



COUNTY OF SANTA BARBARA  
PLANNING AND DEVELOPMENT

MEMORANDUM

TO: Santa Barbara County Planning Commission

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

DATE: August 21, 2018

RE: Hoops Structures Ordinance Amendment  
County Planning Commission Hearing on August 29, 2018  
Case No. 17ORD-00000-00005

On July 11, 2018, the County Planning Commission (Commission) reviewed staff's presentation and memo regarding responses to questions raised by the Commission at the May 30, 2018, hearing, received public testimony, and continued the hearing to August 29, 2018.

This memo supplements the information presented on July 11, 2018, and provides additional information for the Commission's consideration regarding (1) whether any one or more of the mitigation measures that are presented in the Final Environmental Impact Report (EIR) might be rejected, and (2) the procedural implications for the EIR of rejecting the mitigation measures. For the reasons set forth below, staff believes that some of the mitigation measures could be removed without requiring recirculation of the EIR; however, the removal of certain biological resources mitigation measures would likely require recirculation.

**I. Changes to the EIR Mitigation Measures and Recirculation of the EIR**

The EIR identified mitigation measures to reduce impacts resulting from the proposed ordinance amendment to allow and exempt crop protection structures on agricultural lands, with impacts remaining significant and unavoidable to aesthetics/visual resources (Class I), and reducing impacts to less than significant levels for flooding and biological resources (Class II). In order to reject one or more mitigation measures as infeasible, the Board of Supervisor (as recommended by the Commission) must make findings that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the Final EIR. Such findings must be supported by substantial evidence in the record (CEQA Guidelines Sections 15091(a)(3) and 15091(b)). Furthermore, feasibility may be considered in light of the project objectives that are set forth in Section 2.4 of the EIR – that is, whether implementation of the mitigation measure will compromise the basic objectives of the project (e.g., simplify the permit process to allow more efficient agricultural operations).

If any mitigation measures are rejected, the EIR must be revised in order to describe these changes and whether any environmental impacts would result from the removal of the mitigation measures. Depending upon the change, the EIR revisions may or may not require recirculation for additional public review and comment, as discussed below. If it is determined that some impacts would result in a substantial increase in severity (for example, from significant and unavoidable (Class I) to remaining significant and unavoidable (Class I), but substantially increasing in impact), or if an impact classification were to increase (for example, from less than significant with mitigation (Class II) to significant and unavoidable (Class I)), recirculation may be required pursuant to CEQA Guidelines Section 15088.5(a). Should the Commission recommend to the Board of Supervisors that any of the mitigation measures be rejected as infeasible, the action must be supported by substantial evidence in the record.

## **II. Water Resources and Flooding Mitigation Measure MM-WR-1 and Biological Resources Mitigation Measure MM-BIO-2**

On July 11, 2018, the Commission considered new evidence from the County Flood Control District (July 3, 2018, letter) and the United States Fish and Wildlife Service (USFWS) (June 15, 2018, letter) to provide a basis for rejecting two of the seven identified mitigation measures: MM-WR-1 to mitigate a flooding impact and MM-BIO-2 to mitigate a potential impact to the California tiger salamander (*Ambystoma californiense*). For the reasons discussed in the memorandum for the July 11, 2018, Commission hearing (dated July 3, 2018) and at the July 11, 2018, hearing, staff believes that these two mitigation measures can be removed without requiring recirculation of the EIR. These changes would require revisions to the EIR to explain that these mitigation measures were removed, the reasons for doing so, and how doing so would not result in significant impacts requiring further analysis in the revised EIR.

## **III. Visual/Aesthetic Resources Mitigation Measures**

The Final EIR identified the following three mitigation measures that would reduce impacts to visual/aesthetic resources; however, residual impacts would remain significant and unavoidable (Class I):

- *MM-VIS-1. Height and Setback Requirements*
- *MM-VIS-2. Urban Township Setback Requirement*
- *MM-VIS-3. Design Control (D) Overlay Limitation*

Please refer to the staff memo for the July 11, 2018, hearing (dated July 3, 2018), which presented information as to why MM-VIS-1 may be infeasible. As discussed in the July 11, 2018, memo, MM-VIS-1 could create an economic burden on agricultural operations leading to farming inefficiencies and increased costs that might compromise the first objective identified in the Final EIR (to simplify the permit process to allow more efficient agricultural operations), without adequately meeting the last objective to reduce or minimize potential adverse effects. Therefore, MM-VIS-1 may be found to be infeasible due to these economic considerations.

The Commission may also find that MM-VIS-2 and MM-VIS-3 are infeasible based on substantial evidence in the record. For example, the Commission might determine that the information presented in comment letters on the EIR from the Agricultural Advisory Committee or Grower Shipper Association (as experts in the area of agriculture) (Letter Nos. 5 and 7, respectively, Section 9.4 of the EIR), constitutes substantial evidence demonstrating how MM-VIS-2 and MM-VIS-3 are infeasible due to their economic/technological impact on agriculture.

Regardless, if any of the visual/aesthetic resources mitigation measures are rejected based on a finding of infeasibility; impacts to aesthetics/visual resources would remain significant and unavoidable. There is some evidence to support that if these mitigation measures were deleted, there would not be a substantial increase in the severity of the impact; therefore, staff believes that recirculation of the EIR would not be required.

#### **IV. Biological Resources Mitigation Measures**

Section 4.6.6 of the Final EIR identified three mitigation measures that would reduce impacts to biological resources, and concluded that residual impacts would be less than significant with the implementation of the three mitigation measures (Class II). As stated in this memo (Section II above), staff believes that MM-BIO-2 may be removed. This leaves the following, two mitigation measures for further consideration:

- *MM-BIO-1. Limit Exemption to Crop Protection Structures on Historically Intensively Cultivated Agricultural Lands*
- *MM-BIO-3. Setbacks from Streams and Creeks*

Public testimony at the May 30, 2018 and July 11, 2018 Commission hearings suggested that impacts to biological resources can be addressed by existing regulations under local, state, and/or federal regulations, thus making MM-BIO-1 and MM-BIO-3 unnecessary. These regulations include the Endangered Species Act and California Endangered Species Act (administered by the USFWS and the California Department of Fish and Wildlife (CDFW), respectively), Ag Order 3.0<sup>1</sup> (administered locally by the Central Coast Regional Water Quality Control Board (RWQCB)), and community plan policies within the County Comprehensive Plan. As discussed below, staff believes that these regulations would address some, but not all, of the biological impacts identified in the EIR. If MM-BIO-1 and MM-BIO-3 were to be rejected, it would need to be on the basis of infeasibility due to economic and/or technological reasons.

##### *A. MM-BIO-1*

As discussed in the EIR, MM-BIO-1 exempts crop protection structures on historically, intensively cultivated lands because these are locations where it can be assured that no impacts (either direct or indirect) to biological resources would result. However, the project has the potential to result in impacts to biological resources that may exist in areas which have not been historically, intensively cultivated.

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<sup>1</sup> Ag Order 3.0 is formally known as SWRCB Central Coast Region Order No. R3-2017-00002 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands.

New agricultural activities involving hoops structures within areas that have not been historically, intensively cultivated would be subject to consultation with the USFWS and CDFW. Consultation with the USFWS and CDFW would address any potential impacts to unique, rare, threatened, or endangered plant or wildlife species (Impact BIO-1) that are subject to the federal and/or California Endangered Species Acts, and to movement patterns of any native resident or migratory species (Impact BIO-3). However, consultation would not address impacts to biological resources that are not subject to the regulations requiring consultation. Therefore, MM-BIO-1 is required to address the impacts to these other biological resources.

More specifically, MM-BIO-1 reduces impacts (to less than significant levels) to sensitive habitats or sensitive natural communities (Impact BIO-2) and to other habitats that are not fully protected throughout the entirety of the County by existing County policies and ordinances. These biological resources include streams, creeks and riparian habitats, environmentally sensitive habitats (ESH), and other habitats (Impact BIO-4). Sensitive habitats and sensitive natural communities are identified for protection under the Conservation Element of the County's Comprehensive Plan and many of the community plans, and include woodland and savanna, native grassland, and riparian habitats (to name a few – see Section 4.6 of the EIR for a full discussion of the sensitive habitats and natural communities). Furthermore, community plans provide more specific requirements and setbacks to protect these biological resources, including ESH in some communities. However, these protective policies and development standards would apply only within community plan areas and would not apply to all areas where crop protection structures would be exempt. Thus, compliance with the Comprehensive Plan would provide protections in some but not all areas of the County affected by this project.

Therefore, staff believes that rejection of MM-BIO-1 would result in an increase in the severity of impact from Class II to Class I, given that there do not appear to be existing regulations or other mitigation measures that could be implemented in lieu of MM-BIO-1 to reduce all of the biological impacts that it is intended to mitigate.

*B. MM-BIO-3*

Staff considered (1) whether Ag Order 3.0 and/or existing Comprehensive Plan policies and regulations would address the impacts to streams and creeks identified in Impact BIO-4 and (2) whether MM-BIO-3 is needed given the requirements of Ag Order 3.0 and/or existing Comprehensive Plan policies and regulations.

With regard to Ag Order 3.0, Ag Order 3.0 has a qualitative standard, not a quantitative and easily enforceable standard. In addition, it is focused on water quality and not the ecosystem functions that riparian habitats provide for other plant and animal species, such as breeding, roosting, foraging, and dispersal as wildlife corridors. Therefore, staff does not believe that the implementation of Ag Order 3.0 by itself is sufficient to reduce impacts to ecosystem functions to a less-than-significant level (Class II).

With regard to the Comprehensive Plan policies and regulations, community plans provide specific requirements and setbacks to protect streams, creeks, and riparian habitats. Although Section 35.20.020.C of the LUDC requires that all land uses comply with the Comprehensive

Plan, including any applicable community plans, as discussed above, these protective policies and development standards would apply only within community plan areas and would not apply to all areas where crop protection structures would be exempt. Thus, compliance with the Comprehensive Plan would provide protections in some but not all areas of the County affected by this project.

*C. Conclusion Regarding Mitigation Measures MM-BIO-1 and MM-BIO-3*

In short, staff believes that rejection of MM-BIO-1 and MM-BIO-3 would result in an increase in the severity of impacts to biological resources including an increase in the classification from less than significant with mitigation (Class II) to significant and unavoidable (Class I). As a consequence, should the Commission recommend these two measures be rejected, recirculation of the EIR would be required.

**V. Options for Revising the EIR**

As stated above, staff believes that mitigation measures MM-VIS-1, MM-WR-1, and MM-BIO-2 could be rejected based on substantial evidence in the record, and without resulting in a need to recirculate the EIR. Although recirculation would not be warranted, the EIR would need to be revised to reflect that these mitigation measures were rejected, and explain the reasons for doing so. If the Commission recommends that only MM-VIS-1, MM-WR-1, and/or MM-BIO-2 be rejected, then staff recommends that the Commission (1) continue the August 29, 2018, hearing to October 10, 2018, and (2) direct staff to prepare the revisions to the EIR for the Commission's consideration at the continued hearing.

However, as stated above, staff believes that rejection of MM-BIO-1 and/or MM-BIO-3 would increase the impact to certain biological resources from potentially significant but mitigable (Class II) to unavoidably significant (Class I) and, consequently, recirculation of the EIR would be necessary. Therefore, if the Commission recommends that MM-BIO-1 and/or MM-BIO-3 be rejected, then staff recommends that the Commission (1) direct staff to revise and recirculate the EIR and (2) direct staff to re-agendize the matter after the EIR has been recirculated.