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Comment Letter B-8

001

## PRICE, POSTEL &amp; PARMA LLP

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OUR FILE NUMBER

18769.10

April 6, 2009

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City of Goleta  
 Planning & Environmental Svcs.

BY EMAIL: [dnemechek@cityofgoleta.org](mailto:dnemechek@cityofgoleta.org)

Mr. Dan Nemechek  
 Planning and Environmental Services  
 City of Goleta  
 130 Cremona Drive, Suite B  
 Goleta, CA 93117

Re: Comments on Draft SEIR, Goleta General Plan Track 3 Amendments

Dear Mr. Nemechek:

Our client, Shelby Family Partnership, L.P. ("Shelby") has asked us to provide comments on the Draft Supplemental Environmental Impact Report ("SEIR") for proposed amendments to Goleta's 2006 General Plan identified as Track 3 among several sets of amendments being considered by the City Council.

Shelby owns approximately 15.05 acres of land at 7400 Cathedral Oaks Road identified in the County Assessor's Records as APN 077-530-019 (the "Shelby Property"). It is located within the City's "northwest residential area" (General Plan Figure 1-2) and is currently zoned for agricultural uses, with an AG-II land use designation (General Plan Figure 2-1).

When Shelby (Dr. Glynne Couvillion and family) purchased the Shelby Property in the 1970s, it was a 25 acre property zoned residential but undeveloped, with a large avocado orchard. Dr. Couvillion purchased the property as part of retirement portfolio specifically for development. In its 1993 Goleta Community Plan Update, the County of Santa Barbara designated the Shelby Property as AG-II as a "holding designation," with recognition that the property was only to be zoned for agriculture for the "mid-term" and the zoning was to be revisited as part of a then-anticipated 2003 update. During the ensuing decade, various attempts at agriculture proved unsuccessful because of poor soil conditions. In addition, the County acquired an easement along the southerly boundary of today's Shelby Property for the extension

04/06/2009 15:56 FAX 8058829897

002

Mr. Dan Nemechek  
 April 6, 2009  
 Page 2

of Cathedral Oaks Road, thus severing it from ten acres with which it had been farmed. The environmental document for that County action identified the severance as a "Class I" impact to the agricultural viability of the remaining acreage. Today the Shelby Property is surrounded by urban uses (including "Area E" [Glen Annie Golf Course] to the north, which the City has proposed for inclusion in the City's sphere of influence anticipating future annexation and development) and, with the extension of Cathedral Oaks Road, it has access to water, sewer and other services that will facilitate its development.

Since at least July 2003, Shelby and we have been working with the City on alternative residential development proposals for the Shelby Property, each of which would require both rezoning and a redesignation for residential uses. We refer you, in particular, to our letters dated July 8, 2003, December 9, 2003, and April 26, 2005. On September 10, 2007, Shelby filed with the City a Development Plan with proposed General Plan amendments and proposed rezoning of the Shelby property, asking the City to initiate a General Plan amendment to change the property land use designation from "Agriculture" to "Residential" and to alter related text and maps. Shelby also sought a rezoning from the current zoning of AG-II-40 to R-1 Single Family Residential and DR Design Residential/Multifamily Residential. We understand that the City Council has initiated General Plan amendments as proposed by Shelby and that these amendments will be included in the Track 4 amendments, for which the City has not yet completed environmental review. Based upon the City's agreement to process Shelby's proposed amendments, Shelby has agreed to several stays of its litigation, *Shelby Family Partnership, L.P. v. City of Goleta et al.* (SBSC No. 1241956), filed November 6, 2006, in which Shelby challenged the legal sufficiency of both the FEIR and the General Plan.

B-8.1 While we expect that the Track 4 amendments will include Shelby's specific proposals, we are concerned that the Track 3 amendments and the SEIR do not correct deficiencies in the General Plan and the FEIR that we identified in a letter dated July 18, 2006, a copy of which is attached as Exhibit A. We reiterate these comments and incorporate them in this letter by reference. If the City does not include necessary policy corrections in Track 3, Shelby's "project-sponsored" amendments will remain in conflict with the General Plan. The comments below focus on Shelby's present concerns, and we ask that you provide written responses to each comment.

B-8.2

**1. The SEIR Perpetuates an Incorrect Definition of Agriculture.**

B-8.3 The Track 3 amendments do not change the incorrect definition of "agriculture" applied by the City in its FEIR in 2006, which provided the foundation for its General Plan land use designations, and thus do not contemplate a change in the incorrect agricultural designation of the Shelby Property. In fact, the SEIR states in Section 3.2 that the amendments "would not result in greater or different impacts to agriculture and farmland than those analyzed in the 2006 Final EIR, do not have the potential to result in new potentially significant impacts to agriculture

04/06/2009 15:56 FAX 8058829897

003

Mr. Dan Nemechek  
 April 6, 2009  
 Page 3

B-8.3 | and farmland, and are not proposed to policies cited as mitigation for potential impacts to  
 cont. | agriculture and farmland in the 2006 Final EIR.”

The FEIR defined agriculture as: (1) sites zoned for agriculture by the County of Santa Barbara at the time of incorporation of the City in 2002; (2) sites that are or were used for agricultural production that are devoid of structures that prevent or limit the continued or resumed use of the land for agricultural purposes; and/or (3) sites with soils or other characteristics that make them suitable for agricultural activities and are devoid of structures of other alterations that prevent or limit the use of the land for agricultural purposes.” (FEIR section 3.2.1) These criteria for designation were carried forward in the General Plan in Land Use Policy 7.3, which states that sites “designated in the Agricultural land use category shall generally meet one or more of [the three criteria]. . . .” The SEIR states that the objective of “Policy 7” is “to reserve existing agricultural lands and reserve vacant lands suitable for agriculture to maintain the option of future agricultural uses.”

However, Public Resources Code section 21060.1, both in 2006 and currently, defines agricultural land as:

(a) “Agricultural land” means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.

(b) In those areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), “agricultural land” means land that meets the requirements of “prime agricultural land” as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of Section 51201 of the Government Code.

B-8.4 | Because California lands have been surveyed for the classifications stated in section  
 | 21060.1(a), its definitions should apply to the City’s environmental review under CEQA.

The California Department of Conservation, Division of Land Resource Protection, through its Farmland Mapping and Monitoring Program (“FMMP”) has developed mapping that is contiguous with modern soil surveys developed by the USDA, rating agricultural land according to soil quality and irrigation status. As contemplated under CEQA, the best quality land is called Prime Farmland, which the FMMP defines as “[f]armland with the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”

Under the correct CEQA definition, the Shelby Property is not “agricultural land” and should not be “reserved” for future agriculture uses under Policy 7. The most recent FMMP

04/06/2009 15:56 FAX 8058829897

004

Mr. Dan Nemechek  
 April 6, 2009  
 Page 4

maps of Important Farmland, completed in 2006, a copy of which is attached as Exhibit B, show the Shelby Property as "urban and built-up lands," consistent with the lands adjacent to it on all sides. In removing the Shelby Property from any definition of farmland under the FMMP standards, the Department clearly has recognized both the absence of the features necessary for sustained agriculture and the absence of any viable agricultural for at least four years prior to the mapping date.

In 2006, the City incorrectly identified the Shelby Property as Prime Farmland (FEIR Table 3.2-2, in which the Shelby Property is identified as "Couvillion" or "Site #2") on which development should be precluded, even though it did not meet the state definition of agriculture as required under CEQA. In fact, of the three criteria stated in the City's incorrect agricultural definition, the Shelby Property met only the first, having been zoned for agriculture by the County at the time of the City's incorporation and that zoning, as discussed above, was intended only as interim zoning to be revisited in 2003.

B-8.5 The SEIR perpetuates this error, making no changes to the definition stated in the General Plan's land use policies. Thus, as to the Shelby Property, SEIR Figures 3.10-1 through 3.10-4, purporting to show existing land uses, incorrectly show the Shelby Property as agricultural. Section 3.10.1.1 states that the existing land uses "are observed to be substantially the same as existed at the time of preparation of the 2006 Final EIR." In fact, both in 2006 and at present, the Shelby Property has not been in agricultural use. Figure 2.3 (Land Use Plan Map), identified as Figure 2.3 in the FEIR and as Figure 2.1 in the General Plan, shows the Shelby property as designated for agricultural use in the future when it clearly is not suitable for agriculture under Department of Conservation and CEQA standards.

B-8.6  
 B-8.7 In our view, General Plan Land Use Policy 7.3 should be revised to reflect the definition stated in Public Resources Code section 21060.1, the SEIR should be amended to include environmental review under CEQA's definition, and the General Plan's land use policies should incorporate the 2006 Important Farmland mapping, which should result in removal of the Shelby Property from the AG-II designation, amendment to all General Plan and SEIR maps showing the Shelby Property as agricultural, and consideration of the property's potential to meet other City needs.

2. **The SEIR Incorrectly Excludes the Shelby Property from "Vacant Sites" Available for Development.**

B-8.8 Both SEIR Figure 3.2, which purports to show existing "vacant sites" that could be available for future development, and Figure 3.10-1, which shows "vacant lands" for purposes of assessing open space, completely ignore the Shelby Property, apparently because of the erroneous presumption that it is or should be in active agriculture. While the SEIR purports to amend the General Plan to consider all developable parcels in the City, it has excluded this 15

04/06/2009 15:57 FAX 8058829897

005

Mr. Dan Nemecek  
 April 6, 2009  
 Page 5

acre parcel that is not suitable for agriculture and is surrounded by urban uses, with existing access via a major roadway and with access to urban services that support development.

B-8.9 The SEIR should be amended to assess potential residential development of the Shelby Property and should identify the Shelby Property as “vacant” on maps illustrating potential alternative uses.

3. **The SEIR Does Not Address the Cumulative Impacts of Several Tracks of Amendments.**

The City is proceeding with its General Plan amendments by dividing them into five tracks. The current track under CEQA review, identified as Track 3, is described as “revisions meriting more detailed review as to their potential impacts.” Track 4, yet to come, is intended to include “project-sponsored amendments.” In its Track 3 SEIR analysis of “Other CEQA Considerations,” the City concludes that the implementation of the amended GP/CLUP under Track 3 would result in impacts “identical to those identified in the 2006 Final EIR. No other new significant impacts (Class I) associated with the proposed amendments to the GP/CLUP have been identified in this Supplemental EIR.”

B-8.10 In our view, the City’s division of its amendment into five tracks appears to segment a “project,” which may be improper under CEQA, and it ignores the cumulative effects of the sets of amendments. CEQA Guidelines section 15355 defines “cumulative impacts” as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” The individual effects may be changes resulting from a single project or a number of separate projects. Therefore, even if the City considers each of its amendment tracks a separate project for CEQA purposes, it cannot avoid considering potential cumulative impacts that result from considering the impact of one “project” (i.e., set of amendments) in relation to other closely related past, present, and reasonably foreseeable probable future projects.

B-8.11 The essence of Shelby’s proposed amendments, to be considered in Track 4, is a correction of the City’s erroneous definition of agriculture which resulted in a failure to undertake a correct analysis of the agricultural potential of the Shelby Property and, at the same time, to ignore the property’s potential for meeting the City’s residential needs. Even if Shelby’s requests were introduced as “project-sponsored” amendments, the substance of these amendments is a policy change that is not property-specific – a policy change that more reasonably meets the definition of “revisions meriting more detailed review as to their potential impacts” in Track 3.

As for the Shelby Property specifically, its proposed amendments include a change of land use designation and the deletion of the Shelby Property from the inventory of “reserved”

04/06/2009 15:57 FAX 8058829897

006

Mr. Dan Nemechek  
April 6, 2009  
Page 6

B-8.12 | agricultural land, while adding it to the land available for residential development. Although the City reasonably may conclude that the impacts of these changes are not significant under CEQA, they are necessarily changes that must be considered in concert with the Track 3 amendments.

\* \* \* \* \*

In summary, the SEIR for the Track 3 amendments does not resolve Shelby's principal objections to the General Plan and its FEIR. Because Shelby's concerns impact generally applicable policies as well as its specific development proposal, we think the Track 3 amendments cannot be complete without revision to the General Plan's agricultural land use policies, and the City's environmental review will remain inadequate unless the City considers the relationship between its own proposed policy amendments and project-sponsored amendments.

We will continue to follow the City's General Plan amendment process with interest. We look forward to receiving your responses to our comments, and we are available to answer any questions you may have.

Very truly yours,



Susan M. Basham  
for PRICE, POSTEL & PARMA LLP

SMB:lkh  
Enclosures

cc: Glynne Couvillion, M.D.

04/06/2009 15:57 FAX 8058829897

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Attachment

# EXHIBIT A

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OUR FILE NUMBER  
 18769.10

July 18, 2006

Planning and Environmental Services  
 Attention: Anne Wells  
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 Goleta, CA 93117

**HAND DELIVERED**

Re: City of Goleta Draft General Plan/Local Coastal Plan Draft EIR  
Shelby Family Partnership Property (APN 77-530-19)

Dear Ms. Wells:

We respectfully submit the following comments on the City's Draft General Plan/Local Coastal Plan Draft EIR for your consideration in finalizing the Plan and associated analysis. We represent the interests of the Shelby Family Partnership LLC, owners of agricultural property located at 7400 Cathedral Oaks Road, within the City of Goleta. A site-specific history and additional background on the agricultural viability and suitability of the property is provided below, followed by CEQA-specific comments on the Draft EIR.

The above-referenced property, which is a 15.05 acre (gross) site immediately inside of the City's northern boundary, is adjacent to and includes a segment of Cathedral Oaks Road. Due to setbacks, roads, easements, and buildings, approximately 4.95 acres are unavailable for agricultural production, leaving a hypothetical net tillable area of 10.1 acres. Our clients originally purchased the property when it was zoned for residential development, consistent with development to the west. Without any analysis of agricultural viability, the property was given an AG-II rural agricultural designation by the County of Santa Barbara in the 1993 Goleta Community Plan Update, but was cited in that Plan as one of the various properties appropriate for agriculture for only an interim period. The zoning designation was to be revisited as part of the then anticipated 2003

04/06/2009 15:57 FAX 8058829897

009

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 2

County General Plan Update. At that time, the parcel was farmed as part of a larger, approximately 25 acre agricultural site.

In the ensuing period, the owner's agricultural operations proved unsuccessful due to soils conditions, the County acquired an approximately 2 acre easement across the southerly portion of the subject parcel for the extension of Cathedral Oaks Road, separating it from the lower 10 acre parcel, and the Glen Annie Golf Course was built surrounding the upper parcel. Construction of the County's Cathedral Oaks Road extension involved significant grading and fill of the site, all which was allowed with the expectation that the property would be returned to its residential zoning and developed for residential use. In the 2004 County report on Urban Agriculture in the Goleta Valley, the property is reported as having already converted to urban development.

In response to the City's proposed agricultural land use designation within the Draft General Plan/Local Coastal Plan and Draft EIR, further study has been conducted by a qualified Agricultural Economist on the agricultural viability and suitability of the subject site for potential future agricultural production. A copy of this study is enclosed. The key points from that analysis, and inaccuracies in the Draft EIR which need to be addressed, are as follows:

1. Water – Water was provided by means of a Goleta Water District (GWD) agricultural meter from prior to 1987 to 2000, when avocado orchards were in production on the site. During that time, the orchards experienced reduced yield as the extensive man-made mounding system upon which each tree was planted failed, and the avocado root structures hit the underlying clay hardpan. Following the loss of the orchards, GWD revoked the agricultural meter in 2000. The site has not been in irrigated production, and has lain fallow since.

2. Soils – According to the U.S. Department of Agriculture Soils Conservation Service (now known as the Natural Resources Conservation Service [NRCS]), the 1981 mapping indicates the majority of the property contains Diablo Clay (DaC) soils; DaC soils on slopes of 2% to 9% are considered Class II (prime), if irrigated, but on slopes of 9% to 15% are Class III (non-prime). When a site is not irrigated, as is the case with the Shelby site, it is our understanding that DaC soils of 2% to 9% are designated as Class III (non-prime), and on slopes of 9% to 15% are Class IV (non-prime).

The data for the NRCS Soil Survey was primarily derived from aerial photographs, prior surveys and field work; however, the soil was not examined in situ by NRCS, and therefore, compaction, permeability and drainage problems were not considered. The site soils are slowly permeable and difficult to work and can be worked only within a narrow range of moisture content. When the soil is wet, cultivation is not only difficult, but also damages the soil structure. Slopes also were not identified or taken into account in the 1981 Soil Survey map. Accordingly, the northern 2.65 acres of the site, with slopes ranging from 10 to 30 percent, were incorrectly identified as Class II, and due

04/06/2009 15:58 FAX 8058829897

010

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 3

to slope and lack of irrigation, should be designated as Class IV. The steepest and northernmost 0.58 acres of the site are classified as Ayar Clay (AhF2) soils, which are designated as Class VI. Taking into account the site's topography, and using the 1981 Soil Survey classifications, there are only 6.87 acres of potential Class II tillable soils; however, since the site has not been irrigated since 2000, and the site's agricultural meter designation has been revoked by GWD (see no. 1, above) with no other known sources of water, the 6.87 acres should be designated as Class III soils.

Site-specific soil studies were completed by Fruit Growers Laboratory in 1997 (soon after the avocado orchards crashed due to widespread root rot), and by Geolabs Engineering in 2001. Both reports concluded that the surface soils on the site are significantly more clayey and dense, with poor soils structure and compaction problems than the NRCS Soil Survey map indicates. This type of soil results in poor water percolation and drainage, as well as very difficult tillage conditions due to excessive moisture levels. The underlying subsoils were also shown to be clay hardpan, which is very compact clay soils with poor water percolation. Both reports concluded that the entirety of site soils should be reclassified to non-prime soils to accurately reflect on-the-ground conditions, consistent with the above conclusion.

3. **Agricultural Suitability** – This is a determination of a site's fitness for agricultural operations based on the natural attributes of the site, including soil, subsoil, tilth, drainage, slope, etc. Due to poor soils, clay hardpan subsoils, slope, and low fertility on the site, the successful cultivation of orchard and row crops is severely constrained and the agricultural suitability of the site low. If required to remedy these conditions, the existing dense topsoil and portions of the underlying hardpan would have to be removed (estimated at 32,000 cy) and replaced with more friable soil (another 32,000 cy), which would require extensive on- and off-site hauling of material using large capacity dump trucks, thus resulting in added truck trips onto area roadways and highways. It is estimated that if using a 10-cy dump truck, total soil moving activities would result in an estimated 6,400 new truck trips, resulting in increased traffic, air quality, and noise impacts beyond that which is analyzed in the Draft EIR. There is also no local source identified for such friable soil, and removal would potentially impact the agricultural viability of the donor parcel. In addition, there is no known recipient site for the clayey soils to be removed, which is a primary reason the County disposed of Cathedral Oaks Road spoil on the Shelby property.

4. **Agricultural Viability** – This is a determination of whether a parcel will generate sufficient monetary returns to bring and keep it in agricultural production. In the short-term, and at the level of a single producer, a viable agricultural enterprise must yield an economic surplus after taking into account all production costs. The study indicates that there are no agricultural enterprises which would yield a consistent and reasonable return, including orchards, greenhouse agriculture, row

04/06/2009 15:58 FAX 8058829897

011

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 4

crops, or grazing. Previous agricultural ventures on the site have included “organic” farming, which was not successful.

The Department of Conservation, Division of Land Resource Protection developed the Farmland Mapping and Monitoring Program (FMMP) to document changes in agricultural land in the State. Agricultural land is rated according to soil quality and irrigation status; the best quality land is called Prime Farmland. (The City supposedly used FMMP data as the basis of its agricultural land use designations.) The FMMP defines Prime Farmland as: “farmland with the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. **Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date**” (emphasis added). As indicated by no. 1, above, the site has not been in irrigated use since 2000, and our understanding is that FMMP mapping shows the property as “grazing land,” though there is no adjacent land available for such operation. This further supports the study’s conclusion that soils on the site do not qualify as prime farmland.

Given this site-specific background, the conclusions reached by the Draft EIR are inaccurate and unsubstantiated, and do not reflect the economic impact or feasibility of maintaining a 10.1 acre fallow parcel in agricultural use without the benefit of a viable agricultural enterprise. There are other appropriate agricultural sites located within the City of Goleta that are currently designated by the Draft General Plan/Local Coastal Plan for future residential use that would be better suited for long-term, viable agricultural production. Those parcels should be considered for re-designation to agricultural land use, consistent with Suggested Mitigation MM 3.2-1.

#### General Comments on the Draft EIR

**Project Description.** The Project Description has changed as a result of ongoing public comment and City Council directive during the course of the public review period of this Draft EIR. Changes in land use designations, provision of newly defined “overlays,” as well as traffic modeling will necessarily need to be addressed and incorporated into the Final EIR. If new, significant impacts or additional feasible mitigation measures are identified, portions of the EIR analysis would likely require re-circulation and associated public review and comment.

**Economic and Social Effects.** A discussion of the economic or social effects of Plan implementation is absent from the Draft EIR, including any indirect or secondary impact resulting from a physical effect discussed in the Draft EIR. For example, the economic and social impact that

04/06/2009 15:58 FAX 8058829897

012

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 5

potential new agricultural development would have on adjacent residential and recreational uses, including potential decreases in land value and increases in nuisance complaints resulting from increased dust and air quality effects, noise, and traffic should be identified and assessed.

According to CEQA Guidelines section 15131(c): "Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the record." Accordingly, information concerning these effects needs to be added to the record, and we would request that the analysis be made publicly available.

**Cumulative Analysis.** The "plan approach" used to conduct the cumulative analysis within the City boundary appears to be inaccurately applied. Although the plan approach allows for use of projections from a General Plan, the use of such is contingent upon the Plan's adoption or certification. CEQA Guidelines section 15130(b)(1)(B) states that "a summary of projections contained in an **adopted general plan or related planning document**, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. **Any such planning document shall be referenced and made available to the public at a location specified by the lead agency**" (emphasis added). The City's Draft General Plan/Local Coastal Plan is not an adopted document, and therefore, can not be the only basis on which to assess cumulative impacts associated with Plan implementation.

A variety of current applications and known future projects located within the City are not identified within the Draft EIR. The impact of these projects' additional vehicle trips and other environmental effects are potentially understated in the cumulative analysis.

**Alternatives Analysis.** The discussion of alternatives in Chapter 5 does not develop or analyze any additional, feasible policy-based alternatives that could avoid or reduce potentially significant adverse impacts of the Draft General Plan/Coastal Land Use Plan. The four previous "Planning Alternatives" may have been evaluated to help consider policies to inform the Draft General Plan/Coastal Land Use Plan, but other policies should be explored at this time to reduce or avoid significant impacts identified by the Draft EIR. Such an alternative could include the identification of new flexible policy language intended to reduce inconsistencies amongst land use, housing, noise and/or agricultural policies.

04/06/2009 15:58 FAX 8058829897

013

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 6

One such feasible alternative that should be considered and assessed is the preservation of currently farmed agricultural parcels, as the Draft EIR states that conversion of these parcels to urban uses would be a Class I impact. Preservation of the parcels in current agricultural production, with their successful ongoing operations, prime soil structure, and adequate water source and support facilities would be in keeping with the City's goal of preserving qualified prime farmland and would allow those non-viable parcels identified by the Plan for agricultural use to accommodate the City's need for housing. The policy-based alternative should assess the impacts of implementing new policy that would transfer the housing potential to those sites that are shown to not be viable for agricultural production, while maintaining those parcels throughout the City that are productive and profitable. This policy would avoid or reduce the Class I impact on agriculture and farmland, as well as increase the likelihood that affordable housing will be constructed throughout the City in keeping with current proposed housing policy.

**Secondary or Indirect Impacts.** CEQA Guidelines section 15126.2 requires not only consideration and discussion of direct impacts, but of any foreseeable secondary or indirect impacts resulting from implementation of a project or its proposed mitigation measures. Although the Draft EIR states that its discussion focuses on the indirect impacts associated with Plan implementation, as approval and adoption of a Plan has no direct physical effect, the indirect impacts themselves, including changes in land use, traffic and circulation patterns and future buildout will inherently have additional secondary effects. A Program EIR is intended to cover this range of possibilities. This discussion is absent from the Draft EIR.

**Technical Detail.** The technical background needed to substantiate conclusions reached throughout the Draft EIR, including air quality analyses, noise contour modeling data including the 2004 FBF Baseline Report for field noise measurements, biological resource evaluations, and economic or social impact analyses are missing from the document. CEQA Guidelines section 15147 states that "appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination...". We previously requested in a letter to the City, submitted June 26, 2006, that these appendices be made available for review.

#### Section-specific Comments on the Draft EIR

**Section 3.1, Aesthetics and Visual Resources.** A Class I impact is identified for development along scenic corridors, although many of the future affordable housing sites and new commercial development within the Old Town Revitalization Area are situated along these corridors. A conflict exists between the housing and visual policies if no new housing can be built without findings of overriding consideration or substantial redesign rendering development economically infeasible.

04/06/2009 15:59 FAX 8058829897

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Ms. Wells  
City of Goleta  
July 18, 2006  
Page 7

It is not clear in this analysis how the key public viewpoints were chosen or applied (it is understood that the local scenic corridors are identified by the Draft General Plan/Local Coastal Plan). Although it is agreed that scenic views are afforded along scenic corridors, as well as certain open spaces, specific and separate vantages from these corridors when traveling are intermittent due to intervening development, topography and vegetation. Figure 3.1-1 appears to identify several locations along the scenic corridor where such views are questionable. In addition, it appears that certain viewpoints were chosen towards or from private lands (e.g., Bishop Ranch).

**Section 3.2, Agriculture and Farmland.** The definition of "agriculture" used in the Draft EIR is incorrect; the CEQA definition of agricultural land should have been used to define baseline conditions and to assess impacts. CEQA Guidelines section 21060.1 defines agricultural land as "prime farmland, farmland of statewide importance, or unique farmland, as defined by the USDA land inventory and monitoring criteria, as modified for California."

The discussion within 3.2.1.3 is mislabeled. It should be re-titled Goleta Valley, as it pertains mostly to lands outside the City boundary than to those within the City. A discussion specific to lands within the City boundary should then be provided based on site-specific data, and not areawide assumption.

Figure 3.2-1 and Table 3.2-2 incorrectly states the size of Site #2 as 14.8 and 14.1 acres, respectively. The correct acreage is 10.1 (net tillable) acres.

Figure 3.2-2 incorrectly identifies Site #2 as Prime Farmland. The FMMP requires the land to have been used for irrigated agricultural production at some time during the four years prior to the Important Farmland Map date. As noted in the background section, above, the site has not been in irrigated production since 2000. The source(s) of this map should also be provided, as information is not provided solely by the City of Goleta.

Table 3.2-2 is confusing since it combines Soil Type, as established by the Federal NRCS 1981 Soil Survey Map, and Farmland Classification from what appears to be the State Department of Conservation's FMMP definitions and maps. The definition of "prime soils" vs. "non-prime" soils according to NRCS is based on the soils's Class designation - Class I and II soils are prime, whereas the remaining classes are non-prime. Therefore, the Farmland Classification for Site #2 should either be stated as: "does not qualify" based on the comment above, or if using the same classification system provided by the Soil Type category, Non-Prime (for the non-irrigated Class III DaC soils, Class IV DaD soils, and Class VI AhF2 soils).

04/06/2009 15:59 FAX 8058829897

015

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 8

The discussion of agricultural viability is confusing. The blanket statement that organic farming can be more viable on small parcels is an unsubstantiated claim requiring further discussion and an expert source. The success and profitability of any method of farming is dependent on the attributes of the land; those parcels that can be shown to have continued profitable and successful operations may benefit from organic farming methods, but if a site lacks the proper soils, slopes, etc. than farming operations will not be capable of maintaining production irregardless of method employed.

The type of soil is an attribute of a site's agricultural suitability, not viability. The concepts are distinctly separate, and the analysis in the EIR should more carefully reflect this. The definition of viability at the level of a single producer requires that a crop's yield be in economic surplus after taking into account all production costs, including land preparation, harvesting, marketing and inspection, cash overhead (e.g., property taxes and insurance), and non-cash overhead costs (e.g., land rent, cost of equipment, etc.).

Table 3.2-3 provides incorrect data for Site #2. The agricultural acreage (or net tillable area that is not within easements, previously developed with buildings or subject to City imposed setbacks) is 10.1 acres. The Farmland categories should be changed as discussed under the Table 3.2-2 comment, above. The total "prime" soils acreage should be 0 acres, as the soil types on-site are not considered prime due to lack of irrigation, poor soil structure and water percolation characteristics.

The discussion of impacts and mitigation should consider cases where development on lands within the City could conflict with uses on adjacent or nearby unincorporated lands. Additional mitigation measures should be identified to reduce potential conflicts between incompatible uses, such as agricultural and residential, to avoid increased nuisance complaints.

Suggested Mitigation Measure MM 3.2-1 should be analyzed at a greater level of detail, as it is agreed that the City has other suitable agricultural lands that are currently in production with high value, specialty crops, but which have not been identified for future agricultural use. See also comment on alternatives analysis, above.

**Section 3.8, Population and Housing.** The Housing Element of the Draft General Plan/Local Coastal Plan identifies a need for farmworker housing on-site for areas zoned for agriculture (Implementation Program 5.G). As many of the sites identified for agricultural use are currently fallow and would need both new infrastructure and housing development to accommodate potential future agricultural operations, the direct and indirect impacts associated with such development

04/06/2009 15:59 FAX 8058829897

016

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 9

needs to be assessed in the Draft EIR. In addition, the impacts from new population growth associated with increased agricultural operations is currently not assessed.

**Section 3.10, Land Use and Recreation.** The discussion of potential inconsistencies between Draft General Plan/Coastal Land Use Plan policies and other adopted plans and policies is not complete, as it does not address other applicable local, regional, or statewide plans. For example, a discussion of the Clean Air Plan, Congestion Management Plan, Goleta Old Town Revitalization Plan, etc. should be included.

**Section 3.13, Transportation and Circulation.** It is our understanding that an updated forecasting model and associated traffic analysis was completed following the release of the Draft EIR. Assuming new, significant impacts were identified within that model, the analysis contained within the Draft EIR will need to be re-assessed and that portion re-circulated for public review and comment.

The recommended major infrastructure improvements/mitigation for overcrossings at Ellwood Station and La Patera are not feasible mitigation and should not be used to forecast future conditions. Their construction would appear to be dependent on the approval of future development and payment of fair-share fees, as well as Caltrans approval and discretionary oversight, as they are not accounted for in a capital improvements program, and realistically may not occur during the life of the Plan. This long-term "goal" defers the reduction of potential significant Class I impacts, and conditions it upon potential future approvals, which may not be granted due to significant traffic impact.

Any potential future agricultural production on the Shelby site would result in additional, unaccounted truck and vehicle trips resulting from the need to "create" prime conditions through removal and replacement of poorly drained soils with better suited material, as well as from employees accessing the site during the day. The current baseline conditions do not include any vehicle activity to or from the site resulting from active agricultural production, as the site is fallow.

#### Conclusion

Based on the above comments, we assert that the adequacy of the analysis contained within portions of the Draft EIR are incomplete and, therefore, do not accurately disclose the full impact of Plan implementation.

04/06/2009 15:59 FAX 8058829897

017

Ms. Wells  
City of Goleta  
July 18, 2006  
Page 10

Thank you for your thoughtful consideration of the comments contained herein.

Very truly yours,



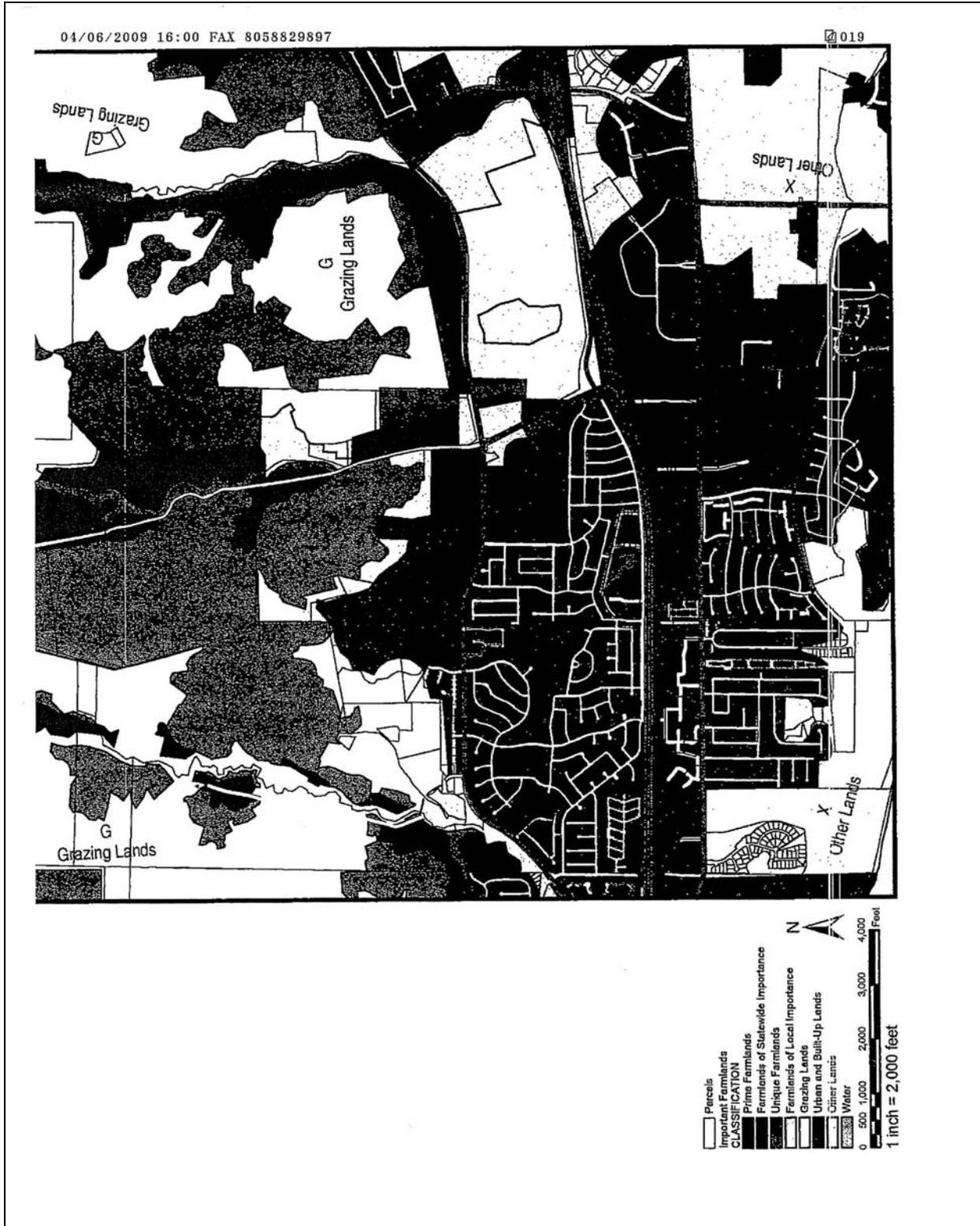
Alison K. Malkin, AICP  
for PRICE, POSTEL & PARMA LLP

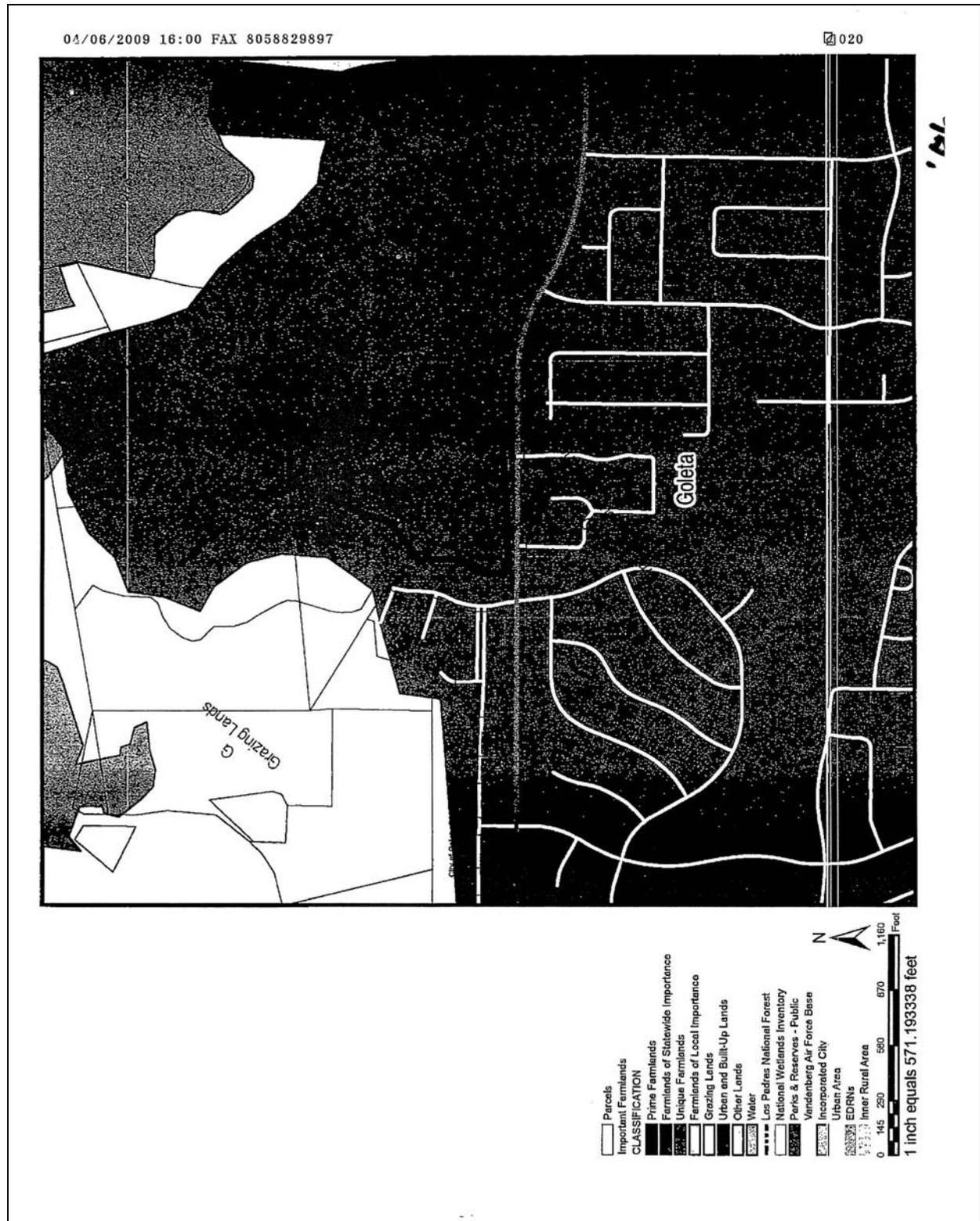
cc: Mr. C. E. Chip Wullbrandt  
Dr. Glynne Couvillion

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018

# EXHIBIT B





**Response to Comment No. B-8.1**

The commentator has expressed an opinion regarding their like or dislike of the project description, rather than the adequacy of the environmental analysis presented in this Supplemental EIR. Comment noted.

**Response to Comments Nos. B-8.2 through B-8.5, B-8.8, B-8.9, B-8.11, B-8.12**

See Response to Comment No. B-8.1.

**Response to Comment No. B-8.6**

The commentator correctly states that Figure 2.3 Land Use Plan Map and SEIR Figure 2.1 designated the “Shelby” property as Agriculture. Land Use Designation Modifications for the Shelby properties were not initiated as part of the Track 3 process and the comment does not relate to the adequacy of the environmental analysis presented in this Supplemental EIR. Comment noted.

**Response to Comment No. B-8.7**

The commentator states the opinion that Policy LU 7.3 should be revised. However LU 7.3 is not initiated for amendment under Track 3 and the comment does not relate to the adequacy of the environmental analysis presented in this Supplemental EIR. Comment noted.

**Response to Comment No. B-8.10**

The commentator states the City’s division of General Plan Amendments into five separate tracks appears to segment a “project,” which may be improper under CEQA, and ignores the cumulative effects of their sets of amendments.

Section 3.0.3 of Chapter 3 addresses CEQA requirements for Cumulative Impact analysis and outlines the City’s approach to evaluation of potential cumulative impacts. The five “tracks” established by the City are described in Section 1.1 of the Final SEIR, as follows:

In March 2007, the City Council initiated a process for reopening the GP/CLUP to consider the emergence of suggested amendments by City staff, the public-at-large, landowners, developers, and special interest groups. Those City-initiated amendments were subsequently grouped into five categories: *Track 1* for Housing Element revisions to respond to State Department of Housing and Community Development Department comments; *Track 2* for minor technical or editorial revisions presenting no new significant environmental impacts; *Track 3* for revisions meriting more detailed review as to their potential impacts; *Track 4* for project-sponsored amendments; and *Track 5* for Sphere of Influence.

Additional details are provided as follows:

- Track 1, Housing Element: The scope of revisions was unknown at the time of initiation of proposed amendments to other GP policies.
- Tracks 2 and 2.5 (Building Intensity Standards) CEQA Addendums: These revisions are, by definition, less than significant, even when viewed cumulatively. The correct form of CEQA documentation were the CEQA Addendums adopted in June 2008 and May 2009.

- Track 3 Supplemental EIR: These revisions merited additional environmental review to determine significance, and include a cumulative impacts evaluation as part of the analysis. The GP/CLUP policy revisions adopted via Tracks 2 and 2.5 are incorporated into Track 3, so that the cumulative analysis in the Final Supplemental EIR includes the adopted Track 2 and Track 2.5 revisions, by definition.
- Track 4 Policy Amendments: These proposed policy amendments were not initiated by the City Council as part of the General Plan Work Program, but are associated with applicant driven projects. Amendments for which the City Council elected to address were incorporated into the Track SEIR effort.
- Track 5: These revisions dealt with Future City Service Areas, for which no changes are currently proposed.

In sum, the five tracks do not represent segmentation of a project, but have served to effectively facilitate proper CEQA review associated with the proposed policy revisions.

Comment Letter B-9



April 6, 2009

Ms. Anne Wells  
Advance Planning Manager  
Planning and Environmental Services Department  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

RECEIVED

APR 06 2009

City of Goleta  
Planning & Environmental Svcs.

**RE: SEIR PUBLIC REVIEW COMMENTS GOLETA GENERAL PLAN TRACK 3  
AMENDMENTS**

Dear Ms. Wells,

B-9.1

SyWest Development has reviewed the SEIR for Goleta General Plan Track 3 Amendments and we are pleased to submit the following comment. Table 3.10-2 and Figure 3.10-3 both reference our property as a future park designation. OS 6-11 specifically states "A park in the southern portion of Old Town. A 4-5 acre active recreation community park, potentially including sports fields, located on or in the vicinity of the former drive-in theater in Old Town between the Santa Barbara Airport and SR-217." Attached is a copy of the letter sent by Hatch & Parent dated July 10, 2006 noticing the City of the unlawful Open Space Element map designation. We again reiterate our stance regarding the future park designation over our property and request the designation be removed.

We appreciate the opportunity to further clarify the SEIR Goleta General Plan Track 3 amendments. Please contact us should you have any questions or comments regarding our comments. Thank you in advance for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Bill Vierra", written over a horizontal line.

Bill Vierra  
President and COO of Development  
SyWest Development  
415.448.8321

150 Pelican Way, San Rafael, CA 94901

Comment Letter B-9  
Attachment

21 East Carrillo Street  
Santa Barbara, CA 93101  
Telephone: (805) 963-7000  
Fax: (805) 965-4333



Steven A. Amerikaner  
(805) 882-1407  
SAmerikaner@HatchParent.com

July 10, 2006

By Facsimile (805) 685-2635

Mayor Jonny Wallis and Members of the City Council  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

Re: 907 S. Kellogg Way (APN 071-190-035)

Dear Mayor Wallis and Members of the City Council:

This is a follow-up to our letter of June 26, 2006, submitted by Hatch & Parent on behalf of SyWest Development, the owner of the property at 907 S. Kellogg Way.

As you know, the property was formerly occupied by a drive-in movie theatre, and is now used principally for a swap meet on weekends. It consists of approximately 12 acres of land surrounded by industrial uses. The current zoning of the property is MS-GOL on approximately four acres (the northerly portion) and M-1 on eight acres (the southerly portion).

At its June 28 meeting, the Goleta City Council instructed staff to revise the proposed General Plan as follows: (i) The Land Use Map is to show the property designated as "I-S", which is an industrial use category, and (ii) the Park and Recreation Plan Map (part of the Open Space Element) is to show the property with a symbol that means the property is a "Future Park Site."

We have researched the legal issues related to the proposed designation on the Open Space Element map, and we believe it is unlawful for at least two reasons. First, the two designations are incompatible, thus creating an internal inconsistency in the General Plan in violation of Government Code section 65300.5. Second, if designating the site as a "Future Park Site" precludes the City from issuing a building permit for any other purpose (see Government Code section 65567), the property owner will be prevented from making any reasonable use of the property. As a result, the General Plan will have caused a taking of the property compensable under federal and state law.

Under the circumstances, if the City Council proceeds to implement its June 28 instruction to staff, the property owner will have no choice but to challenge the validity of the Goleta General Plan and to seek damages from the City for the claimed taking of property.

We urge the City Council to allow the property owner to use the property in accordance with its industrial zoning for the reasons stated in our June 26 letter. At the same time, if the City wishes to acquire the property for public park purposes, then we believe the law requires that the City secure an appraisal and commence negotiations with the owner over its fair market value. The path chosen by

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Mayor Jonny Wallis and Members of the City Council  
July 10, 2006  
Page 2

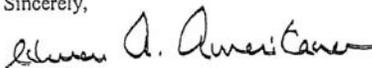
the City – using the General Plan to accomplish a taking of property -- will lead to litigation that will jeopardize the General Plan and open the City to a substantial damage award.

Finally, we have a question that remains unanswered. Under the existing M-1 zoning on 2/3 of our property, we are permitted to have a concrete mixing plant. And, we have been approached by the owner of a concrete mixing plant located elsewhere in the City to discuss relocating this facility to our property. Apparently, this contact was initiated at the suggestion of a member of the City Redevelopment agency.

Our question is simple: Will the "I-S" land use designation permit a concrete mixing plant on our property?

Thank you for considering these views and questions.

Sincerely,



Steven A. Amerikaner  
For HATCH & PARENT  
A Law Corporation

cc. Julie H. Biggs, City Attorney (by email)  
Brian Pierik, Assistant City Attorney (by email)  
Don Davis, Assistant City Attorney (by email)  
Ken Curtis, City Planner (by email)  
Bill Vierra, COO, SyWest Development (by email)  
Linda Lucas, Vice President, Asset Management, SyWest Development (by email)

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**Response to Comment No. B-9.1**

The commentator states their opposition to a future park site location to a specific property in Old Town Goleta. As stated in General Plan Subpolicy OS 6.11, the location of a park in the southern portion of old town is “located on, or in the vicinity of” the referenced property. The location is thereby general and does not commit the park to a specific location. To clarify, the SEIR and the FEIR do not reference future parks in Table 3.10-2 as suggested in Comment No. B-9.1. Table 3.10-4 (SEIR and FEIR) should be viewed for future park site locations. Furthermore, the City locates parks on non-City property only with the support of the land owner. If the land owner were not interested, the City would attempt to locate a park in the general vicinity where feasible.