SANTA BARBARA URBAN CREEKS COUNCIL

February 13, 2022

Peter Imhof, Director, Department of Planning and Environmental Review
130 Cremona Drive, Suite B
Goleta, CA 93117

Subject: Security Paving Inadequate Stream Protection Area, Old San Jose Creek

Dear Director Imhof:

The Santa Barbara Urban Creeks Council is a grassroots organization dedicated to protecting and restoring streams and watersheds in Santa Barbara County. Our organization was established 30 years ago and has over 3,000 members.

Creeks naturally filter and store clean water; reduce the impact of floods; are home to special-status species, including migratory birds and raptors; reduce the urban heat island effect; and are protected as Environmentally Sensitive Habitat Areas (ESHA). The City's Creek and Watershed Management Plan further highlights the value of Old San Jose Creek. For example, ecological benefits of the creek noted on page 127 include groundwater recharge; wildlife and freshwater habitat; spawning, reproduction and/or early development; and rare, threatened, or endangered species. Furthermore, page 96 indicates that Old San Jose Creek (south of Kellogg Avenue, where this project is located) is one of only two locations in the City of Goleta designated by the U.S. Fish and Wildlife Service as Critical Habitat for the Tidewater Goby.[1]

We have concerns about the subject project – a proposed SCD for the Security Paving – and its creek setback. The project description "acknowledges the as-built site improvements" but does not discuss or analyze these changes further, nor are these changes discussed in the attached Findings. Importantly, the As-Built Plan and Figure 3 of the Revised Restoration Plan both show several project components (including but not limited to the raw and finish stockpiles and associated retaining wall) as not only within 25 feet of the current ESHA boundary but also moving closer to the creek. General Plan Policy CE 2.2 and related 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.

Although it's possible that the baseline ESHA boundary for the existing, approved project may be a faulty 2010 survey performed by Dudek, the SCD is unequivocally a new project as the application was submitted

[1] Text reads "Within the City, designated USFWS critical habitat occurs for tidewater goby (*Eucyclogobius newberryi*) in Bell Canyon Creek south of US 101 and in Old San Jose in open waters, south of S. Kellogg Avenue…"

this year. As such, all project components described in the SCD, including the proposed As-Built site plan, are subject to Title 17 of the Goleta Municipal Code and the present-day ESHA boundary, per above.

Given the value of Old San Jose Creek, the City must ensure it is properly protected pursuant to the General Plan and Title 17 before any decision to approve the proposed project can be made. Our groups request the City delay action to address our concerns. We are willing to work with the City and the applicant on available solutions and how best to proceed.

Thank you in advance for your close attention to these concerns.

Respectfully,

Dan McCarter

President, Santa Barbara Urban Creeks Council

https://sb-urbancreeks.org/

February 13, 2022

Subject: **Public Comment on Case Number 22-0001-SCD for Security Paving**
City of Goleta Planning and Environmental Review Director Decision
Decision Date: February 14, 2022

Dear Director Imhof:

I am writing to provide comments on the subject project for your consideration.

Under different circumstances (e.g., if ESHA were not located on or near the property, the project was not controversial, and the changes were smaller, such as not relocating the project more than 10% closer to a property line), the proposed project changes as shown in the As-Built Plan could be considered minor. In such a circumstance, issuance of a SCD would be an appropriate course of action. 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.

Staff are given tremendous discretion on day-to-day implementation of the City's adopted policies (e.g., CE 2.2) and Municipal Code. **The fact that Staff attempted to process this project in this manner – with an "acknowledgement" of the As-Built Plan (and no analysis thereof), preparing unjustified Findings (that cannot be made), and with egregious errors in Noticing the proposed project – is deeply concerning.** This also raises questions about the manner in which Staff are processing other proposed projects and zoning violations.

While I am grateful that the decision to approve the SCD on Monday has been cancelled, it is also concerning that no indication has been provided thus far that approval of a Major Conditional Use Permit will be required if the proposed project is not significantly changed. **When moving forward, the applicant must be required to either request a Major Conditional Use Permit (per 17.30.070) or modify the project such that this is no longer applicable.** If the project remains largely unchanged and a Major Conditional Use Permit is not deemed necessary, solid justification must be provided (e.g., in the accompanying Zoning Analysis) for doing so.

Additionally, there are several existing zoning violations on the property that staff have allowed to not only persist but also grow. These must be addressed immediately. The applicant has delayed this permitting process for years while continuing to operate as if the project was complete. Given the issues raised herein, it is not clear how the applicant will choose to move forward and there is a significant risk that the existing, unpermitted, massive stockpile will remain in place for a long time to come. If this happened, it could ultimately be up to the City to remove the stockpile at significant cost.

Last, I believe the potential to rescind the existing permit must be considered. Every approval associated with this project, including the Planning Commission's approval in 2011, the 2017 LUP, and 18-136-SCD-LUP, included a Condition that the approval is based on accurate information provided by the Applicant. Since the last LUP was issued, staff have determined (and Figure 3 of the Revised Restoration Plan shows) that the 2010 Biological Report showed a wildly inaccurate ESHA boundary. As noted in more detail below, in one location, the boundary is off by more than 50 feet. Given the

incorrect information, the many other problems with this project, and the applicant's refusal to postpone commencing operations until a Final Certificate of Occupancy is granted, the possibility of rescinding the existing permit should be seriously considered.

Respectfully,

Chris Noddings
City of Goleta Resident

Part A: Comments on the As-Built Plan and Permit Process

1. One of the standard Conditions of Approval is that projects be constructed per the approved plans, and that any deviations therefrom (e.g., the As-Built Plan) shall be subject to further permit processes. As such, all project components, including all changes shown on the As-Built Site Plan, must be described and analyzed consistent with Title 17 requirements as well as past practice (e.g., Hollipat Permanent Parking Lot). Components include, but are not necessarily limited to, the following:

    a. <u>The retaining wall, V-ditch, and chain link fence along the western property boundary</u>. As shown on the As-Built Site Plan, the retaining wall is precisely built where the chain link fence is supposed to be, and other features (V-ditch, chain link fence) are built precisely 10 feet further west of where they are supposed to be located. Relocating these features, and expanding the large stockpiles located behind the retaining wall – must be analyzed consistent with General Plan policies and Title 17 requirements.

    b. <u>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</u>. This includes, but is not necessarily limited to, the parking area, east-west V-ditch along the northern property line, and a portion of the basin to the east of the parking area.

    c. <u>The overflow swale from the retention basin to the northern property line</u>. This has been added as a new project feature going through former ESHA and therefore represents development *within* ESHA. The fact that the ESHA was previously and illegally removed by the property owner to the north has no bearing on the matter as the definition of ESHA includes "any area that has been previously designated [as ESHA]."

2. Given that the above components are all considered "development" (per the Title 17 definition of "development") and have been relocated closer to ESHA within the 100-foot SPA for ESHA (some within the ESHA itself), all requirements from Chapter 17.30 of the GMC apply. This includes a Bio Study consistent with GMC Section 17.30.030 and a Major Conditional Use Permit consistent with GMC Section 17.30.070.

3. The changes to the existing Development Plan proposed represent a new project, received in 2022. Furthermore, none of the Project Vesting allowances under GMC Section 17.01.040(E) apply to these proposed changes. Consistent with Title 17 requirements, and as implemented by the City for multiple other projects (e.g., the Hollipat Permanent Parking Lot is one such project), any proposed changes must comply with Title 17 requirements despite approval of original Development Plan prior to Title 17 going into effect.

4. The proposed changes on the As-Built Plan show development within 25 feet of ESHA as it existing in 2019 (refer to Revised Restoration Plan Figure 3). Given comments above, comments submitted by the Audubon Society, anticipated vegetation growth since 2019, Title 17 requirements (Chapter 17.30), and General Plan Policy (CE 2.2), it is unclear how these proposed

changes within 25 feet of ESHA (as it exists today) can be approved even if a Major Conditional Use Permit is granted.

Part B: Comments on the Project Description

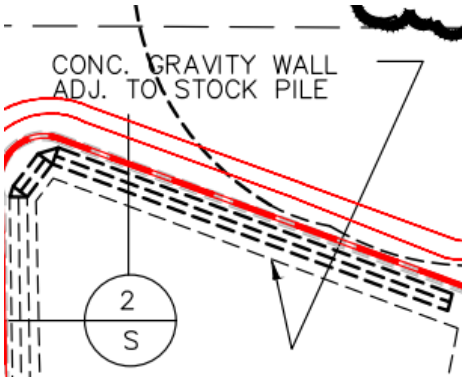
5. Regarding the changes proposed in the As-Built Site Plan, the project description in the SCD states, "These locations do not fully align with the original City approvals, given the initial site plan inaccuracies, site plan and project changes made at the California Coastal Commission level, and discrepancies that occurred during construction." This statement requires further justification as it is both inaccurate and misleading. Given Staff's awareness of the project's history, and internal discussions, I believe this is intentional to downplay the nature of the proposed changes. For example:
    a. What "initial site plan inaccuracies" are being referenced? The original architect for the entitled plans used a different coordinate system than was used by Security Paving's licensed surveyors, which made initial efforts to provide an As-Built Overlay difficult. The Security Paving Team, however, was able to resolve this discrepancy and prepare the proposed As-Built Site Plan that has been accepted by the City's Public Works Department as (sufficiently) accurate.

    b. While the original City approvals (from 2011 by the Planning Commission) were indeed heavily modified by the Coastal Commission's site plan, which heavily reconfigured the site and was approved in 2014, the As-Built site plan is overlaid on the site plan for the 2017 LUP that was issued to effectuate the Coastal Commission's approval. While the Coastal Commission's site reconfiguration does have implications for various Conditions of Approval, it has no bearing on the fact that the site was constructed incorrectly. Suggesting that the changes in the As-Built Plan are needed because of "project changes made at the California Coastal Commission level" is completely misleading and inaccurate.

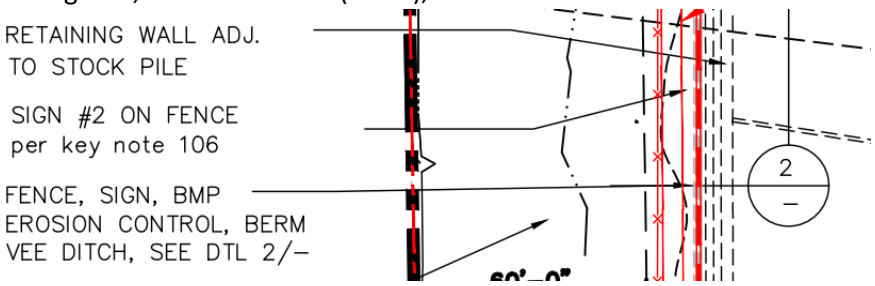
    c. Regarding the As-Built location of the retention wall and (other features built incorrectly) as shown in the As-Built Site Plan:

    Based on discussions with the applicant, staff concluded that the licensed surveyors hired by the applicant misread the site plans given the unusual symbology utilized for the line work (e.g., the chain link fence is a thick, dashed, gray line and the concrete gravity wall is shown as "adjacent to stock pile"). Given the callouts and details provided in the site plan (shown below), however, the approved site plan makes it is clear where the wall was supposed to be located despite the unusual symbology. Accordingly, describing the relocation of project components into ESHA and SPA as a "discrepancy during construction" is dubious, at best.

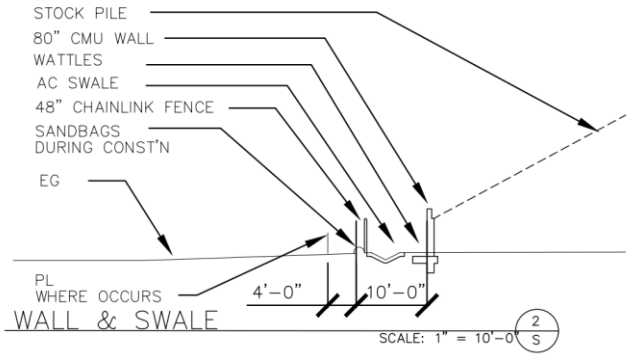
    This callout at the northern end of the project clearly identifies the location of the stockpile and retaining wall, with a reference to the site detail in the upper-left hand corner of the same sheet:



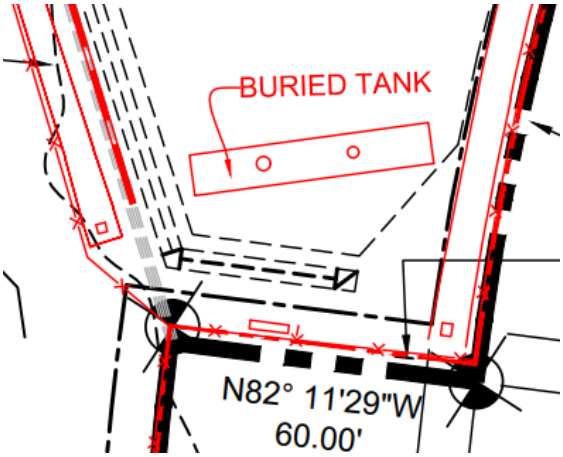
These callouts along the western property boundary clearly identify the retaining wall, chain link fence (twice), and V-ditch:



This detail inset clearly shows the retaining wall to the east and south of the V-ditch and chain-link fence:



The chain link fence was always planned to reach the corner of the property shown below. Even if the surveyors had missed all of the above, they should have realized that the thick, gray, dashed line representing the chain link fence could not be the wall because constructing the wall in this manner would close off the required secondary fire access road.



Part C: Comments on the Findings

As detailed below, the Findings attached to the SCD do not meet the most basic requirements. It is shocking that Staff would attempt to approve a project that have these issues.

6. Despite "recognizing" the As-Built Site Plan in the project description, the As-Built site plan is never mentioned in the Findings.
7. Finding 1.4:
    a. This Finding requires that "The location [of the project] must not be moved more than 10 percent closer to a property line than the originally approved Permit or Plan." The northern portion of the retaining wall, and the large stockpile behind the wall, was supposed to be 20 feet from the nearest property line to the west. Moving the retaining wall and stockpile 10 feet to the west thereby moves a portion of the project 10 feet to the west, resulting in moving the project 50% closer to a property line. Other project features (e.g., the V-ditch and chain link fence) are moved even more than 50% closer to the property line. This finding cannot be made.

    When I identified the above issues to the City's Current Planning Manager prior to accepting an offer of a promotion at another jurisdiction, she agreed with my assessment. Why, then, did Staff choose to attempt to approve this project with a SCD?

    b. Furthermore, regarding the revised location of the Restoration Plan (as addressed in the Finding):
        i. Text inaccurately indicates total restoration area would be increased, stating "... while also adding habitat to an area located along the northern property line..." instead of providing "an equivalent amount of habitat restoration, as intended with the original approval," as used in Finding 2.1. This language in Finding 1.4 makes the proposed revisions to the Restoration Plan appear better than they are.
        ii. The Finding requires that the revised location be consistent with the original approval as it was "originally intended." It is very clear that the approvals by the City's Planning Commission and the Coastal Commission were based on the SPA

being restored within 25-50 feet of the existing ESHA within Old San Jose Creek. The proposed revision would locate part of the restored area further away from this corridor. The analysis does not address this fact or state how it is consistent with the intent of the original approval.

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.

   Furthermore, proposed projects that have less than a 100-foot SPA are known to staff as being controversial. Heritage Ridge, in the opposite side of the railroad tracks and with only a very small portion of the project within the 100-foot SPA, was held up for months (possibly years - I don't know current status) because of a request for a minor SPA reduction. As described above, the proposed project is partially ***within*** ESHA, is largely within the minimum 25-foot SPA setback, and almost entirely within the 100-foot SPA. While Staff have decided that public comments submitted to date generate sufficient public controversy to prevent this Finding from being made, **it remains unclear how Staff could have ever justified that there was no reason "to believe the [project] is likely to create substantial public controversy."**

   Finally, as noted in the Zoning Violation section below, the applicant has flagrantly disregarded requirements not to bring new material onto the site and not to operate the crushing machinery. It is unclear how this was not expected to generate public controversy.

9. Finding 2.1 regarding re-making the Findings for the original approval:
   a. The text acknowledges the "various survey and site plan discrepancies [that] have come to light" and does not acknowledge the fact that the retention wall was built where the chain link fence was supposed to be located, or that everything originally planned to be west of the retention wall was subsequently shifted further west (and into the SPA and ESHA itself).
   b. Per above, the intent was to require a minimum of a 25-foot SPA setback, consistent with the minimum requirements of the General Plan. This is no longer proposed. Moreover, Staff are now aware that the 2010 Dudek study was highly flawed; as shown on Restoration Plan Figure 3, the discrepancy between the ESHA boundary as determined by

the 2010 Dudek Survey and a 2010 aerial is a minimum of 12 feet, typically 20-25 feet, and (at the southern end of the project) over 50 feet.

Accordingly, it is impossible to justify the statement that "the revised project meets the intent of what was to occur on the property and can be found consistent with the original approval" as the intent was to provide a minimum 25-foot upland SPA buffer.

10. Finding 2.2, that "The change does not conflict with project conditions of approval… and the change can be effectuated through existing permit conditions" cannot be made for reasons outlined above. The project no longer provides the 25-foot minimum SPA (let alone 50 feet required by the Coastal Commission). Furthermore, the revised restoration plan is not consistent with the original Conditions of Approval that required all work to be immediately adjacent (within the first 25 feet of) the ESHA.

11. Finding 2.3 regarding proposed changes being consistent with the previous environmental impact analysis:

    The project analyzed in the MND had a 25-foot SPA that was to be measured from what was later discovered to be a flawed edge of riparian canopy from Dudek's 2010 Bio Study. The analysis in the MND was provided based on a good-faith assumption that the bio study was accurate and that at least 25 feet of SPA would be provided. Related, the MND did not analyze the significant impact associated with not complying with General Plan requirements (e.g., CE 2.2, which requires a minimum of a 25-foot SPA). This project is not consistent with the original analysis and the Finding cannot be made. Indeed, to make the Finding, it would have to be demonstrated that the MND analyzed the use of a less-than-25 foot SPA and that it was approved as such by both the Planning Commission and Coastal Commission. Clearly, the proposed change would result in the need for additional mitigation measures.

    The finding's text regarding CEQA also does not address the As-Built Plan:

    > "A Mitigated Negative Declaration (11-MND-02) was prepared for the original development plan and a Categorical Exemption was issued for previously approved SCD (Case No. 18-136-SCD). As the change to the restoration plan does not results [*sic*] in changes to previously identified impacts, nor result in any new significant impacts, and since the changes to the project are considered minor, the previous CEQA findings can be re-made and an exemption for the revised project would be the appropriate environmental documentation. The City of Goleta, as the lead agency for this project, has found the revisions to the habitat restoration plan to be exempt from CEQA and a Notice of Exemption can be issued by the Director. Specifically, the project is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15333 (Small Habitat Restoration Project. The project is less than 5 acres in size for the purpose of restoration and enhancement of wildlife and streamside protection."

12. Common Findings, required per GMC Section 17.52.070, are missing entirely. This Section of the GMC states “The Review Authority must make affirmative findings of fact as required by this Title for any approval of new development...". No such findings are provided.

    a. Finding 2 states “The proposed project conforms to the applicable regulations of this Title...". Given all of the above, which include moving the project more than 10% closer to the property line and development within the ESHA itself, this finding cannot be made.
    b. Finding 2 also states "...and any zoning violation enforcement on the subject premises has been resolved as permitted by law." This finding cannot be made – see the discussion regarding ongoing Zoning Violations below.
    c. Finding 4, that "The development is within the project description of an adopted or certified CEQA document or is statutorily or categorically exempt from CEQA," also suffers from the same issues identified above and cannot be made.

Part D: Comments on the Restoration Plan

13. Figure 3: In and around the "Southern Extension," the figure shows that the boundary of the 2010 riparian canopy (ESHA, as represented by a solid red line) has been reduced when compared to the most recent survey performed in 2019 (as represented by a solid orange line). The project's Conditions of Approval require that any riparian habitat inadvertently removed must be mitigated. This must be added to the Zoning Violations listed below and mitigation must be provided.

14. The Restoration Plan already has an “Approved” stamp on it. Given that the SCD is to approve the Revised Restoration Plan, this is pre-decisional and wholly inappropriate.

15. Furthermore, the “Electronic Certification Stamp” has not been included to certify the approval, which is inconsistent with Current Planning approval procedures. I had thought this might be intentional, but per an email chain forwarded by Ms. Prasse, it is clear that the intention is for the Revised Restoration Plan to be approved. This stamp must be marked as rescinded immediately.

Part E: Comments on the Ongoing Zoning Violations

Numerous violations of the existing permit and/or zoning code are known to City Staff. These include the items below. It should be noted that a review of project materials (electronic and written notes at City Hall, emails, etc.) may reveal additional violations known to City Staff that have been similarly disregarded.

16. **Given the required Findings that there are no zoning violations on the property, the issues identified below should have been investigated by Staff and resolved prior to publicly releasing the proposed SCD**. Staff should explain why this was not done.

17. The As-Built Plan shows that a portion of the chain link fence in the northwestern corner has been constructed on neighboring property (APN 071-190-018). I believe this property is owned by the City of Santa Barbara. Have they been notified of the error?

18. Security Paving is using the trash and recycling enclosure as office space. This is an unpermitted Change of Use. City Staff have discussed the violation with the applicant's team and chosen to disregard it, deciding that they (Staff) would pretend that the applicant had resolved the situation without verification or follow-up inspections to ensure the violation did not subsequently return. This is particularly relevant given that the Coastal Commission's approval removed all office space proposed in the site plan approved by the City's Planning Commission in 2011.

19. Maintaining the stockpile at an angle of repose greater than what is allowed in the permit. This was included in at least one Notice of Violation issued by the City. While it may have been corrected after the NOV was issued, based on the photographs shown below, it appears the angle of repose is once again too great.

20. Given the proximity to the airport and to ensure airport safety, the stockpile is not allowed to exceed a specific height. If memory serves, the maximum height allowed is roughly 28 to 34 feet. I had asked Staff to provide a copy of the permit, Conditions of Approval, and/or report the maximum height allowed so that I could verify the specific maximum height allowed, but Staff refused to provide this information in a timely manner without explanation; this is discussed further below. Regardless, based on a site visit to the eastern end of Placencia Street and Corta Street, the existing pile appears to be taller than the adjacent, ~35-foot-tall trees. As such, I believe the existing stockpile is taller than the maximum allowed.

21. Security Paving has continually brought new, raw material (asphalt and concrete rubble) onto the site without the benefit of a permit. City Staff have discussed this issue with the Security Paving team countless times between 2018 (when Security Paving assumed responsibility for the project) and my departure from the City in September 2021. For example, the City's Building Official observed the applicant receiving raw material during a typical inspection (at which time the applicant was reminded of this requirement). We discussed this issue before and after issuance of the 18-136-SCD-LUP, which gave a <u>one-time authorization</u> to crush the raw material that was on the site and included a Condition of Approval prohibiting the receipt of new material to ensure this activity did not continue. Security Paving agreed to the Condition but did not stop bringing new material onto the site. Subsequently, the City issued two Notices of Violation (dates: 11/19/2020 and 1/19/2021).

    After receiving the first NOV, Mr. John Gasparo called to discuss the situation with me and stated that Security Paving had not stopped bringing new material onto the site in part because they thought the ongoing permit situation (e.g., the Wall and Restoration Plan) would be resolved before anyone noticed.

    <u>Despite all of the above, Security Paving continues receive new material:</u> on February 7, 2022, Mr. Glenn Gazdecki inspected the site and observed Security Paving receiving new material.

Furthermore, the APCD has also issued a NOV (#12825, dated August 26, 2021) because Security Paving was caught crushing materials without a Permit to Operate from the APCD (or a Final Certificate of Occupancy from the City of Goleta). Despite this and the many years of disregarding permit requirements, as of September 2021, the City of Goleta had not yet issued a third NOV. If this is still the case, that means the last NOV was issued in January 2021, approximately 7 months before the APCD caught Security Paving crushing material. **Why has a third NOV not been issued in all of this time?**

The scale of the material that Security Paving has received is astounding. According to Security Paving's operational logs provided by the APCD, Security Paving produced 16,126 tons of road base in January-February 2021 (without a permit) and 13,269 tons of road base in September 2021. This latter crushing event likely would have been significantly greater if the APCD had not been informed of the violation, investigated, and shut it down. Combined, this makes 29,395 tons of road base produced without a permit. For comparison, that is 1,867 tons more than the 27,528 tons that were legally produced in in September 2019 (as part of the one-time exemption to crush the over-sized, unpermitted raw stockpile collected by Highway Recycling and Security Paving).

Additionally, today's unpermitted, raw stockpile appears to be at least as big as the unpermitted stockpile that existed in September 2019. Assuming that the existing stockpile today is indeed about the same as existing in September 2019 (approximately 27,528 tons), **the total amount of raw material brought onto the site, *after agreeing to a Condition of Approval not to do so*, is 29,395 + 27,528 = 56,923 tons.**

Please also refer to the images below to help understand the scale of the issue.

This has gone on long enough. The City must enforce permit conditions!

22. It must also be noted that, on February 7, 2022, Mr. Gazdecki also reported that, after leaving a voicemail for Mr. Albert Torres and Ms. Sue Saddler at 805-961-7556, he received a return phone call from a woman (he could not remember her name but stated it was not Ms. Saddler) stating that Security Paving is allowed to bring new material onto the site. City Staff should clarify what, if anything, has changed to allow Security Paving to bring new material onsite, especially when considering that the raw stockpile location was filled months ago. Alternatively, perhaps this was an error, or an inexplicable miscommunication? Regardless, the status that Security Paving is not permitted to bring new material onto the site should be clear to all involved.

23. Additional violation details (e.g., the phone number to report dust complaints has been disconnected) are noted in the Investigation Summary prepared by APCD Inspector Glenn Gazdecki in August 2021, as shown below. Note that the logs for all crushing activity provided to the APCD following Mr. Gazdecki's report demonstrates discrepancies between what he was told verbally and what actually happened. For example, the crushing event in August 2021 occurred for a total of 7 days (not 6, as stated). All of these logs are available to the City upon Staff's request.

At approximately 1:24 pm, I arrived outside the facility gates located at 909 S. Kellogg Avenue. A sign on the gate states that noise and dust complaints should be referred to Scott Olson (805-401-2902). I called that number, but it was not in-service. I then called another phone number (805-770-8800) posted on the outside of the gate.

In the meantime, I observed the plant in operation. It was operating an electrically powered portable rock crushing and screening plant. Water was being applied at four different locations to keep dust down. Those locations included: 2 stock piles, cone crusher, and hopper-jaw crusher.

When Scott arrived, I asked him how long they have been operating the plant and he said that they began operations on Monday August 16th, 2021, and they worked five days (M-F) plus today, which makes it six days total. I asked if they operated earlier in the year, and he said that they operated approximately ten days in February 2021.

Given Mr. Christie's prior interactions with the District on Rule 201 requirements, the District considers NOV 12825 to be a willful and intentional violation of District Rule 201.

Part F: Comments on the City's Public Notice for this Director's Decision

24. Multiple aspects of the Notice did not meet Title 17 requirements for Notices, in part because no "Notice" was ever posted – onsite or online. The first file attached for eight of the eleven Director Decisions proposed, as posted to the City's Director Decisions page (https://www.cityofgoleta.org/city-hall/planning-and-environmental-review/director-decisions), is either a "Notice of Intent to Issue…" or a "Notice of Director's Decision." This project does not have such a Notice posted. Accordingly, Staff have not provided the critical information needed to submit a Public Comment. This information, which includes directions on how to submit comments and a description of the appeals process, is required by Title 17.

25. Multiple thousands of people have requested email notification about Planning-related projects. While not required by Title 17, whenever I processed SCDs as Staff, I ensured that this email list was notified of the pending decision. Such notice is the best professional practice, particularly as there is no indication that such projects will not be noticed in this manner. Without this Notice, by far the only way for an interested party (that does not live in the immediate vicinity of a project) to know about a proposed Director Decision such as this one is to regularly monitor the City's website linked above. This is a disservice to the people who have gone out of their way to request notifications from City Planning.

    Moreover, based on a searched my personal email for such City-wide notification for this project, the only City-wide notification I could find was for a Director Decision scheduled for July 17, 2020. It appears that not a single one of the 10 SCDs since July 2020 has been similarly Noticed. This also means that the only SCD that has been noticed in this manner was for a religious institution (a Jewish Synagogue). It is not clear why Staff have made these decisions or why the Synagogue project was singled-out in this manner.

26. Given the above issues with notification, project description, etc., it seems extremely likely that **if I hadn't known about the problems with this project and specifically requested to be updated**

as an interested party, the proposed SCD, with all of the problems noted in this letter, likely would have been approved on February 14, 2022. <u>City Staff should provide justification for its decisions to process this project this way.</u>

Part G: Comments on the Staff Report

27. Like the lack of a Public Notice, there is no Staff Report. None of the information typically provided therein, including background and analysis, is provided. It is unclear what the Draft Director's Letter is based on, nor is there an opportunity for interested members of the public to comment on the analysis.

Part H: Comments on Requests for Information

28. While preparing these comments, I requested information from City Staff. While some requests were honored, most were denied or deferred to a Public Records Act Request process. This includes requests as simple as an electronic copy of a readily-available permit (18-136-LUP). Importantly, the Public Records Act (PRA) allows staff a minimum of 10 days to respond, which would push receipt of the requested materials well beyond the scheduled decision date (9/14/2022).

    Importantly, not once in my nearly four years of public service at the City of Goleta Planning Counter was I instructed by any supervisor or manager to direct a member of the public seeking copies of readily-available permits to submit a PRA, especially when it was germane to an proposed project imminently scheduled for a decision. To the contrary, I was instructed to provide the information as quickly and efficiently as possible. Only if someone wanted copies of a Notice of Violation, emails, and similar were requestors directed to submit a Public Records Act Request.

    I do not understand the impetus for this deeply disappointing, and sudden, change, which is made all the more egregious by the fact that a Staff Report was not prepared.

Part I: Images (2019-Present)

June 20, 2019 Site Visit: view of unpermitted, original raw stockpile a few months prior to the one-time exemption that allowed it to be crushed.

View of finish stockpile. This is the result shortly after Security Paving received a one-time exemption to crush the unpermitted, raw stockpile in September 2019. Image date: October 11, 2019.

October 22, 2020: More than one year after Security Paving legally crushed the unpermitted stockpile, a small portion of the Finish stockpile remains (mid-ground) and a (new) raw stockpile is clearly visible (background, left). Image taken during an on-site meeting of City personnel (Planning and Public Works) with the Security Paving Team. The presence of the new, raw stockpile – and the angle of repose utilized to build it – led to the issuance of a Notice of Violation on November 19, 2020.

Photograph taken by Mr. Glenn Gazdecki, APCD Inspector, in August 2021, of Security Paving's unpermitted crushing equipment in action, with raw and finish stockpile visible.

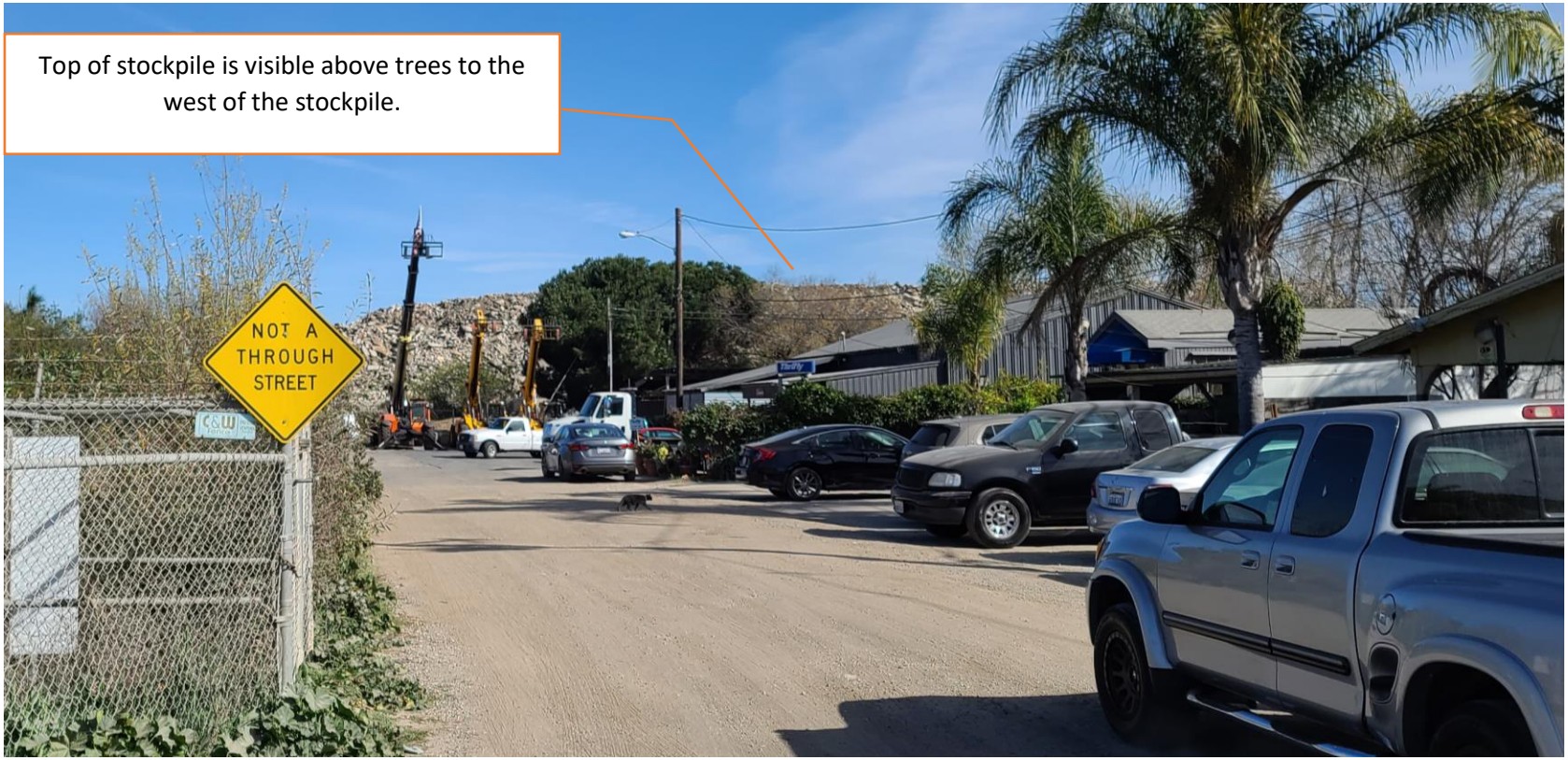
This material was brought onto the site following issuance of 18-136-SCD-LUP, which included Conditions of Approval to not bring new material onsite.

View from Entrance at 909 S. Kellogg Ave (gate was open) on 2/4/2022 (zoomed in). This material was brought onto the site following issuance of 18-136-SCD-LUP, which included Conditions of Approval to not bring new material onsite. Despite two previous, unpermitted crushing efforts in 2020, this raw material stockpile appears to be bigger than it was in 2019, when the unpermitted material was legally allowed to be crushed.

View from Entrance at 909 S. Kellogg Ave (gate was open) on 2/4/2022 (full image – for perspective). This material was brought onto the site following issuance of 18-136-SCD-LUP, which included Conditions of Approval to not bring new material onsite. Despite two previous, unpermitted crushing efforts in 2020, this raw material stockpile appears to be bigger than it was in 2019, when the unpermitted material was legally allowed to be crushed.

View from Placencia Street on 2/8/2022. This raw material is where the Finish Stockpile is supposed to be located.

This material was brought onto the site following issuance of 18-136-SCD-LUP, which included Conditions of Approval to not bring new material onsite. Despite two previous, unpermitted crushing efforts in 2020, this raw material stockpile appears to be bigger than it was in 2019, when the unpermitted material was legally allowed to be crushed.



View from Corta Street on 2/8/2022. This material was brought onto the site following issuance of 18-136-SCD-LUP, which included Conditions of Approval to not bring new material onsite. Despite two previous, unpermitted crushing efforts in 2020, this raw material stockpile appears to be bigger than it was in 2019, when the unpermitted material was legally allowed to be crushed.

View of the raw stockpile from CA-217 headed towards UCSB on 2/8/2022 (zoomed in). This material was brought onto the site following issuance of 18-136-SCD-LUP, which included Conditions of Approval to not bring new material onsite. Despite two previous, unpermitted crushing efforts in 2020, this raw material stockpile appears to be bigger than it was in 2019, when the unpermitted material was legally allowed to be crushed.

View of the raw stockpile from CA-217 headed towards UCSB on 2/8/2022 (no zoom, for perspective). This material was brought onto the site following issuance of 18-136-SCD-LUP, which included Conditions of Approval to not bring new material onsite. Despite two previous, unpermitted crushing efforts in 2020, this raw material stockpile appears to be bigger than it was in 2019, when the unpermitted material was legally allowed to be crushed.

SANTA BARBARA AUDUBON SOCIETY

P.O. Box 6737
Santa Barbara, CA 93160
www.SantaBarbaraAudubon.org

Peter Imhof, Director
Department of Planning and Environmental Review
130 Cremona Drive, Suite B
Goleta, CA 93117

February 11, 2022

Re: Security Paving Substantial Conformity Determination Case No. 22-0001-SCD

Dear Director Imhof,

Santa Barbara Audubon Society (SBAS) works to connect people with birds and nature through education, science-based projects, and advocacy. We are a chapter of the National Audubon Society, and have over 1,100 members in Santa Barbara County. We are heavily invested in protecting birds and bird habitat within the City of Goleta, the Goleta valley, and the reaches of the Goleta Slough. We have a track record of supporting the City's Zoning Ordinances and those provisions in the General Plan that provide environmental protection, and this includes Streamside Protection Areas (SPAs).

This letter addresses our concerns regarding the scheduled Substantial Conformity Determination for Security Paving to be held on February 14. We are opposed to this action for a host of reasons, and we present the most concerning here.

1. The City of Goleta adopted a 100' SPA, with possible reduction IF certain evidence is recorded- and this project supports none of these requirements. We are concerned about the apparent reduction of the SPA along Old San Jose Creek from 50' as conditioned by the Coastal Commission, down to 25'- and that the SPA has in actuality been reduced to far less than 25' as evident by inspecting Google Earth imagery for the location of the retaining wall and the stockpile of material.

2. We are viewing this project in regards to provisions from within Title 17, Goleta's Zoning Ordinance, and specifically Title 17 17.30.070. This appears to be a clear case where Title 17 applies. Ignoring the need to adhere to Title 17 would set a dangerous precedent for development within and adjacent to wetland and riparian ESHA. In addition, Title 17, IV-51 lists allowable uses within SPAs but a retaining wall and stockpiling of debris (as currently built on the Security Paving parcel and evident from Google Earth imagery) is not on the list.

3. This current project is based upon a 2011 survey, meaning that the project is based upon environmental data that is eleven years old. There is also reason to believe that this outdated survey might not have been correct in the first place. The case description states that proposed restoration needs to be relocated due to "imprecise measurements regarding the edge of riparian boundary during the review period in 2009-2011 and again during construction." How can a SCD be issued if the riparian boundary has been incorrectly mapped not once, but twice? And how can the SCD be granted if construction occurred in the wrong location?

4. A Notice of Exemption (NOE) has been filed even though language within the NOE states "*The proposed project involves changes to the habitat restoration plan in terms of the location of work because of various survey and site plan discrepancies.*" How can these discrepancies be ignored? In addition, the NOE states that "*no changes are proposed to the use of the site or the location of the stockpiles or equipment that were previously approved.*" However, evidence shows that the current locations of the retaining wall and stockpile are NOT at the approved location and instead have been offset to the west and into the SPA. Issuing the SCD in light of this evidence go against the very intent of Goleta's environmental protection code and sets a very dangerous precedent.

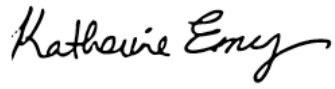
5. We are highly concerned with the modified and lackluster plans for mitigation restoration. Page 3 of the Revised Restoration Plan states *"Other factors include a misrepresented top of the bank resulting in a reduction of restoration area thought to be available, and ambiguity within the 2017 approved site plan, making the location of the asbuilt stormwater feature (wall, v-ditch and fence) problematic under the extended canopy."* 'Misrepresentation', 'ambiguity' and 'problematic' are not acceptable descriptors on which to base a suitable restoration plan. In addition, we do not understand why this Revised Plan proposes using the Northern Restoration Area. How can this area identified as *"literally meeting the City's restoration zone for the Ekwill-Fowler project mitigation planting area"* be credited towards this project? We are also concerned that the plants proposed for use in this Restoration Plan are admittedly upland plants and thus cannot be considered (or protected) as future ESHA. This parcel was once Goleta Slough wetlands, and given expected sea-level rise predictions, will again be wetlands in the not-too-distant future. We believe that the City should be planning for this fact- as to ignore it means that restoration efforts will in the long-term, fail.

6. The proposed SCD acknowledges *"The as-built site improvements locations include but are not limited to walls, chain link fencing, parking spaces, etc. These locations do not fully align with the original City approvals, given the initial site plan inaccuracies, site plan and project changes made at the California Coastal Commission level, and discrepancies that occurred during construction."* Why on earth would the City move forward with approvals for a project that it openly acknowledges does not fully align with initial approvals, has site plan inaccuracies, site plan changes and additional discrepancies? Any one of these should stop a project in its tracks.

7. Revised Restoration Plan Section 3.2.3 Potentially Occurring Sensitive Animals. The Plan opines that no sensitive birds are expected to nest <u>onsite or nearby</u>. Birds do not recognize property lines. Our SBAS members have documented sensitive birds, including Yellow warblers and White-tailed kites, foraging <u>and breeding</u> very close to this site[1], and there is no reason to believe that this area of Old San Jose Creek and the Goleta Slough were not once suitable foraging and breeding habitat. Indeed, it may be due specifically to human activities that these birds have not been breeding here in the recent past. We would argue that the very <u>purpose</u> of restoration would be to restore habitat function to the level of providing opportunities for sensitive (and common) species. Otherwise, what would be the point?

In closing, we appreciate the opportunity to provide public comment. The City admits that this Project both as approved and as built, is inconsistent with policy and procedure. We urge the Director to not approve the proposed Substantial Conformity Determination.

Sincerely,



Katherine Emery, PhD
Executive Director
Santa Barbara Audubon Society

1 Yellow warbler fledgling under parental care ~0.65 mile away from project location, SBAS bird breeding study record 5664 https://ucsb.maps.arcgis.com/apps/webappviewer/index.html?id=d5479baf24dc498a8e8f3894f298ed2d

Director Deccision:
February 14, 2022 at 5:00pm - Security Paving Substantial Conformity Deterr
Case No. 22-0001-SCD; 909 S. Kellogg; APN 071-190-035
Public Comment - Public Comment No. 4

Santa Barbara CHANNELKEEPER®

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February 11, 2022

Peter Imhof
Planning & Environmental Review Director
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

RE: Security Paving Substantial Conformity Determination Case No. 22-0001-SCD

Dear Director Imhof:

Santa Barbara Channelkeeper (SBCK) is a local non-profit organization dedicated to protecting and restoring the Santa Barbara Channel and its watershed through science-based advocacy, education, field work, and enforcement. Channelkeeper has been working in the Goleta Valley Watershed since 2002 primarily through our Goleta Stream Team water quality monitoring program. Recently, SBCK served on the Technical Advisory Committee to the City as it developed its first ever Creek & Watershed Management Plan (CWMP), which was adopted by City Council on November 17, 2020. This plan recognizes Goleta's creeks and riparian areas as important natural features which "should be protected to provide habitat for fish and wildlife, accommodate wildlife movement corridors, convey stormwater runoff and floodwaters, and furnish open spaces and passive recreation areas."

We have recently become aware of the Substantial Conformity Determination (SCD) for the Security Paving Project located at 909 S. Kellogg Street. Upon reviewing the project findings provided for the SCD as well as the attachments, we have several concerns about this project, in particular that development has occurred inconsistent with General Plan policy CE 2.2.

We request that the development changes that are described in the SCD are thoroughly analyzed through a development plan amendment, which will go to the Planning Commission with a public hearing. Thank you for your consideration.

Sincerely,

Ted Morton
Executive Director
Santa Barbara Channelkeeper

Director Deccision:
February 14, 2022 at 5:00pm - Security Paving Substantial Conformity Determination
Case No. 22-0001-SCD; 909 S. Kellogg; APN 071-190-035
Public Comment - Public Comment No.5

From: George Relles <grelles@gmail.com>
Sent: Wednesday, February 9, 2022 8:38 AM
To: Peter Imhof <pimhof@cityofgoleta.org>
Cc: Chris Noddings <chrisnoddings@gmail.com>
Subject: Security Paving Project SCD

Dear Director Imhof:

We of The Goodland Coalition have received the attached letter of concern from Chris Noddings regarding the proposed Substantial Conformity Determination (SCD) for the Security Paving project. We share many of the questions and concerns Chris has raised. We are writing to respectfully ask you to not approve an SCD for this project. We believe that a public hearing is needed, where the issues of process and fact could be addressed in a more publicly available forum.

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. Thank you and your staff for the service you provide to our community.

Sincerely,

George Relles, Convener of The Goodland Coalition
cc: Chris Noddings