



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: January 12, 2010
Placement: Departmental
Estimated Tme: 1 hour
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Glenn Russell, PhD., Director (568-2085)
Director Planning and Development
Contact Info: Doug Anthony, Deputy Director, (805) 568-2046
Development Review Division – North County

by Dianne M. Black

**SUBJECT: Chisan Nursery Appeal of Planning Commission Approval of the Chisan Nursery
Development Plan**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: No

Other Concurrence: N/A

As to form: No

Recommended Actions:

The Board of Supervisor's action should include the following:

- a) Make the required findings for the project specified in the Planning Commission action letter dated November 2, 2009 (Attachment A);
- b) Deny the appeal, case no. 09APL-00000-00028, thereby upholding the Planning Commission's approval of 07DVP-00000-00035; and
- c) Grant *de novo* approval of case no. 07DVP-00000-00035, subject to the conditions specified in the Planning Commission action letter and attachments dated November 2, 2009.

Summary Text:

A. Proposed Project

The project includes the legalization of four existing unpermitted greenhouses totaling approximately 1,079,917 square feet (368,359 square feet, 378,376 square feet, 285,912 square feet and 47,270 square feet). These greenhouses are used for the cultivation of orchids.

The proposed project also includes the legalization of the following existing, unpermitted structures:

- three decks/porches of 132 square feet each for a total of 396 square feet;
- two 60 square feet storage shed attached to the three modular units onsite for a total of 120 square feet;
- a potting shed of 1,440 square feet;
- a pump house of 147 square feet;
- an addition to the existing 726 square foot storage shed of 475 square feet;
- and a storage building of 3,564 square feet.

The project also includes a loading dock, three detention basin, and roadway improvements. The proposed project will be for wholesale use only and not open to the public. The following structures currently exist on the parcel: unpermitted greenhouses, and three permitted employee dwelling trailers with unpermitted porches and sheds and a 1,200 square foot storage building.

To date the project has not fulfilled all conditions of approval. The following conditions have been submitted or are currently under review: 1) filing for the zoning clearance application; 2) payment of the monitoring fees for compliance of project conditions; 3) filing appropriate paperwork to the Department of Fish and Game; and 4) submittal of revised plans for review by the Central Board of Architectural Review. There are approximately thirty conditions of approval still pending. These conditions also include the departmental condition letters of approval.

B. Background

On December 20, 2007 a Development Plan application was submitted for an as built orchid nursery. On October 21, 2009 the Planning Commission heard the project and continued the item to October 26, 2009. On October 26, 2009 the Planning Commission approved the project subject to the revised conditions submitted at the hearing.

On December 17, 2007, the road naming was approved the Zoning Administrator. On April 10, 2006, the Zoning Administrator approved three modular units under 05CUP-00000-00060. The parcel was legalized under Certificate of Compliance 05-CC-001. A 725 square foot equipment storage building built in approximately 1939 is located on the property.

On June 2, 2004 a pre-application was filed by Chisan Nursery for the development of a 1.2 million square foot orchid nursery. On August 23, 2004 a letter (see Exhibit I) was sent to DeWayne Holmdahl, agent for Chisan Nursery and Mr. Lee, owner which outlined the process for the proposed orchid nursery development.

Approximately 377,490 square feet of shade structures were allowed by Val Alexleff, the previous Planning and Development Director in September 2004 based on the information that the structures were temporary, to be used for plant protection, and the structures were more than four feet in height would not be in place for more than 75% of any 24 month period. On May 18, 2006, Planning and Development allowed the placement of the additional 188,745 square feet of shade structures provided the Development Plan application is submitted no later than December 18, 2006. This extension of the submittal requirements allowed Chisan Nursery to complete production for the fall without severe financial loss. Attached is the timeline for Chisan Nursery as Exhibit H.

Appeal Issues:

On November 4, 2009 an appeal was filed by the owners of Chisan Nursery. Staff recommends denial of the appeal as the applicant has already benefitted from several years of unpermitted use.

The following items were identified as the basis for this appeal:

1. **Appeal Issue:** The agent's request is to modify the Planning Commission approval to allow for temporary heating prior to compliance with permit conditions. This request represents the applicant's desire to protect its current crop of orchids from freezing weather.

Condition 10: Fire The project shall comply with the Fire Department condition letter dated June 2, 2009 [included herein as Exhibit F] regarding: access standards, fire hydrant installation, on-site fire extinguishers, automatic fire sprinkler systems, building address identification, hazardous materials storage and payment of fire mitigation fees. Plan Requirements/Timing: All components of the Fire Department condition letter shall be completed when indicated in the letter. Monitoring: A site inspection shall be conducted by the Fire Department and P&D compliance staff prior to occupancy clearance.

Staff Response: The Fire Department is unequivocal that the applicant must meet minimum requirements prior to approving installation and use of heating units to protect the orchids currently being grown inside the unpermitted greenhouses from freezing weather. P&D staff concurs with that position. Installation of adequate access to and from the unpermitted greenhouses and installation of water supplies are basic prerequisites to fire and life safety. Other requirements of Condition 10 are also prerequisite to installation of heating units for the same reason. While progress has been made toward satisfying Condition 10, more work remains to be done. The fire extinguishers have been installed but not yet inspected as of December 23, 2009. The business plan is on file and currently being updated. The fire line and hydrant system has not yet been purchased and will take time; in the interim, the Fire Department is willing to accept a temporary water system, and that currently is being developed by the fire protection specialist hired by the applicant.

2. **Appeal Issue:** The agent's request is for the modification to Condition 38, Departmental Condition Letters. The request of this appeal issue is to allow the project temporary heating without compliance with the Fire Department Condition letter and the Public Works, Roads Division letter for deferment of traffic mitigation fees.

Condition 38 – Departmental Condition letters.

Public Works, Roads Division letter dated September 29, 2009

Fire Department letter dated June 2, 2009

Staff Response: See staff response to appeal issue 1, above, with regard to applicants request to forego basic fire and life safety requirements in order to allow earlier installation of temporary heating units within unpermitted greenhouses. The Fire Department condition letter dated June 2, 2009 (see Exhibit F), and Public Works Roads Division letter dated September 29, 2009 (see Exhibit G) are conditions of approval for the Chisan Nursery under 07DVP-00000-00035. The applicant is requesting a deferment in meeting these conditions to allow for the nursery to obtain natural gas hookup for heating the existing unpermitted greenhouses that contain orchid plants during the harvest season. The harvest season generally ends in March. The Fire Department is not recommending deferral of their condition letter.

With regard to deferral of traffic fees, Public Works (PW), Roads Division, has indicated that the fees associated with their condition requires payment of fees at time of Zoning Clearance approval/issuance. PW staff also notes it that, does not have the latitude in adjusting the timing of the payment per County Ordinance 4270, nor is there an adequate trigger point to collect the fees from the applicant if there was an option to postpone the payment. Therefore, PW staff recommends that the Board of Supervisors deny the request of Chisan Nursery to defer the payments of transportation fees. P&D staff concurs with that recommendation.

3. **Appeal Issue:** The agent's request is to allow for the proposed temporary office and the natural gas hookup to the nurseries as part of the Planning Commission's approval of 07DVP-00000-00035 on October 26, 2009.

Condition 54: Any future development on the site shall require the filing and approval of a substantial conformity determination, an amendment or a revision to 07DVP-00000-00035 in accordance with the Land Use and Development Code. The agent's request is to allow for the temporary office and the natural gas hookup to the nurseries as part of the Planning Commission's approval of 07DVP-00000-00035 on October 26, 2009.

Staff Response: At the October 26, 2009 Planning Commission hearing, the agent discussed the need for a temporary office trailer for the orchid nursery. Since the plans were not available for the proposed temporary office, a new condition, Condition 54, was added to allow the applicant to apply for a substantial conformity determination for the proposed temporary office. The Planning Commission determined that, based on the proposed location identified by the agent for the proposed temporary office, the substantial conformity determination application would be the correct process. Once the plans have been submitted for review and approval of the temporary office, the substantial conformity determination process would be handled at the staff level. At the hearing, no opposition was raised by the agent for the project regarding this condition.

4. **Appeal Issue:** The agent's request is to delay structural removal of the western portion of nurseries A, B, C, and D until after the harvest season.

Condition 58: In order to comply with the Fire Department access and to satisfy the landscape requirements conditions, the west portion of Nurseries A, B, C, and D shall remove fifteen feet of existing structural development. Timing: Prior to issuance of the zoning clearance, the proposed building portion shall be removed and a site inspection shall be conducted by P&D.

Staff Response: The applicant had agreed to the removal of the portion of the nurseries to accommodate the need for emergency access and screening of the existing structures due to access requirements from the Fire Department and landscape conditions. Neither the agent and/or the owner raised concerns regarding the removal of the west portion of nurseries A, B, C, and D for landscaping screening and emergency fire access during the process or during a site visit conducted on March 18, 2009. On December 4, 2009, a letter was sent to the Mr. Severn and Mr. Kim indicating that since the access is currently adequate for the Fire Department, the installation of the landscaping and removal of the nurseries shall be completed by June 1, 2010. This deferment on Condition 58 would allow the nurseries to remain during the harvest season which ends around April 1, 2010. Also, during the Planning Commission hearings conducted on October 21, 2009 and October 26, 2009 these issues were not raised by the agent and or the owner. The applicant is requesting a delay in the removal of these structures until after the harvest season. The agent has indicated that the harvest season generally ends in March. Upon agreement from the applicant/agent this would no longer be an issue as part of this appeal.

Fiscal and Facilities Impacts:

Budgeted: Yes

Estimated staff time to process the appeal and prepare for and attend the hearing before the Board of Supervisors is approximately 30 hours for an estimated cost of \$4,600.00. This cost is partially offset by the \$643 appeal fee paid by the appellant per the Planning & Development Department fee schedule in effect on the date that the appeals were filed (Resolution 09-005 adopted by the Board of Supervisors on January 27, 2009). The remaining cost of processing the appeal is an expense to the General Fund and is budgeted in the Permitting and Compliance Program of the Development Review Division – North on page D-312 of the adopted budget for Fiscal Year 2009/2010. There are no facilities impacts.

Special Instructions:

Clerk of the Board shall publish a legal notice in the Santa Maria Times and shall complete the mailed noticing requirements for the project at least ten (10) days prior to the January 12, 2010 hearing (mailing labels attached).

Clerk of the Board shall forward a copy of the Minute Order and copies of the legal notice and proof of publication to Planning & Development, Hearing Support Section, Attention: David Villalobos.

Exhibits:

- A. Planning Commission Action Letter dated November 2, 2009
- B. Appeal Application dated November 4, 2009
- C. Staff Report dated October 5, 2009
- D. PC Memo dated October 20, 2009
- E. PC Memo dated October 26, 2009
- F. Fire Department letter dated September 25, 2008 and June 2, 2009
- G. Public Works, Roads Division letter dated September 29, 2009
- H. Timeline for Chisan Nursery dated December 17, 2009
- I. 04PRE-00000-00009 Chisan Pre-application letter dated August 23, 2004
- J. Site Plan dated October 7, 2009

Authored by:

Florence Trotter-Cadena, Senior Planner
805 934-6253

cc: County Counsel