

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



# Th9a

## ADDENDUM

August 4, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th9a**, COASTAL COMMISSION APPEAL NUMBER **A-5-EMB-08-103** FOR THE COMMISSION MEETING OF **August 7, 2008**.

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### Changes to Staff Report

Commission staff recommends modifications and additions to the staff report on page 8. Deleted language is in ~~strike through~~ and new language to be added is shown in **bold, underlined italic**, as shown below:

Page 8 – Modify Section V, Findings and Declarations, as follows:

The appellant also contends that the proposed development would block a historic community beach access easement and would impede public access to the beach and therefore be in direct contradiction of the public access policies of the Coastal Act and the Emerald Bay LCP. As stated previously, Emerald Bay is a gated community, and does not provide vertical access to the beach for the public. The access way, as described is an easement for the private community of Emerald Bay and does not provide public access to the beach and therefore the public access policies of the Coastal Act are not relevant. The easement was reserved to the community in 1944, and to this day remains unimproved; currently no plans exist to construct any vertical access for the community through the easement.

**The Emerald Bay LCP includes the following policies related to development that would require the addition of public access to the beach through the presently gated community of Emerald Bay.**

**5. Public Beach Access – Emerald Bay**

**a. Public access for pedestrian or bicycle purposes to, or use of the Emerald Bay beach for low intensity recreational uses, shall be required as a condition of any new development project by the Emerald Bay Community Association if such project is located between Pacific Coast Highway and the sea, and if the proposed development project meets the following criteria:**

**1. That the project for which the permit is sought will have a substantial direct adverse impact upon existing public access to or along the Emerald Bay beach or overcrowding the capacity of nearby public beaches.**

- 2. That the requiring of access to or low intensity recreational uses of the beach at Emerald Bay will directly mitigate the adverse impacts on existing public access to, or use of, the beach caused by the project for which the permit is sought**

**The proposed development does not trigger any requirements that the project include a public beach access component for several reasons. The project is not proposed by the EBCA, and as proposed by the applicant, does not have any direct adverse impacts to existing public beach access. Therefore, the appellant's argument that the public's rights to beach access, through the community access way easement, are blocked by this development is not correct.**

Additionally, the appellant's contention that the proposed development would forever block the community easement is inaccurate. In 2005, an arbitrator between the applicant and the Emerald Bay Community Association (EBCA) directed the EBCA to relocate the community access easement from its original location between 162 and 164 Emerald Bay to a new location between the residences at 160 and 162 Emerald Bay. The proposed development would not block the community access easement in its new location, and if in the future the EBCA chooses to improve the access way that option would still be available.

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Filed: July 14, 2008  
49th Day: September 1, 2008  
180th Day: N/A  
Staff: Gabriel Buhr-LB  
Staff Report: July 24, 2008  
Hearing Date: August 6-8, 2008  
Commission Action:



# Th9a

## STAFF REPORT: APPEAL/NO SUBSTANTIAL ISSUE

**LOCAL GOVERNMENT:** County of Orange [Click here to see additional materials appended to the staff report.](#)

**LOCAL DECISION:** Approval with Conditions

**APPEAL NUMBER:** A-5-EMB-08-193

**APPLICANT:** Bob and Ali Johnson

**AGENT:** Laura Kohut

**APPELLANT:** George Lopez

**PROJECT LOCATION:** 162 and 164 Emerald Bay Drive, Laguna Beach (Orange County)

**PROJECT DESCRIPTION:** Appeal of County of Orange Local Coastal Development Permit PA07-0069 for the demolition of two existing, single family residences, and the construction of a new 9,006 square foot, two-story, single family residence with a basement level which will straddle the two lots located in the gated community of Emerald Bay.

### SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **NO SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed because the project approved by the County of Orange is consistent with the County's certified Local Coastal Plan for Emerald Bay and the public access and recreation policies in Chapter 3 of the Coastal Act, and the issues raised by this appeal are not substantial. The motion to carry out the staff recommendation is on page 5.

### SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit PA07-0069
2. Emerald Bay Certified Local Coastal Program.

## **I. APPELLANT'S CONTENTIONS**

County of Orange Local Coastal Development Permit PA07-0069, approved by the Planning Commission on June 18, 2008, has been appealed by George Lopez (Exhibit #5). The appellant contends that the proposed project does not conform to the requirements of the certified Emerald Bay LCP and the public access and recreation policies of the Coastal Act with regard to the following issues:

- 1) The proposed development extends down the bluff slope and encroaches into the 25-foot blufftop setback typically imposed by the Commission.
- 2) The proposed development would permanently block a 10-foot wide historic community beach walkway access easement.
- 3) The proposed development includes an existing cabana located on the sand that has never been permitted.

## **II. LOCAL GOVERNMENT ACTION**

On April 17, 2008, the Orange County Zoning Administrator held a public hearing and approved County of Orange Local Coastal Development Permit PA07-0069, for the demolition of two existing, single family residences, and the construction of a new 9,006 square foot, two-story, single family residence with a basement level which will straddle the two lots located in the gated community of Emerald Bay. The County established a fifteen-day appeal period, and received an appeal of the project on April 30, 2008 by George Lopez. The Planning Commission denied the appeal of the Zoning Administrator's decision to approve the project on June 18, 2008. The County permit includes special conditions requiring a geologic report and WQMP be completed before any construction or grading begins.

On June 27, 2008, the Commission's South Coast District office in Long Beach received the City's Notice of Final Local Action (dated June 23, 2008) for Local Coastal Development Permit PA07-0069, and the Commission's required ten working-day appeal period commenced. The appeal by the George Lopez was submitted in the Commission's South Coast District office in Long Beach on July 14, 2008, the last day of the appeal period. No other appeals were received.

## **III. APPEAL PROCEDURES**

After certification of a local coastal program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permit applications. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a) of the Coastal Act identifies which types of development are appealable. Section 30603(a) states, in part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
  - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
  - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

The County approval of the proposed project is appealable because the project is located within the first public road and the sea and is within 300 feet of the top of the seaward face of a coastal bluff.

Section 13111 of Title 14 of the California Code of Regulations allows an appeal of a local government's decision on a coastal development permit application once the local appeal process has been exhausted. In accordance with Section 13573, an appellant shall be deemed to have exhausted local appeals once the appellant has pursued his or her appeal to the local appellate body, except that exhaustion of all local appeals shall not be required if:

- (1) *The local government or jurisdiction require an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program.*
- (2) *An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.*
- (3) *An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article.*
- (4) *The local government jurisdiction charges an appeal fee for the filing or processing of appeals.*

The grounds for appeal of an approval of a local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing on the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If the Commission determines that the appeal raises no substantial issue with respect to conformity with the relevant LCP and public access policies of the Coastal Act, the actions of the local government stand. Alternatively, if the Commission finds substantial issue, the local coastal development permit is voided and the Commission typically continues the public hearing to a later date in order to review the coastal development permit as a de novo matter. The de novo portion of the hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

Pursuant to Section 30621 of the Coastal Act, a hearing on a coastal development permit appeal shall be set no later than 49-days after the date on which the appeal is filed with the Commission. An appeal of the above-described decision was filed on July 14, 2008. The 49<sup>th</sup> day falls on September 1, 2008. The only remaining Coastal Commission meeting scheduled between the date the appeal was filed and the 49-day limit is the August 6-8, 2008 meeting in Oceanside.

In accordance with Section 13112 of Title 14 of the California Code of Regulations, staff requested on July 15, 2008 that the County of Orange forward all relevant documents and materials regarding the subject permit to the Commission's South Coast District office in Long Beach. The documents and materials relating to the County's approval of the project are necessary to analyze the project's consistency with the Coastal Act and the certified Local Coastal Program (LCP) in relation to the grounds of the appeal.

In order to be ready for the Commission's meeting, the staff report and recommendation for the appeal would have to be completed by July 24, 2008. On July 21, 2008, the requested information from the County of Orange was received. Therefore, the Commission staff was able to thoroughly analyze the appealed project and County approval in time to prepare a staff recommendation for the Commission's August 2008 meeting in Oceanside.

#### **IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

The staff recommends that the Commission determine that **NO SUBSTANTIAL ISSUE** exists with respect to the grounds on which an appeal has been filed pursuant to California Public Resources Code Section 30625(b)(2) and 30603(b)(1). As approved by the local government, the development is consistent with the access and recreation policies in the Coastal Act.

Staff recommends a **YES** vote on the following motion:

**MOTION:** *"I move that the Commission determine that Appeal No. A-5-EMB-08-193 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

Passage of this motion will result in a finding of no substantial issue and adoption of the following resolution and findings. If the Commission finds no substantial issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

#### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE FOR APPEAL NO. A-5-EMB-08-193:**

The Commission finds that Appeal No. **A-5-EMB-08-193** does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

#### **V. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. PROJECT DESCRIPTION**

The project site is located on two, adjacent oceanfront bluff lots, each developed with existing, one-story, single-family residences on the bluff top, located in the gated community of Emerald Bay in the City of Laguna Beach (Exhibit #1). The project site is bordered by existing single-family residential development. To the south of the site is the toe of the bluff, and the sandy beach of Emerald Bay, a preexisting stairway is located on the bluff face that leads to an existing cabana on the sandy beach and are not included as a part of the proposed project. The subject site is designated as R1, Single Family Residential, and lies within the Coastal Development Overlay of the County's Zoning Map. The proposal is also subject to review under the Emerald Bay Local Coastal Program for Medium Density Residential (3.5 – 6.5 du/ac).

The applicant is proposing to demolish the existing single-family residences and construct a new 9,006 square foot, two-story, single-family residence with a basement level which will straddle the two lots on the site, as well as site walls and landscape improvements (Exhibit #3). The proposed residence will occupy essentially the same footprint as the existing homes to be demolished, and only extend slightly more seaward along the southern edge of the structure. The proposed development also includes lower and upper level decks that extend further toward the bluff face. The proposed residence will have two attached garages providing on-site parking for six vehicles. The applicant is also requesting a variance from the required front (street side) setback of twenty

feet to allow a front setback of six-feet, six-inches. A Local Coastal Development Permit was required for the demolition and construction request.

## **B. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action taken after certification of its local coastal program unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of evidentiary and legal support for the local government's decision that the development is consistent with the certified LCP;
2. The extent and scope of the development as approved by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **NO SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed because the project approved by the County is consistent with the County's certified Local Coastal Plan and the public access and recreation policies in Chapter 3 of the Coastal Act as set forth below:

## **C. SUBSTANTIAL ISSUE ANALYSIS**

The appellant has raised three separate issues in his appeal related to the proposed project. He contends that the project as designed encroaches into the Coastal Commission's 25-foot blufftop setback, would forever block a 10-foot wide historic community beach access easement, and that the cabana associated with the property violates the prohibition of development on the sandy beach as described in the Emerald Bay LCP.

The standard of review regarding blufftop development in this area is the Emerald Bay LCP. The LCP was developed utilizing the policies of the Coastal Act as guidance to preserve the scenic and visual qualities of the coastal zone as described more specifically in Section 30251 of the Coastal Act. Additionally the LCP cites Section 30253 of the Coastal Act as a reference used to develop policies related to potential geologic hazards.

The Emerald Bay LCP does not contain any policies specifically requiring a 25-foot setback for blufftop development. The County has traditionally used a string line procedure for regulating



blufftop development in this area in furtherance of viewshed protection and bluff stability. A string line is the line formed by connecting the nearest adjacent corners of the adjacent residences. A string line setback allows an applicant to have a setback that averages the setback of the adjacent neighbors provided it is otherwise consistent with the LCP policies. This allows equity among neighbors and recognizes existing patterns of development. The County applied a similar string line procedure to the proposed development and found that the development as designed conforms to the string line requirement consistent with other approvals in the area.

Development on a coastal bluff is inherently risky due to the potential for bluff failure. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures and ancillary improvements. Additionally, blufftop development has the potential to degrade the scenic and visual qualities of coastal areas. Setting development further back from the edge of the coastal bluff decreases the project's visibility from the beach below and as seen from the water. Development sited along a sandy beach may also increase a feeling of privatization of the beach. The construction of protective devices to stabilize beachfront development may also impact lateral access along the beach available for the public. For these reasons, the Commission typically imposes some type of bluff top set back and restricts beachfront development.

A number of coastal lots within the Emerald Bay community already have significant development that either encroaches on the bluff edge, or extends down the bluff face. The adjacent properties to the subject site at 160 and 166 Emerald Bay respectively both have development extending beyond the bluff edge. The Emerald Bay LCP does not contain many restrictive policies related to bluff face development. Along the promontories that extend along either side of the bay, new development is prohibited on the bluff face within two established Conservation zones in order to protect the scenic resources of the area. The subject property is not located within one of the restricted areas. Although the site would be visible from the water and there are distant views of the site available from a public accessway and viewpoint downcoast of the site within the 'Smithcliffs' development, the site is not visible to the public from the beach below the site which is a privately owned beach that is inaccessible to the public either vertically (due to gates) or laterally (due to headlands that project into the ocean). Additionally the LCP does not identify the bluffs in the area as unstable or any other geologic hazards that might affect the subject site. The County's approval further addresses any concerns regarding bluff instability by requiring a geologic report be submitted regarding the proposed development before any grading permit can be issued. Finally, as mentioned previously, the subject site is located within the gated community of Emerald Bay, and no vertical access to the beach below is available to the public. Because of the steep cliffs and headlands that surround the bay lateral access to the beach is difficult which essentially results in a private beach for the gated community. Due to all of the reasons presented here, siting the proposed development further landward from the bluff edge is not warranted in this specific case, rather enforcing a string line setback, as applied by the County, is a more relevant and effective means for establishing an appropriate limit for seaward development.

The appellant also contends that the proposed development would block a historic community beach access easement and would impede public access to the beach and therefore be in direct contradiction of the public access policies of the Coastal Act and the Emerald Bay LCP. As stated previously, Emerald Bay is a gated community, and does not provide vertical access to the beach for the public. The access way, as described is an easement for the private community of Emerald Bay and does not provide public access to the beach and therefore the public access policies of the Coastal Act are not relevant. The easement was reserved to the community in 1944, and to this day remains unimproved; currently no plans exist to construct any vertical access for the community through the easement.

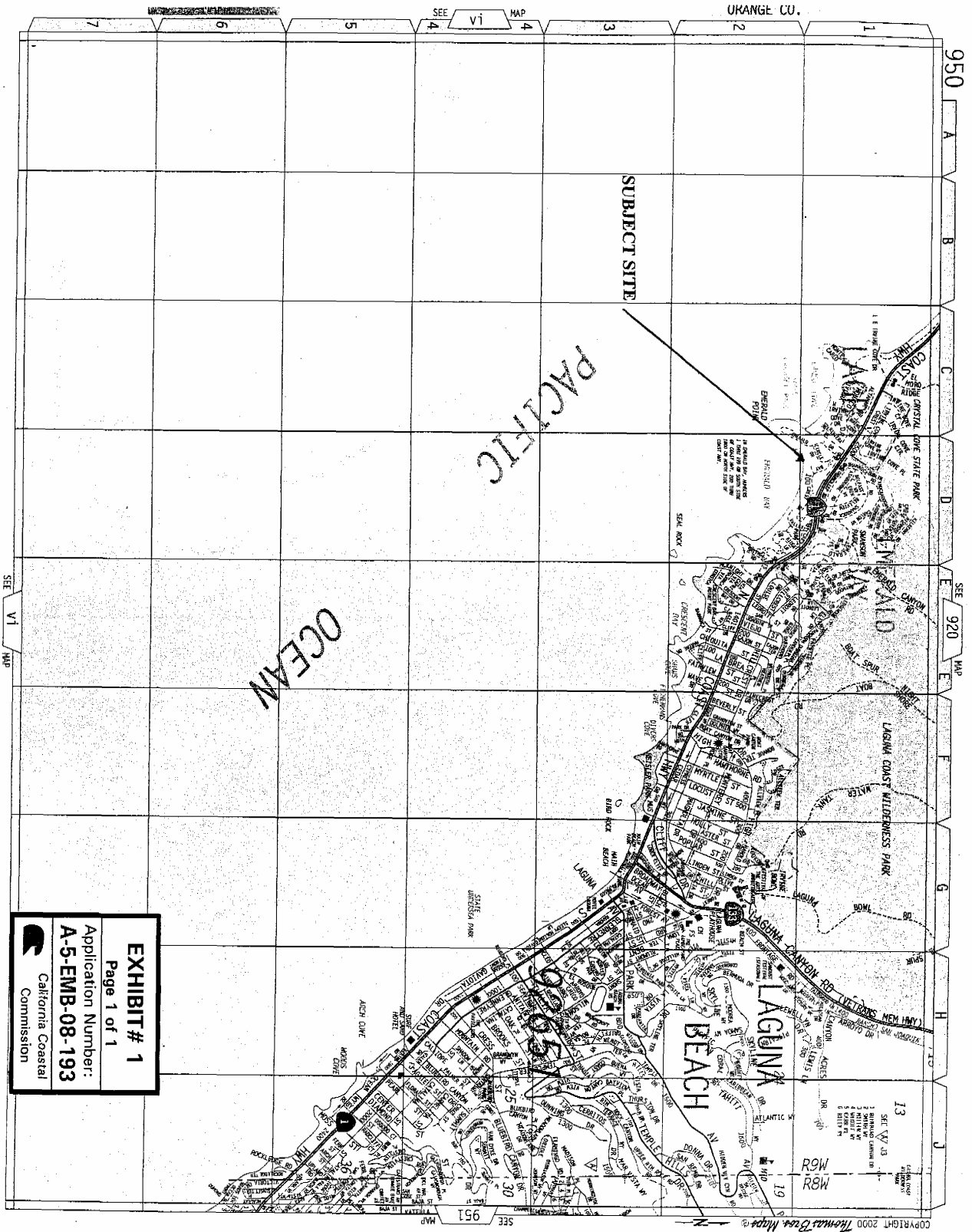
Additionally, the appellant's contention that the proposed development would forever block the community easement is inaccurate. In 2005, an arbitrator between the applicant and the Emerald Bay Community Association (EBCA) directed the EBCA to relocate the community access easement from its original location between 162 and 164 Emerald Bay to a new location between the residences at 160 and 162 Emerald Bay. The proposed development would not block the community access easement in its new location, and if in the future the EBCA chooses to improve the access way that option would still be available.

Finally the appellant argues that the proposed project includes an existing cabana located at the toe of the bluff along the southerly perimeter of the applicant's property. The cabana was constructed in 1969, prior to the enactment of the Coastal Act. The project as proposed by the applicant does not include any improvements to the cabana, or any other development designed to protect the structure and therefore is not subject to the appeal. Only the project, as approved by the County of Orange, is subject to review under the appeal.

Therefore, in conclusion, the Commission finds that the local government's action does not raise any substantial Local Coastal Plan or Chapter 3 public access and recreation policy issues. Therefore, no substantial issue exists with respect to the approved project's consistency with the LCP or Chapter 3 public access and recreation policies.

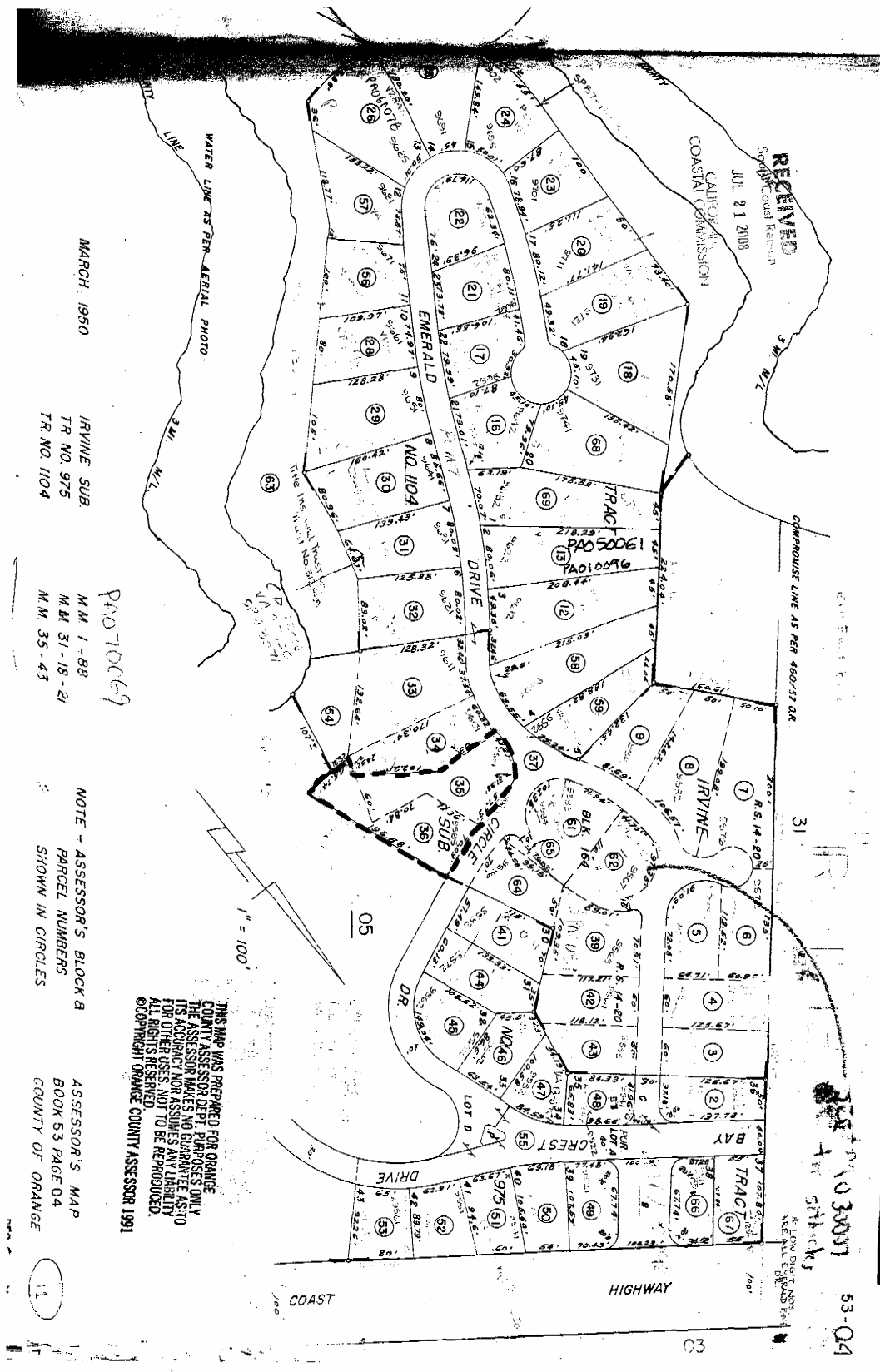
## **CONCLUSION**

The Commission finds that no substantial issues exist with respect to the grounds on which the appeal was filed, as there has been no showing of any manner in which the approved project is not in conformance with the County's certified LCP or the public access or recreation policies of the Coastal Act, the project is of modest scope, and the issues raised are local issues that do not affect coastal resources or have implications for the future interpretation of the certified LCP.



**EXHIBIT # 1**  
Page 1 of 1  
Application Number:  
**A-5-EMB-08-193**  
California Coastal  
Commission





MARCH 1950  
 IRVINE SUB.  
 TR. NO. 975  
 TR. NO. 1104

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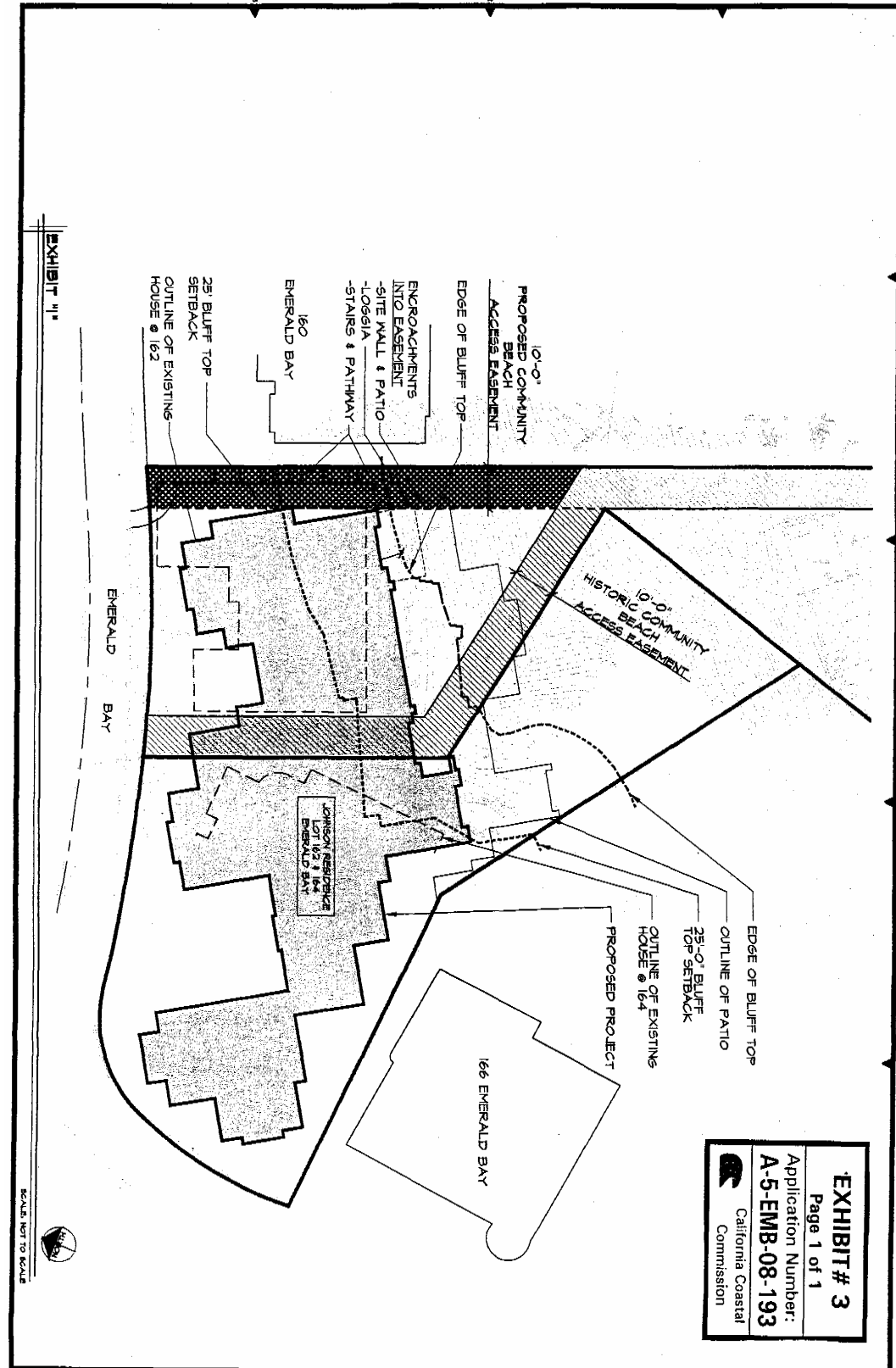
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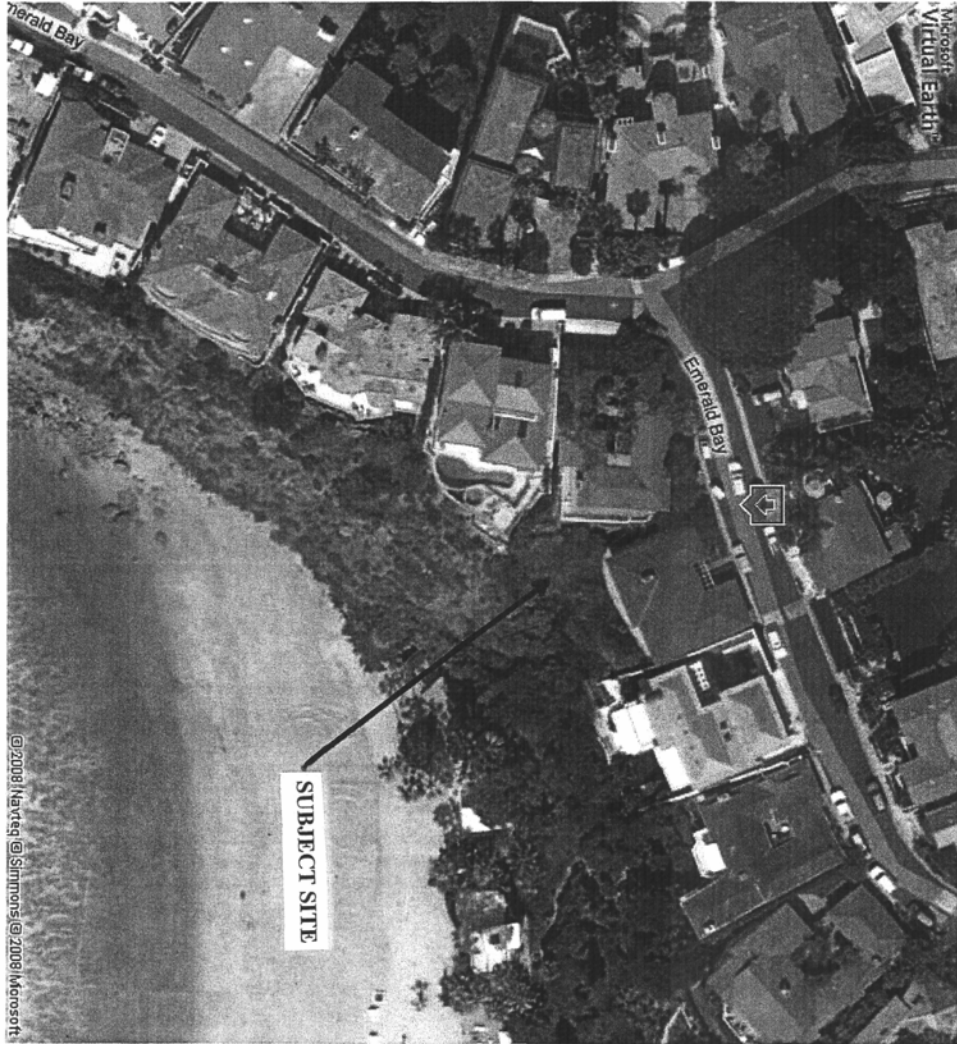
ASSESSOR'S MAP  
 BOOK 53 PAGE 04  
 COUNTY OF ORANGE

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO THE ACCURACY OR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. COPYRIGHT ORANGE COUNTY ASSESSOR 1991

	<b>EXHIBIT # 2</b>
	Page 1 of 1
	Application Number: <b>A-5-EMB-08-193</b>

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	<b>EXHIBIT # 4</b>
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	Commission



**EXHIBIT # 4**  
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California Coastal  
Commission

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name: George A. Lopez

Mailing Address: 166 Emerald Bay

City: Laguna Beach

Zip Code: 92651

Phone: (714) 384-4130

**SECTION II. Decision Being Appealed**

**RECEIVED**  
South Coast Region

JUL 14 2008

CALIFORNIA  
COASTAL COMMISSION

1. Name of local/port government:

Orange County

2. Brief description of development being appealed:

Demolition of two one-story houses on two ocean-front lots at 164 and 162 Emerald Bay. These lots run from the community street down to the Emerald Bay beach, and currently are divided by a historic community beach access easement. Construction of a three-story home over both lots is proposed, which would violated the Coastal Commission's 25-foot bluff top set back and forever block the historic access easement. Variance required from the 20' front setback to 6 1/2 feet.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

164 and 162 Emerald Bay, Laguna Beach

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A5-EMB-08-193

DATE FILED:

7/14/08

DISTRICT:


South Coast / Long Beach

**EXHIBIT# 5**

Page 1 of 4

Application Number:

**A-5-EMB-08-193**

 California Coastal  
Commission



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator  
 City Council/Board of Supervisors  
 Planning Commission  
 Other

6. Date of local government's decision: June 18, 2008

7. Local government's file number (if any): PA070069

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Robert Johnson, 164 Emerald Bay, Laguna Beach, CA 92651

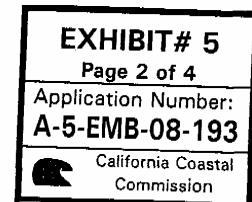
b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Emerald Bay Community Association, 600 Emerald Bay, Laguna Beach, CA 92651

(2)

(3)

(4)



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The proposed development violates the Emerald Bay Local Coastal Program ("LCP") and the Coastal Act, including the public access policies set forth in the Coastal Act, in that it:

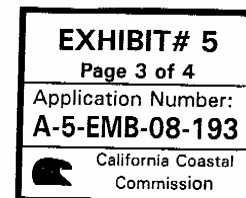
- (1) Extends far down the bluff slope and encroaches into the Coastal Commission's 25-foot bluff-top set back;
- (2) Would forever block a 10-foot wide historic community beach walkway access easement, which is the 10-foot wide "community area" easement that would be used for public access from the Pacific Coast Highway to the Emerald Bay beach, in the event that public access to the Emerald Bay beach is required (Emerald Bay LCP, p. II-23); and
- (3) Includes a cabana constructed on the sand without Orange County permits, which violates the prohibition of the Emerald Bay LCP against "development ... on the sandy beach at Emerald Bay..." (Emerald Bay LCP, p. II-24)

(A copy of the LCP is attached as Exhibit B, attachment 6)

The following documents are attached (in chronological order):

- Exhibit A: 4/17/08 Orange County Planning & Development Services Department Report;  
Exhibit B: 4/30/08 Appeal on behalf of Appellant George Lopez of the Orange County's Approval of Planning Application No. PA070069 for a Coastal Development Permit granted on 4/17/08;  
Exhibit C: 6/6/08 Notice of Public Hearing by the Orange County Planning Commission;  
Exhibit D: 6/16/08 Letter from Gaines & Stacey on behalf of Johnson to Orange County;  
Exhibit E: 6/18/08 Planning & Development Services Department Report; and  
Exhibit F: 6/18/08 Submission on behalf of Appellant George Lopez to the Orange County Planning Commission regarding Johnson's unpermitted cabana. This submission was made prior to the hearing and was discussed at the hearing.

The arguments of Appellant George Lopez were presented orally to the Orange County Planning Commission at the hearing on 6/18/08, and are set forth in Exhibits B and F, attached.



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.



\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 6/20/08

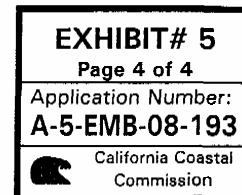
**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_



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July 22, 2008

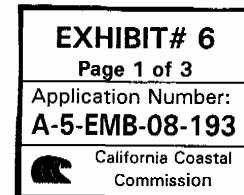
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South Coast Region

JUL 23 2008

CALIFORNIA  
COASTAL COMMISSION

Mr. Gabriel Buhr  
California Coastal Commission  
200 Oceangate, #1000  
Long Beach, CA 90802

Re: Appeal by George Lopez of Decision of Orange County  
Appeal No. A5-EMB-08-193  
Robert Johnson-162 and 164 Emerald Bay



Dear Mr. Buhr:

This office represents Robert Johnson, the property owner and applicant for Orange County Permit No. PA070069 for the demolition of two residences and the construction of one single family dwelling at 162-164 Emerald Bay (the "Permit"). An appeal from the final decision of Orange County to approve the Permit subject to conditions has been filed by George A. Lopez, the neighboring property owner at 166 Emerald Bay. The three issues described in the Appeal do not raise a significant question of conformity to the certified Emerald Bay Local Coastal Program ("Emerald Bay LCP") or the public access or public recreation policies of the Coastal Act. The Commission should find that there is no substantial issue and decline to hear the application de novo.

The County of Orange has a fully certified LCP for Emerald Bay. Therefore, the County is the permit issuing jurisdiction. The County properly found that the development proposed was consistent with the Emerald Bay LCP and the public access and recreation policies of the Coastal Act. The Coastal Commission exercises only an appeal jurisdiction. An appeal will be rejected unless it poses a significant question of conformity to the policies in the Emerald Bay LCP or to the public access and recreation policies in Chapter 3 of the Coastal Act. See, Calif. Code of Admin. Regs., Title 14, §13115.

As to the three issues raised in the Appeal (1) the Johnson home is consistent with the pattern of development in Emerald Bay and no specific "bluff-top setback" is contained in the Emerald Bay LCP; (2) the Johnson home does not block any community beach walkway access easement and the easement on the Johnson property is not intended by the Emerald Bay LCP to

Mr. Gabriel Buhr  
California Coastal Commission  
July 22, 2008  
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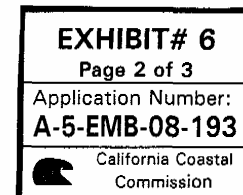
be used for public access from the Pacific Coast Highway to the Emerald Bay beach; and (3) the cabana constructed at the bottom of the slope on the Johnson property has existed since before 1972.

The issues set forth in the Appeal do not raise any substantial issue and are not supported either by the facts or by the Emerald Bay LCP. First, the Johnson home does not extend far down the bluff slope. In fact, the Johnson home is less seaward than either the Lopez home at 166 Emerald Bay or the home on the other side at 160 Emerald Bay. The provisions of the Emerald Bay LCP do not contain any "25 foot bluff-top setback". Under the Emerald Bay LCP, limitations on the seaward extent of structures is reviewed on a case by case basis. The County found that the Johnson home was well within the existing pattern of development along this portion of the bluff in Emerald Bay and did not extend seaward to an inappropriate extent. The facts support that finding.

Second, the access easement to which Lopez refers in his Appeal is a **private** easement in favor of the Emerald Bay Community Association. The private easement has never been developed for use by the Association. The private easement is not being eliminated but is being moved from a location between Lots 162 and 164 to the east side of Lot 162. Lopez' assertion that this particular 10 foot easement was intended to be a location for public access from Pacific Coast Highway to the beach has no support in the Emerald Bay LCP. The easement does not extend to Pacific Coast Highway and ends at the Johnson's boundary.

Third, no development on the beach is proposed in the application or is authorized by the Permit. There is an existing small structure on the sand on the Applicant's property which was built prior to 1972. Photograph No. 7238070 from the California Coastal Records Project website (<http://www.californiacoastline.org/>) shows the structure. The photograph was taken by the California Department of Boating and Waterways in 1972 and is part of Exhibit D to the appeal. In response to prior complaints by Dr. Lopez in 2001, the structure has been previously inspected by the County Building Department which found no basis to complain. The plans and approvals shown as part of Lopez' Exhibit F show that the structure was designed and approved by Emerald Bay in 1970.

Each of these issues was raised on appeal to the Orange County Planning Commission. I responded to these issues in greater detail in my letter to the Planning Commission dated June 16, 2008. A copy of my letter was attached as Exhibit D to the Appeal. I refer you to that letter and to its attachments in support of the determination of no substantial issue.




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The County of Orange acted properly in approving PA070069. The Applicant's proposed home is consistent with the Emerald Bay LCP and the implementing provisions of the County Zoning Code.

Sincerely,

  
SHERMAN L. STACEY

SLS/sh

cc: Mr. Robert Johnson  
Mr. Pat Austin  
Mr. Brion Jeannette  
Laura Kohut, Esq.

