

ATTACHMENT 12



COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT

MEMORANDUM

TO: Santa Barbara County Planning Commission

FROM: Daniel T. Klemann, Deputy Director 
Long Range Planning Division

DATE: January 22, 2019

RE: Hoops Structures Ordinance Amendment
January 30, 2019, County Planning Commission Hearing
Case No. 17ORD-00000-00005

At the December 5, 2018, hearing, the County Planning Commission (Commission) considered seven conceptual changes that Commissioner Parke presented at the Commission hearing on November 7, 2018. Following public comment and deliberations, the Commission gave direction to staff regarding the seven conceptual changes summarized in the table below.

Conceptual Change	Commission Direction Summary
<i>Include / Reincorporate Santa Ynez and Gaviota Overlays</i>	Include/reincorporate the 4,000 square foot size limit as a criterion to qualify for the exemption in both overlays. Also allow exemption if structures of any size are not visible from public roads/areas of public use. Revise to allow a permit path for larger structures in both overlays.
<i>Add Slopes Greater Than 20%</i>	Add steepness of slope as a criterion to qualify for the exemption, with the steepness (percent slope) to be determined on January 30, 2019. Allow a permit path for structures occurring on steeper slopes.
<i>Address Hillside Views (e.g., Revise Agricultural Grading Ordinance)</i>	Do not amend the Grading Code.
<i>Historically Cultivated and Non-Cultivated Lands (Restore / Revise Mitigation Measure MM-BIO-1)</i>	Restore applicability of MM-BIO-1 to all sensitive habitats pursuant to the mitigation measure presented in the Final EIR. Revise the historically cultivated timeframe.
<i>Coordinate Biological Resources Mitigation Measures with Existing Ag Grading Ordinance (Revise Mitigation Measure MM-BIO-3)</i>	Do not change MM-BIO-3 (streams and creeks setbacks).

Conceptual Change	Commission Direction Summary
<i>Clarify What is "Development" (Revise Definitions)</i>	Do not redefine development.
<i>Explain Relation to Cannabis Ordinance</i>	Add reference to the recently adopted cannabis regulations, Section 35.42.075 of the Land Use and Development Code (LUDC).

The Commission also reconfirmed previous direction to delete mitigation measures MM-VIS-1, MM-VIS-2, MM-WR-1, and MM-BIO-2 for the reasons outlined in the staff memorandum dated July 3, 2018, incorporated by reference, and discussed at the Commission's July 11, 2018, hearing.

Attached to this memo are revised documents necessary for the Commission to make a recommendation to the Board of Supervisors to approve the project pursuant to the Commission's direction of December 5, 2018. The Commission also will need to confirm final details regard certain components of the ordinance amendment (i.e., steep slope criterion and historic timeframe for MM-BIO-1). The revised documents include the following:

- Revised Findings for Approval (including CEQA findings and Statement of Overriding Considerations, Attachment A)
- EIR Revision Document (Attachment C)
- Revised Land Use and Development Code Amendment (Attachment D, Exhibit 1)
- Revised Policy Consistency Analysis (Attachment E)

This memorandum presents additional information regarding the four revisions the Commission recommended on December 5, 2018.

A. *Include / Reincorporate Santa Ynez and Gaviota Overlays*

On December 5, 2018, the Commission recommended that the 4,000-square foot size limits for crop protection structures located within the Santa Ynez Valley Community Plan Design Control (D) Overlay and the Critical Viewshed Corridor (CVC) Overlay within the inland Gaviota Coast Plan area be retained but revised to a permit threshold with two components. First, crop protection structures that are no more than 4,000 square feet in area per lot would be considered exempt if they meet all other exemption criteria. Second, crop protection structures larger than 4,000 square feet per lot would be considered exempt if they meet all other exemption criteria and if they are not visible from public roadways or other areas of public use. To qualify for this second exemption, landscape screening shall not be taken into consideration when determining whether the structures are visible from public roadways or other areas of public use. Visible crop protection structures larger than 4,000 square feet per lot may be allowed with approval of a permit (i.e., a Land Use Permit if less than 20,000 sq. ft. in area and a Development Plan if larger).

The EIR Revision Document (Attachment C) has been revised to consider the potential impacts to aesthetics/visual resources associated with making these revisions to the ordinance amendment. In sum, revising the size limit to a permit threshold and allowing unlimited crop

protection structures without a permit if not visible from public roadways within the D and CVC overlays would not substantially increase the severity of impacts identified in the Final EIR or result in any new significant environmental impacts. Those crop protection structures that would be larger than 4,000 square feet and visible from public roadways would be reviewed through the permit process and aesthetics/visual resources would be addressed on a site-specific basis, including requirements to comply with Santa Ynez Valley Community Plan and Gaviota Coast Plan visual resources protection policies, as applicable, and may require additional CEQA review.

B. Add Slopes as a Criterion

On December 5, 2018, the Commission recommended that a maximum steep slope be incorporated into the ordinance amendment as a new criterion to exempt crop protection structures from planning permits, and provide a permit path for crop protection structures on steeper slopes. The Commission discussed several alternatives for a steep slope permit threshold, ranging between 5% and 20%, but did not make a final recommendation.

The Final EIR analyzed the potential impacts associated with allowing exempt crop protection structures anywhere on lands zoned Agricultural. A slopes criterion within the range considered would be more restrictive and, thus, would result in fewer impacts. The EIR Revision Document (Attachment C) has been revised to consider the potential impacts associated with adding slopes as a permit threshold. The Revision Document concludes that limiting the permit exemption to areas with no slopes or lesser slopes, while allowing crop protection structures on steep slopes only with a permit, would reduce impacts to aesthetic/visual resources. A steep slopes permit threshold would prevent an unlimited expansion of the use of crop protection structures on much of the steeply sloping lands throughout the County, which are more visible from public roadways and generally less suited to agricultural cultivation. However, the new permit threshold would not reduce aesthetic/visual resources impacts to less-than-significant levels as crop protection structures could still occur on steep slopes (albeit with a permit) and would be exempt on gentle slopes or level lands in the valley bottoms (if they meet all other exemption criteria), where most structures are used. The limited reduction of impacts to aesthetics/visual resources would not change appreciably whether 10%, 20% or some other slope is applied as the permit threshold criterion. Residual impacts visual resources would remain significant and unavoidable (Class I).

C. Historically Cultivated and Non-Cultivated Lands (Restore / Revise Mitigation Measure MM-BIO-1)

On December 5, 2018, the Commission recommended revising mitigation measure MM-BIO-1 to restore the original language of the EIR mitigation measure regarding its applicability and to revise the timeframe for what is considered “historically intensively cultivated agricultural lands.” Planning and Development recommends the revised measure read as follows:

MM-BIO-1. Limit Exemption to Crop Protection Structures on Historically Intensively Cultivated Agricultural Lands. Prior to approval of the Project, the Hoop Structures Ordinance Amendment shall be revised to clarify that hoop structures and shade structures (crop protection structures) shall be allowed with a permit exemption only on historically intensively cultivated agricultural lands. Historically intensively cultivated agricultural lands shall mean land that has been tilled for agricultural use and planted with a crop for at least

~~*three one of the previous five three years. The land does not necessarily need to have been actively planted with a crop for all five years (to account for potential fallow years).*~~

The original MM-BIO-1 applies to all lands that have not been historically intensively cultivated, not just those lands within 1.24 miles of California tiger salamander (*Ambystoma californiense*) (CTS) breeding ponds. Restoration of the original language of MM-BIO-1 would mitigate potential impacts to all sensitive habitats and natural communities, as well as all listed species and their habitats, not only the CTS.

On November 7, 2018, the Commission proposed changing the prescribed historical timeframe from three years of cultivation within the previous five years to one year within the previous 10 years. Staff consulted with the U.S. Fish and Wildlife Service (USFWS) and shared the USFWS conclusion (email dated December 4, 2018) with the Commission on December 5, 2018:

California tiger salamanders rely on small mammal burrows as refugia, so in order to be suitable habitat for California tiger salamander, it must also be undisturbed long enough for small mammals to colonize the area and create burrows. ... The consensus between biologists in our office and the two independent biologists that provided input was that disturbance at least 3 out of the past 5 years would likely preclude burrowing mammals from creating extensive burrow networks; therefore if this was the case for a plot of land it would be considered "historically farmed" and thus not habitat for California tiger salamander. Disturbance in 1 or more of the past 10 years could allow enough time for these mammals to create and maintain stable burrow systems that could provide refugia for California tiger salamander and therefore is not an adequate definition for "historically farmed" land. [Kendra Chan, Fish and Wildlife Biologist, USFWS, email dated December 4, 2018; Attachment 4 of the EIR Revision Document (Attachment C of this staff memo)]

Subsequently, on December 5, 2018, the Commission recommended that an alternative timeframe be considered: one year of cultivation within the previous five years. Staff consulted with USFWS staff and the California Department of Fish and Wildlife (CDFW) regarding the Commission's December 5th recommendation, in addition to another alternative that was mentioned by staff at the hearing: one year of cultivation out of the previous three years. USFWS service stated:

Cultivating sometime in the last 5 years is too long of a time frame for this measure to be effective. A farm field left alone for up to 4 years could allow the area to return to CTS habitat. Cultivating sometime in the last 3 years is an adequate measure to include in this exemption. From the salamander and ground squirrel's perspective, this would have the same effect as a field in cultivation 3 out of the past 5 years. [Kendra Chan, Fish and Wildlife Biologist, USFWS, email dated December 7, 2018; Attachment 5 of the EIR Revision Document (Attachment C of this staff memo)]

Staff discussed the alternative timeframes with CDFW staff on December 19, 2018, and subsequently received a letter on January 16, 2019 (see Attachment F). The CDFW letter does not address the alternatives for the historic timeframe. Rather, CDFW states its preference for the original language of MM-BIO-1, including the original historic timeframe for cultivation as three years out of the previous five years.

The Final EIR concluded that impacts to biological resources would be reduced to less-than-significant levels with the incorporation of MM-BIO-1 as it was originally drafted using cultivation for three years out of five to be considered historically intensively cultivated and,

thus, qualify for the exemption. Based on the new information from USFWS cited above, and as discussed in the EIR Revision Document (Attachment C), revising the historic timeframe to one year of cultivation out of the previous three years could be considered adequate mitigation to avoid an increase in the severity of impacts such that recirculation of the EIR would be necessary. The EIR Revision Document RV 01, dated January 30, 2019, has been revised consistent with the new information provided by USFWS, and concludes that a revised historic timeframe of one year of cultivation out of the previous three years would not increase the severity of impacts to biological resources and residual impacts would remain significant but mitigable (Class II).

D. Explain Relation to Cannabis Ordinance

Anyone intending to grow cannabis in the Inland Area of Santa Barbara County must comply with the recently adopted cannabis regulations set forth in Section 35.42.075 of the LUDC. Anyone intending to grow cannabis under hoop structures or shade structures must comply with both the cannabis and hoop structures sections of the LUDC. The ordinance amendment (Attachment D, Exhibit 1) has been revised, adding a subsection that directs the reader to the new cannabis section of the LUDC (Section 35.42.075) for additional information regarding permit requirements and development standards for cultivation of cannabis. As this revision is informational only, it would not cause or contribute to any impacts on the environment.

II. Recommendations and Procedures

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 17ORD-00000-00005 based upon the project's consistency with the Comprehensive Plan, and based on the ability to make the required findings. The Commission's motion should include final direction regarding the percent slope for a slopes criterion and the historic cultivation timeframe, and the following:

1. Make the required findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the required findings for approval of the proposed amendment, including CEQA findings and Statement of Overriding Considerations (Attachment A).
2. Recommend that the Board of Supervisors certify the Hoop Structures Ordinance Amendment Program Environmental Impact Report (17EIR-00000-00004) (State Clearinghouse No. 2017101040) (Attachment B), as modified by the EIR Revision Document RV 01 dated January 30, 2019 (Attachment C).
3. Adopt a resolution (Attachment D) recommending that the Board of Supervisors approve the Hoop Structures Ordinance Amendment by adopting an ordinance amending the County Land Use and Development Code (Case No. 17ORD-00000-00005), Section 35-1 of Chapter 35, Zoning, of the Santa Barbara County Code, to address permitting requirements for hoop structures and shade structures (Attachment D, Exhibit 1).

Please refer the matter to staff if your Commission takes other than the recommended actions for the development of appropriate materials.

ATTACHMENTS

- A. Findings for Approval
- B. Final Environmental Impact Report
- C. EIR Revision Document RV 01 dated January 30, 2019
- D. Resolution of the County Planning Commission
 - Exhibit 1. Board of Supervisors Ordinance Case No. 17ORD-00000-00005
- E. Policy Consistency Analysis
- F. Letter from California Department of Fish and Wildlife dated January 16, 2019

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