

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 02/08/2021

TIME: 08:29:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00020207-CU-TT-CTL** CASE INIT.DATE: 06/12/2020

CASE TITLE: **Save the Field vs Del Mar Union School District [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

APPEARANCES

The Court is in receipt of the proposed judgment and writ of mandate submitted by both parties, as well as the briefing supporting their positions. The Court has read and considered these materials and has determined that it will execute the judgment and writ of mandate submitted by Petitioner, but with changes. The Court has redacted some language and added other language. The modified and signed documents will be filed. However, Petitioner is directed to submit "clean" versions incorporating the changes.

In the event of a finding that a public agency has not complied with CEQA requirements, the Court cannot direct the agency to exercise its discretion in any particular way. Pub. Resources Code 21168.9. In Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal. App. 4th 1099, 1112, the Court stated:

"This conclusion does not mean the Agency is required to start the EIR process anew. Rather, the Agency need only correct the deficiency in the EIR that we have identified before considering recertification of the EIR. The form of that correction is a matter for the Agency to determine in the first instance. (See CEQA, § 21168.9, subd. (c)....) Likewise, whether the correction requires recirculation of the EIR, in whole or in part, is for the Agency to decide in the first instance in light of the legal standards governing recirculation of an EIR prior to certification"

(most internal citations omitted); see also Friends of College of San Mateo Gardens v. San Mateo County Community College Dist. (2017) 11 Cal. App. 5th 596, 611 ("We will not, however, order the District to prepare an EIR on remand, as Friends requests. The District can choose to prepare a subsequent MND if it determines that the possibly significant environmental effects will 'be reduced to insignificance' through the implementation of mitigation measures.").

Given the Court's prior ruling granting the writ of mandate (ROA # 47), Respondent is left with three choices if the Rebuild Project is to go forward: it may prepare and circulate a complete EIR, a "focused" EIR or a second MND. The briefing provides cogent argument why any of these scenarios could satisfy the requirements of CEQA. However, Respondent must be afforded the discretion to choose the path forward. The Court lacks the authority to mandate any particular procedure, and any finding in that

regard would constitute an impermissible advisory ruling. The redactions and modifications to the judgment and writ of mandate are intended to permit Respondent with sufficient latitude to exercise its discretion. Of course, any procedure Respondent chooses to follow will be subject to subsequent judicial review.

IT IS SO ORDERED.