

From: [Gillian Fennessy](#)
To: [Gillian Fennessy](#)
Subject: FW: Addendum to EDC Comment Letter on City of Goleta's New Zoning Ordinance Re Streamside Protection Areas - NZO Public Comment Addendum - Tara Messing
Date: Monday, September 23, 2019 12:33:07 PM
Attachments: [Addendum to Comment Ltr to PC re NZO 2019 09 23.pdf](#)

From: Tara Messing <tmessing@environmentaldefensecenter.org>
Sent: Monday, September 23, 2019 12:01 PM
To: Kim Dominguez <kdominguez@cityofgoleta.org>
Cc: Linda Krop <lkrop@environmentaldefensecenter.org>; Brian Trautwein <btrautwein@environmentaldefensecenter.org>
Subject: Addendum to EDC Comment Letter on City of Goleta's New Zoning Ordinance Re Streamside Protection Areas

Dear Ms. Dominguez,

Attached please find the comment letter submitted today by the Environmental Defense Center ("EDC") on behalf of our clients, Urban Creeks Council and EDC, regarding the City of Goleta's New Zoning Ordinance in advance of tonight's hearing. Please let me know if you have any questions.

Best regards,
Tara



September 23, 2019

Ms. Jennifer Smith, Chair
Planning Commission
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

Re: Addendum to Comments Opposing Changes in the Errata Sheet to Section 17.30.070 in the City of Goleta’s Draft New Zoning Ordinance Regarding Streamside Protection Areas

Dear Chair Smith and Commissioners:

The Environmental Defense Center (“EDC”), on behalf of EDC and Santa Barbara Urban Creeks Council (“UCC”), submits these comments as an addendum to the comments submitted on September 20, 2019, and in opposition to the proposed revisions to the City of Goleta’s (“City”) Draft New Zoning Ordinance (“NZO”) regarding Streamside Protection Areas (“SPAs”). The following comments are specific to the changes to Section 17.30.070¹ governing SPAs proposed in the Errata Sheet released on Friday, September 20, 2019 at approximately 3:00pm.

UCC is a non-profit grassroots organization dedicated to protecting and restoring streams and watersheds in Santa Barbara County (“County”). Over the past thirty years, UCC has partnered with a number of organizations on creek restoration projects and has been committed to educating people of all ages about the values of creeks. UCC members include many families who live and recreate in Goleta and Santa Barbara. EDC is a non-profit, public interest law firm that protects and enhances the environment in Santa Barbara, Ventura, and San Luis Obispo counties through education, advocacy, and legal action.

Attachment 1 to the Errata Sheet contains a redlined version of the entire Chapter governing Environmentally Sensitive Habitat Areas (“ESHA”) in the NZO.² We appreciate and support staff’s decision to delete the “Changes to Required ESHA Buffers” section included in

¹ Formerly Section 17.30.080 in the August 2019 Draft New Zoning Ordinance.

² City of Goleta, Planning Commission, *NZO Adoption Recommendation Hearing – Errata Sheet; Attachment 1* (September 20, 2019).

the August 2019 NZO version for the reasons set forth in our comment letter dated September 5, 2019. However, we strongly oppose the proposed revisions to the SPA ordinance at Section 17.30.070 in Attachment 1. **The suggested language is actually worse than the framework proposed in the August 2019 NZO for the following reasons.**

First, staff's suggested changes do not consider or adopt the recommendations made by EDC and UCC throughout this process, which are routinely required by the California Coastal Commission ("CCC") and are supported by many local groups including, but not limited to, The Goodland Coalition, Santa Barbara Audubon Society, Citizens Planning Association, and Santa Barbara Channelkeeper.

Second, the staff's proposed amendments to the SPA ordinance simply reiterate the provisions under General Plan Policy CE 2.2 but do not *implement* the Policy by setting forth the required findings and necessary evidence to support a feasibility determination.

Finally, the new language added at Section 17.30.070(B)(2), "Feasible Alternatives Analysis," will improperly allow applicants to circumvent the protections under Policy CE 2.2 and rob the City of its discretion, threatening the degradation of creeks and riparian habitat in the City in violation of Policy CE 2.2. The new subsection states:

"2. Feasible Alternatives Analysis. If a reduction in a required SPA buffer is requested, the alternatives analysis must be based on a clearly written statement of project objectives as outlined in CEQA Guidelines Section 15124(b) and with the consideration and discussion of alternatives in CEQA Guidelines Section 15126.6. To demonstrate that there is no feasible alternative siting for development that will avoid the SPA buffer, the applicant must show substantial evidence that the project objectives cannot be satisfied. The substantial evidence must address economic, environmental, social, and technological factors. The Director and the Review Authority must be provided all information deemed necessary to complete the substantial evidence review."³

The proposed language would allow an applicant to avoid consistency with General Plan Policy CE 2.2 by narrowly crafting project objectives during the CEQA process to necessitate a buffer reduction. As phrased, if the project objectives cannot be satisfied, then adherence to the 100-foot buffer would be deemed infeasible and the applicant would be permitted to reduce the setback. Reliance on CEQA project objectives to inform *policy* determinations severely constrains the analysis required under Policy CE 2.2. The proposed framework would deprive the City of its discretion to analyze the feasibility of alternative siting and consistency with the General Plan Policy CE 2.2 by limiting the analysis to consistency with the project objectives identified during the CEQA process. A project, however, must be consistent with the General Plan as well as any zoning ordinance. Gov. Code § 65860; *Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 540. There are no overriding considerations if a General Plan inconsistency arises. For these reasons, the ramifications of approving this language are

³ *Id.*

September 23, 2019

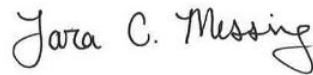
Comments Opposing the Changes Proposed in Attachment 1 of the Errata Sheet Regarding SPAs

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significant and would only serve to perpetuate the problems identified by EDC and UCC concerning reductions in SPA buffers without any analysis of feasibility. As explained in our previous comments and testimony, the City has a history of reducing creek setbacks for specific projects, based on the applicant's wishes, when in fact compliance with the City's setback policy was feasible. The last-minute proposed change submitted on September 20th would only serve to encourage this unlawful practice.

Based on the reasoning set forth herein and in our letter dated September 5, 2019, we reiterate our request that the Planning Commission direct staff to incorporate the CCC's language for analyzing economic viability in the NZO to inform determinations of feasibility with regards to SPA buffer reductions. We also urge the Planning Commission to invite CCC staff to attend future hearings to ensure that the CCC's suggestions are incorporated into the NZO at this stage in the process to avoid delays later during certification.

Sincerely,

A handwritten signature in cursive script that reads "Tara C. Messing".

Tara C. Messing
Staff Attorney

cc: Santa Barbara Urban Creeks Council