

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
CERTIFYING SECOND REVISED FINAL ENVIRONMENTAL IMPACT REPORT 616
FOR THE ESPERANZA HILLS RESIDENTIAL DEVELOPMENT PROJECT

date

WHEREAS, Yorba Linda Estates, LLC, OC 33, LLC and the Nicholas/Long Family Trusts (collectively “Applicant”) submitted Planning Application PA 120037 (“PA120037”) requesting approval of a residential development consisting of 340 single-family residential units including the adoption of a General Plan Amendment (Land Use Element) (“GPA LUE 16-01”), Zone Change (“Zone Change 16-05”), adoption of the Esperanza Hills Specific Plan (“Specific Plan”) and certification of Second Revised Final Environmental Impact Report No. 616 (“SRFEIR 616”) (collectively, the “Project”);

WHEREAS, the County of Orange (“County”) is the lead agency under the California Environmental Quality Act (“CEQA”), for the proposed Project; and

WHEREAS, in accordance with Section 15063 of the CEQA Guidelines, the County prepared an Initial Study/Environmental Checklist for the Project and distributed it, along with the Notice of Preparation (“NOP”) to responsible and interested agencies and key interest groups for a 42-day public review period from December 22, 2012 to February 1, 2013; and

WHEREAS, pursuant to the Initial Study prepared for the Project and in recognition of the comments received in response to the NOP, the County of Orange prepared Draft Environmental Impact Report 616 dated November 27, 2013 (“DEIR 616”); and

WHEREAS, the subsequent actions addressed in DEIR 616 include, but are not limited to, County approval of a Vesting Tentative Tract Map and site development permits; and

WHEREAS, a Notice of Availability for DEIR 616 was filed with the State Clearinghouse and posted on December 2, 2013, giving public notice of the availability of DEIR 616 for review and comment; and

WHEREAS, copies of DEIR 616 were circulated for public review and comment for a 62-day period between December 4, 2013 and February 3, 2014; and

WHEREAS, a public meeting was held on January 16, 2014 to solicit comments from interested parties; and

WHEREAS, during the public review period, a total of 85 letters and emails were received and 19 public meeting commenters made comments on DEIR 616; and

WHEREAS, in accordance with the requirements of CEQA, full and complete responses to those comments received during the public review period were prepared and are included in SFREIR 616; and

WHEREAS, all the information comprising SRFEIR 616 is on file with OC Public Works/Development Services/Planning Division, 300 North Flower Street, Santa Ana, California; and

WHEREAS, on March 10, 2015, the County Board of Supervisors certified Revised FEIR 616; and

WHEREAS, on June 2, 2015, the Board of Supervisors approved the Project; and

WHEREAS, on July 7, 2015, Protect Our Homes and Hills et al. filed a Petition for Writ of Mandate challenging the adequacy of the Final EIR; and

WHEREAS, Judge William Claster in the Statement of Decision dated June 24, 2016, in Orange County Superior Court Case No. 30-2015-00797300-CU-TT-CXC, found that “the EIR impermissibly defers mitigation of greenhouse gas (GHG) impacts and also arbitrarily limits the extent to which mitigation measures must be considered. . .” and that “the EIR is flawed insofar as it arbitrarily limits mitigation requirements to an additional 5% reduction in GHG emissions, fails to mandate analysis of all mitigation measures beyond the 5% level and does not require the adoption of all mitigation measures.”; and

WHEREAS, on August 24, 2016 the Court entered a Judgment and Writ (“Judgment”), which ordered that the County vacate its prior certification of the FEIR, adoption of the Mitigation Monitoring and Reporting Program and Findings of Fact/Statement of Overriding Considerations made in support of the Project, vacate all approvals of the Project, and revise the FEIR to resolve the deficiencies identified by the Court in its Statement of Decision; and

WHEREAS, to comply with the Court’s Judgment and Writ, the County prepared Revised Final EIR No. 616 (“RFEIR”), which modified the Greenhouse Gas Emissions section of the FEIR (Section 5.6) to incorporate 40 specific GHG mitigation measures and project design features as new mitigation measures to achieve a 7.93% reduction in project specific construction and operational greenhouse gas emissions; and

WHEREAS, in accordance with the Judgment and Supplemental Writ, the new mitigation measures addressing construction-related GHG emissions required compliance to occur *prior* to the issuance of a precise grading permit instead of *prior* to initial occupancy of any on-site facility; and

WHEREAS, this 7.93% reduction is in addition to the anticipated 23.9% reduction resulting from state regulations developed in compliance with the Global Warming Solutions Act of 2006 (also known as AB 32); and

WHEREAS, on May 9, 2017, the County Board of Supervisors certified the RFEIR, and approved the Specific Plan and other entitlements, and adopted a Mitigation and Monitoring Program and Findings of Fact/Statement of Overriding Considerations; and

WHEREAS, after briefing and a hearing, Judge Claster approved the RFEIR in a final order discharging the Writ dated October 6, 2017; and

WHEREAS, on October 13, 2017, the Court of Appeals issued an unpublished decision in Court of Appeal Case No. G054185 (“Appeal Decision”) on Petitioners’ appeal of the Judgment, finding that the FEIR 616 was deficient in three respects in addition to the original GHG deficiency identified by the Orange County Superior Court on June 24, 2016: 1) detailing water supply and demand, 2) the environmental setting description of Chino Hills State Park in relation to the Project, and 3) improper deferral of the mitigation required for the community evacuation plan for the Project; and

WHEREAS, the Court of Appeals affirmed the trial court’s rulings on (i) the FEIR’s emergency evacuation analysis, which included Option 1, (ii) its biological analysis, including gnatcatchers and

special plant species, and (iii) the County’s decision not to recirculate the FEIR, and also emphasized, at page 14, that “[n]othing in this opinion shall affect the peremptory writ of mandate issued by the trial court on August 24, 2016.”; and

WHEREAS, on April 3, 2018, in accordance with the Appeal Decision, following the Appeal Decision, the Orange County Superior Court entered a judgment (“Amended Judgment”) and issued a supplemental writ of mandate (“Supplemental Writ”) concerning Final EIR 616 (“FEIR 616”), State Clearinghouse No. 2012121071 on April 3, 2018 in accordance with the Appeal Decision; and

WHEREAS, the Supplemental Writ mandated that the County vacate its prior certification of the Revised FEIR 616 (“RFEIR 616”), adoption of the Mitigation Monitoring and Reporting Program and Findings of Fact/Statement of Overriding Considerations made in support of the Project, vacate all approvals of the Project, and address the deficiencies identified by the in the Appeal Decision; and

WHEREAS, the Board of Supervisors vacated all approvals on July 31, 2018 in a public meeting; and

WHEREAS, the County modified RFEIR through a Second Revised Final EIR (“SRFEIR”) by doing the following: (i) revising Section 4.2 (a) to provide for more detailed and extensive analysis of Chino Hills State Park (“CHSP”) in relation to the Project, (b) to review all maps in the RFEIR and revise 28 of them to reflect the current boundaries of CHSP with relation to the Project, and (c) to modify Table 5-9-19 to update the discussion of the Project’s consistency with the CHSP General Plan; (ii) revising and expanding mitigation measures (Haz 15 – 31) relating to the Project’s Community Evacuation Plan (“CEP”); and (iii) revising Section 5.7.3 to provide specific details as to the projected water demand and use for the Project, all as required by the Appeal Decision; and

WHEREAS, SRFEIR is comprised of the following: (i) DEIR 616; (ii) the Responses to Comments, which includes a list of persons, organizations, and public agencies commenting on DEIR 616 and the RFEIR, along with the letters and emails received from such commenters, public meeting testimony, and corresponding responses to comments; (iii) revisions to DEIR 616 by the SRFEIR reflecting changes made in response to comments, and to the Court’s orders, Judgment and Amended Judgment in *Protect Our Homes and Hills v. County of Orange*, Orange County Superior Court Case No. 30-2015-00797300-CU-TT-CXC, and other information as detailed in the Response to Comments Errata and the Additional Environmental Analysis dated February 21, 2017 (“2017 AEA”) and the 2018 Additional Environmental Analysis (“2018 AEA”); and (iv) all attachments and documents incorporated by reference into DEIR 616, the RFEIR, the 2017 AEA, and the 2018 AEA ; and; and

WHEREAS, SRFEIR 616 is in compliance with CEQA (California Public Resources Code, Sections 21000 *et seq.*) and the CEQA Guidelines (Title 14, California Code of Regulations, Sections 15000 *et seq.*) (“CEQA Guidelines”), and is a Project EIR as defined by CEQA Guidelines Section 15161, and as such addressed the potentially significant environmental impacts associated with the Project, including the approval of a Specific Plan, General Plan Amendment GPA LUE 16-01, a Zone Change ZC 16-05, and related programs and entitlements, as well as the impacts anticipated from subsequent implementing steps in the chain of contemplated actions designed to carry out the final planning and development of the Project; and

WHEREAS, the Board of Supervisors reviewed the findings contained in the CEQA Findings of Fact, attached hereto as Exhibit A and incorporated herein by this reference, with respect to significant impacts identified in SRFEIR 616; and

WHEREAS, included in the Findings of Fact is a Statement of Overriding Considerations listing the Unavoidable Adverse Significant Impacts of the Project; and

WHEREAS, as part of the certification of the adequacy of SRFEIR 616, per California Public Resources Code Section 21081.6, a Mitigation Monitoring and Reporting Program (“MMRP”) is included identifying Mitigation Measures (“MM(s)”) and Standard Conditions (“SC(s)”), all of which have been identified as measures to reduce potential adverse significant impacts; and

WHEREAS, the principal purpose of the MMRP is to ensure that the approved mitigation measures for the adopted Project are implemented and monitored for compliance during subsequent planning stages and, ultimately, during project implementation; and

WHEREAS, a copy of the MMRP is attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, the Board of Supervisors has reviewed SRFEIR 616 and conducted a public hearing on _____ regarding certification of SRFEIR 616; and

WHEREAS, the Board of Supervisors finds SRFEIR 616 has adequately addressed the greenhouse gas emissions impacts and provided clear and specific mitigation measures to reduce impacts in a manner consistent with AB 32 and the California Air Pollution Control Officers (CAPCOA) mitigation measures for residential development; and

WHEREAS, the expanded mitigation measure requirements for the reduction of greenhouse gas emissions meet the intent of the judicially mandated requirement for resolution of deficiencies noted by the Court in its Statement of Decision in order to bring the Revised FEIR into compliance with CEQA; and

WHEREAS, the Board of Supervisors finds that the proposed greenhouse gas emissions mitigation measures in SRFEIR 616 meet and exceed the state requirements and SRFEIR 616 complies with CEQA by providing all feasible and reasonable measures for the reduction of greenhouse gas emissions; and

WHEREAS, the MMRP identifies each and every mitigation measure to be implemented to achieve a reduction of greenhouse gas emissions; and

WHEREAS, the Board of Supervisors finds that SRFEIR 616 provides a more detailed and extensive analysis of the water demand and use for the Project and its compliance with the Model Water Efficiency Landscape Ordinance (“MWELO”) and meets the intent of the judicially mandated requirement for resolution of deficiencies with respect to water demand and use noted by the Superior Court in its Amended Judgment and by the Court of Appeal in its Appeal Decision; and

WHEREAS, the Board of Supervisors finds that SRFEIR 616 has provided a more detailed and extensive analysis of CHSP in relation to the Project, has updated all maps to reflect the current boundaries of CHSP and has updated the analysis of the Project’s consistency with the CHSP General Plan so that the SRFEIR meets the intent of the judicially mandated requirement for resolution of deficiencies with respect to CHSP noted by the Superior Court in its Amended Judgment and by the Court of Appeal in its Appeal Decision; and

WHEREAS, the Board of Supervisors finds that new mitigation measures Hazards 15-31 required for the Project’s Community Evacuation Plan (“CEP”) meet the judicially mandated requirement for the resolution of deficiencies with respect to the Project’s CEP noted by the Superior Court in its Amended Judgment and by the Court of Appeal in its Appeal Decision; and

WHEREAS, the Board of Supervisors reviewed all documentation and materials comprising SRFEIR 616, including the revisions required by the Court of Appeal in its Appeal Decision and by the Superior Court in its Judgment, Amended Judgment, Writ and Supplemental Writ.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Board of Supervisors hereby certifies SRFEIR 616 as complete and adequate in that it addresses all environmental effects of the Project and fully complies with the requirements of CEQA, the CEQA Guidelines, and the County of Orange CEQA Guidelines. All of the information comprising SRFEIR 616 is on file with the County of Orange/OC Development Services at 300 N. Flower Street, Santa Ana, California.
2. The Board of Supervisors hereby certifies that SRFEIR 616 was presented to the Board as the decision-making body of the lead agency, and that the Board has reviewed and considered the information contained in SRFEIR 616 prior to approving the Project
3. The Board of Supervisors finds that SRFEIR 616 identifies all significant environmental effects of the Project, and that there are no known potential environmental impacts which are not specifically and adequately addressed in FEIR 616.
4. The Board of Supervisors finds SRFEIR 616, which includes the Additional Environmental Analysis dated August 2018, reflect the independent judgment of the County of Orange and satisfy the requirements of CEQA for Access Option 1A.
5. The Board of Supervisors approves and adopts the Findings of Fact, including the Statement of Overriding Considerations prepared for the Project, attached as Exhibit A. Specifically, the Board of Supervisors finds that each fact in support of the individual findings is true and based upon substantial evidence in the record, including SRFEIR 616.
6. The Board of Supervisors finds that although SRFEIR 616 identifies certain significant environmental effects that will result if the Project is approved; those significant effects which can be feasibly mitigated or avoided have been reduced to an acceptable level by the incorporation in the approved Project of the individual mitigation measures identified in the Findings of Fact, included as Exhibit A, and the MMRP, included in Exhibit B.
7. The Board of Supervisors finds that SRFEIR 616 describes a reasonable range of alternatives to the Project that could feasibly attain most of the basic objectives of the Project but would avoid or substantially lessen one or more of the significant effects associated with the proposed project (including the “No Project Alternative”) even though these alternatives might be more costly or infeasible.
8. The Board of Supervisors finds that no substantial evidence has been presented which would call into question the facts and conclusions appearing in SRFEIR 616.
9. The Board of Supervisors finds that no significant new information has been added to SRFEIR 616 such that recirculation for additional public review is necessary or required pursuant to CEQA Guidelines Section 15088.5.
10. The Board of Supervisors finds that the MMRP, attached as Exhibit B, establishes a mechanism and procedures for implementing and verifying the project mitigation prior to or concurrent with Project approval and implementation.
11. The Board of Supervisors hereby adopts the MMRP, and directs that the mitigation measures be incorporated into the Project prior to or concurrent with Project implementation.

12. The Board of Supervisors finds that the unavoidable adverse effects of the Project (as identified in the “Statement of Overriding Considerations,” included in the Findings of Fact as Exhibit A) that have not been reduced to a level of less than significant have been, nonetheless, lessened in their severity by the imposition of the mitigation measures identified in the MMRP. The Board further finds that any remaining, unavoidable significant impacts are clearly outweighed by the specific economic, legal, social, and other benefits of the Project (as more particularly described in the Statement of Overriding Considerations) and that the adverse environmental effects are therefore considered acceptable.
13. The Board of Supervisors adopts the Statement of Overriding Considerations, included in Exhibit A, which identifies the economic, legal, social, and other benefits of the Project which support approval of the Project notwithstanding certain unavoidable significant environmental effects which cannot be feasibly and substantially mitigated, and finds that the Statement of Overriding Considerations sets forth all of the facts upon which it is based.
14. The Board of Supervisors finds that SRFEIR 616 reflects the independent review and judgment of the County.
15. The Board of Supervisors finds that SRFEIR 616 serves as adequate and appropriate to comply with the requirements of CEQA.
16. The Board of Supervisors selects the proposed Project with Option 1A as the preferred alternative and authorizes and directs staff to take necessary actions towards its implementation.

Exhibit A

Findings of Facts
&
Statement of Overriding Considerations

Exhibit B

MMRP