



Staff Report

TO: City Council
FROM: Todd Parton City Manager
DATE: November 2, 2021
SUBJECT: **Continued Public Hearing and Consideration of Resolution Denying Certification of Final Partially Recirculated EIR for the Legacy Highlands Specific Plan Project**

Background and Analysis:

2008 Approval of Project, and Certification of the Final EIR

On January 15, 2008, the City Council certified the Legacy Highlands Specific Plan Project Final Environmental Impact Report, SCH No. 2005031155 (the "2008 EIR"), and approved the Legacy Highlands Specific Plan Project ("Project"). Specifically, the City Council adopted the following resolutions and ordinances for the Project:

- Resolution No. 2008-05 certifying the 2008 EIR for the Project,
- Resolution No. 2008-06 adopting Specific Plan No. 07-02,
- Resolution No. 2008-07 requesting initiation of annexation proceedings,
- 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
- Ordinance No. 925 adopting the Development Agreement between the City of Beaumont and The Preserve LLC.

CEQA Lawsuit and Judgment

Following a final action by the City, a lawsuit was filed under the California Environmental Quality Act ("CEQA") in February 2008, challenging the City's actions. A hearing on the writ petition was conducted in February 2009. The Court found 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. A Statement of Decision, Judgment and Peremptory Writ of Mandate ("Writ") were issued on March 30, 2009, that directed 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.

Bankruptcy Proceeding

The Preserve, LLC, the Project's applicant, filed a Chapter 11 bankruptcy case in the United States Bankruptcy Court, Central District of California during the CEQA litigation, which was subsequently converted to a Chapter 7 filing. In December 2008, the United States Bankruptcy Court entered an order granting relief from the automatic stay to permit the CEQA action to proceed.

Enacting Resolution No. 2009-24

On June 30, 2009, the City 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 adoption of Resolution No. 2008-05 (i.e., certification of the 2008 EIR); and approvals of the Legacy Highlands Project, including the Legacy Highlands Specific Plan and the Development Agreement.

Stipulation Voiding Resolution No. 2009-24

In 2017, The Preserve, LLC asserted that the City of Beaumont violated the automatic stay of the Bankruptcy Court by enacting Resolution 2009-24. The City disputed such assertion. Nevertheless, out of an abundance of caution, the parties stipulated that Resolution 2009-24 was enacted in violation of the automatic stay and thus was void, withdrawn and cancelled. In December 2017, the stipulation was approved by the United States Bankruptcy Court.

Partially Recirculated Environmental Impact Report

The City prepared and distributed the December 2020 Partially Recirculated Environmental Impact Report ("PREIR"). The PREIR addressed the issues identified in the CEQA Judgment. The PREIR was circulated for a 45-day review period from December 14, 2020, through January 28, 2021. A final PREIR was prepared and submitted to the City on or about February 23, 2021, and was ready for review and approval or disapproval by the City. However, in light of the 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.

Motion for Relief from the Automatic Bankruptcy Stay

On May 21, 2021, the City 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, 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 the City may comply with the Statement of Decision, the judgment and the Writ in the Riverside County Superior Court CEQA action, and review and act upon the currently proposed final PREIR.

City of Beaumont Adopted Ordinance Complying with Court Orders

On August 17, 2021, City Council approved the first reading of an ordinance decertifying the final environmental impact report and rescinding adoption of findings statement 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 (LAFCO) to initiate annexation proceedings as to the Legacy Highlands Specific Plan, Site Plan, Land Division, Annexation, Pre-Zoning and Zoning. In a previous item on the current agenda, the City Council will have considered the second reading and adoption of such ordinance. Upon adoption, the City will have complied with the Statement of Decision, the judgment and the Writ in the Riverside County Superior Court CEQA action, and the United States Bankruptcy Court.

Project Case History

Project Location

The Project site is located southerly of SR-60 and westerly of SR-79 in unincorporated Riverside County, adjacent to the boundary of the City of Beaumont. The Project site lies within the City of Beaumont Sphere of Influence (SOI) and would be annexed to the City as one of the Project's requested discretionary actions.

Project Summary

The Project would provide for a total of up to 2,868 dwelling units (1,107 single family residential units + 1,761 active adult, low density residential units), 100 acres (approximately 1.20 million square feet) of commercial/industrial uses, a 20-acre school site, various neighborhood parks, undeveloped open space, and all supporting infrastructure and utilities. 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 LAFCO to initiate proceedings for the annexation of the Project area to the City 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.

Since the 2008 EIR has been vacated, the final PREIR is incomplete and must be denied.

As noted above, on September 21, 2021, the City Council passed, approved, and adopted an Ordinance rescinding all prior approvals for the Project, including the certification of the 2008 EIR. The Ordinance was enacted in compliance with the CEQA Judgment and Writ from the Riverside County Superior Court, and the Order from the United States Bankruptcy Court.

The final EIR consists of the draft EIR, among other things. (CEQA Guidelines, § 15132(a).) Before approving the project, the lead agency must certify that its decision-making body reviewed and considered the information contained in the EIR, that the EIR reflects the agency's independent judgment and analysis, and that the EIR was completed in compliance with CEQA. (Pub. Resources Code, § 21082.1, subd. (c); CEQA Guidelines, § 15090.)

Based on the CEQA Guidelines, the City Council must review and consider the information in the 2008 EIR when reviewing and approving or disapproving the certification of 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 should deny the certification of the final PREIR.

If City Council concurs, the appropriate action would be a motion to adopt a resolution denying the certification of the final PREIR.

Fiscal Impact:

City staff estimates the cost to prepare this report to be \$9,750.

Recommended Action:

Hold the continued public hearing, and
Waive the full reading and adopt by title only, "A Resolution of the City Council of the City of Beaumont, California, Denying the Certification of the Final Partially Recirculated Environmental Impact Report."

Attachments:

A. Resolution