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**Re: Santa Barbara Botanic Garden Vital Mission Plan Project
Hearing Date: May 4, 2010
Staff's Proposed Project Revision 1**

Dear Honorable Chairperson Janet Wolf and Honorable Supervisors:

This office represents the Santa Barbara Botanic Garden (the "Garden"). This letter is in opposition to Staff's proposed Project Revision 1 discussed at pages 15-16 of its Board Agenda Letter regarding the Friends of Mission Canyon appeal of the Botanic Garden Vital Mission Plan Project (the "Project").¹

The Project, as approved by the Planning Commission, includes a total of five staff residences on a single lot commonly known as the "Hansen site." These residences consist of two existing units to be remodeled, two new units, and the Garden's Caretaker's Cottage that is to be relocated from the west side of Mission Canyon Road. Upon further consideration of the issue, Staff is now recommending that the Project, as approved by your Planning Commission, be revised so as to eliminate the two new proposed residential units on the Hansen site and to relocate the Caretaker's Cottage that is currently used for administrative functions on the west side of Mission Canyon Road to the Tunnel Road site of the Director's residence that was destroyed in the Jesusita fire.² Staff proposes that the two existing residences on the Hansen site remain and be remodeled with one becoming the legal caretaker unit and the second remaining as a legal non-conforming unit. However, two badly needed new employee residential units

¹ Project Revision 1 is also discussed at pages 11-12 of the Agenda Letter regarding the Arredondo appeal and at pages 7-8 of the Agenda Letter regarding the Mission Canyon Association appeal.

² It should be noted that Staff's proposal to relocate the Caretaker's Cottage to the Tunnel Road site was never discussed with the Garden.

approved by the Planning Commission for the Hansen site would be eliminated from the Project.

Staff argues that Project Revision 1 is necessary because County's Land Use and Development Code ("LUDC") allows only one caretaker unit per legal lot within the REC zone district. The Garden disagrees with Staff's interpretation of the LUDC. In determining what uses are allowed in a particular zone district, pursuant to Section 3.20.030 of the LUDC, it is first necessary to look at the list of allowable uses in the subject zone as set forth in the land use tables in Chapters 35.21-35.26. Allowable uses in the REC zone are listed in Table 2-23 of Section 35.26.030. **Exhibit "A"**. This Table lists several uses allowed in the REC zone under various permit types, including a Library/Museum with a Conditional Use Permit ("CUP"). The LUDC defines a museum as follows:

"a building, place, or institution devoted to the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value." **LUDC, Chapter 35.110.020, p. 11-40.**

Staff has determined that the Santa Barbara Botanic Garden clearly fits within this allowable use. **10/16/09 Staff Report, p. 11 & 4/20/10 Agenda Letter re: Friends Appeal p. 8, Exhibits "B" & "C"**.

Table 2-23 of Section 36.26.030 also lists "Caretaker/manager dwelling" units as an allowable use in the REC zone with a Minor CUP. The LUDC defines "Caretaker/Manager Dwelling" as follows:

"A permanent residence that is secondary or accessory to the primary use of the property, and used for housing a caretaker employed on the site of any non-residential use where needed for security purposes or to provide 24-hour care or monitoring of people, plants, animals, equipment, or other conditions on the site." **LUDC, Chapter 35.110.020, p. 11-11.**

The above definition fits the facts of this case like a glove. The structures proposed to be located on the Hansen site are for housing Garden employees who monitor plants, equipment, and other features of the Garden and are secondary or accessory to the primary use of the Garden's property. Moreover, the LUDC definition does not state that there can only be one Caretaker/Manager Dwelling unit on a parcel with a Minor CUP.

Additionally, it must be noted that LUDC Table 2-24 states (relative to "residential densities" in the REC zone): "The actual number of units allowed will be

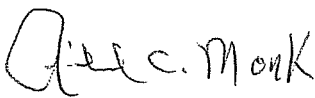
determined through subdivision or planning permit approval" (emphasis added). Therefore, contrary to Staff's opinion that the LUDC allows only one caretaker unit per legal lot within the REC zone district, the LUDC actually states that residential densities (employee housing and/or caretaker units) are not restricted to only one caretaker unit per legal lot within the REC zone district, but rather, the actual number of units allowed will be determined through the planning permit approval process, and as such, much greater densities can be permitted.

The foregoing legal analysis follows the same interpretation and analysis employed by Staff and County Counsel in finding that other elements of the Project, namely arts and crafts fairs, are secondary uses that are ancillary or customarily incidental to the principal use of the Garden under its CUP. **Exhibits "B" and "C"**.

Based upon the foregoing, we respectfully request that your Board reject Staff's interpretation of the REC zone and its proposed Project Revision 1 and allow the proposed five Staff residences on the Hansen site as approved by your Planning Commission.

Respectfully submitted,

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A Professional Corporation

By 
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Table 2-23 - Continued Allowed Land Uses and Permit Requirements for the Special Purpose Zones REC, TC	E	Allowed use, no permit required (Exempt)		
	P	Permitted use, Land Use or Coastal Permit required (2)		
	MCUP	Minor Conditional Use Permit required		
	CUP	Conditional Use Permit required		
	S	Permit determined by Specific Use Regulations		
	—	Use Not Allowed		
LAND USE (1)	PERMIT REQUIRED BY ZONE			Specific Use Regulations
	REC	REC CZ	TC CZ(3)	

RECREATION, EDUCATION & PUBLIC ASSEMBLY USES

Boat club	CUP	—	—	
Campground	P	P	—	
Commercial entertainment - Indoor	—	—	—	
Community center	—	—	—	
Conference center	CUP	CUP	CUP	
Country club, swimming and tennis club	CUP	CUP	CUP	
Equestrian facility - Public or commercial	CUP	CUP	CUP	
Fairgrounds	CUP	CUP	CUP	
Fitness/health club or facility	—	—	—	
Fitness/health club or facility, accessory	—	—	—	
Golf course	P	P	CUP	
Historical park	CUP	—	—	35.42.185
Library, museum	CUP	CUP	CUP	
Meeting facility, public or private	CUP	CUP	CUP	35.42.200
Meeting facility, religious	CUP	CUP	CUP	
Park, playground - Public	P	P	—	
Park, playground - Private	—	—	—	
Private residential recreation facility	—	—	—	
Recreational vehicle (RV) park	P	P	—	
School	CUP	CUP	CUP	
School - Business, professional, or trade	CUP	CUP	CUP	
Shooting range	CUP	—	—	
Sports and outdoor recreation facilities	CUP	CUP	CUP	
Sports and outdoor recreation facilities, accessory	—	—	—	
Studio - Art, dance, martial arts, music, etc.	—	—	—	
Theater - Indoor	—	—	—	
Trail for bicycles, hiking, or riding	P	P	P	
Trout farm	CUP	—	—	
Zoo	CUP	CUP	—	

Key to Zone symbols

REC	Recreation	CZ	Coastal Zone
TC	Transportation Corridor		

Notes:

- (1) See Article 35.11 (Glossary) for land use definitions.
- (2) Development Plan approval may also be required; see Section 35.26.030.C.
- (3) Uses allowed as a "P" in abutting zones and in compliance with any applicable specific use regulations.

Table 2-23 - Continued Allowed Land Uses and Permit Requirements for the Special Purpose Zones REC, TC	E Allowed use, no permit required (Exempt) P Permitted use, Land Use or Coastal Permit required (2) MCUP Minor Conditional Use Permit required CUP Conditional Use Permit required S Permit determined by Specific Use Regulations — Use Not Allowed			
	PERMIT REQUIRED BY ZONE			
LAND USE (1)	REC	REC CZ	TC CZ(3)	Specific Use Regulations

RESIDENTIAL USES

Caretaker/manager dwelling	MCUP	MCUP	—	
Dwelling, one-family	—	—	—	
Dwelling, two-family	—	—	—	
Dwelling, multiple	—	—	—	
Emergency shelter	—	—	—	
Home occupation	—	—	—	
Mobile home park	—	—	—	
Monastery	CUP	CUP	CUP	
Residential accessory use or structure	—	—	—	
Residential second unit	—	—	—	
Single room occupancy facility (SRO)	—	—	—	
Special care home, ≤ 14 clients	MCUP	MCUP	MCUP	35.42.100
Special care home, ≥ 15 clients	MCUP	MCUP	MCUP	35.42.100

RETAIL TRADE

Agricultural product sales, on-site production only	—	—	MCUP	35.42.050
Auto and vehicle sales and rental	—	—	—	
Bar, tavern	—	—	—	
Building and landscape materials sales - Outdoor	—	—	CUP	
Clothing store	—	—	—	
Convenience store	—	—	—	
Convenience store, in mixed use project	—	—	—	
Drive-through facility, accessory to permitted use	CUP	CUP	—	35.42.130
General retail	—	—	—	
Grocery/food store	—	—	—	
Office supporting retail	—	—	—	
Plant nursery	—	—	—	
Restaurant, café, coffee shop - Indoor and outdoor	—	—	—	
Restaurant, café, coffee shop - Accessory to recreation use	CUP	CUP(4)	—	
Service station	—	—	—	
Visitor-serving commercial	—	—	—	

Key to Zone symbols

REC	Recreation	CZ	Coastal Zone
TC	Transportation Corridor		

Notes:

- (1) See Article 35.11 (Glossary) for land use definitions.
- (2) Development Plan approval may also be required; see Section 35.26.030.C.
- (3) Uses allowed as a "P" in abutting zones and in compliance with any applicable specific use regulations.
- (4) Allowed only in an urban area designated by the Coastal Land Use Plan.

Allowable Uses within Recreation Zone

A question was raised at the last hearing regarding allowable uses within the Recreation (REC) zone district, and members of the public asserted that certain activities are not allowed in the REC zone pursuant to the Temporary Uses section of the LUDC.

The first step in determining what uses are allowed in a particular zone district, pursuant to Section 35.20.030 of the LUDC, is to 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 believes that the Santa Barbara Botanic Garden clearly fits within this allowable use. Since the project conforms to an allowable use in the REC zone, there is no need to make a Use Determination, which is utilized when a use is proposed that is not listed as an allowable use in the land use tables.

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 are ancillary or incidental to the primary use as a non profit botanical garden, and function as an integral component supporting its ongoing operation. The intent of the Temporary Use section of the LUDC (Section 35.42.250) is to provide a permitting path for occasional or sporadic uses or events when the underlying permit for the site (e.g. CUP, DP, LUP, etc.) does not otherwise allow for such uses. One does not look to the Temporary Use section to determine what uses are allowable within a particular zone. Rather, one looks to the allowable uses as listed in the table included in Chapters 35.21 through 35.26. Since the Botanic Garden operates under a CUP, and fundraisers and other types of community events have been, and continue to be, an incidental component of the operation (i.e. not a temporary use), the Temporary Use section of the ordinance does not apply to this particular case.

Oak Tree Replacement

The EIR identified significant but mitigable (Class II) impacts to oak woodlands and adverse but less than significant (Class III) impacts with respect to individual native trees associated with development of the proposed project. To mitigate these impacts and ensure consistency with County policies related to native tree protection, the EIR identified mitigation measures requiring the replacement of each protected oak tree removed at a 10 to 1 replacement ratio. This ratio is consistent with Planning and Development's standard conditions for tree replacement. It assumes that most of the trees would not survive but that out of 10 seedlings at least one tree would reach maturity. The County Fire Department has recently expressed a concern about the application of the 10 to 1 replacement ratio for this project, since it would be contrary to their attempts at reducing fuel loads in Mission Canyon. It is also recognized that the Botanic Garden would likely have a greater rate of success in planting trees and ensuring their survival than a typical developer, given their experience as a botanical garden and the professional horticulturalists that they have on staff. For these reasons, staff is recommending that the replacement ratio be reduced from 10:1 down to 3:1.

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