

B-7

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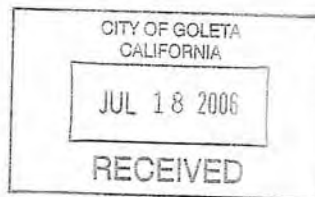
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RETIRED FOUNDERS  
WILLIAM A. BRACE  
J. JAMES HOLLISTER III

July 18, 2006

**HAND DELIVERED**

CITY OF GOLETA  
130 Cremona Drive, Suite B  
Goleta, CA 93117



Attn: Mr. Kenneth Curtis

**Re: Comments on Draft Environmental Impact Report for the City of Goleta's Draft General Plan / Coastal Land Use Plan**

Dear Mr. Curtis,

This office represents the Connor Property (APN 071-090-77) located at 170 South Kellogg Avenue. The subject property is approximately 3.13 acres and is currently zoned DR-10. We respectfully submit the following comments for Council's consideration.

Preliminarily, we understand that the purpose of the Draft Environmental Impact Report ("DEIR") is not to propose land uses, but only to analyze the environmental impacts of land uses as proposed in the City of Goleta's Draft General Plan / Coastal Land Use Plan ("DGP"). Thus, many of the deficiencies and concerns noted below regarding the DEIR originate with the DGP. Our office, along with Dudek, have already provided comments on the DGP, and in order to avoid unnecessary repetition, we have attached the three following comment letters for your review: Jonathon Leech's letter of April 17, 2006, Steven Kirby's letter of June 22, 2006, and Jonathan Leech's supplemental letter of June 23, 2006 (Exhibits A, B and C hereto, respectively).

B.7-1

It is our understanding that the City Council recently approved staff recommendations to revise the DGP to, among other things, "retain a designation, similar to the existing residential designation for the Sumida property, on Kellogg Avenue near the corner of Hollister Avenue and indicate it as a potential park site in the Open Space and Recreation Element." (See Goleta Joint City Council /Planning Agency

B.7-2

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Mr. Kenneth Curtis  
 July 18, 2006  
 Page 2

Adjourned Special Meeting Minutes, June 28, 2006.) We appreciate the City's willingness to take this positive step and look forward to gaining further clarification on the proposed land use matters applicable to the Connor Property. We provide the following comments on the DEIR which, as of this writing, is still based on the original version of the DGP, which does not reflect this change.

B.7-2

#### **Downzoning of Connor Property from DR-10 to Open Space**

The primary concern about the Connor Property is that the DGP designates it as "Open Space – Active Recreation," even though the property is currently zoned DR-10. If the City were to adopt zoning consistent with this designation, it would in our view constitute an unlawful downzoning of the property.

##### *A. Legal feasibility.*

Among the basic purposes of CEQA is to "[p]revent significant, avoidable damage to the environment by requiring changes in projects through the use of ... mitigation measures" that are "feasible." 14 Cal Code Regs (Guidelines) §15002(a)3. CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, *legal* [emphasis added], social, and technological factors. Guidelines §15364. While the City's proposed redesignation of the Connor Property is not identified as a mitigation measure per se, the redesignation serves the same functional purpose in that the proposed open space is intended to mitigate the negative impacts to recreational opportunities created by future (and past) development. DGP Table 2-4 (Allowable Uses and Standards for Other Land Uses Categories), makes it clear that the proposed OS-AR category would allow far fewer uses on the Connor Property than the current DR-10. However, the City cannot "mitigate" community-wide impacts by effectively taking private property for a public use — a neighborhood park in this case — without paying just compensation. (Please see attached Kirby letter for a more detailed legal analysis of the takings issue.) The City's unwillingness or inability to pay the requisite just compensation for the property would render the proposed new land use designation legally infeasible. The City also cannot use the redesignation for the purpose of reducing the property's value in anticipation of condemnation. Furthermore, should the redesignation be proven legally infeasible, the effect would ripple throughout many areas of the DEIR's environmental analysis. For example, the DEIR's current conclusions regarding recreation, land use, transportation, noise, and housing would need to be changed accordingly. The public should have an ample opportunity to review any such changes during the necessary recirculation of the DEIR.

B.7-3

Mr. Kenneth Curtis  
 July 18, 2006  
 Page 3

*B. The DEIR fails to adequately describe the proposed land use redesignation.*

CEQA requires that a project description be provided that is adequate to evaluate the environmental impacts of the proposed project. See Guidelines §15124. The DEIR, however, fails to inform the reader of the basic fact that the Connor Property is being "rezoned" from DR-10 to "Open Space / Active Recreation." In fact, neither the DGP nor the DEIR provide a general map showing the existing zoning for any properties in the City. Instead, the DEIR simply identifies the Connor Property as "vacant," and proceeds to use the same proposed "Open Space / Passive Recreation" designation as contained in the DGP (see DEIR Fig. 3.10-4). This prevents the reader from being able to fully understand the scope of proposed change in land use that would result from the DGP's redesignation.

B.7-4

The primary "notice" that Connor has of the City's plans for the property is DGP Table 3-1 (Existing and Planned Parks and Open Spaces), which identifies APN 071-090-036 as an "Expansion of Armitos Park" for the purpose of a "neighborhood park." In addition, DGP Fig. 3-2 (Park and Recreation Plan Map) shows the property as a planned future park. The DEIR, in Table 3.10-3 and Fig. 3.10-3 respectively, show the same information. But, as mentioned in more detail below, other than stating the City's intent to change the land use, the DEIR provides no meaningful analysis of the impacts (e.g., noise, traffic, water quality, etc.) of this land use change, nor does it identify or analyze any alternatives.

B.7-5

*C. The DEIR provides no feasibility or alternatives analysis of the proposed land use redesignation of the Connor Property.*

Even assuming, for the sake of argument, that the proposed redesignation would be legally valid, CEQA still requires the DEIR to analyze the relative impacts of the proposed land use change. However, the DEIR fails to provide any analysis of the relative impacts, for example to transportation, housing, water quality, noise, and recreation, between the existing and proposed zoning. Without such basic information, the public has no basis to know whether the proposed redesignation has an overall beneficial effect on the neighborhood and community compared to the existing permitted use.

B.7-6

Not only does the DEIR fail to provide a comparative analysis of the existing zoning to the proposed zoning, it does not even provide a substantive analysis of the proposed use's impacts on the surrounding neighborhood. The only place where the DEIR provides any "analysis" of the potential impacts of the new park is in a general analysis of the impacts from buildout of all recreational facilities proposed in the DGP.

Mr. Kenneth Curtis  
July 18, 2006  
Page 4

The DEIR identifies two such impacts: *Impact 3.10-2 Adverse Physical Effect on the Environment Due to Construction of Planned Recreational Facilities*, and *Impact 3.10-6 Loss of Privacy and/or Neighborhood Compatibility Due to Buildout of GP/CLUP Land Uses*. Both are stated as Class II impacts, but the DEIR analysis of the impacts is nothing more than broad and unsupported conclusions that there might be impacts. Other than noting the logical possibility for there to be impacts, the DEIR offers no meaningful analysis. More importantly, there is no analysis specifically addressing the Connor Property and its potential impacts to surrounding properties should it be converted to a neighborhood park.

B.7-6

Moreover, the DEIR fails to make any effort to distinguish the impacts from future parks located on sites already identified for recreational facilities, versus those to be located on new sites, such as the Connor Property. This distinction is particularly relevant in the context of neighborhood compatibility, because a proposed park site that is not currently zoned for recreational use would tend to have a greater potential of being incompatible with the existing neighborhood. Put another way, if Mr. Connor applied for a rezone of the same property, the City would no doubt require a comparison of the impacts of the existing and proposed uses and compatibility analysis. While the same level of detail is not necessary when a similar change is proposed through a draft general plan, the public still has a right to understand the respective environmental impacts, as well as the appropriate mitigation measures and alternatives.

Unfortunately, the DEIR merely states that there may be some neighborhood compatibility problems with any of the DGP's proposed parks and that the impacts will be mitigated to a less-than-significant-level. The DEIR's discussion is so general that an interested neighbor of the Connor Property would have little, if any, idea of what could be built and what might be the impacts of the project. For example, while a neighborhood park could include ball fields, tennis courts and cause noise, traffic, lighting and other impacts, the DEIR provides no discussion of any such impacts to surrounding properties or whether certain mitigation should be required and what alternatives may exist. While one may argue that such future impacts are too speculative to be substantively analyzed, the DEIR is full of examples where impacts are estimated based on reasonable assumptions of future development of various properties. For example, the entire alternatives analysis is based on estimating impacts from various undeveloped properties based on nothing more than land use designations. There is no reason that a similar type of analysis cannot be done for a proposed neighborhood park. Without such an analysis, the public merely knows that the property may be rezoned from DR-10 to a neighborhood park, and little else. This does not satisfy CEQA's requirements.

B.7-7

Mr. Kenneth Curtis  
July 18, 2006  
Page 5

*D. Conclusion.*

Apart from the serious legal issues surrounding the proposed land use redesignation from DR-10 to "Open Space / Active Recreation," the DEIR fails to properly compare the impacts of a proposed neighborhood park to the residential uses allowed under existing zoning. Further, no alternatives are presented. A park is a very different land use than a moderately dense housing development. The public should be given all the information necessary to evaluate the relative benefits. The DEIR provides no meaningful analysis, other than brief conclusory statements, of the impacts that a proposed neighborhood park would have on surrounding properties. Alternative sites are also not identified or analyzed in the DEIR. If the City is to propose such a drastic change in land use through its General Plan, then it should at least provide the public with a meaningful analysis of the impacts of that decision. The DEIR does not do this, and thus fails to meet the basic requirements of CEQA.

B.7-8

Thank you for the opportunity to comment.

Very truly yours,

HOLLISTER & BRACE

By Sylvia A. Tate for  
Steven Evans Kirby

SEK/sgt  
Attachments  
copy: Doug Connor  
Peter Umoff, Esq.  
Jonathan Leech

**DUDEK**

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April 17, 2006

Mr. Ken Curtis  
Planning Director  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

SUBMITTED VIA EMAIL & HAND DELIVERY

**Subject:** Proposed Goleta General Plan Land Use and Zoning Designations  
5580 Hollister Avenue & 170 South Kellogg Avenue, Goleta CA

Dear Mr. Curtis:

The landowner for the above-referenced parcels (DLC Enterprises, Douglas Connor – President) has retained Dudek to provide professional land use planning assistance regarding these real properties. At this moment, our most time-sensitive task is to provide input on the potential land use designations contemplated for the properties under the Draft Goleta General Plan. This letter is submitted on behalf of the landowner, at their specific request. The primary intention of this letter is to submit evidence and rationale against the establishment of the proposed Open Space land use designation over the entirety of the 170 South Kellogg Avenue property (071-090-77).

**Background**

DLC Enterprises acquired both subject properties in 2005 with an intent to eventually accommodate relocation of the existing Santa Barbara Nissan automobile dealership (presently also within the Goleta City boundaries at 425 South Kellogg Avenue). The Nissan Dealership could be accommodated on a portion of the combined site, but would require more space than is available within the 5580 Hollister Avenue property alone. DLC Enterprises originally purchased both of the properties to establish an opportunity for adjustment of the common boundary between the parcels, affecting a potential increase in the size of the area within the properties to be dedicated to commercial uses.

The current zoning designations on the parcels were established by the County of Santa Barbara, prior to the City of Goleta Incorporation. It is our understanding the City of Goleta adopted the County of Santa Barbara Zoning Ordinance and Zone Districts. The zoning on the subject parcels at the time of purchase by DLC Enterprises, and which will continue to exist

**EXHIBIT A**

Mr. Ken Curtis  
 City of Goleta  
 Comments on Proposed General Plan Land Use Designations  
 5580 Hollister Avenue & 170 South Kellogg Avenue  
 April 17, 2006  
 Page 2

until the General Plan Adoption and related zoning updates are accomplished, is presented in the table below. Please refer to the attached Zoning Map excerpt from the Goleta Community Plan that illustrates the zone district boundaries on the property.

Parcel Number	Size	Address	Zoning
071-090-77	3.13 Acres	170 South Kellogg	<b>DR-20</b>
071-090-78	1.42 Acres	5850 Hollister Avenue	<b>C-2</b>

The Goleta Community Plan encompasses the neighborhood containing the subject parcels. We are aware upon incorporation the City of Goleta did not adopt the Santa Barbara County land use designations, including those of the Goleta Community Plan. However, the land use designations for the parcels established by the County of Santa Barbara were consistent with the existing zoning designations (Multiple Family Residential and General Commercial, respectively). Drawing upon the existing zoning of the parcels, and California planning law that dictates land use designations and zoning designations for a given property be in accord, the appropriate land use designations under the Goleta General Plan would be those that allow residential and commercial uses within their respective current zone districts of the property.

In addition to the present DR-20 zoning designation for APN 071-090-77, the property has a documented permit history indicating development with multiple residences. At the current time there are no residences remaining on the parcel, but a demolition permit evidences the presence of a residence as recently as 1999 (Zoning Exemption 6/1/99). Development history therefore strengthens the validity and appropriateness of the current multiple-family zoning designation and the accompanying theoretical development potential of APN 071-090-77.

#### **Proposed General Plan Land Use Designations**

Dudek has reviewed the March 2006 Public Draft Goleta General Plan. According to *Figure 2-1, Land Use Plan Map*, the proposed land use designations for the property are presented in the table below. We compare these proposed General Plan land use designations to the historic land use designations for the property under the Goleta Community Plan.

Mr. Ken Curtis  
 City of Goleta  
 Comments on Proposed General Plan Land Use Designations  
 5580 Hollister Avenue & 170 South Kellogg Avenue  
 April 17, 2006  
 Page 3

Parcel Number	Address	Proposed Land Use Designation	Historic Land Use Designation
071-090-77	170 South Kellogg	<b>Open Space</b>	Multi-family Residential
071-090-78	5850 Hollister Avenue	Old Town Commercial	General Commercial

The proposed land use designation of Old Town Commercial for the 5850 Hollister Avenue property is consistent with the historic land use designation for the property from the Santa Barbara County Comprehensive Plan, and the subsequent Goleta Community Plan. The Old Town Commercial designation for 5850 Hollister Avenue is also in accord with the present zoning of C-2 and is reflective of the currently established land uses on the property (i.e., an automobile sales lot).

In sharp contrast, the proposed Open Space land use designation for 170 South Kellogg is **inconsistent** with the historic land use designation of Multi-family Residential established by the Santa Barbara County Comprehensive Plan and maintained under the subsequent Goleta Community Plan. The proposed Open Space designation would also be clearly incompatible with the existing DR-20 zoning on the property. Last, the proposed Open Space designation ignores the historic pattern of multi-family residential development of the parcel. We therefore conclude the proposed Goleta General Plan Open Space land use designation for 170 South Kellogg (APN 071-090-77) is inappropriate.

In our professional opinion, the establishment of a land use designation and any associated rezone that would result in a theoretical development potential of less than the current DR-20 zone district for APN 071-090-77 could represent a 'taking' for which the City of Goleta may need to provide adequate compensation to the current landowner. The currently proposed Open Space designation for APN 071-090-77 would undeniably reduce (eliminate) the theoretical development potential associated with the present DR-20 zoning on the property, resulting in a potential taking of the property unless adequate compensation is provided by the City. With this in mind, we believe there is an alternative General Plan land use designation



Mr. Ken Curtis  
 City of Goleta  
 Comments on Proposed General Plan Land Use Designations  
 5580 Hollister Avenue & 170 South Kellogg Avenue  
 April 17, 2006  
 Page 3

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Mr. Ken Curtis  
City of Goleta  
Comments on Proposed General Plan Land Use Designations  
5580 Hollister Avenue & 170 South Kellogg Avenue  
April 17, 2006  
Page 5

The recommended Old Town Commercial land use designation for these two related properties would achieve the following:

1. Preservation of the existing theoretical development potential for both parcels, thereby avoiding a potential 'taking' issue. The Old Town Commercial land use designation allows commercial and residential development; the maximum allowable residential density development under the Old Town Commercial land use designation is 20 units / acre. This residential development density exactly corresponds to the present DR 20 zoning for APN 071-090-77.
2. Maximum flexibility in site design that is not constrained by the current common parcel boundary / land use district boundary, but with the greatest potential to accommodate the environmental limitations of the properties.
3. Ability to create a mixed-use development with retail commercial (i.e., automobile dealership) and housing opportunities that encompasses appropriate development siting within the combined properties.
4. An opportunity for true integration of the land uses across the entire property rather than a hard and arbitrary division between commercial and residential uses.

The landowner and Dudek recognize there are existing environmentally sensitive habitat and riparian corridor overlays that affect portions of the subject parcels. We are also aware that portions of the properties are currently mapped to lie within the 100-year flood boundary. In 2002, when our client began initial discussions to acquire the property, Penfield & Smith Engineers completed a preliminary flooding and drainage evaluation for the properties that indicated large areas of both properties are in fact located outside the 100-year flood zone. Our client is also prepared to carry out detailed site-specific biological assessments to refine the boundary for sensitive biological resources before site planning begins in earnest. However, we are confident the extent of biological resources and flooding limits will not justify the application of an Open Space land use designation for the entirety of APN 071-090-77.

While we have not yet had the opportunity to develop a site plan for the combined properties, we do strongly believe the recommended single land use designation of Old Town Commercial across both properties would enable a creative site design and foster neighborhood input regarding future significant community opportunities within the site. The landowner himself is concerned about housing inventory in Goleta for his own employees; integrating a housing

Mr. Ken Curtis  
City of Goleta  
Comments on Proposed General Plan Land Use Designations  
5580 Hollister Avenue & 170 South Kellogg Avenue  
April 17, 2006  
Page 6

component with the commercial elements of the site has a very real potential for localized job and housing balance, and increases the long-term viability of the existing dealership operation. And while we do not feel it is appropriate to designate APN 071-090-77 as Open Space, the existing overlays would continue to function for protection of resources or avoidance of hazards; they also represent opportunities from the stand point of potential location of a trail element from Hollister Avenue to the proposed City Park area to the northeast of the subject parcels.

Closing Remarks

In closing I would like to reiterate the proposed General Plan land use designation of Open Space for APN 071-090-77 is inappropriate with respect to the current DR-20 zoning on the property and is in conflict with the established residential development of the property.

On behalf of the landowner, we would like to request the proposed Old Town Commercial land use designation now proposed for 5580 Hollister Avenue (071-090-78) be extended to encompass as well 170 South Kellogg Avenue (071-090-77). The Old Town Commercial land use designation would avoid a potential "down-zoning" of the property and also maximize design flexibility for these two related parcels.

Thank you for your consideration in this matter. Should you have any questions regarding this letter, or wish to speak with me to discuss our recommendation, I hope that you will not hesitate to contact me. I can be reached at (805) 963-0651, ext. 27 or via email at [jleech@dudek.com](mailto:jleech@dudek.com).

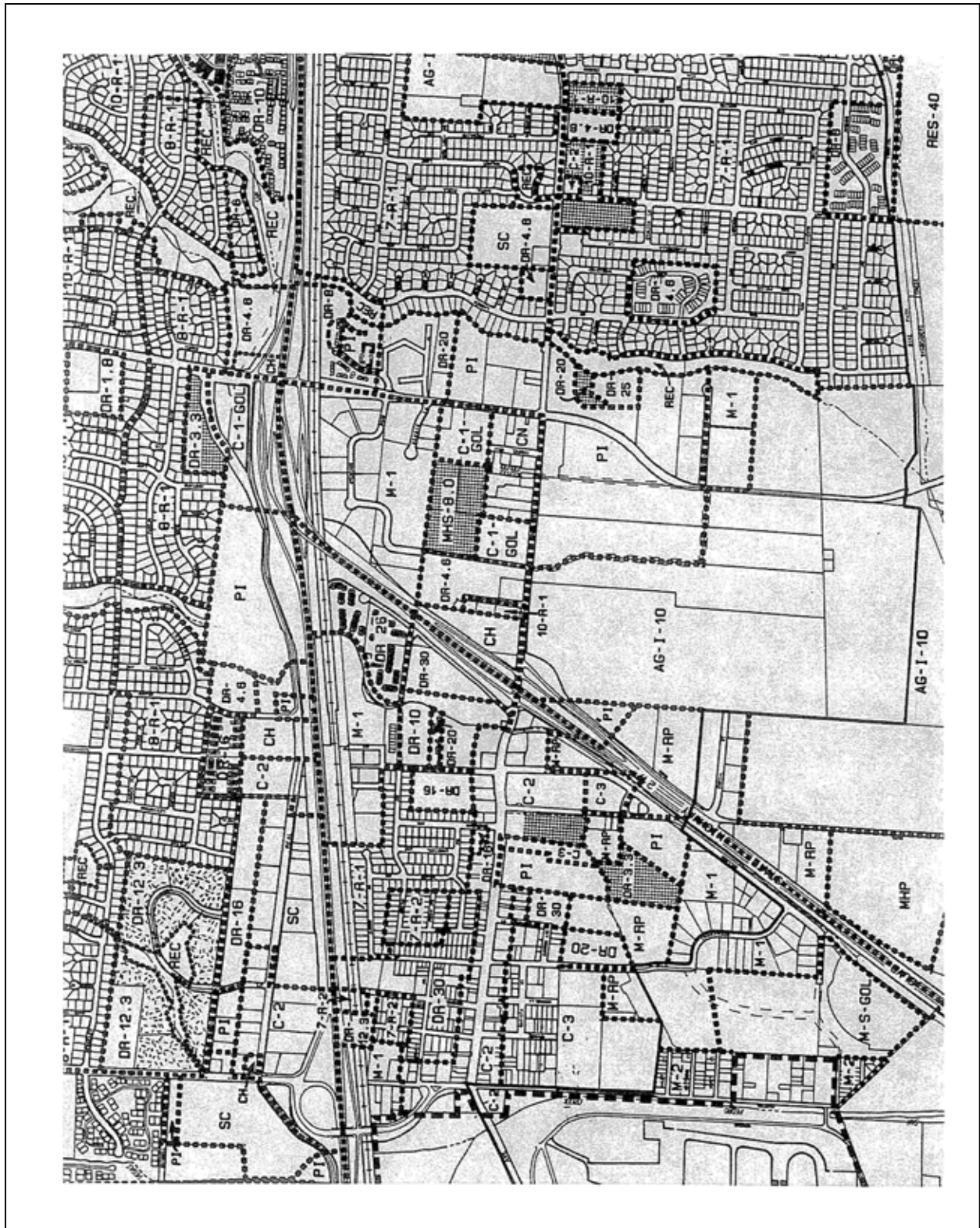
Sincerely,



Jonathan V. Leech, AICP  
Environmental Planner V

Cc: Doug Connor

Attachment: Excerpt of Zoning Map



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June 22, 2006

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**HAND DELIVERED**

CITY OF GOLETA  
130 Cremona Drive, Suite B  
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Attn: Mr. Kenneth Curtis

**Re: 170 South Kellogg Avenue, Goleta, CA**  
**Proposed Goleta General Plan Land Use and Zoning Designations**

Dear Mr. Curtis:

This office represents DLC Enterprises, owner of the subject property at 170 South Kellogg Avenue (A/P 071-090-77). The purpose of this letter is to express our client's deep concern about the City's proposed "Open Space" land use designation for this property under the Draft Goleta General Plan.

The City's proposed General Plan would establish an "Open Space" land use designation for the subject property with intention of creating a public park on the site. The proposed "Open Space" land use designation would be inconsistent with the historic residential use of the parcel and the current DR-10 (Design Multi-Family Residential) zoning of the property. Our client's land use consultant, Jonathan V. Leech of the Dudek firm, comprehensively addressed this matter from a planning perspective in his April 17, 2006 letter to you. Among other things, Mr. Leech recommended a General Plan land use designation consistent with the adjoining property to south which is also owned by our client. The adjoining property (5580 Hollister Avenue) is presently zoned C-2 (General Commercial). The City's proposed land use designation for this parcel is "Old Town Commercial". The landowner's consultant recommended the same land use designation for the subject property.

On or about April 24, 2006, Mr. Leech was advised by City Council members and staff that they were at the time unwilling to consider changing the proposed land use

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**EXHIBIT B**

Mr. Kenneth Curtis  
CITY OF GOLETA  
June 22, 2006  
Page 2

designation so as to allow the owner any beneficial use of the property. The purpose of this letter is to respectfully urge the City to reconsider its position and change the proposed land use designation for this property to one that would allow a beneficial use consistent with the predominant surrounding uses.

#### Facts

DLC Enterprises purchased the 170 South Kellogg Avenue property, together with the adjoining parcel to the south at 5580 Hollister Avenue, from Hilton Sumida on November 21, 2005. DLC paid a substantial price for these properties. The subject property consists of 3.13 acres. It was for many years occupied by multiple residential structures. It has historically been zoned DR-10 (Design Multi-Family Residential) and was so zoned by the County of Santa Barbara when the City of Goleta incorporated in 2002.

Several years ago, the existing residences on the property were removed in order to prepare the site for other productive uses consistent with the existing or other appropriate zoning. In removing the residences, the property owner in no way intended to abandon his vested right to use the property for multi-family residential use or other beneficial economic use. Our client thereafter purchased the property with the reasonable expectation of continuing to use the property for multi-family residential or commercial use consistent with uses permitted on the surrounding lands.

As currently proposed, the Draft General Plan would designate the property as "Open Space". If the General Plan is adopted with this designation, the property will then necessarily have to be "down-zoned" to a consistent zoning designation. Cal. Government Code § 65860(a) (zoning ordinance must be consistent with general plan). For the reasons explained below, we believe that this would be a serious mistake.

#### Legal Analysis

In our view, imposition of a land use limitation of Open Space would be an invalid exercise of the City's land use regulatory authority and would constitute a taking of the property for which the City would be required to compensate the landowner.

1. **The Proposed Land Use Designation Would Be Unreasonable, Arbitrary and Discriminatory.**

The City's exercise of its police power to regulate land use is limited by constitutional and common law principles. For example, a zoning regulation is unreasonable and invalid as applied to a particular property where the regulation

Mr. Kenneth Curtis  
CITY OF GOLETA  
June 22, 2006  
Page 3

attempts to exclude and prohibit existing and established uses that are not nuisances. *Jones v. City of Los Angeles* (1930) 211 Cal. 304; *Wilkins v. San Bernardino* (1946) 29 Cal.2d 332, 340. Where the land use regulation restricts use of a parcel so as to give its owner fewer rights than those afforded surrounding property owners, thereby creating a restricted "island" in the middle of a larger area devoted to other uses, the land use regulation may also be declared invalid. Thus, where the regulation creates an isolated area of restricted use surrounded by residential and commercial uses, the regulation may constitute invalid "spot zoning." *Reynolds v. Barrett* (1938) 12 Cal.2d 244; *Paramount Rock Company v. County of San Diego* (1960) 180 Cal.App. 2d 217, 225-226 (zoning ordinance invalid and unreasonable where small parcel restricted and given less rights than surrounding property). See also *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 243 (a land use regulation may not arbitrarily impose greater restrictions on some landowners than on others similarly situated).

Land use regulations will also be held invalid where they are oppressive or confiscatory. Thus, where property is downzoned so that all or substantially all beneficial use of the property is precluded by the regulation as a prelude to condemnation of the property for public use, the regulation is invalid. *Griffen v. County of Marin* (1958) 157 Cal.App.2d 507, 510 (where downzoning as a prelude to condemnation was found to be pretextual, discriminatory, confiscatory and unconstitutional); *Agins v. Tiburon* (1979) 24 Cal.3d 266, 273, aff'd, 447 U.S. 225 (1980) (the courts will not sanction the excessive regulation of private land for the benefit of the public without compensation).

These principles would in our view lead to the ultimate invalidation of the proposed "Open Space" land use designation for the subject property. The Open Space land use designation would effectively prohibit the historic vested use of the property for multi-family residential purposes without any showing (or even the allegation) that such a use constitutes a nuisance. Properties to the north, west and south of the subject parcel carry residential or commercial land use designations. With the exception of the creek channel, properties to the east are also designated for residential use under the proposed land use element. An "Open Space" land use designation for the subject property would therefore constitute an invalid exercise of the police power as an illegal act of "spot zoning" and confiscatory regulation.

2. **The Proposed Land Use Regulation Would Also Constitute a Regulatory Taking.**

The Fifth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, and Art. I, Section 19 of the California Constitution guarantee that private property shall not be taken for public use without the

Mr. Kenneth Curtis  
CITY OF GOLETA  
June 22, 2006  
Page 4

payment of just compensation to the owner. *First Lutheran Church v. Los Angeles County* (1988) 482 U.S. 304, 316. Where a land use regulation "goes too far", such compensation is required. A regulation goes too far when: a) it is arbitrary or unreasonable; or b) it imposes upon the landowner such unreasonable economic loss as to amount to a *de facto* appropriation of the property. *Twain Harte Associates, LTD v. County of Tuolumne* (1990) 217 Cal.App.3d 71, 83 (where "light commercial" zoned property was downzoned to "open space").

As explained above, the unreasonableness or arbitrariness of a land use regulation can be shown where the property is "spot zoned" or downzoned so as to allow virtually no beneficial use as a prelude to condemnation. See also, *G&D Holland Construction Company v. City of Marysville* (1970) 12 Cal.App.3d 989, 994. Moreover, where the land use regulation effects such economic deprivation on the property owner so as to constitute a denial of all or substantially all beneficial use of the property, just compensation is required. *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 774 ("a regulation . . . may effect a taking though it does not involve a physical invasion and leaves the property owner some economically beneficial use of his property." Emphasis in original). See also, *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015; and *Hansen Bros. Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 551, 553 ("However, if the [land use regulation] effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid." Citation omitted.) Similarly, "[w]here a regulation places limitations on land that fall short of eliminating all economic beneficial use, a taking nonetheless may have occurred depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. [Citation]". *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 616.

Our client purchased the subject property for a substantial sum based upon the reasonable expectation that the property could continue to be used at least as it had in the past, i.e. for multi-family residential or other productive commercial use. This situation clearly constitutes a "reasonable investment-back expectation" within the meaning of federal and state regulatory takings jurisprudence.

If, as has been stated publicly, the City of Goleta intends for the subject property to become a public park, there is no question but that just compensation will have to be paid to our client. In the meantime, the City accomplishes nothing useful by establishing a land use designation of "Open Space" in direct conflict with the existing zoning designation of multi-family residential (DR-10), especially if the unspoken intent



Mr. Kenneth Curtis  
CITY OF GOLETA  
June 22, 2006  
Page 5

is to artificially depress the value of the property in the hope of acquiring it less expensively through condemnation. As explained above, any such confiscatory land use regulation would be invalid in any event. If, on the other hand, the City does not intend to acquire the property, but instead to create open space for the benefit of the general public, then such a land use regulation would constitute a taking of the property for which just compensation would still have to be paid. Similar economic consequences would befall the City in either event.

Unless the City is prepared to proceed openly and initiate condemnation proceedings to take the property now in exchange for payment of just compensation, the City should reconsider its proposed land use designation for the property. The consultant's recommendation that the property be designated "Old Town Commercial" would be compatible with immediately adjacent properties southward of the subject parcel, and would not expose the City to such substantial liabilities. At a minimum, the City should consider adopting a residential land use designation which allows multiple family residences (i.e., medium density or planned residential) in order to avoid an inconsistency with the current DR-10 zoning and the valuable development potential of the property.

Thank you for this opportunity to comment.

Very truly yours,

HOLLISTER & BRACE

By   
Steven Evans Kirby

SEK/sgt  
copies: Doug Conner  
Jonathan V. Leech, AICP  
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**DUDEK**

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June 23, 2006

Mr. Ken Curtis  
Planning Director  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

SUBMITTED VIA EMAIL & HAND DELIVERY

**Subject:** Addition Comments Regarding Proposed Draft Goleta General Plan Land Use Designations for 5580 Hollister Avenue & 170 South Kellogg Avenue, Goleta CA

Dear Mr. Curtis:

On April 17, 2006 our office submitted to the City of Goleta an extensive comment letter presenting rationale against the establishment of a proposed Open Space land use designation over the entirety of our client's property at 170 South Kellogg Avenue (071-090-77). The purpose of this letter is to highlight additional land use planning considerations which were carried out with respect to the subject parcels under the Old Town Goleta Revitalization Plan (Adopted 1998). Said planning activity by the County of Santa Barbara further supports the landowner expectations of intensified urban development of APN 071-090-77.

We are aware the City of Goleta chose not to adopt the Goleta Community Plan upon City incorporation. However, the Goleta Old Town Revitalization Plan was adopted by the County in June 1998; to our knowledge, the City of Goleta has been following many of the recommendations from the Goleta Old Town Revitalization Plan.

The parcel commonly known as 170 South Kellogg Avenue (APN 071-090-77) is in fact specifically called out as "Key Site #3" in the adopted Goleta Old Town Revitalization Plan. The pre-ambule to the identification of proposed policy language for Key Site #3 provides the following analysis and intent regarding this parcel (*Final Revitalization Plan, June 1998, Page 106, Excerpt Attached*).

The undeveloped property west of San Jose Creek is the preferred site for a hotel which could serve as an initial catalyst for Old Town Redevelopment. The Plan proposes that this portion of the site (APN 71-090-77, 78) be considered for a rezone to C-2 to facilitate development of a hotel if the owner constructs a public parking lot.

**EXHIBIT C**

Mr. Ken Curtis  
Comments on Proposed General Plan Land Use Designations  
5580 Hollister Avenue & 170 South Kellogg Avenue  
June 23, 2006  
Page 2

The Revitalization Plan recognized a deficit of public parking spaces in this neighborhood, and therefore proposed the rezone to C-2 to include a condition of an on-site public parking lot. The salient point remains that 071-090-77 was recommended for a rezone to C-2, with a minimal exaction that public parking spaces be included to benefit the surrounding community. The Revitalization Plan presents the following Policy for the subject parcels.

Policy KS3-2: The County shall work with the owner of APNs 71-090-77 & -78 to discuss and possibly negotiate a rezone and/or a development agreement for increased development of the site beyond what is currently allowed if the owner is willing to construct and lease to the County a public parking lot with at least 25 spaces for a minimum of five years with an option to renew by the County.

With respect to Open Space zoning, the Revitalization Plan recommended that portions of San Jose Creek on the adjacent parcel to the east be placed under open space zoning, NOT the subject parcels. The parcel to the east is almost entirely enveloped in either the 100-year floodplain or the riparian habitat overlay for San Jose Creek, and therefore the Open Space designation was determined to be appropriate for that parcel. Even so, the County recognized they could not simply downzone the adjacent parcel. The following adopted Action from the Revitalization Plan addresses the proposed Open Space rezone of the adjacent parcel.

Action KS3-1: If requested by the property owner of APN 71-090-36, the County should facilitate the transfer of development credits from the site to either APN 71-090-77 or some other appropriate site within the Goleta Valley in exchange for the dedication of the entire site for a public park.

The County correctly concluded that some form of compensation was necessary in exchange for the down-zoning. Also, clearly the subject parcel was identified as an appropriate receiver site for transferred development rights, again strengthening the conclusion that the subject property was planned and envisioned to support urban development. In fact, the referenced Policy and Action contained within the Revitalization Plan establish an expectation that development potential would be greater than the existing zoning of DR-10 for the parcel.

The County of Santa Barbara subsequently went forward to include in the Goleta Growth Management Ordinance a specific exemption for a hotel to be located on the subject parcel, *based upon the adopted Revitalization Plan recommendations*. The current version of the adopted City of Goleta Growth Management Ordinance continues to include the specific exemption, as presented below (excerpt attached).

Mr. Ken Curtis  
Comments on Proposed General Plan Land Use Designations  
5580 Hollister Avenue & 170 South Kellogg Avenue  
June 23, 2006  
Page 3

Section 6, Exempt Projects and Procedures for Exempt Projects

6.1.e. **Goleta Old Town Key Site 3 (Sumida)** – a hotel development project up to a maximum of 150 rooms.

**Closing Remarks**

In closing I would like to reiterate the proposed Draft General Plan land use designation of Open Space for APN 071-090-77 is inappropriate. The adopted Goleta Old Town Revitalization Plan recommends a re-zone to C-2, as long as parking for the public is included; the City of Goleta's own Growth Management Ordinance contains a specific exemption for the property to allow up to 150 hotel rooms to be developed on the parcel without any allocation under the GGMO; the resource constraints maps from the Revitalization Plan clearly demonstrate there is developable area on the subject parcel; the site has been identified as a receiver for development rights transfer.

The Open Space designation recommended under the Revitalization Plan is for the adjacent parcel to the east (071-090-36); the City should follow the Revitalization Plan recommendations and not extend an Open Space land use designation to the subject parcel.

On behalf of the landowner, we would like to again request a land use designation for 170 South Kellogg Avenue (071-090-77) that preserves the existing potential for urban development and beneficial use of the property. Either an Old Town Commercial land use designation or Medium Density Residential land use designation would be consistent with the present DR-10 zoning of the parcel, and avoid a potential "down-zoning" of the property. Thank you for your consideration in this matter.

Sincerely,



Jonathan V. Leech, AICP  
Environmental Planner V

Cc: Doug Connor  
Steve Kirby

Attachments: Excerpt of Goleta Old Town Revitalization Plan  
Excerpt of the City of Goleta's Growth Management Ordinance

— FINAL —  
Goleta Old Town  
Revitalization Plan



— June 1998 —

Prepared by County of Santa Barbara • Planning & Development • Comprehensive Planning Division  
123 East Anapamu Street • Santa Barbara, CA 93101 • (805) 568-2000

## GOLETA OLD TOWN REVITALIZATION PLAN

### Key Site #3 Hollister/Kellogg

This 14 acre site is located at the northeast corner of the Hollister/Kellogg intersection. Land use designations for the site include Residential (Res.) 10 units/acre and 20 units/acre, General Commercial, and Proposed Public or Private Recreation Facility Overlay. Zoning designations include Design Residential 10 and 20 units/acre, and Retail Commercial (C-2). Existing development includes a 1,875 s.f. auto repair shop, a used car dealership and 24 residential units. Approximately 9.0 acres are currently undeveloped or underdeveloped. Surrounding uses consist of high density (20.0 units/acre) two-story condominiums/apartments to the west, light and heavy industrial uses to the north, Hollister Avenue and retail commercial to the south, and high density (30.0 units/acre) two-story condominiums/apartments to the east.

The heavily vegetated riparian corridor of San Jose Creek, a designated environmentally sensitive habitat (ESH) area, extends 900 feet north-to-south across the site (Figure 26). Approximately 75% of the site is constrained by the *floodway* and 100-year floodplain of San Jose Creek. The floodway extends over all but two of the site's undeveloped nine acres and severely restricts developable area east and west of the creek. In 1995, San Jose Creek overflowed its banks and flooded significant portions of the site. Approximately 80% of the parcel east of the creek is constrained by floodway. Flood control improvements are being pursued which would greatly increase developable area.

Prominently located at the eastern entry of Old Town, development on this site will be visible from Hollister Avenue, SR 217, the proposed bikeway, onsite ESH and existing residences to the north, east, and west. Increased traffic and vehicles turning into and out of driveways on Hollister Avenue could increase friction and encumber traffic. Commercial truck traffic has the potential to increase traffic and related noise for surrounding residents and safety concerns arise when these commercial vehicles use residential streets north of Hollister.

Parking in the area is also constrained and new development needs to ensure that commercial parking demand will not compete with residences for onstreet parking. The large portion of the site constrained by the floodway potentially presents an opportunity to provide new public parking to help address Old Town's severe deficit.

The undeveloped property west of San Jose Creek is a preferred site for a hotel which could serve as an initial catalyst for Old Town Redevelopment. The Plan proposes that this portion of the site (APN 71-090-77, 78) be considered for a rezone to C-2 to facilitate development of a hotel if the owner constructs a public parking lot.

The parcel east of the creek has an existing Public Park Overlay and a proposed Class I Bikeway/Multi-use trail is located west of the Creek. If flood control improvements are successful, the 4 acre site east of the creek could provide an opportunity for high density housing (up to 60 units) and 1-2 acres of park/open space. The Plan allows for consideration of an increase in zoning on the eastern parcel if 1.5-2 acres are dedicated to the County for a public

## GOLETA OLD TOWN REVITALIZATION PLAN

park to offset additional high density housing in this area. If flood control improvements are infeasible, a park may be the only compatible use for this area.

The Plan retains the existing land use and zoning designations for the site (including the Park Overlay in the area east of the creek) and encourages development in areas located outside of the floodway. The southern portion of the site lies within the boundaries of the Heritage District.

The following Development Standards apply to new development within Key Site #3.

**Policy KS3-1:** The County shall consider redesignating/rezoning APN 71-090-36 to Res. 15/DR-15 if 1.5 acres of the parcel have been dedicated to the County or other County-approved group or agency for a public park.

**Policy KS3-2:** The County shall work with the owner of APNs 71-090-77 & -78 to discuss and possibly negotiate a rezone and/or a development agreement for increased development of the site beyond what is currently allowed if the owner is willing to construct and lease to the County a public parking lot with at least 25 spaces for a minimum of five years with an option to renew by the County.

**Action KS3-1:** If requested by the property owner of APN 71-090-36, the County should facilitate the transfer of development credits from this site to either APN 71-090-77 or some other appropriate site within the Goleta Valley in exchange for the dedication of the entire site for a public park.

**DevStd KS3-2:** New development of parcels adjacent to San Jose Creek shall maintain a minimum setback of 50 feet from the top of bank or edge of riparian vegetation, whichever is further. These parcels shall include habitat restoration along the creek consisting of appropriate native trees, shrubs and understory which shall be maintained by the developer for a period of 3 years or until established whichever is earlier.

**DevStd KS3-3:** If fill is required to raise foundations above the floodplain, appropriate native landscaping shall be used where feasible.

**DevStd KS3-4:** In order to provide visual and biological continuity within the entire site, the native vegetation used to restore the creek bank shall be incorporated into the site landscape plan as appropriate.

**DevStd KS3-5:** If appropriate nexus findings can be made, to help mitigate impacts to adjoining residential areas, new development shall contribute to funding of off-site traffic calming features on Kellogg Avenue, such as speed humps, diagonal diverters, and curb extensions.

**DevStd KS3-6:** No new access points/driveways shall be constructed off Hollister Avenue, unless this would preclude reasonable use of a parcel.

## GOLETA OLD TOWN REVITALIZATION PLAN

**DevStd KS3-7** The Development Plan for APNs 71-090-77 & 78 shall include a public parking lot with signs visible from Hollister Avenue. For this public lot, parking hours may be limited to preclude storage of cars or residential overflow.

**DevStd KS3-8:** If appropriate nexus findings can be made, all new development along the west bank of San Jose Creek shall be required to dedicate an easement to the County and construct the Class I San Jose Creek Bikeway. The bikeway shall be integrated with the site's internal circulation plan and shall connect with the proposed bikeway network for Goleta Old Town. This paved access shall be sufficient to support the weight of SBCFCD maintenance vehicles and/or emergency vehicles. The easement shall be set back from the top of the creek bank to minimize habitat impacts but located to allow continued reasonable use of the property. Exact setback will be determined at the time the easement is sited. Siting and design of the bikeway shall minimize the removal of trees and significant native vegetation.

**DevStd KS3-9:** If appropriate nexus findings can be made, development on this site shall be reviewed for streetscape design along Hollister Avenue, including pedestrian access and landscaping on Hollister frontages and a center median on Hollister Avenue. The median shall be constructed and landscaped by the developer with street trees, shrubs and groundcover acceptable to County Public Works and P&D. Trees shall be of sufficient height at maturity and spacing to provide a partial canopy over Hollister Avenue without blocking business signs, and all street and median landscaping shall be maintained by the developer for a minimum of 3 years. The owner/developer shall maintain the median plantings for a period of up to 3 years, or in accordance with DevStd VIS-OT-3.4 or until such a time as a funding district is established.

**DevStd KS3-10:** The design, scale, and character of the project architecture, landscaping, and signage shall be compatible with vicinity development and shall be consistent with architectural design standards set forth in the heritage district section of the aesthetics and design section of the plan.

**DevStd KS3-11:** A landscape and screening plan shall be submitted for each parcel and shall include project screening from residential development, Kellogg Avenue, Dearborn Place, Open Space, and trail areas. The landscaping shall consist of drought-tolerant trees and shrubs with sufficient density to provide a landscape buffer. Where feasible, existing trees shall be retained for their screening and visual character. To the extent feasible solid fencing or a continuous landscape wall shall be avoided. Where walls must be installed they shall be screened with native drought-tolerant plants. Where appropriate, this buffer should be integrated with the creek restoration program above. Trees shall be selected on the basis of screening capabilities and compatibility with adjacent riparian vegetation. To the greatest degree feasible, this plan shall be coordinated between the parcels so as to provide unified landscape and screening across the whole site. This landscaping shall be incorporated into the final landscaping plans for future proposals on the site.



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## GOLETA OLD TOWN REVITALIZATION PLAN

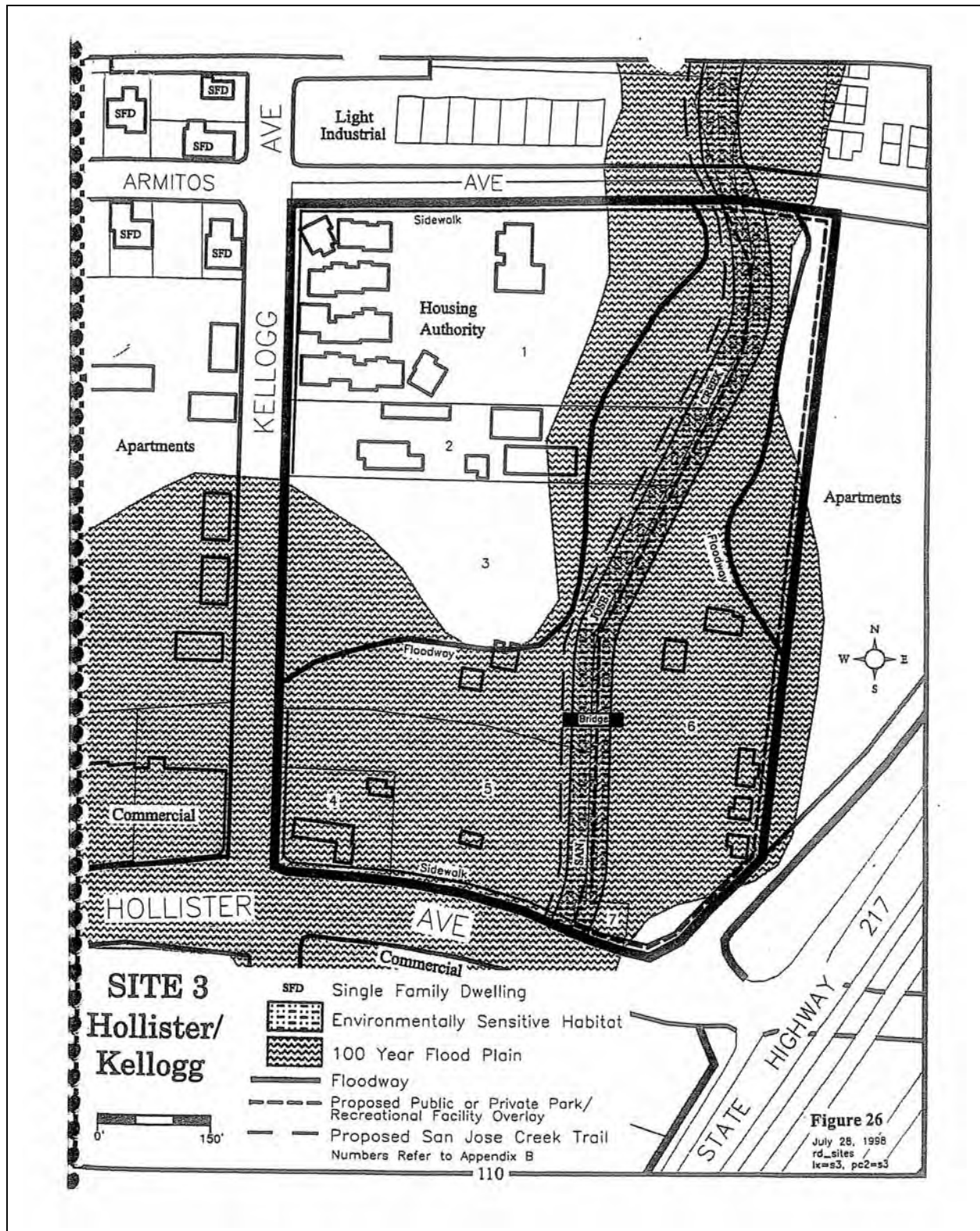
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**Program KS3-12:** The Public Works Department shall investigate an on-street parking control program which may include no parking zones, limited time parking, and/or a parking permit system to minimize on-street parking conflicts with adjoining neighborhoods.

**DevStd KS3-13:** To minimize turning movement conflicts on Hollister Avenue, the developer of APNs 71-090-63 & 78 shall install a right-in, right-out only turning pocket along the Hollister frontage, as determined necessary by Public Works.

**DevStd KS3-14:** If a public park is dedicated and if appropriate nexus findings can be made, a public pedestrian bridge over San Jose Creek connecting APN 71-090-77 to APN 71-090-36 shall be constructed as part of any development on either of these sites. The first development shall construct the footbridge and the County shall establish a reimbursement agreement to allow the costs of this bridge to be shared between the two property owners, and possibly the County, on a pro-rata basis. Timing and design of this bridge must be approved by County Flood Control.

**DevStd KS3-15:** If appropriate nexus findings can be made, new development on APN 71-090-77 shall be required to dedicate a public easement connecting Kellogg Avenue to the pedestrian bridge over San Jose Creek. The exact location will be determined at the time the easement is sited.



## 5.2 Calculation of Base Allocation.

The Base Allocation in any year shall be calculated as the following product: The number of building permits issued for new residential units in the preceding year multiplied times 400 square feet per residential unit equals the Base Allocation. The Base Allocation shall be measured as gross floor area.

## 5.3 Carryover.

Any portion of the Total Annual Allocation from the preceding year that is unassigned to new development projects may be carried over to the current year and added to the Base Allocation for the current year, subject to the limitation that the Total Annual Allocation for the subject year shall not exceed 80,000 square feet of floor area.

## SECTION 6. Exempt Projects and Procedures for Exempt Projects

### 6.1 Exempt Projects.

The following projects are exempt from the requirement to obtain a growth management allocation pursuant to this ordinance:

- a. **Public Utilities.** Physical facilities for the transmission of electricity and gas and for the provision or transmission of water, sewage collection, treatment, and reclamation, except that associated office uses are not exempt.
- b. **Goleta Old Town Key Site 10** (Fairview Corporate Center) - up to 77,500 net new square feet of floor area. This exemption is subject to the terms of a Development Agreement that provides for dedication of the full right of way width for a segment of the future Eckwill Street along and parallel to the southerly property line.
- c. **Goleta Old Town Key Site 7a** (Rosenstein) - up to 68,000 square feet of floor area. This exemption is subject to a condition that the applicable property owner(s) execute an Irrevocable Offer to Dedicate the necessary right-of-way for extension of Fowler and Eckwill Streets.
- d. **Goleta Old Town Key Site 4** (Old Town Hotel Project) – up to a 105-room hotel with a maximum of 60,000 square feet, subject to a condition that the project include general retail space adjacent to Hollister Avenue.
- e. **Goleta Old Town Key Site 3** (Sumida) – a hotel development project up to a maximum of 150 rooms.
- f. **Goleta Old Town Key Site 6** (Page) – a development project consisting of a hotel, conference center, and related commercial development up to 221,500 square feet, including no more than 250 hotel rooms. This exemption is subject to a condition that the property owner(s) execute an Irrevocable Offer to Dedicate the necessary right of way for extension of Eckwill Street.

The exemptions set forth in items c. through f. shall expire and be of no further force or effect two years following the effective date of this ordinance, unless the applicable property owner(s) requests a one-year extension in writing prior to the expiration date and approval of the request is granted by the Goleta City Council.

**Response to Comment No. B.7-1**

The commentator states the opinion that deficiencies regarding the DEIR originate with the GP/CLUP. Specific details regarding alleged deficiencies were not identified in this particular comment. This comment is noted.

**Response to Comment No. B.7-2**

The commentator expresses appreciation for the land use designation for the Sumida/Connor property in Kellogg Avenue near the corner of Hollister Avenue. This is a comment on the GP/CLUP and does not pertain to the EIR.

**Response to Comment No. B.7-3**

The commentator requests the Connor property (APN 071-090-077) to not be rezoned from DR-10 to “Open Space – Active Recreation” without just compensation. The EIR has been revised to reflect the City’s approved revisions to the GP/CLUP and GP/CLUP Land Use Map, which involves changing the land use designation for the Connor Property (APN 071-090-77) from “Open Space – Active Recreation” to “Planned Residential – 10 units per acre” to correspond to the existing zoning of the property. Refer to response to comment No. B.4-11 for a summary of changes to the project description and what changes trigger the need for recirculation of an EIR.

**Response to Comment No. B.7-4**

The commenter expresses concern regarding the open space designation of the Connor property and requests that the GP/CLUP and DEIR include a zoning map. The commenter also expresses concern regarding the “vacant” land use description for the property. The FEIR is revised to reflect the City Council/Planning Agency direction to change the land use designations for the Connor Property (APN 071-090-77) from “Open Space – Active Recreation” to “Planned Residential – 10 units per acre” consistent with existing zoning of the property and consistent with the commentator’s request. Staff notes that the vacant land use description is used to define the existing site conditions and does not serve as the basis for land use designation. A new zoning code will be prepared upon adoption of the GP/CLUP and that the land use plan map in the GP/CLUP will be used as the basis for the new code.

**Response to Comment No. B.7-5**

The commentator requests further analysis of the impacts or alternatives associated with the Connor property (APN 071-090-077) being rezoned from DR-10 to “Open Space – Active Recreation.” See response to comments B.7-3 and B.7-4.

**Response to Comment No. B.7-6**

See response to comments B.7-3 and B.7-4.

**Response to Comment No. B.7-7**

The commentator requests further analysis of the impacts or mitigation measures with the Connor property (APN 071-090-077) being rezoned from DR-10 to “Open Space – Active Recreation.” See response to comments B.7-3 and B.7-4. The analysis and level of detail

presented to evaluate the potential environmental impacts to land uses identified in the EIR are consistent with the level of detail for a programmatic EIR for a General Plan policy document. The setting, impacts, and mitigation discussions presented in the EIR are all, by definition, program level.

**Response to Comment No. B.7-8**

See response to comments B.7-3 and B.7-7.