

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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DATE: February 16, 2012

TO: Commissioners and Interested Persons

FROM: Jack Ainsworth, Senior Deputy Director
Steve Hudson, District Manager
Amber Tysor, Coastal Program Analyst

SUBJECT: Santa Barbara County Local Coastal Program Amendment No. MAJ-2-11 (Medical Marijuana Storefront Dispensaries) for Public Hearing and Commission Action at the California Coastal Commission hearing of March 8, 2012 in Chula Vista.

DESCRIPTION OF THE SUBMITTAL

Santa Barbara County is requesting an amendment to the Coastal Zoning Ordinance/Implementation Plan (CZO/IP) portion of its certified Local Coastal Program (LCP) to include a prohibition on medical marijuana storefront dispensaries within County boundaries. On February 1, 2012, additional materials were received and the Executive Director determined that the County's Amendment was in proper order and legally adequate to comply with the submittal requirements of Coastal Act Section 30510(b). The Commission must act within 60 days of submittal. Therefore, the Commission must act upon the amendment by its March 2012 Commission hearing.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the Implementation Program/Zoning Ordinance Amendment as submitted. Santa Barbara County proposes to amend the Coastal Zoning Ordinance portion of its certified Local Coastal Program to prohibit medical marijuana storefront dispensaries. The amendment would not prohibit the use, possession, or cultivation of marijuana for personal medical purposes nor would the amendment affect non-storefront collectives and cooperatives, which could continue to provide access to medical marijuana as allowed under the Compassionate Use Act of 1996 and as regulated under other laws.

The Commission can only reject such amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) and/or render the Implementation Program (IP) inadequate to carry out the LUP. As discussed in the findings set forth in this report, the Implementation Program/Zoning Ordinance, as amended, continues to conform with, and be adequate to carry out, the relevant provisions of the City's certified Land Use Plan. Therefore, staff recommends that the Commission decline to reject this IP amendment. The motion and resolution for Commission action can be found on page 4 of this report.

Substantive File Documents: Santa Barbara County Coastal Plan; Santa Barbara County Coastal Zoning Ordinance, Article II, Chapter 35 of the County Code; Ordinance 4808, *Case Number 11-ORD-00000-00031*, adopted by the Board of Supervisors November 1, 2011.

TABLE OF CONTENTS

I. PROCEDURAL ISSUES.....	3
A. STANDARD OF REVIEW	3
B. PUBLIC PARTICIPATION.....	3
C. PROCEDURAL REQUIREMENTS	3
II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO)	4
III. FINDINGS AND DECLARATIONS FOR THE IMPLEMENTATION PROGRAM AMENDMENT APPROVAL AS SUBMITTED	5
A. AMENDMENT DESCRIPTION	5
B. ISSUE ANALYSIS	7
IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT	8

EXHIBITS

Exhibit 1. Santa Barbara County Board of Supervisors Resolution No. 11-414

Exhibit 2. Santa Barbara County Ordinance 4808 for Case No. 11ORD-0000-00031

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

Section 30513 of the Coastal Act provides:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

The Commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken.

The standard of review used by the Commission for the proposed amendment to the Implementation Plan (Coastal Zoning Ordinance) of the certified Local Coastal Program, pursuant to Section 30513 and 30514 of the Coastal Act, is that the proposed amendment is in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified Santa Barbara County Local Coastal Program. All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies pursuant to Policy 1-1 of the LUP.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires that maximum opportunities for public input be provided in preparation, approval, certification and amendment of any LCP. The County held public hearings for this amendment on 10/19/11 and 11/1/11 and received verbal and written comments regarding the project from concerned parties and members of the public. Public hearings on the moratorium and ordinance adoption process began in December 2009. One public speaker slip was received for the 10/19/11 County Planning Commission hearing, one public speaker slip was received for the 10/19/11 Montecito Planning Commission hearing, and no written public comments were received for those hearings. Two public speaker slips were received for the 11/1/11 Board of Supervisors hearing, and no written public comments were received. The hearings were noticed to the public consistent with Sections 13552 and 13551 of the Title 14 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations ("14 CCR"), the County, by resolution, may submit a Local Coastal Program Amendment that will either require formal local government adoption after the Commission approval, or an amendment that will take effect automatically upon the Commission's approval

pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, the County has submitted this amendment as one that will require formal government adoption. Following review by the Commission, the County Board of Supervisors will have six months from the date of the Commission's action to decide whether or not to accept the Commission's action in order for the Amendment to become effective (14 CCR Sections 13544 and 13542(b)). Pursuant to 14 CCR Section 13544, the Executive Director shall determine whether the County's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO)

Following public hearing, staff recommends that the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and the staff recommendation is provided prior to each resolution.

APPROVAL OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED

MOTION: I move that the Commission reject the Implementation Program Amendment (STB-MAJ-2-11) for the County of Santa Barbara as submitted.

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Following this staff recommendation with result in failure of this motion and certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment (STB-MAJ-2-11) for the County of Santa Barbara as submitted and adopts the findings set forth below on grounds that the Implementation Program, as amended, conforms with and is adequate to carry out the provisions of the certified Land Use Plan, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment.

III. FINDINGS AND DECLARATIONS FOR THE IMPLEMENTATION PROGRAM AMENDMENT APPROVAL AS SUBMITTED

The following findings support the Commission's approval of the LCP Amendment as submitted. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

Santa Barbara County proposes to amend the Coastal Zoning Ordinance (Implementation Plan) portion of its certified Local Coastal Program (LCP) to prohibit medical marijuana storefront dispensaries. The amendment applies to any facility or location that dispenses marijuana through a storefront, including storefronts operated by medical marijuana collectives and cooperatives as defined by the 2008 Attorney General Guidelines. The County imposed a moratorium on medical marijuana storefront dispensaries on January 19, 2010, which expired on December 6, 2011. The amendment would reinstate the ban as a permanent ban by adding new definitions and a general prohibition on medical marijuana storefront dispensaries. The County emphasizes that the proposed zoning code amendment would not affect non-storefront collectives and cooperatives, which would continue to provide access to medical marijuana as allowed under the Compassionate Use Act of 1996 and as regulated under other laws.

Proposed Amendment Language

Specifically, the County proposes to add two new definitions to Division 2 (Definitions) of the Article II, Coastal Zoning Ordinance of Chapter 35, Zoning, of the Santa Barbara County Code, as part of Section 35.58 for "Medical Marijuana" and "Medical Marijuana Dispensary," as follows:

1. **Medical Marijuana.** *Shall mean marijuana, as set forth in the California Health and Safety Code Section 11018 (as that Section now appears and may be amended or renumbered) as used for medical purposes, in compliance with Health and Safety Code Section 11362.5 et. seq.*

2. **Medical Marijuana Dispensary.** *A facility or location that dispenses marijuana through a storefront, including but not limited to storefronts organized and operated by a collective or cooperative as defined by the 2008 California Attorney General Guidelines or its successor.*

a. **Medical Marijuana Cooperative.** *Shall mean a statutory Cooperative which conducts its business for the mutual benefit of its members, must file articles of incorporation, is a non-profit entity, and is subject to all legal requirements of a statutory Cooperative, as outlined in the California Corporations Code or Food and Agriculture Code.*

b. **Medical Marijuana Collective.** *Shall mean a non-profit organization, with five or more members, which exists merely to facilitate the collaborative efforts of*

Qualified Patient, Persons with ID Card, and Primary Caregiver members and to coordinate transactions between members involving Medical Marijuana.

Additionally, the County proposes to add a new section to Division 7 (General Regulations) of the Article II Coastal Zoning Ordinance, of Chapter 35, Zoning of the Santa Barbara County Code, as Section 35.144I that prohibits medical marijuana storefronts in all zone districts, as follows:

35.144I- Medical Marijuana Dispensaries (MMD)

Medical Marijuana Dispensaries Prohibited. *Medical Marijuana Dispensaries are not allowed in any zone district and shall not be considered similar use under Division 4, Zone Districts (Sections 35-68 through 35-93A).*

Background on County Amendment

The County's rationale for the prohibition of medical marijuana storefront dispensaries is based, in part, on the County's concerns that California law is in conflict with the Federal Controlled Substances Act. Under the Federal Controlled Substances Act, the manufacture, distribution, or possession of marijuana is a criminal offense. Under California State law, including the Compassionate Use Act of 1996 and the Medical Marijuana Program Act of 2003, seriously ill Californians are granted access to marijuana for medical purposes. The County asserts that recent California legislation, AB 1300, reinforces local authority to regulate medical marijuana dispensaries. AB 1300 goes into effect on January 1, 2012 and allows for local governing authorities to regulate the location, operation, and establishment of medical marijuana cooperatives or collectives and reinforces the County's authority to regulate and enforce the location, operation, and establishment of storefront collectives. The County's prohibition of storefront dispensaries is also based on the April 22, 2009 *White Paper on Marijuana Dispensaries* by the California Police Chiefs Association's Taskforce on Marijuana Dispensaries, as well as the fact that the Department of Justice has begun enforcing federal law as it relates to medical marijuana, referencing an October 7, 2011 press release related to commercial marijuana operations in California.

Further, the County is concerned that medical marijuana storefront dispensaries may cause negative secondary effects, such as an increase in criminal activity, which would adversely impact the neighborhoods in which they are located. The Board of Supervisors' concerns with the potential proliferation of medical marijuana dispensaries are based, in part, on expert and citizen testimony at Board of Supervisors public hearings related to the medical marijuana moratorium and ordinance adoption process (hearings on 1/19/10, 2/16/10, 12/7/10, and 10/4/11). The County asserts that the proposed prohibition is necessary to protect public health and safety and welfare.

According to Santa Barbara County Sheriff's office testimony at a County of Santa Barbara Board of Supervisors hearings on December 8, 2009, and October 4, 2011, medical marijuana dispensary storefronts have resulted in criminal activity. According to the County's CEQA findings for its Notice of Exemption, unregulated medical marijuana storefront dispensaries within the County are under investigation for the sale of illegal

drugs, money laundering, and illegal firearms. There were four known medical marijuana storefront dispensaries in the County of Santa Barbara as of November 2011. Two of the four storefronts have closed. One storefront has closed as a result of a criminal investigation by the Sheriff's department, and one has closed as a result of a zoning enforcement investigation (both operating at the same location). Two other storefront dispensaries, both in Summerland, are currently in operation, although one is currently the subject of a zoning violation.

The County Board of Supervisors resolution (Resolution No. 11-414) is included as **Exhibit 1** and the County Board of Supervisors Ordinance (Ordinance No. 4808) is included as **Exhibit 2**.

B. ISSUE ANALYSIS

The standard of review used by the Commission for the proposed amendment to an Implementation Plan (IP) is whether or not the proposed amendment would render the IP not in conformance with, or inadequate to carry out the provisions of, the Land Use Plan (LUP). As noted in Section I.A., above, Coastal Act Section 30513 states in relevant part:

The Commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan.

Given the limited nature of the Commission's review, the merits of the proposed change is not before this Commission for its consideration. Similarly, the question before this Commission is not whether the proposed change is required by, or even within the scope of issues addressed by, the Coastal Act. The only question is whether the change would render the existing IP out of conformity with the LUP or inadequate to carry it out. The proposed amendment will not conflict with the policies certified as part of the Santa Barbara County Land Use Plan (LUP). There is no policy in the LUP that mandates the availability of storefront dispensaries for medical marijuana, either directly or indirectly. As noted above, the County's rationale for the prohibition of medical marijuana dispensaries is based, in part, on concerns that California law is incompatible with and preempted by the Federal Controlled Substances Act. Additionally, the County has concerns that medical marijuana dispensaries may cause negative secondary effects, such as an increase in criminal activity, which would adversely impact the neighborhoods in which they are located. The County is concerned that medical marijuana storefront dispensaries would negatively impact the health, safety, and welfare of the community. These issues are independent of the Coastal Act.

The proposed prohibition of medical marijuana storefront dispensaries does not conflict with the provision of priority land uses identified in the LUP, nor does it raise issue with regard to the public access or coastal resource policies of the LUP. Thus, the proposed amendment will not conflict with the certified LUP, the standard of review in this case.

Further, the addition of a prohibition of medical marijuana storefront dispensaries does not in any way reduce the adequacy of the IP in carrying out the provisions of the LUP, which include the Chapter 3 Policies of the Coastal Act. Therefore, the Commission finds that the proposed amendment, as submitted, does not raise any issues justifying its rejection pursuant to Coastal Act Section 30513.

IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required, in approving an LCP submittal, to find that the LCP does conform with the relevant provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended IP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b).

The proposed amendment is to the County of Santa Barbara's certified Local Coastal Program Implementation Ordinance. The Commission originally certified the County of Santa Barbara's Local Coastal Program Land Use Plan and Implementation Ordinance in 1981 and 1982, respectively. For the reasons discussed in this report, the LCP amendment as submitted is consistent with the intent of the applicable policies of the certified Land Use Plan and no feasible alternatives are available which would lessen any significant adverse effect which the approval would have on the environment. Therefore, the Commission finds that the LCP amendment, as modified, is consistent with CEQA and the Land Use Plan.

RESOLUTION OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

IN THE MATTER OF SUBMITTING TO THE)
COASTAL COMMISSION AN AMENDMENT)
TO THE TEXT OF THE SANTA BARBARA)
COUNTY LOCAL COASTAL PROGRAM)
THAT AMENDS ARTICLE II, COASTAL)
ZONING ORDINANCE, OF CHAPTER 35 OF)
THE SANTA BARBARA COUNTY CODE)
REGARDING THE PROHIBITION OF)
MEDICAL MARIJUANA DISPENSARY)
STOREFRONTS.)

RESOLUTION NO: 11-414
CASE NO: 11ORD-00000-00031

WITH REFERENCE TO THE FOLLOWING:

- A. On January 7, 1980, by Resolution No. 80-12, the Board of Supervisors of the County of Santa Barbara adopted the Santa Barbara County Coastal Plan; and
- B. On July 19, 1982, by Ordinance 3312, the Board of Supervisors of the County of Santa Barbara adopted the Santa Barbara County Coastal Zoning Ordinance, Article II of Chapter 35 of the Santa Barbara County Code; and
- C. On November 1, 2011, by Ordinance 4808, the Board of Supervisors, having deemed it to be in the interest of orderly development of the County and important to the preservation of the health, safety, and general welfare of the residents of said County, amended the Local Coastal Program by adopting:

11ORD-00000-00031: Medical Marijuana Dispensary (MMD) storefront ban, attached as Exhibit A:

An Ordinance (Case No. 11ORD-00000-00031), attached as Exhibit A, amending Article II, Coastal Zoning Ordinance, of Chapter 35 of the Santa Barbara County Code by amending Division 2, Definitions, and Division 7, General Regulations, to prohibit Medical Marijuana Dispensary (MMD) storefronts.

- D. Public officials and agencies, civic organizations, and citizens have been consulted on and have advised the County Planning Commission and the Montecito Planning Commission on the proposed amendment in duly noticed public hearings pursuant to Section 65353 and Section 65854 of the Government Code, and the County Planning Commission and the Montecito Planning Commission have sent their written recommendations to the Board pursuant to Section 65354 and Section 65855 of the Government Code.
- E. The Board held duly noticed public hearings, as required by Section 65355 and Section 65856 of the Government Code, on the proposed amendment, at which hearings the amendment was explained and comments invited from the persons in attendance.

EXHIBIT 1

STB-MAJ-2-11

County Resolution

- F. This amendment to the Local Coastal Program is consistent with the provisions of the Coastal Act of 1976, the Santa Barbara County Coastal Land Use Plan, and the requirements of State Planning and Zoning laws as amended to this date.
- G. The Board now wishes to submit this amendment to the California Coastal Commission.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

- 1. The above recitations are true and correct.
- 2. Pursuant to the provisions of Section 65356 and Section 65857 of the Government Code and Section 30514 of the Public Resources Code, the above described changes are adopted as an amendment to the Santa Barbara County Local Coastal Program.
- 3. The Board certifies that this amendment is intended to be carried out in a manner fully in conformity with the said California Coastal Act.
- 4. The Board submits this Local Coastal Program amendment to the California Coastal Commission for review and certification.
- 5. The Chairman and the Clerk of this Board are hereby authorized and directed to sign and certify all maps, documents and other materials in accordance with this resolution to reflect the above described action by the Board of Supervisors.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 13th day of December, 2011, by the following vote:

AYES: Supervisor Carbajal, Supervisor Wolf, Supervisor Farr, Supervisor Gray, Supervisor Lavagnino

NOES: None

ABSTAIN: None

ABSENT: None



 JONI GRAY, CHAIR
 Board of Supervisors, County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR

Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By: [Signature]
Deputy County Counsel

This is a true certified copy of the original document on file or of record in my office. It bears the seal and signature, imprinted in purple ink, of the Clerk of the Board of Supervisors.



[Signature]
Clerk of the Board, Santa Barbara County, California
Date 2/19/11 by Deputy: [Signature]

EXHIBITS:

- A. MMD Article II Ordinance Amendment (Case No. 11ORD-00000-00031)

EXHIBIT 2

ORDINANCE NO. 4808

AN ORDINANCE AMENDING ARTICLE II, COASTAL ZONING ORDINANCE, OF CHAPTER 35 OF THE COUNTY CODE BY AMENDING DIVISION 2, DEFINITIONS, AND DIVISION 7, GENERAL REGULATIONS, TO IMPLEMENT NEW REGULATIONS PROHIBITING MEDICAL MARIJUANA DISPENSARIES.

Case No. 11ORD-00000-00031

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

DIVISION 2, DEFINITIONS, of the Article II Coastal Zoning Ordinance of Chapter 35 Zoning, of the Santa Barbara County Code, is amended to add new Medical Marijuana definitions as part of Section 35.58, to read as follows:

1. **Medical Marijuana.** Shall mean marijuana, as set forth in the California Health and Safety Code Section 11018 (as that Section now appears and may be amended or renumbered) as used for medical purposes, in compliance with Health and Safety Code Section 11362.5 et seq.
2. **Medical Marijuana Dispensary.** A facility or location that dispenses marijuana through a storefront, including but not limited to storefronts organized and operated by a collective or a cooperative as defined by the 2008 California Attorney General Guidelines or its successor.
 - a. **Medical Marijuana Cooperative.** Shall mean a statutory Cooperative which conducts its business for the mutual benefit of its members, must file articles of incorporation, is a non-profit entity, and is subject to all legal requirements of a statutory Cooperative, as outlined in the California Corporations Code or Food and Agriculture Code.
 - b. **Medical Marijuana Collective.** Shall mean a non-profit organization, with five or more members, which exists merely to facilitate the collaborative efforts of Qualified Patient, Persons with ID Card, and Primary Caregiver members and to coordinate transactions between members involving Medical Marijuana.

SECTION 2:

DIVISION 7, GENERAL REGULATIONS, of the Article II Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to add a new Section (35-144I) Medical Marijuana Dispensaries), to read as follows:

35.144I – MEDICAL MARIJUANA DISPENSARIES (MMD)

Medical Marijuana Dispensaries Prohibited. Medical Marijuana Dispensaries are not allowed in any zone district and shall not be considered similar use under Division 4, Zone Districts

EXHIBIT 2

STB-MAJ-2-11

County Ordinance

(Sections 35-68 through 35-93A).

SECTION 3:

All existing indices, section references, and figure and table numbers contained in Division 2 and Division 7, of Article II, Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code, are hereby revised and renumbered as appropriate to reflect the revisions enumerated above.

SECTION 4:

Except as amended by this Ordinance, Division 2 and Division 7 of Article II, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

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SECTION 5:

This ordinance and any portion of it approved by the Coastal Commission shall take effect and be in force 30 days from the date of its passage or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code 30514, whichever occurs later; and before the expiration of 15 days after its passage, it, or a summary of it, shall be published once, together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 18 day of November, 2011, by the following vote:

- AYES: Supervisor Carbajal, Supervisor Wolf, Supervisor Gray, Supervisor Lavagnino
- NOES: Supervisor Farr
- ABSTAINED: None
- ABSENT: None

Joni Gray
 JONI GRAY
 Chair, Board of Supervisors
 County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR
 Clerk of the Board of Supervisors

By [Signature]
 Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
 County Counsel

By Rachel Kim Mullen
 Deputy County Counsel