

Item # 203 - June 16 2014

(R-2014-780)

Sub item 'B'

RESOLUTION NUMBER R- 309037

DATE OF FINAL PASSAGE JUN 16 2014

A RESOLUTION GRANTING COASTAL DEVELOPMENT  
PERMIT NO. 1302871

WHEREAS, the City of San Diego Real Estate Assets Department filed an application to vacate a portion of North Torrey Pines Road and Genesee Avenue ("Right-of-Way Vacation No. 1011450"); and

WHEREAS, Genesee Right-of-Way Vacation No. 1011450 ("Project") is located on property owned by the City of San Diego ("Owner"); and

WHEREAS, the parcel proposed for vacation is located within the Coastal Overlay Zone, and Section 126.0702(a) of the San Diego Land Development Code requires a Coastal Development Permit for vacation of public rights-of-way within the Coastal 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 June 16, 2014, 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.1302871:

**COASTAL DEVELOPMENT PERMIT SDMC SECTION 126.0708**

**1. 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.**

This Project vacates excess right-of-way pursuant to a land exchange memorandum of understanding between the City and the Regents of the University of California, City Council Document No. RR-281891-2, adopted by the City Council May 3, 1993 ("MOU"). As a result of the MOU, North Torrey Pines Road and Genesee Avenue were realigned. The realignment involved street widening and installation of improvements to create the existing intersection of these two six-lane major streets. The intersection has been completed, and to finalize the exchange required by the MOU, the excess parcel will be vacated and easements for water and slope purposes will be reserved. The parcel being vacated is excess public right-of-way and is not required for street or highway purposes. The public right-of-way has been impassable for vehicular travel for a period of five years. The parcel is small, unimproved, and used as buffer from the street. A coastal development permit is required to vacate public right-of-way in the Coastal Overlay Zone. The vacation is consistent with the University Community Plan, will not encroach upon any existing or proposed physical accessway, and will

enhance and protect public views of the ocean or any other scenic coastal areas specified in the Local Coastal Program land use plan.

**2. The proposed coastal development will not adversely affect environmentally sensitive lands.**

This Project vacates excess right-of-way pursuant to a land exchange memorandum of understanding between the City and the Regents of the University of California, City Council Document No. RR-281891-2, adopted by the City Council May 3, 1993 (“MOU”). A coastal development permit is required to vacate public right-of-way in the Coastal Overlay Zone. The Project is not within or adjacent to environmentally sensitive lands and does not propose construction. Therefore, the Project will not adversely affect environmentally sensitive lands

**3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.**

This Project vacates excess right-of-way pursuant to a land exchange memorandum of understanding between the City and the Regents of the University of California, City Council Document No. RR-281891-2, adopted by the City Council May 3, 1993 (“MOU”). As a result of the MOU, North Torrey Pines Road and Genesee Avenue were realigned. The realignment involved street widening and installation of improvements to create the existing intersection of these two six-lane major streets. The construction of the intersection has been completed and this right-of-way vacation will finalize the MOU. A coastal development permit is required to vacate public right-of-way in the Coastal Overlay Zone. The vacation is consistent with the certified Local

Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

**4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.**

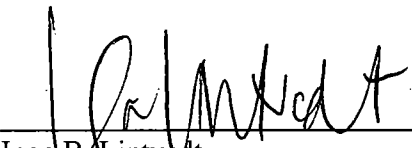
This Project vacates excess right-of-way pursuant to a land exchange memorandum of understanding between the City and the Regents of the University of California, City Council Document No. RR-281891-2, adopted by the City Council May 3, 1993 ("MOU"). As a result, North Torrey Pines Road and Genesee Avenue were realigned. The realignment involved street widening and installation of improvements to create the existing intersection of these two six-lane major streets. The intersection has been completed and this right-of-way vacation will finalize the MOU. This Project is on the border of the designated first public roadway and does not include any construction. The action does not negatively impact access to the sea or the shoreline of any body of water located within the Coastal Overlay Zone and therefore is in conformance with public access and recreation policies 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, based on the findings hereinbefore adopted by the City of San Diego, Coastal Development Permit No. 1302871 is hereby granted by the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and

conditions as set forth in Coastal Development Permit No. 1302871, a copy of which is attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Inga B. Lintvedt  
Deputy City Attorney

IBL:mm  
5/30/2014  
Or.Dept: DSD  
Document No: 796098

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

**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WBS NUMBER: S-00720.03.01

**COASTAL DEVELOPMENT PERMIT NO. 1302871**  
**GENESEE AVENUE PROJECT NO. 286156**  
**City Council**

This Coastal Development Permit No. 1302871 is granted by the City Council of the City of San Diego Real Estate Assets Department, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0708. The site is located at 10590 1/3 Genesee Avenue on the south east corner of North Torrey Pines Road and Genesee Avenue and is within the University Community Plan area, in the Coastal (State and non-appealable1) and RS-1-4 zones. The site is legally described as a portion of Pueblo Lot 1323, of Pueblo Lands of San Diego according to miscellaneous Map 36, being portions of North Torrey Pines Road as dedicated per F/P 101883 06/05/1964 (Ordinance No. 7634, 02/19/1919 and O- 2588, 12/15/1942), and Genesee Avenue as dedicated per F/P 64-165210, 09/10/1964 (Resolution No. 180076, 05/21/1964), La Jolla Pines Technology Center Map 12960, 08/12/1992, and F/P 1995-0509293, recorded 11-08-1995, as shown on City of San Diego drawing 19894-1-B and 19894-2-B, being described as Right-of-Way Vacation No. 1011450. The site is shown on Drawing Nos. 19894-1-B and 19894-2-B attached as Exhibit B to the resolutions granting this Coastal Development Permit and authorizing Right-of-Way Vacation No. 1011450.

Subject to the terms and conditions set forth in this Permit, permission is granted to City of San Diego Real Estate Assets Department, Owner/Permittee to vacate excess/unimproved right of way to satisfy the land exchange memorandum of understanding between the City and the Regents of the University of California, City Council Document No. RR-281891-2, adopted by the City Council May 3, 1993 ("MOU").

The project shall include:

- a. Vacate excess/unimproved right of way to satisfy the land exchange memorandum of understanding between the City and the Regents of the University of California, City

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. 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. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
3. 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.
4. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
5. 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.).
6. 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.

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" 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.

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. 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.

**PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:**

9. The Owner/Permittee shall maintain any existing storm drain or water facilities using the water and slope easements reserved in the resolution approving Right-of-Way Vacation 1011450.

**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.
- 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 June 16, 2014 and R-

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AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

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Helene Deisher  
Development Project Manager

**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.

**City of San Diego, Real Estate Assets  
Owner/Permittee**

By \_\_\_\_\_  
NAME: April McCusker  
TITLE: Supervising Property Agent

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

Passed by the Council of The City of San Diego on JUN 16 2014, 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"/>
Ed Harris	<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 JUN 16 2014

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

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Karen A. ..., Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 309037