

# Mullen & Henzell L.L.P.

ATTORNEYS AT LAW

e-mail: rbattles@mullenlaw.com



September 20 2007

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RAMÓN R. GUPTA  
RAFAEL GONZALEZ  
JANA S. JOHNSTON  
REBECCA D. EGGEMAN  
LINDSAY G. SHINN

## HAND DELIVERED

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

**Re: Santa Barbara Botanic Garden - Meadow Terrace Exhibit  
Appeal of Actions by Historic Landmarks Advisory Commission**

Dear Honorable Supervisors:

We are writing on behalf of our client, the Santa Barbara Botanic Garden, to appeal the actions taken by the Historic Landmarks Advisory Commission (HLAC) on September 10, 2007 relating to the Garden's Meadow Terrace Exhibit. This appeal is made pursuant to Section 18A-7 of Chapter 18A of the Santa Barbara County Code. The following documents are attached and are made a part of this appeal:

**Exhibit A:** Letter to HLAC from Mullen & Henzell dated August 22, 2007 including as attachments (i) description of Meadow Terrace project; and (ii) Resolution No. 2003-059 setting forth historic landmark restrictions applicable to the Santa Barbara Botanic Garden;

**Exhibit B:** Letter to HLAC from Andrew Wyatt, Botanic Garden Director of Horticulture, dated August 22, 2007;

**Exhibit C:** Letter to HLAC from Mullen & Henzell dated September 6, 2007; and

**Exhibit D:** Opinion of County Counsel dated April 5, 2005.

It is the Botanic Garden's position that, under the clear terms of Resolution No. 2003-059, the Meadow Terrace Exhibit is exempt from the HLAC's review and approval jurisdiction. The facts and analysis which provide the basis for this position are set forth in detail in the attached letters from our office. In brief, the

DENNIS W. REILLY  
CHARLES S. BARGIEL  
KIRK R. WILSON  
JARED M. KATZ  
GRAHAM M. LYONS  
OF COUNSEL

THOMAS M. MULLEN  
1915-1991  
ARTHUR A. HENZELL  
RETIRED



Meadow Terrace Exhibit represents nothing more than a “change” to an existing “public area”. As such, it is exempt under the Resolution for the same reasons cited by County Counsel in its April 5, 2005 legal opinion, which found the Garden’s trail paving project to be exempt.

In addition, the following summary of the Garden’s position is provided in support of this appeal:

- The conversion of a natural landscaped area to a paved landscape area does not result in a substantial deviation from the historic landscape design concept and is not prohibited under Resolution No. 2003-059. The opinion of County Counsel dated April 5, 2005 makes it clear that a paving project such as this is permitted under the Resolution.
- The overall size of the project (approximately 4,200 square feet) does not result in a substantial deviation from the historic landscape design concept. The Resolution includes no limitations on the size of exempt projects. In addition, the Meadow Terrace Exhibit is exceedingly small in relation to the overall Botanic Garden property and in relation to the trail paving project which was previously held to be exempt.
- The project does not involve an intensification of use of the area and will not result in a substantial deviation from the historic use of the Meadow. The Meadow area in general, and the location of the Meadow Terrace Exhibit in particular, have been used as public areas for decades and the paving of the exhibit area will not result in intensification of use. 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.
- The project will not adversely affect a defining feature of the Garden. The project does not restrict views of the Meadow and improves accessibility to this area of the Garden by upgrading an existing public area. As such, the project complies with all applicable standards, including the standards set forth in the Resolution.
- The project does not introduce piecemeal elements that threaten the historic character of the Garden. The project simply upgrades an existing public area and is consistent with the historic landscape design concept.



- The project does not affect any of the seven structures or features identified in the Resolution.
- The project will not cause the Botanic Garden to substantially deviate from or conflict with the historic landscape design concept or historic use. Following completion of the project, the Garden will continue to function as a traditional botanic Garden, will continue to employ a system of trails through plant communities and exhibits and will continue to emphasize California native plants. Therefore, under the clear standards set forth in the Resolution, the Meadow Terrace Exhibit is a permitted project.
- The project is similar to and less significant than the 2004 trail paving project, which County Counsel found to be exempt.
- The project represents a change to an existing public area and, as such, is exempt under the express language of the Resolution.
- The project is consistent with other existing improvements at the Botanic Garden.
- The HLAC's interpretation of the Resolution violates clear constitutional limitations and results in an unconstitutional taking of the Botanic Garden property.
- The HLAC actions are not supported by the findings and its findings are not supported by the evidence in the record.
- The HLAC actions represent an abuse of discretion and were arbitrary and capricious.
- The HLAC proceeded in excess of its jurisdiction.
- The HLAC failed to proceed in the manner required by law.

The Botanic Garden endorsed Resolution No. 2003-059 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. The HLAC, however, has entirely lost sight of the Resolution's original intent and is completely ignoring the limitations on the HLAC's jurisdiction which the parties negotiated in good faith and agreed upon.

Board of Supervisors  
County of Santa Barbara  
September 20, 2007  
Page 4



Resolution No. 2003-059 is the guiding document with respect to activities and projects at the Botanic Garden. In order for the Resolution to serve its purpose, it is important to honor the present language and to respect what the Resolution does and does not restrict. Any attempt to create a different process or to impose new restrictions that are not set forth in the Resolution would violate the intent and would undermine all the effort that lead to the establishment of the Resolution.

In the final analysis, if the HLAC is permitted to misinterpret and expand the scope of the Resolution, the Botanic Garden must seek to have the Resolution rescinded or substantially modified. It is essential for the Garden's Trustees and management to retain the authority for making decisions regarding projects involving the "change, maintenance, repair, relocation, replacement, or updating of plant communities, temporary or permanent displays, exhibits, trails, public areas, interpretive materials or existing structures," including those that involve the construction or installation of new structures, features, or facilities. The Garden's authority and responsibility in that regard simply cannot be delegated to the HLAC.

It should also be noted that, if the HLAC's actions on September 10, 2007 are permitted to stand, it will have a chilling effect on the designation of other properties as historic landmarks in the future. This is true because property owners will be reluctant to allow a landmark designation where a precedent has been established for the HLAC to be overzealous in asserting its jurisdiction and imposing restrictions on such landmarked properties.

Thank you for your favorable consideration of this appeal.

Respectfully Submitted,

A handwritten signature in black ink that reads "Richard Battles".

Richard G. Battles of  
Mullen & Henzell L.L.P.  
Attorneys for Santa Barbara  
Botanic Garden

RGB:cml  
Enclosures

Board of Supervisors  
County of Santa Barbara  
September 20, 2007  
Page 5



cc: (With enclosures)  
The Honorable Fife Symington, Botanic Garden Board Chairman  
Edward Schneider, Botanic Garden President and CEO  
Nancy Johnson, Botanic Garden VP of Development and Marketing  
Michael Brown, County Administrator  
John Baker, 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  
Kevin Ready, Senior Deputy County Counsel  
Mary Pat Barry, Deputy County Counsel  
Richard Monk, Esq.

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# EXHIBIT A

Mullen & Henzell L.L.P.  
ATTORNEYS AT LAW

e-mail: rbattles@mullenlaw.com



August 22, 2007

**HAND DELIVERED**

Historic Landmarks Advisory Commission  
County of Santa Barbara  
123 East Anapamu Street  
Santa Barbara, CA 93101

J. ROBERT ANDREWS  
JEFFREY C. NELSON  
JAY L. BECKERMAN  
JOSEPH F. GREEN  
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KIRK R. WILSON  
JARED M. KATZ  
GRAHAM M. LYONS  
CO. COUNSEL

THOMAS M. MULLEN  
1915 - 1991

ARTHUR A. HENZELL  
1924 - 1991

**Re: Santa Barbara Botanic Garden - Meadow Terrace Exhibit**

Dear Commissioners:

**Introduction**

We are writing on behalf of our client, the Santa Barbara Botanic Garden, in connection with the Garden's Meadow Terrace Exhibit. A description of this project is enclosed. Also enclosed for your reference is a copy of Resolution No. 2003-059 which sets forth the historic landmark restrictions applicable to the Santa Barbara Botanic Garden. The purpose of this letter is to provide your Commission with the reasons supporting the Garden's conclusion that the Meadow Terrace Exhibit fully complies with Resolution No. 2003-059 and does not require the approval of the Landmarks Commission. The Garden also wishes to advise you that it is interested in working cooperatively with your Commission to ensure that (i) you have the opportunity to fully review and approve projects which are subject to Resolution No. 2003-059, and (ii) you remain informed and have an opportunity to comment on projects and activities which do not come under the Resolution's restrictions.

**Background**

Resolution No. 2003-059 is the result of many long hours of work and represents a collaborative effort between the Landmarks Commission's subcommittee and representatives of the Botanic 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 Botanic 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 Botanic 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.

#### **What Resolution No. 2003-059 Restricts**

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

##### **1. 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 the Landmarks Commission (with the exception





of the Caretaker's Cottage, the relocation of which has been approved by the Board of Supervisors).

## 2. Historic Landscape Design Concept

The Resolution also provides for the protection of the "historic landscape design concept" of the western 23 acres of the Garden. The historic landscape design contract concept is 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 the Landmarks Commission.

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

Resolution identifies the following activities that are not subject to the Landmarks Commission'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.

In summary, the Resolution requires Landmarks Commission approval before any changes are made to the seven identified protected structures and features. The Resolution also requires Landmarks Commission approval if the Botanic Garden wishes to substantially deviate from its historic landscape design concept or historic use, defined as a 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 Botanic Garden with respect to its future activities. The Resolution allows the Botanic 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 Botanic 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 the Landmarks Commission.

#### **Applicability of Resolution No. 2003-059 to Meadow Terrace Exhibit**

The Meadow Terrace Exhibit clearly does not involve any of the seven structures and features which are protected under the Resolution. Nor will the Meadow Terrace Exhibit cause the Botanic Garden to “substantially deviate” from or conflict with the historic landscape design concept or historic use. This conclusion is based on the simple fact that, following completion of Meadow Terrace Exhibit, the Garden will continue to employ a system of trails through plant communities and exhibits and will continue to emphasize California native plants. Accordingly, it cannot be reasonably argued that the project requires Landmarks Commission review or approval under Resolution No. 2003-059. The Meadow Terrace Exhibit 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.

#### **Going Forward**

Resolution No. 2003-059 is the guiding document with respect to activities and projects at the Botanic Garden. As indicated above, much time was spent to achieve the careful balancing of interests set forth in the Resolution. In order for the Resolution to serve its purpose, it is important to honor the present language and to respect what the Resolution does and does not restrict. Any attempt to create a different process or to impose new restrictions that are not set forth in the



Resolution would violate the intent and would undermine all the effort that lead to the establishment of the Resolution.

The selection and design of exhibits at the Garden is per se excluded under Resolution No. 2003-059. The Board of Trustees simply cannot agree to a process which would require the Botanic Garden to seek "pre approval" from the Landmarks Commission before selecting building materials or designing exhibits. The Resolution was drafted with the clear purpose of allowing these types of decisions to be made by the Garden.

That being said, the Botanic Garden wishes to maintain open lines of communication with your Commission, work cooperatively with you, and ensure that you remain informed with respect to the Garden's activities and projects. The Garden's Board of Trustees and the Landmarks Commission both highly value the Garden, recognize it as a valuable and unique resource and share a common interest in preserving and protecting it. Both parties are seeking to achieve the same goals. To that end, the Garden will continue to advise your Commission in advance before making any changes to the seven identified protected structures and features, as was recently done with the interior changes to the Information Kiosk and Library. The Garden is also willing to explore with you procedures that can be put in place to allow your Commission to remain informed regarding other activities at the Garden, without delaying the Garden's ongoing operations through a lengthy Landmarks Commission review process.

### **Conclusion**

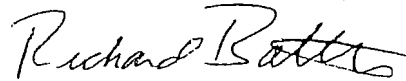
The past and present Trustees and management have been exemplary stewards of Santa Barbara Botanic Garden. The Trustees agreed to the provisions of Resolution No. 2003-059 because, like the members of the Landmarks Commission, they are committed to the long term preservation of the historic elements of the Garden. In pursuing the Garden's mission, the Trustees actively solicit and carefully consider input from those in the community with differing points of view. Inevitably, there will be those who oppose the course of action selected by the Trustees or have a different vision of what the Garden is and should be. In the final analysis, the Trustees and management can be relied upon to continue their responsible stewardship of the Garden and to comply with the letter and spirit of the Resolution.

Historic Landmarks Advisory Commission  
County of Santa Barbara  
August 22, 2007  
Page 6

The logo consists of the lowercase letters 'mh' in a white, sans-serif font, centered within a solid black square.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Richard Battles', written in a cursive style.

Richard G. Battles of  
Mullen & Henzell L.L.P.

RGB:cml

Enclosures

cc: (With enclosures)

The Honorable Fife Symington, Botanic Garden Board Chairman  
Edward Schneider, Botanic Garden President and CEO  
Nancy Johnson, Botanic Garden VP of Development and Marketing  
County of Santa Barbara Board of Supervisors  
Michael Brown, County Administrator  
John Baker, Director of Planning and Development  
Diane Black, Director of Development Services  
David Ward, Deputy Director of Planning and Development  
Anne Almy, Supervising Planner  
Kevin Ready, Senior Deputy County Counsel  
Mary Pat Barry, Deputy County Counsel

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## PROJECT DESCRIPTION

### Santa Barbara Botanic Garden Meadow Terrace Exhibit

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.

**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 Lutah 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 25 day of February \_\_\_, 2003, by the following vote:

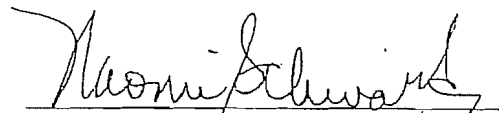
AYES: Supervisors Schwartz, Rose, Marshall, Gray, Centeno

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:

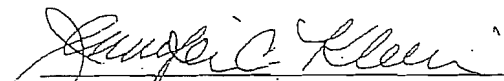
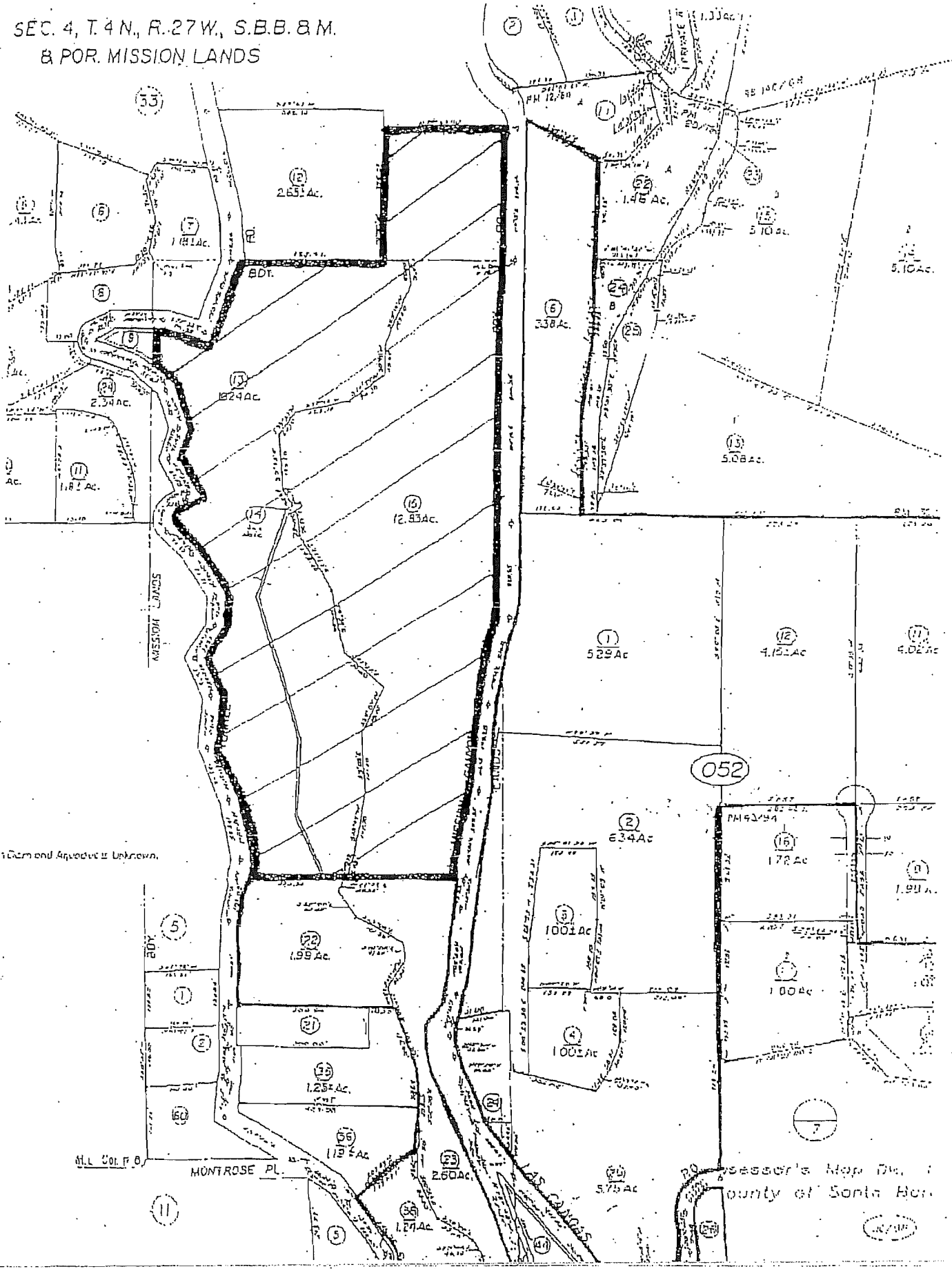
  
Deputy County Counsel

EXHIBIT "A"

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

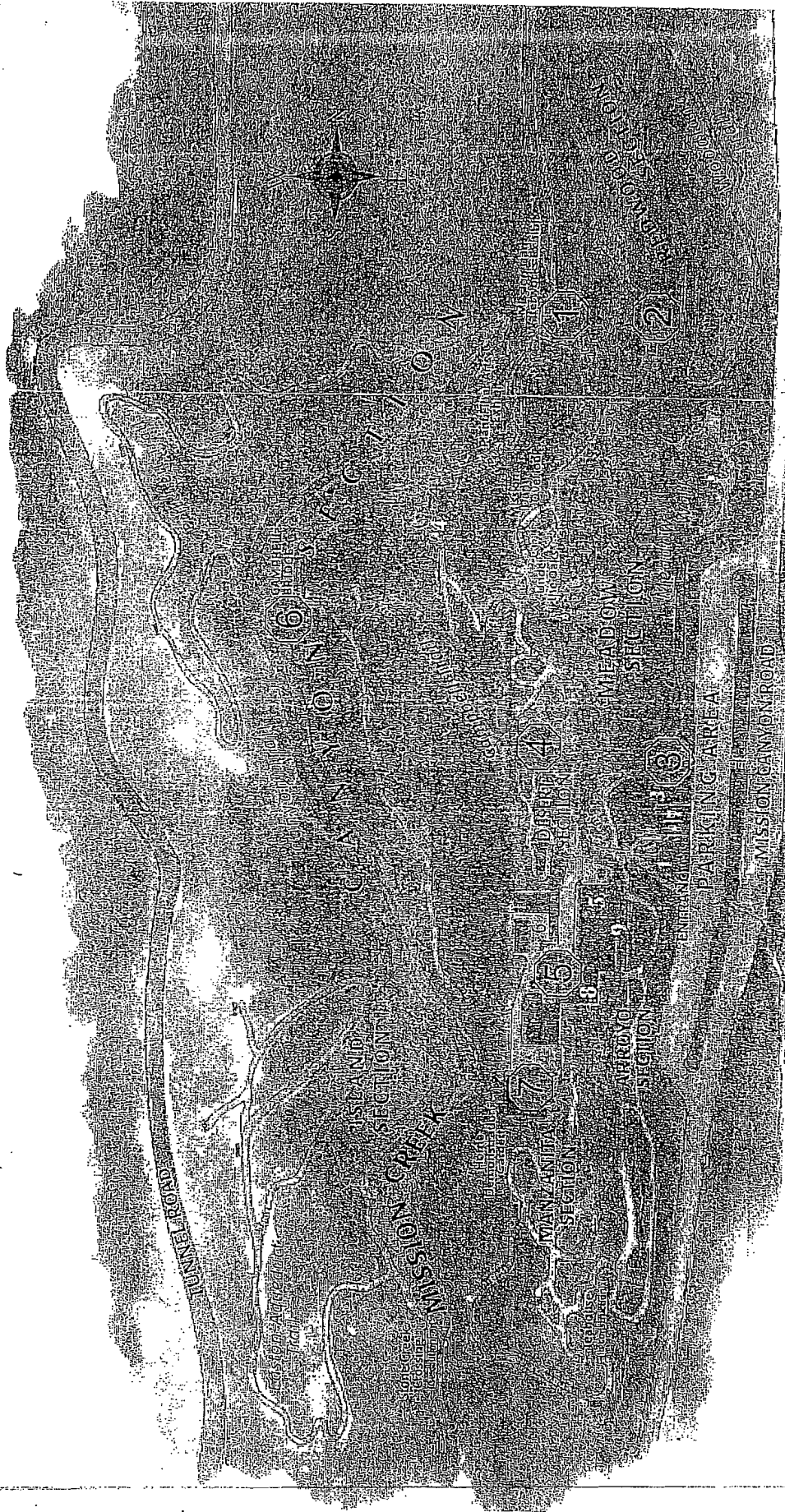


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M.L. COL. F. O.

MONTROSE PL.

Surveyor's Map No. 1  
 County of Santa Bern.



- ①
- ②
- ③
- ④

Mission Dam and Aqueduct  
 Indian Steps  
 Entry Steps  
 Information Kiosk

- ⑤
- ⑥
- ⑦

Blaksley Library  
 Campbell Bridge  
 Caretaker's Cottage

EXHIBIT B

August 22, 2007

Historic Landmarks Advisory Commission:

As the Santa Barbara Botanic Garden's Director of Horticulture, I would like to address concerns expressed about the old oak tree:

1. The Meadow Terrace Exhibit was designed to fill the void left by the oak's removal.
2. The life span of a coast live oak is 150–200 years under good conditions
3. The Botanic Garden's efforts to save the oak stretches back over 15 years and include:
  - Removing built up soil around trunk
  - Limiting access around the base of the tree
  - Grafting young saplings into the tree (documentation enclosed).
4. Seven certified arborists gave their opinion on the tree's condition and concurred that the tree was a public safety hazard and there was no other choice but to remove it.

#### Meadow Terrace Exhibit

Horticultural interpretative aspects:

1. Display of large containerized California native trees and shrubs on terraces that the Botanic Garden has not had space to grow, adding an extra dimension to its displays and increasing taxa
2. 3-foot-wide borders behind each low retaining wall planted with ground cover and sub-shrubs
3. Plants in containers and in borders will be part of the Botanic Garden's living collections, accessioned and labeled in the same manner as other plants in the collections
4. Screening plantings of shrubs to be planted at the front of the terrace and along right hand side

Historic use of exhibit space includes but is not limited to:

- Traditional gathering place for decades
- Volunteer luncheons
- Evening music events (including dancing)
- Children's classes and activities
- Scientific events and activities

- Members 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

To establish my credentials, I have studied garden history and development. I have written two theses on the development of botanic gardens' living collections taking into consideration history. I have had the pleasure of working for two of the world's oldest botanic gardens - the University of Oxford Botanic Garden, founded in 1621, and the Royal Botanic Gardens Kew, founded in 1715. Both of these gardens protect specific historical features but have always embraced new design principals and horticultural advances.

I am appreciative of the HLAC for designating features at the Botanic Garden, such as the Information Kiosk and Entrance Steps as historic landmarks. I would like to emphasize that the Horticulture Department is also committed to maintaining the historic vistas and sweeping views at the Botanic Garden. It is important to note that the Botanic Garden is not an example of one landscape architect's work, like Dun Barton Oaks or Valverde; rather, it has incorporated design ideas through a committee process throughout our history. The Botanic Garden is dynamic, like all botanic gardens. Botanic gardens are melting pots of horticulture experimentation and design. Plantings at the Botanic Garden have changed radically over time. It is critical that species rich scientific collections like those found at the Botanic Garden be able to change on a regular and continuing basis.

Sincerely,

Andrew Wyatt, M.S., DIP Hort Kew, NDAH  
Director of Horticulture

# EXHIBIT C



Mullen & Henzell L.L.P.  
ATTORNEYS AT LAW

e-mail: rbattles@mullenlaw.com

September 6, 2007

**HAND DELIVERED**

Historic Landmarks Advisory Commission  
County of Santa Barbara  
123 East Anapamu Street  
Santa Barbara, CA 93101

**Re: Santa Barbara Botanic Garden - Meadow Terrace Exhibit**

Dear Commissioners:

**Introduction**

We are writing to supplement our letter to you dated August 22, 2007 relating to the Santa Barbara Botanic Garden's Meadow Terrace Exhibit and the comments made to your Commission on behalf of the Garden at your August 22 meeting. We also wish to provide you with our comments and analysis with respect to the office memorandum dated April 5, 2005 from Jennifer Klein, Deputy County Counsel, relating to the Botanic Garden's trail paving project (the "2005 Opinion"), and the email dated August 24, 2007 from Kevin Ready, Senior Deputy County Counsel, relating to the Garden's Meadow Terrace Exhibit (the "2007 Opinion").

**Applicability of 2005 Opinion to Meadow Terrace Exhibit**

We believe it is clear that the analysis set forth in Ms. Klein's 2005 Opinion applies equally to the Garden's Meadow Terrace Exhibit. The 2005 Opinion, the conclusions from which were presented verbally by Ms. Klein to the Historic Landmarks Advisory Commission on September 13, 2004, 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]

**a. The Meadow Terrace Project is Similar to and Less Significant than the 2004 Trail Paving Project**

Ms. Klein’s analysis applies to the Meadow Terrace Exhibit for two reasons. First, the Meadow Terrace Exhibit is similar in all important respects to the paving project:

- The Meadow Terrace Exhibit is located in the same area as a portion of the trail paving project, and the paved trail is immediately adjacent to the Exhibit.
- Both projects involve the creating of paved surfaces. In the case of the trail paving project, the paved surface consists primarily of concrete pavers. The Meadow Terrace Exhibit will use natural sandstone pavers.
- Both the trail paving project and the Meadow Terrace Exhibit are primarily at ground level and at existing grade, with the maximum height of the Meadow Terrace Exhibit reaching only 18 inches. In this regard it should be noted that the Meadow Terrace Exhibit was designed by three extremely well qualified and respected landscape designers who were careful to take into consideration views, setting, compatibility and other relevant issues. The result is a beautifully designed exhibit that will not obstruct views across the Meadow in any way and will enhance the aesthetics of the Meadow area.

In addition, the Meadow Terrace Exhibit represents a far less significant project than the trail paving project:



- The Meadow Terrace Exhibit is only a fraction of the size of the paving project.
- The Meadow Terrace Exhibit will use natural sandstone pavers, thereby reducing the impacts of the project as compared to the trail project, which used concrete pavers. In addition, the Meadow Terrace project incorporates exhibit space for plants and will therefore enhance the Meadow area.

Because of the similarities between the two projects, and because the Meadow Terrace Exhibit is significantly smaller and uses natural paving materials, the paving project and the 2005 Opinion which found that project to be exempt, establish a clear precedent that the Meadow Terrace Exhibit is exempt from review and approval by your Commission. It should also be noted that in his 2007 Opinion, Mr. Ready agrees with the conclusion in Ms. Klein's 2005 Opinion that the trail paving project was exempt from Commission review under the Resolution.

**b. Changes to Existing Public Areas are Exempt**

The conclusions in Ms. Klein's 2005 Opinion are based, in part, on the determination that the paving project represented a "change" to existing "trails". In the same way, the Meadow Terrace Exhibit represents a "change" to an existing "public area". "Changes" to "public areas" are exempt from Commission review in precisely the same way that "changes" to "trails" are exempt under the Resolution. 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 Meadow Terrace Exhibit 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

Attachment "A" to this letter includes photos of the Meadow Terrace Exhibit area showing the use of the area by the public for a variety of purposes.

The Meadow Terrace Exhibit represents nothing more than a change to an existing public area within the Garden. The installation of sandstone pavers 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 installation of the Exhibit is exempt from review and approval by the HLAC.

**The Meadow Terrace Exhibit does not Substantially Deviate from the Historic Landmark Design Concept**

Under the Resolution, a project that is subject to the HLAC's review and approval jurisdiction must be permitted as long as it does not "substantially deviate" from the "historic landscape design concept", as that term is defined in the Resolution. In the present case, it cannot be reasonably argued that the Exhibit represents a "substantial deviation" from the "historical landmark design concept". As was stated to your Commission previously, following the completion of the Meadow Terrace Exhibit, the Santa Barbara Botanic 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 Meadow Terrace Exhibit is a permitted project.



In this regard it is also important to emphasize that, as stated in the 2007 Opinion, what the Resolution protects is a “concept” and not a “plan”. The original landscape plans for the Botanic 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 Botanic Garden to any particular landscape plan, but instead seeks to preserve a concept.

It should also be noted that the design of the Meadow Terrace Exhibit is consistent with other improvements at the Botanic Garden. For example, as shown in the photograph included under Attachment “B” to this letter, the Caretaker’s Cottage, which is a landmarked structure, includes a Home Demonstration Garden consisting of a large flagstone patio, raised planting areas with grouted sandstone retaining walls, exhibit space, and a water feature, all of which were constructed in 1990. These are the same design features that will be included in the Meadow Terrace Exhibit. Given the similarities between the two projects, it is difficult to understand how the Meadow Terrace Exhibit could be viewed as deviating in any way from the Garden’s historic landscape design concept.

As discussed above, however, it is our opinion that the HLAC need not consider whether or not the Meadow Terrace Exhibit substantially deviates from the historic landscape design concept because the project represents a “change” to an existing “public area”. As such, under the analysis in the 2005 Opinion, the project is exempt from HLAC review.

### **Examples of Substantial Deviation**

If the 2004 trail paving project and the Meadow Terrace Exhibit are exempt from HLAC review under the Resolution, then what projects would constitute a substantial



deviation from the historic landscape design concept? In our view, this can be determined by applying the following three tests established by the Resolution:

First, the Botanic Garden must continue to function as a traditional botanical garden holding documented collections of plants for purposes of conservation, scientific research, display and education. Therefore, if the Garden undertook a project that changed its primary function from that of a traditional botanic garden holding plant collections for the purposes listed above, that project would represent a substantial deviation.

Second, the Botanic Garden must continue to be characterized by a system of trails through and around plant communities, displays, exhibits and structures. Accordingly, a substantial deviation would occur if the Garden undertook a project that eliminated the trail system and/or established a method for displaying plant communities that did not involve a system of trails.

Finally, the Botanic Garden must continue to be dedicated (with limited exceptions) to plants native to California and the California Floristic Province. Under this test, a substantial deviation would occur if the Garden sought to change its focus and/or expand its exhibits and displays such that it was no longer dedicated primarily to plants native to California and the California Floristic Province.

#### **Exempt Projects do not Require Commission Review**

Mr. Ready's 2007 Opinion concludes that "any project that might be reasonably considered to "affect" the Historic Landmark, should be brought to Historic Landmarks Advisory Commission's attention and the determination that it is in compliance with the Resolution." However, the 2007 Opinion also points out, correctly, that "the narrowly drawn list of matters not requiring Commission review in section 2.B.ii would **not** require Commission's discretionary review" [Emphasis added]. As discussed above, the Meadow Terrace Exhibit is included within the narrowly drawn list of exempt matters listed in section 2.B.ii because it represents a "change" to a "public area". As such, the Botanic Garden was not required to bring this project before the Commission for review or approval.

Although certain activities and projects at the Botanic Garden are entirely exempt from your Commission's review jurisdiction, the Garden understands the Commission's interest in remaining informed and involved with respect to the Botanic Garden landmarked areas. Therefore, as we previously advised you, the Garden is



willing to work with you to develop procedures for (i) seeking your approval for projects that are restricted under the Resolution, and (ii) keeping your Commission informed regarding projects that are not subject to your formal jurisdiction.

### **The Standards Set Forth in the Resolution Should be Respected**

The Botanic Garden has serious concerns that the 2007 Opinion appears to propose a new standard for reviewing the Garden's projects. We agree with the statement in the 2007 Opinion that the Commission's review of the "historic landscape design concept" is limited, or rather focused, by the delineation of what is meant by this term in section 2.B.i., which states that the "historic landscape design concept . . . is characterized by a system of trails through and around plant communities, displays, exhibits, and structures." However, the 2007 Opinion then states, incorrectly and without any authority, as follows:

However, there is an aesthetic and historical factor that is the prerogative of the HLAC to determine and that is, on an overall scope, "Does the new terrace project fit within the historic perspective of what was meant by "historic landscape design concept?"

It is important to emphasize that the Resolution does not provide for the Commission's consideration of "aesthetic and historical" factors or the "historic perspective" when reviewing projects by the Botanic Garden. To the contrary, what the Resolution requires the Commission to do is determine whether a project substantially deviates from "historic landscape design concept", as defined in the Resolution. The term "historic landscape design concept" was developed and specifically defined in the Resolution so that a standard would be clearly established and so that the review of projects by the HLAC would be clearly limited. The defined term establishes what is historic about the Botanic Garden and what needs to be preserved.

Long hours were spent developing a workable definition for the Resolution and the process involved certain compromises. The language that was ultimately agreed upon is as follows:

The Santa Barbara Botanic Garden has historically functioned as a traditional botanical garden holding documented collections of living plants for purpose 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. [Emphasis added]

The foregoing language sets forth the negotiated standard for reviewing projects at the Botanic Garden and should be respected. If the Commission is not limited by the agreed upon definition for what constitutes the protected "historic landscape design concept", then the limitations on the Commission's review authority, which the parties negotiated and agreed to in good faith, will be lost. If the Commission is now allowed to consider "aesthetic and historical" factors and the "historic perspective", no clear standard will exist and every project and activity becomes subject to the Commission's discretionary review. This is precisely the result that the Resolution sought to avoid.

By endorsing the Resolution, the Botanic Garden agreed to significant restrictions on future projects at the Garden. At the same time, the Resolution provides for clear limitations on the Commission's authority. These limitations cannot now be removed by the introduction of new review standards. We strongly believe that, in assessing the applicability of the Resolution's restrictions to projects at the Botanic Garden, the carefully drafted language in the Resolution must be strictly adhered to.

#### **Constitutional Limitations Must be Respected**

As we have previously stated, in applying the Resolution to any particular project, it is important to bear in mind that the Resolution was drafted to respect certain constitutional limitations. To avoid an unconstitutional taking, the landmark designation of the property owned by the Botanic Garden, as a charitable organization, cannot 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 construction of exhibits and displays unless the controls are necessary to achieve a compelling government purpose.



Historic Landmarks Advisory Commission  
County of Santa Barbara  
September 6, 2007  
Page 9

The logo consists of the lowercase letters 'mh' in a white, sans-serif font, centered within a solid black square.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink that reads 'Richard Battles'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard G. Battles of  
Mullen & Henzell L.L.P.

RGB:cml  
Enclosures

cc: (With enclosures)  
The Honorable Fife Symington, Botanic Garden Board Chairman  
Edward Schneider, Botanic Garden President and CEO  
Nancy Johnson, Botanic Garden VP of Development and Marketing  
County of Santa Barbara Board of Supervisors  
Michael Brown, County Administrator  
John Baker, 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  
Kevin Ready, Senior Deputy County Counsel  
Mary Pat Barry, Deputy County Counsel  
Richard Monk, Esq.

ATTACHMENT "A"

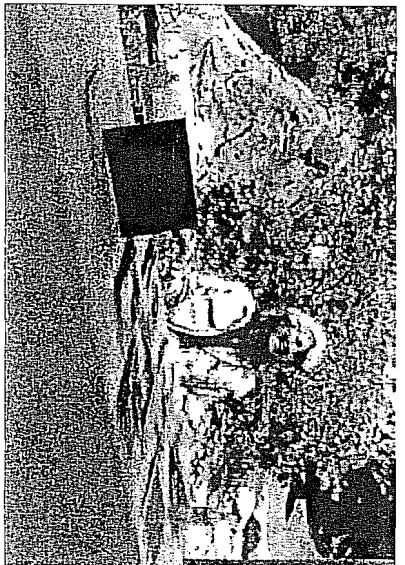
Examples of use of Meadow Terrace Exhibit location as a public area.



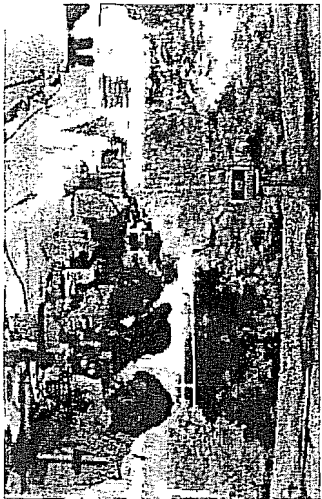
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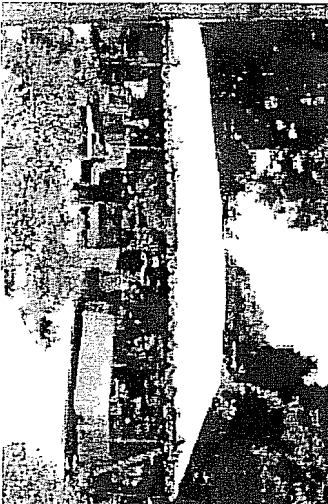
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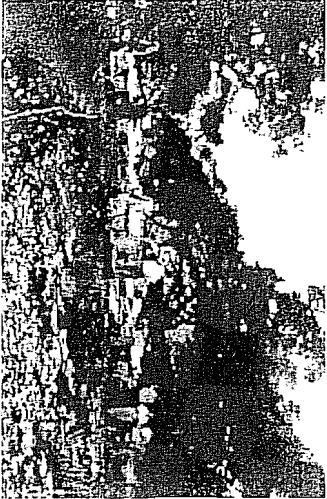
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bioblitz 07



bioblitz 07



birthday 06



birthday 06

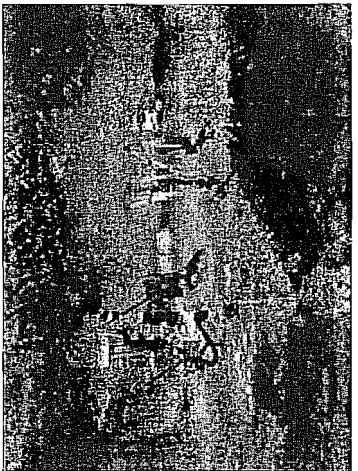


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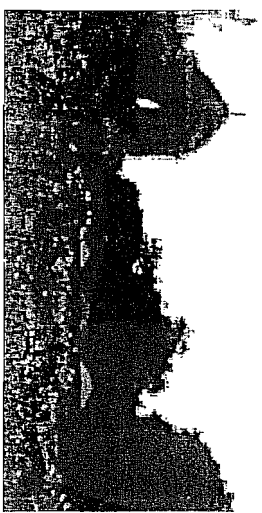




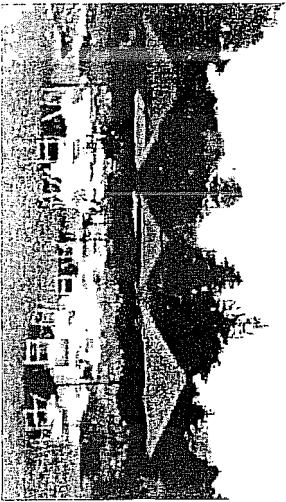
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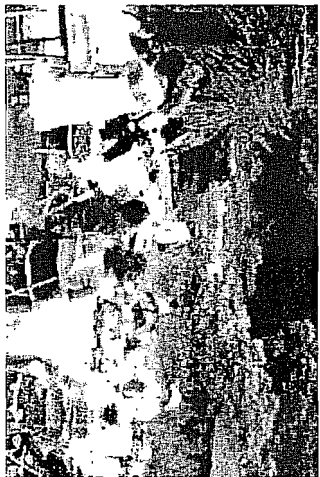
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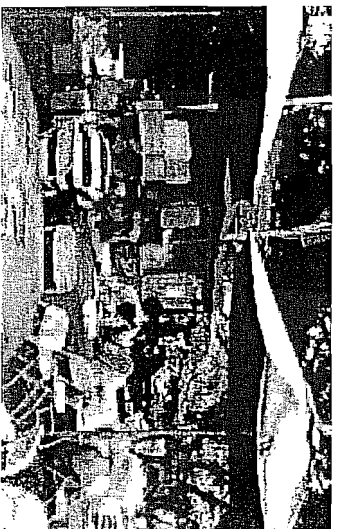
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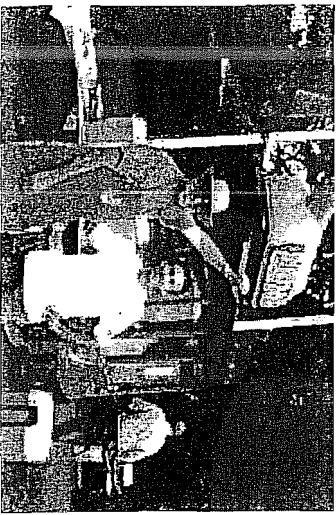
high tea 05



high tea 06



hispanic cc 07



hispanic cc 07



hispanic cc 07



hispanic cc 07



ice cream social 02



ice cream social 02



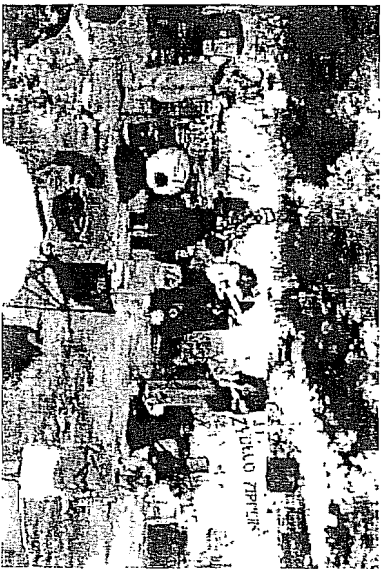
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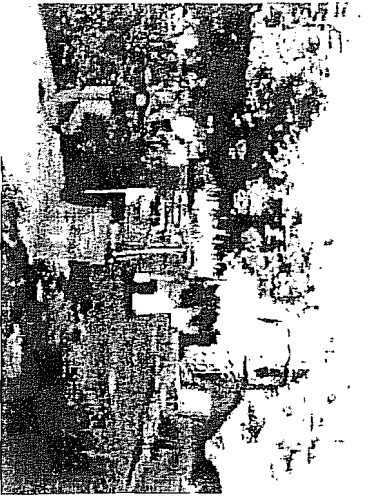
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member picnic 07



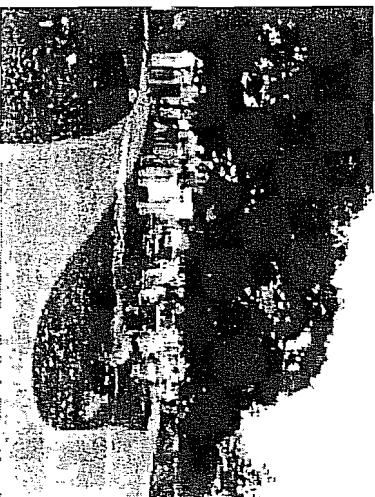
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vmp 06

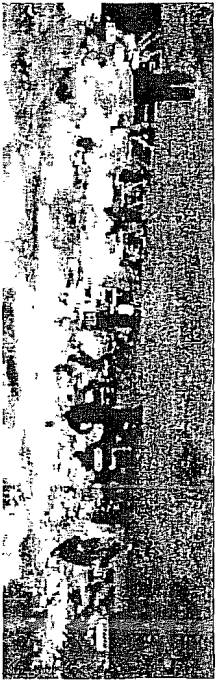


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vmp 06

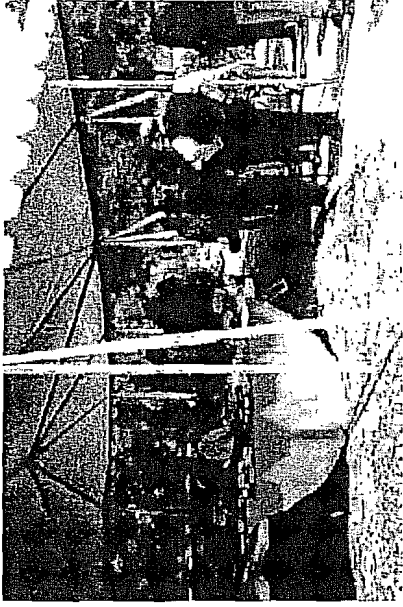




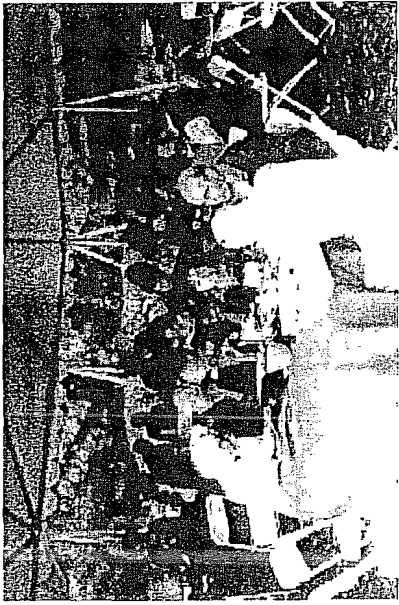
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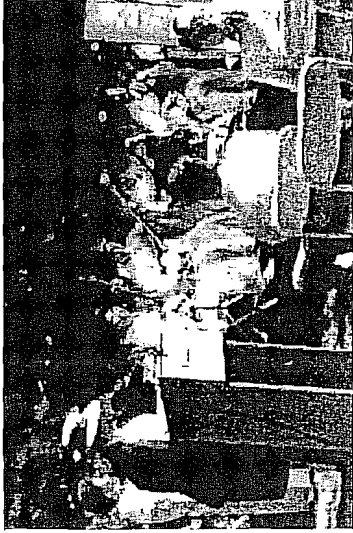
sb beautiful lunch 04



downtown rotary 07



downtown rotary 07



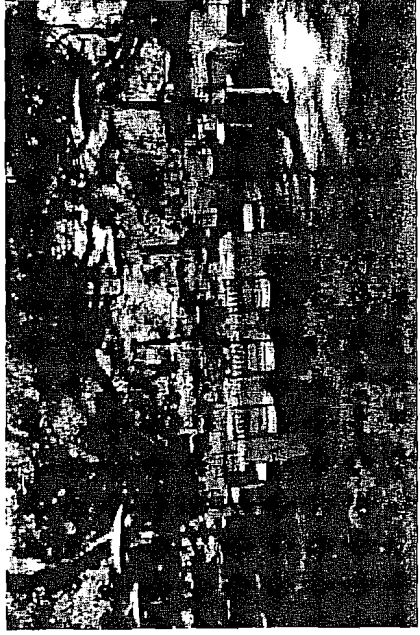
summer 05



toad hall naming 05



toad hall naming 05



upper level dinner



vol lunch 07

ATTACHMENT "B"

Flagstone patio, raised planting beds, sandstone retaining walls, exhibit space and water feature constructed in 1990 adjacent to historic Caretaker's Cottage.





EXHIBIT D



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 concerned 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.<sup>1</sup> 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

<sup>1</sup> 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.