

(R-2009-178)
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349A
9/09/08

RESOLUTION NUMBER R- 304109

DATE OF FINAL PASSAGE SEP 09 2008

A RESOLUTION GRANTING COASTAL DEVELOPMENT
PERMIT NO. 570110 – 7444 MIRAMAR AVENUE STREET
VACATION, PROJECT NO. 104039.

WHEREAS, Mary Ellen Morgan, and David R. Kinnaman, Wife and Husband as Joint Tenants, Owners/Permittees, filed an application with the City of San Diego for a coastal development permit to vacate a portion of Miramar Avenue adjacent to an existing single-family residence to be known as the 7444 Miramar Avenue Street Vacation project, located at the southern terminus of Miramar Avenue with the unimproved portion of Miramar Avenue and north of Rhoda Drive, at 7444 Miramar Avenue, and legally described as portions of Lot 3, Beverly Heights, Map No. 2229, in the La Jolla Community Planning area, in the RS-1-7 zone, Coastal Overlay Zone (non-appealable), and Coastal Height Limitation Overlay Zone; 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, a public hearing was required by law implicating due process rights of individuals affected by the decision, and 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 SEP 09 2008, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Coastal Development Permit No. 570110:

**A. 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 6,647 square-foot project site is currently undeveloped landscape area with retaining walls and fences adjacent to three existing single-family residences. The development proposes to vacate a portion of public right-of-way at the southern terminus of Miramar Avenue and is located approximately one mile from the coastline. The proposed development is contained within the existing legal lot area of three legal lots, which will not encroach upon any existing or proposed physical access to the coast. The project site is not located in an area with a public view as identified within the La Jolla/La Jolla Shores Local Coastal Program. The project site is situated along an unimproved portion of Miramar Avenue, within a developed residential area. The area of the proposed vacation is currently developed with landscape area with retaining walls and fences of three existing residences, no further development is proposed.

2. **The proposed coastal development will not adversely affect environmentally sensitive lands.** The 6,647 square-foot project site is currently undeveloped landscape area, and based on City Staff's site visit the project site is fully disturbed where the proposed vacation area is located and the site does not contain environmentally sensitive lands. The environmental review, determined that the project would not have a significant environmental effect on environmentally sensitive lands and was found to be exempt from environmental review under California Environmental Quality Act [CEQA] Guidelines.

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 proposed street vacation is located adjacent to a site which is designated as Low Density Residential (5-9 du/ac) in the La Jolla Community Plan. The proposed street vacation area would become part of the adjacent single-family lots, which conforms to this land use designation and density. The proposed vacation to Miramar Avenue would eliminate public right-of-way in this area, which was found to be consistent with the Transportation Element of the La Jolla Community Plan, due to the fact that it is not illustrated as a circulation element street. The environmental review determined that the project would not have a significant environmental effect on environmentally sensitive lands and was found to be exempt from environmental review under CEQA Guidelines. The project site is not located in an area identified as containing a public view as identified within the La Jolla/La Jolla Shores Local Coastal Program. Due to these factors the proposed street vacation project was found to be in compliance with the City of San Diego adopted La Jolla Community Plan and the Progress Guide, the certified Local Coastal Program Land Use Plan and General Plan.

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

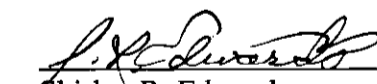
proposed street vacation is adjacent to three single-family residential lots, currently developed with existing residential structures, is part of and within a well established urbanized area of La Jolla. The project site is not located between the first public road and the sea or coastline. Development of the project, the vacation of excess public right-of-way will become part of the adjacent private property, is not currently used by the public as a form of access to the coastline and is not identified as a current or future form of access by the La Jolla/La Jolla Shores Local Coastal Plan. The project site is approximately one mile away from the Pacific Ocean. The project site is not located in an area identified as containing a public view as identified within the La Jolla/La Jolla Shores Local Coastal Program. The existing residences currently are designed to take access off the existing public street, Miramar Avenue and Rhoda Drive, with adequate off-street parking. The existing character and pedestrian design of the adjacent streets will remain unaltered.

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 the City Council grants Coastal Development Permit No. 570110 to Mary Ellen Morgan, and David R. Kinnaman, Wife and Husband as Joint Tenants, Owners/Permittees, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

BE IT FURTHER RESOLVED, that the City Council finds that this activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15305, Minor Alteration in Land Use.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev
08/20/08
09/12/08 COR.COPY
Or.Dept:DSD
R-2009-178
MMS #6666

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 42-6505

COASTAL DEVELOPMENT PERMIT NO. 570110
7444 MIRAMAR AVENUE STREET VACATION - PROJECT NO. 104039
CITY COUNCIL

This Coastal Development Permit [CDP] No. 570110 is granted by the City Council of the City of San Diego to Mary Ellen Morgan, and David R. Kinnaman, Wife and Husband as Joint Tenants, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] section 125.0901. The subject site is located at the southern terminus of Miramar Avenue with the unimproved portion of Miramar Avenue and north of Rhoda Drive. The project site is located at 7444 Miramar Avenue in the RS-1-7 zone, Coastal Overlay Zone (non-appealable), and Coastal Height Overlay Zone of the La Jolla Community Plan area. The project site is legally described as a portion of Lot 3, Beverly Heights, Map No. 2229.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners/Permittees to vacate excess public right-of-way, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated SEP 09 2008, on file in the Development Services Department.

The project or facility shall include:

- a. The vacation of excess dedicated Public Right-of-Way of a portion of Miramar Avenue along the front side of the property located at 7444 Miramar Avenue on a property containing an existing single-family residence; and
- b. Existing landscaping (planting, irrigation and landscape related improvements) within the public right-of-way remaining to be maintained.

STANDARD REQUIREMENTS:

1. Vacation of the described Public Right-of-Way must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will

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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. Vacation of the Public Right-of-Way described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The 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.

3. 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.

4. 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.

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 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 Owners/Permittees 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.

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ENGINEERING REQUIREMENTS:

8. This Coastal Development Permit shall comply with the Street Vacation No. 344108, 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 SEP 09 2008 by
Resolution No. R- 304109

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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.

Mary Ellen Morgan, Wife
Owner/Permittee

By _____

By _____

David R. Kinnaman, Husband
Owner/Permittee

By _____

By _____

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

PERMIT/OTHER - Permit Shell 11-01-04

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