

Andy Newkirk

From: Andy Newkirk
Sent: Wednesday, November 27, 2019 11:33 AM
To: Andy Newkirk
Subject: FW: EDC and UCC Comment Letter on Goleta NZO for 12/3 City Council Hearing
Attachments: EDC and UCC Comments on NZO_CC hearing on Dec 3_2019_11_26.pdf

From: Tara Messing [<mailto:tmessing@environmentaldefensecenter.org>]
Sent: Tuesday, November 26, 2019 5:14 PM
To: City Clerk Group <cityclerkgroup@cityofgoleta.org>
Cc: Linda Krop <lkrop@environmentaldefensecenter.org>; Brian Trautwein <btrautwein@environmentaldefensecenter.org>
Subject: EDC and UCC Comment Letter on Goleta NZO for 12/3 City Council Hearing

Hello,

Attached please find the comment letter submitted today by the Environmental Defense Center and Urban Creeks Council on the City of Goleta's New Zoning Ordinance in advance of the December 3rd hearing. Please confirm receipt.

Best,
Tara



November 26, 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 City 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 urge the City Council to adopt our proposed revisions to Sections 17.01.040 and 17.30.070 of the City's NZO attached hereto as Exhibit A. Third, we concur with the City's approach for the NZO to apply to both the inland and coastal portions of the City.

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 environmental law firm that protects and enhances the environment in Santa Barbara, Ventura, and San Luis Obispo counties through education, advocacy, and legal action.

I. It is in the Best Interests of the City to Undertake Consultation with the CCC Now Prior to Additional Adoption Hearings.

City staff must communicate with CCC staff now about the substance of the NZO to encourage a good faith discussion between the agencies. Over the past several months, EDC and UCC have repeatedly asked for City staff and CCC staff to coordinate on 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, duplicative efforts, and unexpected surprises during the CCC certification process.

Initiating discussions with CCC staff prior to the adoption process is also recommended by the CCC's South Central Coast/South Coast District Director, Steve Hudson, and is a common practice that has been adopted by many jurisdictions, including the City of Carpinteria and the City of Santa Barbara. For example, as detailed in a staff memorandum dated November 13, 2019 concerning the City of Carpinteria's Coastal Land Use Plan/General Plan update, the City of Carpinteria and CCC coordinated and worked together on the update *prior* to releasing public drafts.¹ Additionally, the City of Santa Barbara recently conducted a Local Coastal Program ("LCP") amendment process. In a staff report dated June 6, 2018 to the City of Santa Barbara Planning Commission regarding the LCP update, staff explained that they had engaged in "extensive consultations" with CCC staff throughout the LCP update process.² City of Santa Barbara staff recognized in the report that "...it is in the best interest of both the City and CCC to undertake extensive consultation up front prior to any hearings on the LCP Amendment."³ Notably, as evidenced in the staff report, City of Santa Barbara staff only had a few issues to bring to the Planning Commission.⁴ These examples further demonstrate the importance of pausing the City's NZO adoption process now to give City staff time to coordinate with the CCC staff, as is standard practice. 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. EDC and UCC's Recommended Language from the CCC Ensures Strong Protections for Creeks and Habitats by Informing the Requisite Analysis Upon an Applicant's Request to Alter City Zoning or Policy Requirements.

For years, the City has struggled with the implementation of the City's General Plan Policy Conservation Element ("CE") 2.2 concerning Streamside Protection Areas ("SPAs").⁵ Despite the Policy's strong protections for creeks and riparian habitats, the City has previously

¹ Staff memorandum dated November 13, 2019 concerning the City of Carpinteria's Coastal Land Use Plan/General Plan update.

² Staff report dated June 6, 2018 to the City of Santa Barbara Planning Commission regarding the City of Santa Barbara Local Coastal Program Amendment.

³ *Id.* at 4.

⁴ *Id.* at 5-6.

⁵ City of Goleta, General Plan, Ch. 4 Conservation Element at 4-13 to 4-14.

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 and our clients are 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 change City zoning or policy requirements to allow for a reasonable economic use.

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, 2019.⁶ 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.

A. EDC's and UCC's Recommendations are Consistent with, and Implement, the General Plan.

On November 2, 2019, the City Attorney provided EDC with proposed text for Section 17.30.070 regarding SPAs.⁷ The proposed revisions set forth four findings based on General Plan Policy CE 2.2(a)-(b) upon an applicant's request to reduce the minimum 100-foot creek setback:

- "a. The reduction in the SPA upland buffer will not have a significant adverse effect on streamside vegetation or the biotic quality of the stream;
- b. There is no feasible alternative siting for the proposed project that will avoid an incursion into the SPA upland buffer;
- c. In the absence of a reduction in the SPA upland buffer, the applicant cannot make reasonable economic use of the parcel; and
- d. The approved amount of reduction in the SPA upland buffer is no greater than necessary to allow a reasonable economic use of the parcel."⁸

The initial two findings (a)-(b) are based on General Plan Policy CE 2.2(a), which focuses on whether alternative siting of the development is feasible and if the project's impacts will have a significant adverse effect. The findings under subsections (c)-(d) relate to Policy CE 2.2(b), which assesses whether an applicant would be deprived of a "reasonable economic use" of their property if the 100-foot setback is imposed. Subsection (b) explicitly states that "[i]f the provisions above would result in any legal parcel created prior to the date of this plan being

⁶ City of Goleta, Response to Planning Commission Comments, available at: <http://nebula.wsimg.com/8714bb8793746cd61a460185ef09ae69?AccessKeyId=8B11547F66E8794DD29E&disposition=0&alloworigin=1>.

⁷ Proposed revisions to Section 17.30.070 provided by the City Attorney to EDC on November 2, 2019. ("Exhibit B").

⁸ City of Goleta, General Plan, Ch. 4 Conservation Element at 4-13 to 4-14.

made unusable in its entirety for any purpose allowed by the land use plan, exceptions to the foregoing may be made to allow a reasonable economic use of the parcel, subject to approval of a conditional use permit.”⁹ Thus, the four findings proposed by the City Attorney are based upon and consistent with General Plan Policy CE 2.2(a)-(b).

With regards to findings (c)-(d), assessing whether adherence to City zoning or policy requirements would preclude an applicant’s “reasonable economic use” of their property equates to a takings analysis, which has broader applicability throughout the NZO than simply SPA buffer reductions. The CCC uses the phrase “reasonable economic use” in the context of evaluating whether adherence to a policy or other requirement would constitute an unconstitutional taking of private property without just compensation.¹⁰ The City of Santa Barbara also utilizes a “reasonable economic use” analysis in its Land Use Plan Policy 1.2-3 concerning private property takings based on suggestions by the CCC during the City of Santa Barbara’s recent LCP amendment. It is therefore well-established by the CCC and other jurisdictions that “reasonable economic use” is applied in the context of a takings analysis.

Based on the foregoing, EDC revised the City Attorney’s proposed text by pulling out the “reasonable economic use” analysis from the SPA section and placing it into the NZO’s existing Section 17.01.040 regarding property takings.¹¹ As revised, Section 17.01.040(c) identifies the evidence that the Review Authority may rely on to determine whether adherence to a policy or requirement would preclude a reasonable economic use of property, such as compliance with the 100-foot SPA buffer.¹² The information set forth therein is based on CCC’s language. Section 17.01.040(d) states the findings that must be made upon determining that deviation from a provision or standard is necessary to provide a reasonable economic use.¹³ These findings are also based on CCC’s recommended language. Adopting such provisions will provide City decision-makers with a systemic approach for evaluating whether to allow a certain amount of development to provide for reasonable economic use of property. The process will also ensure that these decisions are based on adequate findings and evidence.

We therefore urge the City Council to direct staff to adopt our proposed revisions to Sections 17.01.040 and 17.30.070, which are consistent with General Plan Policy CE 2.2 and based on recommended language from the CCC.

B. EDC’s and UCC’s Recommendations are Based on Language Created by the CCC and Adopted—Without Controversy—in Neighboring Jurisdictions.

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 in the NZO generated by the CCC to inform decisionmakers’ analysis when an applicant asserts that the application of a

⁹ *Id.*

¹⁰ California Coastal Commission, *Draft Residential Adaption Policy Guidance; Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs* at 64 (March 2018). (Excerpt attached as “Exhibit C”).

¹¹ Exhibit A.

¹² *Id.*

¹³ *Id.*

zoning or policy requirement would preclude a reasonable economic use of their property. The CCC's standard language establishes a detailed and clear process for evaluating whether adherence to a policy or ordinance would not provide a "reasonable economic use" (or an "economically viable use"). The CCC language offers a straightforward process for decision-makers to help navigate such an analysis and arrive at a legally defensible determination.

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 Eastern Goleta Valley Community Plan ("EGVCP"). Furthermore, on July 16, 2019, the City of Santa Barbara adopted findings substantially similar to Section 35-192.6 of the County's Coastal Zoning Ordinance for its 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.

The foregoing examples wholly defeat the unsubstantiated allegations previously made during public comment that adoption of the CCC language would cause the Review Authority to make determinations beyond the scope of their expertise. To the contrary, Planning Commission and City Council decisionmakers are in the position of evaluating whether a particular ordinance or policy requirement would preclude a reasonable economic use of property. It is thus imperative for the NZO to set forth a comprehensive process for making a legally defensible decision when an applicant raises this argument.

C. The City Continues to Grapple with Implementing Policy CE 2.2 as Evidenced by the Pending Amendment to the Kellogg (formerly Schwan) Self-Storage Project.

The Kellogg (formerly Schwan) Self-Storage Project ("Project") was approved by the City's Planning Commission on October 24, 2011 with a 50-foot SPA absent evidence that the 100-foot SPA required by Policy CE 2.2 was infeasible.¹⁴ Currently, the applicant is proposing an amendment to the Project ("Addendum No. 2"), which would "allow for the addition of 326 gross square feet and the rearranging of interior spaces, which results in an additional 2,738 net square feet of floor area and an increase in the number of storage units from 863 units to 1,043 units."¹⁵ In addition to increasing the total number of units and square footage of the Project, Addendum No. 2 proposes to increase the creek setback from 50-feet to 75-feet.¹⁶ It is clear that

¹⁴ City of Goleta, *Kellogg Crossing Self-Storage Development Plan Approval Project Page* (November 25, 2019) <https://www.cityofgoleta.org/city-hall/planning-and-environmental-review/ceqa-review/kellogg-crossing-formerly-schwan-self-storage-development-plan-amendment>; See also City of Goleta, *Notice of Pending Action by Director of the Planning and Environmental Review Department* at 1 (November 25, 2019).

¹⁵ City of Goleta, *Notice of Pending Action by Director of the Planning and Environmental Review Department* at 1 (November 25, 2019).

¹⁶ City of Goleta, *Kellogg Crossing (Formerly Schwan) Self-Storage Development Plan Amendment*, available at: <https://www.cityofgoleta.org/city-hall/planning-and-environmental-review/ceqa-review/kellogg-crossing-formerly-schwan-self-storage-development-plan-amendment>.

the Project could have originally been designed, redesigned, or amended by the City to impose an SPA buffer requirement of at least 75 feet. This example further supports EDC and UCC's request for an effective ordinance to implement Policy CE 2.2.¹⁷

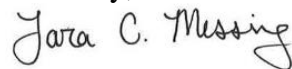
III. The NZO Must Apply to Both the Coastal and Inland Portions of the City, as Drafted by City Staff and Approved by the Planning Commission.

The City's NZO must apply to both the inland and coastal portions of the City. All sections of creeks must be treated the same. Bifurcating the NZO will open-the-door for the application of weaker standards for creek protection in inland areas.

IV. Conclusion

For the foregoing reasons, we respectfully request that the City Council direct staff to consult with CCC staff before proceeding forward with the NZO adoption process to ensure an informed and efficient certification process. We have made this request repeatedly over the past several months, but it is not too late to initiate coordination now. Second, we urge the City Council to adopt our proposed revisions to Sections 17.01.040 and 17.30.070 of the NZO. Third, we concur with the City's approach for the NZO to apply to both the inland and coastal portions of the City.

Sincerely,



Tara C. Messing
Staff Attorney

cc: Santa Barbara Urban Creeks Council

Exhibits:

A – EDC Proposed Revisions to Sections 17.01.040 and 17.30.070 of the City of Goleta's Draft New Zoning Ordinance submitted to City Attorney on November 14, 2019.

B – Proposed revisions to Section 17.30.070 provided by the City Attorney to EDC on November 2, 2019.

C – Excerpt from California Coastal Commission, *Draft Residential Adaption Policy Guidance; Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs* (March 2018).

¹⁷ EDC has also identified the Village at Los Carneros Project as another example which demonstrates the need for a standalone provision that would apply to any request to alter City zoning or policy requirements affecting creeks and other habitats. There, the applicant proposed to reduce the SPA by fifty percent. The 465-unit residential Project was proposed with a maximum 50-foot setback from Tecolotito Creek. Ultimately, the 100-foot SPA buffer was determined to be infeasible and the Project was deemed "consistent with this Policy [CE 2.2]." However, 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 Policy CE 2.2.

EXHIBIT A



November 14, 2019

Michael Jenkins
City Attorney
130 Cremona Drive, Suite B
Goleta, CA 93117
(805) 961-7533
Michael.Jenkins@bbklaw.com

Submitted electronically via Michael.Jenkins@bbklaw.com

Re: EDC Proposed Revisions to the City of Goleta's Draft New Zoning Ordinance

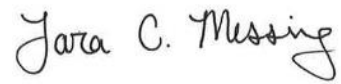
Dear Mr. Jenkins,

The following comments are submitted by the Environmental Defense Center ("EDC") on behalf of Santa Barbara Urban Creeks Council ("UCC") and EDC regarding proposed revisions to Sections 17.01.040 and 17.30.070 of the City of Goleta's ("City") Draft New Zoning Ordinance. Attached hereto as Attachment A are our proposed revisions to Sections 17.01.040 and 17.30.070. EDC revised Section 17.01.040 based on the version set forth in the Planning Commission Recommended New Zoning Ordinance. Changes to Section 17.30.070 are based on the proposed text drafted and sent electronically to EDC by the City Attorneys on November 2, 2019.

UCC is a non-profit grassroots organization dedicated to protecting and restoring streams and watersheds in Santa Barbara 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.

We appreciate your consideration and look forward to continuing to work with the City to ensure strong protections for Goleta's creeks, wetlands, and other vital natural resources.

Sincerely,

A handwritten signature in black ink that reads "Tara C. Messing". The signature is written in a cursive, flowing style.

Tara C. Messing

cc: Santa Barbara Urban Creeks Council
Peter Imhof
Michelle Greene
Anne Wells

Attachments:

A – EDC Proposed Revisions to Sections 17.01.040 and 17.30.070 of the City of Goleta's Draft New Zoning Ordinance

EXHIBIT A



TO: Michael Jenkins, Goleta City Attorney
FROM: Tara Messing, EDC Staff Attorney
Re: EDC Proposed Revisions to the City of Goleta's Draft New Zoning Ordinance
Date: November 14, 2019

Commented [TM1]: EDC uses the phrase "reasonable economic use" in these revisions in order to be consistent with the City of Goleta's General Plan policies. EDC reserves the right to revise the phrase "reasonable economic use" as used herein later in the process, particularly during the California Coastal Commission review and certification process.

17.01.040 Applicability

A. General Rules for Applicability of Zoning Regulations.

1. Timing. All development within the City shall be subject to the development standards and regulations herein upon the effective date of this Title.

2. Private Property Takings.

a. This ~~Title-Zoning Ordinance~~ is not intended, and shall not be construed as authorizing the City acting pursuant to this ~~Title-Zoning Ordinance~~ to exercise its power in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This ~~Section-Zoning Ordinance~~ is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

b. Where ~~strict-full~~ adherence to the provisions and standards of this Title-Zoning Ordinance would preclude ~~all economically beneficial~~ a reasonable economic use of a lawfully created private property as a whole, the City may allow the minimum use and development of the property necessary to avoid an unconstitutional taking of private property without just compensation ~~apply the provisions of this Title to the maximum extent possible to avoid an unconstitutional taking of private property~~. However, where proposed use or development of property would violate background principles of property law, such as nuisance law or public trust doctrine, then the City shall fully apply this ~~Title-Zoning Ordinance~~ as applicable. Continued use of an existing structure, including with any permissible repair and maintenance, may provide a reasonable economic use. If development is allowed pursuant to this section, it must be consistent with all policies and standards of the General Plan and Zoning Ordinance to the maximum extent feasible.

c. If full adherence to this Title-Zoning Ordinance would preclude a reasonable economic use of property, the Review Authority shall request that the applicant provide the following information, unless the Review Authority determines that one or more of the particular categories of information is not relevant to its analysis. The information shall pertain to the

entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application.

- i. The date the applicant purchased or otherwise acquired the property, and from whom.
- ii. The purchase price paid by the applicant for the property.
- iii. 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.
- iv. 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.
- v. Any development restrictions or other restrictions on use, other than government regulatory restrictions, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.
- vi. 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.
- vii. 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.
- viii. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
- ix. 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.
- x. 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.
- xi. 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.
- xii. Any additional information that the County requires to make the determination.

~~d. Where strict adherence to this Title would constitute an unconstitutional taking, the Review Authority may, at its sole discretion, waive an application or parts of an application allow deviation from provisions or standards of the Zoning Ordinance to provide a reasonable economic use only if the following findings can be made supported with substantial evidence. The waiver shall:~~

- i. Based on the economic information provided by the applicant and reviewed by a City-approved, third-party economic consultant, as well as any other relevant evidence, the provisions and/or standards of the Zoning Ordinance would not provide a reasonable economic use of the applicant's property.

- ii. Application of the provisions and/or standards of the Zoning Ordinance would unreasonably interfere with the applicant's reasonable investment-backed expectations.
- iii. Extend only as far as necessary to allow some economically beneficial use of the property; The use and project design, siting, and size are the minimum necessary to avoid a taking.
- iv. The use proposed by the applicant is consistent with the applicable zoning.
- vii. The project is the least environmentally damaging alternative and is consistent with all provisions of the Zoning Ordinance other than the provisions for which the exception is requested.
- viii. Comply. The project complies with CEQA and all other applicable state and federal laws.
- viii. The development will not be a public nuisance or violate other background principles of the State's law of property, e.g. public trust doctrine. If the project would violate any such background principle of property law, the development shall be denied. Not constitute a nuisance.

3. Applicability to Property. This Title applies, to the extent permitted by law, to all property within the corporate limits of the City.
4. Compliance with Regulations. Land or buildings may be used and structures may be erected or altered only in accordance with the provisions of this Title.
5. Applicability to the City. The City will ensure that all public buildings and facilities comply with the same development standards and regulations as would be applicable to private development.
6. Applicability to Other Agencies. Other governmental agencies, including State and federal, are exempt from the provisions of this Title only to the extent that the agency's property cannot be lawfully regulated by the City.

17.30.070 Streamside Protection Areas

A. Purpose and Applicability. The purpose of a Streamside Protection Area (SPA) designation in the General Plan is to preserve and enhance the SPA in order to protect the associated riparian habitats and ecosystems as well as the water quality of streams. The SPA consists of the creek channel, wetlands and/or riparian vegetation related to the creek hydrology and an adjacent upland buffer area~~the riparian vegetation in the buffer area adjacent to streams.~~

B. Required SPA Buffer. The SPA upland buffer must be a minimum of 100 feet outward on both sides of the ~~stream~~creek, measured from the top of the bank or the outer limit of the wetlands and/or riparian vegetation, whichever feature is further from the creek. The Review Authority may allow portions of a SPA upland buffer to be less than 100 feet wide, but not less than 25 feet wide, based on a site specific assessment~~may expand or reduce the upland buffer on a case-by-case basis, as provided in this Section.~~

C. Reduction in the SPA Buffer.

1. Upon request of an applicant, the Review Authority may allow portions of a SPA upland buffer to be less than 100 feet, as such measurement is prescribed in paragraph B above, but not less than 25 feet, with approval of a Major Conditional Use Permit, provided the Review Authority finds, on the basis of substantial evidence in the record, that:

a. The reduction in the SPA upland buffer will not have a significant adverse effect on streamside vegetation or the biotic quality of the stream;

b. There is no feasible alternative siting for the proposed project that will avoid an incursion into the SPA upland buffer;

c. In the absence of a reduction in the SPA upland buffer, the applicant cannot make reasonable economic use of the ~~parcel~~property; and

d. The approved amount of reduction in the SPA upland buffer is no greater than necessary to allow a reasonable economic use of the ~~parcel~~property.

2. Upon receipt of an application for an SPA upland buffer reduction, the Director may direct preparation by a City-selected, ~~third-party consultant biologist~~ of a Biological Report, ~~an economic/financial analysis~~ and/or any other study or report the Director deems necessary in his or her reasonable discretion, at the applicant's expense, to assist the Review Authority in making ~~the above~~ findings (a)-(b). At the request of the Director, the applicant shall provide information that the Director deems necessary, in his or her reasonable discretion, ~~to produce the above referenced studies or reports, including but not limited to financial data, land appraisal data, acquisition cost, land development/construction cost data, prospectuses, and financial/revenue projections. The application will not be deemed complete until the required reports are completed to the Director's satisfaction.~~

To assist the Review Authority in making findings (c)-(d), refer to Section 17.01.040 of this Zoning Ordinance. Any deviation from a policy or standard of the General Plan or Zoning Ordinance to provide a reasonable economic use of property may only be allowed if the application is approved by the Review Authority consistent with Section 17.01.040.

The application will not be deemed complete until the required reports are completed to the Director's satisfaction.

D. Expansion of the SPA Buffer. In connection with consideration of any discretionary entitlement for a ~~parcel~~property adjoining a creek, the Review Authority may expand the SPA upland buffer beyond 100 feet at the Review Authority's discretion to preserve and enhance the SPA in order to protect the associated riparian habitats, ecosystems, and/or water quality ~~as necessary to avoid a significant adverse effect on streamside vegetation or the biotic quality of the stream~~. The buffer may be expanded provided that the applicant may still make reasonable economic use of the ~~parcel~~property.

~~E. — Definitions. The following definitions shall apply for purposes of carrying out the provisions of this Section 17.30.070:~~

~~—— “No feasible alternative siting” shall mean that the size, configuration, topography and development constraints of the parcel would not allow development of the parcel in any manner consistent with the allowable uses and design and development standards applicable in the zone and allow a reasonable economic use of the parcel without incursion into the SPA upland buffer.~~

~~—— “Reasonable economic use of the parcel” shall mean, considering all relevant factors:~~

~~1. — For a commercial, industrial, multiple family residential or other investment project on the parcel, the applicant is able to generate positive net operating income and obtain a fair return on its investment in light of what the applicant knew or should have known about the City imposed restrictions on use of the property. Factors excluded from the evaluation of fair return shall include matters that could not be reasonably foreseen by and that are outside the control of the applicant, as well as avoidable, unreasonable or unnecessary expenses.~~

~~2. — For a single family residential project on the parcel, the applicant is able to construct, taking into account any other modifications allowed by the Review Authority, a single family residential dwelling (with standard attendant features, such as driveways, porches and fences) that is reasonably comparable in size and functionality to residential dwellings on similar size parcels in the vicinity under the same zoning classification.~~

~~—— “Significant adverse effect” shall mean a substantial or potentially substantial adverse change in the physical condition of the streamside vegetation and the stream as that phrase is understood and used in the California Environmental Quality Act (Section 21000 *et seq.* of the California Public Resources Code) and implementing regulations.~~

EXHIBIT B

17.30.070 Streamside Protection Areas

A. Purpose and Applicability. The purpose of a Streamside Protection Area (SPA) designation in the General Plan is to preserve and enhance the SPA in order to protect the associated riparian habitats and ecosystems as well as the water quality of streams. The SPA consists of the riparian vegetation in the buffer area adjacent to streams.

B. Required SPA Buffer. The SPA upland buffer must be 100 feet outward on both sides of the stream, measured from the top of the bank or the outer limit of the riparian vegetation, whichever feature is further from the creek. The Review Authority may expand or reduce the upland buffer on a case-by-case basis, as provided in this Section.

C. Reduction in the SPA Buffer.

1. Upon request of an applicant, the Review Authority may allow portions of a SPA upland buffer to be less than 100 feet, as such measurement is prescribed in paragraph B above, but not less than 25 feet, with approval of a Major Conditional Use Permit, provided the Review Authority finds, on the basis of substantial evidence in the record, that:

a. The reduction in the SPA upland buffer will not have a significant adverse effect on streamside vegetation or the biotic quality of the stream;

b. There is no feasible alternative siting for the proposed project that will avoid an incursion into the SPA upland buffer;

c. In the absence of a reduction in the SPA upland buffer, the applicant cannot make reasonable economic use of the parcel; and

d. The approved amount of reduction in the SPA upland buffer is no greater than necessary to allow a reasonable economic use of the parcel.

2. Upon receipt of an application for an SPA upland buffer reduction, the Director may direct preparation by a City-selected consultant of a Biological Report, an economic/financial analysis and/or any other study or report the Director deems necessary in his or her reasonable discretion, at the applicant's expense, to assist the Review Authority in making the above findings. At the request of the Director, the applicant shall provide information that the Director deems necessary, in his or her reasonable discretion, to produce the above-referenced studies or reports, including but not limited to financial data, land appraisal data, acquisition cost, land development/construction cost data, prospectuses, and financial/revenue projections. The application will not be deemed complete until the required reports are completed to the Director's satisfaction.

D. Expansion of the SPA Buffer. In connection with consideration of any discretionary entitlement for a parcel adjoining a creek, the Review Authority may expand the SPA upland buffer beyond 100 feet as necessary to avoid a significant adverse effect on streamside

vegetation or the biotic quality of the stream. The buffer may be expanded provided that the applicant may still make reasonable economic use of the parcel.

E. Definitions. The following definitions shall apply for purposes of carrying out the provisions of this Section 17.30.070:

“No feasible alternative siting” shall mean that the size, configuration, topography and development constraints of the parcel would not allow development of the parcel in any manner consistent with the allowable uses and design and development standards applicable in the zone and allow a reasonable economic use of the parcel without incursion into the SPA upland buffer.

“Reasonable economic use of the parcel” shall mean, considering all relevant factors:

1. For a commercial, industrial, multiple-family residential or other investment project on the parcel, the applicant is able to generate positive net operating income and obtain a fair return on its investment in light of what the applicant knew or should have known about the City-imposed restrictions on use of the property. Factors excluded from the evaluation of fair return shall include matters that could not be reasonably foreseen by and that are outside the control of the applicant, as well as avoidable, unreasonable or unnecessary expenses.

2. For a single-family residential project on the parcel, the applicant is able to construct, taking into account any other modifications allowed by the Review Authority, a single-family residential dwelling (with standard attendant features, such as driveways, porches and fences) that is reasonably comparable in size and functionality to residential dwellings on similar size parcels in the vicinity under the same zoning classification.

“Significant adverse effect” shall mean a substantial or potentially substantial adverse change in the physical condition of the streamside vegetation and the stream as that phrase is understood and used in the California Environmental Quality Act (Section 21000 *et seq.* of the California Public Resources Code) and implementing regulations.

EXHIBIT C



CALIFORNIA COASTAL COMMISSION RESIDENTIAL ADAPTATION POLICY GUIDANCE

Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs



Photo Credit: Mary Matella

MARCH 2018

REVISED

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DRAFT RESIDENTIAL ADAPTATION POLICY GUIDANCE

March 2018

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How to Use this Document

Use this document as:	This document is <u>NOT</u> :
Interpretive Guidelines	Regulations
<p><i>This Guidance is advisory. It provides the Commission’s direction on how local governments can address sea level rise issues in Local Coastal Programs consistent with the Coastal Act. The guidance is not a regulatory document or legal standard of review for the actions that the Commission or local governments may take under the Coastal Act. Such actions are subject to the applicable requirements of the Coastal Act, the federal Coastal Zone Management Act, certified Local Coastal Programs, and other applicable laws and regulations as applied in the context of the evidence in the record for that action.</i></p>	
Examples to modify	A substitute for consultation with CCC staff
<p><i>This Guidance contains model policies that may need to be customized before they can be incorporated into individual LCPs. In addition, not all policies are applicable in every jurisdiction. Commission staff can assist local governments with using the Guidance to develop policies that help prepare for sea level rise impacts in their communities.</i></p>	
Policy options for consideration	A checklist
<p><i>Not all of the content will be applicable to all jurisdictions. Jurisdictions should consider the policy options that are relevant to their specific situation, rather than view the options as a checklist of requirements.</i></p>	

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Land Division

B.9 Restrict Land Division in Hazardous Areas

Limit land divisions, including lot line adjustments, in areas vulnerable to coastal hazards, including hazards exacerbated by sea level rise. Prohibit the creation of new lots (including adjusted lots) in such areas, unless it is demonstrated either that: 1) the new lot(s) would be permanently protected for open space, public access, or other similar purposes consistent with the LCP, or 2) resultant parcels contain a buildable area in which development on new lots would comply with LCP policies protecting coastal resources, would remain located on private property despite the migration of the public trust boundary, not require the future construction or augmentation of a shoreline protective device, be adequately served by public services (e.g., water, sewer, and safe, legal, all-weather access as applicable) over the anticipated duration of the development, and otherwise be consistent with all LCP policies.

Exceptions

Note: Despite the Coastal Act's requirements to minimize hazards and protect coastal resources, local governments must still ensure that actions on coastal development permits do not result in an unconstitutional taking of private property. Many LCPs already contain takings policies to address this need. The model language below notes that background principles of property law like the public trust doctrine or nuisance abatement might change the context of decisions related to sea level rise adaptation actions in the future. This policy helps clarify when a taking might not be a consideration.

Communities might also create adaptation plans on a neighborhood scale (see Model Policy G.3–Adaptation Plan for Highly Vulnerable Areas) to provide strategies for hazardous areas where development must be approved to avoid an unconstitutional taking of private property.

B.10 Takings Analysis

Where full adherence with all LCP policies, including for setbacks and other hazard avoidance measures, would preclude a reasonable economic use of the property as a whole, the [*city or county, or Commission if on appeal*] may allow the minimum economic use and/or development of the property necessary to avoid an unconstitutional taking of private property without just compensation. There is no taking that needs to be avoided if the proposed development constitutes a nuisance or is otherwise prohibited pursuant to other background principles of property law (e.g., public trust doctrine). Continued use of an existing structure, including with any permissible repair and maintenance (which may be exempt from permitting requirements), may provide a reasonable economic use. If development is allowed pursuant to this policy, it must be consistent with all LCP policies to the maximum extent feasible.

C. DESIGN FOR THE HAZARD

Note: The Coastal Act requires hazards to be minimized. Accommodation strategies rely on methods that modify existing developments or design new developments to minimize hazard risks and thus increase the resiliency of development to the impacts of sea level rise. Design options for accommodation can be an important part of phasing a community's response to sea level rise impacts, especially when it is not feasible to avoid hazards altogether. The policy below is general, but could be customized to the applicable hazards a community is confronting. Also see Model Policy E.4 for flood hazard mitigation design options.