



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: March 17, 2009
Placement: Departmental
Estimated Time: 1 hour
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department John Baker, 568-2085
Director(s)
Contact Info: Dianne Black, 568-2086

SUBJECT: **James Marino Appeal of Historic Landmarks Advisory Commission Approval of Herb Parker Art Exhibit at Santa Barbara Botanic Garden**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

As to form: N/A

Recommended Actions:

Consider the appeal filed by James Marino on the Historic Landmarks Advisory Commission's approval of the Herb Parker art exhibit installation in the meadow area of the Santa Barbara Botanic Garden, located at 1212 Mission Canyon Road in the Mission Canyon area, First Supervisorial District, as follows.

That the Board of Supervisors:

1. Confirm, modify, or set aside the Historic Landmarks Advisory Commission's actions on February 9, 2009 regarding the Botanic Garden's proposed Herb Parker temporary art installation.

Summary Text:

The Santa Barbara Botanic Garden (Garden) operates 65 acres under its existing Conditional Use Permit (72-CP-116) in the Mission Canyon area of Santa Barbara. Approximately 23 acres, (encompassing three parcels) of the Garden are designated as a County Historic Landmark (Landmark #24) and governed by Resolution 2003-059, approved by the Board of Supervisors on February 25, 2003 (see Attachment B to the Board letter). As such, the Historic Landmarks Advisory Commission (HLAC) has jurisdiction over certain elements and activities at the Garden. The proposed temporary art installation

project site that is the subject of this appeal is located within one of the three parcels included within the Landmark Resolution boundaries. On January 12, 2009, the HLAC, in reviewing the Garden's proposed project, voted to 1) find that the project was subject to review and approval by the HLAC, as provided for under the authority given to HLAC by the Landmark Resolution; 2) conceptually approve the sculpture exhibit within the meadow section, as conditioned; and 3) continue the item to its February 9, 2009 hearing to take final action upon preparation of a CEQA Notice of Exemption. In support of the second action, the HLAC included the following conditions:

1. The display shall be temporary for only up to 3 years;
2. The project is not to set a precedent for future large displays; and
3. The site is to be brought back to its original and naturalistic meadow setting upon removal of the sculpture.

On February 9, 2009, the HLAC voted to 1) accept the Notice of Exemption prepared for the project, pursuant to CEQA; 2) grant final approval of the project, subject to the three previously stated conditions; and 3) find that the project, as conditioned, would be consistent with the historic use and historic landscape design concept of the Botanic Garden.

On February 19, 2009 James Marino, on behalf of the Munda Family Trust and Patricia Munda, filed an appeal of the HLAC's action (see Appellant letter, Attachment A).

Appeal Issues

The appeal contains three issues: 1) The appellant asserts that the HLAC abused its discretion because the project is inconsistent with the historic landscape design concept and historic use of the Garden as identified in the Board Landmark Resolution due to its size and location in the meadow section of the Garden and its alleged impact on character-defining features of the historic Garden. 2) In addition, the appellant asserts that the Notice of Exemption prepared for the project pursuant to Section 15311 of the CEQA Guidelines was inappropriate and that the project should not qualify for a categorical exemption due to potential impacts with respect to noise, traffic, fire hazards, and historic resources. 3) Lastly, the appellant asserts that the project is not permissive under the Garden's active Conditional Use Permit (72-CP-116).

Consideration of the Appeal:

Appeal Issue 1 – HLAC Authority:

The HLAC is an independent body appointed by the Board of Supervisors. Planning and Development (P&D) provides administrative support to the HLAC and is therefore bringing this appeal forward to the Board on HLAC's behalf. Given its administrative support function, P&D is not making a recommendation as to what action the Board should make in this case.

Section 18A-7 of the County Code provides that when acting on an appeal of actions taken by the HLAC the Board of Supervisors may confirm, modify or set aside any or all of those actions by the HLAC.

In 2003, a portion of the Botanic Garden was designated a County Historic Landmark by the Board of Supervisors upon recommendation by the HLAC. The Resolution identified seven specific elements of the Garden deserving landmark status. Those seven features include: 1) Mission Dam and Aqueduct, 2) “Indian Steps”, 3) Entry Steps, 4) Information Kiosk, 5) Original Library, 6) Campbell Bridge, and 7) Caretaker’s Cottage. The Meadow area is not specifically listed, but is a landscape design feature. The landmark requires the protection of these seven historic elements as well as the “historic landscape design concept” and “historic use” of the Garden, but also exempts many activities at the Garden from HLAC review.

County Counsel recommends that the Board of Supervisors’ consideration of this appeal include a review of Paragraph 2(B)(i) and 2(B)(ii) at Pages 3 and 4 of Resolution Number 2003-059, which is included as Attachment B. Paragraph 2(B)(i) discusses the “historic landscape design concept” and “historic use” of the Santa Barbara Botanic Garden. Paragraph 2(B)(ii) contains two sentences:

- The first sentence describes actions and items that “shall not require review and approval by the Commission.”
- The second sentence discusses “construction or installation of new structures, features or facilities on the landmark property.”

Although this recommendation is not binding on the Board of Supervisors, County Counsel recommends that your Board’s consideration of this appeal begin with determining whether or not the project is exempt from review and approval by the HLAC through operation of the first sentence of Paragraph 2(B)(ii) at Page 4 of Resolution Number 2003-059.

Appeal Issue 2 – Adequacy of CEQA Exemption:

A CEQA Notice of Exemption was prepared for the project (see Attachment F) to support HLAC’s approval. CEQA Section 15311 provides for a categorical exemption from CEQA for minor accessory structures. As discussed in the exemption, the project would not significantly affect traffic, fire hazards, or historic resources which would result in obviating the use of the CEQA exemption for this project. The project is temporary and the site would be returned to its current state upon its removal without any damage to historic resources or the historic landscape design concept. The exhibit would have an irrigated vegetative roof and the timber frame would be coated with a flame retardant so as to minimize any potential fire hazard associated with the exhibit. It is foreseeable that fundraising and other special events may be held at the exhibit space, consistent with past activities similarly held throughout the Garden. The Garden is open to the public and has throughout its entire existence attracted visitors to the site, whether it be to see the spring flowers bloom in the meadow or attend a community event. Thus it is not expected that the project would result in significant traffic increases as compared to existing levels. With respect to noise, there is no reason to expect that this project would result in any greater noise generation than other past and current activities held at the Garden, including specific past exhibits such as Toad Hall that have attracted visitors to the Meadow section and where special events have been held.

Appeal Issue 3 – Uses Allowed under 72-CP-116:

This project is considered to be in conformance with its existing Conditional Use Permit (72-CP-116), as it is consistent with existing uses and the ongoing operation of the garden, which includes temporary displays and exhibits, and hosting of events which draw visitors to the site.

Background:

The project involves a nature-based art sculpture, which in the words of the artist “are created to enhance a viewer’s perception of the environment and our relationship with nature. The nature-based work speaks in a hybrid language from three distinct realms: architecture (experience), sculpture (concept) and landscape (medium).” The sculpture installation is designed to simulate a labyrinth with two opposing entrances leading through corridors to an open courtyard in the center. The sculpture would be sited within the upper Meadow section of the Garden and would be approximately 1,200 square feet in size with a height ranging between seven feet at the interior courtyard and 13 feet at the outer entrances. The interior of the proposed sculpture would be accessible to the public. Materials include a natural timber frame with a metal grid in place to support a vegetated roof. The timbers would be set into the ground approximately two to three feet. The width of the walkways would be up to six feet at the entrances, narrowing to less than four feet in the central courtyard. There would be approximately 140 feet of roofed walkways enclosed by 138 four-five inch diameter natural timber columns. The sculpture would remain for no more than three years and the site would be returned to its prior landscaped state upon its removal.

The Botanic Garden originally brought the project before the HLAC at their August 11, 2008 hearing. At that time, the project was designed to be sited in the Redwood section of the Garden. The HLAC requested that the Garden consider other alternative sites that may be more suitable to such a sculpture exhibit. The Garden returned to the HLAC on December 8, 2008 with two alternative locations, including the upper meadow section and an area south of the administration buildings. The designs for each site varied in order to match the surrounding landscape. At the hearing in January, the Garden identified the meadow section and associated labyrinth design as its preferred project and eliminated the other two options from consideration.

A Building Permit is required for the project to ensure structural code compliance and compliance with accessibility requirements.

Performance Measure:

N/A

Fiscal and Facilities Impacts:

There is no individual fee established for processing an appeal of a decision by the Historic Landmarks Advisory Commission. Estimated staff time to process this appeal is approximately 15 hours to prepare the Board letter, communicate with the applicant and interested residents, and attend the Board hearing.

Staffing Impacts:

Legal Positions:
N/A

FTEs:
N/A

Special Instructions:

The Clerk of the Board shall public a legal notice at least 10 days prior to the hearing on March 17, 2009. The notice shall appear in the Santa Barbara Daily Sound. The Clerk of the Board shall fulfill noticing requirements. 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 A: Appeal Letter from James Marino, February 19, 2009
- Attachment B: Botanic Garden Historic Landmark Resolution, 2003-059
- Attachment C: HLAC Unapproved Minutes, February 9, 2009
- Attachment D: HLAC Approved Minutes, January 12, 2009
- Attachment E: Project Plans
- Attachment F: CEQA Notice of Exemption

Authored by: Alex Tuttle, 884-6844

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