# EXHIBIT C

(To Statement of Grounds for Appeal, dated October 20, 2008)

COAST LAW GROUP LLP

169 Saxony Road
Suite 204
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

**July 15, 2008**

Anne Almy
Supervising Planner
County of Santa Barbara
123 E. Anapamu Street
Santa Barbara, CA 93101

***Via Electronic Mail***
**anne@co.santa-barbara.ca.us**

**Re: Miramar Beach Resort and Bungalows Project**
*Citizens Planning Association*
Comments on Final Subsequent Environmental Impact Report
Planning Commission Hearing July 16, 2008

Dear Ms. Almy:

Coast Law Group LLP represents the interests of Citizens Planning Association (CPA) with respect to the County's review of the above-referenced project (the Caruso Plan, or Project) under the California Environmental Quality Act (CEQA). Thank you for the opportunity to participate in the review process. Because the issues raised in Coast Law Group's comment letter on the Draft SEIR have not been adequately addressed, we remain concerned with the scope of the proposed project and the numerous potentially significant impacts associated therewith.

In anticipation of the Montecito Planning Commission's consideration of the Project at its July 16, 2008 hearing, please consider the following comments in addition to those previously submitted. Due to the following inadequacies, we remain convinced that the Project cannot be legally approved as proposed, and a comprehensive environmental impact report must be produced.

## 1. Improper Segmentation

The County's continued reliance on the hybrid Addendum procedure constitutes a prejudicial abuse of discretion under CEQA. The Response to Comments prepared by the applicant's attorneys state, "An Addendum may be prepared when there are project changes that do not involve new or substantially worse significant impacts, and not merely because of technical changes or additions." (Response to Comment 8c). In justifying this position, the applicant's "CEQA Topical" dated May 21, 2008, relies heavily on *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App. 4th 1385 ("*Mani*"). However, *Mani* expressly held that "an addendum is only appropriate to a previously certified negative declaration where 'minor technical changes or additions are necessary [citation]." *Id.* at 1400.

As noted in our comment letter on the Draft SEIR, because the County expressly concluded that the project will result in new significant environmental effects with respect to historical resources, it cannot legally find that the project involves "only minor technical changes or additions" or that "none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR" have occurred. 14 CCR §15164(b) (emphasis added).

In an attempt to further support the County's incorporation of the Addendum, the CEQA Topical relies heavily on *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App. 4th 357 ("*Eureka*"). In doing so, the Topical appears to rely on CEQA Guideline section 15128, which provides:

> An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study."

14 CCR §15128 (emphasis added).[1]

Notably, a lead agency's election to separate the analysis in an attached initial study under section 15128 does not change the fact that the initial study constitutes a component of the subject EIR and merely substitutes for the analysis otherwise required in the body of the document. For instance, in *Eureka*, the court noted that the attached initial study satisfied section 15128's substantive EIR requirements with respect to the finding that aesthetic impacts would not be significant. *Id.* at 376. The court explained:

> Here the City determined that the Project's aesthetic impacts would be insignificant, and [the] EIR contained, as required, statements addressing the reasons for that conclusion. (Guidelines, §15128.) The EIR therefore adequately dealt with this issue. *Id.* (Emphasis added).

The Topical takes the position that an initial study is "the functional equivalent of an addendum" and that incorporation of the Addendum into the SEIR in this case is therefore warranted under *Eureka.* However, the Topical ignores the fact that under such an approach, the Addendum would simply constitute a component of the SEIR in the same manner as the initial study in *Eureka.* Accordingly, the adequacy of the Addendum would be subject to review against substantive EIR standards. As noted in our prior comment letter, SEIRs must meet the stringent content requirements applicable to all EIRs. 14 CCR §15160; Pub. Res. Code §21100.

In failing to recognize this point, the County has improperly segmented the review process. For instance, the *Eureka* decision itself references the lead agency's obligation to disclose disagreements among experts within the body of the EIR: "When experts in a subject area dispute the conclusions reached by other experts whose studies were used in drafting the EIR, the EIR need only summarize the main points of disagreement and explain the agency's reasons for accepting one set of judgments instead of another." *Eureka, supra,* 147 Cal.App. 4th at 371-372.

Significantly, neither the Final SEIR nor the Addendum disclose the criticism raised by B&E Engineers and John Frye with respect to the Penfield & Smith reports. On this issue, the applicant's Response to Comments state:

[1] Relevant here, event though it easily could have, the California Resource Agency did not promulgate a similar guideline with respect to the use of addenda under Guideline section 15164. Instead, it adopted the mandatory finding requirements discussed above and referenced in *Mani.* The Topical fails to address applicable rules of statutory construction and legislative intent in this regard.

> The commenter cites Guidelines § 15151 which relates to adequacy of an EIR to support the proposition that the SEIR should have summarized a disagreement among experts relating to hydrological impacts, even though the SEIR analyzes historic resource impacts, and not hydrological impacts . . . Guidelines § 15151 specifically applies to EIRs, and is not applicable to addenda.

(Response to Comment 8e).[2]

The County's rationale is entirely misplaced. Just as the attachment of an initial study could not be used to circumvent the substantive requirements applicable to EIRs, incorporation of the Addendum in the SEIR cannot be used to circumvent the County's good faith disclosure obligations. In this regard, segregation of the analysis in the Addendum has led to a number of fundamental flaws as referenced in our prior comment letter.[3]

## 2. Water Supply Impacts

The massive size of the Project is rarely more evident than in the analysis of water demand. The applicant estimates it will require more than **105,000 gallons** of water *per day*, equating to an annual demand of **38,325,000 gallons** (117.6 acre feet). Importantly, this estimate is *usage* only, and does not include the additional **311,000 gallons** that will be needed to fill the two pools, 9 spas, and 10 water features.[4]

The MND Addendum determined water use impacts to be insignificant because (a) the Montecito Water District (MWD) on May 11, 2007 issued a "Certification of Water Service Availability" letter (service letter) purporting to commit to serve the Project's water demand, (b) the Project would no longer include the use of an on-site private well contemplated for use in the Shrager Plan, and ©) adequate water supplies from the State Water Project would be available. Addendum, p.47.

CEQA requires production of a Subsequent EIR when "[s]ubstantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects." CEQA Guidelines ¶ 15162(a)(2) & (b). Notwithstanding MWD's paper promise of water supply availability, relevant irrefutable facts demonstrate changed circumstances exist that will

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[2] The County Response to Comments take the same position.

[3] For instance, the project description remains defective because it lacks critical information relating to issues that were improperly relegated to the Addendum (such as the project's substantial water needs).

[4] The 10 water features alone comprise more than 6,500 square feet of development. These figures do not account for the fact that pools and water features are drained every 3-4 years, and hot tubs 1-4 times per month, resulting in additional water demand not factored into the 117.6 acre-feet annual demand conclusion.

create new significant and unmitigable environmental effects warranting production of an EIR.[5]

*First*, the fact that the Project will no longer utilize the groundwater and well available at the site indicates a heightened reliance upon MWD for water supply. The Shrager Plan contemplated groundwater pumping of almost 14 acre feet of water per year for landscaping and laundry requirements. While abandonment of well-water use may alleviate potential impacts to groundwater and neighboring wells serviced by the same aquifer, the MND/Addendum fails to assess or even discuss impacts from additional pressure on MWD's diminished water supplies and its ability to meet sub-regional water demand.

*Second*, on December 14, 2007, a federal judge in Fresno issued a final court order demanding that the State Water Project reduce pumping operations by up to nearly one-third in order to protect an endangered fish, the Delta Smelt. ("Delta Smelt Ruling", *NRDC v. Kempthorne*, 2007 U.S. Dist. LEXIS 91968). The Delta Smelt Ruling has been widely reported in the press, and is certainly known by the County and MWD to have occurred. Nonetheless, there is no discussion of the imminent reduction in State Water Project exports anywhere in the environmental documents, technical reports, or staff report. Given the purported reliance on State Water to render impacts less than significant, discussion of the ruling's implications on MWD's ability to meet the Project's demand, or the demand of customers who will see heightened reductions due to MWD's service to the Project, is required. (*See,* Exhibit A, attached).

Third, and most importantly, the reliance on an outdated "Certificate of Water Service Availability" is insufficient to meet CEQA's requirement not only to identify water supply availability, but also to assess the environmental effects of such supply.

On April 15, 2008, MWD passed Ordinance 89, which states, "In 2007 the total demand of water exceeded the District's reliable supply of 5700 acre feet by approximately 600 acre feet." Ordinance 89 further laments the increasing demands on MWD supplies due to redevelopment of improved land, redevelopment of commercial uses into larger units, and increased landscaping. MWD unequivocally concludes (I) "a water shortage currently exists because the reliable supply of water *will not meet the projected demand of District consumers in the current year and in years following*; and (ii) the District "has not located sufficient additional sources to resolve this concern." *(See,* Ordinance 89, An Ordinance of the Montecito Water District Placing Limitations on Water Distribution to Land Within the District, adopted April 15, 2008, Exhibit B, attached. )(Emphasis added)

Clearly, the May, 2007 service letter commits to serving the Project with some water. But, contrary to assertions by the Applicant, there is no commitment to the full 117 acre feet required by the Project. The record further contains an April 30, 2008 letter from MWD to the Applicant's consultant following passage of Ordinance 89 stating that the ordinance's provisions potentially limiting future availability to new and expanded uses would not apply to the Project. Within the last week, on July 11, 2007, MWD issued a clarification letter noting that:

[5] While downscaling the Project design to utilize less water may reduce water consumption levels, such a change would at the very least require significant revisions to the MND/Addendum.

> MWD is notifying the County of Santa Barbara that the District has not in any previous correspondence of Certificates of Water Service Availability (CWSA) committed to providing the project with 117 acre feet of water on an annual basis."

*(See,* Correspondence from MWD General Manager Tom Mosby to David Ward, dated July 11, 2008, attached as Exhibit F to the County's Planning Commission hearing Errata Sheet.) The letter goes on to clarify that the letter purporting not to apply Ordinance 89 to the Project was in error, and its assertions invalid. The letter concludes, "MWD ... has not established the available water supply for the project..." *Id.*

Case law confirms, "[a]n environmental impact report for a [project] must contain a thorough analysis that reasonably informs the reader of the amount of water available." *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App. 4th 715, 717. *See, also, Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App. 3d 818 (an environmental review document is inadequate if the proposed project intends to use water from an existing source, but it is not shown that the existing source has enough water to serve the project and the current users.) Thus, despite assurance of "paper water" in the form of the service letter, if the environmental review process reveals a project would cause or add to a significant water shortage condition, the lead agency must adopt any feasible means of substantially lessening or avoiding such an impact, and, **if the impact remains significant, prepare an EIR and adopt a statement of overriding considerations as to the impacts.** *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal. 4th 105,134.

The fact that MWD is operating at a deficit and affirmatively states it will have problems meeting existing and future demand is directly at odds with the conclusion of *less than significant* impact in the MND/Addendum. The passage of Ordinance 89, the fact that the State Water Project will not be able to provide expected levels of exported water to MWD, and the decision to abandon groundwater use constitute changed circumstances mandating additional environmental review. And given MWD's July 11th correspondence, the service letter relied upon in the MND/Addendum is virtually meaningless.[6]

The ability of the Project to achieve its stated objectives is in jeopardy given the prospect of mandatory water conservation measures that may limit the use of water features, pools, and landscaping. Given that the Project is purportedly already designed to minimize water use, the only option available is to scale down the Project.

Because even scaled down to historic use levels of approximately 50 acre feet per year service to the Project will be constrained, the only possible conclusion is that environmental impacts from water supply will be significant and unmitigable. Therefore, an EIR and statement of overriding considerations are required.

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[6] Put another way, because the Project would add to the cumulatively significant impact of insufficient water supplies district wide, an EIR is required. See, *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App. 4th 98, 117-121 (noting that even de minimis individual project contributions to a cumulatively significant impact warrant denomination as "significant," and thus trigger requirement to prepare an EIR).

## 3. Noise Impacts

Pile driving activities at the ocean front units will result in significant, unmitigable short-term noise impacts. Because such activities would occur within 6.5 feet of adjacent residences, noise levels will reach up to 120 dBA at those receptors. (Addendum, p. 31). These levels exceed the County's 65dBA significance threshold by an astounding margin. Despite this fact, the Addendum, the Responses to Comments, and the Dudek Noise Topical dated June 17, 2008, fail to provide any substantive analysis as to how the project's proposed mitigation measures will actually reduce pile driving noise impacts to levels below the 65dBA standard. As such, the noise impact analysis is legally deficient, the impact is significant and unmitigable, and an EIR is required.

"[W]hen a mitigated negative declaration is proposed, it is particularly important that the study fully describe the mitigation measures and explain how they will avoid the project's potential impacts." 1 Kostka & Zischke, Practice under the California Environmental Quality Act (Cont.Ed.Bar 2004) § 6.18, p. 266 (emphasis added). The Addendum does not provide the requisite causal link in this regard.

For instance, the Addendum states, "Implementation of mitigations requiring installation of a temporary noise barrier, implementation of a noise monitoring program and the provision to offer off-site accommodation for residents adjacent to the construction during maximum noise-generating activities, would reduce short-term noise impacts associated with pile driving to less than significant levels." (Addendum, p. 31; emphasis added). However, this statement is not supported by the record, as the County has expressly conceded that it has no authority to force residents from their homes and therefore cannot carry out the off-site accommodation measure. (Response to Comment 8o).

In addition, the County's responses to public comments on the issue directly contradict the foregoing statement. The responses state that the accommodation measure is:

> ...only one of several mitigations developed to reduce impacts associated with pile driving. Other mitigations include limitations on hours and days of construction, shielding of construction equipment, and erection of temporary sound barriers.

(Response to Comment 8o). This response is legally deficient for a number of reasons.

For instance, Noise Study Addendum 1 - Revision 2 states that shielding is not a viable option with respect to pile driving equipment because the sound is predominantly generated by the impact itself rather than operation of the engine.[7] (Revision 2, p. 2). Similarly, Revision 2 states that "a sound wall with a height greater than 30 feet would be necessary to provide noise shielding for the pile driving activities" but that such a wall "is not feasible at this location." *Id.* The report also states that a 12-foot wall "seems to be feasible" but notes that an increase in thickness "would not change the pile driving noise going over the wall."*Id.*; (emphasis added).

[7] Addendum No. 1 and Revision No. 1 thereto have been conveniently left out of the Technical Reports Compendium despite being relied upon in the environmental document. (*See* Addendum, p. 30).

Given the above, it remains unclear how noise levels would be reduced to levels below 65 dBA. Significantly, the analysis does not identify (or even attempt to study) the noise levels that would actually result at neighboring homes after implementation of the 12-foot wall (Staff has expressly stated that "if noise mitigation is needed the effect of the noise-mitigating measures should be explored [and] 'Before' and 'After' data should be presented, preferably in both written and graphic form." (*See,* Exhibit C, attached).

Nor does the study explain how the wall is feasible given spacing constraints (the property line will reduce operating space to less than 6.5 feet). Further, neither the Addendum nor the revised study discuss (I) the extent to which pile driving activities will impact beach use and public recreation, (ii) the potential for impacts caused by physical vibration, or (iii) whether noise impacts were evaluated without consideration of the improper off-site accommodation measure.

As the County is aware, pile driving would not have been required under the Schrager Plan. The inclusion of such activities in the current proposal constitutes a significant project change that is inappropriately analyzed in the Addendum. Likewise, the conclusion that noise impacts will be reduced to less than significant levels is not supported by substantial evidence in the record. Because there is no reasonable basis to conclude that impacts will be mitigated to below the 65dBA threshold, the County cannot certify the SEIR without adopting a Statement of Overriding Considerations on this issue.[8]

## 4. Flood Impacts

The County's responses to public comments relating to potential flood impacts are legally deficient under CEQA. A number of specific comments were submitted on the Draft SEIR detailing flood impact concerns raised by the engineering manager of the County Flood Control District with respect to the methodologies and analysis applied in the various Penfield & Smith (P&S) reports. (*See* Comment 8h). In response, the County simply states, "The comments relating to drainage and flooding are not addressed to the latest Drainage report (March 7, 2008). Comments relative to earlier reports are irrelevant in that the March 7, 2008 report supersedes the previous reports and focuses on the current project." (Response to Comment 8h; emphasis added).

The foregoing response is entirely inadequate under the statute. As the County is aware, the evaluation and response to public comments is an essential part of the CEQA process. As such, "the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." 14 CCR §15088 (emphasis added). Indeed, "the requirement of a detailed analysis in response [to comments] ensures that stubborn problems or serious criticism are not swept under the rug." *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal. App. 4th 1219, 1240.

Here, the County's position that prior technical reports are irrelevant to the review process is both surprising and disturbing. The standard of review is based on whether the County's

[8] The Montecito Community Plan requires that noise-sensitive uses be protected from significant noise impacts. Because pile driving activities will result in a violation of this policy, the project will also result in significant land use impacts.

analysis is supported by "substantial evidence, in light of the whole record." *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2008) 161 Cal. App. 4th 1204, 1226 (emphasis added). The County's unilateral attempt to excise technical reports from the record and ignore them in responding to public comments is entirely improper in this context.

Further, the County's engineering manager expressly found that the P&S flood studies contain a "fatal flaw." As the County is aware, an inadequate or unsupported study is entitled to no judicial deference. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 409. As such, the extent to which prior technical studies have or have not been revised is clearly relevant under CEQA and the County cannot simply bury its head in the sand when its own staff raises such criticism.

With respect to the P&S drainage studies, internal County Flood Control emails (attached hereto in chronological order as Exhibit 1) reflect critical modeling errors in the December 7, 2007 report. On January 31, 2008, John Frye P.E., the Flood Control District's engineering manager, prepared a list of outstanding issues and questions that had not been addressed by the applicant. On February 20, 2008, in an email to Tom Fayram, deputy director of Public Works, Mr. Frye stated:

> Candice today confirmed a fatal flaw assumption in the modeling approach that P&S took in their RAS/SBUH attempt to consider the affects of the loss of the overbanks. This gives me even more confidence in the validity of the request we've put in for more information, and gives me even less confidence in what P&S has done to date.[9]

(Emphasis added).

On February 29, 2008, Mr. Frye further indicated to Mr. Fayram that "the drainage study P&S submitted has a serious flaw *or two* that Dale's initial review didn't pick up on." (Emphasis added). Shortly thereafter, the County Executive Officer and Supervisor Carbajal requested a meeting with staff to discuss "unacceptable delays with the Miramar Project" and specifically identified Tom Fayram as an attendee. The next day, on March 11, 2008, Mr. Fayram drafted an email to the director of Public Works explaining the reasons for the delays, as follows:

> As we discussed, the Miramar project proposes to fill in the Floodplain, or also called the Floodway Fringe . . . It has been calculated that any more filling in of the Floodplain is not allowed.
>
> [I]f we wanted to determine what the impact of the filling is, then an additional analysis would be required. The earlier work by the applicant was NOT in concert with any standard manner to do this work. The applicant refused to do the work. In fact, unlike the hundreds of other projects I have worked on, the Applicant would not allow their engineer to talk to us.

(Emphasis added).

[9] Reference to Candice Constantine, Ph.D, County Flood Control civil engineering associate.

Three days later, Mr. Fayram drafted the miraculous email so heavily relied upon in the Addendum and Responses to Comments. The email indicates that P&S issued the March 7, 2008 flood study but that Fayram only reviewed the executive summary. Regardless, Fayram goes on to conclude that the study is adequate. Shortly afterwards, the meeting to discuss the project's unacceptable delays was cancelled because there had been "resolution to the key issues that Caruso wanted to discuss."

On March 17, 2008, in response to a request from the Planning Department to confirm the adequacy of the latest report, Mr. Frye drafted an email to Mr. Fayram stating the following:

> I don't want to review the study quite frankly . . . I prefer to have absolutely no comment to this study for the very reason that I haven't looked at it and I haven't looked at it because my boss did not direct me to look at it. That way, no matter who gets hold of me, I have nothing to say, good bad or indifferent. Does that sound okay? I'll tell Michelle that I'm not reviewing?"

(Emphasis added).[10] Comments submitted on the Draft EIR specifically requested that the County explain "the manner in which the engineering manager's concern's have been resolved." (Comment 8h). As discussed above, Mr. Frye and Mr. Fayram identified critical flaws in the methodologies applied by P&S (concerns that were confirmed in the comments submitted by B&E Engineers). And while the scope of the March 7, 2008 report was expanded to evaluate more significant storm events, it continues to employ the same methodologies used in the December 7, 2007 report.

In its Response to Comments, the County baldly concluded that the request for further explanation of the issue was "not relevant." (Response to Comment 8h).[11] In doing so, the County circumvented CEQA's fundamental goal of ensuring that stubborn problems and serious criticism are not simply "swept under the rug." The response is entirely unacceptable in this regard.

## 5. Land Use Impacts

**(a)** Ordinance Modifications: The requested modifications to the Coastal Zoning Ordinance's standards for height, parking and setbacks are not warranted or appropriate. As such, approval of the project will result in significant land use impacts. Per the Staff Report, the modifications are being requested for the following reasons:

> To meet the project objectives to create site uniformity and site layout through abandonment of Miramar Avenue and to create a cohesive site design of bungalows, cottage clusters and other buildings around resort amenities and expansive landscaping grounds and paths to serve guests and visitors, and to increase public beach parking and access to and

[10] Mr. Fayram approved the request.

[11] The applicant's response was equally deficient, as it simply referred to other sources that do not explain the extent to which Mr. Frye's criticisms have been addressed.

> through the property, these modifications would aid in good design of the site. (Staff Report, p. E-8; emphasis added).

Because the request is solely intended to benefit the applicant (in terms of project layout, internal site design and hotel amenities),[12] the requisite justification for approval of the modifications under Section 35-174.8 has not been established. The County must identify a nexus between the requested modification and the associated public benefit justifying its approval. The County has not (and cannot) do so in this case.

As the Staff Report discloses, rather than providing a community benefit, the modifications will have a direct adverse effect on surrounding residential uses. For instance, the setback modifications will result in increased noise impacts to neighboring properties as a result of the project's increased outward expansion (such as articulation of larger buildings closer to the S. Jameson Lane frontage than under the approved plan). (Addendum, p. 3; Setback Topical dated June 17, 2008, p. 2). Such a scenario is in direct contrast to the setback modifications approved under the Schrager Plan, which were required to accommodate the retention of historical structures.

If the interest in "preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests." *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal. App. 4th 997, 1009. As the County is aware, the Coastal Zoning Ordinance and MCP Overlay District set forth a cohesive set of restrictions designed to ensure appropriate development in terms of mass, scale, bulk and neighborhood compatibility. Section 35.174.8 must be read restrictively in harmony with those provisions such that the overall integrity of the Ordinance is preserved. Approval of the modifications in this case would result in an absurdity and set an entirely inappropriate precedent for future projects.

In this regard, the representation that the modifications are warranted based on "increase[d] public beach parking and access to and through the property" is not supported by substantial evidence. The notion that a parking modification is warranted because a proposed project is short of the Ordinance's parking requirements by at least 115 spaces defies common sense. Further the same number of parking spaces would be provided under both plans. With respect to beach access, one of the vertical access easements is being provided as a direct result of the loss of access relating to the Miramar Avenue right-of-way vacation (another project benefit for which remuneration is not being provided). The second vertical access easement constitutes a token benefit, as the Coastal Commission would have already required that such additional public access be provided.

**(b)** Cottage Type Hotel: The proposed project will result in significant land use impacts because the proposed structures are inconsistent with the cottage style tradition set forth in the Montecito Community Plan (MCP) and Montecito Architectural Guidelines & Development Standards (MAG). Specifically, the project violates MCP policy LUC—1.6 and MAG section V.B.3.a(2).

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[12] The same inappropriate "justifications" are echoed in the applicant's Setback Topical, dated June 17, 2008.

Policy LUC—1.6 states, "Improvements to resort visitor-serving hotels shall be designed to be consistent with the existing historic 'Cottage Type Hotel' tradition from the early days of Montecito. 'Cottage Type Hotel' is defined by cottages limited to six guest rooms each, which are generally single story in height." (Emphasis added).

The Addendum states that the "early days of Montecito" refers to the original Miramar, Biltmore and San Ysidro Ranch, which included "large structures for congregation (restaurants, conference rooms, etc.) and smaller buildings or cottages for sleeping. The Addendum and "Cottage-Style" Topical dated June 17, 2008 engage in a tortured analysis to make the necessary finding of consistency.

For instance, the Topical states that the percentage of units in cottages has decreased over time such that by 1981, "73% of the Miramar's units were in cottages of 5 keys or less." The Topical relies on this decrease to conclude that there is no requirement that all guest rooms be in cottages in order for a hotel to be consistent with the policy. However, the Topic fails to note that only 26%, or 54 of the 204 units, will be located in cottages. The project does not satisfy the standards for the cottage style tradition.

## 6. Historical Resources

A number of public comments on the Draft SEIR proposed potentially feasible mitigation measures with respect to historical resources. For instance, Comment 12a proposed "restoration or replication of a few of the signature blue and white cottages so that patrons and visitors alike can get as [*sic*] sense of what this famous resort was like. The other cottage hotels in the area, San Ysidro Ranch, the Biltmore and El Encanto have preserved many of their historic elements within their modernized facilities."

Similarly, in Comment 47a, the County Historic Landmarks Advisory Commission requested that the County preserve historic resources by "restoring one or more of the oldest and/or most historic cottages and either retaining it at its current location or moving it to a different location within the project." The comment further proposed that the structure be used as an historical exhibit with visual displays and artifacts.

In response to these comments, the County simply stated, "The SEIR was prepared specifically to analyze impacts to the historic resources on the project site. Your comment will be forwarded to the Planning Commission for their consideration." (Responses to Comments 12a; 47a). The applicant did not provide any response to the comments. The County's responses are legally deficient under CEQA, as detailed below.

The Final SEIR's alternatives analysis evaluates the feasibility of replacing or restoring the historic structures on-site. (Final SEIR, p. 54, Alternative 1). The County ultimately concludes the alternative is infeasible because (I) the new buildings would need to be re-designed to accommodate the structures, (ii) preservation of the structures would interfere with the open internal site design, (iii) many buildings could not be restored and would require foundation as well as engineering work, and (iv) most of the buildings could not be brought up to modern code requirements.

The proposed mitigation measures set forth above propose a reasonable middle ground that would provide greater mitigation than photo-documentation but would not conflict with project

objectives. First, only one or two of the most viable and historically significant structures would be selected for restoration. Further, the reduced number of preserved structures would reduce costs as well as site flow impingement. Finally, the additional historical photographs and materials identified in the Historical Topical (dated June 19, 2008) could be displayed in the restore(d) unit or units. Because the County failed to respond with good faith, reasoned analysis, the responses are defective.

Likewise, the discussion of Alternative 2 is legally deficient, as the County has not provided a meaningful analysis with respect to the potential for relocating historical structures off-site. As the County is aware, the alternatives discussion must focus on alternatives capable of eliminating significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733.

The Final SEIR fails to evaluate any potentially viable relocation sites or otherwise explain the attempts that were made to identify available sites. Further, the blanket conclusion that the alternative would be cost prohibitive is not supported by substantial evidence in the record. The County cannot claim that the "impact of this alternative would be almost entirely speculative" when it has engaged in no effort to evaluate the alternative in the fist instance. The discussion does not "contain analysis sufficient to allow informed decision making." *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 403-404.

## 7. Green House Gasses

The Addendum purports to assess the contributions of the Project to global warming impacts on pages 13 and 14. In essence, the document concludes that thresholds of significance have not been identified, and therefore staff must rely on careful judgment in determining whether impacts are significant. The extent of analysis and careful judgment is summed up, "Unfortunately, scientific and factual data are not sufficiently available to judge, without undo speculation, whether projects with relatively small incremental contributions to the state's GHG totals are cumulatively significant or insignificant." This approach suffers from two major faults.

*First*, we know the problem of global warming is itself significant. This is without dispute. Cumulative emissions of green house gasses is warming the planet and causing, or will cause, environmental destruction. Once a cumulative impact is assessed, whether contributions from a project are significant or *de minimis* is relevant only to determine the extent of mitigation required, not whether mitigation is required at all. See, *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App. 4th 98, 117-121 (noting that even de minimis individual project contributions to a cumulatively significant impact warrant denomination as "significant," and thus trigger requirement to prepare an EIR).

*Second,* it is fundamental to the goals of CEQA that an agency may not avoid preparation of an EIR by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App. 3d 296. Certainly, the energy consumption from the hundreds of air conditioning units, fountains, spa heaters, lights, and other fixtures could be calculated. Further, occupancy rates could be estimated, as could energy demanding services. From such figures, the total energy demand could be calculated, which, depending on how the supplied energy is generated, would yield a total GHG emission estimate. The hotel industry has successfully implemented energy

conservation measures, and has been a leader in taking advantage of energy generation opportunities of photo-voltaics and stationary fuel cells. Regardless, the failure to even attempt quantification of GHG emission renders the Addendum inadequate.

Without any data, the County concludes the Project is "unlikely" to contribute considerably to cumulative impacts. Without substantial evidence in the record to support the conclusion, any contribution to a cumulatively significant impact is itself significant and an EIR must be produced.

## 8. Coastal Erosion

The Applicant's consultants expressly recognize that despite relative long term stability of the Miramar Beach shoreline, the shoreline fronting the Project is subject to significant short-term erosion from significant wave events. Thus, the beach in front of the hotel will change widths dramatically throughout the year. Given that the Project anticipates significant use of the beach for private hotel-related functions (such as weddings and parties), without further mitigation measures limiting such activities to time periods where beach widths permit joint use with the public, a significant impact to public beach access may occur.

## 9. Storm Water Management

Passage of the Phase II small municipalities NPDES general storm water permit (General Permit) by the State Water Resources Control Board significantly changed the way storm water impacts are considered and reviewed at the local level. The County's Strom Water Management Plan, found consistent with the General Permit, requires consideration of storm water management as a critical element of site design, with analysis of flows, likely pollutant constituents, and best management practices spelled out in sufficient detail to allow the public and decision makers to assess impacts and mitigation during the CEQA process.

The Project Addendum contains exactly one paragraph (p.50) analyzing or describing how the project will comply with such requirements. This is patently insufficient to meet either CEQA's or the General Permit's mandates. Statements of conclusion without analysis, and deference to Water Agency preliminary approval do not constitute nor substitute for disclosure. Further, burying information in technical documents within the administrative record does not obviate the need to provide information to the public in the Addendum itself.

## 10. Lack of Independent Review

Under CEQA, the lead agency may rely on the applicant's work product so long as it applies its "independent review and judgment to the work product before adopting and utilizing it." *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal. App. 3d 1446, 1452–1455. The claim that such judgment has been exercised must be supported by substantial evidence in the record showing that the agency conducted a detailed review and critique of the applicant's work product.

In this case, the County blanketly attached each of the applicant's responses to comments and various "topical" reports as Appendix D to the Final SEIR. In doing so, the County failed to exercise its independent judgment. The Final SEIR simply states, "The applicant also prepared responses to public comments. These are included as Appendix D of this document." (Final

SEIR, p. 4).

Neither the Final SEIR nor the Addendum reference the topical studies or the extent to which the applicant's work product has been independently reviewed by County staff.[13] Because the record is devoid of any evidence that the County actually reviewed and evaluated Caruso's topical studies and responses to comments, the County violated CEQA as a matter of law.

## 11. Conclusion

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

Sincerely,

**COAST LAW GROUP LLP**

Marco A. Gonzalez
Ross M. Campbell

Exhibit A: Internet News Article, *Court issues final order for State Water Project to drastically cut water deliveries.* December 18, 2007

Exhibit B: Montecito Water District, Ordinance 89, April 25, 2008

Exhibit C: Electronic Mail and attachment, from Nicole Ashore to Julie Harris

CC: Client

[13] Such a review appears to be completely absent, as a number of the County's responses to comments directly conflict with those of the applicant. (*See e.g.* Responses to Comment 37a - County response indicating that December 2007 P&S report is irrelevant versus applicant response indicating that December 2007 P&S report is the operative study).

# EXHIBIT A

(To CLG Comment Letter, dated July 15, 2008)

**Court issues final order for State Water Project to drastically cut water deliveries**

The State Water Contractors, an association of 27 public water agencies in the Bay Area, Central and Southern California, reacted last week to the largest court-ordered water supply reduction in California history, citing statewide impacts to farms, businesses and people.

On December 14, federal judge Oliver Wanger issued a final court order, issuing an operational plan that orders the State Water Project (SWP) and Central Valley Project (CVP), the state's two largest water delivery systems, to reduce pumping operations by up to nearly one-third.. The two projects direct water through the Sacramento-San Joaquin River Delta (Delta) to urban and agricultural water users.

The operational plan, formalizing a preliminary framework issued by Judge Wanger on August 31, 2007, calls for the massive reduction in water supplies to protect an endangered fish species, the Delta smelt. The court has specified that reduced operations will last until September 15, 2008, while federal agencies develop a revised federal biological opinion for Delta smelt that will ensure the projects' compliance with Endangered Species Act requirements.

"To have such a large reduction in statewide water supplies is not only significant, but unprecedented," said Laura King Moon, assistant general manager of the State Water Contractors. "For the next nine months, the backbone of the state's water system will be operated based on a lawsuit. Reducing water supplies through the courts won't solve the fundamental problems in the Delta. We need a smarter water system so that the courts don't face this situation in the future."

Local water agencies will have to rely on contingency and emergency sources of water, including local groundwater and storage supplies, to lessen direct impacts on their customers. However, by doing so, they will exhaust or significantly limit supplies that would be needed for a drought or major catastrophe, such as an earthquake, major flood event, etc. Local agencies are particularly concerned about depleting their back up reserves during the current drought. The past year has been the driest year on record for parts of California.

"We have already faced enormous challenges this year and will undoubtedly face more in the coming year," added Moon. "This court-ordered reduction will only place further hardship on water agencies throughout the state and ultimately, consumers, businesses, farmers and the economy as a whole. This is an expensive way to try to restore Delta smelt, and likely won't succeed unless there is a comprehensive program addressing all the stressors on this fish species."

The significant reduction in water supply will be experienced in the Bay Area. Central and Southern California. The SWP alone, a critical source of water for the majority of California, provides water to two out of every three people, irrigates 750,000 acres of prime agricultural lands and directly supports $400 million of the state's trillion-dollar economy.

The most immediate impacts of the court ruling will be felt in agricultural communities as farmers in the San Joaquin Valley, Inland Empire and San Diego region are forced to abandon crop planting this winter and spring. Urban water users will need to conserve water during this critical time period. In some regions, consumers may be asked for more stringent water restrictions, including rationing, and may experience increased costs.

Throughout the coming weeks, local public water agencies will be assessing direct impacts of the final court order to their regions and customers, including potential impacts on local economic growth.

As background, a federal court ruled, in May 2007, that the existing 2005 biological opinion for Delta smelt, issued by the U.S. Fish and Wildlife Agency, did not comply with the Endangered Species Act. The biological opinion guides pumping operations for the CVP and SWP to ensure no long-term jeopardy to the health and habitat of Delta smelt. Until a revised biological opinion is prepared by the federal agencies, the court has ordered certain "remedies" or actions to protect the endangered fish species. Those remedies, imposed in the court-ordered operational plan, collectively amount to the cut in statewide water supply. While the court order will last until September of next year, these kinds of reductions will likely continue until the Delta system is fixed.

"Every day it becomes increasingly clear that we must decide on a solution for our broken water delivery system," added Moon. "Moving water through the Delta is an outdated method of delivering water to 25 million people. We need to look at ways of moving water around the Delta to help secure the state's water future and protect the ecosystem"

The Delta's failing condition has made it an increasingly unreliable pathway for delivering water to 25 million Californians, businesses and farms throughout the state. Aged and deteriorating levees, climate change, mounting regulatory uncertainties such as this most recent event and a struggling ecosystem plague the Delta more so today than ever before. These unprecedented challenges need to be addressed responsibly and in a timely manner in order to avoid immeasurable damages to California's water supply, environment, public health, statewide economy and infrastructure system.

The State Water Contractors is a non-profit association of 27 public agencies from Northern. Central and Southern California that purchase water under contract from the California State Water Project. Both the Coachella Valley Water District and Desert Water Agency (which cover almost 100% of the Coachella Valley) are members of State Water Contractors and have contracts with the Water Projects to purchase water for the ever growing needs of the desert region. Collectively the State Water Contractors deliver water to more than 25 million residents throughout the state and more than 750,000 acres of agricultural lands.

For more information on the State Water Contractors, visit www.swc.org.

# EXHIBIT B

(To CLG Comment Letter, dated July 15, 2008)

Ordinance No. 89

AN ORDINANCE OF THE GOVERNING BOARD
OF MONTECITO WATER DISTRICT
PLACING LIMITATIONS ON WATER DISTRIBUTION
TO LAND WITHIN THE DISTRICT

WHEREAS the Montecito Water District is a County Water District organized and existing under the laws of the State of California, situated and serving an area entirely within the County of Santa Barbara, State of California; and

WHEREAS the District, pursuant to Section 31020 of the California Water Code, may do any act necessary to furnish sufficient water in the District for any present or future beneficial use; and

WHEREAS the District, pursuant to Section 31025 of the California Water Code, may establish rules and regulations for the sale, distribution and use of water; and

WHEREAS the District, pursuant to Sections 31026 of the California Water Code, may restrict the use of district water during any emergency caused by drought, or other threatened or existing water shortage, and prohibit the wastage of water during such periods; and

WHEREAS the District, pursuant to Section 31026 of the California Water Code, may prohibit the use of district water for any purpose other than household uses or uses determined necessary by the District and also may prohibit use for other non-essential uses identified by the District;

THEREFORE, the Board of Directors of the District now FINDS AND DECLARES the following:

A. In 2007, the total demand for water exceeded the District's reliable supply of 5700 acre feet by approximately 600 acre feet.

B. In addition to serving its existing customers, the District responds to each application for a Certificate of Water Availability from owners of land within the District who are seeking permits from the County of Santa Barbara or the City of Santa Barbara for new or expanded development.

C. The subdivision of land into multiple developable parcels; the development of previously unimproved land, and redevelopment of improved land, with large residences and extensive landscaping; and the redevelopment of commercial and institutional uses into larger units are resulting in an increased demand on the District's limited water supply.

D. A water shortage condition currently exists because the reliable supply of water will not meet the projected demand of District consumers in the current year and in years following.

E. The District has sought additional sources of water to be drawn upon to overcome anticipated shortages but has not located sufficient additional sources to resolve this concern.

F. Because the District expects the water shortage condition to continue, the District will not be able to provide Certificates of Water Availability to all those who seek them unless it establishes an equitable methodology for restricting the availability of water for new service connections and expanded service to existing connections.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the Montecito Water District as follows:

1. As of the Effective Date of this Ordinance, every subdivision of land within the District, and every change in the use of land within the District that requires a permit or approval of any kind from the County of Santa Barbara or the City of Santa Barbara, shall require a Certificate of Water Availability issued by the District. Property owners shall be responsible for applying for a Certificate of Water Availability before commencing construction on a project, regardless of whether the City or County requires presentation of a Certificate before issuing required permits. The District General Manager will issue a Certificate of Water Availability if he finds that service can be made available to the property, that the project requiring the Certificate will include the installation of state-of-the-art water-saving technologies, and that estimated water usage for the project is within a reasonable range of the Maximum Available Quantity as determined under this Ordinance. The District General Manager may require a property owner to provide, at owner's expense, a qualified expert's analysis of estimated water usage or other water-related aspects of the project before making his determination and may require, at owner's expense, a peer review of owner's expert's data by a qualified expert selected by the District.

a.. For purposes of this Ordinance, a change in the use of land may include, but is not limited to, addition of new habitable structures or replacement of existing ones; expansion of square footage of existing structures; construction of amenities or accessory structures such as swimming pools, tennis courts or cabanas; and/or extensive grading for new agricultural crops or landscaping material.

b. For purposes of this Ordinance, subdivision of land includes any division or redivision of a legal parcel or parcels into smaller legal parcels, whether through subdivision under the California Subdivision Map Act or by approval of certificates of compliance with that Act for previously-identified parcels, but does not include a lot line adjustment that does not result in an increase in the number of legal parcels.

2. Every property subject to this Ordinance measuring one acre or more shall receive a maximum of one acre-foot of water per year, subject to exceptions provided herein. If a property measures less than one acre, the District will make available a pro rata portion of one acre foot of water, based on the portion of one acre included in the property. For purposes of this computation, a property includes one or more legal parcels served or proposed to be served by a single service connection.

3. Notwithstanding the limitations of Paragraph 2, the District shall respond to each request for a Certificate of Water Availability by determining a "Base Allotment," calculated as the average amount of water actually delivered to the property per year and per month during the three-year fiscal period 2003/04 – 2005/06 (the "Base Allotment Period"). The Certificate of Water Availability will be issued for either the Base Allotment or one acre-foot of water or portion thereof as applicable under Paragraph 1, whichever is greater (the "Maximum Available Quantity").

4. In the event that a property owner believes the Base Allotment does not reflect accurately the historical water usage associated with a property, for example because the property has been unoccupied for some or all of the Base Allotment Period or because the property has been in transition from a prior use to a proposed new use, the property owner may request in writing that the District General Manager establish a proxy Base Allotment for the property. The General Manager shall consider written evidence provided by the property owner and such relevant factors as the established historical use of the property prior to the Base Allotment Period, or the water usage of properties of comparable sizes or with comparable uses during the Base Allotment Period. If the General Manager determines that a proxy Base Allotment greater than the calculated Base Allotment is warranted, and if the proxy Base Allotment exceeds the Maximum Available Quantity as determined under Paragraph 3, the General Manager shall notify the property owner in writing of his determination and issue an amended Certificate of Water Availability for the amount of the proxy Base Allotment. If the proxy Base Allotment is less than the Maximum Available Quantity stated on the Certificate, the General Manager shall notify the property owner in writing of his determination and no amended Certificate will be issued.

5. When a Certificate of Water Availability is required because land is proposed for subdivision as defined in Paragraph 1(b), the Maximum Available Quantity shall be either the Base Allotment for the entire property divided proportionally among the new parcels or, for each new parcel, one acre foot per year or pro rata portion thereof as applicable under Paragraph 2, whichever is greater in total.

6. The District General Manager is authorized to include in any Certificate of Water Availability such terms and conditions as the General Manager determines are necessary to ensure that water use is limited in accordance with the provisions of this Ordinance.

7. Any Certificate of Water Availability issued prior to the Effective Date of this Ordinance shall be valid as issued, provided that the property owner complies in a timely manner with all District requirements associated with the issuance of the Certificate,

including but not limited to the payment of required fees, and provided that the property owner agrees to include the installation of state-of-the-art water-saving technologies in the project for which the Certificate was issued. In the event of a property owner's non-compliance, the General Manager may issue an amended Certificate under the provisions of this Ordinance.

8. A property owner's acceptance of a Certificate of Water Availability pursuant to this Ordinance shall constitute a binding commitment to use no more water than is made available under the Certificate. In the event that a property in any month uses water in excess of the Maximum Available Quantity available under a Certificate of Water Availability issued pursuant to this Ordinance, the District, without further notice, may increase the rate for all water delivered in excess of the property's Maximum Available Quantity and/or limit service to the property to no more than the Maximum Available Quantity, but the District shall provide at all times a supply of water sufficient to meet the health and safety needs of the property's occupants.

9. Any property owner wishing to contest the application of this Ordinance to any land within the District, including without limitation a challenge to the General Manager's computation of a proxy Base Allotment, a determination of Maximum Available Quantity, or a decision concerning issuance of a Certificate of Water Availability, may appeal by written request to the District Board of Directors following the District's appellate procedure stated in District Ordinance No. 82, section 9.

10. In the event of a conflict or inconsistency between any provision of this Ordinance and any other Ordinance, Resolution, policy, regulation or procedural requirement of the District, this Ordinance shall be controlling.

11. Nothing in this Ordinance shall prevent the District from exercising any of its powers under the California Water Code, nor shall it be construed as constraining any of the District's powers under the California Water Code, including but not limited to its power to declare a water shortage emergency or a threat of water shortage and to adopt additional ordinances in response thereto.

12. This Ordinance is adopted pursuant to California Water Code section 31026 to address an existing water shortage condition. The District has considered the potential environmental impacts of this Ordinance and has determined that the adoption of this Ordinance is an emergency action necessary to prevent or mitigate an emergency, and therefore is an exempt action under the California Environmental Quality Act ("CEQA"), California Public Resources Code section 21080(b)(4), and 14 CCR § 15269(c). Following adoption of this Ordinance by the District Board of Directors, the General Manager is authorized to prepare and file a Notice of Exemption in compliance with CEQA.

13. Pursuant to California Water Code section 31027, this Ordinance shall be in full force and effect immediately upon adoption by the Board of Directors (the "Effective Date"), and shall be published once in full in a newspaper of general circulation, printed,

published and circulated in the District within 10 days after adoption in the manner therein described.

PASSED AND ADOPTED by the Board of Directors of the Montecito Water District on this 15th day of April, 2008 by the following vote, to wit:

Ayes: Directors Abel, Frye, Morgan, and Shaikewitz

Nays: None

Abstain: Director Wilson

Absent: None

Richard Shaikewitz
President

ATTEST:

Tom Mosby
Secretary

# EXHIBIT C

(To CLG Comment Letter, dated July 15, 2008)

**Rodriguez, Terry**

**From:** Mashore, Nicole
**Sent:** Tuesday, September 11, 2007 11:14 AM
**To:** Harris, Julie
**Cc:** Pujo, June
**Subject:** Noise Study Review
**Attachments:** Noise Study Review.doc

Dear Julie,

Attached you will find my notes from review of the Miramar noise study. I compared it with previous Miramar noise studies and the Santa Claus Lane Noise study. Also, do yuo want me to attend the meeting today for noise/historic? It is currently on my calendar.

-Nicole

*Nicole Mashore*
Planner II

Development Review Division
County of Santa Barbara

Phone: (805) 884-8068
Fax: (805) 568-2030
Address: 123 E. Anapamu St., Santa Barbara, CA 93101
Email: nmashore@co.santa-barbara.ca.us

## Noise Study Review Notes

*Noise Element Requirements*

1) ***In the planning of land use, 65 dB Day-Night Average Sound Level should be regarded as the maximum exterior noise exposure compatible with noise-sensitive uses unless noise mitigation features are included in project designs.***

5) ***Noise-sensitive uses proposed in areas where the Day-Night Average Sound Level is 65 dB or more should be designed so that interior noise levels attributable to exterior sources do not exceed 45 dB $L_{DN}$ when doors and windows are closed. An analysis of the noise insulation effectiveness of proposed construction should be required, showing that the building design and construction specifications are adequate to meet the prescribed interior noise standard.***

6) ***Residential uses proposed in areas where the Day-Night Average Sound Level is 65 dB or more should be designed so that noise levels in exterior living spaces will be less than 65 dB $L_{DN}$. An analysis of proposed projects should be required, indicating the feasibility of noise barriers, site design, building orientation, etc., to meet the prescribed exterior noise standard.***

*Montecito Community Plan*

- ***Policy N-M-1.1: Noise-sensitive uses (i.e., residential and lodging facilities, educational facilities, public meeting places and others specified in the Noise Element) shall be protected from significant noise impacts.***

- ***Development Standard N-M-1.1.1: All site preparation and associated exterior construction activities related to new residential units including remodeling, demolition, and reconstruction, shall take place between 7:00 a.m. and 4:30 p.m., weekdays only.***

- ***Development Standard N-M-1.1.2: Significant noise impacts shall be avoided upon development of new noise sensitive land uses (as defined by the Noise Element) through the provision of sound shielding and/or adequate design which provides sufficient attenuation or through proper siting of structures to avoid areas of elevated ambient noise.***

1) **Previous Reports & Peer Review-** Veneklassen and Associates prepared an Acoustical Analysis, dated January 13, 1999. The Veneklassen report was peer reviewed by Artnek in a report dated November 7, 1999. These reports included interior noise analysis and analysis of both the on and off-site impacts of the proposed sound wall (this analysis is not included in the current Dudek report). These reports also provided useful noise-contour site maps.

2) **Sound Wall/Noise Mitigation-**The report should first assess noise levels without factoring in the existence of the Sound Wall or other proposed noise attenuating structures. After this assessment is done it should be determined if noise-

mitigating structures are needed. If noise mitigation is needed the effect of the noise-mitigating measures should be explored. "Before" and "After" data should be presented, preferably in both written and graphic form. A description of the structural makeup of the soundwall should be included.

3) **Interior Noise-** If it is found that a sound wall is required to maintain 65 dB Day-Night Average Sound Level, interior noise level analysis should be done.

4) **Measurement Parameters-** The American Society of Testing and Materials (ASTM) Guide for Measurement of Outdoor A-Weighted Sound Levels advises that measurements should be made on both a weekday and a weekend day. No noise measurement was undertaken on the weekend in the submitted report.

5) **Noise Levels-** It should be noted that noise levels above the ground floor are more severe, therefore, mitigation is increasingly important above the ground floor.

6) **Allowable Hours of Construction-** The report incorrectly states that the County Noise Element limits noise to the hours of 8:00 p.m. and 7:00 a.m. The Montecito Community Plan requires that all site preparation and associated exterior construction activities, including remodeling, demolition, and reconstruction, take place between 7:00 a.m. and 4:30 p.m., weekdays only.

7) **Sound Amplification-** The report states that sound amplification may take place, but no specifics are listed or analyzed.

8) **Construction Trailer-** The report makes mention of a temporary construction/contractor trailer. Has this been included in the project description?

9) **Railroad-** Previous noise studies for the Miramar property as well as recent noise studies for similarly sited projects include a more extensive discussion of railroad noise impacts including whistles, number of passenger/freight train trips, etc.

# EXHIBIT D

(To Statement of Grounds for Appeal, dated October 20, 2008)

COAST LAW GROUP LLP

169 Saxony Road
Suite 204
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

**August 5, 2008**

Anne Almy
Supervising Planner
County of Santa Barbara
123 E. Anapamu Street
Santa Barbara, CA 93101

***Via Electronic Mail***
**anne@co.santa-barbara.ca.us**

**Re: Miramar Beach Resort and Bungalows Project**
*Citizens Planning Association*
Comments on Final SEIR and Revised Staff Report
Montecito Planning Commission Hearing August 6, 2008

Dear Ms. Almy:

Coast Law Group LLP represents the interests of Citizens Planning Association (CPA) with respect to the County's review of the above-referenced project (the Caruso Plan, or Project). Thank you for the continued opportunity to participate in the review process. As a preliminary matter, we would like to thank the Montecito Planning Commission for the considerable time and effort the Commissioners have spent in reviewing the Project to date, as well as their close consideration of the issues at the Commission's July 16th hearing.[1]

In anticipation of the Commission's consideration of the Project at its August 6, 2008 hearing, we request that the Commission consider the following comments on the Final SEIR/Addendum and Staff's Memorandum, dated August 6, 2008 (Memorandum) in addition to those previously submitted. Due to the inadequacies detailed below, CPA remains convinced that the Project cannot be legally approved as proposed, and a comprehensive environmental impact report (EIR) must be produced.

## 1. Improper Segmentation

As we have reiterated throughout the review process, the County's reliance on the hybrid SEIR/ Addendum approach is improper as a matter of law. Rather than fully evaluating the Project's impacts up front in a single, cohesive EIR, the County has inappropriately fragmented the analysis by constantly updating, revising, amending and releasing documents in a piecemeal fashion. Doing so has severely compromised CEQA's informational purpose.

The record is replete with instances where both the County and Applicant have provided less than complete information and waited for the public and/or sister agencies to identify potential impacts before attempting to address them. The net result is that numerous impacts have not been adequately analyzed or considered. The most recent examples relate to the significant water, wastewater and beach noise impacts discussed in greater detail below.
Equally concerning, the County continues to use the Addendum to circumvent substantive EIR

[1] Coast Law Group appreciates County Counsel's formal retraction of its incorrect claim that this office changed a quote from a cited appellate court decision (relating to the propriety of using the Addendum) to serve our client's interests. CLG accepts the County's apology for the inaccurate and potentially slanderous statements regarding the same.

requirements, including the obligation to disclose disagreements among experts - particularly with respect to the legitimate flood concerns raised by B&E Engineers and the County's own Flood Control manager. The Applicant's Responses to Comments, dated July 28, 2008, ignore the fact that such disagreements must be disclosed and summarized in the body of the EIR itself in order to satisfy CEQA's informational purpose.[2]

The County's reliance on the Addendum constitutes an abuse of discretion; the County must prepare a comprehensive EIR to fully and adequately address Project impacts.

## 2. Floor Area Ratio

The Applicant has inappropriately incorporated the sandy beach/Parcel 6, including the public's lateral beach access easement, in its FAR calculations (as part of the site's net lot area). FAR is a measurement used to determine development intensity and is based on developable land area. Thus, areas that cannot be developed or improved due to easement restrictions are not to be included in net lot area.

For instance, at the July 16th hearing, the Commission appropriately questioned the Applicant's inclusion of portions of the Union Pacific Railroad easement to the extent the Applicant does not have the right to develop therein. These same concerns apply to the beach. As noted in the Final SEIR, the Applicant is precluded from constructing physical improvements, as follows:

> The hotel may place non-permanent items such as chairs, umbrellas, and other non-motorized beach-related recreation items (inflatable rafts, boogie boards, etc.) out for hotel guests within the hotel beach use area, outside of the public's lateral access area, which would be removed nightly; these non-permanent items would only be placed out in response to guest requests.

(Final SEIR, p. 25; emphasis added).

At the July 16th hearing, the Applicant went on to explain that it calculated the square footage of Parcel 6 based on the mean high tide line. (Part 4, 11:35). Thus, the entire sandy beach area landward thereof (a questionable 106 feet per the Applicant's submittal) was included in the base FAR analysis. However, inclusion of the public's lateral beach easement is clearly improper because even the temporary items listed above (chairs, umbrellas, etc.) cannot be placed therein.

As the County is aware, the easement is 20 feet wide (ambulatory with the mean high tide line) and runs the length of the Property. This will result in a significant subtraction from net lot area that must be reviewed against the current .249 FAR calculation. Further, Penfield & Smith's July 25, 2008 report on Parcel 6 does not provide sufficient analysis justifying the 106-foot

[2] Contrary to the Applicant's assertions, the obligation has not been satisfied in the responses to comments or appendices. (Responses to Comments, dated July 28, 2008, p. 1). If the requirement were satisfied simply by responding to comments, the specific obligation to disclose and summarize disagreements among experts set forth in Guidelines section 15151 would be unnecessary and superfluous. Such an interpretation conflicts with standard canons of statutory construction.

mean high tide line and contradicts the obvious physical conditions at the beach.[3]

The Applicant's inaccurate calculation of the man high tide line and inclusion of the public lateral easement in the FAR analysis has resulted in a project that is not compatible with the surrounding neighborhood in terms of size, bulk and scale. As such, approval of the Project in its current form will constitute an abuse of discretion.

## 3. Cottage-Type Tradition

The Commission expressly requested that the Applicant address Building 44 in the context of the Project's consistency with the cottage-type tradition. (Montecito Community Plan, Policy LUC-M-1.6). Building 44 actually consists of 3 separate structures connected by a series of elevated catwalks. As such, the project will result in a total of 26 guestroom buildings, 16 of which will be one story. The Project is thus inconsistent with the cottage-type tradition because it violates the requirement that 2/3's of all guestroom structures be restricted to a single story.

In response to the Commission's request, the Applicant simply enclosed one side of each catwalk. However, such a minimal change is insufficient to transform the individual structures into a single building. Under the Coastal Zoning Ordinance, an "attached building" is defined as "[a] building having at least five lineal feet of wall serving as a common wall with the building to which it is attached." (Coastal Zoning Ordinance §35-58; emphasis added).

Clearly, to satisfy this definition, the two structures must be at least partially flush with one another such that they actually share five lineal feet of the same wall. If the rule were otherwise, the Ordinance would lead to completely absurd results. For instance, two structures could be separated by 300 yards or more but would still be considered one building due to a connecting corridor.

Similarly, under the Applicant's interpretation, a developer could connect multiple structures via an underground corridor system and the structures would still constitute a single building under the Ordinance. Clearly, an enclosed catwalk or corridor cannot serve as the "five lineal feet" required by the Ordinance.[4] If the Commission were to adopt the interpretation proposed by the Applicant, it would set an incredibly poor precedent for future projects (particularly with respect to the dichotomy between primary residences and disallowed secondary structures/guest houses).

Because Building 44 constitutes three distinct, multi-story buildings, the project violates the cottage-style tradition set forth in the Montecito Community Plan. As such, approval of the Project in its current form would constitute an abuse of discretion.

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[3] At the July 16th hearing, Chairman Bierig requested that the Applicant explain the increase in lot area as compared to the Schrager Plan. (Part 4, 7:20). As part of its response, the Applicant indicated that the Schrager Plan did not include Parcel 6 or the associated sandy beach area in its FAR calculations. (Part 4, 10:00). Given that the Applicant cannot develop any permanent structures on the beach, that area is appropriately excluded and the FAR analysis should be revised accordingly.

[4] If it did, a 3-foot corridor would not meet the definition of an attached building even though the two buildings would be more closely connected than with a 5-foot corridor. To adopt such a tortured interpretation of the Ordinance would constitute an abuse of discretion.

## 4. Modifications

While the Commission is afforded considerable discretion in justifying requested modifications, its discretion is subject to significant limitations. The County's regulatory structure is designed to protect against specific land use impacts for the benefit of the community as a whole. In that regard, a modification may be appropriate where the specific harm that the regulation is intended to prevent would not otherwise occur.

For instance, where a structure abuts the bottom of a steep slope, a height modification might be justified to the extent the roof line does not exceed the top of the slope and/or obstruct view corridors. That is not the case here, as the massive height of the main building will directly impact visual resources.[5]

A modification may also be justified when approving the request would result in a direct public benefit. This is reflected in the Coastal Zoning Ordinance itself. For instance, affordable housing is appropriately excluded from FAR calculations because the construction of such improvements provides a significant community benefit. Again, that is not the situation here. For instance, under the Schrager Plan, setback modifications were warranted because they were necessary to preserve cottage structures. As such, the modifications would have provided a direct public benefit through the preservation of historical resources. The setback modifications requested by the Applicant, on the other hand, serve no such purpose. Rather, they are intended to outwardly expand the Project simply to promote internal site design.

Neither of the appropriate justifications referenced above apply to the modifications requested by the Applicant. Again, the requested setback, height and parking modifications are solely intended to benefit the Applicant and hotel guests at the cost of the surrounding community. Approval of the Project as currently proposed will severely compromise the integrity of the County's land use regulations and policies. The modifications must therefore be denied.

## 5. Water Supply/Resources

Coast Law Group LLP's July 15, 2008 comment letter detailed inadequacies with the County's assessment and conclusions regarding Project impacts on water supply/resources. Despite clarification materials submitted by the Montecito Water District (MWD) and Project Description modifications by the County and Applicant, the basic premise of CLG's letter has not changed; to wit, approval of the Project will result in significant, unmitigable impacts requiring production of an EIR and statement of overriding considerations.

MWD's July 29th and July 30th letters to the Applicant and County, respectively, purport to ensure water service for the Project, but with major caveats. We do not believe sufficient information exists in the record to allow the County to deem Project impacts to water resources insignificant. Please consider the following issues related to interior water use by the Project:

[5] Attachment A to the revised Staff Report purports to justify the height modification for the main building based on (i) optimal site planning/a better visitor experience, and (ii) setting the building back from S. Jameson. These "justifications" are entirely deficient. Modifications are not appropriate simply because it would make the Project more desirable. And to the extent the main building is moved further south, it will only serve to further obstruct mountain views from the beach.

- The County's and/or Applicant's original estimation of water supply requirements for the Project is approximately 100% greater than what MWD states it *may* be able to provide. Conveniently, "reassessment" of the water demand calculations cut nearly in half the County's prior estimation, yet it resulted in absolutely no change in Project design![6]

  Significant additional information is required to accurately assess the likely demands of the Project. Indeed, the MWD conditions of approval require the Applicant to complete a "water supply and peak demand study" to identify water needs and to ensure appropriate conservation measure are implemented. Without this information available at the time of Project approval, it is impossible for decision-makers to assess whether the Project, as designed, will be able to achieve the total water allotment proposed by MWD. Given the enormous discrepancy between original estimates and those now proposed, greater certainty is required. This amounts to a deferral of information gathering explicitly disallowed by the courts under CEQA. See, *Sundstrom v. County of Mendocino* (1988) 202 Cal.App. 3d 296 (Failure to gather relevant data cannot serve to avoid preparation of an EIR).

- MWD identifies an increase in non-room related facilities associated with the Beach Club (and its added membership) that will certainly result in added water supply demand. Yet, MWD concludes "the installation of modern, state-of-the-art water conservation devices and practices for the entire project, in the District's opinion, should offset any such water demand increases." With no knowledge of the total number of fixtures, the size of the clubhouse sauna, locker room facilities, showers, toilets, or lavatory faucets, the likely water demand for the Beach Club clubhouse cannot be estimated. There are no plans from which any decision-maker can ascertain what the "water conservation devices and practices for the entire project" will be. With no empirical assessment of the impact of these devices on reduced demand, it is an abuse of discretion for the County to rely on MWD's speculation. Further, any attempt to link clubhouse use to room numbers makes no sense as the Beach Club will serve 300 members of the community, *and their families and guests*, irrespective of hotel use. As already noted, this is precisely the type of information that must be derived and disclosed in a full SEIR.

- MWD relies upon a 1989 Interface Environmental Services study entitled *Water Demand and Conservation Study* (Interface Study) as the basis for an estimated per room, per day, water usage average of 94 gallons assuming use of modern water efficient, conservation technology. The Interface Study has not been provided as an appendix to any correspondence from MWD, and has not been disclosed to the Public or decision-makers for review. Further, there has been no discussion regarding the propriety of using a twenty year old document in this

[6] It is important to note, MWD's July 29th letter purports to estimate Project demands independent of the Applicant and County. It is virtually unheard of for a water district to estimate less water usage than the applicant itself. This unusual circumstance is indicative, along with the major changes to Project description and significant last-minute consultant reports, of the need for a more complete discussion of the issues in a full project SEIR.

instance. Similarly, there has been no justification offered for utilizing average water usage calculations which in all likelihood do not accurately represent the 5-star nature of the proposed Project. Luxury accommodations, by their very nature, are more consumptive. Without this additional data, use of the Interface Study for baseline consumption reference is an abuse of discretion.

- MWD and the Applicant's computations assume an estimated annual occupancy rate of 71%. No justification has been provided for this figure.

- MWD relies upon the Interface Study's computation that interior usage accounts for 60-70% of a hotel's overall usage without justification. The Project is certainly unlike most hotels in the region, given its extravagant amenities and numerous detached buildings. As such, additional information must be derived and assessed specific to Project design before the total interior usage assumption may be made. The repeated caveat and speculation that water saving technology will account for any exceedance of estimated use from the spa, pools, and Beach Club clubhouse do not suffice as analysis under CEQA.

- Regarding laundry facilities, MWD's assessment reduces the Project estimate from 42 af/yr to 4 af/yr without explanation. While we agree 42 af/yr is an overly-conservative estimate if high-efficiency washers are utilized, MWD's estimation is still low. According to U.S. EPA, ultra high efficiency washers that utilize rinse water recycling require approximately 2.5 gallons of water for every pound of fabric washed. Hotel specific studies estimate the production of between 12 and 20 pounds of laundry produced per day, per room, with even higher amounts associated with more luxurious accommodations. Further, given the significant pool, spa, ballroom, catering services and Beach Club amenities, there can be expected significant laundry generation from non-room related uses. Without assessment of these issues, and a justified occupancy rate, it is impossible to assume laundry water usage will be at the low end of the spectrum as assessed by MWD.

MWD indicates its commitment to provide 45 af/yr of water to the Project. Given the foregoing, it cannot be credibly argued based upon facts in the record that the Project can achieve this limit.

MWD repeatedly states that so long as it can serve the Project within historical limits, and without the need for larger meters, there will be no impact on the District's ability to serve other customers. This makes no sense. As noted in CLG's July 15th letter and presentation to the Montecito Planning Commission on July 16th, CEQA requires significantly more analysis. Where, via Ordinance 89, MWD has identified an inability to met *current* demand, it is baffling that somehow the provision of an additional 45 af/yr is not significant. MWD's and the Applicant's attempts to establish an environmental baseline equivalent to the historic water use by the prior Miramar Hotel does not override the conditions that exist "on the ground." Because the hotel has sat unused for such a long period of time, the proper baseline use is zero.[7]

[7] Note, even MWD Ordinance 89 states that base allotment shall be determined upon historic use during the three fiscal years 2003-2006. Clearly, the use at the Miramar Hotel during this period was effectively zero.

Because MWD is already operating at a deficit, any addition above zero must be considered a significant, unmitigable impact.

In addition to the factual gaps described prior, MWD's explanation of how it will provide water service in and of itself must result in a determination of significant impact on water supply.

Appendix G of the CEQA Guidelines suggests a proposed project would result in a significant impact to water supply, availability, and distribution if sufficient water supplies are not available to serve the project from existing entitlements and resources, or results in the need for new or expanded entitlement.

The prior discussion dealt solely with interior water usage. The Project will require a minimum of 12 af/yr of water for the lush landscaping that, among other things, is supposedly going to serve to balance the aesthetic and water quality impacts of the Project. Landscaping water was previously supplied by an onsite well, which in the current iteration of the Project will be abandoned. MWD's July 29th letter laments the decision not to use the onsite well, and implicitly suggests use of the well may be required to achieve Project landscaping goals.

MWD discusses the possibility of re-activating a District-owned well offsite which currently functions as a stand-by (or emergency) water supply without identifying where the well is located, how such water might be transported to the Project, or what impacts could result on that aquifer or adjoining wells. Ultimately, the District entirely defers any analysis of impacts or commitment to such a plan. As such, this cannot form the basis of any reliance by the Applicant or County upon such water to serve the landscaping needs of the Project. In light of the findings of District-wide shortages in Ordinance 89 and its July 30th letter to the County, MWD's assertion that it will serve the Project's needs above 45 af/yr "to the extent, and consistent with the District ability to serve all other District customers" essentially nullifies any conclusion that Project demands have or can be met. In short, MWD's letters are replete with caveats and conditions that make it impossible to declare water supply availability for landscaping to be insignificant.[8]

Given the foregoing and the body of law provided to the County at the MPC hearing, there can be absolutely no question that significant unmitigable impacts to water supply/availability exist, and therefore a SEIR and statement of overriding considerations is required.

## 6. Noise Impacts

The project will result in significant noise impacts to beach use and public recreation. The Dudek Noise Topical, dated June 17, 2008, states the following:

> The loudest maximum noise level during pile driving activities could reach up to 100 dBA at 50 feet distance (Source: Environmental Protection Agency - EPA). Noise levels from construction equipment decrease with distance from the

[8] Importantly, MWD's July 30th letter purporting to address the District's ability to meet all of its customers current and future demands paints an equally dire and uncertain picture. Nothing in this correspondence provides any assurance whatsoever that additional necessary supplies will be available. Hence, at the very least, indirect and direct cumulative impacts from the Project will be significant and unmitigable.

> construction site at a rate of approximately 6 dBA per doubling of distance. Based on the above, we estimate that pile-driving noise levels would be reduced to 85 dBA at the nearest noise sensitive receptors, located approximately 300 feet from the main building pile driving activities.

(Noise Topical, p 5, underlining in original).

With respect to the oceanfront properties, pile driving activities will take place over a period of 13 days. (Dudek Noise Study Addendum 1, dated January 16, 2008, p. 1). Per the Applicant's own calculation of the mean high tide line (conducted as part of the FAR analysis discussed above), the average length of the beach is estimated to be 106 feet. As the County is aware, the public's lateral beach easement extends 20 feet landward from the mean high tide line. Given the above-referenced standards, oceanfront pile driving activities will result in noise levels in excess of 94 dBA at the public's lateral easement. Because such levels clearly exceed the 65 dBA threshold, the project will result in significant noise impacts to beach use and recreation.

As noted in our last comment letter, these impacts have not been considered or analyzed as part of the review process. (See *e.g.* Dudek Noise Topical, pp. 1-3, identifying seven monitoring stations none of which were sited at the beach). Moreover, the issue has not been adequately addressed by Staff or the Applicant. For instance, at the Commission's July 16th hearing, Mr. Middlebrook of Caruso Affiliated responded to our comments as follows:

> With respect to the comment that pile driving would impact beach use, construction equipment would not be placed on the beach. We've made that clear in our documents.

(Video Recording of July 16, 2008 hearing, Part 8, 15:05; *see also* Applicant's July 28, 2008 Responses to Comments, p. 3 ).

This response is wholly disingenuous and misses the point entirely. The significance of the impact is measured based on noise levels at the receptor itself - not the location of the generating source. As noted above, per the EPA standards cited and relied upon by the Applicant, noise levels at the beach will exceed the County's significance threshold by 30+ dBA. Because neither the SEIR nor the Addendum evaluated this impact, potentially feasible mitigation measures have not been discussed or analyzed. As such, the SEIR/Addendum hybrid is legally deficient.[9]

Likewise, the County's continued reliance on the off-site accommodation measure is improper as a matter of law. As we have noted, it constitutes an abuse of discretion for the County to rely on mitigation measures that exceed its authority. In this regard, the County cannot find that an impact will be reduced to levels of insignificance where the efficacy of the applicable mitigation measure is entirely dependent on the conduct of third parties beyond its control.

[9] This represents yet another example of the impropriety of the County's adopted hybrid approach. Pile driving was not required under the Schrager Plan. Had the County properly evaluated Project's impacts from the outset in a full EIR, it would not be facing these deficiencies today.

For example, if a lead agency found that a proposed project would result in significant traffic impacts there would be no basis to conclude that such impacts would be mitigated to a level of insignificance simply because the agency offered carpooling services. To do so would constitute an abuse of discretion, as the extent to which commuters would or could actually use the service would be entirely speculative.[10] The County's reliance on off-site accommodation in this case is similarly flawed and speculative because it is based on assumptions that are not supported by evidence in the record.

In light of the above, the County cannot find that noise impacts to neighboring residences will be reduced to levels of insignificance. Relevant here, the County failed to attach two important noise reports to the Final SEIR/Addendum - Dudek's Noise Study Addendum 1, dated January 16, 2008, and Dudek's Noise Study Addendum 1, Revision 1, dated February 22, 2008 (jointly attached hereto as Exhibit 1). Those reports indicate that the proposed 12-foot sound wall will only reduce pile driving noise levels by 5 to 10 dBA at the nearest receptors. Thus, noise levels at neighboring properties will range between 90 and 115 dBA and will result in significant short-term impacts.

The County cannot certify the CEQA compliance unless and until it adequately addresses these issues in the SEIR and adopts a Statement of Overriding Considerations.

## 7. Flood Impacts

As noted previously, the County provided inadequate responses to public comments regarding flood impacts and the "fatal flaw" issue. Attachment A to the Memorandum does not change this fact as the Response to Comments Errata provides no additional information or analysis. (*See* Attachment A, p. 15).

Further, the statements in Mr. Fayram's July 28, 2008 memorandum (Attachment J) directly contradict the spirit and letter of CEQA. Mr. Fayram states:

> CLG's contention that superseded reports should continue to be relevant to our review is baffling. The latest P&S report updated the analysis and is the applicable technical information submitted by the Project. There is no reason that superseded reports should be repeatedly examined.

(Attachment J, p. 2).

This statement is disingenuous at best. The "fatal flaw" language was not fabricated by CLG or the public. It came directly from the County's own Flood Control manager. Moreover, the issue is not "baffling" or complicated - if the December 2007 P&S report contained a "fatal flaw" in its modeling approach, and that approach was not changed, the flaw will continue to apply to the March 2008 report. Thus, CLG's comments go directly to the adequacy of the March 2008 report. CLG simply demands what is required by the statute:

> Where comments from responsible experts or sister agencies disclose new or

[10] The TDM "justification" for the parking modification is deficient for precisely this reason. (*See* Memorandum, Attachment A, p. 7).

> conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response*.

*Berkeley Keep Jets over the Bay Com. v. B.d of Port Com. of Oakland* (2001) 91 Cal. App. 4th 1344, 1367 (italics in original; underline added) (*Berkeley*).

The mischaracterization that CLG seeks to "repeatedly examine" the December 2007 report does not satisfy this requirement. At minimum, a good faith, reasoned response requires the following: (i) Flood Control's identification of the specific flaw at issue, and (ii) a discussion of how that particular flaw was cured in the March 2008 report. The County's ongoing attempts to avoid addressing the issue do not live up to the standards set forth in the *Berkeley* decision and are particularly inappropriate given Flood Control's own email communications on the subject. (*See* Exhibit 2, containing emails referenced in CLG's July 15 letter).

Based on the foregoing, the County's responses to public comments are legally deficient. In addition, the SEIR and Addendum fail to adequately disclose disagreements among experts in the body of the documents (as noted above). Unless these deficiencies are remedied, certification of the SEIR will constitute an abuse of discretion.

## 8. Historical Resources

Replication and reconstruction have been identified as an appropriate mechanism for mitigating impacts and preserving historical value under CEQA. 14 CCR §15126.4. Public comments appropriately proposed a middle-ground mitigation measure that would result in the preservation or reconstruction of a limited number of cottages. The County refused to consider adoption of this measure on the grounds that it would not reduce impacts to a level of insignificance and "the impact classification would therefore remain unchanged, Class I significant and unavoidable." (Memorandum, p. 11).

The foregoing is contrary to CEQA's fundamental purpose. The statute expressly states that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid *or substantially lessen such significant effects*. Pub. Res Code §21002 (emphasis added).

Consistent with the above, mitigation measures should be capable of "[m]inimizing impacts by limiting the degree or magnitude of the action and its implementation." 14 CCR §15370. As such, the County may not disregard potentially feasible mitigation measures simply because those measures will not reduce the impact all the way to a level of insignificance. If the rule were otherwise, an agency could refuse to adopt any mitigation measures simply because the impact would still be significant.

Because the proposed mitigation measure at issue here could "substantially lessen" potential impacts by providing a physical, 3-dimensional sample of a historic cottage on-site. The County's response is legally inadequate.

## 9. Parking Impacts

The parking analysis is deficient because the Applicant's employee staff count fails to identify or include the number of groundskeepers that will be required to maintain the Project's extensive landscape acreage. The fact that such services may be staffed by an outside third party does not change the Project's physical parking needs. (*See* Memorandum, Attachment F, dated July 24, 2008, p. 3).

Further, the staffing estimate of 102 employees is vague and unhelpful because it merely states that the figures apply to "the first and busiest shift" without further defining what that means. (*Id.* p. 1). This appears to conflict with the Final SEIR, which indicates that the 102 employee figure is based on the "approximate no. of employees on site at any given time." (Final SEIR, p. 29). In addition, the staffing requirements have been underestimated and would not serve the hotel's needs during peak summer time uses (e.g. 4 bell hops for 204 rooms).

Likewise, the ATE Updated Traffic Analysis, dated July 24, 2008, appears to be based on standard resort hotels calculations rather than those of a 5 star establishment such as the one at issue here. (Attachment G).

Staff's Memorandum states, "Even if the Miramar's proposed employee count at 102 is currently estimated, a substantial increase in employees could easily be absorbed by the overall provision of 551 parking spaces which is 96 more spaces than the Biltmore." (Memorandum, p. 7). This type of rationale has resulted in inadequate environmental review throughout the process. The County cannot substitute its obligation to fully evaluate parking impacts, including the number of additional staff members that were left out of Attachment F, based on speculation.

## 10. Conclusion

As noted above, the Project will result in a number of significant environmental impacts in addition to those relating to historical resources. By failing to adequately evaluate those additional impacts up front in a comprehensive EIR (and by segregating the discussion in the Addendum), the County improperly limited the scope of environmental review. Likewise, the massive size, bulk and scale of the Project is not compatible with the surrounding community, as reflected by the numerous requests for modifications, improper FAR calculations, and violation of the cottage-style tradition. Based on the foregoing, the Project is not legally defensible and certification of the SEIR will constitute an abuse of discretion.

Sincerely,

**COAST LAW GROUP LLP**

Ross M. Campbell
Marco A. Gonzalez

Exhibit 1: Dudek Noise Study Addendum 1, dated January 16, 2008
Dudek Noise Study Addendum 1, Revision 1, dated February 22, 2008
Exhibit 2: County Internal Flood Email Communications

CC: Client

# EXHIBIT 1

(To CLG Comment Letter, dated August 5, 2008)

**DUDEK**

621 CHAPALA STREET
SANTA BARBARA, CALIFORNIA 93101
T 805.963.0651 F 805.963.2074

January 16, 2008

Mr. Matt Middlebrook, Vice President
Caruso Affiliated
101 California Street, Suite 2450
San Francisco, CA 94111

**SUBJECT:** ***Miramar Hotel and Bungalows Project, Montecito, California***
***Noise Study Addendum 1 - Pile Driving Oceanfront Properties***

Dear Mr. Middlebrook:

Dudek is pleased to submit this addendum to our noise study dated November 2007. The purpose of this addendum is to address the project's potential noise impacts associated with the pile driving for the oceanfront properties foundations.

## BACKGROUND

The duration of pile driving for the oceanfront properties foundations is estimated to be 13 days (8 hours per day). It is estimated that there will be 128 piles, with a driving capability of approximately 10 piles per day.

The construction activities will be within 1600 feet of sensitive receptors (residences, church, preschool), and both the County and Montecito construction related noise limits apply, i.e. pile driving for the oceanfront properties foundation is limited to weekdays between the hours 8:00 a.m. and 4:30 p.m. and noise levels above 95 dBA may require additional mitigation.

## POTENTIAL NOISE IMPACTS AND MITIGATION ANALYSIS

The nearest noise sensitive receptors include residences at approximately 50 feet from the oceanfront properties pile driving area boundary. The maximum noise levels at these locations are estimated to range between 85 dBA and 100 dBA during pile driving for the oceanfront properties foundations.

To reduce the noise levels during pile driving for the oceanfront properties foundations at the nearest noise sensitive receptor locations, we recommend installing a 12-ft high temporary wall around the pile driving site, or between the pile driving site and nearest noise sensitive receptor location. The minimum weight of the wall materials should be 3.5 pounds per square foot of

face area. Materials meeting this requirement include a combination of plywood with noise control panels or sound absorbing blankets installed at the pile driving side of this plywood wall, to minimize reflection. We estimate that this 12-ft high wall would reduce the pile driving noise levels between 5 dBA and 10 dBA at the nearest noise sensitive receptor locations.

The pile driving activities need to comply with the regulatory permissible hours and days of construction, i.e., pile driving for the oceanfront properties foundations shall be limited to weekdays between the hours 8:00 a.m. and 4:30 p.m. In addition, we recommend the contractor to notify the community in advance of any pile driving activities.

## CONCLUSIONS

It can be expected that pile driving for the oceanfront properties foundations could create short-term noise disturbances for occupants of residences and people near the project site. The total duration of pile driving for the oceanfront properties foundations is estimated to be 13 days. Due to the short-term duration, and because the pile driving would occur during allowable hours (8:00 a.m. and 4:30 p.m.) on weekdays only, and the pile driving noise would not exceed noise levels typically considered acceptable for construction activities, the construction would result in a *less than significant* noise impact.

* * * * * * *

Respectfully submitted,

**DUDEK**


**Cornelis H. Overweg, P.E., INCE**
Senior Acoustician

**DUDEK**

621 CHAPALA STREET
SANTA BARBARA, CALIFORNIA 93101
T 805.963.0651 F 805.963.2074

February 22, 2008

Mr. Matt Middlebrook, Vice President
**Caruso Affiliated**
101 California Street, Suite 2450
San Francisco, CA 94111

**SUBJECT:** ***Miramar Hotel and Bungalows Project, Montecito, California***
***Noise Study Addendum 1 - Revision 1 - Pile Driving Oceanfront Properties***

Dear Mr. Middlebrook:

Dudek is pleased to submit this revision to our noise study Addendum No. 1, dated January 16, 2008. The revision is made to reflect a more accurate approximation of the oceanfront properties foundations pile driving distances to the nearest noise sensitive receptor locations.

## BACKGROUND

The duration of pile driving for the oceanfront properties foundations is estimated to be 13 days (8 hours per day). It is estimated that there will be 128 piles, with a driving capability of approximately 10 piles per day.

The construction activities will be within 1600 feet of sensitive receptors (residences, church, preschool), and both the County and Montecito construction related noise limits apply, i.e. pile driving for the oceanfront properties foundation is limited to weekdays between the hours 8:00 a.m. and 4:30 p.m. and noise levels above 95 dBA may require additional mitigation.

## POTENTIAL NOISE IMPACTS AND MITIGATION ANALYSIS

Although accurate pile driving information is not yet available, based on the assumption that the 128 piles will be spaced at equal distances, the following provides an approximation of the pile driving locations in relation to off-site properties.

The total footprint of the oceanfront properties is approximately 18,400 sf. Assuming equal spacing, there will be a pile for every 145 sf or approximately every 13'x13' area. Assuming the pile in the center, on the west side there could be a row of 3 piles running N to S at a distance of approximately 6.5 feet from the exterior wall of the nearest off-site property. Similarly, on the east side there could be a row of 5 piles running N to S at a distance of approximately 6.5 feet from the exterior wall of the nearest off-site property.

In conclusion, the oceanfront properties pile driving could take place as close as 6.5 feet from the nearest off-site properties. The maximum noise levels at these locations are estimated to range between approximately 100 dBA and 120 dBA during the pile driving for the oceanfront properties foundations.

To reduce the noise levels during pile driving for the oceanfront properties foundations at the nearest noise sensitive receptor locations, we recommend installing a 12-ft high temporary wall around the pile driving site, or between the pile driving site and nearest noise sensitive receptor location. The minimum weight of the wall materials should be 3.5 pounds per square foot of face area. Materials meeting this requirement include a combination of plywood with noise control panels or sound absorbing blankets installed at the pile driving side of this plywood wall, to minimize reflection. We estimate that this 12-ft high wall would reduce the pile driving noise levels between 5 dBA and 10 dBA at the nearest noise sensitive receptor locations.

The pile driving activities need to comply with the regulatory permissible hours and days of construction, i.e., pile driving for the oceanfront properties foundations shall be limited to weekdays between the hours 8:00 a.m. and 4:30 p.m. In addition, we recommend the contractor to notify the community in advance of any pile driving activities.

## CONCLUSIONS

It can be expected that pile driving for the oceanfront properties foundations could create short-term noise disturbances for occupants of residences and people near the project site. The total duration of pile driving for the oceanfront properties foundations is estimated to be 13 days. Due to the short-term duration, and because the pile driving would occur during allowable hours (8:00 a.m. and 4:30 p.m.) on weekdays only, and the pile driving noise would not exceed noise levels typically considered acceptable for pile driving activities, the beach front properties pile driving would be an adverse, but *less than significant* noise impact.

* * * * * * *

Respectfully submitted,

**DUDEK**


**Cornelis H. Overweg, P.E., INCE**
Senior Acoustician

# EXHIBIT 2

(To CLG Comment Letter, dated August 5, 2008)

## Gibbs, Michelle

**From:** Frye, Jon
**Sent:** Thursday, January 31, 2008 9:51 AM
**To:** Gibbs, Michelle
**Cc:** Ward, Dave; Black, Dianne; Almy, Anne; Fayram, Tom; Constantine, Candice; Parker, Mike
**Subject:** RE: Miramar flood issue

Michelle,

I understand the applicant has requested direction on how to proceed with the technical analysis of the project's potential impacts to the special flood hazard area.

- FIRM shows Oak, San Ysidro and Romero Creeks' special flood hazard areas combined;
- FIRM shows flow over the UPRR tracks;
- Water surface elevation (20) contour shows flow towards Oak Creek from San Ysidro Creek;
- Effective FEMA San Ysidro Creek HEC-2 model shows right over-bank (looking downstream) flows of significant amounts leaving the San Ysidro Creek channel in the direction of Oak Creek;
- Flows were observed heading to Oak Creek from San Ysidro Creek in 1995. These flows were unofficially estimated to be on the order of a 25-year return period;
- Flows were reportedly observed heading to Oak Creek from San Ysidro Creek in 1998 (per Penfield & Smith Preliminary Drainage Report Appendix D, page 2, December 7, 2007);
- The question is how does loss of over-bank storage (Miramar project) affect the other areas of the special flood hazard area?
- In attempting to address that question, the P&S Report of December 7 does not take the above into consideration therefore does not represent acceptable evaluation;
- HEC software should be used for all hydrology/hydraulics. Hydrocadd SBUH not applicable.
- HEC-RAS unsteady flow analysis options are described in software documentation that specifically address loss of over-bank storage.
- Unsteady flow analysis needs hydrographs.
- HEC-HMS should be used to develop watershed hydrograph(s) with a peak equal to the 25- and 100-yr flow for use in HEC-RAS unsteady flow analysis.
- Hydrograph needs to include flows directed to Oak Creek from San Ysidro Creek.
- HEC-RAS cross-sections need to extend far enough upstream and downstream to capture the influence of the Miramar project.
- HEC-RAS model needs to be calibrated to FIRM and consistent with San Ysidro Creek effective HEC-2 over-bank flows unless better technical information that FEMA would be willing to accept is provided.
- In use of HEC-HMS and HEC-RAS, provide technical justification if Romero and/or San Ysidro Creeks are not included in the detailed study.
- Any change in base flood elevation and/or floodway limits will require a submittal to FEMA for a Conditional Letter of Map Revision.

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

Jon Frye, PE, CFM
Engineering Manager
SANTA BARBARA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
123 East Anapamu Street
Santa Barbara, CA 93101
Main Phone: 805-568-3440 Direct Line: 805-568-3444
Fax: 805-568-3434

**Schatz, Star**

---

**From:** Baker, John
**Sent:** Wednesday, February 20, 2008 1:43 PM
**To:** Black, Dianne
**Subject:** RE: Miramar study, P&S

Who is FC? It looks like there may be a need to talk with Tom F. about the comments made in the e-mail. I am surprised that John forwarded this to Michelle given his comments.
jb

---

**From:** Black, Dianne
**Sent:** Wednesday, February 20, 2008 1:04 PM
**To:** Baker, John
**Subject:** FW: Miramar study, P&S

John, Notice the customer service dripping from this e-mail??? No need to do anything, but wanted you to understand this has been difficult. I'll let you know if, after 3/3 meeting, we need your help. Thanks. Dianne

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**From:** Gibbs, Michelle
**Sent:** Tuesday, February 19, 2008 9:35 AM
**To:** Black, Dianne; Ward, Dave; Almy, Anne; Slutzky, Mary; Yates, Edward
**Subject:** FW: Miramar study, P&S

fyi

---

**From:** Frye, Jon
**Sent:** Tuesday, February 12, 2008 5:48 PM
**To:** Gibbs, Michelle
**Subject:** FW: Miramar study, P&S

fyi

---

**From:** Frye, Jon
**Sent:** Tuesday, February 12, 2008 2:23 PM
**To:** Fayram, Tom
**Cc:** Parker, Mike
**Subject:** Miramar study, P&S

Craig Steward called and asked me if we could meet to go over our "wish list" as lined out in an email I sent P&D a couple weeks ago, which I had developed because I had been told by P&D that the developer asked for it. A subsequent email from the developer claims they never asked for it, so I guess P&D just made that up.
I asked Craig what it was that he wanted to discuss, and he said that there were some items listed that "FC just isn't aware of the implications". I said that if that's the case, then put it down in writing as a response to the email. Craig said that he's been directed by the developer not to put anything down in writing.
So I respectfully declined to meet with Craig. I think we talked long enough during the conversation anyway to take away the need to meet.

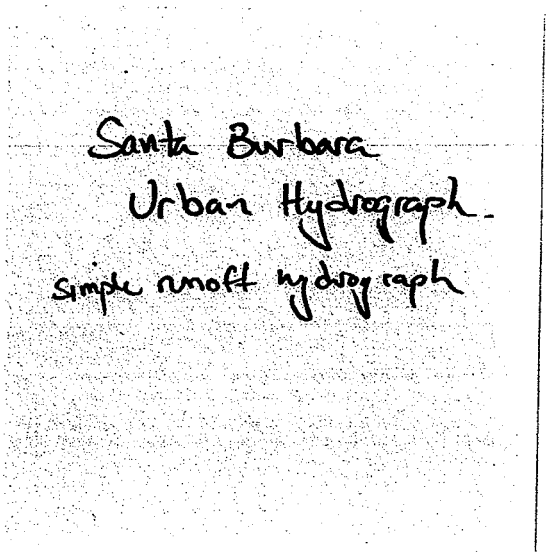
Jon Frye, PE, CFM

Engineering Manager
SANTA BARBARA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
123 East Anapamu Street
Santa Barbara, CA 93101
Main Phone: 805-568-3440 Direct Line: 805-568-3444
Fax: 805-568-3434

## Frye, Jon

**From:** Frye, Jon
**Sent:** Wednesday, February 20, 2008 9:48 PM
**To:** Fayram, Tom
**Subject:** brief Miramar update

Tom,
Candice today confirmed a fatal flaw assumption in the modeling approach that P&S took in their RAS/SBUH attempt to consider the affects of the loss of the overbanks.
This gives me even more confidence in the validity of the request we've put in for more information, and gives me even less confidence in what P&S has done to date.
When you have a minute I'll show you what they did and how we showed what they did is flawed.
Jon



## Fayram, Tom

**From:** Frye, Jon
**Sent:** Friday, February 29, 2008 8:31 AM
**To:** Fayram, Tom
**Cc:** Parker, Mike
**Subject:** RE: Miramar

Tom,
I know that you and I met with Supv. Carbajal back in September at which time he asked us our opinion of the technical flooding issues. Based on Dale's review of the P&S report, I believe we shared with him that we thought that the project represented no potential adverse impact (or however it's worded below).
Subsequently, upon further review of the drainage study, we've of course now come to a conclusion that we don't know and won't know without further studies. What we do know is that the drainage study P&S submitted has a serious flaw or two that Dale's initial review didn't pick up on.
I don't know if this new information warrants an update to Supv. Carbajal.
Jon

---

**From:** Weber, Dale
**Sent:** Thu 9/27/2007 8:39 AM
**To:** Fayram, Tom; Frye, Jon
**Subject:** RE: Miramar

Thanks Tom! That is pretty much what I would have written.
I've marked it up with a couple of clarifications.

Dale W. Weber, P.E., C.F.M.
Development Engineer
Santa Barbara County Flood Control District
123 E. Anapamu Street
Santa Barbara, CA 93101
(805) 568-3446
(805) 568-3434 Fax
website: http://www.countyofsb.org/pwd/water/derev.htm

-----Original Message-----
From: Fayram, Tom
Sent: Wednesday, September 26, 2007 8:38 PM
To: Frye, Jon; Weber, Dale
Subject: RE: Miramar

I just took a stab, Dale / Jon, let me know what you think, and correct as needed, or add as needed.

Thanks

---

Salud -

To confirm our discussions of yesterday, we have reviewed the Engineering Drainage Report as s part of the Miramar project.

The report was prepared by a highly regarded local engineering firm. The Miramar Project in its current configuration is designed in a manner that has less paved (impervious) area than the property had prior. As such, the project will generate

## Almy, Anne

**From:** Gibbs, Michelle
**Sent:** Tuesday, March 04, 2008 4:34 PM
**To:** Frye, Jon
**Cc:** Parker, Mike; Almy, Anne
**Subject:** RE: Miramar - Dec 12 2007 Drainage Study

Hi guys,

Ok, thanks, I think we both need to add these questions to the list of items that need to be addressed in the revised drainage study then. I am currently making a list of all outstanding items for our impact analysis and will be discussing the list with Dianne, Dave, and Anne this Friday. I'll let you know what our next steps on this are after the meeting.

Michelle

---

**From:** Frye, Jon
**Sent:** Friday, February 29, 2008 8:20 AM
**To:** Gibbs, Michelle
**Cc:** Parker, Mike
**Subject:** FW: Miramar - Dec 12 2007 Drainage Study

Michelle,
See below.
Jon

---

**From:** Parker, Mike
**Sent:** Fri 2/29/2008 8:17 AM
**To:** Frye, Jon
**Subject:** RE: Miramar - Dec 12 2007 Drainage Study

This is a lot like the last heal the ocean letter.. lots of questions and no answers from P&S.. yes I concur that they raise some very good questions and no answers have yet to come forward from the applicant

---

**From:** Frye, Jon
**Sent:** Friday, February 29, 2008 8:12 AM
**To:** Parker, Mike
**Subject:** RE: Miramar - Dec 12 2007 Drainage Study

If the P&S report doesn't speak to their questions (I didn't look at what was sent by Heal the Ocean) then our response to Michelle Gibbs can be something like 'good question, we agree that the report doesn't clearly address' or something like that. If that's indeed the case then we can send that response off right now if you concur.

---

**From:** ~~Parker, Mike~~
**Sent:** Fri 2/29/2008 8:09 AM

**To:** Frye, Jon
**Subject:** RE: Miramar - Dec 12 2007 Drainage Study

All good questions.. wish I had the answers

---

**From:** Frye, Jon
**Sent:** Wednesday, February 27, 2008 2:27 PM
**To:** Parker, Mike
**Subject:** FW: Miramar - Dec 12 2007 Drainage Study
**Importance:** High

Mike,
Please take a look at this.
Thanks,
Jon

---

**From:** Gibbs, Michelle
**Sent:** Wednesday, February 27, 2008 1:46 PM
**To:** Frye, Jon
**Cc:** Almy, Anne; Ward, Dave
**Subject:** Miramar - Dec 12 2007 Drainage Study
**Importance:** High

Hi Jon,

I just remembered the other thing that I was going to ask you regarding the drainage studies. We recently had a meeting with Heal the Ocean at their request and they asked us to followup on some inconsistencies that they saw in the Preliminary Drainage Studies prepared for the Miramar. I've attached Heal the Ocean's specific questions and put an asterisk by each of the their main questions. Could you (or Mike) verify whether their concerns are true or not? When I go back and look at their questions, their concerns could be valid?

Thanks so much Jon!

Michelle

Michelle Gibbs, Planner III
Santa Barbara County Planning and Development Department
123 E. Anapamu Street
Santa Barbara, CA 93101
(805) 568-3508

Salud
+ Mike Brown

**Schatz, Star**

**From:** Baker, John
**Sent:** Monday, March 10, 2008 5:28 PM
**To:** Black, Dianne
**Subject:** FW: Miramar - Rick Caruso Mtg.

Dianne -
Here is requested meeting. I will respond to Mike and Salud.
jb

---

**From:** Castillo, Brenda
**Sent:** Monday, March 10, 2008 5:01 PM
**To:** Baker, John
**Subject:** Miramar - Rick Caruso Mtg.

Mike Brown asked to set a meeting at the direction of Supervisor Carbajal with County staff to discuss unacceptable delays with the Miramar Project. Rick Caruso and Mr. Middlebrook will attend.

We are to invite Dianne Black, Fire (Montecito and/or County?) Scott McGolpin, Tom Fayram, John B and Planner.

Date is Wednesday, March 19 at 11:00 a.m.

Location: County Admin. (Working on the room at this time)

Thanks,

Brenda

**Black, Dianne**

---

**To:** Baker, John

**Cc:** Ward, Dave

**Subject:** RE: Miramar - Rick Caruso Mtg.

John,

I'm working on trying to address the historic issue in a different, quicker way. It will hopefully reduce the time to get this project review completed. I'll let you know how this moves forward.

With respect to Flooding, we have a meeting with Matt Middlebrook from Caruso at Flood Control tomorrow at 4. I probably won't be back from the PC in time to attend (PC is in north county). I think it would be helpful for you to attend at the beginning of the meeting to set the tone. It's in the PW first floor conference room.

With respect to Fire, MFD, Matt Middlebrook and staff are meeting today at 2pm.

We also have a meeting with Matt to discuss the status of the project at 1pm.

Dave and I will keep you in the loop.

By the way, the meeting time next week is during the MPC hearing. I'm not sure I'll be done that early. If I have to, I can step out and have someone else sit with them.

Thanks.

Dianne

---

**From:** Baker, John
**Sent:** Monday, March 10, 2008 5:28 PM
**To:** Black, Dianne
**Subject:** FW: Miramar - Rick Caruso Mtg.

Dianne -
Here is requested meeting. I will respond to Mike and Salud.
jb

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**From:** Castillo, Brenda
**Sent:** Monday, March 10, 2008 5:01 PM
**To:** Baker, John
**Subject:** Miramar - Rick Caruso Mtg.

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We are to invite Dianne Black, Fire (Montecito and/or County?) Scott McGolpin, Tom Fayram, John B and Planner.

Date is Wednesday, March 19 at 11:00 a.m.

Location: County Admin. (Working on the room at this time)

Thanks,

Brenda

* Salud Flood.

## Fayram, Tom

**From:** McGolpin, Scott
**Sent:** Tuesday, March 11, 2008 9:23 PM
**To:** Fayram, Tom
**Subject:** Re: Miramar

Tom - I think it is well done and appropriate to send. It lays out exactly where we are today and how this project moves forward from here. It also shows our decision makers that we are not holding this one up in any way. My take is it would be good to have this one on the record.....written that is.

Scott D. McGolpin, P.E.
Director - Public Works

County of Santa Barbara
Public Works Department
123 E. Anapamu St.
Santa Barbara, CA 93101

(w) 805.568.3010
(c) 805.896.5574
(f) 805.568.3019

e-mail: mcgolpin@cosbpw.net

web: www.countyofsb.org/pwd

-----Original Message-----
From: Fayram, Tom
To: McGolpin, Scott
Sent: Tue Mar 11 20:58:40 2008
Subject: Miramar

I drafted this up, but then wondered if that i sbetter for a discussion rather email.

What do you think?

**********

Hello John / Scott –

I see that a meeting has been called by the CEO / Supervisor Carbajal to discuss the delays to the Miramar project.

I had a brief chance to talk to John today at the Board, I wanted to go over the status as we see it from history of the past few months.

As we discussed, the Miramar project proposes to fill in the Floodplain, or also called the Floodway Fringe. County Ordinance allows this area to be filled in, as does FEMA regulations. The Floodway is identified as that portion of the floodplain that is not allowed to be obstructed. As defined, the when you fill in the floodway, it allows the flood elevation to increase, but only up to a maximum of 1 foot increase. It has been calculated that any more filling in of the Floodplain is not allowed.

Area residents have expressed concerns as to what the impacts of this would be on them. In fact, so did the Montecito Planning Commission. Flood made it clear to P&D that the Miramar can be approved as is under County Ordinances. However, if we wanted to determine what the impact of this filling is, then an additional analysis would be required. The earlier work by the applicant was NOT in concert with any standard manner to do this work.

The applicant refused to do the work. In fact, unlike the hundreds of other projects I have worked on, the Applicant would not allow their engineer to talk to us. In one meeting we had with them, the meeting was of no use, because there was no exchange of information at all.

So what to do? The way I slice it, we have 3 choices. 1) just proceed and stand by the statement that the project does not fill the Floodway and conforms to County Ordinances; 2) Tell the applicant to do the required work and wait to go to PC until they did; or 3) do the analysis through the CEQA document with a 3rd Party Engineer.

So that is where we are stuck. I understand the importance of the project, I also understand that the PC will be asking these questions, and I found it typically better to get these answers for the PC, otherwise the meeting may not go well.

We just need to know what to do. Oh, and at no time did we ever ask for a 10,000 year flood study. This is a 100 year standard issue, although it is complicated by the commingling of flood waters from San Ysidro Creek, which has been witnessed in recent years.

-----Original Message-----
From: McGolpin, Scott
Sent: Tue 3/11/2008 8:53 PM
To: Fayram, Tom
Subject: Re:

Flood Control and Water Agency.

Scott D. McGolpin, P.E.
Director - Public Works

County of Santa Barbara
Public Works Department
123 E. Anapamu St.
Santa Barbara, CA 93101

(w) 805.568.3010
(c) 805.896.5574
(f) 805.568.3019

e-mail: mcgolpin@cosbpw.net

web: www.countyofsb.org/pwd

-----Original Message-----
From: Fayram, Tom
To: McGolpin, Scott
Sent: Tue Mar 11 20:52:20 2008
Subject: RE:

Which ones are 2400 and 3050?

-----Original Message-----
From: McGolpin, Scott
Sent: Tue 3/11/2008 8:38 PM
To: Fayram, Tom
Subject: Re:

10-4. Got that one earlier today. We will spend some time on that tomorrow as well. We reviewed the Division today - Mike wants to look at fund 2400 and 3050.

The backup is great - I assumed it was Sandy and Lynn who did it at the direction of Rochelle. Sorry didn't know it was you.... :-)

Flood

**Black, Dianne**

**From:** Fayram, Tom
**Sent:** Friday, March 14, 2008 3:46 PM
**To:** Ward, Dave
**Cc:** Black, Dianne; Almy, Anne
**Subject:** Mirmar Flood Analysis

Hi Dave –

On March 12, 2008, Penfield & Smith Engineers met with County staff and delivered a Flood Analysis for the Miramar Project entitled "Oak Creek Flood Analysis for the Miramar Beach Resort and Bungalows", dated March 7, 2008.

The P&S report provided valuable information relating to the floodplain issues on the project. Craig Steward described the conclusions of the report followed by my review of the Executive Summary.

As we have discussed, the proposed Miramar project conforms with County Floodplain Development Standards, an on it face complies with FEMA and County development conditions in that no development is proposed in the Floodway.

The P&S report goes on to evaluate what the impacts with the development. It must be noted that upon review of the FEMA Floodplain, the portion of the Miramar property in the floodplain is an extreme "bulb" (or as P&S referred to, bathtub) of the floodplain. Intuitively it is easy to conclude that the "bulb" area is not effective flow area, meaning the area does not contribute significantly, if at all, to the flood carrying capacity of the system.

Physical features that establish how flood flows will behave (called control points) have important effects on floodplain impacts, the UPRR is such a control. I therefore agree that using floodplain management approaches, little if any impact downstream would result. P&S concluded the same, and a FEMA "Standard" Study would ignore any such impacts. FEMA uses a "steady state" analysis which assumes constant flowrate through the Floodplain system. In addition, FEMA and County Floodplain regulations allow floodplain encroachments to cause no more than a 1 foot rise the 100 year flood elevations.

Tables 7 and 9 of the P&S report show that there is no rise in the flood levels for 100 and 500 years flow analysis. P&S used standard HEC-RAS analysis to determine this.

Although not required, Penfield & Smith went another step further to determine theoretically if the loss in floodplain space at the Miramar would cause downstream impacts. Modeling the lost floodplain as a "basin", P&S reports that the lost in storage could result in a slight increase of downstream flowrates, roughly 90 cubic feet per second (cfs) in an event of over 3000 cfs. While FEMA would not recognize this condition (would presume constant flow rate and now flow increase) P&S estimates a potential flow depth increase at severe flood flow levels of only ¾ of an inch. In practicality, such an increase could not even be measured given the wave action and turbulence is high flood flows.

If you have any questions please contact me, the P&S Report concludes the impacts to flooding are indeed minimal, if at all.

This report addresses those issues.

---

Thomas D. Fayram, PE, CFM
Deputy Public Works Director
123 E. Anapamu St
Santa Barbara, CA 93101

Phone 805.568.3436
Email tfayram@cosbpw.net

**Stewart, Bret**

**From:** Fayram, Tom
**Sent:** Monday, March 17, 2008 4:08 PM
**To:** Frye, Jon
**Cc:** Parker, Mike; Stewart, Bret
**Subject:** RE: Miramar

10-4.

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Thomas D. Fayram, PE, CFM
Deputy Public Works Director
123 E. Anapamu St
Santa Barbara, CA 93101

Phone 805.568.3436
Email tfayram@cosbpw.net

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**From:** Frye, Jon
**Sent:** Monday, March 17, 2008 2:13 PM
**To:** Fayram, Tom
**Cc:** Parker, Mike; Stewart, Bret
**Subject:** Miramar

Tom,

I forwarded you a phone message from Michelle Gibbs. She wanted me to call her and tell her that I concur with your conclusions that what P&S just submitted is fine.
I don't want to review the study quite frankly. As you said this morning, it's the project engineer's responsibility to do the details correctly, and you have already reviewed the bigger picture stuff.
From another perspective, I prefer to have absolutely no comment to this study for the very reason that I haven't looked at it and I haven't looked at it because my boss did not direct me to look at it. That way, no matter who gets hold of me, I have nothing to say, good bad or indifferent.
Does that sound okay? I'll tell Michelle that I'm not reviewing?

Jon Frye, PE, CFM
Engineering Manager
SANTA BARBARA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
123 East Anapamu Street
Santa Barbara, CA 93101
Main Phone: 805-568-3440 Direct Line: 805-568-3444
Fax: 805-568-3434

## Carbajal, Salud

**From:** Brown, Michael F. (CEO)
**Sent:** Wednesday, March 19, 2008 8:36 AM
**To:** Baker, John; Carbajal, Salud
**Cc:** Black, Dianne
**Subject:** RE: Miramar Meeting

Thanks muchly for the expediting

**From:** Baker, John
**Sent:** Wednesday, March 19, 2008 8:18 AM
**To:** Carbajal, Salud; Brown, Michael F. (CEO)
**Cc:** Black, Dianne
**Subject:** Miramar Meeting

Salud/Mike -
I am told by Dianne that after talking with Matt Middlebrook of the Caruso team, there will not be a need for the meeting today. You may have already heard the same from the Caruso team. There has been resolution to the key issues that Caruso wanted to discuss. We are now shooting for a Montecito Planning Commission date of June 10. Rest assured that we will stay on top of this application to move it to conclusion in an as expeditious a manner as possible. Our goal all along has been to provide the path for approval that will not have obstacles that will result in lengthy delays. Dianne will also make the necessary phone calls to relay this information.
jb