



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: December 9, 2008
Placement: Departmental
Estimated Tme: 3 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department John Baker, Director, 568-2085
Director Planning and Development
Contact Info: Dave Ward, Deputy Director, 568-2520
Development Review Division– South County
**SUBJECT: Citizens Planning Association and Jean & Stan Harfinest Appeals of the Montecito
Planning Commission’s Approval of the Miramar Beach Resort and Bungalows
Project**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: N/A

Recommended Actions:

Consider Case Nos. 08APL-00000-00036 & 08APL-00000-00037 for the Jean & Stan Harfinest & Citizens Planning Association Appeals of the Montecito Planning Commission’s Approval of the Miramar Beach Resort and Bungalows Project (07RVP-00000-00009, 07CUP-00000-00045, 07CUP-00000-00046, 07CUP-00000-00047, 08CUP-00000-00005; 08GOV-00000-00017 and 08CDP-00000-00054):

On December 9, 2008, your Board’s action should include the following:

1. Deny the appeals;
2. Adopt the required findings for the project contained in the October 8, 2008 Montecito Planning Commission Action Letter, as amended by the Errata dated November 20, 2008 (Attachment A of this Board Letter), including findings for the revised Development Plan and modifications to the ordinance standards for setbacks, height, and parking, including the CEQA findings. The October 8, 2008 Montecito Planning Commission Action Letter was included as Attachment A of the November 18, 2008 Board Set Hearing Letter;
3. Certify the Subsequent Environmental Impact Report 08EIR-00000-00003 and approve the Addendum as amended by the Errata dated November 20, 2008 (Attachment A of this Board Letter), and adopt the mitigation monitoring program contained in the conditions of approval. The Subsequent Environmental

Auditor-Controller Concurrence

As to form: N/A

Impact Report 08EIR-00000-00003 and Addendum were included as Attachment C of the November 18, 2008 Board Set Hearing Letter; and

4. Grant *de novo* approval of the project, as amended by the Errata dated November 20, 2008 (Attachment A of this Board Letter), subject to the conditions included as Attachment C of the October 8, 2008 Montecito Planning Commission Action Letter. The October 8, 2008 Montecito Planning Commission Action Letter was included as Attachment A of the November 18, 2008 Board Set Hearing Letter.

Background: Project Description

Caruso BSC Miramar LLC requests a revised Development Plan and several Conditional Use Permits to redevelop the Miramar Hotel with all new buildings of approximately 385,296 gross (164,849 net) square feet, including a main building with a lobby, meeting rooms and conference facilities, back-of-house areas, and underground parking; a ballroom; a spa, a Beach and Tennis Club; 192 guest rooms; two restaurants and a beach bar; two pools and two tennis courts; new landscaping; new 10-foot high sound wall; four employee dwellings; and abandonment of the north-south segment of Miramar Avenue with approximately 36,300 cubic yards of cut and 46,100 cubic yard of fill with 10,000 cubic yards to be imported. All existing buildings would be demolished.

On November 20, 2008, the applicant modified the project description to eliminate any pile driving activities substituting instead the use of Torque Down 1275 piles at the Ocean Front units. The Torque Down 1275 piles would be inserted into the ground using a screw-driver type action driven by a Delmag RH26 rig power train. The purpose of this project change is to reduce noise and vibrational impacts associated with the previously proposed driven piles.

Please see Attachment C of the October 8, 2008 Montecito Planning Commission action letter for a fully detailed project description. Please see also the Errata dated November 20, 2008 (Attachment A of this Board Letter) which includes a modification to the project description as noted above.

Montecito Planning Commission Action

At the Montecito Planning Commissions' hearing of October 8, 2008, the Commission took the following action: Commissioner Phillips moved, seconded by Commissioner Burrows and carried by a vote of 4-1 (Commissioner Overall voted no) to: 1) approve the project based on the project's consistency with the Comprehensive Plan including the Coastal Land Use Plan and the Montecito Community Plan, and the Coastal Zoning Ordinance, and the ability to make the required findings; and 2) Certify the Subsequent EIR 08EIR-00000-00003 and approve the revised Addendum, and adopt the mitigation monitoring program contained in the conditions of approval, as revised in the errata; and 3) approve the requested project modifications to the Coastal Zoning Ordinance provisions for height, setbacks and parking.

Summary Text:

Appeal Issues & Staff Responses

As stated above, the Montecito Planning Commission approved the Miramar Beach Resort and Bungalows Project on October 8, 2008. The approval was subsequently appealed by Jean & Stan Harfinest and the Citizens Planning Association.

This docket package is the second of two prepared for the appeals of the Miramar Beach Resort and Bungalows Project. The first docket package dated November 18, 2008 contained the set hearing request and the administrative record for the project to date. The information contained in this letter lays out the appeal issues presented by the two appellants and provides staff's responses to those issues. As appropriate, the referenced materials in the responses below can be found in the administrative record. The following appeal issues (in bold) have been distilled to provide greater clarity.

Appellant Claim: CEQA

The County's reliance on the hybrid SEIR-Addendum procedure constitutes a prejudicial abuse of discretion under CEQA. Applicable deficiencies include the following:

C-1. The Caruso Project is not the “same” as the Schragger Project and does not constitute a mere “revision” or “modification” of the Schragger Project, but is a new and different project.

The Caruso Plan is considered a modification to the previously approved Schragger Plan because the intensity and type of uses proposed are substantially the same as the Schragger Plan. The project complies with CEQA and the County's parameters for being a project modification. The County has consistently treated the project as a modification. More detailed information on this topic can be found in response 9a of the Response to Comments for the SEIR (In binder I).

C-2. The review that has been performed for the Caruso Project has been illegally segmented.

The term “segmentation” under CEQA refers to CEQA's requirements to consider all project elements of a project within the same CEQA process. (CEQA Guidelines, Section 15378.) Segmentation, therefore, refers to the project itself and not the documents used to analyze the project. The appeal provides no evidence that there has been any segmentation of the project or the project elements. In regard to the issue of whether an EIR and an addendum can address one project, CEQA does allow for the use of an EIR focused on a single resource area where lead agencies have determined that impacts from other resource areas are less than significant. The project's environmental review documents comprising the Schragger Negative Declaration (00-ND-003), Addendum and Subsequent Environmental Impact Report (08EIR-00000-00003) focused on historic resources are appropriate environmental review documents. The record contains data and analysis that support the conclusion that historical impacts of the Caruso Plan would have potentially more severe impacts than the previously approved plan but that impacts to other resources would be similar to or less than the previously approved Schragger Plan. A more detailed response to this topic can be found in response 8c of the Response to Comments for the SEIR (In binder I).

C-3. The MPC and County have used an improper baseline to assess the impacts of the Caruso project.

The Development Plan for the previously approved Schragger Plan remains in effect, and as such, could be constructed today with the issuance of building permits. The proposed Caruso Plan is similar in physical characteristics and potential environmental impacts to the Schragger Plan. While the baseline for new projects is normally the current environmental conditions, CEQA is clear that the baseline for modified projects is the level of impacts identified in a previously approved CEQA document. More detailed information can be found in responses 8b, 9a, 16c, 17a, 17d and 29d of the Response to Comments for the SEIR (In binder I).

C-4. The project description is deficient.

The Caruso project description fully and accurately describes the physical characteristics and proposed uses of the project. Please see the complete project description included with Attachment C of the October 8, 2008 Montecito Planning Commission Action Letter.

C-5. Because the “substantial work” referenced in the SEIR was performed on the very structures that are now slated to be demolished under the proposed project, the Applicant cannot legally rely on the Schragger Plan as a vested project.

The Director of P&D, as stated in an April 27, 2005 letter, determined that substantial physical construction had been completed for the Miramar Hotel Final Development Plan (the Schrager Plan). Over \$5 million worth of actual physical construction for infrastructure, site preparation and cottage repair/restoration had been completed, thus preventing the expiration of the Development Plan permit.

C-6. Alternatives to the Caruso Project have not been adequately identified and evaluated.

Three alternatives to the project were analyzed in the Subsequent Environmental Impact Report (08EIR-00000-00003): 1) The No Project Alternative (i.e. the Schrager Plan); 2) Alternative 1 – “Replacement of Historically Significant Features on Existing Cottages and “Out Buildings” and Repair of the Poolside Rooms”; and 3) Alternative 2 – “Relocation of Historically Significant Structures.” For purposes of reducing impacts to historical resources, those alternatives which could meet project objectives and that are feasible were examined in the SEIR. The Alternatives Analysis is located on pages 55-59 of the SEIR. (In binder I)

C-7. There has been no or inadequate consideration and analysis of cumulative impacts from the Caruso Project and other projects in the area.

The SEIR includes a discussion of the cumulative impacts of the proposed project on historic resources and concludes that impacts are significant and unavoidable. The addendum analyzes the incremental changes between the approved Schrager Plan and the proposed Caruso Plan and finds that there is no substantial increase in the severity of any of the impacts analyzed. As such, cumulative discussions of the ND remain valid and do not need to be revisited. See also response 8r of the Response to Comments for the SEIR (In binder I).

C-8. The MPC’s and County’s responses to public comments have been inadequate.

The County provided complete, written Responses to Comments made on the draft EIR and responded to substantive comments throughout the project review period. Therefore, response to comments on the Caruso project’s environmental review documents comprising the Schrager Negative Declaration (00-ND-003), Addendum and Subsequent Environmental Impact Report (08EIR-00000-00003) was adequate pursuant to CEQA Guidelines section 15088. Please see the County’s written Response to Comments on the SEIR contained in Binder I.

- C-9. a. The County failed to independently review the Applicant’s work prior to relying on it.**
- b. The MPC and County did not conduct and apply their independent review and judgment to the work product of the applicant before adopting and utilizing it.**

The Montecito Planning Commission used its independent judgment when adopting the required findings for the project, including the CEQA and administrative findings. The MPC also relied on the Santa Barbara County P&D staff and County Counsel advice and analysis regarding the interpretation of the documents supporting the CEQA documents. Referring to the CEQA analysis specifically, Finding 1.1.1 states in part, “The Addendum reflects the independent judgment of the Montecito Planning Commission and has been completed in compliance with CEQA and, together with the 00-ND-003 and the SEIR discussed below, is adequate for this proposal.”

C-10. The MPC and County unlawfully pre-judged the adequacy of the environmental documentation and their approval of the Caruso Project.

It is unclear what exactly the appellant is referring to. If the appellant is referring to the project charter, the February 5, 2008 charter was an initial attempt to set a timeline for the processing of the project including environmental review. The charter included caveat language that the ultimate form and scope of environmental review was unknown at the time but nonetheless provided time limits associated with preparation of an EIR. The appeal provides no evidence that there has been any segmentation of the project or the project elements. In regard to whether the project was the subject of good faith review, County Staff and the MPC engaged in lengthy and in depth scrutiny of the project and its impacts as demonstrated by the EIR and Addendum, and by the numerous public meetings including questioning of the applicant and responding to testimony of all interested parties as directed by the MPC.

Appellant Claim: Disagreement Amongst Experts

DE-1 a. The environmental review conducted for the Project fails to disclose disagreements among experts.

Disagreement amongst experts on the topic of Historic Resources was specifically disclosed in the SEIR on pages 44-49 and further disclosed in response 8e of the Response to Comments on the SEIR (In binder I). Disclosure of such disagreements is only required in the project SEIR.

b. The County abused its discretion by failing to disclose disagreements between B&E Engineers (B&E) and Penfield & Smith with respect to the Project's flood impacts.

While the disagreement amongst experts (B&E Engineers and/or PACE and Penfield & Smith with respect to flooding and drainage analysis) was not specifically discussed in the Subsequent EIR and Addendum, it was addressed in staff memoranda and discussed by the Montecito Planning Commission and the Flood Control Division during several public hearings. As stated above, discussion and analysis of such disagreements is only required in the project SEIR.

Appellant Claim: Drainage & Flooding

D-1. The Project will result in a 3/4 inch rise in flood levels during relevant storm events. Further, even *de minimis* individual project contributions to a cumulatively significant impact warrant denomination as "significant," and thus trigger the requirement to prepare an EIR.

CEQA no longer uses the term "de minimus" and the County has not relied on such a concept to determine significance. To determine whether the project has the potential for cumulative impacts, the County considered whether the project made cumulatively considerable impacts to the relevant resource. Further, the referenced 3/4 inch rise in flood levels during a 100-year event would occur downstream of the project site. For additional information on flood impacts, please see the Water Resources section of the Schrage Negative Declaration and the Water Resources section of the Addendum (in Binder I).

D-2. 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.

Craig A. Steward, P.E., CFM of Penfield and Smith prepared a report entitled Oak Creek Flood Analysis for Miramar Beach Resort and Bungalows, dated March 7, 2008 (in Binder III) analyzing whether the project meets standard floodplain safety requirements and also providing information regarding potential impacts on adjacent and downstream properties. In part, the report concludes: "In the post-project condition the peak flow rate downstream of the UPRR is estimated to increase from 3,510 cfs to 3,600 cfs during the most

extreme storm conditions equivalent to concurrent 100-year flooding in Oak Creek and San Ysidro Creek. The resulting maximum increase in average flood depth in this area would be about ¾ of an inch. An increase in flood elevation of ¾ of an inch is not measureable and hence impacts associated with the proposed project would not constitute a substantial increase in severity over impacts associated with the approved project.”

Further, per County Flood Control, the project meets the County Floodplain Ordinance and FEMA regulations for development in the flood plain. This topic is further addressed in detail in the Water Resources/Flooding Section of the Addendum on pages 51 through 57 and in the Response to Comments document (Binder I) in response 9f.

D-3. A complete watershed study and analysis for the Caruso Project has not been prepared and evaluated.

There are no State, Federal or local requirements that a complete watershed study and analysis be prepared for the project. However, comprehensive flooding and drainage analyses were prepared by a registered professional engineer, Craig Steward of Penfield & Smith. County Flood Control staff peer-reviewed and approved the reports and concur with their conclusions. This topic is further addressed in detail in the Water Resources/Flooding Section of the Addendum on pages 51 through 57 (In binder I).

D-4. In addition, the determination that the Project will result in less than significant flood impacts is not supported by substantial evidence.

The determination that project flooding impacts would be less than significant is supported by substantial evidence. The March 7, 2008 Penfield & Smith “Oak Creek Flood Analysis” analyzed whether the project meets standard floodplain safety requirements and also provided information regarding potential flooding impacts on downstream properties. As stated above, the report has been reviewed by County Flood Control and accepted as adequate (memo from Tom Fayram dated March 14, 2008). This topic is further addressed in detail in the Water Resources/Flooding Section of the Addendum on pages 51 through 57 (In binder I).

D-5. The deficiencies and inadequacies identified by Pacific Advanced Engineering, Inc. (PACE) and B&E Engineers with respect to the Applicant’s flood analyses have not been adequately addressed.

Responses to the PACE and B&E Engineers reports were provided in detail by Craig Steward P.E., CFM, of Penfield & Smith and discussed by the Montecito Planning Commission during the October 8, 2008 hearing. A July 25, 2008 Penfield & Smith letter further addresses the B&E Engineers concerns (August 6, 2008 MPC Hearing Binder). County Flood Control has confirmed their agreement with Mr. Steward’s analysis as stated in their July 28, 2008 memo to Dianne Black (August 6, 2008 MPC Hearing Binder).

Appellant Claim: Water Supply

- W-1. a. The SEIR and Addendum fail to adequately identify and evaluate future water sources for the Project.**
- b. Per Appendix G of the CEQA Guidelines, a proposed project would result in a significant impact to water supply, availability, and distribution if sufficient water supplies are not available to serve the project from existing entitlements and resources, or results in the need for new or expanded entitlement.**

The Montecito Water District has identified secured and potential future water sources for the project including Cachuma Lake, Jameson Lake, Doulton Tunnel, the District groundwater basin, and District

allocation from the State Water Project. These water sources, in combination with the Montecito Water District's recently approved classification definitions and conservation rate structure (Ordinance 90 and Resolution 2047) would ensure adequate water supply to the proposed project. Per a MWD letter dated July 30, 2008, the Miramar is an existing customer of the Montecito Water District, "and as an existing customer under current ordinances, the District will serve the Miramar Hotel to the extent and consistent with the ability of the District to serve all other District customers." In addition, the Caruso project has included numerous water saving techniques and devices, such as water-conserving toilets and fixtures and drought-tolerant landscaping. Therefore, there are sufficient supplies available, and the Caruso project would not result in a significant impact to water supply, nor result in the need for new or expanded entitlements. This topic is further addressed in detail in the Water Resources Section of the Addendum on pages 51 through 57 (In binder I).

W-2. Relevant irrefutable facts demonstrate changed circumstances exist that will create new significant and unmitigable environmental effects warranting production of a full EIR, including the following:

- a. The federal court order issued on December 14, 2007, requiring that the State Water Project reduce pumping operations by up to nearly one-third in order to protect an endangered fish, the Delta Smelt. The foregoing constitutes changed circumstances mandating additional environmental review.**
- b. The considerable water supply shortages that have arisen in Montecito, as reflected in MWD Ordinance 89, which states, "the reliable supply of water will not meet the projected demand of District consumers in the current year and in years following;" and the District "has not located sufficient additional sources to resolve this concern." (Emphasis added).**
- c. The fact that the Project will no longer utilize the groundwater and well available at the site resulting in a heightened reliance upon the MWD for water supply.**

The project has been issued a Certificate of Water Service Availability from the Montecito Water District and is an existing customer of the District as stated during the MPC hearings of August 6, August 28 and October 8, 2008, and in the July 30, 2008 letter by District Manager Tom Mosby. County staff has reviewed and assessed the implications of these possible changes in circumstance as they relate to the proposed project. The data and analysis indicate that the project will not have new significant effects or substantially more severe significant effects than the previously approved project with respect to water resources. Therefore, production of a full EIR is not required or warranted. The topic of water resources is further discussed in the Water Resources section of the Addendum on pages 51 through 57 (In binder I).

- W-3.**
- a. The Addendum contains factual misrepresentations regarding the MWD's ability to satisfy the short and long-term water supply needs of the Project and existing customers. Citing testimony provided by Tom Mosby, the general manager of the MWD, the Addendum concludes the Project will not result in significant water supply impacts because of "the fact that the district has adequate resources to serve existing customers including excess water available for purchase in the market." However, this directly contradicts the findings of Ordinance 89.**
 - b. The County must provide a reasoned analysis and evaluation of water supplies and storage capacity in the context of expected demand. Future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making.**

The Addendum does not contain factual misrepresentations regarding the MWD's ability to satisfy the short and long-term water supply needs of the Project and existing customers. It clearly discusses the adequacy of current supplies including Ordinance 89 and measures being taken by the District to resolve the current water supply/imbalance including the adoption of Ordinance 90 (adopted on August 20, 2008). In addition, the Caruso project has included numerous water saving techniques and devices, such as water-conserving toilets and fixtures and drought-tolerant landscaping in its plan. This topic is further addressed in detail in the Water Resources/Flooding Section of the Addendum on pages 51 through 57 (In binder I).

W-4. The SEIR, Addendum and adopted Findings fail to provide any meaningful analysis to support the Applicant's water usage estimate.

Detailed analysis supporting the applicant's water usage estimate (45 acre feet/year or AFY for interior uses) was provided by the Montecito Water District in their letter dated July 29, 2008. The Montecito Water District provided analysis using historical District information for the Miramar property and a similar existing hotel, the Biltmore Hotel, to assess likely water demand and use by the current Miramar project. The applicant also provided specific information projecting that the proposed project would use a total of 51.3 AFY for all hotel needs including landscaping. This topic is further addressed in detail in the Water Resources/Flooding Section of the Addendum on pages 51 through 57 (In binder I).

Appellant Claim: Noise

N-1. Pile driving at the Main Building and Oceanfront Units will result in significant, unmitigable noise impacts to neighboring residences as well as beach use and recreation.

In order to reduce project noise impacts to the extent feasible, the project description no longer includes the use of pile driving equipment. Rather piles would be inserted into the ground by an alternative screw-driver type technique utilizing Torque Down 1275 Piles. According to the November 19, 2008 Acentech Noise & Vibration Analysis (Attachment B of this Board Letter), by using the Torque Down 1275 piles, noise impacts would be reduced under those which would be created by the previously proposed pile-driving technique. The major noise source associated with this process would be the Delmag RH26 rig power train which would be positioned no closer than 25 feet from the nearest residences when installing the nearest piles. The errata (Attachment A of this Board Letter) to the Addendum prepared for the Caruso Plan discusses changes in noise impacts over the previously proposed pile-driving technique. Additional mitigation measures not included with the approved Schragger Plan including offsite accommodation would ensure that short-term construction-related noise impacts would be adequately mitigated to less than significant levels. Recreational users of the adjacent beach area are not considered "sensitive receptors" by adopted County Thresholds and therefore, do not require mitigation. This topic is further addressed in detail in the Noise Section of the Addendum on pages 32 through 37 (In binder I).

N-2. The conclusion that noise impacts would be mitigated to a level less than significant constitutes an abuse of discretion. The proposed off-site "accommodation" measure is improper as a matter of law.

The project description no longer includes the use of pile driving equipment. Rather piles would be inserted into the ground by an alternative screw-driver type technique utilizing Torque Down 1275 piles. According to the November 19, 2008 Acentech Noise & Vibration Analysis (Attachment B of this Board Letter), by using the Torque Down 1275 Piles, noise impacts would be reduced under those which would be created by the previously proposed pile-driving technique.

Analysis of potential noise impacts was carried out per the County's CEQA Environmental Thresholds and Guidelines manual and Noise Element. However, the County does not have a threshold of significance for short-term construction-related impacts. Impacts would be mitigated to less than significant levels by designated work hours, specific noise-reducing construction techniques including temporary sound barriers, the use of Torque Down 1275 piles, limitation of noise generating equipment, the designation of construction routes, and additional measures identified in the November 2007 noise study (*Noise Impact Analysis For The Miramar Hotel And Bungalows, Montecito, County Of Santa Barbara, California*, Cornelis H. Overweg, P.E., INCE Senior Acoustician, Dudek, incorporated herein by reference) for the project.

The appellant offers no support for their statement that the proposed "accommodation" measure (short term offsite accommodations during pile driving construction phase) is improper as "a matter of law". The proposed offsite accommodation is an effort by the applicant to address the concerns of neighbors raised during the project review and is not improper as a matter of law. This topic is further addressed in detail in the Noise Section of the Addendum on pages 32 through 37 (In binder I).

N-3. The Addendum does not address viable pile driving alternatives, including the use of concrete caissons.

Under CEQA, the Addendum is not required to address viable alternatives to specific project components. However, the project description no longer includes the use of pile driving equipment. Rather piles would be inserted into the ground by an alternative screw-driver type technique utilizing Torque Down 1275 piles. According to the November 19, 2008 Acentech Noise & Vibration Analysis (Attachment B of this Board Letter), by using the Torque Down 1275 Piles, noise impacts would be reduced under those which would be created by the previously proposed pile-driving technique.

N-4. Potentially significant vibrational impacts resulting from pile driving activities have not been reviewed or evaluated.

The project description no longer includes the use of pile driving equipment. Rather piles would be inserted into the ground by an alternative screw-driver type technique utilizing Torque Down 1275 piles. According to the November 19, 2008 Acentech Noise & Vibration Analysis (Attachment B of this Board Letter), by using the Torque Down 1275 Piles, project-induced vibrational impacts would be reduced under those which would be created by the previously proposed pile-driving technique. Additionally, the analysis states that the use of the Torque Down 1275 piles would result in vibrational levels less than thresholds recommended by CALTRANS. The County CEQA Thresholds do not identify vibration as an impact and therefore the County has not identified a threshold of significance for vibrational impacts.

Appellant Claim: Wastewater

WW-1. a. The Schragger Plan did not require the construction of a new lift pump station. As such, it is unclear how mitigation measures applicable to the Schragger Plan would mitigate impacts associated with the new facility.

WW-2. b. The SEIR and CEQA Addendum are legally deficient because they fail to adequately discuss and address potential wastewater impacts and the Project's dependence on the construction of additional facilities /improvements.

Pursuant to the Montecito Sanitary District October 2, 2008 letter in which the District confirmed the ability to serve the proposed project, the applicant would be required to provide the District with a "Dedication Agreement for Sewer facilities" to ensure construction of the lift station, engineered plans for

all required sewage collection system elements and the appropriate connection fees prior to issuance of building permits. Construction impacts associated with infrastructure improvements would be mitigated to *less than significant levels* as per the construction impact mitigation measures included in 00-ND-003. A more detailed discussion of this topic can be found in the Public Facilities section of the Addendum on pages 37 & 38 (In binder I).

WW-3. The deficient water usage estimates referenced above have led to a distorted review of the Project's wastewater impacts. Reasonable wastewater projections indicate the Project will result in the need for an expansion and upgrade of the wastewater treatment plant, a significant impact under CEQA.

Pursuant to testimony by Montecito Sanitary District Manager Dianne Gabriel during the August 28 and October 8, 2008 Montecito Planning Commission hearings, the proposed project would not require an expansion or upgrade of the District wastewater treatment plant. Ms. Gabriel stated that such suggestions were speculative.

Appellant Claim: Floor Area Ratio

F-1. The Project violates the County's floor area ratio (FAR) regulations. The Commission inappropriately included Parcels 6 (the sandy beach, including the *public's* 20-foot lateral access easement) and Parcel 11 (Union Pacific Railroad easement) in the calculation of net floor area.

Parcels 6 & 11 are both included in the Project's Final Development Plan and as such, the Montecito Planning Commission appropriately included them in calculation of the project's net floor area. Parcel 6 is wholly owned by the applicant. Additionally, the applicant owns an easement in perpetuity over portions of Parcel 11 which allows for the development of numerous improvements including landscaping, accessways and structures. The definition of "Floor Area Ratio (FAR)" in the Montecito Community Plan Overlay District regulations states that is "the quotient of the net floor area...divided by the sum of the net lot area of all lots included in the Development Plan." While deliberating this topic, the MPC discussed how the FAR guidelines are applied to residential properties in the Montecito area. The MPC considered these distinctions, per the MPC authority, and interpreted the regulations to allow all lots contained in the Development Plan for calculation of the FAR. For these reasons, Parcels 6 & 11 can appropriately be included in the calculation for net floor area. Please see Findings 2.1.1.1 and 2.2.1 of the October 8, 2008 MPC Action Letter for more information.

F-2. The Applicant's estimate of the mean high water mark (at 116 feet) contradicts and is entirely inconsistent with the *obvious* physical condition of the beach.

The applicant has provided a site survey generated by a licensed surveyor which accurately displays the mean high water mark of the adjacent sandy beach (Psomas survey located in Binder III under the Floor Area Ration tab). The mean high tide line shown by the survey is consistent with the metes and bounds legal description of Parcel 6 set forth in the recorded grant deed. The State Lands Commission was contacted in this matter and responded by stating that they did not conduct a survey in the project area for the purpose of establishing the boundary of lands owned by the State. Please refer to the Psomas site survey included with technical appendices in Binder III and the State Lands Commission Letter dated August 27, 2008 included in the August 28, 2008 MPC hearing binder for more detailed information.

Appellant Claim: Modifications

M-1. a. The MPC abused its discretion and committed an error of law in granting numerous "modifications" to the requirements of the Montecito Community Plan.

- b. The MPC committed error of law and abused its discretion under the Montecito Community Plan, the Montecito Land Use & Development Code, and the Coastal Zoning Ordinance. Approval of the Caruso Project is inconsistent with and does not comply with these land use ordinances and plans for height and setbacks.**

Section 35-174.8 of Article II, Coastal Zoning Ordinance, for Development Plans, stipulates that the decision-maker of a Development Plan (e.g., Montecito Planning Commission) “may modify the building height limit, distance between buildings, setback, yard, parking, building coverage, or screening requirements specified in the applicable zone district when the decision-maker finds that the project justifies such modifications.” As such, the Montecito Planning Commission approved modifications to the height and setback requirements under this provision and adopted findings based on substantial evidence in support of said approvals and their justification. Please see Findings 2.3 and 2.3.1 of the October 8, 2008 MPC Action Letter for more information.

Appellant Claim: Cottage Type Hotel

CTH-1. The Project’s buildings do not comply with the requirements for “cottage style” architecture.

In addition to the general characteristics described on page 31 of the Addendum which help to define “Cottage Type Hotel”, during the August 28, 2008 hearing, the Montecito Planning Commission (MPC) further refined the definition by articulating the following:

A "Cottage-Type" hotel is a collection of one and two story-building structures that vary in size and orientation. Placement and scale of buildings should be in a garden type setting with large canopy trees. Site should be pedestrian friendly.

"Cottage-Type" hotel buildings refer to a quaint architectural style and can be California Cottage and Bungalow or an architectural style reflecting the historical regional California coast. Architectural vernacular should incorporate low-sloped roofs with gables and/or hips, residentially scaled plate heights, overhangs and eaves; casement, double-hung or fixed windows or French doors with divided lights, porches and/or trellis; exterior walls of masonry, plaster, stone an/or wood siding (or other simulated materials).

The MPC directed the applicant to undergo further Montecito Board of Architectural Review (MBAR) with specific direction for the MBAR to ensure the proposed project be consistent with the above “Cottage-Type” architectural style. This process, as provided for under CEQA, together with the mitigations contained in the Aesthetics/Visual Resources section of the Addendum would act to ensure the project’s consistency with the above “Cottage-Type Hotel” definition. This issue is further discussed in the Land Use section of the Addendum on pages 30 through 32 (In binder I).

CTH-2. Improper Deferral to MBAR: The conclusion that the Project is consistent with the cottage style tradition constitutes an abuse of discretion, as the Applicant has not yet submitted sufficient plans and renderings to make such a determination.

The County’s design review is a three step process including a conceptual review and then Preliminary and Final approvals by the Montecito Board of Architectural Review (MBAR). Conceptual review is conducted prior to project approval by the decision-maker and then Preliminary and Final approvals by the MBAR follow. The MBAR is the correct body to review project design components and architecture. The MBAR conducted a conceptual review on December 17, 2007 and directed the project to the Montecito Planning Commission for approval prior to returning to the MBAR for Preliminary and Final approvals. During the MPC hearings, the definition of “Cottage-Type Hotel” was refined by the MPC and direction was given to the MBAR to ensure that the project architecture was consistent with the refined

definition (See Condition No. 5 of the October 8, 2008 MPC Action Letter). Appropriate changes would be incorporated into the final project design. Final MBAR approval would be contingent upon the project architecture being consistent with the refined definition of “Cottage-Type Hotel”.

Appellant Claim: Historic Resources

H-1. The SEIR’s discussion of historical resources is legally deficient. These defects apply to the alternatives analysis, the discussion of mitigation measures, responses to public comments, the adopted findings (including the finding that environmental impacts have been reduced to the maximum extent feasible), and the statement of overriding considerations.

The SEIR has been prepared in accordance with the environmental review requirements established by the CEQA Statutes and Guidelines, and in accordance with the County of Santa Barbara CEQA Guidelines, adopted by the Board of Supervisors in 1990, as amended in 2005. The SEIR described and analyzed the impacts on historic resources, proposed mitigation measures, discussed a reasonable range of alternatives and summarized the disagreement amongst experts. The comment does not supply any specific information regarding the purported adequacy of the analysis. Please see the body of the SEIR and the Response to Comments documents located in Binder I.

H-2. Inadequate Response to Public Comments: A number of public comments on the Draft SEIR, including comments from the County Historic Landmarks Advisory Commission, proposed feasible mitigation measures including restoration or replication of a few of the cottages rather than all of the cottages.

Two Holmes Culley Historic Resources Reports dated March 19, 2008 and April 15, 2008 address the infeasibility of preserving the existing structures. Retaining one or more of the existing cottages would not be sufficient to reduce the Class I, significant and unavoidable impacts caused by the Caruso project. This topic is discussed in detail in the Subsequent EIR (in Binder I).

Additionally, in response to the above-mentioned public comments, Condition of Approval No. 85 was added to the project which states:

85. Prior to removal, photo documentation of the cottages, poolside rooms and associated buildings ‘in situ’ shall occur pursuant to the County’s standards as outlined in Condition No. 32. The owner shall make available for 90 days from the date of final discretionary approval of the project, any cottage(s) or the poolside rooms for removal and relocation to any individual or organization proposing to rehabilitate said structure(s). All costs and liability for transportation and removal, including any necessary permits shall be the sole responsibility of the individual or organization seeking relocation and reuse of the structure(s). **Plan Requirements and Timing:** Notice of availability of structures shall be provided in local newspaper, notice on site and other public outreach efforts to the community by the applicant. The applicant shall document such effort with the County prior to the approval of the follow-on Land Use Permit.

Appellant Claim: Greenhouse Gasses (GHG)

GHG-1. The County did not engage in a meaningful attempt to analyze the Project’s effects upon greenhouse gases or global warming. Under CEQA, the County must engage in a *thorough investigation* before it can find that a particular impact is too speculative for evaluation.

Santa Barbara County is currently working with its Air Pollution Control District (APCD), the California Air Pollution Control Officers Association (CAPCOA), and salient California agencies, to develop CEQA thresholds of significance that would guide classification of impacts associated with global climate

change in CEQA documents. Absent such thresholds, CEQA lead agencies must rely on their own careful judgment, based on scientific and factual data to the extent possible, in determining if impacts related to global climate change are significant. The County has disclosed the relevant project emissions relating to climate change and has identified air quality mitigation measures that address the potential impacts of these emissions. Unfortunately, scientific and factual data are not sufficiently available to judge, without undo speculation, whether projects with relatively small, incremental contributions to the state's GHG totals are cumulatively significant or insignificant. This issue is further discussed in the Air Quality section of the Addendum on pages 15 & 16 (In binder I).

Appellant Claim: Parking

P-1. The Project provides insufficient parking.

Under the Caruso Plan, 551 parking spaces would be provided onsite for hotel use plus 28 overflow spaces that could be provided on the tennis courts if necessary. Additionally, 68 public parking spaces would be provided for public beach access along the Eucalyptus Lane and South Jameson right-of-ways. County parking ordinance requires a total of 639 onsite parking spaces for the hotel uses (see project description), leaving the project 88 spaces short. However, the amount of onsite parking would be adequate to meet the anticipated peak demand for the site as determined by Associated Transportation Engineers (ATE) using Urban Land Institute's (ULI) parking demand rates for individual hotel components as discussed in the shared parking analysis (ATE Access, Circulation, and Parking Evaluation, March 2008 and August 27, 2008 and as updated in the August 22, 2008 letter). Because the Biltmore Hotel is considered similar to the proposed Miramar project in terms of room count and intensity of use, the MPC also considered information provided by staff related to the Biltmore's parking operations as detailed in the August 6, 2008 staff memo.

Under the approved Schragger plan, 416 parking spaces were to be provided onsite plus 28 overflow spaces on the tennis courts (for a total of 444 spaces total). The County parking ordinance required 599 parking spaces for the hotel uses, leaving the approved project 183 spaces short (not counting the overflow parking). A modification to the County's parking ordinance was granted by the County for the approved plan. A modification to the County's parking ordinance was also granted by the County for the proposed plan as detailed in Finding 2.3 of the October 8, 2008 MPC Action Letter.

This issue is further discussed in the Transportation/Circulation section of the Addendum on pages 41 through 50 and in response 31c of the Response to Comments document (Binder I).

Appellant Claim: Visual Resources

V-1. The Project is incompatible with the established physical scale of the area.

Of importance to determining compatibility with the established physical scale of the area is the Montecito Board of Architectural Review's (MBAR) positive conceptual review of the project (December 17, 2007). Specifically, the MBAR opined that the proposed project, even given the reduced front yard setbacks, increased heights and grand style would be in conformance with the scale and character of the community, and in proportion to and in scale with the area surrounding the property. Notwithstanding those findings of conformance to scale, the project was reduced in height and square footage subsequent to MBAR review. Additionally, the MPC made the required findings of neighborhood compatibility as

stated in Findings 2.1.1.5, 2.4.2.2, 2.2.5 and 2.6.2.3 contained in the October 8, 2008 MPC Action Letter. This issue is further discussed in the Aesthetics/Visual Resources section of the Addendum on pages 4 through 12 (In binder I).

V-2. The Project fails to protect and instead interferes with and limits public views of the coast.

Views toward the ocean from South Jameson Lane would remain essentially the same as exist today (i.e., mostly obscured by structures and landscaping). Additionally, the beach front bungalows would be reconstructed in the same location as the existing structures. As such, the reconstructed buildings would not interfere with or limit public views of the coast above what exists on the site today. See finding 2.6.2.2 of the October 8, 2008 Action Letter for more detail on this topic.

Appellant Claim: Miscellaneous

M-1. The Findings are deficient because the Project's adverse impacts have not been mitigated to the maximum extent feasible.

As discussed in Section 7.1 of the MPC staff report dated July 3, 2008 for the proposed project and as updated in the staff memoranda to the Montecito Planning Commission dated August 6, 2008, August 28, 2008 and October 8, 2008, and incorporated herein by reference, adverse impacts anticipated to all issue areas except for historic resources have been mitigated to less than significant levels (Class II impacts). A more detailed discussion regarding mitigation of the project's potential impacts is provided in Findings 2.1.1.2 and 2.2.2 of the October 8, 2008 Montecito Planning Commission action letter.

M-2. The Project's grading and filling of the site will significantly alter existing natural landforms.

Total grading quantities of the proposed project are approximately 42,000 c.y. of cut and approximately 39,000 c.y. of fill for a 16-acre site. The proposed project would alter the site topography such that the rolling topography of the grounds within the site would be lost and the eastern edge of the site would be manufactured in its topographic relief. The site currently slopes from a high point in the western half to a low point in the eastern half with a difference in elevation of approximately 20 feet. While several undulations in the site topography would be leveled to provide for more walkable grounds, such leveling would not result in a significant alteration to existing natural landforms. A more detailed discussion of this issue is provided in the Geologic Processes section of the Addendum on pages 28 & 29 (In binder I).

M-3. The MPC abused its discretion and committed an error of law in approving the Project without the authorization and approval of the Union Pacific Railroad.

The proposed project improvements that would be located within the UPRR are similar to those included with the approved Schragger Plan. Caruso Affiliated has an easement agreement with UPRR for development over portions of the UPRR right-of-way that allows project uses as proposed including signage, a new pedestrian crossing, construction of a guard station and landscaping. The UPRR has determined the preliminary project plans to be acceptable subject to certain conditions as stated in their December 13, 2007, May 13, 2008 and July 2, 2008 letters to the County. Additionally, Condition of Approval No. 82 requires that "the project shall receive express authorization from the UPRR to construct improvements in its right-of-way prior to issuance of the first LUP granted for the proposed project." This condition ensures that construction of the project components to be located within the UPRR right-of-way could not commence without the consent of the UPRR and can be found in the October 8, 2008 Montecito Planning Commission Action Letter.

M-4. The Project fails to provide and instead interferes with adequate public access and use of the beach.

The proposed project would eliminate existing “no trespassing signs”, would maintain a lateral beach access easement across Miramar beach, would dedicate two formal vertical public access easements through the site to the beach and provide general, informal public access through the center of the site, would provide 68 public parking spaces along South Jameson Lane and Eucalyptus Lane as well as coastal access signage directing the public to the beach through the site and would encourage public use of certain hotel facilities. A more detailed discussion of this issue is provided in the Recreation section of the Addendum on pages 38 through 41 (In the October 8, 2008 MPC Hearing Binder), in Finding 2.1.1.8 and in the Response to Comments (Binder I) in responses 26b and 45c.

M-5. The County failed to adequately address or evaluate stormwater management and drainage impacts.

According to the Penfield and Smith Preliminary Drainage Report dated December 12, 2007, overall runoff from the site during a 100-year storm event under the proposed project would be reduced under post project conditions due to the fact that the site would have a lesser amount of impervious surface than in the pre-project condition. Runoff directed to Oak Creek would be less than under pre-project conditions and runoff directed to the beach would be slightly increased over pre-project levels (1.75 cfs) during the 100-year storm event. Additionally, the proposed project includes Best Management Practices designed to fulfill the storm water quality mandates of the NPDES General Permit for new projects in Santa Barbara County. The County Water Agency has preliminarily approved the proposed project’s water quality treatment components and with the Water Agency’s continued oversight and the standard required submittal of a storm water pollution prevention plan (SWPPP), the project impacts on stormwater quality would be less than significant. A more detailed discussion of this issue is provided in the Water Resources/Flooding section of the Addendum on pages 51 through 57 (In binder I) and in the Response to Comments (Binder I) in response 37a.

M-6. The County failed to adequately address significant liquefaction concerns.

Underlying geological materials, design components and recommended construction techniques intended to address potential liquefaction have been analyzed and discussed by several memos provided by Ken Clements (Registered Geotechnical Engineer) of Penfield & Smith dated June 6, 2007, September 18, 2007 and November 9, 2007 and in the Draft Geotechnical Report (FUGRO 2007a & FURGRO 2007b). Condition of Approval No. 28 requires that the design components and construction techniques identified in the Preliminary Geotechnical Report be incorporated into the building permit plans. Additional information is contained in the Geologic Processes section of the Addendum on pages 27 & 28 (In binder I).

M-7. The County failed to adequately evaluate potential groundwater impacts (including potential breaches of the aquifer).

Impacts to groundwater were discussed in the Water Resources section of the Addendum on pages 51 through 57. Project overexcavation for the subterranean basement (Parking level 2 of the Main Building) would be approximately 9 feet above the current groundwater elevation. Thus, no impacts to groundwater are anticipated. Regardless, the project includes the development and implementation of a comprehensive drainage plan which includes dewatering provisions during construction and the use of subdrains for any structure that would be completed at an elevation below existing ground surface. Additional information is contained in response 23a of the Response to Comments (Binder I).

M-8. Vacation of the north-south segment of Miramar Avenue was improper.

The land underlying Miramar Avenue is owned in fee by the applicant and the County holds an easement over it for public access. In its October 8, 2008 action, the Montecito Planning Commission found the proposed vacation consistent with the Comprehensive Plan and recommended approval of the request to vacate the County's easement over Miramar Avenue to the Board of Supervisors in exchange for the applicant's dedication of two vertical access easements through the site. Additional information on this topic is contained in responses 6d, 17d-4-c-iii and 91b of the Response to Comments (Binder I).

M-9. The County failed to adequately evaluate impacts resulting from the seawall improvements.

The seawall would remain in its existing location. The underground supports would be strengthened as part of the project and shotcrete injections would be used to reinforce its structural integrity. Restoration of the seawall contemplated under the Caruso Plan would result in no new significant effects over and above those identified in the ND for the approved Schrage Plan. Additional information is contained in the Water Resources section of the Addendum on page 54 and in response 45j of the Response to Comments (Binder I).

Conclusion:

The issues raised by the appellants have been adequately addressed in the project's environmental documents, CEQA findings and findings and conditions for project approval. Staff recommends denial of the appeals and approval of the project, consistent with the actions recommended in this staff report above.

Fiscal Analysis:

Budgeted: Yes

County costs for processing an appeal in the Coastal Zone are not reimbursed by the appellant as no appeal fee is collected by the Clerk of the Board. The estimated staff cost to process the appeal is approximately \$8,070.00 (60 planner hours). Permit revenues are budgeted in the Permitting and Compliance Division of the Development Review South Division, on page D-301 of the adopted 2008-2009 fiscal year budget.

Staffing Impacts:

None

Attachments:

- A. Errata to Addendum dated November 20, 2008
- B. Acentech Noise & Vibration Analysis dated November 19, 2008

Authored by:

Errin Briggs, Planner III
Development Review Division, South
568-2047

cc:

Anne Almy, Supervising Planner