

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

Helene Schneider
Mayor/Chair
Grant House
Mayor Pro Tempore/Vice Chair
Bendy White
Ordinance Committee Chair
Das Williams
Finance Committee Chair
Dale Francisco
Frank Hotchkiss
Michael Self



James L. Armstrong
*City Administrator/
Executive Director*

Stephen P. Wiley
City Attorney/Agency Counsel

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

**MAY 18, 2010
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.

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

ORDER OF BUSINESS

- 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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CHANGES TO THE AGENDA

PUBLIC COMMENT

CONSENT CALENDAR

CITY COUNCIL

1. Subject: Minutes

Recommendation: That Council waive the reading and approve the minutes of the regular meeting of April 20, 2010, and the special meeting of April 23, 2010.

2. Subject: Youth Watershed Education Program Contract With Art From Scrap (540.14)

Recommendation: That Council authorize the Parks and Recreation Director to execute a 12-month professional services contract with Art From Scrap in the amount of \$56,299.25 in Creeks Funds for the provision of Creeks Program youth and community watershed education programs in Fiscal Year 2011.

CONSENT CALENDAR (CONT'D)

CITY COUNCIL (CONT'D)

3. Subject: Used Oil Payment Program Grant - Sixteenth Cycle (630.01)

Recommendation: That Council:

- A. Adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Authorizing the Waterfront Director to Submit an Application to the California Department of Resources Recycling and Recovery (CalRecycle) for Fiscal Year 2011 Used Oil Payment Program Grant (OPP Grant), Formerly Known as the Used Oil Block Grant - Sixteenth Cycle, in the Amount of \$12,190; and
- B. If the grant is awarded, accept the OPP Grant - Sixteenth Cycle, and increase appropriations and estimated revenues in the Waterfront Fund for an amount of \$12,190 for Fiscal Year 2011.

4. Subject: Introduction Of Ordinance Amending Municipal Code Section 3.16.073 Regarding Registered Domestic Partners (800.05)

Recommendation: That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Title Three of the Santa Barbara Municipal Code to Revise Section 3.16.073 of Chapter 3.16 Pertaining to the Employment by the City of Domestic Partnerships in the Same City Department or Division.

REDEVELOPMENT AGENCY

5. Subject: Minutes

Recommendation: That the Redevelopment Agency waive the reading and approve the minutes of the regular meeting of April 20, 2010.

NOTICES

- 6. The City Clerk has on Thursday, May 13, 2010, 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.

REDEVELOPMENT AGENCY REPORTS

7. **Subject: Contract For Professional Services For The Police Station Seismic And Structural Analysis Services Project (700.08)**

Recommendation:

- A. That the City Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Approving and Adopting the Findings Required by Health and Safety Code Section 33445.1 for Redevelopment Agency Funding of Capital Improvements for the Police Station Renovation Located Outside and Not Contiguous to the Central City Redevelopment Project Area and Authorizing Certain Other Actions; and
- B. That the Redevelopment Agency (RDA) Board authorize the expenditure of \$151,246 for seismic and structural analysis of the Police Station by Coffman Engineers, building assessment services by Paul Poirier and Associates Architects, and related project management services by Public Works Department staff.

CITY COUNCIL ADMINISTRATIVE AND ATTORNEY REPORTS

PUBLIC WORKS DEPARTMENT

8. **Subject: Public Hearing To Acquire Property Interests At 306 West Ortega Street By Eminent Domain For The Ortega Street Bridge Replacement Project (330.03)**

Recommendation: That Council:

- A. Accept the Addendum to the Certified Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Lower Mission Creek Flood Control Project (State Clearing House SCH No. 1998101061, dated March 10, 2008), prepared by the City's Environmental Analyst for the Ortega Street Bridge (Bridge) Replacement Project; and
- B. Adopt, by reading of title only, A Resolution of Necessity by the Council of the City of Santa Barbara for the Real Property at 306 West Ortega Street, Adjacent Access Easement, and Adjacent Parking Easement, all Located on Portions of Santa Barbara County Assessor's Parcel Number 037-073-011.

PUBLIC HEARINGS

9. Subject: Appeal Of Single Family Design Board Denial Of Retaining Walls For 1464 La Cima Road (640.07)

Recommendation: That Council:

- A. Grant the appeal of Scott McCosker with direction on a modified design and grant the project preliminary approval, making the findings contained in the staff report; and
- B. Refer the project back to the Single Family Design Board Consent Calendar for final approval consistent with Council's direction on a modified design.

COUNCIL AND STAFF COMMUNICATIONS

COUNCILMEMBER COMMITTEE ASSIGNMENT REPORTS

RECESS

EVENING SESSION

RECONVENE

ROLL CALL

PUBLIC COMMENT

CITY COUNCIL ADMINISTRATIVE AND ATTORNEY REPORTS

COMMUNITY DEVELOPMENT DEPARTMENT

10. Subject: Introduction Of Medical Marijuana Storefront Collective Dispensary Ordinance (520.04)

Recommendation: That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending the Municipal Code by Revising Chapter 28.80 and Establishing Revised Regulations and Procedures for Medical Marijuana Storefront Collective Dispensaries.

ADJOURNMENT



CITY OF SANTA BARBARA CITY COUNCIL MINUTES

REGULAR MEETING April 20, 2010 COUNCIL CHAMBER, 735 ANACAPA STREET

CALL TO ORDER

Mayor Helene Schneider called the joint meeting of the Council and Redevelopment Agency to order at 2:03 p.m. (The Finance and Ordinance Committees met at 12:30 p.m.)

PLEDGE OF ALLEGIANCE

Mayor Schneider.

ROLL CALL

Councilmembers present: Dale Francisco, Frank Hotchkiss, Grant House, Michael Self, Bendy White, Das Williams, Mayor Schneider.

Councilmembers absent: None.

Staff present: City Administrator James L. Armstrong, City Attorney Stephen P. Wiley, City Clerk Services Manager Cynthia M. Rodriguez.

CEREMONIAL ITEMS

1. Subject: Proclamation Declaring April 20, 2010, As The 40th Anniversary Of UCSB Environmental Studies Program (120.04)

Action: Proclamation presented to Environmental Studies Program Chair and Professor Joshua Schimel and Environmental Affairs Board Co-Chair Nick Allen.

PUBLIC COMMENT

Speakers: Kenneth Loch, Kate Smith, Gert Walter, Jaycee Hunter.

CONSENT CALENDAR (Item Nos. 2 - 8 and 10 - 12)

The titles of the resolutions and ordinances related to the Consent Calendar were read.

Motion:

Councilmembers House/Hotchkiss to approve the Consent Calendar as recommended.

Vote:

Unanimous roll call vote.

2. Subject: Minutes

Recommendation: That Council waive the reading and approve the minutes of the adjourned regular meeting of March 22, and the regular meetings of March 23, March 30, and April 6, 2010 (cancelled).

Action: Approved the recommendation.

3. Subject: State Revolving Fund Project Funding For The El Estero Wastewater Treatment Plant (540.13)

Recommendation: That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Authorizing the Wastewater Fund as the Dedicated Source of Revenue for Repayment of the Clean Water State Revolving Fund (CWSRF) Loan.

Action: Approved the recommendation; Resolution No. 10-019 (April 20, 2010, report from the Public Works Director; proposed resolution).

4. Subject: Adoption Of Appeal Findings Resolution For 3714-3744 State Street - Sandman Inn Redevelopment Project (640.07)

Recommendation: That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Denying the Appeal and Upholding the Decision of the City Planning Commission to Certify the Final Environmental Impact Report for the Sandman Inn Redevelopment Project, and to Approve the Application of Brent Daniels, L&P Consultants, Agent for Kellogg Associates, for the Tentative Subdivision Map, a Development Plan Approval, and Certain Lot Area Modifications and Line Adjustments in Connection with the Redevelopment Project Proposed for 3714-3744 State Street Buffer (MST2007-00591) and Known as the "Sandman Inn Redevelopment Project."

Action: Approved the recommendation; Resolution No. 10-020 (April 20, 2010, report from the City Attorney; proposed resolution).

5. Subject: Introduction Of Ordinance For Lease Agreement With Doug Chessmore (330.04)

Recommendation: That Council approve a lease agreement with Doug Chessmore, doing business as Ocean Aire Electronics, and introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Approving a Lease Agreement with Doug Chessmore, Doing Business As Ocean Aire Electronics, Effective May 27, 2010, for Lease of the Premises Located at 125 Harbor Way #7.

Action: Approved the recommendation (April 20, 2010, report from the Waterfront Director; proposed ordinance).

6. Subject: Introduction Of Ordinance For Extension And Amendment Of Supervisors' Memorandum Of Understanding (440.02)

Recommendation: That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Ordinance No. 5484, the 2009-2011 Memorandum of Understanding Between the City of Santa Barbara and the Santa Barbara City Supervisory Employees' Bargaining Unit (Supervisors' Unit).

Action: Approved the recommendation (April 20, 2010, report from the Assistant City Administrator; proposed ordinance).

7. Subject: Approval Of An Emergency Purchase Order For The Modoc Road Storm Drain Repair Project (530.04)

Recommendation: That Council retroactively approve the issuance of an emergency Purchase Order to Tierra Contracting, Inc. (Tierra), in the amount of \$87,718 for construction of the Modoc Road Storm Drain Repair, pursuant to Municipal Code Section 4.52.080.

Action: Approved the recommendation (April 20, 2010, report from the Public Works Director).

8. Subject: Purchase Order Contract For The Gibraltar Dam Concrete Maintenance Project (540.09)

Recommendation: That Council waive formal bid procedures as authorized by Municipal Code Section 4.52.070(k) and authorize the General Services Manager to issue a Purchase Order to Santa Barbara Surfacing for the Gibraltar Dam Concrete Maintenance Project (Project) in the amount of \$87,290.31, and authorize the General Services Manager to approve expenditures of up to \$17,450 for extra services that may result from necessary changes in the scope of work.

Action: Approved the recommendation (April 20, 2010, report from the Public Works Director).

Item No. 9 appears in the Redevelopment Agency minutes.

NOTICES

10. The City Clerk has on Thursday, April 15, 2010, 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.
11. The Recommended Fiscal Year 2011 Operating and Capital Budget was filed with the City Clerk's Office on April 20, 2010.
12. Received a letter of resignation from Creeks Advisory Committee Member Daniel Wilson; the vacancy will be part of the current City Advisory Groups recruitment.

This concluded the Consent Calendar.

REPORT FROM THE FINANCE COMMITTEE

Finance Committee Chair Das Williams reported that the Committee met to discuss the Fiscal Year 2011 recommended budget and related matters that the Committee will be reviewing every Tuesday afternoon through the month of May in the David Gebhard Public Meeting Room.

REPORT FROM THE ORDINANCE COMMITTEE

Ordinance Committee Chair Bendy White reported that the Committee met today to discuss a change concerning the number of members on the Architectural Board of Review. He stated the voters approved a change to the membership from nine to seven members, but in order to maintain the existing Board for one to two years to complete the transition, an amendment was proposed, which will be presented to the Council for approval in approximately one month.

CITY COUNCIL ADMINISTRATIVE AND ATTORNEY REPORTS

FINANCE DEPARTMENT

13. Subject: Fiscal Year 2011 Recommended Operating And Capital Budget (230.05)

Recommendation: That Council:

- A. Receive the Fiscal Year 2011 Recommended Operating and Capital Budget;
- B. Hear a report from staff in connection with the filing of the Fiscal Year 2011 Recommended Budget; and
- C. Approve the proposed Schedule of Council Budget Review Meetings for the presentation of the Fiscal Year 2011 Recommended Budget.

Documents:

- April 20, 2010, report from the Interim Finance Director.
- April 20, 2010, PowerPoint presentation prepared and made by staff.

Speakers:

Staff: City Administrator James Armstrong, Interim Finance Director Robert Samario.

Motion:

Councilmembers House/Francisco to approve the recommendations.

Vote:

Unanimous voice vote.

RECESS

3:27 p.m. - 3:38 p.m. City Administrator Armstrong was absent when the Council reconvened. Assistant City Administrator Paul Casey was present.

REDEVELOPMENT AGENCY REPORTS

14. Subject: Future Of The Redevelopment Agency (620.01)

Recommendation: That Council and the Redevelopment Agency Board receive a report on the future of the Redevelopment Agency.

Documents:

- April 20, 2010, report from the Agency Deputy Director.
- April 20, 2010, PowerPoint presentation prepared and made by staff.

(Cont'd)

14. (Cont'd)

Speakers:

Staff: Housing and Redevelopment Manager Brian Bosse, Assistant City Attorney Sarah Knecht.

By consensus, the Council and Agency Board received the report.

CITY COUNCIL ADMINISTRATIVE AND ATTORNEY REPORTS (CONT'D)

PUBLIC WORKS DEPARTMENT

15. Subject: Cachuma Conservation Release Board Draft Budget (540.03)

Recommendation: That Council review the draft Fiscal Year 2011 budget for the Cachuma Conservation Release Board (CCRB).

Documents:

- April 20, 2010, report from the Public Works Director.
- April 20, 2010, PowerPoint presentation prepared and made by staff.

Speakers:

Staff: Water Resources Manager Rebecca Bjork.

By consensus, the Council reviewed the budget.

RECESS

Mayor Schneider recessed the meeting at 4:55 p.m. in order for the Council to reconvene in closed session for Agenda Item Nos. 16 and 17, and stated that no reportable action is anticipated. City Administrator Armstrong was present when the Council reconvened in closed session. Assistant City Administrator Casey was absent.

CLOSED SESSIONS

17. Subject: Conference With Real Property Negotiator (330.03)

Recommendation: That Council hold a closed session to consider instructions to its negotiators regarding the possible lease of property owned by the City of Santa Barbara, commonly described as a ten-acre parcel of real property located at the Santa Barbara Airport airfield, bounded by Taxiway A and Taxiway M. Instructions to negotiators will direct staff regarding the price and terms of payment of a possible lease of the City-owned property with Tam Hunt. Negotiations are held pursuant to the authority of Section 54956.8 of the Government Code. City Negotiators are: Karen Ramsdell, Airport Director; Paul Casey, Assistant City Administrator/Community Development Director; and Sarah Knecht, Assistant City Attorney. Negotiator for the potential lessee is Tam Hunt. Under negotiation: Price and terms of payment of a possible ground lease. Scheduling: Duration, 20 minutes; anytime Report: None anticipated

Documents:

April 20, 2010, report from the Airport Director and City Attorney.

Time:

4:55 p.m. - 5:35 p.m.

No report made.

Councilmember Williams left the meeting at 5:35 p.m.

16. Subject: Conference With Legal Counsel - Pending Litigation (160.03)

Recommendation: That Council hold a closed session to consider pending litigation pursuant to subsection (a) of section 54956.9 of the Government Code and take appropriate action as needed. The pending litigation is Cynthia Ricci v. Isadora Gonzalez; City of Santa Barbara, SBSC Case Number 1337050. Scheduling: Duration, 15 minutes; anytime Report: None anticipated

Documents:

April 20, 2010, report from the City Attorney.

Time:

5:36 p.m. - 5:45 p.m.

No report made.

ADJOURNMENT

Mayor Schneider adjourned the meeting at 5:45 p.m.

SANTA BARBARA CITY COUNCIL

SANTA BARBARA
CITY CLERK'S OFFICE

HELENE SCHNEIDER
MAYOR

ATTEST:

CYNTHIA M. RODRIGUEZ, CMC
CITY CLERK SERVICES MANAGER



CITY OF SANTA BARBARA CITY COUNCIL MINUTES

SPECIAL MEETING April 23, 2010 DAVID GEBHARD PUBLIC MEETING ROOM 630 GARDEN STREET

JOINT CITY COUNCIL AND SANTA BARBARA BOARD OF EDUCATION MEETING (150.05)

1. Call to Order and Roll Call

Mayor Helene Schneider called the joint meeting of the Council and the Board of Education to order at 1:34 p.m.

Councilmembers present: Dale Francisco, Frank Hotchkiss, Michael Self, Bendy White, Das Williams, Mayor Schneider.

Councilmembers absent: Grant House.

Staff present: City Administrator James L. Armstrong, Assistant City Attorney Sarah Knecht, Deputy City Clerk Susan Tschech.

Board Members present: Annette Cordero, Dr. Robert Noel, Kate Parker, President H. Edward Heron.

Board Members absent: Susan Deacon.

Staff present: Superintendent J. Brian Sarvis.

2. Pledge of Allegiance

Mayor Schneider.

3. Spanish Translation/Traduccion en Espanol and Headsets for Hearing Impaired

Assistant City Administrator Marcelo López stated he was available for Spanish translation.

Councilmember House entered the meeting at 1:45 p.m.

4. Public Comments

Speakers: Kenneth Loch, Cheri Rae, Karolyn Renard, Janet Rowse, Kate Smith.

5. Statement of Purpose for Joint Meeting

Mayor Schneider and Board President Heron stated that this semiannual meeting presents an opportunity for the two agencies to engage in a public forum and to discuss mutual interests.

Agenda Items 6 - 10

Mayor Schneider stated that Agenda Item Nos. 6 - 10 have written reports and asked if anyone had questions regarding these items. Questions were asked regarding Item Nos. 7 and 9.

6. Report on Joint City/School District Programs

Documents:

April 23, 2010, report prepared by Sarah Hanna, City Recreation Programs Manager, and David Hetyonk, School Districts' Director of Facilities and Operations, on behalf of the Joint Use Committee.

7. Report on Renewal of the Agreement for Joint Use, Programming, Maintenance, and Development

Documents:

April 23, 2010, report prepared by Sarah Hanna, City Recreation Programs Manager, and David Hetyonk, School Districts' Director of Facilities and Operations.

Speakers:

City of Santa Barbara Staff: Recreation Programs Manager Sarah Hanna.

8. Report on Completion of Measure V 2000 Bond Projects

Documents:

Report entitled "Road to Renovation," prepared by Santa Barbara School Districts Office of Administrative Services and Communications.

9. Report on the Status of Efforts to Acquire the National Guard Armory and the Fremont Hall Army Reserve Center

Documents:

April 23, 2010, report prepared by Assistant City Administrator Paul Casey.

(Cont'd)

9. (Cont'd)

Speakers:

City of Santa Barbara Staff: Parks and Recreation Director Nancy Rapp.

10. Report on School Districts and City Collaboration on Foodscrap and Recycling Programs

Documents:

April 23, 2010, report prepared by Stephen MacIntosh, City Environmental Services Supervisor, and Brian Tanguay, School Districts Purchasing Coordinator.

11. Presentation on City and School Districts Budget Planning for the Upcoming Fiscal Year

Documents:

- PowerPoint presentation prepared and made by City Staff.
- Petitions regarding the funding of school crossing guards.

Speakers:

- City of Santa Barbara Staff: Interim Finance Director Robert Samario.
- Santa Barbara School Districts Staff: Deputy Superintendent Eric Smith.
- Members of the Public: Brent Millhollen, Cricket Wood, Damien Barnett, Virginia Clarke, Eva Inbar, Michael Vail, Beatriz Flores, Lisa Fell, Karolyn Renard, Kate Smith, Tisha Levy.

Discussion:

City and School Districts Staff discussed in some detail the structure of each agency's budget and the challenges faced by both agencies in making adjustments to allow for significant revenue shortfalls. Public comment focused on the proposed elimination of funding for school crossing guards. Council and Board members made comments, and their questions were answered.

12. Presentation on the Fiscal Implications of Becoming a Basic Aid School District

Speakers:

- Santa Barbara School Districts Staff: Deputy Superintendent Eric Smith.
- Public Economics, Inc.: Dante Gumicio.
- Members of the Public: Kate Smith.

(Cont'd)

12. (Cont'd)

Discussion:

Deputy Superintendent Smith defined the concepts of "revenue limit" and "basic aid" and explained how school districts are funded according to their status as one or the other type. He also described State action to appropriate a portion of basic aid funding. Mr. Gumicio discussed how redevelopment affects the basic aid status of school districts.

13. Update on the South Coast Gang Task Force Activity

Speakers:

- City of Santa Barbara Staff: Assistant City Administrator Marcelo López.
- Santa Barbara School Districts Staff: Superintendent J. Brian Sarvis.
- Members of the Public: Kate Smith, Karolyn Renard.

Discussion:

Assistant City Administrator López summarized the accomplishments of the Task Force convened in 2008, including a summer program, the caseworker model which produces plans specific to individual clients, the securing of a Cal-GRIP grant, and the establishment of many partnerships. He concluded by listing the major elements of the long-term plan to address the issue of gang violence.

Board of Education Member Cordero left the meeting at 3:59 p.m., and Councilmember Self left the meeting at 4:01 p.m.

14. Update on the Medical Marijuana Dispensary Ordinance

Documents:

September 8, 2009, letter from the Santa Barbara School Districts.

Speakers:

- City of Santa Barbara Staff: Assistant City Administrator Paul Casey.
- Members of the Public: Shereen Khatapoush, Council on Alcoholism and Drug Abuse; Mari Mender; Nancy Harter.

Councilmember White left the meeting at 4:09 p.m.

Discussion:

Assistant City Administrator Casey answered questions from Board of Education Members regarding the draft ordinance being considered by the City Council's Ordinance Committee to revise the regulations for medical marijuana dispensaries.

15. Additional Matters for Placement on a Future Agenda

Speakers:

Members of the Public: Karolyn Renard.

Discussion:

Board of Education Member Parker requested information regarding the school resource officer position at Santa Barbara High School, and she also suggested that the School Board and City Council collaborate on graffiti education. Councilmember Williams asked that a presentation be made regarding the School Districts' Fiscal Crisis & Management Assistance Team Report.

The Board of Education meeting was adjourned at 4:17 p.m.

ADJOURNMENT

Mayor Schneider adjourned the City Council meeting at 4:17 p.m.

SANTA BARBARA CITY COUNCIL

SANTA BARBARA
CITY CLERK'S OFFICE

HELENE SCHNEIDER
MAYOR

ATTEST: _____
SUSAN TSCHECH, CMC
DEPUTY CITY CLERK



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers

FROM: Creeks Division, Parks and Recreation Department

SUBJECT: Youth Watershed Education Program Contract With Art From Scrap

RECOMMENDATION:

That Council authorize the Parks and Recreation Director to execute a 12-month professional services contract with Art From Scrap in the amount of \$56,299.25 in Creeks Funds for the provision of Creeks Program youth and community watershed education programs in Fiscal Year 2011.

DISCUSSION:

The Creeks Restoration and Water Quality Improvement Division (Creeks Division) recommends that the City contract with Art From Scrap to provide youth watershed education programs and support the continuation of community events and programming at the South Coast Watershed Resource Center. Youth education is a key component of the Creeks Division's Public Education Plan and the City's Storm Water Management Program (SWMP), along with ongoing efforts to reduce urban runoff pollution and improve ocean water quality at the beach. By providing clear and engaging activities for youth and the community regarding the importance of clean water and the causes of pollution, these programs help people to develop an appreciation of creek and ocean water quality and adopt appropriate behaviors to protect and improve it.

Art From Scrap is a non-profit organization with a primary focus on environmental education for youth. Since 2002, the Creeks Division has implemented an education program for elementary age children, as well as community outreach programming based out of the Watershed Resource Center. The proposed contract with Art From Scrap would continue the existing and successful education partnership to meet the SWMP goal to reach 3,000 students annually.

Scope of Work

Under the proposed contract, Art From Scrap will provide four water quality education programs for schoolchildren within the City of Santa Barbara. These programs include: 1) a three-part Creek Kids series that is targeted to fourth through sixth grade students; 2) field trips to the Watershed Resource Center at Arroyo Burro Beach for kindergarten through sixth grade; 3) in-class creek lessons focusing on the watershed model; and 4) hands-on water quality education activities at community and school events, including science nights. The Art From Scrap programs are correlated to state standards and designed to complement other Creeks Division youth education programs. Additionally, the proposed contract includes a partnership with Santa Barbara County to fund a part-time (five hours/week) staff person to manage and administer the Watershed Resource Center.

During Fiscal Year 2011, it is anticipated that Art From Scrap will conduct 160 presentations over a 12-month period, reaching at least 3,000 schoolchildren. Art From Scrap will also provide staffing and support to multiple community programs hosted at the Watershed Resource Center. New themes and special projects are developed each year to maintain an evolving program with fresh elements for teachers and students.

Regional Integration

In addition to providing youth watershed education programs within the City, Art From Scrap is under contract with the County of Santa Barbara to provide similar programs to schoolchildren in other areas in the County. The Creeks Division recommends that the City and County continue to work with Art From Scrap to provide similar and consistent watershed education programs.

BUDGET/FINANCIAL INFORMATION:

The total cost of the contract with Art From Scrap is \$56,299.25. Funds for this contract are included in the proposed Fiscal Year 2011 Creeks Fund Operating Budget.

SUSTAINABILITY IMPACT:

Reducing the impact of polluted urban runoff from developed areas is critical for the protection of water quality in the City. An important goal of the Creeks Division public outreach effort is to educate residents about specific behaviors and habits that can improve water quality. Providing educational activities for youth and the community helps participants develop an appreciation of local creek and ocean water quality and adopt appropriate behaviors to protect and improve it.

PREPARED BY: Cameron Benson, Creeks Restoration/Clean Water Manager

SUBMITTED BY: Nancy Rapp, Parks and Recreation Director

APPROVED BY: City Administrator's Office



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers

FROM: Facilities Division, Waterfront Department

SUBJECT: Used Oil Payment Program Grant – Sixteenth Cycle

RECOMMENDATION: That Council:

- A. Adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Authorizing the Waterfront Director to Submit an Application to the California Department of Resources Recycling and Recovery (CalRecycle) for Fiscal Year 2011 Used Oil Payment Program Grant (OPP Grant), Formerly Known as the Used Oil Block Grant – Sixteenth Cycle, in the Amount of \$12,190; and
- B. If the grant is awarded, accept the OPP Grant – Sixteenth Cycle, and increase appropriations and estimated revenues in the Waterfront Fund for an amount of \$12,190 for Fiscal Year 2011.

DISCUSSION:

CalRecycle provides annual noncompetitive Used Oil Grants to local governments for establishing and enhancing community used oil collection programs. These funds must be directed toward used motor oil collection and/or related educational programs. Grant awards are based on the population size of each jurisdiction. The City was awarded a grant in the amount of \$12,190 in Fiscal Year 2010, with the funds dedicated to educate the public about proper management of used motor oil. This same level of funding is expected for Fiscal Year 2011.

Over the past several fiscal years, the Environmental Services Division has administered the OPP Grant program for the City. Beginning with Fiscal Year 2011, the Waterfront Department will assume responsibility for administering and expending all OPP Grant funding. Waterfront staff agreed to this arrangement in large part due to the need for these grant monies to support the Waterfront's Clean Marina Program.

Funds from this Sixteenth Cycle will be used to:

- Distribute oil-absorbent pads free to the boating community, keeping bilges free of surface oil and subsequently keeping bilge pumps from creating a sheen on the harbor;

- Conduct public education and outreach, including brochures, pamphlets, signage, stenciling, regarding the proper disposal of used motor oil;
- Set-up and conduct temporary Hazardous Household Waste collection events at the Harbor, where used oil will be accepted;
- Purchase and distribute free used-oil collection materials (funnels, rags, etc.);
- Make facility improvements that help maintain compliance with the requirements of the Waterfront Department's Storm Water Pollution Prevention Plan; and
- Assist with costs for the disposal of used oil from a bilge-water pumpout station and used-oil disposal stations at Marina 2, Marina 4 and the City Pier.

BUDGET/FINANCIAL INFORMATION:

With approval of the grant, the project will be fully funded. The term of the grant will begin on July 1, 2010, and end on June 30, 2011. The annual fund allocation for the coming Fiscal Year is \$12,190.

SUSTAINABILITY IMPACT:

The program is designed to prevent discharges of used motor oil into the harbor by providing free and easily accessible resources for its safe disposal.

PREPARED BY: Karl Treiberg, Waterfront Facilities Manager

SUBMITTED BY: John Bridley, Waterfront Director

APPROVED BY: City Administrator's Office

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA AUTHORIZING THE WATERFRONT DIRECTOR TO SUBMIT AN APPLICATION TO THE CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE) FOR FISCAL YEAR 2011 USED OIL PAYMENT PROGRAM GRANT (OPP GRANT), FORMERLY KNOWN AS THE USED OIL BLOCK GRANT - SIXTEENTH CYCLE, IN THE AMOUNT OF \$12,190

WHEREAS, Public Resources Code Sections 48690 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle), formerly known as the California Integrated Waste Management Board, to make payments to qualifying jurisdictions for implementation of their used oil programs as required by PRC § 48690 et seq.;

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the administration of the Used Oil Payment Program; and

WHEREAS, CalRecycle's procedures for administering the Used Oil Payment Program require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Used Oil Payment Program.

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

SECTION 1. Authorizes the submittal of a Used Oil Payment Program application to CalRecycle; and

SECTION 2. The Waterfront Director or his designee, is hereby authorized and empowered to execute in the name of the City of Santa Barbara all documents, including but not limited to, applications, agreements, annual reports including expenditure reports and amendments necessary to secure said payments to support our Used Oil Collection Program; and

SECTION 3. This authorization is effective for five (5) years from the date of adoption of this resolution through June 30, 2015.



Agenda Item No. _____

File Code No. 800.05

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers

FROM: Human Resources, Administrative Services

SUBJECT: Introduction Of Ordinance Amending Municipal Code Section 3.16.073 Regarding Registered Domestic Partners

RECOMMENDATION:

That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Title Three of the Santa Barbara Municipal Code to Revise Section 3.16.073 of Chapter 3.16 Pertaining to the Employment by the City of Domestic Partnerships in the Same City Department or Division.

DISCUSSION:

Background

Currently the Municipal Code provides that a City employee cannot be placed under the direct supervision of that employee's spouse when both spouses work within the same City department, division, or facility. In addition, when this situation occurs upon the marriage of two City employees, a review is conducted by the affected department and Human Resources for any potential job related conflicts relative to supervision, safety, security, and morale. If, upon the conclusion of a review, a potential conflict concern exist then employment decisions, such as requiring one of the employees to transfer to different City department or division, are made accordingly. These regulations were first enacted in 1989 to reflect the requirements of the state Fair Employment and Housing Act and the Department of Fair Employment and Housing non-discrimination regulations; however, they have not been updated since that time.

This Municipal Code language should be revised to now include state and City registered domestic partners since potential employment-related conflicts of interest, as described above, may exist not only for spouses and close relatives, but also for registered domestic partners who work in close proximity in the same City department or division. This proposed Title 3 Code update also includes an express definition of a registered domestic partner and provides that that term "marriage" as used in City Charter Section 710 (Nepotism) would be expanded to include registered domestic partner relationships.

Ordinance Committee Review

On April 27, 2010, the Ordinance Committee considered the proposed amendment and voted 2/0 to forward to Council for introduction and adoption. No public comments were received regarding the proposed amendment.

PREPARED BY: Barbara Barker, Human Resources Manager

SUBMITTED BY: Marcelo Lopez, Assistant City Administrator

APPROVED BY: City Administrator's Office

**Council Introduction Draft
SHOWING CHANGES FROM CURRENT
May 18, 2010
NEW LANGUAGE IN UNDERLINING**

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF
THE CITY OF SANTA BARBARA
AMENDING TITLE THREE OF THE
SANTA BARBARA MUNICIPAL CODE TO
REVISE SECTION 3.16.073 OF
CHAPTER 3.16 PERTAINING TO THE
EMPLOYMENT BY THE CITY OF
DOMESTIC PARTNERSHIPS IN THE
SAME CITY DEPARTMENT OR
DIVISION.

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES
ORDAIN AS FOLLOWS:

SECTION ONE: Chapter 3.16 of Title Three of the Santa
Barbara Municipal Code is hereby amended by revising
Section 3.16.073 to read as follows:

Section 3.16.073 Employee Selection.

A. **EMPLOYMENT OF SPOUSE, REGISTERED DOMESTIC PARTNER, AND RELATIVES.** An employment decision shall not be based on whether an individual has a spouse, registered domestic partner, or relative presently employed by the City except in accordance with City Charter Section 710 and the following criteria:

1. For business reasons of supervision, safety, security, or morale, the City Administrator, after consulting with the Personnel Officer and the department head, may refuse to place a spouse, registered domestic partner, or relative under the direct supervision of the other spouse, registered domestic partner, or a relative.

2. For business reasons of supervision, safety, security or morale, the City Administrator, after consulting with the Personnel Officer and the department head, may refuse to place both spouses, both registered domestic partners, - or the ~~(or~~ two relatives) in the same department, division or facility if the work involves potential conflicts of

interest or other hazards greater for married couples, registered domestic partners, ~~-(or relatives)~~ than for other persons.

B. ACCOMMODATIONS FOR CITY EMPLOYEES WHO MARRY OR WHO REGISTER AS DOMESTIC PARTNERS. If two (2) City employees marry or register as domestic partners, the City Administrator shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security, or morale. If the City Administrator is unable to make an acceptable accommodation which sufficiently minimizes the problems of supervision, safety, security or morale, it may require the two City employees who have married or who have registered as domestic partners to decide which one of the ~~spouses-them~~ will resign from City employment within 60 days of being notified of the City Administrator's inability to make a reasonable accommodation.

C. Registered Domestic Partners - Defined. For the purposes of this section, a "registered domestic partner" shall refer to domestic partners who have registered in any of the following ways:

1. with the Santa Barbara City Clerk's Office pursuant to Chapter 9.135 of the Santa Barbara Municipal Code;
2. with the state of California Secretary of State office as the term is defined in state Family Code section 297; or
3. with another municipal, county, or state domestic partner registry authorized and maintained by a governmental entity within the United States.

D. Charter Section 710 and Nepotism. For the purposes of City Charter Section 710, use of the term "marriage" shall include those persons who are registered domestic partners as defined and used in this section 3.16.073.

CITY OF SANTA BARBARA
REDEVELOPMENT AGENCY MINUTES

Regular Meeting
April 20, 2010
Council Chamber, 735 Anacapa Street

CALL TO ORDER

Chair Helene Schneider called the joint meeting of the Agency and the City Council to order at 2:03 p.m.

ROLL CALL

Agency members present: Dale Francisco, Frank Hotchkiss, Grant House, Michael Self, Bendy White, Das Williams, Chair Schneider.

Agency members absent: None.

Staff present: Executive Director/Secretary James L. Armstrong, Agency Counsel Stephen P. Wiley, Deputy Director Paul Casey, Housing and Redevelopment Manager Brian Bosse, City Clerk Services Manager Cynthia M. Rodriguez.

PUBLIC COMMENT

No one wished to speak.

CONSENT CALENDAR (Item No. 1)

Motion:

Agency/Council Members House/Hotchkiss to approve the Consent Calendar as recommended.

Vote:

Unanimous roll call vote.

1. Subject: Minutes (9)

Recommendation: That the Redevelopment Agency waive the reading and approve the minutes of the special meeting of March 30, 2010.

Action: Approved the recommendation.

REDEVELOPMENT AGENCY REPORTS

2. Subject: Future Of The Redevelopment Agency (620.01/14)

Recommendation: That Council and the Redevelopment Agency Board receive a report on the future of the Redevelopment Agency.

Documents:

- April 20, 2010, report from the Deputy Director.
- April 20, 2010, PowerPoint presentation prepared and made by staff.

Speakers:

Staff: Housing and Redevelopment Manager Brian Bosse, Assistant City Attorney Sarah Knecht.

By consensus, the Board and Council received the report.

ADJOURNMENT

Chair Schneider adjourned the meeting at 5:45 p.m.

SANTA BARBARA
REDEVELOPMENT AGENCY

SANTA BARBARA
CITY CLERK'S OFFICE

HELENE SCHNEIDER
CHAIR

CYNTHIA M. RODRIGUEZ, CMC
CITY CLERK SERVICES MANAGER



CITY OF SANTA BARBARA

JOINT COUNCIL AND REDEVELOPMENT AGENCY AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers
Chairperson and Boardmembers

FROM: Engineering Division, Public Works Department
Housing and Redevelopment Division, Community Development
Department
Administration Division, Police Department

SUBJECT: Contract For Professional Services For The Police Station Seismic
And Structural Analysis Services Project

RECOMMENDATION:

- A. That the City Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Approving and Adopting the Findings Required by Health and Safety Code Section 33445.1 for Redevelopment Agency Funding of Capital Improvements for the Police Station Renovation Located Outside and Not Contiguous to the Central City Redevelopment Project Area and Authorizing Certain Other Actions; and
- B. That the Redevelopment Agency (RDA) Board authorize the expenditure of \$151,246 for seismic and structural analysis of the Police Station by Coffman Engineers, building assessment services by Paul Poirier and Associates Architects, and related project management services by Public Works Department staff.

EXECUTIVE SUMMARY:

Over the past two years, staff has been working on an evolving project that began as the Police Station Men's Locker Room Upgrade Project. During the course of a preliminary structural review, questions arose regarding the need to perform an in-depth modeling of the structure to determine deficiencies, seismic retrofit requirements, and their associated costs. Staff conducted a Request for Proposal and found that Coffman most closely met the City's requirements to perform the analysis. Poirier was chosen to provide a building assessment to summarize the condition of key elements of the building.

DISCUSSION:

BACKGROUND

The Police Station, constructed in 1959, is a concrete and steel structure that operates as an essential facility for the City of Santa Barbara. Currently, this City-owned facility houses approximately 214 police officers and administrative staff, and is in full operation 24 hours per day, seven days per week. Not only does this building serve as the main administrative office for police services, it also includes a jail and shooting range, chemical and Special Weapons and Tactics (SWAT) equipment, criminal records, crime scene evidence, the Police and Fire Combined Communications Center that handles 911 calls and all radio communication. In case of a disaster, the building also serves as the City's backup Emergency Operations Center.

The Police Station contains the original Heating, Ventilation, and Air Conditioning (HVAC), electrical, and plumbing equipment that was installed in the 1950's. Improvements to the Police Station have been limited over the years, due mainly to the cost and difficulty of working on a building that must remain in operation 24 hours per day, 7 days per week, and because it contains sensitive areas that cannot easily be disrupted. In 2006, the main lobby of the building was remodeled to improve security. Over the years, ten small HVAC units were added to improve working conditions when the capacity of the original HVAC unit was not capable of meeting occupant heating and cooling needs.

PROJECT BACKGROUND

In 2007, Council directed staff to make tenant improvements to the dilapidated men's locker room. Located in the basement of the building, the men's locker room, along with the exercise and shower rooms, is the only area available for Police Department staff to store uniforms, field equipment, and personal items while on duty. These rooms have several issues including, but not limited to:

- Minimal ventilation
- Severely limited overhead clearance due to piping and ventilation ducting
- Non-compliance with the Americans with Disabilities Act (ADA)

Staff returned to Council in October 2007 and received approval for a preliminary design contract for \$148,158 with Poirier. The analysis addressed the dilapidated condition of the locker room area, analyzed the electrical and mechanical system for the men's locker and exercise rooms, and included recommendations. A full building system assessment was not included in the study. Upon completion, the design architect's

examination revealed a number of substantial issues with the original HVAC unit that included the following:

- Inability to meet the building heating and cooling needs
- Gross inefficiency
- Well beyond useful life expectancy

Separate from the impaired HVAC, the study indicated that the replacement of the main switchboard, transformer, and distribution panel was long overdue. As these units were originally installed circa 1950s, replacement parts are no longer available. Furthermore, due to its age and impedance, the transformer is extremely inefficient.

In July 2008, staff presented the preliminary design analysis to Council, which included three options on how to proceed:

- Option A: Upgrade locker and exercise rooms
- Option B: Upgrade locker and exercise rooms and install an emergency generator
- Option C: Upgrade locker and exercise rooms and install an emergency generator and new HVAC system

Council chose Option C in hopes of addressing more of the building deficiencies, for a total project cost of \$5.3 million. During that meeting, Council approved an additional \$365,117 for the design consultant to perform this additional design work. Council also directed staff to include the women's restroom remodel, and to return with a revised estimate and anticipated program impacts. In addition, Council determined that the appropriate funding source for the project should be RDA funds. The Council made the findings of fact needed to fund a publicly owned capital project with redevelopment funds.

With the increased scope, staff expanded the initial design review and returned to Council and RDA Board in December 2008 with a refined project scope. The revised total project cost estimate was \$8 million for the new work which includes \$6 million for construction. Council subsequently approved the expanded design scope and increased cost, noting that the bulk of additional expense was attributed to:

- The women's locker room upgrade
- Necessary replacement of the entire HVAC ducting system
- Required asbestos and lead removal
- Required relocation of all building occupants during construction

In February 2009, with an expanded project scope that would impact the entire Police Department staff, an internal Project Stakeholder Group was assembled to assist with critical decisions. The group included the Police Chief, a Police Lieutenant, the Public Works Director, the Housing and Redevelopment Manager, and the Community

Development Director, along with a Principal Engineer managing the project. As the design progressed, detailed information about the complexity of the Police Station temporary relocation resulted in a projected relocation cost of \$2 million, disproportionate with the actual construction cost estimate of \$6 million, and pushing the total project cost estimate to \$9.5 million. Given the significant impact of relocation in both cost and Police Department staff, efforts began to complete an entire building assessment, including a review of the existing structure's seismic stability.

In June 2009, structural engineers from Ehlen, Spiess & Haight, Inc., were retained to provide a preliminary seismic evaluation and report of the building's structural systems. The report identified a significant number of structural deficiencies and recommended a more comprehensive investigation, including computer modeling and an analysis of the building structural frame. The results of the preliminary review indicated that the building did not meet the California Building Code's Seismic Performance Standards for Police Facilities, referred to as "Immediate Occupancy" (or "immediately operational following a maximum probable earthquake in a 500 year return period").

Additionally, there was concern about meeting minimum safety requirements in the front half of the building, referred to as "Life Safety", (a seismic performance standard that allows for occupants to safely exit the building though the building may not be habitable again). Based on concerns about the seismic capability of the building, staff is requesting approval to further investigate the condition of the structure and costs associated with a possible retrofit of the building.

CONSULTANT SERVICES

The work by Coffman will consist of seismic and structural analysis of the Police Station building, and will include research into the original construction of the building and testing of the structure, followed by computer modeling to determine the seismic performance during an earthquake. Additionally, retrofit models and their costs will be developed to meet "Life Safety" and "Immediate Occupancy" service standards. This information will be presented to Council in a subsequent Council report. Coffman was selected through an RFP process as the most qualified consultant. They have successfully completed other projects at similar police facilities, schools, and hospitals. Staff recommends that Council authorize, by Resolution, the Public Works Director to execute a contract with Coffman in the amount of \$99,446 for seismic and structural analysis, and authorize the Public Works Director to approve expenditures of up to \$10,000 for extra services that may result from necessary changes in the scope of work.

The work by Poirier will complete a building assessment. The building assessment is meant to identify conditions of the building to aid in discussions and decisions about the building's future. The assessment would include the following key building elements:

1. HVAC
2. Electrical
3. Plumbing
4. ADA
5. Roof
6. Lead and Asbestos
7. Summary of the Seismic Structural Results

Staff recommends that Council, by Resolution, authorize the General Services Manager to issue a purchase order contract to Poirier in the amount of \$19,800 for the building assessment, and authorize the General Services Manager to approve expenditures of up to \$2,000 for extra services that may result from necessary changes in the scope of work.

NEXT MILESTONE

Following the completion of the seismic analysis and building assessment, staff anticipates that they will have building retrofit options by November 2010, and will schedule the item for Finance Committee review and recommendation before returning to Council and Board in early 2011. Based on a final decision by Council in early 2011, staff anticipates that the process to develop final plans and specifications for a seismic retrofit project, including relocation planning, will likely take more than one year to complete. The schedule's most significant "unknown" will be the level of relocation effort required by the final project.

FUNDING

The following summarizes the cost of seismic analysis and building assessment:

ESTIMATED TOTAL COST

Seismic Analysis (by Contract by Coffman)	\$99,446
Coffman Extra Services	\$10,000
Building Assessment (by Contract with Poirier)	\$19,800
Poirier Extra Services	\$2,000
Project Management (by City Staff)	\$20,000
TOTAL COST	\$151,246

With approximately \$7.4 million in the RDA project account, there are sufficient funds to cover these costs.

HEALTH AND SAFETY CODE SECTION 33445.1

Health and Safety Code Section 33445.1 provides that a redevelopment agency, with the consent of the legislative body, may pay for the installation and construction of public improvements on property located outside and not contiguous to a redevelopment project area, but within the community, if the legislative body (City Council) makes certain findings of fact. The proposed findings of fact are set forth in the attached Resolution recommended for adoption by the City Council.

PREPARED BY: Joshua Haggmark, Principal Civil Engineer\mj
Brian Bosse, Housing and Redevelopment Manager
Gil Torres, Police Captain

SUBMITTED BY: Christine F. Andersen, Public Works Director
Paul Casey, Assistant City Administrator
Cam Sanchez, Police Chief

APPROVED BY: City Administrator's Office

RESOLUTION NO. ____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA APPROVING AND ADOPTING THE FINDINGS REQUIRED BY HEALTH AND SAFETY CODE SECTION 33445.1 FOR REDEVELOPMENT AGENCY FUNDING OF CAPITAL IMPROVEMENTS FOR THE POLICE STATION RENOVATION LOCATED OUTSIDE AND NOT CONTIGUOUS TO THE CENTRAL CITY REDEVELOPMENT PROJECT AREA AND AUTHORIZING CERTAIN OTHER ACTIONS

WHEREAS, the Redevelopment Agency of the City of Santa Barbara is undertaking certain activities for the planning and execution of redevelopment projects in the Central City Redevelopment Project Area ("CCRP");

WHEREAS, In order to meet the public safety needs of the residents, visitors and commercial activities occurring within the CCRP, the ageing and inadequate Police Station must be renovated;

WHEREAS, The Police Station is located outside and is not contiguous to the CCRP; and

WHEREAS, The Redevelopment Agency may, with the consent of the City Council, pay all or part of the cost of the construction of the Police Station Renovation that is publicly owned and is located outside and not contiguous to the CCRP, but is located within the City of Santa Barbara, if the City Council makes the findings set forth below.

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

SECTION 1. The Police Station Renovation is of primary benefit to the CCRP because the Police Station is located half of a block from the CCRP and provides public safety services to the CCPR. The existing Police Station is ageing and inadequate to serve the public safety needs of the residents, visitors and businesses located within the CCRP. The Police Station must be renovated in order to efficiently address the public safety needs of the residents, visitors and businesses located within the CCRP.

SECTION 2. The Police Station Renovation will help eliminate blight within the CCRP by ensuring that adequate and efficient public safety is continually provided within the CCRP. Increasing the safety and security of residents, visitors and businesses within the CCRP will generate increased pedestrian, commercial and visitor activity which will itself lead to increased investment and the elimination of blight and the factors that lead to blight in the CCRP.

SECTION 3. No other reasonable means of financing the Police Station Renovation is available to the community. Funds from general obligation bonds, revenue bonds, special assessment bonds and Mello-Roos Community Facilities Act bonds, are not

available and issuance of new debt by the City to finance the Police Station Renovation is not feasible. The City, along with the state of California and federal government, is facing an economic crisis of historic proportions and is, therefore, unable to devote declining General Fund revenues to fund public improvements. Taxpayers, also suffering from record unemployment levels and increased living costs, are unable and unwilling to increase taxes, even to finance necessary public safety improvements.

SECTION 4. The payment of funds for the Police Station Renovation is consistent with the Agency's 2010-2014 Implementation Plan adopted pursuant to Section 33490 which provides as follows:

“Police Department Building Renovations: Seismic and structural upgrades of the police station headquarters at 215 E. Figueroa Street. Interior remodeling would upgrade the locker and exercise rooms, install an emergency generator and new heating, ventilation and air conditioning (HVAC) and electrical system. This project will eliminate blight that begins with the degradation of infrastructure and will prevent blight by providing safe and well-maintained support facilities for emergency response within the Project Area.”

SECTION 5. The Police Station Renovation is provided for in the Agency's Redevelopment Plan. The Redevelopment Plan provides as follows:

“Section 415 Public Improvements: The Agency is authorized to cause, provide, or undertake, or to make provision with any person or public entity for the installation or construction of such public improvements and public utilities including placing said utilities underground either within or without the Project Area as are necessary to carry out this Plan. Such public improvements include, but are not limited to, streets, curbs, gutters, sidewalks, street lights, sewers, storm drains, traffic signals, street trees, electrical distribution systems, communications systems, natural gas distribution systems, water distribution systems, fire hydrants, parks and playgrounds and public buildings.”

The Plan specifically authorizes the Agency to provide for or undertake with any public entity for the installation or construction of public buildings outside the boundaries of the CCRP.

SECTION 6. The City Council authorizes the Public Works Director to execute a Professional Services contract with Coffman Engineers for engineering services in the amount of \$99,446 for Police Station seismic and structural analysis and to approve expenditures of up to \$10,000 for extra services that may result from necessary changes in the scope of work.

SECTION 7. The City Council further authorizes the General Services Manager to issue a Purchase Order to Paul Poirier and Associates Architects for building assessment services in the amount of \$19,800 and approve expenditures of up to \$2,000 for extra services that may result from necessary changes in the scope of work.



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department

SUBJECT: Public Hearing To Acquire Property Interests At 306 West Ortega Street By Eminent Domain For The Ortega Street Bridge Replacement Project

RECOMMENDATION: That Council:

- A. Accept the Addendum to the Certified Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Lower Mission Creek Flood Control Project (State Clearing House SCH No. 1998101061, dated March 10, 2008), prepared by the City's Environmental Analyst for the Ortega Street Bridge (Bridge) Replacement Project ; and
- B. Adopt, by reading of title only, A Resolution of Necessity by the Council of the City of Santa Barbara for the Real Property at 306 West Ortega Street, Adjacent Access Easement, and Adjacent Parking Easement, all Located on Portions of Santa Barbara County Assessor's Parcel Number 037-073-011.

EXECUTIVE SUMMARY:

The Ortega Street Bridge Replacement Project (Project) will replace the existing bridge over Lower Mission Creek. The Project is an approved Federal Highway Bridge Program project with oversight provided through Caltrans. Construction of the Project is scheduled to begin in 2011.

The City must purchase various property interests for the Project, and offers have been made to affected owners. To date, with the exception of Mission Creek Properties, LLC (Mission Creek Properties), which owns the property at 306 West Ortega Street, all of the City's purchase offers have been accepted. All property interests and their status are shown on Attachment 1, and the necessary interests are outlined on Attachment 2.

The purpose of this hearing is to determine the public necessity to acquire certain remaining property interests at 306 West Ortega Street (Property Interests), to make the necessary findings to use the Eminent Domain process, and to adopt the proposed Resolution of Necessity (Resolution). Even though a tentative settlement purchase

agreement is now being drafted and may soon be signed, as a precaution to enable commencement of the Project on the optimum schedule, the proposed Resolution is recommended to be adopted by Council to authorize the City Attorney to initiate action to acquire the Property Interests by eminent domain action, if it becomes necessary.

DISCUSSION:

The Project requires the City to purchase certain rights of way, including two residential properties, and various permanent and temporary easements, as shown on Attachment 1. The City must acquire the rights of way in accordance with applicable laws and guidelines, with oversight provided by Caltrans to ensure City eligibility for reimbursement of Project costs using Highway Bridge Replacement and Rehabilitation funds provided by the Federal Highway Administration.

To date, the City purchase offers have been accepted by the owners of the following properties: 309 West Ortega Street, 314 West Ortega Street, 627 Bath Street, 631 Bath Street, and 620 Castillo Street. As previously approved by Council, steps are ongoing by staff to finalize those purchases.

Property Interests – 306 West Ortega Street

Efforts are ongoing to obtain a purchase agreement with Mission Creek Properties to enable the City to purchase certain Property Interests, including its property at 306 West Ortega Street, together with adjacent access and parking easements. The Property Interests are located on portions of the property that contain eleven residential rental units and one commercial unit, known as 306, 308, and 310 West Ortega Street, and 701, 705, and 709 Bath Street, all owned by Mission Creek Properties. The rental unit at 306 West Ortega Street is a separate structure, occupied by tenants. No other rental units at this location are needed for the Project.

Based on recent discussions between City staff and Mission Creek Properties, a purchase agreement may soon be signed, but if the steps to obtain the purchase agreement and to close the escrow are not completed on schedule, the Resolution will enable steps by the City Attorney to obtain legal possession as allowed by law to keep the Project on track. The potential for delay and increased Project costs are the primary reasons why the use of eminent domain may become necessary to acquire the Property Interests.

Tenant Relocation

The tenants at 306 West Ortega Street will be displaced by the Project because the residential unit is located within the work area. The unit will not be removed, but it will not be habitable during the Project. Steps are being taken in accordance with applicable laws and guidelines to relocate the tenants who presently occupy the rental unit to acceptable replacement housing.

Purpose of Hearing

In order to proceed with eminent domain, it is required to first conduct a public hearing concerning the Property Interests being sought by the City. Subject to the evidence presented at such hearing, Council should consider adoption of the Resolution to authorize their acquisition through the use of eminent domain if it ultimately becomes necessary.

As required by Section 1245.235 et seq. of the California Code of Civil Procedure, written notices were mailed to the owner, Mission Creek Properties, at least fifteen (15) days before the scheduled Council hearing to provide notice of Council's intent to hear any evidence and to consider the possible adoption of the Resolution. The notice satisfies all legal noticing requirements for the hearing.

As provided in the California Code of Civil Procedure, the public hearing related to the proposed adoption of the Resolution should be limited to discussion of the requisite statutory findings as set forth in Section 1240.030 of the Code of Civil Procedure, namely:

- a. That the public interest and necessity require the proposed Project.
- b. That the proposed Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- c. That the property described in the Resolution is necessary for the proposed Project.
- d. That either the offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

The proposed Resolution should be adopted by Council to authorize the City Attorney to initiate Superior Court eminent domain litigation, if necessary. Pursuant to Section 1245.240 of the California Code of Civil Procedure, the proposed Resolution requires approval by at least five Council members.

Following the recommended adoption by Council of the proposed Resolution, discussions between Mission Creek Properties, the City Attorney, and City staff, with coordination by assigned agents of Hamner, Jewell and Associates, consultant on behalf of the City, will continue to possibly acquire the Property Interests by successful negotiations. The escrow necessary to finalize City acquisition of the Property will also be expedited as much as possible.

Environmental Review

Staff recommends that Council also accept the Addendum to the Certified Final EIS/EIR for the Lower Mission Creek Flood Control Project prepared by the Project Environmental Analyst. The Addendum was prepared to address the Project specific elements pertaining to the Lower Mission Creek Flood Control Project (State Clearinghouse No. 1998101061).

The Addendum concludes that the Project impacts are not substantial and do not involve new significant impacts nor a substantial increase in severity of previously identified impacts.

The Addendum is available to the public at the City Clerk's office and at the Public Counter located at the Community Development Department offices at 630 Garden Street.

BUDGET/FINANCIAL INFORMATION:

The table shown on Attachment 3 summarizes all estimated Ortega Street Bridge Replacement Project costs. The total cost is estimated at \$6,790,400, with combined costs estimated at \$2,150,000, for acquiring the necessary property interests.

In addition to payment of the costs for the purchase of properties and easements required for the Project, it is necessary to pay the costs for the relocation of displaced occupants pursuant to federal and state laws and guidelines. Once all displaced occupants have been relocated to replacement dwellings, the final costs will be known. The associated right of way and construction costs will also be shared between the City (11.47%), and grant funding (88.53%), in accordance with applicable guidelines and the formula shown on Attachment 3.

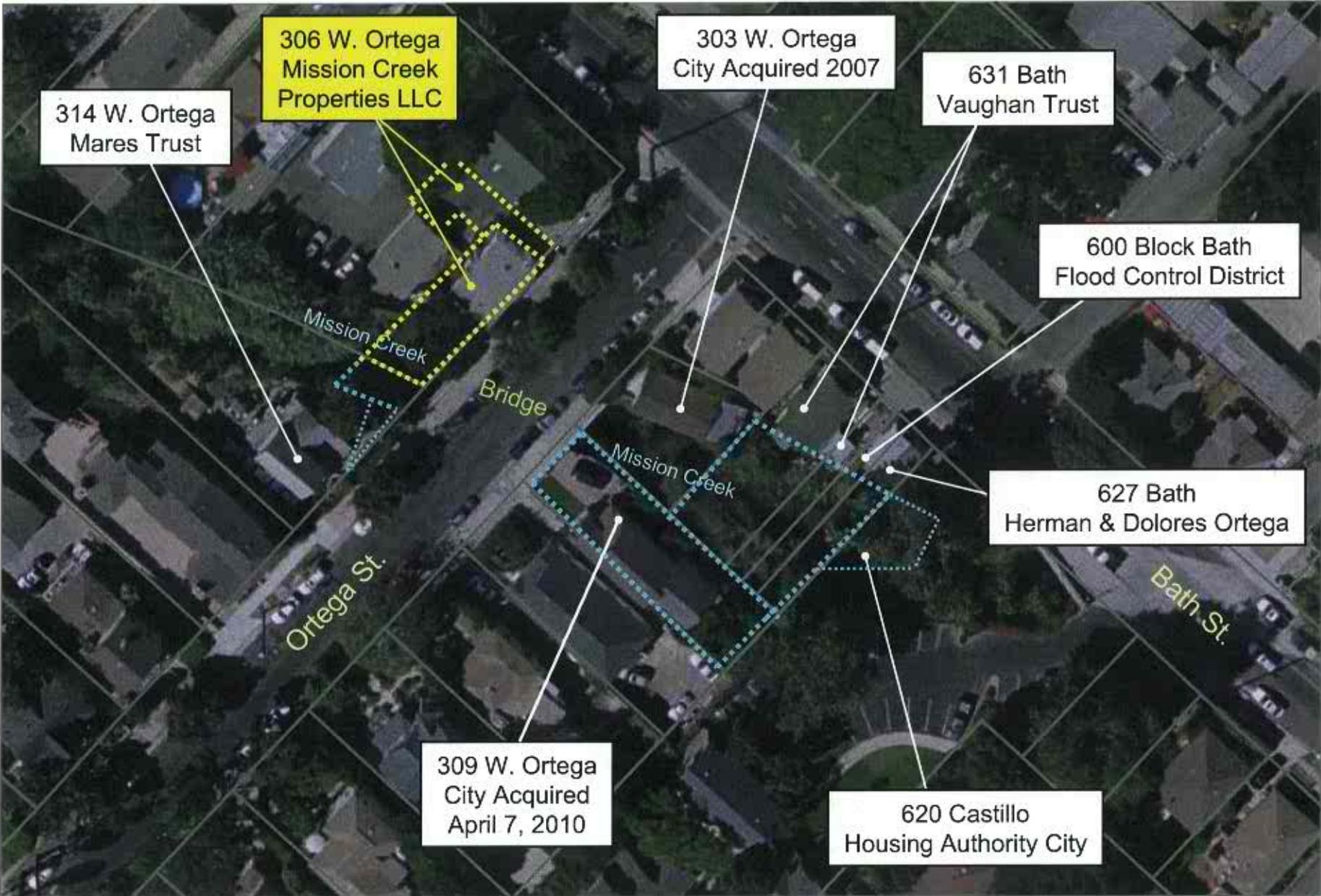
There are sufficient appropriations in the Streets Capital Fund to cover the City's costs.

- ATTACHMENTS:**
- 1) Project Area Aerial Photo
 - 2) Acquisitions And Easements For Ortega Street Bridge Replacement Project
 - 3) Estimated Total Project Cost

PREPARED BY: John Ewasiuk, Principal Civil Engineer/DI/sk

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office



PROJECT AREA AERIAL PHOTO

ATTACHMENT 2

Acquisitions And Easements For Ortega Street Bridge Replacement Project

The properties and easements needed for the Ortega Street Bridge Replacement Project are identified below.

Address	Description	Status
303 West Ortega Street, City Property	Entire Property Acquired; Structure Located Within Mission Creek Work Area	City Acquired 2007
306 West Ortega Street, Mission Creek Properties LLC	Portion Property to be Acquired in Fee, along with Easement for Access, and Along with Easement for Parking; Structure Located Within Mission Creek Work Area	Offer Pending Ongoing Contacts by City Agents with Owner, Mission Creek Properties, LLC; Hearing Relating to Possible Use of Eminent Domain
309 West Ortega Street, Manuel & Juana Figueroa	Entire Property Acquired; Structure Within Mission Creek Work Area	City Acquired and Closed Escrow on April 7, 2010; Approved by Agreement 23,296
314 West Ortega Street, Mares Family Trust	Temporary Construction Easement and Mission Creek Easement Acquired; Released Narrow Strip of Land within Mission Creek	City Acquired Easements on April 27, 2010, by Agreement 23,410; Escrow Pending
620 Castillo Street, Housing Authority of City	Temporary Construction Easement Acquired for Work in Mission Creek	City Acquired Easement on April 27, 2010, by Agreement 23,413
627 Bath Street, Herman & Dolores Ortega	Mission Creek Easement Acquired for Alignment of Mission Creek	City Acquired Easement on April 27, 2010, by Agreement 23,411; Escrow Pending
600 Block Bath Street, County Flood Control District	Encroachment Permit for Work in Mission Creek	Issuance of Permit by County Flood Control District Pending
631 Bath Street, Vaughan Trust	Mission Creek Easement Acquired for Alignment of Mission Creek	City Acquired Easement on April 27, 2010, by Agreement 23,412; Escrow Pending

ATTACHMENT 3

ORTEGA BRIDGE REPLACEMENT PROJECT

ESTIMATED TOTAL PROJECT COST

PROJECT PHASE	HBP SHARE	CITY SHARE	ESTIMATED COSTS
Design Phase *	\$707,760	\$176,940	\$884,700
Right of Way Phase	\$1,903,395	\$246,605	\$2,150,000
Construction Phase	\$3,324,920	\$430,780	\$3,755,700
Totals	\$5,936,075	\$854,325	\$6,790,400

The table above shows total estimated Project costs. The Project is currently in the Right of Way Phase and has been authorized up to \$2,150,000 (per written approval by Caltrans).

Caltrans is overseeing the City's steps to purchase all properties and easements for the Project, since 88.53% of the City's eligible right of way and construction costs will be reimbursed by the Federal Highway Bridge Program (HBP) through Caltrans. The City will be responsible for 11.47% of these eligible costs.

- * The Design Phase of this Project included 80% Federal Highway Bridge Program reimbursement with the City responsible for 20% of eligible Design costs.

RESOLUTION NO. _____

A RESOLUTION OF NECESSITY BY THE COUNCIL OF THE CITY OF SANTA BARBARA FOR THE REAL PROPERTY AT 306 WEST ORTEGA STREET, ADJACENT ACCESS EASEMENT, AND ADJACENT PARKING EASEMENT, ALL LOCATED ON PORTIONS OF SANTA BARBARA COUNTY ASSESSOR'S PARCEL NUMBER 037-073-011

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES HEREBY DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. That on May 18, 2010, after fifteen days written notice to the owners of the property described hereafter, as they appeared on the last equalized County Assessment Roll, the City Council held a hearing for the purpose of allowing the owners thereof and other persons a reasonable opportunity to appear and be heard on the following matters:

- a. That the public interest and necessity require the proposed project;
- b. That the proposed project (identified as the Ortega Street Bridge Replacement Project, as depicted on City Plan No. C-1-4581, a copy of which is permanently on file at the Public Works Department of the City of Santa Barbara) is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury;
- c. That the property and easements described in the Resolution are necessary for the proposed project;
- d. That the offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record;
- e. That the proposed project has been evaluated in the Certified Lower Mission Creek Flood Control (LMCFC) Project Environmental Impact Statement/Environmental Impact Report (EIS/EIR) (State Clearinghouse No. 1998101061) and an Addendum to the LMCFC Project EIS/EIR dated March 10, 2008, pursuant to the California Environmental Quality Act (CEQA). The Addendum indicates that no new significant impacts or changes in circumstances or regulations would be anticipated since the original EIS/EIR was certified; and,
- f. Such other and further matters as may be referred to in California Code of Civil Procedure §1245.230.

SECTION 2. That the Council of the City of Santa Barbara does hereby find, determine and declare that:

- a. The public interest and necessity require the proposed project;
- b. The proposed project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury;
- c. All the property and easements described in this Resolution are necessary for the proposed project;

d. The offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record (or the offer has not been made because the owner cannot be located with reasonable diligence); and

e. The proposed project was evaluated in the Certified Lower Mission Creek Flood Control (LMCFC) Project Environmental Impact Statement/Environmental Impact Report (EIS/EIR) (State Clearinghouse No. 1998101061) and an Addendum to the LMCFC Project EIS/EIR dated March 10, 2008, pursuant to the California Environmental Quality Act (CEQA). The certified EIS/EIR determined that there would be unavoidable impacts associated with the project. The Addendum indicates that no new significant impacts or changes in circumstances or regulations would be anticipated since the original EIS/EIR was certified

The taking of the real property and the easements described herein is authorized by Section 19 of Article I of the California Constitution, Section 37350.5 of the California Government Code, and Sections 1240.010 through 1240.125 of the California Code of Civil Procedure.

SECTION 3. That the Council of the City of Santa Barbara does hereby declare that it is the intention of said City to acquire said real property and said easements described herein in its name in accordance with the provisions of the laws of the State of California with reference to condemnation procedures.

SECTION 4. That the said real property is located in the City of Santa Barbara, County of Santa Barbara, State of California, as more particularly described on Exhibit A and depicted on Exhibit B, both attached hereto and incorporated herein; reserving to Grantor for the benefit of the remainder property, a permanent non-exclusive license for existing utilities servicing the remainder of the Real Property; provided, however, that City and its successors and assigns have the right to relocate the utility service lines so long as Grantor's utility services are maintained from available public utilities located within adjacent Ortega Street or Bath Street; and reserving to Grantor for the benefit of the remainder property, a non-exclusive easement for ingress and egress by vehicles and pedestrians, as described on Exhibit A and depicted on Exhibit B; and reserving to Grantor for the benefit of the remainder property, an exclusive easement for parking of lawfully registered and operable vehicles, as described on Exhibit A and depicted on Exhibit B.

SECTION 5. That the said easement for access is located in the City of Santa Barbara, County of Santa Barbara, State of California, as more particularly described on Exhibit C and depicted on Exhibit D, both attached hereto and incorporated herein, being a permanent non-exclusive appurtenant easement for ingress and egress, for the benefit of that portion of the Real Property granted in fee, as described herein on Exhibit A and depicted on Exhibit B.

SECTION 6. That the said easement for parking is located in the City of Santa Barbara, County of Santa Barbara, State of California, as more particularly described on Exhibit E and depicted on Exhibit F, both attached hereto and incorporated herein, being a permanent appurtenant exclusive easement for parking of lawfully registered and operable vehicles, for the sole and exclusive benefit of that portion of the Real Property granted in fee, as described herein on Exhibit A and depicted on Exhibit B.

SECTION 7. That the City Attorney is hereby authorized and directed to prepare, institute and prosecute in the name of the City, and is authorized to retain a law firm as Special Counsel for such proceedings, if necessary, in the proper Court having jurisdiction thereof, as may be necessary for the acquisition of the real property, the adjacent easement for parking, and the adjacent easement for access. Said counsel is also authorized and directed to obtain a necessary order of court granting to said City the right of immediate possession and occupancy of said real property and certain adjacent easements, and, at the discretion of the City Attorney, to approve and execute a settlement agreement or stipulated judgment vesting title to the real property and the easements described herein on terms and conditions approved by the City Attorney for the best interests of the City.

SECTION 8. That the Environmental Quality Control Act of 1970, as amended, and guidelines adopted pursuant thereto, have been complied with insofar as the above project is concerned by the preparation of the Addendum to the Certified Lower Mission Creek Flood Control (LMCFC) Project Environmental Impact Statement/Environmental Impact Report (SCH No. 1998101061, dated March 10, 2008), which is hereby approved and directed to be filed with the City Clerk.

Exhibit A
(Parcel 037-073-011-1)

037-073-011-1

That portion of land described in the deed to Mission Creek Properties, LLC, a Limited Liability Company recorded April 29, 2004 as Instrument No. 2004-0044757 of Official Records, in Block 196 of the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

Commencing at the easterly corner of said Block 196, at the intersection of the southwesterly line of Bath Street with the northwesterly line of Ortega Street; thence along the northwesterly line of Ortega Street South 42°24'18" West, 53.09 feet to the True Point of Beginning of the land described herein; thence North 47°40'33" West, 37.82 feet; thence South 42°24'22" West, 97.81 feet to a point on the center line of Mission Creek being a point on the southerly line of said Mission Creek Property; thence along said center line South 72°17'46" East, 10.02 feet; thence continuing along said centerline South 68°10'11" East, 7.37 feet; thence continuing along said centerline South 64°17'52" East, 8.92 feet; thence continuing along said centerline North 85°55'12" East, 19.28 feet to a point on the northwesterly line of Ortega Street; thence along said northwesterly line of Ortega Street North 42°24'18" East, 74.55 feet to the point of beginning.

Containing an area of 3,357 square feet, more or less.

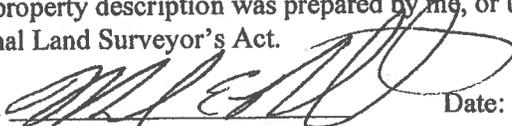
Reserving therefrom to Grantor for the benefit of the remainder property a non-exclusive easement for ingress and egress by vehicles and pedestrians over the northeasterly 5.80 feet as measured perpendicular to the northeasterly line of the land described herein.

Also reserving therefrom to Grantor for the benefit of the remainder property an exclusive easement for parking of lawfully registered and operable vehicles over that portion of said land described as follows:

Commencing at the point of beginning of the land described above; thence along the northeasterly line of said land North 47°40'33" West, 37.82 feet to the northerly corner of said land; thence along the northwesterly line of said land South 42°24'22" West, 17.78 feet to the True Point of Beginning of the portion of land herein described; thence continuing along said northwesterly line South 42°24'22" West, 9.43 feet; thence South 47°40'33" East 3.80 feet; thence North 42°24'22" East, 9.43 feet; thence North 47°40'33" West, 3.80 feet to the point of beginning.

APN: portion of 037-073-011

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature: 
Mark E. Reinhardt, PLS

Date: 12-28-09



EXHIBIT "B"

BATH

STREET

PROPOSED
5.8' WIDE
INGRESS/EGRESS
EASEMENT RESERVED
219 SF

N47°40'33"W
37.82'

P.O.C.

P.O.B.

PROPOSED
9.43'x3.80'
RESERVED
PARKING
36 SF

97.81'

S42°24'22"W

037-073-011-1

3,357 S.F.

74.55'

N42°24'18"E

ORTEGA STREET



RIGHT-OF-WAY

S68°10'11"E
7.37'

N85°55'12"E
19.28'

8.92'
S64°17'52"E

10.02'
S72°17'46"E



MNS
ENGINEERS INC
4050 Calle Real, Suite 110
Santa Barbara, CA 93110
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT



1 inch = 20 ft.

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Exhibit C
(Parcel 037-073-011-2)

037-073-011-2

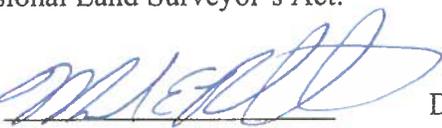
That portion of land described in the deed to Mission Creek Properties, LLC, a Limited Liability Company recorded April 29, 2004 as Instrument No. 2004-0044757 of Official Records, in Block 196 of the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

Commencing at the easterly corner of said Block 196, at the intersection of the southwesterly line of Bath Street with the northwesterly line of Ortega Street; thence along the northwesterly line of Ortega Street South 42°24'18" West, 53.09 feet to the True Point of Beginning of the land described herein; thence, North 47°40'33" West, 37.82 feet; thence South 42°24'18" West, 7.78 feet; thence North 47°29'44" West, 11.21 feet; thence South 42°30'16" West, 19.40 feet; thence North 47°32'53" West, 18.65 feet; thence North 42°14'18" East 30.73 feet; thence South 47°24'07" East 67.71 to a point on the northwesterly line of Ortega Street; thence along said northwesterly line South 42° 24' 18" West 3.30 feet to the point of beginning.

Containing an area of 828 square feet, more or less.

APN: portion of 037-073-011

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature: 
Mark E. Reinhardt, PLS

Date: 12-14-09



EXHIBIT "D"

BATH STREET

RIGHT-OF-WAY

P.O.C.

53.09'

N47°24'07"W 67.71'

3.30'

P.O.B.

S T.

O R T E G A

N42°24'18"E

30.73'

S42°24'18"W

037-073-011-2

828 S.F.

18.65' S47°32'53"E

19.40'

S47°29'44"E

N42°30'16"E

11.21'

7.78'

N42°24'18"E

S47°40'33"E

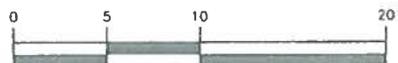
37.82'

B L O C K

C I T Y



ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT



1 inch = 10 ft.

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Exhibit E
(Parcel 037-073-011-3)

037-073-011-3

That portion of land described in the deed to Mission Creek Properties, LLC, a Limited Liability Company recorded April 29, 2004 as Instrument No. 2004-0044757 of Official Records, in Block 196 of the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

Commencing at the easterly corner of said Block 196, at the intersection of the southwesterly line of Bath Street with the northwesterly line of Ortega Street; thence along the northwesterly line of Ortega Street South 42°24'18" West, 53.09 feet; thence, North 47°40'33" West, 37.82 feet; thence South 42°24'18" West, 7.78 feet to the True Point of Beginning of the land described herein; thence South 42°24'18" West, 10.00 feet; thence North 47°29'44" West, 11.23 feet; thence North 42°30'16" East, 10.00 feet; thence South 47°29'44" East, 11.21 feet to the point of beginning.

Containing an area of 112 square feet, more or less.

APN: portion of 037-073-011

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature: 

Mark E. Reinhardt, PLS

Date: 12-14-09



EXHIBIT "F"

BATH STREET

P.O.C.

RIGHT-OF-WAY

53.09'

S.T.

ORTEGA

N42°24'18"E

S47°40'33"E

37.82'

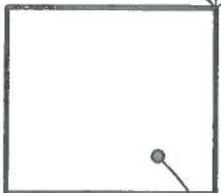
P.O.B.

S47°29'44"E
11.21'

7.78'

PROPOSED
INGRESS/EGRESS
EASEMENT RESERVED

N42°30'16"E
10.00'



10.00'

S42°24'18"W

11.23'
N47°29'44"W

037-073-011-3
112 S.F.



CITY



1 inch = 10 ft.

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ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

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CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Council members

FROM: Planning Division, Community Development Department

SUBJECT: Appeal Of Single Family Design Board Denial Of Retaining Walls For
1464 La Cima Road

RECOMMENDATION: That Council:

- A. Grant the appeal of Scott McCosker with direction on a modified design and grant the project preliminary approval making the findings contained in the staff report; and
- B. Refer the project back to the Single Family Design Board Consent Calendar for final approval consistent with Council's direction on a modified design.

EXECUTIVE SUMMARY:

On March 1, 2010, the Single Family Design Board (SFDB), by unanimous vote, denied a request to approve as-built retaining wall improvements at the rear of a private residence. The denial was requested by the owner after several design attempts failed to obtain project approval. The property owner (McCosker) has appealed this decision and requests that Council overturn the denial of the project, asserting that the proposed improvements comply with the Neighborhood Preservation Ordinance (NPO) and would be compatible with the surrounding neighborhood. The appellant states that there is no basis for denial of the project which, as modified, will meet design guidelines since no tree removals are proposed (see Attachment 1).

It is staff's position that this project is a relatively small improvement involving minor grading quantities, short lengths of retaining walls and common garden landscaping that are located in the rear yard of a private residence. The current project's level of controversy has been heightened given several disputes and appeals between the appellant and adjoining neighbor (Cook) over the last eight years. The project's review by the SFDB was further complicated given the initial retaining wall work was constructed without permit, did not meet building codes and by the level of opposition expressed at each hearing from the neighbor. Although some of the work is as-built, the applicant has shown a willingness to respond to some of the SFDB's direction to adjust the design,

change wall heights, and regrade the site to help soften the appearance of the walls. Staff understands the concerns expressed by the SFDB relative to protection of oak trees, however, sufficient reports have been submitted by a certified arborist indicating that the grading and retaining wall work has not and would not negatively impact the oak trees.

Staff is of the opinion, that a slightly revised project can be supported at this site with some further reductions in the size of terraces. It is recommended that Council deny the appeal but allow a revised project to move forward which involves a redesign to remove the terrace area on the eastern side of the property to lessen grading impacts on site. Staff recommends that Council refer the modified project back to SFDB Consent Calendar for final approvals.

PROJECT DESCRIPTION:

The project site is located on a 10,615 square foot lot on the upper portion of La Cima Road, on the west side of the City within the Bel Air residential neighborhood. This property and surrounding area are within the Hillside Design District. The project site is currently developed with a multi-story residence and attached two-car garage. The project improvements are to be located in the rear yard of the residence situated primarily on a sloped terrain (over 30%) that had historically been unimproved, given the steep terrain and quantity of oak trees.

The project scope consists of a proposal to remove existing non-permitted Allan block retaining walls and construct approximately 120 linear feet of reinforced block wall and Allan block retaining walls ranging in height from 3.5 to 6.5 feet. The project will abate violations in a current code enforcement case. The application is the second denial by the SFDB of this project improvement. The first proposal to permit as-built walls in this location was also denied without prejudice by the SFDB in June, 2009.

DISCUSSION:

Background

On March 1, 2010, the SFDB denied, on a 7/0 vote, a request for as-built retaining wall improvements at the rear of a private residence. The property owner (McCosker) has appealed this decision and requests that Council overturn the denial of the project, asserting that the current proposal is a revised design that addresses the concerns raised by the SFDB, and which is compatible with the surrounding neighborhood. The appellant states that there is no basis for denial and that the project as modified will meet design guidelines and protect the oak trees on the property.

SFDB Review

Since October 2008, the SFDB has reviewed this grading and retaining wall project at a total of six hearings under two separate applications. Over the course of these reviews, several issues of concern were raised at each hearing by the Board and adjacent neighbor including that of the structural integrity of the as-built walls, level of side yard encroachments, possible impacts to adjacent neighbor's privacy, impacts to oak trees and lack of substantial redesign. The applicant responded to these concerns by providing more detailed information, professional reports, and several changes to the proposed retaining walls and grading plan. The first application was reviewed at four meetings until the SFDB denied the project on June 22, 2009 on a 4/1/1 vote after concerns over a lack of structural information, setback encroachment, and lack of redesign. Since the as-built improvements were under code enforcement, a subsequent application was required to be filed to abate the ongoing violation.

A slightly different proposal, which included new landscaping plan, was submitted to Planning staff in August 2009 for informal review, pending the completion of a structural analysis of the existing walls. In December 2009, the structural evaluation was completed and revealed that some of the Allan block walls would need to be removed or reconstructed to meet building codes. A new proposal to demolish, reconstruct and redesign the garden area was developed as a result.

A revised plan and new application was submitted in January 2010 and the SFDB reviewed this revised project for the first time on February 1, 2010. The proposal involved a substantial reduction of Allan block walls areas since the original design. The circular garden terrace was relocated away from the property line; the total amount of terraced retaining wall areas was reduced from 100 lineal feet to 36 lineal feet with the removal of several Allan block walls. The SFDB continued to request a redesign, citing concerns about the amount of footing excavations and construction under the oak tree drip lines (see SFDB minutes, Attachment 2).

On March 1, 2010, the applicant returned with slightly revised design and letter from the arborist, but the SFDB continued to be concerned about building retaining walls in close proximity to the oak trees. The Board appeared to disagree with the introduction of an additional, smaller terrace area along the eastern side. Finding limited support for the revised plan, the Board denied the project at the applicant's request and stated that the hillside would be negatively affected by the proposed grading and retaining walls.

Appeal Issues

Neighborhood Compatibility

Appellant's Position: The improvements should be allowed to remain. Other neighbors support the retaining wall improvements and the project will be compatible with the neighborhood.

Staff's Position: The SFDB found the project was not redesigned sufficiently to lessen impacts to the oak trees and the hillside. The SFDB, however, did not state that the as-built retaining wall work was not compatible with the neighborhood. The SFDB did not cite a lack of consistency with NPO guidelines as a reason for project denial. The SFDB did not indicate they could not support the project because of aesthetic concerns or the inability to make the required Neighborhood Preservation Ordinance (NPO) findings for natural topography protection. The SFDB was more focused on scaling back the scope of the project design and limiting grading impacts to the oak trees (see Attachment 3).

Staff's position is that these landscaping improvements are relatively minor and not highly visible to the general public. Staff agrees with the SFDB that the terrace design should be reduced to a smaller garden area. Staff is of the opinion, that a complete denial of the project is not necessary and there is insufficient basis to require removal of all these as-built improvements. A slightly revised project can be supported at this site with some further reduction in the size of terraces. Therefore, it is recommended that Council require that the terrace area on the eastern side of the property be removed. Staff believes that the reduced sized project could be found compatible with the surrounding neighborhood and consistent with design guidelines (see Attachment 3, dated May 12, 2010)

Protection of Oak Trees

Appellant's Position: Two arborist report letters were provided to the SFDB that concluded the as-built installation of retaining walls do not negatively impact the oak trees. The arborist report letter provides a conclusion that there would be long-term benefits of retaining the hillside and improved drainage to assist in protection of tree roots (see Attachment 4).

Staff's Position: The SFDB has specific landscape design guidelines for native tree protection. The following guidelines are applicable:

1. **Earth Disturbance Prohibitions.** No earth disturbance is allowed in the circular area one-third the distance of the overall canopy/dripline as measured from the trunk. (For example, if the tree canopy is 30 feet, no work can be done in the first 10 feet from the outside edge of the trunk in all directions.) In other areas under the canopy/dripline, earth may only be disturbed with hand tools.
2. **Arborist's Report.** Any work within the general vicinity of the dripline of a native or specimen tree may require an Arborist's Report. If an Arborist's Report is required, the SFDB may defer to the report's recommendations.

The SFDB guidelines give flexibility to require reports to be submitted and to allow for the opinions of a professional arborist to be considered when considering potential impacts to tree canopies or roots. It appears that the SFDB did not completely defer to the arborist report's recommendations and still had concerns regarding the impacts to the oak trees. Staff does not believe the proposed grading work will adversely impact the oak trees given the expert opinions provided by the Arborist. However, staff recommends that no additional terraces be proposed on the eastern side of the property and that only a pathway be provided for access purposes. Staff does not support additional expansion of terraced areas or any proposal to expand grading fill in areas not already disturbed.

Neighborhood Preservation Findings

Appellant's Position: The proposed improvements have been modified and should be allowed to remain. There is no basis for project denial.

Staff's Position: The SFDB can deny a project if the appropriate NPO findings cannot be made. In the Hillside Design District, additional sloped lot findings are required to be made prior to granting project approvals involving natural topography protection, appropriate building scale, grading and tree preservation. Staff agrees with the SFDB that the proposed retaining walls could be reduced to better fit into the hillside but not because of potential impacts to the oak trees. Maintaining the natural topography and the steepness of the site should be the basis for limiting grading and the amount of retaining walls at this site. In this particular case, the retaining walls are of a minor nature, do not greatly impact adjoining neighbor's privacy, are not highly visible, and do not involve large quantities of grading.

Conclusion

Staff believes Council should direct the applicant to reduce the size of terraced areas as suggested earlier in the report. Staff has concerns regarding the amount of design review and City time already spent on this minor project. For this reason, staff recommends the project be referred back to the Consent Calendar with specific direction from Council. This type of grading and landscaping project can be found consistent with design guidelines and is similar to other approved grading projects.

Staff recommends that Council grant the appeal with direction to the applicant to modify the project design as noted in this report, making the findings contained in this report, and refer the project back to the SFDB Consent Calendar for final approval of the project consistent with the direction of Council.

NPO Findings (SBMC Chapter 22.69)

The City Council finds the following:

1. **Consistency and Appearance.** The proposed development is consistent with the scenic character of the City and will enhance the appearance of the neighborhood. Appropriate materials are being used for the walls which will not be highly visible.
2. **Compatibility.** The proposed development is compatible with the neighborhood, and its size, bulk, and scale are appropriate to the site and the neighborhood. The height and design of the walls are appropriate for the hillside area.
3. **Quality Architecture and Materials.** The proposed buildings and structures are designed with quality architectural details. The proposed materials for the retaining walls and colors maintain the natural appearance of the ridgeline or hillside.
4. **Trees.** The proposed project does not include the removal of or significantly impact any designated Specimen Tree, Historic Tree, or Landmark Tree. The proposed project preserves and protects healthy, non-invasive trees since no trees are proposed for removal.
5. **Health, Safety, and Welfare.** The public health, safety, and welfare are appropriately protected and preserved.
6. **Good Neighbor Guidelines.** The project generally complies with the Good Neighbor Guidelines regarding privacy, landscaping, noise, and lighting.
7. **Public Views.** The development, including proposed structures and grading, preserves significant public scenic views of and from the hillside. The proposed work is screened from public view.

Additional NPO Findings: Hillside Design District and Sloped Lot Findings.

1. **Natural Topography Protection.** The development, including the proposed structures and grading, is appropriate to the site, is designed to avoid visible scarring, and does not significantly modify the natural topography of the site or the natural appearance of any ridgeline or hillside.
2. **Building Scale.** The development maintains a scale and form that blends with the hillside by minimizing the visual appearance of structures and the overall height of structures.
3. **Grading.** The proposed grading will not significantly increase siltation in or decrease the water quality of streams, drainages or water storage facilities to which the property drains; and the proposed grading will not cause a substantial loss of southern oak woodland habitat given no trees are being removed.

- ATTACHMENTS:**
1. Appellant's letter dated March 11, 2010
 2. Single Family Design Board Minutes Summary
 3. Reduced copies of plans dated October 20, 2008, February 1, 2010, March 1, 2010, and May 12, 2010
 4. Arborist letters dated October 3, 2008 and March 1, 2010
 5. History and Chronology

PREPARED BY: Jaime Limon, Senior Planner II

SUBMITTED BY: Paul Casey, Community Development Director

APPROVED BY: City Administrator's Office

SCOTT McCOSKER
1464 La Cima Road
Santa Barbara, California
687.2436

March 11, 2010

Mayor Helene Schneider and
Members of the Santa Barbara City Council
c/o City Clerk
735 Anacapa Street
Santa Barbara, CA 93101

Re: Appeal to City Council of March 1, 2010 Project Denial By Single Family Design Board; Proposed Project: Backyard Retaining Walls [MST 2009-00391] at 1464 La Cima Road

Dear Mayor Schneider and Members of the City Council:

As property owner and applicant for the proposed project, I hereby appeal to the City Council of the City of Santa Barbara the Denial by the Single Family Design Board ("SFDB"), on Monday, March 1, 2010, of the Proposed Project at 1464 La Cima Road.

The basis for the appeal is that the all necessary findings can and should be made based on the proposed project description, the design of the project, the other evidence presented (plans and arborist letter), and the applicable provisions of the Neighborhood Preservation Ordinance, Single Family Design Board Guidelines and Hillside Design District Ordinance.

My attorney will provide a more detailed discussion of the entire matter in a future submission prior to the City Council's appeal hearing, but (as provided in Sections 22.69.080 and 1.30.050 of the Municipal Code) I identify the "significant issues, facts and affected parties" as follows:

- As to significant issues and facts, see the attached Statement of Significant Issues and Facts, which is incorporated by reference.
- As for affected parties, Owner believes that there are only two affected parties: the City and the Owner – since the project is virtually imperceptible from public vantage points streets and may only be seen by neighbors who make an effort to position themselves on their property so that they may view the proposed project.¹

Respectfully submitted,

SCOTT McCOSKER

¹ It is acknowledged that one set of neighbors, John and Kathy Cook, represented by Tony Fischer, Esq., oppose the proposed project – but the Owner contends that such opposition is simply part of a vendetta by the neighbors against the Owner for having enlarged his home during a remodel project several years ago and such opposition does not stem from any aspect of the currently-proposed project having any effect on such neighbors. In contrast to the Cooks, other neighbors have no objections to the proposed project.

Statement of Significant Issues and Facts

1. The site at 1464 La Cima Road is 10,615 square feet, and the footprint of the existing home and garage is about 1,200 square feet, with a Floor Area Ratio of less than 75%. There is a large backyard, which slopes downhill from the home and which contains over 20 oak trees (ranging in size from 6 to 18 inches in diameter).
2. The current-proposed project is not an effort to permit previously-constructed Allan Block walls that required a permit, but were constructed without a permit.
3. The Owner regrets following erroneous advice that he received to the effect that the walls that were previously-constructed did not require permits. While what was previously built without permits (walls and fill areas) overlies a portion of the backyard, about two-thirds of the backyard was left in a natural condition. The purpose of the previously-built walls was to minimize erosion, improve drainage, and create small areas in the backyard, some of which were usable as outdoor living and some of which were usable as planting areas. The fill behind the walls for such areas was excess dirt generated in the prior house remodel and expansion project.
4. The following summarizes events in 2009:
 - After the Owner was advised by City staff that the as-built walls required permits, he engaged both a surveyor and landscape architect, and applied for permits.
 - In the course of SFDB hearings in 2009, the Owner also engaged a civil engineer who had done the engineering on other Allan Block walls that had been constructed on a nearby property [1484 La Cima Road; permit issued on consent agenda for two 4' high 80 linear foot retaining walls]. This engineer concluded that the walls as-built at 1464 La Cima Road were stable and (with one minor modification on one short section of wall) were structurally sound. This engineer's drawings and a short letter were submitted to the SFDB.
 - The neighbors to the west, the Cooks, and Mr. Fischer (see footnote 1, page 1, above) claimed that the encroachments into the setbacks would cause privacy problems, among a shotgun approach of objections.
 - At the conclusion of hearings in 2009, the SFDB became somewhat impatient that the project had not been redesigned sufficiently per their request and the SFDB denied the application, but expressly without prejudice (so that a revised project could be submitted).
 - The SFDB stated that its denial was made, in order of importance, for the following reasons: (1) lack of compliance with the Neighborhood Preservation Ordinance, (2) no substantial redesign as requested previously, (3) concerns about privacy for the neighbor to the west, (4) encroachment into setbacks, and (5) concerns about compatibility with existing oak trees, structural integrity of existing as-built walls and inadequacy of engineer's letter, and lack of handrails.
 - The Owner understood from the tenor of individual comments at the SFDB at the time of denial that there was great skepticism about the conclusions of the civil engineer engaged by Owner, and further understood that such concerns were a driving force for the denial.

5. Because the Owner was required by City building enforcement staff to have a pending project or become subject to administrative fines, *the Owner redesigned the prior plans to eliminate any walls located in the setback* and re-applied to the City in August 2009 for the remainder of the as-built walls. This proposal is referred to as the "August 2009 Proposal" below. At the time this application was made, the Owner's representatives advised the City staff that the project had been filed as a placeholder while research was being conducted concerning structural issues.
6. In order to address the "driving force" concern about the structural integrity of the as-built walls, as stated by the SFDB in 2009, the Owner engaged a different engineer, Greg Van Sande, and Mr. Van Sande undertook a lengthy evaluation of the as-built walls in conjunction with the engineers of the Allan Block Company in Minnesota – using all available information including two different soils reports and information obtained from partial excavation of one wall and an interview with the builder of the wall concerning the construction technique that had been followed. Ultimately, the conclusion of the Allan Block Company's engineers was that certain elements of the construction of the walls would require that the as-built walls be completely de-constructed and then re-constructed before they could be said to meet the specifications of the Allan Block Company – although there was no visible sign of imminent instability of the walls at the time of Mr. Van Sande's visual inspection (which remains true today). The information from the Allan Block engineers was received by Mr. Van Sande during December 2009, about one week before Christmas, and communicated shortly thereafter to the Owner.
7. In January 2010, the Owner and Mr. Van Sande re-designed the proposed walls, and there was no longer any attempt to work within the layout of the existing walls – in view of the information from the Allan Block engineers. Such new design, among other things, included structural elements known as geogrids, as suggested by Allan Block Company's engineers for this site.
8. In this "January 2010 Proposal," which was responsive to the various specific concerns of the SFDB at the time of denial of the prior proposal:
 - no walls were proposed in setbacks;
 - there were only 36 lineal feet of proposed Allan Block walls and about 220 square feet of exposed Allan Block wall area [as compared to the >100 lineal feet and nearly 700 square feet of exposed wall in the August 2009 Proposal] – resulting in as project about one-third the size of the as-built Allan Block walls and the August 2009 Proposal;
 - Allan Block walls were proposed in those areas where Allan Block walls were already existing and where removal of the existing walls would require demolition and grading, but a CMU wall was proposed in one place in lieu of Allan Block Walls to minimize grading where there had not been extensive earth work previously; and
 - An Arborist's Letter was provided that included multiple mitigation measures.
9. At the February 1, 2010 SFDB hearing, the Cooks and Mr. Fischer appeared in opposition to the January 2010 Proposal. At the end of the February 1 hearing, the SFDB requested several changes and more detailed drawings. Among the requested information was a demolition plan for the existing as-built walls and a survey of the drip line of the

oak tree canopy and more detail on landscaping, as well as a redesign of the Allan Block walls proposed in the January 2010 proposal.

10. In February 2010, the Owner submitted revised plans for a yet further redesigned project, and included the level of detail in drawings and additional information that the SFDB had requested. In this "February 2010 Proposal":
 - the patio areas were lowered and the proposed Allan Block walls were further reduced to 24 lineal feet and about 100 square feet of exposed walls (as compared to 36 lineal feet and about 220 square feet of exposed Allan Block wall area in the January 2010 Proposal and >100 lineal feet and nearly 700 square feet of exposed wall in the August-2009 Proposal) – meaning that the project walls and patio and planting areas would occupy less than 15% of the Owner's backyard;
 - all walls were outside the setbacks;
 - the proposed walls were moved away from oak trees; and
 - an Update to the Arborist's Letter, setting forth additional analysis and mitigations, was submitted.
11. At the March 1, 2010 SFDB hearing, the landscape designer noted that the largest impact to any oak tree occurred in one place, where a proposed Allan Block wall and patio area would impact up to (but not more than) 20% of the root zone of one oak tree. Other walls would impact less than 5% of the root zone of three other trees. The remaining 17+ sizable oak trees on the site would be untouched by the proposed project. It is noted that the Arborist's Letter and Update included extensive provisions for an onsite arborist to supervise all work in the root zone of trees, which was to be done by hand and would include various techniques to minimize disturbance and also provided for additional mitigation by planting of additional trees (even though no trees were to be removed).
12. At the March 1, 2010 SFDB hearing, the Cooks and Mr. Fischer again appeared in opposition. At the conclusion of the Owner's presentation and public comment by the Cooks and Mr. Fischer, the chair of the SFDB stated that the matter was almost certain to go to the City Council on appeal, no matter what action the SFDB took and the chair person then requested that all SFDB members keep that in mind as they made their comments. The Owner understands why such a statement about appeal to the City Council would be made by the SFDB chairperson (it was almost certainly true), but the statement appeared to have an unfair effect on the Owner in that it created a "snowball" effect for the first set of comments and left little room for discussion such that the initial comments of one SFDB member ultimately turned into the two findings of the SFDB – in short, the process was a somewhat stilted consideration of the matter in which SFDB members appeared to feel some obligation to back up the first opinion stated since the matter was going to the City Council on appeal. In its consideration of the February 2010 Proposal, the SFDB did not discuss the specific wording of the findings at any point, did not consult the ordinance and guidelines directly, and did not seek assistance in doing so from the City staff who were present at the hearing. At the end of the SFDB comments, the SFDB asked if the Owner preferred to receive a denial on March 1 or an opportunity to come back to the SFDB with a revised proposal. Under the circumstances, the Owner stated a preference not to come back to the SFDB and the SFDB then denied the February 2010 proposal.

13. As will be discussed in the Owner's attorney's future submission, (a) the February 2010 Proposal meets all requirements under the City's Neighborhood Protection Ordinance, Single Family Design Board Guidelines, and Hillside Design District Ordinance, and (b) the evidence overwhelmingly supports an approval of the February 2010 Proposal.
14. As will also be discussed in the Owner's attorney's future submission, the SFDB's findings are not supported by evidence and do not justify the denial of the February 2010 Proposal. Additionally, as a matter of process, the SFDB's denial and findings appear to have been swayed by the continuing vociferous (though meritless) opposition of the neighbors and Mr. Fishcher and by the introductory comment of the SFDB chairman concerning a likely appeal to the City Council.
15. It is the desire of the Owner, after the end of the current rainy season and prior to the next rainy season, to remove the existing as-built walls and simultaneously to reconstruct the much smaller project contained in the February 2010 Proposal. Therefore, the Owner hopes to have this appeal heard in the next few months. It should be noted that the impact on oak trees of removing the as-built walls and constructing the February 2010 Proposal is essentially the same as simply removing the as-built walls. The Owner should be allowed to make the very modest proposed use of a very small portion of his backyard, with walls constructed according to Allan Block company specifications, since the February 2010 Proposal will be without any significant adverse impacts to oak trees and without any appreciable (much less any significant) impact on public views or on neighbors.

End Statement of Issues and Facts



SINGLE FAMILY DESIGN BOARD
CASE SUMMARY

1464 LA CIMA RD

MST2009-00391

B-ENF

Page: 1

Project Description:

Proposal to remove existing non-permitted Alan block retaining walls and construct approximately 120 linear feet of reinforced CMU and Alan block retaining walls ranging in height from 3.5 to 6.5 feet. The project is located in the rear yard of a single-family residence on a 9,693 square foot lot in the Hillside Design District. A previous proposal to permit as-built walls in this location was denied without prejudice. The project will abate violations in ENF2008-00170.

Activities:

3/1/2010 SFDB-Concept Review (Cont.)

(Second review. Action may be taken if sufficient information is provided.)

Actual time: 4:22

Present: Margie Grace, Landscape Architect, Trish Allen, Agent; Greg Van Sande, Structural Engineer.

Public comment was opened at 4:42 p.m. The following individuals spoke in opposition: John Cook for Don Swann, John Cook, Kathy Cook, and Tony Fischer.

A letter in opposition from Paula Westbury was acknowledged.

Public comment was closed at 4:53 p.m.

The Board asked the applicants whether they preferred a continuance or a denial; the property owner requested a motion to deny the project.

Motion: Deny the project without prejudice with the following comments:

- 1) The design violates guidelines for building within drip lines of the Oak trees.*
- 2) The hillside is negatively affected by the proposed grading and retaining walls.*

Action: Mahan/Woolery, 6/0/0. Motion carried. (Carroll absent.)

3/1/2010 SFDB-Final Review (Denied)

Activities:

2/23/2010 **SFDB-Resubmittal Received**

2/1/2010 **SFDB-Concept Review (New)**

(Action may be taken if sufficient information is provided.)

Actual time: 3:56

Present: Trish Allen, Agent; Greg Van Sande, Structural Consultant, Margie Grace, Landscape Designer.

Public comment was opened at 4:12 p.m. The following individual(s) spoke in favor or opposition:

Don Swann: opposed.

Kathy Cook: opposed.

John Cook: opposed.

Tony Fisher: opposed.

Written comments in opposition from David Gilkeson and from Paula Westbury were acknowledged.

Public comment was closed at 4:24 p.m.

Motion: Continued four weeks to Full Board with the following comments:

1) The project needs to be significantly redesigned. There is concern with the aggressive proposal, particularly the height and surface of the proposed retaining walls, and the amount of excavation for footings.

2) Applicant and staff to determine whether the existing east and west stairs and decks are permitted.

3) There is concern about construction under the oak tree drip lines. Accurate drip lines are to be verified by a Civil Engineer.

4) Return with accurate and complete plans, including elevation drawings. Submit the plans to Staff prior to the meeting.

Action: Mosel/Mahan, 7/0/0. Motion carried.

8/31/2009 **SFDB-FYI/Research**

Trish Allen to come back on Tuesday to look through previous design review file (project denied and file is on Jaime's desk) for photos to submit with this new application.

Also, heads up on three previous PC Resos that go with this parcel. And not sure if new retaining wall in setback needs a mod or not. S. Gantz

SFDB-Concept Review (New)

(Action may be taken if sufficient information is provided.)



ALL ACTIVITIES SUMMARY

MST2008-00255

R-SFR

Proposal to abate violations in ENF2008-00170 for minor re-grading including the construction of retaining walls, garden walls between and 24" and 42" in height and landscape stairs in the rear yard on a 9,693 square foot lot in the Hillside Design District.

<u>Activities:</u>	<u>Disp</u>	<u>Date 1</u>	<u>Date 2</u>	<u>Date 3</u>
<i>Proposal to abate violations in ENF2008-00170 for minor re-grading including the construction of retaining walls, garden walls between and 24" and 42" in height and landscape stairs in the rear yard on a 9,693 square foot lot in the Hillside Design District.</i>				

<u>Status: Denied</u>	<u>DISP</u>	<u>Date 1</u>	<u>Date 2</u>	<u>Date 3</u>
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SFDB-Concept Review (Cont.)

PEND

(The project was referred from the Consent Calendar. Action may be taken if sufficient information is provided.)

Application Received

RECD

05/27/08

See Danny Kato re: fees charged.

ABR-Resubmittal Received

RECD

06/30/08

Initial submittal stamped with fees paid on 6/30, don't know why received activity on 5/27/08. Tony Boughman

SFDB-Resubmittal Received

RECD

10/07/08

Per TB had Carol Gross fill out substitution form JL may have file in his office.

SFDB-Consent (New)

CONT

10/20/08

(Action may be taken if sufficient information is provided.)

Continued three weeks to the Full Board with comments: 1) show setbacks; 2) ensure walls were installed correctly, provide engineer report; 3) show neighboring property footprint; 4) provide 2 site sections; 5) provide overall elevation from below; 6) show drainage and day lighting; 7) provide a landscape plan.

SFDB-Concept Review (Cont.)

CONT

01/20/09

Actual time: 5:26

Present: Carol Gross, Landscape Architect; Greg Van Sande, Engineer; Scott McCosker, Owner.

Ms. Gross submitted two letters in support of the project.

Public comment opened at 5:38 p.m.

1. Don Swann, agent for John and Kathy Cook, opposed: Cook's were required to move stairs away from the property line for privacy, site plan does not show steps that are currently located at eastern side of property at 36% slope, concerned that the Cook's retaining wall will be undermined, slope should drain away, need detail of planter.
2. John Cook, opposed: front of his house depicted on applicant's plans has nothing to do with property line, steps and retaining walls were built on excavation from lower story and fill was not recompacted before walls were installed, slope

Activities:DispDate 1Date 2Date 3

where stairs are was not the original slope-dirt was added, too close to property line, lack of privacy, landscape was cut away, retaining wall was undermined in construction of applicant's retaining walls.

3. Kathy Cook, opposed: applicant was building without permits when he spoke before the board against her own as-built work, she was required to relocate her stairs yet the applicant has built stairs close to the property line.

4. Jim Wickman, opposed: walls are highly visible from the street below, applicant did not communicate with neighbors.

5. David J. Gilkeson, opposed: the applicant previously appeared before the Board stating his concern for privacy yet he subsequently cut down a fence, two orange trees, and an avocado tree that provided privacy, too close to neighbor's property, project should be moved toward center of property.

6. Tony Fisher, representing John and Kathy Cook, opposed: enforcement case of August 2007 was closed and new enforcement case opened in February 2008, attempted to obtain photographs so Board could review site in its original condition, can not believe that work could be done without a permit, Board needs elevation drawings to review, previous as-built work on the hillside is not known and was not presented to the Board, project exceeds 215 feet total length on uncompacted fill, suggested a site visit, stairs on other side missing from drawings, Allen block walls have limitations and are not appropriate to the site.

Public comment closed at 6:00 p.m.

Motion: Continued six weeks to the Full Board with the following comments:

- 1) The design is not acceptable as proposed. Restudy the design to provide neighbor privacy.
- 2) Provide more landscape screening at the west property line.
- 3) Eliminate the steps near the west property line and reevaluate the terraces.
- 4) Move the project out of the 5 foot setback.
- 5) Comply with the Arborist's report.
- 6) A Structural Engineer is to determine which walls can be saved.
- 7) Plans are to be prepared by licensed professionals.

Action: Woolery/Carroll, 5/0/0. Motion carried. (Deisler/Mosel absent.)

ABR-Resubmittal Received**RECD****03/24/09**

resubmittal for continued Concept

SFDB-Resubmittal Received**RECD****05/04/09**

Three sets

SFDB-Concept Review (Cont.)**CONT****05/11/09**

(Third concept review. Action may be taken if sufficient information is provided.)

Actual time: 3:32

Present: Cindy Sadler, Agent; Carol Gross, Landscape Architect.

Public comment opened at 3:48 p.m.

1. Six letters in support of the project were acknowledged.
2. Don Swan, agent for Kathy and John Cook, opposed. The applicant has not complied with Board's comments of 1/20/09; walls need footings; existing deck encroachment requires a modification.
3. John Cook, neighbor, opposed: applicant has not complied with Board's comments of 10/20/08, his property location not shown on plans, incorrect stair removal, licensed contractor needed, possibility that walls not installed correctly; avocado on neighboring property line was removed.
4. Kathy Cook, opposed: landscape plan does not show existing bamboo, project encroaches into side yard.
5. Tony Fischer, representing John and Kathy Cook, opposed: construction continued after stop work order was issued; Allan Block wall was not properly built; planting under the Oak tree; Bamboo at property line is invasive and creates a fire ladder; in favor of denial.

Public comment closed at 4:01 p.m.

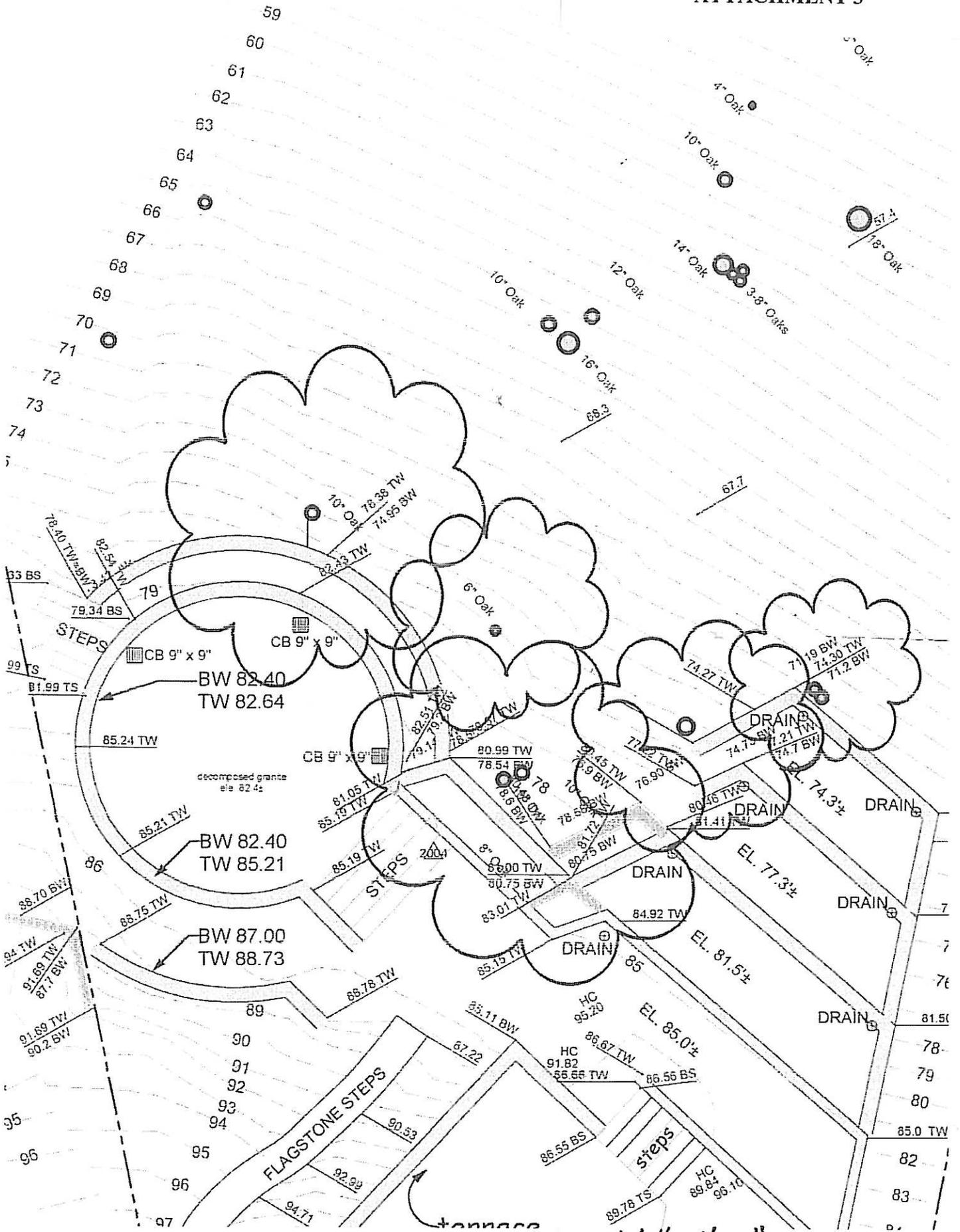
Motion: Continued four weeks to Full Board to the Full Board with the following comments:

- 1) Substantial redesign is expected.
- 2) All comments from the 1/20/09 meeting were carried forward: 1. The design is not acceptable as proposed. Restudy

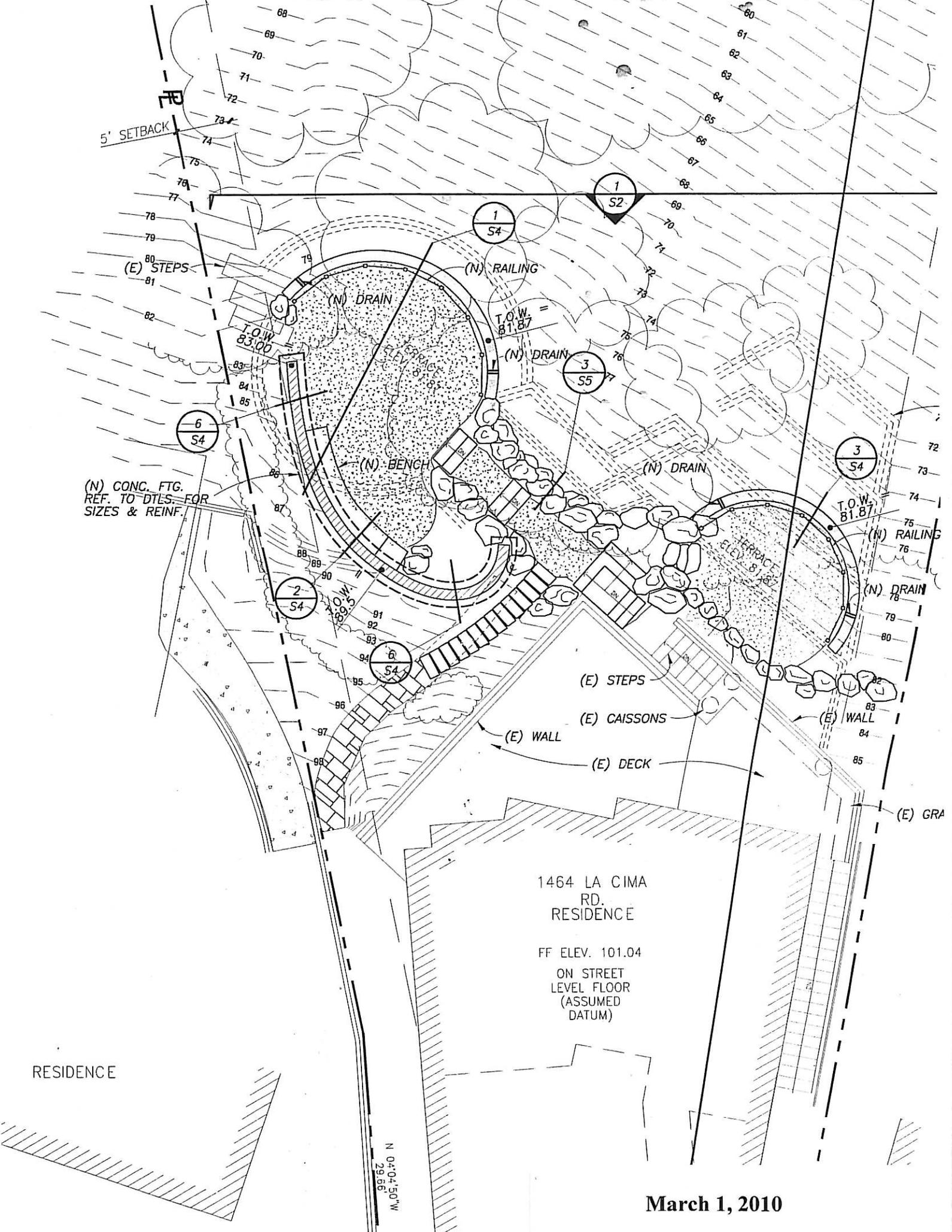
<u>Activities:</u>	<u>Disp</u>	<u>Date 1</u>	<u>Date 2</u>	<u>Date 3</u>
the design to provide neighbor privacy; 2. Provide more landscape screening at the west property line; 3. Eliminate the steps near the west property line and reevaluate the terraces; 4. Move the project out of the five foot setback. 5. Comply with the Arborist's report; 6. A Structural Engineer is to determine which walls can be saved; 7. Plans are to be prepared by licensed professionals. 3) Provide additional information about the deck along the eastern property line 4) Provide information about the species of Bamboo along the Western property line Action: Zink/Woolery, 7/0/0. Motion carried.				
SFDB-Resubmittal Received	RECD			06/19/09
Received revised grading plans, applicant stated that both J. Limone and T Boughman reviewed the plans, and determined they are ready for resubmittal.				
SFDB-Concept Review (Cont.)	DENY			06/22/09
(Fourth concept review. Action may be taken if sufficient information is provided.) Actual time: 4:54 Present: Carol Gross, Landscape Architect; Scott McCosker, Owner. Public comment opened at 5:04 p.m. 1. Don Swann, Agent for John and Kathy Cook, opposed: stairway was not moved beyond setback; terrace was not moved; stair on east side is in the setback. 2. John Cook, neighbor, opposed: the retaining walls should be reviewed as though they did not already exist; concerned that the walls were built before consulting a structural engineer; alternate access to lower deck exists. 3. Kathy Cook, neighbor, opposed: the project should be reviewed as though it did not already exist; stairs should not be allowed close to property line. 4. Jeff McCune: an on site analysis showed the home to be very defensible from fire with the main area of concern to be the narrowness of the public street access; low vegetation, no ladder fuel; Oak canopy was thinned out improving fire resistance; the ability for a fire engine to enter and stage is an asset; terrace provides location for fighting fires. 5. Tony Fischer, Attorney, for John and Kathy Cook: the project repeatedly returns without substantial change; the engineer's letter appears inadequate without engineer's inspection of work. Activity summary inaccurately indicates that both Mr. Limon and Mr. Boughman reviewed and approved plans for re-submittal. Public comment closed at 5:15 p.m. Staff comments: Mr. Boughman stated that he was unable to confirm with Danny Kato, Senior Planner if the stairs and landing at the east side of property were approved. Mr. Boughman suggested that if a motion is made approving the project, the stairs and landing should be explicitly excluded from the scope of work. Regarding the terrace in the setback, the Ordinance contains a provision for an encroachment of up to three feet for a landing/platform to enter a house above grade, the provision does not apply to this application. If the stairs on grade do not require a building permit, they are still within the Board's purview as a part of the whole project. Motion: Denied without prejudice with the following comments: 1) The project is not acceptable and does not comply with the Neighborhood Preservation Ordinance. 2) There has been no substantial redesign as requested since prior reviews. 3) The project does not comply with good neighbor guidelines with regard to privacy for the neighbor to the west. 4) Does not comply with setbacks. 5) There are concerns about compatibility with the existing Oak trees; structural integrity of existing as-built walls; lack of handrails; privacy for neighbor to the west; the Engineers letter may not be adequate. Action: Zink/Woolery, 4/1/1. Motion carried. (Carroll opposed, Bernstein abstained, Deisler absent.)				
(F) Print ALL Actions of Case	PRNT			06/22/09
SFDB-Prelim Review (Denied)	DENY			06/22/09
ENV-MEA Prepared-action req	NEED			07/15/09
Provide drainage plan as part of plan set.				

<u>Activities:</u>	<u>Disp</u>	<u>Date 1</u>	<u>Date 2</u>	<u>Date 3</u>
ABR-Correspondence/Contact	READ			07/31/09
Met with applicant to discuss alternative designs and new timeframe for a new rea-appliation. New submittal expected within two weeks.				
(F) Print ALL Actions of Case				11/05/09
(F) Print ALL Actions of Case				05/04/10

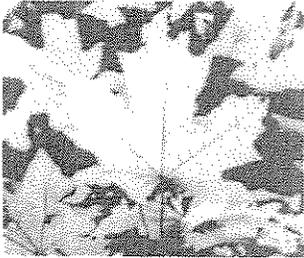
ATTACHMENT 3



October 20, 2008



March 1, 2010



WESTREE

Peter Winn
P.O. Box 22702
Santa Barbara
CA 93121

805-966-3239
Cont. Lic. #772299

October 3, 2008

Scott McCosker
1464 La Cima Lane
Santa Barbara, CA 93109

RE: 1464 La Cima Lane, Evaluation of retaining walls and grading impact to existing Oak trees.

I visited the above mentioned site to evaluate the condition of the existing Coast Live Oak trees (*Quercus agrifolia*) and the possible impact the new retaining walls and grading have had or will have on these trees.

Westree has been pruning your Oak trees for the last eight years to remove major deadwood as well as light thinning and view clearing. This work has helped to improve their overall health. It was very clear to us prior to the remodel of your house and the construction of the retaining walls, that there was a great deal of natural slope erosion and leaf litter build-up against the trunks of the Oaks. This is detrimental to the long term well-being of the trees, as the burying of the root crown results in root rot and either the complete loss or a steady decline of the tree.

The construction of your retaining walls and consequent grading has impacted (not necessarily negatively) five Oaks. They have been numbered on a map showing their locations in relation to the retaining walls. I have not included the numerous other Oaks on your property that have not been impacted by the retaining wall & grading. However, you should be aware of the need to keep the excess soil and mulch away from the immediate trunk area.

The following is a list of the five trees impacted by the retaining wall & grading, along with their approximate size, condition and any mediation necessary.

TREE #1. Coast Live Oak (*Quercus agrifolia*) 10" dbh (diameter at breast height). This tree is located 4ft to the south of the retaining wall; it is an average condition specimen for a tree in this hilly location, but in good health. The use of the dry stack boulders on the upper side of the trunk is a good idea to help prevent further soil build up. There appears to have been no major impact from the grading.

TREE #2. Coast Live Oak (*Quercus agrifolia*) 6" dbh (diameter at breast height). This tree is a stand alone stem that was obviously buried for a long time. It is a fair specimen and in good health. There is a need to excavate more soil from around the trunk of the tree and as with tree #1, place dry stack boulders for soil retention. This tree has not been negatively impacted by the retaining walls.

TREE #3. Coast Live Oak (*Quercus agrifolia*) 10&8" dbh (diameter at breast height). This tree has two stems from the base, one with major decay at the base. It is a fair specimen and in good health. There is a need to excavate more soil from around the trunk of the tree and as with tree #1, place dry stack boulders for soil retention. This tree has not been negatively impacted by the retaining walls.

TREE #4. Coast Live Oak (*Quercus agrifolia*) 10" dbh (diameter at breast height). This tree is a fair specimen and in good health. The need to excavate more soil from around the trunk of the tree and as with tree #1, place dry stack boulders for soil retention. This tree has not been negatively impacted by the retaining walls.

TREE #5. Coast Live Oak (*Quercus agrifolia*) 8&6" dbh (diameter at breast height). This multi stem tree has been suppressed by the other trees but is a poor specimen but in good health. There is a need to excavate more soil from around the trunk of the tree and as with tree #1, place dry stack boulders for soil retention. This tree has not been negatively impacted by the retaining walls.

In conclusion, I see that the installation of the retaining walls and the subsequent grading has not negatively impacted the Oak trees anymore than they were prior to any construction activities. On the contrary, the long term benefits of retaining the hill side and the improved drainage will allow the Oaks in questions and the Oaks down the slope further to better resist the root rot problems associated with a buried root crown. I would recommend adding the dry stack boulders on the upper side of all the trees on the slope.

Should you have any further questions or comments, please do not hesitate to call my office.

Yours sincerely,



Peter J.H. Winn
I.S.A. Certified Arborist #921



WESTREE

Peter Winn
P.O. Box 22702
Santa Barbara
CA 93121

805-966-3239
Cont. Lic. #772299

March 1, 2010

Trish Allen
Susan Elledge Permit Planning Services
800 Santa Barbara Street
Santa Barbara, CA 93101

Addendum to letter dated January 26, 2010

RE: Proposed Landscape Retaining Walls for McCosker Property at 1464 Las Cima Road, Santa Barbara.

Dear Trish,

This is an addendum to the previous letter dated January 26, 2010 as you requested I have reviewed the revised set of plans dated February 23, 2010 as there has been some modifications to the retaining walls that may have an effect on the existing Oak trees on site.

The existing retaining walls are proposed to be removed completely and reconstructed further away from the Oak trees, which is different from the design concept I was shown back in January. I have the following points to add to my original letter.

- There will be little additional impact from this project that would not exist if the existing walls were simply removed and nothing was rebuilt.
- In the unlikely event any large root was encountered, the impact can be minimized by bridging the root. The structural engineer has confirmed this is feasible because of the geogrid installation.
- Due to the soil retaining elements of the project there could be long term benefits to the Oaks from building the proposed project.
- Any Oaks affected by the retaining walls shall be mitigated. If there is not enough practical space for all of the trees, the City may have alternate locations for planting.

Should you have any questions or comments, please do not hesitate to call my office.

Yours sincerely

Peter J.H. Winn

History Chronology – 1464 La Cima Rd – McKosker
& 1466 La Cima Rd- Cook

1464 La Cima Rd- McKosker

- 3-11-02- ABR Application for additions including new outdoor deck chimney
- 11/13/02- Permit issued for a remodel and 437 square foot addition. The addition, which included a back patio, outdoor fireplace and chimney. , was reviewed and approved by the Architectural Board of Review (ABR) at their Consent Calendar in July, 2003. There was no requirement to notify neighbors of the review or approval.
- 12/14/04- ABR/SHO application to enclose carport
- 1/28/05- A revision to the approved plan to convert the existing carport to a garage was denied by Modification Hearing Officer.
- 5/5/05- Appeal of Staff Hearing Officer decision by McCosker- Appeal granted by Planning Commission
- 1/12/06- Application for minor 37 sf 2nd story addition
- 2/1/06- The Modification for this second story element was approved by the Staff Hearing Officer (SHO).
- 4/6/06- Appeal to Planning Commission by Cook. During those two public hearings, the neighbor to the west (Cook) voiced their opposition to an outdoor fireplace chimney that was under construction. Staff and the PC kept the focus of the hearings on the front yard encroachment.
- 5/24/06- City Council appeal of PC/ABR decision by Cook - Appeal denied
- 9/12/07- Complaint re: vegetation removal, grading and addition of stairs
- 2/25/08- Complaint re: illegal retaining walls under construction
- 5/28/08- 1st application for as-built retaining walls- Code Enforcement Case
6/22/09- Project denied by SFDB
- 8/31/09- 2nd application filed for as-built retaining walls
3/1/10- Project denied by SFDB
3/11/10- Appeal of SFDB denial decision by McCosker

1466 La Cima Rd- Cook

- 10/31/05- Complaint re: Construction of wood deck
3/14/06- Application for as-built wood deck and accessory bldg
12/14/05- Complaint re: Illegal dwelling unit, construction without permit
7/19/07- Complaint re: Several additions without permit
2/25/08- Complaint re: Construction without permit

CORRESPONDENCE
RELATED TO ITEM NO. 9

David C. Fainer, Jr.
Attorney at Law

1114 State Street, Suite 200 • Santa Barbara, CA 93101
phone 805-899-1300 • fax 805-963-5988 • dfainer@aol.com

May 11, 2010

Mayor Helene Schneider and
Members of the City Council,
City of Santa Barbara
c/o Clerk's Office, City Hall
Santa Barbara, CA 93101

**Re: McCosker Appeal of Single Family Design Board Denial
of Proposed Retaining Walls and Gravel Patio Areas;
City Council Hearing Date: May 18, 2010**

Dear Mayor Schneider and Members of the City Council:

I represent Scott McCosker, the owner of the single family residence at 1464 La Cima Road and applicant for the Proposed Project.

Mr. McCosker has appealed to the City Council from the denial by the Single Family Design Board ("SFDB"), on Monday, March 1, 2009, of his Proposed Project. Mr. McCosker's appeal attaches a Statement of Significant Issues and Facts, which is incorporated by reference.

The Proposed Project is for construction of three relatively short retaining walls, with two small gravel patio areas and landscaping, in the back yard of the McCosker property. *See attached Exhibit A.*

The Proposed Project would not be visible to the public, and would have no impact on neighbors.

The Proposed Project leaves most of the McCosker back yard in a natural condition, and creates two small, tasteful, useable outdoor areas in the transition from the residence to the natural areas of the backyard. Oak trees and the hillside would be protected.

1. Evolution of Proposal and Scale of the Proposed Project

The Proposed Project on appeal to the City Council is considerably smaller and much lower in impact than Mr. McCosker's prior proposals, and represents an evolution of the proposed project in response to comments of the SFDB.

The Proposed Project is *not* an effort to permit previously-constructed Allan Block walls, which will be removed because they were constructed without a permit following erroneous advice received by Mr. McCosker.

The Proposed Project, when compared to the as-built walls, would have many fewer lineal feet of walls and much less exposed wall area.

The SFDB reviewed a proposal from Mr. McCosker in 2009 (for the as-built walls) and revised proposals in February and March 2010. The proposal in February was much reduced in scale from the as-built walls, and responded to earlier comments of the SFDB. In response to further comments of the SFDB in February 2010, Mr. McCosker and his designer made a number of changes between the February and March hearings, which further reduced the Allan Block walls.

The point is that Mr. McCosker has attempted to respond to comments and comply with City requirements, but also seeks to make a reasonable use of his back yard – notwithstanding the objections of one neighbor, which appeared to overly influence the SFDB process (as discussed below)

Since Mr. McCosker has appealed the denial of the March proposal and since the previously-constructed walls provide an existing frame of reference, the following comparison of the as-built and proposed walls is provided.

<i>All numbers are approx.</i>	Exposed Wall Area of Allan Block Walls (sq.ft.)	Length of Allan Block Walls (lin.ft.)	Exposed Wall Area of CMU Wall (sq.ft.)	Length of CMU Wall (lin.ft.)	Exposed Wall Area of All Walls (sq.ft.)	Length of All Walls (lin.ft.)
As-Built Walls	>900	>240*	-0-	-0-	>900	>240
Proposal on Appeal	144	50**	114	36***	258	86

- * continuous, connected as-built walls
- ** Wall A (24 feet) and Wall B (26 feet)
- *** Wall C on Exhibit A

continues next page.

2. Discussion of Cooks' Objections

The only objections from the public to this project have been from the neighbors to the west (Mr. and Mrs. Cook). Their participation and that of their attorney, Tony Fischer, seemed to dominate underlying SFDB proceedings, and to unduly influence the SFDB.

The irony is that the Cooks' existing deck is quite large and imposing, in contrast to the very modest project which is proposed on the McCosker property.

Mr. McCosker contends that the Cooks' opposition is simply part of a vendetta by the Cooks against him for having enlarged his home during a remodel project several years ago, all of which was work done pursuant to permits issued by the City.

In contrast to the Cooks, other neighbors have no objections to the proposed project.

The Council's site visit on Monday, May 17, will provide Council Members the opportunity to compare the height and mass of the Cook's deck, which looms over the McCosker's backyard, with the size and scale of the proposed McCosker project. Mr. McCosker and I believe that, given the topography, the Council's in-person observation is worth a thousand words, and I will spare you the thousand words attempting to describe what is best seen and understood in person.

It is respectfully submitted that a visit to Mr. McCosker's backyard places the comments of the Cooks and their representatives in perspective, and that, for purposes of evaluating the comments of the Cooks, what is in scale with and characteristic of the neighborhood should be ascertained from the massive deck that the Cooks built.

On behalf of Mr. McCosker, I acknowledge that neighbor battles are distasteful to the Council. The balance of this letter will focus on the Proposed Project itself.

3. The Proposed Project Merits Approval in this De Novo Appeal Hearing.

The basis for the Owner's appeal is that the all necessary findings can and should be made based on the proposed project description, the design of the project, the other evidence presented (plans and arborist letter), and the applicable provisions of the Neighborhood Preservation Ordinance, Single Family Design Board Guidelines and Hillside Housing Design Guidelines.

Trish Allen of Suzanne Elledge Permitting & Processing and I have assembled attached Exhibits B, C and D, which (1) set forth the various criteria and findings in the Neighborhood Protection Ordinance, the Single Family Design Board Guidelines, and the Hillside Housing Design Guidelines and (2) discuss why Mr. McCosker's Proposed Project is consistent. These exhibits are incorporated by reference.

In short, Exhibits B, C and D demonstrate that the Proposed Project is consistent with City ordinances and guidelines, and therefore the Proposed Project merits approval by the City Council, which considers the Proposed Project *de novo* at the appeal hearing.

In fairness to the SFDB, many of their comments in 2009 and in February 2010 have been incorporated into the Proposed Project and are essential elements why the Proposed Project merits approval at this time – as it did in March 2010.

Further, the City Council and Community Development Department are engaged in a process to reduce, not increase, the intrusiveness of City design review processes on back yard improvements of residences that are out of the public view. The SFDB's review of the Proposed Project in March 2010 is an example of how City design review can be overly intrusive for a back yard improvement that is out of the public view.

4. Conclusion; Request for Final Action on May 18

At the hearing on May 18, a further presentation by Mr. McCosker and his representatives will be made. However, it is believed that such presentation of additional information will make the most sense to Council Members after their site visit on the afternoon of May 17.

For the reasons set forth in this letter and its attachments, and in light of all of the evidence before the City Council (including plans and arborist letter), Mr. McCosker's appeal should be granted. It is respectfully submitted that the City Council grant final design approval when ruling on the appeal. Final design approval would allow Mr. McCosker adequate time to engage his contractor, remove the as-built walls, and construct the Proposed Project – before the next rainy season.

Thank you for your consideration of this appeal.

Sincerely,



DAVID C. FAINER, JR.

DCF/

Attachments: Exhibits A, B, C and D

cc: Scott McCosker
Trish Allen, SEPPS
Margie Grace Designs
Greg Van Sande, P.E.

Tree #1

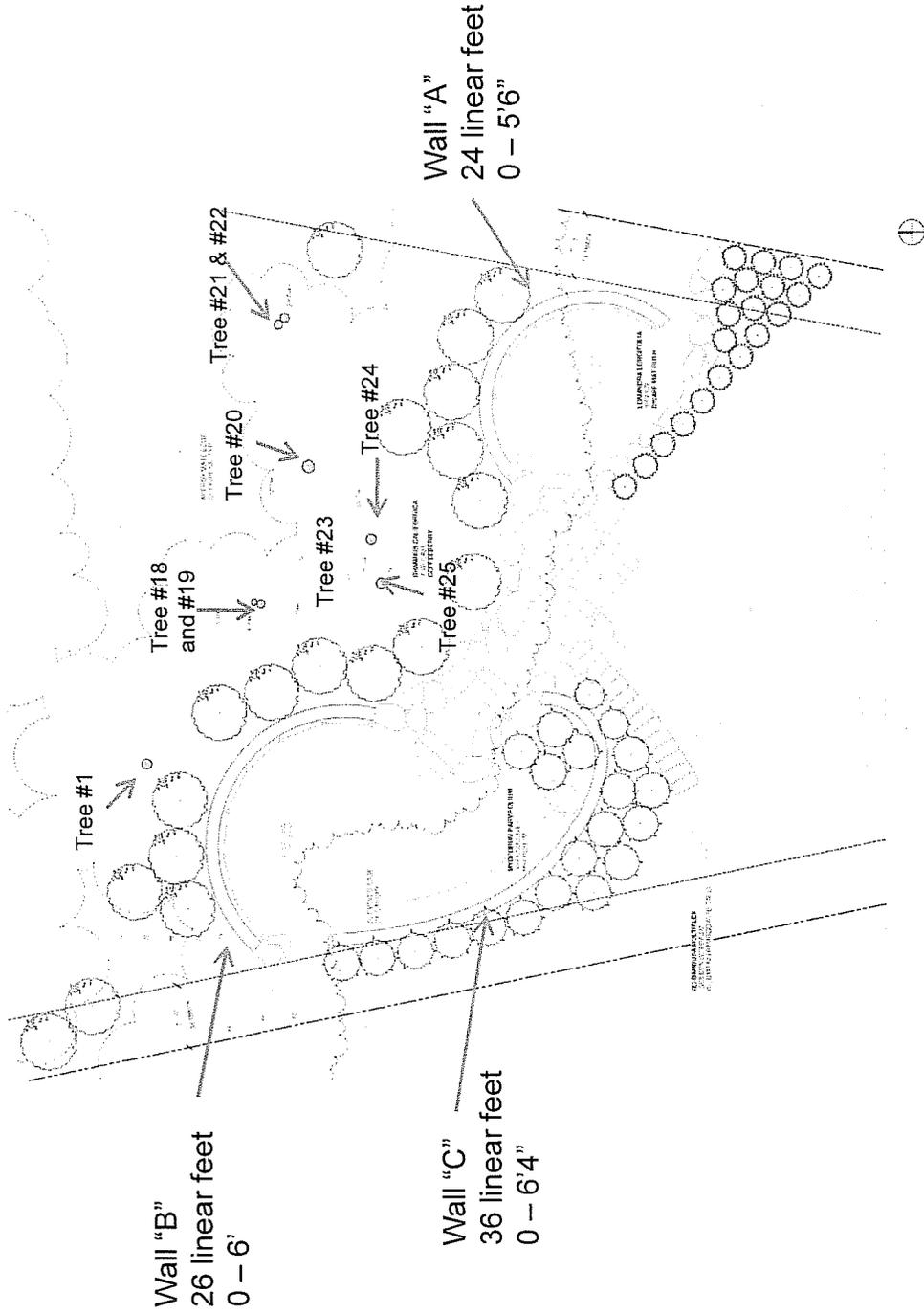


EXHIBIT A

Distances and heights are approximate; heights reflect exposed wall height.
Wall "C" height measured from top of bench.

Findings Under Applicable Guidelines and Ordinances

*Neighborhood Preservation, Grading and Vegetation
Removal Ordinance Findings
Municipal Code § 22.69.050 A & B*

Why the McCosker Proposed Project Complies

<p>1. Consistency and Appearance. The proposed development is consistent with the scenic character of the City and will enhance the appearance of the neighborhood.</p>	<p>1. To the extent that this finding is applicable to a back yard project that is invisible to public views, the proposed retaining walls are consistent with the character and appearance of the neighborhood. The walls meet the design standards set forth in the SFRDB pertaining to walls. (See Exhibit C.)</p>
<p>2. Compatibility. The proposed development is compatible with the neighborhood, and its size, bulk, and scale are appropriate to the site and neighborhood.</p>	<p>2. When completed, the proposed retaining walls will be separated from one another, and of varying heights, thereby avoiding a massive or bulky appearance.</p> <ul style="list-style-type: none"> • Proposed Wall A is about 24 feet in length, of varying height between grade level and a maximum visible height of 5'6". • Proposed Wall B is about 26 feet in length, of varying height between grade level and a maximum visible height of 6 feet. • Proposed Wall C is about 36 feet in length, of varying height between grade level and a maximum visible height of 6'4".
<p>3. Quality Architecture and Materials. The proposed buildings and structures are designed with quality architectural details. The proposed material and colors maintain the natural appearance of the ridgeline or hillside.</p>	<p>3. There are two types of walls, each intended to function in the transition from the modern residence to the natural areas of the back yard – a CMU wall cut into the hill which is visible almost exclusively from the outdoor seating area when looking back at the residence, would be painted to match the walls of residence and deck area, and two Allan Block walls, which blend with the natural appearance of the hillside. In between the white walls and the natural-colored Allan Block walls are the gravel patios. The proposed vegetation will screen and soften the appearance of the walls in the transition from the residence to natural areas.</p>
<p>4. Trees. The proposed project does not include the removal of or significantly impact any designated Specimen Tree, Historic Tree or Landmark Tree. The proposed project, to the maximum extent feasible, preserves and protects healthy, non-</p>	<p>4. The project does not propose removal of any trees. The project includes oak tree protection and mitigation measures for those oak trees that may be potentially impacted by the grading and the proposed retaining walls are consistent with SFDB Guidelines</p>

Findings Under Applicable Guidelines and Ordinances

Neighborhood Preservation, Grading and Vegetation Removal Ordinance Findings
Municipal Code § 22.69.050 A & B

Why the McCosker Proposed Project Complies

<p>invasive trees with a trunk diameter of four inches (4") or more measured four feet (4') above natural grade.</p>	<p>for Native Tree Protection Standards. All work proposed within the dripline would be conducted with hand tools and supervised by the project arborist in accordance with the arborist recommendations and mitigation measures.</p>
<p>5. Health, Safety, and Welfare. The public health, safety and welfare are appropriately protected and preserved.</p>	<p>5. The proposed walls are located in the backyard of a single family residence and will meet structural requirements established by the building code in order to protect public health, safety and welfare.</p>
<p>6. Good Neighbor Guidelines. The project generally complies with the Good Neighbor Guidelines regarding privacy, landscaping, noise and lighting.</p>	<p>6. The proposed walls create a useable outdoor area that is much lower in elevation than the adjacent neighbor's usable outdoor areas, and would not interfere with neighbor's views or privacy. Proposed landscaping provides additional privacy screening.</p>
<p>7. Public Views. The development, including proposed structures and grading, preserves significant public scenic views of and from the hillside.</p>	<p>7. The backyard is not visible from public vantage points.</p>
<p>B.1 Natural Topography Protection. The development, including the proposed structures and grading, is appropriate to the site, is designed to avoid visible scarring, and does not significantly modify the natural topography of the site or the natural appearance of any ridgeline or hillside.</p>	<p>B.1 The Proposed Project will not result in any scarring of the site and does not significantly modify the natural topography. The Proposed Project has no effect on any ridgeline and only a modest impact on a small portion of the hillside in the McCosker back yard. The Proposed Project has been fully engineered to assure stability on the hillside.</p>
<p>B.2 Building Scale. The development maintains a scale and form that blends with the hillside by minimizing the visual appearance of structures and the overall height of structures.</p>	<p>B.2 The Proposed Project blends with the hillside visually and is not visible to the public. The height of Walls A, B and C varies and is tied to the topography. On average, the walls are about 3 feet above ground – and the maximum exposed height of the walls is only 5 to 6 feet, for distances less than several feet long.</p>

EXHIBIT B

Findings Under Applicable Guidelines and Ordinances

Single Family Design Board Guidelines concerning Native/Specimen Tree Protection & Replacement (p. 8-9 of Section 2, Landscape Guidelines)

Why the McCosker Proposed Project Complies

1. **Earth Disturbance Prohibitions.** No earth disturbance is allowed in the circular area one third the distance of the overall canopy/dripline as measured from the trunk.

The McCosker backyard includes 25 oak trees, 14 of which have tree trunks 10 inches or greater. For identification, the three proposed walls been designated as Walls A, B and C and trees have been numbered 1 through 25. See Exhibit A, page 2.

Both proposed Wall A and Wall C are far outside the “no earth disturbance zone” for all 25 trees on the applicant’s property.

Proposed Wall B is far outside the “no earth disturbance zone” for 23 of 25 trees on the applicant’s property.

Proposed Wall B would be located at approximately “one third the distance of the overall canopy/dripline as measured from the trunk” of Trees 1 and 25. The canopy/dripline of these 2 trees overlap, making a precise application of this Guideline difficult as to them. According to the arborist, the de-construction of the existing walls and re-construction of the proposed walls would have no greater effect on oak trees nearest the existing walls than the mere de-construction of the existing walls. As such, it is the de-construction of the existing walls and not the re-construction of proposed new walls that would result in earth disturbance near to Trees 1 and 25. To the extent of any concern about any slight intrusions into the “no disturbance zone,” such concerns about potential impacts can be fully mitigated by additional plantings of oak trees per the arborist’s oversight and direction during field work.

The proposed project substantially, if not fully, complies with the “letter” of this Guideline, and also complies with the “spirit” (purpose) of this Guideline in that earth disturbance close to native trees as a result of the proposed project is avoided.

EXHIBIT C

Page 1 of 3

Findings Under Applicable Guidelines and Ordinances

Why the McCosker Proposed Project Complies

Single Family Design Board Guidelines concerning Native/Specimen Tree Protection & Replacement (p. 8-9 of Section 2, Landscape Guidelines)

<p>2. Arborist Report. Any work within the general vicinity of the dripline of a native specimen, the SFDB may defer to the report's recommendations.</p>	<p>An Arborist has evaluated the existing condition and the proposed condition. A report was prepared that addresses work within the oak dripline. The applicant proposes to follow <u>all</u> recommendations of the arborist.</p>
<p>3. Paving. Paving and other non-permeable surface encroachment under native and specimen tree canopy/driplines should be minimized.</p>	<p>The project does not propose paving. Most of the patio areas do not encroach into tree canopy/driplines; where this does occur, the ground surface of the patio areas is permeable and is designed to drain properly.</p>
<p>4. Distance from Structures. The edge of the mature native or specimen tree canopy/dripline should remain a minimum of five (5) feet from all new structures.</p>	<p>The project fully complies with this Guideline as to 20 out of 25 trees on the property, and substantially complies with this Guideline as to the other 5 trees since only relatively small portions of the project would be within the dripline of any of these trees. Again, to the extent directed by the Arborist during field work, any concerns about impacts can be mitigated.</p> <p>Wall C is entirely outside driplines of trees.</p> <p>Wall B is entirely outside the driplines of 22 out of 25 trees on the applicant's property, by more than 5 feet. Wall B is within the dripline of Trees 1, 18 and 19 to a minor extent. Trees 1, 18 and 19 have overlapping canopies – but well less than 25% of the canopy of these trees, which is the often-recognized criterion for evaluating potential impacts to oaks.</p> <p>Wall A is entirely outside the driplines of 23 out of 25 trees on the applicant's property by more than 5 feet, but Wall A is within the dripline of Trees 23 and 24 to a minor extent – again well less than 25% of the canopy of these trees, which is the often-recognized criterion for evaluating potential impacts to oaks.</p>

EXHIBIT C

Findings Under Applicable Guidelines and Ordinances

Single Family Design Board Guidelines *Why the McCosker Proposed Project Complies*
 concerning Native/Specimen Tree Protection & Replacement
 (p. 8-9 of Section 2, Landscape Guidelines)

<p>5. Protection Notes. Proposed projects which may impact existing native or specimen trees are required to submit Tree Protection notes as part of the final landscape submittal. Notes shall be located on all site and/or grading plans.</p>	<p>Oak tree protection notes recommended in the Arborist report will be incorporated into the final landscape submittal and on all site plans.</p>
<p>6. Replacement Dimensions. If it is determined that a native or specimen tree is to be removed, the diameter of the required replacement tree(s) will be equal to or greater than one-quarter the diameter of the existing tree (e.g., a 12-inch-diameter oak will be replaced with one measuring no less than 3 inches). Smaller tree replacement sizes than this formula may be specified in some cases to ensure replacement tree availability.</p>	<p>Although the project does not propose oak tree removals, the Arborist report includes mitigation measures for any unplanned removals and for any potentially impacted trees. These notes will be included on the final landscape plans.</p>

EXHIBIT C

Findings Under Applicable Guidelines and Ordinances

Why the McCosker Proposed Project Complies

Hillside Design District And Sloped Lot Findings

From 34. Retaining Walls (which repeats portions of 9.)

<p>34.1 Minimize length of solid fences, landscape walls, and retaining walls on hillsides. Walls should not exceed 50' in length.</p>	<p>34.1 The retaining walls in the proposed Project are well less than 50' in length, and are separated from one another.</p>
<p>34.2 Minimize fence and wall heights. An 8' wall may be acceptable if the materials are aesthetically pleasing (for example, stone), but a 6' height limit is more appropriate for materials such as stucco.</p>	<p>34.2 Wall heights have been minimized and have been designed to be aesthetically pleasing, with natural appearing allan block walls along the natural areas and a painted CMU wall that ties into the architecture of the home. All wall heights vary, with maximum wall heights of 5'6" to 6'4" for only a short distance and average wall heights about one-half of these maximum heights.</p>
<p>34.3 & 34.4</p>	<p>-- N/A</p>
<p>34.5 Follow topography with fence and wall design.</p>	<p>34.5 Wall C retains the hillside above by following the topography of the natural grade. In contrast, the curved walls of Walls A and B create the patio areas with minimal intrusion into oak trees, which is another design consideration, by starting at grade level.</p>
<p>34.6 Use earth tone colors that tend to blend with the surrounding natural colors of the hillsides and minimize visual effects. Avoid use of colors contrasting with natural terrain such as bright white walls or large areas of bright non-native flowers.</p>	<p>34.6 Since none of the walls is visible to the public, this guideline is probably not applicable. Nevertheless, the Proposed Project complies. The Allan Block walls are natural colored and blend in. The CMU wall is proposed to be painted, but should be viewed as uniting the white walls of the nearby residence – with the two patio areas as the transition from the white walls of the residence and the natural areas of the yard down-slope.</p>
<p>34.7 Use stone or other native, natural materials.</p>	<p>34.7 In the redesign that resulted in the Proposed Project, boulders were substituted for walls where possible. The Allan Block is natural in color.</p>
<p>34.8 Integrate vegetation and landscaping with fence and wall design.</p>	<p>34.8 The landscape plan integrates new plantings that are compatible with the oak trees and plantings that will drape over the CMU wall.</p>

EXHIBIT D

Findings Under Applicable Guidelines and Ordinances

Hillside Design District And Sloped Lot Findings

Why the McCosker Proposed Project Complies

From 34. Retaining Walls (which repeats portions of 9.)

<p>34.9 through 34.12</p> <p>34.13 The following are suggested maximum heights for fill slope retaining wall systems:</p> <ul style="list-style-type: none"> • 6 feet suggested maximum exposure for individual retaining walls • 12 feet suggested maximum combined exposed retaining wall faces. <p>34.14 The following are suggested maximum heights for cut slope retaining wall systems:</p> <ul style="list-style-type: none"> • 8 foot suggested maximum exposure for individual retaining walls • 16 feet suggested maximum combined exposed retaining wall faces. 	<p style="text-align: center;">-N/A</p> <p>34.13 This guideline is applicable to Walls A and B. The maximum exposure of the two Allan Block walls is less than 6', and is much less on average.</p> <p>34.14 This guideline is applicable to Wall C. The visible portion of CMU wall is 6'4" briefly (but less on average) due to its design that follows topography.</p>
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EXHIBIT D



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Introduction Of Medical Marijuana Storefront Collective Dispensary Ordinance

RECOMMENDATION:

That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending the Municipal Code by Revising Chapter 28.80 and Establishing Revised Regulations and Procedures for Medical Marijuana Storefront Collective Dispensaries.

EXECUTIVE SUMMARY:

The Ordinance Committee has recently held four hearings on additional City ordinance amendment provisions for the permitting of medical marijuana dispensaries within the City, and it has reached a consensus on certain amendments. The major components are of the consensus are the following: 1. Medical marijuana may be distributed via storefront locations only if storefront dispensaries operate as collectives; 2. a maximum of five storefront collectives in seven possible areas of the City; 3. Collective membership is limited to the tri-county area; 4. a 24-hour waiting period to join a collective; 5. Membership, cultivation and medical records must be kept (All records except medical records to be inspected by City Staff with limited notice and medical records inspection requires search or inspection warrant); 6. a permit decision by Staff Hearing Officer, with a possible appeal directly to Council; and 7) Revisions previously recommended by Ordinance Committee. A public hearing before the Planning Commission is scheduled for May 13, and the Planning Commission recommendations will be presented to Council during the oral staff presentation.

DISCUSSION:

Previous Council Direction

On February 23, 2010, the Council reviewed a draft revision to the Medical Cannabis Dispensary Ordinance, and directed the Ordinance Committee to consider all of the following:

1. Possible revisions to the latest draft version of the Ordinance regulating Medical Marijuana Dispensaries in order to reduce the maximum number of dispensaries within the City to five (5),
2. Providing that major alcohol and drug rehabilitation facilities would be protected uses and adjusting the allowed areas for dispensaries appropriately,
3. Allowing dispensaries in the Cottage Hospital area, and
4. Further defining the operational parameters of storefront collective/cooperatives in order to ensure compliance with Proposition 215 and the state SB 420 statutes.

The Ordinance Committee met on March 16th, March 30th, April 13th, and April 27th, came to consensus on these and other issues and made the following recommendations to Council in the attached ordinance for introduction.

Ordinance Committee Recommendations

1. Rename the ordinance from the "Medical Cannabis Dispensary Ordinance," to the "Medical Marijuana Storefront Collective Dispensary Ordinance."
2. Medical marijuana can only be made available to Qualified Patients and Primary Caregivers at storefront locations if such locations are operated as "collectives or cooperatives" in the manner required by SB 420.
3. Allow a total of five (5) storefront collective dispensaries within the City. This number was a compromise between Committee members who wanted more and Committee members who wanted fewer.
4. Allow storefront collective dispensaries in seven possible areas of the City (Maps showing the areas are included as Attachments 1-6):
 - a. Outer State
 - b. Upper De la Vina
 - c. Mission Street
 - d. Downtown West
 - e. Downtown East
 - f. Milpas
 - g. West Pueblo Medical (formerly referred to as the Cottage Hospital area)

The Ordinance Committee discussed the elimination of the Downtown West and Downtown East areas, but did not reach consensus to do so.

5. Prohibit storefront dispensaries within 500 feet of the 17 highest priority drug and alcohol recovery facilities within the City.

6. Restrict storefront collective dispensary membership to residents of Santa Barbara, San Luis Obispo and Ventura Counties. This was a compromise of the Ordinance Committee members, as one wanted membership to be from throughout the state, another wanted City residents only, and the third wanted Santa Barbara County residents only. This compromise was reached in conjunction with also requiring a 24 hour waiting period before becoming a collective member.
7. Require a 24 hour initial waiting period in order to join a storefront collective and restricting individuals to membership in one collective at a time. The purpose of this requirement is to attempt to discourage medical marijuana tourism, wherein residents of the tri-county area would come to Santa Barbara just to obtain medical marijuana.
8. Specific cultivation, membership, and financial records of the collective are required to be maintained, with possible inspection by specified City Staff on limited prior notice.
9. Member medical records may be inspected by City Staff, but only with a search warrant or inspection warrant.
10. Dispensary inspection of the dispensary premises with limited notice by CDD City Staff.
11. Continue the current process of initial review by the Staff Hearing Officer, but have appeals heard by the Council, bypassing the Planning Commission. The current process requires a decision by the Staff Hearing Officer, with an appeal to the Planning Commission. The previous revisions proposed adding a Council appeal of the Planning Commission decision.

The Ordinance Committee members felt that while an administrative approval might be appropriate, an appeal to Council was necessary. Since there is no current process for an administrative approval to be appealed to Council, and there are current processes wherein discretionary approval are appealed directly to Council (e.g. Architectural Board of Review), the Ordinance Committee recommended that the initial decision should remain with the Staff Hearing Officer, but that any appeal would be heard by the Council.

12. All amendment recommendations previously forwarded to Council, including the following:
 - a. Prohibit storefront dispensaries within 1000 feet of Casa Esperanza.
 - b. Prohibition on storefront collectives in mixed-use buildings, where the residential units are condominiums, and the project is existing at the time the revisions are adopted.
 - c. Allowable dispensary areas are described by block face, rather than by prohibition radii.

- d. Security provided by a separate “Private-party operator” security company, which is licensed by the State.
- e. More discretion for the Staff Hearing Officer, and Council on appeal, in the form of changes to the criteria for issuance (see SBMC §28.80.0070.B.6. and B.10).
- f. Annual review of the storefront collective dispensary operation for legal compliance by the Police and Community Development Departments.
- g. Reduce the amortization period of six months from the effective date of the ordinance for the closure of those dispensaries which existed prior to the adoption of the current ordinance. If these ordinance revisions are adopted as recommended by the Ordinance Committee, the effect on pending, approved, appealed, legally operating and nonconforming dispensaries would be as outlined in Attachment 7. Most pending applications would not be allowed to proceed because their locations are no longer allowable. One pending application would not be allowed to move forward because it's in an existing, mixed use building with residential condominiums. In those areas where multiple applications are pending, the application deemed complete first would be allowed to go to hearing first. If the first complete application were to be approved, the remaining applications would then be precluded from approval. If it were not approved, then the next complete application would be allowed to move forward in the permitting process.
- h. Minor and other miscellaneous changes to the ordinance language.

MMDO Suspension Ordinance Status

The attached ordinance contains a section that repeals the MMDO suspension on the effective date of these revisions, which is 30 days after the adoption of the ordinance. Currently, pending applications are being processed through application completeness. Upon repeal of the suspension, staff will schedule complete applications for hearings, and terminate applications that are precluded because of the newly adopted revisions. Additionally, the six month amortization period will begin. During that time, permitted dispensaries must update their operational plans, and nonconforming dispensaries must either obtain a permit or close down.

BUDGET/FINANCIAL INFORMATION:

The City will charge an hourly rate for the processing of Medical Marijuana Dispensary Permits, so that the full cost of processing the permits and for each annual review will be covered.

- ATTACHMENTS:**
1. Outer State Street Area map
 2. Upper De la Vina Area map
 3. Mission Area map
 4. Downtown East and West Area map
 5. Milpas Area map
 6. West Pueblo Medical Area map
 7. Table showing status of dispensaries

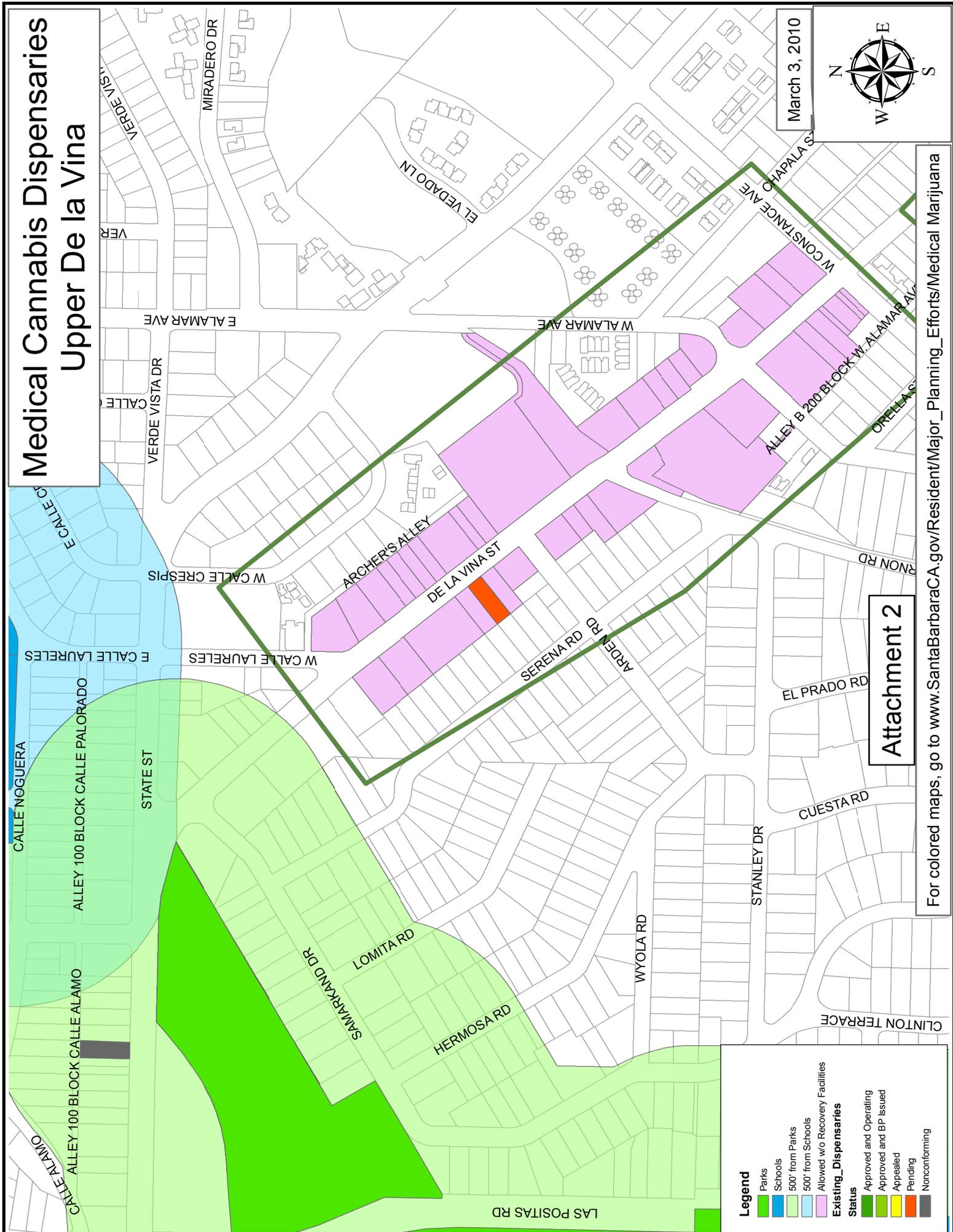
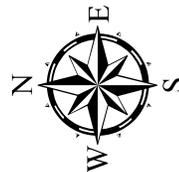
PREPARED BY: Danny Kato, Senior Planner

SUBMITTED BY: Paul Casey, Assistant City Administrator

APPROVED BY: City Administrator's Office

Medical Cannabis Dispensaries Upper De la Vina

March 3, 2010



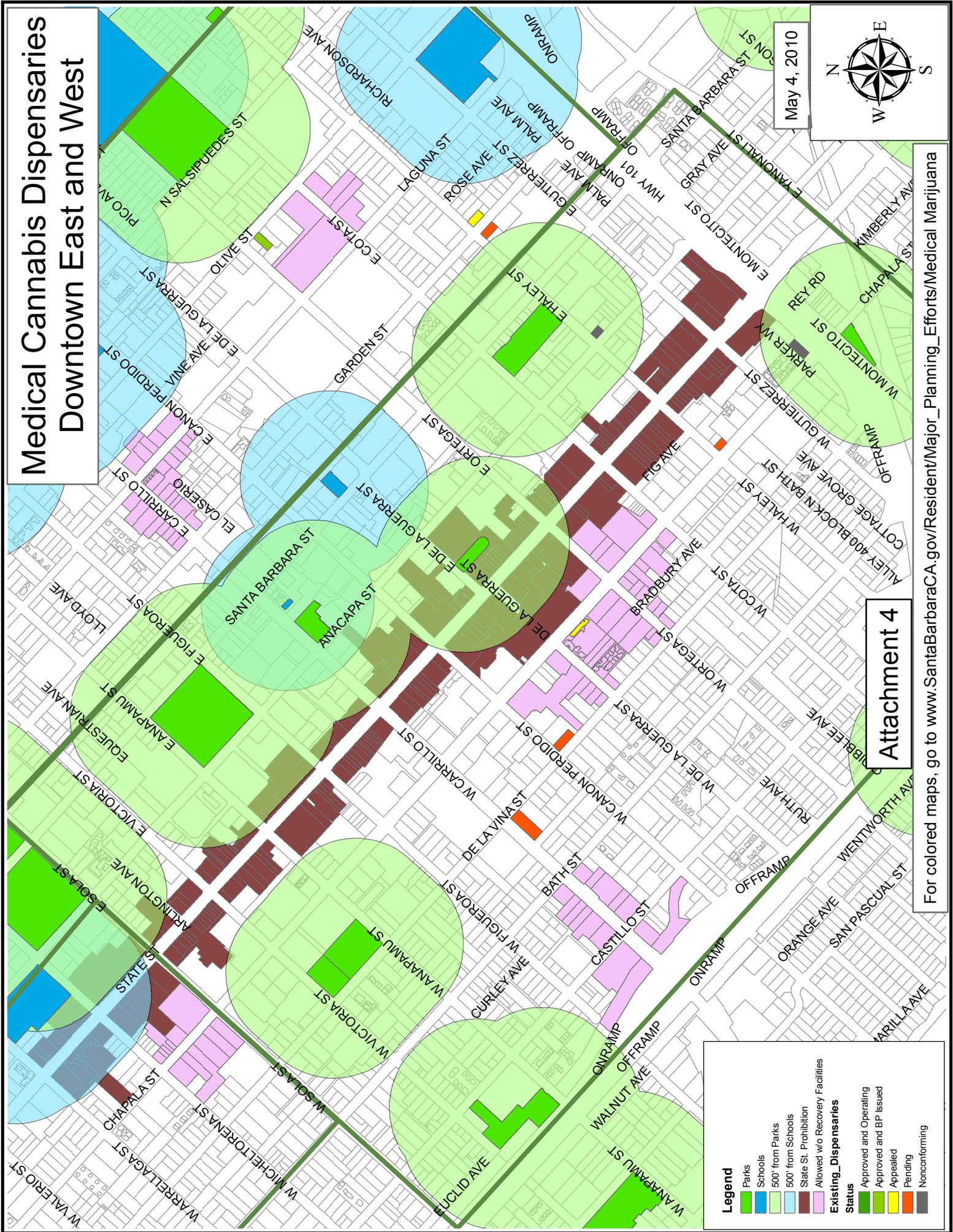
Attachment 2

For colored maps, go to [www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical Marijuana](http://www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical_Marijuana)

- Legend**
- Parks
 - Schools
 - 500' from Parks
 - 500' from Schools
 - Allowed w/o Recovery Facilities
- Existing_Dispensaries**
- Status**
- Approved and Operating
 - Approved and BP Issued
 - Appealed
 - Pending
 - Nonconforming

Medical Cannabis Dispensaries Downtown East and West

May 4, 2010



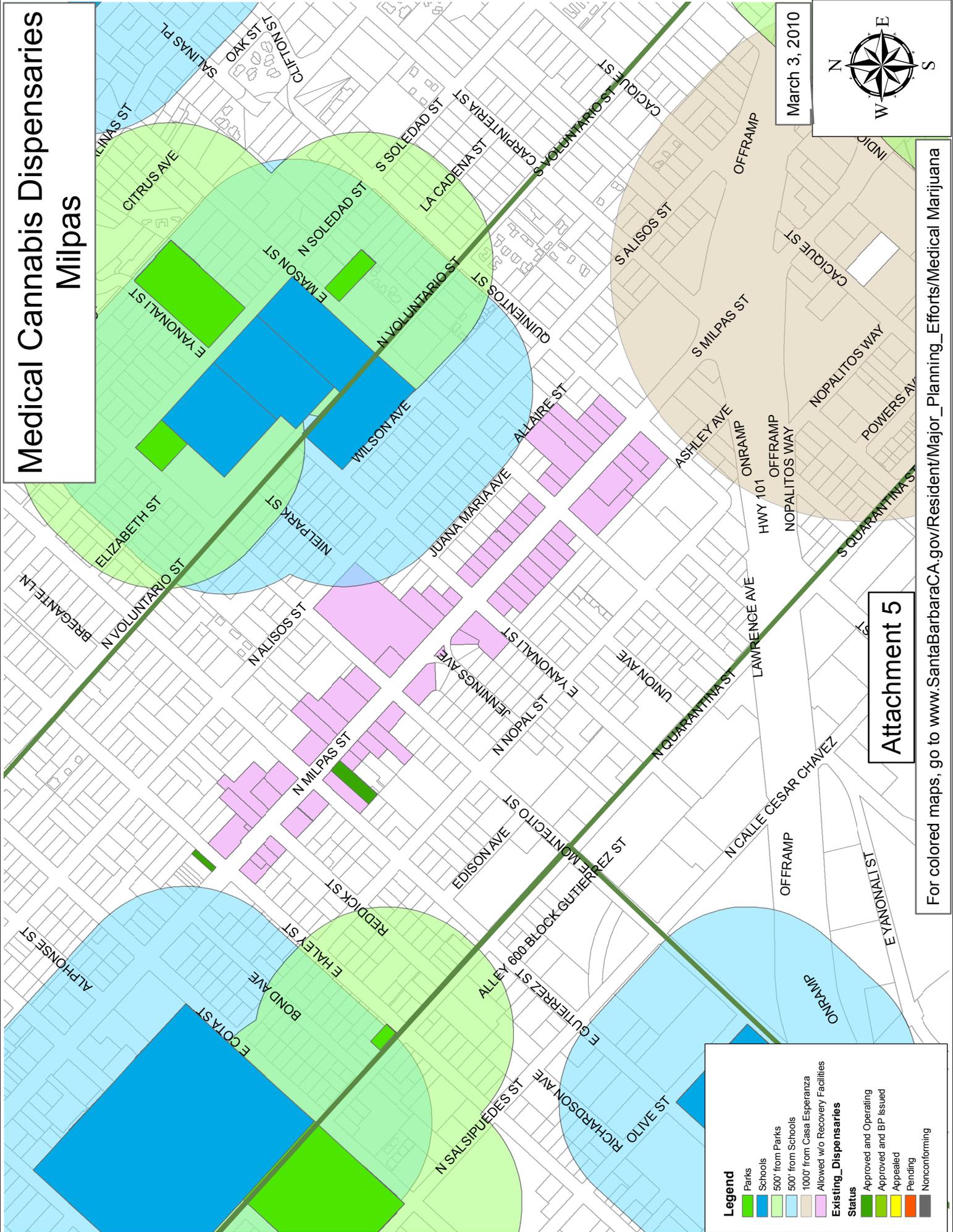
Attachment 4

For colored maps, go to www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Marijuana

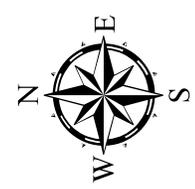
Legend

- Parks (Light Green)
 - Schools (Light Blue)
 - 500' from Parks (Light Purple)
 - 500' from Schools (Light Blue)
 - State St. Prohibition (Light Purple)
 - Allowed w/o Recovery Facilities (Light Purple)
- Existing_Dispensaries**
- Approved and Operating (Green)
 - Approved and BP Issued (Yellow)
 - Appealed (Orange)
 - Pending (Light Orange)
 - Nonconforming (Grey)

Medical Cannabis Dispensaries Milpas



March 3, 2010



Attachment 5

Legend

- Parks
- Schools
- 500' from Parks
- 500' from Schools
- 1000' from Casa Esperanza
- Allowed w/o Recovery Facilities

Existing_Dispensaries

Status

- Approved and Operating
- Approved and BP Issued
- Appealed
- Pending
- Nonconforming

For colored maps, go to [www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical Marijuana](http://www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical_Marijuana)

Pending, Approved, Appealed, Permitted, and Nonconforming Dispensaries
Necessary Actions Upon Ordinance Adoption
 May 4, 2010, Page 1 of 2

Address	Status	Location Meets Current Ordinance?	Location Meets Revised Ordinance?	Action Required upon Adoption of Revised Ordinance	Notes
MILPAS					
331 N. Milpas	Permitted	Yes	Yes	Amend operational plan	
500 N. Milpas	Permitted	Yes	No, but OK to remain	Amend operational plan	
DOWNTOWN EAST					
631 Olive	Permitted	Yes	No, but OK to remain	Amend operational plan	
302 E Haley	Approved by SHO Appealed to PC	Yes, but within 500 feet of 234 E. Haley	No	Withdraw application	
234 E. Haley	Application is Pending	Yes, but within 500 feet of 302 E. Haley	No	Withdraw application	
OUTER STATE					
16 S. La Cumbre	Application is Pending	No	Yes	Continue processing application	Applicant owns 3128 State, which must close
3128 State	Nonconforming	No, too close to MacKenzie Park	No	6 months to close	
3516 State	Application is Pending Nonconforming status in dispute	Yes	Yes	6 months to get permit or close	Staff believes that this dispensary lost its nonconforming status. Cease and desist order issued.

Pending, Approved, Appealed, Permitted, and Nonconforming Dispensaries
Necessary Actions Upon Ordinance Adoption
 May 4, 2010, Page 2 of 2

Address	Status	Location Meets Current Ordinance?	Location Meets Revised Ordinance?	Action Required upon Adoption of Revised Ordinance	Notes
DE LA VINA					
2915 De la Vina	Application is Pending. Legal status is in Dispute	Yes	Yes	Continue processing application.	Staff believes that this dispensary never had nonconforming status. Cease-and-Desist order issued. If current application is approved, this dispensary could remain.
DOWNTOWN WEST					
403 Chapala	Application is Pending	Yes	No	Withdraw Application	These three applications are pending in Downtown West area, but none meet the new locational requirements.
826 De la Vina	Application is Pending	Yes	No	Withdraw Application	
211 W. Carrillo	Application is Pending	Yes	No	Withdraw Application	
741 Chapala	Approved by SHO Appealed to PC	Yes	No, in Existing Mixed Use Bldg.	Withdraw Application	
100 E. Haley	Closed	No, too close to Veracruz Park	No	None, Already Closed	This dispensary closed as result of enforcement efforts
26 Parker Way	Nonconforming	Yes	No	6 months to close	This dispensary's status as nonconforming was in dispute, but has since provided evidence to substantiate operational status

**CITY COUNCIL INTRODUCTION DRAFT
NOT SHOWING CHANGES FROM CURRENT CODE
MAY 18, 2010 COUNCIL MEETING**

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING THE
MUNICIPAL CODE BY REVISING CHAPTER
28.80 AND ESTABLISHING REVISED
REGULATIONS AND PROCEDURES FOR
MEDICAL MARIJUANA STOREFRONT
COLLECTIVE DISPENSARIES.**

The City Council of the City of Santa Barbara does ordain as follows:

SECTION ONE. Chapter 28.80 of Title 28 of the Santa Barbara Municipal Code, entitled "Medical Marijuana Dispensaries," is amended to read as follows:

Section 28.80.010 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate the storefront distribution of medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Santa Barbara. The regulations in this Chapter, in compliance with the State Compassionate Use Act of 1996 and the State Medical Marijuana Program Act ("the SB 420 statutes"), are not intended and do not interfere with a patient's right to use medical marijuana as authorized under the Compassionate Use Act or the SB 420 statutes, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under the Compassionate Use Act. Under the Compassionate Use Act of 1996 and the SB 420 statutes, only qualified patients, persons with identification cards, and primary caregivers may legally cultivate medical marijuana collectively and provide it to qualified patients or person with identifications cards. Therefore, medical marijuana collective within the City which operate storefront dispensary locations must comply with all provisions of the Santa Barbara Municipal Code ("SBMC") for obtaining a permit for the storefront dispensary as well as complying with the Compassionate Use Act, the SB 420 statutes, and all other applicable local and state laws. Nothing in this

Chapter purports to permit activities that are otherwise illegal under federal, state, or local laws.

Section 28.80.020 Definitions.

For the purpose of this Chapter, the following words and phrases shall have the following meanings:

A. Applicant. A person who is required to file an application for a Medical Marijuana Storefront Collective Dispensary permit under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other dispensary operator, Management Member, employee, or agent of a Medical Marijuana Storefront Collective Dispensary.

B. Drug Paraphernalia. As defined in California Health and Safety Code Section 11014.5, and as may be amended from time to time.

C. Identification Card. As defined in California Health and Safety Code Section 11362.71 and as may be amended from time to time.

D. Management Member. A Medical Marijuana Collective 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.

D. Medical Marijuana Storefront Collective Dispensary or Storefront Collective Dispensary. An incorporated or unincorporated association which is composed of four (4) or more Qualified Patients and their designated Primary Caregivers who associate at a particular location or Property within the City in order to collectively or cooperatively cultivate marijuana for medical purposes and who, acting through Management Members, distribute the collectively cultivated medical marijuana to the members of their Collective at a storefront dispensary located within a non-residential zone of Santa Barbara, all in accordance with the Compassionate Use Act of 1996 (California Health and Safety Code sections 11362.5) and Health and Safety Code section 11362.7 through 11362.9. For the purposes of this Chapter, the term "Medical Marijuana cooperative" (or "cooperative") shall have the same meaning as a "Medical

Marijuana collective" (or a "collective") and the term "cooperative" shall have the definition and formation requirements established for it by state law.

A Storefront Collective Dispensary shall not include the dispensing of medical marijuana by primary caregivers to qualified patients in the following locations so long as the location and operation of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code and operated in the manner required by applicable state laws:

1. a clinic licensed pursuant to Chapter 1 of Division 2 of the state Health and Safety Code;
2. a health care facility licensed pursuant to Chapter Two of Division 2 of the state Health and Safety Code;
3. a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the state Health and Safety Code;
4. residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the state Health and Safety Code;
5. a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the state Health and Safety Code;

provided that any such clinic, health care facility, hospice or residential care facility also fully complies with applicable laws including, but not limited to, the Compassionate Use Act of 1996 and the SB 420 statutes.

E. Permittee. The Management Member or Members identified to the City by an Applicant as such and to whom a City Storefront Collective Dispensary permit has been issued and someone who also qualifies as a primary caregiver.

F. Person with an Identification Card. A person as described in California Health and Safety Code Section 11362.71 through 11362.76, and as amended from time to time.

G. Physician. A licensed medical doctors including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

H. Primary Caregiver. A person as defined and described in either subdivision (d) or (e) of California Health and Safety Code Section 11362.7 as it may be amended from time to time.

I. Property. The location or locations within the City at which Medical Marijuana Collective members and Management members associate to collectively or cooperatively cultivate or to distribute Medical Marijuana exclusively to their Collective members.

J. Qualified Patient. A person as defined and described in California Health and Safety Code Section 11362.5 et seq., and as it may be amended from time to time. For the purposes of this Chapter, a Qualified Patient shall also include a Person with an Identification Card.

K. School. An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle, or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years, whether public or private.

L. Reasonable Compensation. Compensation commensurate with reasonable wages and benefits paid to employees of federal Internal Revenue Code qualified non-profit organizations which employees have similar job descriptions and duties, as well as a comparable required level of experience and education, similar prior earnings or wage history, and number of hours typically worked per week. The payment of a bonus shall not be considered reasonable compensation.

Section 28.80.030 Storefront Collective Dispensary - Permit Required to Operate.

It shall be unlawful for any person to engage in, to conduct or carry on (or to permit to be engaged in, conducted or carried on) in or upon his or her Property located within the City, the operation of a Storefront Collective Dispensary unless an Applicant has first obtained and continues to maintain in full force and effect a valid Storefront Collective Dispensary Permit issued by the City for that Property pursuant to this Chapter.

Section 28.80.040 Imposition of Medical Marijuana Storefront Collective Dispensary Permit Fees.

Every application for a Storefront Collective Dispensary permit shall be accompanied by an application fee (in an amount established by resolution of the City Council) at a amount calculated to recover the City's full cost of reviewing and issuing the Storefront Collective Dispensary permit) and the filing of a complete required application pursuant to this Chapter. The application fee shall not include the standard City fees for fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies.

Section 28.80.050 Limitations on the Permitted Location of a Storefront Collective Dispensary.

A. Permissible Zoning for Storefront Collective Dispensaries.

Storefront Collectives Dispensaries may only be permitted and located on parcels within the City which are zoned for commercial uses and on those street block faces listed in the exhibit to this Chapter designated as "Medical Marijuana Storefront Collectives Dispensaries - Allowed Locations" dated as of May 18, 2010.

B. Storefront Locations. Except for those locations shown as allowed within the West Pueblo Medical Area on the exhibit attached to this Chapter which have been specifically approved by the Staff Hearing Officer as non-storefront locations pursuant to this Chapter, a Storefront Collective Dispensary shall only be located in a visible store-front type ground-floor location which provides good public views of the Dispensary entrance, its windows, and the entrance to the Storefront Collective Dispensary premises from a public street.

C. Commercial Areas and Zones Where Storefront Collective Dispensaries Not Permitted. Notwithstanding subparagraph (A) above, a Storefront Collective Dispensary shall not be allowed or permitted in the following locations or zones:

1. On a parcel located within 1000 feet of another permitted or allowed Storefront Collective Dispensary; or
2. On a parcel on State Street between Cabrillo Boulevard and Arrellaga Street;

D. Locational Measurements. The distance between a Storefront Collective Dispensary and above-listed restrictions shall be calculated as a straight line from any parcel line of the Property on which the Storefront Collective Dispensary is located to the parcel line the real property on which the facility, building, or structure, or portion of the building or structure, in which the above-listed use occurs or is located.

For the purposes of determining compliance with the locational restrictions imposed by this section, the permissibility of a proposed Storefront Collective Dispensary location shall be determined by City staff based on the date the permit application has been deemed complete by the City with the earliest complete applications deemed to have priority over any subsequent Storefront Collective Dispensary application for any particular permissible location.

E. One Collective Dispensary for Each Area of the City. No more than one Storefront Collective Dispensary may open or operate in each of the areas of the City designated as allowed or permissible Collective Dispensary location areas in the exhibit attached to this Chapter except for those areas which, at the time of the adoption of the ordinance amending this Chapter, already have more than one Storefront Collective Dispensary on a legal non-conforming basis and which are allowed to continue to operate on a legal non-conforming basis under Section Two of the Ordinance amending this Chapter - in which case a legal non-conforming Dispensary may be allowed to continue to operate in such an area.

F. Maximum Number of Medical Marijuana Storefront Collective Dispensaries Allowed Permits. Notwithstanding the above, the City may not issue a total of more than five (5) Collective Dispensary permits at any one time and no more than five (5) permitted or allowed Collective Dispensaries may legally operate within the City, including specifically those dispensaries which are open and operating in a legal nonconforming manner at the time of the adoption of the ordinance amending this Chapter.

Section 28.80.060 Storefront Collective Dispensary - Permit Application Requirements.

A. Application Filing. A complete Performance Standard Permit application submittal packet is required for a Storefront Collective Dispensary permit and it shall be submitted (along with all required fees) and all other information and materials required by this Chapter in order to file a complete application for a Storefront Collective Dispensary Permit for a specific

Property. All applications for Storefront Collective Dispensary permits shall be filed with the Community Development Department using forms provided by the City. It is the responsibility of the Applicant to provide all of the information required for approval of the permit. The application shall signed by a Management Member under penalty of perjury.

B. Eligibility for Filing. If a Storefront Collective Dispensary permit application is filed by a non-owner of the Property, it shall also be accompanied by a written affirmation from the Property owner expressly allowing the Applicant and Management Member to apply for the Permit and acknowledging the Applicant's right to use and occupy the Property for the intended Medical Marijuana Storefront Collective Dispensary use.

C. Filing Date. The filing date of any application shall be the date when the City officially receives the last submission of information or materials required in compliance with the submittal requirements specified herein and the application has been deemed complete in writing by the City.

D. Effect of Incomplete Filing. Upon notification that an application submittal is incomplete, the Applicant shall be granted an extension of time to submit all materials required to complete the application within thirty (30) days. If the application remains incomplete in excess of thirty (30) days the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject request.

E. Filing Requirements - Proposed Operational Plan. In connection with a permit application, an Applicant for a Storefront Collective Dispensary permit shall provide a detailed "Operations Plan" for the proposed Dispensary and, upon issuance of the Storefront Collective Dispensary permit by the City, shall operate the Storefront Collective Dispensary in accordance with the Operations Plan, as approved, at all times. A required Operations Plan shall consist of at least the following:

1. Site Plan and Floor Plan. A Storefront Collective Dispensary application shall have a proposed site plan and floor plan which shows a lobby waiting area at the entrance to the Storefront Collective Dispensary used to receive qualified patients or primary caregivers, and a separate and secure designated area for dispensing medical marijuana to qualified patients or designated primary caregivers members of the Collective. The primary entrance shall be located and maintained clear of barriers, landscaping and

similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

2. Storage. A Storefront Collective Dispensary shall have suitable locked storage on the premises, identified and approved as a part of the operational security plan for the after-hours storage of medical marijuana.

3. Security Plans. A Storefront Collective Dispensary shall provide a plan to provide adequate security on the premises of the Dispensary which shall be maintained in accordance with the Dispensary security plan approved by the Chief of Police and as reviewed by the Staff Hearing Officer. This plan shall include provisions for adequate lighting and alarms in order to insure the safety of persons and to protect the premises from theft. All security guards used by dispensaries shall be licensed and employed by a state licensed private-party operator security company retained by the Storefront Collective Dispensary and each security guard used shall possess a valid state Department of Consumer Affairs "Security Guard Card" at all times. Security guards shall not possess or carry firearms or tazers while working at a Collective Dispensary.

4. Security Cameras. The Security Plan shall show how the Property will be monitored at all times by 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 an individual on or adjacent to the Property. The recordings shall be maintained at the Property for a period of not less than thirty (30) days.

5. Alarm Systems. The Operations Plan shall provide that professionally monitored burglary and fire alarm systems shall be installed and such systems shall be maintained in good working condition within the Storefront Collective Dispensary at all times.

6. Emergency Contact. A Operations Plan shall provide the Chief of Police with the name, cell phone number, and facsimile number of a Management Member to act as an on-site community relations staff person to whom the City may provide notice of any operating problems associated with the Storefront Collective Dispensary.

7. Public Nuisance. The Operations Plan shall provide for the Management Members of the Collective Dispensary to take

all reasonable steps to discourage and correct objectionable conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if directly related to the patrons of the subject Storefront Collective Dispensary.

8. Loitering Adjacent to a Dispensary. The Operations Plan shall provide that the Management Members will take all reasonable steps to reduce loitering by Collective members in public areas, sidewalks, alleys and areas surrounding the Property and adjacent premises during the business hours of the Storefront Collective Dispensary.

9. Trash, Litter, Graffiti. The Operations Plan shall provide that the Management Members will keep area which includes the sidewalks adjoining the Dispensary plus ten (10) feet beyond property lines (as well as any parking lots under the control of the Dispensary) clear of litter, debris, and trash.

10. Removal of Graffiti. The Operations Plan shall provide a method for the Management Members to promptly remove all graffiti from the Property and parking lots under the control of the Collective within 72 hours of its appearance.

F. Filing Requirements - Information Regarding Storefront Collective Dispensary Management. A Storefront Collective Dispensary Applicant shall also provide the following Management Member and Collective information as part of a Storefront Collective Dispensary application:

1. The name, address, telephone number, title and function(s) of each Management Member;
2. For each Management Member, a fully legible copy of one (1) valid government issued form of photo identification, such as a state driver's license or identification card. Acceptable forms of government issued identification include, but are not limited to, driver's license or photo identity cards issued by the state Department of Motor Vehicles (or equivalent) that meet REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents) or a Permanent Resident card.

3. Written confirmation as to whether the Collective or a Management Member of the Collective previously operated in this or any other county, city or state under a similar license or permit, and whether the Collective or Management Member Applicant ever had such a license or permit revoked or suspended by and the reason(s) therefore.

4. If the Collective is a corporation or a cooperative, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's By laws;

5. If the Collective is an unincorporated association, a copy of the articles of association;

6. The name and address of the Applicant's or Collective's current designated Agent for Service of Process;

7. A statement dated and signed by each Management Member, of the Collective, under penalty of perjury, that the Management Member has personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the identified Management Member(s);

8. Whether Edible Medical Marijuana products will be prepared and distributed at the proposed Dispensary Property;

9. The Property location or locations where any and all Medical Marijuana will be collectively cultivated by the Collective members and Management Members;

Section 28.80.070 Criteria for Review of Collective Dispensary Applications by the City Staff Hearing Officer.

A. Decision on Application. Upon an application for a Storefront Collective Dispensary permit being deemed complete, the Staff Hearing Officer shall either issue a Storefront Collective Dispensary permit, issue a Storefront Collective Dispensary permit with conditions in accordance with this Chapter, or deny a Storefront Collective Dispensary permit.

B. Criteria for Issuance. The Staff Hearing Officer, or the City Council on appeal, shall consider the following criteria in determining whether to grant or deny a Medical Marijuana Storefront Collective Dispensary permit:

1. That the Collective Dispensary permit and the operation of the proposed Dispensary will be consistent with the intent of the Compassionate Use Act of 1996 and the SB 420 Statutes for providing medical marijuana to qualified patients and primary caregivers and the provisions of this Chapter and with the Municipal Code, including the application submittal and operating requirements herein.
2. That the proposed location of the Storefront Collective Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity.
3. For those applicants who have operated other Storefront Collective Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area of the applicants former location.
4. That issuance of a Collective Dispensary permit for the Collective Dispensary size requested is appropriate to meet needs of community for access to medical marijuana.
5. That issuance of the Collective Dispensary permit would serve needs of City residents within a proximity to this location.
6. That the location is not prohibited by the provisions of this Chapter or any local or state law, statute, rule, or regulation and no significant nuisance issues or problems are likely or anticipated and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.
7. That the Dispensary's Operations Plan, its site plan, its floor plan, the proposed hours of operation, and a security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises; the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring

property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

8. That all reasonable measures have been incorporated into the Dispensary security plan or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, marijuana use in public, or creation of a public or private nuisance, or interference of the operation of another business.

9. That the Storefront Collective Dispensary is likely to have no potentially adverse affect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance and that the Dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

10. That any provision of the Municipal Code or condition imposed by a City issued permit, or any provision of any other local, or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws will not be violated.

11. That the Applicant has not made a false statement of material fact or has omitted to state a material fact in the application for a permit.

12. That the Applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the operation of another business within the City.

Section 28.80.080 On-Going Management Requirements for Medical Marijuana Storefront Collective Dispensaries.

Storefront Collective Dispensary operations shall be maintained and managed on a day-to-day basis only in compliance with the following operational standards and requirements:

A. Criminal History. A Storefront Collective Dispensary permittee, including all Management Members of that permittee, shall not have been convicted of a felony or be on probation or parole for the sale or distribution of a controlled substance and shall remain free of such a conviction or probation during the period of time in which the Storefront Collective Dispensary is being operated.

B. Minors. It shall be unlawful for any Storefront Collective Dispensary permittee, a Management Member of the permittee, or any other person effectively in charge of any Storefront Collective Dispensary to employ any person who is not at least 18 years of age. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Collective Dispensary unless they are a qualified patient member of the Collective and they are accompanied by a parent or guardian at all times. The entrance to a Storefront Collective Dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient member of the Collective and they are in the presence of their parent or guardian.

C. Storefront Collective Dispensary Size and Access. The following access restrictions shall apply to all Storefront Collective Dispensaries permitted by this Chapter:

1. A Storefront Collective Dispensary shall not be enlarged in size (i.e., increased floor area) without prior review and approval of the change from the Staff Hearing Officer and an approved amendment to the existing Storefront Collective Dispensary permit pursuant to the requirements of this Chapter.
2. An expressly designated Management Member or Members shall be responsible for monitoring the Property of the Storefront Collective Dispensary for any nuisance activity (including the adjacent public sidewalk and rights-of-way) which may occur on the block within which the Storefront Collective Dispensary is operating.
3. Only Collective members as primary caregivers or qualified patients shall be permitted within a Storefront Collective Dispensary building for the purposes of cultivating, processing, distributing, or obtaining medical marijuana.

4. A qualified patient or a primary caregiver shall not visit a Storefront Collective Dispensary without first having obtained a valid written recommendation from his or her licensed physician recommending the use of medical marijuana or, in the case of a primary caregiver, without first having been expressly designated a primary caregiver to a qualified patient as required by the Compassionate Use Act.

5. A qualified patient or primary caregiver may not obtain medical marijuana upon their first in-person visit to a Storefront Collective Dispensary and, instead, may only become a member of the Collective at the first visit to a particular Dispensary. Upon joining the Collective, a registered member of a Collective may obtain medical marijuana as a qualified patient or primary caregiver only after an initial waiting period of 24 hours after their initial in-person visit to the Dispensary for the purposes of joining the Collective.

6. Only a primary caregiver and qualified patient members of the Collective Dispensary shall be allowed within the designated marijuana dispensing area of a Storefront Collective Dispensary (as shown on the site plan required by the Application) along with only a necessary Management Members.

7. Restrooms with the Storefront Collective Dispensary shall remain locked and under the control of Collective Dispensary Management Members at all times.

D. Medical Marijuana Dispensing Operations. The following medical marijuana distribution restrictions and conditions shall apply to all of the day-to-day medical marijuana dispensing operations which occur within a permitted Storefront Collective Dispensary:

1. A Storefront Collective Dispensary shall only dispense to qualified patients or primary caregivers with a currently valid physicians approval or recommendation in compliance with the criteria of the Compassionate Use Act of 1996 and the SB 420 Statutes to those persons who are registered as active members of that Collective. Storefront Collectives Dispensaries shall require such persons to provide valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card each time they seek to obtain medical marijuana.

2. Prior to dispensing medical marijuana, a Management Member of the Storefront Collective Dispensary shall obtain a re-verification from the recommending physician's office personnel that the individual requesting medical marijuana is or remains a qualified patient or a primary caregiver.

3. A Storefront Collective Dispensary shall not have a physician on-site to evaluate patients and provide a Compassionate Use Act recommendation for the use of medical marijuana.

4. Every Storefront Collective Dispensary shall display at all times during its regular business hours, the permit issued pursuant to the provisions of this Chapter for such Collective Dispensary in a conspicuous place so that the same may be readily seen by all persons entering the Storefront Collective Dispensary.

5. No Storefront Collective Dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises of the Dispensary that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

6. Storefront Collective Dispensaries shall be considered commercial use relative to the parking requirements imposed by Santa Barbara Municipal Code Section 28.90.100(I).

7. A notice shall be clearly and legibly posted in the Storefront Collective Dispensary indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the Dispensary is prohibited. Signs on the premises shall not obstruct the entrance or windows. Address identification shall comply with Fire Department illuminated address signs requirements.

8. Business identification signage for Storefront Collective Dispensaries shall comply with the City's Sign Ordinance (SBMC Chapter 22.70) and be limited to that needed for identification only, consisting of a single window sign or wall sign that shall not exceed six square feet in area or 10 percent of the window area, whichever is less.

E. Dispensary Medical Marijuana On-Site Consumption and Re-Distribution Restrictions. The following medical marijuana

consumption restrictions shall apply to all permitted Storefront Collective Dispensaries:

1. Medical marijuana shall not be consumed by qualified patients on the Property or the premises of the Storefront Collective Dispensary.

The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the Collective Dispensary's entrance. Collective Dispensary management member employees who are qualified patients may consume marijuana within the enclosed building area of the premises, provided such consumption occurs only via oral consumption (i.e., eating only) but not by means of smoking or vaporization.

2. Storefront Collective Dispensary operations shall not result in illegal re-distribution or sale of medical marijuana obtained from the Collective Dispensary, or the use or distribution in any manner which violates state law.

F. Retail Sales of Other Items by a Storefront Collective Dispensary. The retail sales of related marijuana use items at a Storefront Collective Dispensary may be allowed only under the following circumstances:

1. With the approval of the Staff Hearing Officer, a Collective Dispensary may conduct or engage in the commercial sale of specific products, goods, or services (except drug paraphernalia) in addition to the provision of medical marijuana on terms and conditions consistent with this Chapter and applicable law.
2. No Collective Dispensary shall sell or display for sale any drug paraphernalia or any implement that may be used to administer medical marijuana.

G. Storefront Collective Dispensary - Compliance with the Compassionate Use Act of 1996 and SB 420 Statutes.

1. **State Law Compliance Warning.** Each Collective Dispensary shall have a sign posted in a conspicuous location inside the Storefront Collective Dispensary advising the public of the following:

- a. The diversion of marijuana for non-medical purposes is a criminal violation of state law.
- b. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
- c. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of state law.

2. Not For Profit Operation of the Storefront Collective Dispensary. No Medical Marijuana Storefront Collective Dispensary shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation for services provided by Management Members and Collective members toward the Collective's actual expenses for the growth, cultivation, processing, and provision of Medical Marijuana to qualified patients of the Collective shall be allowed provided that such reimbursements are in strict compliance with the applicable provisions of the SB 420 Statutes. All such cash and in-kind reimbursement amounts and items shall be fully documented in the financial and accounting records of the Collective Dispensary in accordance with and as required by the recordkeeping requirements of this Chapter.

3. Cultivation of Medical Marijuana by the Collective. The Collective cultivation of medical marijuana shall be limited to the Collective members and Management Members. Cultivation of medical marijuana by the Collective members and the Management Members shall occur exclusively within the boundaries of the counties of Santa Barbara, Ventura, or San Luis Obispo County and only at the real property identified for such cultivation on the approved Storefront Collective Dispensary Permit application.

No cultivation of medical marijuana at any Property where the marijuana will be visible with the un-aided eye from any public or other private property, nor shall cultivated medical marijuana or dried medical marijuana be visible from the building exterior on the Property. No cultivation shall occur at the Property of the Collective 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. Distribution of Medical Marijuana within Santa Barbara Only. Distribution of the medical marijuana collectively

cultivated by some Collective members to other Collective members shall occur exclusively within the boundaries of the city of Santa Barbara and only at the real property identified as the Dispensary location on the approved Storefront Collective Dispensary Permit application.

5. Membership Limited to One Collective. Membership in a Collective which operates a Storefront Collective Dispensary within the City shall be limited to one Collective per qualified patient or primary caregiver. Each Collective shall also consist only of individuals residing with Santa Barbara, Ventura, or San Luis Obispo counties as the term "principal residence" is defined in the federal Internal Revenue Code.

J. Maintenance of Appropriate Collective Records Regarding Cultivation and Compliance with the SB 420 Statutes.

1. Cultivation Records. Every City permitted Storefront Collective Dispensary shall maintain, on-site at the Property designated for the operation of the Storefront Collective Dispensary cultivation records, signed under penalty of perjury by each Management Member responsible for the cultivation, identifying the location within the counties of Santa Barbara, Ventura, or San Luis Obispo at which the collective's medical marijuana is being cultivated. Such records shall record the total number of marijuana plants cultivated or stored at each location. The Storefront Collective Dispensary shall also maintain an inventory record documenting the dates and amounts of medical marijuana cultivated or stored at the Dispensary Property, as well as the daily amounts of Medical Marijuana distributed from the Property for which the Dispensary permit is issued.

2. Membership Records. Every Storefront Collective Dispensary shall maintain full and complete records of the full name, date of birth, residential address, and telephone number(s) of each Collective member and Management Member; the date each Collective member and Management Member joined the Collective; the exact nature of each Collective member's and Management Member's participation in the Collective; and the status of each member and Management Member as a Qualified Patient or Primary Caregiver.

3. Financial Records. The Collective Dispensary shall also maintain a written accounting records of all cash and in-

kind contributions, reimbursements, and reasonable compensation provided by the Management Members of the Collective, and all operational expenditures and costs incurred by the Storefront Collective Dispensary in accordance with generally accepted accounting practices and standards typically applicable to such records.

4. Dispensary Record Retention Period. The records required above by subparagraphs (1), (2), and (3) of this subsection shall be maintained by the Medical Marijuana Collective Dispensary for a period of three (3) years and shall be made available by the Collective to the City upon a written request, subject to the authority set forth in Section 28.90.080.

Section 28.80.090 City Access to and Inspection of Required Storefront Collective Dispensary Records.

A duly designated City Police Department or Community Development Department representative may enter and shall be allowed to inspect the premises of every Storefront Collective Dispensary as well as the financial and membership records of the Collective required by this Chapter between the hours of ten o'clock (10:00) A.M. and eight o'clock (8:00) P.M., or at any appropriate time to ensure compliance and enforcement of the provisions of this Chapter, except that the inspection and copying of the private medical records of a Collective member shall be made available to the Police Department only pursuant to a properly executed search warrant or inspection warrant by a court of competent jurisdiction, or a court order for the inspection of such records.

It shall be unlawful for any property owner, landlord, lessee, Medical Marijuana Collective Dispensary member or Management Member or any other person having any responsibility over the operation of the Storefront Collective Dispensary to refuse to allow, impede, obstruct or interfere with an inspection of the Storefront Collective Dispensary or the required records thereof.

Section 28.80.100 Sale, Distribution, or Exchange of Medical Marijuana with a non-Medical Marijuana Collective Member.

A. Transfers to or from a Non-Collective Member. A Storefront Collective Dispensary, including the Management Member operating the Dispensary, shall not cause or permit the sale, distribution, or exchange of Medical Marijuana or of any Edible Medical

Marijuana product to any non- Collective Management Member or member. No Storefront Collective Dispensary shall possess medical marijuana that was not collectively cultivated by its Management Members or members either at the Property designated for the cultivation or at its prior location allowed in accordance with this Chapter.

B. Assistance for Edible Marijuana Products. Sales of edible medical marijuana products may be permitted at a Storefront Collective Dispensary and an individual or business within the City which assists a Dispensary in preparing and processing such a product will be deemed by the City as an "individual who provides assistance to a qualified patient or person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to a qualified patient ..." as that phrase is used in state Health and Safety Code section 11362.765(b)(3).

Section 28.80.110 Appeal from Staff Hearing Officer Determination.

A. Appeal to the City Council. An applicant or any interested party who disagrees with the Staff Hearing Officer's decision to issue, issue with conditions, or to deny or to revoke a Storefront Collective Dispensary permit may appeal such a decision to the City Council by filing an appeal pursuant to the requirements of section 1.30.050 of the Municipal Code.

B. Notice of City Council Appeal Hearing. Upon the filing of an appeal pursuant to subparagraph (A) above, the Community Development Director or the City Clerk shall provide public notice of the appeal hearing in accordance with the notice provisions of SBMC Section 28.87.380.

Section 28.80.120 Suspension and Revocation by Staff Hearing Officer.

A. Authority to Suspend or Revoke a Storefront Collective Dispensary Permit. Consistent with Section 28.87.360, any Storefront Collective Dispensary permit issued under the terms of this Chapter may be suspended or revoked by the Staff Hearing Officer if it shall appear to that Officer that the Dispensary permittee has violated any of the requirements of this Chapter or the Dispensary is being operated in a manner which violates the operational requirements or operational plan required by this Chapter, or operated in a manner which conflicts with state law.

B. Annual Review of Collective Dispensary Operations. The staff of the Community Development Department and the Police Department are hereby authorized to conduct an annual review of the operation of each permitted Storefront Collective Dispensary within the City for full compliance with the operational requirements of this Chapter, including specifically annual verification that all persons employed or volunteering at the Storefront Collective Dispensary have not been convicted of or on probation for a crime related to the possession, sale, or distribution of controlled substances. A fee in an amount established by resolution of the City Council may be established in order to reimburse the City for the time involved in the annual review process. The staff may initiate a permit suspension or revocation process for any Storefront Collective Dispensary which is found not to be in compliance with the requirements of this Chapter or which is operating in a manner which constitutes a public nuisance.

C. Suspension or Revocation - Written Notice. Except as otherwise provided in this Chapter, no permit shall be revoked or suspended by the Staff Hearing Officer under the authority of this Chapter until written notice of the intent to consider revocation or suspension of the permit has been served upon a Management Member or the person to whom the permit was granted at least ten (10) days prior to the date set for such review hearing. Such revocation or suspension notice shall state the specific reasons for the proposed suspension or revocation and must have been provided to the permittee in writing prior to the hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the permittee, or by depositing such notice in the U.S. mail in a sealed envelope, postage prepaid, (via regular mail and return receipt requested), addressed to the person to be notified at his or her address as it appears in his or her application for a Storefront Collective Dispensary permit.

Section 28.80.130 Transfer of Collective Dispensary Permits.

A. Permit - Site Specific. A permittee shall not operate a Storefront Collective Dispensary under the authority of a Storefront Collective Dispensary permit at any place other than the address of the Collective Dispensary stated in the application for the permit. All Collective Dispensary permits issued by the City pursuant to this chapter shall be non-transferable to a different location.

B. Transfer of a Permitted Collective Dispensary. A permittee shall not transfer ownership or control of a Storefront Collective Dispensary or attempt to transfer a Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with this all provisions of this Chapter accompanied by the required transfer review application fee.

C. Request for Transfer with a Revocation or Suspension Pending. No Storefront Collective Dispensary permit may be transferred (and no permission for a transfer may be issued) when the Community Development Department has notified in writing the permittee that the permit has been or may be suspended or revoked for non-compliance with this Chapter and a notice of such suspension or revocation has been provided.

D. Transfer without Permission. Any attempt to transfer a Storefront Collective Dispensary permit either directly or indirectly in violation of this Chapter is declared void, and the permit shall be deemed revoked.

Section 28.80.140 Medical Marijuana Vending Machines.

No person shall maintain, use, or operate a vending machine which dispenses marijuana to a qualified patient or primary caregiver unless such machine is located within the interior of a duly permitted Collective Dispensary.

Section 28.80.150 Business License Tax Liability.

An operator of a Storefront Collective Dispensary shall be required to apply for and obtain a Business Tax Certificate pursuant to Chapter 5.04. as a prerequisite to obtaining a Storefront Collective Dispensary permit pursuant to the terms of this Chapter. When and as required by the State Board of Equalization, Storefront Collective Dispensary transactions shall be subject to sales tax in a manner required by state law.

SECTION TWO.

A. Dispensaries Permitted under the March 2008 Ordinance. Those Dispensaries which were authorized and permitted pursuant to the

Santa Barbara Municipal Code Chapter 28.80 (as adopted on March 25, 2008 as City Ordinance No. 5449) shall be deemed pre-existing legal non-conforming uses of the real property locations upon which they are situated provided that, upon the effective date of this Ordinance, such dispensaries operate in accordance with all Collective Dispensary operational provisions added to Santa Barbara Municipal Code Chapter 28.80 by this Ordinance.

B. Dispensaries Which Have Operated Legally Prior to and Since the Effective Date of Ordinance No. 5449. Those dispensaries which opened and operated in a legal manner prior to the effective date of City Ordinance No. 5449 and which have remained in a legal nonconforming manner of operation since that time, may, despite a non-conforming location, remain as a legal non-conforming use for a period of one hundred eighty (180) days from the effective date of this Ordinance, provided that such a dispensary or Collective Dispensary implements and fully observes the following operational conditions of this Ordinance prior to the effective date of this Ordinance:

1. the operation of the dispensary or Collective Dispensary is not discontinued for a period of time in excess of thirty (30) consecutive days;
2. the day-to-day operation of the dispensary or Collective Dispensary complies with all operational requirements of Chapter 28.80, as revised and enacted by this Ordinance, and;
3. the dispensary or Collective Dispensary is subject to the requirements for non-conforming uses of SBMC section 28.87.030 until such time that it has been discontinued or permitted at a new allowed location pursuant to this Ordinance.

SECTION THREE. City Ordinance No. 5510 entitled "An Ordinance Of The Council Of The City Of Santa Barbara Extending A Temporary Suspension Of The Right To Apply For Or To Obtain A Permit For The Opening Or Operation Of Medical Marijuana Dispensaries Otherwise Permitted By Santa Barbara Municipal Code Chapter 28.80 On An Interim Basis" adopted on February 2, 2010 is hereby repealed as of the effective date of this Ordinance.

EXHIBIT A TO ORDINANCE NO. ____
MEDICAL MARIJUANA DISPENSARIES
SANTA BARBARA MUNICIPAL CODE CHAPTER 28.80
ALLOWED LOCATION EXHIBIT
DATED AS OF MAY 18, 2010

1. Outer State Street Area:

- a. 3400 - 3900 blocks of State Street
- b. All parcels on south La Cumbre Road
- c. All parcels on south La Cumbre Lane
- d. All parcels on La Cumbre Plaza Lane
- e. 00-100 blocks of south Hope Avenue

2. Upper De la Vina Area:

- a. 2600 – 2900 blocks of De la Vina Street

3. Mission Street Area:

- a. 1900-2000 blocks of De la Vina Street
- b. 100 block of west Mission Street
- c. 1800 block of State Street
- d. 1400 block of Chapala Street

4. Downtown West Area:

- a. 600-700 blocks of Chapala
- b. 300-400 blocks of west Carrillo
- c. 100 blocks of west De la Guerra
- d. 00-100 blocks of west Ortega

5. Downtown East Area:

- a. 900 block of Laguna Street
- b. 400 block of east Cota
- c. 300 block of east Carrillo

6. Milpas Street:

- a. 00–400 blocks of north Milpas Street

7. West Pueblo Medical Facility Area:

- a. 200 block of Nogales
- b. 200-400 blocks of west Pueblo
- c. 2400-2500 blocks of Bath

- d. 2300 block of Castillo
- e. 300 block of West Junipero