



MEMORANDUM

DATE: June 28, 2024 [Hearing scheduled for July 3, 2024]
TO: Dave Ward, AICP, Planning Director
FROM: Michael Conger, Senior Planner
SUBJECT: Planning Director's Hearing – July 3, 2024
Responses to Comments and Modifications to Conditions of Approval
Mircetic Conditional Use Permit (CUP) and Planned Development (PD)
Permit, Case No. PL23-0009
11820 Topa Vista Road, Upper Ojai Valley
Assessor's Parcel Number 037-0-080-115

This memorandum supplements the June 20, 2024, staff report for the CUP / PD Permit No. PL23-0009.

A. Continued Hearing

The June 20, 2024 hearing for CUP / PD Permit No. PL23-0009 has been continued to **Wednesday, July 3, 2024, at 11:00 am**, and will be conducted online over the Zoom platform. The meeting information is below:

<https://ventura-org-rma.zoom.us/j/87473804177>

Meeting ID: 874 7380 4177
Passcode: 590511

Dial in: (669) 900-9128 or (669) 444-9171

B. Applicant's Comments

(1) Structural Separation – Grooming Stations

Summary of Comments: The applicant requests Condition No. 18 (Minimum Setback Between Structures) be deleted because the grooming stations (Structure Nos. 12 and 13 in Table 1 of the staff report) should not be considered

“structures.” The applicant notes that the shade canopies are only in place temporarily while horses are being groomed.

Staff Response: The grooming stations are comprised of pipe corrals no taller than eight feet. Canopies are occasionally attached to the support poles to create shade during grooming. Based on these features, the Planning Division has determined that the grooming stations fit within the Non-Coastal Zoning Ordinance's (NCZO's) definition of “fence”: “An unroofed vertical structure which is intended primarily to serve... as a physical enclosure...” As fences are not considered to be “structures” as defined in the NCZO, NCZO § 8106-6.1 (Distance Between Structures on the Same Lot) would not apply. Therefore, the applicant does not need to separate the grooming structures from the shed, storage container, or each other.

The shed and the storage container are “structures” under the NCZO definition and will be required to meet the six-foot separation requirement in NCZO § 8106-6.1.

Staff Recommendation: Revise Condition No. 1 to clarify that the grooming stations are fences, not animal shade structures, and revise Condition No. 18 to remove reference to the grooming stations.

(2) **Tree Removal Offsets**

Summary of Comments: The applicant requests deletion of Condition No. 23 (Tree Protection Plan (TPP)), as they believe the County has insufficient evidence the prior landowner removed protected trees around 2006-07 to accommodate the garage.

The applicant has provided a statement from an arborist (Scott Tomkinson) suggesting that there is reasonable doubt as to whether the removed trees were a protected species. Specifically, the arborist suggests these trees may have been ash, which is not a protected species outside of the Scenic Resource Protection (SPR) overlay zone. The arborist notes that there are other ash trees on the property and that the removed trees resemble ash trees in the historical aerial imagery.

Staff Response: The aerial imagery shows that two trees were removed between June 2006 and July 2007. In the aerial photos, the trees appear substantially similar to other trees on the property that the project biologist identifies as coast live oaks in the Initial Study Biological Assessment (ISBA). If the removed trees were coast live oaks, the canopy spread suggests that they would have met the minimum girth (9.5 inches) to qualify for protected status. Based on this the Planning Division concludes that it is probable that the prior owner removed two protected trees without the proper permits.

The Planning Division acknowledges that the prior owner planted six coast live oaks, as referenced in the ISBA. Review of aerial images suggests that these oaks are healthy and well-established. These six oaks would likely have satisfied any required offsets for unpermitted removal of the two oaks. Therefore, the Planning Division concludes that further offsets will not be necessary if the applicant can document that the introduced oaks are healthy and vigorous.

Staff Recommendation: Revise Condition No. 23 to note that the condition can be satisfied by submitting the same documentation prior to issuance of a Zoning Clearance.

C. Public Comments

(1) Proximity to Off-Site Residences

Summary of Comments: The commenter expressed concerns with the proximity of animal husbandry / animal keeping facilities to off-site residences. Specifically, the commenter expresses concerns about proximity to a proposed house on the property south of the subject property (see Zoning Clearance No. ZC22-1085). The commenter identified the following conditions as imposing hardship on this neighboring property:

- Noise;
- Dust;
- Odor – both from urine and manure;
- Flies; and
- Spread of disease.

Regarding the spread of disease, the commenter references the potential spread of several different strains of bacteria, viruses, fungi, and parasites.

To reduce the impact on the proposed residence, the commenter requests that any animal husbandry / animal keeping facilities be located a minimum of 400 feet from existing and proposed off-site residences. The commenter notes that there are other locations on the property where these facilities could be relocated.

Staff Response: The project is located in the RE zone, which allows animal husbandry and animal keeping as principal uses. The NCZO requires that any animal husbandry / animal keeping facilities be located no closer than 40 feet to off-site dwelling units (NCZO §§ 8107-2.2.2 and 8107-2.5.1). The County has long considered this distance to be adequate in reducing the impact that nearby animal husbandry or animal keeping operations could have on neighboring residents. The approved but as yet built single-family dwelling is approximately

63 feet south of the nearest animal husbandry use/structure. Requiring the owner to relocate animal husbandry / animal keeping facilities 400 feet from the approved dwelling would impact nearly all the existing and proposed facilities. Additionally, a wetland is located in the northern portion of the site; relocating the existing and proposed structures to the undeveloped portions of the northern boundary of the property could result in biological impacts that have not been evaluated and are presently being avoided.

(2) **Easement Location and Use**

Summary of Comments: The commenter suggests that the applicant is not accessing the site using the legally established easement. The commenter also alleges that the applicant regularly blocks the easement and overburdens the easement with traffic generated by the business.

Response: The applicant has supplied documentation to show that there is adequate legal and physical access to the property. The easement aligns with the driveway shown on the site plan (Exhibit 3). Presence of adequate legal and physical access is sufficient to support granting a CUP / PD Permit.

The commenter's concerns about trespass or misuse of the easement are civil or criminal matters that cannot be addressed through the land use permitting process.

(3) **Business Operations**

Summary of Comments: The commenter expressed concerns with the applicant running a business on the property. The commenter notes that equestrian boarding and training take place at the project site.

Staff Response: The principal use of the property is animal husbandry and animal keeping. In the RE zone, animal husbandry and keeping activities are exempt from land use permits, as long as the number of animals do not exceed what is allowed under NCZO § 8107-2. Based on the size of the parcel, the applicant would be allowed up to 11.8 animal units, which is equivalent to 11 full size horses and two smaller horses. The applicant presently has ten horses on the property (10 animal units). The definition of "animal keeping" in the NCZO includes several business activities. These include "boarding," "stabling," and "training of animals and lessons for their owners." As such, the boarding and training of horses are permissible on the property without the need for a land use permit.

(4) **Building Aesthetics and Height**

Summary of Comments: The commenter objects to the design of Animal Husbandry Structure No. 3, which they liken to gas station canopy. The commenter also objects to the height of the structures.

Staff Response: Animal Husbandry Structure No. 3 is an open shade structure with a corrugated metal roof. This type of structure is common on animal husbandry and animal keeping operations in rural areas. The tallest structure on the property is 21 feet, which is well below the maximum allowed height of 35 feet.

(5) **Gateway Entrance**

Summary of Comments: The commenter expressed concerns with the tall gateway entrance and its proximity to the power lines.

Staff Response: The applicant will require Zoning Clearance approval of the gateway. If the gateway can be authorized, the applicant will need to apply for a construction permit through Building and Safety. Building and Safety will evaluate any safety issues that may arise due to the proximity to power lines. It appears that gateway is more than 20 feet from the power lines.

(6) **Applicant's History of Violating the NCZO**

Summary of Comments: The commenter opines that the County would be rewarding the applicant's bad behavior by granting the CUP / PD.

Staff Response: The applicant has constructed the subject structures without the proper land use permits. To remedy this issue, the applicant has applied for this CUP / PD Permit. This request has been subject to the same permitting process and requirements as a proposal for new construction would be.

(7) **Environmental Justice**

Summary of Comments: The commenter raises environmental justice concerns, likening the Planning Division's recommendation of approval of this project to a "Redline scheme... to keep African Americans from living in areas they are not welcome." Specifically, the commenter argues that the nuisance conditions of the applicant's operations are intended to "[c]reate an unlivable situation, so that it becomes impossible for [the neighbor] to live on their property."

Staff Response: The Ventura County General Plan includes several policies that address environmental justice, in compliance with Senate Bill 1000 (2006).¹ These policies are intended to prevent noxious, hazardous, or nuisance land uses, or development that degrades the environment, from disproportionately occurring in “designated disadvantaged communities.” The only disadvantaged communities that have been designated in unincorporated Ventura County are El Rio, Saticoy, and Piru. The Upper Ojai Valley is not designated as a disadvantaged community.

Land use decisions are made based on a project's consistency with the General Plan and Zoning Ordinance. Race is not a factor in decisions on whether to grant a CUP / PD Permit.

D. Recommended Revisions to Conditions of Approval

Staff recommends modifications to the following conditions (please see Attachment A for details):

- Condition No. 1 (Project Description) – to clarify that the grooming stations are regulated under fencing standards rather than as animal shade structures and to clarify that the allowed use of the property is both animal husbandry and animal keeping.
- Condition No. 18 (Minimum Setback Between Structures) – to eliminate any requirement that the grooming stations maintain a six-foot separation, as these are considered fences and not animal shade structures.
- Condition No. 23 (Tree Protection Plan (TPP)) – to allow the applicant to satisfy the condition by presenting evidence from an arborist that the six introduced oaks are healthy and vigorous.

If you have any questions about this material, please contact Michael Conger at (805) 654-5038 or Michael.Conger@ventura.org.

¹ Refer to Policies LU-17.1 through LU-17.8 in the Land Use and Community Character Element of the Ventura County General Plan.