



# Appeal to the Board of Supervisors or Planning Commission (County or Montecito)

**APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of :**

- All Discretionary projects heard by one of the Planning Commissions
- Board of Architectural Review decisions
- Coastal Development Permit decisions
- Land Use Permit decisions
- Planning & Development Director's decisions
- Zoning Administrator's decisions

## THIS PACKAGE CONTAINS

- ✓ APPLICATION FORM
- ✓ SUBMITTAL REQUIREMENTS

## AND, IF ✓'D, ALSO CONTAINS

<b>South County Office</b> 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	<b>Energy Division</b> 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	<b>North County Office</b> 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258	<b>Clerk of the Board</b> 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax : (805) 568-2249
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Website: [www.sbcountyplanning.org](http://www.sbcountyplanning.org)

## SUBMITTAL REQUIREMENTS

\_\_\_\_\_ 8 Copies of the attached application.

\_\_\_\_\_ 8 Copies of a written explanation of the appeal including:

- If you are not the applicant, an explanation of how you are an “**aggrieved party**” (“Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.”);
- A clear, complete and concise statement of the **reasons or grounds for appeal**:
  - Why the decision or determination is consistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; or
  - There was error or abuse of discretion;
  - The decision is not supported by the evidence presented for consideration;
  - There was a lack of a fair and impartial hearing; or
  - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

\_\_\_\_\_ 1 Check payable to Planning & Development.



Note: There are additional requirements for certain appeals including:

- a. Appeals regarding a previously approved discretionary permit** – If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).
- b. Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: 1555 South Jameson Lane

ASSESSOR PARCEL NUMBER: 009-371-003 and -004; 009-372-001; 009-343-010; 009-333-010; 009-344-008; and 009-010-001

Are there previous permits/applications? no yes numbers:

Case Numbers 14 RVP-00000-00063; 14AMD-00000-00010
14AMD-00000-00011; 14CDP-00000-00086; 14CDP-00000-00090; and 14 CDP-00000-00091

Are there previous environmental (CEQA) documents? no yes numbers: 15164 Addendum
to 08EIR-00000-00003, 00-ND-003 and Addenda dated December 9, 2008 and March 11, 2011

1. Appellant: Miramar Acquisition Co LLC Phone: 323 900 8100 FAX: 323 900 8101

Mailing Address: 101 The Grove Drive, LA, CA 90036 E-mail: ekrenzien@carusoaffiliated.com
Street City State Zip

2. Owner: Miramar Acquisition Co LLC Phone: 323 900 8100 FAX: 323 900 8101

Mailing Address: 101 The Grove Drive, LA, CA 90036 E-mail: ekrenzien@carusoaffiliated.com
Street City State Zip

3. Agent: Phone: FAX:

Mailing Address: E-mail:
Street City State Zip

4. Attorney: Richard Monk; Hollister and Brace Phone: (805) 963 6711 FAX:

Mailing Address: 1126 Santa Barbara Street, Santa Barbara, CA 93101 E-mail: rcmonk@hbsb.com
Street City State Zip

COUNTY USE ONLY

Case Number: Companion Case Number:
Supervisorial District: Submittal Date:
Applicable Zoning Ordinance: Receipt Number:
Project Planner: Accepted for Processing
Zoning Designation: Comp. Plan Designation

# COUNTY OF SANTA BARBARA APPEAL TO THE :

**BOARD OF SUPERVISORS**

**PLANNING COMMISSION:**  **COUNTY**  **MONTECITO**

RE: Project Title \_\_\_\_\_

Case No. \_\_\_\_\_ Case Numbers 14 RVP-00000-00063; 14AMD-00000-00010; 14AMD-00000-00011; 14CDP-00000-00086; 14CDP-00000-00090; and 14 CDP-00000-00091

Date of Action January 21, 2015

I hereby appeal the  approval  approval w/conditions  denial of the:

Board of Architectural Review – Which Board? \_\_\_\_\_

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? Montecito

Planning & Development Director decision

Zoning Administrator decision

### Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

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Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

**(see attached letter)**

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**Specific conditions imposed which I wish to appeal are (if applicable):**

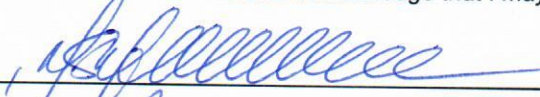




- a. Language contained in Condition 66 (re: Beach Club membership phasing)
- b. Language contained in Condition 95 (re: Excursion Bus Loading)
- c. Elements of the project description (and Condition 84) referring to event capacity

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Matt Middlebrook		1/27/15
Print name and sign - Firm		Date
Matt Middlebrook		1/27/15
Print name and sign - Preparer of this form		Date
Matt Middlebrook		1/27/15
Print name and sign - Applicant		Date
Matt Middlebrook		1/27/15
Print name and sign - Agent		Date
Matt Middlebrook		1/27/15
Print name and sign - Landowner		Date

Miramar Acquisition Co, LLC ("**Appellant**") appeals from the January 21, 2015 decision of the Montecito Planning Commission ("**MPC**") to conditionally approve the Miramar Beach Resort revised project (Case Numbers 14 RVP-00000-00063; 14AMD-00000-00010; 14AMD-00000-00011; 14CDP-00000-00086; 14CDP-00000-00090; and 14 CDP-00000-00091). More specifically and for the reasons set forth below, Appellant objects to the following conditions and project description elements imposed by the MPC:

**1. Condition of Approval 66: Beach Club Membership Phasing**

The MPC's decision revised Condition 66 to reduce the maximum number of beach club memberships available at initial occupancy from 200 to 100, a decision that not only creates significant obstacles for the successful operation and financing of the project but is also unsupported by the evidence presented to the MPC for consideration. Because the MPC's revisions to Condition 66 are unsupported by both the Appellant's and the County's own analysis, the revised condition is neither reasonable nor appropriate as required under the Coastal Zoning Ordinance ("**CZO**"). (See, CZO 35-174.8.2).

Condition 66 condition was amended by the MPC to read in full as follows:

"The Beach Club Memberships shall be 100 individuals or families upon occupancy (i.e. a couple would have one membership as would a couple and their children living at home). Plan Requirements and Timing: A review of the Beach Club operations shall be made by the Montecito Planning Commission 36-42 months after occupancy or 6 months of stabilization (at 76% occupancy) in order to determine the adequacy of the site (i.e. with respect to circulation, parking and intensity of use) to host additional Beach Club memberships. If it is determined by the Montecito Planning Commission that the Beach Club is operating adequately and the site is capable of operating with additional memberships, the number of members may be increased but shall not exceed a maximum of 300 individuals or families. Monitoring: P&D shall review the Beach Club operations in conjunction with the annual reports required for parking and events and report to the Montecito Planning Commission annually until the MPC determines that annual reporting is no longer necessary."

**A. Reduction of Initial Beach Club Memberships**

First, the Appellant respectfully requests that condition be restored to reflect the limitation proposed by Appellant, which has been previously approved by the Board of Supervisors: namely, that Beach Club memberships be initially limited to 200, subject to increase to a maximum of 300 total memberships following review of hotel operations after opening.

The Appellant's parking and traffic analysis, which was prepared by Associated Traffic Engineers ("**ATE**") and independently reviewed by qualified county staff, demonstrated that even with 300 beach club members and 100% hotel occupancy the Miramar hotel will have a surplus of parking. Using generally accepted, industry-standard parking demand formulas from Urban Land Institute and Institute of Transportation Engineers as well as local parking usage data (including data from the highly analogous and neighboring Coral Casino/Biltmore property), ATE concluded that with 200 memberships at initial

occupancy the hotel will have a surplus of 35 parking stalls at 100% hotel occupancy and a surplus of 72 parking stalls at projected average occupancy of 76%.

*Moreover, the County of Santa Barbara Public Works department prepared an independent review of ATE's shared parking analysis, and fully concurred with the report's methodologies and conclusions.* The Public Works Department verified that proposed on-site parking is sufficient to serve beach club membership of 300, meaning that an initial limit to 200 beach club members provides a more-than-ample "cushion" to ensure the hotel's parking supply is sufficient to meet demand. Furthermore, the same methodology to study parking demand that was employed by ATE, endorsed by the County Public Works Department, and presented by the Appellant to the MPC was accepted by the Board of Supervisors when the Board approved an initial limit of 200 beach club members under the larger and generally more intensive 2011 plan for the hotel. Given parking analysis that concludes the hotel will be adequately parked with 300 beach club members and 100% hotel occupancy, the evidence does not support the MPC's decision to arbitrarily reduce beach club memberships at initial occupancy to 100.

#### **B. Extension of Time Prior to Operational Review**

Second, the Appellant appeals the MPC's decision to extend the time period before which parking operations may be reviewed under Condition 66. The Appellant respectfully requests that Condition 66 be revised to provide for review by MPC of parking operations at "24 to 36 months after occupancy" instead of "36-42 months after occupancy or 6 months of stabilization (at 76% occupancy)." Condition 66, as proposed by the Appellant and approved by the Board of Supervisors in 2011, provided for review of parking operations 12 to 18 months after occupancy. The Appellant requests a "middle ground" between the shorter period approved as part of the 2011 plan, and the much longer period imposed by the MPC at their January 21, 2015 hearing.

Extending the period before review of parking operations may commence does not serve the public interest and appears to result from a misunderstanding of statements made by the Appellant's spokesperson. First, the public interest is better served by providing for a review of parking and circulation impacts sooner rather than later, and because Condition 66 does not compel the MPC to increase the maximum number of beach club memberships at the first operational review, the MPC may defer the decision if circumstances warrant at the time. Second, at the December 15, 2014 hearing on the project, Mr. Middlebrook referenced the Appellant's conservative estimate that stabilization of hotel operations could take three years. In a robust, supply-constrained tourism market such as Santa Barbara, hotels have stabilized within 24 months or less from opening. Accordingly, the period before which hotel operations may be reviewed should commence after 24 months, and the Appellant's conservative estimate that hotel stabilization could take three years should set the outside date by which operational review may commence. Finally, because the overall tourism market could result in the Miramar hotel stabilizing at an average occupancy other than the Appellant's current projection of 76%, the Appellant respectfully requests that the reference to "6 months of stabilization (at 76% occupancy)" be stricken from Condition 66.



### **C. Conclusion**

For the foregoing reasons, the MPC's revisions to Condition 66, reducing to 100 the number of initial Beach Club memberships and extending the mandatory review period to 36-42 months after opening are arbitrary and unsupported by the evidence presented to the MPC. Furthermore, the MPC's arbitrary and unsupported decision to restrict the initial number of beach club memberships that the Miramar hotel may offer is inconsistent with the economically sound enhancement of public recreational opportunities along the coast, one of the fundamental purposes of the Coastal Land Use Plan and the Coastal Zoning Ordinance that implements it.

#### **2. Condition of Approval 95: Excursion Buses**

The Appellant also appeals MPC's decision to impose a condition of approval at the January 21, 2015 MPC hearing relating to excursion buses. Specifically, the MPC imposed a new Condition 95, providing as follows:

"Excursion Bus, Pick-up, drop-off and temporary parking shall only occur in the main valet entrance to the hotel and shall not idle off-site."

Although the Appellant does not object to the requirement that excursion buses park and idle only on hotel property, the MPC's Condition 95 is overbroad and arbitrarily restricts idling excursion buses to the "main valet entrance to the hotel." The Appellant thus respectfully requests that Condition 95 be revised to read in full as follows:

"Excursion Bus, Pick-up, drop-off and temporary parking shall only occur on the hotel property, and shall not idle-off site."

At the January 21, 2015 MPC hearing, certain Commissioners expressed concerns that hotel excursion buses could potentially create traffic or parking impacts by idling on public streets or in public parking spaces. Such concerns are adequately resolved by requiring hotel excursion buses to park on hotel property. There is no basis for the further requirement that the buses idle in the "main valet entrance to the hotel" when other areas—such as the hotel's loading dock or the entrance area to the hotel ballroom—would serve equally well. This type of "micro-managing" of hotel operations is neither necessary nor appropriate where the MPC's concerns about parking and circulation on public rights-of-way can be adequately addressed by a more general condition of approval limiting excursion bus idling to the hotel property. The MPC's requirement in new Condition 95 that hotel excursion buses idle in the "main valet entrance to the hotel" is not supported by any evidence and therefore should be overturned.

#### **3. Event Attendee Limitation in the Project Description and Condition of Approval 84**

Finally, the Appellant appeals the MPC's decision to limit the maximum event patronage to 350 from the 400 person limit proposed by the Appellant and supported by both the Appellant's and the County's

own parking and circulation analysis. The Appellant respectfully requests that the 400 person event-capacity limit be restored.

As discussed in connection the Appellant's appeal of Condition 66 above, independent traffic analyses conducted by ATE, peer-reviewed by the County's Public Works Department, and presented to MPC concluded that the hotel would have ample parking during a 400 person event *even at 100% hotel occupancy and with 300 beach club members*. Notwithstanding such analysis, the initial limit of beach club memberships to 200, and the successive drop in the hotel's event attendee limit from 600 persons in 2008, to 500 persons in 2011, to the 400 persons proposed by the Appellant in 2014, at the January 21, 2015 hearing the MPC arbitrarily cut the event attendance cap even further to 350. Indicative of the arbitrariness of MPC's new condition, reductions to 300 and to 350 event attendees were variously proposed and discussed by the Commissioners with no evidence to support any reduction let alone the specific reduction ultimately selected.

Comparison of the Miramar hotel project to the neighboring and directly analogous Four Seasons Biltmore property makes plain that the MPC's conditioning of the project to limit event attendance to 350 is neither reasonable nor appropriate. The Biltmore (including the Coral Casino) has a parking ratio of 2.2 stalls per guestroom, which under the ITE industry standards is in the highest percentile of parking ratios for a luxury resort property. The revised Miramar project proposes to provide 2.6 stalls per guestroom, an increase of nearly 20% over the Biltmore's "per-key" parking ratio. Moreover, the Biltmore is larger than the proposed Miramar project in nearly every respect: The Biltmore has 37 more guestrooms than proposed for the Miramar, event attendee limits of 500 to 600, and a maximum of 600 beach club memberships. Both the Appellant's expert parking consultant, Scott Schell of ATE, and members of the public testified at the January 21, 2015 MPC hearing that the Biltmore and Coral Casino have sufficient parking and do not create significant parking impacts in the immediately surrounding areas. The MPC's imposition on the Miramar hotel of far more stringent restrictions on event size (as well as beach club memberships) than apply to the neighboring and directly analogous Biltmore/Coral Casino property not only implicates basic notions of fundamental fairness, but also threatens to put the Miramar hotel at a competitive disadvantage relative to the nearby Biltmore.

As shown by both the Appellant's parking and traffic analysis and the directly analogous example of the Biltmore, the MPC was not presented with evidence sufficient to justify the reduction of event attendee limit from 400 to 350 patrons. Under the parking demand methodology accepted by County staff and experts at the Public Works Department, even at peak capacity of 100% hotel occupancy and 300 beach club members the hotel would have a parking surplus during a 400 person event. For the foregoing reasons, the arbitrary reduction in maximum event capacity from 400 to 350 persons is neither reasonable nor appropriate and should be overturned. Furthermore, because the MPC's imposition of the condition is unsupported by the evidence presented and will serve to limit the number of persons who are able to partake in the coastal recreational opportunities offered by the Miramar hotel, the MPC's decision is inconsistent with the policies of the Coastal Land Use Plan and the Coastal Zoning Ordinance.