



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

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

Department Name: Planning and Development
Department No.: 053
For Agenda Of: March 8, 2022
Placement: Departmental
Estimated Time: 1.5 hours on March 8, 2022
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning and Development
Director: (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Development Review Division
(805) 568-2518

SUBJECT: **PR Investments, LLC and Far Western Liquor, Inc. Appeal, Case Nos. 21APL-00000-00062 and 21APL-00000-00063, of the Planning Commission Approval of the Orcutt Gas Station Development Plan and Minor Conditional Use Permit, Case Nos. 18DVP-00000-00001 and 18CUP-00000-00001, Fourth Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

Staff recommends that your Board take the following actions to deny the appeals and uphold the Planning Commission's approval of the Project:

- a) Deny the appeals, Case Nos. 21APL-00000-00062 and 21APL-00000-00063;
- b) Make the required findings for approval of the modified Project, Case Nos. 18DVP-00000-00001 and 18CUP-00000-00001, as specified in Attachment 1, including CEQA findings;
- c) Adopt the Mitigated Negative Declaration, Case No. 19NGD-00000-00001 (included as Attachment 3), and adopt the mitigation monitoring program contained in the conditions of approval; and
- d) Grant *de novo* approval of the modified Project, Case Nos. 18DVP-00000-00001 and 18CUP-00000-00001, subject to the conditions of approval (included as Attachment 2).

Summary Text:

On January 16, 2018, the Applicant submitted an application for a Development Plan and Minor Conditional Use Permit for a service station consisting of a commercial building with a convenience store and retail space, as well as a detached fuel canopy with four raised fuel dispenser islands. On December 21, 2020 the Planning and Development Zoning Administrator (hereinafter Zoning Administrator) approved the Proposed Project, and on January 4, 2021, Far Western Liquor, Inc. and PR Investments, LLC (hereinafter Appellants) filed timely appeals of the Zoning Administrator's approval. On October 6, 2021, the Planning Commission (hereinafter Commission) granted *de novo* approval of the Proposed Project. On October 15, 2021, the Appellants filed timely appeals of the Commission's approval.

A. Proposed Project

The Proposed Project is a request of Lama Fadel, Applicant, for the approval of a Minor Conditional Use Permit (Case No. 18CUP-00000-00001) and a Development Plan (Case No. 18DVP-00000-00001) to allow the construction and operation of a service station. The subject property is a vacant 0.82-acre lot located at the southeast corner of the Orcutt Road and Lakeview Road intersection. The service station will include a 5,054-square foot (sq. ft.) commercial building comprised of a 4,203-sq.-ft. convenience store and an 851 sq. ft. general retail space, as well as a detached 2,814-sq.-ft. fuel canopy with four fuel dispensers. The commercial building will have a maximum parapet height of 23 feet (ft.). The fuel canopy will have a maximum height of 19 ft. Hours of operation for the service station will be from 5:00 AM to 12:00 AM. The Proposed Project will include 10,092 sq. ft. of new landscaping. The Proposed Project will require the removal of eight trees, including one California Sycamore. Grading for the Project will include 440 cubic yards (cu. yds.) of cut and 430 cu. yds. of fill. The Golden State Water Company, Laguna County Sanitation District, Pacific Gas and Electric Company, and the County Fire Department will serve the Proposed Project. Access will be provided from Orcutt Road and Lakeview Road by two 40 ft. wide paved driveways. The subject property is a 0.82-acre lot zoned Neighborhood Commercial (CN), shown as APN 107-011-028 and known as 3616 Orcutt Road, in the Orcutt Community Plan area, Fourth Supervisorial District.

B. Background:

On January 16, 2018, the Applicant submitted an application for a Development Plan and Minor Conditional Use Permit for a service station consisting of a commercial building with a convenience store and retail space, as well as a detached fuel canopy with four raised fuel dispenser islands. The original project also requested waiver of the requirement to underground utilities. A Mitigated Negative Declaration (MND) (Attachment 3) was prepared by Planning and Development (P&D) staff, which was circulated for a 30-day public review and comment period from July 12, 2019, through August 12, 2019. The MND incorporated mitigation measures for the following issue areas: Aesthetics/Visual Resources, Air Quality, Fire Protection, Geologic Processes, Hazardous Materials/Risk of Upset, Noise, Transportation/Circulation, and Water Resources/Flooding. On December 21, 2020, the Zoning Administrator approved the Proposed Project, and on January 4, 2021, the Appellants filed timely appeals of the Zoning Administrator's approval.

The Proposed Project was initially heard by the Commission on July 28, 2021. At that hearing, the Commission continued the Proposed Project to October 6, 2021 to allow the Applicant additional time to work with the Department of Public Works Roads Division (Roads Division) to identify potential changes to the Orcutt Road and Lakeview Road intersection. The Commission also requested that the Applicant provide additional details regarding the cost estimate to underground the utilities for this Project.

As described in the Planning Commission Memorandum dated September 28, 2021 (Attachment 8), Roads Division staff discussed the Lakeview Road and Orcutt Road intersection with Supervisorial District 4 staff. No immediate improvements to the intersection were identified and therefore, the Proposed Project and associated road requirements are still applicable.

At the October 6, 2021, Planning Commission hearing, P&D informed the Commission that P&D and the Roads Division require a condition of approval to underground applicable existing and proposed utilities pursuant to Board Resolution Nos. 24419 and 87-344 and Visual Resource Policy 5 of the County's Comprehensive Plan. The Commission granted *de novo* approval of the Proposed Project and did not waive the requirement to underground utilities. The Applicant has not appealed that decision and has withdrawn the request to waive the undergrounding requirement. On October 15, 2021, the Appellants filed a timely appeal of the Commission's approval. The Board of Supervisors (Board) appeal application is included as Attachment 4. The Appellant's appeal issues and staff's responses are discussed in further detail under Section C of this Board Agenda Letter.

C. Appeal Issues and Staff Responses

The Appellants are affiliated with nearby businesses. The appeal applications (Attachment 4) contain a letter outlining the issues on appeal. The appeal issues allege inconsistency with the County's zoning ordinances (Land Use and Development Code), error and abuse of discretion, approval of the Proposed Project is not supported by evidence, the Proposed Project is inconsistent with the Comprehensive Plan, including the Orcutt Community Plan (OCP), and the Proposed Project must comply with requirements to underground utilities. Staff reviewed the appeal issues and found they are without merit. The appeal issues and staff's responses are discussed in detail below.

Appeal Issue No. 1: Approval is Inconsistent with Requirements and Not Supported by Evidence

The Appellants allege that the decision to approve the Proposed Project is inconsistent with the provisions and purposes of the Land Use and Development Code (LUDC) and other applicable law. The Appellants also allege that there was error and abuse of discretion. Further, the Appellants allege that the decision to approve the Proposed Project is not supported by the evidence presented for consideration.

Staff Response:

The Proposed Project is consistent with all applicable sections of the LUDC and all applicable laws. The service station is an allowed use in the Neighborhood Commercial (CN) Zone District with approval of a Minor Conditional Use Permit. As detailed in Section 6.3 of the Planning Commission Staff Report, dated July 20, 2021, and included as Attachment 7, the Proposed Project is consistent with the setback, site coverage, maximum height, landscaping, and parking requirements in the CN Zone for a service station. A Development Plan is also required for the Proposed Project, which includes a new 5,054 sq. ft. convenience store structure and 2,814 sq. ft. fuel canopy, because a Development Plan is required for structures that exceed 5,000 sq. ft. in the CN Zone District. As detailed in the Planning Commission Staff Report, dated July 20, 2021, and included as Attachment 7, the Proposed Project also meets the requirements for Development Plans.

There is no evidence or facts alleged to support that there was error or abuse of discretion by the Planning Commission in their decision to approve the Proposed Project. The Commission hearings on July 28, 2021, and October 6, 2021, followed all procedural standards outlined in the Santa Barbara County Planning Commission Procedures Manual. The Commission approved the Proposed Project with a vote of 5 to 0 at a hearing that was conducted in a fair and impartial manner. The required notice of the hearing

was provided, and all attendees, including the Appellants, were given a fair opportunity to address the Commission. After considering the evidence presented as part of the record, the Commission granted approval of the Proposed Project.

Approval of the Proposed Project is supported by substantial evidence in the record. The Proposed Project is consistent with each of the findings set forth in Sections 35.82.060.E.1 and 35.82.060.F of the LUDC as described in further detail in Attachment 1 and summarized below. The site is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed. Mitigation measures from the proposed final MND ensure that impacts of the Proposed Project will be less than significant (Attachment 3). With implementation of the proposed mitigation measures, streets and highways will be adequate and properly designed to carry the type and quantity of traffic generated by the Proposed Project, and the County Public Works Roads Division and County Fire Department determined that existing road facilities are sufficient. There will be adequate public services, such as water provided by Golden State Water Company, sewer provided by Laguna Sanitation District, and access from driveways off Orcutt Road and Lakeview Road. The Proposed Project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area, in part because compliance with OCP requirements will reduce visual, noise, and traffic impacts. The policy consistency analysis included in Section 6.3 of the Planning Commission Staff Report dated July 20, 2021, and included as Attachment 7, supports that the Proposed Project will conform to the goals and policies in the Comprehensive Plan, including the OCP. Lastly, the Proposed Project will not conflict with any easements required for public access or public use.

Appeal Issue No. 2: Inconsistent with the Comprehensive Plan, Including the Orcutt Community Plan

The Appellants allege that the Proposed Project is inconsistent with the Comprehensive Plan, including the OCP. The Appellants identify two specific sub-issues related to this issue, including: inconsistency with OCP Policy CIRC-O-3 and OCP Policy LUC-O-5. These appeal sub-issues are further outlined in staff's responses below.

2.A Inconsistent with OCP Policy CIRC-O-3

The Appellants contend that project-generated traffic will exceed the acceptable Level of Service for Lakeview Road and is therefore inconsistent with OCP Policy CIRC-O-3. The Appellants also allege that the County used a determination from the Public Works Department Transportation Division to attempt to amend the OCP in the Applicant's favor. The Appellants assert that by approving a project that exceeds the acceptable Level of Service, the County is acting contrary to the policies and standards outlined in the OCP, and that the determination from the Public Works Department Transportation Division cannot take precedence over the adopted language of the OCP when reviewing the Proposed Project for consistency with local policies and regulations.

Staff Response:

Staff finds that the Proposed Project is consistent with all circulation policies in the OCP, including OCP Policy CIRC-O-3. Consistency with OCP Policy CIRC-O-3 is achieved by the payment of project fees that contribute toward alternative transportation projects identified in the Orcutt Transportation Improvement Plan (OTIP).

The OCP designates Lakeview Road as a secondary roadway with a design capacity of 11,600 Average Daily Trip (ADT). OCP Policy CIRC-O-3 requires the County to maintain a minimum Level of Service (LOS) D

for Lakeview Road. LOS D equates to approximately 80% to 90% of a road's design capacity. Accordingly, the minimum LOS for Lakeview Road is equivalent to approximately 10,500 ADT.

The traffic and circulation study prepared for the Proposed Project by Pinnacle Traffic Engineers on October 10, 2019 (Attachment 9 of Attachment 3) indicates that Lakeview Road currently operates at a LOS D with 10,300 ADT, or approximately 88% of its design capacity. This study projects that the Project will add 254 ADT, including 18 peak hour trips (PHT), to Lakeview Road and will exceed the minimum LOS D (10,500 ADT) by 54 trips.

When the estimated future volume of traffic for a project exceeds the acceptable LOS on a secondary roadway, OCP Policy CIRC-O-3 requires a contribution toward an alternative transportation project (as identified in the OTIP) that is deemed to offset the effects of project-generated traffic, unless the project generates 100 ADT or less.

To satisfy this requirement, the Applicant proposes to fund alternative transportation projects identified in the OTIP through the payment of additional fees to the County Public Works Department. These fees will be used towards OTIP identified alternative transportation projects including transit facility projects, sidewalk improvements, and purchasing clean air buses. When implemented, these projects enhance community walkability by establishing a well-maintained, secure pedestrian network with improved connections to public transit. The fees will not be used for operational or safety upgrades near the Project site, because, as discussed below, the Proposed Project will not result in operational impacts to Lakeview Road and because safety related effects of the Proposed Project are addressed through consistency with County-adopted engineering standards and frontage improvements (curb, gutter, and sidewalk) that already exist on the subject property.

The fees charged will be based on new peak hour trips (PHT) in excess of the number outlined in the OCP for projects as described above, similar to the County-adopted Transportation Development Impact Fees (DIMFs). For context, a PHT is identified as a vehicle trip generated by a land use that occurs during the hours where a road system is expected to operate at its highest traffic volume as established by the Institute of Transportation Engineers (e.g., 7:00 a.m. to 9:00 a.m.). According to the Proposed OTIP Fee Summary (Attachment 6), the Applicant will pay the fee identified by the adopted Orcutt Development Mitigation Fee Schedule for a total of \$49,555. These fees are described in Attachment 6 and will be collected by the Public Works Department prior to Final Occupancy Clearance by the Building Division.

Planning and Development staff, in coordination with the Public Works Department, determined that the payment of these fees is consistent with the above OCP policy because it constitutes a contribution toward an alternative transportation project that would offset the effects of the Project-generated trips. This requirement is included in Attachment 2 as Condition of Approval No. 6. The condition reads as follows:

OTIP Contribution Fees. *The project will generate traffic that exceeds the design capacity of Lakeview Road by more than 100 trips. In order to remain Consistent with the Orcutt Community Plan, the applicant must pay fees equivalent to the 11 peak hour trips which will fund alternative transportation projects identified in the Orcutt Transportation Improvement Plan. A Peak Hour Trip is equivalent to a Single Family Residence. Therefore, the applicant will pay a fee equivalent to the adopted Orcutt Development Mitigations Impact Fee for eleven (11) Single Family Dwellings with landscape median fees and bikeway infrastructure fees included. The current total fee estimate is*

\$49,544.00. Actual fees will be based on the adopted Orcutt Area Development Impact Fee at the time of final occupancy.

TIMING: *The fees shall be paid to the County Public Works Department-Transportation Division prior to Final Building Permit Inspection and shall be based on the fee schedules in effect when paid, which may increase at the beginning of each fiscal year (July 1st).*

The Appellants assert that, despite the fees, the County is acting contrary to the policies and standards outlined in the OCP by approving a project that exceeds the acceptable Level of Service. As discussed above, the Proposed Project does exceed the minimum LOS D for Lakeview Road, however, the roadway has a higher capacity than what is described in the OCP, which was adopted in 1997 and amended December 2020. The impact to Lakeview Road is addressed in the proposed final MND (Attachment 3). The County Public Works Department Transportation Division provided an analysis of roadway operations at Lakeview Road in Attachment 11 of the proposed final MND, which explains why operational impacts to the roadway are less than significant, despite exceeding the acceptable road capacity described in the OCP. The analysis describes that actual operations at Lakeview Road demonstrate that the roadway currently has a higher design capacity of 15,700 ADT compared to the 11,600 ADT that is described in the OCP. Lakeview Road connects State Route 135, a highway, to Bradley Road, a major arterial road. The analysis further explains that operational failures at roadway intersections are key indicators of roadway capacity issues because the inability to clear vehicle queues at roadway intersections leads to reductions in roadway capacities. In summary, the intersections connecting this segment of Lakeview Road with Bradley Road to the east and State Route 135 to the west will continue operating within acceptable level of service with the addition of Project-generated traffic based on the analysis provided by Pinnacle Traffic Engineers and reviewed by the Public Works Department Transportation Division.

Finally, the analysis from the Public Works Department is not an amendment to the OCP as alleged by the Appellants. Rather, the analysis was provided as part of the environmental review process to explain why significant operational impacts are not expected to occur on Lakeview Road despite Project-generated trips exceeding the acceptable road capacity described in the OCP. OCP Circulation policies allow this option to fee-out, thus allowing trips above LOS D. Paying fees is consistent with the OCP and is not an amendment.

2.B Inconsistent with OCP Policy LUC-O-5

The Appellants contend that the Proposed Project is inconsistent with OCP Policy LUC-O-5, which states “*All commercial and industrial projects shall minimize impacts to adjoining residences, businesses and open space areas.*” The Appellants further argue that the approved turn restrictions benefit the Applicant by diverting traffic south on Orcutt Road, toward the Proposed Project site and away from the commercial uses on the north side of Lakeview Road. The Appellants also allege the following with regarding to the traffic analyses prepared for the Proposed Project:

- 1) The traffic analyses utilize traffic figures from the OCP, which acknowledged parcel size. A voluntary merger that created the subject 0.82-acre parcel occurred after the OCP was adopted, and thus the use of the subject parcel as a single parcel was not considered in the OCP.
- 2) The traffic analyses assume that traffic redirected east of the Proposed Project site can execute an illegal left turn across two solid lines to enter the commercial center on the north side of Lakeview Road. Additionally, the Appellants contend that there was no study that accounted for the existence of the two-solid lines, which the Appellants allege should have been considered a traffic barrier.

Staff Response:

Staff finds that the Proposed Project is consistent with OCP Policy LUC-O-5 and all other applicable policies and standards of the OCP. The traffic analyses (Traffic Analyses hereinafter) for the Proposed Project consists of five documents prepared by Pinnacle Traffic Engineering, which are included as Attachments 6, 7, 8, 9, and 13 to the proposed final MND (Attachment 3). The Traffic Analyses were reviewed by the County Public Works Department, City of Santa Maria Public Works Department, and Caltrans, and each department and agency agreed that the data and findings from the Traffic Analyses were accurate. Further, the Appellants have not presented contrary information from traffic engineers, and their assertions are conclusions without substantial evidence in support.

Additionally, the approved turn restrictions do not benefit the Applicant by diverting traffic south on Orcutt Road, toward the Proposed Project site and away from the commercial uses on the north side of Lakeview Road as alleged by the Appellants. The turn restrictions are necessary to mitigate Project-related transportation impacts. The recommended mitigation measure limits traffic north and southbound on Orcutt Road to right turns only during morning (7:00 a.m. to 9:00 a.m.) and afternoon (4:00 p.m. to 6:00 p.m.) peak hours. These restrictions still provide viable options for drivers travelling north on Orcutt Road to enter the retail center across Lakeview Road, such as turning right onto Lakeview Road and then turning left over solid double yellow lines and into the parking lot driveway.

The Traffic Analyses utilize design capacity information from the OCP and data from the Santa Maria Traffic Model and Lakeview Promenade Mixed Use Project traffic study, which was conducted in 2018. This data focuses on existing traffic using estimates for known-approved and funded projects in the area rather than parcel size. The following directly addresses the two issues alleged by the Appellants above, respectively:

- 1) The lot merger of the preexisting lots at the Project site does not affect the accuracy of the Traffic Analyses. County records show that the previous service station existed over three parcels. The Applicant merged the parcels because current zoning practices do not allow the construction of a structure over shared property lines.
- 2) The double yellow lines separating the two-way traffic at Lakeview Road do not present a traffic barrier that disallows entrance in the commercial property on the north side of Lakeview Road. Pursuant to California Vehicle Code 21460(d), the presence of solid yellow lines, "...do not prohibit a driver from crossing the marking if turning to the left at an intersection or into or out of a driveway or private road." Therefore, the traffic studies are accurate.

Appeal Issue No. 3: Project-Related Utilities Must be Undergrounded

The Appellants contend that the Proposed Project must comply with Visual Resource Policy 5 in the Land Use Element of the County Comprehensive Plan as well as County Board of Supervisor Resolution 87-344 (Attachment 9) requiring the Applicant to place Project-related utilities underground. The Appellants state that the obstacles noted in the Applicant's request for relief of this requirement were present at the time that the Evergreen Shopping Center was developed. The Evergreen Shopping Center is located across Lakeview Road from the Proposed Project site. The retail center was approved by the Planning Commission in 2008 under Development Plan No. 07DVP-00000-00010. The approved project description and conditions of approval for the Evergreen Shopping Center project both include provisions requiring that utilities serving the Evergreen Shopping Center be placed underground. The Applicants for the Evergreen Center were required to underground the utilities despite the added cost and time and despite

their own request for this requirement to be waived. The Appellants allege that this requirement should be consistently applied to the Proposed Project.

Staff Response:

This argument is moot because the Applicant has not appealed the Planning Commission's decision to deny the request to waive the undergrounding requirement posed in the Public Works condition letter and Board Resolution 87-344 and the Applicant has withdrawn the request for a waiver.

Visual Resource Policy 5 of the County Comprehensive Plan Land Use Element requires the installation of underground utilities for all new development except where cost of undergrounding would be so high as to deny service. This policy states:

Utilities, including television, shall be placed underground in new developments in accordance with the rules and regulations of the California Public Utilities Commission, except where cost of undergrounding would be so high as to deny service.

County Board of Supervisor Resolution 87-344 (Attachment 9) further specifies that projects requiring approval of a Development Plan must place all utilities underground, including those used for communication, power, and television. The Condition Letter provided by County Department of Public Works (Attachment 2, Condition of Approval No. 43) requires that utilities fronting Orcutt Road and Lakeview Road be placed underground, consistent with the aforementioned resolution.

As stated above, the Applicant has withdrawn their request to waive the undergrounding requirement and will underground all applicable existing and proposed utilities. During the October 6, 2021, Planning Commission hearing, County Public Works staff confirmed that the Applicant will not be required to underground existing utilities that cross over the Highway 135 right-of-way. Instead, the Applicant will be required to place all existing and proposed utilities that front the subject property underground, consistent with the Public Works condition letter and Board Resolution 87-344. The Director of Public Works has discretion to determine what is feasible and reasonable for projects abutting, adjacent to, or contiguous with a public easement, right of way, or street or highway. (Resolution 87-344 § 2, pp. 3-4.) Accordingly, the Public Works Director will determine the location of the power pole adjacent to Highway 135 where the underground utilities on this project site connect with existing aboveground utilities that cross Highway 135. The Applicant will be required to proceed with undergrounding all applicable existing and proposed utilities that front the subject property consistent with the Public Works condition letter and Board Resolution 87-344.

Conclusion: For the reasons discussed above, staff finds that the appeal issues raised are without merit. Planning and Development staff recommends that the Board approve the Project *de novo* based on the findings provided as Attachment 1.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$19,000 (75 hours of staff time). The fixed appeal fee was paid by the Appellants in the amount of \$709.06. Funding for processing this appeal is budgeted in the Planning and Development Department's Permitting Budget Program as shown on page D-301 of the County of Santa Barbara Fiscal Year (FY) 2021-2022 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on March 8, 2022. The notice shall appear in the Santa Maria Times. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward a minute order of the hearing, as well as proof of publication to the attention of Gwen Beyeler, and return one printed copy of the Mitigated Negative Declaration (Case No. 19NGD-00000-00001) to the attention of Planning and Development Department: Hearing Support.

Attachments:

1. Findings
2. Conditions of Approval
3. Proposed Final Mitigated Negative Declaration
4. Appeal Letter dated October 15, 2021
5. Project Plans dated April 29, 2020
6. Proposed OTIP Fee Summary
7. Planning Commission Staff Report dated July 20, 2021 and Attachments
8. Planning Commission Memorandum dated September 28, 2021
9. County Board of Supervisor Resolution 87-344
10. Faciliation Request
11. Planning Commission Memorandum dated October 6, 2021 and Attachments

Authored by:

Gwen Beyeler, Planner, (805) 934-6269
Development Review Division, Planning and Development Department