



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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After 20 Years, City Settles De la Fuente Lawsuits

General Fund, once on the hook for \$136 million, will pay out nothing

The City of San Diego today resolved its oldest and most difficult lawsuit, a hard-fought land-use dispute that began in the 1990s and once resulted in an adverse judgment against the City that, had it not been overturned, would have cost taxpayers \$136 million.

Instead of suffering a financial blow, however, the City will benefit under today's settlement of five lawsuits involving entities owned and controlled by developer Roque de la Fuente II.

To end the 20-year-old litigation, two of the City's former insurance carriers have agreed to pay both sides in the dispute – with \$8.2 million going to the City and \$25 million to De la Fuente's Border Business Park.

During the next five years, Border Business Park will obtain permits and install necessary infrastructure so that the property can be legally developed. As an inducement to its making timely improvements and correcting code violations, \$18.75 million of the Business Park's \$25 million insurance settlement will be placed in an escrow account, to be paid out contingent upon the Business Park meeting specific benchmarks during that period and upon court approval.

To ensure against yet more lawsuits arising out of development of the property -- a central goal of the settlement that had been a barrier to settlement -- the parties agreed to a "safety valve" strategy designed by City Attorney Jan Goldsmith. Under that strategy, the parties are barred from filing any new lawsuit over this property or the development during the next five years while the project is proceeding. Should there be unresolved disputes, they will be submitted to Judge Jeffrey B. Barton for resolution in a summary proceeding. In addition, as noted above, Judge Barton will have control of the \$18.75 million security fund. There will be no appeals.

The parties are committed to cooperation, but the "safety valve" is there just to be sure. The strategy sets a path to develop the 312-acre Otay Mesa property and to resolve disagreements without litigation over that time.

The settlement, hammered out over months of intense negotiations led by Goldsmith and overseen by retired judge Leo S. Papas, was approved in closed session today by the City Council.

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“Through this creative solution, San Diego has pivoted from the specter of costly litigation to the potential for economic growth,” Goldsmith said. “Everyone wins here. Border Business Park can finally be developed into the world-class property it was intended to become, creating jobs and growing our tax base. The border region will receive an important economic stimulus. And taxpayers, once on the hook for tens of millions, will not only benefit, but be protected against future litigation.”

In addition, the City will be spared the cost of another trial, which was estimated to cost millions of dollars.

The case was on a path to a Spring 2016 trial when it was stayed by Judge Barton in August to allow one final push for a settlement with City Attorney Goldsmith’s participation. Extensive negotiations occurred, first with the insurance carriers and then with all the parties during the months of August, September, October and November.

Under the terms of the settlement:

- The five long-standing lawsuits will be dismissed with prejudice and the City released of all claims.
- The City will receive \$8.2 million from its former insurance carriers.
- No funds will be expended from the City’s General Fund or paid by its current insurance carriers.
- Border Business Park receives \$25 million from one of the City’s former insurance carriers.
- Three-fourths of that amount (\$18.75 million) will be held in escrow to secure the Business Park’s obligations over a five-year period. The Business Park is required to correct code violations, seek required permits and make specified improvements to the property. Benchmarks are established, and funds can be released only with court order.
- The Business Park will pay the City \$3,460,375 in Facilities Benefit Assessments (also known as FBA fees) in five annual installments based on its proposed uses for the property.
- To ensure there is no new litigation, the parties waived their appellate rights and agreed that Judge Barton will retain jurisdiction over any disputes so long as the Business Park’s obligations continue.

This initial dispute arose from the Business Park’s claim that the City violated a development agreement and interfered with its rights under a 1985 tentative map for development of the property.

The first lawsuit was filed in 1995 -- the same year as the O.J. Simpson trial. At the time, four of San Diego’s current Councilmembers were still teenagers.

The case has had a lifespan five times longer than the United States’ involvement in World War II. It has outlasted six mayors (Golding, Murphy, Atkins, Sanders, Filner, Gloria) and three city attorneys (Witt, Gwinn, Aguirre). Judge Papas was the fifth mediator to attempt to bring the parties together. The litigation eventually grew into five cases, with new lawsuits filed in 1999, 2000, 2009 and 2011. All cases are being settled.

"After years of litigation, this settlement marks the start of a new and prosperous future for Otay Mesa," Mayor Kevin Faulconer said. "With an agreed upon plan to bring hundreds of acres into compliance with City standards, the community will now begin to benefit from millions of dollars in developer fees to

build much-needed infrastructure, and we can focus on fulfilling Otay Mesa's potential as a hub for commerce and jobs. I applaud the City Attorney and his skilled team for working together with my staff to find a solution that is in the best interest of taxpayers and protects against future litigation."

Councilmember David Alvarez, who represents Otay Mesa, said the resolution of this litigation has been one of his priorities since he was elected in 2010.

"I am very pleased that we have succeeded in settling these lawsuits," Councilmember Alvarez said. **"For decades this litigation has not only been a risk to City taxpayers, it's been a barrier to economic development. The settlement finally allows for the construction of transportation infrastructure that will stimulate growth and job creation in Otay Mesa. I'd like to commend City Attorney Jan Goldsmith, our mediator Judge Leo Papas and the Plaintiffs representative David Wick for making this settlement possible."**

Attorney Vincent J. Bartolotta, Jr., who represent Border Business Park, said the property's development will spur the economy of the surrounding region.

"Thanks to the efforts of Mayor Faulconer's office and City Attorney Jan Goldsmith's personal efforts, we have ended 20 years of litigation with a win-win resolution," said attorney Vincent J. Bartolotta, Jr. **"The City will benefit not only from the conclusion of the litigation, but from the development of a valuable geographic region of San Diego. Border Business Park and its neighbors in Otay Mesa will now benefit from the ability to develop their properties with the necessary infrastructure to sustain continued and more rapid growth. This is a real plus for all of San Diego."**

The City's negotiating team consisted of the following: Goldsmith; Deputy Chief of Staff Felipe Monroig from the Mayor's Office; Councilmember Alvarez's Chief of Staff Travis Knowles; Chief Deputy City Attorney David J. Karlin; Christopher Garrett, Robert Howard, Jake Ryan and Clif Williams from Latham & Watkins, outside counsel for the City; Cecilia O'Connell Miller from Procopio Cory Hargreaves & Savitch LLP, and members of the City's Development Services Department: Director Bob Vacchi, Deputy Director Michael Richmond and Senior Civil Engineer Tony Khalil, who will be City project manager of the property.

Border Business Park was represented by Vincent J. Bartolotta, Jr. of Thorsnes Bartolotta McGuire; David Casselman of the Casselman Law Group, and David Wick, CEO of De la Fuente Enterprises

ABBREVIATED TIME LINE

1986: Development Agreement approved with City of San Diego to develop Border Business Park, a 312-acre industrial park in Otay Mesa. Development stalls.

1995: First of five lawsuits is filed against the City of San Diego. It alleges, among other things, that the City caused development to stall.

1999: Second lawsuit filed against City.

2000: Third lawsuit filed against City.

2001: A jury returns a \$94 million verdict against the City for breaching its development agreement with Border Business Park and inverse condemnation of land. The City appeals and a new trial is ordered on the breach-of-contract action, but the rest of the award is upheld and, with interest, increased to \$122 million. The total amount would later reach \$136 million.

2006: Appellate court reverses verdict and returns to lower court for new trial.

2009: Fourth lawsuit filed against City.

2011: Fifth lawsuit filed against City. All five cases assigned to Judge Jeffrey B. Barton.

2012: Cases re-assigned to Judge Denton, and later reassigned back to Judge Barton

2001 to 2015: Extensive negotiations and mediations occur using five different mediators, each a retired judge.

July 2015: Mediation efforts failed and parties schedule discovery (depositions, document production, etc.) and preparation for re-trial to begin in June 2016.

July 2015: Councilmember Alvarez and Judge Irving ask that City Attorney Jan Goldsmith get personally involved in the mediation. Goldsmith meets with the mediator, Judge Papas. At Goldsmith's request, communicated by both sides, Judge Barton stays all discovery and motions to enable one last effort to settle case before re-trial.

August 2015: City Attorney leads City team in renewed negotiations. This time, however, negotiations are initially held separately with the City's former insurance company and not directly between the litigants. Tentative settlements are reached with the insurer and the City and with the insurer and Border Business Park.

Sept 2015: Having each reached monetary settlements with the insurer, the City and the Border Business Park litigants renew direct settlement talks. After tentatively agreeing to the "continuing jurisdiction" process, the parties appear in front of Judge Barton, who agrees to the process.

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