

Public Comment

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From: Cameron Goodman <cgoodman@ppplaw.com>
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To: sbcob
Cc: Richardson, Jennifer; Reese, Shannon; Mark S. Manion; Matt Mansi; 'Ernie Mansi'
Subject: Comment Letter - Board of Supervisors May 10, 2022 Agenda Item No. 6
Attachments: Goodman to BOS 2022.05.06.pdf



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Hello,

Please see attached comment letter for submittal to the Board of Supervisors in relation to Agenda Item No. 6 at the May 10, 2022 meeting.

Thank you



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May 6, 2022

VIA E-MAIL ONLY

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Re: Key Site 3 Residential Subdivision Project

Dear Supervisors:

This firm represents SB Clark, LLC in the development of the Key Site 3 residential subdivision project in Orcutt (the "Project"), which which was originally considered by the Board of Supervisors at its regular meeting on October 12, 2021. The Board voted to continue the hearing in order to give our client additional time to (among other things) obtain secondary access to the Project site along Oakbrook Lane instead of Chancellor Street. Despite our client's diligent efforts, most of the property owners on Oakbrook Lane are unwilling to grant such an access easement. Fortunately, our client currently has legal access to the Project site via an existing easement over Chancellor Street, which means the secondary access should not impede the Board's approval of the Project.

The Project meets all of the County's long-term planning goals, standards and objectives, and will provide much needed housing opportunities and valuable public open space. In fact, State law mandates that the County approve the Project. For these reasons we respectfully request that the Board of Supervisors approve the Project at the hearing on May 10, 2022.

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Project Background

The Project proposes 119 single-family homes and dedication of 110 acres of open space on 138.57 acres of the Key Site 3 property in Orcutt. As contemplated in the Orcutt Community Plan (“OCP”), the Project requires: (1) a General Plan Amendment, consisting of two amendments to the Comprehensive Plan and the OCP to change the Land Use Designation from Residential Ranchette to Planned Development; and (2) a rezone from RR-10 to PRD. All of these actions are expressly contemplated and recommended by the OCP.

The OCP states that, notwithstanding the current Land Use Designation and zoning of Key Site 3, the County shall consider re-designating and rezoning the portion of the Project site currently zoned RR-10 to PD/PRD 125, so long as specified open spaces have been dedicated to the County, and the property owner has demonstrated compliance with Mello-Roos requirements. Any proposed development on Key Site 3 shall also comply with twenty-one Development Standards. (OCP at pp. KS3.2 – KS3.6.) Under the OCP, potential projects within the developable area of Key Site 3 could consist of any combination of housing types, including the 119 single-family housing units proposed in the Project. (OCP at p. KS3.1.) Planning staff originally determined that the current Project application satisfies both of the rezone prerequisites, and that the Project is consistent with all PRD zoning requirements. (See Staff Report for November 4, 2020 Planning Commission hearing, pp. 7 and 72-87.)

In sum, the Project meets all of the requirements of the OCP, and will provide much needed housing opportunities and open space dedication in the manner contemplated by the County’s long-range planning documents. The homes in the Project are expected to sell for well below the average cost of homes in similar subdivision projects in the area, and combined with the multifamily development on the Project site (which has already been approved by the County), the Project will help alleviate the housing-jobs crisis in the County.

The Planning Commission’s Unsupportable Findings for Denial

The Planning Commission has recommended findings for denial which are completely unsupported by any evidence in the record. This is made abundantly clear by comparing County Planning staff’s original recommended findings for approval dated October 15, 2020, with the findings for denial that were ultimately adopted by the Planning Commission on May 18, 2021. The findings for denial are in direct conflict with the relevant OCP Policies, which explicitly contemplate higher density development in the northern area of the Project site, combined with dedication of public open space on the remainder of the southern portion of the site. Contrary to this clear directive in the OCP, the Planning Commission found that, in order to ensure neighborhood compatibility, a larger portion of the Project site should be developed with lower density housing, and the proposed open space should be developed in ranchette style development. This constitutes an ad hoc amendment to the OCP, and is contrary to the County’s

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clear policies and objectives encouraging high-density residential development clustered on the northern portion of the Project site, with open space throughout the southern portion of the site.

This purported incompatibility with surrounding uses focuses only on the medium-density residential uses to the west of the Project site, and completely ignores the high-density mobile home park (“MHP”) to the north. The findings also are misleading in stating that the Project would be inconsistent with adjacent agricultural lands to the south and east. The southern portions of the Project site adjacent to agricultural land would all be designated open space, not residential development, and the agricultural land to east of the Project site is separated by Highway 101. In addition, the findings ignore the substantial setbacks, landscaping and open space in the areas adjacent to the existing one-acre lots to the west and south of the Project site.

The Planning Commission also failed to balance the substantial public benefits associated with the Project—namely, the addition of much needed housing, and the dedication of substantial public open space and trails—with the opposition of a few vocal neighbors. There are a total of five (5) existing developed lots that border the Project site, not including the MHP. These lots clearly benefit from the undeveloped Project site in the form of de-facto open space and backyard views across the site, and the neighbors have expressed discontent over emergency secondary access along Chancellor Street. The Planning Commission’s recommendation to deny the Project gives preference to these few property owners’ interests over the general health and welfare of the community as a whole, ignoring the substantial housing and open space benefits the Project will provide.

Issues Raised at the Last Board of Supervisors Hearing

At the last hearing on the Project, the Board asked whether: (1) the secondary access could be moved from Oakbrook Lane to Chancellor Street; (2) the density could be reduced such that development could be spread out across the Project site; (3) the multifamily (“MR-O”) portion of the Project site could be relocated elsewhere; (4) there is adequate water supply for the Project; and (5) there will be adequate parking on the Project site. Each of these questions is addressed in turn below.

Secondary Access

The Project proposes secondary access along Chancellor Street, a private road to the west of the Project site. As set forth in that certain Grant Deed recorded May 16, 1984 as Instrument No. 84-25731 of Official Records, our clients currently hold a “non-exclusive easement and right of way for ingress, egress, public road and public utility purposes, in, on and under” a portion of Chancellor Street for the purpose of accessing the Project site (the “Easement”). In an attempt to thwart Project approval, a few vocal neighbors on Chancellor Street have raised objections to this secondary access route, alleging that the proposed use would overburden the Easement, and

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threatening so much as to block access to the Easement through either a locked gate and/or a lawsuit. The Planning Commission relied on this Easement dispute as a secondary basis to rationalize their tenuous findings for denial. As discussed below, this is not a valid basis for denial.

The OCP suggests secondary access to the Project site along Oakbrook Lane, which is located parallel and approximately 700 feet to the north of Chancellor Street. Our clients originally submitted the Project application with secondary access along Oakbrook Lane, but in 2009 County Planning staff recommended a change in the secondary access point to Chancellor Street in part because of the existing recorded Easement. Our clients then changed the secondary access point to Chancellor Street in accordance with the County's recommendations.

Nevertheless, in accordance with the Board's suggestion at the last hearing, our clients attempted to obtain an access easement from the property owners along Oakbrook Lane, but to no avail. For these reasons we return to the Board requesting Project approval with secondary access along Chancellor Street, which is preferable to Oakbrook Lane for multiple reasons. First, while fourteen (14) homes would be impacted by secondary access along Oakbrook Lane, only five (5) homes would be impacted by secondary access along Chancellor Street. Chancellor Street is ten (10) feet wider than Oakbrook Lane, and is in better condition. Most importantly, our clients currently have legal access across Chancellor Street, all but guaranteeing the required emergency access to the Project site. Nothing in the OCP mandates secondary access along Oakbrook Lane, and Chancellor Street is the logical and reasonable option under the circumstances.

At the last hearing the Board questioned whether a legal challenge by the neighbors on Chancellor Street would thwart our client's ability to develop the Project, thereby presenting a basis for denial. As a preliminary matter, the Easement is defined broadly for ingress and egress purposes, and we are confident our clients would prevail in any legal dispute over the proposed use of the Easement for secondary access to the Project site. Moreover, as County staff has confirmed, the permitted scope and use of the Easement is a private dispute between our clients and the owners of the properties along Chancellor Street. In the event the neighbors challenge our clients' right to utilize the Easement for secondary access purposes, the matter will be resolved in the courts. If the neighbors prevail, our clients will not be able to satisfy a condition of approval and cannot proceed with the Project. If our clients prevail—as we strongly believe they will—then secondary access remains a non-issue and they can proceed with the Project as approved. There is risk of legal challenge inherent in every project that requires access along a private way. The County should not condition or deny a project on the basis of a speculative possibility that neighbors will challenge the owner's access rights.

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Reduced Density

Certain members of the Board suggested at the last hearing that our clients consider reducing the density of the Project consistent with the Planning Commission's recommendations. This is not an option for our client. The Project is consistent with the policies, standards and objectives set forth in the OCP, which in fact allow for even higher density than proposed. Reduced density spread out across the Project site would not only be inconsistent with the General Plan, but would also reduce vital housing opportunities provided by the Project, and reduce the amount of open space available for public use. Moreover, as discussed in detail below, the Housing Accountability Act prohibits the County from conditioning Project approval on lower density.

Moving the MR-O

Certain members of the Board also suggested re-locating the MR-O portion of the Project site elsewhere in the County. This is also not an option for our client. The MR-O zoned portion of the Project site allows for development of up to 20 residential units per acre by right as a result of the County's General Plan Housing Element Focused Rezone Program. This MR-O portion was approved by the County in February of 2009, at which time secondary access to that portion of the Project site was approved via Chancellor Street. This approval cannot be rescinded, and our client will proceed with the MR-O portion regardless of whether the Project currently under consideration is approved.

Water

One Board member questioned whether water supply to the Project has been adequately considered. The adequacy of water supply for the Project has been fully evaluated under both CEQA and Planning staff's policy consistency analysis: long-term water supply for the Project and the MR-O will be provided by Golden State Water Company, in addition to a Supplemental Water Purchase Agreement with the City of Santa Maria. No further discussion or analysis of water supply is necessary.

Parking

Finally, one Board member questioned whether there will be adequate parking for the Project, hypothesizing that all off-street garages will be converted to accessory dwelling units under State Law. The adequacy of parking has likewise been fully evaluated under both environmental review and Planning staff's consistency analysis. The Project provides for more than the minimum amount of off-street parking for all the residential units. There is also ample street parking on one or both sides of the streets within the Project, as well as additional guest and trail access off-street parking.

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The Housing Accountability Act Prohibits the County from Denying the Project

Finally, the Housing Accountability Act (Gov. Code § 65589.5) (the “HAA”) prohibits the County from denying the Project. In the event our clients were to challenge a denial of the Project, the County could be exposed to significant liability, including injunctive and declaratory relief, penalties in excess of \$1.9 million, and attorneys’ fees.

Originally enacted in 1982, the HAA provides that when a proposed housing development complies with applicable general plan, zoning, and development policies, the local agency may not disapprove the project (or approve it on condition that it be developed at lower density) unless it finds that the project would have a specific, adverse, and unavoidable impact on public health or safety. Various amendments to the HAA over the years have added more teeth to the legislation, further restricting local agencies’ discretion to deny or condition housing developments. “It is the policy of the state that [the HAA] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (*Id.* § 65589.5(a)(1)(L), Stats. 2017, ch. 378, § 1.5.) Recent case law demonstrates that the courts are following this legislative intent to promote the development of housing, and imposing increasingly stringent standards on local agencies to justify disapproval (or conditional approval) of housing developments. (See *California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2021) 283 Cal. Rptr. 3d 877 (the HAA checks municipal authority as necessary to further the statewide interest in new housing development, and does not infringe on the right to home rule).)

The Project is a “housing development project” as defined under the HAA. (Gov. Code § 65589.5(h)(2)(A); *Honchariw v. Cty. of Stanislaus* (2011) 200 Cal. App. 4th 1066, 1074-1076.) The Project also complies with all applicable, objective general plan, zoning, and subdivision standards and criteria. (Gov. Code § 65589.5(j)(2)(B) (housing development project automatically deemed to be in compliance with objective standards and criteria when local agency fails to provide written notice of any non-conformities within 30 days of date application deemed complete); *Sequoyah Hills Homowners Assn. v. City of Oakland* (1993) 23 Cal. App. 4th 704, 711 (project in compliance with objective standards and criteria because, even though project density exceeded designation in comprehensive plan, project density was nevertheless “appropriate” under comprehensive plan policies which provided that land use classifications are flexible and local agency will prefer a relatively higher density for a given project where certain conditions are met, and all of the relevant conditions were met).)

As a result, the County may not deny the Project, or condition it to reduce density, unless it finds—based on a preponderance of the evidence that outweighs the evidence presented by the applicant—that: (1) the Project has a “specific, adverse impact upon the public health or safety,” which means the Project would have a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions”;

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and (2) there is no feasible method to mitigate or avoid the adverse impact other than to deny the Project or condition approval upon lower density. (Gov. Code § 65589.5(j)(1)(A), (B).)

The County clearly cannot make the requisite health and safety findings, and the Planning Commission's recommended findings for denial fall far short of the HAA requirements. As such, if the County denies the Project or requires reduced density, a court may issue an order setting aside the denial or density reduction and either: (1) compel the County, within 60 days, to comply with the HAA in its subsequent review of the Project application; or (2) direct the County to approve the Project if the court finds the County acted in bad faith. (*Id.* § 65589.5(k)(1)(A)(ii).) If the County fails to comply with the order, the court shall fine the County a minimum of \$10,000 per housing unit in the Project (\$1.19 million in this case). (*Id.* § 65589.5(k)(1)(B).) Our client would also be entitled to recover reasonable attorneys' fees and costs of suit. (*Id.* § 65589.5(k)(1)(A)(ii).)

The fact that the Project proposes secondary access along Chancellor Street does not change the fact that the Project is in compliance with all "applicable, objective general plan, zoning, and subdivision standards and criteria," as required by the HAA. The Project application proposes the following two text amendments to the OCP:

DevStd KS3-6: "No development, other than a secondary access road ~~from Oakbrook Lane~~ to Chancellor Street, shall occur within 100 feet of the dripline of the vegetation in the southwest corner of the northern mesa, or within a 25 foot-buffer from the top of bluff of the canyon in the northeast corner of the site."

DevStd KS3-7: "Primary access to the site shall be from the frontage road along US Hwy 101. The existing easement over Site 2 shall be renegotiated to accommodate development of Site 2 and to align with the "preferred access point" intersection. The developer shall coordinate with P&D, Public Works Transportation Division, and the Fire Department to ensure appropriate secondary access from ~~Oakbrook Lane~~ Chancellor Street using the developer's existing Chancellor Street easement."

Oakbrook Lane and Chancellor Street are parallel and one block away from one another (about 700 feet). Although the Development Standards to be amended originally provided for secondary access through Oakbrook Lane, the Key Site 3 description in the OCP merely says, "Secondary, emergency-only access could be from Oakbrook Lane to the west." (OCP at p. KS3.2 (emphasis added).) The secondary access point was changed in or around 2009—at the County's recommendation—because our clients had an existing access easement on Chancellor Street but not on Oakbrook Lane, and Chancellor Street was mutually agreed upon by the County as a superior alternative to Oakbrook Lane because it is wider and has greater traffic capacity.

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Moreover, the November Staff Report for the Project included a consistency analysis for the proposed amendments which states as follows: “The applicant does not have an access easement across Oakbrook Lane. As a result, secondary access to the project site is proposed from Chancellor Street where the applicant does have an access easement. Should the requested amendment be adopted, this development would not conflict with this Key Site 3-specific OCP development standard and would be consistent with this development standard.” (See Staff Report for November 4, 2020 Planning Commission hearing at pp. 76-77 (emphasis added).)

The OCP clearly contemplated a secondary access point for Key Site 3 from a road to the west of the Project site. Oakbrook Lane and Chancellor Street are the only two options for such secondary access. At the time the OCP was drafted, Oakbrook Lane was identified as potentially being the appropriate access point, and the relevant Development Standards were drafted accordingly. For some reason the OCP did not take into account that there was already an access easement along the parallel street to the South, making the proposed OCP amendments all but a foregone conclusion and entirely in line with the intent of the OCP’s policies and standards.

The Chancellor Street easement was recorded in 1984, and the OCP was originally adopted in 1997, so it is unclear why the easement issue was not addressed at the time of adoption. Nevertheless, the OCP was prepared and adopted by the County. If secondary access were more feasible along a road with an existing easement, then the County’s Comprehensive Plan merely set up the Project site owner for failure by identifying Oakbrook Lane as opposed to Chancellor Street given that an amendment would be inevitable or at least highly likely. As a result, the proposed amendment to the OCP to move the secondary access point is merely a change that renders the Project more in conformity with the intent of the OCP.

The County has already identified Chancellor Street as the correct secondary access point for the Project site. An 8-acre portion of Key Site 3 was rezoned to MR-O in February of 2009 as part of the County’s Housing Element Focused Rezone Program (although the 160 units in the MR-O zone are not a part of the Project currently before the County). The environmental impacts associated with the future development of the MR-O were evaluated in the Focused Rezone Program EIR (State Clearinghouse #2008061139, Santa Barbara County, 2008) (the “MR-O EIR”). Appendix C to the MR-O EIR states, “According to the [OCP], access [to Key Site 3] will be provided via a connection to Chancellor Street and via the frontage road west of U.S. 101.” (MR-O EIR Traffic and Circulation Study, July 21, 2008 at p. 12 (emphasis added).) The County clearly contemplated secondary access to the Project site via Chancellor Street given that the traffic and circulation analysis for Key Site 3—which was certified by the County—was based on secondary access via Chancellor rather than Oakbrook.

In addition, under the HAA a project is automatically deemed to be in compliance with the objective standards and criteria if the local agency fails to provide the applicant with written notice of any non-conformities—and an explanation thereof—within 30 days of the date the

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project application is deemed complete. (Gov. Code § 65589.5(j)(2)(B).) The County never made a determination that the Project as proposed (with the Chancellor Street secondary access point) was out of compliance with the objective standards and criteria, and the County did not provide the applicant with a written explanation of any alleged non-conformity. In fact, if anything the November Staff Report (above) indicates that the County determined that the Project was consistent with the policies and standards notwithstanding the proposed change in access point. Even if the automatic compliance provisions do not apply, County staff has already determined that the Project is consistent with each and every standard and criteria.

The legislative intent of the HAA is to limit the ability of local agencies to deny housing projects, and the legislature has only made the HAA stronger over time.¹ Given these policy considerations, we do not believe the County can reasonably conclude that the Project is out of compliance with the applicable standards and criteria merely because it proposes a slight change to a secondary access point 700 feet to the south in order to accommodate a private access easement, with the end result being a secondary access point in substantially the same location and serving the exact same purpose as originally contemplated in the OCP. Nor can the County conclude that the Project is inconsistent with any other standards or criteria because it satisfies each and every requirement and development standard in the OCP necessary for the rezone and General Plan amendment. As a result, we strongly believe a court would find the County to be in violation of the HAA if it denies the Project or conditions approval on reduced density.²

The County's potential non-compliance with the HAA has been reported to the California Department of Housing and Community Development ("HCD"), which is investigating the matter and monitoring the progress of the Project. Even in the event HCD fails to take action against the County relative to a denial of the Project, the legal question of whether the County violated the HAA will eventually be determined by the courts, and our clients are prepared to resolve the issue through litigation if the County denies the Project or conditions approval on reduced density.

¹ "The Legislature's intent in enacting [the HAA] in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." (Gov. Code § 65589.5(a)(1)(K).)

² For purposes of the HAA, a housing development project shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity." (*Id.* § 65589.5(f)(4) (emphasis added).)

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Conclusion

Approval of the Project will provide much-needed housing and public open space consistent with the County's long-range planning policies. The Project as proposed is exactly what the County envisioned for Key Site 3 in the OCP, and our client has complied with all of the County's objective standards and criteria for development of the property. For these reasons, the Planning Commission's contrived findings for denial are unsupported by any evidence in the record, and represent capitulation to the demands of a handful of vocal neighbors at the expense of the health and welfare of the greater community. Our clients have legal secondary access along Chancellor Street, and the County should not deny the Project merely because a few vocal neighbors have threatened frivolous litigation over our clients' access rights. Finally, the HAA prohibits the County from denying the Project (or even reducing the density), and our clients will seek judicial relief as necessary in the event the Project is denied or conditioned on reduced density.

Thank you for your consideration of this comment letter, and we look forward to answering any questions you may have at the continued hearing on the Project.

Sincerely,



Cameron Goodman
for PRICE, POSTEL & PARMA LLP

cc: Shannon Reese, Planner (sreese@co.santa-barbara.ca.us)
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