

RESOLUTION NUMBER R- 308664

DATE OF FINAL PASSAGE DEC 16 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO APPROVING COASTAL DEVELOPMENT  
PERMIT NO. 1200871 FOR THE MORRELL STREET PUBLIC  
RIGHT-OF-WAY VACATION - PROJECT NO. 315688.

WHEREAS, the Marquez Family Trust, representing themselves and three other property owners all of whom will be affected by the vacation of Morrell Street and who have given their permission to process the application and assigned Marquez Family Trust to sign said permit on their behalf, as representative of the Owners/Permittees, filed an application with the City of San Diego for a Coastal Development Permit No. 1200871 to vacate a 10-foot portion of Morrell Street pursuant to Right-Of-Way Vacation No. 1103410, known as the Morrell Street Vacation project, located at 4214 and 4216 Morrell Street and 1976 Oliver Avenue between Oliver Avenue to the south and an unnamed alley to the north, San Diego, California. The project site is legally described as follows: That portion of Morrell Street adjoining Lot 21 in Block 282, According to Map No. 922, in the City of San Diego, County of San Diego, State of California, bounded on the north by an unnamed 20-foot alley and on the south by Oliver Avenue, said portion being 10 feet in width; and

WHEREAS, on November 14, 2013, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 1200871, and voted 5-0 recommending City Council approval; 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 DEC 16 2013, 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. 1200871:

**COASTAL DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE 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 the vacation of a 10-foot segment of an existing public right-of-way and as such no change upon the land to the existing property which contains the public right-of-way will occur with the approval of the coastal development permit. Furthermore, the site 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 because none exist at this site and none are planned for this site. The proposed coastal development will have no effect upon public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. Furthermore, there are no public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan from this site or across this site to these visual resources.

**2. The proposed coastal development will not adversely affect environmentally sensitive lands.** The proposed coastal development is the vacation of a 10-foot segment of an existing public right-of-way and as such no change upon the land to the existing property which contains the public right-of-way will occur with the approval of the coastal development permit. The site is a developed suburban property. The site does not contain any environmentally sensitive lands or environmentally sensitive resources and as such the proposed coastal development will not adversely affect any 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 proposed coastal development is the vacation of a 10-foot segment of an existing public right-of-way and as such no change upon the land to the existing property which contains the public right-of-way will occur with the approval of the coastal

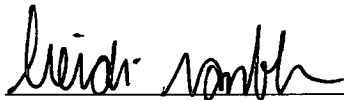
development permit. The adopted Pacific Beach Community Plan designates this site for residential uses and the vacation of the public right-of-way is consistent with those uses. The vacation of the public right-of-way complies with all regulations of the certified Implementation Program for the adopted Pacific Beach Community 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 coastal development is the vacation of a 10-foot segment of an existing public right-of-way and as such no change upon the land to the existing property which contains the public right-of-way will occur with the approval of the coastal development permit. The site is not located between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone. As such the vacation of an existing public right-of-way and approval of the coastal development permit will have no effect upon the public access and public recreation policies of Chapter 3 of the California Coastal Act.

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. 1200871 is granted to Marquez Family Trust, representing themselves and three other property owners all of whom will be affected by the vacation and who have given their permission to process the application and assigned Morrell Family Trust to sign said permit on their behalf, as representative of the Owners/Permittees, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Heidi K. Vonblum  
Deputy City Attorney

ALG/HKV:als/nja  
10/21/13  
Or.Dept:DSD  
Doc. No.: 657782

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

**WHEN RECORDED MAIL TO**  
**CITY CLERK**  
**MAIL STATION 2A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24003613

**COASTAL DEVELOPMENT PERMIT NO. 1200871**  
**MORRELL STREET PUBLIC RIGHT-OF-WAY VACATION - PROJECT NO. 315688**  
**CITY COUNCIL**

This Coastal Development Permit No. 1200871 is granted by the City Council of the City of San Diego to Marquez Family Trust, representing themselves and three other property owners all of whom will be affected by the vacation of Morrell Street and who have given their permission to process the application and assigned Morrell Family Trust to sign said permit on their behalf, as representative of the Owners/Permittees, pursuant to San Diego Municipal Code (SDMC) section 126.0708. The 10-foot segment of Morrell Street to be vacated measures approximately 1,250 square feet in area and is located at 4214 and 4216 Morrell Street and 1976 Oliver Avenue between Oliver Avenue to the south and an unnamed alley to the north, San Diego, California, in the RM-1-1 zone of the Pacific Beach Community Plan. The project site is legally described as follows: That portion of Morrell Street adjoining Lot 21, in Block 282, According to Map No. 922, in the City of San Diego, County of San Diego, State of California, bounded on the north by an unnamed 20-foot alley and on the south by Oliver Avenue, said portion being 10 feet in width.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to vacate an existing public right-of-way described and identified by size, dimension, quantity, type, and location as shown on Drawing No. 37483-B, on file in the Development Services Department.

The project shall include:

- a. The vacation of a 10-foot portion of Morrell Street pursuant to Public Right-Of-Way Vacation No. 1103410.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. This permit expires on DEC 16 2016. Utilization of this permit shall be deemed the recordation of the resolution approving the vacation of the public right-of-way in the San Diego County Recorder's Office. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1, of the SDMC within the 36-month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
3. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
4. 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.).
5. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.
6. If 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" 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.
7. The Owner/Permittee 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 Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee 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, Owner/Permittee 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 Owner/Permittee 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 Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

8. Within 60 days of the approval of this Permit, Owner/Permittee shall enter into an Encroachment Maintenance Removal Agreement for that portion of the existing stairs located within the public right-of-way along Morrell Street to the satisfaction of the City.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this 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 DEC 16 2013 by Resolution  
No. R-308664.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

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Mike Westlake  
Acting Deputy Director

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

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

**MARQUEZ FAMILY TRUST**  
Owner

By \_\_\_\_\_  
NAME  
TITLE

NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.

Passed by the Council of The City of San Diego on DEC 16 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 16 2013.

**(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT

as interim Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By  , Deputy

Office of the City Clerk, San Diego, California

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