

RESOLUTION NUMBER R- 302995

DATE OF FINAL PASSAGE SEP 17 2007

WHEREAS, on May 11, 2004, the Council of the City of San Diego approved Vesting Tentative Map No. 25674, Planned Development Permit No. 25675, Site Development Permit No. 25676, Coastal Development Permit No. 25677, and Neighborhood Use Permit No. 76234 [the Shaw Lorenz Project Approvals] for the Shaw Lorenz Project, a residential development in the Del Mar Mesa Community Planning area within the City of San Diego [City]. Pardee Homes, a California Corporation, is the Owner/Permittee for the Shaw Lorenz Project; and

WHEREAS, on October 13, 2006, United States District Judge Rudi M. Brewster in the Southern District of California issued a Decision and Injunction in the case entitled, *Southwest Center for Biological Diversity, et al. vs. Jim Bartel, Anne Badgley, and Gale Norton, and Building Industry Legal Defense Foundation, et al.*, Case No. 98-CV-2234-B(JMA) [the Injunction]; and

WHEREAS, the Injunction immediately enjoined the City of San Diego's incidental take permit dated July 18, 1997 issued by the United States Fish and Wildlife Service [USFWS] for pending and future development projects. This ruling enjoins (1) any and all pending applications for development of land containing vernal pool habitat; (2) those projects where the City has granted permission, but the development has not yet physically begun to destroy the vernal pool habitat; and (3) any further development where the permittee is presently engaged in the destruction of vernal pool habitat; and

WHEREAS, as a result of the issuance of the Injunction, Pardee is enjoined from proceeding with the Shaw Lorenz Project and has been unable to obtain from City a grading

permit or final map for the Shaw Lorenz Project. As a consequence, on March 27, 2007, Pardee applied for a stay of the expiration of the Shaw Lorenz Project Approvals pursuant to the provisions of Sections 125.0461 and 126.0111 of the City's Land Development Code and pertinent provisions of the California Subdivision Map Act [Sections 66453.5 and 66452.6 of the California Government Code]; and

WHEREAS, it is likely the Injunction will not be "lifted" in the near future; and

WHEREAS, the Shaw Lorenz Project Approvals granted by the City include dates and periods of time within which a final map must be recorded and permits acted upon; and

WHEREAS, Pardee Homes timely filed an application with the City requesting approval of a stay on the running of periods of time within which a final map must be recorded and permits acted upon as set forth in the Shaw Lorenz Project Approvals; 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, City approval of such request is consistent with the Injunction, Section 66452.6, Section 66452.12, Section 66453.5, and Section 66863.9 of the California Government Code, and authorized by the Subdivision Map Act of the State of California; NOW, THEREFORE,

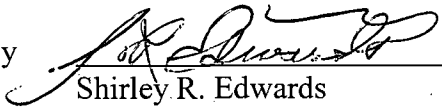
BE IT RESOLVED by the Council of the City of San Diego, that this City Council approval will stay the expiration of the Shaw Lorenz Project Approvals until the Injunction is

vacated or the Injunction or any modification(s) thereof is no longer applicable to the Shaw Lorenz Project and for an additional 180 days thereafter. In no event shall this stay exceed the applicable statutory time limits of the Subdivision Map Act.

BE IT FURTHER RESOLVED that at such time as City determines the Injunction, and any modification(s) thereto, no longer apply to the Shaw Lorenz Project, the City will terminate the Stay through City Council action. If the City determines that the Injunction no longer applies to the Shaw Lorenz Project, City shall notify Pardee Homes in writing. Pardee Homes will have no more than 180 days after the lifting of the stay to exercise any and all rights under the Shaw Lorenz Project approvals.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev
08/28/07
10/25/07 REV.
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