

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

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TO: Board of Supervisors

FROM: Val Alexeeff
Director; Planning and Development

STAFF CONTACT: David Swenk, Planner III, Development Review North
934-6266

SUBJECT: Orcutt Plaza Shopping Center- 99-DP-038, 99-CP-083, 01APL-00000-00023

Recommendation(s):

That the Board of Supervisors deny the appeal of the Planning Commission's approval of June 11, 2003 and approve 99-DP-038 and 99-CP-083:

1. Adopt the required findings for the project specified in the action letter of the Planning Commission dated June 26, 2003, including CEQA findings;
2. Accept the proposed Supplemental Environmental Impact Report, 02-SEIR-03, dated April 18, 2003 as adequate environmental review for the project;
3. Approve 99-DP-038 subject to the conditions of approval included in the action letter of the Planning Commission dated June 26, 2003;
4. Approve 99-CP-083 subject to the conditions of approval included in the action letter of the Planning Commission dated June 26, 2003; and
5. Adopt the mitigation monitoring and reporting plan contained within the Conditions of Approval.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law or routine business necessity.

Executive Summary and Discussion:

The Orcutt Plaza Project consists of a Final Development Plan and Major Conditional Use Permit to construct a 201,279 s.f. shopping center on 22 acres known as Key Site 25 in the Orcutt Community Plan (OCP). The project was considered by the Planning Commission on three separate occasions including a March 12, 2003 informational workshop, and public hearings held on May 13, 2003 and June 11, 2003. The project was approved by the Commission at the June 11, 2003 hearing.

An appeal of the Commission's approval of the Orcutt Plaza project was filed by the City of Santa Maria on June 20, 2003. All of the issues raised in the appeal relate to the adequacy and feasibility of the supplemental water supply proposed to serve the Orcutt Plaza project. The City of Santa Maria asserts that the contract for the purchase of supplemental water cannot be fulfilled due to other contractual obligations that affect the parties involved and that the proposed method of water delivery is infeasible.

Staff has evaluated the concerns expressed by the appellant and found that the proposed supplemental water supply is adequate and can be delivered. Thus, it is recommended that the appeal be denied and the project approved.

1. Water Use and Current Water Agreement Background

The estimated water demand of the proposed project was re-evaluated by staff after circulation of the draft supplemental environmental impact report, 02-SEIR-03. As indicated in the May 19, 2003 staff memorandum (copy attached) provided to the Planning Commission, the estimated water demand was revised to reflect current demand factors for grocery stores and to account for return flows to the groundwater basin. With these changes, the water demand of the Orcutt Plaza project is estimated to be 20.47 AFY (gross) and 14.33 AFY (net). In order for the project to be served without an increase in groundwater pumpage, an annual average of 14.33 AFY of supplemental water supplies must be delivered to the Santa Maria Groundwater Basin. For the State Water Project (SWP), the 14.33 AFY of supply is equivalent to a SWP entitlement of 19.1 AFY at the current estimated reliability factor of 75 percent. The proposed OTC-Cal Cities-Solvang water agreement would be adequate as it would provide an entitlement of 20 AFY to serve the project.

The Planning Commission reviewed the draft water agreement negotiated between the applicant, Cal Cities, and the City of Solvang. During the June 11, 2003 hearing, concerns were expressed in public testimony that the draft OTC-Cal Cities-Solvang water supply agreement had not been approved by all parties for which approval may be required. As part of deliberations, a condition of approval (Condition #70) was developed and included in the project approval by the Commission to address these concerns. The Condition reads as follows:

70. Documentation shall be provided to the County of Santa Barbara that the Santa Ynez Water Conservation District, Improvement District #1 (ID#1) and the Central Coast Water Authority (if required by the CCWA) has authorized full implementation of the City of Solvang/Orcutt Town Center, LLC/Southern California Water Company Water Supply and Delivery Agreement. **Plan Requirements and Timing:** The applicant shall provide to the County written documentation from ID#1 and the Central Coast Water Authority that meets the above requirement prior to approval of any Land Use Permit, Grading Permit, or Building Permit associated with the proposed Orcutt Town Center (Orcutt Plaza) project.

MONITORING: Planning and Development staff and County Counsel shall review the applicant-submitted documentation to determine if it authorizes full implementation of the Water Supply and Delivery Agreement.

With this condition, final land use clearance would not be granted for the project until all relevant agencies had approved the water transfer arrangement.

2. Facilitation Meeting Results

A facilitation meeting, as required by County Regulations for third party appeals, was held on July 14, 2003. Representatives from the City of Santa Maria and the applicant met to discuss the basis of the appeal. No progress was made in rectifying their differences and the parties did not come to a facilitated agreement. (Facilitation Report Attached).

3. Staff Response to Claim of Abuse of Discretion in Findings

On the submitted appeal form filed with the Clerk of the Board, the appellant asserts that the Planning Commission abused its discretion in its approval of the Orcutt Plaza project in the following areas:

- “Issue 4.5 (Water Resources)”
- “6.2 (Comprehensive Plan Consistency, Land-use Element and Water Resources)”
- “No finding regarding Class I impact, Cumulative Water Resources”
- “Statement of Overriding Considerations not supported by substantial evidence”
- “Development Plan findings 2.1.2, 2.1.4 and 2.1.6 not supported by substantial evidence”
- “Conditional Use Permit findings 2.2.2, 2.2.4 and 2.2.6 not supported by substantial evidence”

All of the above issues raised by the appellant relate to the adequacy and feasibility of delivery of the supplemental water supply proposed to serve the Orcutt Plaza project. The proposed water supply for the project would be provided through a transfer of State Water Project (SWP) entitlement from the City of Solvang to the Cal Cities Water Company that would be used offset the new groundwater pumpage required to serve the project. The appellant provided a detailed discussion of these issues in a June 19, 2003 letter attached to the appeal form. Each of the issues raised in the June 19, 2003 letter are addressed in the following section of this Board Agenda Letter.

The requirement of Orcutt Community Plan Policy WAT-O-2 that new development in the Orcutt Planning Area (including the Orcutt Plaza project) be supported by supplemental water supplies if the Santa Maria Groundwater Basin is in a state of overdraft, precludes significant impacts on water resources. A Statement of Overriding Considerations for water resources is not required when no significant impact would occur. The appellant does not disagree, in general, with the goal or effect of Policy WAT-O-2 as it relates to new development in the Orcutt area. The appellant asserts, however, that the method proposed to achieve consistency with this policy in the case of the Orcutt Plaza project is infeasible and does not allow the required findings to be made. It is also asserted that, because of the infeasibility of the water supply, the CEQA document does not accurately reflect the level of impact on water resources.

With regard to CEQA analysis, Class I impacts were identified in the certified environmental impact report for the Orcutt Community Plan (OCP) and incorporated into the adopted Statement of Overriding Considerations. Key Site 25 (the Orcutt Plaza site) was evaluated in the OCP EIR based on a higher density of development than included in the currently proposed project. Thus, the impacts of the current project are within the scope of analysis of that document.

Two Class I impacts are identified in the OCP EIR: Aesthetics and Cumulative Water Resources. Water Resources for the Orcutt Plaza project were originally identified in the Supplemental EIR as a Class I impact as no draft water agreement or contract had been provided by the applicant that demonstrated the availability

of a supplemental source of water. During project review by the County, the applicant provided a draft contract (the OTC-Solvang-Cal Cities contract) that was found by the Planning Commission to be adequate to meet the requirements of OCP Policy WAT-O-2. With this determination, a non-groundwater basin water supply for the project became available and impacts on groundwater resources are now considered less than significant (Class III). The CEQA documents remain adequate and recirculation is not required as the level of impact has been reduced from that previously identified by feasible mitigation agreed to by the applicant. (Refer to CEQA Guidelines Section 15088.5)

As indicated in the review of the appellant's June 19, 2003 letter below, staff believes that the CEQA analysis is adequate, that all the required findings for approval can be made because the project is consistent with OCP Policy WAT-O-2, and that the Planning Commission did not abuse its discretion in the approval of the Orcutt Plaza project.

4. Staff Responses to Appellant Issues raised in letter dated June 19, 2003:

In the June 19, 2003 letter from Paul J. Karp, the City of Santa Maria ("Santa Maria") gives three specific reasons for the appeal. Each of these reasons are discussed below, numbered and labeled in correspondence to the June 19, 2003 letter.

A. The Proposed Agreement is for "Paper Water."

Santa Maria disagrees with the conclusion presented in the "May 14, 2003 staff report" [this report is actually dated May 5, 2003] that SWP supplies purchased from the City of Solvang would provide sufficient water to support the proposed development consistent with Policy WAT-O-2. The June 19, 2003 letter asserts that "there is no evidence of a physical connection between Cal Cities and the OTC proposed development and there is no discussion of how, or even if, supplemental water will be delivered to OTC. Accordingly, the City assumes that the OTC proposed development will be pumping water from the groundwater basin."

Santa Maria correctly recognizes in the June 19, 2003 letter that the OTC project would be served through the existing Cal Cities delivery system and supported by increased groundwater pumpage. Santa Maria also recognizes in the June 19, 2003 letter that "increased pumpage can be mitigated by a decrease in Cal Cities groundwater pumping" elsewhere in the Santa Maria Groundwater Basin. Because Santa Maria believes that Cal Cities does not have sufficient delivery capacity within the Santa Maria Groundwater Basin to utilize the supplemental SWP supply obtained for the Orcutt Plaza project, it considers the OTC-Solvang-Cal Cities contract to represent "paper water" and not actual water.

As discussed below, the SWP delivery capacity held by Cal Cities can deliver the new supplemental SWP supply from the City of Solvang to existing water customers in the Santa Maria Groundwater Basin. Such delivery would offset the pumpage due to the new demand of the Orcutt Plaza project.

At the June 11, 2003 hearing of the Planning Commission, representatives of both the City of Santa Maria and Cal Cities provided testimony. Attorney Rob Saperstein represented Cal Cities and stated that "*Cal Cities had not yet formally approved the water supply agreement*" and was sensitive to the concerns of the City of Santa Maria. He also stated that "*we do believe we can perform the*

agreement as it is currently structured.” Commissioner Boysen asked how the water would be delivered. Mr. Saperstein made the following statements in response:

“County policy doesn’t require the direct delivery of the supplemental water to the specific project.”

“The County policy requires that the water be used within the Santa Maria Groundwater Basin to offset pumping in the basin. So in effect, if its used anywhere in the basin to meet 20 AF of demand, it offsets 20 AF of pumping that would have occurred.”

“Cal Cities has the capability of delivering water to its Tanglewood system which is in the Santa Maria Basin... We could take direct delivery of the State Water there, offset pumping that would occur there.”

Mr. Saperstein’s statements regarding the County’s application of OCP Policy WAT-O-2 are correct. Direct delivery of supplemental SWP supplies to any specific site is not required. Only the use of the supplemental supply to serve existing customers that were historically supplied by groundwater is required to offset the pumpage needed to serve a new project.

Utilities Manager Dewayne Chisholm spoke on behalf of the City of Santa Maria at the June 11, 2003 hearing. His comments explain Santa Maria’s position and are reproduced below:

“Cal Cities does not appear to have sufficient delivery capacity to fulfill their obligations under the terms of this agreement. The Cal Cities turnout serves the Tanglewood area. And to my knowledge, no permanent connection exists between the Tanglewood area and the existing service area. In a letter received from the Central Coast Water Authority recently, Tanglewood has received no more than 225 AF annually over the last three years into that particular area. That is the maximum amount of supplemental water that Cal Cities has received. In the May 14, 2003 staff report, staff indicates that over 400 AFY of Cal Cities existing entitlement is committed. It would not appear to be prudent to increase this delivery deficiency. Nor would it appear to be equitable or fair to have these commitments rescinded to provide delivery capacity for this project.”

Mr. Chisholm’s statements primarily serve to identify that Cal Cities has 225 AFY of capacity to deliver supplemental SWP supplies to existing customers in the Santa Maria Groundwater Basin. Other comments he provided above are misleading in that they do not reflect the application of OCP Policy WAT-O-2 or recognize the difference between a commitment of SWP supply and a commitment of SWP delivery capacity.

The comment that no permanent connection exists between Tanglewood and the “existing service area” seems to assert that the supplemental SWP supply must be delivered to the Orcutt area where the proposed Orcutt Plaza project would be located. As recognized by Mr. Saperstein of Cal Cities, this assertion is incorrect as a reduction in pumpage anywhere in the Santa Maria Groundwater Basin (including the Tanglewood area) can be used to offset new pumpage in the Orcutt area as required to serve a new project.

Mr. Chisholm's comments do not discern between a commitment of SWP supply and a commitment of SWP delivery capacity. County Land Use Development Policy #4 requires that adequate "services and resources" be available in order to approve new development. Thus, County review of a proposed project would involve a determination of whether adequate water supplies (i.e. resources) had been obtained and whether adequate facilities (i.e. services) were available to deliver the water. This determination would occur at the time of decision-maker action on a proposed discretionary development permit. Thus, the available resources (SWP yield) could be "committed" through purchase by private parties but the facilities (i.e. SWP delivery capacity) could remain available on a first-come, first-served basis.

The long-term yield of Cal Cities 550 AFY of SWP entitlement is currently estimated by the DWR to be 413 AFY. The yield was previously estimated to be 437 AFY by DWR. All of this supplemental supply (i.e. a **resource**) has been purchased by developers in the Orcutt area. However, only about 87 AFY of this supply has been committed to approved projects in the Orcutt Planning area. The remaining 350 AFY has been purchased on behalf of a project (the Rice Ranch subdivision) that has not yet been approved or built. Thus, of the 225 AFY of SWP delivery capacity available to Cal Cities in the Tanglewood area, 138 AFY is currently available to allow offset of the pumpage of new development projects in the Orcutt area. As it only requires 20 AFY of pumpage offset, sufficient delivery capacity is available to serve the Orcutt Plaza project.

As indicated by Mr. Chisholm, 225 AFY of SWP supplemental supply is already being delivered to the Tanglewood area. This current SWP delivery serves to temporarily reduce the overall net pumpage of Cal Cities until approved projects are built and pumpage returns to historic levels. This interim delivery does not affect the supplemental status of Cal Cities currently unused (but purchased) SWP yield or the SWP yield proposed to be purchased from Solvang. Note that the delivery of SWP supplemental supplies to serve the anticipated 350 AFY of demand of a future Rice Ranch project would require a cooperative arrangement between Cal Cities and the City of Santa Maria, or the construction of new SWP delivery facilities by Cal Cities.

In summary, adequate water resources (SWP yield purchased from Solvang) and services (Cal Cities SWP delivery capacity in the Tanglewood area) are available to serve the Orcutt Plaza project.

B. Transfer of SWP Water to a Non-project Participant is Not Permitted.

In the June 19, 2003 letter, Santa Maria asserts that the proposed OTC-Solvang-Cal Cities agreement is not valid because the City of Solvang is not a project participant. Santa Maria asserts that the Santa Ynez Water Conservation District, Improvement District #1 (ID#1) must be a party to the transfer of the SWP entitlement proposed to be sold by Solvang. Santa Maria also asserts that the proposed OTC-Solvang-Cal Cities Water Supply Agreement does not conform to the requirements of ID#1/CCWA Water Supply Agreement.

Condition of Approval #70 was added by the Planning Commission at the June 11, 2003 hearing and addresses these concerns. This condition requires that documentation be provided to the County prior to the issuance of any land use clearance that ID#1 has approved the transfer of SWP yield to Cal Cities on behalf of OTC (Orcutt Plaza). Issues of conformance with the agreement between ID#1 and

the CCWA must be settled between those entities as it is beyond the scope of County review of the proposed project.

C. Transfer of SWP water to Non-Project Participants is Contrary to Public Policy.

Santa Maria asserts that the transfer of SWP project allotments to non-project participants without providing Project Participants with a right of first refusal is contrary to both sound public policy and the intent of the CCWA Water Supply Agreements.

The term "sound public policy" in the current context is not defined in the June 19, 2003 letter. Thus, no response is possible. It is not the role of the County as part of its land use decision-making process to alter the content or interpret the intent of the CCWA Water Supply Agreements. These issues must be addressed by the CCWA and its member agencies, including the City of Santa Maria and ID#1.

The comments of the City of Santa Maria regarding the transfer of water to non-project participants are difficult to understand in that several draft contracts between the Santa Maria and private developers in the Orcutt area (e.g. Gibson TPM, Timmons TPM) similar in form to the OTC-Solvang-Cal Cities contract have been presented to the County.

5. City Rejection of Sanitary Service to Project Site

The project site is located within the LCSD jurisdiction in an area subject to the Flow Swap Agreement dated August 8, 1977. This agreement between LCSD and the City of Santa Maria allows for effluent from portions of the Orcutt area to be treated at the City wastewater treatment facility. Despite this long-standing agreement, Laguna County Sanitation District (LCSD) received a letter from the City of Santa Maria dated August 15, 2003 (copy attached) indicating that the City will not accept wastewater flows from the Orcutt Plaza project.

LCSD has indicated it has the capacity to accept the effluent from this project and is working with Environmental Health Services (EHS) regarding the matter. LCSD has indicated that the applicant may extend the existing 8" line in Lakeview Estates to Bradley Road and across Santa Maria Way to the project site. This pipeline extension would allow the wastewater to flow directly to the Laguna CSD plant. Necessary bonding and coordination with the Department of Public Works would be required for the construction should the applicant desire to connect to the existing line. The project would be consistent with OCP policies on wastewater disposal according to LCSD.

6. Staff Conclusions and Recommendations

Adequate supplemental water resources (SWP yield) and facilities (Cal Cities SWP delivery capacity) are available to serve the Orcutt Plaza project consistent with LUDP#4 and OCP Policy WAT-O-2. Project conditions require that the applicant, Cal Cities, ID#1, and the CCWA approve the final contract arrangement for water delivery prior to land use clearance. Sewer service is available from the LCSD. Thus, the Planning Commission's approval of the project can be confirmed by the Board of Supervisors with the assurance that the project would not be constructed without adequate water supplies or sewer service consistent with OCP policy and Land Use Development Policy #4.

Mandates and Service Levels:

The appeal was filed pursuant to Section 35-327.3 of Article III of Chapter 35 of the County Zoning Ordinances, which states that the decisions of the Planning Commission may be appealed to the Board of Supervisors within ten days after the Planning Commission's actions

Pursuant to Government Code Sections 65355 and 65090, a notice shall be published in at least one newspaper of general circulation.

Pursuant to Government Code Section 65091, mailed notice required to property owners within 300 feet of the project, including the real property owners, project applicant and local agencies expected to provide essential services, shall be done at least 10 days prior to the hearing.

Fiscal and Facilities Impacts:

Pursuant to Board of Supervisors Resolution No. 96-323, some of the costs associated with this appeal are offset by the \$435.00 appeal fee.

Special Instructions:

Clerk of the Board shall complete noticing for the project in the Santa Barbara News-Press and shall complete the mailed notice for the project (mailing labels are attached) at least 10 days prior to the hearing.

Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, attn: Hearing Support, Cintia Mendoza.

Planning and Development will prepare all final action letters and notify all interested parties of the Board of Supervisors' final action.

Concurrence: County Counsel

ATTACHMENTS: Appeal to the Board of Supervisors dated June 20, 2003 (includes 6-19-03 letter)
Planning Commission action letter dated June 26, 2003
August 29, 2003 Facilitation Report
Revised Water Estimate Memo dated May 19, 2003
City of Santa Maria Letter to LCSD dated August 15, 2003
Draft Water Contract dated June 3, 2003
Planning Commission staff report dated May 5, 2003
Letters of public comment.
Supplemental environmental impact report 02-SEIR-03 (Board only)
