

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: DEVELOPMENT AGREEMENT

DATE: March 17, 2022

TO: Commissioners and Interested Persons

FROM: South Central Coast District

SUBJECT: Public Hearing and Commission Action on Development Agreement (4-21-0569) between the City of Goleta and Goleta Gardens LLC, located at 907 Kellogg Avenue, Goleta, Santa Barbara County (For Public Hearing and Commission Action at the April 6, 2022 Commission meeting in Ventura)

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **APPROVE** Development Agreement 4-21-0569, with one condition. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

Pursuant to California Government Code Section 65869 "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action." In this case, the City of Goleta does not have a certified local coastal program; therefore, development agreements that pertain to property within the City's coastal zone must be approved by the Commission. Thus, the applicant has submitted this application to the Commission for the proposed development agreement. However, it is important to note that approval of a development agreement is not equivalent to approval of a coastal development permit (CDP) and does not authorize development to take place. Since the

City of Goleta does not yet have a certified local coastal program (LCP), development within the City's coastal zone requires a CDP from the Commission, and the standard of review for a CDP is Chapter 3 of the Coastal Act. Typically, development agreements are submitted in conjunction with a CDP application, or after a CDP has been approved, for a specific development project. In this case, the applicant has submitted the proposed development agreement to the Commission before preparing and submitting any CDP application for the subject site. The applicant intends to coordinate with the City of Goleta in obtaining applicable local land use authorizations, and the proposed development agreement is part of that process.

The City of Goleta incorporated in 2002 and has a locally adopted zoning code that is used for their local land use authorizations. By the terms of the proposed development agreement, the City of Goleta agrees to use an older version of the City's zoning code for the City's local review of a development project at the applicant's property located at 907 Kellogg Avenue in the City of Goleta, Santa Barbara County (APN 071-190-035). In exchange, the applicant would grant a license to the City and its sublicensee, the Santa Barbara County Flood Control District, for use of a portion of the applicant's property for vehicular and pedestrian access to an adjacent flood control channel along San Jose Creek for creek repair and maintenance purposes only. Previously, the owner of the subject property submitted a local permit application to the City of Goleta for a proposed industrial building on the site. On April 11, 2018, the City determined that application to be complete under the provisions of the City's zoning code in effect at that time. In March 2020, the City adopted a comprehensive revision to its local zoning code, and a number of amendments to the code have been adopted since then. The City's current zoning code allows for applications that were deemed complete prior to the effective date of the new code to be evaluated under the prior code through December 31, 2021 or until a later date set by a development agreement.

Although the proposed development agreement purports to vest certain planning documents, those vested documents pertain to local planning documents only and do not constitute any LCP documents certified by the Commission pursuant to the Coastal Act. Further, the proposed development agreement does not bind the Commission in any way, nor does it restrict what may or may not be approved by the Commission under any subsequent CDP for development on the subject property pursuant to the Coastal Act. Accordingly, the proposed development agreement would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with the Chapter 3 policies of the Coastal Act.

It is important that the applicant acknowledge that Commission approval of the subject development agreement is not equivalent to approval of a CDP for any future development of the subject property. Therefore, Special Condition 1 is necessary to require a revision to the proposed development agreement to include the applicant's acknowledgement that approval of the subject development agreement is not approval of any existing or future development on the property and the applicant is required to obtain a CDP for any such development, in which the standard of review is Chapter 3 of the Coastal Act.

Additionally, the proposed development agreement includes an expiration date of December 31, 2023, but also includes a provision that allows for the expiration date to be extended by written agreement of the City and the applicant. Currently, the City is coordinating with Commission staff on draft policies for a Coastal Land Use Plan (LUP), and while the subject development agreement would not restrict the City from analyzing any proposed project's consistency with a potential future certified LCP, it is important to ensure that no ambiguities exist at the time of LCP or LUP certification if the development agreement is still in effect at that time. Therefore, Special Condition 1 is necessary to require the development agreement to be terminated no later than the date that an LUP is certified by the Commission. Thus, as conditioned, the proposed development agreement is not inconsistent with the Chapter 3 policies of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Proposed Development Agreement](#)

[Exhibit 2 – Parcel Map](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Development Agreement 4-21-0569 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the development agreement as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Development Agreement:

The Commission hereby approves Development Agreement 4-21-0569 on the grounds that the development agreement, as conditioned, would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation policies of Chapter 3, would not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. SPECIAL CONDITIONS

1. Revised Development Agreement or Development Agreement Amendment

The applicant shall submit to the Executive Director, for review and approval, a Revised Development Agreement or Development Agreement Amendment, approved by the City of Goleta ("City"), consistent with the following:

- (1) The Revised or Amended Development Agreement shall include the following provision: The Owner acknowledges and agrees that this Agreement pertains to local planning documents only and does not constitute approval of standards to be utilized for processing a coastal development permit application for any existing or future development of the subject site, that a coastal development permit is required to be obtained from the Coastal Commission under Section 30600 of the Coastal Act for any proposed development of the subject site, and the standard of review shall be the Chapter 3 policies of the Coastal Act.
- (2) Section 7.01 Term shall be amended to include the following provision: 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.

The Applicant shall not execute the Revised Development Agreement or Development Agreement Amendment until such document has been approved by the Executive Director.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Background and Content of Development Agreement

California Government Code Sections 65864-65869.5 authorizes any city, county, or city and county, to enter into a development agreement with any person having a legal or equitable interest in real property for the development of property owned by that entity. A development agreement specifies the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. According to Government Code Section 65865.2, the development agreement "...may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time. The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time." Government Code Section 65866 states further that, "[u]nless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies."

However, pursuant to Section 65869 "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action."

Since the City of Goleta does not have a certified local coastal program (LCP), any development agreement that pertains to property within the City's coastal zone must be approved by the Commission. Thus, the applicant has submitted an application to the Commission for the subject development agreement. However, it is important to note that approval of a development agreement is not equivalent to approval of a coastal development permit (CDP) and does not authorize development to take place. Since the City of Goleta does not yet have a certified LCP, development within the City's coastal zone requires a CDP from the Commission, and the standard of review for a CDP is Chapter 3 of the Coastal Act. Typically, development agreements are submitted in conjunction with a CDP application, or after a CDP has been approved, for a specific development project. In this case, the applicant has submitted the proposed development to the Commission before preparing and submitting any CDP application for the subject site. The applicant intends to coordinate with the City of Goleta in obtaining applicable local land use authorizations, and the proposed development agreement is part of that process. The City of Goleta incorporated in 2002 and has a locally adopted zoning code that is used for their local land use authorizations, as explained further below; however, the City's zoning code has not been certified by the Commission and is not the standard of review for CDPs.

The proposed development agreement pertains to an approximately 11.71 acre parcel owned by Goleta Gardens, LLC that is located at 907 S. Kellogg Avenue within the coastal zone ([Exhibit 2](#)). The subject property is bounded on the east by San Jose Creek. The portion of the creek adjacent to the subject property is a concrete-lined channel that predates the Coastal Act and was built, and continues to be maintained, for flood control purposes. An existing dirt road on the subject property allows restricted vehicle access to the westerly bank of San Jose Creek. A 20 ft. wide portion of the property directly adjacent to the creek, including the existing access road, is currently burdened by two easements along the entire eastern property line. These easements grant the Santa Barbara County Flood Control District (SBFCD) a right of access for flood control purposes. Another portion of the subject property adjacent to the access road has also been used in the past, with the property owner's permission, by the City and SBFCD for creek maintenance and repair, and the City approached the property owner with a request that it convey to the City an easement for use of this area for vehicular and pedestrian access to San Jose Creek (for creek repair and maintenance purposes only). This portion of the property, which is not currently under an easement, license, or other formal agreement, is approximately 305 ft. long, ranges in width from 5 ft. wide to 20 ft. wide, and covers a total area of approximately 2,100 sq. ft. ([Exhibit 1](#)).

Previously, the owner of the subject property submitted a local permit application to the City of Goleta for a proposed industrial building. On April 11, 2018, the City determined that application to be complete under the provisions of the City's zoning code in effect at that time, which will be referred to as the "Prior Code" hereafter in this report. On March 2, 2020, the City adopted a comprehensive revision to its local zoning code (which will be referred to as the "New Code"), and a number of amendments to the New Code were adopted by the City thereafter. The New Code allows for applications that were complete prior to the effective date of the New Code to be evaluated under the Prior Code through December 31, 2021 or until a later date set by a development agreement.

By the terms of the proposed development agreement (and as authorized under the New Code), the City of Goleta agrees to use the development standards of the City's Prior Code for the review of the development project at the subject property in exchange for a license granted by the applicant to the City and SBFCD for use of the entire existing access road area on the property for purposes of creek maintenance and repair. The proposed development agreement would expire on December 31, 2023, unless it is extended by written instrument executed by the applicant and the City, or another terminating event (as described in the development agreement) occurs prior to the expiration date.

The development agreement notes that the City is under no obligation to approve the development project in connection with the application to the City. However, if the City approves the development project, the development agreement states that the City may impose a condition that requires the applicant to execute and record an easement in perpetuity by which the City and SBFCD may utilize the access road for vehicular and pedestrian access to the creek for creek maintenance and repair purposes only.

B. Consistency Analysis

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250 of the Coastal Act states:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.
- (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed development agreement states that the City shall use the City's Prior Code to evaluate the proposed development of the subject property, including, but not limited to, the Prior Code's development standards, environmental standards, and procedures. The applicant identified three provisions that were of particular interest regarding the City's evaluation of a proposed project. These provisions pertain to building height, parking ratios, and creek buffers. Specifically, the City's Prior Code required building heights to be measured from the average finished grade of the lot, whereas the current zoning code (i.e., the New Code) requires building heights to be measured from the existing grade. Additionally, the Prior Code required one parking space per 1,000 sq. ft. of gross floor area and one space per four employees, while the New Code requires one parking space per 500 sq. ft. Finally, the Prior Code required a minimum 50 ft. buffer from streams in urban areas but also allowed the buffer to be adjusted upward or downward on a case-by-case basis. The New Code requires a minimum 100 ft. buffer from the top of bank or the outer limit of riparian vegetation, whichever feature is further from the creek, but also allows for the buffer to be reduced (but not to less than 25 ft.).

Although a specific development project is not before the Commission at this time, the applicant has indicated that the elevation of the subject site would likely need to be significantly raised as part of their contemplated development proposal in order to meet County flood control standards, which would present a challenge in meeting the building height standard of the City's New Code. Additionally, the applicant has indicated that their development proposal would not meet the creek buffer provision of the City's New Code.

The Commission has previously approved several development agreements; however, most, if not all, of the proposed development agreements have been submitted in conjunction with a CDP application or after a CDP has been approved for a particular site. In those cases, the Commission reviewed the proposed development to which the development agreement pertained. In this case, the applicant has submitted this proposed development agreement to the Commission before preparing and submitting

any CDP application. The applicant and the City intend to coordinate on the specific project for development, which the applicant must present to the Commission for approval in the future through a CDP application.

Despite the fact that a proposal for development of the subject site is not currently before the Commission, it can make similar findings to those previously made in similar development agreements considered by the Commission. Although the proposed development agreement purports to vest certain planning documents, those vested components pertain to local planning only and do not constitute an LCP under the Coastal Act. Further, the proposed development agreement does not bind the Commission in any way, nor does it restrict what may or may not be approved by the Commission under any subsequent CDP for development on the subject property pursuant to the Coastal Act. Accordingly, the development agreement would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30211, 30240, 30250, 30251, or any other Chapter 3 policies of the Coastal Act. In light of these limitations, it is important that the applicant acknowledge that Commission approval of the proposed development agreement is not equivalent to approval of a coastal development permit for any development of the subject property. Therefore, the Commission finds that Special Condition 1 is necessary to require the submission of a Revised Development Agreement or Development Agreement Amendment. Special Condition 1 specifies that (1) the development agreement pertains to local planning documents only and does not constitute approval of standards to be utilized for processing a CDP application for any existing or future development of the subject site and (2) a CDP is required to be obtained from the Coastal Commission for any proposed development of the subject site, in which the standard of review is the Chapter 3 policies of the Coastal Act. The Revised Development Agreement or Development Agreement Amendment required by Special Condition 1 must be reviewed and approved by the Executive Director of the Commission before the proposed development agreement is effective.

As noted previously, the City does not have a certified LCP, nor does it have any certified LCP components, such as a certified LUP. The City is, however, currently coordinating with Commission staff on draft policies for a LUP, and because the local planning documents referenced in the proposed development agreement do not constitute LCP documents, the subject development agreement would not restrict the City from analyzing any proposed project's consistency with a potential future certified LCP or LUP. However, in order to ensure that no ambiguities exist at the time of any LCP or LUP certification, if the proposed development agreement is still in effect at that time, the Commission finds that Special Condition 1 is necessary to require the development agreement to be terminated no later than the date that an LUP is effectively certified.

Therefore, the Commission finds that the development agreement, as conditioned, would not be inconsistent with the Chapter 3 policies of the Coastal Act, would not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act,

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and would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit Application No. 4-21-0569 and associated file documents.