



March 8, 2019

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Re: Revisions to Section 17.30.070 of the City of Goleta's Revised Draft New Zoning Ordinance Regarding Streamside Protection Areas

Dear Anne:

The following comments are submitted by the Environmental Defense Center ("EDC") on behalf of EDC and Santa Barbara Urban Creeks Council ("UCC") regarding proposed revisions to Section 17.30.070 the City of Goleta's ("City") Revised Draft New Zoning Ordinance concerning Streamside Protection Areas ("SPAs"). Attached hereto are EDC's proposed revisions to Section 17.30.070, which are based in large part on the California Coastal Commission's ("CCC") Suggested Modifications to the Eastern Goleta Valley Community Plan Local Coastal Program ("LCP") Amendment.

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 3,000 members, including 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.

Section 17.30.070 of the City's Revised Draft New Zoning Ordinance requires a minimum 100-foot SPA upland buffer on both sides of a creek, as is consistent with the requirements under Policy CE 2.2 of the City's General Plan.¹ The buffer may be increased or

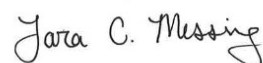
¹ City of Goleta Revised Draft New Zoning Ordinance, Section 17.30.070(B).

decreased upon a finding that (1) “[t]he project’s impacts will not have a significant adverse effect on streamside vegetation or the biotic quality of the stream, and” (2) “[t]here is no feasible alternative siting for development that will avoid the buffer.”² As presently drafted, however, Section 17.30.070 is void of any process or standards by which to determine whether these factors are met. For this reason, UCC and EDC advocate for clear zoning ordinance language which effectively implements Policy CE 2.2. To do so, Section 17.30.070 must set forth a process, required findings, and evidentiary requirements to inform the City’s determination of significant adverse effects and infeasibility. This clarity and transparency will benefit not only City decisionmakers, but also applicants and interested members of the public.

In accordance with the CCC’s Suggested Modification No. 13 to Eastern Goleta Valley Community Plan LCP Amendment, EDC has drafted proposed revisions to Section 17.30.070. CCC’s recommended language is directly relevant and instructive in crafting the City’s creek protection ordinance, especially with regards to determining when creek setbacks reductions may be permitted. EDC also recognizes that its proposed language may be applicable to other sections such that the language should have more general applicability. As long as it is clear that the requisite findings and evidence applies to Section 17.30.070 as well, EDC is open to other approaches for incorporating this language in the City’s new Zoning Ordinance.

For the foregoing reasons, we respectfully request that the City consider EDC’s revisions and amend Section 17.30.070 based on EDC’s proposed language.

Sincerely,



Tara C. Messing
Staff Attorney

Attachments:

A - Redline version of EDC proposed revisions to Section 17.30.070

B - Clean version of EDC proposed revisions to Section 17.30.070

² City of Goleta Revised Draft New Zoning Ordinance, Section 17.30.070(B)(1)(a)-(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 the SPA in a natural state, in order to protect the associated riparian habitats and ecosystems as well as the water quality of streams. The SPA must include the creek channel, wetlands and/or riparian vegetation related to the creek hydrology, and an adjacent upland buffer area, ~~based upon the following:~~
- B. **Buffers.** The width of the SPA upland buffer must be 100 feet outward on both sides of the creek, measured from the top-of-bank or the outer limit of wetlands and/or riparian vegetation, whichever is greater. The Review Authority may consider increasing or decreasing the width of the SPA upland buffer on a case-by-case basis at the time of environmental review.
1. The ~~Planning Commission~~Review Authority may allow portions of a SPA upland buffer to be less than 100 feet wide, but not less than 25 feet wide, subject to approval of a Major Conditional Use Permit. ~~Any~~ decision to decrease the 100-foot buffer shall be based on ~~the Initial Assessment and Biological Report, if needed, and~~ a finding that:
 - a. The project's impacts will not have a significant adverse effect on streamside vegetation or the biotic quality of the stream, and
 - b. There is no feasible alternative siting for development that will avoid the SPA upland buffer.
 2. A SPA upland buffer must not be adjusted downward unless the Review Authority makes affirmative findings of fact in writing supported by substantial evidence with respect to subsections (a) and (b) above.
 - a. The Review Authority must make one or more written findings for each potentially significant adverse effect on streamside vegetation or the biotic quality of the stream, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect.
 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
 - b. Any and all findings required by the above sections shall be supported by substantial evidence derived from a City-approved, third-party biologist review and consideration of the application, project plans, Initial Assessment and Biological Report, public testimony, reports, and other relevant materials presented to the Review Authority.
 - c. The Review Authority may decrease the 100-foot buffer only if the Review Authority makes the following findings in addition to the findings required in Title V for approval or denial of a project and for the issuance of a Major Conditional Use Permit:

1. Based on a City-approved, third-party economic consultant's review and consideration of the economic information provided by the applicant, as well as any other relevant evidence, adherence to the 100-foot SPA upland buffer would not provide an economically viable use of the applicant's property.
 2. Application of the 100-foot SPA upland buffer 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 Zoning Ordinance other than the provision 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. 20 1003, 1028-30 (e.g., public trust doctrine). If it would violate any such background principle of property law, the development shall be denied.
 7. The project is located on a legally created lot.
 8. The project is consistent with all other applicable biologic goals, objectives, policies, actions and development standards from the Goleta General Plan, Local Coastal Program, and Zoning Ordinances.
- d. A finding of infeasibility must be supported by substantial evidence based upon a City-approved, third-party biologist and economic consultant's review and consideration of the application, project plans, Initial Assessment and Biological Report, public testimony, reports, and other relevant materials presented to the Review Authority. The applicant shall also 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:
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, local coastal program, 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 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 Review Authority requires to make the determination.

2.3. If this provision above would result in any legally created lot being made unusable in its entirety, exceptions to the foregoing may be made to allow a reasonable economic or beneficial use of the lot, subject to the approval of a Major Conditional Use Permit.

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 the SPA in a natural state, in order to protect the associated riparian habitats and ecosystems as well as the water quality of streams. The SPA must include the creek channel, wetlands and/or riparian vegetation related to the creek hydrology, and an adjacent upland buffer area.
- B. **Buffers.** The width of the SPA upland buffer must be 100 feet outward on both sides of the creek, measured from the top-of-bank or the outer limit of wetlands and/or riparian vegetation, whichever is greater. The Review Authority may consider increasing or decreasing the width of the SPA upland buffer on a case-by-case basis at the time of environmental review.
1. 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, subject to approval of a Major Conditional Use Permit. A decision to decrease the 100-foot buffer shall be based on a finding that:
 - a. The project's impacts will not have a significant adverse effect on streamside vegetation or the biotic quality of the stream, and
 - b. There is no feasible alternative siting for development that will avoid the SPA upland buffer.
 2. A SPA upland buffer must not be adjusted downward unless the Review Authority makes affirmative findings of fact in writing supported by substantial evidence with respect to subsections (a) and (b) above.
 - a. The Review Authority must make one or more written findings for each potentially significant adverse effect on streamside vegetation or the biotic quality of the stream, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect.
 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
 - b. Any and all findings required by the above sections shall be supported by substantial evidence derived from a City-approved, third-party biologist review and consideration of the application, project plans, Initial Assessment and Biological Report, public testimony, reports, and other relevant materials presented to the Review Authority.
 - c. The Review Authority may decrease the 100-foot buffer only if the Review Authority makes the following findings in addition to the findings required in Title V for approval or denial of a project and for the issuance of a Major Conditional Use Permit:
 1. Based on a City-approved, third-party economic consultant's review and consideration of the economic information provided by the applicant, as well as any other relevant evidence, adherence to

- the 100-foot SPA upland buffer would not provide an economically viable use of the applicant's property.
2. Application of the 100-foot SPA upland buffer 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 Zoning Ordinance other than the provision 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.
 7. The project is located on a legally created lot.
 8. The project is consistent with all other applicable biologic goals, objectives, policies, actions and development standards from the Goleta General Plan, Local Coastal Program, and Zoning Ordinances.
- d. A finding of infeasibility must be supported by substantial evidence based upon a City-approved, third-party biologist and economic consultant's review and consideration of the application, project plans, Initial Assessment and Biological Report, public testimony, reports, and other relevant materials presented to the Review Authority. The applicant shall also 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:
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, local coastal program, 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 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.
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 12. Any additional information that the Review Authority requires to make the determination.
3. If this provision above would result in any legally created lot being made unusable in its entirety, exceptions to the foregoing may be made to allow a reasonable economic or beneficial use of the lot, subject to the approval of a Major Conditional Use Permit.