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July 15, 2016

**BOARD OF SUPERVISORS  
JULY 19, 2016  
PLANNING & DEVELOPMENT  
AGENDA ITEM: 6**

Via Email

Chair Peter Adam, and  
Members of the Board of Supervisors  
County of Santa Barbara  
105 East Anapamu Street  
Santa Barbara CA 93101

Re: Olsten Trust Appeal (16APL-00000-00007); 1154 Channel Drive, Montecito

Dear Chair Adam and Members of the Board:

I write on behalf of appellants Cheryl Olsten and Steve Grabowski, owners of 1154 Channel Drive, Montecito, to urge you to grant their appeal of the Montecito Planning Commission's narrow 3-2 vote for denial of their residential project.

Background

Some two years ago, after purchasing the existing two-story home at 1154 Channel Drive, Cheryl Olsten and Steve Grabowski engaged the highly-respected Warner Group architectural firm to design their dream retirement home.

Thiep Cung, AIA, and Kelly Teich, AIA, worked with the MBAR, which held eight meetings, during which the architects continually made significant, even dramatic changes, responding to all of the direction and suggestions from members of the MBAR. The proposed plan includes a larger second story element to accommodate a second bedroom, although the proposed home remains relatively small. It is only a two-bedroom home, the new second-story element is positioned at the rear, partially set back, and lowered to eliminate potential view impacts both for the public and for the neighbor to the north, and the entire house has an FAR that is 21% smaller than the existing residence, much smaller than the neighbors' homes, and much smaller than the average home in the existing neighborhood.

During the careful review process, the owners made major modifications to the design to respond to comments from the MBAR and from the neighbors. They significantly reduced the size, lowered the height, eliminated the RSU, set back portions of the second story to accommodate



views of the neighbor to the north<sup>1</sup>, reduced the amount of second story glazing, added a privacy wall along Channel Drive. At the specific request of the Montecito Planning Commission, included a pedestrian footpath along Channel Drive and added a beautiful landscaping plan by a well-known landscape architect. They even removed a balcony from the rear to which one neighbor<sup>2</sup> objected, despite the fact that the balcony was over 100' from the neighbor's home. The final project is dramatically different and improved from the initial proposal. Quite frankly, as we believe the evidence will show, the resulting home is beautiful, fits beautifully into the existing neighborhood, and will be a big enhancement to the entire community.

The applicants also repeatedly reached out to their neighbors. Cheryl and Steve came to Santa Barbara specifically inviting all interested neighbors to meet with them and their architects at the nearby Coral Casino. When they had developed the final plans, Warner Group invited all interested neighbors and other members of the community to come to their offices for a detailed, individual presentations of the proposed plans so that they could receive any additional comments.

The proposed home complies with all zoning and planning requirements, complies with every single element of the Montecito Community Plan, and seeks no exceptions of any kind. We believe it fits beautifully into the existing environment. It will not only enhance the beauty of Channel Drive, but enhance public views of the Santa Ynez mountains, enhance private ocean views of neighbors to the north, and contribute to the quiet, semi-rural atmosphere of the community. It is for all these reasons that the MBAR approved the home.

#### The Purported, and the Real Issues

Why, then, is there any opposition, and why did the Montecito Planning Commission deny the project? The answer is twofold.

Almost all of the opposition stems from only two neighbors, Michael and Sharon Hair (the "Hairs"), who live at \_\_\_\_\_, and Tom and Heather Sturgess (the "Sturgesses"), who live at \_\_\_\_\_ (though their home is for sale). When the Hairs and Sturgesses each bought their homes, the existing two-story residence now owned by the applicants was already there. These neighbors now object to a replacement residence that is significantly smaller, lower, more carefully massed, and far more sensitively designed, because, in reality, they want something they have never had—a one-story home between them and the ocean.

These two neighbors have hired attorneys (Susan Petrovich and Mindy Wolf), a designer (Sophie Calvin), contractors, real estate agents, tenants, and friends, to testify against the proposed home. Those witnesses focus on purported impact to public mountain views, privacy, size, bulk and scale,

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<sup>1</sup> Michael and Sharon Hair.

<sup>2</sup> The Hairs.



and private ocean views. But the truth, no matter how much they protest to the contrary, is that their opposition is merely NIMBY concerns, parading as community issues.

The final Montecito Planning Commission vote was very closely divided. At the prior hearing, the Chair, Michael Phillips, and the Vice Chair, Jack Overall, movingly urged their colleagues to support the project. They emphasized that the project is beautiful, and that it complies with every aspect of the community plan. They complimented the applicants and their architects on the many changes they had made during the process. They questioned how the Commission could possibly deny a project that is appropriately designed, and cautioned against the chilling effect a denial would have on residents hoping to improve our beautiful community. And they specifically challenged the Commissioners who expressed concerns, saying that they did not believe, as a matter of law, that it would be possible to adopt findings of fact for denial because there was no credible evidence in the record that could support denial.

At the final hearing, Commissioners Phillips and Overall voted to support the project, but did not amplify or repeat their prior comments of strong support. Instead, the focus of the deliberations was on the three remaining Commissioners. I attach a transcript of the entire final deliberations, with emphasis I have added by underscoring key comments. The statements of Commissioners Brown and Keller make it clear that they sought something that, quite frankly, is beyond the power of the Commission to lawfully mandate—that if remodeled, the old home must be replaced with a one-story home. There is no lawful basis for such a goal. The property is zoned for two-story homes. More than half of the existing homes on Channel Drive (8 out of 13) are already two-story. The proposed home complies with the size requirements (the FAR's) of the Community Plan, and is significantly smaller than the neighbors' homes and the average in the area. The home complies with all Community Plan Requirements. The proposed home is smaller, shorter, more carefully and certainly more beautifully designed than the current home. It improves public views of the mountains and even improve private ocean views of the neighbors to the north.

Nothing more clearly establishes the problematic nature of the Montecito Planning Commission's goal of prohibiting two-story homes on Channel Drive than the fact that within the last year or two, the Commission approved two other Channel Drive two-story homes just a short distance from this one. One of those homes was a brand new home, and the other removed a one-story home with a two-story home.

The three Commissioners who voted to deny the project emphasized that the Montecito Community Plan is sacred must be respected. But then they voted to deny a project because it has a second story, despite the fact that the Community Plan allows two-story homes. Commissioner Cole stated that he could accept a second story element provided it was not larger than the existing second-story element, despite the fact that he acknowledged that the increase in the proposed second story element will not materially impact mountain views. The Commissioners opposed the design on principal, not because of its actual impacts.



It is quite striking, and indeed remarkable from a legal perspective, that a majority of the Commissioners<sup>3</sup> stated that the proposed project does not impede public views of the mountains or create night lighting impacts, but nevertheless adopted findings of fact for denial that state the exact opposite. Findings must follow the evidence.

### The Evidence

Any project can only ever be approved or denied based upon findings of fact. The findings of fact, in turn, must supported by credible evidence in the record.

When the proposed design was finalized, the applicants erected story poles carefully depicting the massing, roof and ridge lines. They then engaged a licensed surveyor to determine if the story poles were accurate, and a surveyor confirmed the accuracy<sup>4</sup>. Staff has independently confirmed the certification.

The applicants then took careful photographs of the existing home with the erected story poles in place so that they could prepare photo-realistic renderings of the proposed home from many locations matching the certified story poles and accurate in every detail. These remarkably-helpful renderings, before and after, show exactly how the proposed home will be. Short of actually building the proposed home and then taking photographs, nothing could be more accurate or useful as a planning tool.

We will not attempt to persuade you with the words in this letter, because the images themselves are so eloquent. We have uploaded the images to the County's website and will review them with you at Tuesday's hearing. This accurate evidence must guide your review. We respectfully submit that after viewing this evidence no one can credibly contend that the proposed home will have a negative impact on any public views of the mountains, that it will improperly impact any private views of the ocean, that it will cause any inappropriate outdoor lighting impacts, or that it does not fit beautifully into the existing, developed neighborhood.

Ironically, under the circumstances, you don't have to take our word for the foregoing conclusions, because you can look at the statements of a majority of the Commissioners themselves. The Montecito Planning Commissioners themselves stated that the proposed home is architecturally beautiful, and that it would be an enhancement over the existing developed home. Four of the five

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<sup>3</sup> All but Commissioner J'Amy Brown.

<sup>4</sup> He actually determined that the story poles in some instances were a few inches higher than the proposed home, but applicants determined that it was not worth it to lower the story poles as they were certainly not too high.



Commissioners<sup>5</sup> stated that it would *not* materially impact mountain views or create problematic lighting impacts.

And you do not have to rely only on our statements and the statements of the Commissioners. We have submitted, and posted on the County's website, 22 letters by individual Montecito residents, powerfully stating that they believe the proposed home will be a great asset to the community and should be approved. Their names are listed on the attached exhibit, but we won't burden you by attaching yet another copy. Some of them will attend Tuesday's hearing to urge you to grant the appeal.

Every one of these letters states that he or she has personally studied the plans and concluded that the project is appropriate, and urged the Montecito Planning Commission to approve it. They constitute as remarkable an outpouring of support from neighbors and the community as I recall ever seeing.

#### The Opponents Misleading "Evidence"

As a land use professional, I am profoundly disturbed that so much of the "evidence" the opponents have presented to the Montecito Planning Commission, and that obviously biased the Commission, is grossly misleading or just outright false.

As we will show at the hearing, using the opponents' actual slides, they have presented "renderings" of a huge, looming blocky, pure white house that is demonstrably different, higher and wider than the actual documented story poles of the proposed home. Despite the many design changes, they continue to use the same, old, tired and false images they used from the outset, as if no changes to the design had ever been made.

They submitted to the Montecito Planning Commission a "rendering" that purports to show the significant impact on ocean views of the Hairs' residence. The rendering was not only demonstrably incorrect, but was admittedly based on earlier story poles of a different, higher residence, that is not the design being reviewed. They submit a "rendering" that shows a huge, existing palm tree that is, in fact on the Hair's residence, magically "behind" a rendering of the proposed residence, to make it appear looming. They submit renderings based on a licensed surveyor<sup>6</sup> certifying height above finished floor, though they failed to tell the surveyor that the proposed finished floor is significantly lower than the existing finished floor, so that the resulting "story poles" are numerically incorrect. .

They present "renderings," obviously (and sloppily) photoshopped, in which ridiculously large images of trees have been "stamped" in a repeated pattern to create the image of a wall that

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<sup>5</sup> All but Commissioner J'Amy Brown.

<sup>6</sup> Joel Avakian



supposedly completely blocks one neighbor's ocean view, despite the fact that the image bears no relation to the actual proposed landscaping plan, and despite the fact that a highly qualified landscape architect<sup>7</sup> testified that vegetation in the salty, coastal environment cannot possibly grow so tall. They post statistics on the amount of glazing the proposed house supposedly has, despite staff's confirmation that their statistics are incorrect and that the applicant's statistics are accurate. They show a number of "renderings" of the proposed home at night that omit the six-foot, vine-covered privacy wall along Channel Drive that will eliminate almost all of the first story (and its windows) from public view. That distorts the facts.

In jury trials, there is an established judicial instruction stating that if the jury determines that a witness has made false statements about any fact, the jury is legally entitled to disbelieve or ignore everything the witness states. As applicants, we have leaned over backwards to present you accurate, photorealistic information to allow you to fairly evaluate the facts. The opponents, I am sad to say, have provided you demonstrably and obviously false, misleading, and inflammatory "evidence." That evidence obviously misled and biased the Montecito Planning Commission and the community. That is a disservice to the Board. It would justify you in ignoring all the assertions they make.

#### Montecito Association

The opponents will undoubtedly tell you that the Montecito Association has repeatedly urged you to reject the project. That is not so.

In 2014, the Montecito Association recommended that the Montecito Planning Commission disapprove an earlier design for the home—a design that was higher, significantly more modernistic, with much more south-facing glass, and that the applicant since rejected. The applicants have comprehensively redesigned the proposed home.

When they returned to the Montecito Association Land Use Committee last year, the committee formally decided that it should not review the proposed design (the current design) at all, because it had already deferred to the Montecito Planning Commission. Therefore the Montecito Association did not send an additional letter or take any action.

Just this week, the Montecito Association Land Use Committee and the Board considered the new design. The members of the committee made it clear that they "simply" wanted to support the Montecito Planning Commission. A number of them, including the Chair, stated that if the Montecito Planning Commission had voted to approve the project, they would likely have voted to support the Montecito Planning Commission. In other words, they were not recommending disapproval of the project on its merits, but simply supporting the Montecito Planning Commission.

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<sup>7</sup> Sam Maphis



After hearing the committee's report, the Association Board reached a similar conclusion. Quite a few Board members stated that they did not have nearly the information they would require to comment on the merits of the project itself, and would not do so. They only decided to urge you, the Board of Supervisors, to respect the Community Plan and the process.

The Association letter only states that you should "respect the process," not that you should affirm the Montecito Planning Commission. And that is as it should be. The one thing that you cannot do is simply adopt the Montecito Planning Commission's findings just because the Commission adopted them. The hearing before you Tuesday is *de novo*. You must—legally—consider the evidence anew and reach your own conclusions based on the evidence before you. Anyone who tells you as a matter of policy, *not because of the merits*, that you should affirm the Montecito Planning Commission is telling something that is false—that the hearing is not *de novo*.

We all agree that we should respect the Community Plan. That has never been in dispute. We all agree that Channel Drive is special. That has never been in dispute. We urge you to grant the appeal, and allow this beautiful project to proceed, precisely because it is fully consistent with the Community Plan and enhances the community.

#### Draft Findings for Denial

When the current project first came to the Montecito Planning Commission, with a recommendation for approval by the MBAR, staff recommended that the Commission approve the project and, anticipating that the Commission would do so, prepared Findings for Approval. Those findings, among other things, recited (correctly) that the project complies with all ordinance and community plan standards, that the home will not impede public views of the Santa Ynez mountains, and that it is otherwise in full compliance with all applicable planning policies and guidelines.

In other words, knowing that MBAR had had many, thorough hearings on the proposed home, and because both the staff and the MBAR had concluded that the proposed home complied with all Montecito Community Plan provisions, planning staff assumed that the Commission would concur and prepared Findings for Approval that supported the expected evidence, and that supported the project. We attach a copy of those Findings for Approval.

It was only after two hearings, at which some members of the Commission insisted that staff prepare contrary findings, that staff did so. The facts, of course, had not changed. Staff was just directed to draft opposite findings, and did so. Most of the findings remained the same (and supported the project). Only two findings differ.

#### Lighting

With respect to lighting, the draft Findings for Denial recite,



“The amount of glazing from the proposed windows would conflict with development policy LU-M-2.2, which states that lighting of structures, roads and properties shall be minimized to protect privacy, and to maintain the semi-rural, residential character of the community.”

The quoted policy regulates lighting of the exterior of structures, roads and properties. It is not intended to deal with lighting of the interior of private spaces. There are therefore two really big problems with a finding that the proposed project conflicts with the policy. First, the proposed project *eliminates* almost all of the exterior lighting that the existing residence has, that can make it so prominent, and that impacts the semi-rural character of Montecito. In contrast to the adjacent properties (including that of the main project opponent<sup>8</sup>), the proposed project has virtually no external lighting and cannot, therefore, be found to conflict with the policy.

The second problem is that even if the policy did pertain to interior lighting, the proposed project has 23% less visible south-facing glass than the existing home because the six-foot privacy wall screens almost the entire first story, and the second story has less south-facing glass than the existing residence. Even without the shutters the applicants offered at the final hearing, which no one favored, the proposed project has dramatically less visible south-facing glass than the existing home and eliminates the external lighting. Therefore, the evidence simply does not support the finding.

And of course there is also the problem that a majority of the Commissioners themselves stated that lighting was not their concern. Yet after making those statements, they just adopted inconsistent finding as a means to deny the project because of their goal of preventing or limiting all new second stories. That is improper. If the evidence does not support the draft finding, the Commission is not legally able to adopt it.

#### Mountain Views

The draft Findings for Denial also recite,

[t]he increased size, bulk, scale, and orientation of the proposed second story as compared to the current residence would increase the visibility of the residence from Channel Drive in conflict with Policy Lu-M-2.1 of the Montecito Community Plan, which states that new structures shall be designed to minimize their visibility from public roads. Moreover, the impacts to public views of the Santa Ynez mountain range from the increased size, bulk, scale and orientation of the proposed second story of the new dwelling would conflict with development policy VIS-M-1.3, which states that development of property should minimize impacts to open space views as seen from public roads and viewpoints.”

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<sup>8</sup> Michael and Sharon Hair





In this case, the primary problem is just the evidence. The only credible evidence—the photorealistic images by the appellant—establishes to any fair-minded viewer that, if anything, the proposed residence improves public views because the residence is lower, eliminates the chimneys, pushes the east portion of the second story back, and lowers the rear portion of the second story. Moreover, the existing residence is in the foreground of existing trees, not the mountains, so does not significantly impact mountain views. Side by side comparisons of the existing and proposed residence, posted to your website and that we will discuss at the hearing, conclusively show that the proposed residence is an improvement to public views.

No doubt, the opponents will say the project should be viewed as a brand new structure, as if no structure were there today. There is no basis for that assertion. And should the project be denied the existing one will no doubt remain. But there is an even more significant point. A majority of the commission clearly stated that they would support the project if the second story were limited to its current size. But with respect to the visual finding in question, the increase in size of the rear portion of the second story is irrelevant. If the applicant reduced the size of the second story, retained the chimneys, and did not push back part of the mass, a majority of the Commission stated that they would have approved it, but the actual visual impact on the mountains would be worse, not better.

It is simply not logical for Commissioners to oppose a change to the second story on principle, where the design, considered as a whole, improves public views of the mountains. The finding for denial based on visual impact is not supported by the evidence and cannot be made.

#### The Importance of Remaining MBAR Discretion

Many applicants appearing before Planning Commissions keep in their pockets some key concession they are, in fact, willing to concede so that, on appeal to you, they can offer one final change. We think that is disingenuous. And it is disrespectful to you because it means you will unnecessarily have to hear projects that might have been satisfactorily resolved by the Planning Commissions below if the applicants had only been forthcoming.

We did everything possible, and made every concession we considered realistic and acceptable, and even made proposals that we thought were unnecessary and should not be required, in a vain attempt to satisfy the neighbors' concerns. We were unsuccessful because, in reality, they want no second story. But the fact that we tried so hard to appease them also means that there are no secret concessions we have been holding back.

It is important for you to remember that the project will still be reviewed by the MBAR, the group the County entrusts with the task of careful review of all projects. The MBAR retains important discretion over all details of the design and over the landscaping. That is especially important because one neighbor has expressed to us that his primary concern is the potential impact of landscaping and that the proposed landscaping will leave his house in the shade all day long and completely block ocean views. No one who has actually reviewed the proposed landscaping plan



DEREK A. WESTEN  
ATTORNEY AT LAW

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July 15, 2016

could reach that conclusion, and we certainly do not propose any landscaping that would in any way impede ocean views of the neighbors to the north. But in all events, the MBAR retains discretion over landscaping and has—staff will confirm this—the discretion to review landscape height.

We think the proposed landscaping is beautiful and appropriate. We remind you that we added the landscaping plan, and the two proposed trees at the front, at the express request of the Montecito Planning Commission. But if the proposed landscape is of concern to, you can always include direction to the MBAR to review the proposed final landscaping plan with special attention to the concerns of neighbors to the north. Such direction would more than address any legitimate concerns, and ensure that the MBAR, which has professional landscape professionals, will review the final plan, as well as all architectural details, before giving final approval.

#### Conclusion

For all the foregoing reasons, we will urge you to study with care all the evidence we will be providing at next week's hearing, and will ask that you look with a critical eye at any "evidence" that lacks credibility.

We are confident that if you do so, you will agree that the evidence supports the Findings for Approval originally prepared by staff, and that the appeal should be granted.

We look forward to discussing this project with you at Tuesday's hearing.

Sincerely,

Derek A. Westen  
Attorney at Law

cc. Cheryl Olsten and Steve Grabowski  
J. Ritterbeck  
Thiep Cung, AIA  
Kelly Teich, AIA

1                   BEFORE THE MONTECITO PLANNING COMMISSION

2                               COUNTY OF SANTA BARBARA

3                                       STATE OF CALIFORNIA

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6   ITEM 2

7 Hearing on the request of Matthew Ewing, agent for the  
8 property owner, Olsten Montecito Trust, Case No.  
9 14CDH14, application filed on June 10th, 2014, and to  
10 determine the project is exempt pursuant to Sections  
11 15301, 15303 of the State Guidelines for  
12 Implementation of the California Environmental Quality  
13 Act. The application involves the parcel located at  
14 1154 Channel Drive in the Montecito Community area,  
15 First Supervisorial District.

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19   Transcript of Recorded Proceedings

20   March 23, 2016

21   County of Santa Barbara

22   Planning Commission Hearing Room

23   123 East Anapamu Street, Room 17

24   Santa Barbara, CA 93101

25 Transcribed by:

Marlene Struss

PARTICIPANTS

Planning Commission

J'Amy Brown

Susan Keller

Joseph Cole, Vice-Chair

Jack Overall, Vice-Chair

Michael Phillips, Chair

County Representatives

Jay Ritterbeck, Planner

David Villalobos, Clerk of the Commission

Diane Black, Planning Commission Secretary

Applicants' Representative

Josh Rosen, Landscape Architect

Derek Westen, Real Estate Attorney

Kelly Teich, Architect, Warner Group

Community Representatives

Derrick Eichelberger

Sam Maphis

Edwin Quackenbush

Will Gustason

Robert Collector

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APPEARANCES (Continued)

Community Representatives (Continued)

- Riley Stille
- David Cornwall
- Mindy Wolfe, for the Sturgesses
- Sophie Calvin, for Mr. Hair
- Mr. Clares
- Michael Hair
- Bill Spiewak
- Susan Petrovich

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SANTA BARBARA, CALIFORNIA

MARCH 23, 2016

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TRANSCRIPT OF TESTIMONY PORTION OMITTED ...

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CHAIRPERSON PHILLIPS: Thank you, Mr. Westen.

I will now close the public portion of the hearing and invite my fellow Commissioners to ask questions of staff, applicant and -- and the public should you wish to, those who were here, should you have any questions. So this is where we are.

So any questions of --

Ms. Brown?

COMMISSIONER BROWN: I do have a question of staff, please. There's been testimony back and forth about the 40 percent glass. I believe you said early in the hearing that there was a 40 percent glass reduction. Later on it appears that that reduction is more of a filtering over the -- the glass actually hasn't been removed; it's just been filtered; is that correct? Or how do you get to the 40 percent reduction since the last hearing?

MR. RITTERBECK: Mr. Chair, Commissioner Brown, the 40 percent that was cited in staff -- staff's presentation was specifically about the glazing

1 effect. So having the shutters that covered that 40  
2 percent effectively created it so that there wasn't  
3 that -- that glow. That was a statistic that was  
4 provided by the applicant. It was reviewed. The  
5 numbers did -- did -- were accurate. But it was  
6 specifically about a comparison of un- -- unfettered  
7 shining through and then an area that was reduced by  
8 40 percent by adding those shutters.

9 COMMISSIONER BROWN: So the actual glazing, the  
10 glass itself, remains the same?

11 MR. RITTERBECK: Mr. Chair, Commissioner Brown,  
12 the amount of glass behind the shutters and that  
13 amount that is not covered by shutters did not change.

14 COMMISSIONER BROWN: All right. Thank you very  
15 much. That's my only question.

16 CHAIRPERSON PHILLIPS: Commissioner Keller?

17 COMMISSIONER KELLER: Yeah, just to follow up on  
18 that, please, the amount of the shutters do have a  
19 somewhat shadowing effect. Applicant has said it's  
20 between 50 to 80 percent of the light being emitted;  
21 and the opposition has said it's 30 percent. Did you  
22 have any independent source to verify that either of  
23 those was correct?

24 MR. RITTERBECK: Mr. Chair, Commissioners, that  
25 was a new statistic that I had heard today about the



1 amount of reduction of that lumen- -- the lumens  
2 coming through, so that was not vetted or reviewed.

3 COMMISSIONER KELLER: Thank you.

4 CHAIRPERSON PHILLIPS: Mr. Overall.

5 COMMISSIONER OVERALL: Actually (inaudible)

6 CHAIRPERSON PHILLIPS: Oh, I'm sorry.

7 That's me. Any other questions of the  
8 Commission?

9 Okay. Seeing none, I want to close public  
10 -- is there a light on?

11 COMMISSIONER COLE: There are two. But that's --  
12 go ahead.

13 CHAIRPERSON PHILLIPS: I don't see -- who --  
14 who's first.

15 COMMISSIONER COLE: Mine and -- and J'amy.

16 CHAIRPERSON PHILLIPS: Oh, you were.

17 COMMISSIONER COLE: But I'm waiting for you to do  
18 what you were going to do. I just jumped the gun.

19 CHAIRPERSON PHILLIPS: All right. I'm going to  
20 close the --

21 COMMISSIONER BROWN: And I'm -- I was trying to  
22 jump his gun.

23 CHAIRPERSON PHILLIPS: Okay, gun jumpers.

24 Let's see, I'm going to close public  
25 hearing, and we are in deliberation. And the first

1 light on, Mr. Overall.

2 COMMISSIONER OVERALL: Yeah. I have, I guess,  
3 several -- several comments. I think the thing that  
4 has struck me is that we are -- we've gone pretty deep  
5 in the weeds on this project. And I am acutely aware  
6 of the fact that we are not the MBAR. I certainly am  
7 not an architect, landscape or otherwise. And I read  
8 and reread various comments by the MBAR. If we  
9 approve this project, it's going to go back to them.

10 I understand from Ms. Gottsdanker that, as  
11 related to one of the specific issues, that being  
12 landscaping, that they can condition their approval of  
13 the landscape plan to address concerns about how high  
14 the shrubs or trees get. (*Emphasis added.*) So I think  
15 that -- if that -- if staff will verify that that is  
16 in fact correct Go ahead.

17 MR. RITTERBECK: Mr. Chair, Commissioners, that  
18 is actually correct. I was waiting for the  
19 opportunity to -- to clarify that. It will be  
20 returning for final BAR. It actually does not have  
21 any formal approval by the BAR; it was only reviewed  
22 at the conceptual level. So all those comments that  
23 you have are conceptual. No action had been taken  
24 yet.

25 It will return for final. At final review

1 they look at colors and materials. They look at  
2 lighting. They look at landscaping, all those things  
3 that are -- not all but many of the issues that are  
4 being discussed. When it does return, the Commission  
5 has the ability to give direction or offer comments  
6 for specific items to be addressed at that final  
7 review.

8           And then another earlier question that was  
9 requested about how is that enforceable? Throughout  
10 the project description and many of the conditions of  
11 approval it's cited that the plans shall be adhered  
12 to. So those plans, which are exhibits which are  
13 offered today, are the binding document that -- that  
14 they will be held to.

15           COMMISSIONER OVERALL: So to -- to continue my  
16 comment, I think it -- it's important we've had  
17 lengthy hearings. I think to the extent that we have  
18 concerns that have not been addressed, that we want  
19 the MBAR to address when they review it, I think we  
20 ought to be very specific in that.

21           But going to the -- to my personal view on  
22 this, I want to address three -- I guess three points.

23           The issue of public views of the mountains.  
24 I -- I don't find that this project materially impacts  
25 those. (*Emphasis added.*) I think anybody who is

1 foolish enough to walk along Channel Drive and be  
2 looking solely at the mountains, is dooming themselves  
3 to be hit by a bike or a car. So I think it's a -- I  
4 think it's -- several people have said, it's a moving  
5 dynamic across there. And I just don't see the small  
6 angle that might be affected by a part of this house  
7 as materially impacting the public views. (*Emphasis*  
8 *added.*)

9 As far as the private views are concerned,  
10 it -- our Community Plan and the Guidelines do say to  
11 the maximum extent feasible. And I think the  
12 operative word there is "feasible." And I would just  
13 point out, I have no idea what the Olstens paid for  
14 this property, but it was many millions of dollars.  
15 And they're going to pay a lot more to build a house.  
16 I don't think it is reasonable or feasible, if you  
17 want to use the word, to expect them to build a house  
18 that is 1800 square foot or 2000 square feet, you  
19 know, on an \$8 million lot. I just don't think that's  
20 feasible. (*Emphasis added.*)

21 And I think the fact that there is a second  
22 story on the -- on the property now, gives a pretty  
23 good indication and justification for why the  
24 architect has gone the way they have. (*Emphasis*  
25 *added.*)

1           So as far as the public views are  
2 concerned, I don't see that to be a problem. As far  
3 as the private views are concerned, I think it's a  
4 very limited angle, and I think the feasibility issue  
5 has to govern there. (Emphasis added.)

6           And let's see, I had one other point. Oh,  
7 as to the -- as to the lighting and the so-called  
8 lantern effect, modern architecture by its very nature  
9 relies very heavily on stone, wood, and glass. And I  
10 think for us to take a look at this project and -- and  
11 deny the palette to the architect of modern  
12 architecture, we either need to say a modern home  
13 doesn't fit on this property, period, and go  
14 absolutely back to the drawing board, or we need to  
15 leave it alone and leave it to the experts on the MBAR  
16 to make those calls. (Emphasis added.)

17           So having said that, I will be willing to  
18 make a motion or certainly support a motion to approve  
19 the project, but I'd like to give staff notes to pass  
20 along to the MBAR should this -- should such a motion  
21 pass. (Emphasis added.)

22           COMMISSIONER BROWN: And, Mr. Chair, before you  
23 make a motion can we hear everybody's comments?

24           CHAIRPERSON PHILLIPS: Oh, absolutely.

25           COMMISSIONER BROWN: Oh, good.

1 CHAIRPERSON PHILLIPS: Commissioner Brown, do you  
2 -- are you next?

3 COMMISSIONER BROWN: Well, I have a lot of  
4 comments, so I hope you're comfortable and not going  
5 to fall asleep after lunch.

6 I -- at the last hearing, Commissioner  
7 Overall asked what findings could we possibly make  
8 that would justify denial? And I thought that was a  
9 valid question. And I spent most of last night and  
10 most of today or some of today looking through trying  
11 to find out what the answer to that question was.

12 I -- the easiest place was to look in the  
13 findings of our own staff report which says the -- and  
14 I thought they were quite aptly put -- the project  
15 doubles in size, and it significantly obstructs the  
16 views of the Santa Ynez Mountains. That's from our  
17 own staff. That -- they think it's significant. So  
18 I'll buy into that. (Emphasis added.)

19 The applicant has to pass a really hard  
20 test to meet the Community Plan policies. There's no  
21 question about it. The Commission must adhere to  
22 those policies. That's exactly what we're here to do.  
23 The Community Plan is, as Ms. Petrovich mentioned,  
24 wasn't just willy-nilly. They were very precise and  
25 strict in their -- they wanted to keep what was

1 existing on the ground the way it was. I believe that  
2 the Community Plan is law, and I believe that the  
3 local area plan must be adhered to.

4 I also think that this Commission was  
5 absolutely erected so that local Montecito citizens  
6 could administer that plan.

7 So as I said, I read it carefully. And on  
8 page 46 LUM goals, the goals, say the project -- we  
9 "must protect residential privacy, protect public  
10 views of the mountains and ocean, and to the maximum  
11 extent feasible, protect private views."

12 And as far as going to feasible, it's also  
13 -- excuse me, it's that mint I had in my mouth. It's  
14 perfectly feasible to build a one-story house. I mean  
15 feasible can mean a lot of things. So I think that --  
16 that probably what they -- you know, I think that the  
17 private views would probably, in my mind, overtake  
18 that it is feasible to put a one-story house, which  
19 would protect the private views. (Emphasis added.)

20 LUM-2 ensures that all development, all  
21 development, not just this house or somebody else's  
22 house, but all development along roads is designed in  
23 a manner that does not impinge on the character of the  
24 roadway. And I -- David, could you put up my little  
25 photo again; is that possible?

1           Thank you.  Maybe pop it up -- make it a  
2 little bigger.

3           Again, I think that -- I think that even  
4 the house that's there sort of somehow has some feel  
5 of that, of that character of that mountain range.  
6 Perhaps it's the bougainvillea.  But the -- the  
7 character here is the mountain views and the ocean  
8 views, I agree with that.  But we also are suppose- --  
9 we have a very obtrusive house, and we have the  
10 opportunity to not have such an obtrusive house.

11           LUM 2-1 says you must screen the view from  
12 the adjacent public roadway.  Well, we talked about  
13 the screening today, and again, that's why I wanted  
14 this picture put up.  I have a very strong opinion  
15 that the landscape, front yard landscape, will indeed  
16 not screen; it will actually distract from the public  
17 view.

18           LUL-22, or L-2.2, says lighting of  
19 structure "shall" be minimized.  I don't think that  
20 the solution brought today does that.  I -- I actually  
21 was quite disappointed that a shutter was put up, that  
22 it's not even a storm shutter, it's a louver -- you  
23 know, it's a sort of a filtering shutter.  So that --  
24 that part was very disappointing to me.  The -- it  
25 also says in L-22 that you must protect privacy and



1 maintain community character.

2           Page 124 of the Development Standards say,  
3 "Development shall be subordinate to the natural open  
4 spaces and character of the mountains." "Subordinate"  
5 is the word here. And again, I don't think this  
6 project comes in as subordinating to the mountain  
7 views.

8           The Community Plan goes on to say, "The  
9 Architectural Guidelines, which shall be adopted,  
10 shall address site planning, including mass, height,  
11 and structure; impacts to neighborhood privacy."

12           And on page 22 it says low level lights  
13 that allow views of the stars. On page 20 it says  
14 minimize visual impacts of structures from public  
15 roads. Blend with existing land forms. Not attract  
16 attention to themselves.

17           And again, it that the current second story  
18 is -- is very obtrusive.

19           And in the end, it wasn't all just the -- I  
20 think you can see I'm not going to be able to support  
21 the project as presented. But it wasn't really just  
22 reading the Community Plan. That was very important  
23 to me. But it was also listening to Mr. Quackenbush,  
24 Mr. Stille, Mr. Cornwall, and Mr. Collector. And I  
25 think they reminded us that it comes to us to -- to

15

1 instill and enforce these community policies. And if  
2 we don't do that, I don't even know why we would have  
3 a Planning Commission. We could leave it at MBAR and  
4 staff and we could just spare ourselves these -- these  
5 delightful Wednesdays here.

6 So I think that the -- the view -- I think  
7 that the current project, I think the view needs to be  
8 protected. I think that the landscape blocks the  
9 mountain view. (*Emphasis added.*) The goal of the  
10 Community Plan is to protect the ocean and mountain  
11 views, so it's with regret -- I must say that -- that  
12 -- and again, that we're just required to have a  
13 Community Plan consistency.

14 So for that reason, the reasons I've given  
15 here, I think we -- I could not make the findings to  
16 accept this project. So.

17 CHAIRPERSON PHILLIPS: Very good.

18 Commissioner Keller, your views.

19 COMMISSIONER KELLER: I would like to express my  
20 deep sympathies to Ms. Grabowski and Mr. Olsten,  
21 because this has been a very long and very expensive  
22 process for them. However, it seems to be the  
23 realities of today that you pay a great deal of money  
24 for a property and your real estate broker doesn't  
25 tell you you might not be able to do with it what you

1 want to. And I think the brokers have an obligation  
2 to tell them that. And then you find an architect who  
3 wants to please you and do as much as you possibly can  
4 with the project and doesn't tell you that maybe you  
5 can't build exactly what you want to on that project.

6 And so in the process of going through from  
7 what was initially a project that didn't meet any  
8 standards and specifications, that was way oversized  
9 and way extreme in one direction of being quite  
10 modern, it has evolved. And I think the property is  
11 much more attractive as a result. I think that  
12 usually that is the product of the process, that you  
13 do make improvements. I think it's a much more  
14 appealing, a warmer. I like the addition of the  
15 greenery on the front. (*Emphasis added.*) I like the  
16 addition of the wood. I think it's a -- a much nicer  
17 addition to the neighborhood than what was initially  
18 proposed.

19 However, the issues that were dealt with  
20 today at great length, which had mostly to do with  
21 public/private views and with lighting and lantern  
22 effect, were not my primary concern, which is the  
23 precedent setting size of the -- not just the second  
24 floor, but having a second floor and of the property  
25 in general. And I say precedent setting because if

1 this project came before the MBAR today on a .44 acre  
2 lot, which is undersized, and it was proposed to have  
3 3800 square feet with -- with a second floor that  
4 impinged on views of the neighbors, I do not believe  
5 it would be approved. And I think the only reason  
6 it's been approved thus far is because there is an  
7 existing second floor and the MBAR felt constrained to  
8 continue to allow that. (*Emphasis added.*)

9           And I'm just -- I have a great concern that  
10 more -- that if we allow a second floor, especially a  
11 second floor that is doubled in size to what is  
12 existing and preexisting the Community Plan, then  
13 there will be an incredibly concerning precedent set  
14 for Channel Drive.

15           And I also want to point out that much has  
16 been made about the reduction in square footage. The  
17 revised dwelling currently be thirty-one thousand  
18 eighty-seven -- I mean 3187 square feet. And however,  
19 that is only as a result of the employment of the  
20 popular subterfuge of having a detached accessory  
21 structure, which we will be addressing in our  
22 Architectural Guidelines revisions in the next agenda  
23 item. The fact is there's a 570-foot cabana that is  
24 attached to the house with a -- I think it's called --  
25 this is why I was looking at the plans. It's deemed a

1 bridge, an overpass. It's something that connects the  
2 house, provides shelter, and enables easy passage from  
3 the house to the cabana.

4           So not counting that in the total is really  
5 something that the entire committee, the Architectural  
6 Guidelines Review Committee, addressed as an urgent  
7 need because of this proliferation -- sorry, it's a  
8 difficult word to say, but the proliferation of  
9 accessory structures. And when you count that into  
10 the size of the property, into the size of the square  
11 footage, suddenly the square footage is back up to  
12 3757, which is only 50 feet, less than 50 feet smaller  
13 than the current development on the property, not  
14 taking into account either garage.

15           So that the -- the effective construction  
16 development on the property as proposed is almost  
17 identical to what is there. It it's just configured  
18 with a much larger second floor, not even counting the  
19 800 square foot basement nor the larger garage -- or  
20 sorry, slightly smaller garage.

21           So I just think that if we look at this  
22 project as we must, as a new project, not giving it  
23 any precedent because it already has a second floor,  
24 that it's not a project that would pass muster under  
25 the current Guidelines and certainly not under the

1 proposed Guidelines, the direction the Guidelines are  
2 heading in, which is not to allow as many accessory  
3 structures. And I'm very concerned about having this  
4 precedent set. (*Emphasis added.*)

5           As we noted before, there was another  
6 structure at the other end of the street next to the  
7 Biltmore that we did approve that had a second floor.  
8 And we agonized over that because we wanted to find a  
9 way not to allow that second floor because we see this  
10 as being a kind of domino effect along Channel Drive.  
11 And that didn't have the privacy issues. It didn't  
12 have the public view issues. It did have lighting  
13 issues which were resolved to a great extent. And now  
14 we're -- we're taking it one step further. And I  
15 think it's very dangerous. (*Emphasis added.*)

16           So I feel that the solutions and all of the  
17 suggestions that came forth today were really more  
18 camouflage than they were change. (*Emphasis added.*)  
19 Because they have not changed one foot of the  
20 additional store -- of the second story, which three  
21 of us had expressed concern about. They only today  
22 addressed the lighting issues and the landscape and  
23 view issues. And I feel that a very lasting impact  
24 will be the precedent of allowing a second floor of  
25 this size and all the ramifications thereof.

1 CHAIRPERSON PHILLIPS: Mr. Cole.

2 COMMISSIONER COLE: Well, I will be brief.  
3 Because you're probably more interested in my  
4 conclusions than my reasoning.

5 I -- I think Commissioner Overall asked the  
6 right question last time. You know, what are we  
7 basing our -- our findings on? And I think, again, I  
8 give Derek Westen a lot of credit for focusing on the  
9 facts and focusing his team on what are the facts. We  
10 certainly looked at a lot of different pictures of the  
11 same thing. Or depending on what height, you know,  
12 you happen to be and where you happen to stand.

13 I -- the view is very troubling. I have to  
14 say I agreed with Mr. Westen that the -- standing on  
15 Channel and looking at the mountains, maybe there  
16 wasn't a big impact on public mountain views.

17 (*Emphasis added.*) I think if you are -- but it's the  
18 maximum extent feasible for private views. Especially  
19 if you were on Hill Drive and you're look towards the  
20 ocean, the -- I did -- I did go back through it.

21 I'm not going to bore you with it, but I  
22 did go back through the Community Plan and looked at  
23 the different goals and policies. And -- and to tie  
24 my reasoning to those. As I mentioned I even drove by  
25 last night at 12:30 because I was laying awake

1 wondering about this. It's a tough call. (*Emphasis*  
2 *added.*) I drove back and forth. I was a little  
3 worried about the sheriff at one point, wondering what  
4 I was doing there walking on the street. Usually  
5 Mr. Hair comes out when I walk back and forth.

6 The -- I looked at the lighting pretty  
7 carefully. I appreciate everything they've done with  
8 the shutters. Certainly the visibility issues, the  
9 private views.

10 But again, what I can't get over -- and  
11 it's amazing -- I think it's amazing what the  
12 applicant's done. I mean you look at what we started  
13 with and where we are now. But what I can't get over  
14 is the fact that it's going to be scraped. It's going  
15 to be a demolition. And if we were starting from  
16 scratch, we probably or at least I wouldn't support a  
17 second story. I do try to balance the rights of  
18 property owners. So that's where I was last time with  
19 700 square feet. But this -- this project continues  
20 to double the size of the second story. I think  
21 there's a precedent value. (*Emphasis added.*) The  
22 question is in Montecito where are we going to draw  
23 the line?

24 I visit beach cities in Southern California  
25 a lot on weekends for children's sports. And it is



1 terrible what you see in other communities. And so  
2 I'm not willing to support the project as permitted.  
3 If it was -- as proposed. If the entire redesign was  
4 around under 700 or less on the second story, I'd  
5 probably be there. (*Emphasis added.*) But I'm not. And  
6 the project isn't there.

7 CHAIRPERSON PHILLIPS: I -- I looked at the very  
8 same issues as my colleagues and came to a different  
9 conclusion. I think that's what happens in difficult  
10 cases. It's -- it's on the edge. And my view is that  
11 it's an appropriate project. I think the land use  
12 issues have been the burden to overcome. The  
13 objections have been met by the applicant. Definitely  
14 a better -- a better project than the existing one.  
15 So I would support it.

16 And saying that, I will call the question,  
17 looking for a motion for denial, I guess.

18 Go ahead, JB, sure.

19 COMMISSIONER BROWN: Sure. I -- well, I think it  
20 was just on. I'm sorry, I didn't really flip it on to  
21 do that. But yes, I would make a motion for denial  
22 according to the staff suggestions.

23 MS. BLACK: So, Mr. Chair and Commissioner Brown,  
24 I think what you're suggesting is a motion for denial  
25 based upon Option 2 in the staff report?

1 COMMISSIONER BROWN: Yes.

2 COMMISSIONER COLE: Yeah, Attachment 4. Yeah.

3 COMMISSIONER BROWN: Yeah, Option 2 with the  
4 findings for denial.

5 MS. BLACK: (Inaudible) Attachment 4 and  
6 Attachment 5.

7 COMMISSIONER BROWN: Attachment 4 and 5. Mm-hm.  
8 Yes. Precisely.

9 CHAIRPERSON PHILLIPS: Do I hear a second?

10 COMMISSIONER COLE: Second.

11 CHAIRPERSON PHILLIPS: Mr. Cole seconds.

12 All in favor?

13 (Commissioner Brown, Commissioner Keller,  
14 and Commissioner Cole say "aye.")

15 CHAIRPERSON PHILLIPS: Opposed?

16 (Chairperson Phillips and Commissioner  
17 Overall against.)

18 CHAIRPERSON PHILLIPS: It passes three to two.  
19 And we conclude that item.

20 MS. BLACK: Thank you.

21 CHAIRPERSON PHILLIPS: Thank you.

22 (End of Item 2, March 23, 2016, meeting of  
23 the Montecito Planning Commission.)

24

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C E R T I F I C A T E

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STATE OF CALIFORNIA            )  
COUNTY OF SANTA BARBARA    )  ss.  
-----)

I, MARLENE STRUSS, do hereby certify that I am a professional transcriptionist and that I transcribed, from compact disk and in stenotype, the proceedings fully and accurately to the best of my skill and ability; that I have caused my stenotype notes to be translated into typewriting, and that the foregoing pages numbered 5 through 140 herein constitute a complete and accurate transcript of said stenotype notes.

IN WITNESS WHEREOF, I have subscribed this certificate at Santa Barbara, California, on this 7th day of June, 2016.

*Marlene Struss*

MARLENE STRUSS

## Supporting Letters for 1154 Channel Drive

Steven Grabowski & Cheryl Olsten

1	Mrs. Bonnie Damron	1086 Channel Drive
2	Randall Van Wolfswinkel	1210 Channel Drive
3	Paul and Jane Orfalea	1130 Channel Drive
4	Hadi Makarechian	1150 Channel Drive
5	Robert Finkelstein	40 Butterfly Lane
6	Sam Maphis, ASLA	
7	Barry Winick, AIA	
8	Lyndon Lea	1104 Channel Drive & 1127 Hill Road
9	Danny Longwil, AIA	
10	Jeffery Berkus, AIA	
11	Catherine Blagden and Mary Rics	1206 Channel Drive
12	Jeff and Elizabeth Young	
13	Walt and Lynne Clay	
14	Tom and Chris Frisina	
15	Michael and Jit Barnick	
16	Arlyn Goldsby	
17	David Lacy	
18	Robert and Alexandra Nourse	
19	Ilene Nagel	
20	Dina Sultan	
21	Richard and Catherine Frinier	
22	Forbes Perkins	

# ATTACHMENT 1

## FINDINGS FOR APPROVAL

### 1.0 CEQA FINDINGS

The Montecito Planning Commission finds that the proposed project is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15301 [Existing Facilities] and 15303 [New Construction or Conversion of Small Structures]. Please see the Notice of Exemption, included as Attachment 3 to the staff memo, dated March 3, 2016.

### 2.0 ADMINISTRATIVE FINDINGS

#### 2.1 FINDINGS REQUIRED FOR ALL COASTAL DEVELOPMENT PERMITS

**In compliance with Section 35-60.5 of the Article II Zoning Ordinance, prior to issuance of a Coastal Development Permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and/or the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development.**

As discussed in Section 6.2 of the staff report, dated April 30, 2015, incorporated herein by reference, the Montecito Water District has issued a Certificate of Water Service Availability and the Montecito Sanitary District has issued a Sewer Service Availability Letter for the proposed new SFD on the subject parcel (Attachments E & F to the April 30, 2015 staff report). Access to the project site will continue to be provided via the existing driveway off of Channel Drive. Driveway dimensions and access will be in conformance with Montecito Fire Protection District specifications. Therefore, this finding can be made.

### 2.2 ARTICLE II COASTAL ZONING ORDINANCE FINDINGS

**Findings required for Coastal Development Permit applications subject to Section 35-169.4.2.** In compliance with Section 35-169.5.2 of the Article II Zoning Ordinance, prior to the approval or conditional approval of an application for a Coastal Development Permit subject to Section 35-169.4.2 the review authority shall first make all of the following findings:

#### 2.2.1 The proposed development conforms:

- 1) **To the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan;**
- 2) **With the applicable provisions of this Article and/or the project falls within the limited exception allowed under Section 35-161.**

As revised, the project remains consistent with all applicable ordinances and policies as discussed in Sections 6.2 and 6.3 of the original staff report, dated April 30, 2015. The revisions that have been made to the project only serve to further enhance the project's compatibility with surrounding development. Therefore, the revised project continues to comply with all applicable policies of the Comprehensive Plan, including the Montecito Community Plan and Coastal Land Use Plan, as well as applicable provisions of the Article II Coastal Zoning Ordinance. The parcel's legal nonconforming status as to size does not preclude the project and will remain the case following project approval.

Additionally, the revised project significantly reduces potential night light impacts in the following respects: it eliminates a number of relatively bright exterior lights, has 42% less second-story south-facing glazing, has 9% less first story south-facing glazing, includes a six (6)-foot wall along Channel Drive; the revised project also includes two mature landscape trees that further minimize potential night light impacts. As a consequence, the potential night light impacts of the proposed residence are substantially reduced from those of the existing residence, and will not have a significant adverse impact on the public's nighttime use and enjoyment of the area.

Additionally, although the size of the second story element is larger than that of the existing residence, the overall FAR of the project is reduced 21% from the FAR of the existing residence, the height of the highest roof is sixteen (16) inches lower than the ridge height of the existing residence, and the height of the southern-most portion of the project is twenty five (25") inches lower than the ridge height of the existing residence. The design and massing of the second story element does not have an impact on any public views of ocean or mountains that differs significantly from any such impacts of the existing residence.

Therefore, this finding can be made.

### **2.2.2 The proposed development is located on a legally created lot.**

The proposed development is located on a legal lot of record that is shown as lot 19 of the 1887 Recorded Map (Rack 1, Map 3), known as the Tract Map of the Montecito Land Company, as depicted on Assessor's Map Book 009, page 35, County of Santa Barbara. Therefore, this finding can be made.

### **2.2.3 The subject property and development on the property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of this Article, and any applicable zoning violation enforcement fees and processing fees have been paid. This subsection shall not be interpreted to impose new requirements on legal non-conforming uses and structures in compliance with Division 10 (Nonconforming Structures and Uses).**

As discussed in Section 6.3 of the staff report, dated April 30, 2015 and incorporated herein by reference, there are no zoning or building violations recorded against the subject parcel.

Additionally, as conditioned, the subject property and proposed project are in full compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and all other applicable provisions of Article II, Coastal Zoning Ordinance for the E-1 zone district. The parcel's legal nonconforming status as to size does not preclude the project and will remain the case following project approval. Therefore, this finding can be made.

### **2.2.4 The development will not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.**

The proposed project does not significantly obstruct public views from any public road or from a public recreation area to, or along the coast. The residence is on the mountain side of Channel Drive and does not obstruct views to or along the coast from Channel Drive or any other public road or viewing area. Additionally, although this finding relates to significant obstruction of public views to and along the coast, as noted in the Approved Minutes from the Montecito Board of Architectural Review's December 15, 2014 and October 12, 2015 hearings, the project does not block any views from the beach and retains public views of the mountains as viewed from Channel Drive (see Attachment D to the staff report, dated April 30, 2015 and Attachment 6 to the staff memo, dated March 3, 2016, respectively, both incorporated herein by reference). Therefore, this finding can be made.

### **2.2.5 The development is compatible with the established physical scale of the area.**

As shown in Attachment D to the staff report, dated April 30, 2015, incorporated herein by reference, the MBAR reviewed the originally proposed development at the conceptual level on six separate occasions. At the hearing of December 15, 2014, the MBAR took a straw vote and determined that the project, as previously designed, was compatible with the neighborhood and would fit in nicely with the surrounding community. The revised project, which reduces the overall size and height of the proposed new dwelling, was reviewed by the MBAR on October 12, 2015, where it was determined to be in proper relationship with the size, bulk and scale of the surrounding neighborhood and appropriate to the size of the lot (see Attachment 4 to the staff memo, dated March 3, 2016 and incorporated herein by reference). Additionally, as a condition of approval, the project will require final review and approval by the MBAR prior to issuance of the Coastal Development Permit (see Condition #3, Attachment 2 to the staff memo, dated March 3, 2016 and incorporated herein by reference).

Additionally, as discussed in Section 6.2 of the staff report, dated April 30, 2015 and incorporated herein by reference, large homes on small lots make up the majority of dwellings throughout the immediate neighborhood. The existing two-story dwelling on the subject parcel is 3,802 square feet in total size (first floor: 3,136 sq. ft; second floor: 666 sq. ft.) and is approximately 31% over the maximum recommended floor area for the 0.44-acre lot. The revised new two-story dwelling currently will be 3,187 square feet in total size (first floor: 1,935 sq. ft; second floor: 1,252 sq. ft.) and will be approximately 9.9% over the maximum recommended floor area for the lot. Existing floor areas of some of the homes on surrounding parcels located on the same block as the subject parcel also exceed the maximum recommended floor area, ranging from 1% over to as much as 48% over. As such, the 9.9% overage falls within this range and is smaller than the existing dwelling on the lot. Therefore, this finding can be made.

**2.2.6 The development will comply with the public access and recreation policies of this Article and the Comprehensive Plan, including the Coastal Land Use Plan.**

The proposed project does not impact public access to the beach along this area of the coast as the project site is not immediately adjacent to any public access points to the ocean and will not impede lateral access along the beach. Therefore, this finding can be made.

**2.3 ADDITIONAL FINDINGS REQUIRED FOR SITES WITHIN THE MONTECITO COMMUNITY PLAN AREA**

**2.3.1 In compliance with Section 35-215 of the Article II Zoning Ordinance, prior to approval or conditional approval of an application for a Coastal Development Permit on sites within the Montecito Community Plan area, the review authority shall first find for all development projects as development as defined in the Coastal Land Use Plan that the project meets all the applicable development standards included in the Montecito Community Plan of the Coastal Land Use Plan.**

As discussed in Sections 6.2 and 6.3 of the staff report, dated April 30, 2015 and incorporated herein by reference, as proposed and conditioned, the project is in full compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and all other applicable development standards of Article II, Coastal Zoning Ordinance for the E-1 zone district and all applicable standards of the Comprehensive Plan, including the Montecito Community Plan and the Coastal Land Use Plan. The parcel's legal nonconforming status as to size does not preclude the project and will remain the case following project approval. Therefore, this finding can be made.

**2.3.2 In compliance with Section 35-215 of the Article II Zoning Ordinance, prior to the approval or conditional approval of an application for a Coastal Development Permit on sites within the Montecito Community Plan area, the review authority shall first find for projects subject to discretionary review that the development will not adversely impact recreational facilities and uses.**

The proposed project does not impact public access to the beach along this area of the coast as the project site is not immediately adjacent to any public access points to the ocean and will not impede lateral access along the beach. Therefore, this finding can be made.