

RESOLUTION NUMBER R- **302608**

DATE OF FINAL PASSAGE **MAY 14 2007**

WHEREAS, Dan McKinnon, Owner/Permittee, filed an application with the City of San Diego for a coastal development permit/site development permit to demolish an existing one-story residential structure to construct a two-story residential structure to be known as the McKinnon Residence project, located at 3300 Kellogg Way, and legally described as Lots 105, 106, and 117 of the Pueblo Lands of San Diego, according to the Map thereof, by James Pascoe in 1870, a copy of which is filed in the Office of the County Recorder of San Diego County, November 14, 1921, Map 36, in the Peninsula Community Plan area, in the RS-1-4 zone; and

WHEREAS, on February 15, 2007, the Planning Commission of the City of San Diego considered Coastal Development Permit [CDP] No. 147413/Site Development Permit [SDP] No. 147529 and Easement Abandonment No. 404901, and pursuant to Resolution No. 4224-PC voted to recommend City Council approval of the Permit; and

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

WHEREAS, the matter was set for public hearing on **MAY 14 2007**, 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 No. 147413/Site Development Permit No. 147529:

**A. COASTAL DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE
[SDMC] SECTION 126.0708**

1. Findings for all Coastal Development Permits:

a. **The proposed *coastal development* will not encroach upon any existing physical accessway 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 is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the Environmentally Sensitive Lands [ESL] regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral. The Peninsula Community Plan and Local Coastal Program Plan do not identify any public views from the project location. The proposed development is located within a gated community not accessible to the public.

b. **The proposed *coastal development* will not adversely affect environmentally sensitive lands.** The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The deviation for drainage would allow the project site to continue to drain to the rear of the lot to the east following natural topography. The vegetation on site is predominantly ornamental, contains no native habitat, and is not located within or adjacent to Multi-Habitat Planning Area [MHPA]. While the existing drainage is causing some erosion of the canyon areas behind the lot, the proposed drainage reconfiguration would substantially improve the runoff conditions by installing stormwater treatment and control devices, sized to accommodate the runoff, to effectively capture, treat, and reduce the exit velocity of the site drainage into a natural vegetated canyon area. The project would also include slope stabilization of the Steep Slopes as defined under the ESL regulations of the Municipal Code. The stabilization would shore against existing and future bluff erosion. A biological survey of the site was also conducted. No sensitive biological resources were found on site. For these reasons, the proposed development would not adversely affect environmentally sensitive lands.

c. **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 is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The project site is within the La Playa neighborhood of the Peninsula Community Plan and Local Coastal Program Plan near the boundary with the Wooded Area neighborhood. The location is on a private street in a gated community offering private views of San Diego Bay. The lots in this community area are generally large, single-family lots. The designated land use for this area is single-family residential, and is classified as a Protected Single-Family neighborhood, by the Community Plan. Redevelopment of the site would be consistent with the goal of the Community Plan to preserve neighborhood character. The immediate neighborhood is generally characterized by newer, larger construction. Approximately twenty-one shade trees would be planted on site, and an existing Torrey Pine would remain, protected in place.

The maximum permitted density of this area is four dwelling units per acre [DU/AC]. With one structure proposed on a 1.46 acre lot, the project complies with the recommended density of the Community Plan and the zone. The project would observe the required setbacks. The allowable Floor Area Ratio [FAR] is 45 percent where 17 percent is proposed. Approximately 66 percent of the project site was previously disturbed. Approximately 66 percent of the site (0.97 acres) is proposed to be disturbed over the same disturbance footprint. Approximately 33 percent of the site is natural slopes and would remain undisturbed with no encroachment into the natural slopes.

For these reasons, the proposed development would not adversely affect the Peninsula Community Plan and Local Coastal Program Plan.

d. **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 project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The project location is within the area mapped as the First Public Roadway, although the project site is substantially inland and elevated. However, due to its mapped location with the First Public Roadway, the Coastal Act findings are substantiated as follows.

Development shall not interfere with the public's right of access to the sea. The site is within a private, gated community with no public access. The site is approximately 0.50 miles from the nearest public access to the waters of the San Diego Bay to the east and approximately 0.75 miles from the nearest public access to the waters of the Pacific Ocean to the west. The site, therefore, would not impede any public access to the sea or to the bay.

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where adequate access exists nearby. The project is not required to provide access to the shoreline and coast as the project is between 0.50 and 0.75 miles from the bay and from the sea, respectively. The nearest public access to the Pacific Ocean exists through the Point Loma Nazarene University to the northwest. The existing Fort Rosecrans Military Reservation precludes public access to the sea to the west and south of the project site. Public access to the bay exists at several points east of Rosecrans Street to the east of the project site.

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it. The project site is within an existing, gated, private community where existing development, and infrastructure is in place. Approximately 66 percent of the site (0.97 acres) is proposed to be disturbed over the same disturbance footprint. Approximately 33 percent of the site is natural slopes and would remain undisturbed with no encroachment into the natural slopes.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. The project site is within an existing, gated, private community where existing development, and infrastructure is in place. Approximately 66 percent of the site (0.97 acres) is proposed to be disturbed over the same disturbance footprint. Approximately 33 percent of the site is natural slopes and would remain undisturbed with no encroachment into the natural slopes. The project has no direct correlation to public views to or along the ocean or scenic coastal areas. The proposed development is consistent with other development in the gated community and would not represent a substantial departure in views as viewed from the public roads below the project site, as the proposed development is not ridgeline development, and no additional vegetation clearing would occur.

The location and amount of new development should maintain and enhance public access to the coast. The project site is within an existing, gated, private community where existing development, and infrastructure is in place. The project has no direct correlation to public access to or along the ocean or scenic coastal areas as the nearest coastline is approximately 0.50 miles to the east.

New development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. The project site was evaluated for geotechnical hazards. While a fault buffer zone exists across the project site, no active faulting was found that would affect the proposed structure. The engineering geologist has determined that no unusual geologic conditions exist that would preclude safe redevelopment of the site.

New development shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The project site was evaluated for

geotechnical hazards. While a fault buffer zone exists across the project site, no active faulting was found that would affect the proposed structure. The engineering geologist has determined that no unusual geologic conditions exist that would preclude safe redevelopment of the site. In addition, the site drainage has been studied through a Drainage Study to ensure proper and adequate collection and treatment of stormwater runoff to minimize erosion. Areas of existing erosion would be repaired and slope stabilization (soil nailing) would occur as part of the project.

New development shall be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development. Prior to demolition of the existing structure, the Air Pollution Control Board would be contacted to issue a permit for demolition.

New development shall minimize energy consumption and vehicle miles traveled. The proposed development shall be consistent with State Title 24 (energy conservation) building codes. The proposed development is located in an existing urbanized community and neighborhood and therefore would not change existing road patterns and vehicle miles traveled.

New development shall, where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses. The project site is within an existing, gated, private community where existing development, and infrastructure is in place. The project has no direct correlation to public access to or along the ocean or scenic coastal areas as the nearest coastline is approximately 0.50 miles to the east. The development has demonstrated conformance with the community plan and would be compatible with the surrounding development.

2. Supplemental Site Development Permit Findings for Environmentally Sensitive Lands within the Coastal Overlay Zone - Section 126.0708(b):

a. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the applicant's property. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

Kellogg Way is a private road which does not include curb, gutter, sidewalk, or storm drain. Current drainage of the property flows naturally onto the surrounding open space. The economic impact of collecting and diverting site drainage by way of a pump station to Kellogg Way is not a viable use of the property as Kellogg Way does not have the necessary infrastructure (curb and gutter) to accommodate the runoff. The cost of improving Kellogg Way to provide the necessary infrastructure, and to construct the pump station, is estimated to exceed \$565,389. These costs are not considered reasonable, investment-backed expectations for viable use of the property. Due to the cost to the applicant to construct the required infrastructure to redirect site drainage, a deviation is requested pursuant to Section 143.0150, to deviate from Section 143.0142, to allow drainage flow to continue to follow the natural drainage pattern to the steep slope area along the eastern property line.

b. Application of the Environmentally Sensitive Lands Regulations would interfere with the applicant's reasonable investment-backed expectations. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The existing road infrastructure does not include any curb or gutter or storm drain system. The current drainage of the property flows naturally onto the surrounding open space. The economic impact of capturing the site drainage and diverting it, via a pump station, to Kellogg Way, is not a viable use of the property as Kellogg Way does not have the necessary curb and gutter systems to handle the increase in surface runoff that would occur with pumping. The cost of improving Kellogg Way to include the necessary infrastructure to handle the increased runoff, in addition to the pump station that would be required, far exceeds any reasonable investment expectations that we had in purchasing the property. The cost of improving Kellogg Way to provide the necessary infrastructure, and to construct the pump station, is estimated to exceed \$565,389.

The proposed design of the storm drain system in its location is consistent with a reasonable economic expectation for a viable use of this property.

c. The use proposed by the applicant is consistent with the applicable zoning. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The maximum permitted density of this area is four dwelling units per acre. With one structure proposed on a 1.46 acre lot, the project complies with the recommended density of the Community Plan and the Zone. The project would observe the required setbacks. The minimum required front setback is 20 feet, where 20 feet is proposed. The side setbacks are determined in accordance with 131.0443(a)(3)(E) for irregular lots and vary from 48 feet on the northern portion adjacent to the steep slope areas, to eight feet along the southern property line adjacent to the neighboring house at 3311 Kellogg Way. The rear setback required is 24 feet (131.0443(a)(4)(A)(ii) determined as 10% of the lot depth (240 feet), where 24 feet is provided. The allowable Floor Area Ratio (FAR) is 45% where 17% is proposed. Approximately 66% of the project site was previously disturbed. Approximately 66% of the site (0.97 acres) is proposed to be disturbed over the same disturbance footprint. Approximately 33% of the site is natural slopes and would remain undisturbed with no encroachment into the natural slopes.

d. The use and project design, siting, and size are the minimum necessary to provide the applicant with an economically viable use of the premises. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally

Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The allowable Floor Area Ratio (FAR) is 45% where 17% is proposed.

Approximately 66% of the project site was previously disturbed. Approximately 66% of the site (0.97 acres) is proposed to be disturbed over the same disturbance footprint. Approximately 33% of the site is natural slopes and would remain undisturbed with no encroachment into the natural slopes.

e. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified *Local Coastal Program* with the exception of the provision for which the deviation is requested. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The natural drainage pattern on the site is toward the rear of the lot into the natural canyon system. The northerly and easterly portions of the site are subject to the Environmentally Sensitive Lands (ESL) regulations of the Municipal Code. The vegetation on site is predominantly ornamental, contains no native habitat, and is not located within or adjacent to Multi-Habitat Planning Area (MHPA). The existing drainage patterns have resulted in erosion. The project would correct the erosion, and shift the drainage slightly to avoid the eroded areas, construction treatment Best Management Practices to collect, treat, convey, and reduce the exit velocity of discharged stormwater through engineering and vegetative means.

B. SITE DEVELOPMENT PERMIT – SDMC SECTION 126.0504

1. Findings for all Site Development Permits:

a. The proposed *development* will not adversely affect the applicable land use plan. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The project site is within the La Playa neighborhood of the Peninsula Community Plan and Local Coastal Program Plan near the boundary with the Wooded Area neighborhood. The location is on a private street in a gated community offering private views of San Diego Bay. The lots in this community area are generally large, single-family lots. The designated land use for this area is single-family residential, and is classified as a Protected Single-Family neighborhood, by the Community Plan. Redevelopment of the site would be consistent with the goal of the Community Plan to preserve neighborhood character. The immediate neighborhood is generally characterized by newer, larger construction. Approximately twenty-one shade trees would be planted on site, and an existing Torrey Pine would remain, protected in place.

The maximum permitted density of this area is four du/ac. With one structure proposed on a 1.46 acre lot, the project complies with the recommended density of the Community Plan and the zone. The project would observe the required setbacks. The allowable FAR is 45 percent where 17 percent is proposed. Approximately 66 percent of the project site was previously disturbed. Approximately 66 percent of the site (0.97 acres) is proposed to be disturbed over the same disturbance footprint. Approximately 33 percent of the site is natural slopes and would remain undisturbed with no encroachment into the natural slopes.

For these reasons, the proposed development would not adversely affect the Peninsula Community Plan and Local Coastal Program Plan.

b. The proposed *development* will not be detrimental to the public health, safety, and welfare. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The project site was evaluated for geotechnical hazards. While a fault buffer zone exists across the project site, no active faulting was found that would affect the proposed structure. The engineering geologist has determined that no unusual geologic conditions exist that would preclude safe redevelopment of the site. In addition, the site drainage has been studied through a Drainage Study to ensure proper and adequate collection and treatment of stormwater runoff to minimize erosion. Areas of existing erosion would be repaired and slope stabilization (soil nailing) would occur as part of the project. In addition, while the municipal code landscape regulations normally do not apply to single-family construction in a single-family zone, the landscape regulations were applied to this project in the public interest to ensure adequate vegetative erosion control on the site in the interest of this project site and in the interest of downslope neighbors.

Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

c. The proposed *development* will comply with the applicable regulations of the Land Development Code. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The maximum permitted density of this area is four du/ac. With one structure proposed on a 1.46 acre lot, the project complies with the recommended density of the Community Plan and the Zone. The project would observe the required setbacks. The minimum required front setback is 20 feet, where 20 feet is proposed. The side setbacks are determined in accordance with SDMC section 131.0443(a)(3)(E) for irregular lots and vary from 48 feet on the northern portion adjacent to the steep slope areas, to 8 feet along the southern property line adjacent to the neighboring house at 3311 Kellogg Way. The rear setback required is 24 feet (SDMC section 131.0443(a)(4)(A)(ii)) determined as 10 percent of the lot depth (240 feet), where 24 feet is provided. The allowable FAR is 45 percent where 17 percent is proposed.

Approximately 66 percent of the project site was previously disturbed. Approximately 66 percent of the site (0.97 acres) is proposed to be disturbed over the same disturbance footprint. Approximately 33 percent of the site is natural slopes and would remain undisturbed with no encroachment into the natural slopes.

The proposed development has otherwise been designed and conditioned to ensure conformance to the requirements of the City of San Diego Land Development Code. Therefore, the proposed use will comply with the applicable regulations of the San Diego Municipal Code in effect for this site.

2. Supplemental Site Development Permit Findings for Environmentally Sensitive Lands Deviations - Section 126.0504(b):

a. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The location is suitable for single-family residential development according to the community plan and the implementing residential zone. The site is also physically suitable for the structure as proposed. Geotechnical analysis conducted for the project site verifies that the site is physically suitable for the proposed construction without undue risk from geological hazards. The location of the new house is substantially similar to the location of the existing structure, set closer to the roadway and away from the steep slopes, as not to put new vertical or lateral pressures on the hillsides. The project would observe the required setbacks. The minimum required front setback is 20 feet, where 20 feet is proposed. The side setbacks are determined in accordance with SDMC Section 131.0443(a)(3)(E) for irregular lots and vary from 48 feet on the northern portion adjacent to the steep slope areas, to eight feet along the southern property line adjacent to the neighboring house at 3311 Kellogg Way. The rear setback required is 24 feet (SDMC Section 131.0443(a)(4)(A)(ii)) determined as 10% of the lot depth (240 feet), where 24 feet is provided.

The natural drainage pattern on the site is toward the rear of the lot into the natural canyon system. The northerly and easterly portions of the site are subject to the Environmentally Sensitive Lands (ESL) regulations of the Municipal Code.

The existing pad for the existing structure relies on this natural drainage pattern. The project would correct the erosion, and shift the drainage slightly to avoid the eroded areas, construction treatment Best Management Practices to collect, treat, convey, and reduce the exit velocity of discharged stormwater through engineering and vegetative means.

b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geological and erosional forces, flood hazards, or fire hazards. The project is the construction of a two-story, single-family

residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The proposed location would not modify the existing landforms, and is set back from the edges of the steep slope areas. Under existing conditions, the natural hillside is experiencing erosion. The project would repair this erosion and diminish the possibility of future erosion.

The project site includes Geologic Hazard Category 12 (fault zone). As such, a *Report of Preliminary Geotechnical Investigation* and *Addendum* were prepared and reviewed by city staff. No geotechnical conditions were found that would preclude safe construction of the project. The project has been designed to minimize impact of geological hazards. Site-specific geotechnical analysis conducted for the project site verifies that the site is physically suitable for the proposed construction without undue risk from geological hazards. The location of the new house is substantially similar to the location of the existing structure, set closer to the roadway and away from the steep slopes, as not to put new vertical or lateral pressures on the hillsides.

The project location is not subject to any unusual fire hazard risk due to prevalence of natural / native vegetation on the slope system. The house structure is also setback sufficiently from the slope edges such that no additional Brush Management controls would be needed to mitigate for a fire risk.

c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The location of the proposed structure is substantially consistent with the location of the current structure which is well removed from the sloping edges of the hillsides. The project would observe the required setbacks. The minimum required front setback is 20 feet, where 20 feet is proposed. The side setbacks are determined in accordance with SDMC Section 131.0443(a)(3)(E) for irregular lots and vary from 48 feet on the northern portion adjacent to the steep slope areas, to eight feet along the southern property line adjacent to the neighboring house at 3311 Kellogg Way. The rear setback required is 24 feet (SDMC Section 31.0443(a)(4)(A)(ii) determined as 10% of the lot depth (240 feet), where 24 feet is provided.

This location has been demonstrated to be geologically stable, therefore not posing any new risks to the stability of the hillside.

The natural drainage pattern on the site is toward the rear (western portion) of the lot into the natural canyon system. The northerly and easterly portions of the site are subject to the Environmentally Sensitive Lands (ESL) regulations of the Municipal Code. These areas are not affected from site runoff. The existing pad for the existing structure relies on this natural

drainage pattern. The project would correct the erosion, and shift the drainage slightly to avoid the eroded areas, construction treatment Best Management Practices to collect, treat, convey, and reduce the exit velocity of discharged stormwater through engineering and vegetative means.

d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

While the northerly and easterly portions of the site are subject to the Environmentally Sensitive Lands (ESL), the project location is not subject to a Subarea Plan of the MSCP. The only two subareas in the Peninsula are associated with Sunset Cliffs Natural Park, and with the Cabrillo National Monument (Figure 4, page 20, City of San Diego MSCP Subarea Plan, March 1997).

While the ESL associated with this project is not part of an MSCP protected area, the project scope would still not have impacts to the existing or adjacent vegetation as analyzed and determined in the California Environmental Quality Act (CEQA) document. Negative Declaration 51161 was prepared and finalized on January 16, 2007 pursuant to CEQA. No mitigation was identified, and no public comment was received.

e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The project site is within an existing, gated, private community where existing development, and infrastructure is in place. The project has no direct correlation to public access to or along the ocean or scenic coastal areas as the nearest coastline is approximately 0.50 miles to the east.

f. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single family residence, granting deviation from the Environmentally Sensitive Lands regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

While landscaping regulations are normally not imposed for single-family construction in a single-family zone, landscaping conditions are added to the permit to ensure reasonable protection of the public health and safety to minimize potential erosional impacts.

While the project analysis did not reveal potential for slope failure, the addition of landscape review and control will further minimize the potential for erosion or failure.

3. Supplemental Findings for Environmentally Sensitive Lands Deviations – SDMC section 126.0504(c):

a. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The natural drainage pattern on the site is toward the rear of the lot into the natural canyon system. The northerly and easterly portions of the site are subject to the ESL regulations of the Municipal Code.

The project would correct the erosion, and shift the drainage slightly to avoid the eroded areas, constructing treatment Best Management Practices to collect, treat, convey, and reduce the exit velocity of discharged stormwater through engineering and vegetative means.

b. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making. The project is the construction of a two-story, single-family residence, at 3300 Kellogg Way, replacing a one-story single-family residence, granting deviation from the ESL regulations for drainage, and approving an Easement Abandonment for a portion of the sewer line constructing a replacement private lateral.

The natural drainage pattern on the site is toward the rear of the lot into the natural canyon system. The northerly and easterly portions of the site are subject to the ESL regulations of the Municipal Code.

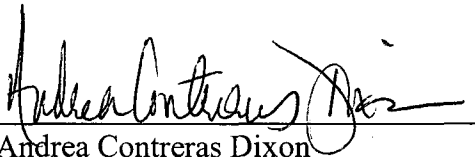
The existing pad for the existing structure relies on this natural drainage pattern. The project would correct the erosion, and shift the drainage slightly to avoid the eroded areas, construction treatment Best Management Practices to collect, treat, convey, and reduce the exit velocity of discharged stormwater through engineering and vegetative means.

Other alternatives would impose unreasonable costs on the applicant to capture and convey stormwater runoff to a private drive which has no engineering control to adequately convey runoff, resulting in the need for the project to construct curb and gutter at substantial expense.

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

BE IT FURTHER RESOLVED, that Coastal Development Permit No. 147413/ Site Development Permit No. 147529 is granted to Dan McKinnon, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Andrea Contreras Dixon
Deputy City Attorney

ACD:pev
04/11/07
05/31/07 REV.
07/03/07 COR.COPY
Or.Dept:DSD
R-2007-914
MMS #4551

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

JOB ORDER NUMBER 42-3456

SITE DEVELOPMENT PERMIT NO. 147529
COASTAL DEVELOPMENT PERMIT NOT. 147413
McKINNON RESIDENCE
CITY COUNCIL

This Site Development Permit No. 147529/Coastal Development Permit No. 147413 is granted by the City Council of the City of San Diego to Dan McKinnon, Owner/ Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0503 and 126.0707. The 1.46-acre site is located at 3300 Kellogg Way in the RS-1-4 zone of the Peninsula Community Planning Area within the Coastal Overlay Zone (appealable), First Public Roadway, and Coastal Height Limit Overlay Zone. The project site is legally described as Lots 105, 106, and 117 of the Pueblo Lands of San Diego, according to the Map thereof, by James Pascoe in 1870, a copy of which is filed in the Office of the County Recorder of San Diego County, November 14, 1921, Map 36.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to demolish an existing single-family residential structure to construct a single-family residential structure, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated MAY 14 2007, on file in the Development Services Department.

The project or facility shall include:

- a. Demolition of an existing 1-story, non-historic single-family residence;
- b. Construction of a 11,043 square foot, 2-story, single-family structure with attached 2-car garage and four off-street (guest) parking spaces;
- c. Slope stabilization according to the accepted Geotechnical Report and addenda;
- d. Deviation from the Environmentally Sensitive Lands Regulations for drainage to continue to flow to the canyon areas east of the project site at

the rear of the lot, subject to engineering controls defined in the grading plans, and Water Quality Technical Report;

- e. Abandonment of an existing 6-inch sewer easement, and construction of the replacement laterals to serve the project site at 3300 Kellogg Way, and the neighboring existing residence at 3310 Kellogg Way;
- f. Landscaping (planting, irrigation and landscape related improvements);
- g. Fire sprinkler protection for the new single-family residence; and
- h. 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. This Permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this Permit as described in the SDMC 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 affect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. Unless this Permit has been revoked by the City of San Diego the property 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.
5. This Permit is a covenant running with the subject property and shall be binding upon the Permittee 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.

6. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. 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.).

8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

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

11. This Permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibit "A."

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Prior to demolition of the existing building, the applicant shall obtain approval from the Air Pollution Control District.

BRUSH MANAGEMENT PROGRAM REQUIREMENTS:

13. Brush Management Zones are not a factor on this site for the following reasons. The proximity to the coast with its damp and moist air would keep the vegetation green and healthy and not a fuel factor threat. The vegetation nearer the neighboring properties would be irrigated, further reducing the dry fuel factor. There are no sensitive biological resources on site.

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any construction permit, the applicant shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP's] maintenance.

15. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, related to this development including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

16. Prior to the issuance of any construction permit, the applicant shall incorporate any construction BMP's necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

17. Prior to the issuance of any construction permit, the applicant shall submit a Water Pollution Control Plan [WPCP]. The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

18. Prior to the issuance of any construction permits, the applicant shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.

19. The drainage system proposed for this development is private and subject to approval by the City Engineer.

20. Prior to the issuance of a building permit, the applicant shall obtain a grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

GEOLOGY REQUIREMENTS:

21. Project shall be constructed in accordance with geotechnical recommendations of the Addendum Geotechnical Report and Response to LDR-Geology Cycle 6 Review Memorandum, Proposed Single-Family Residence, 3300 Kellogg Drive, San Diego, California, prepared by Christian Wheeler Engineering, dated May 10, 2005 (their job no. CWE 2040327.2).

22. Additional geotechnical review will be required during the ministerial permitting process if a grading permit or building permit is requested.

LANDSCAPE REQUIREMENTS:

23. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit "A," Landscape Development Plan.

24. Prior to issuance of any grading permits, complete landscape construction documents, including an automatic permanent irrigation system, shall be submitted to the City Manager for approval. The plans shall be in substantial conformance to Exhibit "A."

25. Installation of slope planting and erosion control including seeding of all disturbed land (slopes and pads) consistent with the approved landscape and grading plans is considered to be in the public interest. The Permittee shall initiate such measures as soon as the grading and disturbance has been completed. Such erosion control/slope planting and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Land Development Manual: Landscape Standards.

26. Prior to issuance of any construction permits for buildings (including shell), complete landscape and irrigation construction documents consistent with the Land Development Manual: Landscape Standards shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan. Construction plans shall take into account a 40 square foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC section 142.0403(b)5.

27. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A No Fee Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

28. Prior to any utility stub out, for wet and dry utilities, a plot plan shall be submitted to the Landscape Section of Development Services. The plot plans shall coordinate all utilities and driveways with the required Street Trees. The location of the Street Trees shall be in substantial conformance with Exhibit "A," Landscape Development Plan.

29. All required landscape shall be maintained in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

30. Construction Documents for grading shall include the following note:
"Installation of landscaping associated with these construction documents shall require a minimum short-term establishment period of 120 days for all native/naturalized slope restoration and a minimum long-term establishment/maintenance period of 25 months." Final approval of the required landscaping shall be to the satisfaction of the Mitigation Monitoring Coordination section of the Development Services Department.

31. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage or Certificate of Occupancy or a Final Landscape Inspection.

32. Prior to issuance of construction permits for grading, appropriate tree protection notes identifying the existing Torrey Pine to remain shall be added to all Grading Plans and Landscape Construction Documents.

PLANNING/DESIGN REQUIREMENTS:

33. No fewer than three off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager. The approved design shows two garage parking spaces and four guest parking spaces.

34. 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.

35. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is

lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.

36. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

37. 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.

38. No building additions, including patio covers, shall be permitted unless approved by the City Manager. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

39. Environmentally sensitive lands that are outside of the allowable development area shall be left in a natural state and used for only for those passive activities allowed as a condition of approval.

40. The Owner/Permittee shall execute a covenant of easement recorded against title to the affected premises and executed in favor of the City. The Owner/Permittee shall draft the covenant of easement as follows:

- a. To contain a legal description of the premises affected by the permit with a description of the development area and the environmentally sensitive lands that will be preserved; and
- b. To impart notice to all persons to the extent afforded by the recording laws of the state regarding the restrictions affecting use of the environmentally sensitive lands covered by the permit to ensure that the burdens of the covenant shall be binding upon, and the benefits of the covenant shall inure to, all successors in interest to the affected premises; and
- c. To ensure enforceability of the covenant of easement by the City.

41. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

FIRE REQUIREMENTS:

42. In lieu of providing fire department access the proposed single family residence and garage shall be equipped with a residential fire sprinkler system satisfactory to the Fire Marshal.

WASTEWATER REQUIREMENTS:

- 43. All on-site sewer facilities shall be private.
- 44. Prior to the issuance of any building permits, the developer shall abandon onsite public sewer mains or they shall be converted to private, satisfactory to the Metropolitan Wastewater Department Director. All associated public easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.
- 45. Prior to the issuance of any engineering or building permits, the developer shall obtain an Encroachment Maintenance and Removal Agreement for all private utilities located in or over the public right of way.
- 46. The developer shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.
- 47. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

WATER REQUIREMENTS:

- 48. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Water Department Director and the City Engineer.
- 49. Prior to the issuance of any Certificates of Occupancy, all public water facilities shall be complete and operational in a manner the Water Department Director and the City Engineer.
- 50. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, and associated easements, as shown on approved Exhibit "A" shall be modified at final engineering to comply with standards.

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.

Park Fees are required and due at building permit time \$100.00 per single family unit and \$75.00 per multi-family unit per SDMC section 96.0401. No other City fee owned open space impacts imposed by this project.

APPROVED by the City Council of the City of San Diego on MAY 14 2007 by
Resolution No. R- 302603

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R- 302603

AUTHENTICATED BY THE CITY MANAGER

By _____

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

DAN MCKINNON
Owner/Permittee

By _____

By _____

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

PERMIT/OTHER – Permit Shell 11-01-04