

Failures of the Miramar Beach Resort and Bungalows Project

Appeal by Citizens Planning Association

Santa Barbara County Board of Supervisors

December 9, 2008



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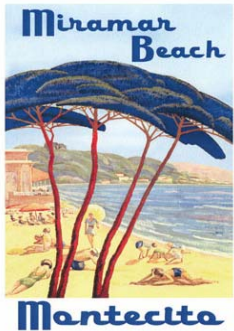
Project is “Extraordinary”

- **Deference to Applicant** (Consultants, attorneys)
- **Lack and subversion of staff input**
 - Planners quit, fired, otherwise removed
 - Other staff unwilling to speak out
- **Application of well established CEQA law**
- **Flip-flop of the Montecito Planning Commission after recommending SEIR**
- **Personal attacks on those who oppose the project**



Issues Appealed

- **Flood Impacts**
- **Water Supply Impacts**
- **Noise Impacts**
- **Wastewater Impacts**
- **Floor Area Ratio**
- **CEQA Procedure**
- **Modifications**
- **Cottage Type Hotel Historical Resources**
- **GHG Emissions**
- **Parking & Traffic**



WATER SUPPLY IMPACTS

significant and unmitigable





MPC Aug. 6th Hearing

- **4-1 vote in favor of requiring a Subsequent EIR to address Project impacts on water supply**
- **Applicant threatens to walk away from project**
- **MPC changes its mind without explanation**
- **Is this how CEQA is supposed to work?**



Water Supply Impacts Today

- **MPC flip-flop not entitled to deference**
- **Proposed findings regarding water availability not supported by substantial evidence**
- **Project will cause significant impacts to MWD water supplies**
 - **Drought and increased project usage**
 - **Addendum fails to meet minimum CEQA standards**



Water Supply Impacts

Facts

- Addendum wrongly states (as fact) MWD has enough water to serve existing customer base and hotel
 - In 06/07, MWD saw increases in demand beyond historical sources
 - Drought condition cannot be overstated, 1/3 State water reductions
 - 07/08 demand exceeded MWD supply by ~650 AF
 - 1,400 AF emergency purchase averted shortage
 - “Reliable” supply of 6,500 AF/Yr has been reduced to 5,380 AF/Yr
 - Water shortage condition specific to MWD currently exists
 - Supply will not meet projected demand of current customers
 - Even with 800 AF left over from prior emergency purchase, MWD expects shortage of 1,234 AF for 08/09
 - MWD has not identified additional sources, may have to declare a Water Shortage Emergency



MPC Testimony

Tom Mosby-MWD

- When asked about future availability of “emergency water”
 - “There are no assurances”
 - “...there are quite a few of us that are tapped in.....if the rest of the state starts looking at this water, there will be less available to Montecito.”
 - “...it’s not always going to be there. And if it is there, it may be a limited quantity.”



Water Supply Findings Unsupported

- MWD has the ability to serve all its water customers as documented by the General Manager Tom Mosby for both short and long-term needs.
- Basis for determination of “no significant impact” premised on MWD’s commitment to serve project as an existing customer and “the fact that the district has adequate resources to serve existing customers including excess water available for purchase in the market.”



Staff Memorandum

- Identifies potential future water sources for project
 - Cachuma Lake, Jameson Lake, Doulton Tunnel, groundwater basin, State Water Project
- Along with Ordinance 90 and Resolution 2047, these sources would “ensure adequate water supply to the proposed project.”
- BUT, all of these supplies were included in MWD’s 08/09 calculation showing a 1,234 AF deficit!



What does this mean?

- Factual inconsistencies and lack of clarity do not constitute substantial evidence
 - *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 439.
- Circumstances have changed since Schrager's 2000 approval
- Subsequent EIR is required



MWD Ordinances

- **CEQA Guidelines, Appendix G - Significant impact if:**
 - Sufficient water supplies not available to serve project from existing entitlements and resources, or
 - Results in the need for new or expanded entitlement
- **MWD Ordinance 89 – Emergency Action in response to drought**
 - Limits customers to historic usage (“base allotments”) in an attempt to keep water usage within MWD “reliable supply”
- **MWD Ordinance 90 – increases rates for those who exceed base allotments**
 - Additional funds intended to pay for new water to meet new demand



Miramar Historic Usage

- **During last 10 yrs of operation, averaged 30 AF/Yr**
- **Nonetheless, MWD established base allotment of 45 AF/Yr**
- **Hotel non-operation for 8 years relevant to assessment of impacts on water supply (due to changed drought circumstances)**
- **Original estimate was 117 AF/Yr, then amazingly reduced to 51 AF/Yr after Ordinance 89 limitations identified**
- **This still exceeds the base allotment of 45 AF/Yr, which will trigger the need to purchase supplemental water, which constitutes a significant impact under CEQA**



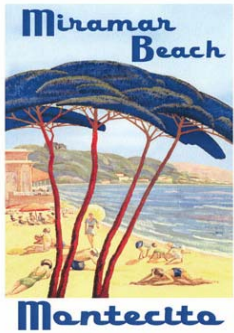
- **Schrager Plan would have used on-site well water at a time when adequate State water was available**
- **Changes in Project AND circumstances under which it is being undertaken trigger new impacts not previously considered.**



CEQA Law on Water

*Vineyard Area Citizens for Responsible Growth v.
City of Rancho Cordova (2007) 40 Cal. 4th 412*

- County must identify and evaluate future water sources for project IN THE ADDENDUM
 - Disclose future uncertainties.
 - What are impacts of acquiring potential sources?
 - Likelihood of MWD competing for other sources?
 - Expected State criteria for allocating diminished supply?
 - Number and scope of other entitled projects that may contribute to water shortage?
 - Extent of current drought conditions?
 - Extent to which Ordinance 90 can actually be expected to reduce demand.



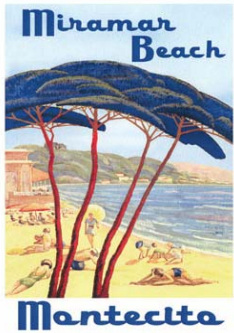
CONSTRUCTION NOISE





Construction Noise Impacts

- Change in method of pile installation
- Equipment will be closer to residents than stated (6.5 ft. v. 25 ft.)
 - Errata misstates impacts
 - 103dB at residential receptors
- Vibrational impacts understated
- Mitigation Measures inadequate
 - No description or assessment of noise barriers
 - County threshold manual misrepresented



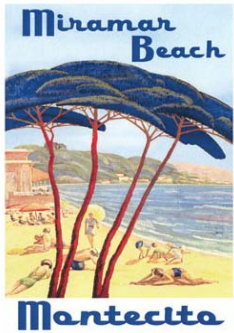
Floor Area Ratio





Floor Area Ratio Restrictions

- What's the point?
- Beach Parcel Lot Size Determination
 - Mean high tide
 - OAL: Bollay case 8/26/2008 (CTU 2008-0204-01)
 - Coastal Erosion
 - Lot extension 50 ft. into water?
- MPC interpretation precedent
- Obvious physical condition and ambulatory public easement restrict size of gross lot



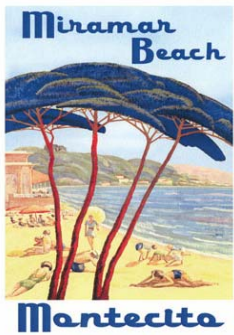
CEQA PROCESS





CEQA: MND/Addendum v SEIR

- **Addendum ONLY for “Minor Technical Changes” to MND**
- **No cited cases on point with this Project’s process**
 - CEQA does not contemplate production of two separate CEQA documents for one project, at one time
 - Sequential MND, then Addendum, then SEIR possible
- **SEIR required for all impacts once threshold is met**
 - Historic Resources – Significant Unmitigable
 - Single issue EIRs allowed, but not to avoid doing full review of all issues
 - Incorporation of MND/Addendum into SEIR has implications
- **Because Water Supply and Temporary Construction Noise impacts are significant and unmitigable, none of this matters. A SEIR is required.**



Conclusion

SEIR Required.

