

SANTA BARBARA COUNTY PLANNING COMMISSION
Staff Report for Santa Barbara Botanic Garden Meadow Terrace
Substantial Conformity Determination

Hearing Date: September 26, 2007
Staff Report Date: September 10, 2007
Case No.: 07SCD-00000-00034

Environmental Document: N/A

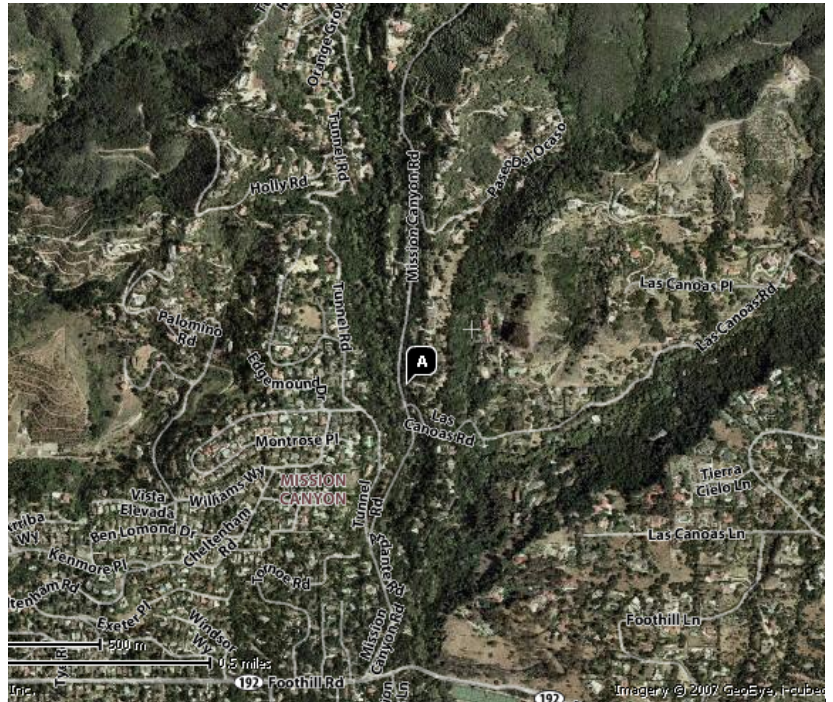
Deputy Director: Dave Ward
Division: Development Review
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OWNER:

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Santa Barbara Botanic Garden
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AGENT:

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This site is identified as Assessor Parcel Number 023-340-015, located north of Foothill Road at 1212 Mission Canyon Road in the Mission Canyon area, First Supervisorial District.

Application Filed: September 5, 2007

Processing Deadline: N/A

1.0 REQUEST

Hearing on the request of Ken Marshall, agent for the Santa Barbara Botanic Garden, to consider Case No. 07SCD-00000-00034, [application filed on September 5, 2007] for a determination of the substantial conformity of the proposed Meadow Terrace project with the existing CUP, 72-CP-116, pursuant to Section 6 of Appendix H of the County LUDC. The application involves AP No. 023-340-015, located at 1212 Mission Canyon Road, in the Mission Canyon area, First Supervisorial District.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and conditionally deny Case No. 07SCD-00000-00034 marked "Officially Accepted, County of Santa Barbara September 26, 2007 County Planning Commission Exhibit 1", based upon the project's inability to make the required findings.

Your Commission's motion should include the following:

1. Find that the project is not in Substantial Conformity with the existing CUP; and
2. Direct staff to include the project into the current Vital Mission Plan CUP Revision application and analyze accordingly.

Refer back to staff if the County Planning Commission takes other than the recommended action for appropriate findings and conditions.

3.0 JURISDICTION

This project is being considered by the County Planning Commission based on Appendix H of the County Land Use and Development Code which states:

If a Substantial Conformity Determination cannot be made [by the P&D Director] regarding changes to a project, the applicant may:

- a. Withdraw the request and continue with the project as approved; or*
- b. Submit an application to the review authority [Planning Commission] for a Substantial Conformity determination, or apply for Amendment or Revision of the original permit.*

4.0 ISSUE SUMMARY

A 24-acre portion of the Santa Barbara Botanic Garden west of Mission Canyon Road was designated as a County Historic Landmark in 2003 by the Board of Supervisors (Resolution 2003-059, attached). The Landmark designation includes several structures and features of the Garden as well as its "historic landscape design concept," which is "characterized by a system of trails through and around plant communities, displays, exhibits and structures." The Landmark designation requires review and approval by the Historic Landmarks Advisory Commission (HLAC) before any elements of the Landmark are impacted, including substantial deviations from the historic landscape design concept, with certain exceptions. On July 10, 2007, the Santa Barbara Botanic Garden requested a Substantial Conformity Determination for a proposed terracing project on the western side of the meadow, in an area that was previously occupied by a mature oak tree that was diseased and had been removed. According to the Garden, the site had been historically used for small events and gatherings under the oak tree, and the Garden was interested in creating a terraced setting to enhance the site for such uses in the future. A Substantial Conformity Determination was issued and later rescinded by P&D, citing

longstanding substantial public controversy associated with development in the vicinity of the project site that P&D was unaware of when staff first issued the determination. Pursuant to the County LUDC Substantial Conformity Determination Guidelines, if staff is unable to make a determination or the applicant disagrees with the department's determination, then the applicant may seek a determination from the Planning Commission.

The project was reviewed by the HLAC on three separate occasions, including a site visit on August 22, 2007. At the most recent hearing on September 10, 2007 the HLAC determined that the project represents a "substantial deviation" from the historic landscape design concept and as such, violates the terms of the Historic Landmark designation (see attached unapproved minutes). Staff is therefore unable to make the necessary findings to approve the SCD, and since the larger Vital Mission Plan (Case No. 72-CP-116 RV01) is currently being reviewed, recommends incorporating the project into that process to be properly analyzed.

5.0 PROJECT INFORMATION

5.1 Site Information

Site Information	
Comprehensive Plan Designation	Inland, Open Space/Recreation
Ordinance, Zone	County LUDC, REC Zone
Site Size	12.83 acres (subject parcel)
Present Use & Development	Botanic garden
Surrounding Uses/Zone(s)	<i>North:</i> Residential, 1-E-1 and RR-5 <i>South:</i> Botanic Garden, REC and Residential, 1-E-1 <i>East:</i> Botanic Garden, REC and Residential, RR-5/RR-10 <i>West:</i> Botanic Garden, REC and Residential, 1-E-1
Access	Private entrance off Mission Canyon Road
Public Services	Water Supply: City of Santa Barbara Sewage: Private septic Fire: County Fire Department

5.2 Setting

The Santa Barbara Botanic Garden has been operating in its current location since 1926, though it has expanded by several acres since its inception. The landscape is characterized by extremely varied topography with steep hillsides intermixed with relatively flat ridges and canyon bottoms, with Mission Creek running through the middle of the Garden. The Garden consists of 78 acres, 65 of which are currently included within the existing 1972 Conditional Use Permit. The Garden is relatively undeveloped, with the bulk of the property consisting of open space, natural vegetation, planted and maintained landscapes and exhibits, and approximately five miles of trails. The main visitor area of the Garden features a number of buildings and structures (many of which are historically significant), a large open and planted meadow with expansive views from the mountains to the ocean, Mission Creek and the historic Mission Dam and Aqueduct, native plant communities, and a series of trails through and around these features. The Meadow Terrace project site, located immediately to the west of the meadow, was once the home of a large mature

oak tree with sprawling branches that was removed in 2006 due to disease (*Armillaria mellea*, Oak Root Fungus) and the potential for public safety hazards. The Garden consulted numerous independent arborists in making this determination before removing the tree.

5.4 Description

The proposal is for a three-tiered exhibit plaza area with three low level rock retaining walls defining the terrace levels, with a surface in a flagstone rock treatment. The total project area is approximately 4,025 square feet, with planting beds along the edge of each retaining wall and flagstones making up the terraces. A total of approximately 240 linear feet of retaining walls is proposed. The maximum exposed height of the retaining walls is 18 inches. The project will involve less than 50 cubic yards of cut and/or fill¹.

5.5 Background Information

The existing Conditional Use Permit (CUP) under which the Garden currently operates was approved in 1972 (Case No. 72-CP-116). At the time, the CUP validated existing uses at the Garden and approved the development of a horticultural unit. A Negative Declaration was prepared for the 1972 project and found no significant effects. Since that time, the Garden has undertaken numerous smaller projects that have been approved under substantial conformity determinations.

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 features of the Garden deserving landmark status, along with the entire parcel within which the proposed terrace project is located due to the significant historic landscape design concept featured in this area. 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 landmark requires the protection of these historic elements but also exempts many changes at the Garden from HLAC review. The Botanic Garden has questioned the authority of the HLAC per the Resolution since that time, most notably in association with paving the garden trails and now with the present case.

The Botanic Garden submitted their request for a SCD for the Meadow Terrace project on July 10, 2007. Staff reviewed the request, conducted a site visit, reviewed it in the context of the landmark designation, and issued a letter (attached) to the applicant on July 18, 2007 indicating the P&D had found the project to be in substantial conformity with the Garden's existing CUP and within the exception authority of the Historic Landmark Resolution.

Upon receiving numerous complaints by both concerned neighbors and members of the Historic Landmark Advisory Commission (HLAC), criticizing P&D for approving the project without vetting it through the HLAC and questioning the impact of the project on the Landmark designation and "historic landscape design concept," the project was brought before the HLAC at their August 13th hearing. It became clear that the Meadow Terrace project site has been the source of substantial public controversy for several years. Because approval of a SCD at the staff

¹ Confirmed on September 5, 2007 by Tony Bohnett, Grading Inspector in the Building Division.

level, pursuant to the provisions of Appendix H of the County LUDC, is contingent upon a finding that the project is not the subject of substantial public controversy, P&D determined it had issued the SCD in error. On August 16, 2007, P&D rescinded the SCD for the project (see attached) and issued a Stop Work Order on the construction activities. On September 5, 2007, the Botanic Garden submitted this application for a Substantial Conformity Determination by the Planning Commission.

6.0 PROJECT ANALYSIS

6.1 Substantial Conformity Determination Criteria

Appendix H of the County LUDC sets forth criteria to assist in determining whether proposed changes to approved projects are in substantial conformity with approved permits. Below is an analysis of the proposed Meadow Terrace project against each of the established criteria.

A. Does not conflict with project conditions of approval and/or recorded map conditions.

The existing CUP under which the Garden currently operates was approved in 1972 to allow development of a new horticultural unit and validate existing uses and development at the Garden. The CUP includes three conditions: 1) development shall be in 'substantial conformity' with Planning Commission Exhibit No. 1, dated December 13, 1972; 2) the use shall be conducted in compliance with the conditions in Ordinance 661 related to conditional use permits; and 3) a grading permit is required. The site plan referenced in the CUP lacks detail and specificity in regards to the landscape features, trails, exhibits, and other related Garden improvements. It is recognized that the Garden is a dynamic landscape that has changed over time. The proposed Meadow Terrace project is thus consistent with the original conditions of approval.

B. Does not result in health and safety impacts.

The proposed project would not result in any health and safety impacts. It would provide a level seating, exhibit space, and gathering area for events held at the Garden.

C. That the project facilities, operating procedures, environmental impacts, safety impacts, and the project's compliance with policies are substantially the same as those considered in the previous permit issued by the County.

The facilities, operating procedures, safety impacts and compliance with policies are substantially the same under this project as with the original permit issued by the County. The proposed project would not impact those criteria. However, the potential impacts of the Meadow Terrace project with respect to historic resources and the Garden's Historic Landmark designation, are different than those considered in the previous permit. The original permit did not consider or analyze any changes to the Garden in this area, but rather validated existing uses and approved development of a horticultural unit on the east side of Mission Canyon Road. On September 10, 2007, the HLAC found that the project as proposed would adversely impact important historic resources, namely the historic landscape

design concept. Such impacts were not and have not been analyzed. Therefore, this criterion cannot be met.

D. That the changes proposed can be effectuated through existing permit conditions.

As discussed above, the existing CUP under which the Garden currently operates includes only three conditions. The proposed project is consistent with these conditions, as they apply. Standard conditions of approval related to construction noise, erosion control, and cultural resources, would ensure impacts of the project are minimized.

E. That the impacts and changes do not alter the findings that the benefits of the project outweigh the significant unavoidable environmental effects made in connection with the original project.

The impacts and changes associated with the proposed project do not alter the findings of the benefits of the original project. There were no significant unavoidable environmental effects found to result from the original 1972 project.

F. Does not result in an increase of 1,000 sq. ft. or more than 10% of building coverage of new structures over total project approvals, whichever is less.

The proposed project would not result in new building coverage. Rather, the project only involves the installation of retaining walls, flagstone surfacing, and minor grading to achieve the desired terraced slope.

G. Is clearly exempt from environmental review or was evaluated in the environmental review document prepared for the project and there are no new significant impacts related to the project change.

The proposed project was not evaluated in the Negative Declaration prepared as part of the 1972 CUP. Based on the outcome of the recent HLAC meetings, including the findings made by the HLAC on September 10, 2007, the project was found to adversely affect the historic defining features of the Garden. For this reason, the project is not clearly exempt from environmental review (historic and cultural significance). The HLAC formed an ad hoc subcommittee to work with the Garden to develop a revised terrace project that would be acceptable under the landmark Resolution. This effort could be folded into the Vital Mission Plan project and evaluated under the EIR for the Vital Mission Plan.

H. Does not require the removal of specimen trees or impact areas defined in the project environmental document as sensitive or designated as areas prohibiting structures.

The proposed project does not require the removal of specimen trees or impact areas defined as environmentally sensitive or prohibiting structures.

I. Is consistent with Comprehensive and/or Coastal Plan policies and applicable zoning ordinances.

The proposed Meadow Terrace project is consistent with all applicable policies of the Comprehensive Plan, including the Mission Canyon Area Specific Plan, as well as applicable requirements of the County Land Use Development Code. The project would otherwise be exempt from a Land Use Permit and is only being reviewed because of the operation of the Garden under a CUP.

J. *Does not result in more than 1500 cubic yards of net cut and/or fill (Article III and IV) or 50 cubic yards (Article II), and avoids slopes of 30% or greater (unless these impacts were addressed in the environmental assessment for the project and mitigation measures were imposed to mitigate said impacts and the proposal would not compromise the mitigation measures imposed or result in additional impacts).*

The proposed project would result in less than 50 cubic yards of cut and/or fill² and avoids slopes 30% or greater.

K. *Is located within the same general location as, and is topographically similar to, approved plans. The location shall not be moved more than 10% closer to a property line than the originally approved development.*

The proposed project is located within the originally dedicated 65 acres of the Botanic Garden included within the 1972 CUP. The original site plans associated with the existing CUP are not very detailed or specific and do not identify landscape features or other structural improvements within the Garden's grounds. The Meadow Terrace project would be located in the same general area as the previous oak tree and would continue to be used for small events, exhibits, and gatherings.

L. *Does not result in an overall height which is greater than 10% above the approved height. The project must remain consistent with height requirements of the zoning district.*

With the exception of the retaining walls and flagstone surfacing, there is no structural development associated with the proposed project. There would be no height increases associated with this project and it would be consistent with height requirements of the zone district.

M. *Receives BAR approvals for landscaping and structures, if necessary.*

The project is not subject to review by the South County BAR.

N. *Does not result in intensification of use; e.g., no new employees, no increases in traffic, etc., if these were important to the previous environmental/policy analysis.*

Originally and based on information provided by the Garden, staff found that the proposed project would not result in intensification of use, and rather, that the site would continue to be

² Confirmed on September 5, 2007 by Tony Bohnett, Grading Inspector in the Building Division.

used for small events, exhibits, and gatherings as it has been historically. However, the HLAC found at their September 10th hearing that the project would allow the site to be more intensively used by expanding the extent of usable space and making it more suitable for such activities than what was there historically.

O. Does not affect easements for trails, public access, or open space.

The Meadow Terrace project would not affect any recorded easements for trails, public access, or open space.

6.2 Environmental Review

Substantial Conformity Determinations are meant for minor changes to a project that are clearly exempt from environmental review or do not result in new significant impacts that were not previously evaluated in the environmental analysis prepared for the original project. If the project is not clearly exempt or may result in new impacts not previously analyzed, then a SCD cannot be made. Based on the input received from the HLAC at their recent hearings on this issue, it is clear that there is the potential for this project to adversely impact the historically significant resources of the Botanic Garden, and it is therefore not clearly exempt from environmental review. Such impacts were not previously analyzed as part of the Negative Declaration prepared for the 1972 CUP. For this reason, a SCD cannot be made and the project must be analyzed in the context of a revision to the CUP.

7.0 APPEALS PROCEDURE

The action of the Planning Commission may be appealed to the Board of Supervisors within 10 calendar days of said action. The appeal fee to the Board of Supervisors is \$443.

ATTACHMENTS

- A. Findings
- B. Site Plan
- C. Unapproved Minutes from HLAC Hearing, September 10, 2007
- D. Board Resolution 2003-059
- E. Substantial Conformity Determination letter to Applicant, July 18, 2007
- F. Substantial Conformity Determination Rescission letter to Applicant, August 16, 2007

ATTACHMENT A: FINDINGS

The Planning Commission finds that the project is not in substantial conformity with the existing Conditional Use Permit due to the inconsistency of the project with the substantial conformity guidelines set forth in Appendix H of the County Land Use Development Code, as described in Section 6.1 of the staff report referenced herein. The Planning Commission further finds that the Meadow Terrace project should be incorporated into the Vital Mission Plan project (Case No. 72-CP-116 RV01) currently being review by the County in order to ensure full analysis of the impacts of the project on historic resources within the context of other development proposed as part of the Vital Mission Plan.