

MIRAMAR BEACH RESORT AND BUNGALOWS PROJECT
MONTECITO PLANNING COMMISSION PUBLIC HEARING

THURSDAY, AUGUST 28, 2008

123 EAST ANAPAMU STREET

SANTA BARBARA COUNTY ENGINEERING BUILDING

SANTA BARBARA, CALIFORNIA

OUR FILE NO: 080828GAS&SDA
REPORTED BY: GINA A. STACY, C.S.R. 7927
SHARON D. ALLEN, C.S.R. NO. 10752

1 MONTECITO PLANNING COMMISSION:

2 ROBERT BIERIG, CHAIRMAN

3 CLAIRE GOTTSDANKER

4 JACK OVERALL

5 SUE BURROWS

6 MICHAEL PHILLIPS

7

8 COUNTY COUNSEL:

9 MIKE GHIZZONI

10 MARY ANN SLUTZKY

11

12 COUNTY STAFF:

13 JESSICA OPLAND

14 DIANNE BLACK

15 ERRIN BRIGGS

16 DAVE WARD

17 ANNE ALMY

18 NICOLE MASHORE

19

20 PUBLIC SPEAKERS:

21 RICH CARUSO

22 AMY NEFOUSE

23 RICHARD MONK

24 MATT MIDDLEBROOK

25 TOM MOSBY

1 PUBLIC SPEAKERS (CONTINUED):
2 KENNETH JAMES WILSON
3 MICHAEL EMMONS
4 HARRY HOVEY
5 SONJA JEKICH McFARLAND
6 CANDICE BUERGEY
7 GEORGE W. EGAN
8 BOB HAZARD
9 TED BUERGEY
10 RICHARD EILER
11 KAREN DROWN
12 BILL JONES
13 RON PULICE
14 RUTH GREEN
15 DORA BRADLEY
16 BROWNIE BORDEN
17 RICHARD GILMAN
18 NAOMI KOVACS
19 DAVID LACK
20 JEAN HARFENIST
21 ROBERT MELTZER
22 BRETT BEAUVOIX
23 JOSEPHINE DUFF
24 DAVID STRAUSS
25 GLORIA MONTANO

1 PUBLIC SPEAKERS (CONTINUED):

2 VERNE LANGDON

3 MARC CHYTILO

4 NINA TERZIAN

5 JOE SCIFERS

6 ADRIENNE SCHUELE

7 SYLVIA EASTON

8 NORM NEBROSKI

9 ROSS CAMPBELL

10 TED TEDESCO

11 INGRID ANDERSON SMITH

12 CALDECOT CHUBB

13 STACY PULICE

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SANTA BARBARA, CALIFORNIA

THURSDAY, AUGUST 28, 2008, 9:05 A.M.

MR. BIERIG: I would like to call to order the August 28th special hearing for the Montecito Planning Commission.

Will you all rise for the Pledge of Allegiance.

(Pledge of Allegiance.)

MS. OPLAND: Montecito Planning Commission hearings will be on Saturday, August 30, and Sunday, August 31, at 5:00 o'clock P.M. on CSB TV channel 20.

And for the role call, Commissioner Gottsdanker.

MS. GOTTSDANKER: Here.

MS. OPLAND: Commissioner Overall.

MR. OVERALL: Here.

MS. OPLAND: Commissioner Burrows.

MS. BURROWS: Here.

MS. OPLAND: Commissioner Phillips.

MR. PHILLIPS: Here.

MS. OPLAND: And Commissioner Bierig.

MR. BIERIG: Here.

MS. OPLAND: Thank you.

MR. BIERIG: Thank you.

So that will take us to our standard agenda, and our one and only item today is yet again more fun times

1 on the Miramar Hotel.

2 So, Ms. Opland, would you please read the item
3 into the record.

4 MS. OPLAND: Thank you, Mr. Chair.

5 The following is a hearing on the request of
6 Caruso, BFC, Miramar, LLC, owner to consider the approval
7 of the following: A, 07RVP9, application filed on
8 June 7, 2007;

9 B, modifications to the height, parking, and
10 setback ordinance requirements of Article II, Coastal
11 Zoning Ordinance, including development standards in the
12 Montecito Community Plan Overlay District;

13 C, 07CUP45, application filed on June 7, 2007;

14 D, 07CUP46, application filed on June 7, 2007;

15 E, 07CUP47, application filed on June 7, 2007;

16 F, 08CUP5, application filed on December 13,
17 2007;

18 G, 08GOV17, application filed on June 25, 2008;

19 H, 08CUP54, application filed on May 1, 2008;

20 And to certify the subsequent environmental
21 impact report 08EIR3 including an addendum to negative
22 declaration 00ND003, pursuant to the state guidelines for
23 implementation of the California Environmental Quality
24 Act.

25 MR. BIERIG: Thank you.

1 Director Black, are you going to take the lead
2 here?

3 MS. BLACK: Mr. Chair, I just wanted to make a
4 couple of comments before Errin gives his staff
5 presentation.

6 At the conclusion of your hearing on August 6, I
7 asked if you wanted us to put anything in writing for
8 your commission, and I was told no. So some of you may
9 wonder why you got this much material when we told you we
10 weren't going to provide anything. And I thought I
11 should briefly explain.

12 We did provide a staff report, very brief memo,
13 to your commission addressing some changes in the status
14 of a couple of issues which Errin will go over. We also
15 tried to summarize the design comments that you made.
16 And we also, at the request of the Chair, provided you
17 with very draft findings that would support denial if you
18 chose to go in that direction. So I just wanted to
19 clarify that.

20 You've also received a lot of other material.
21 Much of it is one-page letters from the public that were
22 received on time or multiple pages that were received on
23 time. But I have marked a number of items that are more
24 than a page and were not received on time that we'll need
25 to consider.

1 Most of it was sent to you in advance. Yesterday
2 we only sent you a couple of items, but you received this
3 this morning (indicating). And so I'm prepared to go
4 through this at whatever appropriate time you would like,
5 and we can decide what you would accept and what you
6 won't accept into the record.

7 MR. BIERIG: Well, I know we spoke on this
8 yesterday, and I suggested that, as a cutoff date, we
9 might use the evening, the day before yesterday, on
10 counting things. I didn't get all the things that came
11 through yesterday, but I don't know how my fellow
12 commissioners did.

13 I did read the Coast Law Group letter, but I
14 think that was about the only one of things that went
15 through yesterday.

16 MS. BLACK: Mr. Chair, the only other
17 correspondence you may want to consider -- you'll
18 certainly be hearing about it today -- is the letter that
19 we received from the attorney at the State Lands
20 Commission. But I think you'll hear about most of the --

21 MR. BIERIG: Would you suggest we save this until
22 later on today?

23 MS. BLACK: Sure. Like I said we can go through.

24 MR. BIERIG: Now, I know we have some
25 presentation material on two different subjects. One is

1 the water. I understand there is enhancements to that
2 based on the correspondence that we've received. And
3 also the letter -- the correspondence from the county
4 surveyor and the State Lands.

5 And I take it that, from a procedural standpoint,
6 just in terms of what we're going to receive today, that
7 is the substance of it; is that correct? Is there
8 something else?

9 MS. BLACK: Mr. Chair, I think that is correct in
10 terms of information provided from staff.

11 MR. BIERIG: Good.

12 MS. BLACK: In addition to the draft findings
13 for --

14 MR. BIERIG: Now, I see there is some PowerPoint
15 material here. Are you going to -- Mr. Briggs --

16 MS. BLACK: Mr. Briggs is going to go through
17 that.

18 One other comment I wanted to make for
19 clarification for people who are attending this hearing
20 today. At your last hearing you indicated that you were
21 closing the hearing for public comment.

22 Whenever we provide additional information to the
23 Commission -- I think the Commission understands this.
24 But whenever we provide additional information, we also
25 need to provide the public with an opportunity to speak

1 to that. So I think you will at least have to reopen the
2 public hearing to address issues that are presented today
3 and provide an opportunity.

4 MR. BIERIG: Let me ask you a question on that.
5 Because we have had, from just an operational standpoint
6 up here, the length of time that is required for public
7 comment often puts us so late in the afternoon that it's
8 difficult for us to get some of the -- our own
9 questions -- and I won't say deliberations -- but at
10 least answering questions.

11 And I'm wondering how late in the day we can
12 postpone the public comments so that we can try to get as
13 much accomplished here before we do that as possible.
14 And maybe that is a question of our legal staff.

15 MS. BLACK: I'll try first.

16 MR. BIERIG: I'm not suggesting we won't take
17 public comment and not consider it, but I would like to
18 get at least some of what we need to do out of the way
19 first.

20 MS. BLACK: Mr. Chair, I think our
21 recommendation -- well, first of all, you have a lot of
22 discretion in determining when and how long public
23 comment is to be taken.

24 We would strongly recommend that your commission
25 not deliberate and reach a conclusion before you've taken

1 public comment, but aside from that, I think you have a
2 lot of freedom as to when and how long.

3 MR. BIERIG: We've done some things before where
4 we sort of discuss the parameters of how the various
5 commissioners felt on items. Is it inappropriate to do
6 that before the public comment?

7 And I'm not suggesting that we're voting, but
8 just that we try to kind of bracket some of these issues
9 between ourselves.

10 MS. SLUTZKY: Mr. Chair, members of the
11 Commission, Mike and I just discussed that. We both
12 agreed independently that it would be better if you were
13 informed by the public comment before you had that
14 discussion.

15 MR. BIERIG: Even though I might limit people to
16 like 15 seconds each.

17 MS. SLUTZKY: I think that they can get a lot in
18 in 15 seconds.

19 MR. BIERIG: Well, I don't want to have form over
20 substance here. We'll play it by ear and see -- if we
21 get to the point where it looks like we're starting to
22 deliberate, we'll make sure that we take the public
23 comment at that point.

24 So unless there is further information,
25 Mr. Briggs, why don't you --

1 MS. GOTTSDANKER: Mr. Chair, I just would like to
2 jump in here for a minute.

3 While we're actually discussing somewhat about
4 time constraints here, and I do have a time constraint
5 today given this was a special hearing and I had a
6 longstanding engagement.

7 So I will be leaving the hearing at 4:30. So if
8 it's expected that the vote is to be taken after that,
9 then I will not be voting on the project. I just wanted
10 to make that very clear to the commissioners and the
11 staff. At 4:30 I have to be out of here.

12 MR. BIERIG: I'm determined that we're going to
13 vote before that. So we'll see how we do. The gavel
14 will come down.

15 MS. GOTTSDANKER: Well, I just, you know.

16 MR. BIERIG: Okay. Please proceed. Let's get
17 right into it.

18 Mr. Briggs.

19 MR. BRIGGS: Mr. Chair, members of the
20 Commission, Errin Briggs. We do have a short
21 presentation for you today.

22 During your August 6 hearing, Commission took
23 public comment, discussed the appropriateness of the
24 project details, and gave the Applicant specific
25 direction on necessary redesign of the project.

1 At the close of the hearing you took three
2 actions:

3 You remanded the project staff to prepare an SEIR
4 on the topic of water supply.

5 You requested that staff return with information
6 on traffic, parking, and employee counts, but not in the
7 context of an environmental analysis.

8 And you continued the hearing to today's date.

9 While your commission specifically declined to
10 take a conceptual action on August 6 to deny the project,
11 as requested by the Applicant, Chairman Bierig
12 subsequently requested that staff summarize the design
13 direction given by the Commission and prepare findings
14 for denial.

15 Those findings are included in as Attachment A of
16 the staff report. The denial findings include references
17 to project design components discussed by the Commission
18 and also include references to water resources.

19 During the previous hearing the Commission
20 provided the Applicant with clear direction on a
21 necessary project redesign. Including the following
22 comments:

23 Lot 11 shall be excluded from the FAR
24 calculations.

25 No two-story buildings shall be located within

1 the South Jameson front yard setback.

2 Buildings adjacent to All Saints by the Sea shall
3 be granted a modification to maintain a minimum setback
4 of 20 feet from the property line.

5 The main building and ballroom do not merit
6 height modifications. Height shall be measured from the
7 Jameson Lane curb.

8 A sidewalk will be provided along the South
9 Jameson Lane frontage consistent with the County's
10 encroachment policy.

11 There shall be no lighting of the tennis courts.

12 And rainwater should be collected from roof
13 runoff and reused for landscaping purposes.

14 On the topic of water. In addition to the design
15 direction given to the Applicant, the Commission
16 requested staff prepare an SEIR on the topic of water
17 resources. While staff has not prepared the requested
18 SEIR for this hearing, some new information has been
19 provided since August 6. Including:

20 The Montecito Water District passed Ordinance 90
21 and adopted Resolution 2047 on August 20.

22 The Ordinance and Resolution created a
23 conservation rate structure intended to address the
24 current supply and demand imbalance as discussed by Tom
25 Mosby at the previous hearing and detailed in previous

1 Montecito Water District letters.

2 Also the Applicant has provided a revised water
3 consumption analysis, dated August 20, which is also
4 included in the staff report as Attachment B.

5 Concerns of the Commission related to water
6 supply and the new information from the water district
7 are all included in the findings.

8 And, finally, the county surveyor wanted to
9 respond to the Commission's questions related to Parcel 6
10 with more clarity and submitted a memo dated August 20
11 which addressed -- which is included as Attachment D of
12 the staff report.

13 The letter states that the county surveyor
14 contacted the State Lands Commission because he was not
15 certain the 1958 State Lands Commission survey determined
16 inland boundary of the State's land below the high tide
17 line specific to the Applicant's property.

18 Subsequently the State Lands Commission responded
19 with an August 27 letter stating that "The map does not
20 establish the boundary between the uplands in private
21 ownership and the tidelands in public ownership."

22 Therefore, the county surveyor considers
23 adequate, for planning purposes, the methodology used by
24 the Applicant to determine the size of Parcel 6.

25 Counsel and the county surveyor Mr. Emmons are

1 here and prepared to answer additional questions on this
2 topic.

3 And that concludes our presentation and staff
4 awaits your direction and is available to answer
5 additional questions.

6 MR. BIERIG: Excellent. Thank you.

7 Commissioners, do you have any questions of staff
8 before we go to the Applicant?

9 I'm not seeing anyone.

10 MS. GOTTSDANKER: The only question I have,
11 Chairman Bierig, is do we still expect to hear from the
12 county surveyor or -- you know, will we have an
13 opportunity to ask questions about the information that
14 they -- we received yesterday?

15 MS. BLACK: Yes.

16 Mr. Chair and Commissioner Gottsdanker, we can do
17 this now if you'd like, or at any point that you would
18 like. But Mike Emmons the county surveyor is here and is
19 prepared to answer your questions and explain the
20 situation today.

21 MS. GOTTSDANKER: Well, when it's appropriate. I
22 just wanted to -- I mean, I did still have a few
23 questions about his interpretation of what he said.

24 MR. BIERIG: I think we probably do have some
25 questions, but I would suggest we go to the Applicant

1 first because --

2 MS. GOTTSANKER: Absolutely. I'm not saying
3 now. I just wanted to make sure that we weren't being
4 given his submittals without an opportunity to further
5 question him.

6 MR. BIERIG: Of course. I would love to see the
7 Applicant present. Because I know there has been some
8 discussion amongst us all, or to us all, regarding
9 potential changes of the Applicant.

10 And I would like to get into those and hear what
11 those are and where they are at and their interest in
12 moving the project forward, either with the denial or
13 with conditions for approval. And I suggest we do that
14 first and then get back to the specifics afterwards.

15 So with that Commissioner -- excuse me --
16 Director Black.

17 MS. BLACK: Mr. Chair, just wanted to make it
18 clear that there are a number of staff people here. So
19 if there are questions on other issues, they are
20 available as well.

21 MR. BIERIG: Thank you.

22 Mr. Caruso.

23 MR. CARUSO: Good morning, Mr. Chair, members of
24 the Commission.

25 First of all, I again want to thank you for your

1 time this morning. I know you have invested, even
2 outside of these hearings, an enormous amount of time
3 reading through materials, and I also want to thank you
4 for the opportunity to meet with me so I had the
5 opportunity to express to you personally my commitment to
6 continue to move this project forward and build a
7 property that I believe will be a great community asset.

8 As I have said from the beginning, our goal
9 through this whole process has been able to -- is to
10 bring back the great Miramar. There are great memories
11 up here from the Miramar.

12 We have not tried to do anything, frankly, that
13 would be inconsistent with those memories. We have not
14 tried to do anything that is other than building a hotel
15 that is geared to families and enjoying this great
16 Montecito lifestyle. And, if anything has been
17 interpreted otherwise, I want to clear the record on
18 that.

19 We have also had a principle in the office with
20 all of our projects, and particularly this one, that we
21 want to listen carefully and learn. And we have done
22 that over 18 months. You can argue -- and I'm sure the
23 people will -- that we haven't listened well enough and
24 we haven't learned enough, but we continue to do that.

25 So based on the discussion from the last

1 commission hearing, we heard you, loud and clear. We
2 heard the concerns that you raised. We have great
3 respect for this board. We understand your role in the
4 community. We have listened to our neighbors. We have
5 listened to homeowners' associations around us. We have
6 listened to the community.

7 We have had an attitude that we want to solve
8 problems that are raised. So I am here in that vein.
9 I'm going to try to list for you a number of issues that
10 you raised and solutions that we are proposing. And
11 some, I think, are fairly dramatic, but go to what you
12 were hoping for.

13 And with that, my goal is that we're able to get
14 an approval from this board so that we can move the
15 project forward and start celebrating at the Miramar in
16 the very near future.

17 As you know, a number of design issues were
18 raised at the last meeting, as well as concerns about
19 various aspects of the project. There were some
20 technical issues that were raised: Traffic and parking,
21 water, and our ability to use Parcel 7 in FAR. The issue
22 of Parcel 6 was also revisited by the county surveyor and
23 county counsel, which was just discussed.

24 We have members of our team who will follow me
25 and address the issues just mentioned. But let me make a

1 brief comment regarding water and the parcels. On water,
2 we respectfully request that you withdraw your directive
3 to conduct an SEIR on water. We do not believe it is
4 necessary and believe that the record shows -- and our
5 counsel Amy Nefouse from our team will speak to it more
6 specifically -- but that is our request, that is not
7 necessary.

8 On Parcel 6, we believe that our analysis of
9 Parcel 6 remains accurate and that the questions that
10 have been raised by the County in this regard have been
11 answered.

12 Also with respect to Parcel 11, we continue to
13 feel that it is our right to count it as part of FAR. I
14 believe that it was your intent in excluding it to reduce
15 FAR. I believe as part of our discussions today, we can
16 accomplish your intent without removing what I believe
17 are our lawful property rights, and I hope you will
18 consider that.

19 Richard Monk, additional counsel, will speak to
20 both of these issues in more detail in a few minutes.

21 Let me turn to design issues. When we finished
22 meetings at the Commission and meeting with all of you, I
23 gave a challenge to our team to go find solutions to each
24 and every one of these problems without affecting, in our
25 opinion, the viability of the hotel.

1 I want to let you know that we heard you, as I
2 said, loud and clear. We went back and we looked at our
3 design. We reviewed your comments and tried to do as
4 much as we could. And let me lay out for you the changes
5 that we are proposing.

6 You said to us you wanted to two-story buildings
7 in the setbacks along Jameson. To that end, we will move
8 Building 44 out of the setback along Jameson and add a
9 sidewalk along the front of the public parking spaces as
10 was requested by your commission at our last meeting.

11 Let's go ahead and put that slide up, Rick.

12 While it's going up, I will continue.

13 We will move Building 5, the ballroom, out of the
14 setback along Jameson.

15 Is there a way to blow that up? Okay.

16 Matt, maybe you can come up here and point to the
17 buildings as I'm reading so we're all on the same page.

18 So, again, we will move Building 44. That is 44
19 out of the setback (indicating). We will move
20 Building 5, the ballroom, at the other end of the site,
21 out of the setback. The main building, Building 1, will
22 remain in the setback, but the portions of Building 1
23 within the setback are all one story.

24 We will make a bold move and lower the height of
25 the main building by four feet. What this will

1 accomplish is that the peak of the building will now be
2 38 feet above the adjacent curb line at Jameson, as
3 requested by the Commission Chair, the allowed height of
4 a two-story building in Montecito.

5 While we will still require a height modification
6 for the main building, since it must be measured from the
7 existing grade, it will now more closely reflect,
8 Commissioner Bierig, your request regarding setting the
9 "zero point," quote, unquote, of the building at the
10 Jameson curb for purposes of measuring the heights.

11 We will be able to accomplish this without
12 lowering the basement, which we still have a concern may
13 intrude into the high waterline mark of the aquifer. And
14 we're doing this -- and we can show you a section in a
15 minute -- by reducing the ceiling heights in the
16 building.

17 And although that does have some concern for us
18 from an interior architectural design standpoint, we want
19 to do it in an effort, again, to meet the requests of the
20 Commission and some members of the community and move
21 this project forward.

22 Either I, or my architectural team -- we're here
23 to discuss the specific height changes in more detail, if
24 you wish, following our presentation.

25 We will make another bold move. We will remove

1 the second floor of Building 43. And in addition to
2 removing the second floor, we will divide that building
3 into two cottage-style six-key buildings. This has the
4 effect of eliminating 12 rooms from the plan, going from
5 204 rooms to 192 rooms.

6 We essentially change a two-story 24-room
7 building into two one-story six-key cottages. This
8 change will also reduce the project's FAR by 6,655 square
9 feet. The change to Building 43 has the additional
10 impact of increasing the cottage-style nature of the
11 project.

12 We add both to the number of one-story guest room
13 buildings, and guest room buildings with six keys or
14 fewer. Before the change that I just announced, we had
15 24 guest room buildings. 16 were one story and 18 had
16 six keys or less. After this change, we have 25 guest
17 room buildings, 18 are one story, and 20 have six keys or
18 less. 80 percent of the guest room buildings on this
19 property will have six keys or fewer.

20 And if I can ask you to look at the plan up
21 there. The buildings you see in the plum color are all
22 one-story buildings. The buildings you see in the ugly
23 color, are all two-story buildings, none of which are in
24 the setback.

25 And if you take the cluster of plum-colored

1 buildings -- if you can circle that -- I'm sorry, Matt --
2 that whole area -- go back. No. Okay. That is a dot.
3 We don't know what that is.

4 There we go. Perfect.

5 So if you take a look at that whole cluster --
6 again, that -- the majority of the site, those are all
7 one-bedroom cottage-style buildings now. One story, not
8 one bedroom. One-story cottage-style buildings now.

9 Additionally, all the buildings near the church
10 will be moved 15 feet from the property line. We felt
11 this was at least a number of the Commission's direction
12 last hearing. The setback in the previous plan was 10
13 feet. That includes buildings 37, 40, 41, and 43.

14 There are buildings currently. The current
15 buildings out there are less than three feet from the
16 fence line. So I our proposed change is a substantial
17 improvement.

18 It will also allow for more landscaping and,
19 parenthetically, there is also a significant amount of
20 landscaping that is currently there that will be left
21 there and enhanced, and more room for guests entering and
22 exiting the guest rooms.

23 With respect to self-parking, we have reviewed
24 our parking layout, and we have determined that we have
25 the ability to provide up to 146 parking spaces within

1 the current configuration. From an operational
2 standpoint, we believe that full valet is a much better
3 plan, and we request that you allow us to operate the
4 hotel in that manner initially.

5 However, after a year, when the parking review is
6 conducted, you now know that the self-parking operation
7 is available to you to correct the situation that this
8 Commission feels is a problem for the local community.

9 We will revisit our design, at your request, with
10 MBAR to make the design more cottage style, and we will
11 concur with your previous discussion to eliminate
12 lighting from the tennis courts.

13 We believe these are significant changes that
14 have addressed, to the best we believe we can, the
15 suggestions that you have raised. They were good
16 suggestions, clearly made with the best interests of the
17 community in mind.

18 Throughout this process we have tried to be
19 respectful of your opinions and those of the community,
20 and we believe that we have made significant steps to
21 achieve that, and we hope these changes will lead you to
22 support this plan.

23 On traffic -- let us briefly address the issue of
24 traffic. Based on these changes, we redid our parking
25 analysis. Given our proposed reductions in rooms, our

1 updated analysis shows that we have a lower impact on
2 traffic than the approved Schragger plan and we have 50
3 excess parking spaces at peak times.

4 While we believe that the employee count for our
5 proposed hotel that we presented and discussed at our
6 previous meetings is accurate, we wanted to attempt to
7 adequately address Commissioner Overall's concerns that
8 the hotel would have inadequate parking if there were
9 more employees.

10 The factors that we used in our traffic and
11 parking analysis are factors that ULI and the ITE use and
12 which are accepted by most all jurisdictions. We asked
13 our traffic engineer to double the factor for employees
14 for both the parking and the traffic analysis.

15 For example, the ITE traffic method of analysis
16 counts .9 employees per room for the purposes of
17 calculating traffic impacts. We did the analysis using
18 that factor, which gave us the results that I have
19 already mentioned.

20 And we also doubled the factor to 1.8 employees
21 per room and ran the numbers that way. The analysis
22 shows that even under this scenario, the doubling of the
23 factor, we have six excess parking spaces at peak times,
24 not including overflow parking, and we have no
25 significant impact on traffic.

1 While we believe that this is an extraordinary
2 way to look and analyze both parking and traffic, we hope
3 that it helps reassure you that there is more than
4 adequate parking on the property.

5 Additionally, and perhaps a more practical and
6 real comparison, we want to reiterate what was pointed
7 out at the last meeting. Although the Biltmore has more
8 rooms, larger restaurants, and a beach club twice the
9 size of ours, the Biltmore has nearly 100 fewer spaces
10 than our proposed plan.

11 Our traffic engineer is available to respond to
12 questions following our presentation if you would like to
13 discuss this further.

14 I would like to bring up a section of the
15 building, Building 1. That is the lobby. So, when we
16 left here at the last meeting, the challenge of taking
17 the adjacent curb height and measuring 38 feet from there
18 we felt was impossible. And, quite frankly, up until
19 about 24 hours ago it was still impossible.

20 But with reducing the slope on the roof line and
21 lowering the interior ceiling heights, which we believe
22 we can live with, we can do that and meet that directive
23 from this commission.

24 I also want to show the parking.

25 As a backup to the parking, this is the first

1 level of the parking (indicating) -- first and second
2 level -- I'm sorry -- first and second level of the
3 parking that you would enter off the private road
4 adjacent to the conference center or the banquet space.

5 So a year from opening, if the Commission feels,
6 or the County feels, that self-parking should be
7 mandated, a guest of ours could enter off the private
8 road into this, into single parked lanes. And that
9 should resolve hopefully that issue.

10 Let me say again that this is obviously a
11 spectacular piece of property, and I know that in many
12 ways we are custodian of that property. And through this
13 whole process, we really have tried to do what we believe
14 is in the best interests of the community.

15 We have heard about the scale and the height. We
16 have done as much and pushed the envelope as we can, and
17 in reference to that, if we could bring up the slide that
18 shows the reduction.

19 After our MBAR hearing, which found that we were
20 consistent with the scale of the community, if you take a
21 look at this slide (indicating), the top area of the
22 reddish color is the height that was presented to MBAR in
23 July -- July 25, '07. With the changes we have now made,
24 that is the additional reduction to the height of the
25 buildings.

1 So with that, I would ask for your consideration.
2 I hope you take these changes in the spirit that they
3 have been made in an effort to move this project forward,
4 and we hope to be able to start construction soon.

5 With that, let me now turn it over to our counsel
6 Richard Monk to discuss Parcel 6 and 11. Thank you.

7 MR. BIERIG: Thank you, Mr. Caruso.

8 MR. MONK: Chairman Bierig, members of the
9 Commission, good morning. I'm Richard Monk with the firm
10 of Hollister & Brace, and I'm here to address two issues:
11 One regarding the inclusion of the sandy beach; and,
12 secondly, the exclusion of Parcel No. 11, which is the
13 Union Pacific property, from the denominator for purposes
14 of calculating FAR.

15 Coastal Zoning Ordinance section 35202 provides
16 the formula for floor area ratio where there is an
17 approved final development plan. And, of course, if this
18 project is approved, it will be approved with a final
19 development plan because that is what is being applied
20 for.

21 And that section provides that:

22 "Where there is an approved final
23 development plan, the floor area ratio
24 shall be the quotient of net floor area
25 excluding basements used exclusively for

1 storage and residential units that meet
2 the County's definition of affordable
3 housing divided by the sum of the net lot
4 area of all parcels included in the
5 development plan."

6 Now, the ordinance provision starts out with the
7 word "shall." So it's mandatory. It's couched in
8 mandatory terms, not permissible.

9 Here the Union Pacific property, Parcel 11, and
10 the sandy beach parcel are both included in the
11 Applicant's development plan application.

12 Accordingly and consistent with the provisions of
13 that code section, the net lot area of both parcels must
14 be included in the denominator for calculation of floor
15 area ratio. We don't believe there is any discretion on
16 that item.

17 The plain wording of the ordinance requires that.
18 I'm not saying that satisfaction of a particular FAR
19 guarantees the density that the FAR indicates. That is
20 discretionary. But for purposes of inclusion in the
21 denominator, these parcels must be included.

22 Now, at the last hearing, several members of your
23 commission questioned the propriety of including the
24 railroad property in the denominator for calculation of
25 FAR because the Applicant does not own the fee to that

1 parcel. Rather it holds an easement.

2 And some of you said that this would set a
3 dangerous precedent because, one holding perhaps a
4 landscape easement, might be able to avail themselves of
5 the same opportunity and include the area of that
6 landscape easement in the denominator for FAR.

7 And ultimately your commission excluded the
8 railroad property for purposes of calculating FAR. I
9 would submit that the exclusion of that property is
10 legally unsupportable under Coastal Zoning Ordinance
11 section 35202.

12 As I said, the property is included in the
13 project's development plan and will be included in the
14 final development plan if approved. Therefore, the net
15 lot area of that parcel must be included in the
16 denominator. There is simply no getting around this.

17 And I believe that the landscape easement
18 hypothetical is inapplicable, grossly inapplicable, to
19 the facts of this case. And let me explain why.

20 The easement that the Applicant holds, which it
21 inherited from the predecessor in interest is an easement
22 in perpetuity. I negotiated that easement with Union
23 Pacific on behalf of the Ian Schragger ownership, which
24 was then called "Miramar Holdings," which was a joint
25 venture of Ian Schragger and North Star Investments.

1 And I know -- and I re-reviewed that easement --
2 and it expressly allows building encroachments as well as
3 improvements to be constructed in the easement area. And
4 Union Pacific has given its consent to the processing of
5 this project.

6 Moreover, the ultimate grantee of that easement,
7 which was Miramar Property, LLC, which was a Ty Warner
8 entity, paid in excess \$2 million for that easement. I
9 don't know whether the money consideration was paid by
10 Schragger at the closing or it was paid by Miramar
11 property, but that is irrelevant.

12 The consideration for the granting of that
13 easement was in excess of \$2 million. So this is -- not
14 in any way akin to a mere landscape easement that might
15 be granted between adjoining neighbors, for neighborly
16 accommodation reasons, or for love and affection, or
17 whatever.

18 Rather \$2 million plus of real money
19 consideration was paid for this. Moreover landscape
20 easements typically do not allow for structures to be
21 built on them. Perhaps there might be a garden shed or
22 something of that sort.

23 But here actual portions of the hotel buildings
24 are allowed to encroach, and new buildings are allowed to
25 be built, portions of them, in the landscape easement.

1 Therefore, in my mind, the easement is actually
2 tantamount to a fee. Clearly it must be included in the
3 denominator for purposes of calculating FAR.

4 As I said before, it's not couched in permissive
5 terms. It uses the word "shall."

6 Next, on the sandy beach, gratefully you did
7 include the area of the sandy beach in the denominator
8 for FAR purposes. However, after the last hearing, as
9 you've been told by county staff, a new issue arose as to
10 how to calculate the net lot area.

11 We've heard from counsel and staff this morning
12 that that issue has been resolved in favor of the
13 Applicant. A letter was issued by the State Lands
14 Commission yesterday, and that corroborates the arguments
15 that we made in our letter of August 18 and August 21 and
16 Penfield & Smith made in its letter of August 22.

17 And the letter, which was signed by the chief
18 counsel -- acting chief counsel of the State Lands
19 Commission states, in pertinent part:

20 "To clarify this office's position
21 regarding a survey by the staff of the
22 Commission reflected by the map dated
23 February 1958, that map does not
24 establish the boundary between the
25 uplands in private ownership and the

1 tidelands in public ownership."

2 And it goes on to say:

3 "As to the letters from Hollister &
4 Brace, we agree that Public Resources
5 Code section 6202 and 6332 do not mandate
6 using the survey conducted by the
7 commission staff in 1958 for purposes of
8 calculating the area in private
9 ownership."

10 So we believe that, with the issue with the State
11 Lands Commission letter, that that is dispositive of this
12 issue and that area calculated by the Applicant is indeed
13 the area that should be counted in the denominator.

14 And section 35-128.2 of your Coastal Zoning
15 Ordinance is the controlling authority for calculating
16 the area of the sandy beach. And it provides:

17 "For the purpose of computing the lot
18 area or building area of any lot, the
19 boundaries of such lot shall be the
20 boundaries established by the latest
21 recorded deed, parcel map, subdivision
22 map, et cetera, provided that such
23 recorded document does not create or
24 attempt to create a lot in violation of
25 the provisions of any applicable

1 California or county law or ordinance."

2 And CZO section 35-128.2 allows for the use of
3 the recorded grant deed to our client for purposes of
4 computing lot area.

5 And the mean high tide line was established by
6 the methodology explained in Penfield & Smith's letter to
7 you of August 22, 2008 -- or to staff, I should say.

8 This methodology established a southern most
9 boundary of Parcel 6, and the mean high tide line derived
10 by this methodology is consistent with the metes and
11 bounds legal description of Parcel 6 in the recorded
12 grant deed.

13 Thus the recorded grant deed to our client is the
14 proper instrument to be used for the purpose of computing
15 the lot area of the sandy beach under Coastal Zoning
16 Ordinance section 35-128.2.

17 So I believe that that issue is resolved, and the
18 lot area is the area that has been calculated by -- by
19 the Applicant, and there shouldn't be any further
20 question on that.

21 And again, if I just may reiterate, we believe
22 that you were mandated to include the -- for purposes of
23 FAR, the Parcel 11 in the denominator for calculation of
24 FAR. Not to say that you're bound by that FAR in terms
25 of density decisions, but for purposes -- what I'm saying

1 basically is, that you cannot make a finding that this
2 project violates the FAR provided for under the Coastal
3 Zoning Ordinance and the Montecito Community Plan.

4 Unless you have any questions, at this time I
5 would like to introduce Jim Wilson, a licensed surveyor
6 with Penfield & Smith.

7 Questions?

8 MR. BIERIG: Commissioner Overall.

9 MR. OVERALL: Mr. Monk, when you refer to the
10 railroad parcel, I could probably look it up in here, but
11 I'll ask a question instead.

12 My recollection is that one of the provisions of
13 that code was that that parcel be appropriately zoned.
14 And my understanding is that the railroad easement is not
15 appropriately zoned and therefore would be excluded.

16 MR. MONK: There is no discussion of zoning in
17 the relevant Coastal Zoning Ordinance. It makes no
18 distinction as to zoning. All it says is that it be
19 included in the development plan.

20 And we said in one of our letters -- I think it
21 was August 5 -- that, had the board of supervisors
22 intended that when they adopted that Coastal Zoning
23 Ordinance, they certainly knew how to say so and they
24 could have said, provided however that all parcels have
25 the same zoning designations. They did not.

1 So I don't think that is a requirement. And I
2 think staff agrees with us on that.

3 MR. BIERIG: Director Black.

4 MS. BLACK: Mr. Chair, I'm not sure I would be
5 quite as absolute as Mr. Monk was in terms of your lack
6 of discretion on this item, but we do concur that that is
7 certainly a reasonable interpretation of 35-202 and that
8 is why we did include it in the parcel size
9 clarifications that we presented to the Commission.

10 There is nothing in the Zoning Ordinance that
11 requires that that parcel be of the same zoning as the
12 rest of the Miramar parcel. It's clearly part of the
13 development plan.

14 And I also agree with Mr. Monk that, even if you
15 were to include this parcel, that does not provide any
16 guarantee that they will get the FAR that goes along with
17 that parcel. Your commission has the full discretion to
18 reduce development on the site consistent with the
19 findings that you need to make.

20 So I don't think the two have to be as correlated
21 as they have been to date.

22 MR. BIERIG: Thank you.

23 MR. MONK: I apologize. I misspoke. Jim Wilson
24 will be speaking later.

25 So that concludes my presentation.

1 MR. OVERALL: I would like to follow up with
2 Director Black.

3 I may have the source of information incorrect.
4 It may not be in the Coastal clause, but I know that I
5 have read in here about the zoning. So I would ask
6 somebody to tell me where to go look for it. I'm not
7 sure it's all that important at this point, but I would
8 like to know.

9 MS. BLACK: Mr. Chair and Commissioner Overall,
10 I'm not quite sure what you're asking me in terms of
11 where to point you.

12 But I know that the railroad corridor is zoned
13 transportation corridor if that is what you are asking,
14 or are you asking -- oh, Nicole knows.

15 MS. MASHORE: Mr. Chair, Commissioner Overall, I
16 think that the provision that you're referring to is in
17 the Montecito Overlay, in the back of the ordinance, and
18 it talks about -- I don't have the language right in
19 front of me, but it talks about in the CV zone the FAR
20 should be .25. That is what it says.

21 MS. GOTTSDANKER: I think --

22 MR. BIERIG: Ms. Gottsdanker.

23 MS. GOTTSDANKER: Yes.

24 I think, given what Mr. Monk has said and what
25 staff has said and Commissioner Overall, and certainly I

1 was the one who brought this to the table at the last
2 hearing, and for myself, I think it was by inference of
3 that, the point .25 was applied to the CV zone district
4 lots.

5 In my mind, by inference, given that this was --
6 is a transportation -- zoned transportation corridor, I
7 then went, well, wait a second, how could an FAR number
8 that specifically, in the Community Plan and in the
9 follow-up ordinances, limits coast -- you know, visitor
10 resort to .25, then -- then ultimately there is nothing
11 that limits transportation corridor. There's no FAR's
12 for there.

13 So that is kind of my thought pattern of how --
14 where I arrived at what I arrived at. And that may be
15 what the confusion is. It's like I don't know that I
16 ever specifically read that. But I was kind of going,
17 well, we're using apples and orange here. So let's get
18 on to apples, which is the visitor resort zoning.

19 That is what -- that is what the intention was of
20 that .25.

21 MS. BLACK: Mr. Chair, I think the section you're
22 looking for Mr. Overall -- Commissioner Overall, is the
23 very next section in the ordinance, and that is 35-203,
24 which is floor area ratio.

25 And it indicates:

1 "For parcels within the resort
2 visitors survey zoning district, the
3 floor area ratio is defined by section
4 35-204. Shall not exceed .25."

5 So that is the reference. If I may?

6 MR. BIERIG: Please.

7 MS. BLACK: The difficulty with this particular
8 situation -- and I discussed this with the Chair
9 yesterday -- there is no really clear rule on this
10 particular situation because I don't think we've ever
11 encountered this kind of a situation before.

12 So, you know, we know how to deal with people who
13 have landscaping easements or other types of easements on
14 adjoining properties where they don't have more certain
15 rights to use the property, but this just isn't
16 comparable to that.

17 So I think the Commission has discretion here,
18 and I think you have the discretion to decide whether or
19 not to include Parcel 11. Our recommendation is that you
20 include it and you address your FAR concerns in other
21 ways.

22 MR. BIERIG: And I would point out to my fellow
23 commissioners that ultimately it's a question of how much
24 density we want to see on the site. The way we get to it
25 is a different subject. It's simply a method of getting

1 to a destination. And maybe we shouldn't get too bogged
2 down into what -- exactly how much square feet one is
3 versus the other as opposed to just looking at the
4 operational aspects of the property.

5 MS. GOTTSDANKER: I totally agree.

6 MR. BIERIG: Commissioner Phillips.

7 MR. PHILLIPS: I agree as well, Mr. Chair.

8 I guess I have some concerns that one could
9 easily see how attaching a landscape easement to a
10 property could majorly effect the FAR. And what probably
11 controls is, at what point does the development plan
12 become recognized and therefore the Applicant is able to
13 rely on it.

14 And I don't know where that happens. But that is
15 where the county should have said, no, not that parcel in
16 your development plan. That is out. Or it's in. But
17 once it's -- once that development plan is real, the
18 Applicant has a right to rely.

19 Something we need to look at in the future, I
20 think. I don't know where that is, but I think that
21 happened already. And I think 11 should be counted as a
22 result.

23 MR. BIERIG: Well, I caution us to stay away from
24 deliberation at this point.

25 MS. GOTTSDANKER: It's hard.

1 MR. BIERIG: Commissioner Overall, do you have
2 another question? I know it's hard not to jump in on
3 these. I feel like doing it myself.

4 Does that -- did you have more of a presentation
5 on the subject of the -- counting the lots, or are you
6 going to move on to the next part?

7 MR. CARUSO: We're going to move on to water.

8 MR. BIERIG: Please do.

9 MR. CARUSO: Okay. Amy Nefouse here, counsel on
10 the water issue.

11 MS. NEFOUSE: Good morning, Chairman and members
12 of the Commission. My name is Amy Nefouse with the law
13 firm of DLA Piper. I am a CEQA land-use lawyer and have
14 been doing this for about 15 years and have been advising
15 projects on various CEQA issues.

16 And I would like to speak to Mr. Caruso's request
17 to you earlier this morning that you please reconsider
18 your decision from a few weeks ago that a supplemental
19 EIR should be prepared on the issue of water supply for
20 this project.

21 Under CEQA, once full environmental review has
22 been done for a project, the statute provides that no
23 additional environmental review can be required unless
24 two things are shown:

25 First, that there is a change in circumstances or

1 new information or a project change and that that project
2 change or new information or change in circumstances
3 results in a new or a substantially more severe
4 environmental impact.

5 It's not enough just to have new information.
6 That information has to demonstrate a new or
7 substantially more severe environmental impact. The
8 statute's presumption here is against requiring
9 additional environmental review because the project has
10 already been fully reviewed under CEQA.

11 Here, as mentioned by your staff, there is new
12 information and there is even newer information that has
13 been provided to you since your hearing a few weeks ago.
14 In particular MWD has, since that time, actually taken
15 delivery of an additional 1,400 acre feet of water.

16 They have solved their short-term supply/demand
17 imbalance that had been of concern to you and that had
18 been mentioned in their Ordinance 89 that had been
19 approved back in the spring.

20 They have instituted a new tiered rate structure,
21 which is intended to encourage conservation and bring
22 down the demand for water while at the same time
23 generating additional revenue, if necessary, to purchase
24 supplemental water.

25 Since that time, also mentioned by your staff,

1 there has been additional information provided to you
2 that demonstrates what the actual needs -- water needs of
3 the project are at 51.8 acre feet a year. Although
4 obviously that number would be slightly reduced as well
5 now given the reduction in size of the project that
6 Mr. Caruso presented to you this morning.

7 And throughout this process, since the very
8 beginning, MWD has repeatedly and consistently stated
9 they can and will serve this project. It has only ever
10 been a matter of how much it would cost the project to
11 pay for that water.

12 MWD has established its historical base allotment
13 of 45 acre feet, but it said, we can serve the project
14 even above that amount, they are just going to have to
15 pay a little extra for it based on our new structure.

16 And Mr. Mosby from the Water Board has been here
17 and testified to you, and his statements really couldn't
18 be more clear. If I could just read a couple of them to
19 remind you. On July 16 he said:

20 "The whole reason why we are here is
21 to ensure you, understand, we will serve
22 the Miramar Hotel."

23 And then similarly on August 6, in response to a
24 question from Mr. Phillips:

25 "Can you supply everything they need

1 going forward?"

2 Mr. Mosby's response was:

3 "Yes, we can."

4 And then later in that same testimony he said:

5 "We can provide the project with
6 water."

7 Now, the MWD are the experts in water supply, and
8 expert testimony from the water supplier is substantial
9 evidence under CEQA. And what this evidence
10 demonstrates, along with all the other evidence
11 collectively that has been presented to you, is that this
12 project will be served.

13 There is water to serve this project, and this
14 project is not going to have a new or substantially more
15 severe impact with respect to water supply issues than
16 the previously approved project.

17 Now, of course, it's up to you to decide which
18 evidence you find credible. Whether you find speculation
19 from the Coast Law Group, or someone else, that there is
20 going to be an impact to be credible, or whether you want
21 to rely on the testimony and the evidence presented to
22 you by the expert water supply agency, the MWD.

23 You get to decide, and courts give deference to
24 you as the decision maker as to what evidence you find
25 credible and what you determine to be substantial

1 evidence.

2 But the test under CEQA is clear. It's not
3 enough here that there might be an impact. In order for
4 you to require a supplemental EIR, you have to find,
5 based on substantial evidence in the record, that there
6 will be an impact, that there will be a new impact or a
7 substantially more severe impact.

8 It's not just enough to have new information. So
9 here what we believe -- and I did submit a letter
10 yesterday. I do hope that you admit it into the record
11 and consider it even though it's three pages and not one
12 page long.

13 But -- because I think it's important, given the
14 nuances of CEQA here, to really understand what the law
15 says. And, you know, as developer's counsel here, and on
16 behalf of the developer, we care more than anyone in
17 ensuring that you have a legally defensible approval
18 should you approve the project and should there be a
19 challenge.

20 And so we wish that you would simply follow the
21 law and hear what the law says is, no new environmental
22 review unless. And those unless's haven't been shown
23 here, and in fact the opposite has been shown. And there
24 is more than substantial evidence to support you here in
25 a determination that this project would not have more,

1 substantially more, environmental impact with respect to
2 water supply. And, therefore, requiring a supplemental
3 EIR really would be inappropriate.

4 So, with that, I'm happy to take any questions
5 that you may have. And we respectfully request that you
6 reconsider that decision.

7 MR. BIERIG: I do have a question for you.

8 Assuming you are correct and that there -- let me
9 restate it. There seem to be two issues. One is whether
10 there is a problem on it as a practical matter, whether
11 the project can be served with water.

12 The second question, though, that I think
13 Mr. Ghizzoni brought up and made a point about was the
14 fact that there is a -- I'll call it a sequencing issue,
15 that CEQA requires change of conditions to be studied,
16 you know -- and without the use of an SEIR, effectively
17 this issue did not get addressed.

18 Am I stating that correctly? I think I am.

19 I mean, the issue is not one of necessarily
20 whether there will be water, but whether it can be
21 determined outside the use of an SEIR whether that is in
22 fact the case, and that there is a litigation risk
23 because it's outside the parameters of how it should have
24 been analyzed regardless of what the outcome might be.

25 MS. NEFOUSE: If I may, I have litigated

1 supplemental EIR cases.

2 MR. BIERIG: I'm just asking you to respond to
3 that suggestion, sequencing as a problem.

4 MS. NEFOUSE: The sequencing is not a problem
5 here because what happened is your staff did an extensive
6 review when the project was applied for and made a
7 determination, in their judgment, based on the evidence
8 before them and the expert information that they were
9 provided at that time, whether there was this substantial
10 new evidence of a new significant impact or a substantial
11 increase in the impact.

12 And there is substantial evidence in the record
13 to support their conclusion that an SEIR is not required,
14 or their initial conclusion in the documents they
15 prepared and brought to you, that there is not that
16 information that requires it.

17 And under CEQA, what the test is and what the
18 case law says and what the statute says and what the
19 guideline says, it's phrased in a way that says, you
20 shall not require subsequent environmental review, you
21 shall not require an SEIR to be done unless the
22 information and the substantial evidence to support that
23 information and the conclusion shows that there is a new
24 impact or a substantial increase in the impact.

25 The sequencing here was done correctly. And the

1 issue is what does the evidence that is before you show.
2 Does it show that there is going to be an impact, or does
3 it show, as we believe it does, based particularly on the
4 information that has been provided to you by the expert
5 water agency, that there is water to serve this project.
6 They will serve the project. They have said it
7 repeatedly and unequivocally.

8 And I have litigated these types of cases. The
9 Manning brothers case is one that I mentioned to you in
10 the letter. Public Court of Appeal Opinion from last
11 year dealing with the question of whether the addendum in
12 that project was adequate or a supplemental EIR should
13 have been done.

14 And the courts are very clear where the balance
15 lies at this stage of the game. It's different if we
16 were beginning anew, the project had never been approved
17 before and had never been analyzed under CEQA before.
18 Then the test is different.

19 Because then it only needs to -- consider that
20 there is a fair argument, that there might be an
21 environmental impact. In which case, you're right then.
22 You defer to doing the environmental review. But that
23 changes after environmental review has already been
24 completed and the statute is phrased the opposite way.

25 MR. BIERIG: Thank you for commenting.

1 Before we continue, because there may be other
2 questions, we have a number of people standing in the
3 back, and there are seats, and I'm going to have to ask
4 you to take a seat. And if you can't find a seat, you're
5 going to have to leave the room. The fire regulations
6 simply don't allow us to have people stand in the back.
7 So I'll give you a moment.

8 While that is going on, Commissioners, do you
9 have questions on this issue?

10 Commissioner Burrows, why don't you go forward.

11 MS. BURROWS: Thank you, Mr. Chairman.

12 MS. BLACK: Could people please take their seats.
13 We are in the middle of a hearing.

14 MS. BURROWS: Thank you, Mr. Chairman.

15 I seconded the motion which resulted in the
16 subsequent EIR on the water issues. So at this point I
17 would like to ask county counsel, which gave me the
18 information on which I based -- I seconded that motion,
19 to respond to the information.

20 First of all, the new information that we have
21 the from the Montecito Water District, and to the
22 analysis that we have received from the Applicant's
23 attorney.

24 Please. Thank you.

25 MR. GHIZZONI: Chairman Bierig, Commissioner

1 Burrows, thank you.

2 I think it would be helpful to divide the issue
3 in two. Ms. Nefouse addressed assertions by the
4 Montecito Water District about can and will serve, and we
5 agree that that is in the record.

6 I think that is not the question under CEQA. The
7 Moss case from earlier this year involved, rather than
8 that it can and will serve issue, a question of even a
9 slight increase in demand having significant
10 environmental impact.

11 In this case, the July 30 letter from the
12 Montecito Water District states that the district's
13 demand levels are currently greater than its long-term
14 reliable water supply. That is a significant fact. That
15 was new information that came out.

16 As we mentioned before, the July 30 letter, as
17 well as MWD Ordinance 89 came out after the draft
18 environmental document was out for comment. Based on
19 those, it would be certainly within your commission's
20 discretion to require a subsequent EIR as to water
21 supply.

22 You would be on firm ground. There would be
23 substantial evidence, including in terms of expert
24 opinion. You've got an ordinance from the Montecito
25 Water District that we discussed last time having

1 findings of demand exceeding supply, inability to locate
2 alternate sources of supply, as well as their letter of
3 July 30 actually using the term, in the absence of
4 reliable water supply.

5 So that would all be part of the substantial
6 evidence that you could consider in requiring a
7 subsequent EIR.

8 On the other hand, you do have new information
9 from the Montecito Water District which announces
10 essentially a belief granted on some prior experience
11 that conservation will solve their problem.

12 But when you mix that all together, you have some
13 very strong statements from the servicing water district
14 of a lack of reliable water supply and a multiyear
15 shortfall of demand over supply.

16 So you could properly require subsequent EIR's
17 under the controlling -- well, under the controlling
18 cases, including the Moss case, which examined this issue
19 approximately six months ago.

20 MS. BURROWS: Considering new information we have
21 received from the Montecito Water District, is there an
22 opportunity for us to reconsider our motion on the SEIR,
23 and is it your opinion that that information is
24 sufficient, well, to reconsider?

25 MR. GHIZZONI: Chairman Bierig and Commissioner

1 Burrows.

2 I think that -- let me look at the macro again
3 for a second. You have before you both draft findings
4 for denial, for your consideration on denial, as well as
5 a draft finding to require a subsequent EIR.

6 And I would say that part of your decision as the
7 subsequent EIR would be which route are you going to
8 take. Because if you go down the denial route, then you
9 obviate the need for a subsequent EIR. You would not
10 properly require a subsequent EIR in a denial scenario.

11 So it would be helpful for you to first determine
12 would you be going down the road of a denial, or looking
13 at an approval down the road and thereby requiring
14 further environmental information to make that decision.
15 But a denial would not require a subsequent EIR. So that
16 would be my first point.

17 The second point would be looking at the
18 Montecito Water District's more recent new information,
19 that is, the conservation ordinance and resolution, I
20 think that those do address essentially a belief or an
21 assertion by the Water District that conservation will
22 help them mitigate some other problems and relate that to
23 past experience with conservation programs, and it will
24 be your decision whether that, mixed in with the other
25 evidence, still requires you as a decision maker to

1 require a subsequent EIR.

2 My belief is that you would still be -- you could
3 still find substantial evidence to require the subsequent
4 EIR if that is what you want to do. It's not that one
5 negates the other. It's going to be the blend that you
6 look at as to whether that is substantial evidence.

7 MR. BIERIG: Commissioner Overall.

8 MR. OVERALL: I want to go a little bit beyond
9 the legal nuances of this, and I want to ask some
10 questions, and I don't know who was the appropriate --
11 who are the appropriate people to respond to this.

12 But I think I want to focus on the numbers. We
13 went from 117 acre feet down to, what is it, 51 and a
14 half acre feet now?

15 MS. NEFOUSE: 51.1 minus whatever for the
16 reduction in size.

17 MR. OVERALL: Let's call it 51 for the sake of my
18 memory.

19 The Montecito Water District has put a base
20 allocation of 45 acre feet. The words are I think
21 subject to some explanation. You have can and will serve
22 letters.

23 I -- in an ex parte conversation with Mr. Mosby,
24 I asked him specifically what guarantee is it that you're
25 going to have water available. I mean, you say you can

1 serve. Well, what guarantee is there? If we don't
2 get -- there was an article in the Sacramento Bee about
3 the rework in the Delta, and we've cut the allocation of
4 state water to us from about 30 percent to 10 percent.
5 You know, what does the future hold.

6 And I got back less than, what I would call, a
7 totally reassuring answer that says, this project, and
8 our whole community for that matter, are going to be not
9 faced with severe problems. I didn't get that
10 reassurance.

11 The other thing that came up in the conversation
12 is, apparently with the five meters that are on the
13 property, there is a substantial question, in Mr. Mosby's
14 mind, at least as I interpret what he said, whether or
15 not you can push enough water through those lines to
16 provide 51.1 acre feet of water a year.

17 Those lines are now going to be used for
18 irrigation, as I understand it, where they had not been
19 considered before. The well water was used in the past.
20 It's fine to say, we've got enough water, but if you
21 can't get it through the pipes, you've got a problem.

22 And I'm sitting here trying to help the
23 Applicant, help the community, and understand what we're
24 doing. And I have to confess, I am thoroughly confused
25 at this point. I don't know what the right course of

1 action is, and I would appreciate somebody explaining to
2 me the discrepancies in the numbers and what happens if
3 Montecito Water District does not get enough water to
4 supply the whole district, not just the Miramar project.
5 Was that clear?

6 MR. CARUSO: Yes, sir.

7 Commissioner, obviously I was not a part of your
8 conversation with Mr. Mosby, but his comments on the
9 record were very, very clear.

10 The Miramar has been a customer for over 100
11 years. There is a will serve letter that has been issued
12 to us. He has said on the record here a number of times
13 that, with the existing meters -- he was very clear --
14 that with the existing meters, he can supply the water
15 necessary for the hotel.

16 The original 117 feet estimate was an effort on
17 our part to avoid criticism, to take the worst case
18 scenario. The worst case scenario was, the hotel is 100
19 percent occupied, the ballroom is 100 percent occupied,
20 everything is at full capacity at one time, which will
21 never happen, but that was the worst case scenario.

22 The Water District asked us to go back and say,
23 based on normal operating use, what would the normal
24 operating use be. And we submitted to the Water
25 District, we submitted to you from an expert in the hotel

1 industry who does this for a living, this is the amount
2 of water that will be used.

3 Mr. Mosby also said on the record that he even
4 thought the water use would be less because of
5 conservation matters that we are going to institute at
6 the Miramar.

7 Now, from my standpoint, the last thing I want to
8 do is build a hotel and spend a few hundred million
9 dollars and not have water. That would probably be a
10 problem to our guests. We would certainly have cocktails
11 not as cold as they should be.

12 But we are absolutely convinced, based on our
13 executions with the Water District, based on our
14 independent analysis, that is there is adequate water.

15 And I would also ask this Commission to please
16 rely on the facts, and with all deference to county
17 counsel, he is saying you have a reasonable basis to
18 require an SEIR. That also means you have a reasonable
19 basis not to require an SEIR.

20 And I don't think the solution to this issue is
21 going to be lie in another nine months of studies with
22 the facts that you have. It doesn't produce any new
23 information. And the findings that the MWD made last
24 week were very, very clear on what their availability is
25 in this area. And Mr. Mosby is the head, the general

1 manager, of that department.

2 Now, let me also say, Amy is a fine counsel. But
3 when you look at the dispositive cases in this area, the
4 dispositive case, Amy was counsel on that case. She
5 understands the legal issue very well because she was
6 part of the counsel that tried the case.

7 So we feel on very firm ground that, not only we
8 have the water, and also that you do not have the
9 requirement to require an SEIR. And I would certainly
10 ask you to consider that.

11 And, again, in light of the fact we just reduced
12 the size of the hotel, that gives us that much more
13 flexibility. And the additional flexibility in there is,
14 we can always locate laundry off site, out of the area,
15 which is something we talked about before also, which
16 would reduce the on-site use of water on the hotel.

17 And we have also agreed, when available, that we
18 will use reclaimed water for irrigation, which would
19 reduce the use of water. All of those things put
20 together, I think give us a lot of room to be able to
21 approve the project and move it forward knowing that
22 there is an adequate supply of water. Thank you.

23 MS. NEFOUSE: Just also to mention, since I don't
24 know if you have had a chance to look at the letter we
25 provided, we did attach to it, for your consideration, a

1 draft finding that would allow you to reconsider and
2 decide instead not to require a supplemental EIR. And I
3 know your staff has provided some different findings. We
4 wanted to provide you with a draft of that as well,
5 should you go in that direction.

6 MR. BIERIG: Maybe you could do us the favor of
7 locating that, providing another copy of that.

8 MS. NEFOUSE: I gave staff a number of copies of
9 that again this morning.

10 MS. BLACK: Mr. Chair, it is in the material you
11 received this afternoon -- or this morning. Excuse me.
12 So you didn't get it prior to today.

13 MR. BIERIG: Okay. We'll take a look at that
14 during the break. Thank you.

15 Commissioner Phillips.

16 MR. PHILLIPS: Thank you, Mr. Chair.

17 Before we move off the water issue, Mr. Chair, is
18 there someone from the Water District we could speak to?

19 MS. BLACK: Mr. Chair, Mr. Mosby is not here at
20 the moment, but if the Commission would like to directly
21 ask him questions, we could call and see if he could be
22 available. He indicated he could.

23 MR. PHILLIPS: Yes. I would like to -- I've
24 asked this before. And at the 12th hour, the 11th hour,
25 I guess I made the motion for the SEIR. The necessity of

1 that route may have changed given the new information.

2 But from the very beginning, I think it was my
3 intent, and I think it was this Commission's intent to be
4 comfortable with the resulting impact on the community.
5 I'm concerned, and we're all concerned, that Mr. Caruso
6 has water.

7 I'm also concerned what would be the impact to
8 the community should there be a problem in securing water
9 in the future, and that could happen because of a supply
10 problem or that conservation doesn't work as well as
11 intended.

12 Conservation and price issues are not going to
13 impact this project. They are going to pay whatever it
14 will take to get water. What happens to the people in
15 the front row? Does their rate go up as well? I need
16 that answer somewhere so that I can feel comfortable
17 about this issue.

18 MR. BIERIG: Let's hold on for a second.

19 Commissioner Gottsdanker, you have a comment.

20 MS. GOTTSDANKER: Yes, Mr. Chair.

21 I would like to sort of just back up, Ms. Black.
22 I think it would be really appropriate to get Mr. Mosby
23 here and available. And because I -- for me, when
24 Commissioner Overall says that in an ex parte
25 conversation that Mr. Mosby stated they were having

1 problems pushing through, all of a sudden my little ears
2 start prickling, and I said, well, wait a second.

3 What does that mean? Does that mean the pipes
4 aren't big enough? Does that mean that the meters aren't
5 big enough? I don't know that that necessarily has to do
6 with whether there is water available.

7 Now we seem to have some sort of logistical thing
8 that's been put in, or a mechanical issue that has been
9 put in. At least that is the way I interpret it when you
10 say push water through a pipe. Well, does that mean that
11 the pipes aren't big enough, the meters aren't big
12 enough? Are we now looking at having to put in a new
13 water main?

14 I mean, I know I brought up the question around
15 whether we actually had enough -- to the fire department,
16 whether they could actually have enough poundage in the
17 pipes to be able to service all the fire hydrants. That
18 seems -- that issue still seems to be -- because
19 obviously we may have enough fire hydrants, but if we
20 don't have big enough pipes.

21 So it's like -- I think Mr. Mosby needs to get
22 down here so we can get this handled.

23 MS. BLACK: Mr. Chair, rather than continue to
24 ask questions that we can't answer because Mr. Mosby
25 isn't in the room, maybe we could set this aside for a

1 little bit and see what we can do.

2 MR. BIERIG: I would agree. We've been here for
3 about --

4 MS. BLACK: He's on the way.

5 MR. BIERIG: So why don't we take a -- let's say
6 a 12-minute break. We'll come back at twenty to the
7 hour.

8 (Recess.)

9 MR. BIERIG: If you'll come back into order.
10 We're going to reconvene our hearing here on the Miramar.

11 We are still with the Applicant. I believe we
12 have finished with the water item until Mr. Mosby joins
13 us.

14 MS. BLACK: Mr. Chair.

15 MR. BIERIG: Director Black.

16 MS. BLACK: Part of the Applicant's presentation
17 was going to be to hear from their surveyor. So I think
18 that might be a good place to go, and then our county
19 surveyor is here as well and could address the Commission
20 and hear about those drawing issues.

21 MR. BIERIG: I don't think the Applicant is --
22 Mr. Mosby -- we're missing an integral part of our
23 hearing, it looks like.

24 MS. GOTTSANKER: We're missing the front row.

25 MS. BLACK: I made that comment about the Water

1 District not being here. Mr. Mosby did just walk in.

2 MR. BIERIG: Mr. Mosby, you want to join us here.

3 MR. MOSBY: Are we talking about water?

4 MR. BIERIG: Yeah. We're still talking about
5 water.

6 MS. GOTTSANKER: Hang on a second. Let's get
7 the Applicant's team in the room.

8 MR. BIERIG: Maybe we'll jump right into that and
9 let you go back to your duties.

10 Commissioners, you had questions of Mr. Mosby.
11 Who wants to take the stage?

12 Commissioner Phillips, please do.

13 MR. PHILLIPS: Thank you, Mr. Chair.

14 Mr. Mosby, thank you for joining us. Some of
15 this is redundant. I think I may have asked you these
16 questions at the last hearing.

17 Our concern is what impact will this Applicant's
18 presence be to the community? And if I could just ask it
19 in that broad way, maybe you can pick up on it, and I'll
20 come in later if I don't get what I need.

21 MR. MOSBY: As we mentioned in the previous
22 meetings, they are an existing customer. Their previous
23 historical use is somewhere right around 41, 42 acre
24 feet. We established that based on an allocation of 45
25 acre feet.

1 Being an existing customer, we are using our
2 existing historical water supplies to serve them, what is
3 available to us. You're asking me for a statement on
4 impact, when in essence all our customers are using quite
5 a bit of water at the moment.

6 But at 41, 42, 45 acre feet, whatever the base
7 allotment is -- they have actually provided us with a
8 letter that indicated that they expect their interior use
9 to be somewhere around 41 acre feet.

10 They -- we serve them as we served the hotel in
11 the past. So an impact -- I can't say it's going to be
12 an impact other than the fact that every customer right
13 now is using a tremendous amount of water in the
14 district, and they are an existing customer.

15 MR. PHILLIPS: You just implemented a -- "you"
16 meaning the Montecito Water Board -- a new rate
17 structure?

18 MR. MOSBY: That is correct.

19 We actually on the 20th of August, meeting at
20 6:30 P.M., they held a special meeting of the Board. And
21 we actually adopted Ordinance No. 90, which talked about
22 classifications and definitions and we adopted Resolution
23 2047, which talks about water rates and charges.

24 MR. PHILLIPS: Would this project's additional
25 water demand -- will it -- will this project's additional

1 water demand impact the rate structure for residential
2 use in Montecito?

3 MR. MOSBY: You know, I have not been listening
4 to the hearing this morning. I did speak with David
5 briefly, and there was a couple comments made that it is
6 believed that this project's water use will cause other
7 users, smaller users in the district, some type of
8 additional cost.

9 It's far from it. The way the rate structure is
10 set up now, the single-family residential customer, for
11 those customers using up to 60 units of water a month,
12 which is over an acre foot a year, those people are
13 actually paying a very reasonable amount of money for
14 their water.

15 They're equivalent to about 79 percent of the
16 customer base. Their rates will not go up as much as it
17 will for those that are using significantly over 60 units
18 of water a month. So for the average residential
19 customer in Montecito, they won't see any effect to their
20 water rates as a result of the function of the Miramar
21 Hotel.

22 MR. PHILLIPS: Is there anything you know,
23 Mr. Mosby, that I haven't asked you or anyone else hasn't
24 asked you that might be important to this project
25 regarding water?

1 MR. MOSBY: I'm here to answer questions.

2 MR. PHILLIPS: We are not going to find out that
3 we didn't ask you to the precise question that we should
4 have months from now?

5 MR. MOSBY: Again, I haven't been following the
6 hearing. But I heard there were several questions
7 regarding water in the district.

8 I haven't been asked the one question that was
9 talked about, I heard about 15, 20 minutes ago, and I'm
10 waiting for one of the commissioners to ask that
11 question.

12 MR. BIERIG: I just asked it.

13 MR. PHILLIPS: The pipe issue? The supply issue?

14 MR. MOSBY: The pipe issue, as far as the
15 services and meters, things of that nature -- again,
16 we've spoken with the Caruso group. We said, look, it's
17 really important. This is a new project. If we're going
18 to come on line, design the project to meet the base
19 allotment. We can do this.

20 I'm almost sure Caruso can do it. They really
21 have to look carefully at what this project is going to
22 use. Don't go out there and think we have got another
23 Biltmore. We have a great opportunity here to really
24 design a project that will efficiently use water. They
25 have that opportunity.

1 There was a question regarding water supply for
2 the district, overall water supply, and that is the
3 question I'm asking the Commission to ask me. And that
4 is, is there a guarantee the district will actually have
5 sufficient water available in the long-term future to
6 meet this project or to meet any customer use within the
7 district.

8 The answer to that is, there is no assurance.
9 There is no guarantee. Right now we are in a water --
10 we're actually in a drought condition. The governor
11 declared a drought. As such, they have actually made
12 available the Dry Year Water Purchase Program.

13 The district has taken advantage of that. This
14 year we have purchased 1,400 acre feet of water. I have
15 a whole slide presentation in my pocket that shows the
16 entire rate structure of the water supply situation,
17 which probably you won't want to see today.

18 But it indicates that we went from July 31 --
19 from a negative 622 acre feet for this water year, we
20 went to a 750 acre foot bank carryover condition. That
21 is how the Dry Year Water Purchase Program works.

22 It's really important to recognize the high-end
23 users are the ones that are actually paying for this, not
24 the average residential customer. And, two, this Dry
25 Year Water Purchase Program may have the water next year,

1 it may not. There is no assurance that we are going to
2 have an adequate water supply to serve all our customers
3 in the long-term future, but we are working on it.

4 MR. PHILLIPS: Thank you.

5 MR. MOSBY: Anything else?

6 MR. BIERIG: Commissioner Gottsdanker.

7 MS. GOTTSDANKER: Yes.

8 Mr. Mosby, given that this project -- or not even
9 the project -- this property is an existing customer,
10 inside of all the water usage calculations that have been
11 done to date by the Montecito Water District, you have
12 always counted that use, that historical use, in your
13 needs overall for the community. Is that accurate?

14 MR. MOSBY: That is accurate, Commissioner
15 Gottsdanker.

16 Recognize that we saw this project under
17 Schragger. We saw it under Mr. Warner, who was also an
18 existing customer previously.

19 How could we say that this project no longer
20 exists. It always existed. They actually purchased
21 meters from us in 1924.

22 MS. GOTTSDANKER: So you've been counting --
23 you've always counted like the 41 point, whatever you
24 said, acre feet inside your needs for the community
25 ongoingly. That amount of acre feet has always been used

1 inside your calculations, assuming that something was
2 going to get built at some point there and that, that
3 whatever was there, you could historically deliver water
4 to?

5 MR. MOSBY: This is correct.

6 Recognizing, when you're looking at the 45 acre
7 foot that the project is estimated to use, the overall
8 demand for '07, '08 was 7,216 acre feet.

9 So you look at the overall percentages, you would
10 see that we've got agricultural users, we've got other
11 commercial users that use a lot more water than the
12 Miramar. They are, again, just one of our customers.

13 MS. GOTTSANKER: But for me, I can't hold the
14 Miramar or Caruso Affiliates to account for -- for the
15 problem that the Montecito Water District is having
16 delivering water. They are just one customer.

17 I mean, we've got -- overall we have got a
18 problem throughout the community. And that problem is
19 not -- as far as I can tell from what you're saying, is
20 not going to be exacerbated by this project coming
21 on-line.

22 Because you -- because you, in the work that you
23 have done, have always counted the historical use, which
24 is 41.6, or whatever the number is, somewhere in there,
25 and now what is being requested, I believe is 46 with an

1 additional up to 51 for landscape water, which is still
2 negotiable where that water is going to come from.

3 So, you know, it's not this project that is
4 causing the problem is where I'm getting to.

5 MR. MOSBY: Thank you. You've said that exactly
6 the way this is. They are just one customer.

7 And we do have, you know, a program in place to
8 correct the supply demand imbalance. And it has been
9 implemented. The last phase of it, of course, was the
10 rate structure and the new ordinance regarding
11 classification definitions.

12 But the Miramar Hotel is just one customer. And,
13 again --

14 MS. GOTTSANKER: Essentially an existing
15 customer?

16 MR. MOSBY: That is the way we see the Miramar.

17 MS. GOTTSANKER: In the numbers?

18 MR. MOSBY: That is correct.

19 MS. GOTTSANKER: In the numbers they are an
20 existing customer that historically has used whatever
21 they have used -- 41 acre feet, just to round it off.

22 And now -- so, this project is proposed to use
23 five acre feet more than has been historically used by
24 this property?

25 MR. MOSBY: And to be honest with you, when I

1 look at the letter that was sent to us by Caruso
2 Affiliated, they are looking at the interior use, which
3 is somewhere around 41 units, which is keeping it down to
4 what they were using prior.

5 And the only difference was, is the outdoor
6 landscaping is something we would have to now consider
7 and factor into the water demand for the project, and
8 we're actually doing that at this time.

9 MS. GOTTSANKER: Well, we can do that too.

10 MR. MOSBY: Right.

11 MS. GOTTSANKER: See, inside the conditioning
12 the project, we can come up with conditions which also
13 may limit the water use for landscaping, very much as the
14 city does. I mean, I just throw out one.

15 I mean, you know, 20 percent of any residential
16 property can be designed, in my business, with lawn. If
17 I put more than 20 percent of the open space of any given
18 property, no matter what it is, in lawn, it comes right
19 back to me with red lines all over it and goes, well, no,
20 no, no not that landscape plan. So there are things that
21 we can do, you know, to support you and what you're up to
22 as far as conservation throughout the community.

23 MR. MOSBY: We're actually looking for the
24 Montecito Planning Commission to help us with all the new
25 projects being submitted.

1 MS. GOTTSANKER: I understand.

2 MR. MOSBY: And we recognize that you're going to
3 do that.

4 MS. GOTTSANKER: Yes. Okay. Thank you.

5 MR. BIERIG: Commissioner Phillips.

6 MR. PHILLIPS: Thank you.

7 I don't know if I'm directing this to you,
8 Mr. Mosby, but if you would hang on a second.

9 Counsel, could you answer a question for me. Is
10 it permissible for a planning commission to approve a
11 project with new water use -- I think we have five acre
12 feet -- when we don't know where that water is coming
13 from?

14 MR. GHIZZONI: Chairman Bierig, Commissioner
15 Phillips, your question actually straddles two different
16 questions.

17 One is, permissibility under CEQA, and the other
18 is, the nature of mandatory findings that are required
19 under the county code.

20 So there are findings that require you to address
21 adequate services -- sanitation, water, access. Within
22 the county code, they are wholly apart from CEQA. So you
23 do need to make a determination of adequate water supply
24 as one of the mandatory findings for approval of the
25 project.

1 Now, that finding as an adequate water supply --
2 you know, the difference between 41 and 45, or 45 and
3 52 -- that is not a gross number. And you could properly
4 make that finding after you hear evidence about how the
5 district is going to address that or conditions that
6 you're applying to the project to demonstrate that there
7 is adequate water supply.

8 The CEQA question, the CEQA piece of this, is
9 really partially answered by the Moss case, and that is,
10 within the Moss case, the footing of that case was that
11 the project applicant sued the county for requiring a
12 subsequent EIR as to water supply.

13 And the Court of Appeal upheld the County's
14 determination to require a subsequent EIR as to water
15 supply in the face of a slight increase in usage by the
16 Applicant, but really controlled by the changed
17 circumstance of a significant -- or nearing the capacity,
18 of the water supply of the community.

19 So that would be the CEQA issue here, would be,
20 not so much the individual applicant's use, but what is
21 the state of the community's water supply. Is it at or
22 near capacity or is it over capacity. That would be the
23 CEQA question to ask.

24 MR. PHILLIPS: Couldn't it be argued that this is
25 not new use? This is an historical user that happens to

1 be using a little bit more. We're not approving new use.
2 We're recognizing historical use with a projection of
3 exceeding that, and, therefore, the issue of where the
4 water is coming from is not relevant?

5 MR. GHIZZONI: Chairman Bierig and Commissioner
6 Phillips, I would say, no, that your finding for amending
7 a development plan or amending a conditional-use permit
8 still requires you to make a finding of adequate water
9 supply.

10 So you would be addressing the delta of usage
11 between existing historic and any increase under the
12 county code, and it could be something that you probably
13 address under CEQA also.

14 MR. PHILLIPS: Thank you.

15 Can I do that, Mr. Mosby? Can I find adequate
16 water supply?

17 MR. MOSBY: Again, you have to look at what the
18 district has done. What I hope to do today -- and what
19 we talked to county planning was -- was to actually come
20 to you and provide you with a presentation of our supply/
21 demand and what steps the district has taken to restore
22 the imbalance that currently exists, in other words, to
23 finally balance it and have the water that we've
24 historically had for the community. That didn't occur.

25 I realize you have a lot on your agenda with this

1 project. But as far as the district steps, we talked --
2 again, have public outreach. It's all in the
3 presentation. We had Ordinance 89, which has been a very
4 successful experience and we thank you for helping us
5 with that.

6 And we also have, of course, the new rate
7 structure, which was adopted last Wednesday. What we're
8 finding, if you saw the presentation, is that we've
9 conducted about 290 water audits amongst our
10 single-family residential customers over the last two to
11 three years.

12 And what we're finding overall is the actual
13 usage is 20 to 30 percent per customer over what they
14 truly need. We had one customer show up at the public
15 meeting on Wednesday, and she went in front of the Board
16 and said, I'm very concerned about this water rate
17 structure you're considering adopting. I've looked at
18 it. My water bill is this now. It's going to go to
19 this.

20 First off, there was a misconception on how this
21 new rate structure is being applied, and it was
22 corrected. And, second, what was very interesting, this
23 woman had roughly .6 acres. She was using as much water
24 on that property as a property between 2 to 5 acres would
25 use.

1 And then I got a call from her the following day
2 and she said, it's funny, my arborist came out the other
3 day, and all my trees are dying.

4 Why is that?

5 Well, I guess it's too much water.

6 So we're actually finding this districtwide,
7 meaning you have to actually control the controllers.
8 You have to program things right. We believe we are
9 going to get on average, on average, a 20 percent
10 reduction in single-family residential use.

11 There are customers out there that are actually
12 very conscience, very conservation oriented. But there
13 are others that don't quite understand what water use
14 means, and we're trying to educate them and help them
15 with that.

16 MR. PHILLIPS: Thank you.

17 MR. BIERIG: Commissioner Burrows.

18 MS. BURROWS: Thank you.

19 In our conversation yesterday I asked about the
20 long-term water supply for Montecito. And what I think
21 you told me is that you're convinced that there is
22 sufficient spot water purchases to meet our needs. And
23 the second part of it was that the district has
24 sufficient money to make these purchases.

25 Could you please elaborate on that. And did I

1 understand correctly? And what exactly are spot water
2 purchases? I assume that is when the state water --

3 MR. MOSBY: I'm definitely going to correct that.
4 Because there are no assurances.

5 We do know the governor is working with the
6 Department of Water Resources to try to create a Dry Year
7 Water Purchase Program for everyone on the state water
8 project. Recognize there are quite a few of us that are
9 tapped in.

10 We have a special fund set aside at Montecito
11 Water for spot purchases. It is a special reserve fund
12 that we have available to us. But it's got limitations
13 to it. And the interesting thing is, is when you look at
14 spot water purchases, if the rest of the state starts
15 looking at this water, there will be less available to
16 Montecito.

17 So recognize there is -- it's not always going to
18 be there. And if it is there, it may be a limited
19 quantity. The other thing you need to recognize is last
20 year, in '06, '07, the spot water market -- we started
21 the year with \$25 an acre foot. That doesn't include the
22 treatment, the transmission.

23 Then by the end of '06, '07 went to \$100. This
24 year it's at \$160. And the amount of water that we
25 bought cost the district \$816,000 delivered to the

1 customer, and it's going to last 45 days. So it goes to
2 show you, our demand, our customer usage, is very high.
3 We're going to address that with the new rate structure.

4 But you understand also that the rest of the
5 state is tapped into this system. And even though the
6 Dry Year Water Purchase Program where we received the
7 most recent water will be in effect next year if we
8 remain in a drought condition, there may be less water
9 available to purchase.

10 So are we out of the woods? No. We can't assure
11 you that we'll ever be out of the woods. We need to
12 restore the supply/demand that we're attempting to do
13 now, that we believe we'll be successfully in doing, and
14 that we'll be able to live within our means.

15 MR. BIERIG: Maybe it would be a good time,
16 Commissioner Burrows. You did mention that you had
17 spoken to the Water District on this issue. And maybe
18 it's a good time for us to talk about ex parte
19 communications.

20 Because I know I had a meeting with Mr. Caruso
21 where we sat down and looked at the plan. And I believe
22 that is the only thing I can think of to report. There
23 is nothing in that communication that hasn't come up at
24 least so far.

25 Commissioner Burrows, you spoke to -- we might

1 want to go down the list just so we get that out on the
2 table right now.

3 MS. BURROWS: Well, I spoke with Mr. Mosby. I
4 spoke with Joan Kerns, who was prior water district
5 director and currently serves as water consultant to the
6 League of Women Voters. And I met with Mr. Caruso. And
7 I met with a number of neighbors and friends.

8 MR. PHILLIPS: I met with Mr. Caruso at my office
9 on August 12. We discussed the aftermath of the August 6
10 hearing. And I don't think anything was discussed that
11 you're all not aware of. If something comes to mind,
12 I'll bring it up.

13 The sense of the meeting was that Caruso
14 Affiliates will make efforts to bring the project into
15 conformity with our thoughts and, although it may not get
16 exactly there, that is the intention. And it was a
17 positive meeting.

18 MR. BIERIG: Commissioner Gottsdanker.

19 MS. GOTTSDANKER: Yes.

20 I met with Mr. Caruso on Wednesday, August --
21 whatever it was. Somewhere in there. It was after the
22 meeting with Commissioner Phillips and Commissioner
23 Burrows.

24 I had a conversation with county counsel prior to
25 the meeting to clarify for myself whether this could be

1 in violation of Brown Act and was given direction by
2 county counsel that it was appropriate for me to go ahead
3 and meet with Mr. Caruso.

4 I met with Mr. Bill Palladini of the Montecito
5 Association, and I met with numerous community members,
6 some of which are proponents of the hotel and some of
7 them are opponents. So, you know, during none of those
8 community meetings did I actually deal with any new
9 information, it should be said. They were -- I just
10 received a number of calls, and I actually have taken a
11 number of those calls. Some of which I wish I hadn't.
12 So that is it for me.

13 MR. BIERIG: Commissioner Overall.

14 MR. OVERALL: I also met with Mr. Caruso, and the
15 essence of that meeting was he expressed a change from
16 the request for denial at the August 6 meeting and
17 expressed a desire, which I think was evident by their
18 presentation this morning, of wanting to have a project
19 that could move forward. So I would say it was a very
20 positive meeting.

21 I've had conversations with Mr. Mosby. I have
22 had a conversation with one of the directors of the water
23 board. Fortunately, I was out of town for 11 days. So I
24 missed a fair number of calls. But I have spoken to a
25 few people in the community. I don't think there is

1 anything to report out of those conversations.

2 MR. BIERIG: Well, I'm glad we got that out.

3 Probably should have done that earlier.

4 So proceeding. Do we have more questions of

5 Mr. Mosby at this point?

6 Mr. Overall.

7 MR. OVERALL: Mr. Mosby, first of all, I want to

8 try to make something abundantly clear to the Applicant

9 and to my fellow commissioners.

10 In raising the questions related to the water, I

11 am not in any way trying to deny this project based on

12 lack of water supply or whatever. What I am trying to

13 understand and get to is what are appropriate potential

14 mitigation measures?

15 If we come to the point where you cannot purchase

16 an adequate water supply for the community and it impacts

17 the Miramar as well as the rest of us, what steps can the

18 Miramar take, what conditions could we write into our

19 approval, assuming we get to that point, that would help?

20 I know that you proposed a couple of things that,

21 frankly, in preparation for this meeting I didn't get

22 back to because we were reviewing the conditions for

23 denial, not for approval and the conditions for the

24 project -- or findings of denial rather.

25 So I would ask you a question about what

1 mitigations you would suggest. I think Mr. Caruso,
2 before you were here, suggested one possibility is they
3 can put -- ship their laundry out rather than doing it on
4 site. I think we ought to be looking for those kinds of
5 steps and measures that we can put in an approval that
6 would solve the problem or anticipate the problem.

7 So I would ask you if you have any specific
8 suggestions that you want to offer up in terms of
9 potential mitigation measures.

10 MR. MOSBY: That is a great question. And thank
11 you for allowing me to comment on that.

12 Actually when we sent a letter to Caruso
13 Affiliated about a month and a half ago regarding water
14 use on the project, we did list about a page and a half
15 of conditions on the project. And you've -- actually,
16 Commissioner Overall, I did send that to you just to
17 refresh your memory.

18 And in those conditions it specifically states
19 that they will have to do additional studies, and we're
20 going to be able to track the projected water use of the
21 project to make adjustments where we can make adjustments
22 to ensure that we stay within the base allotment.

23 So, again, we would work with the Applicant, as
24 with any other applicant that comes into Montecito Water
25 and ensure that we don't miss something. And that is

1 the way it works with all our customers is that we --
2 we're working with one right now that you'll probably be
3 seeing shortly.

4 And that is exactly how we would do it. We would
5 incorporate those conditions that you presently have seen
6 into the project and that they have to submit reports to
7 us indicating what the water use will be. We'll review
8 those reports, look at them constructively, and approve
9 the reports.

10 And then, of course -- I'm not sure where -- it
11 will stay within us, but we may wish to report back to
12 the Planning Commission in the event that you take a
13 certain action.

14 MR. BIERIG: Mr. Mosby, what is the date of that
15 particular letter that included those conditions?

16 MR. MIDDLEBROOK: Was it June 29 -- Matt
17 Middlebrook -- I believe? Thank you. July 29.

18 MS. GOTTSANKER: Could I interject and have
19 staff, if they could, get us -- I think it's the
20 materials that we -- I don't know which. I remember
21 seeing it. But if we're going to move forward in this
22 hearing, I think I would like to have a copy of it.

23 And I certainly did not haul down the 50 to 80
24 pounds of materials with me this morning. Because I
25 thought we were going somewhere else than we appear to be

1 going.

2 MR. BIERIG: In fact, we don't have to do it now,
3 but if you flag that so that we can incorporate it later
4 in the motions.

5 MS. GOTTSANKER: Mr. Chairman, I would like to
6 have a copy of it because I'm clear that it's either in
7 my car or under my bed.

8 MR. BIERIG: Commissioner Overall.

9 MR. OVERALL: Mr. Mosby, I have one other
10 question for you.

11 As I reflect on it, I may have attributed this --
12 the genesis for this question to you inappropriately.
13 But, either from you or from someone else connected with
14 the water situation, I formed the opinion that there was
15 an issue as to whether or not you could actually push
16 enough water through the pipes to the property to meet
17 the demand of -- as I -- what I was -- the impression
18 that I formed was that 45 acre feet was about the maximum
19 amount of water that you could deliver regardless of what
20 the supply was. Assuming the supply was more than
21 adequate, you still couldn't push much more than 45 acre
22 feet through.

23 Is that a correct perception on my part?

24 MR. MOSBY: No. Actually we can -- they have
25 five existing meters. We know the meter sizes, and the

1 letter that we sent to Caruso Affiliated, we indicated
2 that the maximum flow use is through those meters. It
3 includes also a peak flow.

4 We recognize also that, if you ran those meters
5 for 12 hours a day at their current rate, you can well
6 exceed the 45 acre feet on an annual basis, well exceed
7 that.

8 But what it really has to address are the peak
9 flows of the project. The peak flows occur when
10 everybody wakes up the morning and takes a shower, the
11 laundry is going, you have irrigation systems on. That
12 is what needs to be addressed.

13 And actually there is a specific addition in the
14 letter that we sent to Caruso Affiliated that says you
15 need to do a peak flow analysis of what the project is
16 going to do during certain periods of the day and under
17 certain occupancy conditions.

18 So they are actually going to do -- that is one
19 of our conditions -- a peak flow analysis. We believe
20 they can still utilize the existing meters, with all the
21 water conservation fixtures, and serve the project
22 adequately. But we need to see the study to confirm
23 that, and they recognize that.

24 MR. OVERALL: Just one follow-up question related
25 to that.

1 Describe for us, if you would, please, the
2 process for final blessing, for want of a better
3 description. You've asked for this analysis. How does
4 that -- where does it go? Who sees it? How does it get
5 blessed?

6 MR. MOSBY: The way it works is typically, when
7 there truly is a project, and it's made it through this
8 phase of review, then there is a project. And what
9 happens is, is we actually establish a job number for the
10 project.

11 We then interact directly with the Applicant, and
12 we let them know what the conditions are. He's going to
13 sign a water main relocation agreement. He has certain
14 infrastructure changes he has to make on the property.

15 And we do this with all our customers. And it's
16 something that occurs regularly. So Montecito Water will
17 actually undertake that activity. And, again, as I
18 indicated to you earlier, we would be more than happy to
19 come back and report to you the progress that we made and
20 the appropriate actions that we take.

21 MR. OVERALL: Thank you.

22 MS. BLACK: Each of the commissioners should have
23 received what was Attachment B to the August 6 staff
24 report.

25 And I just wanted to point out that we had

1 incorporated this letter into the conditions of approval
2 on August 6.

3 MR. BIERIG: I remember it now because of the
4 attachment.

5 MS. GOTTSDANKER: I remembered it. I just wanted
6 to see it again.

7 MS. BLACK: The last two pages, I believe, are
8 the district project conditions of approval.

9 MR. BIERIG: Any other questions of Mr. Mosby?
10 Commissioner Gottsdanker, keeping these things
11 under the bed -- does that really work?

12 MS. GOTTSDANKER: Except when I get a telephone
13 call that asks me a question and I have to climb
14 underneath my bed to look for it.

15 MR. BIERIG: Thank you, Mr. Mosby.

16 MR. MOSBY: Thank you, very much.

17 MR. BIERIG: Mr. Caruso.

18 MR. CARUSO: If I could just put one thing in
19 front of you in terms of water.

20 In terms of the amount of water that the Miramar
21 is proposed use it is .0062., .62 percent of all the
22 water served in Montecito. In terms of the incremental
23 use that we are talking about over the base amount of
24 what it has historically used, it's .0007.

25 I think to find that the incremental use of the

1 water is not unreasonable or would be a problem is
2 really, really simple in relative terms to the total
3 water usage in Montecito. Thank you.

4 MR. BIERIG: Thank you.

5 I think we're ready to move on from that subject.
6 I don't see any other questions. So thank you for that.

7 MS. BLACK: Mr. Chair, I believe the Applicant
8 had a presentation from their surveyor as well, and as I
9 indicated before, the county surveyor is here as well.

10 MS. GOTTSDANKER: Mr. Chair, can we have
11 Mr. Mosby come back for a second. I do actually have
12 another question.

13 MR. BIERIG: He almost got away.

14 MS. GOTTSDANKER: But his lawyer just got him
15 really fast.

16 MR. MOSBY'S COUNSEL: Commissioner Gottsdanker, I
17 just wanted you to know it's Mr. Mosby's birthday today.
18 So if you would wish him a happy birthday for coming down
19 here.

20 MS. GOTTSDANKER: Would you like us to sing?

21 MR. MOSBY'S COUNSEL: Actually I was going to
22 bring a cake down here, but I couldn't get it together on
23 time.

24 MS. GOTTSDANKER: So, happy birthday. I should
25 note that Mr. Mosby and I have been personal friends for

1 a number of years. So personally I wish you happy
2 birthday and many, many more, Tom.

3 MR. MOSBY: Thank you, very much.

4 MS. GOTTSANKER: So on to my question in a more
5 formal matter.

6 We haven't talked about groundwater. And I know
7 Mr. Caruso has agreed not to tap into his particular
8 aquifer.

9 If the Montecito -- and I mean, I do also know
10 that the Montecito Water District has a certain number of
11 wells throughout the community that you've negotiated
12 ownership of.

13 And how much of the water that we currently use
14 in the community comes out of the groundwater basin, out
15 of those wells, and is it expected, if we get in like a
16 really, really emergency situation, over and above what
17 actions are being taken by the district right now, that
18 we will be tapping into those groundwater basins
19 exceeding what we're currently doing today?

20 MR. MOSBY: Right now we're pumping roughly --
21 we're pumping almost maximum capacity. We're only
22 actually picking up somewhere between 6 and 7 percent of
23 the supply needed to satisfy the community.

24 The groundwater basin in Montecito is very
25 limited. We have reports that go back to the sixties.

1 The district has spent quite a bit of money on setting
2 the groundwater basin.

3 We have masked, you know, exactly what each
4 section of the basin is able to produce and provide. And
5 it's a very limited aquifer. And that is some of the
6 concerns that have been expressed to you earlier. We
7 utilize -- we are the groundwater managers for the basin,
8 and as such, we use it responsibly.

9 So, as far as groundwater being -- having the
10 ability to help satisfy demand during serious droughts,
11 as we are in right now, the answer is no. There is not
12 enough capacity in the groundwater basin to do that.

13 MS. GOTTSANKER: Thank you.

14 MR. BIERIG: Thank you.

15 MS. GOTTSANKER: Go have your birthday cake.
16 Have a nice lunch too.

17 MR. BIERIG: I think we'll move on to the
18 surveyor now.

19 I'll make the comment that you can keep it brief
20 if it works for you. Because I think given -- our
21 direction is to look more at the project site rather than
22 work backwards from the particular parcels. At least
23 that is the sense I'm getting from the commissioners
24 here.

25 MR. WILSON: Good morning. My name is Jim

1 Wilson. My professional license says Kenneth James
2 Wilson. I actually have a nickname that I'm haunted
3 with.

4 But I wanted to come before you just to get into
5 the record that my associate Pat Yokhum is a colleague of
6 mine that I have worked with several years, and he
7 provided testimony on behalf of Penfield & Smith at your
8 August 6 hearing, as well as prepared our finding reports
9 and various letters as to the matter of Parcel 6 area
10 calculations which we were asked to provide an
11 independent review on.

12 And I have read through the transcripts of past
13 testimony, as well as all the other materials that we've
14 worked together with and jointly on, and I just want to
15 stand before you and say that I fully endorse his
16 findings as if they were my own and that the material
17 presented would be substantially the same had I been here
18 in person that day.

19 So if there are any questions regarding that, I
20 would be happy to answer.

21 MR. BIERIG: I understand he's not a licensed
22 surveyor.

23 THE WITNESS: He's not.

24 But I consider him to be an expert in his field.

25 MR. BIERIG: And you've reviewed all the work

1 that --

2 THE WITNESS: I've reviewed all the work and
3 we've had many late afternoon sessions.

4 MR. BIERIG: Thank you.

5 Questions?

6 Thank you.

7 MR. WILSON: Thank you.

8 MS. BLACK: Mr. Chair, did you have any questions
9 of the county surveyor? Would you like the county
10 surveyor to address the Commission?

11 MS. GOTTSDANKER: I do.

12 MR. BIERIG: Apparently Commissioner Gottsdanker
13 does.

14 MR. EMMONS: Good morning. My name is Michael
15 Emmons. I'm the deputy director of Public Works and
16 county surveyor for the County of Santa Barbara.

17 MS. GOTTSDANKER: Let's see here what my question
18 is.

19 So I've read -- I read the letter from the State
20 Lands Commission, and somehow my -- and I just want to
21 verify that my interpretation of the determination of
22 where the high watermark is, you know, the mean high tide
23 line, that given the information that we've now got in
24 front of us, which we just got yesterday, is that mean --
25 am I correct in thinking that the mean high tide

1 waterline -- it can be determined at any moment in time?
2 Is that what this is actually -- it seems like that is
3 what it's saying. I'm trying to clarify that.

4 MR. EMMONS: Commissioner Bierig, Commissioner
5 Gottsdanker, I believe that is what the State Lands
6 Commission letter specifically states is that it's a
7 snapshot in time?

8 MS. GOTTSDANKER: Yes.

9 MR. EMMONS: That's correct.

10 MS. GOTTSDANKER: So then, I guess -- well, maybe
11 that is under deliberations. I'm having so much trouble
12 not deliberating here. I apologize.

13 I just wanted to make sure that I was reading the
14 same thing that you would say you would read from that.

15 Thank you.

16 MR. EMMONS: Yes.

17 MR. BIERIG: Thank you, very much.

18 MR. EMMONS: Thank you.

19 MR. BIERIG: We're moving right along now. Well,
20 I thought maybe, before we got to the public comment
21 portion, we might have -- the Applicant has a number of
22 changes, and I thought we might want to satisfy ourselves
23 that we understand the changes being proposed.

24 It was run through pretty quickly, and they are
25 substantial changes. So I personally would like to spend

1 a little time working on those, and I think there might
2 be more questions here. So you if you don't mind -- and
3 I'm not sure Mr. Caruso whether that is best addressed to
4 the project architect or how you want to handle that.

5 MR. CARUSO: Well, we'll see the limits of my
6 knowledge. There is a whole team of people here that
7 will back me up if I mess things up.

8 MR. BIERIG: I'll jump in to start out with,
9 which is Building No. 1. I'm looking at the exhibit
10 you've provided here. It's revision of 6.03.

11 MS. GOTTSDANKER: Is that the section, Bob?

12 MR. BIERIG: Yes. It's a section of the
13 building. I believe it's the one before that.

14 MR. CARUSO: It's the same.

15 MR. BIERIG: Yes, it is the same. I see.

16 So you've got two -- the two arrows. One points
17 to the top of the berm, the upper arrow; and the lower
18 arrow is the top of curb.

19 Am I reading that correctly?

20 MR. CARUSO: Correct.

21 MR. BIERIG: So you've changed the building
22 heights on each of the floor levels to bring it down.

23 MR. CARUSO: Correct.

24 MR. BIERIG: And so it does now -- so if we
25 have -- if we measure the height of the structure from

1 the top the curb, it now falls within the guidelines as
2 recommended -- the Montecito Community Plan guidelines is
3 how I would read this.

4 MR. CARUSO: That's correct.

5 MR. BIERIG: Which is excellent. I'm really
6 happy to see that change.

7 Just curious. I notice you didn't change the
8 depth of the parking structure, and I take it that issue
9 of sea level is still -- it is a legitimate problem and
10 you could not push the building any lower in the ground.

11 MR. CARUSO: That is correct.

12 We went back to our engineers after that question
13 was posed by you, and the current elevation of the water
14 is fairly low. But there have been historical instances
15 where it's reached a higher level. So the recommendation
16 from our engineers is to keep it at the existing level
17 from a safety standpoint.

18 MR. BIERIG: I did go back and look at the
19 elevation on the ocean front units and noticed you had
20 conformed to the same elevation on those, which I had
21 assumed would be lower because it appears closer to sea
22 level. But I see they are both at the same level.

23 What -- you also conformed by and large to my
24 request that there not be -- that none of the buildings
25 be within the setback. And I noticed on this particular

1 building you are asking for a continued variance from
2 that.

3 And could you give me an indication of what
4 the -- it's not a very big amount. I'm wondering what
5 the constraint is that is preventing that particular --
6 or continuing to require that particular modification to
7 the design.

8 MR. CARUSO: Sure. The direction, as I thought
9 we heard it, was that you did not want to see any two-
10 story buildings within the setback.

11 MR. BIERIG: That's correct.

12 MR. CARUSO: So the building that is currently in
13 the setback is a one-story building. It's not in the
14 setback, you're correct, that great amount.

15 The request that we have is, as we continue to
16 move that building sort of forward towards the ocean,
17 we're just losing open space in front of the hotel that
18 we would like to maintain. And since it is a one-story
19 elevation and really not visible, we would request to
20 allow it to encroach in the setback.

21 MR. BIERIG: Okay. I assumed it had to do with
22 the design of pool area and the shrink in that area.

23 MR. CARUSO: It's the pool. And we're trying to
24 stay far enough away -- you know, the reality is we are
25 dealing with a pretty active railroad track and would

1 rather not have lounge chairs along the railroad track.

2 MR. BIERIG: Okay. Excellent.

3 MR. PHILLIPS: Thank you, Mr. Chair.

4 The question for staff. Can I embrace Chairman
5 Bierig's methodology change as to measurement of this
6 building from ordinance code to curb height -- from the
7 curb?

8 MR. BIERIG: I'm not sure if we're really trying
9 to do anything. I was offering that as a practical
10 version --

11 MR. PHILLIPS: I like the results.

12 MR. BIERIG: -- of the height.

13 MS. BLACK: Mr. Chair and Commissioner Phillips,
14 just to answer your question. I don't think you can
15 change the ordinance standards, but you can indicate that
16 this is necessary in order for you to find -- to make
17 appropriate findings to support the project, and there
18 are findings as to compatibility. There are findings as
19 to visual effects that I think you could tie that into.
20 So I think you have a lot of latitude.

21 MR. BIERIG: We still need the modifications.
22 Because, based on code, it's from existing ground, and
23 that measurement is not.

24 But my point, when I made that suggestion at our
25 last hearing, was that, from a visual practical aspect,

1 from the perceived look of the project, it's within
2 height limitations.

3 Commissioners? Questions of these many
4 modifications that are in front of us?

5 MR. PHILLIPS: One more thing, if I could.

6 Mr. Caruso, do you have any elevations or any
7 sketches as to what these buildings might look like?

8 MR. CARUSO: They are going to look like a
9 cottage-style Montecito hotel, not like Monticello.

10 MR. PHILLIPS: Thank you.

11 MR. CARUSO: I promise you as we go through with
12 the ongoing process with MBAR and yourselves, we will
13 make sure that they are in keeping with the cottage style
14 in the community.

15 MR. BIERIG: Mr. Caruso, another item that was in
16 the MBAR suggestions relative to the project related to
17 Building 44.

18 There were some questions about varying the roof
19 heights. And I can't remember the exact terminology that
20 was in their minutes. But I assume your design direction
21 would incorporate that as well --

22 MR. CARUSO: Correct.

23 MR. BIERIG: That was your intention relative to
24 that.

25 Because that is part of where they were headed

1 with their interpretation of cottage style. And that was
2 your intention too?

3 MR. CARUSO: That is correct, Mr. Chairman.

4 MR. BIERIG: Could we also take a look at the
5 self-parking. I believe I understand it, but I assume
6 the darker spaces are the single-loaded spaces.

7 MR. CARUSO: I'm sorry, Mr. Chair. The darker
8 spaces -- correct -- are the self-parking the non-tandem
9 spaces, right.

10 MR. BIERIG: You could allow people to self-park
11 and use those non-tandem spaces. And I assume you would
12 want to set this up so that it was -- during peak periods
13 you might not have that operational, I would assume?

14 MR. CARUSO: Well, what our hope is, like I
15 mentioned, if we get approved, based on our proposal to
16 maintain valet and if for some reason the Commission
17 finds that that is not operating properly, that there is
18 spillage into the community, that we would come back and
19 we would figure out a condition that you would impose
20 upon us to allow self-parking.

21 MR. BIERIG: I believe we cover a lot of -- is it
22 condition 55, Director Black, that is the operative
23 condition? So that is that one we have to modify to
24 address that this would be one of the solutions that
25 would be used?

1 Mr. Briggs, do I have the right one?

2 MR. BRIGGS: Yes, you do. And we can do that for
3 you.

4 MR. BIERIG: I know I'll want to take a look at
5 that during the lunch break.

6 MR. OVERALL: Mr. Chair, related to that, the
7 self-park possibility, I would like staff to prepare a
8 comparison for us of the spaces under the -- under the
9 valet tandem parking approach and what happens to the
10 total number of spaces if you make this change. Because
11 I'm not doing the math very well.

12 MR. CARUSO: There are no changes,
13 Mr. Commissioner.

14 This is the existing design and existing count.
15 So what we've done is we've identified the parking spaces
16 that are non tandem and the current design that you
17 already have, and that would allow you to impose that
18 condition for the existing non-tandem spaces. There is
19 no loss of parking spaces by incorporating this.

20 MS. BLACK: Mr. Chair, maybe I can at least help.
21 I'll say it in a different way, and maybe it will help.
22 Maybe it won't.

23 If you look at the exhibit on the screen, you see
24 there are some shaded spaces. Those spaces can be
25 accessed without a valet having access to other spaces to

1 get the cars out. So if you look at those, people can
2 come in and self-park in those spaces, and the remaining
3 spaces that are not shaded would be valeted spaces.

4 So I think what Mr. Caruso is proposing -- this
5 is the first I've heard it -- so I'm summarizing what I'm
6 hearing -- is that, for the first year of operation, we
7 would monitor and report back to the Planning Commission
8 in the context of a one-year review as to how parking is
9 working with the project and its effects, if any, on the
10 neighborhood. And, if necessary, the Commission could
11 require that these spaces that are shaded be made
12 available for self-parking, and the remainder would be
13 valet.

14 MR. BIERIG: Excellent. Thank you.

15 And this would access from the ballroom side; is
16 that correct?

17 MR. CARUSO: It would access from the private
18 road across from the ballroom, yes. The existing
19 entrance is there.

20 MR. BIERIG: Thank you.

21 Would it be fair to say, Mr. Caruso, that we --
22 we have our staff report here, which I think you're
23 familiar with. We talked about it the other day. Page 2
24 has our redesign directions.

25 And you have basically incorporated all of those,

1 plus a few more, with the exception of the -- basically I
2 think you've incorporated them all, except you changed
3 the 20-foot setback to 15 feet on the church side, I'll
4 call it.

5 MR. CARUSO: That's correct.

6 MR. BIERIG: Otherwise you've incorporated all of
7 these changes into your design?

8 MR. CARUSO: That is correct.

9 And I think we went a little bit beyond that with
10 Building 42 and 43 by taking that building, taking the
11 second floor off --

12 MR. BIERIG: I appreciate that you made other --
13 I was just -- that's correct. I was just referring to
14 our redesign direction, and effectively you had
15 incorporated all of those items with the 5-foot change,
16 but you've also reduced -- taken out the two-story
17 component as well.

18 MR. CARUSO: Correct.

19 And reduced FAR by about 6,700 square feet.

20 MR. BIERIG: What did your room count actually
21 drop to?

22 MR. PHILLIPS: 192.

23 MR. CARUSO: 192.

24 MR. BIERIG: Do you have any estimate,
25 guesstimate, on the FAR differential?

1 MR. CARUSO: It's just under -- it's .2399.

2 MS. GOTTSANKER: Just to clarify, that would be
3 with the inclusion of Lot 11 and the inclusion of all of
4 Lot 6.

5 MR. CARUSO: Correct.

6 MS. GOTTSANKER: You're reduction would be --
7 what did you just say? It's point two --

8 MR. CARUSO: -- 399.

9 MS. GOTTSANKER: .2399.

10 MR. CARUSO: There is reduction of about
11 sixty-six hundred --

12 MS. GOTTSANKER: 6,645.

13 MR. CARUSO: 6,655.

14 MS. GOTTSANKER: So that would bring us to two
15 three with the inclusion of those?

16 MR. CARUSO: That's correct.

17 MS. GOTTSANKER: Now, I remember -- I think we
18 were at -- once the proposal had been made to go ahead
19 and include Lot 6 -- because we didn't -- we didn't take
20 any action around Lot 6. We left Lot 6 completely in
21 place.

22 While we did take an action -- or conceptual
23 action was to remove Lot 11. Now, if we were to continue
24 to remove Lot 11, do you have numbers to let us know what
25 the FAR is with your reduction in square footage?

1 Because I know that -- I think we were over 3,200 square
2 feet now or subtracted 6,000. I'm kind of wondering
3 where all that really lays out with all the alternatives.
4 I mean, keeping Lot 6, keeping Lot 11, where we're at
5 with that.

6 MR. CARUSO: We will calculate that, if none of
7 the square footage in Parcel 11 was used in the
8 denominator, there would be an additional reduction of
9 4,000 square feet approximately.

10 MS. BLACK: Necessary?

11 MR. BIERIG: Necessary.

12 MR. CARUSO: Necessary, yes.

13 So we would lose a total of around 10,600 square
14 feet, plus or minus.

15 MS. GOTTSANKER: Without Lot 11 in the mix.

16 MR. CARUSO: Without Lot 11 in the mix.

17 MS. GOTTSANKER: But -- so you would need to
18 lose 4,000 more than you've already lost by losing those
19 rooms?

20 MR. CARUSO: Correct. The total loss, if you
21 take out 11, is about 10,600.

22 MS. GOTTSANKER: Thanks. That is what I'm
23 looking for.

24 MR. CARUSO: We've taken out roughly 60 percent
25 of the total on our own voluntary action.

1 MS. GOTTSANKER: Got that. Got that.

2 I really have to -- I mean, I just want to stop
3 for a minute. I meant to say this earlier.

4 But, you know, I really want to compliment you
5 and your team and staff in that I now feel that this --
6 that we're -- this project and the negotiations and the
7 dialogue and the compromises, everything that is
8 happening in this meeting, is really what land use is at
9 the foundation of land use in our particular community.

10 This is what makes the projects work in our
11 community. And I know there has been a lot of angst in
12 the papers and this way and that way, but I really
13 appreciate the fact that finally we're at a hearing where
14 there is actually dialogue, where there is actually back
15 and forth the ability to be able to make compromises on
16 our part, make compromises on your part, And that out of
17 that, from my experience, long as it -- I don't even want
18 to think about -- that is the way the best projects come
19 out for the entire community. For the entire community.

20 And that is why we have the community we have
21 because we are willing, as friends, neighbors, and
22 community members, to sit down and actually compromise
23 and dialogue. And I am just so -- I'm just like really
24 happy about this meeting today. I'm just like having so
25 much fun. Thank you.

1 MR. CARUSO: Thank you for that comment. I
2 appreciate it. I appreciate your comment. That makes us
3 happy too.

4 MR. BIERIG: Commissioners?

5 Not seeing it. I think we're going to go to
6 public comment.

7 Unless you have some other issues you would like
8 to address with us.

9 MR. CARUSO: Mr. Chair, in the interests of
10 time -- and I know you've had a lot of long meetings and
11 we have a lot of supporters here -- I would ask our
12 supporters, maybe, if they just want to stand up and have
13 a show of support and we would encourage them to waive
14 the --

15 MS. GOTTSDANKER: We were going to do that
16 anyway.

17 MR. CARUSO: -- speaking.

18 If somebody -- obviously, I can't tell everybody
19 what to do, but that would be my --

20 MR. BIERIG: Mr. Caruso, is calling for his
21 supporters to stand up and be recognized here.

22 (Audience participants stand.)

23 MS. GOTTSDANKER: You are to recognized.

24 Thank you.

25 MR. CARUSO: Thank you, very much, Mr. Chair.

1 MR. BIERIG: I also want to let people that are
2 opposed to the project -- give them an opportunity to
3 stand up as well.

4 (Audience participants stand.)

5 MR. BIERIG: Thank you.

6 I know some of you can't come back after lunch.
7 So I did want to give everybody a chance to make their
8 presence known. So thank you.

9 And I'll encourage you not to speak. Because we
10 really would like to get to deliberations as soon as we
11 can this afternoon. So I'll ask you to try to confine
12 your comments to new information if you can.

13 Obviously, we've heard the passion about this
14 project from both sides. And we have a lot of work to do
15 today. So if you could limit your comments, it would be
16 really, really appreciated.

17 I hate to be so restrictive. Can we do, let's
18 say, a minute and a half? Can you do two? Let's do two
19 minutes.

20 MS. OPLAND: Okay.

21 MR. BIERIG: In opposition, Harry Hovey.

22 MS. GOTTSANKER: He's changed his mind.

23 MR. HOVEY: One of my major complaints was, at
24 least we found out that the height limits above
25 Jameson -- South Jameson Lane was 49 feet, and Mr. Caruso

1 did a wonderful presentation today saying that he reduced
2 the height to 38 feet. I'm totally happy.

3 MR. BIERIG: Thank you.

4 In favor, Ted Tedesco.

5 I guess Ted is not here.

6 Mary Briggs.

7 You know, what we could do. Is there anybody --
8 we're going to probably break for lunch here in 15
9 minutes. If there are people that would like to speak
10 before the break, we might just try lining up again, and
11 we'll take you as quickly as we can.

12 No?

13 MS. BLACK: Mr. Chair, I've been trying to get
14 people to sit down in their seats, and if you have them
15 line up, we're creating our own fire issue.

16 MR. BIERIG: How about not lining up. How about
17 no more than a couple up at the time.

18 MS. BLACK: Call like three speaker slips at a
19 time.

20 MR. BIERIG: Okay. We'll try that.

21 Sonja Jekich --

22 MS. JEKICH McFARLAND: Good enough.

23 MR. BIERIG: McFarland.

24 MS. JEKICH McFARLAND: My name is Sonia Jekich
25 McFarland. I'm a resident of Santa Barbara and Glendale.

1 I have lived in Glendale for 32 years, and I have
2 lived in Santa Barbara for almost three years. I met a
3 wonderful man three years ago in Santa Barbara, and so
4 through osmosis I moved here also.

5 I do public relations work as an independent
6 contractor for several firms in Los Angeles, and
7 approximately four years ago I worked on the Americana
8 project in Glendale without ever meeting Mr. Caruso.

9 By sheer coincidence, I was also a resident of
10 Glendale and a property owner. So it was very important
11 for me to be able to feel comfortable about that project.
12 And so after examining the project for Americana, I felt
13 very good about it. And I begun here work for it, and to
14 this day I feel great about it, and I'm happy to
15 participate today here.

16 Thank you for hearing me. I think he's one of
17 the most wonderful developers. I recently read an
18 article in U.S. News and World Report. And some of the
19 most popular developments in American today, especially
20 small towns such as Montecito and communities like
21 Glendale, are exactly the kind of developments that
22 Mr. Caruso is developing all over Southern California.

23 Mr. Caruso never met me until today. I just
24 introduced myself to him about two hours ago, and he was
25 flabbergasted. I don't think he could even understand

1 half of the stuff I said to him, but I'm great in favor
2 of this project, and I look forward to the Commission's
3 approval of it.

4 I studied history at UCLA, and I graduated with
5 honors, and as far as I can recall, even The Pyramids and
6 Stonehenge were approved and built quite successfully.
7 I'm sure the Commission can move beyond the discussion
8 and debate that has been going on in this project, even
9 without Mr. Caruso, for more than a decade.

10 There have been three owners involved in the
11 ownership of the Miramar project. And I appreciate if we
12 can just move on to approval. And I'm grateful to be
13 able to speak. Thank you.

14 MR. BIERIG: Candice Buergey.

15 MS. BUERGEY: Thank you, you guys, for all your
16 hard work, and also thank you to our whole community.

17 Protect Montecito: Keep the SEIR in place.
18 State water has been reduced from 33 percent to
19 10 percent. Alternative future water is sketchy and
20 unpredictable for Montecito. Have Mr. Caruso deed his
21 water rights over to the Montecito Water District to
22 protect the aquifer for our community.

23 And I would like to ask Mr. Caruso why he won't
24 deed that over. And maybe he could explain that to our
25 community. Thank you.

1 MR. BIERIG: Thank you.

2 Herbert Kendall.

3 Egan -- is it George Egan?

4 MR. EGAN: I'll waive my rights to make any talk
5 and say let's get on and have a vote. I've been in two
6 of these meetings, and I think it's time to quit
7 nitpicking and get on with the show. Thank you. I'm
8 sorry for the rats and termites will be out of work.

9 MR. BIERIG: Bob Hazard.

10 MR. HAZARD: I waive my right, and I join you in
11 get on with the vote.

12 MR. BIERIG: Let's see. Ted Buergey.

13 MR. BUERGEY: Hi, Commissioners. I think I'm
14 coming up with somewhat new information here.

15 There has been a lot of analyzing of water
16 issues, which has brought upon the SEIR. And most of
17 these analyzations are predicated on the July 29 letter
18 that Mr. Mosby wrote that you all just received.

19 And Mr. Mosby I don't believe is qualified to
20 make the determination on how much water is going to be
21 used on a major resort. He's never done that before. He
22 doesn't have any credentials. That job is supposed to be
23 done by the Applicant.

24 He's failed to supply any kind of a non-biased
25 water usage analyzation for his project. Just hasn't

1 done it. Now, if I point to page, I believe it is,
2 page 4 on the July 29 letter, now the project is supposed
3 to be held to historical usage of previous water.

4 Now, on page 4 there is a chart that has nine
5 years running of the Miramar Hotel water usage. There is
6 one here that is a huge number. That is '89/'90, 41.8.
7 But if you average that all out, there is 28.1 average
8 feet of water a year that the Miramar Hotel used in the
9 past, and that was without any water-saving devices
10 whatsoever. That was just let it run.

11 Now, magically, through all of this analyzation,
12 Mr. Mosby comes up with a number of forty -- base
13 allotment of 45 acre feet, 45 to 60, based upon the
14 Applicant making a reapplication.

15 Where did this huge number of 45 to 60 acre feet
16 come about? I think that is what you really need to
17 examine in this EIR. Where does that number magically
18 come from? That to me says that that is a project that
19 is a lot larger than the approved Schrager plan.

20 Now, the approved Schrager plan was about three
21 acre feet above the 28.1 average, I believe. You've got
22 a big discrepancy on the amount of acre feet of water
23 there that they are asking for. I think that is setting
24 a very bad precedent.

25 Now, Mr. Mosby I don't think was -- I don't think

1 he was really forthwith in telling you about how much
2 water shortage we are really looking at next year. He
3 said -- I heard some numbers, like, oh, we're 550 feet in
4 the bank.

5 That doesn't mean anything. If you take the
6 amount of water usage during the year, this last year was
7 7,700 acre feet --

8 MR. BIERIG: I'm going to have to ask you to wrap
9 it up.

10 THE WITNESS: I just want you to understand that
11 that same amount of water is going to be used, and
12 already -- according to Mr. Mosby's analyzations, we're
13 already about 2,000 or 3,000 acre feet short of what
14 we're going to use next year. So you've got some real
15 water usage questions, and an SEIR is going to be the
16 only thing that will answer.

17 MR. BIERIG: Thank you.

18 MR. BUERGEY: Thank you.

19 MR. BIERIG: Dick Eiler.

20 And Karen Drown following.

21 MR. EILER: My name is Dick Eiler. I'm a
22 Montecito resident for the past 33 years, and I'm a close
23 neighbor to the Miramar, actually probably eight blocks
24 away is where I live.

25 If you are to confine me to things that are going

1 to be new today, I think new is a good descriptive word
2 for everything we've heard here today. I think we've got
3 a new spirit of cooperation. I think we've got a
4 developer here who has listened carefully, instructed his
5 staff to meet these concerns, and has done an admirable
6 job in developing the changes that you had requested and
7 that he has made.

8 I think that, yes, we have a water crisis. Every
9 now and then we have a water crisis. Then we have Lake
10 Cachuma overflowing. We can't control that, but we know
11 that we go through these ups and downs.

12 As far as the water district is concerned, they
13 are qualified to determine whether or not they can and
14 will serve, and they have demonstrated that. I ask you
15 here to -- in the notice of brevity -- to take very
16 careful consideration of all of the things that have been
17 offered today that you have requested, and let's get on
18 with this project. Let's approve this project. It's got
19 almost 100 conditions.

20 They are certainly going to hold his feet to fire
21 in all areas, and you're going to have a beautiful
22 project. Thank you, very much.

23 MR. BIERIG: Thank you.

24 After Karen will be Bill Jones.

25 MS. DROWN: Good morning, Commissioners. I'm

1 Karen Drown, a 40-year plus resident and long-time farmer
2 here in the area.

3 One of the things that hasn't really been
4 mentioned in Montecito's water saga is that we are no
5 longer allowing -- at least currently allowing, any
6 agricultural hookups. So it's kind of a decision that
7 the community has made.

8 Which I don't know if there are any that want to
9 come on-line right now, but we do have a long water
10 district. Montecito Water, traditionally, for many
11 years -- limited growth. We had long lists of people
12 waiting to get meters and waiting to for development.

13 And we had some deals that took place. Many of
14 them involved trading water well rights, or drilling
15 rights on property, for meters. And this has been
16 alluded to today. We had the Ennisbrook development, La
17 Contratos there at Sheffield and San Leandro. They had
18 water wells on the property.

19 And people preferred to have the service and
20 convenience of metered water. So they did a trade at
21 that point and signed over their water rights or their
22 right to drill wells on the property in exchange for
23 meters.

24 The Fleshman property is a large property on
25 Lambert Road in the Montecito Water District. Again,

1 they did the same sort of thing. They wanted to have the
2 consistency, the safety, and everything else with nice
3 safe metered water. So they deeded over to the district
4 their water rights.

5 There is a condition right now on the Miramar
6 property where there are water rights, and we are hoping
7 that Mr. Caruso, in the interests of community spirit and
8 having safe and -- safe water for the existing wells in
9 the area and safely delivered water to the people who are
10 in the hotel -- we're asking him to please deed over his
11 water rights and let Montecito Water District, which is a
12 big supporter of his project, carefully monitor all the
13 water that is coming under his land and the neighboring
14 properties as well.

15 And I urge him to consider this. He has alluded
16 to the fact -- at one point, because there was a lot of
17 dissent --

18 MR. BIERIG: Karen, you're going to have to wrap
19 it up.

20 THE WITNESS: There was a lot of dissent about
21 the wells. Whiskey is used for drinking. Water is used
22 for fighting. We all know that.

23 But he alluded that he wouldn't be using it.
24 Well, if he isn't going to use it, please deed it over.
25 Thank you.

1 MR. BIERIG: Karen. Karen. Thank you.

2 Bill Jones.

3 Followed by Ron Pulice.

4 MR. JONES: My name is Bill Jones. I live in the
5 same area as Harry Hovey.

6 I represent three other neighbors besides myself
7 on either Wyant or Bonnie Lane. I'll only bring two new
8 things today. One, someone has made reference to the
9 Miramar maybe in 1974.

10 During 1974 and 1973 and 1972 I stayed at the
11 Miramar. That was the declining years of the Miramar.
12 It was not a peak usage time for the Miramar. We
13 purchased our home in 1974, 1975 and live up off San
14 Ysidro Road. So if you have information about use of
15 water, you're talking about a hotel that was in its
16 declining years.

17 The second thing is, some speakers previously
18 have talked about problems in relation to the southbound
19 entrance to Highway 101, as with the new Miramar it might
20 become congested. I don't think that is a possibility,
21 principally because we have Olive Mill Road half a mile
22 to the west, and we have Sheffield one-and-a-half miles
23 to the south -- or to the east.

24 And so any of us that don't want to enter the
25 Highway 101 from north -- from South Jameson alongside

1 the Miramar can back up to Olive Mill or swing down to
2 Sheffield. I don't think it's a congestion issue at all.
3 The other aspects of it I had here have been raised.

4 Thank you very much for speaking, and I fully
5 support the new Miramar project.

6 MR. BIERIG: Thank you.

7 Ron Pulice.

8 Followed by Ruth Green.

9 MR. PULICE: Hello the Board and Chair.

10 You know, I -- just like you, on the last
11 midnight ride of Paul Revere, from Mr. Caruso we get
12 information at the 11th hour. I get e-mails from him at
13 the 11th hour saying we're misinformed, and there is
14 information that we have. That was last night. The
15 night before that as well.

16 You know, it looks like there is a foregone
17 conclusion here that you're going to kiss and make up and
18 move this thing along. But I'll let you know that
19 dealing with a few issues that make you happy is not
20 dealing with all of them. And there is plenty more that
21 exist.

22 There are people that know that there is a flood
23 problem. There is a fatal flaw. There has been
24 engineers that state that. We do need investigation on
25 these issues like that.

1 The traffic -- I've called Caltrans. They said
2 they got no response from the county regarding their
3 questions. They got lip service. There are issues
4 regarding parking. We've gone through all these things.
5 Granted. I just wish you would take your time and don't
6 get in a happy-fest today and think, oh, it's great and
7 just pass it.

8 Give us a month or two, whatever times it takes,
9 to look at these new changes. All of a sudden you think,
10 oh, it's perfect. But what is it you're seeing? No one
11 has a chance. If he really cared about the community, he
12 would have taken the time to meet with us and show us the
13 changes and give us a chance to dialogue the changes with
14 time.

15 You say, Claire, that you're happy we're
16 dialoguing. This is not dialoguing. This is politics.
17 Dialoguing is taking the time, taking days to look at
18 this thing. This is a major project, and the only one
19 you'll ever have a chance to approve, at least at this
20 point, that didn't get a full EIR.

21 And without that, there will be lawsuits until we
22 get the whole dialogue done. So if you want to have this
23 lawsuit go on, there will be. If you don't deal with
24 these people's safety on the ocean -- I don't live there.
25 But this 13-foot high tennis court that is going to block

1 and cause irreparable damage by flooding -- it exists.

2 And Penfield & Smith can cover it up all they
3 want to. So that is just one major issue. There is more
4 than that. So take your time. Do not decide this all in
5 one day. Thank you.

6 MR. BIERIG: Thank you.

7 Ruth Green.

8 MS. GREEN: Mr. Chair, I waive my right to speak,
9 and I am in support of the project.

10 MR. BIERIG: Dora Bradley.

11 MS. BRADLEY: No. I'm not speaking.

12 MR. BIERIG: Marilyn Rea.

13 Alan Smith.

14 Bonnie Jordan -- Borden.

15 MS. BORDEN: Excuse me. Sorry. Sorry. I would
16 like to speak.

17 MR. BIERIG: Please do.

18 MS. BORDEN: I thought I wasn't going to be
19 allowed to. So I put it in here (indicating).

20 MR. BIERIG: Followed by Bill Howard.

21 MS. BORDEN: My name is Brownie Borden. I have
22 lived here for 22 years. I love Santa Barbara.

23 First, I will say that Mary Griggs, who was
24 called on, who is my twin, left early because she thought
25 she was never going to get to talk. What she wanted to

1 say was that she drives by every single Sunday morning in
2 a bus going to church and drives by the Miramar, and she
3 thinks it's a disgrace that Santa Barbara, Montecito,
4 should have that sitting there for ten years going to
5 hell in a handbag.

6 Now, I haven't driven by that. So I don't know.
7 But I have been in Montecito for 22 years. And I've
8 listened to you all for eight hours two weeks ago on the
9 television. So I wonder if you're going to go on letting
10 this go on forever and ever. I think you're a great
11 team, but it should be solved.

12 Mr. Caruso has spent, what, a year and a half and
13 millions of dollars trying to make this happen,
14 rebuilding of the Miramar. Everyone believes that
15 Mr. Caruso has fulfilled the requests of your board, and
16 then you demand something more. I've listened, and I've
17 been here. And I've been shocked.

18 I have handed in 77 names, that are in a pamphlet
19 up there that I put in, of people who think this Miramar
20 should happen.

21 MS. JEKICH-McFARLAND: My name should be on
22 there. So that should be 78.

23 MS. BORDEN: I've only been doing this for about
24 less than a week since I listened to you two weeks ago,
25 was it. So I thought I'd ask, and I've asked. And, as I

1 say, almost everybody I know -- and they are unable to be
2 here, but they are on that list. I think it's 77 people
3 who say this should happen.

4 Thank you, very much, for listening. Bye.

5 MR. BIERIG: Thank you.

6 Bill Howard.

7 Richard Gilman.

8 MR. GILMAN: I waive my right at this point. I
9 waive my right.

10 MR. BIERIG: Richard -- sorry.

11 Naomi Kovacs.

12 Followed by Steve Decker.

13 MS. KOVACS: I thought I was going to get say
14 good morning, but I guess I have to say good afternoon,
15 Commissioners.

16 I'm Naomi Kovacs. I am the executive director of
17 the Citizen's Planning Association. You've gotten
18 several comment letters from our attorneys Coast Law
19 Group representing us.

20 I just wanted to say today that we're really
21 pleased to see that there are adjustments happening with
22 this project. It's definitely a move in the right
23 direction.

24 Nevertheless a number of our concerns remain
25 unchanged, which Mr. Campbell and Mr. Chytilo will

1 address for you today. I don't want to take time and
2 repeat what they are going to say.

3 So I just wanted to come up and remind you that
4 CPA represents hundreds of community members. Many of
5 them are not able to be here with us today, and I'm
6 pleased to see a packed room, but there are many people
7 who can't take the time off and this big chunk of time to
8 come to a hearing like this today. So we represent them.

9 I really just, as a last note, want to remind
10 everybody why CPA is so concerned with this project. It
11 is about getting the project right. It's about getting a
12 good solid project that adheres to the Montecito
13 community plan and all of our rules and regulations.

14 It's about adhering to the proper public and
15 review process. And if we do that, we're going to get a
16 great project. So we really want to support you in
17 pushing for the proper review process. Thank you.

18 MR. BIERIG: Thank you.

19 Steve Decker.

20 Peter Jordano.

21 MR. MIDDLEBROOK: Mr. Chair, Peter Jordano just
22 left, but he said he was going to come back after lunch
23 and he will probably comment.

24 MR. BIERIG: David lack.

25 Jean --

1 MR. LACK: Hi. I'm David Lack.

2 MR. BIERIG: Go ahead. I didn't see you stand
3 up.

4 THE WITNESS: Thank you, Commissioners. I'm
5 David Lack. I'm a 20-year resident of Santa Barbara/
6 Montecito area, and I'm glad to see that we're doing the
7 right thing, moving along with the project, and I hope to
8 see it get voted in today.

9 I know the character of the man and his staff,
10 and so on, like that. They are good people. They will
11 do the right thing. We could use the tax base here in
12 Santa Barbara County. I'm a bring proponent of bringing
13 tax dollars into Santa Barbara County, and I think it's
14 important that we kind of hurry up -- not in a sense
15 hurry. You're all doing the right thing. You just got
16 to move it along so that we can get underway and build us
17 a nice project over there.

18 So, I appreciate all your good will that you're
19 doing, and I know you're doing the right thing. Thank
20 you.

21 MR. BIERIG: Carrie Grant.

22 MS. HARFENIST: I thought maybe my slip
23 disappeared.

24 Hi. My name is Jean Harfenist. I have spoken to
25 this commission twice before. I just have one thing to

1 say. I would like to remind everybody, as I understand
2 it anyway, the Commission doesn't have to approve or deny
3 today. I think there is a third choice, and that is to
4 ask for time to ask the SEIR be done on the water.

5 A denial today from this group will send the
6 project directly to the board of supervisors. However,
7 if you ask for more time, the Applicant will have two
8 choices. He can either comply with your request for an
9 SEIR, or he can withdraw his application. Thank you.

10 MR. BIERIG: Thank you.

11 Laura Smith.

12 Is there a Laura Lodato?

13 How about Mike Lodato?

14 Steve Traxler?

15 Robert Meltzer?

16 MR. MELTZER: Meltzer? I'll be quick.

17 MR. BIERIG: Anything that sounds close, you
18 should come to the microphone. Anything that sounds like
19 it could be your name probably is.

20 MR. MELTZER: I've been here before. I liked the
21 project before. I like it even better now.

22 I would dispute the earlier -- my name is Bob
23 Meltzer. I'm within view of the Miramar from my home. I
24 would dispute the recommendation of the last speaker and
25 tell you that I think you have an obligation to make a

1 decision and not tie these things up forever.

2 Three hearings should be enough. Obviously, I'm
3 in favor of it, but what I would like to see today is a
4 decision. Let's get to the vote.

5 MR. BIERIG: Thank you.

6 Beauvoix -- Beauvoix -- not even close.

7 MS. BEAUVOIX: Brett Beauvoix.

8 MR. BIERIG: All right.

9 MS. BEAUVOIX: This is very costly because I've
10 over parked.

11 But I want you to know I am in favor of the
12 project, but we need time. There are so many things that
13 have to be looked at. I drive by there every day. I
14 swim at the Polo Club. And there will be traffic. There
15 will be congestion. The way they are doing valet
16 parking -- there isn't enough room for a lot of cars to
17 get in there. I'm against that.

18 I don't know what the figures are. They were way
19 below the parking before. And I couldn't get that quite
20 straight about, are they going to have the same amount.
21 Then they have this additional parking.

22 I don't believe they are going to have enough
23 parking if they have 500 people at the convention, and
24 they have 278 at the restaurant, and 196 at the rooms,
25 and there is a 4,000-square-foot shopping center, which

1 is not exactly what is recommended in our mandate in the
2 Montecito Community Plan.

3 There are so many flaws that I really ask you to
4 please take your time and look this over, and I have no
5 idea -- and I was a builder/developer, an architectural
6 designer, and I saw these pictures just now, but I sure
7 don't know what they really mean. So I would like to see
8 what is really out there. Take your time. That is what
9 I ask for. Thank you.

10 MR. BIERIG: Thank you.

11 Josephine Duff.

12 MS. DUFF: I am absolutely in favor of this
13 project. I've been here for ten years.

14 MR. BIERIG: You can't talk from the audience.

15 Carrie Grant.

16 MS. GRANT: No, thank you.

17 MR. BIERIG: David Strauss.

18 Followed by Bonnie Borden -- Brownie.

19 MS. BORDEN: Excuse me. Brownie Borden just
20 talked. I turned in 77 names.

21 MR. BIERIG: Thank you.

22 MR. STRAUSS: Yes. Thank you, Commissioners.

23 I'm David Strauss. I live in Montecito, and I have been
24 watching this project for many years. I used to live
25 down on Beach when I first moved here, and I do believe

1 that the entire community does want a Miramar project.

2 And I say that with two buts. I ask that the
3 commissioners please listen carefully to the neighbors.
4 There is an old saying, you know, walk a mile in my
5 shoes. And the neighbors do have concerns with -- and
6 given time and if you listen to them, I'm sure that all
7 of their concerns can be worked out.

8 And, secondly, since I am running for the
9 Montecito Water Board, I want to mention the fact to all
10 of you to bear in mind that we have had something like 14
11 water rate increases in the past 17 or 18 years in the
12 Montecito Water District. And look where we are. It's
13 not about money.

14 So I am one who has a lot of reservation as to
15 whether or not this new rate structure is going to have
16 any affect on the consumption. They said it would be --
17 save 10 percent. Now they come back and they say it will
18 save 20 percent. I dare say that I don't think it will
19 save any percent.

20 I think there are other types of solutions, and
21 certainly we are many, many years behind the City of
22 Santa Barbara and the plans that they have instituted and
23 that are working there. So, thank you.

24 MR. BIERIG: Thank you.

25 Montano. I can't read the first name. Gloria

1 Montano.

2 MS. MONTANO: I waive my right to speak, but I am
3 for the project.

4 MR. BIERIG: Thank you.

5 Verne Langdon.

6 MR. Langdon: Good morning, Mr. Chair, and other
7 chairs. And I'm very grateful to be here today.

8 I just have one thing to ask of you. Do what you
9 want to about the water. Do what you want to about the
10 hotel. Do what you want to about the parking. Just get
11 the damn bar open as quickly as possible. Thank you.

12 MR. BIERIG: Marc Chytilo.

13 Followed by Tracy Lyon.

14 MR. CHYTILO: Mr. Chair, my name is Marc Chytilo,
15 and I'm taking whoever's slip you have in front of you.

16 MR. BIERIG: I appreciate you're working with me
17 on that name.

18 MR. CHYTILO: I'm an attorney, and I'm
19 representing the Citizen's Planning Association here
20 today.

21 Now, Santa Barbara County is a special place, and
22 Montecito in particular, because we've adhered to the
23 rules and we've ensured that all projects as they go
24 forward are carefully studied. And we'd encourage your
25 commission to ensure that all of the technical issues are

1 resolved before you move ahead with approval for this
2 project.

3 There have been quite a few last-minute changes
4 that raise serious questions with respect to both
5 environmental impact in the short term as well as some of
6 the long-term costs that may be imposed upon the county,
7 and we do encourage that you do do a more technical
8 analysis.

9 I'm going to raise one issue in a few moments
10 that I have here, based on my cursory review, of one
11 matter that has been raised.

12 And if I could ask that the slide of the parking
13 structure to be placed up there. The issue concerns
14 liquefaction. I don't believe it's been a matter of
15 discussion, but we talked about the basement elevations
16 to the parking structure.

17 In the negative declaration and in the SEIR --
18 that is the one. Thank you -- there is a reference to
19 the -- analysis of whether there are different soils
20 prone to liquefaction on the site. And it concludes --
21 both those documents conclude there are none.

22 However, Mr. Middlebrook declared that there is
23 in fact, later in the record, a local liquefaction zone,
24 which made infeasible the restoration of the historic
25 poolside house and the rooms there. And based on that --

1 his determination of infeasibility and the evidence of
2 liquefaction, he's determined that they may excavate the
3 soils and install this building in that place.

4 Now, Mr. Middlebrook and the Applicant can't have
5 it both ways. If there is liquefaction hazard there, it
6 needs to be evaluated. Your local policies require a
7 geotechnical analysis, and there are -- there is also a
8 policy requirement that the Hillside Watershed Protection
9 Policy, number 2, which requires not only the grading and
10 site preparation be kept to an absolute minimum -- and I
11 think we have seen a substantial escalation in the amount
12 of grading -- but more significantly, areas of the site
13 according to policy, areas of site, which are not suited
14 to development because of known geologic hazards should
15 be kept in open space.

16 This is an unresolved issue where we have
17 conflicting evidence between the environmental review
18 documents and the evidence that is being offered by the
19 Applicant. And I think this is exemplary of the kinds of
20 issues that your commission needs to ensure that they
21 resolve before you take action.

22 The water issue -- I think you'll hear from
23 Mr. Campbell about it, and we have substantial concerns
24 about that. Santa Barbara is the way it is because your
25 predecessors have engaged in the kind of review that is

1 necessary to answer all these questions before you act.

2 It's our opinion that you need to conduct that
3 additional environmental review. There is clearly legal
4 and technical support for preparing a supplemental EIR on
5 this project and we would encourage you to do that.

6 Thank you.

7 MR. BIERIG: Thank you.

8 Tracy Lyon.

9 Nina Terzian. Nina.

10 MS. TERZIAN: Hello again, Mr. Chairman,
11 Montecito planning commissioners.

12 I hope this is my last public comment, and you
13 will vote yes today. Miramar now.

14 On the water issue -- let me just state I'm on
15 Miramar beach. On the water issue, being of positive
16 mind, I believe Mr. Caruso could have the biggest
17 influence on the awareness for Montecito residents to
18 conserve our personal use of water.

19 I know I have never thought so much about this
20 until I started attending these interesting and
21 informative meetings. I also thought I was a champion of
22 perseverance, but I'm now passing the baton to Mr. Rick
23 Caruso. Your supporters are giving you a silent standing
24 ovation. Thank you.

25 MR. BIERIG: Thank you.

1 Joe Scifers.

2 Gloria Montano.

3 MS. MONTANO: I just spoke.

4 MR. BIERIG: Thank you.

5 Adrienne Schuele.

6 MS. SCHUELE: Adrienne Schuele. I waive my right
7 and am in support of the project.

8 MR. BIERIG: Thank you.

9 Sylvia Easton.

10 MS. EASTON: I waive my right. I'm for the
11 project. My husband and I strongly support it. Thank
12 you.

13 MR. BIERIG: Norm -- anybody named Norm out
14 there?

15 MR. NEBROSKI: Norm Nebroski. I'm in support of
16 the project.

17 This is the third meeting I've been to, and I
18 just wanted to let people at home to know that we're
19 looking at 90 to 95 percent of the folks that are here
20 that are taking the time are in support of this project.

21 And this team right here is going to be
22 responsible for it if this gets killed. If this doesn't
23 push through, the vision that he has -- Mr. Caruso --
24 will never come about. Thank you.

25 MR. BIERIG: Thank you.

1 Bob Meltzer.

2 MR. MELTZER: I spoke.

3 MR. BIERIG: You did speak. Thank you, very
4 much.

5 Peter Jordano. Are you here?

6 Ross Campbell?

7 And if there is anybody that wishes to speak that
8 hasn't submitted a slip, now is the time.

9 MR. CAMPBELL: Good afternoon, Mr. Chair,
10 Honorable Commissioners. Ross Campbell of Coast Law
11 Group here on behalf of Citizen's Planning Association.

12 I will jump right into it. I would like to start
13 with the floor area ratio issues. One, the ambulatory
14 beach easement, 20-foot-wide easement, needs to be taken
15 out of the final calculations. We really don't have a
16 lot of time, and it doesn't look like that has been
17 addressed.

18 Also associated with Parcel 6. We've basically
19 seen from the State Lands Commission and its letter of
20 yesterday's date that they confer -- or concur -- excuse
21 me -- with the county surveyor's office that there is
22 insufficient information to calculate the southern
23 boundary of Parcel 6.

24 And what is important there is there is an
25 outstanding issue that there needs to be additional study

1 of how oceanic conditions are affecting the sand such
2 that you could determine the mean high watermarks.

3 We also know that the project cannot be approved
4 if it does not comply with the regulations. Given the
5 importance of those regulations, the boundary issue needs
6 to be addressed adequately and accurately. Anyone
7 standing on the beach can tell you that that mean high
8 watermark is not 116 feet out.

9 It would be a disservice to the community not to
10 require an independent survey to establish that boundary
11 line. Now, notably Schragger never used Parcel 6 in the
12 calculations. Because he's trying to develop a whole
13 lot. And so to the extent you're going to you allow the
14 Applicant now to use it, it is not too much to ask and
15 require that an independent survey be used to establish
16 that high watermark line.

17 Quickly moving over into water, nothing has
18 changed from the last hearing. The fact that this
19 district and this community is facing a massive water
20 shortage has not miraculously gone away in the last three
21 weeks.

22 The critical issue is some of the issues
23 Mr. Overall -- Commissioner Overall has raised. What
24 about mitigation measures? The fact that we're asking
25 those questions is indicative a significant environmental

1 impact that needs to be addressed in an SEIR.

2 The extent to which the rate structure will
3 mitigate potential impact is entirely speculative. What
4 you've been discussing -- all of it is the type of
5 information that must be flushed out in an adequate
6 environmental document.

7 And so I thank you for your time and appreciate
8 your efforts today. Thank you.

9 MR. PHILLIPS: Sir, just one second. What do
10 you -- what would you be looking for in the water SEIR
11 that we don't know now?

12 MR. CAMPBELL: I think the critical issue is,
13 obviously Mr. Mosby has set no assurances where you're
14 going to be with water. Absolutely not.

15 If there is indeed a deficit, as was indicated at
16 the last water district meeting, that, as of perhaps
17 spring of '09, there could be an emergency situation if
18 rainfall isn't improved over the winter. There is going
19 to be a deficit.

20 What you're going to be needing to look at in an
21 EIR, whether it's 41 acre feet, 51 acre feet per year --
22 whatever it is -- if this hotel is consuming it, that
23 means other people don't get to. That is an impact.
24 That is a significant issue.

25 The fact that the Applicant is focused on the

1 question of, you know, is there a can and will serve
2 indication -- aside from that, and much more importantly,
3 is the fact that other end users are going to have water
4 taken away from them if indeed there is a shortage.

5 That is one issue obviously we haven't had enough
6 supporting information for. The water usage
7 calculations -- there is no justification for some of the
8 assumptions that are made there, and we've outlined that
9 in the additional letter that we submitted today.

10 But there are some conflicting issues. For
11 instance, there are calculations of 4.7 special events
12 per day. But ballroom water usage is based on two events
13 per week. So some of these things need to be flushed
14 out. They need to be explained, and we would anticipate
15 than an EIR would have much more detail on that issue as
16 well.

17 MR. BIERIG: Thank you.

18 I believe it's Ingrid -- oh, it's Ted. I called
19 your name before. Do you want to speak?

20 MR. TEDESCO: Yes, please.

21 MR. BIERIG: Mr. Tedesco.

22 MR. TEDESCO: My name is Ted Tedesco, and I
23 apologize for having to walk out for about 30 minutes.

24 When the Land Use Committee of the Montecito
25 Association as well as the entire board received a couple

1 presentations by the water board representatives about
2 water, one of the interesting facts which I haven't
3 heard -- and maybe it was mentioned while I was gone --
4 was that 70 to 80 percent of the water consumed by the
5 water district is for landscaping.

6 So my suggestion was -- I have fairly extensive
7 experience in Colorado where every drop of water is
8 managed -- was maybe the district ought to begin to think
9 about installing two meters, so one for household use,
10 another for landscaping. Therefore, the proper priority
11 can be set as to where the consumption is going.

12 So you have a very large estate of some kind and
13 you want to keep it all in some kind of lush landscaping,
14 there ought to be a fair examination of the rate that one
15 pays, as opposed to the essential water which is required
16 for all of us for normal household living.

17 So I think it isn't a question of -- it's the
18 management of the resources. Clearly nobody can predict
19 rainfall, snowfall, and all of that. So you ask for
20 guarantees. There are no guarantees. But the fact of
21 the matter is, everybody knows that we've got to conserve
22 some water. And those presentations to us, I think, are
23 the same kinds of things that the water district people
24 are telling you.

25 Conservation measures are going to go in. They

1 are going to try economic incentives by increasing rates.
2 If that doesn't work, they are going to go out to second
3 and third and fourth level payments. We examined all of
4 those kinds of issues.

5 I don't -- anybody who is raising the question of
6 water adequacy -- it's a legitimate issue for sure.
7 Conservation is probably the answer, just like in energy
8 conservation.

9 But the fact of the matter is we're not really
10 talking about taking water away from people's household
11 use by a long shot. I just want to throw in on the
12 record. Thank you, very much.

13 MR. BIERIG: Thank you.

14 MS. GOTTSANKER: Thank you.

15 MR. BIERIG: Ingrid Anderson Smith.

16 MS. BLACK: Maybe we could just pause for a
17 couple minutes. Because I think the court reporter
18 really needs a bit of a break.

19 MR. BIERIG: I'll do a pause, but we only have
20 two left.

21 Followed by Mr. Chubb.

22 MS. ANDERSON SMITH: Good afternoon. My name is
23 Ingrid Anderson Smith.

24 And I was just going to forego my right to speak,
25 but Mr. Tedesco really inspired me. I think this idea of

1 the whole community having water allocated for
2 landscaping versus water allocated for house use is a
3 great idea.

4 Otherwise I'm in favor of the project. Thank
5 you, very much.

6 MR. BIERIG: Thank you.

7 MR. CHUBB: That was excellent work on my name.

8 I'm Cotty Chubb. I'm at Humphrey Road near the
9 Miramar.

10 In your last meeting you asked -- you passed
11 three things, and one of them was a request for more
12 information on parking, employee count, and traffic. I
13 didn't see that that additional information was supplied.

14 I asked Mr. Briggs if it had come, and he said,
15 no, it wasn't really within the staff's ability to
16 generate that, that they look for the applicant to give
17 that.

18 And my question is really about the number of
19 employees. Because the approximately 102 employees that
20 are listed in the application as being employees of the
21 hotel do not seem to include the number of employees that
22 service retail and the number of employees that are
23 servicing the landscaping.

24 Yet those employees have to get there somehow,
25 and they have to park somewhere. Where will they be? I

1 don't see them included. And that is a question I would
2 ask you to consider and request further information for.

3 Finally, there was an excellent presentation from
4 the Caruso attorney on the impossibility of your asking
5 for an SEIR. But it was premised on the notion that
6 there already has been a full environmental review. I
7 haven't seen that, and I would dearly like to see one.
8 Thank you.

9 MR. BIERIG: Thank you.

10 Stacy Pulice.

11 And that will be our last speaker.

12 MS. PULICE: Hi. I didn't prepare anything, but
13 I don't think I have heard anything clearly stated about
14 the way the vesting of the project was accomplished by
15 Schragger and how a negative declaration was given to his
16 project with an EIR for the historical aspects of that
17 project and that money was put into those cottages by
18 both Schragger and Warner to continue the entitlement for
19 that project and that this project is resting on that
20 negative declaration, it seems.

21 And it seems like this is a whole new project
22 since they are getting rid of the cottages that were the
23 foundation of that earlier plan. It seems like it's a
24 new plan, and a new project would ask for a full EIR,
25 wouldn't it? That is what I thought I understood. And I

1 would just love to hear an answer to that. Thanks.

2 MR. BIERIG: Thank you.

3 That concludes the public comment period. I'm
4 going to close the period for public comment for this
5 item. It is 12:30. We'll reconvene back here at 1:30.

6 (Whereupon at 12:30 P.M. a
7 recess was taken for lunch.)

8

9 (Whereupon at 1:40 P.M. the
10 deposition was reconvened.)

11

12 MR. BIERIG: I would like to call us back into
13 session. And we're hearing the Miramar item, returning
14 from lunch.

15 And we have finished with the staff and the
16 applicant's presentation. We've also been through our
17 public testimony. And now would be an opportunity for
18 any rebuttal or commentary that the Applicant would wish
19 to make related to these comments that they have heard.

20 MR. CARUSO: We're fine.

21 MR. BIERIG: Doesn't look like there is any.

22 I will go to the staff. And we may have a couple
23 questions based on the public testimony portion I heard.
24 So I'll just jump in.

25 Somebody brought up the issue of liquefaction,

1 and I wonder if somebody on staff would address that
2 issue. I don't remember seeing anything in any of the
3 material related to liquefaction. I've never heard of
4 liquefaction in Montecito before as an issue.

5 Anybody?

6 MS. BLACK: I'm sorry. I wasn't trying -- I
7 wasn't ignoring you.

8 MR. BIERIG: I thought maybe I wasn't being
9 clear.

10 MS. BLACK: We're trying to find the binder with
11 the information. We did have information on this.

12 MS. GOTTSDANKER: Did it go under my bed?

13 MS. BLACK: Maybe do you want to -- we're
14 searching under the bed. So maybe if there is another
15 question we can find the answer to that when we get it.

16 MR. PHILLIPS: Is there a liquefaction expert
17 here? I guess the mitigation or the remedy would be
18 pylons or something deeper or --

19 MR. BIERIG: It's really a soils issue.

20 MS. BLACK: Can we ask a different question,
21 please.

22 MR. BIERIG: I think we should get that one out
23 of the way, just make issue that there is not an issue
24 that we have not addressed.

25 Commissioner Burrows.

1 MS. BURROWS: Moving back to the Schragger plan,
2 which did not include the railroad lot, Lot 7, I
3 suppose -- 11 in the FAR calculations.

4 Was he denied the right to do that?

5 MS. BLACK: Mr. Chair and Commissioner Burrows, I
6 don't believe that Mr. Schragger asked for either Lot 6 or
7 11 to be included.

8 MR. PHILLIPS: He was well above it. He didn't
9 need it. He was well within.

10 MS. BLACK: He was within the .25.

11 MR. BIERIG: You know, one thing we could do
12 while we're waiting on this liquefaction issue is, we do
13 have all these letters related to the record. Maybe we
14 can take care of that now.

15 MS. BLACK: That will take a few minutes.

16 So I'm going to first go to the material that was
17 distributed to you in advance of today. So if you kept
18 it separate for some reason, mine happens to be that way.

19 So the first is information that was e-mailed
20 from Jane Gray at Dudek. And it was information on the
21 Montecito Water District materials. It's actually -- the
22 subject line is "Montecito Water District Materials for
23 Entrance Into the Record," and that was dated Friday,
24 August 22, and it was after noon. And it's quite
25 lengthy. It's mostly PowerPoint. And then a memo to the

1 Montecito Water District Board.

2 The second item is a letter that is from Robert
3 Collector, and it's date stamped August 22.

4 The third is a letter from Jean Harfenist dated
5 and date stamped August 22.

6 And the staff kept track of what time these came
7 in. So these all came in after noon.

8 An e-mail from Ron Pulice dated August 22.

9 An e-mail from -- an e-mail from -- another
10 e-mail from Stan Harfenist dated August 22, received just
11 a little bit after noon with a three-page letter
12 attached.

13 Another e-mail from Jane Gray of Dudek, and the
14 title is "Responses to Comment Letters and August 6,
15 2008, MPC transcript," and it was received August 22 in
16 the afternoon.

17 And then a letter from -- or an e-mail from
18 Michael McMannis with Caruso Affiliates dated August 22,
19 and came in about 4:00 -- almost 5:00 o'clock. And it's
20 information on the Parcel 6 area calculations.

21 And then a fax from Larry Archibald dated
22 August 22, and attached to it is a three-page letter.

23 Then we have the State Lands Commission letter to
24 Mike Emmons dated August 27.

25 And the final document I have that the Commission

1 should have gotten in advance was the Coast Law Group
2 letter dated August 26.

3 And then moving on to the material today -- and
4 just a reminder, we did receive an awful lot of material
5 today, but most of it was one page. So I'm not going to
6 highlight the one-page items. Those are automatically
7 accepted into the record.

8 In terms of items that are more than a page that
9 were given to you today, we have the DLA Piper letter
10 from Amy Nefouse dated August 27.

11 We have an e-mail from Bill Jones dated
12 August 28, this morning before our hearing started.

13 We have an e-mail from Stacy Pulice dated
14 August 28. Actually it was received just a little bit
15 past midnight last night.

16 An e-mail from -- some of these are really hard
17 to follow -- Thomas Wright received August 26.

18 An e-mail from Raymond Stefani dated August 26,
19 which I think for the most part was included in the
20 record for your August 6 hearing.

21 An e-mail from Jane Gray with Dudek dated
22 August 27, and this one is -- has responses to several of
23 the public letters that were received.

24 And then another transmittal from Jane Gray with
25 Dudek. I think it may be the same responses to letters.

1 Sorry about that.

2 And then finally responses to comments from the
3 Coast Law Group, from the Caruso group as well.

4 And, Mr. Chair, I think that's it. And just for
5 clarification's sake, at our last meeting there were a
6 number of letters that you did not choose to vote into
7 the record. Because we've continued that hearing to
8 today, they are now in the record.

9 So it's just the material that was received today
10 that we need to deal with.

11 MR. BIERIG: Anybody feel comfortable making a
12 motion to include these items into the record?

13 MR. PHILLIPS: So moved.

14 MR. BIERIG: I'll second. Moved and seconded.

15 All in favor say aye; opposed, no.

16 Aye.

17 MR. OVERALL: No.

18 MR. BIERIG: Got one "no."

19 MS. GOTTSDANKER: Aye.

20 I'm just making sure that I actually know what
21 I'm doing here, Mr. Chair.

22 MR. BIERIG: It passes. Through to.

23 A couple of our members are concerned that they
24 didn't see all of them. I think I've seen all of them at
25 this point.

1 MS. BLACK: Mr. Chair, I think David Ward can
2 address the liquefaction issue now.

3 MR. WARD: Thank you, Mr. Chair. Commissioners.

4 In your Volume 4, which includes a lot of the
5 technical reports -- it's actually the final tab that is
6 labeled as "various reports." In that tab it contains
7 technical reports.

8 This is from January 2008, and that report
9 assesses the entirety of the site, and there is a section
10 on liquefaction. It actually goes through various areas
11 of the property, but I believe part of the question
12 earlier today was in relationship to the eastern portion
13 of the site.

14 It does include an analysis of that portion on
15 page 14, talks about that there is liquefaction
16 potential. Talks about the depth in which that is
17 anticipated, which is in the upper 10 to 15 feet of the
18 soil.

19 It goes on to include summary findings and
20 preliminary recommendations, again, for the entirety of
21 the site. But specific to that area and liquefaction, it
22 does cover on page 18 and continues onto page 19 with
23 recommendations.

24 There are two recommendations. One relates to
25 doing compact fill, where you're taking out that fill of

1 soil down to 12 and 15 feet and doing re-compaction. And
2 then there is also, as an alternative a geo-improvement
3 technique which is replacing the grout, mixing other use
4 of stone columns and geopiles to address the foundation.

5 So the --

6 MR. BIERIG: And these items would be addressed
7 at the time of the construction based upon the individual
8 sites?

9 MR. WARD: Correct. This is all preliminary
10 geotechnical, which serves as the foundation for the
11 follow-up information they need to provide at the time of
12 construction.

13 MR. BIERIG: Who prepared that report? I don't
14 remember it personally.

15 MR. WARD: Fugro.

16 MR. BIERIG: Fugro. Okay.

17 MS. GOTTSANKER: Mr. Ward, when you say the
18 eastern part of the property, could you just kind of --
19 just kind of -- given I don't have Volume 4 with me,
20 could you just kind of indicate up there -- is there a
21 map, or is there a display or anything, that shows where
22 that was in regards to? Or is it just kind of described
23 as the eastern portion of the property?

24 MR. WARD: No. Actually they have a labeling
25 technique here, and it's probably further back in the

1 appendix. But it talks about the area of CPT-F4 through
2 F16. So if I diagram the site, I can pull that out for
3 you if you would like.

4 MS. GOTTSDANKER: I guess the public comment that
5 was made was in relationship to the depth of the parking.

6 So I'm just wondering if those things -- what
7 you're telling us is actually in relationship to the area
8 that came up -- where the question came up as far as
9 public comment was concerned.

10 MR. WARD: Let me see if I can get the diagram
11 for you.

12 MS. GOTTSDANKER: Okay. Thank you.

13 MR. PHILLIPS: Mr. Chair, but in any event, this
14 is curable, mitigable, and therefore we don't need to go
15 much further.

16 MR. BIERIG: I don't think we do. I think the
17 issue was there was a liquefaction issue relating to the
18 one of the exiting cottages which certainly could be the
19 case. It doesn't mean it's not curable under new
20 construction.

21 MR. WARD: Mr. Chair and Commissioner Phillips,
22 you're correct. It's curable through the
23 recommendations.

24 I did find the graphic. And I don't -- I'm not
25 sure if I can pull it out of the binder to get it up on

1 your overhead. But it does actually give you the labels
2 and show that the eastern portion, which is addressing
3 the areas of the ballroom, and obviously the parking.

4 MS. GOTTSDANKER: Okay. Great. That is all I
5 was asking.

6 MR. CHYTILO: Mr. Chair, Mr. Ward, we had -- this
7 is Marc Chytilo. We had attempted to get and requested
8 of staff this information and weren't able to get it in a
9 timely manner. We think it does belie an underlying
10 problem, and we do think that it deserves additional
11 review. Thank you.

12 MR. BIERIG: Thank you.

13 Commissioners? Questions?

14 We're asking questions, and once we're finished
15 with our questions, we're going to close the public
16 hearing and deliberate on this project.

17 MS. BLACK: Typically at the end of a public
18 hearing, you allow the Applicant a chance to make any
19 closing comments.

20 MR. BIERIG: I will certainly do that.

21 Nothing? Nothing? After all this time?

22 MS. GOTTSDANKER: Questions?

23 MR. BIERIG: Questions?

24 Commissioner Gottsdanker, I don't believe you
25 don't have any questions, Claire.

1 MS. GOTTSDANKER: I do. I do. I'm sorry. I'm
2 trying to keep sorting through it all. Sometimes I'm
3 slow. I apologize.

4 There was also public comment made specifically
5 about Mr. Mosby's comments that somebody in public
6 comment expressed a concern that he was, you know, not a
7 water expert, or whatever they said, and that he didn't
8 have information -- enough information to be able to
9 determine what -- whether the 46 or the 51 acre feet was
10 sufficient.

11 Now, isn't that the information that we have in
12 front of us that looks like this (indicating)? Isn't
13 that that information that he would have taken his
14 information from? I mean, this is water usage, and we've
15 got living space, guest rooms, utility, restrooms,
16 general hotel operations, outdoor showers, landscaping,
17 water fixtures, and then -- you know, it lists all that
18 stuff.

19 MR. PHILLIPS: That is July 26?

20 MS. GOTTSDANKER: That is from -- where is that.
21 That is in the -- yeah. It's attached to the PowerPoint
22 exercise that we didn't actually see, but which we have
23 copies in.

24 So we got this -- I'm assuming we got this today,
25 and as part of that packet, we did receive this chart

1 that has listed water use on it, like how many
2 fixtures -- you know, how many fixtures are in the beach
3 club, how many fixtures are in the main building, how
4 many fixtures are in the ballroom. And what their
5 general flow is, and what the -- you know, and how that
6 all adds up to acre feet.

7 Well, I mean, I guess just so everybody knows
8 where I'm going here, is that my understanding of the
9 whole CEQA process is to -- and we've heard a lot of
10 people in public comment continue and we've certainly
11 received enough letters saying that an EIR in their world
12 is still needed.

13 And yet my understanding of what the CEQA process
14 is about, is to provide the decision makers with full
15 disclosure of all the facts and figures. So we're now
16 faced with having to make a decision as to whether we can
17 certify the environmental work that is done.

18 In the background, I'm having -- I'm asking
19 myself do I have all the information to be able to make
20 that kind of decision. And this is one of the things
21 that came up at the last hearing that people said that we
22 didn't have, and I'm questioning is this -- we now have
23 this one page of information that we hadn't had
24 previously with regards to water use.

25 MS. BLACK: Mr. Chair and Commissioner

1 Gottsdanker, I think the document you're showing us is a
2 water table that was attached to the July 29 estimate
3 prepared by Carolyn Blumfield.

4 We've since received -- and, yes, that is a piece
5 of information, but you had that at your August 6
6 hearing.

7 MS. GOTTSDANKER: Oh, we did have that?

8 MS. BLACK: Yes. That particular document.

9 You didn't have all of the PowerPoint slides and
10 some of the other documents that are attached.

11 But what you have before you today is I think a
12 more detailed analysis of the water situation, and that
13 is included in Attachment B to your staff report today.

14 MS. GOTTSDANKER: Thank you.

15 MR. BIERIG: Commissioner Overall.

16 MR. OVERALL: Question directed to staff.

17 We heard this morning that ATE had rerun an
18 analysis of traffic and parking needs related on doubling
19 of the employee count in the ULI model.

20 Am I correct in assuming that the staff has not
21 at this point done any research or come with any
22 suggestions related to mitigations that might be
23 available to this commission should those numbers, in
24 whatever form, prove not to be valid after a period of
25 operation?

1 MR. BRIGGS: Mr. Chair, Commissioner Overall,
2 although staff was not able to generate any new reports
3 or take any new traffic counts -- that would typically be
4 the duty of the applicant to provide information such as
5 that -- we did get together and did brainstorm a few
6 ideas on how you could review the parking situation maybe
7 six to twelve months from now, and we do have a few
8 suggestions for you on how to respond to a situation
9 where the parking was inadequate.

10 MR. OVERALL: Do we have that -- go ahead.

11 MS. BLACK: Mr. Chair, I was going to also point
12 out that I know Will Robertson is around. He's with
13 Public Works, and we're trying to find him so he can come
14 in and help in this discussion.

15 I believe he has reviewed some of the additional
16 information that has been generated by Caruso and
17 Affiliates with respect to traffic, but the people at the
18 table today do not have that information.

19 MR. OVERALL: Let me be clear. At this point, I
20 don't want to get into a discussion of whether the
21 information that has been provided us is complete and
22 accurate. Because in truth, until this hotel, which has
23 been closed for eight, nine years -- until it's back in
24 operation and the Caruso group does what they do -- which
25 to cite other properties they do extremely well.

1 MONTECITO PLANNING COMMISSION:

2 ROBERT BIERIG - CHAIRMAN

3 CLAIRE GOTTSANKER

4 JACK OVERALL

5 SUE BURROWS

6 MICHAEL PHILLIPS

7

8 SPEAKERS:

9 DIANNE BLACK

10 MICHAEL GHIZZONI

11 RICK CARUSO

12 MATT MIDDLEBROOK

13 MARY ANNE SLUTZKY

14 WILL ROBERTSON

15 ANN ALMY

16 PETER HAYDEN

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SANTA BARBARA, CALIFORNIA

THURSDAY, AUGUST 28, 2008; 2:02 P.M.

(Continuation of Afternoon Session)

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MR. BIERIG: Okay.

MS. BLACK: These were not preposed in the additional mitigation measures.

MR. BIERIG: Primarily Condition 55.

MS. BLACK: I think what we're talking about is looking at the operation of this hotel a year or 18 months after, depending on what the Commission would like to do, to determine if there are effects on the local area with respect to parking, and the other issue I heard the Commission speak to is the issue of staffing at the hotel entrance and whether that might interfere with circulation in the area. I think those two issues we have some ideas about how we would be able to address.

If we're talking about if there's more than six impacts at this intersection or that, I don't think you can go back in time and readdress those issues, but operational issues you can. So if you'd like to hear --

MR. BIERIG: Explain to me why we can't go back and look at the traffic impacts.

1 MS. BLACK: At the -- impacts to intersections?

2 MR. BIERIG: Yeah.

3 MS. BLACK: What would we do. I guess that's the
4 issue. There are things we can do to address parking in
5 the neighborhood and things we can do to address
6 stacking at the project site, but I don't think there
7 are things we can do retroactively to address an
8 additional trip or two at an area intersection. I don't
9 know what that would be.

10 MR. OVERALL: Just as an example, if memory serves
11 me correctly, under the current request they're entitled
12 to 4.7 events, on average, events per day. We could, if
13 we had enormous traffic impacts, we could be looking at
14 scaling back the number of events and the number of
15 people that can attend them.

16 MS. BLACK: And --

17 MR. OVERALL: But that would require some analysis
18 of what the impact is on traffic.

19 MS. BLACK: And, Mr. Chairman and Commissioner
20 Overall, I think it's going to be difficult to determine
21 at a particular intersection where the traffic was
22 coming from. I think that's going to be somewhat
23 difficult. So that's partly why we don't try to look
24 and verify after a project has been constructed exactly
25 how the distribution is occurring on area roadways

1 because it's difficult to tell at various intersections
2 where that traffic is coming from, what generated that.

3 MR. BIERIG: Let's change Commissioner Overall's
4 question slightly and apply it to neighborhood parking.
5 If every time there was an event we discovered that, you
6 know, people were double-parked on a residential street,
7 what kind of -- what is our ability to deal with that on
8 an effective basis, and do we have -- this Condition 55
9 give us those remedies?

10 MS. BLACK: Mr. Chair, I think it can.

11 MR. BIERIG: I'm not sure how it's drafted.

12 MS. BLACK: I think there are a --

13 MR. BIERIG: It's very loose.

14 MS. BLACK: I think there are a number of things
15 that the Commission could do. First is you could if you
16 determine that the reason that this traffic is occurring
17 is because there's too much traffic to the site that
18 that would be something in terms of valet parking and we
19 could put Mr. Caruso's solution into -- into play and
20 see if that works. You could also phase in or scale
21 back, depending on how comfortable you are with the
22 numbers, the Beach Club use, special events use,
23 et cetera.

24 MR. BIERIG: I think that's probably where
25 Commissioner Overall is headed, you know, because

1 there's two ways to approach this. One is to let them
2 have the full use that they applied for and then if it
3 turns out to be a problem, scale it back. Alternatively
4 you can start with less and ramp it up, and I'm not sure
5 if -- if those are equally viable. Obviously it's
6 easier to give more than it is to take away.

7 MS. BLACK: Well, Mr. Chair --

8 MR. BIERIG: The real request is then whether the
9 condition can be written to give that flexibility so we
10 don't have to start out with the Applicant. I'm not
11 sure if I'm ever going to get it.

12 MS. BLACK: Mr. Chair, I think you do have to make a
13 decision as to whether you want to give the full amount
14 and provide -- make some provisions to scale back if
15 there are impacts that you didn't expect.

16 MR. BIERIG: From a legal standpoint, can we make it
17 work either way? And then I'm looking at the issue
18 of --

19 MS. BLACK: I have two attorneys sitting at this
20 table. I'm not answering it.

21 MS. SLUTZKY: Mr. Chairman and Commission, as you
22 noted, once they have a period of permit and they've
23 spent substantial sums and reliance on that permit, it's
24 much more difficult to undo that which you have given.
25 I would take -- it's not impossible. Some energy

1 projects have certain conditions that are similar. I
2 think they add additional mitigation measures. They
3 don't actually ramp back that which they had been given.
4 I think they attempt to address that which has occurred,
5 which is different.

6 MR. BIERIG: You know, it's a lot easier to look at
7 an operation after six months and say not a problem and
8 ramp it up. So go at it that way. Okay.

9 MS. BLACK: Mr. Chair, Mr. Robertson is here. You
10 had questions specifically about transportation issues
11 with him.

12 MR. BIERIG: Mr. Phillips, I see you have your light
13 on.

14 MR. PHILLIPS: Thank you. Could we restate -- could
15 we restate the modifications in play right now? I think
16 they've been taken care of, but I'm not positive.

17 MR. BIERIG: Mr. Phillips.

18 MR. PHILLIPS: Other issues with stamped
19 "Modification still requested," I think --

20 MS. GOTTSANKER: Yeah.

21 MR. PHILLIPS: One is on the setback measure.

22 MS. BLACK: Yes. Modifications are still requested
23 for the height of the main building, for the height of
24 the ballroom, for the height of the beach club and
25 tennis -- beach and tennis club and for intrusion into

1 the setbacks, albeit it's a lesser intrusion than
2 before, along the sidelines of the church.

3 MR. PHILLIPS: Well, I'm glad I asked that because I
4 thought the main building was exactly right on.

5 MS. ALMY: Excuse me. The main building actually is
6 still intruding into the setback to some extent. You
7 can see the plum colored single-story area that is
8 intruding into the setback and would need a
9 modification.

10 MR. PHILLIPS: But not the height? The height is --

11 MS. GOTTSANKER: The height --

12 MR. PHILLIPS: The height is right?

13 MS. ALMY: The height of the overall building would
14 still need a modification as well.

15 MR. PHILLIPS: Why is that?

16 MS. ALMY: Because it's measured from existing
17 grades.

18 MR. BIERIG: The methodology is the existing grades.
19 Under the terms of our ordinance it still requires a
20 modification.

21 MR. PHILLIPS: I see.

22 MR. BIERIG: But I think we can justify that
23 modification with the setback rules.

24 MR. PHILLIPS: And the beach and tennis club is
25 still at 26?

1 MS. ALMY: The beach and tennis club is -- still
2 exceeds the height that is allowed for structures that
3 are on 10 feet of fill or grade. It would still need a
4 modification. At your last hearing you noted that it
5 was internal to the site, and your comments were --

6 MR. PHILLIPS: Okay.

7 MS. GOTTSANKER: Can we go back to traffic?

8 MR. BIERIG: Sure.

9 MS. GOTTSANKER: So if I go to the findings for
10 denial, there is a sentence in there that says that
11 "Additionally, currently data with regard to conditions
12 of nearby intersections was provided for only one
13 intersection."

14 So, Ms. Black, I think what I'm hearing you say
15 is that if we perceive that there's -- there's
16 intersection problems in the future based upon, you
17 know, what we think, we -- we still in the future, given
18 this statement, don't really have a baseline for
19 intersections to start from other than what we had in
20 the Schragger plan. Is that accurate? We still don't,
21 as of today, know what the -- what -- what's going on on
22 the ground right now with the intersection other than
23 the one that is indicated as been -- having been
24 studied. I mean that's what staff is saying in this
25 condition of denial, we've got information on one, we

1 don't have any information on any others.

2 So anything that we would say even in the
3 future we still wouldn't have any information. We don't
4 have it now. We won't have it -- we won't have it then
5 unless we, in some way, condition the project to within
6 the next, you know, six months while it's built --
7 pulling building permits we get some information about
8 what's going on with traffic right now today.

9 MR. ROBERTSON: Mr. Chairman, Members of the
10 Commission, as you're -- I'm sorry. I'm Will Robertson
11 with County Traffic. To answer your question, you guys
12 have seen the submittal by ATE this morning about the
13 additional analysis with the reduced project. And as
14 part of that package, ATE did provide intersection
15 levels of service for additional intersections that were
16 counted this year through a CalTrans program.

17 MS. GOTTSANKER: Excuse me. Just for the public
18 record, we don't have that document.

19 MS. BLACK: We just got it today.

20 MS. GOTTSANKER: So just so you know that that
21 doc- -- I don't have that document.

22 MR. ROBERTSON: Okay. I apologize.

23 MS. GOTTSANKER: You may have it.

24 MR. ROBERTSON: I assumed it was read into the
25 record --

1 MS. GOTTSANKER: Staff may have it. We don't have
2 it.

3 MR. ROBERTSON: -- this morning for your
4 information.

5 MR. BIERIG: You can tell us about it.

6 MR. ROBERTSON: This document does provide the
7 intersections that were counted, North Jameson at San
8 Ysidro, San Ysidro at U.S. 101 northbound and San Ysidro
9 at U.S. 101 southbound as well as those intersections in
10 the existing p.m. peak hour, and it does show under some
11 of the intersections "Level of Service D or Better,"
12 which is actually what CalTrans' target is.

13 The key to your question, I think, is, and
14 perhaps county counsel can jump in here if I state this
15 incorrectly, but County policy under this project --
16 well, first we're only allowed under determination by
17 county counsel to look at the net difference of the
18 project. You guys are well aware of that. Under the
19 reduced project we actually see negative values to the
20 intersection compared to the Schrage plan. So looking
21 at a net decrease in traffic that is approved by the
22 Schrage plan. Nothing new there.

23 Also under County policy we have significant
24 changes in level of service as noted. Level of Service
25 D intersections the County policy allows a project to

1 send 15 trips to a D intersection and still be
2 consistent with County policy. Therefore, being able to
3 be approved. In this case we have negative numbers.
4 We're not sending 15 trips to a Level of Service D. So
5 under existing and existing plus project conditions we
6 would not have a County impact under County policy.

7 The Applicant is responsible for its existing
8 and existing plus project impacts. That's what they
9 would be responsible for mitigating. They have proved
10 here that there is no impact. Therefore, there would be
11 no need to mitigate that because there's nothing to
12 mitigate based on the project under build-out
13 conditions, which is what you're basically hinting at
14 here, what happens in the future. That's actually for
15 the County to determine. We have to look -- we have a
16 long-term goal. We have a transportation improvement
17 program that we look at. We collect money from
18 developers for that. Any deficiencies we actually
19 create a program and projects to identify those impacts.
20 101 in Motion is -- something we're working with
21 CalTrans is another project we're looking at to mitigate
22 the substandard 101 operations.

23 So basically to answer your question here, the
24 County would have to monitor future conditions in the
25 area and come up with projects to mitigate the long-term

1 impacts, but as far as what the Applicant is responsible
2 for, existing plus project plus pending approved, they
3 meet that goal.

4 MS. BLACK: So, Mr. Chairman, maybe I can take a
5 moment and just clarify what you have before you in
6 these findings because Commissioner Gottsdanker said
7 "Well, the staff's findings." We drafted these findings
8 based upon our review of the transcript and our notes
9 about what the Commission said. So we were trying to
10 reflect what the Commission said at your last hearing,
11 and one of the statements that you actually made a
12 motion on was you thought there needed to be some
13 additional analysis of traffic, parking and employees.
14 So that's what we were trying to imbibe here. We really
15 were just trying to reflect what your discussion --

16 MS. GOTTSDANKER: Okay. Great.

17 MS. BLACK: -- and action was. We do have this
18 additional report, and you've heard from Will. So
19 you're not bound to this. This just is our attempt to
20 put something in writing.

21 MS. GOTTSDANKER: No. I mean it just sort of led me
22 to believe like oh, well, well. We don't have enough
23 information. So going from that time to now, I was
24 trying to find out if there was any other information,
25 which you now say there is, you know.

1 MS. BLACK: And, Mr. Chair and Commissioner
2 Gottsdanker, just to be clear at the meeting last time I
3 think we felt like we had sufficient information to make
4 a recommendation on.

5 MR. BIERIG: Commissioners, questions?

6 MR. OVERALL: Mr. Chair, I think it would be
7 appropriate to give us a few moments to read this
8 document because we haven't seen it before.

9 MR. BIERIG: We can take a break.

10 MS. GOTTSDANKER: Well, I think -- you know, I think
11 given this is kind of our time, you know, and, you know,
12 it's like -- I think we should be prepared that there
13 may be moments during the next couple of hours where
14 there's going to be a silence and no questions because
15 we're trying to kind of now digest, once again, new
16 information. So I just -- just be allowed -- you know,
17 just let us have kind of some little gaps here.

18 MR. BIERIG: We can also take a break for 15 minutes
19 and let everybody compose their notes on what they want
20 to follow up on.

21 I would like to close -- close the public
22 hearing and maybe give the Applicant a chance to speak
23 to us, and I believe we can still ask some questions
24 during our deliberation phase, can we not?

25 MS. BLACK: Mr. Chair, you can ask questions of

1 anybody really.

2 MR. BIERIG: Right. So I would -- if you don't
3 mind, if you want to have any concluding remarks. I
4 think we're basically ready to close the public hearing
5 on this item. Unbelievable, but could be true, and
6 gratefully so.

7 MR. CARUSO: I really have no other remarks to make
8 other than we stand ready to answer any questions. We
9 appreciate all the time. We hope to get an approval,
10 and we are excited about the possibility that we may be
11 getting a decision. So thank you very much.

12 MR. BIERIG: Thank you.

13 I think with that, we'll go ahead and close the
14 public hearing.

15 We're going to take a break for, let's say, 15
16 minutes and then re-adjourn for questions and
17 deliberations and motions.

18 (Brief recess taken.)

19 MR. BIERIG: Calling us back into order for the
20 afternoon session on the Miramar Hearing on August 28th.

21 Oh, Dianne needs to come back.

22 MR. GHIZZONI: Yes. She'll come.

23 MR. BIERIG: She'll come.

24 Bear with us a moment. We're going to wait for
25 Ms. Black to return. She's engaged in a conversation.

1 I think in the interim I had some remarks I was
2 going to make earlier on this project. So maybe I'll
3 just throw them in now, which is -- you know, this is a
4 very large, very complicated project, and we have large
5 complicated projects in Montecito on occasion. The
6 Music Academy was one. Westmont was one. There's been
7 a number of them, and this one is challenging, more
8 challenging than many in how it's transpired, and there
9 sure has been a lot of emotion on this one. It's
10 interesting -- interesting to see.

11 You know, if this was a vacant field, I don't
12 think we would have gotten nearly the emotion we've had
13 out of this. It would have probably all been one-sided
14 with us hearing that we should work on protecting the
15 community and preserving that field in its pristine
16 state. But given the background on this, we find
17 ourselves in a different situation where there are
18 strongly felt incentives of people who want to go
19 forward and see this restored to what it was.

20 But I'm reminded, I don't know this from
21 personal fact, and I believe and maybe some of the
22 planning staff believes there were, I believe, a couple
23 highrises proposed for the Biltmore site in the early
24 '60s. At least that's what I heard from some of the
25 prior presidents of the Montecito Association. And I

1 believe it was either before it was a Marriott, but it
2 was interesting because obviously they didn't get built.

3 And --

4 MS. BLACK: Happy to report that was before my time.

5 MR. BIERIG: Yeah, I know. I think it was in the
6 late '50s or early '60s.

7 MS. BLACK: Really before my time.

8 MR. BIERIG: But I'm reminded that Montecito didn't
9 just happen. You know, it's a wonderful place, and the
10 reason we like it is because of the pain that we put
11 people through, and I don't mean it's intentionally
12 painful, but it is a windowing process to reach a
13 consensus, and as opposed to where we started this
14 project I'm very encouraged that we now have a project
15 before us that, albeit not perfect, is, I think, gone a
16 long ways towards being the kind of thing that will fit
17 into that overriding compatible bulk and scale with the
18 community.

19 It is a hotel, and it's not going to be
20 completely compatible, but to the extent that it can be
21 I believe we've gone a long ways in that direction. So
22 I want to thank the development team for making the
23 changes which were proposed to today because I know they
24 are substantial, and it's not to say we won't have some
25 conditions here. I don't know where things are going to

1 go that you might not like, but I think -- I think
2 you've -- you've really done a good job in changing this
3 thing that really makes it part of the community, and I
4 think it will be to your benefit over the long haul. So
5 thank you for that.

6 I was sort of looking at the list of issues
7 that we've more or less dealt with, and I don't want to
8 second guess my fellow commissioners here, but there
9 have been substantial questions on drainage, grading,
10 historic resources, abandonment of Miramar Avenue, which
11 zoning ordinance applies for the calculation of FAR, the
12 interpretation of the zoning ordinance and how it
13 applies to underground parking, the issue of cottage
14 style, the non code parking analysis, whether to use the
15 County Code or the Urban Land Institute, the sound wall
16 in the front, the seawall, pile driving, setbacks, the
17 issue of the EIR, how to measure the building heights.

18 There's been a lot of issues that I think we
19 have, more or less, come to a consensus on, and I don't
20 want to speak for the other commissioners, but I think
21 we've gotten there.

22 And then I have my list of problem areas, which
23 was the two story on Jameson and the setback. Well,
24 that one got resolved. Increasing the setback on the
25 west side of the project, I feel comfortable personally

1 that 15-foot change and especially getting rid of the
2 two story along that side really goes a long ways. I
3 know it's not 20, but I think 15, talking to Claire, I
4 think can work. The tennis court lights, the agreement
5 to modulate the building heights and do the other things
6 to bring it to that cottage style. So there's a lot of
7 things here. The valet parking. It's a lot. It's a
8 lot.

9 So we do have some big issues in front of us
10 here, which I'm hoping we will resolve today, and the
11 big one being the SEIR. If we're not going to reverse
12 that, we're not going to do anything. So I'm hoping
13 that I'm hearing -- from the nature of the questions
14 being asked, I get the feeling that maybe we're going to
15 revisit that one hopefully in a way that allows us to
16 move this project forward today.

17 So with all that, why don't we get into the
18 remaining questions of the commissioners and see what we
19 can get to. We lose Commissioner Gottsdanker at four
20 o'clock. So --

21 MS. GOTTSANKER: I could stretch that to 4:30, by
22 the way.

23 MR. BIERIG: So you were just kidding us, weren't
24 you?

25 MS. GOTTSANKER: No. I just have to be in the car

1 by 4:30.

2 MR. BIERIG: Okay. Let's see if we can't move this
3 as rapidly as possible and get to wherever we're going
4 to get to.

5 Commissioner Phillips.

6 MR. PHILLIPS: Thank you, Mr. Chair. I guess I'm
7 looking for comfort more than -- well, answers are
8 always good, and maybe I'll be comfortable. Maybe -- as
9 we're considering the sufficiency of this secret
10 document, we have, among other things, a flooding issue.
11 And the Applicant has changed the floodplain by filling
12 in some and creating a wall. A very confident
13 engineering firm opined through a study, Oak Creek Flood
14 Analysis for Miramar Beach by Mr. Stewart, Penfield and
15 Smith, and they say this might raise it three-quarters
16 of an inch, this is not substantial, we're okay. All of
17 the neighbors feel very, very strongly that that is not
18 okay, and I think we know what's going to happen here.

19 Do I have an obligation to ignore a serious
20 engineering study if it seems counterintuitive? If I
21 walk in that floodplain and I see this and this looks
22 like it's going to create a health problem, do I call
23 for another study? Do I don't go there? I mean how --
24 what do we do when it's so technical because I have no
25 ideas frankly? I mean I can't say that. I have some

1 idea.

2 MR. BIERIG: I have an opinion on that. My opinion
3 is we have a County Public Works Department who is
4 charged with making that determination, and we should
5 let them do it. I don't see any smoking guns. I mean
6 there's conflicting methodologies coming up with
7 conflicting information, but I don't see anything that
8 says the County's method isn't viable.

9 MR. PHILLIPS: It seems counterintuitive to a lot of
10 people that if you raise things up, this water won't
11 focus and result in spillage going where it hasn't gone
12 before. Star Trek.

13 MR. BIERIG: I have an alternative analysis, which
14 is if you have a hose that has a certain amount of water
15 going in it and a certain amount of water coming out the
16 other side, how fat it gets in the middle isn't -- it's
17 only got X amount of water, and I think that's the
18 methodology. That might not be completely accurate, but
19 the water coming in is a fixed amount, and the water
20 going out is a fixed amount. It's not a detention --

21 MR. PHILLIPS: But here we have a bulge that is
22 measurable.

23 MR. BIERIG: But it's not a detention base.

24 MR. PHILLIPS: Anyway, I'm concerned about it
25 because it's really -- it's a major safety issue if it

1 goes wrong. Do you think we've seen enough information
2 from a legal point of view to make an opinion, have a --

3 MR. GHIZZONI: Chair Bierig and Commissioner
4 Phillips, let me back up a little bit first by saying
5 that I would encourage your Commission not to rely
6 solely on a staff opinion that determination of the
7 accuracy of the document is your Commission's decision,
8 and it's your duty to go through and conclude that there
9 is or is not substantial evidence to make these
10 different findings.

11 So while staff can be persuasive and guide you
12 towards a piece of this and provide you with some
13 comfort, in the end it's the standard that this will be
14 reviewed under. It's one of substantial evidence as the
15 standard you should be using now. If you have your own
16 knowledge from walking the site, you're looking at one
17 engineering opinion and you hear something different
18 from another engineering opinion, it doesn't mean that
19 any one of those three factors trumps the other two.
20 But you have to look at all of them and make a
21 determination on substantial evidence. But I would
22 definitely encourage you not to say it doesn't sound
23 right to me, but staff has told me X and go that way.
24 That would be a bad way to find substantial evidence.

25 MR. PHILLIPS: Well, I feel no better at all.

1 MS. BLACK: Mr. Chair, if you wanted any additional
2 information on this or some reminders about where we've
3 been, Tom Fayran has just come into the room.

4 MR. PHILLIPS: He did?

5 MS. BLACK: Right there, and would be able to answer
6 any questions on the subject.

7 MR. OVERALL: Before you go there, Michael, just
8 tell you what my feeling was and the only question I
9 have. At one point I believe in the staff report it did
10 not highlight and mention the fact that there was expert
11 opinion that disagreed with the Penfield and Smith
12 analysis. We subsequently, I believe, got copies of
13 those documents and have now had an opportunity to
14 consider that position as well.

15 So I think for me personally the way I resolve
16 this issue is, I think, very much the way Chair Bierig
17 has put it. At some point, we have to rely on somebody.
18 And I think we had a fair amount of input on both sides
19 of the equation. I understand that the people in the
20 neighborhood are quite concerned about it. If my house
21 had been flooded, I'd be concerned as well. But I don't
22 know -- personally I don't know where we can go beyond
23 where we've gone, and we have expert testimony that the
24 County has accepted and supported in the staff report.

25 MR. PHILLIPS: That's the problem. If I could

1 convince everyone that we should have less grading, it
2 may not make any difference, and I can't justify the
3 argument other than it's a suspicion. So that won't
4 be --

5 MR. BIERIG: By the way, I'm giving you guys
6 permission to just open --

7 MR. PHILLIPS: Sorry.

8 MR. BIERIG: No. I'm saying open it up. Don't wait
9 for me to call on you. Communicate with each other.

10 MS. GOTTSANKER: The way I've kind of chosen to
11 look at that is one thing is that in all of the
12 information that we do have about grading and drainage,
13 you know, grading slash drainage, is how we deal with
14 those things is that it's been stated, you know, by
15 public works and flood people and in our staff materials
16 that this project is adding no more water, this project
17 is not going to exacerbate the problem that exists.

18 So the problem that exists is really not the
19 Applicant's problem. The problem that exists is the
20 County's problem, you know, in that we have undersized
21 drainage facilities throughout Montecito. I mean
22 throughout Montecito. Anybody that's below a piece of
23 property they're going to get -- it just keeps kind of
24 cascading down. Unfortunately this is one of the last
25 outlets for the drainage, overall drainage system for

1 the community, and it's a problem, you know. Is it the
2 Applicant's problem? I don't think so. That's my
3 personal opinion.

4 Now, if we were to say don't fill the
5 floodplain, for whatever reason, it's this late date.
6 We said well, okay, we think, you know, it's going to be
7 a problem here if you fill up -- you do this grading and
8 you fill up the floodplain, then we're now leaving the
9 Applicant in the position that in the future they've got
10 to get prepared -- work now preparing them to be
11 flooded. You know, that floodplain that we know has --
12 has been a catchment basin for flooding. So now it's on
13 the onus of the Applicant and the neighbors. They all
14 know that they're going to get flooded, and because
15 this -- it's been proven to me, at least, sufficiently
16 that the project itself is not going to add water, I
17 mean they've dealt with their drainage that was all
18 going in different directions, and there's no more added
19 water given the -- as the project is proposed.

20 MR. PHILLIPS: Well, three-quarters of an inch.

21 MS. GOTTSANKER: Okay. Three-quarters of an inch.
22 But that -- you know, the reality is -- is -- is the
23 County has a problem in that it's got a floodway at the
24 bottom -- from the top of Montecito all the way down,
25 and it's gathering water and it's gathering water and

1 it's gathering water, and it's a problem. You know, it
2 is a problem, but is it the Applicant's problem? I
3 don't think so. I think it's the County's problem, you
4 know, and I think those neighbors that, you know, ought
5 to be -- and I think as a Planning Commission being
6 responsible and maybe the Montecito Association.

7 I think this is a problem we need to really
8 look at and take on and figure out how we're going to
9 fix it, not only for this Applicant but for the
10 neighbors that -- that know they're going to get
11 flooded, you know. I mean I don't think that maybe
12 necessarily those neighbors when they are going to get
13 flooded are going to be able to prove it in court that
14 it's the Applicant. You know, if they get flooded
15 because of this project, it would be really bad because
16 they're going to sue the County, you know. That's
17 really where it's going to come down to.

18 MR. PHILLIPS: They're going to name all of us for
19 permitting this fill.

20 MS. GOTTSANKER: If you think that the fill added
21 to the problem.

22 MR. PHILLIPS: Indeed.

23 MS. GOTTSANKER: If you think that the actual fill
24 made it worse, you know. The only thing the fill does
25 is take away the basin that could get filled up.

1 MR. OVERALL: Michael, one additional thought, I
2 don't think we have any data in front of us that might
3 make you feel better, but there is a requirement in
4 here, I believe it was written in that form, certainly
5 Caruso agreed to capture the rain water. To the extent
6 that they capture that rain water and it doesn't run off
7 anymore, you know, I don't know exact -- depending on
8 where the water goes, it may actually be a very positive
9 impact on the amount of drainage although it doesn't all
10 go into Hope Creek.

11 MR. PHILLIPS: Yeah.

12 MR. OVERALL: Do we have any documents --

13 MR. PHILLIPS: And the document reflects that.

14 MR. BIERIG: I'll warn you it probably won't happen
15 during peak flows, which is when the problems are.
16 Everything is full then.

17 MS. BURROWS: Mr. Chairman, I will just join those
18 who recognize that this is a problem. I don't see it as
19 the Applicant's problem, and I don't think it's a
20 problem that the Applicant could address. So I'm
21 willing to move forward on this.

22 MR. BIERIG: Mr. Phillips.

23 MR. PHILLIPS: I don't have any more questions on
24 this.

25 MS. GOTTSANKER: Oh, just questions in general?

1 MR. OVERALL: Concerns.

2 MS. GOTTSDANKER: Oh, concerns, questions. Okay.
3 When I was looking at the new table and the old table
4 related --

5 MR. OVERALL: Related to what?

6 MS. GOTTSDANKER: Oh, related to water. "Revised
7 Estimate of Water Consumption." There's some fairly
8 significant changes or discrepancies in the two
9 documents, and I just need somebody to kind of address
10 that for me. I mean it may be up -- the Applicant may
11 have to do that because they just may have made a whole
12 different way of analyzing things that I just don't
13 understand.

14 But where I go to, first off, is the guest
15 rooms in this -- in this original document, which was
16 the one that was submitted back in July, I guess. It's
17 got the guest rooms at 71 percent occupancy, and we have
18 a GPD usage there of 13,615, and now all of a sudden
19 we're down to 5,855. So was -- is the discrepancy there
20 because of the kinds of fixtures, or how did those
21 numbers change so much?

22 MS. BLACK: Mr. Chair and Commissioner Gottsdanker,
23 I do think this is for the Applicant to address.

24 MS. GOTTSDANKER: It just wasn't -- I just don't
25 understand that.

1 MR. HAYDEN: Mr. Chair, Commissioners, I'm Peter
2 Hayden. I'm the vice president of engineering for
3 Caruso Affiliated, and I authored this document.

4 MS. GOTTSANKER: That's this one?

5 MR. HAYDEN: Correct. The August 20th document.

6 MS. GOTTSANKER: Okay.

7 MR. HAYDEN: It says "Table 1 Revised Estimated
8 Water Consumption."

9 MS. GOTTSANKER: Yes.

10 MR. HAYDEN: Okay. This table was prepared in
11 response to various comments that have been received
12 throughout the project on the water consumption
13 analyses. The prior table that you're comparing against
14 was derived on the basis of estimates that had been
15 provided to us by Metropolitan -- by Montecito Water
16 District. They had given us an estimated rate of
17 consumption of 94 gallons a day for a typical guest room
18 use, and that's based on unpublished information that
19 they provided to us.

20 Our people did their best. They put our table
21 together, and we still had questions about verifying the
22 document, this use. So we went to our engineers,
23 Penfield and Smith, Jim Harris, various other parties,
24 and we came up with water consumption studies that had
25 been performed in Seattle, Las Vegas, Los Angeles, and

1 where no studies were available we pulled water
2 consumption analyses that are used by the City of Los
3 Angeles Hyperion Water District for feeding into the
4 Hyperion plant. So if you're feeding into their plant,
5 you have to calculate what your water use is. And they
6 have a table of published rates that they charge the
7 rate payers.

8 So in lieu of any other published information,
9 that was a source for the document. Now specifically as
10 far as guest room toilets, sink, shower --

11 MS. GOTTSANKER: I don't think at this point you
12 need to go through the specifics of the document because
13 I think you just gave me the answer, gave me what was
14 needed.

15 MR. HAYDEN: We did the best we could.

16 MS. GOTTSANKER: I mean the question was why the
17 discrepancy. You answered that question.

18 MR. PHILLIPS: Mr. Chair?

19 MR. BIERIG: Mr. Phillips.

20 MR. PHILLIPS: Since we're speaking of water, would
21 you entertain a discussion about the SEIR issue that we
22 voted on last hearing?

23 MR. BIERIG: I'd love it.

24 MR. PHILLIPS: Okay.

25 MR. OVERALL: Michael, before you go there just one

1 quick observation on what Mr. Hayden said. Since it is,
2 I think, a key to the discussion we have and confidence
3 we have in any decisions we make related to water, I had
4 no idea that this calculation that you just talked about
5 existed and the reasons for it. I mean it just blows my
6 mind. Here we have a number provided by the experts at
7 Montecito Water District that appears to be, you know,
8 three times what the final data that the Caruso Group
9 has put forward. What kind of confidence do we have in
10 the data we're getting when our own water district is
11 this far off?

12 MS. BLACK: Mr. Chair, I think that the way that the
13 two numbers are calculated are just done in a different
14 way. They broke out the uses in a different way. If
15 you look at the Montecito Water District's July 29
16 letter, I think is when they really broke it down.

17 MS. GOTTSANKER: Yeah, the bottom line.

18 MS. BLACK: They had an estimate almost identical to
19 this 51. It was in the neighborhood of 52 to 54 with
20 landscaping, I think. So I don't think it was that far
21 off. I think there are just different ways of
22 estimating water for all of these various uses and
23 different ways of putting them together and breaking
24 them down.

25 MS. GOTTSANKER: Yeah. That's accurate. The

1 bottom line numbers are not that much different. But,
2 you know, for us because -- I guess for me, not for us,
3 but for me because it's been consistently asked to step
4 over or -- or put aside the work that would have been
5 done during -- during the environmental review, it --
6 that's the kind of stuff that for me in the past has
7 always showed up. It's like, well, this person says,
8 and this person says this and this person says this and
9 this is how they got there and this is how they got
10 there.

11 So as a decision maker, I know all of that, you
12 know, and during the process of this project it's -- you
13 know, it could be -- you know, I'm left with, you know,
14 like 10 or 15 minutes to decide whether the methodology
15 of the Applicant's group is the right methodology or
16 whether it's the methodology of the Montecito Water
17 District, and that's kind of where I was going. I was
18 going how could these numbers be so different even
19 though they come to the same conclusion. You know, it's
20 the methodology that got them there that just -- it's
21 kind of --

22 MS. BLACK: Mr. Chair, I have a suggestion. I don't
23 think the methodology is that critical --

24 MS. GOTTSANKER: No. I don't think so either.

25 MS. BLACK: -- given the bottom number is about the

1 same. If you look at the July 29 Montecito Water
2 District letter, there are a number of conditions
3 attached to that letter. Many are quite technical, but
4 there are a couple that aren't so technical, and that is
5 use as low conserving water fixtures as you can, you
6 minimize your landscape demand, and they're fairly
7 specific about that, and then they ask that they pipe
8 for reclaimed water.

9 So what, I guess, I'm trying to say is no
10 matter which methodology you use, we're going to tackle
11 each of the elements of water as this project is
12 refined, assuming it goes forward with approval, to try
13 and reduce that number as much as we can. I think it's
14 in everybody's interest to do so. So I just don't know
15 that it's that terribly critical as to whether you can
16 estimate it based upon one method or the other since it
17 all comes out about the same.

18 MR. BIERIG: Mr. Phillips, before you start maybe I
19 can just for the edification, I think everybody
20 understands, but I'll say it again. The SEIR
21 requirement is if we're going to more forward on the
22 project for anything other than denial, we're going to
23 have to change our position we'll make to the
24 requirement of the SEIR. If we don't get to the change
25 in our position on the SEIR, I would still like to see

1 us make sure that we have a -- some sort of the
2 conceptual motion that incorporates the changes that the
3 Applicant has suggested, that we try to put those --
4 similar to what our memo is here today.

5 But, as you know, I voted against that, and I'm
6 really hoping it might be possible to reverse that vote,
7 on the board.

8 So with that.

9 MR. PHILLIPS: Yeah. Let me -- it was, gosh, three
10 weeks ago only we're facing a critical water shortage,
11 and I didn't hear the answers necessary to make an
12 informed decision for the community as to the impact
13 this project is going to have on that water shortage,
14 and most importantly I was never hearing where we --
15 where water would come from, and I think I heard both of
16 those more clearly today. It's going to be spot
17 purchases, it's going to be expensive. This will --
18 there will be water, and it may be the historical
19 Schrager used. It may be a new ordinance.

20 It seemed on -- anyway, it seemed on August 6
21 there were enough technical problems with not asking for
22 the SEIR that it would be -- it would hurt the Applicant
23 in that it was an easy target to appeal. I think those
24 answers have been addressed with new information. So
25 I'd like to move that we withdraw our vote to require an

1 SEIR on the water issue.

2 MS. BURROWS: Mr. Chairman, I seconded the original
3 motion on the SEIR. At this time, I am going to
4 withdraw my second or to -- I'm not sure what the
5 procedure is. Just second Commissioner Phillips'
6 motion. The information that I have received since that
7 date from the Montecito Water District and other sources
8 is that my questions have been answered, and I think
9 there is adequate water to service this project subject
10 to the constraints that the rest of Montecito will be
11 under.

12 MR. BIERIG: Motion and seconded. Discussion?

13 MR. OVERALL: I will vote to support Commissioner
14 Phillips' motion, but I will want everyone to know that
15 when it comes time to look at the conditions for this
16 project, that I think we need to come back to this issue
17 and look at the mitigations Mr. Caruso suggested this
18 morning, and in a pinch, that they'll ship their laundry
19 out. I think those are the types of things we need to
20 add to the conditions when we get to that stint of our
21 deliberations.

22 MR. GHIZZONI: Chairman Bierig, I would like to help
23 you with your motion, if I may.

24 MR. BIERIG: Please do.

25 MR. GHIZZONI: At the request, I waited for a change

1 of tape.

2 I think it would be helpful to announce the
3 change of standard so that the motion carries the
4 correct language to reflect what you've been discussing.
5 There are really two pieces of what you've been
6 discussing, the adequacy of water supply for the project
7 and the presence or absence of significant effects not
8 discussed in the previous negative declaration.

9 One of those prongs is primarily a creature of
10 the County's Land Use Code, that's the adequacy of water
11 supply that Commissioner Burrows discussed. But if your
12 motion today would be to not require a Subsequent EIR as
13 to water supply, you should address within that your
14 finding based on substantial evidence of the whole
15 record that there is not a new significant effect that
16 was not discussed in the previous negative declaration.
17 That's the standard that this would be reviewed under
18 subsequently.

19 MR. BIERIG: So can you incorporate that language
20 into your motion?

21 MR. PHILLIPS: Well, as a result of this hearing, I
22 can -- I believe that there's not a new subsequent
23 significant impact that wasn't addressed in the prior
24 negative declaration.

25 MR. GHIZZONI: As to water supply.

1 MR. PHILLIPS: As to water supply.

2 MS. BURROWS: I accept that amendment, and I'll go
3 ahead and second my motion.

4 MR. BIERIG: I'm going to call for vote. In favor
5 say "aye," opposed "no."

6 Aye.

7 MR. OVERALL: Aye.

8 MR. PHILLIPS: Aye.

9 MS. BURROWS: Aye.

10 MR. PHILLIPS: I thought Mr. Overall had something
11 to say.

12 MR. OVERALL: I got cut off.

13 MS. BURROWS: Did she vote?

14 MR. BIERIG: No.

15 MS. GOTTSANKER: Okay. I'll go with you guys.

16 MR. BIERIG: Good.

17 MR. OVERALL: Mr. Chair, just to comment.

18 MR. BIERIG: Please.

19 MR. OVERALL: Spoken just personally, the vote that
20 I just cast was cast because I think this project
21 warrants going forward. I think we need to continue to
22 work on it, and clearly this was an enormous obstacle to
23 continue to move it forward.

24 However, I had to swallow hard when I heard the
25 language about this was covered adequately in the

1 negative declaration before. I mean I don't know what
2 we do about it, but I swallowed.

3 MR. BIERIG: Okay. Appreciate it.

4 MS. BURROWS: Are we moving on to other subjects?

5 MR. BIERIG: We are.

6 MS. BURROWS: I would like to please ask the
7 Commission to again consider the -- I think you had a
8 motion on Parcel 11, the railroad.

9 MS. GOTTSANKER: We did not.

10 MS. BURROWS: I would like to move to discuss that
11 and whether or not that should be included.

12 MR. BIERIG: Okay. Mr. Overall.

13 MR. OVERALL: I'm able to chime in on that. I think
14 this is a matter of our discretion in terms of the
15 intensity abuse of the property. It's clear in my mind
16 that the Schragger plan didn't include either Parcel 6 or
17 Parcel 11, and as I reflect on this, I think it's less
18 important the basis on which we arrive at the decision
19 about the size of the project and intensity of use than
20 it is -- I think there is an element of this that is a
21 gut reaction to you go back to our hearing in January
22 and the comments that we made about the size of the
23 project, how it loomed over the freeway, those kinds of
24 things. So I think this really is a matter of our
25 discretion, and I think to pin it solely to the

1 inclusion or exclusion of those two lots is probably
2 not, at least for me, it's not the basis on which I'm
3 going to make the decision.

4 I'm going to look at the total project and
5 compatibility and based on a specific FAR calculation
6 I'll include to feel about how the project appears.

7 MS. BURROWS: Could I ask staff the reason we took
8 the straw vote on this last time? I don't recall that,
9 how we got that.

10 MS. BLACK: Mr. Chair and Commissioner Burrows, I
11 think you were just trying to address a number of design
12 issues, and so you went through all sorts of issues
13 including whether or not Lot 11 should be included.

14 MR. BIERIG: If I --

15 MS. GOTTSANKER: I think I could answer that
16 question since I was the one that put it on the table,
17 and I was clear what my intention was at the time I put
18 it on the table. So my intention at the time of putting
19 it on the table was to address the density of use on the
20 project and reduce the amount of square footage that was
21 being proposed, you know. I also am willing to take
22 off -- I'm willing to take off -- to take that off the
23 table today given that I think the Applicant has now
24 made, you know, whether he was forced or not by my
25 actions at the last hearing, but he certainly has made a

1 good-faith effort to reduce the square footage and the
2 density of use on the property, you know. And so --
3 especially with Lot 11. It really does contribute open
4 space, which is what the intent of having FAR's
5 calculations are. So, you know, we've got open space,
6 and then we've got development, and Lot 11, as far as I
7 can tell, is always going to be left in open space. I
8 mean I don't think any hotel developer is going to try
9 to build within -- on that. Whether they have the right
10 to or not, I don't think -- I can't imagine a hotel room
11 that's going -- it's going to be bad enough with the
12 hotel rooms being as far as they are from the railroad
13 tracks, you know.

14 So given that the Applicant has now reduced
15 some of the square footage is going in the direction
16 that I was pushing them into, or at least trying to push
17 them in at the time, it's a moot point for me any
18 longer, you know, because I think I'm getting where I
19 wanted to go. You know, I'm getting the size, bulk and
20 scale of the project down scaled, you know, and we no
21 longer seem to be playing a numbers game of like well,
22 I'll push it to there, but, you know, you have to take
23 this away. So like that's -- that's where I was coming
24 from. At the time that I put that out there, it was the
25 only alternative I saw to getting the size of the

1 project reduced, which I thought was too big.

2 MR. BIERIG: Commissioner Overall.

3 MR. OVERALL: I have a question to direct to staff
4 or counsel. By not making a determination as to whether
5 Parcel 6 and 11 should be included or excluded for
6 purposes of FAR calculations, are we -- by not making
7 the decision, are we leaving a door open for future
8 requests for the development, or -- I'm not even exactly
9 sure how to phrase this question. I want to know what
10 the consequences are of not making decisions related to
11 the FAR calculations using or not using those parcels.

12 MR. GHIZZONI: Chair Bierig, Commissioner Overall, I
13 think what you're actually asking is using Parcel 6 and
14 11 inclusion as a proxy for a secondary decision or a
15 different decision on how much -- how full do you want
16 the parcels to be, does that cause you more problems or
17 less problems. I think that's what I'm hearing in your
18 question.

19 MR. OVERALL: Yes.

20 MR. GHIZZONI: And I would say at the gross level,
21 the rough cut, that you would have less legal
22 uncertainty by including the parcels and dealing
23 frontally with the FAR question once they were included
24 than by excluding Parcel 6 or excluding Parcel 11 and
25 using that as a proxy for that decision.

1 MS. GOTTSDANKER: Could you repeat that?

2 MR. GHIZZONI: Chairman Bierig, Commissioner
3 Gottsdanker, I'm saying that I think the question was
4 rather than attacking the FAR question head on, are
5 there more or less issues by putting off a decision as
6 to 6 and 11, and my answer is there would be more legal
7 issues by excluding 6 and 11 or putting off that
8 decision than by simply including them and then
9 addressing the FAR question head on.

10 MR. PHILLIPS: Well, my understanding what we did
11 the last time is we left Lot 6 in last time. Isn't that
12 accurate? So that's not a question at this point. I
13 mean we're all, you know, fairly comfortable with State
14 Lands Commission and the surveyor and everything that
15 they've come up with. I'm assuming, nod your head yes
16 if not, or no. Commissioner Overall is not happy with
17 that yet. Okay. So we'll come back there.

18 So -- but everybody else is happy with
19 including all of Lot 6. So Lot 6 is not in question
20 once Mr. Overall is happy with whatever he wants to say.
21 So the only issue on the table is Lot 11, the inclusion
22 or not inclusion of Lot 11; is that accurate?

23 MR. BIERIG: I'll point out we didn't vote. We just
24 took a straw vote.

25 MR. PHILLIPS: No. I understand.

1 MR. BIERIG: We have nothing to reverse. We can
2 simply determine what we think is the appropriate FAR,
3 let the project's description stand as it is is I think
4 the easiest way to move forward on this.

5 MS. BURROWS: So if we do nothing on Parcel 6 and
6 11, what happens?

7 MS. BLACK: Mr. Chair --

8 MS. BURROWS: What is the status?

9 MS. BLACK: Then you leave us to interpret what we
10 think you want -- wanted.

11 And, Mr. Chair, I think -- I think you should
12 make a decision as to whether they're included or
13 excluded. I think you heard from county counsel you're
14 safer to include them and address any concerns you have
15 about the size of the project through the other tools
16 that you have.

17 MR. BIERIG: How about if we just --

18 MS. BLACK: The calculations right now are based
19 upon both those parcels being in.

20 MR. BIERIG: How about we jump to a solution.

21 I'll make a motion that we treat all of the
22 parcels in the development plan as part of the
23 development plan for purposes of calculating FAR, and if
24 somebody wishes to make a motion later to adjust the
25 total square footage on the property, we just look at

1 that issue independently.

2 MR. PHILLIPS: I'll second that motion.

3 MR. BIERIG: Moved and seconded. All in favor say
4 "aye," opposed say "no."

5 MS. BURROWS: Aye.

6 MR. OVERALL: Aye.

7 MR. PHILLIPS: Aye.

8 MS. GOTTSANKER: I think there may be some
9 discussion.

10 MR. OVERALL: I'll make the follow-up motion. I
11 would move for purposes of not the floor area ratio, the
12 total square footage, that we impose a limitation of
13 160,000 square feet. I think that is, more or less, the
14 number after the reductions we heard this morning.

15 MR. BIERIG: Not positive what our number is
16 currently.

17 Would you please? I know we are at 168-, and
18 you took out about six. Currently at 164,800. So that
19 would -- after the reduction of 6,655.

20 MS. BLACK: Mr. Chair.

21 MR. BIERIG: Please.

22 MS. BLACK: Mr. Chair, I don't recommend you impose
23 this.

24 MR. BIERIG: A straight number.

25 MS. BLACK: Well, because I don't think we had a

1 chance to look at it and confirm if you're talking about
2 gross versus net and done the calculation properly. So
3 I'm a bit uncomfortable, and I don't know what that
4 means, and I don't know the Commission necessarily knows
5 what this means.

6 MS. GOTTSANKER: I don't know either.

7 MR. BIERIG: Well, we have a motion, and it is
8 seconded. Maybe we can have some discussion.

9 MS. BLACK: Just to clarify on the previous motion,
10 that was a 5-0 motion?

11 MR. BIERIG: Yes.

12 MS. GOTTSANKER: Which one?

13 MS. BLACK: Including the development plan and
14 calculation.

15 MS. GOTTSANKER: No. My vote was no on that.

16 MS. BLACK: I'm glad I asked.

17 MS. GOTTSANKER: I had voted no on that.

18 MS. BLACK: Thank you.

19 MR. PHILLIPS: Mr. Chair, I see the directness of
20 picking a square foot number, but I think we also have
21 to, at the end of the day, have this project come in
22 within the 25 percent FAR number.

23 MR. BIERIG: It did.

24 MR. PHILLIPS: It did?

25 MS. GOTTSANKER: That's why I voted no, because I'm

1 unclear where the FAR is. Because I don't know because
2 we've been going back and forth, Lot 6, Lot 6, all of
3 those things, and now -- and we've had a reduction and
4 all of it's great and I have no idea where we're at
5 right now.

6 MS. BLACK: Mr. Chair, what we've heard, and I have
7 not been able to verify because you have as much
8 information as we do about the reductions that have been
9 agreed to by Mr. Caruso, but what he said earlier in his
10 testimony is they're at .39 -- I'm sorry, .2399 with the
11 changes that they made today and inclusion of Parcels 6
12 and 11. So that's what he's indicated. Like I said, we
13 have not, obviously, been able to verify that as of
14 today.

15 MS. GOTTSANKER: So then the question remains is --
16 okay. So that's fine. That -- that -- that complies
17 with the community plan.

18 MS. BLACK: Right.

19 MS. GOTTSANKER: We're below the community plan.
20 Then the question that remains is there some way then of
21 conditioning the project so it never goes above that
22 ever? In perpetuity, forever and ever and ever if we
23 now think that this is the adequate amount of building
24 to be put on this property, can we do that?

25 MR. BIERIG: Ms. Black.

1 MS. BLACK: Mr. Chair and Commissioner Gottsdanker,
2 no, you can't.

3 MR. PHILLIPS: For this project.

4 MS. BLACK: You are approving what you're approving
5 today. People always have the right to come back in and
6 request additional square footage. What you can do is
7 you can indicate that it is not -- there is not a path
8 through substantial conformity or amendment to modify
9 upward from the approval today so that at least it has
10 to come back to your body. But aside from that, you
11 can't say never. You can't bind the discretion of
12 future decision makers, including yourselves.

13 MS. BURROWS: So that would, in effect, be a public
14 hearing?

15 MS. BLACK: Of course, Commissioner Burrows, and
16 that is the case with essentially any project.

17 MS. GOTTSANKER: Yeah. I understand.

18 MR. BIERIG: Thank you.

19 MS. GOTTSANKER: It almost seems -- I'm kind of
20 thinking out loud. It almost would be more kind of
21 comfortable if there was some way of taking some lot
22 area out, like even the 20-foot easement across the
23 beach, such that then without that land mass out counted
24 in the ratio the FAR was actually closer to 25 or some
25 combination there where I was assured that it wasn't

1 going to go over that.

2 MS. BURROWS: But I think we have to keep in mind
3 all these numbers can change. The FAR number can change
4 decades from now.

5 MS. GOTTSANKER: That would take a community plan
6 amendment. That's a two-year process you have to go
7 through. That's why I'm thinking okay, let's get it as
8 close to the 25 as we can get it.

9 MS. BURROWS: That can happen.

10 MS. GOTTSANKER: I know it can happen, but it is
11 rare. Let's put it that way. And it's a lot harder
12 than sitting in front of a planning commission.

13 MR. BIERIG: So if I could, we have a motion from
14 Commissioner Overall. Does anybody want to support it?

15 MS. BURROWS: What was the motion?

16 MR. BIERIG: The motion was to set the number at
17 160-, and I have a comment before anybody goes forward
18 on it, which is I think probably at this point, from my
19 perspective, we're really getting down to picking things
20 that don't have any material to them. The difference
21 between a -- if you stand across the street from 160,000
22 foot building, you wouldn't know whether it's 120-,
23 140-, 160- 180-. You can't see it, and especially when
24 you're talking about a one percent change. It's just
25 not going to be visible.

1 I understand where you're -- the reason --

2 MS. GOTTSANKER: Yeah. Yeah.

3 MR. BIERIG: But I think we should try -- let's keep
4 it real simple, stick to the big items at this point and
5 see if we can't move forward with the motion and move
6 this project along.

7 MS. BURROWS: Yes.

8 MR. PHILLIPS: I agree. I -- I love the simplicity
9 of the number, but you have to provide some design
10 flexibility. It would be off and we're back here again.

11 MR. BIERIG: We know it's under the FAR.

12 MR. PHILLIPS: And let's hold tight to that 25
13 percent and give the Applicant room to move that.

14 MR. BIERIG: Mr. Overall.

15 MR. OVERALL: My comment to Commissioner Phillips is
16 that's exactly what I was trying to avoid. You use the
17 FAR -- I'm not suggesting that Mr. Caruso and his group
18 would do that, but the -- sounds to me that the
19 possibility is there. If we adopt the basis for the
20 square footage based solely on FAR and the inclusion of
21 those two lots, we've just opened the door back up for a
22 larger project, and I think that's -- my personal view
23 is I think that's a mistake, and I know we were not
24 going to go in the direction of establishing a limit
25 based on a target project, whether it's 164,000 or 160-.

1 I just didn't know what the number was. Had I known
2 that was the direction you were headed, I wouldn't have
3 voted to include Parcel 6 and 11. So I just --

4 MR. PHILLIPS: How would this be a larger project?

5 MR. BIERIG: I think you get to the same place. If
6 we approve this project, we're approving a project. I
7 know we don't have the exact number of square footage
8 but down within a thousand. For it to change, we'd have
9 to see it again.

10 Am I misstating that?

11 MS. BLACK: Mr. Chair, I think that's correct. I
12 think we can add a condition that indicates that, you
13 know, any increase in square footage, as small as it
14 might be, would come back to the Commission and handle
15 that at staff level.

16 MR. BIERIG: Please, Madam.

17 MS. BLACK: I think we did to the Westmont project
18 essentially, that comes back to your Commission.

19 MR. BIERIG: Let's leave a couple feet in there.
20 Commissioners, other issues? Questions?

21 MS. BURROWS: I think this body is moving toward
22 approving this project. I assume with many of the
23 conditions, some of which Mr. Caruso brought today and
24 some of which we will add, do we start this process by
25 going back to the findings on the July 16 staff report

1 and then incorporating all of the other conditions that
2 we will develop here today? Because we've been
3 addressing one issue at a time, I'm not sure we'll ever
4 get toward moving of the whole project.

5 MR. BIERIG: I'll let you. Sorry. I'm going to let
6 you. I've got an opinion, but no sense being corrected.

7 MS. BLACK: Okay. Mr. Chair and Commissioner
8 Burrows, thank you for that question. I think it was a
9 good question to ask about at this point in time.

10 MS. BURROWS: Thank you.

11 MS. BLACK: So we have -- we sort of have three --
12 four documents in play. We have the findings, we have
13 the conditions, we have the CEQA documents --

14 MR. BIERIG: We're talking original findings?

15 MS. BLACK: I'm talking about any findings.

16 MR. BIERIG: Because we have findings for denial as
17 well.

18 MS. BLACK: Conditions, findings, CEQA documentation
19 and then the actual site plan, and none of those at the
20 very moment match each other.

21 MS. BURROWS: So how do you reconcile those?

22 MS. BLACK: Well, the sensible way of reconciling
23 those is to take a bit of time to get to a place where
24 your Commission is comfortable enough to take a
25 conceptual motion so we know what we're working toward

1 and to give us some time to prepare the documentation
2 that you need to support your action. That would be my
3 preferred course of action.

4 MR. BIERIG: I'd like the Applicant at the end of
5 the day to understand, maybe not every little word in
6 the conditions, but at least the parameters of the
7 project physically that he gets to build, and I would
8 hope that we could get to that point for even required.
9 I mean we've got a language to deal with here today.

10 MS. BLACK: And if it were -- Mr. Chair, if it were
11 10:00 in the morning, I might say well, you know, trail
12 this and try and work on some issues, but knowing that
13 the Commission has a goal of leaving at 4:30, it gets
14 pretty --

15 MR. BIERIG: It's not going to happen.

16 MS. BLACK: -- unrealistic for us to do a good job
17 of really supporting the action.

18 MR. BIERIG: In your estimation what is a
19 reasonable -- how long will staff require to pull
20 together the -- the original findings, the original
21 conditions, add to them, the modifications that have
22 been put before us today and bring that back to us as an
23 integrated package?

24 MS. BLACK: Mr. Chair, my preference would be to
25 have revised plans, at least a revised site plan and

1 some of the basic plan material. My ideal would be to
2 take it to the MBAR and make sure that they don't have
3 any other issues. That's just the ideal. But I think
4 it would take us --

5 MR. BIERIG: Well, I can see that especially --

6 MS. BLACK: -- a week or two.

7 MR. BIERIG: -- as it relates to the issue of
8 cottage style.

9 MS. GOTTSANKER: Yeah. That's what I was going to
10 jump in with.

11 MS. BLACK: But in terms of actually putting
12 together the material, I don't think it would take us an
13 inordinate amount of time, but we would like to have
14 that plan, and then, you know, we would like to get this
15 material to you well enough in advance that we're not
16 again stressing the Commission and the public in the
17 reviewing process. So that adds on to the time. I
18 think pushing it to the next hearing is going to be a
19 push.

20 MR. BIERIG: And that is the 8th?

21 MS. BLACK: No. September 17.

22 MR. GHIZZONI: Commissioner Bierig, if I may?

23 MR. BIERIG: Yeah, please.

24 MR. GHIZZONI: I'd like to join in with Ms. Black's
25 comments and remind you that this is a case where you

1 have received several overt threats of litigation on the
2 project, which suggests that there will be an appeal or
3 there's likely to be an appeal, and that the record
4 would be well served to have findings as clear as
5 possible so we don't have -- again, as Commissioner
6 Gottsdanker said, we know what a cottage style actually
7 is, what you actually approved. We address the CEQA
8 decision to go from requiring a subsequent EIR to not
9 requiring so that we provide captured thoughts and that
10 evidence that you received would support that. So that
11 we actually do take the time to have very crisp findings
12 that a subsequent appeal or subsequent litigation will
13 be able to look at and know what you approved.

14 MR. BIERIG: And so that is -- that is the safest
15 way for us to move this forward in that that is
16 defensible in your opinion?

17 MR. GHIZZONI: Absolutely.

18 MR. BIERIG: Okay.

19 MS. SLUTZKY: Mr. Chair, I have a minor note, but
20 important clean-up item. I think we have a motion on
21 the floor without a second.

22 MR. OVERALL: I'll withdraw the motion.

23 MS. SLUTZKY: All right. Thank you.

24 MR. BIERIG: Commissioners?

25 MS. GOTTSDANKER: Mr. Chair, unless there's any more

1 like, you know, major discussion the rest of the
2 Commission may want to discuss, I would think that we
3 might want to just sort of kind of start throwing out
4 those things that we want staff to include as conditions
5 and see if there's alignment rather than kind of going
6 back and forth through this thinking process. I mean I
7 have at least two or three that I just would like to
8 throw on the table and see what the rest of the
9 Commission thinks about it.

10 MR. BIERIG: I would agree.

11 Can we start with the base is going to be the
12 conditions for approval from the original staff report.
13 So that's our base level.

14 MS. GOTTSANKER: No. I don't want to go there.
15 That's, you know --

16 MR. BIERIG: I'm not suggesting we look. We've all
17 seen them.

18 MS. GOTTSANKER: Yeah. I'm not sure -- I'm not
19 really clear whether those findings at this point are --

20 MR. BIERIG: Well, we have to start some- --

21 MS. GOTTSANKER: -- completely adequate to where we
22 are right now. We kind of got a slightly different
23 project than we had back then.

24 MR. BIERIG: We have to start somewhere.

25 MS. GOTTSANKER: Yeah.

1 MS. BLACK: Can I make a suggestion?

2 MR. BIERIG: Sure.

3 MS. BLACK: Maybe what the Commission would like to
4 do is really to focus on the conditions of approval and
5 not the findings, because I think we did a halfway
6 decent job of articulating the basis for a potential
7 denial, and I think we can go through the hearing today
8 and previous hearings and get very close. And if you
9 have minor changes that you would like to make at the
10 next hearing on the findings, I think you will be able
11 to do it. So I think the real helpful area at this
12 point would be the conditions of approval.

13 MR. BIERIG: All right. But we have to start
14 somewhere.

15 MS. BLACK: And I would recommend that you go back
16 to those conditions of approval that we drafted because
17 I think that's where you already were.

18 MR. BIERIG: That's where we already were.

19 MS. BLACK: Condition 55, and we had addressed a
20 number of things.

21 MR. BIERIG: I mean we have a basic set of
22 conditions. I would suggest, you know, my -- my
23 beginning cut at this was we've have a set of
24 conditions. Let's amend those conditions of approval to
25 include the Applicant's suggested changes from this

1 morning. So I realize this is just textual, but, you
2 know, they have to start somewhere. So -- and then the
3 question is do we have other conditions that we want to
4 add?

5 Shouldn't there be -- I'm sorry. Excuse me.
6 Go ahead.

7 MS. BURROWS: Mr. Chairman, at this point I'm
8 willing to move, if it's appropriate, to accept the
9 changes that Mr. Caruso presented today. We all have
10 copies of that, and that would be a place to start.

11 MR. BIERIG: Yes, incorporate those --

12 MS. BURROWS: Incorporate those.

13 MR. BIERIG: -- into the project description, and
14 draft conditions that would incorporate those.

15 MS. BLACK: So, Mr. Chair, rather than having all of
16 these individual motions, which are a little bit
17 difficult to deal with, I think what you might want to
18 do is somebody might want to make a motion to
19 conceptually approve the project, and then you can
20 second it and articulate -- and then you can come up and
21 articulate the conditions that go along with that, or
22 you can talk about the conditions first or put it into a
23 conceptual motion. I think that's where we're trying to
24 get.

25 MR. PHILLIPS: Or we can conceptually deny it too.

1 MS. BLACK: Or conceptually deny it, if that's where
2 you want to go.

3 MS. BURROWS: I'm willing to move conceptual
4 approval of this project.

5 MR. PHILLIPS: I'll second it.

6 MR. BIERIG: Okay. So we have a motion, but -- but
7 we haven't directed staff as to what they need to do so
8 that we have an actual project in front of us.

9 MR. PHILLIPS: But they need this to get to the next
10 part.

11 MS. BLACK: Mr. Chair, the next step I would take is
12 discuss those conditions that -- that you would like to
13 change or modify or add to this project, and I would
14 start with those conditions that we've presented to the
15 Commission on July 16. Which does everybody have those
16 with them?

17 MS. BURROWS: Yes.

18 MS. GOTTSANKER: Yes, I have them.

19 MR. BIERIG: We do.

20 MS. BLACK: And we already have some changes. We
21 know we have some project description compliance changes
22 to make based upon the changes the Applicant made to
23 reflect the site plan that Mr. Caruso showed us earlier,
24 and then I think we had some changes at the August 6
25 hearing which were included in that memo on Page 12 --

1 essentially on Page 12 of the August 6 memo. And then I
2 heard some discussion about adding to Condition No. 55,
3 which would require some monitoring. We've had some
4 discussion about whether you want to phase in or phase
5 out beach club membership and special events, and there
6 may be other things as well.

7 Just to be clear, I think your conceptual
8 motion was to approve the project as revised by the
9 Applicant today, and we'll incorporate that into the
10 project description. So I think the thing to do right
11 now is discuss any condition changes.

12 MR. BIERIG: Yeah. We have a motion to conceptually
13 approve, but I think we need to specifically --

14 MR. PHILLIPS: Identify the conditions first?

15 MR. BIERIG: Well, at least identify -- we have a
16 project -- we have a verbal project description which
17 includes the changes we made in our hearing of August
18 6 -- July 16 as a starting point. We have an August 6
19 because we have a number of changes that were proposed
20 at the hearing, such as take the second story off the
21 spa.

22 MS. BURROWS: The sidewalk.

23 MS. GOTTSANKER: No. That came today.

24 MR. BIERIG: The redesign of Building 44, the
25 description was amended to state the Montecito Water

1 District. We'll rely exclusively on the Water District.
2 Lift station was clarified. There was a number of
3 things.

4 MS. BLACK: So, Mr. Chair, we're assuming we're
5 starting from that basis?

6 MR. BIERIG: From that basis, right. And now we
7 have today's list of further modifications to the
8 project as outlined in the Applicant's application.

9 MS. BLACK: Which I think is already incorporated
10 into your motion.

11 MR. BIERIG: I'm assuming it is. I'm making sure it
12 is.

13 MS. BURROWS: Now, we're talking about Page 2 of 5
14 on the August 21, the redesign direction on the tennis
15 court and those things? Is that where we are?

16 MR. BIERIG: We have a problem here.

17 MS. GOTTSANKER: Yeah. I think we -- I think we do
18 have a problem here.

19 MS. BURROWS: It would seem to me that we'd have
20 greater clarity if we could go ahead and vote on the
21 conceptual approval.

22 MR. BIERIG: Of what?

23 MS. BURROWS: Of the project before us. Well, no
24 because conditions come then, right?

25 MR. PHILLIPS: Well, I don't know.

1 MS. GOTTSANKER: I mean I'll be really straight
2 about it. I am unwilling to vote for a conceptual
3 approval on a project that I don't even have an accurate
4 project description of. I don't care what time it is.
5 I don't care how tired anybody is here. But for me
6 ethically that is like -- that's like over the top
7 asking me as a planning commission -- I don't even have
8 a project description that I can vote on.

9 Yeah, I know we're kind of agreeing here that
10 we're going to change the project description. What are
11 we going to change it to? I mean that's like -- it's so
12 just -- I mean yeah, if we're going to vote on a
13 conceptual motion right now to take what Mr. Caruso has
14 brought to the table and say yeah, do I -- is that what
15 I want with these? Yeah. But when we start getting
16 into these documents. You know, it took us eight months
17 to do this work with Westmont.

18 MR. PHILLIPS: You're suggesting a continuance with
19 direction to staff to prepare findings of approval?

20 MS. GOTTSANKER: Yeah, and the conditions.

21 MR. PHILLIPS: With the conditions?

22 MS. GOTTSANKER: Yeah, with conditions.

23 Conceptually letting Caruso and Affiliates know that
24 while we're really close to having a project that
25 whenever this work gets done, we're going to approve it.

1 You know, we're not going to back up and start adding --
2 you know, I'll give my word that I'm not going to start
3 adding in a bunch of conditions that are going to impact
4 this project the next time we come together. But this
5 is -- I mean this is an issue for me, to asking me to
6 conceptually approve what I -- you know, what I've got.

7 MR. PHILLIPS: What is the significance of the
8 conceptual approval? It's certainly not binding.

9 MS. BLACK: Mr. Chair?

10 MR. BIERIG: We're giving directions to the staff
11 what to write.

12 MS. BLACK: Mr. Chair and Commissioner Phillips, you
13 can do this any way you want to do it. You can take a
14 conceptual motion, which binds you to nothing. It's
15 simply giving an indication to the Applicant that that's
16 your intention and providing direction to staff about
17 any changes or additions that you'd like to see in the
18 conditions. I'm not asking you to come up with the
19 precise language of the conditions today, but just
20 issues you want us to address and what direction you
21 want us to go in.

22 We will come back, whether you take a
23 conceptual action for approval or you continue this
24 matter with direction to come back with findings, we
25 will come back, and we'll have a revised project

1 description, we'll have revised conditions, we'll have
2 revised findings or findings to support your proposed
3 action, and we will make modifications to the CEQA
4 documentation as necessary to support your action in the
5 best way possible.

6 So you don't have to take a conceptual action
7 to approve or conceptual motion to approve, but you
8 certainly may, and it's not binding on you. It's just
9 giving the Applicant an indication that that's the
10 direction you're going in.

11 MS. GOTTSDANKER: If it's not binding, then why do
12 it?

13 MS. BURROWS: That was the point. The point was,
14 Commissioner Gottsdanker, that staff asked if we were
15 ready for a conceptual motion, that that would be the
16 time to do that. As I made the motion and got a second
17 on it. It's not binding, in my understanding, and then
18 we can use the next 40 minutes to develop the
19 conditions.

20 MS. GOTTSDANKER: We can do that without the motion.
21 See, that's my point.

22 MR. BIERIG: Commissioner Gottsdanker, what would
23 you like to do? What are you suggesting as an
24 alternative? I saw a conceptual motion as simply a way
25 to direct staff as to how to proceed --

1 MS. BLACK: That's right.

2 MR. BIERIG: -- to write the documentation that we
3 will have in front of us for our next hearing. We need
4 that in whatever shape or form.

5 MS. GOTTSANKER: And I have no disagreement with
6 that.

7 MR. BIERIG: If you want to call it something other
8 than a conceptual motion, that's fine.

9 MS. GOTTSANKER: The staff -- the staff has now
10 said that it is not binding.

11 MS. BURROWS: A conceptual motion never is.

12 MR. BIERIG: So -- okay. So now we're all on the
13 same page.

14 MS. GOTTSANKER: The staff has now said that it is
15 not binding. If it is not binding, then that's fine,
16 you know. That's all. I just want to make sure that
17 I'm not voting on something that now is going to bind me
18 with something.

19 MR. BIERIG: So, if I can, I'm going to try again to
20 go back to where we were before which is we're starting
21 out not with the conditions for denial but the
22 conditions for approval as -- and with the additions
23 that the Applicant has suggested, they are willing to
24 make to the project, that those be incorporated into the
25 project description and findings that would be required

1 for that and for the language related to the SEIR that
2 we have changed our position. I think those are fairly
3 straight forward. I'm not saying we won't need to look
4 at those and make modifications next time we meet, but
5 at least that gets them to the point of drafting for us.

6 So really the only other question I see in
7 front of us is is there anything else that one of the
8 Commissioners feels they want to have addressed within
9 this project that has not been discussed, is not part of
10 the application or the project description that the
11 Applicant has suggested? Is there anything else you
12 want staff to draft as a condition on the project?

13 MR. OVERALL: Yes and no.

14 MR. BIERIG: Yes and no.

15 MR. OVERALL: I don't know that I want it drafted as
16 a condition although it certainly may be that. We made
17 a specific request at the last hearing that the staff
18 come back with the analysis related to traffic and
19 parking. We got a document today that I've read. I
20 don't claim to fully understand it. I know that
21 contained in what I'm reading here there is a potential
22 for the need for some conditions related to traffic and
23 parking. I haven't had a chance to review it in enough
24 detail to feel comfortable suggesting anything at this
25 point. So I would like to -- in my mind, there are two

1 different parts of this project. There is physically
2 what's going to get built. I think we generally have
3 agreement on physically what we can approve. I think
4 there are questions related to operations, traffic, and
5 parking be, in my mind, a principal one that frankly we
6 haven't devoted -- I don't think we've devoted enough
7 time in analyzing and feeling comfortable saying this is
8 what it is.

9 The traffic report says there's no impact.
10 Once we approve the project, if I understand this
11 correctly, and I think I did, once we approve the
12 project if it turns out there is an impact, it's a horse
13 on the county, not on Mr. Caruso. If we determine that
14 there was impact now, the cost of the mitigation would
15 be borne by Mr. Caruso in relationship to his share, his
16 fair share of whatever the mitigation would be that
17 would be required. I may have messed that up a little
18 bit, but, in essence, I know it's the truth.

19 So what we risk is, if we approve this, and we
20 haven't fully analyzed this based on the county's
21 acceptance of it, I guess we could go there, what the
22 county risks is any mitigations that come down, physical
23 mitigation on what needs to be done, would be the
24 county's responsibility and not the developer's
25 responsibility.

1 I'm willing to go in that direction, but I
2 still would like to understand what we could do related
3 to the project that would limit those impacts somewhere
4 down the road and whether that's limitation of the
5 number of events or limitation of the number of members
6 for the tennis and beach club. We haven't talked about
7 any of those possibilities at this point. So...

8 MR. PHILLIPS: Couldn't Commissioner Overall
9 condition the approval findings with those concerns when
10 we see it?

11 MR. OVERALL: I think Director Black wanted to say
12 something.

13 MR. BIERIG: Director Black, would it be possible
14 that we write one of the conditions where we had some
15 flexibility to stage -- bear with me. Where we had the
16 ability -- I'm directing this to Commissioner Overall's
17 comments. Where we had the ability to, I'll say, ramp
18 up the operations? We have a provision in here that
19 we're going to look at the operations in less than 12 to
20 18 months, and that we would, I'll throw out an option,
21 that we would as an initial cut give them the same
22 operational ability as under the Schragger plan and then
23 look at it again one year later with a conformity
24 hearing to make sure there hadn't been any operational
25 problems and then address the balance of these things?

1 I'm not suggesting how to write that language.
2 Just could we do something like that that might satisfy
3 the concerns related to traffic? Because we don't need
4 a -- in my personal opinion, we don't need any more
5 traffic.

6 MS. BLACK: Mr. Chair, I'll answer your question,
7 and then I'll make a comment about traffic. Yes, of
8 course you could draft or craft conditions that would
9 phase in the special events and the spa usage over time
10 based upon some criteria so the Applicant knows how we
11 would be evaluating that. So -- and we'll work on that,
12 and you may even want to ask the Applicant if they have
13 a preference about.

14 MR. BIERIG: Which parts?

15 MS. BLACK: Which parts would be better or harder to
16 ramp up in terms of their operational issues.

17 My comment is, you know, I think we keep using
18 different words for three different issues. So I want
19 to be really clear about what my intention is we would
20 address. My intention is that we would be addressing
21 parking and the effects on the neighborhood and the
22 potential issues surrounding valet parking and how that
23 may prevent people from utilizing parking in a way that
24 they otherwise would, the amount of parking, if we just
25 got it wrong and there isn't enough parking, whether

1 it's valet or otherwise. And the other issue that I
2 think we can address is circulation effects related to
3 the project. So if we are having a lot of stacking and
4 that's causing some issues because people are coming to
5 events and, you know, causing some operational issues, I
6 think that could be addressed through this condition
7 issue -- this condition approach.

8 What I don't think we can address and what I
9 think -- what I would suggest we ought to rely on public
10 works for is that the actual traffic -- when I say
11 "traffic," I mean intersection and roadway, volume
12 issues, is not considered to be a significant issue, and
13 it's not something that we can really effectively
14 evaluate after operation has occurred. So we'd really
15 be looking at circulation issues and parking issues and
16 the adequacy of parking both in terms of numbers and
17 method of parking.

18 MR. BIERIG: I think that's -- what you just said I
19 believe that's a really excellent synopsis of where I
20 was headed for this. It's not really traffic for me.
21 It's parking and circulation what's going on, and if we
22 could give ourselves some options, language options, so
23 that we could look at that at our next hearing and maybe
24 tweak that a little bit, that would be wonderful. So
25 thank you for that language.

1 Did you write it down?

2 MS. BLACK: She did.

3 MR. BIERIG: It's on the tape. It's on the tape.

4 Would that satisfy some of your concerns,

5 Commissioner Gottsdanker?

6 MS. GOTTSANKER: Yeah, I think so.

7 MR. BIERIG: And, Commissioner Overall?

8 MR. OVERALL: Yes.

9 MS. GOTTSANKER: Are we clear with regards to that?

10 And I think it may have come up in an earlier hearing.

11 I think one of the suggestions around this is that the

12 beach club membership may be held as operational at 140

13 and then ramped up once we knew in the future. Have you

14 got that in there?

15 MS. BLACK: Mr. Chair, I think that's certainly an

16 option, and that's what I think -- it would be a good

17 idea to have Mr. Caruso maybe later comment about.

18 MS. GOTTSANKER: Yeah.

19 MS. BLACK: So we all have an understanding of what

20 would work best. There's the beach club use in numbers

21 and there are the various special events that could be

22 phased in as well, and one other --

23 MR. BIERIG: Sure. I just wanted to make the point

24 to my fellow Commissioners. I'm not suggesting that we

25 do this. I'm suggesting that we have language that

1 gives us the option to look at this next time and decide
2 what we feel.

3 MS. GOTTSANKER: You mean next time being in --

4 MR. BIERIG: At our next hearing.

5 MS. GOTTSANKER: Oh. Oh, I'm sorry. I thought we
6 were actually to the point where we were directing staff
7 to write things that we wanted to have them write down.

8 MR. BIERIG: Do you feel comfortable that you know
9 exactly what you want it to say at this point? I was
10 just trying to give the option.

11 MS. GOTTSANKER: Well, that was the one -- that was
12 the one thing that I had down is that I really wanted to
13 look at what we're now calling operational as far as,
14 you know, being able to pull back and then look at it
15 again in 12 to 18 months.

16 MR. BIERIG: Right. But my only question is do you
17 know what you want that pull back to look like?

18 MS. GOTTSANKER: Well, the 140 beach club
19 membership was the one thing I had on the table.

20 MS. BURROWS: Mr. Chairman, there was quite a
21 discussion about this at the last hearing in regard to
22 the phasing and the membership numbers. If we have
23 that, it would be interesting to see what we had
24 discussed at that time. I would also be interested in
25 hearing from Mr. Caruso.

1 MS. BLACK: Mr. Chair, we can pull the transcript, I
2 suppose, if we have it on that and provide that to you
3 next time, but I don't think you have reached a
4 conclusion how you want to address it because it was
5 more operational.

6 MR. BIERIG: We did not.

7 MS. BLACK: When you asked Mr. Caruso to address the
8 Commission, another item that would be helpful to us is
9 to know when we might be able to receive plans so that
10 we can plan.

11 MS. GOTTSANKER: And then the other issue around
12 it, the other thing around the issue, which I haven't
13 had an opportunity to bring up at all ever with this
14 whole traffic, parking and how we manage the employee
15 parking and if they really are parking in the hotel. I
16 think some of them aren't going to park in there. Is I
17 would like to impose some employee parking decal program
18 so that it's possible to actually determine that we
19 don't have -- you know, or some other methodology. You
20 know, we went through this whole issue with Westmont.
21 So we know there's a methodology out there making sure
22 that hotel employees are not parked in the
23 neighborhoods. You know, we have it all -- it's a big
24 deal in the Village. Everybody that works at Pierre
25 Lafond's doesn't park at Pierre Lafond's. They park in

1 the neighborhood, and they walk to work. So I just want
2 to -- given that's a concern, I want to have some way of
3 being able to determine where they're parking, like
4 decal or something else, however we want to work that
5 out.

6 MR. BIERIG: Okay.

7 MR. OVERALL: Mr. Chair, I have a question related
8 to the concept of using the Schrager plan as the base
9 from which we start, and it relates to --

10 MR. BIERIG: You're talking -- you're speaking
11 operation?

12 MR. OVERALL: Yes. It relates to events. If memory
13 serves me, the current proposal is an average 4.7 events
14 per day in the course of a year. I want to make sure
15 that that number, by virtue of saying we're going to use
16 Schrager as a starting point, doesn't become carved in
17 stone. If you were to run those numbers out to the
18 absurd, it brings in a million people a year to the
19 facility, and Mr. Caruso might be very happy with that,
20 and we might be very unhappy with it.

21 So I think once we see what happens, we might
22 want to reduce the number of events, and I just want to
23 make sure that the discussion we're having now which
24 says use Schrager as a starting point doesn't somehow
25 vest that 4.75 events. I'm looking for some

1 confirmation that it does not vest it.

2 MS. BLACK: Mr. Chair and Commissioner Overall,
3 nothing is vested now because you haven't done anything.
4 We'll see what we can do.

5 MR. OVERALL: Assuming that we have.

6 MS. BLACK: It's in the way that the condition is
7 crafted.

8 MR. BIERIG: Commissioners, anything else?

9 MS. BURROWS: We had a motion.

10 MS. GOTTSANKER: We still on traffic or moving on?

11 MR. BIERIG: Whatever.

12 MS. GOTTSANKER: Just so I'm clear. Okay.

13 MR. BIERIG: Just trying to get them all on the
14 table.

15 MS. GOTTSANKER: Yeah. Well, I really want to -- I
16 would first of all like to compliment whoever actually
17 defined "cottage style" in the conditions of denial. I
18 mean it's amazing to me after all the work we've done we
19 finally got a definition of what the intention of the
20 general plan or the community plan is. So I want this
21 included in the conditions, that this is actually what
22 defines cottage style and it's not defined by the number
23 of keys, it's not defined by -- you know, it is still
24 defined by the number of keys and the two-quarters and
25 all of that, but that -- this -- this particular -- I

1 want this in there because I want this to go to MBAR.

2 I want MBAR to get real clear that a cottage
3 style hotel looks like these words. This is it: "It's
4 small structures designed in the California cottage
5 bungalow architecture vernacular style. A California
6 cottage bungalow" -- I mean it goes on and on, and it's
7 really, really good. I was like going whoa, this is
8 interesting, you know.

9 And then in relationship to that, and I
10 still -- I want to also -- and it doesn't necessarily
11 have to be a condition in the conditions we looked at,
12 but I want to be real sure that I'm still up for -- with
13 Building 44 we're varying those ridge heights, you know,
14 so that that long facade gets broken up somehow. And I
15 don't know whether that's something that's going to come
16 back when we see elevations, and I don't know that it
17 needs to be in the condition, but it certainly needs to
18 get to MBAR that that's what we're looking for. Or at
19 least what I'm looking for. I don't know whether
20 anybody else is looking for that or not. But I still
21 think that long -- I think that building can still be
22 manipulated to be more consistent with the cottage style
23 hotel.

24 MR. OVERALL: If Chair Gottsdanker would permit,
25 related to that building.

1 MS. GOTTSANKER: Go for it.

2 MR. OVERALL: In all fairness, I think we need to
3 acknowledge the Caruso Group pointed this out to us when
4 we talked about cottage style and using the 16
5 buildings, the 4 buildings versus 1 building. My
6 personal sense is that the way the buildings was --
7 buildings were put together, I don't mean the specific
8 how they're clad and all that, but there was more
9 distance between, or at least seemed to me there was,
10 under the old plan. If we're not locking ourselves into
11 this 16 out of 24 requirement as the definition for
12 cottage style, it might warrant the Caruso Group going
13 back and looking at the design that they had before
14 versus what we have now, which seems to be more compact
15 and more dense. I may be incorrect on that. That's the
16 way it appears to me.

17 MS. GOTTSANKER: I don't remember.

18 MR. BIERIG: I didn't understand that particular
19 item.

20 MR. OVERALL: Maybe my perception is incorrect.
21 Start there. But my -- what I'm carrying in my mind is
22 that the old design before they enclosed the passageways
23 and I think moved the buildings closer together, it
24 looked to me like it had more openness and it wasn't --
25 they weren't trying to force it into the appearance of

1 a -- of one building when, in fact, if you look at it,
2 it really is -- can be viewed as four buildings. I
3 thought the old design was preferable to what I've seen
4 more recently. As I said, I may be incorrect. Was that
5 clear?

6 MR. BIERIG: Yeah. I don't have a --

7 MR. OVERALL: Mr. Chair, maybe I can explain that.
8 Before I do, I'm not going to let this moment slip by
9 because Commissioner Gottsdanker complimented an unknown
10 person on staff, and I want you to know who it was that
11 articulated the cottage style definition. It was Nicole
12 Mayshore, and she did an excellent job.

13 MS. GOTTSDANKER: Congratulations, Nicole. It was
14 awesome.

15 MS. BLACK: She's provided quite a backbone in the
16 review of this project, and I just thought it was
17 important to acknowledge.

18 MR. BIERIG: Thank you.

19 MS. BLACK: Okay. So to your issue, and I'm
20 probably not going to get this exactly right, but the
21 areas we're talking about, I think, are these little
22 enclosures.

23 MS. GOTTSDANKER: Um-hum.

24 MR. OVERALL: And those are on the first floor. So
25 that building could be considered to be one attached

1 building, and I think that's what Commissioner Overall
2 was saying. Maybe that wasn't such a good idea because
3 it increases the bulk of the building. There was a
4 specific reason we did that, and I think it was because
5 of the mix of one-story and two-story buildings, and
6 that building the way it was designed before would have
7 accounted for four buildings, and now with those
8 enclosures it counts for one. So we'll look at it and
9 see if given the other changes that have been made if
10 there's a way to break up one or more of those segments
11 of the buildings.

12 MR. BIERIG: The other way we could look at that is
13 given the fact that they've taken -- eliminated a
14 two-story building, gone to one-story buildings, we're
15 actually giving them design flexibility if they want it.

16 MS. GOTTSANKER: Yeah. I mean that's what I was
17 going to tell you. It seemed like now, and I don't know
18 how the numbers match up inside the ordinance, but it's
19 almost like the building that's diagonal could maybe
20 even be separated out of that building if it works
21 inside the numbers. And I -- more like what I was
22 referring to was more -- once again, going back to, you
23 know, that maybe some of those buildings they didn't
24 all -- it didn't need to be repetitive, like every one
25 was the same when you looked at it, when you looked at

1 the elevations, that maybe there was some way more of,
2 you know, manip- -- maybe one building having more
3 dormers and one building having less and one building
4 having a slightly higher roof and another one having a
5 slightly lower one or changing the pitches of the roof.
6 So it looked more like a cluster of buildings rather
7 than a single building.

8 And for the purposes of the one-third,
9 two-thirds, clearly we're still calling it one building,
10 but there might be some way that in redesigning this
11 project you could manipulate that building more so it
12 looks like less rather than more.

13 MR. BIERIG: Mr. Caruso, would you like to address
14 us?

15 MR. CARUSO: I would love to. Mr. Chairman, I
16 wanted to make sure I was able to do that before
17 Commissioner Gottsdanker had to leave.

18 Let me just be honest and explain my concerns.
19 So here we are. We came to the Board after the last
20 hearing after a list of the things were asked of us to
21 look at and made every one of those changes, and now
22 we're standing here and we're talking about a whole
23 bunch of other things, maybe they could relook at the
24 site plan and maybe -- you know, at some point, I'd like
25 to reach a conclusion. Staff has a plan. That's a CAD

1 drawing. We can deliver a full-size drawing in a matter
2 of minutes. And we just can't keep going on design
3 changes. So I hope that's not the direction of the
4 sport at this point because I would just respectfully
5 request you to decide on this plan that we've
6 substantially modified, but it's --

7 As to the findings, everything in this plan is
8 better, less intense. So I'm still confused on why
9 findings need to be changed, but I think we're past that
10 point.

11 In terms of operations, we need to have this
12 hotel make sense, and the discussion we had last time,
13 which we agreed to, was to limit the members in the
14 beach club to 200 and then after six months there would
15 be an additional 50 assuming there wasn't a problem, and
16 six months after that there would be an additional 50.
17 If there's thoughts to saying we're going to allow less
18 intense uses on the property and then we'll
19 incrementally increase them other than the beach club,
20 that's a real problem because the underpinning of the
21 hotel operations is based on the number of rooms, the
22 number of events, everything that has been vetted out
23 for 18 months, and it is less intense than the Schragger
24 plan substantially now in terms of rooms.

25 So I would please ask you not to ask staff to

1 go down the direction of saying okay, you can only have
2 one event a week until a year comes by and we study it.
3 We have conditions of approval that staff recommended
4 for the July 16 meeting and parking and traffic studies,
5 four of them now, that verify there's not a problem.
6 And I would please ask you to rely on that. If you want
7 the option of coming back to us in a year or 18 months
8 and saying operationally you need to go fix these
9 problems or we'll impose some other conditions on you,
10 that's fair. We want to be a good neighbor. But let us
11 start out running at full tilt so we know the hotel can
12 operate and work and be profitable and fully staffed.

13 In terms of employee parking that was raised,
14 we have a whole analysis and incentives for employees,
15 bus passes, all of those kind of things that are in the
16 original documents including free parking. Just to
17 address your concern, Commissioner, that they don't have
18 any incentive to park on the street, they park in our
19 parking structure at no cost. So I think we've dealt
20 with that. Certainly if we think again after a year or
21 18 months there is a problem and we need to go revisit
22 it, I'm more than comfortable with that. But I really
23 need the right to get started full tilt on the property.

24 I'd really like to have the approvals be based
25 on this revised plan if we could, and frankly it's

1 pretty straight forward in my comments that I made
2 copies to you. There's basically ten changes, you know,
3 that we made that --

4 And I need clarification on whether we're going
5 back to MBAR because that would be impossible for us at
6 this time. At MBAR there's a whole lot of work that
7 needs to get done, and we know we've got architectural
8 work to do. In order to do that, I'd like to get an
9 approval from this Board, with the direction from this
10 Board of cottage style, which you've given us, and then
11 go through the MBAR process through the normal process
12 to make the architectural changes and not have to go
13 back to MBAR before we come back to this Board for
14 approval.

15 MR. BIERIG: Can I make a brief comment on Building
16 44 that Commissioner Gottsdanker just spoke about? I
17 believe where she was headed there was try to give you
18 more flexibility, not to tell you you had to do
19 something.

20 MS. GOTTSDANKER: Yeah. Absolutely. That's why I
21 got confused here.

22 MR. CARUSO: And architecturally we can deal with
23 that. The dormers, the heights broken up, completely
24 agree. What I'm asking for is to ask us to go design
25 that now before we come back to you, I think, quite

1 frankly, is unfair. We've made all the good-faith
2 efforts, and everything you asked us to do at the last
3 meeting we came back and agreed to and more.

4 Now we'd like to get to a conclusion so we can
5 spend the time and money to go update the designs to get
6 back to MBAR. To ask us to do that now and spend
7 hundreds of thousands of dollars on design without
8 knowing we have a project approved, I just don't think
9 it's fair.

10 MS. GOTTSANKER: I think maybe I was misunderstood
11 because I think that's all I was trying to say was, you
12 know, that inside the conditions this is how it should
13 look, you know, and this is just to deal with for myself
14 that the perception that there's been miscommunication
15 between this Board and MBAR and then MBAR then comes
16 back to us. I mean listen, you have no idea. You're
17 actually addressing a problem that has existed for many
18 people, you know, where they go to MBAR, then they come
19 to us, then they go to MBAR and they go to us. I mean I
20 don't know how many times we did that with Westmont.
21 All I'm trying to do is address that in the conditions
22 so you don't have to do that.

23 MR. CARUSO: I'm sorry.

24 MS. GOTTSANKER: That was not my intention.

25 MR. CARUSO: I'm sorry.

1 MS. GOTTSANKER: My intention was to try to get it
2 in the conditions so you knew where you were going and
3 that MBAR knew what was intended to come out the back
4 end.

5 MR. CARUSO: And I apologize. I misunderstood.

6 MS. GOTTSANKER: Well, I apologize. I think we may
7 have a --

8 MR. CARUSO: I just heard Ms. Black say that maybe
9 they should go to MBAR before they come back to this
10 Commission, and I was piecing that together with what
11 you said, and I thought we were going back to MBAR.

12 MS. GOTTSANKER: You know, that becomes a real
13 problem with projects of this size inside the process.
14 Not your problem, you know. But it is a problem, you
15 know, and in the past I know I've requested to the
16 Planning Commission we have joint meetings because they
17 go well, this, and we go well, that, and you're stuck
18 for six months trying to design the project and not
19 meeting anybody's wants or needs.

20 MR. CARUSO: Okay.

21 MS. GOTTSANKER: So no, I was not sending you back
22 to MBAR. I tried that once, and it didn't happen. So
23 I'm not going to try it again.

24 MR. BIERIG: Mr. Caruso, if we can, I appreciate
25 your comments.

1 We have a motion on the table, and I'm hoping
2 maybe we can take a vote on it.

3 Director Black.

4 MS. BLACK: Mr. Chair, I did say that.

5 MR. BIERIG: You did say?

6 MS. BLACK: I didn't want anybody to think I didn't
7 say it was something you may want to consider, going to
8 the MBAR. That's completely at your discretion. It
9 will go to the MBAR for preliminary review and final
10 review before our -- the Planning and Development
11 Department's work on this. It was just a suggestion.
12 If you don't want it to go back to the MBAR before you
13 take final action, that's fine. If you want to just
14 give the direction in the context of the conditions,
15 that's fine. There are pros and cons to both.

16 MR. BIERIG: Got it.

17 So we have a motion for conceptual approval,
18 and it was made before the comments about cottage style,
19 and before the comment about the alternative of beefing
20 up Condition 55 or adding the Option 2, ratchet. I saw
21 that as a either/or. We could look at both. I
22 understand the Applicant's concern about the ratcheting
23 things up, but I think he suggested the alternative
24 might work as well. I know there's some problems with
25 that, the alternative, to have a look where we could

1 make modifications to the project later. I'm not
2 suggesting I know which language we'll settle on.

3 MS. BLACK: Mr. Chair, might I suggest it's getting
4 dangerously close to 4:30 when Commissioner Gottsdanker
5 is gone. Why don't you let us explore some options and
6 look at both approaches and try to present some
7 language, and you can focus on this at your next
8 meeting.

9 MR. BIERIG: That would be great.

10 So with the move -- make of the motion and the
11 seconder incorporate the other discussions we've had
12 here to how to direct staff to prepare?

13 MS. BURROWS: Yes.

14 MR. PHILLIPS: Yes.

15 MR. BIERIG: Any further discussion on this item?

16 Moved and seconded for conceptual approval
17 directing staff to create the findings and the
18 conditions for the project and to come back to us at our
19 next regular meeting. All the favor say "aye," opposed
20 "no."

21 MR. OVERALL: Aye.

22 MS. BURROWS: Aye.

23 MS. GOTTSDANKER: Aye.

24 MR. PHILLIPS: Aye.

25 MS. BLACK: Mr. Chair, that's September 17.

1 MS. GOTTSANKER: Yeah. Didn't you say you thought
2 it was unlikely you could be complete by then?

3 MS. BLACK: Mr. Chair, it's my understanding what
4 the Applicant is willing to give us is a full-size copy
5 of the site plan. So if that's what he's willing to
6 give us and we get it tomorrow --

7 MR. BIERIG: They said they were prepared to do
8 elevations for us.

9 MS. BLACK: I didn't hear that.

10 MS. GOTTSANKER: I didn't hear elevations.

11 MR. BIERIG: Not one cottage? Not one cottage?

12 MR. MIDDLEBROOK: The one building that's changed,
13 the buildings in the corner, we have elevations because
14 they are the same buildings as 40 and 41. So the
15 cottages that we're creating for Buildings 40 -- the two
16 buildings are already in the existing set of plans
17 because it would be the same style of building. So the
18 only new building -- new buildings you already have
19 elevations of the same type.

20 MR. BIERIG: I guess the question is you made a
21 statement you were going to incorporate cottage style.

22 MR. CARUSO: We are. What we would like to be able
23 to do is have an opportunity to take the time from a
24 architectural standpoint to look at the whole site
25 relative to a cottage definition, and, again, in order

1 to do that, hundreds of hours to do it, we'd like to get
2 an approval from this Board. You have our commitment.
3 We are going to go to cottage style. We're going to
4 MBAR. We have to satisfy MBAR. I'm very confident that
5 MBAR is going to be hearing you loud and clear. If they
6 don't, I'm sure you'll remind them of that.

7 So if I could deal with getting approval
8 basically on the scale of what we proposed today and get
9 a project approved, then we can invest the time and
10 money to do the right job on the architecture, and it
11 won't happen very quickly. So that would be my request.

12 MR. PHILLIPS: Okay. Everything moving.

13 MR. CARUSO: Thank you.

14 MS. BLACK: So, Mr. Chair, just so the Commission
15 understands if we're to put this material together by
16 September -- your hearing on September 17, I mean we
17 have literally like eight days before we have to get
18 this information to you. So we --

19 MS. GOTTSANKER: That's it. I don't --

20 MR. BIERIG: I mean that's our request. If it can't
21 be done, then we'll schedule --

22 MS. GOTTSANKER: October or a special hearing.

23 MR. BIERIG: Or special hearing.

24 MS. GOTTSANKER: I don't think it's appropriate for
25 you to have to push this anymore than it's already been

1 pushed.

2 MS. BLACK: If you set September 17, we're going to
3 try and make it. So I'm just telling you it's going to
4 be a push.

5 MR. BIERIG: I understand.

6 MS. BURROWS: Thank you.

7 MR. OVERALL: Mr. Chair, I think this project has
8 suffered, the quality of the staff work has suffered
9 because it has been put under, for whatever reasons from
10 whatever sector, a lot of time pressure. I think we're
11 making one hell of a big mistake. We're down to the
12 final analysis now. We're going to pass this thing, and
13 I think to force them to do it in a unrealistic time
14 frame. Director Black didn't say it quite that way, but
15 that's what -- I think that's what she's saying.

16 I think we ought to let you come back to us and
17 tell us what the time frame is that you can perform it.
18 That would be my preference.

19 MR. PHILLIPS: Well, you wouldn't know that today
20 necessarily.

21 MS. BLACK: Mr. Chair, you know, I'm not the only
22 one that's responsible at this table, and I have county
23 counsel and staff who have other responsibilities as
24 well. I guess I feel completely comfortable with
25 October 8th. I feel pretty uncomfortable with

1 September 17.

2 MS. BURROWS: That's fine for me.

3 MS. GOTTSANKER: October 8th it is then. You know,
4 I'm in complete agreement with Commissioner Overall. At
5 this point in time, you know, it's like we're feeling
6 once again crunched today trying to come up with
7 conditions.

8 MS. BURROWS: Right.

9 MS. GOTTSANKER: And to crunch it again.

10 MR. BIERIG: I'm not suggesting we should ask staff
11 to do something they can't do. From my perspective,
12 when you're working on a project, it's easier just to
13 keep it in front of you and move it forward as opposed
14 to dropping the ball and try to learn the material again
15 which is what I find happens.

16 MS. GOTTSANKER: I don't think she's saying that.
17 I think she's saying she's going to go to work now until
18 October 8th and come up with a project. You know, I
19 didn't hear her say that.

20 MS. BURROWS: May I suggest that we leave this with
21 Ms. Black will contact us at the time that you can have
22 the work completed?

23 MR. BIERIG: Well --

24 MS. BLACK: I've really put myself into a box now.

25 MR. BIERIG: Yes, you did.

1 MS. BLACK: Because if we don't have to continue to
2 a specific date, then we have to re-notice the whole
3 project, and that wouldn't be my preference. So unless
4 someone in this room can convince me otherwise, I think
5 that the most prudent thing to do is pick October 8th.

6 MR. GHIZZONI: Chairman Bierig, if I may join in on
7 that also, really an eight-day review starts making it
8 pretty tight to what counsel can review on a project
9 with overt threats of litigation. So I would also like
10 to have time for review.

11 MR. BIERIG: Good comment. October 8th it is.

12 If there's nothing else before us, with that
13 we're adjourned.

14 MS. SLUTZKY: No. No. We don't have a vote.
15 That's important.

16 MR. BIERIG: We did take a vote.

17 MS. SLUTZKY: No, we didn't. If the motion maker
18 and the second actually agree to a continuance instead
19 of the 17th to October 8th, and Jessica would like, if
20 you're able, a restatement of the motion. I could say
21 that it would be conceptually approve the project as
22 revised by Commissioner Bierig's comments and the
23 discussion we had today.

24 MS. BURROWS: Yes, I incorporate the conditions we
25 discussed here today in regard to this project.

1 MS. BLACK: Mr. Chair, let me read to you what I
2 would say. I think you are voting to go conceptually
3 approve the Applicant's revised project as revised today
4 and at the previous hearing, and then you've given
5 direction as to a number of conditions that you want
6 staff to address and bring back to you at the next
7 hearing on October 8th along with all the other
8 documents to support your action.

9 MS. BURROWS: Yes. I accept that.

10 MR. PHILLIPS: Second.

11 MR. BIERIG: Okay. We've got a motion and a second
12 as per the restated motion and second. So all in favor
13 of the motion say "aye," opposed say "no."

14 MS. GOTTSANKER: Aye.

15 MR. PHILLIPS: Aye.

16 MR. OVERALL: Aye.

17 MS. BURROWS: Aye.

18 MR. BIERIG: Passes unanimously.

19 If there's not any further items in front of
20 us, we're adjourned to September 17th.

21 (Whereupon the proceeding was concluded at 4:33 p.m.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF VENTURA) ss.

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I, Sharon D. Allen, C.S.R. No. 10752, in
and for the State of California, do hereby certify:

That said proceedings were taken down by
me in shorthand at the time and place therein named and
thereafter reduced to typewriting under my direction and
the same is a true, correct and complete transcript of
said proceedings;

I further certify that I am not interested
in the events of the action.

Witness my hand this 29th day of August,
2008.

SHARON D. ALLEN, C.S.R. NO. 10752