

RESOLUTION NUMBER R- 298609

ADOPTED ON NOV 18 2003

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO MAKING FINDINGS RELATING TO THE DISCONTINUANCE OF NON-TRANSIENT RESIDENTIAL USE AT DE ANZA POINT; AUTHORIZING THE CITY AUDITOR AND COMPTROLLER TO APPROPRIATE \$2,000,000 FROM THE SAN DIEGO HOUSING COMMISSION TO IMPLEMENT THE TRANSITION PLAN; AND RELATED ACTIONS.

WHEREAS, the City of San Diego is the fee title owner of approximately 70 acres of land and 6 acres of water located at De Anza Point in Mission Bay Park and referred to as De Anza Trailer Park and as De Anza Harbor Resort [the Property]; and

WHEREAS, approximately 60 acres of the Property were conveyed to the City by the State of California in 1945 as part of a tidelands grant primarily for park and recreational uses, and approximately eleven acres were leased to the City by the State of California beginning in 1945 and then granted to the City in 1964 for park and recreational uses; and

WHEREAS, on May 18, 1951, the City entered into a master ground lease for the development and use of the Property as a transient tourist and trailer park area, as amended and assigned from time to time thereafter [the Lease]; and

WHEREAS, the City entered into the Lease with Marian Fesler Purdy and Lila C. Witcher, later doing business as De Anza Harbor, Inc., a majority of the stock of which became owned and controlled in 1970 by Mission Bay Associates, a limited partnership whose general partners were Herbert M. Gelfand and Liberty Leasing, Inc., then assigned to De Anza Mobile

Estates, a California limited partnership, of which Herbert M. Gelfand was general partner, and then assigned to De Anza Harbor Resort and Golf, a Delaware limited liability company, whose members include Herbert M. Gelfand [collectively, Lessee or De Anza]; and

WHEREAS, use of the Property as contemplated by the Lease as a transient tourist and recreational vehicle park area is consistent with the use restrictions under the tidelands grant; and

WHEREAS, in 1962, the Property was included in the dedication of Mission Bay Park to park and recreational use pursuant to section 55 of the Charter of the City of San Diego; and

WHEREAS, subsequent to 1953 and through the mid-1970s, use of the Property by recreational vehicle occupants became more permanent mobile home use such that in 1978, the City Attorney, responding to a question raised by the City's Mayor and Council, issued an opinion that use of the Property for a residential purpose was not consistent with the use restrictions included in the State's grant of the Property and may violate the terms of the Lease; and

WHEREAS, by that time, approximately 510 mobile homes were located on the Property; and

WHEREAS, in 1981, as a special accommodation to the mobile home owners on the Property, the State of California adopted legislation permitting the then existing permanent residential use to continue until expiration of the Lease on November 23, 2003 [the Kapiloff Legislation] upon specific conditions including: 1) that the Legislature did not intend to affect the rights and obligations of the parties under existing leases; 2) that public access to the Property be permitted to the maximum extent possible; 3) that on and after November 23, 2003, the Property be developed solely for park and recreation purposes; 4) that all tenants and residents be notified of the provisions of the Kapiloff Legislation; 5) that the City receive fair

rental value for use of the Property; and 6) that the City must concur in the findings and determinations of the Kapiloff Legislation by February 1, 1982 for the Legislation to be operative; and

WHEREAS, on January 25, 1982, after adoption of the Kapiloff Legislation and several public hearings before the City Council regarding the economic hardship to tenants if the residential use were immediately terminated, the City Council adopted Resolution Number R-255718 and resolved that: 1) the City Council concurred in the findings and determinations set forth in the Kapiloff Legislation; 2) that concurring in the findings and determinations set forth in the Kapiloff Legislation did not create any additional lease rights or obligations; and 3) that the resolution was contingent upon amendment of the Lease; and

WHEREAS, on January 25, 1982, the City Council adopted Resolution Number R-255717 authorizing the City Manager to enter into a Tenth Amendment to the Lease to address the conditions of the Kapiloff Legislation by requiring the Lessee to: 1) provide and improve public access to the Property; 2) provide a copy of the Kapiloff legislation to all of its current and future tenants; 3) notify all of its current and future tenants that the tenants shall not be entitled to and may not claim any relocation allowances, benefits, monetary payments or any other rights of any kind or amount whatsoever at any time whatsoever by reason of, or arising out of, the Kapiloff Legislation or by virtue of any action or inaction of the Lessee or the City under the Lease; 4) notify all of its current and future tenants that the tenants may not claim any extension of their subleases pursuant to any provision of the Lease or the Kapiloff Legislation; 5) notify all of its current and future tenants that the Lease expires on November 23, 2003, unless terminated sooner, and that under no circumstances shall any resident's term be extended beyond November 23, 2003; and 6) to increase the rent being paid to the City under the Lease and to allow De Anza

to submit a plan for redevelopment of areas not occupied by mobile home residents and consistent with park and recreational use of the Property; and

WHEREAS, in contemplation of residential use of the Property by De Anza's tenants, and the end of that residential use on November 23, 2003, the Tenth Amendment to the Lease also added a provision requiring the Lessee to peaceably yield up and surrender the Property at the end of the Lease; and

WHEREAS, on January 29, 1982, the Lessee executed the Tenth Amendment to the Lease, and thereafter operated the Property as a mobile home park and a recreational vehicle park; and

WHEREAS, after execution of the Tenth Amendment, De Anza provided a "Notice to Tenants at De Anza Harbor Resort" to each of its tenants including a copy of the Kapiloff Legislation and stating that: 1) the tenants shall not be entitled to and may not claim any relocation allowances, benefits, monetary payments or any other rights of any kind or amount whatsoever at any time whatsoever by reason of, or arising out of, the Kapiloff Legislation or by virtue of any action or inaction of the Lessee or the City under the Lease; 2) that the tenants may not claim any extension of their subleases pursuant to any provision of the Lease or the Kapiloff Legislation; and 3) that the Lease expires on November 23, 2003, unless terminated sooner, and that under no circumstances shall any resident's term be extended beyond November 23, 2003; and

WHEREAS, beginning in or about 1989, after extensive negotiations between De Anza and the mobile home residents and their respective attorneys, De Anza entered into subleases, called Long Term Rental Agreements [LTRAs], with virtually all of the mobile home owners on the Property for a term ending no later than November 23, 2003; and

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WHEREAS, the LTRAs provided express notice that "De Anza intends to close the park on November 23, 2003," limited any rent increases, and provided for potential payment to mobile home owners only in the event that De Anza pursued development of a hotel on the Property; and

WHEREAS, mobile homeowners who purchased mobile homes after passage of the Kapiloff Legislation have done so with actual notice of the termination of the Lease on November 23, 2003, actual notice of the termination of their sublease on November 23, 2003, and expiration of the Kapiloff Legislation on November 23, 2003; and

WHEREAS, De Anza has entered into an LTRA with virtually every new mobile home owner on the Property since 1989; and

WHEREAS, mobile home owners have received benefits under the LTRAs in the form of reduced and controlled rents since 1989, and continuing to the present time; and

WHEREAS, since 1982, mobile home owners on the Property have had the opportunity to sell their mobile homes, assign their LTRAs and move from the Park, or, alternatively, continue to reside on the Property while enjoying favorable rent rates; and,

WHEREAS, it has always been contemplated, recommended and understood by the City, the Lessee and the residents that: 1) De Anza Park residents have enjoyed special, unique rights to continue to reside on the Property until November 23, 2003, under favorable terms and conditions; 2) that residential use on the Property ends, as a matter of law and by virtue of the expiration of the Lease, on November 23, 2003; and 3) that under the terms of the LTRAs, the Lease, and the Kapiloff Legislation, the residents have received tangible benefits in the form of controlled rent, advanced years of notice, and continued residential use that mitigate against any hardship caused by the termination of residential use, and are not entitled to further benefits in

the form of any residential relocation assistance due to any mobile home park closure or discontinuation of the mobile home park use of the Property; and

WHEREAS, the City's Mobilehome Park Discontinuance and Tenant Relocation Regulations (Municipal Code sections 143.0610-143.0640) specifically exclude the Property from its provisions and express the City's intention to deal with any discontinuance and relocation issues involved with the Property by separate ordinance or resolution because of the unique conditions imposed by the Kapiloff Legislation; and

WHEREAS, in 1994, the City approved the Mission Bay Master Plan Update, and the California Coastal Commission certified the Update as a Local Coastal Plan, designating the Property as a 76-acre Special Study Area, and anticipating the cessation of permanent residential use on the Property; and

WHEREAS, on July 27, 1999, the City Council adopted Resolution Number R-292007 authorizing the City Manager to execute a Memorandum of Understanding [the MOU] with De Anza Harbor Resort and Golf, LLC, for review of a redevelopment plan including a hotel on property including the Property, and the adjacent Mission Bay Golf Course leasehold, [the MOU Area], establishment of a process for review, and authorizing the City Manager to negotiate exclusively with De Anza for an option to lease the MOU Area; and

WHEREAS, the MOU again recited the facts of termination of De Anza's Lease on November 23, 2003, expiration of the Kapiloff Legislation authorizing residential use on the Property on November 23, 2003, and that the LTRAs govern the rights of the mobile home owners on the Property; and

WHEREAS, to address the mobile home owners' concerns regarding the costs of moving from the Property, as part of the MOU, De Anza expressly agreed to cover such costs as part of

any development proposal; and

WHEREAS, under the terms of the MOU, the option to lease the MOU area had to be exercised by De Anza no later than May 23, 2003; and

WHEREAS, on or about November 15, 2002, De Anza provided notice to all residents on the Property that the Lease and the LTRA expire on November 23, 2003, that residential use cannot continue on the Property after November 23, 2003, and that development of a hotel might not be desirable or feasible; and

WHEREAS, by letter dated May 7, 2003, De Anza notified the City that it had abandoned its efforts to develop a hotel on the MOU Area; and

WHEREAS, on or about May 6, 2003, De Anza provided notice to all residents on the Property that the Lease and the LTRA expire on November 23, 2003, that residential use cannot continue on the Property after November 23, 2003, that De Anza abandoned its efforts to develop a hotel on the Property, that residents would not be entitled to any of the benefits described in the LTRA that were provisional upon development of a hotel, that the City had not agreed to any transitional use of the Property after November 23, 2003, that mobile home owners must be prepared to remove their mobile homes by November 23, 2003, and that De Anza would require the payment of rent by mobile home owners through November 23, 2003; and

WHEREAS, on or about September 15, 2003, De Anza caused a "Notice of Termination of Tenancy" to be personally served on all residents on the Property stating that tenancy on the Property terminates effective November 23, 2003, based on expiration of the LTRA and the Lease; and

WHEREAS, by letter dated September 22, 2003, the City notified residents on the Property that the Lease and the Kapiloff Legislation allowing residential use on the Property

expire on November 23, 2003, and that the City would take possession of the Property at that time; and

WHEREAS, by letter dated October 17, 2003, De Anza again notified the mobile home owners that the Lease and the LTRAs terminate on November 23, 2003, and requested payment of rent and utilities through November 23, 2003; and

WHEREAS, the City negotiated in good faith for several years with De Anza for an agreement to redevelop the Property including an orderly departure of De Anza's mobile home tenants from the Property, which negotiations did not result in an agreement; and

WHEREAS, De Anza has not implemented a plan and has not taken steps to arrange the departure of its tenants from the Property by November 23, 2003, and has required that its tenants continue paying rent up to and including November 23, 2003; and

WHEREAS, as of October 23, 2003, the majority of the mobile home residents continue to reside on the Property; and

WHEREAS, due to a number of factors including the immobility and age of many of the mobile homes and the limited availability of alternative affordable housing, residents have conveyed to the City the need for additional time to relocate from the Property; and

WHEREAS, a significant number of the mobile home residents are low and very-low income persons of limited means, and as the precise percentage of residents that may qualify for housing assistance based on incomes of less than 80% of Area Median Income has yet to be determined but is in excess of twenty percent; and

WHEREAS, De Anza, by taking the position that it does not have the responsibility or obligation to remove its tenants or improvements from the Property by November 23, 2003, has caused the City to incur the cost and expense of that removal, including but not limited to the

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significant legal costs involved in evicting residents from the Property, causing the removal of or removing and demolishing mobile homes and related improvements, continuing to provide utilities and essential services to residents until their departure, and other substantial costs and expenses; and

WHEREAS, to facilitate and fund the departure of the mobile home residents, removal of the mobile homes from the Property, return of the Property to its park and recreational use, and settlement of any potential claims related to the cessation of residential use on the Property, the City Council authorized an offer of settlement to mobile home owners and the implementation of a plan for the departure of residents from the Property and the cessation of all residential use on the Property beginning November 24, 2003, and ending May 31, 2008, which offer was conveyed to the residents at a meeting on October 22, 2003, and in writings mailed to each resident and mobile home owner beginning October 23, 2003; and

WHEREAS, to implement the departure plan, the City requires an onsite agent experienced in property management and the departure of residents and removal of mobile homes; and

WHEREAS, the City has retained such an operator on an interim basis; and

WHEREAS, the San Diego Housing Authority has allocated \$2 million of interim funding to enable the City to assist in the implementation of the transition plan; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, as follows:

1. That, pursuant to Municipal Code section 143.0615(b), the City Council finds:
 - a. That the discontinuance of the use of the Property as a permanent residential mobile home park on November 23, 2003, is caused by the expiration of the

Lease, the expiration of the Kapiloff Legislation and the Long Term Rental Agreements between the mobile home owners and the current Lessee, De Anza Harbor Resort and Golf, LLC, and is not a closure, a change of use of a mobile home park, or a taking of property under California law, including but not limited to Civil Code section 798.56 or Government Code sections 65863.7 or 66427.4, and that neither the City, as lessor of the Property, nor the Lessee, as the owner and operator of the mobile home park, are required to comply with any procedural or financial mobile home park closure legal requirements or obligations under those sections or any other provisions of law.

b. That the discontinuance of the use of the Property as a permanent residential mobile home park is not a conversion or demolition by the City or the Lessee within the meaning of Government Code section 65590 or any other provision of law, and neither the City nor the Lessee shall be required to provide for, or pay an in lieu fee related to, any low or moderate income residents, residences or residential units.

c. That the mobile home residents at De Anza Point have received repeated actual notice of the November 23, 2003 date as the date of expiration of the Lease, the LTRAs, the Kapiloff Legislation, and consequently, the cessation of residential use on the Property, that such notice was provided beginning with the passage of the Kapiloff Legislation in 1981, and most recently with the notices provided by De Anza dated November 15, 2002, May 6, 2003, September 15, 2003, and October 17, 2003.

d. That under the terms of the LTRA, mobile home owners at the Property have received significant and material benefits including but not limited to: long term marketable space-leases at a desirable location, controlled rents for as long as fourteen years, and the opportunity to reside on the Bay in Mission Bay Park with all of the

benefits of living in the City's largest water-oriented regional park.

e. That neither the City nor the Lessee are obligated to pay, and no residents on the Property are entitled to receive, any relocation or other benefits as a result of discontinuance of the use of the Property as a permanent residential mobile home park beyond the benefits which have been provided to residents under, and subject to the terms and conditions of, the LTRAs.

f. That the material benefits received by the mobile home owners pursuant to the LTRAs are significant and sufficient mitigation for the long-anticipated cessation of residential use on November 23, 2003, as negotiated by the mobile home owners and Lessee.

g. That the Kapiloff Legislation requires that the Property be returned to park and recreational uses after November 23, 2003, and further, that as the Property has been dedicated to park and recreational use since the Lease was entered into, section 55 of the City Charter also requires that the Property be returned to park and recreational use upon the expiration of the Lease.

h. That the City is required to undertake removal of the residents from the Property because De Anza has not implemented nor does it intend to implement any plan to remove its tenants from the Property.

2. That the City Council authorizes the City Auditor and Comptroller to appropriate \$2,000,000 from the San Diego Housing Commission to implement the transition plan, and to establish such funds as may be required.

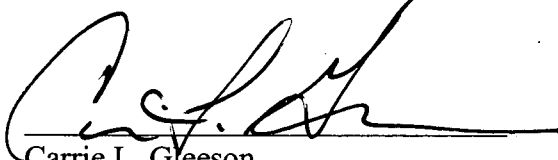
3. That the City Council authorizes the City Auditor and Comptroller to make expenditures from the established funds, contingent upon the receipt of funds from the

San Diego Housing Commission.

4. That the City Council authorizes the City Manager to enter into an agreement with the San Diego Housing Commission setting forth funding guidelines, auditing and reporting requirements, and other necessary provisions for the receipt and use of funds.
5. That the City Council authorizes the City Manager to determine appropriate funding sources as needed to implement the transition plan.

APPROVED: CASEY GWINN, City Attorney

By


Carrie L. Gleeson
Deputy City Attorney

CLG:mm
11/06/03
11/17/03 CORR.COPY
Or.Dept: READ
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