

RESOLUTION NO. 2021-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BEAUMONT, CALIFORNIA, DENYING THE
CERTIFICATION OF THE FINAL PARTIALLY
RECIRCULATED ENVIRONMENTAL IMPACT REPORT**

WHEREAS, The Preserve LLC applied for the approval of the Legacy Highlands Specific Plan for property located south of State Route 60 and west of State Route 79, within the City of Beaumont's sphere of influence, for the development of approximately 1,600 acres, including more than 700 acres of undeveloped open space, up to 2,868 residential units, 100 acres of commercial development, and supporting school, park, and recreation uses (the "Project").

WHEREAS, in addition to approval of the specific plan, the Project required approval by the City Council of a zone change to pre-zone 1,616.89 acres of land from County of Riverside W-2 (Controlled Development) to City of Beaumont SP-A (Specific Plan Area) and R-R (Rural Residential). The Project also required the City Council to request the Local Agency Formation Commission of Riverside County to initiate proceedings for the annexation of the Project area to the City of Beaumont and concurrent detachment from the Riverside County Waste Management Resources District, and annexation to the Beaumont Cherry Valley Water District. The Project applicant also requested approval of a 25 year Development Agreement between the City of Beaumont and The Preserve LLC which would have given The Preserve LLC a vested right to develop and construct the Project in accordance with the entitlements received from the City pursuant to its discretionary approvals as well as all existing land use regulations and development standards in existence at the time the Development Agreement was approved.

WHEREAS, the City of Beaumont conducted an extensive environmental review for this Project which included an Environmental Impact Report ("2008 EIR") prepared by the independent firm of Applied Planning, Inc., with technical reports concerning biological resources, traffic and circulation, air quality, and noise.

WHEREAS, on January 15, 2008, the City Council held a duly noticed and advertised hearing on the matter. At the close of the public hearing, the City Council took the following actions:

1. Approved Resolution No. 2008-05 certifying the Final 2008 EIR for the Project;
2. Approved Resolution No. 2008-06 adopting Specific Plan No. 07-02;
3. Approved Resolution No. 2008-07 requesting initiation of annexation proceedings;
4. Approved Ordinance No. 924 adopting a zone change to pre-zone the Project area from County of Riverside W-2 (Controlled Development) to

City of Beaumont SP-A (Specific Plan Area) and R-R (Rural Residential);
and

5. Approved Ordinance No. 925 adopting the Development Agreement between the City of Beaumont and The Preserve LLC.

WHEREAS, on or about February 14, 2008, Cherry Valley Pass Acres and Neighbors ("CVPAN") and Cherry Valley Environmental Planning Group ("CVEPG") filed a petition for a writ of mandate and complaint for declaratory relief in an action entitled Cherry Valley Pass Acres and Neighbors, et al. v. City of Beaumont, et al., Case No. RIC492830 in the Riverside County Superior Court based, in part, on the following alleged violations of the California Environmental Quality Act ("CEQA"):

1. Failure to adequately analyze the Project's water impacts;
2. Failure to properly analyze cumulative impacts;
3. Failure to properly analyze growth inducing effects;
4. Failure to properly analyze Project alternatives; and
5. Failure to adopt an adequate statement of Overriding Considerations.

WHEREAS, The Preserve LLC filed a chapter 11 bankruptcy case in the United States Bankruptcy Court, Central District of California (Case No. 2:10-bk-18429-BB) on September 25, 2008, which was subsequently converted to one under chapter 7. On December 16, 2008, United States Bankruptcy Judge Sheri Bluebond entered an order granting relief from the automatic stay to permit the CEQA action to proceed.

WHEREAS, on February 3, 2009, after reviewing the pleadings submitted by the parties, and after conducting a trial on the petition and complaint filed by CVPAN and CVEPG, Judge Mac Fisher of the Riverside County Superior Court issued a Statement of Decision in the CEQA action, finding the 2008 EIR deficient with respect to water supply impacts and alternatives analysis. Further, the Court held that the statement of Overriding Consideration did not comply with CEQA. The remaining challenges to the 2008 EIR were found to be without merit.

WHEREAS, on March 30, 2009, in accordance with the Statement of Decision, on March 30, 2009, Judge Fisher issued a Judgment and Writ of Mandate ("Writ") in the CEQA action directing the City to set aside and vacate its certification of the 2008 EIR for the Project. In addition, the court directed the City to set aside and vacate the land use approvals related to the Project.

WHEREAS, on June 30, 2009, the City of Beaumont complied with the Judgment and the Writ by enacting Resolution No. 2009-24, which rescinded all prior approvals for the Project. Specifically, the City Council set aside and vacated its (a) adoption of Resolution No. 2008-05; and (b) approvals of the Legacy Highlands Project, including the Legacy Highlands Specific Plan and the Development Agreement.

WHEREAS, in the fall of 2017, The Preserve LLC asserted that the City of Beaumont violated the automatic stay by enacting Resolution No. 2009-24. The City disputed such assertion. Nevertheless, out of an abundance of caution, the parties stipulated that Resolution No. 2009-24 was enacted in violation of the automatic stay and thus was void, withdrawn and cancelled. On December 20, 2017, the Stipulation was approved by the United States Bankruptcy Court.

WHEREAS, the City prepared a Partially Recirculated Environmental Impact Report (“PREIR”) based on the Statement of Decision. The following is a summary of the City’s environmental review for the PREIR:

1. The City issued a Notice of Availability advising the public that it was circulating the PREIR for a 45-day review period: December 14, 2020 through January 28, 2021.
2. A Final PREIR was prepared and submitted to the City Council on or about February 23, 2021 and was ready for review and approval or disapproval by the City. However, in light of the 2017 Stipulation, the City could not take any action related to the Final PREIR until the automatic stay was lifted. To do otherwise would not only be in direct violation of the Stipulation, but also in violation of the Judgment and the Writ. The purchaser of the Project disagreed with the City’s position that it needed to comply with the Judgment and Writ in the CEQA action.

WHEREAS, on May 21, 2021, the City of Beaumont filed a Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 in the United States Bankruptcy Court. After reviewing the pleadings submitted by the parties, and after conducting a hearing, Judge Bluebond of the United States Bankruptcy Court granted the City’s motion for relief from automatic stay on June 29, 2021. The Court ordered, among other things, that:

1. The City may take the PREIR Actions¹ as required or permitted by local and state law including, but not limited to complying with the Statement of Decision, the Judgment and the Writ in the Riverside County Superior Court CEQA action, and reviewing and acting upon the currently proposed Final PREIR; and

¹ The PREIR Actions is defined in the United States Bankruptcy Order to include, but are not limited to, reviewing and acting upon the Final PRIER, complying with the judgment and the writ in the Riverside County Superior Court, the related entitlements, the Legacy Highlands development agreement, specific plan, site plan, land division, annexation, pre-zoning and zoning, mitigation monitoring and reporting program, Findings of Facts and a Statement of Overriding Considerations, Resolution No. 2008-05, Resolution No. 2008-06, Resolution No. 2008-07, Ordinance No. 924 and Ordinance No. 925.

2. The City Council and the Planning Commission shall retain any and all discretion and authority under CEQA, other state law as well as local law with regards to the PREIR Actions.

WHEREAS, on August 17, 2021, the City complied with the CEQA Judgment and Writ from the Riverside County Superior Court, and the Order from the United States Bankruptcy Court. Specifically, the City Council of the City of Beaumont, California introduced and waived full reading for the first time and ordered posted at a regular meeting “An Ordinance of the City Council of the City of Beaumont, California, Decertifying the Final Environmental Impact Report; Rescinding Adoption of Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program, Specific Plan No. 07-02, Pre-Zoning Ordinance No. 924, Development Agreement Ordinance No. 925, and Request for the Local Agency Formation Commission to Initiate Annexation Proceedings as to the Legacy Highlands Specific Plan, Site Plan, Land Division, Annexation, Pre-Zoning and Zoning” (“the Ordinance”).

WHEREAS, on September 21, 2021, the Ordinance was passed, approved and adopted at a regular meeting of the City Council of the City of Beaumont, California.

WHEREAS, the City Council must complete and certify the Final PREIR within one year following its acceptance of the application as complete. (14 Cal. Code Reg. § 15108; Pub. Res. Code § § 21100.2, 21151.5(a).) Therefore, the Final PREIR must be reviewed and approved or disapproved for certification no later than December 8, 2021.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Beaumont, California makes the following findings, determinations and recommendations with respect to the Final PREIR for the proposed Project:

SECTION 1: Denial of Final PREIR

1. That the above recitations are true and correct, and material to this Resolution.
2. The Riverside County Superior Court issued a Judgment and Writ in the CEQA litigation ordering the City Council to set aside and vacate its (a) adoption of Resolution No. 2008-05 (certifying the 2008 EIR); and (b) approvals of the Legacy Highlands Project, including the Legacy Highlands Specific Plan and the Development Agreement.
3. The United States Bankruptcy Court issued an Order that the City may take the PREIR Actions as required or permitted by local and state law including, but not limited to complying with the Statement of Decision, the Judgment and the Writ in the Riverside County Superior Court CEQA action, and reviewing and acting upon the currently proposed Final PREIR.

4. Based on the CEQA Judgment and Writ from the Riverside County Superior Court, and the Order from the United States Bankruptcy Court, the City Council passed, approved, and adopted an Ordinance rescinding all prior approvals for the Project, including the certification of the 2008 EIR on September 21, 2021.
5. The City Council must review and consider the information in the 2008 EIR when considering and certifying the Final PREIR. However, since the 2008 EIR and entitlements have been rescinded, there is no longer an EIR for the Project. Therefore, the City Council hereby denies the certification of the Final PREIR.

SECTION 6: Effective Date

This resolution shall take effect immediately upon its adoption.

MOVED, PASSED, and ADOPTED this 2nd day of November by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lloyd White, Mayor Pro Tem

Attest:

Steven Mehlman, City Clerk

Approved as to form:

John Pinkney, City Attorney