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April 14, 2015

Via Hand Delivery

Honorable Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, Suite 401
Santa Barbara, CA 93101

Re: The Miramar Beach Resort and Bungalows Revised Project

Dear Honorable Supervisors:

This office represents Caruso Affiliated in connection with the Miramar Beach Resort and Bungalows Revised Project (the "2014 Revised Project"), certain elements of which are on appeal to the Board of Supervisors by the Applicant.

As you are undoubtedly aware, the 2014 Revised Project includes certain modifications to County height limits, setbacks and parking requirements. The modifications are the same as those proposed in the 2011 project which was approved by you and a majority of your then fellow Supervisors on March 15, 2011 (the "2011 Approved Project").¹

One of the requested modifications is to the required setback from the northern property line adjacent to South Jameson Lane. The requested setback modification is described as follows in the Montecito Planning Commission's ("MPC") January 28, 2015 Action Letter:

¹ The 2011 Project entitlement, including its Coastal Development Permit, Development Plan and Conditional Use Permit, is still valid and enforceable. (P&D 11/21/14 Staff Report, p. 36; P&D 7/9/12 Letter to Caruso Affiliated.)

Table 2-4

Setback Modifications Required for the Proposed Revised Project

<u>Location of Encroachment</u>	<u>Encroachment</u>	<u>Encroachment into Setback Area</u>
Northern property line adjacent to S. Jameson	Theatre Building, small portion of Jameson Lanai Guestrooms, Parking	<p><u>Buildings:</u> 10-15' into the setback area (same as 2011 approved project)</p> <p><u>Parking:</u> Public spaces are located entirely within the front yard setback, up to 15' into the right-of-way; 4 private spaces located entirely within the front yard setback, other private spaces are located up to 14' into the front yard setback</p>

(MPC 1/28/15 Action Letter, p. B-15-16.)

Caruso Affiliated was recently made aware of a letter by a group called the Neighborhood Defense League which was submitted to the public record on April 2nd, 2015, and not seen by Caruso Affiliated until the staff report was posted on Thursday, April 9th. The letter from this group, which has not previously commented on the Miramar Hotel Project in any public forum, links the setback modification to a potential Caltrans/101 project in the same improper manner as the two topics were linked by Commissioners Overall and Brown at the January 21 MPC hearing. Their letter states:

“... SBCAG Deputy Director Stephen VanDengburgh stated-in no uncertain terms-that allowing the Hotel to be sited in the setback from South Jameson Lane, will likely preclude options for the eventual re-engineering and improvement of the San Ysidro intersection.

In other words, once the large, imposing Project is built, it can't be moved, thus limiting Caltrans' and County Public Works' ability to design the safest and most effective intersection and freeway on-ramp, consistent with the 101 widening design.”

Our client is concerned that this group has submitted a letter at the final hour neither consulting the Applicant regarding this matter, nor commenting favorably or negatively on the Project at any time prior to this letter. Furthermore, it is our client's understanding that there is no 'project' for potential improvements to the San Ysidro interchange, as any one of a number potential options would need to be studied, engineered, approved and funded. Potential improvements to the 101/San Ysidro interchange are wholly speculative at this point. Moreover, for the reasons set forth below, it would be legally improper for the County to deny in 2015 the

same setback modification that was approved in 2011 in order to preserve the “option” to acquire our client’s property for a lesser price some day in the future.

A similar discussion was raised at the January 21, 2015 MPC hearing. The 2014 Revised Project was approved by a vote of 3 to 2, with Commissioners Jack Overall and J’Amy Brown voting no. The MPC majority’s approval included the modification of the setback from the northern property line discussed above.

Commissioner Overall voted against the MPC’s approval of this setback modification because he wants to ensure that the County can subsequently acquire the land situated within the setback area at a lower price to facilitate the interchange improvements envisioned by a potential, unfunded and wholly speculative Caltrans 101/San Ysidro interchange project.

Commissioner Overall made such desire for the County to be able to acquire the subject property at a lower price abundantly clear in a January 13, 2015 meeting at his home with Matt Middlebrook, Caruso Affiliated’s Executive Vice President. During that meeting, Commissioner Overall said he would urge his fellow Commissioners to require a focused EIR on Project traffic and circulation if Caruso Affiliated did not agree to move the Project’s buildings out of the subject setback in order to accommodate the traffic circle at the south end of the San Ysidro bridge envisioned by a potential 101/San Ysidro interchange project.

In keeping with the wide discretion given local agencies in the exercise of the police power, courts typically will not examine the motives of members of a board of supervisors or planning commission in making land use decisions. However, if the facts show that the police power has been exercised in such a way as to oppress or discriminate against an individual property owner, the courts will give weight to evidence tending to show that the declared purpose of the land use decision differed from its actual purpose. One situation in which this question arises is when a zoning ordinance, land use regulation or land use decision is enacted or made for the purpose of depressing the market value of private property so that it can be subsequently acquired by the local agency in condemnation proceedings. This has been held to constitute an invalid exercise of the police power because it does not serve a legitimate public purpose. *Kissinger v. Los Angeles* (1958) 161 Cal.App.2d 454, 460-463.

If a zoning ordinance, land use regulation or land use decision does not constitute a valid exercise of police power because it seeks to depress the market value for purposes of facilitating a potential condemnation, it may give rise to a cause of action in inverse condemnation against the local governmental agency. *Peacock v. Sacramento* (1969) 271 Cal.App.2d 845, 861-862 (court held that an extended freeze on any type of development while the government decided whether it wished to acquire the property constituted a taking); *Sneed v. Riverside* (1963) 218 Cal.App.2d 205, 212 (overturned a height limitation ordinance in the approach zone to an airport on the ground that a flight easement should have been purchased); *Mid-Way Cabinet Fixture Mfg. Co. v. County of San Joaquin* (1967) 257 Cal.App.2d 181, 185-186 (court refused to allow forced dedication of land for a county street construction project as a condition to granting a use permit where the street project was not required by the proposed private development); *Kissinger*

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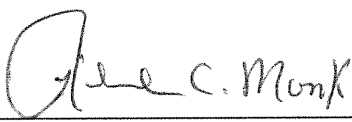
v. Los Angeles, supra, (down-zoning designed to reduce the value of the property before city acquisition).

Based upon the foregoing case authorities, it is our legal opinion that a denial of the requested northern property line setback modification for the purpose of enabling the County to acquire the subject land at a lesser price to facilitate a potential Caltrans 101/San Ysidro interchange project would constitute illegal pre-condemnation activity by the County and give rise to a potential cause of action in inverse condemnation against the County.

Should you have any questions or wish to discuss this matter, I would be happy to do so with you and County Counsel.

Respectfully submitted,

HOLLISTER & BRACE

By: 
Richard C. Monk

cc: Rick Caruso
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