



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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APPEALS COURT VACATES FEDERAL JUDGE ORDER ON ENDANGERED SPECIES

San Diego, CA: A federal court of appeal has vacated a court order that has banned certain development in the City of San Diego since 2006. The order imposed a moratorium on development impacting vernal pool species such as fairy shrimp and other endangered vernal pool species. The 2006 order, issued by a Federal District Court Judge on the basis of the Endangered Species Act, brought many projects already underway- mostly in Otay Mesa- to a halt. The federal appellate decision allows development to proceed under a new process implemented by the City.

The lawsuit was brought by the Center for Biological Diversity and 13 environmental groups. Plaintiffs contended that the City and Federal Government had violated the Endangered Species Act by not adequately protecting vernal pool species in San Diego from extinction due to private development. The California Building Industry Association and several private developers were allowed to intervene in the lawsuit. Plaintiffs prevailed at the trial level and the City appealed.

Recently, the City decided to accept federal grant funds to prepare a habitat conservation plan for vernal pool species. Once the habitat conservation plan is completed, the City intends to apply for a new federal permit that will authorize the City to approve development projects impacting vernal pools if there are stringent protections for the endangered vernal pool species. In the meantime, developers must now apply for permission directly from federal wildlife agencies before development projects affecting vernal pool species may proceed forward.

On the basis of these changes, the appellate court found that there was no longer a basis for an injunction and ordered the United States District Court to vacate the injunction. The appellate court rejected the Center for Biological Diversity's argument that the moratorium should remain in place while the City develops its vernal pool habitat conservation plan.

City Attorney Jan Goldsmith, whose office argued in the appeal that the injunction was unnecessary, applauded the federal appellate court's decision finding the injunction must be vacated. "The appellate court recognized that a moratorium is unnecessary," said Mr. Goldsmith. "The City's new process achieves a reasonable method of protecting endangered species without a moratorium."

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Mr. Goldsmith noted that this is another example of good legal work conducted by the City Attorney's Office. "Deputy City Attorneys George Schaefer, Christine Leone and Andrea Dixon did an outstanding job of figuring out a way to change the process to lift the moratorium while complying with federal law," he said. "Their team-work saved a lot of future costs."

Mr. Schaefer said that the City's staff has solicited public input regarding a new vernal pool habitat conservation plan, including input from the environmental community and building industry. "The City's objective is to reach a consensus on what conservation methods are necessary to comply with the Endangered Species Act without jeopardizing vital projects, such as construction of new public schools and safety improvements at local airports," he said.

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