

Miramar _transcript MPC meeting 10_08_08.txt

MIRAMAR BEACH RESORT AND BUNGALOWS PROJECT
MONTECITO PLANNING COMMISSION PUBLIC HEARING

WEDNESDAY, OCTOBER 8, 2008
123 EAST ANAPAMU STREET
SANTA BARBARA COUNTY ENGINEERING BUILDING
SANTA BARBARA, CALIFORNIA

FILE NO. 081008AW
REPORTED BY AMANDA R. WOLFENSTEIN, C.S.R. NO. 13129

- 1 MONTECITO PLANNING COMMISSION:
- 2 ROBERT BIERIG - CHAIRMAN
- 3 CLAIRE GOTTSANKER

4 JACK OVERALL
5 SUE BURROWS
6 MICHAEL PHILLIPS
7
8 SPEAKERS:
9 JESSICA OPLAND
10 DIANNE BLACK
11 JOHN BAKER
12 ERRIN BRIGGS
13 RICK CARUSO
14 DIANE GABRIEL
15 TOM FAYRAM
16 CRAIG STEWART
17 MARY ANNE SLUTZKY
18 MICHAEL GHIZZONI
19 FREDRICK WOOCHEER
20 GREG HUDLAND
21 JEAN HARFENIST
22 STEVEN ZOLDOS
23 ROSS CAMPBELL
24 MARILYN RAE
25 RON PULICE

2

1 SPEAKERS (CONTINUED):
2 BILL PALLADINI
3 CANDICE BUERGEY
4 VERNE LANGDON
5 TOM VERNON

6 MR. HAZARD
7 SCOTT SHELL
8 MICHAEL MC MANNIS
9 MATT MIDDLEBROOK
10 WILL ROBERTSON
11 DAVE WARD
12 ANN ALMY

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1 SANTA BARBARA, CALIFORNIA
2 WEDNESDAY, OCTOBER 8, 2008; 9:02 A.M.

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4 MR. BIERIG: I'd like to call us to order for
5 the October 8, 2008, meeting of the Montecito Planning
6 Commission.

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7 would you all rise for the Pledge of

8 Allegiance.

9 (Pledge of Allegiance.)

10 MR. BIERIG: Jessica, will you make the TV
11 coverage announcement and do role call, please.

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

13 Montecito Planning Commission hearings are
14 televised live on County of Santa Barbara Television,
15 CSBTV, Channel 20, at 9:00 A.M. in the South Coast,
16 Lompoc, Santa Ynez Valley, Santa Maria, and Orcutt
17 areas. Rebroadcast of Montecito Planning Commission
18 hearings are on Fridays at 5:00 o'clock P.M. on CSBTV,
19 Channel 20.

20 Role call: Commissioner Gottsdanker?

21 MS. GOTTSDANKER: Here.

22 MS. OPLAND: Commissioner Overall?

23 MR. OVERALL: Here.

24 MS. OPLAND: Commissioner Burrows?

25 MS. BURROWS: Here.

4

1 MS. OPLAND: Commissioner Phillips?

2 MR. PHILLIPS: Here.

3 MS. OPLAND: And Commissioner Bierig.

4 MR. BIERIG: Here.

5 MS. OPLAND: Thank you.

6 MR. BIERIG: Director Black, do you want to
7 handle the agenda status report and projection report?

8 MS. BLACK: Sure. Thank you, Mr. Chair.

9 Good morning, Commissioners. We have two
10 items on our agenda today, the Grassini single-family
11 dwelling addition and the Miramar Hotel.

12 And we do have a request again for a
13 continuance on the Grassini single-family dwelling
14 addition. My suggestion would be that we continue that
15 to December 17th, and if that's the desire of the
16 Commission, perhaps you'd want to do that early in your
17 agenda so that anyone that might be here would know.

18 MR. BIERIG: Yes. That is our first item, is
19 it not?

20 MS. BLACK: Yes.

21 MR. BIERIG: Okay.

22 MS. BLACK: And the Miramar Hotel is ready to
23 go. You have quite a bit of material for that item, and
24 I will try to help you through those items that were
25 already devoted to the record and go over the staff

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1 materials before we start the formal hearing on that
2 item.

3 Moving on to the projection report, we just
4 have a few more hearings this year. Your hearing in
5 November will be on November 19th. That's the next time
6 the Commission will be meeting, and you have about 4 «
7 hours worth of items so far on that item -- I mean on
8 that day.

9 December 3rd is the planning commission

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10 holiday lunch. I just wanted to remind the
11 Commissioners about that. You will be receiving more
12 information about the location and precise time. And
13 then the last hearing of the year for the Montecito
14 Planning Commission will be December 17th, and we were
15 just about to continue that one item to that day.

16 MR. BIERIG: And it looks like that's our
17 only item that's going to be --

18 MS. BLACK: So far, Mr. Chair, but there
19 might be other items that may come up as well.

20 I just wanted to spend a moment and talk
21 about potential hearing schedules for 2009 if the
22 Commission is willing to do that. We are looking at
23 potentially changing the Wednesday of the month that the
24 Montecito Planning Commission meets, which would provide
25 a little bit more even schedule with the County Planning

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1 Commission. Right now the County Planning Commission
2 typically meets the first and fourth Wednesdays of the
3 month in Santa Barbara, and the second Wednesday it
4 meets in Santa Maria.

5 We thought it might be smoother if the
6 Montecito Planning Commission were to meet the second
7 Wednesday of the month. That way the County Planning
8 Commission could meet the first and the third Wednesdays
9 of the month in Santa Barbara and the fourth in
10 Santa Maria. So I just wanted to check and see if any
11 of the Commissioners have any particular concerns with

12 switching the Wednesday of the month.

13 MR. BIERIG: Commissioner Overall.

14 MR. OVERALL: Ms. Black, the only comment I
15 would have is one of the, I think, valuable sources of
16 input over the years has been from the
17 Montecito Association, and unless they were to change
18 their Land Use Committee meeting and the traditional
19 board meeting, it gives them -- I think their board
20 meeting is the second Tuesday of the month, giving them
21 zero time to get voted material to us. Perhaps they can
22 change their schedule. I don't know, but it seems to me
23 that's a conflict.

24 MR. BIERIG: That's probably more
25 coordination.

7

1 MS. BLACK: We don't have to set it today. I
2 just wanted to explore that idea. Thank you for
3 feedback. That's helpful. That's all I have this
4 morning.

5 MR. BIERIG: Great. Okay. Thank you.
6 Director Baker, got any words of wisdom on
7 the board of supervisors?

8 MR. BAKER: Mr. Chairman, Members of the
9 Commission, no items from the Montecito area board of
10 supervisors. So that must mean you guys are doing a
11 swell job --

12 MR. BIERIG: That's good to hear.

13 MR. BAKER: -- as far as the cases coming

14 before you.

15 I'm going to use this time once again to
16 talk -- to announce for the general public -- I said it
17 last week -- last month, but I want to say again -- the
18 County technically completed the actions on internal,
19 and I think set a hearing for the 21st.

20 And assuming that action takes place by the
21 board, there will be a closure of our offices. The 19th
22 will be the last day, 19th of December, and we will be
23 closed essentially the 22nd through January 4th.

24 So people need to know. If they're items
25 that they need to be dealing with in terms of permitting

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1 for land use or if they're building -- and I think
2 that's one where I see maybe the crunch will come, the
3 building and safety area where people will be expecting
4 to do inspections during that two-week period, and we're
5 not going to be doing inspections during that two-week
6 period.

7 I also want to emphasize that the surveyor's
8 office is going to be closed at the same time. So
9 people that need to have documents completed for
10 recording purposes before the end of the year -- they
11 need to plan to get stuff in.

12 My advice would be get it in to that
13 surveyor's office before the first of December because
14 it takes some time for things to clear out of the

15 surveyor's office. So I just, again, wanted to let
16 people know that we will not be here for a two-week
17 period of time.

18 MR. BIERIG: Director Baker, does that cover
19 all the county administrative employees? How broad is
20 that?

21 MR. BAKER: The answer is it covers all --
22 there will be some offices -- for example, the
23 assessor's office by law has to have some openings. So
24 they will be here.

25 So for example, if you have survey documents

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1 complete for the 19th, the surveyor's will be here to do
2 that recording. I mean the assessor's office will be
3 here to do that recording.

4 Of course, the police, the sheriff, fire --
5 those folks will all be here. There will be -- I can't
6 tell you right now. Mental health -- maybe there's a
7 chance they're -- I don't know exactly what they're
8 going to be doing. It's still not finalized, but for
9 the most part, the administrative offices of the County
10 will be closed.

11 MR. BIERIG: Okay. Thank you.

12 The next item on our agenda is time for
13 public comment. If there's anyone that wishes to
14 address us today on an item that is not one of our two
15 agenda items, now will be the time to do so.

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16 Not seeing anyone, we'll close the time for
17 public comment, and we'll move onto the planning
18 commissioners' informational reports.
19 Anybody want to weigh in on anything in
20 particular in the last 30 days in terms of briefing us
21 on anything that's transpired outside?
22 Not seeing anything, we will move onto the
23 planning and development divisional briefing, the next
24 item on our agenda.
25 MS. BLACK: Mr. Chair, we don't have anything

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1 this morning.
2 MR. BIERIG: Good. So moving right along,
3 we're on to the minutes of the meeting of
4 September 17th. I will be abstaining from this item
5 since I was not in attendance for that meeting.
6 MR. PHILLIPS: Mr. Chair, I could move to
7 adopt and approve.
8 MR. BIERIG: We have a motion and a second to
9 approve the minutes of the meeting of September 17th
10 without modification. I'll be abstaining from that
11 vote.
12 All in favor say "Ay"; opposed "no."
13 MS. GOTTSANKER: Ay.
14 MR. OVERALL: Ay.
15 MS. BURROWS: Ay.
16 MR. PHILLIPS: Ay.
17 MS. GOTTSANKER: For the record, it should

18 be noted that I did step down on Item 1. I was present
19 for the other items. So I can approve the other items
20 but not for Item 1.

21 MR. BIERIG: So noted. Thank you.

22 So that will take us to our standard agenda,
23 and the first item we're going to see here is the
24 Grassini single-family addition. I assume you're going
25 to move this thing forward to December. We should read

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1 this one into the record, I believe. Isn't that the
2 procedure?

3 Jessica.

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

5 The following is the hearing on the request
6 of Ken Mineau, agent for the owner, to consider
7 Case No. 07CDH-15, application filed May 8, 2007, and to
8 accept the exemption pursuant to Section 15301(e) of the
9 State Guidelines for Implementation of the California
10 Environmental Quality Act.

11 MS. GOTTSANKER: Mr. Chair, is that a
12 motion -- that's not a motion for continuance? Oh, it
13 is?

14 MR. BIERIG: Yes. It would be a motion for
15 continuance.

16 Would any of the Commissioners like the
17 presentation on this? We've seen this item before.
18 We've continued it once. I suggest we continue it

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19 forward to the December meeting as Director Black --
20 MS. GOTTSANKER: So moved.
21 MS. BURROWS: Second.
22 MR. BIERIG: Moved and second to move this
23 item to the meeting of December 17th. All in favor say
24 "ay"; opposed "no."
25 MS. GOTTSANKER: Ay.

12

1 MR. OVERALL: Ay.
2 MS. BURROWS: Ay.
3 MR. PHILLIPS: Ay.
4 MR. BIERIG: Ay. Passes unanimously, which
5 takes us quickly into our main item of the day, which is
6 going to be the Miramar Hotel.
7 Jessica, would you mind reading this item
8 into the record for us, please.
9 MS. OPLAND: Thank you, Mr. Chair.
10 The following is the hearing on the request
11 of Caruso BSC Miramar LLC, owner, to consider the
12 approval of the following: A, 07RVP-9, application
13 filed June 7, 2007;
14 B, modification to the height, parking, and
15 setback ordinance requirements of Article II, Coastal
16 Zoning Ordinance, including development standards in the
17 Montecito Community Plan Overlay District;
18 C, 07CUP-45, application filed on June 7,
19 2007;
20 D, 07CUP-46, application filed on June 7,

21 2007;

22 E, 07CUP-47, application filed on June 7,

23 2007;

24 F, 08CUP-5, application filed on December 13,

25 2007;

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1 G, 08GOV-17, application filed on June 25,

2 2008;

3 H, 08CDP-54, application filed on May 1st,

4 2008;

5 And to certify the Subsequent Environmental
6 Impact Report, 08EIR-3, including an Addendum to
7 Negative Declaration, 00-ND-003, pursuant to the State
8 Guidelines for Implementation of the California
9 Environmental Quality Act.

10 MR. BIERIG: Thank you very much.

11 Director Black, are you going to start out?

12 MS. BLACK: Mr. Chair, before we really get
13 into the substance of the agenda today, I just wanted to
14 recap where we've been. This is our fourth hearing on
15 the Miramar Beach Resort and Bungalows Project. You've
16 received a substantial amount of material before today
17 on the project.

18 Our purpose today is to follow up from the
19 last hearing when the Commission indicated that you
20 wanted us to prepare findings and conditions to support
21 approval of the project. We've done that, and those

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22 documents are contained in three separate memorandums
23 you got from our Staff before you today. They're all
24 dated October 8th.

25 The first is a fairly thick memorandum that

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1 you received two weeks ago from the Staff. The second
2 is a document that's entitled "RE Miramar Beach Resort
3 and Bungalows Errata Sheet in Response to Comments."

4 And then the third is just a couple page
5 memorandum. That's Miramar Beach Resort and Bungalows
6 Errata Sheet No. 2. That's what you should have in
7 front of you. The second one I think was just before
8 you this morning.

9 MR. BIERIG: Was the Errata Sheet 2 -- is
10 that the one we just received today? That wasn't
11 e-mailed to us; right?

12 MS. BLACK: No, it was not e-mailed to you.
13 They're just very minor corrections that have come to
14 our attention in a variety of the documents, and Errin
15 will be going over those.

16 Then in terms of information that you've
17 received from the public, we've received quite a few
18 different correspondences on behalf of the Applicant
19 that were all received in a timely manner. We received
20 a letter from the Montecito Association, which was
21 received timely, and received quite a few e-mail
22 correspondences as well.

23 The items that I'll need you to consider

24 voting into the record include the Hansen Association
25 traffic and transportation engineering report dated

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1 October 6th, and that was written to Mr. Pulice, and
2 it's from Gary Hansen.

3 The second one is another document that was
4 written to Mr. Ron Pulice, dated October 7th, from
5 Case Advanced Water Engineering Company.

6 The third is the Coast Law Group letter dated
7 October 7th, and we just received that last evening. So
8 I think that was waiting for you today, and I don't
9 believe you've seen that. That document was not
10 e-mailed to you.

11 And then the fourth was a letter we just
12 received this morning from Strumwasser & Woocher dated
13 October 8th, and it's seven pages long plus attachments.

14 So those are the documents that you did not
15 receive in a timely fashion, and you would have to vote
16 into the record if you wanted them to be in the record
17 and wanted them to be considered in your action.

18 MR. BIERIG: I thought we had received...

19 MS. BLACK: You did receive another Heal the
20 Ocean letter on October 2nd. So there are two letters.
21 The October 2nd letter was timely received.

22 MR. BIERIG: Okay. That was the one that I
23 was thinking of. So that one came in on time.

24 MS. BLACK: Jack, can you put your mike on

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25 and pull it towards you.

16

1 MR. OVERALL: Is it coming through now? I
2 don't seem to have a copy of the Coast Law Group letter.

3 MR. BIERIG: I believe they were on our desks
4 this morning although we had a big pile. It could be in
5 the one that's clipped.

6 MS. OPLAND: The packet with the
7 Penfield & Smith e-mailed letter -- they should be in
8 that packet. They're paperclipped together.

9 MR. BIERIG: Should we do this now if we're
10 going to?

11 MS. BLACK: It's up to you, Mr. Chair. If
12 you want to wait and see how the hearing progresses and
13 give you an opportunity to review these letters --

14 MR. BIERIG: I'm thinking by the end of the
15 day we'll have an opportunity to look at these.

16 MS. BLACK: I just wanted to point them out
17 and make the Commission aware I have not had the
18 opportunity to look at these letters.

19 MR. BIERIG: I think we'll hold off and make
20 sure we get through them before we vote them into the
21 record.

22 MS. BLACK: And then there's one more item
23 before Errin provides you with the Staff presentation.
24 We do have some time constraints with Staff people and
25 other agents I think you'll want to hear from today.

1 Diane Gabriel will be here between the hours of 9:30 to
2 10:30.

3 And I believe Tom Fayram is also available to
4 your Commission this morning but would appreciate trying
5 to get out of here. He actually changed a flight so he
6 could come and spend time with you this morning in case
7 you have questions of him as well. So we're going to go
8 through the Staff presentation fairly quickly.

9 MR. BIERIG: That would be my suggestion is
10 we try to get to them immediately if we can because I
11 don't think there's any problem in handling the issues
12 in any particular order today.

13 Mr. Briggs.

14 MR. BRIGGS: Mr. Chair, Members of the
15 Commission, as Mrs. Black has stated, this is our fourth
16 hearing for the Miramar Beach Resort and Bungalows
17 Project.

18 On August 28th the Montecito Planning
19 Commission reviewed numerous changes made by the
20 Applicant intended to address the Commission's previous
21 concerns. The Commission then provided the following
22 direction:

23 To not require an SEIR on the issue of water
24 supply due to the new information;

25 To include all parcels in the development

1 plan including all portions of Lot 6 and 11 for purposes
2 of calculating FAR;

3 And to conceptually approve the August 28,
4 2008, revised project with direction to Staff to confirm
5 design changes, incorporate appropriate condition
6 changes, revise the findings, and revise the
7 environmental documentation.

8 First, let's walk through the project changes
9 starting here with the main building (indicating). The
10 overall height has been reduced by four feet. I tried
11 to make this as clear as possible. And starting down at
12 the base of Parking Level 2, ten inches have been taken
13 out of Parking Level 2. Eight inches have been taken
14 out of Parking Level 1, another six taken out of the
15 first floor lobby level, 1 foot taken out of the second
16 floor restaurant level, and then another foot taken out
17 of the mechanical well on the roof.

18 So when you're standing on Jameson looking at
19 the structure, it does comply with 38-foot-height limit
20 as seen from the height at Jameson Lane. The one-story
21 portions of the structure appear to be 1 « feet lower,
22 and the two-story portions appear to be 4 feet lower.

23 With respect to Building 44, Building No. 44
24 along South Jameson Lane has been pushed back
25 approximately 8 feet to the south to relocate the

1 structure outside of the setback. So here you can see
2 the yellow line is the 50-foot setback (indicating), and
3 you can see that the blue line is the footprint of the
4 structure, and the structure is now observing the
5 setback.

6 Additionally a 7-foot-wide sidewalk and a
7 7-foot-wide landscaping area has been added outside of
8 the sound wall along South Jameson Lane in the area of
9 the public parking stalls, and that sidewalk there is
10 highlighted in red.

11 And to make this a little more clear, we can
12 look at this from a section view, and what you see here
13 is Jameson Lane parking, the curb at Jameson Lane. And
14 originally the sound wall had been about 6 or 7 feet
15 from the curb, not allowing any room for a sidewalk.

16 So in order to address the Commission's
17 concerns, the Applicant moved the building and the sound
18 wall back about 8 feet to provide enough room for the
19 sidewalk and also a landscape planting area in front
20 here (indicating).

21 The ballroom building has been adjusted so
22 it's located outside of the setback along Jameson Lane
23 first by removal of an exterior covered walkway and also
24 reconfiguration of the interior spaces. And you can see
25 the setback line here in red, the building footprint

1 again in blue (indicating). And originally this
2 building had kind of gone in a straight line this way
3 (indicating) and had violated the setback by probably 10
4 to 15 feet here.

5 And they've adjusted the footprint of the
6 structure to step along with the setback line,
7 reconfigured some of the interior spaces to account for
8 that loss of area, and also the employee units located
9 on the second floor have, likewise, been adjusted to
10 observe the same setback.

11 The setback along the western property line
12 near All Saints by the Sea has been increased from 8 to
13 15 feet as shown here (indicating). The property line
14 is this black-and-white dashed line and then the 15-foot
15 setback.

16 Additionally, the previously proposed
17 Building 43 which was one building and two stories in
18 height has now been broken into two buildings which are
19 one story in height and also containing 6 or fewer --
20 well, I shouldn't say that. But that building has been
21 broken into two and brought down to one story in height,
22 and additionally the tennis court lighting has been
23 removed from the project description.

24 During previous hearings, the Commission
25 expressed interest in being able to modify the number of

21

1 hotel events per day on average. Two strategies were
2 contemplated: Start the events per day at 4.7, similar

3 to the Schrage plan and then lower the events per day
4 if the intensity of use would adversely impact the
5 surrounding neighborhood;

6 Or secondly, start the events per day at a
7 lower level and raise them to 4.7 on average if the
8 hotel is determined to be operating adequately.

9 And at that point during the conversation,
10 County Counsel had opined that granting the events per
11 day on average at 4.7 to start and then decreasing it
12 would be less than advisable.

13 And so to address the concerns of the
14 Commission, we pretty much have two options: No. 1,
15 permit the project with 4.7 a day on average and rely on
16 the other Conditions of Approval to mitigate circulation
17 and parking concerns;

18 Or secondly, you could require a change to
19 the project description to start the project at 2.5, or
20 a similar number determined by the Commission, events
21 per day and increased to a maximum of 4.7 on average
22 after one year if the hotel is determined to be
23 operating adequately.

24 We did revise a few of the conditions at the
25 direction of the Commission. And just to run through

22

1 quickly the more salient conditions, No. 52 was revised
2 to prevent employee parking in public spaces, requiring
3 parking decals on all employee cars. And we also

4 require a monitoring program that would be reviewed
5 annually by the MPC.

6 Condition No. 55 would require a final
7 parking plan with monitoring reports for special events
8 and also would contain annual commission review.

9 Condition No. 66 includes phasing of the
10 Beach and Tennis Club, starting membership off at 200
11 and phasing them up to 300 with a Commission annual
12 review.

13 No. 74 addresses Commission concerns relating
14 to the alteration of buildings, and this requires any
15 alterations resulting in an additional 1,000 square feet
16 or 10 percent of building size reviewed by the
17 Commission.

18 we also added some new conditions at the
19 direction of the Commission. No. 4 establishes a
20 monitoring report for special events. Those reports
21 would also be presented annually.

22 No. 85 was the so-called "Santa Claus
23 Condition" which requires the developer to make
24 available for 90 days any structures for removal and
25 relocation by any individual or organization.

23

1 No. 86 would require the developer to
2 relocate laundry operations off site in the event that a
3 water shortage emergency is declared by the
4 Montecito Water District.

5 And finally No. 87 requires that the MBAR

6 ensure the project architecture is consistent with the
7 condition's definition "cottage-style hotel."

8 So in summary your complete docket package
9 includes the revised findings for approval, the revised
10 addendum, the updated project description, and the
11 revised and new conditions.

12 And then after the original Staff Report was
13 submitted, of course, we had some changes that were
14 pointed out to us, and you have two errata sheets that
15 show technical changes to the conditions and findings in
16 the addendum.

17 And very quickly a couple points of
18 clarification, the dates in the Coastal Development
19 Program that were attached to the Staff Report had the
20 old dates in there, and I just wanted to mention that
21 the CDP, once it's approved, will reflect the final
22 decisionmaker action dates. And Errata Memo No. 2 that
23 you received this morning was provided to further
24 clarify the findings and addendum mainly with respect to
25 the conditions.

24

1 Staff's recommendation -- adopt the revised
2 findings for the project including findings for
3 modifications to the ordinance standards for setback
4 heights and parking specified in Attachment A of the
5 Staff Report including CEQA findings;

6 Certify the Subsequent EIR, 08EIR No. 3, and

7 approve the revised addendum contained in Attachment B
8 and adopt the mitigation monitoring program contained in
9 the Conditions of Approval;

10 Approve the revised project subject to the
11 revised conditions included in Attachment C;

12 And finally determine that the vacation of
13 the portion of Miramar Avenue is consistent with the
14 community plan.

15 And that concludes Staff's presentation.

16 MR. BIERIG: Thank you, Mr. Briggs.

17 Commissioners, do you have questions of the
18 Staff regarding the material that's been presented to us
19 so far or the documents we've received?

20 Commissioner Phillips.

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

22 Mr. Briggs, could you review with us -- and
23 we have the benefit of Counsel present -- the analysis
24 that results in that it is less than advisable to
25 increase usage later. Is it that you fear we have no

25

1 jurisdiction later or we have no authority later?

2 MS. BLACK: Mr. Chair, here's what I'm going
3 to ask the Commission to do. As I indicated before, we
4 have some staff that are limited in their ability to
5 attend the hearing today, and we can address these
6 issues later.

7 Maybe what we want to do is move to the
8 Applicant's presentation and then focus on the

9 sanitation and flooding issues first and then come back
10 to this issue. I think it's an important issue.

11 MR. BIERIG: It is. It's one we'll get into.

12 MS. BLACK: We're here all day.

13 MR. BIERIG: I do have two questions that are
14 just sort of technical in nature as it relates to the
15 plans themselves, a couple things I noted on the plans.

16 The plan sheet shows the spa building is
17 still a two-story building. This is the second sheet.
18 I just want to note that -- it's on the plans as a
19 two-story building just as a line on it. That's one
20 that needs -- I just want to point out that's an error
21 in the plan.

22 And the other thing I noted was sheet 6.02,
23 and if you could pull that one up, I think that's also
24 one -- I know I may look at these plans more than
25 everybody else, but I can't help myself. I'm not saying

26

1 more than -- because I know we each have our particular
2 things we're interested in, but I do want to point out
3 that the setbacks on this plan are not correct.

4 The other end. Is it 6.02? I'm looking for
5 the cut section on the main building.

6 Ah, there we are. That was it right there if
7 you want to pull back. I believe we're looking at the
8 main building here. And I'll just note that the dashed
9 line showing the 20- and 50-foot setbacks are not

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10 correctly located on this plan, and those lines run
11 through the building. They're not outside the building
12 line.

13 So I just want to note those two items
14 because we'll probably want to talk about this setback
15 issue at some point as well.

16 So with those two things -- sure, please.

17 MS. GOTTSDANKER: Mr. Chair, I'm not quite
18 sure whether this is -- I mean there's a number of
19 discrepancies between the plans and what the documents
20 say. I don't know whether -- do you want to go through
21 all of those now, or do we want to wait and kind of
22 bring them up as we go along inside the areas?

23 I mean I'm just looking at the procedures and
24 the time and who's here and like that because I mean,
25 you know, I've got red marks all over the place.

27

1 MS. BLACK: Mr. Chair and
2 Commissioner Gottsdanker, my suggestion is we hold that,
3 hear from the Applicant, get on to the flood control --

4 MR. BIERIG: You really want to get into the
5 flood control issue? Is that the one that's most time
6 constrained?

7 MS. BLACK: Both of them, flood control and
8 the Montecito Sanitary District.

9 MR. BIERIG: why don't we proceed forward
10 then, and then we'll come back to some of these more
11 technical issues on the plan later.

12 MS. BLACK: That sounds fine.
13 MR. BIERIG: So now would be the time when
14 the Applicant can make whatever presentation you want
15 to.
16 Mr. Caruso.
17 MR. CARUSO: Good morning.
18 MR. BIERIG: Are you our presenter again
19 today?
20 MR. CARUSO: I'm as good as you're going to
21 get. I'm sorry.
22 MR. BIERIG: That will work just great.
23 MR. CARUSO: They're trying to find a new
24 CEO, but the search is taking longer than expected.
25 MR. BIERIG: Well, I'm sure you'll fill in

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1 just fine.
2 MR. CARUSO: Good morning, Mr. Chair, Members
3 of the Commission. Thank you for your time again today.
4 My comments will be brief, and we're happy to answer any
5 questions that you would like us to answer.
6 what you have before you today are our
7 revised plans that reflect the changes that we discussed
8 at our last meeting and which you conceptually approved.
9 we have also reviewed the Staff Report and all attached
10 documents, and we would like again to thank the Staff
11 for all of their hard work that they have put into this
12 project and the amount of time they have put into this

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13 project.

14 We accept all the conditions on the project
15 save two which we would like to discuss briefly and
16 hopefully resolve.

17 First, there is a definition of "cottage
18 style" that was presented at the last meeting that the
19 Commission had expressed support for, and that language
20 was then inserted in a number of places throughout the
21 document.

22 while we understand the goal and intent of
23 the language, the language is extremely limiting in our
24 opinion and would constrain design options more than we
25 think was intended. The current definition only

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1 included one option of siding material and on option for
2 window layout and mandates small porches with columns.

3 while these ultimately could be the design
4 choices, to limit our ability, your ability, and the
5 ability of MBAR to weigh in on different options is not
6 what I believe was intended.

7 The proposed definition also refers only to
8 the buildings and does not discuss any desired
9 attributes of the site, which we believe is also
10 important.

11 Since our last meeting, we have discussed
12 with Commissioner Gottsdanker some revised language
13 which we believe was the intent of the original language
14 while providing enough flexibility to actually achieve

15 all of our design goals and give you and MBAR the
16 ability to weigh different design options.

17 we found language which is before you that
18 was mutually acceptable to us and the Commissioner, and
19 we hope that you would adopt this as a revised
20 definition and substitute it throughout the documents
21 where the other definition appeared.

22 Secondly, I want to discuss the options
23 presented to you to either allow us to have 4.7 events
24 per day average or reduce that 2.5 events per day, a
25 nearly 50 percent cut. We request that you allow us to

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1 begin operating the hotel at full capacity and not
2 impose a reduction. We believe that the intent of
3 considering this option is to manage any potential
4 impact on traffic, and I believe there are already more
5 than sufficient safeguards in the plan.

6 Let me discuss what those are. The plan has
7 some 135 more parking spaces more than the Schragger plan
8 while having 21 fewer guest rooms, the same restaurant
9 and ballroom capacity. And as you are aware, Schragger
10 was granted the 4.7 events per day average.

11 You're already intending, pursuant to
12 proposed Condition of Approval 66, to reduce the number
13 of beach club members from 300 to 200, despite the fact
14 that there's more than sufficient parking.

15 I have already stated my agreement to this

16 change. Beach club membership will not increase until
17 the sufficiency of this excess parking is established in
18 practice and found to be acceptable to this Commission.
19 If you identify problems based upon these reports, you
20 can adjust accordingly.

21 There are very clear limits in the proposed
22 approvals with respect to the number of people that can
23 attend an event at any given time, and pursuant to
24 Condition of Approval No. 84, you will receive detailed
25 reporting on the number of events and how many people

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1 attend the event.

2 And Condition of Approval No. 55 requires
3 very detailed reports on the project's parking that will
4 allow you to review our parking situation after 12
5 months and then make changes, if necessary.

6 As I said at our last meeting, the interests
7 of the community and our business interests with respect
8 to the hotel's parking are one and the same. It is
9 critical for us that our parking is adequate, more than
10 adequate. We are going to great expense to build more
11 parking than we need in order to ensure that our
12 property runs smoothly and does not impact our
13 neighbors.

14 At the same time it is important for us to be
15 able get the hotel operations up and running at full
16 strength early on so we can get the hotel operating as
17 it should. Proposing to scale back the events by

18 50 percent is not necessary and, we believe, could be
19 harmful to the hotel.

20 To reiterate we have reduced the rooms. We
21 have sufficient parking. We have scaled back the
22 opening number of beach club memberships. We have a
23 built-in number of mechanisms to oversee our operation,
24 and I hope you will find that sufficient and let us get
25 the hotel up and running at full tilt.

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1 I would also like to point out that in
2 today's economic times, which are, at least,
3 challenging, we would like the opportunity -- and
4 frankly, we need the opportunity -- to be able to start
5 this hotel with a full compliment of services.

6 And also I would tell you that we're not
7 going to know if there is going to be a problem with the
8 operation unless we operate at full capacity or full
9 opportunity, and it will be at that time that we will
10 know what the problems are and be able to figure out the
11 solutions.

12 Other than those two issues, we believe that
13 everything else has been covered sufficiently either in
14 the documents or at the prior meetings, and we would
15 like to let you get to your deliberations as quickly as
16 possible, and I thank you for your time.

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

18 Any questions of Mr. Caruso before we

19 proceed?

20 MR. PHILLIPS: Mr. Chair, I have just one
21 question.

22 Sorry. Go ahead.

23 MS. GOTTSDANKER: Well, I just wanted to
24 point out, given it just has come up in public
25 testimony, that we have not done ex parte. I would like

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1 to get that covered given that we're now referring to ex
2 parte communications that took place.

3 MR. BIERIG: Commissioner Gottsdanker,
4 please.

5 MS. GOTTSDANKER: Okay. So as Mr. Caruso has
6 referred to, there was some work done between myself and
7 Caruso Affiliates through a number of string e-mails
8 between Mr. Middlebrook and myself. Those string of
9 e-mails was submitted at the completion to Staff so that
10 they could be aware of what -- how that came about.

11 And during that process I did have
12 conversations with Tony Span, chairman of MBAR,
13 architect Tom Bollay and architect Andy Newman. So I
14 just wanted to point out it was not me coming up with
15 that definition on my own, but I did enlist the support
16 of other architects working in this area that I happen
17 to respect.

18 And I just wanted to submit for the -- just
19 so you have this available to you the documents that
20 Mr. Span sent to me which was -- which is a rather

21 in-depth document. It's three pages long, and I'm not
22 proposing that we change anything based on this
23 document, but I just wanted you -- the Commission and
24 Staff to have it as a background material that some of
25 the information that is now in the revised cottage

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1 definition came out of. So that's here for you, and
2 then we do have revised. I did bring that.

3 And then I also wanted to submit -- it really
4 hasn't come up at any of the hearings, but one of the
5 areas that -- where Mr. Span and myself went to look for
6 some of the specifics found in the definition were a set
7 of old photographs that I actually did transmit this
8 file through Mr. Middlebrook to Caruso Affiliates.

9 But I think, whether we get to the discussion
10 of how this new definition was arrived at, we want to be
11 able to have these photographs available for overhead
12 projection because I don't -- we haven't really seen
13 those in a hearing yet, and they definitely were
14 referred to during the process.

15 And the only other ex parte communication
16 that I did have is that I did meet with Mr. Ron Pulice
17 and Mr. Robert Collector, the former president of the
18 Montecito Association, with regards to the problems that
19 I have said in previous hearings I do not think
20 necessarily Mr. Caruso is doing.

21 But with regards to the drainage problem that

22 I feel now becomes a community-wide problem in how to
23 deal with the drainage of Oak Creek and San Ysidro
24 Creek, and given that Mr. Caruso is now a member of the
25 community, I think it's a "we" problem. I think it's a

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1 problem that the County has, I think it's a problem that
2 Montecito has, and I think we all need to come together
3 to figure out how to solve that problem apart from this
4 project.

5 I mean I don't want Caruso Affiliates to have
6 to solve the problem. It's a community-wide problem,
7 and in my estimation, given meeting with them and
8 revisiting the site, we have a health and safety issue
9 for the members of the community area wide and
10 specifically that area not even next door but across the
11 freeway we've got a problem, and we need to at some
12 point address this problem. So that's it.

13 MR. BIERIG: Thank you,
14 Commissioner Gottsdanker.

15 Commissioner Overall.

16 MR. OVERALL: The only ex parte meeting I had
17 was with Ron Pulice. I hope I didn't butcher the name
18 there. I visited the site with him, reviewed the
19 drainage and flooding issues that Claire has referred
20 to, and we also talked about traffic issues.

21 I received yesterday, as I think we all
22 did -- I don't know whether we had a chance to read them
23 or not, but we got reports he had prepared on both

24 issues, and I don't think there was anything in the
25 discussions that was not included in the materials.

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1 MR. BIERIG: Commissioner Burrows.

2 MS. BURROWS: Thank you. I also had a call
3 from Robert Collector, and I met Mr. Pulice and Walt at
4 the site yesterday. I also had a call from the
5 Applicant on the changes made of the definition of
6 "cottage style." I had a number of other calls. I had
7 a detailed letter from Sally Jordon, and I'm assuming
8 that all of you had that letter.

9 MR. BIERIG: Commissioner Phillips.

10 MR. PHILLIPS: I think ex parte requires a
11 party and I -- so I can't -- let me start that again. I
12 can't -- this is indicative of how this day is going to
13 go. I don't know that I can reiterate everyone that I
14 spoke with, conversations I had with everyone in the
15 community. I had many.

16 I did do a site visit over on the Oak Creek
17 flood plain. I walked that with neighbors. I did have
18 one ex parte communication with Mr. Caruso last Friday
19 wherein he reiterated his view of the importance of
20 having the events requested, and I think that covers it.

21 MR. BIERIG: Thank you. I also had the same
22 walkthrough Oak -- the canyon, the drainage canyon, with
23 Mr. Pulice and Mr. Collector and tend to agree with
24 Commissioner Gottsdanker's comment that we already have

25 a problem. It's apparent when you're down there the

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1 severity of the existing problem unrelated to any impact
2 that this project may have on it. So that was a good
3 process.

4 I've also spoken to Mr. Caruso about this
5 issue for the ratcheting up versus ratcheting down. I
6 think the only thing that wouldn't come out is I
7 suggested, in answer to some of Counsels' concern as to
8 whether you could ratchet down -- I suggested that they
9 might think about language that could perform that
10 function that they could live with if we decided to go
11 that way, and I think that's it. The meeting with
12 Mr. Pulice I did see some background information on
13 Oak -- on the drainage basin for the canyon.

14 MR. PHILLIPS: I think that's in with the new
15 reports.

16 MR. BIERIG: I believe it is as well. I
17 thought I'd mention it because I didn't keep it. I
18 looked at it briefly when we were walking the site, but
19 I don't think it's anything that we haven't seen before
20 other than just trying to show the size of the drainage
21 area that's part of the existing problem not related to
22 this particular project.

23 So with that I think probably the first item
24 we should try to get into, since we have time
25 constraints, is issues related to the sewer issue, and I

1 don't know if any of you have questions, but we do have
2 constraints related to the representative of the sewage
3 district.

4 MR. OVERALL: One other ex parte because it's
5 coming up -- I had a fairly detailed conversation with
6 Diane Gabriel yesterday about the Heal the Ocean letters
7 and related items. Hopefully all that information will
8 come out.

9 MR. BIERIG: If it doesn't, hopefully you can
10 brief us on what you did later. Now, we do have a
11 letter from the sanitary district here which I am
12 struggling to find. But I guess I'll start out by
13 asking the Commission whether -- here it is. It's dated
14 October 2nd.

15 And I believe we also have a response or a
16 comment from Penfield & Smith -- I guess that's my
17 memory -- that might have addressed the modifications to
18 the plan related to the sewer pump on site, sewer pump
19 issue, and I don't know if anybody has any questions on
20 that. To me it explained the question, and I don't have
21 anything further.

22 But Ms. Gabriel is only going to be here for
23 a while. So if we have questions on this subject, now
24 would be the time. I don't see any.

25 Please Commissioner Overall.

1 MR. OVERALL: If Ms. Gabriel would come up, I
2 would pose her two questions.

3 MR. BIERIG: Ms. Gabriel, thank you for
4 making yourself available here this morning. I do know
5 you have a constraint timewise, or are you just trying
6 to keep from staying here all day like the rest of us?

7 MS. GABRIEL: No, I have a meeting in
8 Santa Maria with all the countywide sanitary agency
9 managers.

10 MR. OVERALL: I will make this quick. Two
11 questions I have, Ms. Gabriel responded to. One, there
12 was a capacity question posed, and she gave a clear
13 concise answer to that. And the other was the question
14 of is the community as a whole in any way being forced
15 to subsidize expansion capacity either now or in the
16 future. Perhaps you can cover that briefly and then
17 head to Santa Maria.

18 MS. GABRIEL: Well, if the actual sewer flows
19 from the project end up being in the order of magnitude
20 being estimated by Penfield & Smith, the approximate
21 40,000 gallon per day average flowing to the sewer,
22 Montecito Sanity District would have adequate capacity
23 in our collection system and our treatment plant.

24 But that would be with Caruso funding an
25 onsite lifting station. That would be dedicated to the

1 district. They would have that constructed to district
2 standards. There would be redundancy in that lift
3 station. So it would be sized for one pump to handle
4 the maximum flow, but we would require two. There would
5 be backup power. All of this would be paid for by
6 Caruso and dedicated to the district so at no expense to
7 our other customers.

8 As far as the added capacity because the
9 historic Miramar was not at 40,000 gallons per day,
10 there is a growth there. We didn't meter sewage at that
11 time, but if you look back at water records and some of
12 our pumping records from our existing lift stations, we
13 might estimate the historic Miramar was at 30,000
14 gallons per day perhaps.

15 So there's going to be an increase of 10,000
16 gallons per day, and Caruso will be paying additional
17 connection fees for that increase in flow. And that
18 will enable the district, if in the future we need to
19 increase the size of our mains or our pumps at the
20 treatment plant or any part of our treatment plant -- we
21 would have collected at the time that this project is
22 going through for building permits -- we would collect
23 those fees, and we would have that for the future. So
24 again, no impact to our existing rate payers.

25 The other thing on an annual basis, unlike a

1 residential customer who pays a flat rate, this project,
2 as all of our commercial customers, pay their sewer
3 service charges based on the water used. So they will
4 be paying sewage charges for every drop of water that
5 goes through their Montecito Water District meter.
6 There will be no subsidy then from our other commercial
7 customers or from our residential customers because they
8 pay for what they use.

9 Any further questions?

10 MR. BIERIG: I do have two questions. One is
11 of staff. I don't remember seeing a condition related
12 to the lift station, but I assume that is in there.
13 Just making sure.

14 MR. BRIGGS: Mr. Chair, you are correct. The
15 sanitary district did submit a condition letter, and it
16 was attached to the memo.

17 MR. BIERIG: It wasn't in our list of
18 conditions. It was in the memo itself.

19 MR. BRIGGS: The attachment to the memo.

20 MR. BIERIG: So that will be included in the
21 final draft of the --

22 MR. BRIGGS: Right.

23 MS. GABRIEL: And I believe it's shown on the
24 site plan. In our mind, it is part of the project. It
25 is nothing really that we have to condition. It is

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1 really just part of the project description.

2 MR. BIERIG: Just making sure. Secondarily,

3 there was a discussion related to the emptying of the
4 pools and whether that would severely impact you, and
5 the concept seemed to be it could be coordinated. Is
6 that standard procedure for a hotel like this?

7 MS. GABRIEL: Most definitely. All pools of
8 significant size in Montecito -- we require the owner to
9 coordinate with us when they're draining the pool. We
10 do the same thing for Montecito YMCA, for Coral Casino.
11 They have to let us know when they are going to do it
12 depending on what time of day. We may have requirements
13 they dechlorinate the pool.

14 we also require that it's done at a rate that
15 we know it can be handled by the sewer system. So they
16 can't throw ten pumps in the pool and get it all out in
17 a matter of hours. It would have to be done gradually
18 over time with our agreement as to when and how much the
19 quality of the water that's being discharged.

20 MR. BIERIG: That's all part of your service
21 agreement with the customer.

22 MS. GABRIEL: That will be part of their
23 permit with the district.

24 MR. BIERIG: Thank you.

25 Any other questions?

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1 Thank you very much for your time.

2 The next item we should try to jump into
3 would be the drainage issue. And Commissioners, I know

4 there's going to be a lot of questions on this. Does
5 anybody want to take a stab at jumping into this issue?
6 Commissioner Burrows, you have your light on.
7 MS. BURROWS: I have a question of Staff, and
8 this may be a legal question. Where does responsibility
9 lie with this? Is it with the County? Is it with FEMA?
10 I don't think it's with the Applicant and this project.
11 It seems to be a separate responsibility in regards to
12 flooding and the drainage issues there.
13 MS. BLACK: Mr. Chair, I think I'll ask
14 Mr. Fayram to start the response, and I think, just to
15 clarify the question, you're asking who's responsible
16 for the existing situation?
17 MS. BURROWS: Yes.
18 MR. FAYRAM: Yes. Mr. Chair, Members of the
19 Planning Commission, Tom Fayram, County Public Works
20 Department, Flood Control Division, that's a difficult
21 question to answer, and I think we have to be careful
22 with the terms we use. I see Counsel has stepped
23 away --
24 MS. SLUTZKY: We have one Counsel.
25 MR. FAYRAM: I'm sorry. The fan is in my

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1 way. When we use the word "responsibility," I look at
2 two words, "responsibility" and "authority," and they're
3 different. Who has the responsibility to do something,
4 and who has the authority to do something? And those
5 words mean different things.

6 In terms of responsibility, most of the
7 drainage features are not owned by a public agency with
8 the exception of the bridge crossing. Typically, the
9 creek corridors are privately owned and not an improved
10 project that's owned by a public agency.

11 Now that said, there are agencies that have
12 authority to do something about that, and the flood
13 control district is certainly one of those entities that
14 has authority to do something about that. And I would
15 try to draw the difference between there.

16 There are constructive projects, like debris
17 basins and constructed channels and pipelines and
18 engineered facilities, that, when you construct them,
19 you have a responsibility to maintain them and make sure
20 they operate per their design.

21 That's the difference we have here. We have
22 something that's in between that. So with the authority
23 that the County would have, I think that's the direction
24 that we would be looking at going to address these
25 problems.

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1 I also wanted to mention that this particular
2 part of the County is not alone in this matter. We have
3 problems that people are seeking resolution all over the
4 county, one of the largest being Mission Creek right
5 here in Santa Barbara, which is now a \$60 million
6 project, and the Santa Maria river levy up in

7 Santa Maria, which is, if we fix the whole levy,
8 reaching \$100 million project.

9 So these are issues that are out there and
10 need to be worked on. Maybe I'll wait for more
11 questions, but at the end I maybe have some suggestions
12 for how to pursue this when the time is right,
13 Mr. Chair.

14 MR. BIERIG: Well, actually I think that is a
15 place we're going to go to right away because it's
16 pretty apparent to all of us that there's an existing
17 problem there.

18 Maybe you can walk us through, just as a
19 starting point, the County's position relative to the
20 additional burden that the Caruso project will place on
21 the existing problem in that area and how the
22 analysis -- how your analysis works and how comfortable
23 you are given there's clearly a lot of controversy
24 amongst neighbors concerning the analysis is incorrect
25 and will lead to a further -- the problem will be

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1 significantly worse than it already is, which clearly in
2 flood conditions is really significant.

3 MR. FAYRAM: Mr. Chair, I think in previous
4 commission meetings I've talked about the issue between
5 the flood plain, the floodway, and the FEMA flood maps
6 because really the impact issues -- when it comes to
7 development in a 100-year flood plain issue, that
8 analysis has been done by FEMA, and those are those

9 flood maps that we have.

10 And FEMA breaks that flood plain down into
11 two major areas, what I call the overall flood plain and
12 then the floodway. The floodway is that area, which you
13 are not allowed to encroach upon unless you do a whole
14 lot of other work to make sure you're not making an
15 impact.

16 But then the floodway area that, if you
17 elevate and protect your property, that there is an
18 increment that is allowed to be filled in, again, with
19 the floodway preserving the major flood conveyance
20 corridor.

21 In this case that's what we've had. We've
22 had it in cases all over the county. That's how we have
23 applied that standard that meets the county code. It
24 meets FEMA federal standards as well.

25 Now, in regards to this project, when you

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1 actually look at the flood plain on the Miramar
2 property. It's even more somewhat unique, and I don't
3 know if we have a picture of that we can put up on the
4 screen or not of the flood plain there on the site.

5 MR. BIERIG: We could refer at least to the
6 site plan itself because it does show the floodway on
7 the right-hand side.

8 MR. FAYRAM: You can recall that there's an
9 off shoot of the flood plain that sticks into the

10 Miramar property kind of by the nature that that area is
11 low. It's not part of the creek, but it's a low flood
12 plain area.

13 MR. BIERIG: It floods in periods of high
14 water.

15 MR. FAYRAM: Yes. However, by it's
16 configuration, it's not what I would consider an
17 integral part of the flood conveyance system. You can
18 see the line right there (indicating). It's kind of
19 like a bulb that comes out with the creek being
20 generally over here (indicating).

21 So intuitively, when I looked at that, when
22 you lose that area, you displace volume from the flood
23 plain. That's true. But you don't significantly lose
24 conveyance of the creek system.

25 So Penfield & Smith then analyzed that using

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1 the same methods as FEMA, and that's the March report
2 where their tables reference there is little to no
3 impact from that filling, which intuitively I agree
4 with. That makes sense.

5 MR. BIERIG: Is the reason it intuitively
6 seems correct because you have a limitation of how much
7 water can get into the floodway?

8 MR. FAYRAM: It comes from the fact this
9 water is going to be still and not flowing because it's
10 off to the side of the main channel. It will fill up
11 and be still, but it won't be actively flowing.

12 MR. BIERIG: So the fact that it cannot fill
13 is not relevant?

14 MR. FAYRAM: It's not relevant to this area
15 and upstream. It's perhaps relevant downstream. So
16 what Penfield & Smith then did is used another type of
17 analysis to say, "well, if you lose that storage, then
18 what is the impact downstream?"

19 I believe their analysis in between a 100-
20 and a 500-year flow that that would be between zero and
21 three quarters of an inch. Maybe Craig Stewart could
22 accurately represent that. That's my recollection of
23 when I read that. And that intuitively makes sense as
24 well.

25 In the overall system this is not a large

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1 percentage on itself. Now you always have the
2 incremental issue that you want to look at. But again,
3 the FEMA flood map is what was done as the whole system.
4 They look at the whole system and say, "Even if you fill
5 in all of the area, up and down every creek, you would
6 get a rise one foot" -- "by federal standards no more
7 than one foot."

8 Of course, that's up to jurisdiction as to
9 whether or not you want to accept that or not, but
10 generally that's what's accepted around the country and
11 has been applied in Santa Barbara County since we became
12 a member of the Federal Flood Insurance Program in the

13 '70s.

14 And each individual project, when you look at
15 it, perhaps isn't significant. Even in total it can't
16 be more than a foot increase in raise which we don't
17 have here as well.

18 MR. BIERIG: So you're saying that in the
19 same standards that have been applied in analyzing this
20 project, as you would analyze any other project, and
21 fits within the guidelines for analysis that you would
22 expect you're comfortable with. You're absolutely
23 comfortable?

24 MR. FAYRAM: Absolutely.

25 MR. BIERIG: Commissioner Overall.

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1 MR. OVERALL: Mr. Fayram, just a point of
2 clarification, not looking at any data right at the
3 moment, was that study based on one creek, or did it use
4 the combination of the two creeks?

5 MR. FAYRAM: It did use the combination of
6 two creeks, but the waters are muddied by the confluence
7 of Oak and Sycamore -- or I'm sorry -- Oak and
8 San Ysidro.

9 MR. BIERIG: Commissioner Phillips.

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

11 Mr. Fayram, is it your testimony that the
12 federal FEMA requirement supersedes the County's
13 authority? As I read it, the County's requirements are
14 more restrictive so that the FEMA issue doesn't come

15 forward.

16 MR. FAYRAM: Mr. Chair,
17 Commissioner Phillips, to some extent, our requirements
18 are stricter than FEMA. Basically we adopt FEMA's
19 standards with two additional stricter criteria. First
20 of all, FEMA requires that any development in the flood
21 plain be built to the 100-year flood plain. We require
22 it typically to be required to be raised two feet above
23 a 100-year flood plain.

24 FEMA does not have requirements regarding to
25 how close to a watercourse you can get. The County has

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1 an ordinance that requires setbacks from creeks and
2 river.

3 In terms of the encroachment into the flood
4 plain, we adopt the FEMA flood maps. So there is no
5 stricter interpretation of that. So the County's
6 requirement is that -- and bear with me because there
7 will be a sentence or two following this. It begins
8 with "Don't build in a flood plain," and then if you do,
9 there's a measurement of increase of water elevation and
10 flow that is of concern.

11 So your measurement results, as an adoption
12 of Penfield & Smith, is three quarters of an inch
13 increase in water elevation. It was your testimony that
14 you can get up to 12 inches. However, in your report
15 you don't want any more building in that flood plain in

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16 addition to what's going on. There's 11 « inches
17 left. Why did you say no more at that point with three
18 quarters of an inch increase?

19 MR. FAYRAM: Mr. Chair,
20 Commissioner Phillips, I perhaps didn't do a good job at
21 differentiating there. There's two separate issues
22 there.

23 First of all, let me try to answer the one
24 question regarding "Don't build in the flood plain, but
25 if you do, do this." I don't believe the county code

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1 says that. The requirement is you can build in the
2 flood plain, not in the floodway. But if you build in
3 the flood plain, you have to elevate.

4 Now, back to what the FEMA flood maps do.
5 The FEMA flood maps take and theoretically squeeze the
6 flood plains to some limit where you get that 12-inch,
7 one-foot, rise, and then that is the threshold that says
8 "Now we will not allow anymore encroachment in the flood
9 plain." That is called the floodway.

10 And when we're dealing with the Miramar, that
11 typically deals with properties upstream, not downstream
12 because -- and you can imagine if you had -- I always
13 like to use the analogy of water flowing in the gutter
14 in front of your house, and if you put your foot in
15 front of it, it backs it up behind, but once it
16 overflows, it continues on its way if that makes sense.
17 Maybe I did that too many times as a kid. Maybe that's

18 why I got in this business.

19 MR. PHILLIPS: Mr. Fayram, let me stop you
20 right there. That's an excellent point. But if you put
21 your foot there and the water moves to the left and
22 goes -- moves away and goes over the curb, there will be
23 less water going downstream.

24 MR. FAYRAM: Exactly. And that is where, if
25 you accept the floodway analysis, which says, "We're not

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1 going to allow you to put your foot in there to that
2 extent." Maybe you can put your foot in to the outer
3 edge but not the whole curb. That's the difference.

4 You're preserving a core conveyance through
5 the system that you will not allow anyone to put their
6 foot in, and that's what the floodway analysis does. On
7 flood plain properties such as this, you're dealing with
8 fringe. I use the term "flood plain" because it's less
9 confusing. You're basically filling in that side area,
10 not the main conveyance area.

11 In some cases you can actually fill in where
12 water is actually flowing, but in this case I think it's
13 less of a flowing situation. What you're saying is
14 exactly right that you could displace water elsewhere.
15 That's what the floodway analysis attempts to avoid, and
16 that's why that analysis was done.

17 MR. PHILLIPS: You argue that it's
18 intuitive -- you seem to find that it's intuitive that

19 this will not negatively raise flow, velocity, or height
20 downstream. It's counterintuitive to me. There is a
21 relief valve, a basin of water, that takes pressure off
22 downstream, and I just can't see how it wouldn't impact
23 when that is denied. Can you tell me again in really
24 layman's terms because I've been struggling with this.
25 MR. FAYRAM: I think the situation that we

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1 have here -- and again, it's complicated by the railroad
2 downstream and that the loss of the flood plain in
3 impact downstream is on the volume storage -- not flow,
4 not velocity but volume storage -- because, when you
5 have an obstruction at the railroad and then as flood
6 waters build up, it goes into storage.

7 It's what happens at all of our water supply
8 reservoirs. We take that water, we store it, and then
9 we weed it off slowly as we utilize it. Faster in this
10 case, but when you take away some of that storage, that
11 is the potential impact for downstream.

12 Now, again, that analysis is looked at as
13 being relatively minor, and I suppose that's a personal
14 definition as to what this is certainly within a
15 one-foot range which has been generally accepted. And
16 so I guess it varies on your point of view in this
17 situation. I don't see it as being significant.

18 MR. PHILLIPS: John Frye is the county flood
19 control emergency manager, I believe, engineer.

20 MR. FAYRAM: Engineering manager.

21 MR. PHILLIPS: Engineer, not emergency. He
22 had a problem -- based on the review of e-mails, he had
23 a problem with the methodology used by the Applicant and
24 Penfield & Smith, which is, at least, a regionally
25 recognized significant engineering firm, if not

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1 national. I don't know if they are.

2 Can you tell me why this man with such
3 experience had such a problem with that. Any sense of
4 why I can get back -- I think there's a R-A-S S-B-U-H
5 approach, and there's another one, and I can get that,
6 but I think you know that.

7 MR. FAYRAM: Mr. Chair and
8 Commissioner Phillips, I think what you're referring to
9 is back in 2007 an earlier Penfield & Smith used a
10 method to analyze --

11 MR. PHILLIPS: This is the March 2nd report?

12 MR. FAYRAM: No, I believe it was December.
13 Using a program that the flood control district actually
14 developed that's called SBUH, Santa Barbara Urban
15 Hydrograph. We didn't feel that was an appropriate
16 program to use in this particular instance, and so
17 Penfield & Smith redid that, and that's the March
18 report.

19 That's why the criticisms of the December
20 report are irrelevant because the March report has the
21 updated methodology which uses what's called HEC-RAS

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22 which is a standard flood plain routing program for FEMA
23 and for flood plain systems.

24 Now, I don't want to confuse things, but I
25 need to say that for purposes, again, of looking at the

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1 impact at the Miramar and upstream that is the
2 appropriate methodology to use.

3 For impacts downstream, if we use HEC-RAS, it
4 will show zero impact or probably show zero impact
5 because of the control of stream. That's why they use
6 the different methodology using the volume loss to
7 calculate what that downstream impact would be from the
8 loss of the storage.

9 You really have to switch gears. There's two
10 things going on. There is -- what is the loss of the
11 flow area and what is the loss of the storage.
12 Typically the loss of flow area more impacts upstream.
13 Loss in storage would more impact downstream.

14 MR. PHILLIPS: But in the December report, I
15 think there was a finding of a three-quarter-inch
16 increase using a different methodology, and that never
17 seemed to change as the County's methodology was
18 replaced. We still get the same number. And also in
19 December there wasn't -- there wasn't consideration or
20 measurement of the San Ysidro Creek impact on Oak.

21 MR. FAYRAM: I believe that's true, and that
22 has been addressed in the March 7th.

23 MR. PHILLIPS: But we end up with the same

24 result.

25 MR. FAYRAM: I'll let Craig Stewart answer

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1 that. I did not review in detail the December report.
2 I reviewed in detail the March report. To me the
3 December report is irrelevant.

4 MR. PHILLIPS: Because of the methodology?

5 MR. FAYRAM: Because this is what I see as
6 the accurate report.

7 MR. BIERIG: Mr. Fayram, before we go on,
8 have you reviewed -- we received a letter yesterday from
9 Pace. It's an engineering firm.

10 MR. FAYRAM: No.

11 MS. GOTTSANKER: Yeah, I think at least for
12 me -- if we could take a few minutes so that Mr. Fayram
13 could review that letter because there's a number of
14 things that were referred to in the letter that I'm kind
15 of in agreement with, you know. We keep talking about
16 the effects of this downstream. I'm assuming
17 "downstream" means on the ocean side.

18 And the letter from Pace Advanced Water
19 Engineering and going back to intuitive thinking, once
20 again, the problems have occurred for upstream, and
21 we've had in the past flooding of the 101 because
22 there's just -- it kind of floods over 101 and then
23 fills up the basin on the Miramar property and sits
24 there and finally gets out to the ocean.

1 points out, we haven't really looked at that. And going
2 back to Mr. Fayram's shoe analogy, the fact that the
3 property is being raised and a wall is being built along
4 there -- I mean it's -- just for anybody that's been
5 around, that wall is the shoe. That wall is what's
6 going to take that water from San Ysidro Creek that
7 overflows the freeway, settles in the basin, and then
8 finally gets out of the basin or into the ground or
9 wherever it ends up going.

10 But now, that building, that grading, or that
11 wall is the shoe that puts all that water into what is
12 very clear a very narrow channel under the railroad and
13 can't go anywhere.

14 So it's not just a downstream problem. It
15 seems to me, if there's nowhere for water to get out to
16 the ocean, it's just going to keep backing up and
17 backing up and backing up because it can't get onto the
18 Miramar any longer.

19 It's now under the freeway, over the freeway,
20 and now is impacting those people who live on the other
21 side of the freeway north. We can say it's north. It's
22 probably not. It's probably west but anyway.

23 That's why I find this to be a community
24 problem or county problem that needs to be dealt with,
25 and I just see the problem is going to be exacerbated by

1 the wall or the shoe, whatever we want to call it. And
2 I just don't know how to solve it.

3 MR. BIERIG: Director Black.

4 MS. BLACK: Mr. Chair, maybe I can just make
5 a suggestion, and that is let's take a ten-minute break
6 to give Tom a few moments to read the letter, and then
7 before you go into this much further, I think it would
8 be appropriate to decide if you're actually accepting
9 this letter into the record because you're basically
10 talking about it. We can do that when we come back.
11 That will give the court reporter a few minutes too.

12 MR. BIERIG: Let's take a break. We'll come
13 back at 10:30.

14 (Whereupon a short recess was taken.)

15 MR. BIERIG: Mr. Fayram, maybe you can give
16 us -- weigh in on what your comments might be on this
17 letter from Pace Engineering.

18 By the way, I'll make the comment the
19 air-conditioning is apparently out.

20 MS. BLACK: Mr. Chair, I'm sorry. I probably
21 I should have told you. I think I mentioned it to
22 several Commissioners before we started the hearing.
23 There is a project underway for the County on the HVAC
24 system, which is the heating and cooling system.

25 Unfortunately that means we have no

1 air-conditioning probably -- we won't need it as we
2 progress into the year, but we won't have it until
3 essentially next spring. So we're doing the best we
4 can.

5 MR. BIERIG: Well, we do have the fans on,
6 but I would expect it's going to get quite warm in here.

7 MS. BLACK: It will get warmer and warmer.

8 MR. BIERIG: Yeah. So be prepared.

9 Mr. Fayram.

10 MR. FAYRAM: Mr. Chair --

11 MS. BLACK: Mr. Chair.

12 MR. BIERIG: Oh, please.

13 Hold on.

14 MS. BLACK: Could we decide -- make a
15 decision on whether or not you're going to accept this
16 letter into the record before we continue discussing
17 that letter.

18 MR. BIERIG: Good idea.

19 MS. BLACK: And the letter is the Case
20 Engineering letter to Ron Pulice dated October 7th.

21 MR. BIERIG: Does someone want to make a
22 motion to accept all of these letters into the record?

23 MR. OVERALL: I can't make that because I
24 haven't had the chance to read them all. But I would
25 move to accept it.

1 MR. BIERIG: Second.

2 All in favor say "ay."

3 MS. GOTTSANKER: Ay.

4 MR. OVERALL: Ay.

5 MS. BURROWS: Ay.

6 MR. PHILLIPS: Ay.

7 MR. BIERIG: Ay.

8 Please.

9 MR. FAYRAM: Mr. Chair, it's very
10 difficult -- I just tried to read this letter right now.
11 I think it would be impossible for me to go through and
12 say, "Yes, that's a point there." "It's not."

13 Maybe Craig Stewart would want to take a shot
14 at some of the points that are made in here. A couple
15 of comments off the top, one of the issues that was
16 brought up was wanting to do a model assuming 101 is
17 improved. That's not the case we have here now. So I'm
18 not sure where that comment was.

19 It talks about having the commingling of
20 Romero, San Ysidro, and Oak Creek. But I don't believe
21 Romero commingles with Oak Creek. Actually, if you
22 drive through that area, Romero is quite a bit lower. I
23 believe San Ysidro may commingle that way but not Romero
24 into Oak Creek. Although on the flood map it may look
25 that way, it's not really that way as I recall.

1 The rest of the letter is questioning some of
2 the assumptions and factors that go into the Penfield &
3 Smith model, and I prefer to have Mr. Stewart respond to
4 them than me.

5 MR. PHILLIPS: May I ask Mr. Fayram before we
6 go forward with Mr. Stewart.

7 MR. BIERIG: Sure.

8 MR. PHILLIPS: Mr. Fayram, I finished the
9 Pace report just as you did, and indeed it needs further
10 study, but the consensus seems to be the deletion of the
11 watershed has an impact.

12 Could you once again -- and I'm very sorry to
13 keep asking you this. Can you explain to us the science
14 of this phenomenon because it seems, again, intuitive,
15 when you delete a watershed basic function relief valve,
16 there will be constriction. There will be faster flow
17 and higher flow. Could you address that for me.

18 MR. FAYRAM: Mr. Chair,
19 Commissioner Phillips, I'll try to say that again, and
20 if I'm not communicating, I'll ask Craig Stewart to put
21 it in a better way. I'm using how I see it.

22 If you have a portion of the flood plain
23 that -- if you constrict, it has a potential to rise to
24 the flood level. Typically that increase is at that
25 location and flood stream. Because of the configuration

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1 of this flood plain, which isn't necessarily flowing
2 water and is more ponded water, it doesn't have that

3 impact upstream because it has the potential downstream
4 because of the loss of volume storage.

5 So Penfield & Smith then analyzed the loss of
6 volume storage, which I believe they didn't do in the
7 December report but updated this. And that's where they
8 came up with in excess of the 100-year storm. Then the
9 loss of that storage starts to factor in but at that
10 level.

11 But it affects two different processes. One
12 process is flowing water, and one process is still or
13 stored water. The flowing water typically affects
14 upstream. The loss of still water typically affects
15 downstream.

16 MR. PHILLIPS: Can the County restrain the
17 flow above to minimize impact below? Could you
18 manipulate what reaches that site?

19 MR. FAYRAM: The quick answer is yes, but it
20 would be very difficult to do it because agencies do
21 that to protect downstream communities, and it's
22 typically done with some type of storage facility, a
23 dam, or an offline storage facility that would actually
24 store waters and let them go slowly. It's done in
25 Los Angeles. It's done actually all over the country.

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1 It would be difficult to do something like that here,
2 but that is something that could be done upstream if
3 there were space to do so.

4 MR. BIERIG: Mr. Fayram, what is the relative
5 difference between, I'll call it, the constriction on
6 the flood -- not the floodway but the flood basin, flood
7 area, as compared with the addition of water coming off
8 of the property? Which is the more relevant component
9 on this particular project?

10 MR. FAYRAM: Well, of the two, Mr. Chair,
11 because the analysis has shown that the additional water
12 off the site itself is not a factor at all.

13 MR. BIERIG: Is not a factor. So detention
14 on site wouldn't have any impact at all?

15 MR. FAYRAM: No. I'm happy to answer more
16 questions if I can, but I also wanted to perhaps have an
17 opportunity to make a suggestion because I think what
18 you're dealing with here, as Commissioner Gottsdanker
19 said, is a regional issue, and it's an issue that we're
20 dealing with all over the South Coast. And this will be
21 just another one those on the list, but I would have a
22 suggestion for how we could at least start that process
23 and looking at that.

24 MR. BIERIG: Please because it's obvious. It
25 sometimes takes a project like this that comes up in a

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1 neighborhood to focus people's attention on the fact
2 that there is a need for a solution in an area, and
3 there is definitely a need for a solution in this case.

4 MR. FAYRAM: Mr. Chair, in this case, in
5 Montecito and San Ysidro Creek and those areas, we have

6 problems in that we have infrastructure that has created
7 obstructions and problems for us, our roads, freeways,
8 railroads.

9 Existing development has obstructed the flood
10 plain, and existing creek channels either constructed
11 downstream or natural are not to the standard we would
12 like to have for developments surrounding it.

13 So as I was sitting in the audience when the
14 discussion was starting off, it occurred to me that --
15 Ms. Black came to us previously with the County Planning
16 Commission because they had questions about water
17 supply.

18 And so we prepared a presentation on a day we
19 would come back and lay those issues out and try to
20 provide a briefing. And then if there were areas where
21 we could go forward with a potential solution, we'd do
22 that.

23 I would propose that outside of this project
24 that I work with Ms. Black and prepare a more in-depth
25 gathering of the data of that particular area, of what

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1 is actually going on, and "Are their solutions that can
2 be done?" and look at bringing that back to you. Again,
3 that's outside of this project.

4 I will tell you there are a number of capital
5 projects that are on the list right now that involve
6 tens of millions of dollars. So funding of a fix like

7 this will not be immediate.

8 But I also want to point out and remind the
9 Commission at a previous meeting, when the North Jameson
10 projects were done, the bridges on North Jameson, County
11 took a leadership role and said, "We're not cutting
12 ourselves off in the future. When we replace a
13 structure, we are going to increase that facility to a
14 capacity so that at some point in time we can get to the
15 end of this problem."

16 we pushed Caltrans to do the exact same
17 thing. They are looking at some point in the future
18 replacing those -- some of those bridges were built in
19 the '30s, '40s, and '50s. They're going to have to
20 replace those.

21 when they do, we want them to replace them to
22 the same size we do so we do not get cut off forever
23 again. And every opportunity that that happens, we're
24 looking at doing that. Clearly it looks like we're
25 going to need some type of master planning effort with

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1 where we're going to go with this as well. That's what
2 I wanted to suggest.

3 MR. BIERIG: In this case, though, the
4 immediate neighborhood surrounding the Miramar Hotel --
5 the solution is really to reconfigure the drain channel
6 and bridges below the project and the ocean; is that
7 correct?

8 MR. FAYRAM: Mr. Chair, obviously the

9 immediate fix for downstream would be to increase the
10 size of the conveyance facility that goes to the ocean
11 and increase the size of the UP railroad crossing that
12 would provide a lot of benefits for downstream and
13 upstream and will provide for both.

14 Dealing with the railroad is a challenge.
15 We've done it. We're working with them on several other
16 bridges, and so we're maybe gaining some valuable
17 experience of how to get that done in the future.

18 MR. BIERIG: Is there any mechanism for
19 funding of projects like this? I'm sure you have a
20 laundry list as you suggested of projects that are
21 probably in front of this.

22 But is there any other mechanisms that -- a
23 lot of communities will do an assessment district or set
24 up something that the neighbors might be able to get on
25 board with the County and come up with a funding

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1 mechanism to assist an existing problem?

2 MR. FAYRAM: Mr. Chair, in declining order,
3 there would be the following way that we could do this:
4 we could seek to have this project looked at as a
5 federal project by the core of engineers. Mission Creek
6 started in the '60s, and we're now in 2008. I don't
7 think we want to go that way, and there's problems
8 there.

9 The next step would be there is an increasing

10 opportunity for grant funding from the State. We passed
11 Proposition 180 and Proposition 84 in, I believe it was,
12 November of '06 or '07. I can't recall. And projects
13 can be funded through some of those mechanisms.

14 There's actually discussion now at the
15 statewide level, the state association of counties, to
16 have more flood control money available statewide, not
17 just to the Sacramento area for levy but statewide. So
18 there might be opportunity there.

19 And then the last possibility would be an
20 assessment district for an individual project. Now,
21 there is an assessment district in place, and that is
22 the flood control district assessing properties.

23 If you go look at your property tax, you'll
24 see a line item. That assessment was put in place in
25 1980, and it was increased in 1996, and for an average

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1 home, it's around \$20.00 a year.

2 Clearly when you get into projects now that
3 cost tens of millions of dollars, that becomes a
4 problem. So we like to use that money than leverage
5 state or federal money. But for a locally funded
6 project, there is an option to do an additional
7 assessment to get that through paid off over time. That
8 is an option.

9 MR. BIERIG: Well, it is outside of our pay
10 grade here, but it does seem that here you have a
11 situation where you have a commercial project that's

12 going to generate substantial tax benefits and other
13 money into the county, and I'm not suggesting this
14 project needs to fix it. But is there ever a mechanism
15 where funds that come out of a development are used to
16 fix infrastructure around a development? I think that's
17 kind of broad.

18 MR. FAYRAM: That's typically done when you
19 have like a transportation improvement plan where a
20 project would go in and would pay a fee that goes to the
21 more regional -- and that doesn't exist in this case for
22 the drainage.

23 MR. BIERIG: Assessment districts -- they
24 usually require the -- if it was a benefit area that was
25 small, such as this particular neighborhood, that would

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1 have to be voted on by all the property owners in the
2 neighborhood.

3 MR. FAYRAM: Mr. Chair, that's correct. Any
4 assessment district now has to be voted on by either the
5 voters or property owners. There's two different
6 formulas for that.

7 MR. BIERIG: One of the options we might have
8 require that this project be required to participate
9 based on the engineering analysis for appropriate
10 shares. I see Director Black shaking her head. I'm
11 only exploring. I'm not suggesting this, and I'm not
12 interested from a legal standpoint, just from an

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13 engineering benefit assessment.

14 MR. FAYRAM: Mr. Chair, when a project or a
15 development comes on line and they pay their assessment
16 and their taxes, they in sense would be paying their
17 share through those assessments.

18 MR. BIERIG: Usually those are done as a
19 function of area and voting and difficult to get passed
20 unless everyone's on board. I know I had projects that
21 were conditioned to participate in assessment districts
22 that were coming down the road but not yet in place.

23 Sure. Might as well, Director Black.

24 MS. BLACK: We have two attorneys at the
25 table. I guess I'll give them a shot.

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1 MR. BIERIG: I didn't want them to tell me
2 what a bad idea it was before I got it out.

3 MS. BLACK: Mr. Chair and Members of the
4 Commission, I have not seen us apply a condition on a
5 project where there wasn't a nexus, a very clear nexus,
6 to the project participating in an assessment district.

7 So my read of the situation and
8 interpretation of what Tom said is there's no nexus to
9 require the Miramar to do any flood improvements. If
10 that's the case, I don't think you would require that
11 they not object to formation of an assessment district.

12 MR. BIERIG: Well, that isn't what he said.
13 What he said is it wasn't -- it didn't hit the criteria
14 being required to repair itself, but that's different

15 than being part of the problem.

16 MS. BLACK: That is different than being part
17 of a problem, Mr. Chair, but there are many properties
18 that are part of the problem, and you don't have the
19 opportunity to require that they not object to an
20 assessment district.

21 If we thought there was a direct nexus and
22 there was an issue that this project was causing in
23 terms of flooding, we would require that they fix it as
24 part of his permit. I think that's entirely clear.

25 And so if there isn't the ability to require

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1 that they fix it, I'm not sure how we would require that
2 they participate in a regional solution differently than
3 anybody else in the area.

4 So I think on the projects that you've been
5 involved with there was a different situation, a
6 different set of facts, where one mechanism for funding
7 improvements was an assessment district.

8 And on residential projects and other types
9 of projects, that's often a method that's used in
10 mitigation of impact fees or in addition to mitigation
11 of impact fees to solve your portion of that, to fund
12 your portion of that. I think this is a little bit
13 different situation.

14 MR. BIERIG: Seems pretty close. Any chance
15 for a different answer from Counsel?

16 MS. SLUTZKY: Mike may have something to say
17 also. The area in the county in which we have done
18 something similar to what you're suggesting was part of
19 the Orcutt Community Plan, and there was a very
20 multiyear study identifying what was needed, how much.
21 It was a very --

22 MR. BIERIG: I'm not suggesting this is going
23 to happen in the next week.

24 MS. SLUTZKY: Policies were adopted at the
25 end of that and applied to that.

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1 MR. BIERIG: I'm looking at the moneys coming
2 out of this project applied to the county, and I realize
3 we can't dictate what the County does with its
4 resources.

5 MS. BLACK: Mr. Chair, you don't dictate the
6 budget of the county. You can certainly advise the
7 board what would be a good use for this tax stream.

8 MR. BIERIG: That's enough of this. I
9 thought we'd explore it a little bit while we're here.

10 MS. BURROWS: There's so much information,
11 and I find all of it interesting and helpful, and maybe
12 for long term, I would suggest we take the advice and
13 schedule a workshop to consider all of these issues
14 because the problem probably is much bigger in Montecito
15 than what we have seen in this one creek area which I
16 toured yesterday. I would suggest we move forward on
17 this and then set aside a different time, a workshop, to

18 review the options and maybe make a recommendation to
19 the board.

20 MR. BIERIG: I think that's an excellent
21 idea.

22 MR. PHILLIPS: Mr. Chair, before we move on,
23 can we talk to the Penfield & Smith representative?

24 MR. BIERIG: Absolutely. Are they here?

25 MR. STEWART: Mr. Chair, Commissioners, thank

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1 you very much for allowing me to appear before you. My
2 name is Craig Stewart. I'm a professional engineer and
3 certified flood plain manager.

4 Before you ask your questions, I'd just like
5 to state a little bit about my qualifications. I was
6 born and raised in Santa Barbara. My dad was the road
7 commissioner for Santa Barbara, worked for the County
8 for 40 years. So when the 1969 floods came through,
9 even though I was in junior high, I knew everything that
10 went on.

11 I've worked in Santa Barbara at Penfield &
12 Smith for 27 years. I know where it floods. I know
13 when it floods. I go out and take pictures. I have
14 opportunities that most people don't have to get to know
15 the general situation and areas in Santa Barbara.

16 Montecito is one as you've mentioned. It's a
17 very critical area. There have been a couple of
18 questions that have come up before from you if you'd

19 allow me to address those couple of items first to make
20 sure that we're starting on a firm understanding.

21 First of all, there was a mention that the
22 December analysis that I had previously done showed a
23 three-quarter-inch increase in the 100-year water
24 surface. That is absolutely untrue.

25 It shows no increase in water surface in

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1 Oak Creek. And the increases that we're showing --
2 potential increases that we're showing in Oak Creek due
3 to development with the March report are for either a
4 500-year flow in Oak Creek or a commingled flow from
5 San Ysidro Creek and Oak Creek for a 100-year flow. So
6 it's beyond the standards that FEMA and the local
7 agencies normally look at.

8 So I'd love to address this report from Pace
9 if you'd like me to go through it point by point. I'd
10 be happy to. I just got it this morning just like you
11 did, and I think it's astounding that this report gets
12 dropped on us like this. I think it's -- I won't
13 comment any further. But unless you'd like to ask
14 questions first, I'd like to respond point by point of
15 their letter.

16 MR. PHILLIPS: I would, Mr. Stewart. I'd
17 like to hear your view on that as well. One of the
18 concerns that I've had as your stellar reputation and
19 Penfield & Smith's reputation, and I just don't
20 understand how there were seven revisions, I believe, a

21 change in methodology, not looking at adjacent stream
22 impact, and then including it. How did this happen?
23 was this an unusually difficult project for you to
24 analyze?

25 MR. STEWART: This is an extremely difficult

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1 project to analyze. Typically flood control will look
2 at the flood map and say, "Are you outside of the
3 floodway? If you're outside of the floodway, no impact,
4 you're fine."

5 MR. PHILLIPS: That's the FEMA analysis --

6 MR. STEWART: That's the FEMA analysis.

7 MR. PHILLIPS: -- which is not what we're
8 using here.

9 MR. STEWART: But that is the normal approach
10 that flood control would use on a normal project.
11 So we -- there's no encroachment within the floodway for
12 this project. All of the improvements are outside of
13 the regulatory floodway.

14 There were concerns from some of the
15 neighbors. So we took -- we looked at a further
16 analysis of Oak Creek, and we looked both downstream of
17 the -- of the railroad and upstream of the railroad, and
18 then there was additional concern about bringing in
19 San Ysidro Creek and how to do that.

20 That's a very difficult question when you're
21 dealing with two adjacent watersheds. And how do you

22 approach that? It's a very, very tricky way of
23 assessing what's going on.

24 MR. PHILLIPS: Well, I don't know how you do
25 it, but apparently, given what I've read, you have to

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1 find someone that's actually seen the water flowing over
2 the creek and into another. Did you see this in here?
3 What is this about? What if no one was there that day?
4 Did that not happen?

5 MR. STEWART: I've had an opportunity both to
6 act as an expert witness for water flowing from
7 San Ysidro Creek into Oak Creek as well as, after that
8 fact, witnessing, personally witnessing, the water
9 overflowing US 101 from San Ysidro Creek and into
10 Oak Creek.

11 MR. PHILLIPS: So you're the witness.

12 MR. STEWART: Yes, I was there. At the time
13 the water flowed over the freeway and down into the
14 creek where there was plenty of capacity in the creek,
15 but there was water coming in from San Ysidro Creek -- I
16 should say water in Oak Creek at a low level with water
17 adding in from San Ysidro Creek.

18 MR. PHILLIPS: Yet in your model of December,
19 '07, you didn't include that.

20 MR. STEWART: I had included increased flows
21 in Oak Creek over and above the 100-year flow. I just
22 did not name the source of that flow.

23 MR. PHILLIPS: I didn't even know there was a

24 500-year event. That's the first I've heard of that.
25 well, I just -- I'm just not capable of the language,

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1 vocabulary, or the understanding to make this
2 meaningful, I'm afraid.

3 Is there different methodology in existence
4 that could come to different results in your projection?
5 would you recognize a different methodology with a
6 different result with an impact we should be concerned
7 with?

8 MR. STEWART: There's always different
9 methodologies. There's different programs, approaches,
10 engineers, et cetera. I can't address whether there
11 would be an impact or not on other approaches. I only
12 feel confident with the approach I've taken.

13 It shows there was no impact with 100-year
14 flow and Oak Creek. I feel confident with that for both
15 upstream and downstream property owners.

16 MR. PHILLIPS: That's all I have. Thank you,
17 Mr. Stewart.

18 MR. BIERIG: Mr. Stewart, I do have a
19 question. Looking at this Pace report, not the text of
20 it but looking at the pictures, reminds me of touring
21 this site, and there's a lot of debris -- not debris.
22 There's a lot of rubble in these channels. How much is
23 reduction of capacity an issue on this --

24 MR. STEWART: In this situation as far as

1 MR. BIERIG: -- and do you calculate that as
2 part of your analysis whether this thing actually
3 functions on its design given it's full of rubble?

4 MR. STEWART: The major concern of debris and
5 rubble is at US 101. And in those situations I did not
6 take my analysis upstream US 101. It's independent of
7 that. So our project has no impact in that situation.

8 So the water could, as it comes over US 101,
9 either go over the freeway or be moved along by, say, a
10 blockage at the railroad. How it gets to Oak Creek
11 doesn't matter. That it gets to Oak Creek is the
12 important thing.

13 MR. BIERIG: I was looking more at the exit.
14 Oak Creek to the ocean.

15 MR. STEWART: When we started our report, I
16 checked with Santa Barbara County Flood Control with
17 maintenance engineers as to what kind of debris
18 situation they had had at the Union Pacific Railroad.

19 And they told me they have never had to
20 maintain that or clean it or whatever. And generally I
21 attribute that to a sieve effect; that is, we have the
22 culverts at US 101 and the culverts upstream at
23 San Ysidro that kind of collect all debris before it
24 gets down to this point. I didn't see a major problem.

25 However, in accordance with that, our

1 analysis of the culvert under the Union Pacific Railroad
2 took into account the existing debris that was already
3 there which is -- normally would be more than what would
4 be there during a flood event because a flood event
5 would normally flush that out.

6 MR. BIERIG: That was really the nature of my
7 question. That was taken into account to reduce the
8 capacity --

9 MR. STEWART: Yes, it was.

10 MR. BIERIG: -- even though it was probably
11 pushed out during the event itself?

12 MR. STEWART: That's correct.

13 MR. BIERIG: Any other questions?

14 Commissioner Burrows.

15 MS. BURROWS: Does Romero feed into
16 Oak Creek?

17 MR. STEWART: That's an interesting question.
18 That is the basis the Pace report sets up, and I have
19 just finished a detailed flood report on Romero Creek in
20 this area and reviewed the flood control topographic
21 mapping. And Romero Creek does not feed into --
22 overflow into San Ysidro Creek or Oak Creek at all.

23 So the whole basis of the Pace letter making
24 that assumption is erroneous. Everything they say after
25 that is colored by the fact they've made that

1 assumption.

2 MR. BIERIG: Thank you. If there aren't any
3 other questions, Mr. Stewart, the only thing I ask of
4 you is to take a look at this Pace report in some detail
5 and if you have additional comments.

6 MR. STEWART: I have comments right now. I
7 have had about 20 minutes to look at it, which is
8 probably more than you had to look at it in detail with
9 all the things you have.

10 But starting on page 1, where it reads under
11 "Hydrology Study," first of all, as I mentioned, it
12 indicates that Romero Creek was assumed to be in the
13 overflow area. This is not true.

14 Item No. 1, it says "In the existing
15 conditions, models should be revised to account for the
16 existing functional offline detention/retention basin."
17 That was included in the report. I don't know how Pace
18 could have missed that. It was an important part of our
19 analysis. So erroneous.

20 Item No. 2 talks about the commingling of
21 three watersheds. And again, that's an error.

22 Item No. 3 talks about the ultimate condition
23 model showing planned improvements at US 101. That's
24 irrelevant. It makes no difference. Our project has no
25 impact on that. That has no impact on our project. At

1 this moment that's not the existing condition.

2 Item No. 4 on page 2 talks about a rise in
3 the water surface they assume is going to happen.
4 However, this report was based on a visual walkby.
5 There was no analysis done or included in here. So they
6 looked at it and said "Looks like the water is going to
7 go up."

8 I have done --

9 MR. PHILLIPS: I know what they mean.

10 MR. STEWART: I understand. I have done a
11 detailed analysis of the capacity of the Union Railroad
12 bridge and the channel downstream. And by the way, that
13 channel, the concrete channel, downstream of the Union
14 Pacific Railroad at Oak Creek starts flooding at a
15 ten-year storm. They have problems very early on in a
16 storm regardless of whether this project goes in or not.

17 And the railroad culvert has plenty of
18 capacity. The owners or whoever built that channel
19 decided to neck it down and make it small. So they made
20 their own problem.

21 So in Item 4 where it talks about deleting
22 the watershed function from the existing condition
23 analysis, we did the existing condition analysis. We
24 did the watershed function. It was included. They
25 missed it.

1 In the hydraulic study, we talked -- again,
2 Item No. 1 at the bottom of page 2 talks about the
3 analysis of the US 101 culverts. Again, irrelevant.
4 Item No. 3 -- I should say Item No. 2 they
5 talked about not accurately depicting the hydraulic
6 model. I disagree with that. We have excellent
7 two-foot contour and one-foot contour models that is
8 topographic mapping that is better than is required by
9 FEMA or better than we've been using in most hydrologic
10 or hydraulic models, and our analysis follows that.
11 Item No. 3, they talk about using a different
12 Manning general roughness coefficient at the
13 Union Pacific Railroad. They may disagree with what I
14 used. That's fine. If I use a different roughness
15 coefficient, that will make the same change on the
16 existing as well as the proposed condition. It will be
17 a zero gain, zero difference. So the results will be
18 exactly the same.
19 Again, they can disagree with me on the
20 roughness, but changing the roughness won't change the
21 analysis, the final results of the analysis.
22 They talk about Item No. 4, "the overbank
23 area of Oak Creek is not accurately modelled." Again, I
24 disagree. We have very good topographic modeling.
25 Item No. 5, this is their recommendation that

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1 we should prepare additional analysis. I have studied
2 this over and over again to increasing levels of detail

3 well past the standard of care for a project of this
4 type. I stand behind my report and the results that
5 come from it. I think that Pace has taken a quick look
6 at this and hasn't seen all the details.

7 MR. BIERIG: Thank you very much.

8 Oh, excuse me. It looks like
9 Commissioner Overall has a question.

10 MR. OVERALL: Mr. Stewart, you made a comment
11 there's plenty of capacity at Union Pacific Railroad. I
12 wondered if you could explain to a lay person why it is
13 that we have flooding into the railroad down into the
14 houses below.

15 MR. STEWART: Okay. That's very easy because
16 the people that built the concrete channels downstream
17 of the railroad necked it down. They took it from about
18 an -- I'm sorry. I'm not going to get into numbers
19 because I can't remember whether it was 20- or a
20 25-foot-wide opening under the railroad to something
21 much less just downstream of the railroad.

22 So the water comes through the culvert or the
23 bridge at the railroad and hits a wall.

24 MR. OVERALL: Let me interrupt you for a
25 second. Maybe somebody else could help me out. Maybe I

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1 misunderstood, but it was my understanding the water
2 came upstream of the Union Pacific Railroad, went over
3 the railroad tracks, and came down the other side, not

4 that it went through the culvert and then spread out
5 down to the other side. Is that your understanding?

6 MR. STEWART: That's not correct. There is
7 sufficient capacity to carry the water through the
8 bridge at the railroad on all except very, very most
9 extreme events. In fact, I can't think of an event. I
10 think even for our 500-year or commingled 100-year -- I
11 still think it makes it through the railroad bridge. We
12 designed for it -- to allow it to go over the top just
13 in case.

14 MR. BIERIG: The only thing that might make
15 us think that's not true, at least in my walkthrough, is
16 there's sandbags along the side -- at the railroad and
17 since -- I didn't see it flood. I just looked at the
18 sandbags.

19 MR. STEWART: There are sandbags that the
20 homeowners downstream of the Union Pacific Railroad have
21 put up to try to keep the water in the too small
22 channel, but there's not sandbags above the railroad
23 tracks.

24 MR. BIERIG: No, there's not. So they're
25 simply trying to improve the flow into the channel.

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1 MR. STEWART: That's correct, and by so
2 doing, if -- well, I won't get into this here. There's
3 some liability problems with respect to that.

4 MR. BIERIG: Commissioner Burrows.

5 MS. BURROWS: Sir, is it your opinion, I

6 think you just said, that the owners by making the
7 outflow into a bottleneck deal with the problem that
8 they now face?

9 MR. STEWART: That's correct.

10 MR. PHILLIPS: Mr. Stewart, the County has a
11 one-foot window wherein, if the flow increases higher
12 than one foot, you're out of bounds. It's no good.
13 Three quarters of an inch is your measurement. Isn't it
14 a function of increase and the constriction of the
15 outflow? How does your three quarter inch impact a
16 constricted outflow?

17 And if we're looking at impact of this
18 project, it is the facts that we have. Raising the
19 constriction is interesting because, if it was 11
20 inches, that impact through the constricted flow would
21 be much greater obviously but still within bounds.

22 MR. STEWART: Let's talk about things. When
23 we're talking about three quarters of an inch, that is
24 well outside of the -- that's above the 100-year flow.
25 That's not the 100-year flow in Oak Creek. In Oak Creek

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1 the 100-year flow is 1,800 CFS.

2 we're talk 3,700 CFS, almost twice the flow,
3 whether that's commingled with the San Ysidro Creek or
4 the 500-year flow in the Oak Creek watershed. I'm not
5 going to get into how we divide that up. It could be
6 either one.

7 But what happens -- what we're looking at on
8 the downstream effects is, where you have -- we're
9 looking at the -- finally increasing the flow rate to --
10 sufficiently, as you fill in a small portion of that
11 shoe that we're talking about that Mr. Fayram mentioned,
12 you have enough constriction that the water upstream of
13 the railroad rises enough that it pushes a little more
14 water through downstream.

15 So there's a small increase in the flow rate
16 downstream which means, when you have increase in the
17 flow rate downstream, you get a slight rise in the water
18 surface. But you're talking on flows that are extreme,
19 well past that 100-year FEMA requirement.

20 Essentially, in any situation, you could
21 continue to push more water through any creek, any
22 bridge until you get some constriction, and that's
23 essentially the point that we've reached at Oak Creek.
24 We kept increasing the water surface until we had an
25 impact, and it's a very small impact.

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1 MR. BIERIG: Commissioner Overall.

2 MR. OVERALL: I've got one more question
3 because I now confess I'm a little confused. Based on
4 what I think I understood you to say, it sounds to me
5 the only thing that needs to happen to solve this
6 problem is widen the channel south of the ocean side of
7 the Union Pacific Railroad.

8 MR. STEWART: That would certainly go a long

9 ways. I haven't done a detailed analysis, but it would
10 solve the major problems increasing the flood capacity
11 of that channel from a 10-year -- less than a 10-year
12 flow to -- you could -- however wide you need to make
13 it, you could carry more flow. You could potentially
14 make it large enough to carry a 100-year flow.

15 MR. PHILLIPS: Could it be deeper?

16 MR. STEWART: It cannot be deeper.

17 MR. BIERIG: Thank you, Mr. Stewart.

18 Appreciate your testimony.

19 Commissioners, I'm considering going to
20 public comment next just because I know we're going to
21 work on traffic, and we don't have our traffic --

22 MS. BLACK: Mr. Chair, Mr. Stewart --

23 Mr. Robertson will be here this afternoon.

24 MR. BIERIG: Right. So I thought maybe we'd
25 try to do public comment now unless somebody objects and

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1 would like to handle something else.

2 MS. BLACK: So Mr. Chair, we're letting
3 Mr. Fayram go get on a plane.

4 MR. BIERIG: Yes, we are.

5 Mr. Fayram, thank you very much. Tell you
6 what. If you see anything in that report, you want to
7 call it in?

8 Okay. So I'm going to open us to public
9 comment and --

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Mr. Caruso, please.

10

11 MR. CARUSO: Mr. Chair, Members of the
12 Commission, I would suggest, unless somebody is speaking
13 on our behalf and feels very, very strongly, that our
14 supporters waive their public comment so we can move the
15 meeting forward. So that would be my request to our
16 supporters.

17 MR. BIERIG: Thank you for that. And I'll
18 add to that. I know there's people here both for and
19 against the project, and we know there's a lot of
20 passion on both sides. I would really encourage you,
21 unless you have an issue that you don't think we've seen
22 that's really missing, that you simply show your support
23 for or against but don't come tell us that you don't
24 like the project or you do like the project because it
25 really isn't going to advance us forward which is what I

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1 would like to do.

2 MS. GOTTSANKER: And Mr. Chair, just to tag
3 onto that, just having looked at some of the comments, I
4 think that we have seen all the issues during the
5 hearings.

6 MR. BIERIG: So do I.

7 MS. GOTTSANKER: But I think -- what I'm
8 seeing from the comments on the slip are people that may
9 have new information. So I do think it would be
10 appropriate to hear any new information, but if it's
11 just someone coming up to give us the same information

12 that we already have, I don't see the point.

13 MR. BIERIG: Do you remember the gong show?

14 MS. GOTTSANKER: Given that I just completed
15 my 50th high school reunion, yes, I do remember the gong
16 show.

17 MR. BIERIG: I wish I had one of those here.

18 MR. PHILLIPS: Mr. Chair, I don't remember.
19 Could you tell me about it.

20 MR. BIERIG: Sure you don't.

21 Mr. Caruso.

22 MR. CARUSO: Mr. Chair, I'm sorry. But I do
23 want to say for the record -- I was a little short on
24 that -- to our supporters who have come out, I do
25 appreciate your time. I do appreciate your support.

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1 And I'm not intending to cut you off or be
2 disrespectful, but I think it would be important to get
3 to the discussion amongst the Commission. So anyway,
4 with all due respect to our supporters, thank you.

5 MR. BIERIG: No, I don't want a gavel. I
6 want a switch that turns off the mike.

7 MS. BLACK: Jessica has one.

8 MS. GOTTSANKER: You can give me a big
9 stick.

10 MR. BIERIG: Fredrick Woocher.

11 MR. WOOCHEER: Thank you, Mr. Chairman and
12 Commissioners. I did submit a letter this morning.

13 It's one of the items that you have not yet ruled upon
14 whether you would enter that record, and I could say
15 that my comments would be much briefer if you will agree
16 to add that to the record. So I don't have to actually
17 repeat them here.

18 MR. BIERIG: I'm sure we will. Remind us
19 again what letter it was.

20 MR. WOOCHEER: It's a letter from
21 Strumwasser & Woocher. It attaches the Pace report.
22 I'm an attorney. I'm here on behalf of a number of
23 homeowners who do live in the area both south of and
24 north of the proposed project site. I am a lawyer. I
25 am not a hydrologist. I'm not an expert in those

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1 subjects. I'm here to talk about -- a little bit about
2 what I know of, and that's the law, and how the
3 environmental review process is supposed to occur.

4 And to reiterate the objections that have
5 been raised both by my clients individually, by others
6 on their behalf, and the behalf of other residents to
7 the inadequacy and really the oddness, shall I say, of
8 the environmental review process that's occurred here.

9 This is a massive project that involves the
10 complete demolition of every existing building on the
11 site; the complete recontouring and regrading, which, as
12 you've heard, up to 13 feet of fill in an area that is
13 presently serving as a several acre retention basin; and
14 the construction of something on the order of

15 400,000 square feet of new buildings, which involves
16 filling in the flood plain with some 46,000 cubic yards
17 of dirt. And yet there has never been an EIR prepared
18 for this project.

19 If you were to go up and down the state of
20 California and try and explain that to somebody as to
21 how that occurred, they would be confounded, and I don't
22 envy the position that you are in today as we talk, for
23 example, about these flooding and draining issues
24 because I don't think you have been well served by the
25 process to date.

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1 You are the decisionmakers, at least at this
2 step. And both you and the public are entitled to the
3 environmental documentation, the studies, the analysis,
4 the sending out for distribution, the comments, the
5 consideration of alternatives that CEQA would provide
6 you with.

7 But instead, due to the way in which this
8 project has been bootstrapped from the earlier Schragger
9 project, the way in which it's been illegally segmented
10 into specific issues, and the way in which you get
11 conclusions like we've heard that there's no possibility
12 of significant impact from what we've just heard occur
13 here through seven revisions of a report -- two county
14 planners, I understand, resigned or were forced off this
15 project because they could not endorse in good faith --

16 MR. BIERIG: I have to ask you to wrap up,
17 and you really aren't addressing anything that we
18 haven't heard. I understand you feel passionately.

19 MR. WOOCHEER: I believe, looking at the
20 correspondence and e-mails, what we would urge you to do
21 is take this issue and at least treat it like the law
22 requires that it be done through -- if you want to call
23 it a subsequent or supplemental EIR, fine. There's
24 clearly enough information here and enough dispute and
25 the basis that this requires further resolution. It

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1 requires the independent judgment from the County, and
2 that has not occurred here.

3 The e-mails -- I've got the chain of e-mails
4 here -- you've seen some of them -- that make it clear.
5 I heard Mr. Fayram who wasn't even a project engineer on
6 this -- the project engineer Mr. Frye refused to even
7 look at the report or was told not to. We don't know
8 which it is. He's not looked at it.

9 MR. BIERIG: Again, we've heard this. I'm
10 sorry. You're going to have to wrap up.

11 MR. WOOCHEER: In wrapping up, we would urge
12 you to give this issue the study it requires and the
13 study that's called for under CEQA by setting it up for
14 a subsequent EIR specifically with respect to the
15 flooding and drainage issues.

16 MR. BIERIG: Thank you.

17 Looking at the speaker slips, I have about 4

18 against and 20 in favor. I know on the proponents it
19 indicated a lot of you don't want to speak. If there's
20 some that do wish to speak, maybe you can make yourself
21 known.

22 Please, sir. And what is your name?

23 MR. HUDLAND: My name is Greg Hudland.

24 MR. BIERIG: And you have a speaker slip in
25 here?

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1 MR. HUDLAND: Yes, I do. Good morning, my
2 name is Greg Hudland, and I'm the president of the
3 Miramar Beach Homeowners' Association. My family and I
4 have lived at Miramar Beach on the sand for 44 years.
5 What really concerns me here is we're using hired hands
6 from out of town like lawyers to start keeping on --
7 going over and over and over the same information.

8 We've heard experts about the water. I
9 accept their opinions. They're highly paid. They're
10 very expert. I think we should take the information
11 they give us and accept it at face value.

12 Now, I know about this creek which is a
13 seasonal creek. It's not a watershed from San Ysidro
14 Creek except very, very rarely like in 1969 and other
15 years of heavy El Ninos.

16 As far as I paced off the opening, it's about
17 12 feet wide. On one side of it is the Green family,
18 and they've been there for a very long time. The other

19 side, I believe, is owned by Mr. Harfenist who I believe
20 is selling his property.

21 For some reason back when they built those
22 properties they narrowed it down about 12 feet. It
23 seems to be very simple just like a bottleneck of a coke
24 bottle, if you widen the opening, more water is going to
25 go through it. Now, I don't know if those things are

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1 done with permits, without permits. But it seems to be
2 a simple solution to widen that.

3 I think it's the County's problem and an army
4 of core engineers' problem. I don't think we should
5 punish or penalize Mr. Caruso saying that it's his fault
6 things are going to happen differently.

7 I've seen all the studies, everything, and I
8 urge the opponents to please put aside their personal
9 animosities and attempt to think about what's best for
10 us all.

11 So my association and all the homeowners I
12 represent that live right on the beach and are full-time
13 residents, a lot of them, urge you to approve this
14 process and approve this application. Thank you.

15 MR. BIERIG: Jean Harfenist. I know I
16 mispronounced that.

17 MS. HARFENIST: Harfenist. Think harpist.

18 MR. BIERIG: Think harvest?

19 MS. HARFENIST: Harpist, like harpist
20 (indicating). Hi, my name is Jean Harfenist. I have

21 spoken to this group a number of times now, every time
22 in opposition to this project.

23 Today I would like to speak for David Pickett
24 who is the general attorney for Union Pacific Railroad.
25 I've been in fairly steady communication with

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1 Mr. Pickett. In fact, I spoke to him last night, and he
2 was sorry that he couldn't be here this morning. He
3 hadn't quite realized that there was this meeting when I
4 informed him.

5 And he asked me to tell you that not only are
6 there issues with Union Pacific that haven't been
7 resolved, but the railroad has notified the Caruso
8 association about those issues on a number of occasions
9 and has not yet received a single response.

10 He says that the issues that the railroad has
11 are primarily related to hydrology. So yet again, it
12 seems we have another expert, and this time it's
13 railroad engineers weighing in and saying, "We have
14 serious hydrology issues here, and they're not being
15 responded to."

16 Further, he asked me to let you know that
17 they have remaining issues with the crossing. None of
18 that has been resolved yet quite. He gave me his phone
19 number should you want it later. If anybody has any
20 questions and would like to speak directly to
21 Mr. Pickett, he would love to speak to you.

22 So again, I ask you to please pay attention
23 to the fact that we have experts here. You can't
24 dismiss Pace Engineering, out of hand. You can't
25 dismiss Union Pacific Railroad, and I think that a

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1 watershed study needs to be done.

2 In fact, there are numerous documents, many
3 of which you've already seen, I'm sure, that show that
4 the county flood control and planning and development
5 was asking Penfield & Smith for studies or further
6 information about the watershed again and again and
7 again.

8 And Penfield & Smith refused, according to
9 those e-mails, to provide that information which is
10 still questionable in my mind. And I think, as Claire
11 has said extremely well, this is an issue of water
12 coming across the 101 and entering the Miramar Hotel
13 across their northern boundary.

14 And it is a crime, I think, to continue to
15 focus on the elbow of Oak Creek and the way the water
16 washes off of that elbow into what they're calling the
17 pond at the expense of taking a look at what might
18 happen if the water is blocked by the dam that the new
19 hotel will be and forced to close the 101. We don't
20 know what is going to happen. That is the point. Thank
21 you for your time, and I appreciate your efforts.

22 MR. BIERIG: Thank you.

23 Commissioner Burrows.

24 MS. BURROWS: Ms. Harfenist, do you know if
25 Union Pacific Railroad assumes financial responsibility

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1 for the condition of the tunnel which goes under the
2 railroad and is the source of some of the flooding?

3 MS. HARFENIST: I don't think I can speak
4 further for them beyond what they've told me to. I do
5 know that in a conversation with Mr. Picket on
6 September 9th he said he has written a letter to Caruso
7 Affiliates. It had been an e-mail. I'm just
8 remembering this.

9 And he said that he told them there are
10 probably ways to make this project work but that they
11 may well include new culverts, a new railroad trestle.
12 Some very serious work needs to be done because of the
13 problems here.

14 And I think he suggested the responsibility
15 for that cost would be the developers, but again, if
16 you'd like, I will give you -- yeah, I don't know. I
17 will give you his phone number, and you can ask him, and
18 maybe they could call him also. That would be nice.

19 MR. BIERIG: Again, calling speakers in favor
20 of the project, again, I've got about 20 slips here if
21 there's somebody that wishes to speak.

22 Please.

23 MR. ZOLDOS: Good morning. My name is
24 Steven Zoldos, and I'm being very, very brief.

1 here?

2 MR. ZOLDOS: Yes.

3 MR. BIERIG: Thank you.

4 MR. ZOLDOS: I've been a member of the
5 Miramar Beach and Tennis Club for about 50 years, and I
6 am indeed a polar bear. Even though polar bears are
7 supposedly beginning to be extinct, I am still here by
8 God's grace. I had heart surgery a couple weeks ago,
9 and the doctor told me I can stick around to go back and
10 swim at the Miramar the first of next year too again,
11 and I hope I can keep up that tradition.

12 Anyway, I want to congratulate you because
13 all of you are here today in a very, very unique time of
14 our history. The worldwide turmoil in our financial
15 arena is so deep and so dramatic that I don't think too
16 many governmental agencies have the opportunity you have
17 to generate for this community very, very substantial
18 funds.

19 Right now everybody's looking for credit.
20 Everybody's looking for funds, and I think that, due to
21 your ambitious and conscientious work and the ingenuity
22 of Mr. Caruso and his staff, if you give him the very
23 well-deserved "okay" to go ahead with this project, this
24 community will derive approximately, I understand, about
25 \$3 million per year, which in 10 years is \$30 million.

1 And I understand -- I studied demographics
2 and financial turnover of funds. If you figured that
3 those funds are turned around seven times or eight
4 times, you figure every dollar that is spent creates
5 ripple effects in this community, most of it.

6 So seven times -- if you say seven times or
7 eight times, \$3 million, that's \$24 million in the next
8 ten years. What a privilege you have in this disastrous
9 financial situation in which the whole world is. You
10 are the exception to the rule because you can create
11 funds. You can create cash flow to this community.

12 we need it. we need employment. Thousands
13 of people will be grateful to you, and you will remember
14 it, and you will tell your grandchildren that you were
15 instrumental to make this Miramar -- to resurrect the
16 Miramar.

17 I really want to compliment you from the
18 bottom of my heart for sticking with this because there
19 are so many people who selfishly tried to kill this
20 project just because they have no vested interest in it.
21 I think this is a good project, and there's an old Latin
22 saying "Causa bona trium fide. If it's a good cause, it
23 shall triumph." God bless you all. Thank you very
24 much.

25 MR. BIERIG: Thank you, Mr. Zoldos.

1 Ross Campbell, please.

2 MR. CAMPBELL: Good morning, Mr. Chair,
3 Honorable Commissioners. Ross Campbell with Coast Law
4 Group here on behalf of the Citizens Planning
5 Commission. Thank you once again for allowing us to
6 speak during your time.

7 we did submit a comment letter. With respect
8 to that issue and accepting these documents into the
9 record, the memorandum that Tom Fayram posted on the
10 Internet two nights finally purporting to respond to the
11 fatal flaw assumption identified by Mr. Frye.

12 To say that you're not going to accept them
13 after four hearings asking for that for six months, if
14 you don't accept it, we'll take it up with the court.

15 With respect to the subject of the issue of
16 the fatal flaw issue, I would like to address a few
17 things. I'll start by some of the CEQA standards, and
18 I'll move into some of the background and talk about how
19 things have been sufficient to date.

20 CEQA, of course, as we all know, is about
21 producing an informational document sufficient for
22 allowing you to make an educated decision about
23 environmental impacts of a project and also about full
24 public disclosure.

25 With respect to specific comments on specific

1 issues, your obligation is to provide a good faith
2 effort at full disclosure. The idea there is to present
3 serious legitimate criticism that it simply being swept
4 under the rug in the administrative process.

5 with respect to disagreement among experts,
6 you've got to identify them and explain in the
7 environmental documents why you're selecting one expert
8 over another.

9 Now, I won't get into too much detail. We
10 all know there's 13 feet plus of fill to put in the
11 Oak Creek flood plain. But again, with respect to the
12 December, 2007, report, Mr. Frye identified a fatal flaw
13 assumption. I will get to new issues, but this is
14 something significant that has not been addressed.

15 with respect to that issue, we specifically
16 requested, one, just tell us what that fatal flaw issue
17 is; and two, explain how it was fixed or addressed in
18 the March 7, 2008, report.

19 Basically the response was "Your concerns are
20 irrelevant and baffling." We took the time to explain,
21 if you've got a defective December, 2007, report based
22 on a modeling approach and the same approach is used in
23 the March 7th report, the flaw still exists. There
24 still is a problem.

25 Now, the most recent memorandum from

1 Mr. Fayram is one page and purports to identify the
2 fatal flaw. It says it relates to the use in the
3 December report of the Santa Barbara Urban Hydrograph.
4 The memo also states the County would prefer a full
5 HEC-RAS following the original analysis.

6 But in the March 7th report, quote, "an
7 approved approach was applied." We don't know what the
8 approved approach was. It's not specified in the
9 memorandum. But it is clear that subsequent to that
10 March 7th report by P & S they used a joint HEC-RAS
11 HydroCAD approach.

12 HydroCAD, under our understanding, is simply
13 a commercial application of the Santa Barbara Urban
14 Hydrograph and is essentially interchangeable. And so
15 the flaw has not addressed.

16 This is not coming out of left field.
17 Mr. Frye in his January 31st e-mail to County Staff
18 indicated, one, HEC-RAS only. No HydroCAD, no Santa
19 Barbara Urban Hydrograph. Yet HydroCAD has been used.

20 And so we're talking about criticism from one
21 of your own, from one of your own experts. It's being
22 swept under the rug. We're not going to allow it to
23 happen. This needs to be addressed in detail. Why
24 isn't Mr. Frye here speaking about it? These are
25 questions that need to be answered. We do appreciate

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1 your time. We do understand this has been a long
2 process. Thank you.

3 MR. BIERIG: Thank you.

4 Mr. Stewart, not yet.

5 Again, on the proponents, if there's someone
6 out of the group of speakers that would like to address
7 us.

8 MS. RAE: Good morning. Marilyn Rae. I
9 would like to say --

10 MR. BIERIG: Marilyn, you might want to pull
11 that mike down.

12 MS. RAE: -- that I am too short for this.
13 Yesterday was such a gorgeous day here in Santa Barbara
14 as you all know. I chose to drive down Cabrillo and
15 happen to think look at Fess Parker's beautiful hotel.
16 It took him so long to clean up the blight. Some of you
17 will remember what it was like, and it was pretty awful,
18 and so thank you, Davy Crockett.

19 And so now we have Prince Charming -- sorry.
20 A little levity might work here -- and we have an ugly
21 duckling, and I would like to book that first 4.7 events
22 in one day, and I would encourage you to start this
23 project. I don't know what else you could possibly
24 learn. You've done a great job. It's been an
25 interesting and educational excruciating experience for

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1 all of us from the beginning. Thank you very much.

2 MR. BIERIG: Ron Pulice.

3 MR. PULICE: Honorable Chair, Commissioner,

4 good to see you even here. We usually just meet in the
5 creek. It's nice to meet here with better clothes on.
6 I want to first acknowledge I've talked to a
7 lot of people, but I hear nothing of the best of
8 Rick Caruso, his developments, his family traditions he
9 has at home, and many good things from many good people.
10 So I want to say that my remarks are not about this man.
11 I think this man could build us a wonderful hotel. I
12 think we should do the process some justice, and at this
13 point I don't think we have.
14 Now, Pace Engineering I hired and paid for.
15 I paid for Hansen. I paid for Mike Hoover. I've done
16 all these studies. I didn't do it because I needed to
17 spend money on something like this. And I must say that
18 Mr. Stewart has spoken but -- and Michael, you've said
19 there has been seven reports. There have.
20 And after seven reports, this last week I
21 walked under the freeway and realized his reports, every
22 one of them, included how much water came underneath the
23 freeway, and guess what? He was off by 47 percent.
24 Now, if I can do that in one minute
25 underneath that creek, do you think in seven reports we

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1 might at least get some clarity about what goes through
2 oak creek culverts? It doesn't exist. He can't refute
3 that. Once you look at the picture, the picture shows
4 how wide it is. You can measure it. We measured it,
5 used our cell phones, called the office, and figured out

6 how many cubic feet per second goes through there. 550.

7 Now, Penfield & Smith are great engineers.

8 They've worked for me for 25 years, but remember they

9 don't specialize in hydraulic engineering.

10 subdivisions, streets -- that's their specialty. It's

11 like asking a general practitioner to do your brain

12 surgery. That's not what they do.

13 Now, I respect his opinion, but he also

14 refused, and they have not discussed the fact that, even

15 though it's not Rick Caruso's or Miramar's problem,

16 there was a previous decision made by this County by

17 flood control to change the map and allow Montecito

18 Estates to be built on the east side of Oak Creek.

19 When they did that, they modified and changed

20 the whole flood plain analysis. It's never been looked

21 at. So what we have here is a flood plain now missing

22 and made smaller and now exacerbating a problem that's

23 really severe.

24 Now, if you think that water at a 1,200 feet

25 per second magnitude coming over the freeway that went

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1 onto the possibly five to seven acres of the Miramar

2 Hotel has no effect, that's just not reasonable.

3 And there's a watershed analysis policy that

4 this County has written and adopted, and they refuse to

5 do it on this project. Now, if we would just take our

6 time and do the work, I don't think one yard of dirt

7 should be moved on this project until we know what the
8 watershed management study says and what the corrective
9 work should be done, and that work should be done first.
10 It's a crime to do anything but that.

11 The County put themselves in a bad situation
12 by approving the Montecito Estates project, and now
13 they're going to double it again. Okay. Ending that
14 comment.

15 You haven't talked about traffic. If that's
16 not enough, I don't know what enough is. I've done this
17 so many times. I've brought it in front of you. It's
18 improper. It's inadequate. You need to do that study.
19 So it takes a month or two months to do the project.
20 That's the most. So the project took two years to get
21 through the County, and Applicant can take
22 responsibility because he's not been timely with
23 bringing his reports in and, when they have come in,
24 they've been in error and inadequate. You wouldn't need
25 seven reports if the first one was done properly.

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1 Okay. So if we had two months to straighten
2 out that problem, wouldn't we now just look at the
3 Hansen report? This report says that no adequate
4 comprehensive traffic analysis has been done. What that
5 means is that no analysis has been done with the
6 assumption of construction, traffic, or the traffic from
7 the new hotel.

8 what they've done is say this is our traffic

9 now. It doesn't meet our analysis necessary to be
10 taken. So guess what? No analysis was done on any of
11 the freeways, not one bit of analysis. Now isn't that
12 striking you kind of strange?

13 we should know the impact of thousands of
14 people or at least hundreds people now coming in and out
15 of a new hotel, a wonderful hotel. I want it built.
16 But we need to know what we're up against. We need to
17 know that.

18 And finally I trust you, this group only. I
19 have confidence in you. I don't have confidence in the
20 Montecito Association nor have I a lot of confidence in
21 the Staff forcing the Applicant to have the reports done
22 correctly.

23 So I'm saying I would just say trust your
24 eyes only on the cottage-style analysis. Would you
25 please make it your business to have the final say in

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1 what a cottage style looks like. Thank you for
2 listening to me.

3 MR. PHILLIPS: Mr. Chair?

4 MR. BIERIG: Yes, please.

5 MR. PHILLIPS: Mr. Pulice, I just want to say
6 that your level of participation makes these meetings
7 better, and I thank you for them.

8 MR. BIERIG: Mr. Pulice, if I could, you've
9 mentioned a couple things I'd like to follow up on with

10 Staff later. You talked about a watershed analysis not
11 being done. Could you expand on that.

12 MR. PULICE: Yeah. There's an ordinance that
13 we have in the County and was done in '96 and 2007 and
14 signed by Tom and John, the infamous John who wrote the
15 fatal flaw with Michelle Gibbs and Candice Constantine,
16 which we -- I call it "The Flowers Conspiracy," but we
17 won't go there.

18 But in any event, that study would tell --
19 you do topographical mapping of the two major creeks,
20 San Ysidro and the Oak Creek. And somebody said Romero
21 which doesn't effect. And in that writing pays -- all
22 the information that they have there is always
23 San Ysidro and Oak. How Romero got in there? I don't
24 know. But in any event you need a study.

25 with that study you then will be able to

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1 analyze for certain that 1,200 cubic feet per second
2 where it goes. It's my suspicion that the majority of
3 it goes over to the hotel.

4 And it does act as a debris basin. That's
5 why the County has not had to clean out Oak Creek
6 because the dirt and all the trash that goes on the
7 property now will go in that little hole.

8 And so that analysis would probably take a
9 month to six weeks. And then you would take what would
10 be appropriate, I believe, is to have the Applicant, the
11 County, and the combining neighbors to sit and

12 mitigate -- and it shouldn't take very long. You should
13 mitigate a solution and have an agreement and build it
14 after this winter.

15 And so you shouldn't move any dirt until
16 after that project has been at least on the way. You
17 can start in May and be done by next October. He can
18 start demoing in the spring and building into late
19 summer. But you need to have that cooperation and
20 understanding. And if you wait until after you pass it,
21 there's not a lot of leverage.

22 MR. BIERIG: You also once spoke about a
23 measurement that you said was off. Would you expand on
24 that, exactly which measurement.

25 MR. PULICE: I walked under the 101 freeway

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1 at the Oak Creek opening on the south side of South
2 Jameson. I walked underneath it all the way. The
3 opening shows roughly like 800 cubic feet per second
4 opening.

5 So that's the assumption that
6 Penfield & Smith had, how much water comes down that
7 creek and then into a diversion into a 650 cubic feet
8 per second smaller channel by the neighbors.

9 well, what I found out, when I went under it,
10 is that the northbound part of 101 restricted by a
11 concrete box culvert that's designed differently -- that
12 it only flows 550.

13 So the water that goes through Oak Creek is
14 less than what's capable of coming out of the ocean. So
15 that means the biggest mass majority of the water comes
16 over the freeway, and until the freeway is changed,
17 that's what's going to happen.

18 And if it comes over and it's blocked by a
19 new hotel that has a moat around it because it's now --
20 it used to be able to take water onto it, it's going to
21 back across the freeway, restrict the overland trail out
22 of town as we call it, and it will flood part of
23 headrow. Headrow is in much more danger to some extent
24 than these eight or nine neighbors on the ocean.

25 MR. BIERIG: Thank you very much.

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1 MR. PULICE: Thank you.

2 MR. BIERIG: Again, proponents, anybody wish
3 to address us?

4 Not seeing anyone, Bill Palladini. I see
5 you've got a slip here.

6 MR. PALLADINI: Commissioners, I'm not an
7 attorney, and I'm not here to speak about water. I just
8 wanted to briefly comment on the letter you received
9 yesterday from us by e-mail yesterday morning. I think
10 it was sent to you.

11 And I just want to comment to you that this
12 is the result of reviews that the Land Use Committee did
13 of the new drawings that were furnished to us by the
14 Caruso group and the Staff Report, and they were not

15 intended to supersede or change the board's comment and
16 support of the Caruso project that we submitted to you
17 in the past.

18 This is a followup based on new information
19 that came out and new consensus that came out as a
20 result of the Staff Report, and it briefly -- it's only
21 one page long. It's very brief -- briefly addresses a
22 few things, one of which I want to spend time to
23 clarify. We realize, after we had sent the letter --
24 "we" being the Land Use Committee and the members that
25 participated at that. By the way, that was at our

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1 regular Monday, first Monday of the month, Land Use
2 Committee meeting this past Monday at 9:00 A.M.

3 And I'll be specific here. The way it reads
4 is that -- it talks about trying to limit the size of
5 the events per day, the number of events. It was not
6 the intent actually of the committee to address a
7 specific number of events.

8 And if you think about this conclusion, for
9 example, if you've had -- the comment says "No more than
10 two events per day of 100 people or above 100 people."
11 The problem with that assumption, which we finally
12 agreed upon, was that, if you have a wedding at
13 5:00 o'clock of 500 people, that would only allow you to
14 have one group of 105 people for lunch, and you have far
15 more capacity for that at the facility. So that was not

16 our intent, and we apologize for that.

17 What we were trying to address was in
18 Errin Brigg's memo about the number of events, the 2.5
19 versus the 4.7 events per day average, and we kind of
20 got stuck on the word "average," and here's the reason
21 why.

22 You could conceivably see where you could
23 have very few events early in the week and then really
24 be able to load up at the end of the week because of the
25 word "average." So you have none, and you transfer

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1 those to the end of week.

2 So our concern and the concern of the
3 committee was basically that you consider the
4 recommendations in the Staff Report as to whether 2.5 or
5 4.7 is appropriate. The thought was it would be better
6 to start with less, but we understand the operational
7 issues for the Miramar, and it is your decision to do
8 that. So the word "average" is a little bit problematic
9 on that.

10 And the other thing would be that it would be
11 more appropriate to focus on the number of people who
12 are at the facility in any one day rather than number of
13 events. The association would have absolutely no
14 problem if you had ten groups of 15 people for lunch. I
15 mean that's only 150 people.

16 So the other thing would be good -- I know in
17 the Staff's conditions there's no overlap allowed for

18 large events, but the issue, I think, because we don't
19 have an answer, would be what's an appropriate clear out
20 time between large events? In terms of valet parking,
21 people coming in, people going out.

22 So if you have a series of large events
23 coming in one right after the other, what's the
24 appropriate gap between them? We don't have the answer
25 to that. That's something we think you should consider.

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1 So the only two things in the letter that
2 I'll just briefly touch on those. I'm over time now.
3 Just a few more seconds. The property maintenance and
4 security, if you grant approval for the project, I think
5 it's realistic to think that there be something related
6 to maintaining the property in the intervening time
7 before construction can actually begin, particularly if
8 there's appeals and things like that.

9 And the last thing is on project
10 architecture, we haven't seen any drawings yet, and we
11 understand that MBAR will have the major responsibility
12 for dealing with this, but we recommend to you that you
13 remain involved in some manner with MBAR, either by
14 having them come back to you with their comments or
15 something so that it's not only the responsibility of
16 the MBAR and the Applicant to come up with acceptable
17 architectural style and materials.

18 That's it. Thank you very much. If you have

19 any questions, I'd be happy to answer them.

20 MR. BIERIG: Bill, I have a question for you.
21 what would you think about asking the Applicant to
22 demolish the existing buildings at the end of the period
23 for which we're going to have them maintain them for
24 possible movement?

25 MR. PALLADINI: With the goal of?

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1 MR. BIERIG: With the goal of clearing the
2 site.

3 MR. PALLADINI: Cleaning the site or clearing
4 the site? Prior to a coastal -- prior to development
5 permits?

6 MR. BIERIG: To eliminate some of the --

7 MR. PALLADINI: Prior to development permits?
8 well, I'll be happy to respond. That subject has come
9 up in a land use meeting I attended on Monday, and there
10 was comment on maybe -- can provisions be made to
11 demolish the nonhistorical like the motel-looking
12 two-story things just as an effort to improve the
13 appearance of the site and just generally, you know,
14 make the site less of an issue for the community.

15 So we didn't frankly -- we went nowhere with
16 that because we didn't know where to go because of the
17 historic nature, and also there was the whole issue of
18 at what point do you do that based on permitting.
19 what's your permit threshold for allowing you to do
20 that? I see Ms. Black is shaking her head. Thank you.

21 MR. BIERIG: All right. Thank you.

22 Candice Buergey.

23 MS. BUERGEY: Hi. I'm Candice Buergey. I
24 live at 109 Miramar. I live in the Headrow district.
25 And one of the concerns -- I have a lot of concerns

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1 because there's a lot of violations against our
2 community plan.

3 But what they've been talking about today is
4 flooding. And on my street which is Miramar and as you
5 cross San Leandro and go up Romero, there has been four
6 houses that have flooded in that area during the high
7 rain season, and they put out flooding signs on our
8 street because of the culvert which was supposed to be
9 replaced and has never been replaced.

10 And I have big concerns about if we're
11 putting walls up and down there, what kind of impact are
12 we going to have in our neighborhood. So I would really
13 like to see more studies done. Maybe the MPC needs to
14 go speak to the people that had their house flooded
15 because it's nothing fun, and especially with the
16 problems that you have with mold once you have a flooded
17 house, that really deteriorates profit on your home.

18 The other things that I'm concerned about --
19 and I know everyone gets all excited about this one --
20 is the historical. We have very few resources in
21 Montecito. My house is on the national register. I

Miramar _transcript MPC meeting 10_08_08.txt
22 would love to see these cottages restored. I don't mean
23 to save every board but maybe the skins of them.
24 I think the San Ysidro Ranch did a fabulous
25 job in restoring those that showed the cottage-style

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1 hotel, not something that's the size of whatever
2 building that's been named in Santa Barbara.

3 And if most of the people don't think this is
4 an issue about our community plan, you might think
5 differently when your neighbor wants to grade their
6 property and add 10 feet of fill to get a view.

7 This site is going to sit on a pad that's 10
8 to 12 feet higher than South Jameson. That's probably
9 the ceiling in our room. So I don't want to see that
10 happen.

11 There's a case that's already passed -- I
12 believe it's up in Sonoma -- where the County allowed
13 someone to do something outside of their community plan,
14 and the new builder came in and sued because they felt
15 they were being discriminated against, and they won.

16 So it's how we want to view our community.
17 And I welcome Mr. Caruso to our community. I think he
18 could build a fabulous hotel. I just think we have to
19 stay in our parameters and our guidelines in our
20 Montecito Community Plan because that's why our
21 community looks the way it does now. That's why we have
22 everyone clamoring to get up here.

23 So I appreciate your hard work. I know it's

24 been a long haul for all of us, and I hope this project
25 doesn't divide our neighbors because I think it's

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1 terrible to go in the market and have people disputing
2 projects like this. We need to follow our laws that are
3 in place.

4 Thank you for your hard work.

5 And thank you, Mr. Caruso. I hope we can all
6 work together.

7 MR. BIERIG: Thank you.

8 Tom Vernon.

9 MR. LANGDON: I'm sorry. I surprised you.
10 I'm Verne Langdon, and I'd like to speak here.

11 MR. BIERIG: Well, Verne, would you mind
12 going after Tom?

13 MR. LANGDON: No.

14 Tom, I'm sorry. It's good to see you.

15 I'll be in the back. Give me a call.

16 MR. VERNON: I'm Tom Vernon. And I do have a
17 passion for the cottages, and I put it out there to say
18 we should save these, but at the same time I've spent
19 the last year trying to identify a new location or home
20 for the Miramar.

21 And I'm making some progress. I won't give
22 you the details. The permitting process is going to
23 take a while. The time that has been recommended, which
24 is 90 days, absolutely does not give enough time to get

25 it permitted. I really think it should be dependent on

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1 when the ground is actually broken and the Caruso
2 project moves forward.

3 The last thing we want to do is what we did
4 seven or eight years ago when we tore down half of the
5 Miramar. If we hadn't done that, it could continue to
6 be operated. So I don't want to make the same mistake
7 twice.

8 I'm just asking for give me, the party that's
9 interested in the cottage and the cottages only, an
10 allowable time because by the time this thing is
11 financed, by the time they break ground I don't think
12 it's going to be in 90 days from now.

13 MR. BIERIG: What period of time are you
14 suggesting would be sufficient for you? By the way, I
15 should disclose we spoke on the telephone, and you did
16 mention Venco (phonetic) as a possible destination --

17 MR. VERNON: I don't even want to go there,
18 but I've identified a property that someone's of
19 interest there. The biggest road block is permitting
20 issues. We all know what that's going to involve.

21 MR. BIERIG: Well, you can understand that
22 it's not reasonable for to us have an open-ended time
23 period.

24 MR. VERNON: No, I'm not asking for open
25 ended. I'm asking for when this project really happens.

1 I don't think that's 90 days from today. I know it's
2 not 90 days from today. Don't make it dependent on
3 that. Make it connected to the actual starting of the
4 project, and again, I think you can clean up the site.
5 Just leave the cottages. There's plenty of work to be
6 done there.

7 MR. BIERIG: What are you defining as
8 cottages?

9 MR. VERNON: There are 25 cottages.

10 MR. BIERIG: And the other buildings you're
11 not --

12 MR. VERNON: I can get specific with you.
13 I've got them identified. I can give that list to you.

14 MR. BIERIG: Commissioner Gottsdanker.

15 MS. GOTTSANKER: Tom, could you come back.
16 Thank you. Have you developed any cost factors or like
17 what it would cost to actually move a given cottage,
18 what financially we're talking about for an Applicant
19 that would want to go through the permitting process?

20 MR. VERNON: My efforts have been to identify
21 a property, identify a group to work with.

22 MS. GOTTSANKER: Well, that group must be
23 interested in what it's going to cost.

24 MR. VERNON: I've got to get them interested
25 yet, and I'm making very good progress there as of

1 yesterday. I have moved a house on my property, an old
2 house someone wanted to tear down. It's beautiful. I'm
3 willing to show it to any of you, what I've done. I
4 picked up a house and moved it. That was approximately
5 \$40,000 to move it. So that's --

6 MS. GOTTSANKER: Okay. Thank you.

7 MR. BIERIG: Thank you, Tom.

8 Mr. Langdon.

9 MR. LANGDON: I'm sorry. I apologize to all
10 of you. My name is Verne Langdon. You've seen me here
11 before. I'm one of the dinosaurs from Montecito.
12 Unaccustomed as I am to public speaking, I made notes
13 here. I'll be very brief.

14 We've spent a lot of time this morning on
15 solutions. If the "go ahead" for the Miramar is
16 postponed again and if wall Street stays in the toilet,
17 there won't be anyone left who will be able to afford
18 eating, drinking, or sleeping there.

19 why don't you approve the project today and
20 work out all the legalese-laced knit-picky little
21 details later. Meanwhile, could we start a workshop on
22 where I'm going to get bus fair home today. Thank you.

23 MR. BIERIG: Thank you, Mr. Langdon.

24 I still have quite a few proponent speaker
25 slips, and I would ask any of you that would like to

1 address us now would be the time to do so; otherwise,
2 I'm going to close the time for public comment and have
3 you simply raise your hands or stand up to show support
4 for the project. Why don't you stand up and show your
5 support because I know there's a number of you here.

6 Mr. Hazard, you'd like to address us?

7 MR. HAZARD: I'd like to very quickly talk to
8 a point that Bill Palladini made about 4.7 events per
9 day. You're right. You've heard the elephant in the
10 room. A new change that has happened since the last
11 meeting, is, of course, the economy. And this morning
12 the Wall Street Journal says the Dow has fallen
13 13 percent in the last five days. Right now, as we sit
14 here, it's up 70. So that's the good news.

15 But the reality is that not one new single
16 luxury hotel has been built or financed since the
17 beginning of this summer, and hotel lending has
18 completely shut down. The equity requirements are
19 higher than they ever were before. Debt is more
20 expensive, and of course, occupancy is down 25 percent
21 in luxury hotels.

22 So my only point is that I would urge you to
23 go look at operating restrictions put on the hotel, such
24 as limiting 4.7 events per day or, say, only 15 people
25 at a spa or these kinds of things. Lenders will look at

1 that and say, "This is not a good idea, and what
2 business is it of a Montecito government or association
3 to put these kind of restrictions on a hotel with the
4 good intention of 'well, we're going to cut down traffic
5 or cut down noise' or whatever it is?"

6 In this economy with that 25 percent in
7 occupancy, that cuts down traffic and cuts down noise.
8 So I would say, as you look at this thing, please,
9 please restrain yourself from things that add to
10 construction costs and things that add to operating
11 costs if you want this thing to be built and not spend
12 ten years on rats and riddles.

13 MR. BIERIG: Thank you, Mr. Hazard.

14 With that I'm going to close the period for
15 public comment unless there's somebody that feels they
16 want to address us.

17 Not seeing anyone, time for public comment is
18 closed.

19 It's a little after noon. I suggest -- we
20 had a few issues that were raised by some of the
21 speakers and deal with those while they're fresh and
22 then take a break for lunch.

23 Mr. Stewart, if you don't mind, I saw you
24 taking some notes on a number of the items that were
25 addressed by some of the speakers. I was hoping you

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1 might give us your take on a couple of those. In
2 particular the issue of the measurement of the size of

3 the channel and some concern about the discrepancy about
4 the inflow into Oak Creek and the outflow into the
5 ocean.

6 MR. STEWART: As far as the measurement of
7 the channel, I'd have to go back and look at our survey
8 to find out exactly what the width is. We did a
9 detailed topographic survey of the channel from the
10 ocean up to and including the Union Pacific Railroad.
11 So we have survey data.

12 The width of it is about half of the width of
13 the existing Union Pacific culvert under the railroad.
14 To tell you exactly what width is which -- I'm sorry --
15 I'd have to go back and review our survey.

16 As far as inflow versus outflow, could you
17 explain what exactly the concern is. I thought I had
18 addressed it.

19 MR. BIERIG: Well, I thought you did too, but
20 there seemed to be a difference of opinion on that one,
21 and I just thought -- I'd hate to get technical, but I
22 thought the difference between the two was you guys
23 calculated additional flow outside of the channel as
24 part of what's being dealt with here, and that seemed to
25 be the differential. I didn't want to speak to it on

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1 the technical side. But you do calculate inflow into
2 the channel that doesn't come through the channel?

3 MR. STEWART: We have never, ever calculated

4 the flow under the freeway or over the freeway or made
5 any determination what comes over or under. It's what's
6 in Oak Creek channel.

7 In fact, I've talked to the comment from the
8 people that were concerned about overflow over the
9 freeway is that North Jameson Lane which forms --
10 there's actually two types of weirs, essentially roads
11 that act as weirs.

12 North Jameson Lane has a low point which is
13 just east of the Miramar project, and it starts at about
14 Elevation 22, 23, and it extends up -- if you go up to
15 San Ysidro Road up to Elevation 40. So that's the
16 westerly portion of the weir, and then North Jameson
17 Road extends essentially flat over to Posilipo Lane.

18 So the mass majority of water that comes over
19 the freeway is going to come over North Jameson Lane
20 between our project and Posilipo Lane and go into the
21 channel which is just adjacent to North Jameson Lane,
22 not even coming through the project.

23 The possibility that our project would impact
24 the -- would impact or back up the flow across the
25 freeway is remote.

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1 MR. BIERIG: Do you have a comment on
2 Mr. Campbell's statements relative to the fatal flaw?

3 MR. STEWART: Okay. That's interesting. The
4 term "fatal flaw" and the reference to that memo and
5 fatal flaw -- we saw the memo that came from Mr. Frye in

6 January, and the comment about fatal flaw was an
7 internal memo that we didn't see until much later in the
8 year.

9 At the time we received the wish list from
10 Mr. Frye, I immediately called him up, and I said -- I
11 expressed my concerns about what he was asking for and
12 what the intent was. My understanding of his concern
13 was that we had not taken into account the ponded volume
14 of -- you know, the filling in of the ponded area on the
15 Miramar site. He wanted a little bit more information
16 on that.

17 I also expressed my concern that the
18 methodology that he was asking for appeared to be pushing
19 towards a full letter of map revision flood report which
20 has never been appropriate for this project. He
21 explained to me that that was not the case, that there
22 are many different ways that we could approach the
23 analysis of the project, and that we didn't have to use
24 exactly what he had prescribed.

25 So how that relates to the fatal flaw, I

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1 can't tell you because I wasn't aware of that quote,
2 that he used the term "fatal flaw" before.

3 MR. BIERIG: There seemed to be an issue of
4 timing whether they had originally -- based on the memo,
5 there had been some change in the methodology used, and
6 it seemed to be a timing issue of whether the change had

7 been incorporated or not, and I take it your answer is
8 it was.

9 MR. STEWART: We used the methodology that the
10 County has prescribed in their standard Conditions of
11 Approval, and that's all I can say. That's what we
12 used, and Mr. Frye had requested something different,
13 and I replied to him, "But this is what you've
14 requested."

15 And he said, "There's lots of different ways
16 to do the same thing."

17 MR. BIERIG: I understand.

18 MR. PHILLIPS: Mr. Chair.

19 MR. BIERIG: Commissioner Phillips.

20 MR. PHILLIPS: Thank you. I think one of the
21 problems is we all have different objectives here, and I
22 suspect yours might be on behalf of your client to do
23 the very least examination possible and come to a
24 professionally defensible result. I can't imagine any
25 other reason you would redo your report seven times.

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1 Now, I understand that -- let me finish -- we
2 all have jobs to do and this and that. But we have a
3 public safety issue here, and I'm concerned that you may
4 be -- you may have been constrained in doing the type of
5 report necessary and the person who is peer reviewing
6 you stopped objecting and wouldn't look at it anymore,
7 and now we have the final Stewart report after seven
8 iterations. Can you explain why the revisions kept

9 happening, and were you defined by the Applicant as to
10 methodology?

11 MR. STEWART: Our first -- I'm not sure that
12 I can say I've heard the term seven times. I'm not sure
13 there were seven revisions.

14 MR. PHILLIPS: Assume 5 or 6.

15 MR. STEWART: Well, I'm not sure there was
16 that many. There were drainage reports. There was
17 water quality reports. There were flood reports -- all
18 three different versions combined, et cetera. And there
19 were changes in the project that happened that made
20 changes necessary in the drainage report, but then maybe
21 considered a change in the, quote, "flood report" that
22 was contained in the same binder.

23 But I will tell you that the client said, "We
24 want to do what we need to do for what is normally
25 required for the County of Santa Barbara for approval of

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1 a project." We gave them a proposal, a scope of the
2 work. We provided that amount of work. And the County
3 came back and said, "We want to see more."

4 We also talked with neighbors at the time,
5 and they said, "We're concerned about this filling in of
6 the flood plain." So in response to the neighbors'
7 concerns, we went the extra mile and did some additional
8 work. At that point then --

9 MR. PHILLIPS: But in the first instance you

10 did not feel constrained, you did not feel that you
11 needed to apply methodology that you typically did not?
12 Is that your testimony that you did not feel that?

13 MR. STEWART: That was the first approach.
14 We have always taken the analysis through. I mean, as
15 we looked at, for instance, the flood plain elevations,
16 we could see that our project was well above the flood
17 plain elevations. We were not impacting into the
18 floodway. We felt that the opening under the railroad
19 was a very large opening. We felt by observations there
20 was little impact, and that observation was born out
21 through our later more detailed analysis.

22 MR. PHILLIPS: And not measuring of the
23 culvert under 101 was appropriate because it's de
24 minimus?

25 MR. STEWART: That's correct.

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1 MR. PHILLIPS: It doesn't lead us to any real
2 issue?

3 MR. STEWART: Well, if we're not impacting
4 upstream elevations, then what impact do the culverts
5 upstream of us have to do on our project? We looked
6 at -- we're looking at whether the flows come over
7 US 101 or under 101 in an existing culvert. Our project
8 makes no difference.

9 MR. PHILLIPS: So there's nothing that I'm
10 not asking you that would result in a different answer
11 that would impact this project? Is there something I'm

12 missing that I'm not asking you that you would like to
13 tell us about this?

14 MR. STEWART: I can't think of anything.

15 MR. PHILLIPS: Thank you very much.

16 MR. BIERIG: Commissioner Overall.

17 MR. OVERALL: Mr. Stewart, in Mr. Campbell's
18 comments, I'll make garbage out of the specifics here,
19 but in reference to the fatal flaw, the notes that I
20 took, were that there's something called the Santa
21 Barbara Urban --

22 MR. STEWART: Hydrograph.

23 MR. OVERALL: Thank you -- that was
24 inappropriate to use, and they requested it not be used.
25 And then I believe I understood him to say that in the

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1 final report you did you used HydroCAD which used the
2 same principles used in that other program which he said
3 shouldn't have been used. Can you shed any light on
4 that? And forgive me if I got it confused.

5 MR. STEWART: Well, as I understand
6 Mr. Fayram's comments, it was Mr. Frye's belief that I
7 had used the old published basic computer program SBUH
8 for doing the analysis.

9 we used the Santa Barbara County standard
10 conditions for development that the State said that we
11 should use, an SBUH methodology. So we used SBUH
12 methodology as used in the HydroCAD program for our

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13 analysis. I'm sorry. There's one program versus
14 another program.

15 MR. OVERALL: Mr. Campbell maintained it was
16 inappropriate to use either one of them, and I'm trying
17 to get at -- Ms. Black, were you going to add something
18 there to help clarify?

19 MS. BLACK: Well, Mr. Chair and
20 Commissioner Overall, I was simply going to indicate
21 that Mr. Fayram in his earlier testimony indicated that
22 the analysis that they did was acceptable and accepted
23 by public works flood control.

24 And I think it's hard for us to go much
25 further into that at this point from the County's

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1 prospective without Mr. Fayram here to testify. But I
2 think he was quite clear that the analysis was done
3 properly and according to County standards, and I just
4 can't answer your question specifically.

5 MR. STEWART: I know there were a couple of
6 other comments that were made if I could address those.

7 MR. BIERIG: Please do.

8 MR. STEWART: Okay. No. 1, there was a
9 comment regarding that Penfield & Smith was not -- did
10 not have a specialization in hydraulics and hydrology.
11 That's totally incorrect.

12 I have been working in hydraulics and
13 hydrology in advanced courses for the last 25 years. I
14 have submitted and have approved numerous

15 one-dimensional and two-dimensional analysis on this and
16 was a featured speaker at the Flood Plain Managers'
17 Association program last month. Totally untrue.

18 And also there was the assertion both in the
19 Pace report and by the gentleman saying that we had not
20 done a watershed analysis. We did do a watershed
21 analysis. We did determine a hydrograph which was used
22 for determining what the impacts of filling in the
23 volume of what Oak Creek would be. That was the precise
24 reason we did it. We determined the hydrograph and
25 hydrologic routing as required to understand that

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1 situation.

2 MR. BIERIG: Okay. We're going to take a
3 break. We're going to have to take a break here in a
4 moment whether it's for lunch -- can we hold on for
5 another couple minutes.

6 THE REPORTER: It's okay. Go ahead.

7 MR. BIERIG: We are going to need to wind up
8 in a couple minutes.

9 Please go ahead.

10 MR. OVERALL: Mr. Campbell, you heard the
11 exchange related to your comments.

12 MR. CAMPBELL: I did.

13 MR. OVERALL: I would like you to have an
14 opportunity to --

15 MR. CAMPBELL: Thank you,

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16 Commissioner Overall. Yes, please. While Mr. Fayram
17 may not be present, we have his memorandum dated
18 October 6th. It states "The fatal flaw is related to
19 the use of the SBUH," as we know, the Santa Barbara
20 Urban Hydrograph.

21 As I understood Mr. Stewart's testimony,
22 HydroCAD is for all intensive purposes equivocal, and it
23 was used.

24 So that is a problem. I haven't heard
25 anything to explain how it's been corrected. We have

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1 the memo from Mr. Fayram saying the flaw is related to
2 SBUH, Santa Barbara Urban Hydrograph. It's clear in the
3 memorandum given the current representation from
4 Mr. Stewart.

5 MR. BIERIG: I'm sorry. I don't understand
6 what the problem you're seeing is. You're saying
7 there's a problem, but I don't hear the problem.

8 MR. CAMPBELL: I think the problem is the
9 county flood control engineer John Frye has identified a
10 fatal flaw assumption in the December, 2007, report.
11 Our concern is, if that fatal flaw was not corrected in
12 the March 7, 2008, the most recent report, it's still
13 inaccurate.

14 MR. BIERIG: He said it was.

15 MR. CAMPBELL: I'm sorry?

16 MR. BIERIG: I heard him testify it was. I
17 don't get what's missing.

18 MR. CAMPBELL: This is the concern. The
19 current memorandum -- we've been asking just for simply
20 an identification of what that fatal flaw was. That's
21 their obligation under CEQA.

22 MR. BIERIG: We have a memo that tells us
23 what it is. I'm really struggling with what the issue
24 is.

25 MR. CAMPBELL: Okay. Well, the issue is the

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1 flaw relates to the use of the Santa Barbara Urban
2 Hydrograph. The equivalent methodology was used in the
3 March 7th report. So the fatal flaw would still apply.

4 MR. BIERIG: That isn't what he said.

5 MS. GOTTSANKER: Yes, it is what he said.
6 You've got to know what these things are. It is what he
7 said.

8 MR. PHILLIPS: Mr. Chair, is it the
9 Commissioners' sense that the fatal -- do you join me in
10 believing that the fatal flaw was a methodology issue and
11 then having not taken into consideration the San Ysidro
12 Creek overflow, and both of those were looked at again,
13 and fatal flaw is now gone? I think that's my
14 understanding.

15 MR. BIERIG: My understanding was a question
16 of methodology. They modified the methodology used and,
17 therefore, no fatal flaw. I haven't heard anything that
18 changes that. Maybe Staff can help us on it.

19

MR. CAMPBELL: It may have changed --

20

MR. BIERIG: Mr. Campbell, hold on for a

21 second.

22

MS. BLACK: Mr. Chair, I'm going to the memo

23 that Mr. Fayram wrote to me on September 30th indicating

24 that -- he's addressing the Miramar project, a

25 clarification of a fatal flaw. And if you read through

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1 that memo, the second to the last paragraph indicates

2 "Subsequent to that," meaning the previous work that was

3 done, "Penfield & Smith completed another report that

4 supersedes the previous report and utilized an approved

5 approach to determine the minimal."

6 That was Mr. Fayram's conclusion. That's

7 what he said today. I believe he clearly represented

8 that flood control in this situation has been adequately

9 analyzed.

10 And there's another issue, and that is the

11 existing baseline conditions that he feels needs some

12 additional review outside of the context of this

13 project, but this project has been analyzed properly.

14 MR. BIERIG: Thank you.

15 Commissioner Gottsdanker.

16 MS. GOTTSANKER: Mr. Chair, so I think I

17 tried to say this at the very beginning of this whole

18 discussion around -- I think I've said it before around

19 the drainage problems -- is that I believe that, yes,

20 there needs to be more studies. Absolutely.

21 But it is not -- that is not the Applicant's
22 problem. It really isn't. This is the County of
23 Santa Barbara's problem. You know, yeah, we have a
24 problem. We now are here -- rather than protecting the
25 Applicant and the public, we're here to protect the

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1 County of Santa Barbara. We've got a problem. It's
2 going to be a health and safety liability problem.

3 The County of Santa Barbara already has had a
4 problem with this creek and what's been referred to as
5 the Mission Estates and whatever. We've lost a human
6 life because we have a problem. It's not Mr. Caruso's
7 problem. It's the County of Santa Barbara's problem.

8 And you know, that's why I think
9 Commissioner Burrows's comment is totally accurate. We
10 need to have a workshop, and we as the planning
11 commissioners dealing with land use need to take on the
12 problem when we have time to have the studies and have
13 them as wide as they need to be and as deep, whatever we
14 want to say. You know, how many watershed? All of that
15 needs to be determined.

16 MR. PHILLIPS: We have a project that may be
17 exacerbating it. That's the issue today.

18 MS. GOTTSANKER: Well, that's a difference
19 of opinion. My opinion is that this project is not
20 exacerbating the problem.

21 MR. BIERIG: Let's hold off on this for

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22 deliberations.

23 MS. GOTTSANKER: I have other problems that
24 it may be exacerbating, but as far as drainage, I don't
25 think this problem -- this project is exacerbating the

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1 problem for drainage in this area.

2 MS. BURROWS: We're just recrawling the same
3 field. We need to move on and have a workshop. We
4 would love to have Mr. Campbell.

5 We would love to have you join us and try to
6 come up with some solutions to this really big problem
7 for Santa Barbara County and especially for this group,
8 for Montecito.

9 MR. CAMPBELL: If I may, we're not asking the
10 Applicant to address the entire community issue. We're
11 asking him to address the impact of putting 13 feet of
12 fill in the flood plain, in the associating flood plain.

13 MR. BIERIG: We're going to break for lunch
14 and come back at a quarter to 2:00. That gives us an
15 hour and ten minutes for lunch.

16 (Whereupon a short recess was taken.)

17 MR. BIERIG: And I think for this afternoon
18 probably our item of business would be to talk about
19 traffic. I know there's been some questions on traffic.

20 Mr. Briggs, maybe I could --

21 MS. GOTTSANKER: Mr. Chair, I'd hate to
22 say -- I don't want to interrupt here except to say this
23 fan is not working next to me, the fan on the floor. I

24 can't hear what anybody else is saying here.

25 MR. BIERIG: We're going to turn the volumes

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1 on the mikes up to the point where nobody would be able
2 to miss us.

3 MS. GOTTSANKER: I didn't mean to interrupt,
4 but I couldn't hear anything you said then.

5 MR. BIERIG: I think that's a little better.
6 We need to make sure we speak into the microphones here,
7 make sure we get heard.

8 Mr. Briggs, just to start out, I was looking
9 at the errata sheet, the first one. On page 4 there's
10 some changes in the level of service calculations for
11 the intersections, and I'm not sure if any of these
12 really amount to any substantial difference, but I
13 thought you could walk us through that for a second if
14 you would. What is contained in this change of the
15 transportation circulation, page 43?

16 MR. BRIGGS: Basically that stems from new
17 data that was collected by ATE. Caltrans had done some
18 recent counts at these intersections, and they simply
19 wanted to bolster the traffic analysis by providing the
20 most updated numbers available, and I wanted to pass
21 those on to you.

22 MR. BIERIG: Okay. So it's simply an update
23 based on the most recent traffic study that was done.

24 MR. BRIGGS: Correct. That's correct.

1 changed any level of service for the intersections as I
2 read this. At least not in a negative way.

3 MR. BRIGGS: I don't recall any changes. I
4 could be wrong with that, but it did add levels of
5 service to several intersections where before we had
6 none.

7 MR. BIERIG: No data before?

8 MR. BRIGGS: Right.

9 MR. BIERIG: One issue that's come up that I
10 know Commissioner Overall is interested in, and I'll
11 mention that one is -- is it Robertson?

12 MR. ROBERTSON: Yes.

13 MR. BIERIG: Robertson. Thank you.

14 Mr. Robertson has come up -- is how cars on Jameson will
15 turn around if they don't want to get on the freeway. I
16 know that's an issue on the plan. Maybe it's not best
17 directed at you.

18 Looking at the plan, we were trying to
19 determine how someone -- any one of the site plans will
20 show it. I saw a bit of data indicating that someone
21 could turn around at the truck-loading area, I assume,
22 for the ballroom. But I'm not sure if those radiuses
23 will really work as a turnaround, and I wonder if one of
24 the things we might need to do is have somebody at least
25 do a preliminary take on whether cars can actually turn

1 around without having to go down to the next
2 intersection and drive into the neighborhood for a
3 driveway to get back.

4 This might be better directed at the
5 Applicant at some point because I did see it in one of
6 your responses to a question. Is there somebody on your
7 team that could address this issue of the turnaround?

8 Mr. Shell.

9 MR. SHELL: Good afternoon. I'm Scott Shell
10 with Associated Transportation Engineers.

11 MR. BIERIG: I don't remember whether that
12 memo was from your office indicating a turnaround
13 possibility, but there is some concern that, given that
14 the parking spaces are angled, there might not be -- it
15 might be difficult for them to go west on Jameson.

16 MR. SHELL: I think Ellis and Art thought for
17 all the spaces that were back this side of access to the
18 parking area that this would be the turnaround for those
19 spaces. We haven't looked at -- you're talking about
20 these ones right here (indicating). I haven't really
21 looked at whether that accommodates or not. I think
22 that's something we can look into.

23 MR. BIERIG: Is there enough room physically
24 there to expand the size of that entrance point so that
25 somebody can make a U-turn? I can't see exactly where

1 the property line is, but on that I think it's something
2 worth while addressing.

3 MR. MC MANNIS: Mr. Chair, Commissioners,
4 Michael McMannis with Caruso. That service area is
5 designed for a 55-foot truck turnaround in there
6 already. You would probably want to look at Sheet A --

7 MR. BIERIG: You're talking about inside it?
8 I'm not sure people would turn in there. I guess they
9 might.

10 MR. MC MANNIS: It would allow for it.

11 MR. PHILLIPS: Mr. Chair, you're talking
12 about somebody backing out and heading --

13 MR. BIERIG: When they back out, they're
14 going to be headed east. And the question is how do
15 they get west.

16 MR. PHILLIPS: And they don't want to go
17 south?

18 MR. BIERIG: They don't want to get on the
19 freeway, and he's right as it relates to one -- on the
20 other end of Jameson, they could come into the ballroom
21 entrance or the hotel entrance. There's options for
22 them.

23 MR. PHILLIPS: Is there a semicircle that
24 could be cut out somewhere?

25 MR. MC MANNIS: If I may, this area in here

1 is a turnaround for a truck to pull into here, back into
2 here, and back out (indicating).

3 MR. BIERIG: So there is a way to do it.

4 MR. MC MANNIS: Sheet A0.10 will show that
5 geometry more clearly.

6 MS. GOTTSANKER: So just so I'm clear, what
7 you're actually saying is that -- it's so difficult to
8 read all of these because there's all these lines and
9 things, but you're saying that that -- actually the way
10 it reads is it reads as a driveway, but it really isn't.
11 It's an entire paved area that's outlined by the
12 building. Is that accurate? It's like the building
13 itself is the edge of the paved area?

14 MR. MC MANNIS: Yes. That sheet is the roof
15 line sheet. Errin's going to pull up the ground floor
16 sheet so you'll see the paved area.

17 MR. BIERIG: While they're pulling up that
18 sheet, I've got a list, and maybe we'll just throw them
19 out. The self-parking option -- maybe you could walk us
20 through how that -- again, just how the cars would get
21 in and out, which we're thinking of conceptually if that
22 becomes a requirement later.

23 And another related question is the Beach and
24 Tennis Club members. Will they be able to self park
25 regardless of self-parking? I mean similar to

1 employees. I assume you're not going to have employees
2 and Beach and Tennis Club members valet?

3 MR. MIDDLEBROOK: We expect them to valet --
4 probably come into the ballroom area and valet park
5 there. We've not -- since self-parking is an option in
6 the future, we have not looked at that in detail
7 operationally where that would be self-parking through
8 the ballroom entrance to the garage or main entrance to
9 the lobby. We haven't explored it to that detail.

10 MR. BIERIG: Mr. Middlebrook, my concern is,
11 if it's too difficult for the Beach and Tennis Club
12 members to park, they might park elsewhere and walk in.
13 I'm not saying they will, but they might. So it's a
14 little bit of a concern certainly as it relates to the
15 employees. So is the plan to have the employees have
16 some sort of self-parking option for them?

17 MR. MIDDLEBROOK: That's what we would
18 expect. The beach club -- I don't know why it would be
19 hard to park. They would just be able to pull in and
20 park.

21 MR. BIERIG: It's only a question of if you
22 have to wait. Valet often involves waiting and people
23 and tips. Yes, tips. And people just don't like it.

24 MR. MIDDLEBROOK: Hopefully, operationally,
25 we can address that and make sure the service level is

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1 there, and I think the beach club members, if they're
2 not getting service for what they're paying for, I'm

3 sure would let us know about it in short order.

4 MR. BIERIG: I would imagine they will.

5 MR. PHILLIPS: Mr. Chair.

6 Matt, one second. I think we did this
7 somewhere else, with Westmont or the Music Academy. Is
8 there a little decal that you could put on a car so that
9 would --

10 MR. BIERIG: I think that's in the
11 conditions.

12 MS. GOTTSANKER: We did it with employees.
13 We haven't done it with beach club members yet.

14 MR. PHILLIPS: Can we do it with beach club
15 to keep them out of the diagonal parking?

16 MS. BLACK: Mr. Chair, we could certainly
17 include a condition, but I think it's very difficult to
18 expect that the Miramar is going to be able to control
19 whether or not somebody puts a decal on every car they
20 own.

21 MR. BIERIG: You think?

22 MS. BLACK: Yeah, I do. We can do it. We
23 can ask them to do it, but I wouldn't hold a lot of
24 credence with that. They can't fire a beach club
25 member; they can fire an employee.

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1 MR. MIDDLEBROOK: But one thing we have
2 described and talked about before with respect to beach
3 club members and busy weekends -- we would send out

4 decals to the members letting them know they could only
5 bring -- for 4th of July they could only bring one car,
6 and they would have to have that card on their dashboard
7 to limit them to one car. So we have some ability to
8 manage the busiest times.

9 MR. BIERIG: Mr. Overall.

10 MR. OVERALL: I'd like to weigh in on this.
11 This is more observation on parking. I feel that the
12 approach that you're using clearly related to the tennis
13 and beach club is not practical. I don't think it would
14 be enforced. It would be virtually impossible to do.

15 I think the only way to have satisfactory
16 arrangement is to have a parking facility where tennis
17 and beach club members can do it on a self-park basis.

18 If I'm a member and I come down three or four
19 times a week to use the club, whatever, I think it's
20 highly unlikely that I'm routinely going to pull in,
21 shell out, you know, 10.00, \$20.00 for valet parking,
22 you know, four times a week. And I don't think people
23 are going to do that.

24 I think the truth is they're going to be
25 there for an hour and a half, and what they're going to

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1 do is they're going to end up parking on the street. I
2 just don't think it's a viable approach.

3 MR. CARUSO: Commissioner, if I could respond
4 to that, I'm a member of a beach club down in
5 Newport Beach, and it's valet. That's how you go to the

6 beach club down there. So I think there's different
7 ways to operate.

8 I would ask again on these particular
9 issues -- there's a number of safeguards the Commission
10 has. Can you give us some flexibility to operate the
11 hotel, and if we're not operating properly or if there's
12 intrusion to the community, the Commission certainly has
13 the right to call us back, and we're going to be
14 sensitive to that.

15 I would hate to think we're going to get into
16 every little detail of operations because you just can't
17 predict how things will operate. These are our beach
18 club members. They'll be paying to go there. We're
19 going to want to service them well. We're going to want
20 to cater to them, and if there's a problem, we're going
21 to address it.

22 MR. BIERIG: Mr. Caruso, I agree with you in
23 your statement. I know you'll be doing your very best.
24 But I think the reticence -- "reticence" may be too
25 strong, but the concern is that we have Counsel telling

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1 us it's going to be very difficult to modify your
2 operational procedures after approval and it's difficult
3 to do so.

4 I understand you're going to want to work
5 with the community, but we can't assume anything. It
6 may not be you operating this hotel. We could be

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7 dealing with somebody else down the road. We're trying
8 to do a base level of things that we see in front of us.

9 MR. CARUSO: I understand that. But the
10 three conditions you currently have in the Conditions of
11 Approval give the Commission the opportunity to bring us
12 back. You can impose other conditions on us. You can
13 impose the self-parking on us. So it's not like we are
14 out there on our own. We're going to have to be
15 responsible to you. We're going to want to do the right
16 thing, and you're retaining jurisdiction over those
17 items. So again, we do have a lot of experience in
18 operating active busy properties.

19 MR. BIERIG: Well, I would like to think
20 we're retaining jurisdiction over you. I'm not sure if
21 there's a practical --

22 MR. CARUSO: You own me, sir.

23 MR. BIERIG: As soon as I ask Counsel here
24 whether I have jurisdiction, I'm afraid they're going to
25 give me a different answer.

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1 MR. CARUSO: With three conditions we
2 currently have in there? Well, Condition 55, 63 --

3 MR. BIERIG: 55, 66, and 84. But you're
4 right. We're going to spend some time on those, and
5 hopefully that gets us there, but understand we're just
6 trying to look at some of the things that we think may
7 be at the top of the cut list for things that might be
8 reasonable to impose if we do find problems.

9 MR. CARUSO: If you want us to use decals,
10 even though it may not be 100 percent effective, we're
11 happy to do.

12 MR. PHILLIPS: Mr. Chair, do you mind if I
13 follow up on that.

14 MR. BIERIG: Please do.

15 MR. PHILLIPS: Can I ask Counsel about this
16 now? Let's get this over with, I guess. Is it -- if a
17 permit is issued with the right to have us -- and it's
18 conditioned in that a study may or may not happen -- I
19 guess it could be called a year later -- does the
20 Applicant have an entitlement to that level of use and,
21 therefore, our burden is to overcome that entitlement
22 right, or is it -- which sounds like a difficult task
23 for the Commission.

24 And can you appeal that?

25 Could they appeal our decision to do that?

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1 MR. GHIZZONI: Chairman Bierig,
2 Commissioner Phillips, let me start off with that what
3 we're really talking about is not so much -- or not a
4 vested rights issue or entitlement issue but a process
5 issue. I'll make that distinction that so long as the
6 conditions in the project describe the potential for
7 that to be reduced later that there should be no
8 expectation for the Applicant that that could not go
9 down.

10 As a practical problem, though, I'm reminding
11 you that we're talking about a development plan, not a
12 conditional use permit. And under the Coastal Zoning
13 Ordinance, there's a clear path in a conditional use
14 permit for the Commission to look at -- to relook at
15 that particular conditional use permit.

16 And it's really the nature of a conditional
17 use permit versus a development plan that we're talking
18 about. With a development plan we're talking about a
19 company that fits very squarely into that particular
20 zoning district whereas, with that conditional use
21 permit, some people would not be the principle for use
22 for that. And because of that, you have different holes
23 on a conditional use permit project than a development
24 plan.

25 So in terms of your ability to reopen or look

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1 again at a particular condition, if it's called out in
2 the condition, you do not have a vested rights or
3 entitlement problem, but you may have at the practical
4 level a process problem in terms of some -- for example,
5 a downstream owner says -- wants to challenge your
6 process, what that process is going to look like in
7 front of the planning commission or to appeal that
8 process.

9 So my recommendation any time you're thinking
10 about a particular condition would be, in descending
11 order, the cleanest and the way you can get the most

12 confidence in what this project will look like is to set
13 a fixed number. For example, if it's 4.7 events per
14 day, you set a fixed number for that.

15 The next cleanest in terms of process would
16 be setting some number less than 4.7, and keeping in
17 mind that our Coastal Zoning Ordinance provides a couple
18 different paths including a substantial conformity
19 determination where, if you would set the number at 3.5
20 or 2.5 and wanted to provide upward growth, that the
21 Applicant could come in later for a substantial
22 conformity determination to raise it up to a number up
23 to or including 4.7.

24 So those are both paths that exist in our
25 Coastal Zoning Ordinance, but the paths that would be

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1 more challenging -- and when I say "challenging," you
2 can read into that more likely to be litigated by some
3 potential downstream owner -- would be starting at a
4 number like 4.7 and then purporting to bring the
5 Applicant back in against their will to lower that
6 number.

7 MR. PHILLIPS: Would it require a downstream
8 owner?

9 MR. GHIZZONI: No. But in term of looking
10 for problems so you're not disappointed ten years from
11 now, that's a potential scenario that you could look at.

12 MR. PHILLIPS: The Applicant could challenge

13 the 4.7 right now. So his rights to challenge this
14 set -- this number continues with him, but beyond that
15 there's no other burden for us, is there? It's a
16 rational basis argument or --

17 MR. GHIZZONI: I think you put your finger on
18 the other piece of this, which at the practical level,
19 not to vested rights or entitlement questions -- that's
20 not what we're talking about here -- but at the
21 practical level of either process or standards. Process
22 I just talked to you about.

23 The next part would be the farther you stray
24 from some established metrics or standards the more
25 appeals you will be looking at. I'm not talking about

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1 just this particular project, but statistically over a
2 large number of projects, the absence of metrics in
3 there --

4 MR. BIERIG: We better not find subjective
5 traffic parking issues.

6 MR. GHIZZONI: Right. Four neighbors report
7 there's a lot of cars in the neighborhood. Is that
8 grounds to go from 4.7 to 3.2?

9 MR. PHILLIPS: I have a sense that it's too
10 crowded. We don't have the metrics now. So nice of you
11 to bring that up.

12 MS. BLACK: Mr. Chair, just to just go a
13 slight bit further, to answer your question could they
14 appeal your decision if you went from a higher level to

15 a lower level, yes, they could. I mean essentially
16 every decision your Commission makes is available to the
17 court.

18 And then the other issue is there are several
19 conditions that are contemplated to allow some changes
20 in the future, the number of people or the number of
21 events is one. The other is self-parking versus valet
22 parking. I think we feel more comfortable with the
23 option to go from full valet to some level of
24 self-parking. It's operational -- it's a pretty simple
25 operational change you could put into place, and that's

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1 actually included in your Conditions of Approval. We
2 have not included the other things.

3 MR. GHIZZONI: I would say, just
4 bootstrapping onto that, that Condition 84, 52, 55, 66
5 there are some conditions in there that you've said up
6 front what the expectations are and the chance for
7 changes to occur.

8 So the Applicant is on notice for that. So
9 you removed any kind of vested rights or entitlement
10 concerns from that. That's an announced process. We
11 know what that looks like.

12 On some of these other process issues or
13 metrics issues, it seems like, if you had 20 of these
14 projects, the farther you stray from either having a
15 fixed number or a number that could increase through a

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16 substantial conformity determination, the more appeals
17 you could count on.

18 MS. BLACK: The other point I wanted to make
19 is we're not starting from scratch here. We've analyzed
20 this project with Schragger as the base for it, and we're
21 essentially telling you it's about the same. In fact,
22 it's improved since the room count has gone down to some
23 degree.

24 MR. BIERIG: I don't want to spend too much
25 time on it, but at some point I want to look at that

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1 table again and remind ourselves how this plan, the
2 Schragger plan -- when it come to operational approvals,
3 they are already in place.

4 Commissioner Overall.

5 MR. OVERALL: I have a question for Counsel.
6 Is it fair to say in order for this Commission to
7 justify an increase -- can essentially be
8 impressionistic? "We don't have a parking problem;
9 therefore, we'll grant you an increase?" And by
10 contrast to make a reduction will require a much higher
11 standard of proof that there's an impact?

12 MR. GHIZZONI: Chairman Bierig,
13 Commissioner Overall, using slightly different words,
14 yes. I'll make it maybe a little more succinct by
15 saying the substantial conformity determination is a
16 tool that would allow your Commission to go up easily.

17 And as I identified before, the Coastal

18 Zoning Ordinance does not provide an announced process
19 for reducing downward. So that would be more
20 challenging for your Commission. Thank you.

21 MR. PHILLIPS: Just one question. I know
22 we're going to talk about this more. The substantial
23 conformity as a rational justification to go up, in the
24 first instance, we're saying, "Your traffic studies are
25 competent, and we'll certify them, but we don't believe

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1 them, and we're not going to let you enjoy the
2 impact" -- "we're not going to let you enjoy the usage
3 that these studies suggest you should have."

4 If we do that now, talk about an appeal. I
5 think that's inviting one, isn't it? How do we do both
6 of those things? "We understand the studies. We think
7 they're legitimate, but we're not going to let you enjoy
8 the usage of your property that those studies suggest
9 are reasonable."

10 MR. GHIZZONI: Chairman Bierig,
11 Commissioner Phillips, I think what you would actually
12 be saying there is you have questions about the studies,
13 but facially they look good. You still have some
14 questions. You have heard evidence from the community.
15 You have questions of those studies, and you're going to
16 approach them from setting a slightly lower level and
17 providing room to grow or going all the way to the top
18 at 4.7.

19 One other piece of a substantial conformity
20 determination, I'll remind you, is that Appendix B of
21 our Coastal Zoning Ordinance announces it is outside the
22 planning developer director's ability to provide that
23 substantial conformity determination if there's been
24 substantial public controversy on a project, and that's
25 why I suggested they come back to you for that

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1 substantial conformity determination.

2 MR. BIERIG: Commissioner Overall.

3 MR. OVERALL: I presume we'll continue
4 discussion of this at some point.

5 MR. BIERIG: Probably right now.

6 MR. OVERALL: I want to go back to the
7 turnaround on South Jameson issue. It seems to me this
8 Commission is charged with looking at what the potential
9 impacts are on the community and to protect the
10 community as best we can while upholding the law and
11 that business.

12 It seems to me with all those -- the purpose
13 of that parking along South Jameson is to provide public
14 access to the beach or parking for it. The access has
15 been negotiated, and that's in place, but if you don't
16 have parking, if the parking is taken up by people using
17 the hotel, the fact is we would have no public access.

18 The concern I have obviously are the two.
19 Make sure that the parking there is made available to
20 the public, and the second is a safety issue. I listen

21 to how you can turn around, but I'm also -- I'm thinking
22 about 4:30, 5:00 o'clock on a summer afternoon people
23 are going back to their cars, getting in their cars with
24 their kids. And people will hang U-turns if it's
25 inconvenient on Jameson. I don't think it's safe.

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1 I think to not have something set up where
2 there is a roundabout for the entrance to the lane for
3 the ballroom whether it's a special widened spot to hang
4 a U-turn in a dedicated area, that's not our job.

5 It's public works. It seems to me that's who
6 should have caught this and who should have designed it
7 in cooperation with the Applicant. But I don't think
8 the way the system is set up now, which is very much ad
9 hoc, find a hole in the development there and find a
10 spot to duck into and turn around, is an adequate
11 solution to what I view is a very significant problem.

12 So I guess the point I'm trying to make is I
13 think you need a specific proposal either from the
14 Applicant or public works as to how to address that
15 problem that does not rely on an ad hoc use of the
16 property the way it was suggested a few minutes ago.

17 MR. PHILLIPS: Mr. Commissioner, if we're
18 asking the Applicant to provide these spaces, ensure
19 that the right people park there, make sure you don't do
20 a U-turn, that's a lot to ask, a lot to ask. I
21 understand the issue. I appreciate it.

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MR. OVERALL: Let me give you a very quick

22
23 response. The way the system has operated in the
24 past -- you have a very clear circulation path along
25 Miramar Avenue. Now, we're giving up Miramar Avenue,

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1 and as a consequence we have created a significant issue
2 about circulation, and all I'm saying in return for that
3 is let's have something that is clear and safe to the
4 public to allow for an orderly transition from facing
5 southeast and headed northwest in the community.

6 MS. GOTTSDANKER: Chair Bierig.

7 MR. BIERIG: Commissioner Gottsdanker.

8 MS. GOTTSDANKER: Yeah, if Mr. Briggs could
9 bring up sheet C-1, I think on sheet C-1 it's got the
10 paving on there. You really can see, and I think this
11 problem could be easily solved -- the turnaround problem
12 I think could be easily solved because there is space
13 there. Just get me C-3.

14 MR. BRIGGS: C-3 or 1?

15 MS. GOTTSDANKER: So there we are. So
16 there's the paved driveway that goes -- that Caruso's
17 team has been pointing to that's available for people to
18 actually turn around, but I think that could be
19 developed. As the plan goes along here, you've got room
20 between where the parking spaces are and the outside of
21 your property line where there actually could be some
22 sort of turn in that would allow people to not have to
23 go down and back up and come back out but actually be

24 designed as a place where people could actually just
25 come from their parking space, spin in, and make their

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1 U-turn. I mean that's what I would do.

2 who's the designers over there? I'm never
3 quite sure. Do you see what I'm saying.

4 MS. BLACK: Mr. Chair, it seems like we could
5 just assign that driveway.

6 MS. GOTTSANKER: Or if we're concerned with
7 the issue of somebody having to pull in, back up, there
8 are trucks being in the way, it could really be designed
9 right there at the beginning. Don't you think?

10 MR. MC MANNIS: Yes, Commissioner, there
11 seems to be more room here where we could assign this
12 and allow this to be stripped or we could pull back to
13 allow this to really work. That would be pretty easily
14 doable. There aren't trucks here but for a short period
15 of time, and they're in and out.

16 MS. GOTTSANKER: I understand. Human being
17 does what human being does and most convenient. So I'm
18 saying in the designing of that paving it would be
19 possible to make it more convenient and more attention
20 getting for anybody that's coming along to just pull out
21 and swoop around rather than having to pull down the
22 driveway. A human being is not going to pull down the
23 driveway.

24 MR. CARUSO: The answer is yes. We'll make

25 it work.

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1 MS. GOTTSANKER: Okay. Good. For me that
2 would solve that problem.

3 MR. BIERIG: The paved area of Jameson is
4 40 feet. So if we add an additional space, we'll be
5 okay.

6 Commissioner Overall.

7 MR. OVERALL: In a way I want to address
8 Commissioner Phillips's comment on the traffic studies.
9 In the material that was provided to us by Mr. Pulice
10 and the study that was done by Hansen & Associates, I
11 would ask my fellow Commissioners to look at the fourth
12 page of this document.

13 And actually in the last two points, it looks
14 like Point No. 1 says that "The total seems low given
15 the somewhat rural location of the project and limited
16 transportation alternatives." They're talking about the
17 parking ratio of employees which is 3.8 percent of a
18 number of 100 employees.

19 We have Mr. Shell's reports which support
20 this approach, but clearly at some point, it's incumbent
21 upon us to exercise a measure of judgment. We can have
22 reports and studies that's been done, but we also have
23 not only the authority but I feel the responsibility to
24 look at the data and say, "Does it pass the smell test?
25 Are there concerns here we should be addressing?"

1 And as you've all heard me say before, I
2 think there's a point made here. We are in a relatively
3 remote location. It's not like there's city parking
4 lots down the street where people can park. The transit
5 district is not all that convenient.

6 And so as I look at it, I don't believe that
7 38 percent is probably where we will end up or even very
8 close to it, and beyond that we have the whole issue of
9 how many employees are going to be on site.

10 And Caruso & Associates continues to put
11 forward the number of 100. It's fine to pick and choose
12 when you make a comparison to the Biltmore. That's
13 their prerogative, but it's also our responsibility to
14 look through that picking and choosing.

15 The Biltmore has 275 employees, not 100, for
16 a roughly comparable population. And so I think to sit
17 here and say, "we'll only need 38 parking spaces for
18 employees," we're kidding ourselves. We are going to
19 have a much greater impact, I believe, and I think we
20 have to look at the worse case potential scenario in
21 order to protect the community than 38 reserved parking
22 places for employees.

23 And then the other point we make here relates
24 to the self-parking issue, and we touched on that
25 before. But I would respectfully say we get into the

1 specifics of the parking. I don't feel that the numbers
2 that are the basis for what we've had presented to us
3 are completely credible. I think we have to exercise
4 judgment on it. I personally have come to conclusions
5 different than what's in the Staff Report.

6 MS. GOTTSANKER: I ask what are we
7 proposing? I think we ought to start proposing things
8 rather than saying, "There's something wrong." Let's
9 start moving forward and say, "Okay. This is what we
10 now want."

11 MR. BIERIG: Commissioner, I have a
12 suggestion. Part of what I saw us doing right now is
13 making sure -- I know we have opinions on the validity,
14 usefulness of some of the documents, how to weigh them.

15 But I thought at this point we should just
16 try to make sure we've got all our questions and answers
17 and then jump into the deliberative side which I would
18 really like to get to.

19 we still have some experts in front of us.
20 we have our County traffic engineer here and make sure
21 that, if we have specific questions we feel we're either
22 unsure of or don't know what the County's position is,
23 we get these out on the table.

24 And then I'd like to close the public hearing
25 and get to the deliberative side of this thing where we

1 can go back and forth. Does that sound all right?

2 Please, Director Black.

3 MS. BLACK: I just wanted to point to the
4 information comparing the Biltmore to the proposed
5 project --

6 MR. BIERIG: Operational.

7 MS. BLACK: -- that we relied on to feel
8 comfortable with the amount of parking notwithstanding
9 the form of parking, and that was back in the memorandum
10 we prepared for the Commission on August 6, 2008.

11 Based upon the room count at that time, we
12 felt like the Miramar had quite a bit more parking than
13 a comparable operation that's the Biltmore. They
14 have -- the Biltmore has 455 standard spaces plus 49
15 overflow spaces, and the Miramar would have 551 spaces
16 plus the 28 overflow spaces.

17 So it's easy, I think, to pick out a
18 component of the project and focus on that component and
19 whether that component was over or underparked. What we
20 were looking at is just overall facilities and level of
21 use and felt like there's a substantial difference in
22 the amount of parking to the good on the Miramar side.

23 So that was our basis for feeling like the
24 parking was adequate. I wanted to remind the Commission
25 we have a lot of material. I wanted to bring you back

1 there. At least you understood that.

2 MR. BIERIG: We do have that comparison table
3 in our conditions, I believe?

4 MS. BLACK: I don't think you have the
5 comparison with the Biltmore.

6 MR. BIERIG: It's just the table showing the
7 analysis of the uses between the existing plan, the
8 Schragger plan.

9 MR. MIDDLEBROOK: Commission Bierig.

10 MR. BIERIG: Mr. Middlebrook.

11 MR. MIDDLEBROOK: Just real quick.

12 Recognizing Commissioner Overall's concerns which he's
13 raised before, we also want to remind you at the last
14 hearing we submitted new traffic analysis based upon our
15 192 room count that show the updated analysis, but then
16 as part of that analysis, we also doubled the employee
17 factor and reran the analysis assuming twice the number
18 of employees and still showed that we had excess parking
19 even at peak. So I wanted to note that analysis had
20 been done as well.

21 MR. BIERIG: Thank you for pointing that out
22 because I'd forgotten that change in the number of
23 employees calculated in the analysis.

24 MS. GOTTSANKER: Where are we?

25 MR. BIERIG: Well, if you don't have any more

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1 questions of either Staff, the Applicant, or -- it's
2 questions.

3 MS. GOTTSDANKER: This is really a simple one
4 to answer, but in the errata sheet, Mr. Briggs, very
5 first, "Biological Resources," page 4, that was sent
6 out, you struck through "Eight native oaks would be
7 removed." Are these now remaining on site? I went
8 through the tree demolition plan. I'm confused why we
9 struck that out.

10 MR. BRIGGS: Mr. Chair,
11 Commissioner Gottsdanker, they would be relocated, not
12 removed.

13 MS. BURROWS: Relocated on the property?

14 MR. BRIGGS: I believe so.

15 MR. MIDDLEBROOK: In recent iteration plans,
16 we had originally slated to remove eight oak trees which
17 are small oak trees. Based upon comments we received
18 from the public a little time ago, we agreed to relocate
19 those eight that we had previously slated for
20 demolition, relocating them elsewhere on the site. So
21 they will be preserved on site in different locations.
22 We also accepted a mitigation measure that, if they were
23 hurt during replacement, then we'll do that. So there
24 has been that change.

25 MS. GOTTSDANKER: I just didn't quite

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1 understand. Thank you.

2 MR. BIERIG: Commissioner Overall.

3 MR. OVERALL: Ms. Black, were you trying to

4 say something?

5 MS. BLACK: Mr. Chair, when you finish your
6 questions, there's a few things I'd like to clarify for
7 the record. I can maybe do that and spur some
8 questions, or I can do it at the conclusion of your --

9 MR. BIERIG: Why don't we do it at the
10 conclusion?

11 MR. OVERALL: I have a question for Staff.
12 There seems to me to be a lot of room for confusion over
13 the definition of "event." And I'm not sure that the
14 term "event," whether it be special or normal or
15 whatever you want to call it, really addresses the
16 concern about potential impact.

17 So I'd like you to talk about what is an
18 event, and as an example, if you had a group that came
19 in, 300 people, they're there for a morning meeting and
20 an afternoon meeting and an evening meeting, is that one
21 event? Is that three events?

22 So anyway, if you talk about the definition
23 of "event" and how you're attempting to measure it, it
24 would be helpful, I think.

25 MR. BRIGGS: Mr. Chair, Commissioner Overall,

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1 I'll take a first stab at that answer and then maybe
2 Dave or Dianne can augment. A group of folks getting
3 together for dinner and coming into the hotel for drinks
4 would not be considered an event.

5 An event would be a more formal dedication of

6 a ballroom function, a beach function, a wedding, a
7 Beach and Tennis Club function, something we could
8 tangibly call an event, not just a group of people
9 meeting on the site for a few drinks.

10 Although we didn't get into this level of
11 detail, I would assume that, if we had a group of folks
12 that were using the ballroom for maybe two hours in the
13 morning and then two hours again in the afternoon, that
14 would be considered one event with a lunch break in
15 between.

16 MR. BIERIG: In other words, this is
17 something where they reserve space, physical space, in
18 the hotel?

19 MR. BRIGGS: That's our initial reading.

20 MR. WARD: Mr. Chair, we would be using the
21 conference and banquet facility typically how an event
22 would be scheduled at a typical hotel, whether it's a
23 chamber of commerce meeting with 50 people in one of the
24 smaller break out rooms of a larger ballroom, dividing
25 those up including weddings and other things that occur.

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1 Page C, dash, 19 in conditions, which is
2 Condition 1, which is the project description, defines
3 the operation of the hotel, explains the events, type of
4 events, number of people, goes in and does normal
5 events, does an example, and then there's special, and
6 it gives an example.

7 MS. BLACK: Normal events are defined for
8 under 500 people. Special events are over 500 people.
9 So I think it's reasonably clear. We've had some
10 experience of dealing with this, and I think it's a good
11 area to highlight because it can be somewhat confusing
12 when you have a normal restaurant that's open to the
13 public. Sometimes people feel that making a reservation
14 is an event. That's not what we're talking about.

15 MR. OVERALL: As a follow-on question, I
16 heard Mr. Caruso ask -- I heard Mr. Caruso ask for us to
17 grant the full level of the number of events this
18 morning, and the difficulty I'm having is clearly the
19 reason we considered a restriction in the number of
20 events was we were trying to limit impact on the
21 property, trying to measure and control the intensity of
22 use.

23 So the difficult I'm having is -- I'm trying
24 to relate the number of events to the impact. What is
25 it that we are measuring because, if I'm following you

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1 correctly, you could have 4.7 events of 20 people each,
2 and that would be -- that would be maxed out for a day.

3 On the other hand, you could have a group
4 there for the entire day if we accept Mr. Briggs's
5 definition. You could have -- let me try it
6 differently. You could have three groups there, 500
7 each. One way -- I've forgotten the numbers I've used
8 -- you've got the impact of 100 people coming to and

9 from the property; the other way you've got 1,500.
10 So I'm afraid by using the term "event" and
11 trying to control that number, we may be not addressing
12 what the central issue is, which is, I believe,
13 transportation and parking issues and the consequences.
14 And I would be interested in my fellow Commissioners'
15 thoughts. You've clarified the question which is how do
16 you define it.

17 MS. GOTTSANKER: The way I read what Staff
18 has written is it says "One event or several events
19 occurring simultaneously shall not exceed 600
20 individually or collectively."

21 So it doesn't really matter whether we've got
22 ten events of however many people or one event of 600
23 people. The way it's written or at least how I read it
24 is that it's 600 people no matter what they're doing at
25 any given time.

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1 MS. BURROWS: Agreed.

2 MS. GOTTSANKER: At any given time we can
3 have 600 people. It's up to Caruso Affiliates, the
4 Miramar Hotel, to decide what combination they're
5 catering department wants to rent out and service and
6 how much money they could make off of any event.

7 If they can do 20 events and it still comes
8 under 600 people and they're going to earn more money at
9 that, I think they would probably do it that way. I

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10 don't run a hotel and probably never will.

11 MR. BIERIG: Mr. Middlebrook, if you want to
12 address this.

13 MR. MIDDLEBROOK: I just wanted to clarify,
14 Commissioner Overall, what our understandings of these
15 events are and share your interpretation of it. That
16 for most times of the year, the maximum number of people
17 we can have on site cumulatively in addition to guests
18 for events is 500 people, whether it's 200 in the
19 meeting rooms and 200 in one part of the ballroom,
20 another -- 500 cumulatively.

21 And 12 times per year that can peak at 600
22 people on site. But we cannot have a situation that
23 exceeds 500 where we have three 500 person events
24 happening simultaneously. That's not what's allowed.

25 MR. BIERIG: I think that's very clear.

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1 MR. OVERALL: But you could have 4.7 events
2 in a day of 500 for each one which is 2,300 people.

3 MR. MIDDLEBROOK: Technically, but the
4 reasonable discussion is -- I think what it gets to is
5 people backing up. If we have 500 people in the
6 ballroom for a 500 person event, the reality is the next
7 500 person event isn't going to be lined up outside
8 waiting for one event to leave and the next event to
9 come in. There's a natural breaking down of one event
10 and setting up for the next. So in terms of the flow
11 from one event to the next --

12 MR. BIERIG: As a practical matter, you
13 couldn't do it if you wanted to.

14 MR. MIDDLEBROOK: And what's been added as
15 part of this report as well is the Condition of Approval
16 No. 84 which is new to this report which requires us to
17 keep a very detailed accounting of the number of events
18 on the property, how many people are there, how much
19 excess parking exists when those events are at peak
20 times.

21 So you will at your disposal after a year
22 have a complete breakdown, but again, our understanding
23 is at any given moment they can't exceed 500 people on
24 the property at any given time.

25 MR. BIERIG: Commissioner Phillips.

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1 MR. PHILLIPS: I think we ought to consider
2 something even more radical. We are going to provide
3 this project with a certain amount of parking. I hope
4 it is maxed. I hope he's making every dollar possible
5 on those parking spaces.

6 He can't have events that have no one park.
7 He can have as many events as he wants. It's a function
8 of how many cars are coming in. It's not how many
9 people are on his property. What is our interest in how
10 crowded the Miramar is internally?

11 MS. GOTTSANKER: Because of the possibility
12 that those cars do not have a space to park and will be

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13 in the neighborhood and walking to the event. That's
14 the problem.

15 MR. PHILLIPS: We're prepared to remedy that.

16 MR. MIDDLEBROOK: The parking analysis that
17 is done is based upon events of 600 people. Our maximum
18 capacity is an event of 600 people, and that is only
19 allowed to happen 12 times a year. So most times we are
20 maxed out at 100 fewer people per event than that.

21 So the parking analysis that shows we still
22 have excess parking even at peak demand is a very
23 conservative analysis that only happen 12 times. Most
24 of the time it's well below that. Thus we believe there
25 will be even more parking available.

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1 MR. PHILLIPS: But for some events 600 people
2 could generate 600 cars. Some events of 600 people
3 could generate 200 cars. The annual meeting of the
4 South Coast Planning Commission could be two buses --
5 ten buses and get 600 people in there. Ten buses we're
6 going to put it in the driveway. We're not going to
7 have a parking problem.

8 Our interest is not, I think, what's going on
9 on your campus or on your site but how many people are
10 impacting the community around it. And maybe it isn't
11 events. Maybe don't have more than 500 cars or 551. Is
12 that what you have now?

13 MR. MIDDLEBROOK: 551 parking spaces.

14 MR. PHILLIPS: Yeah. And that's all you can

15 have.

16 MR. MIDDLEBROOK: The parking analysis shows
17 that 600 people attending an event with the hotel full
18 with a reasonably high ratio of people at the beach club
19 that we still have excess parking. You know, we think
20 it's a fairly conservative analysis on parking. Even at
21 peak demand, that only happens 12 times year. There's
22 still excess parking.

23 MR. PHILLIPS: If your event creates an
24 overflow, you're not going to say, "I didn't know
25 everyone was going to drive their own car." You're not

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1 going to say that, and they had to park in the
2 neighborhood. Where else can they go? You're not going
3 to say that.

4 MR. MIDDLEBROOK: And I think that the
5 purpose of Condition of Approval No. 55 and 84 is for
6 you to have the opportunity after a year to say, "Stop
7 doing that."

8 MR. BIERIG: Commissioner Overall.

9 MR. OVERALL: We were getting into debating
10 specifics. I don't have any more actual questions.

11 MR. BIERIG: I do have a question of
12 Mr. Robertson. We had a traffic analysis that was
13 submitted to us by Hansen & Associates, and I wonder if
14 you had a chance to look at that and to comment on the
15 analysis that's contained in that document. I believe

16 we had some other traffic. I think we had another
17 traffic study that was submitted for this. Anyway.

18 MR. ROBERTSON: Mr. Chair, Commissioners, I
19 did have a chance to look at the document, and in
20 general the document does a really good job about going
21 over the basic assumptions of what should be included in
22 the traffic study or a traffic study in a given project.

23 However, I think what Hansen & Associates did
24 miss here is something very fundamental. In the middle
25 of the analysis, they did make the statement this is

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1 what should be done for a typical project.

2 well, I think we can all argue the Miramar is
3 anything but typical. So a lot of what a normal traffic
4 study would include was not included in the traffic
5 analysis that was done specifically because we're
6 looking at a baseline condition which is set by the
7 Schrage plan.

8 So I think that's the biggest thing to pull
9 away from Hansen's letter here is that he didn't quite
10 understand the specifics about the baseline being an
11 approved plan that could be built tomorrow with building
12 permits for the County. Were there -- I mean did you
13 have any specific comments on that?

14 MR. BIERIG: After that do you have specific
15 comments about this especially on the idea of estimating
16 the parking demand?

17 MR. ROBERTSON: Specifically Item No. 1 he

18 mentioned Table 14, dash, 4 that they're only providing
19 38 stalls for 100 employees. It's crystal clear in the
20 text that the items in that table are proposed peak
21 demands for each of those related land uses -- the
22 hotel, the fine dining restaurant -- but it's also quite
23 clear the parking demand is not additive. So it does
24 not take in the conjunctive use of the hotel.

25 If you go back to the method of analysis that

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1 were done --

2 MR. BIERIG: The same methodology we used
3 comparing this to the Biltmore.

4 MR. ROBERTSON: Correct. You can't argue,
5 once you conclude conjunctive use, this project is
6 definitely parked adequately based on our methodolgy for
7 calculating parking.

8 MR. BIERIG: Again, stepping back again from
9 the studies that we have, not from the studies but
10 looking at this afresh, from your position in the
11 County, you feel that the study we have in front of us
12 adequately represents what we will likely see as a
13 result of this project?

14 MR. ROBERTSON: Mr. Chair, Commissioners,
15 yes, I do. I feel that this project basically takes the
16 Schrager plan and brings it to another level of actually
17 improving what was approved before, and they've provided
18 additional parking spaces. They're being attentive to

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19 public parking demands on the street.

20 Yes, I feel that even the analysis that was
21 done at the last meeting where -- they looked at double
22 employees due to public concern. They've done an
23 excellent job, and parking should not be an issue. It's
24 not an exact science either, and I think the Commission
25 will actually look at some conditions that will address

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1 any impacts that may arise that we perhaps didn't
2 foresee.

3 MR. BIERIG: Thank you.

4 Commissioner Phillips.

5 MR. PHILLIPS: Thank you. You've mentioned
6 that the Hansen study provides a more typical approach
7 to parking analysis. The Miramar is not typical. One
8 of the reasons isn't because we're operating under a
9 negative declaration under the baseline ten years ago.
10 The Miramar -- that's the problem I'm having continually
11 here.

12 You're talking about a CEQA sufficiency. I
13 think we're worried about real impact. Is this Hansen
14 approach likely to get us a better look at the future,
15 or is the Applicant's plan as approved by the County?

16 MR. ROBERTSON: Mr. Chair,
17 Commissioner Phillips, unfortunately that's kind of a
18 loaded question because obviously we have an approved
19 project that is not generating traffic on the ground
20 under the conditions.

21 So under the methodology under a regular
22 traffic study, yes, we would probably be seeking the
23 worst case impact by adding more traffic. Right now
24 there's nothing out there.

25 But unfortunately that's not how we're

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1 looking at this project. We have an approved project
2 that could build tomorrow and add the traffic on
3 regardless of what's going on today. So it's quite
4 realistic that traffic could create an impact.

5 And really the only thing we can do is look
6 at that, and if we see an impact come of this that
7 wasn't anticipated, then it would be a public works
8 responsibility to go and look for a fix for that
9 project.

10 MR. PHILLIPS: Chairman Bierig was asking you
11 about methodology. I guess we're talking about that. Is
12 the methodology proposed by Hansen so different it could
13 be an erratically different result?

14 MR. ROBERTSON: Mr. Chair,
15 Commissioner Phillips, it could be considerably
16 different, but again, that is not the path the project
17 took, and we were very specific when we looked at this.
18 We were operating under an approved plan.

19 MR. PHILLIPS: You can argue that you met
20 sufficiency, but I have to go to Vons on Wednesday
21 afternoon. It's a little different. I appreciate your

22 answer.

23 MR. BIERIG: Commissioner Overall.

24 MR. OVERALL: Mr. Robertson, is it not true
25 that a year from whenever the project is completed that

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1 whatever the traffic study said at that point there is
2 no entitlement? What the Schrager plan said or didn't
3 say, whatever the traffic study said or didn't say is
4 really going to be irrelevant to what's going to be
5 actually happening on the ground; is that correct?

6 MR. ROBERTSON: Mr. Chair,
7 Commissioner Overall, from a legal standpoint, I believe
8 that is not the case, and I will defer to Counsel. We
9 are specifically looking at this from a legal aspect.
10 Whether they are or not entitled, I cannot comment. But
11 I do agree with you the impacts on the ground could be
12 considerably different, but again, we also have an
13 approved project.

14 MR. OVERALL: Where I'm going -- and I'll
15 welcome Staff and Counsels' response to it -- is, if
16 these projections turn out to be wrong and we have
17 substantial traffic and/or parking impact, what are the
18 avenues? What are the remedies that are open to us?
19 How circumscribed is our ability to affect any
20 limitations?

21 MS. SLUTZKY: I just want to make a couple
22 comments here. I think what Will was saying in terms of
23 CEQA -- the CEQA guidelines 15162 provides that when an

24 EIR is certified or a negative declaration is being
25 adopted, which is the case for the Schrager plan, no

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1 subsequent EIR shall be prepared for that project.

2 And so we have an approved negative
3 declaration and we -- the Schrager plan is the baseline.
4 That's what we have to use.

5 And so if we don't -- we can't or don't
6 anticipate what those impacts are going to be, we missed
7 the ball. I mean I think there's not an opportunity to
8 come back. I think that's what you're trying to do in
9 these conditions that you're sort of to hang onto it.

10 And they're may be ways in these conditions
11 that you can manipulate this permit a bit, but
12 Mr. Ghizzoni has explained that there are parameters to
13 which you have to craft those conditions to your
14 concerns.

15 MS. BLACK: Mr. Chair, if I could add onto
16 that, I think what we're looking at here is a plan that
17 is analyzed and conditioned under Schrager, and we're
18 essentially adding onto that analysis. So whatever
19 mitigations or conditions were required of Schrager
20 continues, and that impact is essentially dispensed. So
21 we're looking at whatever incremental impact might exist
22 from the Schrager plan to the Caruso plan. That's what
23 we've provided in your documents.

24 So like other projects, once you approve a

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25 project, you certify an environmental document, you've

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1 basically said, "I've done the best I can given all the
2 facts and the situations we have to deal with," and you
3 don't necessarily get to go back and see whether or not
4 things turned out like you expected.

5 It's very much the same as pretty much any
6 project that you're seeing. The difference is you're
7 seeing it in two stages. You didn't actually see it the
8 first time. The County Planning Commission saw it the
9 first time, the Schragger plan. That was approved. That
10 was vested. And now we've got this incremental on top
11 of it.

12 MR. BIERIG: So Jack, when things go wrong,
13 we'll just blame the County Planning Board.

14 MR. OVERALL: So you're telling me that, if
15 every intersection goes to LOSF, there's nothing we can
16 do about it?

17 MS. BLACK: Mr. Chair and
18 Commissioner Overall, what I'm saying is you can't go
19 back to this project and say, "I think you caused that
20 to go to accidents. So now you need to do something
21 about it." It is the County's problem at that point.

22 We do our analysis. We anticipate what we
23 think the impacts are going to be. We mitigate those
24 impacts as best we can given the tools we have and the
25 limitations we have under the law and then.

1 MR. OVERALL: Even if the study turns out to
2 be off by 100 percent?

3 MS. BLACK: Mr. Chair and
4 Commissioner Overall, I'll point to another project that
5 you've approved. You've approved the Coral Casino.
6 What if we have the Coral Casino wrong or the Music
7 Academy at the West? If we got it wrong, we got it
8 wrong.

9 MR. BIERIG: And the thing is, I think we
10 have to keep looking back at is we don't have analysis
11 that shows that it's wrong. We have an analysis that
12 shows that it's right. We believe it to be right. I
13 haven't heard any testimony -- I mean clearly
14 differences of opinion among experts.

15 We have our staff right here telling us he
16 thinks it works. At some point we have to have data
17 that says it doesn't work, not just we're afraid it
18 doesn't work. Our job here is to make a decision.
19 That's what we have a problem with. It may be hard. It
20 may be wrong, but it is our job.

21 MR. OVERALL: I would also point out it's
22 hardly our responsibility to exercise judgment as well
23 as -- it's not just accepting a report --

24 MR. BIERIG: I would have to -- we'll save
25 this for deliberations, but I would just say to you,

1 Commissioner Overall, we have to have something in front
2 of us that says we're wrong. I don't find that to work.
3 And I would suggest, if you find information in that
4 that you really think is accurate, that you specifically
5 address Mr. Robertson about what's in that memo that you
6 want him to explain because that's why he's here.

7 You know, this is not an easy process. I
8 think there's a part of us right now -- I know we're not
9 in deliberation, but we have the requirement in front of
10 us to make a decision, and we've got a lot of data in
11 front of us. I think it's time we get down to making a
12 decision because we're going to do it in the next
13 couple -- three hours. Let's decide what it is. If we
14 have questions, let's get them answered.

15 MS. GOTTSANKER: Well, I think in the Hansen
16 report -- I mean I don't know that it points out -- from
17 the way I read it is it's pointing out that a different
18 or another analysis needs to be made. It doesn't give
19 us -- it doesn't say an analysis has been done -- that
20 "We Hansen Associates Traffic & Transportation
21 Engineering have done an analysis."

22 It's saying "From our point of view, we think
23 another and different analysis needs to be made" so that
24 then they could go back and provide us with information.
25 But the reality --

1 MR. BIERIG: Mr. Robertson, do you think yet
2 another analysis needs to be done that will come to a
3 different conclusion?

4 MR. ROBERTSON: Mr. Chair,
5 Commissioner Gottsdanker, no, I do not. I believe that
6 the analysis based on the legal parameters that were set
7 is adequate. And quite honestly what we're looking at
8 here is the Schragger plan could be built tomorrow, and
9 it's going to do the exact same things to the
10 intersections, if not worse, because Caruso's plan is
11 actually improving upon the project.

12 MR. BIERIG: It's got more mitigations.

13 MR. ROBERTSON: It's got more mitigation
14 measures, more conditions to keep the traffic issues in
15 check. So no, I don't believe an additional analysis
16 needs to be done.

17 MR. BIERIG: Thank you. Commissioners, I
18 don't mean to grandstand here. I want to get us down
19 the road. I think the one thing we do have -- I know
20 you wanted to get on to is your comments on the
21 testimony we've had in front of us today.

22 MS. BLACK: That, Mr. Chair, and I think we
23 better deal with these letters we keep referring to. So
24 I'd ask the Commission if they would like to vote into
25 the record the Hansen Association report dated

1 October 6th; the Strumwasser & Woocher letter dated
2 today; and the Coast Law Group dated October 7th.

3 MR. PHILLIPS: So moved.

4 MS. GOTTSANKER: I'll second that.

5 MR. BIERIG: Got a motion and a second. I
6 must admit I haven't read the Strumwasser, but I will
7 before the end of hearing.

8 All in favor say "ay"; opposed "no."

9 MS. GOTTSANKER: Ay.

10 MR. OVERALL: Ay.

11 MS. BURROWS: Ay.

12 MR. PHILLIPS: Ay.

13 MR. BIERIG: Ay.

14 MS. BLACK: Then Mr. Chair, I'm going to
15 touch up on a couple of issues -- I lost my place --
16 that haven't necessarily -- I'm not going to talk about
17 flooding. I'm not going to talk about traffic. I'm not
18 going to talk about special events. I'm sure we'll come
19 back to some of those as you go through your
20 deliberations.

21 But there was a comment by both the
22 Montecito Association, I believe, and Mr. Pulice that
23 asks that your Commission to retain some jurisdiction on
24 the design of the hotel, and I think you heard from
25 Mr. Ghizzoni earlier that the danger on this up and down

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1 on the special events is that there isn't a specific
2 process in place.

3 well, in this particular situation on design,
4 there is a process in place, and that process is you
5 take action on this project; the Montecito BAR does
6 their review process; and once they grant approval or
7 denial, then that action can be appealed to your
8 Commission.

9 And I suggest you not do anything different
10 than that. I think the process works the way it is set
11 up, and to do something different is going to completely
12 blur the lines of authority between MBAR and your
13 Commission. So that's my response to those requests.

14 MR. BIERIG: I know you have a list, and
15 Commissioner Gottsdanker had a question on this issue.
16 We talked about it at lunch.

17 MS. GOTTSDANKER: I'm going to go right down
18 to the nitty gritty of it -- okay -- is that I think the
19 reason -- at least for me the reason why I've asked for
20 continually some way of being able to hold onto this
21 project is that to date -- to date as we sit here at
22 3:00 o'clock, to date after the number of hearings that
23 we've had, I, in my opinion, do not have a project that
24 I can approve.

25 I have conditions that refer to page numbers

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1 all the way through. So my understanding is that I'm
2 approving all of this, and I'm approving this
3 (indicating). Now, right now, if we decide during

4 deliberations to vote into the record the agreed upon
5 cottage style, I don't have a set of plans that reflect
6 that.

7 I'm sorry Mr. Ghizzoni is gone because I was
8 actually going to ask this question of County Counsel.
9 How do I do this? That's why we keep wanting to hold on
10 to see this to make sure that the project that we are
11 being asked to approve matches the conditions we set
12 forward, and I don't know how to do that.

13 MS. BLACK: Mr. Chair and
14 Commissioner Gottsdanker, you can appeal the MBAR
15 decision if you don't like it.

16 MS. GOTTSDANKER: Then I would like to go
17 into that.

18 And I'm sorry. This is really an in-house
19 thing going on right now, and it's not intended in any
20 way to include Caruso Affiliates.

21 I have gone as a planning commission to a
22 number of MBAR meetings over the years because I was
23 chairman of MBAR. So I have a huge interest. It's
24 clear that my interest is in design. That's where I
25 spend my life, and I have been told by County Staff that

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1 I cannot comment at MBAR. That as I planning
2 commission, I am bound from not being able to comment to
3 a project or act in any way because it becomes legal
4 because it's going to come back to me essentially on
5 appeal. Now, you're telling me I can go appeal a

6 project. I'm a little confused.

7 MS. BLACK: There's big difference between
8 commenting on a project and appealing a project.

9 MS. GOTTSANKER: I could appeal a project
10 literally that I had sat on for eight months? I could
11 then go and appeal a project? Tomorrow, if I don't like
12 what happens today, I get to go appeal a project?
13 There's something wrong here.

14 MS. BLACK: I think you could. If you felt
15 that strongly, I seriously doubt you would have to
16 because I think somebody else would probably appeal it
17 for you.

18 The point I'm trying to make is there are
19 prescribed roles in our zoning ordinance for the
20 planning commission and for the Montecito BAR, and the
21 Montecito BAR's actions are appealable to your
22 Commission. You have ultimate authority on this.

23 You either approve the project and let the
24 project go through the process, or you don't. I mean
25 you can't say, "I'm going to approve it but not really."

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1 MS. GOTTSANKER: What's the project? That's
2 what I'm asking. Is this the project?

3 MS. BLACK: The project is the project
4 package with the conditions, with the cottage-style
5 language. That's why -- my understanding is that's why
6 we've been working on that language -- why you've been

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7 working on that language to give direction to the BAR.

8 And if they don't get it right, it will be appealed.

9 MS. GOTTSDANKER: But this hasn't gotten it
10 right. My point is this set of plans hasn't gotten it
11 right. This is what's right -- before me.

12 MS. BLACK: Mr. Chair, Commission
13 Gottsdanker, that's why you're inserting that language,
14 giving the direction as to what you intend to see in
15 cottage style. That's my understanding. The Commission
16 did not ask the Applicant to come back with redesigned
17 plans to address cottage style at your last hearing. If
18 that's what you want, then you should make that clear.

19 MS. GOTTSDANKER: No, it actually isn't what
20 I want. I'm more than happy to let the MBAR. But what
21 I do want is I want every page in this document that has
22 elevation that does not, in my opinion, match the
23 description of a cottage-style hotel -- and it's mostly
24 the elevation pages I'm concerned with -- I want them
25 taken out of this packet before I approve it.

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1 MR. BIERIG: We can do that textually. Can't
2 we simply say, "We're not approving the elevation"?

3 MS. BLACK: Mr. Chair, that cuts both ways
4 because you've made a lot of changes about the height of
5 the structures --

6 MS. GOTTSDANKER: It's all described in the
7 sections. I'm not talking about the sections. I'm
8 talking about the actual elevations.

9 MR. BIERIG: Commissioner Overall.

10 MR. OVERALL: I tend to agree with
11 Ms. Gottsdanker on this. It seems to me it's an
12 enormous waste of Mr. Caruso's time and money to have to
13 go back to MBAR, and we're sitting here and have yet to
14 agree on the definition of "cottage style." We have it
15 in the community plan. We have at least two or three
16 rewrites with no universal agreement on it with this
17 Commission.

18 And we're not asking him to go back to MBAR
19 with very, very loose direction on it and the only adage
20 on it -- a picture is worth 1,000 words. If it were
21 entirely up to me, I'd ask Mr. Caruso's team to come
22 back with a couple of drawings, pretty pictures. Let's
23 look at it, have a dialogue about it.

24 At least at that point, MBAR would have a
25 visual, would not be -- go through the process of an

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1 expensive presentation, get it appealed, have to come
2 back here, and have to go through the whole thing here
3 again.

4 MS. BLACK: Mr. Chair, Commissioner Overall,
5 I can certainly appreciate that. Mr. Caruso did not
6 come back with representative elevations or any
7 elevations at all. So perhaps you ought to ask him what
8 he -- how he wants to proceed because I think, if your
9 point is somehow he's putting himself in a bad position,

10 maybe that's the position he wants to be in and feels
11 like that's a more expeditious position than coming back
12 again.

13 MR. OVERALL: Mr. Caruso, consider yourself
14 asked a question.

15 MR. CARUSO: I'm going to -- if you don't
16 mind, I'm going to turn a little bit over to
17 Matt Middlebrook. But we specifically discussed this
18 last time we were. As I recall the direction we ended
19 up with and the agreement was that we were going to go
20 away with a definition of "cottage style," and at the
21 time it was one that was drafted by Staff. The
22 Commission liked it, and we were not going to do
23 redesigns because to spend the time and money to
24 redesign all elevations and be able to get back in front
25 of you was going to be impossible.

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1 we were going to follow the normal process.
2 we were going to hopefully get approved here with a
3 clear direction and a definition of "cottage style," go
4 on to MBAR, take your input, and hopefully would solve
5 it. And we may just by consequence get it right and not
6 have to come back. Let's keep it on the positive side.
7 Right?

8 So I'm hoping that -- we've gone through a
9 number of design changes on the site plan and everything
10 else which is great. But we're talking about an
11 extensive amount of work as you all know on design that

12 we're going to start from scratch.

13 And let us go do that. We'll get to MBAR.
14 we'll get everybody's input, and hopefully we get it
15 right. And in between I am more than happy -- in fact,
16 I would be eager and welcome the opportunity as the
17 process is going along to meet with each of you
18 individually to get input so that the chances of when we
19 get to MBAR are very, very high and close to satisfying
20 your needs.

21 Now I've got to satisfy ten people, and I
22 understand I probably won't get there. But if I can get
23 to a high percentage, I'm ready to go for it.

24 MS. GOTTSANKER: I'm wondering -- I
25 appreciate that. Thank you. And I'm just kind of

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1 looking to see here what other possible avenues. would
2 it be possible to have a condition to handle this issue
3 that we have kind of like an update?

4 You know, as the drawings are beginning to
5 develop and move forward, rather than having the
6 Applicant meet individually with us because that becomes
7 like this weird thing, we could just have the Applicant
8 come in to a hearing when they say they're ready with
9 not the entire package but, as Commissioner Overall
10 indicates, kind of just like an update?

11 Like "This is the direction we're going.
12 This is as far as we've gone?" what do you think,

13 people? I don't know. I'm trying to work out something
14 that works for the Commission, that works for the
15 community, and that works for Mr. Caruso. I'm big on
16 this today.

17 MS. BLACK: Mr. Chair and
18 Commissioner Gottsdanker, if what you're suggesting is
19 sort of a postconceptual review where your Commission
20 just individually gives comments on the design
21 progress --

22 MS. GOTTSANKER: Like an in-progress review.

23 MS. BLACK: I think that's probably okay,
24 knowing that you can't say -- you know, you don't have a
25 decision to make, but you can provide individual input

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1 and then let the MBAR process run it's course. But if
2 you wanted to see and provide some input, I think you
3 could do that.

4 MS. GOTTSANKER: I just think, if input is
5 going to be provided, that it be provided in the public
6 arena rather than in the -- I don't have any problem
7 meeting with Applicants. Everybody knows that, but
8 County Counsel gets a little iffy with me. That's all
9 I'm trying to avoid here.

10 MS. BLACK: If that's something the Applicant
11 is willing to do, it's something we can certainly
12 provide.

13 MR. BIERIG: My take on this is we're doing
14 it as a service to the Applicant because you don't want

15 to come back. You don't want to go through design --

16 MR. CARUSO: Oh, I love coming back.

17 MR. BIERIG: No, you don't. I know how much
18 you love being here, but having gone through the MBAR,
19 you don't want to come back here. You want to know that
20 when they say "yes" you're done.

21 MR. CARUSO: I think that's a great idea.
22 And I think we start with image boards, and we come in
23 soon, and we'll bring in some image boards and pictures,
24 and we get some direction from you, and we go away, and
25 then we come back, and we do this whole process. I'm

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1 great with that. I would welcome it because that is
2 very, very helpful.

3 MR. PHILLIPS: Mr. Caruso, if I may.

4 MR. CARUSO: Yes, sir.

5 MR. PHILLIPS: Our interest, I think,
6 collectively is not that we're in love with cottage
7 architecture. It's in the community plan and is called
8 out. Is there something about the cottage style that
9 creates problems to -- in operation, in reaching a
10 certain price level? Is there resistance on your part?
11 Do you hate cottage architecture?

12 MR. CARUSO: You know, it goes back to my
13 childhood.

14 MR. PHILLIPS: I have some of those issues.

15 MR. CARUSO: Let's spend some time talking

16 about it. No, I don't hate cottage architecture at all.
17 But with all due respect, we came to this board for an
18 informational meeting, and we showed the same designs
19 that you have in your packet today, and you gave us the
20 thumbs up. That's true. It's on the record.

21 But anyway, the definition of "cottage style"
22 that we've been able to work out, I think gives us
23 flexibility and guidance and parameters all at the same
24 time. And I think we can get there, and I'm sure
25 there's going to be a difference of opinion. But

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1 architecture is a very subjective thing. We're going to
2 do our best to satisfy, and at the same time make it a
3 quality hotel and make it feel like it's quality
4 construction. I don't think that's inconsistent with
5 cottage.

6 MS. GOTTSANKER: And just sort of for the
7 rest of the Commission, you know, that was why I was
8 willing to kind of go to work on the definition because
9 I don't want the Commission left with the idea that
10 Caruso Affiliated's architects will necessarily come
11 back with what we would call generic cottage. That's
12 California bungalow, and this is getting a little
13 technical right now.

14 That's why the definition was expanded so it
15 would be possible for Caruso Affiliated to -- and that's
16 why I put into there "historic," "regional,"
17 "California."

18 And there's a number of different architects
19 that have designed historically on the California
20 coast -- the big one that comes to mind is Sea Ranch up
21 in Mendocino. That would not be considered cottage
22 style as most of the general public think about it, but
23 it would fit in this definition. And the buildings
24 there aren't extraordinary, but they aren't your classic
25 California bungalows.

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1 That's why I agreed with Caruso's team that
2 it really needed to be expanded from just saying
3 "California bungalow" which is only one architectural
4 vernacular, and I was hoping to kind of open it up so
5 that it would -- I mean I don't have any problem if the
6 whole thing looks like a cluster of California barns if
7 that works -- if we could make that work. So I just
8 wanted to clarify --

9 MR. CARUSO: I do.

10 MS. GOTTSANKER: You don't want a bunch of
11 barns down there? You know what I'm saying. I wanted
12 to kind of open it up for everybody so the Commission
13 doesn't expect that they're going to see California
14 bungalows. They may not, and that was okay with me
15 because that's why we went very -- went through the
16 photographs and tried to say there are elements of
17 architecture that should be included but not just one
18 vernacular.

19 MR. PHILLIPS: And in the end the community
20 will collectively say, "This looks like what was called
21 out for in the community plan." That's our objective,
22 whatever that is.

23 MS. GOTTSANKER: That's our intent because
24 clearly the architecture of the Biltmore is Spanish. I
25 wouldn't mind if this was Spanish. I wouldn't even mind

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1 if this looked like an adobe mission. There's a lot of
2 directions where it could go.

3 MR. BIERIG: Director Black.

4 MS. BLACK: So that was my first comment.

5 MR. BIERIG: We got through one. How many do
6 you have? Two?

7 MS. BLACK: They're reducing rapidly. The
8 other one is also an issue that was raised in the
9 Montecito Association letter, and that was the first
10 point about property maintenance and security.

11 And I just wanted to point out to the
12 Commission I'm not sure we can really get at the heart
13 of what the Montecito Association would like, and I
14 think this is really -- falls into the realm of
15 requesting the Applicant to do something differently
16 than they're doing now because, until they pull permits,
17 they're really not operating under the development plan
18 you're considering today.

19 So they can't really enforce. It's a
20 difficult situation to enforce. So that's something I

21 think I would discuss with the Applicant and try to --

22 MR. OVERALL: Ms. Black, forget the issue of

23 "Can you enforce?" As a corollary, can you allow?

24 MS. BLACK: Can we allow them to secure their

25 buildings and do 24 hour -- of course. Of course.

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1 MS. GOTTSDANKER: But given they're not yet
2 developed -- they're not yet operating under a
3 development permit, they don't have a development permit
4 yet -- clearly that's what we're here to issue --

5 MS. BLACK: They don't need a development
6 permit. They have the Schragger permit.

7 MS. GOTTSDANKER: So as part of the Schragger
8 permit, are there conditions that fences be maintained
9 and put up? Those were kind of -- that was voluntary?

10 MS. BLACK: Mr. Chair and
11 Commissioner Gottsdanker, it's my understanding the
12 condition of the site during construction, per se,
13 wasn't addressed specifically. This isn't something we
14 anticipated in the Schragger. You do what happens, and
15 so I just don't think it's addressed in a good way. So
16 I think this falls into the realm of a very good idea,
17 but one that might need to be pursued in a different
18 way.

19 And then the only other comment I think I
20 wanted to make was with respect -- then I'm going to
21 pass to Dave for an issue he needs to clarify -- was a

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22 comment Tom Vernon made -- or a request he be given more
23 than 90 days to try to find somebody who might want to
24 take on these cottages.

25 The condition just requires 90 days from

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1 final discretionary approval to make these cottages
2 available. And final discretionary approval is final
3 discretionary approval meaning, if this is appealed to
4 the board, there will be additional time. If this gets
5 appealed to the coastal commission, there will be
6 additional time.

7 That being said, until the Applicant is ready
8 to pull permits to demolish the rest of the structures,
9 I can't imagine why they wouldn't continue to want
10 someone to take the buildings off the site.

11 So that's something you might want to discuss
12 or talk about setting a longer period of time, but I
13 don't think we can leave it open ended. There has to be
14 a point where we can say, "Okay. Now we may issue
15 demolition permits and allow the site to be prepared for
16 the project."

17 MS. GOTTSANKER: Maybe that's the cut off
18 time that the time -- the cottages are available until
19 the day the demolition permit is issued.

20 MS. BLACK: At least 90 days.

21 MS. GOTTSANKER: And/or when the demolition
22 permit is issued.

23 MS. BLACK: That is fine with me. I think

24 that's fine with Mr. Caruso as well. So that's
25 perfectly fine.

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1 And one additional issue with regard to the
2 railroad, and then I think we're done and available if
3 you have additional questions.

4 MR. WARD: Mr. Chair, Commissioners, we had
5 one public comment this morning in regards to Union
6 Pacific and any type of communication that occurred
7 between the Applicant and the County.

8 And I know you have a lot of materials over
9 the last several hearings, but in very first Staff
10 Report from July 16th as part of that addendum errata
11 dated July 11th -- and in that errata was provided a
12 correspondence from Union Pacific railroad including
13 from the person that was referenced this morning,
14 David Picket.

15 And in that correspondence, they acknowledge
16 that they are aware of the proposed project by the
17 Caruso team. It makes reference to the development that
18 is to occur on both sides of the railroad, and it
19 addresses the use of the easement that they had already
20 worked out. And that draft of that agreement is
21 provided in his letter, and clearly documents what types
22 of uses -- including utilities, pipes, those types of
23 things -- that occur in the easement area both north and
24 south of the railroad.

1 railroad was fully noticed and working cooperatively
2 with the developer on this project.

3 MR. BIERIG: Commissioners, questions?

4 MR. OVERALL: Did anybody call Mr. Picket as
5 was suggested?

6 MR. WARD: No, we did not.

7 MR. OVERALL: Might it be advisable since we
8 have testimony saying there are still issues to have us
9 check with him?

10 MR. WARD: Mr. Chair, Commissioner Overall,
11 we could certainly do that if that's what you direct.
12 It seems fairly clear through the letter, again, dated
13 July 2nd, they were fully noticed of the project. So it
14 didn't raise an issue.

15 Honestly they were noticed all along with
16 each phase of project including environmental review and
17 then noticed for the hearings.

18 MS. BLACK: Mr. Chair and
19 Commissioner Overall, if you want us to place a call, we
20 certainly can try. The railroad does know about this
21 project, and they've been involved. So that's why I
22 find it interesting that they would communicate through
23 a third party and not directly to staff.

24 MR. BIERIG: Mr. Caruso, would you like to
25 address us on this?

1 MR. CARUSO: Just to give the Commission an
2 update, we have ongoing discussions with the railroad,
3 including Mr. Tony Love who is out of the headquarters
4 who I also talked to directly. And as of last night, I
5 know Michael and Mr. Picket traded call on an ongoing
6 matter. So there's no surprises to the railroad. I
7 know their new representative here may feel otherwise.

8 But I would also point out that Condition 82
9 does not allow us to pull permits until we have all the
10 permission in place from the railroad. So I think
11 everything is adequate and covered.

12 MR. BIERIG: Commissioners, any other
13 questions. Otherwise, I'm going to ask the Applicant if
14 they want to make any closing remarks.

15 Why don't we take a ten-minute break and come
16 back, let the Applicant make any remarks he wants to
17 make, and we'll get into deliberations.

18 (Whereupon a short recess was taken.)

19 MR. BIERIG: I think where we were at is we
20 were ready for deliberations.

21 And Mr. Caruso, I see you have a cup of
22 coffee here.

23 MR. CARUSO: Scotch.

24 MS. GOTTSANKER: I want some. How about
25 some gin?

1 MR. CARUSO: Concluding statements, yes, sir.

2 MR. BIERIG: You don't need to. I wanted to
3 give you an opportunity before we -- not to say we won't
4 have you up again.

5 MR. CARUSO: This is going to take
6 10 seconds. First of all, again, thank you sincerely
7 for all the time. Second, I would ask that the pages of
8 the elevations be left in only so that by chance, if
9 there's information on those pages we need and for some
10 reason they're taken out, we don't have bigger problem.
11 We understand the architecture issue. You have my
12 personal commitment at that.

13 Lastly and most importantly, I would again
14 ask you to allow the hotel to operate at full tilt.
15 Give us a chance to do it. Give us a chance to prove
16 ourselves. Give us a chance to show we can operate
17 properly, that we will take care of the community, that
18 we're going to be conservative in how we manage it.

19 And also that does give us the opportunity to
20 get it financed which is important because a lender is
21 going to want to see a hotel that can fully operate. To
22 me it would be analogous to saying, "We'll only allow
23 you to rent out 50 percent of the rooms." We couldn't
24 get it financed. So if you could bear with and trust me
25 on that, I would very much appreciate it.

1 And with that I look forward to your
2 deliberations and hopefully an approval. Thank you very
3 much.

4 MR. BIERIG: If there's no other comments
5 from Staff, I'm going to close the public hearing
6 portion and take it to the Commission for deliberation.

7 I don't know. I was thinking maybe we
8 could -- we've had a number of issues in front of us,
9 and maybe we should sort of step through them and talk
10 about them.

11 I know the one we spent the most time --
12 well, we started out with drainage. I guess we could
13 start out with the site plan first and make sure
14 everybody is comfortable with that. We did have one
15 discussion about the turnaround and drainage.

16 And then I think we get into the operational
17 side. So that would be my suggestion as to how to
18 proceed, and maybe we can do straw votes or even look at
19 these things in terms of if anybody wants to suggest a
20 condition on a particular item or issue rather than have
21 one grand stab at this thing at the end, which I find is
22 too confusing normally.

23 Claire, I know you had a number of concerns
24 about inconsistencies in the site plan.

25 MS. GOTTSANKER: Yeah, I don't have a number

1 of concerns, but I would -- I just would ask that Staff
2 in conjunction with Caruso Affiliated's team go through
3 and at least get all -- some consistency with the plans
4 that we have.

5 And why I say that is because on some
6 pages -- and I don't want to go through page by page --
7 on some pages we've got finished floor elevation of the
8 main building, and this is one that is particularly
9 important. On your grading plan you've got it at
10 37 feet on the grading plan, and then somewhere in here
11 on another plan, it's listed as the finished floor
12 elevation as being 35.

13 So you know, in lieu of like ripping this
14 packet apart, I would just ask that there be somewhere
15 some notation made that we decide on what the finished
16 floor elevations are or that the plans be consistent
17 from page to page as to whatever's been decided upon.
18 Okay. And at least I think legally we should have a
19 consistency in the document that we're dealing with.
20 Okay.

21 MS. BLACK: Mr. Chair and
22 Commissioner Gottsdanker, that's a perfectly reasonable
23 request. We thought we did that. So if there are some
24 plan sheets you believe are inconsistent with others,
25 maybe you could provide us with them just to make sure

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1 that they're consistent.

2 MS. GOTTSDANKER: Yeah, I can do that outside

3 the hearing.

4 MR. BIERIG: I mentioned two at the beginning
5 with this sheet 6.02 and the spa building as one story.
6 Those are the only two I have to be changed.

7 Go ahead.

8 MR. OVERALL: Not a question, it's a comment.
9 It certainly belongs on the plans. Now, as we talked
10 about the need for a turnaround provision on Jameson, we
11 covered that. I think it also ought to include signage
12 for the public whether that gets -- how you handle it,
13 just handle it.

14 MR. BIERIG: Commissioner Burrows, you have
15 your light on. Do you have questions?

16 MS. BURROWS: I'd like to refer to the Beach
17 and Tennis Club. We had that at 300, to start at 200, I
18 believe, page C-8. I don't see anything in here, unless
19 I'm missing it, that we're starting at a minimum and,
20 unless there are complaints or problems or a monitoring
21 situation, that we were going to increase by 25 after
22 six months, capping out at 300 -- is my memory. Is that
23 another place? Are those details on another chart or
24 something because --

25 MR. BRIGGS: Mr. Chair, Commissioner Burrows,

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1 yes, we did write that into a Condition of Approval.

2 MR. BIERIG: 66.

3 MR. BRIGGS: And what it does is it starts

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4 the beach club at 200 members, and then after annual
5 review I think you can jump it to 300.

6 MS. BURROWS: I think we agreed to a
7 six-month review.

8 MR. BIERIG: I don't think we agreed to
9 anything.

10 MR. BRIGGS: Commissioner Burrows, I think
11 there was discussion as to allowing it to go 12 months
12 to allow the hotel to ramp up the operations and get a
13 better feel for its operations. I think some folks had
14 said after six months it couldn't quite be up to a level
15 where you could really tell.

16 MR. BIERIG: Just one thing before we get
17 into the operational stuff, which is where we seem to be
18 headed, are there any other comments about the plans?

19 Because in particular I want to make sure
20 that we -- it seems like this dovetails first into
21 architectural style because so many of the plans in our
22 plan sheet revolve around that.

23 And I think maybe our next thing or at least
24 part of it is to talk about cottage style and making
25 sure we have a condition on this that substitutes

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1 cottage style or the elevations that are contained in
2 that plan package. I'm not sure how to word that.

3 MS. BLACK: Mr. Chair, you may want to
4 include the "cottage style" definition into the BAR
5 condition, BAR direction, and their subsequent review of

6 this. I tend to agree -- well, I do agree with
7 Mr. Caruso. I don't think it's a good idea to tear off
8 every elevation sheet because I think there may be some
9 information in there that we can indicate the Commission
10 specifically didn't approve the elevation design
11 features and that you intended to seek revision to
12 ensure cottage style.

13 MR. BIERIG: Which of our -- I don't remember
14 which condition has the reference to the MBAR.

15 MS. GOTTSDANKER: I don't know that it did.
16 It may be referenced to MBAR, but I think the
17 recommendation that Nicole Mayshore came up with appears
18 three times in the document.

19 MS. BLACK: Condition 87, Mr. Chair, would be
20 the condition that it showed -- it's also in the
21 findings and in Condition 1 in the project description.

22 So if your Commission refines or changes that
23 description in the conditions, then we'll carry it
24 through in the other two places it shows.

25 MR. OVERALL: I would like to offer on that,

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1 rather than change what the plan says, we offer both
2 definitions as elaboration of what we've entertained and
3 think is appropriate for the MBAR to consider without
4 officially adopting either of them.

5 And going beyond that, I know
6 Commissioner Gottsdanker provided this morning the Staff

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7 with photographs about the things -- some illustrations
8 of some of the ideas that were considered to develop the
9 wording, and I wondered if it's worth our time to go
10 through that and say, "Yes, we think that ought to be
11 forwarded," or "No, we shouldn't." Are we agreeable to
12 doing it or ask for me --

13 MR. GOTTSDANKER: Chairman Bierig, I'm a
14 little confused as to what Commissioner Overall is
15 actually proposing because there's no proposal on the
16 table to make any changes to the community plan at all.

17 This was only an attempt to define what
18 appeared to be -- you know, I mean what we've got
19 existing today is we have numbers that define
20 "cottage-type hotel." You know, two thirds, one third,
21 all of that stuff that we've dealt with and that County
22 Counsel has sorted out for us.

23 So I'm not proposing we add anything to the
24 community plan. This is only an attempt at this time to
25 actually define what the community may have meant when

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1 it put "cottage-type hotel."

2 MR. BIERIG: Commissioner Gottsdanker, would
3 you be making conceptually a motion we substitute the
4 language you provided us today for the language that
5 currently is in Condition 87 because, if you did, I
6 certainly would support that?

7 MS. GOTTSDANKER: If we're ready for that,
8 unless anybody else on the -- we haven't discussed it.

9 So I don't want to bully it in.

10 MS. BURROWS: Is this an attempt to amend the
11 community plan?

12 MS. GOTTSDANKER: Absolutely not amending the
13 community plan.

14 MS. BURROWS: But it's going to be incorporated
15 into this and then found that this project is amending
16 the community plan, or are we not by application doing
17 that?

18 MS. GOTTSDANKER: No. In order to amend the
19 community plan, you have to amend the community plan. I
20 think rather than going down that route, at least for
21 myself, I kind of decided this would be another way to
22 define it without having to require the Applicant to
23 amend the community plan. That is a two-year process.
24 I'm sure Mr. Caruso is not interested in that process at
25 all, and that is one process we as a planning commission

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1 could have asked for, and I decided that wasn't going to
2 happen.

3 MS. BURROWS: Absolutely. And I thank you
4 for doing that.

5 MS. BLACK: I think what you're doing if you
6 adopt the revised "cottage style" definition that
7 Commissioner Gottsdanker provided is you're really
8 providing some direction, detail, interpretation of
9 what's in the community plan in terms of the definition.

10 You're not substituting. The Applicant
11 continues to be bound by the policy language of the
12 community plan, but you're providing the Commission's
13 further interpretation of what that means.

14 MR. BIERIG: So all we really have to do in
15 that regard is, assuming -- I mean I'm going to suggest
16 that we simply substitute the language that
17 Commissioner Gottsdanker has spent significant time
18 working on here for the language that Ms. Mayshore had
19 started with as our first draft. Unless there's
20 objections, I think we should just substitute it.

21 MR. PHILLIPS: I agree this definition will
22 not go away. I don't know. If we have another hotel in
23 Montecito, this will continue on. I only have one
24 problem. I'm not sure -- I'm concerned about
25 "residentially scaled plate heights." I think the plate

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1 height -- I think of some residences, you know, and I
2 have a feeling, if there is resistance to cottage style
3 on the Applicant's part, it is plate height, and it's
4 hard to get the pitch groove in the plate height.
5 You've noticed in the pitches the grooves are coming
6 down.

7 MS. GOTTSANKER: I don't necessarily agree
8 with that statement, by the way. You can still have
9 pitched roofs, and you can shove plate height up under
10 the pitch of that roof, which is why we looked at the
11 idea of overhangs and porches so it gave the ability of

12 the Applicant to push the plate heights up into those
13 pitched roofs so there would a possibility of -- when
14 you're on the inside, it's a tall ceiling. When you're
15 on the outside, you've got the sense of a building
16 that's lower.

17 MR. PHILLIPS: So these cottages would never
18 get higher than envisioned because of the requirement
19 that the roof be pitched? That would not be agreeable;
20 right?

21 MS. GOTTSANKER: No. They're still single
22 story. What limits them is single story.

23 MR. PHILLIPS: "Residentially scaled plate
24 heights," again, I don't know if that means -- what do
25 you --

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1 MS. GOTTSANKER: It is ambiguous. It was
2 purposely ambiguous. I didn't, you know -- as you can
3 -- I could have come in and said, "I want the plate
4 heights on the cottages to be eight feet high. I want
5 the plate heights" -- you know, but in looking in going
6 in that direction, I really felt like that was overly
7 restrictive to the Applicant and the Applicant's
8 architects' abilities.

9 I mean it's granting the architects the
10 ability to be able to work inside of what cottage-type
11 hotel is and manipulate things inside of that without
12 saying, "This building has to have an 8 foot. This

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13 building has to have a 10 foot. This building has to
14 have a 12 foot." That is not my job here. That's the
15 job of the MBAR to decide what that looks like.

16 MR. PHILLIPS: Why don't we take
17 "residentially scaled plate heights" out?

18 MS. GOTTSANKER: Well, actually
19 "residentially scaled plate heights" was part of the
20 original -- was part of something that Mr. Caruso's team
21 sent through to me as a possible way of describing this.
22 So I included it for their benefit, not necessarily for
23 mine.

24 MR. BIERIG: Commissioner Gottsdanker, I
25 heard something previously --

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1 I think, Commissioner Phillips, you alluded
2 to it.

3 -- as to whether you are redefining what
4 "cottage style" means for Montecito for the rest of
5 time. And I wonder whether, based on that, we might
6 want to preamble this with "In the context of the
7 historical land use on the Miramar site, this is
8 cottage-style hotel buildings."

9 MS. GOTTSANKER: That's up to Staff.

10 MR. PHILLIPS: You know, this definition
11 comes up in terms of the Miramar only. It doesn't mean
12 all hotels of Montecito.

13 MS. GOTTSANKER: Well, all hotels in
14 Montecito fit this definition because I went back and

15 checked and went, "Okay. Now I've written this. Now
16 can I walk around the Biltmore and say it fits this
17 definition? Yes, I can."

18 When I walk around San Ysidro Ranch and I
19 walk around there, would San Ysidro Ranch fit this
20 definition? Yes, it would.

21 Then, if you read in the Staff Report, it's
22 all predicated on. You know, that was written in the
23 community plan based on the history of the hotels in
24 Montecito. We didn't come out with this from nowhere.

25 MR. PHILLIPS: The community plan section

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1 speaks only to the Miramar, and it says "Build it like
2 the Biltmore" --

3 MS. GOTTSANKER: No. It speaks to all of
4 the hotels.

5 MS. BLACK: Mr. Chair and
6 Commissioner Phillips, it speaks to all of the hotels in
7 Montecito, and they're all to be cottage style, and I'm
8 positive -- I don't say positive very often, but I'm
9 positive on this one because we've looked at it a lot.

10 And I think there was an anticipation that over time
11 there may be some improvements to these hotels. Low and
12 behold, here we are, not to the Miramar specifically.

13 while you would be applying a Condition of
14 Approval to help further define cottage style, I think
15 it would be something we would look to San Ysidro Ranch

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16 or the Biltmore to redevelop over time as well.
17 Remember, this is guidance to the BAR. This is guidance
18 to the BAR.
19 MR. PHILLIPS: Yeah, I think the language is
20 fine. I worry about plate heights. I think the
21 language in the community plan it gives you the range of
22 from the Biltmore to the ranch. That's quite a lot in
23 between. This gives -- I think this gives a little more
24 definition to disclosures. So I have no problem with
25 it.

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1 MR. BIERIG: Commissioner Overall.
2 MR. OVERALL: This question is directed at
3 Commissioner Gottsdanker. You said a few minutes ago --
4 I think I know the answer to this. I got to ask anyway.
5 You said this applies to one-story buildings. It was my
6 understanding this guidance applies to all buildings on
7 site --
8 MS. GOTTSDANKER: Right. No, it was not
9 intended to -- I don't think I said that because that
10 was never my intention that it be applied to only
11 one-story buildings. It applies to all the buildings.
12 MR. PHILLIPS: Excuse me, Mr. Chair.
13 Claire, you have "Cottage-type hotel building
14 refer to a quaint architectural style that can be
15 California cottage and bungalow or something completely
16 different perhaps, an architectural style reflecting the
17 historically regional California coast. That could be

18 adobe."

19 MS. GOTTSANKER: You betcha.

20 MR. PHILLIPS: That's not cottage type.

21 MS. GOTTSANKER: The Biltmore is

22 cottage-type hotel as defined in the community plan.

23 MR. PHILLIPS: What are you excluding? Are

24 you excluding anything with or an architectural style

25 reflecting -- could it be --

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1 MS. GOTTSANKER: Yeah, I'm specifically
2 excluding North Carolina whatever -- plantation style.

3 That's excluded. There's nowhere on the coast of

4 California where we get to see what's being proposed

5 which is plantation style from North Carolina.

6 That's why I specifically -- and that

7 recommendation actually came directly from Tony Span and

8 Andy Newman, two architects that work in varying styles

9 that they think fit the California coast, and those were

10 their words.

11 So I said, "Okay. Good." They know more

12 than I do about this. Those are their words. And I

13 just want to point out that, you know, this is kind of a

14 very interesting place for me to find myself in -- is

15 that this was actually agreed on by myself, Caruso

16 Affiliates, and the architects that I had noticed, that

17 I had informed.

18 And I was in communication with Staff. So we

19 want to go back and rewrite it, fine. We can take
20 another hour and go back and rewrite it, but I've got
21 MBAR saying this works for them. I have Staff saying it
22 works for them.

23 MR. PHILLIPS: Are you suggesting I can't ask
24 you about it?

25 MS. GOTTSANKER: No, I'm not suggesting

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1 that. I'm just saying we want to start really watching
2 the time here because I know there's a request to not be
3 here past --

4 MR. PHILLIPS: I understand.

5 MS. GOTTSANKER: Okay. Great. I'm just
6 saying it was arrived at not by me individually but
7 myself and Caruso's team and the architects on MBAR and
8 Andy Newman because he had been on MBAR at the time the
9 guidelines were written. So it was a collective issue.
10 It was a collective effort.

11 MR. PHILLIPS: I'm amazed we're talking about
12 this at this hour.

13 MR. CARUSO: Let's not.

14 MR. PHILLIPS: Let's not. We will see it
15 again.

16 MS. BURROWS: Yes, Commissioner Gottsdanker,
17 I want to thank you for your work on this and say that I
18 accept your work product.

19 MR. BIERIG: I agree. Very nice job.

20 So we're going to add this to Condition 87,

21 substitute this language.

22 MR. OVERALL: You were asking for other
23 comments on the plans. At our last meeting in reference
24 to Building 44, there were some comments offered related
25 to perhaps making an effort to revert to the earlier

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1 approach to the building. While it is one building,
2 there is more definition between -- it appears to be
3 broken up more. To the best of my knowledge, no kind of
4 change is reflected in the current plans. I offer that
5 again to my fellow Commissioners whether that makes
6 sense or not.

7 MR. BIERIG: Which building is that again?

8 MR. OVERALL: Building 44.

9 MR. BIERIG: It visually looks to be separate
10 buildings.

11 MS. BLACK: Mr. Chair, this is the building
12 that was more distinctly four separate building, and now
13 the way it reads on the first floor the buildings are
14 connected by linen storage areas essentially so that
15 they could be considered attached under the ordinance.

16 So on the first floor, I think you're right.
17 It looks more like a unified building, but the second
18 floor is still separated, and the roof lines are
19 separate.

20 MR. BIERIG: You're suggesting we allow the
21 Applicant to separate them?

22 MR. OVERALL: Yeah, give him more latitude --
23 MS. BLACK: Mr. Chair, I think the reason we
24 did this -- maybe I can ask Nicole or Anne to address it
25 because they are right there -- it had to do with the

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1 number of buildings --

2 MR. BIERIG: Had to do with complying with
3 the --

4 MS. BLACK: With the cottage definition and
5 keys. So I want to make sure we don't run a foul of
6 that if we ask the Applicant to do that.

7 MR. BIERIG: Building 43 was broke into two
8 pieces. I don't know if that changes the count. You
9 know what? I don't want to get into -- I agree with
10 you, but I don't want to get into having yet another
11 amendment to the community plan or the ratio.

12 MS. BLACK: Mr. Chair, I think your instinct
13 is probably good. I think, if we start to break this
14 building apart, it wouldn't comply with the language of
15 the policy. I think we do need to keep --

16 MR. OVERALL: I would argue, while that may
17 be true, we're making enough exceptions to the community
18 plan already that, if this would help the design of the
19 site and the building, I would personally support it.

20 MS. BLACK: Mr. Chair, just to make sure our
21 record is very clear, we are not making exceptions to
22 the community plan because you cannot legally make
23 exceptions to the community plan. We can grant

24 modifications to the ordinance to require -- but not the
25 community plan, and this is actually a policy.

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1 MR. BIERIG: I think what we can do is
2 indicate flexibility regarding how to interpret that
3 policy if the Applicant wants to adjust. I can't see us
4 changing any conditions given our instruments although I
5 agree with you.

6 Commissioner Gottsdanker.

7 MS. GOTTSANKER: I just was reminded of
8 something looking at the display that's on the board.
9 At the last hearing, did we -- was not the main building
10 shifted out of the setbacks? Was it or -- it was not.

11 MR. BRIGGS: Commissioner Gottsdanker, only
12 one-story elements of the main building remain in the
13 setback.

14 MS. GOTTSANKER: Okay. So we still have --
15 the one-story elements are still in the setback.

16 MR. BRIGGS: Correct.

17 MS. GOTTSANKER: Okay. Got it. Thanks.

18 MR. BIERIG: Just on the one. The other ones
19 were moved out. The ballroom and Building 44 were moved
20 out.

21 MS. BLACK: Mr. Chair, just to make sure
22 we're clear, the spa is clear, but it is one story.

23 MR. BIERIG: But it's one story.

24 I think maybe where we should go to next --

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25 why don't we look at drainage? I'm only saying we look

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1 at drainage for the purpose of saying we're done unless
2 somebody has -- now would be the time to speak your
3 peace. If not, okay.

4 Traffic. I turned off your mike, Jack.

5 MR. OVERALL: Actually I'd like to come back
6 to talk about that.

7 MR. BIERIG: You mean the operational side of
8 it? That makes sense.

9 Commissioner Gottsdanker.

10 MS. GOTTSANKER: I don't know if this
11 necessarily falls under traffic, but I was wondering --
12 I just wanted to ask why is this Miramar Avenue right of
13 way to be dedicated to the county as a formal easement?
14 I just want to know the mechanism that's happening
15 there. I mean Miramar Avenue belonged to the county; is
16 that right?

17 MR. BIERIG: No, it's an easement.

18 MS. GOTTSANKER: So it was an easement
19 always. So then why are we now dedicating it -- so I
20 mean why that language? Wasn't it already an easement,
21 and why -- are we rededicating something? Are we
22 realigning? What are we doing here?

23 MS. ALMY: Mr. Chair, what we're doing is
24 abandoning the current alignment of the Miramar easement
25 in favor of an alignment that goes across the fire.

1 MS. GOTTSDANKER: Okay. That's fine.

2 MS. ALMY: And it's going to be strictly a
3 pedestrian easement, not a vehicular easement as well.

4 MS. GOTTSDANKER: That easement is not
5 restrictive in any way to the public at any time day or
6 night?

7 MS. ALMY: That's my understanding. That's
8 correct.

9 MS. GOTTSDANKER: Is that clear in the
10 conditions and the documents that it absolutely is a
11 pedestrian easement that's always open for the public?

12 MS. ALMY: I believe it is clear, but let me
13 look.

14 MS. GOTTSDANKER: Okay. I want to make sure.
15 This is a major thing.

16 MS. BLACK: Mr. Chair,
17 Commissioner Gottsdanker, it's one of the coastal -- the
18 coastal easements. So it's definitely to be available
19 to the public.

20 MS. GOTTSDANKER: That's why I wanted to make
21 sure in the documents it's very clear it's unrestricted.

22 MR. PHILLIPS: "Runs through the land in
23 perpetuity," all that.

24 MS. GOTTSDANKER: All that good stuff. Okay.
25 Good.

1 MR. BIERIG: Director Black, I would suggest
2 next maybe look at the operational table which I know
3 there's a couple places -- it's on page 24, C-24, starts
4 on C-24 and goes through several.

5 So I don't know but if Mr. Briggs or somebody
6 wants to walk us through which items on the operational
7 side, which is, I guess, on page 27. It's the start of
8 where the proposed plan in front of us as modified
9 differs from the third Schrager plan.

10 And in particular I think you probably need
11 to focus on this issue of events that we've been
12 discussing today -- normal events, special events,
13 weddings, the number of assembled seats. As I go down
14 the list, I guess the differences are we have a
15 modification for special events.

16 MR. BRIGGS: Mr. Chair, two things are
17 jumping out at me. The number of beach events has been
18 increased from 12 under the Schrager plan and 30 under
19 the Caruso plan. And also the number of people
20 attending those beach events increased from 50 to 100.
21 And the time limit has increased from a half an hour to
22 an hour.

23 And then when you jump down to Beach and
24 Tennis Club, under Schrager we have 140 members and then
25 ultimately under Caruso's plan starting at 200 and

1 ramping up to a possible 300 and then, in improvement of
2 the Caruso plan, the no lighting to the tennis courts.
3 And aside from that, it looks very similar.

4 MR. BIERIG: So Commissioners, I don't know
5 if you want to use this as a jumping off point to talk
6 about this issue as this relates to Condition 56.

7 MS. BLACK: Mr. Chair, just one other
8 operation issue I think is very obvious but 21 fewer
9 rooms as well.

10 MR. BIERIG: Yes. Commissioner Burrows,
11 you're mike light is on.

12 MS. BURROWS: On spa use by nonguests, 15
13 nonguests per day, that's weekends and 24/7? Thank you.

14 MR. BIERIG: Which page is that on?

15 MS. BURROWS: C-28, "15 nonguests per day."

16 MR. BIERIG: But it is the same. I was
17 simply looking at comparing the approved plan.

18 MS. BURROWS: 15 is the outside number on --
19 so there's no increase there. Well, the condition this
20 would relate to is the condition --

21 MR. BIERIG: Well, part of it is the 66, the
22 Beach and Tennis Club membership phasing in is one way
23 that we addressed it. The suggestion has been made by
24 the Caruso team to ratchet up that Beach and Tennis Club
25 membership and -- although the starting point suggested

1 by them is 200 versus the 140 under the existing plan.

2 MR. OVERALL: My recollection we did not have
3 discussion on that.

4 MR. BIERIG: We have not.

5 MR. OVERALL: It was proposed by
6 Commissioner Burrows --

7 MS. BLACK: Mr. Chair, I think Caruso
8 Affiliates suggested a beginning number of 200 and
9 ratcheting it up to 3-. That's my understanding.

10 MR. OVERALL: What I'm saying is we have not
11 discussed increasing from 140. It was mentioned, but I
12 don't believe there was any discussion.

13 MS. BURROWS: Well, it's been mentioned a
14 number of times because I've mentioned it a number of
15 times, and I think my feeling was that starting at 200
16 and then phasing in the additional numbers gives us time
17 to see how this is working in regard to parking and
18 whatever other issues might arise.

19 And also I think there is a monitoring in
20 place up to the 300, and then let's see. Then
21 Montecito -- MPC will monitor annually until they
22 determine monitoring an annual report is no longer
23 necessary.

24 MR. BIERIG: One thing I think we might want
25 to consider here is looking at this the time period in

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1 which this thing is going to come back to us, come back
2 to this Commission, as to whether 12 months is an

3 appropriate time period.

4 I'd certainly like to have it be some period
5 of time where we could see where the operation of the
6 hotel is, and I'm inclined to give Staff some
7 discretion. For instance, if this hotel opened in the
8 middle of summer, we probably wouldn't -- 12 months
9 later we really wouldn't have an idea of what the
10 summer -- how the operation would have proceeded during
11 peak time period because it'll be ramped up. Does that
12 make sense?

13 I'd like to see them have a year of operation
14 where they're actually operating before we ratchet it up
15 so we know what conditions we're dealing with. I'd be
16 inclined to modify this condition and give some
17 discretion to Staff to bring it back to us in, say, a
18 year to 18 months with the proviso of no obligation.

19 MR. PHILLIPS: Mr. Chair, isn't there any
20 concern about individuals or family -- that's so
21 different. I belong to a club where they permit
22 children. There's seven vehicles between my wife and I,
23 theoretically. They're not all driving, but they could
24 be. Isn't the amount of traffic, depending on how
25 comfortable or uncomfortable the beach crowd is -- I

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1 mean the beach club crowd is or how crowded it is --
2 say, 300 individuals or 1,200 people if there were four
3 people to a family and if they were all driving? I mean

4 that may be fine, but what kind of -- we have no idea.
5 MS. BURROWS: We may not get to 300.
6 MR. BIERIG: We may not get to 300.
7 MR. PHILLIPS: I think there's 300 members
8 already from what I'm hearing.
9 MS. GOTTSANKER: We know there's 140.
10 MR. PHILLIPS: And again, I think it should
11 be how many parking spaces don't go over that at a time.
12 551 people -- 551 cars, bring friends, put five people
13 in the car, what do we care.
14 MS. GOTTSANKER: How do you manage that?
15 MR. PHILLIPS: Once they're on site, we're
16 not managing that.
17 MR. BIERIG: She's suggesting how would you
18 rewrite the condition.
19 MR. PHILLIPS: I don't think we should
20 micromanage events and club memberships. I think we
21 ought to be concerned about traffic to the site.
22 MR. BIERIG: What about 1,000 club members?
23 MR. PHILLIPS: I don't know.
24 MS. BURROWS: Unlimited.
25 MR. BIERIG: If we have enough room, they'll

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1 be able to let you in.

2 MR. PHILLIPS: I thought I going to to the
3 Coral Casino party.

4 MR. BIERIG: I do think we need limits.

5 MS. BURROWS: On the issue of traffic, by

6 phasing in additional numbers, we are in effect having
7 some control over the traffic. If we see traffic
8 impacted, we can keep this at 200.

9 MR. BIERIG: I'll throw out one option. I
10 personally would be more comfortable if we started at
11 150 than 200.

12 MR. PHILLIPS: I just don't know what that
13 membership means. I don't know if that --

14 MR. BIERIG: Here's how I look at 150
15 memberships. The Caruso team will be working really
16 hard to make those work correctly. Those are worth
17 \$150,000 a piece. That's a lot of money, 150
18 memberships.

19 MS. BLACK: Mr. Chair, just a little
20 comparison figure, I was actually more interested how
21 members were defined at the Coral Casino, but
22 interestingly enough, they're defined the same way.
23 Permanent members may bring immediate family. Their
24 family is included.

25 MS. BURROWS: What about friends?

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1 MS. BLACK: And charged per guest, family
2 guest, but they have 600 at Coral Casino.

3 MR. BIERIG: That's true. I forgot about
4 that. We did look at that in terms of the traffic
5 report.

6 MS. BLACK: We did analyze that.

7 MR. BIERIG: I forgot we did analyze that.

8 MR. OVERALL: Mr. Chair, while all of that
9 may be true --

10 MR. BIERIG: How would you suggest family --

11 MS. BLACK: I really need you all to speak
12 into your mikes because the court reporter can't hear
13 and the public definitely can't hear.

14 MR. BIERIG: Commissioner Overall, how would
15 you suggest we handle this?

16 MR. OVERALL: Well, I think I'll talk briefly
17 to County Counsel. I'll go back to the discussion about
18 what we can and can't do. If we start low, we have no
19 problems. The threshold to say we'll increase it is
20 minimal, and we can kind of make that decision.

21 To go the other way, we're going to have to
22 have metrics in place, and I think it's going to be very
23 difficult to get a meaningful way out of who is a guest,
24 how many guests, how many family members, how many
25 family cars relating to tennis and beach club for the

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1 moment. So whether there's 140 to 150, I would opt for
2 a lower number, start there.

3 MR. BIERIG: I guess where I'm starting is I
4 couldn't see -- I couldn't see starting lower than the
5 approved project, and so I was --

6 MR. OVERALL: That's 140.

7 MR. BIERIG: So I was using it as a jumping
8 off point. But I'm open for -- you know, I'm looking

9 for suggestions as to how the Commissioners would like
10 to address this issue of operations because I know it's
11 still in front of us.

12 Yes, go ahead.

13 MS. BURROWS: Mr. Chairman, I'm still willing
14 to go with the 200 because, again, if there are parking
15 problems or operational problems, that can be the cap,
16 no more than 200.

17 And yet, if things are going well, then we
18 would be able to offer to the community a bigger chance
19 of becoming a member because I understand this is going
20 to be very popular. Is there reason to feel like people
21 that were currently members or were in the past members
22 or whatever -- we're talking about a difference of 50
23 people. Friends will not be admitted, as I understand,
24 even for a fee to use this; is that correct? It would
25 only be for family members, and I would be interested in

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1 knowing how "family" is defined.

2 MS. GOTTSANKER: 2.5 people.

3 MS. BLACK: The condition actually says
4 "children living at home."

5 MS. BURROWS: That's very good.

6 MS. GOTTSANKER: What I was going to say is
7 I would tend towards the 200 mark myself because -- in
8 agreeing with Commissioner Burrows because I would
9 rather make this hotel available to the people in

10 Montecito than, you know, the special events coming in.

11 So if we're going to start playing numbers
12 here, I would rather play it with allowing more of the
13 community and less for -- if we have to take it out
14 somewhere else, we'll take it out somewhere else.

15 MR. BIERIG: I think that's an excellent
16 point, and I hadn't considered that.

17 MR. PHILLIPS: In all due respect to Counsel,
18 I think we're going to need a metric coming up and going
19 down. There will be an argument that "The site is
20 sufficient. You said you were going to look at it.
21 What's your reason for denying us?"

22 And we're going to say, "It feels kind of
23 crowded." That's not going to be enough. We're going
24 to need some measurement.

25 MS. GOTTSDANKER: As part of the condition?

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1 200 and then some sort of --

2 MR. PHILLIPS: I feel very strongly as you
3 do, Commissioner Gottsdanker. This is one opportunity
4 for the community after suffering through the
5 construction and the noise and having to listen to us
6 for so many hearings -- they might have some fun there.

7 MS. GOTTSDANKER: I can't wait.

8 MR. BIERIG: How about different wording on
9 this?

10 MR. PHILLIPS: So if it's a little crowded,
11 we'll move it down and fight with Mr. Caruso about it

12 later.

13 MS. BURROWS: I would join in saying that.

14 MS. GOTTSANKER: Are you saying going to 3-
15 right off?

16 MR. PHILLIPS: I don't even need to go that
17 far. I think --

18 MR. BIERIG: No, I think that's a mistake.

19 MS. BURROWS: I think it's a mistake too. I
20 want to stay at 200. If things work out, traffic and
21 operations are well managed, then we can bump it up
22 after six months or one year.

23 MR. PHILLIPS: We're going to catch this in
24 our parking review. If they're parking all over the
25 neighborhood, we're going to catch it there.

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1 MR. BIERIG: That's the point.

2 MS. BURROWS: That's the point. We'll catch
3 it if there's problems. We'll catch that.

4 MR. PHILLIPS: Why have them say, "How many
5 families are here today?" because they have to report to
6 us. That's such a burden.

7 MS. BURROWS: I'm not an expert on the
8 operation of hotels, but it seems to me that would work
9 better -- at Coral Casino works very well. You pay
10 \$25.00 to bring in a friend. I don't know if Mr. Caruso
11 wants to go that route. It's the family and members.

12 MR. GHIZZONI: Chairman Bierig and

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13 Commissioner Phillips, may I address the difficulty of
14 going down, especially if you're envisioning third party
15 purchasers of memberships --
16 MR. BIERIG: It's not going down.
17 MS. BURROWS: We would cap it.
18 MR. GHIZZONI: I was responding to
19 Commissioner Phillips.
20 MR. BIERIG: You think some of these meetings
21 have been tough with the public?
22 MR. PHILLIPS: Try to take their memberships
23 away.
24 MR. BIERIG: Try to take their memberships
25 away and see where we are.

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1 MS. GOTTSANKER: So where we are is at 2-
2 moving to a cap of 3- at some period of time when we
3 have measures around operations. Is that what we're
4 saying? I want to get real clear on what we're saying.
5 MR. BIERIG: I would prefer if the language
6 gave us more discretion than what's in here in terms of
7 "at the discretion of the planning commission" versus --
8 what does it say now? It says "starting at 200, limited
9 to 3-." I mean that's almost like you get 3-. It's
10 just a question of when.
11 MS. BURROWS: But it's not. If there are
12 problems with parking or operations --
13 MR. BIERIG: That's not what it says.
14 MS. BURROWS: I think that's what we had

15 intended it to say. The noncompliance or the monitoring
16 plan would mean that it would not be picked up. So we
17 need to add that language.

18 MR. BIERIG: Counsel, any comments on our
19 ability to -- I mean I'm worried that your comment
20 about -- I think it's impossible to go down. It's just
21 impossible, but I question whether, given how the
22 language is written, we can even limit it, we can stop
23 it from going up.

24 MR. GHIZZONI: Chairman Bierig, I would
25 suggest there is a framework you could look to. No

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1 matter how this is worded, you would look at the fact
2 that making determinations -- you already have some
3 guidelines for substantial conformity determinations,
4 the existing framework within Article II.

5 And whether that's spelled out in this
6 condition or not, that's something you could be
7 considering as this comes back to you. Whether it's 200
8 or even 300, when the Applicant came back and said, "I'd
9 like to go to 250 now," the same approach in a
10 substantial conformity determination would serve you
11 here. You can't just say whatever comes to mind, but if
12 you're looking consistency with other aspects of the
13 project and if there were parking problems or other
14 problems, you would address those at that time.

15 MR. BIERIG: So you're saying that we do have

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16 discretion because, when I read the language, it says
17 200 going to -- increasing to --

18 MR. PHILLIPS: As if it's an entitlement,
19 expectancy.

20 MS. BURROWS: Under monitoring, that's what
21 it says.

22 MS. BLACK: Mr. Chair, I think the way we
23 would look at this condition, going from 200 to 3- -- we
24 would only do it in a context of making a recommendation
25 to your Commission in the context of a compliance

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1 action, a compliance report. I think we would most
2 likely bring a substantial conformity report to your
3 Commission at same time and make a recommendation to
4 you.

5 MR. BIERIG: I'm just making sure you feel
6 comfortable that the Applicant can't say, "I'm entitled.
7 Now I want it." I'm sure there's a few minor problems
8 out there.

9 MS. BLACK: I feel comfortable it requires a
10 subsequent action that is not an entitlement.

11 MS. SLUTZKY: Mr. Chair, under planning
12 requirements -- under Condition 66, Planning Requirement
13 and Timing, it provides "If it is determined by
14 Montecito Planning Commission that the Beach and Tennis
15 Club is operating adequately and the site is capable of
16 operating additional memberships" -- you have that
17 determination presented in that condition.

18 MR. BIERIG: Thank you for bringing up that
19 other clause in here.

20 MR. PHILLIPS: But we don't have a metric,
21 Mr. Chair. How do we argue that?

22 MR. BIERIG: What I'm hearing from Staff is
23 this fits within purview of discretion. We certainly
24 wouldn't not give it to them if there wasn't a problem.
25 We want it. We want them to have it. I'm sorry. I cut

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1 you off.

2 MS. BLACK: Mr. Chair, I was just going to
3 say we would be looking at your original findings to see
4 if we could continue to make the original findings -- is
5 the review still adequate? Can we make the findings?
6 Are you creating any policy consistency issues,
7 et cetera? I think there's plenty of structure to this.

8 MR. OVERALL: I have two concerns about this
9 related to parking. One of the metrics, as far as I'm
10 concerned, is we don't have parking on public access
11 spaces along Jameson. And the other is at some point
12 we've talked about the self-park component of this,
13 presumably the two are linked, but I'm not absolutely
14 certain that's the case.

15 I don't have a specific wordage to go on
16 record with. You all -- those are -- it did not take
17 public access parking really critical, and I think there
18 may be a point in time where we're going to require a

19 self-park facility on the site.

20 MR. BIERIG: We do have a condition.

21 MS. BLACK: Mr. Chair, we already have a
22 condition.

23 MR. OVERALL: Not fully. We'll come to that
24 in a minute when we finish the rest of the parking. I
25 think it's possible, when we look at the total parking,

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1 that we may want to say, "We can or can't have" -- if
2 there's no problem, obviously it's fine. If there is a
3 problem, either you don't get it, or you provide
4 additional parking.

5 MR. BIERIG: It's in Condition 55. It's at
6 the bottom of the page. You're just trying to put the
7 Applicant on notice as to what your standard is. I'm
8 comfortable that this covers what we had discussed
9 previously about that, self-parking, the option for
10 self-parking.

11 MS. BURROWS: And I'm comfortable with that
12 as well.

13 MR. BIERIG: Commissioner Phillips, you have
14 your light on.

15 MR. PHILLIPS: No.

16 MR. BIERIG: I've got the only light on. I
17 think that we have a consensus to stick with the
18 language that's in here. Is that what I'm hearing?
19 Okay.

20 You want to have any discussion on the number

21 of events, the timing of events, the beach events going
22 back to the table that's pages 26, 27, and 28? we
23 discussed the Beach and Tennis Club. Any concerns about
24 the number of onsite events as contained in Table C-2 at
25 the bottom or C-27, 28?

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1 Commissioner Overall.

2 MR. OVERALL: I want to go back to the
3 discussion we had earlier this morning, and Mr. Caruso
4 requested he be allowed to have 4.7 events average per
5 day. I think it's important that we look at what
6 that -- the two, that I find, faults with that.

7 One, I think, as Mr. Palladini pointed out,
8 the Montecito Association pointed out, average -- if we
9 were to average 4.7, it gives me great pause
10 particularly dependent upon the size of the events.

11 And then I think you come to the issue -- I
12 think you have to be most concerned about which is how
13 many people are coming to this site in a given day? To
14 me that's the issue. It's not how many events there
15 are. It's how many people are coming because that's
16 going to drive traffic and drive parking demand.

17 And unless I missed something, which is
18 entirely possible, you can have 4.7 events with 10
19 people at each event. You can have 47 people there. On
20 the other hand, you can have -- theoretically you can
21 have 4.7 events with 500 each, which is 2,350 people.

22 So you've got --

23 MS. BURROWS: Jack, I think it's 600 capped.

24 MS. BLACK: Mr. Chair, I think the way I read
25 this condition and I think the way the Condition is

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1 intended to operate is that at any given time there
2 can't be more than 500 people on the site during regular
3 events, not per event but total.

4 MR. OVERALL: Any one time. So if you have
5 an event at 9:00 o'clock and another event at noon --

6 MS. BLACK: And that is true. The --
7 Mr. Chair, Commissioner Overall, the intention is we
8 address parking in a way that works, and the way we've
9 looked at parking is we've ensured that there's adequate
10 parking.

11 we believe there's adequate parking for up to
12 600 people to be on site attending special events at any
13 given time, and that only can occur 12 times a year.
14 The rest of the time it's only 500 people at any given
15 time to be adequately parked.

16 So that's how the condition is supposed to
17 operate, and then layered on top of that is the average
18 of 4.7.

19 MR. OVERALL: I understand. Tell me what is
20 wrong with the statement I made. You can have 4.7
21 events. You can have 10 people at an event, or you can
22 have 500 at an event. Is that not true?

23 MS. BLACK: Mr. Chair and

24 Commissioner Overall, that is true, but you couldn't
25 have -- you couldn't have four events happening at the

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1 same time with 500 people.

2 MR. OVERALL: I understand that. But if you
3 look at the total traffic demand in that neighborhood on
4 a given day, that's what my concern is. It's not the
5 number of events. It's how much traffic are we
6 generating? And then obviously the consequence to that
7 is the parking issue. We'll get to that in a minute.

8 MS. BLACK: Mr. Chair, to close the loop on
9 that, the way we've analyzed this -- we've analyzed both
10 situations whether there's 4.7 consecutive events of 500
11 or 600 people, depending, and concluded that parking is
12 adequate and circulation and traffic is okay because
13 it's spread over a large time. And that's obviously a
14 very, very worst case situation. I don't think anybody
15 expects there to be that many events every single day.

16 MR. BIERIG: As a practical matter, it just
17 can't happen.

18 MS. BLACK: But we did analyze that, and we
19 believe that parking would be adequate. Circulation is
20 adequate.

21 MR. BIERIG: Did we get operational
22 information from the Biltmore? I believe we've had
23 some. Somewhere along the line, it came before us.
24 Maybe it was related to the spa or something else. I

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25 know we've seen it, and as a practical matter, they

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1 don't have anywhere near this number of events. I mean
2 there's not enough people in this town.

3 MS. BLACK: We really do look at a very, very
4 worst case scenario when we look at 100 percent
5 occupancy with special events that reach that maximum.

6 MR. BIERIG: I understand
7 Commissioner Overall's concern of the worst case -- the
8 perfect storm of bad events.

9 MR. OVERALL: I just think we're trying to
10 limit the wrong thing. We're trying to limit the number
11 of events. What we should be looking at is limiting the
12 number of people.

13 MS. GOTTSANKER: I'm just trying to -- it's
14 so complicated when we're trying to do all three things
15 at the same time. I'm just wondering if there's a way
16 of offsetting your concerns, Commissioner Overall.

17 If there were some limit of how many events
18 of 5- to 600 people one could have in any one given day,
19 seeing as the 500 number is kind of open ended -- we
20 actually -- we do limit 600. Those are special events,
21 5- to 600 that comes under the special events. It's not
22 the normal events. I think, as I understand it, yes,
23 special events are 600 people maximum.

24 But to offset the concern that's been voiced
25 by the Montecito Association and your concern and it's

1 now becoming my concern, is there some way we can
2 actually say "only X number" because I do see that this
3 could possibly potentially be a problem seeing as we
4 don't really have like current traffic.

5 we didn't do traffic studies. We took what
6 we had, and we added to those. We're all clear we got a
7 problem, and the problem -- on a sunny day down by the
8 beach, it's a major problem. It really is a problem.

9 And the thought of having another 500 trips
10 added for a breakfast meeting on Sunday morning, those
11 500 people leaving mid day, another 500 people coming in
12 for an afternoon or a wedding or whatever, those people
13 leaving, I mean we've just added 2,000 trips to those
14 intersections.

15 I mean we just have -- that's what we've done
16 by having this be open ended. So I don't necessarily
17 want to restrict them. I just want to know if there's
18 some mechanism written into the document that stretches
19 it all out or something so we can get at impacts to
20 parking and traffic. I don't know. This is not where
21 I've been putting my energy.

22 MR. PHILLIPS: Commissioner Overall, if the
23 4.7 events creates the perfect storm, the most awful
24 situation, but Mr. Caruso is still underparked, is that
25 all right? If he's not in the neighborhood, if he's

1 under at 551, is that all right?

2 MR. OVERALL: I can't answer the question
3 without additional data because you have two different
4 impacts. You have the parking impact, and you have the
5 traffic impact.

6 MR. PHILLIPS: It's the same thing.

7 MR. OVERALL: No, it's not the same thing.

8 MR. PHILLIPS: How?

9 MR. OVERALL: Parking is in the structure,
10 and traffic interacts with everything else going on.

11 MR. PHILLIPS: Well, it's not cars parked
12 we're concerned about. It's cars coming to the site
13 we're concerned about.

14 MR. OVERALL: Right. But you can have cars
15 coming to the site, and they can be adequately parked,
16 but with the additional traffic on the roads, you could
17 have an LOSF. The point is I can't answer the question.

18 MS. GOTTSANKER: It's really difficult to
19 separate.

20 MS. BLACK: Commissioner Bierig, I offer an
21 observation and maybe a suggestion. Observation: If
22 you look at the approved plan under Schragger, we're
23 basically nearing that.

24 MR. BIERIG: We are.

25 MS. BLACK: So just observation. Suggestion:

1 It sounds like maybe what you want -- we're trying to
2 see what this number might be, but it sounds like what
3 you maybe might want is a cap on the number of people
4 that could come to special events whether it's one or
5 five events during the day -- how many people can
6 actually be there. Is that what you're looking for so
7 that you don't have 4.7 events at that 500 --

8 MR. OVERALL: I don't think it's an issue of
9 special events. I think total --

10 MS. BLACK: Events. Events, regular or
11 special events.

12 MR. OVERALL: It seems to me that's a better
13 measure of the potential impact than the number of
14 events. I have no -- one of the things we haven't done
15 is we haven't asked Mr. Caruso what the profile is of
16 his marketing effort. One of the things we know from
17 his reputation and other locations is that they're very
18 good. And if they're targeting groups of 50 and 60,
19 that's one thing. If they're targeting groups of 500,
20 that's an entirely different story.

21 MS. BLACK: Mr. Chair, maybe you want to ask
22 Mr. Caruso. Maybe you want to give him a few minutes to
23 absorb it. I don't know because I don't know
24 operationally. I've never run a hotel.

25 MS. GOTTSANKER: But then we get into the

1 complexity that Mr. Caruso can do what advertising
2 Mr. Caruso wants to do and target whatever group he
3 wants to target, and if he wants to bus them all in, so
4 be it. I don't know. I'm trying to figure out what it
5 is that we're trying to do here.

6 MR. PHILLIPS: Are we agreed that, if every
7 551 spaces is taken every minute, that would be fine,
8 and we would celebrate Mr. Caruso's success? Is that
9 true, Jack? Or else we need to drop this parking level.

10 MR. OVERALL: Tell me what the traffic
11 impacts are.

12 MR. PHILLIPS: I think they're acceptable
13 because we gave up parking spaces assuming cars are
14 coming there.

15 MR. BIERIG: Director Black, I know you had a
16 comment.

17 MS. BLACK: Mr. Chair, I guess go back to our
18 original recommendation. Our original recommendation
19 was to allow the level of special events -- I don't
20 think we're hesitant about that. I think we believe
21 that they will have more than sufficient parking based
22 upon comparisons to other hotels.

23 The Biltmore is in a different neighborhood
24 but is really quite similarly situated because they have
25 coastal access parking and some of the same struggles.

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1 They have a lot less parking, and they operate in some
2 ways a higher level.

3 MR. BIERIG: Let me ask a question that comes
4 to mind, and maybe gets at this. The traffic report
5 didn't study 4.7 trips.

6 MS. BLACK: Yes, it did.

7 MR. BIERIG: They had to assign some amount
8 of people.

9 MS. BLACK: I can tell you --

10 MR. BIERIG: Not per car.

11 MS. BLACK: The traffic analysis we did for
12 the Schragger plan which was contained in that original
13 ND approved by the county planning commission analyzed
14 this exact profile.

15 MR. BIERIG: How many people did they assume
16 was going to come to each of those 4.7 events?

17 MS. BLACK: You let me let will go.

18 MR. BIERIG: But you understand what I'm
19 saying. I don't know what number was analyzed.

20 MS. BLACK: I would assume a reasonable worst
21 case number was analyzed, but I would have to look.

22 MR. BIERIG: Was it 407?

23 MS. BLACK: I have to look.

24 MR. BIERIG: Or was it 2070?

25 MR. WARD: Mr. Chair, Commissioners, the

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1 standards used for the traffic modeling would be based
2 on ULI. Those are standard practices used to generate
3 trip generations. We have the technical reports. We

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4 can look at them.

5 MR. BIERIG: I read it. I don't have it
6 here. I was comfortable this traffic report was done
7 correctly.

8 MR. PHILLIPS: Jack, we only have 551 cars.
9 That's all we can have.

10 MR. OVERALL: Not in the course of a day.

11 MR. PHILLIPS: At any one time.

12 MS. BURROWS: Once that 500 completes their
13 business and leaves, then after some set up time of a
14 couple hours or whatever -- for example, if you had 500
15 PTA members in the morning and then after lunch 500
16 native women voters people, you would still have the
17 same number of cars in the parking place at the same
18 time.

19 MR. OVERALL: I'm afraid I'm not
20 communicating it. Right now I'm not talking about
21 parking. I'm talking about traffic.

22 And I'd like to pose a question to Mr. Caruso
23 because he's the one that made the request. He said he
24 needed 4.7 events in his modeling for his lenders. I
25 think that would help us.

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1 MR. CARUSO: We have an income statement and
2 a profit and loss statement that our lenders have, and
3 they have relied upon that. And it assumes an income
4 number generated from F and B, from food and beverage.
5 And it's not maxed out where we have 500 people there 3

6 times day, 7 days a week, 365 days a year.

7 MR. BIERIG: You could only hope.

8 MR. CARUSO: I could only hope. I hope we
9 have that problem to deal with.

10 But again, to short of artificially restrict
11 this when we have a traffic plan that's been accepted by
12 the County and we have more parking than we are required
13 to have and now we have less traffic impact than
14 Schrager because we have less rooms, it just seems to be
15 punishing us on the notion and the dream that we may be
16 so successful we have a traffic problem. And if we do,
17 you have the ability to reel us back in and say, "Caruso
18 fix it."

19 MR. BIERIG: We haven't punished you yet.
20 We're just thinking about it.

21 MR. CARUSO: It's punishment sitting here,
22 though, sir.

23 MR. BIERIG: It works both sides.

24 MR. CARUSO: I know. I ask for some
25 deference in allowing us to operate.

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1 MR. BIERIG: We haven't decided to do
2 anything. We're just making sure we understand what
3 we're allowing.

4 MR. CARUSO: Fair enough.

5 MR. BIERIG: I appreciate your giving me the
6 prospective. I think the important thing is we do have

7 a traffic study that's been analyzed and has been
8 accepted by the County.

9 MS. BURROWS: And the monitoring program in
10 place.

11 MR. BIERIG: As to this operation. We
12 probably -- we have about an hour left, and I'd like to
13 take a couple-minute break, but before we do, I'm just
14 wondering what items my fellow Commissioners would still
15 like to discuss.

16 MR. OVERALL: Parking.

17 MS. BURROWS: Have we resolved this? I
18 suggest we do that before we break.

19 MR. BIERIG: I think we're going to have to
20 take a break and come back. I think that's a good
21 suggestion. But Commissioner Overall suggested he wants
22 to talk about parking.

23 Commissioner Gottsdanker, do you have some
24 issues you want to --

25 MS. GOTTSANKER: I don't think so. I think

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1 I'm still stuck on this one. That's fine. You can go
2 on and come back.

3 MR. BIERIG: I'm trying to get a list of
4 things we might go onto.

5 MS. GOTTSANKER: Let me look at my Post-It's
6 here.

7 MR. BIERIG: I'm trying to decide whether
8 we're going to deal with these issues in five minutes or

9 eight minutes.

10 MS. GOTTSANKER: No, I think all my Post-Its
11 have been covered.

12 MR. BIERIG: Good. Because mine have. Okay.
13 so we still have the continuation of the operations
14 discussion and the related issue of traffic -- excuse
15 me -- parking.

16 MS. GOTTSANKER: It always comes down to
17 this, always comes down to parking.

18 MR. BIERIG: Always the same issues. Let's
19 take five to seven minutes.

20 (Whereupon a short recess was taken.)

21 MR. BIERIG: Commissioner Phillips.

22 MR. PHILLIPS: Mr. Chair, can I approach this
23 parking/traffic issue from another direction. Let's
24 assume that after a year we are very unhappy with the
25 result regardless of the metric. We agree as a

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1 Commission that this isn't working, the impact on the
2 community is too great. Can we bring the Applicant back
3 here and say, "Let's review operations. Let's take a
4 look at the beach club. Let's take a look at the
5 weddings. Let's make this work." Can we do that?

6 MR. BIERIG: We can.

7 MS. BLACK: Mr. Chair, I think what you've
8 heard from County Counsel so far is that wouldn't be
9 their preferred way of addressing operational issues at

10 the site.

11 In terms of the beach club, I think it would
12 be disastrous. You can't allow Mr. Caruso to sell
13 memberships and then tell him, "You need to get rid of
14 some of those memberships."

15 But in terms of other operations, I think
16 what County Counsel has suggested is, if your condition
17 provides for a ratcheting down, you're probably okay in
18 terms of vested rights, but you're probably on somewhat
19 shaky grounds in terms of process.

20 MR. PHILLIPS: Could the beach club
21 memberships be month to month or a year? The problem
22 is, if we don't do it this way, we're denying the
23 Applicant money. He needs to operate this, and he can't
24 have us guess -- and we're just guessing how many people
25 would be sufficient. I mean that's --

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1 MS. BLACK: Mr. Chair and
2 Commissioner Phillips, I guess I would suggest you
3 separate this discussion of beach club and special
4 events.

5 MR. PHILLIPS: I bet if you ask Mr. Caruso
6 right now he'd say, "Let me do what I want, and I'll
7 come back in a year, and I'll adjust it any way you
8 want."

9 MR. CARUSO: No, I don't think I'll say that.

10 MS. BURROWS: But you know, my guess is that
11 Mr. Caruso would see, if this is not working, if it

12 becomes not a good place to be because of traffic being
13 so heavy, because of congestion, because of those things
14 that you don't expect at a five-star hotel -- you would
15 expect those things to be managed well -- I think that
16 is terrific incentive for him to make this work.

17 MR. PHILLIPS: That's what derivative barking
18 argued.

19 MS. BURROWS: And that was derivative
20 barking.

21 MR. OVERALL: I would point out,
22 Commissioner Burrows, people that come to the Miramar
23 are here for a few days. People in the community are
24 here all the time.

25 MS. BURROWS: That's right.

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1 MR. OVERALL: So people who might be the most
2 impacted by traffic and inconvenienced would be
3 residents, not guests at the hotel. So I think the
4 community would be probably more sensitive to the issue
5 than the guests would be.

6 MS. BURROWS: I think that's right, but if
7 you look at the level of communication by the community
8 of Montecito in this project, I think that -- if there
9 were problems at the hotel that impacted on the
10 community as a whole, my guess is many people in
11 Montecito would be very verbal, and that would move
12 toward another solution.

13 MR. BIERIG: Like hanging the planning
14 commission.
15 MR. GHIZZONI: Chairman Bierig and
16 Commissioner Phillips, I just want to repeat the three
17 choices you have of approving the fixed number whether
18 it's a certain number of events or a certain number of
19 people or ratcheting up or ratcheting down. The first
20 two are the two where you have confidence that whatever
21 decision you made was one that would be enforceable down
22 the road. If you have a vision of issuing the number of
23 4.7 and ratcheting down, I would just caution you that
24 you should have less confidence that that would be
25 enforceable down the road.

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1 MR. BIERIG: Thank you. I'll point out to my
2 fellow commissioners the reason I went to 150 on the
3 Beach and Tennis Club because it's the one place that I
4 felt there was a nexus.

5 we have an approved project. We're not
6 trying to change hisoperational standards. Here's one
7 we know the Applicant would like to have those
8 additional 150. He's going to do everything he can to
9 make this hotel operate in a manner that works so he can
10 fit that additional 150. To me it seems like a simple
11 way for us to have a really strong carrot versus a
12 stick. That's my take on this thing.

13 MR. PHILLIPS: Would you entertain a motion
14 to move Staff's recommendation as to 66 with one change?

15 This language "membership shall be phased" sounds like
16 it's going to be.

17 MR. BIERIG: That was my one concern, and
18 that's why I addressed that.

19 MR. PHILLIPS: What do you think it should
20 be? "Can be"? "Might be"?

21 MR. BIERIG: "At the discretion of the
22 planning commission may be changed after a compliance
23 hearing showing adequate operational procedures."

24 MR. PHILLIPS: Would you accept a motion like
25 that at this point?

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1 MR. BIERIG: Sure. I mean we're not -- I
2 don't think we're ready to move the whole thing but,
3 yes, to add that to our list because we have a few
4 things.

5 MR. PHILLIPS: Do you see the language there,
6 The "shall be"? Can we mitigate that or bring that
7 down?

8 MR. BIERIG: I'd like the language to give us
9 more discretion.

10 MR. BRIGGS: Let's make sure we have
11 consensus among the Commission before.

12 MS. BURROWS: Are we on the Beach and Tennis
13 Club?

14 MR. BIERIG: We are.

15 Mr. Caruso, I'm trying to get us not to --

16 MR. CARUSO: I know. I have an important
17 point to make, and I'm sorry. You're forcing me into
18 that situation not honoring existing memberships.

19 MR. BIERIG: You can't have more memberships
20 than allowed in the current plan.

21 MR. CARUSO: We've got many people out there
22 that are currently members that haven't paid in a long
23 time. What we're trying to do is --

24 MR. BIERIG: Are you collecting dues?

25 MR. CARUSO: Nope. Everything is free for

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1 them. They can use the beach. They can go down there.
2 But there's a list, and there's a roster. They don't
3 have vested rights. It's not contractual. They have
4 their key to get through the gate. We have said to this
5 community that we will honor existing memberships.

6 So you know, again, we need some space here
7 to operate. And we're quarreling about 50 memberships
8 showing up, and that's going to be the crisis in the
9 neighborhood?

10 with all due respect, we're micromanaging
11 this thing down to a point. We'll never get done. Let
12 me operate the place. You want an incentive. We're
13 going to have 300 million into it. That's an incentive.

14 MR. PHILLIPS: Promise to come back and make
15 it work if it doesn't work?

16 MR. CARUSO: It's in the condition.

17 MR. PHILLIPS: Where?

18 MR. BIERIG: No, it's really not.
19 MR. CARUSO: On the membership it's not. You
20 got to give me a baseline. We've got the other
21 conditions on the other events.
22 MR. PHILLIPS: I move to adopt "staff" at 200
23 up to 3-. That's --
24 MR. CARUSO: That's what we've been asking
25 for.

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1 MR. PHILLIPS: That's what we're talking
2 about.
3 MR. CARUSO: I was just hearing we were going
4 down to 150 now.
5 MR. PHILLIPS: No. 200. That's what I'm
6 talking about 200.
7 MR. BIERIG: Okay. I was suggesting 150.
8 MS. BURROWS: I don't understand where you
9 are. You want to change --
10 MR. PHILLIPS: The word "shall." The first
11 word in the second sentence, second line.
12 MS. BURROWS: And it will be --
13 MS. BLACK: Mr. Chair and
14 Commissioner Burrows, I think what we're saying is "the
15 Beach and Tennis Club memberships shall be 200
16 individuals or families upon occupancy," instead of
17 saying "phased starting at" -- that was the Commission's
18 concern that it not imply that it automatically go up.

19 I think the condition is finding a way --

20 MR. PHILLIPS: With the opportunity to move
21 to 3-.

22 MS. BLACK: And that's already included.

23 MR. OVERALL: Commissioner Phillips, if
24 you're going to go that route, the thing I would say is
25 this is certainly not a commitment from the Caruso

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1 community. I would say let's withdraw the right to have
2 guests. Keep it family at this point, and when we
3 review it in six months or a year --

4 MR. BIERIG: We can't monitor it.

5 MS. BURROW: There are no guests. It says
6 individuals or family.

7 MR. BIERIG: It's a hotel.

8 MS. BLACK: And Mr. Chair and
9 Commissioner Phillips, in the project description
10 itself, it does refer to guests. I think it's pretty
11 unusual not to allow --

12 MS. BURROWS: I misunderstood.

13 MR. BIERIG: It's a hotel with right of an
14 access, and how do you tell somebody they can't bring
15 somebody into the club as a guest? Nobody wants to be a
16 member of a club they can't bring anyone to. You've got
17 to like each other a lot in this club.

18 MR. PHILLIPS: So Mr. Chair, is it clear I'm
19 talking about 200? I'm sorry. I missed the 150
20 comment. I created confusion.

21 MR. BIERIG: I'm not married to a number.
22 I'm more married to the idea that there's a nexus for
23 something that the Applicant will really want. He will
24 work hard. I'm not suggesting he won't work hard
25 anyway, but it's a good starting point.

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1 But as he points out, 50 either way won't
2 make or break it. But I do think it's important to
3 change that it not be -- that it's clear that the
4 increase is at our discretion, not bring it up to. I
5 don't have a list.

6 MS. GOTTSANKER: As long as we're still
7 muddling around with pages C-19 and C-20, I just wanted
8 to check and make sure that everybody's comfortable
9 given we're sort of dealing with this traffic and
10 parking and all of this stuff with -- at the wording of
11 "After each event there will be a cleanup and setup
12 period before the following event so that the attendees
13 of an events will effectively be cleared out before" --
14 I mean I get whole purpose of that.

15 I mean how long does that take? Anybody?
16 Hotel people over there? How long does it take to clear
17 out and set up? Got any idea?

18 MR. CARUSO: It depends on the amount of
19 people.

20 MS. GOTTSANKER: Well, because the concern
21 up here that I'm hearing from the other Commissioners is

22 what happens if you've got two 500 events per day? You
23 know, is the parking lot going to be empty?

24 I mean how -- so I'm wondering whether it
25 makes more sense to not leave it in the language of

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1 "clean up" and "set up" but have an absolute
2 calendaring, you know, like two hours between events. I
3 don't know. I'm just looking to see because I don't
4 know what it takes like to set up and tear down a 500
5 person event.

6 MR. CARUSO: Again, it depends on the type of
7 event -- sorry, Commissioner. It would just depend on
8 the type of the event, the extent of the event. Is it a
9 wedding? Is it just a meeting? It's tough to say. I
10 mean if you want to just randomly say two hours between
11 events, fine. That should be more than adequate.

12 MS. GOTTSANKER: I'm not trying to be
13 random. I'm trying to figure out if that would make any
14 of the other Commissioner more comfortable with the mass
15 of people that they're envisioning being on the roads.
16 That's all I'm thinking.

17 MR. CARUSO: It's also not 500 cars coming,
18 and it's not 500 trips coming. Chances are many of the
19 events people are already in the hotel. I would also
20 suspect most of the events -- many, many of the events
21 are probably from local residents that are going to be
22 using the hotel banquet facilities.

23 The hotel from the very beginning is supposed

24 to be an amenity and a community asset. So the more
25 that we constrain that -- we talked about the weddings

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1 with the church next door. They can park with us, have
2 their ceremony, and then walk over. We're trying to do
3 all these kind of things.

4 MR. BIERIG: My take on this -- this is not
5 directed at you, Mr. Caruso, but rather my fellow
6 Commissioners -- is that we have a really good model.
7 The Biltmore is right down the street. It works.

8 MS. GOTTSANKER: So is this consistent with
9 that model?

10 MR. BIERIG: Yes.

11 MS. GOTTSANKER: I think it is from all --
12 everything I've read, but I'm beginning to lose brain
13 cells here.

14 MR. BIERIG: It's been a while, but I see you
15 looking at it, but I know we have a whole analysis where
16 we prepare the operational, and this is way less, and I
17 just -- I'm not saying a perfect storm couldn't happen,
18 but it just seems like we're going around and around to
19 solve an issue that maybe isn't a problem.

20 MS. GOTTSANKER: Let's be really clear. It
21 is not a problem for me.

22 MR. BIERIG: It's not a problem for me.

23 MS. BURROWS: It is not a problem for me. So
24 I would suggest we move on.

1 MR. BIERIG: That was easy. I think we're
2 ready for a motion unless there -- I mean I'm looking
3 for conditions we need to modify -- that there's some
4 consensus to modify. The only one I have on the list so
5 far is Condition 87 related to "cottage style," that
6 substitution, and Condition 66.

7 MR. PHILLIPS: The language change.

8 MR. BIERIG: The language change that's up
9 here where we're going to modify it, and maybe you can
10 give us some suggested language on that so we can agree
11 as to what that would be.

12 And guys, after that you're going to have to
13 propose them because I don't have them.

14 No, you can't thank them until we're done.
15 After we've voted, you can thank them.

16 MS. BLACK: Mr. Chair, why don't I read the
17 condition language for Condition 66 as I understand you
18 want to modify it? And I think Errin has a few other
19 conditions that have been mentioned along the way and
20 make sure that those are condition changes you want to
21 include.

22 So 66 would read "The Beach and Tennis Club
23 memberships shall be 200 individuals or family upon
24 occupancy," and we would just write "Beach and Tennis
25 Club memberships shall be limited to a maximum of 300

1 individuals or family," and we would leave the
2 definition, i.e., "A couple would have one membership
3 that could include a couple and their children living at
4 home."

5 Then the plan requirements for the timing
6 would read --

7 MR. BIERIG: This wouldn't be the Beach and
8 Tennis Club. I'm assuming we have a single review.

9 MS. BLACK: Whenever we talk about -- that's
10 a good question, Mr. Chair and Commissioners. Whenever
11 we talk about the annual review, we're going to group
12 all of the conditions that have an annual review. We're
13 not going to come to you every month with an annual
14 review of the Miramar.

15 MR. BIERIG: I would like to give you that
16 discretion that it be a year to 18 months.

17 MS. BLACK: I think what we would do here is,
18 instead of it saying "12 months," we would say "12 to
19 18 months after occupancy in order to determine adequacy
20 of the site."

21 Further down --

22 MR. BIERIG: We would modify the others --

23 MS. BLACK: Yes. 12 to 18. And where it
24 says "The number of members could be increased," it said
25 "The number of members may be increased but shall not

1 exceed a maximum of 300 for individuals or family." So
2 I think it makes it very clear that it is discretionary.

3 MR. BIERIG: Thank you.

4 Mr. Briggs, some other things came up in
5 terms of our discussion?

6 MR. BRIGGS: Mr. Chair, yes, there are. You
7 wanted to have the condition about the turnaround on
8 Jameson with appropriate signage, and I have some
9 suggested language. "A turnaround consistent with
10 county public work roads standards shall be constructed
11 in the area of the surface driveway. Appropriate
12 signage shall be provided to direct the public. Such
13 signage shall be reviewed in the overall sign plan."

14 MR. BIERIG: Okay.

15 MR. BRIGGS: And then you also wanted to
16 substitute the definition of cottage type with what was
17 discussed here today, and that shows up in
18 Condition No. 1 the project description, and
19 Condition 87. And both would be revised and in the
20 findings.

21 And then Condition 66, as Mrs. Black just
22 discussed, and then the review period we extended from
23 12 months -- 12 to 18 months in all the appropriate
24 conditions.

25 MS. BLACK: And Mr. Chair, a recommendation

1 is also to incorporate the changes to findings and
2 conditions contained in the errata, both errata.

3 MR. BIERIG: Okay. So let's assume that's a
4 draft motion. And Commissioners, now is the time.

5 MR. PHILLIPS: This is a motion to --

6 MS. BURROWS: Add the conditions?

7 MR. BIERIG: We've had three conditions. I'm
8 suggesting, if there's other conditions, now is the
9 time.

10 MS. GOTTSANKER: So just to be clear, we
11 made no changes to the normal and special events per the
12 Staff Report? Accurate?

13 MS. BURROWS: That's right.

14 MR. BIERIG: If you want to, now is the time.

15 MS. GOTTSANKER: I don't know. I'm just --
16 it got -- that's when I started going crazy. So I just
17 wanted to make sure that's where we were.

18 MR. BIERIG: That's where we were. So far
19 that's all we've got on the table as the modification to
20 200 and the changes that were incorporated.

21 MS. BURROWS: I have no problem with the
22 events as delineated in the conditions.

23 MR. BIERIG: Commissioner Overall.

24 MR. OVERALL: Just to be clear, we're voting
25 on 2.5 average events.

1 MR. BIERIG: No, we're voting on 4.7. I
2 haven't heard any discussion of 2.5.

3 MS. BLACK: Mr. Chair, I think the way it is
4 at the moment -- and it certainly can be modified -- the
5 way the events are addressed in the Conditions of
6 Approval in Attachment C, there was alternative language
7 discussed at the direction of the Commission for 2.5,
8 but we didn't incorporate those into the conditions.

9 MR. OVERALL: For my part, I'd like to see
10 that language concerned.

11 MR. BIERIG: Commissioners.

12 MS. BURROWS: Again, I'm willing to accept
13 the statements that are in the conditions in regard to
14 the events at the hotel. I think that will serve
15 Mr. Caruso well, but to the larger extent, I think it
16 will serve the community well.

17 MR. BIERIG: I guess for my part it would be
18 easier to reduce it. We would all feel more comfortable
19 if it was smaller, but I have trouble finding rational
20 justification to do it.

21 MS. GOTTSANKER: I think that's my problem.
22 This is built on top of an approved plan, and the
23 approved plan that was approved for the Schragger
24 project, that's what it was approved at.

25 And I don't -- I haven't quite yet heard a

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1 nexus for reducing it down past an approved plan when
2 this project has more parking than what it was

3 originally approved at. You know, that's kind of where
4 I --

5 MR. BIERIG: That along with the analysis
6 comparing it to the existing operational Biltmore down
7 the street.

8 MS. GOTTSANKER: Yeah.

9 MR. BIERIG: That operates at a lower -- has
10 less restrictions and operates in a manner that seems to
11 work -- I mean I just -- I can't figure out a way --

12 MS. GOTTSANKER: Yeah, that's where the
13 confusion is at. I just couldn't find a way to get
14 there.

15 MR. PHILLIPS: Mr. Chair, I think, like it or
16 not, we're facing the moment where we have to embrace
17 the SEIR and either say we think it's legitimate or not,
18 and if we do, then we approve this project. And if we
19 don't, we send it back for a new EIR.

20 MR. BIERIG: We're done with that. Sorry to
21 tell you, but we did that last hearing. So you don't
22 have to worry about that one.

23 MR. PHILLIPS: Then the supporting documents
24 we have to give credence to, like it or not. I move we
25 approve this.

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1 Ms. Black, is this conceptual approval? Here
2 it is.

3 MS. BIERIG: We're going -- this is letting

4 go.

5 MS. BLACK: We're looking for you to take the
6 actions on the screen.

7 MR. PHILLIPS: Would you like to read this,
8 or can I adopt your Staff recommendation?

9 MS. BLACK: You can adopt the Staff's
10 recommendation as revised in the hearing today and by
11 the errata.

12 MS. GOTTSDANKER: I want you to read the
13 whole damn thing.

14 MR. PHILLIPS: "Adopt the revised findings
15 for the project" -- let me say I have read it, and I
16 adopt it and proffer it as a motion as amended.

17 MS. BURROWS: And I second that motion. I
18 would note for the record that the Chair said he will
19 give me a minute after we vote to make my statement to
20 the community, and I thank you for that.

21 MR. BIERIG: So move to second it? Any
22 further discussion? Roll call, though, apparently. I
23 thought we could just mumble.

24 MS. BURROWS: Not this time.

25 MR. BIERIG: Roll call.

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1 MS. OPLAND: Commissioner Gottsdanker.

2 MS. GOTTSDANKER: Yes.

3 MS. OPLAND: Commissioner Overall.

4 MR. OVERALL: No.

5 MS. OPLAND: Commissioner Burrows.

6 MS. BURROWS: Yes.
7 MS. OPLAND: Commissioner Phillips.
8 MR. PHILLIPS: Yes.
9 MS. OPLAND: Commissioner Bierig.
10 MR. BIERIG: Yes.
11 MS. OPLAND: Vote carries 4 to 1.
12 MR. BIERIG: Well, that was a monumental
13 task. Thank you all. I know we have a lot of hard
14 work. We can put it all behind us, and this is not an
15 easy -- it's hard to let go -- hard to let go. We would
16 have loved to continue, Mr. Caruso, on this for another
17 month or two, at least a couple more meetings.
18 MR. CARUSO: I know I feel like we've bonded.
19 So I'm happy to come back any time you want. I can sit
20 here and keep you company.
21 MR. BIERIG: We will see more of you, and we
22 did have this discussion about coming back on the
23 architectural side. Of course, we want to work with you
24 to make that process as painless as possible.
25 MR. CARUSO: I appreciate that.

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1 MR. BIERIG: The idea will not be to let you
2 go to design and then come to us on appeal. Obviously
3 we want to know that we approve it if it does come to us
4 on appeal. So I hope it works out that well. We're
5 going to look forward to having you as a member of the
6 community and the hotel, and I think it will work great.

7 MR. CARUSO: I appreciate your confidence. I
8 appreciate all the time. I sincerely do. You've all
9 been great to work with and very fair. I want to give a
10 special thanks to staff. We've worked with a lot of
11 staff and a lot of jurisdictions. There is nobody
12 better. And Dianne, you are terrific. Very tough, very
13 fair, and everybody on your team is great. Thank you
14 all.

15 MR. BIERIG: Good luck.

16 MS. BURROWS: Maybe you want to stay for one
17 minute. I didn't have a chance to thank the people of
18 Montecito, and I've lived in Montecito for 40 years.
19 I've never seen a community so engaged as they were in
20 this process.

21 I also would like to thank the Applicant for
22 respecting our community, for the outreach that you did,
23 and allowed us -- embraced our participation and giving
24 us the shrinkage that we needed in order to approve this
25 process.

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1 For the nonprofits that were involved in this
2 process, I want to thank you. I have the unique
3 position of having served as vice president of Citizens
4 Planning Association and the Montecito Association.

5 To the Montecito Association, the forums that
6 you gave and the education of the public, I think you
7 were at your very finest.

8 The Citizens Planning Association, Naomi, who

9 is the executive director, I think you're great. I
10 think your attorneys are good. I want to thank you
11 bringing to us issues we might not have addressed
12 otherwise. And I thank you for helping us get the best
13 possible project for Montecito. We thank you for that.

14 Heal the Ocean was great for all the work you
15 did.

16 The Staff. Enough can't be said for the
17 hours you put in, for the professionalism that you
18 showed in all of the reports. So we thank all of you
19 for that.

20 And for the Commission, I'm so proud of the
21 Commission. I think we did just fine.

22 MR. BIERIG: Time will tell. Thank you all.
23 Unless any there's any further matters, we're adjourned.

24 (Whereupon the proceeding was concluded
25 at 5:47 P.M.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA BARBARA) ss.

3

4 I, AMANDA R. WOLFENSTEIN, C.S.R. NO. 13129, IN
5 AND FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

6 THAT SAID PROCEEDINGS WERE TAKEN DOWN BY ME IN
7 SHORTHAND AT THE TIME AND PLACE THEREIN NAMED AND
8 THEREAFTER REDUCED TO TYPEWRITING UNDER MY DIRECTION AND
9 THE SAME IS A TRUE, CORRECT, AND COMPLETE TRANSCRIPT OF

Miramar _transcript MPC meeting 10_08_08.txt
10 SAID PROCEEDINGS;

11 I FURTHER CERTIFY THAT I AM NOT INTERESTED IN
12 THE EVENT OF THE ACTION.

13 WITNESS MY HAND THIS DAY
14 OF , 2008.

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CERTIFIED SHORTHAND
REPORTER FOR THE
STATE OF CALIFORNIA