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COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Re. July 3rd 2018 meeting –EGVCP (ESH/RC Overlay Map Update)

June 27, 2018

Dear Supervisor Williams,

The update of the EGVCP ESH/RC Land Use and Zoning Overlay Map is not adequate for any amendment to the Santa Barbara County Comprehensive Plan and the County Zoning Map. The requirements of CEQA are not met for the following reasons:

1. Production of the ESH/RC map did not include public input.
2. The ESH/RC designation is abused.
3. The map is inaccurate.
4. The map is inconsistent.

While I applaud the efforts of the county to present factual data on which to make policy, this project falls short. Changing the zoning on a property affects its possible uses and consequently its value. It also deeply affects the life of many residents who have expectations based on what the property was when they bought it. The ESH/RC proposed should be more considerate of the welfare of persons within the EGVCP, and less subject to pressure from organizations and special interests. Many of the comments seem to originate from non residents which have no stake in the resident's welfare. It is easy for people to dictate environmental policies when the policies do not affect them. Yes, it would be nice to protect all the flora and fauna in the entire county, but the reality is that it is not possible without serious economic consequences for both the County and the land owner.

The project was ambitious, and attempted on a budget that was not sufficient to do it right. Most importantly, the professionals involved should remain objective and stand clear of misrepresentations, or bias. Neither environmentalist militants nor profiteers belong in the group of policy makers. The map update must be done with integrity and

must be done right. That implies collecting relevant and unbiased information, and formulating a compassionate and equitable policy which allows for the reasonable use of the parcels. Such a policy is not possible by looking at aerial photographs. If the goal is to preserve the flora and fauna, a botanist must visit the sites to see reality on the ground, to assess the health of the environment, to determine if a species does exist on the land rather than speculate or assume endangered species exist, and place the burden of proving them wrong on the land owner.

Many residents in the EGVCP have a fairly modest income or are retirees like me. If the County wants their cooperation, the County must take their financial constraints in consideration. The current permitting process is too expensive and compliance will inevitably suffer. The added costs implied by the ESH/RP will certainly add to the problem as ESH/RC imposes restrictions beyond those of Article IX. - Deciduous Oak Tree Protection and Regeneration, especially monetary cost for monitoring.

If the map is to be updated, it must be done right, with full cooperation with the residents rather than be presented as a diktat by some bureaucrats in the government. It can be done.

Cordially,

A handwritten signature in black ink, appearing to read 'Phillip Fanchon', with a large, stylized flourish at the end.

Phillip Fanchon, PhD.
Professor Emeritus of Economics.

1. Lack of public participation:

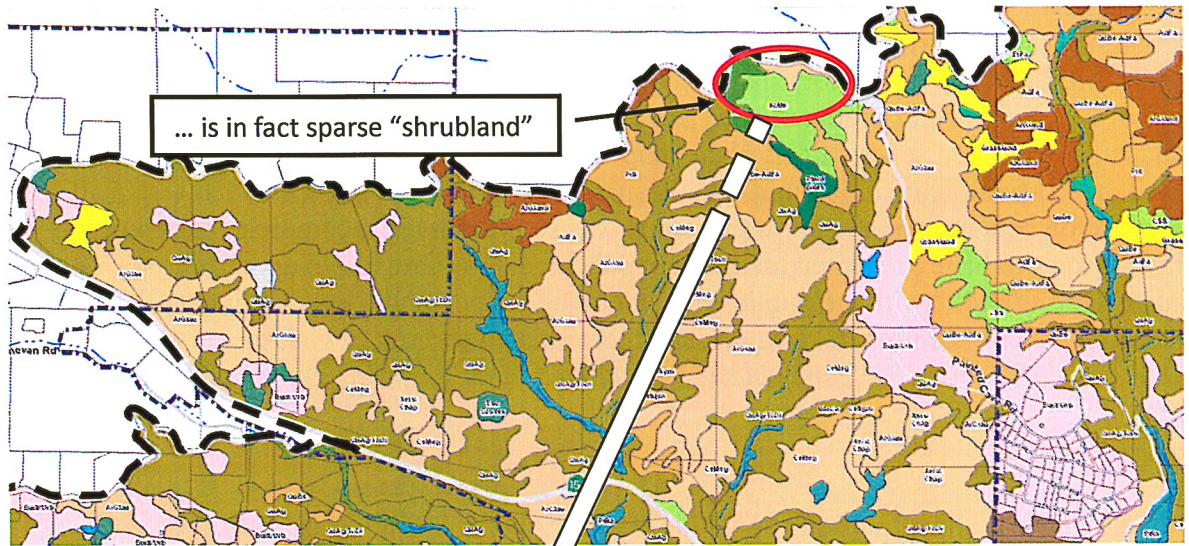
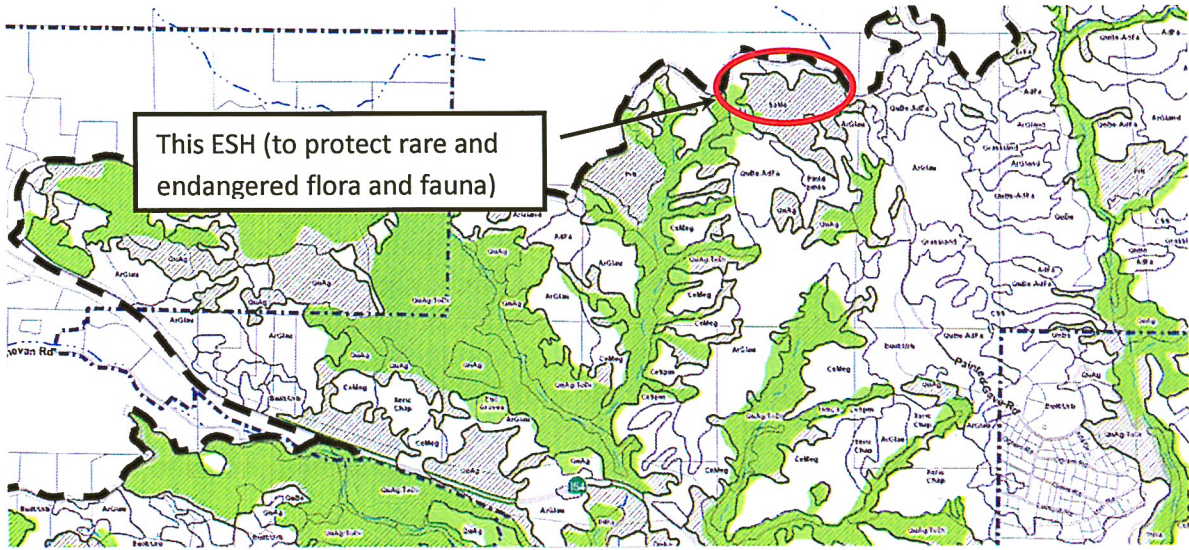
Section 15201 of the California Environmental Quality Act states that “Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency’s activities”. The County Planning and Development department did not give the public proper Notice of Preparation¹ for the map of the zoning overlay, and did not initiate public review. Almost all the parcels effected by the initial Environmentally Sensitive Habitat/ Riparian Corridor (ESH/RC) map are on federal land, where the jurisdiction of the county is in doubt and where it has little regulatory and enforcement power. During the single public meeting (held on May 2, 2018) the new map was presented as a vegetation map, without the explanation that the vegetation would define the ESH/RC area, and with no explanation that the ESH/RC designation would severely restrict development activities on the lots. Most of the participants were not aware that the policies adopted in 2015 would apply not only to the national forest but also to their own parcel.

The poor attendance (about 25 persons) at the May 2nd 2018 public hearing reflects the fact that the public was not properly notified and/or that it was misled by the failure to indicate that the “Eastern Goleta Valley Vegetation Mapping by AIS” posted online prior to the meeting would be used as the basis for the zoning overlay and change their property rights. During the meeting, the planners were asked several times if the map was final, and consistently responded that the map was indeed final. No public input was taken. During the meeting, comments were made that the information contained in the maps presented was so inaccurate, incomplete, biased or misleading so as to have prevented meaningful public review. One can even wonder why there was such “consultation” with the public when the public was not allowed any input. There was no prior contact with the property owners, and there was no attempt to visit the private sites affected. *None of the negative comments were included in the staff report to the Planning Commission.*

2. Use of the Environmentally Sensitive Habitat Area (ESH) overlay is abused:

ECO-EGV-5.2 states that “The Purpose and intent of The Environmentally Sensitive Habitat Area (ESH) overlay is to protect and preserve specified areas in which plant or animal species or their habitats are either rare or especially valuable.” While the document provides a list of local “sensitive” plant species in figure 6A, it does not identify any rare or especially valuable animal species that would need protection. The CEQA article 15380 (reproduced in appendix A) defines “endangered”, “rare” or “threatened” species very precisely and the proposed map amendment fails to provide evidence that it will increase protection of any “endangered”, “rare” or “threatened” species. Currently, the Planning department can identify the specific reason why an area is environmentally sensitive (e.g. provides habitat to the California red legged frog). While ECO-EGV-5.2.1 is very specific about what constitutes an ESH, the blanket definition of ESH in ECO-EGV-5.2.2 effectively removes the link between ESH and protected species, hence allows for the ESH label to be used anywhere. The following pictures are an example.

¹ Guidelines for the Implementation of the California Environmental Quality Act of 1970 As Amended, -Revised May 25, 2010 Article V



ECO-EGV-5.2 also stipulates: *The presence and extent of ESH shall be identified on a case-by-case basis based upon site-specific evidence provided by a biological report prepared by a qualified biologist.* The production of the proposed map was done without a biological report and is not site specific. A site visit would have revealed that the conditions on the ground are not what is inferred from the study of an aerial photograph. The way the map was created is in violation of the county's own policy.

3. Inaccurate map:

ECO-EGV-5.4 clearly states that the ESH/RC designation is identified by the map of EGVCP figure 22 or by a site survey. The current proposal modifies the EGVCP map without conducting a proper survey.

The ESH/RC map proposed is mostly² based on the Vegetation map (attachment 6) produced by Aerial Information Systems using photographs taken in 2015. The associated report shows the location of field verification sites in Figure 5 (page 9 of attachment 5). In order to minimize field time and expense, survey sites were selected in close proximity to roads and trails, hence most of the map area was not surveyed on the ground, and the map information is largely interpretation of aerial photographs. The Accuracy Assessment on page 23 of attachment 5 states: *“Due to budgetary constraints, no formal accuracy assessment was performed on the vegetation database”*

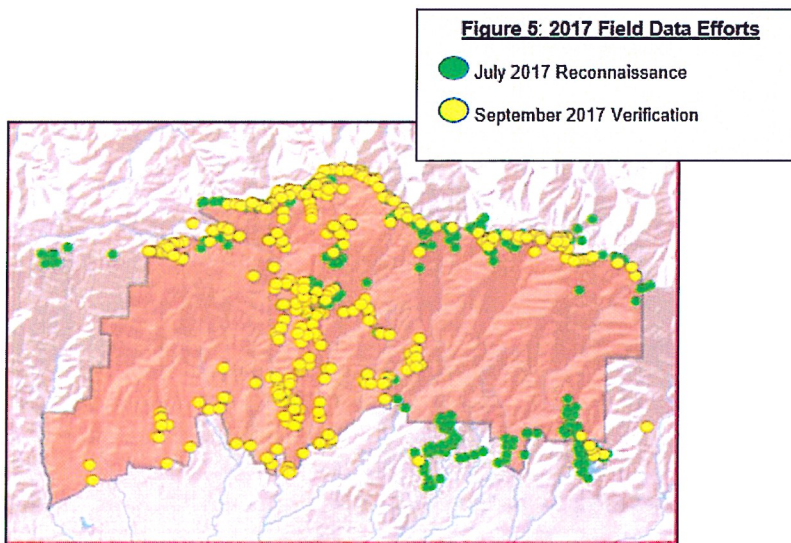
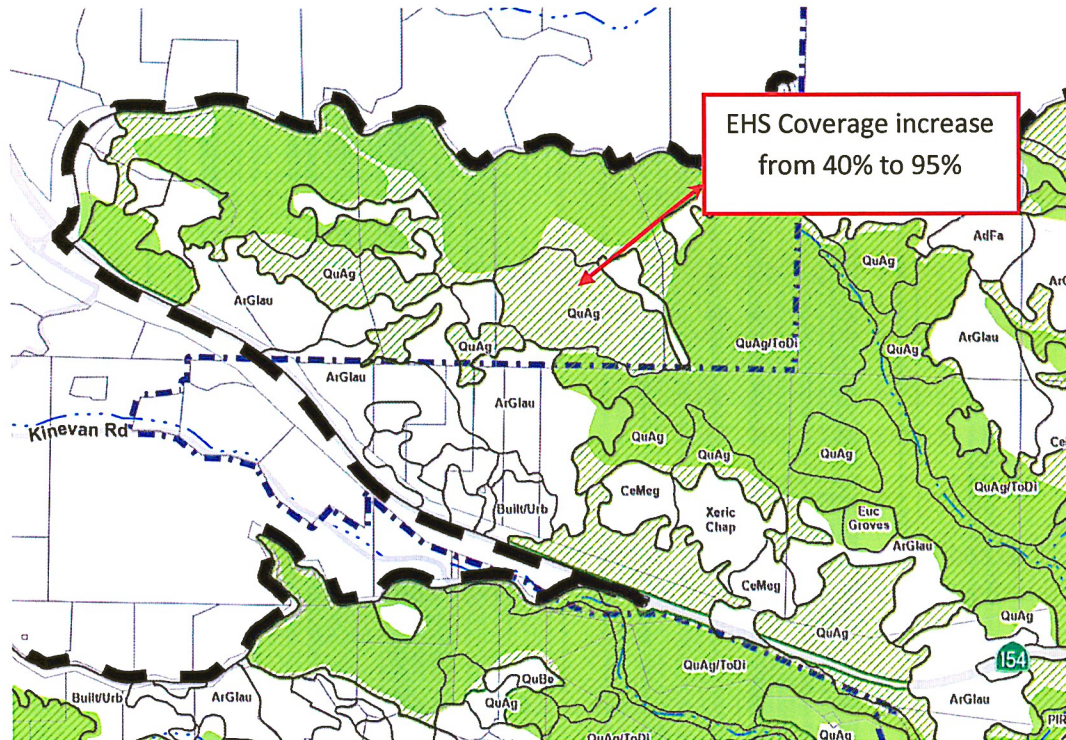
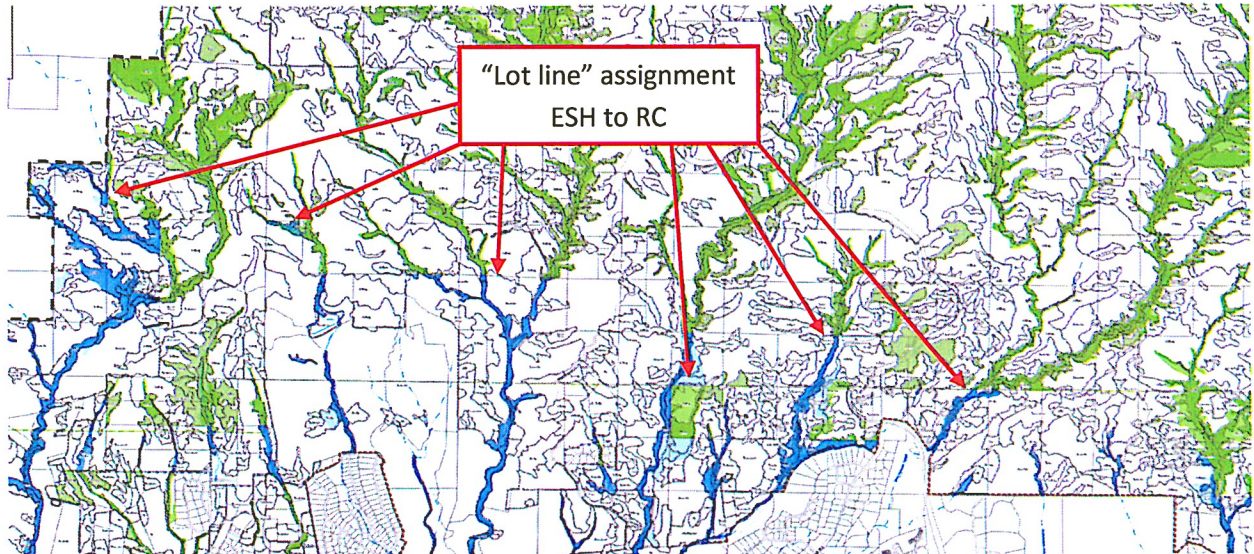


Figure 5: Locations of Field Reconnaissance and Verification Sites

The data in the "ESH and RC Mapped Acreage" of section 5.5 of the staff report is biased, and the claim that "the changes to the boundaries are relatively minor" and is false. A quick look at

² See the next section.

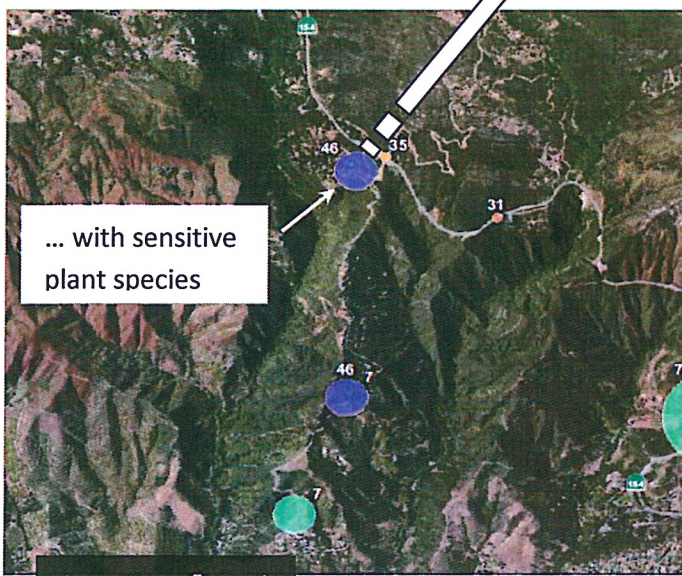
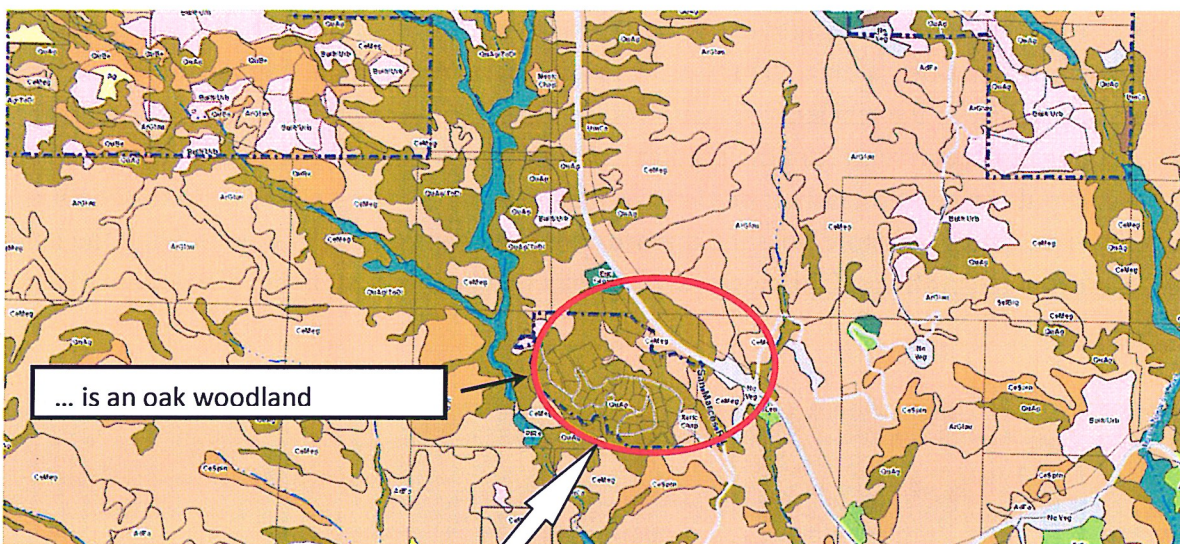
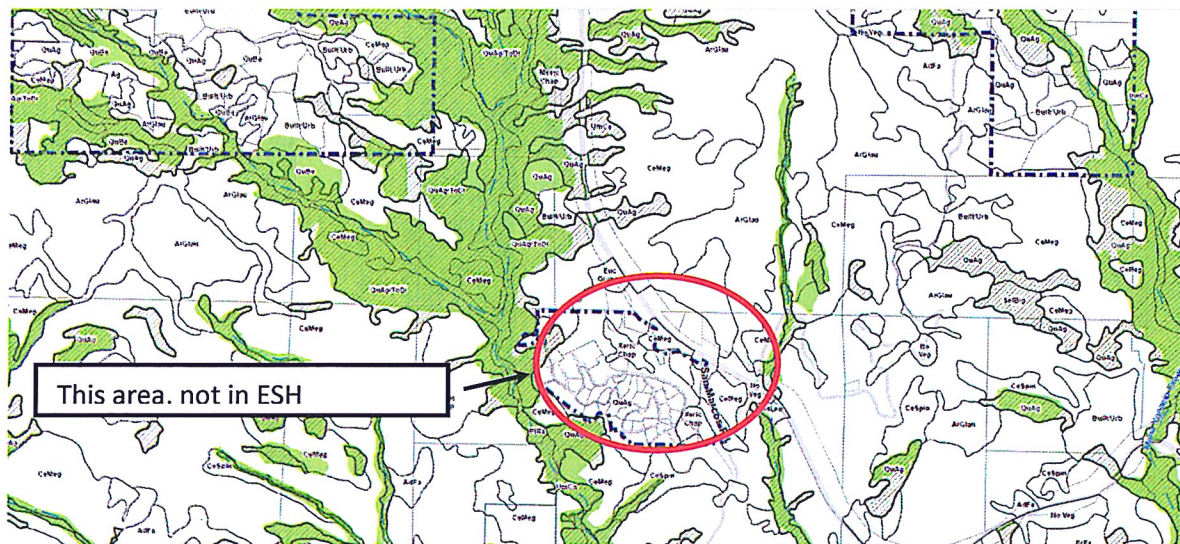
the proposed map in attachment 7 shows that the designation ESH versus RC was done by parcel, and not with facts on the ground as evidenced by the switch from ESH to RC at the lot line for many parcels, especially in the National Forest. A riparian corridor does not stop being one by crossing a lot line! The associated data in the table is therefore biased. The RC area did not decrease as stated, and the ESH area increased by more than 236 acres. The increase in ESH is also not shared equally by areas. For example, the revised map increases the ESH coverage of my lot from 40% to 95%. (There several parcels in the San Marcos Pass EDRN are also severely affected).



The map is also obsolete in that it does not represent the current conditions on the ground. Some areas have been cleared of vegetation or have ancillary structures, facts that are not captured with the 2015 photographs. This is especially true for areas under the tree canopy. *Such conditions cannot be documented without a site survey.* Large areas in the San Marcos Pass region were recently cleared by the Painted Cave Volunteer fire department with the help of Cal Fire. There is no vegetation left under the oak canopy and therefore does not provide a habitat. This point was made in a letter to the Planning Commission, with numerous photographs (some are reproduced below).



4. The ESH/RC map is inconsistent as it does not reflect the information from the AIS vegetation map. Either the planners exclude the Existing Developed Rural Neighborhood from the rezoning, or they include them. The Trout Club is a site with oaks and a “sensitive” plant, yet is excluded from the ESH/RP area. The other EDRNs (like Painted Cave) are also excluded, but the San Marcos Pass EDRN is included in the ESH/RP area.



- Eastern Goleta Valley Planning
- Sensitive Plant Species**
- 5, Brewer's Spiniflower
 - 7, Catalina Mariposa Lily
 - 8, Chaparral Checkerbloom
 - 20, Fish's Milkwort
 - 21, Gaviola Tarplant
 - 22, Hoffmann's Bitter Gooseberry
 - 24, Late-flowered Mariposa Lily
 - 31, Pale-yellow Layia
 - 32, Plummer's Baccharis
 - 34, Santa Barbara Bedstraw
 - 35, Santa Barbara Honeysuckle
 - 36, Santa Lucia Dwarf Rush
 - 39, Seaside Brookweed
 - 44, Sonoran Maiden Fern
 - 46, Sticky Phacelia
 - 48, Thimbleberry
 - 54, White-haired Manzanita
 - 55, White-veined Monardella

FIGURE 6a
 Reported Occurrences of Sensitive
 Plant Species within the Eastern
 Goleta Valley Planning Area

0 Miles 0.5

2. Note on forest health and the consequence of excessive financial cost of regulations:

Nearly all the oak trees in the proposed ESH area in San Marcos Pass are diseased.

Unfortunately, the County cancelled the position of the Oak Tree Specialist, the Agricultural Commissioner is exclusively focused on agriculture and the UC Davis extension program moved to San Luis Obispo. Since there are no County resources to assess the health of trees, CalFire was contacted to identify the disease. Their Forest Health Specialist took several samples and is waiting for a positive identification. If the initial diagnostic of “Diplodia Corticola” is confirmed, the oaks must be destroyed as there is no cure for the pathogen. Thousands of oak trees are affected by the disease.

County code 35.28.100, sections C.1.a.1.f.(iii), and (iv) requires the land owner to provide the Planning Department with evidence from an arborist, a licensed tree surgeon, or other qualified person that a tree is diseased and poses a danger to healthy trees in the immediate vicinity, or that the tree is so weakened by age, disease, storm, fire, excavation, removal of adjacent trees, or any injury so as to cause imminent danger to persons or property. Identification of all the diseased trees by a specialist, making a map, disposing of the diseased trees and paying the county fees is far beyond the budget of the residents. County code 35.28.100, sections C.1.a.1.f.(iii), and (iv) provide a strong disincentive to cure the problem and the trees will continue to fall. This excessive cost puts residents and their property at risk. Just like sending a sick child to school is unethical, it is unethical to ignore both the disease and the consequences of not allowing the land owners to address the problem. Ultimately, all the oaks will be affected by the disease and die.





Appendix A

15380. ENDANGERED, RARE OR THREATENED SPECIES

- (a) "Species" as used in this section means a species or subspecies of animal or plant or a variety of plant.
- (b) A species of animal or plant is:
 - (1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or
 - (2) "Rare" when either:
 - (A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or
 - (B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.
- (c) A species of animal or plant shall be presumed to be endangered, rare or threatened, as it is listed in:
 - (1) Sections 670.2 or 670.5, Title 14, California Code of Regulations; or
 - (2) Title 50, Code of Federal Regulations Section 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered.
- (d) A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b).
- (e) This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by:
 - (1) The Director of Food and Agriculture with regard to economic pests; or
 - (2) The Director of Health Services with regard to health risks.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21001(c), Public Resources Code.