



THE CITY OF SAN DIEGO

Redevelopment Agency's Report

DATE ISSUED: October 22, 2008 REPORT NO.: RA-08-30
RTC-08-158

ATTENTION: Council President and City Council
and Members of the Redevelopment Agency
Docket of October 28, 2008

SUBJECT: Proposed Settlement Agreement in Save Our Heritage Organisation v. City of San Diego, Redevelopment Agency of the City of San Diego, City Council of the City of San Diego, Centre City Development Corporation (Case No. GIC 865774)

REQUESTED ACTION: 1) Approve the Settlement Agreement; and 2) Authorize execution of said Settlement Agreement. The Settlement Agreement is attached hereto as Exhibit "A".

RECOMMENDATION: Approve the requested items.

SUMMARY: On May 10, 2006, a citizen group known as Save Our Heritage Organisation ("SOHO") filed a petition for writ of mandate challenging the City's compliance with the California Environmental Quality Act ("CEQA") in its February 28, 2006, approvals of the Downtown Community Plan ("DCP") and subsequently implementing ordinances.¹ SOHO claims in its petition that the Centre City Development Corporation ("CCDC") and the City allegedly violated CEQA in several respects, all primarily relating to the assessment of historical and cultural resources in the environmental impact report ("EIR") for the DCP: (1) by allegedly failing to include an adequate analysis of historical, cultural, and archaeological resources; (2) for allegedly failing to adequately identify and consider feasible mitigation measures and a reasonable range of alternatives; (3) by adopting a mitigation monitoring and reporting program ("MMRP") that was allegedly inadequate and incomplete; and (4) by adopting findings that were allegedly unsupported by substantial evidence. SOHO further alleged that post-certification changes relating to historical and cultural resources were made to the EIR but were not carried over into the Community Plan and implementing ordinances.

Through the course of settlement discussions over the last two and a half years, the parties have worked out a set of amendments and revisions to the DCP, Centre City Planned Development Ordinance ("PDO"), and MMRP that would settle SOHO's concerns without requiring the rescission of the DCP or the recirculation of the EIR. The changes are aimed at clarifying and strengthening protections for historical and cultural resources within the Downtown Community Plan area and making all of the relevant policies, ordinances, and mitigation measures consistent with each other.

In addition to these revisions, the Settlement Agreement would make the following additional

^{1/} A second CEQA suit was filed by Save Our Forests and Ranchlands ("SOFAR") against the City challenging the same approvals. That litigation was settled through an agreement approved by the City Council and Redevelopment Agency on April 10, 2007 and fully executed on May 15, 2007.

changes. First, the same protections provided for properties actually “listed” in the National Register would be extended to “eligible” historic properties. SOHO asserted that this change was made in the final mitigation measures approved for the DCP, but that the change was not implemented in the final adopted plan.

Second, SOHO wanted the City and CCDC to consider giving developers a greater geographic range of possible properties to whom the developers may sell increased development density rights, known as transferable development rights or “TDRs.” The draft plan evaluated various options, including that if a historic building renovator was too constrained by the historic character limitations of his or her property to utilize the full development density to which he or she would otherwise be entitled, he or she could have sold those excess rights to other developers not similarly constrained within a block radius around the site (a total area of 9 blocks). However, the final version of the implementing ordinances allowed transfers only within the same block as the property at issue.

The compromise reached by the parties on this issue is an expanded TDR program in which property owners, through a development permit application, could request to transfer any portion of, or all, of their development rights from their property to sites identified on Figure 3-11 of the DCP and on Figure K of the Centre City PDO as eligible to increase development rights through the TDR program. Only designated historical resources would qualify, and staff will make project-by-project determinations as to the condition of the property, financial need of the transfer to facilitate rehabilitation and preservation, and amount of development rights that may be sold.

Third, the City will consider designating one or more receiver sites for the potential relocation of small historic buildings threatened by redevelopment. A first step would be for CCDC to do a feasibility analysis of a few particular areas at the east end of downtown adjacent to Interstate 5 for this purpose. The parameters of this feasibility analysis are set forth in an attachment to the Settlement Agreement.

Fourth, the priority and timing of archaeological research in the project planning process, which determines the potential archaeological yield of the site, will be moved up earlier in the process. The parties agree that doing so would reduce the likelihood that potential archaeological finds may be damaged in the initial construction phases.

The Settlement Agreement provides that CCDC and the City shall use their best efforts to enact all of the amendments described in the Settlement Agreement within nine (9) months of the effective date of the Agreement. The Agreement also cautions that no guarantees have been made regarding the exercise of the City’s legislative discretion and exercise of its police power. If the amendments are not enacted within nine months, however, SOHO has the right to resume the litigation and continue with the prosecution of its case.

If CCDC and the City enact all of the amendments as described in the Settlement Agreement and payment is made to SOHO of its attorneys’ fees, in the amount of \$56,364.00, SOHO will promptly execute and file a notice of dismissal of its petition with prejudice, meaning that SOHO may not refile a suit alleging the same claims against the DCP EIR.

FISCAL CONSIDERATIONS: Funds for all costs to be incurred in connection with the implementation of this Settlement Agreement on behalf of all respondents and defendants are available and will be paid for by CCDC.

PREVIOUS COUNCIL AND REDEVELOPMENT AGENCY ACTION: The City Council and Redevelopment Agency Board have been previously briefed on this matter in closed session.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS: None with this Settlement Agreement, but during 2007 CCDC staff held public meetings for the proposed amendments before the Centre City Advisory Committee and its subcommittees, the CCDC Board and its subcommittees and the Planning Commission, all of which supported the amendments.

Respectfully submitted,

Huston Carlyle
Chief Deputy City Attorney