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January 16, 2015

**VIA OVERNIGHT DELIVERY AND EMAIL**

Montecito Planning Commission  
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Michael Phillips  
Jack Overall  
Sue Burrows  
Joseph Cole  
c/o Planning & Development, Hearing Support  
123 East Anapamu Street  
Santa Barbara CA 93101

RECEIVED  
DATE: 1-21-14  
JAN 16 2015  
S.B. COUNTY  
PLANNING & DEVELOPMENT  
HEARING SUPPORT

Re: Objections to Case Nos. 14RVP-00000-00063, 14AMD-00000-00010, 14AMD-00000-00011, 14CDP-00000-00086, 14CDP-00000-00090, 14CDP-00000-00091; Addendum to 08EIR-00000-00003, 00-ND-003, Addenda dated December 9, 2008 and March 11, 2011; Miramar Hotel and Bungalows Development Plan Revision

Honorable Planning Commissioners:

**I. INTRODUCTION.**

Thank you for your ongoing review of the proposed Miramar Hotel project's ("Project") and your efforts to mitigate its significant environmental impacts on the community and the surrounding neighborhood.

As stated in our December 11, 2014 letter, this firm represents the Pachulski Family, owner of the home at 50 Miramar Avenue, Montecito, directly across Miramar Avenue from the proposed Project.

Preliminarily, we understand that certain proposed changes to the Project have been mentioned in the staff report, including moving the Beach Club more to the east side of the hotel property and possibly rerouting pedestrian access away from the Miramar Avenue residences. If these are indeed part of a revised Project application before you, then that would be welcome; these changes could reduce some of the traffic/parking and

noise impacts that would otherwise affect Miramar Avenue and its homes. However, it is unclear whether these proposed changes are being advanced by the Project applicant or not. While some reference to them exists in the staff materials, at the same time, the January 13, 2015 letter from “RMM,” counsel for the Project applicant, refers only to the original 2014 plan, as to which this Commission, at its last hearing, expressed significant concerns.

So we start by asking: What are the contours of the proposed Project currently before you? The public and this body are entitled to definitively know. Solely on the basis of the conflicting information put forward by the applicant, the Project before you may be rejected. At a minimum, this hearing should be continued so that the Planning Commission and all stakeholders know exactly what the applicant proposes. An “accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient” CEQA review document. San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 655.<sup>1</sup>

We certainly support relocation of the Beach Club and rerouting of the pedestrian access away from the homes and Miramar Avenue. At a minimum, that should be required. Still, the latest iteration of the Project retains serious flaws, and various legal deficiencies have yet to be properly disclosed or analyzed by the Project applicant or staff.

The time must be taken now to make sure the Project is a benefit to the community and does not harm it for generations to come. In its current form, the Project falls far short of that goal. To summarize some of our ongoing concerns:

(1) The plan that the Project applicant presented at the last Planning Commission hearing has dramatically less parking than the previous plans and shifts significant hotel traffic and parking onto the surrounding residential area, including Miramar Avenue. That is not a “minor technical change” (see below) that might allow

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<sup>1</sup> An important example of the confusion in the materials is as follows: The project description contained in Attachment N to the January 13, 2015 memorandum (i.e., staff report update) says the Beach Club will be located in the central portion of the site adjacent to the Adult Pool, but the project plans have it next to the Family Pool. Meanwhile, the staff memo only says it will be relocated from the west of the pool to the east of the pool, but does not clarify which pool. We need to ensure that the applicant is not swapping the location/designation of these two pools and that the Beach Club will be east of the Family Pool at the eastern side of the site.

for use of and Addendum under CEQA, and is improper.

(2) The Project applicant should make sensible modifications to his proposal, including providing adequate on-site parking, restoring at least one level of subterranean parking, and moving the bungalow parking so that guests do not self-park on Miramar Avenue. Instead, the bungalows should be re-oriented to face in, with access to and parking for the bungalows from the interior of the hotel property.

(3) The prior plans included provision of more on-site parking, including subterranean parking. While the current proposal has slightly reduced the room count and imposed an illusory and impossible-to-enforce event capacity cap (see prior analysis from traffic engineer Arthur Kassan, and two additional analyses from Mr. Kassan at Exhibits 1 & 2 hereto), the reality is that the current proposal's parking demand analysis is based on unsupported or false assumptions. The current proposal eliminates necessary parking, including subterranean, to save costs. Put simply, the applicant's attempted multi-million dollar savings should not come at the expense of the community. Yet the community is effectively being asked to subsidize the applicant and his Project by providing a substantial amount of off-site parking.

(4) The applicant and his counsel seek to dismiss the serious legal and factual issues surrounding the water shortage issue. But the documents we recently obtained from the Montecito Water District through Public Records Act requests paint a far grimmer picture than the *laissez faire* one portrayed by the applicant.

**II. THE STAFF REPORT FAILS TO ADDRESS A NUMBER OF CONCERNS RAISED BY THE PLANNING COMMISSION ON DECEMBER 15, 2015. THOSE ISSUES REMAIN UNANSWERED. A CONTINUANCE TO RECEIVE COMPLETE AND SATISFACTORY RESPONSES IS APPROPRIATE.**

We have carefully reviewed the staff memorandum dated January 13, 2015, which tracks your Commission's specific questions from the December 15, 2014 hearing. We have also reviewed the proposed applicant revisions to the site plan (assuming those are part of a further revised Project proposal, and are being considered at the January 21, 2015 hearing).

The following is a summary of our concerns related to the enumerated staff responses:

1. No comment other than we believe that the southern perimeter of the site (including the 5 bungalows) along east-west Miramar Ave. and the cul de sac should be fully screened with a minimum 8-foot-high sound wall and hedge.
2. We continue to maintain that water usage for the Project is underestimated and water availability for the Project is uncertain at best. Moreover, we believe Ordinance 93 adopted by the Montecito Water District requires determining a *Base Allotment* for the project (which is materially different than the 45-acre foot *allocation*) derived from water delivered to the property during a three year fiscal period. Once a Base Allotment is calculated, the amount of water available to be delivered for the project would be determined using the Monthly Allocation Factor. Until these mandatory Ordinance 93 volumes are established it is impossible to know if there will be adequate water to serve the Project. (See also Section VI, infra.)
3. As discussed in detail by our consulting Traffic Engineer, Arthur Kassan, the ATE parking and circulation analysis is flawed and substantially underestimates the impact of the proposed Project on the surrounding neighborhood. Moreover, review by County staff is not a peer review. A peer review, by definition, must be undertaken by a qualified independent third party, not by the lead regulatory agency. (See also Section V, infra, and Exhibits 1 & 2.)
4. As discussed by Mr. Kassan, the location of mass transit facilities has limited relevance to the Project given the limited hours of service to the Montecito area.
5. No breakdown of employees by department was provided as of January 16, 2015. However, the employee parking assumptions are underestimated, as discussed in detail by Mr. Kassan.
6. The assumption of 102 employees on site at any given time for a 170-room five-star "luxury hotel" seems exceedingly low, particularly considering

staffing levels necessary for events totaling up to 400 people, not to mention for restaurants, bars, maintenance staff, etc.

7. The future impacts of the San Ysidro/101 improvement project are potentially significant with respect to hotel parking and circulation and must be disclosed and analyzed thoroughly in at least a Supplemental EIR. The Addendum prepared for the Project does not adequately address this issue.
8. No Comment.
9. No Comment.
10. No Comment.
11. We believe the 45-acre-feet per year usage is underestimated and that adequate water supply does not currently exist for the Project.
12. Please see our CEQA analysis below.
13. No Comment.
14. To mitigate nuisance noise from the adult pool and bar, we urge the Commission to condition the Project to include an minimum 8-foot high sound wall and hedge along the entire border of Miramar Ave., including the area of the pool adjacent to the cul de sac.
15. No comment.
16. No comment.
17. No Comment.
18. The staff response relies entirely on the ATE report which fails to adequately address parking and circulation, as discussed in detail in the attached letters (**Exhibits 1 & 2**) by Arthur Kassan.
19. No comment.

20. We recommend additional conditions be included to require Project changes described below.
21. Additional Project changes should include: (1) a minimum of an additional 100 parking spaces on-site, which should ideally be underground; (2) the bungalows along Miramar should be re-oriented to not face the public road and not be self-parked on/from Miramar Avenue; and (3) as discussed above, a minimum 8-foot high sound wall and hedge installed along the entire perimeter of Miramar Ave.

### III. THE APPLICANT'S DISMISSAL OF THE PACHULSKI AND PLANNING COMMISSION'S CONCERNS RAISE FURTHER CONCERNS.

The applicant's attorney, RMM, submitted a 22-page letter dated January 13, 2015, with about 100 pages of attachments. Without ourselves attempting to be dismissive, the RMM letter is largely "full of sound and fury" — Macbeth (Act 5, Scene 5, lines 17-28), but signifying very little of factual or legal accuracy.

A running theme in the RMM letter is an attempt to dismiss all of the Pachulskis' December 11, 2014 objections as being either "non-expert" or "unsupported." Neither statement is accurate.

First, the opinions of Mr. Kassan, who is the senior-most traffic engineer working in the State of California (to our knowledge, the lowest license number of any active traffic expert), of the Pachulskis' counsel, and of other neighbors who testified and objected constitute substantial evidence in the record that the Project as proposed will have significant, unmitigable impacts, and cannot be analyzed under a CEQA Addendum.

The applicant and RMM may not like those opinions and facts, but they cannot simply be dismissed away as "non-expert" or "unsupported." Without repeating all of Mr. Kassan's critiques of the applicant's traffic and parking demand studies (see Mr. Kassan's analysis attached to our December 11, 2014 letter, and **Exhibits 1 & 2** to this letter), suffice it to say that they are both "expert" and well supported. Moreover, Mr. Kassan has prepared additional analysis, including responding to the current staff report and the applicant's further traffic/parking study from ATE dated December 29, 2014, in the attached **Exhibits 1 & 2**. ATE and RMM have failed to properly address, much less refute, Mr. Kassan's comments.

Second, the fact-based opinions of the Pachulskis and others in the community who have real-life experience on the ground with how luxury hotels like the Biltmore in quiet residential communities operate and adversely impact those communities also constitute substantial evidence that simply cannot be brushed aside.

“Statements of area residents who are not environmental experts may qualify as substantial evidence if they are based on relevant personal observations . . . .” Bowman v. City of Berkeley (2004) 122 Cal.App.4th 572, 583. “[I]n Oro Fino Gold Mining Corp. v. County of El Dorado (1990) 225 Cal.App.3d 872 . . . , the court ruled that citizens’ personal observations about the significance of noise impacts on their community constituted substantial evidence that the impact may be significant and should be assessed in an EIR . . . .” Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commr’s (2001) 91 Cal.App.4th 1344, 1380-1381. “The relevant personal observations of these residents alone constitutes substantial evidence of environmental impacts.” Arviv Enterprises, Inc. v. South Valley Area Planning Commission (2002) 101 Cal.App.4th 1333, 1347.

Third, and perhaps most important, this Planning Commission expressed many of the exact same doubts, concerns and skepticism about the assertions and assumptions made by the Project applicant and its consultants. Thus, to dismiss the Pachulskis, their expert and counsel, or other members of the community is to dismiss this Planning Commission, which echoed many of the same concerns about the Project. Thus to denigrate us is to denigrate you, the Planning Commission, and the entire process.

A “planning commissioner’s fact-based opinions, stemming from commission’s experience in planning and development, are substantial evidence . . . .” The Pocket Protectors v. City of Sacramento (2004) 124 Cal.App.4th 903, 932, citing Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144:

“It is undisputed that members of the planning commission are experienced in matters of planning and development. The commission members reviewed the initial and revised initial studies as well as the documentation provided by [Real Party]. Therefore, [a Commissioner’s] expressed opinion during a formal hearing . . . is significant.” Stanislaus Audubon Society, supra, 33 Cal.App.4th at 155.

IV. THE APPLICANT'S CEQA ANALYSIS IS WRONG: USE OF AN ADDENDUM IS IMPROPER AND THE APPLICANT'S "BASELINE" ARGUMENTS ARE INCORRECT AND A NON SEQUITUR.

A. The Use Of A CEQA Addendum Is Improper.

At a minimum, the Project cannot be approved based upon a low-level CEQA Addendum. As explained in this firm's December 11, 2014 letter, a supplemental EIR is required.

This conclusion is reinforced by a new CEQA decision, Ventura Foothill Neighbors v. County of Ventura (Dec. 15, 2014) 232 Cal.App.4th 429, which similarly found that a CEQA Addendum was improper and that a Supplemental EIR was required where, as here, there are more than simply "minor technical changes or additions which do not raise important new issues about the significant effects on the environment. [Citation]." Id. at 426. Staff and the applicant have not correctly applied the law to the facts of this matter.

The Ventura Foothill case – which came out *after* our December 11, 2014 letter was submitted to this body – explains that a "subsequent or supplemental EIR is required" when:

"(1) '[s]ubstantial changes' are proposed in the project, requiring 'major revisions' in the EIR; (2) substantial changes arise in the circumstances of the project's undertaking, requiring major revisions in the EIR; or (3) new information appears that was not known or available at the time the EIR was certified. [Citations.]" (Committee For Green Foothills v. Santa Clara County Bd. of Supervisors (2010) 48 Cal.4th 32, 54–55, 105 Cal.Rptr.3d 181, 224 P.3d 920.)" Id. at 426.

Stated in the disjunctive by using "or," only one of those three criteria must be satisfied to require preparation of a subsequent or supplemental EIR. But in this case, all three criteria are present and satisfied.

Despite the timelines of this new case, the applicant's January 13, 2015 RMM letter – which gives a long but inapplicable list of cases regarding the Addendum/Supplemental EIR issue – fails to inform the Planning Commission about the



new Ventura Foothill case, which geographically and conceptually is so close to the one at hand.

See our prior objection letter and exhibits. See also Mr. Kassan's further comments (**Exhibits 1 & 2**) and the new and important information obtained from the Montecito Water District Public Records Act requests (**Exhibits 3-7**) – all showing that: (1) substantial changes are proposed in the project [traffic/parking; water]; or (2) substantial changes arise in the circumstances of the project's undertaking [water; cumulative impacts; changed baseline]; or (3) new information appears that was not known or available at the time the EIR was certified [traffic/parking; water; cumulative impacts; changed baseline].

**B. The Applicant's "Baseline" Argument Is Legally And Factually Incorrect.**

The applicant's RMM letter spends considerable time trying to convince the Planning Commission of two inter-related points: (1) in looking at whether to do an Addendum or Supplemental EIR, you only look for changes from the "baseline" condition that existed when the prior Addendum of 2011 was approved; and (2) in any event, there allegedly are no significant changes in the environment or baseline from 2011 to 2015. The applicant's position on both points is severely lacking.

First, the applicant's starting premise is questionable. CEQA law, including as discussed in the new Ventura Foothill case and the Supreme Court's Committee for Green Foothills case cited therein, refer to whether "substantial changes [have] arise[n] in the circumstances of the project's undertaking, requiring major revisions in the EIR; or new information appears that was not known or available at the time the EIR was certified." (Emphasis added.) Thus, the starting point for measuring impacts or the degree of change is the original EIR – which in this case was certified in 2008 – not an intervening Addendum from 2011.

Second, even assuming the applicant's premise were correct, there clearly have been significant changes in both the proposed Project and in the circumstances of the Project's undertaking/environment/regulatory framework that would trigger this threshold of significance, including moving of the Beach Club under the 2014 plan; reducing parking on site; shifting traffic and parking burdens onto the community; changing the orientation and/or traffic/parking access to the bungalows; and the existence and magnitude of the drought conditions, including enactment of Ordinance No. 93. So

even under the rubric posed by the applicant, a Supplemental EIR at a minimum would be required.

Third, “nothing in the baseline concept excuses a lead agency from considering the potential environmental impacts of increases in the intensity or rate of use that may result from a project.” Lighthouse Field Beach Rescue v. City of Santa Cruz (2005) 131 Cal.App.4th 1170 1196-1197. (See point No. 2, immediately above.)

As stated by the Court in the new Ventura Foothill case, which rejected the County’s use of an Addendum and affirmed the trial court’s order mandating preparation of a Supplemental EIR for a project that slightly changed the location of a building and increased its height from 75 feet to 90 feet, the Project applicant’s position here “is nonsense.” Ventura Foothill Neighbors v. County of Ventura, *supra*, 232 Cal.App.4th at 427.

V. **THE APPLICANT’S TRAFFIC/PARKING ANALYSIS FAILS; THE PROJECT SHOULD BE REJECTED.**

The applicant’s traffic consultant, ATE, produced a letter dated December 29, 2014 which attempts to respond to Mr. Kassan’s December 10, 2014 comments incorporated into our December 11, 2014 letter (at Exhibit 4 thereto). In turn, the letter from the applicant’s attorney, RMM, embellishes upon the latest ATE letter. Unfortunately, the ATE and RMM letters cloud the issues and facts.

As Justice Brandeis observed, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” Buckley v. Valeo (1976) 424 U.S. 1, 67, quoting L. Brandeis, Other People’s Money, 62, National Home Library Foundation, ed. 1933. We respectfully direct your attention to the light Mr. Kassan’s letters shine on the salient issues for this Commission.

A. **Kassan Letter, Exhibit 1 Hereto.**

(1) Nowhere in ATE’s November 2014 report or December 29, 2014 letter is there an estimate of the number of banquet employees at the peak time, nor is there an accounting for the parking for those 50 to 60 or more employees that ATE never acknowledges and for whom no parking is provided.

(2) On page 4, ATE presents a comparison of the facilities at the proposed Miramar Hotel and the existing Biltmore Hotel. But no documentation of the Biltmore

Hotel statistics is presented. Nor are there any comments on the adequacy of the parking supply at the Biltmore Hotel. What is the actual, documented parking demand on a hot summer day when the hotel rooms are 100% occupied, there is a full banquet, and the beach club is heavily used? Is the number of spaces at the Biltmore adequate to accommodate all of those peak demands at the same time without spill-over onto streets or other properties? ATE does not address this vital information. Such study should have been completed over several such "full-use" days to obtain a statistically reliable sample.

(3) ATE also does not reveal that the reason that the Biltmore Hotel parking facilities appear to be underused is that there is a significant cost disincentive for people to park within those facilities. People attending an event at that hotel must pay as much as \$35 to park on-site, and many event attendees choose to park on the streets surrounding the hotel.

(4) Nowhere in either the ATE report or their December 29, 2014 letter is the number of Project banquet hall employees revealed, nor is there any discussion of parking for those employees. Also, the source of the rates upon which the hourly parking demands were estimated was not ITE or the Urban Land Institute (ULI), but ATE, the preparers of the report and the consultants to the developer. No documentation or neutral source for those critical hourly demands are presented.

(5) Drivers leaving the South Jameson Lane angle parking will be headed eastbound on the street. If they want to turn around to head westbound, ATE invites them to enter the private property of the hotel and to turn around in the hotel's eastern driveway. There is no information in the ATE letter as to how the angle parkers are to be informed that the hotel eastern driveway is their recommended U-turn location. Although ATE states that such a maneuver would be safe [p. 6], it is quite likely that there would be serious conflicts between hotel traffic and public traffic using that driveway, perhaps, leading to collisions. With safety as the criterion, a better solution for the South Jameson Lane U-turn demand should be found that does not use a private driveway for public street traffic maneuvers and does not result in on-site conflicts.

(6) ATE and RMM do not present street speed data for South Jameson Lane in the vicinity of the angle parking. That should be a primary public safety consideration, and it has not been addressed. The STOP sign on South Jameson Lane at Posilipo Lane is a quarter of a mile or more from the angle parking. Street vehicles between Eucalyptus Lane and just east of Miramar Avenue, where the angle parking is located, are too far away from the STOP sign to be slowing for that sign. Traffic engineers know from

experience that STOP signs are not speed control devices. Even with street traffic at moderate speeds, leaving the parking spaces will be dangerous.

(7) Mr. Kassan's December 10, 2014 letter referred to the loss of approximately 44 legal parking spaces on the north-south leg of Miramar Avenue, located a short walking distance from the beach. The ATE response is that the increase of 10 spaces on the east-west leg of that street is more parking than was provided in the previous hotel plan. That is not the relevant comparison that responds to Mr. Kassan's comment. The loss of 44 existing spaces will obviously overwhelm the provision of 10 new spaces, and there will be a net loss of 34 convenient beach parking spaces to which ATE does not respond.

(8) ATE states that fire trucks, delivery trucks, and trash trucks would be able to turn around in the reduced-radius cul-de-sac using three-point turns [p. 10]. However, no proof of that, such as turning diagrams using standard design vehicle templates, is presented.

**B. Kassan Letter, Exhibit 2 Hereto.**

Virtually all of the issues that the RMM letter raises have already been replied to in Mr. Kassan's January 13, 2015 letter (Exhibit 1 hereto). But we note in particular the following points from Exhibit 2 hereto:

(1) The RMM letter states that ATE has determined that a total of 53 parking spaces will serve all of the hotel employees – a) the hotel administration and front desk staff; b) the hotel room cleaners; c) the hotel maintenance and landscaping staff; d) the staffs of the two restaurants and the bar; e) the beach club staff; and f) the cooks, waiters, cleaners, and entertainers needed to serve a three-course meal to 400 banquet guests. The RMM letter claims that “substantial evidence supports the conclusions in the Addendum regarding the sufficiency of parking for the Revised project.” [RMM letter, p 11.] But none of that evidence is presented in the RMM letter or in the ATE reports; the conclusions rest solely on ATE assumptions that are not documented.

(2) ATE has based its parking study on the completely unwarranted and undocumented assumption that 30% of all banquet attendees (30% of 400 = 120) will also be hotel guests. That means that 120 guests of the 170-room hotel will be at the hotel for the sole purpose of attending a banquet. That is certainly not a traffic engineering “industry standard,” as claimed in the RMM letter. [RMM letter, p. 8.] There is no traffic engineering “industry standard” that permits the analyst to ignore 30%

of the attendees at an event in order to justify a lower parking demand. This is akin to “reverse engineering” – a plugged number to pretend that a problem has been “solved.”

(3) ATE has assumed that the maximum parking demand with 300 beach club memberships will be only 94 vehicles. Most beach club memberships will cover entire families, one membership per family. It cannot be assumed that there will be any meaningful amount of ridesharing among different families who are holders of different memberships. The conservative assumption must be that each membership/family unit will represent at least one vehicle that must be parked. If 94 vehicles are parked, as assumed by ATE, what of the other 206 membership holders? Will none of them want to attend the club on a warm weekend? What if 150 members (50% of the total) want to use the club on such a day? That would require 56 additional parking spaces. If only 200 members are at the club on a peak day, there would be a need for 106 more spaces.

(4) The RMM letter claims that the new plan will enhance the angle parking proposed for South Jameson Lane. [RMM letter, p. 12.] However, the letter does not mention that backing vehicles out onto two lanes of traffic flowing at a rate of one vehicle every nine seconds (based on the ATE estimate of future street traffic) will be hazardous and difficult for drivers to accomplish. Any consideration of that issue has been ignored by ATE.

(5) The RMM letter speaks of the increase in parking space length from 20 feet to 23 feet on Miramar Avenue that will be required by the County. [RMM letter, p. 12.] It does not reveal that the result of that change will be a reduction of four to five parking spaces on the street. The lost spaces on the north side of the street would have been reserved for the hotel bungalow guests (itself highly problematic). Where will those guests park when there are fewer spaces than proposed for them? The spaces on the south side of the street would have been available to the public replacing a small number of the 44 existing public parking spaces that will be lost when the north-south leg of Miramar Avenue is vacated for hotel purposes. There has been no consideration of this latest reduction in street public parking spaces.

In sum, the parking- and traffic-related statements in the RMM letter are merely restatements of the ATE report and letters and suffer from the same lack of factual and documentary support. The errors and omissions in the ATE documents are repeated in the RMM letter.

**VI. THE APPLICANT'S WATER ANALYSIS FAILS; THE PROJECT SHOULD BE REJECTED.**

We thank you for the continuance of this matter which you granted on December 15, 2014. One of the reasons we asked for a continuance was for time to receive and review documents relevant to the Project that the Montecito Water District indicated they would be providing to us pursuant to our California Public Records Act requests.<sup>2</sup> Those records have been received and review and, indeed, provide further evidence of a potentially significant impact with respect to water service neither anticipated nor analyzed in prior environmental documents.

A Certificate of Water Service Availability ("CWSA"), sometimes also referred to as a "can and will serve" letter does exist for the Project site for 45 Acre-Feet/Year ("AFY"). A CWSA, however, is neither a contract nor a guarantee for that amount. The District has pointed out that cannot be guaranteed during a water shortage emergency.

The water shortage emergency in Montecito need not be recounted in great detail. Only extraordinary conservation efforts on the part of Montecito residents and businesses have kept the faucets from literally running dry. Under the District's Ordinance 93, which allocated water during the water shortage emergency, the current year (2014/15) allocation for the District is 5,300 AF. For 2015/16, the District currently projects having only 2,070 AF to allocate.

Pursuant to Ordinance 93, the District restricts water usage based on a Base Allocation. The ordinance defines "base allocation" as "the calculated average amount of water actually delivered to the property per month during the three-year fiscal period 2003/04 - 2005/06. A Base Allotment will be calculated for properties classified as Commercial or Institutional. If the property does not have three years of use history, or if the use changes materially, the District will determine the Base Allotment by taking into account other relevant factors such as the established historical use of the property, or the water usage of properties of comparable sizes or with comparable uses during the Base Allotment period" The Base Allocation is then subjected to a monthly allocation factor, identified as how much of the base allocation can be used in a given month.

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<sup>2</sup> Although we received many helpful documents, a number of them contained heavy redactions. We do not believe all of those documents were redacted under a proper exception such as attorney-client privilege. That remains an open issue. Revealing the full contents of those public records is something our clients may further pursue.

The Miramar Hotel has not been in operation since 1999. While there may be a CSWA for the Project site for 45 AFY, this means the base allocation under Ordinance 93 is zero. While the District, as of the time of this correspondence, has made no official determination, statements from District staff and directors have intimated this.

In an August 13, 2014 memorandum from the District's General Manager to its Operations Committee, the General Manager indicated that "the Miramar project water use allocation was not factored into Ordinance 93 with its adoption by the Board at its meeting on February 21, 2014." (Exhibit 3.) Changing that would require an amendment to the ordinance. The memorandum concluded that "the matter will be further discussed with counsel at the time this matter is heard by the Committee."<sup>3</sup>

The August 21-28, 2014 edition of the Montecito Journal reported that a District Director had warned the Miramar entitlement team to disclose to its lenders that Ordinance 93 gives the District considerable discretion in a severe water emergency to alter future allocation to protect the health and safety of residential users. Ordinance 93 provides residential users with an allocation for essential health and sanitation uses that are not subject to adjustment under the monthly allocation factor. Commercial users are not provided with a similar exempt allocation.

Additionally, an August 28, 2014 memo from General Manager Tom Mosby to Senior Planner Anne Almy also noted that "the Miramar has no water allocation under Ordinance 93 because the project was not in use when those allocations were determined." (Exhibit 4.)

The day before, the District had also informed Caruso Affiliated that while "[t]he District will continue to honor your Certificate of Water Service Availability... as with all other District customers, the amount of water available to service your property in the future cannot be guaranteed while we are in a Water Shortage Emergency. (Exhibit 5.)

Even if the District looks towards "other relevant factors, such as the established historical use for the property," in determining an Ordinance 93 Baseline Allocation, that allocation will be nowhere near the 45 AFY identified in the CWSA. A July 2008 District water service letter on the project identified average annual District water usage

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<sup>3</sup> We also note that proceeding with the Project without amendment would create a conflict with Ordinance 93, creating a potentially significant impact to land use and planning not identified or analyzed in the original EIR or subsequent documentation.

for the old Miramar Hotel from 1989 and 1998 at 28.19 AF. Annual average District water usage from 1991 to 1998 was even lower, 25.37 AF. (**Exhibit 6.**)

The applicant, in an August 14, 2014 memorandum to the Montecito Water District Board and staff, asserted that water usage for the first 12 months on construction would be 25 AF. (**Exhibit 7.**) Even using historical use as a base allocation, any further reductions resulting from the water shortage emergency would mean that there is insufficient water even to begin construction.

## **VII. CONCLUSION.**

For all of the foregoing reasons, we respectfully submit that the revised Project, its entitlement applications, and the accompanying CEQA Addendum are legally deficient and must be rejected. There is no possible way that the parking, circulation and water issues identified can legally be addressed through an Addendum – or should be approved consistent with the health, safety and welfare of the community.

Very truly yours,

ROBERT P. SILVERSTEIN  
FOR  
THE SILVERSTEIN LAW FIRM

RPS:aa

Attachments

cc: David Villalobos, Board Assistant Supervisor ([dvillalo@co.santa-barbara.ca.us](mailto:dvillalo@co.santa-barbara.ca.us))  
(via email and Overnight Express [ten (original + 9) hard copies])  
Hon. Salud Carbajal, First District County Supervisor, 105 E. Anapamu St., Santa Barbara, CA 93101 (via Overnight Express)  
Tom Mosby, General Manager, Montecito Water District, 583 San Ysidro Road, Montecito, CA 93109 (via Overnight Express)  
Anne Almy, Supervising Planner, Santa Barbara County Planning and Development, 123 E. Anapamu St., Santa Barbara, CA 931014 (via Overnight Express)  
Chris Sneddon, Santa Barbara County Public Works Dept., 123 E. Anapamu St., Santa Barbara, CA 93101 (via Overnight Express)  
Jack Ainsworth, California Coastal Commission, 89 S. California St., #200, Ventura, CA 93001 (via Overnight Express)



Montecito Planning Commission  
January 16, 2015  
Page 17

Client (via email and Overnight Express)  
Chris Price (via email and Overnight Express)

# EXHIBIT 1

**ARTHUR L. KASSAN, P.E.**  
*Consulting Traffic Engineer*

January 13, 2015

Mr. Robert P. Silverstein, Esq.  
The Silverstein Law Firm  
215 North Marengo Avenue, 3<sup>rd</sup> Floor  
Pasadena, CA 91101-1504

Subject: Impacts of Proposed Miramar Hotel

Dear Mr. Silverstein:

This is in reply to the letter prepared by Associated Transportation Consultants (ATE) on December 29, 2014, addressed to Mr. Evan Krenzian of Caruso Affiliated. The purpose of the ATE letter was to respond to comments regarding hotel parking and traffic that were made by County Planning Commissioners and by me in my letter of December 10, 2015.

Following are my replies to the responses in the ATE letter. The first four replies, designated A through D, in this letter relate to the ATE responses to the Planning Commission comments.

A. On page 2: ATE states: "The parking demand estimates for the restaurants, bars and dining areas *included* employee parking demands in their forecasts ..." According to the November 18, 2014 parking analysis by ATE, the hotel's fine-dining restaurant will need a maximum of 17 parking spaces during the daytime, the family-dining restaurant will need a maximum of 30 spaces during the daytime, and the bar will need a maximum of 7 spaces during the daytime. Those spaces will be primarily for non-hotel-guest patrons of the three facilities; possibly, employees of those facilities may use some of those spaces, as well. At the same time, there could be a 400-attendee event in the banquet hall. For all 400 people, ATE states, in their November report, that the need is for 140 parking spaces. But, where is the parking for the employees who will be preparing and serving a three-course meal to 400 people? Nowhere in ATE's November report or their December letter is there an estimate of the number of banquet employees at the peak time nor is there an accounting for the parking for those 50 to 60 or more employees that ATE never acknowledges and for whom no parking is provided.

B. The hotel's valet parking station will be located in the northern part of the hotel site near South Jameson Lane. From there, beach club members will have a considerable and circuitous walk through the hotel grounds to the club. Many members will find it more convenient to park on Miramar Avenue. Although ATE states that the hotel will monitor the Miramar Avenue parking, it will not be practicable to observe every vehicle as it is parking on the street and to ascertain whether it is appropriate for the driver to do so. Human nature will result in a substantial number of drivers choosing the parking closest to the club, and that will be on Miramar Avenue.

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C. On page 3, ATE presents "industry data", published by the Institute of Transportation Engineers (ITE), on the parking demands observed at one or more "Hotels" and at one or more "Resort Hotels". But we have no way of knowing if the hotels in the ITE data bank are in any way comparable to the proposed hotel. Do the ITE hotels have large banquet halls; do they have beach clubs; are they in areas well-served by transit? Without that information, the ITE data should not be applied to the proposed hotel, and, in fact, ATE did not use those data in their November report or in their December letter. Therefore, those data are irrelevant to the study of the Miramar Hotel specific parking needs.

D. On page 4, ATE presents a comparison of the facilities at the proposed Miramar Hotel and the existing Biltmore Hotel. But, no documentation of the Biltmore Hotel statistics is presented. Nor are there any comments on the adequacy of the parking supply at the Biltmore Hotel. What is the actual, documented parking demand on a hot summer day when the hotel rooms are 100% occupied, there is a full banquet, and the beach club is heavily used? Is the number of spaces at the Biltmore adequate to accommodate all of those peak demands at the same time without spill-over onto streets or other properties? ATE does not address this vital information. It would be important to see the study data upon which such a judgment could be made and have it be part of the record; it is hoped that the study was done over several such "full-use" days to obtain a statistically reliable sample.

While ATE was gathering the data from the Biltmore Hotel, they should have asked for the number of employees that are necessary to prepare and serve a three-course meal to approximately 400 banquet guests. Also, they should have asked about the experience with the percentages of banquet guests that were non-hotel guests. Were there any large banquets at which 100% of the guests were from outside of the hotel? Or 90%? Or 80%? Those data would have been useful in solving the open questions about the adequacy of the parking proposed for the Miramar Hotel banquet/event hall. (Please also refer to the reply to Comment 1b on the following page.)

ATE also does not reveal that the reason that the Biltmore Hotel parking facilities appear to be underused is that there is a significant cost disincentive for people to park within those facilities. People attending an event at that hotel must pay as much as \$35 to park on-site, and many event attendees choose to park on the streets surrounding the hotel.

The following replies to the ATE letter deal with their responses to the comments that I made in my letter of December 10, 2014, addressed to you. For clarity, I have numbered my responses to match the numbering that ATE used in their letter

Comment 1a. On page 5, ATE states in bold print: "... estimates for the restaurants, bars and dining areas included employee parking demands in their forecasts." But those estimates could not have included banquet hall employees, because the November ATE report states that the parking for the banquet hall was estimated on the basis of "ATE Parking and Time of Day Rates, assumes 30% of guests are affiliated with hotel and a 2.0 AVO (Average Vehicle Occupancy) for public guests." [footnote in "Shared Parking Calculations" table attached to the November letter] Notice that the parking rate is based on the number of guests per vehicle and there is no mention of the employees. Nowhere in either the ATE report or their recent letter is

the number of banquet hall employees revealed, nor is there any discussion of parking for those employees. Also notice that the source of the rates upon which the hourly parking demands were estimated was not ITE or the Urban Land Institute (ULI), but ATE, the preparers of the report and the consultants to the developer. No documentation or neutral source for those critical hourly demands are presented.

Comment 1b. ATE maintains that "The parking demand analysis correctly assumed that some of the guests at the on-site events would be hotel guests." [page 5] The word "correctly" is used by ATE with no justification or documentation. Is it impossible that a major banquet could be held at the Miramar Hotel, and all of the attendees would be non-hotel-guests? In their parking analysis, ATE has assumed that fully 30% of any 400-attendee event (that is, 120 attendees) would be hotel guests who will be already parked on-site. The remaining 280 attendees would be non-hotel-guests, according to the ATE assumption, and ATE has estimated the peak parking needs based on the 280 outside attendees, only. That is not the "worst case analysis" that is required of environmental studies. (No banquet hall employees are accounted for in the 280 attendees, and no parking is provided for those employees in any of ATE's analysis.)

What will happen if there are 320 outside attendees, or if all 400 attendees are from outside? Because ATE is so confident that the hotel parking will accommodate no more than 280 outside attendees, they should agree with the recommendation in my letter that the banquet hall attendance be limited to 280 guests who are not also hotel room guests.

Later in the ATE response, they present banquet hall attendee AVOs that are substantially higher than the 2.0 people per vehicle used in their analysis – 25% to 50% higher. Those higher AVOs are based on "... information provided by valet parking operators ...", not based on a statistically validated study by neutral engineers/planners. Why does ATE present those alternative vehicle occupancy rates? Are they preparing for a major revision in their parking analysis?

Comment 2. Drivers leaving the South Jameson Lane angle parking will be headed eastbound on the street. If they want to turn around to head westbound, ATE invites them to enter the private property of the hotel and to turn around in the hotel's eastern driveway. There is no information in the ATE letter as to how the angle parkers are to be informed that the hotel eastern driveway is their recommended U-turn location. Although ATE states that such a maneuver would be safe [page 6], it is quite likely that there would be serious conflicts between hotel traffic and public traffic using that driveway, perhaps, leading to collisions. With safety as the criterion, a better solution for the South Jameson Lane U-turn demand should be found that does not use a private driveway for public street traffic maneuvers and does not result in on-site conflicts. Perhaps, a public cul-de-sac, with right-of-way taken from the hotel site, would be a feasible solution.

ATE misses the point regarding traffic volumes on South Jameson Lane. The concern is not regarding volume/capacity ratios and Levels of Service. The concern is for the convenience and safety of those who use the angle parking, particularly when they are leaving the spaces and have to back out into two lanes of two-way public street traffic. ATE estimates that the peak traffic volume on South Jameson Lane, with the hotel in full operation, will be 402

vehicles per hour. [page 7 of their letter] That will be an average of one street vehicle every 9 seconds. There may not be sufficient safe gaps in the street traffic to accommodate vehicles leaving the angle spaces conveniently and safely.

ATE does not present street speed data for South Jameson Lane in the vicinity of the angle parking. That should be a primary public safety consideration, and it has not been addressed. The STOP sign on South Jameson Lane at Posilipo Lane is a quarter of a mile or more from the angle parking. Street vehicles between Eucalyptus Lane and just east of Miramar Avenue, where the angle parking is located, are too far away from the STOP sign to be slowing for that sign. Traffic engineers know from experience that STOP signs are not speed control devices. Even with street traffic at moderate speeds, leaving the parking spaces will be dangerous.

Comment 3. The use of the northwestern parking lot for event/banquet guest parking, as described by ATE, will be impractical. Those guests, after parking in that lot, will have to "... be shuttled to the banquet hall via service carts ..." [page 7] because of the great distance, and they will have to wait in the lot for the service carts to make round trips to and from the banquet hall. Imagine banquet guests in formal attire riding in service carts and standing for 10- to 20-minute waits in the remote parking lot.

ATE states: "The secondary valet lot would provide approximately 100 overflow spaces for use when large events (over 200 guests) are held at the banquet facility ..." [page 7] If there are 100 overflow spaces, at 2 guests per parked vehicle, those spaces could accommodate 200 banquet guests. Added to the 200 guests that are mentioned in the ATE statement quoted above, there would be a total of 400 guests using parking spaces for such a banquet. That is in conflict with the ATE contention that there will never be more than 280 banquet guests (70% of 400) coming from outside the hotel. Which is the "correct" estimate?

ATE does not address the concerns that I expressed regarding valet drivers having to make left turns out of the driveway onto South Jameson Lane and from that street into the remote parking lot. The safety issue, particularly when including the parking activity at the angle parking spaces, should be considered.

Comment 6. The assigned hotel guest parking on Miramar Avenue will be accessible by the general public using that street. According to ATE, "Use of the spaces by non-hotel guests will be enforced by the Miramar Hotel (unauthorized vehicles will be towed)." [page 8] On paper, that may seem to be a viable operation, but in reality, it is bound to fail. For example, consider a hotel guest returning from a nearby restaurant or a concert, etc. between 10 p.m. and midnight. When he arrives at the hotel, his assigned space is occupied. He has three choices -- park in someone else's assigned space; park in a non-hotel public space on the street (if available); or request that the other car be towed from his space. To do the third option, he will have to find the appropriate hotel employee somewhere on the hotel grounds (at that late hour, there would not be a parking attendant waiting on Miramar Avenue to guard the 18 hotel parking spaces); explain the situation; have the employee call a towing company; and wait for the tow truck to arrive and complete its function. Late at night, after a long day, the hotel guest will not be satisfied with that system. Even during the daytime and early evening hours, for as many as 14 hours per day every day, will the hotel have an attendant or security guard on full-time duty at the Miramar Avenue 18 hotel spaces to enforce their proper use and to assist authorized guests? That would be expensive and may not be practicable over the long term.

Comment 7. The hotel on-site valet parking station will be located in the northern part of the site, quite a walking distance from the beach club access. Some club members will find it more convenient to park on Miramar Avenue in the public parking spaces. ATE states that "Hotel security will frequently monitor the premises and its borders to ensure that no hotel guests, members, or employees are parking in nearby surface parking streets." [page 8] How will hotel security be able to tell if a car parked on a nearby street belongs to a guest/member/employee? Unless the security person sees the actual parking maneuver and follows the driver/passengers, there will be no way to distinguish general-public vehicles from hotel-related vehicles. That enforcement system will not be effective.

Comment 8. The comment in my letter referred to the loss of approximately 44 legal parking spaces on the north-south leg of Miramar Avenue, located a short walking distance from the beach. The ATE response is that the increase of 10 spaces on the east-west leg of that street is more parking than was provided in the previous hotel plan. That is not the relevant comparison that responds to my comment. The loss of 44 existing spaces will obviously overwhelm the provision of 10 new spaces, and there will be a net loss of 34 convenient beach parking spaces to which ATE does not respond.

Comment 9. ATE claims that the current plan will result in an increase of 14 public parking spaces, but 10 of those have already been counted as being on Miramar Avenue. Therefore, there will be only 4 new spaces on South Jameson Lane, and they will be at a considerable distance from the beach. My comment actually dealt with a comparison of the current walking distance from the existing parking on north-south Miramar Avenue to the future walking distances when the parking is on South Jameson Lane only. ATE does not address that comparison.

Comment 10. In discussing the pedestrian connection between the South Jameson Lane public parking spaces and the beach, ATE states: "Beach-goers parking in the public spaces on South Jameson Lane would use the new sidewalk to connect to the pedestrian access easements that would be provided through the Miramar Hotel site to reach the beach access south of the site." [page 9] Members of the public walking through the hotel site may result in security problems for the hotel and its guests. Families with small children and substantial beach equipment will interfere with the hotel guests' quiet enjoyment of the hotel grounds. That could be significantly detrimental to hotel attractiveness. Large numbers of people walking through the hotel grounds may result in pedestrian conflicts with hotel vehicles, such as service and maintenance carts. The walking distance between the public parking spaces on South Jameson Lane and the beach will still be substantial.

Comment 11. ATE states that fire trucks, delivery trucks, and trash trucks would be able to turn around in the reduced-radius cul-de-sac using three-point turns. [page 10] However, no proof of that, such as turning diagrams using standard design vehicle templates, is presented.

Comment 12. The installation of red curb and No Parking signs in the Miramar Avenue cul-de-sac, by itself, will not prevent drivers from parking in the bulb. It will be necessary to have frequent enforcement by the County Sheriff, and considering the remoteness of the cul-de-sac and the low level of traffic that will use Miramar Avenue, it is probable that the County Sheriff will not assign significant enforcement resources to the street.

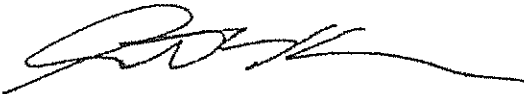
The ATE letter does not address any of the three recommendations that were in my December letter. I believe that they have validity in mitigating the potential impacts of the proposed hotel development, and that if Caruso Affiliated's consultant chooses not to address them, the County staff should be asked to consider them.

I have also reviewed the County Planning and Development Staff Report that was made available on January 13, 2015. Toward the end of that report on page 11, there is a recommendation that the parking spaces on Miramar Avenue be 23 feet in length instead of the 20-foot length that is proposed by the developer and justified by ATE. With the longer spaces, there will be a loss of two to three spaces on the north side of the street and a loss of two spaces on the south side, compared with the developer's plan. The north-side spaces are those that will serve the bungalows on the hotel site, and a parking supply that is two to three spaces fewer than planned will have a substantial effect on the convenience of parking for the hotel guests. On the south side, the reduction of two spaces will affect the residents and beach parkers. How will those deficiencies be accounted for?

The staff report states that there are two bus stops within a less than 10-minute walk of the hotel. [page 4] However, it fails to reveal that weekday and Saturday bus service ends before 6:30 p.m., and Sunday service consists of four runs toward Montecito with the first at 12:00 noon and the last at 5:15 p.m. and five runs toward Santa Barbara with the first at 7:25 a.m. and the last at 2:25 p.m. That schedule will not provide service that will be convenient or attractive for hotel employees, especially those working at evening events. Unless the hotel intends to subsidize additional bus service in the evenings, transit cannot be considered a significant alternative travel mode for employees.

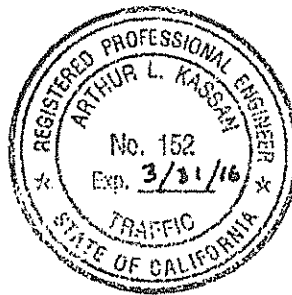
If you have any questions about my analysis, comments, and recommendations, please contact me at your convenience. I would be pleased to discuss them with County staff and officials.

Very truly yours,



Arthur L. Kassan, P.E.  
Consulting Traffic Engineer

Registered Civil Engineer No. C 15563  
Registered Traffic Engineer No. TR 152





# EXHIBIT 2

**ARTHUR L. KASSAN, P.E.**  
*Consulting Traffic Engineer*

January 16, 2015

Mr. Robert P. Silverstein, Esq.  
The Silverstein Law Firm  
215 North Marengo Avenue, 3<sup>rd</sup> Floor  
Pasadena, CA 91101-1504

Subject: Impacts of Proposed Miramar Hotel

Dear Mr. Silverstein:

The following are my replies to the parking-related comments in the letter written by Mr. Whitman Manley of Remy Moose Manly, addressed to the Montecito Planning Commission and dated January 13, 2015. Virtually all of the issues that Mr. Manley raises have already been replied to in my letter to you dated January 13, 2015. However, in this letter, I have amplified some of those replies as they refer to the more significant issues.

Mr. Manley states that ATE, the Caruso Affiliated consultant, has determined that a total of 53 parking spaces will serve all of the hotel employees – a) the hotel administration and front desk staff; b) the hotel room cleaners; c) the hotel maintenance and landscaping staff; d) the staffs of the two restaurants and the bar; e) the beach club staff; and f) the cooks, waiters, cleaners, and entertainers needed to serve a three-course meal to 400 banquet guests. [page 11] ATE and Mr. Manley state this without once revealing the total number of employees that would be needed for all of those functions at the peak times. The ATE report is clearly deficient in omitting consideration of the 50 to 60 or more people who will be necessary to staff a full banquet. Mr. Manley states that "... substantial evidence supports the conclusions in the Addendum regarding the sufficiency of parking for the Revised project." [page 11] But, none of that evidence is presented in Mr. Manley's letter or in the ATE reports; the conclusions rest solely on the ATE assumptions that are not documented.

ATE has based its parking study on the completely unwarranted and undocumented assumption that 30% of all banquet attendees (30% of 400 = 120) will also be hotel guests. That means that 120 guests of the 170-room hotel will be at the hotel for the sole purpose of attending a banquet. That is certainly not a traffic engineering "industry standard", as claimed by Mr. Manley [page 8]. There is no traffic engineering "industry standard" that permits the analyst to ignore 30% of the attendees at an event in order to justify a lower parking demand. ATE and Mr. Manley have not considered the very realistic possibility that many banquets will attract all of their attendees from outside of the hotel – that is, 120 more non-hotel guest attendees than ATE has considered, and they will be arriving in at least 60 more vehicles that will have to be parked on-site.

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ATE has assumed that the maximum parking demand with 300 beach club memberships will be only 94 vehicles. Most beach club memberships will cover entire families, one membership per family. It cannot be assumed that there will be any meaningful amount of ridesharing among holders of different memberships. The conservative assumption must be that each membership will represent at least one vehicle that must be parked. If 94 vehicles are parked, as assumed by ATE, what of the other 206 membership holders? Will none of them want to attend the club on a warm weekend? What if 150 members (50% of the total) want to use the club on such a day? That would require 56 additional parking spaces. If only 200 members are at the club on a peak day, there would be a need for 106 more spaces. Where will they be located?

Mr. Manley states that the hotel will inform guests that street parking is for public use only. [page 10] Guests of the events at the banquet hall will be members of the public, and they will be entitled to park on the streets, if they wish to. At the Biltmore Hotel, many event attendees park on the streets because of the high parking fees (\$35 per vehicle) charged by the hotel. The same is likely to occur at the Miramar hotel.

Mr. Manley claims that the new plan will enhance the angle parking proposed for South Jameson Lane. [page 12] However, he does not mention that backing vehicles out onto two lanes of traffic flowing at a rate of one vehicle every nine seconds (based on the ATE estimate of future street traffic) will be hazardous and difficult for drivers to accomplish. Any consideration of that issue has been ignored by ATE.

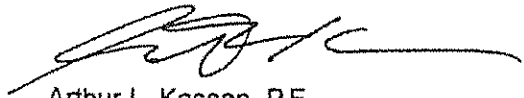
Mr. Manley mentions a "safe" turnaround in the easternmost hotel driveway for those leaving the angle spaces on South Jameson Lane and desiring to U-turn to travel westward. [page 12] By what standards does Mr. Manley judge such a design "safe"? Has he or ATE (who proposed the driveway turnaround) evaluated the very real potential for conflicts between those vehicles and vehicles exiting the hotel?

Mr. Manley speaks of the increase in parking space length from 20 feet to 23 feet on Miramar Avenue that will be required by the County. [page 12] He does not reveal that the result of that change will be a reduction of four to five parking spaces on the street. The lost spaces on the north side of the street would have been reserved for the hotel bungalow guests. Where will those guests park when there are fewer spaces than proposed for them? The spaces on the south side of the street would have been available to the public replacing a small number of the 44 existing public parking spaces that will be lost when the north-south leg of Miramar Avenue is vacated for hotel purposes. There has been no consideration of this latest reduction in street public parking spaces.

Mr. Manley claims that the beach club parking demand estimated by ATE is based on experience at other similar beach clubs. [page 12] But, ATE has presented no evidence or documentation of any of that experience as to: a) the peak parking accumulation vs. the number of memberships; b) the peak levels of membership use of the clubs as percentages of total memberships; c) the average vehicle occupancy of member vehicles; or other similar data that would be important in evaluating the ATE recommendation of 94 peak parking spaces for 300 memberships.

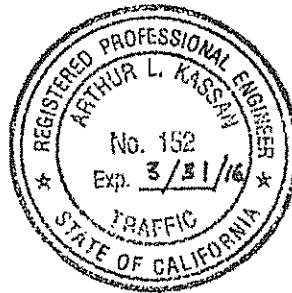
The parking- and traffic-related statements in Mr. Manley's letter are merely restatements of the ATE report and letters. The errors and omissions in the ATE documents are repeated in Mr. Manley's letter. I have replied in detail to the ATE documents in my previous letters. The above replies to Mr. Manley's letter amplify my previous replies.

Very truly yours,



Arthur L. Kassan, P.E.  
Consulting Traffic Engineer

Registered Civil Engineer No. C 15563  
Registered Traffic Engineer No. TR 152



# EXHIBIT 3

**MONTECITO WATER DISTRICT  
MEMORANDUM**

**SECTION: 3-B**  
**DATE: AUGUST 13, 2014**  
**TO: OPERATIONS COMMITTEE**  
**FROM: GENERAL MANAGER**  
**SUBJECT: MIRAMAR BEACH RESORT & BUNGALOWS – CERTIFICATE OF  
WATER SERVICE AVAILABILITY**

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**RECOMMENDATION:**

For information, discussion and possible action to be decided by the Committee at the time this matter is heard.

**DISCUSSION:**

In a letter dated July 28, 2014, the Miramar property owner, Caruso Affiliated has requested that the District confirm water service availability for the proposed revisions to the Miramar Beach Resort and Bungalows Project Final Development Plan, Coastal Development Plan, and Conditional Use Permits.

With the District under a water shortage emergency and having adopted rationing to all customer classifications, the return of this project could not have come at a more challenging time. District staff has asked legal counsel to review all District files and the recent submitted documents from Caruso Affiliated to determine if this project qualifies for water service under the provisions of Ordinance 92 and 93. The undeveloped property has been not been in service since the latter part of 1999 however the property owners have maintained in good standing their District water service account which includes five active water meters. All water used by the property open space and meter service charges are fully paid to date.

The project in 2008 was provided an allotment of 45 acre feet per year which was established by a comprehensive water use analysis. The project returning to the District for water service certification has been revised to exclude the underground parking facility, a reduction in the number of "keys" from 188 to 170 and a commitment to perform primary laundry services outside the District service boundary and other revisions as noted in the Caruso Affiliated letter dated July 28, 2014.

The Miramar Beach Resort and Bungalows property is classified by the District as a commercial customer which under Ordinance 93 is provided the quantity of water allocated to the customer based on their historical 2003 through 2006 water usage or the quantity of water determined by the District for its particular use if the project was not in service during

*Exh. 3*

the allocation period. The allocation of water to the property is provided on a monthly basis in accordance with the commercial classification monthly allocation factor.

The question is does the District have sufficient water supplies to serve the currently vacant property which is tentatively scheduled for operation as a resort hotel in the summer of 2017. This Miramar project water use allocation of 45 acre feet was not factored into Ordinance 93 with its adoption by the Board at its meeting of February 21, 2014. In accordance with Ordinance 93, the District reviews the water supply condition prior to the start of the water year, October 1 and if necessary adjustments are made to each water use classification to meet the available water supply.

In the case of the Miramar Project, the allocation of 45 acre feet would need to be factored into Ordinance 93 which would reduce the amount of water available to other water use classifications (and its customers). At this point in time, the District is unsure when the Miramar property will begin the full use of its annual allocation and in order to serve the project an amendment to Ordinance 93 will need to occur. The District is currently revisiting Ordinance 93 with the change to its available water supply for the 14/15 Water Year and the timing of water delivery (i.e. water year) for Miramar Project requires further clarification. This matter will be further discussed with counsel at the time of this matter is heard by the Committee.

You will find a list below of all of the attached documents to assist in your review of the Miramar Beach Resort and Bungalows status of Water Service Availability.

- 8/11/14 Revised Water Usage Analysis; Landscape Water Use Calculation
- 7/28/14 Request for Confirmation of Water Service Availability by Caruso Affiliated.
- 7/28/14 Technical Memorandum & Revised Water Usage Analysis by Dudek
- 2/15/11 Letter to SBCo regarding Miramar amended development plan and reaffirmation of Can and Will Serve by District
- 8/20/08 Revised Water Usage Estimate of 51.1 AFY to SBCo Planning by Caruso Affiliated
- 7/29/08 Letter clarifying terms of MWD Water Service Availability due to project omission of private well water by MWD
- 5/11/07 Can and Will Serve Letter Issued by MWD

# EXHIBIT 4



**MONTECITO WATER DISTRICT**

**DATE:** AUGUST 28, 2014  
**TO:** ANNE ALMY, Senior Planner -- Santa Barbara County  
**FROM:** TOM MOSBY, General Manager  
**RE:** MIRAMAR BEACH RESORT AND BUNGALOWS - Revision, 14 RVP-63, 1555 South Jameson Lane

Dear Ms. Lieu

Please allow this email to respond to your email of August 18, 2014 concerning the above referenced project.

Responses to the two specific questions set forth in your email are as follows:

1. Would the proposed project result in overdraft or over-commitment of any groundwater basin or a significant increase in the existing overdraft or over-commitment of any groundwater basin? Or, is the previous allocation already considered in the District's water demand?

The proposed project will not adversely affect/impact groundwater supplies because, as presently proposed, it does not propose use of groundwater.

2. Would the proposed project result in a substantial reduction in the amount of water otherwise available for public water supplies? Or, is the previous allocation already considered in the District's water demand?

[ The Miramar is a commercial customer of the District with 5 active water meters. However, the Miramar had no water allocation under Ordinance 93 because the project was not in use when those allocations were determined. The CWSA for the project contains a 45 Acre Foot ("AF") base annual allocation, which is less than 1% of the available water supply under Ordinance 93. A base allocation, of course, is not a promise that any particular volume of water will be available under current conditions of extreme drought. However, this project will share in available water supplies of the District on the same terms as other commercial customers of the District and be subject to service restrictions on the same terms as those other commercial customers. ]

Please note that the following issues require consideration and review by the County relative to this project:

1. Montecito Water District submitted project conditions of approval to the County on or about August 27, 2008, and compliance with those conditions is still a requirement for this project. A pdf copy of those conditions is attached to this email.

*Exh. 4*

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2. On February 11, 2014, Montecito Water District passed Ordinance 92, declaring a Water Shortage Emergency and providing for restrictions on use of water and penalties for failure to comply with conservation measures. Given its rapidly diminishing water supply, the District adopted Ordinance 93 on February 21, 2014, establishing a mandatory water rationing program for all of its customers and penalties for consumption in excess of allocation.

Currently, under Ordinance 93, the District has allocated 5,300 AF of water for the current water year amongst its active customers. Although the District had originally anticipated having to further reduce these allocations as we moved into the 2014 -15 water year (which commences October 1, 2014), due to the extraordinary conservation efforts by our customers and the aggressive procurement of supplemental (emergency) supplies of water by the District, we are now able to continue the existing allocation of 5,300 AF of water into the new year.

The District currently projects having only 2,070 AF of water to allocate for the 2015-16 water year, which is nearly 61% less water than is currently being allocated amongst the District's customers. The District will continue to explore opportunities to procure additional sources of supply, however, this is the most current information we can provide, given the extremely serious and dynamic nature of the situation.

As set forth above, the CWSA for this project allocates 45 AF of base allocation to the Miramar. This allocation was based upon the District's water supply during normal situations, and we are currently in a statewide and local Water Shortage Emergency.

The District will honor the Certificate of Water Service Availability for the project, and the 45 AF base allocation set forth therein. However, as with all other District customers, the amount of water available to serve the property in the future cannot be guaranteed while a Water Shortage Emergency exists, but this property will be treated on the same terms as other active commercial customers of the District

3. In light of the Water Shortage Emergency, the County should consider dust control restriction measures during project grading that require the use of non-potable water.

# EXHIBIT 5



August 27, 2014

Matt Middlebrook  
Caruso Affiliated  
101 The Grove Drive  
Los Angeles, CA 90036

Re: Miramar Beach Resort and Bungalows; Water Service Availability

Dear Mr. Middlebrook,

This letter serves as a written response by Montecito Water District to the Caruso Affiliated "Miramar Hotel; Confirmation of Water Service Availability" letter of July 28, 2014 and the "Miramar Water Usage and Will-Serve Follow Up" memorandum dated August 14, 2014. Montecito Water District does not agree with every assertion set forth in those documents, but will refrain at this time from elaborating on specific areas of disagreement. Please allow this letter to memorialize the position of Montecito Water District concerning the subject Certificate of Water Service Availability.

As you may recall, the District, in its July 29, 2008 letter to you regarding Miramar water service was very clear that under a water shortage emergency declaration, "the Miramar will be subject to reductions in available water and/or cost increases necessary to conserve the remaining water supply for the community". Presently, the entire State of California is in a Water Shortage Emergency and Santa Barbara has been classified as a "D4 Exceptional Drought Region". On February 11, 2014, Montecito Water District passed Ordinance 92, declaring a Water Shortage Emergency and providing for restrictions on use of water and penalties for failure to comply with conservation measures. Given its rapidly diminishing water supply, the District adopted Ordinance 93 on February 21, 2014, establishing a mandatory water rationing program for all of its customers and penalties for consumption in excess of allocation.

Both Ordinances were drafted in accordance with the California Water Code, which provides the District with the authority to adopt regulations and restrictions on the delivery and consumption of water which will conserve the water supply for the greatest public benefit. The regulations and restrictions remain in full force and effect until the supply of water available for distribution has been replenished, the emergency has ceased, or the ordinances are repealed.

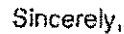
Exh. 5

The District currently projects having only 2,070 AF of water to allocate for the 2015-16 water year, which is nearly 61% less water than is currently being allocated amongst the District's customers. The District will continue to explore opportunities to procure additional sources of supply, however, this is the most current information we can provide given the extremely serious and dynamic nature of the situation.

While the District continues to recognize you as one of its customers, the 45 AF allocation which you cite under the District's Certificate of Water Service Availability was based upon the District's water supply during normal situations but, as stated above, we are currently in a statewide and local Water Shortage Emergency which is far from a normal situation.

The District will continue to honor your Certificate of Water Service Availability however, as with all other District customers, the amount of water available to service your property in the future cannot be guaranteed while we are in a Water Shortage Emergency.

Sincerely,



Tom Mosby  
General Manager

Richard Cohen  
District Manager  
10000 N. 10th Street, Suite 100  
Phoenix, AZ 85020

# EXHIBIT 6



July 29, 2008

Mr. Matt Middlebrook  
Caruso Affiliated  
101 The Grove Drive  
Los Angeles, CA 90036

Re: Proposed Miramar Beach Resort and Bungalows - District Water Service

*Sent via fax and postal mail*

Dear Mr. Middlebrook:

This letter is to clarify the terms, conditions and circumstances for Montecito Water District (MWD) water service availability and a reasonable water budget for the proposed Miramar Project. A water budget will reflect the needs of the proposed project, consider community-wide usage patterns and be within the District's short and long-term available supplies. The water budget will also serve as the "base allotment" for future fees and charges under the currently proposed commercial base allotment rate structure, which the MWD Board will consider at a public hearing in August of this year. The base allotment concept will also result in your project funding, through the block rate structure, any need for the District to acquire any project water use above the established base allotment. The proposed new rate structure is part of an overall District water conservation program to restore a balance between District water supply and demand. The base allotment addresses water rate structure, not water availability.

The processing of this project to date has been somewhat unusual for MWD. The Miramar property has remained a District customer in good standing, paying its rates and charges for five District meters even though water usage has been minimal since closure of the hotel in 1999. If this had been a new project, MWD and the owner/applicant would have worked together to define the project's water supply and water service needs early in the process. A project of this size would normally need the assistance of a project planning and permitting service (hired by the owner) that takes the lead role in collecting, analyzing and summarizing all information needed to fully define the project's water requirements. In your case, the District initially met with Caruso Affiliated, the property owner, Dudek and Associates, a planning firm representing the property owner; and the County of Santa Barbara Planning and Development Department.

The previous Miramar Hotel operated until 1999 with a combination of District service for interior potable use and a private well for exterior and other non-potable use. Since the hotel closure, the District has reviewed various proposals to rehabilitate/reconstruct the Miramar. Each proposal showed demand for District

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supplies consistent with previous historic water use levels. Based on the representation that the Caruso proposal would also show no increase in intensity of use, except for increased landscaping to be served by an onsite well, MWD provided the proposed project with a Certificate of Water Service Availability (CWSA), dated May 11, 2007. As stated in the CWSA: "The District can and will serve the proposed project through the existing water services. If there is a change in water demand, the owner may apply for larger District meters subject to completion of a Water Meter Use Evaluation application, approval of the application by District staff and payment of all fees and costs for the meter size increase." To date, Caruso and its consultants have not applied for increased service, or completed a Water Meter Use Evaluation application. A Meter Use Evaluation would provide definition of infrastructure improvements, development of a reasonable water budget, and a peak flow analysis to confirm the adequacy of the existing meter service to the property. Without this information, all indications were that water use on the property would remain substantially the same.

To ensure that the overall project water demand would be within reasonable historic limits, and to address infrastructure issues, the District continued working directly with Caruso Affiliated. The District had several meetings with Caruso representatives, sent letters to Caruso Affiliated and has, to a limited extent, received correspondence from Caruso Affiliated regarding project water use. The District also reviewed the proposed project scope as detailed in a Revised Development Plan (RDP) application dated November 13, 2007 from Caruso Affiliated. Based on the November 13, 2007 RDP, which was provided by Santa Barbara County, the District concluded that proposed changes to the project that would affect water use were mainly limited to outdoor landscaping. The District's correspondence to Caruso Affiliated focused on outdoor water use and the continued use of an existing water well on the property for irrigation/non-potable water needs.

While we understand that the scope and size of the project has not increased since our November 2007 review, the project apparently no longer includes the onsite well. Water demand estimates, provided in the County staff report and SEIR/Addendum indicated that the project water use will be much greater than the historic use. In response to recent requests from the County and Caruso, the District has again analyzed its ability to provide for project water demand based on the current project description, and is providing its estimate of project demand in this letter.

The following table from page four of the Caruso Affiliated Revised Development Plan (RDP), dated November 13, 2007 compares the previously operating Miramar Hotel with the Schrager and Caruso plans. You will note from the table that the proposed Caruso plan is comparable to the previously operating Miramar Hotel and actually has fewer rooms. The only apparent change that could increase interior water use is the addition of a 1,482 square foot Beach Club clubhouse with a membership increase from the previous 140 members to 300 members. The proposed clubhouse would increase water use since it includes saunas, locker rooms, showers and toilets. However, 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.



**Caruso Affiliated - November 13, 2007 Revised Development Plan**

**HOTEL OPERATIONS**

In order to avoid as many environmental impacts as possible and quickly begin the renovation process, the proposed project closely adheres to the previously approved level of development and either maintains or reduces the impacts associated with the hotel operations. The table below summarizes key operating features of the Miramar Hotel, as it existed prior to closing in October of 2000, the Schragger renovation plan approved in 2000, and the proposed Caruso project.

<i>Existing and Proposed Hotel Operations</i>			
<i>Operational Component</i>	<i>Previously Operating Miramar Hotel</i>	<i>Approved Schragger Plan</i>	<i>Proposed Caruso Plan</i>
<i>Number of rental units</i>	213	213	202
<i>Number of employee units</i>	2 Existing CUP allows 3 of the 213 units to be used for employee housing	4	4
<i>Banquet Hall/Ballroom</i>			
<i>Maximum number of seats</i>	835 No CUP limits; regulated	600	600
<i>Assembly Area</i>	12,386 SF	8,672 SF	8,467 SF
<i>Hours of Operation</i>	(No CUP limits) Operator currently requires indoor activities to conclude by 1 a.m. and outdoor activities by 10:30 p.m.	7 a.m. to 1 a.m. (outdoor activities to conclude by 10:30 p.m.)	7 am to 1 am (outdoor activities to conclude by 10:30 p.m.)
<i>Restaurants</i>			
<i>Number of seats</i>	193	193	193
<i>Hours of Operation</i>	(no CUP limits) 7 am to 11 p.m.	6:30 am to 11 p.m. (Bar closes at 2 am)	6:30 am to 11 p.m. (Bar closes at 2 am)
<i>Beach Bar/ Snack House</i>			
<i>Number of seats</i>	65 (Roll Car Diner)	65	65
<i>Hours of Operation</i>	8 am to 3 p.m. weekdays 8 am to 5 p.m. weekends	9:30 am to 12 am (midnight)	9:30 am to 12 am (midnight)
<i>Beach Club Membership</i>	140	140	300
<i>Salon/Spa Use</i>	3-5 non-guests/day 9am to 9pm	13-15 non-guests/day 9 am to 9 pm	15 non-guests/day 9 am to 9 pm
<i>Parking Provided</i>	406	460 stalls	551 stalls
<i>FAR</i>		0.242	.2463

Our review indicated that, for the Caruso Project as proposed, excluding outdoor water use, and assuming the use of state of the art water saving technologies, water use would be comparable to the previously operating Miramar Hotel.

Historical water usage for the Miramar Hotel between 1989 and 1998 is shown in the table below. The 1998/99 water use year is not shown as the hotel closed in early 1999.

MIRAMAR HOTEL HISTORICAL USAGE									
Total All Meters	87/88	88/89	89/90	90/91	91/92	92/93	93/94	94/95	95/96
July	1872	1379	1209	1106	1082	1251	809	1554	2089
August	1799	1670	1654	1402	1212	1882	1094	1727	2338
September	1416	1180	1101	1040	756	1890	629	2121	2366
October	1505	1003	894	694	767	1591	680	1478	1459
November	829	823	823	657	841	533	618	1289	1149
December	729	825	698	646	483	550	590	1958	1144
January	602	410	588	334	398	376	706	1279	1897
February	605	611	428	517	426	602	626	1071	1250
March	972	958	640	594	665	667	858	525	1303
April	1184	1237	728	746	671	858	698	543	1142
May	1138	1358	943	730	761	744	841	784	1049
June	1418	1495	1121	1098	1124	632	1171	840	1523
Units (HCF)	14080	12968	11026	9595	8974	11378	9598	14947	18208
Units (AF)	32.3	29.8	25.3	21.9	20.6	26.1	21.6	34.3	41.6

The District's analysis of anticipated demand, based on the historical usage, has focused on per room or "key" usage. In this analysis, the District recognizes that all existing water fixtures were of the older inefficient and wasteful types that were very common for the period of the hotel operation. The fixtures in place were of the 3.5-5 gallon/flush toilet type tanks, 3-5 gallons per minute showerheads and 2 gallons per minute lavatory faucets.

A study prepared in August 1989 by Interface Environmental Services, titled *Water Demand and Conservation Study* ("Interface Water Demand Study") for the Santa Barbara South Coast region encompassing the City of Santa Barbara, the County of Santa Barbara, Goleta and a portion of Ventura County, focused on the water savings associated with the replacement of such older water-wasteful fixtures with water-saving, conservation fixtures for hotels. That Interface Water Demand Study is used by the City of Santa Barbara for its estimation of hotel water demand.

The Interface Water Demand Study estimates the water savings for each room or key was about 30% with replacement of inefficient water fixtures with state of the art water efficient technology. The base use was determined by analyzing water use in hotels within the south coast area, which determined that room or key usage averaged about 134 gallons per day. With the 30% water savings from modern water efficient, conservation technology, in-room or key usage is reduced to about 94 gallons per day. This results in a total projected demand for the Miramar Project of 21.4 acre-feet per year with 100% occupancy of its 204 proposed

rooms (most current revised Plan). With the estimated annual occupancy rate of 71 % used by Caruso Affiliated, the total in-room use for the 204 units is estimated at approximately 15.25 acre-feet per year.

The Interface Water Demand Study reports that room or interior usage accounts for 60-70% of a hotel's overall usage. At a conservative 60% interior usage estimate of 15.25 AF/year, the extrapolated total project usage is estimated at 26 AF/year with the 71 % occupancy rate. A "worst case" interior demand with 100% occupancy would be approximately 36 acre-feet per year, which is still within the Miramar's historic District water usage. While the Miramar Project may have some water usage that is above and beyond a typical hotel with the addition of a spa, pools and the clubhouse, the District expects that with appropriate use of water saving technology, overall potable water demand can still be met within historic usage and with existing District service.

Therefore, in the District's opinion and based on the Interface Water Demand Study, the expected Miramar project interior water use, with the above exception for landscaping and with the replacement of the prior inefficient and wasteful water fixtures with new state of the art water conservation fixtures, will be comparable to the historical usage. In addition, the use of state of the art water conservation technology and fixtures should also reduce peak water demands and enable the project to utilize the existing meters serving the property. This would avoid requiring an increase in meter size and increasing the demand on the District's limited water supply.

Comparing the District's estimation of projected Miramar water demand with the 117 acre-foot estimate shown in the County SEIR for the project, the District has the following comments which would further support the District's analysis.

The SEIR estimate of Clubhouse water use was not useful for the District because it did not show the number of fixtures. The clubhouse will serve up to 300 members; it is unclear if these are individual memberships or family memberships. This 1,482 square foot structure includes a sauna, locker room, showers, toilets and lavatory faucets. The District expects that any such clubhouse use would be included as part of the 40% non-room interior use discussed above, but in any case the District does not expect that it would require more than 2-4 acre-feet of water per year.

Water use for an onsite laundry facility has also been estimated in the SEIR at about 42 acre-feet of water per year. The District believes that this figure is about ten times the actual demand for such a hotel. The District has not been able to ascertain how this value was determined. The estimated laundry demand also does not account for savings from the use of rinse water reuse technology which should be incorporated into any project involving a laundry. Such water conservation technology should reduce laundry water demand to a point where it is consistent with the overall project. A reasonable estimate for such laundry use is expected to be no more than 4 acre-feet per year.

Other water use as estimated by Caruso for the kitchens, restaurants, meetings, and special events including weddings and conventions is set at about 25 acre-feet. These estimates also appear to be high. Again, looking at the Interface Water Demand Study, interior guestroom water use is normally 60-70% of the total facility demand. If we use the conservative 60%

figure for interior guestroom demand, then all other ancillary water usage (excluding landscape irrigation) at 40% would be less than 20 acre-feet per year.

Even assuming the laundry and clubhouse each use an additional 4 acre-feet per year, total project water demand (excluding landscaping) is less than 45 acre-feet. This is slightly greater than the maximum historical usage of 42 acre-feet, and is within the District's ability to serve the project with the existing meters. Project landscape usage noted above will be discussed further on in this letter.

The District has also compared the proposed Caruso Miramar Project water use estimates to the nearby, larger, Biltmore Hotel. The historical use for the Biltmore for the same period as that analyzed for the previous Miramar Hotel is shown in the table below. The Biltmore has its own onsite laundry facility, more water features, a greater number of rooms, more banquet facilities and larger landscaped area.

BILTMORE HOTEL HISTORICAL USAGE					
Total All Meters	86/89	87/88	88/89	89/90	90/91
July	3309	3418	3327	2829	2894
August	3133	2758	2898	3456	3314
September	2788	2746	2482	3211	2882
October	3154	2853	2483	2907	2221
November	2581	2318	2427	2597	2206
December	2477	2329	2250	2391	2365
January	2094	2323	2229	2222	1883
February	2188	1992	2334	2159	2153
March	2888	2954	2803	2705	2214
April	3976	3559	2816	2906	2242
May	2890	3272	2847	3708	2279
June	3148	2828	2505	3635	2535
Usage (HCF)	33804	32552	31441	34430	28945
Usage (AF)	77.6	74.7	72.2	78.0	66.4

The Biltmore water usage is greater than the historic Miramar usage, which is indicative of the large turf-based landscape area encompassing the Biltmore property. The difference in historic water use between the two hotels also illustrates that the estimated water use figures for the "new" Miramar Hotel used in the County SRIR are far higher than the larger "old" Biltmore.

In recent years, the Biltmore has expanded landscaping and amenities, yet its use has stayed constant or actually decreased, as shown in the table below for the most recent 10 year period.

Biltmore Hotel Water Use										
Total	07/08	08/07	09/06	04/05	03/04	02/03	01/02	00/01	99/00	98/99
July	3273	3168	3623	3220	3532	3920	3903	435	3737	3309
August	3486	3630	2900	3830	4110	2404	1709	10564	3574	3133
September	2778	2426	2921	3488	3121	1607	1964	3660	3210	2789
October	2612	2650	2619	2639	2647	3268	2341	3886	3252	3154
November	2779	2419	2264	2148	2289	2749	2314	2972	2594	2591
December	2188	1871	1062	2228	2716	2746	2090	2454	3158	2477
January	2427	2329	696	1665	1995	2816	2288	2827	2188	2094
February	1961	2641	873	2044	2268	2188	2202	1842	2459	2186
March	2785	2883	1335	1465	2134	2946	3720	2621	3079	2899
April	2887	2876	2110	2599	2784	2617	3660	2442	2966	3875
May	3464	3900	2448	2335	2374	1609	4682	2628	3626	2890
June	3405	2866	3433	2812	2821	4989	3624	2615	1421	3148
HCF	33683	32852	26390	30398	33102	32436	34017	38204	35284	33804
Acres Feet	77.8	75.4	60.8	69.8	76.0	74.5	78.1	87.7	80.9	77.6

The previously operated Miramar Hotel had significant areas dedicated to onsite vehicular access and parking. As such the grounds had extensive paving and limited landscaped area. The proposed Caruso Project removes interior site vehicle access, including the paved road right-of-way on Miramar Avenue, and replaces about 4.7 acres of asphalt surfaces with hardscape and landscaping.

Based on calculations provided by Santa Barbara County, this project's estimated exterior water use for landscaping and water features is about 12 acre-feet per year. At 12 acre-feet, the District recognizes that this landscape water demand estimate is equivalent to a little over 2 acre-feet per year per acre for the estimated 5.3 acres of open space. This low water demand value is indicative of a strong conservation-based project planting design and schedule.

MWD was advised early on by Caruso Affiliated that all such exterior use would be served from an onsite well, with total outdoor use less than the historic well use by the previously operating Miramar Hotel. Letters from MWD explained that the well on the property would be important in reducing water demand on the District's potable water supply. MWD also indicated that the well should not be considered a remedy for extravagant plantings and landscaping and that drought tolerant, low water use plantings should be emphasized in the overall landscape design.

MWD's review of the current Miramar Project SEIR issued by Santa Barbara County, shows that the water well is now no longer a part of the project. MWD was not informed until recently that the use of well water, which has been a part of the previously operated Miramar Hotel for decades, is no longer a viable water supply option for the project.

Regarding the use of well water at the site, the District is governed by a Groundwater Basin Management Plan under AB 3030 which was prepared in coordination with County and State

agencies. Based on that Plan, the District is the Groundwater Basin Manager for all properties within its service boundary. With this management designation and responsibility, MWD monitors water well levels District-wide twice a year to determine groundwater basin conditions. In its role as the groundwater basin manager, from time to time MWD will also consult with a registered hydro-geologist to ascertain groundwater conditions. MWD's support for use of a water well for the project is founded on its comprehensive understanding of water use within the groundwater basin. MWD was not consulted prior to the removal of this important alternate water supply. As its removal will increase project water demand the decision to remove the well as a project non-potable water source makes it imperative that the Caruso project further emphasize ways to utilize state of the art water conservation technology to reduce water demand.

MWD has discussed with Caruso Affiliated the possibility of the District re-activating a District-owned well that is currently not in use and not on the Miramar property. This water source has been designated by the District as a stand-by water supply. If the District determines that this stand-by water supply should be re-activated and that it will be of benefit to the community at large, and further if Caruso Affiliated will contribute and pay a proportionate share of the development costs, to be mutually determined by both parties, the District may increase the project base allotment from 45 acre-feet per year to 60 acre-feet per year. The base allotment increase from 45 acre-feet to 60 acre-feet is expected to cover that portion of project water used for outdoor irrigation purposes and is conditional on there being no water well in use on the property.

With this said, the District believes that a base allotment of 45 acre-feet, excluding water for landscape irrigation is a fair and appropriate value. The 45 acre-foot annual allotment would be the amount of water applied to the commercial classification block one rate (subject to the adoption of a new conservation rate structure by the District Board in August) which is currently \$4.25 per unit of water (100 cubic feet). All water used by the proposed project in excess of 45 acre-feet annually would be billed at the block 2 rate of \$5.90 per unit. The higher block 2 rate covers the estimated additional cost to the District for acquiring higher priced supplemental water that is above and beyond the District's normal supply. The 45 acre-foot base allotment will be divided into monthly allocations predicated on historic usage patterns for the property.

The District will serve project demand above that 45 acre-foot amount, to the extent, and consistent with the District ability to serve all other District customers and at the higher block water rate. The District expects it will be able to serve such additional amounts in most years, except in years of extreme shortage. In the event of a prolonged shortage in the District's normal supply the price difference from block 1 to block 2 will likely increase as the cost of water on the statewide water supplies market increases and the need for local conservation is enhanced.

The issue of providing water service during periods of peak flow has not been addressed in any of the documents reviewed by the District. The Miramar property is served by five water meters as shown in the table below. This table indicates size and, more important, the continuous and peak meter design rate of flow.

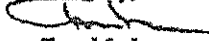
Meter Install Date	Meter Size (in)	Meter Peak Flow (GPM)	Meter Continuous Flow (GPM)
1924	2	180	130
1930	2	180	130
1955	2	180	130
1947	1 1/2	125	85
1952	1	60	25
Total Flow		715	503

The previously operated Miramar Hotel was served without a flow deficiency and due to the similar size of the Caruso project, it was expected that the existing meters would be able to adequately serve the project. With increases in water demand to the property caused by the new ancillary facilities and landscaping, timing of flow demand will need to be coordinated for the existing five meters to serve the project. This concern needs to be further examined in order to ensure that there is not a need for new meters which would constitute an expansion of use on the property. Such potential impacts can be addressed, however, by inclusion of the above-referenced conservation fixtures and techniques, and by timing of landscape watering, pool maintenance and other similar activities to avoid peak guest demand. With infrastructure improvements and implementation of measures consistent with the District's attached conditions, the District expects to be able to serve the project through its existing services. A peak use study will need to be completed to confirm the flow adequacy of the existing meters during peak demand periods.

MWD has, from the beginning of the project under Caruso Affiliated, been proactive in alerting you to possible water supply issues. As a public agency, the District's goal is to work with its customers to help a project meet the reasonable needs of the customer without compromising the District or the community. The established 45 acre-foot base allotment is considered by the District to be a reasonable and appropriate project water demand estimate for interior water use. The District will continue work with Caruso Affiliated to provide additional project water above the 45 acre-foot base allotment subject to the terms and conditions noted above.

Once again, while the District expects that it will be able to serve additional project demand if it occurs, this will be at a higher rate, reflective of the District's actual cost to obtain such additional water supply. Please note that at times of severe drought or service interruption, the District may declare a water shortage emergency. In this emergency condition, the Miramar will be treated as other District customers and be subject to reductions in available water and/or cost increases necessary to conserve the remaining water supply for the community. Please contact me at (805) 969-2271 if you have any questions or require further clarification of the information provided above.

Sincerely,

  
Tom Mosby  
General Manager

cc: David Ward, County of Santa Barbara  
Rick Caruso, Caruso Affiliated

## MONTECITO WATER DISTRICT

Project: Miramar Beach Resort and Bungalows

### DISTRICT PROJECT CONDITIONS OF APPROVAL

Project conditions listed below apply to the Miramar Beach Resort and Bungalows Project (Project/Owner) as it is currently being proposed with the information currently available to the Montecito Water District (District). Conditions of Approval beyond those listed herein may be added in the event the Project Description is modified in such a manner that the water supply and water distribution to the Project deviates from what is currently proposed.

- Owner shall provide a water supply and peak demand study for the project prepared by a District approved water engineering consultant specializing in hotel/resort operations. Consultant shall be familiar with comprehensive water demand analysis with the application of the most current water saving fixtures and conservation design technology. The water supply and peak demand study shall be based on the existing water meter services to the Hotel property. The study shall be reviewed and approved by the District in writing as a condition of the project.
- Owner shall execute a District Public Water Main Extension/Relocation Agreement with the District and fulfill all obligations and responsibilities associated with the agreement.
- The Owner shall provide the District with a Preliminary Design Report (PDR) prepared by a District approved water resources engineering consultant. The PDR shall serve such purpose as to provide the District with sufficient information to determine if proposed pipeline sizes and alignments are acceptable and satisfy District requirements. The PDR shall contain at a minimum: a project description; plan view scaled engineering drawings of the District's existing public water distribution system infrastructure and easements on the property; all proposed project underground and surface improvements in conflict with existing District infrastructure; and easement corridors, existing and proposed locations of all District water meters, lateral connections to each meter, backflow protection devices, and all secondary connections for potable and non-potable property water uses. The PDR shall be reviewed and approved by the District in writing as a condition of the project.
- Owner shall provide the District with scaled engineering drawings, prepared by a civil engineer registered in the state of California showing all proposed relocated District facilities and new District easements that are being moved to avoid conflicts with proposed project underground and surface improvements. District facilities being relocated must be within a 12-foot wide (clear dimension with no obstructions) easement corridor accessible to District equipment at all times. Engineering drawings for relocated District facilities must be submitted in accordance with District Ordinances, construction

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standards and all applicable health and safety code requirements. All public water system alterations and changes shall be reviewed and approved by the District in writing as a condition of this project.

- Owner shall make provisions for a non-potable water distribution system dedicated for outdoor irrigation using possible future reclaim or other non-potable water sources that may become available in the future.
- Owner shall utilize the latest generation of water efficient and conservation technologies to meet the project water use base allotment. Water conservation fixtures and equipment shall be utilized in Hotel operations with such equipment consisting of but not limited to; high efficiency rated commercial dishwashers and front loading laundry systems incorporating rinse water reuse technology, low flow water use interior fixtures, water-less urinals where appropriate in public restrooms. All water efficient technology shall meet the most current edition of the Uniform Plumbing Code and other applicable State and County ordinances and standards at the time of construction.
- Landscape irrigation systems and project landscaping shall be designed in accordance with the most current State Water Efficient Landscape Ordinance that is projected to be adopted by the State in the 2009 calendar year. Irrigation water requirements shall be designed in accordance with an ETo of 40-inches per year from the City of Santa Barbara CIMIS station with a ETo factor of .6, requiring a mixture of drought and low water use plantings with areas of turf. The State Water Efficient Landscape Ordinance makes reference to the use of "Smart" Irrigation controllers with soil moisture sensors and rain detected auto shutoff capabilities which shall be a condition of the irrigation system design and incorporated as part of the project.

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# EXHIBIT 7



CARUSO  
AFFILIATED

## MEMORANDUM

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**To:** Montecito Water District, Board and Staff  
**From:** Evan Krenzlen and Matt Middlebrook, Caruso Affiliated (Miramar Acquisition Co, LLC) and Jane Gray, Dudek  
**Date:** August 14, 2014  
**Subject:** MIRAMAR WATER USAGE AND WILL-SERVE FOLLOW UP

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On behalf of Caruso Affiliated, we would like to thank the District's General Manager, Tom Mosby, and the Operations Committee for reviewing the revised plans and existing willserve allocations for the Miramar Hotel project at their meeting on August 13, 2014. In response to some of the issues mentioned by the Operations Committee Members and District staff, we have prepared this memo to affirm our understanding of critical items during a time of a water shortage emergency.

- As previously discussed and confirmed by District staff at yesterday's meeting, the Miramar is an existing customer of the District and has been for over 100 years. Caruso Affiliated's Miramar Hotel project was first approved by the Santa Barbara County Board of Supervisors in 2008 and was amended in 2011. The project currently before the District is not a new project, but a revision to an existing and approved project. During the 2008 entitlement process, which included environmental review, the project was not regarded or treated as a new project, but as an update to the existing and approved Schrage Plan. Hence, while we recognize that the property has been out of service for over a decade, the Miramar Hotel – as one of the original customers of the District has been, is and will continue to remain a customer in good standing.
- As a District customer in possession of a Certificate of Water Service Availability (CWSA), which provides a base allotment of 45 AFY, Caruso Affiliated fully understands that our project is subject to and must comply with the conditions of Ordinance 92 and 93 during this time of drought. If any additional ordinances are implemented, we understand that our project, as a customer of the District will need to comply with these ordinances just as our fellow Water District customers (residential and commercial) will be required to do.

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- Caruso Affiliated is highly sensitive to the severity of the drought in Montecito, and throughout the State. We do not take this matter lightly, and as such have endeavored to reduce projected water consumption on site, in fact, we have made sweeping reductions to the Plan resulting in a substantial reduction in projected water usage. The previously approved Caruso Plan was approved with a projected water usage of 51.1 acre feet/year inclusive of landscaping. The Water district issued a will serve letter, with a base allocation of 45 acre feet/year, *exclusive of landscaping*, indicating that if the Miramar did not use its onsite well for landscaping, there would be the opportunity to work with the District to utilize abandoned district wells elsewhere in order to use up to 15 acre feet/year for landscaping *beyond the 45 AFY allocation*.
- Illustrative of Caruso Affiliated's responsiveness to the drought and the community's water resources, the revised Miramar Hotel plan has been designed to be extremely efficient and will operate within the existing allocation of 45 acre/feet year including landscaping. This is a significant reduction from both the District's previous estimates, as well as from Caruso Affiliated's previous estimate for the currently approved project.
- Caruso Affiliated understands the District's and community's sensitivity to drought tolerant landscaping, as Montecito and its residents, once known for their lush landscaping and lawns are being forced to relinquish some of these amenities in order to live within their allocations. Regarding landscaping, we think it is noteworthy that lawn irrigation is included in our water usage projections and our base allotment, and just like all other customers of the District we must live within our base allotment during water shortages.
- Per the ordinances currently in effect, we understand that the approved pools cannot be filled with water from within the District or the County. While these ordinances are in effect, we will not use District or County water and we are committed to developing alternative sources for filling these pools and any auxiliary water features. Topping off of the pools is included in our current 45 acre feet/year projection, and as such is included as part of the annual allocation. Should the limitations on use of District or County water to top off pools change, we will continue to top off the pools without utilizing County water resources.
- Prior to pulling our building permits, we will review the feasibility of utilizing a gray water or an on-site water recycling system to irrigate drought tolerant and low water use areas that can thrive under this type of irrigation.
- We will review the feasibility of building onsite storage tanks to best manage our monthly allocations. This will also help us carry over "water savings" from one

month to the next, and provide a backup should we need to bring in water from another source during specific times of need.

- We would like to affirm that all water use projections are based on hotel-industry standards and take into account the use of water efficient plumbing fixtures. The fixture count is based on the most recent plan and has been studied in detail to be as accurate as possible at this stage of design. The water efficient fixtures specified for our guestrooms (and used for our water usage projections) were used at Caruso Affiliated's most recent luxury residential project and are consistent with the fixtures or types of fixtures that will be installed in the hotel. Please note that these fixtures are significantly more water efficient than the fixtures previously used at the Miramar Hotel.
- While Caruso Affiliated is not directly privy to the specific water usage allocations of other area hotels at this time, it is our understanding that the Miramar will use approximately 40-50% less water than the Four Seasons Biltmore, primarily due to less landscaping area and a smaller overall operational program. This project is, therefore, peerless in Santa Barbara County as it relates to water resource efficiency and caliber of hotel service.
- Regarding timeline, Caruso Affiliated has committed to an opening date of summer 2017. While the exact construction date is highly dependent on the expedience of the County Planning and Development approval process, the total construction period is estimated to be 20- 24 months, and construction would most likely begin in 2015 (again, depending on the timeline of project approvals).
- Finally, the project will not use it's full base allotment until it opens in Summer 2017. Between now and that time, while there will be water used during construction, it will be significantly less than our base allotment. In the next 12 months we will use approximately 25 acre feet, ~19 acre feet in the 12 months following, and ~31.5 acre feet in the 9-12 months that would remain before opening. Once open, the project will use 45 acre/feet per year onward.