

DATE ISSUED: May 20, 2004

REPORT NO. 04-111

ATTENTION: Natural Resources and Culture Committee  
Meeting of May 26, 2004

SUBJECT: De Anza Update

### **SUMMARY**

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE OR THE COUNCIL.

### **BACKGROUND**

On November 23, 2003 the lease and state legislation (Kapiloff Bill) allowing residential use at De Anza Harbor Resort expired. The City of San Diego is mandated by state law as well as the San Diego City Charter to transition the property back to legal park and recreational use. As such, the City Council authorized the implementation of a transition plan. In order to facilitate and fund the departure of the mobile home residents, removal of the mobile homes from the property, and returning the property to legal park and recreational use, the settlement offer and transition plan allows for the orderly departure of residents beginning November 24, 2003 through May 31, 2008.

On November 18, 2003, the City Council held a public hearing on the transition plan and adopted Council Resolution No. 298609 making findings related to the discontinuance of residential use at De Anza. This report provides an update since the November 18, 2003 public hearing. The Manager's Report issued for the November 18, 2003 hearing is included as Attachment 1 and Attachment 2 provides a detailed history of the De Anza property.

#### **Settlement Offer to Residents**

The City offered mobile home owners who reside at De Anza Cove a settlement package that includes scheduled departures (on dates chosen by the residents) staggered over time and ending

May 31, 2008; no rent increases; and settlement payments of between \$8,000 and \$4,000 depending upon the date of departure. The owner is responsible for removing the mobile home on or before the chosen departure date, and removing all improvements, i.e. patios, porches, decks, hardscaping and landscaping. Owners who do not reside at De Anza were made the same offer without the settlement payment. The City's offer included financial assistance to economically qualified persons based on available revenue and resources.

The terms of the City's settlement offer came out of months of discussions with representatives and board members of the De Anza Homeowners Association (HOA) and its former attorneys. The City's settlement offer addressed many of the concerns raised by the residents, but did not meet the residents' demands in terms of the amount of time to remain on the property or the amount of money to be paid each resident. Those demands have increased since the HOA hired its current attorneys, and now include additional demands (see discussion below under Status of Litigation.)

Many residents at De Anza have accepted the City's offer and have been very cooperative in assisting the City in meeting its legal mandate to restore the property to park and recreational use. Some residents have already removed their mobile homes and collected their settlement payment. Currently, there are 38 vacant spaces at the property and the number is increasing on a daily basis.

## **DISCUSSION**

The City took possession of the property on November 24, 2003. In order to implement the Council-approved transition plan and to ensure a smooth transition of the property, the City retained Hawkeye Asset Management to manage the day-to-day operations on behalf of the City. Over the past five months City staff has been working very closely with Hawkeye to address health and safety concerns in terms of repairing damaged gas, electrical, water and sewer lines; improving safety and security on the property; and overseeing the proper removal of units.

When the property was returned to the City, the condition of the utility systems was extremely poor due to the lack of routine maintenance. Consequently, repairs are constant and numerous. Following is a brief summary of maintenance and repairs that the City's contractors have conducted since November 24, 2003.

### Utility Systems: Gas, Electric, Water and Sewer

- Due to a number of leaks in the system, emergency repairs were performed in several areas of the property.
- Gas meters and risers in many locations were malfunctioning and had to be removed and completely replaced.
- Water main breaks and other problems necessitated shutting the water supply off for a full day to repair the break and avoid potentially larger problems. Repairs to the system are difficult because there is only one main water line to the park, which requires shutting down the entire park during repairs.

- The water lines serving the property are extremely old, corroded and will continue to need repairs in order to serve the residents of the property.
- The existing electrical system was not properly maintained by the former lessee and is simply not designed to accommodate the demands that the residents place on it on a day-to-day basis.
- The sewer system is in extremely poor condition. Tree roots have invaded the sewer lines in many places and require immediate removal because the system continues to have breaks and back-ups on a daily basis.
- Roots are also impacting the other utility systems, most importantly, the gas system.

### Trees

Because of the serious root problems impacting the utility lines, City staff and Hawkeye have been working with a team of licensed contractors to identify trees and shrubbery that are growing into and around the utility lines. In recent weeks extra effort has been made to televisive the sanitary sewer system in several areas of the property to determine the extent of the root invasion. Breaches were found in several segments of the sewer pipes and are interfering with proper functioning of the resident's toilets.

In an effort to respond to the resident's numerous complaints over the removal of trees, City staff contacted the City's certified arborist for the Park and Recreation Department and asked for assistance in identifying any significant, rare or endangered trees. A meeting was held on-site with the certified arborist as well as representatives from Councilmember Frye's office, the Sierra Club, the Audubon Society, and several residents. The purpose of the meeting was to identify any significant, rare or endangered trees. Although there are no trees on the property that were identified as rare or endangered, from the total number of trees marked for evaluation, a few were identified that should be given extra measures for protection before any removal is planned. It was suggested that some larger pines, podocarpus trees and few select others should be afforded extra protection and reasonable alternatives should be explored prior to any plan to remove these trees.

City staff also submitted a memorandum to the City's Community Forest Advisory Board in response to their request for an informational update regarding tree removal at De Anza. City staff indicated in the memo that we would continue working with the City's Arborist and the Community Forest Advisory Board to identify solutions that would allow for the necessary utility repairs and preserve as many significant trees as possible. It is important to note that not all of the trees marked will necessarily have to be removed. Only those that are creating health and safety problems in the form of hindering the proper functioning of the toilets, breaching the sanitary sewer system, and interfering with gas, electrical, and/or water lines will be removed.

### Security

The property has had continuing problems with illegal activity including vandalism, theft, unlawful occupants, drug use, drug sales, and prostitution. Hawkeye has been working

with the San Diego Police Department (SDPD) and the Drug Abatement Response Team (DART) on ways to improve security and deter the illegal activity through enhanced access control and surveillance. The City retained a new security company on April 1, 2004 to assist in this effort. Metropolitan Public Safety has considerable experience in working with SDPD in identifying and reporting illegal activity. The City's objective is to substantially reduce or eliminate illegal activity at the property during the transition period with the help of the new security company, Hawkeye and SDPD. This effort is particularly critical due to the ongoing removal of units. Vacant structures are a public nuisance and can provide a haven for criminal activity. Further, construction sites often attract theft and vandalism if not properly secured.

### Communication Efforts

City staff and Hawkeye have several measures in place for the residents to ask questions and register complaints. Hawkeye staff is available from 8:00 a.m. to 5:00 p.m., Monday through Friday to address resident's issues in person or residents can submit written comment forms to the front office at any time. Hawkeye staff receives anywhere from 50 to 100 inquires and/or complaints on a weekly basis, primarily related to sewer and electrical problems, swimming pool temperature, domestic complaints, and noise. If an emergency arises after normal business hours, the residents have been informed via their monthly rent statements that they can call the security staff. In an effort to increase our communication efforts even further, City staff has set up an information telephone line that will be updated on a weekly basis to let the residents know of any pertinent information, i.e. utility repairs, water shut-offs, tree removal, etc. Additionally, residents receive hand-delivered notices whenever repair work is being conducted that will directly affect their unit, including utility repairs, water shut-offs, tree removal, etc.

### Status of Litigation

On November 18, 2003, the De Anza Cove Homeowner's Association, Inc. (HOA) filed a lawsuit against to City seeking to prevent the City from evicting residents from the property upon termination of the lease. The lawsuit seeks damages, including various types of damages that the Kapiloff Bill specifically precludes.

On January 15, 2004, the Court issued a Preliminary Injunction that seeks to preserve the status quo at the property for the time being. The Preliminary Injunction enjoins the City from commencing or enforcing evictions, or any other legal action seeking damages against the current residents, without leave of court. The Injunction also states that the City cannot discontinue services to the residents or close down any of the common areas while the Injunction is pending. This does not include the RV section of the park, as it is not a common area for the mobile home residents. Recognizing the City's position that the residents are holdovers from the prior lease, the Injunction specifically authorizes the City to accept and expend monthly rent and other charges from all residents, without prejudice to the City's position that the City does not have a landlord/tenant relationship with the residents and is not going into the business of operating a mobile home park. In keeping with the Injunction, the clubhouse, pool, and pavilion remain open, and the City

is maintaining the pool (at 82 degrees), spa, laundry facilities, dog run, promenade, and other on-site facilities. The Injunction also requires the HOA to post a \$30,000 undertaking, which it has done. The Preliminary Injunction does not prevent the City from processing unlawful detainers and evicting those residents who have chosen not to pay rent, but requires that the City seek leave of court before doing so. The City has sought and received leave of court to evict several non-paying residents, and is proceeding with those unlawful detainer actions.

On January 20, 2004, the De Anza Cove HOA, filed its First Amended Complaint for Injunctive Relief and Damages for: 1) Violations of Mobile Home Residency Law; 2) Violation of the Mello Act; 3) Failure to Discharge a Mandatory Duty; 4) Abuse of Process; 5) Negligent Misrepresentation; 6) Fraud and Intentional Deceit; 7) Constructive Fraud; 8) Violation of the Due Process and Equal Protection Clauses of the California Constitution; 9) Inverse Condemnation; 10) Violation of State Relocation Assistance Requirements; and 11) Breach of Contract. The First Amended Complaint names the City of San Diego as a Defendant, and leaves out DHRG, whereas the original Complaint included DHRG as a Defendant.

The City demurred to the First Amended Complaint. The court sustained the City's demurrer on Plaintiff's causes of action for Abuse of Process, Negligent Misrepresentation, Fraud and Deceit, Constructive Fraud, Violation of Due Process and Equal Protection, and those causes of action were dismissed without leave to amend. The court also sustained the City's demurrer, with leave to amend, for Plaintiff's Breach of Contract cause of action. The court granted the City's motion to strike Plaintiff's demand for punitive damages. The court let stand Plaintiff's causes of action for Violations of Mobilehome Residency Law, Violation of the Mello Act, Failure to Discharge a Mandatory Duty, Inverse Condemnation, and Violation of State Relocation Assistance Requirements.

The De Anza HOA served the City with its Second Amended Complaint on April 26, 2004. The HOA has not sued DHRG in the Second Amended Complaint. It appears that the HOA has entered into a tolling agreement with DHRG to preserve its claims.

On April 21, 2004, the City's Risk Management Department received 238 administrative claims filed by De Anza residents. The administrative claims are substantively identical. Each claim attaches an attorney-drafted statement alleging wrongdoing by the City and Hawkeye in the ongoing management of the property that is largely based on factual misrepresentations and misinformation.

The De Anza HOA has made a settlement offer to the City demanding that the City build the residents a new mobile home park, pay relocation benefits, provide some residents with new mobile homes, and pay the residents' attorney's fees (see Attachment 3.) The HOA has valued this request at over \$141 million. At the direction of the Mayor and Council the City has rejected this offer.

## **CONCLUSION**

City staff is continuing to implement the Council-approved transition plan and is working diligently with the on-site management company, Hawkeye to efficiently manage the property and address the important health and safety concerns.

Respectfully submitted,

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Real Estate Assets Director

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Deputy City Manager

Griffith/BM

Attachment(s):

1. [City Manager's Report No. 03-229](#)
2. [Property History](#)
3. [Plaintiff's Settlement Offer](#)