COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT

MEMORANDUM

TO: Board of Supervisors

FROM: Travis Seawards, Deputy Director, Development Review Division

STAFF CONTACT: Steve Conner, Planner, (805) 568-2081

DATE: April 25, 2024

HEARING DATE: May 7, 2024

RE: Sanford Appeal, Case No. 23APL-00021, of the Montecito Planning Commission Approval of the Music Academy of the West Revised Conditional Use Permit, Case Nos. 21RVP-00000-00109 and 21CDP-00000-129
1070 Fairway Drive, Montecito

INTRODUCTION

An appeal (Case No. 23APL-00021) of the Montecito Planning Commission's approval of the Music Academy of the West Revised Conditional Use Permit (Case Nos. 21RVP-00000-00109 and 21CDP-00000-00129) was submitted to the Clerk of the Board on April 14, 2023. The appeal package included an appeal letter with three appeal issues. Subsequently, on April 25, 2024, an additional appeal letter, dated June 8, 2023, was brought to P&D's attention. The letter, which includes new information, was never transmitted to either the Clerk of the Board or to P&D staff. Therefore, P&D staff requests that the appeal be dropped from the May 7, 2024, hearing agenda to allow staff time to review the new information and provide a full response to the Board.

RECOMMENDATION

1. Drop the item, Case No. 23APL-00021, from the hearing agenda of May 7, 2024.

Attachments:

1. Appeal Letter dated June 8, 2023

Cc: Case File (to Planner)
Hearing Support

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June 8, 2023

SENT VIA ELECTRONIC E-MAIL

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Re: Appeal of the Montecito Planning Commission's Approval of Revised Conditional Use Permit for Music Academy of the West

Dear Supervisors Williams, Capps, Hartmann, Nelson and Lavagnino;

This firm and the undersigned represent Butterfly Beach Association (hereinafter "Association" or "Appellant"). Please keep this office on the list of interested persons to receive timely notice of all hearings, votes, determinations and official filings related to the above-referenced matter.

We submit this letter in response to the Montecito Planning Commission's ("MPC") approval of the Music Academy of the West ("MAW") Revised Conditional Use Permit ("CUP"). Our client, the Association, has appealed the MPC's approval of the CUP for the Project, and its use of an Addendum to an outdated Environmental Impact Report, pursuant to the California Environmental Quality Act ("CEQA").

Appellant urges the Board of Supervisors to grant the appeal and deny the CUP. The Project cannot be approved since it violates the 2004 CUP conditions of approval, and a number of state statutes and municipal codes, as further explained in detail below.

Importantly, when the original CUP was approved in 2004, the Board of Supervisors specifically found that "the operation and site development at the Music Academy have reached a maximum level able to be found consistent with the health, welfare, safety, and convenience of the neighborhood and the Board of Supervisors recommends that no further increase in use, density, or development be allowed." This finding was incorporated into the CUP's Conditions of Approval, which stated:

> **Advisory statement from the Board of Supervisors with regard to neighborhood compatibility and its intent in approving 90-CP-111 RV01**: In granting this permit, the Board of Supervisors advises future decision-makers that based on the evidence in the record at this time, the operation and site development at the Music Academy have reached a maximum level able to be found consistent with the health, welfare, safety, and convenience of the neighborhood and the Board of Supervisors recommends that no further increase in use, density, or development be allowed.

(2004 Final Conditions of Approval, p. 1 [bold in original].)

The 2004 Conditions of Approval stated that the CUP was subject to compliance with the following conditions:

> This Conditional Use Permit is based upon and limited to compliance with the project description, the hearing exhibits marked A-L, with Planning Commission hearing stamp date of June 16, 2004 (plans dated May 2004 except plan PL-2 dated 1/30/04), and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. **Deviations may require approved changes to the permit and/or further environmental review.** Deviations without the above-described approval will constitute a violation of permit approval.

(2004 Final Conditions of Approval, p. 1 [bold added].)

The Conditions also state that "all provisions of the permit shall be strictly construed." (2004 Final Conditions of Approval, p. 13.)

Given the above-referenced directives and findings by the Board of Supervisors, the MPC erred in approving a "revised" CUP that simply piggybacked on a 20-year-old CUP for a vastly different Project that now seeks to not only intensify the operational use allowed, but transform an educational facility into a commercial enterprise. The CUP is improper and should be denied in its entirety. Further, the 2004 CUP's conditions of approval should be enforced.

I. THE MPC APPROVED THE PROJECT IN VIOLATION OF CEQA BY PROCEEDING UNDER AN ADDENDUM TO A 20-YEAR-OLD ENVIRONMENTAL IMPACT REPORT ("EIR") FOR A 2004 APPROVAL OF *A DIFFERENT PROJECT.*

An addendum to a previously certified EIR or adopted MND may only be used if none of the conditions described in CEQA Guidelines section 15162 have occurred, and if only minor technical changes or additions are necessary. (CEQA Guidelines § 15164(b).) A lead agency violates CEQA, on among other grounds, if it abused its discretion either by failing to proceed in the manner required by law or by making findings unsupported by substantial evidence. (Pub. Resources Code ("PRC") § 21168.5.) The use of an addendum when a Subsequent, Supplemental, or new EIR or MND is required is a failure to proceed in accordance with law, and deprives the public and decision makers of the benefit of further public comment on the new or revised Project.

An agency must prepare a Subsequent EIR or Supplemental EIR for a project if the agency has some kind of continuing discretionary authority over the project (CEQA Guidelines § 15162(c)), and the

agency determines, based upon the basis of substantial evidence in light of the whole record, that "substantial changes proposed in the project require major revisions to a previous EIR because of the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; substantial changes occur with respect to the circumstances under which the project is undertaken that will require major revision of a previous EIR because of the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; or new information of substantial importance that was not known or could not have been known without exercise of reasonable diligence at the time of the previous EIR was certified shows any of the following: (1) The project will have one or more significant effects not discussed in the previous EIR, (2) Significant effects previously examined will be substantially more severe than shown in the previous EIR, (3) Mitigation measures or alternatives previously found not feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt them, (4) Mitigation measures or alternatives that are considerably different from those analyzed in the previous document would substantially reduce one or more significant effects, but the project proponents decline to adopt them." (CEQA Guidelines § 15162(a).)

If a court finds that the lead agency's decision to rely on the Addendum instead of preparing a full EIR was arbitrary, capricious, or unsupported by substantial evidence, it may overturn the agency's action. A lead agency under CEQA must provide a basis for their CEQA findings, especially if the agency is to rely on an Addendum to a prior EIR. (CEQA Guidelines §15164(e) [explanation must be supported by substantial evidence]; See, e.g., *IBC Business Owners for Sensible Development v. City of Irvine* (2023) 88 Cal.App.5th 100 [court struck down use of an Addendum due to failure to quantify GHG emissions]["*IBC Business Owners*"].)

MAW is proposing to significantly modify the project from the description set forth in the 2004 CUP. The significant modifications to the 2004 CUP proposed by the instant Revised CUP include, but are not limited to:

1) increasing the maximum "any given time" public attendance from 330 to 410 people;

2) increasing the attendance cap for meetings and seminars from 175 to 350 participants per event with an end time of 10:00 p.m.;

3) eliminating the seasonal caps of "summer" (22,000 people) and "non-summer" (25,000 people), while maintaining the existing annual cap of 47,000 people;

4) increasing the total allowances of use of the amplified spoken voice from twice per calendar year to 17 per calendar year and allowing this to occur in outdoor zones along with non-amplified music;

5) permitting a change in use to allow Significant Life Events (SLEs), such as weddings, memorial services, quinceaneras, birthday and anniversary celebrations, bridal/baby showers and other individual private parties up to 15 times per year, with reception attendance related to each SLE being limited to 252 people and permitting amplified music at indoor locations in Lehmann Hall or Weinman Hall, which shall commence no earlier than 4:30 PM and end no later than 10:00 PM. However, Outdoor amplified sound for SLEs shall be limited to spoken voice. SLEs may take place in any appropriately-sized indoor space, with the exception of Hahn Hall. Outdoor amplified spoken word and unamplified/acoustic music shall be limited to the following areas: Zone 1 Anne's Garden, Zone 2/2.5

Holden Encore Society Garden/Presidents Garden, Zone 3/4 Bock Garden/Williams Garden, Zone 5 Kuehn Court, Zone 7 Towbes Court, Zone 9 Lind Patio, and Zone 11 Kinnear Fountain (See Figure 1 Map of MAW Outdoor Zones);

6) Formally replacing the Cut Through Reduction Program with the Gate Closure Program where fairway road entrance requires access card and traffic attendants placed at gate for any public events; and

7) Changing public use of studios from music practice and recordings to yoga, dance, visual and performing arts (See Staff Report pp. 7-8.)

8) Increasing the instructional student population from 150 to 175 students.

These major changes may have significant environmental impacts that were not discussed in the previous 20-year-old EIR. At a minimum, additional analysis is required of the following impacts:

- Traffic
- Land use Compatibility
- Noise
- Air Quality
- GHG Emissions

a. *Traffic Impacts*

The MPC erred in approving the Addendum and the CUP, because it incorrectly determined the MAW project's traffic would have less than significant environmental effects. Here, there is no substantial evidence to support the MPC's findings of no new or substantial impacts. Substantial evidence "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." PRC § 21080(e)(1). It also includes "*reasonable inferences from this information that a fair argument can be made to support a conclusion,* even though other conclusions might also be reached . . ." (CEQA Guidelines § 15384(a).)(Emphasis added.)

First, there is insufficient evidence to support the MPC's explanation that the MAW project's traffic counts are consistent with the 2003 EIR. (CEQA Guidelines §15164(e).) The 2003 EIR only accounted for traffic in summer and non-summer events attendance because it relied on Project conditions that required such caps – 22,000 and 25,000 respectively. The MAW Project and Addendum deletes these mitigation measure/project component caps, while maintaining the overall 47,000 annual attendance cap. Not only is it "unclear" whether the MAW will be able to meet the EIR's mitigation requirement of 22,000 summer public attendance totals, but it is *impossible* for the MAW Project to continue meeting this mitigation measure/Project component because ***it deletes it***. Adding insult to injury, the Addendum provides *no rationale* for why deleting this vital mitigation measure/project design feature, meant to mitigate impacts to a less than significant level, could possibly result in no new or substantial impacts.

Second, the removal of the summer attendance cap will undoubtedly lead to the MAW hosting more public events (many of which will be commercial events) and therefore lead to more people visiting the MAW during the summer months. This obviously was not analyzed in the 2003 EIR because

the summer attendance cap was put in place by the 2003 EIR/2004 CUP. However, there is no analysis in the Staff Report for the instant project about how the increase in intensity of use resulting from the removal of the summer attendance cap will impact traffic, or any other resource for that matter. Moreover, no analysis was performed about how this increase in intensity would be amplified by the public commuting to the nearby Butterfly Beach during summer beach season.

In granting the 2004 CUP, the Board of Supervisors advised "future decision-makers that based on the evidence in the record at that time, the operation and site development at the Music Academy had reached ***a maximum level able to be found consistent with the health, welfare, safety, and convenience of the neighborhood*** and the Board of Supervisors recommends that no further increase in use, density, or development be allowed." Thus, any deviations from what was analyzed in the FEIR on the 2004 CUP must require subsequent environmental review. (CEQA Guidelines §15162.) The issue of traffic generated from the change in intensity and removal of attendance caps has not been examined in either the 2003 EIR, which did not and could not have analyzed the effects of these project changes, or the instant Addendum.

Here, the Addendum does not attempt to quantify the increase in traffic from the proposed changes to CUP, and, as such, its findings are not supported. (CEQA Guidelines § 15164(e) [explanation must be supported by substantial evidence]; See, e.g., *IBC Business Owners*, supra, 88 Cal.App.5th 100 [court struck down use of an Addendum due to failure to quantify GHG emissions].) The 2022 Traffic Study glaringly omits any quantification of trips generated from these public attendance increases and *solely* focuses on the increase due to *additional students*. Thus, it cannot be relied upon to support an Addendum to the EIR. (*IBC Business Owners, supra*, 88 Cal.App.5th 100, 128-131; CEQA Guidelines § 15162.) In contrast, as noted in the attached correspondence from Mr. Robert Kahn, a traffic engineer with over 40 years' experience, the raised level of attendance caused by the proposed Project raises new significant impacts and increase in the severity of impacts identified in the EIR, such as:

- **Additional trips from public attendance at any time from 330 to 410 people**: "several events could occur simultaneously that could generate additional AM and/or PM trips. The traffic study only assumed 5 additional AM or PM peak hour trips for the project. Increasing the maximum public attendance by 80 persons could easily increase the peak hour tips by at least 50 peak hour trips" (Attachment 1, p. 3.)

- **Additional trips from increasing the attendance for meetings and seminars from 175 to 350 participants per event**: "Scheduling events "back-to-back" has the potential for increasing trips and parking requirements during the peak hours… [the current CUP does not ensure] entering and exiting traffic won't happen at the same time and the overlap of parking does not occur and overflow into the adjacent neighborhoods." (Attachment 1, p. 3.)

- **Increasing peak traffic flows during the busiest season of the year by eliminating the seasonal caps of summer (22,000 people) and non-summer (25,000 people):** see below. (Attachment 1, p. 3.)

- **Impacts from weddings and other special events:** "Changing to allow for weddings and other special events as SLE's (Significant Life Events) 15 times per year which will include up to 225 attendees plus additional support staff, deliveries and other activities which will increase trip generation for the project." (Attachment 1, p. 4.)

- **Impacts from cut-through traffic:** (see below page 7 of this letter, referencing Attachment 1, p. 4.)

The Addendum's failure to quantify the project's anticipated traffic and noise increases would be overturned as an abuse of discretion on the part of the MPC in approving the Project with the Addendum. And there is substantial evidence that impacts from the Project are outside the scope of the prior EIR. (Attachment 1, Kahn Letter, pp. 3-5.)

i. *Elimination of seasonal attendance caps*

A major change from the Project analyzed in the 2003 EIR is the removal of seasonal attendance caps. The Addendum draws the following conclusion regarding impacts from removing seasonal attendance caps:

> "The summer (22,000) and non-summer (25,000) maximum public attendance caps will be eliminated to allow MAW more flexibility in scheduling events throughout the year, but the daily and annual maximum public attendance caps will remain unchanged at 900 and 47,000, respectively. This mitigation measure was initially adopted to reduce land use compatibility impacts to less than significant levels. ***Elimination of the seasonal attendance caps will not result in any new significant impacts or increase the severity of impacts previously identified since the overall level of use on any given day, daily and on an annual basis will not change.***" (Addendum, at p. 5 [emphasis added].)

This finding is not supported by logic, analysis, or the evidence in the record before the MPC. Below is Table 1 from page 9 of the 2004 CUP Final Conditions of Approval [highlights added] and illustrates why conditions of approval requiring caps on attendance figures was vital to mitigate significant impacts to the environment from the 2004 CUP project, specifically relating to traffic and noise.

Table 1 Music Academy Attendance Figures [a]			
Music Academy Attendance			
Maximum Attendance	**Existing Baseline**	**Proposed Project**	**Net Change**
Any-given-time	382	330	-52[b]
Daily	None	900	N/A[c]
Summer (8-weeks)	15,828[d]	22,000	+6,172
Non-Summer (44 weeks) [e]	53,766	25,000	-28,766
Annual	71,447	47,000	-24,447

(a)Figures do not include faculty, staff, students, other performers or employees or people attending administrative functions.
(b)To avoid parking and other conflicts, special administrative functions (board meetings, dinners, etc.) shall not occur concurrently with high attendance events. Therefore, administrative activities are not expected to increase occupancy of the site over and above the proposed any-one time attendance maximum. Also, special administrative functions are not be subject to the daily, seasonal and annual attendance limits either under baseline conditions or the proposed project scenarios (Fundraisers shall not count as administrative functions).
(c) Seasonal attendance caps limit the number of days where the daily maximum could be reached.
(d) The new summer public attendance caps will result in a 39% increase in public audience members (est. 15.5% increase in traffic) for the summer period.
(e)When more than 95 performers and staff are present for a maximum capacity non-summer event, staff or performers above this number shall be bused to the MAW campus.

The 2004 CUP raised the summer attendance by 6,172. Footnote c states that seasonal attendance caps limit the number of days where the daily maximum could be reached, so dividing the 900 daily cap into the 22,000 summer total, would equal a total of 24 days in the summer that the 900 could be used under the current CUP as analyzed in the 2003 EIR. With the new CUP application, that 900 daily cap can be used ***many more days*** in the top summer season, ***up to 28 more days*** if MAW chooses to use the total 47,000 annual cap. Footnote d says that the new (2004) summer public attendance cap of 22,000 would result in a 39% increase in attendance and an estimated 15.5% increase in traffic for the summer period.

Thus, MAW's current CUP application's removal of the seasonal cap potentially allows MAW to have up to 900 public visitors per day in the summer beyond the 24 days allowed by the original CUP and analyzed in the EIR. Given the 2004 Board's admonition that no new intensity of use be permitted given that the community impacts were already maxed out with the 2004 CUP, allowing an increase in summer attendance (and its resulting traffic and noise) will overburden the community and cause new significant impacts and more severe impacts not encompassed by the EIR. The EIR relied on the requirement that "[s]pecial events and rental activities would continue to be limited to the non-summer season as the summer season would continue to be devoted solely to the Academy's summer music program." (FEIR, at p. 62, nt. 15.) This restriction has not been applied to the SLEs or other commercial activity (conferences, yoga, dance, performing arts studio rentals, etc...) anticipated to occur under the instant project.

In fact, the proposed changes to the CUP represent an 850% increase in attendance, and with the proposed removal of seasonal attendance caps, a potential to *more than double* summer traffic and increase non-summer traffic by eliminating the seasonal caps relied on in the EIR that were intended to reduce significant impacts caused by the approval of the CUP (FEIR, at pp.62-63.)

As traffic expert Robert Kahn explains:

> Of particular concern is that although the annual projected attendance will not be changed with the action, the potential change in the distribution of trips for the project during the day could impact both the AM/PM peak hour trips and peak parking demand for the project. The action would also allow more activities to occur during the summertime than the currently approved CUP. Furthermore, the type of activities such as the SLE's (Significant Life Events) has the potential for increasing trips generated by non- attendees for the various activities. This is especially true for the SLE's where non-attendee traffic would occur beyond just the attendees at the events. (Attachment 1, p. 2.)

This represents new significant impacts not addressed in the EIR. As such, subsequent environmental review must occur, and the Board may not rely on an Addendum for the Project on this basis alone.

ii. The Project's deletion of the Cut-Through Reduction Plan elements presents new and more severe traffic impacts

The 2004 CUP required MAW to: "Implement a Cut-Through Reduction Plan (CTRP) to discourage vehicles coming to the MAW for no reason other than to gain access to the east of the site (Butterfly Lane and beyond) using the MAW internal road as a circulation 'short-cut.' In the short-term implement a more simple cut-through program prior to implementing the more elaborate long-term program." (2004 CUP p. 4.)

The short-term CTRP consisted of: 1) a requirement to count roadway traffic; 2) placing an attendant at the MAW's exit to monitor cut-through traffic (from 2-4 pm during the summer season) and inform motorist about not using MAW's private drive as a cut-through and 3) closing the entrance gate at Fairway Road when activities are not occurring on-site. The Fairway Road gate hours were as follows: Summer hours - Weekdays [Opened at 10:00 AM, closed at 4:00 PM]; Saturdays [Opened at 10:00 AM, closed at 4:00 PM]; and Sunday [Closed all day] AND for Non-summer hours - the start time was generally 11:00 a.m. A key card access system for faculty, staff and students was also implemented. (Staff Report for Informational Briefing on Cut-Through Traffic Reduction Program (CTRP) pp. 5-8.)

While this Short-Term CTRP was ongoing, MAW was required to submit a formal CTRP (that was to be consistent with the 2003 ATE Study and contained some additional limitations) to the County for review. It does not appear the formal CTRP was ever adopted, because sometime in 2009, the County determined (based on a letter from MAW's traffic consultant who relied on a traffic study conducted in mid-march, i.e., not during the peak summer season) that the interim CTRP and the gate closure program were effective in reducing cut-through traffic by up to 77% by 2006. Thus, in 2009, the County further determined that reporting requirements for the CTRP were to be discontinued.

The instant project proposes to replace the formal CTRP with a Gate Closure Program which provides: Gate Hours for the Fairway Rd. gate would be as follows – Summer Hours: [Weekdays and Saturdays Gate open 10:00 AM to 4:00 PM]; [Gate open for evening events held on campus with traffic attendant] and [Gate closed all day Sunday] AND Non-summer hours of: [Weekdays Gate open 11:00 AM to 3:00 PM]; [Gate closed all day Saturday and Sunday, except for events held on campus with traffic attendant]. Finally, a traffic attendant shall be placed at the entrance to the driveway for any public events held on campus outside of open gate hours. Attendant shall monitor for cut-through vehicles which were not observed originating from a campus parking lot. Attendant shall record license numbers of confirmed cut-through vehicles and issue verbal warning to associated drivers and existing site and County signage warning on no through traffic at the Fairway Road entrance gate and along the exit road adjacent to The Rack. (Proposed Revised Permit pp. B-42-B43.)

Thus, in approving the Gate Closure Program, the MPC waived the following mitigation measures contained in the formal CTRP:

> "Provide a 'ticket-spitter' before arriving at the fork in the entrance drive, where the driver would receive a ticket and provide signage that indicates that validation of the ticket will be required or a minimum $10.00 fee will be charged upon exiting the site (and increasing this fee to $20.00 for non-validated tickets for persistent cut-through traffic);... whenever the entrance gates are open, a kiosk on the exit segment shall be manned to collect validated tickets or the exit fee (for non-validated tickets)." (2004 CUP p. 30.)

The Gate Closure Program does not control cut through traffic during hours when the gate is open and does not contain the measures from the CTRP that would have accomplished this. Sometime after our client's appeal was filed, the County further revised the CUP to insert the following permit condition: "The Music Academy shall assign a full-time staff member year-round to actively monitor and direct parking, vehicular flow, and traffic on-site and at the gates to reduce neighborhood traffic impacts." (Revised Conditions of Approval p. B-5.) However, it is unclear if this refers to the front gate or exit gate or both, nor whether a ticket validation component will be included in this condition. The penalty of paying a fee absent a validated ticket is one way to deter cut-through traffic.

Moreover, the reporting and monitoring under the 2004 CUP was faulty, as Appellant believes that MAW undercounted the total number of vehicles entering the property in that it only counted attendees, not staff, contractors, musicians etc., as was required. Traffic expert Robert Kahn notes the failure to properly assess the CTRP:

> RK recommends to quantify the current Cut-through problem; an updated Cut- through evaluation by another professional traffic consultant should be completed to determine the true extent of the Cut-through traffic traveling both through the MAW to Butterfly Lane and along the one-way section of Fairway Road. This would be done by the use of a license plate survey which would track vehicles traveling through the MAW and along the one-way section of Fairway Road and would compare it to amount of total traffic along both of these routes. (Attachment 1, Kahn Letter, p. 4.)

iii. *Current issues with traffic remain unaddressed and must be addressed in an EIR.*[1]

Regardless of proper traffic counts, local neighborhood observations clearly indicate a major problem with cut through traffic that greatly impacts the neighborhood. (Attachment 2 [Map depicting route taken by cut through traffic].) This cut-through traffic causes back-ups on the neighborhood roads. The location of the cut-through route is from the entrance at Fairway Road to Butterfly Lane. (Attachment 2.) This creates spillover traffic on Hill Road and Channel Road. Thus, the deletion of the CTRP mitigation measures and condition of approval constitutes new significant impacts and/or severity of previously identified significant impacts in the EIR, necessitating further environmental review. **Appellants propose that the ultimate solution is to run a road from MAW to Channel Drive at the Santa Barbara Cemetery as this would bypass the neighborhood and mitigate the significant impacts from MAW's traffic.**

Fairway Road is a two-lane street from Channel Drive to the point of the entrance to the MAW. There is a gate immediately at the entrance to the MAW. If the MAW's gate is closed, motorists will continue driving down the one-way portion of Fairway (which flows in the opposite direction west) to reconnect with Channel Drive. The second problem is that if MAW's gate is open, motorists will take the left turn into the MAW and then drive to and make a right on the street near Wildwood Home for the Arts. Motorists will then travel down that street until they reach Butterfly Lane. From Butterfly Lane they will either make a left onto Hill Street and speed down Hill en route to their ultimate destination or drive further down Butterfly Lane traveling south and make a left onto Channel Drive and speed down Channel Drive. The problem is so widespread that the residents were forced to demand speed bumps be installed on Hill Street to prevent abuse of that street and speed bumps may now be required on Channel in order to mitigate the Project's traffic impacts.

iv. *Cumulative traffic impacts were impermissibly ignored and represent potentially significant impacts.*

The MPC relied on the 2022 ATE Traffic Study to support its use of an Addendum to conduct the required CEQA review. However, in addition to the defects discussed above, there is no mention of cumulative traffic impacts at all in the study. That a particular threshold for analysis may not be met does not mean, *ipso facto*, that no significant impacts, or cumulative impacts, exist. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117.)

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[1] On or about April 28th, Appellant was informed of more recent CUP Revisions. The added items were:

"The Music Academy shall assign a full-time staff member year-round to actively monitor and direct parking, vehicular flow, and traffic on-site and at the gates to reduce neighborhood traffic impacts." This was added to the project description under Condition #1, on page B-5.

"For SLEs, traffic shall be routed in and out through the main gate on Fairway Road." This was added to Operational Changes under Condition #1, on page B-11.

A cumulative impact consists of an impact which is created as a result of the combination of the project together with other projects causing related impacts. (CEQA Guidelines § 15130(a)(1).) "One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming dimensions only when considered in light of the other sources with which they interact." (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.) (*Internal citations and quotes omitted*).

CEQA recognizes the potential for an accumulation of small contributions to a problem to create a cumulative effect, and requires investigation and disclosure of the potential of a project to be the straw that breaks the camel's back. (CEQA Guidelines § 15065(a)(3).) If a lead agency finds a project's incremental effect is not "cumulatively considerable," the agency does need not to consider that effect significant, but it must "briefly describe its basis for [so] concluding. . .." (CEQA Guidelines § 15130(a).) As with other aspects of CEQA, "cumulative impact analysis must be interpreted so as to afford the fullest protection of the environment within the reasonable scope of the statutory and regulatory language." (*Citizens To Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431-432.)

The 20-year-old EIR discussed a handful of projects in terms of cumulative traffic impacts, but noted that those projects had either been withdrawn or came with their own EIRs that stated no anticipated increases in traffic from those other projects. Although, the EIR did state that the closure [for improvements] of "the southbound on-ramp [to the 101] at the Cabrillo interchange would mean that... it is likely that the number of non-Music Academy vehicles using the Academy's private road for eastbound travel between Cabrillo Boulevard and the Butterfly Beach area would increase." (EIR p. 185.)

The 1993 Montecito Community Plan EIR found there would be significant cumulative traffic impacts as a result of build-out under that plan. (MCP EIR Table 1.) Regional Traffic along S.R. 192, future Caltrans Freeway Improvements and Channel Drive Termination were all identified as impacts. The EIR concluded by confirming that residual cumulative traffic impacts even after mitigation would remain significant and unavoidable. (MCP EIR p. 5-65.)

The Addendum conveniently omits impacts identified in the EIR and MCP EIR. Projects in the immediate vicinity of the Project, as well as other nearby projects in the planning stages are reasonably foreseeable. *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985), 172 Cal.App.3d 151, made it clear that consideration must reach beyond those projects currently under environmental review: "Related projects currently under environmental review unequivocally qualify as probable future projects to be considered in a cumulative analysis. [Citation.] In addition, even projects anticipated beyond the near future should be analyzed for their cumulative effect." (*Id.* at 168, citing *Bozung v. Local Area Formation Com.* (1975) 13 Cal.3d at 284.)

In conclusion, the Addendum and Staff Report fails to perform the required cumulative impact analysis.

b. Land Use Impacts

In granting the 2004 CUP, the Board of Supervisors advised future decision-makers that based on the evidence in the record at that time, the operation and site development at the Music Academy had reached ***a maximum level able to be found consistent with the health, welfare, safety, and convenience of the neighborhood*** and the Board of Supervisors recommended that no further increase in use, density, or development be allowed. Thus, any deviations from what was analyzed in the EIR on the 2004 CUP requires subsequent environmental review. (Guidelines §15162.)

Per CEQA Guidelines Appendix G, a project may have a significant impact on Land Use if it will cause a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. The Project is inconsistent with several land use policies and codes. Thus, the Project represents a change in intensity that has not been examined in sufficient detail in either the 2003 EIR, which did not analyze the effects of these project changes, or the current Addendum.

The Planning and Zoning Law of California (Government Code ("Gov. Code") § 65000 et seq.) establishes the authority of most local government entities to regulate the use of land. (Gov. Code § 65850.) "The general plan is atop the hierarchy of local government law regulating land use." (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.)

"Subordinate to the general plan are zoning laws, which regulate the geographic allocation and allowed uses of land." (*Neighborhood Action Group, supra*, 156 Cal.App.3d 1176, 1183.) "Most zoning ordinances specify certain uses as of right and certain other uses allowed only by use permit for each zone. This mechanism enables localities to control uses that may be desirable, but whose unrestricted existence at a specific location could engender a nuisance. Most conditionally permitted uses are such that the use could easily become incompatible with the surrounding uses, especially residential uses. Other types of conditionally permitted uses (for example, mineral extraction or drive-through businesses) may raise specific issues such as traffic, noise, or health and safety, requiring close scrutiny regarding the desirability of the location and the need to impose conditions on the use to protect against nuisance. Common uses allowed by CUP are liquor stores, alcohol service at restaurants, cannabis retail locations, and automotive repair, and places of worship, schools, or hotels in residential zones." (4 California Environmental Law & Land Use Practice § 60.31 (2022) (Emphasis added).

Put another way, "Zoning laws regulate land uses in two basic ways. Some uses are permitted as a matter of right if the uses conform to the zoning ordinance. Other sensitive land uses require discretionary administrative approval pursuant to criteria in the zoning ordinance. (Gov. Code § 65901.) They require a conditional use permit. (See Cal. Zoning Practice, supra, § 7.55 et seq.) The reason for discretionary treatment is that these are uses which cannot be said to be always compatible in some zones while always incompatible in others. . .. uses that should not be allowed as of course, but could be allowed subject to conditions. . .. The traditional purpose of the conditional use permit is to enable a municipality to exercise some measure of control over the extent of certain uses, such as service stations, which, although desirable in limited numbers, could have a detrimental effect on the community in large numbers." (*Neighborhood Action Group, supra*, 156 Cal.App.3d 1176, 1183-1184.)

The state legislature has found and declared that "Decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan, and should proceed within the framework of

officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors." (Gov. Code § 65030.1.)

A local permit action taken without compliance with the hierarchy of land use laws is *ultra vires* as to any defect implicated by the uses sought by the permit. (*Neighborhood Action Group, supra*, 156 Cal.App.3d 1176, 1184.) Zoning laws must conform to the adopted general plan and all of its elements. (Ibid.) Land use actions, including CUPs, must be consistent with any pertinent general plan elements. (4 California Environmental Law & Land Use Practice § 60.31 (2022); *Neighborhood Action Group, supra*, 156 Cal.App.3d 1176, 1185.)

i. *The CUP is Inconsistent with the Montecito Community Plan*

The MAW is within the Montecito Community Plan ("MCP") area. (MCP p. 3.) The goals, objectives and policies in the MCP were established to ensure that new development is sensitive to community desires and to conditions within the community. (MCP p. 10.) A main focus of the MCP is to allow development in a manner consistent with available resources and in keeping with the semi-rural residential quality of life in Montecito. (MCP p. 26.)

The MAW will conflict with the semi-rural residential quality of life in Montecito by increasing its hosting of commercial activity, including conferences, outdoor commercial events (i.e., SLEs) and rental activity (yoga, dance and performing arts studio sessions) without any regard to the semi-rural residential area in which these activities are to be conducted.

Pursuant to Policy LUG-M-1.1: The County shall recognize that the Montecito Planning Area is a community nearing its full buildout potential, and shall require that development respect its small town, semi-rural character. (MCP p. 49.)

Pursuant to Policy LUED-M-1.1: All educational, institutional, and other public and quasi-public uses shall be developed in a manner compatible with the community's residential character. (MCP p. 54.)

While the Staff Report identifies these two policies, the purported consistency analysis only states that "The proposed change of uses will not exceed the current allotted daily or maximum annual public attendance, nor will it result in a further increase in the uses allowed." (Staff Report, p. 13.)

The Staff Report is wrong. Under the proposed CUP, there will be an increase in intensity of the summer season attendance as the summer season attendance cap is eliminated under the instant CUP. The summer attendance cap is being removed because the MAW knows that is likely to receive more people than the pre-existing 22,000 cap would permit through a combination of future musical events and new uses consisting of SLEs, yoga, dance and performing arts activities. The removal of the cap would also allow increased conferences and seminars. The Staff Report has not analyzed the impact of the increase in intensity of the summer season attendance on the land use policies in the MCP. As discussed in more detail herein, the increase in summer session attendance will result in traffic and noise that is not compatible with the semi-rural residential character of the area. Thus, the Staff Report has not performed the required analysis of the MCP's land use policies.

In fact, the MCP states that, "The roadway characteristics of the community are unique because of the semi-rural nature of the major and collector street system, the limited controls (i.e., only two intersections are signalized), and because most streets provide direct access to numerous residential driveways. Many roadways within Montecito are narrow and winding and often fail to meet typical County standards (twelve-foot lanes, five-foot paved shoulder). These narrow widths, winding design and extensive vegetation, while valued by area residents, tend to somewhat decrease road system traffic capacity." (MCP p. 64.)

In terms of traffic, Policy CIRC-M-1.7 states: "The County shall continue to develop programs that encourage the use of alternative modes of transportation including, but not limited to, an updated bicycle route plan, park and ride facilities, and transportation demand management ordinances." (MCP p. 70.) This policy was not analyzed in the Staff Report nor Addendum, but must be; implementation of the policy with the instant project could serve to reduce traffic impacts.

Policy CIRC- M-3.3 states: "If at any time, a traffic count accepted by the County Public Works Department determines that a local road (i.e., a road not designated on the Circulation Element) has an ADT count which exceeds 5,530 ADT, a review of land use densities and intersecting roadways of the surrounding area shall be conducted for possible inconsistencies with Circulation and Land Use goals and policies. (If appropriate, a road classification may be assigned to such a road after a review and approval by the Board of Supervisors)." (MCP p. 73.) This ties in with the fact that the Plan does not provide LOS standards for local roads (i.e., roadways that have and will likely continue to contain the highest levels of traffic. Local roads or roadways that lack the geometrics handle traffic associated with classified roadways). (e.g., MCP p. 72.)

In terms of noise, Policy N-M-1.1 states: 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.

However, residents surrounding the MAW have made many complaints that MAW leaves its windows to the concert halls open during music performances, that the semi-trucks bringing sound equipment to the site for performances as well as some generators powering that equipment make an unreasonable amount of noise, and that the proposed outdoor events will also contribute to the already noisy environment at and around the MAW.

ii. *The CUP is Inconsistent with The Santa Barbara County Local Coastal Plan/Coastal Zoning Ordinance*

The Staff Report states that "No new structural development is included with the proposed revision to the CUP, the daily and annual maximum public attendance limitations will not be changed, there will be no significant traffic impacts, and the addition of amplified and acoustic sound outdoors will be monitored and managed to maintain compliance with existing CUP conditions and the 65 dBA CNEL maximum at property lines. Therefore, the proposed CUP revision will be consistent with the purpose and intent of the 1-E-1 Zone District." (Staff Report p. 17.) This finding of consistency is not supported by the evidence cited by the Staff Report, and constitutes an incomplete analysis of the facts.

The County of Santa Barbara has a certified Local Coastal Plan and a component of that plan is the Santa Barbara County Coastal Zoning Ordinance. The R-1/E-1 Zone in which MAW is situated does

not permit educational institutions by-right. (Coastal Zoning Ordinance ("CZO") Sec. 35-71.) A CUP can permit education facilities in R-1 Zones. (CZO Sec. 35-172.5) However, commercial activity such as yoga, dance and performing arts studios, corporate retreats, SLEs and other non-music education related activities purely for financial and commercial gain are not permitted in R-1 zones, even with a CUP. (*Ibid.*) Theoretically under the CUP, MAW could hold funerals, gun shows, political benefits and weddings on site, all of which are completely divorced from music education and are instead purely commercial endeavors which should not be permitted. Thus, the County's approval of the CUP which allows commercial activities is, by definition, inconsistent with the zoning law in R-1/E-1 Zones.

Thus, the MAW's project is also inconsistent with the Santa Barbara LCP.

iii. *The County Cannot Approve the CUP as-is Because Doing So Would Permit a Nuisance to Continue to Exist on and around the MAW site.*

The County is under an ongoing obligation to ensure that the MAW's use of the site does not become a nuisance. (*Neighborhood Action Group, supra*, 156 Cal.App.3d 1176, 1183-1184.) The CUP will allow the MAW to increase its intensity and nature of use (e.g., new uses of non-music education related endeavors such as yoga, dance and visual and performing arts and outdoor Significant Life Events, as well as allowing the potential for an increase of total summer season attendance above 22,000) as the MAW seeks to increase the commercial activity occurring onsite. This increase in intensity and nature of use will have impacts on traffic, noise and land use compatibility. Since there are no adequate safeguards and mitigation measures imposed on MAW that will control these impacts, the CUP will result in nuisance activity with respect to traffic, noise and land use.

For instance, the CUP reinstates weddings at MAW, when weddings were previously removed from the list of permitted activities in the 2004 CUP due to complaints by neighbors. (See 2003 FEIR p. 20.) In fact, in the 2003 FEIR, the County recognized that "one of the most controversial aspects of the previous permit was legitimizing use of the Academy grounds for weddings." (2003 FEIR p. 123.) It is unclear why the County and Applicant would implicitly admit the weddings are a nuisance by removing them from the 2004 CUP only to bring this nuisance activity back in the instant iteration of the CUP. To compound this error, not only is MAW proposing to bring back weddings, but it now proposes to role weddings into a larger category of "Significant Life Events" ("SLEs") all of which are currently approved for outdoor use in the instant CUP. The instant CUP also represents a nuisance in that it is inconsistent with the hierarchy of applicable land use laws.

It must also be noted that MAW is not trying to hide the commercial use of its educational facility; it has publicly disseminated marketing materials that claim, "The Music Academy, formerly known as the Music Academy of the West, and now in its 76th season, celebrates the 'Summer of the Artist' with eight weeks of live events at its picturesque Miraflores campus and throughout scenic Santa Barbara, California (June 12–Aug 5). Learn more about the lineup here!" (https://www.broadwayworld.com/camp/Summer-Music-Academy) It goes without saying that the overarching purpose of these events are commercial, not educational.

c. ***Noise Impacts***

The Santa Barbara County Thresholds for Noise Impacts provides, "In the unincorporated County, it is estimated that as many as 8,000 housing units and 21,000 persons are potentially exposed

to transportation noise at Day-Night Average Levels exceeding 60 dB. The exposure level of 60-65 dB(A) is considered to be the maximum outdoor noise level compatible with residential and other noise-sensitive land use. In the planning of land use, 65 dB(A) Day-Night Average Sound Level is regarded as the maximum exterior noise exposure compatible with noise-sensitive uses unless noise mitigation features are included in project designs. The Montecito Community Plan requires that noise-sensitive uses, as defined in the Noise Element, shall be protected from significant noise impacts." (Santa Barbara County Environmental Thresholds and Guidelines Manuel, p. 139.)

"If existing exterior noise levels, including at outdoor living areas, experienced by sensitive receptors is below 65 dB(A) CNEL, and if the proposed project will generate noise that will cause the existing noise levels experienced by the sensitive receptors to exceed 65 dB(A) CNEL – either individually or cumulatively when combined with other noise-generating sources – then the proposed project is presumed to have a significant impact. If existing exterior noise levels, including at outdoor living areas, experienced by sensitive receptors exceeds 65 dB(A) CNEL, and if the proposed project will generate noise that will cause the existing noise levels experienced by the sensitive receptors to increase by 3 dB(A) CNEL – either individually or cumulatively when combined with other noise-generating sources – then the proposed project is presumed to have a significant impact." (Santa Barbara County Environmental Thresholds and Guidelines Manuel pp. 140-141; See Also Santa Barbara Noise Element Policy No. 5.)

The Staff Report states that "The applicant provided an acoustical analysis of the proposed sound levels at seven designated outdoor areas (Attachment I). The analysis concluded that sound levels will not exceed the 24-hour equivalent exterior noise limit of 65 dBA CNEL at the property lines, in accordance with the County's CEQA Thresholds and Guidelines Manual." (Staff Report p. 14.)

However, noise expert Marlund Hale, the principal of Advanced Engineering Acoustics, has reviewed the MAW's acoustical analysis from 45dB and determined that the application of the CNEL (LDN) 24-hour average noise descriptor that was originally developed for use primarily for transportation (highways, railways, airports, etc.) and construction noise is a poor fit for informational noise sources such as speech and music events, which typically have set performance times and venue locations. Instead, the Lmax standard is more appropriate to measure the impacts of sudden spontaneous noise events anticipated to occur at the MAW, including but not limited to speech, yelling, cheering and amplified music.

Mr. Hale concludes that the new uses of yoga, dance and visual and performing arts and outdoor Significant Life Events, as well as allowing the potential for an increase of total summer season attendance above 22,000, are all new activities that were not studied in the 2003 EIR and that could pose potential significant noise impacts to the neighborhood. (See Attachment 3.)

The 45dB report did not take into account that the CNEL standard is unequipped to deal with the unique noise issues presented by MAW and also appears to have omitted analysis of the noise from semi-trucks that bring in audio equipment for the MAW's performances and the generators that run to power the amplification equipment during the MAW's performances. Nor did the 45dB report address the noise from large amounts of attendees on the MAW's property. Thus, the County's analysis of noise impacts is insufficient and its conclusion regarding noise is not based on substantial evidence.

d. GHG Impacts

The Santa Barbara County CEQA GHG Thresholds state, "The environmental document shall first quantify and disclose a project's GHG emissions by individual GHG and then convert the project's emissions to metric tons of carbon dioxide equivalent per year (MTCO2e/year), based on the global warming potential of each gas...All industrial stationary-source projects shall be subject to a numeric, bright-line threshold of 1,000 MTCO2e/year to determine if GHG emissions constitute a significant cumulative impact. Annual GHG emissions that are equivalent to or exceed the threshold are determined to have a significant cumulative impact on global climate change unless mitigated."

Recent case law held that an Addendum that does not quantify GHG emissions violates CEQA. (*IBC Business Owners, supra,* 88 Cal.App.5th 100.) A Project cannot proceed without a quantification and an analysis of GHG emissions, as is required also by the Santa Barbara County Environmental Thresholds and Guidelines. (Santa Barbara County Environmental Thresholds and Guidelines Manual, at p. 84.) The Addendum fails to do so and is invalid under CEQA

In summary, by not identifying these impacts and not performing the required analysis of these impacts, the County has erred a matter of law.

II. SUBSTANTIAL EVIDENCE DOES NOT EXIST TO SUPPORT THE FINDINGS NECESSARY TO APPROVE REVISIONS TO THE CUP OR THE COASTAL DEVELOPMENT PERMIT.

The landmark case of *Topanga Asso. for Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515 established that a decision on an application for a quasi-judicial zoning action [like a CUP] must be accompanied by written findings, supported by substantial evidence in the record, that satisfy the criteria of the local zoning ordinance and, if applicable, Gov. Code § 65906. Although they need not be as formal as judicial findings, the findings must bridge the analytic gap between the raw evidence and the ultimate decision. The findings must be sufficient to enable the parties to determine on what basis they should seek review in court, and, in the event of a legal action, to apprise the court of the basis for the local jurisdiction's decision. (*Id.*, 515.)

a. The County Cannot Make the Required Findings for a Revised Coastal Development Permit

MAW is within the area governed by the CZO and is engaging in change of intensity of use, thus the provisions of the CZO regulating CDPs also apply to this project. Under CZO Sec. Section 35-169.5, the approval of a Revised CDP requires the following:

1. The proposed development conforms: To the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan and with the applicable provisions of this Article or the project falls within the limited exceptions allowed under Section 35-161 (Nonconforming Use of Land, Buildings and Structures);

2. The proposed development is located on a legally created lot;

3. The subject property and development on the property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of this Article, and any applicable zoning violation enforcement fees and processing fees have been paid;

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

5. The development is compatible with the established physical scale of the area; and

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

While the Staff Report includes each of the above six findings, the findings are not supported by substantial evidence, nor is the required analysis performed to support these findings, as explained herein. Therefore, the County has committed error under the CZO and the Coastal Act.

b. *The County Cannot Make the Required Findings for a Revised CUP*

Pursuant to Government Code §§ 66474.60 and 66474.61, the MPC shall deny approval of a CUP if the proposed CUP is not consistent with applicable general and specific plans. As explained above, a finding of consistency with the applicable plans is not supported by the record, because the required analysis was not performed, and therefore the record lacks the substantial evidence to support the consistency finding. Moreover, the record demonstrates that the CUP is affirmatively *inconsistent* with the applicable plans.

Moreover, under CZO Sec. 35-172.8, the findings for a Revised CUP requires the same findings as a new CUP or:

1. That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the type of use and level of development proposed;
2. That adverse environmental impacts are mitigated to the maximum extent feasible;
3. That streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use;
4. That there are adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project;
5. That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area;
6. That the project is in conformance with the applicable provisions and policies of this Article and the Coastal Land Use Plan;
7. That in designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area;
8. That the project will not conflict with any easements required for public access through, or public use of the property; and
9. That the proposed use is not inconsistent with the intent of the zone district (Coastal Ordinance 35-172.8.)

As to finding 2, the MCP claims that the mitigation measures from the 2003 EIR are being carried over into the new CUP. (Findings p. 2.) That is not true; key provisions of the 2004 CUP intended to mitigate significant impacts have been deleted from the instant CUP.

As to finding 3, the MCP claims that the attendance caps will prevent the project from resulting in a significant traffic increase. (Findings p. 3.) There is zero evidence in the record to support this claim; the Staff Report completely failed to analyze the impact of increased summer attendance due to the removal of the summer attendance cap.

As to finding 5, the MCP failed to consider the impact of increased summer attendance resulting from the removal of the summer attendance cap, the deletion of the formal CTRP, and the pre-existing and new commercial uses being added to CUP. For the same reasons, the findings fail to properly bridge the gap between evidence and conclusion with respect to findings 6, 7 and 9.

Finally, pursuant to CZO Sec. 35-215, the following findings for a development project shall also be made:

1. That the project meets all the applicable development standards included in the Montecito Community Plan of the Coastal Land Use Plan;

2. For projects requiring a Major Conditional Use Permit, a finding shall be made that the project will not potentially result in traffic levels higher than those anticipated for the parcel by the Montecito Community Plan and its associated environmental documents; or if the project will result in higher traffic levels, that the increase in traffic is not large enough to cause the affected roadway(s) and/or intersection(s) to exceed their designated acceptable capacity levels at buildout of the Montecito Community Plan or that road improvements included as part of the project description are consistent with provisions of the Comprehensive Plan (specifically the Montecito Community Plan) and are adequate to fully offset the identified potential increase in traffic; and

3. For projects subject to discretionary review, a finding shall be made that the development will not adversely impact recreational facilities and uses.

MCP's finding as to item 2 fails to acknowledge an increase in intensity of traffic as a result of lifting the summer attendance cap and the elimination of key provisions of the contemplated formal CTRP. Thus, the finding is not supported.

III. THE NEW CUP CREATES A USE NOT ALLOWED BY THE COASTAL ZONING ORDINANCE

The proposed Project turns the MAW into a commercial enterprise for renting out its facilities for events, meetings and weddings in violation of the original CUP. Approval of this revised CUP will result in the property being utilized predominantly for commercial purposes for uses that are not permitted in a R-1/E-1 district. The list of permitted uses allowed in such a zone with a CUP does not include an entertainment/recreation venue akin to what the instant CUP would allow. (CZO Sec. 35-71 and Sec. 35-172.) This unauthorized CUP will be materially detrimental to the public welfare, and injurious to the property or improvements in the same zone and vicinity. Therefore, the revised CUP must be denied outright.

IV. THE COUNTY HAS NOT MADE THE FULL RECORD AVAILABLE TO APPELLANT AND THE PUBLIC FOR REVIEW AND COMMENT, AND NO HEARING ON THE APPEAL SHOULD BE SCHEDULED UNTIL ALL DOCUMENTS ALLEGEDLY RELIED UPON BY THE MPC FOR ITS DECISION ARE PROVIDED TO APPELLANT WELL IN ADVANCE OF THE APPEAL HEARING DATE.

The 2003 EIR relied on the 2003 ATE study for its environmental assumptions and project design features intended to mitigate environmental impacts. There are also numerous appendices referred to by the 2003 EIR, but Appellant is unable to access these documents due to the County's inability to locate them, and these documents must be released to Appellant and the public so that the public and decisionmakers may properly review and comment on the Project's environmental review. Per Public Resources Code § 21082.1, the County must "submit, in an electronic form as required by the Office of Planning and Research, the draft environmental impact report...to the State Clearinghouse" (Pub. Res. Code § 21082.1(c)(4)), and post all environmental review documents on its internet website, if any. (Pub. Res. Code § 21082.1(b)). The failure of the County to post its environmental documents is a violation of CEQA. The fact that these documents were not presented to the MPC also strongly suggests a failure by the MPC to properly consider the referenced documents prior to approving the Addendum. (See Guidelines §15164(d) [requiring decision-making body to consider the addendum along with the Final EIR].)

Appellant requests that the Board of Supervisors not set a hearing on its appeal until key environmental and case documents are located and provided to Appellant and the Board of Supervisors for review and consideration. (Guidelines §15164(d).) In particular, the 2003 EIR appendices, including the 2003 ATE Traffic Study, could not be located by the County in a digital medium.[2] These documents are necessary. The California Supreme Court has stated: "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) Those precepts apply to the Board of Supervisors. As stated by the Supreme Court in *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, CEQA's "purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment but also informed self-government. To this end, public participation is an essential part of the CEQA process." (*Id.* at 1123) (italics in original; underline added).

The CEQA process must provide accurate information to the public and decisionmakers to obtain a complete picture of the environmental context, as well as to provide government accountability. (*See Laurel Heights, supra, and Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935-936.)

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[2] Appellant's counsel performed a search for the complete 2003 EIR on the County of Santa Barbara's website and the state's CEQAnet portal. Neither the environmental document and its appendices were available on either website. Accordingly, Appellant's counsel contacted the County and asked for the location of the 2003 EIR and its appendices. The County staff member indicated that the county was in the process of scanning prior environmental documents and that the 2003 EIR was one of those documents. The Staff Member indicated that the documents were most likely somewhere on site. It was later confirmed that hard copies of the documents were available for review and copy.

V. APPELLANT'S AND ITS MEMBERS' DUE PROCESS RIGHTS WERE VIOLATED

Appellant and the public in general were denied the opportunity to engage in a fair and impartial hearing at the MPC. No advanced notice was given of the last-minute modification to the Project's agenda item, nor the County's decision to move the hearing to the afternoon session. This prevented those interested in voicing concerns about the project from participating in the hearing. Only a few concerned neighbors were permitted to provide comments during the public comment portion of the MPC meeting, preventing the Planning Commissioners from receiving the full input of the community.

Disturbingly, MAW was able to present their CUP revisions without any discussion from dissenters and without rebuttal. Many statements made to the MPC on behalf of MAW were incorrect and misleading. MAW inaccurately classified this as a "no impact proposal" with "no additional traffic," and that they have received "no neighbor complaints," a patently untrue claim.

Appellant and its members' inability to participate at the hearing on the relevant agenda item resulted in a lack of accountability on the part of decisionmakers and the project proponent. Appellant was entitled to minimum procedural due process, including a right to adequate notice and opportunity to be heard in front of the MPC. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605.) The MPC failed to give due consideration, and constitutionally required due process, to the community members who tried to raise these crucial public-interest issues. As such, we recommend that matter be sent back to the MPC to give proper notice and a full hearing on the merits of the CUP application and environmental review. (See, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 ["public participation is an essential part of the CEQA process"].) At the very least, the Board of Supervisors should give very little deference to the MPC's findings based on the record before it.

VI. CONCLUSION

Based on the foregoing, it is respectfully requested that the Board of Supervisors grant the appeal and deny the CUP as approved by the Montecito Planning Commission.

Sincerely,

Sabrina Venskus
Attorney for Appellant