

ATTACHMENT 11



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: November 28, 2018

RE: Hoops Structures Ordinance Amendment  
December 5, 2018, County Planning Commission Hearing  
Case No. 17ORD-00000-00005

On August 29, 2018, the County Planning Commission (Commission) directed staff to revise the environmental impact report (EIR) to reject three mitigation measures as infeasible (MM-VIS-1, MM-VIS-2, MM-VIS-3), delete two mitigation measures as unnecessary due to new substantial evidence submitted into the record (MM-WR-1, MM-BIO-2), and modify one mitigation measure (MM-BIO-1) so that it addresses potentially significant impacts to California tiger salamander (*Ambystoma californiense*) (CTS) habitat. On November 7, 2018, the Commission reviewed the revised documents provided for the Commission to make a recommendation to the Board of Supervisors pursuant to the Commission’s August 29, 2018, direction, and received additional public testimony.

At the November 7, 2018, hearing, Commissioner Parke presented several slides (Attachment A) outlining alternative options that he had been developing with Commissioner Ferini. Commissioner Parke presented the following conceptual changes:

- Clarify what is development, e.g., hoop houses over 20 ft. tall, or in overlays, or on slopes over 20%, non-historically cultivated land
- Coordinate Bio MM’s with existing ag grading ordinance,
  - Address streambed exemptions in AAC letter
  - Allow where historically cultivated land
- Address hillside views, e.g., revise ag grading ordinance
- Reincorporate Santa Ynez and Gaviota overlays
- Explain relation to cannabis ordinance

The Commission continued the hearing to December 5, 2018, with direction for staff to return with options for the Commission’s consideration, and obtain feedback from the Commission at the hearing on December 5<sup>th</sup>. Following that direction, staff will draft specific ordinance

language, findings, and revisions to the EIR to support the Commission's recommendation to the Board of Supervisors. The Commission discussed the follow-up hearing occurring on January 9, 2019.

Commissioner Parke volunteered to meet with staff to discuss and further develop his and Commissioner Ferini's proposed conceptual changes. Staff met with Commissioner Parke on November 16, 2018.

This memorandum summarizes each conceptual change presented to the Commission on November 7, 2018, in Commissioner Parke's slides, but in the following order:

- A. *Include / Reincorporate Santa Ynez and Gaviota Overlays*
- B. *Add Slopes Greater Than 20%*
- C. *Address Hillside Views (e.g., Revise Agricultural Grading Ordinance)*
- D. *Historically Cultivated and Non-Cultivated Lands (Restore / Revise Mitigation Measure MM-BIO-1)*
- E. *Coordinate Biological Resources Mitigation Measures with Existing Ag Grading Ordinance (Revise Mitigation Measure MM-BIO-3)*
- F. *Clarify What is "Development" (Revise Definitions)*
- G. *Explain Relation to Cannabis Ordinance*

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

The first option would reincorporate the size limit that would be applied to hoop structures and shade structures (together in this memorandum, crop protection structures) located within the Santa Ynez Valley Community Plan Design Control (D) Overlay and the Gaviota Coast Plan's Critical Viewshed Corridor (CVC) Overlay.

More specifically, the option would (1) keep the 4,000 square foot size limit to the CVC Overlay, which is part of the original project description, and (2) reinstate the 4,000 square foot size limit to the D Overlay. Reinstating the D Overlay would essentially result in accepting and not rejecting the EIR mitigation measure MM-VIS-3 (Attachment B). MM-VIS-3 also includes a provision that the size limit would not apply within the D Overlay if the structures would not be visible from public roads or other areas of public use. Under MM-VIS-3, landscaping is not to be considered when determining whether the crop protection structures are visible. This exception was not provided in the original CVC Overlay. The Commission may consider whether this exception should be incorporated into the CVC Overlay.

The 4,000 square foot size limit reduces the potential impacts to visual resources that could result from locating crop protection structures of unlimited size within both the D Overlay and the CVC Overlay. In the D Overlay, as discussed in the Final EIR, residual impacts to visual resources with the implementation of MM-VIS-3 would remain significant and unavoidable. While MM-VIS-3 would reduce impacts as seen from public roads and other areas of public use, private views, which are not protected or otherwise regulated, may be adversely affected. Similarly, if the Commissioner were to add this exception to the CVC Overlay, there may be an increase in adverse effects to private views; however, this exception should have no appreciable adverse effect on public views.

***B. Add Slopes Greater Than 20% as a Criterion***

At the November 7, 2018, Commission hearing, it was suggested that slopes steeper than 20% be incorporated into the ordinance amendment. This option was not previously considered by staff or discussed in the EIR, and could be accomplished in one of two ways. First, crop protection structures could be prohibited on slopes steeper than 20%. Generally, cultivation of crops that benefit from crop protection structures occurs on slopes less than 20%. Therefore, prohibiting their use on steep slopes likely would not unduly limit the use of crop protection structures.

A variation would be to exempt from planning permits crop protection structures on slopes of 20% or less, but provide a permit path for crop protection structures on slopes greater than 20%. This would provide the opportunity for a property owner to make a case for crop protection structures on steeper slopes, which may be appropriate in certain circumstances, rather than simply not allow them.

Adding 20% slopes as a criterion to either (1) prohibit crop protection structures on slopes greater than 20%, or (2) require a permit if located on slopes greater than 20%, would reduce the visual impacts of the project. Neither option would mitigate the visual impacts to a less than significant level as neither option would mitigate impacts associated with crop protection structures on relatively gentle slopes or level lands in the valley bottoms, where most structures are used. However, either option could be accomplished with relatively minor revisions to the EIR, findings, and statement of overriding considerations because the impacts to visual resources would be reduced by these options. Residual visual impacts would remain Class I with or without this additional criterion.

***C. Address Hillside Views (e.g., Revise Agricultural Grading Ordinance)***

The Grading Code is Chapter 14 of the County Code. It sets forth the standards with which grading must comply, as well as the criteria for when grading permits or erosion control permits are required. The Grading Code only addresses the physical movement of earth material, drainage, and erosion and sediment control. It does not regulate structures (i.e., the Grading Code does not require or grant exemptions or permits for structures). The County does not have a separate agricultural grading ordinance; rather, the Grading Code includes special provisions for grading for agricultural practices. In general, grading for normal and usual agricultural practices to prepare a field for a crop does not require a permit. However, there are exceptions, and a permit may be required when grading for agricultural practices would be located on steep slopes.

As the Grading Code does not regulate structures, revising the Grading Code to address hillside views that would be impacted by structures would not be appropriate. Instead, hillside views can be addressed in the County Land Use and Development Code (LUDC) as discussed in Section B of this memorandum, above.

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

Under this option, at the November 7<sup>th</sup> Commission hearing Commissioner Parke suggested simplifying mitigation measure MM-BIO-1 by restoring the original language of the EIR mitigation measure. The original MM-BIO-1 (Attachment C) would apply to all potentially

affected lands, not just those lands within 1.24 miles of CTS breeding ponds. Restoration of the original language of MM-BIO-1 would mitigate potential impacts to all sensitive, listed species and habitats, not only the CTS. In addition, changing the timeframe for “historically intensively cultivated lands” prescribed by MM-BIO-1 was also suggested.

A change to the prescribed historical timeframe from three years of cultivation within the previous five years to, perhaps, once within the previous 10 years would require a revised discussion within the EIR revision document based, in part, on input from the resources agencies (U.S. Fish and Wildlife Service and California Department of Fish and Wildlife) to determine whether residual impacts would remain less than significant or whether the impacts would increase to the extent that recirculation of the EIR would be necessary. As of the date of publication of this memorandum, Planning and Development Department (P&D) staff has contacted the agencies and will provide an update at the December 5, 2018, Commission hearing if staff has received any new information.

***E. Coordinate Biological Resources Mitigation Measures with Existing Ag Grading Ordinance (Revise Mitigation Measure MM-BIO-3)***

The conceptual changes suggested on November 7, 2018, are intended to align mitigation measure MM-BIO-3 with requirements or standards that are already included in the County Grading Code. MM-BIO-3 requires a 100-foot setback from streams and creeks in the Rural Area to reduce impacts of crop protection structures to biological resources associated with riparian habitats (Attachment D). Suggested conceptual changes include: (1) allowing crop protection structures without permits on historically cultivated lands, and (2) the “streambed exemptions” requested in the Agricultural Advisory Committee (AAC) letter dated November 5, 2018.

Key considerations for not making any changes include: (1) the Grading Code regulates the physical movement of earth material, not structures, (2) historic cultivation is not defined in the Grading Code, and (3) the 50-foot setback from streams and creeks within the Grading Code is a setback for grading only; it is not a setback for structures. A 100-foot setback is typically applied to structures throughout the Rural Areas of the County to protect riparian habitats and species that use riparian habitats for food, shelter, nesting, migration corridors, etc., in addition to protecting water quality.

***F. Clarify What is “Development” (Revise Definitions)***

At the hearing, Commissioner Parke suggested revising definitions such that crop protection structures that meet certain criteria would be defined as “development” and, thus, require permits pursuant to the LUDC. According to Commissioner Parke’s slides, “hoop houses over 20 ft. tall, or in overlays, or on slopes over 20%, non-historically cultivated land” could be defined as “development,” and structures that do not meet the criteria would not be defined as “development.”

Redefining one type of crop protection structure as “development” depending on height or location, while the same type of structure would not be “development” due to an alternative height or location, would be a departure from how the LUDC is designed to function. First, LUDC Section 35.10.040 states “[t]his Development Code applies to all land uses, subdivisions, and development within the County.” Second, LUDC Section 35.20.040 provides a detailed list

of uses, activities, and structures that are exempt from the planning permit requirements of the LUDC. It also states that the “land uses, structures, and activities ... are exempt ... only when [t]he use, activity, or structure is established and operated in compliance with the setback requirements, height limits, parking requirements, and all other applicable standards of this Development Code” [LUDC Subsection 35.20.040.A.1]. The purpose of clearly identifying exempt uses, activities, and structures (rather than excluding them from the definition of “development”) ensures that uses, activities, and structures comply with the (albeit, minimal) standards of the LUDC to protect and promote public health, safety, general welfare, and orderly development [LUDC Subsection 35.10.010].

Redefining crop protection structures as development only if (1) they were taller than 20 feet, or (2) if less than 20 feet tall but located on slopes greater than 20%, located within certain overlays, or located on non-historically cultivated land, would result in making an exception that would treat crop protection structures differently than other uses and structures exempt from planning permits.

***G. Explain Relation to Cannabis Ordinance***

Anyone intending to grow cannabis must consult the recently adopted cannabis regulations included in Section 35.42.075 of the LUDC and comply with those regulations. 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 Commission may consider whether to add a subsection to the Hoop Structures Ordinance Amendment that would direct 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.

**ATTACHMENTS**

- A. Commissioner Parke Slides Presented November 7, 2018
- B. Mitigation Measure MM-VIS-3 Design Control (D) Overlay Limitation
- C. Mitigation Measure MM-BIO-1 Limit Exemption to Crop Protection Structures on Historically Intensively Cultivated Agricultural Lands
- D. Mitigation Measure MM-BIO-3 Setbacks from Streams and Creeks