

December 12, 2019

Dear Mayor Perotte and Council Members,

As you near the end of your NZO review and deliberations, we would greatly appreciate your consideration of our comments regarding Substantial Conformity Determinations (SCD) that we orally submitted at two of your previous council meetings. Your review and deliberations regarding our comments were postponed to your future meetings, as you took up other important topics in the NZO queue.

It is gratifying that the council has made zoning regulations more public friendly, particularly with the enhanced noticing procedures used in various aspects of land use processes. However, one issue we want to bring to your attention is that changes are necessary to make the Substantial Conformity Determination process as public friendly and informative as other processes in the NZO.

We want raise several issues regarding NZO **Section 1752.100 Changes to Prior Permits and Approvals Subsection B. Substantial Conformity Determination (SCD).**

1. The first issue is the elimination of the "substantial public controversy" assessment that the Director must make. The NZO draft has removed this key issue criterion which requires the Director to find out first whether a SCD can be used at all to affect change to a project that has previously been subject of "substantial public controversy". (See this section from the current zoning ordinance SCD highlighted in red at attachment).

There is no good justification for allowing the Director to approve a change to a project that has been the subject of substantial public controversy, without any public notice or participation. Please consider that in the City's recent past there have been projects which have been "controversial," such as those that have been subject to lawsuits (eg., Westar, Marriott Residence Inn, Bacara.) We submit that it would be prudent and practical to retain the "substantial public controversy" criterion in order to avert public distrust and outcry over no-noticing and decision-making undertaken outside of public view, scrutiny, and potential for public participation.

2. The public should have at least minimal notice when a SCD is being considered by the Director. The proposed NZO has no provision for such notice. Decision making should be made in the “light of day” with the public having an opportunity to comment, offering information and views the Director may not have considered.

Note that such notice can be done at virtually no cost. It could be limited to notice on the city’s website and emails and to residents who have pre-signed up to receive notice when an SCD is being considered, similar to the notification process for a Director’s or Zoning Administrator decision.

3. Lastly, there should be a right to appeal a SCD determination. The proposed NZO allows no appeal. If there is an aggrieved party, who has been allowed to participate in the public process, then, that person should be allowed to appeal.

Benefit-Burden Test: In considering our request, we ask you to apply the "benefit-burden" test.

- The benefits of accepting our suggestions are great: ensuring consistency with your goals of conducting Goleta's business in public and enhancing public participation and trust.
- The burdens of accepting our requests are extremely low. Noticing could be quite limited and therefore virtually free. The Director would need to consider just one more but vital criterion, and it is highly likely that appeals would be very few and far in between.

Conclusion: We respectfully ask you to do the following:

- a. Retain the “substantial public controversy” key issue criterion for the Director to use in determining whether a SCD can be used to affect project change, and
- b. Add limited public noticing and the right of appeal provision to the SCD section.

Thank you for your time and attention to this matter. Best Wishes for the Holidays and the New Year!

George Relles
Cecilia Brown

SUBSTANTIAL CONFORMITY DETERMINATION GUIDELINES

On occasion, an applicant requests slight deviations from an approved action in order to carry out a project. The County Development Code allows certain types of alterations from an approved project, following a determination of substantial conformity.

Procedure:

1. Applicant obtains an application for a Substantial Conformity Determination at the Department and pays applicable fees which may vary depending on the complexity of the request.

2. The Department reviews the project description that was considered at the time of project approval.

3. The Department considers key issues:

a. Has the project been the subject of substantial public controversy, or is there reason to believe the change is likely to create substantial public controversy?

b. Will the deviation result in a change to the project that would alter the scope and intent of the project the review authority acted on?

c. Would the deviation alter the public's perception of the project?

d. Would the deviation result in environmental effects not analyzed or discussed at the time of project approval and/or result in the need for additional mitigation measures?

If the answer to any of these basic questions is "yes", the Director cannot make a determination of substantial conformity.

4. The Department compares the request with established criteria. Listed below are criteria developed to assist in determining whether proposed changes to approved projects are in substantial conformity with the approved plans.

a. Does not conflict with project conditions of approval and/or recorded map conditions.

b. Does not result in health or safety impacts.

c. That the project facilities, operating procedures, environmental impacts, safety impacts, and the project's compliance with policies are substantially the same as those considered in the previous permit issued by the Director.

d. That the changes proposed can be effectuated through existing permit conditions.

e. That the impacts and changes do not alter the findings that the benefits of the project outweigh the significant unavoidable environmental effects made in connection with the original approval.

f. Does not result in an increase of 1,000 sq. ft. or more than 10 percent of building coverage of new structures over total project approvals, whichever is less.

g. Is clearly exempt from environmental review or was evaluated in the environmental review document prepared for the project and there are no new significant impacts related to the project change.

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- h. Does not require the removal of specimen trees or impact areas defined in the project environmental document as sensitive or designated as areas prohibiting structures.
 - i. Is consistent with Comprehensive and/or Coastal plan policies and Development Code requirements.
 - j. Does not result in more than 1500 cubic yards of net cut and/or fill outside of the Coastal Zone, or 50 cubic yards within the Coastal Zone, and avoids slopes of 30% or greater, unless these impacts were addressed in the environmental assessment for the project and mitigation measures were imposed to mitigate said impacts and the proposal would not compromise the mitigation measures imposed or result in additional environmental impacts.
 - k. Is located within the same general location as, and is topographically similar to, approved plans. The location shall not be moved more than 10 percent closer to a property line than the originally approved development.
 - l. Does not result in an overall height which is greater than 10 percent above the approved height. The project must remain consistent with height requirements of the zone.
 - m. Receives Design Review approval for landscaping and structures, if necessary.
 - n. Does not result in intensification of use; e.g., no new employees, no increases in traffic, if these were important to the previous environmental/policy analysis.
 - o. Does not affect easements for trails, public access, or open space.
5. Depending on the degree of complexity for a substantial conformity determination request, the project manager takes action as follows:
- a. If a Substantial Conformity Determination request is minor, (e.g., no additional conditions are required, is not controversial, does not alter the intent of the decision-makers action, with approval from their supervisor), the Director issues the appropriate permit (Coastal Development Permit or Land Use Permit).
 - b. The Department prepares a letter outlining the changes to be made and why they are being approved. The letter must be reviewed and signed Director.
6. If a Substantial Conformity Determination cannot be made regarding changes to a project, the applicant may:
- a. Withdraw the request and continue with the project as approved; or
 - b. Submit an application for a Substantial Conformity Determination to the review authority for the original permit to which the Substantial Conformity Determination is requested, or apply for Amendment or Revision of the original permit.
7. Substantial Conformity Determinations are made by the review authority for the original permit if the conditions of approval of that permit so require.