



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: 1 hour on 5/04/10
Continued Item: No
If Yes, date from:
Vote Required: Majority

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: **Santa Barbara Botanic Garden Appeal of Historic Landmarks Advisory
Commission Decision on Vital Mission Plan**

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 Santa Barbara Botanic Garden (09APL-00000-00041) of the Historic Landmarks Advisory Commission's November 9, 2009 decision regarding the 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. Confirm, modify, or set aside the Historic Landmarks Advisory Commission's actions on November 9, 2009 regarding the Botanic Garden's proposed Vital Mission Plan project.

Summary Text:

The Santa Barbara Botanic Garden (Garden) operates 65 acres under its existing Conditional Use Permit (72-CP-116) in the Mission Canyon area of Santa Barbara. Approximately 23 acres, (encompassing three parcels) of the Garden are designated as a County Historic Landmark (Landmark #24) and are governed by Resolution 2003-059, approved by the Board of Supervisors on February 25, 2003 (see Attachment B to the Board letter). As such, the Historic Landmarks Advisory Commission (HLAC) has jurisdiction over certain elements and activities at the Garden.

Section 2(B)(i) of the Landmark Resolution states that “no changes to the [historic landmark] shall be made which substantially deviate from the foregoing historic landscape design concept or historic use of the landmark property unless express consent in writing is first had and obtained from the Historic Landmarks Advisory Commission...” Section 2(B)(ii) of the Landmark Resolution further states that the “change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures...shall not require review and approval by the Commission. Any construction or installation of new structures, features or facilities on the landmark property shall not substantially deviate from, or substantially conflict with, the historic landscape design concept or historic use as set forth above, and shall not cause the landmark property to substantially deviate from, or substantially conflict with, the eight criteria from County Code Chapter 18A-3....”

On October 26, 2009, the County Planning Commission approved the Santa Barbara Botanic Garden’s Vital Mission Plan (Case Nos. 72-CP-116 RV01, 99-DP-043), subject to certain conditions of approval, and certified the Environmental Impact Report. Several elements of the proposed Vital Mission Plan project are located within the three parcels included within the Landmark Resolution boundaries and are therefore subject to potential jurisdiction by the HLAC. These include the Meadow Terrace project, paving of trails, new construction within the Landmark boundaries, including the Education Center, Admissions Kiosk, and Children’s Laboratory, and remodeling of the Blaksley Library. As a result, the Botanic Garden sought approval of these project elements by the HLAC subsequent to project approval by the County Planning Commission.

On November 9, 2009, the HLAC, in reviewing the Garden’s proposed Vital Mission Plan project, voted to:

1. *Find that the Meadow Terrace project is designed to accommodate intensification of use requiring structural additions, such as stone walls, that substantially deviate from the historic landscape design concept of the Garden.* As a result, the HLAC denied the Meadow Terrace component of the project and required removal of the partially completed stonework and restoration of the site to its previous naturalistic condition, including replacement of an oak tree where one once stood.
2. *Find that paving of the trails with concrete interlocking pavers is completely incompatible with the naturalistic trails that have been an important character-defining feature of the Garden throughout its history and, as such, is a substantial deviation from the historic landscape design concept of the Garden.* Therefore, the HLAC approved only limited paving within heavy traffic areas at entrances and around buildings and required that any new paving be of naturalistic material such as flagstone. The HLAC also required that paving and hardscape plans be reviewed and approved by HLAC prior to construction. Paving of the trails outside of these heavy traffic areas was denied.
3. *Find that the new Education and Library buildings and new Entrance Kiosk do not substantially deviate from or substantially conflict with the historic landscape design concept or historic use of the landmark and that these buildings do not adversely affect the seven identified historic features and structures identified in Landmark Resolution 2003-059.* Therefore, the HLAC found that these new buildings were not subject to their jurisdiction.

4. *Find that the new entrance represents a substantial deviation of the historic landscape design concept as it greatly detracts from an important character-defining feature of the Garden.* The HLAC approved the new entrance, subject to the re-opening of the historic main entrance on occasion, where practical, to be utilized in concert with the new entrance.

5. *Approve the exterior alterations to the Blaksley Library.*

Included as part of the HLAC's actions is a requirement that a Cultural Landscape Master Plan be prepared and submitted to HLAC for review and approval prior to construction of any alterations to the Landmark. This is in keeping with the HLAC's ability to impose reasonable conditions on a project as deemed necessary. The HLAC found that other elements of the project within the landmark boundaries were not subject to their jurisdiction because they did not have the potential to substantially deviate from the historic landscape design concept, did not affect any of the seven identified structures and features of the Garden specifically identified in the Landmark Resolution, or the project affected existing buildings that are not protected by the Landmark Resolution.

Consistent with Chapter 18A, the Botanic Garden appealed the HLAC's action to the Board of Supervisors after receiving a notice of the HLAC's actions on the project.

Consideration of the Appeal:

The HLAC is an independent body appointed by the Board of Supervisors. Planning and Development (P&D) provides administrative support to the HLAC and is therefore bringing this appeal forward to the Board on HLAC's behalf. Given its administrative support function, P&D is not making a recommendation as to what action the Board should take in this case.

Section 18A-7 of the County Code provides that when acting on an appeal of actions taken by the HLAC the Board of Supervisors may confirm, modify or set aside any or all of those actions by the HLAC.

County Counsel recommends that the Board of Supervisors' consideration of this appeal include a review of Paragraph 2(B)(i) and 2(B)(ii) at Pages 3 and 4 of Resolution Number 2003-059, which is included as Attachment B. Paragraph 2(B)(i) discusses the "historic landscape design concept" and "historic use" of the Santa Barbara Botanic Garden. Paragraph 2(B)(ii) contains two sentences:

- The first sentence describes actions and items that "shall not require review and approval by the Commission."
- The second sentence discusses "construction or installation of new structures, features or facilities on the landmark property," and specifically states that new structures or changes to the Landmark shall not substantially deviate from the historic landscape design concept or historic use.

The Santa Barbara Botanic Garden has appealed the HLAC's actions with regard to 1) the Meadow Terrace, 2) paving of trails, and 3) review and approval of a Cultural Landscape Master Plan. These issues are discussed below.

Issue 1 - Meadow Terrace

The Botanic Garden has appealed the HLAC's denial of the Meadow Terrace component of the proposed project, arguing that the project has been reduced in scope through mitigation included in the EIR and revised by the Planning Commission and incorporated as a condition of approval, which reduces impacts to the historic designed landscape to Class II, less than significant levels. By reducing its scope, the Garden argues that the project is exempt from review by the HLAC.

As discussed by the HLAC, the criteria and standards for evaluating a project under the Landmark Resolution are different than those considered in a CEQA analysis. The HLAC has repeatedly found that the Meadow Terrace project falls under their jurisdiction as it entails new structural development within the Landmark boundaries and has the potential to substantially deviate from the historic landscape design concept as it relates to preservation of the Meadow, which has functioned as a central component of the landscape design since the Garden's inception.

Issue 2 - Paving of Trails and HLAC Future Review

The second component of the Botanic Garden's appeal is of the HLAC's action on the proposed installation of pavers throughout the Garden's trails and pathways. The HLAC approved the use of pavers in only limited circumstances and less than what was requested by the Garden and approved by the Planning Commission.

The Garden asserts that it was improper for the HLAC to object to the existing pavers and recommend that the existing pavers be removed since they were advised by County Counsel during the HLAC hearing that they did not have the authority to require their removal. However, while the HLAC cannot require the removal of existing pavers, there is nothing that prevents them from stating their objections and recommending that they be removed. While not requiring their removal, the HLAC did state in their findings on the project their objections to the existing pavers and encouraged their removal.

The Garden asserts that the HLAC had no authority to require that paving use only "naturalistic materials" because they did not find that the paving would substantially deviate from the Garden's historic landscape design concept. However, HLAC stated in their action on November 9, 2009 that the paving of the trails with concrete interlocking pavers is "completely incompatible with the naturalistic trails that have been an important character-defining feature of the Garden throughout its history and, as such, is a substantial deviation from the historic landscape design concept of the Garden." The Landmark Resolution authorizes the HLAC to impose reasonable conditions as necessary to ensure consistency with the Landmark Resolution.

The Botanic Garden asserts the HLAC's finding that the paving of the trails under what was approved by the Planning Commission would "substantially deviate from the Garden's historic landscape design concept or historic use" is inconsistent with the conclusions of the EIR and historic resources report prepared by Historic Resources Group (HRG). HRG evaluated the historic significance of the Garden and found that the paving of dirt trails with synthetic pavers would result in a significant impact on the historic designed landscape. In order to mitigate this impact to a less than significant level, HRG recommended that new paving be limited to no more than 10% above current areas and that it should be centered around currently paved areas adjacent to the Administration/Education area, Horticultural/Support area, and areas around the Meadow. The EIR concluded that compliance with this mitigation would allow the Garden to continue to be eligible for listing on the California and National Registers of Historic Places, which is the standard applied to the mitigation of historic resources under

CEQA. The Planning Commission modified the mitigation measure to exclude from the 10% restriction paving necessary for ADA compliance and County Fire Department access requirements to and around buildings. The Planning Commission concluded that the mitigation measure as revised would be adequate to reduce the impact to a less than significant level. The EIR Revision Letter (Attachment 3 of Board Letter for 09APL-00000-00029) discusses the changed mitigation measure and Planning Commission conclusion.

The HLAC further restricted new paving to only heavy traffic areas at entrances and around buildings and prohibited the paving of any existing dirt trails outside of these areas. As noted above, the HLAC has different criteria for evaluating a project than that which occurs under a CEQA analysis. The HLAC is guided by the language of the Landmark Resolution, which sets forth different standards than what are contained within the CEQA thresholds and guidelines. It is under this context that the HLAC imposed additional restrictions beyond what was approved by the Planning Commission and considered adequate mitigation in the context of the EIR.

Lastly, the Garden asserts that the HLAC failed to take into account the needs of the disabled community in restricting the extent of new paving. The HLAC is responsible for protecting the County's significant historic resources. Consideration of issues such as disabled access or effects of a project on other resources (e.g. biological resources, fire safety, etc.) is outside of their scope of review. Regardless, Americans with Disabilities Act (ADA) requires that the primary paths of travel between the parking area and buildings be surfaced with a stable, slip resistant surface. The HLAC's action on the pavers would continue to allow the Garden to be in compliance with ADA requirements, since the HLAC approved the use of pavers within heavy traffic areas at entrances and around buildings.

In regards to the requirement that plans for new paving and hardscape be reviewed and approved by HLAC prior to construction, the Garden asserts that such a requirement is beyond the scope of the HLAC's jurisdiction. The HLAC has the ability under the Landmark Resolution to impose reasonable conditions on a project as part of its approval. The HLAC required that plans be reviewed and approved prior to construction under this precept. Clearly, any paving or hardscape that falls outside of the boundaries of the Landmark would not need to be reviewed or approved by the HLAC since it would be outside of their jurisdiction.

Issue 3 - Cultural Landscape Master Plan

As a condition of project approval, the Planning Commission required the preparation of a Cultural Landscape Master Plan (CLMP) containing specified information and guiding future development and maintenance of the Garden in a manner that respects and protects the Garden's historic resources. The Garden asserts that the HLAC improperly inserted itself into the review responsibility of the CLMP, as the CLMP extends beyond the boundaries of the Landmark and would include information and address issues beyond the scope of HLAC's jurisdiction. The HLAC required their review and approval of the CLMP prior to construction under the parameters of the Landmark Resolution which allows the HLAC to impose reasonable conditions on a project as part of its approval. However, certain elements of the CLMP that extend beyond the scope or jurisdiction of the HLAC under the terms of the Landmark Resolution would not be subject to HLAC review.

Background:

In 2003, a portion of the Botanic Garden was designated a County Historic Landmark by the Board of Supervisors upon recommendation by the HLAC. The Resolution identified seven specific elements of

the Garden deserving landmark status. Those seven features include: 1) Mission Dam and Aqueduct, 2) “Indian Steps”, 3) Entry Steps, 4) Information Kiosk, 5) Original Library, 6) Campbell Bridge, and 7) Caretaker’s Cottage. The Meadow is not specifically listed, but is a landscape design feature. The landmark requires the protection of these seven historic elements as well as the “historic landscape design concept” and “historic use” of the Garden, but also exempts many activities at the Garden from HLAC review. The Botanic Garden has questioned the authority of the HLAC per the Resolution since 2003, most notably in association with paving the garden trails and the Meadow Terrace project.

Performance Measure: N/A

Fiscal and Facilities Impacts:

Budgeted: No

There is no individual fee established for processing an appeal of a decision by the Historic Landmarks Advisory Commission. Estimated staff time to process this appeal is approximately 25 hours to prepare the Board letter, communicate with the applicant and interested residents, and attend the Board hearing.

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 A: Appeal Letter

Attachment B: HLAC Action Letter, November 9, 2009 hearing

Attachment C: HLAC meeting minutes, 11/9/2009 and 12/14/2009

Authored by: Alex Tuttle, 884-6844