

F I L E D  
Clerk of the Superior Court

FEB 22 2005

By: D. LIM, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS  
ASSOCIATION, INC., a California non-profit  
corporation,

Plaintiff,

v.

CITY OF SAN DIEGO, a California  
municipality;  
and DOES 1-100, inclusive,

Defendants.

Case No. GIC 821191

STIPULATION TO STAY LITIGATION  
AND TO CONTINUE MOTION  
HEARING DATES; ORDER THEREON

DEPT: 66  
I/C JUDGE: Honorable Charles Hayes

AND RELATED CROSS-ACTION

Complaint Filed: November 17, 2003  
Trial Date: June 10, 2005

In order to continue a meaningful dialogue regarding possible resolution of this case, IT IS  
HEREBY STIPULATED, by and between Plaintiff De Anza Cove Homeowners Association, Inc.  
and Defendant and Cross-Complainant City of San Diego that:

1. **Tenant Impact Report.** At its cost, the City of San Diego will commission a Tenant  
Impact Report and Conversion, Relocation, and Replacement Housing Plan ("Tenant  
Impact Report") to be conducted in accordance with all notice and hearing requirements and  
procedures contained in California's Mobilehome Residency Law (Civ. Code §§ 798 *et*  
*seq.*, Gov't Code §§ 65863.7, 67863.8), California Relocation Assistance Law (Gov't Code  
§§ 7260 *et seq.*; Code of Reg., Title 25, Ch. 6 *et seq.*), the City of San Diego Mobilehome

1 Park Overlay Zone (San Diego Municipal Code §§ 143.0610 *et seq.*), and any other  
2 applicable sections and regulations. Additionally, though not part of the Tenant Impact  
3 Report, the City will ensure that feasibility studies regarding the adequacy of replacement  
4 housing in a coastal zone—pursuant to provisions of the Mello Act (Gov’t Code §§ 65590  
5 *et seq.*)—will be completed and a copy provided to the HOA and its counsel as soon as it  
6 becomes available. By agreeing to commission the Tenant Impact Report and follow the  
7 procedures herein, the City does not admit that the above statutes necessarily apply to the  
8 City in this case. For example, the City has contended that Municipal Code section  
9 143.0610 does not apply to De Anza Cove pursuant to Municipal Code section 143.0615(b),  
10 but, for purposes of this Stipulation only, the City agrees that the Tenant Impact Report  
11 should be prepared consistent with the San Diego Mobilehome Park Overlay Zone without  
12 consideration of section 143.0615(b). Plaintiff contends that all of the above statutes apply  
13 to the City in this case.

- 14 2. The Tenant Impact Report will be conducted by Overland, Pacific & Cutler—or another  
15 impartial third-party company or organization (“TIR Company”) that is mutually agreeable  
16 to both the De Anza Cove Homeowners Association, Inc. and the City of San Diego—in a  
17 manner consistent with all applicable laws. The Tenant Impact Report shall address, among  
18 other things, relocation needs, relocation costs, relocation assistance, relocation benefits,  
19 replacement housing needs, replacement housing availability, appraisal of existing  
20 mobilehomes, and replacement housing payments.
- 21 3. The Tenant Impact Report will address all homeowners, tenants, and other occupants of the  
22 mobilehome park as of October 22, 2003, as well as any and all homeowners, tenants, and  
23 other occupants of the mobilehome park who may have entered the mobilehome park after  
24 October 22, 2003. Despite being willing to include and study all owners, tenants, and other  
25 occupants as described herein, the City in no way is conceding that they may have rights to  
26 any potential relocation assistance or benefits.
- 27 4. Prior to the initiation of the Tenant Impact Report, counsel for the City and the HOA will  
28 meet jointly with the TIR Company to discuss and agree upon what information is needed to

1 complete the report. Upon initiation of the Tenant-Impact-Report process, neither party  
2 shall have any unilateral communication with the TIR Company; rather, joint meetings,  
3 teleconferences, or correspondence are required. Once initiated, the Tenant-Impact-Report  
4 process cannot be unilaterally halted or terminated for reasons related to the subject matter  
5 of the HOA's lawsuit; in other words, neither party can stop the reporting process simply  
6 because they are unhappy with the conclusions drawn by the TIR Company. The City  
7 reserves its ability to terminate the TIR Company's contract, however, in the unlikely event  
8 of billing fraud or other unlawful activity.

9 5. The Tenant Impact Report and the underlying supporting documents, reports, spreadsheets  
10 and the like from the TIR Company are admissible, are not subject to characterization as  
11 protected settlement communications or attorney work product, are not subject to Evidence  
12 Code section 1152, but are subject to cross-examination, rebuttal or impeachment by any  
13 party, both in Court and at any public hearings before the City Council. The City Council,  
14 or its duly delegated agency, must, within a reasonable period of time, review and act upon  
15 the final Tenant Impact Report, as required by all applicable statutes, regulations, bills, and  
16 ordinances.

17 6. **Possessory Interest Tax.** The City Manager and the City Attorney's Office will  
18 recommend to the City Council that any valid possessory interest taxes assessed by the  
19 County of San Diego against the homeowners of the De Anza Cove mobilehome park be  
20 paid by the City of San Diego. The City intends to negotiate with the County regarding the  
21 amount of taxes to be paid. The City will pay any penalties for late, partial, or non-payment  
22 of the County's possessory interest tax. Homeowners who already paid the County's  
23 possessory interest tax will be reimbursed by the City of San Diego upon proof of payment.  
24 If, for whatever reason, the City is not able to pay or reimburse these taxes and any  
25 applicable penalties before March 1, 2005, City agrees to provide an immediate rent credit  
26 to each homeowner in an amount equal to that homeowner's tax assessment; in other words,  
27 City agrees to allow each homeowner to deduct the amount of their tax from their March or  
28 April rent so that the homeowner can be reimbursed or pay the tax directly to the County.

1       7. **Park Management.** Plaintiff has requested that the City voluntarily appoint an  
2 independent third-party management company to operate and maintain the mobilehome  
3 park, as well as hire an independent security company to provide security for the  
4 mobilehome park's residents. The City has declined Plaintiff's request. During this stay,  
5 the parties will discuss the park management issues and will revisit the issue of appointing  
6 an independent third-party management company and/or an independent security company.  
7 Moreover, the City Attorney and Tatro & Zamoyski, LLP will work together to address  
8 residents' concerns regarding park management and create a set of written protocols and  
9 rules regarding these park management issues. In the event that the parties are unable to  
10 agree on these issues, Plaintiff may file—and have heard during this stay—a motion to  
11 request the appointment of a receiver and any correlative motions and for the receiver to  
12 retain an independent third-party management company and an independent security  
13 company to return the *status quo* to the mobilehome park and its residents as ordered by the  
14 Court in its January 2004 Preliminary Injunction. The City maintains, however, that  
15 appointing a receiver is inappropriate.

16       8. During this stay, the City of San Diego will review with the De Anza Cove Homeowners  
17 Association the City's commitment to refurbish the mobilehome park's common areas  
18 known as the Pavilion and the Bay Club at the City's expense.

19       9. **Tolling Agreement.** The City of San Diego agrees and stipulates that the due date for filing  
20 new lawsuits and/or amending the existing complaint in this case, GIC 821191, based on  
21 administrative claims already filed and denied by the City of San Diego regarding actions  
22 and events at De Anza Cove is hereby extended to September 30, 2005. The City of San  
23 Diego agrees and stipulates that the due date for filing any new administrative claims  
24 regarding actions or events at De Anza Cove since June 1, 2004 is hereby extended to  
25 September 30, 2005.

26       10. The City of San Diego agrees and stipulates that, within 45 days of the expiration or  
27 termination of this Stay of Litigation, Plaintiff may file, without leave of court, an amended  
28 complaint in this case, GIC 821191, to add new parties and causes of action and that said

1 amendments will—if necessary to avoid statute of limitations issues—relate back to the date  
2 of the filing of Plaintiff’s original Complaint in November 2003.

3 11. **Discovery**. During this stay, both parties will cooperate and provide information critical to  
4 ongoing settlement negotiations or park management issues, subject to ordinary discovery  
5 objections, including the use of redacted documentation as necessary to protect any 3<sup>rd</sup> party  
6 privacy rights.

7 12. **Scope of Stay**. The entire case and all case-related issues and matters (except for Notices  
8 for claims of non-payment of rent) shall be stayed for all purposes from January 21, 2005  
9 through April 29, 2005. No correspondence or notice of any kind may be sent by the City  
10 of San Diego or its agents and attorneys to any park resident without providing a copy of  
11 same to the attorneys for Plaintiff.

12 13. During the stay, all parties reserve the right to request *ex parte* relief for matters requiring  
13 the Court’s immediate intervention.

14 14. **Status Conference**. A status conference will be held on April 29, 2005 at 10:00 a.m. in  
15 Department 66. The parties will report on their progress, and, if negotiations are going well,  
16 might request a further stay.

17 15. **Hearing Dates**. The following motion hearing dates are continued as follows:

- 18 a. Plaintiff’s Motion for Summary Adjudication (currently set for February 10, 2005):  
19 Hearing date: May 20, 2005 at 2:00 p.m.
- 20 b. Plaintiff’s Motion re: Possessory Interest Tax (currently set for February 10, 2005):  
21 Hearing date: May 27, 2005 at 2:00 p.m.
- 22 c. Defendant’s Motion for Summary Judgment (currently set for March 4, 2005):  
23 Hearing date: July 15, 2005 at 2:00 p.m.

24 If the stay does not resolve the case and there are no further extensions to this Stipulation,  
25 the parties reserve the right to appear *ex parte* to request a rescheduling of these hearing  
26 dates.

27 16. The City Council met in closed session on February 14, 2005 and voted unanimously to  
28 authorize the City Attorney to enter into this Stipulation on behalf of the City of San Diego.

1 IT IS SO STIPULATED:

2  
3 Dated: Feb. 16, 2005

MICHAEL J. AGUIRRE, CITY ATTORNEY

4  
5 By: 

6 Michael McGuinness, Esq.  
7 Heidi A. Wieman, Esq.  
8 Attorneys for Defendant/Cross-Complainant  
9 City of San Diego

10 Dated: Feb. 16, 2005

TATRO & ZAMOYSKI, LLP

11  
12 By: 

13 Timothy J. Tatro, Esq.  
14 Peter A. Zamoyski, Esq.  
15 Attorneys for Plaintiff/Cross-Defendant  
16 De Anza Cove Homeowners Association, Inc.

17 **ORDER**

18 After reviewing the papers and finding good cause for the relief requested, IT IS SO  
19 ORDERED.

20  
21 CHARLES R. HAYES

22 FEB 22 2005

23 JUDGE OF THE SUPERIOR COURT