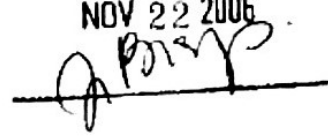


FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 22 2006



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10 Environmental Planning Group

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

12 COUNTY OF RIVERSIDE

13 Riverside Branch

**BY FAX**

14 CHERRY VALLEY PASS ACRES AND )  
15 NEIGHBORS, a California non-profit )  
16 corporation; and CHERRY VALLEY )  
17 ENVIRONMENTAL PLANNING GROUP, a )  
18 California non-profit corporation,

19 Petitioners,

20 v.

21 CITY OF BANNING, a municipal corporation; )  
22 Respondent.

23

24 SCC/BLACK BENCH, LLC; and ROES 1 )  
25 through 100; inclusive, )  
26 Real Parties in Interest )

No. RJC 061035

Case Filed Under the Environmental Quality Act

**PETITION FOR WRIT OF MANDATE  
UNDER THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT**

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc. Code § 1085]

1           Petitioners CHERRY VALLEY PASS ACRES AND NEIGHBORS and  
2 CHERRY VALLEY ENVIRONMENTAL PLANNING GROUP allege as follows:

3           1.       Petitioner CHERRY VALLEY PASS ACRES AND NEIGHBORS  
4 (“CVAN”) is a California non-profit corporation comprised of approximately 434 households,  
5 many of whom have members who live and work in an unincorporated area of Riverside County  
6 known as Cherry Valley in close proximity to the Black Bench project (referred to hereafter as  
7 “the Project” or “the Black Bench Project”) which is the subject of this action. CVAN’s  
8 members will be harmed by the adverse environmental impacts caused by the Project. CVAN  
9 was established to protect and preserve the environment in and around Cherry Valley and to  
10 preserve and protect the area’s rural qualities

11           2.       Petitioner CHERRY VALLEY ENVIRONMENTAL PLANNING  
12 GROUP (“CVEPG”) (with Petitioner CVAN, collectively referred to as “Petitioners”) is a  
13 California non-profit corporation comprised of residents of an unincorporated area of Riverside  
14 County known as Cherry Valley in close proximity to the Project which is the subject of this  
15 action and will be harmed by the adverse environmental impacts caused by the Project. CVEPG  
16 was established to protect and preserve the environment and water supply in and around Cherry  
17 Valley.

18           3.       Respondent CITY OF BANNING (“Respondent”) is the lead agency for  
19 the Project that is the subject of this petition, and is, and at all times relevant to this petition has  
20 been, charged with administering the requirements of the California Environmental Quality Act  
21 (“CEQA”).

22           4.       Petitioners are informed and believe, and on that basis allege, that real  
23 party in interest SCC/BLACK BENCH, LLC is the proponent of the Project.

24           5.       Petitioners are informed and believe, and on that basis allege, that real  
25 parties in interest, ROES 1 through 100 inclusive, either own or have contractual interests in the  
26



1           9.     Whether to issue permits, agreements, licenses and other documents  
2 allowing development of the Project was within the discretionary decision-making power of the  
3 City Council acting on behalf of the City of Banning.

4           10.    A Draft EIR for the project was released on March 30, 2006, and  
5 circulated for public comment. On August 15, 2005, the City Planning Commission  
6 recommended to the City Council that it approve the project and certify the EIR. Petitioners  
7 allege, on information and belief, that the Planning Commission did not have a copy of the Final  
8 EIR at the time it made that recommendation, and that the Final EIR was not released to the  
9 public until September 12, 2006.

10          11.    On October 11, 2006 the City Council approved the Project in concept by  
11 a vote of three to two. The City Council formally approved the Project October 24, 2006.

12          12.    A Notice of Determination was filed on October 27, 2006.

13                           **CLAIM FOR RELIEF**

14   **(Writ of Mandate)**

15          13.    Petitioners reallege and incorporate herein by reference all the allegations  
16 of Paragraphs 1 through 12, inclusive, of this Petition.

17          14.    Petitioners have performed all conditions precedent to filing this action by  
18 complying with the requirements of Cal. Pub. Res. Code § 21167.5 in serving notice of this  
19 action on Respondent.

20          15.    In certifying the EIR and adopting findings, Respondent has abused its  
21 discretion, failed to proceed in a manner required by law, and failed to comply with the  
22 requirements of CEQA, as set forth below:

- 23           a)     The EIR's analysis of impacts on hydrogeology and water quality is  
24                    inadequate, and its conclusion that impacts to local groundwater would be  
25                    “less than significant” is not supported. The EIR concedes that the  
26

1 hundreds of millions of gallons of water that the Project will consume  
2 each year will come from "groundwater resources." There is no question  
3 that the groundwater basins from which the water will come are already in  
4 overdraft. According to the San Geronio Pass Water Agency  
5 ("SGPWA"), the "safe yield" from the Beaumont Basin is only 6,000 acre  
6 feet per year, the overdraft in the Beaumont Basin was approximately  
7 12,700 acre feet in 2002 and 13,300 acre feet in 2003, and the groundwater  
8 levels drop by approximately one foot per year. The Banning Basin is also  
9 in overdraft, with groundwater levels declining steadily over time. The  
10 EIR nonetheless failed to discuss the current status of each of the  
11 groundwater basins from which the City draws water (in addition to the  
12 Beaumont and Banning Basins, the Upper Canyon Storage Unit, the  
13 Middle Banning Canyon Storage Unit, the Banning Bench Storage Unit,  
14 and the Cabazon Storage Unit), and in particular whether these storage  
15 units are in overdraft and whether groundwater levels have been declining.

16 b) In calculating water available to the Project, the EIR relies in part on 5,910  
17 acre feet a year that it will take from the overdrafted Beaumont Basin. The  
18 City claims that it is able to take this much water from the overdrafted  
19 Beaumont Basin as a result of a stipulated adjudication of the Beaumont  
20 Basin, in which the parties to the stipulation (including the City) agreed to  
21 worsen the overdraft by creating a "temporary surplus." However, the EIR  
22 does not discuss the environmental impacts of worsening the overdraft  
23 through this scheme.

24 c) The EIR's water analysis is inadequate because neither the EIR, nor the  
25 Water Supply Assessment ("WSA") for the Project, adequately assess each  
26

1 of the groundwater storage units that are identified as the primary water  
2 sources for the Project.

3 d) The EIR's cumulative water analysis is defective in its analysis of the  
4 availability of water to meet planned and approved projects in the area. In  
5 particular, the EIR assumes that future demand will be met by purchase of  
6 sufficient State Water Project Water to fill the basin's purported 200,000  
7 to 400,000 acre foot storage capacity, without analyzing the availability of  
8 such water, the source of such water, or the impacts of obtaining such  
9 water. There also is insufficient evidence in the record to support a  
10 conclusion that there is sufficient water available to supply the thousands  
11 of new homes approved by Respondent and neighboring cities, including  
12 Beaumont and Cabazon, together with the approved commercial projects  
13 that also rely on groundwater.

14 e) The EIR fails to include evidentiary support for key assumptions regarding  
15 the availability of water for the Project. In particular, it appears that  
16 Respondent has accepted, without any analysis, conclusions made in a  
17 stipulated adjudication of water rights in the Beaumont Basin and  
18 conclusions in unspecified environmental impact reports prepared for  
19 other agencies. However, there is no evidentiary support for these  
20 conclusions. Respondent's failure to exercise its independent evaluation  
21 of these third party documents does not satisfy its obligations under  
22 CEQA. Moreover, in order to meet the projected water supply demand in  
23 the City, the EIR assumes the SGPWA will complete the East Branch  
24 Extension of the California Aqueduct by 2010. This claim is contradicted  
25 by a letter from the SGPWA to the City which states that the earliest date  
26

1 by which the extension would be completed is 2011, and accordingly the  
2 SGPWA cannot make a commitment that the water for the development  
3 will be available.

- 4 f) The Project includes construction of detention basins in the Smith Creek  
5 Tributary. However the EIR does not evaluate the environmental impacts  
6 of these basins, particularly on Smith Creek.
- 7 g) The Project contemplates construction of two (2) multi-million gallon  
8 reservoirs for the storage of water. However, the EIR does not specify  
9 where these reservoirs will be located, how they will be constructed, and  
10 who will be responsible for constructing or maintain these reservoirs. The  
11 EIR also does not analyze the environmental impacts of these storage  
12 facilities and their siting, nor does it evaluate alternative siting locations.
- 13 h) The EIR does not support the EIR's conclusion that land use and planning  
14 impacts are less than significant. The EIR does not consider impacts on  
15 the San Bernardino National Forest, and does not identify, consider or  
16 evaluate land use plans, policies and regulations relating to this National  
17 Forest. In addition, the EIR's conclusion that impacts on the adjacent  
18 historic Highland Springs Resort are mitigated by routing a trail under the  
19 proposed four-lane highway is not supported by any evidence in the EIR.
- 20 i) The EIR's analysis of wildlife is inadequate because it fails to analyze the  
21 role of the Project in connection with the adjacent San Bernardino  
22 National Forest, and does not evaluate the Project's consistency with  
23 applicable plans and regulations relating to the Forest.
- 24 j) The EIR is flawed in that traffic impacts are inadequately analyzed. The  
25 EIR's traffic analysis makes it clear that the Project will have significant –  
26

1 and unmitigated impacts – on the community of Cherry Valley and the  
2 City of Beaumont. In particular, the level of service at intersections within  
3 Cherry Valley (Brookside and Beaumont Avenues and Cherry Valley  
4 Boulevard and Beaumont Avenue) will be below the acceptable levels of  
5 service as a consequence of the direct and cumulative impacts of this  
6 project. The EIR improperly fails to evaluate mitigation measures within  
7 the City that could mitigate these significant off site impacts at all  
8 locations outside of the City.

9 k) The EIR's air quality analysis is inadequate because it fails to evaluate  
10 impacts on the adjacent San Bernardino National Forest, it fails to evaluate  
11 impacts on the adjacent historic Highland Springs Resort, and its trail  
12 system, it fails to consider impacts on sensitive receptors (i.e., children)  
13 who use the Highland Springs Resort trail system, and it fails to analyze  
14 the Projects impact on greenhouse gas emissions.

15 l) The EIR's analysis of the population inducing impacts of the Project is  
16 inadequate. The Project places a dense suburban development between a  
17 National Forest and an historic resort complex. The EIR fails to consider  
18 whether the Project is likely to cause further development and growth into  
19 these areas by, among other things, extending currently non existent  
20 infrastructure. In addition, the EIR does not identify, consider or analyze  
21 any policies or regulations relating to the National Forest that might relate  
22 to the type of encroachment that the Project will entail.

23 m) The EIR's cumulative impacts analysis is defective because it fails to  
24 consider numerous proposed and/or approved projects in other areas, such  
25 as those in the Cities of Banning, Calimesa, Yucaipa, and Cabazon. On  
26



1 information and belief, Petitioners allege that the environmental impacts  
2 of these projects are likely to compound or interrelate with the impacts of  
3 the proposed project. The EIR is defective because of its failure to  
4 consider the impacts of these projects in its analysis of cumulative impacts  
5 on traffic, water supply, air quality, biological resources and cultural  
6 resources. Cumulative water supply issues are particularly important,  
7 given the widespread reliance on groundwater resources.

- 8 n) The EIR fails adequately to analyze the Project's impacts on biological  
9 resources. The Project site provides habitat for numerous species of  
10 special concern, including the Golden Eagle. The EIR contains no  
11 detailed, quantitative analyses of Project impacts on populations of  
12 special-status.
- 13 o) The EIR improperly defers to the analysis of the Western Riverside  
14 County Multiple Species Habitat Conservation Plan for all analyses of  
15 impacts to special status species.
- 16 p) The EIR's analysis of noise impacts is inadequate because, among other  
17 things, it does not analyze noise impacts to hikers from increased levels of  
18 traffic, does not analyze ground vibration during construction, does not  
19 analyze noise impacts related to the Project itself, including noise from the  
20 school, parks and the fire station.
- 21 q) The EIR is deficient because it fails to disclose the location of utility  
22 extensions to the Project site.
- 23 r) The EIR is deficient because there is both an inadequate analysis of the  
24 risk of a wildfire, and inadequate mitigation of this impact.
- 25  
26

1           16.     After the City Council voted three to two to approve and certify the Final  
2 EIR, the City Council voted on and approved Findings of Fact and a Statement of Overriding  
3 Considerations. Said Findings were statutorily inadequate and unsupported by substantial  
4 evidence under CEQA for reasons which will be discussed in depth at the time of hearing on this  
5 matter.

6           17.     Respondent failed to adopt a legally adequate statement of overriding  
7 considerations in that, among other things, the final EIR and associated administrative record do  
8 not provide substantial evidence to support the alleged benefits and "overriding considerations"  
9 associated with the Project.

10          18.     Respondent's findings, its determinations and its decision to approve the  
11 Project are not supported by substantial evidence in the record.

12          19.     Petitioners have exhausted their administrative remedies in that grounds  
13 for noncompliance with CEQA were presented to Respondent in writing in comments on the  
14 draft EIR, in writing in comments on the final EIR and in oral testimony to Respondent on the  
15 draft EIR and final EIR. CVAN, CVEPG, other agencies, interested groups, and individuals  
16 made oral and written comments on the draft EIR, final EIR, and findings and raised each of the  
17 legal deficiencies asserted in this petition.

18          20.     Respondent has the clear, present legal duty and present legal authority  
19 and ability to comply with CEQA. However, Respondent has failed and refused to perform that  
20 duty and has abused its discretion in failing to comply with CEQA, and failing to proceed in a  
21 manner required by law. Respondent's failure and refusal is arbitrary and capricious.  
22 Respondent's decision to approve the Project is not supported by substantial evidence. The  
23 standard of review is set forth in Cal. Pub. Res. Code § 21168.5.

24          21.     Respondent's actions of issuing the final EIR and approving the Project  
25 are invalid and do not comply with CEQA because the EIR is legally inadequate. In failing to  
26



1 c) Respondent to prepare, circulate, and consider a new legally adequate  
2 EIR and otherwise to comply with CEQA in any subsequent action taken  
3 to approve the Project.

4 3. For costs of suit.

5 4. For an award of attorney fees.

6 5. For other equitable or legal relief that the Court considers just and proper.

7 Dated: November 22, 2006

8  
9 LAW OFFICES OF ROBERT C. GOODMAN

10  
11 By: Robert C. Goodman (CMB)  
12 ROBERT C. GOODMAN  
13 Attorneys for Petitioners  
14 Cherry Valley Pass Acres and Neighbors  
15 and Cherry Valley Environmental  
16 Planning Group  
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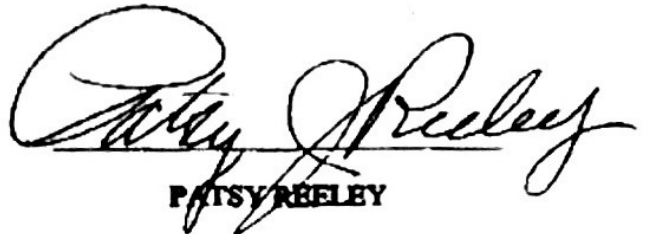
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**VERIFICATION**

I am president of the Petitioner, Cherry Valley Pass Acres and Neighbors, and am authorized to execute this verification on behalf of Petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in this petition are true of my personal knowledge, unless stated on information and belief. As to those facts, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November \_\_, 2006



PATSY REELEY

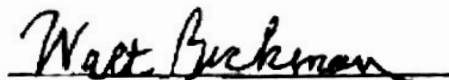
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VERIFICATION

I am president of the Petitioner, Cherry Valley Environmental Planning Group, and am authorized to execute this verification on behalf of Petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in this petition are true of my personal knowledge, unless stated on information and belief. As to those facts, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November \_\_, 2006



WALT BECKMAN