

ATTACHMENT G

**LETTERS RECEIVED AFTER CLOSE OF PUBLIC COMMENT ON
DRAFT ENVIRONMENTAL IMPACT REPORT**



environmental
DEFENSE CENTER

February 9, 2015

Glenn Russell, Director
Planning and Development
Santa Barbara County
123 East Anapamu Street
Santa Barbara, CA 93101
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FEB 10 2015

S.B. COUNTY
PLANNING & DEVELOPMENT

VIA EMAIL

Re: Goleta Valley Community Plan Update Draft Environmental Impact Report – Mitigation Requirements under CEQA

Dear Mr. Russell:

As you are aware, we have discussed with you the Environmental Defense Center's ("EDC") comments on the Draft Environmental Impact Report ("Draft EIR") for the Eastern Goleta Valley Community Plan Update ("Plan"), submitted on behalf of the Santa Barbara Urban Creeks Council's ("UCC"). You requested further information on the enforceability of the mitigation measures UCC proposed in its comments to address impacts to Environmentally Sensitive Habitats ("ESH"), including chaparral habitat.¹

EDC's position is that the mitigation measures proposed by the County do not substantially lessen impacts or lessen impacts to below a level of significance, but that the mitigation measures UCC proposes in its Comment Letter would help to substantially lessen the impacts of the Plan. Some of UCC's recommendations could reduce impacts to a level of insignificance. Even where UCC's proposed mitigation measures would not reduce impacts to below a level of significance (i.e., Class I to Class II), including these proposed mitigation measures would nonetheless substantially lessen the impacts of the Plan. As described below, in order to comply with the California Environmental Quality Act ("CEQA" – Pub. Res. Code § 21000 *et seq.*), the County should implement mitigation measures that substantially lessen the impacts of the Plan.

¹ October 3, 2014. *Comments on the Draft EIR for Eastern Goleta Valley Community Plan Update: Biological Resources, ESH Protection and Urban Agriculture (hereinafter "Comment Letter")*.

In summary, UCC recommended the following mitigation measures, more fully described in the Comment Letter:

- (1) Amend the proposed ESH-GOL Overlay Ordinance language by modifying Action ECO-EGV-5B to close the loophole which allows unmitigated removals of ESH of less than one acre as long as no “development” is proposed;
- (2) Update the ESH Overlay Map to reflect Mitigation Measure Bio-1 and to reflect changes to ESH boundaries that have occurred since 1993;
- (3) Update the ESH Overlay Map to include the Plan’s northeast expansion area including the Mountainous Area rezone site;
- (4) Amend Chapter 9A of the County Code (the Brush Removal Ordinance) to lower the trigger for a Brush Removal Permit to 1 acre per holding per year; and
- (5) Include the ESH Overlay in Agriculturally-zoned lands.

After further consultation with biological resources experts, including biologists who regularly work with chaparral and other sensitive habitats, it is EDC’s and UCC’s position that mitigation measures 2, 3 and 5 have the potential to reduce biological impacts of some activities below a level of significance, on a project-by-project basis. Because these measures create a project-specific permitting process for removal of chaparral and other ESH, there is an additional layer of review, not currently in place, which on a project-by-project basis, could reduce impacts to chaparral and other ESH to below a level of significance.

Proposed mitigation measures 1 and 4 will also help substantially reduce impacts to ESH and chaparral habitats; however it is less certain whether their implementation will reduce impacts to below a level of significance. The potential for reducing impacts depends on a quantitative analysis of the amount of clearing per project. It is important to note that all of these mitigation measures work together synergistically – each alone would not have the effect of substantially reducing impacts – but they work together to substantially reduce the impacts of the Plan. Therefore it is important to implement all of them to reach the greatest potential for reducing impacts.

As you are aware, an agency must identify mitigation measures for each significant impact identified in the EIR. “An EIR shall describe *feasible measures which could minimize significant adverse impacts...*” 14 CCR § 15126.4(a)(1) (emphasis added). And a project should not be approved if feasible mitigation measures exist:

CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible...A public agency *should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects* that the project would have on the environment.

14 CCR § 15021(a) (emphasis added).

An agency can only approve a project with significant impacts by making certain findings:

1) Changes or alterations [i.e., mitigation measures] have been required in, or incorporated into, the project which *avoid or substantially lessen the significant environmental effect* as identified in the final EIR...3) Specific economic, legal, social, technological, or other considerations...make *infeasible the mitigation measures* or project alternatives identified in the final EIR.

14 CCR § 15091 (emphasis added).

Even if some impacts will remain significant, the County has a duty to substantially lessen impacts of the Plan, which it can do through implementation of UCC's proposed mitigation measures. *See, e.g., Citizens for Open Gov't v. City of Lodi* (2012) 205 Cal. App. 4th 296 (holding that mitigation measures that did not lessen impacts to below a level of significance nonetheless "substantially lessened" the impacts of the proposed project). In *Lodi*, the court stated:

In the city's findings of fact and statement of overriding considerations, the city explained the following: There were no feasible mitigation measures to avoid the loss of prime agricultural farmland because it was not possible to recreate prime farmland on other lands...The city would minimize and substantially lessen the significant effects of the proposed project by requiring the project applicant to acquire an off-site agricultural conservation easement.

205 Cal. App. at 323-24 (emphasis added). *See also Friends of the Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105, 127 (fn. 22) (internal citations omitted) (emphasis added):

We recognize that the DEIR states there is a "lack of feasible mitigation" for the conversion of farmland. *The DEIR, however, goes on to recommend three mitigation measures that are intended to lessen the Project's impact on farmland. Thus, we do not read the DEIR as concluding there are no measures that would minimize or compensate for the impact (mitigation), which are capable of being accomplished in a successful manner (feasible). Rather, in context, it is apparent that the DEIR means no feasible measures are available that would mitigate the impact to a less-than-significant level. This is a common use of the phrase "feasible mitigation."* For example, [*Lodi*], a case involving a proposal to build a shopping center on farmland, the lead agency found there were "no feasible mitigation measures" because no mitigation could avoid the significant impact resulting from the permanent loss of farmland....*The lead agency went on to require the project applicant to acquire an ACE. The Court of Appeal found substantial evidence to support the lead agency's finding that "there were no feasible mitigation measures," although the court also noted that the ACE requirement "would minimize and substantially lessen the significant effects" of the project. Since the Lodi court expressly recognized that the ACE requirement would mitigate a significant impact, it is clear the court intended the phrase "there were no feasible mitigation measures" to mean there were no feasible mitigation measures that would reduce the project's impact to a level of insignificance.*

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See also Masonite Corporation v. County of Mendocino (2013) 218 Cal.App.4th 230, 238-39 (court upheld the use of Agricultural Conservation Easements as mitigation measures that can "substantially lessen" impacts of agricultural land conversion, even if the impacts are not reduced to below a level of significance).

In summary, the County should implement UCC's proposed feasible mitigation measures, either because they would reduce impacts to less than significant, or because they would minimize and substantially lessen such impacts.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Di Camillo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nicole Di Camillo,
Staff Attorney

cc: Eddie Harris, President, Santa Barbara Urban Creeks Council



SUZANNE ELLEDGE

PLANNING & PERMITTING
SERVICES, INC.

3 April 2015

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S.B. COUNTY
PLANNING & DEVELOPMENT

Santa Barbara Planning Commission
County of Santa Barbara
Planning & Development
123 East Anapamu Street
Santa Barbara, CA 93101

Subject: Eastern Goleta Valley Community Plan
Prospective Re-Zone; 4320 Modoc Road; APN 061-092-017

Dear Commissioners:

Our office represents the owner of the above referenced property, the Schader Trust. We were contacted earlier this year to discuss the possibility for increasing the density on her property. We investigated the parcel and found that it was within the Goleta Valley Plan Area and will be subject to the updated Community Plan.

The subject property is a 1.625 acres parcel zoned DR-8 (8 DU/Acre) that is currently developed with 13 residential units. Our review of the background file shows that the project has retained a comprehensive zone designation of Res-12.3 (12.3 DU per acre) since at least 1972, when the current housing was permitted and developed.

Through the Community Plan process, we are requesting the property be rezoned to DR 12.3, consistent with the underlying comprehensive plan. The neighboring property to the west is already zoned DR-12.3. We recommend this zoning be applied to each of the nine (9) APNs located in the area which have the Res-12.3 Comprehensive Plan designation.

APN	Comp Plan	Current Zoning	Notes
061-092-022	Res-12.3	DR-8	
069-092-023	Res-12.3	DR-8	
061-092-017	Res-12.3	DR-8	subject parcel
061-400-008	Res-12.3	DR-12.3	abutting parcel to west
061-092-018	Res-12.3	DR-8	
061-092-013	Res-12.3	DR-8	
061-092-014	Res-12.3	DR-8	
061-092-015	Res-12.3	DR-8	
061-092-016	Res-12.3	DR-8	

In support of this request, one of the proposed policies in the Plan states:

Policy EGV-4.1: Land use and development shall complement existing neighborhoods and enhance aesthetics and viewsheds, where site suitability and layout, project scale, neighborhood land use characteristics, and urban design are factors considered in planning and design.

The proposed zoning to match the Res-12.3 Comprehensive Plan designation would complement the proposed objectives for the nearby State Street/Hollister Corridor:

OBJECTIVE EGV-5: Enhance the State Street/Hollister Ave Commercial Corridor to connect residential uses with services, goods, transit, and social, cultural, and/or civic areas.

Action EGV-5A: Mixed Use Zoning District (MU-EGV): Develop the Mixed Use Eastern Goleta Valley District (MU-EGV) Zoning District. The purpose and intent of MU-EGV is to allow commercial/retail uses and residential uses in the same area, property, or structure to improve the State Street/Hollister Commercial Corridor as an attractive, safe, and pedestrian-oriented mixed-use neighborhood destination for goods and services through long term redevelopment and revitalization, paired with a multi-modal transportation system and streetscape improvements, per Policy LUR-EGV-3.2.

Page 42 of the draft Plan states that "residents living near employee centers, commercial services and recreational facilities revitalize the area economically, physically and socially, providing 'eyes on the street', that is, a neighborhood presence that enhances security." The area proposed for rezone is just .2 miles from the State Street/Hollister corridor which is consistent with what is considered an ideal distance per LUR-EGV-2.4:

Policy LUR-EGV-2.4: Residential and Mixed Use Neighborhood Development should be considered ideally located:

1. Within walking distance (.25 miles maximum) of commercial/service nodes and employment centers, schools, and/or parks and recreation facilities, or

Looking at the surrounding neighborhoods around the commercial core, a large block of DR-12.3 zoning already exists for the residential areas on the east side of State Street. A new mixed use DR-20 zone is proposed near the intersection of 154 and State. And, just a few parcels to the west of the Schader Trust parcel, there are properties zoned DR-20.

In summary, the proposed DR-12.3 zoning would:

- 1) Resolve needless inconsistency between the current zoning and general plan designation,
- 2) Facilitate the GVCP goals for the State Street/Hollister Commercial Corridor by adding residential density in the vicinity that will help vitalize the core; and
- 3) Be consistent with other zoning near the commercial core as described above and shown on the accompanying zoning map from the proposed Plan.

We thank the Commission and County staff for considering this request.

Sincerely,
SUZANNE ELLEDGE
PLANNING & PERMITTING SERVICES



Steve Welton, AICP
Senior Planner

Cc: Ms. Julie Harris; County of Santa Barbara Long Range Planning Division; 123
East Anapamu Street; Santa Barbara, CA 93101

Ms. Sherilyn Dyruff, Trustee of the Schader Trust, via e-mail

