

RESOLUTION NUMBER R- 303791
DATE OF FINAL PASSAGE MAY 27 2008

WHEREAS, on July 1, 2003, the Council of the City of San Diego approved (1) Vesting Tentative Map No. 9691 [VTM] per Resolution No. 298152; (2) Planned Residential Development Permit No. 9693 [PRD] and Coastal Development Permit No. 9694 [CDP], and a MHPA boundary line adjustment per Resolution No. 298153; (3) certification of EIR LDR No. 99-0639 per Resolution No. 298150; and (4) Amendments to City of San Diego Progress Guide and General Plan, Mira Mesa Community Plan, and Local Coastal Plan No. 10747 per Resolution No. 298151 for the Crescent Heights Project, a residential development in the Mira Mesa Community Plan area within the City of San Diego [City]. Pardee Homes, a California corporation [Pardee], is the Owner/Permittee of the Project; and

WHEREAS, on October 24, 2005, the Council of the City of San Diego [City Council] approved Ordinance No. O-19427 (New Series) rezoning the Project parcels; and

WHEREAS, on March 11, 2006, the Coastal Commission certified the local coastal program amendment for the rezone; and

WHEREAS, the VTM No. 9691 approval became effective on the effective date of the rezone and such approval shall remain effective for three years and will expire March 11, 2009, absent further authorized extensions; and

WHEREAS, PRD No. 9693 and CDP 9694 were conditioned to expire three years following all appeals of the City Council approval pursuant to PRD/CDP Standard Requirement 1; and

WHEREAS, the Project is located in the Coastal Zone's appealable area and the Coastal Commission commenced appeal of the City Council's approval of CDP No. 9694; and

WHEREAS, the City's CDP was set aside through the appeal process and the Coastal Development Permit jurisdiction became the responsibility of the Coastal Commission; and

WHEREAS, the Coastal Commission's appeal of the City Council approval was resolved on October 11, 2006 and therefore the PRD will expire October 11, 2009, absent further authorized extensions; 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. v. Jim Bartel, Anne Badgley, and Gale Norton, and Building Industry Legal Defense Foundation, et al.*, Case No. 98-CV-2234-B (JMA) [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, 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] as to (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, on January 31, 2008, the Development Services Department sent a letter to Pardee advising that the Project was enjoined by the Injunction dated October 13, 2006 and the City would not accept any resubmittals or perform any reviews of the Project; and

WHEREAS, as a result of the issuance of the Injunction and the letter from the Development Services Department, Pardee is prevented from proceeding with the Project and has been unable to obtain from City a grading permit or final map for the Project; and

WHEREAS, as a consequence, on March 11, 2008, Pardee applied to the City for a stay of the expiration of the Crescent Heights 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 66452.6, 66452.12 and 65863.9 of the California Government Code); and

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

WHEREAS, the Crescent Heights 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 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 Crescent Heights 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 a request is consistent with the Injunction, Sections 66452.6, 66452.12 and 65863.9 of the California Government Code, and authorized by the Subdivision Map Act of the State of California; and

WHEREAS, pursuant to pertinent provisions of the California Subdivision Map Act (Govt. Code sections 66452.6 (b) and (f)), the Injunction qualifies as a "development moratorium" tolling the expiration of Vesting Tentative Map No. 9691 for up to five years or until the Injunction is lifted, whichever is shorter; and

WHEREAS, the expiration dates for the Project's VTM and PRD shall be tolled under the same conditions as this resolution (i.e. starting on October 13, 2006 and resuming their remaining time periods five years later or upon termination of the Injunction, whichever occurs first); and

WHEREAS, Pardee seeks confirmation from the City that the expiration of the Project's VTM and PRD were and are tolled as of the time the development moratorium was imposed by the Injunction, October 13, 2006, for up to five years or the duration of the Injunction, whichever occurs first; and

WHEREAS, the City Council may determine that no further resolution is necessary to permit the City to process discretionary or ministerial permits or approvals for the Project, including, but not limited to, the Project's final map and grading permit upon confirmation by the Director of the Development Services Department that the Injunction has been lifted as it pertains to the Project as a result of the terms of a settlement agreement, dissolution of the Injunction, action of the United States District Court, or reversal of the Injunction by the Ninth Circuit Court of Appeals [collectively "Release of Injunction"]; and

WHEREAS, the approval of this resolution will cause the VTM to expire 2 years 149 days after the Injunction is lifted, the CDP will expire 1 year 363 days after the Injunction is lifted, the PRD will expire 2 years 363 days after the Injunction is lifted, and Condition 38(i) of the CDP and PDP relating to the timing for the City's acceptance of certain open space lots must

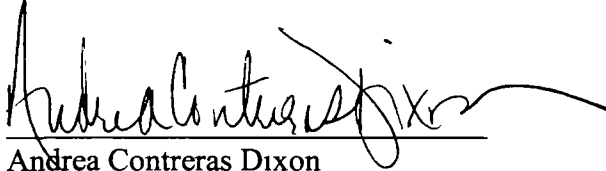
be satisfied 1 year and 261 days after the Injunction is lifted, absent further authorized extensions; NOW, THEREFORE,

BE IT RESOLVED by the City Council that the City Council acknowledges that the Injunction has imposed a "development moratorium" on the Project, and that pursuant to California Government Code sections 66452.6, 66452.12 and 65863.9, the City stays the expiration of the Crescent Heights Approvals for five years or until the Injunction is lifted on the Project, whichever is sooner.

BE IT FURTHER RESOLVED that no further City Council action is necessary to permit the City to lift this stay of expiration of the Crescent Heights Approvals and to process discretionary or ministerial permits or approvals for the Project, including, but not limited to, the Project's final map and grading permit upon confirmation by the City Attorney and the Director of the Development Services Department of the Release of Injunction.

BE IT FURTHER RESOLVED that upon the Effective Date of the lifting of this stay of expiration, the VTM will expire 2 years 149 days after the Injunction is lifted, and the PRD will expire 2 years 363 days after the Injunction is lifted, and Condition 38(i) of the VTM must be satisfied 1 year 261 days after the Injunction is lifted, absent further authorized extensions.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
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