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Re: Appeal of the Historic Landmarks Advisory Commission Approval of a  
Building Structure on the Historic Great Meadow

RESPONSE TO THE STAFF REPORT REGARDING THE APPEAL OF THE  
PARKER LABYRINTH BUILDING ON THE BOTANIC TARDEN'S  
MEADOW AND THE APPROVAL GRANTED BY THE HISTORIC  
LANDMARKS COMMISSION

INTRODUCTION

The Botanical Gardens was created by the efforts of Anna Dorinda Blaksley Bliss and a group of local enthusiasts who wanted to establish a bucolic and serene garden retreat in which to plant and cultivate flora and enjoy the scenic vistas and unique setting of upper Mission Canyon and also to provide an education site to study botany, particularly of native species. In 1926 the setting in upper Mission Canyon was both remote, scenic and quiet, suitable for just such a public garden. For over 70 years the Garden was preserved more or less in accordance with its original intent and purpose, which was codified in its original 1939 Articles of Incorporation, not the least of which was the specification that it was to be free and open to the public including residents of the Santa Barbara/South Coast area and for visitors to enjoy. [See the Historical Context section contained in the recently re-circulated draft Environmental Impact Report in Appendix D (pages 12 through 35 of 67).]

On or about December 19, 1972 a conditional use permit (C.U.P.) was obtained because the garden, under its then administration, sought to construct a horticultural building which was to be larger than the 300 square feet in size permitted under the applicable zoning. Because it exceeded that limit, the C.U.P. was required. No other permitted uses were provided for in that specific C.U.P. [See EXHIBIT "K" to Appellants Appeal on file herein.]

Based upon the original purposes and the historical design concept of the Garden, many of the additional lands that were added to the original parcel, were gifted to the Garden with strict conditions prohibiting *any structures at all*. These deeds initially had to be conveyed to the Garden by way of the Museum of Natural History. This procedure was necessary because the Garden originally was not a

qualified non-profit. The gifted lands were first conveyed to the Museum of Natural History with the understanding of the donors and recipients that the lands would then be conveyed to the garden. [See attached EXHIBIT “D” to the Appeal on file herein.]

The integrity of the Garden envisioned by its founders lasted from 1926 until approximately 1992 when the current administration took over the Garden and its governing foundation.

On or about February 2003 the County of Santa Barbara designated many areas of the Garden as historic landmarks to insure their integrity in the future and insure that the historic uses and the landscape design concepts were not materially altered. [See EXHIBIT “E” to Appellants Appeal herein, a copy of County resolution **2003-059**.]

Since the mid 1990’s, and after the present administration took over the Garden and it’s governing foundation, they undertook a conscious and calculated plan to alter the fundamental uses and landscape design concept originally put in place to protect the passive serenity of the Garden, as it was originally intended by the founders, and set about converting the Garden to entirely different purposes.

Not only were large tracts of land originally donated to the Garden with deed restrictions prohibiting any structures of any kind from being built clear evidence of the intended uses foreseen by the founders, but furthermore as private lands adjacent to the park were purchased and developed for single family homes, it was done with the understanding by the purchasers that they could enjoy the rural serenity, peace, quiet and scenic beauty of upper Mission Canyon. They purchased their homesites at considerable expense in reliance upon the historic uses and condition of the Botanic Garden which were based on the long history of uses and the landscape design which had been preserved for several decades.

Since approximately 1999 or 2000 several attempts to convert the garden into “*a world class tourist attraction*” (to use the words of the **CEO Edward L. Schneider**) began. His vision also apparently includes converting this passive Garden into some kind of *prestigious institution of higher learning*, a sort of “Botanical College” for the elite, coupled with collection of rental facilities to fund the ever-increasing costs associated with this commercialization of the Botanic Garden. More and more money that is needed to pay the high level salaries of the administrators, including a full-time public relations and marketing director and 40 paid employees and 60 volunteers. Even more of these commercial endeavors will undoubtedly be needed if the current expanded “master plan”, now under environmental review, ultimately receives County approval.

A series of these commercial expansion proposals have been put forth in the past eight (8) years including a massive events center with capabilities to assemble and feed over 350 attendees under one roof. That proposal included an adjacent two-story concrete parking garage and many other features wholly inconsistent with the historic and intended uses of the Garden and the natural setting of upper Mission Canyon. More recently three large walled terraces adjacent to the scenic “great meadow” were built, without permits, for the purpose of renting them out for wedding receptions and other revenue-generating events, although they were euphemistically and disingenuously described in the plans as “**plant display areas.**”

The present administration has imposed an eight dollar (\$8.00) entry fee to help fund this on-going and growing commercial enterprise, all being done under the auspices of the existing “conditional use permit” originally obtained to simply build a greenhouse slightly larger than that allowed under existing zoning. This massive development is being proposed despite the existing confines of the upper Mission Canyon area, which are wholly unsuitable for such a massive increase and marked change in usage and for the expansion of a large scale commercial tourist enterprise.

The current Garden administration has also commenced a piecemeal installation of a circumference fence to insure no one can enter the Garden and evade the \$8.00 entry fee. This was done without regard to the many animals which have historically entered and inhabited upper Mission Canyon and who relied upon the year-round accessibility to a water supply furnished by upper Mission Creek.

## DISCUSSION

Access, ingress and egress in upper Mission Canon area is extremely limited due to natural terrain features and a single narrow roadway serving the east side of the canyon. The steep walled terrain on each side of upper Mission Canyon act like a megaphone so that people talking, even in normal tones of voice within the Botanic Garden, can be heard throughout the upper end of the canyon.

Noise pollution, traffic circulation, parking and light pollution are all major concerns of all of the residents of upper Mission Canyon including the significant fire dangers and the inability to evacuate large numbers of people from the canyon in the event of any kind of emergency. The city MTD bus can barely navigate Mission Canyon Road now, as it runs along the east side of the canyon adjacent to the Gardens, even on normal days when there are only a few cars parked along the roadside. When there are special events at the Garden the parking, ingress and egress is dangerously exacerbated. [See for example EXHIBIT “H” to Appellants appeal herein.] As set out above, the massive expansion plan now being proposed

for the Garden is currently being evaluated by staff and the public. It is yet to be reconciled with existing zoning and the many unmitigated negative impacts arising out of that planned expansion. Even if that plan is substantially modified and curtailed during the current planning process, it nevertheless will result in further cumulative impacts on traffic, parking and circulation problems as well as aggravating the unmitigated noise, air and light pollution that already exists.

In particular, the current expansion plan provides for as many as 150 money-making annual “**events**”, plus the many commercial rentals already available and which include service of alcoholic beverages, amplified music, food preparation and services furnished by commercial catering companies and which are to include likely large and potentially boisterous crowds in attendance. They are also including classes being offered and other intensive uses.

The current efforts to compensate the many existing paid employees of the Garden, not only includes salary and parking but also includes efforts to provide housing for some of these employees to live permanently on-site, just as the Garden does now for it’s CEO.

The ability of the County to police, regulate and control these expanded uses is, at best, extremely limited and would necessarily be dependent entirely upon the Garden itself who have admittedly set a course to “**create a world class tourist attraction**” to use the words of its chief executive officer. *The Toad hall “exhibit”* from 5 years ago, lasted for two years and the “**big bug exhibit**” lasted several months. Both of these tourist attractions exceeded the height limit placed on them by the County and created traffic and parking problems. As discussed earlier the traffic congestion was chaotic and dangerous at times as depicted by the photographs in EXHIBIT “**H**” attached to Appellants Appeal herein.

The categorical exemption given by the County for this latest project, the construction of the three year “**Labyrinth building**” *project* is totally *inappropriate*. It fails to adequately consider the traffic, parking and noise issues involved, which are problematic now even before the cumulative impacts of the proposed massive expansion plan are taken into account. Similarly the categorical exemption was issued without considering the existing impacts of converting many of the Garden’s features into rental sites capable of accommodating up to a thousand people, when fully rented. These numbers do not include the daily random numbers of visitors attending the Gardens regularly nor any special visitor groups, some of whom come by large buses. [See also as examples of the expanded commercialization, the rental sites available within the park attached to Appellants Appeal herein as EXHIBIT “**I**” and **also** the attached EXHIBIT “**L**” to this response submitted in connection with the staff’s reply to Appellants Appeal.

EXHIBIT “L” represents current rental rates for virtually all the Gardens features.]

At the very least this proposed three year “*sculpture*” building should be restrained and postponed until the current study and environmental review of the entire cumulative impacts of all of these proposed developments and both existing and planned activities are properly evaluated and that review completed by staff. The categorical exemption, erroneously issued by the County in this case, does not even address the cumulative impacts of all of these matters, traffic, circulation and parking, noise, light and air pollution, alcoholic beverage services, food services, amplified music and public address systems. Rather the “categorical exemption” arbitrarily given this latest “attraction” concludes without factual data or support, that there will be no added impacts.

This conclusion by County staff was reached even though the Garden administration testified themselves before the Historic Landmarks Commission, that the purpose of installing the Herb Parker Labyrinth building on the historic landmark meadow was to draw even more visitors to the Garden. The review of the Garden’s major expansion plan is currently in progress, and includes an analysis of what activities are now being permitted and what future activities will be permitted under the cover of the conditional use permit that was issued originally to simply allow a greenhouse to be constructed that was slightly larger than that permitted under existing zoning law. It is likely that a new and proper C.U.P. needs to be obtained just for many of the existing activities such as the commercial nursery, gift shop, etc.

## CONCLUSION

The recent proposal to construct a 1,200 plus square foot, 14-foot high unsightly building, on the scenic landmarked great meadow, and described as a “sculpture”, is sought by the Garden’s administration under the guise of being artwork and is claimed to be only a “*temporary*” structure because it will be on the historic and scenic meadow for just three years. There is no distinction anywhere between what constitutes a tourist attraction or a so-called display of artwork. This is but one of many examples of the past misuses of the conditional use permit issued in 1972 and is a clear violation of the historic and intended uses<sup>1</sup> of the Garden and is clearly a violation of the historic landscape design concept which included no such garish buildings as part of that scenic setting, whether called “artwork” or not. The categorical environmental exemption failed to consider a number of impacts likely to result from increases in visitors not only to see this attraction but to use all of those available sites for rent and the many additional visitor attracting

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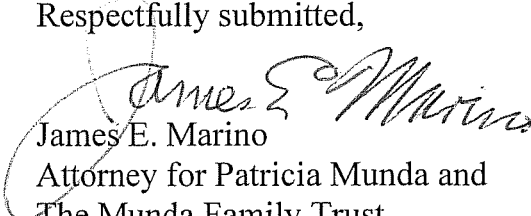
<sup>1</sup> See the historical context set out in the re-circulated Environmental Impact Report currently under review.

features planned for the Garden if the pending massive expansion plan is ultimately approved by the County. In addition, although the HLC proposes that this approval will not represent any precedent in fact each of these “exhibits” are successively being bootstrapped upon each other and constitute an expanding series of precedents that are being sanctioned by County planning staff and used to justify more and more and bigger and bigger tourist attractions. [See the attached EXHIBIT “M” to this Response which is a letter from County planner Abe Leider approving the prior “*Toad Hall*” tourist attraction feature which is then being used in the current claim by Mr. Tuttle justifying the categorical exemption, stating that the “*Labyrinth building*”, will set no precedent.

These proposed increased quantities and types of tourist attractions and uses, as well as marked departure from the historic landscape design concepts are unacceptable, inappropriate and out of place in the serene confines of upper Mission Canyon. They represent an unlawful commercialization of the Botanic Gardens to fund the ever increasing overhead expenses needed because of this commercialization of the Garden and which is approaching that of a “*public nuisance*,” not a “*world class tourist attraction*” nor is the creation of a *Mission Canyon University of Botany*, as apparently envisioned by the existing administration, necessary because the community is fortunate to have at least 3 exceptional universities and institutions of higher learning all in far better locations to handle high traffic volumes.

There are also an abundance of sites in this area where this Labyrinth building can be constructed as “artwork” and can be easily viewed by those interested to do so free of charge, for example in Alameda Park or Elings Park or at several sites along the Santa Barbara waterfront where expansive tourism has become an integral part of the landscape.

Respectfully submitted,

  
James E. Marino  
Attorney for Patricia Munda and  
The Munda Family Trust

# **EXHIBIT “L”**

## **CURRENT RENTAL RATES**

# Santa Barbara Botanic Garden

## Rental Sites and Fees

Garden facilities are available for rent by groups, organizations, individuals, and businesses when the Garden is closed to the public and/or when there is no conflicting Garden activity. The following is a list of available Botanic Garden sites, capacity per site, and fees. Fees are for site rental only. For more information on additional fees and regulations, contact the Marketing Department at 805-682-4726 ext.139 or adelucia@sbbg.org.

Locations	Guest Capacity	Locations	Guest Capacity
Arroyo Room	30	Meadow View	28
Blaksley Library	60	Picnic Area	40
Blaksley Terrace	35	Redwoods	200
Courtyard	100	Tea House	25
Discovery Garden	50	Meadow Lawn	150
Garden Terrace	30	Other	TBD
Home Demo Garden Patio & Deck	75		

Rental Fees	
<b>Arroyo Room</b>	
Up to 4 hours	\$300
Additional hour(s)	\$75
<b>Blaksley Library</b>	
Up to 4 hours	\$500
Additional hour(s)	\$100
<b>Blaksley Terrace</b>	
Up to 4 hours	\$1,000
Additional hour(s)	\$100
<b>Courtyard</b>	
Up to 4 hours	\$1,500
Additional hour(s)	\$125
<b>Discovery Garden</b>	
Up to 4 hours	\$500
Additional hour(s)	\$100
<b>Garden Terrace</b>	
Up to 4 hours	\$1,000
Additional hour(s)	\$100
<b>Home Demonstration Garden and Deck</b>	
Up to 4 hours	\$2,500
Additional hour(s)	\$100

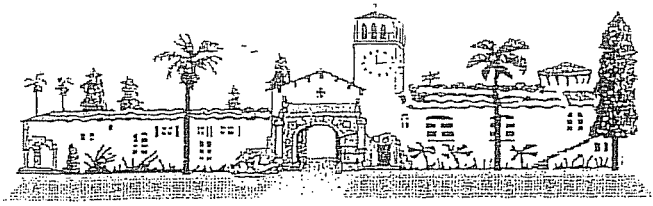
Rental Fees	
<b>Meadow View</b>	
Up to 4 hours	\$1,000
Additional hours	\$100
<b>Picnic Area</b>	
Up to 4 hours	\$500
Additional hour(s)	\$100
<b>Redwoods</b>	
Up to 4 hours	\$2,500
Additional hours	\$175
<b>Teahouse</b>	
Up to 4 hours	\$1,500
Additional hour(s)	\$100
<b>Meadow Lawn</b>	
Up to 4 hours	\$3,000
Additional hour(s)	\$175
<b>Other</b>	
Up to 4 hours	\$ TBD
Additional hour(s)	\$ TBD
<b>Parking Lot</b>	
<i>(for offsite events to accommodate Mission Canyon neighbors)</i>	
Up to 4 hours	\$350
Additional hour(s)	\$100

All decisions regarding use of the facilities are made by the Santa Barbara Botanic Garden, which reserves the sole right to determine appropriate use.



# **EXHIBIT “M”**

**COUNTY P & D LETTER REGARDING  
TOAD HALL “EXHIBIT”**



# County of Santa Barbara Planning and Development

Valentin Alexeeff, Director  
Dianne Meester, Assistant Director

May 6, 2004

Sid Goldstien, Civil Engineer  
650 Alamo Pintado Road, Ste. 302  
Solvang, CA 93463

RE: Botanic Garden Proposed Sculpture Installation

Dear Mr. Goldstien,

Thank you very much for meeting with us in April to discuss the Garden's plans to host an installation by the artist Patrick Dougherty. We agree that bringing Mr. Dougherty's work to Santa Barbara will be a benefit to the Garden and to the whole community. The purpose of this letter is to put in writing Planning and Development's determination on potential permit requirements for the installation, as we discussed today by telephone. This determination was arrived at through coordination between the department's Development Review and Building & Safety divisions.

From the materials you provided as well as correspondence with the artist himself, staff has gained an understanding of Mr. Dougherty's construction techniques. We recognize that the location, scale and shape of the work will not be known until the artist arrives at and assesses the site and conceives his vision for the project. In spite of the unknowns, we must consider whether the installation is considered a structure under the Zoning Ordinance and Uniform Building Code and so require permits.

The primary goal of our permitting is to ensure public safety, a goal we are certain the Garden shares. We understand that Mr. Dougherty's work—approximately 150 installations over 20 years in the U.S. and abroad—has never required building permits and that subjecting the work to permits and requiring engineered plans could in fact impede the artistic process. As a result, staff has developed a set of parameters that, if the project fits within them, could render the sculpture exempt from both planning and building permits. The installation would likely be exempt from permits if 1) the sculpture is constructed of plant material (as are the other works of Mr. Dougherty's that we've seen), and:

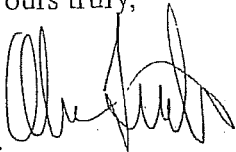
2. the sculpture is not accessible or interactive (non-enterable or climbable, e.g. roped- or fenced-off), or
3. the aspect ratio (height to width) is approximately 1:1 or wider, or

4. the sculpture's height is limited to 12 feet, or
5. the sculpture uses a mature tree, existing building or similar to provide stability for height over 12 feet.

In a memo dated April 30, 2004, the director of Planning and Development determined that the prospective installation falls within the provisions of the Garden's existing Conditional Use Permit. If the installation were to fall within the parameters described above, it would merit exemption from Land Use Permits pursuant to Article III, Section 35-314.2.1.

Feel free to contact me if you would like to meet again to discuss this letter or any other aspects of the proposed installation. I can be reached at (805) 568-3508 or via e-mail at [aleider@co.santa-barbara.ca.us](mailto:aleider@co.santa-barbara.ca.us).

Yours truly,



✓ Abe Leider  
Development Review Division – South

copy: Bob Sherwood, Botanic Garden, 1212 Mission Canyon Road, Santa Barbara, CA 93105-2126  
Val Alexeeff, Director, P&D  
Anne Almy, Supervising Planner, Development Review Division, P&D  
Lincoln Thomas, Building & Safety Division, P&D