

DATE ISSUED: September 10, 2008

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Council President and City Council
Docket of September 16, 2008

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: Tailgate Park Environmental Covenant (two full blocks bounded
by Imperial Avenue, K Street, Park Boulevard, and 14th Street) --
East Village Redevelopment District of the Expansion Sub Area of
the Centre City Redevelopment Project

COUNCIL DISTRICT: 2

REFERENCE: None

STAFF CONTACT: Eli Sanchez, Senior Project Manager, 619-533-7121

REQUESTED ACTION: Authorize the Mayor and Executive Director of the Redevelopment Agency of the City of San Diego ("Agency") or designee to execute, deliver, and record an Environmental Covenant in the Official Records of the County of San Diego to restrict the future uses of Tailgate Park and requiring maintenance of the asphalt cap enclosing contaminated soils.

STAFF RECOMMENDATION: That the Agency adopt a resolution authorizing the Executive Director or designee to execute, deliver and record the Environmental Covenant in the Official Records of the County of San Diego

That the City Council ("Council") adopt a resolution authorizing the Mayor to execute, deliver and record the Environmental Covenant in the Official Records of the County of San Diego.

SUMMARY: The state Department of Toxic Substances Control (DTSC) has required that an environmental covenant document be recorded in the Official Records of the County of San Diego restricting certain future uses of Tailgate Park and prohibiting activities that would disturb soil beneath the parking lot "cap" without further regulatory oversight. The Agency owns Tailgate Park. The City owns the closed, but not vacated, streets within Tailgate Park. The Agency has leased Tailgate Park to the Padres baseball organization.

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The proposed Environmental Covenant will assist with the environmental closure process for the Ballpark Project. If the City or the Agency desires to use the land at this site in a manner that is inconsistent with the environmental covenant, provisions are available for a discretionary variance procedure that could allow such uses.

FISCAL CONSIDERATIONS: None.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION: Resolution No. 2992 of the Council, adopted June 1, 1999, authorized the President of the Centre City Development Corporation ("Corporation"), or designee, to take actions as appropriate within the project area as authorized by the Polanco Redevelopment Act.

KEY STAKEHOLDERS: The key stakeholders are the City of San Diego, the Agency, and the Padres Baseball Team.

BACKGROUND

Under the oversight of the San Diego County Department of Environmental Health (DEH), redevelopment efforts and remedial action created Tailgate Park, which was one of many environmental remediation and redevelopment efforts that occurred during Phase II of the East Village Ballpark District redevelopment.

The DEH approved a Property Mitigation Plan (PMP) for Tailgate Park. DEH also issued conditional "no further action" letters to various parties who had performed site investigation and remedial action work at Tailgate Park under the DEH oversight. The PMP and no further action letters recognized that environmental contaminants would remain below ground and, therefore, the DEH required protective measures, including the installation of an asphalt parking lot "cap," to guard against exposure to regulated materials that remained underground at the Tailgate Park site.

Prior to the DEH's issuance of a final certificate of completion, the site designation process pursuant to the Unified Agency Review of Hazardous Sites Law, requires that DTSC and other state environmental agencies review and approve the DEH certification. On or around October 2006, DTSC performed this review and identified the need for an Environmental Covenant at Tailgate Park in order to assist in assuring the integrity of the "cap" and to otherwise limit the site's future use as contemplated by the PMP. DTSC further advised the Agency that, without the Environmental Covenant, DTSC would not approve the final closure of Tailgate Park or the larger East Village Redevelopment Area.

The Agency owns Tailgate Park. Within Tailgate Park, however, the City holds certain property interest rights for closed but non-vacated streets. The City and the Agency have executed an

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Encroachment Maintenance and Removal Agreement under which the Agency agreed to maintain and repair the closed street areas. The Agency has leased Tailgate Park to the Padres baseball organization for use as a parking lot.

DISCUSSION

The City Attorney's Office has prepared a memorandum that recommends execution and recordation of the Environmental Covenant (Attachment B). Following is a summary of the memorandum.

On behalf of the Agency, the Corporation, with the assistance of special counsel, entered into negotiations with the DEH to craft an Environmental Covenant acceptable to DEH and DTSC. The DEH had never prepared such a covenant, and because the DTSC had never approved the issuance of a DEH covenant, fairly lengthy negotiations ensued that eventually resulted in the proposed final version of the proposed Environmental Covenant.

The Environmental Covenant prohibits the future use of Tailgate Park for residential purposes, or as a hospital, school, or day care facility without further environmental oversight. In addition, the Environmental Covenant prohibits activities such as excavation and grading, without prior approval from the DEH pursuant to a variance process set forth in the Environmental Covenant.

If in the future, the City, the Agency, or a successor desires to develop the site into one of the restricted land uses, provisions are available for a discretionary variance procedure that could allow such uses in accordance with the Environmental Covenant.

The execution and recordation of the proposed Environmental Covenant will fulfill a major milestone towards DEH's issuance of a final certificate of completion for Tailgate Park as well as the larger effort to obtain approvals for the clean up of the East Village Ballpark District redevelopment. The covenant requires the signatures of both the Agency, as the owner, and the City because it maintains a property interest in the non-vacated streets on the site.

Project Description – The construction of the parking lot on Tailgate Park is complete. The Environmental Covenant memorializes the future use restrictions required in the DEH'S PMP approval and no further action letters.

Housing Impact – None.

Disposition of Property – The Agency will maintain ownership of Tailgate Park subject to the lease with the Padres.

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Environmental Impact – This activity is not a project, and therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(3).

CONCLUSION

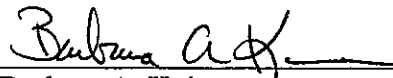
The Environmental Covenant memorializes the future use restrictions required in the DEH's approval and conditional no further action letters. The recordation of the covenant in the County's land records will put future property owners on notice and, therefore, helps to prevent any future claims against the City or the Agency as a result of exposure to or the existence of the regulated materials in the sub-surface areas of the site. It will ensure that any future redeveloper of the site is made aware of the restrictions and the existence of the materials. The execution and recordation of the proposed Environmental Covenant will fulfill a major milestone towards DEH's issuance of a final certificate of completion for Tailgate Park and the East Village Ballpark District redevelopment.

Respectfully submitted,

Concurred by:



Eli Sanchez
Senior Project Manager



Barbara A. Kaiser
Vice President – Real Estate Operations

Attachments: A – Environmental Covenant
B – Office of the City Attorney Memorandum dated April 7, 2008