

Ramirez, Angelica

Public Comment

A-24



**From:** Cameron Goodman <cgoodman@ppplaw.com>  
**Sent:** Friday, September 17, 2021 10:13 AM  
**To:** sbcob  
**Cc:** Richardson, Jennifer; Reese, Shannon; Matt Mansi; Ernie Mansi; Mark S. Manion  
**Subject:** Comment Letter - Board of Supervisors 9/21/2021 Agenda Item A-24  
**Attachments:** Goodman to BOS\_2021.09.17.pdf

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Hello,

Please see attached comment letter for submittal to the Board of Supervisors in relation to Agenda Item No. A-24 at the September 21, 2021 meeting.

Thank you



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September 17, 2021

**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"). The County Planning Commission has adopted findings recommending that the Board of Supervisors deny the Project, which is expected to be considered by the Board of Supervisors at its regular meeting on October 12, 2021.

As discussed below, the Project meets all of the County's long-term planning goals and objectives, and there is insufficient evidence in the record to support the Planning Commission's findings for denial. Rather, the Planning Commission's erroneous and unsupportable recommendation to deny the Project stems from the vocal opposition of a few neighbors who do not want secondary emergency access along their private street. As further discussed below, we have proposed alternative access options that will allay any such concerns. Moreover, the Housing Accountability Act (Gov. Code § 65589.5) prohibits the County from denying the Project. For these reasons we believe the Project must be approved by the Board of Supervisors.

**County of Santa Barbara Board of Supervisors**

Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 2

**Project Background**

The Project proposes 119 single-family dwellings and dedication of 110 acres of open space on 138.57 acres of the Key Site 3 property in Orcutt, as more specifically delineated in the Orcutt Community Plan (“OCP”). As contemplated in the OCP, the Project application 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 by and recommended in 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 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 as 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 Planning Commission’s Unsupportable Findings For Denial**

The Planning Commission’s findings for denial are completely unsupported by any evidence in the record. This is abundantly clear based upon the administrative record and upon comparing 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 (dated May 18, 2021). The findings for denial are in direct conflict with the relevant OCP Policies, which explicitly contemplate higher density development in the area of the proposed Project, combined with dedication of public open space on the remainder of the Project 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.

**County of Santa Barbara Board of Supervisors**

Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 3

The purported incompatibility with surrounding uses identified by the Planning Commission 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 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 on Chancellor Street (see discussion below). There are a total of five 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 have apparently expressed discontent over emergency secondary access along their private street. The Planning Commission’s recommendation to deny the Project gives preference to these five property owners’ interests over the general health and welfare of the community as a whole.

**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”). However, in an attempt to thwart Project approval, some neighbors have installed a locked gate across Chancellor Street, and have refused to provide any assurance of unobstructed access in the future. The Planning Commission relied on this easement access issue as a secondary basis to rationalize the tenuous findings for denial. This is not a valid basis for denial of the Project.

As discussed in further detail below, the OCP identifies secondary access to the Project site along Oakbrook Lane, a private road parallel to Chancellor Street located approximately 700 feet to the north. Our clients originally submitted the Project plans with secondary access along Oakbrook Lane, but in 2009 County Planning staff recommended that our clients change the secondary access point to Chancellor Street because they already had access rights pursuant to the recorded Easement. In light of this, our clients changed the secondary access point to Chancellor Street in order to satisfy the County’s recommendations.

**County of Santa Barbara Board of Supervisors**

Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 4

In an effort to once again placate the County and the Project's neighbors, our clients have met with Supervisor Bob Nelson and Planning staff to determine the most reasonable path towards Project approval. In the event the Board of Supervisors determines that secondary access along Chancellor Street is not preferable, our clients are willing to amend the Project application to propose secondary access along Oakbrook Lane, with Chancellor Street as a fallback option. Revised conditions of approval would require that our clients first endeavor to obtain an access easement on Oakbrook Lane. In the event they are unable to obtain an access easement on Oakbrook Lane, the County will consider adopting a resolution of necessity in order to exercise eminent domain to establish such secondary access. In the event our clients are unable to obtain an access easement on Oakbrook Lane and the County does not exercise eminent domain to establish such secondary access, they may use Chancellor Street as the secondary access road because they already have an access easement for such purposes.

We believe the Project should be approved with secondary access as it is currently being submitted to the Board of Supervisors. However, in the event the Board has concerns about Chancellor Street, we believe the above alternatives are a reasonable compromise to allow for Project approval while encouraging secondary access along Oakbrook Lane.

**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 disapprove the project (or approve it on condition that it be developed at lower density) only if the local agency 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 WL 4129452, (Cal. Ct. App. Sept. 10, 2021).)

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.)

**County of Santa Barbara Board of Supervisors**

Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 5

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; *Sequoiah Hills Homeowners 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”; 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 to re-locate the secondary access point from Oakbrook Lane to 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.”

**County of Santa Barbara Board of Supervisors**

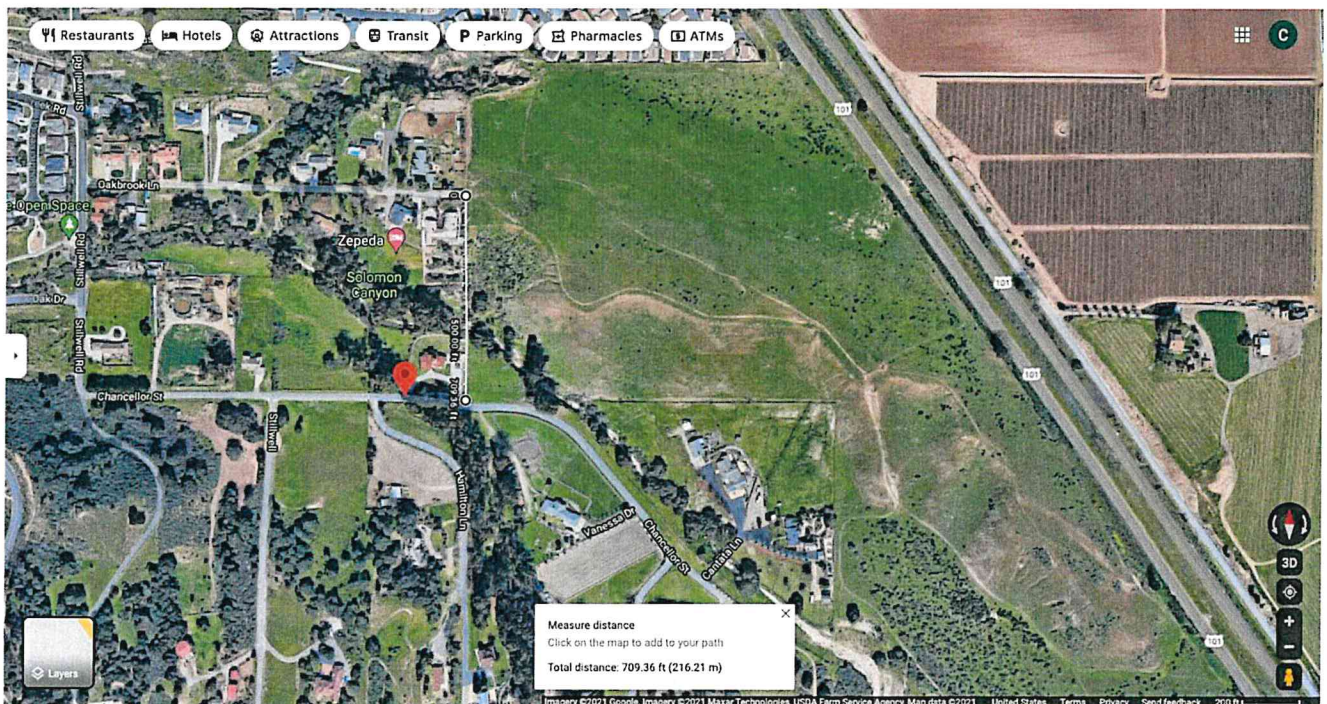
Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 6

**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). Below is a Google Maps screenshot depicting the two roads, with the measurement showing the distance between them at their respective termini by the Project site.



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. It is our understanding that 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.

**County of Santa Barbara Board of Supervisors**

Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 7

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 zoned area of Key Site 3 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.) 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 eventually 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



**County of Santa Barbara Board of Supervisors**

Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 8

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.

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.<sup>1</sup> 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. As a result, we do not believe a court would find that a slight change in the secondary access point renders the Project non-compliant with the applicable standards and criteria under the HAA.<sup>2</sup>

**Conclusion**

In summary, 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. Finally, the HAA prohibits the County from denying the Project (or even reducing the density) as recommended by the Planning Commission. In the event secondary access along Chancellor Street is deemed to be a significant issue for the Board of Supervisors, our clients have proposed an alternative that is acceptable to all parties.

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<sup>1</sup> "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).)

<sup>2</sup> 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).)

**County of Santa Barbara Board of Supervisors**

Re: Key Site 3 Residential Subdivision Project

September 17, 2021

Page 9

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

Very truly yours,



Cameron Goodman  
for PRICE, POSTEL & PARMA LLP

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