

February 22, 2022

Peter Imhoff
Planning and Environmental Review Director
City of Goleta
130 Cremona Drive
Goleta, CA 93117

Re: Cancellation of Substantial Conformity Determination February 14, 2022;
Case No. 22-0001-SCD; 909 S. Kellogg; APN 071-190-035

Dear Mr. Imhoff:

This letter is written in response to the cancellation of Security Paving Company, Inc. ("SPC")'s Substantial Conformity Determination ("SCD") for Case No. 22-0001-SCD. As you are aware, this matter was scheduled for Director Decision on February 14, 2022. It is our understanding that the Director Decision was cancelled, and the City of Goleta ("City") failed to take action on the SCD request, given the public comments received by the City. By failing to act on the SCD the Director, and the City, are in violation of Goleta Municipal Code section 17.52.100(B) and have abused their discretion.

Goleta Municipal Code section 17.52.100(B) – Substantial Conformity Determination, provides as follows:

1. Minor Changes to Approved Development. The Director may approve a minor change to any Conditional Use Permit or Development Plan issued pursuant to this Title prior to the approval expiration, if applicable. The Director must determine that the change is in substantial conformity with the approval such that the change would not result in a change to the project, which would alter the scope and intent of the approval the Review Authority originally acted on, pursuant to the standards and findings below:
 - a. Development Thresholds.
 - i. The change will not result in an increase of 1,000 square feet or more than 10 percent of building coverage of new structures over total previous Permit or Plan approval, whichever is less.

ii. The change will not result in an overall height, which is greater than 10 percent above the previous Permit or Plan approval height.

iii. The change will not result in more than 1,500 cubic yards of new cut and/or fill in the Inland Area (50 cubic yards in the Coastal Zone) and avoids slopes of 30 percent or greater unless these impacts were addressed in the environmental analysis for the project; mitigation measures were imposed to mitigate said impacts and the proposal would not compromise the mitigation measures imposed.

iv. The project is located within the same general location as, and is topographically similar to, approved plans. The location must not be moved more than 10 percent closer to a property line than the originally approved Permit or Plan.

v. The project has not been the subject of substantial public controversy, nor is there reason to believe the change is likely to create substantial public controversy.

The City determined that each of these requirements were met, as detailed in its proposed Findings of Approval. It appears no action was taken on the SCD due to comments received from SB Audubon, Goodland Coalition, SB Urban Creeks Council, SB Channel Keeper and the City's disgruntled ex-employee, Chris Noddings. In reviewing these comments, they do not rise to the level of "substantial public controversy." The following demonstrates just a few examples of how these letters to rise to the level of *substantial* public controversy. There are many more examples not detailed here.

First, the SB Audubon Society letter states, in summary, that they are concerned about the SPA reduction along Old San Jose Creek (OSJC) from 100 feet to 50 feet as conditioned by the Coastal Commission down to 25 feet. Goleta Municipal Code section 17.01.040 (E) (1) - Previously Approved Projects Under Construction provides that: *"Any structure for which a building permit has been issued prior to adoption of this Title may be built in accordance with the approved zoning and building permits ..."* Section 17.36.20 (D) - Establishment of Non Conformity, Previously-Approved Development Plans further provides that: *"Any project legally permitted through the approval of a Development Plan and in existence prior to the adoption of this Title shall not be considered nonconforming pursuant to this Title."* These sections confirm that the project does not need to conform to the SPA setback requirements in the current version of the Title 17

ordinance effective in April 2020, but rather needs to conform to the ordinance requirements effective when the project was approved by the City on October 24, 2011. Further, the Coastal Commission approval did not condition this project to require a 50-foot OSJC setback in Coastal Permit 4-15-0692. In addition, the City approved the project with a 25 foot SPA setback in 2011.

Second, the Goodland Coalition letter states that: "In the event you proceed to issue an SCD for this project, please provide us with the specifics of the process to appeal such an approval." As noted below the Goodland Coalition does not have standing as an "aggrieved party" to appeal this Substantial Conformity Determination. Neither the Goodland Coalition nor George Rellas attended the City of Goleta Planning Commission meeting or inform them of their comments when this project was approved on October 24, 2011, therefore this letter is irrelevant.

Third, the SB Urban Creeks Council letter states that: ... "Title 17 (Zoning Code) requirements do not allow this type of development within the 25-foot SPA. Moreover, development encroaching within the 100-foot SPA can only be permitted by a Major Conditional Use Permit." As indicated above, pursuant to sections 17.01.040 (E) (1) and 17.36.20 (D), the current 100-foot SPA setback does not apply to this nonconforming project.

Fourth, the SB Channel Keepers letter states that: "... development has occurred inconsistent with General Plan policy CE 2.2." General Plan policy CE 2.2 adopted April 2020 does not apply to this nonconforming project, which was approved by the City Planning Commission in 2011.

Fifth, the letter from Chris Noddings states that: "Title 17 requirements for a SCD are clear, and unfortunately, this project does not meet any of these criteria as shown in the detailed analysis below." Again, pursuant to sections 17.01.040 (E) (1) and 17.36.20 (D) the current April 2020 requirements of Title 17 relative to the issues raised in this letter do not apply to this nonconforming project. Further, the letter states: "All development that has moved closer to ESHA within the 100-foot SPA, with special attention given to any development that has been moved into the 50-foot setback from ESHA required by the California Coastal Commission." Pursuant to sections 17.01.040 (E) (1) and 17.36.20 (D), the current April 2020 requirements of Title 17 relative to a 100-foot SPA setback do not apply to this nonconforming project, which was approved in 2011. In addition, there is no condition of approval requiring a 50-foot setback from the creek as identified in Coastal Development Permit 4-15-0692. Lastly, with regard to the SCD, the letter also states: "8. Finding 1.5 regarding public controversy: The text simply repeats of the finding verbatim; no supporting evidence to justify making the finding is provided. All Planners

know that Findings must be justified, and City Staff did not attempt to justify this finding. That staff attempted to approve this project via a SCD, especially given the facts below (all of which are known to Staff) is appalling. California Coastal Commission Staff recommended that the Coastal Commission deny the project. To make this Finding required to approve a SCD, City Staff must address this issue. The Finding must have described why Coastal Commission Staff recommended denying the project (and attached the Commission's Staff Report for full details) and explained why that recommendation did not amount to "controversy" in the past and would not create controversy now." This allegation raises the issue of findings reflecting the approval of this project by the Coastal Commission in 2015. There were no findings approved by the Commission for this project nor was the staff recommendation and its findings for denial adopted by the Commission when the Commission approved this project. Therefore, whether the Coastal Commission Staff recommended that the Coastal Commission deny the project is irrelevant since this project was overwhelmingly approved by the Commission on a 9-2 vote.

Further, none of the parties that provided comment are an "aggrieved party" as defined by the Goleta Municipal Code and, therefore, have no standing to appeal a Director Decision on the SCD.

Pursuant to Goleta Municipal Code section 17.50.120(A)(1)(b), Director decisions on Substantial Conformity Decisions may be appealed to the Planning Commission. Goleta Municipal Code section 17.50.120(B) – Right to Appeal, states that *"an appeal may only be filed by an applicant or any aggrieved party."* Goleta Municipal Code section 17.73.020 – Definitions, defines an *"aggrieved party"* as *"any person who, in person or through a representative, appeared at a public hearing or by other appropriate means before action on a permit, informed the City of his or her concerns about an application for such permit, or who, for good cause, was unable to do either."*

None of the public comments above are from an aggrieved party who appeared or presented information at the Planning Commission hearing to inform the City of his or her concerns about the application for the permit on the day the Planning Commission approved the project on October 24, 2011.

As indicated above, through these examples, the letters do not rise to the level of substantial public controversy due to their misunderstandings of City Ordinance, lack of standing to appeal the Director's SCD, and misrepresentation of the historic facts relative to past approvals of the project.

The City has continually delayed this project for nearly 3 years from obtaining a Certificate of Occupancy since the City assigned our project in May 2019 to Chris Noddings. In 2017, the Santa Barbara County Superior intervened to get the City to take action to issue the building permit due to staff inaction. Currently, SPC cannot operate the site and is losing money on a daily basis. If the City does not reverse its current course and approve the SCD, then SPC may have no alternative but to seek court intervention, once again, to get the City to take action to approve the Certificate of Occupancy. Hopefully, upon reconsideration, the City acts swiftly and approves the SCD. Please feel free to contact me if you have any questions.

Very truly yours,



**Robert Shaffer, General Counsel
Security Paving Company, Inc.**

cc: John Gasparo