

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Santa Barbara, CA 93101
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Agenda Number:

Prepared on: August 30, 2006
Department Name: Planning & Development
Department No.: 053
Agenda Date: September 26, 2006
Placement: Departmental
Estimate Time: 45 minutes
Continued Item: YES
If Yes, date from: July 18, 2006
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TO: Board of Supervisors

FROM: John Baker, Director
Planning & Development

STAFF CONTACT: Dianne M. Black, Assistant Director
568-2086

SUBJECT: Nunez Appeal of the Rancho Danza del Sol Commercial Horse Facility

Recommendation:

That the Board of Supervisors deny the appeal by Mr. and Mrs. Oscar Nunez [BOS Appeal Case No. 05APL-00000-00039] and uphold the Planning Commission's September 28, 2005 approval of the Rancho Danza del Sol Commercial Horse Facility, [99-CP-059], located at 1140 Via Regina, APN 059-010-079, Goleta area, Second Supervisorial District.

The Board of Supervisors' action should include the following:

1. Adopt the required findings for the project, as specified in the Planning Commission action letter dated October 3, 2005, including CEQA findings (Attachment A of the July 18 Board Letter);
2. Approve the Negative Declaration (05NGD-00000-00001) and adopt the mitigation monitoring program contained in the conditions of approval (Attachment D of the July 18 Board Letter);
3. Deny the appeal, upholding the Planning Commission's approval of Conditional Use Permit 99-CP-059;
4. Grant *de novo* approval of the project subject to the conditions included in the Planning Commission's action letter (Attachment A of the July 18 Board Letter) as revised herein.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

Background

On September 28, 2005, the Planning Commission approved by a 4-0 vote the Rancho Danza del Sol lot split (TPM 14,447) and, by a 3-0-1 vote, a commercial horse facility (99-CP-059). The project as approved consists of the division of 11.95 acres into three parcels and the conditional use of Parcel 2 as a commercial horse boarding facility. The conditional use permit would allow the boarding of a maximum of 15 horses and construction of a new covered riding arena, barn, caretaker's residence and septic system.

The Planning Commission's approval of 99-CP-059 was appealed on October 7, 2005 by Mr. and Mrs. Oscar Nunez. The appeal issues focused on adequate protection of the surface water in Maria Ygnacio Creek and the area ground water, especially the appellant's downstream well (Nunez Well # 1).

At your Board's July 18 appeal hearing on the Conditional Use Permit, the appellant submitted water quality test results that had not been provided to either staff or the applicant (Attachment A). These results were obtained from samples taken in March and May of 2006. This data showed that the appellants' well (Nunez Well #1), from which the appellant draws his drinking water, contained no fecal coliform bacteria, but did contain elevated levels of total coliform bacteria.

Given this new technical information, your Board continued the item with specific direction to staff to address the water quality data for the appellants' well.

Staff Analysis

Water Quality Test Results

Subsequent to the July 18 hearing, the appellant, applicant and Santa Barbara County Environmental Health Services coordinated in extensive testing of the appellants' wells (Attachment B) and of the surface water of Maria Ygnacio Creek (Attachment C). In addition, the appellant provided a second set of test results, sampled under direction of the appellant, from July 7 of this year (included in Attachment B). These test results (Attachment B), with only one exception (July 7, 2006), showed that the subject well (Nunez Well # 1) contained no fecal coliform bacteria.

With respect to the surface water quality in Maria Ygnacio Creek, the results showed that the creek contained fecal coliform (Attachment C), with samples from the creek upstream showing over twice the level as samples from the creek downstream of the applicant's property.

Analysis of Results: Groundwater & Fecal Coliform (Horse) Contamination

The State of California Drinking Water Standards (CCR Title 22) require that a private well contain no fecal or “total” coliform bacteria. Fecal coliform bacteria come from solid animal waste (feces) whereas bacteria in the “total coliform” group can come from almost any source (e.g. soil, leaves, vegetation).

The appellant has claimed the test results show that the current horse operation (six animals) contaminates his drinking water well (Nunez Well # 1). This is incorrect. Contamination by solid horse waste would result in fecal coliform contamination, and the data, with the exception of one extremely low reading, show no such contamination. With respect to the one test result from July 7, 2006 that shows the presence of fecal coliform, this level is at the extreme low end of what can actually be detected, and is the only sample out of five (5) samples that shows any contamination. If the horse operation were causing on-going, persistent contamination of the appellants well, one would expect more positive samples.

Although approval of the proposed commercial horse facility would increase the number of animals to 20, the project has been designed to prevent solid (and liquid) animal waste from contaminating the creek and the groundwater. The horse facility would be located well over 300 feet from the existing well, providing sufficient distance and area for the filtration and elimination of bacteria and liquid contaminants by the native soil. In addition, vegetated bio-swales that take up and eliminate bacterial and liquid contaminants, have been provided as part of the project design. Further, run-off from the proposed horse facility and the bio-swales is directed into underground detention basins that act to retain and eliminate bacterial and liquid contaminants through action of the surrounding rock and soil. The project also requires approval of an Animal Waste Management Plan by Environmental Health Services. This plan would require that solid waste be removed and stored in a manner, and at frequent enough intervals, such that the waste would not be able to contribute to contamination of area runoff.

Analysis of Results: Groundwater & Liquid Waste (Urine) Contamination

The appellant asserts that the liquid waste (i.e. urine) from the proposed commercial horse facility could impact the water quality of his well. Urine is a sterile solution and is not a source of contaminating bacteria. Urine does contain nitrogen compounds and could contribute to contamination of water sources with nitrites and/or nitrates. However, the test results show no contamination of the appellants well by either nitrites or nitrates in excess of State drinking water standards (Attachment B).

Again, although approval of the proposed commercial horse facility would increase the number of animals to 20, the project has been designed to prevent contamination of ground and surface water by liquid as well as solid animal waste (see above).

Resolution of Groundwater Contamination

Contamination of drinking water sources by fecal and/or total coliform, and by other contaminants (e.g. nitrites, nitrates, total dissolved solids, metals), can be eliminated through the use of simple water treatment systems (e.g. ultraviolet light or chlorination for coliform bacteria, reverse osmosis for other contaminants).

At the time that the appellant requested final occupancy clearance for his new dwellings served by Well # 1, Environmental Health Services would collect a water sample from the dwellings (e.g. kitchen tap) for bacteriological analysis. If the sample was found to be positive for total and/or fecal coliform bacteria, the County would require that the applicant disinfect the water system. When the disinfection process was completed, a second sample would be collected and analyzed (per D. Brummond, EHS, 9/06/06). Given that the current data (8/1/06) show the well failed tests for some contaminants (total dissolved solids, metal, conductivity), a treatment system would be required for those contaminants. Automatic disinfection, in addition to the treatment for the specified contaminants, would produce water that met all established standards. This would resolve the appellants' concerns with respect to contamination of his well.

Applicant Proposed Changes To Conditions

At the Planning Commission's September 28, 2005 hearing, staff crafted two conditions to satisfy the Planning Commission's concerns about compliance. These conditions were adopted by the Planning Commission and are numbered 8 and 9 (please see the PC action letter attachment to your July 18, 2006 Board packet for this project). In their letter to staff dated September 11, 2006 (Attachment D), the applicant's attorney suggests modifications to the conditions. Modifications to condition 8 are acceptable but for the last sentence insofar as the corrections clean up the language of the condition and confirm the applicant's responsibility to bear costs for the compliance reviews. Staff supports the following changes to condition 8.

8. The applicant shall submit reports affirming compliance with the conditions of approval of the CUP. Such reports shall be due first at final map clearance, second at clearance of the land use permits and subsequently every six months. Compliance reports shall be subject to review and approval by P&D staff and subject to site inspection by P&D Compliance Officers. All costs associated with compliance shall be borne by the applicant. ~~Any~~ Continuing non-compliance with ~~of any the~~ CUP condition shall be resented to the Commission at a reasonableby scheduled hearing.

The applicant's proposed modifications to condition 9 are more substantive but staff believes they are acceptable. The original condition 9 required water sampling of the Maria Ignacio Creek on the applicants property every six months until such time as the CUP lapsed. The applicant makes the argument that three years of good samples with full horse occupancy per the CUP (12 horses total) should be adequate to prove the efficacy of surface water contamination controls. Proposed modifications also acknowledge that there may be ways other than modification of the Animal Waste Management Plan to ameliorate any identified future surface water contamination problems. Other vehicles would include, but not be limited to, additional biofiltration and/or revision or revocation of the CUP. Accordingly staff supports the following changes to condition 9:

- 9 ~~All costs for compliance review shall be borne by the property owner. Applicant shall implement and comply with the surface water monitoring program described in the “Work Plan – Surface water Monitoring Plan” prepared by Campbell Geo, Inc. and presented by letter dated June 28, 2006 to Mr. Mark Walter of P&D (Attachment E). Sampling under this program will continue for a period of three years from the date when the owner/applicant reports to P&D that he is boarding at least twelve horses on a regular basis, provided that all samples taken during that three-year period meet the standards set forth in the Work Plan. In the event that the average fecal coliform values in a repeat sample set, as required under the Work Plan, fail to meet the standards described therein, the sampling period will continue for three years from the date when the unacceptable samples were collected. In addition, if at any time County staff received a report of fecal bacteria at a level that is unacceptable under the standards set forth in the Work Plan, following resampling and applicant’s effort to identify sources of unacceptable levels of fecal bacteria, County staff will consult with applicant and may require additional on site control measures if applicant’s horse boarding operation is determined to be the source of the unacceptable bacteria level. Such additional requirements may be imposed as a revision to the applicant’s The Animal Waste Management Plan or through other appropriate means available to the County, including revision to the CUP. If samples are continuously unacceptable and measures do not work to effectuate change, revocation hearings may be held, shall be reviewed, approved and updated by Health Services as necessary as part of each compliance review. Health Services shall review water samples taken from the creek on site. Comparative samples from upstream shall also be provided to Health Services for purposes of updating the Animal Waste Management plan as necessary.~~

Mandates and Service Levels:

Pursuant to Section 35-327.3 of Article III of Chapter 35 of the County Zoning Ordinances, the decisions of the Planning Commission may be appealed to the Board of Supervisors by the applicant or any interested person adversely affected by such decision.

Pursuant to Sections 65355 and 65090 of the California Government Code, a notice shall be published in at least one newspaper of general circulation within the County, at least 10 calendar days prior to the hearing.

Pursuant to Sections 65091 of the California Government Code, notice shall be mailed to the real owners of property within 300 feet of the project, and shall be mailed to the project applicant and local agencies expected to provide essential services, at least 10 calendar days prior to the hearing.

Fiscal and Facilities Impacts:

The costs for processing appeals are typically provided through a fixed appeal fee and funds in P&D’s adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$435. P&D will absorb the costs beyond that fee. These funds are budgeted in the Permitting and Compliance

Program of the Development Review South Division, as shown on page D-290 of the adopted 2006/2007 fiscal year budget.

Special Instructions:

Clerk of the Board shall complete noticing in the Santa Barbara News-Press at least 10 calendar days prior to the September 26, 2006 hearing.

Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Hearing Support Section, Attention: Cintia Mendoza.

Concurrence: None

Prepared by: Mark Walter, Ph.D., Planner

Attachments:

- A. Groundwater Test Results entered at July 18 Hearing
- B. Groundwater Test Results
- C. Surface Water Test Results
- D. Letter from Price, Postel and Parma LLP dated September 11, 2006
- E. Work Plan – Surface Water Monitoring Program dated June 28, 2006