

RESOLUTION NUMBER R- 311874

DATE OF FINAL PASSAGE JUL 10 2018

ITEM # 338A
7/10/18

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING COASTAL DEVELOPMENT
PERMIT NO. 1898596 FOR FROST STREET RIGHT-OF-WAY
VACATION - PROJECT NO. 507388.

WHEREAS, Suzanna Frost, Owner/Permittee, filed an application with the City of San Diego for a Coastal Development Permit to vacate portions of San Dionicio Street, known as the Frost Street Right-of-Way Vacation project, located in the public right-of-way directly to the east of 660 San Dionicio Street (APN 532-351-07) and 3020 Qualtrough Street (APNs 532-351-07 and -06), and legally described as that portion of the westerly one-half of San Dionicio Street (formerly Kearney Street), as dedicated to public use and shown on miscellaneous Map No. 35, lying easterly of Lot 4 of Block 166 of La Playa, in the City of San Diego, County of San Diego, State of California, according to the Map of the Pueblo Lands of San Diego by Charles H. Poole in 1856, filed in the Office of the San Diego County Recorder, March 4, 1872, and known as Subdivision Map 380, in the Peninsula Community Plan and Local Coastal Program Land Use Plan area, in the RS-1-7 and Coastal (Non-appealable Area) Overlay Zones; and

WHEREAS, on October 10, 2017, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guidelines Section 15305 (Minor Alterations in Land Use Limitations), and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; and

WHEREAS, on April 19, 2018, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 1898596, and pursuant to Resolution No. 4935-PC voted to recommend 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 July 10, 2018, 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. 1898596:

COASTAL DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (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. The project is a 25-foot by approximately 168-foot vacation of public right-of-way. The 0.096-acre (4,193-square-foot) project site is directly to the east of 660 San Dionicio Street and 3020 Qualtrough Street (APNs 532-351-07 and -06). The project site and all adjacent properties are zoned RS-1-7 and designated Single-Family Residential (maximum 9 du/ac) within the Peninsula Community Plan and Local Coastal Program.

The proposed coastal development is the vacation of an existing public right-of-way. The vacation will not result in physical change to the property underlying the public right-of-way. The unimproved, excess remnant right of way of San Dionicio Street does provide vehicular or pedestrian access for properties in the area. The right-of-way to the east and to the north has already been closed and/or vacated (Street Closure 989 Quiet Title Action No. 255076 and Street

Vacation per Resolution No. 14113 dated June 9, 1913). Therefore, there is no existing right-of-way connecting Roger Street to Qualtrough Street, and no existing or planned access for pedestrians or vehicular traffic.

The Peninsula Community Plan does not identify this segment of San Dionicio Street as a component of access and circulation in the community. It does not designate a public view across the property. The unimproved portion of San Dionicio Street proposed to be vacated is a remnant of already closed and vacated right-of-way that has no connectivity to any other street. Right-of-way ownership will revert to the adjacent property owners.

Therefore, there is no present or prospective public use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated. 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; nor will it negatively affect public views as outlined in the plan.

2. The proposed coastal development will not adversely affect environmentally sensitive lands. The project is a 25-foot by approximately 168-foot vacation of public right-of-way. The 0.096-acre (4,193-square-foot) project site is directly to the east of 660 San Dionicio Street and 3020 Qualtrough Street (APNs 532-351-07 and -06). The project site and all adjacent properties are zoned RS-1-7 and designated Single-Family Residential (maximum 9 du/ac) within the Peninsula Community Plan and Local Coastal Program.

The proposed coastal development is the vacation of an existing public right-of-way. The vacation will not result in physical change to the property underlying the public right-of-way. There are no Environmentally Sensitive Lands located on or adjacent to the project site, which is located in an urbanized and developed area. Therefore, the proposed coastal development 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. The project is a 25-foot by approximately 168-foot vacation of public right-of-way. The 0.096-acre (4,193-square-foot) project site is directly to the east of 660 San Dionicio Street and 3020 Qualtrough Street (APNs 532-351-07 and -06). The project site and all adjacent properties are zoned RS-1-7 and designated Single-Family Residential (maximum 9 du/ac) within the Peninsula Community Plan and Local Coastal Program.

The proposed coastal development is the vacation of an existing public right-of-way. The vacation will not result in physical change to the property underlying the public right-of-way. The adopted Peninsula Community Plan designates the site for residential uses, and does not identify San Dionicio Street as an arterial street, major street, collector street, or as a pedestrian, bicycle, or coastal access facility. Right-of-way ownership will revert to the adjacent property owners, two single-family properties which will retain their current zoning and Community Plan designations.

Therefore, 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.

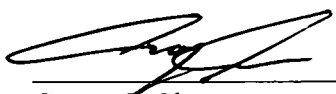
4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The project is a 25-foot by approximately 168-foot vacation of public right-of-way. The 0.096-acre (4,193-square-foot) project site is directly to the east of 660 San Dionicio Street and 3020 Qualtrough Street (APNs 532-351-07 and -06). The project site and all adjacent properties are zoned RS-1-7 and designated Single-Family Residential (maximum 9 du/ac) within the Peninsula Community Plan and Local Coastal Program.

The project site is not located between the nearest public road and the sea or the shoreline of any body of water; therefore, this finding does not apply.

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. 1898596 is granted to Suzanna Frost, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By 

Casey C. Shaw
Deputy City Attorney

CS:als
06/18/2018
Or.Dept:DSD
Doc. No.: 1772460

Attachment: Coastal Development Permit No. 1898596

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

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

INTERNAL ORDER NUMBER: 24006919

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COASTAL DEVELOPMENT PERMIT NO. 1898596
FROST STREET RIGHT-OF-WAY VACATION - PROJECT NO. 507388
CITY COUNCIL**

This Coastal Development Permit No. 1898596 (Permit) is granted by the City Council of the City of San Diego to SUZANNA FROST, Owner/Permittee, pursuant to San Diego Municipal Code (SDMC) section 126.0702. The 0.096-acre project site is directly to the east of 660 San Dionicio Street and 3020 Qualtrough Street (APNs 532-351-07 and -06), within the RS-1-7 zone and the Peninsula Community Plan and Local Coastal Program.

The project site is legally described as that portion of the westerly one-half of San Dionicio Street (formerly Kearney Street), as dedicated to public use and shown on miscellaneous Map No. 35, lying easterly of Lot 4 of Block 166 of La Playa, in the City of San Diego, County of San Diego, State of California, according to the Map of the Pueblo Lands of San Diego by Charles H. Poole in 1856, filed in the Office of the San Diego County Recorder, March 4, 1872, and known as Subdivision Map 380.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to vacate that portion of the San Dionicio Street right-of-way described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibits "A" and "B"] dated July 10, 2018, on file in the Development Services Department.

The project shall include:

- a. The vacation of a 25-foot by 168-foot section of public right-of-way within San Dionicio Street, as approved by Right-of-Way Vacation No. 1782175 and described on Exhibit "A" and as shown on Exhibit "B."

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. This permit must be utilized by _____.

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. 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.

4. 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.

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. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibits "A" and "B." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. 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"

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.

10. 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.

11. The Owner/Permittee shall comply with the conditions of Public Right-of-Way Vacation No. 1782175.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary 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 July 10, 2018 and by Resolution No. _____.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Tim Daly
Development Project Manager

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

**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.**

By _____
SUZANNA FROST
Owner/Permittee

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

Passed by the Council of The City of San Diego on JUL. 10 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<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"/>
Chris Ward	<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"/>
Chris Cate	<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"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL. 10 2018.

(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.

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

(Seal)

By *Aty Brea*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311874