

**CITY OF SANTA BARBARA
CITY COUNCIL
REDEVELOPMENT AGENCY**

Marty Blum
Mayor/Chair
Dale Francisco
Mayor Pro Tempore/Vice Chair
Das Williams
Ordinance Committee Chair
Roger L. Horton
Finance Committee Chair
Iya G. Falcone
Grant House
Helene Schneider



James L. Armstrong
*City Administrator/
Executive Director*

Stephen P. Wiley
City Attorney/Agency Counsel

City Hall
735 Anacapa Street
<http://www.SantaBarbaraCA.gov>

**NOVEMBER 17, 2009
AGENDA**

ORDER OF BUSINESS: Regular meetings of the Finance Committee and the Ordinance Committee begin at 12:30 p.m. The regular City Council and Redevelopment Agency meetings begin at 2:00 p.m. in the Council Chamber at City Hall.

REPORTS: Copies of the reports relating to agenda items are available for review in the City Clerk's Office, at the Central Library, and <http://www.SantaBarbaraCA.gov>. In accordance with state law requirements, this agenda generally contains only a brief general description of each item of business to be transacted or discussed at the meeting. Should you wish more detailed information regarding any particular agenda item, you are encouraged to obtain a copy of the Council Agenda Report (a "CAR") for that item from either the Clerk's Office, the Reference Desk at the City's Main Library, or online at the City's website (<http://www.SantaBarbaraCA.gov>). Materials related to an item on this agenda submitted to the Council/Redevelopment Agency after distribution of the agenda packet are available for public inspection in the City Clerk's Office located at City Hall, 735 Anacapa Street, Santa Barbara, CA 93101, during normal business hours.

PUBLIC COMMENT: At the beginning of the 2:00 p.m. session of each regular Council/Redevelopment Agency meeting, and at the beginning of each special Council/Redevelopment Agency meeting, any member of the public may address them concerning any item not on the Council/Redevelopment Agency agenda. Any person wishing to make such address should first complete and deliver a "Request to Speak" form prior to the time that public comment is taken up by the Council/Redevelopment Agency. Should Council/Redevelopment Agency business continue into the evening session of a regular Council/Redevelopment Agency meeting at 6:00 p.m., the Council/Redevelopment Agency will allow any member of the public who did not address them during the 2:00 p.m. session to do so. The total amount of time for public comments will be 15 minutes, and no individual speaker may speak for more than 1 minute. The Council/Redevelopment Agency, upon majority vote, may decline to hear a speaker on the grounds that the subject matter is beyond their jurisdiction.

REQUEST TO SPEAK: A member of the public may address the Finance or Ordinance Committee or Council/Redevelopment Agency regarding any scheduled agenda item. Any person wishing to make such address should first complete and deliver a "Request to Speak" form prior to the time that the item is taken up by the Finance or Ordinance Committee or Council/Redevelopment Agency.

CONSENT CALENDAR: The Consent Calendar is comprised of items that will not usually require discussion by the Council/ Redevelopment Agency. A Consent Calendar item is open for discussion by the Council/Redevelopment Agency upon request of a Council/Agency Member, City staff, or member of the public. Items on the Consent Calendar may be approved by a single motion. Should you wish to comment on an item listed on the Consent Agenda, after turning in your "Request to Speak" form, you should come forward to speak at the time the Council/Redevelopment Agency considers the Consent Calendar.

AMERICANS WITH DISABILITIES ACT: In compliance with the Americans with Disabilities Act, if you need special assistance to gain access to, comment at, or participate in this meeting, please contact the City Administrator's Office at 564-5305 or inquire at the City Clerk's Office on the day of the meeting. If possible, notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements in most cases.

TELEVISION COVERAGE: Each regular Council meeting is broadcast live in English and Spanish on City TV Channel 18, and rebroadcast in English on Wednesdays and Thursdays at 7:00 p.m. and Saturdays at 9:00 a.m., and in Spanish on Sundays at 4:00 p.m. Each televised Council meeting is closed captioned for the hearing impaired. Check the City TV program guide at www.citytv18.com for rebroadcasts of Finance and Ordinance Committee meetings, and for any changes to the replay schedule.

ORDER OF BUSINESS

- 1:00 p.m. - Special Finance Committee Meeting, David Gebhard Public Meeting Room, 630 Garden Street
- 2:00 p.m. - City Council Meeting Begins
- 2:00 p.m. - Redevelopment Agency Meeting
- 5:00 p.m. - Recess
- 6:00 p.m. - City Council Meeting Reconvenes
- 6:00 p.m. - Interviews for City Advisory Groups

SPECIAL FINANCE COMMITTEE MEETING - 1:00 P.M. IN THE DAVID GEBHARD PUBLIC MEETING ROOM, 630 GARDEN STREET (120.03)

1. Subject: Redevelopment Agency Fiscal Year 2010 Interim Financial Statements For The Three Months Ended September 30, 2009

Recommendation: That the Finance Committee recommend that the Redevelopment Agency Board accept the Redevelopment Agency Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

(See Council/Redevelopment Agency Agenda Item No. 9)

2. Subject: Fiscal Year 2010 First Quarter Interim Financial Statements

Recommendation: That the Finance Committee recommend that Council:

- A. Receive a report from staff on the status of revenues and expenditures, in relation to budget, as of September 30, 2009; and
- B. Accept the Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

(See Council/Redevelopment Agency Agenda Item No. 2)

**REGULAR CITY COUNCIL MEETING – 2:00 P.M.
REGULAR REDEVELOPMENT AGENCY MEETING – 2:00 P.M.**

AFTERNOON SESSION

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CEREMONIAL ITEMS

1. **Subject: Presentation Acknowledging Mick Kronman As Harbor Master Of The Year 2009 (120.04)**

CHANGES TO THE AGENDA

PUBLIC COMMENT

CONSENT CALENDAR

CITY COUNCIL

2. **Subject: Fiscal Year 2010 First Quarter Interim Financial Statements (250.02)**

Recommendation: That Council:

- A. Receive a report from staff on the status of revenues and expenditures, in relation to budget, as of September 30, 2009; and
- B. Accept the Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

CONSENT CALENDAR (CONT'D)

CITY COUNCIL (CONT'D)

3. **Subject: State Revolving Fund Loan Of Up to \$29.9 Million For William B. Cater Water Treatment Plant And Ortega Groundwater Treatment Plant Projects (540.10)**

Recommendation: That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Authorizing a Notice of Application Acceptance for a Safe Drinking Water State Revolving Fund (SDWSRF) Loan, and Authorizing Officers to Act on Behalf of the City.

4. **Subject: Contract For Design Of The Ortega Groundwater Treatment Plant Rehabilitation Project (540.10)**

Recommendation: That Council:

- A. Authorize the Public Works Director to execute a professional services agreement with Carollo Engineers, Inc. (Carollo), in an amount not to exceed \$708,000, for final design of the Ortega Groundwater Treatment Plant (OGTP) Rehabilitation Project (Project); and
- B. Authorize the Public Works Director to approve extra services for Carollo that may result from necessary changes in the scope of work for a total amount not to exceed \$70,000.

5. **Subject: Rental Agreement For The Gibraltar Dam Caretaker Residence (540.09)**

Recommendation: That Council authorize the Public Works Water Resources Manager to execute a Caretaker Rental Agreement for the Gibraltar Reservoir and Dam residence with Frank Dealy, through the term of his employment as the Dam Caretaker for this location.

6. **Subject: Approval Of Map And Execution Of Agreements For 561 West Mountain Drive (640.08)**

Recommendation: That Council approve and authorize the City Administrator to execute and record Parcel Map Number 20,775 for a subdivision at 561 West Mountain Drive (finding the Parcel Map in conformance with the state Subdivision Map Act, the City's Subdivision Ordinance, and the tentative subdivision map) and other standard agreements relating to the approved subdivision.

7. **Subject: Capital Improvement Projects: First Quarter Report For Fiscal Year 2010 (230.01)**

Recommendation: That Council receive, for information only, a report on the City's Capital Improvement Projects (CIP) for the First Quarter of Fiscal Year 2010.

CONSENT CALENDAR (CONT'D)

REDEVELOPMENT AGENCY

8. Subject: Minutes

Recommendation: That the Redevelopment Agency Board waive the reading and approve the minutes of the regular meeting of October 20, 2009.

9. Subject: Redevelopment Agency Fiscal Year 2010 Interim Financial Statements For The Three Months Ended September 30, 2009

Recommendation: That the Redevelopment Agency Board accept the Redevelopment Agency Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

NOTICES

10. The City Clerk has on Thursday, November 12, 2009, posted this agenda in the Office of the City Clerk, on the City Hall Public Notice Board on the outside balcony of City Hall, and on the Internet.

This concludes the Consent Calendar.

REPORT FROM THE FINANCE COMMITTEE

CITY COUNCIL ADMINISTRATIVE AND ATTORNEY REPORTS

CITY ADMINISTRATOR

11. Subject: Intent To Participate In AB 811 Central Coast Energy Independence (630.06)

Recommendation: That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Declaring Its Intention to Participate in the Central Coast Energy Independence Program, Which Will Allow City Property Owners to be Included in a County Assessment District that Provides Financing for Private Energy Efficiency and Renewable Energy Projects on a Voluntary Basis.

PUBLIC HEARINGS

12. Subject: Appeal Of Planning Commission Approval For 226 And 232 Eucalyptus Hill Drive (640.07)

Recommendation: That Council deny the appeal filed by neighbors, June Sochel, Tony and Caroline Vassallo and Ernie Salomon and uphold the Planning Commission approval of the application of Brent Daniels, agent for Cynthia Howard, for the proposed Lot Line Adjustment, Street Frontage Modifications and Performance Standard Permits to create four new homes and associated improvements.

COUNCIL AND STAFF COMMUNICATIONS

COUNCILMEMBER COMMITTEE ASSIGNMENT REPORTS

RECESS

EVENING SESSION

RECONVENE

ROLL CALL

PUBLIC COMMENT

MAYOR AND COUNCIL REPORTS

13. Subject: Interviews For City Advisory Groups (140.05)

Recommendation: That Council:

- A. Hold interviews of applicants to various City Advisory Groups at 6:00 p.m.;
and
- B. Continue interviews of applicants to November 24, 2009, at 4:00 p.m.

14. Subject: Request From Councilmembers Falcone And Francisco Regarding Medical Marijuana (520.04)

Recommendation: That Council consider the request from Councilmembers Falcone and Francisco to reconsider its policy concerning medical marijuana, consider alternative models for meeting the needs of patients, and provide direction to the Ordinance Committee as appropriate.

ADJOURNMENT

CITY OF SANTA BARBARA
FINANCE COMMITTEE
SPECIAL MEETING AGENDA

DATE: November 17, 2009

TIME: 1:00 p.m.

PLACE: David Gebhard Public Meeting Room
630 Garden Street

Roger L. Horton, Chair

Helene Schneider

Iya Falcone

James L. Armstrong
City Administrator

Robert D. Peirson
Finance Director

ITEMS TO BE CONSIDERED:

1. Subject: Redevelopment Agency Fiscal Year 2010 Interim Financial Statements For The Three Months Ended September 30, 2009

Recommendation: That the Finance Committee recommend that the Redevelopment Agency Board accept the Redevelopment Agency Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

(See Council/Redevelopment Agency Agenda Item No. 9)

2. Subject: Fiscal Year 2010 First Quarter Interim Financial Statements

Recommendation: That the Finance Committee recommend that Council:

- A. Receive a report from staff on the status of revenues and expenditures, in relation to budget, as of September 30, 2009; and
- B. Accept the Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

(See Council/Redevelopment Agency Agenda Item No. 2)

HARBOR MASTERS & PORT CAPTAINS

INCORPORATED

The

HARBOR MASTER OF THE YEAR

2009

Presented To

MICK KRONMAN

Santa Barbara Harbor

Mick has been a stalwart participant in the Association whether on or off the Board. He has served as President and several years as a Director. He has been a prolific gatherer of information from Association members to enhance his own operation, and equally prolific at disseminating the results for other marinas' benefit. He has faithfully represented the Association on many levels, both locally and statewide. This year he spent countless days as a member of the Southern California Stakeholder Group in developing alternatives for administration of the Marine Life Protection Act. In his own words, he serves his harbor "to continue to improve our programs and policies – and deliver the greatest service we can to boaters and other users of the harbor."

Through his sustained extraordinary efforts over many years he has advanced the objectives of the Association and epitomizes the position of harbor master.



TOM WELCH

Awards Chairman



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: Accounting Division, Finance Department

SUBJECT: Fiscal Year 2010 First Quarter Interim Financial Statements

RECOMMENDATION: That Council:

- A. Receive a report from staff on the status of revenues and expenditures, in relation to budget, as of September 30, 2009; and
- B. Accept the Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

DISCUSSION:

Each month, the Finance Department submits interim financial statements to Council, which show the progress of revenues and expenditures, in relation to budget, for each of the City's funds (Attachment 2). Each quarter, the interim financial statements are expanded to include a detailed narrative analysis of the General Fund and enterprise funds (see Attachment 1).

This report covers the first three months of the fiscal year, and while it is premature to make any solid projections for the year, revenues are expected to fall short of budgeted expectations but expenditures appear to be within expectations. Most of the expenditure variances are timing differences that will diminish throughout the year. Significant variances are discussed in Attachment 1.

On November 10, 2009, Council approved staff recommended adjustments to fiscal year 2010 budgeted revenues and expenditures in the General Fund. These adjustments are in response to a \$2.9 million estimated revenue shortfall based on new information received since the date of budget adoption. Because the fiscal year 2010 budget adjustments were not approved until after September 30, the information presented in Attachments 1 and 2 do not reflect these changes to the budget; however, these adjustments are referenced in the written analysis included in Attachment 1.

ATTACHMENTS:

1. Interim Financial Statements (Narrative Analysis)
2. Interim Statement of Revenues and Expenditures – Summary by Fund

PREPARED BY: Rudolf J. Livingston, Accounting Manager

SUBMITTED BY: Robert Samario, Interim Finance Director

APPROVED BY: City Administrator's Office

*Fiscal Year 2010 Interim Financial Statements
For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

General Fund Revenues

The table below summarizes General Fund revenues for the three months ended September 30, 2009. For interim financial statement purposes, revenues are reported on the cash basis (i.e. when the funds are received). The table below includes the budgeted totals as well as the year-to-date (YTD) budget, which for tax revenues and franchise fees has been seasonally adjusted based on a 3-year average of collections through the same period. Because tax revenues are not collected evenly throughout the year, adjusting the year-to-date budget to reflect the unique collection pattern of each type of tax revenue enables a more meaningful comparison to year-to-date results as shown in the Year-to-Date Actual column. For all other revenues, the Year-to-Date Budget column represents 25% (3 months out of the 12 elapsed) of the annual budget column. Unlike tax revenues, these revenues tend to be collected more evenly during the year.

**Summary of Revenues
For the Three Months Ended September 30, 2009
GENERAL FUND**

	Current Year Analysis						Prior Year Analysis	
	Annual Budget	YTD Budget *	YTD Actual	YTD Variance	YTD Percent Rec'd	3-Year Average Benchmark	Prior Year YTD Actual	Variance Prior Yr To Current Yr
Sales & Use Tax	\$ 18,479,524	\$ 3,590,572	\$ 3,217,116	\$ (373,456)	17.41%	19.43%	\$ 3,691,435	-12.8%
Property Tax	23,860,000	-	-	-	0.00%	0.00%	-	0.0%
UUT	7,242,000	2,036,450	1,760,166	(276,284)	24.30%	28.12%	1,777,577	-1.0%
TOT	12,027,000	4,323,707	3,880,775	(442,932)	32.27%	35.95%	4,718,696	-17.8%
Bus License	2,273,300	367,365	392,038	24,673	17.25%	16.16%	395,168	-0.8%
Prop Trans Tax	325,800	108,980	90,014	(18,966)	27.63%	33.45%	96,402	-6.6%
Total Taxes	64,207,624	10,427,074	9,340,109	(1,086,965)	14.55%	16.24%	10,679,278	-12.5%
License & Permits	179,000	44,750	42,540	(2,210)	23.77%	25.00%	49,920	-14.8%
Fines & Forfeitures	2,942,774	735,694	796,880	61,187	27.08%	25.00%	580,597	37.3%
Franchise Fee	2,976,000	715,133	709,716	(5,417)	23.85%	24.03%	707,961	0.2%
Use of Money & Property	1,348,387	337,097	458,832	121,735	34.03%	25.00%	594,609	-22.8%
Intergovernmental	2,345,577	586,394	125,354	(461,040)	5.34%	25.00%	827,207	-84.8%
Fee & Charges	19,441,461	4,860,365	5,205,066	344,701	26.77%	25.00%	4,243,749	22.7%
Miscellaneous	9,794,796	2,448,699	2,628,866	180,167	26.84%	25.00%	3,903,317	-32.7%
Anticipated Year-End Var	1,361,508	340,377	-	(340,377)	0.00%	25.00%	-	0.0%
Total Other	40,389,503	10,068,509	9,967,254	(101,255)	24.68%	25.00%	10,907,360	
Total Revenues	\$ 104,597,127	\$ 20,495,582	\$ 19,307,363	\$ (1,188,219)	18.46%	19.59%	\$ 21,586,638	-10.6%

* YTD Budget for Taxes is calculated based on a 3-year average of collections for each revenue source; for all other revenues, YTD Budget is calculated on a straight-line basis based on the number of months elapsed.

*Fiscal Year 2010 Interim Financial Statements
For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

After only three months of activity, it is generally difficult to project with certainty where revenues will end the year. However, staff has revised several non-departmental budget projections after the end of the first quarter which were approved by Council on November 10, 2009. While the following discussion is based upon the budget and actual results at September 30, 2009, the table below shows the amended revenue projections approved by Council last week. The following General Fund tax revenue adjustments were approved in November.

<u>Revenue</u>	<u>Adopted Budget</u>	<u>Adjustment</u>	<u>Revised Budget</u>
Sales Taxes	\$ 18,479,524	\$ (1,073,842)	\$ 17,405,682
Property Taxes	23,860,000	(433,655)	23,426,345
UUT	7,242,000	(325,671)	6,916,329
TOT	12,027,000	(675,030)	11,351,970

Some of the major revenues are discussed below.

Sales and Use Taxes

Sales tax revenues continue to be affected by the weak national and local economies and finished the quarter below the YTD budget. The revenues received through September 30, 2009 relate to the quarter ended June 30, 2009, which were approximately 16% below the revenues from fiscal year 2009 for the same quarter. The budget as amended on November 10 assumed a decline of approximately 14% for this quarter. For the year, the revised projection of \$17.4 million is based on an updated quarter-by-quarter estimate by the State Department of Finance. Due to the continuing uncertainty surrounding the economy and its recovery, it is too difficult to determine the accuracy of the current budgeted estimate.

Property Tax

Property taxes are due in December and April of each year. We do not usually receive any payments until after the first quarter, when we receive minimal payments from the County. The majority of the revenue is received after the December installments are due. The City did not receive any property tax payments in the first three months of this year.

As noted above, the adopted budgeted revenues for property taxes were adjusted on November 10, 2009 based on new information received from the County after budget adoption. Actual revenues for the year are projected to approximate budget, as adjusted. However, there could be some variability in the amount of supplemental taxes the City receives, which are a function of the number of property sales between levy dates and the amount of increase in assessed valuation.

Utility Users Tax

Utility users tax (UUT) is a tax applied to utilities, including water, cable television, telephone, electricity, and natural gas. Half of all UUT revenues are restricted for streets maintenance and capital, and they are reported directly in the Streets Fund. The \$1.8 million first quarter General Fund revenue is approximately 3.8% below the annualized year-to-date budget, primarily due to

*Fiscal Year 2010 Interim Financial Statements
For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

a significant decrease in natural gas rates that began in the second half of last year. At this early point in the fiscal year it is difficult to project where UUT revenue will end the year given the unpredictability of certain commodity prices, such as natural gas and electricity.

Transient Occupancy Tax

TOT revenue has been significantly impacted by the protracted national and local economic downturn that we have seen over the past year. While TOT revenues have continued to decline, first quarter TOT results indicate that revenues are in line with revised revenue projections. It is still too early to make solid projections for the year and we will provide regular updates to Finance Committee and Council throughout the coming months.

Use of Money & Property

Use of Money & Property primarily consists of investment earnings. Generally speaking, interest rates are at historical lows and are not expected to decline further. Over the next several years, we expect the economy will be in its recovery phase and interest rates will rise as well. Until then, our budgeted and projected revenues will continue to reflect the lower interest rates available for the investment of City funds. First quarter interest earnings exceeded the adopted budget; however, we do not expect this to continue in subsequent quarters. As higher-yielding maturing investments are replaced with lower yielding investments, we expect the variance to diminish by year-end. Another factor contributing to the favorable budgetary variance at the end of the first quarter is that the General Fund received a scheduled annual debt service payment in the first quarter on a loan made to the Waterfront Fund for renovation of Waterfront office space. The \$98,000 interest portion of the payment was recognized when received in September and created a temporary variance that will diminish throughout the year.

Intergovernmental

One of the largest components of Intergovernmental revenue is mutual aid reimbursements received by the Fire Department. These revenues are generated when the Fire Department provides mutual aid assistance to other locations throughout the state. The City is reimbursed for the actual costs of providing assistance, plus an overhead factor to provide the service. Intergovernmental revenue shows as significantly behind budget year-to-date primarily due to a timing issue of receipt of \$1 million in reimbursements that have been billed by the department year-to-date. Based on historical receipts over the past few years, \$2 million in mutual aid reimbursements was budgeted. It is virtually impossible to project if these revenues will meet budget during the year because of the unpredictable nature of this revenue source.

Fees & Service Charges

Fees & Services charges revenue was approximately \$345,000 (1.8%) ahead of YTD revenues at September 30. Approximately \$160,000 of this variance is due to the timing of semi-annual payments from Santa Barbara County to the Library. Various fees charged by Community Development for services such as building permits, plan checks, and records management are approximately \$185,000 ahead of the YTD budget. A portion of this positive variance in permits revenue is due to construction projects related to the recent fires in the City. It is premature to draw any conclusions on these revenues for the remainder of the year.

*Fiscal Year 2010 Interim Financial Statements
For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

General Fund Expenditures

The table below summarizes the General Fund budget and year-to-date expenditures through September 30, 2009. The Annual Budget column represents the amended budget, which includes appropriation carryovers from the prior year, as well as any supplemental appropriations approved by Council in the current year.

As shown below, a year-to-date budget (labeled "YTD Budget") column is included. This represents 25% of the annual budget to coincide with 3 out of 12 months in the fiscal year having elapsed. Unlike revenues, where the collection rate during the year is often seasonally affected, most expenditures tend to be incurred fairly evenly throughout the year.

The amended annual budget totaled \$104.8 million, and the year-to-date budget is calculated at \$26.2 million (25%). Actual expenditures of \$24.2 million resulted in a favorable variance of \$1.9 million (1.9%) at September 30.

SUMMARY OF EXPENDITURES GENERAL FUND For the Three Months Ended September 30, 2009							
Department	Annual Budget	YTD Budget	YTD Actual	Variance Without Encumbrance	Encum- brance	Variance With Encumb Favorable (Unfavorable)	
						\$	%
Mayor & Council	\$ 747,750	\$ 186,938	\$ 170,924	\$ 16,014	\$ 2,493	\$ 13,521	1.8%
City Attorney	2,099,358	524,840	474,863	49,977	-	49,977	2.4%
City Administrator	2,021,353	505,338	471,555	33,783	53,959	(20,176)	-1.0%
Administrative Svs.	2,146,852	536,713	416,428	120,285	193,634	(73,349)	-3.4%
Finance	4,618,811	1,154,703	1,169,218	(14,515)	22,242	(36,757)	-0.8%
Police	32,850,677	8,212,669	7,576,103	636,566	344,452	292,114	0.9%
Fire	21,503,496	5,375,874	5,000,060	375,814	102,868	272,946	1.3%
Public Works	6,693,582	1,673,396	1,419,070	254,326	86,383	167,943	2.5%
Parks & Recreation	13,797,811	3,449,453	3,612,702	(163,249)	251,149	(414,398)	-3.0%
Library	4,331,670	1,082,918	915,586	167,332	7,065	160,267	3.7%
Community Dev.	10,531,894	2,632,974	2,076,831	556,143	92,691	463,452	4.4%
Non-Departmental	3,418,392	854,598	923,805	(69,207)	-	(69,207)	-2.0%
Total	<u>\$ 104,761,646</u>	<u>\$ 26,190,412</u>	<u>\$ 24,227,145</u>	<u>\$ 1,963,267</u>	<u>\$ 1,156,936</u>	<u>\$ 806,331</u>	0.8%
% of annual budget		25.0%	23.1%	1.9%	1.1%	0.8%	

As of September 30th, three departments had exceeded their YTD budget. The Finance Department is over the YTD budget due to the timing of quarterly payments made for community access television programming in the first three months of the year. This is purely a timing issue that will resolve itself throughout the remainder of the year. It is not unusual for Parks and Recreation expenditures to exceed the year-to-date budget for the first quarter because, unlike many departments, their expenditures do tend to be seasonal in nature with the summer camp programs. Non-departmental expenditures also usually exceed the year-to-date budget at September 30 because of: 1) debt service payments that are not made ratably

*Fiscal Year 2010 Interim Financial Statements
For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

throughout the year; and 2) Fiesta and 4th of July, two of the year's largest community events, occur in the first quarter.

As previously noted, City Council approved adjustments to the adopted FY10 budget on November 10, 2009. The re-balancing adjustments approved by Council last week included approximately \$1.6 million in General Fund Departmental expenditure reductions. The reductions to the adopted budget are not included in the table shown above or in the September 30 variance analysis. However, the changes to the General Fund Expenditure budgets will impact departmental variances throughout the remainder of the fiscal year.

*Fiscal Year 2010 Interim Financial Statements
For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

Enterprise Fund Revenues

Unlike the General Fund, which relies primarily on taxes to subsidize programs and services, Enterprise Fund operations are financed primarily from user fees. The table below summarizes Enterprise Fund revenues through September 30, 2009, with a comparison to budget and prior year. Note that the "YTD Budget" column has been calculated based on a 3-year average collection rate through September 30th. This rate, which is shown as a percentage in the "3 Year Average Rec'd" column, has been applied to the annual budget amount to arrive at the Year-to-Date Budget. This approach is used in recognition that enterprise fund revenues, like General Fund tax revenues, are seasonally affected and are not necessarily received evenly throughout the year. Therefore, adjusting the budget for seasonal variations allows for a more meaningful comparison to year-to-date revenues. After only three months of activity, it is generally difficult to project with certainty where revenues will end the year.

As shown below, only Golf Fund revenues fell short of the 3-year average collection rate through September 30, 2009. Significant variances in Enterprise Fund revenues are discussed below.

**SUMMARY OF REVENUES
Three Months Ended September 30, 2009
ENTERPRISE FUNDS**

	Current Year Analysis					Prior Year Analysis		
	Annual Budget	YTD Budget *	YTD Actual	YTD Variance	YTD Percent Rec'd	3 Year Average Rec'd	YTD Actual	% Variance
Water	\$ 34,188,296	\$ 9,791,528	\$ 10,284,372	\$ 492,844	30.08%	28.64%	\$ 10,014,995	2.69%
Wastewater	14,828,850	3,928,162	3,992,192	64,030	26.92%	26.49%	3,976,906	0.38%
Downtown Parking	6,762,290	1,670,286	1,737,513	67,227	25.69%	24.70%	1,776,979	-2.22%
Airport	12,440,678	3,033,037	3,122,196	89,159	25.10%	24.38%	3,424,361	-8.82%
Golf	2,380,438	647,955	535,909	(112,046)	22.51%	27.22%	657,209	-18.46%
Waterfront	11,522,348	3,279,260	3,436,120	156,860	29.82%	28.46%	3,277,324	4.85%

* The YTD Budget column has been calculated based on a 3-year average collection rate through September 30, which has been applied to the annual budget.

Water Fund

Of the \$34.2 million in budgeted Water Fund revenue this year, approximately \$29.9 million (87.3%) is derived from charges for metered service. As such, revenues are significantly impacted by both metered rates and consumption. Water Fund revenue was ahead of the year-to-date budget as of September 30th by more than \$493,000. This variance is due primarily to metered water sales exceeding the seasonally adjusted budget. As of September 30th, approximately 30% of the annual revenue budget for metered sales had been received. This is slightly higher than the 3-year average of 28.6% for the first quarter and is due to consumption in the first quarter. We have just completed one of the driest years in recorded history which, in

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For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

turn, has resulted in increased water consumption. In addition, reimbursement revenue from Montecito Water District and the Carpinteria Water District for their respective shares of water treatment costs at the Cater facility are more than 50% of the annual budget. This is attributable to significantly increased costs to treat the water after recent fires, a portion of which is reimbursed by these partner agencies. Treatment costs, and associated reimbursements from partner agencies, are expected to exceed the YTD budgeted amount throughout the year.

Airport Fund

Airport Fund revenues are in line with the current year YTD budget but approximately 8.8% lower than revenues for the first quarter of the prior year. Staff anticipated some of the revenue decreases from the prior year when preparing the current year budget. Revenues have decreased from the prior year due primarily to 1) the loss of two major tenants in the second half of last year, and 2) the impact of recession on all terminal-related activities, in particular parking. Investment income has continued to decline as the City's average investment rate has been decreasing over the past year.

Golf Fund

Fees for golf rounds and gift card sales are approximately 3.3% below the average collection rate through the first three months of the year. This is a reflection of the weak local economy which has reduced the number of rounds played. The number of golf rounds has also been impacted by two construction projects designed to improve course safety and the quality of the play are underway. Miscellaneous revenues are approximately \$68,000 under the YTD budget amount due to a budgeted \$250,000 loan from the General Fund which has not yet been funded this year. This loan is for the golf course safety improvement plan and will be funded when needed to pay for this important project.

Golf Fund revenues are approximately 18.5% below those for the first three months of the prior year. Most of this decrease is attributed to a marked decline in rounds played over the last year. . The decline has been more significant beginning in this calendar year and is consistent with national trends.

Waterfront Fund

Waterfront Fund revenues are approximately 1.4% ahead of the YTD budget at September 30. This positive variance is primarily due to revenues from slip transfer fees and parking fees doing better than expected. Both of these important revenues were budgeted conservatively as a result of a decline experienced in the prior year.

Overall, revenues exceeded the prior year first quarter amounts by approximately \$159,000 (4.85%), with slip transfer fees accounting for almost half of the variance. Slip transfer fees were significantly below budget in the first quarter of last year but increased slightly as the year progressed. These fees have returned to more historically normal levels this fiscal year resulting in a \$72,000 positive revenue variance from the first three months of last year.

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For the Three Months Ended September 30, 2009 (25% of Year Elapsed)*

Enterprise Fund Expenses

Enterprise fund expenses through September 30, 2009, with a comparison to budget and prior year actual, are summarized in the following table below. The column labeled “YTD Budget” represents 25% of the annual budget column. Although many expenses tend to be incurred fairly evenly throughout the year, there are some notable expenses that do not occur evenly during the year. These expenses, such as debt service and capital projects, can create significant temporary variances from the YTD budget at certain times during the year.

The table does not include outstanding encumbrances as of September 30, 2009, as their inclusion would significantly distort the analysis of expenditures after just three months. Outstanding encumbrances include appropriations that were carried forward from prior year as part of the appropriation carryovers and contracts or blanket purchase orders that have been added in the current year but are expected to be spent over the coming months.

SUMMARY OF EXPENSES							
Three Months Ended September 30, 2009							
ENTERPRISE FUNDS							
	Current Year Analysis					Prior Year Analysis	
	Annual Budget	YTD Budget	YTD Actual & Enc	YTD Variance	YTD Percent Exp	YTD Actual	% Variance
Water	\$ 37,418,635	\$ 9,354,659	\$ 8,134,138	\$ 1,220,521	21.74%	\$ 9,432,604	13.77%
Wastewater	16,070,288	4,017,572	3,106,338	911,234	19.33%	2,920,725	-6.36%
Downtown Parking	8,195,457	2,048,864	1,764,058	284,806	21.52%	1,500,981	-17.53%
Airport	12,723,593	3,180,898	2,644,434	536,464	20.78%	3,526,725	25.02%
Golf	2,785,158	696,290	737,360	(41,071)	26.47%	1,036,080	28.83%
Waterfront	12,061,259	3,015,315	2,378,923	636,392	19.72%	2,389,987	0.46%

All enterprise fund expenses, except the Golf Fund, are under the year-to-date budget amounts at September 30, 2009. All of the enterprise funds had a positive variance in salary & benefit costs at September 30. This is primarily due to two factors: 1) Only 23.1% of the payrolls occurred on the first three months of the year; and 2) The City imposed a furlough on employees for this fiscal year. The furlough will reduce wages paid to most employees by 5%.

It is too soon in the year to make detailed projections on budget variances during the remainder of the year. However, expense activity is closely monitored by staff and annual projections are revised as necessary. The following discussion highlights some of the more significant expense variances of the enterprise funds, in relation to budget or prior year.

Water Fund

Water Fund expenses are \$1.2 million (3.3%) below the year-to-date budget but in line with expenses for the same period in the prior year. The fund has approximately \$274,000 savings from budgeted salary and benefit costs. The remainder of the budget variance is primarily the

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result of materials, supplies, and services expenses that have been budgeted and encumbered at September 30 but not yet spent. These temporary variances will change throughout the year as actual expenses occur.

Wastewater Fund

Wastewater Fund expenses are \$911,000 (5.7%) below the year-to-date budget at September 30. The primary reasons for the budget variance are: 1) Debt service does not occur ratably throughout the year. At September 30, none of the \$1.4 million that was budgeted for debt service has been expended. 2) \$151,000 of the budget variance is attributable to salaries and benefits. 3) Approximately \$369,000 of the budget variance is due to supplies and services savings which are variable in nature and are spent as needed and not necessarily expended ratably throughout the year.

Downtown Parking Fund

Downtown Parking Fund expenses are approximately \$285,000 (3.5%) below the year-to-date budget at September 30. Approximately \$123,000 of the variance is due to salaries and benefits costs and another \$125,000 is due to supplies and services savings which are variable in nature and are spent as needed and not necessarily expended ratably throughout the year. The fund budgeted \$50,000 in appropriated reserves that remains unspent and the remaining variance is due to small temporary savings in special projects and capital expenditures, all of which are expended as needed and often result in temporary variances throughout the year.

Capital expenses of the Downtown Parking Fund are now accounted for in a separate capital projects fund. The long-term nature of capital projects consistently caused significant budget variances in the fund. This change will facilitate analysis of the operating activities of the Downtown Parking Fund.

Airport Fund

Airport Fund expenses are \$536,000 (4.3%) under the year-to-date budget at September 30. Salary & benefits savings account for approximately \$153,000 of the variance; materials, supplies & services costs were \$243,000 under budget, and the unspent appropriated reserve accounted for approximately \$68,000 of the variance. As previously noted these costs are expended as needed and often result in temporary variances throughout the year.

Golf Fund

Golf Fund expenses are over the YTD budget due to debt service costs and capital expenditures for the safety improvement plan and the creeks biofilter project. Debt service expenses are recognized when paid and capital expenditures are incurred as needed. Neither of these expenditures is incurred ratably over the course of the year and result in temporary variances during the year.

Waterfront Fund

Waterfront Fund expenses are \$636,000 (5.3%) under the year-to-date budget at September 30. Approximately \$295,000 of the variance is due to the timing of the semi-annual debt service

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payments. Salaries and wages are under the year-to-date budget by approximately \$137,000 because of the timing of payrolls and furlough savings as previously noted. Another \$156,000 in savings is from supplies and services which are usually not spent evenly throughout the year. These costs are variable in nature and are expended as needed throughout the year.

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenditures
Summary by Fund
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>
GENERAL FUND					
Revenue	104,597,127	19,307,362	-	85,289,765	18.5%
Expenditures	104,761,646	24,227,145	1,156,936	79,377,565	24.2%
<i>Addition to / (use of) reserves</i>	<u>(164,519)</u>	<u>(4,919,783)</u>	<u>(1,156,936)</u>		
WATER OPERATING FUND					
Revenue	34,188,296	10,284,372	-	23,903,924	30.1%
Expenditures	37,418,635	8,134,138	3,300,625	25,983,872	30.6%
<i>Addition to / (use of) reserves</i>	<u>(3,230,339)</u>	<u>2,150,234</u>	<u>(3,300,625)</u>		
WASTEWATER OPERATING FUND					
Revenue	14,828,850	3,992,192	-	10,836,658	26.9%
Expenditures	16,070,288	3,106,338	1,753,444	11,210,506	30.2%
<i>Addition to / (use of) reserves</i>	<u>(1,241,438)</u>	<u>885,854</u>	<u>(1,753,444)</u>		
DOWNTOWN PARKING					
Revenue	6,762,290	1,737,513	-	5,024,777	25.7%
Expenditures	8,195,457	1,764,058	722,480	5,708,920	30.3%
<i>Addition to / (use of) reserves</i>	<u>(1,433,167)</u>	<u>(26,544)</u>	<u>(722,480)</u>		
AIRPORT OPERATING FUND					
Revenue	12,440,678	3,122,196	-	9,318,482	25.1%
Expenditures	12,723,593	2,644,434	721,864	9,357,295	26.5%
<i>Addition to / (use of) reserves</i>	<u>(282,915)</u>	<u>477,761</u>	<u>(721,864)</u>		
GOLF COURSE FUND					
Revenue	2,380,438	535,909	-	1,844,529	22.5%
Expenditures	2,785,158	737,360	425,855	1,621,943	41.8%
<i>Addition to / (use of) reserves</i>	<u>(404,720)</u>	<u>(201,450)</u>	<u>(425,855)</u>		
INTRA-CITY SERVICE FUND					
Revenue	5,601,878	1,280,530	-	4,321,349	22.9%
Expenditures	5,863,705	988,914	760,413	4,114,378	29.8%
<i>Addition to / (use of) reserves</i>	<u>(261,827)</u>	<u>291,615</u>	<u>(760,413)</u>		
FLEET REPLACEMENT FUND					

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenditures
Summary by Fund
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>
FLEET REPLACEMENT FUND					
Revenue	1,779,868	474,451	-	1,305,417	26.7%
Expenditures	3,821,874	339,781	73,174	3,408,919	10.8%
<i>Addition to / (use of) reserves</i>	<u>(2,042,006)</u>	<u>134,670</u>	<u>(73,174)</u>		
FLEET MAINTENANCE FUND					
Revenue	2,565,663	628,916	-	1,936,747	24.5%
Expenditures	2,667,128	468,509	192,570	2,006,049	24.8%
<i>Addition to / (use of) reserves</i>	<u>(101,465)</u>	<u>160,407</u>	<u>(192,570)</u>		
SELF INSURANCE TRUST FUND					
Revenue	6,073,674	1,522,323	-	4,551,351	25.1%
Expenditures	6,219,840	1,109,208	260,730	4,849,901	22.0%
<i>Addition to / (use of) reserves</i>	<u>(146,166)</u>	<u>413,114</u>	<u>(260,730)</u>		
INFORMATION SYSTEMS ICS FUND					
Revenue	2,435,147	610,041	-	1,825,106	25.1%
Expenditures	2,630,280	480,194	266,653	1,883,434	28.4%
<i>Addition to / (use of) reserves</i>	<u>(195,133)</u>	<u>129,847</u>	<u>(266,653)</u>		
WATERFRONT FUND					
Revenue	11,522,348	3,436,120	-	8,086,228	29.8%
Expenditures	12,061,259	2,378,923	732,828	8,949,508	25.8%
<i>Addition to / (use of) reserves</i>	<u>(538,911)</u>	<u>1,057,197</u>	<u>(732,828)</u>		
TOTAL FOR ALL FUNDS					
Revenue	205,176,257	46,931,925	-	158,244,332	22.9%
Expenditures	215,218,864	46,379,003	10,367,572	158,472,289	26.4%
<i>Addition to / (use of) reserves</i>	<u>(10,042,607)</u>	<u>552,922</u>	<u>(10,367,572)</u>		

**** It is City policy to adopt a balanced budget. In most cases, encumbrance balances exist at year-end. These encumbrance balances are obligations of each fund and must be reported at the beginning of each fiscal year. In addition, a corresponding appropriations entry must be made in order to accommodate the 'carried-over' encumbrance amount. Most differences between budgeted annual revenues and expenses are due to these encumbrance carryovers.**

CITY OF SANTA BARBARA
General Fund
Interim Statement of Budgeted and Actual Revenues
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	Annual Budget	YTD Actual	Remaining Balance	Percent Received	Previous YTD
TAXES					
Sales and Use	18,479,524	3,217,116	15,262,408	17.4%	3,691,435
Property Taxes	23,860,000	-	23,860,000	0.0%	-
Utility Users Tax	7,242,000	1,760,166	5,481,834	24.3%	1,777,577
Transient Occupancy Tax	12,027,000	3,880,775	8,146,225	32.3%	4,718,696
Franchise Fees	2,976,000	709,716	2,266,284	23.8%	707,961
Business License	2,273,300	392,038	1,881,262	17.2%	395,168
Real Property Transfer Tax	325,800	90,014	235,786	27.6%	96,402
<i>Total</i>	<u>67,183,624</u>	<u>10,049,824</u>	<u>57,133,800</u>	15.0%	<u>11,387,238</u>
LICENSES & PERMITS					
Licenses & Permits	179,000	42,540	136,460	23.8%	49,920
<i>Total</i>	<u>179,000</u>	<u>42,540</u>	<u>136,460</u>	23.8%	<u>49,920</u>
FINES & FORFEITURES					
Parking Violations	2,582,774	680,245	1,902,529	26.3%	499,946
Library Fines	110,000	29,161	80,839	26.5%	30,113
Municipal Court Fines	150,000	47,024	102,976	31.3%	50,538
Other Fines & Forfeitures	100,000	40,450	59,550	40.5%	-
<i>Total</i>	<u>2,942,774</u>	<u>796,880</u>	<u>2,145,894</u>	27.1%	<u>580,597</u>
USE OF MONEY & PROPERTY					
Investment Income	941,951	355,485	586,466	37.7%	492,922
Rents & Concessions	406,436	103,347	303,089	25.4%	101,687
<i>Total</i>	<u>1,348,387</u>	<u>458,832</u>	<u>889,555</u>	34.0%	<u>594,609</u>
INTERGOVERNMENTAL					
Grants	2,145,577	-	2,145,577	0.0%	693,991
Vehicle License Fees	200,000	125,354	74,646	62.7%	133,216
<i>Total</i>	<u>2,345,577</u>	<u>125,354</u>	<u>2,220,223</u>	5.3%	<u>827,207</u>
FEEES & SERVICE CHARGES					
Finance	858,930	206,506	652,424	24.0%	195,759
Community Development	4,425,717	1,290,485	3,135,232	29.2%	1,121,052
Recreation	2,412,579	659,290	1,753,289	27.3%	664,859
Public Safety	550,543	101,713	448,830	18.5%	86,002
Public Works	4,608,873	1,250,013	3,358,860	27.1%	974,953
Library	775,452	364,331	411,121	47.0%	9,567
Reimbursements	5,809,367	1,332,728	4,476,640	22.9%	1,191,558
<i>Total</i>	<u>19,441,461</u>	<u>5,205,066</u>	<u>14,236,395</u>	26.8%	<u>4,243,749</u>
OTHER MISCELLANEOUS REVENUES					
Miscellaneous	1,512,487	417,163	1,095,324	27.6%	1,893,303
Indirect Allocations	7,238,105	1,889,778	5,348,327	26.1%	1,699,981
Operating Transfers-In	2,405,712	321,926	2,083,786	13.4%	310,032
<i>Total</i>	<u>11,156,304</u>	<u>2,628,866</u>	<u>8,527,438</u>	23.6%	<u>3,903,317</u>
TOTAL REVENUES	<u>104,597,127</u>	<u>19,307,362</u>	<u>85,289,765</u>	18.5%	<u>21,586,636</u>

CITY OF SANTA BARBARA
General Fund
Interim Statement of Appropriations, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>** Remaining Balance</u>	<u>YTD Expended and Encumbered</u>	<u>Previous YTD</u>
GENERAL GOVERNMENT						
<u>Mayor & City Council</u>						
MAYOR	747,750	170,924	2,493	574,332	23.2%	
<i>Total</i>	<u>747,750</u>	<u>170,924</u>	<u>2,493</u>	<u>574,332</u>	23.2%	<u>187,982</u>
<u>City Attorney</u>						
CITY ATTORNEY	2,099,358	474,863	-	1,624,495	22.6%	
<i>Total</i>	<u>2,099,358</u>	<u>474,863</u>	<u>-</u>	<u>1,624,495</u>	22.6%	<u>489,160</u>
<u>Administration</u>						
CITY ADMINISTRATOR	1,351,840	337,831	2,493	1,011,516	25.2%	
LABOR RELATIONS	228,570	47,265	-	181,305	20.7%	
CITY TV	440,943	86,459	51,466	303,017	31.3%	
<i>Total</i>	<u>2,021,353</u>	<u>471,555</u>	<u>53,959</u>	<u>1,495,838</u>	26.0%	<u>498,572</u>
<u>Administrative Services</u>						
CITY CLERK	773,167	141,114	169,455	462,598	40.2%	
HUMAN RESOURCES	1,190,764	241,166	24,179	925,419	22.3%	
ADMIN SVCS-EMPLOYEE DEVELOPMENT	182,921	34,148	-	148,773	18.7%	
<i>Total</i>	<u>2,146,852</u>	<u>416,428</u>	<u>193,634</u>	<u>1,536,790</u>	28.4%	<u>422,101</u>
<u>Finance</u>						
ADMINISTRATION	682,555	280,594	7,495	394,466	42.2%	
TREASURY	384,702	97,857	1,200	285,645	25.7%	
CASHIERING & COLLECTION	427,287	95,223	-	332,064	22.3%	
LICENSES & PERMITS	387,383	90,206	-	297,178	23.3%	
BUDGET MANAGEMENT	353,511	95,719	-	257,792	27.1%	
ACCOUNTING	405,390	82,077	12,703	310,610	23.4%	
PAYROLL	273,371	61,488	-	211,883	22.5%	
ACCOUNTS PAYABLE	210,859	47,269	-	163,590	22.4%	
CITY BILLING & CUSTOMER SERVICE	560,542	111,043	-	449,499	19.8%	
PURCHASING	653,082	145,459	844	506,779	22.4%	
CENTRAL STORES	183,803	41,622	-	142,181	22.6%	
MAIL SERVICES	96,326	20,660	-	75,666	21.4%	
<i>Total</i>	<u>4,618,811</u>	<u>1,169,218</u>	<u>22,242</u>	<u>3,427,351</u>	25.8%	<u>1,103,189</u>
TOTAL GENERAL GOVERNMENT	<u>11,634,124</u>	<u>2,702,988</u>	<u>272,329</u>	<u>8,658,808</u>	25.6%	<u>2,701,004</u>
PUBLIC SAFETY						
<u>Police</u>						
CHIEF'S STAFF	1,160,176	263,586	-	896,590	22.7%	
SUPPORT SERVICES	575,931	127,249	4,341	444,341	22.8%	
RECORDS	1,396,802	304,833	12,045	1,079,924	22.7%	
COMMUNITY SVCS	1,063,530	254,978	5,424	803,128	24.5%	
CRIME ANALYSIS	90,584	7,732	-	82,852	8.5%	
PROPERTY ROOM	125,326	30,142	1,034	94,150	24.9%	

CITY OF SANTA BARBARA
General Fund
Interim Statement of Appropriations, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	Annual Budget	YTD Actual	Encum- brances	** Remaining Balance	YTD Expended and Encumbered	Previous YTD
PUBLIC SAFETY						
<u>Police</u>						
TRNG/RECRUITMENT	381,881	135,035	-	246,846	35.4%	
RANGE	879,439	233,198	33,816	612,426	30.4%	
BEAT COORDINATORS	801,812	106,220	-	695,592	13.2%	
INFORMATION TECHNOLOGY	1,118,502	355,617	86,881	676,004	39.6%	
INVESTIGATIVE DIVISION	4,513,258	951,483	4,880	3,556,895	21.2%	
CRIME LAB	222,370	28,979	-	193,391	13.0%	
PATROL DIVISION	12,629,310	2,781,616	165,940	9,681,755	23.3%	
TRAFFIC	1,330,706	255,176	1,650	1,073,880	19.3%	
SPECIAL EVENTS	986,472	547,813	-	438,659	55.5%	
TACTICAL PATROL FORCE	1,131,685	254,193	-	877,492	22.5%	
STREET SWEEPING ENFORCEMENT	236,362	58,122	-	178,240	24.6%	
NIGHT LIFE ENFORCEMENT	458,400	85,722	-	372,678	18.7%	
PARKING ENFORCEMENT	902,337	180,640	27,800	693,897	23.1%	
CCC	2,383,022	470,842	641	1,911,540	19.8%	
ANIMAL CONTROL	462,772	142,928	-	319,844	30.9%	
<i>Total</i>	<u>32,850,677</u>	<u>7,576,103</u>	<u>344,452</u>	<u>24,930,123</u>	24.1%	<u>8,043,939</u>
<u>Fire</u>						
ADMINISTRATION	1,096,276	250,848	4,191	841,237	23.3%	
EMERGENCY SERVICES AND PUBLIC ED	216,586	54,512	1,958	160,116	26.1%	
PREVENTION	1,187,985	262,218	1,168	924,599	22.2%	
WILDLAND FIRE MITIGATION PROGRAM	191,083	36,457	29,109	125,517	34.3%	
OPERATIONS	17,188,401	4,014,681	66,441	13,107,279	23.7%	
ARFF	1,623,165	381,345	-	1,241,820	23.5%	
<i>Total</i>	<u>21,503,496</u>	<u>5,000,060</u>	<u>102,868</u>	<u>16,400,568</u>	23.7%	<u>5,568,140</u>
TOTAL PUBLIC SAFETY	<u>54,354,173</u>	<u>12,576,163</u>	<u>447,319</u>	<u>41,330,690</u>	24.0%	<u>13,612,080</u>
PUBLIC WORKS						
<u>Public Works</u>						
ADMINISTRATION	862,361	202,087	15,266	645,008	25.2%	
ENGINEERING SVCS	4,305,474	939,705	12,069	3,353,700	22.1%	
PUBLIC RT OF WAY MGMT	1,011,589	213,352	2,572	795,665	21.3%	
ENVIRONMENTAL PROGRAMS	514,158	63,914	56,476	393,768	23.4%	
<i>Total</i>	<u>6,693,582</u>	<u>1,419,070</u>	<u>86,383</u>	<u>5,188,129</u>	22.5%	<u>1,489,053</u>
TOTAL PUBLIC WORKS	<u>6,693,582</u>	<u>1,419,070</u>	<u>86,383</u>	<u>5,188,129</u>	22.5%	<u>1,489,053</u>
COMMUNITY SERVICES						
<u>Parks & Recreation</u>						
PRGM MGMT & BUS SVCS	524,868	137,100	-	387,768	26.1%	
FACILITIES	407,356	100,678	11,278	295,400	27.5%	
CULTURAL ARTS	429,832	108,092	33,733	288,006	33.0%	
YOUTH ACTIVITIES	752,636	222,223	12,479	517,934	31.2%	

CITY OF SANTA BARBARA
General Fund
Interim Statement of Appropriations, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>** Remaining Balance</u>	<u>YTD Expended and Encumbered</u>	<u>Previous YTD</u>
COMMUNITY SERVICES						
<u>Parks & Recreation</u>						
SR CITIZENS	722,733	190,317	3,918	528,498	26.9%	
AQUATICS	1,097,052	438,939	45,080	613,032	44.1%	
SPORTS	488,962	99,853	10,293	378,816	22.5%	
TENNIS	275,753	85,527	869	189,357	31.3%	
NEIGHBORHOOD & OUTREACH SERV	1,263,260	300,528	1,240	961,492	23.9%	
ADMINISTRATION	528,293	120,705	-	407,588	22.8%	
PROJECT MANAGEMENT TEAM	247,538	82,946	-	164,592	33.5%	
BUSINESS SERVICES	520,527	85,867	762	433,898	16.6%	
FACILITY & PROJECT MGT	1,012,354	347,462	1,721	663,171	34.5%	
GROUND MANAGEMENT	4,174,069	1,011,374	102,207	3,060,488	26.7%	
FORESTRY	1,182,344	249,322	13,887	919,136	22.3%	
BEACH MAINTENANCE	170,234	29,614	10,169	130,451	23.4%	
<i>Total</i>	<u>13,797,811</u>	<u>3,612,702</u>	<u>251,149</u>	<u>9,933,960</u>	28.0%	<u>4,046,744</u>
<u>Library</u>						
ADMINISTRATION	416,148	91,185	-	324,963	21.9%	
PUBLIC SERVICES	2,264,920	491,417	3,596	1,769,907	21.9%	
SUPPORT SERVICES	1,650,602	332,984	3,469	1,314,149	20.4%	
<i>Total</i>	<u>4,331,670</u>	<u>915,586</u>	<u>7,065</u>	<u>3,409,019</u>	21.3%	<u>1,115,383</u>
TOTAL COMMUNITY SERVICES	<u>18,129,481</u>	<u>4,528,288</u>	<u>258,214</u>	<u>13,342,979</u>	26.4%	<u>5,162,127</u>
COMMUNITY DEVELOPMENT						
<u>Community Development</u>						
ADMINISTRATION	491,949	100,016	884	391,049	20.5%	
ECON DEV	62,919	12,799	-	50,120	20.3%	
CITY ARTS ADVISORY PROGRAM	540,483	-	-	540,483	0.0%	
HUMAN SVCS	818,612	137,845	-	680,767	16.8%	
RDA	730,700	135,901	-	594,799	18.6%	
RDA HSG DEV	711,639	154,123	-	557,516	21.7%	
LR PLANNING/STUDIES	742,833	164,866	5,972	571,995	23.0%	
DEV & DESIGN REVIEW	1,035,162	222,160	10,235	802,767	22.5%	
ZONING	854,297	181,655	1,086	671,556	21.4%	
DESIGN REV & HIST PRESERVATN	957,682	193,907	43,718	720,057	24.8%	
SHO/ENVIRON REVIEW/TRAINING	704,462	147,382	8,043	549,037	22.1%	
BLDG PERMITS	1,018,740	218,455	1,310	798,975	21.6%	
RECORDS & ARCHIVES	593,922	114,544	21,093	458,284	22.8%	
PLAN CK & COUNTER SRV	1,268,494	293,178	350	974,967	23.1%	
<i>Total</i>	<u>10,531,894</u>	<u>2,076,831</u>	<u>92,691</u>	<u>8,362,372</u>	20.6%	<u>2,461,979</u>
TOTAL COMMUNITY DEVELOPMENT	<u>10,531,894</u>	<u>2,076,831</u>	<u>92,691</u>	<u>8,362,372</u>	20.6%	<u>2,461,979</u>

CITY OF SANTA BARBARA
General Fund
Interim Statement of Appropriations, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	Annual Budget	YTD Actual	Encum- brances	** Remaining Balance	YTD Expended and Encumbered	Previous YTD
NON-DEPARTMENTAL						
<u>Non-Departmental</u>						
DUES, MEMBERSHIPS, & LICENSES	22,272	-	-	22,272	0.0%	
COMMUNITY PROMOTIONS	1,706,580	575,002	-	1,131,578	33.7%	
SPECIAL PROJECTS	21,000	4,177	-	16,823	19.9%	
TRANSFERS OUT	43,500	43,500	-	-	100.0%	
DEBT SERVICE TRANSFERS	353,568	288,626	-	64,942	81.6%	
CAPITAL OUTLAY TRANSFER	573,170	12,500	-	560,670	2.2%	
APPROP. RESERVE	698,302	-	-	698,302	0.0%	
<i>Total</i>	3,418,392	923,805	-	2,494,587	27.0%	1,752,218
TOTAL NON-DEPARTMENTAL	3,418,392	923,805	-	2,494,587	27.0%	1,752,218
TOTAL EXPENDITURES	104,761,646	24,227,145	1,156,936	79,377,565	24.2%	27,178,462

*** The legal level of budgetary control is at the department level for the General Fund. Therefore, as long as the department as a whole is within budget, budgetary compliance has been achieved. The City actively monitors the budget status of each department and takes measures to address potential over budget situations before they occur.*

For Enterprise and Internal Service Funds, the legal level of budgetary control is at the fund level. The City also monitors and addresses these fund types for potential over budget situations.

CITY OF SANTA BARBARA
Special Revenue Funds
Interim Statement of Revenues and Expenditures
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>
TRAFFIC SAFETY FUND					
Revenue	515,000	149,898	-	365,102	29.1%
Expenditures	515,000	187,725	-	327,275	36.5%
<i>Revenue Less Expenditures</i>	-	(37,827)	-	37,827	
CREEK RESTORATION/WATER QUALITY IMPRVMT					
Revenue	2,610,100	849,605	-	1,760,495	32.6%
Expenditures	3,386,420	617,349	409,238	2,359,833	30.3%
<i>Revenue Less Expenditures</i>	(776,320)	232,256	(409,238)	(599,338)	
SOLID WASTE PROGRAM					
Revenue	18,614,209	4,321,031	-	14,293,178	23.2%
Expenditures	18,667,007	4,398,915	178,616	14,089,476	24.5%
<i>Revenue Less Expenditures</i>	(52,798)	(77,884)	(178,616)	203,702	
COMM.DEVELOPMENT BLOCK GRANT					
Revenue	2,955,642	475,966	-	2,479,676	16.1%
Expenditures	2,831,775	149,681	27,129	2,654,965	6.2%
<i>Revenue Less Expenditures</i>	123,867	326,284	(27,129)	(175,289)	
COUNTY LIBRARY					
Revenue	1,703,932	502,244	-	1,201,688	29.5%
Expenditures	1,765,938	382,043	21,371	1,362,524	22.8%
<i>Revenue Less Expenditures</i>	(62,006)	120,200	(21,371)	(160,836)	
STREETS FUND					
Revenue	9,570,982	1,873,594	-	7,697,388	19.6%
Expenditures	14,093,195	2,737,432	1,112,026	10,243,737	27.3%
<i>Revenue Less Expenditures</i>	(4,522,213)	(863,838)	(1,112,026)	(2,546,349)	
MEASURE "D"					
Revenue	4,884,000	641,904	-	4,242,096	13.1%
Expenditures	9,067,069	677,657	2,990,826	5,398,585	40.5%
<i>Revenue Less Expenditures</i>	(4,183,069)	(35,753)	(2,990,826)	(1,156,490)	

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

WATER OPERATING FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Water Sales - Metered	29,850,000	8,734,128	-	21,115,872	29.3%	8,681,071
Service Charges	385,000	82,011	-	302,989	21.3%	105,961
Cater JPA Treatment Charges	2,200,000	1,145,464	-	1,054,536	52.1%	688,118
Licenses & Permits	(2,500)	-	-	(2,500)	0.0%	-
Investment Income	1,008,000	297,429	-	710,571	29.5%	399,009
Grants	36,098	18,343	-	17,755	50.8%	-
Reimbursements	18,000	-	-	18,000	0.0%	-
Miscellaneous	693,698	6,999	-	686,699	1.0%	140,836
TOTAL REVENUES	<u>34,188,296</u>	<u>10,284,372</u>	<u>-</u>	<u>23,903,924</u>	<u>30.1%</u>	<u>10,014,995</u>
EXPENSES						
Salaries & Benefits	7,599,922	1,623,739	-	5,976,183	21.4%	1,577,577
Materials, Supplies & Services	10,540,950	1,827,473	3,146,688	5,566,789	47.2%	2,067,199
Special Projects	646,774	22,959	77,238	546,577	15.5%	21,970
Water Purchases	7,776,465	1,644,114	64,463	6,067,888	22.0%	2,044,199
Debt Service	5,094,672	1,658,608	-	3,436,064	32.6%	1,633,235
Capital Outlay Transfers	5,302,492	1,325,623	-	3,976,869	25.0%	2,078,956
Equipment	197,459	31,309	9,983	156,167	20.9%	1,899
Capitalized Fixed Assets	109,900	260	2,253	107,388	2.3%	7,516
Other	-	54	-	(54)	100.0%	54
Appropriated Reserve	150,000	-	-	150,000	0.0%	-
TOTAL EXPENSES	<u>37,418,635</u>	<u>8,134,138</u>	<u>3,300,625</u>	<u>25,983,872</u>	<u>30.6%</u>	<u>9,432,604</u>

NOTE - These figures reflect the operating fund only. Though the capital fund is excluded, the current year contribution from the operating fund is shown in the Capital Transfers.

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

WASTEWATER OPERATING FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Service Charges	14,010,000	3,647,029	-	10,362,971	26.0%	3,551,877
Fees	410,000	231,971	-	178,029	56.6%	190,374
Investment Income	325,000	105,691	-	219,309	32.5%	140,887
Miscellaneous	83,850	7,500	-	76,350	8.9%	93,769
TOTAL REVENUES	<u>14,828,850</u>	<u>3,992,192</u>	<u>-</u>	<u>10,836,658</u>	<u>26.9%</u>	<u>3,976,906</u>
EXPENSES						
Salaries & Benefits	5,125,324	1,130,011	-	3,995,313	22.0%	1,087,700
Materials, Supplies & Services	5,733,089	1,063,980	1,745,269	2,923,840	49.0%	894,454
Special Projects	711,367	186,164	-	525,203	26.2%	300,606
Transfers-Out	65,000	16,250	-	48,750	25.0%	-
Debt Service	1,354,888	2,630	-	1,352,258	0.2%	1,000
Capital Outlay Transfers	2,827,188	706,797	-	2,120,391	25.0%	633,357
Equipment	50,167	246	5,922	43,999	12.3%	2,067
Capitalized Fixed Assets	53,265	260	2,253	50,752	4.7%	1,541
Appropriated Reserve	150,000	-	-	150,000	0.0%	-
TOTAL EXPENSES	<u>16,070,288</u>	<u>3,106,338</u>	<u>1,753,444</u>	<u>11,210,506</u>	<u>30.2%</u>	<u>2,920,725</u>

NOTE - These figures reflect the operating fund only. Though the capital fund is excluded, the current year contribution from the operating fund is shown in the Capital Transfers.

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

DOWNTOWN PARKING

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Improvement Tax	875,000	198,606	-	676,394	22.7%	213,982
Parking Fees	5,552,550	1,436,731	-	4,115,819	25.9%	1,367,165
Investment Income	202,500	58,151	-	144,349	28.7%	95,385
Reimbursements	50,000	-	-	50,000	0.0%	-
Miscellaneous	15,000	524	-	14,476	3.5%	56,948
Operating Transfers-In	67,240	43,500	-	23,740	64.7%	43,500
TOTAL REVENUES	<u>6,762,290</u>	<u>1,737,513</u>	<u>-</u>	<u>5,024,777</u>	<u>25.7%</u>	<u>1,776,979</u>
EXPENSES						
Salaries & Benefits	3,724,389	808,532	-	2,915,857	21.7%	806,403
Materials, Supplies & Services	1,978,278	369,565	162,887	1,445,825	26.9%	402,242
Special Projects	846,410	193,115	553,293	100,002	88.2%	53,177
Transfers-Out	312,621	78,155	-	234,466	25.0%	-
Capital Outlay Transfers	1,258,760	314,690	-	944,070	25.0%	34,078
Equipment	25,000	-	2,800	22,200	11.2%	88
Capitalized Fixed Assets	-	-	3,500	(3,500)	100.0%	204,994
Appropriated Reserve	50,000	-	-	50,000	0.0%	-
TOTAL EXPENSES	<u>8,195,457</u>	<u>1,764,058</u>	<u>722,480</u>	<u>5,708,920</u>	<u>30.3%</u>	<u>1,500,981</u>

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

AIRPORT OPERATING FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Leases - Commercial / Industrial	3,893,750	1,052,644	-	2,841,106	27.0%	1,074,546
Leases - Terminal	4,853,050	1,159,913	-	3,693,137	23.9%	1,220,743
Leases - Non-Commerical Aviation	1,075,875	280,377	-	795,498	26.1%	316,888
Leases - Commerical Aviation	2,113,451	522,612	-	1,590,839	24.7%	598,137
Investment Income	310,000	91,956	-	218,044	29.7%	148,191
Miscellaneous	194,552	14,693	-	179,859	7.6%	65,856
TOTAL REVENUES	12,440,678	3,122,196	-	9,318,482	25.1%	3,424,361
EXPENSES						
Salaries & Benefits	4,780,946	1,042,161	-	3,738,785	21.8%	1,037,013
Materials, Supplies & Services	6,211,961	1,310,332	721,864	4,179,765	32.7%	1,508,289
Special Projects	742,838	111,487	-	631,351	15.0%	50,193
Transfers-Out	7,351	-	-	7,351	0.0%	-
Capital Outlay Transfers	675,240	162,767	-	512,473	24.1%	874,609
Equipment	34,212	17,687	-	16,525	51.7%	18,407
Capitalized Fixed Assets	-	-	-	-	100.0%	38,214
Appropriated Reserve	271,045	-	-	271,045	0.0%	-
TOTAL EXPENSES	12,723,593	2,644,434	721,864	9,357,295	26.5%	3,526,725

NOTE - These figures reflect the operating fund only. Though the capital fund is excluded, the current year contribution from the operating fund is shown in the Capital Transfers.

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

GOLF COURSE FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Fees & Card Sales	1,802,397	430,887	-	1,371,510	23.9%	530,545
Investment Income	28,300	10,622	-	17,678	37.5%	13,844
Rents & Concessions	299,741	92,206	-	207,535	30.8%	88,349
Miscellaneous	250,000	2,194	-	247,806	0.9%	24,470
TOTAL REVENUES	<u>2,380,438</u>	<u>535,909</u>	<u>-</u>	<u>1,844,529</u>	<u>22.5%</u>	<u>657,209</u>
EXPENSES						
Salaries & Benefits	1,137,368	254,917	-	882,451	22.4%	269,891
Materials, Supplies & Services	577,822	123,727	125,782	328,313	43.2%	194,542
Special Projects	31,190	976	9,524	20,690	33.7%	5,310
Debt Service	219,058	156,529	-	62,529	71.5%	155,696
Capital Outlay Transfers	303,553	138	-	303,415	0.0%	17,070
Equipment	8,400	-	-	8,400	0.0%	-
Capitalized Fixed Assets	507,767	201,072	290,549	16,146	96.8%	393,571
TOTAL EXPENSES	<u>2,785,158</u>	<u>737,360</u>	<u>425,855</u>	<u>1,621,943</u>	<u>41.8%</u>	<u>1,036,080</u>

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

INTRA-CITY SERVICE FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Vehicle Maintenance Charges	-	-	-	-	100.0%	653,658
Work Orders - Bldg Maint.	3,808,159	832,100	-	2,976,059	21.9%	757,162
Service Charges	1,728,719	432,180	-	1,296,539	25.0%	405,163
Miscellaneous	-	-	-	-	100.0%	93,212
Operating Transfers-In	65,000	16,250	-	48,750	25.0%	-
TOTAL REVENUES	<u>5,601,878</u>	<u>1,280,530</u>	<u>-</u>	<u>4,321,349</u>	<u>22.9%</u>	<u>1,909,196</u>
EXPENSES						
Salaries & Benefits	3,208,250	656,607	-	2,551,643	20.5%	960,973
Materials, Supplies & Services	919,270	211,225	99,371	608,673	33.8%	560,916
Special Projects	1,686,832	120,593	659,079	907,160	46.2%	347,818
Capital Outlay Transfers	829	207	-	622	25.0%	1,603
Equipment	23,000	-	-	23,000	0.0%	1,469
Capitalized Fixed Assets	25,524	282	1,962	23,280	8.8%	18,201
TOTAL EXPENSES	<u>5,863,705</u>	<u>988,914</u>	<u>760,413</u>	<u>4,114,378</u>	<u>29.8%</u>	<u>1,890,979</u>

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

FLEET REPLACEMENT FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Vehicle Rental Charges	1,343,020	335,755	-	1,007,265	25.0%	463,075
Investment Income	194,000	54,483	-	139,517	28.1%	75,934
Rents & Concessions	242,848	60,712	-	182,136	25.0%	67,060
Miscellaneous	-	23,501	-	(23,501)	100.0%	17,958
TOTAL REVENUES	<u>1,779,868</u>	<u>474,451</u>	<u>-</u>	<u>1,305,417</u>	<u>26.7%</u>	<u>624,027</u>
EXPENSES						
Salaries & Benefits	162,092	34,157	-	127,935	21.1%	25,578
Materials, Supplies & Services	1,120	280	-	840	25.0%	274
Capitalized Fixed Assets	3,658,662	305,344	73,174	3,280,144	10.3%	436,707
TOTAL EXPENSES	<u>3,821,874</u>	<u>339,781</u>	<u>73,174</u>	<u>3,408,919</u>	<u>10.8%</u>	<u>462,559</u>

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

FLEET MAINTENANCE FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Vehicle Maintenance Charges	2,515,663	628,916	-	1,886,747	25.0%	-
Miscellaneous	50,000	-	-	50,000	0.0%	-
TOTAL REVENUES	<u>2,565,663</u>	<u>628,916</u>	<u>-</u>	<u>1,936,747</u>	<u>24.5%</u>	<u>-</u>
EXPENSES						
Salaries & Benefits	1,224,737	262,229	-	962,508	21.4%	-
Materials, Supplies & Services	1,367,766	203,414	170,936	993,416	27.4%	-
Special Projects	60,625	2,866	21,634	36,125	40.4%	-
Equipment	14,000	-	-	14,000	0.0%	-
TOTAL EXPENSES	<u>2,667,128</u>	<u>468,509</u>	<u>192,570</u>	<u>2,006,049</u>	<u>24.8%</u>	<u>-</u>

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

SELF INSURANCE TRUST FUND

	** Annual Budget	YTD Actual	Encum- brances	Remaining Balance	Percent of Budget	Previous YTD
REVENUES						
Insurance Premiums	2,950,613	737,653	-	2,212,960	25.0%	799,360
Workers' Compensation Premiums	2,482,928	620,732	-	1,862,196	25.0%	339,375
OSH Charges	302,518	75,629	-	226,889	25.0%	73,145
Investment Income	337,615	87,476	-	250,139	25.9%	117,771
Miscellaneous	-	832	-	(832)	100.0%	307,858
TOTAL REVENUES	6,073,674	1,522,323	-	4,551,351	25.1%	1,637,510
EXPENSES						
Salaries & Benefits	600,672	125,961	-	474,711	21.0%	114,314
Materials, Supplies & Services	5,590,392	982,972	260,730	4,346,690	22.2%	994,865
Transfers-Out	-	-	-	-	100.0%	1,589,853
Capital Outlay Transfers	1,105	276	-	829	25.0%	2,137
Equipment	4,000	-	-	4,000	0.0%	-
Appropriated Reserve	23,671	-	-	23,671	0.0%	-
TOTAL EXPENSES	6,219,840	1,109,208	260,730	4,849,901	22.0%	2,701,168

*** The Self Insurance Trust Fund is an internal service fund of the City, which accounts for the cost of providing workers' compensation, property and liability insurance as well as unemployment insurance and certain self-insured employee benefits on a city-wide basis. Internal Service Funds charge other funds for the cost of providing their specific services.*

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

INFORMATION SYSTEMS ICS FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Service charges	2,435,147	609,814	-	1,825,333	25.0%	583,253
Miscellaneous	-	226	-	(226)	100.0%	10,526
TOTAL REVENUES	<u>2,435,147</u>	<u>610,041</u>	<u>-</u>	<u>1,825,106</u>	<u>25.1%</u>	<u>593,779</u>
EXPENSES						
Salaries & Benefits	1,537,067	329,073	-	1,207,994	21.4%	382,400
Materials, Supplies & Services	598,350	148,116	73,781	376,452	37.1%	186,684
Special Projects	1,700	834	3,377	(2,512)	247.7%	102
Capital Outlay Transfers	-	-	-	-	100.0%	21,250
Equipment	408,269	2,171	189,494	216,604	46.9%	908
Appropriated Reserve	84,895	-	-	84,895	0.0%	-
TOTAL EXPENSES	<u>2,630,280</u>	<u>480,194</u>	<u>266,653</u>	<u>1,883,434</u>	<u>28.4%</u>	<u>591,344</u>

CITY OF SANTA BARBARA
Interim Statement of Revenues and Expenses
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

WATERFRONT FUND

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>	<u>Previous YTD</u>
REVENUES						
Leases - Commercial	1,482,056	412,057	-	1,069,999	27.8%	459,585
Leases - Food Service	2,393,380	643,617	-	1,749,763	26.9%	682,526
Slip Rental Fees	3,676,785	912,142	-	2,764,643	24.8%	883,513
Visitors Fees	700,000	168,597	-	531,403	24.1%	141,159
Slip Transfer Fees	250,000	164,275	-	85,725	65.7%	91,475
Parking Revenue	1,885,098	708,588	-	1,176,510	37.6%	540,235
Wharf Parking	268,749	77,420	-	191,329	28.8%	66,029
Other Fees & Charges	364,909	91,180	-	273,729	25.0%	94,830
Investment Income	125,000	90,158	-	34,842	72.1%	115,982
Rents & Concessions	279,322	84,709	-	194,613	30.3%	71,078
Miscellaneous	97,049	83,378	-	13,671	85.9%	130,914
TOTAL REVENUES	11,522,348	3,436,120	-	8,086,228	29.8%	3,277,324
EXPENSES						
Salaries & Benefits	5,530,336	1,245,482	-	4,284,854	22.5%	1,232,700
Materials, Supplies & Services	3,416,967	698,697	726,570	1,991,700	41.7%	745,808
Special Projects	122,559	26,102	3,000	93,457	23.7%	7,626
Debt Service	1,673,572	123,503	-	1,550,069	7.4%	123,503
Capital Outlay Transfers	1,131,381	282,845	-	848,536	25.0%	279,749
Equipment	86,445	2,294	3,258	80,893	6.4%	601
Appropriated Reserve	100,000	-	-	100,000	0.0%	-
TOTAL EXPENSES	12,061,259	2,378,923	732,828	8,949,508	25.8%	2,389,987

NOTE - These figures reflect the operating fund only. Though the capital fund is excluded, the current year contribution from the operating fund is shown in the Capital Transfers.



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: Water Resources Division, Public Works Department

SUBJECT: State Revolving Fund Loan Of Up to \$29.9 Million For William B. Cater Water Treatment Plant And Ortega Groundwater Treatment Plant Projects

RECOMMENDATION:

That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Authorizing a Notice of Application Acceptance for a Safe Drinking Water State Revolving Fund (SDWSRF) Loan, and Authorizing Officers to Act on Behalf of the City.

DISCUSSION:

Project Description

The Advanced Treatment Project at the William B. Cater Water Treatment Plant (Cater), and the Ortega Groundwater Treatment Plant (OGTP) Rehabilitation Project both address upcoming water regulation compliance. As a result, they are eligible to be funded through a low interest SDWSRF loan.

Advanced Treatment Project

Cater treats the water for the City of Santa Barbara, Montecito and Carpinteria. The Advanced Treatment Project is the culmination of many years of work to determine the best solution for the South Coast water agencies to comply with the upcoming Stage 2 Disinfection Byproduct Rule (Stage 2 Rule), which will lower the allowable level of disinfection byproducts in drinking water. The California Department of Public Health (CDPH) will implement the Stage 2 Rule in 2012.

The Advanced Treatment Project is a centralized solution that will install an ozonation facility at Cater, along with supporting chemical stations and a dewatering facility. The project will ensure consistent compliance with the Stage 2 Rule and better tasting water. The Boards of Directors for Montecito Water District and Carpinteria Valley Water District have received a City staff presentation on the project, and support moving forward with it.

Ortega Groundwater Treatment Plant Rehabilitation Project

The OGTP Rehabilitation Project will refurbish the existing groundwater treatment plant and filters. Having the OGTP online will assist the City with meeting the Stage 2 Rule. Groundwater contains only trace amounts of disinfection byproducts; therefore, blending treated groundwater with treated surface water from Cater will effectively lower the levels of disinfection byproducts in the distribution system. Additionally, rehabilitating the existing OGTP will enable staff to more effectively use the City's groundwater supplies, which is especially important during periods of drought.

Loan Application and Action

On January 13, 2009, City Council authorized the City Administrator to apply for a SDWSRF loan for the Advanced Treatment Project on behalf of the City. The estimated loan amount was \$20,000,000. During the loan application period, CDPH representatives contacted City staff about extending the loan funding to the OGTP Rehabilitation Project, as the project would also assist with compliance of the Stage 2 Rule.

The estimated cost of the OGTP Rehabilitation Project is \$9,920,000. Staff had planned to use debt funding to finance the rehabilitation of the OGTP, but the SDWSRF loan is a lower cost alternative. The City has received a letter from the CDPH (see attachment), which serves as a Notice of Acceptance of the City's loan application. Funds in the amount of \$29,920,000 for a loan have been encumbered in the SDWSRF account and will be reserved for the projects, subject to conditions as set forth in the letter. The actual loan amount will be finalized after the projects are bid. At that time, staff will return to Council for approval of the actual SDWSRF loan amount and award of contract for construction.

The SDWSRF loan will cover 100% of the project costs. Terms of the loan agreement include a 20-year repayment period at a fixed 2.5017 percent interest rate. To maintain the reservation of funds in the SDWSRF account, it is necessary that a City representative sign the Notice of Application Acceptance and return it to the CDPH by November 28, 2009. The signature will signify the City's acceptance of the terms of the preliminary offer and its intention to proceed with the projects. It does not constitute any obligation on the City's part to execute the loan contract. Failure to sign and return the notice by November 28, 2009, will result in withdrawal of the notice and the bypassing of SDWSRF funding for both the Advanced Treatment Project and the OGTP Rehabilitation Project.

According to the loan requirements, a resolution of the water system's governing body (City Council) must be attached to the loan application designating the authorized representative, authorizing that individual to apply for the loan, and dedicating a repayment source. The attached resolution designates the City Administrator as the authorized individual to apply for the loan on behalf of the City and identifies the Water Fund as the source of funds for repayment of the loan.

This item was presented to the Board of Water Commissioners at their meeting on November 9, 2009, and the Board voted 4-0 in favor of the recommendation.

ATTACHMENT: Notice of Acceptance of Application dated September 29, 2009

PREPARED BY: Catherine Taylor, Water System Manager/mh

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office

State of California—Health and Human Services Agency
California Department of Public Health



MARK B HORTON, MD, MSPH
Director

ATTACHMENT 1



ARNOLD SCHWARZENEGGER
Governor

September 29, 2009

Mr. James L. Armstrong
City Administrator/Clerk/Treasurer
City of Santa Barbara
630 Garden Street
Santa Barbara, California 93102

Dear Mr. Armstrong:

**SAFE DRINKING WATER STATE REVOLVING FUND PROJECT FUNDING FOR
CITY OF SANTA BARBARA, PROJECT NO. 4210010-004**

Your application for funding under the Safe Drinking Water State Revolving Fund (SDWSRF) has been reviewed by the California Department of Public Health (CDPH) and its agent, Department of Water Resources (DWR). We have determined that project number **4210010-004**, as proposed by the City of Santa Barbara, is eligible for a construction loan in the amount of \$29,920,000. The proposed funding is provided in part from a Federal Capitalization Grant for Drinking Water State Revolving Fund (California) CFDA number 66.468.

This letter serves as our Notice of Acceptance of Application (NOAA). Funds in the amount of \$29,920,000 have been reserved for this project provided the terms and conditions as set forth herein are met, subject to availability of funds.

The funding agreement when issued and executed will provide for a \$29,920,000 loan to be repaid over 20 years at a 2.5017 percent interest rate. Once the City of Santa Barbara begins drawing loan funds, CDPH will invoice you semiannually during construction for interest accrued on funds disbursed. (Section 116761.65 of the Health and Safety Code prohibits deferral of interest on loans.) Your semiannual principal and interest payments will be approximately \$955,240 and will normally begin after project completion. An accumulation of approximately \$95,524 semiannually during the first 10 years of the loan repayment period is required in order to build a loan repayment reserve fund equal to two semiannual payments.

Funding is contingent upon your **timely** compliance with all terms and conditions of this NOAA, including those set forth in the "City of Santa Barbara, Project No. 4210010-004 SAFE DRINKING WATER STATE REVOLVING FUND NOTICE OF ACCEPTANCE OF APPLICATION TERMS AND CONDITIONS" attached hereto and incorporated herein by this reference. Compliance shall be determined at the sole discretion of CDPH or its authorized representative.

This NOAA is not an authorization to begin construction. Unless prior written approval from CDPH is received, initiation of construction of this project prior to the execution of a funding agreement may result in this project being ineligible for financing from the SDWSRF. Therefore, if you plan to start construction early, you should immediately contact your District Office of CDPH.

In order to maintain the reservation of funds in the SDWSRF account for your project, you must sign the attached "City of Santa Barbara, Project No. 4210010-004 SAFE DRINKING WATER STATE REVOLVING FUND NOTICE OF ACCEPTANCE OF APPLICATION TERMS AND CONDITIONS" at the space provided and return it within **60 days** of receipt. **We have provided two originals. Please sign and return one full document to:**

Department of Water Resources
Safe Drinking Water Office
Attention: Dennis Woods
1416 Ninth Street, Room 816
Post Office Box 942836
Sacramento, California 94236-0001

Your signature will indicate your acceptance of the terms and conditions and your intention to proceed with the project. It does not constitute any obligation on your part to enter into the loan funding agreement. **Failure to sign and return the attachment to this NOAA within the time period will result in the withdrawal of the NOAA and the bypassing of your project.**

Mr. James L. Armstrong, City Administrator
September 29, 2009
Page 3

The State commends the City of Santa Barbara for taking steps to enhance the provision and protection of the drinking water supplied to your consumers. If you have any questions regarding this NOAA, please contact either your CDPH Santa Barbara District Office at (805) 566-1326 or Dennis Woods, DWR Associate Analyst, at (916) 653-9724, or by e-mail at dwoods@water.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Dennis Woods". The signature is written in a cursive style.

for Gary H. Yamamoto, P.E., Chief
Division of Drinking Water
and Environmental Management

Enclosures

cc: (See Attached list.)

Honorable Pedro Nava
Member of the Assembly
State Capitol, Room 2148
Sacramento, California 94249-0035

Honorable Tony Strickland
Member of the Senate
State Capitol, Room 4062
Sacramento, California 94248-0001

Honorable Marty Blum
Mayor of the City of Santa Barbara
735 Anacapa Street
Santa Barbara, California 93101

Ms. Rebecca Bjork, Water Resources Manager
City of Santa Barbara
630 Garden Street
Santa Barbara, California 93102

Mr. Kurt Souza, Regional Engineer
Division of Drinking Water and
Environmental Management
Carpinteria Section
California Department of Public Health
1180 Eugenia Place, Suite 200
Carpinteria, California 93013

Mr. Kurt Souza, Acting District Engineer
Santa Barbara District
Division of Drinking Water and
Environmental Management
California Department of Public Health
1180 Eugenia Place, Suite 200
Carpinteria, California 93013

Ms. Linda Ng, Chief
Safe Drinking Water Office, Room 816
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001

Mr. Dennis Woods, Associate Analyst
Safe Drinking Water Office, Room 816
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001

Mr. Kelvin Yamada, Chief
Drinking Water Infrastructure Financing Section
Division of Drinking Water and
Environmental Management
California Department of Public Health
Post Office Box 997377
Sacramento, California 95899-7377

Ms. Lorri Silva
Drinking Water Infrastructure Financing Section
Division of Drinking Water and
Environmental Management
Safe Drinking Water State Revolving
Fund Program
California Department of Public Health
Post Office Box 997377
Sacramento, California 95899-7377

Ms. Natalia Deardorff, ERU HQ
Environmental Unit
Division of Drinking Water and
Environmental Management
California Department of Public Health
Post Office Box 997377
Sacramento, California 95899-7377

Ms. Nadine Feletto
Technical Support Unit
Division of Drinking Water and
Environmental Management
California Department of Public Health
Post Office Box 997377
Sacramento, California 95899-7377

CITY OF SANTA BARBARA
Project No. 4210010-004

SAFE DRINKING WATER STATE REVOLVING FUND
NOTICE OF ACCEPTANCE OF APPLICATION
TERMS AND CONDITIONS

Unless otherwise expressly directed herein, items indicated as DWR Requirements must be submitted to DWR at the address provided below, and CDPH Requirements must be submitted to your District Office of CDPH.

Copies of all documents referenced below are enclosed. You are encouraged to share these documents with your legal and financial advisor(s) and governing body. Any concerns or comments should be directed to DWR.

I. Prior to issuance of the funding agreement for signature by your authorized representative, the following items must be provided:

DWR Requirements

1. A written designation, by resolution or as otherwise appropriate, of individual(s) with legal authority to:
 - a. Sign the SDWSRF funding agreement;
 - b. Approve the Claims for Reimbursement;
 - c. Sign the Budget and Expenditure Summary;
 - d. Sign the Final Release form; and
 - e. Sign the certification that the project is complete and ready for final inspection.

Person(s) signing the Budget and Expenditure Summary and certification that the project is complete and ready for final inspection must be a registered engineer(s) or person(s) approved by CDPH.

2. A written statement, resolution, or ordinance (as appropriate) adopted by the water system's governing body identifying a source of revenue and pledging/dedicating such source of revenue for repayment of the loan. When identifying the source of repayment, the identification should be as specific as possible, for example if using: assessments provide assessment name, date or number; user water rates, fees, or charges; CPUC authorized surcharge provide identity of CPUC order; or provide identity of accounts receivable as appropriate. The document shall also include a statement agreeing to increase rates as appropriate whenever necessary to satisfy debt service over the term of the loan.

You are encouraged to submit a draft of the statements, resolutions, or ordinances to DWR for review **prior** to taking it to your board or governing body for adoption or approval. DWR will review the draft and recommend to you any required modifications, thus avoiding unnecessary delays in issuance of your funding agreement. A resolution that does not meet program requirements will not be accepted.

3. Provide the identity of your Contract Manager.
4. The City of Santa Barbara shall certify to CDPH that any fees or charges needed to construct, operate and/or maintain the proposed project, including revenues dedicated for repayment of a SDWSRF loan, have been approved in accordance with Article XIII C and XIII D of the California Constitution (Proposition 218), or provide the written opinion of its legal counsel that Proposition 218 procedures are not applicable or required.

Note: You are encouraged to commence satisfaction of the above DWR Requirements immediately. Any concerns or comments should be directed to DWR.

CDPH Requirements

1. If property will be purchased for this project, the City of Santa Barbara shall provide documentation of conformance of land acquisition with the federal Uniform Relocation Assistance and Real Property Acquisition Act (Uniform Act) requirements to the Uniform Act coordinator at CDPH Sacramento Office, SRF Program no later than September 1, 2010. Please refer to the enclosed letter dated March 12, 2009, from Mr. Stephen Woods of CDPH.
2. The City of Santa Barbara shall submit final plans and specifications with a detailed cost breakdown for the entire project (including non-SRF funded portions) to CDPH's Santa Barbara District Office no later than September 1, 2010.
3. The City of Santa Barbara shall submit a permit amendment application to CDPH's Santa Barbara District Office no later than September 1, 2010.
4. The City of Santa Barbara shall prepare and submit the Worksheet for CEQA/NEPA Determinations to CDPH's Environmental Review Unit (ERU) for federal coordination no later than September 1, 2010.
5. The City of Santa Barbara shall the Federal Cross-cutters Worksheet to assist in federal coordination in accordance with the CDPH "NEPA-like" requirements no later than September 1, 2010.

6. The City of Santa Barbara shall complete its CEQA documentation and file such documentation, including any applicable Notices with the Santa Barbara County Clerk's Office and the Governor's Office of Planning and Research State Clearinghouse and send a copy of such documentation to CDPH's ERU no later than September 1, 2010.

All requirements under I must be satisfied before a funding agreement will be issued for signature by your authorized representative, and all such requirements must be satisfied within 1 year following the date of your signature of this "City of Santa Barbara, Project No. 4210010-004 SAFE DRINKING WATER STATE REVOLVING FUND NOTICE OF ACCEPTANCE OF APPLICATION TERMS AND CONDITIONS".

II. Prior to final execution of the funding agreement by State, the following items must be provided:

DWR Requirements

1. The services of a Fiscal Agent must be secured to assist in administering repayment of the loan. Complete and return to DWR a Fiscal Services Agreement form, in triplicate with original signatures on all copies.
2. Complete and sign a Payee Data Record (STD 204). This form is to be returned with the signed funding agreement. DWR will forward it with the final funding agreement to CDPH.

CDPH Requirements

1. The City of Santa Barbara shall have a Labor Compliance Program for this project prior to construction bid solicitation. Appropriate provisions related to the Labor Compliance Program shall be included in all construction bid solicitation(s).
2. The City of Santa Barbara shall certify to CDPH that it is in compliance with Labor Code Section 1771.8 requirements. (Information is available on the Department of Industrial Relations website: <http://www.dir.ca.gov/lcp.asp>) The certification shall be sent to CDPH Sacramento Office, SRF Program no later than September 30, 2010. Enclosed is an acceptable certification form which may be used to satisfy this requirement.

All items under II must be provided before final execution of the funding agreement by State.

Failure to timely comply with DWR and CDPH Requirements I and II may result in a withdrawal of the Notice of Acceptance of Application. Should this occur, your project will be bypassed but will remain on the project priority list. You may submit a new application for future funding only after receiving another letter of invitation from CDPH. If for any unforeseen reason you are unable to comply with any of the above requirements, you should contact your District Office of CDPH as soon as possible.

III. Prior to disbursement of funds, the following items must be provided:

DWR Requirements

1. Evidence that a separate checking account or a separate ledger has been established to account for funds received from the State.

Please indicate the name and address of the financial institution, exact name of account holder, and the account name and number. If this checking account is not used solely to account for funds received from the State, you must establish a ledger within your accounting system in accordance with generally accepted accounting principles. The ledger must identify the project number and SRF funding agreement number. You must provide documentation showing that the ledger has been established. **(Please note all accounts are subject to audit at any time.)**

2. Detailed account information where funds collected to repay the loan are held before being transferred to your Fiscal Agent.

Please indicate the name and address of the financial institution, exact name of account holder, and the account name and number. You must establish a ledger within your accounting system in accordance with generally accepted accounting principles to account for the receipt of funds collected to repay the loan. The ledger must identify the project number and SRF funding agreement number. You must provide documentation showing that the ledger has been established. **(Please note all accounts are subject to audit at any time.)**

3. Complete and return to DWR a Security Agreement (Deposit Account) form, on the accounts in items 1 and 2 above. For account verification by the State, please provide one of the following: a voided blank check, voided deposit slip, or a copy of your most recent bank statement on this account.
4. A Financing Statement (form UCC-1) will be completed and filed with the Secretary of State of California by DWR. A copy of the form is enclosed. This document is filed to provide security in items of personal property including the accounts as referenced in items 1 and 2 above.

CDPH Requirements

1. The City of Santa Barbara shall submit an initial budget of eligible project costs approved by CDPH on a DWR Budget and Expenditure Summary form.

All items under III must be provided before any disbursement of funds will be made.

IV. General Requirements

CDPH Requirements

1. City of Santa Barbara **must complete all technical, environmental and financial conditions of the Notice of Acceptance of Application including this "City of Santa Barbara, Project No. 4210010-004 SAFE DRINKING WATER STATE REVOLVING FUND NOTICE OF ACCEPTANCE OF APPLICATION TERMS AND CONDITIONS" within a time frame such that a funding agreement can be issued within 1 year from the date you sign this "City of Santa Barbara, Project No. 4210010-004 SAFE DRINKING WATER STATE REVOLVING FUND NOTICE OF ACCEPTANCE OF APPLICATION TERMS AND CONDITIONS"**.
2. Subsequent to funding agreement execution you may request a **one-time** increase in funding. Such request must be **based upon competitive bids** and shall be submitted to the Santa Barbara District Office of CDPH. Approval of your request may be granted or denied at the sole discretion of the State, subject to funding availability and your financial qualifications.
3. Pursuant to Government Code Section 8546.7 the contracting parties shall be subject to the examination and audit of the State or any agent thereof, and the State Auditor. Parties are also subject to examination and audit of the U.S. Environmental Protection Agency, the Comptroller General of the United States, and Office of the Inspector General.
4. As a signatory to the California Urban Water Conservation Council – Memorandum of Understanding (MOU), the City Of Santa Barbara is responsible for the implementation of the urban water conservation "best management practices" of the MOU.
5. The City of Santa Barbara shall submit an Operations Plan amendment for the proposed facilities to the Santa Barbara District Office no later than December 31, 2013.

6. The City of Santa Barbara shall not initiate project construction activities unless and until the environmental review process is complete and all applicable Notices are filed.
7. The City of Santa Barbara shall complete construction of the project no later than December 31, 2013.
8. Any significant changes in the project design, subsequent to the issuance of this NOAA and prior to issuance of a funding agreement, may be subject to further environmental review.
9. Cross-cutting Federal Authorities apply to your project; see enclosed list. In order to conform to the federally mandated Disadvantaged Business Enterprise (DBE) good faith effort requirements, you must include the appropriate DBE "good faith effort" provisions in any bid documents. (You must meet the "good faith effort" requirements even if you do not utilize a formal bid process.). In order to demonstrate conformance with the federally mandated DBE good faith effort requirements, you must submit the construction bid solicitation package and the Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) good faith effort documentation from the construction funding agreement award, to the CDPH DBE coordinator.

The United States Environmental Protection Agency has established a good faith effort process to assure DBE have the opportunity to compete to participate in federally funded procurement. To comply with this requirement, you must:

- Perform the six affirmative steps required to meet the good faith effort requirements on procurement of construction, equipment, supplies and services for this project. (**You will be required to demonstrate that you have complied with the six "good faith" steps.**)
- Include EPA forms 6100-2, (DBE Program Subcontractor Participation Form), EPA forms 6100-3 (DBE Program Subcontractor Performance Form), and EPA Form 6100-4 (DBE Program Subcontractor Utilization Form) in each bid solicitation.
- Report semiannually on or before April 15 and October 15 on the CDPH MBE/WBE Utilization Report, enclosed.
- **Create and maintain a bidders list** if the recipient of the funding is subject to, or chooses to follow, competitive bidding requirements. The list, of all firms that bid or quote on prime contracts, or bid or quote subcontracts, must be kept until the project completion has been certified to CDPH.
- Include "Good Faith Effort" language in all contracts and subcontracts requiring compliance with the above.

Enclosed you will find a copy of the **Disadvantaged Business Enterprise (DBE) – Guidance for Public Water Systems (June 2009)** concerning conformance with the federal regulations for Participation by Disadvantaged Business Enterprise in USEPA funded projects. Should you have any questions regarding MBE/WBE, please contact Nadine Feletto with CDPH at (916) 449-5621.

Under the Federal Drinking Water State Revolving Fund Guidelines, the City of Santa Barbara is required to comply with the Single Audit Act. This Act requires entities to conduct an audit in accordance with the Office of Management and Budget (OMB) Circular A-133 Act if the entity expends \$500,000 or more (or as said threshold amount may be amended by the federal government) in federal awards from any funding source, during the entity's fiscal year. A copy of the audit is to be submitted to CDPH. Information regarding the Single Audit Act can be found on the Internet at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

Address for DWR:

Department of Water Resources
Safe Drinking Water Office
Attention: Dennis Woods
1416 Ninth Street, Room 816
Post Office Box 942836
Sacramento, California 94236-0001

The terms and conditions set forth in the Notice of Acceptance of Application dated September 29, 2009, including those set forth in this "City of Santa Barbara, Project No. 4210010-004 SAFE DRINKING WATER STATE REVOLVING FUND NOTICE OF ACCEPTANCE OF APPLICATION TERMS AND CONDITIONS" are acceptable to the City of Santa Barbara and it is City of Santa Barbara's intent to continue with this project as proposed.

Signature: _____

Date: _____

Print Name: _____

Title: _____

Address: _____

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA AUTHORIZING A NOTICE OF APPLICATION ACCEPTANCE FOR A SAFE DRINKING WATER STATE REVOLVING FUND (SDWSRF) LOAN, AND AUTHORIZING OFFICERS TO ACT ON BEHALF OF THE CITY

WHEREAS, a SDWSRF loan has been identified by staff as an attractive instrument to fund the Advanced Treatment Project at the William B. Cater Water Treatment Plant and the Ortega Groundwater Treatment Plant Rehabilitation Project;

WHEREAS, the City Administrator was authorized to apply for a Safe Drinking Water State Revolving Fund loan to pay for substantial portion of the costs of such projects; and

WHEREAS, the California Department of Water Resources has notified the City Administrator that the two projects, identified collectively by the SDWSRF as Project No. 4210010-004, are eligible for a SDWSRF loan in the amount of \$29,920,000 at an interest rate of 2.5017 percent to be repaid over twenty years.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SANTA BARBARA AS FOLLOWS:

1. Council, subject to the approval and execution of the SDWSRF funding agreement, approves the loan amount of \$29,920,000 at an interest rate of 2.5017 percent to be repaid over twenty years.

2. The source of revenue for repayment of the loan shall be that portion of the Water Fund necessary to make full and complete repayment of the loan, established as the Advanced Treatment Project Fund and the Ortega Groundwater Rehabilitation Project Fund. The City shall revise rates pursuant to California law, specifically Article XIII C and/or Article XIII D of the California Constitution, as appropriate whenever necessary to satisfy debt service over the term of the loan.

3. The City Finance Director is authorized and directed to: approve claims for reimbursement, negotiate and execute one or more contracts as necessary to secure and provide for services of a Fiscal Agent to assist in administering repayment of the loan; complete and return the Fiscal Services Agreement; complete and sign any required Payee Data Record; provide security for the loan as may be contained in the funding agreement; disburse funds by, including without limitation, establishing separate funds and separate checking accounts, and preparing and executing security agreements and financing statements, and; execute the Certification Regarding Lobbying and all other administrative and financial requirements in accord with the process required by, or approved by, the officers, agents or employees of the California State Department of Water Resources.

4. The City Public Works Director acting directly or through the City Engineer or City Water Resources Manager, is authorized and directed to sign and return a Notice of Application of Acceptance; negotiate and execute an agreement with the California State Department of Water Resources for such Safe Drinking Water State Revolving Fund loan or loans; prepare and sign the Budget and Expenditure Summary; prepare and sign the Contractor's Release form; prepare and sign a certification that the project is complete and ready for final inspect, as appropriate; perform all services as required by permits, plans, specifications, environmental compliance and resource documents; and provide for the design, development, construction and completion of the project to comply with State requirements, on construction agreements, and design, services agreements approved by the City Council.

5. The City Administrator is authorized and directed to act on behalf of the City to negotiate, prepare and execute any and all related necessary agreements, commitments, claims, demands, adjustments, extension, compromises assurances, indemnity, security agreements, notices and/or certification required or useful to secure the benefits of a loan or loans for Cater Improvements from the California State Department of Water Resources.



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: Water Resources Division, Public Works Department

SUBJECT: Contract For Design Of The Ortega Groundwater Treatment Plant Rehabilitation Project

RECOMMENDATION: That Council:

- A. Authorize the Public Works Director to execute a professional services agreement with Carollo Engineers, Inc. (Carollo), in an amount not to exceed \$708,000, for final design of the Ortega Groundwater Treatment Plant (OGTP) Rehabilitation Project (Project); and
- B. Authorize the Public Works Director to approve extra services for Carollo that may result from necessary changes in the scope of work for a total amount not to exceed \$70,000.

DISCUSSION:

The City's groundwater supplies are an important part of the City's overall water supply. They help meet peak summer water demands and supplement depleted surface water supplies during droughts. Groundwater supplies also serve as an emergency source in the event of catastrophic interruption of the supplies from the Santa Ynez River and the State Water Project. Additionally, groundwater supplies could be used to assist the City's compliance with stricter drinking water quality regulations that will be effective by 2012.

The existing Ortega Groundwater Treatment Plant (OGTP) was constructed in the 1970's to treat high levels of naturally occurring iron and manganese in groundwater pumped from the four downtown area wells at Ortega Park, the Corporation Yard, Vera Cruz Park, and City Hall. These wells provide approximately 50% of the City's overall groundwater pumping capacity. The OGTP and four wells played an important water supply role during the drought of the late 1980's. Currently, the OGTP and four downtown wells are in need of significant rehabilitation in order for them to once again become an important part of the City's water supply.

The proposed Project is the culmination of previous investigations by Carollo to define the work required for the OGTP and wells to reliably produce and treat up to three million gallons of groundwater per day for the City's distribution system. Carollo's previous work

included a pre-design investigation and extensive pilot project that determined the best treatment scheme for the OGTP.

Carollo has submitted an acceptable proposal in the amount of \$708,000 for final design to rehabilitate the OGTP and the four wells. Their scope includes refurbishing the existing pressure vessels and storage tank and improving the related pumping and collection systems. Rehabilitation work targeted for the wells includes various amounts of well structure improvements and upgrades to existing electrical, piping, and pumping systems. Staff is recommending approval of \$70,000 to cover any additional, unforeseen costs associated with the Project.

Costs associated with final design and construction are listed below:

Carollo's Design Services	\$ 708,000
Change Order Authority	\$ 70,000
City Engineering Support Services	\$ 40,000
*Permitting/Environmental Review	\$ 37,000
Sub-Total for Design Costs	\$ 855,000
*Construction Contract	\$ 8,500,000
*Consultant Engineering Support Services	\$ 275,000
*City Engineering Support Services	\$ 80,000
*Construction Management	\$ 210,000
Sub-Total for Construction Costs	\$ 9,065,000
Total Project Costs	\$ 9,920,000

* Estimated Costs

BUDGET/FINANCIAL INFORMATION:

Funds for the proposed design work are budgeted in the 2009 Water Fund Capital Program. It is anticipated that a low-interest State Revolving Fund loan will fund the rehabilitation of the OGTP and the four groundwater wells. This item was presented to the Board of Water Commissioners at their meeting on November 9, 2009, and the Board voted 4-0 in favor of the recommendation.

SUSTAINABILITY IMPACT:

Rehabilitating the OGTP will help the water system comply with upcoming State water quality regulations, and will enable staff to make better use of the City's groundwater to supplement drinking water supplies, which is especially important during droughts.

PREPARED BY: Catherine Taylor, Water System Manager/CT/mh

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: Water Resources Division, Public Works Department

SUBJECT: Rental Agreement For The Gibraltar Dam Caretaker Residence

RECOMMENDATION:

That Council authorize the Public Works Water Resources Manager to execute a Caretaker Rental Agreement for the Gibraltar Reservoir and Dam residence with Frank Dealy, through the term of his employment as the Dam Caretaker for this location.

DISCUSSION:

Gibraltar Reservoir and Dam, a concrete arch dam positioned on the Santa Ynez River, is owned by the City of Santa Barbara. The Dam is situated in a remote location deep within the Los Padres National Forest at 1,400' above sea level. With an average yield of approximately 4,600 acre-feet per year, the Gibraltar Reservoir is the second largest single source of water for the City. Water from the Dam is delivered through the Santa Ynez Mountains via Mission Tunnel to Lauro Reservoir for treatment at the City's Cater Water Treatment Plant.

Historically, the Dam Caretaker has been required to live in the City-owned residence at Gibraltar Reservoir and Dam. Daily operation and maintenance of the Reservoir and Dam, along with site security, warrant having someone reside on site.

Frank Dealy was recently promoted to the position of Dam Caretaker. He has been an employee of the Water Resources Department since 1997, and has been working at the Gibraltar Reservoir and Dam since 1999. Over the past ten years, Mr. Dealy has gained both knowledge and expertise in the operation, maintenance, reporting requirements, and related duties associated with operating the Reservoir and Dam.

The Department recommends approval of a rental agreement with Mr. Dealy, effective upon signing, through the term of his employment as the City's Dam Caretaker for Gibraltar Reservoir and Dam. The proposed rental agreement has been shared with Service Employees International Local 620 representatives.

BUDGET/FINANCIAL INFORMATION:

No rent will be received as revenue, as tenant services are performed in lieu of rent. The remote location and difficulty of access to this valuable water resource underscores the intrinsic value provided by continuing the tradition of having the Dam Caretaker reside on site.

PREPARED BY: Catherine Taylor, Water System Manager/CT/sj

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009
TO: Mayor and Councilmembers
FROM: Engineering Division, Public Works Department
SUBJECT: Approval Of Map And Execution Of Agreements For 561 West Mountain Drive

RECOMMENDATION:

That Council approve and authorize the City Administrator to execute and record Parcel Map Number 20,775 for a subdivision at 561 West Mountain Drive (finding the Parcel Map in conformance with the state Subdivision Map Act, the City's Subdivision Ordinance, and the tentative subdivision map) and other standard agreements relating to the approved subdivision.

DISCUSSION:

A Tentative Map for a subdivision located at 561 West Mountain Drive (Attachment 1) was conditionally approved on March 15, 2007, by adoption of the Planning Commission Conditions of Approval, Resolution Number 014-07. The project proposed a 4-lot subdivision of an 8.8 acre parcel with the existing residence to remain on one lot, but the project was appealed to Council on March 26, 2007, and again on July 24, 2007. Council directed the applicant to revise the project by reducing the project to a 3-lot subdivision by Council Resolution Number 07-086 (Attachment 2).

In accordance with the Council approval, the Owners (Attachment 3) have signed and submitted the Parcel Map and the subject Agreements to the City, tracked under Public Works Permit Number PBW2008-00661. It is necessary that Council approve the Parcel Map since it conforms to all the requirements of the Subdivision Map Act and the Municipal Code applicable at the time of the approval of the Tentative Map (Municipal Code, Chapter 27.09.060).

Staff recommends that Council authorize the City Administrator to execute the subject *Agreement Relating to Subdivision Map Conditions Imposed on Real Property*.

The *Agreement Assigning Water Extraction Rights* was processed separately and recorded on October 4, 2008 as instrument 2008-0060984.

THE PARCEL MAP IS AVAILABLE FOR REVIEW IN THE CITY CLERK'S OFFICE.

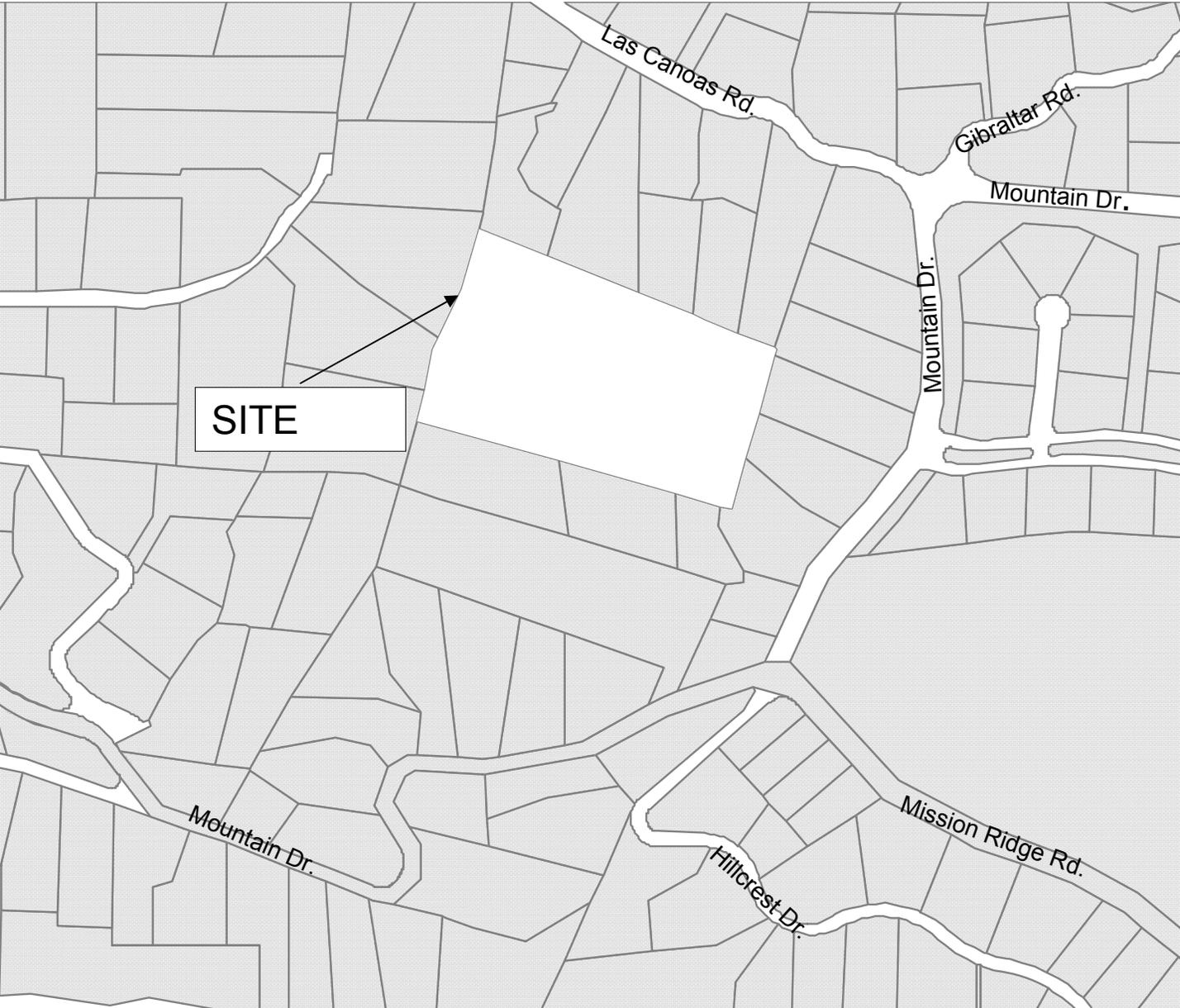
- ATTACHMENTS:**
1. Vicinity Map
 2. Conditions required to be recorded concurrent with Parcel Map Number 20,775 by the Council's Conditions of Approval, Resolution Number 07-086
 3. List of Owners/Trustees

PREPARED BY: Mark Wilde, Supervising Civil Engineer/VJ/kts

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office

Vicinity Map
561 W. Mountain



Not to Scale

CONDITIONS REQUIRED TO BE RECORDED CONCURRENT WITH PARCEL MAP NO. 20,775 BY COUNCIL CONDITIONS OF APPROVAL, RESOLUTION NUMBER 07-086

561 West Mountain Drive

Said approval is subject to the following conditions:

1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural water courses, conduits and any access road, as appropriate.
2. **Recreational Vehicle Storage Limitation.** No recreational vehicles, boats or trailers shall be stored on the Real Property unless enclosed or concealed from view as approved by the Architectural Board of Review (ABR).
3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan approved by the Architectural Board of Review (ABR). Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan.
4. **Storm Water Pollution Control and Drainage Systems Maintenance.** Owner shall maintain the drainage system and storm water pollution control devices intended to intercept siltation and other potential pollutants (including, but not limited to, hydrocarbons, fecal bacteria, herbicides, fertilizers, etc.) in a functioning state. Should any of the project's surface or subsurface drainage structures or storm water pollution control systems fail to capture, infiltrate and/or treat, or result in increased erosion, the Owner shall be responsible for any necessary repairs to the system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Community Development Director to determine if an amendment, or a new Building Permit is required to authorize such work. The Owner is responsible for the adequacy of any project related drainage facilities, and for the continued maintenance thereof in a manner that will preclude any hazard to life, health or damage to the Real Property or any adjoining property.
5. **Development Rights Restrictions.** The Owner shall not conduct any development within the restricted portion of the Real Property (that area outside of the development envelope) as designated on the approved Tentative Subdivision Map in order that those portions of the Real Property remain in their natural state. These restrictions include, but are not limited to, the right to develop the restricted portions with any grading, irrigation, buildings, structures or utility service lines. The restricted areas shall be shown on the Final Map. The Owner shall continue to be responsible for (i) maintenance of the restricted area, and (ii) compliance with orders of the Fire Department. Any brush clearance shall be performed without the use of earth moving equipment.
6. **Approved Development.** The development of the Real Property approved by the City Council on November 20, 2007 is limited to three lots, the construction of two new residences with garages, and associated landscape improvements as shown on the approved architectural drawings and as conditioned herein, and the improvements shown on the Tentative Subdivision Map signed by the Mayor of the City Council on said date and on file at the City of Santa Barbara. No detached accessory structures are permitted on Lot 2. Building pad elevations or building heights for Lots 1 and 3 shall be reduced from the plans reviewed by the Planning Commission on March 15, 2007
7. **Required Private Covenants.** The Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:

ATTACHMENT 3

LIST OF MEMBERS Jorgensen Ranch, LLC

561 West Mountain Drive

Milan Timm, Manager

Richard L. Ridgeway, Manager



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department

SUBJECT: Capital Improvement Projects: First Quarter Report For Fiscal Year 2010

RECOMMENDATION:

That Council receive, for information only, a report on the City's Capital Improvement Projects (CIP) for the First Quarter of Fiscal Year 2010.

EXECUTIVE SUMMARY:

The Engineering Division of the Public Works Department will present a summary of design and construction CIP for the First Quarter of Fiscal Year 2010.

DISCUSSION:

CONSTRUCTION HIGHLIGHTS

One project was completed in the First Quarter of Fiscal Year 2010, with a total project cost of \$465,548.36 (Attachment 1).

In addition, 20 CIP's are currently in construction, with a value of \$68,814,467.76 (Attachment 2). The following are construction highlights:

Redevelopment Agency:

- West Cabrillo Pedestrian Improvements (\$1,895,142) - A new sidewalk has been placed from the Ambassador Park crosswalk to the Los Banos Pool on the beachside. The art element across from Ambassador Park has been completed and the art element for the Bath Street Waterfront entrance is currently being constructed.

Public Works Streets:

- Underground Utility District Number 10 - Cliff Drive (\$567,697.51) - The City, Southern California Edison, Verizon, and Cox Cable are working together to remove the unsightly utility poles along Cliff Drive. The project consists of

placing new underground vaults, connecting the maze of conduits, placing new street lights, and connecting the new service lines to the resident's homes. The project is expected to be completed by early 2011.

Waterfront:

- Marina One Replacement Phase 1 (\$1,781,840) - Marina One, containing 592 slips, is the largest of four marinas in the Santa Barbara Harbor. The majority of Marina One, fingers A - P, was constructed in the mid-1970s. Phase I includes the replacement of the main headwalk, gangway, and upgrading/replacing the utilities serving Marina One. Construction is anticipated to start in November 2009. The headwalk and gangway installation will begin in 2010.

DESIGN HIGHLIGHTS:

There are currently 49 projects under design, with an estimated total project cost of \$140,714,223, and categorized as follows:

PROJECT CATEGORY	PROJECT DESIGNS IN PROGRESS	
	No. of Projects	Total Value of Projects
Airport	1	\$4,149,385
Creeks	3	\$9,200,500
Downtown Parking	1	\$685,000
Public Works: Bridges	6	\$51,754,000
Public Works: Lower Mission Creek	1	\$3,770,000
Public Works: Streets/Transportation/Parking	15	\$10,048,079
Public Works: Water/Wastewater	18	\$45,588,945
Redevelopment Agency	4	\$15,518,314
TOTALS	49	\$140,714,223

Work is scheduled to be funded over several years, as generally shown in the City's Six-Year Capital Improvement Program Report. The projects rely on guaranteed or anticipated funding and grants.

The following are some design project highlights:

Creeks:

- Mission Creek Concrete Channel Fish Passage (\$7,515,000) - This project will construct a fish passable corridor through the existing concrete County Flood Control Channel. The fish passage will be owned and maintained by the City's Creeks Division.

Public Works Streets:

- Cabrillo Bridge (\$19,707,000) - The California Department of Fish and Game Permit has been reviewed by City staff. The Tidewater Goby Protection and Aquatic Species Management Plan has been completed by Science Application International Corporation, and is being distributed for comments from various regulatory permitting agencies.
- Chapala/Yanonali Bridge Seismic Retrofit (\$1,500,000), Cota Street Bridge Replacement (\$2,572,000), and Mason Street Bridge Replacement (\$9,600,000) - The City has received authorization to proceed with the design for these three bridges. Staff has prepared preliminary environmental study forms, and will be scheduling Caltrans' field reviews for all three bridges.
- Haley/De La Vina Bridge (\$12,290,000) - Construction of the Haley/De La Vina Bridge is scheduled to start in November 2009. This multi-million dollar project, funded largely through a grant from the Federal Highway Bridge Replacement and Reconstruction Program, will replace the deteriorating bridge, improve pedestrian areas near the bridge, and enhance portions of Mission Creek for water flow and native habitat. In addition, new street lighting will be installed at the intersection.
- Ortega Street Bridge Replacement (\$6,085,000) - The City has received authorization to proceed with Right Of Way acquisitions. The Right Of Way phase will last approximately one year, ending in October 2010, with construction beginning in spring 2011.
- Carrillo/Anacapa Intersection (\$608,400) - Staff anticipates completing final design in the second quarter of Fiscal Year 2010. Work includes installing new signal poles with mast arms over Carrillo Street, new pedestrian signal indicators with countdown heads in all directions, curb extensions, and directional sidewalk access ramps on the northeast and southeast sides of Carrillo Street.
- Jake Boyssel Multipurpose Pathway (\$992,000) - The project will provide a bike/pedestrian pathway, separated from the adjacent roadways that experience high vehicular volumes and speeds, to allow safe travel to and from nearby schools. Construction is scheduled to begin in August 2010. City staff is working closely with the Boyssel family on the selection and placement of a memorial

bench and boulder that will pay tribute to Jake Boysel. This project is fully funded by a Federal Safe Routes to School grant.

Redevelopment Agency:

- Fire Department Administrative Annex (\$3,750,000) - The Redevelopment Agency authorized \$3.7 million to finish the design and construction of the Fire Department Administrative Annex. Completion of the design is anticipated in August 2010. This project will allow the Fire Administration staff to move out of the leased space at 925 De La Vina.

Public Works Water:

Cater Ozone (\$18,000,000) - The City has received the Notice of Acceptance of Application from the Safe Drinking Water State Revolving Fund Program in the amount of \$29.9 million. City staff is working on the Master Application and the environmental review documents.

ATTACHMENTS: 1. Completed Capital Projects for First Quarter, Fiscal Year 2010
2. Capital Projects with Construction in Progress

PREPARED BY: Pat Kelly, Assistant Public Works Director/City Engineer/TA

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office

COMPLETED CAPITAL PROJECTS, FIRST QUARTER FISCAL YEAR 2010

Project Name	Zone 3 Pavement Preparation
Design Costs	\$61,637.40
Construction Contract	\$340,143.00
Construction Change Order Costs	\$0
Construction Management Costs	\$63,767.96
Total Project Costs	\$465,548.36

Capital Projects with Construction in Progress

PROJECT CATEGORY	CONSTRUCTION IN PROGRESS	
	No. of Projects	Construction Contract Costs
Airport	3	\$43,293,055.00
Creeks	1	\$1,322,323.10
Parks and Recreation	1	\$449,201.40
Public Works: Streets/Transportation/Parking	6	\$6,053,283.22
Public Works: Water Resources	2	\$2,299,995.00
Redevelopment Agency	5	\$13,010,578.64
Waterfront	2	\$2,386,031.40
TOTAL	20	\$68,814,467.76



CITY OF SANTA BARBARA

REDEVELOPMENT AGENCY BOARD AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Redevelopment Agency Board

FROM: Accounting Division, Finance Department

SUBJECT: Redevelopment Agency Fiscal Year 2010 Interim Financial Statements For The Three Months Ended September 30, 2009

RECOMMENDATION:

That the Redevelopment Agency Board accept the Redevelopment Agency Fiscal Year 2010 Interim Financial Statements for the Three Months Ended September 30, 2009.

DISCUSSION:

The Interim Financial Statements for the Three Months Ended September 30, 2009 (25% of the Fiscal Year) are attached. The Interim Financial Statements include budgetary activity in comparison to actual activity for the Redevelopment Agency's General, Housing, and Capital Projects Funds.

ATTACHMENT: Redevelopment Agency Interim Financial Statements for the Three Months Ended September 30, 2009

PREPARED BY: Rudolf J. Livingston, Accounting Manager

SUBMITTED BY: Robert Samario, Interim Fiscal Officer

APPROVED BY: City Administrator's Office

REDEVELOPMENT AGENCY
OF THE
CITY OF SANTA BARBARA

INTERIM FINANCIAL STATEMENTS
FISCAL YEAR 2010
FOR THE THREE MONTHS
ENDED SEPTEMBER 30, 2009

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA

General Fund

Interim Statement of Revenues, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>Year-to-date Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>
Revenues:					
Incremental Property Taxes	\$ 16,337,400	\$ -	\$ -	\$ 16,337,400	0.00%
Investment Income	264,700	51,067	-	213,633	19.29%
Interest Loans	5,000	-	-	5,000	0.00%
Rents	48,000	18,033	-	29,967	37.57%
Total Revenues	<u>16,655,100</u>	<u>69,100</u>	<u>-</u>	<u>16,586,000</u>	<u>0.41%</u>
Use of Fund Balance	3,039,650	759,911	-	-	25.00%
Total Sources	<u>\$ 19,694,750</u>	<u>\$ 829,011</u>	<u>\$ -</u>	<u>\$ 16,586,000</u>	<u>4.21%</u>
Expenditures:					
Material, Supplies & Services:					
Office Supplies & Expense	\$ 3,000	\$ 401	\$ -	\$ 2,599	13.37%
Mapping, Drafting & Presentation	250	-	-	250	0.00%
Janitorial & Hshld Supplies	100	-	-	100	0.00%
Minor Tools	100	-	-	100	0.00%
Special Supplies & Expenses	5,000	54	-	4,946	1.08%
Building Materials	100	-	-	100	0.00%
Equipment Repair	1,000	568	-	432	56.80%
Professional Services - Contract	787,155	146,456	4,142	636,557	19.13%
Legal Services	154,508	32,863	-	121,645	21.27%
Engineering Services	20,000	1,481	-	18,519	7.41%
Non-Contractual Services	12,000	420	-	11,580	3.50%
Meeting & Travel	7,500	-	-	7,500	0.00%
Mileage Reimbursement	300	-	-	300	0.00%
Dues, Memberships, & Licenses	13,500	-	-	13,500	0.00%
Publications	1,500	-	-	1,500	0.00%
Training	7,500	415	-	7,085	5.53%
Advertising	2,000	-	-	2,000	0.00%
Printing and Binding	3,000	-	-	3,000	0.00%
Postage/Delivery	1,000	199	-	801	19.90%
Non-Allocated Telephone	500	-	-	500	0.00%
Vehicle Fuel	1,300	299	-	1,001	23.00%
Equipment Rental	500	-	-	500	0.00%
Total Supplies & Services	<u>1,021,813</u>	<u>183,156</u>	<u>4,142</u>	<u>834,515</u>	<u>18.33%</u>
Allocated Costs:					
Desktop Maint Replacement	25,207	6,302	-	18,905	25.00%
GIS Allocations	4,785	1,196	-	3,589	25.00%
Building Maintenance	1,785	446	-	1,339	25.00%
Planned Maintenance Program	6,752	1,688	-	5,064	25.00%
Vehicle Replacement	5,323	1,331	-	3,992	25.00%
Vehicle Maintenance	4,396	1,099	-	3,297	25.00%
Telephone	2,908	727	-	2,181	25.00%
Custodial	3,674	919	-	2,755	25.00%
Communications	4,663	1,166	-	3,497	25.00%
Property Insurance	8,142	2,036	-	6,107	25.00%
Allocated Facilities Rent	5,746	1,436	-	4,310	25.00%
Overhead Allocation	693,628	173,407	-	520,221	25.00%
Total Allocated Costs	<u>767,009</u>	<u>191,752</u>	<u>-</u>	<u>575,257</u>	<u>25.00%</u>
Special Projects	2,196,580	134,559	21,728	2,040,293	7.12%
Transfers	14,015,527	2,975,233	-	11,040,294	21.23%
Grants	1,545,028	108,402	411,578	1,025,048	33.66%
Equipment	8,070	51	-	8,019	0.63%
Fiscal Agent Charges	11,500	2,988	-	8,512	25.98%
Appropriated Reserve	129,223	7,628	29,002	92,593	28.35%
Total Expenditures	<u>\$ 19,694,750</u>	<u>\$ 3,603,769</u>	<u>\$ 466,450</u>	<u>\$ 15,624,531</u>	<u>20.67%</u>

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA
Housing Fund
Interim Statement of Revenues, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	Annual Budget	Year-to-date Actual	Encum- brances	Remaining Balance	Percent of Budget
Revenues:					
Incremental Property Taxes	\$ 4,084,400	\$ -	\$ -	\$ 4,084,400	0.00%
Investment Income	150,000	22,867	-	127,133	15.24%
Interest Loans	160,000	77,151	-	82,849	48.22%
Miscellaneous	-	1,914	-	(1,914)	100.00%
Total Revenues	4,394,400	101,932	-	4,292,468	2.32%
Use of Fund Balance	318,984	79,746	-	-	25.00%
Total Sources	\$ 4,713,384	\$ 181,678	\$ -	\$ 4,292,468	3.85%
Expenditures:					
Material, Supplies & Services:					
Office Supplies & Expense	\$ 1,800	\$ 322	\$ -	\$ 1,478	17.89%
Special Supplies & Expenses	1,800	22	-	1,778	1.22%
Equipment Repair	500	458	-	42	91.60%
Professional Services - Contract	717,423	153,970	-	563,453	21.46%
Legal Services	2,000	-	-	2,000	0.00%
Non-Contractual Services	2,000	192	-	1,808	9.60%
Meeting & Travel	6,000	-	-	6,000	0.00%
Mileage Reimbursement	100	-	-	100	0.00%
Dues, Memberships, & Licenses	2,025	-	-	2,025	0.00%
Publications	200	-	-	200	0.00%
Training	5,000	-	-	5,000	0.00%
Advertising	-	320	-	(320)	100.00%
Printing & Binding	-	61	-	(61)	100.00%
Postage/Delivery	500	26	-	474	5.20%
Non-Allocated Telephone	500	-	-	500	0.00%
Equipment Rental	100	-	-	100	0.00%
Total Supplies & Services	739,948	155,371	-	584,577	21.00%
Allocated Costs:					
Desktop Maintenance Replacement	7,562	1,891	-	5,671	25.00%
GIS Allocations	2,393	598	-	1,795	25.00%
Building Maintenance	893	223	-	670	25.00%
Planned Maintenance Program	4,001	1,000	-	3,001	25.00%
Telephone	969	242	-	727	25.00%
Custodial	1,867	467	-	1,400	25.00%
Communications	2,897	724	-	2,173	25.00%
Insurance	166	41	-	125	24.99%
Allocated Facilities Rent	3,405	851	-	2,554	25.00%
Overhead Allocation	181,432	45,358	-	136,074	25.00%
Total Allocated Costs	205,585	51,396	-	154,189	25.00%
Transfers	829	207	-	622	24.97%
Equipment	2,500	51	-	2,449	2.04%
Housing Activity	3,044,272	59,822	-	2,984,450	1.97%
Principal	470,000	470,000	-	-	100.00%
Interest	168,950	87,413	-	81,537	51.74%
Fiscal Agent Charges	1,300	1,265	-	35	97.31%
Appropriated Reserve	80,000	-	-	80,000	0.00%
Total Expenditures	\$ 4,713,384	\$ 825,525	\$ -	\$ 3,887,859	17.51%

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA
Capital Projects Fund
Interim Statement of Revenues, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>Year-to-date Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>
Revenues:					
SB Trust for Historic Preservation	\$ -	\$ 522,180	\$ -	\$ -	100.00%
Fire Station #1 EOC Donations	6,000	6,000	-	-	100.00%
Transfers-In	6,500,125	1,624,617	-	4,875,508	24.99%
Total Revenues	<u>6,506,125</u>	<u>2,152,797</u>	<u>-</u>	<u>-</u>	<u>33.09%</u>
Use of Fund Balance	12,208,909	3,052,229	-	-	25.00%
Total Sources	<u>\$ 18,715,034</u>	<u>\$ 5,205,026</u>	<u>\$ -</u>	<u>\$ -</u>	<u>27.81%</u>
Expenditures:					
Finished					
Coffee Cat Pedestrian Improvements	\$ 17,367	\$ -	\$ -	\$ 17,367	0.00%
Construction Phase					
IPM - Sustainable Park Improvements	9,511	-	9,511	-	100.00%
Fire Station #1 Remodel	377,482	213,857	192,759	(29,134)	107.72%
Fire Station #1 EOC	202,064	57,583	103,000	41,481	79.47%
Underground Tank Abatement	23,070	-	-	23,070	0.00%
Design Phase					
Carrillo Rec Center Restoration	2,200,000	-	-	2,200,000	0.00%
Planning Phase					
Opportunity Acquisition Fund	366,500	-	-	366,500	0.00%
RDA Project Contingency Account	7,452,481	-	-	7,452,481	0.00%
Parking Lot Maintenance	192,621	3,952	151,298	37,371	80.60%
PD Locker Room Upgrade	7,525,483	21,810	35,132	7,468,541	0.76%
Housing Fund Contingency Account	348,455	-	-	348,455	0.00%
Total Expenditures	<u>\$ 18,715,034</u>	<u>\$ 297,202</u>	<u>\$ 491,700</u>	<u>\$ 17,926,132</u>	<u>4.22%</u>

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA
RDA Bonds - Series 2001A
Interim Statement of Revenues, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>Year-to-date Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>
Revenues:					
Investment Income	\$ -	\$ 633	\$ -	\$ (633)	100.00%
Transfers-In	-	824,986	-	(824,986)	100.00%
Total Revenues	-	825,619	-	(825,619)	100.00%
Use of Fund Balance	3,219,138	804,785	-	-	25.00%
Total Sources	<u>\$ 3,219,138</u>	<u>\$ 1,630,404</u>	<u>\$ -</u>	<u>\$ (825,619)</u>	50.65%
Expenditures:					
Capital Outlay:					
Finished					
East Cabrillo Blvd Sidewalks	\$ 254,437	\$ 20,542	\$ -	\$ 233,895	8.07%
Design Phase					
Mission Creek Flood Control @ Depot	1,964,701	-	-	1,964,701	0.00%
Carrillo Rec Center Restoration	1,000,000	-	-	1,000,000	0.00%
Total Expenditures	<u>\$ 3,219,138</u>	<u>\$ 20,542</u>	<u>\$ -</u>	<u>\$ 3,198,596</u>	0.64%

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA
RDA Bonds - Series 2003A
Interim Statement of Revenues, Expenditures and Encumbrances
For the Three Months Ended September 30, 2009 (25% of Fiscal Year)

	<u>Annual Budget</u>	<u>Year-to-date Actual</u>	<u>Encum- brances</u>	<u>Remaining Balance</u>	<u>Percent of Budget</u>
Revenues:					
Investment Income	\$ -	\$ 3,941	\$ -	\$ (3,941)	100.00%
Transfers-In	-	525,215	-	(525,215)	100.00%
Intergovernmental	-	73,519	-	(73,519)	100.00%
Total Revenues	-	602,675	-	(602,675)	100.00%
Use of Fund Balance	18,764,514	4,691,131	-	-	25.00%
Total Sources	\$ 18,764,514	\$ 5,293,806	\$ -	\$ (602,675)	28.21%
Expenditures:					
Capital Outlay:					
Finished					
Adams Parking Lot & Site Imprvmts	\$ 77,419	\$ 1,264	\$ 3,584	\$ 72,571	6.26%
Anapamu Open Space Enhancements	2,464	-	-	2,464	0.00%
Historic Railroad CAR	24,646	8,574	15,258	814	96.70%
Construction Phase					
IPM - Sustainable Park Improvements	94,909	-	-	94,909	0.00%
Fire Station #1 Remodel	40,015	36,295	33,944	(30,224)	175.53%
West Beach Pedestrian Improvements	2,565,901	270,635	1,848,745	446,521	82.60%
Artist Workspace	612,042	10,405	29,089	572,548	6.45%
West Downtown Improvement	3,143,824	46,755	2,627,051	470,018	85.05%
Carrillo Rec Ctr Restoration	2,897,579	106,473	159,990	2,631,116	9.20%
Design Phase					
Plaza De La Guerra Infrastructure	2,282,158	-	38,290	2,243,868	1.68%
Westside Community Center	216,066	8,841	4,543	202,682	6.19%
Planning Phase					
Mission Creek Flood Control - Park Development	759,142	1,500	-	757,642	0.20%
Carrillo/Chapala Transit Village	1,882,256	-	-	1,882,256	0.00%
Waterfront Property Development	1,460,996	-	-	1,460,996	0.00%
Mission Creek Flood Control @ Depot	535,299	-	-	535,299	0.00%
Helena Parking Lot Development	499,798	3,613	-	496,185	0.72%
Chase Palm Park Wisteria Arbor	835,000	-	1,545	833,455	0.19%
On-Hold Status					
Visitor Center Condo Purchase	500,000	-	-	500,000	0.00%
Lower State Street Sidewalks	335,000	-	-	335,000	0.00%
Total Expenditures	\$ 18,764,514	\$ 494,355	\$ 4,762,039	\$ 13,508,120	28.01%



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: City Administrator's Office

SUBJECT: Intent To Participate In AB 811 Central Coast Energy Independence

RECOMMENDATION:

That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Declaring Its Intention to Participate in the Central Coast Energy Independence Program, Which Will Allow City Property Owners to be Included in a County Assessment District that Provides Financing for Private Energy Efficiency and Renewable Energy Projects on a Voluntary Basis.

DISCUSSION:

In July 2008 California passed Assembly Bill 811 permitting local governments to create municipal financing programs that allow property owners to enter into contractual assessments to finance the installation of energy efficiency or distributed renewable energy generation improvements on their property. By entering into a contractual assessment property owners are able to repay the assessment with their property tax over 20 years.

In June 2009 the County of Santa Barbara Board of Supervisors directed County staff to determine the program feasibility, explore initial and ongoing funding and design a program. Since that time, the County staff completed a feasibility study and identified initial sources of funding. The feasibility study acknowledged that in order for the program to be successful in Santa Barbara County, regional participation by all of the cities located within the County is necessary. With regional participation the program can achieve economies of scale and generate sufficient interest from the public. The program is projected to fund approximately 400 applications per year for both residential and commercial retrofits, totaling approximately \$12 million in improvements. Contractual assessments are expected to average approximately \$30,000 per property.

The County estimates that the initial start-up cost for the program is \$1 million. County staff has identified two American Recovery and Reinvestment Act (ARRA) State funding opportunities: the State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) for Small Cities and Counties to reduce the start-up costs. Both

of these funding opportunities allow for the funds to be applied towards a municipal financing program. The SEP application deadline has been extended to December 21, 2009, and the EECBG application is due on January 12, 2010. County staff is planning to submit applications for each grant. As part of the application requirements the County must submit resolutions of intention to participate in the municipal financing program from partnering agencies as well as authorize them to apply for funding on our behalf. The County is not requesting a financial contribution from the City of Santa Barbara for program start-up or ongoing costs.

On October 1, 2009, County staff made a presentation to the Sustainability Council Committee. The Sustainability Council Committee recommended that Council adopt a resolution of intention to participate in the County's program, assuming that no financial contribution would be required for start-up or ongoing costs and that the program parameters would be developed with City staff and other regional partners.

SUSTAINABILITY IMPACT:

By assisting property owners in the financing and installation of energy efficiency and renewable energy projects the CCEIP will help to reduce energy consumption in our community, particularly existing buildings where retrofits are needed.

NEXT STEPS:

If Council adopts the resolution, Staff will work with the County on the details of the program and return to Council in early 2010 with a formal resolution to participate in the program and a cooperative agreement to operate the program.

ATTACHMENT: Letter from Michael F. Brown, County Executive Officer, Santa Barbara

PREPARED BY: Lori Pedersen, Administrative Analyst

SUBMITTED BY: James L. Armstrong, City Administrator

APPROVED BY: City Administrator's Office

County of Santa Barbara



Michael F. Brown
County Executive Officer

RECEIVED

OCT 19 2009
105 East Anapamu Street, Suite 406
Santa Barbara, California 93101
805/568-3400 • Fax 805/568-3414
www.countyofsb.org

Executive Office

October 12, 2009

James Armstrong
City Administrator
City of Santa Barbara
P.O. Box 1990
Santa Barbara CA 93102-1990

Dear Mr. Armstrong:

During our August 12, 2009 City Mangers meeting, David Matson, a member of my staff, made a presentation on current County efforts to establish a regional energy financing program (Central Coast Energy Independence Program or CCEIP), pursuant to California Assembly Bill 811. The program would help facilitate energy efficiency retrofits and solar installations for existing homes and commercial buildings by offering voluntary loans to property owners, thereby overcoming the obstacle of high upfront costs. As of today, only two programs are up and running across the nation, and both are in California. These programs in Sonoma County and the City of Palm Desert are putting contractors back to work, incubating new businesses, lowering participants monthly utilities bills, and have already induced tens-of-millions in local private investment. Initial estimates demonstrate that over \$100 million in private investment could be leveraged into the regional economy through the County's proposed program. Undoubtedly, the community benefits associated with these types of programs are real and comprehensive.

Following the presentation, each of you expressed positive interest in your city participating in a regional CCEIP. Accordingly, I am following up to confirm your continued interest. In the near future, the County Board will consider the formal creation of the CCEIP and, if directed by the Board, the County plans to establish a regional program for launch by spring 2010. Without a doubt, participation from each incorporated city will be a fundamental aspect of program success. Although the County does not intend to ask for a financial contribution from each participating city, there are steps that you can take to formalize your support.

To assist with covering upfront costs of establishing and administering the CCEIP for the region, the County is planning to submit an application for federal American Recovery and Reinvestment Act (ARRA) State Energy Program funds on November 30, 2009. To ensure the County submits the strongest possible ARRA grant application for the CCEIP, I am requesting that you express interest in participating in the regional program. That interest could take the form of either a letter of support from your office or a resolution of intent from your City Council. We will need to hear from you no later than November 25, 2009 so that we can accurately characterize the full scale and character of the regional program in our grant application.

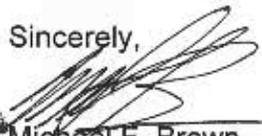
Following the Board's discussion and program implementation decision, and over the coming months, County staff will work with your jurisdiction to establish a formal program agreement. I

October 12, 2009

Page 2

look forward to your continued engagement and support for the County as we move to create the first region-wide coastal program in the nation. Please contact David Matson at 568-2068 or John McInnes at 568-3552 for further assistance and more information.

Sincerely,


Michael F. Brown
County Executive Officer

Attachment

Attachment 1

Program Description and Regional ARRA Grant Opportunity

Santa Barbara County (County) is currently analyzing the feasibility of establishing a regional Municipal Energy Efficiency and Solar Financing Program (Program). This Program would allow the County to provide voluntary “loans” to property owners for energy efficiency retrofits (i.e., new windows and doors, HVAC systems, insulation, radiant roof barriers, etc) and renewable energy improvements (i.e., solar panels). Water conservation systems would also be a part of the County’s regional program.

Launching a regional Program open to all residential and commercial property owners in the cities and the unincorporated area requires the County to fund significant start-up and ongoing administrative costs. Start-up costs would consist primarily of bond counsel and underwriter service and ongoing costs would include:

- Marketing and advertising materials, including a strong internet presence.
- A loan-loss fund to preserve programmatic integrity and risk mitigation options.
- Four full-time Program staff with specialized lending knowledge to service several hundred loan applications per year.
- Rent and overhead for storefronts in the northern and southern regions of the County.

Thus far, the County’s analysis has determined that roughly \$1 million will be needed to address these upfront costs and the County is proposing to use its entire Energy Efficiency and Conservation Block Grant (EECBG) designation for this purpose. In addition the County intends to apply for additional American Recovery and Reinvestment Act (ARRA) State Energy Program (SEP) grant opportunities to augment those EECBG funds and further mitigate programmatic risks. Municipal Energy Efficiency and Solar Financing programs are one of four areas eligible for funding through a competitive process.¹

SEP grant applications are due November 30, 2009. The CEC encourages collaboration among communities, since regional programs have the greatest likelihood of achieving the economies of scale needed for long term success. Accordingly, letters of interest from cities showing support for the County’s program will increase the competitiveness of the proposed SEP grant application. These letters are requested no later than November 25, 2009. The County will formalize participation commitments from the cities through resolutions and agreements in January 2010.

¹ For more information, you may download the SEP Guidelines at: <http://www.energy.ca.gov/recovery/sep.html>. Discussion of Municipal Energy Efficiency and Solar Financing programs is found on page 17 through 25.



SECRET

UNITED STATES DEPARTMENT OF THE ARMY
 HEADQUARTERS, ARMY AIRCRAFT DIVISION
 WASHINGTON, D. C.

MEMORANDUM FOR THE RECORD

SUBJECT: [Illegible]

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA DECLARING ITS INTENTION TO PARTICIPATE IN THE CENTRAL COAST ENERGY INDEPENDENCE PROGRAM, WHICH WILL ALLOW CITY PROPERTY OWNERS TO BE INCLUDED IN A COUNTY ASSESSMENT DISTRICT THAT PROVIDES FINANCING FOR PRIVATE ENERGY EFFICIENCY AND RENEWABLE ENERGY PROJECTS ON A VOLUNTARY BASIS

WHEREAS, the California Legislature amended the California Streets and Highways Code, authorizing cities and counties to assist property owners in financing the cost of installing distributed generation renewable energy sources or making energy efficient improvements that are permanently fixed to their property through a contractual assessment program;

WHEREAS, the City of Santa Barbara is committed to energy efficiency improvements and development of renewable energy sources, reduction of greenhouse gases, and protection of our environment;

WHEREAS, the City of Santa Barbara encourages residents and businesses to invest in energy efficiency improvements and explore the use of renewable energy, such as solar panels;

WHEREAS, the County of Santa Barbara is proposing to collaborate with the cities of Santa Barbara County to form a Central Coast Energy Independence Program;

WHEREAS, the County of Santa Barbara is not requiring a financial contribution from the City of Santa Barbara for initial program start-up or ongoing costs;

WHEREAS, the County of Santa Barbara has agreed to work with City staff on program parameters, including eligible projects and program promotion;

WHEREAS, the County of Santa Barbara is eligible to apply for Energy Efficiency and Conservation Block Grant (EECBG) funds under the California Energy Commission's EECBG Program on behalf of all cities in the County of Santa Barbara;

WHEREAS, the County of Santa Barbara is eligible to apply for State Energy Program funds for a municipal financing program on behalf of all cities in the County of Santa Barbara; and

WHEREAS, the City of Santa Barbara has considered the application of the California Environmental Quality Act (CEQA) to the approval for the energy efficiency project/s described in the Exhibit.

NOW, THEREFORE, be it resolved by the Council of the City of Santa Barbara:

1. The Council authorizes the County of Santa Barbara to submit applications to the California Energy Commission for grant funds for the Central Coast Energy Independence Program on behalf of the City of Santa Barbara along with other participating County regional agencies.

2. The Council of the City of Santa Barbara finds that the approval for the energy efficiency project described in Exhibit A is not a “project” under CEQA, pursuant to Public Resource Code Section 15378(b)(4).

The Central Coast Energy Independence Program – Project Definition for CEQA Compliance

The proposed project would establish the Central Coast Energy Independence Program (CCEIP), pursuant to AB 811. The CCEIP would assist property owners with energy efficiency retrofits and installation of renewable energy projects to existing real property through *voluntary* contractual assessments, whereby Santa Barbara County would provide upfront capital for improvements to program participants. Contractual assessments would be paid off using property tax bills over a term of up to twenty years, and would be secured by an assessment lien. The lien would remain with the property upon resale, enabling subsequent owners to benefit from the improvements.

Residential and commercial property owners throughout Santa Barbara County, inclusive of all unincorporated communities and incorporated cities, are anticipated to participate in the CCEIP. To establish a contractual assessment, property owners would be required to follow a standard application process, whereby proposed improvements are reviewed by the CCEIP Program Administrator, and the ability of the property owner to repay contractual assessments is validated. The program is projected to fund approximately 400 applications per year for both residential and commercial retrofits, totaling approximately \$12 million in improvements. Contractual assessments are expected to average approximately \$30,000 per property; however, some projects, particularly commercial projects, are expected to qualify for larger amounts. Applicants must follow existing permit processes to install improvements, and quality assurance measures will be in place to ensure correct installation.



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Appeal Of Planning Commission Approval For 226 And 232 Eucalyptus Hill Drive

RECOMMENDATION:

That Council deny the appeal filed by neighbors, June Sochel, Tony and Caroline Vassallo and Ernie Salomon and uphold the Planning Commission approval of the application of Brent Daniels, agent for Cynthia Howard, for the proposed Lot Line Adjustment, Street Frontage Modifications and Performance Standard Permits to create four new homes and associated improvements.

EXECUTIVE SUMMARY:

In 2007, the Staff Hearing Officer denied the proposed project, although Staff had recommended approval. The applicant filed an appeal and a Planning Commission appeal hearing was held on June 18, 2009. The item was continued to August 20, 2009, at which time the Planning Commission approved a revised project that addressed Commissioners concerns regarding the amount of development proposed. Subsequently, an appeal was filed by neighbors who live south of the project site. The appeal letter expresses concerns regarding drainage and grading (see Attachment 1 – Appeal Letter). The appellants contend that neighborhood issues remain unresolved and inadequately addressed.

The proposed project was reviewed by the Architectural Board of Review on three occasions, by the Staff Hearing Officer on two occasions, and by the Planning Commission on two occasions. Issues regarding drainage have been thoroughly addressed and all substantial issues included in the appeal letter have been previously addressed in the public hearings, staff reports, and Final Mitigated Negative Declaration. It is staff's position that the Planning Commission appropriately considered all relevant issues pertaining to the application and made the appropriate findings to approve the proposed project. Therefore, staff recommends that the Council deny the appeal and uphold the approval of the project.

DISCUSSION:

Project Description

The proposed project involves a Lot Line Adjustment between two parcels. Proposed Parcel 1 (upper parcel) would be 2.47 acres and proposed Parcel 2 (lower parcel) would be 3.10 acres. The existing single-family residence and greenhouse foundation would be demolished.

Two new single-family residences would be constructed on each parcel, for a total of four. Parcel 1 would include a new 6,129 square foot residence with an attached 743 square foot garage plus a new 1,150 square foot residence with a 320 square foot garage, and a detached 430 square foot garage. Parcel 2 would include a new 3,700 square foot residence with a 747 square foot attached garage plus a new 1,250 square foot residence with a 352 square foot subterranean garage. Proposed drainage facilities include a storm drain and concrete swale crossing 860 Woodland Drive, a property located south of the project site, also owned by the applicant. The project site is accessed from Eucalyptus Hill Drive, a private road. The total grading quantities for both parcels include 3,090 cubic yards of cut and 2,830 cubic yards of fill. Street Frontage Modifications are requested to allow less than the required 100 feet of frontage on a public street for each newly configured parcel. Performance Standard Permits are requested to allow an additional dwelling unit on each parcel.

Background

Architectural Board of Review: The proposed project was reviewed by the ABR on three occasions. The Board supported the density of the development, the size of the buildings, and the number of garage parking spaces, given the reconfiguration of the lots and that they would not be visible to the general public.

Staff Hearing Officer Action: On August 29, 2007, the Staff Hearing Officer held a public hearing on the proposed project and then continued the item to September 12, 2007 in order for the applicant to address the concerns expressed by neighbors, which focused primarily on drainage issues in the neighborhood. The Staff Hearing Officer expressed additional concerns regarding the lot line adjustment, the amount of development, grading, and oak tree removal.

At the September 12, 2007 hearing, the Staff Hearing Officer denied the project stating that unresolved issues had not been adequately addressed. Subsequently, the applicant filed an appeal. In the interim years, following the denial, the applicant met with both City staff and neighbors, and as requested by Staff, completed additional drainage reports and updated the drainage plan to meet the requirements of the recently adopted City's Storm Water Management Plan, which was not in effect at the time of the Staff Hearing Officer hearing.

Planning Commission Action: On June 18, 2009, the Planning Commission considered the appeal of the project. After much discussion by the Planning Commission, the project was continued to allow the applicant to return with a revised project that included less overall development on the site. No changes were requested concerning drainage. On August 20, 2009, the applicant returned with a revised project that included a reduction in the size of three of the four residences, for a total reduction of 1,130 square feet. The garages were not reduced; however, using the methodology allowed by the Zoning Ordinance, the net floor areas of the garages were recalculated, resulting in a total recalculation reduction of 1,053 square feet. The Planning Commission voted 4-1-2 to uphold the appeal, adopt the Final Mitigated Negative Declaration, and approve the project.

Environmental Review

The Draft Mitigated Negative Declaration (MND) was prepared and released for public review from April 6 to May 7, 2007. Six public comment letters were received that expressed concerns related to biological resources, cultural resources, traffic, grading, and drainage. These issues are outlined in the Staff response to public comments incorporated into the Final Mitigated Negative Declaration. In addition, the applicant's civil engineering consultant, Triad/Holmes Associates, submitted a letter, which responded to the neighbor's comments regarding drainage.

The environmental analysis determined that the proposed project could potentially have significant adverse impacts related to biological resources, geophysical conditions, hazards, and water environment; however, mitigation measures described in the Initial Study and agreed to by the applicant would reduce potential impacts to less than significant levels. The Final Negative Declaration did not identify any significant and unavoidable impacts related to the proposed project. The additional drainage related studies submitted by the applicant after denial by the Staff Hearing Officer provides additional information but does not result in any changes to the project that would change the level of significance in any issue areas; therefore, no changes were made to the environmental document.

The Staff Hearing Officer did not adopt the MND because it was not necessary to do so since the project was not being approved; however, no issues with the MND were raised, and although there were concerns about drainage, they did not rise to a level of significance. The Planning Commissioners did not have comments on the Final Mitigated Negative Declaration, which they adopted with a vote of 4-1-2 on August 20, 2009, when they approved the project.

Lot Line Adjustment

Neighbors expressed concerns that the proposal should be considered a subdivision, subject to the Subdivision Map Act, rather a lot line adjustment. The proposal includes a request to adjust the lot line from a north-south to an east-west direction. Because no additional lots are created, it meets the definition of a lot line adjustment and is therefore exempt from requiring a Tentative Subdivision Map. It should be noted that it is the proposed development itself that requires that it be subject to the City's Storm Water Management Plan and is not tied to the issue of whether it is a subdivision or not.

Street Frontage Modifications

The lot configuration is proposed to change from two side by side vertical lots to one lot above the other with a horizontal lot line dividing the two lots. In the A-2 Zone, newly created lots are required to have 100 feet of frontage on a public street. Because Eucalyptus Hill Drive is an existing private road, none of the existing lots on the road have the required public street frontage. Modifications are required because the adjusted parcels would also not meet the frontage requirement. Per the Zoning Ordinance, all lot line adjustment requests for properties on private roads would require street frontage modifications, although Planning Commissioners have suggested that Staff review this requirement.

Performance Standard Permits

Additional dwelling units are allowed in single-family zones, with approval of a Performance Standard Permit, if the lot has the required lot area and adequate access. In this case, the minimum lot area required for each residence is 50,000 square feet, or 100,000 square feet per lot. Each adjusted lot would have over 100,000 square feet and adequate access is provided from Eucalyptus Hill Drive; therefore, the requirements are met.

The existing lot sizes and configurations would also meet the requirement for additional dwelling units, meaning that without the lot line adjustment approval, a total of four residences would still be allowed.

Appeal Issues

After the Planning Commission upheld the applicant's appeal and approved the project, the neighbors filed an appeal. The appeal letter states that many of the neighborhood issues, including drainage and hillside grading were still left unresolved.

Drainage

The main concern expressed by the neighbors was drainage, and the potential for the project to make the drainage situation in the neighborhood worse, citing longstanding drainage problems on Woodland Drive, located down slope from the project site. As indicated by the applicant at the Planning Commission hearing, there are currently no drainage facilities on the project site and the majority of the existing drainage sheet flows toward the top of the Norman Lane neighborhood, located directly south of the project site.

In the City, property owners are allowed to drain storm water to the public right-of-way; however, as properties are redeveloped, they are subject to the requirements of the City's Storm Water Management Plan.

After the denial by the Staff Hearing Officer, and prior to consideration by the Planning Commission, the applicant submitted the following additional drainage reports. These reports and changes to the drainage and grading plan respond to Staff's requests and it is Staff's belief that these changes should alleviate the neighbor's concerns.

1. *Revised Preliminary Stormwater Study, dated September 2008, and Addendum, dated February 23, 2009, prepared by Triad/Holmes Associates.* The report demonstrates that the stormwater runoff from the first inch of rain from any storm event would be retained and treated onsite in accordance with the City's adopted Storm Water Management Plan (SWMP). The volume of the proposed detention/retention basin would allow for detention of the 100-year storm runoff with a release rate equal to the 25-year pre-development runoff rate. The retention portion of the basin would provide the infiltration needed to comply with the City's water quality treatment requirements. The report concludes that the proposed preliminary design exceeds the City's requirements regarding volume reduction (almost double) and water quality treatment.
2. *Infiltration at Proposed Retention/Detention Basin Report, prepared by Earth Systems, dated February 13, 2009.* The report concludes that the required infiltration rate (approximately 0.1 inches/hour) can be achieved with the proposed retention/detention basin proposed for the southern portion of the site.
3. *Slope Stability at Proposed Retention/Detention Basin Report, prepared by Earth Systems, dated January 16, 2009.* The report consists of a slope stability analysis of the soils/bedrock below the proposed retention/detention basin. The report concludes that all factors of safety found for the slopes met all acceptable minimum factors of safety values and that failures along the slope are not anticipated.

Although the Preliminary Stormwater Study, referenced above, provides evidence that the proposed storm drain and concrete swale located within the easement at 860 Woodland Drive are adequate to convey the drainage from the onsite detention/retention basin to Woodland Drive, the applicant redesigned it to address neighbor's concerns. The culvert and swale would have two turns rather than one 90-degree turn at the southeast corner to further reduce the potential for the stormwater to spill out of the swale. Also, a reduction in the size of the onsite storm drain, from 24 inches to 8, 12 & 15-inch storm drains, was made to address neighbors concerns regarding the perceived effect of oversized storm drains conveying increased amounts of stormwater.

Off-site improvements include a drop inlet structure at the intersection of Woodland Drive and Alston Road and sixty feet (60') of thirty-six inch (36") storm drain connecting the drop inlet structure to an existing curb inlet along Alston Road, in order to alleviate existing drainage problems down the road from the project site.

When the project was before the Planning Commission, it included a revised condition of approval that requires the property owner to either modify the onsite retention/detention stormwater system to reduce the amount of stormwater discharge to Woodland Drive per City Standards, or install approximately five hundred feet (500') of eighteen inch (18") storm drain in Woodland Drive and connect to the storm drain on Alston Road (see Condition of Approval D.6). The revised condition of approval goes beyond the standard condition that there be no increase in flows onto city streets up to a 25-year storm. Prior to the issuance of building permits, Engineering staff will work with Building and Safety Staff and the applicant to obtain a design that will satisfy the requirements and concerns of the public, up to a 25-year storm. The Planning Commission did not express any concerns regarding drainage and Staff believes that the drainage issues are resolved with the new condition of approval.

Grading and Amount of Development

The Staff Hearing Officer expressed concerns regarding the amount of proposed development. The Planning Commission expressed similar concerns and requested that the applicant reduce the amount of development on the site. As stated previously, the size of three of the four residences was reduced and the Planning Commission approved the project.

The project was designed to minimize the grading as much as possible; however, it is generally not feasible to entirely eliminate grading for projects located on hillsides with slopes greater than 20 to 30 percent. The amount of earthwork required for the proposed project is estimated to be 3,090 cubic yards of cut and 2,830 cubic yards of fill. With the grading amounts almost completely balanced onsite, the proposal would result in some alteration of the existing landform but would not substantially change the existing topography of the site. The slopes on the property range from nearly flat to

over 30%, and the two main house sites would be located in areas of between 0-20% slopes. The two smaller residences would be located in areas of mostly 20-30% slopes, with a small portion of the lower guest house and a portion of the driveway located in areas that exceed 30% slopes.

Because each newly configured lot would have the required lot area to allow one additional residence, and would meet all setback and slope density provisions, Staff believes that the proposed development is appropriate for the site. In addition, the four single-family residences are not anticipated to obstruct any important public scenic views.

Conclusion

Staff is in support of the proposed project. With the reduction in the square footage of the residences as required by the Planning Commission, and with the additional drainage studies and improvements, Staff believes that the current proposal is superior to the original proposal.

RECOMMENDATION:

Staff recommends that Council deny the appeal and uphold the decision of the Planning Commission based on the findings contained in Planning Commission Resolution 031-09 to adopt the Final Mitigated Negative Declaration and approve the Lot Line Adjustment, Street Frontage Modifications, and Performance Standard Permits.

NOTE: The Planning Commission Staff Reports (6/18/09 & 8/20/09) and the Final Mitigated Negative Declaration are provided to the City Council's reading file under separate cover. These documents are available to the public in the City Clerk's Office and are also available at http://www.santabarbaraca.gov/Resident/Environmental_Documents/226_and_232_Eucalyptus_Hill.

ATTACHMENTS:

1. Appeal letter dated August 25, 2009
2. Site Plan
3. Applicant's letter dated October 28, 2009
4. Planning Commission Minutes and Resolution 031-09

PREPARED BY: Kathleen Kennedy, Associate Planner

SUBMITTED BY: Paul Casey, Community Development Director

APPROVED BY: City Administrator's Office

RECEIVED

ATTACHMENT 1

AUG 25 2009

CITY CLERK'S OFFICE
SANTA BARBARA, CA

JUNE C. SOCHEL
835 Woodland Drive
Santa Barbara, CA 93108

August 25, 2009

City of Santa Barbara
Planning Division
C/o Kathleen Kennedy, Associate Planner
630 Garden Street
Santa Barbara, CA 93102

SUBJECT: APPEAL OF THE PLANNING COMMISSION DECISION OF
AUGUST 20, 2009;
226-232 EUCALYPTUS HILL DRIVE
APN 015-050-017 & 015-50-018

Dear Ms. Kennedy:

Please accept this letter as a formal appeal of the entire subject of City Planning decisions as well as the Environmental decision made under CEQA to the Santa Barbara City Council. We believe the Planning Commission Hearing left many of the neighborhood issues unresolved and inadequately addressed. The Planning Commission's tightly structured time frame hampered meaningful discussion/debate; questions raised at this hearing and the prior hearing on June 18, 2009, went unanswered; no opportunity was given for discussion of the conditions of approval. Conflicting testimony regarding drainage issues, hillside grading, and indemnification continue to raise serious concerns and merit further scrutiny. Further we seek an objective evaluation of this development based on consideration of all the people who will be impacted by this project.

The required appeal fee of \$ 395 is attached for processing. As one of the neighborhood representatives and a resident of the City of Santa Barbara, I ask for the earliest possible hearing of this appeal. If you have questions, please contact June Sochel at 969-0354 or Ernie Salomon at 565-3025.

Respectfully submitted,

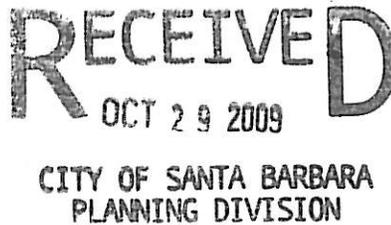
Caroline Vassallo
Tony Vassallo

Tony and Caroline Vassallo

KATHLEEN M. WEINHEIMER
Attorney at Law
420 Alameda Padre Serra
Santa Barbara, California 93103
Telephone: (805) 965-2777
Facsimile: (805) 965-6388
kathleenweinheimer@cox.net

October 28, 2009

Mayor Marty Blum and Members
of the City Council
City of Santa Barbara
Post Office Box 1990
Santa Barbara, California 93102



Re: Appeal of Planning Commission Approval of 226-232 Eucalyptus Hill Drive

Dear Mayor Blum and Members of the City Council:

I represent Cyndee Howard, owner of the property at 226-232 Eucalyptus Hill Drive, which consists of two parcels totaling 5.57 acres in the A-2 zone. Since 2003, Ms. Howard has been attempted to obtain approval for a lot line adjustment changing the orientation of these lots from north-south to east-west to provide for a more conventional configuration of the property. On August 20, 2009, she received approval of this lot line adjustment from the Planning Commission, which approval was appealed by an unspecified group of downhill neighbors on August 25, 2009. The basis for the appeal, as outlined in the one page appeal letter, appears to be that the neighbors feel they were denied adequate time to present their concerns to the Planning Commission at two separate hearings (although the Commission received a significant amount of public comment and a multitude of written submittals from the apparent appellants in connection with this lot line adjustment), and that "conflicting testimony" was received which merits "objective evaluation." No specifics are provided regarding their objections, nor is there any explanation of why the staff's evaluation of the application failed to provide the needed "objective evaluation." Given this paucity of detail, it is difficult to respond to any particular issue, apart from acknowledging that the neighbors simply do not like the project and do not accept the opinions of either the staff or the applicant's experts on issues of drainage and grading. On that point, we must respectfully disagree. We believe that the project exceeds the requirements of the City, represents no increase in development beyond what would be permitted without the lot line adjustment, and offers significant benefits to the downhill property owners. Details of our position are outlined in the attached letters to the Planning Commission (dated October 6, 2008, March 4, 2009, and July 24, 2009) and summarized below.

Mayor Marty Blum and Members
of the City Council
October 28, 2009
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The Application

Fundamentally, this is a simple request: by reorienting the lot line between the two parcels, Ms. Howard will be creating an upper parcel of 2.47 acres and a lower parcel of 3.10 acres. Because of the slope of the property, the slope density provisions apply, requiring a minimum lot size of 50,000 square feet per lot (slightly larger than one acre). Clearly, both parcels exceed the minimum size requirements.

The second element of the application is for two performance standard permits, to allow Ms. Howard to construct a second unit on each of the parcels, so that she can complete her goal of creating a compound for her family. Under the Zoning Ordinance, the minimum lot size to support a second unit on these parcels is 100,000 square feet. The upper parcel exceeds that minimum size by more than 7,500 square feet, while the lower parcel contains in excess of 35,000 square feet above the minimum requirement.

In response to concerns expressed at the first Planning Commission hearing in June (including those of the neighbors), Ms. Howard revised her plan to dramatically reduce the size of the second units, with the second home on the upper lot totaling 1,150 square feet, and on the lower lot, 1,250 square feet. The main home on the upper lot, known as the replacement home for Ms. Howard's existing residence, will be slightly larger than 6,000 square feet, while the main home on the lower lot will be 3,700 square feet. With these reductions, building coverage on the upper lot is 8%, with more than 70% of the lot in landscaped or natural open space. Building coverage on the lower lot is even less, at 5%, with 88% of the lot landscaped or left in natural open space. As such, claims of "massive" structures and unacceptable density are simply false.

The only relief being requested is a street frontage modification, which is a technical request at best, as the existing parcels already fail to meet the public street frontage requirement, and therefore nothing will change by the approval or denial of the modification request. Eucalyptus Hill Drive is a private street. These lots were all created with access only on that private street. There is no configuration of the lots which could provide access to a public street.

The Conditions

Despite the limitations imposed by state law on the local agency's ability to condition simple applications such as lot line adjustments (see Government Code Section 66412 as

Mayor Marty Blum and Members
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October 28, 2009
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quoted in my letter of October 6, 2008, attached), Ms. Howard agreed to a number of conditions on her project which benefit the appellants. These include substantial drainage improvements, both onsite and at the intersection of Woodland Drive and Alston Road, which will help alleviate longstanding drainage problems in the area, including on Norman Lane. Additionally, Ms. Howard has agreed that, should her plans for onsite retention of 100 year storm runoff prove insufficient, she will undertake additional drainage improvements along Woodland Drive to prevent any drainage from her project impacting the downhill properties.

While these improvements may be standard on a subdivision, they are rather extraordinary when one considers that the same amount of development could occur on these parcels without the lot line adjustment, and therefore, without any nexus, however remote, to support these conditions. Each of the existing lots, in their present configuration, could support a considerably larger main house as well as a substantially larger second unit without the need for any modifications. While it is true that performance standard permits would be required for the second units, it is inconceivable that costly offsite improvements such as these could be imposed on a single application for a 1,150 square foot second residence or a subsequent, separate application for one of 1,250 square feet were these applications to be submitted separately over time.

Conclusion

While it is clear that the neighbors would like to retain the rural ambiance which exists on Ms. Howard's undeveloped properties, the decision to develop the site rests with Ms. Howard. She has proposed a modest project, one with significant open space and substantial neighborhood improvements; one which is in keeping with both the surrounding properties and the governing ordinances. On average, each home occupies 1.4 acres, well in excess of any property on Woodland Drive or Norman Lane. At 1,150 and 1,250 square feet, two of the four homes are substantially smaller than the homes on the appellants' streets.

In addition, Ms. Howard has incorporated a number of beneficial attributes into her project which will control and appropriately convey drainage from the hillside for the benefit of the downhill neighbors, specifically those on Woodland Drive, Norman Lane, and at the low spot at the corner of Woodland Drive and Alston Road. None of these improvements exist today or will exist without the approval of this lot line adjustment. Furthermore, the appellants' unspecified claims regarding drainage and grading problems lack any detail and are unsupported by any factual information. As such, there is simply

Mayor Marty Blum and Members
of the City Council
October 28, 2009
Page four

no basis for concluding that the project will create drainage or grading problems, is overbuilt, exceeds the allowable density, or poses a threat to neighboring property owners. Therefore, we respectfully request that the Council uphold the Planning Commission's decision approving this lot line adjustment and deny the appeal. Thank you very much.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen M. Weinheimer".

Kathleen M. Weinheimer

Enclosures

KATHLEEN M. WEINHEIMER

ATTORNEY AT LAW

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MAR 04 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

October 6, 2008

Chairman George C. Myers and Members
of the Planning Commission
City of Santa Barbara
Community Development Department
630 Garden Street
Santa Barbara, California 93101

Re: 226 and 232 Eucalyptus Hill Drive

Dear Chairman Myers and Members of the Planning Commission:

I represent Cynthia Howard, owner of the property at 226 and 232 Eucalyptus Hill Drive, APNs 015-050-017 and 015-050-018, in connection with her application for a lot line adjustment, and a modification and performance standard permit for each lot. This matter was heard by the Staff Hearing Officer in September of 2007, who determined that the findings required for approval could not be made. A timely appeal to your Commission was filed on September 20, 2007.

The proposed project involves the reorientation of the lot line between the two parcels, so that the line will run in an east-west direction instead of the current north-south configuration. When the lot line adjustment is completed, the upper parcel will consist of 2.47 acres, with an average slope of 21.3% (hereafter, Parcel 1), and the lower parcel (Parcel 2) will contain 3.10 acres with an average slope of 22.5%. All structures currently existing on the two parcels (a single family residence, greenhouse foundation, and hardscape) would be removed and replaced with two residences on each parcel. Access to both parcels would be from Eucalyptus Hill Drive, a private road, with access to Parcel 2 via an easement across Parcel 1. Modifications for street frontage are required, as are performance standard permits for the second residences on each parcel.

Chairman George C. Myers and Members
of the Planning Commission

October 6, 2008

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The SHO Hearing

In 2007, the Staff Hearing Officer held two hearings to consider this application, both of which were attended by a number of neighboring property owners. At both the hearings, there was considerable confusion about the application, with most of those speaking in opposition expressing concerns ranging from access via the adjacent streets below the project (Woodland Drive and Norman Lane) to fears that the project would exacerbate existing drainage problems in the area. Notably, virtually all those in opposition to the project were owners of property on the two streets below the site, as the neighbors on Eucalyptus Hill Drive support the project.

At the initial SHO hearing in August of 2007, the hearing officer's concerns focused on the drainage issue. Ms. Weiss asked the applicant to explain the drainage improvements proposed for the project and expressed particular concern about the existing conditions on the streets below the site and the potential for the project to worsen those conditions. At the subsequent hearing in September, Ms. Weiss expressed her objection to the design of the project, stating that she felt it was overbuilt, and that second units were inconsistent with the Hillside Design Standards. In denying the project, Ms. Weiss stated that, in addition to the neighborhood concerns, it was her opinion that "the Conservation Element and the General Plan were not adequately fulfilled regarding development and reduced building footprint, lot line adjustment, adequate access and egress, lot area, and connecting roadways." In short, she was of the opinion that this application was better suited to a four lot subdivision and should be heard by the Planning Commission.

The Appeal

Both the Municipal Code and state law are clear on the issue of lot line adjustments. Section 66412 of the Government Code states in part that:

"A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements."

Chairman George C. Myers and Members
of the Planning Commission

October 6, 2008

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While the hearing officer's denial stated that the Conservation Element and General Plan were "not adequately fulfilled regarding development and reduced building footprint, lot line adjustment, adequate access and egress, lot area, and connecting roadways" no specifics of these inadequacies were cited. Not only are specifics of these alleged inadequacies lacking, the "laundry list" of problems cited by the hearing officer goes well beyond the limited review applicable in the case of lot line adjustments.

The only issue before the decision maker in reviewing the lot line adjustment is whether the resulting lots will conform to the General Plan and the Zoning Ordinance. In this case, the proposed site plan meets the lot area and density requirements of the Zoning Ordinance and General Plan, and although not determinative, the proposed lot coverage is in keeping with the FARs of nearby developments. Similarly, although not within the scope of review for the lot line adjustment application, the new configuration does not include new access points, as access already exists to both lots from Eucalyptus Hill Drive. The proposal also does not increase the impact on adjacent roadways, as two lots already exist and, with approval of a performance standard permit, both existing lots could contain two dwellings. Finally, the proposed sizes and designs of the homes are in keeping with the Hillside Design Standards. Denial of this lot split application will not limit the development potential of the site, but rather only constrain that development to the existing configuration.

The Staff Hearing Officer's initial concerns about drainage have apparently also been satisfied, as no mention of drainage considerations was contained in her final action. Similarly, there was no discussion of the requested modifications for public street frontage. It is our belief that the finding for approval of this modification can be supported, as the modification is necessary to secure an appropriate improvement on Parcel 2, access to which is already nonconforming.

Specific objections to the requested performance standard permits were also lacking, beyond a statement that the development was "too dense" and overbuilt. With almost 1.4 acres per unit, it is difficult to see how this conclusion can be supported, as the project clearly meets the requirements of Municipal Code Section 28.93.030E. Similarly, with two of the four proposed units measuring less than 2000 square feet each, a charge of overbuilding is equally hard to sustain.

Chairman George C. Myers and Members
of the Planning Commission

October 6, 2008

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The Past Year

Since the hearings in 2007, the applicant has spent considerable time and effort in refining the proposal, including substantial work on the drainage issue which was of such concern to the neighbors. The revised proposal was presented at a neighborhood meeting in August of this year, which was attended by 18 members of the neighborhood. Ms. Howard's agent, Brent Daniels, described the drainage improvements, including the retention basins, increased pipe capacity, and improvements planned for the intersection of Woodland Drive and Alston Road. He also responded to several of the ongoing misconceptions about the development, including the rumor that access to the lower lot was through Woodland Drive and that each of the four houses would be sold separately. As has been made clear from the outset, access to the site will remain at the current Eucalyptus Hill Drive entrance, the entire site is intended as a family compound, and runoff to the properties below the site will be reduced once the proposed drainage improvements have been installed. It is our hope that this meeting helped alleviate some of the neighbors' concerns, and eliminate many of the unfounded rumors.

Our Request

As stated above, we believe the requirements of the relevant law have been met, and that the action of the Staff Hearing Officer in denying the application exceeded the scope of review. Therefore, we respectfully request that, in keeping with the provisions of the Zoning Ordinance and state law, the Commission overturn the decision of the Staff Hearing Officer, make the required findings, and approve the requested application for a lot line adjustment, modifications for street frontage, and performance standard permits to allow the application to proceed to design review. Thank you very much.

Sincerely,



Kathleen M. Weinheimer

KATHLEEN M. WEINHEIMER

ATTORNEY AT LAW

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MAR 04 2009

March 4, 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

Chairwoman Stella Larson and Members
of the Planning Commission
City of Santa Barbara
Community Development Department
630 Garden Street
Santa Barbara, California 93103

Re: 226 and 232 Eucalyptus Hill Drive

Dear Chairwoman Larson and Members of the Planning Commission:

In October of 2008, I wrote to the Commission concerning my client Cynthia Howard's appeal of a September, 2007 decision of the Staff Hearing Officer (copy attached). At that time, we anticipated a hearing before the Commission in November or December of 2008. My letter outlined my client's position with regard to the project, the reasons why the Staff Hearing Officer's decision was in error, and requested that the Commission overturn the denial and approve the requested lot line adjustment, modifications, and performance standard permits. Since that time, however, we have been presented with a series of additional requests from staff which has delaying the hearing for a number of months. These include:

- a slope stability study,
- additional drainage analysis and refinement of the grading plans,
- additional information on the Preliminary Drainage and Grading Plan, to reflect the recommendations in the drainage analysis,
- proof that the proposed drainage plan meets the City's SWMP guidelines.

While all of this information is undoubtedly useful to some extent, it is well beyond the scope of the City's authority to require such information prior to reviewing an application for a lot line adjustment, and certainly exceeds the scope of review for an appeal. The original application was found complete some years ago when it was heard by the Staff Hearing Officer. Under the Permit Streamlining Act (Government Code Section 65920 *et. seq.*), decisionmakers are precluded from requiring additional documentation once an application is deemed complete. Since the application was, by law, complete when the

Chairwoman Stella Larson and Members
of the Planning Commission

March 4, 2009

Page two

original hearing was held, it cannot "become" incomplete simply by virtue of the fact that the property owner filed an appeal. Moreover, state law clearly limits the extent of the inquiry that can be made in connection with a lot line adjustment application, as the impacts of such an application are by definition limited: the same number of houses could be built without the lot line adjustment as can be constructed after approval of the requested application. During at least one consultation between staff and the applicant's agent, there was discussion of the existing problems created by storm water down Woodland Road to Alston Road. Not only is this inquiry well beyond the perimeters of Section 66412 of the Government Code (defining the local agency's review of lot line adjustments), it exceeds what would be acceptable were this an application for a subdivision. There is simply no nexus between the reconfiguration of the property lines between my client's two lots and the longstanding drainage problems on Woodland Drive. Ms. Howard is neither responsible for, nor can she be required to pay to correct those existing problems.

With those objections, we have prepared and submit herewith the following:

Two (2) copies of the Slope Stability at Proposed Retention/Detention Basin Report, prepared by Earth Systems, dated January 16, 2009;

Two (2) copies of the Infiltration at Proposed Retention/Detention Basin Report, prepared by Earth Systems, dated February 13, 2009;

Two (2) copies of an Addendum Letter, prepared by Triad/Holmes Associates, Civil Engineers, dated February 23, 2009;

Ten (10) copies of the Architectural Plan Set for the Four Proposed Houses (resubmitted under separate cover), and

Ten (10) copies of the revised Lot Line Adjustment, Preliminary Grading and Drainage Plan, dated February 2009.

Chairwoman Stella Larson and Members
of the Planning Commission
March 4, 2009
Page three

As outlined in my letter of October 6, 2008, we respectfully request that the Commission review the attached material, find the project acceptable as proposed, and take the steps necessary to allow this project to proceed. Thank you very much.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen M. Weinheimer".

Kathleen M. Weinheimer

Enclosures

KATHLEEN M. WEINHEIMER

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July 24, 2009

Chairwoman Stella Larson and Members
of the Planning Commission
City of Santa Barbara
630 Garden Street
Santa Barbara, California 93101

Re: Howard Appeal

Dear Chairwoman Larson and Members of the Commission:

At the last hearing on this project, the majority of the Commission expressed concerns about the amount of development proposed on the more than five and one half acre site, raising issues related to size, bulk and scale, parking and density of development. Since then, the appellant has made a number of revisions to the proposal to address these issues, as well as to reflect changes in the Zoning Ordinance which have been adopted since this project began. These include:

1. The main house on the lower lot has been redesigned to reduce the size, bulk and scale of the proposed dwelling by 227 square feet, for a total square footage of 3,700 square feet. Pursuant to SBMC Section 28.15.083, the calculation of the garage size has also been reduced by 373 square feet, as the garage is built into the hillside and therefore does not qualify as square footage. This house is located in an area of the property where most of the slope is well under 10 percent.

2. The second home on the lower lot has also been revised to reduce the size, bulk, and scale consistent with the Hillside Design Guidelines. In addition to a 200 square foot reduction in calculation of the size of the garage (per Section 28.15.083), the overall size of the dwelling has been reduced by more than 1/3 to 1,250 square feet (from 1,786 square feet).

3. The size of detached two car garage and storage room on the upper lot has been recalculated in accordance with Section 28.15.083, which resulted in a reduction of 320 square feet, due to the fact that the garage is largely built into the hillside and is not visible from surrounding properties.

EXHIBIT B

Chairwoman Stella Larson and Members
of the Planning Commission
July 24, 2009
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4. The second home on the upper lot has also been reduced in size, both through application of the new ordinance provisions and reductions in overall square footage. Section 28.15.083 resulted in a 160 square foot reduction in the understory garage of this unit, while the home itself was reduced by 367 square feet, for a total square footage of 1,150 square feet (a 41 % reduction from the prior submittal).

With these changes, there is a combined reduction of 2,183 square feet in the project. Building coverage on the upper lot is 8%, on the lower lot 5%. More than 70% of the upper lot and 88% percent of the lower lot will be landscaped or open space. In addition, while the main, or replacement house, on the upper lot remains as previously presented, it is important to note that most of this structure is in an area of the property which is well under 10 percent slope. With these kinds of reductions, there is simply no basis for a conclusion that this more than 5.5 acre site is overbuilt.

At the last hearing, time constraints prevented me from providing several additional supporting factors for the Commission's consideration in adopting the required findings for approval. These include the following:

A. Lot Line Adjustment Findings: The staff report states that the Lot Line Adjustment is appropriate for the area and is consistent with the City's General Plan and Building and Zoning Ordinances, in that the readjusted lots at 2.47 acres and 3.10 acres would far exceed the minimum size required under the Zoning Ordinance (50,000 square feet per lot, adjusted for slope density). The staff report also notes that the readjusted lots would complement each other in both the flow and functionality of landscape and architectural design. I would also suggest that a review of the surrounding neighborhood shows that, while there are other linear parcels along this private roadway, most of the properties in the vicinity are configured in a manner similar to what we are proposing. The east-west alignment allows for better use of the site, increased distance between structures, and requires fewer modifications of setbacks and the like. Rather than forming an exception to the surrounding neighborhood, this proposal brings the development in line with many of the properties in the vicinity.

B. Street Frontage Modification Finding: As Commission Thompson said during the last hearing, this modification is a technical requirement only, as all the parcels on Eucalyptus Hill Drive front on a private road, a nonconformity which will continue regardless of the action on this application. No matter how the lots are configured, public street frontage could never be obtained. More importantly, however, is the fact that the lot line adjustment request will allow for a preferred use of the properties, by avoiding the clustering of development adjacent to the street. Both before and after the lot line adjustment, one of the two lots will include 100 feet of frontage, albeit on a private street.

In addition to staff's point about the appropriateness of the improvement, I would also suggest that this modification is supportable because it is necessary to promote uniformity of development, again not necessarily with the homes on Eucalyptus Hill Drive, but with the larger Eucalyptus Hill neighborhood.

C. Performance Standard Permits: The staff report states that the lot areas of the two parcels have the minimum lot area required in the A-2 zone and the additional dwelling units comply with all other applicable ordinance requirements. In addition, however, it is important to mention that not only do the two lots meet the minimum size requirements under the A-2 zone, they both provide the minimum required for the requested second unit. Parcel 1 will include 2.47 acres, which is equivalent to 107,593 square feet, or 7,593 square feet more than required at a ratio of 50,000 square feet per unit. Parcel 2 is even larger at 3.10 acres or 135,036 square feet, with more than 35,000 square feet above that required for two units. On average, this equates to 1.4 acres per unit. Both of the Performance Standard Permit requirements, that the minimum site area per dwelling unit must be met and the location of such additional dwellings must comply with all other applicable ordinance provisions, have been met in this case. No other discretionary evaluation is included or appropriate. As such, there is no basis for a conclusion that the site would be overdeveloped, particularly given the reduced sizes of the proposed homes.

Finally, I would like to clarify some of the misstatements made by members of the public at the last hearing. While some of the comments evidenced simple misunderstandings of the governing law (for example, questions about "second units" or "granny units" which implied that the limited restrictions of the conditional use permit process must be met rather than an understanding that these were full-sized second dwellings which meet the Performance Standard Permit criteria), others were simply factually incorrect. These include:

- The continued claims that drainage on Woodland Drive will be adversely impacted by the project. Not only will the project contain the average storm flows onsite, the required installations will improve the existing situation on Woodland Drive, one which has existed for many years and is not the obligation of this owner to repair.
- Assertions that "lives and property will be endangered" through the construction of three additional houses on more than five and one half acres. There is absolutely no justification for that kind of unfounded statement in a public setting, and that claim cannot go unchallenged.

- Concern that there was too much parking on the site. There are, in fact 11 parking spaces on the property, all in garages. Eight of these garage spaces are proposed to be built into the hillside, reducing their apparent size, bulk and scale in accordance with the Hillside Design Guidelines. The "turnaround" area near the garage on the upper lot is included based on a requirement of the Fire Department, not as additional open parking.

The ability to express an opinion about a project is fundamental in our society and should be respected. However, respect for the other party's position is equally important. For a complaint to have any merit, it must be based on facts. Unfortunately, some of the letters and statements made by those opposed to this project were based on nothing more than exaggeration, misstatements, and bald-faced lies. For example, one owner claimed that the project involved the construction of "five huge structures." The reality is that one home was originally proposed at less than 1,600 square feet and has now been reduced to 1,150 square feet, while another began at less than 1,800 square feet and is now 1,250 square feet. Three of these four (not five) allegedly "huge" structures are similar in size or smaller than most of the existing homes in the surrounding neighborhoods, and at a ratio of 1.4 acres per residence, are located on lots larger than those on Woodland Drive or Norman Lane. Another neighbor objected to the entire hearing, arguing that since the SHO had made her decision, we should be precluded from an appeal. Not only did the concept of due process apparently escape this neighbor, he also alleged that we were somehow responsible for the change in staff planners and the delay in getting to the Planning Commission. A simple review of the record or a conversation with staff would have corrected this misimpression. We believe we have addressed each of the *legitimate* concerns raised at the last hearing, as reflected by the revisions described above, and ask that you disregard these false and baseless claims by the neighbors.

In closing, I would simply reiterate that the primary discretionary component of this application is for a lot line adjustment, not for an increase in density or intensity of use beyond what could already be built on the site, but merely for approval of a more compatible configuration of the property. By reducing the project by 2,183 square feet (essentially the size of a single family residence), we believe we have been responsive to the Commission's concerns and have presented a revised project which is in keeping with the neighborhood, respectful of the surroundings, and beneficial to the community through the installation of the offsite improvements. With that, we would request that you approve the changes we have proposed, uphold our appeal, and adopt the

Chairwoman Stella Larson and Members
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Mitigated Negative Declaration, findings, and conditions as outlined by staff at the last hearing. Thank you very much.

Sincerely,



Kathleen M. Weinheimer

RECEIVED
JUL 27 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

IV. STAFF HEARING OFFICER APPEAL:

ACTUAL TIME: 1:47 P.M.

APPLICATION OF BRENT DANIELS, AGENT FOR CYNTHIA HOWARD, 226 & 232 EUCALYPTUS HILL DRIVE, APN 015-050-017 & 015-050-018, A-2, ONE-FAMILY RESIDENCE ZONE, GENERAL PLAN DESIGNATION: RESIDENTIAL, TWO UNITS PER ACRE (MST2004-00349)

This is an appeal of the denial of the project by the Staff Hearing Officer. The proposed project involves a lot line adjustment between two parcels (2.82 and 2.75 acres in size) by realigning the dividing lot line from a north-south direction to an east-west direction, and resulting in two parcels of 2.47 acres (Parcel 1, upper parcel) and 3.10 acres (Parcel 2, lower parcel). Parcel 1 would have an average slope of 21.3% and Parcel 2 would have an average slope of 22.5%, both parcels sloping north to south. An existing single-family residence, greenhouse foundation, and hardscape driveway would be removed, and two new single-family residences are proposed on each parcel. Parcel 1 would include a 6,129 square foot residence with an attached 743 square foot garage, and a 1,517 square foot residence with a 320 square foot garage, and a detached 430 square foot garage. Parcel 2 would include a 3,927 square foot residence with an a 747 square foot attached garage, and a 1,786 square foot residence with a 352 square foot subterranean garage. The project site is currently accessed from Eucalyptus Hill Drive, a private road, by an existing unimproved driveway which extends to the southern portion of the properties. This driveway would be improved to facilitate access to the proposed lower parcel, via an easement though the upper parcel. The total grading quantities proposed for the development of both parcels include 3,090 cubic yards of cut and 2,830 cubic yards of fill.

The discretionary applications required for this project are:

1. Lot Line Adjustment to allow adjustment of the property line between two existing parcels (SBMC§27.40);
2. Street Frontage Modifications to allow less than the required 100 feet of frontage on a public street for each parcel (SBMC§28.15.080); and
3. Performance Standard Permits to allow an additional dwelling unit on each parcel (SBMC§28.93.030.E).

The Planning Commission will consider adoption of the Mitigated Negative Declaration prepared for the project pursuant to the California Environmental Quality Act Guidelines Section 15074.

Case Planner: Kathleen Kennedy, Associate Planner
 Email: KKennedy@SantaBarbaraCA.gov

Kathleen Kennedy, Associate Planner, gave the Staff presentation.

Bettie Weiss, City Planner, gave the Staff Hearing Officer presentation.

Brent Daniels, L & P Consultants, gave the applicant presentation and introduced his team: Cristi Fry, Civil Engineer, Triad/Holmes Associates; Lane Goodkind, Landscape Architect; Allan McCloud, Architect, Shubin and Donaldson Architects, Inc.; and Kathleen Weinheimer, Attorney.

Chair Larson opened the public hearing at 2:24 P.M.

The following people spoke in support of the appeal:

1. Clay Tedeschi
2. Teha Eliassen
3. Steve Bollinger

The following people spoke in opposition to the appeal:

1. John Manning, neighbor, is opposed to the project and expressed concerns regarding the lot line adjustment, increased development potential, amount of cut and fill, and removal of eucalyptus trees
2. June Sochel, neighbor, expressed concerns regarding grading of the hillside, soil instability and drainage.
3. Tony Vassallo, neighbor, expressed concerns similar to those submitted as written comments.
4. Caroline Vassallo, neighbor, expressed concerns similar to those submitted as written comments.
5. Ernie Salomon, neighbor, expressed concerns regarding flooding, slides, and land movement and suggested that the water from the proposed project be piped into the north-side creek which runs parallel and runs west of Woodland Drive.

With no one else wishing to speak, the public hearing was closed at 2:46 P.M.

Staff responded to the Planning Commission question about the adoption of the Mitigated Negative Declaration (MND) stating that it was not necessary to adopt the MND if the project was not being approved. Ms. Weiss stated that she did not have any issues with the MND, and although she was concerned about the drainage, it does not rise to a level of significance.

Mark Wilde, Supervising Engineer, Public Works, explained that the standard condition has been included so that there will be no increase in flows to Woodland Drive up to a 25 year storm. The proposed condition goes beyond the standard in proposing a potential installation of an 18" storm drain that meets up with the existing 36" storm drain. If this project is approved, Engineering staff can work with Building and Safety Staff to obtain a design that will satisfy the requirements and concerns of the public, without having any damage to their properties, up to a 25 year storm.

Mr. Vincent explained the differences between a lot line adjustment and subdivision and why a lot line adjustment is appropriate for the project. He also answered the question concerning the City's policy about the number of lots using a private drive, stating that a waiver would be needed for more than four lots; however, in this case, a waiver would not apply since the number of lots would remain the same.

Ms. Fry stated that Woodland Drive could handle 60 cubic feet per second (cfs) and that the project is only proposing 7.9 cfs. She added that the actual location of the 4' wide and 1' high concrete swale has not been determined but that it will be in the area identified on the map by a yellow line, and would not require much landscape screening from down below.

Mr. Daniels stated that, per the City's ordinance, each of the four homes could have 500 square feet of accessory structures.

The Commissioners made the following comments:

1. Commissioner Jacobs had a concern with the proposed density and the size of the additional residences.
2. Commissioners Jostes and Lodge had concerns regarding drainage, density, the number of garages, and cannot support the street frontage modification.
3. Commissioner White could not support the project and wondered if the applicant would still want a lot line adjustment with two houses on the property instead of four.
4. Commissioner Bartlett summarized his recollection of the project's history at the ABR and stated that the applicant has gone far and above what is technically required and can support the project and requested modifications.
5. Commission Thompson stated that the City has got to get a better handle on private streets seeking public street frontage waivers. He stated that fire safety has been improved with the removal of hazardous vegetation and that he agrees with the Staff recommendation and supports the project as proposed.
6. Commissioner Larson agrees with Commissioners Bartlett and Thompson, but remains concerned with the density.

Staff acknowledged the Planning Commission's discretion to approve the performance standard permit. Ms. Weiss added that there is adequate ingress and egress and lot area for this project.

Mr. Daniels stated that the lot line adjustment would not increase the allowable density onsite.

MOTION: Bartlett/Thompson

Uphold the appeal to adopt the Mitigated Negative Declaration (MND), recommend approval of the street frontage modification, lot line adjustment, performance standard permits, and include revised condition of approval as proposed by the applicant in D.6., including requirement for 500 linear feet of storm drain.

This motion failed by the following vote:

Ayes: 3 Noes: 4 (Jostes, White, Jacobs, Lodge) Abstain: 0 Absent: 0

The motion failed.

Commissioner White remained concerned with the density and needed to see less development on the site.

Ms. Weinheimer stated that a continuance, rather than a denial, would be preferred and cautioned that if the parcels are merged, four houses could still be allowed to be built there.

MOTION: Jostes/White

Continued to July 23, 2009

This motion carried by the following vote:

Ayes: 7 Noes: 0 Abstain: 0 Absent: 0

Chair Larson called for a recess at 3:29 P.M. and reconvened the meeting at 3:48 P.M.

V. **DISCUSSION ITEM:**

ACTUAL TIME: 3:48 P.M.

PLAN SANTA BARBARA WORK SESSION (DISCUSSION ITEM)

This work session will focus primarily on the Land Use and Growth Management Element which updates the existing Land Use (General Plan) Element. Prefatory to that discussion, staff will present an overview of the proposed General Plan framework document to review the format for the proposed General Plan and provide context for the Land Use and Growth Management Element. The discussion of the proposed Land Use and Growth Management Element will focus on the disposition of policies in the existing Land Use Element; which policies are recommended to be retained as is, retained but revised, moved to another more appropriate element, or deleted. Additionally, a brief update will be given on revisions to the Land Use Map. Any public comment on these items as well as the EIR process to date will be welcome.

This is a Planning Commission discussion item, including a staff presentation, public comment, and Commission discussion. No Commission action will be taken on *Plan Santa Barbara*.

Case Planner: John Ledbetter, Principal Planner
Email: JLedbetter@SantaBarbaraCA.gov

John Ledbetter, Principal Planner, gave the Staff presentation, joined by Beatriz Gularte, Project Planner, and Bettie Weiss, City Planner.

**APPLICATION OF BRENT DANIELS, AGENT FOR CYNTHIA HOWARD,
226 & 232 EUCALYPTUS HILL DRIVE, APN 015-050-017 & 015-050-018, A-2,
ONE-FAMILY RESIDENCE ZONE, GENERAL PLAN DESIGNATION:
RESIDENTIAL, TWO UNITS PER ACRE (MST2004-00349)**

This is an appeal of the September 12, 2007 denial of the project by the Staff Hearing Officer. The revised project includes a reduction in the size of three of the four proposed residences. The proposed project involves a lot line adjustment between two parcels (2.82 and 2.75 acres in size) by realigning the dividing lot line from a north-south direction to an east-west direction, and resulting in two parcels of 2.47 acres (Parcel 1, upper parcel) and 3.10 acres (Parcel 2, lower parcel). Parcel 1 would have an average slope of 21.3% and Parcel 2 would have an average slope of 22.5%, both parcels sloping north to south. An existing single-family residence, greenhouse foundation, and hardscape driveway would be removed, and two new single-family residences are proposed on each parcel. Parcel 1 would include a 6,129 square foot residence with an attached 743 square foot garage, and a 1,150 square foot residence with a 320 square foot garage, and a detached 430 square foot garage. Parcel 2 would include a 3,700 square foot residence with an a 747 square foot attached garage, and a 1,250 square foot residence with a 352 square foot subterranean garage. The project site is currently accessed from Eucalyptus Hill Drive, a private road, by an existing unimproved driveway which extends to the southern portion of the properties. This driveway would be improved to facilitate access to the proposed lower parcel, via an easement though the upper parcel. The total grading quantities proposed for the development of both parcels include 3,090 cubic yards of cut and 2,830 cubic yards of fill.

The discretionary applications required for this project are:

1. Lot Line Adjustment to allow adjustment of the property line between two existing parcels (SBMC§27.40);
2. Street Frontage Modifications to allow less than the required 100 feet of frontage on a public street for each parcel (SBMC§28.15.080); and
3. Performance Standard Permits to allow an additional dwelling unit on each parcel (SBMC§28.93.030.E).

The Planning Commission will consider adoption of the Mitigated Negative Declaration prepared for the project pursuant to the California Environmental Quality Act Guidelines Section 15074.

Case Planner: Kathleen Kennedy, Associate Planner
Email: KKennedy@SantaBarbaraCA.gov

Kathleen Kennedy, Associate Planner, gave the Staff presentation.

Kathleen Weinheimer, Attorney, gave the Appellant presentation.

Brent Daniels, L & P Consultants, gave the Applicant presentation.

Chair Larson opened the public hearing at 3:23 P.M.

The following people spoke in support of the appeal, or with concerns:

1. Clay Tedeschi
2. Mary Faro

The following people spoke in opposition to the appeal:

1. Chris Flynn
2. Steve Lew
3. Joel Ohlgren
4. Ernest Salomon
5. June Sochel
6. Pierre Nizet
7. Tony Vassallo
8. Caroline Vassallo
9. Caryl Crahan
10. Claudia Sobel
11. Leon Olsen
12. Cherie Lucas
13. Maria Nizet
14. Doris Sturgess
15. Charlene Little
16. Richard Mahoney
17. Julie Mahoney
18. Collette Flynn
19. Meagan Flynn

With no one else wishing to speak, the public hearing was closed at 3:55 P.M.

Mr. Daniels responded to the Commission's question by confirming that there are currently no drainage facilities on the property and that there is sheet flow with the majority going toward the top of the Norman Lane neighborhood. He also spoke about the slope stability.

Michael Cloonan, Public Works Engineering, responded to the Commission's question about the storm drain condition of approval, stating that if the drainage outflow to Woodland Drive is determined to be too high, then the applicant would be required to install the 18-inch underground storm drain for approximately 500 feet to connect to the storm drain in Alston Road. The determination will be made at the time the building permit is issued. Mr. Vincent added further comment explaining the existing storm drain at Alston Road and the conditions that would trigger the proposed storm drain to the base of Woodland Drive.

Mr. Vincent explained how the lot size could support an additional dwelling unit under the existing zoning.

Ms. Weinheimer commented that the current configuration would allow two dwelling units on each lot, but that they would not be as well sited and would not include the significant drainage improvements that the proposed application offers. Issues of significant concern to the down-slope property owners would not be able to be addressed later. Any of the concerns that were raised about mudslides, density of development, fire, etc., could just as well happen without a lot line adjustment, but would not be addressed with the proposed improvements.

Mr. Kato stated that without the lot line adjustment, there would still be a Performance Standard Permit and required compliance with the City's Storm Water Management Plan.

Mr. Cloonan responded to Mr. Thompson's question regarding why the determination was not made for the 18 inch drain. Mr. Vincent added that the City allows property owners to have water drain to the right-of-way.

The Commissioners made the following comments:

1. Commissioner Bartlett supported the changes that have been made and felt that the lot line adjustment makes the project better. The project will improve the situation for growth of other plants on the hillside.
2. Commissioner Thompson will support the street frontage modification, but felt that the Ordinance should be reviewed so that people do not have to ask for these modifications on a private street. Understood concerns of neighbors but defers to the expertise of City Engineers.
3. Commissioner White remained skeptical of changes and felt that the site is overdeveloped in contrast to the original development. The project proposes more development than he is comfortable with on the two slopes. Commissioner Larson concurred and added her concern for public safety and fire access.

Commissioner Bartlett explained that the proposal actually has fire access benefits with the addition of a hammerhead turn for the Fire Department.

MOTION: Bartlett/Thompson

Assigned Resolution No. 031-09

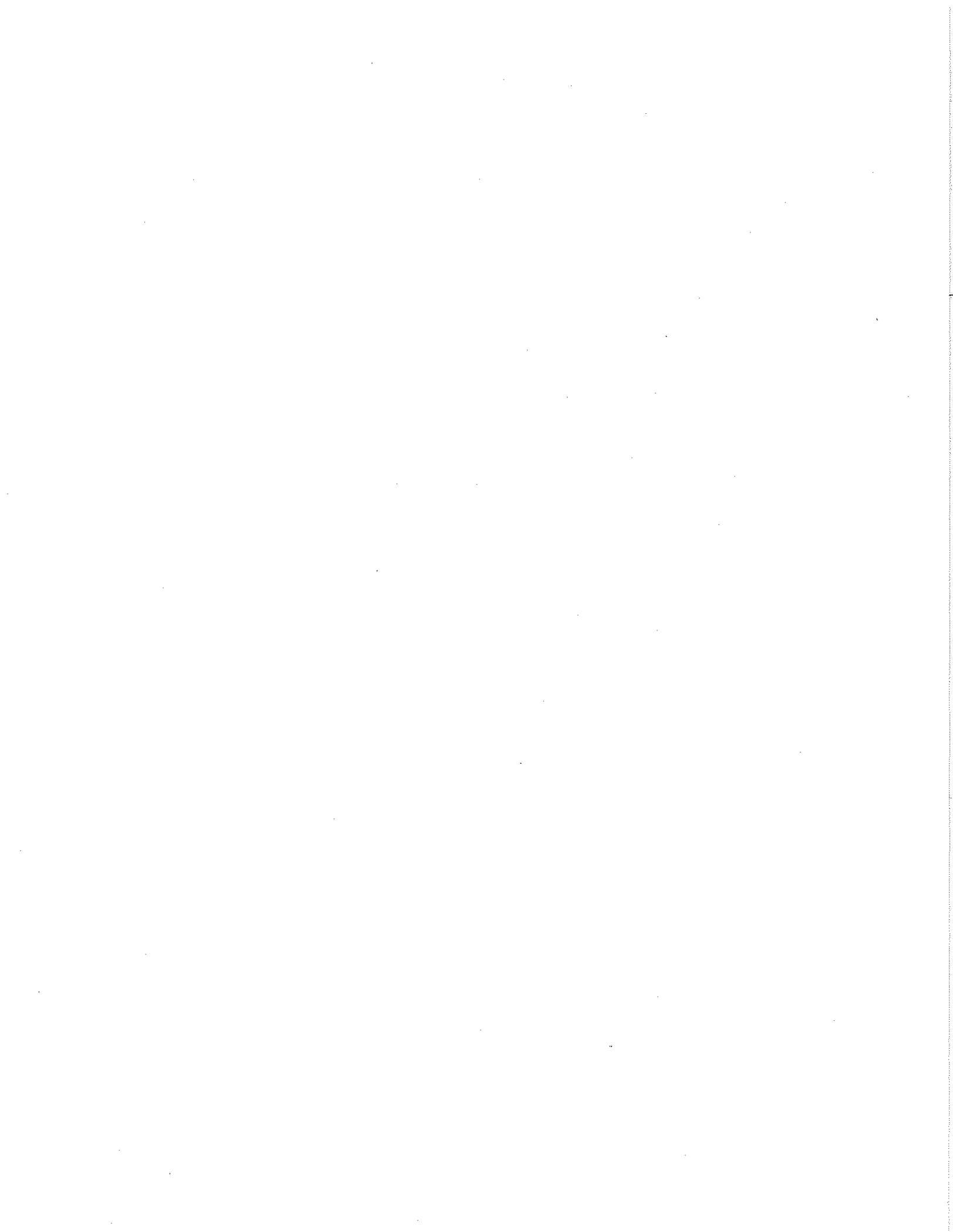
Uphold the appeal, approve the project, and adopt the Final Mitigated Negative Declaration, making the findings for the Lot Line Adjustment, Street Frontage Modifications, and Performance Standard Permits as outlined in the Staff Report, subject to the Conditions of Approval in Exhibit A of the Staff Report.

This motion carried by the following vote:

Ayes: 4 Noes: 1 (White) Abstain: 0 Absent: 2 (Jacobs, Jostes)

Chair Larson announced the ten calendar day appeal period.

Chair Larson called a brief recess at 4:30 and resumed the meeting at 4:33 P.M.





City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

UPDATED* RESOLUTION NO. 031-09

226 AND 232 EUCALYPTUS HILL DRIVE

LOT LINE ADJUSTMENT, STREET FRONTAGE MODIFICATIONS, PERFORMANCE STANDARD PERMITS
AUGUST 20, 2009

**APPLICATION OF BRENT DANIELS, AGENT FOR CYNTHIA HOWARD,
226 & 232 EUCALYPTUS HILL DRIVE, APN 015-050-017 & 015-050-018, A-2, ONE-FAMILY
RESIDENCE ZONE, GENERAL PLAN DESIGNATION: RESIDENTIAL, TWO UNITS PER
ACRE (MST2004-00349)**

This is an appeal of the September 12, 2007 denial of the project by the Staff Hearing Officer. The revised project includes a reduction in the size of three of the four proposed residences. The proposed project involves a lot line adjustment between two parcels (2.82 and 2.75 acres in size) by realigning the dividing lot line from a north-south direction to an east-west direction, and resulting in two parcels of 2.47 acres (Parcel 1, upper parcel) and 3.10 acres (Parcel 2, lower parcel). Parcel 1 would have an average slope of 21.3% and Parcel 2 would have an average slope of 22.5%, both parcels sloping north to south. An existing single-family residence, greenhouse foundation, and hardscape driveway would be removed, and two new single-family residences are proposed on each parcel. Parcel 1 would include a 6,129 square foot residence with an attached 743 square foot garage, and a 1,150 square foot residence with a 320 square foot garage, and a detached 430 square foot garage. Parcel 2 would include a 3,700 square foot residence with an a 747 square foot attached garage, and a 1,250 square foot residence with a 352 square foot subterranean garage. The project site is currently accessed from Eucalyptus Hill Drive, a private road, by an existing unimproved driveway which extends to the southern portion of the properties. This driveway would be improved to facilitate access to the proposed lower parcel, via an easement though the upper parcel. The total grading quantities proposed for the development of both parcels include 3,090 cubic yards of cut and 2,830 cubic yards of fill.

The discretionary applications required for this project are:

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2. Street Frontage Modifications to allow less than the required 100 feet of frontage on a public street for each parcel (SBMC§28.15.080); and
3. Performance Standard Permits to allow an additional dwelling unit on each parcel (SBMC§28.93.030.E).

The Planning Commission will consider adoption of the Mitigated Negative Declaration prepared for the project pursuant to the California Environmental Quality Act Guidelines Section 15074.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, 2 people appeared to speak in support of the appeal, and 19 people appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, August 20, 2009
2. Site Plans
3. Correspondence received in support of the appeal:
 - a. William R. Lucas, Santa Barbara, CA
 - b. Mary Foto, via email
4. Correspondence received in opposition to the appeal, or with concerns:
 - a. Cheryl Lucas, Santa Barbara, CA
 - b. Elaine Heavner, Santa Barbara, CA
 - c. Illegible signature, Santa Barbara, CA
 - d. Richard Hykes, MD, Santa Barbara, CA
 - e. Moris Hampton, Santa Barbara, CA
 - f. Illegible signature, Santa Barbara, CA
 - g. Winifred Higgins, Santa Barbara, CA
 - h. Illegible signature, Santa Barbara, CA
 - i. Diane C. Grant, Santa Barbara, CA
 - j. Illegible Signature, Santa Barbara, CA
 - k. G. W. Marks, Santa Barbara, CA
 - l. Catherine Romero, Santa Barbara, CA
 - m. Illegible signature, Santa Barbara, CA
 - n. Tony and Caroline Vassallo, Santa Barbara, CA
 - o. Eva Callis, Santa Barbara, CA
 - p. Joel Ohlgren and Nancy Even, via email
 - q. Steve Lew, via email
 - r. Chris Flynn, MD, via email
 - s. Charlene Little, Santa Barbara, CA
 - t. Richard and Julie Mahoney, Santa Barbara, CA
 - u. K. Maur, Santa Barbara, CA
 - v. Claudia Sobel, Santa Barbara, CA
 - w. Illegible signature, Santa Barbara, CA
 - x. Carol Crahan, Santa Barbara, CA

y. Paula Westbury, Santa Barbara, CA

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

I. Upheld the appeal, approved the project, and adopted the Final Mitigated Negative Declaration, making the following findings and determinations:

A. Final Mitigated Negative Declaration Adoption

- The Planning Commission has considered the proposed Final Mitigated Negative Declaration together with comments received during the public review process.
- The Planning Commission finds on the basis of the whole record before it (including the initial study and comments received) that there is no substantial evidence that the project will have a significant unmitigated effect on the environment.
- The Planning Commission finds that the Final Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis.
- The Planning Commission finds that the Final Mitigated Negative Declaration has been prepared in compliance with CEQA, and constitutes adequate environmental evaluation for the proposed project. The Planning Commission hereby adopts the Final Mitigated Negative Declaration for the project.
- The Planning Commission hereby adopts a mitigation monitoring and reporting program for measures required in the project or made a condition of approval to mitigate or avoid significant environmental effects.
- The location and custodian of the documents or other material which constitute the record of proceedings upon which this decision is based is the City of Santa Barbara Community Development Department, 630 Garden Street, Santa Barbara, California.

B. Street Frontage Modifications (SBMC§28.15.080)

The modifications are consistent with the purposes and intent of the Zoning Ordinance and are necessary to secure an appropriate improvement on the lots. The existing lots do not currently meet the 100 foot street frontage requirement. There are adjacent parcels in the neighborhood that have less than 100 feet of street frontage or no street frontage at all.

C. Lot Line Adjustment (SBMC§27.40)

The proposed lot line adjustment is appropriate for the area and is consistent with the City's General Plan and Building and Zoning Ordinances. The lot line adjustment would adjust the lot line between the two parcels which are currently 2.82 acres (Parcel A) and 2.75 acres (Parcel B) in size by realigning the dividing lot line from a north-south direction to an east-west direction, resulting in two parcels of 2.47 acres (Parcel 1) and 3.10 acres (Parcel 2). The proposed parcels exceed the minimum lot area requirement which is 50,000 square feet when slope density requirements are applied in

recognition of steep topography. The intent of the lot line adjustment is to create an integrated set of properties that would complement each other in both the flow and functionality of landscape and architectural design.

D. Performance Standard Permits (SBMC§28.93.030.E)

The lot areas of the two parcels have the minimum lot area per unit required in the A-2 zone and the additional dwelling units comply with all other applicable ordinance requirements.

E. Department Of Fish And Game Fee

An Initial Study has been conducted by the lead agency, which has evaluated the potential for the proposed project to result in adverse effects, either individually or cumulatively, on wildlife resources or the habitat on which the wildlife depends. For this purpose, "wildlife" is defined as "all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability" (Section 711.2 Fish and Game Code). This project has the potential to affect wildlife resources or the habitat on which wildlife depend, and is subject to the Department of Fish and Game fee.

II. Said approval is subject to the following conditions:

A. California Department of Fish and Game Fees Required. Pursuant to Section 21089(b) of the California Public Resources Code and Section 711.4 et. seq. of the California Fish and Game Code, the approval of this permit/project shall not be considered final unless the specified Department of Fish and Game fees are paid and filed with the California Department of Fish and Game within five days of the project approval. The current fee required is \$1,993 for projects with Mitigated Negative Declarations. Without the appropriate fee, the Notice of Determination (which the City is required to file within five days of project approval) cannot be filed and the project approval is not operative, vested or final. The fee shall be delivered to the Planning Division immediately upon project approval in the form of a check payable to the California Department of Fish and Game.

B. Design Review. The project is subject to the review and approval of the Single Family Design Board (SFDB). The SFDB shall not grant preliminary approval of the project until the following Planning Commission land use conditions have been satisfied.

1. **Landscape Plan.** The final landscape plan shall adhere to the Fire Department Landscape Guidelines for properties that are in the high fire hazard area. The plan shall be reviewed and approved by the Single Family Design Board and the Fire Department. (H-2)
2. **Oak Tree Replacement.** A replacement of the four oaks proposed for removal shall include the planting, management, and long-term maintenance of 70 1-gallon young saplings per the recommendations of the Oak Tree Protection Plan. (B-2)

3. **Irrigation System.** The irrigation system shall be designed and maintained with the most current technology to prevent a system failure and watering of vegetation on the steep slope shall be kept to the minimum necessary for plant survival.
 4. **Permeable Paving.** Permeable/porous paving materials shall be utilized where possible to reduce the impermeability of hardscape surfaces. (W-3)
- C. **Recorded Conditions Agreement.** Prior to the issuance of any Public Works permit or Building permit for the project on the Real Property, the Owner shall execute a written instrument, which shall be reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director, recorded in the Office of the County Recorder, and shall include the following:
1. **Approved Development.** The development of the Real Property approved by the Planning Commission on August 20, 2009 is limited to a Lot Line Adjustment, Street Frontage Modifications, Performance Standard Permits and the improvements shown on the plans, including landscaping and hardscape work associated with the proposed residences and associated garages signed by the Chair of the Planning Commission on said date and on file at the City of Santa Barbara.
 2. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural water courses, conduits and any access road, as appropriate.
 3. **Recreational Vehicle Storage Limitation.** No recreational vehicles, boats or trailers shall be stored on the Real Property unless enclosed or concealed from view as approved by the Single Family Design Board (SFDB).
 4. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan approved by the Single Family Design Board (SFDB) and the Fire Department. Such plan shall not be modified unless prior written approval is obtained from the SFDB and Fire Department. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan.
 5. **Geotechnical Liability Limitation.** The Owner understands and is advised that the site may be subject to extraordinary hazards from landslides, erosion, retreat, settlement, or subsidence and assumes liability for such hazards. The Owner unconditionally waives any present, future, and unforeseen claims of liability on the part of the City arising from the aforementioned or other natural hazards and relating to this permit approval, as a condition of this approval. Further, the Owner agrees to indemnify and hold harmless the City and its employees for any alleged or proven acts or omissions and related cost of defense, related to the City's approval of this permit and arising from the aforementioned or other natural hazards whether such claims should be stated by the Owner's successor-in-interest or third parties.

6. **Existing Tree Preservation.** The existing tree(s) shown on the approved Tree Preservation and Removal Plan to be retained shall be preserved and protected.
7. **Habitat Protection.** The two eucalyptus trees identified as a great horned owl roost and an acorn granary, shall be retained and protected per the recommendations of the Biological Assessment dated October 26, 2006, and as noted on the Tree Preservation Plan. (B-3)
8. **High Fire Vegetation Management.** Residences located in the High Fire Hazard area are required to maintain vegetation to create an effective fuel break by thinning dense vegetation (mosaic style) and removing dry brush, flammable vegetation and combustible growth from areas within 100 feet of all buildings or structures. The owner(s) shall perform the following maintenance annually for the life of the project:
 - a. Cut and remove hazardous brush, shrubs, and flammable vegetation such as dry grass and weeds within 100 feet of any structure and within 2 inches of the ground.
 - b. Thin brush from streets and driveways both horizontally and vertically along the property. Flammable vegetation must be cleared on each side of the street or driveway for a distance of 10 feet and a vertical distance of 13 feet, 6 inches. Vegetation must be cut to within 2 inches of the ground. This applies to the public or private driveway and any public or private streets that border the property.
 - c. Remove dead wood, trim the lower branches, and limb all live trees to 6 feet above the ground (or as much as possible with younger, smaller trees), especially trees adjacent to buildings.
 - d. Trim tree limbs back a minimum distance of 10 feet from any chimney opening.
 - e. Remove all dead trees from the property.
 - f. Maintain the roof of all structures free of leaves, needles or other vegetative debris.
 - g. Legally dispose of all cut vegetation, including any debris left from previous tree trimming and brush removal. Cut vegetation may be chipped and spread throughout the property as a ground cover, up to 12 inches in depth, and at least 30 feet from any structure. (H-1)
9. **Storm Water Pollution Control and Drainage Systems Maintenance.** Owner shall maintain the drainage system and storm water pollution control devices intended to intercept siltation and other potential pollutants (including, but not limited to, hydrocarbons, fecal bacteria, herbicides, fertilizers, etc.) in a functioning state (and in accordance with the Operations and Maintenance Procedure Plan prepared in accordance with the Storm Water Management Plan BMP Guidance Manual). Should any of the project's surface or subsurface

drainage structures or storm water pollution control methods fail to capture, infiltrate, and/or treat water, or result in increased erosion, the Owner shall be responsible for any necessary repairs to the system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Community Development Director to determine if an amendment or a new Building Permit is required to authorize such work. The Owner is responsible for the adequacy of any project-related drainage facilities and for the continued maintenance thereof in a manner that will preclude any hazard to life, health, or damage to the Real Property or any adjoining property.

10. **Required Private Covenants.** Owners shall execute and record in the official records of Santa Barbara County appropriate and necessary covenants of easement to provide for access, utilities, and drainage for the adjusted parcels. The covenants of easement shall provide express method for the appropriate and regular maintenance of the common improvements, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance should the parcels be sold into separate ownership.
 11. **Participation in the Eucalyptus Hill Vegetation Management Unit.** Participate in the Eucalyptus Hill Vegetation Management Unit to reduce fire hazards in the area. If a community project is underway, the Owner shall participate in cooperative vegetation management, public education, or other community solutions to reduce hazard and risk.
- D. **Public Works Requirements Prior to Building/Grading Permit Issuance.** The Owner shall submit the following, or evidence of completion of the following to the Public Works Department for review and approval, prior to the issuance of a Building Permit for the project:
1. **Lot Line Adjustment Required.** The Owner shall submit an executed Agreement Related to the Lot Line Adjustment, Quitclaim Deed and Acceptance Thereof/Declarations of Lot Line Adjustment to the Public Works Department, including the legal description of the subject properties prior to, and following the lot line adjustment. A licensed surveyor shall prepare the legal description and said Agreement/Declaration shall be recorded in the Office of the County Recorder.
 2. **Easement(s).** Covenants of Easement described as follows, subject to approval of the easement scope and location by the Public Works Department and/or the Building and Safety Division:
 - a. A variable width Covenant of Easement for Ingress, Egress, Drainage, Public and Private Utilities and Other Incidental Purposes, as shown on Lot Line Adjustment Map, and recorded by separate instrument.

- b. A ten-foot wide Covenant of Easement for sewer and drainage for the benefit of Adjusted Lot 1, as shown on the Lot Line Adjustment Map, and recorded by separate instrument.
- c. A ten-foot wide Covenant of Easement for sewer and drainage purposes for the benefit of Adjusted Lot 1 and Adjusted Lot 2 through the adjacent property known as 860 Woodland Drive, and recorded by separate instrument.
3. **Water Rights Assignment Agreement.** The Owner shall assign to the City of Santa Barbara the exclusive right to extract ground water from under the Real Property in an "Agreement Assigning Water Extraction Rights." Engineering Division Staff will prepare said agreement for the Owner's signature.
4. **Drainage Calculations.** The Owner shall submit drainage calculations prepared by a registered civil engineer or licensed architect demonstrating that the new development will not increase runoff amounts above existing conditions for a 25-year storm event. Any increase in runoff shall be retained on-site.
5. **Drainage and Water Quality.** Project drainage shall be designed, installed, and maintained such that stormwater runoff from the first inch of rain from any storm event shall be retained and treated onsite in accordance with the City's NPDES Storm Water Management Permit. Project plans for grading, drainage, stormwater treatment methods, and project development, shall be subject to review and approval by City Building Division and Public Works Department. Sufficient engineered design and adequate measures shall be employed to ensure that no significant construction-related or long-term effects from increased runoff, erosion and sedimentation, urban water pollutants, or groundwater pollutants would result from the project. The Owner shall maintain the drainage system and storm water pollution control methods in a functioning state. (W-1)
6. **Alston Road and Woodland Drive Public Improvement Plans.** The Owner shall submit C-1 public improvement plans for construction of improvements along Alston Road and Woodland Drive. The C-1 plans shall be submitted separately from plans submitted for a Building Permit.

As determined by the Public Works Department, the Alston Road improvements shall include new and/or remove and replace to City Standards, the following: approximately sixty feet (60') of thirty-six inch (36") RCP storm drain; one (1) drop inlet; storm drain stenciling; connection to existing thirty-six inch (36") storm drain crossing Alston Road; approximately sixty feet (60') curb and gutter, asphalt concrete, and crack seal to the centerline of the street along entire new storm drain frontage and a minimum of twenty feet (20') beyond the limit of all trenching.

As determined by the Public Works Department, at the time of permit issuance, the Woodland Drive improvements shall include new and/or remove and replace to City Standards, the following: any modifications to the on-site retention/detention stormwater system necessary to reduce point discharge to the

Public right-of-way to meet the City Construction Standard Details for Drain Outlets (In the event that on-site modifications are unable to achieve the City Standard for flow rate at Drain Outlets, as measured at the time of construction of the modifications, the Owner will install approximately five hundred feet (500') of eighteen inch (18") RCP storm drain); approximately twenty (20') feet curb and gutter, asphalt concrete, and crack seal adjacent to the area of improvement, the width of the 800 block of Woodland Drive.

For both Alston Road and Woodland Drive: public drainage improvements shall include supporting drainage calculations and/or hydrology report for installation of drainage pipe, erosion protection (provide off-site storm water BMP plan) etc.; preserve and/or reset survey monuments and contractor stamps; and provide adequate positive drainage from site. Any work in the public right-of-way requires a Public Works Permit.

7. **Agreement to Construct and Install Improvements.** The Owner shall submit an executed Agreement to Construct and Install Improvements, prepared by the Engineering Division, an Engineer's Estimate, signed and stamped by a registered civil engineer, and securities for construction of improvements prior to execution of the agreement.
 8. **Removal or Relocation of Public Facilities.** Removal or relocation of any public utilities or structures must be performed by the Owner or by the person or persons having ownership or control thereof.
 9. **Approved Public Improvement Plans and Concurrent Issuance of Public Works Permit.** Upon acceptance of the approved public improvement plans, a Public Works permit shall be issued concurrently with a Building permit. The C-1 public improvement plans may be bonded for prior to concurrent Building permit issuance.
 10. **Landscape Plan Approval Required.** The landscape plan shall be reviewed and approved by the Transportation Planning Division to ensure compliance with sight visibility requirements.
- E. **Community Development Requirements Prior to Building or Public Works Permit Application/Issuance.** The following shall be finalized prior to, and/or submitted with, the application for any Building or Public Works permit:
1. **Project Environmental Coordinator Required.** Submit to the Planning Division a contract with a qualified representative for the Owner, subject to approval of the contract and the representative by the Planning Division, to act as the Project Environmental Coordinator (PEC). The PEC shall be responsible for assuring full compliance with the provisions of the Mitigation Monitoring and Reporting Program (MMRP) and Conditions of Approval to the City. The contract shall include the following, at a minimum:
 - a. The frequency and/or schedule of the monitoring of the mitigation measures.

- b. A method for monitoring the mitigation measures.
- c. A list of reporting procedures, including the responsible party, and frequency.
- d. A list of other monitors to be hired, if applicable, and their qualifications.
- e. Submittal of biweekly reports during demolition, excavation, grading and footing installation and biweekly reports on all other construction activity regarding MMRP and condition compliance by the PEC to the Community Development Department/case planner.

The PEC shall have authority over all other monitors/specialists, the contractor, and all construction personnel for those actions that relate to the items listed in the MMRP and conditions of approval, including the authority to stop work, if necessary, to achieve compliance with mitigation measures.

2. **Nesting Native Birds.** Construction activities including tree and vegetation removal shall occur outside the breeding bird season (February 1 – August 15). If project activities cannot be feasibly avoided during the bird nesting season the owner shall conduct a minimum of four weekly bird surveys, using a qualified biologist with experience in conducting breeding bird surveys, approved by the City Environmental Analyst, to detect protected nesting native birds in the vegetation and trees to be removed and within 300 feet of the construction work area. The surveys shall begin 30 days prior to the disturbance of suitable nesting habitat and conducted on a weekly basis with the last survey conducted no more than three days before construction is initiated. If an active nest is located, construction within 500 feet of a raptor nest and 300 feet of any other nesting bird, vegetation clearing and tree removal shall be postponed until the nest is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. This shall be confirmed by the qualified biologist. Nesting areas to be avoided during construction shall be marked and protected with flagging and stakes or construction fencing at least 300 feet or 500 feet (if applicable) from the nest.
3. **Neighborhood Notification Prior to Construction.** At least twenty (20) days prior to commencement of construction, the contractor shall provide written notice to all property owners, businesses and residents within 450 feet of the project area. The notice shall contain a description of the project, the construction schedule, including days and hours of construction, the name and phone number of the Project Environmental Coordinator (PEC) and Contractor(s), site rules and Conditions of Approval pertaining to construction activities and any additional information that will assist the Building Inspectors, Police Officers and the public in addressing problems that may arise during construction. The language of the notice and the mailing list shall be reviewed and approved by the Planning Division prior to being distributed. An affidavit signed by the person(s) who compiled the mailing list shall be submitted to the Planning Division.

4. **Contractor and Subcontractor Notification.** The Owner shall notify in writing all contractors and subcontractors of the site rules, restrictions and Conditions of Approval. Submit a copy of the notice to the Planning Division.
 5. **Arborist's Monitoring.** Submit to the Planning Division a contract with a qualified arborist for monitoring of all work within the dripline of all oak trees during construction. The contract shall include a schedule for the arborist's presence during grading and construction activities, and is subject to the review and approval of the Planning Division.
 6. **Letter of Commitment for Pre-Construction Conference.** The Owner shall submit to the Planning Division a letter of commitment that states that, prior to disturbing any part of the project site for any reason and after the Building permit has been issued, the General Contractor shall schedule a conference to review site conditions, construction schedule, construction conditions, and environmental monitoring requirements. The conference shall be held within twenty days of the commencement of construction and shall include representatives from the Public Works Department Engineering and Transportation Divisions, the assigned Building Inspector, the Planning Division, the Property Owner, the Landscape Architect, the Biologist, the Project Engineer, the Project Environmental Coordinator, the Contractor and each subcontractor.
 7. **Final Planning Commission Resolution Submittal.** The final Planning Commission Resolution shall be submitted, indicating how each condition is met with drawing sheet and/or note references to verify condition compliance. If the condition relates to a document submittal, describe the status of the submittal (e.g., Final Map submitted to Public Works Department for review), and attach documents as appropriate.
- F. **Building Permit Plan Requirements.** The following requirements/notes shall be incorporated into the construction plans submitted to the Building and Safety Division for Building permits.
1. **Design Review Requirements.** Plans shall show all design, landscape and tree protection elements, as approved by the Single Family Design Board, outlined in Section B above.
 2. **Mitigation Monitoring and Reporting Requirement.** Note on the plans that the Owner shall implement the Mitigation Monitoring and Reporting Program (MMRP) for the project's mitigation measures, as stated in the Mitigated Negative Declaration for the project.
 3. **Grading Plan Requirement for Archaeological Resources.** The following information shall be printed on the grading plans:

If archaeological resources are encountered or suspected, work shall be halted or redirected immediately and the Planning Division shall be notified. The archaeologist shall assess the nature, extent, and significance of any discoveries

and develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List, etc.

If the discovery consists of possible human remains, the Santa Barbara County Coroner shall be contacted immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. A Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Planning Division grants authorization.

If the discovery consists of possible prehistoric or Native American artifacts or materials, a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Planning Division grants authorization.

4. **Post-Construction Erosion Control and Water Quality Plan.** Provide an engineered drainage plan that addresses the existing drainage patterns and leads towards improvement of the quality and rate of water run-off conditions from the site by capturing, infiltrating, and/or treating drainage and preventing erosion. The Owner shall employ passive water quality methods, such as bioswales, catch basins, or storm drain on the Real Property, or other measures specified in the Erosion Control Plan, to intercept all sediment and other potential pollutants (including, but not limited to, hydrocarbons, fecal bacteria, herbicides, fertilizers, etc.) from the parking lot areas and other improved, hard-surfaced areas prior to discharge into the public storm drain system, including any creeks. All proposed methods shall be reviewed and approved by the Public Works Department and the Community Development Department. Maintenance of these facilities shall be provided by the Owner, as outlined in Condition C.9 above, which shall include the regular sweeping and/or vacuuming of parking areas and drainage and storm water methods maintenance program. (W-2)
5. **Grading and Foundation Recommendations.** Site preparation, grading and project construction related to soil conditions shall be in accordance with the recommendations contained in the Engineering Geology and Geotechnical Engineering Report, prepared by Earth Systems Southern California, and dated July 14, 2006. Compliance shall be demonstrated on plans submitted for grading and/or building permits. (G-1)
6. **Mechanical Parking System.** The upper platform of the mechanical parking system shall be equipped with a barrier or a guide designed to ensure that vehicles parked on the upper deck will not interfere with the access to the garage parking spaces. The lift system shall include a pressure sensitive electric safety

edge. The location of the Key-operated control switch for security and safety shall be reviewed and approved by staff prior to issuance of a Building Permit for this residence.

7. **Conditions on Plans/Signatures.** The final Planning Commission Resolution shall be provided on a full size drawing sheet as part of the drawing sets. Each condition shall have a sheet and/or note reference to verify condition compliance. If the condition relates to a document submittal, indicate the status of the submittal (e.g., Final Map submitted to Public Works Department for review). A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

Property Owner	Date	
Contractor	Date	License No.
Architect	Date	License No.
Engineer	Date	License No.

- G. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field for the duration of the project construction.

1. **Pre-Construction Conference.** Not less than 10 days or more than 20 days prior to commencement of construction, a conference to review site conditions, construction schedule, construction conditions, and environmental monitoring requirements, shall be held by the General Contractor. The conference shall include representatives from the Public Works Department Engineering and Transportation Divisions, Building Division, Planning Division, the Property Owner (Arborist, Landscape Architect, Biologist, Project Engineer, Project Environmental Coordinator, Mitigation Monitors), Contractor and each Subcontractor.
2. **Demolition/Construction Materials Recycling.** Recycling and/or reuse of demolition/construction materials shall be carried out to the extent feasible, and containers shall be provided on site for that purpose, in order to minimize construction-generated waste conveyed to the landfill. Indicate on the plans the location of a container of sufficient size to handle the materials, subject to review and approval by the City Solid Waste Specialist, for collection of demolition/construction materials. A minimum of 90% of demolition and

construction materials shall be recycled or reused. Evidence shall be submitted at each inspection to show that recycling and/or reuse goals are being met.

3. **Construction-Related Truck Trips.** Construction-related truck trips shall not be scheduled during peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.). The purpose of this condition is to help reduce truck traffic on adjacent streets and roadways. (T-1)
4. **Construction Related Traffic Routes.** The route of construction-related traffic shall be established to minimize trips through surrounding residential neighborhoods, subject to approval by the Transportation Manager. (T-1)
5. **Haul Routes.** The haul route(s) for all construction-related trucks with a gross vehicle weight rating (GVWR) of three tons or more, entering or exiting the site, shall be approved by the Transportation Manager. (T-1)
6. **Construction Hours.** Construction (including preparation for construction work) is prohibited Monday through Friday before 7:00 a.m. and after 5:00 p.m., and all day on Saturdays, Sundays and holidays observed by the City of Santa Barbara, as shown below:

New Year's Day	January 1st*
Martin Luther King's Birthday	3rd Monday in January
Presidents' Day	3rd Monday in February
Cesar Chavez Day	March 31st
Memorial Day	Last Monday in May
Independence Day	July 4th*
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Following Thanksgiving Day	Friday following Thanksgiving Day
Christmas Day	December 25th*

*When a holiday falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, shall be observed as a legal holiday.

When, based on required construction type or other appropriate reasons, it is necessary to do work outside the allowed construction hours, contractor shall contact the Chief of Building and Safety to request a waiver from the above construction hours, using the procedure outlined in Santa Barbara Municipal Code §9.16.015 Construction Work at Night. Contractor shall notify all residents within 300 feet of the parcel of intent to carry out night construction a minimum of 48 hours prior to said construction. Said notification shall include what the work includes, the reason for the work, the duration of the proposed work and a contact number that is answered by a person, not a machine. (N-1)

7. **Construction Equipment Sound Control.** All construction equipment, including trucks, shall be professionally maintained and fitted with standard manufacturers' muffler and silencing devices. (N-2)

8. **Construction Parking/Storage.** Construction parking and storage shall be provided as follows:
 - a. During construction, free parking spaces for construction workers shall be provided on-site or off-site in a location subject to the approval of the Public Works Director. Construction workers are prohibited from parking within the public right-of-way, except as outlined in subparagraph b. below.
 - b. Parking in the public right of way is permitted as posted by Municipal Code, as reasonably allowed for in the 2006 Greenbook (or latest reference), and with a Public Works permit in restricted parking zones. No more than three (3) individual parking permits without extensions may be issued for the life of the project
 - c. Storage or staging of construction materials and equipment within the public right-of-way shall not be permitted, unless approved by the Transportation Manager. (T-2)
9. **Construction Dust Control – Minimize Disturbed Area/Speed.** Minimize amount of disturbed area and reduce on site vehicle speeds to 15 miles per hour or less. (AQ-1)
10. **Construction Dust Control - Watering.** During site grading and transportation of fill materials, regular water sprinkling shall occur using reclaimed water whenever the Public Works Director determines that it is reasonably available. During clearing, grading, earth moving or excavation, sufficient quantities of water, through use of either water trucks or sprinkler systems, shall be applied to prevent dust from leaving the site. Each day, after construction activities cease, the entire area of disturbed soil shall be sufficiently moistened to create a crust.

Throughout construction, water trucks or sprinkler systems shall also be used to keep all areas of vehicle movement damp enough to prevent dust raised from leaving the site. At a minimum, this will include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency will be required whenever the wind speed exceeds 15 mph. (AQ-2)
11. **Construction Dust Control – Tarping.** Trucks transporting fill material to and from the site shall be covered from the point of origin. (AQ-3)
12. **Construction Dust Control – Gravel Pads.** Gravel pads shall be installed at all access points to prevent tracking of mud on to public roads. (AQ-4)
13. **Construction Dust Control – Disturbed Area Treatment.** After clearing, grading, earth moving or excavation is complete, the entire area of disturbed soil shall be treated to prevent wind pickup of soil. This may be accomplished by:
 - a. Seeding and watering until grass cover is grown.
 - b. Spreading soil binders.

- c. Sufficiently wetting the area down to form a crust on the surface with repeated soakings as necessary to maintain the crust and prevent dust pickup by the wind.
 - d. Other methods approved in advance by the Air Pollution Control District. (AQ-5)
14. **Construction Equipment Requirements.** The following shall be adhered to during project grading and construction to reduce NOx and particulate emissions from construction equipment:
- a. Heavy-duty diesel-powered construction equipment manufactured after 1996 (with federally mandated "clean" diesel engines) shall be utilized wherever feasible.
 - b. The engine size of construction equipment shall be the minimum practical size.
 - c. The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time.
 - d. Construction equipment shall be maintained in tune per the manufacturer specifications.
 - e. Catalytic converters shall be installed on gasoline-powered equipment, if feasible.
 - f. Diesel powered equipment shall be replaced by electric equipment whenever feasible. (AQ-6)
15. **Construction Best Management Practices (BMPs).** Construction activities shall address water quality through the use of BMPs, as approved by the Building and Safety Division.
16. **Construction Contact Sign.** Immediately after Building permit issuance, signage shall be posted at the points of entry to the site that list the contractor(s) and Project Environmental Coordinator's (PEC's) name, contractor(s) and PEC's telephone number, work hours, site rules, and construction-related conditions, to assist Building Inspectors and Police Officers in the enforcement of the conditions of approval.
17. **Oak Tree Protection.** Tree protection measures for oaks, as recommended in the Oak Tree Protection Plan dated September 21, 2006, shall be followed for the duration of all grading and construction activities associated with the project. (B-1)
18. **Tree Protection.** All trees not indicated for removal on the site plan shall be preserved, protected and maintained.
19. **Graffiti Abatement Required.** Owner and Contractor shall be responsible for removal of all graffiti as quickly as possible. Graffiti not removed within 24

hours of notice by the Building and Safety Division may result in a Stop Work order being issued, or may be removed by the City, at the Owner's expense, as provided in SBMC Chapter 9.66.

20. **Unanticipated Archaeological Resources Contractor Notification.** Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts associated with past human occupation of the parcel. If such archaeological resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and an archaeologist from the most current City Qualified Archaeologists List shall be retained by the applicant. The latter shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City qualified Barbareño Chumash Site Monitors List, etc.

If the discovery consists of possible human remains, the Santa Barbara County Coroner shall be contacted immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. A Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

If the discovery consists of possible prehistoric or Native American artifacts or materials, a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

- H. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:
 1. **Repair Damaged Public Improvements.** Repair any damaged public improvements (curbs, gutters, sidewalks, roadways, etc.) subject to the review and approval of the Public Works Department per SBMC §22.60.090. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
 2. **Complete Public Improvements.** Public improvements, as shown in the improvement/building plans, including utility service undergrounding and installation of street trees.
 3. **Cross-Connection Inspection.** The Owner shall request a cross connection inspection by the Public Works Water Reclamation/Cross Connection Specialist.

4. **Mitigation Monitoring Report.** Submit a final construction report for mitigation monitoring.
- I. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses and costs of that independent defense.

NOTICE OF APPROVAL TIME LIMITS:

The Planning Commission's action approving the Lot Line Adjustment, Street Frontage Modifications and Performance Standards Permits shall terminate two (2) years from the date of the approval, per Santa Barbara Municipal Code §28.87.360, unless:

1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
2. A Building permit for the use authorized by the approval is issued within and the construction authorized by the permit is being diligently pursued to completion and issuance of a Certificate of Occupancy.
3. The approval has not been discontinued, abandoned or unused for a period of six months following the earlier of (a) an Issuance of a Certificate of Occupancy for the use, or (b) two (2) years from granting the approval.

This motion was passed and adopted on the 20th day of August, 2009 by the Planning Commission of the city of Santa Barbara, by the following vote:

AYES: 4 NOES: 1 (White) ABSTAIN: 0 ABSENT: 2 (Jacobs, Jostes)

PLANNING COMMISSION RESOLUTION No. 031-09
AUGUST 20, 2009
PAGE 19

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date. *Updated to include the findings outlined in the Staff Report dated August 20, 2009.



Deana McMillion, Administrative/Clerical Supervisor for
Julie Rodriguez, Planning Commission Secretary

11-2-09

Date

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009
TO: Mayor and Councilmembers
FROM: City Clerk's Office, Administrative Services Department
SUBJECT: Interviews For City Advisory Groups

RECOMMENDATION: That Council:

- A. Hold interviews of applicants to various City Advisory Groups at 6:00 p.m.; and
- B. Continue interviews of applicants to November 24, 2009, at 4:00 p.m.

DISCUSSION:

On November 10, 2009, the City Council interviewed applicants for various positions on City Advisory Groups. On November 12, 2009, the Council Subcommittee interviewed applicants to the Franklin Center, Lower Westside Center and Westside Center Advisory Committees, and the Downtown neighborhood representative position on the Community Development and Human Services Committee. The City Council continued the interviews to November 17, 2009, at 6:00 p.m. Applicants will also have the option to be interviewed on November 24, 2009, at 4:00 p.m.

Applicants have been notified that to be considered for appointment, they must be interviewed. Applicants have been requested to prepare a 2-3 minute verbal presentation in response to a set of questions specific to the group for which they are applying.

Appointments are scheduled to take place on December 15, 2009.

PREPARED BY: Cynthia M. Rodriguez, CMC, City Clerk Services Manager
SUBMITTED BY: Marcelo A. López, Administrative Services Director
APPROVED BY: City Administrator's Office

ACCESS ADVISORY COMMITTEE

- One vacancy.
- Term expires 12/31/2011.
- Resident of the City or a full-time employee of an entity doing business within the City who demonstrate an interest, experience, and commitment to issues pertaining to disability and access and who represents the Disability Community.
- Appointee may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1st, 2nd, 3rd, 4th)	Notes
<i>Disability Community (1)</i>	Ken McLellan			

AIRPORT COMMISSION

- Two vacancies.
- Terms expire 12/31/2013
- Qualified electors of the City or residents of the County of Santa Barbara.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Electors or residents of the County (2)</i>	Chris Colbert			Qualified Elector
	Charles Foley			County
	William Gilbert			County

ARCHITECTURAL BOARD OF REVIEW

- Three vacancies. (If Measure E is passed by the voters, membership is reduced from 9 to 7. Only the Professional Qualifications position will be filled; the Landscape Architect category will be included in the Professional Qualifications category.)
- One term expires 12/31/2010; and
Two terms expire 12/31/2013.
- Qualified electors of the City:
 - One member who is a licensed landscape architect;
 - One member who possesses professional qualifications in related fields including, but not limited to, building design, structural engineering or industrial design; and
 - One member who is a licensed architect, licensed landscape architect, possess professional qualifications in related fields or who represents the public at large.
- Appointees may not hold any full-time paid office or employment in City government.

NOTE: If Measure E is passed by the voters, all applicants will be eligible for appointment; If Measure E is not passed, County* residents will not be eligible for appointment.)

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Licensed Landscape Architects (1)</i>	Chris Gilliland	12/16/2008 (1 year)		Qualified Elector
<i>Professional Qualifications (1)</i>	Gary Mosel	12/13/05 (4 years)		Qualified Elector
<i>Licensed Architect/Licensed Landscape Architect/Professional Qualifications/Public at Large (1)</i>	Keith Nolan*			Architect - County

ARTS ADVISORY COMMITTEE

- Four vacancies.
- Terms expire 12/31/2013.
- One qualified elector of the City; and
Three residents of the south coast area of Santa Barbara County.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Elector (1)</i>	Tom Morey	12/13/05 (4 years)		Qualified Elector; currently under South Coast Area Category
<i>South Coast Area (3)</i>	Roman Baratiak			County
	Phyllis de Picciotto	2/26/02 & 12/13/06 (7 years, 10 months)		County
	Suzanne Fairly- Green	12/13/05 (4 years)		Qualified Elector

CENTRAL COAST COMMISSION FOR SENIOR CITIZENS

- One vacancy.
- Term expires 6/30/2011.
- Resident of the City.
- Appointee may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Resident of the City (1)</i>	None			

CIVIL SERVICE COMMISSION

- One vacancy.
- Term expires 12/31/2013.
- Qualified elector of the City.
- Appointee may not hold any full-time paid office or employment in City government and, for 1 year after ceasing to be a member, may not be eligible for any salaried office or employment with the City.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Elector (1)</i>	Kathryn McKee	12/13/05 (4 years)		

COMMUNITY DEVELOPMENT AND HUMAN SERVICES COMMITTEE

- Six vacancies.
- One term expires 12/31/2010;
One term expires 12/31/2011;
One term expires 12/31/2012; and
Three terms expire 12/31/2013.
- Residents or employees within the City but need not be qualified electors of the City. One representative from each:
 - African American Community
 - Business Community/Economic Development
 - Downtown Neighborhood (Census Tract 9)
 - Housing Interests
 - Human Services Agency
 - Senior Community
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1st, 2nd, 3rd, 4th)	Notes
<i>African American Community (1)</i>	None			
<i>Business Community/Economic Development (1)</i>	Laura Knight	7/11/06 (3 years, 5 months)		
<i>Downtown Neighborhood (1)</i>	Maureen Mina			Also qualifies for the Human Services Agency category
<i>Housing Interests (1)</i>	None			

(Cont'd)

COMMUNITY DEVELOPMENT AND HUMAN SERVICES COMMITTEE (CONT'D)

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1st, 2nd, 3rd, 4th)	Notes
<i>Human Services Agency (1)</i>	Julie Jeakle			
<i>Senior Community (1)</i>	Susan Johnson			
	Christal Leeth			

CREEKS ADVISORY COMMITTEE

- One vacancy.
- Term expires 12/31/2011.
- Resident of the City or the County with some experience in ocean use, business, environmental issues, and/or provide community at large representation.
- Appointee may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1st, 2nd, 3rd, 4th)	Notes
<i>Experience in ocean use, business, or environmental issues, and/or represents the community at large (1)</i>	Kathleen "Betsy" Weber			

DOWNTOWN PARKING COMMITTEE

- Two vacancies.
- Terms expire 12/31/2013.
- Two residents of the City or the County of Santa Barbara.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Residents of the City or the County (2)</i>	Randy Rowse	12/7/04 & 12/13/05 (5 years)		City

FIRE AND POLICE COMMISSION

- Two vacancies.
- One term expires 12/31/2011; and
One term expires 12/31/2013.
- Qualified electors of the City.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Electors (2)</i>	Frank Bañales			
	Jennifer Christensen			
	Robert Handy			
	Patrick Lennon, Jr.	12/13/05 (4 years)		
	Daniel McCarter			
	Bill Medel			

FIRE AND POLICE PENSION COMMISSION

- Three vacancies.
- Two terms expire 12/31/2012; and
One term expires 12/31/2013.
- One qualified elector of the City who is not an active firefighters or an active police officers for the City of Santa Barbara;
One active or retired firefighter who need not be a resident or qualified elector of the City; and
One active or retired police officer who need not be a resident or qualified elector of the City.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Elector (1)</i>	None			
<i>Active/Retired Firefighter (1)</i>	None			
<i>Active/Retired Police Officer (1)</i>	None			

FRANKLIN CENTER ADVISORY COMMITTEE

- Three vacancies.
- One term expires 12/31/2010; and
Two terms expire 12/31/2013.
- Members are not required to be qualified electors of the City:
 - One resident or employee within the Franklin Neighborhood (Census Tract Nos. 8.01, 8.02 or 9)
 - Two residents of the City who represent the public at large
- Appointees may not hold any full-time paid office or employment in City government.

NOTE: Applicants for the Resident/Employee in the Franklin Neighborhood category are also eligible for the Public at Large category.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Resident/Employee in the Franklin Neighborhood (1)</i>	Britta Bartels		1) Franklin; 2) Westside; 3) Lower Westside	Census Tract 9
	Chrystal Sturm	12/16/08 (1 year)		Census Tract 8.01
<i>Residents of the City who represent the public at large (2)</i>	Sebastian Aldana, Jr.	12/28/07 (2 years)		
	Sharon Byrne			
	Laura Garcia			

HARBOR COMMISSION

- One vacancy. (If Measure D is passed by the voters, increasing membership from 5 to 7, there will be three vacancies filled.)
- Term expires 12/31/2013.
- Qualified elector of the City.
- Appointee may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Elector (1)</i>	Eric Friedman			Current Library Board Member; term expires 12/31/10
	Paul Miller			
	Jim Sloan			
	Charles E. Watson			

HISTORIC LANDMARKS COMMISSION

- Two vacancies.
- Terms expire 12/31/2013.
- One appointee must be a qualified elector of the City and one appointee may be a resident of the County of Santa Barbara: Licensed architects/licensed landscape architects/professional architectural historians or a representatives of the public at large.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Architect, Landscape Architect, Professional Architectural Historian or may represent the public at large (2)</i>	Louise Boucher	12/13/05 (4 years)		Public at large – Qualified Elector
	William (Bill) LaVoie			Architect - County
	Tom Ochsner			Architect – Qualified Elector
	Philip Suding			Landscape Architect – Qualified Elector
	Justin Van Mullem			Professional Architectural Historian – Qualified Elector

HOUSING AUTHORITY COMMISSION

- One vacancy.
- Term expires 2/15/2012 (Term effective 2/16/10).
- Senior tenant (62 years of age or older) who is receiving housing assistance from the Housing Authority of the City of Santa Barbara.
- Appointee may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Senior Tenant (1)</i>	Stanley Eisele	12/18/07 (2 years)		

LIBRARY BOARD

- One vacancy.
- Term expires 12/31/2013.
- Qualified elector of the City.
- Appointee may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Elector (1)</i>	Christine Forte			

LIVING WAGE ADVISORY COMMITTEE

- Four vacancies.
- One term expires 6/30/2010;
Two terms expire 6/30/2012; and
One term expires 6/30/2013.
- One representative from each:
 - Local Living Wage Advocacy Organization
 - Non-Profit Entity
 - Owner or manager of a business operating within the City
 - Santa Barbara Chamber of Commerce
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1st, 2nd, 3rd, 4th)	Notes
<i>Local Living Wage Advocacy Organization (1)</i>	None			
<i>Non-Profit Entity (1)</i>	Anna Kokotovic	7/11/06 (3 years, 5 months)		
<i>Owner/Manager of a business operating within the City (1)</i>	Gabe Dominocielo			Also eligible for the Non-Profit Entity category
<i>Santa Barbara Chamber of Commerce (1)</i>	None			

LOWER WESTSIDE CENTER ADVISORY COMMITTEE

- Two vacancies.
- Terms expire 12/31/2013.
- Members are not required to be qualified electors of the City: Residents of the City who represent the public at large.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Residents of the City who represent the public at large (2)</i>	Britta Bartels		1) Franklin; 2) Westside; 3) Lower Westside	
	Paul Contreras	12/16/08 (1 year)		
	M. Carmen Lozano Ibanez			

MEASURE P COMMITTEE

- Five vacancies.
- One term expires 12/31/2011;
Two terms expire 12/31/2012; and
Two terms expire 12/31/2013.
- One representative each as follows:
 - Civil liberties advocate
 - Criminal defense attorney
 - Medical Marijuana Patient (Census Tract 9)
 - Medical Professional
 - Resident of the City
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Civil Liberties Advocate (1)</i>	None			
<i>Criminal Defense Attorney (1)</i>	None			
<i>Medical Marijuana Patient (1)</i>	Gary Buffington			
<i>Medical Professional (1)</i>	None			
<i>Resident of the City (1)</i>	None			

PARK AND RECREATION COMMISSION

- One vacancy. (If Measure C is passed by the voters, increasing membership from 5 to 7, there will be three vacancies to be filled.)
- Term expires 12/31/2013.
- Qualified elector of the City.
- Appointee may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1st, 2nd, 3rd, 4th)	Notes
<i>Qualified Elector (1)</i>	Chris Casebeer			
	Lesley Wiscomb			

PLANNING COMMISSION

- Two vacancies.
- Terms expire 12/31/2013.
- Qualified electors of the City.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Qualified Electors (2)</i>	Bob Cunningham			
	Michael Jordan			Current Creeks Advisory Committee member; term expires 12/31/2010
	Chava Riley			
	Deborah L. Schwartz			
	Addison Thompson	12/13/05 (4 years)		

RENTAL HOUSING MEDIATION TASK FORCE

- Four vacancies.
 - One term expires 12/31/2012; and
Three terms expire 12/31/2013.
 - Two appointees must be residents of the City:
 - One homeowner
 - Two landlords
 - One tenant
- * Non-resident members must be owners of residential rental property within the City limits or affiliated with organizations concerned with landlord-tenant issues within the City limits.
- Appointees may not hold any full-time paid office or employment in City government.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Homeowner (1)</i>	Daniel R. Herlinger	6/28/05 (4 years, 6 months)		City
<i>Landlords (2)</i>	None			
	None			
<i>Tenant (1)</i>	Lynn E. Goebel	6/30/09 (6 months)		City

WESTSIDE CENTER ADVISORY COMMITTEE

- Three vacancies.
- One term expires 12/31/2010; and
Two terms expire 12/31/2013.
- Members are not required to be qualified electors of the City:
 - One resident or employee in the Westside Neighborhood (Census Tract Nos. 9, 10, 11.01 and 11.02)
 - Two residents of the City who represent the public at large
- Appointees may not hold any full-time paid office or employment in City government.

NOTE: Applicants for the Residents/Employees in the Westside Neighborhood category are also eligible for the Public at Large category.

CATEGORY (Number of Vacancies)	APPLICANT	Incumbent Appt. Dates (Years Served)	Applicant's Preference (1 st , 2 nd , 3 rd , 4 th)	Notes
<i>Resident/Employee in the Westside Neighborhood (1)</i>	Britta Bartels		1) Franklin; 2) Westside; 3) Lower Westside	Census Tract 9
	Michelle V. Nassif			Census Tract 10
<i>Residents of the City who represent the public at large (2)</i>				



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: City Administrator's Office

SUBJECT: Request From Councilmembers Falcone And Francisco Regarding Medical Marijuana

RECOMMENDATION:

That Council consider the request from Councilmembers Falcone and Francisco to reconsider its policy concerning medical marijuana, consider alternative models for meeting the needs of patients, and provide direction to the Ordinance Committee as appropriate.

DISCUSSION:

Attachment 1 is a memorandum from Councilmembers Falcone and Francisco requesting that Council give direction to the Ordinance Committee on Medical Marijuana. Attachment 2 is a memorandum from the City Attorney's Office regarding medical marijuana.

ATTACHMENTS: (1) Memorandum from Councilmembers Falcone and Francisco
(2) Memorandum from Steve Wiley, City Attorney

PREPARED BY: Linda Gunther, Administrator's Office Supervisor

SUBMITTED BY: Joan Kent, Assistant City Administrator

APPROVED BY: City Administrator's Office



City of Santa Barbara
Mayor and Council Office

Memorandum

DATE: October 26, 2009

TO: James L. Armstrong, City Administrator

FROM: Dale Francisco, Mayor Pro Tempore 
Iya Falcone, Councilmember

SUBJECT: Direction to the Ordinance Committee on Medical Marijuana Dispensaries

Pursuant to Council Resolution No. 05-073 regarding the Conduct of City Council Meetings, we request that an item be placed on the Santa Barbara City Council Agenda regarding Council's overall direction to the Ordinance Committee on revisions to Chapter 28.80 ("Medical Cannabis Dispensaries") of the Zoning Ordinance.

- Summary of Information to be Presented to the City Council

Since the City Council originally gave direction to the Ordinance Committee early this summer to revise the section of the Zoning Ordinance dealing with medical marijuana dispensaries (MMDs), both community sentiment and the legal landscape regarding MMDs have shifted dramatically. Parents and school district leaders are concerned that at least some MMDs are functioning as conduits for introducing drugs into schools. In several recent court cases, other jurisdictions have shown that severe limitations on MMDs, including an outright ban, are consistent with state law. Santa Barbara is the only jurisdiction in Santa Barbara County, and one of the few in Southern California, that allows MMDs to be established. It is time for the City Council as a whole to evaluate the wisdom of this policy.

As a possible alternative to the storefront dispensary model, we believe the Council should consider a "compassionate care collective" model. In such a model, a group of defined size, with members consisting of registered patients and registered caregivers, cultivates marijuana in limited quantities exclusively for its own use. This we believe would be consistent with state law, would provide patients who have a genuine medical need the means to obtain medical marijuana in a safe, legal manner, and would make it more difficult to divert marijuana to other than medical use, thus reducing the enforcement burden on both Community Development and the Police Department. The City of Los Angeles is currently considering an ordinance that would implement such a model. (See attachment 1.)

- Statement of Specific Action the Council will be asked to take

We ask that City Council reconsider its policy of allowing MMDs in Santa Barbara, that it consider alternative models for meeting the needs of patients, and that it provide specific

policy direction to the Ordinance Committee on re-drafting chapter 28.80 of the Zoning Ordinance.

- Statement of the Reasons Why it is Appropriate and Within the Jurisdiction of the Council to Consider this Subject Matter and to Take the Requested Action

The Zoning Ordinance is within the purview of City Council, and only the full Council can provide policy direction to the Ordinance Committee on this topic of vital community concern.

City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

(213) 978-8100 Tel
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CTrutanich@lacity.org
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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 0 9 - 0 3 6 0

OCT 20 2009

REPORT RE:

**FOURTH REVISED DRAFT ORDINANCE ESTABLISHING REGULATIONS
REGARDING MEDICAL MARIJUANA COLLECTIVES**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 08-0923

Honorable Members:

This office has prepared and now transmits for your consideration the attached revised draft ordinance, approved as to form and legality. This draft ordinance would add Article 5.1 to Chapter IV of the Los Angeles Municipal Code (LAMC) regulating the collective cultivation of medical marijuana, pursuant to state law, in the City of Los Angeles. Pursuant to instructions from your Planning and Land Use Management (PLUM) Committee, it includes several changes from the last draft ordinance transmitted on September 22, 2009. The changes are summarized below.

When this matter is considered, we will be prepared to discuss the impacts of this ordinance, the case of *Los Angeles Collective Association, et al. v. City of Los Angeles*, LASC BC 422215 and any other relevant litigation. If necessary, we will ask that the meeting be recessed into closed session for this purpose, pursuant to Government Code section 54956.9(a) and (b)(1).

Background

On April 14, 2008, pursuant to a request from the City Council, the City Attorney's Office transmitted a draft ordinance for the regulation of medical marijuana cultivation. This Office transmitted a revised draft ordinance to the Council on January

26, 2009, and explained its provisions in a verbal presentation to the Planning and Land Use Management ("PLUM") Committee on January 27, 2009. Additional technical improvements were made and a second revised draft ordinance was transmitted to the Council on February 6, 2009. A third revised draft ordinance was filed on September 22, 2009 and presented to the PLUM Committee on that date and on September 29, 2009. The Committee directed this office to amend the draft ordinance in accordance with its instructions. The attached Fourth Revised Draft Ordinance reflects these changes and additional modifications, which we believe improve the draft, for your consideration.

CEQA Finding

If you wish to adopt the ordinance, you must first comply with the California Environmental Quality Act (CEQA). Regarding a finding pursuant to CEQA, this Office believes that adoption of this ordinance is exempt from CEQA under State CEQA Guidelines sections 15060(c)(2) and (3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, since it merely establishes regulations for medical marijuana collectives and will result in a substantial decrease in the number of locations that are currently in existence. In addition, the City Council could determine that adoption of the ordinance is exempt from CEQA under City CEQA Guidelines Article II, Section 1 (General Exemption) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. If the City Council concurs, it may comply with CEQA by making one or both of these findings prior to or concurrent with its action on the ordinance. We recommend that you also direct staff to file a "Notice of Exemption" as permitted by CEQA. This will have the effect of shortening the period of time within which a CEQA-based legal challenge can be brought against the City.

Summary of Changes

The material changes are as follows:

- The introductory recitals have been modified to include the addition of one related to possible contamination of marijuana, and a reference to the continued illegality of the sale of marijuana under both state and federal law;
- The definition of "medical marijuana collective" in Section 45.19.6.1 now includes a numerical minimum of qualified members. We recommend, and inserted, "four or more," rather than "three or more," requested by your PLUM Committee, because the latter could encompass two parents or guardians and a child, triggering the ordinance's regulatory provisions. However, cultivation of such limited scope is not contemplated by the draft ordinance. An additional phrase, "member engaged in the management," has been added and defined in Section 45.19.6.1;

- Pursuant to PLUM Committee instruction to identify an alternative registration body other than the City Clerk, the registration body has been changed to the Office of Finance in Section 45.19.6.2. Insofar as the PLUM Committee did not specify the desired registration body, we selected the Office of Finance with the understanding that the Council, or your Public Safety Committee, may instruct that a different City department be substituted;
- Pursuant to PLUM Committee instruction, the language stating that the failure of any member of the collective to sign the registration form shall result in refusal to accept the registration form, in Section 45.19.6.2, has been removed;
- A collective must provide, within five (5) days after a request for preinspection, written notice of specified information to the appropriate City Council member and the Certified Neighborhood Council representing the area of the collective (Sec. 45.19.6.2 C);
- Pursuant to PLUM Committee instruction, Section 45.19.6.2, subsection B, has been amended to include a research fee, in addition to a preinspection fee. Also, additional registration provisions have been added, including requirements that the collective provide plans and a radius map of the location to show compliance with Section 45.19.6.3 and that LADBS submit its written preinspection report to the collective and the Office of Finance within 45 days;
- Pursuant to PLUM Committee instructions, the measurement of distance from sensitive uses in Section 45.19.6.3 has been changed, in pertinent part, to "...a straight line from the property line...to the closest property line of the lot on which the collective is located without regard to intervening structures";
- Pursuant to PLUM Committee instruction, a provision that no collective shall abut or be located across the street or alley from or have a common corner with a property improved with an exclusively residential building has been added (Sec. 45.19.6.3 A);
- A provision that a person who has been convicted within the previous 10 years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall not be engaged directly or indirectly in the management of the collective and shall not manage or handle the receipts or expenses of the collective has been added (Section 45.19.6.3.14);
- A provision regarding the operative date of the draft ordinance has been added;
- A provision requiring maintenance of documentation of each member's status as a qualified patient, person with identification card, or primary caregiver has been

added to ensure qualification to participate in collective cultivation (Sec. 45.19.6.4 (5)); and

- Pursuant to PLUM Committee instruction, the period of compliance for existing medical marijuana dispensaries which complied with the operation and registration requirements of Interim Control Ordinance No. 179,027 was changed from 90 days to 180 days (Sec. 45.19.6.6).

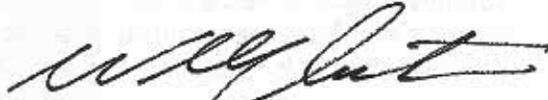
Additionally, non-substantive changes were made to improve clarity, such as reorganization of the Registration provisions under Section 45.19.6.2 and specification of which department is authorized to enforce particular regulations.

Copies of the revised draft ordinance have been provided, pursuant to Council Rule 38, to the Los Angeles Police Department, Office of Finance, and the Department of Building and Safety, with a request that all comments, if any, be presented directly to your Honorable Body at the time this matter is considered.

If you have any questions regarding this matter, please contact Assistant City Attorney Sharon Siedorf Cardenas at (213) 978-8235 or Deputy City Attorney Heather Aubry at (213) 978-8380. These attorneys or another member of this office will be available when you consider this matter to answer any questions you may have.

Sincerely,

CARMEN A. TRUTANICH, City Attorney

By 

WILLIAM W. CARTER
Chief Deputy City Attorney

WWC:SSC:HA:aa
Transmittal

ORDINANCE NO. _____

An ordinance adding Article 5.1 to Chapter IV to the Los Angeles Municipal Code and amending Section 91.107.3.2 of the Los Angeles Municipal Code to implement the Compassionate Use Act and the Medical Marijuana Program Act consistent with the provisions of the Acts but without violating state or federal law.

WHEREAS, although the possession and sale of marijuana remain illegal under both state and federal law, California voters approved the Compassionate Use Act ("CUA") in 1996 to exempt seriously ill patients and their primary caregivers from criminal liability for possession and cultivation of marijuana for medical purposes; and

WHEREAS, the Medical Marijuana Program Act of 2003 ("MMPA") provides for the association of primary caregivers and qualified patients to cultivate marijuana for specified medical purposes and also authorizes local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, the City of Los Angeles enacted an Interim Control Ordinance in 2007 for the temporary regulation of medical marijuana facilities through a registration program, which resulted in the unintended proliferation of storefront medical marijuana dispensaries to a number currently estimated to exceed 500 such locations, presenting a substantial risk of unlawful cultivation, sale, and the illegal diversion of marijuana for non-medical uses; and

WHEREAS, there have been recent reports from the Los Angeles Police Department and the media of an increase in and escalation of violent crime at the location of medical marijuana dispensaries in the City of Los Angeles, and the California Police Chiefs Association has compiled an extensive report detailing the negative secondary effects associated with medical marijuana dispensaries; and

WHEREAS, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because, unlike all other ingestibles, marijuana is not regulated, inspected, or analyzed for contamination by state or federal government and may, as with samples recently tested by a U.S. Food and Drug Administration laboratory, contain harmful chemicals that could further endanger the health of persons who are already seriously ill and have impaired or reduced immunities; and

WHEREAS, the City of Los Angeles has a compelling interest in ensuring that marijuana is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing compassionate access to medical marijuana to its seriously ill residents.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 5.1 is added to Chapter IV of the Los Angeles Municipal Code to read:

ARTICLE 5.1.

MEDICAL MARIJUANA COLLECTIVE

SEC. 45.19.6. PURPOSES AND INTENT.

It is the purpose and intent of this article to regulate the collective cultivation of medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Los Angeles. The regulations in this article, in compliance with the Compassionate Use Act and the Medical Marijuana Program Act, California Health and Safety Code Sections 11362.5, *et seq.*, ("State Law") do not interfere with a patient's right to use medical marijuana as authorized under State Law, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under State Law. Under State Law, only qualified patients, persons with identification cards, and primary caregivers may cultivate medical marijuana collectively. Medical marijuana collectives shall comply with all provisions of the Los Angeles Municipal Code ("Code"), State Law, and all other applicable local and state laws. Nothing in this article purports to permit activities that are otherwise illegal under federal, state, or local law.

SEC. 45.19.6.1. DEFINITIONS.

A. The following phrases, when used in this article, shall be construed as defined in California Health and Safety Code Sections 11006.5, 11018, 11362.5 and 11362.7:

"Attending physician;"
"Concentrated Cannabis;"
"Identification card;"
"Marijuana;"
"Person with an identification card;"
"Primary caregiver;" and
"Qualified patient."

B. The following phrases, when used in this article, shall be construed as defined below. Words and phrases not defined here shall be construed as defined in Sections 11.01, 12.03, 45.19.5, 45.21, and 56.45 of this Code.

“Medical marijuana.” Marijuana used for medical purposes in accordance with California Health and Safety Code Section 11362.5

“Medical marijuana collective (“collective”).” An incorporated or unincorporated association, composed solely of four or more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards (collectively referred to as “members”) who associate at a particular location (“location” or “property”) to collectively or cooperatively cultivate marijuana for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5, *et seq.*

“Member engaged in the management.” A member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a collective, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the collective.

SEC. 45.19.6.2. REGISTRATION.

A. Registration Required. No collective shall operate until after it has filed a registration form in accordance with the provisions of this article and the registration has been accepted as complete by the Office of Finance.

B. Preinspection Required. Prior to filing a registration form with the Office of Finance, a collective shall provide plans of the collective location including details of any proposed alterations and a radius map signed by an architect or civil engineer licensed in the State of California to show compliance with the standards set forth in Section 45.19.6.3 A of this article. A collective shall obtain a written preinspection report from the Department of Building and Safety after the Department verifies the accuracy of the plans and radius map submitted and performs all required research (planning/zoning records). A preinspection fee pursuant to Section 91.107.3.2 of this Code, plus a research fee for a minimum of two hours of time pursuant to Section 98.0415 (f) of this Code, shall be paid to the Department of Building and Safety at the time of a request for preinspection. The Department of Building and Safety shall submit its written preinspection report to the collective and to the Office of Finance within 45 days thereafter. If the preinspection report verifies noncompliance with the standards set forth in Section 45.19.6.3 A of this article, a subsequent preinspection may be requested by the collective, for which an additional preinspection fee shall be paid.

C. Notice of Preinspection. Within 5 days after a request for preinspection, the collective shall provide written notice to the City Council member and the Certified Neighborhood Council representing the area in which the collective is located of: the preinspection request, the property address of the collective, a telephone number at the property, the name, telephone number, and address of a person authorized to accept service of process for the collective, and the name(s), telephone number(s), and address(es) of each member engaged in the management of the collective.

D. Registration Form. Upon receipt of a Department of Building and Safety preinspection report verifying compliance with the standards set forth in Section 45.19.6.3 A of this article, the collective shall file a registration form with the Office of Finance. The registration form shall require the following accurate and truthful information: the names of all persons who are members of the collective; the address and physical description (i.e., one-story commercial building, etc.) of the property at and upon which the collective is located; a telephone number at the property; the name, telephone number, and address of a person authorized to accept service of process for the collective; the name(s), telephone number(s), and address(es) of each member engaged in the management of the collective; and any other information reasonably required to show that the collective complies with this article. The collective shall file an amended registration form quarterly with any changes in the information provided in the initial registration form or any change in status of compliance with the regulations set forth in Section 45.19.6.3. A change of property location cannot be accomplished by an amended registration form but shall instead require a new registration. Each and every member who is engaged in the management of the collective shall print his or her name and sign the initial registration form and any subsequent amended registration form, under penalty of perjury certifying that all information contained in the registration form is true and correct.

E. Additional Registration Documents. As attachments to the original and any subsequently amended registration form, the collective shall provide to the Office of Finance (1) written proof that the property owner, and landlord if applicable, was given notice that the collective intends to file the registration form and that the owner, and landlord if applicable, has received a copy of the information contained in the registration form, (2) for each member engaged in the management of the collective, a fully legible copy of one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport, and (3) written proof that notice of preinspection was given to the applicable City Council member and Certified Neighborhood Council.

F. Completed Registration. The Office of Finance shall mail proof of a completed registration and any subsequent amended registration to the person authorized to accept service of process on behalf of the collective.

G. Registration Non-Transferable. A registration accepted as complete under this article shall become null and void upon the cessation of the collective, upon the relocation of the collective to a different property, or upon a violation by the collective or any of its members of a provision of this article.

SEC. 45.19.6.3. REGULATIONS.

The property at or upon which a collective cultivates and provides medical marijuana to its members must meet the following requirements:

A. Preinspection Requirements.

1. The property shall comply with the provisions of Chapters I and IX of the Code as they pertain to the agricultural use. Permits for any alterations to the building shall be obtained from the Department of Building and Safety;

2. No collective shall abut or be located across the street or alley from or have a common corner with a property improved with an exclusively residential building;

3. No collective shall be located within a 1,000-foot radius of a school, public park, public library, religious institution, licensed child care facility, youth center, hospital, medical facility, substance abuse rehabilitation center, or other medical marijuana collective(s). The distance specified in this subdivision shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, licensed child care facility, youth center, hospital, medical facility, substance abuse rehabilitation center, or other medical marijuana collective(s), to the closest property line of the lot on which the collective is located without regard to intervening structures;

4. Exterior building lighting and parking area lighting for the property must be in compliance with Sections 93.0104, 93.0107 and 93.0117 of the Code. In addition, the property shall be equipped with lighting fixtures of sufficient intensity to illuminate all interior areas of the lot with an illumination of not less than 1.5 foot-candles evenly distributed as measured at floor level;

5. Any exterior signs and any interior signs visible from the exterior shall be unlighted; and

6. Windows and roof hatches of the property shall be secured with bars so as to prevent unauthorized entry, and be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency in compliance with all applicable building code provisions.

B. Conditions of Operation.

1. The property shall be monitored at all times by web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the property. The recordings shall be maintained for a period of not less than ninety (90) days and shall be made available by the collective to the Police Department upon request. Consent is given by the collective under this article to the provision of said recordings to the Police Department without requirement for a search warrant, subpoena or court order;

2. The property shall have a centrally-monitored fire and burglar alarm system;
3. No cultivation of medical marijuana on the property shall be visible with the naked eye from any public or other private property, nor shall cultivated marijuana or dried marijuana be visible from the building exterior. No cultivation shall occur at the property unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry;
4. No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed;
5. No collective shall be open to or provide medical marijuana to its members between the hours of 8:00 p.m. and 10:00 a.m. This prohibition shall not apply to a qualified patient whose permanent legal residence is the property;
6. No sale of marijuana or of edible products containing marijuana shall be allowed, nor shall the manufacturing of these products for sale be permitted;
7. No persons under the age of eighteen shall be allowed on the property, unless that minor is a qualified patient or person with an identification card and accompanied by his or her licensed attending physician, parent or documented legal guardian;
8. No medical marijuana collective shall possess more than 5 pounds of dried marijuana or more than 100 plants of any size on the property. No collective shall possess marijuana that was not cultivated by the collective either on the property or at its predecessor location fully registered in accordance with Section 45.19.6.2 of this article;
9. A sign shall be posted in a conspicuous location inside the structure on the property advising: "The diversion of marijuana for non-medical purposes is a violation of State law. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery. Loitering at the location of a medical marijuana collective for an illegal purpose is prohibited by California Penal Code Section 647(h)";
10. No collective may provide medical marijuana to any persons other than its members who participate in the collective cultivation of marijuana at or upon the property of that collective. No medical marijuana provided to a primary caregiver may be supplied to any person(s) other than the primary caregiver's qualified patient(s) or person(s) with an identification card;

11. No collective shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the property or in the parking area of the property;

12. No dried medical marijuana shall be stored in buildings that are not completely enclosed, or stored in an unlocked vault or safe, or other unsecured storage structure; nor shall any dried medical marijuana be stored in a safe or vault that is not bolted to the floor or structure of the facility;

13. Medical marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the property, in the parking areas of the property, or in those areas restricted under the provisions of California Health and Safety Code Section 11362.79. This prohibition shall not apply to a qualified patient's use of marijuana for his or her own medical purposes if the qualified patient's permanent legal residence is the property; and

14. A person who has been convicted within the previous 10 years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall not be engaged directly or indirectly in the management of the collective and, further, shall not manage or handle the receipts and expenses of the collective.

SEC. 45.19.6.4. MAINTENANCE OF RECORDS.

A medical marijuana collective shall maintain records on the property accurately and truthfully documenting: (1) the full name, address, and telephone number(s) of the owner, landlord and/or lessee of the property; (2) the full name, address, and telephone number(s) of all members who are engaged in the management of the collective and the exact nature of each member's participation in the management of the collective; (3) the full name, address, and telephone number(s) of all members who participate in the collective cultivation, the date they joined the collective and the exact nature of each member's participation; (4) the full name, address, and telephone number(s) of members to whom the collective provides medical marijuana; (5) each member's status as a qualified patient, person with an identification card, or designated primary caregiver; (6) all contributions, whether in cash or in kind, by the members to the collective and all expenditures incurred by the collective for the cultivation of medical marijuana; (7) an inventory record documenting the dates and amounts of marijuana cultivated on the property, including the amounts of marijuana stored on the property at any given time; and (8) proof of registration with the Office of Finance in conformance with Section 45.19.6.2 of this article, including evidence of an accepted registration form. These records shall be maintained by the collective for a period of five years and made available by the collective to the Police Department upon request. Consent is given by the collective under this article to the provision of said records to the Police Department without requirement for a search warrant, subpoena or court order.

SEC. 45.19.6.5. INSPECTION AUTHORITY.

The Department of Building and Safety may enter and inspect the property of every collective between the hours of 10:00 a.m. and 8:00 p.m. or at any reasonable time to ensure compliance with and enforce the provisions Section 45.19.6.3 A of this article. In addition, the Police Department may enter and inspect the property of every collective and the records maintained pursuant to Section 45.19.6.5 of this article between the hours of 10:00 a.m. and 8:00 p.m., or at any reasonable time to ensure compliance with Section 45.19.6.2, 45.19.6.3 B, and 45.19.6.4 of this article. It is unlawful for any owner, landlord, lessee, member (including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the collective to refuse to allow, impede, obstruct or interfere with an inspection, review or copying of records and closed-circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any records or monitoring.

SEC. 45.19.6.6. EXISTING MEDICAL MARIJUANA OPERATIONS.

Any existing medical marijuana collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this article must immediately cease operation until such time, if any, when it complies fully with the requirements of this article; except that any medical marijuana collective, dispensary, operator, establishment, or provider not in compliance with the requirements of this article that (1) was established and operating at its current location prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, shall have 180 days from the effective date of this article during which to fully comply with the requirements of this article or to cease operation. No medical marijuana collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this article shall be deemed to be a legally established use under the provisions of this article, and such medical marijuana collective, dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status.

SEC. 45.19.6.7. COMPLIANCE WITH THIS ARTICLE AND STATE LAW.

A. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution or giving away of marijuana for medical purposes except as provided in this article, and pursuant to any and all other applicable local and state law.

B. It is unlawful for any person to cause, permit or engage in any activity related to medical marijuana except as provided in Health and Safety Code Sections 11362.5 *et seq.*, and pursuant to any and all other applicable local and state law.

C. It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the City under this article, or to any other

local, state or federal government agency having jurisdiction over any of the activities of collectives.

SEC. 45.19.6.8. VIOLATION AND ENFORCEMENT.

Any violation of this article shall be subject to all remedies and enforcement measures authorized by Section 11.00 of this Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the certificate of occupancy for the property, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state law for any violations committed by the collectives and persons related or associated with the collective.

Notwithstanding an initial verification of compliance by the collective with the preinspection requirements set forth in Section 45.19.6.3 A of this article prior to the filing of the registration form, any collective later found to be in violation of any of the preinspection requirements at any time is subject to the enforcement provisions provided in this section.

Sec. 2. Section 91.107.3.2 of the Los Angeles Municipal Code is amended by adding a new item 5 to read:

5. Medical Marijuana Collective Preinspection. A preinspection fee shall be collected by the Department to verify compliance with Section 49.19.6.3 A of the Los Angeles Municipal Code. The preinspection fee shall be in addition to any other fee that the Department determines is necessary due to the nature of the work involved.

Sec. 3. **Operative Date.** No preinspection pursuant to Section 45.19.6.2 B of the Los Angeles Municipal Code shall be conducted by the Department of Building and Safety, nor shall a registration form pursuant to Section 45.19.6.2 A of the Los Angeles Municipal Code be accepted by the Office of Finance for a period of 180 days from the effective date of this ordinance; except that any medical marijuana collective, dispensary, operator, establishment, or provider that (1) was established and operating at its current location prior to September 14, 2007, and (2) was registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, may have a preinspection done by the Department of Building and Safety and may file a registration form with the Office of Finance during this 180 day period.

Sec. 4. **Severability.** Pursuant to the provisions of Los Angeles Municipal Code Section 11.00 (k), if any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

Sec. 5. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

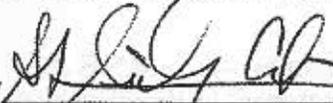
By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
SHARON SIEDORF CARDENAS
Assistant City Attorney

Date OCT 20 2009

File No. CF 08-0923

CITY OF SANTA BARBARA

INTEROFFICE MEMORANDUM

TO: Mayor and City Council
James L. Armstrong, City Administrator
Camerino Sanchez, Chief of Police
Paul Casey, Community Development Director

FROM: Stephen P. Wiley, City Attorney

DATE: November 12, 2009

SUBJECT: Recent Legal Developments Regarding Medical Marijuana Dispensaries –
Council Agenda Item - November 17, 2009 Council Meeting

A. Introduction.

This memo is to provide the City Council with some background information regarding recent legal developments concerning the “Compassionate Use Act of 1996” (hereinafter “Prop 215.”) It is apparent to us that these developments could impact the dispensing and availability of medical marijuana within California in the future, particularly with respect to whether the over-the-counter “dispensary” model of providing medical marijuana to “qualified patients” will continue to be allowed by federal, state, and local law enforcement agencies.

Attached hereto are two newspaper articles about efforts in the city of Los Angeles to possibly move away from permitting the “dispensary” model as a permitted land use to that of only recognizing the legality of the “cooperative” (or “collective”) model for the shared cultivation and access to medical marijuana among members of such a cooperative or collective. These efforts appear to be a result of the August 2008 Compassionate Use Act of 1996 Guidelines issued by the Attorney General for the state of California. (copy attached.) This “cooperative/collective” model would involve a group of individuals who jointly cultivate marijuana on a fairly small scale and local basis and then provide it on a non-cash basis only to fellow cooperative/collective members who are either “qualified patients” or a properly designated “primary caregiver” for such a patient.

This possible shift to the “cooperative/collective” approach is apparently a result of several recent court decisions concerning Prop 215 which rely heavily on the Attorney General’s Guidelines and their detailed analysis of the intent of Prop 215 [including the state statutes enacted in 2003 implementing Prop 215 commonly known as “SB 420,” (Health & Safety Code sections 11362.7 through 11362.9.)] Two very recent California Court of Appeal decisions, in particular, *People v. Hochanadel* 98 Cal.Rptr.3d 347 (decided August 18, 2009) and *City of Claremont v. Kruse* 100 Cal.Rptr.3d 1 (decided August 27, 2009), indicate that the retail over-the-counter mode of dispensing medical marijuana is not permitted by state law or Prop 215 and

that nothing in Prop 215 or SB 420 requires a city to permit dispensaries. Consequently, as these newspaper articles mention, several law enforcement agencies in California, particularly within Los Angeles County (such as the LAPD, the LA County District Attorney, and the Los Angeles City Attorney), appear poised to prosecute dispensary operators who retail medical marijuana, particularly those who are doing so on a for-profit basis. According to the attached New York Times article, the San Diego County District Attorney is also considering such criminal prosecutions.

The following is a summary of the Attorney General Guidelines, especially concerning how the Attorney General's office views the dispensary model versus the "collective/cooperative" model of providing medical marijuana to those persons who are "qualified patients."

B. The SB 420 Implementation Statutes and the August 2008 State Attorney General Guidelines.

As mentioned, in August 2008, the California Attorney General's office issued guidelines to explain how Prop 215 and SB 420 should be interpreted and implemented – hereinafter referred to as the "Attorney General Guidelines" – copy attached. As stated in the Guidelines, their main purpose is to "help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law." However, a secondary purpose of the Guidelines is also to "help law enforcement agencies perform their duties effectively and in accordance with California law."

Among other things, the Attorney General's Guidelines focus on a key portion of the SB 420 legislation - Health & Safety Code Section 11362.765. This section provides generally for an immunity from criminal prosecution to any "qualified patient" or any "primary caregiver" who possesses or uses medical marijuana in accordance with Prop 215 and SB 420. However, significantly, the Guidelines also refer specifically to and emphasize the language of subparagraph (a) of section 11362.765 which provides as follows:

"However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article (i.e., SB 420), nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit." (emphasis added.)

In addition, in explaining the SB 420 distinction between permissible ways to "cultivate" and "distribute" medical marijuana and the criminal distribution of marijuana, the Attorney General Guidelines also stress the importance of subparagraph (c) of Health & Safety Code section 11362.765 which allows a "primary caregiver" to recoup only his or her expenses. This provision reads as follows:

"(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this

article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment ...”

Furthermore, in explaining the intentionally narrow definition of a “primary caregiver” under Prop 215, the Guidelines point out that, in order to be truly a “primary caregiver” under the law, a person must be expressly designated in writing as such **and** must be a medical professional or must consistently provide for the health, safety, or housing of a “qualified patient.” Thus, the Attorney General Guidelines pointedly note that “someone who merely maintains a source of marijuana does not automatically become the party who has consistently assumed responsibility for the housing, health or safety of that purchaser” as is expressly required by SB 420. This point appears directed particularly at those dispensary operators who commonly allow a qualified patient to designate that operator as their “primary caregiver” merely by checking a box on a form used in connection with the sale (apparently) of medical marijuana at a retail storefront dispensary.

Finally, the Attorney General Guidelines explain the corporate legal forms of association known as “cooperatives” and “collectives” and express their view, under Prop 215 and SB 420, that a cooperative/collective model for distributing medical marijuana is probably the only method of acquiring and dispensing marijuana which does not constitute a criminal operation. And, they further indicate that, for a group of patients and caregivers to form a “cooperative” or “collective,” the individuals involved “... must file articles of incorporation with the State and conduct its business for the mutual benefit of its members” and must “be properly organized and registered as such a corporation under the Corporations or Food and Agriculture Code.”

However, probably the most telling indication in the Attorney General Guidelines which distinguishes the day-to-day operation of a proper and legal medical marijuana cooperative/collective from the currently ubiquitous medical marijuana retail “dispensary” model are the Attorney General Guidelines numbered 4, 5, and 6. These guidelines provide the following:

“4. Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana: Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member’s contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. Distribution and Sales to Non-Members are Prohibited: State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c)). Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. Permissible Reimbursements and Allocations: Marijuana grown at a collective or cooperative for medical purposes may be:

- a). Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b.) Provided in exchange for services rendered to the entity;
- c.) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d.) Any combination of the above.”

C. Conclusion.

It is apparent that, with several years now of interpreting and applying the SB 420 statutes intended to implement Prop 215, the State judicial system, with some recent assistance from the State Attorney General’s Office, is in the process of definitively interpreting and applying Prop 215 and SB 420. This is resulting in published court decisions which set binding legal precedents. These decisions will undoubtedly have the effect of furthering our understanding of what was intended by Prop 215 and how it can actually allow “qualified patients” to obtain marijuana locally for their medical needs from a “primary caregiver” and to do so in a manner that does not violate state and federal criminal laws.

At this point, it appears that the retail “dispensary” model may not withstand legal scrutiny and may result in criminal prosecutions of dispensary owners and operators. For this reason, the City Council may want to clearly understand and discuss the potential significance of these legal developments in connection with the Council’s desire to re-consider the parameters of the City’s April 2008 zoning ordinance which established a City zoning permit process for medical marijuana dispensaries.

Mayor and City Council
Background Memo – Medical Marijuana Dispensaries
November 12, 2009
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Please contact the City Attorney's office if you have any questions concerning this background information or if you need anything further from the City Attorney's office regarding this subject.

Attachments:

1. Los Angeles Times article dated October 9, 2009
2. New York Times article dated October 18, 2009
3. Attorney General's Guidelines (August 2009)

latimes.com/news/local/la-me-medical-marijuana9-2009oct09,0,5210895.story

latimes.com

Los Angeles County D.A. prepares to crack down on pot outlets

Cooley says the vast majority of medical marijuana dispensaries in the county are operating illegally.

By John Hoeffel

October 9, 2009

Los Angeles County Dist. Atty. Steve Cooley said Thursday he will prosecute medical marijuana dispensaries for over-the-counter sales, targeting a practice that has become commonplace under an initiative approved by California voters more than a decade ago.

"The vast, vast, vast majority, about 100%, of dispensaries in Los Angeles County and the city are operating illegally, they are dealing marijuana illegally, according to our theory," he said. "The time is right to deal with this problem."

Cooley and Los Angeles City Atty. Carmen Trutanich recently concluded that state law bars sales of medical marijuana, an opinion that could spark a renewed effort by law enforcement across the state to rein in the use of marijuana. It comes as polls show a majority of state voters back legalization of marijuana, and supporters are working to place the issue on the ballot next year.

The district attorney's office is investigating about a dozen dispensaries, following police raids, and is considering filing felony charges against one that straddles the Los Angeles-Culver City line.

"We have our strategy and we think we are on good legal ground," Cooley said.

Medical marijuana advocates say the prosecutors are misinterpreting the law.

"I'm confident that they are not right," said Joe Elford, chief counsel for Americans for Safe Access. "If they are right, it would mean that thousands of seriously ill Californians for whom the Compassionate Use Act was intended to help would not be able to get the medicine that they need."

Law enforcement officials have been frustrated by the explosion in the number of dispensaries in Southern California, arguing that most are for-profit enterprises that violate the 1996 voter initiative legalizing medical marijuana and the 2003 state law permitting collective cultivation. Cooley's announcement, coming at a news conference that followed a training session he and Trutanich conducted for narcotics officers, dramatically raises the stakes.

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In the city of Los Angeles, some estimates put the number of dispensaries as high as 800. The city allowed 186 to remain open under its 2007 moratorium, but hundreds of others opened in violation of the ban while the city did nothing to shut them down.

In August, Cooley and Sheriff Lee Baca sent a letter to all mayors and police chiefs in the county, saying that they believed over-the-counter sales were illegal and encouraging cities to adopt permanent bans on dispensaries.

Mark Kleiman, a professor of public policy at UCLA and an expert on drug policy, was not surprised that local prosecutors had decided to attack the rapid proliferation of marijuana stores.

"I think it's a natural response to the rather flagrant marketing practices of a bunch of the dispensaries. The medical veneer has been wearing thinner and thinner," he said. "I've always wondered why those things were legal when they didn't look legal to me."

Cooley said he believes that under state law, collectives must raise their own marijuana and can only recoup their costs. "That's absolutely legal," he said. "We're going to respect that."

But he said none of them currently do that.

The district attorney's warning could make the situation more chaotic in Los Angeles, where the City Council has struggled for two years to devise an ordinance to control the distribution of medical marijuana.

In addition to prosecuting dispensaries, Cooley said he would consider going after doctors who write medical marijuana recommendations for healthy people. Medical marijuana critics argue that some doctors freely recommend the drug to people who are not ill.

Medical marijuana advocates celebrated a brief thaw in the enforcement climate after the Obama administration signaled earlier this year that it would not prosecute collectives that followed state law. That spurred many entrepreneurs to open dispensaries in Los Angeles. As stores popped up near schools and parks, neighborhood activists reacted with outrage and police took notice.

Councilman Dennis Zine, a key player on the issue at L.A. City Hall, welcomed Cooley's decision to prosecute dispensaries. "There are many that are operating illegally and it's not a secret," he said, adding that he believes "a few" collectives in the city are operating legally.

Anticipating that police departments will ramp up raids on dispensaries, medical marijuana advocates reacted with dismay to Cooley's announcement.

"What we'll see is a big disruption," said Don Duncan, the California director for Americans for Safe Access. He called Cooley's decision "incredible" and said, "It certainly sounds scary."

Duncan acknowledged that many dispensaries do not follow the law and urged Cooley and Trutanich to focus exclusively on them. "You don't have to cast a net over the entire community, you can target the problem people and not take this extreme adversarial position," he said. "Some good people are going to be caught in the crossfire."

About 100 medical marijuana patients, activists and dispensary owners protested on a sidewalk outside the Montebello Country Club, where about 150 prosecutors and narcotics officers met. Motorists repeatedly honked and shook their fists in support as they rolled by, triggering cheers from the crowd.

Barry Kramer, the operator of California Patients Alliance, a collective on Melrose Avenue, said many dispensaries have responsibly regulated themselves for years in the vacuum left by the City Council's inaction.

"I feel like that gets lost," he said. "It's frustrating to get painted with one brush by the city."

Kramer said he believed that dispensaries would continue to operate. "People have found ways around marijuana laws for as long as there have been marijuana laws," he said.

But he also said that stepped-up prosecutions could resuscitate the criminal market: "Things will go underground. We'll see a lot more crime."

When Californians voted for Proposition 215 in 1996, they made it legal for patients with a doctor's recommendation and their caregivers to possess and raise pot for the patient's medical use.

In 2003, the Legislature allowed patients and caregivers "collectively or cooperatively to cultivate marijuana for medical purposes" but said they could not do it for profit.

Cooley and Trutanich, after reviewing a state Supreme Court decision from last year, have concluded that the law protects collectives from prosecution only in the cultivation of marijuana, not for sales or distribution.

Medical marijuana advocates, however, note that the state currently requires dispensaries to collect sales taxes on marijuana, and that guidelines drawn up by the attorney general conclude that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful."

The guidelines allow collectives to take costs into account but do not deal directly with over-the-counter sales.

Jacob Appelsmith, special assistant attorney general, said Atty. Gen. Jerry Brown talked to Cooley on Thursday. "Our staffs are continuing to meet about these issues," he said.

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Los Angeles Prepares For Clash Over Drug

By SOLOMON MOORE

LOS ANGELES — There are more marijuana stores here than public schools. Signs emblazoned with cannabis plants or green crosses sit next to dry cleaners, gas stations and restaurants.

The dispensaries range from Hollywood-day-spa fabulous to shoddy-looking storefronts with hand-painted billboards. Absolute Herbal Pain Solutions, Grateful Meds, Farmacopeia Organica.

Cannabis advocates claim that more than 800 dispensaries have sprouted here since 2002; some law enforcement officials say it is closer to 1,000. Whatever the real number, everyone agrees it is too high.

And so this, too, is taken for granted: Crackdowns on cannabis clubs will soon come in this city, which has more dispensaries than any other.

For the first time, law enforcement officials in Los Angeles have vowed to prosecute medical marijuana dispensaries that turn a profit, with police officials saying they expect to conduct raids. Their efforts are widely seen as a campaign to sway the City Council into adopting strict regulations after two years of debate.

It appears to be working. Carmen A. Trutanich, the newly elected city attorney, recently persuaded the Council to put aside a proposed ordinance negotiated with medical marijuana supporters for one drafted by his office. The new proposal calls for dispensaries to have renewable permits, submit to criminal record checks, register the names of members with the police and operate on a nonprofit basis. If enacted,

Disagreement over how medical marijuana should be regulated.

It is likely to result in the closing of hundreds of marijuana dispensaries.

Mr. Trutanich argued that state law permits the exchange of marijuana between growers and patients on a nonprofit and noncash basis only. Marijuana advocates say that interpretation would regulate dispensaries out of existence and thwart the will of voters who approved medical cannabis in 1996.

Whatever happens here will be closely watched by law enforcement officials and marijuana advocates across the country who are threading their way through federal laws that still treat marijuana as an illegal drug and state laws that are increasingly allowing medicinal use. Thirteen states have laws supporting medical marijuana, and others are considering new legislation.

No state has gone further than California, often described by drug enforcement agents as a "source nation" because of the vast quantities of marijuana grown here. And no city in the state has gone further than Los Angeles. This has alarmed local officials, who say that dispensary owners here took unfair advantage of vague state laws intended to create exceptions to marijuana prohibitions for a limited number of ill people. "About 100 percent of dispensaries in Los Angeles County and the city are operating illegally," said Steve Cooley, the Los Angeles County district attorney, who is up for re-election next year. "The time is right to deal with this problem."

Mr. Cooley, speaking last week at a training luncheon for regional narcotics officers titled "The Eradication of Medical Marijuana Dispensaries in the City of Los Angeles and Los Angeles County," said that state law did not allow dispensaries to be for-profit enterprises. Mr. Trutanich, the city attorney, went further, saying dispensaries were prohibited from accepting cash even to reimburse growers for labor and supplies. He said that a recent California Supreme Court decision, *People v. Mentch*, banned all over-the-counter sales of ma-



PHOTOGRAPHS BY JIM WILSON/THE NEW YORK TIMES

Harborside Health Center, a nonprofit medical marijuana dispensary in Oakland, Calif., is looked upon as a model of how others could operate.



A grower in a house in Berkeley, Calif., who said he could grow three crops a year, each worth about \$40,000.

rijuana; other officials and marijuana advocates disagree.

So far, prosecutions of marijuana dispensaries in Los Angeles have been limited to about a dozen in the last year, said Sandi Gibbons, a spokeswoman for Mr. Cooley. But Police Department officials said they were expecting to be called on soon to raid collectives.

"I don't think this is a law that we'll have to enforce 800 times," said one police official, who declined to speak on the record before the marijuana ordinance was completed. "This is just like anything else. You don't have to arrest everyone who is speeding to make people slow down."

Don Duncan, a spokesman for Americans for Safe Access, a leader in the medical marijuana movement, said that over-the-counter cash purchases should be permitted but that dispensaries should be nonprofit organizations. He also said marijuana collectives needed more regulation and a "thinning of the herd."

"I am under no illusions that everyone out there is following the rules," said Mr. Duncan, who runs his own dispensary in West Hollywood. "But just because you accept money to reimburse collectives does not mean you're making profits."

For marijuana advocates, Los Angeles represents a critical juncture — a symbol of the movement's greatest suc-

cess, but also its vulnerability.

More than 300,000 doctors' referrals for medical cannabis are on file, the bulk of them from Los Angeles, according to Americans for Safe Access. The movement has had a string of successes in the Legislature and at the ballot box. In the city of Garden Grove, marijuana advocates forced the Highway Patrol to return six grams of marijuana it had confiscated from an eligible user. Cannabis dispensaries have opened in more than 20 counties in the state.

But there have also been setbacks. In June, a federal judge sentenced Charles C. Lynch, a dispensary owner north of Santa Barbara, to one year in prison for selling marijuana to a 17-year-old boy whose father had testified that they sought out medical marijuana for his son's chronic pain. The mayor and the chief of police testified on behalf of Mr. Lynch, who was released on bail pending appeal.

And last month, San Diego police officers and sheriff's deputies, along with agents from the Drug Enforcement Administration, raided 14 marijuana dispensaries and arrested 31 people. In an interview, Bonnie Dumanis, the district attorney for San Diego County, said that state laws governing medical marijuana were unclear and that the city had not yet instituted new regulations.

Ms. Dumanis said that she approved of medical marijuana clubs where pa-

tients grow and use their own marijuana, but that none of the 60 or so dispensaries in the county operated that way.

"These guys are drug dealers," she said of the 14 that were raided. "I said publicly, if anyone thinks we're casting too big a net and we get a legitimate patient or a lawful collective, then show us your taxes, your business license, your incorporation papers, your filings with the Department of Corporations."

"If they had these things, we wouldn't prosecute," she said.

Marijuana supporters worry that San Diego may provide a glimpse of the near future for Los Angeles if raids here become a reality. But many look to Harborside Health Center in Oakland as a model for how dispensaries could work.

"Our No. 1 task is to show that we are worthy of the public's trust in asking to distribute medical cannabis in a safe and secure manner," said Steve DeAngelo, the pig-tailed proprietor of Harborside, which has been in business for three years.

Harborside is one of four licensed dispensaries in Oakland run as nonprofit organizations. It is the largest, with 74 employees and revenues of about \$20 million. Last summer, the Oakland City Council passed an ordinance to collect taxes from the sale of marijuana, a measure that Mr. DeAngelo supported.

Mr. DeAngelo designed Harborside to



MONICA ALMEIDA/THE NEW YORK TIMES

exude legitimacy, security and comfort. Visitors to the low-slung building are greeted by security guards who check the required physicians' recommendations. Inside, the dispensary looks like a bank, except that the floor is covered with hemp carpeting and the eight tellers stand behind identical displays of marijuana and hashish.

There is a laboratory where technicians determine the potency of the marijuana and label it accordingly. (Harborside says it rejects 80 percent of the marijuana that arrives at its door for insufficient quality.) There is even a bank vault where the day's cash is stored along with reserves of premium cannabis. An armored truck picks up deposits every evening.

City officials routinely audit the dispensary's books. Surplus cash is rolled back into the center to pay for free counseling sessions and yoga for patients. "Oakland issued licenses and regulations, and Los Angeles did nothing and they are still unregulated," Mr. DeAngelo said. "Cannabis is being distributed by inappropriate people."

But even Oakland's regulations fall short of Mr. Trutanich's proposal that Los Angeles ban all cash sales.

"I don't know of any collective that operates in the way that is envisioned by this ordinance," said Mr. Duncan, of Americans for Safe Access.

Christine Gasparac, a spokeswoman for State Attorney General Jerry Brown, said that after Mr. Trutanich's comments in Los Angeles, law enforcement officials and advocates around the state had called seeking clarity on medical marijuana laws.

Mr. Brown has issued legal guidelines that allow for nonprofit sales of medical marijuana, she said. But, she added, with laws being interpreted differently, "the final answer will eventually come from the courts."



**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
OF MARIJUANA GROWN FOR MEDICAL USE**
August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).¹) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

¹ Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. Possession Guidelines:

a) **MMP:**² Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.” (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

² On May 22, 2008, California’s Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute’s possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “co-op”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”]).

2. **Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members’ medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.