



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 011-09

400 SOUTH FAIRVIEW AVENUE

MITIGATED NEGATIVE DECLARATION AND COASTAL DEVELOPMENT PERMIT

APRIL 2, 2009

APPLICATION OF GELARE MACON, AGENT FOR THE TOWBES GROUP, 400 BLOCK OF SOUTH FAIRVIEW AVENUE, 073-045-003, A-F, SP-6, S-D-3, AIRPORT FACILITIES, AIRPORT INDUSTRIAL AREA SPECIFIC PLAN AND COASTAL OVERLAY ZONES, GENERAL PLAN DESIGNATION: MAJOR PUBLIC AND INSTITUTIONAL (MST 2008-000032, CDP2008-00020)

The project consists of the installation of two storm drain outfalls and rock rip-rap on the eastern bank of San Pedro Creek in the City of Santa Barbara on Santa Barbara Airport Property along Fairview Avenue. This proposed project would satisfy conditions of approval for the Towbes office development project on the east side of Fairview Avenue in the City of Goleta. The discretionary application required for this project is a Coastal Development Permit to install a 250 square foot riprap headwall, two storm drain outfalls, and restore 1,000 square feet of creek bank habitat Appealable Jurisdiction of the Coastal Zone (SBMC §28.45.009).

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

WHEREAS, no one appeared to speak in favor of the application, and no one appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, May 27, 2009
2. Site Plans
3. Correspondence received in opposition to the project:
 - a. Paula Westbury, Santa Barbara, CA

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

- I. Approved the subject application making the following findings and determinations:
 - A. **FINAL MITIGATED NEGATIVE DECLARATION ADOPTION (CEQA GUIDELINES §15074)**
 1. The Planning Commission has considered the proposed Final Mitigated Negative Declaration together with comments received during the public review period process.
 2. The Planning Commission finds on the basis of the whole record before it (including the initial study and comments received) that there is no substantial evidence that the project, as mitigated, will have a significant impact on the

environment. The Final Mitigated Negative Declaration dated March 10, 2009 is hereby adopted.

3. The Planning Commission finds that the Final Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis.
4. The Planning Commission finds that the Final Mitigated Negative Declaration has been prepared in compliance with CEQA, and constitutes adequate environmental evaluation for the proposed project.
5. A mitigation monitoring and reporting program for measures required in the project or made a condition of approval to mitigate or avoid significant environmental effects has been prepared.
6. The location and custodian of the documents or other materials which constitute the record of proceedings upon which this decision is based is the City of Santa Barbara Community Development Department, 630 Garden Street, Santa Barbara, California.
7. The California Department of Fish and Game (DFG) is a Trustee Agency with oversight over fish and wildlife resources of the State. The DFG collects a fee from project proponents of all projects potentially affecting fish and wildlife, to defray the cost of managing and protecting resources. The project is subject to the DFG fee, and a condition of approval has been included which requires the applicant to pay the fee within five days of project approval.

B. COASTAL DEVELOPMENT PERMIT (SBMC §28.44.060)

1. The project is consistent with the policies of the California Coastal Act, because it would be a flood control project that has been designed to minimize environmental impacts to the extent feasible as described in Section VII of the staff report (Coastal Act Section 30236).
2. The project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code, because it would be constructed in previously disturbed areas and would not adversely affect cultural or biological resources (Policies F-3 and C-12) as described in Section VII of this staff report.
3. The project is consistent with the Chapter 3 (commencing with Section 30200) Policies of the Coastal Act regarding public access and public recreation, because it would not introduce a new impediment to public access as it would not impede travel on any existing trail or roadway.

II. Said approval is subject to the following conditions:

- A. **California Department of Fish and Game Fees Required.** Pursuant to Section 21089(b) of the California Public Resources Code and Section 711.4 et. seq. of the California Fish and Game Code, the approval of this permit/project shall not be considered final unless the specified Department of Fish and Game fees are paid and

filed with the California Department of Fish and Game within five days of the project approval. The fee required is \$1,876.75 for projects with Negative Declarations. Without the appropriate fee, the Notice of Determination cannot be filed and the project approval is not operative, vested, or final. The fee shall be delivered to the Planning Division immediately upon project approval in the form of a check payable to the California Department of Fish and Game.

B. Public Works Requirements Prior to Public Works Permit Issuance. The Applicant shall submit the following, or evidence of completion of the following to the Public Works Department for review and approval, prior to the issuance of a Public Works Permit for the project.

1. **Fairview Avenue Public Improvement Plans.** The Applicant shall submit C-1 public improvement plans for construction of improvements along the property frontage on Fairview Avenue. As determined by the Public Works Department, the improvements shall include new and/or remove and replace to City standards, the following: sidewalk, driveway apron modified to meet Title 24 requirements, curbs, gutters, access ramp(s), asphalt concrete, concrete pavement on aggregate base, crack seal to the centerline of the street along entire subject property frontage and a minimum of 20 feet beyond the limit of all trenching, underground service utilities, public drainage improvements with supporting drainage calculations and/or hydrology report for installation of drainage pipe and erosion protection (provide off-site storm water BMP plan).
2. **Traffic Control Plan.** A traffic control plan shall be submitted, as specified in the City of Santa Barbara Traffic Control Guidelines. Traffic Control Plans are subject to approval by the Public Works Director/Transportation Manager.

C. Community Development Requirements with Public Works Permit Application. The following shall be submitted with the application for a Public Works permit and finalized prior to Public Works Permit issuance:

1. **Project Environmental Coordinator Required.** Submit to the Planning Division a contract with a qualified representative for the Applicant, subject to approval of the contract and the representative by the Planning Division, to act as the Project Environmental Coordinator (PEC). The PEC shall be responsible for assuring full compliance with the provisions of the Mitigation Monitoring and Reporting Program (MMRP) and Conditions of Approval to the City. The contract shall include the following, at a minimum:
 - a. The frequency and/or schedule of the monitoring of the mitigation measures.
 - b. A method for monitoring the mitigation measures.
 - c. A list of reporting procedures, including the responsible party, and frequency.
 - d. A list of other monitors to be hired, if applicable, and their qualifications.

- e. Submittal of monthly reports during demolition, excavation, grading and footing installation and monthly reports on all other construction activity regarding MMRP and condition compliance by the PEC to the Community Development Department/case planner.
 - f. The PEC shall have authority over all other monitors/specialists, the contractor, and all construction personnel for those actions that relate to the items listed in the MMRP and conditions of approval, including the authority to stop work, if necessary, to achieve compliance with mitigation measures.
 - g. The PEC shall monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when construction work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District upon request (*Required Mitigation Measure AQ-8*).
2. **Neighborhood Notification Prior to Construction.** At least twenty (20) days prior to commencement of construction, the contractor shall provide written notice to all property Applicants, businesses, and residents within 300 feet of the project area. The notice shall contain a description of the project, the construction schedule, including days and hours of construction, the name and phone number of the (Project Environmental Coordinator (PEC) and Contractor(s), site rules and Conditions of Approval pertaining to construction activities and any additional information that will assist the Building Inspectors, Police Officers and the public in addressing problems that may arise during construction. The language of the notice and the mailing list shall be reviewed and approved by the Planning Division prior to being distributed. An affidavit signed by the person(s) who compiled the mailing list shall be submitted to the Planning Division.
 3. **Contractor and Subcontractor Notification.** The Applicant shall notify in writing all contractors and subcontractors of the site rules, restrictions, and Conditions of Approval. Submit a copy of the notice to the Planning Division.
 4. **Construction Dust Control – Minimize Disturbed Area/Speed.** Amount of disturbed area shall be minimized and on site vehicle speeds shall be limited to 15 miles per hour or less (*Required Mitigation Measure AQ-1*).
 5. **Construction Dust Control - Watering.** During site grading and transportation of fill materials, regular water sprinkling shall use reclaimed water whenever the Public Works Director determines that it is reasonably available. During clearing, grading, earth moving or excavation, sufficient quantities of water, through use of either water trucks or sprinkler systems, shall be applied to prevent dust from leaving the site. Each day, after construction activities cease, the entire area of disturbed soil shall be sufficiently moistened to create a crust.

Throughout construction, water trucks or sprinkler systems shall also be used to keep all areas of vehicle movement damp enough to prevent dust raised from leaving the site. At a minimum, this will include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency will be required whenever the wind speed exceeds 15 mph (*Required Mitigation Measure AQ-2*).

6. **Construction Dust Control – Tarping.** Trucks transporting fill material to and from the site shall be covered from the point of origin (*Required Mitigation Measure AQ-3*).
7. **Construction Dust Control – Gravel Pads.** Gravel pads shall be installed at all access points to prevent tracking of mud on to public roads (*Required Mitigation Measure AQ-4*).
8. **Construction Dust Control – Stockpiling.** If importation, exportation and stockpiling of fill material are involved, soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation (*Required Mitigation Measure AQ-5*).
9. **Construction Dust Control – Disturbed Area Treatment.** After clearing, grading, earth moving or excavation is completed, the entire area of disturbed soil shall be treated to prevent wind pickup of soil. This may be accomplished by:
 - a. Seeding and watering until grass cover is grown;
 - b. Spreading soil binders;
 - c. Sufficiently wetting the area down to form a crust on the surface with repeated soakings as necessary to maintain the crust and prevent dust pickup by the wind;
 - d. Other methods approved in advance by the Air Pollution Control District (*Required Mitigation Measure AQ-6*).
10. **Construction Dust Control – Paving.** All roadways, driveways, sidewalks, etc., shall be paved as soon as possible after grading unless seeding or soil binders are used (*Required Mitigation Measure AQ-7*).
11. **Portable Construction Equipment.** All portable diesel-powered construction equipment shall be registered with the state's portable equipment registration program OR shall obtain an APCD permit (*Required Mitigation Measure AQ-9*).
12. **Fleet Owners.** Fleet owners shall comply with to sections 2449, 2449.2, and 2449.3 in Title 13, Article 4.8, Chapter 9, of the California Code of regulations (CCR) to reduce diesel particulate matter and criteria pollutant emissions from in-use off-road diesel-fueled vehicles (*Required Mitigation Measure AQ-10*).

13. **Engine Size.** The engine size of construction equipment shall be the minimum practical size (*Required Mitigation Measure AQ-11*).
14. **Equipment Numbers.** The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time (*Required Mitigation Measure AQ-12*).
15. **Equipment maintenance.** All construction equipment shall be maintained in tune per the manufacturer's specifications (*Required Mitigation Measure AQ-13*).
16. **Catalytic Converters.** Catalytic converters shall be installed on gasoline-powered equipment, if feasible (*Required Mitigation Measure AQ-14*).
17. **Diesel Construction Equipment.** Diesel construction equipment meeting the California Air Resources Board (CARB) Tier 1 emission standards for off-road heavy-duty diesel engines shall be used. Equipment meeting CARB Tier 2 or higher emission standards should be used to the maximum extent feasible (*Required Mitigation Measure AQ-15*).
18. **Engine Timing and Diesel Catalytic Converters.** Other diesel construction equipment, which does not meet CARB standards, shall be equipped with two to four degree engine timing retard or pre-combustion chamber engines. Diesel, catalytic converters, diesel oxidation catalysts and diesel particulate filters as certified and/or verified by EPA or California shall be installed, if available (*Required Mitigation Measure AQ-16*).
19. **Diesel Replacements.** Diesel powered equipment shall be replaced by electric equipment whenever feasible (*Required Mitigation Measure AQ-17*).
20. **Idling Limitation.** Idling of heavy-duty diesel trucks during loading and unloading shall be prohibited; electric auxiliary power units shall be used whenever possible (*Required Mitigation Measure AQ-18*).
21. **Restoration Plan.** Applicant shall submit final landscaping and restoration plans for the project to be reviewed by City staff. The plans should include restoration of all temporarily disturbed habitat areas with native riparian and wetland species and creation of 1,000 sq. ft. of additional riparian and wetland habitat area onsite to mitigate the permanent loss of 250 sq. ft. of habitat. Initial planting shall occur in concert with or immediately following construction activities associated with the project. Monitoring and reporting shall occur for a period of at least three years and up to five years following initial planting if the performance criteria are not met. If performance criteria are not met by the end of year 5, then the choice of plants, site conditions, performance criteria, and other factors would be reevaluated by a qualified biologist. A new restoration effort would be implemented with a new 3-5 year monitoring period. Performance criteria for the initial planting effort would be as follows: 85%

survival one year after planting, 90% survival two years after planting, 95% survival three years after planting. Weed cover criteria for creek banks (including only noxious weeds, not naturalized non-aggressive plants) would be no more than 10% cover at any time during the monitoring and maintenance period (*Required Mitigation Measure BIO-1*).

22. **Existing Tree Protection.** Applicant shall avoid existing willow and sycamore trees at the project site during construction placing protective fencing around the willow trees or clumps to prevent unauthorized grading or construction activity that could damage trees (*Required Mitigation Measure BIO-2*).
23. **Construction Area Restoration.** Applicant shall restore the construction area to pre-construction grade and conditions using on-site materials to the extent feasible (*Required Mitigation Measure BIO-3*).
24. **Bird Nesting Season Construction Limitation.** Proposed project grading and construction activities, including tree removal and other disturbances to vegetation, shall, to the extent feasible, be limited to periods outside of the breeding bird season (February 1-August 30) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). If project grading and construction activities cannot feasibly be avoided during the breeding bird season, beginning three (3) days prior to the disturbance of suitable nesting habitat the applicant shall conduct daily bird surveys to detect protected native birds in the habitat to be disturbed and other habitat within 300 feet of the construction work area (within 500 feet for raptors) as access to adjacent properties allow. The surveys shall be conducted by a qualified biologist with experience in conducting breeding bird surveys. The surveys shall continue on a weekly basis with the last survey being conducted no more than three (3) days prior to the initiation of clearance and/or construction work. Should an active nest be located, clearing and construction within 300 feet of the nest (500 feet for raptor nests), or as determined by a qualified biological monitor, must be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting.

Limits of construction to avoid a nest shall be established in the field with flagging and stakes or construction fencing marking the protected areas 300 feet (or 500 feet) from the nest. Construction personnel shall be instructed on the sensitivity of the area. The applicant shall record the results of the recommended protective measures described by this condition to document compliance with applicable State and federal laws pertaining to the protection of native birds (*Required Mitigation Measure BIO-4*).

25. **Archaeological Monitor Required.** The following language shall be reproduced on the construction plans submitted for building plan check and the directives of this mitigation measures followed:

- a. Prior to the issuance of a public works permit, the applicant shall contract with a City-approved archaeologist to provide for monitoring of additional ground disturbing activities, and, as may be determined to be necessary based on the results of the surface survey. The archaeologist shall include a City qualified Native American monitor who shall be required to be on-site during all excavation activities. Contract(s) shall be subject to the review and approval of the Environmental Analyst.
- b. The General Contractor shall schedule a construction conference. The conference shall include representatives from the Public Works Department, Building Division, Planning Division, the Property Owner and Contractor. Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts associated with past human occupation of the parcel. If such cultural resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and a City-approved archaeologist shall be consulted. The latter shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, including but not limited to redirection of grading and/or excavation activities. If the findings are potentially significant, a Phase 3-recovery program shall be prepared and accepted by the Environmental Analyst and the Historic Landmarks Commission. That portion of the Phase 3 program, which requires work on-site, shall be completed prior to continuing construction in the affected area. If prehistoric or other Native American remains are encountered, a Native American representative shall be contacted and shall remain present during all further subsurface disturbances in the area of the find.
- c. If any archaeological artifacts, exotic rock (non-native) or unusual amounts of shell or bone are uncovered during any on-site grading, trenching or construction activities, all work must stop immediately in the area and a City-approved archaeologist retained by the applicant to evaluate the deposit. The City of Santa Barbara Environmental Analyst must also be contacted for review of the archaeological find(s). If the discovery consists of potentially human remains, the Santa Barbara County Coroner and the California Native American Heritage Commission must also be contacted and State procedures followed. Work in the area may only proceed after authorization is granted by the Environmental Analyst (*Required Mitigation Measure CR-1*).

26. **Herbicide Spill Avoidance.** Herbicides shall be mixed away from the vicinity of the channel and any other waterway in case of a spill (*Required Mitigation Measure HAZ-1*).
27. **Loud Construction Activities Limitation.** Noise generating construction activity shall be prohibited Saturdays, Sundays, all holidays, and between the hours of 4 p.m. to 7 a.m. Holidays are defined as those days which are observed by the City of Santa Barbara as official holidays by City employees (*Required Mitigation Measure NOI-1*).
28. **Construction Equipment Maintenance.** All construction equipment, including trucks, shall be professionally maintained and fitted with standard manufacturers' muffler and silencing devices. Sound control devices and techniques such as noise shields and blankets shall be employed as needed to reduce the level of noise to surrounding residents, as determined by the City Building Official (*Required Mitigation Measure NOI-2*).
29. **Construction Site Recycling.** Recycling and/or reuse of demolition/construction and green waste materials shall be carried out and containers shall be provided on site for that purpose during the construction period (*Required Mitigation Measure PR-1*).
30. **Peak Hour Avoidance.** Construction-related truck trips shall not be scheduled during peak hours (7:30 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) to help reduce truck traffic on adjacent streets and roadways (*Required Mitigation Measure TC-1*).
31. **Truck Routing.** The route of construction-related traffic shall be established to minimize trips through surrounding residential neighborhoods, subject to approval by the Transportation Manager (*Required Mitigation Measure TC-2*).
32. **Haul Route Approval.** The haul route(s) for all construction-related trucks, three tons or more, entering or exiting the site, shall be approved by the Transportation Manager (*Required Mitigation Measure TC-3*).
33. **Construction Worker Parking.** Construction parking and storage shall be provided in locations subject to the approval of the Transportation Manager. During construction, free parking spaces for construction workers shall be provided on-site or off-site (*Required Mitigation Measure TC-4*).
34. **Storm Water Pollution Prevention Plan.** The Storm Water Pollution Prevention Plan (SWPPP) utilizing Best Management Practices shall be used for grading and construction activities and approved by the building Division and included on all plans submitted for a public works permit to maintain all sediment on site and out of the drainage system. The plan shall include, at a minimum:
 - a. Install silt fence, sand bag, hay bale or silt devices where necessary around the project site to prevent offsite transport of sediment.

- b. Bare soils shall be protected from erosion by applying heavy seeding, within five days of clearing or inactivity in construction.
- c. Construction entrances shall be stabilized immediately after grading and frequently maintained to prevent erosion and control dust.
- d. Establish fuel and vehicle maintenance staging areas on impervious surfaces located away from all drainage courses, and design these areas to control runoff.
- e. Maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- f. Minimize the area of bare soil exposed at one time.
- g. The construction contract shall contain a provision that all motorized equipment shall be maintained and maintenance verified by the Project Environmental Coordinator prior to the commencement of work onsite, as well as regularly checked for leakage of hazardous materials. In addition, the work contract shall contain a provision that spill containment and clean-up materials shall be present at all times at the work site. Crews shall be informed of the importance of avoiding spills in the streams and the riparian area. No equipment maintenance or washing shall occur within the creek or adjacent native riparian vegetation area (*Required Mitigation Measure WE-1*).

35. **Construction During Dry Season.** Construction activity in the area where flows occur in the channel shall be limited to the dry season months of April 15 to November 15. In the event that water is flowing in the San Pedro Creek channel within 50 feet of the proposed project at the time of proposed construction, a biologist approved by City staff shall be on site to monitor for fish species and re'ocate them as necessary. Water flows shall be diverted to avoid the project site without causing damage to the bed or banks of the creek and providing for fish passage where feasible. Construction activities should be avoided, to the extent feasible, during times when San Pedro Creek is flowing (*Required Mitigation Measure WE-2*).

D. **Public Works Permit Plan Requirements.** The following requirements/notes shall be incorporated into the construction plans submitted to the Engineering Division for Public Works permits.

- 1. **Mitigation Monitoring and Reporting Requirement.** Applicant shall implement the Mitigation Monitoring and Reporting Program (MMRP) for the project's mitigation measures, as stated in the Mitigated Negative Declaration for the project.
- 2. **Conditions on Plans/Signatures.** The final Planning Commission Resolution shall be provided on a full size drawing sheet as part of the drawing sets. Each

condition shall have a sheet and/or note reference to verify condition compliance. If the condition relates to a document submittal, indicate the status of the submittal (e.g., Archaeologist contract submitted to Community Development Department for review). A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

 Property Applicant Date

 Contractor Date License No.

 Architect Date License No.

 Engineer Date License No.

E. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Owner and/or Contractor for the duration of the project construction.

1. **Haul Routes.** The haul route(s) for all construction-related trucks with a gross vehicle weight rating (GVWR) of three tons or more, entering or exiting the site, shall be approved by the Transportation Manager.
2. **Traffic Control Plan.** All elements of the approved Traffic Control Plan shall be carried out by the Contractor.
3. **Construction Parking/Storage/Staging.** Construction parking and storage shall be provided as follows:
 - a. During construction, free parking spaces for construction workers and construction shall be provided on-site or off-site in a location subject to the approval of the Public Works Director. Construction workers are prohibited from parking within the public right-of-way, except as outlined in subparagraph b. below.
 - b. Parking in the public right of way is permitted as posted by Municipal Code, as reasonably allowed for in the 2006 Greenbook (or latest reference), and with a Public Works permit in restricted parking zones. No more than three (3) individual parking permits without extensions may be issued for the life of the project.

- c. Storage or staging of construction materials and equipment within the public right-of-way shall not be permitted, unless approved by the Transportation Manager.
- F. **Prior to Project Completion.** Prior to issuance of the Certificate of Occupancy, the Applicant shall complete the following:
1. **Repair Damaged Public Improvements.** Repair any damaged public improvements (curbs, gutters, sidewalks, roadways, etc.) subject to the review and approval of the Public Works Department per SBMC §22.60.090. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
 2. **Manholes.** Raise all sewer and water manholes on easement to final finished grade.
 3. **Existing Street Trees.** Submit a letter from a qualified arborist, verifying that the existing street tree(s) have been properly pruned and trimmed.
 4. **Archaeological Monitoring Report.** A final report on the results of the archaeological monitoring shall be submitted to the Planning Division within 180 days of completion of the monitoring or prior to the issuance of the Final Inspection, whichever is earlier.
 5. **New Construction Photographs.** Photographs of the new construction, taken from the same locations as those taken of the story poles prior to project approval, shall be taken, attached to 8 ½ x 11" board and submitted to the Planning Division.
 6. **Mitigation Monitoring Report.** Submit a final construction report for mitigation monitoring.
 7. **Biological Monitoring Contract.** Submit a contract with a qualified biologist acceptable to the City for on-going monitoring.
- G. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Applicant hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Applicant further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.
- Applicant/Applicant shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the

approval of the Project. If Applicant/Applicant fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

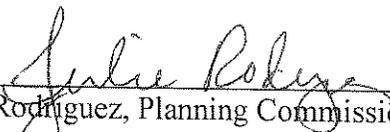
NOTICE OF COASTAL DEVELOPMENT PERMIT TIME LIMITS:

Pursuant to Section 28.44.230 of the Santa Barbara Municipal Code, work on the approved development shall commence within two years of the final action on the application, unless a different time is specified in the Coastal Development Permit. Up to three (3) one-year extensions may be granted by the Community Development Director in accordance with the procedures specified in Subsection 28.44.230.B of the Santa Barbara Municipal Code.

This motion was passed and adopted on the 2nd day of April, 2009 by the Planning Commission of the city of Santa Barbara, by the following vote:

AYES: 5 NOES: 0 ABSTAIN: 0 ABSENT: 2 (Jacobs, Jostes)

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.



Julie Rodriguez, Planning Commission Secretary



Date

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

