

RESOLUTION NUMBER R-303287

DATE OF FINAL PASSAGE JANUARY 7, 2008

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 Litigation or, alternatively, the Injunction] enjoining the City of San Diego's Incidental Take Permit as applied to the San Diego fairy shrimp and six other vernal pool species; and

WHEREAS, on September 17, 2007, the Council of the City of San Diego approved Pardee Homes' application to 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the Shaw Lorenz Project Approvals until the Injunction is vacated or the Injunction or any modification(s) thereof is no longer applicable to the Shaw Lorenz Project and for an additional 180 days thereafter, except that, in no event shall the stay exceed the applicable statutory time limits of the Subdivision Map Act; and

WHEREAS, the USFWS re-initiated formal consultation on the Biological Opinion for the Shaw Lorenz Project and, on November 5, 2007, issued a new Biological Opinion authorizing the incidental take of San Diego fairy shrimp and vernal pool habitat species and concluded that:

The applicant is not relying on coverage for the San Diego fairy shrimp or other vernal pool species provided under the City of San Diego's incidental take permit and related MSCP subarea plan. The impacts of this project on the San Diego fairy shrimp is reviewed by the Service independently and without regard to the provisions of the City's MSCP subarea plan or the Service's biological opinion under Section 7 regarding the City's MSCP subarea plan and associated incidental take permit."; and

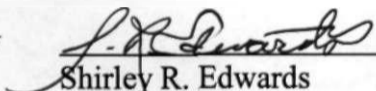
WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego, that the stay of the expiration of the Shaw Lorenz Project Approvals is hereby lifted. The City shall notify Pardee Homes in writing that the stay has been lifted and that Pardee Homes will have no more than 180 days after the effective date of this Resolution (the date the stay was lifted) to exercise any and all rights under the Shaw Lorenz Project approvals. Should it be determined in any legal proceeding by a ruling subsequent to this City Council action that development of the Shaw

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REV.

Lorenz Project is enjoined for any reason, or continued to be enjoined, in the Litigation, this stay shall automatically be reinstated without further City Council action.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev
12/17/07
01/09/08 REV.
Or.Dept:DSD
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