

October 7, 2019

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BY HAND DELIVERY AND EMAIL (KDOMINGUEZ@CITYOFGOLETA.ORG)

Jennifer R. Smith, Chair, and Members of the Commission
City Planning Commission
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

RE: New Zoning Ordinance

Dear Chair Smith and Members of the Commission:

This letter is submitted on behalf of SyWest Development, owner of the site of the former Goleta Drive-in Theatre at 907 S. Kellogg Avenue.

The following comments pertain to the recently-issued revisions to the NZO, with particular emphasis on Sec. 17.30.070 ("Streamside Protection Areas") attached as Exhibit 1 to Attachment 2 of the staff report for your October 7 meeting. The proposed revisions are inconsistent with the policies set forth in the General Plan and, absent a General Plan Amendment, cannot legally be adopted.

The legal principle applicable here is well established.

"While a given general plan is in effect, neither local governments nor electors can enact a zoning ordinance inconsistent with it." *City of Morgan Hill v. Bushey* (2018), 5 Cal.5th 1068, 1079.

Any such inconsistent zoning ordinance "is invalid at the time it is passed." *Id.* See also *Leshor Communications, Inc. v. City of Walnut Creek* (1990), 52 Cal. 3d 531, 544-45 [describing such zoning ordinances as "invalid *ab initio*," that is, invalid from the day of enactment].

There are two portions of the NZO pertaining to SPAs that SyWest believes deserve special mention. First, the list of "Allowable Uses within SPAs" appearing on page 10 (Sec. 17.30.070, C). In the NZO, there are **three** allowable uses. In the General Plan, there are **nine** allowable uses. Among the uses listed in the General Plan that are omitted from the NZO: "maintenance of existing roads, driveways, utilities, structures, and drainage improvements."

This omission creates grave problems for SyWest, since its only access point to its property from Kellogg Avenue is within the SPA for San Jose Creek. Further, and ironically, the City itself will have a significant problem with this provision, given the proximity of Kellogg Avenue to San Jose Creek. Is the City prepared to abandon use of Kellogg Avenue because ongoing maintenance will not be permitted?

Second, there are 2 ½ pages of brand new text describing an elaborate system for deciding whether a SPA upland buffer can be reduced in size. This text is entirely untethered from the General Plan, and imposes

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burdens and barriers that are well beyond the General Plan's policies. Moreover, there are fatal inconsistencies and ambiguities in this lengthy new text that deserves much closer public scrutiny and analysis than is allowed by the few days prior to your hearing.

There are other significant problems with the NZO that also deserve your close attention. For example, the recent revisions to the NZO delete vehicle storage as a permitted use in the I-S (Service Industrial) zone district (see Table 17.10.020). This deletion conflicts with the General Plan, Table 2-3, which specifies that auto sales, rentals, repair, painting, and auto wrecking/junk yards are allowed uses in that zone.

Moreover, the exemption for Projects with a Completed Application has been narrowed to the point of creating serious risks and inequities. In the August 2019 draft, Projects with a Completed Application were exempted from the new NZO, which is a sound policy given the substantial investment required by a property owner who has achieved a completed application. In the most recent version, this exemption has been limited by a 27 month sunset provision (see section 17.01.040(4) and (5)). This short sunset provision is unrealistic and inequitable, given the fact that a project can take three or four years to get from Completed Application to Approval, particularly given the complexities of the environmental review process and the possibility of litigation that imposes substantially more delay.

In my experience, a jurisdiction that is enacting a comprehensive new code will recognize the legitimate investment-backed expectations of applicants who have been seeking permits under the old code. (An example is the City of Santa Barbara, which enacted a comprehensive commercial growth limitation some years ago. The City allowed projects which were "in the pipeline" to proceed through to completion.) This type of planning policy is enacted as a matter of simple fairness and good planning. The recent NZO changes fail to honor this principle.

Finally, and importantly, the recent changes to the NZO are both substantial and not well publicized in the community. There are many property owners who will be very interested in the new provisions applicable to properties near SPAs, but who do not know about those provisions. There are other property owners who have already achieved application completeness, but may not realize that they will be subject to a 27 month time limit to secure their permits. We respectfully suggest that the City should make **specific efforts** to notify these two classes of owners about the NZO changes that will have such a dramatic effect on them.

We urge the Commission to defer action on the NZO until these issues can be fully addressed.

Thank you for your kind consideration.

Sincerely,



Steven A. Amerikaner

cc. Anne Wells, Advance Planning Manager (AWELLS@CITYOFGOLETA.ORG)
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