

STANISLAUS COUNTY PLANNING COMMISSION

July 16, 2015

STAFF REPORT

USE PERMIT APPLICATION NO. PLN2015-0006
ORCHARD RITE – PACIFIC DISTRIBUTING, INC.

REQUEST: TO EXPAND AN EXISTING ORCHARD SHAKER EQUIPMENT DEALERSHIP AND REPAIR BUSINESS BY CONSTRUCTING A 4,960 SQUARE FOOT WAREHOUSE AND MANUFACTURING BUILDING.

APPLICATION INFORMATION

Applicant/Owner:	Gary S. & Monica L. Rossiter Trust
Agent:	Elwyn Heinan, Advanced Design Group
Location:	5724 and 5800 E Whitmore Ave., on the south side of E Whitmore Rd. between Pioneer and Mountain View roads, west of the City of Hughson
Section, Township, Range:	17-4-10
Supervisory District:	Two (Supervisor Chiesa)
Assessor's Parcel:	018-046-007
Referrals:	See Exhibit F Environmental Review Referrals
Area of Parcel(s):	14.43 acres
Water Supply:	Well
Sewage Disposal:	Septic
Existing Zoning:	A-2-40 (General Agriculture)
General Plan Designation:	Agriculture
Sphere of Influence:	N/A
Community Plan Designation:	N/A
Williamson Act Contract No.:	N/A
Environmental Review:	Negative Declaration
Present Land Use:	Orchard shaker equipment business, orchard, accessory single family dwelling.
Surrounding Land Use:	Orchard and row crop operations, generally 10-20 acres in size, with accessory single-family dwellings. The City of Hughson is located approximately ½ mile east of the project site.

RECOMMENDATION

Staff recommends the Planning Commission approve this request based on the discussion below and on the whole of the record provided to the County. If the Planning Commission decides to approve the project, Exhibit A provides an overview of all of the findings required for project approval which includes use permit findings.

PROJECT DESCRIPTION

This is a request to replace a legal non-conforming use, which consisted of an agricultural irrigation sales and storage operation, with an orchard shaker equipment dealership and repair business, owned by Orchard-Rite Ltd. and operated by its Hughson dealership, Pacific Distributing, Inc. This project also includes a request to construct a new 4,960 square foot building. Currently on-site activities include: the assembly, selling and storing of new orchard shaker equipment and the repairing, maintaining, selling, buying, and storing of used orchard shaker equipment. The hours of operation are 12 months a year, 6 days a week (Monday through Saturday), 5:00 am to 5:00 pm. The applicant estimates this project request will expand their current activities by 5 vehicle trips per day (increase from 5 employees to 8 and from 7 customers to 9) and 2 truck trips per day (from 3 truck trips to 5 per day).

While the site plans submitted for this project label the proposed new building as a warehouse/manufacturing building, the existing and proposed expanded use does not include any onsite manufacturing beyond that associated with assembly, repairing, and maintenance of orchard shaking equipment.

SITE DESCRIPTION

The 14.43 acre project site is in the process of being re-planted in almond trees and is not currently enrolled in a Williamson Act Contract. The surrounding area consists of agricultural parcels planted in row crops or orchards, with scattered single family dwellings, ranging in size from 2 acres to 28 acres. The majority of the parcels in the area range between 10-20 acres in size. The project site is located outside the sphere of influence of the city of Hughson, approximately 1/2 mile west of Hughson's city limits.

The Hughson Chemical Company began operating out of the project site in 1970, which was permitted under the property's then A-1 (Unclassified) zoning designation. The property's zoning was changed to A-2-10 (General Agriculture) in 1971 and then to its current zoning of A-2-40 in 1983. While the Hughson Chemical Company was legally established under the 1970's zoning, the 1971 rezoning made the operation a legal non-conforming use based on new zoning standards which did not recognize the use as permitted without a discretionary permit. A Use Permit was issued in 1974 to allow the expansion of the Hughson Chemical Company as a legal non-conforming use. Another Use Permit was issued in 1979 to change the legal non-conforming use to sales and storage of irrigation equipment (New Sprinkler Irrigation Systems). Pacific Distributing, Inc. began operating out of the site in 1986, but has never received a Use Permit to amend the legal non-conforming use of the property.

The operation occupies approximately 1 acre out of the total 14.43 acre orchard (approximately 7% of the total site). The proposed building would be located on the southern end of the existing footprint of the operation, and the operation's footprint would be expanded by approximately .4 acres (for a total operational area covering approximately 9% of the total site) to allow for access to the new building and for additional outdoor equipment storage.

ISSUES

The advertisement for this public hearing identified the project as a request to expand an existing use by constructing a 4,960 square foot warehouse and manufacturing building; however, Orchard Rite never obtained a use permit when they first began operating out of this location in 1986; therefore, this use permit is also a request to change the use from the previous agricultural irrigation

business (which was legal non-conforming) to the current orchard shaker business. No additional issues have been identified during the review of this application. Standard conditions of approval have been added to this project to address less than significant impacts associated with the proposed use. (See Exhibit C - *Conditions of Approval*)

GENERAL PLAN CONSISTENCY

The site is currently designated Agriculture in the Stanislaus County General Plan, which is consistent with the site's A-2-40 (General Agriculture) zoning district. The agricultural designation recognizes the value and importance of agriculture by acting to preclude incompatible urban development within agricultural areas.

The proposed project is addressed by the following goals, objectives, and policies of the Land Use and Agricultural Elements of the General Plan:

Land Use Element

Goal Two, Policy Fourteen, Implementation Measure 1 of the Land Use Element requires all development proposals that require discretionary action to be carefully reviewed to ensure that approval will not adversely affect an existing agricultural area and to ensure compatibility between land uses.

Goal Three, Policy Nineteen, Implementation Measure 1 of the Land Use Element states that the replacement or expansion of non-conforming uses shall be maintained as provided in Chapter 21.80 of the County Code.

Agricultural Element

To minimize conflicts between agricultural and nonagricultural uses, buffer guidelines require any new or expanding non-agricultural uses approved by a discretionary permit in the A-2 zoning district to provide fencing around the proposed use and a 150 foot setback for non-people intensive uses or 300 feet for people intensive outdoor activities. An alternative buffer and setback design may be proposed by an applicant, which is then reviewed by the Stanislaus County Agricultural Commissioner for comment. The Planning Commission ultimately determines whether an agricultural buffer alternative is found to provide equal or greater protection to surrounding agricultural uses.

In this case a buffer alternative has been proposed which includes a reduced setback of 47 feet from the property line and fencing along the western border of the project site. The northern, southern, and eastern boundaries of the project site are also fenced and meet the 150 foot buffer setback requirement. A solid row of cypress trees is also located along the eastern boundary of the operation. This project was circulated to the Stanislaus Agricultural Commissioner during the early consultation referral period and a comment was received supporting the alternative but asking for clarification on why the proposed fencing did not extend to the street on the west side of the project site. However, after further review it was made clear that the western edge of the existing building acts as a fence for the project site. Staff considers the project to be a "low people intensive" use, with a maximum of 8 employees and 9 visitors proposed per day, and recommends that the Planning Commission approve the buffer alternative and find it to provide equal or greater protection to surrounding agricultural uses (as listed in Appendix A – *Findings and Actions Required for Project Approval*).

This project is considered to be consistent with the General Plan policies detailed above. The project is a request to change and expand a legal non-conforming use which provides equipment required for the harvesting of nut crops, an agricultural service establishment, and incorporates buffers designed to address conflicts between surrounding agricultural uses.

ZONING ORDINANCE CONSISTENCY

The site is currently zoned A-2-40 (General Agriculture). The Stanislaus County Zoning Ordinance (Section 21.80.070 Nonconforming Uses of the County Code) states that the Planning Commission may authorize the enlargement, expansion, or restoration of a nonconforming use, or a change to a different use of equal or lesser intensity than the legal nonconforming use, on the same parcel as the existing use, if it finds that the enlargement, expansion, restoration, or changes:

1. Will not, under the circumstances of the particular case, be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood of the use; and
2. Will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of persons residing or working in the neighborhood or to the general welfare of the county; and
3. Is logically and reasonably related to the existing use and that the size or intensity of the enlargement, expansion, restoration, or changes is not such that it would be more appropriately moved to a zoning district in which it is permitted.

In addition, all use permits must be found to be consistent with the general plan and not to be detrimental to the health, safety, and general welfare of the neighborhood or to the general welfare of the county.

The proposed project requests to replace an agricultural irrigation equipment sales business, which was a legal non-conforming use, with the assembly, maintenance, storage, and sales of nut harvesting equipment. Planning staff believes the use permit findings referenced above can be made. No negative impacts to the health, safety, and general welfare of the neighborhood, to surrounding agricultural operations, or to the county are anticipated to occur as a result of this project. The proposed use is considered to be necessary for the continued operation of local commercial agricultural operations, to be compatible with uses located in the A-2 zone, and to be similar in nature and intensity to the previous legal non-conforming use, which also served the agricultural industry.

ENVIRONMENTAL REVIEW

Pursuant to the California Environmental Quality Act (CEQA), the proposed project was circulated to all interested parties and responsible agencies for review and comment and no significant issues were raised. (See Exhibit F- *Environmental Review Referrals*.) A Negative Declaration has been prepared for approval as the project will not have a significant effect on the environment. (See Exhibit E - *Negative Declaration*.) Conditions of approval reflecting referral responses have been placed on the project. (See Exhibit C - *Conditions of Approval*.)

As a point of clarification, the initial study prepared for this project identified the use permit request as a Tier Two Use Permit request. However, provided that the previous uses were legal non-conforming uses, this permit is actually being considered as a replacement to a legal non-

conforming use. The findings required for approval of this permit are included in Exhibit A - *Findings and Actions Required for Project Approval*. This clarification is not environmental in nature and does not impact the environmental review that was prepared for the project.

Note: Pursuant to California Fish and Game Code Section 711.4, all project applicants subject to the California Environmental Quality Act (CEQA) shall pay a filing fee for each project; therefore, the applicant will further be required to pay **\$2,267.00** for the California Department of Fish and Wildlife (formerly the Department of Fish and Game) and the Clerk Recorder filing fees. The attached Conditions of Approval ensure that this will occur.

Contact Person: Kristin Doud, Associate Planner, (209) 525-6330

Attachments:

- Exhibit A - Findings and Actions Required for Project Approval
- Exhibit B - Maps
- Exhibit C - Conditions of Approval
- Exhibit D - Initial Study and Initial Study Comments
- Exhibit E - Negative Declaration
- Exhibit F - Environmental Review Referral

Exhibit A
Findings and Actions Required for Project Approval

1. Adopt the Negative Declaration pursuant to CEQA Guidelines Section 15074(b), by finding that, on the basis of the whole record, including the Initial Study and any comments received, there is no substantial evidence the project will have a significant effect on the environment and that the Negative Declaration reflects Stanislaus County's independent judgment and analysis.
2. Order the filing of a Notice of Determination with the Stanislaus County Clerk-Recorder pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075.
3. Find:
 - (a) That the establishment, maintenance and operation of the proposed use or building applied for is consistent with the general plan and will not, under the circumstances of the particular case, be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood of the use and that it will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county;
 - (b) Will not, under the circumstances of the particular case, be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood of the use;
 - (c) Will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of persons residing or working in the neighborhood or to the general welfare of the county;
 - (d) Is logically and reasonably related to the existing use and that the size or intensity of the enlargement, expansion, restoration, or changes is not such that it would be more appropriately moved to a zoning district in which it is permitted;
 - (e) The project will increase activities in and around the project area, and increase demands for roads and services, thereby requiring dedication and improvements; and
 - (f) That the proposed buffer alternative is found to provide equal or greater protection to surrounding agricultural uses.
4. Approve Use Permit Application No. PLN2015-0006 – Orchard Rite – Pacific Distributing, Inc., subject to the attached conditions of approval.