

RESOLUTION NUMBER R- 300299

ADOPTED ON APRIL 5, 2005

WHEREAS, Judith Fandra Grau O'Hara, Owner/Permittee, and Terence A. Gleeson and Candice J. Gleeson, Owners/Permittees, filed an application with the City of San Diego for a coastal development permit to vacate an unnamed, unimproved public alley right-of-way known as the O'Hara Gleeson Alley Vacation Project, located at 975 and 995 Gage Drive, and legally described as Lots 1 to 6, Block 16, Roseville Heights Map No. 423, and Lot 7, Point Loma Gardens Map 3835, Township 16 South, Range 4 West, San Bernardino Base Meridian, in the Peninsula Community Plan area, in the RS-1-7 zone, coastal overlay zone (non-appealable), coastal height limit overlay zone; and

WHEREAS, the matter was set for public hearing on April 5, 2005, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Coastal Development Permit [CDP] Permit No, 165258.

COASTAL DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC]

SECTION 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. The project request is to vacate a 16 foot wide unimproved portion of the unnamed alley right of way between the two properties located at 975 and 995 Gage Drive in Point Loma. No development is proposed with this project.

Existing improvements would be allowed to remain. Existing improvements consisting of a fence, deck, and walls are located within the subject alley area between these two properties.

The subject property is located approximately one mile from the Pacific Ocean and approximately a half mile from San Diego Bay, and is therefore not located near any existing or proposed public accessways to the ocean utilized by the public or identified in the Peninsula Community Plan and Local Land Use Plan. The project includes the northern portion of a dedicated public right-of-way. This right-of-way is an unnamed unimproved alley. This portion of the unimproved alley is an approximate 40-foot high hill therefore too steep topographically to construct an improved public alley. On the other hand, the southern portion of this unimproved alley is fairly flat and accessible via John Street to the south. A safety barricade is located at the top of the slope in the southern alley above this projects steep hill to warn vehicles or pedestrians that it is not safe to proceed toward the subject unimproved alley. All homes along this unimproved unnamed alley have legal access fronting on improved streets. This unimproved unnamed alley is not a legal access for the homes in this area.

No public access will be affected by this project. A Building Restricted Easement has been granted and executed by the two property owners over the requested alley vacation area. This easement will not allow enclosed or habitable structures to be constructed in the vacated alley area. The existing improvements (fence/deck/walls) would remain in this vacated alley area. Therefore, the proposed development will not impact any physical access way and will protect public views as recommended in the Peninsula Community Plan and Local Coastal Program.

2. The proposed coastal development will not adversely affect environmentally sensitive lands. An Environmental review has been performed for this project for conformance with California Environmental Quality Act [CEQA] Guidelines. The project was determined to be exempt from CEQA review pursuant to State Guidelines section 15061(b)(3). The project site is above the 100 and 500-year floodplain, is not within or adjacent to the Multiple Species Conservation Program, Multiple Habitat Planning Area, and is not designated within any environmentally sensitive lands. Therefore, the proposed coastal development will not adversely affect environmentally sensitive lands.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program. The project proposes no development. The project vacates an unusable portion of public right-of-way. This portion of the unimproved alley is too steep topographically for the City to be able to build any vehicle or pedestrian access. The project is located within the Coastal Overlay and Coastal Height Limit zones. The proposed project conforms to the certified Local Coastal land use plan. No public view to the water would be adversely affected by the approval of this project. The project would not increase any public view impacts. Therefore, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located

within the Coastal Overlay zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The subject property is not located between the nearest public road and the sea or the shoreline of any body of water. The project does not need to demonstrate conformance with the public access and recreation policies of the California Coastal Act as required by this finding.

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

BE IT RESOLVED, by the Council of the City of San Diego that the Coastal Development Permit No. 165258 is granted to Judith Fandra Grau O'Hara, Owner/Permittee, and Terence A. Gleeson and Candice J. Gleeson, Owners/Permittees, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



John C. Hemmerling
Deputy City Attorney

JCH:als
04/19/05
Or.Dept:Dev.Svcs.
R-2005-1056
MMS#1347

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COASTAL DEVELOPMENT PERMIT NO. 165258
O'HARA GLEESON ALLEY VACATION – PTS 14875
CITY COUNCIL

This coastal development permit is granted by the Council of the City of the City of San Diego to Judith Fandra Grau O'Hara, Owner/Permittee, and Terence A. Gleeson and Candice J. Gleeson, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0708. The site is located between 975 and 995 Gage Drive in the RS-1-7 zone, Coastal Overlay Zone (non-appealable), Coastal Height Limit Overlay Zone, of the Peninsula Community plan area. The project site is legally described as Lots 1 to 6, Block 16, Roseville Heights Map No. 423, and Lot 7, Point Loma Gardens Map No. 3835.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners/Permittees to vacate the 16-foot wide unnamed unimproved portion of alley right-of-way between the two properties, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated April 5, 2005, on file in the Development Services Department.

The project or facility shall include:

- a. Vacation of the 16-foot wide unnamed unimproved public alley right-of-way located between the two properties;
- b. No new development;
- c. Building restricted easement for this 16-foot wide vacated right-of-way area;
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City

Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. The alley vacation described herein shall not be granted, nor shall any activity authorized by this Permit be conducted on the premises, following all appeals, until:
 - a. The Permittees sign and return the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the properties included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject properties and shall be binding upon the Permittees and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owners/Permittees of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owners/Permittees shall have the right, by paying applicable processing fees,

to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

8. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

9. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

ENGINEERING REQUIREMENTS:

10. Prior to the recording of this Permit, each Owner shall grant a building restricted easement for the 8-foot wide portion of this 16-foot wide vacated unnamed alley right-of-way area, to the satisfaction of the City Engineer.

INFORMATION ONLY:

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

APPROVED by the City Council of the City of San Diego on April 5, 2005 and Resolution No. R-300299.

AUTHENTICATED BY THE CITY MANAGER

By _____

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

JUDITH FANDRA GRAU O'HARA
Owner/Permittee

By _____

TERENCE A. GLEESON
Owner/Permittee

By _____

CANDICE J. GLEESON
Owner/Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**