



San Bernardino County

Legislation Text

File #: 7078, Agenda Item #: 39

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY AND RECORD OF ACTION

November 15, 2022

FROM

DAVID DOUBLET, Director, Land Use Services Department

SUBJECT

Set Aside and Vacate Project Approvals for the Moon Camp Development Project

RECOMMENDATION(S)

1. Adopt Resolution in compliance with court order to set aside and vacate the Environmental Impact Report and Tentative Tract Map for the Moon Camp Development Project.
 2. Direct the Land Use Services Department Director to return directly to the Board of Supervisors for reconsideration of the Environmental Impact Report and Tentative Tract Map for the Moon Camp Development Project in the event the project continues to be pursued by the project applicant.
- (Presenter: David Doublet, Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in additional use of Discretionary General Funding (Net County Cost) as there are no financial impacts associated with complying with the court order. In the event the project continues to be pursued by the applicant, all costs of future processing of the application will be paid by the project applicant.

BACKGROUND INFORMATION

The purpose of the recommended Resolution is to comply with an order of the court to set aside and vacate the certification of the Environmental Impact Report (EIR) and approval of the tentative tract map for the Moon Camp Development Project (Project), previously known as Project No. PH1107601 and currently known as Project No. PMISC-2020-00016. The Project is a proposed 50-unit residential subdivision located within the community of Fawnskin, Assessor's Parcel Numbers (APNs) 0304-082-04; 0304-091-12, -21 and -22.

On July 28, 2020 (Item Nos. 84 and 85), the Board of Supervisors (Board) approved the Project by taking the following actions: (1) Certifying the EIR; (2) Adopting the California Environmental Quality Act (CEQA) Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program; (3) Adopting the recommended findings for approval of a general plan amendment and tentative tract map; (4) Adopting Resolution No. 2020-155 and Ordinance No. 4391 amending the general plan land use designation and zoning designation, respectively, from Rural Living, 40-acre minimum lot size to Single Residential, 20,000

-square foot minimum lot size for the Project site; and (5) Adopting Tentative Tract Map No. 16136 to create 50 residential lots with a minimum lot area of 20,000 square feet and eight letter lots for open space conservation (collectively the "Project Approvals").

On August 23, 2020, Friends of Big Bear Valley, San Bernardino Valley Audubon Society, Inc. and Center for Biological Diversity (collectively the "Petitioners") filed a petition for writ of mandate and complaint for injunctive relief against San Bernardino County and the Board challenging the Project Approvals in Superior Court Case No. CIVDS2017298, entitled *Friends of Big Bear Valley, et al. v. County of San Bernardino, et al.*

On January 20, 2022, the Court issued a ruling that granted the petition on two limited grounds, concluding that the EIR was deficient under CEQA because substantial evidence did not support the County's finding regarding (1) the Project's impacts on the ashy-grey Indian paintbrush or pebble plain habitat, and (2) the Project's impacts on wildfire evacuation risks. As to the first issue, the Court concluded that the EIR contained inconsistent statements regarding the availability of the off-site Dixie Lee Lane parcel as being available and serving as proper mitigation for the Project's impact on ashy-grey Indian paintbrush or the pebble plain habitat. As to the second issue, the Court concluded that the EIR failed to site to data, reports, or studies regarding the County's emergency evacuation plans or routes to support the conclusion that the Project would not have a significant impact on evacuation risks.

Thereafter, on August 31, 2022, the Court issued an amended writ of mandate ordering the County and Board to set aside and vacate the Project Approvals, except for the general plan amendment and zoning amendment (Severable Approvals). The Court excluded the Severable Approvals from its order based on a finding that these approvals are supported independently by the County's subsequent certification of Program EIR (State Clearing House No. 2017101033) and the adoption of the Countywide Plan on October 27, 2020. Approval of this item includes adoption of a Resolution taking the necessary action to set aside and void the Project Approvals in order to comply with the court order.

This item also includes direction for the Land Use Services Department Director to return directly to the Board for the future reconsideration of the Project Approvals. Because Title 8 of the San Bernardino County Code is silent on the process and procedure for reconsideration of a project after being set aside and vacated by an order of the court, and because the required actions for recertification of a revised EIR and approval of a tentative tract map do not require a recommendation from an advisory body, direction to return directly to the Board for reconsideration of a revised EIR and Project Approvals is within the Board's discretion as the final review authority for such actions.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Supervising Deputy County Counsel, 387-5455) on October 24, 2022; Finance (Erika Rodarte, Administrative Analyst III, 387-4919) on September 29, 2022; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on September 29, 2022.