



THE CITY OF SAN DIEGO

## Report to the Planning Commission

DATE ISSUED: August 24, 2017 REPORT NO. PC-17-073

HEARING DATE: August 31, 2017

SUBJECT: EMERSON STREET MAP WAIVER. Process Four Decision

PROJECT NUMBER: [503585](#)

REFERENCE: Hearing Officer Report No. [HO-17-044](#)

OWNER/APPLICANT: Emerson Street LLC.

### SUMMARY

Issue: Should the Planning Commission approve or deny an appeal of the Hearing Officer's decision to approve Tentative Map Waiver No. 1772919 for the creation of four residential condominium units (previously under construction), located at 3144 Emerson Street in the RM-3-7 Zone, within the Peninsula Community Plan area?

Staff Recommendation: Deny the appeal, uphold the Hearing Officer's decision, and approve Tentative Map Waiver No. 1772919.

Community Planning Group Recommendation: On January 19, 2017, the Peninsula Community Planning Board voted 12-0-1 to recommend denial of the proposed project without conditions (Attachment No. 8). The group wanted the previous code violations associated with the project cleared.

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15305 (Minor alterations in land use limitations). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on April 21, 2017, and the opportunity to appeal that determination ended May 5, 2017.

Fiscal Impact Statement: None. All staff costs associated with the processing of this project is paid from a deposit account maintained by the applicant.

Housing Impact Statement: The project will provide four for-sale residential units, versus four residential units for rent.

## BACKGROUND

The Hearing Officer Report No. HO-17-044 (Attachment1) includes all project specific background and analysis of the Tentative Map Waiver requirements, and necessary findings by which staff recommended approval of the project. The proposed project is located in an area identified as medium density (30-44 Dwelling Units per acre) residential in the Peninsula Community Plan and is consistent with that land use.

Prior to the submittal of the Tentative Map Waiver application, construction plans were reviewed and building permits were issued by the Development Services Department on July 12, 2017, under two separate ministerial approvals, Combination Building Permit Nos. 1664647 and 1664642. Due to a citizen complaint, it was determined the project was not in compliance with the San Diego Municipal Code. Therefore, a construction change was required to bring the project into compliance with floor area ratio requirements and for the modification of retaining walls. On May 15, 2017, Construction Change 'A' to PTS No. 415278, was approved. The scope included change of grade elevation between structures, curb cut and driveway location revised at Emerson Street, curb cut and driveway enlarged at Evergreen Street, and modifications to multiple retaining walls. The project has passed all final inspections. The project complies with all required San Diego Municipal Code regulations.

On June 28, 2017, the Emerson Street Tentative Map application was presented to the Hearing Officer of the City of San Diego at a noticed public hearing. After hearing public testimony, both in support and opposition, and upon close of public testimony, the Hearing Officer approved Tentative Map Waiver No. 1772919.

On July 12, 2017, Jonathan Chapin, filed an appeal of the Hearing Officer decision to approve Tentative Map Waiver No. 1772919.

## DISCUSSION

This item is an appeal of the Hearing Officer's June 28, 2017 decision to approve the Tentative Map Waiver. On July 12, 2017, Jonathan Chapin, representing the neighbors, filed an appeal of the Hearing Officer's decision on the grounds of Factual Error, Conflict with other matters, Findings Not Supported, and New Information (Attachment 2). The following are the appeal issues and responses from City staff.

**Appeal Issue #1:** *"PCPB voted 12-0-1 to deny map waiver on January 19, 2017. In part because the project was originally permitted by the City as apartments. Process 1, and then changed to condominiums which did not allow community input into design prior to construction. The original City approved "apartment building" exceeded Floor Area Ratio (FAR) and needed to be redesigned (top floor removed) after construction."*

**Staff Responses:** The construction of the residential units was previously approved under two separate ministerial approvals, Combination Building Permit Nos. 1664647 and 1664642.

Via an inspection, it was determined the project exceed the allowed FAR. A construction change was required to bring the project into compliance with FAR requirements and for the modification of retaining walls. On May 15, 2017, Construction Change 'A' to PTS No. 415278, was approved. The Tentative Map Waiver is for a mapping action only and these issues are not directly related to approval of the Tentative Map Waiver. The project has passed all final inspections. The project complies with all required San Diego Municipal Code regulations.

**Appeal Issue #2:** *"The project exceeds the 30-foot coastal zone height limit mandated by the voter approved proposition D. Specifically, the roof top deck/deck system open railings and parapet exceed the 30-foot coastal height limit."*

**Staff Responses:** The Tentative Map Waiver is for a mapping action only and these issues are not directly related to approval of the Tentative Map Waiver.

The site is located with the Coastal Height Limitation Overlay Zone ("Proposition D" height limit) which limits the height of buildings and structures to 30 feet. The underlying RM-3-7 zone limits building height to 40 feet. The development was reviewed pursuant to both requirements and complies with these regulations. In response to a code compliance complaint regarding building height, Development Services staff conducted an inspection and verified that the structure height is in compliance with the approved building plans. Additionally, the development received a Height Certification verifying the structure complies with the Proposition D height limitation of 30 feet. On July 17, 2017, the project passed all final inspections. The project complies with all required San Diego Municipal Code regulations.

**Appeal Issue #3:** *"The project includes solid fence and retaining walls that exceed height limit requirements allowed in the San Diego Municipal Code (SDMC). The SDMC (Chapter 14, Article 2, Division 3) regulated location and height of retaining walls is required not exceed a height of 6-feet at the setback line (SDMC 142.310(c)). - The project includes a +/-6-foot high solid fence in the front yard setback which clear setbacks and in the visibility areas as follows:*

- a. *A solid fence located on the front property line shall not exceed 3-feet in height and shall not exceed a height of 6-feet at the setback line (SDMC 143.310(c)). The project includes a +/-6-foot high solid fence in the front yard setback which clearly does not comply with the SDMC.*
- b. *Retaining walls with a maximum height of 6-feet are permitted in the required side and rear yard setback (SDMC 142.0340(d) (1)). An open fence not to exceed 3.5-feet in height is permitted on top of the retaining wall (SDMC 142.0340(d) (2)). The project includes a 9-foot high solid retaining wall in the side yard setback which does not comply with the SDMC. Any additional height over requirements mandated in the SDMC must be of "open design" which this project does not include."*

**Staff Responses:** The Tentative Map Waiver is for a mapping action only and these issues are not directly related to approval of the Tentative Map Waiver. On July 17, 2017, the project passed all final inspections. The project complies with all required San Diego Municipal Code regulations.

**Appeal Issue #4:** *"In order for the City of San Diego to approve a map waiver, the project must comply with the SDMC. The solid and retaining walls constructed for project do not comply with the SDMC. hence findings in the Hearing Officer staff report (HO-17-044) are not correct."*

**Staff Responses:** The Tentative Map Waiver is for a mapping action only and these issues are not directly related to approval of the Tentative Map Waiver. However, on May 15, 2017, Construction Change 'A' to PTS No. 415278, was approved. The scope included change of grade elevation between structures, curb cut and driveway location revised at Emerson Street, curb cut and driveway enlarged at Evergreen Street, and modifications to multiple retaining walls. On July 17, 2017, the project passed all final inspections. Staff has determined that the project complies with applicable sections of the San Diego Municipal Code, including the RM-3-7 development regulations and all City and State subdivision requirements, and that the required findings can be made.

Conclusion:

City staff has reviewed the application for the Tentative Map Waiver to create four residential condominiums at this location and has determined that the project is consistent with the recommend land use and development standards in effect for this site per the State Map Act and the San Diego Municipal Code, including height and retaining wall requirements. The Tentative Map Waiver resolution has been prepared with draft findings (Attachment 4) for consideration. Staff recommends that the Planning Commission deny the appeal and uphold the Hearing Officer's decision to approve Tentative Map Waiver No.1772919.

ALTERNATIVES

1. Uphold the Hearing Officer's decision to approve the Hearing Officer's decision to approve Tentative Map No. 1772919, if the findings can be affirmed.
2. Approve the appeal and deny Tentative Map No. 1772919.

Respectfully submitted,



Elyse W. Lowe  
Deputy Director  
Development Services Department



Derrick Johnson (D.J.)  
Development Project Manager  
Development Services Department

Attachments:

1. Hearing Officer Report HO-17-044
2. Appeal Application

3. Correspondence dated July 19, 2017 from Michael Morton AIA, Architect
4. Draft Tentative Map with Conditions
5. Draft Resolution with Findings
6. Copy of Tentative Map



THE CITY OF SAN DIEGO

## Report to the Hearing Officer

DATE ISSUED: June 21, 2017 REPORT NO. HO-17-044

HEARING DATE: June 28, 2017

SUBJECT: EMERSON, Tentative Map Waiver, Process Three Decision

PROJECT NUMBER: [503585](#)

OWNER/APPLICANT: Emerson Street LLC.

### SUMMARY

Issue: Should the Hearing Officer approve a Tentative Map Waiver for the creation of four residential condominium units (currently under construction). The project is located at 3144 Emerson Street in the RM-3-7 Zone, within the Peninsula Community Plan area?

Staff Recommendation: APPROVE Tentative Map Wavier No. 1772919.

Community Planning Group Recommendation: On January 19, 2017, the Peninsula Community Planning Board voted 12-0-1 to recommend denial of the proposed project without conditions (Attachment No. 8). The group wanted the previous code violations associated with the project cleared.

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15305 (Minor alterations in land use limitations). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on April 21, 2017, and the opportunity to appeal that determination ended May 5, 2017.

### BACKGROUND

The 0.11-acre site is located at 3144-3148 Emerson Street and 1355-1359 Evergreen Street in the RM-3-7 Zone, within the Peninsula Community Plan area. The proposed project is located in an area identified as medium density (30-44 Dwelling Units per acre) residential in the Peninsula Community Plan and is consistent with that land use.

The construction of the residential units was previously approved under two separate ministerial approvals, Combination Building Permit Nos. 1664647 and 1664642. Due to a citizen complaint, it was determined the project was not in compliance with the SDMC. Therefore, a construction

change was required to bring the project into compliance with the 30-foot height limit requirements and for the modification of retaining walls that were over six-feet. On May 15, 2017, Construction Change 'A' to PTS No. 415278, was approved. The scope included change of grade elevation between structures, curb cut and driveway location revised at Emerson Street, curb cut and driveway enlarged at Evergreen Street, and modifications to multiple retaining walls. The project is now consistent with the required 30-foot height limit and the retaining walls have been reduced to six feet.

The project proposes a Tentative Map Waiver for the creation of four residential condominium units, currently under construction. The project is surrounded by both multi-family and single-family residential developments zoned RM-3-7 with a community plan designation of multi-family residential development. The site is not within or adjacent to Multiple Habitat Planning Area (MHPA) lands and does not contain any other type of Environmentally Sensitive Lands (ESL) as defined in the SDMC section 113.0103.

### DISCUSSION

The applicant is requesting the approval of a Tentative Map Waiver, per San Diego Municipal Code (SDMC) Section 125.0120(b)(2)(A) to four under-construction residential units to condominiums, The project requires a Process Three, Hearing Officer decision.

The neighborhood has already had the overhead utility lines undergrounded, with exception of the high voltage power lines. San Diego Municipal Code (SDMC) Section 144.0240 allows the subdivider to apply for a waiver from the requirement to underground existing overhead utilities within the boundary of the subdivision or within the abutting public rights of way. City staff has determined that the requested waiver of the requirements to underground privately owned utility systems and services facilities qualifies under the guidelines of SDMC Section 144.0242(c) (1) (B) as follows: The conversion involves a short span of overhead facility (less than a full block in length) and would not represent a logical extension to an underground facility.

Notwithstanding the requested waiver, the project is required to underground any new service run to any new or proposed structures within the subdivision per Condition No. 6 of the Tentative Map Waiver. The City's Undergrounding Master Plan designated the site within Block 2J with an estimated date for undergrounding for January 2016.

### Conclusion

Staff has determined that the project complies with applicable sections of the San Diego Municipal Code, including the RM-2-7 development regulations and all City and State subdivision requirements, and that the required findings can be made. Staff recommends approval of the project as proposed.

### ALTERNATIVES

1. Approve Tentative Map Waiver No. 1772919, with modifications.

2. Deny Tentative Map Waiver No. 1772919, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

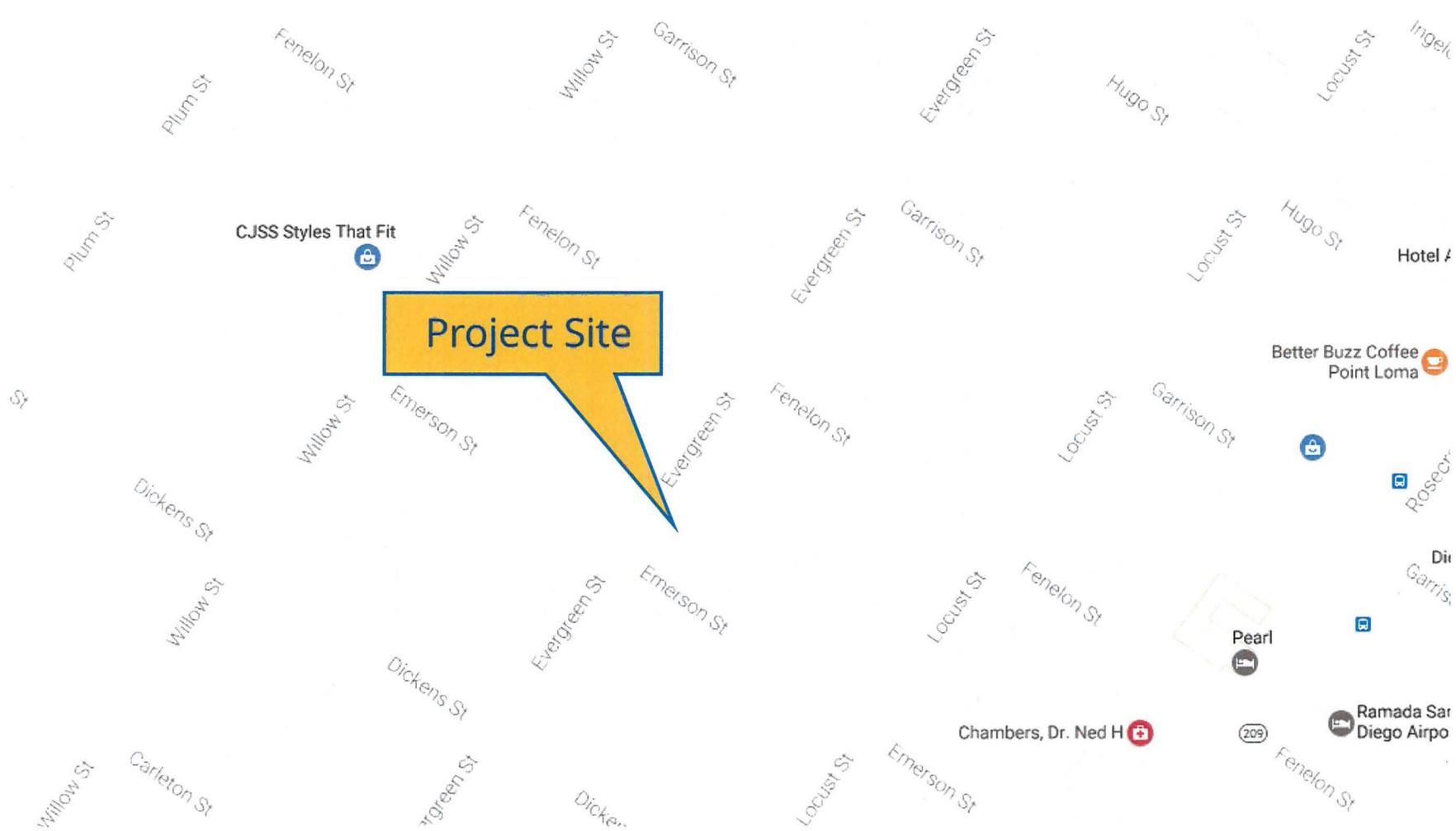


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Derrick Johnson (D.J.), Development Project Manager

Attachments:

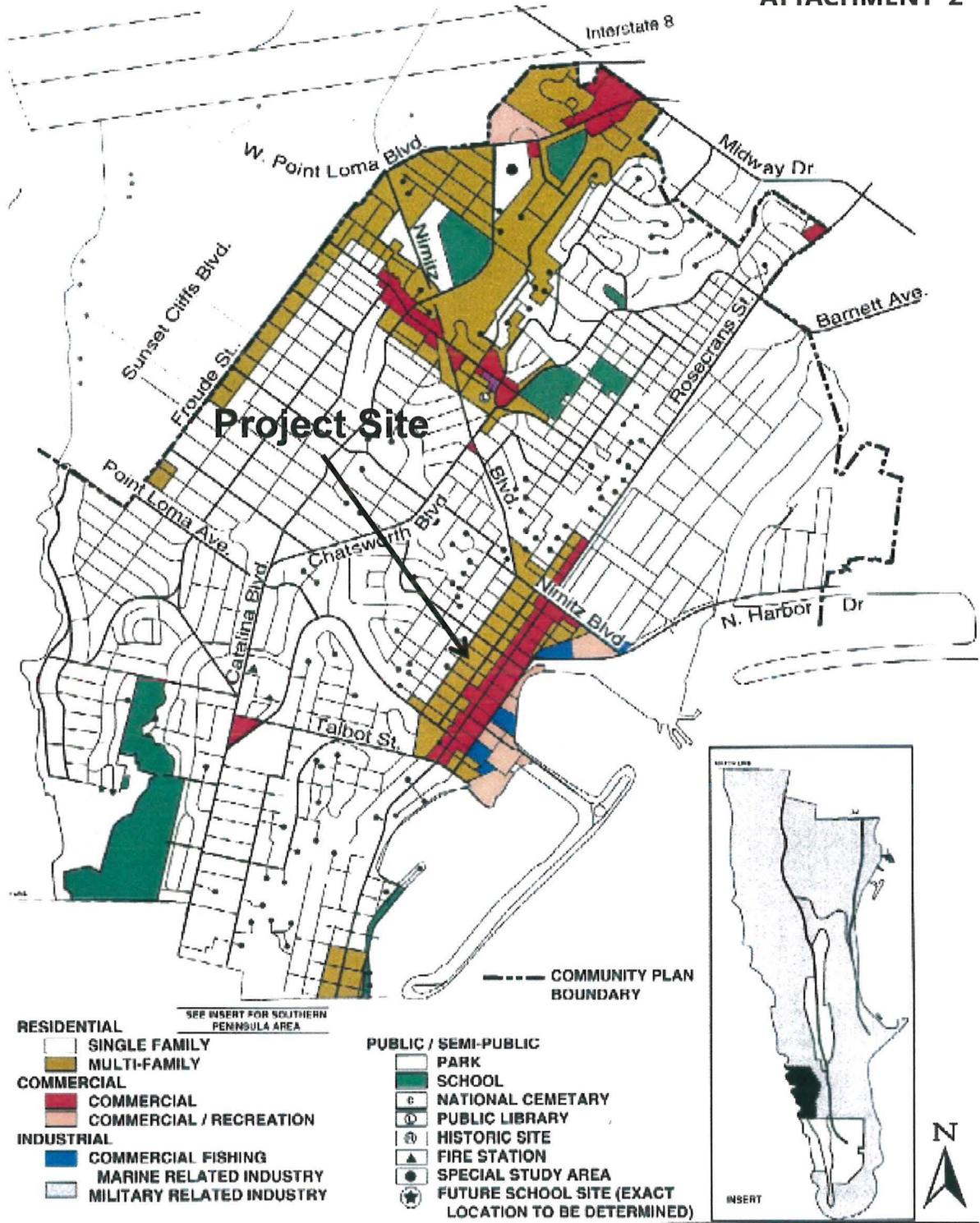
1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Project Data Sheet
5. Draft Map Resolution
6. Draft Map Conditions
7. Environmental Exemption
8. Community Planning Group Recommendation
9. Ownership Disclosure Statement
10. Map Exhibit-Tentative Map Waiver



## Project Location Map

EMERSON MAP WAIVER/3144 EMERSON STREET  
PROJECT NO. 503585





# Land Use Map

EMERSON MAP WAIVER/3144 EMERSON STREET  
PROJECT NO. 503585





**Aerial Photo**  
EMERSON MAP WAIVER/3144 EMERSON STREET  
PROJECT NO. 503585



<b>PROJECT DATA SHEET</b>		
<b>PROJECT NAME:</b>	Emerson Tentative Map Waiver	
<b>PROJECT DESCRIPTION:</b>	Tentative Map Waiver for the creation of four residential condominium units (under construction) at 3144-3148 Emerson Street and 1355-1359 Evergreen Street at a 0.11-acre site in the RM-3-7 zone within the Peninsula Community Plan Area in Council District 2.	
<b>COMMUNITY PLAN AREA:</b>	Peninsula Plan	
<b>DISCRETIONARY ACTIONS:</b>	Map Waiver (Process 3)	
<b>COMMUNITY PLAN LAND USE DESIGNATION:</b>	Multi-Family Residential.	
<b><u>ZONING INFORMATION:</u></b>		
<b>ZONE:</b> RM-3-7: (Multi-Family) <b>HEIGHT LIMIT:</b> 40-Foot maximum height limit, 30-foot Coastal Height Limit <b>LOT SIZE:</b> 7,000 square-foot minimum lot size <b>FLOOR AREA RATIO:</b> 1.8 maximum <b>FRONT SETBACK:</b> 10 ft minimum/20 ft standard <b>SIDE SETBACK:</b> 5 ft minimum <b>STREETSIDE SETBACK:</b> 10 feet <b>REAR SETBACK:</b> 5 feet <b>PARKING:</b> 8 spaces required		
<b><u>ADJACENT PROPERTIES:</u></b>	<b>LAND USE DESIGNATION &amp; ZONE</b>	<b>EXISTING LAND USE</b>
<b>NORTH:</b>	Multi-Family Residential; RM-3-7	Multi-Family Residential
<b>SOUTH:</b>	Multi-Family Residential; RM-3-7	Multi-Family Residential
<b>EAST:</b>	Multi-Family Residential; RM-3-7	Multi-Family Residential
<b>WEST:</b>	Single-Family Residential; RS-1-7	Single -Family Residential
<b>DEVIATIONS OR VARIANCES REQUESTED:</b>	None	
<b>COMMUNITY PLANNING GROUP RECOMMENDATION:</b>	On January 19, 2017, the Peninsula Community Planning Board voted 12-0-1 to recommend denial of the proposed project without conditions.	

HEARING OFFICER RESOLUTION NUMBER R-\_\_\_\_\_

TENTATIVE MAP WAIVER NO. 1772919, EMERSON TMW  
PROJECT NO. 503585.

WHEREAS, Emerson Street LLC, a California Limited Liability Corporation, Subdivider, and Robert Russell, Accurate Land Surveys, Surveyor, submitted an application to the City of San Diego for a Tentative Map Waiver No. 1772919, to create four condominium units in an under-construction project, and to waive the requirement to underground existing offsite overhead utilities. The project site is located at 3144 Emerson Street in the RM-3-7 Zone, within the Peninsula Community Plan area. The property is legally described as Lot 1, Block 48 of Roseville, Map No 165, filed in the office of the County Recorder of San Diego County; and

WHEREAS, the Map proposes the subdivision of a 0.11-acre-site to create four residential condominiums in a project that is currently under construction; and

WHEREAS, on April 21, 2017, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act [CEQA] (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15303 (New Construction or Conversion of Small Structures); and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; and

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

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

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

WHEREAS, on June 28, 2017, the Hearing Officer of the City of San Diego considered Tentative Map Waiver No. 1772919, including the waiver of the requirement to underground existing offsite overhead utilities, and pursuant to San Diego Municipal Code sections 125.0440, and 144.0240 and Subdivision Map Act section 66428, received for its consideration written and oral presentations, evidence having been submitted, and testimony having been heard from all interested parties at the public hearing, and the Hearing Officer having fully considered the matter and being fully advised concerning the same; NOW THEREFORE,

BE IT RESOLVED by the Hearing Officer of the City of San Diego, that it adopts the following findings with respect to Tentative Map Waiver No. 1772919:

**1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan. SDMC, Section 125.0440(a).**

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The 0.11-acre site is located at 3144 Emerson Street in the RM-3-7 Zone, within the Peninsula Community Plan area. The proposed project is located in an area identified as medium density (15-29 du/ac) residential in the Peninsula Community Plan and the project is consistent with that land use. The Peninsula Community Plan encourages a wide variety of housing types for all age, income and social groups. The project would provide four, three-bedroom units in an area that largely consists of two-bedroom units, thereby providing a wider variety of housing types.

The project site is designated Multiple Use in the General Plan and is consistent with existing General Plan designations by providing multi-family housing within a medium- high-density range within an urbanized core of the City. The proposed subdivision implements General Plan Policy UD-A.5 by contributing to a positive neighborhood character and relating to the neighborhood and community context, and UD-B.1 by recognizing the quality of a neighborhood is linked to the overall quality of the built environment.

As proposed, the subdivision would be consistent with the Peninsula Community Plan and overall policies for development related to the Land Use and Urban Design, and Density elements contained in the General Plan.

**2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code, including any allowable deviations pursuant to the land development code. SDMC § 125.0440(b).**

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The 0.11-acre site is located at 3144 Emerson Street, in the RM-3-7 Zone in the Peninsula Community Plan area. The proposed project is located in an area identified as medium density (15-29 du/ac) residential in the Peninsula Community Plan and is consistent with that land use.

The project includes a request to waive the requirement to underground the existing offsite overhead utilities. The requested waiver of the requirement to underground the existing overhead utility facilities in the public right-of-way qualifies under the guidelines of Municipal Code Section 144.0242, Waiver of the Requirements to Underground Privately Owned Utility Systems and Service Facilities, in that the project involves a short span of overhead facility (less than a full block in length) and would not represent a logical extension to an underground facility. The project has been conditioned to underground any new service run to any new or proposed structures within the subdivision.

The current development which is under construction was reviewed for conformance within the RM-3-7 Zone during the Building Permit plan check and conforms to the development regulations. The project is in compliance with the Municipal Code and the Subdivision Map Act and includes conditions and exhibits to ensure the provision of adequate parking, public improvements and compliance with the Land Development Code. Therefore, the proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code.

**3. The site is physically suitable for the type and density of development. SDMC § 125.0440(c).**

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The 0.11-acre site is located at 4144 Emerson Street, in the RM-3-7 Zone in the Peninsula Community Plan area.

The proposed project is located in an area identified as Medium density (15-29 du/ac) residential in the Peninsula Community Plan and is consistent with that land use. The developed, in-fill project site is located on a flat, previously graded parcel.

The project has been conditioned to construct public improvements, as shown on the previously approved construction plan for Grading/Right-of-Way Permit No. 807629 (Project No. 415278) including new City Standard curbs, gutters, and sidewalks. Therefore, the site is physically suitable for the type and density of development.

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

The developed project site is located in an urban in-fill area and does not contain nor is it adjacent to any sensitive resources, Multiple Habitat Planning Area lands, Environmentally Sensitive Lands or existing fish or wildlife habitats. Therefore, the design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. SDMC § 125.0440(d)

**5. The design of the subdivision or the type of improvement will not be detrimental to the public health, safety, and welfare. SDMC § 125.0440(e).**

The project proposes a Tentative Map Waiver for the Subdivision of the 0.11-acre site to create four residential condominium units. The development conforms to the development regulations of Municipal Code and Subdivision Map Act. The project includes a request to waive the requirement to underground the existing offsite overhead utilities. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and other regulations governing construction, continued operation and health/life/safety requirements apply to this project. The project is in compliance with the Municipal Code and the Subdivision Map Act and includes conditions and exhibits to ensure the provision of adequate parking, public improvements and compliance with the Land Development Code. The subdivision is categorically exempt from review under the California Environmental Quality Act. The Subdivider shall construct the required Public Improvements per the previously approved Grading/Right-of-Way Permit No. 807629 (Project No. 415278) including new curbs, gutters, sidewalks and a driveway. As such, the design of the subdivision or the type of improvement will not be detrimental to the public health, safety, and welfare.

**6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. SDMC § 125.0440(f).**

There are no existing access easements located within the project boundaries, as shown on Tentative Map Waiver No. 1772919. As such, no conflict would occur with the recording of the subdivision, and there would be no conflicts with any easements acquired by the public at large for access through or use of the property within the proposed subdivision.

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

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The proposed subdivision will not impede or inhibit any future passive or natural heating and cooling opportunities. Each unit is exposed on two sides (north and south) to ensure passive cooling through cross-ventilation of the interior spaces. Therefore, the

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

**8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources. SDMC § 125.0440(h).**

The in-fill project site is surrounded by existing development, consisting primarily of both multi-family residential complexes and single-family residences. The Peninsula Community Plan encourages a wide variety of housing types for all age, income and social groups. The project would provide four, two-bedroom units in an area that largely consists of single-family residences and three-bedroom units, thereby providing a wider variety of housing types.

The site is currently under construction and has paid all applicable Developer Impact Fees (DIF), school fees, water/sewer connection fees and other impact fees, with the exception of the affordable housing fee, at building permit issuance in accordance with the City's Public Facilities Financing Plan and Impact Fee Schedule. The project site is served by existing public infrastructure, including, water, sewer, electrical and gas lines.

The decision maker has reviewed the administrative record including the project plans, environmental documentation and heard public testimony to determine 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 and found that the conversion of four units into condominium ownership is consistent with the housing needs anticipated for the Peninsula Community Plan area.

Therefore, the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources.

BE IT FURTHER RESOLVED, that based on the Findings hereinbefore adopted by the Hearing Officer, Tentative Map Waiver No. 1772919, including the waiver of the requirement to underground existing offsite overhead utilities, is hereby granted to Emerson Street, LLC. subject to the attached conditions which are made a part of this resolution by this reference.

By \_\_\_\_\_  
Derrick Johnson (D.J.)  
Development Project Manager  
Development Services Department

ATTACHMENT: Tentative Map Waiver Conditions

Internal Order No. 24006878

HEARING OFFICER,  
CONDITIONS FOR TENTATIVE MAP WAIVER NO. 1772919, EMERSON STREET - PROJECT NO. 503585

ADOPTED BY RESOLUTION NO. R-\_\_\_\_\_ ON June 28, 2017

**GENERAL**

1. This Tentative Map Waiver will expire July 13, 2020.
2. Compliance with all of the following conditions shall be completed and/or assured, to the satisfaction of the City Engineer, prior to the recordation of the Certificate of Compliance, unless otherwise noted.
3. Prior to the Tentative Map Waiver expiration date, a Certificate of Compliance to create four residential condominiums shall be recorded in the Office of the San Diego County Recorder.
4. Prior to the recordation of the Certificate of Compliance, taxes must be paid on this property pursuant to Subdivision Map Act section 66492. To satisfy this condition, a tax certificate stating that there are no unpaid lien conditions against the subdivision must be recorded in the Office of the San Diego County Recorder.
5. The Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding, against the City and/or any Indemnified Parties to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided for in Government Code section 66499.37. City shall promptly notify Subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify Subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City and/or any Indemnified Parties harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, City defends the action in good faith, and Subdivider is not required to pay or perform any settlement unless such settlement is approved by the Subdivider.

**AFFORDABLE HOUSING**

6. Prior to receiving the first residential building permit, Subdivider shall comply with the provisions of Chapter 14, Article 2, Division 13 of the San Diego Municipal Code ("Inclusionary Affordable Housing Regulations") by making payment to the City of San Diego, of the full Inclusionary Affordable Housing Fee for the four proposed new construction units based upon the aggregate square footage of the four affordable Housing Regulations.

**ENGINEERING**

7. Public improvements based on Drawing # 38668- D must be constructed and accepted by the City (As Built ) prior to recordation of map.
8. The Subdivider shall obtain an Encroachment Maintenance Removal Agreement for sidewalk under drain on Emerson Street.
9. The Subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The Subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.
10. 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 Waiver 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**

11. Prior to the issuance of a Certificate of Compliance, City staff will perform a field site visit to verify that all property corners, or property corner offsets have been set. If any property corners are missing, they must be set and a Corner Record or Record of Survey (whichever is applicable) shall be filed with the County Recorder pursuant to the Professional Land Surveyors Act. A copy of the Record of Survey or Corner Record shall be provided to the City.
12. Prior to the recordation of the Certificate of Compliance, taxes must be paid or bonded for this property pursuant to section 66492 of the Subdivision Map Act. A current original tax certificate, recorded in the office of the San Diego County Recorder, must be provided to satisfy this condition.
13. Please note if tax bond is required as indicated in the tax certificate, please make sure that it is paid or posted, and submit an evidence (e.g., filed bond letter or receipt from Clerk of the Board) indicating the required tax bond amount has been paid or bonded.

**INFORMATION:**

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

- If the Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), the Subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map Waiver will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map Waiver, may protest the imposition within ninety days of the approval of this Tentative Map Waiver by filing a written protest with the San Diego City Clerk pursuant to Government Code sections 66020 and/or 66021.
- Where in the course of development of private property, public facilities are damaged or removed, the Subdivider shall at no cost to the City, obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer (San Diego Municipal Code § 142.0607).

Internal Order No. 24006878

**NOTICE OF EXEMPTION**

(Check one or both)

TO:  Recorder/County Clerk  
P.O. Box 1750, MS A-33  
1600 Pacific Hwy, Room 260  
San Diego, CA 92101-2400

FROM: City of San Diego  
Development Services Department  
1222 First Avenue, MS 501  
San Diego, CA 92101

Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

**Project Name:** EMERSON MAP WAIVER

**Project No. / SCH No.:** 24006878

**Project Location-Specific:** 3144 Emerson Street, San Diego, CA 92106

**Project Location-City/County:** San Diego/San Diego

**Description of nature and purpose of the Project:** MAP WAIVER for the creation of four residential condominium units (under construction) and to waive the requirements to underground existing utilities at 3144-3148 Emerson Street and 1355-1359 Evergreen Street at a 0.11-acre site in the RM-3-7 zone within the Peninsula Community Plan Area in Council District 2. The construction of the condominium units was previously approved under two separate ministerial approvals (Combination Building Permit No. 1664647 and Combination Building Permit No. 1664642). The approved condominium development complies with all height and bulk regulations and is located on a site that is currently developed with all public utilities in place to serve the residence.

**Name of Public Agency Approving Project:** City of San Diego

**Name of Person or Agency Carrying Out Project:** Maggie Roland, 3752 Park Blvd #701, San Diego, CA 92103, 619-578-2916

Exempt Status: (CHECK ONE)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269 (b)(c))
- Categorical Exemption: 15305 (Minor Alterations in Land Use Limitations).
- Statutory Exemptions:

Reasons why project is exempt: The City of San Diego determined that the project would qualify to be categorically exempt from CEQA pursuant to Section 15305 (Minor Alterations in Land Use Limitations). The exemption is appropriate because 15305 allows for minor alterations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. Furthermore, the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

Lead Agency Contact Person: Courtney Holowach

Telephone: (619) 446-5187

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?  Yes  No

It is hereby certified that the City of San Diego has determined the above activity to be exempt from CEQA



CHRIS TRACY, SENIOR PLN., OCA

June 8, 2017

Signature/Title

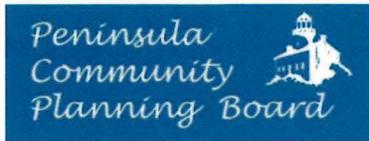
Date

Check One:

Signed By Lead Agency

Signed by Applicant

Date Received for Filing with County Clerk or OPR:



# MINUTES

Meeting Date: January 19, 2017

The regularly scheduled meeting of the Peninsula Community Planning Board was held on January 19, 2017, at the Point Loma/Hervey Branch Library, located at 3701 Voltaire Street, San Diego, California 92107. Meeting called to order at 6:33pm.

All Board members present, with the exception of David Dick and voting as indicated.

1. Approval of Agenda. M/R. Goldyn, S/J. Lohla to approve agenda with the correction to strike language to waive the requirement to underground existing utilities from Action Item No.2, Emerson Map Waiver, as this has already been done.  
Approved: 13/0/0 (Chair not voting)  
Yes: Clark, Coons, Goldyn, Hare, Herrin, Holasek, Krencik, Lohla, Miller, Nystrom, Quinn, Sevrens, Webb  
No:  
Abstain:  
Absent: Dick
2. Treasurer's Report. Treasurer Patricia Clark reported a bank account balance of \$396.09. Paid webmaster invoice of \$395.00; received City of San Diego reimbursement for amount.
3. Chair's Report. Chair Linney mentioned upcoming PCPB elections and Candidates Forum on 3/2/17. Encouraged public to run for open positions. He gave a shoutout to the Board for their work on 30 foot height limit and fighting the Emerson Street project.
4. Approval of Minutes. M/J. Quinn, S/B. Herrin to approve November 2016 meeting minutes.  
Approved: 11/0/2 (Chair not voting)  
Yes: Clark, Coons, Goldyn, Hare, Herrin, Holasek, Lohla, Miller, Nystrom, Quinn, . Sevrens  
No:  
Abstain: Krencik, Webb (not present at November 2016 meeting)  
Absent: Dick
5. Secretary's Report. David Dick absent. Julia Quinn, filling in for secretary.

## Non-Agenda Public Comment

Name	Subject
Nicole Burgess	Will be holding fundraiser on 2/18/17 to support bicycle network improvements.
Korla Eaquinta	Frustrated with City Process 1 that allows ministerial approval of projects and then can apply for map waiver for condos after projects built, over height limit and deficient parking.
Jarvis Ross	Sea World proposing amusement park.
Jim Gilhooly	Miramar Pipeline project will shut down La Playa beach for 3-4 months in February 2017.

Peninsula Community Planning Board  
Meeting Minutes  
January 19, 2017  
Page 3

**Action Items**

1. **2230 Etiwanda Street CDP**, Project No. 472766, Zone RM-1-1. CDP to construct 1472 SF dwelling unit to existing single family dwelling unit on 0.15-acre site. Coastal (non-appealable) overlay zone. Applicant: Steve Lombardi. Mark Krencik advised Project Review Subcommittee voted 5/0/1 to approve. Parking was issue, but was resolved. What was described as a bedroom was actually an office, with no closet and no door. M/M. Krencik, S/P. Clark to approve.

Approved 10/2/1 (Chair not voting).

Yes: Clark, Coons, Goldyn, Hare, Holasek, Lohla, Krencik, Miller, Nystrom, Quinn, Sevrens,

No: Herrin, Miller

Abstain: Webb (Has a financial interest in a nearby property.)

Absent: Dick

2. **Emerson Map Waiver**, Project No. 503585, 3144-3148 Emerson and 1355-1359 Evergreen Street, Zone RM 3-7. Map Waiver to create four condominium units (under construction) on 0.11 acre site. Applicant: Maggie Roland. Krencik advised Project Review Subcommittee voted 6/1/0 to move project forward but did have some problems: roof top deck/deck system open railing and parapet over 30-foot height limit; the way property abuts adjacent property, 6-foot retaining wall will be up to 9-feet (code specifies maximum 6-foot retaining wall) recommended minimize height of wall with open railings (condition project to remove all improvements over 30-feet. Applicant Maggie Roland said parapet cannot be changed; can paint a dark color. Cost prohibitive to change wall to adjacent property and reduce project to not exceed 30-feet. M/J. Lohla, S/D. Sevrens to deny map waiver because it was not revised to exceed 30-feet; retaining wall exceeds 6-feet; and concerns project was originally permitted as apartments and then changes to condominiums which did not allow community input into design. Approved: 12/0/1 (Chair not voting).

Yes: Clark, Coons, Goldyn, Hare, Herrin, Krencik, Lohla, Miller, Nystrom, Sevrens, Webb

No: N/A

Abstain: Holasek (has working relationship with developer).

Absent: Dick

3. **Creation of 2017 Election Committee**. Patricia Clark and Mark Krencik to assist Robert Golden. M/R. Goldyn, S/P. Webb to approve Clark and Krencik to election subcommittee. s. Approved: 13/0/0 (Chair not voting)

Yes: Clark, Coons, Goldyn, Hare, Herrin, Holasek, Krencik, Lohla, Miller, Nystrom, Quinn, Sevrens, Webb

No: N/A

Abstain: N/A

Absent: Dick

4. **Possible Letter of 45 Year Review for 3804 Bernice Drive-** M/P. Webb, S/J. Quinn to direct Bruce Coons to prepare response to City's 45-year review notice indicating structure is potentially historic and Secretary of the Interior standards by followed. Approved: 13/0/0 (Chair not voting)

Yes: Clark, Coons, Goldyn, Hare, Herrin, Holasek, Krencik, Lohla, Miller, Nystrom, Quinn, Sevrens, Webb

No: N/A



City of San Diego  
 Development Services  
 1222 First Ave., MS-302  
 San Diego, CA 92101  
 (619) 446-5000

# Ownership Disclosure Statement

**Approval Type:** Check appropriate box for type of approval (s) requested:  Neighborhood Use Permit  Coastal Development Permit  
 Neighborhood Development Permit  Site Development Permit  Planned Development Permit  Conditional Use Permit  
 Variance  Tentative Map  Vesting Tentative Map  Map Waiver  Land Use Plan Amendment •  Other \_\_\_\_\_

**Project Title**

Emerson Corner MW

Project No. For City Use Only

503585

**Project Address:**

3144 Emerson Street, San Diego, CA. 92106

**Part I - To be completed when property is held by Individual(s)**

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 owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names 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 individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. 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

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_



# 3144 EMERSON STREET

## SAN DIEGO, CA 92106

### CONDOMINIUM NOTE

THIS IS A CONDOMINIUM PROJECT AS DEFINED IN SECTION 4125 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND IS FILED PURSUANT TO THE SUBDIVISION MAP ACT. THE TOTAL NUMBER OF RESIDENTIAL CONDOMINIUM UNITS IS 4.

### LEGAL DESCRIPTION

LEGAL DESCRIPTION: LOT 1 IN BLOCK 48 OF ROSEVILLE, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 165, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

### ASSESSOR'S PARCEL NO.

531-305-01  
NUMBER OF PROPOSED LOTS = ONE (1)

### ZONING

RM-3-7 (RESIDENTIAL MULTIPLE = 1 DWELLING PER 1,000 SQ. FT.)

### SITE AREA + NO. OF UNITS

5,000 SQUARE FEET (GROSS); 4 UNITS

### COORDINATE INDEX

L.C.: 242-1685  
CCS 83: 1882-6245

### MINIMUM SETBACKS

RESUBDIVIDED LOT:  
FRONT: 20 FEET - MINIMUM FRONT 10 FEET  
INTERIOR SIDE: 5 FEET - STREET SIDE 5 FEET TO 10 FEET  
REAR: 5 FEET

### BENCHMARK

THE BENCHMARK FOR THIS SURVEY IS A CITY OF SAN DIEGO VERTICAL CONTROL MONUMENT, A BRASS PLUG, IN TOP OF CURB, LOCATED AT THE SOUTH CORNER OF EMERSON STREET AND EVERGREEN STREET.  
ELEVATION = 24.671 (NGVD '29)

### TITLE REPORT

PRELIMINARY TITLE REPORT ISSUED BY TITLE365 COMPANY, ORDER NO. CA0440-16008530-41, DATED JUNE 13, 2016.

### OWNER

3144 EMERSON STREET L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY  
7590 FAT AVENUE #508  
LA JOLLA, CA 92037

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

### TM WAIVER

THIS IS A REQUEST FOR A WAIVER OF A TENTATIVE MAP AND THE PARCEL MAP.

### UTILITIES

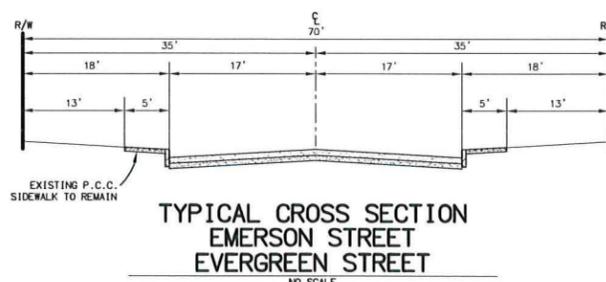
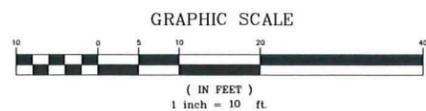
SEWER: CITY OF SAN DIEGO (UNDERGROUND)  
WATER: CITY OF SAN DIEGO (UNDERGROUND)  
GAS: SAN DIEGO GAS AND ELECTRIC (UNDERGROUND)  
ELECTRIC: SAN DIEGO GAS AND ELECTRIC (OVERHEAD)  
TELEPHONE: AT&T (OVERHEAD)  
CABLE: COX CABLE (OVERHEAD)

### EASEMENTS

NONE PROPOSED  
NONE EXISTING

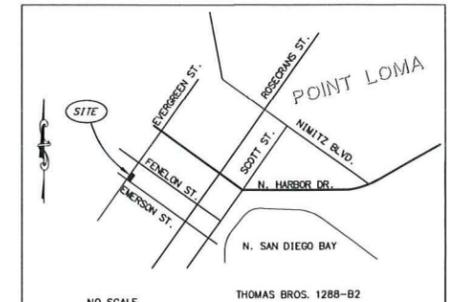
### BUILDINGS + PARKING RATE

UNITS A - D = 2 BEDROOMS EACH  
TOTAL OF 8 BEDROOMS  
PARKING:  
1.25 PER 2 BEDROOM UNIT  
TOTAL REQUIRED FOR UNITS = 5  
PROVIDED 8 ONSITE IN GARAGE  
2 PER UNIT



### LEGEND

- AC --- ASPHALT CONCRETE
- EG --- EXISTING GROUND
- EP --- EXISTING PAVEMENT
- GM --- GAS METER
- FL --- FLOW LINE
- FS --- FINISHED SURFACE
- PL --- PROPERTY LINE
- PP --- POWER POLE
- SB --- SETBACK
- SMH --- SEWER MANHOLE
- STLT --- STREET LIGHT
- TC --- TOP OF CURB
- WM --- WATER METER



### BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CENTERLINE OF EMERSON STREET AS SHOWN ON CORNER RECORD 23529. E.T. N 53°29'16" W.

THIS SITE IS CURRENTLY UNDER CONSTRUCTION PER BUILDING PLAN PTS NO. 475473

NOTE:  
PER SAN DIEGO MUNICIPAL CODE SECTION 144.0240(b)(3), THE PROJECT IS A SINGLE-FAMILY SUBDIVISION OF FOUR LOTS OR LESS AND THEREFORE IS EXEMPT FROM THE REQUIREMENT TO UNDERGROUND THE OVERHEAD UTILITY FACILITIES.

LOT 1  
MAP NO. 165



ROBERT J. RUSSELL, PLB  
05/09/17  
DATE



City of San Diego  
Development Services  
1222 First Ave. 3rd Floor  
San Diego, CA 92101

THE CITY OF SAN DIEGO

# Development Permit/ Environmental Determination Appeal Application

FORM  
DS-3031

AUGUST 2015

In order to assure your appeal application is successfully accepted and processed, you must read and understand Information Bulletin 505, "Development Permits/Environmental Determination Appeal Procedure".

JUL 12 2017

**1. Type of Appeal:**

- Appeal of the Project  
 Appeal of the Environmental Determination

DEVELOPMENT SERVICES

**2. Appellant:** Please check one  Applicant  Officially recognized Planning Committee  "Interested Person" (Per M.C. Sec. 113.0103)Name:  
JONATHAN CHAPINE-mail Address:  
jonny2nite@gmail.comAddress:  
3120 EMERSON STREETCity:  
SAN DIEGOState: Zip Code:  
CA 92106Telephone:  
(858) 523-8623 8632**3. Project Name:**

EMERSON STREET TENTATIVE MAP WAIVER

**4. Project Information**Permit/Environmental Determination & Permit/Document No.:  
PROJECT NO. 508585Date of Decision/Determination:  
06/28/17City Project Manager:  
DERRICK JOHNSON

Decision: (Describe the permit/approval decision)

Hearing Officer approval of an application for a Tentative Map Waiver for the creation of four residential condominium units (currently under construction). The project is located at 3144-3148 Emerson Street in the RM-3-7 Zone within Peninsula Community Plan Area.

**5. Grounds for Appeal: (Please check all that apply)**

- Factual Error  New Information  
 Conflict with other matters  City-wide Significance (Process Four decisions only)  
 Findings Not Supported

**Description of Grounds for Appeal** (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

- PCPB voted 12/0/1 to deny map waiver on January 19, 2017, in part because the project was originally permitted by the City as apartments, Process 1, and then changed to condominiums which did not allow community input into design prior to construction. The original City approved "apartment building" exceeded FAR and needed to be redesigned (top floor removed) after construction.
- The project exceeds the 30-foot coastal zone height limit mandated by the voter approved proposition D. Specifically, the roof top deck/deck system open railings and parapet exceed the 30-foot coastal height limit.
- The project includes solid fence and retaining walls that exceed height limit requirements allowed in the San Diego Municipal Code (SDMC). The SDMC (Chapter 14, Article 2, Division 3) regulated location and height of retaining walls in required setbacks and in the visibility areas as follows:
  - A solid fence located on the front property line shall not exceed 3-feet in height and shall not exceed a height of 6-feet at the setback line (SDMC 142.310(c)).
  - The project includes a +/-6-foot high solid fence in the front yard setback which clearly does not comply with the SDMC.
  - Retaining walls with a maximum height of 6-feet are permitted in the required side and rear yard setback (SDMC 142.0340(d)(1)). An open fence not to exceed 3.5-feet in height is permitted on top of the retaining wall (SDMC 142.0340(d)(2)).
  - The project includes a 9-foot high solid retaining wall in the side yard setback which does not comply with the SDMC.
  - Any additional height over requirements mandated in the SDMC must be of "open design" which this project does not include.
- In order for the City of San Diego to approve a map waiver, the project must comply with the SDMC. The solid and retaining walls constructed for project do not comply with the SDMC, hence findings in the Hearing Officer staff report (HO-17-044) are not correct. **+**

**6. Appellant's Signature:** I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.Signature: J. ChapinDate: 7/12/2017

**Note: Faxed appeals are not accepted. Appeal fees are non-refundable.**

Printed on recycled paper. Visit our web site at [www.sandiego.gov/development-services](http://www.sandiego.gov/development-services).  
Upon request, this information is available in alternative formats for persons with disabilities.

Date: July 19, 2017

**ATTACHMENT 3**

To: The City of San Diego  
Development Services Department  
**Robert A. Vacchi, Esq.**, Development Services Director  
1222 First Ave., MS 301  
San Diego, CA 92101-4101 email- [ravacchi@sandiego.gov](mailto:ravacchi@sandiego.gov)

Re: Appeal of Tentative Map  
3144 Emerson Street  
San Diego, CA 92106  
APN – 531-305-01-00

Mr. Vacchi,

I am writing you on behalf of my client who strongly disagrees at the statement of facts that are cited by the person appealing the Tentative Map for his property at 3144 Emerson Street.

1) To deny map waiver on January 19, 2017, in part because the project was originally 1, and then changed to condominiums which did not allow community input into approved "apartment building"

*Item 1 Response:*

*There is no requirement in the Tentative Map Regulations (Section 114.0201) or the Tentative Map Procedures (Section 1125.0401) that require or imply any input from the community for a conversion of an "apartment" to be converted to a condominium. Further no requirement of any notice, when there are not tenants.*

1B) exceeded FAR and needed to be redesigned

*Item 1B Response:*

*The project was redesigned by the owners choice and issued a building permit by the City of San Diego (Approval Number 1664642) and fully complies with all FAR requirement of the RM-3-7 zone.*

1C) (top floor exceeds the 30-foot coastal zone height limit mandated by the voter approved proposition.

*Item 1C Response:*

*The project was permitted prior to the implementation of the revised code height limit for this area. Permit dated 3/21/2016. Further it complies with all provisions of Proposition "D" as it applies to this project, the survey of the pre-existing grade on this site have a grade differential of 2.95 feet which is allowed to be added to the overall building height. (Per section 113.0270) Also the building has the required height certifications date January 3, 2017 and has passed Final inspection as complete by the City of San Diego on 6/29/2017*

2) A solid fence and retaining walls that exceed height limit requirements allowed The SDMC (Chapter 14, Article 2, Division 3) regulated location and height of retaining areas as follows: located on the front property line shall not exceed 3-feet in height and shall not exceed 142.310(c)).

*Item 2 Response:*

*The building was constructed and verified on July 17, 2017 conforms to the Permitted set of plans and conforms to this code provision.*

3) A retaining wall in the side yard setback which does not comply height over requirements mandated in the SDMC must be of "open design" which this City of San Diego to approve a map waiver, the project must comply with the SDMC. project do not comply with the SDMC, hence findings in the Hearing Officer staff report

ATTACHMENT 3

Please accept this letter and statements as fact pertinent to rebuttal to all appeal items listed in this appeal. We are requesting your approval of the tentative map.as presented.

**Item 3 Response:**

*The retaining wall on the site conform the building code provision (Per Section 142.0340,F) As the project pads height is below the street elevation. And is not number the height requirements and is further measured on the higher side of the retaining wall. The survey of the pre-existing grade on this site has a grade differential of 2.95 feet which is allowed to be added to the overall retaining wall height. The walls as constructed and verified on July 17, 2017 conforms to the Permitted set of plans and conforms to this code provision.*

Sincerely,



Michael Morton AIA

CC: **Afsaneh Ahmadi, P.E.** - Chief Building Official  
619-557-7998 [aahmadi@sandiego.gov](mailto:aahmadi@sandiego.gov)  
**Robert A. Vacchi, Esq.** Development Services Director  
619-446-5423 [ravacchi@sandiego.gov](mailto:ravacchi@sandiego.gov)

**Article 2: Required Steps in Processing***(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***Division 1: Applications***(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§112.0101 Preapplication Conference**

Before submitting an application for a permit, map, or other matter, a prospective *applicant* may request a preapplication conference to discuss the proposed *development* with City staff. The person requesting the preapplication conference may be required to pay a fee that has been established by City Council resolution. Based upon the information provided by the *applicant* at the preapplication conference, the City shall inform the *applicant* of the general policies and regulations in effect at the time of the conference. The City may examine possible alternatives or modifications relating to the proposed permit, map, or other matter.

The *applicant* is responsible for knowing and understanding the governing policies and regulations applicable to the proposed *development*, and the City is not liable for any damages or loss resulting from any actual or alleged failure to inform the *applicant* of any laws or regulations that may be applicable to a *development*. Nothing stated in this meeting shall be construed as actual or implied approval of a proposed *development*.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§112.0102 Application Process**

An application for a permit, map, or other matter shall be filed with the City Manager in accordance with the following requirements:

- (a) Authority to File an Application. The following persons are deemed to have the authority to file an application:
- (1) The *record owner* of the real property that is the subject of the permit, map, or other matter;
  - (2) The *property owner's authorized agent*; or
  - (3) Any other person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application.

- (4) Any person who has an approved and executed Disposition and Development Agreement with the Redevelopment Agency of the City of San Diego
- (b) **Submittal Requirements.** The application shall be made on a form provided by the City Manager and shall be accompanied by the materials, information, fees, and deposits that are required on the date the application is filed, unless otherwise specified by the Land Development Code. The application shall be *deemed complete* when the department processing the application has determined that the application includes all of the information, materials, fees, and deposits required by this section and Section 112.0202. After the application has been *deemed complete*, the City Manager may not request any new or additional materials, information, fees, or deposits that were not specified at the time of application, except as provided by state law. The City may, however, in the course of processing the application, request that the *applicant* clarify, simplify, or provide in alternate format or medium, the information required for the application.
- (c) **Materials and Information.** The City Manager shall maintain a list specifying the materials and information to be submitted with each application for a permit, map, or other matter filed in accordance with the Land Development Code. The list may be revised on a quarterly basis or as needed to comply with revisions to local, state, or federal law, regulation, or policy. The revised list shall be posted at the City, shall become effective on the 30th calendar day after posting, and shall apply to all applications submitted after that date. The City Manager shall provide a copy of the list to all *applicants* and to any person who requests a copy.
- (d) **Expiration of Application.**
- (1) Applications for *construction permits* and Process One map approvals expire 2 years from the date the application is *deemed complete*, unless otherwise stated in the Land Development Code.
- (2) The application may be extended for a period not exceeding 180 calendar days, if the City Manager determines that circumstances beyond the control of the *applicant* prevented issuance of the permit or approval of the Process One map. In such cases, the existing application shall be automatically extended until a decision is made regarding the request for extension.

- (3) An application related to a *premises* for which a civil penalty Notice and Order establishes a future date for corrective action of a code violation shall be automatically extended 180 calendar days from the date for corrective action. If the date for corrective action is less than two years from the date the application is *deemed complete*, the application may be extended in accordance with Section 112.0102(d)(2).
- (4) Once expired, the application, plans, and other data submitted for review may be returned to the *applicant* or destroyed by the City Manager.
- (5) To reapply, the *applicant* shall submit a new application with required submittal materials and shall be subject to all applicable fees and regulations in effect on the date the new application is *deemed complete*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 2-28-2005 by O-19360 N.S.)

(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

### §112.0103 Consolidation of Processing

- (a) When an *applicant* applies for more than one permit, map, or other approval for a single *development*, the applications shall be consolidated for processing and shall be reviewed by a single decision maker as follows, except as provided in Sections 112.0103(b) and (c).
  - (1) The decision maker shall act on the consolidated application at the highest level of authority for that *development* as set forth in Section 111.0105.
  - (2) The *findings* required for approval of each permit shall be considered individually, consistent with Section 126.0105.
  - (3) Where the consolidation of processing combines Process Two, Process Three, Process Four, or Process Five with Process CIP-Two or Process CIP-Five, the consolidation shall be made as follows:
    - (A) Consolidation of Process Two and Process CIP-Two shall be consolidated into Process CIP-Two.

- (B) Consolidation of Process Three, Process Four, or Process Five with Process CIP-Five shall be consolidated into Process CIP-Five, except that any consolidation with a Process Five for rezoning shall be consolidated into Process Five.
- (b) When the California Environmental Quality Act (CEQA) and California Water Code require that the City prepare a Water Supply Assessment (WSA), the WSA shall be considered by the City Council. The associated *development permit* applications are not required to be consolidated with approval of the WSA, as further described below:
- (1) When the *development permit* is subject to Process Two, Three, or Four, the City Council must consider and approve the WSA prior to the lower decision maker's consideration and approval of the *development permit*.
  - (2) When the *development permit* is subject to Process Five, the City Council must consider and approve the WSA at a hearing that occurs prior to or at the same time as the hearing at which it grants approval of the *development permit*. A City Council action to adopt or certify an environmental document that incorporates a WSA constitutes approval of the WSA.
- (c) An application for an approval required to comply with a civil penalty Notice and Order related to a code violation is not required to be consolidated for processing with any other application, but may be consolidated at the *applicant's* request.

*(Added 12-9-1997 by O-18451 N.S.; amended 10-19-1999 by O-18691 N.S.; effective 1-1-2000.)*

*(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)*

*(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)*

**Article 4: Subdivision Regulations**

**Division 2: Tentative Map Regulations**

*(Added 12-9-1997 by O-18451 N.S.)*

**§144.0201 Purpose of Tentative Map Regulations**

The purpose of these regulations is to regulate the preparation and filing of *tentative maps* and related documents within the City of San Diego and to supplement the provisions of the *Subdivision Map Act*.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0202 General Requirements for Tentative Maps**

The *tentative map* shall comply with all ordinances, policies, and standards in effect on the date the City has determined that the application is complete pursuant to California Government Code Section 65943.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0203 Tentative Maps Consistency with Land Use Plans**

The proposed *subdivision* shall be consistent with the applicable *land use plan*.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0204 Phasing Requirements for Tentative Maps**

*Tentative maps* shall be required to phase *development* in accordance with the build-out period and schedule of the applicable *land use plan* and council policies. Building permits shall be issued annually for residential dwelling units in accordance with the applicable community plan capital improvements, phasing, and public facilities financing programs.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0205 Provision of Public Facilities on Tentative Maps**

- (a) *Tentative maps* shall be conditioned to assure that all public facilities are constructed before *development* as specified in the Capital Improvement Program portion of the applicable *land use plan* and applicable City Council policies.
- (b) *Improvements* may be required that qualify for subsequent partial reimbursement of the cost in accordance with the *Subdivision Map Act*, Chapter 4, Article 6.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0206 Requirements for Tentative Maps in Planned Urbanizing Area**

*Tentative maps* of property in the *Planned Urbanized Communities* may be approved if they comply with one of the following conditions.

- (a) *Tentative maps* of property in the *Planned Urbanized Communities* may be approved if the following conditions are required to be met before *final map* or *parcel map* approval:
- (1) An implementation program for financing *public improvements*, or a financing plan for public facilities, and a *development phasing* program have been approved by the City Council;
  - (2) Assessment districts or Facilities Benefit Assessments have been proposed to finance necessary *public improvements*; and
  - (3) Confirmation of 1911-13 Act Assessment Districts or the Resolution of Designation for Facilities Benefit Assessments have been adopted by the City Council.
- (b) *Tentative maps* of property in *Planned Urbanized Communities* may be approved before development of an implementation program for financing *public improvements* in accordance with Section 125.0442 if the *subdivider* enters into a binding Development Agreement with the City by which the *subdivider* consents to future establishment of any necessary assessment districts covering the subject community financing plan area and by which the *subdivider* consents to payment of an estimated facilities benefit assessment fee at the time of building permit issuance. The Development Agreement shall provide for the possibility of an under payment or over payment of the estimated fee and for reimbursement of a portion of, or supplementation of, the fees as may be required. The resolution approving the *tentative map* shall specify all such conditions.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)  
(Amended 4-8-2008 by O-19734 N.S; effective 5-8-2008.)

**§144.0210 General Design Requirements for Tentative Maps**

The proposed *subdivision* shall meet all of the requirements of the *Subdivision Map Act* and the requirements of the Land Development Code unless specific waiver is granted in accordance with the provisions of the Land Development Code. The design of new *subdivisions* shall make adequate provision for the proper *development* of adjacent lands and the provision of public services to the community.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0211 Lot Design Requirements for Tentative Maps**

The proposed *subdivision* lots shall be designed as follows:

- (a) All *lots* shall have frontage on a *street* that is open to and usable by vehicular traffic and all *lots* shall have a minimum 15-foot-wide direct vehicular access to the *street* or other access to a dedicated public *street* approved by the City Engineer;
- (b) All *lots* shall meet the area, frontage, width, and depth requirements of the applicable zone or shall comply with the standards as specified in a *Planned Development Permit* approved with the *tentative map*;
- (c) Where existing improvements in the proposed *subdivision* are proposed to be retained, the *lots* shall be designed so that the improvements conform to regulations for *lot coverage*, *setbacks*, *side yard* or *rear yard* regulations; and
- (d) *Lots* shall be designed to provide for brush management as required in Section 142.0412.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0220 Soils and Geologic Reports Required**

*Geotechnical reports* are required as follows:

- (a) A *preliminary soils report* is required for all *subdivisions* and a more detailed soils investigation may be required by the City Engineer under the conditions described in the *Subdivision Map Act*, Chapter 4, Article 7. The requirement for a preliminary soils report may be waived by the City Engineer after a determination that additional information regarding soils of the *subdivision* is not needed;
- (b) In addition to the requirement for a *preliminary soils report*, a *geological reconnaissance report* that addresses potential geologic hazards may be required by the City Engineer; and

- (c) Where unstable conditions are indicated, the City Engineer may require that these conditions be addressed in a final engineering geology report. The final engineering geology report, including specific mitigation measures, shall be incorporated in the detailed construction plans as a condition of final map or *parcel map* approval.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§144.0230 Dedications and Easements Required for Tentative Maps**

The proposed *subdivision* shall be designed and conditioned as follows:

- (a) *Subdivisions* shall connect to a dedicated and improved *street* and shall make provision for *dedication* of necessary *public rights-of-way*, including *streets*, pedestrian ways, separate bicycle ways, utility easements, and transit routes, as provided in the *Subdivision Map Act*, Chapter 4, Article 3, within or adjacent to the *subdivision*. An unimproved *street* or public transit route covered by a bonded agreement or permit assuring its improvement may be treated as an improved *street* or public transit route in assessing compliance with this section;
- (b) Less than full width *streets* or *alleys* lying along the boundary of a *subdivision* may be dedicated if it is practical to require the *dedication* of the remaining width when the adjoining property, which would also use the *public right-of-way*, is subdivided. Such portion of a *street* shall be distinctly designated upon the map or plat as being only a portion of a *street* and not the full width *street*;
- (c) Access shall be provided to adjacent undeveloped areas by *streets*, *alleys*, or other public ways as may be necessary to provide for future use and public safety;
- (d) *Subdivisions* shall provide for the continuation of existing *streets* in adjoining or adjacent *subdivisions* insofar as these may be necessary for public access requirements. *Streets* shall be extended to the boundary of the *subdivision* to provide suitable access to adjoining property;
- (e) *Public rights-of-way* and improvements shall conform to the current standard design requirements as approved by the City Engineer;
- (f) Where it is in the interest of public safety or the general welfare to limit the access to any *street*, highway, or easement, the *subdivider* may be required to waive direct access rights to any such *street*, highway, or easement from any *abutting property* shown on the *parcel map* or final map;

- (g) Whenever any *subdivision* of land is bounded on any side or in any way by the Pacific Ocean, San Diego Bay, or any public body of water in the City of San Diego, there shall be dedicated upon and by such map or plat, a *street* along the ocean front, bay, or body of water. All such *streets*, and those *streets* leading to the ocean front, bay, or body of water shall extend to and be open to the mean high tide line;
- (h) Whenever the *subdivision* contains land that has been identified as a route for local transit facilities in the applicable *land use plan* or in any transit agency adopted plan, the *subdivision* shall be required to provide the necessary reservation, *dedication* or irrevocable offer of *dedication*, for the *public right-of-way*. In residential *subdivisions*, the requirement for *dedication* shall be limited to those *subdivisions* having a *development* potential of 200 or more dwelling units or containing 100 or more acres. This *dedication* shall be limited to transit facilities that primarily serve the *subdivision* and shall include *dedications* for local stations, associated parking, bus turnouts, and appurtenant facilities. This requirement will not be applicable to *condominium conversions* or *structures* that are 5 or more years in age and which do not involve the addition of new units. In residential *subdivisions* having a *development* potential of fewer than 200 dwelling units or containing fewer than 100 acres, a reservation requirement shall be made as appropriate; and
- (i) Whenever a *subdivision* contains land that has been identified as a route for a bicycle path in the applicable *land use plan*, the *subdivision* shall be required to provide the necessary *dedication* or irrevocable offer of *dedication* for the necessary and safe *public right-of-way* if the *subdivision* contains 200 or more parcels. When fewer than 200 parcels are involved, a bicycle path reservation shall be provided as feasible.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

#### §144.0231 **Right-of-Way Improvements and Land Development for Tentative Maps**

The *subdivider* shall improve *public rights-of-way* and perform land *development* work as required in this article and in accordance with the conditions of the resolution approving the *tentative map* as follows:

- (a) *Streets* in and adjacent to all *lots* within the *subdivision* shall be improved in accordance with adopted *land use plan* policies and the Land Development Manual;
- (b) Pedestrian access shall be provided along all *streets* and to all *lots* within the *subdivision* in accordance with adopted land use plan policies and the Land Development Manual;

- (c) The *subdivider* shall provide street trees as required by Chapter 14, Article 2, Division 4 (Landscape Regulations);
- (d) Storm drains and drainage channels shall be constructed in accordance with policies established by the City Council to adequately control storm waters originating on or upstream from the *subdivision* and to convey these storm waters to a suitable discharge satisfactory to the City Engineer;
- (e) Public transportation improvements shall be constructed and financed in accordance with adopted *land use plan* policies to adequately support the *development* of public transportation programs and to fulfill any traffic mitigation requirements of the project's environmental review;
- (f) Masonry walls or *fences* shall be required adjacent to *public rights-of-way* or *flood* control channels, railroads, *freeways*, expressways, major *streets* and other *streets* where necessary or desirable for the protection of public health, safety, and welfare; and
- (g) Any private improvements existing or to be installed in public right-of-way shall require Encroachment Maintenance and Removal Agreements in accordance with Section 129.0715.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)  
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)  
(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)

**§144.0232 Fees for Bridges or Major Thoroughfares**

The payment of fees may be required for defraying the cost of constructing bridges or major thoroughfares, including public transit facilities, in accordance with the conditions stipulated in the *Subdivision Map Act*, Chapter 4, Article 5 and Chapter 14, Article 3, Division 5 (Parking Regulations). These facilities shall be consistent with the applicable *land use plan*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§144.0233 Acceptance of Dedication**

No reservation for *public rights-of-way* shall be offered for dedication unless such offer includes any necessary slope easements required for the ultimate *development* of the *public right-of-way*, and no such reservation shall be accepted for dedication by the City until improvements therein are constructed pursuant to the requirements of the San Diego Municipal Code.

The City Engineer, or other designee of the City Manager, may accept on behalf of the City Council *streets* and roads, or portions thereof, into the City *street* system and record conveyances to the City of real property interests for *street* and road uses and purposes. No *street* shall be accepted into the City *street* system and open to public use until improvements are constructed pursuant to the requirements of the San Diego Municipal Code.

(Added 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)  
(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

**§144.0240 Utilities Requirements for Tentative Maps**

Where utilities already exist, new *subdivisions* shall be designed so that the utilities are in proper locations or else provide for their reconstruction in locations approved by the utility agencies concerned.

- (a) Sewer and water service shall be provided to each *lot* connecting to the City or City-approved sewer and water systems. Water systems shall provide for fire flow required to service the entire *subdivision*. Individual sewer or water systems may be recommended by the City Engineer in *subdivisions* of *lots* or less where the installation or extension mains to connect to the existing City systems would be impractical. In such cases, contracts shall be executed for installation of future permanent facilities.
- (b) Privately owned utilities shall be provided as follows.
  - (1) Unless otherwise specified herein, all privately owned utility systems and service facilities needed to serve the *subdivision* shall be installed underground.

- (2) The *subdivider* shall make arrangements with each of the utility companies for the installation of all new underground facilities and relocation to an underground position of existing facilities within the boundary of the *subdivision* or within the abutting *public rights-of-way*. All work shall be in conformance with the operating company's rules and regulations on file with, and approved by, the California Public Utilities Commission. Transformers, terminal boxes, meter cabinets, pedestals, concealed ducts and other facilities necessarily appurtenant to the underground utilities may be placed above ground.
- (3) All *subdivisions* in agricultural zones and *single dwelling unit* residential zones that consist of four *lots* or less are exempt from the requirement to convert existing overhead utility facilities to an underground location if the conversion would not constitute an extension of an existing underground system. For *subdivisions* that include a Planned Development Permit, this exemption may be considered on a project by project basis.
- (4) The provisions of this section shall not require undergrounding of power transmission lines of 60,000 volts or more.
- (5) The *subdivider* or *public utility* company may apply for waiver of the requirements of this section as part of an application for the *tentative map*. The decision maker may waive the requirements of this section in accordance with section 144.0242.

(c) Street lights shall be provided in accordance with policies adopted the City Council and the standards established in the Land Development Manual.  
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)  
(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)

**§144.0241 Fees for Sewer or Drainage Facilities**

The payment of fees may be required to defray the cost of planned drainage facilities or planned sewer facilities in accordance with the *Subdivision Map Act*, Chapter 4, Article 5. The plan for the facilities within the local drainage or sewer service area in which the *subdivision* is located must be adopted by the City Council at least 30 calendar days before the imposition of the requirement for payment of fees.  
(Renumbered from Sec. 114.0421 on 6-19-2000 by O-18814 N.S.)

**§144.0242 Waiver of the Requirements to Underground Privately Owned Utility Systems and Service Facilities**

- (a) **Purpose.** The installation of utilities underground benefits the public through the minimization of the visual and functional impact of utility systems and equipment on streets, sidewalks, and the public realm, and the enhancement of quality of life. However, there are circumstances where a waiver of the undergrounding requirement in section 144.0240(b) would be appropriate, in accordance with section 144.0242(c).
- (b) **Process.** Requests to waive the undergrounding requirement in Section 144.0240(b) shall be considered concurrently with the approval of a *tentative map* or amendment thereto. Supporting facts for a decision to grant a waiver shall be documented in the *findings* for *tentative map* approval.
- (c) **Waiver.** A request for waiver of the requirements in section 144.0240(b) will be considered based on documentation provided by the *applicant* demonstrating that one or more of the following factors are applicable to the *development*:
  - (1) Adverse timing or planning considerations:
    - (A) The conversion involves undergrounding of utilities that are already scheduled to occur in the near term as a utility company financed undergrounding project or as part of the City's utility underground program; or
    - (B) The conversion involves a short span of overhead facility (less than a full block in length) and would not represent a logical extension to an underground facility.
  - (2) Inordinate cost to the *development* taking into consideration:
    - (A) Whether the conversion would involve substantial investment in temporary facilities such as cable poles or temporary recruiting;
    - (B) Whether the conversion would require a significant amount of work to occur offsite of the *development* as a result;
    - (C) Whether the cost of conversion would increase the cost per unit for proposed *residential development* by more than one percent; or

- (D) Whether regardless of the conversion, a large transmission line (60,000 volts or larger) would still remain overhead.
- (3) The requested waiver will not create a long term visual or functional impact to any streets, sidewalks or the public realm in conflict with adopted *land use plan* policies.
- (d) Appeals. A decision to approve or deny a waiver, excepting a decision of the City Council, may be appealed to a higher decision maker by filing an appeal of the *tentative map* action in accordance with section 112.0506 or 112.0508 as applicable.

*("Waiver of the Requirements to Underground Privately Owned Utility Systems and Service Facilities" added 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)  
(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)*

**§144.0250 Requirements for Park and Recreational Facilities Sites**

The provision of park facilities and the payment of park fees shall be required in accordance with Municipal Code Chapter 6, Article 3, Division 3 (Development of Park and Recreational Facilities).

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§144.0251 Reservations for Public Facilities Sites**

Sites needed for public facilities within a proposed new *subdivision*, including *school* sites, shall be reserved to the City or other responsible public agency in accordance with the *Subdivision Map Act*, Chapter 4, Article 4.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**Article 5: Subdivision Procedures**

**Division 4: Tentative Maps**  
(Added 12-9-1997 by O-18451 N.S.)

**§125.0401 Purpose of Tentative Map Procedures**

The purpose of these procedures is to provide the process for approving *tentative maps* and the associated design and improvement of *proposed subdivisions* and to implement the provisions of the *Subdivision Map Act* to provide for the orderly division of land.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§125.0410 When a Tentative Map Is Required**

A *tentative map* is required for each *subdivision* of land except for a *parcel map* that creates no additional *lots*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§125.0420 How to Apply for a Tentative Map**

- (a) An *applicant* shall apply for a *tentative map* in accordance with Section 112.0102. The content and form for *tentative maps* and the associated data submitted shall be as specified by the *Land Development Manual* and the *Subdivision Map Act*.
- (b) If the *applicant* fails to submit or resubmit requested materials, information, fees, or deposits, the application file may be closed after 90 calendar days from the date the application was *deemed complete* or from the date of the last written request by the City.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)  
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

**§125.0430 Decision Process for a Tentative Map**

An application for a *tentative map* may be approved, conditionally approved, or denied in accordance with Process Three for *tentative parcel maps* and Process Four for *tentative final maps* except for those *tentative maps* that include proposals for the vacation of *public rights-of-way* or the abandonment of *public service easements*, which shall be reviewed in accordance with Process Five.  
(Amended 3-8-2004 by O-19266 N.S.)

**§125.0431 Additional Notice for a Condominium Conversion Map**

- (a) For a *tentative map* for a *condominium conversion* project, the *subdivider* shall provide the following notices in addition to the notice provided for in Chapter 11, Article 2, Division 3 (Notice):
- (1) Notice to each tenant of the proposed project required in the *Subdivision Map Act* section 66427.1; and
  - (2) Notice to each person applying for the rental of a unit in the proposed project required in Chapter 11, Article 2, Division 3 (Notice) and *Subdivision Map Act* section 66452.17;
  - (3) 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*.
  - (4) 60 Day Notice of Termination of Tenancy, consistent with the Land Development Manual, provided to each tenant 60 days prior to being required to vacate the property.
  - (5) Notice of 90 Day Period of First Right of Refusal to Purchase, consistent with the Land Development Manual, provided to each tenant as follows:
    - (A) Within 5 working days of the issuance of the Subdivision Public Report, or
    - (B) 90 days prior to the initial public offer for sale if no Subdivision Public Report is required.
    - (C) Failure to provide notice within the time period required shall extend the 90 Day Period of First Right of Refusal to Purchase to 90 days from the date the notice is provided to the tenant.

- (b) Following approval of a *tentative map* for *condominium conversion*, a 180 Day Notice of Intention to Convert shall be provided to each tenant prior to termination of tenancy due to *condominium conversion* pursuant to *Subdivision Map Act* section 66452.19.
- (c) The notices required in Section 125.0431(a) shall include a statement advising the tenants that should the *condominium conversion* be approved, tenants may be required to vacate the *premises* following any payment of benefits due pursuant to Section 144.0505.

(Amended 3-8-2004 by O-19266 N.S.)

(Amended 2-9-2006 by O-19461 N.S.; effective 3-9-2006.)

(Amended 7-5-2006 by O-19505 N.S.; effective 8-5-2006.)

(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

#### §125.0440 Findings for a Tentative Map

A *tentative map* may be approved or conditionally approved only if the decision maker makes the following *findings* in accordance with the *Subdivision Map Act* and the Land Development Code:

- (a) The proposed *subdivision* and its design or improvement are consistent with the policies, goals, and objectives of the applicable *land use plan*;
- (b) The proposed *subdivision* complies with the applicable zoning and development regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code;
- (c) The site is physically suitable for the type and *density of development*;
- (d) The design of the *subdivision* or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
- (e) The design of the *subdivision* or the type of improvement will not be detrimental to the public health, safety, and welfare;
- (f) The design of the *subdivision* or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed *subdivision*;
- (g) The design of the proposed *subdivision* provides, to the extent feasible, for future passive or natural heating and cooling opportunities; and
- (h) 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.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

**§125.0441 Finding of Environmental Mitigation Infeasible**

If the decision maker does not make the *finding* in Section 125.0440(d), the *tentative map* may still be approved as allowed in the *Subdivision Map Act*, Section 66474.01, if an environmental impact report was prepared for the project and a *finding* was made pursuant to California Public Resources Code Section 21081(a)(3) that specific economic, social, or other considerations make the mitigation measures or project alternatives identified in the environmental impact report infeasible.  
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§125.0444 Findings for Tentative Maps for Condominium Conversion**

The decision maker may approve a *tentative map* for a *condominium conversion* project, if the decision maker makes the following *findings*, in addition to those required in section 125.0440:

- (a) The notices required by section 125.0431 have been given in the manner required;
- (b) The project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or *low income* housing; and
- (c) 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.

(Amended 3-8-2004 by O-19266 N.S.)

**§125.0450 Filing of Tentative Map Resolutions**

After approval of a *tentative map*, the resolution shall be filed with the City Clerk and a copy shall be mailed to the *applicant*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§125.0460 Expiration of a Tentative Map**

An approved or conditionally approved *tentative map* expires 36 months after its approval or conditional approval. After expiration of an approved or conditionally approved *tentative map*, a final map or *parcel map* shall not be filed without the approval of a new *tentative map*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§125.0461 Extension of Time for a Tentative Map**

The expiration date of a *tentative map* may be extended as follows:

- (a) The expiration date of a *tentative map* may be extended one or more times in accordance with the *Subdivision Map Act*, if the extensions do not exceed a total of 72 months. This time frame does not include any legislative extensions enacted pursuant to state law.
- (1) **Request for Extension.** An application for an Extension of Time for a *tentative map* shall be filed before the expiration date of the *tentative map* but not more than 12 months before the expiration date, in accordance with Section 112.0102. When an application for Extension of Time is timely filed, the *tentative map* shall be automatically extended for a period of 60 calendar days from the expiration date or until the Extension of Time is approved, conditionally approved, or denied, whichever occurs first.
- (2) **Decision Process.** An application for Extension of Time for a *tentative map* shall be acted upon in accordance with Process Two, except that it shall be appealable in accordance with Section 125.0461(c).
- (A) The decision maker shall approve the application for Extension of Time unless a *finding* to conditionally approve or deny the application is made in accordance with Section 125.0461(a)(3).
- (B) Expiration of a *tentative map* shall not preclude the decision maker from approving, conditionally approving or denying an Extension of Time when the application has been filed prior to the *tentative map* expiration.
- (3) **Findings to Conditionally Approve or Deny an Application for Extension of Time.** The decision maker may only conditionally approve or deny a request for extension of time if the decision maker makes one of the following *findings*:
- (A) The failure to conditionally approve or deny the request would place the residents of the *subdivision* or the immediate community in a condition dangerous to their health or safety;  
or
- (B) The condition or denial is required to comply with state or federal law.

- (4) If granted, the time period for the Extension of Time shall begin from the date of expiration of the previously approved *tentative map*.
- (b) Extensions of Time for filing multiple maps in accordance with the *Subdivision Map Act* may be approved or denied by the City Engineer in accordance with Process One.
- (c) Appeals. The City Council shall hear appeals of decisions on Extensions of Time for *tentative maps*.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

*(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)*

*(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)*

*(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)*

#### §125.0470 Minor Modifications to a Tentative Map

Except as otherwise provided, a revision to a previously approved *tentative map* that is in *substantial conformance* with that *tentative map* shall be considered a minor modification. The City Engineer shall decide whether the revision is in *substantial conformance* with the previously approved *tentative map* in accordance with Process One.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

#### §125.0471 Amendments to a Tentative Map

Except as otherwise provided, any revision to an approved *tentative map* that is not in *substantial conformance* with the approved *tentative map* requires an amendment to the *tentative map*, as follows:

- (a) Request for Amendment. An application for an amendment to a *tentative map* shall be filed in accordance with Section 112.0102; and
- (b) Decision Process. The decision on an application for an amendment shall be made in the same manner as the original *tentative map*.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**Article 2: General Development Regulations****Division 3: Fence Regulations**

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§142.0301 Purpose of Fence Regulations**

The purpose of these regulations is to maintain adequate visibility on private property and in *public rights-of-way*, to maintain the openness of front and street side yards, to protect the light and air to abutting properties, and to provide adequate *screening* by regulating the height, location, and design of *fences* and *retaining walls*.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§142.0305 When Fence Regulations Apply**

- (a) This division applies to the construction of all *fences* and *retaining walls*, whether or not a permit or other approval is required.
- (b) Table 142-03A shows the applicable regulations and the type of permit required by this Division, if any, for specific types of *fences*.

**Table 142-03A  
Fence Regulations Applicability**

<b>TYPE OF DEVELOPMENT PROPOSAL</b>	<b>APPLICABLE REGULATIONS</b>	<b>REQUIRED PERMIT TYPE/ DECISION PROCESS</b>
Any <i>fence</i> with a height less than 6 feet	Sections 129.0203, 142.0310-142.0330, 142.0360-142.0380	No permit required by this division
Any <i>fence</i> with a height of 6 feet or greater	Sections 142.0310-142.0330, 142.0360-142.0380	Building Permit/Process One
Any <i>retaining wall</i> with a height less than 3 feet	Sections 129.0203, 142.0340, 142.0370, 142.0380	No permit required by this division
Any <i>retaining wall</i> with a height of 3 feet or greater	Sections 142.0340, 142.0370, 142.0380	Building Permit/Process One
Any <i>fence</i> or <i>retaining wall</i> exceeding the height permitted in Section 142.0310, 142.0320, 142.0330, and 142.0340.	Section 142.0350	Neighborhood Development Permit/Process Two
Any <i>fence</i> or <i>retaining wall</i> located on <i>premises</i> that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731.	Section 142.0310-142.0380	Coastal Development Permit/Process Three - Appealable

*(Added 12-9-1997 by O-18451 N.S.)*

*(Amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)*

*(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)*

**§142.0310 General Fence Regulations for All Zones**(a) Location and Height of *Fences*

- (1) No portion of a *fence* shall extend beyond the *property line* of the *premises* into the *public right-of-way* without a Public Right-of-Way Permit.
- (2) Up to 30 percent of the length of a *fence* may exceed the height limits specified in this division by up to 6 inches.
- (3) *Fence* height shall be measured in accordance with Section 113.0270(b).

(b) *Fence* Height in *Visibility Areas*

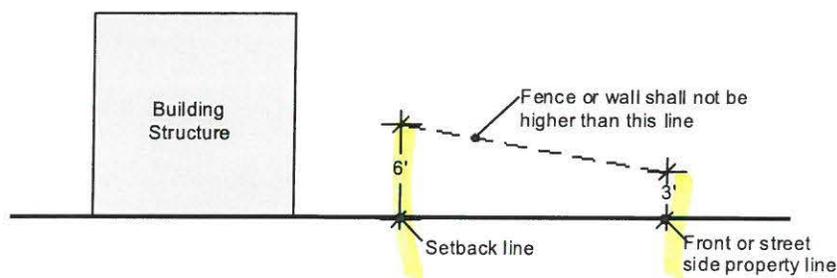
*Fences* in *visibility areas* shall not exceed 3 feet in height.

(c) *Fence* Height in Required *Front Yards* and Required *Street Side Yards*(1) *Solid Fences*

- (A) *Solid fences* located on the front or *street side property line* shall not exceed 3 feet in height except as provided in Section 142.0310(c)(1)(C).
- (B) The height of a *solid fence* located in a required *yard* may increase as the *fence* is placed farther from the front or *street side property line*. No portion of the *fence* shall exceed the height established by a line drawn beginning at a point 3 feet above *grade* at the *property line* and ending at a point 6 feet above *grade* at the *setback line*, as shown in - 142-03A.

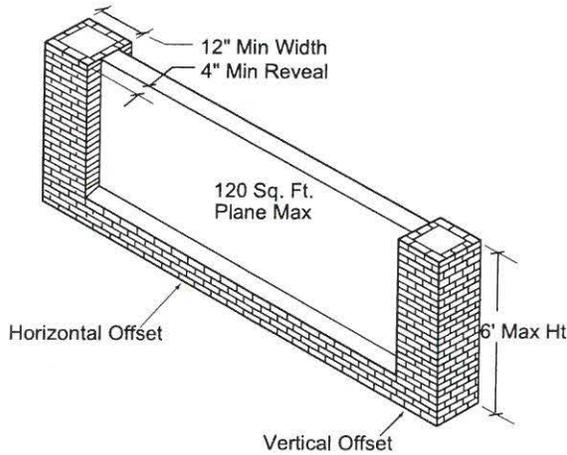
**Diagram 142-03A**

## Solid Fence--Height Limit



- (C) *Solid fences* located in a required *yard* that abuts a major *street*, primary arterial, or *freeway*, as identified in the applicable *land use plan*, are permitted up to 6 feet in height if there is at least one horizontal or vertical offset for every 120 square feet of *fence* area. The offset shall be at least 12 inches wide with a minimum reveal of 4 inches. See Diagram 142-03B.

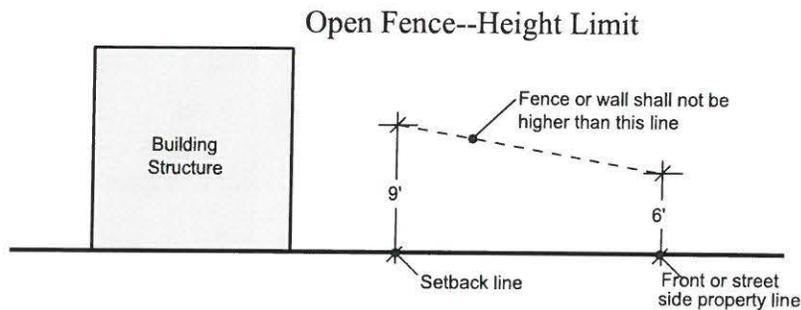
**Diagram 142-03B**  
**Vertical and Horizontal Offsets**



(2) *Open Fences*

- (A) Standard, all metal chain link *fences* located on the front or *street side property line* shall not exceed 3 feet in height. Other *open fences* are permitted up to 6 feet in height.
- (B) The height of an *open fence* located in a required *yard* may increase as the *fence* is placed farther from the front or *street side property line*. No portion of the *fence* shall exceed the height established by a line drawn beginning at a point 6 feet above *grade* at the *property line* and ending at a point 9 feet above *grade* at the *setback line*, as shown in Diagram 142-03C.
- (C) An *open fence* shall have at least 35 percent of the vertical surface area of each 6-foot section open to light except within the Coastal Overlay Zone, where an *open fence* shall have at least 75 percent of its vertical surface area open to light.

Diagram 142-03C

(3) *Combination (Open and Solid) Fences*

- (A) On the front or *street side property line*, an *open fence* is permitted on top of a *solid fence*, provided that the *solid fence* and any chain link *fence* do not each exceed 3 feet in height and the total height does not exceed 6 feet.
- (B) The height of a *combination fence* may increase as the *fence* is placed farther from the front or *street side property line*. No portion of the *fence* shall exceed the height established by a line drawn beginning at a point 6 feet above *grade* at the *property line* and ending at a point 9 feet above *grade* at the *setback line*, as shown in Diagram 142-03D. Where a *visibility area* is required, the beginning point shall be measured 6 feet above any point of intersection of the perimeter of the *visibility area* and the side or rear *property line*, as shown in Diagram 142-03E.

Diagram 142-03D  
Combination Fence--Height Limit

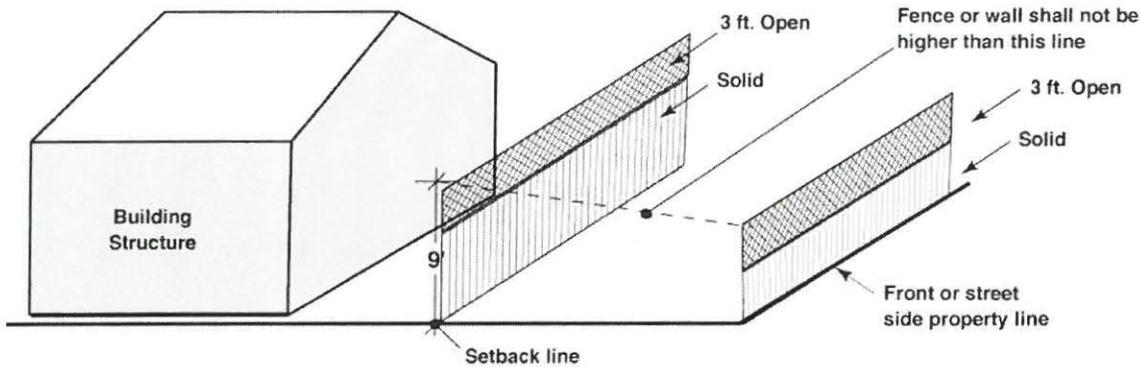
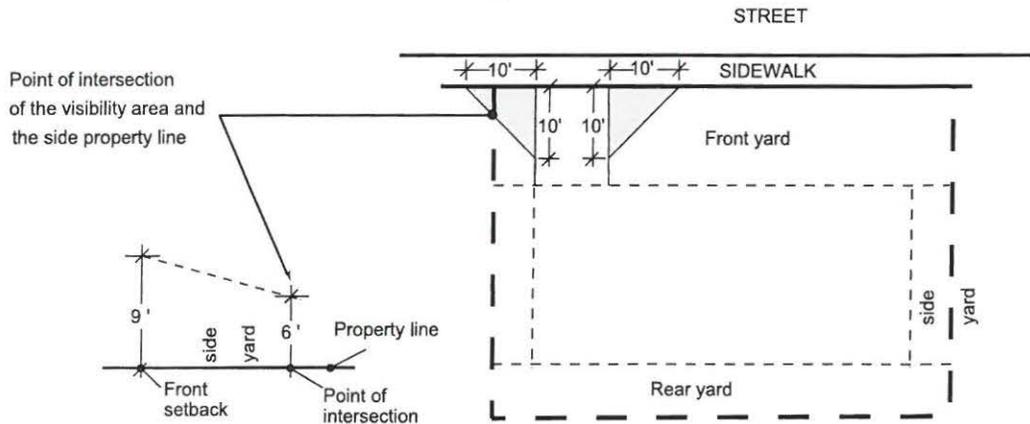


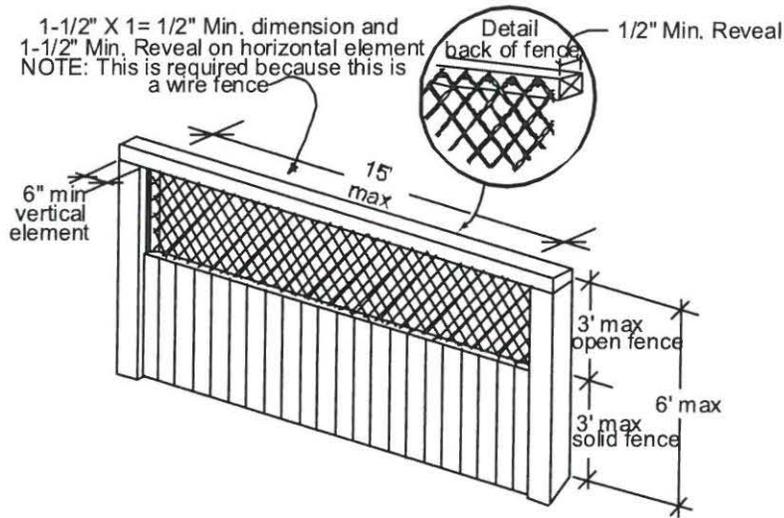
Diagram 142-03E  
Combination Fence--Height Limit with Visibility Area



- (C) Vertical elements such as columns or posts shall be provided at least every 15 feet on a combination fence. Each vertical element shall be at least 6 inches wide (unfinished dimension), measured along the face of the fence as shown in Diagram 142-03F.
- (D) If wire fence material is used for the open portion of the fence, a horizontal element shall be provided along the top of the wire fence. This element shall be at least 1-½ inches wide with a minimum reveal of 1-½ inches, as shown in Diagram 142-03F.

Diagram 142-03F

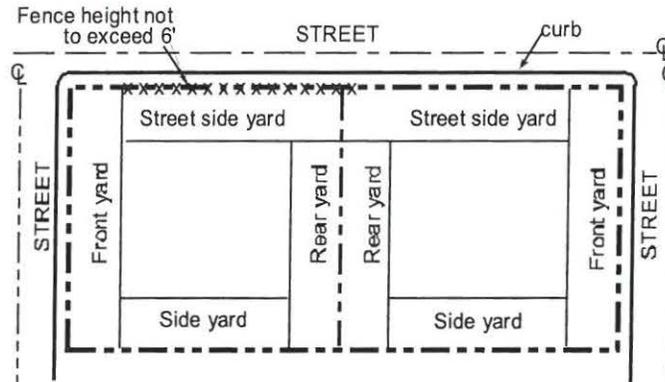
Combination Fence--Vertical and Horizontal Elements



(4) Fence Height Exception in Required *Street Side Yards*

*Solid fences* located in the required *street side yard* of a *lot* with a *rear yard* that abuts the *rear yard* of another *lot*, as shown in Diagram 142-03G, are permitted up to 6 feet in height.

**Diagram 142-03G  
Fence in Street Side Yard**



(d) *Fence Height in Required Side Yards and Required Rear Yards*

*Fences located in required side yards and required rear yards are permitted up to 9 feet in height. Any portion of the fence above 6 feet in height shall be an open fence.*

(e) *Fence Height Outside of Required Yards*

(1) *Fences located outside of required yards, other than those listed in Section 142.0310(e)(2), shall not exceed 10 feet in height in open space, agricultural, and residential zones and 12 feet in height in commercial and industrial zones. These fences may be solid fences, open fences, or combination fences.*

(2) The following fences are permitted outside of required yards up to the maximum structure height specified in the zone:

(A) *Open fences enclosing tennis, badminton, volleyball, and other recreational and public facilities;*

(B) *Building, court, and wing walls or other integral portions of a building.*

*(Amended 1-9-2001 by O-18910 N.S.; effective 8-8-2001.)*

*(Amended 3-1-2006 by O-19467 N.S.; effective 8-10-2006.)*

*(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)*

**§142.0320 Exception to the General Fence Regulations for Residential Zones**

In the Residential Townhouse (RT) zones, *fences* located in the required rear yard along an *alley* adjacent to a garage are permitted up to 10 feet in height. If a *roof deck* is located on the garage, the *fence* may extend to the height of the *roof deck* railing, provided that the *fence* design is consistent with that of the railing.  
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§142.0330 Exceptions to the General Fence Regulations for Commercial and Industrial Zones**(a) *Fences* in Required Rear Yards and Required Side Yards

- (1) *Solid fences* located in the required rear and side yards of commercially zoned property abutting a residentially zoned lot are permitted up to 9 feet in height.
- (2) *Solid fences* located in required rear and side yards of industrially zoned property are permitted up to 9 feet in height.

(b) Required *Fences*

- (1) A *solid fence* shall be constructed along all portions of commercially and industrially zoned lots that abut residentially zoned lots, unless there is a *grade* separation of more than 30 feet between the building pads of the abutting lots. Any gates provided in required *fences* shall also be solid. The *fence* and gate shall be 3 feet in height in required front and street side yards and shall be at least 6 feet but not more than 9 feet in height in required side and rear yards. If there is a *grade* difference of 30 feet or less between the building pads of the commercially or industrially zoned lot and the residentially zoned lot, the required 6-foot *fence* shall be located at the top of the slope between the two lots.
- (2) *Vehicular use areas* located in or adjacent to required front or street side yards shall be *screened* by a *fence* or landscaping of at least 3 feet in height. This *screen* shall be separated from the adjacent *public right-of-way* by a landscape strip that is at least 3 feet wide.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§142.0340 Retaining Wall Regulations in All Zones**(a) Location and Height of *Retaining Wall*

- (1) No portion of a *retaining wall* shall extend beyond the *property line* of the *premises* into the *public right-of-way* unless an encroachment permit has been obtained.
- (2) Up to 30 percent of the length of a *retaining wall* may exceed the height limits specified in this division by up to 6 inches.
- (3) *Retaining wall* height shall be measured in accordance with Section 113.0270(b).

(b) *Retaining Wall* Height in *Visibility Areas*

*Retaining walls* in *visibility areas* shall not exceed 3 feet in height except that a *retaining wall* may be constructed to maintain an existing cut bank adjacent to a *public right-of-way*, if the wall follows the contours of the slope.

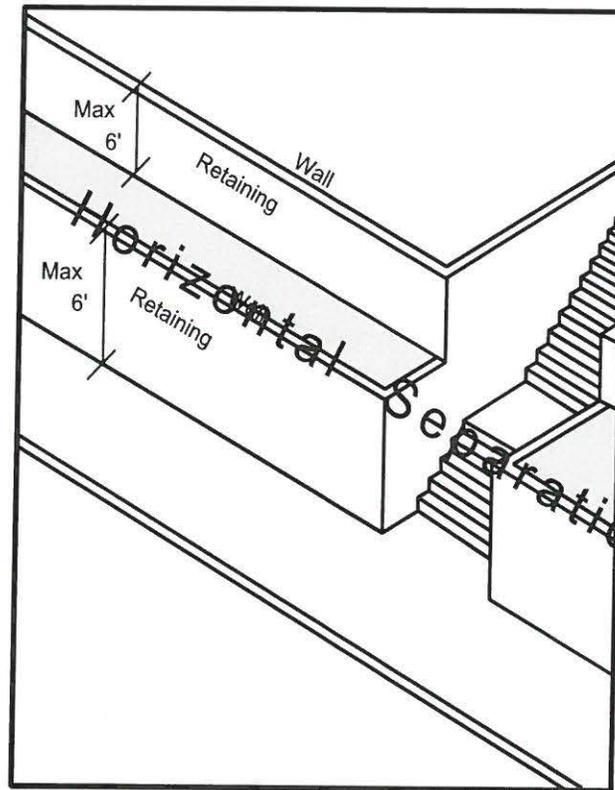
(c) *Retaining Wall* Height in Required Front *Yards* and Required *Street Side Yards*

- (1) Two *retaining walls* with a maximum height of 3 feet each are permitted in the required front and *street side yard* if the two *retaining walls* are separated by a minimum horizontal distance equal to the height of the upper wall. See Diagram 142-03H.
- (2) An *open fence* not exceeding 3 feet, 6 inches in height is permitted on the top of the upper wall section, or an *open fence* which in combination with the upper wall section does not exceed 6 feet in height is permitted.
- (3) *Retaining walls* of 3 feet in height or greater shall have at least one horizontal or vertical offset for each 120 square feet of wall area, except where otherwise provided in Section 142.0340(f). The horizontal or vertical offset shall be at least 12 inches wide with a minimum reveal of 4 inches. See Diagram 142-03B.

(d) *Retaining Wall* Height in Required *Side Yards* and Required *Rear Yards*

- (1) Two retaining walls with a maximum height of 6 feet each are permitted in the required side and rear yard if the two retaining walls are separated by a minimum horizontal distance equal to the height of the upper wall. See Diagram 142-03H.
- (2) An open fence not to exceed 3 feet, 6 inches in height is permitted on top of the upper retaining wall.

Diagram 142-03H  
Retaining Wall Requirements



**Horizontal separation distance shall be greater than or equal to the height of the upper wall**

- (e) Retaining Wall Height Outside of Required Yards  
Retaining walls located outside of the required yards shall not exceed 12 feet in height.
- (f) Exceptions to Retaining Wall Height
  - (1) Retaining walls that abut a public alley are not required to be separated into two wall sections, and a solid fence up to 6 feet in height may be provided on top of the retaining wall if it is 6 feet high or less.

- (2) The height of a *retaining wall* and associated fencing that border an access to underground parking shall be measured from the *street grade*.
- (3) In commercial and industrial zones, a *retaining wall* not exceeding 9 feet in height is permitted in the required side and rear *yards* and shall not be required to provide a horizontal separation between walls.
- (4) When the elevation of the adjacent *street grade* is higher than the building pad, the following shall apply:
  - (A) The portion of the *retaining wall* located at or below the adjacent *street grade* is not subject to Section 142.0340(c)(3); and
  - (B) Measurement of any portion of the wall or attached *fence* above *grade* shall be taken from the adjacent *grade* on the higher side of the *retaining wall*.

(Amended 1-9-2001 by O-18910 N.S.; effective 8-8-2001.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

#### §142.0350 Neighborhood Development Permit for Height Exception

A Neighborhood Development Permit may be requested to permit an increase of up to 20 percent in the *fence* and *retaining wall* height limits in Sections 142.0310, 142.0320, 142.0330, and 142.0340. The decision maker may approve a Neighborhood Development Permit for a height exception only if one of the following circumstances exists:

- (a) The increase in height is justified because of variations in *grade* on the site or abutting the site;
- (b) The increase in height is justified because it conforms to the predominant height of *fences* or *retaining walls* in the neighborhood; or
- (c) The increase in height is necessary for the health and safety of persons on the property.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§142.0360 Electrically Charged and Sharp-Pointed Fence Regulations**

- (a) Electrically Charged *Fences*
- (1) Electrically charged *fences* are permitted in the IH and IS zones and for agricultural uses in agricultural zones if the *fence* is at least 600 feet from a residential zone, and for temporary control of goats used for brush management in any non-agricultural zones in compliance with the Land Development Code section 142.0412, Brush Management, and section 44.0307.
  - (2) Electrically charged *fences* must be approved by the Underwriter's Laboratory or subject to the approval of the City Manager.
  - (3) Electrically charged *fences* shall bear an identifying and warning *sign* every 100 linear feet or fraction thereof.

(b) Sharp-Pointed Metal *Fences*

Sharp-pointed metal *fences* are permitted for agricultural uses in agricultural zones only.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

*(Amended 9-19-2005 by O-19413 N.S.; effective 10-19-2005.)*

**§142.0370 Construction Materials for Fences and Retaining Walls**

- (a) *Solid fences* shall be constructed of wood, brick, block, stone, frame-stucco, tile, metal, opaque plastic, or other similar material. Plywood is not a permitted *fence* material.
- (b) *Open fences* shall be constructed of materials such as wood, ornamental iron, metal, *screen* or decorative block, or translucent plastic or similar material.
- (c) Solid and *open fences* constructed of polyvinyl chloride (PVC) or similar material are permitted only if the material is prefabricated and manufactured as a *fence*.
- (d) Solid and *open fences* shall be constructed of new material or used material in good condition.
- (e) Metal *fences* in required front and street side yards shall be covered with a colored finish other than galvanized metal in all zones except the IH, IS, IL, AG and AR zones.
- (f) Natural living plant material is not considered *fence* material and is not regulated by this division.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§142.0380 Fence and Retaining Wall Maintenance**

- (a) Property owners shall maintain *fences* and *retaining walls* free from dilapidated or dangerous conditions.
- (b) Property owners shall maintain *fences* and *retaining walls* in a graffiti-free condition.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

PLANNING COMMISSION RESOLUTION NUMBER R-  
PROJECT NO. 503585.

WHEREAS, Emerson Street LLC, a California Limited Liability Corporation, Subdivider, and Robert Russell, Accurate Land Surveys, Surveyor, submitted an application to the City of San Diego for a Tentative Map Waiver No. 1772919, to create four condominium units in an under-construction project, and to waive the requirement to underground existing offsite overhead utilities. The project site is located at 3144 Emerson Street in the RM-3-7 Zone, within the Peninsula Community Plan area. The property is legally described as Lot 1, Block 48 of Roseville, Map No 165, filed in the office of the County Recorder of San Diego County; and

WHEREAS, the Map proposes the subdivision of a 0.11-acre-site to create four residential condominiums in a project that is currently under construction; and

WHEREAS, on April 21, 2017, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act [CEQA] (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15305 (New Construction or Conversion of Small Structures); and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; and

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

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

R-

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

WHEREAS, on June 28, 2017, the Hearing Officer of the City of San Diego considered Tentative Map Waiver No. 1772919, including the waiver of the requirement to underground existing offsite overhead utilities, and pursuant to San Diego Municipal Code sections 125.0440 and 144.0240 and Subdivision Map Act section 66428, received for its consideration written and oral presentations, evidence having been submitted, and testimony having been heard from all interested parties at the public hearing, and the Hearing Officer having fully considered the matter and being fully advised concerning the same approved Tentative Map No. 1772919, including the waiver of the requirement to underground existing offsite overhead utilities;

Whereas, on July 12, 2017, Jonathan Chapin, filed an appeal of the Hearing Officer decision to approve Tentative Map Waiver No. 1772919;

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego, that it adopts the following findings with respect to Tentative Map Waiver No. 1772919:

**1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan. SDMC, Section 125.0440(a).**

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The 0.11-acre site is located at 3144 Emerson Street in the RM-3-7 Zone, within the Peninsula Community Plan area. The proposed project is located in an area identified as medium density (30-44 du/ac) residential in the Peninsula Community Plan and the project is consistent with that land use. The Peninsula Community Plan encourages a wide variety of housing types for all age, income and social groups. The project would provide four, two-bedroom units in an area that largely consists of three-bedroom units, thereby providing a wider variety of housing types.

The project site is designated Multiple Use in the General Plan and is consistent with existing General Plan designations by providing multi-family housing within a medium- high-density range within an urbanized core of the City. As proposed, the subdivision would be consistent with the Peninsula Community Plan and overall policies for development related to the Land Use and Urban Design, and Density elements contained in the General Plan.

**2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code, including any allowable deviations pursuant to the land development code. SDMC § 125.0440(b).**

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The 0.11-acre site is located at 3144 Emerson Street, in the RM-3-7 Zone in the Peninsula Community Plan area. The proposed project is located in an area identified as medium density (30-44 du/ac) residential in the Peninsula Community Plan and is consistent with that land use.

The project includes a request to waive the requirement to underground the existing offsite overhead utilities. The requested waiver of the requirement to underground the existing overhead utility facilities in the public right-of-way qualifies under the guidelines of Municipal Code Section 144.0242, Waiver of the Requirements to Underground Privately Owned Utility Systems and Service Facilities, in that the project involves a short span of overhead facilities (less than a full block in length) and would not represent a logical extension to an underground facility. The project has been conditioned to underground any new service run to any new or proposed structures within the subdivision.

The current development which was previously under construction, was reviewed for and determined to be in conformance with the RM-3-7 Zone development regulations. The project is in compliance with the Municipal Code and the Subdivision Map Act and includes conditions and exhibits to ensure the provision of adequate parking and public improvements. Therefore, the proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code and the State Map Act.

**3. The site is physically suitable for the type and density of development. SDMC § 125.0440(c).**

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The 0.11-acre site is located at 3144 Emerson Street, in the RM-3-7 Zone in the Peninsula Community Plan area.

The proposed project is located in an area identified as Medium density (30-44 du/ac) residential in the Peninsula Community Plan and is consistent with that land use. The developed, in-fill project site is located on a flat, previously graded parcel.

The project has been conditioned to construct public improvements, as shown on the previously approved construction plan for Grading/Right-of-Way Permit No. 807629 (Project No. 415278) including new City Standard curbs, gutters, and sidewalks. Therefore, the site is physically suitable for the type and density of development.

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

The developed project site is located in an urban in-fill area and does not contain nor is it adjacent to any sensitive resources, Multiple Habitat Planning Area lands, Environmentally Sensitive Lands or existing fish or wildlife habitats.

Therefore, the design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. SDMC § 125.0440(d)

**5. The design of the subdivision or the type of improvement will not be detrimental to the public health, safety, and welfare. SDMC § 125.0440(e).**

The project proposes a Tentative Map Waiver for the Subdivision of the 0.11-acre site to create four residential condominium units. The development conforms to the development regulations of Municipal Code and Subdivision Map Act. The project includes a request to waive the requirement to underground the existing offsite overhead utilities. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and other regulations governing construction, continued operation and health/life/safety requirements apply to this project. The project is in compliance with the Municipal Code and the Subdivision Map Act and includes conditions and exhibits to ensure the provision of adequate parking, public improvements and compliance with the Land Development Code. The subdivision is categorically exempt from review under the California Environmental Quality Act. The Subdivider shall construct the required Public Improvements per the previously approved Grading/Right-of-Way Permit No. 807629 (Project No. 415278) including new curbs, gutters, sidewalks and a driveway. As such, the design of the subdivision or the type of improvement will not be detrimental to the public health, safety, and welfare.

**6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. SDMC § 125.0440(f).**

There are no existing easements located within the project boundaries, as shown on Tentative Map Waiver No. 1772919. As such, no conflict would occur with the recording of the subdivision, and there would be no conflicts with any easements acquired by the public at large for access through or use of the property within the proposed subdivision.

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

The project proposes a Tentative Map Waiver for the subdivision of the 0.11-acre site to create four residential condominium units. The proposed subdivision will not impede or inhibit any future passive or natural heating and cooling opportunities. Each unit is exposed on two sides (north and south) to ensure passive cooling through cross-ventilation of the interior spaces. With the independent design of the proposed subdivision each unit will have the opportunity through building material, site orientation, architectural treatments, placement and selection of plant

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

**8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources. SDMC § 125.0440(h).**

The in-fill project site is surrounded by existing development, consisting primarily of both multi-family residential complexes and single-family residences. The Peninsula Community Plan encourages a wide variety of housing types for all age, income and social groups.

The project would provide four, two-bedroom units in an area that largely consists of single-family residences and three-bedroom units, thereby providing a wider variety of housing types.

All applicable Developer Impact Fees (DIF), school fees, water/sewer connection fees and other impact fees, were paid at building permit issuance in accordance with the City's Public Facilities Financing Plan and Impact Fee Schedule. The project site is served by existing public infrastructure, including, water, sewer, electrical and gas lines.

The decision maker has reviewed the administrative record including the project plans, environmental documentation and heard public testimony to determine 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 and found that the conversion of four units into condominium ownership is consistent with the housing needs anticipated for the Peninsula Community Plan area. Therefore, the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources.

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

BE IT FURTHER RESOLVED, that based on the Findings hereinbefore adopted by the Planning Commission, the Planning Commission denies the appeal and upholds the Hearing Officer's decision to approve Tentative Map Waiver No. 1772919, including the waiver of the requirement to underground existing offsite overhead utilities, is hereby granted to Emerson Street, LLC. subject to the attached conditions which are made a part of this resolution by this reference.

By \_\_\_\_\_  
 Derrick Johnson (D.J.)  
 Development Project Manager  
 Development Services Department

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ATTACHMENT: Tentative Map Waiver Conditions

Internal Order No. 24006878

PLANNING COMMISSION  
CONDITIONS FOR TENTATIVE MAP WAIVER NO. 1772919, EMERSON STREET - PROJECT NO. 503585

ADOPTED BY RESOLUTION NO.

**GENERAL**

1. This Tentative Map Waiver will expire August 31, 2020.
2. Compliance with all of the following conditions shall be completed and/or assured, to the satisfaction of the City Engineer, prior to the recordation of the Certificate of Compliance, unless otherwise noted.
3. Prior to the Tentative Map Waiver expiration date, a Certificate of Compliance to create four residential condominiums shall be recorded in the Office of the San Diego County Recorder.
4. Prior to the recordation of the Certificate of Compliance, taxes must be paid on this property pursuant to Subdivision Map Act section 66492. To satisfy this condition, a tax certificate stating that there are no unpaid lien conditions against the subdivision must be recorded in the Office of the San Diego County Recorder.
5. The Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding, against the City and/or any Indemnified Parties to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided for in Government Code section 66499.37. City shall promptly notify Subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify Subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City and/or any Indemnified Parties harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, City defends the action in good faith, and Subdivider is not required to pay or perform any settlement unless such settlement is approved by the Subdivider.

**AFFORDABLE HOUSING**

6. Prior to receiving the Certificate of Occupancy, Subdivider shall comply with the provisions of Chapter 14, Article 2, Division 13 of the San Diego Municipal Code ("Inclusionary Affordable Housing Regulations") by making payment to the City of San Diego, of the full Inclusionary Affordable Housing Fee for the four proposed new construction units based upon the aggregate square footage of the four affordable Housing Regulations.

**ENGINEERING**

7. Public improvements based on Drawing # 38668- D must be constructed and accepted by the City (As Built) prior to recordation of map.
8. The Subdivider shall obtain an Encroachment Maintenance Removal Agreement for sidewalk under drain on Emerson Street.
9. The Subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The Subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.
10. 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 Waiver 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**

11. Prior to the issuance of a Certificate of Compliance, City staff will perform a field site visit to verify that all property corners, or property corner offsets have been set. If any property corners are missing, they must be set and a Corner Record or Record of Survey (whichever is applicable) shall be filed with the County Recorder pursuant to the Professional Land Surveyors Act. A copy of the Record of Survey or Corner Record shall be provided to the City.
12. Prior to the recordation of the Certificate of Compliance, taxes must be paid or bonded for this property pursuant to section 66492 of the Subdivision Map Act. A current original tax certificate, recorded in the office of the San Diego County Recorder, must be provided to satisfy this condition.
13. Please note if tax bond is required as indicated in the tax certificate, please make sure that it is paid or posted, and submit an evidence (e.g., filed bond letter or receipt from Clerk of the Board) indicating the required tax bond amount has been paid or bonded.

**INFORMATION:**

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

## ATTACHMENT 5

- If the Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), the Subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map Waiver will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map Waiver, may protest the imposition within ninety days of the approval of this Tentative Map Waiver by filing a written protest with the San Diego City Clerk pursuant to Government Code sections 66020 and/or 66021.
- Where in the course of development of private property, public facilities are damaged or removed, the Subdivider shall at no cost to the City, obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer (San Diego Municipal Code § 142.0607).

Internal Order No. 24006878

# 3144 EMERSON STREET

## SAN DIEGO, CA 92106

### CONDOMINIUM NOTE

THIS IS A CONDOMINIUM PROJECT AS DEFINED IN SECTION 4125 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND IS FILED PURSUANT TO THE SUBDIVISION MAP ACT. THE TOTAL NUMBER OF RESIDENTIAL CONDOMINIUM UNITS IS 4.

### LEGAL DESCRIPTION

LEGAL DESCRIPTION: LOT 1 IN BLOCK 48 OF ROSEVILLE, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 165, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

### ASSESSOR'S PARCEL NO.

531-305-01  
NUMBER OF PROPOSED LOTS = ONE (1)

### ZONING

RM-3-7 (RESIDENTIAL MULTIPLE = 1 DWELLING PER 1,000 SQ. FT.)

### SITE AREA + NO. OF UNITS

5,000 SQUARE FEET (GROSS); 4 UNITS

### COORDINATE INDEX

L.C.: 242-1685  
CCS 83: 1882-6245

### MINIMUM SETBACKS

RESUBDIVIDED LOT:  
FRONT: 20 FEET - MINIMUM FRONT 10 FEET  
INTERIOR SIDE: 5 FEET - STREET SIDE 5 FEET TO 10 FEET  
REAR: 5 FEET

### BENCHMARK

THE BENCHMARK FOR THIS SURVEY IS A CITY OF SAN DIEGO VERTICAL CONTROL MONUMENT, A BRASS PLUG, IN TOP OF CURB, LOCATED AT THE SOUTH CORNER OF EMERSON STREET AND EVERGREEN STREET.  
ELEVATION = 24.671 (NGVD '29)

### TITLE REPORT

PRELIMINARY TITLE REPORT ISSUED BY TITLE365 COMPANY, ORDER NO. CA0440-16008530-41, DATED JUNE 13, 2016.

### OWNER

3144 EMERSON STREET L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY  
7590 FAY AVENUE #508  
LA JOLLA, CA 92037

NAME: \_\_\_\_\_ DATE \_\_\_\_\_

### BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CENTERLINE OF EMERSON STREET AS SHOWN ON CORNER RECORD 23529. E. I. N 53°29'16" W.

**NOTE:**  
PER SAN DIEGO MUNICIPAL CODE SECTION 144.0240(b)(3), THE PROJECT IS A SINGLE-FAMILY SUBDIVISION OF FOUR LOTS OR LESS AND THEREFORE IS EXEMPT FROM THE REQUIREMENT TO UNDERGROUND THE OVERHEAD UTILITY FACILITIES.

THIS SITE IS CURRENTLY UNDER CONSTRUCTION PER BUILDING PLAN PTS NO. 475473

### TM WAIVER

THIS IS A REQUEST FOR A WAIVER OF A TENTATIVE MAP AND THE PARCEL MAP.

### UTILITIES

SEWER: CITY OF SAN DIEGO (UNDERGROUND)  
WATER: CITY OF SAN DIEGO (UNDERGROUND)  
GAS: SAN DIEGO GAS AND ELECTRIC (UNDERGROUND)  
ELECTRIC: SAN DIEGO GAS AND ELECTRIC (OVERHEAD)  
TELEPHONE: AT&T (OVERHEAD)  
CABLE: COX CABLE (OVERHEAD)

### EASEMENTS

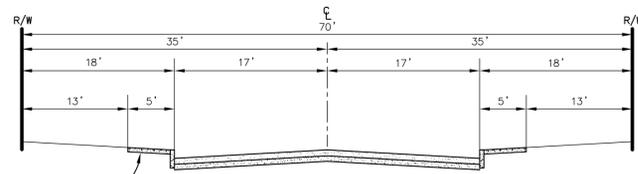
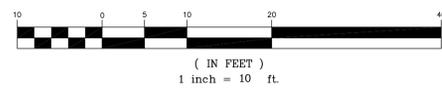
NONE PROPOSED  
NONE EXISTING

### BUILDINGS + PARKING RATE

UNITS A - D = 2 BEDROOMS EACH  
TOTAL OF 8 BEDROOMS

PARKING:  
1.25 PER 2 BEDROOM UNIT  
TOTAL REQUIRED FOR UNITS = 5  
PROVIDED 8 ONSITE IN GARAGE  
2 PER UNIT

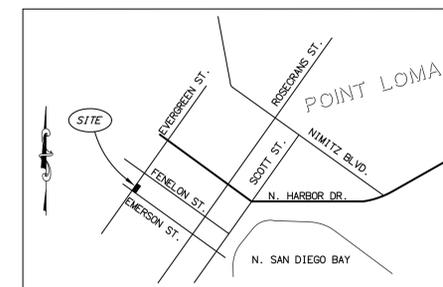
GRAPHIC SCALE



TYPICAL CROSS SECTION  
EMERSON STREET  
EVERGREEN STREET  
NO SCALE

### LEGEND

- AC --- ASPHALT CONCRETE
- EG --- EXISTING GROUND
- EP --- EXISTING PAVEMENT
- GM --- GAS METER
- FL --- FLOW LINE
- FS --- FINISHED SURFACE
- PL --- PROPERTY LINE
- PP --- POWER POLE
- SB --- SETBACK
- SMH --- SEWER MANHOLE
- STLT --- STREET LIGHT
- TC --- TOP OF CURB
- WM --- WATER METER



NO SCALE THOMAS BROS. 1288-82

**ACCURATE LAND SURVEYS**  
2514 ALPINE BLVD. SUITE #4, ALPINE, CA 91901  
PH. 619-445-0110

PROFESSIONAL LAND SURVEYOR  
ROBERT J. RUSSELL  
EXP. MAR 31 19  
NO. 8211  
STATE OF CALIFORNIA

05/09/17  
ROBERT J. RUSSELL, PLS DATE

I.O. 24006878 PTS. 503585 CCS 1882-6245 L.C. 202-1695