



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 and Development
Department No.: 053
For Agenda Of: June 2, 2020
Placement: Set hearing on June 2, 2020
for July 7, 2020
Estimated Time: 3 hours on July 7, 2020
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning and Development
Director (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Planning and Development
(805) 934-6559
SUBJECT: Applicant Appeal of the Carpinteria Valley Farms Helistop,
Case No. 19APL-00000-00029, First Supervisorial District

County Counsel Concurrence

As to form: Yes
Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On June 2, 2020, set a hearing for July 7, 2020 to consider the Applicant's appeal of the Planning Commission's denial of the Carpinteria Valley Farms Helistop, Case No. 19APL-00000-00029.

On July 7, 2020, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 19APL-00000-00029;
- b) Make the required findings for denial of the project, Case Nos. 19CUP-00000-00004 and 19CDP-00000-00055, included as Attachment 1, including California Environmental Quality Act (CEQA) findings; and
- c) Determine that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15270(a).
- d) Deny the project *de novo* (Case No 19CUP-00000-00004 and 19CDP-00000-00055).

Summary Text:

A. Project Description

The request is for a Conditional Use Permit and associated Coastal Development Permit to authorize operation of a helistop with one landing zone to be used for (1) personal use by the property owner and (2) emergency services. The personal use helicopter type shall be a Robinson R44 (or similar, not to exceed noise produced by an R44). The landing zone would consist of one approximately 25 sq. ft. plastic tarp, located toward the center of the property that would be temporarily placed prior to landing and removed following take-off. The landing zone would be located on an existing 10-acre grass field.

Personal use of the helistop would be limited to a maximum of two times per week (two landings and two take-offs) between the hours of 7:00 am and 7:00 pm. Emergency responders that would use the helistop for emergency services include International Emergency Services, LLC and the Santa Barbara County Sheriff's Department. Frequency of use of the helistop by emergency responders would be on an as-needed basis and dependent upon the nature of potential emergencies such as fires, floods, debris flows, and other emergencies.

The helicopter to be used by the owner would take the ocean route as opposed to the mountain route in order to avoid any potential disturbance to residences along the mountain route. See Attachment D of the Planning Commission Staff Report dated June 18, 2019 for an exhibit showing the proposed ocean route flight path. There would be no refueling or maintenance of the helicopters at the proposed helistop. Restrooms within existing structures on the property would be available for emergency responder aircrews. This project does not propose any construction.

The property will continue to be served by the Montecito Water District, Summerland Sanitary District, and Carpinteria-Summerland Fire District. Access will continue to be provided off of Lambert Road, Via Real, and Montecito Ranch Lane. The property is a 19.78-acre parcel zoned AG-I-20 and shown as Assessor's Parcel Number 005-210-056, located at 2800 Via Real in the Summerland/Carpinteria area, First Supervisorial District.

B. Background:

The proposed project was scheduled for the Planning Commission (Commission) hearing of June 26, 2019, at which time the applicant requested to continue the hearing to September (see Commission Memo included as Attachment 4) in order to review and respond to the many letters that were submitted from community members. The Commission granted the continuance and the project was continued to the hearing of September 25, 2019. Prior to the September hearing, the applicant revised the project description to propose one landing zone toward the center of the property as opposed to the previously proposed two landing zones and to reduce the proposed landing pad hours of operation from 7:00 am 9:00 pm to 7:00 am – 7:00 pm (see Commission Memo included as Attachment 5). At the September hearing, the commissioners directed staff to return to the November 7, 2019 hearing with findings for denial (see Commission Memo included as Attachment 6). The Commission made the required findings for denial of the project at the November hearing and denied the project, Case Nos. 19CUP-00000-00004 and 19CDP-00000-00055 (see Commission Action Letter included as Attachment 7), due to the fact that the Commission was not able to make specific applicable findings as further described below.

On November 15, 2019 the applicant submitted a timely appeal of the Commission's denial of the project to the Board of Supervisors. The project description that was denied by the Commission and is being proposed for *de novo* approval by the Board of Supervisors is included above.

C. Appeal Issues and Staff Responses

As noted above, the applicant filed a timely appeal of the Commission's denial of the proposed project. The appeal application (Attachment 8) contains a letter detailing why the applicant believes that the decision of the Commission is not in accordance with applicable law, including Article II, the Coastal Zoning Ordinance (CZO). The appeal issues raised by the applicant include the decision of the Commission being inconsistent with the provisions and purposes of the County's zoning ordinances, the decision of the Commission not being supported by the evidence presented for consideration, and a lack of a fair and impartial hearing. Staff reviewed these appeal issues and found that they are without merit. These appeal issues and staff's responses are summarized below.

Appeal Issue No. 1 - Decision of the Commission Inconsistent with County Zoning Ordinances: The applicant asserts that the decision of the Commission is inconsistent with the provisions and purposes of the County's zoning ordinances and other applicable law.

Staff Response for Appeal Issue No. 1: The Commission's decision to deny the project is supported by the fact that specific applicable findings could not be made. Sections 35-169.4.3 and 35-172.8 of the CZO list the findings that must be made by the review authority prior to the approval or conditional approval of an application for a Coastal Development Permit and a Conditional Use Permit, respectively. The discussion below and the findings presented to the Commission (Attachment 7) and to your Board (Attachment 1) discuss how the proposed project is inconsistent with the CZO and the Comprehensive Plan.

Finding 2.1.1 of CZO Section 35-169.4.3 requires that the proposed development conform to the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan. The subject property is within the Summerland Community Plan (SCP). SCP Policy N-S-1 provides that residential uses shall be protected to minimize significant noise impacts, and SCP Policy BIO-S-3 states that "monarch butterfly roosting habitats shall be preserved and protected." The Commission found that the loud, percussive noise events caused by helicopter take-offs and landings are incompatible with the surrounding neighborhood, adjacent trails, and nearby environmentally sensitive habitat. Therefore, this finding could not be made by the Commission.

Finding 2.1.2 of CZO Section 35-169.4.3 and Finding 2.2.1 of CZO Section 35-172.8 require that the development comply with public access and recreation policies of the CZO and the Comprehensive Plan including the Coastal Land Use Plan, and that the site for the proposed project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed. Policy PRT-S-5 of the SCP states that "new development shall not adversely impact existing recreational facilities and uses." A public trail easement and a bicycle path run immediately adjacent to the property boundaries. The Commission found that the loud and percussive noise events caused by the proposed helistop during helicopter take-offs and landings may startle horses riding on the equestrian trail and pose a safety threat to users of the trail. Additionally, these loud and percussive noise events would degrade the

quality of the nearby pedestrian and bicycle trails. Therefore, these findings could not be made by the Commission.

Findings 2.2.2 and 2.2.3 of CZO Section 35-172.8 require that the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will be compatible with the surrounding area, and that in designated rural areas the use is compatible with and subordinate to the scenic and rural character of that area. The Commission found that the proposed helistop is incompatible with the surrounding areas due to the proximity to the surrounding residential neighborhood and existing trails that are immediately adjacent to the subject property. As discussed above, the loud and percussive noise events caused by helicopter take-offs and landings may startle horses being ridden on the equestrian trail and pose a safety threat to users of the trail. They would also interfere with the quiet enjoyment of residences in the area and degrade the quality of nearby recreational trails. For these reasons, the Commission found that the proposed helistop is not subordinate to the scenic character of the area. Therefore, these findings could not be made by the Commission.

Appeal Issues Nos. 2 and 3 – Commission’s Decision Not Supported by the Evidence Presented: The applicant alleges that there was an error and abuse of discretion by the Commission because there is no substantial evidence to support the denial. Furthermore, the applicant asserts that the Commission’s decision is not supported by the evidence presented for consideration.

Staff Response for Appeal Issues Nos. 2 and 3: The Commission’s decision to deny the project is supported by the fact that specific applicable findings could not be made, as discussed above and in Attachment 7. There is substantial evidence in the record to support the denial of the findings by the Commission, which consists primarily of written and oral testimony provided by members of the community. Along with public testimony given at the Commission hearings on June 26, 2019, September 25, 2019, and November 7, 2019, approximately 200 letters were submitted in opposition of the project. These letters and public testimony were comprised of firsthand accounts from members of the community who regularly see and hear helicopters landing on properties in the area, including on the subject property itself. These helicopter landings are described as causing loud noise events that are detrimental to the safety, comfort, and convenience of people who reside in the surrounding residential neighborhood. Neighbors testified that helicopter landings are detrimental to public use of nearby recreational facilities and that they lessen the scenic and visual qualities of this coastal area. The community also shared a concern that these helicopter landings may startle horses riding on the adjacent equestrian trail, which would pose a safety threat to users of the trail. In addition, during the Commission hearings certain members of the community with post-traumatic stress disorder and noise sensitivities described the inconvenience and discomfort that these helicopter landings cause.

Appeal Issue No. 4 – Lack of Fair and Impartial Hearing: The applicant alleges that there was a lack of a fair and impartial hearing. “Bias – either actual or an “unacceptable probability” of it – alone is enough on the part of a municipal decision maker to show a violation of the due process right to fair procedure. A biased decision maker is constitutionally unacceptable.” The applicant goes on to state that “there is already a body of case law bearing on whether an applicant for a land use permit is afforded procedural due process when a member of the adjudicatory body considering the permit is, or may be, biased against the applicant.”

Staff Response for Appeal Issue No. 4: The Commission followed all required procedures during the hearings of June 26, September 25, and November 7, 2019. Public testimony was heard and due process

rights for both the public and applicant were upheld. The Commission reviewed this specific project proposal and opined as to whether the required findings could be made based upon the evidence in the record. As discussed above and in Attachment 7, the Commission's decision to deny the proposed project is supported by substantial evidence that necessary findings of approval cannot be made..

As discussed above, all of the appeal issues raised are meritless and Planning and Development staff recommends that the Board of Supervisors deny the proposed project.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$9,665.00 (40 hours of staff time). The costs for processing appeals are partially offset by a fixed appeal fee and General Fund subsidy in Planning and Development's adopted budget. The fixed appeal fee was paid by the appellant in the amount of \$685.06. Funding for processing this appeal is budgeted in the Planning and Development Permitting Budget Program, as shown on page D-269 of the adopted 2019-20 Fiscal Year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on July 7, 2020. The notice shall appear in the *Santa Barbara News-Press*. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward a minute order of the hearing to the Planning and Development Department, Hearing Support.

Attachments:

1. Board of Supervisors Findings
2. CEQA Exemption
3. Planning Commission Staff Report dated June 18, 2019
4. Planning Commission Memorandum dated June 25, 2019 for hearing of June 26, 2019
5. Planning Commission Memorandum dated September 24, 2019 for hearing of September 25, 2019
6. Planning Commission Memorandum dated October 29, 2019 for hearing of November 7, 2019
7. Planning Commission Action Letter dated November 12, 2019
8. Board of Supervisors Appeal Application dated November 15, 2019

Authored by:

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