

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SAVE OUR NTC, INC.,

Plaintiff and Appellant,

v.

CITY OF SAN DIEGO et al.,

Defendants and Respondents.

D039615

(Super. Ct. No. 678032)

ORDER DENYING PETITION FOR
REHEARING AND MODIFICATION

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on January 14, 2003 be modified as follows:

Page 10: Delete the first paragraph and replace it with:

The threshold issue in this case is whether Proposition D became applicable to the surplus NTC property once the U.S. government transferred it to the City. SONTC argues that, in accordance with the language of Proposition D and the intent of the electorate in adopting it, the height limitation applies to the property. The City and McMillin respond that, in accordance with controlling federal and state law, Proposition D does not apply to the property, irrespective of the voters' intent. We agree with the latter argument.

Page 11, line 13 delete the citation of authority and replace it with:

(See 32 C.F.R. §§ 175.7(d)(2), 176.30(b)(4)(ii), 176.32(b)(2)(ii).)

Page 12, delete the last paragraph and the carryover and second paragraphs on page 13 and replace them with the following:

Further, contrary to SONTC's assertion, state laws enacted to facilitate the conversion of closed military bases to civilian use are consistent with the federal statutory scheme in this regard. The California Government Code identifies the City as the local base reuse authority for the surplus NTC property (Gov. Code, § 65050), thus establishing the City as the sole state authority for purposes of reuse planning for, and transfer of, the surplus NTC property. (Gov. Code, §§ 65050, subds. (c), (d), 65051.) The state statutes do not include any express provision regarding the impact of local zoning ordinances on reuse planning, except to say that "[i]t is not the intent of the Legislature in enacting this section [establishing local base reuse entities] to preempt local planning efforts" (Gov. Code, § 65050, subd. (b).)

Pursuant to the federal and state statutory schemes governing reuse planning and transfer of military base properties, the federal government's transfer of the surplus NTC property to the City did not trigger the application of all existing zoning ordinances to the property, but instead only those that were consistent with the Reuse Plan approved by the Defense Department and HUD. As SONTC readily admits, the Proposition D height limitation is not consistent with the Reuse Plan; accordingly, the limitation did not apply to the base property, regardless of whether the voters would have intended for it to apply to property acquired by the City after its adoption.

The petition for rehearing is denied.

There is no change in the judgment.

NARES, Acting P. J.