivider will give each tenant a notice of termination of tenancy 60 days prior to being required to vacate the property. (Land Development Code Section 125.0431(a)(4)).
16. The Subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (Land Development Code Section 144.0504(c)).

ENGINEERING

17. The Subdivider shall replace the cracked/uplifted portions of sidewalk, maintaining the existing sidewalk scoring pattern and preserving any contractor's stamp, adjacent to the site on Regents Road and Plaza De Palmas.
18. The Subdivider shall reconstruct the northerly driveway on Costa Verde Boulevard, and the driveways on La Jolla Village Drive and Regents Road adjacent to the site, maintaining the existing driveway widths, to provide pedestrian access across the driveway spans per current City Standards.
19. The Subdivider shall reconstruct six pedestrian ramps to current City Standards, adjacent to the site on La Jolla Village Drive, Regents Road, Plaza De Palmas, and Costa Verde Boulevard.
20. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.
21. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
22. Prior to the recordation of the Final Map, the Subdivider shall demonstrate conformance with the Municipal Code provisions for building and landscape improvements (Land Development Code Sections 144.0507), to the satisfaction of the City Engineer. The parking requirements in Land Development Code Sections 144.0507 and 142.0525.a do not apply, since this project was deemed complete prior to the effective date of this ordinance (July 27, 2006).
23. Conformance with the "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. RR-297376.

MAPPING

24. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
25. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
26. The Final Map shall:
 - a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

SEWER AND WATER

27. The Subdivider shall install appropriate private back flow prevention devices on all existing and proposed water services (domestic, irrigation, and fire) adjacent to the project site in a manner satisfactory to the Water Department Director.
28. The Subdivider shall provide a letter, agreeing to prepare CC&Rs for the operation and maintenance of all private water and sewer facilities that serve or traverse more than a single condominium unit or lot.

LANDSCAPE

29. Prior to recordation of the Final Map, complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with the Exhibit 'A,' Landscape Development Plan, on file in the Office of the Development Services Department.
30. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.
31. The Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.
32. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to recordation of the Final Map.

INFORMATION:

- The approval of this Tentative Map by the Planning Commission of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- If the Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within 90 days of the approval of this 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.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO,
CALIFORNIA, ON OCTOBER 13, 2008.

Paul
Godwin
Sol

RESOLUTION NUMBER R-304228

DATE OF FINAL PASSAGE OCTOBER 13, 2008

COSTA VERDE SOUTH TENTATIVE MAP, PROJECT NO. 71257 - ENVIRONMENTAL APPEAL BY CORY J. BRIGGS, BRIGGS LAW CORPORATION, ON BEHALF F CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL DEVELOPMENT.

WHEREAS, Costa Verde Developers, LLC, Applicant/Subdivider, Hunsaker & Associates, Inc., Engineer, submitted an application to the City of San Diego for Tentative Map, No. 216966, to allow the conversion of 606 existing residential units to condominiums. The project site is located at 8510-8550 Costa Verde Boulevard, which is bounded by Nobel Drive to the south, Regents Road to the west, Costa Verde Boulevard to the east and Plaza de Palmas to the north, legally described as Lots 3, 4 and 5 of Costa Verde, according to Map thereof No. 12045, in the RS-1-14 Zone and within the University Community Plan area; and

WHEREAS, the Map proposes the subdivision of a 8.6-acre site into one (1) lot for a 606-unit residential condominium subdivision; and

WHEREAS, the project is exempt from environmental review pursuant to Section 15301 of the California Environmental Quality Act (CEQA) on the basis that the facilities are existing; and

WHEREAS, a preliminary soils and geological reconnaissance report are waived by the City Engineer pursuant to the Subdivision Map Act and Section 144.0220 of the Municipal Code of the City of San Diego; and

ORIGINAL

WHEREAS, the subdivision is a condominium project as defined in Section 1350 et seq. of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The total number of condominium dwelling units is 606; and

WHEREAS, on June 5, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 216966, including the waiver of the requirement to underground the existing overhead utilities, and voted 6-0 to approve the project, by Resolution No. 4406-PC; and

WHEREAS, two separate appeals of the Planning Commission's decision were filed by the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development c/o Cory J. Briggs, Briggs Law Corporation and by the project applicant; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, on October 13, 2008, the City Council considered Tentative Map No. 216966, and pursuant to Section 125.0440 (tentative map) of the Municipal Code of the City of San Diego and Subdivision Map Act Section 66428, received for its consideration written and oral presentations, evidence having been submitted, and heard testimony 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 Council of the City of San Diego, that it adopts the following findings with respect to Tentative Map No. 216966:

1. The proposed subdivision complies with the applicable zoning and development regulations of the San Diego Municipal Code and Land Development Code [SDMC/LDC] Section 125.0440(b).
2. 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/LDC Section 125.0440(h) and Subdivision Map Act Section 66412.3).
3. Each of the tenants of the proposed condominium project has received, pursuant to State Map Action Section 66452.9, written notification of intention to convert at least 60 days prior to the filing of a tentative map (SDMC/LDC Section 125.0444 and Subdivision Map Act Section 66427.1(a)).
4. The project has been conditioned that the Subdivider will give each tenant and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the Subdivision Map Act (SDMC/LDC Section 125.0444 and Subdivision Map Act Section 66427.1(a)).
5. The project has been conditioned that the Subdivider will give each tenant 10 days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request (SDMC/LDC Section 125.0444 and Subdivision Map Act Section 66427.1(a)).
6. The project has been conditioned that the Subdivider will give each tenant of the proposed condominium project written notification within 10 days of approval of a final map for the proposed conversion (SDMC/LDC Section 125.0444 and Subdivision Map Act Section 66427.1(b)). If the subdivider chooses to provide affordable housing units, the subdivider shall enter into an affordable housing agreement with the Housing Commission, prior to recordation of the Final Map.
7. The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project 180 days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion (SDMC/LDC Section 125.0444 and Subdivision Map Act Section 66427.1(c)).
8. The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, which notice shall be provided within 5 working days of the issuance of the Subdivision Public Report. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right (SDMC/LDC Section 125.0444 and Subdivision Map Act Section 66427.1(d)).

9. The project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or low income housing (SDMC/LDC Section 125.0444(b)).
10. For any project that was developed to provide housing for the elderly, disabled or to provide low income housing, provisions have been made to perpetuate the use for which the project was developed (SDMC/LDC Section 125.0444(c)).
11. Each of the tenants of the proposed condominium project has received written notification of the project application for the condominium conversion within 10 days after the application was deemed complete (SDMC/LDC Section 125.0431(a)(3)).
12. The project has been conditioned that the Subdivider will give each person applying for the rental of a unit in such residential real property written notification that the project application for the condominium conversion was deemed complete (SDMC/LDC 125.0431(a)(3)).
13. The project has been conditioned that the Subdivider will give each tenant a notice of termination of tenancy 60 days prior to being required to vacate the property. (SDMC/LDC Section 125.0431(a)(4)).
14. A Building Conditions Report has been prepared in accordance with the Land Development Manual by a registered architect or engineer licensed by the State of California (SDMC/LDC Section 144.0504(b)).
15. The project has been conditioned that the Subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (SDMC/LDC Section 144.0504(c)).
16. The project has been conditioned that the Subdivider will provide a relocation assistance payment to all tenants of the project whose tenancy has terminated due to the condominium conversion. (SDMC/LDC Section 144.0505).
17. The project has been conditioned for the Subdivider to complete the physical improvements as outlined in Land Development Code Section 144.0507, to the satisfaction of the City Engineer prior to final map approval.
18. The project has been conditioned for the Subdivider to satisfy the inclusionary housing requirements on-site in accordance with Land Development Code Section 142.1306. (SDMC/LDC Section 144.0508).
19. That said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal filed by Cory J. Briggs, Briggs Law Corporation, on behalf of Citizens for Responsible Equitable Environmental Development is denied, the decision of the Planning Commission is upheld, and Tentative Map No. 216966 is approved, including the language on defense and indemnity included in Mr. Robinson's letter to

COSTA VERDE DEVELOPERS, LLC, Applicant/Subdivider and HUNSAKER &
ASSOCIATES, INC., Engineer, subject to the attached conditions which are made a part of this
resolution by this reference.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Marianne Greene
Marianne Greene
Deputy City Attorney

MG:als
10/24/08
Or.Dept:DSD
R-2009-500

CONDITIONS FOR TENTATIVE MAP NO. 216966

COSTA VERDE SOUTH - PROJECT NO. 71257

ADOPTED BY RESOLUTION NO. R-304228 ON OCTOBER 13, 2008

GENERAL

1. This Tentative Map will expire October 13, 2011.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
3. Prior to the Tentative Map expiration date, a Final Map to consolidate the existing lots into one lot shall be recorded in the Office of the County Recorder.
4. Prior to the issuance of the Final Map, taxes must be paid on this property pursuant to section 66492 of the Subdivision Map Act. A tax certificate, recorded in the office of the County Recorder, must be provided to satisfy this condition
5. The Final Map shall conform to the provisions of Planned Residential Development Permit No. 91-0452.
6. The Subdivider shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, for any and all actions related to this subdivision, including but not limited to any to any action to attack, set aside, void, challenge or annul approval by the City of this subdivision.

The City will promptly notify Subdivider of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Subdivider shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees.

The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Subdivider shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Subdivider regarding litigation issues, the City shall have the authority to control the litigation and make litigation-related decisions, including, but not limited to, settlement or other

disposition of the matter. However, the Subdivider shall not be required to pay or perform any settlement unless such settlement is approved by the Subdivider.

7. The Subdivider shall provide a Notice of Tenants Rights and Notices for Condominium Conversion, consistent with the Land Development Manual to be provided as follows:
 - a. For existing tenants, within 10 days of the project application for the *condominium conversion* being deemed complete; or
 - b. For prospective tenants, upon application for the rental of a unit in the proposed *condominium conversion*.
8. The Subdivider shall provide each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the State Map Act.
9. The Subdivider shall provide the tenants a Notice of Application for a Public Report at least 10 days prior to the submittal to the Department of Real Estate (DRB), pursuant to Section 66427.1(a) of the Subdivision Map Act.
10. The Subdivider shall provide each of the tenants of the proposed condominiums written notice of intention to convert at least 180 days prior to termination of tenancy due to the conversion or proposed conversion in conformance with Section 66427.1(c) of the Subdivision Map Act. The provisions of this subdivision shall not alter nor abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1 and 1941.2 of the Civil Code.
11. The Subdivider shall provide each of the tenants of the proposed condominiums notification of their exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, in conformance with Section 66427.1(d) of the State Map Act. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report, pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.
12. The Subdivider shall provide the tenants of the proposed condominiums with written notification within 10 days or approval of a Final Map for the proposed conversion, in conformance with Section 66427.1(b) of the Subdivision Map Act.

AFFORDABLE HOUSING

13. Prior to the recordation of the Final Map, the Subdivider shall enter into an affordable housing agreement with the Housing Commission to provide affordable housing units (10 percent of the total) in compliance with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code).
14. Prior to the recordation of the Final Map, the Subdivider shall demonstrate conformance with the Municipal Code provisions for Tenant Relocation Benefits (Chapter 14, Article 4, Division 5), to the satisfaction of the Development Services Department and the Housing Commission.
15. The Subdivider will give each tenant a notice of termination of tenancy 60 days prior to being required to vacate the property. (Land Development Code Section 125.0431(a)(4)).
16. The Subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (Land Development Code Section 144.0504(c)).

ENGINEERING

17. The Subdivider shall replace the cracked/uplifted portions of sidewalk, maintaining the existing sidewalk scoring pattern and preserving any contractor's stamp, adjacent to the site on Costa Verde Boulevard and Regents Road.
18. The Subdivider shall reconstruct 4 pedestrian ramps to current City Standards, adjacent to the site on Nobel Drive, Regents Road, Plaza De Palmas, and Costa Verde Boulevard.
19. The Subdivider shall obtain an Encroachment Maintenance and Removal Agreement, for the handrails and concrete walls in the Nobel Drive, Regents Road, and Plaza De Palmas rights-of-way.
20. The Subdivider shall enter into an agreement to indemnify, protect and hold harmless the City, its officials and employees from any and all claims, demands, causes or action, liability or loss because of, or arising out of the receipt of runoff from the concrete stairway access path in the Nobel Drive right-of-way.
21. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.
22. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.

ORIGINAL

23. Prior to the recordation of the Final Map, the Subdivider shall demonstrate conformance with the Municipal Code provisions for building and landscape improvements (Land Development Code Sections 144.0507), to the satisfaction of the City Engineer. The parking requirements in Land Development Code Sections 144.0507 and 142.0525.a do not apply, since this project was deemed complete prior to the effective date of this ordinance (July 27, 2006).
24. Conformance with the "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. RR-297376.

MAPPING

25. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
26. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
27. The Final Map shall:
- a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

SEWER AND WATER

28. The Subdivider shall install appropriate private back flow prevention devices on all existing and proposed water services (domestic, irrigation, and fire) adjacent to the project site in a manner satisfactory to the Water Department Director.
29. The Subdivider shall provide a letter, agreeing to prepare CC&Rs for the operation and maintenance of all private water and sewer facilities that serve or traverse more than a single condominium unit or lot.

LANDSCAPE

30. Prior to recordation of the Final Map, complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with the Exhibit 'A,' Landscape Development Plan, on file in the Office of the Development Services Department.
31. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.
32. The Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.
33. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to recordation of the Final Map.

INFORMATION:

- The approval of this Tentative Map by the City Council of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).

- If the Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within 90 days of the approval of this 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.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO,
CALIFORNIA, ON OCTOBER 13, 2008.

§ 142.1304 Variance Rules for Inclusionary Affordable Housing Regulations

- (a) Except as provided in Section 142.1304(c), a variance, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Four and shall require either that the findings in Section 142.1304(d) or in Section 142.1304(e) be made.
- (b) An application for a variance, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, adjustment, or reduction, and shall be a matter of public record.

- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance, adjustment, or reduction request shall be reviewed in accordance with Process Four.
- (d) No variance, adjustment, or reduction shall be issued unless:
- (1) Special circumstances unique to that *development* justify the granting of the variance, adjustment, or reduction;
 - (2) The *development* would not be feasible without the modification;
 - (3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) No variance, adjustment, or reduction shall be issued to an applicant unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.
- (f) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):
- (1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and
 - (2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit oriented development.

(Added 6-3-2003 by O-19189 N.S.)

(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)

EXHIBIT "A"

**INCLUSIONARY AFFORDABLE HOUSING
IMPLEMENTATION AND MONITORING
PROCEDURES MANUAL**

Regulations pertaining to the City of San Diego's Inclusionary Housing Program ("Program") are incorporated in San Diego Municipal Code Chapter 14, Article 2, Division 13. The purpose of the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual ("Procedures Manual") is to provide additional detail in the implementation and administration of the Program.

Development Review Procedures

Specific development procedures are summarized in the Development Services Department Information Bulletin 532. Applicants constructing affordable units pursuant to the requirements of the Program will be eligible for expedited permit processing through the Affordable/Infill Housing and Sustainable Buildings Expedite Program as implemented by Council Policy 600-27 (See Information Bulletin 538).

Targeted Rental Households and Targeted Ownership Households

Program requirements can be fulfilled through the provision of rental or for-sale housing. Rental units meeting program requirements shall be affordable at rents affordable to households earning 65% or less of the Area Median Income ("AMI"). For-sale units meeting program requirements shall be affordable to households earning 100% AMI or less. Income restrictions shall be adjusted annually based upon the revisions to Area Median Income limits as promulgated from time to time by HCD.

Targeted Rental Household

Targeted Rental Household rent calculations shall be based on the updated AMI limits as adjusted for household size by the U.S. Department of Housing and Urban Development (HUD) for San Diego County at 65% AMI. Current rent levels as of April 2009 as adjusted by household size and utility allowance are as follows:

2009 65% Area Median Income and Rent Restrictions			
Household Size	Unit Size	Income	Gross Rent*
One	Studio	\$37,600	\$940
Two	1 bedroom	\$42,950	\$1,074
Three	2 bedroom	\$48,350	\$1,209
Four	3 bedroom	\$53,700	\$1,343

*Gross rent is equal to cash rent plus all tenant-paid utilities. See the "San Diego Housing Commission Utility Allocation Schedule" to calculate the tenant-paid utilities based on the project's actual utilities mix. Any fees required by owner that would otherwise be optional to the tenant (such as renter's insurance) shall be deducted from the gross rent.

The eligibility of each prospective tenant and/or household under the restrictions set forth above shall be certified by the San Diego Housing Commission. Applicants shall submit documentation for certification to the San Diego Housing Commission for a determination of tenant eligibility, prior to tenant occupancy. No Affordable Unit may be rented to a prospective tenant or occupied by any person unless and until the San Diego Housing Commission has determined that the prospective tenant or occupant has satisfied the eligibility requirements.

Targeted Ownership Household

Targeted Ownership Household price restrictions shall be based on the updated AMI limits adjusted for household size by HUD for San Diego MSA at 100% AMI. Program sales price restrictions as of 2009 are as follows:

**2009 SALES PRICE RESTRICTIONS
100% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Maximum Sales Price
Studio	\$207,518
One	\$234,125
Two	\$260,964
Three	\$291,778

**2009 MAXIMUM INCOME
100% AREA MEDIAN INCOME**

Household Size	Income
One	\$52,450
Two	\$59,900
Three	\$67,400
Four	\$74,900
Five	\$80,900

The sales price restrictions shall be established based on housing costs that do not exceed 35% of the annual median household income, including mortgage principal and interests, taxes, insurance, HOA and assessments. Purchase price assumes 5% down payment and the prevailing fixed-rate interest rates. Upon request, the San Diego Housing Commission shall prepare and make available to Applicant any general information that the San Diego Housing Commission possesses regarding income limitations, sales prices, occupancy policies and restrictions which

are applicable to the affected units. Actual sales prices for units restricted at 100% AMI will be calculated on a project-by-project basis.

The eligibility of each prospective buyer and the sales price under the restrictions set forth above shall be certified by the San Diego Housing Commission. Applicants shall submit documentation for certification to the San Diego Housing Commission for a determination of buyer eligibility prior to close of Escrow on each restricted unit. Affordable Units must be owner occupied unless the San Diego Housing Commission has determined a hardship on a case-by-case basis. Except where authorized by the San Diego Housing Commission for a specific unit, renting a restricted unit would trigger a recapture in equity pursuant to San Diego Municipal Code Section 142.1309 (e).

Exemption of Naturally Affordable For-Sale Units

Pursuant to Section 143.1303 of the Municipal Code, any portion of a residential development project that meets all of the following criteria shall be exempted from the requirements of the Program, including payment of the in-lieu fee:

- The units contained within the residential development project are for-sale to private household(s), who owns no other real property, for use as the buyer's primary residence;
- The units are specifically targeted for, sold to, and occupied by households earning less than 150% AMI; and
- Each qualifying unit must have two (2) or more bedrooms (not required for condo conversions).

The unit(s) subject to this exemption has recorded against it an agreement between the *Applicant* and the Chief Executive Officer of the San Diego Housing Commission assuring that the provisions above have been met. The San Diego Housing Commission will certify the eligibility of the prospective buyers.

In the event that the Applicant is unable to fulfill the requirements of this provision, the Program requirements will be applied to the units that would have been exempted. The Applicant may choose to pay the then-current, applicable in-lieu fee or provide the affordable units as provided for in the Inclusionary Housing Ordinance.

Qualifying 150% units shall be sold at prices at or below the "Maximum Sales Price". The Maximum Sales Price shall be the sales price determined and published by the San Diego Housing Commission on an annual basis to be the Maximum Sales Price for a unit affordable to a household with income at 150% AMI, adjusted for unit size, based upon the number of bedrooms located within the 150% Unit(s). The Maximum Sales Price shall be determined by the San Diego Housing Commission in its reasonable discretion as the amount which will result in an annual housing cost to the purchaser of the 150% Unit, which does not exceed the thirty-five percent (35%) of one hundred fifty percent (150%) of Area Median Income adjusted for household size, determined as of the date of the execution of a binding purchase and sale

agreement for the 150% Unit and shall include, without limitation, mortgage principal and interest, taxes, insurance, HOA and assessments.

Maximum eligible incomes and Maximum Sales Price restrictions shall be adjusted based upon the revisions to Area Median Income limits as promulgated from time to time by HUD.

All units qualifying for this exemption for the year 2009 shall be affordable at or below the maximum sales prices shown in the chart below.

**2009 SALES PRICE RESTRICTIONS
150% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Maximum Sales Price
Studio	\$329,170
One	\$373,055
Two	\$417,290
Three	\$465,500
Four	\$412,140

The maximum eligible incomes for 2009 are as follows:

**2009 MAXIMUM INCOME
150% AREA MEDIAN INCOME**

Household Size	Income
One	\$78,675
Two	\$89,850
Three	\$101,100
Four	\$112,350
Five	\$121,350

Condominium Conversions

Pursuant to Section 143.1306 of the Municipal Code, condominium conversion units affordable to and sold to households earning less than 150% AMI shall be exempted from the requirements of the Program, including payment of the in-lieu fee. Qualifying units shall be sold to private household(s), who owns no other real property, for use as a primary residence.

Applicants with qualifying condominium conversion units ("150% units") as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers.

Compliance with the exemption from the provisions of the Inclusionary Housing Ordinance shall be determined at the time of the execution of the purchase and sale agreement, when the

purchase price is fixed. Applicants shall enter into an agreement with the San Diego Housing Commission to ensure compliance.

The San Diego Housing Commission may, but shall not be obligated to, perform the following monitoring functions and services, on a periodic basis: (A) reviewing the applications of prospective or actual occupants and/or purchasers of the affected units, to spot check the eligibility of such persons and/or households as eligible occupants and/or households; (B) reviewing the documentation submitted by Applicants in connection with the certification process for eligible households and/or occupants. Notwithstanding the foregoing description of the San Diego Housing Commission's functions, no person or entity, including the Applicant shall have any claim or right of action against the San Diego Housing Commission based on any alleged failure to perform such function, except that Applicant may reasonably rely upon the San Diego Housing Commission's tenant eligibility determination and the Applicant shall not be liable to the San Diego Housing Commission for any damages, attributable to the San Diego Housing Commission's sole negligence or willful misconduct in conducting any eligibility determinations and/or monitoring.)

Off-Site Housing

If the Applicant elects, pursuant to Section 142.1306 (b)(2) of the San Diego Municipal Code, to construct Off-Site Units to satisfy the requirements of this Program, the Applicant shall construct the Units within the same Community Planning Area, as delineated in the General Plan of the City of San Diego, as the Principal Project. An alternate site for the construction of the Affordable Units shall be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Development Project is located in a Redevelopment Project Area.

An Applicant may satisfy the requirements of this Program by the use of Affordable Units constructed by other developers, in addition to any to be built to meet their respective affordable housing requirements as set forth in the Ordinance, by transfer of credits between developers, if and when approved by the Planning Director of the City of San Diego and the CEO of the San Diego Housing Commission. The Receiver Applicant would be precluded from utilizing any local public funds to meet the Program's affordability requirements. The approval of the Receiver Site would be subject to all applicable approvals set forth in this Procedures Manual and the Ordinance.

If the Applicant elects, pursuant to Section 142.1306 (b)(3) of the San Diego Municipal Code, to construct the affordable units on a site different from the primary development site and outside the community planning area, the applicant must obtain a variance in accordance with Section 142.1304 in accordance with Process Four. An alternate site for the construction of the Affordable Units shall be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Residential Development Project is located in a Redevelopment Project Area. The use of an alternate site for the construction of the Affordable Units outside of

the Community Planning Area of the Principal Project must be found to support the community and economic balance and/or transit orientation goals.

Alternative Development Schedule and Phasing of Units

Pursuant to San Diego Municipal Code Section 142.1309(a)(1), an Applicant may seek approval for an alternative development schedule subject to a Process Two approval. An Applicant approved for an alternative development schedule may provide Affordable Units in accordance with the following:

Affordable Units built subject to this Program shall be constructed, completed, and ready for occupancy no later than the date that the Market Rate Housing is constructed, completed and ready for occupancy unless there is an otherwise acceptable agreement for an alternative development schedule which is satisfactory to the CEO of the Housing Commission or the CEO of the San Diego Housing Commission and the Redevelopment Agency in the event that the Principal Project is located within a Redevelopment Project Area.

The timely construction of the affordable housing shall be assured by the posting of a bond and the execution of agreements satisfactory to the CEO of the San Diego Housing Commission on or before the issuance of the first building permit for any unit in the Residential Development Project.

In the event that the development is proposed to be constructed in phases or the affordable housing is proposed to be constructed off-site, an alternative development schedule may be approved, subject to a written agreement between the Applicant and the CEO of the San Diego Housing Commission, such as the following:

The issuance of building permit for the Affordable Housing Project shall occur on or before the earlier of: (i) the issuance of building permits for construction of the number which represents 50% of the Market Rate Units within the Project; or (ii) the date which is eighteen (18) months after the filing of final map for the Market Rate Project, or (iii) a date which is eighteen months after the receipt of the building permit for the first Market Rate Unit if no final map is filed;

Completion of construction of the Affordable Housing Project shall occur upon the earlier of twelve (12) months after the issuance of building permits for the Affordable Housing Project as described above; or the date which is two and one-half years after the earliest date determined above.

The issuance of building permits for the construction of the number which represents 75% of market rate units for the Project shall not occur until the completion of all of the Affordable Units is authorized by the City.

Occupancy of the Affordable Housing Project by persons meeting the Program Eligibility requirements shall occur not later than 180 days after the completion of construction as determined above.

In-Lieu Fees

Pursuant to Section 143.1310, an Applicant may pay a fee in lieu of constructing affordable units.

Where no building permit application is filed in connection with a condominium conversion project, the in-lieu fees shall be paid in full no later than the close of escrow of the first unit sold within the project, subject to an agreement with the San Diego Housing Commission. The Applicant shall pay the then current, applicable in-lieu fee amount

The amount of the in lieu fees to be charged and collected for each Residential Development Project shall be the product of the applicable per square foot charge multiplied by the aggregate gross floor area, as defined in the San Diego Municipal Code, of all of the units within the Residential Development Project (excluding garages and carports).

The following In Lieu Fees shall be collected during the first three (3) years after the Program is effective:

PROJECTS OF 10 OR MORE UNITS	
YEAR ONE	\$1.00/ SQ. FOOT
YEAR TWO	\$1.75/SQ. FOOT
YEAR THREE	\$2.50/SQ FOOT

PROJECTS OF LESS THAN 10 UNITS	
YEAR ONE	\$0.50/SQ FOOT
YEAR TWO	\$0.875/SQ FOOT
YEAR THREE	\$1.25/SQ FOOT

The level of the in-lieu fee shall be revised annually commencing on the fourth year based on the following formula:

- Fifty percent of the difference between the median sales price of all homes sales in the City of San Diego for the last quarter of the year prior to the time of adjustment (as established by an independent and reputable real estate data firm that publishes data on no less than a quarterly basis) and the amount of money a median-income family of four is able to afford to purchase a home.
- The product of the above calculation shall then be divided by 10, in order to represent the level of obligation under the Program.
- The product of the above calculation shall then be divided by 2,000 Square Feet which represents the average size (Square Feet) of a unit constructed within the City of San Diego, in order to determine the level of the in-lieu fee for projects of ten or more units. Average size of a unit may be adjusted from time to time.
- The level of the in-lieu fee for projects of less than 10 units shall be 50% of the amount set for projects of 10 or more units.

Example:

Assume that the median income household can afford to purchase a home priced at \$174,000. The median home price within the City of San Diego is \$274,000. Fifty percent of the difference between the median home price and that which the median income household can afford is \$50,000. Ten percent of this number is \$5,000. This number is divided by 2,000 SF to produce an in-lieu fee level of \$2.50 per square foot for projects of 10 or more. The level of the in-lieu fee for projects of less than 10 units would be 50% of this or \$1.25 per square foot.

Pursuant to the above formula, the in-lieu fee from July 3, 2009 to July 2, 2010 is \$4.98/square foot for projects with 10 or more units and \$2.49 for projects with 9 or fewer units.

Determining Amount of In Lieu Fee(s)

The San Diego Municipal Code Section 142.1310(a), provides "the rate of the in lieu fee shall be determined at the time the building permit application is filed". Therefore, at the time the building permit application is filed, Development Services shall determine the amount of the in lieu fee and will advise the applicant of the amount of the applicable in lieu fee, in accordance with the following:

- (1) For building permits that are obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, the rate of the in lieu fee shall be the rate in effect at the time the application for that first tentative map or development permit was deemed completed.
- (2) For building permits that are not obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, but are issued within three (3) years of the date of approval of the first tentative map or development permit, the rate of the in lieu fee shall be the rate in effect at the time that first tentative map or development permit was approved.
- (3) For building permits that are not obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, and that are not issued within three (3) years of the date of the approval of the first tentative map or development permit, the rate of the in lieu fee shall be the rate in effect at the time the application for the building permit is deemed complete.
- (4) For any tentative map or development permit approved on or before July 3, 2006, that contains a condition to pay the inclusionary housing in lieu fees, the rate of the in lieu fee at building permit issuance shall be fixed at not more than \$1.25 per square foot for projects of nine (9) or less residential units or \$2.50 per square foot for projects of ten (10) or more residential units for a period of three (3) years from the date the tentative map or development permit was approved, or until July 3, 2006, whichever occurs later. The rate of the in lieu fee thereafter shall be the rate in effect at the time the application for the building permit is deemed complete.

Conversion of Tenure Type for Affordable Units

Any Affordable Units constructed pursuant to the Program, proposed to change the type of tenure from rental to for-sale or for-sale to rental must satisfy the requirements of this Procedures Manual.

Any Affordable Rental Units to be converted to ownership units must satisfy the requirements of this Procedures Manual. Any Rental Units to be converted to For-Sale Units shall be sold at or below the Maximum Purchase Price to Targeted Ownership Households meeting the income qualifications specified in the Notice of Affordable Restrictions or conditions of approval, with a right of first refusal for the occupant(s) of such Units at the time of conversion. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including sales price and length and method of restriction.

Any Affordable Ownership Units to be converted to rental units must satisfy the requirements of this Procedures Manual. Any Affordable Ownership Units to be converted to Rental Units shall be rented at or below the Maximum Rental Rate to Targeted Rental Households meeting the income qualifications specified in the Notice of Affordable Restrictions or conditions of approval. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including rental rate and length and method of restriction.

Affirmative Marketing Requirements

The conditions of approval shall specify that Applicant shall adhere to the marketing, monitoring, and enforcement procedures outlined in this section. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. Applicants shall comply with the terms of their approved affirmative marketing plan, as may be amended from time to time, consistent with City Council Policy 600-20 and Fair Housing Law. The requirements of the affirmative marketing program shall be binding on the original Applicant's successors in interest to the extent that the first sales to the general public are covered.

Ongoing Monitoring

An initial monitoring fee of \$500 will be assessed as a one-time charge to cover costs for developing the compliance monitoring plan, computer database program and reporting system for the project, and training sessions for owner/manager. This fee is only applicable to rental properties.

Annual Monitoring will be required for all rental affordable units developed under the Program. The base monitoring fee per unit is \$65 for the first 40 units. The base fee charged decreases \$10 for each unit more than 40 units, and decreases \$20 for each unit more than 80 units.

1 to 40 Units \$65 per unit

41 to 80 Units \$55 per unit

81+ Units \$45 per unit

The Annual Monitoring fee shall be adjusted upward annually for increased costs due to inflation. The adjustment shall reflect the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the County of San Diego.

For projects that contain affordable for-sale units, a \$1,000 per unit fee will be required for monitoring and determining eligibility for price restricted units. The fee is due upon execution of a cooperation agreement between the Applicant and the Housing Commission.

Waivers, Adjustments and/or Reductions

The City Council of the City of San Diego desires to clarify the procedures that allow potential lack of nexus challenges to the constitutionality of the Inclusionary Ordinance under the provisions of San Diego Municipal Code Section 142.1305. The Council declares that this amendment to the Procedures Manual is declaratory of its existing intent and policy and remedies that exist under the current ordinance and under state law. This Procedures Manual was adopted by Resolution Number R-298003, adopted on May 20, 2003, and may be updated, revised and/or clarified by resolution.

An applicant for or developer of any development, project or property subject to the requirements of the Inclusionary Ordinance may appeal for a reduction, adjustment or waiver of the requirements of the Inclusionary Ordinance by following the procedures outlined in Section 142.1304 and/or 142.1305, based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the in lieu fee or the inclusionary housing requirement. If such lack of nexus is established under either Section 142.1304(d)(1) (variance) and/or 142.1305(d)(1) (waiver), then the findings required under 142.1304(d)(2), (3) and (4) for a variance and/or Section 142.1305(d)(2), (3) and (4) for a waiver, shall automatically be deemed established by the decision makers.

It is the intent of this policy to be applicable until the City Council amends the Inclusionary Ordinance to reflect this policy concerning reduction, adjustment and waivers.

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24000757

VARIANCE NO. 758951
COSTA VERDE NORTH - PROJECT NO. 206871
PLANNING COMMISSION

This Variance No. 758951 is granted by the Planning Commission of the City of San Diego to Costa Verde Developers, LLC, a California Limited Liability Company, Owner and Permittee, pursuant to San Diego Municipal Code [SDMC] section 142.0304. The 8.6-acre site is located at 8510-8550 Costa Verde Boulevard in the RS-1-14 zone of the University Community Plan area within the Costa Verde Specific Plan area. The project site is legally described as Lots 1 and 2 of Costa Verde, Map No. 12045.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to set the in-lieu fee amount at the amount required when the project was deemed complete, and to be allowed to pay that amount at the sale of the first unit, rather than at the recordation of the Final Map as approved on July 22, 2010; specifically, the project shall include:

- a. A Variance from the Inclusionary Housing Regulations to set the in-lieu fee amount required for Tentative Map No. 216983, Project No. 71264, at the rate required when the project was deemed complete, for a total in-lieu fee of \$1,171,920.75, and to be allowed to pay that amount on the close of escrow on the first retail sale of a condominium dwelling unit sold within the property (rather than at the recordation of the final map); the in-lieu fee shall not be due and payable upon a bulk sale of the entire development to another developer or owner to be held and operated as a rental project.

STANDARD REQUIREMENTS

- 1. The Conditions for Tentative Map No. 216983 and Planned Residential Permit No. 91-0452, shall remain in effect except where modified by this permit.

2. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
3. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
4. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
5. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

6. The Owner/Permittee shall defend, indemnify, and hold harmless the City (including its agents, officers, and employees [together, Indemnified Parties]) from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided in Government Code §66499.37 or §65009. City shall promptly notify Owner/Permittee of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to promptly notify the Owner/Permittee of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, the Owner/Permittee 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. The Owner/Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the Owner/Permittee.
7. The Owner/Permittee shall post a copy of each approved discretionary Permit or Tentative Map in its sales office for consideration by each prospective buyer.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on July 22, 2010, and Resolution No. PC-XXXX.

Permit Type/PTS Approval No.: Variance No. 758951/Project No. 206871
Date of Approval: July 22, 2010

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Jeannette Temple
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

Costa Verde North Village, LLC
Owner/Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

**RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501**

**WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24000757

**VARIANCE NO. 758755
COSTA VERDE SOUTH - PROJECT NO. 206871
PLANNING COMMISSION**

This Variance No. 758755 is granted by the Planning Commission of the City of San Diego to Costa Verde Developers, LLC, a California Limited Liability Company, Owner and Permittee, pursuant to San Diego Municipal Code [SDMC] section 142.0304. The 8.6-acre site is located at 8510-8550 Costa Verde Boulevard in the RS-1-14 zone of the University Community Plan area within the Costa Verde Specific Plan area. The project site is legally described as Lots 3, 4, and 5 of Costa Verde, Map No. 12045.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to set the in-lieu fee amount at the amount required when the project was deemed complete, and to be allowed to pay that amount at the sale of the first unit, rather than at the recordation of the Final Map as approved on July 22, 2010; specifically, the project shall include:

- a. A Variance from the Inclusionary Housing Regulations to set the in-lieu fee amount required for Tentative Map No. 216966, Project No. 71257, at the rate required when the project was deemed complete, for a total in-lieu fee of \$1,104,937.75, and to be allowed to pay that amount on the close of escrow on the first retail sale of a condominium dwelling unit sold within the property (rather than at the recordation of the final map); the in-lieu fee shall not be due and payable upon a bulk sale of the entire development to another developer or owner to be held and operated as a rental project.

STANDARD REQUIREMENTS

- 1. The Conditions for Tentative Map No. 216966, and Planned Residential Permit No. 91-0452, shall remain in effect except where modified by this permit.

2. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
3. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
4. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
5. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

6. The Owner/Permittee shall defend, indemnify, and hold harmless the City (including its agents, officers, and employees [together, Indemnified Parties]) from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided in Government Code §66499.37 or §65009. City shall promptly notify Owner/Permittee of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to promptly notify the Owner/Permittee of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, the Owner/Permittee 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. The Owner/Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the Owner/Permittee.
7. The Owner/Permittee shall post a copy of each approved discretionary Permit or Tentative Map in its sales office for consideration by each prospective buyer.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on July 22, 2010, and Resolution No. PC-XXXX.

Permit Type/PTS Approval No.: Variance No. 758755/Project No. 206871
Date of Approval: July 22, 2010

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Jeannette Temple
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

Costa Verde Developers, LLC
Owner/Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

PLANNING COMMISSION RESOLUTION NO. PC-XXXX
VARIANCE NO. 758951
COSTA VERDE NORTH – PROJECT NO. 206871

WHEREAS, COSTA VERDE NORTH VILLAGE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Owner/Permittee, filed an application with the City of San Diego for a variance allowing payment, at first retail sale, of inclusionary in-lieu fees at the rate in effect when the tentative subdivision application was deemed complete (as described in and by reference to the corresponding conditions of approval for the associated Permit No. 758951), on portions of a 9.17 acre site;

WHEREAS, the project site is located at 8720-8950 Costa Verde Boulevard in the RS-1-14 zone of the University Community Plan area within the Costa Verde Specific Plan area;

WHEREAS, the project site is legally described as Lots 1 and 2 of Costa Verde, Map No. 12045;

WHEREAS, on July 22, 2010, the Planning Commission of the City of San Diego considered Variance No. 758951 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, this activity is adequately addressed in Mitigated Negative Declaration No. 85-0783, Mitigated Negative Declaration No. 87-0991, and Addendum (to Mitigated Negative Declaration No. 87-0991) No. 89-1403 and is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of CEQA review as defined in State CEQA Guidelines Section §15378(c). Pursuant to Section (15162) of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review. Additionally and alternatively, this activity falls under the previous categorical exemption from CEQA pursuant to CEQA Guidelines, Section 15301(k) (Existing Facilities);

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated July 22, 2010.

FINDINGS:

1. Special circumstances, unique to that development justify the grant of the variance:

Special circumstances exist in that Applicants started the process of condo conversion at a time when the Inclusionary Ordinance was in transition. The projects are not subject to the current version of the Inclusionary Ordinance, which requires that projects containing more than twenty units provide affordable units on-site (See San Diego Municipal Code §142.1306(c)). This requirement was not in effect at the time the Costa Verde projects' applications were deemed complete (See Cal. Gov. C. §66474.2(a)).

The extraordinary size of these projects and the fact that the units are considered luxury apartments further evidences the special circumstances applicable to the Costa Verde projects. The Costa Verde projects consist of two adjacent projects each containing over 600 units. Since May of 2002,

approximately 660 projects containing over 18,300 units have been approved for conversion from apartments to condominiums in the City. The average size of condo conversion projects in the City over this time period is 27 units. Less than 3% of those condo conversion projects are larger than 200 units. In this time period, there have only been 4 condo conversion projects that are larger than 500 units, two of which are these Costa Verde projects. This equates to less than 0.5% of the total condo conversion projects processed by the City consisting of over 500 units. The sheer size of the Costa Verde projects creates special circumstances that are unique to these projects, justifying the variance. The likelihood of this type of variance being applied to other projects, in the future, is remote.

2. The development would not be feasible without the variance:

Based on the decline in condominium values and the substantial financial hardship provided by the applicant and discussed below, if the entire in-lieu fee of \$2,276,858.50 were paid at final map, the Costa Verde projects would be rendered infeasible by substantial hardship if the Variance were not granted.

3. A specific and substantial financial hardship would occur if the variance was not granted:

The Costa Verde Projects would suffer a specific and substantial financial hardship if the Variance was not granted because the sheer size of the projects and amount of the in-lieu fee. Applicant's Attachment A to the Variance applications states it most succinctly:

The ongoing real estate depression has had a materially adverse impact on San Diego housing prices. The price of a median home in San Diego fell by 37.2%, from \$517,500 in November 2005, shortly after the Costa Verde projects' applications were deemed complete September 2009. The downturn has had a tremendous impact on condominium values in the project's market...the median price for similar units in University City has dropped from around \$500,000 in 2005 to about \$200,000 today, a roughly 40% decline. In addition, converted units are not likely to be sold any time soon.

Importantly, the applicant has also stated that payment of the \$2,276,858.50 in-lieu fee would cripple Applicants' cash flows, would take over 10% of projected maximum gross rents and over 100% of project net profits for an entire year. This certainly constitutes a substantial financial hardship.

4. No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.

Based on the unique nature and immense size of the Costa Verde projects, there are no viable alternatives that would not effectively render the projects infeasible. No alternatives exist that would be more effective in attaining the purposes of the Inclusionary Housing Ordinance than the payment of the in-lieu fee of \$2,276,858.50, even when such payment is deferred until first retail sale. Since the units in question are luxury apartments, generally larger and containing additional amenities, the conversion of these units is different than the normal conversion of apartments to condominiums. Therefore, payment of an in-lieu fee at first retail sale at the amount determined at the projects' deemed complete date, would be very effective in attaining the purposes of the Inclusionary Housing Ordinance while mitigating the hardship to the developer.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Variance No. 758951 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 758951, a copy of which is attached hereto and made a part hereof.

Jeannette Temple
Development Project Manager
Development Services

Adopted on: July 22, 2010

Internal Order No. 24000757

PLANNING COMMISSION RESOLUTION NO. PC-XXXX
VARIANCE NO. 758755
COSTA VERDE SOUTH – PROJECT NO. 206871

WHEREAS, COSTA VERDE DEVELOPERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Owner/Permittee, filed an application with the City of San Diego for a variance allowing payment, at first retail sale, of inclusionary in-lieu fees at the rate in effect when the tentative subdivision application was deemed complete (as described in and by reference to the corresponding conditions of approval for the associated Permit No. 758755), on portions of a 8.6 acre site;

WHEREAS, the project site is located at 8510-8550 Costa Verde Boulevard in the RS-1-14 zone of the University Community Plan area within the Costa Verde Specific Plan area;

WHEREAS, the project site is legally described as Lots 3, 4 and 5 of Costa Verde, Map No. 12045;

WHEREAS, on July 22, 2010, the Planning Commission of the City of San Diego considered Variance No. 758755 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, this activity is adequately addressed in Mitigated Negative Declaration No. 85-0783, Mitigated Negative Declaration No. 87-0991, and Addendum (to Mitigated Negative Declaration No. 87-0991) No. 89-1403 and is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of CEQA review as defined in State CEQA Guidelines Section §15378(c). Pursuant to Section (15162) of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review. Additionally and alternatively, this activity falls under the previous categorical exemption from CEQA pursuant to CEQA Guidelines, Section 15301(k) (Existing Facilities);

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated July 22, 2010.

FINDINGS:

1. Special circumstances, unique to that development justify the grant of the variance:

Special circumstances exist in that Applicants started the process of condo conversion at a time when the Inclusionary Ordinance was in transition. The projects are not subject to the current version of the Inclusionary Ordinance, which requires that projects containing more than twenty units provide affordable units on-site (See San Diego Municipal Code §142.1306(c)). This requirement was not in effect at the time the Costa Verde projects' applications were deemed complete (See Cal. Gov. C. §66474.2(a)).

The extraordinary size of these projects and the fact that the units are considered luxury apartments further evidences the special circumstances applicable to the Costa Verde projects. The Costa Verde projects consist of two adjacent projects each containing over 600 units. Since May of 2002,

approximately 660 projects containing over 18,300 units have been approved for conversion from apartments to condominiums in the City. The average size of condo conversion projects in the City over this time period is 27 units. Less than 3% of those condo conversion projects are larger than 200 units. In this time period, there have only been 4 condo conversion projects that are larger than 500 units, two of which are these Costa Verde projects. This equates to less than 0.5% of the total condo conversion projects processed by the City consisting of over 500 units. The sheer size of the Costa Verde projects creates special circumstances that are unique to these projects, justifying the variance. The likelihood of this type of variance being applied to other projects, in the future, is remote.

2. The development would not be feasible without the variance:

Based on the decline in condominium values and the substantial financial hardship provided by the applicant and discussed below, if the entire in-lieu fee of \$2,276,858.50 were paid at final map, the Costa Verde projects would be rendered infeasible by substantial hardship if the Variance were not granted.

3. A specific and substantial financial hardship would occur if the variance was not granted:

The Costa Verde Projects would suffer a specific and substantial financial hardship if the Variance was not granted because the sheer size of the projects and amount of the in-lieu fee. Applicant's Attachment A to the Variance applications states it most succinctly:

The ongoing real estate depression has had a materially adverse impact on San Diego housing prices. The price of a median home in San Diego fell by 37.2%, from \$517,500 in November 2005, shortly after the Costa Verde projects' applications were deemed complete September 2009. The downturn has had a tremendous impact on condominium values in the project's market...the median price for similar units in University City has dropped from around \$500,000 in 2005 to about \$200,000 today, a roughly 40% decline. In addition, converted units are not likely to be sold any time soon.

Importantly, the applicant has also stated that payment of the \$2,276,858.50 in-lieu fee would cripple Applicants' cash flows, would take over 10% of projected maximum gross rents and over 100% of project net profits for an entire year. This certainly constitutes a substantial financial hardship.

4. No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.

Based on the unique nature and immense size of the Costa Verde projects, there are no viable alternatives that would not effectively render the projects infeasible. No alternatives exist that would be more effective in attaining the purposes of the Inclusionary Housing Ordinance than the payment of the in-lieu fee of \$2,276,858.50, even when such payment is deferred until first retail sale. Since the units in question are luxury apartments, generally larger and containing additional amenities, the conversion of these units is different than the normal conversion of apartments to condominiums. Therefore, payment of an in-lieu fee at first retail sale at the amount determined at the projects' deemed complete date, would be very effective in attaining the purposes of the Inclusionary Housing Ordinance while mitigating the hardship to the developer.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Variance No. 758755 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 758755, a copy of which is attached hereto and made a part hereof.

Jeannette Temple
Development Project Manager
Development Services

Adopted on: July 22, 2010

Internal Order No. 24000757

Project Title: Costa Verde Village North	Project No. (For City Use Only)
---------------------------------------------	---------------------------------

Part II - To be completed when property is held by a corporation or partnership

Legal Status (please check):

Corporation Limited Liability -or- General) What State? _____ Corporate Identification No. _____
 Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property.. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. Additional pages attached Yes No

Corporate/Partnership Name (type or print):
Costa Verde North Village, LLC

Owner Tenant/Lessee

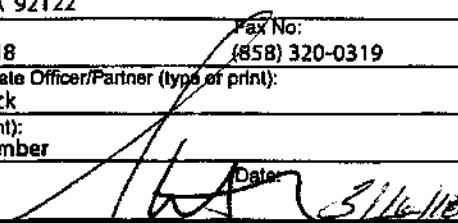
Street Address:
8530 Costa Verde Blvd. - Office

City/State/Zip:
San Diego, CA 92122

Phone No: (858) 320-0018 Fax No: (858) 320-0319

Name of Corporate Officer/Partner (type or print):
Stuart Posnock

Title (type or print):
Manager/Member

Signature :  Date: 3/16/12

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

**Costa Verde Village North - Attachment
Ownership Disclosure Statement**

**Costa Verde North Village, LLC
Additional Owners Names, Titles and Addresses:**

**Zygmunt Wilf
Manager/Member
8530 Costa Verde Blvd. – Office
San Diego, CA 92122**

**Leonard Wilf
Manager/Member
8530 Costa Verde Blvd. – Office
San Diego, CA 92122**

**Mark Wilf
Manager/Member
8530 Costa Verde Blvd. – Office
San Diego, CA 92122**

Project Title: Costa Verde Village South	Project No. (For City Use Only)
---------------------------------------------	---------------------------------

Part II - To be completed when property is held by a corporation or partnership

Legal Status (please check):

Corporation Limited Liability -or- General) What State? _____ Corporate Identification No. _____
 Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. **Note:** The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. **Additional pages attached** Yes No

Corporate/Partnership Name (type or print):
Costa Verde Developers, LLC

Owner Tenant/Lessee

Street Address:
8530 Costa Verde Blvd. - Office

City/State/Zip:
San Diego, CA 92122

Phone No: (858) 320-0018 Fax No: (858) 320-0319

Name of Corporate Officer/Partner (type or print):
Stuart Posnock

Title (type or print):
Manager/Member

Signature:  Date: 3/16/10

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature: Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature: Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature: Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature: Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature: Date:

**Costa Verde Village South - Attachment
Ownership Disclosure Statement**

**Costa Verde Developers, LLC
Additional Owners Names, Titles and Addresses:**

**Zygmunt Wilf
Manager/Member
8530 Costa Verde Blvd. – Office
San Diego, CA 92122**

**Leonard Wilf
Manager/Member
8530 Costa Verde Blvd. – Office
San Diego, CA 92122**

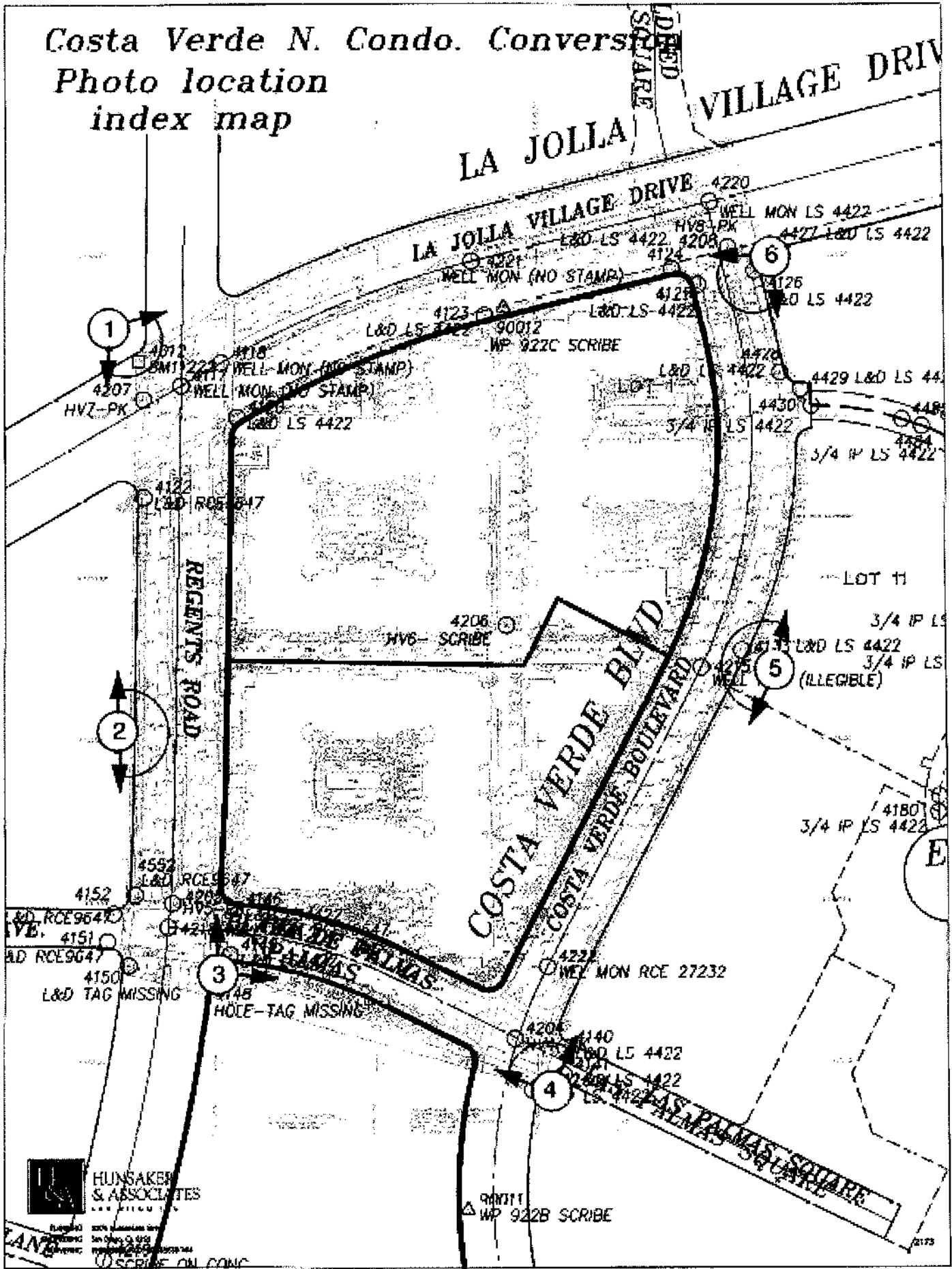
**Mark Wilf
Manager/Member
8530 Costa Verde Blvd. – Office
San Diego, CA 92122**

TABLE 1 - IN-LIEU FEE RATES*

Deemed Complete Date of Building Permit	Project with 10 Units or More	Project with 9 Units or Less
July 3, 2003 - July 02, 2004	\$1.00 per sq. ft.	\$0.50 per sq. ft.
July 3, 2004 - July 02, 2005	\$1.75 per sq. ft.	\$0.875 per sq. ft.
July 3, 2005 - July 02, 2006	\$2.50 per sq. ft.	\$1.25 per sq. ft.
July 3, 2006 - July 02, 2007	\$7.31 per sq. ft.	\$3.66 per sq. ft.
July 3, 2007 - July 02, 2008	\$6.31 per sq. ft.	\$3.16 per sq. ft.
July 3, 2008 - July 02, 2009	\$5.01 per sq. ft.	\$2.51 per sq. ft.
July 3, 2009 - July 02, 2010	\$4.98 per sq. ft.	\$2.49 per sq. ft.

* Commencing July 3, 2007, the San Diego Housing Commission will adjust this fee base upon 50 percent of the difference between the median cost of housing and the housing price affordable to the median household.

Costa Verde N. Condo. Conversion Photo location index map



HUNSAKER & ASSOCIATES
ARCHITECTS

SCRIBE ON CONC



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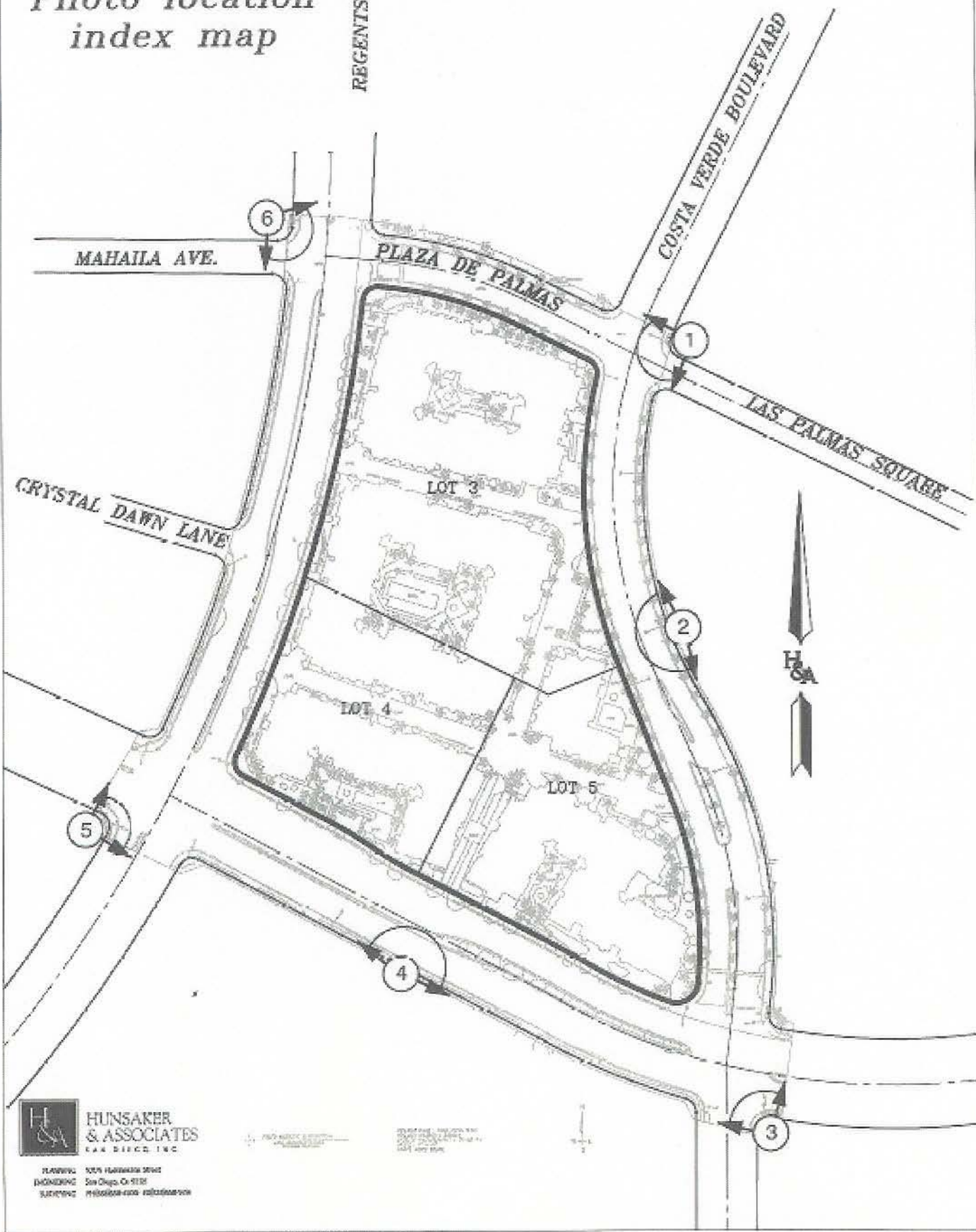


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Costa Verde S. Condo. Conversion

Photo location index map

REGENTS ROAD




HUNSAKER & ASSOCIATES
 SAN DIEGO, INC.

PLANNING: JOHN HUNSAKER, PRINCIPAL
 ENGINEERING: SAN DIEGO, CALIF.
 SURVEYING: PROFESSIONAL SURVEYORS



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