

LAW OFFICE OF MARC CHYTILO

A PROFESSIONAL CORPORATION

ENVIRONMENTAL LAW

October 7, 2024

Chair Martinez and Members
Santa Barbara County Planning Commission
123 E. Anapamu Street
Santa Barbara, California 93101

By Email to: dvillalo@countyofsb.org

RE: Miramar Expansion Project, Item # 2, October 9, 2024

Honorable Planning Commissioners:

This office represents All Saints-by-the-Sea Episcopal Church (All Saints) regarding the Miramar Hotel's proposed expansion and reconfiguration contained in 24RVP-00050, 24RVP-00051, 24AMD-00008, & 24CDP-0007 (Project).

All Saints supports Miramar's proposal to expand on-site affordable housing for its employees, so much so that All Saints prefers that housing was closer to the All Saints church, day-care and senior care opportunities on its own site. The proposed employee housing location raises specific concerns and reservation over the environmental and social justice implications of the proposed location and configuration of Building C so close to the noisy and polluting Highway 101. Further, All Saints has serious substantive objections to the size, bulk, scale and height of Buildings A and B, in particular Building B, which is adjacent to All Saints' grounds and property. As proposed, the Miramar expansion would unnecessarily block long-standing views from the All Saints campus of the Santa Ynez mountains and ridgelines that provide a spiritually- and historically-significant backdrop to All Saints' Church campus.

All Saints believes that the Project could proceed if approval included reconfiguration that entails limiting the height of Building B to one story, which could easily be accomplished by shifting the employee affordable housing to Buildings A & B to be part of the Eucalyptus Lane neighborhood, and shifting the luxury apartments and retail to the eastern side of the resort, elevated above ground-level parking. This "swap" eliminates the need for the expensive and impactful underground parking garage in the northwest corner, provides dignity and a community connection for workers and their families, preserves the significant views of the mountains from the Church's grounds, and retains the integrity of the Eucalyptus Lane setting.

All Saints is located on lands donated by the initial developers of the Miramar in 1900 to provide a church and Sunday school for hotel guests to attend religious services while vacationing in Montecito. Over the past 124 years, All Saints by-the-Sea Episcopal Church has grown into a local institution unique to Montecito with a congregation and spiritual practice specific to its site that is visually and spiritually connected to the mountains and the sea. Not only are the Church's buildings historically significant, the Church's campus and gathering areas have substantial historical character and features, and are eligible for historical recognition as well. The Project

has been proposed in a design and configuration that blocks the Church's long-standing historical view of the Santa Ynez mountains and violates local and state law protecting historical resources and public views.

As the nearest and most intimate neighbor, All Saints seeks to continue its long history of collaborating with Miramar to enable the Hotel's success while preserving the sanctity of the All Saints by-the-Sea Episcopal Church's campus, buildings and grounds. Miramar might be able to realize its expansion plans if it can avoid blocking All Saints' views of the mountains and respect the sanctity of its neighbors, including All Saints by the Sea.

As is explained below and summarized at the end of this letter, the Project involves a number of potentially significant impacts and involves potential conflicts with the Montecito Community Plan, Local Coastal Plan, Coastal Zoning Ordinance and the California Coastal Act. Additional study and analysis is required of several critical issues to ensure the Planning Commission has the evidence it needs and answers to key questions before considering final action. Because the Project is processed under SB 330, the County is limited to "conducting" no more than five hearings, including any appeal. Due process requires that interested and affected parties have a reasonable opportunity to evaluate evidence and make their case to decisionmakers. **We urge the Commission to direct staff to defer action to formally notice your November 1, 2024 Special Meeting until your Commission is confident it has or will have all information needed to fully evaluate this project and make a decision. If the November 1 Special Meeting is noticed, staff has taken the position that it will count as one of the five hearings even if the hearing is continued.**

Through this letter we have endeavored to identify the principal areas of concerns, but we were not provided access to considerable Project information until last Wednesday, with a submittal deadline of Monday at noon. We ask that your Commission review our list of requested reports and studies, and direct staff and the applicant to commission preparation of information and evidence responsive to the concerns of the Commission, the public, and All Saints by the Sea.

As the Planning Commission is well aware, the slate of housing legislation from the State has caused agencies to accelerate and shift many processes. The recent decision to vest the County Planning Commission with approval over all affordable housing projects has raised significant community concern. These changes have also left the County with a process that has failed to inform and involve the public.

A. Process Issues

1. Unprecedented County Project Expediting While Withholding Core Project Documentation

a. County Manipulation and Mismanagement of Public Review Process

Your Commission heard on September 26, 2024 during public comment and discussion about the Commission’s projection report the considerable concern from the Montecito community at large, the neighborhoods that will be further impacted by the project, and the Montecito Planning Commission members that the Planning Department excluded without giving consideration to the County Code. There is a public perception that the Director has acted arbitrarily and capriciously in removing the review of this project from the Montecito Planning Commission in favor of your County Planning Commission, then adding in an MPC meeting as an advisory function at the last hearing. While this action may be authorized under a strict reading of § 25.2(b)(3) that allows certain regional projects in Montecito, such as airports, landfills, jails, but included affordable housing projects) should nevertheless be considered by the County Planning Commission, the Planning and Development Department failed to even inform the Supervisors or otherwise consider § 25-2.2(b) that establishes County Planning Commission review was “unless the board of supervisors directs that the Montecito planning commission shall have jurisdiction.” See Exhibit 1, September 20, 2024 Memo from Director Plowman to the Planning Commissions, not to the Board of Supervisors. This decision was taken at the request of the applicant just one day before. Exhibit 2, Letter, Bryce Ross to Lisa Plowman, September 19, 2024.

The decision to schedule three hearings in just over three weeks must be viewed in the context of the SB 330 provisions that limit the county to conducting no more than five hearings in its complete review of the project, including any appeals. The County proceeded to provide formal notice of the first CPC hearing prematurely, and the Planning Director testified to the Board of Supervisors that the October 9 hearing would count as one of the five SB 330 hearings regardless because of this noticing. While the formal noticing of the Planning Commission’s October 9 and the Montecito Planning Commission’s October 18 hearings have been completed, the November 1 hearing will be a continuation of the Planning Commission’s October 9 hearing and may be withdrawn as an agenda item and set for a later hearing without constituting a hearing that is conducted and counted as one of the five hearings.

It is essential that the Planning Commission ensure that it has all the information it needs to make an informed decision at its final of the three scheduled hearings. A critical question is whether the project qualifies for a CEQA exemption and if an exception to the exemption applies. If the Planning Commission lacks adequate information to complete its assessment, including but not limited to CEQA review, and requires additional evidence to make findings on the project, the Chair should inform the Planning Commission Secretary prior to the deadline for

noticing the Special hearing and schedule this item to be heard at a future a date when that additional information will be available for public and decisionmaker review and consideration.

As noted below, information about the project has been made available only last week and the public's access constrained. Importantly, the Project's impact analysis and thus the County's compliance with CEQA has been constrained. It remains in question whether the County will be able to conduct a fair hearing on this project on November 1. Due to the immense public interest in this case, staff has had numerous inquiries and perhaps plan details were still getting settled last week. In general, it appears that the County's schedule for this hearing is unnecessarily rushed for a project as significant to the Montecito community as the Miramar.

b. Limited time for review of newly available documents

The Staff Report, CEQA analysis, and technical environmental impact studies that provide the project description and explain the analysis conducted to date were formally posted and made available to the public on Wednesday October 2. The deadline for written submittals to your Planning Commission is noon on Monday October 7.

Materials provided to the CPC includes an 88 page CDP, 44 pages of conditions, a 20 page Staff Report, 34 pages of plans and a 15 page CEQA Notice of Exemption, which is the first and only form of CEQA analysis released for this large and controversial project. Three technical reports addressing traffic, parking and historical resources total 129 pages. In addition, over a dozen other technical reports, resource entitlement authorizations and content-filled plan sets are part of the project's analysis (addressing, inter alia, stormwater, sea level rise, biology, noise, GHG, air quality, trees, sewer, and water supply) explain and address elements of the project, totaling hundreds of pages of largely dense technical information. While some reports were posted earlier, their significance for CEQA's environmental impact analysis purposes was not clear until the draft CEQA Notice of Exemption was made public. And while these documents were complete and ready for disclosure at least a week earlier for the 10/2 MPC hearing, they were not made available in a manner that would have helped the interested public prepare for your Commission's hearings. See Exhibit 3, 9/24/24 email from Planning and Development Department.

While there is an oblique reference to revisions to a public access easement in the Compatibility section, this is not referenced or described elsewhere. The project description is incomplete.

While we have not reviewed and fully considered all of the information provided to date, there are several important gaps and material issues that can be identified at this time. In your Commission's quest to complete an analysis of this project, the following discussion and lists identify missing and incomplete analysis that your Commission requires to consider findings for this project.

B. CEQA

A meaningful environmental review process is particularly important for this Project to ensure that avoidable and mitigable impacts are identified and reduced to the extent possible. The Project proposes substantial exemption from development standards that ordinarily mitigate a project, and consequently, there is an increased likelihood of impacts, but there must be a process to identify and consider them. SB 330, the HAA and SBDL do not authorize shortcuts in CEQA review. The Planning Commission also requires an environmental review process to identify potentially significant impacts to support its CUP and DVP findings that Project impacts are maximized to the maximum extent feasible. Without an environmental review process, these decisions and actions lack an evidentiary foundation and impact issues wind up being swept under the rug.

1. Statutory Exemption Is Not Available

The Draft Notice of Exemption cites Public Resource Code § 21159.25 as the exclusive authority for its application. This code section provides in its entirety:

Public Resource Code § 21159.25.

- (a) For purposes of this section, the following definitions apply:
 - (1) “Residential or mixed-use housing project” means a project consisting of multifamily residential uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.
 - (2) “Substantially surrounded” means at least 75 percent of the perimeter of the project site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses. The remainder of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that have been designated for qualified urban uses in a zoning, community plan, or general plan for which an environmental impact report was certified.
- (b) Without limiting any other statutory exemption or categorical exemption, this division does not apply to a residential or mixed-use housing project if all of the following conditions described in this section are met:
 - (1) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
 - (2)

- (A) The public agency approving or carrying out the project determines, based upon substantial evidence, that the density of the residential portion of the project is not less than the greater of the following:
 - (i) The average density of the residential properties that adjoin, or are separated only by an improved public right-of-way from, the perimeter of the project site, if any.
 - (ii) The average density of the residential properties within 1,500 feet of the project site.
 - (iii) Six dwelling units per acre.
 - (B) The residential portion of the project is a multifamily housing development that contains six or more residential units.
 - (3) The proposed development occurs within an unincorporated area of a county on a project site of no more than five acres substantially surrounded by qualified urban uses.
 - (4) The project site has no value as habitat for endangered, rare, or threatened species.
 - (5) Approval of the project would not result in any significant effects relating to transportation, noise, air quality, greenhouse gas emissions, or water quality.
 - (6) The site can be adequately served by all required utilities and public services.
 - (7) The project is located on a site that is a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.
- (c) Subdivision (b) does not apply to a residential or mixed-use housing project if any of the following conditions exist:
 - (1) The cumulative impact of successive projects of the same type in the same place, over time is significant.
 - (2) There is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
 - (3) The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.
 - (4) The project is located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
 - (5) The project may cause a substantial adverse change in the significance of a historical resource.
- (d) If the lead agency determines that a project is not subject to this division pursuant to this section and it determines to approve or carry out the project, the lead agency shall file a notice with the Office of Planning and Research and with the county clerk in the county in which the project will be located in the manner specified in subdivisions (b) and (c) of Section 21152.

- (e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

Important authority corollary to this Statutory Exemption is found in two sections further at § 21159.27. Projects not divisible. **“A project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article.”**

Thus Public Resource Code § 21159.25 is limited in scope by:

- 1) its eligibility criteria (§ 21159.25(b)(3) “no more than five acres substantially surrounded by qualified urban uses”) and
- 2) the exceptions for projects with potentially significant impacts (§ 21159.25(b)(4-6) to habitat, transportation, noise, air quality, greenhouse gas emissions, or water quality and
- 3) exclusions if the Project involves significant cumulative impacts, significant impacts due to unusual circumstances, damage to scenic resources and substantial adverse change to historic resources. § 21159.25(c).

Since the Project site fails the Public Resource Code § 21159.25 eligibility criteria, the Planning Commission should direct the preparation of an Initial Study and conduct appropriate environmental review of the projects several potentially significant impacts.

2. The Site and Project fail to meet the eligibility criteria

Staff’s analysis improperly piecemeals the “project” and separates it from the remainder of the Resort’s lands and even the beachfront parcel to the south, even though this is an integral part of the Resort project.

CEQA prohibits "piecemealing" to ensure comprehensive environmental review. Piecemealing refers to dividing a project into smaller segments to avoid the requirement of a full Environmental Impact Report (EIR). This practice is discouraged because it can obscure the true environmental impacts of a project.

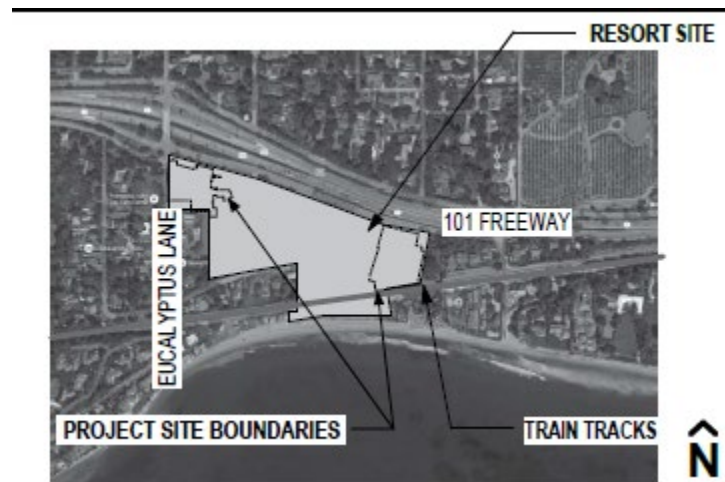
Under CEQA, a lead agency must evaluate the whole of an action and not segment it to avoid full environmental review. The purpose is to prevent project proponents from circumventing CEQA's requirements by splitting projects into smaller parts, each with potentially less significant individual impacts but collectively causing substantial environmental harm.

The question is whether the CEQA statutory exemption applies when a project is piecemealed, and when it comes to the statutory exemption at issue, the Legislature made the prohibition against piecemealing abundantly clear. The Applicant and County cannot piecemeal the Project by creating an artificial ad hoc project boundary in order for the project to qualify for the exemption.

a. The Project Site Exceeds Five Acres

The Project Site is 15.99 acres, not five acres, and certainly not the site size of 3.077 acres in section 5.1 of the staff report. Unlike a Class 32 Categorical Exemption, the language and interpretation of the § 21159.25 Statutory Exemption must be considered in conjunction with and is limited by Public Resource Code § 21159.27 which expressly prohibits piecemealing a project into smaller projects to qualify for a CEQA exemption.

The Plan image below depicts the artificial lines created to piecemeal the Project in order to try to qualify for the Statutory Exemption.



The only reason for dividing the site in this way is to isolate the 3 new elements from the remaining elements of the previously approved project, and to avoid a more thorough environmental review process. The proposed changes built further upon the previously exempted Amendments and Substantial Conformity Determinations that made a number of exterior and interior changes, including converting guest rooms to a restaurant, converting the theater into retail, converting portions of the fitness center to retail, and converting a bungalow to retail. This history belies the applicant's past practice of incremental material changes to the project without environmental review. Accompanying these changes have been various changes to parking, also without environmental review.

Even more damning is the reality that the Project entails changes and impacts beyond the 3 acre artificial project parcel, and in other places relies on the other parts of the parcel to maintain zoning consistency. The Staff Report notes that the site's zoning, C-V Resort/Visitor Serving Commercial, requires an oceanfront location to operate. By piecemealing the project and trying to narrow the Project to a subset of the Miramar Project's 15.99-acre parcel, the commercial elements of the project are not authorized under the Coastal Zoning Ordinance for your review and findings. Approval of the commercial elements of the project requires an oceanfront location in order to operate. Coastal Zoning Ordinance § 35-81.1. Piecemealing the instant

project from the rest of the site denies the requisite oceanfront location, exposing the obvious fact that the uses of the commercial space are integral and essential elements of the entire oceanfront site. Similarly, employees residing in the employee housing will not be limited to serving the 3.077 acre portion of the resort, they will undoubtedly provide services to the entire site. The applicant cannot have it both ways, and the contrived isolation of the smaller areas of the parcel is barred by Public Resource Code § 21159.27 and common sense.

The frailty of staff's analysis and lack of evidence to support the necessary findings is found in the § 35-81.7 findings, which requires that the new residential use is secondary to a primary commercial use "on the same lot". The Staff Report and proposed findings compare the new floor area with "the existing [167,142 square foot] resort floor area." Staff Report at page 27. The project can only be approved under the Coastal Zoning Ordinance when the entire resort project and the entire parcel is considered, and as such, the project site for purposes of the CEQA exemption must also be the entire lot. To do otherwise would entail dividing the overall project into smaller projects to improperly qualify for the CEQA exemption in derogation of Public Resource Code § 21159.27. And as noted below, the Project would not require at least two of the waivers if the whole lot is factored in.

b. The Project is not "substantially surrounded" by qualified urban uses

The exemption is not applicable because the southerly boundary of the Project site is the Pacific Ocean, which cannot qualify as an urban use. The Planning Commission is required to review the nature of the uses of the beachfront parcel and determine whether they are rural or urban in nature. "The term 'urban' is 'not fixed, objective, or easily ascertainable,' " but it has been " 'defined as "of, relating to, characteristic of, or taking place in a city ... constituting or including and centered on a city ... of, relating to, or concerned with an urban and [specifically] a densely populated area ... belonging or having relation to buildings that are characteristic of cities" ' ". *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 541, 544.

In this question, the Planning Commission must refer and defer to the Montecito Community Plan which declares that "Montecito is a semi-rural residential area of approximately 13 square miles" (p.26) and makes repeated reference to the "semi-rural character and quality of life" (id.). A leading goal of the Montecito Community Plan is to "protect the Semi-Rural Quality of Life". GOAL LU-M-1. The zoning for surrounding areas is DR 4.6 and DR-12 and 1/E-1 zoned parcels. These zones are intended to protect the residential characteristics of an area and to promote a suitable environment for family life." The Montecito Community Plan, including its residential areas, contemplates rural, not urban uses.

The 4 beachfront parcels at the east end between the Project and the ocean, zoned E-1, are sprawling residential uses and not urban in nature. While structural development on the Resort's beachfront parcel includes a bar and restaurant, it is oriented to the ocean and is constructed, at least in part, on top of the beach itself, and includes a substantial, essentially rural element, the Pacific Ocean and the sandy beach.

Without a detailed map of the perimeter of the parcels the applicant is counting it is difficult to determine whether the 75% criteria is met if the whole 15.99 acre parcel is included (and the oceanfront beyond that parcel could not be considered urban) and the subset 3.077 acre parcel is counted, with the 4 E-1 residential lots to the south. A detailed perimeter map of each of these parcels should be produced.

3. The Statutory Exemption Does Not Apply to the Project Because Exceptions Are Triggered

The use of the Public Resources Code § 21159.25 exemption is improper because the Project is not consistent with all applicable general plan policies and approval of the Project may result in significant effects related to transportation, air quality and noise.

a. The Project is Inconsistent with the Comprehensive Plan

The Project is not consistent with several policies in the Montecito Community Plan, which has been adopted as an amendment to the Comprehensive Plan; therefore, the Project is not disqualified from CEQA review pursuant to the Public Resources Code § 21159.25 exemption.

The Project is inconsistent with the Montecito Community Plan as follows and as indicated on the attached Exhibit 5:

Montecito Community Plan – Policies	Proposed Project
Policy LU-M-2.1 (p. 48): New structures should be designed, sited, graded and landscaped in a manner which minimizes their visibility from public roads.	The Project’s proposed structures are potentially inconsistent as the 2- story massing of Buildings A and B, and 3-story massing of Building C, and requested setback variances will make the proposed project very visible from all public roads.
Policy LUG-M-1.1 (p.49): The County shall recognize that the Montecito Planning Area is a community nearing its full buildout potential, and shall require that development respect its small town, semi-rural character.	The applicant is requesting an increase in FAR, setbacks as little as 1 foot, 3 inches, and the mass bulk and scale on both frontages does not respect the Montecito small town, semi-rural character.
Policy LUC-M-1.6 (p.52): Improvements to resort visitor-serving hotels shall be designed to be consistent with the existing historic “Cottage Type Hotel” tradition from the early days of Montecito. “Cottage Type Hotel is defined by cottages	The 2- story massing of Buildings A & B, and 3-story massing of Building C are inconsistent with the “Cottage Type Hotel” design.

<p>limited to six guest rooms each, which are generally single story in height.</p>	
<p>Policy PRT M-1.6 (p 87): New development shall not adversely impact existing recreational facilities and uses.</p>	<p>Miramar’s pre-existing access points to beach will remain, but the proposed parking modification will worsen on street parking opportunities for members of the public seeking access to the beach.</p>
<p>Policy CR-M-2.1.1 (p. 120): Significant cultural, archaeological, and historic resources in the Montecito area shall be protected and preserved to the extent feasible.</p>	<p>Building B’s two-story element will adversely affect All Saints-by-the-Sea as a historic resource.</p>
<p>Policy VIS-M-1.1 (p.124): Development shall be subordinate to the natural open space characteristics of the mountains.</p>	<p>Massing of Building B limits open space characteristics south of the Project site and blocks views of the mountains.</p>
<p>Policy VIS-M-1.4 (p. 124): Development of property should minimize impacts to open space views as seen from public roads and viewpoints.</p>	<p>Massing of Building A blocks open space views to ocean from South Jameson Lane and U.S. 101 and Building B will impact views of the Santa Ynez mountains from Eucalyptus Lane and from All Saint’s front step viewpoint, where congregants gather before many church functions.</p>

As the Project is clearly inconsistent with several policies outlined in the Montecito Community Plan, which has been adopted as an amendment to the Comprehensive Plan, the Project is inconsistent with the Comprehensive Plan and therefore, does not qualify for the Public Resources Code § 21159.25 exemption.

b. The Project Is Inconsistent with the Safety Element’s Flood and Geological Risks and Evacuation Policy Requirements

In response to state law, the County has adopted new language and analysis to the Safety Element that expands emergency evacuation obligations in high risk areas. Montecito experienced these risks and paid a price in lives and massive economic losses for failed emergency preparedness and evacuation planning when the January 8, 2018 debris flows inundated much of the community. The revised Safety Element Policies and other new information require a revised flood vulnerability assessment and enhanced evacuation planning at and near the site. When Highway 101 floods, traffic is expected to be routed onto South Jamison Lane, impacting project site access, coastal access parking, and project and

neighborhood evacuation. The project’s addition of new long term guests and permanent resident employee occupancy to the site has not been considered in previous analysis and represents a new threat and potentially significant impact to public health, safety and welfare, as new project-related evacuation may conflict with and hinder area-evacuation activities and compromise the safety of the general public. The 2018 Debris flow tragedy exemplified the connection between wildfire risk management, flood risk management, and evacuation planning.

FEMA has begun the process of updating its designations of high hazard flood areas. See <https://www.countyofsb.org/2158/FEMA-Remapping>. While the projected frequency of flood risk in an eastern portion of the project area was slightly downgraded, a new area of inundation was identified in the Highway 101 corridor north of the Project and under Eucalyptus Lane.



<https://cosb-ent.maps.arcgis.com/apps/instant/media/index.html?appid=5bacf1aa166b4bf6987665419258d3b3>

Creeks on either side of the project are high flood risk areas and are both expected to hinder evacuation and have demonstrated their ability to do so in the recent past.

Safety Element Actions 7.3.2, 7.3.3 and 8.1.1 mandate enhanced planning, preparation and readiness for emergencies requiring evacuation, including planning for evacuation of persons with disabilities. The project’s increased occupancy creates potentially significant evacuation conflicts with the safe evacuation of persons present at the Friendship Center, and local schools, including the All Saints pre-school.

Geologic and Seismic Protection Policy 4 requires enhanced planning and coordination for emergency evacuation and Implementation Measure 9 requires enforcement of the California Coastal Act and LCP provisions that mandate that new development minimize risks to life and property. Public Resource Code § 30253(a).

Eucalyptus Lane is an unclassified roadway and the Montecito Community Plan directs that land uses “shall reflect the desire of the community to maintain [such unclassified] local roads [. . .] below acceptable capacities and Levels of Service for designated roads.” Evacuation planning must address the evacuation “traffic shed” that relies on Eucalyptus Lane for emergency evacuation (Humphrey, Edgecliff, Bonnymede, Miramar Beach Drive) and confirm adequate capacity for safe evacuation of all members of the vulnerable communities in this area in addition to the additional personnel associated with the Project under emergency conditions with Highway 101 flooded and Eucalyptus Lane being the only available means of evacuation egress and emergency responder ingress. See map above.

The Planning Commission must direct the applicant to develop and analysis of the project’s cumulative evacuation demand and promulgate an Evacuation Plan for guests and staff to safely evacuate during a time of vulnerability and heightened risk.

c. The Project May Result in Significant Effects Related to Transportation, Air Quality and Noise

i. *Transportation - Parking*

There is a substantial shortfall of parking associated with the Miramar hotel already, which has led to parking congestion throughout the Project’s area. The studies provided to analyze the parking issue are inadequate and do not provide the level of detail necessary to appropriately analyze the impacts of the Miramar expansion on parking. The importance of adequate parking for the Project is immense as the proposed Project is located in a prime coastal access corridor where parking determines access to the beach. The more limited the parking, the more limited access is to the coast and the greater nuisance to the neighbors. See the separate Parking Analysis, below.

Additionally, there are a number of substantial and nearby development projects proposed for the Montecito area that will impact roadways, intersections and beach access parking cumulatively in conjunction with the Miramar expansion project. These other projects include the Biltmore Hotel, the Montecito YMCA, the Music Academy of the West and 1 Hot Springs Road, along with any other Projects that are proposed or proposing changes to their entitlements. Highway 101 remains a work in progress, resulting in reduced mainline and interchange capacity. Project and other traffic using Jameson Road as the only proximate onramp for southbound 101 traffic introduces increased higher speed traffic in the beach access parking area, where vehicles both seeking to park and exiting beach access parking are extremely steep and must pull across both lanes of Jameson to enter or exit these spaces, increasing conflicts and pedestrian risks. The studies provided by the applicant do not adequately analyze or address the cumulative effects of large-

scale development in the Montecito area on the Project’s transportation impacts and must be addressed in further studies.

ii. Air Quality

It is notable that the applicant is seeking to situate its affordable housing units in Building C, which is located directly next to Highway 101, one of the busiest and most congested freeways in the country. The proximity of Building A to Highway 101 will have potentially significant impacts on air quality to the residents of Building A, who will be subject to a steady barrage of fumes and pollution from Highway 101.

Historically, low-income communities and communities of color have been subject to immense levels of pollution in addition to serving as sites of environmentally-degrading facilities, such as factories and waste treatment plants. In order to help address this issue, the State of California and in particular, the Bureau of Environmental Justice, has mandated that government agencies consider potentially significant environmental impacts on communities already burdened with pollution when reviewing and permitting new projects. Moreover, the California Coastal Act requires that communities located in the Coastal Zone account for environmental justice impacts when reviewing proposed development. Pursuant to Public Resources Code § 30107.3(b), “environmental justice” includes, but is not limited to, all of the following:

- “(1) *The availability of a healthy environment for all people.*
- (2) *The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.*
- (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process.
- (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.”

Further, Public Resources Code § 30604(h) states that the Planning Commission, when acting on a coastal development permit, “consider environmental justice, or the equitable distribution of environmental benefits throughout the state.”

CEQA requires that a project be consistent with all state and local land use policies, including the Coastal Act. By seeking to construct the proposed affordable housing units directly next to Highway 101 without performing air quality studies to assess the increased risk of pollution to its future residents, the County will be perpetuating a cycle of environmental justice for low-income communities in violation of the Coastal Act and therefore, in violation of CEQA.

iii. Noise

Similar to the effects of air quality, the residents of the affordable housing units in Building A will be subject to significant noise from Highway 101. Again, without performing proper studies to assess the increased risk of noise levels to the future tenants of Building A, the County will continue to perpetuate the cycle of environmental injustice for low-income communities in direct violation of the Coastal Act and therefore, in violation of CEQA.

d. Unusual Circumstances Trigger CEQA Review

The § 21159.25 exemption may not be used if the Project: a) involves a cumulative impact; b) if “unusual circumstances” create a reasonable possibility that the project would have a significant adverse environmental impact; c) the project may result in significant damage to scenic resources along a state scenic highway; d) the project site contains hazardous materials or e) the project may cause a substantial adverse change in the significance of a historical resource. Public Resources Code § 21159.25(c)(1-5).

i. The Project’s Cumulative Impacts Have Not Been Disclosed or Considered

In the absence of analysis, few impacts appear. The applicant has failed to present any tangible evidence concerning parking adequacy short of a model based on generic book factors. As described in personal testimony and refuted in this letter below (See Parking Analysis), the project’s individual impacts to coastal access parking are significant, and also constitute cumulative impacts.

ii. The Project May Cause Significant Damage to Scenic Views from Public Places

The height and massing of Buildings B & C will cause significant damage to scenic views from a public place, which disqualifies the Project from relying on the § 21159.25 exemption, mandates environmental review to assess the Project’s significant impacts on aesthetics, and if not altered, renders the Project inconsistent with the Montecito Community Plan.

CEQA mandates environmental review of a Project’s impact on aesthetics. Among other analyses, a lead agency is responsible for assessing whether a Project will have a substantial adverse effect on a scenic vista and whether it will substantially degrade the existing visual character or quality of the site and its surroundings. A lead agency’s review should not be limited to determining whether a Project will affect public views; instead, the Court of Appeals in *Ocean View Estates Homeowners Association v. Montecito Water District* (2004) 116 Cal. App. 4th 396, 401 has confirmed that private views must be assessed as well (“To say there is no common law right to a private view, is not to say that the District is relieved from considering the impact of its project on such views”).

The proposed Project will have significant environmental impacts on aesthetics based on the size and massing of Buildings B & C, which require the preparation of an EIR. Specifically, Buildings A, B & C are slated to be 2-story and 3-story structures, respectively. The height and massing of each building will have a substantial adverse impact on a scenic vista by blocking both public and private views of the Santa Ynez mountains from Eucalyptus Lane. In particular, the Church's private views of the Santa Ynez mountains from its front steps, which are integral to both its religious practices and status as a historic resource, will be significantly altered. Impacts to the neighborhood's views of the Santa Ynez mountains will substantially degrade the existing visual character and quality of the area.

In addition, the Project is in violation of several policies of the Montecito Community Plan that mandate the protection of public views from new development, rendering the Project in violation of CEQA. Policy LU-M-2.1 of the Montecito Community Plan states that “[n]ew structures should be designed, sited, graded and landscaped in a manner which minimizes their visibility from public roads.” The Project’s proposed 2-story Buildings A & B and 3-story Building C, and requested setback variances will make the proposed Project visible from all public roads and in particular, Eucalyptus Lane. Policy VIS-M-1.4 confirms that “[d]evelopment of property should minimize impacts to open space views as seen from public roads and viewpoints”; however, the massing of Buildings B & C will limit open space characteristics south of the Project site and block the viewshed of the Santa Ynez mountains from Eucalyptus Lane.

If the Planning Commission approves the Project as is, it will be in violation of the Montecito Community Plan and therefore, in violation of CEQA for inconsistency with a local land use plan.

iii. Impacts to Historic Resource Precludes Use of a Categorical Exemption

"Historic resources are accorded special protection under CEQA, and the state must 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state' including the protection and rehabilitation of 'objects of historic or aesthetic significance.'" (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1065) "A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment[]" and "[s]uch a project would require the preparation of an environmental impact report (EIR) or a mitigated negative declaration." (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1051.)

CEQA disallows use of a Categorical Exemption when a project may cause substantial adverse change to the significance of a historic resource. A “substantial adverse change” in the significance of a historical resource means the physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired. CEQA Guidelines § 15064.5(b)(1). A historical resource is “materially impaired” when a project demolishes or materially alters in an adverse manner those physical characteristics of the historical resource that account for its inclusion either on the California

Register of Historical Resources or a local register of historical resources. CEQA Guidelines § 15064.5(b)(2)(A-B).

The All Saints-by-the-Sea Episcopal Church (the “Church”) and its campus are eligible for listing as historic resources, and consequently projects that impact those historic qualities must be reviewed as part of an environmental review process.

Historical preservation mandates that character-defining features are protected from adverse changes. The *Secretary of the Interior’s Standards for the Treatment of Historic Properties* defines a character-defining feature as a prominent or distinctive aspect, quality, or characteristic of a cultural landscape that contributes significantly to its physical character, including, but not limited to, *land use patterns*, vegetation, furnishings, decorative details and materials. A character-defining historical feature of the Church is its viewshed of the Santa Ynez mountains, which is also a defining feature of its worship practices. Since its inception in 1900, the Church has emphasized the importance of its location between the mountains and the sea, whether as a resource to serve the patrons of the historic Miramar resort or as consistent and constant testament to the wonders of the natural world.

The applicant is seeking to construct Building B, a two-story building, directly in the sightline of the Church’s historically-significant views of the Santa Ynez mountains. If approved, the Project will physically alter the Church’s cultural landscape, which is a character-defining feature of the Church and part of its basis for eligibility as a Historic Landmark. Moreover, it will significantly impact the historic integrity of the church’s location, design, materials, workmanship, feeling, or association, all of which have been purposely constructed in a manner to emphasize the Church’s connections with the mountains.

As the Project will create a substantial adverse change in the significance of the Church’s cultural landscape, the Project does not qualify for a Categorical Exemption and an EIR must be prepared.

C. California Coastal Act Issues

1. Environmental Justice and Civil Rights Issues

The applicant has proposed to site the affordable housing elements of the Project in a location and design the building and layout in a manner that maximizes residents’ exposure to adverse environmental conditions from Highway 101, including excessive toxic, hazardous and unhealthful air pollution and high levels of noise between the continuous Highway 101 and periodic extremely loud railroad noise. While not a CEQA issue, this reflects a pattern of discrimination and unfair treatment of the resident employees, who are of lower economic means (most of the housing is restricted to lower income units, and it is well established that hospitality service job employment is typically very low wage and as a practical matter, dominated by people of color). Your Planning Commission can and should consider this issue in considering findings of site suitability and whether the project will be detrimental to the health, safety, comfort, convenience and general welfare of the neighborhood.

“Environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the implementation, and enforcement of environmental laws, regulations, and policies. (Gov. Code, § 65040.12(e).) Fairness in this context means that the *benefits* of a healthy environment should be available to everyone, and the *burdens* of pollution should not be focused on sensitive populations or on communities that already are experiencing its adverse effects. As proposed, the project will unfairly allocate the burdens of pollution and unhealthy living conditions to persons and families of racial minorities and economically disadvantaged communities while reserving the benefits to the affluent and less diverse guest population.

The advantages of an environmental justice analysis and project redesign include healthier children, fewer school days lost to illness and asthma, a more productive workforce, and a cleaner and more sustainable environment. Applying the concept of environmental justice to specific projects requires a careful analysis of how the project’s location, design, and configuration may expose residents to unhealthful conditions and hazards not experienced by others. The Coastal Commission’s Environmental Justice Policy requires the analysis of environmental justice issues in Coastal Commission Staff Reports and consideration of mitigation measures to avoid or mitigate identified environmental justice impacts, and the County should conduct its own analysis and mitigation process to provide dignity and fairness for all persons that will occupy the project, regardless if the stay is for a few days or many years. Indeed, long-term employees and their families residing in the employee housing Building C will be subjected to pollution and noise for a much greater duration, furthering the importance of environmental justice analysis.

The adverse health impacts of living near freeways is well documented, and includes increased exposure to pollutants, including particulate matter, nitrogen dioxide, carbon monoxide, diesel emissions and volatile organic compounds. Chronic exposure to freeway emissions can lead to respiratory problems such as asthma, bronchitis, reduced lung function, heart disease and other respiratory conditions. Children exposed to freeway air pollution experience higher rates of adverse cognitive development and pregnant women have a higher risk of adverse outcomes. Chronic exposure to noise can create stress and anxiety, disturb sleep and trigger higher incidences of mental health issues. While these impacts may be excluded from CEQA review, they are germane to consistency with the California Coastal Act, raise discrimination and civil rights issues, and matters of fairness and equity.

2. **Historical Tribal and cultural significance issues**

The project is located on unceded Chumash lands that were part of an extensive village and community complex associated with the historic Chumash village of Shalawa and the myriad other villages and occupants of the area. While the scientific archaeological significance of the site was destroyed decades ago with systematic early plundering and then subsequent landform alterations, the area possesses continuing significance to the first peoples of Montecito. The applicant should undertake consultation with descendants of the area to determine whether the

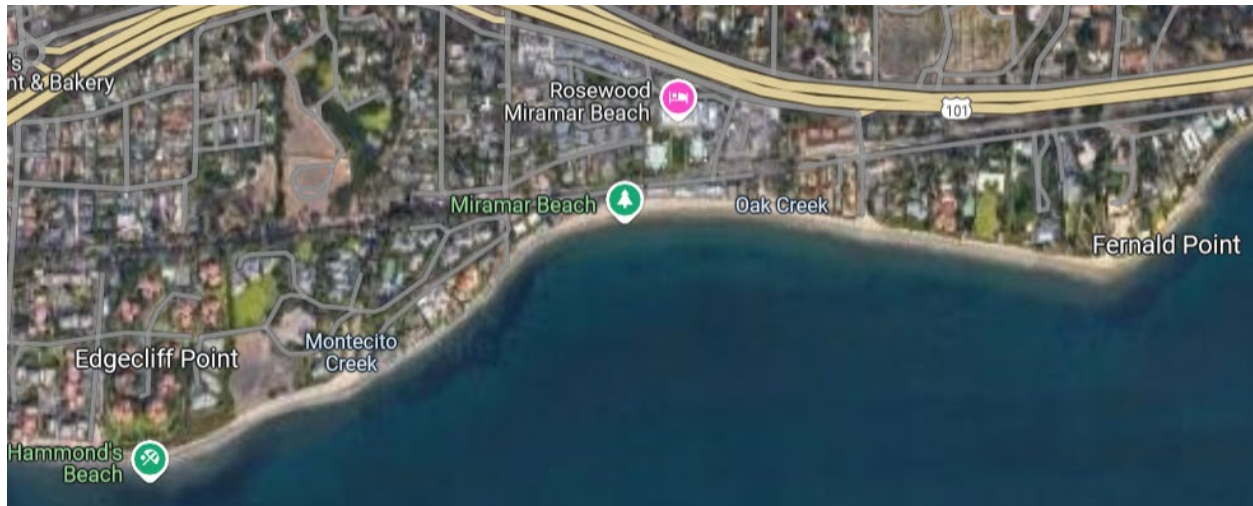
Chumash have stories associated with the site and to provide opportunities for integration of the historic culture and values of the area’s first peoples at the Miramar.

3. Parking Shortfalls Impact Surrounding Neighborhoods and Conflict with the California Coastal Act

a. Coastal Access and Beach Parking

The California Coastal Act requires that new development “maintain and enhance public access to the coast” through “adequate parking facilities” or substitute (public transportation). California Coastal Act § 30252 (4). The Act seeks to “maximize public access to and along the coast.” California Coastal Act § 30001.5 (c). Already, the Miramar Hotel is noncompliant with its obligation to provide adequate parking. The installation of electric vehicle chargers and the practice of staff parking company and guest cars in public stalls has created additional parking shortfalls. Shortfalls in on-site parking for hotel guests, food service patrons, Miramar Club members and employees cause these individuals to park in designated coastal access sites and on neighborhood streets that have historically provided parking for coastal access.

There are four distinct coastal destinations in the vicinity of the project and that are served by public parking that the Resort has impeded. These include: 1) Hammonds Meadow and the associated County Park, popular for the spiritual acknowledgement of the first peoples to this area and their history of use and occupation of the area as well as the Hammonds surf break that experiences extremely high visitation during periods when surf conditions are prime and is primarily accessed from Eucalyptus Lane through the Blakesley trail; 2) the Miramar surf break, accessed from the end of Eucalyptus Lane; 3) Miramar beach, east of the terminus of Eucalyptus Lane and including the high quality beach in front of the Miramar resort and the houses to its west; and 4) the Fernald beaches east of the Miramar resort, principally accessed from Posilipo Lane and including the creek mouths of Oak Creek, San Ysidro Creek and Romero Creek and the Shark’s Point surf break. Each of these coastal recreation areas is principally accessed by private vehicles that must park in the same neighborhoods and areas that are impacted by Miramar’s parking shortfall. Each of these areas has different users, various patterns of types and timing of use, and each requiring parking in various locations that has become established in accordance with historical practice and availability. Each area experiences peak use and parking demand during the same summer, holiday and weekend periods that the Miramar experiences peak parking demand. When coastal access and beach use parking is congested or unavailable, there is increased traffic circling through neighborhoods of beach-goers looking for parking, idling and double parking near and behind vehicles loading to leave, increased illegal parking to unload beach equipment near access points since parking is typically found far away, and considerable lost recreation time as parking can consume a considerable portion of people’s limited beach time.



Submitted under separate cover is a report by Phil Dracht, California attorney and resident of Humphrey Road. See also Parking Map Analysis and Evidence memo, Exhibit 7. This memo and other evidence demonstrate that the hotel has failed to comply with parking conditions and hotel-related parking in public parking spaces has and is occurring, that the existing parking conditions are inadequate to accomplish what was intended in 2011 and 2015, and the major revision to parking on the project necessitates revisiting and overhauling the project's parking conditions in light of evidence submitted to the record, and a revised parking impact assessment.

When ensuring that the public's coastline access is protected, "the Coastal Act should be broadly construed to encompass all impediments to access, whether direct or indirect." *Surfrider Found. v. Cal. Coastal Comm'n*, 26 Cal.App.4th 151, 158 (1994).

Even collecting parking fees could be considered a potential impediment to coastal access, *see Surfrider Found.* In the present case, the hotel's valet parking scheme will likely result in restaurant-goers continuing to park in the conveniently-located no-cost public stalls, rather than pay a fee to valet park just for a meal or drink at the bar. *See Dracht (2024)*. Accordingly, the hotel will have indirectly impeded public coastal access. Additionally, it is possible (even likely given the hotel's continuous lack of compliance) that employees will fail to properly prevent guests from using public parking spaces or surrounding neighborhoods, *see Dracht (2024)*. Employees might also not actually tag their "primary car" and utilize an untagged car to park, either regularly or occasionally. That 87 additional public parking stalls will be added and employee vehicles tagged could thus be a toothless mitigation. There is ample potential for subtle, indirect impediments to coastal access. These impediments must be considered and addressed.

D. The Waivers and Reductions are Unnecessary and Not Justified

Gov. Code § 65915(e) requires approval of waivers of development standards that will have the effect of physically precluding the construction of the development. Waivers # 1 and 4, FAR

and open space, are not necessary because the area of the proposed development should be divided by the project's full 15.99 acres.

As noted above, the project proposes to erect a building in a previously open area that has been part of All Saints by-the-Sea Episcopal Church for 124 years, and is an essential element of the Church's exercise of their doctrine connecting God to the Earth, from the mountains to the sea. All Saints campus is eligible for listing and would be currently listed as a County Landmark but for the County's inability to set the Historic Landmarks Advisory Committee's first designation recommendation in the 90 day period set by Chapter 18.

The MPC should instruct the applicant and staff to work to revise the project to lower the elevation and avoid a second story for Building B to protect the public viewshed from All Saints by the Sea.

E. Findings Cannot be Made

Findings are central to the Planning Commission's review and action on the Project. there is incomplete and inadequate information to support findings regarding the availability of public services, neighborhood compatibility, General Plan consistency, historical resources, project parking facilities and coastal access parking.

1. California Environmental Quality Act Findings

The CEQA findings are summary and patently inadequate, citing no facts or analysis.

2. General Plan Conformity Findings

The Notice of Exemption conflates a smaller subset 3.077 acre parcel and larger 15.99 parcel for purposes of the General Plan conformity findings. Findings of conformity with the Montecito Community Plan, Local Coastal Plan, Coastal Zoning Ordinance and California Coastal Act cannot be made.

3. CDP Finding C.2. Cannot Be Made

CDP Finding C.2 requires a finding that the development will not adversely impact recreational facilities and uses. As demonstrated through photographic evidence, the report submitted by Phil Draught, and extensive public testimony, the operation of the Miramar has adversely impacted the availability of public coastal access parking. The applicant's parking analysis is deeply flawed, and has failed to recognize the impact of past operations on beach access parking for the four separate beach activity areas. The project will exacerbate these problems by adding guests, reducing parking further.

4. CUP and DVP Revision Findings Cannot be Made

Operation of the Miramar in a coastal residential area has conflicted with and caused continuing harm and inconvenience to the surrounding neighborhood. The neighborhood compatibility findings required for these actions, as well as the CUP Amendment, are not supported by evidence and cannot be made.

Our Ask

We request that the Planning Commission direct the preparation of several additional studies and reports to inform your Commission, the Montecito Planning Commission and the public about Miramar's proposal, and help provide a path for an acceptable project. Since the Project entails a number of potentially significant impacts and areas of neighborhood incompatibility, and some of the submitted studies have substantial flaws and other issues have not been addressed, we request that the Planning Commission direct preparation of the following studies and analysis to inform review of this Project:

- a revised and expanded historical analysis
- a comprehensive visual simulation of the viewshed from the All Saints grounds
- a revised comprehensive regional off-site parking analysis (Hammonds to Fernald Point – the area impacted by Project-associated parking) based on physical observations and counts, not a model, that includes: 1) an analysis of the adequacy of neighborhood public coastal access parking in the areas including to the east Humphrey and Eucalyptus Roads, Miramar Avenue and to the west Posilipo Road and Fernald Point Lane, where the public parks to access beaches from Hammonds to Fernald Point and where there is evidence of Miramar-associated parking taking place; and 2) a historical delineation by each project phase the number of total parking places, the number designated for a specific use, including coastal access parking, and the adequacy of that amount of parking to meet the Hotel's needs and assessment of the adequacy of the hotel's past on-site parking and whether past parking supply has been adequate to avoid infringement upon parking needed for public coastal access
- a neighborhood evacuation capacity analysis assessing whether Project evacuation would conflict with other neighborhood residents evacuating in response to flooding, and a model of how the community could safely evacuate in a combined risk scenario, such as flooding of FEMA flood areas combined with an uphill debris flow reaching the ocean
- an environmental justice assessment, evaluating Building C's ambient environmental conditions (noise, air pollution from Highway 101 and parking activities, flood evacuation risk, etc) and determining if applicable and aspirational environmental justice standards are being addressed
- Enhanced Transportation Management Plan, including parking allocations for golf carts and site service vehicles and insignia/identification program for banquet, restaurant and bar patrons to deter use of public coastal access parking
- First People's and Descendant Outreach, interests evaluation and acknowledgement study

- Air quality hot spots analysis, both interim addressing conditions during Highway 101 construction and operational once the highway is completed and congestion reemerges per the Caltrans project analysis
- Solid Waste generation, management and disposal analysis – most solid waste management areas in the project are undersized for projected volumes and diversion programs require additional sorting, processing and storage space

The Coastal Zoning Ordinance requires the adoption of specific findings before approving the projects, including that significant impacts are mitigated to the maximum extent feasible, that the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area, and that the project is in conformance with the applicable provisions and policies of the Coastal Zoning Ordinance and Coastal Land Use Plan. § 35-172.8 (CUP). As shown below and in testimony and evidence before your Commission, project impacts to views, historical resources and parking will be significant as proposed and are not mitigated. The project will have a detrimental effect to the health, safety, comfort, convenience, and general welfare of the neighborhood, including All Saints by-the-Sea Episcopal Church who will lose a key *raison d'être* from the blockage of religiously significant views of the mountains and thus be greatly inconvenienced, from having to either change their spiritual focus or relocate to a more appropriate setting. Currently, Miramar staff and guests make regular and substantial use of parking spaces dedicated for coastal access, both impeding public access to the beach in violation of the California Coastal Act and causing excessive driving, idling and lane blockage and uncontrolled parking by would-be beachgoers throughout the Eucalyptus Road and Humphrey Lane neighborhoods, detrimentally impacting the safety, comfort and convenience of area residents and visiting beachgoers.

The MPC should not schedule a future hearing for this project until all these reports are completed, are subjected to independent peer review, and are made available to the public for at least 30 days for independent review and analysis. Your Planning Commission should direct the applicant to ensure that materials are properly prepared and responsive to MPC's direction, and that staff and the public have a reasonable opportunity to review and analyze all project documents well in advance of the next hearing.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC



By: Marc Chytilo

Exhibits

1. Memo, Planning and Development Department Director Plowman to CPC and MPC, 9/20/24
2. Letter, Bryce Ross to Lisa Plowman, 9/19/24
3. Email, Willow Brown to Marc Chytilo re: project document management, 9/24/24
4. Puchulski-Miramar Grant of Easement and Declaration of Restrictive Covenants, dated April 6, 2015, recorded as 2019-0001255 January 11, 2019
5. MPC and LCP Conformity analysis
6. Long Historical Preservation, 10/7/24
7. Memo, Evidence of Parking Shortfalls and Miramar use of Public Coastal Access Parking Spaces, 10/6/24
8. Memo, All Saints-by-the-Sea Episcopal Church Historic Viewshed



one
COUNTY
one
FUTURE

Planning and Development
Department

MEMORANDUM

DATE: September 20, 2024

TO: County Planning Commission
Montecito Planning Commission

FROM: Lisa Plowman, Director

SUBJECT: 24-RVP-00050, 24-RVP-00051, 24AM-0008, 24CDP-00077; Miramar Housing Mixed Use Development

CC: Mona Miyasato, CEO
Wade Horton, ACEO

County Code Section 2-25.2 sets forth the powers and duties of the County Planning Commission and the Montecito Planning Commission. Under subsection (b)(3) it states that the “Initiation, consideration and recommendations or decisions on applications, proposals or matters involving countywide transportation, airports, waste disposal sites, detention facilities, hospitals, reservoirs, fire facilities or affordable housing” remains within the jurisdiction of the County Planning Commission, unless the Board of Supervisors otherwise directs that the Montecito Planning Commission shall have jurisdiction.

On September 19, 2024 the Department received a letter from the applicants of the above referenced project citing this section of the County Code and requesting that the County adhere to the code requirements and move the Miramar Housing Mixed Use project to the County Planning Commission. The project is considered “affordable housing” as it includes 26 affordable units for resort employees and was identified as a pending project in the County’s Housing Element that helps the County to meet its RHNA allocation for affordable housing. The project also falls under the protections of the Housing Accountability Act and is a mixed use State Density Bonus project.

After reviewing the County Code and the request to follow what is prescribed in Chapter 2, it has been concluded that this project falls under the jurisdiction of the County Planning Commission and not the Montecito Planning Commission. The Department plans to agendaize this project for the October 9, 2024 County Planning Commission hearing.

Caruso

September 19, 2024

By Email

Lisa Plowman
Director of Planning & Development
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101-2058

Email: lpowman@countyofsb.org

Re: Miramar Beach Resort Project (Case Nos. 24RVP-00050 and 24RVP-00051)

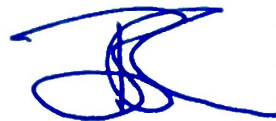
Dear Lisa:

As you know, we are seeking to develop a mixed-use project that includes 26 affordable apartments units for Resort employees at the Miramar Beach Resort (Project). As more than 2/3rds of the square footage is residential, the Project is subject to both the Housing Accountability Act and SB 330. As 76% of the units will be affordable, the Project also qualifies for a density bonus and related incentives and waivers.

Section 2-25.2(b)(3) of the County Code provides that initiation, consideration and recommendations or decisions on applications, proposals or matters involving affordable housing shall remain within the jurisdiction of the County Planning Commission (CPC), not the Montecito Planning Commission (MPC). Because the Project is clearly a proposal or matter involving affordable housing, the CPC, not the MPC, has jurisdiction over the Project.

We request that you schedule the Project for hearing before the CPC on the first available date.

Very truly yours,



Bryce Ross

From: [Brown, Willow](#)
To: [Marc Chytilo](#); [Dargel, Joseph](#)
Subject: RE: Miramar project information and CEQA analysis
Date: Tuesday, September 24, 2024 9:58:04 AM
Attachments: [image002.png](#)
[Miramar Project Info Pages.pdf](#)

Hi Marc,

I attached the pages with the project info tables. Since the October 2nd hearing was canceled, the staff report won't be posted today, but it will be posted by next Tuesday at the latest. This will include the CEQA Notice of Exemption.

Thanks,
Willow



Willow Brown
Senior Planner

Planning & Development
123 E. Anapamu St.
Santa Barbara, CA 93101
805-568-2040
<http://www.countyofsb.org/plndev/home.sbc>

***** Planning and Development has implemented online permitting. You will need to be a registered user in order to submit new applications, and Accela will become our primary project communication portal. You can register now – please visit the link below to learn how!**

<https://www.countyofsb.org/asset/691df04a-6e8f-4dcf-8fd2-68f969895afd>

From: Marc Chytilo <marc@lomcsb.com>
Sent: Monday, September 23, 2024 12:12 PM
To: Brown, Willow <wbrown@countyofsb.org>; Dargel, Joseph <jdargel@countyofsb.org>
Subject: Miramar project information and CEQA analysis

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Hi Willow and Joe

When we talked a few weeks back, Joe indicated you could share the plan title sheet with basic project statistics, as is supplied on virtually every other project plan set. I have not seen that posted or received a copy – are you able to provide this information at this time?

As you've heard, while the project website page is helpful, there is very limited detailed information

available about this project – which should be disclosed in the Staff Report the site says will be posted tomorrow.

It remains unclear how the county is addressing CEQA – you mentioned an exemption in our call, but that determination requires some assessment and rationale. Kindly provide the basis for the County’s proposed CEQA compliance for the project.

Thanks!!

Marc

* * * * *

Marc Chytilo
Law Office of Marc Chytilo, APC
Post Office Box 92233
Santa Barbara, California 93190
Phone: (805) 682-0585
Email: Marc@lomcsb.com



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Official Records			
County of		SB2 HOUSING	150.00
Santa Barbara			
Joseph E. Holland			
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RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

folk

Susan M. Basham, Esq.
Price, Postel and Parma LLP
200 East Carrillo Street, Suite 400
Santa Barbara, CA 93101

APNs 009-344-006, 009-371-004

SPACE ABOVE THIS LINE FOR RECORDER'S USE

D. T. T. [Signature]

GRANT OF EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Grant of Easement and Declaration of Restrictive Covenants (this "Declaration") is executed as of this 6th day of April 2015 (the "Execution Date") by Miramar Acquisition Co., LLC, a California limited liability company ("Caruso" or "Grantor") on the one hand, and Richard Pachulski and Dana Pachulski, husband and wife, and Isaac Pachulski and Althea Pachulski, husband and wife (together "Pachulski" or "Grantee") on the other hand, with reference to the following facts:

RECITALS

- A. Caruso is the record owner of certain real property identified by the Assessor for the County of Santa Barbara as Assessor's Parcel No. 009-371-004 (the "Caruso Property"). Caruso and its affiliated entities also own several adjacent parcels identified as Assessor's Parcel Nos. 009-371-003, 009-372-001, 009-333-010, and 009-344-008. The Caruso Property and adjacent parcels were previously developed with the Miramar Hotel and its related facilities. The Caruso Property is described more fully in Exhibit A hereto.
- B. Pachulski is the sole beneficial record owner of fee title to certain residentially-improved real property identified by the Assessor for the County of Santa Barbara as Assessor's Parcel No. 009-344-006, with a street address at 50 Miramar Avenue, Santa Barbara, California (the "Pachulski Property"). The Pachulski Property is described more fully in Exhibit B hereto.
- C. Caruso intends to develop the Caruso Property and certain adjacent parcels with a high-end resort hotel and related facilities (the "Project").
- D. Pachulski and Caruso (each a "Party" and collectively the "Parties") have agreed to enter into this Declaration to provide for, among other things, certain easement rights with respect to parking spaces to be located on the Caruso Property for the benefit of and appurtenant to the Pachulski Property, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of these premises and the mutual promises stated herein, Caruso and Pachulski hereby agree as follows:

1. Grant of Easement.

Grantor hereby grants to Grantee, from and after the Easement Effective Date (defined below), a non-exclusive easement appurtenant to the Pachulski Property for vehicular parking purposes over and upon that portion of the Caruso Property which is developed with the Pachulski Spaces (defined below), together with a non-exclusive easement for access over, across and through that portion of the Caruso Property within the right of way of Miramar Avenue providing vehicular access from the public right of way to the Pachulski Spaces (the "Easement"). The Easement shall run with the land of the Caruso Property and the Pachulski Property upon the terms and subject to the conditions set forth in this Declaration.

2. Restrictive Covenants.

Caruso and Pachulski hereby covenant and agree as follow (the "Restrictive Covenants"):

a. Designated Exclusive Parking Spaces. At the time Caruso completes its improvements of Miramar Avenue in conjunction with the development of the Project and in any event not later than the opening of the hotel component of the Project (the "Easement Effective Date"), Caruso shall designate three (3) full-sized striped vehicular parking spaces located along the northerly side of Miramar Avenue for exclusive use for vehicular parking purposes by the owners and occupants of the Pachulski Property and their guests and invitees (the "Pachulski Spaces"). Use of the Pachulski Spaces shall be entirely within the sole discretion of Pachulski, provided that such discretion shall not expand the purpose for which the Easement is granted. Regardless of how many spaces may be striped or otherwise designated along Miramar Avenue, the Pachulski Spaces shall be the three spaces along the northerly side of Miramar Avenue most proximate to the Pachulski Property, as reasonably determined by Pachulski, provided that the Pachulski Spaces may be relocated after the Easement Effective Date pursuant to the express terms of this Declaration. The approximate location of the Pachulski Spaces is depicted in Exhibit C hereto.

Caruso shall provide appropriate signage restricting the use of the Pachulski Spaces to Pachulski and prohibiting public parking. Caruso shall be responsible for the regular maintenance of the Pachulski Spaces and the related signage, and Pachulski may not modify the Pachulski Spaces or any portion of the Caruso Property. Pachulski may not install any signage related to the Pachulski Spaces on the Caruso Property or otherwise make physical modifications to the Pachulski Spaces or any other portion of the Caruso Property. Caruso shall have the right from time to time to reconstruct and/or reconfigure the Pachulski Spaces, provided that the Pachulski Spaces remain of substantially similar size and of substantially similar proximity to the Pachulski Property. Should Caruso require access to the Pachulski Spaces for purposes of road maintenance, restriping of spaces, replacement of signage, or reconfiguration or reconstruction of the Pachulski Spaces or related tasks, Caruso shall provide at least 24 hours' written notice to Pachulski and shall make three designated parking spaces elsewhere on the Caruso premises available exclusively to Pachulski during the period of unavailability. Except as expressly provided herein, nothing in this Declaration shall be construed to limit Caruso's rights to improve, modify, alter, develop,

redevelop, remodel or otherwise deal with the entirety of the Caruso Property and the adjacent parcels owned by Caruso.

Guests and employees of Caruso may not utilize the Pachulski Spaces for any reason, and Caruso shall take commercially reasonable steps necessary to advise employees, guests, vendors, and other persons associated with Caruso or activities on the Caruso premises that such parking is prohibited. In the event of parking in the Pachulski Spaces that has not been authorized by Pachulski in its sole discretion, Pachulski is authorized to have the offending vehicles towed without notice to Caruso.

b. Visual Screening. Prior to completion of the Project, and as part of the Project, Caruso shall install a visual barrier between the hotel bungalows and Miramar Avenue as depicted in Exhibit C hereto. The purpose of the barrier is to substantially block light intrusion emanating from the bungalow area. The barrier shall consist of a hedge of five (5) feet in height and a garden wall of three (3) to four (4) feet in height, provided that Caruso shall have the right to install a hedge in excess of five (5) feet in its sole and absolute discretion. Caruso shall have the right to determine materials and design features of the barrier provided that it accomplishes its intended purpose. Caruso will maintain the barrier as required by this Declaration for as long as the Caruso Property is developed with a visitor-serving use. Subject to the express limitations set forth above, if Pachulski determines, in Pachulski's sole and absolute discretion, that the installed and maintained materials comprising the barrier are insufficient to accomplish the intended purpose, Pachulski may notify Caruso of the deficiency and Caruso shall take commercially reasonable steps to remedy the identified deficiencies.

c. Valet Parking. On or before the date when a new hotel opens on the Caruso site, Caruso shall provide to Pachulski a total of two (2) passes for free valet parking on the Caruso site (the "Pachulski Passes"), along with any necessary instructions as to how to access valet parking. Pachulski may use the Pachulski Passes to access parking on the Caruso site for any owners or occupants of the Pachulski Property or guests or invitees of Pachulski. The Pachulski Passes shall be valid for valet parking at all hours when the hotel regularly operates its valet parking service. The Pachulski Passes shall remain valid and shall not expire for so long as valet parking service is offered in connection with a hotel operating on the Caruso site. Caruso shall require its hotel operator to notify Pachulski promptly in the event that material changes are made to the operation of the valet service at the hotel at any point in time. In conjunction with providing the Valet Passes, for as long as the hotel provides a shuttle service to its guests for any purpose and the Valet Passes are in effect, Caruso shall cause the hotel to make its shuttle service available to all persons utilizing the Valet Passes for the limited purpose of transporting such persons to and from the Pachulski Property and the valet parking drop off area of the hotel.

d. Gate Entrance. Upon installation of a pedestrian gate entrance to the hotel on the Caruso site at the easterly terminus of Miramar Avenue, Caruso shall provide to Pachulski two (2) keycards to the gate (the "Access Cards") for use by the owners and occupants of the Pachulski Property and their guests and invitees for the purpose of accessing valet parking and all services open to the public on the Caruso Property during regular hours of operation. In the event that Caruso changes the gate access code or the means of access to the hotel through such pedestrian gate, Caruso promptly shall provide Pachulski with new keycards or other devices that will enable

Pachulski to continue to have pedestrian access to the hotel's valet parking and public-service areas of the Caruso Property from Miramar Avenue.

e. Privatization of Miramar Avenue. At any time following recordation of this Declaration, Pachulski or Caruso may initiate privatization of the portion of Miramar Avenue that runs east-west from approximately the westerly boundary of the Pachulski Property to the easterly terminus of Miramar Avenue (the "Eastern Segment") by seeking from the County of Santa Barbara (the "County") vacation of the public right of way pursuant to California Streets & Highways Code section 8320 and any other required governmental approvals. In conjunction with any effort to privatize the Eastern Segment, to the extent required by the County or any other agency with jurisdiction, Caruso shall make available for roadway purposes an area on the Caruso Property sufficient to accommodate a turnaround in a "hammerhead" configuration at the westerly end of the Eastern Segment. The approximate location of the hammerhead is depicted on Exhibit C hereto. Caruso covenants to remove any structures or other impediments it may from time to time install in the area necessary to accommodate a hammerhead turnaround so as to permit the installation of such a turnaround.

The Party electing to pursue privatization of the Eastern Segment shall bear all costs and expenses associated with obtaining all necessary approvals, including without limitation all costs of engineering, design, planning, permitting and legal services necessary to the effort. The Party seeking privatization of the Eastern Segment shall bear all costs of improvements to Miramar Avenue, including the construction of the turnaround, to the extent such improvements are required for governmental approvals of the privatization of the Eastern Segment. Regardless of which Party initiates the action for privatization of the Eastern Segment, Caruso shall be responsible for selecting design and construction services, designing any required improvements to the standards required by the County, and contracting for the construction of the improvements in accordance with plans approved by the County (at Pachulski's cost and expense if Pachulski initiated the privatization effort). Nothing in this Declaration shall obligate either Pachulski or Caruso to pursue the privatization of the Eastern Segment, but neither Party may oppose the other's effort to accomplish such privatization provided that the same is pursued and accomplished in accordance with this Declaration. Each Party will provide written support for the other's effort to privatize the Eastern Segment if requested and if such effort is made in accordance with this Agreement, and the Parties will reasonably cooperate with each other in the process contemplated by this Agreement.

Regardless of which Party initiates privatization, Pachulski's right hereunder to the Pachulski Spaces on the northerly side of the Eastern Segment shall continue in full force and effect and shall not be interrupted unless, upon completion of privatization, Pachulski obtains rights to exclusive and continuous use of three (3) comparable parking spaces on the southerly side of the Eastern Segment adjacent to the Pachulski Property (the "Replacement Spaces") without restrictions or limitations materially more burdensome than those provided in this Declaration ("Prohibited Restrictions or Modifications"). Caruso shall provide Pachulski written notice when Caruso has provided Pachulski with Replacement Spaces without Prohibited Restrictions or Modifications, which notice shall be accompanied by the proposed Parking Agreement (as defined below). If Pachulski does not provide written notice to Caruso that Pachulski disputes that it has received Replacement Spaces without Prohibited Restrictions or Modifications within ten (10) days following the receipt of such notice and proposed Parking Agreement, then the Easement as to the Pachulski Spaces depicted in Exhibit C hereto shall be automatically extinguished upon execution

and delivery of an agreement granting to Pachulski rights of exclusive and continuous use of the Replacement Spaces without Prohibited Restrictions or Modifications in accordance with the above (a "Parking Agreement"). If Pachulski does provide such written notice of a dispute to Caruso within such ten (10) day period, then such Easement shall continue in effect and shall be extinguished only upon the entry of an order of a court of competent jurisdiction providing for the extinguishment of such Easement. For the avoidance of any doubt, it is the intent of the Parties that both before and after any privatization of the Eastern Segment, Pachulski shall have the right to exclusive and continuous use of three (3) parking spaces proximate to the Pachulski Property on either the northerly or southerly side of the Eastern Segment, but not to either more or less than three (3) such parking spaces. Whether Pachulski retains its rights hereunder to the Pachulski Spaces on the northerly side of the Eastern Segment or obtains rights to the Replacement Spaces as contemplated by this paragraph, the Easement for access purposes over the Caruso Property within the right of way of Miramar Avenue from the public right of way to the Pachulski Spaces or the Replacement Spaces shall not be affected by privatization.

Following privatization of the Eastern Segment, Caruso shall be responsible for installing signage prohibiting use of any designated parking, including the Pachulski Spaces wherever they are located at that time, by persons other than those for whom the spaces have been designated, and any owner of an adjacent parcel whose space is improperly occupied may have the offending vehicle towed without notice to other owners. If the Parties and owners of adjacent parcels agree at the time of privatization, Caruso will install a vehicular access gate at the most westerly terminus of the privatized Eastern Segment. The installation costs for signage and an access gate shall be borne by the party initiating privatization. Following privatization approval, the cost for all maintenance, repair and replacement of the private right of way, parking areas, signage and related features shall be equitably allocated among the owners of parcels abutting the privatized Eastern Segment, including but not limited to Caruso and Pachulski. The Parties agree to reasonably cooperate with each other in making other operating decisions associated with privatization of the Eastern Segment that have not been anticipated in this Declaration, subject in all events to the express limitations set forth herein.

f. Non-Opposition. From and after the Execution Date and for so long thereafter as this Declaration remains in force and effect, Pachulski shall not take, directly or indirectly, any action to oppose the development, construction, maintenance, operation and/or implementation of the Project in accordance with the final governmental approvals pursuant to which the Project is being constructed as of the date this Declaration is recorded pursuant to Section 6 (the "Project Approvals") except as to a proposed modification to the Project Approvals that, if granted, would materially and adversely affect the use and quiet enjoyment of the Pachulski Property and except as provided in this Section 2.f. Pachulski expressly agrees not to object to any of four locations for the "Beach Club" element of the Project: (1) the location approved in the January 2015 Approvals and 2014 Plan as approved by the Montecito Planning Commission, (2) on the beachfront (i.e., south of the railroad tracks) in the location indicated on the 2014 Plan approved by the Montecito Planning Commission as the presidential suite, (3) on the beachfront (i.e., south of the railroad tracks) east of the restaurant indicated on the 2014 Plan approved by the Montecito Planning Commission, or (4) in the area adjacent to South Jameson Lane indicated on the 2014 Plan approved by the Montecito Planning Commission as the theater building. Caruso expressly agrees not to seek, at any time, relocation of the Beach Club to any location other than the foregoing four locations. Pachulski specifically covenants not to take, directly or indirectly, any action in

opposition to the governmental approval of an increase in the maximum membership of the private beach club at the hotel from two hundred (200) members to up to three hundred (300) members. Notwithstanding anything to the contrary in this Declaration, Pachulski shall have the right to oppose an increase to greater than four hundred (400) the number of persons authorized to attend concurrent events on the Caruso Property or an increase to more than 300 in the maximum membership of the beach club at the hotel. This Section 2.f expressly does not supersede Sections 2.2, 2.4, 2.5 and 2.6 of that certain Confidential Settlement Agreement by and between the Parties and dated as of the Execution Date (the "Settlement Agreement") for so long as the Settlement Agreement remains in force and effect.

3. Certain Limitations.

Pachulski shall not be deemed to acquire any prescriptive rights as a result of this Declaration, or to have acquired any interest in real property with respect to the Caruso Property, except solely to the extent of the rights specifically granted herein. Notwithstanding anything to the contrary contained in this Declaration, Caruso shall retain exclusive control over the Caruso Property, the Project, and the operation of each. Caruso shall have no liability to Pachulski or any of its agents, licensees, guests, tenants or invitees for any damage or injury resulting from their use of the Easement or the Pachulski Spaces except solely to the extent caused by the willful misconduct or gross negligence of Caruso, its agents or employees.

4. Enforcement in the Event of Noncompliance.

Either Party who believes the other has failed to comply with any aspect of this Declaration or the Restrictive Covenants imposed hereby may demand compliance by delivering written notice to the non-compliant Party providing a cure period of ten (10) days from the date of the notice. If the alleged non-compliance is not corrected in ten (10) days from the date of the notice (or, if the alleged non-compliance cannot reasonably be corrected in ten (10) days, such correction is not commenced within such ten (10) day period and thereafter diligently pursued to completion), then the Party alleging non-compliance may seek court enforcement of this Declaration against the non-compliant Party. In the event that a court of competent jurisdiction determines that Pachulski has breached Section 2.f of this Declaration, such court shall order the termination and extinguishment of this Declaration as a remedy for such breach, provided that any decision of a court of competent jurisdiction ordering the termination and extinguishment of this Declaration shall not take effect until the court's order becomes final. For purposes of this Section 4, the order will not be final until the occurrence of the following: (a) the time within which to appeal from the court's decision, and the time within which to move for re-argument or rehearing, have each expired and no appeal or motion remains pending; or (b) the right to any such appeal or motion has been waived in writing by Pachulski; or (c) if an appeal is taken, the highest court to which the appeal may be presented has upheld the lower court's decision and any further appeal period has expired. The equitable remedies stated herein are nonexclusive and do not limit the Parties in their pursuit of legal claims or damages. The unsuccessful Party in any litigation arising from this Declaration will be responsible for payment of the reasonable attorney fees and costs incurred by the prevailing Party.

5. Nature and Duration of Covenants and Easement.

a. This Declaration and the Easement and Restrictive Covenants established hereby shall run with the land of the Caruso Property and the Pachulski Property and, except as to (i) modification of the Easement contemplated in Section 2(e), (ii) the self-executing termination provisions set forth in Section 5(d), and (iii) remedies ordered by a court as set forth in Section 4, this Declaration, the Easement and the Restrictive Covenants may not be amended, extinguished, terminated, or otherwise changed unless the Parties amend this Declaration by written instrument and such instrument is recorded as an amendment hereto. This Declaration is an instrument affecting the title and possession of real property. Upon its terms and subject to its conditions, this Declaration shall apply to and bind any and all successors in interest to Caruso as to the Caruso Property and to Pachulski as to the Pachulski Property in accordance with applicable law, including but not limited to Sections 1461 and 1468 of the California Civil Code as the same may be amended from time to time. All covenants, conditions and restrictions herein imposed shall be binding upon and inure to the benefit of the successors in interest of Caruso (with respect to the Caruso Property) and Pachulski (with respect to the Pachulski Property) upon the terms and subject to the conditions hereof. Neither Party may sever the Easement or any Restrictive Covenant hereunder from their real property by sale, assignment, lease, license or any other form of temporary or permanent transfer.

b. Following any sale or division of the land of the Caruso Property or the Pachulski Property, this Declaration shall continue to apply to all parcels that include any portion of the Caruso Property and the Pachulski Property as described herein.

c. Any purchaser of either the Caruso Property or the Pachulski Property, or any portion thereof, by the acceptance of a deed therefor, whether from Caruso or Pachulski or any successor in interest as to either Property, or by the signing of a non-contingent contract or agreement to purchase the same, shall be deemed to have consented to and accepted the Restrictive Covenants and limitations set forth herein.

d. The rights conferred pursuant to the Restrictive Covenants set forth in Section 2(c) [Valet Parking] and Section 2(d) [Gate Entrance] are applicable to the operation of a hotel on the Caruso Property that offers valet parking to guests and includes an access-controlled pedestrian gate at the eastern terminus of Miramar Avenue. Accordingly, if the Caruso Property is put to a use other than as a hotel, or if such hotel does not offer valet parking or include the above-described access-controlled pedestrian gate then, as applicable, Section 2(c) and/or Section 2(d) shall automatically be of no further force or effect; provided that if hotel use, valet parking operations, or access-controlled gating at the eastern end of Miramar Avenue are thereafter reinstated then said Section 2(c) and/or Section 2(d), as applicable, shall likewise be reinstated.

6. Effective Date.

Notwithstanding the fact that, at execution of this Declaration, the Project will not have been completed, this Declaration and the Restrictive Covenants hereby imposed on real property shall become effective upon recordation of this Declaration in the Official Records of Santa Barbara County, provided that the Easement shall not be effective until the occurrence of the Easement

Effective Date. The Parties acknowledge that although this Declaration has been executed as of the Execution Date, it will not become effective or be recorded until the date that is ten (10) days following the issuance to Caruso of a building permit for vertical construction of the Project and the expiration of the period for the timely appeal or challenge of such permit.

7. Estoppel Certificates.

Either Party at any time hereunder may request that the other Party execute, acknowledge and deliver an estoppel certificate, substantially in the form attached hereto as Exhibit D hereto, to certify the then-current condition of the Declaration. Any such statement delivered pursuant to this Section 7 may be relied upon by any prospective purchaser or any mortgagee, ground lessor or other like encumbrancer of the property owned by the requesting Party or any assignee of any such encumbrancer. Failure of a Party to execute and deliver such a statement requested for execution with such modifications or additions thereto as are necessary to make such statement accurate within ten (10) business days after receipt of a request for the same shall constitute acceptance and acknowledgement by such Party that all information included in the statement is true and correct. This Section 7 shall be effective from and after the Execution Date.

8. Miscellaneous Provisions.

a. Each of the undersigned Pachulski owners represents to Caruso as of the Execution Date that they collectively hold one hundred percent (100%) of the beneficial fee title interest in and to the Pachulski Property, they have the authority to accept an easement and declare restrictive covenants affecting title to the Pachulski Property, that no other person or entity holds beneficial title to or has any right of occupancy, possession or ownership in and to the Pachulski Property, and no other actions, consents or waivers are requisite to the valid and binding execution, delivery and performance of this Declaration. Caruso represents to Pachulski as of the Execution Date that it holds fee title to the Caruso Property, has the authority to grant an easement and declare restrictive covenants affecting title to the Caruso Property and no other actions, consents or waivers are requisite to Caruso's valid and binding execution, delivery and performance of this Declaration. The undersigned Rick J. Caruso represents as of the Execution Date that he has been duly authorized to obligate Caruso to the execution, delivery and performance of this Declaration.

b. All exhibits to this Declaration are incorporated herein by this reference.

c. This Declaration, the Settlement Agreement, and the exhibits attached hereto and thereto, contain the entire agreement of Caruso and Pachulski with respect to the subject matter of this Declaration and supersede all prior negotiations, agreements and understandings with respect thereto.

d. Any notice, demand, consent or other communication made pursuant to this Agreement shall be in writing and shall be (a) delivered personally to the Party to whom the same is directed, or (b) sent by recognized courier service (e.g., Federal Express) or registered or certified mail, return receipt requested, postage prepaid; or (c) sent by electronic mail (provided that a copy of such notice, or communication is also sent concurrently in the manner set forth in the foregoing clause (b)) and in each case, addressed as follows:

If to Caruso: Miramar Acquisition Co., LLC
c/o Caruso Affiliated
101 The Grove Drive
Los Angeles, CA 90036
Email: mmiddlebrook@carusoaffiliated.com
Attention: Matt Middlebrook

With copy to: Miramar Acquisition Co., LLC
c/o Caruso Affiliated
101 The Grove Drive
Los Angeles, CA 90036
Email: bhowell@carusoaffiliated.com
Attention: Legal Department

If to Pachulski: Richard Pachulski
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067-4003
Email: rpachulski@pszjlaw.com

With copy to: Isaac M. Pachulski
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067-4003
Email: ipachulski@pszjlaw.com

Any such notice shall be deemed to be delivered, given and received for all purposes as of (i) the date so delivered, if delivered personally, (ii) upon receipt, if sent by electronic mail, facsimile or courier service, or (iii) on the date of receipt or refusal indicated on the return receipt, if sent by registered or certified mail, return receipt requested, postage and charges prepaid and properly addressed. Each Party may change their address for notices provided for herein by delivery to the other Party, in accordance with this section, of a notice setting forth such changed address for notice purposes.

e. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

f. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Caruso Property to the general public or for the use by or benefit of the general public, or for any public purpose whatsoever, it being the intention of the Parties that this Declaration shall be strictly limited to and for the purposes expressed herein.

g. If any term or provision of this Declaration or the application thereof to any person or circumstances, the deletion of which would not adversely affect the receipt of any material benefit by either party hereto, shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected

thereby, and each such term and provision of this Declaration shall be valid and be enforced to the fullest extent permitted by law.

h. No waiver or any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

i. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto, and no such other person or entity shall have any rights hereunder or the ability to enforce the terms hereof.

j. The liability of a Party under this Declaration shall be applicable upon such owner only during its period of ownership of the property affected by this Declaration, provided that no sale or transfer shall relieve an owner of liability for any act, omission, breach, occurrence or condition arising or occurring during such period of ownership.

k. This Declaration may be executed in two or more counterparts, and executed copies may be delivered by facsimile, PDF, or other electronic means. Each electronically-delivered counterpart shall be deemed to be, and may be used for all purposes as, an original, and all counterparts, taken together, shall constitute one agreement.

IN WITNESS WHEREOF the parties hereto have executed this Declaration as of the Execution Date.

[Counterpart signature pages follow.]

COUNTERPART SIGNATURE PAGE

This is a counterpart signature page to the **GRANT OF EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Declaration")** by and between Miramar Acquisition Co., LLC, a California limited liability company on the one hand, and Richard Pachulski and Dana Pachulski, husband and wife, and Isaac Pachulski and Althea Pachulski, husband and wife, on the other hand. Once executed by me I request that this counterpart signature page be attached to said Declaration and that the Declaration be signed by all other parties before it is recorded.

Executed at Los Angeles on this 7th day of April 2015.

MIRAMAR ACQUISITION CO, LLC,
a California limited liability company



By: Rick J. Caruso
Its: President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

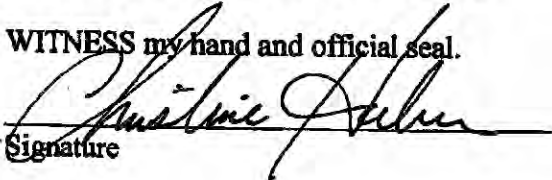
State of California
County of Los Angeles

On April 07, 2015 before me, Christine Haber, a Notary Public, personally appeared RICK J. CARUSO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



COUNTERPART SIGNATURE PAGE

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Executed at Los Angeles on this 7th day of April 2015.


Richard Pachulski

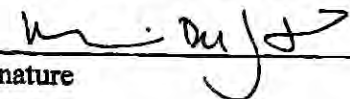
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California
County of LOS ANGELES

On APRIL 7th, 2015 before me, MELISA DESJARDIEN, a Notary Public, personally appeared RICHARD PACHULSKI, who proved to me on the basis of satisfactory evidence to be the person(x) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature



COUNTERPART SIGNATURE PAGE

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Executed at LOS ANGELES, CALIFORNIA on this 7th day of APRIL 2015.


Dana Pachulski

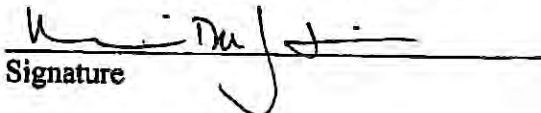
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California
County of LOS ANGELES

On APRIL 7th, 2015 before me, MELISA DESJARDIEN, a Notary Public, personally appeared DANA PACHULSKI, who proved to me on the basis of satisfactory evidence to be the person(x) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature

SEE ATTACHED
CERTIFICATE



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of LOS ANGELES)

On APRIL 7th, 2015 before me, MELISA DESTARDIEN, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared DANA PACHULSKI
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/(her)/their authorized capacity(ies), and that by his/(her)/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Individual Attorney In Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

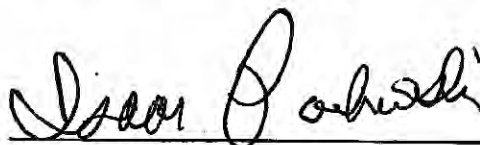
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

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Executed at Los Angeles, Calif. on this 7th day of April 2015.


Isaac Pachulski

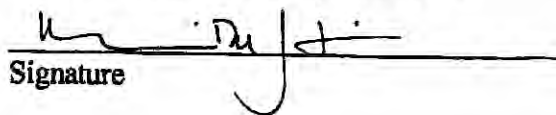
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California
County of LOS ANGELES

On APRIL 7th, 2015 before me, MELISA DESJARDIEN, a Notary Public, personally appeared ISAAC PACHULSKI, who proved to me on the basis of satisfactory evidence to be the person(x) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by (his)/her/their signature(s) on the instrument the person(x), or the entity upon behalf of which the person(x) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature



COUNTERPART SIGNATURE PAGE

This is a counterpart signature page to the **GRANT OF EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Declaration")** by and between Miramar Acquisition Co., LLC, a California limited liability company on the one hand, and Richard Pachulski and Dana Pachulski, husband and wife, and Isaac Pachulski and Althea Pachulski, husband and wife, on the other hand. Once executed by me I request that this counterpart signature page be attached to said Declaration and that the Declaration be signed by all other parties before it is recorded.

Executed at Los Angeles, California on this 7th day of April 2015.

Althea Pachulski
Althea Pachulski

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California
County of LOS ANGELES

On APRIL 7th, 2015 before me, MELISA DESJARDIEN, a Notary Public, personally appeared ALTHEA PACHULSKI, who proved to me on the basis of satisfactory evidence to be the person(x) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he (she) they executed the same in his (her) their authorized capacity (ies), and that by his (her) their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Melisa Desjardien
Signature



EXHIBIT A
Legal Description of Caruso Property

PARCEL ONE:

Lots 19, 20, 21, 22, 23 and 24 of Ocean Side Subdivision, in said County of Santa Barbara, State of California, ad per map recorded in Book 1, Page 29 of Maps and Surveys, in the office of the County Recorder of said County.

Also excepting from said Parcel One those portions thereof lying Northerly of the Southerly line of the tract of land described in the deed to State of California, dated June 2, 1942 and recorded August 28, 1942 in Book 552, Page 275 of Official Records, records of said County.

Excepting therefrom that portion included in that certain Relinquishment of State Highway recorded September 18, 1960 in Book 1778, Page 126 of Official Records.

PARCEL TWO:

That portion of the Outside Pueblo Lands of the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

Beginning at the Southeast corner of Jacob Oleson's land surveyed March 29, 1876; thence 1st, North 1,606 feet to the Northeast corner of the aforementioned tract; thence 2nd, East 176.39 feet to the Northwest corner of Dayton's land; thence 3rd, South 495 feet; thence 4th, East 293.81 feet; thence 5th, South 844.86 feet, more or less, to a 1/2 inch pipe survey monument set at the Southwest corner of Parcel Three herein after described; thence 6th, South 88° 55' East, along the Southerly line of said Parcel Three and the Easterly prolongation thereof (at 110.54 feet to a 1/2 inch survey monument set at the Southeast corner of said Parcel Three), 229.79 feet to a point on the Westerly line of the Matanza Property; thence 7th, along said last mentioned line, South 0° 10' West, 315.59 feet, more or less, to the Southeast corner of the tract of land described in the deed from Sarah Stanton to Josiah Doulton dated April 4, 1876 and recorded in Book P, Page 512 of Deeds; thence 8th, North 85° 30' West, 295.5 feet to a point; thence 9th, West 409.97 feet to the point of beginning.

Excepting therefrom those portions thereof lying Northerly of the Southerly line of the tract of land described in the deed to State of California, dated June 2, 1942 and recorded August 28, 1942 in Book 552, Page 275 of Official Records, records of said County.

Also excepting therefrom those portions thereof conveyed by the following deeds:

A) Deed to J. D. Perry Francis, recorded December 23, 1946 in Book 718, Page 72 of Official Records.

B) Deed to Luther W. Turner, et ux., recorded October 7, 1952 as Instrument No. 15696 in Book 1101, Page 304 of Official Records.

C) Deed to George Hill Clyde, recorded December 24, 1952 as Instrument No. 20074 in Book 1118, Page 47 of Official Records.

D) Deed to Paul A. Greene, recorded December 14, 1953 as Instrument No. 20027 in Book 1201,

Page 146 of Official Records.

Also excepting therefrom that portion thereof lying within the lines of Southern Pacific Railway Company 100-foot right of way.

Excepting therefrom that portion included in that certain Relinquishment of State Highway recorded September 18, 1960 in Book 1778, Page 126 of Official Records.

PARCEL THREE:

That portion of the Outside Pueblo Lands of the City of Santa Barbara, in the County of Santa Barbara, State of California:

Beginning at a point in the center line of Hixon Road, as said road is shown on "Amended Map of Survey made by F. F. Flournoy of the Robert S. Hyde Tract, El Montecito, Santa Barbara County, California", recorded March 28, 1921 in Book 13, Page 58 of Maps, records of said County; thence along the center line of the Coast Highway, North 70° 16' West, 119.60 feet; thence South 0° 09' West 366.49 feet to a ½ inch pipe; thence South 88° 55' East 110.54 feet to an old pipe set in fence corner; thence along old fence line, North 0° 31(½)' East, 328.22 feet to the point of beginning.

Excepting therefrom those portions lying Northerly of the Southerly line of the tract of land described in deed to the State of California, dated June 2, 1942 and recorded August 28, 1942 in Book 552, Page 275 of Official Records of said County.

Excepting therefrom that portion included in that certain Relinquishment of State Highway recorded September 18, 1960 in Book 1778, Page 126 of Official Records.

APN#9-371-04 (PORTION)

EXHIBIT B
Legal Description of Pachulski Property

That portion of Lot Two (2) of the Ocean Side Tract, in the County of Santa Barbara, State of California, according to the map of said tract recorded in the office of the County Recorder of said County July 17, 1893 in Book 1 of Maps and Surveys, at Page 29, bounded and described as follows:

Beginning at an iron spike driven into the asphalt walk at the Northeast corner of said Lot, and running thence South, along the East line of said Lot 148.34 feet to a 1/2 inch pipe survey monument set in the Northerly line of the right of way of the Southern Pacific Railroad Company as now located; thence South 81° 50' West, along said Northerly line, 81.83 feet to a 1/2 inch pipe survey monument; thence North 147.13 feet to a spike driven into the asphalt pavement in the Northerly line of said Lot 2, from which a 1/2 inch pipe survey monument set in the Southerly line of road known as Ocean View Avenue bears South 20.25 feet; thence North 81° 00' East, along the Northerly line of said Lot, 82.01 feet to the point of beginning.

APN: 009-344-06

EXHIBIT C
Depiction of Approximate Locations
of Pachulski Spaces, Visual Screening, and Turnaround Area

C-1

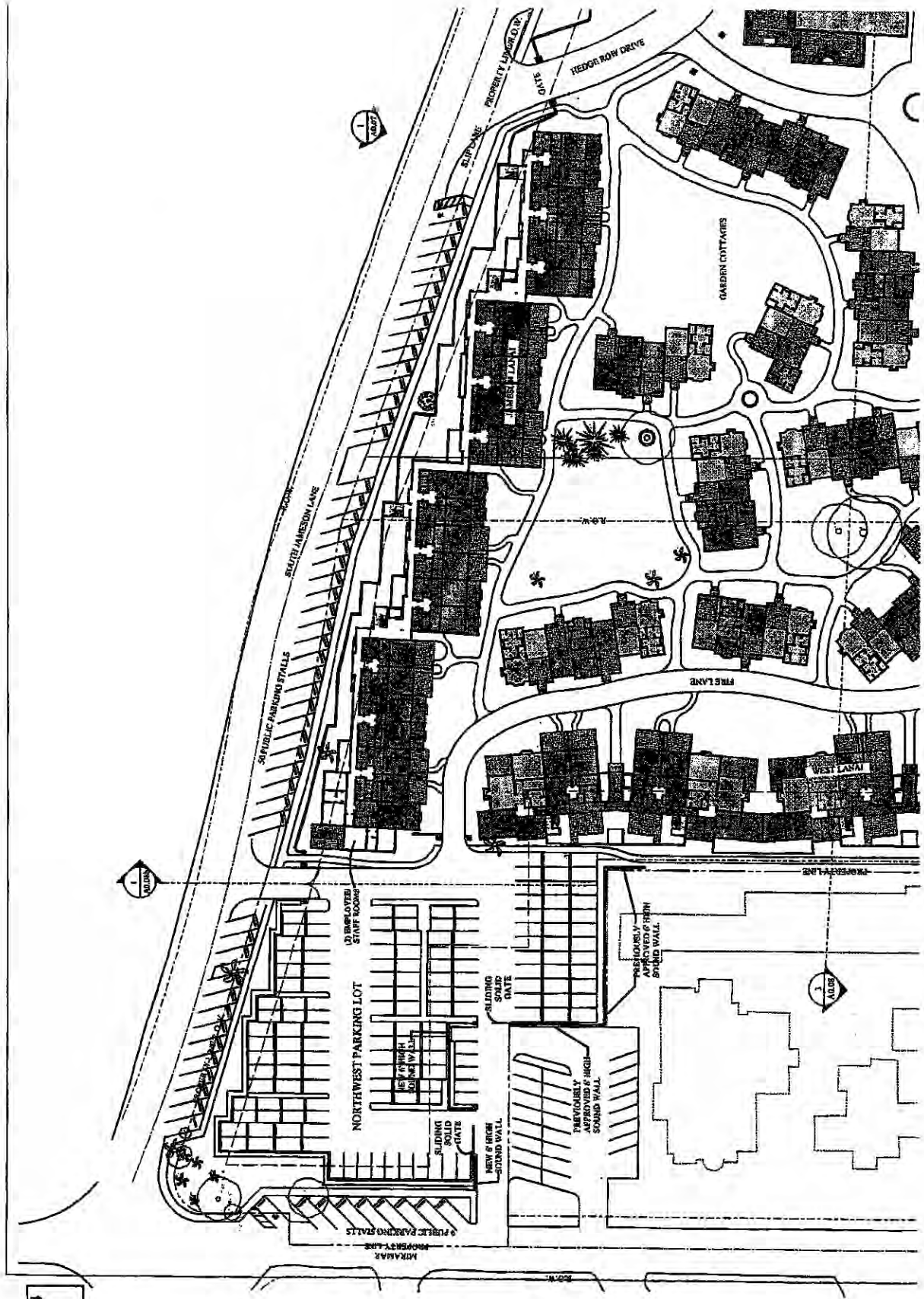


EXHIBIT C - 1 of 4
Upper Left



EXHIBIT C - 3 of 4
Lower Left

EXHIBIT C - 4 of 4
Lower Left

SITE PLAN - GAF

The Miramar
BEACH RESORT & BUNGALOWS
1555 SOUTH JAMESON LANE, MONTECITO, CA



CARUSO
AFFILIATED

Date: 03/26/2013

Scale: 1" = 48'-0"

Drawn: BK

Approved: MJD

Sheet

A0.05a

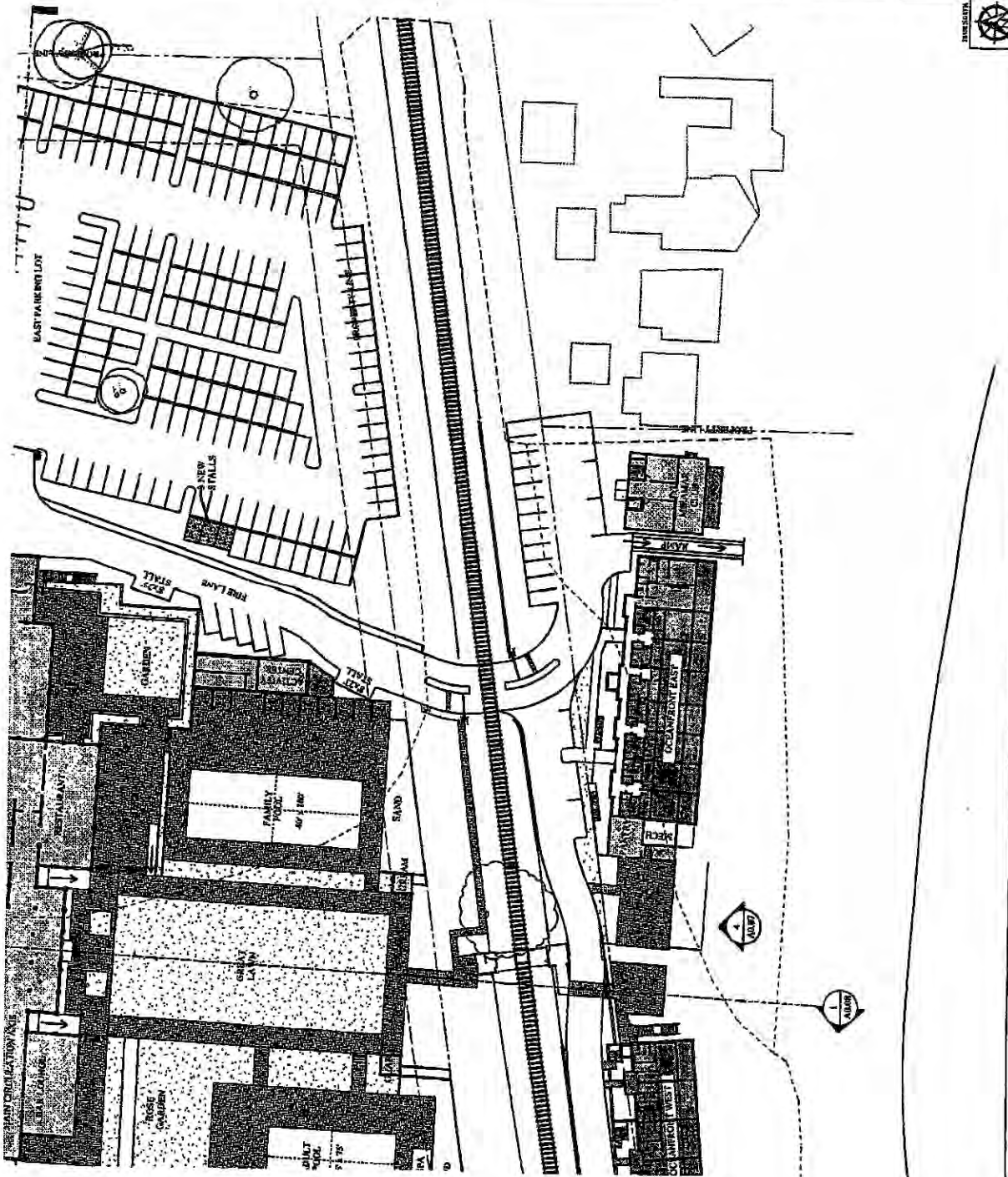


EXHIBIT D
Form of Estoppel Certificate

ESTOPPEL CERTIFICATE

[DATE]

To: _____

Re: Grant of Easement and Declaration of Restrictive Covenants; Miramar Hotel and 50 Miramar Avenue, Santa Barbara, California.

To Whom it May Concern:

Reference is made to that certain Grant of Easement and Declaration of Restrictive Covenants by and between Miramar Acquisition Co., LLC, a California limited liability company ("Caruso") on the one hand, and Richard Pachulski and Dana Pachulski, husband and wife, and Isaac Pachulski and Althea Pachulski, husband and wife (collectively "Pachulski") on the other, dated as of April __, 2015 (the "Declaration"). Pursuant to Section 7 of the Declaration the undersigned (hereinafter the "Certifying Party") hereby certifies to [_____] as follows:

1. [If Pachulski is Certifying Party] Certifying Party is the sole beneficial owner of the Pachulski Property as described in the Declaration. [If Caruso is Certifying Party] Certifying Party is the sole record owner of the Caruso Property as described in the Declaration.
2. The Declaration is in full force and effect and has not be amended, modified, or supplemented, except as follows: _____

The Declaration constitutes the entire agreement between Pachulski and Caruso affecting the Pachulski Property and the Caruso Property.

3. To the knowledge of the Certifying Party (a) no party to the Declaration is in default in the performance of its obligations pursuant to the terms of the Declaration, and (b) no event has occurred that, with the giving of notice or lapse of time or both would constitute a default by a party to the Declaration under the terms of the Declaration.
4. The Certifying Party's address for notices under the Declaration is:

The certifications made by the Certifying Party herein are made at the request of [] (the "Requesting Party") in the knowledge that [] and its successors and assigns, as a [mortgagee / prospective purchaser / ground lessor / investor] of the Requesting Party will place substantial reliance thereon in connection with [insert transaction type].

Very truly yours,

[CERTIFYING PARTY]

SANTA BARBARA LOCAL COASTAL PLAN (Adopted 1982; Republished 2019) Page citations for online document: https://cosantabarbara.app.box.com/s/cx95k0r4hnfo58hg291fi5gzf5rrdurd	
3.1 Introduction	
1. <u>Policy 1-4 (p. 21)</u> : Prior to the issuance of a coastal development permit, the County shall make the finding that the development reasonably meets the standards set forth in all applicable land use plan policies.	<p><u>Potentially Inconsistent</u>: <i>This finding was not included in the staff report.</i> Numerous coastal and land use policies are overlooked in the shadow of recent housing laws. This Coastal Plan policy nonetheless requires that a development meet all the standards in applicable land use policies, therefore this finding can not be made.</p>
3.2 Development	
2. <u>Policy 2-6 (p. 25)</u> : Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, <i>that adequate public or private services and resources</i> (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan... (emphasis added)	<p><u>Potentially Inconsistent</u>: Parking is already deficient in the Miramar site plan and the application requests an additional modification of 39 spaces. Parking near the coast must be considered a public service and the history of the Miramar parking demand exceeding its space is already evident.</p> <p>The finding of consistency with LCP policy 2-6 can not be made.</p>

3.4 Visual Resources	
<p>3. <u>Policy 4-1 (p.43)</u>: Areas within the coastal zone which are now required to obtain approval from the County Board of Architectural Review, because of the requirements of the “D”- Design Supervision Combining Regulations or because they are within the boundaries of Ordinance #453, shall continue to be subject to design review. In addition, developments in all areas designated on the land use plan maps as Commercial, Industrial, or Planned Development and residential structures on bluff top lots shall be required to obtain plan approval from the County BAR.</p> <p>4. <u>Policy 4-4 (p.43)</u>: In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.</p> <p>5. <u>Policy 4-9 (p. 44)</u>: Structures shall be sited and designed to preserve unobstructed broad views of the ocean from Highway #101, and shall be clustered to the maximum extent feasible.</p> <p>6. <u>Policy 4-11 (p.44)</u>: Building height shall not exceed one story or 15 feet above average finished grade, unless an increase in height would facilitate clustering of development and result in greater view protection, or a height in excess of 15 feet would not impact public views to the ocean.</p>	<p>Potentially Inconsistent: <i>This finding was not included in the staff report.</i> The Miramar case had one conceptual MBAR review in 2023, and no subsequent review. The LCP relies on such review for an agency to find consistency with the LCP.</p> <p>Therefore, this finding cannot be made, and should be added as such.</p> <p><u>Inconsistent</u>. The scale and character of the additions to the Miramar are not in keeping with the existing community, nor from views toward ocean from U.S. 101, nor consistent with historic resources on adjoining properties.</p> <p>Potentially Inconsistent: <i>Findings for LCP Policies 4-9 and 4-11 were not in the staff report.</i></p> <p><u>Inconsistent</u>. The scale and character of the additions to the Miramar are not in keeping with the existing community, nor from views toward ocean from U.S. 101, nor consistent with historic resources on adjoining properties.</p>

<p>3.7 Coastal Access and Recreation</p>	
<p>Montecito Planning Area</p> <p>7. <u>Policy 7-10 (p. 96)</u>: The County shall provide increased opportunities for beach access and recreation in the Montecito planning area.</p> <p>Also see implementing actions c, d, e, and f. under this Policy that emphasize need for parking and access to Miramar Beach</p>	<p><u>Potentially inconsistent</u>: Although the provided recorded easements for access to Miramar Beach, present day parking shortages caused by the Miramar’s existing operations currently constrain beach access for the public.</p> <p>The Miramar received a parking modification through cases 14RVP-00000-00063, 21SCD-00000-00020, and 23-SCD-00000-00007 to “allow 436 parking spaces instead of the 618 spaces required by Article II.” (p. 28, CP staff report for 10-9-2024 hearing).</p> <p>The proposed intensification of the Miramar site and its <u>current</u> shortage of parking, and the requested modification to relieve 39 spaces from the site, will not be consistent with this policy.</p>
<p>3.9 Environmentally Sensitive Habitat Areas</p>	
<p>8. <u>Policy 9-1 (p. 128)</u>: Prior to the issuance of a development permit, all projects on parcels shown on the land use plan and/or resource maps with a Habitat Area overlay designation or within 250 feet of such designation or projects affecting an environmentally sensitive habitat area shall be found to be in conformity with the applicable habitat protection policies of the land use plan. All development plans, grading plans, etc., shall show the precise location of the habitat(s) potentially affected by the proposed project. Projects which could adversely impact an environmentally sensitive habitat area may be subject to a site inspection by</p>	<p><u>Potentially Inconsistent</u>: Staff’s analysis notes that the “the project will be located entirely outside the 50-foot ESH buffer, and will have no direct impacts to ESH.” The staff report should cross reference LCP Policy 9-37 that allows the LCP Policy 9-1 buffer prescribed as 250’ to be reduced to 50’ for urban areas.</p> <p>However, this is not consistent with Montecito Community Plan Policy Bio-M-1.3.1 that requires a 100-foot setback. Condition 17 of the CDP24-00077 requires compliance with some policies, but what exactly is that?</p>

<p>a qualified biologist to be selected jointly by the County and the applicant.</p>	<p>The Biological Resources Assessment Report by Dudek (June 2024), cited in staff report Section 6.2, was not available in the staff report attachments or online.</p>
<p>3.10 Archaeological and Historical Resources</p>	
<p>9. <u>Policy 10-2</u> (p 149): When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids impacts to such cultural sites if possible.</p> <p>10. <u>Policy 10-3</u> (p. 149): When sufficient planning flexibility does not permit avoiding construction on archaeological or other types of cultural sites, adequate mitigation shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission</p>	<p><u>Inconsistent</u>: The adjoining All Saints the Sea Church is pending designation as a County Landmark, scheduled for October 15, 2024 action by the Board of Supervisors, after full support from the County Historic Landmarks Advisory Commission.</p> <p>The All Saints church is also eligible for listing on the California State Register of Historic Places, and that application is pending now.</p> <p>The proposed Miramar Building B&C would present a substantial adverse change to this landmark structure and site because these buildings, as currently designed, would materially impair the <u>historic integrity of this adjoining church as a designated historical resource</u>. This integrity is tied to the clear visual connection between the church and the mountains, and that is integral to its landmark status. Mitigation of this impact could possibly occur through a reduction in the massing of buildings B & C as seen from the church. from the sanctuary to the mountains, which will be blocked by Building B&C irreversibly.</p>

COMMUNITY GOALS (p. 26 MCP)	
<p>Montecito's semi-rural character and quality of life is reflected by the lack of sidewalks and traffic lights, the narrow winding roads, the aesthetics of road signing, predominantly low density residential development, limited commercial, resort/visitor serving uses and infrastructure development, the <i>unobstructed community and neighborhood view corridors</i> ..." (emphasis added)</p>	
MCP Policy	Policy Consistency
AESTHETICS/VISUAL RESOURCES	
A. Land Use – Community Character	
<p>1. Policy LU-M-2.1 (p. 48) New structures should be designed, sited, graded and landscaped in a manner which minimizes their visibility from public roads.</p> <p>2. Policy LU-M-2.2 (p. 48): Lighting of structures, roads and properties shall be minimized to protect privacy, and to maintain the semi-rural, residential character of the community</p>	<p><u>Potentially Inconsistent</u>: The 2- story massing of buildings A and B, and 3-story massing of building C, and requested setback variances will make the proposed project very visible from all public roads</p> <p><u>Undetermined</u>: Only one MBAR review of case, so CPC/MPC <u>must make this finding.</u></p>
B. Land Use - General	
<p>3. Policy LUG-M-1.1 (p.49): The County shall recognize that the Montecito Planning Area is a community nearing its full buildout potential, and shall require that development respect its small town, semi-rural character</p>	<p><u>Potentially Inconsistent</u>: The requested increase in FAR, setbacks as little as 1 foot 3 inches, and the mass bulk and scale on both frontages does not respect the Montecito small town, semi-rural character.</p>

<p>D. Land Use - Commercial</p>	
<p>4. Policy LUC-M-1.6 (p.52): Improvements to resort visitor-serving hotels shall be designed to be consistent with the existing historic “Cottage Type Hotel” tradition from the early days of Montecito. “Cottage Type Hotel is defined by cottages limited to six guest rooms each, which are generally single story in height.</p>	<p><u>Inconsistent:</u> The 2- story massing of buildings A and B, and 3-story massing of building C are not in any way part of a “Cottage Type Hotel” design.</p>
<p>PARKS, RECREATION AND TRAILS</p>	
<p>7. Policy PRT M-1.6 (p 87): New development shall not adversely impact existing recreational facilities and uses</p>	<p><u>Inconsistent:</u> Miramar’s pre-existing access points to beach will remain, but parking modification of 39 spaces (83 required for new apartments and retail; 44 provided), will worsen on street parking demand by members of the public seeking access to beach.</p>

<p>RESOURCES AND CONSTRAINTS</p>	
<p>C. Cultural Resources</p>	
<p>8. Policy CR-M-2.1.1 (p. 120): Significant cultural, archaeological, and historic resources in the Montecito area shall be protected and preserved to the extent feasible.</p>	<p><u>Inconsistent:</u> Miramar Buildings B & C will adversely affect All Saints by the Sea historic church, now pending designation as a County and State landmark. Proposed 2-story element in Buildings B&C interferes with historical view</p>

H. Visual/Open Space Resources	
<p>9. Policy VIS-M-1.1 (p.124): Development shall be subordinate to the natural open space characteristics of the mountains.</p>	<p><u>Inconsistent</u>: Massing of Buildings B & C limits open space characteristics south of the Project site and blocks views of the mountains.</p>
<p>10. Policy VIS-M-1.4 (p. 124): Development of property should minimize impacts to open space views as seen from public roads and viewpoints.</p>	<p><u>Inconsistent</u>: Massing of Building A blocks open space views to ocean from South Jameson Lane and U.S. 101.</p>



October 7, 2024

Vincent Martinez, Chair
Santa Barbara County Planning Commission
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Request for Additional Historic Research on the Potential for Impacts to All Saints-by-the-Sea Episcopal Church from the Miramar Mixed-Use Development Project

Dear Chair Martinez,

My firm, Long Historic Preservation Services (LHPS) was retained by All Saints-by-the-Sea Episcopal Church to prepare their Santa Barbara County Landmark Application package in April of this year. Since April, the landmark application was approved by the Historic Landmarks Advisory Commission and the nomination will be going before the Board of Supervisors on October 15, 2024. The church is also in the process of applying to the State Historic Preservation Officer for listing on the California Register of Historical Resources.

LHPS has reviewed the historic report for the Miramar project, prepared by Architectural Resources Group (ARG) in June 2024, and believes that the conclusions of no impact to the church requires additional research and analysis.

1. The landmark application and subsequent resolution approved by HLAC includes eligibility under criterion F as a location with unique physical characteristics or is a view or vista representing an established and familiar visual feature of a neighborhood, community, or the County of Santa Barbara (Chapter 18A-3(f) of the Santa Barbara County Code of Ordinances). The landmark analysis states:

“The church is located within a residential area on land that was donated by an early owner of the Miramar property. It is an established and familiar visual feature in the neighborhood and community of Montecito. The view of the Santa Ynez Mountains from the church is also an established visual feature.”

Eligibility under this criterion was supported and approved by HLAC twice, due to hearing scheduling issues.

2. ARG stated they did not do an independent eligibility analysis of the church but assumed its eligibility in order to use a conservative approach. In 2015, when the Post/Hazeltine eligibility document was prepared, the eligibility criteria for county landmarks did not include criteria regarding established views. Since 2015, the landmark criteria have been expanded to include established views and is captured in the current landmark application.

3. The ARG report states *“Because the church property is sited in its historic location, fronting the east side of Eucalyptus Lane, historically significant views of the property are from the street”* (p24). By the time the church was built, a street grid oriented to the cardinal directions

was already in place, with some deviations for the Coast Highway and the Southern Pacific Railroad tracks. The orientation of the church to the street was a result of urban planning. However, the primary entry and exit of the church does and always has north, directly towards the Santa Ynez mountains. The determination of historically significant views should be determined by the history of the property and not the orientation to the street. Fortunately, because of the open space next to the church provided by the parking lot, the north elevation is visible from the street.

4. The ARG report also states "*The Northwest Lot was previously developed with several guest cottages associated with the historic Miramar Hotel, as well as a dense buffer of vegetation between the properties, which may have historically obstructed northern views of the Santa Ynez mountains from the church property. Thus, while current views of the Santa Ynez mountains may be unobstructed when exiting the main entrance to the sanctuary and looking north from the church parking lot given the lack of vegetation and buildings on the Project Site's Northwest Lot, these views of the mountains from the property do not reflect historic viewsheds*" (p24). This argument is used to substantiate that the project will not obstruct any historic northern views. However, historic aerials photographs, Sanborn Fire Insurance maps, and review of modern projects indicate that all obstructions to the north have been equal to a single-story building. This argument lacks sufficient analysis of the historical viewshed and requires additional research and robust substantiation.

In light of this information, LHPS strongly and respectfully requests a revised historical analysis that responds to these concerns. The north viewshed is significant to the history of All Saints-by-the-Sea Episcopal Church and this matter needs further attention.

Sincerely,

A handwritten signature in blue ink that reads "Amber Long". The signature is written in a cursive, flowing style.

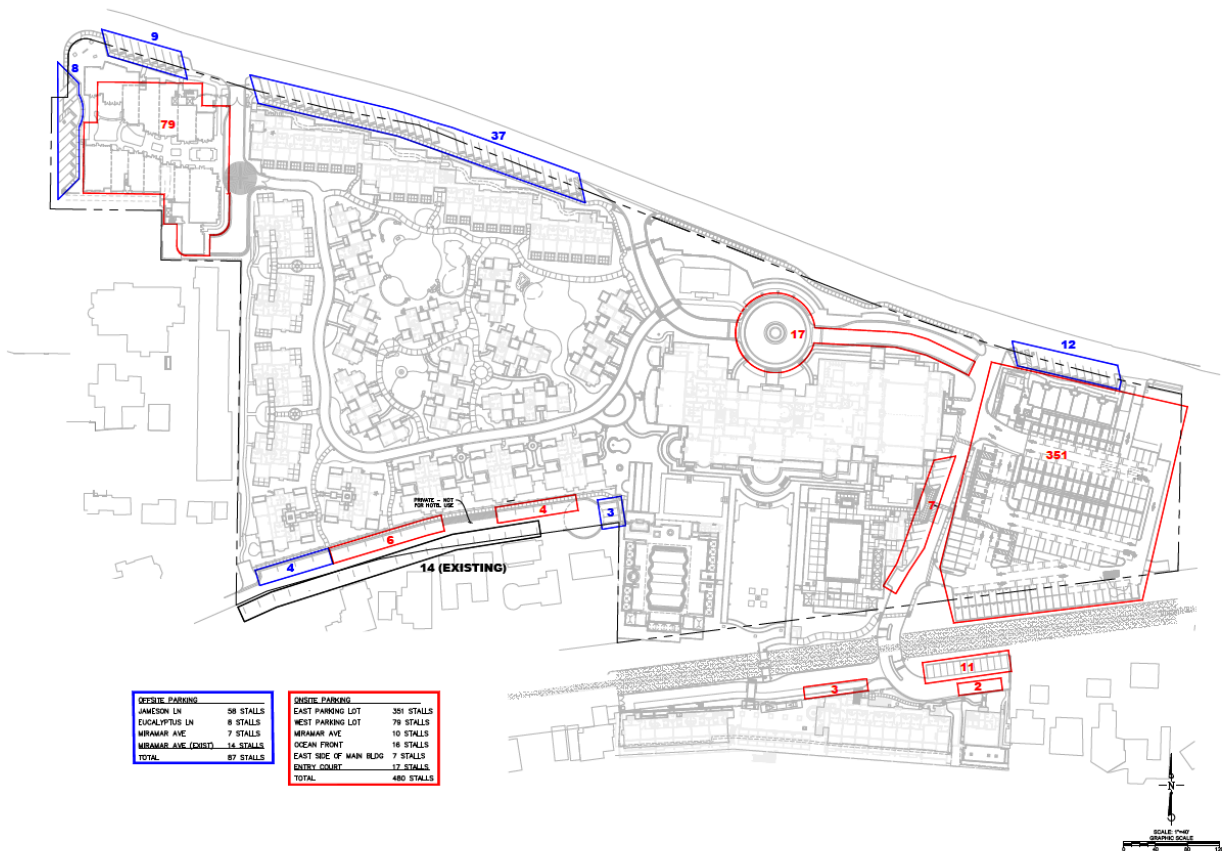
Amber Long, M.A., Founder
Owner | Principal Architectural Historian
Long Historic Preservation Services, LLC

MEMORANDUM

TO: PLANNING COMMISSION
FROM: CAILLIAN SHEEY, QUIQUE HERNANDEZ, MARC CHYTILO
SUBJECT: EVIDENCE OF PARKING SHORTFALLS AND MIRAMAR USE OF PUBLIC COASTAL ACCESS PARKING SPACES
DATE: 10/6/24

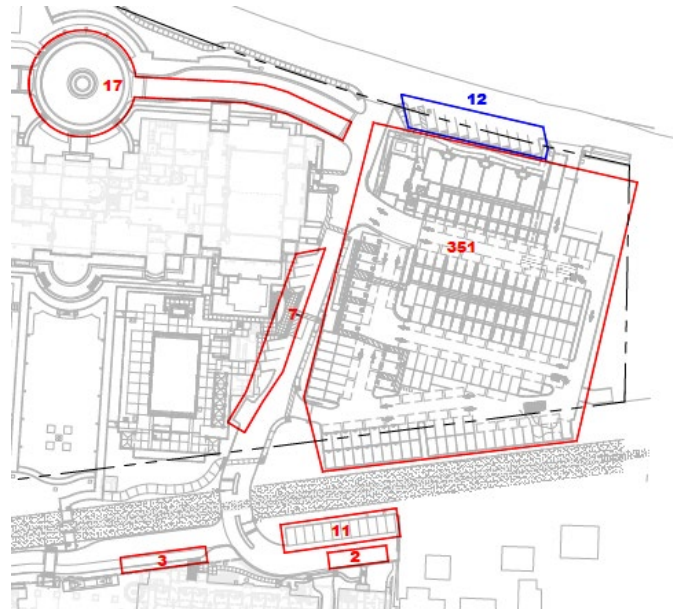
1. Published Aerial Map Views of Parking Conditions

As seen in the below parking plan, the Miramar Hotel commits to reserving 87 public parking stalls. These are outlined in blue (new) and black (existing). These stalls are reserved on the east and west sides of the hotel.

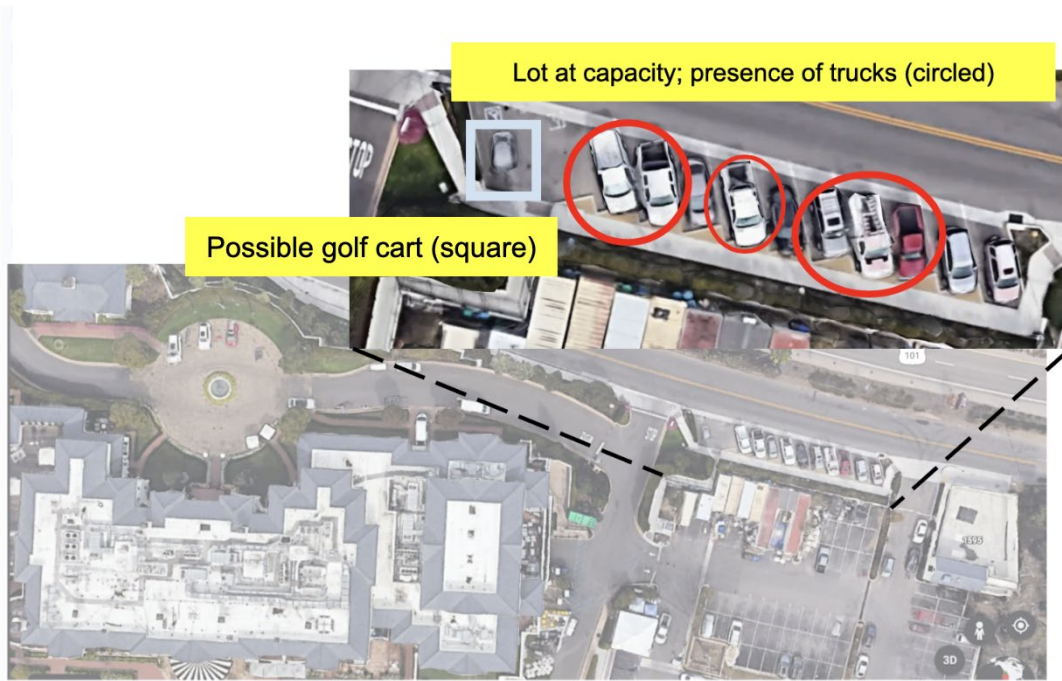


1. East Side of Miramar

The Miramar Hotel has reserved 12 parking spots on the east side of the hotel, along Jameson Lane. Below is the relevant portion (blue):



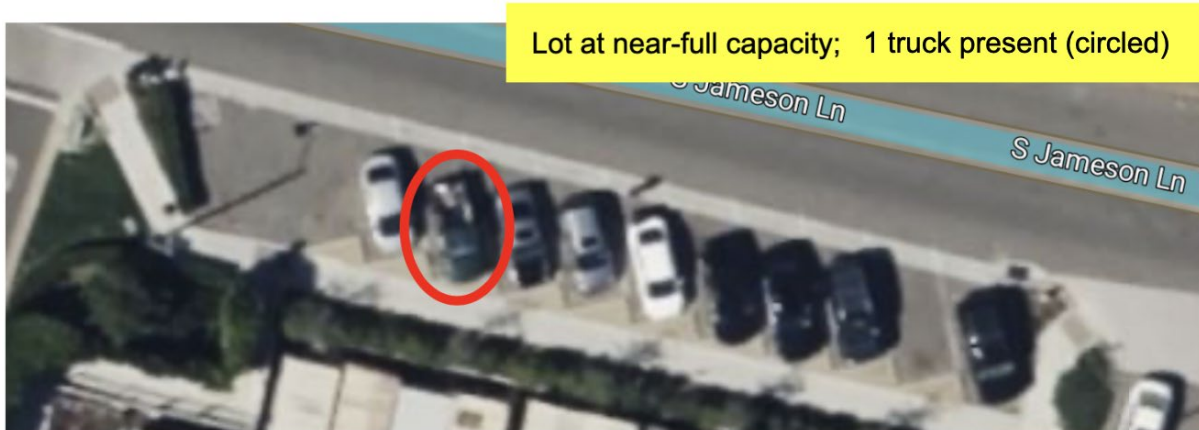
Below is a photo of the location zoomed in to the relevant lot. This photo comes from Google Earth, dated October 25, 2022:



Via Google Earth 10-25-2022

Note the presence of trucks in this image. This public access lot is at full capacity apart from handicapped spots. The trucks may be present for contractor work on the hotel grounds, and not actually beachgoer vehicles. A possible golf cart (or some other obstruction) also appears in one of the handicapped spots.

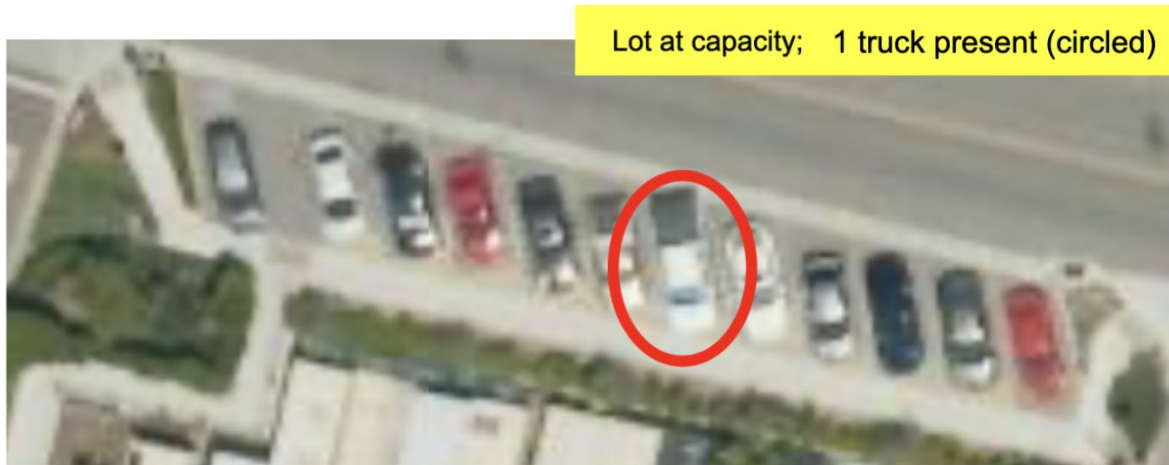
The same can be seen in the below Bing Maps photo of the lot from 2024:



Via Bing Maps 2024

The lot appears at near-full capacity (one spot open apart from handicapped spots on the left). A truck is also present. Again, this truck may be present for contractor work on the hotel grounds.

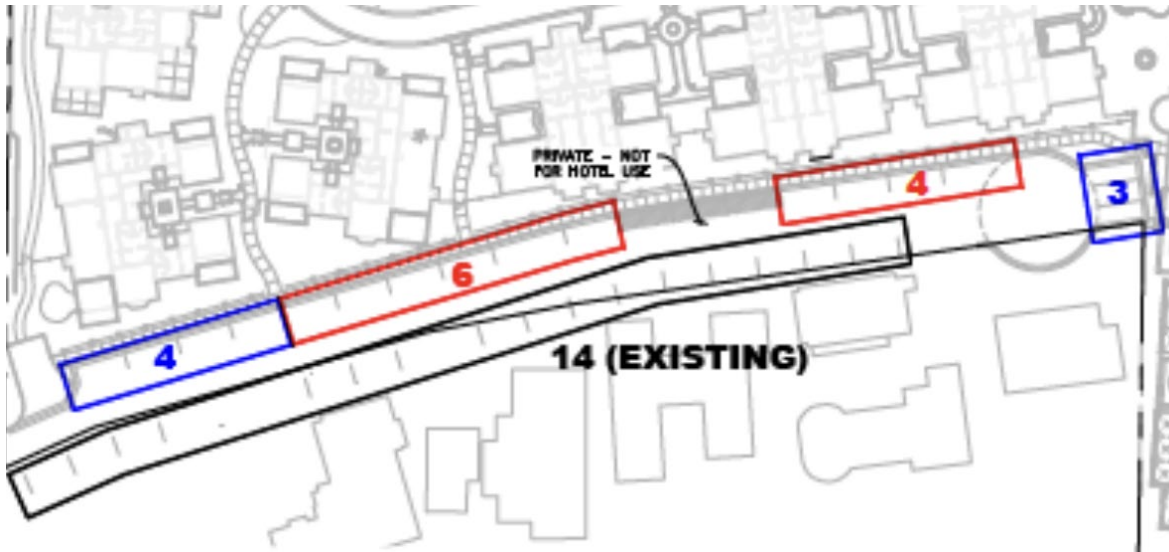
The below undated OnX photo likewise points to the same conclusion: this lot is typically at capacity, and unfortunately, some spots may be taken by workers, rather than members of the public.



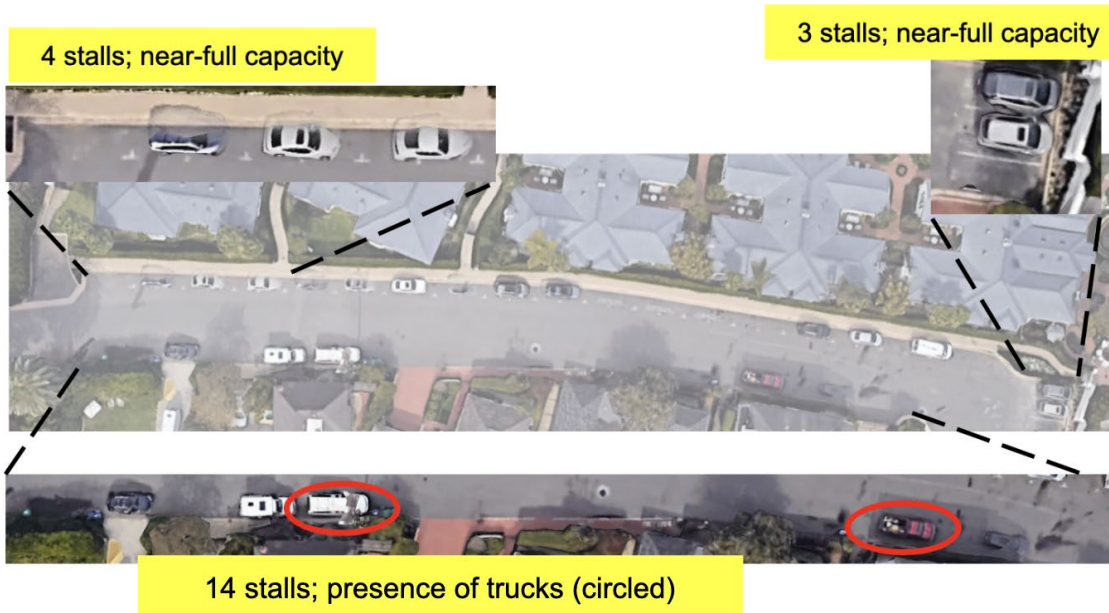
Via OnX (undated)

2. West Side of Miramar

Among other locations, the Miramar Hotel has reserved 7 new spots (blue) in addition to 14 existing spots (black) on the west side, along Miramar Avenue. Below is the relevant portion:



Below is a photo of the location zoomed in to the relevant lots. This photo comes from Google Earth, dated October 25, 2022:



Via Google Earth 10-25-2022

This set of lots along Miramar Avenue reflect the same parking pattern: trucks, and near-full capacity.

The public parking situation in the below 2024 Bing Maps photo appears somewhat improved. However, note the near-full capacity in the 3 stall area:



Via Bing Maps 2024

3 stalls; near-full capacity

As seen in the OnX undated photo below, trucks continue to be present in stalls designated for public parking:



Via OnX (undated)

14 stalls; presence of trucks (circled)

The Miramar Hotel has also reserved a 37-stall lot for public parking on the west side along Jameson Avenue. Below is the relevant portion (blue):



Below is a photo of the location. This photo comes from Google Earth, dated October 25, 2022:

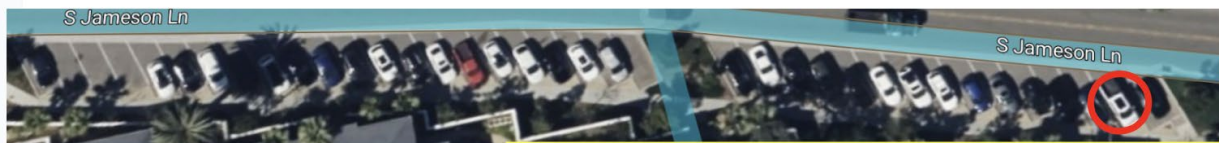


Via Google Earth 10-25-2022

Presence of trucks (circled)

Though the lot does not appear at full or near-full capacity, note the presence of trucks in these public stalls. These trucks notably appear to have work materials inside, and are likely to be intended for contract work on the grounds.

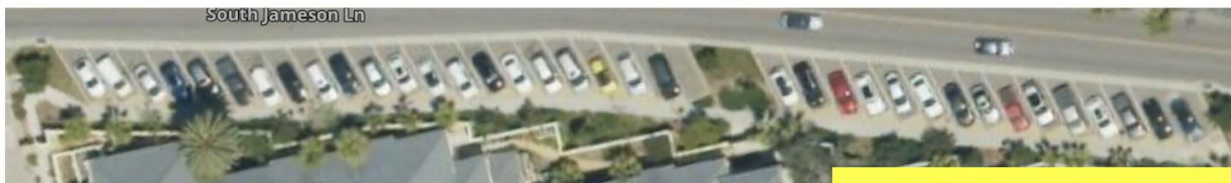
The below 2024 Bing Maps photo shows the lot at near-full capacity, with 1 truck present:



Via Bing Maps 2024

Lot at near-full capacity; 1 truck present (circled)

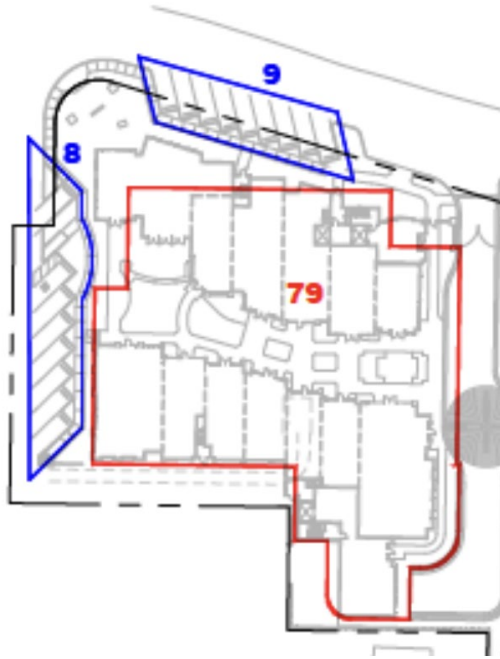
The below undated OnX photo also shows the lot at near-full capacity. If trucks are being parked by Miramar contractors in these public parking stalls, that is impeding beach access.



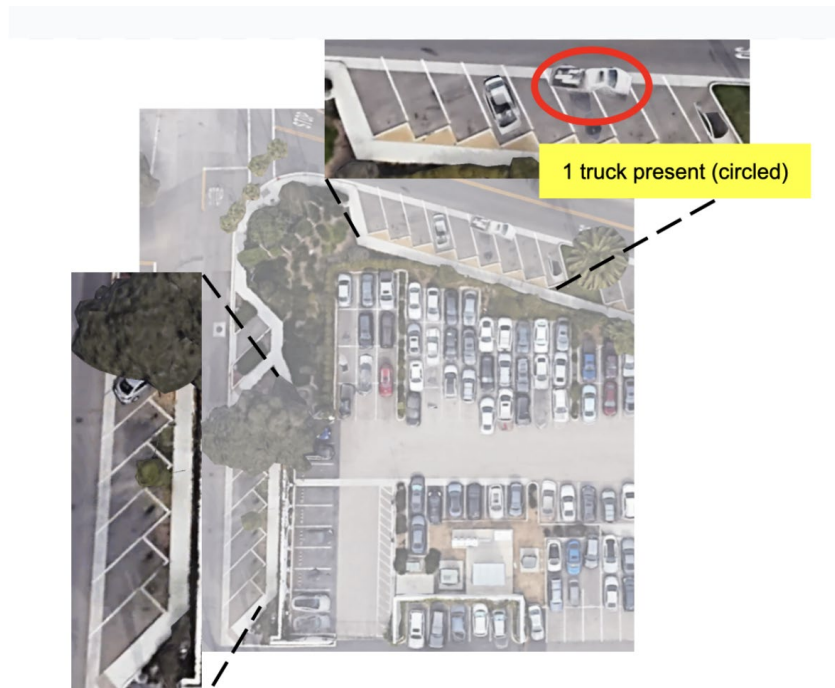
Via OnX (undated)

Lot at near-full capacity

Finally, the Miramar Hotel has reserved 9 more public parking spots on the west side of the hotel along Jameson Lane. It has also reserved 8 public parking spots along Eucalyptus Lane. Below is the relevant portion (blue):



Below is a photo of the location zoomed in to the relevant lots. This photo comes from Google Earth, dated October 25, 2022:



In this appears to

Via Google Earth 10-25-2022

photo, what be a

contractor truck is seen leaving the Jameson public parking lot. The lots are also seen in the Bing Maps 2024 photo below, though some of the spots along Eucalyptus Lane are obstructed by a tree:



The Jameson public parking lot appears at half-full capacity.

Both the Jameson and Eucalyptus Lane public parking lots are seen at near-full capacity in the undated OnX photo below (again, some stalls in the latter lot are obstructed by a tree):



Via OnX (undated)

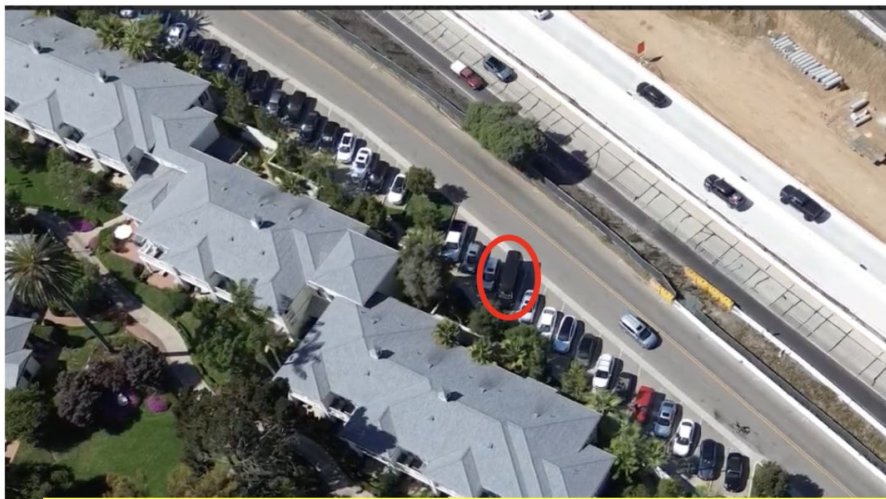
2. Drone Footage

The following are images of Miramar Parking conditions on Saturday August 31, 2024, Labor Day weekend. The following photos are stills from this footage:





Jameson Lane 12-stall lot: full capacity



Jameson Lane 37-stall lot: full capacity; 1 truck present (circled)

As seen from these photos, the Jameson Lane lots are at full capacity. A large black truck seen in the 37-stall lot is likely for transporting hotel guests.

3. Still Images of Cars with Miramar Decals in Public Coastal Access Parking Spaces



Car with Decal in Public Coastal Access Parking space, South Jamison, 8/7/24



Closeup of Car with Decal in Public Coastal Access Parking space, South Jamison, 8/7/24



Closeup of decaled car in Public Coastal Access Parking space on Miramar Avenue, 8/7/24

4. Other Evidence of Note



Vague Signage



Event Truck in Jamison Lane Pullout

5. Conclusion

The public parking lots closest to the Miramar Hotel's entrances (the 37-stall and 12-stall Jameson lots) consistently appeared near-full capacity. The Google Earth, Bing Maps, and OnX photos are likely to provide a solid understanding of real-world parking conditions; these companies' mapping data are often the most utilized. Still photos from the drone footage support the notion that the conditions seen in the map photos are typical. Overall, these photos highlight potential inappropriate uses of the public lots, specifically by contractors. In fact, a potential contractor truck was seen in nearly every lot. Additionally, the Google Earth photo of the 12-stall Jameson lot for the west side of the hotel showed what appeared to be a golf cart parked in a handicapped spot.

The developer contends that the Miramar Hotel has planned for adequate public parking. However, it proves clear that while models may indicate such, reality (as seen in the photos) can be very different. LOMC calls for a more detailed actual parking performance analysis that reflects real-world conditions, not just those supposed on paper.

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MEMORANDUM

TO: MARC CHYTILO
FROM: KATHERINE ANDERSON
SUBJECT: ALL SAINTS-BY-THE-SEA EPISCOPAL CHURCH HISTORIC VIEWSHED
DATE: 9-7-24

Historical Viewshed

The Architectural Resources Group (ARG)¹ report produced for the Project inadequately identifies or characterizes the Project's impacts to the cultural and historic landscape and viewscape of the All Saints-by-the-Sea Episcopal Church (All Saints).

The Post Hazeltine Phase 1-2 Cultural Resources Study (2015), developed for the earthquake retrofit of the stone masonry bell tower, identifies the years from 1900 to 1930 as the period of historic significance for the All Saints Church. Although a great deal of discussion of All Saints in the ARG report focuses on additions to the church and its grounds *after* the period of significance, it does not adequately evaluate the impacts from the portions of the building *during* that historic time period.

Both the Post-Hazeltine and subsequent ARG report fail to adequately identify aspect and location of the fenestration in their construction descriptions during the period of significance. All Saints was built and dedicated in the year 1900. From the few historic photographs available, it is clear the landscape and viewshed setting was largely devoid of built structures, affording its parishioners sweeping views of the Pacific Ocean and the Santa Ynez Mountains. Around the time of the church's construction its windows were filled with clear glass:

‘At first the church lacked stained glass windows; an early photograph of the interior shows “decorative greenery placed around the walls [which added] to the misleading impression of an outdoor place of worship” (McGee, 2000; 9).²

Further,

¹ Architectural Resources Group, June 10, 2024. Miramar Beach Resort and Bungalows, Affordable Employee Housing, Market Rage Housing and Resort-Visitor Serving Commercial Project, Historical Resources Technical Report

² Post-Hazeltine Associates, August 27, 2015. Phase 1-2 Cultural Resources Study, Historic Resources, for 83 Eucalyptus Lane (All Saints By-the-Sea Church), Montecito, California (APN 009-332-009)., p. 8

‘In 1913 leaded glass windows were installed for “all clerestory sash in old and new windows of church”...as well as re-shingle the church’s roof, dormers and robing robe (Order Sheets for the Office of E. Russel Ray, October 15, 27 and October 30, 1913).³’

A photographic postcard of the church from around the time of its construction presents a three-quarter view of the building from the northwest (Fig. 1.) Although the quality of the image reproduced in the Post-Hazeltine report is too poor to determine the type and placement of



Figure 1. Photographic postcard of All Saints By The Sea Episcopal Church about the time of its completion, showing the mountain-facing north side and its dormer. (Figure 2, Post-Hazeltine, 2015)

windows on the north side, it does clearly depict a shed-roof dormer, such as mentioned above. Dormers are built in sloping roofs to allow placement of vertical openings, such as doors and windows, while preventing roof leakage. As there is no deck railing surrounding the dormer, it can be assumed that the dormer’s perpendicular surface contains a window or windows. This dormer is very large, approximately one and a half times the width of the door opening in the bell tower, located on the northeast side of the chapel near the sanctuary.

Buildings Within The Historic Viewshed

Examination of the 1918 Sanborn Fire Insurance Map for Montecito revealed that during the period of 1900 to 1930, there were a few buildings located on properties to the north of All Saints. These buildings consisted of a one-story agricultural lath house and a pump house on the

³ Ibid.

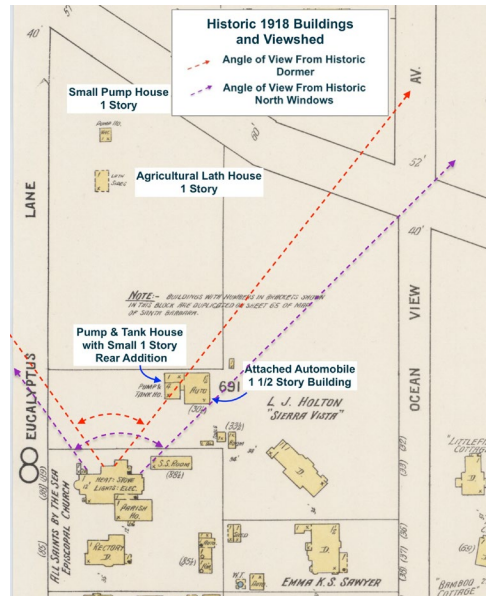
northernmost parcel and a collection of attached buildings consisting of a one story pump house, a tall, narrow tankhouse, and a one-and-a-half story structure for automobiles.



Figure 2. Typical one-and-a-half story building with dormer. Image from Housebuilding.pro



Figure 3. Typical Lath House. Image from www.carexdesign.com



Annotated 1918 Sanborn Fire Insurance Map

Figure 4.

A lath house is a plant protection structure, where strips of wood are closely spaced or latticed to provide shade, as seen in Fig 3. A one-and-a-half story building is not necessarily taller than a one-story building. A one-and-a-half story structure means that the attic portion is finished on the interior to create usable floor space and has gable windows or sometimes dormer windows added to the roof, as seen in Fig 3.

A tankhouse, in California, is a type of water tower in which the wooden water tank and its support structure frame is sided to enclose it (figs 4, 5, 6). Several such tankhouses still exist in Santa Barbara County: Mattei's Tavern, the town of Los Alamos and various older farms, ranches and wineries.

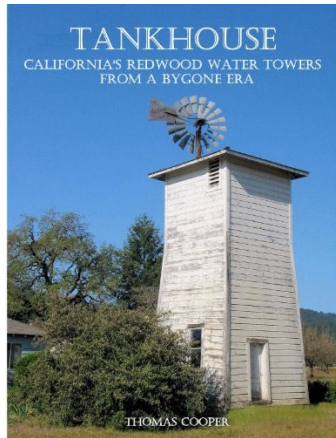


Figure 5. Front cover of a book on California tankhouses, depicting its typical appearance.

Figure 6. Open-sided tankhouse at Mattei's Tavern in Santa Ynez. Image from the-inn-at-matteis-tavern.com

Figure 7. Barovetto tankhouse, Davis, California

Despite their height, tankhouses tended to be slender square buildings, not bulky or massive structures. In a viewshed, these would create a transitory interruption to the eye, similar to a tree.

Changes Over Time

Only two aerial photos of the Miramar parcels that pertain to the period of historic significance are available, one in 1929 and one in 1938. Despite the poor quality, it is apparent that little change occurred between 1918 and 1938. The field to the north of All Saints remained an agricultural field, and no additional buildings are identified in All Saints's historic viewshed (figs 8 and 9). The Sanborn map and aerial images used by ARG to illustrate development of the Miramar cottages in the historic viewshed are from 1942, 1953 and 1972, respectively, well after the period of historic significance.

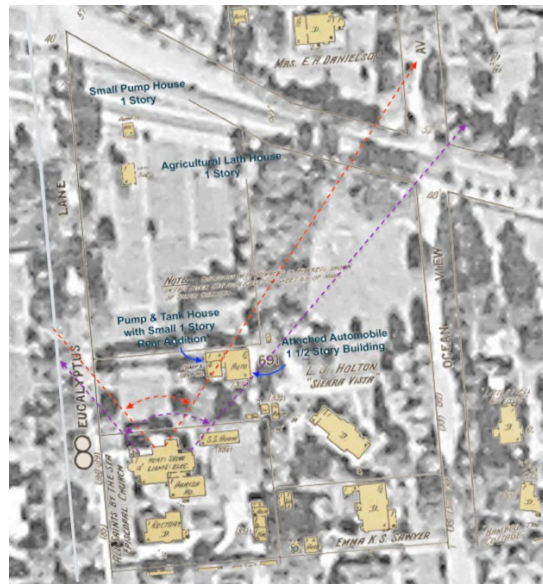
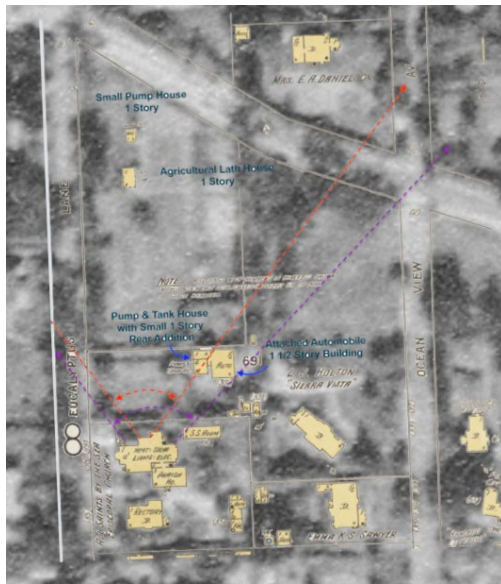


Figure 8. 1929 aerial photo, with buildings from the 1918 Sanborn map and viewshed superimposed.

Figure 9. 1938 aerial photo, depicting little change since 1918 and no additional development in the viewshed.

Project Impacts on the Historic Viewshed

The ARG report describes prior construction on the Project’s northwest lot as largely one-story buildings after the period of historic significance, yet states:

‘...at two stories in height, Buildings A and B would be compatible with the size and scale of buildings within the church property’s existing setting (and in keeping with other buildings in the surrounding area), as well as those that were previously and historically located on the Northwest Lot.’

It is difficult to imagine the small collection of modest, largely one-story historic buildings, one wooden tankhouse and the later 1940s one-story cottages as equivalent in size, mass, bulk, and scale of the proposed development, especially as the majority of two-story buildings referred to in this report are a) outside the viewshed area or b) built after the period of historic significance. Figures 10 and 11 illustrate the impact the Project would have on the historic viewshed of All Saints to the mountains, effectively blocking the entire viewshed both horizontally and vertically.

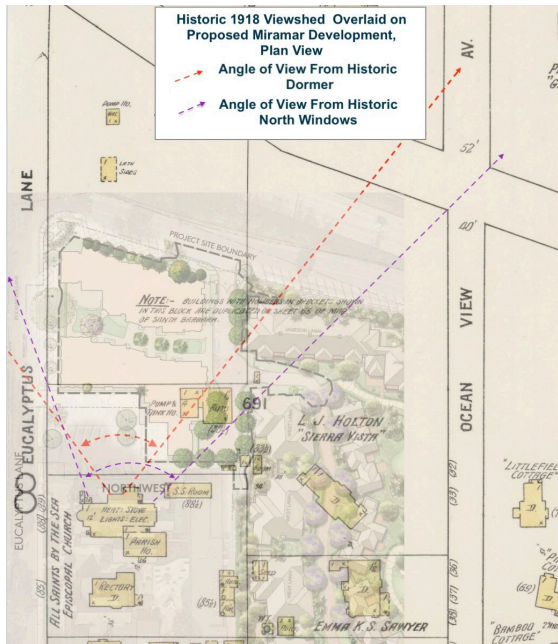


Figure 10. 1918-1938 historic structures superimposed on the proposed plans

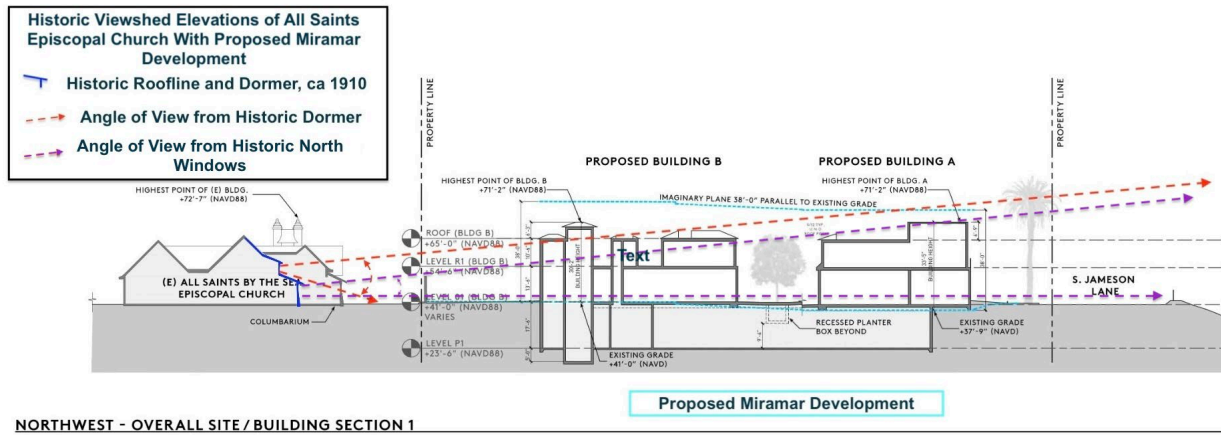


Figure 11. Illustrated historic viewshed superimposed on proposed Project elevations