



Staff Report

TO: City Council
FROM: Todd Parton, City Manager
DATE: March 15, 2022
SUBJECT: **Consideration of Possible Amendments to Settlement Agreement, Mitigation Measures, and Condition of Approval Relating to the Noble Creek Vistas Specific Plan**

Project History and Background:

2005 Approval of Project, and Certification of the Final EIR: On or about February 15, 2005, the Beaumont City Council certified the Noble Creek Vistas Specific Plan Final Environmental Impact Report (“Final EIR”), adopted the Noble Creek Vistas Specific Plan subject to Conditions of Approval, and a Statement of Overriding Considerations (“Project”). The City filed a Notice of Determination with the Riverside County Recorder in connection with the Project.

CEQA Lawsuit: On March 17, 2005, Petitioners Cherry Valley Pass Acres and Neighbors (“CVAN”) and Cherry Valley Environmental Planning Group filed an action against the City in Riverside County Superior Court entitled *Cherry Valley Pass Acres and Neighbors, et al. v. City of Beaumont*, Case No. RIC 427282, challenging the City’s certification of the Final EIR and approval of the Project under the California Environmental Quality Act (“CEQA”). The developer, Noble Creek Meadows, LLC (“Noble Creek”) was named as a Real Party in Interest in the action.

Settlement Agreement: In or about May 2006, the parties¹ entered into a settlement agreement. As set forth more fully below, the settlement agreement modified the Project and certain Conditions of Approval originally issued by the City on February 15, 2005, including Condition of Approval 27 which is at issue here. The tentative tract map was also approved around the time of the settlement.

¹ The parties to the Settlement Agreement include the following: (1) CVAN; (2) Cherry Valley Environmental Planning Group; (3) the City of Beaumont; (4) Noble Creek; (5) Fiesta Development; (6) Olinger Riverside Limited Partnership; and (7) Diamond Riverside Limited Partnership.

Noble Creek Objects to Mitigation Measures and Condition of Approval: On August 5, 2021, approximately 16 years after the Project was approved, legal counsel for Noble Creek provided written notice of a Mitigation Fee Act protest. Specifically, Noble Creek objected to the City's imposition of three mitigation measures from the Noble Creek Vistas Specific Plan EIR (i.e., Mitigation Measures 4.7.1, 4.7.2, and 4.7.3) and Noble Creek Vistas Specific Plan Condition of Approval 27.

On September 13, 2021, the City responded to Noble Creek's August 5, 2021, notice of Mitigation Fee Act Protest. Noble Creek was advised that City did not believe its protest had any merit. First, City staff communicated that Noble Creek completely ignored the Settlement agreement, which changed the conditions of the Project and made it clear that Noble Creek must construct certain transportation improvements prior to the City's issuance of the first certificate of occupancy.

Second, Noble Creek was advised that the traffic improvements in the Transportation Mitigation measures and Condition of Approval 27 must follow the EIR, Specific Plan, Conditions of Approval, Mitigation Monitoring Plan, and Settlement agreement. Based on the clear language set forth in these documents, the City stated that Noble Creek is obligated to physically construct the traffic improvements contemplated for buildout of the *entire* Specific Plan.

Tolling Agreement: On November 5, 2021, the City and Noble Creek entered into a Tolling Agreement to preserve the parties claims and defenses under the Mitigation Fee Act for 180-days (i.e., until May 4, 2022). Noble Creek requested the Tolling Agreement because it was working with CVAN to amend the Settlement agreement regarding Condition of Approval 27.

PROJECT CASE HISTORY:

Project Location: The Project is within the City of Beaumont and is comprised of 332 undeveloped acres, located southwesterly of the intersection of Brookside and Beaumont Avenues. It is approximately 1.5 miles northeasterly of the I-10/Oak Valley Parkway interchange.

Project Summary: The Specific Plan is comprised of a consortium of property owners. Noble Creek, one of the property owners, initially proposed single-family residential uses, as well as areas for a middle school, recreation, and open space. When fully developed, the EIR proposed the construction of a maximum of 965 homes in the Project area. However, as discussed below, the Project has been reduced in size since that time.

History of Specific Plan Area After Approval of Specific Plan and EIR: A substantial portion of the Specific Plan area has now been developed. Brookside Elementary School was constructed along Brookside Avenue and Mountain View Middle School was constructed at the intersection of Beaumont Avenue and Cougar Way. Both were completed prior to adoption of the Specific Plan and made roadway improvements immediately along their respective frontages. In addition, the San Geronio Pass Water Agency constructed its spreading grounds project along Beaumont Avenue without constructing any offsite improvements beyond its frontage.

The San Geronio Pass Agency's recharge basins were constructed in an area that was planned and analyzed for residential units in the Specific Plan and EIR. Specifically, the San Geronio Pass Water Agency property was allocated 126 units in the Specific Plan. Those 126 units will no longer be constructed in the Specific Plan area. In addition, Specific Plan Planning Area 1, which was anticipated to include 180 units by the Specific Plan, is vacant and the tentative map for the property has expired. Therefore, the 180 units slated for Planning Area 1 will not likely be developed. Noble Creek has obtained approval of a tentative map from the City that allows 274 single family units on its portion of the Specific Plan, which expires in November 2022. The number of units that would be constructed for the Project represents less than 43% of the residential units contemplated by the Specific Plan (648 units total) and less than 30% of the residential units analyzed in the EIR (965 units total).

MITIGATION MEASURES AND CONDITION OF APPROVAL AT ISSUE:

Mitigation Measure 4.7.1: Pursuant to the Noble Creek Vistas Specific Plan Consolidated Environmental Impact Report Dated May 2004 ("Draft EIR") and the Mitigation Monitoring Plan within the Final EIR, Mitigation Measure 4.7.1 states as follows:

"4.7.1 To provide City of Beaumont threshold Level of Service "D" or better, and as applicable, the County threshold Level of Service "C" or better during the peak hours for buildout traffic conditions with the Project, the following off-site intersection improvements are required:

- *In order to achieve County threshold of LOS C at the intersection of Beaumont Avenue (NS) at Cherry Valley Boulevard (EW):*
 - *Construct a second through lane for all approaches;*
 - *Provide an additional left turn lane for the northbound, southbound, and westbound approaches;*
 - *Provide northbound, eastbound, and westbound right turn lanes.*

- *In order to achieve City threshold of LOS D at the intersection of Beaumont Avenue (NS) at 14th Street (EW):*
 - *Construct a second westbound through lane;*
 - *Provide a second left turn lane for the northbound, southbound and westbound approaches;*
 - *Provide a right turn lane for the northbound, southbound, and eastbound approaches.*
- *In order to achieve City threshold of LOS D at the intersection of Beaumont Avenue (NS) at I-10 Freeway WB Ramps (EW):*
 - *Restrict 5th Street access to/from Beaumont Avenue;*
 - *Construct a loop ramp in the northeast quadrant to provide westbound access onto the I-10 Freeway. This improvement will eliminate the northbound left-turn lane at this location;*
 - *Provide a southbound right turn lane;*
 - *Provide a shared westbound lane for left and right turns.*
- *In order to achieve City threshold of LOS D at the intersection of Beaumont Avenue (NS) at I-10 Freeway EB Ramps (EW):*
 - *Restrict 4th Street access to/from Beaumont Avenue at this location;*
 - *Construct an additional northbound through and right lane;*
 - *Construct a second southbound and eastbound left turn lane;*
 - *Provide an eastbound free right turn lane.”*

Although not part of the specific text of Mitigation Measure 4.7.1, the Draft EIR states directly below the mitigation measure the following:

“As mitigation for Project-related traffic impacts at the above-referenced intersections, payment of traffic impact mitigation fees shall be realized consistent with the Project fair share contribution to intersection improvements presented in Table 4.7-11.”

Table 4.7-11 states as follows:

Intersection	Existing Traffic	Buildout With Project	Project Traffic	Growth	Project Fair Share Percentage
Beaumont Avenue (NS) at:					
Cherry Valley Blvd. (EW)	836	5792	365	4956	5.35%
14th Street (EW)	1052	6888	320	5836	5.48%
1-10 Fwy WB Ramps 5 th Street (EW)	2181	7080	99	4899	2.02%

1-10 Fwy EB Ramps 4 th Street (EW)	3117	8034	69	4917	1.40%
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Source: *Noble Creek Specific Plan Traffic Study (Revised) Beaumont, California (Urban Crossroads) March 26, 2001.*

Mitigation Measures 4.7.2: Pursuant to the Draft EIR, and the Mitigation Monitoring Plan within the Final EIR, Mitigation Measures 4.7.2 state as follows:

“4.7.2 Construct Beaumont Avenue south of Brookside Avenue to the south Project boundary at its ultimate half-section width as a Major highway in conjunction with development.”

Mitigation Measures 4.7.3: Pursuant to the Draft EIR, and the Mitigation Monitoring Plan within the Final EIR, Mitigation Measures 4.7.3 state as follows:

“4.7.3 Construct Brookside Avenue from the west Project boundary to Beaumont Avenue at its ultimate half-section width as a Secondary highway.”

Mitigation Measures 4.7.2 and 4.7.3 do not discuss fair share contribution, nor did the Traffic Study analyze the Project’s fair share calculations at these intersections.

Condition of Approval 27: As set forth above, the Beaumont City Council approved certain Conditions of Approval on February 15, 2005 for the Specific Plan. The Settlement agreement subsequently modified Conditions of Approval 27 to the Specific Plan (the portion modified/added is indicated by the double underline) to state as follows:

- “27. The Circulation Plan contained in the Specific Plan shall be modified as follows:
 - a. The cross-section for Beaumont Avenue shall be modified to reflect a divided two-lane roadway, based upon the County of Riverside standard for an industrial collector, with a right-of-way of 78 feet and a curb-to-curb width of 52 feet.
 - b. The cross-section for Noble Creek Parkway shall be modified to reflect a divided two-lane roadway, based upon the County of Riverside standard for an industrial collector, with a right-of-way of 78 feet and a curb-to-curb width of 52 feet.
 - c. The City shall not issue any certificates of occupancy for the Project until the improvements contemplated by the Specific

Plan to the following streets and intersections have been completed: the intersections of Beaumont Avenue and Oak Valley Parkway, Beaumont Avenue and Cougar Way, Beaumont Avenue and Brookside Avenue and Beaumont Avenue and Cherry Valley Boulevard. Specifically, the improvements will result in compliance with the level of service required in the mitigation measures approved by the City for the Project.”

NOBLE CREEK REQUESTS THAT THE CITY AGREE TO AMEND SETTLEMENT AGREEMENT AND MITIGATION MEASURES:

Noble Creek contends that their understanding of Condition of Approval 27 and Mitigation measures 4.7.1, 4.7.2, and 4.7.3 at the time the Project was approved was that it would only be responsible for its fair share of traffic fees based on the amount of traffic generated by development on Noble Creek’s property. In other words, it believes it is only required to pay fair share fees for project-related traffic impacts at intersections in lieu of physically constructing the traffic improvements.

However, as discussed above, the City believes that the Mitigation measures and Condition of Approval require Noble Creek to construct traffic improvements contemplated for buildout of the entire Specific Plan, excluding Brookside Elementary School and Mountain View Middle School, which were built and in service prior to its adoption of the Specific Plan. Further, the only fair share contribution analysis done in the Noble Creek Specific Plan Traffic Study was the intersection improvements relating to Mitigation Measure 4.7.1 (which also discussed fair share fees in the EIR).

Nevertheless, City staff in conjunction with the City’s legal counsel has identified that the City Council may have available some discretion in settling the parties’ disputes under the Mitigation Fee Act. City Council may consider amendments to the measures/condition of approval previously discussed in this report.

Noble Creek claims that the buildout of the entire Specific Plan exceeds Noble Creek’s proportionate impact on those traffic facilities, since it owns only a small portion of the property within the Specific Plan. It further claims that the City’s intent in 2005 was that Noble Creek would be responsible only for its fair share of traffic fees based on the amount of traffic generated by development on its property for all mitigation measures/conditions of approval.

For example, it points to the “Circulation Element” in the EIR, which states that “the Project will be required to contribute its fair share of transportation improvements.” (EIR, pp. 4.1-36.) Mitigation Measure 4.7.1 does require fair share contribution, so Noble Creek argues that it is unclear why the other two mitigation measures do not have similar language.

Furthermore, Noble Creek states the Specific Plan contemplates fair share payments based on pro-rata parcel acreage, a phased approach to infrastructure, and the City’s

greater than customary management role with respect to the Specific Plan area. In particular, the Specific Plan states as follows:

“It is expected that the proposed project will be phased over a 5 year period, in response to market demands, according to a logical and orderly extension of roadways, public utilities and infrastructure.” (Specific Plan, p. 4-1, emphasis added.)

“Infrastructure improvements shall be implemented on a fair share basis based on pro-rata parcel acreage as described in the Specific Land Use Plan Statistical Summary. In conjunction with submittal of the first tentative subdivision map the applicant shall formulate a program, approved by the Planning Director² and the City Engineer, which will enable infrastructure improvements to be paid for on a fair share basis for the entire Specific Plan area. (Specific Plan, p. 4-3, emphasis added.)

The City staff and legal counsel met with Noble Creek on February 17, 2022, to discuss possible amendments to the Settlement agreement and Mitigation measures. Noble Creek has advised that CVAN has “agreed in principal” that it would revise the language in Condition of Approval 27. Specifically, it would agree to remove the requirement that the improvements must be completed prior to the certificates of occupancy and Noble Creek would be only required to pay its fair share of traffic fees. Since the City is a signatory to the Agreement, it would also have to sign off on the proposed changes. Noble Creek has requested that the City approve the revisions to Condition of Approval 27 prior to seeking final approval from CVAN.

In addition, Noble Creek has requested that the City agree to revise Mitigation Measures 4.7.2 and 4.7.3 with fair share contribution language. The language would be interpreted the same as Mitigation Measure 4.7.1.

TRAFFIC STUDY

Noble Creek has agreed to prepare a traffic study to determine the fair share calculations, since the intersections for Mitigation Measures 4.7.1 was only analyzed in the previous traffic study. The purpose of the revised traffic study is to evaluate the development of the Noble Creek Specific Plan project from a traffic circulation standpoint.

The traffic study must include the project’s fair share contribution calculations to the study area. The calculations at each intersection should analyze the following: (1) existing traffic; (2) buildout with project traffic; (3) project traffic; (4) growth; and (5) project fair share percentage. The PM peak hours (typically the period when the traffic volumes are the greatest) must be used for the calculations.

² This is now the Community Development Director and the City Engineer.

NO SUBSEQUENT OR SUPPLEMENTAL EIR IS REQUIRED

If the City agrees to the proposed changes in the settlement agreement and mitigation measures, the City's legal counsel does not believe a subsequent or supplemental EIR would be necessary. Once an EIR has been certified, a public agency's discretion to require further environmental review is confined. An agency may be required to review the possible need for a subsequent or supplemental EIR only if one of the three threshold conditions that can trigger the need for a further EIR has occurred: (1) substantial changes are proposed in the project; (2) substantial changes occur in the circumstances under which the project is being undertaken; or (3) new information of substantial importance to the project becomes available. (Pub. Res. Code § 21166; see, e.g., *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005.)

New information can include changes in the project, changes to the environmental setting, or additional new data or other information. However, recirculation is not required where the new information added to the EIR “merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.” (14 Cal. Code Reg. § 15088.5(b)³ [emphasis added].)

Public agencies have substantial discretion to determine what constitutes compliance with adopted mitigation measures, if that determination is reasonable. (*Stone v. Board of Supervisors* (1988) 205 Cal.App.3d 927.) In *Stone*, the Court of Appeal held that agencies must interpret imposed mitigation measures in a reasonable manner, consistent with the intent at the time the measure was adopted. In that case, the agency found that a mining operator complied with a mitigation measure requiring a certain level of pollution liability insurance coverage, even though the amount of insurance was substantially less than specified in the mitigation measure. The reasonableness of the reduced amount was supported by risk assessments, which demonstrated that the maximum exposure would be less than the amount of the reduced coverage. The Court of Appeal held that an agency's compliance determination will be upheld as reasonable and not subject to further CEQA review, provided that the reduced or changed compliance does not result in significant new environmental impacts.

Here, the fair share language proposed in the settlement agreement and mitigation measures is simply meant to clarify the original intent of the EIR. The changes will not require major revisions to the EIR or result in new or substantially more severe impacts.

Since none of the conditions in California Code of Regulations § 15162 triggering preparation of a subsequent or supplemental EIR have occurred, the City might prepare an addendum to the EIR. (14 Cal. Code Regs. §15164(a); *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 946.) An addendum to an EIR need not be circulated for public review but may be included in or attached to the final EIR. (14 Cal Code Regs §15164(c).) The agency's

³ Although CEQA Guideline § 15088.5 applies specifically to recirculation of an EIR prior to certification, the statute has been used for guidance in analyzing “significant new information” for subsequent and supplemental EIR's after certification. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1129).

decision-making body must consider the addendum along with the final EIR before making a decision on the project. (14 Cal Code Regs §15164(d).) Preparation of an addendum is thus a way to make minor corrections to an EIR without recirculating the EIR for further review.

Fiscal Impact:

Once the updated traffic study has been completed, the City will be able to determine the fiscal impacts. City staff estimates the cost to prepare this report is \$6,500.

Recommended Action:

This is a discretionary policy decision of the City Council to take action to approve, conditionally approve, or deny the following actions relating to the Noble Creek Vistas Specific Plan:

1. Interpret Mitigation measures “timing trigger” to be at the time of payment of traffic mitigation fees instead of requiring the measures to be completed prior to certificate of occupancy (subject to final approval at a subsequent City Council meeting).
2. Should City Council be willing to consider changing the “timing trigger” for the mitigation measures (i.e., Item 1), approve the following amendment to Condition of Approval 27 set forth in Exhibit B of the Settlement agreement (subject to final approval at a subsequent City Council meeting):

27.c. The City shall not issue any final inspections or certificates of occupancy for the Project until compliance with the improvements contemplated by the Specific Plan set forth in the mitigation measures and approved by the City for the Project to the following streets and intersections: have been completed: the intersections of Beaumont Avenue and Oak Valley Parkway, Beaumont Avenue and Cougar Way, Beaumont Avenue and Brookside Avenue and Beaumont Avenue and Cherry Valley Boulevard. Specifically, the improvements will result in compliance with the level of service required in the mitigation measures approved by the City for the Project. Where the mitigation measures permit fair share fees in lieu of construction of improvements, payment of fair share fees shall constitute full compliance with the mitigation measures.

3. Demand a new Traffic Study to the extent City Council agrees to approve Items 1 and 2 above.

Attachments:

- A. Noble Creek Vistas – Final Specific Plan, Revised June 2014

B. Noble Creek Vistas – Traffic Mitigation Measures (Table 4.2-1)