

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

RESOLUTION OF THE SAN BENITO)
COUNTY BOARD OF SUPERVISORS) Resolution No. 2019-__
WAIVING CONDITIONS 13, 34 AND 35)
OF THE BLUFFS AT RIDGEMARK)
SUBDIVISION TSM 15-94.

WHEREAS, the subdivider and developer, Frederick Bates & Scott Stringer (Bates Stringer Hollister LLC) (the “Subdivider” or “Developer”), filed an application to subdivide properties under the ownership of Roy and Rita Lompa on August 18, 2015 (File Number TSM 15-94); and

WHEREAS, the project site is located in unincorporated San Benito County, California, approximately 0.7 mile south of the City of Hollister (outside the City’s sphere of influence) and approximately 0.4 mile south of State Route (SR) 25 (“project site”). The project site is generally bordered on the west by Southside Road, on the south by agriculture, and on the north and east by the Ridgemark Country Club development; Assessor’s Parcel Numbers: 025-420-005, 025-420-006, 025- 420-019); and

WHEREAS, the project involves a vesting tentative subdivision map and other discretionary approvals that would allow for the development of 90 single-family residences, two parks, and on- and off-site improvements necessary to serve the residential uses (the “Project”). The lots would range in size between approximately 8,464 square feet to 28,869 square feet; and

WHEREAS, on April 2, 2018, the Planning Commission adopted Resolution No. 2018-03 approving TSM 15-94 for The Bluffs at Ridgemark Subdivision (aka “The Promontory at Ridgemark”) (“TSM 15-94 Resolution”) which would allow the Project to proceed, and the Subdivider to close on the Lompa Property under the terms of its purchase agreement with Roy and Rita Lompa, owners of the Lompa Property; and

WHEREAS, TSM 15-94 Resolution includes several conditions affecting Developer’s ability to proceed with the Final Map. First, Condition #34 of TSM 15-94 Resolution requires that the Developer obtain proof or confirmation of legal access to connect to Ridgemark Drive or provide an agreement with Ridgemark Homes Association (the “RHA”) allowing the Project to utilize the existing Ridgemark roads, and provide such documentation to the County Resource Management Agency (“RMA”) prior to recordation of the first Final Map. Second, Condition #35 of TSM 15-94 Resolution requires that the Subdivider document permission from the RHA and appropriate property owners affected for a potential traffic circle at the northern entrance to the Project. Third, Condition #13 of TSM 15-94 Resolution requires that the Subdivider pay a \$4,500 in-lieu affordable housing fee and Condition #13A of TSM 15-94 Resolution requires that the Subdivider also build 15% on-site affordable housing units (in the form of accessory dwelling units) for the same units for which it was paying the in-lieu fee. Condition #13A was

intended as another means to support the provision of affordable housing and satisfy the Subdivider's obligations related thereto; and

WHEREAS, in 1984, when the County approved Phase 2 of the Ridgemark Project, the County and Ridgemark Corporation, the RHA's predecessor-in-interest, entered into a Zoning Contract requiring that Ridgemark Corporation comply with certain mitigation measures and conditions of approval associated with the development of Phase 2 of the Ridgemark Project (the "1984 Zoning Contract"). One of the mitigation measures related to access to the Lompa Property; and

WHEREAS, for more than two years, Developer has requested that the RHA (successor to Ridgemark Corporation) provide access to The Promontory Project to the Ridgemark roads in accordance with the 1984 Zoning Contract so that the development could proceed on the Lompa Property and in order to satisfy Conditions 34 and 35 of the TSM 15-94 Resolution. The RHA and the Subdivider, however, were unable to reach mutual agreement regarding access. Since January, 2019, Developer has formally requested that the County interpret and enforce the terms of the 1984 Zoning Contract in a manner that would require the RHA to provide access so that Developer may comply with Conditions 34 and 35 of the TSM 15-94 Resolution; and

WHEREAS, on January 25, 2019, Developer filed in San Benito County Superior Court a Verified Complaint for Declaratory Judgment, Quiet Title to Easement, Breach of Contract, Specific Performance, Interference with Contractual Relations, Interference with Economic Advantage, Tort of Another Damages, and Injunctive Relief against the RHA in order to compel the RHA to grant an easement that would provide access to the Lompa Property in accordance with the 1984 Zoning Contract ("RHA Lawsuit"). The RHA Lawsuit remains active as of the date of this Resolution; and

WHEREAS, the RHA's position concerning the provision of off-site access to the Ridgemark roads has prevented Developer from obtaining access to and installing a traffic circle at Ridgemark Drive as required by Conditions #34 and #35 because the Subdivider does not have sufficient title or interest to allow for such access and/or the permit said improvements to be made. As a result, Developer is unable to use the RHA roads at the present time as access into the Promontory Project or otherwise install any off-site improvements in connection therewith; and

WHEREAS, California Government Code section 66458(a) provides that all tentative map conditions of approval must be completed in order for the final map to be approved, and in the event that the conditions will not yet be completed, the Subdivider may enter into a subdivision improvement agreement with the County for the performance of the conditions remaining to be completed; and

NOW THEREFORE BE IT RESOLVED that based on the evidence in the record, the Board of Supervisors of the County of San Benito hereby finds as follows:

Finding 1. The County only exercises its condemnation powers in very limited circumstances pursuant to certain specified legal parameters set forth in the law. The Board of Supervisors hereby finds that because the RHA roads are private roads that are used for the

benefit of the Ridgemark community to which the RHA members fund the maintenance and management of such roads, the County is not willing at this time to adopt a resolution of necessity in support of condemnation of the easement interest in Ridgemark Drive for the purpose of allowing the Promontory residents to use any of the Ridgemark roads. Because the County has not been made aware of any facts indicating that RHA is willing to proceed with annexation or provide access under terms that are mutually acceptable to RHA and the Subdivider, and the County does not wish to adopt a resolution of necessity in support of condemnation of the easement interest in Ridgemark Drive, and therefore will not be exercising its condemnation authority in this regard, the County finds that substantial evidence supports a waiver of Conditions 34 and 35 of TSM 15-94 Resolution.

Finding 2. The Subdivider has been unable to obtain proof from the RHA that it will grant access easements to the Lompa Property; the RHA has not scheduled a vote on the requested access easements because it and the Subdivider have not reached agreement on the terms of annexation or a requested change to the Project that would require the Project to conform to the RHA's governing documents. Consequently, the County finds that because the RHA will not grant the access easements under terms that are mutually agreeable to the RHA and the Subdivider, the Subdivider is unable to confirm that the RHA will provide legal access to connect to Ridgemark Drive. Moreover, the Subdivider has been unable to obtain an agreement with the RHA on terms that are mutually acceptable to the parties, which would allow the Project to utilize the existing Ridgemark roads. The Board of Supervisors hereby finds that because the Subdivider is unable to provide documentation to the County RMA prior to recordation of the first Final Map despite its efforts to obtain such proof of access, the Board of Supervisors hereby finds that substantial evidence supports a waiver of Conditions 34 and 35 of TSM 15-94 Resolution.

Finding 3. The County RMA required that a full secondary access to Southside Road be studied and considered as a project alternative under the California Environmental Quality Act because, among other reasons, there was a growing awareness of the County's own General Plan policies to provide secondary access and "non-cul-de-sac/one-way-in/one-way-out" road and subdivision designs for new development. Recent fires in Northern and Southern California have emphasized to public safety officials and the public how important it is for people to be able to move to points of safety. Appropriate through-roads built to full standards and specifications are material to public safety. Consequently, the EIR analysis conducted this alternatives analysis. However, the EIR determined that the Full Secondary Access to Southside Road Alternative would result in the same level of development as the Project within the same overall development footprint. Therefore, it would result in similar impacts to the Project without the full secondary access for most of the environmental issue areas, including: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use, noise, public services and recreation, transportation and circulation, tribal cultural resources, and utilities and service systems. A comparative summary of the environmental impacts associated with the Full Secondary Access to Southside Road Alternative with the environmental impacts anticipated under the Project is provided in Table 52 of the EIR. The County determined as part of TSM 15-94 Resolution that the Full Secondary Access to Southside Road Alternative would result in the same level and type of development on the same site, and thus it

would meet all proposed project objectives. This alternative would provide a new full access to Southside Road, and will meet the project objective of providing safe and efficient site access. Although the waiver of Conditions 34 and 35 will result in one way in and out to Southside Road with the elimination of access to and use of the RHA roads, the Promontory Project includes an emergency vehicle access (EVA), meeting all applicable Fire Code and other design standards, to connect to Ridgemark Road in the event of a fire or public safety incident. As documented in the administrative record via correspondence from the Fire Marshal, it has been confirmed that a single point of access and the EVA to Ridgemark for the Promontory Project would nonetheless comply with applicable Fire Code and safety requirements.

The Board of Supervisors finds and determines, based on substantial evidence, that the Project is supportable under and consistent with the applicable provisions of the San Benito County General Plan, Zoning Code and Subdivision Development Standards. The CEQA review evaluated environmental impacts associated with the Project having a single point of access into the project site with the full extension of Street C and its connection down to Southside Road. Therefore, the environmental ramifications of the full access to Southside Road was evaluated and sufficiently disclosed in the Project's EIR. While the connection to Southside Road may be a matter of concern for the character of the area by certain members of the communities who live in proximity, there is substantial evidence in the record that it would not result in a new significant impact or an increase in any previously identified significant impacts such that additional environmental review would be required. Furthermore, from a planning and policy perspective, the proposed site design and circulation plan will provide for sufficient access to the project site and provide opportunities for existing residents to readily access the elementary school.

Finding 4. The Board of Supervisors finds that TSM 15-94 Resolution retained the original condition to pay the in-lieu affordable housing fee (Condition #13) when the Planning Commission instead determined that the Developer would be required to satisfy its affordable housing obligations by constructing the on-site affordable units as a condition of Project approval pursuant to Condition #13A. The Board of Supervisors hereby finds that Condition #13 requiring the in-lieu fee payment shall be removed and replaced by Condition #13A because DEVELOPER is already obligated under TSM 15-94 Resolution to construct the on-site affordable units.

NOW THEREFORE BE IT RESOLVED that the County of San Benito hereby approves the waiver of conditions 13, 34, and 35.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO THIS 21st DAY OF MAY 2019 BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mark Medina, Chair
San Benito County Board of Supervisors

ATTEST:

Janet Slibsager, Clerk of the Board

APPROVED AS TO LEGAL FORM:

Barbara Thompson, County Counsel