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November 10, 2024. (REVISED December 5, 2024)
Mr. Steve Lavagnino, Chair
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Appeal of the SB County Planning Commission's November 1, 2024 Approval of the Miramar Hotel Mixed-Use Revision

Dear Chair Lavanigno and Honorable Supervisors:

My name is Christopher Horner, a 12-year resident of the Miramar neighborhood. I am appealing the decision made by the Santa Barbara County Planning Commission on 11/1/24 to approve the Miramar Hotel Mixed-Use revision. I spoke in opposition of the project at the Montecito Planning Commission meeting of 10/18/24 and on 11/1/24 at the SB County Planning Commission meeting.

My appeal of the SBCPC 11/1/24 Miramar Revision approval shall include to various degrees:

- matters related to parking, traffic and related safety issues, including emergency evacuation planning and proposed project construction phase parking and traffic safety
- matters related to public coastal/beach access
- matters related to CEQA and need for Environmental Impact Reports in above areas

Included with my Appeal Submission are:

1) My Appeal Application (previously submitted 11/10/24)
2) EXHIBIT A) (submitted 11/10/24)An opposition letter and a follow-up note to Willow Brown, senior planner for Santa Barbara County, written on 6/7/24 and 6/18/24 respectively and emailed to Ms. Brown
3) EXHIBIT B) (submitted 11/10/24) An opposition letter, marked E emailed to David Villalo of Santa Barbara County on 10/15/24 for presentation to both the Montecito Planning Commission and the Montecito Planning Commission prior to the MPC meeting of 10/18/24
4) EXHIBIT C) (submitted 11/10/24) A letter, now in the public record, originally submitted to the SB County Planning Commission on 10/7/24 by The Law Office of Mark Chytilo on behalf of All Saints Church. While All Saints has since retracted its complaint against Caruso Affilliated, the letter nonetheless contains serious, legally supported arguments which were not heard or considered by the CPC but which support this appeal. I urge the Board of Supervisors to carefully read the Chytilo letter, starting at the bottom of page 2 where marked, as it outlines many of the specific areas where the Miramar Revision Project is deficient in both legal terms and in terms of public health, safety, parking, traffic and other such serious matters.

ADDITIONAL EXHIBITS submitted 12/5/24

5) EXHIBIT D) Page Robinson Parking declaration of 10/28/24
6) EXHIBIT E) Jordan Sisson Appeal Justification
7) EXHIBIT F). Dracht Letter 10/6/24
8) EXHIBIT G) AGD/Caruso Rebuttal
9) EXHIBIT H) Dracht Critique of ATE Parking Analysis
10) EXHIBIT I) TSAI 11/1/24 Comment Letter
11) EXHIBIT J) 10/8/24 Montecito resident Jesse Burden letter

Respectfully Submitted,

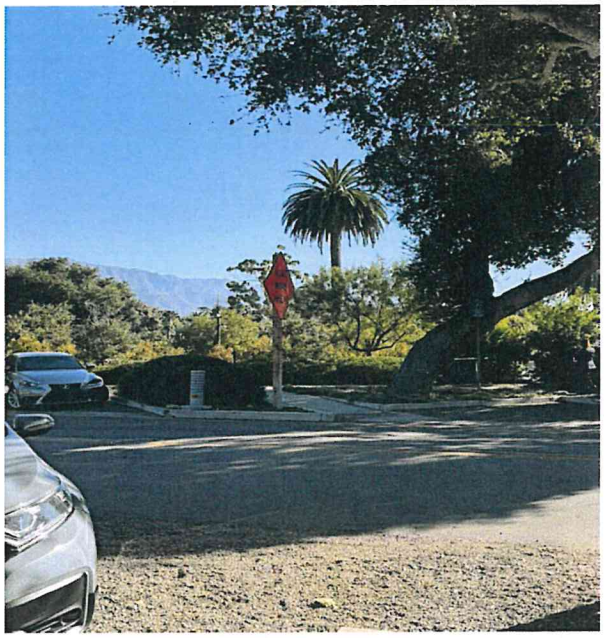
12/5/24

Christopher F. Horner

EXHIBIT D

DECLARATION

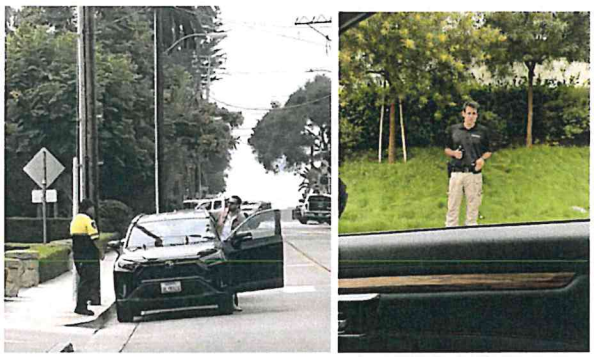
1. I, Page Robinson, am an individual over the age of eighteen and live on Eucalyptus Lane, directly across from proposed Caruso Mixed Use Development and the public spaces provided. I have personal knowledge of the facts stated in this declaration, and if called as a witness, I could and would testify competently to those facts.
2. During weekends, Summertime, holidays, Miramar events and other peak times I have noticed significant increase in parking by Miramar guests, Miramar employees, and Miramar contractors and vendors in the neighborhood public parking spaces, including Eucalyptus lane and those on South Jameson lane, which abuts our property. Since 2022 I have witnessed employees regularly parking in those public spaces across from my house, dressed for work, scurrying down the hill through the gap seen near the guard in this pic, or walking around the corner to the Miramar.



Eucalyptus Public Spaces (This public mountain view from my property will be obstructed by the 30'+ development)

Employees parking on our streets increased when the Miramar ended its practice of providing parking for them immediately south of our house in the Friendship Center and All Saints Church parking lots. I believe, but cannot prove, that while much fewer, some employees continued to park there. I also question whether the Miramar fairly compensated the church for all the nights that lot was in use by their employees. If it was for only 60 nights a year, as I have heard referenced, that is not consistent with what I witnessed. 10/12/24 was the first night I have ever seen all three Church lots empty on a Saturday night since 2022.

3. After the CPC meeting 10/9/24, I began to take pictures at random times to prove that the Miramar is out of compliance with the conditions of their permit regarding parking. I submitted photos to Eric Graham, Compliance officer for P & D beginning October 10, 2024, the day after the CPC meeting of October 9, 2024. After that meeting and the submission of Attorney and Neighbor Phil Dracht's document regarding their parking schematics, I witnessed 5-6 guards, including 1-2 in yellow vests patrolling the neighborhood. There were 3-4 security guards stationed in front of the Miramar, along South Jameson. As of the week of 10/21/24 there seems to be a reduction in force. I have not seen the yellow patrollers, but there are still 3-4 guards stationed along the .25 mile length of South Jameson in front of the Hotel, and on the Corner of Eucalyptus.



10/10/24 Patrol asking man to move car parked in front of Church Eucalyptus lane–man was arguing with him
10/11/24 guard stationed at Fire truck pull over in front of Hotel S Jameson

This monitoring, which I believe is a condition of their permit, has improved the Miramar spill over effect into the neighborhood coastal zone dramatically. Over the last two years, other neighbors and I have spoken directly to Bryce Ross and Katie Mangin of the Caruso team, multiple times regarding these parking issues and we have brought it up at several hearings and at Montecito Association meetings when Caruso Team members were present. My impression/opinion/experience is that until the schematics were presented, and their application was at stake, they did not take our complaints seriously, or add any monitoring measures. I have never witnessed a parking guard on our corner, nor patrolling the streets until the day of that hearing. The change was abrupt.

There remains the issue of parking by diners and shoppers and hotel guests parking in the public spaces along South Jameson in front of the hotel. The conditions are silent on these and they continue to park there without interference. I witnessed that parking almost fully occupied on dark weekend nights, well past beach time. I do not know if this is in violation of the Coastal Act. The "No guests" signs are vague and misleading. Neighbors and I spoke with Mr. Ross in person about these issues in the Fall of 2022.

4. Images from January 2024 of valet parking spaces being used as storage. It seems the Miramar has a storage problem. Here they are occupying parking spaces in the Eastern lot. I was informed by a neighbor that they were working into the night clearing the lot before the hearing 10/9/2024.

1/16/24

5. Fire/Evacuation Safety

a. Three Saturdays in a row, I witnessed the Eastern Valet Lot's egress blocked by cars and trucks parked two across, two deep with gate closed. There were weddings 10/12 and 10/19, which stressed the capacity. The lot was jammed full with only one shared open egress/ingress point.

10/12/24 6:50 pm 10/19/24 6:12 pm

14 days after I reported the blocked entrances, two employees w stickers blocking the Eastern egress

10/26/24 3:53 pm

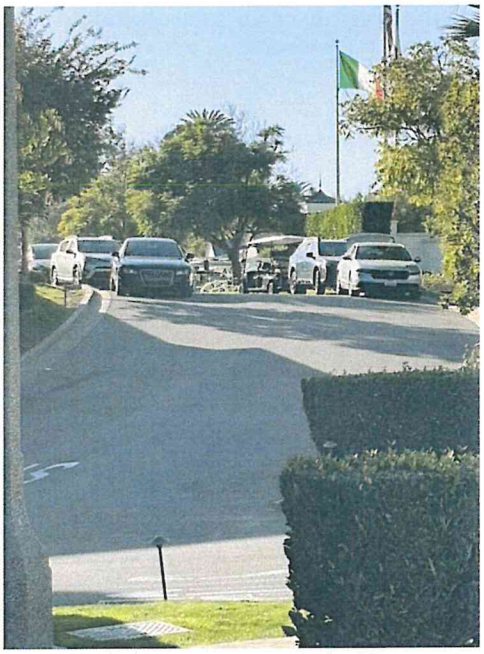
b. Cars, trucks and vans parked in fire truck pull over lanes. I can attest that while the south bound 101 ramp was open earlier this year, and the only way to drive north on the 101, was to drive past the hotel, I drove by frequently. I saw trucks parked here so regularly, I thought the space was designed for truck/van parking until I learned differently this month.

10/10/24 12:03 pm

10/12/24 6:49 pm

c. Vehicles parked on both sides of the main hotel entrance fire lane.

10/19/24 6:11 pm No drivers present

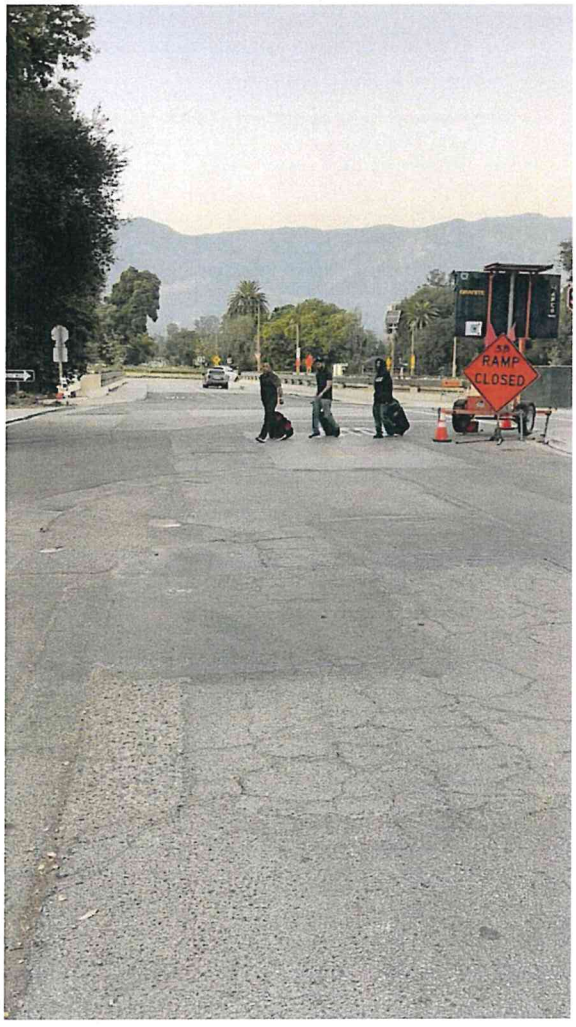


10/12/24/4:30pm

2. Event Parking in neighborhood streets

a. I witnessed more than a dozen cars parked on Eucalyptus Lane and South Jameson next to my house on the corner, coming and going mostly dressed in black business attire. I was told there was a Google event. I saw a white tent on Miramar's eastern valet lot occupying many parking spaces.

10/8/24 6:36 pm South Jameson next to my house to the South



Intersection of South Jameson and Eucalyptus lane

Top Picture I saw this man and others walking from the Miramar to cars parked on Eucalyptus 10/8/24 6:39 pm

Bottom picture, I saw these men and others walking to their cars parked on South Jameson same time

b. Party of 4 dressed in black tie going into the hotel. I saw them later on the hotel grounds.

10/12/24

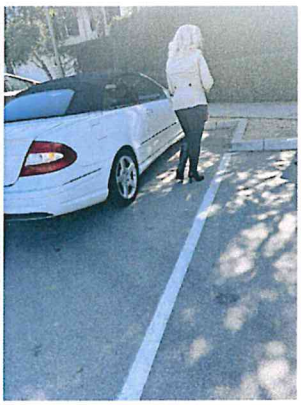
3. Hotel/Guest Parking on South Jameson in front of hotel

While there was a dramatic effort to sweep the neighborhood of employee parkers, with and without Miramar tags, I witnessed almost every day, for ten days from 10/10/24-10/19/24, the guard smile at and greet many well dressed people (not beach attire) mostly in expensive cars, who I witnessed coming or going to the Hotel. Some carried shopping bags, clothing, etc. I did not film anyone who looked remotely like they could be taking a walk on the beach. I witnessed two definite sets of beach goers with towels and chairs, and another with a dog, presumably to walk it on the beach. I did not follow anyone past the drive of the Hotel, so I could not PROVE they did not go to the beach without disrupting them. I did not take pictures of several groups of young girls arriving simultaneously, not dressed for the beach, parents dressed up, who appeared to be possibly attending a birthday party.

I did this in very short bursts of time, over several days. At peak times (7pm) and Saturdays, there were so many seemingly non-beach goers I couldn't keep up–especially on saturday evenings, so I took videos. Not included here.

a. Hotel Shoppers I witnessed coming from the Miramar while parked in public spaces to the immediate right of the entryway. Several had shopping bags. To the right, woman clearly not in beach attire:

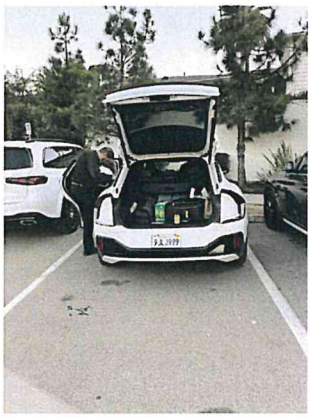
10/11/24 2:17pm



10/10/24 2:16 pm

b. Hotel Guests/Visitors: I witnessed multiple carloads of people who appeared to be guests with suitcases, bags, loading unloading cars parked on South Jameson in front of the Hotel. None were approached by security. Around 7:00 pm on 10/11/24, within 5 minutes, I took 3 photos of different Miramar visitors very dressed up and clearly not in beach attire. The guard smiled and welcomed each group as they approached the entrance without questioning them. I also observed many cars both arriving and parked well past sunset each Friday and Saturday night 10/11/94 - 10/19/24.

10/12/24 12:36 pm



10/19/24 6:08 pm

There were MANY groups of people parked in front who likely, but I cannot attest, did not go to the beach.

10/9/24 4:15

c. Miramar Club Members parked in front. The driver of this vehicle is known to me and believed to be a member of the Miramar Club.

10/11/24 2:14 pm

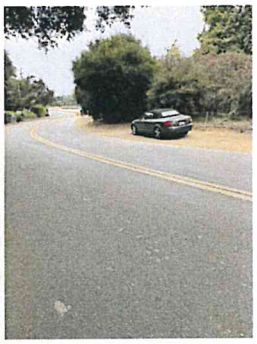
d. Hotel Vendors/Repair People. I did not photograph the workers' trucks I saw–I cannot prove they were not at the beach. I redacted the name of this event planner.


10/9/24 3:13 pm

4. Hotel Employees:
   a. I took these pictures of Miramar Employees parked on Eucalyptus lane in front of the Church and in front of the Hotel. I submitted them with others to Eric Graham, Compliance officer at County Planning. I received a call from him requesting photos of unredacted images so that he could relay tag numbers to the Miramar. I refused, saying I did not want to get employees fired, he told me first they get a warning, before they are fired. I asked about the photos of guests and shoppers I have submitted. He did not answer, but said something like "First let's deal with the employees." He requested the tag numbers again and I refused. I subsequently emailed Eric Graham, over several days, many images. Some spaces on Miramar Ave, I was not clear about. I am still awaiting clarification from Mr. Graham about the parking spaces at the end of Miramar avenue next to their rental property on the beach that does not have parking. I do not know if they are public or private Miramar spaces. I have photos of those spots occupied.

10/9/24 in front of the church

10/9/24 in front of Miramar



10/16/24 3:35 pm South Jameson Employee

b. I saw this man leave the employee entrance/exit, walk to his car which was parked in front and did not have a Miramar sticker–note number of cars parked past sunset.

10/11/24 6:59pm

c. We have observed employees without Miramar stickers parking on neighborhood streets. This man's blue honda also had no sticker, I watched him park in front of hotel and walk into the employee entrance.

10/10/24 4:07 pm

5. Miramar related Rideshare parking continues on Eucalyptus. I witnessed the corner guard tell a different parked Uber driver to move from the public spaces at the northern end of Eucalyptus lane, and I overheard her say something about "8am to 8pm". A bit later, this Uber driver was parked further down in front of the Church, no activity at the Church, or house farther down the street at all, another idled in its parking lot.

10/19/24 6:02 pm

I cannot attest, but believe, especially during peak times, that the resort is dependent on the use of those dedicated public Coastal Access parking spots in front of the hotel on South Jameson. From what I observed of the Valet and Employee lots during weddings on those two Saturdays, they were at capacity, and the front was very full. I can provide photos.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 28, 2024, in Santa Barbara, California.

EXHIBIT E

Santa Barbara County Planning and Development Department

Appeal Application

County Use Only	Appeal Case No.:

STEP 1: SUBJECT PROPERTY

009-371-007, 009-333-013, and 009-010-004,
ASSESSOR'S PARCEL NUMBER(S)

1759 S Jameson Lane, Montecito, CA 93108
PROPERTY ADDRESS (IF APPLICABLE)

Miramar Acquisition Co., LLC
BUSINESS/ESTABLISHMENT NAME (IF APPLICABLE)

STEP 2: PROJECT DETAILS

Housing – Mixed Use Development
PROJECT TITLE

24RVP-00050, 24RVP-00051, 24AMD-00008, 24CDP-00077
CASE NO(S).

County Planning Commis‹ November 1, 2024
DECISION MAKER DATE OF ACTION

Is the appeal related to cannabis activities? ☐ Yes ■ No

STEP 3: APPEAL CONTACTS

APPELLANT

Danielle Wilson (on behalf of UNITE HERE Local 11)
NAME (if LLC or other legal entity, must provide documentation)

464 S. Lucas Ave., Los Angeles, CA 90017
STREET ADDRESS

Los Angeles, CA 90017
CITY, STATE ZIP

818-534-7999 danielle.wilson@unitehere11.org
PHONE EMAIL

AGENT

NAME (if LLC or other legal entity, must provide documentation)

STREET ADDRESS

CITY, STATE ZIP

PHONE EMAIL

ATTORNEY

Jordan R. Sisson, Esq.
NAME (if LLC or other legal entity, must provide documentation)

3993 Orange St., Ste. 201
STREET ADDRESS

Riverside, CA 92501
CITY, STATE ZIP

951-542-2735 jordan@jrsissonlaw.com
PHONE EMAIL

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:

Through counsel, Local 11 objected against the Project, including: (i) written and verbal comments provided during the County Planning Commission hearing held 10/9/24; (ii) verbal comments comments provided during the Montecito Planning Commission hearing 10/18/24; and (iii) verbal comments during the County Planning Commission hearing held 11/1/24.

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.*

Please see attached Appeal Justification dated 11/12/24.

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.

	Danielle Wilson	11/12/2024
SIGNATURE – APPELLENT	PRINT NAME	DATE
SIGNATURE – AGENT	PRINT NAME	DATE
	Jordan R. Sisson	November 12, 2024
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 or (805) 568-2090
North County projects: 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

LAW OFFICE OF JORDAN R. SISSON

LAND USE, ENVIRONMENTAL & MUNICIPAL LAW

3993 Orange Street, Suite 201
Riverside, CA 92501

Office: (951) 405-8127
Direct: (951) 542-2735

jordan@jrsissonlaw.com
www.jrsissonlaw.com

November 12, 2024

VIA HAND-DELIVERY & EMAIL:

County of Santa Barbara Clerk of the Board
105 E. Anapamu Street, Room 407
Santa Barbara, CA 93101
sbcob@countyofsb.org

RE: APPEAL JUSTIFICATION OF MIRAMAR RESORT DEVELOPMENT REVISION (1759 S. JAMESON LN.); CASE NOS. 24RVP-00050, 24RVP-00051, 24AMD-00008, & 24CDP-00077; COUNTY PLANNING COMMISSION APPROVAL OF NOVEMBER 1, 2024

Dear Honorable Board of Supervisors:

On behalf of UNITE HERE Local 11 ("**Local 11**" or "**Appellant**"), this office respectfully submits this "**Appeal**" to the County of Santa Barbara ("**County**") Board of Supervisors ("**Board**") regarding the proposed 34 residential units (8 market rate units and 26 affordable employee units) and 17,500 square feet ("**sf**") of commercial space (15,000 sf of resort shops and a 2,500-sf café) ("**Proposed Project**") located on the existing northwest and northeast parking lots within the roughly 16-acre Miramar Beach Resort ("**Resort**") (APNs 009-371-007, 009-333-013, 009-010-004), proposed by the Project applicant Caruso Affiliate and Miramar Acquisition Co, LLC (collectively "**Applicant**"). (See Figure 1 following page.)

As discussed in Local 11's prior comments[1] dated October 11, 2024 (*attached hereto as Exhibit A*), the Resort has a long entitlement history dating back to 2000 when it was initially proposed as merely 213 renovated guest rooms (eight replacement), four employee units, and only an 896-sf tennis sundry shop next to tennis courts ("**2000 Original Project**"). (See Exh. A, pp. 4-7.) The Board's most recent Resort approval was in 2015 when it authorized the new construction of 170 rooms with 1,060 sf of salon/sundry space, a private theater intended for hotel guests only, and other uses assuming only 102 employees onsite at any given time, and that retail would not draw new trips to the Resort ("**2015 Approved Project**").[2] Since then, the Resort was modified through multiple substantial conformance determinations ("**SCD(s)**") that reduced hotel rooms down to 154, removed theater and fitness space, and added a 50-seat sushi restaurant and 8,481-sf of roughly nine luxury retail establishments ("**2023 Modified Project**").[3]

The Proposed Project seeks various local approvals under the Santa Barbara County Code ("**SBCC**" or "**Code**"), including multiple revisions and amendments to previously issued

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[1] Herein, page citations are either the stated pagination (i.e., "**p. #**") or PDF-page location (i.e., "**PDF p. #**").
[2] See e.g., Board File No. 15-00258, https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2242749&GUID=F4B4C052-F59D-49B3-9A31-545710EA2252; 2015 SEIR/MND Addendum, PDF p. 2; MPC Staff Report (12/15/14) PDF pp. 11, 14, 21, 33, https://santabarbara.legistar.com/View.ashx?M=F&ID=3662572&GUID=4D495433-794F-498C-B4A0-78DF110E46F2; 2015 Conditions of Approval, PDF pp. 3-4, 14-15, 25-26.
[3] See e.g., CPC Staff Report (10/9/24), pp. 8-9; 2021 Traffic Memo, pp. 1-2; 2023 ACE Traffic Memo, pp. 1-2.

Development Plan and Conditional Use Permits ("**CUP**(s)") (collectively "**Entitlements**").[4] The Project also requires a Coastal Development Permit ("**CDP**") per the California Coastal Act (Pub. Res. Code § 30000 et seq.) ("**Coastal Act**"). (Id., at p. 10.) Additionally, for the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) ("**CEQA**"),[5] the County is considering whether the Project qualifies for a statutory exemption authorized under Assembly Bill 1804 (Stats 2018, ch 670) ("**AB 1804**") for residential/mixed-use development for infill/urbanized county areas (Pub. Res. Code § 21159.25) ("**Exemption**"). Furthermore, the Project is being processed under the Housing Accountability Act (Gov. Code § 65589.5) ("**HAA**") and seeks waivers from five Code requirements (collectively "**Waivers**") based on State Density Bonus Law (§§ 65915-65918) ("**SDBL**").

Figure 1: Proposed Project & Resort

Northwest Lot: Includes two, two-story (33'-5" max) buildings referred as Building A and B, which together contain: (i) eight (8) market-rate housing rental units; (ii) 12 resort shops totaling 15,000 sf; (iii) a 2,500-sf café; and (iv) 79 subterranean parking spaces.	**Northeast Lot**: Includes one, three-story (40'-9" max) building referred as Building C, which includes 26 affordable employee apartments (19 studios, one 1-bed, and six 2-bed) totaling 19,102 sf. The lot will also include 350 reconfigured parking spaces utilizing an elevated parking deck with an approximate 11,682-sf footprint (118' by 99') and will be about 17 feet tall.

[4] See CPC Staff Report (10/9/24), pp. 1-6, 10, 13-14.
[5] Including "**CEQA Guidelines**" codified at 14 Cal. Code. Regs. § 15000 et seq.

The Project received public hearings before the County Planning Commission ("**CPC**") and Montecito Planning Commission ("**MPC**") on October 9 and 18, 2024 (respectively).[6] On November 1, after conducting another public hearing and the Applicant making slight modifications to Building B's second-story massing on the northwest lot, CPC approved the Project, including the findings and conditions of approval ("**COA**") for the Entitlements, CDP, Exemption, and Waivers (collectively "**Project Approvals**"), as evidenced by the Planning Department letter dated November 5, 2024 (*referenced herein as Exhibit B*).[7] Local 11 submits this timely Appeal of the Project Approval.[8]

Based on the review of the administrative record and other relevant documents related to the Proposed Project and Resort, the Planning Commission's granting of the Project Approvals seems to be inconsistent with CEQA, Coastal Act, the County's Local Coastal Plan ("**LCP**") provisions, and the Coastal Zoning Ordinances (Article II), particularly as it relates to direct and indirect impacts on traffic (i.e., level of service ("**LOS**"), vehicle-miles traveled ("**VMT**")), parking demand, coastal resources and public access, greenhouse gas ("**GHG**") emissions, public safety impacts, land use compatibility, and other CEQA concerns. Local 11 strongly supports housing but is concerned with the Applicant's narrow and self-serving review of the Proposed Project, which ignores substantial evidence of existing impacts that will be exacerbated by the Proposed Project and relies on an inadequate CEQA-review that misapplies the AB 1804 CEQA Exemption. In doing so, the Applicant and CPC failed to consider feasible mitigation measures and alternatives that would minimize impacts without affecting the Proposed Project's housing density or the five HAA Waivers requested by the Applicant. Therefore, *Local 11 respectfully requests the County Board grant this Appeal and modify the Project Approvals by granting the Waivers and residential densities but requiring implementation of the following three requirements*:

1. Updated traffic, VMT, parking, and GHG studies that assess cumulative impacts at the Resort based on Resort-specific data (subject to public comment).
2. Consideration of enhanced/modified mitigation tied to said new studies, such as additional TDM strategies, enhanced Parking Management Plan components, additional parking solutions, and other measures that reduce VMTs/GHGs.
3. Modification of the Proposed Project that consolidates all residential uses to the northwest lot, commercial/retail uses to the northeast lot, and uses a less traffic-inducing use than the currently proposed retail use (that will likely function as luxury retail shopping center).

The specific points at issue were fully outlined in Local 11's prior comments (attached hereto as Exhibit A) and the comments submitted by others during the Project's approval process (*referenced herein as Exhibits C through T*), which have already been submitted to the County and are available on the County's public hearing folders.[6] For your convenience, these exhibits have been hyperlinked herein this Appeal, which corresponds to the public hearing date and public comment title used in the County's Miramar Project folders. These exhibits and other referenced documents are incorporated into this Appeal in their entirety. For the sake of brevity, the below sections summarize the specific grounds of this Appeal in accordance with other zoning appeal requirements under SBMC § 35.102.020.

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[6] See e.g., CPC Miramar Folder (10/9/24); MPC Miramar Folder (10/18/24); CPC Miramar Folder (11/1/24).
[7] See Exh. B (11/5 Planning Letter).
[8] See SBCC § 35.102.02 subds. B.1.A & B.2 [appeal deadline ten calendar days commencing day after decision made, and where extends to next business day when final tenth day falls on non-business day).

I. APPELLANT AND THEIR INTEREST (SUBDS., A & C.1.A)

Local 11 has an interest and standing involving the Project Approvals. Local 11 represents more than 25,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout Southern California and Phoenix, Arizona. The union has a First Amendment right to petition public officials in connection with matters of public concern, including compliance with applicable zoning rules and CEQA, just as developers, other community organizations, and individual residents do. Protecting its members' interest in the environment, including advocating for the environmental sustainability of development projects and protecting access to coastal resources (in compliance with state and local rules), is part of Local 11's core function. Recognizing unions' interest and union members' interest in these issues, California courts have consistently upheld unions' standing to litigate land use and environmental claims. (See *Bakersfield Citizens v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.) Furthermore, Local 11 has public interest standing to challenge the Project Approvals given the County's public duty to comply with applicable zoning and CEQA laws, which Local 11 seeks to enforce. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916 [fn. 6]. See also *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1158-1159; *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 205-206; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 169–170.)

Through counsel, Local 11 raised its objections throughout the Project approval process, including: (i) written and verbal comments provided during the CPC hearing held on October 9, 2024 (see attached Exh. A); (ii) verbal comments during the MPC hearing on October 18, 2024; and (iii) verbal comments during the CPC hearing held on November 1, 2024. As discussed further below, its concerns were echoed and/or elaborated further by other commenters. Despite these efforts, the CPC approved the Project Approvals on November 1, 2024. Accordingly, for the purpose of this Appeal, Local 11 is an "aggrieved person" allowed to appeal the CPC action to grant the Project Approvals. (See SBCC § 35.102.020.A.[9])

II. DECISION OR DETERMINATION BEING APPEALED (SUBD., C.1.B)

This Appeal challenges the CPC's approval of the Project on November 1, 2024, as explained above. This Appeal also challenges the findings and Project Approvals, which are further detailed in the November 5th Planning letter.[7]

III. STATEMENT OF PROJECT'S INCONSISTENCY WITH APPLICABLE LAW & OTHER SPECIFICALLY STATED GROUNDS (SUBD. C.1.C & C.1.D)

Appellant Local 11 offers the following concise summary of the grounds for this Appeal:

- The Project Approvals are inconsistent with the provisions and purposes of CEQA, the Coastal Act, and the County's Zoning Ordinances;
- CPC's grant of the Project Approvals was an error and abuse of discretion; and
- CPC's decision was not supported by sufficient substantial evidence.

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[9] Under the Code, "person" is defined as including any association, organization, entity, and other forms. (See e.g., SBCC §§ 1-2 [definitions] 35.110.020.P [definitions], 35.500.020.P [definitions].)

"Substantial evidence" includes facts, reasonable assumptions predicated upon fact, or expert opinion supported by fact; it does not include argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. (See e.g., Pub. Res. Code §§ 21080(e), 21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384.) However, that standard does not mean one must "'uncritically rely on every study or analysis presented by a project proponent in support of its position ... [,] [a] clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1355 [quoting *Laurel Heights Improvement Assn. v. Regents* (1988) 47 Cal.3d 376, 409 n. 12].) As such, courts will not blindly trust bare conclusions, bald assertions, and conclusory comments without the "disclosure of the 'analytic route the . . . agency traveled from evidence to action.'" (*Laurel Heights,* 47 Cal.3d at 404-405 [quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515]; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568-569; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 441 [agency "obliged to disclose what it reasonably can ... [or] substantial evidence showing it could not do so."].)

The below sections briefly outline specific grounds for the Appeal, which reference and incorporate the arguments raised by Local 11 and others during the Project Approval process, as well as brief rebuttal key responses contained in the Applicant's counsel letter dated October 30, 2024 (**"Applicant Response"**).[10]

A. POTENTIAL DIRECT AND INDIRECT TRAFFIC, VMT & PARKING IMPACTS

Here, substantial evidence indicates that the existing Resort generates excess traffic and parking demand, including but not limited to:

1. Relevant, fact-specific concerns raised by local residents and community members—substantiated by photos, affidavits, drone imagery, video evidence, personal observations, and other relevant evidence—demonstrate that the existing site is under-parked causing parking spillover into the adjacent streets resulting in the loss of public parking spots, the Resort's conversion of some parking spaces that further reduced parking spaces onsite (e.g., Tesla charging station), and the need to utilize off-site employee parking at the adjacent church parking lot and other location known as the **"QAD."**[11, 12]

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[10] See Exh. T (10/30 Applicant Submittal).
[11] See e.g., Exh. E (10/9 Public Comment Letter #6 (Dracht)), PDF pp. 1-160; Exh. F (10/9 Public Comment Letter #6), PDF pp. 2-6; Exh. G (10/9 Public Comment Letter #7), PDF pp. 2, 8-10, 14-31; Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 19-20, 70-86; Exh. J (10/18 Public Comment Letter #2), PDF p. 3-4; Exh. K (10/18 Public Comment Letter #3, PDF pp. 3-4, 27-60; Exh. L (10/18 Public Comment Letter #4), PDF pp. 1-50; Exh. N (11/1 Public Comment Letter #5), PDF pp. 1-15; Exh. O (11/1 Public Comment Letter #7), PDF pp. 40-41 (providing video links https://vimeo.com/1024814992 & https://vimeo.com/1024826892), 64-75; Exh. P (11/1 Public Comment Letter #8), PDF pp. 1, 6-16.
[12] See e.g., Exh. C (10/9 Public Comment # 3), PDF pp. 1, 2; Exh. D (10/9 Public Comment Letter #4), PDF pp. 2, 6, 8; Exh. I (10/18 Public Comment Letter), PDF p. 1; Exh. O (11/1 Public Comment Letter #7), PDF pp. 32.

2. Public safety concerns regarding emergency vehicle access within proposed parking lots (i.e., proposed underground, surface, platform facilities); potential increased queuing and delayed evacuations related to the parking's proposed valet service, stacker facilities, and double/triple stacked parking configuration; and potential queuing into adjacent local roads that may adversely impact pedestrian, bike, and vehicle circulation on existing small roads already congested by Resort-related parking/traffic demands.[13]
3. The Resort's existing Parking Plan and TDM program are ineffective and have not been adequately enforced in a timely manner.[14]
4. Existing spillover effects adversely impact public parking spaces (i.e., 87 public parking spaces) that provide public access to the beach and other coastal resources.[15]
5. Reasonable assumptions predicated upon site/applicant-specific facts and other evidence demonstrating the existing and proposed retail will function as a luxury boutique shopping center generating significantly more traffic (and associated emissions) and parking demand than what was assumed.[16]
6. Residents highlight that after the CPC hearing held on October 9, the Resort stationed approximately six new parking monitors that, while effective at reducing spillover impacts, are generally not present at the site to enforce parking management solutions.[17]
7. The Resort's recent October parking survey failed to consider seasonal variability (particularly during peak summer season), consider peak periods when big events coincide with other significant operations demanding significant parking, or specify periods when off-site employee parking locations are utilized or how the survey may be likely skewed by the ad hoc parking monitors recently implemented.[18]
8. The Project fails to include a VMT impact analysis due to the improper assumption that retail is merely local/hotel-serving and refusal to consider the potential cumulative impacts from successive developments at the Resort (e.g., 2015 Approved Project, various SCDs as part of the 2023 Modified Project, and current Proposed Project).[19]
9. The Project environmental review fails to consider actual parking demand, trip counts, employee time records over relevant periods, and other site-specific data to base traffic/parking impact analysis instead of utilizing a hypothetical model that has proven inaccurate over time.[20]

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[13] See e.g., Exh. D (10/9 Public Comment Letter #4), PDF pp. 7; Exh. K (10/18 Public Comment Letter #3, PDF pp. 1, 3-4, 18-19; Exh. M (10/18 Public Comment Letter #5), PDF pp. 5; Exh. O (11/1 Public Comment Letter #7), PDF pp. 38-41, 57-63.
[14] See e.g., Exh. A, p. 7-8, 11; Exh. E (10/9 Public Comment Letter #6 (Dracht)), PDF pp. 3-4, 6, , 8-11;
[15] See e.g., Exh. A, p. 10; Exh. E (10/9 Public Comment Letter #6 (Dracht)), PDF pp. 1-3, 8-11; Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 13, 19-20, 70-86; Exh. K (10/18 Public Comment Letter #3, PDF pp. 19-20; Exh. M (10/18 Public Comment Letter #5), PDF pp. 6.
[16] See e.g., Exh. A, pp. 9-10; Exh. D (10/9 Public Comment Letter #4), PDF pp. 1-2; Exh. K (10/18 Public Comment Letter #3, PDF pp. 8-12, 15-16; Exh. O (11/1 Public Comment Letter #7), PDF pp.57
[17] See e.g., Exh. J (10/18 Public Comment Letter #2), PDF p. 1-2; Exh. K (10/18 Public Comment Letter #3, PDF pp. 29; Exh. Q (11/1 Public Comment Letter), PDF pp. 1-2.
[18] See e.g., Exh. A, pp. 10-11; Exh. K (10/18 Public Comment Letter #3, PDF pp. 17-20.
[19] See Exh. A, p. 11.
[20] See Exh. O (11/1 Public Comment Letter #7), PDF p. 57.

The Applicant Response letter does not adequately address these concerns for at least six reasons. First, the Applicant Response claims the Resort already implements a *robust parking plan* that ensures the Resort's employees, guests, vendors, and others "park onsite," which was recently confirmed by County staff. (Applicant Response, PDF pp. 1, 9, 11-12, 18.) However, the proposed Parking Plan (id., at PDF pp. 36-37) is largely similar to what was previously required as part of the 2015 Project Approval,[21] which has proven to be ineffective, as demonstrated by substantial evidence submitted by the residents demonstrating spillover parking impacts, and the Resort only recently implemented parking monitors in the middle of the Proposed Project approval hearings. Residents' personal observations of traffic conditions where they live and commute are substantial evidence, especially when *citing specific facts* based upon *personal knowledge* that call into question the underlying assumptions of a professional traffic study.[22] Furthermore, the past and current Parking Plan contain many vague goals (e.g., emphasize adherence to existing regulations, minimize impacts to neighbors, etc.) that lack objective performance standards.[23]

Second, the Applicant Response claims that the TDM program has already been implemented, does not require a minimum participation percentage, and is nevertheless irrelevant for CEQA since it relates to LOS. (PDF pp. 21, 24.) However, TDM measures are also relevant to the reduction of mobile emissions and related air/GHG emissions, parking demand, and access to public parking spaces for coastal resources (to name a few). Moreover, if TDM and the Parking Plan are clearly inadequate under existing conditions (as demonstrated by numerous commenters), it is proper for the County to consider enhanced TDMs and Parking Plan measures before authorizing further Resort modifications that will exacerbate existing conditions and make cumulative parking impacts worse. CPC should have considered additional measures, such as feasible TDM measures and VMT/GHG-reducing strategies proposed by the California Air Resources Board ("**CARB**"), Office of Planning and Research ("**OPR**"), and the California Air Pollution Control Officers Association ("**CAPCOA**"), among other relevant agencies.[24]

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[21] See Exh. E (10/9 Public Comment Letter #6 (Dracht)), PDF pp. 90-91.

[22] See e.g., *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1152; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173; *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274 [citing relevant caselaw].

[23] Supra fn. 21.

[24] See e.g., SCAG (Dec. 2019) Final Program EIR, pp. 2.0-18 – 2.0-71 (see "project-level mitigation measures" for air quality, GHG, and transportation impacts), https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_complete.pdf?1607981618; CARB 2022 Scoping Plan, 4, 7, 24, 29 & Appendix D, p. 23, https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan/2022-scoping-plan-documents; CARB's 2017 Scoping Plan, Appendix B-Local Action, pp. 1-8, 7-9 & Appendix D, p. 2, https://www.arb.ca.gov/cc/scopingplan/app_b_local_action_final.pdf; OPR (Dec. 2018) Technical Advisory, p. 27, https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf; CAPCOA (Dec. 2021) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity, pp. 31-32, 73, 76, 80-96, https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf; CAPCOA (Aug. 2010) Quantifying GHGs and Mitigation, pp. 64-74, https://www.contracosta.ca.gov/DocumentCenter/View/34123/CAPCOA-2010-GHG-Quantification-PDF.

Third, the Applicant Response claims that a traffic expert (i.e., ATE) prepared a *shared parking analysis* using widely utilized methodologies based on empirical data, reviewed/approved by County staff, which shows that the Proposed Project and Resort would exceed peak parking demand by 18 spots. (Applicant Response, PDF pp. 1, 9, 11-12, 18, 20, 28-29.) However, substantial evidence submitted by community members belies this conclusion, where spillover impacts are evident. Additionally, this updated shared parking analysis was conducted by the same expert and methodology as prior shared parking studies, which have proven inaccurate.[25] Inaccurate evidence is not substantial evidence, and the Planning Commission and County Board are not obligated to rely on every study submitted by the Applicant uncritically. (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1355 [quoting *Laurel Heights, supra,* 47 Cal.3d at 409 n. 12].) Furthermore, to the extent the ULI share parking models are justified when contemplating a future use not yet established, the Resort has been built and operational for years—making actual parking/transportation trips feasible to analyze. The Applicant is obliged to disclose what it reasonably can or substantial evidence showing it could not do so. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 441.)

Fourth, Applicant Response claims the Project is providing adequate parking and not impacting public beach access based on the recent October *parking survey* conducted during the weekend event, which showed usage of 43-75 % of onsite parking spots and 44-88 % usage of the 87 public parking spaces around the Resort. (Applicant Response, PDF pp. 2, 9, 11-14, 18, 20, 25-26, 28-29.) However, that parking survey (id., at PDF pp. 39-45) was only recently conducted when the Resort was employing six new parking monitors, which is not the usual circumstance experienced by community members. The Proposed Parking Plan does not mandate six parking monitors. Additionally, the parking survey does not discuss the use of off-site parking locations for employees (e.g., QAD) or provide any details on how often they are used and what future conditions would require the Resort's use of off-site employee parking locations. Furthermore, the parking survey does not account for larger events (i.e., greater than 250 persons) or account for peak periods during summer or when other Resort uses are experiencing peak demand (e.g., restaurant service). Collectively, these issues suggest that the parking demand survey is (at best) incomplete and does not address normal existing conditions. The recent parking survey does not eviscerate the years of experience of community members.

Fifth, the Applicant Response claims that the *retail trip generation and assumptions* (e.g., trip rates, pass-by trips, etc.) are conservative based on ATE's analysis of appropriate trip rates and other assumptions, which were verified by customer data that is confidential and proprietary. (Applicant Response, PDF pp. 2, 23-25, 30.) However, this is an unsubstantiated narrative and a bald conclusion, which is not substantial evidence. (See e.g., Pub. Res. Code §§ 21080(e), 21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384.) There is no explanation of why redacted copies cannot be provided to protect against disclosure of confidential/proprietary information, which Applicant can reasonably do. (See *Cleveland National Forest Foundation, supra,* 17 Cal.App.5th at 441 [agency "obliged to disclose what it reasonably can ... [or] substantial evidence showing it could not do so."].)

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[25] Supra fn. 11, 12.

Sixth, substantial evidence supports the reasonable assumption (predicated on relevant Resort-specific facts) that the retail will function as a luxury boutique retail center with significantly greater trip rates and parking demand anticipated. Here, the Applicant is a well-known developer of luxury shopping centers, the Resort has already added nine luxury retail establishments, and the Proposed Project would add 12 more establishments with an additional cafe. Based on these and other observations raised by the community, it is reasonable to assume that the proposed retail use will generate traffic/parking demand much greater than ITE rates for an apparel store (which was further reduced by the ATE). Furthermore, the Applicant refuses to provide actual trip counts, parking demand, inventory of actual onsite employees, a complete description of off-site parking facilities in use, or redacted copies of data purporting to justify assumed trip rate estimates.

In sum, the issues mentioned above indicate the Project and Project Approvals are inconsistent with various Montecito Community Plan policies (e.g., PRT M-1.6) and Code sections (e.g., SBCC §§ 35-103, 35-105, 35-106).[26] Additionally, direct/indirect impacts on traffic and parking—particularly cumulative impacts that exacerbate existing conditions—negate the use of an AB 1804 CEQA Exemption. (See Pub. Res. Code § 21159.25(b)(5).)

B. POTENTIAL DIRECT AND INDIRECT IMPACTS ON COASTAL RESOURCE AND PUBLIC ACCESS

Here, substantial evidence indicates the Proposed Project may adversely impact coastal resources, including but not limited to:

1. The loss of public parking to beach access and other coastal resources due to the Resort being under-parked.[27]
2. According to community members, the public easement from the beach through the Resort has been frustrated/denied by staff claiming maintenance operations when no maintenance activities were seemingly present.[28]
3. The public easement between the Resort and the northeast lot could be adversely impacted due to the intensification of traffic and parking.[29]
4. The addition of more luxury shopping at this high-cost Resort may require additional consideration of public recreational opportunities that are to be encouraged under Pub. Res. Code § 30213.[30]

The Applicant Response claims there would be no impact on public parking because existing and proposed parking is adequate based on the shared parking study and parking survey. (Applicant Response, PDF p. 18.) For all the reasons discussed above, those studies are inaccurate, incomplete, and not substantial evidence. Applicant Response also claims there are no changes to the proposed number of hotel rooms and, thus, no nexus to require additional mitigation under Pub. Res. Code Section 30213. (Id., at PDF p. 27.) However, adding more luxury retail services will likely induce more visitors to utilize the beach and other coastal-dependent resources, making

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[26] See e.g., Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 10-13,16; Exh. K (10/18 Public Comment Letter #3, PDF pp. 6-12; Exh. O (11/1 Public Comment Letter #7), PDF pp. 52, 57.
[27] See e.g., supra fn. 11, 15; Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 15;
[28] Exh. R (10/9 Public Comment Letter # 8), PDF p. 1.
[29] Exh. S (10/9 Public Comment Letter # 10), PDF pp. 5.
[30] See e.g., Exh. A, p. 12.

them less available to the public. This is compounded by the potential impacts on public access (e.g., loss of parking, frustrated easements).

In sum, the issues mentioned above indicate the Project and Project Approvals are inconsistent with various Montecito Community Plan policies (e.g., PRT M-1.6), Coastal Act (e.g., Pub. Res. Code §§ 30211, 30213, 30253, 30252), and LCP policies (e.g., 2.4, 3.8).[31] The County Planning Commission failed to consider additional enhancements and mitigation measures addressing these issues.

C. POTENTIAL DIRECT AND INDIRECT GHG IMPACTS

Here, substantial evidence indicates the Proposed Project may have a significant GHG impact (i.e., exceeding the County's 3.8 MTCO2e/yr per service population threshold), which is masked due to flawed assumptions about the Proposed Project's service population (i.e., residents + employees).[32] The Applicant Response claims it is improper to conflate employee peak parking demand with the employee GHG study that looks at the total number of employees across all shifts. (Applicant Response, PDF p. 26.) However, the Applicant does not provide any factual basis to support its estimated employee service population of 11 full-time café employees and 50 employees for resort shops. There is no evidence showing that these 61 employees are full-time or part-time or that their time is exclusively associated with just the café/resort uses. Given that the Applicant assumes the proposed retail would be similar to existing retail uses, the Applicant could provide employee counts and time over a sufficient period to substantiate claims but fails to explain why such data cannot be provided. *(Cleveland National Forest Foundation, supra,* 17 Cal.App.5th at 441 [agency "obliged to disclose what it reasonably can ... [or] substantial evidence showing it could not do so."].) Furthermore, to the extent it relies on unsubstantiated traffic assumptions, the GHG study fails to accurately assess GHG impacts from mobile emissions. Nor does the study consider the adequacy of existing mitigation measures (i.e., TDM program) in the context of the cumulative impacts (i.e., successive changes to the Resort), which will be further exacerbated by the Proposed Project.

In sum, the issues mentioned above indicate that the Proposed Project will have a direct GHG impact (i.e., fails performance standard) and indirect GHG impacts (i.e., cumulative impacts associated with mobile emissions), which negates the use of an AB 1804 CEQA Exemption. (See Pub. Res. Code § 21159.25(b)(5).) The County Planning Commission failed to consider additional mitigation measures that could further reduce the Resort's GHG impacts, such as TDM strategies measures proposed by CARB, OPR, and CAPCOA that have the co-benefit of improving traffic, parking, and reducing air/GHG emissions.

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[31] See e.g., Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 10-13,16; Exh. K (10/18 Public Comment Letter #3, PDF pp. 6-12; Exh. O (11/1 Public Comment Letter #7), PDF pp. 52, 57.
[32] See e.g., Exh. A, p. 13.

D. POTENTIAL DIRECT AND INDIRECT ON PUBLIC SAFETY (E.G., FLOODING, EVACUATION) AND LAND USE COMPATIBILITY

Here, substantial evidence indicates concerns regarding the placement of affordable residential housing in a FEMA flood zone (i.e., northeast lot) and the need for an evacuation plan for this area (e.g., 2018 debris flow tragedy, sea-level rise risk, wildfire, etc.).[33] So too, numerous community members raised concerns about the incompatibility of the luxury retail center adjacent to the residential near the already-impacted Eucalyptus Lane/Jameson area (i.e., near the northwest lot). Many requested relocation of the proposed affordable housing to the northwest lot and relocating the commercial component to the northeast lot. Furthermore, many comments objected to the building height and proposed retail density as being inconsistent with applicable height requirements and the area's semi-rural/cottage aesthetic.[34]

In sum, the issues mentioned above indicate inconsistency with various Montecito Community Plan policies (e.g., LU-M-2.1, LUG-M-1.1, LUC-M-1.6, VIS-M-1.4,); Safety Element actions (e.g., 7.3.2, 7.3.3, 8.1.1); Coastal Act (e.g., Pub. Res. Code 30253(a)); and Code sections (e.g., SBCC §§ 35-81.4.2, 35-208.1 & .2, 35-81.1, 35-81.4).[35] The County Planning Commission failed to consider modifications to the Proposed Project's retail components that would not reduce residential densities.

E. OTHER CEQA ISSUES

Here, substantial evidence indicates the Proposed Project does not qualify for an AB 1804 CEQA exemption for a variety of reasons, including but not limited to the following issues:

1. Improper Project Piecemealing

Here, substantial evidence indicates the Applicant has piecemealed its retail expansion,[36] which is not allowed when utilizing an AB 1804 CEQA exemption. (Pub. Res. Code § 21159.27.) The Resort's retail component exploded from a single, 1,060-sf salon and attached sundry located within the Resort's main building (i.e., 2015 Approved Project) into about nine luxury retail establishments totaling 8,481sf in multiple structures (i.e., 2023 Modified Project), which will be expanded even further by adding another twelve establishments (i.e., 15,000 sf) plus a 2,500-sf café (i.e., Proposed Project). The increase in the square footage and number of establishments is relevant. While reasonable to assume a single 1,060-sf sundry/salon would primarily serve guests/public "already" onsite and not "draw special trips" to the Resort,[37] 20+ luxury retailers (roughly 21,000 sf total) and café (2,500 sf) is similar to a boutique shopping center that will likely draw special trips to the Resort. As such, this retail expansion is not "light commercial uses"

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[33] See e.g., Exh. A, p. 12; Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 10-13, 22; Exh. K (10/18 Public Comment Letter #3, PDF pp. 25-26.
[34] See e.g., Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF p 10.
[35] See e.g., Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 10-13,16; Exh. K (10/18 Public Comment Letter #3, PDF pp. 6-12; Exh. O (11/1 Public Comment Letter #7), PDF pp. 52, 57.
[36] See e.g., Exh. A, pp. 4-9; Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 6-23; Exh. K (10/18 Public Comment Letter #3), PDF pp. 8-##; See e.g., Exh. C (10/9 Public Comment # 3), PDF pp. 2; Exh. D (10/9 Public Comment Letter #4), PDF pp. 1; Exh. I (10/18 Public Comment Letter), PDF p. 2;
[37] See e.g., Exh. E (10/9 Public Comment Letter #6 (Dracht)), PDF pp. 16, 25-26, 37.

normally associated with, incidental, and directly oriented to the needs of visitors—contrary to the Coastal Zoning Ordinance. (See SBCC § 35-81.5.2.)

Applicant Response claims changes made to the Resort's retail uses were minor changes and, to the extent already approved, are part of baseline conditions, not warranting further consideration. (Applicant Response, PDF pp. 2-3, 5-6, 23.) However, the changes are significant when considering the added retail square footage that came at the expense of space primarily serving hotel guests (e.g., retail came at the expense of hotel rooms, fitness space, and private theater). Additionally, luxury retailers would draw special trips from visitors who are not already onsite. Furthermore, the added retail is a significant departure from the 2015 Approved Project, which intentionally minimized retail uses from 3,952 sf down to 1,060 sf (total including salon/attached beauty sundry).[38]

Under CEQA, piecemealing does not occur when "projects have different proponents, serve different purposes, or can be implemented independently." (*Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 280.) Here, the Applicant is the same proponent, and the County has consistently treated the entire 16-acre site as a single luxury Resort, which is comprised of a mix of uses, all serving as the Resort's onsite programming. Additionally, none of the uses can operate independently of each other due to the entire 16-acre site relying on a shared parking program. So too, the Resort's entitlement/CEQA history demonstrates that any modification to the Resort's onsite programming affects the Resort's inter-related shared parking program, which serves as a major constraint on the Resort site. Furthermore, both the 2023 Modified Project (i.e., staff-approved SCDs post-2015) and the current Proposed Project: (i) involve the same proponent; (ii) serve the common purpose of increasing traffic-inducing luxury retail uses; and (iii) are inter-related and dependent on the shared parking program. Essentially, through the staff-approved SCDs (i.e., authorizing the 2023 Modified Project) and the CPC-approved Project Approvals (i.e., the current Proposed Project), the Applicant has undone the Board's careful consideration to eliminate all traffic-inducing retail uses at the Resort (i.e., per the 2015 Approved Project).

Furthermore, to the extent impacts are part of the existing baseline conditions, it is nevertheless proper to evaluate a development's *exacerbating effects* on existing impacts. (See *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 194 [quoting *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377, 388].) Here, the County should consider whether the Proposed Project exacerbates existing impacts. CEQA also requires the consideration of *the cumulative effects* of successive projects of the same type in the same place over time that are significant, which negates the use of an AB 1804 CEQA exemption. (Pub. Res. Code § 21159.27(c)(1), CEQA Guidelines § 15300.2(b).) Here, the 2015 Approved Project, 2023 Modified Project, and current Proposed Project are in the same place and of the same type that may have a cumulative impact.

In sum, the Applicant has piecemealed its environmental review of the expanded retail uses at the Resort site, which needs to be considered in the context of the Proposed Project exacerbating existing impacts that may be cumulatively considerable.

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[38] Ibid.

2. ***Project Exceeds 5-Acre Maximum***

Here, substantial evidence indicates the Proposed Project should be considered as a modification to the 16-acre Resort, which exceeds the five-acre limit. (Pub. Res. Code § 21159.25(b)(3).) As explained above, the Applicant and County have consistently treated the entire 16-acre site as a single luxury Resort comprised of a mix of uses (i.e., programming) that are interrelated and cannot be independently implemented given the shared parking program. The Applicant Response claims the only physical change is to the approximate 3.1-acre parking lots and cites *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal App 5th 951, which involved a proposed 2.38-acre Costco gas station near an existing Costco warehouse on a 12-acre. (Applicant Response, p. 6.) However, that case is distinguishable. First, the Resort site is located in a semi-rural part of the unincorporated County area, intended to serve as an integrated luxury Resort—unlike the Costco shopping center (e.g., already-built, multi-tenant shopping center, located on major commercial thoroughfare, adjacent to a large expansive retail center). (*Protect Tustin Ranch, supra,* 70 Cal App 5th at 956-957.) Second, the Resort's mixed uses are all inter-related and cannot be independently implemented without a shared parking program to address parking shortfall—unlike the Costco case (e.g., no mention of parking shortfall or necessity for shared parking program, gas station would not change existing operations, no suggestion that parking for warehouse and other uses would be located primarily on gas station development site). (Id.) Third, the Resort's entitlement/CEQA history shows the modification to the Resort's programming should be considered a project change affecting the entire 16-acre Resort, and where the Board specifically considered and deliberately minimized traffic-inducing retail uses at the Resort—unlike the city in the Costco case (e.g., no mention whether City of Tustin considered prior iteration of the gas station project). Fourth, Local 11 also objects to other relevant criteria applicable to the claimed AB 1804 CEQA Exemption (e.g., project piecemealing, land use consistency, cumulative impacts, unusual circumstances, adverse impacts on transportation, parking, coastal resources, VMT/GHGs, etc.)—unlike the petitioners in the Cosco case that challenged "only one of the five criteria for the [Class 32] exemption ...." (Id., at p. 960.)

3. ***Project Appears Inconsistent with Applicable Land Use & Zoning Requirements***

Here, substantial evidence indicates the Project is not consistent with all applicable land use plans, policies, coastal provisions, and Code sections (as summarized/noted above),[39] which negates the use of an AB 1804 CEQA Exemption. (Pub. Res. Code § 21159.25(b)(1).)

4. ***Cumulative Impacts Were Not Adequately Considered***

Here, substantial evidence indicates that the *cumulative impact* of successive projects of the same type in the same place over time is significant, which negates the use of an AB 1804 CEQA exemption. (Pub. Res. Code § 21159.27(c)(1), CEQA Guidelines § 15300.2(b).) Here, the 2015 Approved Project and 2023 Modified Project are in the same place and of the same type as the Proposed Project, and there is substantial evidence that the Proposed Project will exacerbate existing impacts—particularly traffic, parking, GHG/VMTs, and impacts on coastal access. The

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[39] See e.g., Exh. H (10/9 Public Comment Letter # 5 (Chytilo)), PDF pp. 10-13,16; Exh. K (10/18 Public Comment Letter #3, PDF pp. 6-12; Exh. O (11/1 Public Comment Letter #7), PDF pp. 52, 57.

County Planning Commission failed to adequately consider these impacts or consider additional mitigation premised on accurate estimates.

5. Various Unusual Circumstances At Issue

Here, substantial evidence indicates a reasonable possibility of significant effects due to unusual circumstances involving the Resort site, which negates the use of an AB 1804 CEQA exemption. (Pub. Res. Code § 21159.27(c)(2), CEQA Guidelines § 15300.2(c).) First, the Proposed Project is inextricably linked to the 16-acre Resort, which cannot run independently of each other without the shared parking program covering the entire Resort. Second, the Resort site is located in a semi-rural community within the Coastal Zone that provides increasingly rare public parking. Third, the Resort already provides significantly fewer parking spaces than required by the Code, which adversely impacts the adjacent community and requires the unusual circumstance of the Resort securing additional off-site parking locations for its employees. Fourth, the Resort site presents unusual safety concerns, such as the FEMA flood zone (at the northeast lot) and concerns of a repeat of the 2018 debris flow tragedy following the extensive wildfires.[40] Fifth, there is the unusual circumstance that the entire Resort was subject to a prior CEQA review and approval process that included the County Board's explicit consideration and deliberately minimized traffic-inducing retail uses at the Resort site. The County Planning Commission failed to adequately consider these factors, which collectively indicate a reasonable possibility of significant effects on traffic, parking, coastal resources, VMT, and GHG emissions. Nor did the County consider additional TDM strategies, enhancements to the Parking Plan, or other parking solutions to address existing impacts exacerbated by the Proposed Project.

6. Supplemental CEQA Review Was Necessary

The Proposed Project is a modification of the Resort, which cannot be operated independently of the Project absent the shared parking plan, which should be considered in the context of the Resort's prior CEQA review. First, there is substantial evidence that the Resort has had significant changes since the 2000 Initial Project, 2015 Approved Project, 2023 Modified Project, and current Proposed Project. Second, there is a significant change in circumstances from the Resort pre-construction stage when the 2015 Approved Project was last considered by the Board (i.e., County anticipating and modeling operational impacts) to current conditions (e.g., several years of operational data now available). Third, there is significant new information regarding actual operations (e.g., traffic counts, parking space, inventory of employees, GHG mobile emissions, etc.) and the efficacy and potential for additional mitigation. These are valid grounds to supplement the Project's prior CEQA review. (Pub. Res. Code § 21166; CEQA Guidelines § 15162.) The County Planning Commission failed to consider this when it granted the Project Approvals without consideration of additional mitigation measures and modifications to minimize existing impacts exacerbated by the Proposed Project—including those that would not affect the Proposed Project's residential density (discussed further below).

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[40] Supra fn. 33; see also MPC Montecito Rebuild, https://www.countyofsb.org/700/Montecito-Rebuild.

7. ***Failure to Consider Project Alternatives and Mitigation Unrelated to Housing Density***

Here, substantial evidence indicates that mitigation and project alternatives are available that would not reduce the proposed "number of housing units," which have not been considered. (CEQA Guidelines § 21159.26.) Here, the issues raised in this Appeal could potentially be addressed through: (1) *revised traffic, parking, VMT, and GHG studies* relying on Resort-specific, substantiated data related to existing operations and proposed uses (e.g., actual employee inventory, parking/traffic counts, disclosed off-site parking usage, etc.); (2) *potentially adding new mitigation* (e.g., additional TDM measures, enhanced Parking Plan, other parking enforcement solutions, other VMT/GHG-reducing measures, etc.) based on those studies; and (3) *modifying the Proposed Project* by consolidating all *residential uses to the northwest lot* (i.e., all commercial/retail uses to the northeast lot) and considering *alternative uses to the proposed luxury retail center uses*.

None of the above three conditions would impact the number or density of housing of the Proposed Project or require denial of the five requested HAA Waivers. While the Applicant has verbally suggested modifications are financially infeasible, this office is unaware of any documentation showing revised studies, new mitigation, or modifications that would make the Resort financially infeasible. Such bald claims are not substantial evidence. (See e.g., Pub. Res. Code §§ 21080(e), 21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384.)

IV. CONCLUSION

Local 11 strongly supports housing but is concerned with the Planning Commission's approval of the Proposed Project that relies on a skewed view of the Proposed Project, ignores substantial evidence of existing impacts that the Proposed Project will exacerbate, and is based on an inadequate CEQA review that misapplies the AB 1804 CEQA Exemption. In doing so, the County failed to consider feasible mitigation measures and alternatives that would minimize impacts without affecting the Proposed Project's housing density or requested HAA Waivers.

Therefore, *Local 11 respectfully requests the County Board grant this Appeal and modify the Project Approvals by granting the Waivers and residential densities but requiring implementation of the following three requirements*:

1. Updated traffic, VMT, parking, and GHG studies that assess cumulative impacts at the Resort based on Resort-specific data (subject to public comment).
2. Consideration of enhanced/modified mitigation tied to said new studies, such as additional TDM strategies, enhanced Parking Management Plan components, additional parking solutions, and other measures that reduce VMTs/GHGs.
3. Modification of the Proposed Project that consolidates all residential uses to the northwest lot, commercial/retail uses to the northeast lot, and uses a less traffic-inducing use than the currently proposed retail use (that will likely function as luxury retail shopping center).

Local 11 reserves the right to supplement these comments at future hearings and proceedings for this Project. (See e.g., *Cmtys. for a Better Env't*, 184 Cal.App.4th at 86; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120.) On behalf of Local 11, this Office requests, to the extent not already on the notice list, all notices of CEQA actions and any approvals, Project CEQA determinations, or public hearings to be held on the

Project under state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. (See Pub. Res. Code §§, 21092.2, 21167(f) and Gov. Code § 65092.) Please send notice by electronic and regular mail to Jordan R. Sisson, Esq., at the address identified on the cover page.

Thank you for your consideration of these comments. Do not hesitate to contact me directly if you have any difficulty retrieving any referenced. Upon request, this office can provide a full (unabbreviated) hyperlink or hardcopy of any referenced document. We ask that this Appeal letter and any attachments are placed in the administrative record for the Project.

Sincerely,

Jordan R. Sisson
Attorney for Local 11

EXHIBITS INCOPORATED INTO THIS APPEAL:

ATTACHED EXHIBITS:

Exhibit A:[41] 10/9 Local 11 Comments

HYPERLINKED EXHIBITS:

Exhibit B:[42] 11/5 Planning Letter
Exhibit C:[43] 10/9 Public Comment # 3
Exhibit D:[44] 10/9 Public Comment Letter #4
Exhibit E:[45] 10/9 Public Comment Letter #6 (Dracht)
Exhibit F:[46] 10/9 Public Comment Letter #6
Exhibit G:[47] 10/9 Public Comment Letter #7
Exhibit H:[48] 10/9 Public Comment Letter # 5 (Chytilo)
Exhibit I:[49] 10/18 Public Comment Letter
Exhibit J:[50] 10/18 Public Comment Letter #2
Exhibit K:[51] 10/18 Public Comment Letter #3

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[41] https://www.dropbox.com/scl/fi/c2j5zm7e2wpopif6k07t5/PC-Comments.Miramar-Comments.final.pdf?rlkey=ubh27ip5y1va1ltrh4taretvt&dl=0.
[42] https://www.dropbox.com/scl/fi/c2j5zm7e2wpopif6k07t5/PC-Comments.Miramar-Comments.final.pdf?rlkey=ubh27ip5y1va1ltrh4taretvt&dl=0.
[43] https://cosantabarbara.app.box.com/s/q97rv82305oyfnbdjhcyxrrdhu3dgkqy/file/1664627288554.
[44] https://cosantabarbara.app.box.com/s/q97rv82305oyfnbdjhcyxrrdhu3dgkqy/file/1666856375146.
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[51] https://cosantabarbara.app.box.com/s/o4z9jfqjpg3h2gp4h9u3zfjicvz4qcld/file/1673759822189.

Exhibit L:[52]	10/18 Public Comment Letter #4
Exhibit M:[53]	10/18 Public Comment Letter #5
Exhibit N:[54]	11/1 Public Comment Letter #5
Exhibit O:[55]	11/1 Public Comment Letter #7
Exhibit P:[56]	11/1 Public Comment Letter #8
Exhibit Q:[57]	11/1 Public Comment Letter
Exhibit R:[58]	10/9 Public Comment Letter # 8
Exhibit S:[59]	10/9 Public Comment Letter # 10
Exhibit T:[60]	10/30 Applicant Submittal

[52] https://cosantabarbara.app.box.com/s/o4z9jfqjpg3h2gp4h9u3zfjicvz4qcld/file/1673838349807.
[53] https://cosantabarbara.app.box.com/s/o4z9jfqjpg3h2gp4h9u3zfjicvz4qcld/file/1674788505348.
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[59] https://cosantabarbara.app.box.com/s/q97rv82305oyfnbdjhcyxrrdhu3dgkqy/file/1668690059371.
[60] https://cosantabarbara.app.box.com/s/q97rv82305oyfnbdjhcyxrrdhu3dgkqy/file/1687290122360.

EXHIBIT A

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October 9, 2024

VIA EMAIL:

Planning Commission, County of Santa Barbra
c/o Planning Commission Recording Secretary (dvillalo@countyofsb.org)

RE: ITEM 2, PLANNING COMMISSION HEARING SCHEDULED OCTOBER 9, 2024; MIRAMAR HOTEL MIXED-USE DEVELOPMENT REVISION (1759 S. JAMESON LN., 93108); CASE NOS. 24RVP-00050, 24RVP-00051, 24AMD-00008, & 24CDP-00077

Dear Chair Martinez and Planning Commissioners:

On behalf of UNITE HERE Local 11 ("**Local 11**"), this office respectfully provides the following comments[1] to the County of Santa Barbra ("**County**") regarding the proposed 34 residential units (8 market rate units and 26 affordable employee units) and 17,500 square feet ("**sf**") of commercial space (15,000 sf of resort shops and a 2,500-sf café) ("**Project**") located within the 16-acre Miramar Beach Resort ("**Resort**"), which opened in 2019 after numerous changes and iterations during its lengthy entitlement history dating back to 2000.

According to the above-referenced item "**Staff Report**,"[2] the Project applicant Miramar Acquisition Co, LLC ("**Applicant**") is seeking various project approvals under the Santa Barbara County Code ("**SBCC**" or "**Code**"), including multiple revisions and amendments to previously issued Development Plan and Conditional Use Permits ("**CUP**(s)") (collectively "**Entitlements**"). (Staff Report, pp. 1-2.) The Project also requires a Coastal Development Permit ("**CDP**") per the California Coastal Act (Pub. Res. Code § 30000 et seq.) ("**Coastal Act**"). (Id., at p. 10.) Additionally, for the purposes of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) ("**CEQA**"),[3] the County is considering whether the Project qualifies for a statutory exemption authorized under Assembly Bill 1804 (Stats 2018, ch 670) ("**AB 1804**") for residential/mixed-use development for infill/urbanized county areas, which sunsets at the end of 2024 (Pub. Res. Code § 21159.25) ("**Exemption**"). (Id., at p. 13-14.) Furthermore, the Project is being processed under the Housing Accountability Act (Gov. Code § 65589.5) ("**HAA**") and seeks waivers from five Code requirements (collectively "**Waivers**") based on State Density Bonus Law (§§ 65915-65918) ("**SDBL**"). (Id., at pp. 3-6.) Herein, "**Project Approvals**" include the Entitlements, CDP, Exemption, Waivers, and Project as a whole.

In short, Local 11 supports housing and hotels that provide onsite employee housing opportunities that offset the induced housing demand caused by operations. This has the added benefit of reducing the vehicle miles traveled ("**VMT**(s)") and associated air and greenhouse gas ("**GHG**") emissions. However, as discussed further below, this Resort appears to rely on decades-old reviews (dating back to 1992), and untested assumptions (merely 100 employees on site) and fails to consider how an 896-sf tennis/sundries shop (proposed in 2000) is anything remotely like eight

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[1] Herein, page citations are either the stated pagination (i.e., "**p. #**") or PDF-page location (i.e., "**PDF p. #**").
[2] Inclusive of all attachments ("**ATT-##**") provided via County website. (See https://app.box.com/s/q97rv82305oyfnbdjhcyxrrdhu3dgkqy/folder/286225175783.)
[3] Including "**CEQA Guidelines**" codified at 14 Cal. Code. Regs. § 15000 et seq.

luxury shops (roughly 8,500-sf currently existing today), much less the total of 20+ luxury shop and food establishments proposed under the current Project (that adds 17,5000 sf of more luxury resort shopping and food service). For decades, the Applicant—a well-known developer and operator of regional-serving, luxury retail projects—has sought to increase its retail/commercial uses. Now, the Applicant appears to be focusing on the housing component of the Project in order to rely on the SDBL and a soon-expiring CEQA Exemption (which sunsets at the end of the year). However, substantial evidence shows that this Project is inter-related and tied to the larger Resort development dating several decades, and potentially causes project-specific and cumulative impacts related to VMTs, GHGs as well as potentially conflict with public access policies under the Coastal Act, like the California Coastal Commission ("**CCC**") policies on lower-cost overnight accommodations ("**LCOA**(s)"). Additionally, there is substantial evidence that the Project is inconsistent with objective zoning height standards and flood safety concerns.

Despite substantial evidence showing the County could deny the Project, Local 11 is supportive of housing development and urges the County to consider a feasible "**Project Alternative**" to the Project design. As further described below, the current Project design includes two, two-story buildings with resort shops on the ground floor and market-rate housing on the second floors, and subterranean parking below (i.e., Building A and B on the Resort's Northwest Lot); and one three-story building with affordable units spread throughout and massive elevated parking deck supporting parking for most of the Resort parking (i.e., Building C on Northeast Lot). The Project Alternative would eliminate the luxury resort uses, reduce Building C's third floor, and relocate the housing across both lots across all three buildings. Alternatively, Local 11 would support other iterations that maintain proposed residential densities (perhaps even more), subject to the Resort not adding any further luxury, region-serving retail until an adequate CEQA review has been conducted, a holistic assessment of Resort operations, and considerations of further mitigation measures and other strategies to minimize impacts (such as improving on the Resort's inadequate Traffic Demand Management ("**TDM**") program that is achieving only a 20 percent participation rates).

We thank the staff for accommodating this office's request for certain Resort documents, which are still being assessed. Local 11 reserves the right to supplement these comments in the future. In the meantime, Local 11 urges the County to consider a Project Alternative in light of the following comments, which include eight chief concerns (see Section III below).

I. BACKGROUND ON CEQA & AB 1804 EXEMPTION

PURPOSE OF CEQA: CEQA requires lead agencies to analyze the potential environmental impacts of its actions in an environmental impact report ("**EIR**"), which is the very heart of CEQA. (See Pub. Res. Code § 21100.[4] see also.) The *foremost principle* in interpreting CEQA is to afford the fullest possible protection to the environment with a fundamental goal of information, participation, mitigation, and accountability.[5] The dual purpose of CEQA is to, one, *inform decision makers* and the public about the potentially significant environmental effects of a project and, two, avoid or reduce environmental damage by requiring the implementation of *environmentally superior alternatives and all feasible mitigation measures*. (See CEQA Guidelines § 15002(a)(1) - (3).)

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[4] See *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.
[5] See e.g., *Cmtys. for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109; *Lincoln Place Tenants Ass'n. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 443-44 (citing CEQA Guidelines § 15002)].

STANDARD OF REVIEW FOR SUBSEQUENT REVIEW: Under CEQA, once an EIR has been prepared, a subsequent or supplement EIR is required for granting a later discretionary approval when there have been: (i) substantial changes to the project, (ii) substantial changes in the circumstances involving the project, or (iii) significant new information involving the project. (See Pub. Res. Code § 21166; CEQA Guidelines § 15162.) Numerous courts have required supplemental CEQA review where a prior EIR fails to analyze significant changes in a future project or where there are previously unanalyzed or increased significant impacts.[6]

AB 1804 CEQA EXEMPTION REQUIREMENTS: The AB 1804 Exemption is one of the few special, streamlined review provisions for housing projects under Article 6 (Special Review of Housing Projects) of Chapter 4.5 (Streamline Environmental Review) of Division 13 of the Public Resources Code (i.e., CEQA). As such, Article 6 includes the following general provisions:

1. **Housing Density Reductions as Mitigation**: A public agency may not reduce the proposed "number of housing units" as a mitigation measure for an environment impact if there is another feasible specific mitigation measure or project alternative available. (Id., § 21159.26.) This section, however, does not affect any other requirements regarding residential density of a project. (Id.)
2. **Project Piecemealing**: 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.)

The AB 1804 Exemption was passed in 2018, *sunsets January 1, 2025,* and is intended to streamline housing projects located in urban, infill county areas. (Pub. Res. Code § 21159.25.) Generally, to qualify, the project must meet the following criteria (supported by substantial evidence):

3. **Residential Project**: Project must meet the definitions of a "residential or mixed-use housing project" (subd. (a)(1));
4. **Urban Site**: Site located on legal parcel, no more than five acres, and substantially surrounded by urban uses (subds. (a)(2), (b)(3), (b)(7));
5. **Zoning Consistency**: Be consistent with applicable general plan and zoning designations, policies, and regulations (subd. (b)(1));
6. **Residential Density**: Contain at least six residential units, have a minimum density of six dwelling units per acre, and density cannot be less than the density of nearby adjacent properties (subd. (b)(2));
7. **ESHA**: Site does not include environmentally sensitive habitat areas (subds. (b)(4));
8. **Utility Service**: Site can be served by all required public utilities and service (subd. (b)(6));
9. **Environmental Impacts**: Not result in significant impacts on transportation, noise, air quality, GHG, or water services (subd. (b)(5));
10. **Exceptions to Exemptions**: None of the CEQA exceptions to the exemption to the exception apply (e.g., cumulative impacts, unusual circumstances, scenic resources, located on Cortese list, historic impacts) (subd. (c)(1)-(5); see also CEQA Guidelines § 15300.2(b)-(f)).

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[6] See e.g., *American Canyon Community v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1073 (increase in size and project changes is substantial change triggering subsequent environmental review); *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 934 (public entity violated CEQA when it failed to prepare a Supplemental EIR for significant project changes and new information).

SUBSTANTIAL EVIDENCE STANDARD: Under CEQA, 'substantial evidence' includes facts, reasonable assumptions predicated upon fact, or expert opinion supported by fact; it does not argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. (See e.g., Pub. Res. Code §§ 21080(e), 21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384.)

II. BRIEF PROJECT DESCRIPTION & PROJECT HISTORY

As shown below, the Project proposes redevelopment of the Resort's two existing surface parking lots, referred to as the "**Northwest Lot**" and "**Northeast Lot**" (shaded in yellow) within the Resort's existing site plan (bounded in red). Of note, the 12 new resort shops (totaling 15,000-sf) are proposed on the ground floor of Buildings A & B on the Northwest Lot.

Figure: Project Site[7]

Northwest Lot: Includes two, two-story (33'-5" max) buildings referred as Building A and B, which together contains: (i) eight (8) *market rate housing* rental units; (ii) 12 *resort shops* totaling 15,000 sf; (iii) 2,500-sf café; and (iv) 79 *subterranean* parking spaces.	**Northeast Lot**: Includes one, three-story (40'-9" max) building referred as Building C, which includes 26 affordable employee apartments (19 studio, one 1-bed, and six 2-bed) totaling 19,102 sf. The lot will also include 350 reconfigured parking spaces utilizing an elevated parking deck with an approximate 11,682-sf footprint (118' by 99') and will be about 17 feet tall.

[7] Staff Report, pp. 10-11; ATT-I (Historic Report), pp. 4-5; ATT-E (Project Plans), PDF pp. 6, 17-18, 20, 23-24.

The Staff Report includes background information of the Resort's prior approvals dating back to 2015, and other changes made via Substantial Conformance Determinations ("**SCD(s)**"). (Staff Report, pp. 7-10.) Missing, however, is the Resort's lengthy entitlement and CEQA history dating back to 2000, which is also missing from the CEQA Notice of Exemption (ATT-C of the Staff Report). Some of this can be gleaned from various County documents recently released by County staff and/or retrieved from multiple Board of Supervisor Files ("**Board File**") online, such as: the addendums to the previously prepared 2000 Mitigated Negative Declaration (No. 00-ND-003) ("**MND**"), 2008 Supplemental Environmental Impact Report focused on historic impacts only ("**SEIR**"),[8] and various traffic memos from Associated Transportation Engineers ("**ATE**"). For the sake of brevity, the chart below lists notable iterations of the Miramar Resort development proposals since 2000, many of which were planned but not carried out until around 2016.

Table: Resort History
Historic Miramar Hotel (pre-2000 closing):[9] – The existing Resort site included 213 cottage/guest rooms, two employee dwelling units, a 193-seat restaurant, a 140-member tennis club, a spa, a 725-seat banquet hall, 390 parking spaces, etc.
2000 Original Schrager Plan (see Renderings, Landscape Plan, Site Plan):[10] – Applicant's predecessor proposed an initial plan (but not carried out), incldluing 213 *renovated* guest rooms (only eight were planned for replacement), four employee units, only 896-sf retail (i.e., tennis & sundries shop next to courts), replace some buildings, 15-month construction schedule. – Note, this plan intended to remove, *reconstruct or refurbish* buildings to make them "more *reminiscent of the early resort days* when the *small cottages were surrounded by lawns*, flowers, and shrubs—with a *primary goal* was *maintaining current intensity* of usage, *no increase in employees* with roughly 100 onsite at any given time.[11] – CEQA review included the 2000 MND, which tiered off the 1992 Montecito Community Plan Environmental Impact Report ("**MCP EIR**"), generally assessing then-baseline conditions.[12] –
2008 New Caruso Plan (see Board File No. 08-01055):[13] – Applicant proposed new plan (but not carried out), demolition all buildings, 192 replaced guest rooms, four employee dwelling units, 4,978-sf retail in five village structures, required "cottage" type buildings limited to two-stories. – Note, that retail was assumed *incidental and geared towards hotel guests*, and could be used by neighbors in the *immediate vicinity* (e.g., beach recreation, boogie boards, magazines, candy, bakery, etc.). Also assumed only 102 onsite employees and a cottage-

[8] See 2008 SEIR/MND Addendum, PDF pp. 1 (2008 MND Addendum), 72 (2000 MND), 169 (2008 SEIR).
[9] See 2008 SEIR/MND Addendum, PDF pp. 75, 81-82 (discussed in 2000 MND).
[10] Ibid., PDF pp. 72-76 (2000 MND), 81-82 (2000 MND hotel operations), 173-175 (2008 SEIR executive summary), pp. 184-185 (2008 SEIR project description), pp. 205-209 (comparison between Schrager Plan and Caruso Plan).
[11] 2008 SEIR/MND Addendum, PDF pp. 73, 81.
[12] Ibid., PDF p. 86 (2000 MND referenced 1992 MCP EIR); see also 1992 MCP EIR.
[13] 2008 SEIR/MND Addendum, PDF pp. 5, 8-9, 173, 184-185, 188, 200.

type structures. Also, a payment of approximatly $1.4 million was required to offset LCOAs (based on new rooms).[14] – CEQA review included the 2008 SEIR (focused only on historic impacts) (**"SEIR"**), and an addendum to the prior 2000 MND.
2010 Time Extension on Permits (Board File No. 10-00216):[15] – Note, extend time on permits associated with the Caruso Plan, public requests regarding removal of existing structures to alleviate fire/safety risks associated with the vacant site (due to the Resort closing around 2000), and delay payment of LCOA in-liue fees.
2011 Amended Caruso Plan (Board File Nos. 11-00178 & 11-00179):[16] – Citing financial constraints, Applicant proposed an amended plan (but not carried out) that now included 186 guest rooms, four employee units, eliminated tennis courts, and included 3,952-sf of retail consolidated into the main building (among other components). – Note, this plan still assumed 102 employees onsite and retail incidental to guests, and the LCOA fee was adjusted accordingly by reducing the number of rooms, which totaled roughly $ 1.39 million. – CEQA review included 2011 Addendum to prior SEIR/MND
2012 Time Extension on Permits (Board File Nos. 12-00159 & 12-00187):[17] – Note, Applicant sought to extend time on permit associated with the amended plan (still not built), continued safety concerns regarding dilapidated buildings left vacant, and some advocating for and against City subsidy to help Applicant develop Resort.
2015 Amended Caruso Project (Board File Nos. 15-00258):[18] – To improve compatibility with the surrounding community, Applicant proposed another amended plan that reduced the scale of the Resort, now including 170 guest rooms (from 186), 1,060-sf of retail/salon space, and a theater intended for guests (among other changes). – Note, that the plan still assumed only 102 employees onsite, and retail would be incidental to guests and would not draw special trips to the Resort. – CEQA included a 2015 Addendum to prior MND. – Construction seemingly commenced after County's 2015 approval.
2020 Project Change (via SCD Nos. 16SCD-00000-00044, 17SCD-00000-00003 & 00041):[19] – Leading up to 2020, Applicant sought plan changes via SCDs that reduced to 161 rooms and eliminated/converted theater space into 3,518-sf retail.

[14] See 2008 Conditions of Approval, PDF p. 104 (condition 81).
[15] See Board Letter, pp. 2
[16] See 2011 SEIR/MND Addendum, PDF pp. 2-4, 9, 13-14, 24.
[17] See e.g., Montecito Association (citing dilapidated buildings); Santa Barbara County Taxpayers Association (for subsidy); Santa Barbara Region Chamber of Commerce (same); Greater Santa Barbara Lodging & Restaurant Association (against subsidy); Inn of the Spanish Gardens (against subsidy floated by developer).
[18] 2015 SEIR/MND Addendum, PDF p. 2; see also Planning Commission Staff Report, PDF pp. 11, 14, 21, 33; see also 2015 Conditions of Approval, PDF pp. 3-4, 14-15, 25-26.
[19] Staff Report, pp. 8-9; 2021 ACE Traffic Memo, pp. 1-2; 2023 ACE Traffic Memo, pp. 1-2.

2021 Project Change (via SCD No. 21SCD-00000-00020):[20] – In 2021 (via SCD approval), Applicant reduced rooms to 154 by converting seven existing guest rooms into 3-5 retail spaces (in Bungalow Building #1 & #3) totaling 6,227 sf of retail, and added a new 50-seat sushi restaurant.
2023 Project Change (via SCD Nos. 23SCD-00007):[21] – In 2023 (via SCD approval) Applicant converted 743 sf of fitness center into additional resort shop, allowed expansion and reconfiguration of previously approved retail spaces, which now total 8,481-sf.

III. PROJECT CONCERNS

1. SIGNIFICANT RESORT CHANGES & CUMULATIVE IMPACTS MAY WARRANT A SUPPLEMENTAL EIR.

As discussed above, the Resort has undergone numerous changes, which raises concerns about whether impacts have been holistically assessed. For example, the original 2000 Schrager Plan (i.e., 213 renovated rooms, 896-sf tennis shop, other uses) assumed traffic and associated air quality impacts would be largely comparable to 1992 baseline conditions and imposed basic transportation demand measurement (**"TDM"**) measures.[22] By 2008 (after years of historic Miramar being closed), in considering the Applicant's new Caruso plan (entire demolition and new development of Resort), the 2008 MND Addendum assumed a baseline condition as if the Schrager Plan was carried out (i.e., 213 rooms), finding it roughly equivalent to the then-proposed Caruso Plan (i.e., 192-room served by 102 employees), and imposed basic annual parking plan reporting requirements.[23] Similar approaches have been used for subsequent Applicant plan proposals between 2008 and 2015, which saw few, if any, new air quality and traffic mitigation.[24] Since 2015, similar approaches have been used in parking studies to justify room reductions and shifting of square footage, including the expansion of resort retail and restaurant space.[25] Based on a limited review of these records, we have the following concerns:

First, *more than 30 years have passed since the 1992 MCP EIR was prepared*, and the Resort has undergone significant changes on paper (2000-2015) and during construction/operations (2015-2023), which includes fundamental differences between a once-LCOA hotel and the now-luxury resort.

Second, *the Applicant agreed to changes between its 2011 and 2015 plans*, which explicitly called for a *single sundry boutique* and salon (totaling 1,060 sf) and private screening theater for hotel guests only. (See excerpts of conditions in figure below.[26]) Yet, through SCD, the Resort has

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[20] Staff Report, pp. 8-9.
[21] Ibid.
[22] 2008 SEIR/MND Addendum, PDF pp. 48, 94-102 (air quality), 149-157 (traffic), p. 153 (assumed only 10 additional non-guest/member visits).
[23] Ibid., at 44-53.
[24] 2011 MND Addendum, PDF pp. 28-29 (air quality), 35-36 (comparing 192-room Caruso plan (2008) versus 186-room Caruso plan (2011)); 2015 MND Addendum, PDF pp. 6-7 (air quality), 9-11 (comparing 186-room Caruso plan (2011) versus 170-room Caruso plan (2015)).
[25] Staff Report, pp. 8-9; 2021 ACE Traffic Memo, pp. 1-2; 2023 ACE Traffic Memo, pp. 1-2.
[26] See also Planning Commission Staff Report, PDF pp. 11, 21, 33.

eliminated the guest-only serving theater, reduced hotel rooms (also guest serving), but added *eight luxury retail establishments* (totaling nearly 8,500 sf).

Third, while estimating future trip rates is reasonable prior to development, the *Resort has been operational since around 2019*, which is a significant change in circumstances allowing the County to assess actual trip rates and confirm fundamental assumptions (e.g., trip rates, onsite employees, etc.).[27] It is also unclear whether the County has considered the annual parking/traffic reports required to be submitted by the Resort.[28]

Fourth, the Resort's *TDM program has experienced only a 20 percent participation* rate (ATT-H, p. 5), which seems ineffective for a previously adopted mitigation measure and may require consideration of additional measures.[29]

Figure: Project Conditions for 2015 Amended Caruso Project[30]

ATTACHMENT 2: PROJECT SPECIFIC CONDITIONS
Case No's: 14RVP-00000-00063, 14CDP-00000-00086, 14CDP-00000-00090, 14CDP-00000-00091

1. PROJECT DESCRIPTION:

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Project Component	2011 Approved Project (186 key)	Proposed Revised Project (170 key)
Beach Club	3,206 SF (at the oceanfront)	3,870 SF (at the oceanfront)
Retail	3,952 SF	Included in main building SF above (1060 total in retail & salon)

###

Hotel Retail

The Main Building would include a single guest serving/sundries style small retail boutique plus a small guest serving salon within the Main Building. The total retail space has been reduced from 3,952 square feet to 1,060 square feet (retail plus salon).

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Theater Building

The proposed new theater building would operate as a private screening room and conference space for guests of the hotel only and would not be open to the public.

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[27] While the studies mention "data" from existing resorts shops (ATT-J, p. 5, ATT-H, p. 2), that data does not appear to be included.
[28] See 2015 Project Conditions, PDF pp. 32-33 (TDM Program).
[29] See 2015 Project Conditions, PDF pp 48 (Parking Plan).
[30] See 2015 Project Conditions, PDF pp. 1, 4, 14-15.

In sum, these factors suggest there may have been significant changes to the Resort, its circumstances, and information relevant to impact mitigation that should be considered in a Supplemental EIR. (See Pub. Res. Code § 21166; CEQA Guidelines § 15162.) So too, the numerous changes to the Resort, in combination with the proposed Project, may have a cumulative impact that would negate the use of an AB 1804 Exemption. (Pub. Res. Code § 21159.25(c)(1).)

2. COUNTY NEED TO ADDRESS REGIONAL-SERVING, LUXURY SHOPPING USES & HOTEL STAFFING ASSUMPTIONS.

An accurate and complete project description is foundational to fulfilling CEQA's purpose, by providing the public and decisionmakers with adequate information to provide a transparent impact assessment.[31] Here, the Staff Report suggests the proposed retail is primarily guest serving, like the existing previously approved retail uses, and will not substantially change the character of the Resort. (Staff Report, pp. 7, 9, 12, 27.) This is fundamental to the Project's CEQA analysis, which assumes that the proposed retail will have very low trip generation rates (i.e., commonly used ITE rates).[32] However, substantial evidence suggests that this retail is regional-serving, luxury shopping, which may have more trip generation, associated emissions, VMTs, and parking demand.

First, *similar assumptions about retail being local serving were made leading up to the 2015 Resort iteration* when the plan was for a single sundry/salon (totaling 1,060-sf) (see figure above), and again leading up to the current eight shops (totaling 8,481 sf).[33] Yet, establishments are clearly advertised as boutique luxury-brands establishments,[34] which is meaningfully different from what was initially considered in 2000 (i.e., tennis/sundry shop) or 2008 (e.g., immediate neighboring services needs like beach towels, boogie boards, magazines, candy, visitor information, etc.).[35] While a single-sundry next to a salon is likely to be incidental to hotel guests already staying at the Resort, the proposed cluster of 12 new resort shops and café located on the Northwest lot is far more akin to a shopping center, which has a much higher trip generation that a single apparel store (as assumed in the traffic study discussed further below in section 3).

Second, *the County should consider how adding a luxury shopping component would significantly change the Resort's traffic profile, as compared to what was assumed in 2015*. In 2015, it was reasonable to accept that a single, 1,090-sf salon/sundry would not attract many trips to the Resort (beyond hotel guests already staying at the site). However, the Resort now includes eight luxury stores (discussed above) with three eateries (i.e., family dining, fine dining, sushi),[36] with a Project proposing to add another 12 retail stores and one café. Combined, this would be 24 high-end luxury establishments (i.e., 20 luxury retailers and four food/restaurant establishments), which can attract significant trips to the Resort (beyond just hotel guests). (Staff Report, p. 28; ATT-J, pp. 1-4.)

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[31] See e.g., *San Joaquin Raptor Rescue Ctr. v. Cnty. of Merced* (2007) 149 Cal.App.4th 645, 654-55 (accurate stable project description is sine qua non of an informative and legally sufficient CEQA review); *Western Placer Citizens for an Agr. and Rural Env't v. Cnty. of Placer* (2006) 144 Cal.App.4th 890, 898.
[32] See ATT-H, PDF pp. 2, 4, 34 (analyzed as apparel shop),
[33] See 2023 ATE Traffic Memo, p. 4 (resort shop to "accommodate the convenience of the resort guests.)
[34] See Rosewood Miramar Beach Website, Resort Retail (advertising Loro Piana, Bottega Veneta, Zegna, Brunello Cucinelli, Laykin Et Cie, etc.).
[35] 2008 SEIR/MND Addendum, PDF pp. 5, 188-89.
[36] See ATT-J, p. 4.

Third, a *luxury shopping component can draw significant trips*. Luxury shopping is trending, where patrons are looking for unique shopping experiences.[37] As discussed above, the Project and existing conditions could total 24 high-end establishments, which would be similar to some of the Applicant's well-known luxury shopping centers (often featuring 20+ shops and restaurants).[38] Furthermore, unlike retail contained within the existing hotel building, the proposed Project would construct two stand-alone buildings located at the Resort's prominent corner right off the 101 freeway.

Fourth, *it is time to reassess the assumptions about the Resort's staffing needs (capped at roughly 100 onsite employees).* This assumption dates back to 2000 under the Original Schrager Plan when the intent was to maintain operations and simply refurbish the Resort.[39] Despite the significant changes to the Resort (both on paper and in function), the Applicant still assumes the maximum number of employees on the Resort would be roughly 100 employees at any given time. (Staff Report, p. 7.) While estimating staffing needs may have been justified back in 2015 (when the Resort was still being planned), the Resort is now built and operational and can provide more accurate staffing data, traffic, and parking data. It is unclear if that has been done by County decision-makers or been subject to any public vetting, which should be done before the County authorizes more commercial uses on the Resort. This review should consider all uses and account for the various changes to the Resort's operations post-2015 through the present (including pre- and post-COVID circumstances).

In sum, these issues suggest the Project may not have been accurately described and analyzed in the appropriate context of other changes made to the Resort's operations, which would be contrary to CEQA. So too, the recent serial changes made to the Resort's luxury retail space suggest potentially improper project piecemealing under CEQA or the AB 1804 Exemption. (Pub. Res. Code § 21159.27.)

3. Traffic & Parking Impacts May Affecting Coastal Access.

Here, the Applicant claims no traffic impacts to the level of service ("**LOS**") or parking. (Staff Report, pp. 19-21; ATT-H [Traffic & VMT Study]; ATT-J [Parking Study].) However, the LOS analysis assumed the retail component would have a trip generation akin to an apparel store (ITE Code 876), then cut in half (assuming 50% would be internal hotel guests), and reduced by another 40 percent (assumed pass-by trips). (ATT-H, PDF pp. 2, 4, 34.) While claiming this trip rate was 75 percent lower than what "Data from ... Miramar show" (id., at p. 2), the Staff Report does not provide the documentation supporting this claim, which is not substantial evidence.

First, as previously discussed, the proposed resort shops may function as a regional-serving, luxury shopping center, which *could generate trips more akin to the levels of a retail strip plaza* (i.e., ITE Code 822) or shopping plaza (ITE Code 821).[40] In fact, the traffic study cited ITE Code 821 when applying hourly trip rates (ATT-H, PDF p. 36), and the Project's GHG Study utilized the retail strip

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[37] See e.g., CNBC, Gen Z is driving luxury sales as wealthy shoppers get younger; RetailNext: Tracking the Evolution of Luxury Retail.
[38] See e.g., Caruso Signature Website, Explore Our Destination (listing in its portfolio: The Commons at Calabasas, The Promenade at Westlake [Thousand Oaks], The Waterside at Marina Del Rey).
[39] See 2008 SEIR/MND Addendum, PDF pp. 73, 81.
[40] See e.g., WisDOT Letter RE: Trip Generation Manual 11th Ed. Guidance on Application, pp. 2, 8; Phoenix Oregon Chart RE: PM Peak Hour Generation Rates, pp. 3.

plaza rates,[41] which supports the rationale of applying similar trip generation rates for traffic generation.

Second (also mentioned earlier), *it is unclear whether the Resort's fundamental assumption that onsite employees are limited to 102 is accurate*. For example, the parking study assumes that the Project's proposed 2,500-sf café would require only five employees (ATT-J, p. 4), but the Project GHG Study assumes that it will require 11 full-time employees.[42] This is factually inaccurate and seemingly self-serving. Furthermore, it is difficult to surmise why it would take 11 full-time employees to run a single safe (purportedly primarily serving guests), at the same time, it would only take 50 employees to run the 154-room hotel (as suggested in the Parking Study). (ATT-J, p. 4.)

Third, *these issues also infect the Project's parking analysis*, which calls for an addition of only 45 parking spaces to the existing 435 spaces provided. (See ATT-J, pp. 4-3.) Together, this may cause an underassessment of the Resort's cumulative onsite parking demand. This is significant because it can lead to spillover effects, whereby Resort patrons take up the public parking spaces along Eucalyptus Lane and South Jameson Lane.[43] This may conflict with Coastal public access policies,[44] which negates the use of an AB 1804 Exemption. (Pub. Res. Code § 21159.25(b)(1).)

In sum, the proposed Project Alternative would address these LOS and parking impacts.

4. VMT IMPACTS NEED MORE CONSIDERATION, INCLUDING ENHANCED TDM MEASURES.

Here, the Applicant claims there will be no VMT impact. (Staff Report, pp. 19-21.) However, this was based on the County's VMT calculator, which screens out all commercial uses under 50,000 sf. (Id.; ATT-H, PDF pp. 18-20.) This is a presumption that only applies absent substantial evidence.[45] Here, as discussed above, there is substantial evidence that the Project's commercial uses would be regional serving and thus warrants an actual VMT analysis. This should also consider the cumulative VMT impacts of the Resort as a whole to consider feasible mitigation.

Additionally, it is worth noting that the VMT analysis seems to mischaracterize the Resort as being within 10 minutes of two bus stops. (Id., at PDF p. 60.) These two stops are both north of the 101 freeway, about a 27– to 38-minute walk (based on Goole Maps).[46] Furthermore, as mentioned earlier, the Resort is achieving only a 20 percent participation rate in its TDM program.

In sum, more analysis seems warranted, which should include an actual VMT study looking at the collective VMT impact of the Resort. This is also relevant because a traffic impact negates the use of an AB 1804 Exemption. (Pub. Res. Code § 21159.25(b).) This could be avoided via the Project Alternative, which would remove regional VMTs. So too, Local 11 urges the County to reconsider assessing the entire Resort operation for enhancements to its TDM program.

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[41] See Project GHG Study, PDF p. 16.
[42] See Project GHG Study, PDF pp. 20, 22.
[43] See . 2008 SEIR/MND Addendum, PDF pp. 41-42 (relied in 2008 SEIR/MND Addendum), 2011 SEIR/MND Addendum, PDF pp. 3 (intended to improve public access).
[44] See . 2000 MND, PDF p. 154-155; 2008 Approvals, PDF p. 206, 209.
[45] See . County VMT Tool, p. 11; OPR, PDF p. 16.
[46] While the bus stop at Jameson/Miramar is approximately 32 minute walk from Northwest Lot (see GoogleMaps) and 38 minute walk from Northeast Lot (see GoogleMaps), the bus stop at San Ysidro./San Leandro is 27 minute walk from Northwest Lot (see GoogleMaps) and 33 minute walk from Northeast Lot (see GoogleMaps).

5. FLOODING AND SEA LEVEL RISE CONCERNS SHOULD BE ADDRESSED MORE CAREFULLY.

Here, the Project includes a proposed three-story Building C on the Northeast Lot, which is a recognized flood zone. (ATT-C, p. 12.[47]) Flood concerns have been raised in the past on prior iterations of the Resort, including concerns about the effect of sea-level rise (**"SLR"**). Here, the Applicant's **"SLR Study"** (dated June. 11, 2024) seems to downplay these concerns by attacking the data relied on by the County and CCC, which may indicate flood risk could be higher.[48] The SLR Study is used to establish the finish floor height of Building C,[49] which also seeks waivers from objective 38-foot, two-story height limits. (ATT-L, p. 2; ATT-B-4, PDF p. 25.) There is concern that placing a three-story, affordable housing building in a flood zone may impact public safety. The Proposed Alternative would help minimize flood risks, because it would allow all proposed residential square footage and unit density to be allocated within three, two-story buildings located in the same proposed locations. This alternative seems more than feasible given it essentially requires the reallocation of one-story of residential (i.e., 3rd story Building C) among the two available stories (i.e., 1st floor of Building A and/or Building B). This would mitigate an apparent inconsistency of objective development standards (e.g., height limits, other Code waivers) claimed to preclude the residential development.

6. COUNTY SHOULD CONSIDER NEEDED LCOAS ENHANCEMENTS.

As previously discussed, the proposed resort shops seem likely to be regional-serving, luxury retail. So too, the eight proposed market-rate residential units are likely to be luxury. This raises concerns about the Coastal policies that encourage the provision of LCOAs. (Pub. Res. Code § 30213.) The Resort already removed over 213 LCOAs from the site, for which the Applicant paid a total of $1.39 million in 2011.[50] That value was based on an LCOA in-lieu fee structure, calculated as: (amount of new high-cost guest rooms) x (0.25) x ($30,000). (Id.) More recently, the Coastal Commission has applied a much higher in-lieu fee rate of $429,000 per room, and only after finding replacement rooms restricted at lower-costs is financial infeasible.[51] At that current rate, adjusted for inflation (i.e., approximately $307,000), multiplied by the current number of Resort rooms (i.e., 154), multiplied by 25 percent, would equate to $11.8 million in-lieu fees—nearly 10-times what the Applicant paid. Not only does this amount to a missed opportunity, but also begs the question whether Santa Barbara County is currently meeting the LCOA needs of the community. These issues should be resolved before the County grants more luxury-oriented development approvals for the Resort, which lies on former LCOA land. Under the circumstances, the Proposed Alternative of removing the luxury retail seems reasonable, and financially viable given it still permits eight luxury, market-rate units in addition to the 154-room Resort, and 8,000+ sf of luxury retail and other revenue-generating enterprises (e.g., restaurant, dining, bars, beach club).

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[47] See County Planning GIS Map; see also Project SLR Study, p. 3.
[48] *Compare* Project SLR Study, pp. 4 (critical of the more conservative estimate of 5.3 ' -6.6' SLR) *with* p. 18 (recommending 4.5' estimate based on different data).
[49] Ibid.; see also Staff Report, pp. 25; ATT-B4, p. 44.
[50] See 2008 Conditions of Approval, PDF p. 104 (condition 81); 2015 Project Conditions, PDF pp. 54 (crossed off once paid).
[51] See e.g., Dana Point Harbor Hotels (LCP-5-DPT-21-0079-2) Coastal Staff Report, pp. 30-58, https://documents.coastal.ca.gov/reports/2024/6/F10a/F10a-6-2024-report.pdf; American Tin Cannery Hotel Resort (CDP No. A-3-PGR-22-0004) Coastal Staff Report, pp. 42-51, 75-80, https://documents.coastal.ca.gov/ reports/2024/4/Th15b/Th15b-4-2024-report.pdf.

7. GHG IMPACTS UNDERSTATED DUE TO FACIALLY INACCURATE EMPLOYMENT ASSUMPTIONS.

The Applicant claims the Project would not have a GHG impact based on the Project meeting an applicable efficiency threshold, which is calculated by the Project's modeled GHG emissions (commonly referred as CalEEMod), divided by the Project's service population (i.e., residents + full-time employees). (ATT-C, pp. 11-12.) For example, according to its CalEEMod results, the Project is expected to generate only 584 MTCO2e per year of GHG emissions, which divided by its purported total service population of 157 (i.e., 96 full-time residents + 50 full-time shop employees + 11 full-time café employees), result in a 3.7 MTCO2e/yr per service population efficiency level, which is below the County's 3.8 MTCO2e/yr per service population threshold. (Id.)

However, when examining the Project's GHG study dated June 2024 ("**GHG Study**"),[52] it seems clear that the *estimated employees are very possibly inaccurate*. CalEEMod is based on a default assumption, which can and should be altered by the user when more accurate project-specific information is supported by substantial evidence. (GHG Study, PDF pp. 5, 20.[53]) Here, the Applicant estimated that there would be 50 full-time shop employees and 11 full-time café employees. (Id., at PDF pp. 20, 22.) Yet, there is no justification for this value or any evidence to support this claim. Additionally, it is facially inconsistent to assume that a café purportedly serving primarily hotel guests needs 11 full-time employees when the Project also assumes that only five full-time employees are needed to assess parking impacts. Moreover, common sense suggests that it is unreasonable to assume 61 employees are needed for the incidental café/retail uses when it purportedly takes only 50 employees to serve all 154 rooms of the Resort. (Id.) Here, these self-serving assumptions do not seem supported by substantial evidence.

Here, it takes only three employees to change the above analysis from no impact (i.e., 584 / 157 = 3.71) to finding an impact (i.e., 584 / 154 = 3.81). Nor has there been an assessment of the cumulative GHG impacts caused by the entire Resort operation, including a holistic assessment to comprehensively mitigate the Resort's GHG profile (e.g., enhance TDM measures, expanding solar, etc.). This is important because GHG impacts would counter an AB 1804 Exemption (Pub. Res. Code § 21159.25(b)(5)), which would be fixed under the Project Alternative that would maintain residential units onsite (i.e., reduce employee emissions) and avoid the potentially understated emissions (i.e., regional, luxury shoppers driving great distance).

8. STATE DENSITY BONUS LAW DENSITY CALCULATIONS NEED CLARITY.

Here, Applicant is proposing 34 new multi-family residential units, including four market-rate units on the second floor of both Building A and B on Northwest Lot (i.e., eight units totaling 9,883 sf), and 26 affordable units throughout the 3-story, Building C on the Northeast Lot (i.e., 19,102). (See Staff Report, pp. 5, 10; ATT-H, p. 2.) Typically, SDBL works to provide a "density bonus" in an amount over and above the maximum allowable gross *residential* density (i.e., base density) (Govt Code § 65915(f) & (o)(6)), which logically involves allowing a greater number of residential *units* and related *square footage*. Here, the Applicant acknowledges that under existing plans, only 2,144 sf of existing square footage is allowed. (ATT-L, p. 2.) It is unclear how this minimal amount can be used to massively increase the commercial square footage by an additional 17,500 sf (i.e., roughly by a factor of 8), while also ignoring the added density bonus square footage associated with the new market-rate and affordable housing.

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[52] See Project GHG Study.
[53] See also CalEEMOD User Guide, PDF p. 6, 10, 37.

Local 11 is supportive of housing, particularly affordable housing on hotel properties. As such, and out of an abundance of caution, Local 11 urges the County to consider all the requested waivers to the extent feasible to permit the requested residential units and density, subject to no additional square footage utilized for luxury resort shops.

In conclusion, these issues may indicate the Project does not qualify for SDBL or AB1804 Exemption. However, Local 11 strongly supports housing and urges the County to consider its Project Alternative or similar proposals that (a) allow for all the requested residential density but (b) exclude the additional luxury retail until the full impacts of the Resort operations are holistically assessed and mitigated under a CEQA-compliant review.

Local 11 reserves the right to supplement these comments at future hearings and proceedings for this Project. (See e.g., *Cmtys. for a Better Env't*, 184 Cal.App.4th at 86; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120.) On behalf of Local 11, this Office requests, to the extent not already on the notice list, all notices of CEQA actions and any approvals, Project CEQA determinations, or public hearings to be held on the Project under state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. (See Pub. Res. Code §§, 21092.2, 21167(f) and Gov. Code § 65092.) Please send notice by electronic and regular mail to Jordan R. Sisson, Esq., at the address identified on the cover page).

Thank you for consideration of these comments. We ask that this letter and any attachments are placed in the administrative record for the Project.

Sincerely,

Jordan R. Sisson
Attorney for Local 11

EXHIBIT F

To: Santa Barbara County Planning Commission

From: Philip Dracht

Date: 10/06/2024

Re: Analysis of Miramar Hotel Parking Compliance and Neighborhood Impacts

A comprehensive study of the parking requirements of the Rosewood Miramar Beach Resort ("Miramar") has revealed important information that must be addressed and rectified before Santa Barbara County should consider granting approval of the new expansion application.

The Miramar violates its parking permits in two ways: it has inadequate on-site parking due to resort changes, and its guests, employees, and vendors are using public parking spaces, limiting public access to local beaches and contributing to neighborhood congestion.

The County permitted Miramar to operate with 436 parking spaces. However, the Western Lot, initially designed for 151 spots, now has only 131 due to the installation of Tesla Supercharger stations and power supply equipment. The Eastern Lot, designed for 226 spaces, only has approximately 218 spots due to Miramar converting parking spots for storage and landscaping. This results in a minimum shortfall of 28 parking spots.

This memo outlines the existing parking situation based on the 2017 Final Development Plan, highlighting the resort's undisclosed parking reductions and misrepresentations. It documents the impact of these violations on the neighborhood and the resort itself, including breaches of permits and Fire Access Conditions, and discusses the impact of Miramar's violation of its permit on this project and on the resort.

Although lengthy, this memo aims to inform the Commission about the ongoing parking issues and Miramar's noncompliance. This is an important issue to understand as Article II, Division 6, §35-105 of the County Code states:

> No parking area or parking space provided for the purpose of complying with the provisions of this DIVISION shall thereafter be eliminated, reduced, or converted in any manner unless equivalent facilities approved by the County are provided elsewhere in conformity with this DIVISION. **The permit for the use for which the parking was provided shall immediately become void upon the failure to observe the requirements of this section.**
>
> Section 35-105 (**bold** added).

The Commission must understand the current issues of parking at Miramar and the Miramar's noncompliance to evaluate the feasibility of Miramar's proposed expansion plans, which will intensify parking problems.

I. 2017 FINAL DEVELOPMENT PARKING REQUIREMENTS AND RESTRICTIONS

A. Parking Spots in Original Development

The 2017 Final Development Plan (Exhibit A) stipulates several conditions, including the requirement for 436 parking spots on the premises.

> The remaining parking stalls are located throughout the site adjacent to the entry court, the oceanfront, and along Miramar Avenue. **All guests and members will valet park with the exception of the Miramar Avenue bungalow guests** who will have the option of self-parking in the stalls along Miramar Avenue. Guests of the Oceanfront presidential suite will also have the option of parking in one of the adjacent stalls at the oceanfront. **Overall parking on site has been reduced from 494 stalls to 436 stalls.**
>
> Page 2-2 of Exhibit A, (003) (**bold** added).

Miramar submitted an expert report by Associated Traffic Engineers (ATE) dated June 25, 2024 supporting its application for expansion and outlining the parking supply on-site:

Parking Supply	**Permitted**
Eastern Lot	226
Western Lot	151
Miramar Avenue	18
Additional On-site	
Main Entrances	17
Beach Access Road	5
Oceanfront Rooms/Beach Bar	19
Total	**436**

Exhibit B, pages 2-3 (062-063). This totals 436 Spaces.

Before approval, Miramar reconfigured the Eastern lot, increasing the spaces to 228, bringing the total to 438. A revised schematic with the updated Eastern lot layout, submitted to the Board of Supervisors during the 2017 approval process, is attached as Exhibit C (075-076).

B. Public Coastal Access Parking Spots.

During the resort's permitting process, a key issue was preserving public access and parking on Jameson, Eucalyptus, and Miramar streets. This was crucial for maintaining coastal access and preventing overflow parking from the Miramar into the neighborhood. As a result, the Final Development Plan required the following:

> Eighty-nine public spaces will be located along South Jameson Lane, Eucalyptus Lane and the East/West segment of Miramar Ave. Seven of these spaces are new public spaces created as a part of the project. **All public spaces would be labeled for "Public Use"** ***to ensure exclusive public use and deter hotel guest use.***
>
> ...Under the proposed revised project, there would be a total of 436 stalls on-site. Updated parking calculations provided by ATE in a letter dated July 31, 2014 show that with the reduction in the project and in maximum event capacity, the 430 spaces would accommodate peak summertime demand, with an excess of 6 spaces at peak demand. **A modification to the parking requirement is being requested for the proposed revised project as the proposed number of spaces represents a shortfall of 176 spaces from the ordinance requirement of 614 spaces (see Table 2-1, above).**

The proposed revised project includes 87 public parking spaces, whereas the 2011 approved project included 75 public parking spaces. These 87 public spaces are in addition to the 436 spaces provided for private hotel use.

As with the 2011 approved project, hotel parking would be provided by valet service. Overnight guests would use the hotel's full valet service, dropping off and picking up their vehicles at the valet stand located at the hotel lobby and would be taken to their rooms by a golf cart or on foot. **All guests would be informed that the street parking spaces along South Jameson Lane and Eucalyptus Lane are public and not available for hotel guest use.** ***Public spaces would be labeled as such to ensure public use only.***

...

Under the proposed revised project, 17 (an increase from 10 in the approved plan) hotel parking spaces have been created along Miramar Avenue so that all guests of the bungalows nearest Miramar Avenue may self-park their cars.

Exhibit A, Page 2-26 (027) (**Bold** and ***italics*** added).

C. Permit Conditions

To prevent Miramar hotel employees from parking on nearby streets, the Final Development Plan included the following conditions:

52. **Parking Decal Program**. To prevent employees from parking in public spaces, parking decals, to be fixed on the windshield of all employee cars, shall be issued to all employees. Said decals shall be displayed at all times during employment. **Additionally, the applicant shall develop a plan and be responsible for monitoring use of parking spaces along Eucalyptus Lane, South Jameson Lane, Miramar Ave, and Humphrey Lane to ensure that spaces remain available to the public and are not used by hotel guests or employees.**

a. Monitoring shall occur on weekend days throughout the year, during the week in the summer months (June 15 – September 15) and on all special event days.

b. To prevent Beach Club members from parking in public spaces, Beach Club members must be informed of detailed parking procedures at the time of initiation, and will be required to RSVP in advance on peak summer weekends (June 15 to September 15) and on special event days. Beach Club members shall be provided complimentary valet parking as a part of their membership.

c. Monitoring report shall be submitted to the County annually from the date of final occupancy clearance and thereafter. 12-18 months after the beginning of operations, Planning & Development shall provide the monitoring reports to the Montecito Planning Commission (review to occur during Planning & Development Divisional Briefing on Administrative Agenda).

Plan Requirements and Timing: The applicant shall submit the monitoring plan including the design and intended location of employee parking decals for P&D's review and approval prior to Zoning Clearance approval. **Monitoring:** The County shall receive and file annual reports. P&D shall convey compliance

reports to the Montecito Planning Commission at the 12-18 month review and return annually until the MPC determines that annual reporting is no longer necessary.

Exhibit A, page 2-47 through 2-48 (048-049).

Condition 55 provides as follows:

A Final Miramar Parking Plan shall be provided. The Final Plan shall include all elements of the Draft Plan and shall also provide for a designated traffic coordinator, examples of notices to inform guests of parking procedures and locations, parking signage, an overall site parking exhibit and an exhibit indicating where additional on-site parking could be developed. The Final Miramar Parking Plan shall be implemented as approved. Additionally, the applicant shall prepare annual compliance report listing the total number of parking spaces used during all events (beach event, conferences, special events, etc.) which generate 200 cumulative patrons or more at any one time. The compliance report shall provide the date, type of event(s) and maximum number of parking spaces used during the event(s). 12-18 months after the beginning of operations, Planning & Development shall provide the compliance report to the Montecito Planning Commission (review to occur during Planning & Development Divisional Briefing on Administrative Agenda). Plan Requirements and Timing: The Miramar Parking Plan shall be reviewed and approved by P&D and Public Works Transportation Division prior to Zoning Clearance approval. A review of the parking situation shall be made by the Planning Commission 12-18 months after occupancy of the site in order to determine the adequacy of the Parking Plan. MONITORING: Permit Compliance and Public Works, Roads Division Staff shall respond to complaints. P&D shall convey compliance reports to the Montecito Planning Commission at the 12-18 month review and return annually until the MPC determines that annual reporting is no longer necessary.

Exhibit A, page 2-48 (049).

II. CHANGES TO RESORT-REDUCTION IN PARKING

A. 2019 Tesla Charger in Western Lot – Loss of 20 Spaces

In 2021, a Tesla Supercharging station was installed in the Miramar Western Parking lot under Permit 19ELE-00000-00247, converting eight guest/employee parking spots into Tesla charging stations and removing them from the parking inventory. Power supply equipment eliminated an additional 12 spaces. The County's response to a public records request confirmed that Miramar did not apply for a Substantial Conformance Determination for this conversion. Attached is a schematic (Exhibit C) from ATE showing the original 151 spots in the Western Lot and a revised view (Exhibit E) reflecting the changes. **This resulted in a loss of 20 parking spaces, reducing the Western Lot to 131 spots, and leaving the resort with a maximum of 418 spaces instead of the required 436.** Photos of the Tesla Charging station and the reconfigured parking in the Western lot are found at Exhibit E, (093-094) and Exhibit K (141).

B. 2021 Project—21SCD-0020

In 2021, Miramar applied for modifications, reducing the number of rooms and increasing retail space, while falsely reporting 435 parking spaces on-site. By September 2021, the Tesla charging station was operational. Miramar submitted a parking analysis

from Associated Transportation Engineers (ATE), claiming that "the 435 parking spaces would remain." ATE estimated a peak demand of 428 spaces, resulting in a 7-space surplus. The October 28, 2021, report is attached as Exhibit F. It is unclear why ATE used 435 spaces as the base calculation instead of the required 436.[1]

Nonetheless, ATE did not provide aerial photographs to verify the 435-space count, which was impossible, as the Western lot had only 131 spaces (instead of 151) due to the Tesla supercharger and power equipment. Had ATE submitted accurate data, the Miramar would have been significantly under-parked, even using ATE's shared parking model. This misrepresentation led the County make a Substantial Conformity Determination and issue a variance from Coastal zoning requirements, approving the project.

C. 2022 Project -- 23SCD--00007

Miramar again applied for modifications, reducing hotel rooms, increasing retail space, and claiming 435 on-site parking spots. To support the application, Miramar submitted a parking analysis by Associated Transportation Engineers (ATE), stating that "the 435 parking spaces would remain." ATE estimated a peak demand of 431 spaces, projecting a surplus of 4 spots. The February 15, 2023, report is attached as Exhibit G.

Accurate data would have revealed a parking shortfall, even under ATE's optimistic shared parking model, which assumed a 4-space surplus with 435 spots. ATE did not provide aerial photographs to verify the 435 spaces, likely because the Western lot had only 131 spaces at the time. The resort would have been significantly under-parked if ATE had submitted the correct information. Based on Miramar's misrepresentation of its parking supply, the County issued a variance to Coastal zoning requirements and approved the project.

D. Eastern Lot – Shortfall due to Conversion

According to Miramar, the Eastern Lot is supposed to have 226 spaces (see Exhibits B and C). However, many of these spots are used for storage and landscaping, leaving far fewer available. Based on overhead photographs, a maximum of 218 spaces provided, but a physical inspection by enforcement would provide a more accurate count. See Exhibit H (109-110), Exhibit K (145).

E. Miramar Avenue

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[1] There are eight SCD's applied for or issued for the Miramar. 16SCD-00000-00044 for minor architectural changes, landscape, and site changes; 17SCD-00000-00078 for architectural changes throughout the property; 17SCD-00000-00041 for replacement of a theater building with a retail building, and site wall changes; 17SCD-00000-00003 for minor architectural changes and site and landscape changes; 18SCD-00000-00033 for sign changes; 18SCD-00000-00009 for landscape and hardscape changes; and 21SCD-00000-00020 for remodel of five existing guest rooms into retail space and remodel of two existing guest rooms into food and beverage restaurant space. The county produced seven of those SCD's in response to a public records request – all but 17SCD-00000-00003, minor architectural changes and site and landscape changes. In my review of the produced SCD's, none of them reduced parking spaces, except on 21SCD-00020, following the ATE's representation of the parking supply of 435 spaces, the Substantial Conformity Determination Memorandum from Staff dated November 22, 2021 references 435 parking spaces.

There are 20 marked spaces on Miramar Avenue, but three of the 20 spaces indicate they are for private residences and not Miramar guests, leaving 17 spaces. 60 Miramar Avenue is a luxury long-term rental managed by the Miramar, with "access to the resort's cabana, pools, fitness/wellness center, restaurants, bars and all the amenities of the Miramar, rents for $75,000 a month. See https://erichaskellgroup.com/properties/60-miramar-ave-montecito-ca-93108-23-578. 60 Miramar does not have any parking on site but appears to use the three spots on the end of Miramar Avenue, which the resort counts as its own to for the 17 parking spaces on Miramar Avenue (14 of which are self-park for visitors). This leaves 14 spaces on Miramar Avenue.

F. Parking Shortfall

Miramar must have at least 436 (or 435 if the County has approved an adjustment) onsite parking spaces as permit requirement for its use. Because of their changing numbers, they have no more than 404. So the Miramar is significantly under-parked:

Parking Supply	**Permitted in 2017**	**Actual**
Eastern Lot	226	218
Western Lot	151	131
Miramar Avenue	18	14
Additional On-site		
Main Entrances	17	17
Beach Access Road	5	5
Oceanfront Rooms/Beach Bar	19	19
Total	**436**	**404**

G. Compliance with the Final Miramar Parking Plan

The Western Lot is primarily used by employees, except during large events when it accommodates guests, forcing employees to park offsite. Miramar previously rented parking from All Saints-by-the-Sea Church, utilizing it for 15 days in 2021, 63 days in 2022, and 60 days in 2023. They now rent parking from QAD during large events and shuttle employees to the resort.

Public parking at the corner of Eucalyptus and Jameson is typically full during Miramar's operating hours, especially on weekends and when employees use QAD for parking. Many cars parked there throughout the day appear to belong to employees rather than carpoolers, as the 101 on/off ramps are closed. Some parked cars have Miramar tags, but many employees without tags also park on Eucalyptus and Jameson streets, possibly due to using second or unregistered vehicles. For instance, on October 4, a man parked on Eucalyptus Lane and said he was a security guard for a shop at the Miramar but had no tag on his car.

Recently, I observed many employee cars in the Eastern lot without Miramar parking decals, indicating they may be guest cars. The Final Miramar Parking Plan requires all employees who drive to register their primary vehicles with the hotel and display decals. However, employees can exploit a loophole by using secondary cars

without tags, allowing them to park on local streets without enforcement. See Exhibit D (079).

Any permit that the County issues should require the Miramar to require a badge for **every** Miramar-associated car, primary, secondary, or otherwise, with the Miramar bearing the burden to enforce their parking policies with their employees, with real penalties for noncompliance.

I frequently see Miramar employees in hotel uniforms walking to their cars in public spots. But monitoring these violations is challenging, and it shouldn't be the neighbors' responsibility. One employee parked on Eucalyptus all summer, covering his car with a tarp to hide his Miramar tag. Given the regular occurrence of Miramar tagged cars that are parked on the neighborhood streets, Miramar is not policing this.

It is unfair to the neighborhood to put the burden of enforcement on the neighbors. Under the Miramar Parking Plan:

> A dedicated parking hotline phone number and email address will be established for neighbors to self-report parking infractions as well. These phone numbers will be provided to residents of the immediate streets, and also made available to Santa Barbara County Planning and Development and the Montecito Association prior to occupancy. Should these phone numbers change in the future; the management team will be responsible for notifying the above mentioned parties within 14 days.
>
> Exhibit D (079).

Neighbors on Eucalyptus Lane do not recall receiving any information about such a hotline. It certainly has not been provided in the last four years.

On September 26, 2024, I contacted the Miramar Resort and inquired about valet parking costs for an overnight stay ($25 day and $75 overnight). When I asked about public parking, I was told public parking was available during the day but unavailable overnight. Condition 50 of the Final Development Plan states, "The applicant shall develop a protocol for informing hotel guests and staff that street parking is for the public specifically to ensure that hotel guests and staff do not use the public parking spaces." Exhibit A, page 2-46 (047). The Parking Plan outlines that guests will be notified at reservation and check-in about valet-only parking, with security monitoring to ensure compliance:

> Guests will be notified at time of reservation/confirmation that parking is valet only. This fact will be reiterated upon arrival (at valet/ check in). At check in the valet will take the guest's name with the Make/ Model/ Name/ and Color of the vehicle along with license plate and the duration of the stay. A customized parking permit will be generated for display in the guest's vehicle for the duration of their stay to utilize the valet service only. This temporary permit will allow hotel security to recognize guest vehicles parking in public stalls along South Jameson Lane or adjacent streets. Hotel management will respond to complaints from adjacent neighbors if they notice a resort guest utilizing public streets. The hotel will have a guest's vehicle information on file and will immediately contact the guest to have the vehicle moved to a hotel lot. A sample of this permit is attached (Exhibit D). The permit must be displayed on the dashboard.

Exhibit A, page 2-46 (047).

Condition 55 requires Miramar to submit compliance reports to the Montecito Planning Commission. See Exhibit A (048-049). I understand that Miramar has not submitted its monitoring report to the Montecito Planning Commission for 2023, even though it is due. See Exhibit J for a submitted compliance report.

Finally, the existing parking program does not account for restaurant or retail shopper parking and the proposed expansion expands both of those uses to up to one retail store for every seven guest rooms, which will result in significant outside visitors. While some guests may use valet parking, many already opt for free public beach access spaces, especially given the $25 valet fee. This project should not be approved without strict conditions to require Miramar to ensure restaurant guests and retail visitors do not park in these public spots, as this would convert them into private resources, negatively impacting public coastal access. These public parking spaces belong to the public, not the Miramar and the public's ownership of those spaces should not be usurped by the Miramar use.

H. Impact of Parking Shortfall to Community and Miramar Resort

Due to a reduction in available parking spaces at the Miramar, guests, employees, and subcontractors are forced to use public spots in the neighborhood.

Attached as Exhibit I are photographs taken over the weekend of September 7, 2024:

- Page 1: A Miramar employee parking in the All Saints-by-the-Sea lot.
- Page 3: A Miramar employee parked on Jameson, west of Eucalyptus Lane.
- Page 5: A Miramar employee parking on Eucalyptus Lane, obscuring their Miramar tag with index cards.
- Page 7: Vendors parking large trucks on Posilipo Lane for an event.
- Page 8: A Miramar valet tag parked on Jameson Lane by the resort.
- Page 9: A Miramar employee parked on Eucalyptus Lane.
- Page 11: A Miramar employee parked on Jameson, west of Eucalyptus.
- Page 12: A Miramar Club Member parked on Posilipo Lane.
- Page 13: A shuttle bus used by the Miramar to transport employees from QAD, parked on Jameson Lane.
- Pages 14 and 15: Vehicles from "Bella Vista Designs," a vendor for an event, parked in no-parking areas on Jameson Avenue, forcing drivers to cross lanes, which could pose issues when the southbound onramp opens.

Attached as Exhibit K are aerial shots of the Miramar resort illustrating parking violations and fire access issues (see Exhibit L for Fire Conditions). You can refer to Exhibit C to see how the parking spaces are supposed to be parked throughout the resort. Exhibit K shows the following:

- Page 1: Overhead view of the Western Lot showing Tesla charging spots and power equipment, with cars noted in orange that violate fire access conditions.
- Page 2: Entrance to the Miramar with cars parked in non-designated spots, potentially obstructing emergency vehicle access.
- Page 3: Cars parked vertically in the roundabout instead of horizontally as planned, reducing the drivable surface from the required 20 feet, a fire safety concern.
- Page 4: Cars improperly parked on the Jameson side of the roundabout exit (and ocean side), violating plans that require 15 feet of unobstructed width for emergency access.

- Page 5: Aerial view of the Eastern Lot showing lost parking spaces due to storage and other uses.
- Page 6: Cars parked in prohibited areas by Beach Club, obstructing beach access and jeopardizing emergency vehicle access as required by fire access conditions.

II. ASSOCIATED TRAFFIC ENGINEERS REPORT

The Miramar's traffic and parking expert, Associated Traffic Engineers (ATE), has repeatedly misrepresented the parking supply to the County to support Miramar expansions. Their current report dated June 25, 2024, continues to assert there are 435 parking spaces available. This error is fundamental. The Commission cannot rely on ATE's analysis and must conduct independent expert peer reviews before making any traffic and parking-related findings.

The Commission should disregard ATE's theoretical "shared parking analysis" because it has access to real-world data. Valet parking is a revenue source for the Miramar. At $25 during the day and $75 overnight, Miramar knows precisely how many guest cars are parked overnight and how many day-use tickets are issued. They report this data during events to the Montecito Planning Commission as part of their parking reports. Thus, Miramar has ample data for a traffic engineer to analyze the proposed parking facilities using actual usage (not ULI and ITE reports) during peak and off-peak periods.

Real-world evidence indicates that the Miramar cannot accommodate all its guests and employees during peak times. This has led to their reliance on All Saints' parking from 2021 to 2023 and now the QAD parking lots, which shows that ATE's shared parking analysis is flawed.

Regarding the shared parking analysis for the proposed retail shops, ATE's findings do not account for the economic implications of the increased retail space. ATE treats the proposed 24,841SF of retail space as the same use as when there was only 1060SF and 8,431SF of retail space: "It is noted that the ITE Parking Generation Manual does not contain parking rates for land use categories that correspond to the kind and character of resort shops that would occupy the new retail area. Data from the existing resort shops at the Miramar Resort indicate that the anticipated customer levels and resulting parking demands of the new resort shops would be approximately 25% of the ITE parking demand forecasts." See June 25, 2024 letter from ATE. There are some major assumptions here that rely on "data" that is likely as reliable as ATE's parking supply count.

Currently, the Miramar website lists 10 shops for 8,431SF. This expansion will add 10-12 more, totaling 23,481 square feet and requiring 47 spaces under the Coastal Zoning Ordinances (1 space per 500 square feet). ATE's analysis treats this new retail space as equivalent to the existing shops, suggesting only 19 spaces are needed. However, adding another 12 spots means there will be 22 shops at the Miramar, each with its own employees and visitors. Given a ratio of **one shop for every seven hotel rooms** (154 rooms on-site), the economic dynamics of this project change significantly. These shops will need a substantial influx of outside guests to remain viable, and that's assuming full capacity of the Miramar's 154 guest rooms. ATE's analysis, which predicts only 19 spaces are needed during peak times, does not even park the employees required to staff the shops much less the shoppers visiting them.

Article II of the Coastal Zoning Ordinance, Division Six, Section 35-103 provides as follows:

> The purpose of this DIVISION is to assure the provisions and maintenance of safe, adequate, well-designed off-street parking facilities in conjunction with any use or development. The intent is to reduce street congestion and traffic hazards and to promote an attractive environment through design and landscaping standards for parking areas. **The standards set forth in this DIVISION shall be considered minimums, and more extensive parking provisions may be required by the Planning Commission as a condition of project approval.**

ATE's analysis treats the Coastal Zoning Ordinances regarding parking as the maximum required. This does not work now and will not work with the additional uses that are proposed as part of this project. While concessions for parking are common under the density laws, the Miramar is attempting to repark their entire resort through this project and, as such, their plans need to be carefully reviewed with the entire resort in mind.

III. CONCLUSION -- IMPACTS OF EXISTING VIOLATION ON THIS PROJECT

In addition to these violations, Miramar is parking cars throughout its facilities, jeopardizing access for emergency vehicles to the resort and nearby beaches, as mandated by their fire access conditions. The failure to maintain adequate parking, as required by their permits, has created a public safety issue.

The Commission should take these violations seriously while evaluating this project for several reasons. First, health and safety are at risk when the Miramar is over-parked. Valet attendants will park cars in any available space, even if it obstructs fire or emergency services access (see Exhibit K and Exhibit L). The proposed parking plan for this project, which reparks the entire resort resembles a complex Tetris game, with lifts, multiple double and triple-parked cars, and valet vehicles blocking those double and triple parked cars, making it an easier proposition to park in access lanes.

Second, the County has approved multiple projects for Miramar based on misrepresentations regarding its existing parking supply. There is insufficient parking to support these projects. Allowing an applicant to make material misrepresentations is unacceptable and the Miramar needs to be dealt with appropriately.

Third, Miramar's violation of its parking requirements directly violates Article II, Coastal Zoning Ordinance, Division Six, Section 35-105 "Maintenance of Parking Spaces":

> **No parking area or parking space provided** for the purpose of complying with the provisions of this DIVISION **shall thereafter be eliminated, reduced, or converted** in any manner unless equivalent facilities approved by the County are provided elsewhere in conformity with this DIVISION. **The permit for the use for which the parking was provided shall immediately become void upon the failure to observe the requirements of this section.**

Section 35-105 (Bold added).

It is unequivocal that the Miramar has eliminated, reduced, and converted parking spaces without County approval and without providing equivalent facilities. Consequently, "The permit for the use for which the parking was provided shall immediately become void upon the failure to observe the requirements of this section."

And since Miramar is not in compliance with its parking permits, it cannot be granted a Coastal Development Permit:

> A Coastal Development Permit application that is subject to Section 35-169.4.1 above shall be approved or conditionally approved only if the decision-maker first makes all of the following findings:
>
> > c. The subject property and development on the property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of this Article, and any applicable zoning violation enforcement fees and processing fees have been paid. This subsection shall not be interpreted to impose new requirements on legal nonconforming uses and structures in compliance with Division 10 (Nonconforming Structures and Uses).

Section 35-169.5

EXHIBIT 9

DALE J. GOLDSMITH
T: 310.254.9054
E: Dale@AGD-Landuse.com

October 30, 2024

BY EMAIL

The Honorable County Planning Commission
123 E. Anapamu Street, Fourth Floor
Santa Barbara, California 93101

Attn: Willow Brown and David Villalobos
wbrown@countyofsb.org; dvillalo@co.santa-barbara.ca.us

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

Dear Commissioners:

We represent Miramar Acquisition Co., LLC ("Miramar"), which is seeking to develop needed housing, including 26 units of affordable apartments for Resort employees, and additional Resort-visitor commercial uses (the "Project") on two existing surface parking lots at the Miramar Beach Resort ("Resort").

We are writing in response to a letter dated October 7, 2024 by Marc Chytilo, on behalf of the All Saints-by-the Sea Church ("Church"), a letter dated October 9, 2024 by Jordan Sisson, on behalf of UNITE HERE Local 11, and four letters from Philp Dracht, respectively dated October 6, October 15, October 15, and October 17, 2024 (collectively, the "Letters"). The Letters present various arguments against the Project and the County's determination that the Project qualifies for the statutory exemption in Public Resources Code section 21159.25 ("Exemption"). As summarized below and discussed in detail in the attached memorandum, these arguments are without merit.

1. <u>The Resort Currently Provides Adequate Parking and Will Continue to do so Under the Project</u>. The Resort implements a robust parking plan to ensure that Resort employees, guests, visitors, and vendors park onsite. Miramar has submitted parking reports that show compliance with all applicable parking requirements. Further, as part of its investigation into a recent complaint, the County inspected the Resort and confirmed that it is in compliance with such requirements.

ATE prepared an updated Shared Parking Analysis for the Project using widely utilized methodologies and based on empirical data from real world projects. This study, which was reviewed and approved by County Staff, shows that the proposed parking will exceed peak demand by 18 spaces. Thus, the Resort will continue to have adequate parking under the Project.

A total of 87 public parking spaces would continue to be provided under the Project. As set forth in ATE's October 28, 2024 memorandum, a recent parking survey conducted on a peak weekend with good weather shows that parking demand at the Resort ranged from 43 to 75 percent, which demonstrates the adequacy of existing parking. In addition, use of the adjacent public parking spaces on South Jameson Lane, Eucalyptus Lane, and Miramar Avenue ranged from 44 to 80 percent. This demonstrates that the Resort is not impacting public beach access.

2. **The Project Will Not Result in Significant Traffic Impacts.** The expert traffic analysis by ATE, which used very conservative assumptions that significantly overstate the number of trips generated, demonstrates that the Project will not result in any significant traffic impacts. The County traffic engineer reviewed and approved this study and all its data and assumptions. The study shows that 50 percent of the Resort shop customers will be guests staying at the hotel and on-site residents and 70 percent of the external trips will be local trips from Montecito. As most of the customers will be local, the shops are not a regional destination that would generate significant traffic.

3. **The Project Will Not Result in Significant Cumulative Impacts.** As set forth in the ATE's October 24, 2024 memorandum, the Project will not result in any cumulative traffic or parking impacts.

4. **The Project Will Not Significantly Impact Views.** The Project will not block any public views as the Project's height is consistent with the heights of existing buildings at the Resort. Views of the mountains from Eucalyptus Lane will not be blocked as views down the street will remain. Views across the Project Site are already impaired by existing buildings and trees and the Church. Private views are not protected under CEQA or the Local Coastal Plan.

As set forth in the expert Historical Resources Technical Report prepared by ARG, views from the Church are not historically significant, and the Project will not have a significant impact to the Church. Furthermore, in designating the Church as a County historic landmark, the Board of Supervisors expressly rejected the Church's argument that the Church is historically significant because of its views.

5. **The Project Qualifies for the Exemption.** As set forth in the Notice of Exemption prepared by County Staff, the Project meets all the criteria for the Exemption. The Project site is limited to 3.077 acres and is substantially surrounded by urban uses. No new development or construction activity related to the Project will occur in other portions of the Resort, which comprise the environmental baseline under CEQA and are not part of the Project.

6. **The County Has Not Engaged in Piecemealing; No Supplemental EIR is Required.** Since the Resort was originally approved in 2015, the County properly approved minor changes to the Resort that the County found to be within the scope of, and in substantial conformance with, the prior approvals. As such, the Resort as it exists today is the CEQA

baseline and not part of the Project. Further, no further CEQA review is required, much less a supplemental EIR. Public Resources Code section 21166 and CEQA Guidelines section 15162.

7. <u>The Project is Permitted Under the C-V Zoning</u>. The Project's market rate and employee housing units meet the Coastal Zoning Ordinance's definition of "secondary use" as they are subordinate or accessory to the principal Resort use and on the same legal lot, do not exceed the ratio of two bedrooms per 1,000 sf of commercial use, and in total do not exceed the total gross floor area of the commercial use of the Resort, which is the primary use. The new Resort shops will be internal to the Resort, incidental to the primary Resort use, and consistent with the existing retail uses, and will not substantially change the character of the Resort.

8. <u>The Project is Consistent with the Comprehensive Plan</u>. The Staff Report includes a comprehensive analysis of the Project's consistency with the Comprehensive Plan, including the Montecito Community Plan. As set forth therein, the Project will be compatible with the Resort's existing building heights and scale and will not impact the character of the surrounding community or coastal views.

9. <u>The Project Will Be Safe from Flood and Sea Level Rise</u>. The Project complies with County and FEMA requirements for the site by elevating the finished flood floor elevations two feet above the base flood elevation. The expert Sea Level Rise and Flood Hazards Report prepared by GeoSoils, Inc. demonstrates that Project will be safe from coastal hazards during its design life.

10. <u>The Project Does Not Raise Environmental Justice Concerns By Locating Housing Near the Freeway</u>. The Project will implement best practices to protect the residents in the employee housing, including locating air intake at the non-roadway facing sides of buildings; utilizing air intake systems equipped with state-of-the-art particle filtration; installing mechanical ventilation systems with fresh air filtration; and locating courtyards and walkways in the interior of the Project site so that they are shielded by buildings. In addition, the expert Noise Study prepared by AES shows that the residents will not be impacted by freeway noise.

For the foregoing reasons, the Letters are without merit and should be disregarded. We are available to answer any questions you may have.

Very truly yours,

Dale J. Goldsmith

cc: Miramar Acquisition Co., LLC

MEMORANDUM

DATE: October 30, 2024

TO: The Honorable County Planning Commission of Santa Barabara County

FROM: Dale Goldsmith

CC: Willow Brown

SUBJECT: Miramar Beach Resort and Bungalows Affordable Employee Housing, Market Rate Housing and Resort-Visitor Serving Commercial Project (Case Nos. 24RVP-00050 and 24RVP-00051, scheduled for the Commission's November 1, 2024 meeting)

The following are point-point responses to the letter dated October 7, 2024 by Marc Chytilo, on behalf of the All Saints-by-the Sea Church ("Church"), the letter dated October 9, 2024 by Jordan Sisson, on behalf of UNITE HERE Local 11, and four letters from Philp Dracht, respectively dated October 6, October 15, October 15, and October 17, 2024. These letters present various arguments against the Project and the County's determination that the Project qualifies for the statutory exemption in Public Resources Code section 21159.25. As set forth below, these arguments are without merit and should be rejected.

I. Responses to the October 7, 2024 Marc Chytilo Letter

A. Process Issues

1. Unprecedented County Project Expediting While Withholding Core Project Documentation

a. County Manipulation and Mismanagement of Public Review Process.

Comment: Director has acted arbitrarily and capriciously in moving the review of this Project from the Montecito Planning Commission (MPC) to the County Planning Commission (CPC), then adding in a MPC meeting as an advisory function at the last hearing.

Response: County Code section Sec. 2-25.2(b) clearly provides that the CPC has jurisdiction over matters involving affordable housing. As 76% of the Project's apartment units will be affordable, the CPC has jurisdiction over the Project.

With three scheduled Commission hearings, including one before the MPC, the public will have a full and fair opportunity to be heard.

b. Limited Time for Review of Newly Available Documents.

Comment: We have not had enough time to review the Staff Report and related documents.

Response: In accordance with its longstanding practice, the County published the Staff Report over one week prior to the first public hearing on the Project before the MPC on October 9, 2024. Other key project documents have been available for months, and the commenter has been in regular contact with Staff. In any event, the Church has not been prejudiced, as evidenced by the commenter's 92-page comment letter.

Comment: The Project Description is incomplete because there is an oblique reference to a public access easement in the Compatibility section of the Staff Report that is not referenced or described elsewhere.

Response: The public access easement will remain in substantially the same location, with only minor adjustments to coincide with adjustments to the sidewalk path to allow for a more attractive and interesting landscape buffer and to slightly jog around Building C. As modified, the easement will continue to provide adequate access for the public to the beach. The modified public access easement is shown on the Project plans on file with the County. The Project Description is not incomplete as providing details regarding the public access easement would be contrary to CEQA's mandate to not supply extensive detail in a project description. See CEQA Guidelines section 15124 ("should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.")

B. CEQA

1. Statutory Exemption Is Not Available.

Comment: The County is engaging in impermissible piecemealing.

Response: Piecemealing involves splitting up a pending project into smaller parts to reduce CEQA review. The commenter appears to suggest that the County has engaged in piecemealing by not including the existing Resort in the Project Description. However, as the Resort is built and operating, it is part of the CEQA baseline and not the Project. There has been no piecemealing.

Comment: The proposed changes build further upon the previously exempted Amendments and Substantial Conformity Determinations that made a number of exterior and interior changes, including converting guest rooms to a restaurant, converting the theater into retail, converting portions of the fitness center to retail and converting a bungalow to retail. This history belies the applicant's past practice of incremental material changes to the project without environmental review.

Response: Since the Resort was originally approved in 2015, the County approved minor changes to the Resort that the County found to be within the scope of, and in substantial conformance with, the prior approvals. They have not resulted in material changes to the Resort or its operations. The County found that these determinations were exempt from environmental review. The time for challenging these determinations has long since passed, and the Project as it exists today is the CEQA baseline.

2. The Site and Project fail to meet the Eligibility Criteria for the Exemption.

a. The Project Site Exceeds Five Acres.

Comment: The Project Site includes the entire 15.99-acre Resort.

Response: CEQA Guidelines section 15378 defines a "project" an action that has a potential for resulting in a direct or indirect ***physical change in the environment.*** The 3.077-acre Project Site includes all areas that will be physically changed by the Project. The other portions of the resort are part of the existing physical environment. No new development or construction activity related to the Project will occur in these other portions. As such, they comprise the environmental baseline under CEQA and are not part of the Project.

The Public Resources Code (PRC) section 21159.25 exemption is based on the Class 32 infill exemption. In *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal App 5th 951, the Court of Appeal upheld the use of the Class 32 exemption for a 2.38-acre project site included within 12-acre existing shopping center as the development would only occur on the project site, which was below the five-acre maximum. The court's holding is equally applicable to the Project.

Comment: Approval of the commercial elements of the project requires an oceanfront location in order to operate.

Response: The commenter confuses zoning requirements with CEQA requirements. The new Resort shops will be located on a portion of the Resort, which abuts the ocean, and are thus consistent with the C-V zoning. However, as discussed above, the other portions of the Resort comprise the environmental baseline under CEQA and not the Project.

Comment: Employees residing in the employee housing will not be limited to serving the 3.077-acre portion of the Resort, they will undoubtedly provide services to the entire site.

Response: This is irrelevant to the CEQA analysis. By definition, the tenants of the employee housing will work at the Resort. However, the residential units in which the employees will live will be developed on the Project Site, no new units will be developed elsewhere within the Resort.

Comment: Section 35-81.7 findings requires that the new residential use is secondary to a primary commercial use "on the same lot."

Response: The market rate and employee housing units meet the Coastal Zoning Ordinance's definition of "secondary use" as they are subordinate or accessory to the principal Resort use, do not exceed the ratio of two bedrooms per 1,000 sf of commercial use, and in total do not exceed the total gross floor area of the commercial use of the Resort, which is the primary use. The inclusion of secondary uses in the Project does not somehow transform the CEQA baseline (i.e., the existing Resort) into the Project.

The commenter also claims that the new residential uses are not on the same lot as the commercial uses. In fact, the residential use and Resort are on a single legal lot; however, the Project impacts are confined to a much smaller area (3.077-acre Project Site).

Comment: The Project can only be approved under the Coastal Zoning Ordinance when the entire resort project and the entire parcel are considered, and as such, the project site for purposes of the CEQA exemption must also be the entire lot.

Response: Again, the commenter conflates the zoning requirements and CEQA requirements. They are separate and distinct and serve different purposes. The case law cited above confirms this.

b. The Project is not "substantially surrounded" by qualified urban uses.

Comment: The exemption does not apply as the Project Site is bordered by the Pacific Ocean.

Response: This assertion is contrary to the above comment, which claims that the Project Site is ***not*** ocean adjacent. The commenter cannot have it both ways. In any event, the Resort is directly adjacent to the ocean; however, the Project Site, which comprises two existing surface parking lots on the northern portion of the Resort, is not.

Comment: Montecito is referred to as semi-rural under the Montecito Community Plan and does not include urban uses.

Response: As set forth in the Notice of Exemption attached to the Staff Report, a "qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." PRC section 21125.25(b)7) requires that: "The project is located on a site that is a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau." The Project Site is in the unincorporated area of the County, in an urban area designated by the United States Census Bureau. (See Exhibit "1".)[1]

CEQA defines a qualified urban use as: "any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." The Project Site is bordered by the Resort, residential uses to the east, residential and public institutional uses to the west, South Jameson Lane and Highway 101 to the north, and residential and transit (railroad) to the south, all of which are qualified urban uses. Further, the parcels on the other side of Highway 101 are developed with residential uses. Therefore, the Project Site meets this exemption criterion.

3. The Statutory Exemption Does Not Apply to the Project Because Exceptions Are Triggered.

a. The Project is Inconsistent with the Comprehensive Plan.

Comment: The Project is not consistent with several policies of the Montecito Community Plan and therefore does not qualify for the exemption.

Response: The Staff Report includes a comprehensive analysis of the Project's consistency with the Comprehensive Plan, including the Montecito Community Plan. The commenter provided no credible evidence of inconsistency, only argument, unsupported opinion, and speculation; speculation is not substantial evidence. (CEQA Guidelines section 15145.)

Comment: The scale and character of the additions are not in keeping with the existing community, nor from views toward ocean from U.S. 101, nor consistent with historic resources on adjoining properties.

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1 https://www.arcgis.com/home/webmap/viewer.html?url=https://tigerweb.geo.census.gov/arcgis/rest/services/TIGERweb/Urban/MapServer&source=sd

Response: The Project will be compatible with the Resort's existing building heights and scale, will not impact the character of the surrounding community, and will not impact coastal views. The maximum heights of Building A and B are 33 feet, 5 inches and 30 feet, 2 inches, respectively, which are within the permitted height limit of 38 feet (with pitched roof) in the C-V zone and consistent with the existing building heights in the Resort, including the two-story lanai guest room buildings located near Buildings A and B and oceanfront guest room buildings that range in height up to 29 feet, and the Manor House which is 44.5 feet in height.

The height of Building C is below the height of the Manor House (44.5 feet) and is compatible with the existing building heights and scale of the Resort. Moreover, Building C is located in the northeast portion of the Resort Site and is not located adjacent to sensitive uses. The nearest residential use is located approximately 125 feet east of the proposed development and is buffered by Oak Creek, landscaping, and mature trees.

In addition, the Project is designed to be compatible and complement the existing Resort "Cottage Type" architecture.

Although Buildings A and C would be visible briefly and intermittently to travelers along Highway 101 and S. Jameson Drive, the Resort's existing development, fencing, walls, and vegetation already largely block views of the ocean. From Eucalyptus Lane, the existing Resort and adjacent Church buildings and existing and proposed vegetation already screen views of the ocean across the Project Site.

There are currently other 1 ½ and 2-story buildings surrounding the Church sanctuary and parish hall, including the Church's 2-story office building across Eucalyptus Lane from the main Church campus. Thus, at two stories in height, Buildings A and B would be compatible with the size and scale of buildings within the Church property's existing setting (and in keeping with other buildings in the surrounding area), as well as those that were previously and historically located on the Northwest Lot.

Comment: Montecito Community Plan Policy PRT-M-1.6 says the development shall not adversely impact existing recreational facilities and uses. Miramar's pre-existing access points to the beach will remain, but the Project will worsen street parking opportunities for members of the public seeking access to the beach.

Response: As set forth in the Parking Analysis by ATE attached to the Staff Report, the Project will result in a surplus of 18 parking spaces during the period of highest demand. In addition, the Resort implements the Final Parking Plan for Rosewood Miramar Beach Montecito ("Parking Plan") (see Exhibit "2") to ensure that Resort employees, guests, visitors, and vendors park onsite. Further, 87 public parking spaces would continue to be

provided under the Project. Therefore, the Project will not worsen street parking opportunities for members of the public seeking access to the beach.

Comment: Findings for Local Coastal Plan Policies 4-9 and 4-11 were not in the Staff Report.

Response: These policies relate to the View Corridor Overlay Designation, which is not applicable to the Project. Therefore, the Staff Report did not need to address them.

Comment: The Project's 50-foot ESH buffer is not consistent with Montecito Community Plan Policy Bio-M-1.3.1, which requires a 100-foot setback.

Response: Development Standard BIO-M-1.3.1 does not require a 100-foot ESH buffer. As set forth in the Staff Report, only a 50-foot buffer is required. All Project development and activities will occur outside of this required buffer. As set forth in the expert Biological Resources Assessment Report dated June 2024 prepared by Dudek posted on the County website, the Project's impact to biological resources, including the ESH and any plants or animals therein, would be less than significant.

b. The Project Is Inconsistent with the Safety Element's Flood and Geological Risks and Evacuation Policy Requirements.

Comment: The Project will be exposed to flood risk based on proposed FEMA mapping changes that show new inundation areas north of 101 and under Eucalyptus Lane and from flooding of creeks on both sides of the Project, creating evacuation risks, which is inconsistent with Coastal Act section 30253(a) regarding minimizing risk to life and property.

Response: The Project complies with County and FEMA requirements for the site by elevating the finished floor elevations two feet above the base flood elevation. The proposed finished floor elevations of the buildings are based upon the County's most current 2024 Recovery Mapping for the Project Site, and include the 2 feet of freeboard required.

The expert Sea Level Rise and Flood Hazards Report prepared by GeoSoils, Inc. (SLR Report) posted on the County website analyzed the potential for impacts from future flooding due to Sea Level Rise (SLR) under the California Coastal Commission's SLR Policy Guidance, as well as from wave runup and beach erosion. This report demonstrates that the Project will be safe from coastal hazards during its design life. There is therefore no basis to conclude there could be evacuation risk issues associated with flooding of the Project site.

The Resort maintains daily coordination with the sheriff and fire departments to remain vigilant and responsive to any emerging needs during emergencies. In the event of an emergency evacuation order, the Resort will follow a structured protocol to ensure the safety and well-being of guests, employees, and the local community. When local authorities issue a recommended evacuation, the Resort partners with a designated hotel or safe location outside the evacuation zone to facilitate a smooth and early transition for our guests and non-essential employees. This approach will avoid last-minute evacuations and prioritize safety. While such situations have only occurred a couple of times over the years, the Resort remains prepared to coordinate departures based on optimal routes identified in real-time.

In the case of a mandatory evacuation, the Resort would undergo a complete shutdown, with only the security team remaining on-site as the primary point of contact with the fire and sheriff departments. Throughout past emergencies, including fires and mudslides, the resort has supported local residents by providing essential supplies such as food, water, and power. Notably, the Resort deployed generators to supply power to elderly neighbors in need of life-sustaining equipment like ventilators for extended periods. Additionally, the Resort has stationed security personnel along nearby train tracks to prevent looting in evacuated areas.

As noted, the Resort monitors potential flood events and follows instructions from governmental officials, which have been to shelter in place during the last several events, including the flooding and mudslides 2018. The Resort did not experience flooding or mudflow during that event.

The Resort will continue to follow these protocols following Project development. Therefore, safety impacts during floods or other emergencies will be less than significant.

c. The Project May Result in Significant Effects Related to Transportation, Air Quality and Noise

i. Transportation – Parking

Comment: The Project will exacerbate the existing parking shortfall and result in significant parking impacts.

Response: In compliance with the existing conditions or approval, the applicant has submitted parking reports that show compliance with applicable parking requirements. Further, as part of its investigation into a recent complaint, the County inspected the Resort and confirmed that it is in compliance with such requirements.

ATE prepared an updated Shared Parking Analysis for the Project, which shows that the proposed parking will exceed peak demand by 18 spaces. County Staff reviewed and approved this study and agree with its conclusions. As discussed above, the Resort implements the Parking Plan to ensure that Resort employees, guests, visitors, and vendors park onsite. The Resort will continue to have adequate parking and the Project will not create street congestion or traffic hazards.

A total of 87 public parking spaces would continue to be provided under the Project. As set forth in the memorandum by ATE dated October 28, 2024 (see Exhibit "3"), a recent parking survey conducted on a peak weekend with good weather shows that parking demand at the Resort ranged from 43 to 75 percent, which demonstrates the adequacy of existing parking. In addition, use of the adjacent public parking spaces on South Jameson Lane, Eucalyptus Lane, and Miramar Avenue ranged from 44 to 80 percent. This demonstrates that the Resort in not impacting public beach access.

In any event, parking is not a CEQA issue and is not a criterion for the exemption.

Comment: The Project will result in significant cumulative traffic impacts, specifically with respect to the Biltmore Hotel, the Montecito YMCA, the Music Academy of the West, and 1 Hot Springs Road.

Response: As set forth in the supplemental traffic memo by ATE dated October 24, 2024 (see Exhibit "4"), these other pending projects would either result in reduced trips or would not add traffic to any of the roadways in the Project vicinity. Moreover, CEQA transportation impacts are not assessed based on level of service but on vehicle miles travelled (VMT). Under the County's VMT methodology, a project that has a less-than-significant project VMT impact also has a less than significant cumulative impact. Therefore, the Project will not result in any significant cumulative traffic impacts.

ii. Air Quality

Comment: Locating the employee housing near the freeway violates environmental justice principles.

Response: The Project will not violate any environmental justice policies, which are intended to protect disadvantaged communities with high air pollution burdens. First, Montecito is not a disadvantaged community and is not shown as such in Cal EPA's SB 535 Disadvantaged Communities mapping tool[2]. In addition, Cal EPA's EnviroScreen mapping tool[3] shows that the Project Site has a low air pollution burden.

[2] https://oehha.ca.gov/calenviroscreen/sb535
[3] https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40

Further, the Project will implement best practices to protect the residents in the employee housing, including locating air intake at the non-roadway facing sides of buildings; utilizing air intake systems equipped with state-of-the-art particle filtration; installing mechanical ventilation systems with fresh air filtration; and locating courtyards and walkways in the interior of the Project Site so that they are shielded by buildings.

Furthermore, the market rate and affordable units will be located within substantially the same distance from the freeway, so there is unfair treatment of the resident employees. The affordable units will also have the same overall quality of construction and design as the market rate units.

iii. Noise

Comment: The residents of the affordable housing units in Building A will be subject to significant noise from Highway 101.

Response: All the apartment units must comply with the California Building Code, which requires insulation to reduce interior noise levels to an acceptable level (45 dBA). In addition, the walkways, plazas, and other open spaces would be shielded from the freeway by the new building, which will reduce noise.

The expert noise study prepared by AES, posted on the County's website, assessed land use compatibly of the new housing, including the affordable units, with the freeway under the County's standards. It determined that the estimated freeway traffic noise levels at the interior of the future units would be approximately 35.9 dBA (CNEL or Ldn), which is well below the County's interior noise limit of 45 dBA (Ldn). It also determined that noise levels in the outdoor living area nearest the freeway (the new lawn area between Building A and Building B) will be approximately 61.9 dBA (CNEL or Ldn), which is below the County's exterior noise limit of 65 dBA (Ldn) for outdoor living areas. Therefore, impacts from freeway noise would be less than significant.

d. Unusual Circumstances Trigger CEQA Review.

i. The Project's Cumulative Impacts Have Not Been Disclosed or Considered.

Comment: The Project will result in cumulative parking impacts, specifically including impacts to coastal access parking.

Response: As set forth in the Parking Analysis by ATE attached to the Staff Report, the Project will result in a surplus of 18 spaces during the period of highest demand. Further, 87 public parking spaces would continue to be provided under the Project.

As set forth in the expert memorandum from ATE dated October 28, 2024, parking impacts are localized, and the projects cited in the comment are all located a mile or more away. Moreover, these other projects would be required to provide adequate parking per County requirements, so there is no potential for significant cumulative parking impacts.

Comment: There are a number of substantial and nearby development projects proposed for the Montecito area that will impact roadways, intersections and beach access parking cumulatively in conjunction with the Miramar expansion project.

Response: As set forth in the October 24 2024 ATE memorandum, the Project will not result in any significant cumulative traffic impacts, as the other pending projects would either result in reduced trips or would not add traffic to any of the roadways in the Project vicinity. Moreover, under CEQA transportation impacts are not assessed on level of service but on vehicle miles travelled or VMT. Under the County's VMT methodology, a project that has a less-than-significant project VMT impact also has a less than significant cumulative impact. Therefore, the Project will not result in any significant cumulative traffic impacts.

ii. The Project May Cause Significant Damage to Scenic Views from Public Places.

Comment: The height and massing of the Project will have a substantial adverse impact on a scenic vista by blocking both public and private views of the Santa Ynez mountains from Eucalyptus Lane.

Response: The Project will not block any public views as the Project's height is consistent with the heights of existing buildings at the Resort. Views of the mountains from Eucalyptus Lane will not be blocked as views down the street will remain. Views across the Project Site are already impaired by existing buildings and trees and the Church.

Private views, including those from the Church, are not protected under CEQA[4] or Appendix G of the CEQA Guidelines.

iii. Impacts to Historic Resource Precludes Use of a Categorical Exemption.

[4] See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App. 4th 47

Comment: The Project will block the Church's historically significant views of the Santa Ynez mountains, which is a character-defining feature of the Church and part of its basis for eligibility as a Historic Landmark.

Response: As set forth in the expert Historical Resources Technical Report prepared by ARG and attached to the Staff Report, such views are not historically significant, and the Project will not have a significant impact to the Church. The commenter provided no credible evidence to the contrary. Furthermore, in designating the Church as a County historic landmark, the Board of Supervisors expressly rejected the Church's argument that the Church is historically significant because of its views.

The Long Historic Preservation Services (LHPS) letter attached to the comment letter does not provide any credible evidence that the north viewshed is significant to the history of the Church. The letter states that the primary entry and exit of the Church has always faced north, but historic photographs show the north entry and ramp were added later. Further, the sanctuary's north-facing windows are all filled with stained glass (added by 1910) and do not afford mountain views. Thus, the mountains were not historically, and are not currently, visible from inside the sanctuary.

The Church has claimed that the 2015 Post/Hazeltine report found the Church to be historically significant because of its views of the mountains. However, the study did not evaluate or even mention views of the mountains. LHPS asserts that this is because the County added a criterion regarding established views after the report was issued in 2015. In fact, this criterion was added in 2001 in Ordinance 4425.

The Church's nomination for the Church as a landmark asserted the significant views are from the north parking lot. Clearly, views ***from the parking lot*** are not evidence that the ***views from the Church building*** are significant. Further, if the views of the mountains were truly important, the Church members would gather in the north Church parking lot. Instead, we understand that Church members currently gather in the south parking lot, where views of the mountains are obstructed by landscaping and the Church itself.

The memo from Katherine Anderson, who is not a historic expert but a "researcher" at the Chytilo law firm, asserts that the important historic views were from the Church's north-facing dormer towards the mountains. Counsel testimony, and that of his "researcher," is not substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580 [attorney testimony not substantial evidence].) As set forth in the expert memorandum from ARG dated October 11, 2024 (see Exhibit "5"), this dormer was demolished, likely in the 1950s during the building's expansion. Therefore, northern views from the dormer cannot contribute to the building's historic significance.

The Church has also suggested that views from the Church's memorial chapel/columbarium are important. As set forth in the October 11, 2024 ARG memorandum, the columbarium was added to the Church in 2021, well after the period of significance, and is therefore not historically significant. Therefore, the views from the columbarium do not contribute to the historic significance of the Church property.

Comment: Moreover, it will significantly impact the historic integrity of the church's location, design, materials, workmanship, feeling, or association, all of which have been purposely constructed in a manner to emphasize the Church's connections with the mountains.

Response: The Project is on a separate parcel and thus could not impact the Church's integrity of location, design, materials, workmanship, feeling, or association. The 2015 Post/Hazeltine Study cited by LHPS concluded that the Church's setting has already been compromised. Thus, further alterations to the Church's setting would not materially impair the significance of the Church.

Comment: As the Project will create a substantial adverse change in the significance of the Church's cultural landscape, the Project does not qualify for an exemption and an EIR must be prepared.

Response: The Church's cultural landscape is not a character-defining feature of the property, and the commenter cites no credible evidence to support this claim. Further, the 2015 Study Post/Hazeltine Study cited by LHPS did not identify views as significant and stated that nearly all landscaping in the 1900-1930 had been removed by 2015 (the present landscape largely dates to the 1990s). As set forth in the expert Historic Resources Report by ARG, the Project would not create a substantial adverse change in the significance of the Church, and impacts would be less than significant.

C. California Coastal Act Issues

1. Environmental Justice and Civil Rights Issues

Comment: Locating the employee housing near the freeway violates environmental justice principles intended to protect disadvantaged communities by exposing residents to pollution and noise from the freeway.

Response: The Project will not violate any environmental justice policies, which are intended to protect disadvantaged communities with high air pollution burdens. First, Montecito is not a disadvantaged community and is not shown as such in Cal EPA's SB 535 Disadvantaged Communities mapping tool. In addition, Cal EPA's EnviroScreen mapping tool shows that the Project Site has a low air pollution burden.

Regarding air quality, the Project will implement best practices to protect the residents in the employee housing, including locating air intake at the non-roadway facing sides of buildings; utilizing air intake systems equipped with state-of-the-art particle filtration; installing mechanical ventilation systems with fresh air filtration; and locating courtyards and walkways in the interior of the Project Site so that they are shielded by buildings.

Regarding noise, all apartment units must comply with the California Building Code, which requires insulation to reduce interior noise levels to an acceptable level (45 dBA). In addition, the walkways, plazas, and other open spaces would be shielded from the freeway by the new building, which will reduce noise.

Furthermore, the market rate and affordable units will be located within substantially the same distance from the freeway, so there is unfair treatment of the resident employees. The affordable units will also have the same overall quality of construction and design as the market rate units.

2. Historical Tribal and cultural significance issues

Comment: The area possesses continuing significance to the first peoples of Montecito. The applicant should undertake consultation with descendants of the area to provide opportunities for integration of the historic culture and values of the area's first peoples at the Miramar.

Response: No such consultation is required under CEQA or County regulations, and the Project is consistent with all applicable policies regarding the protection of cultural and archaeological resources.

The Phase I Cultural Resources Technical Report by Dudek concludes that no known significant cultural resources exist within the Project areas proposed for ground disturbance. These areas have been previously disturbed. If there are any cultural resources below the paved surface, it is likely they are no longer intact. However, the Project is conditioned to require work to stop immediately and retain a qualified archaeologist and Native American representative if an archaeological resource or Native American is encountered during grading or other ground-disturbing activities.

Moreover, the Project is required to comply with California Public Resources Code sections 5097.9–5097.991 (which protects Native American historical and cultural resources, and sacred sites); Public Resources Code section 21084.3 (avoid damaging effects to any tribal cultural resource); and Health and Safety Code section 7050.5 (pertaining to the discovery or recognition of any human remains). Therefore, impacts to tribal cultural and other archaeological resources will be less than significant.

3. Parking Shortfalls Impact Surrounding Neighborhoods and Conflict with the California Coastal Act

a. Coastal Access and Beach Parking

Comment: Insufficient parking supply causes hotel guests and employees to park off-site in designated coastal access sites and neighborhood streets. The hotel already violates existing conditions of approval prohibiting this and a further parking reduction will make this worse.

Specifically, the Resort violates its parking permits in two ways: it has inadequate on-site parking due to resort changes, and its guests, employees, and vendors are using public parking spaces, limiting public access to local beaches and contributing to neighborhood congestion.

Response: The Resort maintains all the parking required under its current approvals, including public parking. In compliance with the existing conditions or approval, the applicant has submitted parking reports that show compliance with applicable requirements. Further, as part of its investigation into a recent complaint, the County inspected the Resort and confirmed that it is in compliance with its parking requirements. ATE prepared an updated Shared Parking Analysis for the Project, which shows that the proposed parking will exceed peak demand by 18 spaces. County Staff have reviewed and approved this study and agree with its conclusions. The Resort will continue to have adequate parking and the Project will not create street congestion or traffic hazards.

A total of 87 public parking spaces would continue to be provided under the Project. As set forth in the memorandum by ATE dated October 28, 2024, a recent parking survey conducted on a peak weekend with good weather shows that parking demand at the Resort ranged from 43 to 75 percent, which demonstrates the adequacy of existing parking. In addition, use of the adjacent public parking spaces on South Jameson Lane, Eucalyptus Lane, and Miramar Avenue ranged from 44 to 80 percent. This demonstrates that the Resort in not impacting public beach access.

Comment: Even collecting parking fees could be considered a potential impediment to coastal access. The Hotel's valet parking scheme will likely result in restaurant goers continuing to park in conveniently-located-no-cost public stalls, rather than pay a fee to valet park just for a meal or drink at the bar.

Response: The commenter speculates that restaurant patrons will park on the street to avoid paying the valet fee. However, valet parking is free to all restaurant and retail patrons.

D. The Waivers and Reductions are Unnecessary and Not Justified

Comment: Waivers # 1 and 4, floor area ratio FAR and open space, are not necessary because the area of the proposed development should be divided by the Project's full 15.99 acres.

Response: Contrary to the comment, the FAR and open space were calculated based on the overall Resort area, consistent with County Code requirements.

Comment: The Project proposes to erect a building in a previously open area that has been part of All Saints by-the-Sea Episcopal Church for 124 years, and is an essential element of the Church's exercise of their doctrine connecting God to the Earth, from the mountains to the sea.

Response: The Project would not be built on a previously open area that has been part of the Church for 124 years, but on two existing surface parking lots that are part of the Resort and owned by the applicant. Moreover, the Church's exercise of their doctrine of connecting God to the Earth is not relevant to the requested waivers, which are governed by State Density Bonus law.

Under State Density Bonus law, the County must make special affirmative findings, supported by substantial evidence, to deny the waivers. The record does not contain substantial evidence that would allow the County to find that the waived standards would not have the effect of physically precluding Project development at the proposed density. However, the waiver request attached to the Staff Report provides substantial evidence that the waived standards would in fact physically preclude Project development at the proposed density.

Comment: The All Saints campus is eligible for listing and would be currently listed as a County Landmark but for the County's inability to set the Historic Landmarks Advisory Committee's first designation recommendation in the 90 day period set by Chapter 18.

Response: The Board of Supervisors designated the Church as a County landmark on October 15, 2024. In any event, the Church' status as a local landmark is not relevant to the requested waivers. State Density Bonus Law permits a local agency to deny a waiver if it finds, based on substantial evidence, that waiver would result in a specific adverse impact on any real property that is listed in the California Register of Historical Resources. However, the Church not listed on the California Register of Historical Resources. Even it was, the Project would not result in a specific adverse impact to the

Church, as demonstrated in the expert Historical Resources Technical Report and supplemental memorandum by ARG.

E. Findings Cannot be Made

Comment: None of the required findings can be made to approve the Project.

Response: As set forth in the Staff Report and its attachments, all the required findings for Project approval can be made. The commenter disagrees with these findings, but provides no credible evidence showing that they are incorrect. Rather, the commenter restates several of the above arguments, which are without merit as set forth in the corresponding responses.

Request for Additional Studies:

Comment: We request the following additional studies:

- Revised and expanded historical analysis

Response: The comprehensive expert Historical Resources Technical Report by ARG demonstrates that the Project will not result in a significant historic impact. The commenter has not provided any credible evidence to support their argument of a significant impact. No further analysis is warranted.

- Comprehensive visual simulation of the viewshed from the Church grounds

Response: Such visual simulations are not necessary. As set forth above, views from the Church have no historical significance, and private views are not protected under CEQA.

- Revised comprehensive regional off-site parking analysis based on physical observations and counts and not a models, that includes: (1) analysis of adequacy of neighborhood public coastal access parking in certain areas, (2) a historical delineation by each project phase the number of total parking places, the number designated for specific use, including coastal access parking, and the adequacy of that amount of parking to meet the Hotel's needs and whether past parking has been adequate.

Response: As set forth above, there will be a surplus of 18 spaces with the Project. Further, as set forth above, the Resort maintains all the parking required under its current approvals, including public parking. Surveys confirm this current parking is adequate and that there is no parking shortfall or impairment of public beach access. No further analysis is warranted.

- Neighborhood evacuation capacity analysis assessing whether Project evacuation would conflict with other neighborhood residents evacuating in response to flooding, and a model of how the community could safely evacuate in a combined risk scenario

Response: As set forth above, there is no risk of flooding. The Resort's emergency plan provides for sheltering in place in the event of civil disorder. The Resort did not experience flooding or mudflow during the flooding and mudslides in 2018. No further analysis is warranted.

- An environmental justice assessment, evaluating Building C's ambient environmental conditions

Response: The commenter has not provided any credible evidence of impacts to future residents of the employees housing or that the Project otherwise conflicts with environmental justice principals. As set forth above, noise and air quality impacts to the residents of the employee housing will be less than significant. No further analysis is warranted.

- Enhanced Transportation Management Plan, including parking allocations for golf carts and site service vehicles and insignia/identification program for banquet, restaurant and bar patrons to deter use of public coastal access parking

Response: The Resort already implements a traffic demand management plan. As set forth above, the Project will not result in significant traffic or parking impacts. No further measures are warranted.

- First People's and Descendant Outreach

Response: As set forth above, such outreach is not required, and impacts to archaeological and tribal cultural resources will be less than significant.

- Air Quality hot spots analysis, both interim addressing conditions during 101 construction and operational once the highway is completed and congestion reemerges per the Caltrans project analysis

Response: The 101 construction is ongoing and part of the environmental baseline conditions, not the Project, and therefore does not need to be assessed. Further, the County requires preparation of a CO hotspot analysis only if a project generates 800 or more peak hour trips. As the Project would only generate 60 peak hour trips, a CO hotspots analysis is not required. Furthermore, the Santa Barbara County APCD no longer requires CO hotspots analysis anywhere in Santa Barbara County because of low background ambient CO concentrations in the County. No further analysis is warranted.

- Solid Waste generation, management, and disposal analysis

Response: The Project is an infill project that will be adequately served by the County's franchised solid waste service hauler. The Project will also comply with all applicable regulations regarding solid waste, including applicable recycling and other waste diversion/reduction requirements. Moreover, earlier this year the County approved a 6.1 million cubic yard expansion of the Tajiguas Landfill, which will help ensure long-term adequacy of disposal capacity in the County. Therefore, the Project's solid waste impacts would be less than significant. The commenter has provided no evidence to the contrary, and no further analysis is warranted.

II. Responses to October 9, 2024 Jordan Sisson Letter

1. The County should adopt a "project alternative" that eliminates the Resort shops.

Response: 76 percent of the apartment units will be affordable units for resort employees. Due to the restricted rents, the applicant loses money on the affordable units. The resort shops will offset the costs of the affordable units. The applicant has determined that the Project would not be economically viable without the shops. Moreover, the County is processing the Project as a CEQA exemption; alternatives analysis is not required for an exemption.

2. The CEQA Exemption is Expiring.

Response: Governor Newson has signed AB 2199, which extends the exemption until 2032.

3. Significant Changes and Cumulative Impacts May Warrant a Supplemental EIR.

Response: The commenter claims that changes to the Resort since the 2008 MND Addendum may warrant preparation of a supplemental EIR. As a preliminary matter, the Project is exempt from further CEQA review under PRC section 21159.25. Further, as set forth in the memorandum attached as Exhibit "6," no further CEQA review is required, much less a supplemental EIR. PRC section 21166 and CEQA Guidelines section 15162.

4. The CEQA analysis relies on outdated studies.

Response: The County did not rely on outdated studies, but on current expert technical reports, including traffic, noise, water quality, air quality and greenhouse gas emissions reports, that are based on current methodologies and data and reflect current baseline conditions.

5. There have been changes to the Resort since it was originally approved that may warrant an EIR; the County has engaged in piecemealing.

Response: There has been no piecemealing. Consistent with longstanding practice, the County reviewed and approved minor changes to the Resort that were found to be in substantial compliance with the original approvals. The County determined that the even with these minor changes, the Resort remained within the scope of the prior approved CEQA analysis. The County found that these determinations were exempt from environmental review. The time period for challenging these determinations has long since passed.

Further, these changes have all been implemented and now are part of the existing baseline conditions and not the Project. No further analysis is necessary.

6. The traffic study should be based on actual traffic counts at the Resort.

Response: Consistent with state law requirements, the County assesses traffic impacts based on VMT. With less than 50,000 square feet of retail uses, the Project's VMT impacts are deemed to be less than significant. Trip generation is not relevant to this threshold.

Consistent with standard practice, the County Public Works Department required the use of trip rates from the Institute of Transportation Engineers (ITE) Trip Generation Manual. This manual is a standard reference used by many jurisdictions throughout the United States and is based on trip generation studies conducted at numerous locations in areas of various populations. As discussed in the traffic study, the ITE apparel store trip rates were used in order to provide a more conservative analysis (i.e., higher trip generation) for the new Resort shops. Customer data collected at the existing resort shops show that they generate significantly less traffic than the estimates calculated using the ITE trip rates.

Further, taking counts at the existing Resort using standard methods such as driveway counts would capture total Resort trips and would not differentiate between trips by the hotel guests and visitors and trips by retail customers.

7. The traffic studies mention "data" from existing resort shops, but that data does not appear to be included.

Response: As discussed above, the traffic study was based on ITE rates. The trip generation was compared against confidential and proprietary transaction data from the existing Resort shops. This comparison shows that using ITE data overstates trips and is therefore more conservative.

8. It is unclear whether the County has considered the annual parking/traffic reports.

Response: No annual traffic reports are required. Miramar submitted parking reports as required by the County for consideration. Per the County's instruction, the report for 2023 will be submitted before the end of this year.

9. Twenty percent TDM participation is too low and may warrant additional mitigation measures.

Response: The conditions of approval for the Resort require implementation of a TDM plan but do not require a minimum participation percentage. Moreover, the Project traffic analysis did not take a TDM credit against the trip generation.

Further, the County added the TDM requirement to address potential level of service (LOS) impacts. Consistent with state law requirements, the County assesses traffic impacts based on VMT. Therefore, the TDM requirement for LOS impacts has no relevance to the CEQA analysis or the CEQA exemption.

10. The proposed retail is regional-serving luxury shopping that is akin to a regional shopping center and may have substantially higher trip generation rates.

Response: The expert traffic report shows that 50 percent of the Resort shop customers will be guests staying at the hotel and on-site residents and 70 percent of the external trips will be local trips from Montecito. As most of the customers will be local, the shops are not a regional destination.

Regional shopping centers are generally located on sites of 40 to 100 acres and contain 400,000 to 800,000 square feet of floor area and have two or more anchor department stores[5]. In contrast, the Project's retail component would be located on a portion of a 3.077-acre site and comprise only 17,500 square feet without an anchor department store.

[5] ICSC (2017) https://www.icsc.com/uploads/research/general/US_CENTER_CLASSIFICATION.pdf

The shops are clearly not a regional shopping center, and treating these shops as a regional shopping center would be inappropriate.

The traffic analysis used very conservative assumptions that significantly overstate the number of trips generated. The County traffic engineer reviewed and approved the traffic study and all its data and assumptions. The commenter provides no credible evidence that the trip rates are inaccurate, only speculation; speculation is not substantial evidence. (CEQA Guidelines section 15145.)

11. The freestanding retail will generate more trips.

Response: The commenter speculates that the Project's retail will generate more trips as it will not be physically connected to the hotel but provides no credible evidence. Like the existing shops, the new shops' storefronts will be internal to the resort.
Further, the trip rates used apply to standalone retail uses. The County traffic engineer reviewed and approved the traffic study and all its data and assumptions.

12. The traffic analysis should have used retail strip center trip rates like the GHG study.

Response: The GHG study did not use strip center trip rates for mobile GHG-emissions. Rather, it assessed mobile GHG emissions, which comprise the vast majority of the Project's GHG emissions, based on trip generation from the traffic study, which the County reviewed and approved.

The GHG model only has a limited number of retail land use categories to choose from, most of which are clearly inapplicable (e.g., gasoline service station, 24-hour convenience market.) Therefore, for the *non-mobile* emissions (water, energy, solid waste), the analysis used the strip center category, which is the most representative use.

13. The Project will result in significant parking impacts that may affect coastal access.

Response: The Project is seeking a parking reduction based on an expert shared parking study that uses widely accepted best methodologies and is based on conservative assumptions. The study shows that there will be a surplus of 18 spaces during the period of highest demand. County Staff reviewed and approved this study and agreed with its conclusions.

In compliance with the existing conditions or approval, the applicant submitted parking reports that show compliance with applicable parking requirements. Further, as part of its investigation into a recent complaint, the County inspected the Resort and confirmed

that it is in compliance with such requirements. As discussed above, the Resort implements the Parking Plan to ensure that Resort employees, guests, visitors, and vendors park onsite.

A total of 87 public parking spaces would continue to be provided under the Project. As set forth in the memorandum by ATE dated October 28, 2024, a recent parking survey conducted on a peak weekend with good weather shows that parking demand at the Resort ranged from 43 to 75 percent, which demonstrates the adequacy of existing parking. In addition, use of the adjacent public parking spaces on South Jameson Lane, Eucalyptus Lane, and Miramar Avenue ranged from 44 to 80 percent. This demonstrates that the Resort is not impacting public beach access.

14. The assumed number of café employees in the shared parking study is not consistent with the number of cafe employees in the GHG analysis.

Response: The commenter is mixing apples with oranges. The shared parking study assesses peak parking demand based on the maximum number of employees at any given time. In contrast, the GHG analysis considers total vehicle miles traveled and thus is based on the total number of employees across all shifts.

15. The traffic study mischaracterizes the Resort as being within 10 minutes of 2 bus stops.

Response: ATE confirmed that, at typical walking speeds, the North Jameson Lane/Miramar Avenue bus stop is 4.1 minutes away, and the San Ysidro Road/San Leandro Park Road stop is 4.3 minutes away. In any event, the traffic study did not take a transit credit.

16. The VMT and GHG analyses should have considered VMT and GHG associated with the existing Resort.

Response: The Project will be developed on two surface parking lots. No new development or construction activity related to the Project will occur in the rest of the Resort. As such, the existing Resort and its associated VMT and GHG emissions comprise the environmental baseline and are not part of the Project.

CEQA only requires analysis of changes over and above the environmental baseline. Therefore, the existing VMT and GHG emissions do not need to be included in the Project CEQA analysis.

17. Flooding and sea level rise concerns should be addressed more carefully.

Response: The comment consists of speculation and unsupported opinion and is not credible evidence of a significant impact. The expert SLR Report was prepared in strict compliance with the requirements of the California Coastal Commission's (CCC) SLR Policy Guidance (2018).

Contrary to the comment, the Report does not downplay risks but rather employs both the more conservative sea level rise estimates contained in the CCC's 2018 SLR Policy Guidance, as well as the updated estimates contained in the Ocean Protection Council's 2024 draft SLR guidance, which the CCC is anticipated to adopt later this year.

The SLR Report does not establish the finished first floor elevations for Building C. Rather, the proposed first floor elevations of the buildings are based upon the County of Santa Barbara Recovery Mapping (County of Santa Barbara, 2024) for the Project Site, and include the 2 feet of freeboard required above the 100-year water surface elevation, in compliance with Chapter 15A of the Santa Barbara County Code, "Floodplain Management Ordinance".

Building C would comply with the flood zone's requirements to include 2 feet of freeboard, and the SLR Report confirmed that the building would be safe from coastal hazards, including from flooding and erosion, during its design life. The Project was reviewed and signed off as complying with applicable requirements for this flood zone by the County Flood Control District.

18. The County should consider needed LCOAs enhancements.

Response: The commenter speculates as to the source of demand for the Project's retail uses, but provides no evidence that they would be "regional serving". To the contrary, like the existing retail at the Resort, the proposed Resort shops and cafe would primarily attract hotel guests, as well as residents of the Montecito community.

The applicant complied with the County's condition of approval requiring the payment of a Lower Cost Visitor Serving Overnight Accommodations mitigation fee in the amount of $1,395,000, which it paid to the County to fund efforts establishing new lower cost accommodations, such as cabins, tents, yurt sites and bicycle camp sites at Jalama Beach Park.

The Project does not propose any additional hotel rooms. Therefore, Coastal Act section 30213 is inapplicable. There would be no nexus to require any mitigation under section

30213, since such mitigation is based either on the removal of lower cost rooms or the addition of higher cost rooms, neither of which would occur under the Project.

19. GHG impacts are understated due to factually inaccurate employment assumptions as the Project employee number is not consistent with the number of hotel employees from the parking study.

Response: The commenter is again mixing apples and oranges. As GHG emissions are based on total VMT, the GHG report appropriately considers the total number of employees across all shifts for all uses. As the parking study assesses peak parking demand, it is based on the maximum number of employees at any given time.

20. It is unclear how the square footage of the Project was increased.

Response: The applicant requested a density bonus waiver to increase the FAR needed to accommodate the Project as it is entitled to under State Density Bonus Law.

III. Responses to the October 6, October 15, October 15, and October 17, 2024 Philip Dracht Letters

1. The Resort is currently not meeting its parking requirements.
Response: The Resort maintains all the parking required under its current approvals, including public parking. In compliance with the existing conditions or approval, the applicant submitted parking reports that show compliance with applicable requirements. Further, as part of its investigation into a recent complaint, the County inspected the Resort and confirmed that it is in compliance with its parking requirements.

2. Resort guests and visitors are parking in public spaces intended for beach goers.

Response: The Resort currently provides 87 public parking spaces that would continue to be provided under the Project. As set forth in the memorandum by ATE dated October 28, 2024, a recent parking survey conducted on a peak weekend with good weather shows that parking demand at the Resort ranged from 43 to 75 percent of supply, which demonstrates the adequacy of existing parking. In addition, use of the adjacent public parking spaces on South Jameson Lane, Eucalyptus Lane, and Miramar Avenue ranged from 44to 80percent. This demonstrates that the Resort in not impacting public beach access.

3. ATE's shared parking analysis should be disregarded because it does not use real world data.

Response: The ATE shared parking study is based on widely utilized methodologies that are based on empirical data from real world projects. The County reviewed and approved the study, which is consistent with County methodology and prior shared parking studies for the Resort. The recent survey discussed above confirms that the current parking is adequate and that there is no parking shortfall or impairment of public beach access. This demonstrates that the prior shared parking analyses are valid and accurate.

4. Real world evidence indicates that the Resort cannot accommodate all its guests and employees during peak time.

Response: The commenter claims that the Resort's use of offsite parking at the Church from 2021 to 2023 and QAD parking lots more recently is evidence that the Resort has insufficient parking. In fact, the Resort has from time to time utilized offsite parking for special events to improve operational efficiency and reduce valet wait times or occasionally when special event requires use of a portion of the parking areas. As set forth above, a recent parking survey confirms that the Resort has sufficient parking. In addition, the Resort implements a Parking Plan to ensure that Resort employees, guests, visitors, and vendors park onsite.

5. The shared parking study understates the retail parking demand.

Response: The commenter speculates that the proposed Resort shops will have a higher parking demand than shown in ATE's expert shared parking study. As set forth above, the ATE study is based on widely utilized methodologies that are based on empirical data from real world projects. The County reviewed and approved the study, which is consistent with County methodology and prior shared parking studies for the resort. The commenter provided no credible evidence to the contrary.

6. There are an insufficient number of Resort parking spaces on Miramar Avenue.

Response: The commenter claims that the Resort must maintain 17 parking spaces on Miramar Avenue for Resort use and that three spaces are reserved for 60 Miramar Avenue, leaving only 14 spaces for the Resort. In fact, only 14 spaces are required for the Resort, and the commenter acknowledges that these spaces are being provided. None of these 14 spaces are reserved for or available to other uses, including 60 Miramar. There are also three public spaces at the end of Miramar, as well as 14 on the south side.

7. **The Resort shops are not permitted under the C-V zone.**

Response: The C-V zone is intended to provide for tourist recreational development in areas of unique scenic and recreational value. It permits resort and hotel uses and light commercial uses "associated with the needs of visitors, provided such commercial activities are so designed and limited as to be incidental and directly oriented to the needs of visitors and do not substantially change the character of the resort/visitor-serving facility."

The commenter maintains that the proposed Resort shops are not consistent with the zoning in that they constitute a "small mall," would not be geared toward the needs of hotel guests, and would change the character of the Resort.

While the exact tenant mix is not currently known, the goods offered in the new Resort shops will be similar to those offered by the existing shops. Like the existing shops, the new shops' storefronts will be internal to the Resort, and they will primarily serve Resort guests and local residents. Thus, the Resort shops will be incidental to the primary Resort use and consistent with the existing retail uses, and will not substantially change the character of the Resort. Therefore, they are permitted under the C-V zoning.

The commenter speculates that the new shops will mostly attract outside retail shoppers, but provides no credible evidence in support. As set forth in the expert traffic study reviewed and approved by County Staff, 50 percent of the Resort shop customers will be guests staying at the hotel and on-site residents and 70 percent of the external trips will be local trips from Montecito. As most of the customers will be local, the shops will not attract mostly outside retail shoppers as the commenter claims.

The commenter asserts that the ratio of shops to guest rooms will be excessive. This is a made up and meaningless statistic that is not part of the zoning. Even with the new Resort shops, the total retail square footage will be less than 10 percent of the total Resort square footage. This percentage overstates the proportion of retail in that it does not reflect the large outdoor areas that are used for restaurant seating and Resort functions. Therefore, the retail will remain incidental to the primary resort use.

The commenter also compares the amount of retail in the Resort to certain other resorts in the area. However, these resorts have different clientele and different rooms and rates, and offer distinctly different experiences. Therefore, they are not comparable. In any event, the zoning does not require the Resort to have a comparable amount of retail to other resorts.

8. The Project will result in significant environmental impacts.

Response: The commenter speculates that the Project will result in significant traffic, noise, air quality, aesthetic, and historic impacts. County Staff determined, based on expert technical reports, that the Project would not result in any significant environmental impacts. The commenter provided no credible evidence to the contrary; speculation is not substantial evidence. (CEQA Guidelines section 15145.)

9. The Project may result in a significant impact on tribal cultural resources.

Response: The commenter speculates that the Project could result in a significant impact to tribal cultural or archeological resources. As set forth in the expert Phase I Cultural Resources Technical Report by Dudek (posted on the County's Project webpage), the Project will not result in a significant impact to tribal cultural or archeological resources. The commenter has provided no credible evidence to the contrary.

The commenter maintains that there will be a significant impact because the County has not required the exact same conditions as imposed on another nearby project. The County is not required to impose the same conditions on every project, as conditions are project specific. Moreover, the commenter has not demonstrated that the Project conditions will be ineffective in addressing potential impacts to tribal cultural or archeological resources. Indeed, the Project conditions will be equally as effective in addressing potential impacts to tribal cultural or archeological resources as the ones cited in the comment. Impacts will be less than significant, and no additional measures are warranted.

DRAFT

EXHIBIT H

Analysis and Critique of ATE Parking Analysis for the Miramar Beach Resort Expansion

The Miramar Expansion Project's proposal to modify parking requirements and reduce the number of on-site spaces is unsupported by credible evidence and has significant implications for public access, local neighborhood integrity, and compliance with Santa Barbara County's parking regulations.

ATE provided the County one set of number in 2023, allowing for a parking surplus of 4 spaces. They now try to fudge those same numbers to find a parking surplus of 23 spaces in their current analysis. But using ATE's own shared parking analysis numbers, this project is short one parking spot.

I. COUNTY CODE REQUIREMENTS

The overarching purpose of Section 35-103 is to ensure **safe, adequate, and well-designed off-street parking facilities** that reduce street congestion and enhance safety. This section clarifies that the established parking standards are **minimum requirements** and that the Planning Commission holds the authority to mandate additional parking if warranted by the specifics of a project. Under Section 35-107(3), "For additions to existing developments, the increased parking requirement shall be based on the aggregate total of the floor area and/or number of employees of all existing and proposed buildings or structures on the property," requiring this Commission to accurately determine the Miramar's parking requirements based on existing and proposed square footage and number of employees.

In support of their request for a variance and reduction in on-site parking, Miramar relies on the June 25, 2024, Associated Traffic Engineer's Parking Analysis, Exhibit J to Staff Report The ATA report undercounts the parking requirements of the existing project by misrepresenting the square footage of at least three amenities. Specifically, Table 3, Page 4, of the Report fails to include the Miramar Beach Bar in its calculation of square footage. It states the following use:

Restaurant – Fine Dining	2,684 SF 20 Employees	1 Space/300 SF patron space 1 Space/2 Employees	9 Spaces 10 Spaces

But Attachment B-4 for this project, **COASTAL DEVELOPMENT PERMIT NO.:** 24CDP-00077, describes Caruso's and the Miramar Beach Bar as follows: "3,932-square-foot beach bar and oceanfront restaurant." Staff Report, Attachment B-4, Attachment A, page A-4. Including the Miramar Beach Bar with Caruso's creates a zoning requirement of 14 spaces for patrons and at least 10 spaces for employees, although likely higher to account for bar employees, amending Table 3 to read

Restaurant – Fine Dining; Miramar Beach Bar	3,932 SF 20 Employees	1 Space/300 SF patron space 1 Space/2 Employees	**14 Spaces** 10 Spaces

More dramatically, ATE misrepresents the square footage of the Beach Club as 665 SF.

Beach Club	665 SF	1 Space/30 SF Assembly Space	23 Spaces

Staff Report, Attachment B-4, Attachment A, page A-4 describes the beach club as follows: "3,870-square-foot beach club." This results in a parking requirement of 129 parking spaces, to service the 300 members.[1] Table 3 should be amended to read:

Beach Club	3,870 SF	1 Space/30 SF Assembly Space	**129 Spaces**

Finally, ATA undercounts the Sushi SF of the sushi restaurant.

Sushi Restaurant	678 SF 5 Employees	1 Space/300 SF patron space 1 Space/2 Employees	3 Spaces 3 Spaces

But the Miramar's Substantial Conformity Determination for the Sushi restaurant, 21SCD-00020, describes the restaurant as follows:

> The project also includes a remodel of two of the existing guest rooms located in Bungalow Building #3 into a new resort food and beverage restaurant space within the existing building, encompassing 1,604 square feet of existing building space and a 288-square-foot patio enclosure totaling 1,892 square feet.

See Exhibit 1, 1, Substantial Conformity Determination Memorandum, 21 SCD-00020, page 1. And ATE submitted a report supporting the application for a Sushi restaurant, claiming that the 50 seat restaurant would only result in a peak demand of 16 spaces. See Exhibit 2, October 28, 2021 ATE Report, page 3, table 2. Table 3 should be amended to read:

Sushi Restaurant	1,892 SF 5 Employees	1 Space/300 SF patron space 1 Space/2 Employees	7 Spaces 3 Spaces

This Commission requires accurate information to make its necessary findings to approve the parking variance. ATE's report is not accurate. ATE's reports submitted to the County to support their developments have been inaccurate. And in reliance on ATE's reports, the County has approved those developments. In addition to the square footage analysis, the employee count for the hotel and restaurants have not changed since 2014, before there were hotel rooms and restaurants – 50, 20, and 20.

Using actual square footages and usage of these identified errors by ATE, the TOTAL requirement under Article II, Division 6, Sections 35-109 and 35-110 is not 701 spaces, as miscalculated by ATE, but **816** spaces.

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[1] It is undisclosed as to whether the 300 memberships are individual memberships, with restricted access to the beach club for those individual members or if the Beach Club. Commissioners should question the applicant regarding

Approved Project and Proposed Project –
Coastal Zoning Ordinance Parking Requirements

Land-Use	Size	ZO RATE	ZO REQUIREMENT
Hotel	154 Rooms 50 Employees	1 Space/Room 1 Space/5 Employees	154 Spaces 10 Spaces
Restaurant – Family Dining	2,423 SF 20 Employees	1 Space/300 SF patron space 1 Space/2 Employees	9 Spaces 10 Spaces
Spa	2,900 SF	1 Space/300 SF	10 Spaces
Banquet Hall	10,425 SF	1 Space/30 SF Assembly Space	348 Spaces
Apartments – Employee Affordable (a)	4 1-Bedroom DU	1 Space/DU	4 Spaces
Restaurant – Fine Dining and Beach Bar	3,932 SF 20 employees	1 Space/300 SF patron space 1 Space/2 Employees	14 Spaces 10 Spaces
Beach Club	3,870	1 Space/30 SF Assembly Space	129
Resort Shops	8,481 SF	1 Space/500 SF	17 Spaces
Sushi Restaurant	1892 SF 5 Employees	1 Space/300 SF patron space 1 Space/2 Employees	7 Spaces 3 Spaces
Lobby Bar	1,270 SF 5 Employees	1 Space/300 SF patron space 1 Space/2 Employees	5 Spaces 3 Spaces
Subtotal:			**733 Spaces**
Proposed Project			
Apartments – Market Rate (a)	1 1-Bedroom DU 7 2+Bedroom DU	1 Space/1-Bedroom DU 1.5 Spaces/2-Bedroom DU	1 Space 11 Spaces
Apartments – Employee Affordable (a)	20 1-Bedroom DU 6 2-Bedroom DU	1 Space/1-Bedroom DU 1.5 Spaces/2-Bedroom DU	20 Spaces 9 Spaces

Resort Café	2,500 SF 5 Employees	1 Space/300 SF patron space 1 Space/2 Employees	9 Spaces 3 Spaces
Resort Shops	15,000 SF	1 Space/500 SF	30 Spaces
Subtotal:			**83 Spaces**
TOTAL Requirement			**816**
Parking Provided			**480 Spaces (b)**

Parking Shortfall/Variance Requested **336 spaces**

If the Commission approves this parking plan, it will be approving a parking plan with only 480 spaces, tightly parked, which still has **a shortfall of 336 spaces** from the minimum parking limits require by code, only providing 59.93% of the parking required by code.

II. ATE Shared Parking Analysis

"Lies, Damned Lies, and Statistics"—Mark Twain

Section 35-107(5) provides: "In order to encourage efficient use of commercial parking space and good design practices, the total parking requirement for mixed uses or Conjunctive Uses shall be based on the number of spaces adequate to meet the various needs of the individual uses operating during the Peak Parking Period." Section 35-58 provides the definition: "**Peak Parking Period:** The two hour period within a seven day time period with the highest calculated parking demand for a single site."

A. ATE's Inconsistent Parking Analysis

In support of this application, ATE submits several shared parking analyses. The first is a spreadsheet on page 9 of Exhibit J, shows that with their existing project, assuming a 30% internal capture for restaurant/banquet and 50% internal capture[2] for retail, there would be a parking surplus of 23 spaces. But this analysis runs contrary to the same analysis that ATE submitted to the County in support of 23SCD-0007, which found that at the peak demand, the existing resort had a parking demand of 431 for a surplus of 4. See Exhibit 2, page 6 February 15, 2023 ATE Parking Analysis for 23SCD-0007. ATE's 2023 analysis was consistent with the prior ATE analysis for 21SCD-00020, which added retail and found a parking demand of 428 and a surplus of 7. See Exhibit 1, page 5.[3]

The differences between ATE's 2021, 2023, and 2024 shared parking analysis are as follows:

1. 2023 used a 30% internal capture rate for retail and demand rate of 2.91KSF (thousand square feet) while 2024 uses a 50% internal capture rate and demand rate of 2.66KSF. According to ATE, this results in 1 less space at noon and 3 less at 1:00 p.m. in 2024.

[2] While undefined by ATE, internal capture is understood to mean in this context to refer to the percentage of users who are already on the resort grounds, i.e., resort guests.

[3] 21SCD-00020 added additional retail.

2. 2023 assumed a 90% peak for family dining at 1:00 p.m. requiring 25 spaces while 2024 assumed 86%, requiring 24 spaces, for a difference of 1 less space in 2024.
3. 2023 assumed a usage of 10 spaces for the lobby bar at 1:00 p.m. while 2024 assumes 0 use and 0 spaces, for a difference of 10 less spaces in 2024.
4. 2023 assumed a 100% peak usage for employee housing, for 7 spaces using a demand rate of 1.65 spaces per unit, while 2024 had a demand rate of 1.00 spaces per unit and a 50% peak usage, for 2 spaces, for a difference of 5 spaces.

With a slight of hand, ATE was able to reduce the "shared parking demand" of the existing resort from 431 in February 15, 2023 to 412 in their June 24, 2024 analysis, finding 19 additional parking spaces.

19 "found" spaces is a critical number. Looking at the second spreadsheet, ATE's analyzes the peak use for the proposed project. With a parking supply of 480, under ATE's own analysis using the 2024 numbers, ATE projects a "surplus" of 18 spaces at noon. But if you add the proposed project's "peak parking" to ATE's 2023 analysis, the proposed project is overparked by one car. Section 35-107(5) requires that the total parking rewquirement "shall be based on the number of spaces adequate to meet the various needs of the individual uses during the Peak Parking Period."

ATE's own analysis falls short in this regard. Indeed, ATE's analysis and "thumb on the scale" should demonstrate to Staff and to the Commission that their report is not an independent analysis but is instead an analysis that has been written to justify a project that is already overparked.

III.

2. Section 35-105 - Maintenance of Parking Spaces

Section 35-105 mandates that parking areas provided to meet code requirements cannot be reduced, eliminated, or converted without equivalent facilities that comply with County standards. Failure to maintain these parking areas renders the primary project permit void.

Argument: The ATA parking report relies on optimistic assumptions regarding shared parking and internal capture rates that underestimate the project's demand. The miscalculation of the beach club's square footage alone demonstrates a potential shortfall, as the real demand for the beach club (corrected to 3,870 sq. ft.) would require significantly more spaces than initially allocated. Additionally, the Miramar project's staff and guests already utilize surrounding public and residential parking, which raises concerns about increased street congestion and traffic hazards in the local area. Allowing a modification would directly contravene Section 35-103's mandate for adequate off-street parking and its intent to **reduce street congestion and promote safety** in high-traffic zones like Montecito's coastal area.

Argument: The project's modification requests effectively reduce the required parking, undermining the purpose of this section. By reallocating parking that should be designated for staff and guests, the project indirectly eliminates spaces by redirecting this demand onto public

and residential areas. This behavior breaches Section 35-105's requirement for maintenance of on-site parking and does not provide any equivalent, alternative facilities as mandated. The Planning Commission should deny the parking modifications to ensure compliance with this section and prevent the project's permit from becoming void due to non-conformance.

3. Section 35-106 - Recalculation of Parking Spaces Upon Change of Use

According to Section 35-106, a recalculation of required parking spaces is necessary upon any change of use, and prior modifications become null and void. Given the expansion's increase in floor area and shift toward mixed-use with significant retail, residential, and hospitality elements, this section requires a fresh parking assessment in line with the new project scope.

Argument: The substantial change from a resort-focused property to a mixed-use development with added retail and residential spaces necessitates a recalculated parking requirement. Given the high demand from upscale shops and the beach club, recalculating based on actual floor area and realistic capture rates would likely reveal a need for additional spaces. ATA's reliance on outdated or unrealistic assumptions fails to meet Section 35-106's requirements, and any previously granted parking modifications should be considered void in light of the site's revised use and demand profile. This justifies denying the modifications to ensure a valid recalculation in accordance with the updated use.

4. Section 35-107 - Required Number of Spaces: General

Section 35-107 outlines that parking spaces must meet the minimum requirements for the zone and be maintained in conjunction with the development. For expansions, parking requirements are calculated based on the aggregate total of floor area and employee count.

Argument: The ATA report's misstatement of the beach club's square footage (665 sq. ft. rather than 3,870 sq. ft.) and optimistic carpooling assumptions suggest that the provided spaces fall below the aggregate requirement. Additionally, Section 35-107(3) requires calculating increased parking based on the aggregate total of floor area and employee count, further supporting the need for additional parking spaces beyond what ATA proposed. Given that the project does not meet the minimum requirements set by the zoning district, denying modifications aligns with this section's objective to maintain required parking standards and prevent spillover into public streets.

5. Section 35-179.6 - Findings Required for Approval of Modifications

Section 35-179.6 specifies that any parking modification must demonstrate that it **will not adversely affect on-street parking demand** in the immediate area.

Argument: The ATA parking report's reliance on shared parking and unrealistic capture rates means that the on-site parking supply will likely fall short of meeting demand, pushing overflow parking onto public streets. This adverse effect directly contradicts Section 35-179.6, which states that modifications should only be approved if they do not impact on-street parking. As public streets are already experiencing increased demand due to staff and guests parking in residential zones, approving a modification would exacerbate existing issues and fail to meet the section's essential finding. Denying the modification is therefore necessary to prevent adverse impacts on public parking and to comply with this provision fully.

Conclusion

The proposed Miramar Expansion Project's parking modifications contravene multiple Santa Barbara County Code sections by failing to provide adequate on-site parking, underestimating demand, and pushing overflow into public areas. Sections 35-103, 35-105, 35-106, 35-107, and 35-179.6 collectively underscore the necessity for maintaining minimum parking requirements to

reduce street congestion, promote safety, and ensure that parking demand is met on-site. Given these conflicts, I recommend that the County Planning Commission **deny the requested parking modifications** to uphold the County's intent to maintain adequate, safe, and compliant off-street parking solutions for the community.

For the proposed Miramar expansion to occur, the Planning Commission has the following discretionary authority

- Section 35-103. - Purpose and Intent.

  SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

  The purpose of this DIVISION is to assure the provisions and maintenance of safe, adequate, well-designed off-street parking facilities in conjunction with any use or development. The intent is to reduce street congestion and traffic hazards and to promote an attractive environment through design and landscaping standards for parking areas. The standards set forth in this DIVISION shall be considered minimums, and more extensive parking provisions may be required by the Planning Commission as a condition of project approval.

- Section 35-105. - Maintenance of Parking Spaces.

  SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

  No parking area or parking space provided for the purpose of complying with the provisions of this DIVISION shall thereafter be eliminated, reduced, or converted in any manner unless equivalent facilities approved by the County are provided elsewhere in conformity with this DIVISION. The permit for the use for which the parking was provided shall immediately become void upon the failure to observe the requirements of this section.

Section 35-106. - Recalculation of Parking Spaces Upon Change of Use.

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Upon the change of any use, the number of parking spaces to be provided shall be calculated according to the requirements of this DIVISION for the new use. Any previous parking modifications granted by the Planning Commission, Zoning Administrator, or the Director shall be null and void.

Section 35-107. - Required Number of Spaces: General.

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The minimum number of parking spaces as required in the specific applicable zone district or specified in this DIVISION shall be provided and continuously maintained in conjunction with any use or development.

3.

For additions to existing developments, the increased parking requirement shall be based on the aggregate total of the floor area and/or number of employees of all existing and proposed buildings or structures on the property.

7.

Modifications to the parking requirements may be granted, pursuant to Section 35-142 (Accessory Dwelling Units), Section 35-144C.4 (Density Bonus for Affordable Housing Projects), Section 35-172.12 (Conditional Use Permits), Section 35-173 (Variances), Section 35-174.8 (Development Plans), or Section 35-179 (Modifications).

Section 35-179.6 Findings Required for Approval.

A Modification shall only be approved if all of the following findings are made:

5. Any Modification of parking or loading zone requirements will not adversely affect the demand for on-street parking in the immediate area.

This report examines the proposed parking layout, valet operations, and potential spillover effects of the expanded Miramar Beach Resort on local public and neighborhood parking. Currently, the resort has nine retail stores and plans to add an additional 10-12, totaling 21 stores. This increases the retail-to-guest room ratio to one store per 7.33 rooms. This is a highly unusual ratio for a luxury resort, indicating that the resort will draw significant non-guest traffic, similar to a destination retail center, in addition to its hospitality offerings, the Beach Club, and special events with up to 400 guests, with significant implications for parking demand, traffic flow, and coastal access.

Given the constraints of the proposed parking supply and the public street parking, his expansion, coupled with existing beach access to Hammonds Beach, Miramar Beach, and Fernald Point, serviced mostly by street parking along Jameson Lane, Eucalyptus Lane, Humphrey Rd., and Miramar Avenue, poses risks to public coastal access and neighborhood parking sufficiency. An analysis of the ATE Parking Analysis highlights these deficiencies, particularly concerning the underestimation of retail impact and reliance on internal capture rates and public parking

I. Parking Requirements

The ATE report calculates parking requirements based on Santa Barbara County's Coastal Zoning Ordinance and the State Density Bonus requirements for residential units. The total code-required parking for the proposed development is 701 spaces, while the proposed supply is

only 480 spaces. The extent of this deficit (221 spaces) is significant and indicates a heavy reliance on shared parking assumptions to justify adequacy.

A. Retail Attraction and "Retail Magnet" Concerns – Change in Character of Resort

The addition of 12 stores is likely to transform the resort into a regional shopping destination, similar to other Caruso projects like The Grove and Palisades Village, which are designed to draw non-local visitors as part of a curated retail experience. As Rick Caruso himself has stated, his properties are about creating "town centers"[4] that are "imaginative retail and mixed-use destinations"[5] in their own right. This shift raises critical concerns regarding parking sufficiency.

Increased Non-Guest Traffic: The new retail expansion, in addition to the retailers of the caliber that are already at the Miramar,[6] is poised to attract substantial vehicle traffic from the local community, tourists visiting Santa Barbara, and Miramar specific day-visitors/shoppers from Southern California alike. 21 stores of Rodeo Drive caliber, located in the manicured grounds of the Miramar will likely become a destination shopping experience for many. The Parking Analysis fails to account for this heightened draw, which could lead to substantial overflow into public parking intended for coastal access. This intensifies the risk of parking shortages during peak periods, particularly from June 15 to September 15, when beach access is highly utilized.

II. ATA SHARED PARKING ANALYSIS

1. Aggressive Internal Capture and Pass-By Rate Assumptions

The ATE analysis does not adequately adjust internal capture rates or pass-by estimates to reflect the increased draw from 21 high-end retail stores. A ratio of 1:7.33 for stores to guest rooms is unprecedented in similar resorts and suggests a clear departure from typical resort traffic patterns. Called "The Man Who Could Save Retail," by the Wall St. Journal,[7] it is undeniable that Caruso is a successful developer who has, through distinctly successful vision and development, created extremely successful high-end retail destinations, where other retail has suffered. There is a reason why ATE could not find a resort with a similar level of retail stores as the proposed Miramar to serve as a comparison, there aren't any.

a. Internal Capture

The analysis relies on internal capture rates of 30% for restaurants/banquets and 50% for retail, assuming that a substantial portion of patrons will be resort guests who do not require additional parking. This rate suggests that half of the trips generated by the retail component are anticipated to be from guests already staying at the hotel or on-site residents, rather than generating additional off-site vehicle trips and 30% of the trips to the café are expected to be from on-site guests or residents, reducing the number of trips that would impact the surrounding road network.

Overly Optimistic Internal Capture Rates. These assumptions are overly optimistic. These rates may be overly optimistic, particularly given the resort's mixed-use nature and the

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[4] https://caruso.com/newsroom/in-the-news/2022/famed-developer-rick-caruso-discusses-the-groves-greatest-moments-and-20th-anniversary-plans/

[5] https://www.lseaic.com/aicconversations/rick-caruso

[6] https://www.rosewoodhotels.com/en/miramar-beach-montecito/experiences/shopping listing 9 stores: Loro Piana, Bottega Veneta, Zegna, Brunello Cuccinelli, Goop Sundries, Laykin et Cie, James Perse, Shop at Miramar, and The Webster.

[7] https://caruso.com/newsroom/in-the-news/2018/man-save-retail/

high volume of guests. It is unlikely that such a significant proportion of visits to the retail shops and café will come solely from within the resort, particularly given the potential 1:7.33 ratio of guest rooms to stores.

Lack of Empirical Validation: The internal capture rates are not substantiated by any site-specific studies or data from comparable projects. Internal capture rates should be validated based on the unique characteristics of each site. Given Caruso's intention to create a shopping destination, internal capture rates are likely to be lower, as retail attractions will draw a higher proportion of non-guest visitors.

Potential Underestimation of External Traffic Impacts: Overestimating internal capture could lead to an underestimation of new trips generated by the resort's commercial components. This results in an incomplete picture of the development's traffic impacts on the surrounding road network, particularly during peak periods when more external visitors might frequent the retail and dining areas.

Inconsistency with Visitor Behavior for High-End Resorts: In a high-end coastal resort like the Miramar, guests may be more inclined to explore surrounding areas, such as the beach, Santa Barbara, wineries, and other nearby attractions, rather than exclusively patronizing on-site amenities. This could lead to lower internal capture rates than those assumed by ATE, with more guests generating external trips rather than primarily remaining on-site.

ATE has used the most aggressive internal capture rate in its analysis – a capture rate that is not supported by empirical data and that does not reflect the development. A more conservative internal capture rate or additional data to substantiate the assumptions would strengthen the analysis and ensure a more accurate assessment of traffic and parking impacts.

b. Pass-By Rates

ATE also provides a very aggressive pass-by rate for the retail and restaurant components at the Miramar. Overestimation of these rates leads to an underestimating of parking demand.

Potential Underestimation of Parking Demand. ATE's pass-by rates of 40% for retail and 43% for the café imply that nearly half of the customers are already on nearby roads and will not generate new parking demand. This assumption could lead to an underestimation of the total number of vehicles requiring parking at the resort, particularly during peak hours when actual demand might exceed available spaces. ATE uses the ITE Trip Generation Manual to create this data, when they could very easily survey existing Miramar guests and visitors to more accurately assess pass-by rates.

Limited Applicability to Resort-Serving Commercial Areas. Pass-by rates make sense in analyzing urban or suburban retail locations with high traffic volumes and convenient drop-in access. For a visitor-serving commercial zone like the one in which the resort is located, it is more likely that guests are specifically traveling to the site, reducing the likelihood of pass-by trips as compared to standard retail or restaurant locations within mixed-use or urban settings. The assumption that a large percentage of customers will not need parking because they are pass-by visitors may not be appropriate in this context.

Impact on Valet and Parking Operations. The reliance on high pass-by rates suggests a lower anticipated parking demand, which could strain valet services and available parking spaces if actual demand is higher. This is particularly concerning in a valet-only parking system at the Miramar, where efficient operation is critical. Underestimating demand due to inflated pass-by rates could lead to delays, congestion, and a reduced quality of service for guests.

Mismatch with Event and Peak Season Parking Needs. For large events or peak tourist seasons, when Miramar attracts many external visitors, the high pass-by rate could result in a

significant shortfall in parking availability. This underestimation could lead to spillover parking impacts on nearby areas, which is especially problematic given that public parking is not available for resort guests or employees.

c. Seasonal Variability and Peak Period Challenges

The project plans do not address how parking will be managed during peak summer months, despite the fact that coastal access demands and resort visitation will be at their highest during this period.

d. Offsite Employee Parking During Peak Season and for Events

Although the resort has historically rented offsite parking during peak periods, this solution is temporary and not explicitly included in the new project plans. The lack of a permanent, seasonal parking strategy may lead to ongoing strain on local streets and public parking, particularly on weekends from June to September.

III. Insufficiency of Onsite Parking and Valet Configuration

a. Valet Constraints, and Traffic Spillback—Fire Access.

The schematic layout of the parking structures, which includes two valet access points on Jameson Lane, does not account for the high turnover associated with large events, beach club usage, and increased retail traffic.

Valet System Overload During Peak Events: The existing valet configuration is likely to be overwhelmed during events with up to 400 attendees, resulting in backups that could extend onto Jameson Lane. The use of two-level stacker parking, requires valet attendants to manually manage vehicle storage and retrieval, which can slow down the process, especially during peak arrival and departure times, such as a large event beginning or ending.

The first Jameson Valet access point servicing the parking structure is near the fire access route serving the interior cottages. Traffic backups at this point due to valet attendants being overloaded or the Western lot being full, will be a point of failure for fire access.

The second Jameson Valet access point for the resort at the main enterance, parking at the Eastern parking lot, is in the interior roundabout, with a fire access route into the interior cottages before valet access point. Traffic backups at this point due to valet attendants being overloaded or the Eastern lot being full, will be a point of failure for fire access.

b. Parking Layout and Circulation Concerns

The parking layout combines conventional spaces, compact spaces, tandem parking, and stacker systems, each with unique limitations. While the specific percentages are unknown, the design of the parking layouts allocate a substantial portion of spaces as compact or tandem parking, reducing the functional capacity for larger vehicles typical of luxury resorts. This is a very high end resort, with clientele driving SUVs and larger vehicles, which may not fit comfortably in compact spaces, leading to inefficient use or guest inconvenience.

Given the narrow margins and tightly stacked parking that is sought to be approved, the Commission requires an analysis of the types of parking spaces that are created here, i.e., how many are compact, with an analysis of the types of cars the Miramar currently parks at its resorts.

The parking schematic indicates drive aisles at standard widths; however, given the stacker configuration, this may restrict movement during peak operations. Valet attendants will

need to navigate between stacker and standard spaces, slowing down circulation within the lot, particularly during times of simultaneous arrival and departure. This layout could result in significant delays for guests and impede efficient flow through the valet system, which is critical for the planned high volume of vehicles under ATE's shared parking analysis.

c. Lack of Overflow and Holding Areas

The schematics do not appear to include designated holding areas for incoming or queued vehicles, a standard feature in high-capacity valet systems. Without holding zones, incoming vehicles must wait within the drive aisles or on Jameson Lane, potentially blocking fire access. This lack of buffering will likely exacerbate congestion at the entrances, backing traffic up on Jameson Lane.

d. Potential for Increased Neighborhood Traffic

The spillover of retail and event traffic into surrounding neighborhoods will likely lead to increased congestion and parking scarcity. Overflow traffic may lead to more vehicles circulating through local neighborhoods in search of parking, increasing congestion and potentially raising safety concerns. Neighbors have already reported this occurring.

IV. Seasonal Challenges, Large Events, and Offsite Parking Needs

The peak tourist season, from June to September, exacerbates the already strained parking situation. Despite prior use of offsite parking during these periods, this practice is not formalized in the current project plans. By not integrating offsite parking and shuttle services into the permanent plan, the Miramar risks exacerbating parking shortages during peak periods.

V. Public Access and Coastal Act Compliance

The California Coastal Act emphasizes that developments should not impair public access to coastal areas, and peak-season beachgoers are at particular risk. The increase in retail traffic combined with peak summer beach traffic will severely restrict public parking availability. This conflicts with the Coastal Act, which requires that public coastal access be maintained without interference from private developments. Failure to preserve these spaces for public use during peak times could lead to non-compliance and potential enforcement actions by the Coastal Commission.

Retail Expansion and Increased Spillover Effects into Public Parking and Beach Access. The California Coastal Act mandates the preservation of public access to the coast, and Section 30210 explicitly requires that coastal access not be obstructed by private development. Section 30352 provides that "The location and amount of new development should maintain and enhance public access to the coast by ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation." The ATE Parking Analysis does not sufficiently address how the reductions in parking supply as required by the Santa Barbar County Code, Article II, and expanded retail presence at the Miramar will likely impact public parking designated for coastal access.

Retail Attraction and Public Parking Competition: With the resort becoming a retail destination, non-guest visitors will likely seek out nearby public parking as a convenient option, displacing beachgoers and impacting coastal access. This is particularly so if there is a fee for valet parking, as is consistent with Miramar current practices. This will also happen if the Miramar parking supply is full due to a sunny summer day with Beach Club members on site, a

hotel full of guests, and a large event such as a wedding. In other words, any given Summer weekend at the Miramar.

The Coastal Act prioritizes public over private use in coastal access areas, meaning any reduction in access due to spillover from the resort's retail visitors could be seen as a violation of this requirement. When private development impinges on public access, it often results in mandatory mitigations or restrictions on parking use to ensure compliance . Therefore, if retail traffic displaces beachgoers, the resort could face similar scrutiny or enforcement actions.

Offsite Employee Parking. For large events, the Miramar often has its employees park offsite, formerly in the parking lot of All Saints by the Sea, from 2021-2023, and in 2024, at QAD. When employees park at QAD, the record is full of complaints by neighbors of Miramar employees, contractors, and venders parking in the neighborhood. This impacts coastal access by taking those public resources—parking spaces, for private purposes – the operation of the Miramar.

Insufficient Public Parking Protections: Despite protocols discouraging resort guests and staff from using public spaces, enforcement has been inadequate, as evidenced by neighbor complaints. When those protocols were created in 2015, there was one retail store at the Resort. Having a total of 21 retail stores on the resort grounds creates different use and visitor to the resort, which impacts public parking. The restriction on parking for those 87 public spots on Jameson, Eucalyptus and Miramar Avenue should be amend to include not just Miramar Guests and Staff, but ANY Miramar Visitor. This includes those retail shoppers. Strengthening these protections, possibly through real-time monitoring and increased enforcement, will be necessary to ensure compliance with public access requirements

VI. CONCLUSION

In conclusion, the proposed parking configuration and valet plans do not adequately address the increased demand from retail visitors and the strain on public access parking. Without substantial adjustments, the project risks severe spillover effects into neighborhood and public parking, reduced coastal access, creating a persistent enforcement issue for the County, and potential non-compliance with the California Coastal Act.

EXHIBIT 1

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October 30, 2024

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RE: County of Santa Barbara's Rosewood Miramar Project (Agenda Item No. V.1.)

Dear Commissioners,

On behalf of the Western States Regional Council of Carpenters ("**Western Carpenters**" or "**WSRCC**"), my Office is submitting these comments for the County of Santa Barbara's ("**County**") County Planning Commission Hearing, for the Rosewood Miramar ("**Project**").

The Western Carpenters is a labor union representing almost 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

The Staff Report describes the Project as the following:

> The proposed residential and commercial development will be located in the existing northwest and northeast parking lots on site. Development in the northwest parking lot will consist of two new mixed-use buildings, Building A and Building B. Building A will be 16,597 square feet, with 8,573 square feet of residential square footage and 8,024 square feet of commercial square footage. Building A will have a maximum height of 33'-5". Building B will be 20,786 square feet, with 11,310 square feet of residential square footage and 9,476 square feet of commercial square footage. Building B will have a maximum height of 30'-2". There will be eight market-rate apartments (four on the second-floor of each building) comprised of one one-bedroom unit, four two-bedroom units, and three three-bedroom units. The first floor of the buildings will be

> commercial space including 15,000 square feet of resort shops and a 2,500-square-foot café. There will be up to 12 resort shops that will be resort/visitor-serving light commercial uses similar in nature to the existing resort shops on site, such as resort-oriented clothing shops, jewelry stores, and wellness/beauty shops. There will also be a subterranean parking lot with 79 parking spaces.(Staff Report, p. 10.)

Individual members of WSRCC live, work, and recreate in the County and surrounding communities and would be directly affected by the Project's environmental impacts.

The Western States Regional Council of Carpenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

The Western Carpenters incorporates by reference all comments raising issues regarding the Environmental Impact Report (EIR) submitted prior to certification of the EIR for the Project. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

Moreover, the Western Carpenters requests that the County provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law ("**Planning and Zoning Law**") (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

I. THE COUNTY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY'S ECONOMIC DEVELOPMENT AND ENVIRONMENT

The County should require the Project to be built using a local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the

applicable craft which would be required to graduate from such a state-approved apprenticeship training program, or who are registered apprentices in a state-approved apprenticeship training program.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

> [L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7,

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[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf.

2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program" can result in air pollutant reductions.[2]

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[3]

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.[4] Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about

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[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10.

[3] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf

[4] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 ("**AB2011**"). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

The County should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT'S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.[5]

Western Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project's construction activities. WSRCC requests that the Lead Agency require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon Western Carpenters' experience with safe construction site work practices, WSRCC recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.

[5] Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, *available at* https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx.

- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]

- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.[6]

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union

[6] *See also* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions Sites, *available at* https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, *available at* https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

members and apprentices conduct safe work practices. The Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Western Carpenters has also developed a rigorous Infection Control Risk Assessment ("**ICRA**") training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.[7]

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

III. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

The California Environmental Quality Act is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[8] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

1. Background Concerning Environmental Impact Reports

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002,

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[7] For details concerning Western Carpenters's ICRA training program, *see* https://www.swmsctf.org/courses/icra-best-practices-in-health-care-construction/

[8] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. Cal. Pub. Res. Code, § 21083. The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in Public Resources Code section 21081. See CEQA Guidelines, § 15092, subds. (b)(2)(A)-(B).

While the courts review an EIR using an 'abuse of discretion' standard, the reviewing court is not to *uncritically* rely on every study or analysis presented by a project proponent in support of its position. *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights Improvement Assn.*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Id.* Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the court stated in *Berkeley Jets*, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450). The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Id.* For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an

adequate opportunity to comment on that presentation before the decision to go forward is made. *Id.*

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St.* v. *City of Hayward* (1980) 106 Cal.3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that "may have a significant effect on the environment." PRC, § 21151; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75; accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC, §§ 21100 (a), 21151; CEQA Guidelines, § 15064 (a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063 (b)(2), 15064(f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." PRC, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, Inc.*, 13 Cal.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines, § 15063(b)(1); see *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom*, 202 Cal.App.3d at p.

310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen,* 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064(f)(1).

2. *Background Concerning Initial Studies, Negative Declarations and Mitigated Negative Declarations*

CEQA and CEQA Guidelines are strict and unambiguous about when an MND may be used. A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; *No Oil, Inc.*, 13 Cal.3d at p. 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064, subds. (f)(1)-(2); see *No Oil Inc., supra*, 13 Cal.3d at p. 75 (internal citations and quotations omitted). Substantial evidence includes "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384(a).

The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. *No Oil Inc.*, *supra*, 13 Cal.3d at p. 84; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579. It "requires the preparation of an EIR where there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial[.]" *County Sanitation*, *supra*, 127 Cal.App.4th at p. 1580 (quoting CEQA Guidelines, § 15063(b)(1)). A lead agency may adopt an MND only if "there is no substantial evidence that the project will have a significant effect on the environment." CEQA Guidelines, § 15074(b).

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. *League for Protection of Oakland's Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905. "Where the question is the sufficiency of the evidence to support a fair argument, deference to the agency's determination is not appropriate[.]" *County Sanitation*, 127 Cal.App.4th at 1579 (quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318).

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom*, 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Id*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. *Environmental Protection Information Center v. Cal. Dept. of Forestry* (2008) 44 Cal.4th 459, 486 (internal citations and quotations omitted). The remedy for this deficiency would be for the trial court to issue a writ of mandate. *Id.*

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. "Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist.*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

In an MND context, courts give no deference to the agency. Additionally, the agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is one of the EIR's responsibilities. As stated in *Pocket Protectors v. City of Sacramento*:

> Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

(2004) 124 Cal.App.4th 903, 935 (internal citations and quotations omitted).

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA requires erring on the side of a "preference for resolving doubts in favor of environmental review." *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332 "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.

3. Background Concerning CEQA Exemptions

Where a lead agency chooses to dispose of CEQA by asserting a CEQA exemption, it has a duty to support its CEQA exemption findings by substantial evidence, including evidence that there are no applicable exceptions to exemptions. This duty is imposed by CEQA and related case law. CEQA Guidelines, § 15020 (The lead agency shall not knowingly release a deficient document hoping that public comments will correct the defects.); see *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Agriculture Assn.* (2015) 242 Cal.App.4th 555, 568 (The lead agency has the burden of demonstrating that a project falls within a categorical exemption and must support the determination with substantial evidence.); accord *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 (The Lead agency is required to consider exemption exceptions where there is evidence in the record that the project might have a significant impact.)

The duty to support CEQA and exemption findings with substantial evidence is also required by the Code of Civil Procedure ("**CCP**") and case law on administrative or

traditional writs. Under the CCP, an abuse of discretion is established if the decision is unsupported by the findings, or the findings are unsupported by the evidence. CCP, § 1094.5(b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles*, our Supreme Court held that implicit in CCP section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. (1977) 11 Cal.3d 506, 515 (internal citations and quotations omitted). The lead agency's findings may be determined to be sufficient if a court has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action. *West Chandler Blvd. Neighborhood Assn. vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521-1522 (internal citations and quotations omitted). However, "mere conclusory findings without reference to the record are inadequate." *Id.* at p. 1521 (finding city council findings conclusory, violating *Topanga Assn. for a Scenic Comm.*).

Further, ***CEQA exemptions must be narrowly construed to accomplish CEQA's environmental objectives***. *Cal. Farm Bureau Federation v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187; accord *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 ("These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.")

Finally, CEQA procedures reflect a preference for resolving doubts in favor of environmental review. See Pub. Res. Code, § 21080(c) (an EIR may be disposed of only if there is no substantial evidence, in light of the entire record before the lead agency, that the project may have a significant effect on the environment or revisions in the project); CEQA Guidelines §§ 15061(b)(3) (common sense exemption only where it can be seen *with certainty*); 15063(b)(1) (prepare an EIR if the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial]; 15064, subd. (h) (the agency must consider cumulative impacts of past, current, and probable future projects); 15070 (a negative declaration may be prepared only if there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment, or project revisions would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

there is no substantial evidence, in light of the whole record, that the project as revised may have a significant effect on the environment); *No Oil, Inc., supra,* 13 Cal.3d at p. 83-84 (significant impacts are to be interpreted so as to afford the fullest possible protection).

B. The Project Would be Approved in Violation of CEQA as the Section 21159.25 Exemption is Inappropriate for the Project.

The 21159.25 Exemption should not be used to exempt this ***large*** project from necessary environmental review. The purpose of the 21159.25 Exemption is to extend the Class 32 Exemption to urbanized locations in unincorporated areas. Importantly, the Class 32 Exemption requires the project sites be limited to no more than 5 acres. Here, the Project Site is reported as 3.077 acres. (Staff Report, p. 6.) However, the actual property, with the inclusion of the existing hotel and shops, is ***15.99 acres***. (Staff Report, p. 13.) By separating the new development from existing project, the Project Site is artificially reduced. The true Project Site should reflect both the existing buildings along with the proposed additions as this Project is intended to be an extension of the existing hotel. The more accurate acreage highlights that this Project is ***simply too big*** to be considered under a categorical exemption.

The City has a burden to provide substantial evidence, which must be based upon facts, reasonable assumptions based on facts and expert opinion, rather than the City's mere speculation, to support its findings. CEQA Guidelines § 15384(a); Save Our Big Trees v. City of Santa Cruz (2015) 241 Cal. App. 4th 694, 711 (citing Muzzy Ranch Co. v. Solano County Airport Land Use Com. (2007) 41 Cal. 4th 372, 386).

C. The Project's Incorporation of Best Management Practices Does Not Negate the Need for Mitigation Measures.

The Staff Report notes improperly labeled mitigation measures as "Best Management Practices" which the CEQA analysis purports will reduce the Project's impacts, such as noise (Staff Report Attachment C, p. 10.) Relying on the Best Management Practices, the Staff Report concludes that the Project will not have any significant impacts that would otherwise make the Section 21159.25 Exemption inapplicable.

However, it is established that "'[a]voidance, minimization and / or mitigation measure' . . . are not 'part of the project.' . . . compressing the analysis of impacts and

mitigation measures into a single issue . . disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656.)

When "an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no significant effects will occur, that agency must treat those measures as though there were adopted following a finding of significance." (*Lotus, supra*, 223 Cal. App. 4th at 652 [citing CEQA Guidelines § 15091(a)(1) and Cal. Public Resources Code § 21081(a)(1).])

By labeling mitigation measures as best management practices, the County violates CEQA by failing to disclose "the analytic route that the agency took from the evidence to its findings." (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.])

As the Project would have significant impacts on Noise without the inclusion of the "Best Management Practices," the Section 21159.25 Exemption must not be applied to the Project. WSRCC requests further environmental review be prepared to adequately mitigate the Project's impacts with enforceable measures.

D. <u>The Project May Have Significant Traffic and Air Quality Impacts.</u>

Section 21159.25 includes exceptions to the general exemption in subsection c. Specifically, the following conditions create an exception to the exemption:

> (1) The cumulative impact of successive projects of the same type in the same place over time is significant.
> (2) There is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
> (3) The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.
> (4) The project is located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
> (5) The project may cause a substantial adverse change in the significance of a historical resource. (Public Resources Code Section 21159.25(c).)

The proposed Project would inherently create the kind of successive significant impacts described in the first exception, as the Project seeks to expand the already

large hotel and shopping operation. As the original project was evaluated under an EIR,[9] the County should, at a minimum, require an addendum to the existing EIR. A subsequent or supplemental EIR would also be appropriate for a proposed project of this size.

Many of the comments on the Project thus far have highlighted the significant concerns that the Project will dramatically increase the traffic in an already congested area. Indeed, the traffic analysis performed by the Project Applicant seems to underestimate the Project's trip generation. Specifically, the external trips assumes that the resort shops will only generate in and out trips in the PM hours. (Staff Report Attachment H, p. 4.)

Table 2
Project Trip Generation Summary – External Trips

Land Use	Size	ADT	AM Peak Trips In - Out	PM Peak Trip In - Out
Apartments – Market Rate Resort (a)	8 Units	54	1 In – Out 2	3 In – 1 Out
Apartments – Employee Affordable (b)	26 Units	94	3 In - 7 Out	5 In - 4 Out
Resort Shops (c)	15,000 SF	299	0 In – 0 Out	10 In – 9 Out
Resort Café (d)	2,500 SF	107	5 In - 5 Out	6 In – 3 Out
Total Trip Generation		**554**	**9 In – 14 Out**	**24 In -17 Out**

(a) Trip generation based on ITE rates for Multifamily Housing (Low-Rise) (ITE #220).
(b) Trip generation based on ITE rates for Affordable Housing (ITE #223).
(c) Trip generation based on ITE rates for Apparel Store (ITE #876), 40% Pass-By
(d) Trip generation based on ITE rates for High Turnover Sit-Down Restaurant (ITE #932), 43 % Pass-By

It is unclear if the prepared traffic study estimates the trip generation for the Proposed additions or for the entire Project, including the pre-existing stores and hotel. As the Project aims to increase the popularity of the hotel, the existing daily trips should be included in the traffic study to establish the estimated increase on the already burdened neighborhood. The provided traffic study is insufficient to support a finding of no significant traffic impacts by the Proposed Project. WSRCC requests the County perform further, independent evaluation.

Further, the Project plans expect to ***remove 50 trees*** from the Project Site.

[9] CEQANet, *Miramar Beach Resort and Bungalows Project (SCH # 2007121158)*, December 28, 2007; available at https://ceqanet.opr.ca.gov/Project/2007121158.

Northwest Lot	
Species	Quantity
Mexican Fan Palm	2
African Sumac	5
Coast Live Oak	2
Australian Willow	10
Rosewood	1
Eastern Redbud	1
Strawberry	1
Jacaranda	1
Paperbark	1

Northeast Lot	
Species	Quantity
Strawberry	3
African Sumac	1
Western Sycamore	22

(Staff Report, p. 11)

While the project plans to plant new trees, there is a strong possibility that many of the trees will not survive. As noted by Lara Roman, a U.S. Forest Service researcher who studies tree mortality, "planting a massive number of trees is not necessarily a positive investment if not enough of them survive to become mature plants."[10] Further, "there's also a carbon cost to tree-planting, meaning that trees have to survive years before they offset that cost. The largest environmental gain comes when trees mature, sometimes decades after they're planted."[11] The reduction of mature onsite trees will necessarily result in negative impacts to air quality and GHG emissions.

IV. CONCLUSION

The Proposed Project is inappropriate for the Section 21159.25 Exemption due to its size and under evaluated impacts on the local environment. WSRCC respectfully requests that the Commission require local hire and Covid-19 safe building practices, deny the Project's CEQA Exemption, and require further environmental review through

[10] Bloomberg, The Darker Side of Tree-Planting Pledges (June 30 2021), available at https://www.bloomberg.com/news/features/2021-07-30/what-happens-after-pledges-to-plant-millions-of-trees?srnd=citylab.

[11] *Id.*

an addendum, a subsequent EIR, or a supplemental EIR. If the Commission has any questions, they may reach out to my office for further information.

Sincerely,

Grace M. Holbrook
Attorneys for Western States
Regional Council of Carpenters

Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);

Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B); and

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C).

EXHIBIT J

Villalobos, David

From:	Jesse Burden <rtwerk@gmail.com>
Sent:	Tuesday, October 8, 2024 8:30 PM
To:	Villalobos, David
Cc:	Steve Lavagnino; Cory Bantilan; Supervisor Nelson; Joan Hartmann; Laura Capps; Supervisor Das Williams
Subject:	Miramar project opposition
Categories:	Purple Category

AGENDA ITEM #: 2
MEETING DATE: 10/1/24

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Planning Commission,

As a long-time resident of our cherished Montecito community, I am writing to express my deep concern and strong opposition to the proposed Miramar development project (Case Nos. 24RVP-00050, 24RVP-00051, 24AMD-00008, & 24CDP-00077).

This massive expansion plan is entirely unfit for our quiet, modest beach neighborhood and poses serious safety risks due to the dramatic increase in traffic it would bring. The staff report indicates the project would generate over 5,000 average daily trips on South Jameson Lane alone. Our narrow residential streets simply cannot safely accommodate such a surge in vehicle traffic. The inevitable congestion would impede emergency vehicle access and put pedestrians and cyclists at risk.

Furthermore, the scale and nature of the proposed commercial development is completely out of character with our humble coastal community. The addition of 15,000 square feet of "resort shops" and other luxury retail seeks to impose a crass, consumerist "Rodeo Drive" culture that has no place in Santa Barbara. Our town has always valued its laid-back beach lifestyle over ostentatious displays of wealth. This project's attempt to cater to ultra-high-end tastes is an affront to the modest character we've long maintained.

The audacity of this plan is staggering. A few of the most egregious elements include:

- Increasing the allowed Floor Area Ratio from 0.25 to 0.29, far exceeding what our zoning allows.
- Constructing a 40-foot tall, 3-story building in an area limited to 2 stories.
- Dramatically reducing required setbacks, in some cases to as little as 1 foot from property lines.
- Slashing the mandated open space from 40% to just 27.74%.

These requested waivers show a blatant disregard for our carefully crafted zoning regulations designed to preserve Montecito's unique character.

I implore the Planning Commission to reject this ill-conceived plan that would forever alter the fabric of our community. The Miramar's desire for profit should not come at the expense of our safety, quality of life, and small-town coastal charm that makes Montecito special.

Sincerely,
Jesse Burden
Concerned Montecito Resident

Addendum: Take-Down Arguments Against Proposed Miramar Development

Dear Planning Commission Board Members,

I urge you to reject the proposed Miramar development for the following compelling reasons:

1. Traffic Safety Hazard
The project would generate over 5,000 average daily trips on South Jameson Lane, overwhelming our narrow residential streets. This dramatic increase in traffic poses an unacceptable safety risk to pedestrians, cyclists, and other drivers. Emergency vehicle access would be severely impeded. The applicant has not adequately addressed these life-threatening impacts.

2. Violation of Community Character
The massive scale of this project is completely incompatible with Montecito's quaint coastal village atmosphere. The proposed 40-foot tall, 3-story buildings would tower over surrounding homes. The addition of high-end retail shops attempts to impose an ostentatious "Rodeo Drive" culture that has no place in our modest beach community.

3. Environmental Damage
The project requires excessive waivers of critical environmental protections, including reduced setbacks as close as 1 foot from property lines and slashing required open space from 40% to just 27.74%. This would cause irreparable harm to sensitive habitats, especially along Oak Creek. The CEQA exemption is inappropriate given these significant impacts.

4. Inadequate Infrastructure
Our water, sewer, and road systems are already strained. Adding 34 new residences and 17,500 square feet of commercial space would overwhelm this fragile infrastructure. The applicant has not demonstrated there is sufficient capacity to support this intense development.

5. Coastal Access Obstruction
While claiming to maintain public beach access, the project would in fact impede it by relocating easements and intensifying private uses of the beachfront. This violates the California Coastal Act's mandate to maximize public coastal access.

Addressing specific agenda items:

1. Case No. 24RVP-00050 (Revision to Development Plan)
This revision to allow 56,485 square feet of development in the CV Zone is excessive and incompatible with our community character. The proposed FAR increase from 0.25 to 0.29 sets a dangerous precedent for overdevelopment. The scale of this project will overwhelm our modest beach town aesthetics and infrastructure.

2. Case No. 24RVP-00051 (Revision to Minor Conditional Use Permit)
The addition of 34 residential units (26 affordable employee apartments and 8 market-rate apartments) will significantly intensify land use beyond what our community can sustainably support. The affordable housing component, while laudable in theory, appears to be a token gesture to push through an otherwise unacceptable level of development.

3. Case No. 24AMD-00008 (Amendment to Major Conditional Use Permit)
Hotel improvements within the UPRR right-of-way raise serious safety and liability concerns. Encroaching on this transportation corridor could have unforeseen consequences for both the resort and our broader community's infrastructure.

4. Case No. 24CDP-00077 (Coastal Development Permit)
This permit would allow for development that is fundamentally at odds with the Coastal Act's mandate to protect coastal resources and public access. The project's scale and intensity will negatively impact coastal views, increase traffic congestion, and strain our limited water resources.

5. CEQA Exemption (Section 21159.25)
The claim that this massive project qualifies for a CEQA exemption is dubious at best. A development of this scale and potential impact warrants a full Environmental Impact Report. The exemption fails to account for cumulative impacts on traffic, water resources, and community character.

In conclusion, this project flagrantly disregards Montecito's small-town coastal character and environmental values in pursuit of profit. It represents a significant overreach that threatens the very character of our community. I implore you to protect our town's unique coastal village atmosphere by rejecting this misguided proposal in its entirety. Our safety, quality of life, and precious coastal resources are at stake.

Sincerely,
Jesse Burden
Concerned Montecito Resident