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December 22, 2009

HAND DELIVERED

Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

**Re: Santa Barbara Botanic Garden – Vital Mission Plan
Appeal of 11/09/09 Action by Historic Landmarks Advisory Commission**

Dear Honorable Supervisors:

I. INTRODUCTION

We are writing on behalf of our client, the Santa Barbara Botanic Garden (the “Garden”), to appeal certain actions taken by the Santa Barbara County Historic Landmarks Advisory Commission (“HLAC”) on November 9, 2009 in connection with the Garden’s proposed Vital Mission Plan project. More specifically, the Garden appeals HLAC’s actions which would (i) require the removal of the Garden’s partially completed Meadow Terrace project, (ii) severely restrict the Garden’s ability to install additional paving, and (iii) require HLAC approval of a Cultural Landscape Master Plan. These actions are identified as items 1, 2 and 7, respectively, in the December 9, 2009 letter from HLAC, a copy of which is included as Attachment 1 to this letter. This appeal is made pursuant to Section 18A-7 of Chapter 18A of the Santa Barbara County Code.

II. BACKGROUND

A. Vital Mission Plan

The last substantial upgrades to the Garden’s facilities occurred more than 30 years ago and were undertaken pursuant to a 1972 Conditional Use Permit (“CUP”) which currently governs the Garden property. The Garden is proposing to undertake a project known as the Vital Mission Plan (“VMP”) to improve and expand its facilities to better meet current and future service demands. The VMP requires revisions to the Garden’s existing CUP and the approval of a Development Plan to allow the construction of approximately 25,884 square feet of net additional building area for administrative, research, educational and residential uses. The VMP

also proposes to add a newly acquired 13.15-acre parcel to the CUP, improve internal circulation and parking, install fencing, improve and expand the trail system, improve fire protection for all existing and proposed development, and extend municipal sewer and water service to the entire project site. Increases in staff, visitors, classes and special events are also proposed. Upon completion of the VMP, the Garden would include a total of 65,442 square feet of development, with a net increase of three residential units.

The objectives of the VMP are to fulfill the Garden's mission to support research, education, horticulture, conservation, and exhibit programs by (i) developing and updating the Garden's facilities, (ii) consolidating functions and uses within existing and proposed facilities, (iii) providing a quality work environment for employees, and (iv) providing state-of-the-art storage and protection for the Garden's collections. The VMP would also improve access for visitors and provide on-site employee housing for critical support staff. Through the VMP, the Garden seeks to maintain and sustain in perpetuity the economic viability of the Garden through continued use of on-site facilities and of special programs and events that are critical to supporting and funding the Garden's resources and goals.

Since first being introduced in 1999, the Garden has revised and scaled the VMP back on numerous occasions to respond to comments and concerns raised by the Garden's neighbors, members of the general public, County planning staff, the County Planning Commission, the County South Board of Architectural Review, HLAC and other interested parties. The current version of the VMP represents a truly "bare bones" proposal and includes only those components which are essential to accomplish the project objectives and to ensure the Garden's continued viability.

B. Planning Commission Action on VMP

On October 26, 2009, the Santa Barbara County Planning Commission certified the Final EIR ("FIER") for the VMP and approved the project, subject to certain revisions and conditions. The Planning Commission's actions with respect to the three components of the VMP which are the subject of this appeal were as follows:

1. Planning Commission Approval of Revised Meadow Terrace Project

As discussed in greater detail in Attachment 2 to this letter, the Meadow Terrace project was partially constructed under a Substantial Conformity Determination and a Land Use Permit that were issued by the County in 2007 and that were later revoked due to substantial public controversy. The Meadow Terrace project was subsequently incorporated into the VMP and analyzed accordingly. The Planning Commission approved the Meadow Terrace project, subject to the following conditions:



The Applicant shall re-design the proposed Meadow Terrace project so that hardscape is minimized and the terrace reflects the naturalistic and informal design historically associated with the area. The hard edge of terrace retaining walls shall be softened with earthen berms and plantings to minimize the effect of abrupt changes in elevation. Terrace walls shall be capped but not extended any further in height or length than what currently exists. Terrace surfaces and areas between the retaining walls shall remain unpaved and the retaining walls shall not continue east of the footpath surrounding the Meadow. An oak tree shall be planted to replace the tree that was removed so that spatial relationships between the Meadow Oaks area and the Meadow are maintained. Path lighting shall be eliminated and any electrical outlets concealed by vegetation. Archival photographs and plans can be used for guidance.

2. Planning Commission Conditions on Paving

The VMP proposed that all remaining pathways, with the exception of the proposed path on the Cavalli property, would be surfaced with pavers over time as individual portions of pathways are determined in need of maintenance and increased accessibility for mobility impaired visitors. The Planning Commission approved additional paving, subject to the following conditions:

Limit pavement (including areas improved with pavers) and hardscape to the Administration/Education area, Horticulture/Support area, the currently paved central areas surrounding the Meadow, and selected adjacent areas for accessibility. Paved pedestrian access and trail areas shall constitute no more than ten percent (10%) above the existing paved areas within the Historic Garden regardless of material. Required paved access for ADA and County Fire Department purposes to and around proposed new buildings shall not count towards the 10% limit. It is also recommended that the Applicant consider the repaving of the Administration/Education courtyard with more historically appropriate material based on historic photos. Trail design shall reflect the naturalistic and informal patterns historically associated with the trail system. It is recommended that for the currently paved areas and for areas to be paved in accordance with this measure (the 10% additional paved area), alternate materials such as decomposed granite and permeable grids be investigated and that a materials palette be developed to ensure sustainability, integration with the natural environment, and sensitive transition from hardscape to natural sections.



3. Planning Commission Requirement for Cultural Landscape Master Plan

In connection with its approval of the VMP, the Planning Commission imposed the following condition relating to the preparation of a Cultural Landscape Master Plan:

Prior to approval of Zoning Clearances, the Applicant shall prepare a Cultural Landscape Master Plan for the Historic Botanic Garden to be used as a guide for project implementation, as well as a framework for ongoing Garden management. This plan will reiterate the historic design intent for the Garden; identify character-defining features; prescribe a process to ensure that historic features are protected throughout implementation of the proposed project; assure transparency in implementation; and guide maintenance, interpretation, and visitor experience incorporating the Garden's history. The Cultural Landscape Master Plan shall include the following:

- a) Documentation of character-defining features of the Historic Garden, including the preparation of an Historic Structures Report for each historically significant building on the property, and documentation of existing conditions for trails, planted sections, structures, objects, and other significant features.*
- b) Goals and design principles based on the Secretary of the Interior's Standards to guide Garden development.*
- c) Brief history of Garden development, a construction chronology, and description of the Garden's historic significance.*
- d) Methodology for implementing the proposed plan and its various mitigation measures.*
- e) Treatment approaches for each facet of the proposed project including building design, paving and fencing materials and location, trail and section maintenance and, interpretive program. An historic plant palette, along with a historic building materials palette will be identified for research and treatment purposes, but should not limit future materials use or plantings.*



C. HLAC Action on VMP

On February 25, 2003, the Board of Supervisors adopted Resolution No. 2003-059 (the "Resolution") which imposed limited landmark restrictions on portions of the Garden's property. Under the terms of the Resolution, portions of the VMP required HLAC approval. Accordingly, HLAC reviewed the VMP at six separate hearings between April and December of 2009. At its November 9, 2009 and December 14, 2009 hearings, HLAC approved the major components of the VMP. However, at its November 9 hearing, HLAC also took the following actions which are the subject of this appeal:

1. HLAC Denial of Revised Meadow Terrace Project

HLAC reviewed the Meadow Terrace project, as revised pursuant to the conditions imposed by the Planning Commission in connection with its approval of the VMP. HLAC took the following action with respect to the Planning Commission approved version of the Meadow Terrace project:

Approval of the Meadow Terrace component of the project is denied, and the following are required:

- a. The partially completed stonework shall be removed in its entirety.*
- b. The area shall be restored to its previous naturalistic condition, including replacement of an oak tree where a mature oak had been before its removal.*
- c. A restoration plan for the area shall be prepared for review and approval by the HLAC before restoration is commenced.*

2. HLAC Restrictions on Paving

With respect to the paving approved by the Planning Commission in connection with its approval of the VMP, HLAC imposed the following conditions:

- a. HLAC has substantial objections to the existing concrete pavers and strongly recommends that existing concrete interlocking pavers be removed entirely and the trails restored with smooth, compacted earth surfacing or natural stone, except as provided in b., below.*
- b. Heavy traffic areas at entrances, around buildings that have traditionally been paved, and around new buildings, shall be paved with naturalistic materials (such as flagstone).*



- c. *Paving and hardscape plans shall be reviewed and approved by HLAC prior to construction.*
- d. *With the exception of b., above, no new concrete pavers, synthetic or otherwise, shall be installed.*

3. HLAC Action on Cultural Landscape Master Plan

With respect to the Cultural Landscape Master Plan required by the Planning Commission as a condition of its approval of the VMP, HLAC added the following requirement:

A Cultural Landscape Master Plan shall be prepared and submitted to HLAC for review and approval prior to construction of any alterations to the Landmark.

III. BASIS FOR APPEAL OF HLAC ACTIONS

A. Meadow Terrace Project

1. Background

In order to properly understand and evaluate HLAC's denial of the Planning Commission approved version of the revised Meadow Terrace project, it is important to have some background information relating to the original version of the project which was initially approved by the County Planning & Development Department in 2007, but was later denied by HLAC in September of 2007 and by the Board of Supervisors in February of 2008. Accordingly, a detailed history relating to the Meadow Terrace project is provided in Attachment 2 to this letter. Attachment 2 also sets forth for the record the Garden's legal position with respect to HLAC's jurisdiction and includes evidence in support of such position.

2. Significant Revisions to Original Project

For purposes of this appeal, what must be emphasized is how significantly the revised Meadow Terrace project differs from the earlier versions of the project that was denied by HLAC in September of 2007 and by the Board of Supervisors and February of 2008. Simply stated, the scope and scale of the earlier Meadow Terrace project have been reduced dramatically. The project's 18 inch high sandstone retaining walls will now be largely hidden from view by earthen berms and California native plants, and essentially all other components of the project have been eliminated. At this point the proposed Meadow Terrace improvements can fairly be characterized as a "non-project," consisting of little more than subtle recontouring of a slightly sloping gathering area to level the space. All paving has been eliminated. All lighting has been eliminated. The proposed retaining wall extensions in the Meadow area have been eliminated. In addition, an oak tree will be planted at the project site to replace a diseased oak tree which the



Garden was previously required to remove to address safety concerns after extensive efforts to save the tree were unsuccessful. As revised, the Meadow Terrace project represents an exceedingly small "change" to an existing "public area". As such, the revised project is clearly exempt under the terms of the Resolution.

3. HLAC Action on Revised Meadow Terrace Project

In denying the revised version of the Meadow Terrace project which was approved by the Planning Commission, HLAC made no findings that the project would impact any of the seven historic structures or features protected by the Resolution. Nor did HLAC make any findings explaining how the project might substantially deviate from the historic landscape design concept or historic use of the Garden. In short, HLAC made no effort to apply the standards set forth in the Resolution and offered no objective justifications for its denial of the project. HLAC also appears to have ignored the fact that, as revised and scaled back, the project will be truly de minimus and will entirely eliminate the concerns that were raised in connection with the original version of the project.

HLAC did make a finding that the Meadow Terrace project is "designed to accommodate intensification of use". There is no evidence in the record to support this finding. To the contrary, the Garden anticipates no intensification of use as a result of the proposed improvements to the Meadow Terrace area. In addition, as shown in Exhibit "E" to Attachment 2, the Meadow Terrace site has been used intensively for a variety of purposes, including the parking of cars, for decades. In any case, an intensification of use (i) is not prohibited under the Resolution and (ii) has no relation to the historic landscape design concept.

In addition, HLAC appears to have ignored the analysis and conclusions contained in the FEIR for the VMP, which were based on studies undertaken by two highly qualified historic resource experts, Historic Resources Group, LLP ("HRG") and Kaplan Chen Kaplan ("KCK"). Based on those studies, the FEIR concluded that the revised Meadow Terrace project would not have significant impacts on the Garden's historic resources. The Planning Commission reached this same conclusion.

For these reasons, the Garden's appeal of HLAC's denial of the revised Meadow Terrace project should be granted.

B. HLAC Restrictions on Paving

As stated above, in connection with its approval of the VMP, the Planning Commission permitted additional pavement (including pavers) and hardscape in several designated areas. Although the Planning Commission limited paving of pedestrian access and trail areas to no more than 10% above the existing paved areas, paved access required for ADA and County Fire



Department purposes to and around proposed new buildings is not counted towards the 10% limit.

HLAC imposed significant additional restrictions with respect to paving. The Garden believes these restrictions are improper for a number of reasons.

First, HLAC was advised by County Counsel that it has no authority to require the removal of the existing concrete interlocking pavers. Accordingly, it was improper for HLAC to address this issue with a formal objection and a recommendation that the existing pavers be removed.

Second, with respect to HLAC's requirement that paving use only "naturalistic materials (such as flagstone)," under the terms of the Resolution, HLAC has no authority to require the use of naturalistic materials in paving projects except in cases where the paving will (i) involve one of the seven designated historic structures or features, or (ii) substantially deviate from the Garden's historic landscape design concept or historic use. HLAC made no such findings in connection with its imposition of this condition. In addition, any finding that the paving approved by the Planning Commission would substantially deviate from the Garden's historic landscape design concept or historic use would be inconsistent with the expert opinion of HRG, which is reflected in the FEIR and which was accepted by the Planning Commission. The Planning Commission concluded that the limitations on paving recommended by HRG would be sufficient to ensure the protection of the Garden's historic resources. Moreover, as set forth in the 2005 Opinion from County Counsel discussed in Attachment 2, paving projects may represent "changes" which are exempt from the Resolution. Accordingly, it was improper for HLAC to require the Garden to use only naturalistic materials when paving.

Third, with respect to HLAC's requirement that paving and hardscape plans be reviewed and approved by HLAC prior to construction, under the Resolution, HLAC has the authority to review and approve paving and hardscape plans only in those cases where the paving or hardscape will (i) involve one of the seven designated historic structures or features, or (ii) substantially deviate from the Garden's historic landscape design concept or historic use. In addition, as indicated above, paving and hardscape projects may represent "changes" which are exempt from the Resolution. Accordingly, it was improper for HLAC to impose a blanket requirement that all paving and hardscape plans be submitted to HLAC for review and approval because, depending on location and other factors, future paving and hardscape projects may or may not be subject to HLAC's jurisdiction.

Fourth, with respect to to HLAC's requirement that no new concrete pavers be installed, under the Resolution, HLAC has no authority to prohibit such future paving. HLAC's jurisdiction in this regard is limited to paving that will (i) involve one of the seven designated historic structures or features, or (ii) substantially deviate from the Garden's historic landscape design concept of historic use. As indicated above, HRG and the Planning Commission both determined that the paving restrictions approved by the Planning Commission were sufficient to protect the Garden's



historic resources. Accordingly, it was improper for HLAC to impose a blanket prohibition with respect to the future use of certain types of pavers.

Finally, it must be emphasized that the additional paving approved by the Planning Commission will enable the Garden to provide improved accessibility for persons with disabilities. HLAC appears to have given insufficient consideration to the needs of the disabled and instead limited its focus to preserving the Garden in its current state.

C. Cultural Landscape Master Plan

As stated above, in connection with its approval of the VMP, the Planning Commission required the preparation of a Cultural Landscape Master Plan containing specified information. HLAC interjected itself into this County condition by imposing a requirement for HLAC review and approval of the Cultural Landscape Master Plan prior to construction of any alterations to the landmarked property. This action by HLAC was improper for two reasons.

First, HLAC's jurisdiction is based on the terms of the Resolution. The Resolution does not confer upon HLAC any authority with respect to Cultural Landscape Master Plans or similar matters. More importantly, the Cultural Landscape Master Plan itself can be expected to address numerous issues that are beyond the scope of HLAC's jurisdiction under the Resolution. For example, the Resolution expressly limits HLAC's authority with respect to the selection of plants and the design of landscape displays, so long as California native plants are utilized. By conferring upon itself authority with respect to the Cultural Landscape Master Plan, HLAC would be improperly expanding the scope of its jurisdiction over Garden operations and projects.

Second, the Cultural Landscape Master Plan will cover areas that are outside the 23 acres which are designated as a historic landmark under the Resolution. Therefore, by conferring upon itself authority with respect to the Cultural Landscape Master Plan, HLAC would be improperly expanding the territory which is subject to its jurisdiction.

IV. CONCLUSION

The actions by HLAC on November 9, 2009 are inconsistent with the clear language of Resolution No. 2003-059. In addition, HLAC failed to consider the Planning Commission's findings and ignored the analysis and conclusions in the final Final Environmental Impact Report, as well as the studies undertaken by the historic resource experts, HRG and KCK. Further, HLAC overlooked the fact that paving on the landmarked property is, in many cases, exempt from HLAC's jurisdiction. Finally, HLAC improperly attempted to expand the scope of its authority by conferring upon itself the right to approve the Cultural Landscape Master Plan.



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As such, HLAC's actions with respect to the three components of the Vital Mission Plan being appealed hereunder should not be permitted to stand.

Thank you for your favorable consideration of this appeal.

Respectfully Submitted,



Richard G. Battles of
HOWELL MOORE & GOUGH LLP

Attorneys for Santa Barbara Botanic Garden

RGB:mlf

cc The Honorable Fife Symington, Botanic Garden Board Chairman
Edward Schneider, Botanic Garden President and CEO
Nancy Johnson, Botanic Garden VP of Development and Marketing
Richard C. Monk, Esq.
Michael Brown, County Executive Officer
Glenn Russell, Director of Planning and Development
Diane Black, Director of Development Services
David Ward, Deputy Director of Planning and Development
Anne Almy, Supervising Planner
Alex Tuttle, Planner
Mary McMaster, Senior Deputy County Counsel



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bcc:

Douglas Singletary
Ken Marshall
April Winecki
John Davies
Taylor Canfield



ATTACHMENT 1

**Letter dated December 9, 2009 from Santa Barbara County
Historic Landmarks Advisory Commission**



Santa Barbara County Historic Landmarks Advisory Commission

December 9, 2009

Ed Schneider, Santa Barbara Botanic Garden
1212 Mission Canyon Road
Santa Barbara, CA 93105

RE: HLAC Meeting of November 9, 2009

Santa Barbara Botanic Garden Landmark #24, Vital Mission Plan

The Historic Landmarks Advisory Commission (HLAC) will further consider and discuss elements of the Santa Barbara Botanic Garden Vital Mission Plan over which HLAC has approval authority pursuant to the Resolution designating County Landmark #24 and take action as appropriate. The proposed project is to revise the existing CUP and approve a Development Plan to allow the development of approximately 25,884 square feet of net additional building area for administrative research, educational, and residential uses. The project also proposes to add a newly acquired 13.15 acre parcel to the CUP (approximately 78 acres total), improve internal circulation and parking, install fencing, expand its trail system, improve fire protection for all existing and proposed development, and extended municipal sewer and water service to serve the entire site. Increases in staff, visitors, classes, and special events are proposed and anticipated. Upon completion of the project, the Garden would include a total of 65,422 square feet of development, with a net increase of three residential units. Changes to features identified in the County Resolution (2003-059) for Landmark #24 include minor alteration to the existing Library, relocation of the Caretaker's Cottage, and various changes that may affect the historic landscape design concept. The property is zoned REC, AG-I-10 and 1-E-1 and shown as Assessor's Parcel Numbers 023-340-013, -014, -015; 023-052-001, -002, -003, -004, -008, -011, -012,; 023-060-018, -022, -023, -024, -025, -038,; 023-350-006; 021-030-001, located at 1212 Mission Canyon Road in the Mission Canyon area, First Supervisorial District. (Continued from 4/13/09, 6/8/09, 7/13/09, & 8/10/09)

Dear Mr. Schneider:

At the Historic Landmarks Advisory Commission meeting of November 9, 2009, the HLAC considered the Final Environmental Impact Report certified by the County Planning Commission (07EIR-00000-00001 RV1) and took the following actions:

Action 1: Commissioner Wyckoff moved, seconded by Commissioner Shepherd, and carried by a

vote of 5 to 1 (Schwartz no; Lowenthal, Welt, Mussell absent) to find that the Meadow Terrace project is designed to accommodate intensification of use requiring structural additions, such as stone walls, that substantially deviate from the historic landscape design concept of the Garden. Therefore, approval of the Meadow Terrace component of the project is denied and the following are required:

- a. The partially completed stonework shall be removed in its entirety;
- b. The area shall be restored to its previous naturalistic condition, including replacement of an oak tree where a mature oak tree had been before its removal; and
- c. A restoration plan for the area shall be prepared for review and approval by the HLAC before restoration is commenced.

Action 2: Commissioner Adams moved, seconded by Commission Shepherd, and carried by a vote of 6 to 0 (Lowenthal, Welt, Mussell absent) to find that paving of the trails with concrete interlocking pavers is completely incompatible with the naturalistic trails that have been an important character-defining feature of the Garden throughout its history and, as such, is a substantial deviation from the historic landscape design concept of the Garden. However, limited paving within the Landmark is approved, subject to the following:

- a. The HLAC has substantial objection to the existing concrete pavers and strongly recommends that existing concrete interlocking pavers be removed entirely and the trails restored with smooth, compacted earth surfacing or naturalistic materials, except as provided in b., below;
- b. Heavy traffic areas at entrances, around buildings that have traditionally been paved, and around new buildings, shall be paved with naturalistic material (such as flagstone);
- c. Paving and hardscape plans shall be reviewed and approved by HLAC prior to construction; and
- d. With the exception of b., above, no new concrete pavers, synthetic or otherwise, shall be installed.

Action 3: Commissioner Wyckoff moved, seconded by Commissioner Shepherd, and carried by a vote of 6 to 0 (Lowenthal, Welt, Mussell absent) to find that the new entrance represents a substantial deviation of the historic landscape design concept as it greatly detracts from an important character-defining feature of the Garden. However, the HLAC approves the new entrance, subject to the re-opening of the historic main entrance on occasion, where practical, to be utilized in concert with the new entrance.

Action 4: Commissioner Adams moved, seconded by Commissioner Schwartz, and carried by a vote of 5 to 1 (Wyckoff no; Lowenthal, Welt, Mussell absent) to find that the new Education and Library buildings and new Entrance Kiosk do not substantially deviate from or substantially conflict with the historic landscape design concept or historic use of the landmark and that these buildings do not adversely affect the seven identified historic features and structures identified in Landmark Resolution 2003-059. Therefore, the HLAC finds that these buildings are not subject to their jurisdiction.

Action 5: Commissioner Wyckoff moved, seconded by Commissioner Adams and carried by a vote of 6 to 0 (Lowenthal, Welt, Mussell absent) to approve the exterior alterations to the Blaksley Library.


Action 6: Commissioner Shepherd moved, seconded by Commissioner Wyckoff and carried by a vote of 6 to 0 (Lowenthal, Welt, Mussell absent) to find that:

- a. The proposed fencing has the potential to substantially deviate from the historic landscape design concept based on its potential visual impacts on the landmark and therefore the HLAC has jurisdiction over this element of the project; and
- b. The final fencing plan shall be brought back to the HLAC at their next meeting for review and approval.

Action 7: Commissioner Woodward moved, seconded by Commissioner Wyckoff and carried by a vote of 6 to 0 (Lowenthal, Welt, Mussell absent) to require that a Cultural Landscape Master Plan be prepared and submitted to HLAC for review and approval prior to construction of any alterations to the Landmark.

Any interested person may appeal in writing to the Board of Supervisors from any action of the Historic Landmarks Advisory Commission filed with the Clerk of the Board of Supervisors within ten days from the date of such action, or in the case of the affected property owner, within ten days of service of notice of the action by certified mail to the owner of the property as appears on the latest available county assessor's records, and the Board of Supervisors shall set a public hearing, duly advertised once in a newspaper of general circulation in the county at least ten days before the date of such hearing, to consider such appeal, and the Board of Supervisors may confirm, modify or set aside any or all such actions of the Historic Landmarks Advisory Commission.

Sincerely,



David Villalobos
Secretary to HLAC

xc: HLAC File
Supervisor Carbajal
County Planning Commissioners
Mary Pat Barry, County Counsel
Anne Almy, Supervising Planner
Alex Tuttle, Planner

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ATTACHMENT 2

History of Meadow Terrace Project and Summary of Garden's Position

ATTACHMENT 2
HISTORY OF MEADOW TERRACE PROJECT
AND SUMMARY OF GARDEN'S POSITION

1. History of Meadow Terrace Project

The Meadow Terrace project has a complicated history. A summary of the major events pertaining to the project is set forth below.

Resolution No. 2003-059: In 2002, the Garden and HLAC jointly drafted and endorsed a landmark resolution, which was adopted by the Board of Supervisors on February 25, 2003 as Resolution No. 2003-059 pursuant to County Code Chapter 18A. A copy of the Resolution is attached hereto as Exhibit "A". Under the terms of the Resolution, the historic elements on the Garden property which are to be protected fall into two categories: (i) seven specifically identified structures and features, and (ii) the "historic use" and "historic landscape design concept" of 23 of the Garden's 78 acres. The Resolution also identifies various activities that are not subject to HLAC's review or approval. The provisions of the Resolution are discussed in more detail below.

Original Meadow Terrace Project: In early 2007, with the assistance of two highly qualified landscape architects, a certified arborist and a biological consultant, and after undertaking an archeological study to ensure the protection of archeological resources, the Garden designed and received donor contributions for the installation of modest improvements to an area located adjacent to the Garden's main meadow. The area in question had been used by the Garden on a regular basis for decades for public events and gatherings. The proposed improvements consisted primarily of three low retaining walls constructed of native sandstone with a finished height of 18 inches. These walls would serve to level the slightly sloping area and create three terraces. The improvements also included the installation of natural flagstone paving on the terrace surfaces and the installation of planting beds for the display of California native plant exhibits. The proposed project involved less than 50 cubic yards of cut and/or fill. The Garden referred to this project as the "Meadow Terrace" project.

A number of mature oak trees are located in the vicinity of the Meadow Terrace site. Before the Meadow Terrace project was designed, one of these oak trees was removed because it had become diseased and presented a serious safety hazard to Garden visitors and staff. The Garden attempted to save the tree for nearly 20 years before it was finally forced to remove it. Contrary to comments made by certain parties who have opposed the Meadow Terrace project, the oak tree in question was not removed to make room for the project

On July 18, 2007, the Garden received a Substantial Conformity Determination ("SCD") from the County Planning & Development Department ("P&D") authorizing construction of the Meadow Terrace project, a copy of which is attached hereto as Exhibit "B". The SCD reflected P&D's finding that the project substantially conformed to the Garden's

1972 CUP. More specifically, the SCD states that “this project falls under the category of continued operation and maintenance of the Garden; maintaining and creating exhibits is considered part of the ongoing operation of the Garden under the existing CUP.” The SCD also contained specific findings that the project was not subject to review or approval by HLAC under the terms of the Resolution. The SCD further determined that the project was exempt from land use and other County permit requirements, and that only an electrical permit would be required for the installation of landscape lighting, which would use an existing power source at the project site. The Garden concurred with the SCD’s determinations on these issues based on (i) the clear terms of the Resolution, which exempted projects of this nature, and (ii) a 2005 opinion from County Counsel which found that a far larger trail paving project undertaken by the Garden in 2004 was exempt from HLAC review and approval under the Resolution.

At the time of its issuance, P&D sent copies of the SCD to representatives of two citizen groups who closely monitor the Garden’s activities (the Mission Canyon Association and Friends of Mission Canyon), and also to the County Supervisor and County Planning Commissioner whose districts include the Garden property. No objections to the issuance of the SCD were received. The Garden thereafter commenced construction of the project.

On August 13, 2007, after the project was nearly 50 percent completed, P&D provided a briefing to HLAC regarding P&D’s decision to approve the SCD. At that briefing, HLAC asked its staff to coordinate a special public hearing and site visit to consider the project and requested that Garden representatives attend that meeting.

On August 16, 2007, P&D withdrew the SCD and required work on the project to be stopped based on a finding of “substantial public controversy.”

On August 22, 2007, HLAC conducted a site visit and held a hearing at the Garden to consider the project. At the conclusion of the hearing, HLAC continued further consideration of the project to September 10, 2007.

At the September 10, 2007 hearing, HLAC took action finding that (i) the project is not exempt from HLAC jurisdiction under the Resolution, and (ii) the project substantially deviated from the historic landscape design concept as defined in the Resolution.

The Garden filed an appeal of the September 10 HLAC action with the Board of Supervisors on September 20, 2007.

Revised Meadow Terrace Project: Following the September 10, 2007 HLAC action on the original Meadow Terrace project, Garden representatives and a subcommittee of HLAC members held a series of meetings to seek a compromise solution, resulting in the development of a mutually acceptable revised version of the Meadow Terrace project. The revised project (i) eliminated almost 70% of the paving associated with the original project, (ii) replaced preexisting concrete pavers with natural flagstone, and (iii) redesigned and reduced in scale the three low walls closest to the Meadow area.

HLAC held hearings on November 20, 2007 and on December 10, 2007 to consider the revised project. At those hearings, the Garden asserted that the project was exempt from HLAC jurisdiction but that the revised project was being submitted to HLAC for review in the spirit of compromise and to avoid the need to pursue the appeal on the original project which was pending before the Board of Supervisors. At the conclusion of the hearing on December 10, 2007, HLAC asserted jurisdiction, denied the revised project and adopted the findings from its September 10, 2007 action. The action was taken by a vote of 5-4, which (in clear violation of HLAC's Bylaws) included "no" votes by HLAC members who had not been present at the November 20, 2007 hearing.

On December 20, 2007, the Garden appealed the December 10 HLAC action to the Board of Supervisors.

2008 Board of Supervisors Action on Appeals: On February 19, 2008, the Board of Supervisors held a hearing to consider the Garden's appeals of HLAC's September 10, 2007 and December 10, 2007 actions. At the conclusion of the hearing, the Board of Supervisors (i) confirmed the action taken by HLAC on September 10, 2007 and denied the original Meadow Terrace project, (ii) rescinded all action taken by HLAC on December 10, 2007 on the revised project due to procedural irregularities, (iii) directed HLAC and the Garden to propose revisions to the Resolution to improve its clarity, and (iv) denied the project due to the requirements of the California Environmental Quality Act ("CEQA").

Writ of Mandate: On May 19, 2008, the Garden filed a Petition for Writ of Mandate and Complaint for Declaratory Relief, Injunction, Rescission and Estoppel with respect to the action of the Board of Supervisors in denying the Garden's appeal of HLAC's actions. The case was ordered to mediation. Through the mediation process, the Garden and the County have been working to develop mutually acceptable amendments to the Resolution to clarify the intent of the Resolution. Those negotiations are ongoing. The litigation has been placed on hold pending the outcome of the mediation process.

Planning Commission Approval of Reduced Meadow Terrace Project: During the time that the original and revised Meadow Terrace projects were being processed and the mediation was ongoing, the processing of the VMP, which was originally filed in 1999, was also proceeding. At the County's suggestion, the Meadow Terrace project was added to the project description for the VMP. As discussed above, on October 26, 2009, the Planning Commission approved the VMP, including the Meadow Terrace project. However, in connection with such approval, the Planning Commission required that the Meadow Terrace project be significantly scaled back. The Planning Commission determined that this scaled back version of the Meadow Terrace project would not have a significant adverse impact on historic resources at the Garden. This determination is set forth in the excerpt from the Planning Commission Action Letter dated October 30, 2009 attached hereto as Exhibit "C". This same conclusion was reached by (i) the FEIR for the VMP, (ii) the Historic Resources Assessment prepared by the County's consultant, Historic Resources Group, LLP ("HRG"), and (iii) the Historic Resources Supplemental Report prepared by the Garden's consultant Kaplan Chen Kaplan ("KCK").

2. Scope of Resolution No. 2003-059

Resolution No. 2003-059 is the result of many long hours of work and represents a collaborative effort between an HLAC subcommittee and representatives of the Garden. Developing landmark restrictions for the Garden involved unique challenges because, unlike a historic structure which can be preserved in its original condition, the Garden is a living museum which involves ongoing activities that must change and improve over time. The Resolution was carefully drafted to achieve the necessary balance with respect to the interests involved. The restrictions contained in the Resolution ensure that what is historic and significant about the Garden is protected and preserved. At the same time, the Resolution makes it clear that the Trustees of the Garden retain the ability to fulfill their mission and fiduciary duties of operating an evolving and improving botanic garden.

The Resolution was drafted to also respect certain constitutional limitations. To avoid an unconstitutional taking, the landmark designation of the property owned by the Garden, as a charitable organization, could not prevent or seriously interfere with the carrying out of the Garden's charitable purposes. In addition, under the First Amendment, the selection and display of museum exhibits are forms of expression protected by the United States Constitution. Therefore, the Resolution cannot impose controls on the Garden's exhibits and displays unless the controls are necessary to achieve a compelling government purpose.

The Garden endorsed the Resolution and agreed to abide by its limitations because the Resolution is careful to not tie the Garden's hands with respect to its future activities and projects. However, in denying the most recent version of the Meadow Terrace project, HLAC appears to have lost sight of the Resolution's original intent and ignored the limitations on the HLAC's jurisdiction which the parties negotiated in good faith and agreed upon.

3. What Resolution No. 2003-059 Restricts

The Resolution clearly identifies what is historic about the Garden and what needs to be protected. The historic elements to be protected fall into two categories.

- **Specific Structures**

The following seven structures and features are identified in the Resolution:

- (a) Mission Dam and Aqueduct
- (b) Indian Steps
- (c) Entry Steps
- (d) Information Kiosk
- (e) Original Library
- (f) Campbell Bridge
- (g) Caretaker's Cottage

With respect to these historic structures and features, no demolition, removal or destruction is allowed and no exterior alterations, additions or changes may be made without the prior approval of HLAC (with the exception of the Caretaker's Cottage, the relocation of which has been approved by the Board of Supervisors).

- **Historic Landscape Design Concept and Historic Use**

The Resolution also provides for the protection of the "historic landscape design concept" and "historic use" of the western 23 acres of the Garden. The historic landscape design concept and historic use are defined as:

"a traditional botanic garden holding documented collections of living plants for purposes of conservation, scientific research, display and education . . . characterized by a system of trails through and around plant communities, displays, exhibits and structures . . . dedicated to plants native to California and the California Floristic Province."

The Resolution provides that no changes shall be made to the Botanic Garden which "substantially deviate" from the historic landscape design concept or historic use without the consent of HLAC.

4. What Resolution No. 2003-059 Does Not Restrict

The Resolution identifies the following activities that are not subject to HLAC's review or approval:

- (a) "[T]he change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures".
- (b) Any construction of new structures, features or facilities unless the construction substantially deviates from or substantially conflicts with the historic landscape design concept or historic use, as defined in the Resolution, or substantially conflicts with the criteria that qualified the property for landmark status.

In summary, the Resolution requires HLAC approval before any changes are made to the seven identified protected structures and features. The Resolution also requires HLAC approval if the Garden wishes to substantially deviate from its historic landscape design concept or historic use, defined as a traditional botanic garden holding documented collections of living plants, characterized by a system of trails through and around plant communities, displays, exhibits and structures, and emphasizing California native plants. Beyond that, the Resolution is careful to not tie the hands of the Garden with respect to its future activities. The Resolution allows the Garden to continue to change, evolve and improve, so long as the identified historic structures and features are not changed and so long as it continues to employ a system of trails through plant communities and exhibits and continues to emphasize California native plants. The Resolution clearly allows the Garden to make changes to its property, undertake maintenance

and repair activities, relocate improvements, including exhibits, trails and public areas and structures and construct new structures, features and facilities, without approval of HLAC.

5. Applicability of Resolution No. 2003-059 to Revised Meadow Terrace Project

The version of the Meadow Terrace project approved by the Planning Commission on October 26, 2009 clearly does not involve any of the seven structures and features which are protected under the Resolution. In addition, as discussed below, the project will not cause the Garden to “substantially deviate” from or conflict with the historic landscape design concept or historic use. Accordingly, it cannot be reasonably argued that the revised Meadow Terrace project requires HLAC review or approval under the Resolution. The scaled back Meadow Terrace project is precisely the type of project that the Resolution intended to exempt.

It should also be noted that nowhere does the Resolution provide or imply that new exhibits, public areas, structures, features or facilities in the Meadow area to be treated differently or that the Meadow area is subject to any special restrictions or protections. The only limitation is that such improvements cannot substantially deviate from or substantially conflict with the historic landscape design concept or historic use, as defined in the Resolution.

6. Changes to Existing Public Areas are Exempt

In an office memorandum dated April 5, 2005 Jennifer Klein, Deputy County Counsel, analyzed the applicability of the Resolution to the Garden’s 2004 trail paving project (the “2005 Opinion”). A copy of the 2005 Opinion is attached as Exhibit “D”.

We believe it is clear that the analysis set forth in the 2005 Opinion applies equally to the revised version of the Meadow Terrace project approved by the Planning Commission. The 2005 Opinion states at page 6 as follows:

This exemption applies to the entirety of section 2.B., subsections ii and i included. Due to the exemption, a proposed “*change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures*”, would not require the “review and approval” of the Commission. This would be the case even if the project “substantially deviates from” the “historic landscape design concept.” Furthermore, under this exemption, “*change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures,*” would not be prohibited even if they involved the “construction or installation of new structures, features, or facilities” that substantially deviated from the historic landscape design concept or historic use of the Garden, or substantially deviated from or conflict with the criteria at County Code Chapter 18A, section 18A-3. In the present case, the trail paving project can reasonably be considered to be a *change to trails*, which is a project that is exempt

from the conditions imposed by section 2.B. of the Resolution. [Emphasis in original]

The conclusions in the 2005 Opinion are based, in part, on the determination that the paving project represented a “*change*” to existing “*trails*”. In the same way, the revised Meadow Terrace project represents a “*change*” to an existing “*public area*”. “Changes” to “public areas” are exempt from HLAC review in precisely the same way that “changes” to “trails” are exempt from review. Under the analysis at page 6 of the 2005 Opinion, and under the clear language of the Resolution, changes to public areas are not prohibited even if they involve the construction or installation of new structures, features, or facilities that substantially deviate from the historic landscape design concept or historic use of the Garden, or substantially deviate from or conflict with the criteria at County Code Chapter 18.A., section 18.A-3.

It cannot be reasonably disputed that the area where the revised Meadow Terrace project is located has regularly been used as a public area for decades. These public uses include but are not limited to the following:

- Volunteer luncheons
- Evening music events (including dancing)
- Children’s classes and activities
- Scientific events and activities
- Member picnics
- Mission Canyon Association meetings
- Artist shows & sales
- Civic organization luncheons/mixers
- Educational activities
- Permanent & temporary exhibits
- Library
- Plant sales
- Rental area including weddings, memorials/receptions
- Environmental events
- Cultural activities
- Horticultural experimentation

Exhibit “E” to this Attachment includes photos of the Meadow Terrace area showing the use of the area by the public for a variety of purposes.

The revised Meadow Terrace project represents nothing more than a minor change to an existing public area within the Garden. The minor recontouring and leveling of the area through the use of low, bermed retaining walls will improve the surface of an area that has been and will continue to be used regularly for public events, and will enable the Garden to better display plant exhibits. As such, the project is exempt from review and approval by HLAC.

7. The Project does not Substantially Deviate from the Historic Landmark Design Concept or Historic Use

Under the Resolution, a project is not subject to the HLAC's review and approval jurisdiction so long as it does not "substantially deviate" from the "historic landscape design concept" or "historic use", as those terms are defined in the Resolution. In the present case, it cannot be reasonably argued that the revised Meadow Terrace project represents a "substantial deviation" from the "historical landmark design concept" or "historic use". This is true because, following the completion of the project, the Garden (i) will continue to function as a traditional botanical garden holding documented collections of plants for purposes of conservation, scientific research, display and education, (ii) will continue to be characterized by a system of trails through and around plant communities, displays, exhibits and structures, and (iii) will continue to be dedicated to plants native to California and the California Floristic Province. Therefore, under the clear standards set forth in the Resolution, the revised Meadow Terrace project is a permitted project.

In this regard it is also important to emphasize that what the Resolution protects is a "concept" and not a "plan". The original landscape plans for the Garden have been changed significantly and on numerous occasions over the years as the Garden has grown, evolved and improved. New exhibits have been constructed, existing exhibit areas have been relocated or removed entirely, and trails have been added, removed rerouted and paved, to name just a few of the changes that have occurred. For the most part, these changes were not contemplated by or included in any landscape plan previously in place. As a result, much of what was shown on early plans for the Garden no longer exists. What does continue to exist, however, is the historic landscape design concept: A traditional botanical garden holding documented collections of living plants characterized by a system of trails through and around plant communities, displays, exhibits and structures and dedicated primarily to California plants. This concept is not specific as to any particular exhibit, area (including the Meadow area), structure or trail plan. The Resolution was careful not to tie the Garden to any particular landscape plan, but instead seeks to preserve a concept.

It is also clear that the design of the Meadow Terrace project is consistent with other improvements at the Botanic Garden. For example, as shown in the photograph included under Exhibit "F", the Caretaker's Cottage, which is a landmarked structure, includes a Home Demonstration Garden consisting of raised planting areas with grouted sandstone retaining walls constructed in 1990. This is the same design feature that will be included in the revised Meadow Terrace project, although the Meadow Terrace's walls will be much lower and will be largely hidden from view by earth berms and native plants. Given the similarities between the two projects, it is difficult to understand how the Meadow Terrace project could be viewed as deviating in any way from the Garden's historic landscape design concept.

As discussed above, however, it is the Garden's opinion that it is unnecessary to consider whether or not the revised Meadow Terrace project substantially deviates from the historic landscape design concept because the project represents a "change" to an existing "public area". As such, under the clear terms of the Resolution, the project is exempt from HLAC review.

EXHIBIT "A"
Resolution No. 2003-059

RESOLUTION OF THE SANTA BARBARA COUNTY
BOARD OF SUPERVISORS

A RESOLUTION DECLARING THAT THOSE PORTIONS OF THE SANTA BARBARA BOTANIC GARDEN, 1212 MISSION CANYON ROAD, SANTA BARBARA, CALIFORNIA, LOCATED ON ASSESSOR'S PARCEL NOS. 23-340-13; 23-340-14 AND 23-340-15 ARE WORTHY OF PROTECTION UNDER CHAPTER 18A OF THE SANTA BARBARA COUNTY CODE, AND PRESCRIBING CONDITIONS TO PROTECT AND PRESERVE THEM AS ADDITIONS TO COUNTY LANDMARK #24.

RESOLUTION No. 2003-059

WHEREAS, the Santa Barbara County Board of Supervisors has considered the historical significance of those portions of the SANTA BARBARA BOTANIC GARDEN, 1212 Mission Canyon Road/ Santa Barbara, California, located on Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15, in accordance with the requirements, standards and criteria contained in County Code, Chapter 18A, and finds that they are worthy of protection as a County Historic Landmark.

WHEREAS, the existing County Landmark #24 known as "MISSION DAM", located on Assessor's Parcel No. 23-340-14, should be expanded to include (a) the entirety of Assessor's Parcel No. 23-340-14 and the aqueduct located thereon, (b) Assessor's Parcel No. 23-340-13, and (c) Assessor's Parcel No. 23-340-15, said County Landmark to be known hereafter as the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT;

WHEREAS, the Santa Barbara Board of Supervisors finds that the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT meet the following criteria provided in County Code, Chapter 18A-3:

1. They exemplify or reflect special elements of the County's cultural, social, economic, political, archaeological, aesthetic, engineering, architectural or natural history;
2. They are identified with persons or events significant in local, state or national history, including Anna Dorinda Blaksley Bliss, Elmer Bissell and Frederick Clements;
3. They embody distinctive characteristics of a style, type, period or method of construction or are valuable examples of the use of indigenous materials or craftsmanship;

4. They are representative of the work of notable builders, designers, landscape architects or architects, including Ervanna Bowen Bissell, Beatrix Farrand, Lockwood de Forest Jr. and Lulah Maria Riggs;
5. They contribute to the significance of a historic area, being a geographically definable area possessing a concentration of historic, prehistoric, archaeological, or scenic properties, or thematically related grouping of properties, which contribute to each other and are unified aesthetically by plan or physical development;
6. They have a location with unique physical characteristics or a view or vista representing an established and familiar visual feature of a neighborhood, community, or the County of Santa Barbara;
7. They embody elements of design, detail, materials, or craftsmanship that represent a significant structural or architectural achievement or innovation;
8. They are one of the few remaining examples in the County, region, state, or nation possessing distinguishing characteristics of an architectural or historical type or specimen;

WHEREAS, the Santa Barbara County Board of Supervisors finds that the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT meet the following standards provided in County Code, Chapter 18A-4:

1. They have historic, aesthetic or special character or interest for the general public and are not limited in interest to a special group of persons;
2. Their designation as a County Historic Landmark does not require the expenditure of an unreasonable amount of money to carry out the purposes of County Code, Chapter 18A; and
3. Their designation as a County Historic Landmark does not infringe upon the right of a private owner thereof to make any and all reasonable uses of such Landmark which are not in conflict with the purposes of County Code, Chapter 18A.

WHEREAS, the Santa Barbara County Board of Supervisors deems that the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT is worthy of protection and preservation as an historical landmark;

NOW, THEREFORE, IT IS RESOLVED as follows:

1. The premises defined herein as the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT, 1212 Mission Canyon Road, Santa Barbara, California, located on Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15, meet the eligibility criteria

and selection standards for a County Historic Landmark as described in County Code, Chapter 18A, as established by evidence presented to the Board;

2. The Santa Barbara County Board of Supervisors hereby designates the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT, Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15, as a Historic Landmark, subject to the following conditions:

A. Historic Structures and Features

- i. Demolition, removal or destruction, partially or entirely, of the following structures or features, as depicted on the attached map, shall be prohibited unless express consent in writing is first had and obtained from the Historic Landmarks Advisory Commission, with reasonable conditions imposed as deemed necessary;
 - a). Mission Dam and Aqueduct
 - b). "Indian Steps"
 - c). Entry Steps (1948)
 - d). Information Kiosk (1937)
 - e). Original Library (1941)
 - f). Campbell Bridge
 - g). Caretaker's Cottage (1927); provided however, that the Board of Supervisors hereby expressly consents to the relocation of the Caretaker's Cottage to another site in the Santa Barbara Botanic Garden.
- ii. No exterior alterations, additions or changes (other than normal maintenance and repair) to the structures or features identified in subparagraph 2-A.i. above shall be made unless and until all plans therefor have first been reviewed by the Historic Landmarks Advisory Commission and approved or modified, and reasonable conditions imposed as deemed necessary.

B. Continued Use as Botanic Garden

- i. The Santa Barbara Botanic Garden has historically functioned as a traditional botanical garden holding documented collections of living plants for purposes of conservation, scientific research, display and education. The historic landscape design concept of the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT is characterized by a system of trails through and around plant communities, displays, exhibits and structures. Such plant communities, displays, and exhibits have, with only limited exceptions, historically been dedicated to plants native to California and the California Floristic Province. No changes to the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT shall be made which substantially deviate from the foregoing historic landscape design concept or historic use of the landmark property unless express consent in writing is first had and obtained from the Historic Landmarks Advisory Commission, with reasonable conditions imposed as deemed necessary.

- ii. Nothing in this subparagraph 2.B, shall be construed so as to control or restrict the change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures, and such changes, maintenance, repairs, relocation, replacement and updating shall not require review and approval by the Commission. Any construction or installation of new structures, features or facilities on the landmark property shall not substantially deviate from, or substantially conflict with, the historic landscape design concept or historic use as set forth above, and shall not cause the landmark property to substantially deviate from, or substantially conflict with, the eight (8) criteria from County Code Chapter 18A-3 listed above.
1. The Board of Supervisors expressly finds that all other existing buildings located on Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15, other than those listed in subparagraph 2.A.i. above, do not meet the eligibility criteria for historic landmark status under County Code Chapter 18A and shall not be subject to the conditions and restrictions contained herein.

PASSED, APPROVED, AND ADOPTED by the Santa Barbara County Board of Supervisors, Santa Barbara, this 25th day of February ____, 2003, by the following vote:

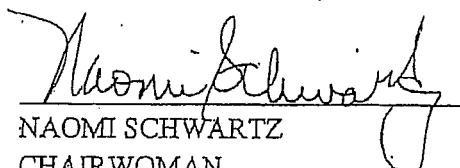
AYES: Supervisors Schwartz, Rose, Marshall, Gray, Centeno

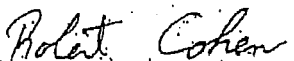
NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD


 NAOMI SCHWARTZ
 CHAIRWOMAN
 SANTA BARBARA COUNTY
 BOARD OF SUPERVISORS

BY: 
Deputy

Approved as to form:

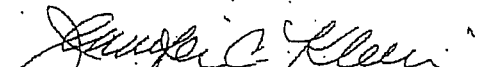
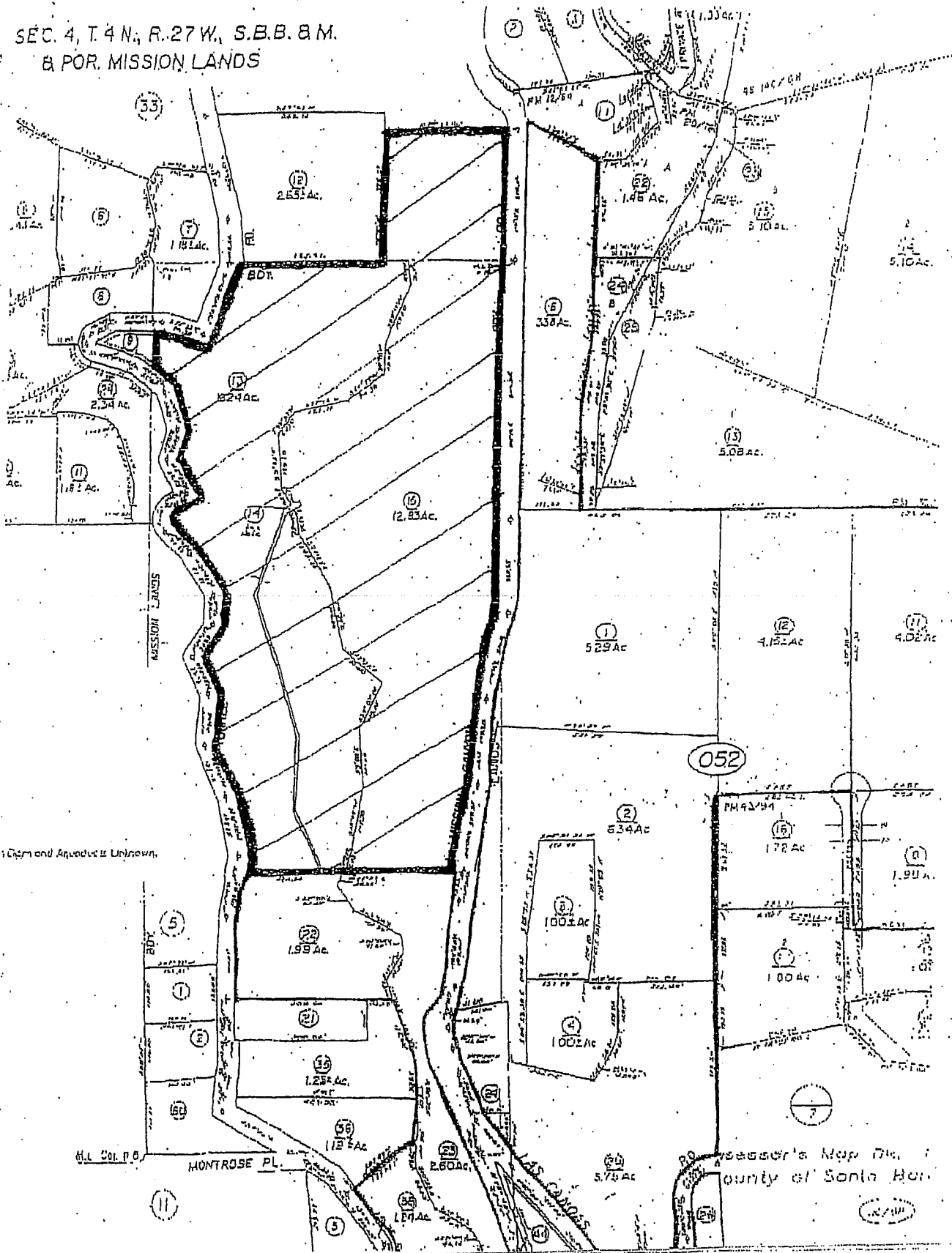

 Deputy County Counsel

EXHIBIT "A"

SEC. 4, T. 4 N., R. 27 W., S.B.B. & M.
 & POR. MISSION LANDS



10m and Aqueduct is Unknown.



000490

- | | | | |
|---|--------------------------|---|---------------------|
|  | Mission Dam and Aqueduct |  | Blaksley Library |
|  | Indian Steps |  | Campbell Bridge |
|  | Entry Steps |  | Caretaker's Cottage |
|  | Information Kiosk | | |

EXHIBIT "B"

**Letter dated July 18, 2007 from County of Santa Barbara Planning and Development
setting forth Substantial Conformity Determination for original Meadow Terrace project**



County of Santa Barbara Planning and Development

John Baker, Director

Dianne Black, Director Development Services

John McInnes, Director Long Range Planning

July 18, 2007

Ed Schneider
Santa Barbara Botanic Garden
1212 Mission Canyon Road
Santa Barbara, CA 93105

RE: Santa Barbara Botanic Garden, 72-CP-116, APN 023-340-015
Substantial Conformity Determination for Meadow Terrace Exhibit

Dear Mr. Schneider:

Planning and Development has reviewed your request for a Substantial Conformity Determination (SCD) for the installation of the Meadow Terrace Exhibit, as follows:

The project site is the former site of a large oak tree that was diseased and recently removed on the west side of the Meadow. The proposal is for a three-tiered exhibit plaza area with three low level rock retaining walls defining the levels, and 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 sandstone 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 fill.

Please note that the location of the proposed project is within the area of the Botanic Garden that is designated a County Historic Landmark (#24). Pursuant to the Landmark designation (Board of Supervisors Resolution 2003-059), the historic landscape design concept of the Garden is "characterized by a system of trails through and around plant communities, displays, exhibits, and structures. Such plant communities, displays, and exhibits have, with only limited exceptions, historically been dedicated to plants native to California and the California Floristic Province. No changes to the [Garden] shall be made which substantially deviate from the foregoing historic landscape design concept or historic use of the landmark property unless express consent in writing is first had and obtained from the Historic Landmarks Advisory Commission..." The Landmark designation goes on to state that the "change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures" may occur without review or approval by the Historic Landmarks Advisory Commission (HLAC) with the understanding that such activity not substantially deviate from the historic landscape design concept and use of the Garden.

Development Review
Building & Safety
Energy, Administration
123 E. Anapamu Street
Santa Barbara, CA 93101
Phone: (805) 568-2000
FAX: (805) 568-2030

Long Range Planning
30 E. Figueroa St, 2nd Floor
Santa Barbara, CA 93101
Phone: (805) 568-3380
FAX: (805) 568-2076

Building & Safety
185 West Hwy 246, Ste 101
Buellton, CA 93427
Phone: (805) 686-5020
FAX: (805) 686-5028

Development Review
Building & Safety
Agricultural Planning
624 W. Foster Road
Santa Maria, CA 93455
Phone: (805) 934-6250
FAX: (805) 934-6258


As a new exhibit area, the proposed project falls within this category of work that may occur without review or approval by the HLAC, but please keep this designation in mind when installing the project and selecting plant species and communities for the exhibit space.

It has been determined by Planning and Development that your request for substantial conformity to case number 72-CP-116 can be made since this project falls under the category of continued operation and maintenance of the Garden; maintaining and creating exhibits is considered part of the ongoing operation of the Garden that is approved under the existing CUP.

It has further been determined that no Land Use Permit is required to effectuate the SCD as the project would otherwise be exempt from permits. However, an electrical permit through Building and Safety is required in order to install landscape lighting within the project location.

Please contact Alex Tuttle at (805) 884-6844 with any questions regarding this letter.

Sincerely,


Dave Ward, Deputy Director

Encl.

cc: case file #72-CP-116
Alex Tuttle, Planner
Anne Almy, Supervising Planner
Records Management
Accounting (cover letter only)
Salud Carbajal, First District Supervisor
Michael Cooney, First District Planning Commissioner
Marc Chytilo, 1505 Mission Canyon Road, Santa Barbara, CA 93105
MCA, c/o Tim Steele, 903 State Street, #210, Santa Barbara, CA 93101

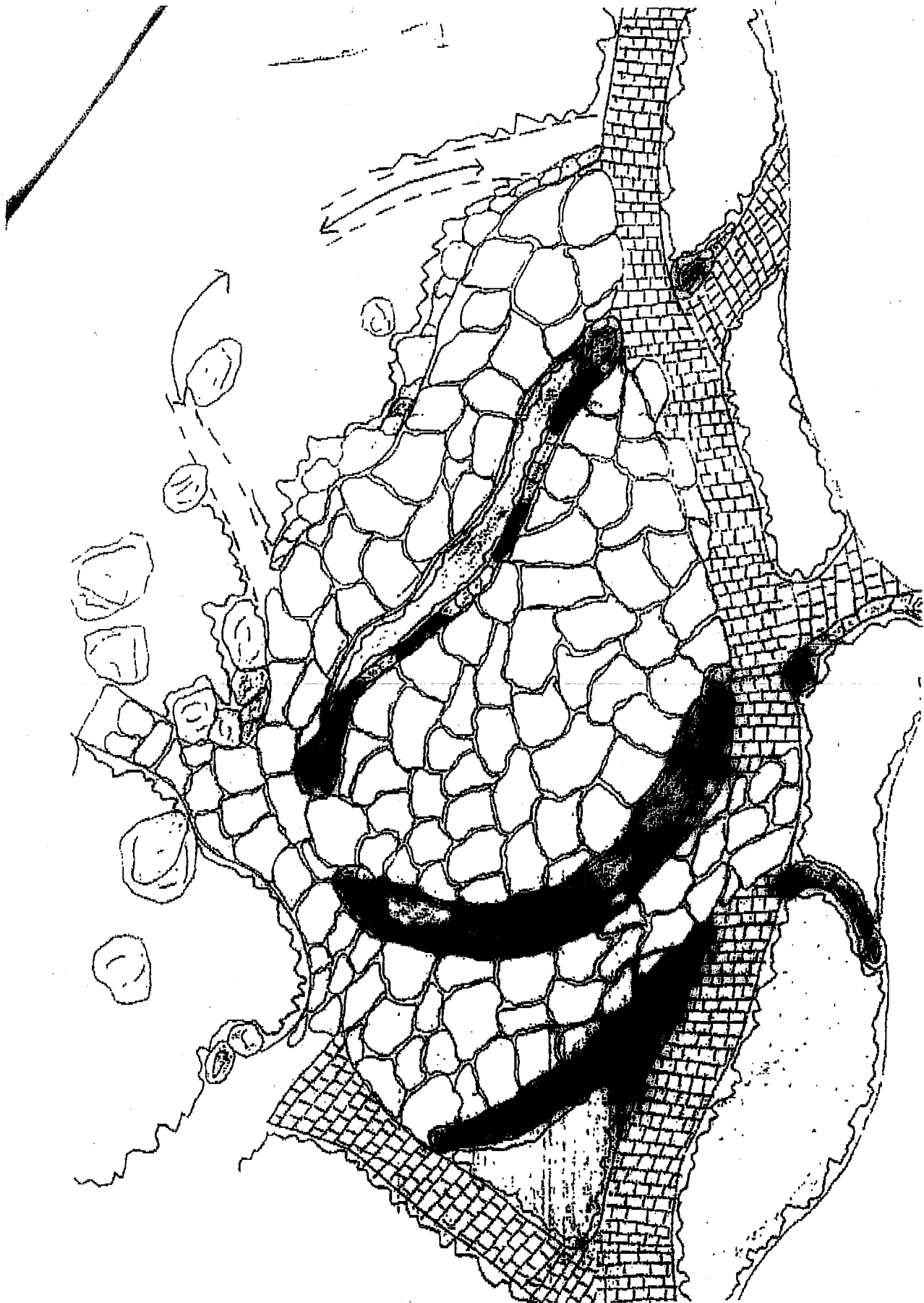


EXHIBIT "C"

Excerpts from Santa Barbara County Planning Commission action letter dated October 30, 2009 setting forth findings that mitigation measures reduce impacts from paving and Meadow Terrace project to less than significant levels

The project would also result in significant but mitigable impacts to several historic resources on the site. Installation of the pavers on existing earthen trails and installation of the Meadow Terrace next to the Meadow area would compromise the naturalistic design of the Historic Garden, which has been historically characterized by the subtle variations found in nature. Paving of the trails would result in a significant loss of naturalistic landscape features and would formalize and make uniform what was originally designed as an informal and unaffected landscape. Installation of the Meadow Terrace would introduce a more architectural and fabricated element into an otherwise informal landscape, interrupting the naturalistic meadow to canyon transition. Mitigation to reduce the impact of the pavers includes limiting the extent of additional paving to no more than 10% beyond existing paving, and restricting it to the area of existing paving in and around the Administration/Education area, Horticulture/Support area, the currently paved central areas surrounding the Meadow, and selected adjacent areas for accessibility. Mitigation to reduce the impact of the Meadow Terrace to a less than significant level includes a project redesign so that hardscape is minimized, a dead and previously removed tree is restored, and the terrace reflects the naturalistic and informal design historically associated with the area through irregularly berming soil against the walls.

EXHIBIT "D"

**County Counsel Office Memorandum dated April 5, 2005 setting forth conclusion that
2004 paving project was exempt from jurisdiction of Historic Landmarks Advisory
Commission**



COUNTY COUNSEL
OFFICE MEMORANDUM

Jennifer C. Klein
Deputy County Counsel

Telephone: (805) 568-2950
FAX: (805) 568-2982

April 4, 2005

To: Historic Landmarks Advisory Commission
Subject: Botanic Garden Trail Paving Project

This memorandum memorializes County Counsel's response to the Historic Landmarks Advisory Commission's question articulated below concerning the Botanic Garden's trail paving project, originally provided orally to the Commission at its September 2004 meeting. The Commission has requested this written opinion to assist it and the Botanic Garden in better understanding the operation of the conditions imposed by Board of Supervisors' Resolution 2003-059.

Question

Whether proposed changes the Botanic Garden's trails should be brought to the Commission for review and approval pursuant to Board Resolution 2003-059, which conferred landmark status to certain portions of the Botanic Garden?

Brief Answer

No. No condition of the Resolution requires the Botanic Garden's trail paving project to be reviewed and approved by the Commission. The Botanic Garden's paving project may reasonably be considered a *change to trails*, which is an activity that is specifically exempt from the general conditions imposed by section 2.B. of Resolution 2003-059, including the condition that the Garden obtain consent from the Commission before commencing the trail paving project under certain circumstances.

Background

On February 25, 2004, the Board of Supervisors passed Resolution 2003-059:

A RESOLUTION DECLARING THAT THOSE PORTIONS OF THE SANTA BARBARA BOTANIC GARDEN, 1212 MISSION CANYON ROAD, SANTA BARBARA, CALIFORNIA, LOCATED ON ASSESSOR'S PARCEL NOS. 23-340-13, 23-340-14 AND 23-340-15 ARE WORTHY OF PROTECTION UNDER CHAPTER 18A OF THE SANTA BARBARA COUNTY CODE, AND PRESCRIBING CONDITIONS TO PROTECT AND PRESERVE THEM AS ADDITIONS TO COUNTY LANDMARK #24.

The full text of this resolution is attached to this memorandum as Attachment A. The language in Board Resolution 2003-059, which was largely the product of compromise and cooperation, attempts to balance the public's interest in historic preservation with the private interests of the Botanic Garden.

At the Historic Landmarks Advisory Commission's August 9, 2004 meeting, Nancy Johnson, on behalf of the Botanic Garden, presented to the Commission the Botanic Garden's proposed additions and improvements to its facilities. Ms. Johnson explained that the Botanic Garden had removed and replaced natural paving stones with synthetic interlocking pavers at the main entrance to the Botanic Garden, which extends to, but stop before the Meadow portion of the Botanic Garden. At the Meadow, a dirt trail that extends around the edge of the Meadow was paved with synthetic pavers. In addition, the area around the "Great Oak Tree", which was previously dirt, was paved with the synthetic pavers. In addition, the Los Arroyos dirt trail, which extends almost to the Teahouse, was paved with synthetic pavers. The Botanic Garden also planned to replace the decomposed granite path extending from the Meadow to the Administration Building with synthetic pavers.

In response to Ms. Johnson's presentation, the Commission expressed concern that the Botanic Garden had paved trails without first seeking the review and approval of the Commission, and consequently took action to refer the matter to County Counsel for an opinion regarding whether the Botanic Garden's paving project required prior Commission approval. The Commission also passed a motion requesting that the Botanic Garden perform no further paving work until this issue is resolved. This request was not honored and the Botanic Garden completed the paving project by replacing the decomposed granite path leading to the Administration Building with synthetic pavers.

On August 19, 2004, attorney Richard Battles, wrote to the Commission on behalf of the Botanic Garden, expressing its opinion that Board of Supervisors Resolution 2003-059 does not "restrict in any way the Botanic Garden from undertaking the paving project and that the project does not require the approval of the Landmarks Commission." (Battles August 19, 2004 letter, page 1, attached as Attachment B.)

This memorandum responds to the Commission's request for an opinion regarding the following question: *Whether proposed changes the Botanic Garden's trails should be brought to the Commission for review and approval pursuant to Board Resolution 2003-059, which conferred landmark status to certain portions of the Botanic Garden?*

Analysis

A. What did the Board designate as a "Landmark" when it passed Resolution 2003-059?

By enacting Resolution 2003-059 the Board essentially: (1) found that certain defined "premises" meet the eligibility requirements and selection standards for landmark status, (2) designated those premises a Historical Landmark, subject to certain conditions,

and (3) found that certain existing buildings *do not* meet the eligibility requirements or selection standards for landmark status, and *shall not* be subject to conditions.

Specifically, the Resolution states: "NOW, THEREFORE IT IS RESOLVED as follows:

1. The premises defined herein as the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT, 1212 Mission Canyon Road, Santa Barbara, California, located on Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15, meet the eligibility criteria and selection standards for a County Historic Landmark as described in County Code, Chapter 18A, as established by evidence presented to the Board;

2. The Santa Barbara County Board of Supervisors hereby designates the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT, Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15, as a Historic Landmark, subject to the following conditions: ...

3. The Board of Supervisors expressly finds that all other existing buildings located on Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15, other than those listed in subparagraph 2.A.i.¹ above, do not meet the eligibility criteria for historic landmark status under County Code Chapter 18A and shall not be subject to the conditions and restrictions contained herein."

The meaning of the phrase "premises defined herein as the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT, 1212 Mission Canyon

¹ 2.A.i. states: Demolition, removal or destruction, partially or entirely, of the following structures or features, as depicted on the attached map, shall be prohibited unless express consent in writing is first had and obtained from the Historic Landmarks Advisory Commission, with reasonable conditions imposed as deemed necessary;

- a) Mission Dam and Aqueduct
- b) "Indian Steps"
- c) Entry Steps (1948)
- d) Information Kiosk (1937)
- e) Original Library (1941)
- f) Campbell Bridge
- g) Caretaker's Cottage (1927); provided however, that the Board of Supervisors hereby expressly consents to the relocation of the Caretaker's Cottage to another site in the Santa Barbara Botanic Garden.

Road, Santa Barbara, California, located on Assessor's Parcel Nos. 23-340-13, 23-340-14 and 23-340-15," is important because this is what the Resolution "landmarked".

The Resolution's recitals define the phrase "SANTA BARBARA BOTANIC GARDEN, MISSION DAM, AND AQUEDUCT" as (1) the entirety of APN 23-340-14, including the Mission Dam and Aqueduct, (2) APN 23-340-13, and (3) APN 23-340-15. This definition appears to cover the entirety of Assessor Parcel Numbers 23-340-13, 23-340-14, and 23-340-15. Section 1 of the Resolution broadly finds that all three parcels meet the eligibility criteria and selection standards for a landmark, and section 2 broadly designates the entire three parcels as a landmark. However, section 3 of the Resolution expressly excludes from its finding that all three parcels meet the eligibility criteria and selection standards for a landmark, all buildings that are not listed in 2.A.1. [see footnote 1]. Thus, buildings that are not listed in 2.A.i. are not a part of the designated landmark. Moreover, they cannot be part of the landmark because the Board expressly found that they do not meet the designation criteria or standards for selection.

Based on the plain language of the Resolution, it is reasonable to conclude that the Board of Supervisors designated as a Landmark the entirety of parcel numbers 23-340-13, 23-340-14 and 23-340-15, except for buildings on those parcels that are not listed in section 2.A.i.

B. What conditions did Resolution 2003-059 impose on the designated Landmark, or portions of the Landmark and how do they apply to the Botanic Garden's trail paving project?

Resolution 2003-059 imposes two sets of "conditions" on the Landmark. The first set of conditions only applies to a specified list of historic structures and features of the Landmark. [See Resolution sections 2.A.i and 2.A.ii.] The second set of conditions concerns the Landmark's "continued use as a botanic garden" and applies to the entire Landmark. [See Resolution sections 2.B.i and 2.B.ii.]

1. Conditions imposed by Section 2.A. The conditions imposed by Resolution section 2.A. only apply to certain listed structures or features. The paving project instigated by the Botanic Garden last autumn does not appear to involve any of the structures or features listed at 2.A.i. This is because the present paving project involves only existing walkways and trails, none of which are specifically listed at section 2.A.i. Therefore, the conditions imposed by section 2.A.i and 2.A.ii do not apply to the paving project.

2. Conditions imposed by Section 2.B i & ii. The second set of conditions, found at sections 2.B.i and 2.B.ii, apply more broadly.

(a) **Section 2.B.i.** The Board in section 2.B.i. states:

2.B. i. The Santa Barbara Botanic Garden has
historically functioned as a traditional

botanical garden holding documented collections of living plants for purposes of conservation, scientific research, display and education. The historic landscape design concept of the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT is characterized by a system of trails through and around plant communities, displays, exhibits and structures. Such plant communities, displays, and exhibits have, with only limited exceptions, historically been dedicated to plants native to California and the California Floristic Province. No changes to the SANTA BARBARA BOTANIC GARDEN, MISSION DAM AND AQUEDUCT shall be made which substantially deviate from the foregoing historic landscape design concept or historic use of the landmark property unless express consent in writing is first had and obtained from the Historic Landmarks Advisory Commission, with reasonable conditions imposed as deemed necessary. [Emphasis added.]

Section 2.B.i does essentially the following: (1) describes the historic use of the Santa Barbara Botanic Garden, (2) describes the Landmark's "historic landscape design concept", and (3) prohibits changes to the Landmark that substantially deviate from the "historic landscape design concept" or "historic use" of the Landmark, without the express consent of the Historic Landmarks Advisory Commission's consent.

The plain meaning of this section is that the Garden may only make changes to the Garden which deviate from the "historic landscape design concept" IF the Garden first obtains the Commission's consent, and if it complies with conditions deemed necessary and imposed by the Commission for the proposed project, if any. Thus, unless an exemption to this condition applies, if the trail paving project would constitute a change to the landmark which substantially deviates from the historic landscape design concept or historic use of the Garden, then the Garden is required to obtain the Commission's consent before commencing the project. In the present case, an exemption does apply, see paragraph (c) below.

(b) **Section 2.B.ii.** Section 2.B.ii impose the following condition on the construction or installation of "new structures, features or facilities":

Any construction or installation of new structures, features or facilities on the landmark property shall not substantially deviate from, or substantially conflict with, the historic landscape design concept or historic use as set forth above, and shall not cause the landmark property to substantially deviate from, or substantially conflict with, the eight (8) criteria from County Code Chapter 18A-3 listed above.

Under section 2.B.ii, the Board of Supervisors specifically called out "any construction or installation of new structures, features or facilities" and required that they "not substantially deviate from, or substantially conflict with, the historic landscape

design concept or historic use..." and that they "not cause the landmark to substantially deviate from, or substantially conflict with the eight (8) criteria from County Code Chapter 18A...." Thus, if the trail paving project involves "any construction or installation of new structures, features, or facilities," which "substantially deviate from, or substantially conflict with the historic landscape design concept," etc., then the project would be absolutely prohibited, unless an exemption applies. In the present case an exemption applies, as explained below in paragraph (c).

(c) **Exemption from Conditions imposed by Section 2.B (i & ii).** The Board of Supervisors significantly limited the discretion of the Commission to review projects when it created an *exemption* to the conditions imposed by section 2.B. This exemption also significantly limited the applicability of the prohibition on the installation or construction of new structures, features, or facilities under certain circumstances. This exemption was created by the first part of section 2.B.ii, which states:

2.B. ii. Nothing in this subparagraph 2.B. shall be construed so as to control or restrict the change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures, and such changes, maintenance, repairs, relocation, replacement and updating shall not require review and approval by the Commission. [Emphasis added.]

This exemption applies to the entirety of section 2.B., subsections ii and i included. Due to the exemption, a proposed "*change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures*", would not require the "review and approval" of the Commission. This would be the case even if the project "substantially deviates from" the "historic landscape design concept." Furthermore, under this exemption, "*change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures*," would not be prohibited even if they involved the "construction or installation of new structures, features, or facilities" that substantially deviated from the historic landscape design concept or historic use of the Garden, or substantially deviated from or conflict with the criteria at County Code Chapter 18A, section 18A-3. In the present case, the trail paving project can reasonably be considered to be a *change* to *trails*, which is a project that is exempt from the conditions imposed by section 2.B. of the Resolution.

D. If the Botanic Garden is in violation of the conditions of the Resolution, what options are available to the Commission?

If the Botanic Garden violates any applicable conditions imposed by Resolution 2003-059 then the Commission may seek enforcement consistent with the terms County's Historical Landmarks Ordinance, Chapter 18A, section 18A-8 as follows:

The historic landmarks advisory commission is charged with the responsibility for the enforcement of the provisions of this chapter and all conditions imposed hereunder. If unable otherwise to obtain compliance with the provisions of this chapter and conditions imposed hereunder, it may refer the matter to the board of supervisors or to the district attorney or to the county counsel for appropriate action. (Ord. No. 4425, § 1)

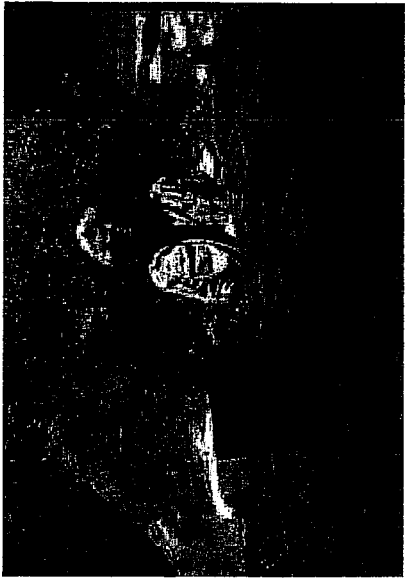
As explained above, in the present case, the trail paving project is exempt from the conditions imposed by Resolution section 2.B. Because those conditions do not apply to the trail paving project, the Garden has not violated them by commencing the project in the first place, or by commencing the project without first obtaining Commission consent.

Conclusion

It is regrettable that the Garden did not consult with the Commission concerning the nature of the project, and its compatibility with the historic use and historic landscape design concept for the Garden before commencement of the project. However, under the Resolution as it presently exists, it is reasonable to conclude that the Garden was neither prohibited from paving the trails, nor required to first obtain the Commission's review and permission before commencing the trail paving project, since the paving can reasonably be considered a change to trails, which is specifically exempt from such conditions. The Commission is free to recommend changes or amendments to Board Resolution 2003-059 to make it more or less protective of the landmark, consistent with County Code Chapter 18A.

EXHIBIT "E"

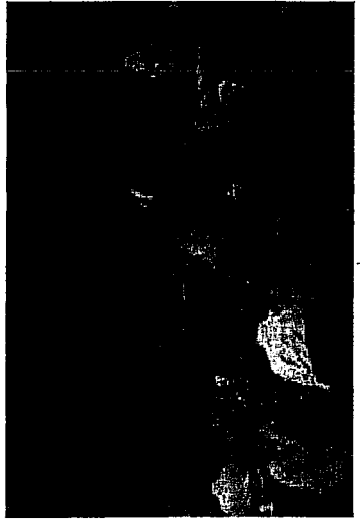
Pictures depicting prior uses of Meadow Terrace site



bioblitz 07



bioblitz 07



ggnn 03



auktion 7/02



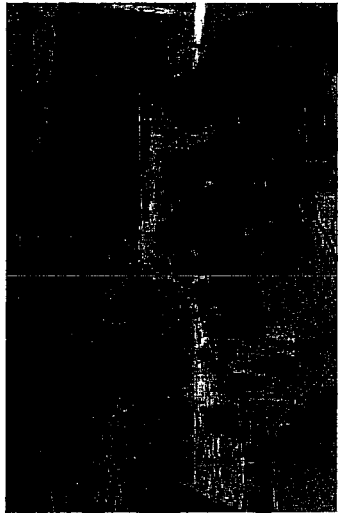
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birthday 06



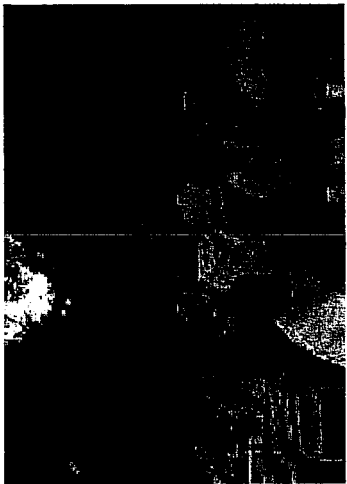
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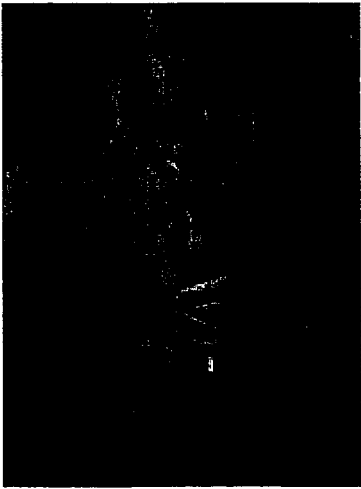
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birthday 06



ggnn 03



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high tea 05



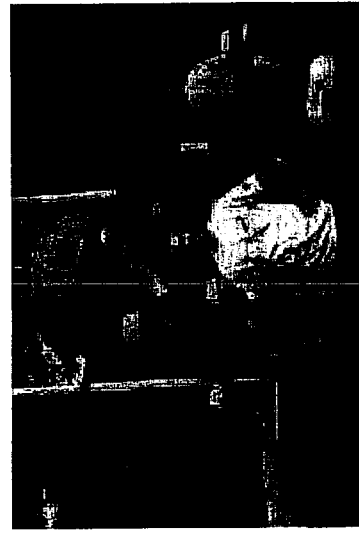
high tea 05



high tea 06



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ice cream social 02



ice cream social 02



members day 55



member picnic 07



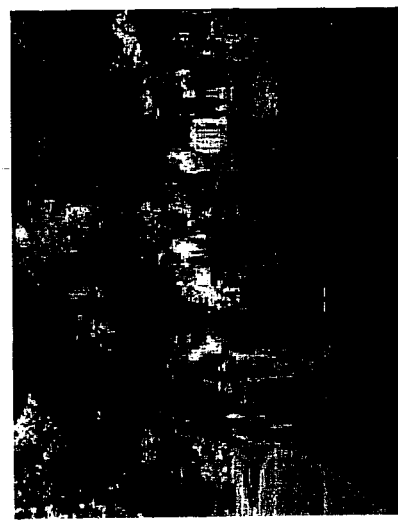
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music 02



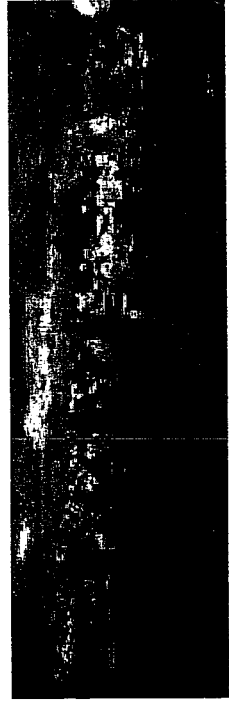
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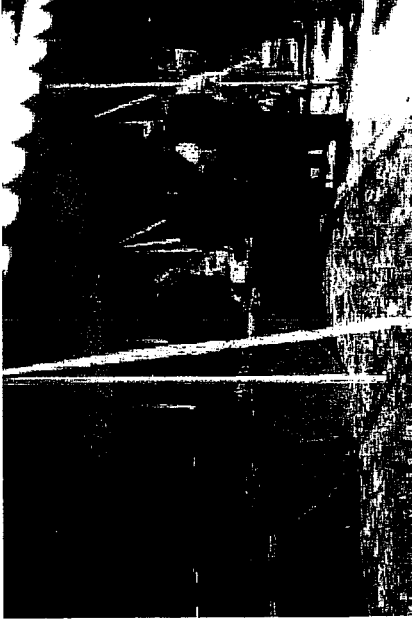
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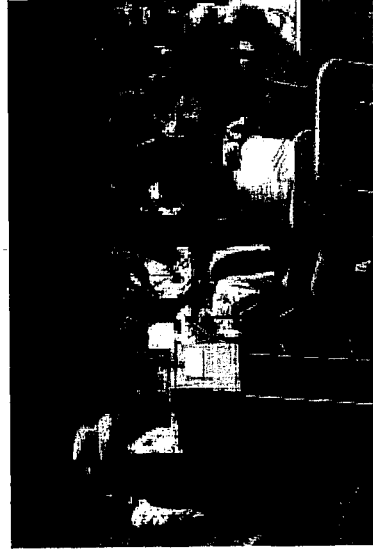
sb beautiful lunch 04



downtown rotary 07



downtown rotary 07



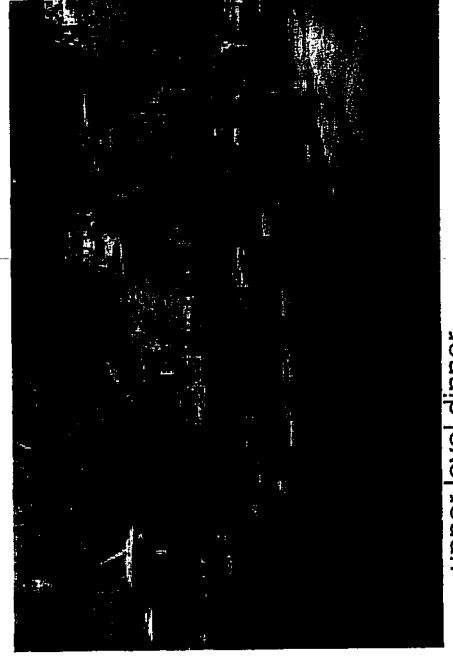
summer 05



toad hall naming 05



toad hall naming 05



upper level dinner



vol lunch 07

EXHIBIT "F"

Picture depicting improvements to Home Demonstration Garden constructed in 1990

