



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Planning &  
Development  
Department No.: 053  
For Agenda Of: April 20, 2010  
Placement: Set Hearing  
Estimated Tme: 2 hours on 5/04/10  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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TO: Board of Supervisors

FROM: Department Glenn Russell, Ph.D., Director 568-2085  
Director(s) Planning and Development

Contact Info: Dave Ward, Deputy Director 568-2520  
Development Review Division, South County

SUBJECT: **Friends of Mission Canyon Appeal of Planning Commission Approval of the Santa Barbara Botanic Garden Vital Mission Plan**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

**Recommended Actions:** Set a hearing for May 4, 2010 to consider an appeal filed by the Friends of Mission Canyon (09APL-00000-00031) of the Planning Commission's October 26, 2009 approval of the Santa Barbara Botanic Garden's Vital Mission Plan project, located at 1212 Mission Canyon Road in the Mission Canyon area, First Supervisorial District.

On May 4, 2010, your Board's action should include the following:

1. Deny the appeal, Case No. 09APL-00000-00031, thereby upholding the County Planning Commission's approval of 72-CP-116 RV01 and 99-DP-043 (the Vital Mission Plan) as revised herein;
2. Make the required findings for approval of Case Nos. 72-CP-116 RV01 and 99-DP-043 (the Vital Mission Plan) included as Attachment 2, including CEQA findings;
3. Certify the Final Environmental Impact Report, 07EIR-00000-00001 (Attachment 7), including the FEIR Revision Letter (RV1) (Attachment 3), and adopt the mitigation monitoring program contained in the conditions of approval; and

4. Grant *de novo* approval of Case Nos. 72-CP-116 RV01 and 99-DP-043 (the Vital Mission Plan), as revised from the Planning Commission approval, subject to the revised conditions of approval included as Attachment 4.

**Summary Text:**

After four hearings, on October 26, 2009, the County Planning Commission approved the Santa Barbara Botanic Garden's Vital Mission Plan including a revised Conditional Use Permit and a Development Plan (Case Nos. 72-CP-116 RV01, 99-DP-043). The Vital Mission Plan involves the net increase of approximately 25,414 s.f. of new development within the Botanic Garden's Mission Canyon setting, consisting of a combination of administrative, research, and education facilities, as well as new staff housing. In addition to the new structural development, the revised CUP includes explicit allowances for uses and activities at the Garden, including general visitation, classes, and special events. The project would be built in phases over the next 10 years. Included with the approval of the revised CUP are 98 conditions applied to the operation of the Garden and buildout of the Vital Mission Plan. Details of the project as approved by the Planning Commission are provided in the Background section below.

Friends of Mission Canyon appealed the County Planning Commission's decision on October 26, 2009 for 17 reasons, as enumerated in their grounds for appeal (Attachment 1). The primary issue centers on fire hazards and a concern that Mission Canyon is ill-suited for the proposed physical expansion and intensification in use proposed under the project due to the high fire risks present in the canyon and associated public safety hazards to Garden visitors and canyon residents from the constrained evacuation capacity of the canyon. However, several other secondary issues have been raised and are discussed below.

A facilitation meeting was held between the applicant and appellant on February 2, 2010. Attempts were made at reaching agreement, focused primarily on acceptable levels of use at the Garden to reduce fire hazards and evacuation impacts. While significant discussions occurred and solutions were offered, the parties were unable to come to any agreement or compromise that would result in the FOMC dropping its appeal.

**Consideration of the Friends of Mission Canyon Appeal**

Friends of Mission Canyon (FOMC) has enumerated 17 grounds for its appeal. Each issue is discussed separately below.

*Issue 1 – Fire Issues, Antiquated Risk and Impact Analysis*

FOMC asserts that fire hazards and the risks that fire hazards pose to public safety are the most significant issue posed by the project. FOMC claims that the EIR analysis is inadequate because it was not updated to reflect the lessons learned in the Tea and Jesusita Fires. On the contrary, the EIR was updated to reflect changes to the physical environmental setting and applicable impact analyses resulting from the Jesusita Fire burning much of the site and surrounding area. In this regard, the EIR made a good faith effort at full disclosure of the changes due to the fire, contrary to the appellant's assertion. Similarly, assumptions on fire behavior and modeling used in the Garden's Fire Protection Plan accurately reflect the conditions that were experienced in the Jesusita Fire.

The appellant also asserts that the EIR is inadequate for failing to consider the effects of climate change on wildfire risk. To this end, the appellant cites a report released by the California Climate Change

Center dated August 2009 that evaluates the effect of climate change on wildfire. This report was released after preparation of the proposed Final EIR (July 2009) and docketing of the staff report to the Planning Commission on July 22, 2009. Therefore, contrary to the appellant's assertion, it was impossible to consider this report in the EIR. Nonetheless, the EIR does include a discussion of the effects of climate change on wildfires, concluding that potentially hotter, drier summers associated with climate change would exacerbate fire risks and result in longer periods of high fire preparedness levels. The project has been conditioned to restrict activities during high fire preparedness levels; these would continue to apply to the longer period, thereby mitigating any impacts. While not required to review and respond to late comments and reports submitted after preparation of the proposed Final EIR, staff has nonetheless reviewed the report cited by the appellant. The report does not include any new information that would alter the analysis or conclusions in the EIR.

*Issue 2 – Fire Issues, Lack of Secondary Access*

The appellant asserts that Santa Barbara County policy and Fire Code requirements mandate a secondary access remote from the primary access for the purposes of evacuation and emergency access. There are no such County policy requirements, though the Draft Mission Canyon Community Plan update currently in process does include a draft policy consistent with this requirement (though it provides a process for waivers from this requirement by the County Fire Department). The County Fire Department institutes a number of development standards that apply to private development projects. Requirement II.E of the County Fire Department Development Standard #1 states: "Two separate and approved access roads (not alternate access) shall be provided when it is determined by the Fire Chief that access by a single road, in excess of 600 ft, might be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access (CFC Appendix D107.1 & 503.1.2)." The County Fire Department reviewed this project for compliance with applicable development standards and the Fire Chief made no such determination; therefore formal secondary access is not required. The other instance in which secondary access is required is for residential subdivisions of 30 homes/lots or more, which does not apply to the proposed project. The EIR Revision Letter (Attachment 3) clarifies this fact.

*Issue 3 – Fire Issues, Double-Counting Fire Mitigation Measures*

The appellant states that the EIR concluded that the use of several mitigation measures that reduce the project's fire hazards to less than significant levels may also be relied upon to overcome the absence of a secondary access. In this way, the appellant asserts that the EIR and staff double counted the mitigation measures.

As stated above, there is no requirement for formal secondary access to serve the project site. As discussed above, this requirement only applies in limited situations and does not apply to the proposed project. The Fire Protection Plan and EIR misstate this requirement's applicability to the proposed project. The EIR Revision Letter (Attachment 3) clarifies this fact. Nonetheless, the single access in and out of the canyon is the primary cause of significant fire hazards and public safety impacts in the canyon because of the limited opportunities for evacuation in a wildfire event. This is the rationale for the Final EIR identifying the lack of secondary access as a contributing factor in the fire hazards and public safety risks associated with the project. By incorporating the various measures in the Fire Protection Plan that enhance defensibility, and placing restrictions on use levels at the Garden during high fire hazard preparedness levels, including closure of the Garden to the public on red flag days, the approved project with conditions offsets the impacts of increases in use and the lack of multiple routes

for evacuation. Thus, the two issues (mitigation of impacts associated with increases in use and offsetting the lack of secondary access) go hand in hand and are not mutually exclusive.

*Issue 4 – CEQA Defects, Failure to Identify Related Projects and Inadequate Cumulative Analysis*

The appellant asserts that the EIR is inadequate because the list of related projects for use in the cumulative impacts analyses was not updated to reflect the rebuilding projects stemming from destroyed houses and accessory structures from the Tea and Jesusita Fires. The Cumulative Projects list was compiled based on recently approved, planned, and pending projects known at the time of the Notice of Preparation (March 2006). This method for selecting the date of the Notice of Preparation as the cut-off date for related projects is a recognized and accepted approach under CEQA. CEQA does not require updating of the list of related projects as the Draft EIR is being prepared, as it would be a constantly moving target as new projects are proposed. Nonetheless, the EIR does acknowledge in applicable sections, including aesthetics, biological resources, land use, and noise, that the recent Jesusita Fire and associated rebuilding of homes would result in cumulative impacts such as short-term construction noise and traffic, though these would be less than significant. The cumulative impact assessment in other issue areas was not revised because it was determined that the fire or rebuild efforts would not have any significant bearing or effect on the cumulative discussion.

Additionally, most if not all of the Tea Fire rebuilds are several miles from the project site and outside of the geographic scope of related projects. Contrary to the appellant's assertion, fire rebuild projects in the Tea Fire area would not add considerable construction traffic to the roads used to access the project site (primarily Mission Canyon Road), as they are in other areas of the Santa Barbara community with other roads that provide more direct access to these sites. It is expected that the majority of fire rebuilds will occur within the next two to three years since residents would want to minimize the amount of time they are displaced from their homes. Beyond that, remaining rebuild efforts would be expected to be fairly staggered with minimal cumulative effect. It will likely take more than one year from the date of final approval of the Garden's Vital Mission Plan project before building permits have been obtained to start construction and, even then, buildout would occur in phases over the next decade. Thus, the amount of overlap between construction of the proposed project and Jesusita Fire rebuilds is not expected to be significant. Lastly, at the time of the release of the proposed Final EIR (July 2009), only one application for a rebuild of a single family dwelling in Mission Canyon had been submitted. It would have been speculative to include in the list of related projects all of the rebuilds, since the timing and extent of rebuild efforts was not known at that time. Therefore, the EIR is adequate in its treatment of related projects, cumulative impact analyses, and consideration of the effects of the recent fires. Nonetheless, for clarity, the EIR Revision Letter (Attachment 3) has been revised to include further discussion on Jesusita Fire rebuilds and the cumulative impact analyses.

*Issue 5 – CEQA Defects, Legally Inadequate Baseline*

The appellant asserts that the EIR is inadequate because the environmental baseline was not updated to reflect the physical conditions after the Jesusita Fire. As stated by the appellant, CEQA normally requires that the baseline reflect the physical environmental conditions existing at the time of the Notice of Preparation. This is the approach that the EIR took, consistent with CEQA requirements. Nonetheless, the EIR was updated to reflect the changed conditions post-fire. Applicable sections of the impact analyses were also updated after the Jesusita Fire to reflect where such physical changes influenced the environmental effects of the project, despite the appellant's claim to the contrary. In sum, County staff and the County Planning Commission determined the EIR to be adequate in its treatment of the environmental baseline.

*Issue 6 – CEQA Defects, Failure to Identify Potential Ethnic Impacts*

The appellant asserts that the EIR is inadequate because it does not reference ethnic impacts, despite the County's *Environmental Thresholds and Guidelines Manual*, which identifies ethnic impacts as an issue to be potentially considered in an EIR. The County's thresholds provide a guide to be used with discretion on a project by project basis, as not all thresholds apply in all cases. Consistent with the County's "Guidelines for the Implementation of the California Environmental Quality Act of 1970, As Amended" originally adopted by the Board of Supervisors in 1988, thresholds of significance provide general guidance for determining significant impacts. Some thresholds are quantitative. Others, like cultural resource thresholds, are not. In this latter case, thresholds are used as guidelines and are thus not ironclad definitions of significant impacts. As such, each project is judged individually for its potential for significant impacts, based on specific circumstances and evidence. The threshold in question relating to ethnic impacts is reserved for sites of utmost significance to the Native American community and is not typically applied to every prehistoric archaeological site, regardless of the site's significance under CEQA. The EIR consultants and County staff found no evidence in the record, either anecdotal or written, indicating use of this site for ceremonial or other purposes or that the site was significant in an ethnic sense above and beyond its significance as an historic/archaeological resource under the California Register criteria. Therefore, assessment of the project's ethnic impacts under this threshold was not incorporated into the EIR analysis. Nonetheless, representatives of the Native American community were contacted as part of the EIR process to assess their concerns and viewpoints on the impacts of the project and adequacy of the mitigation measures (as documented in the PC staff memorandum dated September 2, 2009), consistent with the intent of this threshold. Further, this threshold goes beyond just an assessment of ethnic impacts to also address a combination of archaeological and historic resource issues affecting a community or social group. While not discussed and evaluated under the context of "ethnic impacts" as a separate impact heading, the EIR does evaluate the impacts of the project on archaeological and historic resources, consistent with the intent of this threshold.

*Issue 7 – CEQA Defects, Failure to Identify Inconsistencies with Adopted Plans and Policies*

The appellant asserts that the EIR is inadequate because it fails to identify and analyze impacts associated with the project's inconsistencies with adopted plans and policies, including applicable provisions of the zoning ordinance, County Fire Department standards, and policies of the Comprehensive Plan. Contrary to the appellant's assertion, the EIR includes an entire chapter dedicated to evaluating the project's consistency or inconsistency with County policies. However, an EIR is not the appropriate venue for providing a thorough evaluation of a project's compliance with zoning ordinance requirements, as this evaluation does not correlate with physical environmental effects. Where non-compliance with an ordinance requirement translates into a physical effect, it is appropriately discussed and analyzed in the context of the EIR. Staff evaluation of ordinance compliance typically occurs in the context of the staff report to the decision makers, as was the case for this project. Similarly, County Fire Department standards are not a County plan or policy against which consistency is evaluated in the context of an EIR policy consistency analysis. However, the project is evaluated in the Fire Protection impact analysis section of the EIR (Section 4.5) against these standards as they relate to physical effects on emergency access and defensibility. Contrary to the appellant's assertion, policy inconsistency does not automatically equate to a significant physical impact that must be analyzed in an EIR. A project can be consistent with County policy but still result in a significant impact. Conversely, a project can be inconsistent with County policy but that inconsistency may not translate into a significant environmental effect. These are separate analyses and the EIR discusses them appropriately.

*Issue 8 – Conflicts with Zoning Ordinance*

The appellant claims that the project is inconsistent with the purpose and intent of the Recreation (REC) zone district, and that elements of the project, namely arts and crafts fairs, are specifically prohibited in the REC zone. The appellant's analysis of the project's compliance with requirements of the REC zone is flawed. First, as approved, the project allows for a limited number of special events, fundraisers, and other types of community activities. This includes an annual cap on visitation associated with special events, restricting attendance associated with individual events to no more than 300, and allowing no more than three large events (i.e. events individually exceeding 80 guests) per month. The Planning Commission approved project, however, does not specifically allow for arts and crafts fairs under the terms of the Conditional Use Permit.

Second, in determining what uses are allowed in a particular zone district, pursuant to Section 35.20.030 of the LUDC, one should look at the list of allowable uses in each zone provided in the Land Use Tables in Chapters 35.21 through 35.26. Allowable uses in the REC zone are listed in Table 2-23 in Section 35.26.030. This table lists several uses allowable in the REC zone under various permit types, including a Library/Museum with a Conditional Use Permit. The LUDC defines a museum as "a building, place, or institution devoted to the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value." Staff has determined that the Santa Barbara Botanic Garden clearly fits within this allowable use.

With any principal use, there are secondary uses that are ancillary or customarily incidental to the principal use. In the case of the Botanic Garden, it is reasonable to conclude that fundraising events and other types of community activities have been and continue to be ancillary or incidental to the primary use as a non-profit botanical garden, and function as an integral component supporting its ongoing operation.

Moreover, the appellant mistakenly equates these claims of non-compliance with a significant physical effect that requires analysis in the EIR. As noted above, unless a project's non-compliance with zoning ordinance requirements translates into a physical effect, its discussion is not appropriate in the context of an EIR.

*Issue 9 – Inconsistency with Comprehensive Plan Land Use Element Policy 4*

The appellant also claims that the project is inconsistent with Land Use Development Policy 4 of the County Comprehensive Plan, Land Use Element (LUE) and that the EIR failed to identify and analyze these impacts. Again, this is a policy issue and not specifically a physical environmental impact issue as asserted by the appellant. The EIR does evaluate the project's consistency with this policy in Section 5.0 of the EIR. The LUE Land Use Development Policy 4 requires that adequate public or private services be available to serve a project prior to the issuance of use permits. The application of this policy commonly involves the use of conditions of approval to ensure the provision of adequate services, such as is the case with the Planning Commission-approved project requiring the extension of water lines to ensure adequate flow and pressure for hydrants. Contrary to the appellant's assertion, it is not speculative whether the proposed extension would achieve minimum fire flows and pressure. This condition was developed in consultation with Mission Canyon's water purveyor (City of Santa Barbara) who has thorough knowledge and understanding of the water system in the canyon. Through its understanding and modeling of the water system, the City expects that the water line extension would achieve minimum fire flows and pressure to serve the project hydrants. The County Fire Department has reviewed and approved the project components, including internal road widths, hydrant spacing, and

other access requirements, and determined that the project adequately meets their standards. In regards to Mission Canyon Road, since it is a public road, the County Fire Department standards do not apply. The EIR discussion of this issue is meant to indicate that if the road were private, then it would not comply with County Fire Department standards for road width. County Public Works Department design standards for public roadways include a standard travel lane width of 12 feet, but will allow widths down to 10 feet due to site constraints. Regardless, these design standards do not apply to infill development such as the proposed project. The EIR Revision Letter (Attachment 3) clarifies this point. The County Fire Department maintains that they can continue to serve the project site and residents along Mission Canyon Road, regardless of the existing road widths. Thus, the project does have adequate services and is therefore consistent with this policy.

*Issue 10 – CEQA Defects, Conflicts with General Plan Cultural Resource Policies*

The appellant asserts that the project is inconsistent with the cultural resource policies of the Land Use Element of the Comprehensive Plan and that the EIR is inadequate for failing to recognize this inconsistency as a potentially significant impact. As discussed under Issue 7 above, a policy inconsistency does not necessarily equate to a potentially significant impact. The EIR does include an analysis of the project's consistency with the cultural resource policies referenced by the appellant and concludes that the project is consistent.

The Planning Commission approved project on appeal includes development in an area occupied by a known archaeological site. Specifically, two new staff residences and associated infrastructure improvements would be constructed in this area; two existing residences would be remodeled and utilities would be extended to serve the units. The project was originally designed to avoid impacts to the archaeological site where possible while still meeting project objectives. Additionally, during the permit process, revisions were made to the project to reduce the scale of development in this area and to restore the existing residences rather than demolish them and rebuild them specifically in order to avoid impacting archaeological resources. While areas of identified high and medium density deposits would have been avoided through site design, areas of the site with low density deposits would still have been impacted with the construction of the two new staff residences and associated infrastructure improvements. Appropriately, mitigation measures were adopted to reduce impacts. Hence, the Planning Commission was able to find the project consistent with LUDC Sections 35.60.040.1 and 35.60.040.2.

However, as discussed in more detail below, staff is recommending that these two residential units be eliminated in order to ensure compliance with zoning ordinance residential density requirements, which would help to further avoid impacts to this resource. Contrary to the appellant's assertion, the roadway through the Hansen site that impacts portions of the archaeological site cannot be avoided, as it is an existing road that the County Fire Department is requiring be improved to meet County Fire Department standards for emergency access. Thus, the project has been designed to avoid impacts to the cultural site where possible.

Implementation of the proposed mitigation measures, which are in compliance with the guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission, would ensure impacts to archaeological resources are avoided or reduced to less than significant levels. Such mitigation measures include avoidance through capping of the resource prior to construction where feasible, and Phase 3 investigations where necessary. In addition, monitoring by a County-qualified archaeologist and Native American observer would be required for all ground disturbances within and adjacent to the recorded archaeological site. All impacts were reduced to less than significant levels

through the incorporation of mitigation measures as conditions of project approval, consistent with the policy requirements referenced above.

In regards to the exploration of all available measure to avoid development on significant cultural resources, these measures were considered but were determined to not be appropriate to the site. As a non-profit, the Garden already receives property tax relief on Garden property and purchasing the property would be contrary to the Garden's mission and project objectives, not to mention the fact that there are no County programs or funds available for such actions.

*Issue 11 – Conflicts with the 1984 and Initiated Revised Mission Canyon Specific Plan (Community Plan) Policies*

The appellant asserts that the project conflicts with a number of the proposed policies of the Draft Mission Canyon Community Plan that is currently in progress. However, the appellant does not cite any specific policies in this claim. The project needs to be consistent with policies in effect at the time of project approval. Because the proposed policies of the Community Plan update are still in draft form and not in effect, the project need not be found consistent with them at this time. However, it is recognized that once the Mission Canyon Community Plan is adopted, any subsequent permit approvals for the Garden, including follow-up Zoning Clearances for the Vital Mission Plan individual phases, must be found consistent with the policies in effect. Therefore, the project has been reviewed in the context of proposed policies and no instances of inconsistency were identified.

*Issue 12 – Applicant Manipulation of Feasibility of Alternatives*

The appellant asserts that the alternatives analysis in the EIR violates CEQA because conclusions on the feasibility of alternatives are based on the applicant's desires rather than facts and independent reasoning. On the contrary, County staff did use independent reasoning in concluding that the off-site alternative was infeasible. The alternative as a whole was deemed infeasible because it would separate integral functions at the Garden and significantly impair its ability to run its day to day operations and fulfill its mission consistent with project objectives.

*Issue 13 – Inadequate Response to Comments*

The appellant asserts that the EIR's response to public comments were conclusory, unsupported by facts, and failed to adequately address the comments that the mitigation measures were insufficient to reduce fire hazard impacts to less than significant levels. However, the EIR includes a complete and thorough response to every public comment that was received on the original Draft EIR and the two recirculated drafts, including as they relate to fire hazards and the adequacy of the mitigation measures. Absent specific quantified local thresholds of significance related to fire hazards, the EIR relied on the County Fire Department's experience and expert local opinion as to the adequacy of the project's Fire Protection Plan and mitigation measures in reducing the fire hazard impacts to less than significant levels. This and other information was included in the various responses to public comments.

*Issue 14 – Findings*

The appellant asserts that the CEQA Findings adopted by the Planning Commission are not based on substantial evidence. This claim represents the opinion of the appellant and is not supported by fact. The Planning Commission determined that the CEQA Findings are adequate, sufficiently detailed, and based on substantial evidence in the record.



The appellant also asserts that the required Administrative Findings adopted by the Planning Commission lack the required level of detail and are not supported by substantial evidence, specifically as it relates to the finding that the project is consistent with all applicable provisions of the Development Code, General Plan, and Community Plan. As discussed previously, the project was analyzed and found to be consistent with applicable County policies, including those of the 1984 Mission Canyon Area Specific Plan. In regards to compliance with zoning ordinance requirements, as discussed below, staff is recommending revisions to the staff housing component of the project in order to ensure ordinance compliance. These changes would ensure that this finding could be made.

The appellant also asserts that the Planning Commission finding that the streets are adequate to carry the type and quantity of traffic generated by the project is not supported by substantial evidence. On the contrary, the EIR analysis, including the traffic study prepared to analyze the project, concluded that area roads and intersections would continue to operate within acceptable levels with implementation of the proposed project. Thus, there is evidence to support this finding.

Lastly, the appellant asserts that the Planning Commission finding that all adverse impacts are mitigated to the maximum extent feasible is not supported by substantial evidence. The appellant claims that impacts to fire protection could be further reduced by limiting Garden visitation and activities and that impacts to cultural and historic resources could be further reduced by prohibiting pavers, eliminating the Meadow Terrace, and eliminating the proposed road improvement through the Hansen site. However, the basis for this finding is that the impacts of *the project* are reduced to the maximum extent feasible. Clearly impacts could be further reduced by eliminating elements of the project, but that is not the context in which this finding must be made. The intent of this finding is that the impacts of *the project* have been mitigated to the maximum extent feasible, meaning that more could not be done with the project as proposed to further reduce impacts. To that end, Garden visitation and activities have been restricted as part of the project approved by the Planning Commission, and the use of pavers and scope of the Meadow Terrace project were reduced. The existing roadway through the Hansen site is being improved in order to meet County Fire Department standards and cannot be eliminated from the project, contrary to the appellant's assertion.

#### *Issue 15 – Condition Inadequacy*

The appellant asserts that the conditions of approval fail to adequately implement mitigation measures, do not rectify policy inconsistencies, and do not provide meaningful protection for public safety. The Planning Commission determined that the conditions are adequate and enforceable. Staff is recommending a revision to Condition #63 (discussed below) to ensure its implementation meets the intent of the condition. In regards to the condition that requires closure of the Garden on red flag days, the efficacy of the condition remains the same; only the responsibility for declaring the red flag days has changed from the County Fire Department to the National Weather Service (Condition #31).

#### *Issue 16 – Historical Resources*

The appellant asserts that Planning Commission-approved project Condition CULT 3-1 (Condition #20) improperly defers the preparation of the Cultural Landscape Master Plan until after project approval, and that relying on conformity with the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* for the protection of historic resources is vague and insufficient as adequate mitigation. The Cultural Landscape Master Plan establishes a program for implementing the project consistent with the

Secretary of the Interior's standards and guides future maintenance of the Garden in a manner that ensures the long-term viability of the Garden's historic resources. Contrary to the appellant's assertion, the Cultural Landscape Master Plan does not include an impact assessment. Impacts of the project on historic resources have been thoroughly analyzed and mitigation measures identified as part of the EIR process. The mitigation measures which have been incorporated as conditions of project approval provide performance standards to be used as a guide for implementation. This includes specific mitigation measures addressing proposed pavers and the Meadow Terrace, two of the project elements with the greatest impact to the Garden's historic resources. The project elements have all been specifically evaluated and mitigated with individual conditions; there is no deferral of analysis or mitigation. It is commonplace to rely on conformance with the Secretary of the Interior's standards as adequate mitigation. In fact, CEQA Guidelines Section 15064.5(b)(3) specifically references this approach as being adequate to mitigate impacts to historic resources to less than significant levels.

### *Issue 17 – Cultural Resources*

The appellant asserts that the roadway that is to be improved through the Hansen site should be eliminated from the project in order to avoid impacts to archaeological resources, consistent with County requirements. This element of the project is being required by the County Fire Department in order to provide access consistent with County Fire Department requirements for road width and grade. Therefore, disturbance to archaeological resources associated with this element of the project cannot be feasibly avoided. As a result, archaeological mitigation measures have been adopted consistent with CEQA requirements to reduce the impact of this project element to a less than significant impact.

### **Background:**

The Santa Barbara Botanic Garden has been operating at its current location in Mission Canyon since 1926. It currently operates under a 1972 CUP covering approximately 65 acres and has not undergone any significant facility improvements for over twenty years, though its uses and exhibits continue to evolve. It is surrounded by low intensity residential development. Existing structural development totals 39,558 square feet. Upon completion of the project, the Garden would include a total floor area of 65,442 square feet, representing an approximate 65% increase over existing development. Thirteen acres would be incorporated into the Garden's revised CUP, for a total of 78 acres.

The Garden functions to promote and maintain public programs, botanical collections and exhibits that provide opportunities for research, education and interpretation, conservation, and display. As a non-profit organization, the Garden also engages in various fundraising activities, including holding public classes and lectures, fundraisers, private parties and events. The Planning Commission, in approving the project, placed annual visitation limits associated with events, classes, and general visitation, but allowed such limits to increase by 1.8% per year up to a maximum increase of 50% over existing levels.

In an effort to retain staff and provide 24-hour maintenance and care of the Garden, the Garden currently provides four on-site residential units, three of which are located east of Mission Canyon Road. The Planning Commission approval included four new residential units and conversion of an existing duplex into a single family dwelling (for a net increase of three units within the project as a whole) to provide additional housing opportunities for staff, three of which would be located in the same area of the project site.

The Garden currently includes 30 buildings<sup>1</sup> (including shade structures) totaling approximately 39,558 square feet of development (see table below). The project would result in a net floor area increase of 25,884 square feet relative to existing development (65% increase), taking into account the demolition of several buildings. Upon completion of the proposed project, the Garden would include a total floor area of 65,442 square feet of development (existing plus proposed development). The proposed buildout is anticipated to occur over an approximate ten-year period, though the increases in uses proposed would extend for the life of the project. With buildout of the project, approximately 91% of the site would remain undeveloped in open space or garden exhibits.

Specific elements of the Vital Mission Plan project approved by the Planning Commission include:

- Construction of 15 new buildings, including:
  - 16,171 square feet of new development for research, education, and conservation space, including a new Education Center (7,941 s.f.), Children's Lab (2,678 s.f.), and Conservation Center/Herbarium (5,552 s.f.);
  - Three new residential units totaling 4,235 square feet devoted to subsidized housing for full-time Garden employees;
  - 8,414 square feet of additional horticulture and plant propagation areas, including the new Horticultural Offices (3,527 s.f.) and Garage (1,733 s.f.), four shade structures (1,600 s.f.), Cavalli Office/Garage (1,168 s.f.), and storage facilities (386 s.f.);
  - New Admissions Kiosk/Restrooms (724 s.f.);
- Reconstruction of Gane House destroyed in Jesusita Fire;
- Relocation of Caretaker's Cottage from west side to east side of Mission Canyon Road and conversion back to staff residence;
- Demolition of six buildings totaling 4,240 s.f.;
- Addition to North Wing (674 s.f.) and Director's Garage (457 s.f., destroyed in Jesusita Fire);
- Construction of three-tiered Meadow Terrace;
- Installation of pavers between and around buildings, as well as adjacent areas for access (not to exceed 10% over existing paving);
- New three-space staff parking area on Mission Canyon Road by Las Canoas Road and pedestrian bridge serving the Guild Studio;
- Installation of 3 ½-foot tall fencing around most of property boundaries; existing 6-foot cyclone fencing to remain and be set back six feet from roadway where possible;
- Allowance for the erection of temporary displays or art exhibits, not to exceed 1,200 s.f.; seasonal displays would be permitted for up to 90 days and temporary art exhibits would be permitted for up to three years;
- Total annual attendance associated with educational programs would be limited to a 1.8% annual increase above existing levels (i.e. 1,778 attendees), up to a maximum increase of 50% (2,667); an increase in daytime and nighttime class sizes from 20 to 22 students, with Master Gardner and Docent trainings having up to 50 students and the Annual Lecture Series having up to 70 attendees;
- Total annual attendance associated with special events would be limited to a 1.8% annual increase above existing levels (i.e. 1,983 attendees), up to a maximum increase of 50% (2,974); no single event shall exceed 300 guests (180 guests during high fire season preparedness periods)

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<sup>1</sup> This figure represents the pre-fire condition and is kept as is to reflect the fact that the Garden intends to rebuild structures that were lost in the May 2009 Jesusita Fire.

at any one time, and no more than three large events (i.e. more than 80 guests) permitted per month; and

- Total annual visitation limited to a 1.8% annual increase above existing levels (i.e. 110,000 visitors), up to a maximum increase of 50% (165,000).

### Santa Barbara Botanic Garden Existing Structures

Symbol	Building Name / Description	Square Footage (Footprint)	Changes	# of Floors
E1	Caretaker's Cottage (offices)	1,390 (1,390)	Relocate, convert to residence	1
E2	Herbarium (collections)	2,818 (1,209)	Demolish	2
E3	Blaksley Library (library, office)	3,153 (1,577)	Remodel, offices, exhibit space, snack window	2
E4	Lath House/Plant Sales	3,003 (3,003)	Remodel	1
E5	North Wing (office, gift shop, kitchen, classroom)	3,298 (1,649)	674 s.f. addition, remodel	2
E6	Visitor Kiosk (admissions)	170 (170)	Demolish	1
E7	Restrooms	404 (404)	Remodel – storage	1
E8	Information Kiosk	320 (320)	No change	1
E9	Tea House	188 (188)	No change	1
E10	Gane House (maintenance and storage)	9,318 (3,975)	Rebuild (fire) 8,178 s.f., offices	2 + basement
E11	Storage Shed	339 (339)	Demolish	1
E12	Storage Shed	356 (356)	Rebuild (fire)	1
E13	Storage Shed	323 (323)	Demolish	1
E14	Storage Shed	150 (150)	Rebuild (fire) and relocate	1
E15	Can Yard (shade structure)	1,984 (1,984)	Rebuild (fire)	1
E16	Shade Structure (plants)	244 (244)	Rebuild (fire), 119 s.f. addition	1
E17	Lath House (plants)	725 (725)	Rebuild (fire)	1
E18	Shade Structure (plants)	686 (686)	Rebuild (fire)	1
E19	Head House (office, seed bank)	1,138 (1,138)	No change	1
E20	Wood Shed (storage)	143	Rebuild (fire) and relocate	1
E21	Guild Studio (office, storage, guest quarters)	1,585 (1,440)	No change	1 (raised)
E22	Tunnel Road Annex (storage)	483 (483)	No change	1
E23	Employee Residence	1,185 (1,185)	Remodel	1
E24	Employee Residence (duplex)	2,502 (2,203)	Remodel, SFD	2
E25	Storage Shed	667 (667)	No change	1
E26	Storage Shed	185 (185)	Demolish	1
E27	Director's Residence	1,496 (1,496)	Rebuild (fire)	1
E28	Director's Garage	500 (500)	Rebuild (fire), 457 s.f. 2 <sup>nd</sup> story addition	2
E29	Shade Structure	400 (400)	No change	1
E30	Shade Structure	405	Demolish	1
<b>Additions/Subtractions</b>		N/A	-4,130 (-1,997)	N/A
<b>Total</b>		39,558 (28,937)	35,428 (26,940)	N/A

**Santa Barbara Botanic Garden Proposed Structures**

Symbol	Building Name / Description	Square Footage (Footprint)	# of Floors
P1-A	Children’s Lab	2,678 (1,748)	2
P1-B	Library/Education Center	7,941 (2,779)	2 + basement
P3	Visitor’s Admission	724 (724)	1
P5	Conservation Center	5,552 (2,215)	2 + basement
P6/7/8	Horticulture Offices, Garage & Services	3,527 (3,527)	1
P9	Horticultural Garage/Support	1,733 (1,733)	1
P10	Can Yard (propagation)	400 (400)	1
P12	Garage	386 (386)	1
P13	Staff Residence	1,472 (1,472)	1
P14	Staff Residence	1,496 (1,496)	1
P17	Shade Structure	400 (400)	1
P18	Shade Structure	400 (400)	1
P19	Shade Structure	400 (400)	1
P21	Garage/Office	1,168 (1,168)	1
P22	Staff Residence	1,267 (1,267)	1
<b>Total – Proposed Development</b>		29,544 (20,095)	N/A
<b>Total – Existing + Proposed</b>		64,972 (47,035)	N/A
<b>Net Increase</b>		25,414 (18,098)	N/A

The EIR prepared to evaluate the impacts of the project concluded that the project’s impacts could be reduced to less than significant levels with the implementation of applicable mitigation measures that have since been added as conditions of project approval as approved by the Planning Commission. A copy of the proposed Final EIR is included as an attachment to this Board letter and is also available to the public for viewing at P&D’s office or on P&D’s website at <http://www.sbcountyplanning.org/projects/02NEW-00138/index.cfm>.

***Project Revision 1***

Subsequent to approval of the project by the Planning Commission, staff revisited applicable ordinance requirements in response to a question raised by a member of the public, specifically relating to allowable residential uses on parcels zoned REC (Recreation). The project as approved by the Planning Commission includes a total of five staff residences on a single lot (referred to as the Hansen site) east of Mission Canyon Road, consisting of two existing units to be remodeled, two new units, and one relocated unit from the west side of Mission Canyon Road (Caretaker’s Cottage). The Land Use and Development Code (LUDC) allows a maximum of one caretaker unit per legal lot within the Recreation (REC) zone. Staff’s initial interpretation was that since the Garden operates under a Conditional Use Permit, which allows uses above and beyond those that are principally permitted, and is composed of multiple legal lots, this zoning allowance could be modified to allow the clustering of units within a single lot. However, upon further consideration of this issue, staff has concluded that the project needs to be revised in order to ensure strict compliance with this ordinance restriction regarding density on REC zoned parcels. To this end, staff is recommending that the project as approved by the Planning Commission be revised through your Board’s *de novo* hearing to eliminate the two new residential units on the Hansen site and relocate the third existing unit (the historic Caretaker’s Cottage that is currently used for administrative functions) to the site of the Director’s residence on Tunnel Road that was destroyed in the Jesusita Fire. The two existing staff residences on the Hansen site could remain and be

remodeled (one would become the legal caretaker unit and the second would remain legal non-conforming). These changes would ensure that the project conforms to applicable regulations of the LUDC and that the findings for approval can be made.

### ***Project Revision 2***

In approving the project, the County Planning Commission imposed the following condition to regulate uses and activities on-site:

**63. Intensity of Use.** Total visitation shall not exceed 110,000 persons per year for the first year following project approval. Thereafter, total visitation shall be limited to a 1.8% annual increase, up to a maximum increase of 50% (i.e. 165,000). Beginning the first year following project approval, attendance associated with Garden classes<sup>2</sup> and events<sup>3</sup> shall be limited to a 1.8% annual increase above existing levels (existing levels equate to 1,778 for classes and 1,983 for events, based on a 10-year average from 1997 to 2006), up to a maximum increase of 50% (i.e. 2,667 for classes and 2,974 for events, respectively) without subsequent approval by the Planning Commission. These limits shall be based on a 3-year rolling average. If these limits are exceeded in any single year, the Garden shall take the necessary steps to adjust its scheduling in order to adhere to the limits on a three-year rolling average. No single event shall exceed 300 guests at any one time, subject to the separate restrictions during the High Fire Season Preparedness Levels included in Condition #31. Attendance for individual classes and educational programs (i.e. trainings and lectures) shall comply with the maximums identified in the project description. No more than three events individually exceeding 80 attendees in any given month, inclusive of community events, shall be permitted.

In considering this condition further and how it would be implemented, staff has discovered that the combination of a 3-year rolling average and a 1.8% annual increase has the unintended result of allowing the Garden to exceed its annual cap by a small percentage each year and still be considered in compliance with this condition. To remedy this oversight, staff recommends elimination of the three-year rolling average from this condition. Instead, staff recommends requiring that if the cap is exceeded in a particular year, the Garden shall be required to offset any exceedance by a corresponding reduction the following year and shall forego its 1.8% growth for that year. Alternatively, your Board can select another method for regulating uses and activities at the Garden.

### **Summary and Recommendations**

In the discussions above, staff has presented how the grounds for the appeal filed by the Friends of Mission Canyon have been adequately addressed by the County. Therefore, staff recommends denial of the appeal. However, your Board has the discretion to amend components of the project or restrictions on levels of use in response to the FOMC appeal in order to make the necessary findings for approval.

### **Performance Measure: N/A**

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<sup>2</sup> Classes shall include daytime and nighttime classes, summer programs, docent and Master Gardner training, and lectures. School groups shall not count towards the annual class limit.

<sup>3</sup> Events shall include fundraisers, community group meetings, private parties, recognition events, symposia and workshops, and other events not open to the public. Events open to the public or where visitation is spread out throughout the day shall not count towards the annual event limit, but shall otherwise comply with this condition.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

**Fiscal Analysis:**

The costs for processing appeals are partially offset through payment of a fixed appeal fee of \$643 (\$500 of which covers P&D costs). Three separate appeals of the Planning Commission's approval were filed for this project, for a total cost of \$1,929. A fourth appeal was filed by the Botanic Garden on the Historic Landmark Advisory Commission's (HLAC) action on the project. There is no individual fee established for processing an appeal of a decision by the HLAC. The total estimated time to process these four appeals is approximately 110 staff hours, which equates to approximately \$18,000. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-301 of the adopted 2009/2010 fiscal year budget.

**Staffing Impacts:**

None.

**Special Instructions:**

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on May 4, 2010. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the mailed notice are attached. The Clerk of the Board shall send a notice via certified mail to the Santa Barbara Botanic Garden, attention Ed Schneider. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

**Attachments:**

Attachment 1: FOMC Appeal Letter

Attachment 2: Findings for Approval\*

Attachment 3: EIR Revision Letter\*

Attachment 4: Conditions of Approval\*

Attachment 5: Planning Commission Action Letter\*

Attachment 6: Planning Commission Staff Reports and Memoranda\*

- PC Staff Report, July 22, 2009
- Staff Memorandum, August 5, 2009
- Staff Memorandum, August 27, 2009
- Staff Memorandum, September 2, 2009
- Staff Memorandum, September 16, 2009
- Staff Memorandum, October 16, 2009
- Staff Memorandum, October 23, 2009

Attachment 7: Final EIR\* (See Attachment 6 - PC Staff report dated July 22, 2009 - for EIR Executive Summary)

\* Refer to Board Letter prepared for 09APL-00000-00029 for these attachments.

**Authored by:** Alex Tuttle, 884-6844