



Agenda Item B.1
PUBLIC HEARING
Meeting Date: July 22, 2024

TO: Planning Commission Chair and Members

FROM: Lisa Prasse, Current Planning Manager
Kathy Allen, Supervising Senior Planner

SUBJECT: Proposed Third Amendment to Development Agreement for SyWest Development/Goleta Gardens LLC, 907 South Kellogg Avenue, APN 071-190-035; Case No. 24-0001-ORD

RECOMMENDATION:

It is recommended that the Planning Commission:

1. Open a public hearing to take verbal and written testimony; and
2. After considering the evidence presented during the public hearing, adopt Planning Commission Resolution No. 24-___, entitled "A Resolution of the Planning Commission of the City of Goleta, California, Recommending to the City Council approval of a Third Amendment to the Goleta Gardens LLC Development Agreement to Provide that the Term of the Development Agreement Must Not Extend Beyond the Date the Coastal Commission Certifies the City's Local Coastal Program or December 31, 2025, Whichever Occurs First; 907 S Kellogg Avenue; Case No 24-0001-ORD and Finding the Third Amendment to the Development Agreement to be Exempt from the California Environmental Quality Act." (Attachment 1)

PROPERTY OWNER/APPLICANT

SyWest Development/Goleta Gardens, LLC
c/o Robert Atkinson
50 Pelican Way
San Rafael, CA 94901

APPLICANT'S REQUEST/PROJECT DESCRIPTION

The subject property (APN 071-190-035) is an 11.71-acre parcel located at the south terminus of Kellogg Avenue at 907 S Kellogg Avenue, within the Coastal Zone. The Westwind Drive-In Theater is located on the site but is no longer in operation. The property is zoned Service Industrial (I-S) and the land use designation is Service Industrial (I-S).

The applicant, SyWest Development on behalf of the Property Owner Goleta Gardens LLC, proposes a third amendment to an existing Development Agreement (DA) that grants a license to the City to use a private access road to the San Jose Creek Channel in exchange for an extension of the deadline to use the City's former zoning ordinance (Article 35 Coastal Zoning Ordinance) to December 31, 2025, for review of the applicant's pending development proposal (Case No 17-121-DP-DRB).

The first amendment to the DA implemented a condition from the California Coastal Commission providing that the term of the DA must not extend beyond the date the Coastal Commission certifies the City's Local Coastal Program, if that occurs prior to December 31, 2023. The first amendment was approved by the City Council on September 6, 2022. The second amendment to the DA changed the term of the DA to the date the Coastal Commission certifies the City's Local Coastal Program or December 31, 2024, whichever occurs first. The second amendment was approved by the City Council on September 19, 2023.

The proposed third amendment would extend the term of DA to December 31, 2025, or the certification date of the City's Local Coastal Program, whichever occurs first. The applicant requests the third amendment to allow time to complete the preparation of the project Environmental Impact Report (EIR) and conduct the associated public hearings before the Planning Commission and possibly the City Council. Staff had anticipated that the EIR would be completed in early 2024. Several unexpected complications arose which warranted additional analysis and the EIR is now anticipated to be released for public review in October 2024. To allow adequate review time of the EIR and subsequent public hearings, the applicant is requesting the third amendment to the DA to December 31, 2025.

Coastal Commission staff confirmed that the Coastal Development Permit issued for the DA would not need to be amended to extend the term of the DA.

BACKGROUND

Project History

The applicant, SyWest Development, applied for a DA to grant a license to the City of Goleta to use a private access road to the San Jose Creek Channel along a part of the subject site in exchange for an extension of the deadline to use the City's former zoning ordinance (Article 35 Coastal Zoning Ordinance) for the applicant's pending development proposal (Case No 17-121-DP-DRB) from December 31, 2021 to December 31, 2023 (per Goleta Municipal Code Section 17.01.040.E.4). On May 18, 2021, the City Council adopted Ordinance No. 21-04, approving the DA in concept pending Coastal Commission action.

As the site is located in the Coastal Zone and the City does not have a certified Local Coastal Program, the applicant applied for review and approval of the DA from the California Coastal Commission following Council's action on May 18, 2021. The Coastal

Commission approved the DA on April 6, 2022, with the condition as described above. As noted above, the DA has been amended twice.

Development Agreements

DA's are a device that allows a project applicant to pursue a development with vested rights in exchange for the provision of public benefits to the local entity granting those vested rights. California Government Code Section 65864 authorizes the adoption of DA's to recognize the lack of certainty for development projects and that reliance on existing rules and regulations can reduce the burden of that uncertainty. Government Code Section 65865 provides standards for agencies to process DA's.

Goleta Municipal Code (MC) Section 17.65 provides the process and findings for the City to review a DA, consistent with the Government Code sections referenced above. If approved, a DA creates a contract between the City and developer that identifies, for a specified time period, the rules, regulations, and policies that are applicable to a particular development. Such agreements must provide a public benefit to the City in accordance with findings (Section 17.65.040.C). An amendment to an approved DA is processed under the same codes as those of the original DA.

The proposed Third Amendment must demonstrate that it is consistent with the City's General Plan, will be compatible with uses authorized in the Municipal Code, will provide substantial public benefit, will be non-detrimental to the public health, safety and general welfare of surrounding neighborhoods, and complies with the California Environmental Quality Act.

JURISDICTION

Per Goleta Zoning Ordinance Chapter 17.65, the City Council is the Review Authority on DA's, following a recommendation by Resolution from the Planning Commission. The City Council's action on a DA Amendment request is adopted by Ordinance.

The underlying project, Case No. 17-121-DP-DRB-CDP (in concept), is currently under review and an EIR is being prepared to analyze the potential environmental impacts resulting from the proposed project to construct a new warehouse building. Upon completion and circulation of the EIR, the project will require review by the Design Review Board and Planning Commission at a minimum. City Council review would only occur if there are significant unavoidable environmental impacts identified in the EIR and/or on appeal. Given the site's location within the Coastal Zone, a Coastal Development Permit would also need to be approved by the California Coastal Commission.

DISCUSSION

Proposed Third Amendment to the Development Agreement

Exhibit A to the Planning Commission Resolution (Attachment 1) provides the proposed Third Amendment to the DA for Goleta Gardens, LLC. As stated above, the purpose of this Third Amendment is to extend the term of the DA until December 31, 2025, or the

adoption date of the City's Local Coastal Program, whichever occurs first. The term extension would allow for processing of the underlying project to be completed, including environmental review, and entitlement hearings to be held.

The Draft EIR of the underlying project is under preparation and is anticipated to be released for the 45-day public review in October 2024. Once the public comment period is closed, then work on the Final EIR, including preparing responses to comment and preparing the necessary documents for action by the Planning Commission and potentially the City Council, will commence. The public hearing(s) would not occur and/or be completed before the end of 2024, hence the request for the term extension. Given the status and anticipated timing to complete the City's review process, the extension seems reasonable.

The findings that must be made for the proposed Third Amendment are summarized below, per Goleta Municipal Code Section 17.65.040.C, and are included in the Resolution provided as Attachment 1.

The Third Amendment is consistent with the General Plan policies and zoning ordinance as it does not propose allowing any development different from what is permitted in the Service Industrial (I-S) General Plan-designated land use areas. The current zoning is also Service Industrial (I-S), while prior to the adoption of Title 17 (Zoning Code) in April 2020, the site was zoned Light Industry (M-1) and Service Industrial-Goleta (M-S-GOL). The Third Amendment would provide substantial public benefits by allowing the City of Goleta and other local agencies to access and maintain the lower San Jose Creek Channel as stated in Planning Commission staff report dated March 29, 2021 (report can be accessed at this link: <https://goleta.legistar.com/LegislationDetail.aspx?ID=4889953&GUID=9A645B0B-2E8C-4206-ABBD-65D52B47D4A4>).

The Third Amendment does not pose public health, safety and general welfare concerns to the surrounding neighborhood or residents near the project site in that it only authorizes additional time to review the proposed development application using the previous zoning standards and process.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000 et seq.), the regulations promulgated thereunder (14 Cal. Code of Regulations §§ 15000 et seq.), and the City's Environmental Review Guidelines, the project is exempt from CEQA and a Notice of Exemption is proposed. The City of Goleta is acting as the Lead Agency for this project. The Third Amendment complies with the provisions for implementation of CEQA and can be found exempt per CEQA Guidelines 15061(b)(3) and 15060(c)(2). The Third Amendment to the DA does not involve physical development of the property at issue, nor does it approve the underlying 2017 project, which is undergoing its own process under CEQA and will be subject to the full entitlement process under the City's zoning regulations.

A draft Notice of Exemption has been prepared and is provided as Exhibit B of Attachment 1.

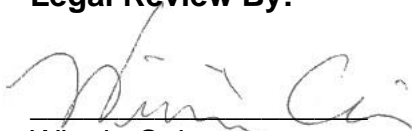
CONCLUSION

The Third Amendment to the DA does not change or modify any existing policy or use of the property or influence the City's discretion to entitle the underlying project. The Third Amendment to the DA would only extend the term of the DA to December 31, 2025, or the adoption date of the City's Local Coastal Plan, whichever occurs first. As described in detail in the attached Resolution, the findings can be made to support the approval of the Third Amendment to the DA. For these reasons, staff recommends that the Planning Commission recommend adoption of the Third Amendment to the DA to the City Council.

NOTICING

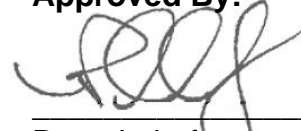
On July 11, 2024, notice of this hearing was published in the Santa Barbara Independent and written notices were mailed to property owners and tenants within 500 feet of the subject property, as well as to the California Coastal Commission. A posted notice was also placed on the property frontage on July 2, 2024.

Legal Review By:



Winnie Cai
Assistant City Attorney

Approved By:



Peter Imhof
Director of Planning and
Environmental Review

ATTACHMENTS:

1. Planning Commission Resolution No. 24-___ entitled "A Resolution of the Planning Commission of the City of Goleta, California, Recommending to the City Council approval of a Third Amendment to the Goleta Gardens LLC Development Agreement to Provide that the Term of the Development Agreement Must Not Extend Beyond the Date the Coastal Commission Certifies the City's Local Coastal Program or December 31, 2025, Whichever Occurs First; 907 S Kellogg Avenue; Case No 24-0001-ORD."

Exhibit A Third amendment to Development Agreement by and between the City of Goleta and SyWest Development/Goleta Gardens, LLC

Exhibit B Notice of Exemption

2. Executed Second Amendment to the Development Agreement By and Between City of Goleta and SyWest Development/Goleta Gardens, LLC and Non-Exclusive Revocable License Agreement
3. Staff Presentation

ATTACHMENT 1
Resolution No. 24-

RESOLUTION 24-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GOLETA, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF A THIRD AMENDMENT TO THE GOLETA GARDENS LLC DEVELOPMENT AGREEMENT TO PROVIDE THAT THE TERM OF THE DEVELOPMENT AGREEMENT MUST NOT EXTEND BEYOND THE DATE THE COASTAL COMMISSION CERTIFIES THE CITY'S LOCAL COASTAL PROGRAM OR DECEMBER 31, 2025, WHICHEVER OCCURS FIRST; 907 S. KELLOGG AVENUE; CASE NO. 24-0001-ORD AND FINDING THE THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT TO BE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS Goleta Gardens is the owner of a 11.71-acre parcel of real property designated as APN 071-191-035-00 and located at 907 S. Kellogg Avenue in the City of Goleta, California.

WHEREAS, on May 18, 2021, the City Council approved a Development Agreement with Goleta Gardens LLC (the "Development Agreement" or "DA") to grant the City a license to use a private access road to the San Jose Creek Channel in exchange for the City's extension of the deadline to use the City's former zoning ordinance (Article 35 Coastal Zoning Ordinance) to December 31, 2023, for review of the applicant's pending development proposal at 907 S. Kellogg Avenue (Case No 17-121-DP-DRB); and

WHEREAS the California Coastal Commission approved the Development Agreement with a condition that the term of the Development Agreement, currently set to expire on December 31, 2023, must not extend beyond the date the Coastal Commission certifies the City's Local Coastal Program. Subsequently, the applicant submitted an application to amend the Development Agreement to implement the Coastal Commission's condition ("First Amendment").

WHEREAS, on July 25, 2022, the Planning Commission recommended that the City Council approve the First Amendment to the Development Agreement to set the term of the DA to December 31, 2023, or the adoption date of the City's Local Coastal Program, whichever occurred earlier.

WHEREAS, on September 6, 2022, the City Council adopted the First Amendment to the Development Agreement to set the term of the DA to December 31,

2023, or the adoption date of the City's Local Coastal Program, whichever occurred earlier.

WHEREAS, on April 3, 2023, the applicant requested a Second Amendment to the Development Agreement to set the term of the DA to December 31, 2024, or the adoption date of the City's Local Coastal Program, whichever occurred earlier;

WHEREAS, on July 24, 2023, the Planning Commission recommended that the City Council approve the Second Amendment to the Development Agreement to set the term of the DA to December 31, 2024, or the adoption date of the City's Local Coastal Program, whichever occurred earlier.

WHEREAS, on September 19, 2023, the City Council adopted the Second Amendment to the Development Agreement to set the term of the DA to December 31, 2024, or the adoption date of the City's Local Coastal Program, whichever occurred earlier.

WHEREAS, on March 26, 2024, the applicant submitted an application to request an additional one-year extension to the term of the Development Agreement that the term of the Development Agreement be set to expire on December 31, 2025, or the adoption date of the City's Local Coastal Program, whichever occurs earlier ("Third Amendment") to allow the applicant to complete CEQA review and hearing process.

WHEREAS Government Code Sections 65684 et seq. recognize an efficiency for development projects to rely on existing policies, rules and regulations, while also recognizing that development agreements can facilitate the provision of public facilities as part of new development; and

WHEREAS Government Code Sections 65865 et seq. authorize local agencies to enter into Development Agreements with persons having legal or equitable development interests in real property located within that jurisdiction and provide guidance for adoption of development agreements by local agencies; and

WHEREAS Chapter 17.65 of the Goleta Municipal Code establishes the process and findings for Development Agreements proposed within the City of Goleta; and

WHEREAS, on July 2, 2024, notice of the July 22, 2024, Planning Commission meeting public hearing on the Third Amendment was posted on the site by the applicant (a minimum of 15 days prior to the Planning Commission meeting); and

WHEREAS, on July 11, 2024, notice of the public hearing on the Third Amendment was published in the Santa Barbara Independent and notices were mailed to owners and occupants within 500 feet of the project site; and

WHEREAS, on July 22, 2024, the Planning Commission conducted a noticed

public hearing on the Third Amendment, at which time all interested persons were given an opportunity to be heard;

NOW, THEREFORE, BE IT RESOVED BY THE PLANNING COMMISSION TO RECOMMEND TO THE CITY COUNCIL OF THE CITY OF GOLETA, AS FOLLOWS:

SECTION 1: Environmental Assessment for the Third Amendment. The Planning Commission makes the following environmental findings:

- A. The Third Amendment was analyzed for its potential environmental impacts and is exempt pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.; “CEQA”) and CEQA Guidelines (14 Cal. Code Regs. Sections 15000 et seq.). Specifically, the project is statutorily exempt from environmental review pursuant to the following CEQA Guidelines: no possibility of significant effect [Section 15061 (b)(3)]; the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment [Section 15060(c)(2)].
- B. There is substantial evidence in the record showing that the Exemption is appropriate for the Third Amendment.
- C. A Notice of Exemption is attached as **Exhibit B** to this Resolution and was prepared in full compliance with CEQA.

SECTION 2: Development Agreement Findings. The Planning Commission recommends that the City Council make the following findings pursuant to Goleta Municipal Code Section 17.65.040(C):

- A. The Third Amendment is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable Specific Plan.

The Development Agreement facilitates the ability of the City of Goleta and other local agencies to access and maintain the lower San Jose Creek Channel, a major flood control channel and public works project called out to be completed in the City’s General Plan, consistent with the City of Goleta General Plan, Conservation Element policies 1.10, 2.5, and 2.6. The Third Amendment would change the date of the termination clause to either be at the time the Local Coastal Program is certified by the California Coastal Commission or December 31, 2025, whichever occurs first. This clarification on timing does not change the Development Agreement’s consistency with the goals, objectives, and policies of the General Plan. Instead, it allows for time to complete the preparation of the applicant’s pending project Environmental Impact Report (EIR) and conduct the associated public hearings.

- B. The Third Amendment is or will be compatible with the uses authorized in this Title, the district, and any applicable Specific Plan in which the property is located.

The Third Amendment does not affect the uses allowed or conditionally allowed as provided for in the applicable Service Industrial (I-S) land use designations. Further, the purpose of the Third Amendment is to clarify the duration of the term of the Development Agreement to terminate either on the date the California Coastal Commission certifies the City of Goleta’s Local Coastal Program or December 31, 2025, whichever occurs first.

- C. The Third Amendment will provide substantial public benefits.

The Third Amendment to the DA does not change the previously identified public benefits as adopted in Ordinance 21-04, which is incorporated herein by reference. The DA grants a license agreement by Goleta Gardens LLC to allow the City and County Flood Control District to access the San Jose Creek Channel. The City and Flood Control District would be able maintain the creek channel and provide flood protection to the surrounding properties and area. As stated, the purpose of the Third Amendment is to clarify that the term of the Development Agreement either terminates on the date the California Coastal Commission certifies the City of Goleta’ Local Coastal Program or December 31, 2025, whichever occurs first.

- D. The Third Amendment will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood, and to property and improvements in the neighborhood.

The Third Amendment does not pose public health, safety and general welfare concerns to the surrounding neighborhood or residents near the project site in that it only authorizes the time for the review of the proposed development application using the previous zoning standards and process. As stated above, the Third Amendment has the effect of protecting the public health, safety and general welfare of persons in the neighborhood because it allows the City and County Flood Control District the right to access the San Jose Creek Channel to maintain it and provide flood protection.

- E. The Third Amendment complies with the provisions for the implementation of the California Environmental Quality Act.

The Third Amendment complies with the provisions for implementation of the California Environmental Quality Act (CEQA) and can be found exempt per CEQA Guidelines 15061(b)(3). The Third Amendment does not involve physical development of the property at issue nor does it approve the underlying development project, which is undergoing its own process under CEQA and will be subject to the full entitlement process under the City’s zoning regulations

SECTION 3: Recommendation. The Planning Commission recommends that the City

Council take the following actions:

- A. Adopt the Third Amendment by and between the City of Goleta and Goleta Gardens LLC for the property located at 907 S. Kellogg provided as **Exhibit A** to this Resolution based on the findings provided in Sections 1-2 above.
- B. Direct staff to file the Notice of Exemption (NOE) Exhibit B within five (5) business days after Council action.

SECTION 4: Reliance on Record. Each and every one of the findings and determinations in this Resolution is based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the second Amendment to the DA. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 5: Limitations. The Planning Commission's analysis and evaluation of the second Amendment to the DA is based on the best information currently available. It is inevitable that, in evaluating a project, absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the Development Agreement Third Amendment and Project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions.

SECTION 6: Summaries of Information. All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 7: This Resolution will remain effective until superseded by a subsequent Resolution.

SECTION 8: The City Clerk is directed to mail a copy of this Resolution to Goleta Gardens LLC and to any other person requesting a copy.

SECTION 9: This Resolution will become effective immediately upon adoption.

SECTION 10: The City Clerk will certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2024.

KATIE MAYNARD, CHAIR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

WINNIE CAI
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, DEBORAH S. LOPEZ, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Resolution No. 24-__ was duly adopted by the Planning Commission of the City of Goleta at a regular meeting held on the _____ day of _____, 2024 by the following vote of the Planning Commission:

AYES:

NOES:

ABSENT:

(SEAL)

DEBORAH S. LOPEZ
CITY CLERK

Exhibit A: Third Amendment to Adopted Development Agreement
Exhibit B: Notice of Exemption

ATTACHMENT 1, EXHIBIT A

Third Amendment to Development Agreement

By and Between

City of Goleta and Goleta Gardens, LLC

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF GOLETA
AND
GOLETA GARDENS LLC

THIS THIRD AMENDMENT (“Third Amendment”) by and between the CITY OF GOLETA, a municipal corporation (the “City”), and GOLETA GARDENS LLC, a California limited liability corporation (“Goleta Gardens” or “Owner”) (together “Parties”) to the DEVELOPMENT AGREEMENT between the Parties which was approved by the City Council on May 18, 2021 (“Original Development Agreement”) and amended by the City Council on September 6, 2022 (“First Amendment”) and September 19, 2023 (“Second Amendment”).

RECITALS

- A. Goleta Gardens is the owner of a 11.71-acre parcel of real property designated as APN 071-190-035 and located at 907 S. Kellogg Avenue in the City of Goleta, California (“Property”). A legal description of the Property is attached hereto as **Exhibit A**.
- B. The City Council approved the Original Development Agreement on May 18, 2021, that among other things set the term of the Development Agreement to December 31, 2023.
- C. The City Council approved the First Amendment to the Original Development Agreement on September 6, 2022, to incorporate a condition that the California Coastal Commission imposed in its approval of the Original Development Agreement that the term not exceed the adoption date of the City’s Local Coastal Program. The First Amendment set the term of the Development Agreement to December 31, 2023, or the adoption date of the City’s Local Coastal Plan, whichever occurred earlier.
- D. The City Council approved the Second Amendment to the Original Development Agreement on September 19, 2023. The Second Amendment set the term of the Development Agreement to December 31, 2024, or the adoption date of the City’s Local Coastal Plan, whichever occurred earlier.
- E. Owner has been diligently processing its underlying project under a different permit application and will not be able to get the case to hearing with the City by December 31, 2024, and the City’s Local Coastal Program has not been approved yet.
- F. If the City’s hearing and decision on the case is made without a certified Local Coastal Plan, the case will be forwarded to the Coastal Commission for issuance of a Coastal Development Permit. Neither the City nor the Owner have control over the Coastal Commission’s processing timeline or decision. It is therefore

foreseeable that even if the City takes action on the case prior to December 31, 2025, the Coastal Commission may not complete their review prior to that date. Moreover, the Coastal Commission's action may modify the project and therefore require the City to hear the case once again to acknowledge new or revised project components or conditions.

- G. In consideration of the uncertainty for timing and result of the Coastal Commission's process, the Third Amendment seeks to revise the Term to extend beyond December 31, 2025, with no further action by Council for the limited purpose of allowing the Coastal Commission's process to occur and allowing the City to apply the Development Agreement terms to any project revisions that may require City approval after the Coastal Commission's permitting process.
- H. Goleta Gardens now seek a one-year extension to the term of the Development Agreement so that the term of the Development Agreement is set to expire as to Goleta Gardens' current application on December 31, 2025, or the adoption date of the City's Local Coastal Program, whichever occurs earlier; however the terms of this Development Agreement shall apply after December 31, 2025 to allow Goleta Gardens to return to the City of Goleta to modify their project approval after the Coastal Commission process to conform the project to the Coastal Commission approval ("Third Amendment").
- I. The terms and conditions of this Third Amendment have been found by the City to be fair, just, and reasonable.
- J. The public health, safety, and welfare of the citizens of the city will be served by entering into this Third Amendment by virtue of the Owner's commitment to license the City's and SBFCD's use of the Creek Access Road during the term of the Development Agreement and a conditional commitment to convey an easement to the City and SBFCD.
- K. This Third Amendment will bind future City Councils to the terms and obligations specified in this Amendment and limit, to the degree specified in this Amendment, the future exercise of the City's ability to regulate development on the Property.
- L. This Third Amendment will serve to implement the policies, objectives, and standards of the elements of the City of Goleta General Plan and is consistent with the General Plan.
- M. This Third Amendment and the consent of Owner and City to each of its terms and conditions will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the public interest.
- N. On July 2, 2024, the site was posted for the July 22, 2024, Planning Commission meeting by the applicant (a minimum of 15 day prior to the Planning Commission meeting);
- O. On July 11, 2024, notice of the public hearing was published in the Santa Barbara

Independent and notices were mailed to owners and occupants within 500 feet of the project site; and

- P. On [date] 2024, the Planning Commission conducted a duly noticed public meeting on the Goleta Gardens LLC Development Agreement, at which time all interested persons were given an opportunity to be heard; and
- Q. On [date] 2024, the Planning Commission considered the entire administrative record, including the staff report, the Draft Third Amendment to the Original Development Agreement and oral and written testimony from interested persons and on a ____ vote, recommended/did not recommend adoption to the City Council.
- R. On [date] 2024, the City Council conducted a duly noticed public meeting on the Goleta Gardens, LLC Development Agreement, at which time all interested persons were given an opportunity to be heard and considered the entire administrative record, including the staff report, the Draft Third Amendment to the Original Development Agreement and oral and written testimony from interested persons.

THIRD AMENDMENT TO ORIGINAL DEVELOPMENT AGREEMENT

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Amendment, except as otherwise expressly provided or unless the context otherwise requires:

- a) “Original Development Agreement” means this Development Agreement by and between the City and Owner, approved by City Council on May 18, 2021.
- b) “Approval Date” means the date on which the Approval Ordinance for the Third Amendment is adopted by the City Council.
- c) “Approval Ordinance” means Ordinance No. _____, adopted by the City Council of the City on [date] 2024, approving this Third Amendment.
- d) “CEQA” means the California Environmental Quality Act, Section 21000, et seq., of the California Public Resources Code.
- e) “City” means the City of Goleta, California.
- f) “City Council” means the City Council of the City of Goleta.
- g) “Code” means the Municipal Code of the City of Goleta.
- h) “Commencement Date” means that date which is 30 days following the Approval Date, provided, however, (i) if the Approval Ordinance is made the subject of a referendum, the Commencement Date shall be the date when the referendum proceedings have been concluded by any process which results in the Approval Ordinance, and (ii) if litigation challenging the validity of the Original Development Agreement (with the Amendment) and/or environmental review pursuant to CEQA should be brought after the Approval Date, the Commencement Date shall be the date such litigation is concluded in a manner that permits the commencement or continuation of the parties’ rights and obligations under the Original Development Agreement.
- i) “Development Agreement Act” means Section 65864 et seq., of the California Government Code.
- j) “First Amendment” means the Development Agreement as amended by ordinance approved by City Council on September 6, 2022.
- k) “Second Amendment” means the Development Agreement as amended by ordinance approved by City Council on September 19, 2023.
- l) “Owner” means Goleta Gardens LLC, a California limited liability corporation and

each of its respective successors and assigns to all or any portion of the Property during such time as such portion is subject to the Original Development Agreement. Goleta Gardens represents that it is the legal owner of the entire Property as of the date of adoption of the Approval Ordinance.

- m) "Term" means the term of the Original Development Agreement, as amended in this Amendment.
- n) "Zoning Ordinance" means the comprehensive Zoning Ordinance of the City, found in Title 17 of the Code of the City of Goleta as it exists on the Approval Date.

SECTION 2. THIRD AMENDMENT TO ORIGINAL DEVELOPMENT AGREEMENT

(1) Section 7.01 of the Original Development Agreement shall be amended to read in its entirety: "Term. This Agreement shall terminate on December 31, 2025 or the date that a coastal land use plan for the City is effectively certified by the Coastal Commission (whichever is sooner), except the Agreement extends beyond December 31, 2025 for the limited purpose of applying to project revisions that may require City approval after the Coastal Commission's CDP permitting process. Additionally, the Term can be extended if (i) it has been extended by written instrument executed by the Parties, or (ii) the "Commencement Date" has been delayed as a result of referendum proceedings or litigation as set forth in Section 1(h)."

IN WITNESS WHEREOF, the parties have each executed this Amendment on the date first written above.

(signatures on next page)

CITY OF GOLETA

GOLETA GARDENS, LLC
A Limited Liability Corporation

By:

Robert Nisbet, City Manager

By: _____
William Vierra, Senior Vice President

ATTEST

By: _____

Deborah Lopez, City Clerk

APPROVED AS TO FORM:

By: _____

Megan Garibaldi City Attorney

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

Legal Description FOR APN/Parcel ID(s): 071-190-035

Parcel "B" of Parcel Map No. 11950, in the City of Goleta, County of Santa Barbara, State of California, in Book 13, Page 58 of Parcel Maps, in the Office of The County Recorder of said County

ATTACHMENT 1 EXHIBIT B
Draft Notice of Exemption

NOTICE OF EXEMPTION (NOE)

To: Office of Planning and Research
P.O. Box 3044, 1400 Tenth St. Rm. 212
Sacramento, CA 95812-3044

Clerk of the Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, Room 407
Santa Barbara, CA 93101

From: City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117



Subject: Filing of Notice of Exemption

Project Title:

Goleta Gardens LLC Development Agreement Amendment
Case No. 24-0001-ORD

Project Applicant:

Goleta Gardens LLC

Project Location (Address and APN):

907 S. Kellogg Avenue
Goleta, CA 93117
County of Santa Barbara
APN 071-190-035

Description of Nature, Purpose and Beneficiaries of Project:

The Goleta Gardens LLC (SyWest as agent) is requesting approval for a third amendment to an existing Development Agreement (DA) that grants a license to the City to use a private access road to the San Jose Creek Channel in exchange for an extension of the deadline to use the City's former zoning ordinance (Article 35 Coastal Zoning Ordinance) to December 31, 2024 for review of the applicant's pending development proposal (Case No 17-121-DP-DRB). The proposed third amendment would extend the DA term to December 31, 2025, or the adoption date of the City's Local Coastal Program, whichever occurs first.

The beneficiaries of the projects are the property owner and the City of Goleta.

Name of Public Agency Approving the Project:

Goleta City Council

Name of Person or Agency Carrying Out the Project:

Goleta Gardens LLC

NOTICE OF EXEMPTION (NOE)

Exempt Status: *(check one)*

- Ministerial (Sec. 15268)
- Declared Emergency (Sec. 15269)
- Emergency Project (Sec. 15269)
- Statutory Exemption/Other: §15061.B.3 & §15060.C.2

Reason(s) why the project is exempt:

Pursuant to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000 et seq.), the regulations promulgated thereunder (14 Cal. Code of Regulations §§ 15000 et seq.), and the City’s Environmental Review Guidelines, the project has been found to be exempt from CEQA and a Notice of Exemption is proposed. The City of Goleta is acting as the Lead Agency for this project.

The Development Agreement Amendment complies with the provisions for implementation of the California Environmental Quality Act (CEQA) and can be found exempt per CEQA Guidelines 15061(b)(3). The Development Agreement Amendment does not involve physical development of the property, nor does it approve the underlying project (Case No. 17-121-DP-DRB), which will undergo its own process under CEQA and be subject to the full entitlement process under the City’s zoning regulations. Therefore, the Development Agreement Amendment is statutorily exempt from environmental review pursuant to CEQA guidelines: no possibility of significant effect [Section 15061(b)(3); and the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment [Section 15060(c)(2)].

City of Goleta Contact Person, Telephone Number, and Email:

Kathy Allen, Supervising Senior
Planner (805) 961-7545,
kallen@cityofgoleta.org

Name	Title	Date
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If filed by the applicant:

1. Attach certified document of exemption finding
2. Has a Notice of Exemption been filed by the public agency approving the project?
 Yes No

Date received for filing at OPR: _____

Note: Authority cited: Section 21083 and 211110, Public Resources Code
Reference: Sections 21108, 21152.1, Public Resources Code

ATTACHMENT 2 Executed Second Amendment to
Development Agreement by and Between City of Goleta
and Goleta Gardens LLC

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT BY AND
BETWEEN CITY OF GOLETA
AND
GOLETA GARDENS LLC**

THIS SECOND AMENDMENT (“Second Amendment”) by and between the CITY OF GOLETA, a municipal corporation (the “City”), and GOLETA GARDENS LLC, a California limited liability corporation (“Goleta Gardens” or “Owner”) (together “Parties”) is made to the DEVELOPMENT AGREEMENT between the Parties which was approved by the City Council on May 18, 2021 (“Original Development Agreement”) and amended by the City Council on September 6, 2022 (“First Amendment”).

RECITALS

- A. Goleta Gardens is the owner of a 11.71-acre parcel of real property designated as APN 071-190-035 and located at 907 S. Kellogg Avenue in the City of Goleta, California (“Property”). A legal description of the Property is attached hereto as **Exhibit A**.
- B. The City Council approved the Original Development Agreement on May 18, 2021, that among other things set the term of the Development Agreement to December 31, 2023.
- C. The City Council approved the First Amendment to the Original Development Agreement on September 6, 2022, to incorporate a condition that the California Coastal Commission imposed in its approval of the Original Development Agreement that the term not exceed the adoption date of the City’s Local Coastal Program. The First Amendment set the term of the Development Agreement to December 31, 2023, or the adoption date of the City’s Local Coastal Plan, whichever occurred earlier.
- D. Owner has been diligently processing its underlying project under a different permit application and will not be able to get the case to hearing by December 31, 2023, and the City’s Local Coastal Program has not been approved yet.
- E. Goleta Gardens now seek a one-year extension to the term of the Development Agreement so that the term of the Development Agreement is set to expire on December 31, 2024, or the adoption date of the City’s Local Coastal Program, whichever occurs earlier (“Second Amendment”).
- F. On April 13, 2023, the Coastal Commission staff indicated via email that the Coastal Development Permit issued for the Development Agreement would not need to be amended to extend the term of the Development Agreement to December 31, 2024, or the date the Coastal Commission certifies the City’s Local Coastal Program, whichever occurs first.

- G. The terms and conditions of this Second Amendment have been found by the City to be fair, just, and reasonable.
- H. The public health, safety, and welfare of the citizens of the City will be served by entering into this Second Amendment by virtue of the Owner's commitment to license the City's and SBFCO's use of the Creek Access Road during the term of the Development Agreement and a conditional commitment to convey an easement to the City and SBFCO.
- I. This Second Amendment will bind future City Councils to the terms and obligations specified in this Amendment and limit, to the degree specified in this Amendment, the future exercise of the City's ability to regulate development on the Property.
- J. This Second Amendment will serve to implement the policies, objectives, and standards of the elements of the City of Goleta General Plan and is consistent with the General Plan.
- K. This Second Amendment and the consent of Owner and City to each of its terms and conditions will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the public interest.
- L. On July 6, 2023, the site was posted for the July 24, 2023, Planning Commission meeting by the applicant (a minimum of 15 day prior to the Planning Commission meeting);
- M. On July 13, 2023, notice of the public hearing was published in the Santa Barbara Independent and notices were mailed to owners and occupants within 500 feet of the project site; and
- N. On July 24, 2023, the Planning Commission conducted a duly noticed public meeting on the Goleta Gardens LLC Development Agreement, at which time all interested persons were given an opportunity to be heard; and
- O. On July 24, 2023, the Planning Commission considered the entire administrative record, including the staff report, the Draft Second Amendment to the Original Development Agreement and oral and written testimony from interested persons and on a 5-0 vote, recommended adoption to the City Council.
- P. On September ~~19, 2023~~, the City Council conducted a duly noticed public meeting on the Goleta Gardens, LLC Development Agreement, at which time all interested persons were given an opportunity to be heard and considered the entire administrative record, including the staff report, the Draft Second Amendment to the Original Development Agreement and oral and written testimony from interested persons.

SECOND AMENDMENT TO ORIGINAL DEVELOPMENT AGREEMENT

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agrees as follows:

SECTION 1. DEFINITIONS

For purposes of this Amendment, except as otherwise expressly provided or unless the context otherwise requires:

- a) "Original Development Agreement" means this Development Agreement by and between the City and Owner, approved by City Council on May 18, 2021.
- b) "Approval Date" means the date on which the Approval Ordinance for the Second Amendment is adopted by the City Council.
- c) "Approval Ordinance" means Ordinance No. 23-10, adopted by the City Council of the City on September 19, 2023, approving this Second Amendment.
- d) "CEQA" means the California Environmental Quality Act, Section 21000, et seq., of the California Public Resources Code.
- e) "City" means the City of Goleta, California.
- f) "City Council" means the City Council of the City of Goleta.
- g) "Code" means the Municipal Code of the City of Goleta.
- h) "Commencement Date" means that date which is 30 days following the Approval Date, provided, however, (i) if the Approval Ordinance is made the subject of a referendum, the Commencement Date shall be the date when the referendum proceedings have been concluded by any process which results in the Approval Ordinance, and (ii) if litigation challenging the validity of the Original Development Agreement (with the Amendment) and/or environmental review pursuant to CEQA should be brought after the Approval Date, the Commencement Date shall be the date such litigation is concluded in a manner that permits the commencement or continuation of the parties' rights and obligations under the Original Development Agreement
- i) "Development Agreement Act" means Section 65864 et seq., of the California Government Code.
- j) "First Amendment" means the Development Agreement as amended by ordinance approved by City Council on September 6, 2022.
- k) "Owner" means Goleta Gardens LLC, a California limited liability corporation and each of its respective successors and assigns to all or any portion of the Property

during such time as such portion is subject to the Original Development Agreement. Goleta Gardens represents that it is the legal owner of the entire Property as of the date of adoption of the Approval Ordinance.

- l) "Term" means the term of the Original Development Agreement, as amended in this Amendment.
- m) "Zoning Ordinance" means the comprehensive Zoning Ordinance of the City, found in Title 17 of the Code of the City of Goleta as it exists on the Approval Date.

SECTION 2. SECOND AMENDMENT TO ORIGINAL DEVELOPMENT AGREEMENT

(1) Section 7.01 of the Original Development Agreement shall be amended to read in its entirety: “Term. This Agreement shall terminate on December 31, 2024, except to the extent that (i) it has been extended by written instrument executed by the Parties, or (ii) the “Commencement Date” has been delayed as a result of referendum proceedings or litigation as set forth in Section 1(h). This Agreement, including any extensions, shall terminate no later than the date that a coastal land use plan for the City is effectively certified by the Coastal Commission.”

IN WITNESS WHEREOF, the parties have each executed this Amendment on the date first written above.

(signatures on next page)

CITY OF GOLETA

By: DocuSigned by:
Robert Nisbet
1AEBACAD150E4D7

Robert Nisbet, City Manager

GOLETA GARDENS, LLC
A Limited Liability Corporation

By: DocuSigned by:
[Signature]
BF8E364E48D3401

William Vierra, Senior Vice President

ATTEST

By: DocuSigned by:
Deborah Lopez
A3E09F3473CA47E...

Deborah Lopez, City Clerk

APPROVED AS TO FORM:

By: DocuSigned by:
Winnie Cai
A1BF0F090101490...

Winnie Cai, Assistant City Attorney

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

Legal Description FOR APN/Parcel ID(s): 071-190-035

Parcel "B" of Parcel Map No. 11950, in the City of Goleta, County of Santa Barbara, State of California, in Book 13, Page 58 of Parcel Maps, in the Office of The County Recorder of said County

ATTACHMENT 3
Staff Presentation

Planning Commission Meeting

Monday, July 22, 2024-6:00p.m.

130 Cremona Drive, Suite B

Goleta, CA

Hybrid In-Person/Zoom



Development Agreements - General

- Development Agreements (DAs) purpose
- California Government Code Standards for DAs;
- Goleta Municipal Code Section 17.65;
- DA Review Authority



Vicinity Map – 907 S. Kellogg Avenue



Sywest Development Agreement

- DA granted license to private access road to San Jose Creek Channel in exchange for use of former zoning ordinance



Background/Chronology

- May 2021 - City Council adopted Ord. No. 21-04 approving the DA
- April 2022 – California Coastal Commission (CCC) approved DA with condition
- July 2022- Planning Commission recommended approval of first DA Amendment
- Sept 2022 - City Council approved first DA Amendment
- July 2023 – Planning Commission recommended approval of second DA Amendment
- Sept 2023 – City Council approved second DA Amendment



Third DA Amendment Request

- ▶ Extends DA date to December 31, 2025 or Local Coastal Program (LCP) certification date



Summary

- Goleta Gardens LLC/Sywest DA Third Amendment complies with Municipal Code §17.65;
- DA Third Amendment Findings met
- Project is exempt from CEQA - 15061(b)(3) & 15060(c)(2)



Recommendation

Planning Commission adopts the proposed Resolution that:

➤ Recommends to City Council:

- 1) Approval of the Goleta Gardens LLC/SyWest Development Agreement Third Amendment; and
- 2) Approval of the Notice of Exemption



Questions?



License granted via DA

