

From: [Gillian Fennessy](#)
To: [Gillian Fennessy](#)
Subject: FW: EDC and UCC Comment Letter for 11/5 City Council Hearing
Date: Monday, November 04, 2019 3:48:38 PM
Attachments: [EDC comment ltr to CC re NZO Exhibit A FINAL 2019 11 04.pdf](#)

From: Tara Messing <tmessing@environmentaldefensecenter.org>
Sent: Monday, November 04, 2019 12:13 PM
To: Anne Wells <awells@cityofgoleta.org>
Subject: EDC and UCC Comment Letter for 11/5 City Council Hearing

Hi Anne,

Attached please find a courtesy copy of the comment letter on the City of Goleta's New Zoning Ordinance submitted today by the Environmental Defense Center on behalf of Urban Creeks Council and EDC in advance of the November 5th City Council hearing.

Best,
Tara



November 4, 2019

Mayor Perotte and Councilmembers
Attn: City Council and City Clerk
130 Cremona Drive, Suite B
Goleta, California 93117
cityclerkgroup@cityofgoleta.org

Submitted electronically via cityclerkgroup@cityofgoleta.org

Re: Environmental Defense Center and Urban Creeks Council's Comments on the City of Goleta's New Zoning Ordinance

Dear Mayor Perotte and Councilmembers:

The Environmental Defense Center ("EDC"), on behalf of Santa Barbara Urban Creeks Council ("UCC") and EDC, submits these comments regarding the City of Goleta's ("City") draft New Zoning Ordinance ("NZO"). First, we respectfully request that the City Council direct staff to consult with the California Coastal Commission ("CCC") staff before proceeding forward with the NZO adoption process to ensure an informed and efficient certification process. Second, we are continuing to work with the City Attorneys and staff to develop a provision in the NZO applicable to any request to modify City zoning or policy requirements, including requests to reduce the required 100-foot setback from streamside protection areas ("SPAs"), that complies with the language recommended by the CCC for considering modification requests.

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 has members 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.

I. CCC Staff Must Be Involved in the NZO Process Now to Avoid Delays and Surprises Down-the-Line.

We sincerely appreciate the time and effort that City staff, attorneys, and decision-makers have made to ensure that the NZO reflects the unique characteristics of the City. However, the CCC also plays a key role in the NZO process as the agency tasked with safeguarding the goals and policies of the seminal California Coastal Act. City staff must communicate with CCC staff now about the proposed provisions in the NZO to encourage a good faith discussion between the agencies about the substance of the NZO. It is important for the City to receive input from the CCC *before* the City Council adopts the NZO to ensure that the City is adopting an NZO that adequately carries out the policies of the Coastal Act at the local level. Moreover, communicating with the CCC staff at this point in the process is critical to avoid future delays and unexpected surprises during the CCC certification process. For these reasons, we respectfully ask that the City Council direct staff to consult with CCC staff before continuing with the City Council adoption process for the NZO.

II. The NZO Must Set Forth the Findings and Evidentiary Requirements Necessary to Inform Modifications to City Zoning or Policy Requirements to Ensure Strong Protections for Goleta's Natural Resources.

For years, the City has struggled with the implementation of the City's General Plan Policy Conservation Element ("CE") 2.2 concerning SPAs.¹ Despite the Policy's strong protections for creeks and riparian habitats, the City has previously approved projects with reduced creek setbacks without the necessary findings and evidence to support claims that adherence to the minimum 100-foot setback was infeasible. For this reason, EDC, on behalf of our clients, is advocating for the development of an ordinance that identifies the findings that must be made and the evidence that is required upon a request to modify City zoning or policy requirements. The NZO has existing provisions that govern modifications to City zoning or policy requirements and could be expanded upon to comply with the CCC language, such as Chapter 17.62 regarding modifications and Section 17.01.040(A)(2) concerning private property takings. The section could then be cited to in the provisions governing SPA buffer reductions.

The need for a clear process for evaluating reductions to creek setbacks was echoed repeatedly by the City's Planning Commissioners at the NZO Workshops as well as at the Planning Commission hearings held on September 9, 2019, September 23, 2019, and October 7, 2019.² Ultimately the Planning Commission's recommendation to the City Council is to incorporate EDC's recommended language in the NZO provisions governing SPA buffer reductions.

¹ City of Goleta, General Plan, Ch. 4 Conservation Element at 4-13 to 4-14.

² City of Goleta, Response to Planning Commission Comments, available at: <http://nebula.wsimg.com/8714bb8793746cd61a460185ef09ae69?AccessKeyId=8B11547F66E8794DD29E&disposition=0&alloworigin=1>.

The language recommended by EDC and UCC is based on findings and evidence developed by the CCC for making economically viable use determinations, which is directly relevant to assessing the feasibility of adherence to the setbacks required under the General Plan. The CCC's language was adopted by the County in Article II of the Coastal Zoning Ordinance, which is incorporated by reference in the Eastern Goleta Valley Community Plan ("EGVCP"). (See Exhibit A.³)

A. Setbacks from Creeks, ESHA, Wetlands, and Habitat are Vital Tools to Protect Natural Resources, Property, and the Public.

Studies, ordinances, and government publications indicate that a 100-foot creek setback is the bare minimum needed to protect water quality, creek and riparian habitats, and wildlife.⁴ Setbacks provide a variety of important benefits to water quality, plants and wildlife, and people. Vegetation, leaves, microbes, and soil found within the setback area serve to minimize water pollution by breaking down and filtering pollutants, such as oil and grease, sediment, fertilizers, and harmful pathogens. Setbacks also safeguard habitats for nesting birds, such as birds of prey, and endangered species, like the Southern California steelhead. For example, the white-tailed kite is a fully protected species in California that has been all but eliminated from the City due to loss of nesting and foraging habitats.⁵ Moreover, from 2010 through 2015, four of the thirty-eight steelhead observed in southern California were spotted in a waterway within the City.⁶ In 2017, one of seven steelhead observed in southern California spawned in a Goleta creek.⁷ In order for steelhead to persist in the City's waters, adherence to the minimum 100-foot SPA requirement under Policy CE 2.2 is vital. Finally, setbacks protect life and property from the devastating impacts due to flooding, streambank erosion, and debris flows—the threat of which is heightened today due to climate change.

B. EDC and UCC Have Been Working Towards a Robust Creek Protection Ordinance Since 2014.

In 2014, EDC conducted a case study of reductions to riparian setbacks for various development projects in the City. Based on this study, EDC discovered that the required 100-

³ Letter from the California Coastal Commission to Joan Hartmann, Chair of the Board of Supervisors for the County of Santa Barbara, regarding Santa Barbara County Local Coastal Program Amendment No. LCP-4-STV-17-0048-1 (Eastern Goleta Valley Community Plan) (August 18, 2017) ("Exhibit A").

⁴ James M. McElfish, Jr., Rebecca L. Kihlslinger, and Sandra Nichols, *Setting Buffer Sizes for Wetlands*, Volume 30, no. 2, National Wetlands Newsletter at 7 (Buffers of 100 feet or larger are effective at nitrogen removal and wildlife protection) (2008); *See also* United States Environmental Protection Agency, *Aquatic Buffer Model Ordinance* at 4-5.

⁵ Email from Mark Holmgren, Wildlife Biologist, to Brian Trautwein, Environmental Analyst/Watershed Program Coordinator for the Environmental Defense Center (August 21, 2019); *See also* Gail Brown, *White-tailed Kites Under Siege Says Researcher* (November 3, 1998), available at <https://www.news.ucsb.edu/1998/011182/white-tailed-kite-under-siege-says-researcher>.

⁶ Rosi Dagit, Senior Conservation Biologist, Resource Conservation District of the Santa Monica Mountains, *So Cal Steelhead Sightings southern DPS* (March 2015).

⁷ Memorandum from Mark H. Capelli, Steelhead Recovery Coordinator for the Southern California Branch of the National Marine Fisheries Service, to File (March 30, 2017).

foot setback under General Plan Policy CE 2.2 was often significantly reduced to approximately 50 to 25 feet and that these approvals were made without the analysis required by Policy CE 2.2(a).⁸

The Village at Los Carneros Project (“Project”) is one of numerous examples which demonstrates the need for a stand-alone provision that would apply to any request to modify City zoning or policy requirements affecting creeks, ESHA, wetlands, and other natural resources. There, the applicant proposed to reduce the Village at Los Carneros SPA by fifty percent. The 465-unit residential Project was proposed with a maximum 50-foot setback from Tecolotito Creek. Public comments on the 2014 Draft Environmental Impact Report (“EIR”) noted that the Project was inconsistent with Policy CE 2.2 because the Project did not have a 100-foot SPA and there was no evidence that a 100-foot SPA was infeasible. The Final EIR determined that several factors “make it difficult to achieve an alternative site plan that provides a 100-foot wide upland buffer....” Moreover, the Final EIR concluded that, “[a] minimum 100 foot wide upland buffer along the entire length of the creek would reduce the number of units that could be built by as much as 30 percent....” Ultimately, the 100-foot SPA buffer was determined to be infeasible and the Project was deemed “consistent with this Policy [CE 2.2].”

Before the Project was approved by the City, EDC and UCC asked the applicant to voluntarily comply with Policy CE 2.2 by providing a minimum 100-foot SPA. In response, the applicant voluntarily redesigned the Project to comply with the Policy’s 100-foot SPA buffer. The redesigned Project retained all 465 units, confirming that the 100-foot SPA was in fact feasible. This Project underscores the need for an ordinance in the NZO that implements the language under Policy CE 2.2. The NZO must not keep the status quo by allowing decision-makers to reduce SPAs below 100 feet without adequate analysis or evidence that a minimum 100-foot SPA is infeasible. To ensure proper implementation of Policy CE 2.2, the City must adopt an ordinance that sets forth an effective process for making feasibility determinations.

EDC summarized its findings and recommendations from the case study in a letter dated February 19, 2014 to Anne Wells, Advance Planning Manager for the City.⁹ Shortly thereafter, EDC and several local groups had a meeting with City staff and the former City attorney to discuss the City’s repeated failure to conduct an adequate analysis of feasibility prior to a decision on an SPA buffer reduction. The meeting confirmed the need for an ordinance to establish a process for making a reduced setback determination if an applicant asserts that the setback is infeasible. Since 2018, EDC, on behalf of its clients, has been working with staff and the City Attorneys to develop such an ordinance.

⁸ Feasibility analyses are not necessarily included in environmental review documents pursuant to the California Environmental Quality Act (“CEQA”). CEQA documents evaluate whether the project will have significant adverse impacts. Thus, analyzing the feasibility of alternative siting is ultimately left up to the decision-makers and can be based on evidence outside of the scope of the CEQA documents.

⁹ Letter to Anne Wells, Advance Planning Manager for the City of Goleta, from Brian Trautwein, Environmental Analyst and Watershed Program Coordinator for the Environmental Defense Center (February 19, 2014).

C. EDC and UCC are Working with the City of Goleta to Develop a Process for Evaluating When a City Zoning or Policy Requirement May Be Modified Upon Request.

Throughout this NZO process, EDC and UCC, along with a host of other local groups and Goleta residents, have advocated for the adoption of language that mirrors the CCC's Suggested Modification No. 13 to the County's EGVCP Local Coastal Program Amendment. The CCC's standard language establishes a detailed and clear process for evaluating whether adherence to a policy or ordinance would not provide an economically viable use. This type of analysis is standard practice for decision-makers when an applicant asserts that the application of a zoning or policy requirement would preclude a reasonable use of their property. The CCC language offers a straightforward process for decision-makers to help navigate such an analysis and arrive at a legally defensible determination.

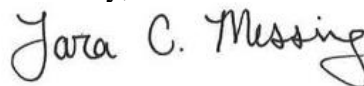
Moreover, the County adopted the CCC's suggested language in Sections 35-192.4 through 35-192.6 in the County's Coastal Zoning Ordinance, without controversy, and these sections are incorporated by reference in Policy EGV-1.5 of the EGVCP. (See Exhibit A.) It is logical for the City to adopt this same language in the NZO because it was recommended by the CCC for the nearby EGVCP and the County adopted this language. Furthermore, on July 16, 2019, the City of Santa Barbara also adopted findings substantially similar to Section 35-192.6 of the County's Coastal Zoning Ordinance for Policy 1.2-3 governing "Property Takings" based on suggestions by the CCC during the City of Santa Barbara's recent Land Use Plan ("LUP") update. The CCC certified the updated Coastal LUP in August of 2019 and the findings recommended by the CCC are incorporated in the City's Coastal LUP.

Finally, adopting language previously recommended by the CCC in the City's NZO is strategic because the CCC is required to certify the City's proposed NZO. Thus, in order to avoid future delays and unexpected surprises, it is important for the City to consider what language the CCC will require later in the adoption process.

III. Conclusion

For the foregoing reasons, we respectfully request that the City Council direct staff to consult with CCC staff before proceeding with the adoption process to ensure CCC review of the NZO prior to adoption. We also will continue to work with City staff and the City Attorneys to develop an ordinance in the NZO applicable to any request to modify City zoning or policy requirements, including setbacks from SPAs, based on standard language recommended by the CCC regarding such requests.

Sincerely,



Tara C. Messing
Staff Attorney

cc: Santa Barbara Urban Creeks Council

Attachments:

A – Excerpt from Letter from the California Coastal Commission to Joan Hartmann, Chair of the Board of Supervisors for the County of Santa Barbara (August 18, 2017)

EXHIBIT A

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



August 18, 2017

Joan Hartmann, Chair
Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Santa Barbara County Local Coastal Program Amendment No. LCP-4-STB-17-0048-1 (Eastern Goleta Valley Community Plan)

Dear Honorable Chair Hartmann and Supervisors:

On August 10, 2017 the Coastal Commission approved the subject Local Coastal Program (LCP) amendment with suggested modifications. The Commission's resolution of certification is contained in the staff report dated July 27, 2017. The suggested modifications, as approved by the Commission on August 10, 2017, are attached to this correspondence.

Section 13544 of the Commission's Administrative Regulations requires that after certification the Executive Director of the Commission shall transmit copies of the resolution of certification and any suggested modifications and findings to the governing authority, and any interested persons or agencies. Further, the certification shall not be deemed final and effective until all of the following occur:

- (a) The local government with jurisdiction over the area governed by the Local Coastal Program, by action of its governing body: (1) acknowledges receipt of the Commission's resolution of certification, including any terms or modifications suggested for final certification; (2) accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications; and (3) agrees to issue coastal development permits for the total area included in the certified Local Coastal Program. Unless the local government takes the action described above the Commission's certification with suggested modifications *shall expire six months* from the date of the Commission's action.
- (b) The Executive Director of the Commission determines in writing that the local government's action and the notification procedures for appealable development required pursuant to Article 17, Section 2 are legally adequate to satisfy any specific requirements set forth in the Commission's certification order.
- (c) The Executive Director reports the determination to the Commission at its next regularly scheduled public meeting and the Commission does not object to the Executive Director's determination. If a majority of the Commissioners present object to the Executive Director's determination and find that the local government action does not conform to the provisions of the Commission's action

to certify the Local Coastal Program Amendment, the Commission shall review the local government's action and notification procedures pursuant to Articles 9-12 as if it were a resubmittal.

- (d) Notice of the certification of the Local Coastal Program Amendment shall be filed with the Secretary of Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(v).

The Commission and staff greatly appreciate the County's consideration of this matter.

Authorized on behalf of the California Coastal Commission by:

John Ainsworth
Executive Director



By: Megan Sinkula
Coastal Program Analyst

Cc: Dianne Black, Santa Barbara County Planning and Development Department

In the Coastal Zone, when siting a new dwelling or addition on a parcel, the goal should be to disturb as little vegetation as possible, with a priority placed on retaining healthy, native species and those trees that, by definition are protected (i.e., mature native trees that do not pose a threat to health and safety).² Fire prevention measures should also be considered. Refer to fire hazard prevention requirements in Section 10, page 55.

SUGGESTED MODIFICATIONS TO THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE

The County's proposed amendment language to the certified Implementation Plan/Coastal Zoning Ordinance is shown in straight type. Language approved by the Commission to be modified is shown in ~~line-out~~ and underline.

SUGGESTED MODIFICATION NO. 13

Article II Coastal Zoning Ordinance

Section 35-192.4 *Economically Viable Use.* If an applicant asserts that the application of the policies and standards contained in the Local Coastal Program regarding use of property within the Eastern Goleta Valley Community Plan area would constitute a taking of private property without just compensation, the applicant shall apply for an economic viability determination in conjunction with the associated Coastal Development Permit application and shall be subject to the provisions of this section.

Section 35-192.5 *Economically Viable Use Determination.* The application for an economic viability determination shall include the entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application. Before any application for a Coastal Development Permit and economic viability determination is accepted for processing, the applicant shall provide the following information, unless the County determines that one or more of the particular categories of information is not relevant to its analysis:

1. The date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for the property.
3. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at that time.
4. The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition.
5. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in subsection 4 above, that applied to the

² Eastern Goleta Valley Community Plan Policy ECO-EGV-4.1 (COASTAL)

- property at the time the applicant acquired it, or which have been imposed after acquisition.
6. Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates.
 7. A discussion of whether the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
 8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
 9. Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price.
 10. The applicant's costs associated with the ownership of the property, annualized for each of the last five calendar years, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.
 11. Apart from any rents received from the leasing of all or a portion of the property, any income generated by the use of all or a portion of the property over the last five calendar years. If there is any such income to report it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.
 12. Any additional information that the County requires to make the determination.

Section 35-192.6 Supplemental Findings for Approval of Coastal Development Permit. A Coastal Development Permit that allows a deviation from a policy or standard of the Local Coastal Program to provide a reasonable use may be approved or conditionally approved only if the appropriate governing body, either the Planning Commission or Board of Supervisors, makes the following supplemental findings in addition to the findings required in Section 35-169 (Coastal Development Permits):

1. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use allowed by the Local Coastal Program policies and/or standards would not provide an economically viable use of the applicant's property.
2. Application of the Local Coastal Program policies and/or standards would unreasonably interfere with the applicant's investment-backed expectations.
3. The use proposed by the applicant is consistent with the applicable zoning.
4. The use and project design, siting, and size are the minimum necessary to avoid a taking.
5. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program other than the provisions for which the exception is requested.
6. The development will not be a public nuisance or violate other "background principles of the State's law of property," as that phrase was used in the U.S. Supreme Court's decision in *Lucas v. South Carolina Coastal Council*, 505 U.S.

1003, 1028-30 (e.g., public trust doctrine). If it would violate any such background principle of property law, the development shall be denied.