



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: 2/11/2020
Placement: Departmental
Estimated Time: 45 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning and Development
Director(s) (805) 568-2086
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning
(805) 568-2072
SUBJECT: Exempt Hoop Structures and Shade Structures – A Guide for Applying Streams
and Creeks Setbacks

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

- a) Receive and file this Board Agenda Letter and *A Guide for Applying Streams and Creeks Setbacks to Exempt Hoop Structures and Shade Structures* (Attachment 1); and
- b) After considering the environmental review documents [Hoop Structures Ordinance Amendment Final Program Environmental Impact Report (EIR)(17EIR-00000-00004) and EIR Revisions Document RV 01, dated April 9, 2019] included as Attachment 2, determine that the Hoop Structures Program EIR (17EIR-00000-00004) and Revisions Document RV 01 are adequate environmental review for this action pursuant to Section 15162 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) and no subsequent EIR or Mitigated Negative Declaration shall be prepared for this action.

Summary Text:

On April 9, 2019, the Board adopted an ordinance (Ordinance No. 5080) amending the County Land Use and Development Code (LUDC) to allow the use of certain hoop structures and shade structures (also known as crop protection structures) without a permit on lands zoned Agricultural-I (AG-I) and Agricultural-II (AG-II). The Board also directed staff to “return with a description of which streams are considered waterways with the appropriate criteria” (i.e., to assist a landowner with determining whether

a waterway is a stream or creek subject to the setback requirement when using crop protection structures adjacent to streams and creeks, pursuant to the exemption), and seek input from the Agricultural Advisory Committee (AAC). Planning and Development Department (P&D) staff has completed this task, as discussed in this Board Agenda Letter, and recommends that the Board receive and file this Board Agenda Letter and *A Guide for Applying Streams and Creeks Setbacks to Exempt Hoop Structures and Shade Structures* (Attachment 1).

Background:

A. LUDC Requirements

When the Board adopted Ordinance No. 5080, the Board incorporated a mitigation measure from the Hoop Structures Ordinance Amendment Program EIR (*MM-BIO-3 Setbacks from Streams and Creeks*) into the LUDC as a development standard with which all hoop structures (exempt or permitted) must comply. LUDC Subsection 35.42.140.C.3.a. (Development standards for hoop structures and shade structures) states, in relevant part:

Hoop structures and shade structures shall comply with the following standards in addition to any other applicable standards of this Development Code. ...

(4) Streams and Creeks.

- (a) Within the Urban, Inner Rural, and EDRN areas hoop structures and shade structures shall be setback 50 feet from the top-of-bank or edge of riparian vegetation of streams and creeks, whichever is more protective of the resource.*
- (b) Within the Rural areas hoop structures and shade structures shall be setback 100 feet from the top-of-bank or edge of riparian vegetation of streams and creeks, whichever is more protective of the resource.*

The purpose of the development standard is to protect riparian habitats by mitigating potentially significant adverse impacts that could result from locating and using an unknown and unlimited quantity of crop protection structures in close proximity to riparian habitats. Riparian habitats support a large number of wildlife species for foraging, roosting, nesting, water, dispersal, and migration, including at least five special-status animal species identified by the California Department of Fish and Wildlife (CDFW) (Hoop Structures Ordinance Amendment Final Program EIR April 9, 2019).

As with all exempt uses and structures in the LUDC, a landowner need not come to the County to request a permit exemption. A landowner can review code requirements for hoop structures and shade structures (Subsection 35.42.140.C) and determine that the structures meet the development standards to be considered exempt without consulting P&D. In addition, all exempt uses and structures identified in the LUDC must also comply with all other applicable standards of the LUDC, such as setbacks or height limits (Subsection 35.20.040.A).

B. Guidance Document Development

Pursuant to the Board’s direction, P&D staff met with a subcommittee designated by the AAC. Over the course of three meetings (July 11, August 1, and September 5, 2019), P&D staff and the AAC subcommittee developed a draft *Guide for Applying Streams and Creeks Setbacks to Exempt Hoop Structures and Shade Structures*.

On October 3, 2019, the full AAC reviewed the draft guide and voted unanimously to support it (Attachment 3). The final *A Guide for Applying Streams and Creeks Setbacks to Exempt Hoop Structures and Shade Structures* (Attachment 1) has been condensed to present essential information to determine the applicability of the setbacks. This Board Agenda Letter incorporates background information presented in the final draft that the AAC reviewed.

In developing the guide, P&D staff and the AAC subcommittee members explored a variety of situations using P&D's Photomapper program, 2018 aerial imagery, and GIS mapping layers depicting blue line and other streams downloaded from the United States Geological Survey (USGS) and National Wetlands Inventory (NWI). Situations explored included the following:

- Waterways with and without riparian vegetation traversing farm and ranch lands.
- Waterways with and without riparian vegetation separated from farm and ranch lands by a levee (e.g., Santa Maria River levee) or a public road.
- Waterways with and without riparian vegetation that have been modified or relocated.
- Waterways with dams, bridges, culverts, or in-stream crossings.
- Waterways with concrete or riprap and no vegetation.
- Waterways purposely created between farm fields or between farm fields and roads for drainage.
- Mapped USGS blue line streams that traverse farmlands that have been cultivated for many years and where there is no physical evidence of a stream or creek.

The guidance document clarifies on the ground situations that are “streams or creeks” when the setback is always required, waterways when the setback is not required, and waterways that may be a “stream or creek” when a setback might be required but where additional, site-specific information will need careful consideration before making a determination (Attachment 1). The guide also provides an advisory regarding relocated or modified streams and creeks, which may have required permits or other authorization from state and federal agencies (e.g., California Department of Fish and Wildlife, and U.S. Army Corp of Engineers) for past modifications, and would require permits for any new alterations.

The guide concludes that when a stream or creek exhibits four essential criteria (i.e., not created by humans, evidence of flowing water, defined bed and bank, and riparian vegetation), whether or not it is mapped as a blue line on USGS or NWI maps, it is a “stream or creek” that requires a setback to comply with the development standard (left column of Table 1, Attachment 1). The middle and right columns of Table 1 present other situations which may lead to a conclusion that a waterway is not a “stream or creek” for which a setback is required (right column) or that more considerations are necessary before reaching a conclusion (middle column).

The guide will be placed on the P&D website in several locations including the Hoop Structures Ordinance Amendment webpage, the Agricultural Element webpage (as it is the primary P&D webpage that refers directly to agriculture), and on the P&D webpage that alphabetically lists all applications and forms for different types of development and uses. The guide will also be added to the County's cannabis website. P&D staff will work with Agricultural Commissioner staff to post the guide on their website.

C. Opportunities for More Information

Exempt Stamp. As with any use or structure identified as exempt in the LUDC, a landowner need not obtain an exemption determination from P&D to pursue exempt development. However, if the landowner wants verification from the department about the exemption, including any applicable setbacks, a

landowner may request a formal exemption from P&D for a fixed fee, which is currently \$258. P&D would review a simple project description and site plan depicting the lot or lots, proposed location and height of the crop protection structures, and any roads, streams, or creeks depicting the applicable setbacks (if needed). If the plan complies with the LUDC, P&D would stamp the plan exempt.

D. CEQA Compliance

The County prepared and certified a Final Program EIR (17EIR-00000-00004) and Revisions Document RV 01, dated April 9, 2019, for the Hoop Structures Ordinance Amendment (available on the Internet at <https://cosantabarbara.app.box.com/s/ivt1ligxtz5id5wfykqknpgspbxn54j>). The Final Program EIR evaluated the potentially significant impacts of the use and location of an unknown and unlimited quantity of crop protection structures on biological resources, including riparian habitats, and found that the potentially significant impacts were subject to feasible mitigation. Mitigation measure MM-BIO-3 required the inclusion of a development standard that requires a minimum setback from streams and creeks, which was incorporated into the final approved ordinance (LUDC Subsection 35.42.140.C.3.a.(4)).

CEQA Guidelines Section 15162 requires the use of a previously certified EIR for a project unless substantial evidence would require major revisions of the previous EIR due to: (1) new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes to the circumstances under which the project is undertaken due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) new information of substantial importance. *A Guide for Applying Streams and Creeks Setbacks to Exempt Hoop Structures and Shade Structures* is not a change from the project that was analyzed under the Final Program EIR, does not revise the mitigation measure or reduce its effectiveness, and does not introduce new information of substantial importance.

The Board's action to receive and file this report and the guide is not a regulatory action. The guide has no regulatory authority and does not change the adopted mitigation measures or regulations of the hoop structures ordinance. Rather, the guide clarifies based on possible on the ground circumstances how to implement the stream and creek setback requirement to assist with self-exempting (LUDC Subsection 35.42.140.C.3.a.(4)). Section 15162 of the State CEQA Guidelines is applicable as there is no substantial evidence indicating that new significant environmental effects would occur, previously identified environmental effects would increase in severity, or that new information of substantial importance would require revisions to the certified Program EIR. Therefore, receiving and filing this Board Agenda Letter and *A Guide for Applying Streams and Creeks Setbacks to Exempt Hoop Structures and Shade Structures* meets the conditions for the application of State CEQA Guidelines Section 15162, and a revised or supplemental EIR shall not be prepared.

Fiscal and Facilities Impacts:

Budgeted: Yes

During the adoption of the hoop structures ordinance amendment on April 9, 2019, the Board gave direction to complete this project. Funding for the project will come from the Long Range Planning Budget Program on page D-269 of the County of Santa Barbara Fiscal Year 2019-2020 budget. There are no facilities impacts.

Special Instructions:

The Clerk of the Board shall forward a copy of the minute order to the Planning and Development Department, attention Julie Harris.

Attachments:

1. *A Guide for Applying Streams and Creeks Setbacks to Exempt Hoop Structures and Shade Structures*
2. Hoop Structures Ordinance Amendment Final Program Environmental Impact Report and Revisions Document RV 01, dated April 9, 2019
(<https://cosantabarbara.app.box.com/s/ivt1ligxtz5id5wfyykqknpgspbxn54j>)
3. AAC Approved Minutes October 2019

Authored by:

Julie Harris, Senior Planner, Long Range Planning Division (805) 568-3543

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