

**From:** [Tara Messing](#)  
**To:** [City Clerk Group](#)  
**Cc:** [Brian Trautwein](#)  
**Subject:** Comments on Amendments to Chapter 17.30 in Zoning Ordinance  
**Date:** Monday, August 17, 2020 11:36:25 AM  
**Attachments:** [EDC and UCC Comments re Amendments to Chapter 17.30 in NZO 2020\\_08\\_17.pdf](#)

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To Whom It May Concern:

Attached please find comments submitted by the Environmental Defense Center ("EDC") on behalf of Urban Creeks Council and EDC regarding the proposed amendments to Chapter 17.30 in the City's Zoning Ordinance.

Best,  
Tara

**TARA C. MESSING**  
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August 17, 2020

Mayor and City Councilmembers  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

*Submitted electronically via [cityclerkgroup@cityofgoleta.org](mailto:cityclerkgroup@cityofgoleta.org)*

**Re: Comments on Proposed Amendments to Chapter 17.30 in the City of Goleta's Zoning Ordinance Regarding Environmentally Sensitive Habitat Areas**

Dear Mayor and Councilmembers:

The Environmental Defense Center ("EDC"), on behalf of EDC and Santa Barbara Urban Creeks Council ("UCC"), submits these comments to the proposed revisions to Chapter 17.30 in the City of Goleta's ("City") Zoning Ordinance ("ZO") concerning protections for Environmentally Sensitive Habitat Areas ("ESHA"). We write in opposition to the proposed amendments to Chapter 17.30, which were rejected by the Planning Commission at the hearing on June 22, 2020. The Planning Commission instead recommended that City staff discuss any issues with California Coastal Commission staff during their consultation on the City's Local Coastal Program ("LCP") certification process.

The proposed revisions to Chapter 17.30 will weaken the protections that the community spent years advocating for and this piecemealed approach to amending to Chapter 17.30 may result in a 'death by a thousand cuts.' Furthermore, a comprehensive review of these provisions is currently underway by City staff and the California Coastal Commission and therefore any amendments to Chapter 17.30 should wait to be informed by this consultation process. The City Council can then assess the proposed changes as a complete packet.

However, it is our understanding that City staff may propose amending the provisions in Chapter 17.30 to allow for staff to conduct the initial site assessment to determine whether a biological report is necessary. Although EDC and UCC support the existing language, if the City Council seeks to take action now, EDC and UCC urge the City Council to solely amend the provisions based on the proposal to have staff conduct the initial site assessment and not take any further action.

UCC is a non-profit grassroots organization dedicated to protecting and restoring streams and watersheds in Santa Barbara County. Over the past thirty years, UCC has partnered with a number of organizations on creek restoration projects and has been committed to educating people of all ages about the values of creeks. UCC members include many families who live and recreate in Goleta and Santa Barbara. EDC is a non-profit, public interest law firm that protects and enhances the environment in Santa Barbara, Ventura, and San Luis Obispo counties through education, advocacy, and legal action.

**I. The Proposed Amendment to Section 17.30.020 Must be Expanded to Apply to All Land Uses and Development.**

The first ESHA-related amendment is in Section 17.30.020, "Applicability." The amended language states that Chapter 17.30 applies to "all physical development," thereby deleting reference to the chapter's applicability to "land use and development." (Staff Report at 3) The California Coastal Act of 1976 establishes that ESHA must be protected. (Pub. Res. Code § 30240(a)) Although the heightened protections under the Coastal Act are limited to coastal zones, the City has the discretion to adopt these protections uniformly throughout the City. By expanding the amendment to include uses as well as development, the ESHA protections under the ZO will better protect Goleta's creeks and watersheds from impacts because "uses" include a broader set of actions than "development." For these reasons, EDC and UCC do not support this amendment unless the provisions under Chapter 17.30 apply to protect ESHA from all development and uses.

**II. The Proposed Amendments Would Improperly Weaken the Requirements for Initial Site Assessment Screenings and Result in Unidentified Impacts to ESHA.**

The second proposed ordinance amendment relates to the application requirements and would render the Initial Site Assessment Screening ineffective under Section 17.30.030(A). The proposed change would amend "must" to "should" with respect to the information necessary to determine the presence or absence of ESHA during the Initial Site Assessment Screening. The amendment, however, offers too much deference to the applicant to decide what to include in the Initial Site Assessment Screening. Notably, an applicant could decide that none of the sources of information are needed to determine the potential presence of ESHA. As written currently, the information identified under Section 17.30.030(A) (e.g., reports, resource maps, aerial photographs, a site inspection) is not overly burdensome and no showing has been made that this requirement is cost prohibitive. To the contrary, the limited and specific information requested for an Initial Site Assessment Screening is the minimum necessary to adequately determine presence or absence of ESHA. As proposed, the amendment guts the requirement for an Initial Site Assessment Screening and should be rejected.

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### **III. The Amendment to Eliminate the Requirement for an Initial Site Assessment Screening and Biological Study for Accessory Structures on Already Developed Parcels Fails to Protect ESHA.**

The third amendment would eliminate the requirement for both an Initial Site Assessment Screening and a Biological Survey for accessory structures proposed on already developed parcels in the R Zone District. (Staff Report at 3) If adopted, this change would prevent the identification of ESHA on or adjacent to project sites, potentially allowing for direct and indirect impacts to ESHA that are undocumented, unmitigated, and inconsistent with the General Plan's objectives and policies for ESHA and creek protection.<sup>1</sup>

The proposed amendment fails to consider that ESHA is found on developed sites, such as raptor nests and raptor and monarch roosts, and raptor nests.<sup>2</sup> For example, as shown on the ESHA map in the Conservation Element of the General Plan, white-tailed kite and hawk nests as well as Monarch aggregation sites are located along Devereux Creek in close proximity to residential development.<sup>3</sup> There is also a white-tailed kite nest along Old San Jose Creek near residential and developed areas of Old Town.<sup>4</sup> Finally, monarch aggregation sites are found along El Encanto and Old San Jose Creek adjacent to or within developed parcels.<sup>5</sup>

Initial Site Assessment Screenings are very important to achieve the protections for ESHA envisioned in the General Plan because these assessments identify whether there is potential ESHA within 300 feet of a project. If so, a Biological Study is then required. The Screening thus determines if ESHA is present and the Study determines if ESHA is impacted and how impacts can be avoided or minimized, so both are necessary. If the Screening does not identify potential ESHA within 300 feet, no Biological Study is required.

### **IV. The Amendment Proposed to the Biological Study Requirements Will Undermine the Protections for ESHA Contrary to the Intent of the General Plan.**

The amendment as proposed will undermine the requirement to prepare a Biological Study by limiting when such study is triggered. The proposed amendment replaces "development activity within 300 feet of ESHA or with the potential to adversely impact ESHA" with "development proposed on a parcel with ESHA or where there is probable cause to believe ESHA may exist" in the first sentence of subsection 17.30.030(B). (Staff report at 3-4)

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<sup>1</sup> City of Goleta, General Plan, Policy 1, Objective: "Objective: To identify, preserve, and protect the city's natural heritage by preventing disturbance of ESHAs." See also General Plan, Policy 2, Objective: "Enhance, maintain, and restore the biological integrity of creek courses and their associated wetlands and riparian habitats as important natural features of Goleta's landscape."

<sup>2</sup> City of Goleta, General Plan ESHA Map, available at <https://www.cityofgoleta.org/home/showdocument?id=11830> (June 18, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

The Staff Report incorrectly argues that as written, a Biological Study is required for a project within 300 feet of ESHA regardless of the outcome of the Initial Site Assessment Screening. (Staff Report at 3) This is simply not the case. If ESHA is not found within 300 feet of the development activity during the Initial Site Assessment Screening, then no Biological Study is required pursuant to 17.30.030.

Furthermore, the elimination of the requirement for a Biological Study if ESHA is identified within 300 feet of a project site substantially weakens the ESHA protections that this community worked hard to adopt in the General Plan and ZO. This standard is a reasonable distance in which to consider impacts to ESHA, even in developed areas. The use of 300 feet is an appropriate distance because nesting birds and raptors, such as hawks, falcons, and kites sometimes nest in developed areas.<sup>6</sup> Nesting raptors and other birds can be disturbed by noise and construction activity within 250-500 feet and may even abandon active nests.<sup>7</sup> Therefore, the City should not eliminate the 300 foot area in which to consider impacts to ESHA. Doing so will not protect ESHA because a Biological Study may omit impacts to nearby, offsite ESHA. The Staff Report even notes that Chapter 17.30 applies to development "near" ESHA. (Staff Report at 3) The amendment, however, would only require assessment of ESHA onsite (excluding nearby ESHA).

Finally, the use of the phrase "probable cause" in the proposed amendment is questionable given that this term is a legal standard in criminal law and it is unclear how this standard is being applied here.

**V. The City Must Allow Time for Planning Staff and Coastal Commission Staff to Engage in Informal Consultation on the ZO Provisions Before Entertaining Substantive Amendments to the ZO Provisions Governing ESHA.**

Amendments to Chapter 17.30 must be considered comprehensively with the changes identified during the consultation between planning staff and the Coastal Commission staff. During the adoption hearings, Council directed planning staff to coordinate and collaborate with staff for the California Coastal Commission on the City's LCP, which includes a review of the provisions under Chapter 17.30. Thus, amendments to this Chapter should wait to also be informed by that City-Coastal Commission staff consultation process before being brought to the City Council.

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<sup>6</sup> City of Goleta General Plan Figure 4-1 (2006)

<sup>7</sup> Southern California Edison, Cross Valley Loop Noxious Weed and Invasive Plan Control Plan stating "If active nests are identified during preconstruction surveys, a no-disturbance buffer shall be created around active raptor nests and nests of other special-status birds during the breeding season, or until it is determined that all young have fledged. Typical buffers are 500 feet for raptors and 250 feet for other nesting birds (e.g., waterfowl, and passerine birds). The size of these buffer zones and types of construction activities that are allowed in these areas could be further modified during construction in coordination with CDFG and shall be based on existing noise and disturbance levels in the project area." Available at <https://www.fws.gov/sacramento/outreach/2013/07-24/docs/SCE%20HCP%20vol2%20-%20pg200-415.pdf> (June 18, 2020).

Furthermore, it is our understanding that these amendments are driven by only a few applicants. It is entirely premature to entertain substantive amendments to the ZO after only two months of being in effect, especially given the years that community members spent on crafting the ZO and ensuring its adoption. Amendments to this ZO, especially with regards to provisions governing ESHA, must not be made in such a reactionary manner. We urge the City Council to provide additional time for the ZO to be implemented and incorporate the changes recommended by planning staff and Coastal Commission staff after they complete their consultation.

**VI. Amendments to the ZO Must Not be Made in a Piecemeal Fashion As Proposed.**

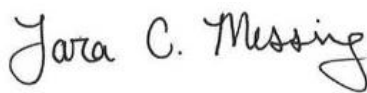
Ordinance amendments should not be handled in a piecemeal fashion. The ZO was created by the City and the community as a package, going into effect on April 3, 2020.<sup>8</sup> The ZO provisions should not be modified through a series of one-off amendments. This segmented review of NZO amendments is very difficult for the public to track and will result in a lack of public involvement. Adequate time must be given for the public, applicants, and planners to work through any implementation issues, and for the City to have a clear understanding of what can be improved and how it can be improved.

**VII. Conclusion**

In conclusion, please do not weaken the protections for ESHA under Chapter 17.30. A comprehensive review of these provisions is currently underway by City staff and the California Coastal Commission and therefore any amendments to Chapter 17.30 should wait to be informed by this consultation process as well. The City Council at that time can assess the proposed changes as a complete packet. Alternatively, if the City Council believes action now is necessary, EDC and UCC are comfortable with the proposal to have staff conduct the initial site assessment to determine whether a biological report is necessary.

Thank you for your consideration.

Sincerely,



Tara C. Messing  
Staff Attorney



Brian Trautwein  
Environmental Analyst / Watershed Program  
Coordinator

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<sup>8</sup> City of Goleta, Zoning Ordinance Webpage, available at <http://www.goletazoning.com/home.html> (June 18, 2020).

**From:** [Amerikaner, Steven](#)  
**To:** [City Clerk Group](#)  
**Subject:** Aug. 18. Meeting, Item C.1: Title 17 Ordinance Amendments  
**Date:** Monday, August 17, 2020 2:26:59 PM

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To Mayor Paula Perotte and Members of the City Council:

This communication is submitted on behalf of SyWest Development, owner of the Westwind Drive-In Theatre at 907 S. Kellogg Avenue. The Westwind Drive-In Theatre has been an important part of the Goleta community for many years, and is proud to have recently resumed operations and make the facility available to non-profit organizations for community events.

SyWest submitted a letter to the City Council on March 2, 2020, when the New Zoning Ordinance (NZO) was presented for adoption. In that letter, we requested that the “Sunset Date” of December 31, 2021 be extended to December 31, 2024 and explained the reasons for our request.

In late June, the Goleta Planning Commission considered a set of NZO amendments, and SyWest again requested that the Sunset Date be revised. In this request, we asked that it be extended by one year to December 31, 2022, to allow SyWest sufficient time to process its development application.

We respectfully renew our request that the Sunset Date be extended. We also suggest that there are two ways this could be accomplished. First, the date could be extended by an amendment to Title 17, which amendment would then apply to any pending projects that meet the ordinance’s standards. Second, the date could be extended by means of a Development Agreement, an approach that could limit the change to only those projects which provide sufficient City benefits to justify such an exception to the City policy.

Thank you for your kind consideration of this request.

Sincerely,

Steven A. Amerikaner  
Brownstein Hyatt Farber Schreck  
1021 Anacapa Street  
Santa Barbara, CA 93101  
805 882-1407 (office)  
[samerikaner@bhfs.com](mailto:samerikaner@bhfs.com)

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**From:** [Steve Fort](#)  
**To:** [City Clerk Group](#)  
**Cc:** [Anne Wells](#)  
**Subject:** City Council Hearing 8/18/20 – Item C.1 – Title 17 Zoning Ordinance Amendments - Public Comment  
**Date:** Tuesday, August 18, 2020 12:36:20 PM  
**Attachments:** [image001.png](#)

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I am submitting comment on behalf of the Towbes Group, Inc., the applicant for the Heritage Ridge project. We respectfully request the City Council act to extend the sunset date of the previously applicable zoning regulations contained in Section 17.01.040(E)(4) to December 31, 2022 for applications that have been deemed complete. The Heritage Ridge project has been carefully designed to comply with the “old” zoning ordinance and the Towbes Group, Inc. has been working diligently with City staff to ensure consistency with the applicable zoning ordinance and bring the project to hearings with the Planning Commission and City Council. While we currently anticipate the Heritage Ridge project will proceed to decision maker hearings in the first quarter of 2021, we are conscious of potential additional unforeseen delays related to the COVID-19 pandemic and potential delays related to processing the application in general (noting that the application was deemed complete in 2014 and the team has been navigating and resolving various issues since that time). Thank you for your consideration of this request.

Please read this public comment “into the record” as described on the agenda for the Council hearing.

Sincerely,

**Steve Fort, AICP**  
*Senior Planner*



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**From:** [herseld@aol.com](mailto:herseld@aol.com) <[herseld@aol.com](mailto:herseld@aol.com)>

**Sent:** Tuesday, August 4, 2020 12:30 PM

**To:** Peter Imhof <[pimhof@cityofgoleta.org](mailto:pimhof@cityofgoleta.org)>

**Subject:** Fwd: The City Council will conduct a Public Hearing for Title 17 (Zoning) Ordinance Amendments at the August 18, 2020 City Council meeting

Dear Peter -

In section 17.41.060 Animal Keeping: it reads the following:

*C. Prohibited Animals. "No predatory wild animals, **roosters**, peacocks, endangered animals, or otherwise protected animals are allowed to be kept within the City"*

During the August 18, 2020, City Council meeting, could you please include in your amendments, to change rooster to **crowing rooster**.

Many Cities use the word "crowing rooster", due to the fact that they are ways that a rooster would not crow. Please see the following: <https://www.amazon.com/s?k=No+Crow+Rooster+Collar>

I appreciate it if you can include my request for this amendment.

Thank you.

Hersek Mikaelian

-----Original Message-----

**From:** City of Goleta <[goleta@public.govdelivery.com](mailto:goleta@public.govdelivery.com)>

**To:** [herseld@aol.com](mailto:herseld@aol.com)

**Sent:** Tue, Aug 4, 2020 10:32 am

**Subject:** The City Council will conduct a Public Hearing for Title 17 (Zoning) Ordinance Amendments at the August 18, 2020 City Council meeting

City News



## **The City Council will conduct a Public Hearing for Title 17 (Zoning) Ordinance Amendments at the August 18, 2020 City Council meeting**

The City Council will conduct a Public Hearing for Title 17 (Zoning) Ordinance Amendments on Tuesday, August 18, 2020, at 5:30 P.M. Due to the nature of this item, we are releasing it early to allow the public to have ample time to review. The item can be found here:

[Title 17 \(Zoning\) Ordinance Amendments](#)

The complete packet of the August 18, 2020, City Council meeting agenda will be released on August 13, 2020. Written comments concerning agenda items may be sent to the City Clerk's e-mail: [cityclerkgroup@cityofgoleta.org](mailto:cityclerkgroup@cityofgoleta.org); or mail: Attn: City Council and City Clerk at 130 Cremona Drive, Suite B Goleta, California 93117. In order to be disseminated to the City Council for consideration during the Council meeting, written information must be submitted to the City Clerk no later than Monday, August 17, 2020, at noon. Material received after this time may not be reviewed by the City

Council prior to the meeting.

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