



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: Frank Arredondo and Friends of Xana'yan Appeal of Planning Commission
Approval of the Santa Barbara Botanic Garden 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 Frank Arredondo and Friends of Xana'yan (09APL-00000-00029) of the Planning Commission's October 26, 2009 approval of the Santa Barbara 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. Deny the appeal, Case No. 09APL-00000-00029, thereby upholding the County Planning Commission's approval of 72-CP-116 RV01 and 99-DP-043 (the Vital Mission Plan) as revised herein;
2. Make the required findings for approval of Case Nos. 72-CP-116 RV01 and 99-DP-043 (the Vital Mission Plan) included as Attachment 2;
3. Certify the Final Environmental Impact Report, 07EIR-00000-00001 (Attachment 7), including the FEIR Revision Letter (RV1) (Attachment 3), and adopt the mitigation monitoring program contained in the conditions of approval; and

4. Grant *de novo* approval of Case Nos. 72-CP-116 RV01 and 99-DP-043 (the Vital Mission Plan), as revised from the Planning Commission approval, subject to the revised conditions of approval included as Attachment 4.

Summary Text:

After four hearings, the County Planning Commission approved the Santa Barbara Botanic Garden's Vital Mission Plan and revised Conditional Use Permit (Case Nos. 72-CP-116 RV01, 99-DP-043) on October 26, 2009. The Vital Mission Plan approved by the Planning Commission involves the net increase of approximately 25,414 s.f. of new development, consisting of a combination of administrative, research, and education facilities, as well as new staff housing. In addition to the new structural development, the revised CUP includes explicit allowances for uses and activities at the Garden, including general visitation, classes, and special events. The project would be built in phases over the next 10 years. Included with the approval of the revised CUP are 98 conditions of approval applied to the operation of the garden and buildout of the Vital Mission Plan. Details of the project as approved by the Planning Commission are provided in the Background section below.

Frank Arredondo and Friends of Xana'yan, representatives of the Native American community, have appealed the County Planning Commission's decision for several reasons, as enumerated in their grounds for appeal (Attachment 1). The grounds for the appeal center on impacts to a recorded archaeological site, CA-SBA-22, located within the project site. The impacts result primarily from construction of two new staff residences and associated infrastructure improvements within a portion of the site referred to as the Hansen site. Specific points of the appeal include a claim of inconsistency with the County Land Use and Development Code (LUDC) zoning requirements and policies of the County Comprehensive Plan related to archaeological resources, as well as noncompliance with cultural resource evaluation procedures identified in the County's *Environmental Thresholds and Guidelines Manual, Chapter 8, Cultural Resources Guidelines Archaeological, Historical and Ethnic Elements*.

A facilitation meeting was held between the applicant and appellants on January 14, 2010. The parties were unable to come to any agreement or compromise that would result in the appellants dropping their appeal.

Consideration of the Frank Arredondo and Friends of Xana'yan Appeal

Frank Arredondo and Friends of Xana'yan (appellants) have enumerated four primary grounds for their appeal. Each issue is discussed separately below.

Issue 1 – Compliance with Ordinance and Policy Requirements

The first issue raised by the appellants is that the approval of the project is not in accord with the zoning ordinance and the Planning Commission abused its discretion in its treatment of the archaeological resource requirements of the LUDC. Specifically, the appellants point to Section 35.60.040 of the LUDC which requires that:

1. *Development proposed on a lot where archaeological or other cultural sites are located shall be designed to avoid impacts to the cultural sites if possible;*
2. *When sufficient planning flexibility does not permit avoiding construction on an archaeological or other cultural site, adequate mitigation shall be required. Mitigation shall be designed in*

compliance with the guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission;

3. *Native Americans shall be consulted when development proposals are submitted that impact significant archaeological or cultural sites; and*
4. *All available measures, including purchase of the site, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, prehistoric, archaeological and other classes of cultural sites.*

These zoning ordinance requirements are identical to the policies in the County's Comprehensive Plan Land Use Element related to cultural resource protection. The appellants assert that the County did not comply with these requirements in evaluating and approving the project.

1. *Development proposed on a lot where archaeological or other cultural sites are located shall be designed to avoid impacts to the cultural sites if possible.*

The Planning Commission approved project on appeal includes development in an area occupied by a known archaeological site. Specifically, two new staff residences and associated infrastructure improvements would be constructed in this area; two existing residences would be remodeled and utilities would be extended to serve the units. The project was originally designed to avoid impacts to the archaeological site where possible while still meeting project objectives. Additionally, during the permit process, revisions were made to the project to reduce the scale of development in this area and to restore the existing residences rather than demolish them and rebuild them specifically in order to avoid impacting archaeological resources. While areas of identified high and medium density archaeological deposits would have been avoided through site design, areas of the site with low density deposits would still have been impacted with the construction of the two new staff residences and associated infrastructure improvements. Appropriately, mitigation measures were adopted to reduce impacts. Hence, the Planning Commission was able to find the project consistent with LUDC Sections 35.60.040.1 and 35.60.040.2.

However, as discussed in detail below (see Background section, Project Revision 1), staff is recommending that the two new units on the Hansen site be eliminated from the PC approved project in order to ensure conformance with zoning ordinance residential density requirements. This would result in further avoidance of development within the archaeological site. With the project revisions, the only new disturbance that would occur in this site would result from roadway improvements and the extension of water, sewer, and other utilities to serve the existing units that are to be remodeled. Contrary to the appellant's assertion, the roadway through the Hansen site that impacts portions of the archaeological site cannot be avoided, as it is an existing road that the County Fire Department is requiring be improved to meet County Fire Department standards for emergency access. Therefore, under the staff recommended project, development has been designed to further avoid impacts to the cultural site to the extent possible.

2. *When sufficient planning flexibility does not permit avoiding construction on an archaeological or other cultural site, adequate mitigation shall be required. Mitigation shall be designed in compliance with the guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.*

Implementation of the proposed mitigation measures, which are in compliance with the guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission, would ensure impacts to archaeological resources are avoided or reduced to less than significant levels.

Such mitigation measures include avoidance through capping of the resource prior to construction where feasible, and Phase 3 investigations where necessary. In addition, monitoring by a County-qualified archaeologist and Native American observer would be required for all ground disturbances within and adjacent to the recorded archaeological site. All impacts were reduced to less than significant levels through the incorporation of mitigation measures as conditions of project approval, consistent with the zoning and policy requirements referenced above.

Contrary to the appellants' assertion, alternatives were evaluated in the EIR that avoided or further reduced impacts to both the archaeological site as well as the site's historic resources associated with the County Landmark #24, though complete avoidance of development within the landmarked boundaries was not possible. These alternatives included elimination of the new staff housing in the area of the recorded archaeological site or relocation of the staff housing to the parcel containing the Director's residence along Tunnel Road. Also included in the alternatives was elimination of new paving on trails and elimination of the Meadow Terrace, two project components that impact the historic landmark. Another alternative that was considered but ultimately rejected was the use of existing residential units owned by the Garden, which are located on parcels adjacent to the Garden property, in lieu of constructing new staff residences. This alternative was rejected and not analyzed because it was determined to be financially infeasible as these two properties were purchased by the Garden for investment purposes and the Garden would be unable to see any return on the investments if they were rented to staff at subsidized rates. Regardless, this alternative was somewhat duplicative of the off-site alternative that was analyzed.

3. Native Americans shall be consulted when development proposals are submitted that impact significant archaeological or cultural sites.

In regards to the third requirement, Native Americans have been consulted and involved in the review of this project. The basis for this aspect of the appeal largely falls on a disagreement between the appellants and Planning and Development over what "consultation" should entail. The appellants assert that consultation should be more involved and include working towards an agreed upon solution with shared decision-making responsibility. However, consistent with Planning and Development's practice, consultation means that the comments, concerns, and suggestions of the local Native American community have been solicited and considered in the evaluation and approval of the project. This has occurred through a combination of meetings, letters, and other communications with members of the local Native American community. Planning and Development included local Native Americans in the scoping process and circulation process of the Draft EIRs and received multiple comment letters on the project. Comments received by these individuals and tribal representatives resulted in revisions to the project and mitigation measures where applicable. In March 2009, Planning and Development sent letters to several members of the local community after getting a list of individuals from the Native American Heritage Commission, inviting further comment and discussion of the project, and did not receive any requests for a meeting or further discussion in response. Immediately prior to the first Planning Commission hearing on the Vital Mission Plan on August 5, 2009, the appellant requested a consultation meeting with Planning and Development staff, applicant, and local Native American community members. Planning and Development staff responded to this request by scheduling and holding a meeting with six local representatives on August 28, 2009. At that meeting, the project was discussed and information was exchanged, including the archaeological investigations and EIR conclusions, and the Native American representatives expressed their concerns with respect to the impacts of the project on sensitive cultural resources and offered their recommendations for avoidance or further mitigation of impacts.

There is no formal adopted protocol for Native American consultation outside of the Senate Bill (SB) 18 context. Since the proposed project does not involve a General Plan Amendment, formal consultation as provided under SB 18 is not required. The purpose and intent of SB 18 consultation, adopted by the State in 2005, is to provide for the sharing of information, to establish meaningful dialogue, to ensure that the comments and concerns of the Native American community are fully considered in the processing of a project involving a General Plan Amendment, and where possible, to strive to protect cultural resources consistent with the desires of the Native American community. However, even in the context of SB 18 consultation, there is nothing that provides shared decision making or that ensures that an agreed upon solution will be reached. Staff has reviewed the County's policies and guidelines related to consultation and involvement of the Native American community and determined that staff has substantially complied with these guidelines in processing this project and bringing it forward to the decision makers for action.

4. *All available measures, including purchase of the site, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, prehistoric, archaeological and other classes of cultural sites.*

In regards to the fourth requirement of the LUDC, these measures were considered but were determined to not be appropriate to the site. As a non-profit, the Garden already receives property tax relief on Garden property and purchasing the property would be contrary to the Garden's mission and project objectives. Further, there are no County programs or funds in place for such actions.

Issue 2 – Consistency with Conservation Element

The appellants reference the Conservation Element of the County's Comprehensive Plan and asserts that the County has not followed the direction outlined in the Conservation Element. The Conservation Element provides a general discussion of archaeological resources in the County and identifies the types of activities that directly or indirectly impact such resources. In addition, the Conservation Element makes recommendations for addressing archaeological resources with respect to development projects. These recommendations are not policy directives that must be adhered to, but rather the document serves as a useful resource when evaluating archaeological resources as part of the review of a development project. In this regard, the County considered the information provided in the Conservation Element and included a detailed ground survey of the area of disturbance as part of the environmental analysis of the project, and evaluated project-specific direct and indirect impacts to the archaeological resources within the site. Contrary to the assertion of the appellants that the lack of an archaeological survey for presence/absence was the only reason the alternative of moving staff residences to another area of the site next to the Director's residence was not selected, the reason it was not selected was because it was not necessary to reduce significant impacts, since the mitigation measures applied to the project as proposed would reduce impacts to less than significant levels. Regardless, as referenced above and discussed in detail under Project Revision 1 below, staff is recommending elimination of the two new residential units and relocation of the third unit to the site of the Director's residence in order to ensure conformance with zoning ordinance residential density requirements. This would result in avoidance of new development within the archaeological site, thereby resolving many of the issues raised in this appeal.

Issue 3 – Compliance with County's CEQA Guidelines Manual

The appellants assert that the County has not complied with its local requirements for evaluating archaeological resources under CEQA, including compliance with the *Environmental Thresholds and*

Guidelines Manual. The appellants assert that the EIR was inadequate for failing to assess ethnic impacts, as discussed in the County's *Environmental Thresholds and Guidelines Manual*. The County's thresholds provide a guide to be used with discretion on a project by project basis, as not all thresholds apply in all cases. Consistent with the County's "Guidelines for the Implementation of the California Environmental Quality Act of 1970, As Amended" originally adopted by the Board of Supervisors in 1988, thresholds of significance provide general guidance for determining significant impacts. Some thresholds are quantitative. Others, like cultural resource thresholds, are not. In this latter case, thresholds are used as guidelines and are thus not ironclad definitions of significant impacts. As such, each project is judged individually for its potential for significant impacts, based on specific circumstances and evidence. The threshold in question relating to ethnic impacts is reserved for sites of utmost significance to the Native American community and is not typically applied to every prehistoric archaeological site, regardless of the site's significance under CEQA. The EIR consultants and County staff found no evidence in the record, either anecdotal or written, indicating use of this site for ceremonial or other purposes or that the site was significant in an ethnic sense above and beyond its significance as an historic/archaeological resource under the California Register criteria. Therefore, assessment of the project's ethnic impacts under this threshold was not incorporated into the EIR analysis. Nonetheless, representatives of the Native American community were contacted as part of the EIR process to assess their concerns and viewpoints on the impacts of the project and adequacy of the mitigation measures, consistent with the intent of this threshold. Further, this threshold goes beyond just an assessment of ethnic impacts to also address a combination of archaeological and historic resource issues affecting a community or social group. While not discussed and evaluated under the context of "ethnic impacts" as a separate impact heading, the EIR does evaluate the impacts of the project on archaeological and historic resources, consistent with the intent of this threshold.

The County's *Environmental Thresholds and Guidelines Manual* references a technical document entitled *Regulations Governing Cultural Resource Projects Undertaken in Conformance with Federal and State Environmental Protection Acts* (1986), which provides procedures for cultural resource consultants to follow in preparing the investigations. The appellants assert that the procedures included in this document were not adhered to in the course of evaluating the archaeological resources associated with this project. It is necessary to point out that the document in question contains *guidelines* for consultants to follow in investigating cultural resources and are not prescriptive in terms of directives that must be adhered to without exception. That said, archaeological investigations that were undertaken as part of the environmental analysis for the proposed project have substantially complied with these guidelines. This includes participation by a Native American monitor/crew member in all subsurface investigations at the site. While included in the guidelines, it is no longer the practice of the County to require Native American monitors that participate in such investigations to have been appointed by local recognized groups or the Native American Heritage Commission. There is a rather small group of local Native Americans that are experienced in this type of work and typically fulfill this function as part of subsurface investigations. These monitors/crew members also typically have a role in at least reviewing the findings of the report before it is submitted to the County.

Issue 4 – Sacred Status of Archaeological Resource

The appellants assert that the archaeological site within the project area is classified as a Native American sacred site. As part of the EIR analysis, a records search of the Native American Heritage Commission's sacred lands file failed to indicate the presence of Native American cultural resources within the project area. In other words, contrary to the appellants' assertion, CA-SBA-22 is not classified as a sacred site by the Native American Heritage Commission.

Summary and Recommendations

In the discussions above, staff has presented how the grounds for the appeal filed by Frank Arredondo and Friends of Xana'yan have been adequately addressed by the County and should be dismissed. That said, staff has revisited allowances for residential units in the Recreation (REC) zone district under the Land Use & Development Code and concluded that the project should be revised to eliminate the new units on the Hansen site in order to ensure compliance with residential density zoning requirements. Addressing this compliance issue would have the effect of avoiding new development within or adjacent to the known archaeological site. The only disturbance that would occur would be improving the existing access road to meet County Fire Department standards and extending water, sewer, and other utilities to serve the existing remodeled units. Thus, most of the concerns of the appellants would be resolved through compliance with this ordinance requirement and approval of staff's recommended project.

Background:

The Santa Barbara Botanic Garden has been operating at its current location in Mission Canyon since 1926. It currently operates under a 1972 CUP covering approximately 65 acres and has not undergone any significant facility improvements for over twenty years, though its uses and exhibits continue to evolve. It is surrounded by low intensity residential development. Existing structural development totals 39,558 square feet. Upon completion of the project, the Garden would include a total floor area of 65,442 square feet, representing an approximate 65% increase over existing development. Thirteen acres would be incorporated into the Garden's revised CUP, for a total of 78 acres.

The Garden functions to promote and maintain public programs, botanical collections and exhibits that provide opportunities for research, education and interpretation, conservation, and display. As a non-profit organization, the Garden also engages in various fundraising activities, including holding public classes and lectures, fundraisers, private parties and events. The Planning Commission, in approving the project, placed annual visitation limits associated with events, classes, and general visitation, but allowed such limits to increase by 1.8% per year up to a maximum increase of 50% over existing levels.

In an effort to retain staff and provide 24-hour maintenance and care of the Garden, the Garden currently provides four on-site residential units, three of which are located east of Mission Canyon Road. The Planning Commission approval included four new residential units and conversion of an existing duplex into a single family dwelling (for a net increase of three units within the project as a whole) to provide additional housing opportunities for staff, three of which would be located in the same area of the project site.

The Garden currently includes 30 buildings¹ (including shade structures) totaling approximately 39,558 square feet of development (see table below). The project would result in a net floor area increase of 25,884 square feet relative to existing development (65% increase), taking into account the demolition of several buildings. Upon completion of the proposed project, the Garden would include a total floor area of 65,442 square feet of development (existing plus proposed development). The proposed buildout is anticipated to occur over an approximate ten-year period, though the increases in uses proposed would

¹ This figure represents the pre-fire condition and is kept as is to reflect the fact that the Garden intends to rebuild structures that were lost in the May 2009 Jesusita Fire.

extend for the life of the project. With buildout of the project, approximately 91% of the site would remain undeveloped in open space or garden exhibits.

Specific elements of the Vital Mission Plan project approved by the Planning Commission include:

- Construction of 15 new buildings, including:
 - 16,171 square feet of new development for research, education, and conservation space, including a new Education Center (7,941 s.f.), Children's Lab (2,678 s.f.), and Conservation Center/Herbarium (5,552 s.f.);
 - Three new residential units totaling 4,235 square feet devoted to subsidized housing for full-time Garden employees;
 - 8,414 square feet of additional horticulture and plant propagation areas, including the new Horticultural Offices (3,527 s.f.) and Garage (1,733 s.f.), four shade structures (1,600 s.f.), Cavalli Office/Garage (1,168 s.f.), and storage facilities (386 s.f.);
 - New Admissions Kiosk/Restrooms (724 s.f.);
- Reconstruction of Gane House destroyed in Jesusita Fire;
- Relocation of Caretaker's Cottage from west side to east side of Mission Canyon Road and conversion back to staff residence;
- Demolition of six buildings totaling 4,240 s.f.;
- Addition to North Wing (674 s.f.) and Director's Garage (457 s.f., destroyed in Jesusita Fire);
- Construction of three-tiered Meadow Terrace;
- Installation of pavers between and around buildings, as well as adjacent areas for access (not to exceed 10% over existing paving);
- New three-space staff parking area on Mission Canyon Road by Las Canoas Road and pedestrian bridge serving the Guild Studio;
- Installation of 3 ½-foot tall fencing around most of property boundaries; existing 6-foot cyclone fencing to remain and be set back six feet from roadway where possible;
- Allowance for the erection of temporary displays or art exhibits, not to exceed 1,200 s.f.; seasonal displays would be permitted for up to 90 days and temporary art exhibits would be permitted for up to three years;
- Total annual attendance associated with educational programs would be limited to a 1.8% annual increase above existing levels (i.e. 1,778 attendees), up to a maximum increase of 50% (2,667); an increase in daytime and nighttime class sizes from 20 to 22 students, with Master Gardner and Docent trainings having up to 50 students and the Annual Lecture Series having up to 70 attendees;
- Total annual attendance associated with special events would be limited to a 1.8% annual increase above existing levels (i.e. 1,983 attendees), up to a maximum increase of 50% (2,974); no single event shall exceed 300 guests (180 guests during high fire season preparedness periods) at any one time, and no more than three large events (i.e. more than 80 guests) permitted per month; and
- Total annual visitation limited to a 1.8% annual increase above existing levels (i.e. 110,000 visitors), up to a maximum increase of 50% (165,000).

Santa Barbara Botanic Garden Existing Structures

Symbol	Building Name / Description	Square Footage (Footprint)	Changes	# of Floors
E1	Caretaker's Cottage (offices)	1,390 (1,390)	Relocate, convert to residence	1
E2	Herbarium (collections)	2,818 (1,209)	Demolish	2
E3	Blaksley Library (library, office)	3,153 (1,577)	Remodel, offices, exhibit space, snack window	2
E4	Lath House/Plant Sales	3,003 (3,003)	Remodel	1
E5	North Wing (office, gift shop, kitchen, classroom)	3,298 (1,649)	674 s.f. addition, remodel	2
E6	Visitor Kiosk (admissions)	170 (170)	Demolish	1
E7	Restrooms	404 (404)	Remodel – storage	1
E8	Information Kiosk	320 (320)	No change	1
E9	Tea House	188 (188)	No change	1
E10	Gane House (maintenance and storage)	9,318 (3,975)	Rebuild (fire) 8,178 s.f., offices	2 + basement
E11	Storage Shed	339 (339)	Demolish	1
E12	Storage Shed	356 (356)	Rebuild (fire)	1
E13	Storage Shed	323 (323)	Demolish	1
E14	Storage Shed	150 (150)	Rebuild (fire) and relocate	1
E15	Can Yard (shade structure)	1,984 (1,984)	Rebuild (fire)	1
E16	Shade Structure (plants)	244 (244)	Rebuild (fire), 119 s.f. addition	1
E17	Lath House (plants)	725 (725)	Rebuild (fire)	1
E18	Shade Structure (plants)	686 (686)	Rebuild (fire)	1
E19	Head House (office, seed bank)	1,138 (1,138)	No change	1
E20	Wood Shed (storage)	143	Rebuild (fire) and relocate	1
E21	Guild Studio (office, storage, guest quarters)	1,585 (1,440)	No change	1 (raised)
E22	Tunnel Road Annex (storage)	483 (483)	No change	1
E23	Employee Residence	1,185 (1,185)	Remodel	1
E24	Employee Residence (duplex)	2,502 (2,203)	Remodel, SFD	2
E25	Storage Shed	667 (667)	No change	1
E26	Storage Shed	185 (185)	Demolish	1
E27	Director's Residence	1,496 (1,496)	Rebuild (fire)	1
E28	Director's Garage	500 (500)	Rebuild (fire), 457 s.f. 2 nd story addition	2
E29	Shade Structure	400 (400)	No change	1
E30	Shade Structure	405	Demolish	1
Additions/Subtractions		N/A	-4,130 (-1,997)	N/A
Total		39,558 (28,937)	35,428 (26,940)	N/A

Santa Barbara Botanic Garden Proposed Structures

Symbol	Building Name / Description	Square Footage (Footprint)	# of Floors
P1-A	Children’s Lab	2,678 (1,748)	2
P1-B	Library/Education Center	7,941 (2,779)	2 + basement
P3	Visitor’s Admission	724 (724)	1
P5	Conservation Center	5,552 (2,215)	2 + basement
P6/7/8	Horticulture Offices, Garage & Services	3,527 (3,527)	1
P9	Horticultural Garage/Support	1,733 (1,733)	1
P10	Can Yard (propagation)	400 (400)	1
P12	Garage	386 (386)	1
P13	Staff Residence	1,472 (1,472)	1
P14	Staff Residence	1,496 (1,496)	1
P17	Shade Structure	400 (400)	1
P18	Shade Structure	400 (400)	1
P19	Shade Structure	400 (400)	1
P21	Garage/Office	1,168 (1,168)	1
P22	Staff Residence	1,267 (1,267)	1
Total – Proposed Development		29,544 (20,095)	N/A
Total – Existing + Proposed		64,972 (47,035)	N/A
Net Increase		25,414 (18,098)	N/A

The EIR prepared to evaluate the impacts of the project concluded that the project’s impacts could be reduced to less than significant levels with the implementation of applicable mitigation measures that have since been added as conditions of project approval as approved by the Planning Commission. A copy of the proposed Final EIR is included as an attachment to this Board letter and is also available to the public for viewing at P&D’s office or on P&D’s website at <http://www.sbcountyplanning.org/projects/02NEW-00138/index.cfm>.

Project Revision 1

Subsequent to approval of the project by the Planning Commission, staff revisited applicable ordinance requirements in response to a question raised by a member of the public, specifically relating to allowable residential uses on parcels zoned REC (Recreation). The project as approved by the Planning Commission includes a total of five staff residences on a single lot (referred to as the Hansen site) east of Mission Canyon Road, consisting of two existing units to be remodeled, two new units, and one relocated unit from the west side of Mission Canyon Road (Caretaker’s Cottage). The Land Use and Development Code (LUDC) allows a maximum of one caretaker unit per legal lot within the Recreation (REC) zone. Staff’s initial interpretation was that since the Garden operates under a Conditional Use Permit, which allows uses above and beyond those that are principally permitted, and is composed of multiple legal lots, this zoning allowance could be modified to allow the clustering of units within a single lot. However, upon further consideration of this issue, staff has concluded that the project needs to be revised in order to ensure strict compliance with this ordinance restriction regarding density on REC zoned parcels. To this end, staff is recommending that the project as approved by the Planning Commission be revised through your Board’s *de novo* hearing to eliminate the two new residential units on the Hansen site and relocate the third existing unit (the historic Caretaker’s Cottage that is currently used for administrative functions) to the site of the Director’s residence on Tunnel Road that was destroyed in the Jesusita Fire. The two existing staff residences on the Hansen site could remain and be

remodeled (one would become the legal caretaker unit and the second would remain legal non-conforming). These changes would ensure that the project conforms to applicable regulations of the LUDC and that the findings for approval can be made.

Project Revision 2

In approving the project, the County Planning Commission imposed the following condition to regulate uses and activities on-site:

63. Intensity of Use. Total visitation shall not exceed 110,000 persons per year for the first year following project approval. Thereafter, total visitation shall be limited to a 1.8% annual increase, up to a maximum increase of 50% (i.e. 165,000). Beginning the first year following project approval, attendance associated with Garden classes² and events³ shall be limited to a 1.8% annual increase above existing levels (existing levels equate to 1,778 for classes and 1,983 for events, based on a 10-year average from 1997 to 2006), up to a maximum increase of 50% (i.e. 2,667 for classes and 2,974 for events, respectively) without subsequent approval by the Planning Commission. These limits shall be based on a 3-year rolling average. If these limits are exceeded in any single year, the Garden shall take the necessary steps to adjust its scheduling in order to adhere to the limits on a three-year rolling average. No single event shall exceed 300 guests at any one time, subject to the separate restrictions during the High Fire Season Preparedness Levels included in Condition #31. Attendance for individual classes and educational programs (i.e. trainings and lectures) shall comply with the maximums identified in the project description. No more than three events individually exceeding 80 attendees in any given month, inclusive of community events, shall be permitted.

In considering this condition further and how it would be implemented, staff has discovered that the combination of a 3-year rolling average and a 1.8% annual increase has the unintended result of allowing the Garden to exceed its annual cap by a small percentage each year and still be considered in compliance with this condition. To remedy this oversight, staff recommends elimination of the three-year rolling average from this condition. Instead, staff recommends requiring that if the cap is exceeded in a particular year, the Garden shall be required to offset any exceedance by a corresponding reduction the following year and shall forego its 1.8% growth for that year. Alternatively, your Board can select another method for regulating uses and activities at the Garden.

Performance Measure: N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The costs for processing appeals are partially offset through payment of a fixed appeal fee of \$643 (\$500 of which covers P&D costs). Three separate appeals of the Planning Commission's approval were filed

² Classes shall include daytime and nighttime classes, summer programs, docent and Master Gardner training, and lectures. School groups shall not count towards the annual class limit.

³ Events shall include fundraisers, community group meetings, private parties, recognition events, symposia and workshops, and other events not open to the public. Events open to the public or where visitation is spread out throughout the day shall not count towards the annual event limit, but shall otherwise comply with this condition.

for this project, for a total cost of \$1,929. There is no individual fee established for processing an appeal of a decision by the Historic Landmarks Advisory Commission. The total estimated time to process these four appeals is approximately 110 staff hours, which equates to approximately \$18,000. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-301 of the adopted 2009/2010 fiscal year budget.

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 1: Frank Arredondo Appeal Letter

Attachment 2: Findings for Approval

Attachment 3: EIR Revision Letter

Attachment 4: Conditions of Approval

Attachment 5: Planning Commission Action Letter

Attachment 6: Planning Commission Staff Reports and Memoranda

- PC Staff Report, July 22, 2009
- Staff Memorandum, August 5, 2009
- Staff Memorandum, August 27, 2009
- Staff Memorandum, September 2, 2009
- Staff Memorandum, September 16, 2009
- Staff Memorandum, October 16, 2009
- Staff Memorandum, October 23, 2009

Attachment 7: Final EIR (See Attachment 6 - PC Staff report dated July 22, 2009 - for EIR Executive Summary)

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