

**Agenda Item**

**AGENDA SUPPORT**



**ASR Control 16-001461**

**MEETING DATE:** 12/13/16  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** 3  
**SUBMITTING AGENCY/DEPARTMENT:** OC Public Works (Approved)  
**DEPARTMENT CONTACT PERSON(S):** Shane Silsby (714) 667-9700  
 Colby Cataldi (714) 667-8860

**SUBJECT:** Esperanza Hills Vacation of 2015 FEIR Certification and Project Entitlements

<b>CEO CONCUR</b> Concur	<b>COUNTY COUNSEL REVIEW</b> No Legal Objection	<b>CLERK OF THE BOARD</b> Discussion 3 Votes Board Majority
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**Budgeted:** N/A                                      **Current Year Cost:** N/A                                      **Annual Cost:** N/A  
**Staffing Impact:** No                                      **# of Positions:**                                      **Sole Source:** N/A  
**Current Fiscal Year Revenue:** N/A  
**Funding Source:** N/A                                      **County Audit in last 3 years:** No

**Prior Board Action:** 06/02/15 #55, 03/10/15 #29

**RECOMMENDED ACTION(S):**

1. Vacate Resolution No. 15-048, dated June 2, 2015, Adopting General Plan Amendment Land Use Element 14-02 for Land Use Designation Changes for the Esperanza Hills Residential Development Project, Project No. PA120037.
2. Vacate Ordinance No. 15-010, dated June 2, 2015, Adopting the Esperanza Hills Specific Plan and Rezoning Certain Land from the A-1 General Agricultural and A1(O) General Agricultural/Oil Production Districts to the S 'Specific Plan' District.
3. Vacate Resolution No. 15-018, dated March 10, 2015, certifying Final Environmental Impact Report No. 616 for the Project.

**SUMMARY:**

Approval of the recommended actions vacates the Board of Supervisors' previous certification of Final Environmental Impact Report No. 616 and approval of the Esperanza Hills Development Project PA120037 in accordance with the Writ of Mandate issued in Protect Our Homes and Hills, et al. v. County of Orange, et al. Case No. 30-2015-00797300.

**BACKGROUND INFORMATION:**

On March 10, 2015, the Board of Supervisors (Board) certified Final Environmental Impact Report (FEIR) No. 616 and approved the Esperanza Hills Project (Project). The Board approved a gated community with 340 single-family homes on 469 acres, with a density of 0.73 dwelling units per acre. The Project approvals involved a General Plan Amendment, Adoption of a Zone Change and Specific Plan and certification of FEIR No. 616.

Following these actions, a Petition for Writ of Mandate and Complaint for Injunction Relief was filed by Protect Our Homes and Hills, Hills for Everyone, Endangered Habitats League, California Native Plant Society and Friends of Harbors, Beaches and Parks challenging the adequacy of FEIR No. 616 pursuant to CEQA (Protect Our Homes and Hills, et al. v. County of Orange, et al. Case No. 30-2015-00797300).

On July 22, 2016, after briefing and oral argument in the case, Judge William D. Claster, presiding, finalized a Statement of Decision (Attachment A). The court concluded that “the Environmental Impact Report (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.” The Court further concluded that, “delaying mitigation until immediately prior to occupancy may have the effect of limiting available measures and cause the Planning Department to consider mitigation only in the context of a nearly-completed project.”

On August 24, 2016, the Judge issued a Writ of Mandate (Writ) (Attachment B), which was subsequently served on the County on October 12, 2016, and commanded that the County:

- a. Vacate certification of FEIR No. 616, adoption of the Mitigation Monitoring and Reporting Program, and Findings of Fact/Statement of Overriding Considerations made in support of the Project.
- b. Vacate all approvals of the Project based upon FEIR No. 616, including Board Resolution No. 15-018 certifying FEIR No. 616, Board Resolution adopting General Plan Amendment LUE 14-02, and Ordinance No. 15-010 adopting the Esperanza Hills Specific Plan and rezoning certain land from the A-1 General Agricultural and A1(O) General Agricultural/Oil Production Districts to the S “Specific Plan” District.
- c. Revise the FEIR in accordance with CEQA, the CEQA Guidelines, the Statement of Decision and the final Judgment to bring the FEIR into compliance with CEQA by resolving the deficiencies identified by the Court in its Statement of Decision.

These actions were to occur within 90 days of service of the Writ in accordance with Code of Civil Procedure Section 1096, requiring personal service on the County, or by January 10, 2017.

The Writ also remanded FEIR certification and Project approval to the County for reconsideration after revision of the FEIR and enjoined the County from issuing permits and allowing construction activities to commence until the County took the necessary steps to bring the FEIR into compliance with CEQA by resolving the deficiencies identified by the Court in its Statement of Decision.

Approval of the recommended actions accomplishes “a” and “b” of the Writ. Consideration of the revised EIR, as well as consideration of Project re-approval (Item “c” of the Writ) will be the subject of a separate Agenda Staff Report.

**Compliance with CEQA:** The recommended actions to vacate Resolution No. 15-018 certifying FEIR No. 616, vacate Resolution No. 15-048 adopting a General Plan amendment, and vacate Ordinance No. 15-010 adopting the Esperanza Hills Specific Plan and rezoning the site are required by the Writ of Mandate and are not considered a project under CEQA.

**FINANCIAL IMPACT:**

N/A

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

Attachment A - Statement of Decision in Protect Our Homes and Hills, et al. v. County of Orange, et al. Case No. 30-2015-00797300

Attachment B - Writ of Mandate issued in Protect Our Homes and Hills, et al. v. County of Orange, et al. Case No. 30-2015-00797300