

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL

SAVE THE FIELD, a California nonprofit
public benefit corporation,

Petitioner,

v.

DEL MAR UNION SCHOOL DISTRICT,
and DOES 1 through 10, inclusive,

Respondent.

Case No. 37-2020-00020207-CU-TT-
CTL

~~PROPOSED~~ ORDER DISCHARGING
THE PEREMPTORY WRIT OF
MANDATE

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

Complaint Filed: June 12, 2020

On December 22, 2020, this Court held a hearing on the merits of Petitioner Save the Field's ("Petitioner") Petition for Writ of Mandate involving the California Environmental Quality Act ("CEQA"). On February 8, 2021, after post-hearing briefing by the parties, the Court executed a Judgment issuing a Peremptory Writ of Mandate ("Judgment") and executed a Peremptory Writ of Mandate ("Writ of Mandate").

The Writ of Mandate ordered the District to:

1. Set aside and vacate Resolution No. 2020-13 approving the Del Mar Heights Rebuild Project ("Project").
2. Set aside and vacate Resolution No. 2020-13 certifying a Mitigated Negative Declaration for the Project.
3. Effective as of December 22, 2020, suspend all project activities in connection with

1 the Project that could result in any change or alteration to the physical environment
2 until Respondent has reconsidered its resolution and brought it into compliance
3 with the requirements of CEOA.

4 4. Comply with the provisions of CEQA.

5 On or about March 10, 2021, the District filed its Initial Return to the Writ of Mandate.
6 On or about April 12, 2021, the District filed its Second Return to the Writ of Mandate. On or
7 about May 24, 2021, the District filed its Third Return to the Writ of Mandate.

8 According to the District’s Returns to the Writ of Mandate, the District vacated its
9 Resolution No. 2020-13 on February 24, 2021. The District also decided to pursue a “focused”
10 Environmental Impact Report (“EIR”) per the Court’s Minute Order dated February 8, 2021. On
11 March 1, 2021, the District issued a Notice of Preparation of a Draft Focused EIR (“Notice of
12 Preparation”) for the Project, which provided notice to the San Diego County Clerk and the
13 California Office of Planning and Research that the District was preparing a Focused EIR relative
14 to the Project. On the same day, the District also published the Notice of Preparation by posting
15 notice at the District’s administrative offices located at 11232 El Camino Real, Ste. 100, San
16 Diego, CA 92130, and on its website at <https://www.dmusd.org/> (under the “Measure MM”
17 button). The deadline for public comment on the Notice of Preparation was March 30, 2021, and
18 the District received 18 comments from the public.

19 On April 28, 2021, the District issued a Notice of Availability for the Draft Focused EIR to
20 the State Clearinghouse, the County Clerk, Responsible Agencies, Organizations, and Interested
21 Parties (“Notice of Availability”), which served as public notice of the availability of the Draft
22 Focused EIR, and solicited comments from the public regarding the content of the Draft Focused
23 EIR.

24 Although the deadline for public comments on the Draft Focused EIR ended on June 11,
25 2021, the District accepted public comments until June 14, 2021. Written comments on the Draft
26 Focused EIR were received from various persons, entities, and governmental agencies, and the
27 District responded to the written comments. On June 18, 2021, the District emailed written
28 responses to the public agencies’ comment letters at least ten (10) days prior to certification of the

1 Final Focused EIR.

2 On June 21, 2021, the District issued the full Final Focused EIR containing all written
3 responses to the comments received during the public comment period. On June 30, 2021, the
4 District's Governing Board of Trustees approved Resolution No. 2021-11 during a duly noticed
5 regular meeting. A true and correct copy of Resolution No. 2021-11 is attached hereto as Exhibit
6 "A" and incorporated herein. Resolution No. 2021-11 makes all appropriate findings under
7 CEQA, approves and certifies the Final Focused EIR, CEQA Findings of Fact for the FEIR, the
8 Mitigation Monitoring and Reporting Program, and approves the Project. Finally, all relevant
9 environmental documents may be found on the District's website at:
10 [https://www.dmusd.org/Measure-MM/Del-Mar-Heights-School-Rebuild-Planning/CEQA-](https://www.dmusd.org/Measure-MM/Del-Mar-Heights-School-Rebuild-Planning/CEQA-Documents/index.html)
11 [Documents/index.html](https://www.dmusd.org/Measure-MM/Del-Mar-Heights-School-Rebuild-Planning/CEQA-Documents/index.html).

12 Having considered the foregoing recitals, all of the District's Returns to the Writ of
13 Mandate, and all other documentary evidence submitted by the District, the Court hereby

14 **ORDERS:**

- 15 1. The District has complied with, and fully satisfied, both the Judgment and the Writ
- 16 of Mandate.
- 17 2. That the District has complied with the provisions of CEQA.
- 18 3. That the Writ of Mandate is hereby discharged.
- 19 4. Other order(s): _____

20 _____
21 _____
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25 
26 Dated: 7/19/2021, 2021 By: _____
27 Honorable Joel R. Wohlfeil
28 Judge of the Superior Court

Exhibit A

RESOLUTION NO. 2021-11

RESOLUTION OF THE GOVERNING BOARD OF TRUSTEES OF THE DEL MAR UNION SCHOOL DISTRICT CERTIFYING THE FINAL FOCUSED ENVIRONMENTAL IMPACT REPORT, INCLUDING THE MITIGATED NEGATIVE DECLARATION (EXCLUDING CERTAIN BIOLOGICAL RESOURCES AND CONSTRUCTION NOISE), AND ADOPTING FINDINGS OF FACT AND OTHER WRITTEN FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE PROPOSED DEL MAR HEIGHTS REBUILD PROJECT; APPROVING THE PROJECT; AND DELEGATING AUTHORITY TO STAFF TO PREPARE AND EXECUTE A NOTICE OF DETERMINATION

WHEREAS, on or about November 6, 2018, registered voters residing within the boundaries of the Del Mar Union School District (“District”) voted on and approved Measure MM, which authorized the District to issue up to \$186,000,000 (“Measure MM”); and

WHEREAS, Measure MM contemplates the potential construction of numerous public works projects including, but not limited to, the proposed Del Mar Heights Rebuild project (“Project”), which is located at 13555 Boquita Drive, Del Mar, CA 92014; and

WHEREAS, California Public Resources Code Section 21000 *et seq.* sets forth the provisions of the California Environmental Quality Act (“CEQA”), and regulations set forth at Title 14, Division 6, Chapter 3 (commencing with Section 15000) of the California Code of Regulations constitute the “State Guidelines for Implementation of the California Environmental Quality Act” (“State CEQA Guidelines”); and

WHEREAS, the District analyzed the proposed Project under CEQA and the State CEQA Guidelines; and

WHEREAS, the District’s environmental consultant prepared an Initial Study and Mitigated Negative Declaration (“MND”), which was released for a 30-day public review and comment period commencing on February 20, 2020; and

WHEREAS, the MND reviewed various environmental analyses and concluded that all issues were less than significant, or less than significant with mitigation measures; and

WHEREAS, the MND and the Project were approved by the Governing Board of Trustees of the District (“Board”) on May 12, 2020 by Resolution No. 2020-13; and

WHEREAS, on June 12, 2020, Save the Field, a California nonprofit public benefit corporation (“Petitioner”), commenced a civil action (San Diego Superior Court (“Court”) Case No. 37-2020-00020207-CU-TT-CTL) by filing a petition for writ of mandate challenging the District’s approval of the Project and certification of the MND on the grounds of a flawed environmental review process (“CEQA Litigation”); and

WHEREAS, after Petitioner’s writ of mandate was heard by the Court, the Court ruled that three environmental categories required further analysis: (1) potential impacts to the Southern Maritime Chapparal habitat and any endangered plant species caused by the Project; (2) potential impacts of construction noise on adjacent residential sensitive receptors; and (3) potential impacts caused by the proposed stairway and ADA ramp included within the scope of the Project (which was later removed from the Project’s scope by the Board on January 19, 2021); and

WHEREAS, the Court issued a judgment relative to the CEQA Litigation ordering the District to: (1) set aside and vacate Resolution No. 2020-13 approving the Project; (2) set aside and vacate Resolution No. 2020-13 certifying the MND; (3) suspend all activities in connection with the Project that could result in any change or alteration to the physical environment until the District has complied with CEQA; and (4) comply with the provisions of CEQA prior to the issuance of approval (“Judgment”); and

WHEREAS, on February 8, 2021, the Court issued a Minute Order providing that the District had the option to prepare and circulate a “focused” environmental impact report; and

WHEREAS, the draft focused environmental impact report (“FEIR”) was prepared to analyze the two remaining environmental issues of the Project – (1) potential impacts to the Southern Maritime Chapparal habitat and any endangered plant species caused by the Project; and (2) potential impacts of construction noise on adjacent residential sensitive receptors; and

WHEREAS, on March 1, 2021, the District issued a Notice of Preparation of a Draft Focused Environmental Impact Report (“Notice of Preparation”) for the Project, which provided notice to the San Diego County Clerk (“County Clerk”) and the California Office of Planning and Research (“State Clearinghouse”) that the District was preparing a FEIR relative to the Project; and

WHEREAS, on March 1, 2021, the District posted the Notice of Preparation and the FEIR by posting notice at the District’s administrative offices located at 11232 El Camino Real, Ste. 100, San Diego, CA 92130, and on its website at <https://www.dmusd.org/> (under the “Measure MM” button); and

WHEREAS, the Notice of Preparation opened a public comment period from March 1, 2021 through March 30, 2021 relating to the preparation and scope of the FEIR; and

WHEREAS, on April 28, 2021, the District issued a Notice of Availability for the Draft FEIR to the State Clearinghouse, the County Clerk, Responsible Agencies, Organizations, and Interested Parties (“Notice of Availability”), which served as public notice of the availability of the Draft FEIR, and solicited comments from the public regarding the content of the Draft FEIR; and

WHEREAS, the District accepted comments on the Draft FEIR beginning on April 28, 2021 through June 11, 2021 (“Public Comment Period”) and included late comments received through June 14, 2021; and

WHEREAS, written comments on the Draft FEIR were received from various persons, entities, and governmental agencies, and the District responded to the written comments and has considered the written and oral comments; and

WHEREAS, on June 18, 2021, the District emailed written responses to public agencies' comment letters at least ten (10) days prior to certification of the Final FEIR; and

WHEREAS, on June 21, 2021, the District issued the full Final FEIR containing all written responses to the comments received during the Public Comment Period on its website;

WHEREAS, the written responses to the comments on the Draft FEIR are incorporated into the body of the Final FEIR; and

WHEREAS, the Board finds that, on the basis of the whole record before it (including, but not limited to, the MND (excluding certain biological resources (i.e., sensitive Southern Maritime Chapparral, Torrey pine, wart-stemmed ceanothus, Nutshell's scrub oak, Del Mar manzanita, and short-leaved dudleya) (collectively, "Certain Biological Resources") and construction noise), the FEIR, the public comments received, responses to such comments, the CEQA Findings of Fact for the FEIR, and the Mitigation Monitoring and Reporting Program (collectively, the "CEQA Documents")), the Project would have no impact or less than significant impacts, including direct, indirect, and cumulative impacts, for the environmental issues summarized in the "CEQA Findings of Fact Regarding the Focused Final Environmental Impact Report" ("Findings of Fact"), which are hereby incorporated herein by this reference, prepared pursuant to Sections 15091 and 15093 of the State CEQA Guidelines and Section 21081 of the Public Resources Code; and

WHEREAS, the Findings of Fact also include findings on environmental issues addressed in the MND (excluding Certain Biological Resources and construction noise), which concluded that all environmental impacts were either less than significant or mitigated to a less than significant level; and

WHEREAS, pursuant to the Findings of Fact, the District prepared a "Mitigation Monitoring and Reporting Program" ("Monitoring Program") that is incorporated herein by this reference, which sets forth mitigation and monitoring procedures to ensure compliance with and enforcement of CEQA during the Project implementation; and

WHEREAS, the District is not required to prepare a "Statement of Overriding Considerations," as its environmental review did not identify any significant and unavoidable adverse impacts in the FEIR that would result from the implementation of the Project, and therefore, the adoption of a Statement of Overriding Considerations is not necessary; and

WHEREAS, the findings in this Resolution and the CEQA Documents reflect the Board's independent judgment and analysis; and

WHEREAS, the Board has reviewed and considered the environmental information contained in the FEIR and the CEQA Documents, and has determined that together they are adequate, complete, and have been prepared in accordance with CEQA and the State CEQA Guidelines; and

WHEREAS, copies of all of the CEQA Documents set forth herein, including, but not limited to, the Final FEIR, are on file with Chris Delehanty, the District's CEQA officer and Executive Director of Capital Programs & Technology, at the District's Office, located at 11232 El Camino Real, Ste. 100, San Diego, CA 92130; and

WHEREAS, due to the on-going COVID-19 crisis, there is limited availability to access these documents in person, and thus, the CEQA Documents will also be available on the District's website at <https://www.dmusd.org> (by clicking "Measure MM," then "Del Mar Heights School Rebuild" under "CEQA Documents") or via the following email: cdelehanty@dmusd.org; and

WHEREAS, on June 11, 2021, the Governor of the State of California ("Governor") issued Executive Order N-08-21, which extended orders set forth in Executive Order N-42-20 and Executive Order N-80-20 until September 30, 2021, relating to the suspension of the public filing, posting, notice, and public access requirements set forth in Public Resources Code section 21152 and State CEQA Guidelines section 15075 (a), (d), and (e) and modifications of procedures for providing a Notice of Determination.

NOW, THEREFORE, THE GOVERNING BOARD OF TRUSTEES OF THE DEL MAR UNION SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. All of the above-listed recitals and attachments are incorporated herein by this reference and shall hereinafter be deemed to be the findings of the Board.

Section 2. The Board has reviewed all of the CEQA Documents before it relative to the proposed Project, including, but not limited to, the MND (excluding Certain Biological Resources and construction noise), the Final FEIR and all related documents, public testimony and comments made to the Board relative to the Project, and all responses to any public testimony and comments.

Section 3. The Board certifies that (1) the Final FEIR and MND (excluding Certain Biological Resources and construction noise) were presented to and considered by the Board; (2) the Board has reviewed and considered the information contained within the Final FEIR and MND (excluding Certain Biological Resources and construction noise), including public comments and responses to such comments; (3) the Final FEIR and MND (excluding Certain Biological Resources and construction noise) have been completed in compliance with CEQA and State CEQA Guidelines; and (4) the Final FEIR and MND (excluding Certain Biological Resources and construction noise) reflect the Board's independent judgment and analysis of the Project.

Section 4. The Board has considered all public comments received in regard to the Project and the CEQA Documents.

Section 5. The Board hereby approves, adopts, and certifies the MND (excluding Certain Biological Resources and construction noise), the Final FEIR and the CEQA Documents, including, but not limited to, the Findings of Fact and the Mitigation Program.

Section 6. The Board hereby approves the Project.

Section 7. The Board hereby delegates authority to Chris Delehanty, the District's CEQA officer, or to his designee, to cause a Notice of Determination to be prepared and filed in accordance with State CEQA Guidelines section 15075, as such regulation has been temporarily modified by the Governor's Executive Order N-08-21.

Section 8. The Board hereby approves a delegation of authority and appoints the Superintendent, or Superintendent's designee(s), who is/are hereby authorized and directed to take any other action to comply with the terms or intent of this Resolution.


ADOPTED, SIGNED AND APPROVED this 30th day of June 2021.

THE GOVERNING BOARD OF THE DEL MAR
UNION SCHOOL DISTRICT

By: 

President of the Governing Board of the
Del Mar Union School District

ATTEST:

By: 

Clerk of the Governing Board of the
Del Mar Union School District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Gee Wah Mok, Esq., Clerk, Governing Board of the Del Mar Union School District, do hereby certify that the foregoing Resolution No. 2021-11 was duly adopted by the Governing Board of the Del Mar Union School District at a meeting thereof held on the 30th day of June, 2021, at which meeting a quorum of such Board was present and acting throughout and for which notice and an agenda was prepared and posted as required by law, and that such Resolution was so adopted by the following rollcall vote:

AYES: 5
NOES: 0
ABSTAIN: 0
ABSENT: 0


Gee Wah Mok

Clerk, Governing Board of the Del Mar Union School District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Gee Wah Mok, Esq., Clerk of the Governing Board of the Del Mar Union School District, do hereby certify that the foregoing is a full, true and correct copy of Resolution No. 2021-11 of such Board and that the same has not been amended, rescinded, or repealed.

Dated this 30th day of June, 2021.



Clerk, Governing Board of the Del Mar Union School District

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PROOF OF SERVICE

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 20 Pacifica, Suite 1100, Irvine, California 92618-3371.

On July 7, 2021, I served the following document(s) described as **[PROPOSED] ORDER DISCHARGING THE PEREMPTORY WRIT OF MANDATE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

- BY OVERNIGHT COURIER:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the parties shown herein. I placed the envelope or package at my place of employment in accordance with regular business practices for collection and overnight delivery.
- BY EMAIL:** My electronic service address is irene.dehart@aalrr.com. Based on an agreement of the parties pursuant to California Code of Civil Procedure § 1010.6 to accept service by electronic means, I sent such document(s) to the email address(es) listed above or on the attached Service List. Such document(s) was scanned and emailed to such recipient(s) and email confirmation(s) will be maintained with the original document in this office indicating the recipients' email address(es) and time of receipt pursuant to CCP § 1013(a).
- BY MAIL:** I placed a true and correct copy of the document(s) in a sealed envelope for collection and mailing following the firm's ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 7, 2021, at Irvine, California.



Irene J. DeHart

SERVICE LIST

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