



# Appeal Application

<i>County Use Only</i>	Appeal Case No.:
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### STEP 1: SUBJECT PROPERTY

009-371-007, 009-333-013 & 009-010-004  
 ASSESSOR'S PARCEL NUMBER(S)  
 1759 South Jameson Lane & 96 Eucalyptus Lane, Montecito, CA 93108  
 PROPERTY ADDRESS (IF APPLICABLE)  
 Miramar Hotel  
 BUSINESS/ESTABLISHMENT NAME (IF APPLICABLE)

### STEP 2: PROJECT DETAILS

Miramar Hotel Mixed-Use Development Revision  
 PROJECT TITLE  
 24RVP-00050, 24RVP-00051, 24AMD-00008 & 24CDP-00077  
 CASE NO(S).  
 County Planning Commis: 11/1/2024  
 DECISION MAKER DATE OF ACTION

Is the appeal related to cannabis activities?  Yes  No

### STEP 3: APPEAL CONTACTS

#### APPELLANT

Heal the Ocean  
 NAME (if LLC or other legal entity, must provide documentation)  
 1430 Chapala Street  
 STREET ADDRESS  
 Santa Barbara CA 93108  
 CITY, STATE ZIP  
 (805) 965-7570 hillary@healtheocean.org  
 PHONE EMAIL

#### AGENT

Heal the Ocean  
 NAME (if LLC or other legal entity, must provide documentation)  
 1430 Chapala Street  
 STREET ADDRESS  
 Santa Barbara CA 93108  
 CITY, STATE ZIP  
 (805) 965-7570 hillary@healtheocean.org  
 PHONE EMAIL

#### ATTORNEY

Heal the Ocean  
 NAME (if LLC or other legal entity, must provide documentation)  
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 CITY, STATE ZIP  
 (805) 965-7570 hillary@healtheocean.org  
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### STEP 4: APPEAL DETAILS

Is the Appellant the project Applicant?  Yes  No

If not, please provide an explanation of how you are an "aggrieved party", as defined in Step 5 on page 2 of this application form:

Appellants submitted written comments to the Planning Commission (dated October 29, 2024) and testified at the November 1, 2024 hearing on this issue.

Please provide a clear, complete, and concise statement of the reasons or ground for appeal:

- Why the decision or determination is consistent/inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law;
- There was error or abuse of discretion;
- The decision is not supported by the evidence presented for consideration;
- There was a lack of a fair and impartial hearing; or
- There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- Coastal Zone – Accessory Dwelling Unit appeals: Appellant must demonstrate that the project is inconsistent with the applicable provisions and policies of the certified Local Coastal Program or that the development does not conform to the public access policies set forth in the Coastal Act.

See attached November 11, 2024 appeal description letter and Heal the Ocean's October 29, 2024 comment letter to the Planning Commission

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 PLANNING AND DEVELOPMENT DEPARTMENT



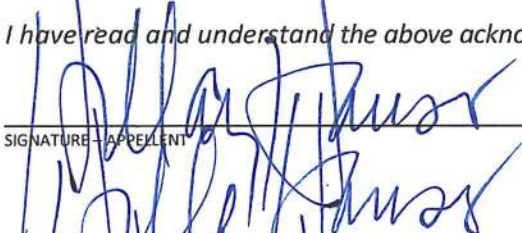
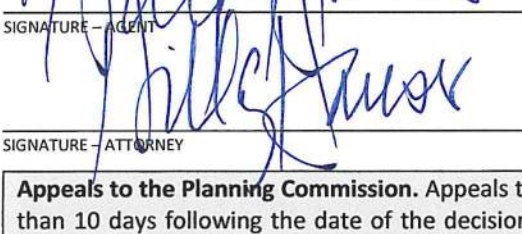
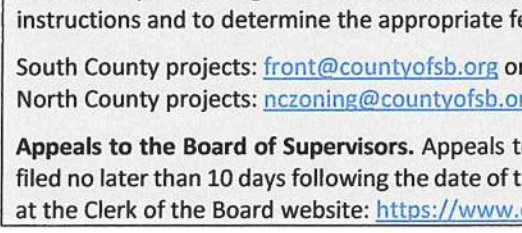
**STEP 5: APPELLANT, AGENT, AND ATTORNEY ACKNOWLEDGEMENTS**

I hereby certify under penalty of perjury that I have read the information below and that:

1. I have carefully reviewed and prepared the appeal application in accordance with the instructions; and
2. I provided information in this appeal application, including all attachments, which are accurate and correct; and
3. I understand that the submittal of inaccurate or incomplete information or plans, or failure to comply with the instructions may result in processing delays and/or denial of my application; and
4. I understand that it is the responsibility of the applicant/appellant to substantiate the request through the requirements of the appeal application; and
5. I understand that upon further evaluation, additional information/documents/reports/entitlements may be required; and
6. I understand that all materials submitted in connection with this appeal application shall become public record subject to inspection by the public. I acknowledge and understand that the public may inspect these materials and that some or all of the materials may be posted on the Department’s website; and
7. I understand that denials will result in no refunds; and
8. I understand that Department staff is not permitted to assist the applicant, appellant, or proponents and opponents of a project in preparing arguments for or against the project; and
9. I understand that there is no guarantee – expressed or implied – that an approval will be granted. I understand that such application must be carefully evaluated and after the evaluation has been conducted, that staff’s recommendation or decision may change during the course of the review based on the information presented; and
10. I understand an aggrieved party is defined as any person who in person, or through a representative, appears at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either; and
11. Pursuant to California Civil Code Section 1633.5(b), the parties hereby agree that where this Agreement requires a party signature, an electronic signature, as that term is defined at California Civil Code Section 1633.2(h), shall have the full force and effect of an original (“wet”) signature. A responsible officer of each party has read and understands the contents of this Agreement and is empowered and duly authorized on behalf of that party to execute it; and
12. I understand that applicants, appellants, contractors, agents or any financially interested participant who actively oppose this project who have made campaign contributions totaling more than \$250 to a member of the Planning Commission or Board of Supervisors since January 1, 2023, are required to disclose that fact for the official record of the subject proceeding. Disclosures must include the amount and date of the campaign contribution and identify the recipient Board member and may be made either in writing as part of this appeal, in writing to the Clerk of the legislative body before the hearing, or by verbal disclosure at the time of the hearing; and
13. If the approval of a Land Use Permit required by a previously approved discretionary permit is appealed, the applicant shall identify:
  - How the Land Use Permit is inconsistent with the previously approved discretionary permit;
  - How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed;
  - How the approval is inconsistent with Section 35.106 (Noticing).

**REQUIRED SIGNATURES:** All aggrieved parties must sign the appeal application prior to the appeal deadline in order to be considered an aggrieved party. Please attach additional signature pages, as needed.

I have read and understand the above acknowledgements and consent to the submittal of this application.

	<p style="font-size: 1.2em; margin: 0;">Hillary Hauser</p>	<p style="font-size: 1.2em; margin: 0;">11/12/24</p>
SIGNATURE – APPELLANT	PRINT NAME	DATE
	<p style="font-size: 1.2em; margin: 0;">Hillary Hauser</p>	<p style="font-size: 1.2em; margin: 0;">11/12/24</p>
SIGNATURE – AGENT	PRINT NAME	DATE
	<p style="font-size: 1.2em; margin: 0;">Hillary Hauser pro se</p>	<p style="font-size: 1.2em; margin: 0;">11/12/24</p>
SIGNATURE – ATTORNEY	PRINT NAME	DATE

**Appeals to the Planning Commission.** Appeals to the Planning Commission must be filed with Planning and Development no later than 10 days following the date of the decision, along with the appropriate fees. Please contact P&D staff below for submittal instructions and to determine the appropriate fee.

South County projects: [front@countyofsb.org](mailto:front@countyofsb.org) or (805) 568-2090  
 North County projects: [nczoning@countyofsb.org](mailto:nczoning@countyofsb.org) or (805) 934-6251

**Appeals to the Board of Supervisors.** Appeals to the Board of Supervisors must be filed with the Clerk of the Board and must be filed no later than 10 days following the date of the decision, along with the appropriate fees. Appeal instructions are located online at the Clerk of the Board website: <https://www.countyofsb.org/2837/Filing-Land-Use-Appeals-Claims>



1430 Chapala Street, Santa Barbara, CA 93101;  
PO Box 90106, Santa Barbara, CA 93190; Telephone (805) 965-7570; fax (805) 962-0651  
[www.healtheocean.org](http://www.healtheocean.org)

November 11, 2024

Mr. Steve Lavagnino, Chair  
Santa Barbara County Board of Supervisors  
105 East Anapamu Street  
Santa Barbara, CA 93101  
*Via hand delivery to SB County Clerk of the Board*

**Re: Appeal of the Planning Commission's November 1, 2024 Approval of Miramar Beach Resort and Bungalows Affordable Employee Housing, Market Rate Housing and Resort-Visitor Serving Commercial Project (Case Nos. 24RVP-00050 and 24RVP-00051).**

Dear Chair Lavagnino and Honorable Supervisors:

Heal the Ocean appeals the Planning Commission's November 1, 2024 approval of the Miramar Acquisition Co. LLC Housing-Mixed Use Development with the determination that the project is exempt from CEQA pursuant to Public Resources Code Section 21159.25.

The following Revisions requested by Miramar Acquisition Co. LLC while bypassing CEQA include:

- Revisions to Development Plan 14RVP-00000-00063 to allow 56,485 square feet of development in the CV (Visitor Serving Commercial) Zone consisting of affordable employee and market-rate apartments and resort shops in compliance with Article II Section 35-174.10.
- Revisions to Minor Conditional Use Permit 07CUP-00000-00047 to allow residential uses consisting of 26 affordable employee apartments and eight market-rate apartments in compliance with Article II Section 35-172.11.
- Amendment of Major Conditional Use Permit 07CUP-00000-00045 for hotel improvements in the Transportation Corridor Zone District (within the Union Pacific railroad right-of-way) in compliance with Article II Section 35-172.11.
- Development allowed by the revised Development Plan (Case No. 24RVP-00050) in compliance with Article II Section 35-174.9, the development and authorized use allowed by the revised Minor Conditional Use Permit (Case No. 24RVP-00051) in compliance with Article II Section 35-172.9, and the development and authorized use allowed by the amended Major Conditional Use Permit (Case No. 24AMD-00008) in compliance with Article II Section 35-172.9.

**Heal the Ocean's Mission Statement is confined to hydrology issues** – stormwater runoff, creek, ocean and groundwater issues, as well as flooding and Sea Level Rise. Our November 1, 2024 comment letter to the Planning Commission was confined to these issues, and we informed

the Planning Commission that the discrepancies we found in the Developer's submitted studies (Water Resources Report, Sea Level Rise study) had been challenged by us to Planning staff, but as of the November 1, 2024 hearing had remained unanswered and unresolved. **(EXHIBIT A)**.

**Speed of Public Process:** HTO raised the issue of errors and discrepancies in the June 27, 2024 Water Resources Report submitted by Caruso Affiliates to the County Planner on the project (Willow Brown), spelled out in our (Exhibit A Comment Letter to the Planning Commission). She replied that the report was being reviewed/ revised by County Flood Control and that we would receive a new Water Resources report. About two months later, (on September 12, 2024) we received the Drainage Report (an entirely separate document).

**AB 1804 CEQA Exemption Requirements** gives the County a streamlined review provision for housing projects, as the Miramar project has been described – “*Miramar Beach Resort and Bungalows Affordable Employee Housing, Market Rate Housing.*” And the public has been taxed to keep up with document submittal with very little turnaround time. Thus, the November 1, 2024 hearing was a difficult deadline to meet, without adequate staff response to our questions about improbable calculations of stormwater runoff, which is required by CEQA.

**Hydrological impacts from proposed expansion:** As we pointed out in our letter to the Planning Commission, Heal the Ocean has had a long history with the Miramar Hotel developers as related to the fumbling of numbers on hydrology issues. In 2008, when Caruso Affiliates began its plan for the rebuilding of the hotel, Coast Law Group legally challenged hydrological impacts, inadequate and contradictory “studies” on drainage, stormwater, and other documentation of impacts to creek and ocean. **(EXHIBIT B)**.

**Discrepancies in technological studies submitted for the Project:** Today, Heal the Ocean has the same problems with the Miramar project as in 2008 and 2015. On November 1, 2024, we testified to the Planning Commission that we have issues with:

- Unanswered discrepancies in stormwater runoff calculations, which is significant in eliminating stormwater flooding of Oak Creek;
- A proposed underground parking garage in a coastal zone next to a Tsunami run-up area with Sea Level Rise (SLR) and accompanying groundwater rise predictions based on non-current data;
- The new FEMA maps place the Affordable Housing element of the Miramar project in a FEMA flood zone.

**Sea Level Rise calculations are uncertain:** To illustrate, the project is in the California coastal zone, where Sea Level Rise predictions are changing, as conditions are accelerating at a pace heretofore uncharted. Caruso Affiliates consultant Geosoils June 11, 2024 estimation of SLR is a “conservative” 4.5 feet, whereas recent NOAA and California State (Low to High) projections cite a possibility of 6.6 feet by 2100\*, rendering the “2 feet of freeboard” (from ground floor of proposed buildings) inadequately examined. In addition, the concurrent rise of groundwater underneath a sunken garage in the coastal zone is unknowable and highly problematic. (\*State of California Sea Level Rise Guidance, 2024 Policy Update, p. 5, <https://opc.ca.gov/wp-content/uploads/2024/05/California-Sea-Level-Rise-Guidance-2024-508.pdf>)

**Cumulative Impact:** Without resolution of conflicting reports with various conclusions and findings that have a direct effect on the Miramar Revision, the project is on a slippery slope. The hydrology issues, together with the proposed revisions and amendments to Development Plans

and Conditional Use permits, adds up to a larger cumulative impact, and renders the Miramar Revision project ineligible for CEQA exemption at PRC sec. 21159.25.

**CPC Motion to Approve was made with *extempore* acknowledgment of the importance of CEQA:** In making the motion to approve the Miramar project during the November 1, 2024 Planning Commission hearing, commissioner Michael Cooney begins by reading the staff findings, then interrupts, to ad lib this:

*“Just one word about CEQA, to interrupt, this is the most difficult part of it for the Commission, which has really sided with protection of the environment above all else, even the discomfort of surrounding neighbors. The fact that a project might cause a violation of CEQA is something that is just not supported at all in my experience. So, with respect to CEQA, yes, we say, but I think it is a difficult finding but very important the CEQA findings are incorporated in our motion...”*

Heal the Ocean agrees with Commissioner Cooney – CEQA findings should be incorporated into the approval of the Miramar Project, and the findings aren’t there.

The following specific errors were made in the Planning Commission’s blanket approval of the project:

**PROJECT PIECEMEALING:** “Piecemealing” a project by amendment, revision and uncoordinated (and contradictory) studies fails to recognize the entire resort as part of the project. and does not qualify for CEQA exemption. From AB1804 CEQA Exemption requirements: *A project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article.* Pub. Res. Code§ 21159.27.)

**EXCEEDANCE OF 5 ACRE LIMIT:** Heal the Ocean has sited hydrological issues that exist over the entire Project Site – which is 16 acres: 1) The Underground Garage at one end, and 2) Installation of impermeable paving at the other end, which, together with increased rooftop impermeability, increases stormwater runoff from the site – to creek, ocean, stormwater drains. 3) FEMA Flood Maps are updated to include the proposed Affordable Housing site.

In its Application submittal, Caruso Affiliates describes the project site as 3.077 acres as cited in section 5.1 of the County Staff report. As illustrated above, the project site is the entire 16 acres of the Miramar property, and exceeds the 5-acre limit for CEQA exemption Pub. Res. Code§ 21159.27.)

Accordingly, Appellant offers the following concise summary of its grounds for appeal:

- The Planning Commission’s approval was inconsistent with the requirements of CEQA;
- The Planning Commission approval was inconsistent with CEQA Exemption parameters Pub. Res. Code§ 21159.27.)
- Planning Commission ignored arguments of Appellant and other Complainants; including one Complainant represented by an attorney;
- Another Commissioner, before making the motion to approve, acknowledged that Commission approval involved *a difficult finding but very important the CEQA*

*findings are incorporated in our motion...* however, CEQA issues were ignored by the Commission in approving the project.

In conclusion, the Appellant, which represents over 3,000 members/supporters, is an interested party adversely affected by the Planning Commission's decision. (See County Code, § 25B-12(b)(1).) Heal the Ocean has kept watch over industrial impact to the ocean in Santa Barbara County since 1998, including wastewater operations and septic system use on the coastline. We took on the political process and raised the funds to replace the septic systems along 7 miles of south Santa Barbara county coastline, and we received a \$350K State grant to study the drift pattern of the Montecito Sanitary District outfall off Butterfly Beach. Without proper CEQA review, the proposed Miramar Hotel Revision is an industrialization of a coastline Heal the Ocean has worked so very hard to protect.

Thank you for your consideration of our comments. We would only add that we reserve the right to supplement this appeal with further issues, evidence, and argument.

Sincerely,

A handwritten signature in black ink that reads "Hillary Hauser". The signature is written in a cursive, flowing style.

Hillary Hauser, Executive Director





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PO Box 90106, Santa Barbara, CA 93190; Telephone (805) 965-7570; fax (805) 962-0651  
[www.healtheocean.org](http://www.healtheocean.org)

October 29, 2024

Santa Barbara County Planning Commission  
County of Santa Barbara  
Engineering Building, Room 17  
123 East Anapamu Street  
Santa Barbara, CA 93101

By email to: [dvillalo@countyofsb.org](mailto:dvillalo@countyofsb.org)

**Re: Nov. 1, 2024 - Agenda Item #1 Miramar Acquisition Co. LLC - Mixed Use Development**

*Dear Chair Martinez and Honorable Members of the Planning Commission*

Heal the Ocean (HTO) submits these comments to the Commission, based on our long history of wrestling with project proposals for the Miramar Hotel through three different owners, starting in 1998, when the Gawzner family sold the hotel to Ian Schrage. Over the past years, most of HTO's wrestling with project proposals has been with Rick Caruso of Caruso Affiliated, who bought the hotel in January, 1997, and began plans for major renovation – including teardown of the old hotel cottages, and then to alter the landscape.

The alterations that captured Heal the Ocean's attention were the Caruso Affiliated plans to alter the height of the west retaining wall of Oak Creek, which if completed, would have dramatically increased volume/pressure aimed at beach houses near the mouth of the creek. That wall did not get built. Nor did the underground garage proposed for the southeast corner of the parking lot, near Oak Creek, which the developer intended to dewater with pumps. HTO challenged these and other plans that failed to adequately address stormwater runoff and grading requirements as required by CEQA.

As for the most recent proposed updates to the Miramar Hotel as related to hydrology/storm runoff/creek and ocean issues, HTO has examined individual studies, which include a Sea Level Rise study, some stormwater runoff calculations, as well as two versions of a Water Resources Report. Before addressing our opinion on the quality of the calculations and/or reports, we are of the strong opinion that the various studies and opinions and calculations, added on top of previous studies and opinions and calculations amounts to **piecemealing, leading to cumulative impact that must be addressed by CEQA.**

County Staff has submitted to you ATTACHMENT 4, which describes Revisions, Revisions, Amendments, etc. to the originally approved Negative Declaration, thereby expanding the project piece by piece, revision by revision, until the project no longer resembles what was approved under the original Development plan, e.g., from Attachment 4, we have:

- **A Revision** to Development Plan Case No. 14RVP-00000-00063 to allow 56,48554,768 square feet of development in the CV (Visitor Serving Commercial) Zone, consisting of affordable employee and market-rate apartments and 17,500 square feet of commercial space;
- **A Revision** to Conditional Use Permit Case No. 07CUP-00000-00047 to allow residential uses consisting of 26 affordable employee apartments and eight market-rate apartments;
- **An Amendment** to Conditional Use Permit Case No. 07CUP-00000-00045 for hotel improvements in the Transportation Corridor Zone District within the Union Pacific railroad (UPRR) right-of-way; and
- An associated Coastal Development Permit to allow for the development and the uses.

And further along in this same Attachment 4 document, Staff has added the following last-minute changes for the Commission's approval:

1. To allow for a FAR increase to 0.29 in lieu of the 0.25 FAR permitted in the C-V Zone.
2. To allow for three stories for Building C in lieu of two stories allowed in the Montecito Community Plan area.
3. To allow for a height of 40'-9" for Building C in lieu of the 38' height limit for the C-V Zone.
4. To allow 27.74% of the net lot area for common open space in lieu of the 40% open space requirement in the C-V Zone.
5. To allow for reduced setbacks for Buildings A, B, and C, and reduced setbacks for parking.

The project also includes a modification to the required number of parking spaces to be provided (83 additional spaces required and 44 additional spaces provided, for a reduction of 39 spaces). The applicant has provided an updated "Shared Parking Analysis" prepared by Associated Transportation Engineers, dated June 25, 2024, which provides support for this modification request.

All development and operations previously approved under Case Nos. 14RVP-00000-00063, 14AMD-00000-00010, 14AMD-00000-00011, 21SCD-00000-00020, and 23SCD-00007, will remain.

**Three stories instead of two, increase in height limits, a reduction nearly by half in open space as required in the C-V Zone, reduced setbacks for building and parking, a reduction of parking spaces, etc. – these are major additions that change the nature and size of the project already approved – and is not permitted under CEQA. These alterations push the Miramar Project into the necessity of a full EIR.**

Your Staff report (Attachment 4 – Revised CEQA NOE), states as a preamble: "The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

Nothing could be further from the truth. Under CEQA an exemption (§ 21159.25) may not be used if the Project: a) involves a cumulative impact. And the significant cumulative impacts introduced by Caruso Affiliates following County approval, and at this very last minute, Trigger CEQA Review.



Taking advantage of the SB330 Housing Law, the Miramar Hotel is about to make a major expansion under the guise of providing low(er) income housing for workers (which incidentally doesn't benefit the low-income community as the law was intended to do), and a CEQA review is required to put all the opinions, studies, documents and statements under one roof.

**The Miramar Hotel must be examined holistically** – the whole thing all together. Another underground garage is proposed, a big hole in the ground where cars will be parked. There will be more impermeable surface such that there will be an increase in stormwater runoff, but we're presented with a system of underground catchment basins – yet calculations are based on old standards, 2, 5, 10, 25, 50, 100-year storm markers – which do not fully address the volatility of climate change and sea level rise projections – and a revised FEMA map that has included more of the Miramar property than before. The current update adds up to a **cumulative impact**, which by law must be examined under the lens of CEQA.

## I. STORMWATER RUNOFF

The current bombardment of opinions and statements and studies about stormwater runoff, which is a CEQA issue, is reminiscent of what occurred in 2008, which we repeat here to make our point:

During the review process for the Miramar Beach Resort and Bungalows Project in 2008, Heal the Ocean studied the stated re-project and post-project peak runoff rates, and discovered significant discrepancies in the runoff calculations. We wrote the developers, and County planners:

*Pre- and Post-Project Peak Runoff rates: A careful study of the Hydrologic and Water Quality Analysis contained in Appendix B of the Preliminary Drainage Report reveals several discrepancies between the various draft versions of the report. These discrepancies are detailed in this chart and discussed in detail below:*

		Beach	Oak Creek	US 101	TOTAL
PRE PROJE C T	August	10.37	50.5	0.55	61.42
	November	25.66	35.2	0.55	61.41
	December	25.66	35.2	0.55	61.41
POST PROJE C T	August	10.14	49.96	0.53	60.63
	November	15.66	43.06	0.47	59.19
	December	27.41	31.31	0.47	59.19

*Comparison between the August 2007 report and the November 2007 and December 2007 reports reveals a large difference in the pre-project Peak Runoff rates. This difference results in a significant increase in flow to Miramar Beach (15.3cfs) and a corresponding decrease in flow to Oak Creek.*

*This alteration in flow has been accomplished by switching the areas labeled CC, DD and R in the Distribution of Flow chart, from discharge into Oak Creek to discharge at the Beach. There is, however, no explanation as to why this change has been made.*

*It is also important to note that this data represents the pre-project conditions – which means that the numbers and distribution of flow should remain the same in each draft of the Report.*

*Post-development distribution flows are also unclear. Comparison between the draft Reports reveals very different characterizations of such flows. The August 2007 report indicates the post-development Peak Runoff rate to Oak Creek is 49.96cfs. The December 2007 Report, however, indicates the Peak Runoff Rate to Oak Creek is 31.31cfs – which represents a significant difference of nearly 19cfs. The decreased flow to Oak Creek is apparently being accomplished by increasing flow to the beach – but there is no explanation or engineering plan that reveals why the distribution of flow to Oak Creek and to the beach will change so dramatically.*

***Storm water drainage from property:*** *The December 2007 Preliminary Drainage Report states that the “proposed storm drain system will convey runoff to the easterly property line where flows will be dispersed over natural areas as they are under current conditions.” However, the graphical depiction of the distribution of flow reveals a very different situation. The pre-project map provided in the December 2007 Report shows only five areas that currently drain to the beach, but the post-project map shows ten areas that drain to the beach. Thus, to state that the post-project storm flows will be dispersed as they are “under current conditions” is a mistake that must be corrected.*

After the 2008 Heal the Ocean team notified the Miramar developers of our observations, they agreed with us but refused to update their calculations.

**UPDATE TO TODAY:** This time around, HTO has run into the same numbers game. The Water Resources Report released June 27, 2024, contained a similar discrepancy as we found in the reports of 2008, and we notified Willow Brown, the County Planner on the Miramar project about it, as follows:

*On page 10 in the Water Resources Report, an increase in impervious surfaces is documented, yet there is a decrease in peak flows from pre-project to post-project. As shown in Table 1 and 2, development of the Project would result in reduced peak flows at the Project Site as compared to existing conditions.*

*We understand how these results were produced:*

*The pre-project hydrologic peak flows for the existing Project Site (the Northwest Lot is 36.6% impervious and the Northeast Lot is 33.2%) analyzed using HydroCAD Stormwater Modeling System software. The existing runoff analysis is based on topography compiled by Stantec dated April 2023. Runoff calculations were prepared using the Santa Barbara County Flood Urban Hydrograph (SBUH) Method. Results are summarized in Table 1.*

*After development of the Project, the Northwest Lot will be approximately 78% impervious and the Northeast Lot 93% impervious. The post-development hydrologic peak flows for the site were analyzed using HydroCAD Stormwater Modeling System software. The analysis is based on the Conceptual Grading Plan for the site prepared by Flowers & Associates, Inc., dated April 19, 2024. Post-development runoff was calculated using the Santa Barbara County Flood Urban Hydrograph (SBUH) Method. Results are summarized in Table 2, below.*

*Increases in impervious surfaces, with other variables removed, result in an increase of peak flows. What is the explanation for the decrease in peak flows despite the increase in impervious surfaces? Please guide us, and please include us in any correspondence with Flood Control about this issue.*

The response to our concerns came almost two months later – in the form of a new update of the Water Resources report. This report contained completely different numbers for post-project flows. We were baffled by this change, because while the post-project flows were completely different from the first version, these flow quantities are still less than the pre-project flows, which satisfies County regulations, but doesn't answer the question as to how an increase in impervious surfaces results in a decrease of peak flows. We received no reason for the difference in data between the first and second report.

Now we were to find out about underground catchment systems. How volume is calculated is not explained, and again, the old standard 2, 5, 10, 25, 50, 100-year storm rating is outdated, since Climate Change is here, and flooding is happening more frequently.

A proper review is needed, with expert up-to-date analysis of differences, reasons for change. (Were these numbers inserted to satisfy the County, or are they based on fact?) Scientific explanation is currently absent and is necessary before massive digging, installations, and building take place.

It is explained in the Water Resources Report that in high storm events, overflows will be directed to Oak Creek. After years of updates to the Miramar Hotel, and after reviewing the most recent proposed updates to the hotel, we still do not have any form of environmental review that analyzes the health of Oak Creek as a result of years of directing flows from the Miramar property to the creek during high storm events. In expecting an increase in the frequency and intensity of high storm and flooding events in years to come, the impacts to this creek, needs to be carefully reviewed, particularly since the creek serves to protect the nearby areas by directing potentially dangerous flows to the ocean. This is yet another example of a cumulative impact that must be inspected through a proper Environmental Impact Review.

## **II. AFFORDABLE HOUSING IN THE NEW FEMA FLOOD ZONE**

FEMA recently released new maps of flood areas, some of which are expanded due to increased rains and changes in weather patterns. The map has expanded into the northeast area of the Miramar Hotel footprint, yet the proposed Miramar plans have placed the affordable housing in the northeast project area, in the newly expanded FEMA flood zone.





It was suggested to the developer that this housing be placed on the other end of the property, closer to All Saints by the Sea Church, and the noted architect Bob Easton produced drawings to present to the Caruso team. Caruso turned down the proposal, because he wants the retail shops to be more accessible to customers at the main entrance to the property. The fact that the affordable housing being built under the fast-track SB330 legislation is located within the boundaries of a newly defined FEMA flood zone appears to be unimportant to the developers. We do not believe they are desensitized to the issue of low-income people being placed in a less desirable area, as much as they are not taking into account the impacts of Climate Change in their calculations. Increased flooding, along with Sea Level Rise, and the frequency and intensity of natural disasters is increasing at a rate faster than previously is happening faster than calculated, by everybody. The Miramar Hotel is located in an environmentally vulnerable area - between the mountains and the sea, alongside a flowing creek, a rising ocean and next to a tsunami runup zone.

### **III. UNDERGROUND GARAGE/EVACUATION**

Heal the Ocean has taken a consistent objection to the development of underground parking garages in the coastal zone. We have thoroughly examined the Sea Level Rise Study that has been produced for the Miramar project and do not feel that its conservative projections in Sea Level Rise should be considered 100% realistic in a time where projections of climate change, flooding events, and sea level rise are changing, to the point of becoming highly unpredictable. The possibility for extreme scenarios, particularly on the coastline, is well known, and the Miramar location is no exception. That the Miramar developers intends to build an underground parking garage by excavating down toward an already shallow and rising groundwater table needs thorough examination. We have seen in other parts of the country – particularly Florida, but even in Los Angeles (see photo- what the grave consequences are for any lack of foresight. If a major storm event occurs, Heal the Ocean feels it prudent to have an approved plan to evacuate the underground parking garage as well as all the other cares and people on the property. This situation is yet another example of a cumulative impact that needs review in an Environmental Impact Report.



Caruso delivery truck stuck on Eucalyptus Lane - Jan. 12, 2019 (Video by Hillary Hauser)

[Video Link](#)

**Conclusion:**

Heal the Ocean is disturbed by unanswered questions and unaddressed issues with the proposed expansion of the Miramar project of this magnitude, proposed in an area so vulnerable to the borderless and unpredictable variables in our environment, including sea level rise, flooding, and climate change, requires meticulous review that cannot be as it is now being rushed. The many iterations of this project, together with individual environmental studies only analyzed *some* of the potential environmental consequences that could occur with each individual iteration. The changes to the Miramar over the years, together with current expansion plans, have created a cumulative impact which has not been properly analyzed under CEQA review.

Please put this project on hold while a proper lineup of studies can be gathered together for a proper review. The consequences of not doing so can be disastrous to the County of Santa Barbara.

Thank you,

Hillary Hauser, Executive Director

Noah Boland Policy Analyst





*Attachment B*

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**May 15, 2008**

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**Re: Miramar Beach Resort and Bungalows Project**  
*Citizens for Responsible Development at Miramar Beach*  
Comments on Draft Subsequent Environmental Impact Report

Dear Mr. Ward:

Coast Law Group LLP represents the interests of Citizens for Responsible Development at Miramar Beach with respect to the County's review of the above-referenced project (the Caruso Plan) under the California Environmental Quality Act (CEQA). Thank you for the opportunity to participate in the review process. Because the issues raised in our scoping letter have not been adequately addressed, Citizens for Responsible Development remains concerned with the scope of the proposed project and the numerous potentially significant impacts associated therewith.

Based on our review of the Draft Subsequent Environmental Impact Report (Draft SEIR), accompanying "15164 Addendum" (Addendum), and inconsistent technical reports, it appears the integrity of the CEQA process has been compromised in favor of approving the project at the earliest possible stage. Indeed, because the applicant has repeatedly failed to address critical issues raised by the County itself, including deficiencies dating back to the County's original July 6, 2007 letter of incompleteness, there is no basis to conclude otherwise.

As the County is aware, CEQA mandates full disclosure to promote informed decision-making and an opportunity for meaningful public participation. The statute's fundamental goals have not been carried out in this case. With these issues in mind, Citizens for Responsible Development respectfully submits the following comments on the Draft SEIR and accompanying Addendum:

**1. Improper Baseline Condition**

As noted in our scoping comments, it is improper for the County to measure project impacts against the Schrage Plan because the Caruso Plan constitutes an entirely new and different project. In this regard, the County has adopted an inappropriate baseline for conducting environmental review. Moreover, even if it were permissible to rely upon the Schrage Plan as a baseline condition, the County would



be limited to adopting the approved project as it could be physically built. The County has not done so in this case. The Draft SEIR states:

The Approved Schragger Plan (99-DP-001/99-CP-002/00-CP-032) was amended twice . . . These amendments both resulted in reductions in the project and/or changes that resulted in lesser environmental impacts. Therefore, the baseline for the environmental impact analysis of the Caruso Plan is based on a comparison against the worst-case Approved Plan under the original case nos. 99-DP-001/99-CP-002/00-CP-032. (Draft SEIR, p. 32, fn. 1; Addendum, p. 6, fn. 1; emphasis added).

In adopting the “worst-case” scenario as the baseline condition, the County committed a prejudicial abuse of discretion. As a general rule, the lead agency must evaluate potential impacts based on the current state of the physical environment. Under limited circumstances, the agency may also consider previously approved structures that have not yet been developed. In doing so, however, the agency is constrained by the scope of the approved plans.

Here, by adopting the original Schragger Plan (rather than the less intrusive final plan), the County artificially inflated the baseline condition and distorted the project’s incremental impacts. The Addendum is thus inherently flawed. Rather than accurately reflecting the project’s environmental consequences, it disproportionately minimizes the scope of its impacts. The Addendum is legally inadequate in this regard.

## **2. Improper Segmentation of Environmental Review**

Equally problematic, the County’s preparation of the Addendum is procedurally improper as a matter of law. Under the CEQA Guidelines, an agency must prepare an SEIR when “[s]ubstantial changes are proposed in the project which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects . . .” 14 CCR §15162(a)(1) (emphasis added); see also Pub. Res. Code §21166(a).

Because the County expressly concluded that the foregoing criteria has been satisfied with respect to historical resources, it cannot legally find that the project involves “only minor technical changes or additions” or that “none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR” have occurred. 14 CCR §15164(b) (emphasis added). Indeed, because the two findings are entirely contradictory and inconsistent, the County’s decision to prepare the Addendum constitutes a prejudicial abuse of discretion.

The foregoing is further supported by the Section 15162(b) of the Guidelines, which provides as follows: “If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency

shall prepare a subsequent EIR if required under subdivision (a). *Otherwise* the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.” (Emphasis added).

In other words, because project changes triggered the need for an SEIR under section 15162(a), there was no basis for the County to reach the addendum issue.<sup>1</sup> The Guidelines are clear in this regard: supplemental review is to be undertaken in a single document, the nature and scope of which depends on the significance of the new information and any impacts related thereto. And for obvious reasons, the statute does not permit lead agencies to fragment the analysis by preparing a lesser environmental document when the findings clearly dictate otherwise.

In this case, once the above thresholds were triggered, the County was obligated to prepare the SEIR as a stand alone document. Relevant here, SEIRs must meet the stringent content requirements applicable to all EIRs. 14 CCR §15160; Pub. Res. Code §21100. Because the Addendum fails to live up to those standards, the County has prejudiced the review process. The County thus committed a fundamental error in preparing and relying upon the Addendum. That error has resulted in numerous additional CEQA violations as more fully addressed in the following sections.

### **3. Deficient Project Description and Summary**

The Draft SEIR must contain a summary of the proposed actions and their consequences. 14 CCR §15123(a). Here, the summary is deficient because the Draft SEIR fails to identify “[a]reas of controversy known to the lead agency including issues raised by agencies and the public.” *Id.* at (b)(2).

For instance, the Draft SEIR fails to disclose a number of controversies relating to the following: (i) hydrological impacts (including the placement of 13 feet of fill in the floodplain and potential impacts on adjoining properties and the Oak Creek riparian corridor), (ii) land use and visual impacts (relating to the height and mass of the proposed structures and their compliance with applicable land use regulations such as the “cottage type” tradition required by the Montecito Community Plan), and (iii) drainage and water quality impacts (raised by Heal the Ocean and other members of the community).

To ensure the Draft SEIR carries out CEQA’s fundamental purpose of full public disclosure and informed decision-making, these points of controversy must be identified up front, in the summary. Through the Addendum, the County improperly segregated

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<sup>1</sup> The County’s reliance on section 15160 of the Guidelines is misplaced. (SEIR, ES-1). EIR alternatives may only be used under that section if they are “consistent with the guidelines.” As noted above, the County’s preparation of the Addendum in this case directly violates section 15162.

the review process and circumvented this obligation.

The Draft SEIR's project description is similarly deficient. See 14 CCR §15124. For instance, the document fails to adequately disclose material aspects of the project, including the following: (i) the scope and nature of the proposed floodplain improvements; (ii) the total amount of fill to be placed in the floodplain (in cubic yards); (iii) the necessity of constructing a 13-foot stepped retaining wall within Oak Creek's historical drainage course; (iv) the extent to which the private road must be elevated out of the floodplain; (v) the nature and scope of required drainage improvements and methods,<sup>2</sup> including the proposed berm adjacent to the railroad tracks; and (vi) the scope and intensity of night lighting on the beach. (See Addendum, p. 6).

The project description is further deficient because it fails to list any related environmental review and consultation requirements mandated by federal, state or local law. See 14 CCR §15124(d). In this regard, the SEIR should reference the need for California Coastal Commission approval, the need for a Letter of Map Revision from the Federal Emergency Management Agency, and all other relevant permits and approvals.

Because the Draft SEIR does not contain an accurate project description, the decision-makers and the public cannot balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantages of terminating the proposal (i.e., the "no project" alternative) or adequately weigh other alternatives. The SEIR is therefore legally inadequate.

#### **4. Failure to Disclose Disagreements among Experts**

It is well established that an EIR should summarize the main points of disagreements among experts. 14 CCR §15151; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 193; *Browning-Ferris Indus. v. City Council* (1986) 181 Cal.App.3d 852, 862; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.

Here, the Draft SEIR is deficient because it fails to disclose disagreements among experts regarding the nature and scope of the project's hydrological impacts. As the County is aware, B&E Engineers (B&E) prepared and submitted numerous comments on this issue. (See January 14, 2008 letter from Ramy F. Awad, P.E.; additional comments are attached hereto). Those comments identify potentially significant impacts to adjoining properties:

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<sup>2</sup> For instance, the Draft SEIR merely states, "Drainage for the property would be designed following the County-approved drainage study prepared for the proposed project." (Draft SEIR, p. 17).



Due to the fact that [the] proposed fill will reduce the 100-year FEMA floodplain area, the water surface area elevation in a 100-year storm may rise and its velocity may increase, causing potential flooding or erosion on adjacent properties to the east and south as will be discussed further in this review. (*Id.* at p. 3).

B&E also identified a number of other deficiencies relating to the various Penfield & Smith (P&S) Preliminary Drainage Reports. Specifically, B&E found that P&S improperly used Hydro-Cad programs to calculate water surface elevations and velocities, failed to conduct a continuous analysis of Oak Creek using HEC-RAS modeling, failed to provide accurate cross-sections of the pre and post project condition, and so on. Moreover, the engineering manager of the County's Flood Control Department expressly corroborated a number of B&E's findings and concerns. (See January 31, 2008 email from Jon Frye, PE, CFM re: "Miramar flood issue").

On March 14, 2008, P&S reiterated its disagreement with the foregoing, defending its determination that the project will not adversely affect Oak Creek's water surface elevations or flow rates, and will not result in significant impacts to downstream and adjoining properties. (March 14, 2008 P&S Memorandum, p. 1). P&S also continued to defend its use of the Hyrdo-Cad programs. (*Id.* at p 11).

Because the Draft SEIR fails to disclose the foregoing disagreements among experts, including the concerns of the County itself, an informed decision cannot be made as to whether the floodplain improvements are warranted or appropriate. The Draft SEIR is therefore legally deficient.

## **5. Significant Environmental Effects**

CEQA mandates that all EIRs consider the significant environmental effects of the project at issue, including substantial, or potentially substantial, adverse changes in any of the physical conditions within the area affected by the project. 14 CCR §15126(a); §15382. Particularly relevant here, due to project changes and the expansive scope of the Caruso Plan, the proposed project will result in a number of potentially significant impacts that would not have arisen under the Schrage Plan. Because those impacts have not yet undergone CEQA review, they must be fully analyzed in the SEIR using the County's current Environmental Thresholds and Guidelines Manual. As reflected in the following sections, the County has not satisfied its obligation to perform a thorough and reasoned analysis of these issues.

## **6. Drainage and Water Quality Impacts**

The Draft SEIR and Addendum fail to adequately analyze the project's drainage and water quality impacts and rely on unfounded assumptions in the various P&S Preliminary Drainage Reports regarding the efficacy of on-site drainage improvements.

In this regard, the SEIR must address and evaluate the project's alteration of existing drainage patterns and redirection of flows to Oak Creek.

The August, 2007 version of the P&S report claimed that the post-project flow rate to Oak Creek will be less than the pre-project condition. The report further assumed that existing drainage infrastructure on Miramar Avenue "is non-functioning since it's [sic] flow capacity is very small and it's [sic] grated inlets are likely to be plugged during the design (100-year) storm." (August 13, 2007, P&S Report, p. 3).

However, the November, 2007 version of the P&S report inexplicably assumed the opposite - that the existing infrastructure on Miramar Avenue "is functioning." (November 9, 2007, P&S Report, p. 4; emphasis added). The Report further indicated that an "underground detention basin will be constructed underneath the proposed tennis courts to reduce post-project storm flow tributary to Oak Creek to less than the pre-project peak flowrate." (*Id.* at p. 4; emphasis added). Indeed, the report's Hydrologic and Water Quality Analysis concluded that such a result could only be achieved if detention methods were implemented. The Report states:

Detention of flows to Oak Creek will be necessary to reduce post-project flows to pre-project levels. (*Id.* at Appendix B, p. 5).

On-site detention will be required to reduce the peak flow rate to Oak Creek to less than the pre-project condition. (*Id.* at Appendix B, p. 7).

After reviewing the November, 2007 report, Staff informed the applicant that the County Flood Control District does not permit the use of underground detention basins. In response, on December 7, 2007, P&S issued yet another version of the Preliminary Drainage Report, which attempted to delete all references to the need for flow detention. A few days later, P&S revised the report yet again because they failed to delete all such references. (See "Minor Revision", dated December 12, 2007).

The December report and Minor Revision continue to claim that post-project flows to Oak Creek will be sufficiently reduced. However, rather than attempting to explain how that will be accomplished without the use of detention methods, the reports now simply state, "The exact storm drain system and design parameters will be part of the final design." (See p. 4, both reports).

The applicant sought to implement drainage detention because the project would increase runoff flows to Oak Creek. After learning such improvements are impermissible, excess flows were conveniently "redirected" to the beach without any explanation as to the manner in which that would be accomplished. Further, the pre-development peak runoff figures were revised (showing a decrease in flows to Oak Creek and a concomitant increase in flows to the beach). The net result is that pre and post-project discharges to the beach and Oak Creek are now conveniently similar and

show no adverse impacts.

Moreover, the findings of the December P&S reports are entirely predicated on assumptions. In this regard, the reports continue to assume that the Miramar Avenue improvements are functioning and also now assume that “a portion of the site storm drainage is directed via direct storm drain connection to the existing catchbasin in the Union Pacific Railroad (21" RCP storm drain).” (*Id.* at p. 4). However, as the County has noted, the outlet to the Miramar Avenue system “is buried with sand.” (List of Outstanding Items, revised March 10, 2008, item 2b).

Given the current stage of the review process, this lack of understanding of existing drainage is entirely unacceptable under the statute. Over six months ago, the County expressly requested that the applicant provide “a watershed study that shows the existing drainage on the site and where the drainage is directed. The study should graphically depict the overall existing and proposed direction of flow and whether there is any change.” (July 6, 2007 Determination of Incompleteness, p. 5). Moreover, in its December 28, 1998 report, P&S itself recommended that the Miramar Avenue system be smoke tested. (See p. 3).

Notwithstanding the blatant inconsistencies in the P&S reports, the extent of the foregoing uncertainties, and the County’s failure to evaluate additional discharges relating to the need for dewatering pumps, the Addendum concludes “[a]dopted mitigation would ensure Flood Control review and approval of a final drainage plan resulting in less than significant impacts similar to the approved plan.” (Addendum, p. 45). For the above-stated reasons, this conclusion is entirely unsupported and is subject to challenge as an abuse of discretion. Given the significance of the foregoing issues, the Final SEIR must evaluate all drainage and water quality impacts under the County’s current Threshold Guidelines.

## **7. Hydrological Impacts**

The Draft SEIR and Addendum fail to adequately analyze potential flood impacts to neighboring properties and the Oak Creek riparian corridor. In addition to the technical comments set forth in the attached correspondence from expert Ramy Awad of B&E Engineers, dated May 8, 2008, Citizens for Responsible Development submits the following comments on this issue:

At a minimum, EIRs must provide a brief explanation indicating the reasons for determining that a project’s environmental effects are not significant. Pub. Res. Code §21100(c). Here, the County’s discussion of hydrological impacts is legally deficient because it simply repeats the conclusions of the P&S reports without providing any analysis. For instance, the Addendum states:

In the post-project condition, for flows less than or equal to the 100-year

event in Oak Creek, there will be *no increase in flow rate* compared to the pre-project condition for adjacent property due to the Miramar Project. (Addendum, p. 46; italics in original).

After repeating similar conclusions with respect to water surface elevation and flow velocity, the Addendum merely states, "In sum, impacts associated with proposed project development in the floodplain would be less than significant." (*Id.*). In doing so, the Addendum fails to satisfy CEQA's informational purpose because it fails to identify how the placement of 13 feet of fill within the floodplain will not affect downstream properties during a significant flood event.

Further, because the various P&S reports have not addressed the specific concerns raised by the engineering manager of the County Flood Control District, there is no basis for the County to conclude that project impacts will be less than significant. On January 31, 2008, the engineering manager identified a number of defects in the P&S analysis. In doing so, he indicated that "HEC-RAS cross-sections need to extend far enough upstream and downstream to capture the influence of the Miramar project." (See January 31, 2008 email from Jon Frye, PE, CFM re: "Miramar flood issue").

Because this has not been done, the implications of developing within the floodplain are not yet fully understood. The engineering manager specifically noted this concern as follows:

Mention was made of speaking to what mitigations would be required if pre- and post-project results show an adverse impact. That's too speculative, not knowing the exact nature of what those adverse impacts might be. (*Id.*; emphasis added).

To comply with CEQA's mandates of full disclosure and meaningful public participation, the SEIR must explain the manner in which the engineering manager's concerns have been resolved.<sup>3</sup>

## **8. Land Use and Visual Impacts**

The Draft SEIR and Addendum fail to adequately analyze land use and visual impacts, including the extensive "modifications" that will be required due to the project's overall mass and scope. Even though the County expressly adopted the Schragger Plan as its baseline condition, it has made no attempt to engage in a qualitative comparison of the two projects. Indeed, neither the Draft SEIR nor the Addendum define the

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<sup>3</sup> The SEIR should also evaluate the potential for inundation of the Union Pacific Railroad (UPR) lines during flood events, potential adverse impacts relating to the adjacent earthen berm, and the extent to which the UPR has been contacted and/or has submitted comments on the proposed project.

physical parameters of any structures or improvements that were previously approved under the Schragger Plan. As such, the proposed project's incremental impacts remain unknown. And to the extent the County has relied on the original Schragger Plan as represented, the project's actual impacts have been understated as discussed above.

Irrespective of these preliminary issues, the Draft SEIR and Addendum clearly fail to evaluate a number of potentially significant impacts. These impacts include the following.

(i) Structural Height and Mass

The height of the Main Building is 49 feet and will therefore violate both the 35-foot height limitation prescribed by the C-V zone and the additional 8-foot exception set forth in the Coastal Zoning Ordinance. (Draft SEIR, p. 16). Similarly, the Beach & Tennis Club will violate the Ordinance's 16-foot height restriction by a substantial margin (as much as 10 feet). As such, the project will require a number of height variances that were not at issue under the Schragger Plan (*Id.*).

The Caruso Plan thus conflicts with a number of land use restrictions intended to preserve community character and reduce viewshed impingement. As such, the project will result in significant land use and visual impacts.

Although the Draft SEIR briefly references the foregoing violations, the "analysis" in the Addendum ignores them altogether. For instance, the Addendum states, "Impacts associated with grading and the heights of buildings are discussed in the Aesthetic/Visual Resource and Geologic Processes Sections of this addendum." (Addendum, p. 27). However, both of those sections are devoid of any relevant analysis addressing the Main Building or Beach & Tennis Club.

Moreover, because the height variances were not required under the Schragger Plan, the County must justify the extent to which previously adopted mitigation measures remain relevant and applicable. Because the violations have not been sufficiently evaluated, there is no basis to conclude that mitigation measures would render the impacts less than significant. (Addendum, p. 27).<sup>4</sup>

(ii) Cottage Type Hotel

The Caruso Plan is not consistent with the "Cottage Type Hotel" tradition set forth in the Montecito Community Plan (MCP). In reviewing the project against Policy LUC-M-1.6, the County failed to evaluate whether the Caruso Plan is consistent with

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<sup>4</sup> The County should also explain the basis for applying the exception set forth in the Coastal Zoning Ordinance (i.e. the extent to which additional height is necessary "to provide for architectural character"). (See Santa Barbara County Code section 35-127(A)(1)(a)(3)).



the Montecito Architectural Guidelines, which more specifically define the term "Cottage Type Hotel." Under the Guidelines, "[t]wo thirds of any new or reconstructed buildings which are guest rooms shall be limited to sixteen (16) feet in height." Section V.B.3.a(2), p. 41 (emphasis added).

The Draft SEIR identifies 24 new guest room structures. (Draft SEIR, Table 2-1, p. 11). Of those structures, only one is below the 16-foot height restriction (See "Bungalow 1" at 15.7 feet). As such, the project is not consistent with the cottage style tradition and will result in significant land use impacts. And as with the structures discussed in the preceding section, the Addendum fails to adequately address this issue.<sup>5</sup>

(iii) Neighborhood Compatibility

The Architectural Guidelines provide: "Visitor resort facilities shall be compatible in mass, bulk, scale and design with the residential character of the surrounding neighborhoods." Section V.B.3.b, p. 41 (emphasis added); see also Section V.B.1 (such facilities should be "compatible with and subordinate to the recreational setting"). Neither the Draft SEIR nor the Addendum adequately describe the surrounding neighborhood or attempt to evaluate whether the proposed project complies with the Guidelines. The Final SEIR must provide a reasoned analysis addressing this issue.

(iv) Setback Violations

The Draft SEIR and Addendum fail to provide a sufficient comparative analysis with respect to setback variances required under the Schragger and Caruso Plans. Again, the differences between the plans cannot be meaningfully analyzed by comparing blanket figures in a table. For instance, the Addendum describes the Schragger setbacks as follows: "Encroachments into all setbacks except side yard setbacks." Because no further discussion is provided, the County has failed to provide any meaningful analysis on this issue. The Draft SEIR and Addenda are therefore legally defective.

(v) Miscellaneous - Citizens for Responsible Development further requests that the County address the following issues in the Final SEIR: (i) potential impacts relating to "night lighting of the beach 60 feet from the boardwalk" (see Addendum, p. 6; this issue is not evaluated in the Nighttime Lighting section); (ii) the impacts of night lighting the tennis courts on neighboring properties; (iii) whether the additional seven guestrooms considered under the "worst-case" scenario have been calculated in the

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<sup>5</sup> The Draft SEIR indicates that the project consists of 209 rooms, even though only 202 rooms are accounted for in Table 2-1. (Draft SEIR, p. 11). The Draft EIR further states that the seven additional rooms would not affect building footprints but fails to address whether building heights will be affected. The County must address this issue in the Final SEIR.

Floor Area Ratio analysis (i.e. 209 units versus 202 units); (iv) the basis for applying different parking ratios to the Beach & Tennis Club under the Schrager and Caruso Plans (see Addendum, p. 40), and (v) potential adverse aesthetic impacts relating to the 13-foot stepped retaining wall located within the floodplain.

## **9. Noise Impacts**

With respect to short-term construction impacts, the Draft SEIR and Addendum fail to adequately describe the proximity of the proposed pile-driving activities to adjoining residences, the number of affected households, whether the activities would take place as a single event or in phases, and the total time period over which the impacts would occur. Given these outstanding uncertainties and the severity of the impacts, the documents fail to serve their informational purpose under the statute.

Further, it is improper for agencies to rely on mitigation measures of unknown efficacy in concluding that significant impacts will be mitigated to a less than significant level. In this regard, the County's reliance on off-site accommodation measures is entirely misplaced. There is no basis to conclude that each affected resident will be able to relocate during the same time period or that 14 days will provide sufficient notice.

Moreover, in devising mitigation measures, "a public agency may exercise only those express or implied powers provided by law other than [CEQA]." Pub. Res. Code §21004; 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 1st ed. 2005) § 17.18, pp. 820–821. Here, the County has no authority to oust residents from their homes in favor of private development. Based on the foregoing, the County's conclusion that noise impacts would be mitigated to a level less than significant constitutes a prejudicial abuse of discretion.<sup>6</sup>

## **10. Groundwater Impacts**

With respect to the proposed new well location, the County must fully disclose and evaluate the results of the well study and pump test when available. To the extent the test or any concurrent monitoring discloses additional significant impacts to neighboring wells or otherwise, the County may be required to recirculate the SEIR for additional public review.

In addition, the Draft SEIR and Addendum fail to address potentially significant impacts relating to the extensive grading activities necessitated by the project

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<sup>6</sup> The County's analysis is further deficient because it fails to discuss the significant impacts that would result from implementing the proposed mitigation measure. See *Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App. 4th 99, 130.

(approximately 36,000 cubic yards of cut, 46,000 cubic yards of fill, and 10,000 cubic yards of import). In this regard, the County must disclose the potential for groundwater displacement and contamination that may result from these activities. The County must also disclose whether development of the parking facility and associated structures will impact the underlying aquifer. This issue was expressly raised in the County's March 10, 2008 "List of Outstanding Items" but has not been discussed in the Draft SEIR or the Addendum.

## 11. Alternatives Analysis

One of the critical functions of an EIR "is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official." *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197. See also *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564 (holding that the mitigation and alternatives sections are the core of an EIR).

The alternatives discussion must focus on alternatives capable of eliminating significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733. Further, the discussion must be "meaningful" and must "contain analysis sufficient to allow informed decision making." *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 403-404.

"[Where] alternatives are rejected, an EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages or cannot be accomplished." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 735-737 (italics in original). An EIR is legally deficient if it lacks concrete information or analysis. *Id.* at 735.

As noted throughout these comments, the Caruso Plan will result in a number of significant environmental impacts in addition to those relating to historical resources. By failing to adequately evaluate those additional impacts (and by segregating the discussion in the Addendum), the County improperly limited the scope of the discussion to historical resources. In doing so, the County circumvented its obligation to provide a meaningful alternatives analysis. Because the Draft SEIR does not identify project alternatives that could feasibly avoid the above-referenced noise impacts, land use impacts, and so on, the document is legally inadequate.

## 12. Cumulative Impacts


The Draft SEIR fails to sufficiently evaluate the proposed project's cumulative impacts. See 14 CCR §15130. Other than the brief reference to the Caltrans project in

the Addendum's traffic component, the County has not identified any past, present, or probable future projects that may affect the analysis. This issue is of particular importance given the amount of time that has elapsed since the Schrage Plan was approved. The Draft SEIR is materially deficient in this respect.

Thank you again for the opportunity to comment on the Draft SEIR and Addendum. Based on our review of the record, the County has not afforded sufficient weight to the integrity of the review process. As detailed above, in attempting to accommodate the applicant's demands and approve the project as quickly as possible, the County has committed a number of fundamental CEQA violations. As a result of those deficiencies, the Draft SEIR and Addendum fail to provide an accurate picture of the project's environmental consequences. Thank you for your time in considering the foregoing.

Sincerely,

**COAST LAW GROUP LLP**

  
Ross M. Campbell

CC: Client  
enclosures