



# Agenda Item

## City Council

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Item #: 3.35.

7/13/2021

File #: 21-0381

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Rick Otto, City Manager

**FROM:** Gary Sheatz, City Attorney

### 1. SUBJECT

Rescind Resolution No. 11187 certifying the EIR for the Trails at Santiago Creek project. Resolution No. 11344.

### 2. SUMMARY

Discussion and action regarding adoption of a resolution to rescind City Council Resolution No. 11187. Resolution No. 11187 certified the Final Environmental Impact Report for the Project, adopted Findings of Fact, a Statement of Overriding Consideration, a Mitigation Monitoring and Reporting Program, and implemented specific project conditions. With the referendum defeating the passage of the General Plan Amendment for the Project, the EIR is no longer needed due to the lack of underlying Project approvals. As proposed, the indemnity provisions from Resolution No. 11187 would survive in the event that there are any outstanding costs or liabilities associated with the Project.

### 3. RECOMMENDED ACTION

Adopt Resolution No. 11344. A Resolution of the City Council of the City of Orange rescinding Resolution No. 11187, which certified and adopted Final Environmental Impact Report No. 1857-18 (SCH No. 2017031020), adopted Findings of Fact, a Statement of Overriding Consideration, a Mitigation Monitoring and Reporting Program, and imposed other project conditions for the Trails at Santiago Creek Project.

### 4. FISCAL IMPACT

None.

### 5. STRATEGIC PLAN GOALS

Adoption of Resolution No. 11344 is not applicable to the specific goals in the City strategic plan as it relates to the Annual Operating and Capital Improvement Budget.

### 6. DISCUSSION AND BACKGROUND

#### *Project Background and City Approvals*

Project applicant Milan REI X, LLC proposed the Trails at Santiago Creek Project, a residential project involving 128 units and 68.5 acres of open space located at 6145 E. Santiago Canyon Road in the City of Orange ("Project Site"). After entering into a Pre-Development Agreement regarding the

proposed Project with applicants on October 11, 2016, the City began environmental review to analyze the proposed Project's potentially significant environmental impacts. The City issued a Final EIR No. 1857-18 for the Project on July 5, 2019.

At the October 22, 2019 meeting, the City Council adopted two Resolutions related to the Project: (1) Resolution No. 11187, certifying the EIR and related actions, and (2) Resolution No. 11188, approving the General Plan Amendment for the Project.

Shortly thereafter on November 12, 2019, the City adopted subordinate Project approvals including the zoning amendments in Ordinance No. 07-19, and the development agreement in Ordinance No. 08-19. However, Resolution No. 11188 specifically stated that "[t]he other subordinate project entitlements shall not take effect unless this General Plan Amendment becomes effective."

### ***Voter Referendum of Resolution No. 11188***

City residents pursued a referendum of Resolution No. 11188 and submitted to the City a "Petition for a Referendum Against Resolution No. 11188 Adopted by the Orange City Council on October 22, 2019" ("Referendum" or "Measure AA"). The Referendum contained the requisite number of signatures to qualify for a public vote.

On February 11, 2020, the City Council submitted Resolution No. 11188 to the voters of the City of Orange. Measure AA was placed on the ballot of the November 3, 2020 General Municipal Election, where a vote "YES" on Measure AA supported authorization of the Project and a vote "NO" opposed authorization of the Project.

The certified results of the election contained in Resolution 11287 show that Measure AA failed to pass, with 39,877 of the City's registered voters voting "NO" on Measure AA, and 23,290 voting "YES."

The electorate's disapproval of Measure AA invalidated Resolution No. 11188 such that the approval of General Plan Amendment No. 2018-0001 never took legal effect. The subordinate project approvals contained in Ordinance Nos. 07-19 and 08-19 therefore also did not become effective.

Certification of the Final EIR contained within Resolution No. 11187 is no longer needed due to the lack of underlying Project approvals (CEQA Guidelines §§ 15090, 15092). Given the lack of Project approvals, the applicant Milan REI X, LLC, submitted a request to the City on July 2, 2021 stating "on behalf of Milan, this email is to request that the City Council rescind Resolution No. 11187 adopted on October 22, 2019." (Attachment B.)

City Staff agree with Milan's request, but suggest that the City maintain the indemnity provisions from Resolution No. 11187 in the event that there are any outstanding costs or liabilities associated with the actions related to the Project.

## **7. ATTACHMENTS**

- Resolution No. 11344
- Email from Milan REI X, LLC, requesting the City rescind Resolution No. 11187
- Resolution No. 11187