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September 20 2007

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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**

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

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:

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

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;

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

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



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.

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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, appearing to read 'Richard Battles', written in a cursive style.

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

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

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

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

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OF COUNSEL

THOMAS M. MULLEN
1915-1991

ARTHUR A. HENZELL
RETIRED



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,

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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

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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

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Thank you for your consideration of these comments.

Very truly yours,

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

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

RGB:cml

Enclosures

cc: (With enclosures)

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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

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.