

RESOLUTION NUMBER R- 304683

DATE OF FINAL PASSAGE FEB 24 2009

A RESOLUTION APPROVING COASTAL DEVELOPMENT PERMIT NO. 20951 – DUDLEY STREET VACATION PROJECT.

WHEREAS, Daniel and Susan Frazee, and The Morton Family Trust, Owners/Permittees, filed an application with the City of San Diego for a coastal development permit to vacate an unimproved portion of the Dudley Street Vacation known as the Dudley Street Vacation project, located at 3520 and 3521 Dudley Street, and legally described as a portion of the Dudley Street Right-of-Way established as part of Map No. 1435, in the Peninsula Community Plan area, in the RS-1-4 zone; and

WHEREAS, this Coastal Development Permit No. 209151 is a part of a Summary Street Vacation project and as such does not require a recommendation from the Planning Commission; 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;

WHEREAS, the matter was set for public hearing on FEB 24 2009, 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. 209151:

**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 proposed coastal development is a request to vacate an unimproved portion of the Dudley Street Right-of-Way. The portion of the Dudley Street Right-of-Way proposed to be vacated does not currently, nor is proposed in the future, to provide physical accessway for the public to or from any coastal shoreline or water way. The project area is within a fully developed single-family neighborhood and the Dudley Street Right-of-Way vacation would not affect any public coastal views.

**2. The proposed coastal development will not adversely affect environmentally sensitive lands.** The proposed coastal development is a request to vacate an unimproved portion of the Dudley Street Right-of-Way. There are no environmentally sensitive lands identified on the project site.

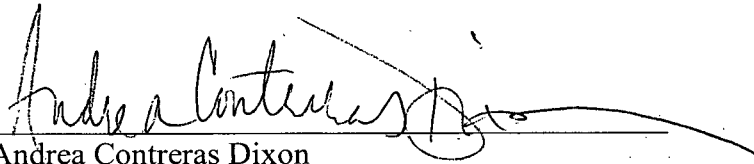
**3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.** The proposed coastal development is a request to vacate an unimproved portion of the Dudley Street Right-of-Way. The proposed vacation is permitted with a Process Five City Council approval in accordance with the City of San Diego Land Development Code. The portion of the Dudley Street Right-of-Way proposed to be vacated is unimproved steep hillside that is not identified in the Peninsula Community Plan as a through street or required right-of-way for public use. Neither is the street identified as a public view corridor or open space element. Therefore, the proposed coastal development would conform with the certified Local Coastal Program and comply with the 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 proposed coastal development is not located between the nearest public road and the shoreline and would not be subject to Chapter 3 of the California Coastal Act.

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

BE IT FURTHER RESOLVED, that Coastal Development Permit No. 209151 is granted to Daniel and Susan Frazee and The Morton Family Trust, Owners/Permittees, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: Jan Goldsmith, City Attorney

By   
Andrea Contreras Dixon  
Deputy City Attorney

AD:hm  
02/02/09  
Or.Dept.DSD  
R-2009-828  
MMS#7651

**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 42-6386

COASTAL DEVELOPMENT PERMIT NO. 209151  
**DUDLEY STREET VACATION – PROJECT NO. 43570**  
CITY COUNCIL

This Coastal Development Permit is granted by the City Council of the City of San Diego to Daniel and Susan Frazee and the Morton Family Trust, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0708. The 3,600 square-foot site is located at 3520 Dudley Street and 3521 Dudley Street in the RS-1-4 zone of the Peninsula Community. The project site is legally described as a portion of the Dudley Street Right-of-Way established as part of Map No. 1435.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to vacate the adjacent sections of the Dudley Street Right-of-Way, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated **FEB 24 2009**, on file in the Development Services Department.

The project shall include:

- a. Vacation of the portions of the Dudley Street Right-of-Way described in the Exhibit A, Legal Description and shown on Exhibit 20256-B;
- b. Landscaping (planting, irrigation and landscape related improvements);

**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 effect at the time the extension is considered by the appropriate decision maker.

2. 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.
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 Owner/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 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 Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
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 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.

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, relating to the issuance of this permit including, but not limited 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.

9. 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.

**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.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on FEB 24, 2009,  
pursuant No. R-304683.

AUTHENTICATED BY THE CITY MANAGER

By: \_\_\_\_\_

---

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

THE MORTON FAMILY TRUST

By \_\_\_\_\_  
DANIEL FRAZEE,  
Owner/Permittee

By \_\_\_\_\_  
SUSAN FRAZEE,  
Owner/Permittee

By \_\_\_\_\_

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

PERMIT/OTHER – Permit Shell 11-01-04