

CALIFORNIA COASTAL COMMISSION

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

**Item W 7.5A**

March 25, 2009

TO: Coastal Commissioners

FROM: Sherilyn Sarb, Deputy Director, South Coast Area Office

RE: Appeal A-5-EMB-09-048 (Gotschall) 107 Emerald Bay, Laguna Beach, Orange County. Filed: March 13, 2009. 49th Day: May 1, 2009.

Recommendation: Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-5-EMB-09-048 was filed. Staff recommends a **YES** vote on the following motion and resolution:

Motion and Resolution. *I move that the Commission determine and resolve that: Appeal Number A-5-EMB-09-048 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.*

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Findings: On February 25, 2009, the County of Orange Planning Commission denied an appeal of the Zoning Administrator's decision to approve Coastal Development Permit PA070080 for the construction of a 7,524 sq. ft. 4-level single-family residence and 1,780 sq. ft. attached garage, grading consisting of 4,675 cubic yards, retaining walls, decks, pool/spa, look-out patio, hardscape and landscaping on a 9,017 sq. ft. vacant sloped lot at 107 Emerald Bay in the Emerald Bay community on the coastal side of Pacific Coast Hwy (PCH), see Exhibit 2. Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because it is development approved by the County and located between the sea and the first public road paralleling the sea and is within the Coastal Commission appeal jurisdiction, as shown on the Commission adopted Post-LCP Certification and Permit Appeal Jurisdiction map contained the certified Emerald Bay Local Coastal Program. Exhibit 1 is the appeal to the Commission from Carl and Kelley Renezedder. The appellants claim that this approval is inconsistent with LCP requirements for the following reasons:

1. Original lot subdivision illegal under Emerald Bay's CC&Rs and Architectural Regulations
2. Massing of structure results in setback encroachments impacting views & privacy
3. Impacts to scenic, visual, and aesthetic resources not considered
4. Impacts from grading and other known geologic hazards not properly considered
5. Orange County staff report impermissibly describes the project
6. Initial Study/Addendum does not analyze effects from other projects that could result in significant cumulative impacts
7. Lookout patio not analyzed
8. Project relies on inadequate environmental documentation

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the County's Final Local Action Notice for the development (Exhibit 2), the appellant's claims (Exhibit 1), the relevant requirements of the LCP, and the file records submitted by the County. The appeal raises no substantial issue with respect to the LCP as follows.

First, the contention that the lot split is illegal because it is inconsistent with the Emerald Bay's CC&Rs and Architectural Regulations does not raise a substantial issue because the LCP, not the CC&Rs, are the standard of review for the County's decision to grant a coastal permit. There is no prohibition on lot splits in the LCP. Furthermore, the lot split occurred through a prior County action and is not a part of the action taken by the County that is the subject of this appeal. Second, there are no significant public visual resources affected by the County approval. The subject site is located seaward of PCH on an inland lot in the gated Emerald Bay community and is not visible to the public from PCH. The beaches seaward of the site are privately owned in a cove isolated by headlands, thus, the site isn't accessible or visible to the public from any public beach area. The proposed single-family residence only affects private views. The Commission concurs that no significant public views, which are protected by the LCP, would be impacted by the development. Nor does the development raise any significant concerns with respect to compatibility with the surrounding built environment. The County previously addressed errors in their locally prepared documents; the Notice of Final Action accurately describes the approved project.

The appellant claims that grading impacts and geologic hazards were not properly considered. The LCP Geologic Hazards Policy 2(a) on page II-21 reads, "Applications for grading and building permits, and applications for subdivision will be reviewed for adjacency to, threats from, and impacts on geologic hazards arising from seismic events, tsunami run-up, landslides, beach erosion, or other geologic hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be required where necessary." Special Condition 9 of the County approval requires the submittal of a geotechnical report and its recommendations implemented to mitigate any geotechnical impacts below a level of significance prior to the issuance of a grading permit. The Commission concurs that Special Condition 9 fulfills the intent of the Geologic Hazards policy in the LCP.

Furthermore, appellant's claims regarding the inadequacy of the Initial Study/Addendum environmental review documents relate to California Environmental Quality Act (CEQA) requirements and do not relate to policies of the certified LCP. In any event, the project would not have cumulative adverse impacts on coastal resources because it is infill development of an otherwise mostly developed subdivision. Overall, the County has provided factual and legal support for its decision (Exhibits 2 and 3). As summarized above, there are no significant coastal resources affected by the decision, and no adverse precedent will be set for future interpretations of the LCP. Finally, the appeal does not raise issues of regional or statewide significance.

For the reasons stated above, the Commission finds that Appeal Number A-5-EMB-09-048 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 Program and/or the public access policies of the Coastal Act.

¹ The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.

List of Exhibits:

1. Appeal from Coastal Permit Decision of Local Government by Carl and Kelly Renezeder
2. County of Orange Notice of Final Decision and February 25, 2009 OC Planning report for the public hearing on the appeal of the Zoning Administrator's Approval of Planning Application PA070080
3. December 18, 2008 OC Planning Report for the public hearing on Planning Application PA070080
4. Project Location Map
5. Proposed Project Site Plan and Exterior Elevations

RECEIVED
South Coast Region

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
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MAR 13 2009



**CALIFORNIA
COASTAL COMMISSION**

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Carl and Kelley Renezeder

Mailing Address: c/o Mark J. Dillon, Gatzke Dillon & Ballance LLP, 1525 Faraday Ave, Suite 150

City: Carlsbad

Zip Code: 92008

Phone: 760-431-9501

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Orange, Planning Commission

2. Brief description of development being appealed:

County approval of Coastal Development Permit to allow the grading and construction of a custom single-family residence in the Emerald Bay community, located in Laguna Beach, California.

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

Address: 107 Emerald Bay, Laguna Beach, California 92651
Assessor's Parcel Number: 053-050-73

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: A-5-EMB-09-048

DATE FILED: 3/13/09

DISTRICT: South Coast / Long Beach

COASTAL COMMISSION

EXHIBIT # 1

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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: February 25, 2009

7. Local government's file number (if any): Planning Application PA070080

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:

Susan Gotschall, 107 Emerald Bay, Laguna Beach, California 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)

(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.

Pursuant to Public Resources Code section 30603, subd. (a)(1), the County's decision to approve the project may be appealed because it is a development approved by the County, a local government, and the development approved by the County is located within the Coastal Commission appeal jurisdiction, as shown on the Commission-adopted Post-LCP Certification and Permit Appeal Jurisdiction map contained in the certified Emerald Bay Local Coastal Program (Figure 9; September 1989).

The grounds for this appeal of the County-approved project are that the development does not conform to the standards set forth in the certified Emerald Bay Local Coastal Program (September 1989).

The reasons supporting this appeal are summarized, here, but also are described in detail in the letter to the California Coastal Commission, dated March 13, 2009, which is attached and incorporated by this reference.

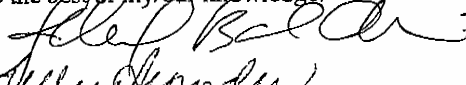
In summary, the reasons supporting the appeal are as follows:

1. Project site was the subject of an illegal lot split under Emerald Bay's CC&RS and Architectural Regulations; as a result, other properties are likely to ignore the CC&RS/Regulations and seek lot splits that further intensify development in Emerald Bay in conflict with the requirements of the Emerald Bay LCP.
2. Massing of proposed structure results in encroachment into setbacks, which impacts views and privacy.
3. The proposed structure's impacts to scenic, visual, and aesthetic resources were not considered.
4. Proposed impacts from grading and other known geologic hazards were not properly considered .
5. The Staff Report impermissibly describes the proposed construction Project.
6. The Initial Study/Addendum does not analyze effects from other projects that could result in significant cumulative impacts.
7. The so-called lookout patio has not been analyzed.
8. Project relies on inadequate environmental documentation.

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SECTION V. Certification

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

 3.13.09
Philip Ballou
Signature of Appellant(s) or Authorized Agent

Date: 3.12.09

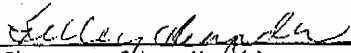
Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

Mark J. Dillon of Gatzke Dillon & Ballance LLP

to act as my/our representative and to bind me/us in all matters concerning this appeal.


Mark J. Dillon
Signature of Appellant(s)

Date: 3.12.09

GATZKE DILLON & BALLANCE LLP

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OF COUNSEL
MICHAEL SCOTT GATZKE
ANTHONY T. DITTY

March 13, 2009

By Hand-Delivery

California Coastal Commission
South Coast Area Office
200 OceanGate, 10th Floor
Long Beach, California 90802-4302

*Re: County of Orange Planning Application PA-070080 for Coastal
Development Permit, Site Development Permit, and Use Permit for
107 Emerald Bay, Laguna Beach, California (Applicant: Susan Gotschall)*

To the California Coastal Commission:

On behalf of Carl and Kelley Renezeder ("Renezeders"), property owners of 105 Emerald Bay, Laguna Beach, California, we submit this letter in support of this appeal of the Orange County Planning Commission's denial of the Renezeders' appeal of the County Zoning Administrator's decision to approve the Coastal Development Permit, Site Development Permit, and Use Permit for the grading and construction of a massive 9,300 square foot, four-story custom residence at 107 Emerald Bay in the Emerald Bay community ("Project"). The Project site is located in Laguna Beach, California, and identified as County Planning Application PA-070080. The applicant is Susan Gotschall.

Pursuant to Public Resources Code section 30603, subd. (a)(1), the County's decision to approve the Project may be appealed because it is a development approved by the County, a local government, which development is located within the Coastal Commission appeal jurisdiction, as shown on the Commission-adopted Post-LCP Certification and Permit Appeal Jurisdiction map contained in the certified Emerald Bay Local Coastal Program ("LCP;" Figure 9; September 1989).

The grounds for this appeal of the County-approved Project are that the development does not conform to the standards set forth in the certified Emerald Bay LCP (September 1989). The reasons supporting this appeal are summarized below. We also request that this letter be made part of the record of this appeal proceeding.

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I. REASONS SUPPORTING THIS APPEAL

A. THE PROJECT SITE WAS THE SUBJECT OF AN ILLEGAL LOT SPLIT UNDER EMERALD BAY'S CC&RS AND ARCHITECTURAL REGULATIONS; AS A RESULT, OTHER PROPERTIES ARE LIKELY TO IGNORE THE CC&RS/REGULATIONS AND SEEK LOT SPLITS THAT FURTHER INTENSIFY DEVELOPMENT IN EMERALD BAY IN CONFLICT WITH THE REQUIREMENTS OF THE EMERALD BAY LCP

The Renezeders appeal on the grounds that the Project site was the subject of an illegal lot split under Emerald Bay's CC&Rs and Architectural Regulations; and, as a result, other properties within the exclusive Emerald Bay community are likely to also ignore the CC&Rs and Architectural Regulations and seek lot splits that will further intensify development within the community in conflict with the "New Development" component of the Land Use Plan contained in the Emerald Bay LCP.

By way of background, the County-approved Project will allow grading and construction of a massive 9,300 square foot, four-story custom residence at 107 Emerald Bay within the Emerald Bay community. Prior to approval, the subject property was *one* legal building site, 109 Emerald Bay. (See attached Planning Report, December 18, 2008, pp. 1-2.) The site was purportedly subdivided by Planning Application PA050022 and Parcel Map No. TPM 2005-113. (*Id.*)¹ At that time, the Renezeders and other Emerald Bay property owners objected to the subdivision of 109 Emerald Bay into *two* separate building sites (109/107 Emerald Bay), because the governing CC&Rs and Architectural Regulations prohibit lot splits within the Emerald Bay community. Specifically, as part of the general development plan, and subject to limited exceptions, the 1985 CC&Rs restrict building within Emerald Bay to one single-family residence per each lot or parcel. (See attached CC&Rs, Article III, Section 2; and Schedule A of the CC&Rs.)² The building restrictions are included in the recorded CC&Rs and in each of the Tract-specific "Schedule A's," which also are recorded with and incorporated into the CC&Rs. (*Id.*; and see CC&Rs, Article VIII, Section 1, ¶1.) Under those Schedules, the following "building restrictions apply to all lots" in the Tracts within Emerald Bay:

Improvements to each Lot or Parcel in said Tract are restricted to one private Single Family residence. . . .

¹ We ask that all of the County's files related to Planning Applications PA070080, PA070069, and PA050022, and Parcel Map TPM 2005-113, including construction plans, be made an express part of the record of this proceeding.

² We request that the 1985 CC&Rs, Articles of Incorporation, and Architectural Regulations be made an express part of the record of this proceeding.

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(See CC&Rs, Schedule A's.) In 1991, a homeowner sought to divide his lot in order to build more than one home. When presented with the request, the Association disseminated a Regulation setting forth the community's collective understanding of the limitations on the Board's authority to consider such applications, an understanding that was embraced by the community for the next 16 years. First, the subject Regulation limited the Board's authority as follows:

[n]either the Architectural Committee nor the Board of Directors shall have authority to approve plans for more than one residence on each *existing* lot or *existing* parcel.

(Architectural Regulations, Section B.2.)

Second, the subject Regulation made clear that *divisions* of a lot or parcel in Emerald Bay were *prohibited*:

[n]o *division of a lot or parcel* shall be permitted which would create a *new* lot or parcel for the purpose of constructing a residence thereon, or for any other purpose.

(*Id.*)

For the next 16 years, the Architectural Regulation remained on the books. The Regulation also was distributed in a "Resident's Handbook" to each homeowner purchasing a home in Emerald Bay. The Regulation represented the Board's and the community's interpretation of the CC&Rs' intent to restrict development in Emerald Bay to one residence per each existing lot or parcel. The Regulation was not disturbed by any of the sitting Boards over the ensuing 16 years and was never challenged by any of the members.

However, in 2006, things abruptly changed. The Board ignored the Regulation and began entertaining lot split applications and variances, which violated the terms of the CC&Rs and the Architectural Regulation. The Board's actions started with preliminary approval of the construction plans for 107 Emerald Bay (the Gotschall property).

During this time frame, County staff was apprised of the attempt to subdivide 109 Emerald Bay into a separate building site, but took the position that the "CC&Rs are private regulations" and that the "County is not a party to and does not enforce these private regulations." (See attached County staff report, June 2, 2005.)³

³ We ask that this staff report be made an express part of the record of this proceeding.

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Thereafter, the Renezeders were forced to initiate litigation against the Association over its attempts to purportedly approve the lot split of 109 Emerald Bay in violation of the CC&Rs and Architectural Regulations. The Orange County Superior Court ruled in favor of the Association; however, an appeal has been filed with the Court of Appeals in Orange County. The appeal is still pending. A favorable appellate court decision would preclude development of 107 Emerald Bay as a result of the illegal lot split. The appeal is anticipated to be resolved by the end of this summer. Thus, we ask that the Coastal Commission stay the requested Coastal Development Permit until the court appeal is resolved.

The applicant's illegal lot split conflicts with the "New Development" component requirements set forth in the Land Use Plan portion of the Emerald Bay LCP. On page II-17, the Emerald Bay LCP states that Emerald Bay "is an established residential community . . . [and] [t]he new development opportunities which exist consist of infill parcels comprising approximately five (5) percent of the Emerald Bay Community." Because the Emerald Bay LCP correctly identified Emerald Bay as an established residential community, and because new development opportunities were contemplated to be limited to infill parcels comprising only about five percent of the community, approval of development of other properties within Emerald Bay (*i.e.*, properties that are equally likely to ignore the CC&RS/Regulations and seek lot splits) would result in increased intensity in the community, in conflict with that contemplated by the Emerald Bay LCP.

This concern is very real for two important reasons. First, the property values within Emerald Bay are significant, as evidenced by the fact that the applicant paid over \$7 million for the vacant, illegal lot. As a result, there are huge financial incentives to further split existing parcels within Emerald Bay. Second, there are a number of existing parcels within Emerald Bay that could process an illegal lot split, just as the applicant did in this case. The best way to illustrate this fact is by reference to the attached Emerald Bay map. The map illustrates the applicant's illegal lot split in pink. The map also illustrates several other existing parcels in Emerald Bay, shown in orange, that could be the subject of illegal lot splits, which would further intensify development within the Emerald Bay community. None of this development intensification was contemplated in 1989, when the Emerald Bay LCP was certified. Indeed, this type of further development intensification was not at all contemplated in the Emerald Bay LCP. It only assumed that five percent of the community may comprise "new development opportunities" within "infill parcels."

The prospect for significant development intensification within Emerald Bay must be analyzed as part of both the Coastal Development Permit under the California Coastal Act, and the associated Initial Study PA-070080/Addendum prepared for the Project under the California Environmental Quality Act ("CEQA"). Absent such an analysis, the cumulative impact of such development intensification will evade review under both the California Coastal Act and CEQA.

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B. MASSING OF PROPOSED STRUCTURE RESULTS IN ENCROACHMENT INTO SETBACKS, WHICH IMPACTS VIEWS AND PRIVACY

The Renezeders also appeal on the grounds that the massing of the approved structure encroaches into setbacks and adversely impacts the ocean views, as well as the scenic and visual qualities of this coastal area, which is to be "considered and protected as a resource of public importance" under both the California Coastal Act (Pub. Resources Code, §30251) and the "Resource" component of the Land Use Plan contained in the Emerald Bay LCP. The cumulative impacts of the Project in conjunction with other probable future development intensification efforts within Emerald Bay also must be analyzed under both the California Coastal Act and CEQA.

The Renezeders objected to the mass and impact of the subject structure in relation to the size of the illegal lot (107 Emerald Bay). If approved, the Project would result in a massive structure that exceeds 9,300 square feet on a building site measuring 9,017 square feet. The development footprint of this massive, four-story residence would encroach into front and side setback areas, intrude into the Renezeders' viewshed, and interfere with the Renezeders' privacy. Specifically, the requested development applications seek approval of a paved "lookout patio" that encroaches three feet into the side area setback of the Project site; an exterior stairway that encroaches into the front and side area setback areas; and retaining walls that encroach into the front and side setbacks.

With respect to ensuring the protection of viewsheds, the County's staff report noted that "Emerald Bay Community Association uses a procedure to establish the location of a structure on a lot based on the location of the structures on either side and to the rear of the property." However, this procedure was not followed for the subject property. This is particularly problematic because the Renezeders were required to set back their house based on the location of the previous residence on 109 Emerald Bay, in order to avoid obstructing any then-existing views. However, with the purported approval of the subdivision of 109 Emerald Bay, the two resulting parcels are long and narrow; and as a result, the location of the massive residence on 107 Emerald Bay will greatly exceed the location of the previous residence in relation to the location of the structures on both sides and to the rear of the property. Thus, the Renezeders' viewshed will be adversely impacted; however, the Initial Study/Addendum omits any analysis of these land use and visual/aesthetics impacts.

For example, the Initial Study/Addendum contains no analysis whatsoever of whether the construction Project conflicts with the adjacent, existing homes or surrounding areas. This "conflict" analysis is required under the "land use and planning" checklist set forth in the Initial Study/Addendum and CEQA. Second, the Initial Study/Addendum omits any analysis of whether the paved "lookout patio," which encroaches into the side area setback of the subject property, affects the views available to the public and surrounding homeowners. Again, this "view" analysis is a required component of the "aesthetics" assessment set forth in the Initial

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Study/Addendum and CEQA. Third, the Initial Study/Addendum fails to analyze whether the "lookout patio" substantially degrades the existing scenic and visual qualities of the surrounding area.

The Renezeders are not obligated to conduct this analysis and "prove" land use or visual/aesthetic impacts. This analysis, in the first instance, must be contained in the Initial Study/Addendum. Absent such an analysis, CEQA concerns regarding land use/visual/aesthetic impacts will be ignored, and California Coastal Act provisions protecting the scenic and visual qualities of this coastal area as a "resource of public importance" will be ignored. (Pub. Resources Code, §30251.)

The scenic and visual qualities of the coastal zone are protected as a public resource under Public Resources Code, section 30251. According to the Emerald Bay LCP, "[n]ew development must be sited and designed such that views to and along the ocean and scenic coastal areas are preserved. Visual compatibility with the character of surrounding areas is achieved, and the alteration of natural land forms is minimized." (*Id.* at p. II-2.) The Emerald Bay Community Architectural Committee is to monitor all new development to ensure that the foregoing Coastal Act policies are followed. (*Id.*, at p. II-8.) However, there is no evidence in the record that the Architectural Committee adopted measures or conditions to preserve the scenic and visual qualities associated with the Project and surrounding areas.

C. THE PROPOSED STRUCTURE'S IMPACTS TO SCENIC, VISUAL, AND AESTHETIC RESOURCES WERE NOT CONSIDERED

A specific example of the improper deferral to Emerald Bay's CC&Rs and regulations is found in the County-prepared Initial Study/Addendum (attached). As to visual and aesthetic impacts, the Initial Study/Addendum notes that the "review process for the proposed single-family dwelling includes submission to the Emerald Bay Community Architectural Committee," which "will ensure that the project will not result in an aesthetically offensive site." To the contrary, the Renezeders contend that the proposed design of the massive residence is commercial in nature and will conflict with the surrounding residences, thereby substantially degrading the existing visual character and quality of the area. However, based on the subject staff report, the County deferred the analysis of visual/aesthetic impacts to the Emerald Bay Community Association.

This deferral also lacks any compliance or monitoring component. In short, as homeowners, the Renezeders have no way of knowing whether or how Emerald Bay's Architectural Committee will "ensure" that this massive construction project will not result in "an aesthetically offensive site." The analysis, compliance, and monitoring components were required to be included in the Initial Study/Addendum. The absence of such components renders the Initial Study/Addendum inadequate under CEQA and the California Coastal Act (Pub. Resources Code, §30251).

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D. PROPOSED IMPACTS FROM GRADING AND OTHER KNOWN GEOLOGIC HAZARDS WERE NOT PROPERLY CONSIDERED

The Renezeders also appeal on the grounds that the grading and other known geologic hazards on or in the vicinity of the Project site were not properly considered, which conflicts with the "Resource" component of the Land Use Plan contained in the Emerald Bay LCP. (See also California Coastal Act, Pub. Resources Code, §30253, subd. (1).)

The Project proposes grading far in excess of the permitted grading allowance of 500 cubic yards on sloped sites. Indeed, the Project proposes to grade more than *nine times* the permitted grading allowance; however, the environmental documentation does not address the proposed grading and summarily concludes that the construction Project would result in a "less than significant impact" involving erosion, and "no impact" involving other geophysical impacts because the Project will be required to comply with guidelines in a forthcoming geotechnical report and the County's grading manual. CEQA and several CEQA cases prohibit the County from deferring the analysis and mitigation of known or probable impacts. However, the County did just that when it relied on a "*forthcoming*" geotechnical report. This, too, results in improper deferral and violation of CEQA.

In addition, the California Coastal Act requires that new development "[m]inimize risks to life and property in areas of high geologic . . . hazard." (Pub. Resources Code, §30253, subd. (1).) The Emerald Bay LCP discloses the existence of faults and earthquake activity that pose geologic hazards, which may affect "new and existing development" within Emerald Bay. (*Id.*, at p. II-4, and LCP, Figure 4.) By reference to the Emerald Bay LCP, Figure 4, the Project site is located immediately to the east of a delineated "Concealed Fault." The Emerald Bay LCP area also is near two known earthquake epicenters. (*Id.*) However, there is no evidence in the record that any of these known geologic hazards were assessed.

E. THE STAFF REPORT IMPERMISSIBLY DESCRIBES THE PROPOSED CONSTRUCTION PROJECT

At page 13, the County's staff report refers to the Project as the "remodeling of the existing single-family dwelling," claiming that the remodel will not "degrade the existing visual character or quality of the site and its surroundings." The staff report is incorrect. The property is currently vacant. There is no remodeling occurring. Instead, the applicant is proposing the grading and construction of a massive custom residence that is not suitable for either the site or the immediate surroundings. Importantly, the Initial Study/Addendum omits the analysis of the lot size and massing issues in violation of CEQA. The lack of analysis also violates the California Coastal Act's affirmative requirements for new development to minimize adverse impacts. (See Pub. Resources Code, §30253.)

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F. THE INITIAL STUDY/ADDENDUM DOES NOT ANALYZE EFFECTS FROM OTHER PROJECTS THAT COULD RESULT IN SIGNIFICANT CUMULATIVE IMPACTS

On page 17, the Initial Study/Addendum finds that, due to mitigation, "there are no known effects from other projects that would result in significant cumulative impacts." This finding is not substantiated. In fact, the County's staff report, at page 2, states that the adjacent lot, 105 Emerald Bay, is currently undergoing construction of a new multi-level, over 9,000 square foot custom residence. These are known facts of other Project effects that could result in significant cumulative impacts. However, the Initial Study/Addendum omits any analysis of such impacts, in violation of CEQA. The lack of analysis also violates the California Coastal Act's affirmative requirements for new development to minimize adverse impacts. (See Pub. Resources Code, §30253.)

G. THE SO-CALLED LOOKOUT PATIO HAS NOT BEEN ANALYZED

The applicant's Project is proposing a paved "lookout patio" that encroaches into setbacks and "overlooks the rear property line" of the subject property. However, the Initial Study/Addendum omits any analysis of this patio area. The scenic and visual qualities of the coastal zone are protected as a public resource under the California Coastal Act. Thus, existing views to the ocean and other scenic vistas are protected under the California Coastal Act. (Pub. Resources Code, §30251.)

Despite applicable law, the Initial Study/Addendum fails to provide any analysis of whether the lookout patio will adversely impact existing views or other scenic vistas to the ocean that are currently enjoyed by Emerald Bay residents living adjacent to or in the vicinity of the Project site. To make matters worse, the County, again, defers to the Emerald Bay Architectural Committee for enforcing unspecified measures to "ensure" that this new development will be "visually compatible with surrounding areas." (County staff report, p. 19.) This deferral is improper under both CEQA and the California Coastal Act. (Pub. Resources Code, §30251.)

H. PROJECT RELIES ON INADEQUATE ENVIRONMENTAL DOCUMENTATION

The Project relies on inadequate CEQA environmental documentation. For example, there is no analysis of whether the project conflicts with adjacent, existing, or planned land uses; there is no analysis of whether the project substantially degrades the existing visual character or quality of the site and its surroundings (see Pub. Resources Code, §30253); and there is no analysis of the proposed grading impacts.

Moreover, the Initial Study serves as an Addendum to previously approved Initial Study/Negative Declaration PA050022. However, an Addendum is permitted only when minor technical changes or additions are necessary to make the previously certified Negative Declaration adequate under CEQA, and/or changes to the Negative Declaration made by the Addendum do not raise important new issues about the significant effects on the environment.

GATZKE DILLON & BALLANCE LLP

California Coastal Commission
March 13, 2009
Page 9

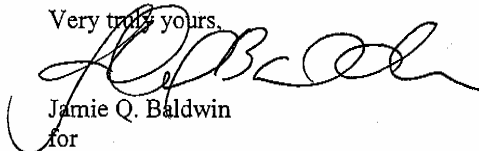
Here, the previously certified Initial Study/Negative Declaration analyzed the impacts of the subdivision of 109 Emerald Bay into two separate building sites. It did *not* evaluate the environmental implications of the subject development applications. Approval of this Project involves more than "minor technical changes" and raises important environmental issues that warrant a hard look prior to authorizing grading and construction on the subject property.

In particular, the Initial Study/Addendum fails to analyze the issues and impacts associated with the setback encroachments for the retaining walls exceeding eight feet in the side setback area and exceeding 3.5 feet within the front setback area; the exterior stairway within the front and side setback areas; the paved "lookout" patio that encroaches three feet into the side setback area; and the proposed grading. These issues alone are enough to require further environmental analysis.

II. CONCLUSION

On behalf of the Renezeders, we request that the appeal be granted and that a hearing be scheduled before the Coastal Commission. If there are any fees required, for the appeal, or if further information is needed, please contact us at your earliest convenience. Thank you for your consideration.

Very truly yours,



Jamie Q. Baldwin
for

Gatzke Dillon & Ballance LLP

JQB/tek

cc: Carl and Kelley Renezeder
(via U.S. Mail)



County of Orange
OC PLANNING

Bryan Speegle
DIRECTOR

300 N. FLOWER ST.
SANTA ANA, CALIFORNIA

MAILING ADDRESS:
P.O. BOX 4048
SANTA ANA, CA 92702-4048

NOTICE OF FINAL DECISION

DATE: February 25, 2009

Coastal Development Permit No.: Planning Application PA070080

Date of County Action: February 25, 2009 **Action:** Planning Commission denied Appeal of Zoning Administrator's decision to approve project.

Applicant/Address: Susan Gotschall, 107 Emerald Bay, Laguna Beach, CA 92651

Project Description: Coastal Development Permit, Site Development Permit, and Use Permit to the Zoning Administrator for grading more than 500 cubic yards on a slope greater than 30% to develop a custom SFD in Emerald Bay with retaining walls, an outdoor built-in pool and spa, and subterranean garage. Use Permit is for retaining walls with interior heights that exceed 8 feet within the side area setbacks and exceed 3.5 feet within the front area setback, exterior stairways within the front area and side area setbacks that exceed 2.5 feet, and a paved look-out patio that encroaches 3 feet into the side area setback.

On December 18, 2008, the Orange County Zoning Administrator conducted a public hearing to consider Planning Application PA070069 and approved the project. The project was appealed on December 31, 2008. The Appeals Board conducted a public hearing on February 25, 2009 and denied the appeal.

Project Location: 107 Emerald Bay, Laguna Beach CA 92651 **Assessors Parcel Number:** 053-050-73

AN APPEAL OF THIS PROJECT WAS ACTED ON AS STATED ABOVE.

THE COUNTY'S ACTION ON THE ABOVE PROJECT WAS NOT APPEALED WITHIN THE LOCAL APPEAL PERIOD ENDING JANUARY 2, 2009.

COASTAL COMMISSION

EXHIBIT # 2

County contact: Channary Leng, Project Planner
OC Planning, Land Use Planning
P. O. Box 4048, Santa Ana, CA 92702-4048

This project is in the coastal zone and is an "appealable development" subject to Coastal Commission appeal procedures.

Approval of an "appealable development" may be appealed to the California Coastal Commission within 10 working days after the Coastal Commission receives this Notice. Appeals must be in writing and in accordance with the California Code of Regulation Section 13111. For additional information write to the California Coastal Commission, South Coast Area Office, 200 Oceangate, 10th Floor, Long Beach, CA. 90802-4302, or call (562) 590-5071.

MAILED TO: California Coastal Commission (including: Staff Report with Findings and Conditions)
Applicant

OC PLANNING REPORT **RECEIVED**
South Coast Region

DATE: February 25, 2009 MAR 19 2009

TO: Orange County Planning Commission CALIFORNIA
COASTAL COMMISSION

FROM: OC Planning/Land Use Planning

SUBJECT: Public Hearing on the Appeal of the Zoning Administrator's Approval of Planning Application PA070080 for a Coastal Development Permit, Site Development Permit, and Use Permit

PROPOSAL: Coastal Development Permit, Site Development Permit, and Use Permit to the Zoning Administrator for grading more than 500 cubic yards on a slope greater than 30% to develop a custom SFD in Emerald Bay with retaining walls, an outdoor built-in pool and spa, and subterranean garage. Use Permit is for retaining walls with interior heights that exceed 8 feet within the side area setbacks and exceed 3.5 feet within the front area setback, exterior stairways within the front area and side area setbacks that exceed 2.5 feet, and a paved look-out patio that encroaches 3 feet into the side area setback.

ZONING: R1 "Single Family Residence", with a CD "Coastal Development" Overlay and an SR "Sign Restrictions" Overlay

LOCATION: The project is located in the community of Emerald Bay at 107 Emerald Bay, Laguna Beach within the Fifth (5th) Supervisorial District.

APPLICANT: Edward and Susan Gotschall, property owner
Leason Pomeroy, architect

APPELLANT Carl and Kelley Renezeder (105 Emerald Bay)

STAFF Channary Leng, staff planner

CONTACT: Phone: (714) 834-5389 FAX: (714) 834-3522

SYNOPSIS: The appellant requests the Planning Commission consider their appeal of the Zoning Administrator's approval of Planning Application PA070080 for a Coastal Development Permit, Site Development Permit, and Use Permit.

Transmitted as attachments to this report are: Gatzke Dillon & Balance's (appellant's representative) letter of appeal on behalf of Mr. and Mrs. Renezeder (appellant), dated December 31, 2008 (Attachment 1); minutes of the December 18, 2008 Zoning Administrator hearing (Attachment 2); and PDSD staff report to the Zoning Administrator dated December 18, 2008, with attachments (Attachment 3).

Land Use Planning recommends the Planning Commission deny the Appeal and uphold the Zoning Administrator's approval of Planning Application PA070080 for a Coastal Development, Site Development Permit, and Use Permit.

BACKGROUND:

The applicant requested approval of a Coastal Development Permit, Site Development Permit, and Use Permit to construct a new four-level custom single family dwelling that has a total floor area of 7,524 square feet for the residence and 1,780 square feet for the attached garage. The subject property is located in the Emerald Bay community on the coastal side of Pacific Coast Highway, specifically at 107 Emerald Bay (Parcel 2 of Parcel Map 2005-113).

Existing Conditions

The project site currently is vacant. The southern portion of the project site contains vegetation; however the central to northerly portion of the lot has minimal vegetation due to demolition of a dwelling unit that before had occupied both 107 and 109 Emerald Bay. Previously, this was one legal building site, 109 Emerald Bay. It was subdivided with planning application PA050022 and tentative parcel map TPM 2005-113. The adjacent lot, 105 Emerald Bay (appellant's property), is currently undergoing construction associated with previously approved planning application PA040041 for demolition of an existing single-family dwelling and construction of a new multi-level, 9,176 square foot custom home.

Proposed Project

The site is zoned R1 "Single Family Residence", with a CD "Coastal Development" Overlay and an SR "Sign Restrictions" Overlay. A Coastal Development Permit and Site Development Permit are required for construction of the proposed residence and for the grading of more than 500 cubic yards on slopes greater than 30%. Earthwork quantities are an estimated 4,675 cubic yards of raw-cut and export off-site.

A Use Permit was also requested for over-height side retaining walls along both the easterly and westerly property lines, for the side retaining walls, which exceed three feet, six inches, encroaching into the required 20-foot front area setback and for the lookout patio encroaching three-feet into the side area setback along the eastern side of the project site.

The subject site is approximately 9,017 square feet in size, with a depth of approximately 138 feet. Access to the site is from a private gated cul-de-sac (known as Gate 5) along the northern end from Pacific Coast Highway. The property also has access to a private Emerald Bay street at the rear of the property, Emerald Bay Drive.

The custom home includes a garage located on the first level with access from the rear side of the property, off Emerald Bay Drive. The driveway grade is +5.6%, thus it complies with Zoning Code Section 7-9-145.2(e). This first level, referred to as the second basement on the Site Plans, includes the garage with utility room, half bathroom, and storage area. The second level includes a guest area with two bedrooms, living room, two and one-half bathrooms, laundry room, storage area, and powder room. There is also a proposed lawn and barbeque area on the second floor at the southerly end of the project site.

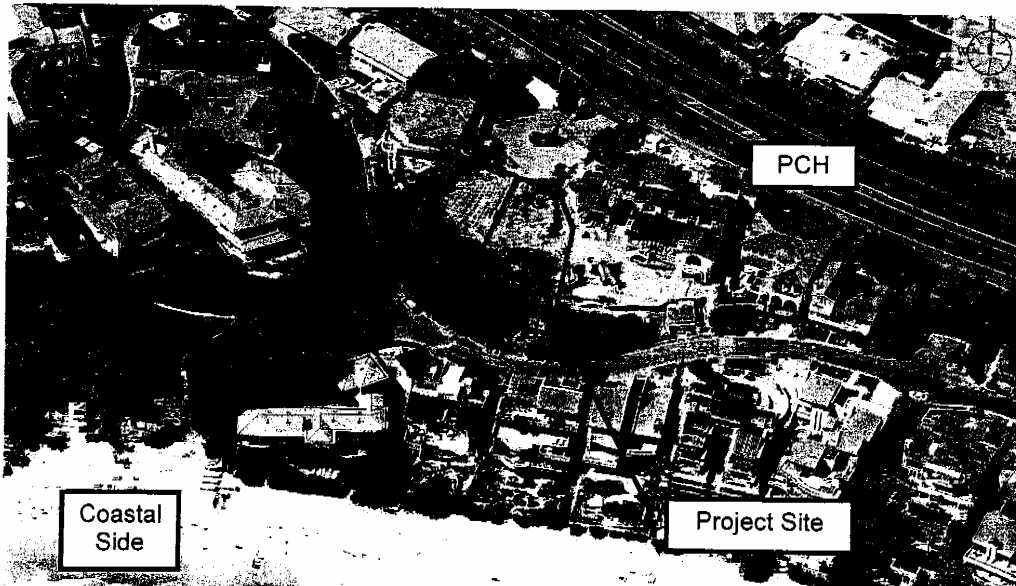
The third level includes a guestroom with full bathroom, a dining area with full kitchen area, pantry room, an office, and the deck, pool and spa. East of the spa is a lookout patio that is elevated slightly higher than the deck, pool, and spa by approximately one and one-half feet and includes glass railing

wrapping around the eastern property line, along the front of the lookout patio and western perimeter of the patio. A raised planter separates the paved lookout patio from the glass wall along the eastern property line. The fourth level includes the master bedroom and bathroom with a wardrobe room, an office area, laundry room, and a deck overlooking the south-side of the property. There is a proposed elevator that runs through all four levels. The proposed new dwelling unit complies with the maximum height standard of 35 feet for the R1 District.

SURROUNDING LAND USE:

The subject site and all surrounding properties are zoned R1 “Single Family Residence” District, with a CD “Coastal Development” District Overlay and an SR “Sign Restrictions” Overlay (see photo below). The site is also within a certified Local Coastal Program (Emerald Bay LCP) zoning regulatory area. All properties in Emerald Bay are subject to the CD District of the Zoning Code and development projects are subject to appeal to the Coastal Commission. Surrounding properties are developed with single family dwellings, with the exception of a vacant lot located to the west, immediately adjacent to the project site.

AERIAL PHOTO OF PROJECT SITE



© Copyright 2008, Pictometry International

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all property owners of record within 300 feet of the subject site and all occupants of dwellings within 100 feet of the site (Coastal Development Permit requirement) on December 5, 2008. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to County Divisions and the Emerald Bay Community Association. As of the writing of this staff report, no comments

raising issues with the project were received from other County divisions. The Emerald Bay Community Association approved the proposal at its September 25, 2007 meeting.

CEQA COMPLIANCE:

Addendum PA070080 to Negative Declaration (ND) No. PA050022/TPM2005-113 was prepared for the proposed project. Negative Declaration PA050022/TPM2005-113 was approved on November 1, 2005 and the Addendum was approved at the Zoning Administrator Hearing on December 18, 2008. Both the Addendum and the ND are attached for the Planning Commission's review (Attachment 4) and must be approved prior to project approval with a finding that it is adequate to satisfy the requirements of CEQA. Appendix A contains the required CEQA finding.

DISCUSSION/ANALYSIS:

Below is a table comparing the development standards for R1 Zoning District with what is being proposed by the applicant:

Project Comparison with "Single Family Residence" District Site Development Standards

STANDARD	PERMITTED	PROPOSED
Building Site Area	7,200 square feet minimum	9,017 square feet
Scenic Roadway Setbacks	None specified	N/A
Structural Front Setback	20'	20'
Structural Side Setback	5' min.	Meets requirement
Structural Rear Setback	25'	Meets requirement
Patio Covers, gazebos	12' in height when within setback areas, 8' in height if within 3' of property line	None proposed
Porches, decks, balconies, exterior steps and stairways	5' less than bldg. front/rear setbacks; 3' less for sides	Lookout patio proposed 2-feet from eastern side property line, exterior stairways greater than 30" proposed in front and side area setbacks. *
Maximum Building height	35' max.	Meets requirement
Building Site Coverage	No standard	N/A
Walls in structural setback limits	3.5' max. height in front; 6' max. in sides and rear	Walls greater than 3.5' in front area setback and interior wall heights greater than 8' in side area setbacks. *
Walls out of setback limits	35' max. height	Meets requirement
Grading	500 CY max. on sloped sites	4,675 CY raw-cut and export *
Height of cut and fill slopes	No standard	N/A
Grading change from natural	No standard	N/A
Contour grading	No standard	N/A
Open space preservation	No standard	N/A

STANDARD	PERMITTED	PROPOSED
Lighting	Glare limited to site	No light standards requiring a building permit (greater than 6 feet in height) proposed
Parking	2 covered spaces min., plus driveway	Meets requirement
Garage setback	20', or 18' with a roll-up door	Meets requirement

* Indicates a deviation from standard that is included in the application.

The December 18, 2008 OC Planning Report, Attachment 3, submitted to the Zoning Administrator for the subject project provided the analysis upon which staff's recommendation for approval was based. The analysis concluded that the proposed Coastal Development Permit, Site Development Permit, and Use Permit requested for a setback encroachment was not an unusual request for the Emerald Bay community and that the design of the applicant's proposed residence is typical of much of the previous approvals and recent constructions within the Emerald Bay community.

The remainder of this report focuses upon the items outlined in the Letter of Appeal dated December 31, 2008 (Attachment 1). The following is a list of the bases for the appeal:

- Lack of notice
- Subject site was subject of an illegal lot split
- Massing of structure results in encroachment into setbacks, which impacts views and privacy
- Proposed structure's impacts to aesthetics were not considered
- Proposed impacts from grading were not properly considered
- Staff report impermissibly describes the proposed construction project
- The Initial Study/Addendum does not analyze effects from other projects that could result in significant cumulative impacts
- The so-called lookout patio has not been analyzed
- Project relies on inadequate environmental documentation

I.A. Procedural Objections – Lack of Notice

"...we asked for a continuance because we were not provided with notice of the Planning Application and related public hearing as we had previously requested. However, we were not granted a continuance. Thus, on appeal, we ask that the Planning Commission reverse the decision of the Zoning Administrator on the ground that proper notice was not provided; we further ask that the Planning Commission refer the application back to the Zoning Administrator with direction to continue the public hearing on the Planning Application to allow sufficient time to review the relevant documentation..."

The appellant mentioned in the Letter of Appeal that the Department "failed to notify us of the Gotschall's development applications," and also mentioned that the County's online research tool did not generate any results when using the location "107 Emerald Bay." Thus, one reason for the appeal is because of the appellant's denial to procedural due process.

Response: The appellant's representative at the time, Gatzke Dillon & Balance LLP, submitted a letter February 13, 2008 requesting notification if the County receives any application for the

approval of any Coastal Development Permit or any necessary building permits within the entire Emerald Bay Community. At the time that public notices were sent, staff ensured that the mailing/distribution list for the public notice included Mr. and Mrs. Carl Renezeder. Shortly after the notices were mailed out, staff received a phone call from Ms. Jaime Baldwin, on behalf of Mr. and Mrs. Renezeder, thus a notice was received by the appellant. Mailing of the public notice met Mr. and Mrs. Renezeder's request for notification of a Planning Application and also public noticing requirements per Zoning Code Section 7-9-150.3(c)(2).

II.A. Substantive Objections – Illegal Lot Split

Appellant states that the governing 1985 CC&Rs and Architectural Regulations prohibit lot splits within the Emerald Bay community. The letter provides a historical context of the Emerald Bay Community Association and Board of Directors' approach in addressing lot splits, indicating that in 2006 the Board of Directors gave preliminary approval of the construction plans for the Gotschalls' property. The Renezeders are requesting that the Planning Commission "reverse the Zoning Administrator's decision" on the basis of a pending appeal to the trial court's ruling in favor of the Association.

Response: The Gotschall property is a legal lot that is entitled to single family use. The Board of Directors of the Emerald Bay Community Association adopted a Resolution on June 11, 2007 regarding division of lots/parcels, finding that the property owners, including the Gotschalls, "have the right under the CC&Rs to adjust the size of their Parcels, or subdivide their Parcels, with the effect of allowing two homes where once only one stood" (Attachment 5).

Subsequent to the Board's Resolution in 2007 regarding division of lots/parcels, the Renezeders initiated litigation against the Gotschalls, the Filancs, and the Association in early 2008. The court disagreed with the Plaintiffs (Renezeders) and ruled in favor of the Gotschalls, the Filancs, and the Association, finding that the community's Declaration of Restrictions does not prohibit lawful subdivision of lots or parcels in the Emerald Bay community. The court also found that the Gotschall property is a legally created lot (Parcel 2 of Parcel Map No. 2005-113) and is permitted to single family use and occupancy (Attachment 6). Being that both the Board of Directors of the Emerald Bay Community Association and the Orange County Superior Court ruled in favor of the Gotschalls, the Renezeder's request that the Planning Commission reverse the Zoning Administrator's decision to await the outcome of their appeal would not be warranted, since the lot split issue was not a matter for deliberation before the Zoning Administrator and was not considered in the decision making process.

II.B. Encroachment Into Setbacks, Impacts to Views and Privacy

The Renezeders also justify their appeal based on "the mass and impact of the subject residence as it relates to the size of the illegal lot." The letter of appeal, Attachment 1, states that the footprint of the proposed residence encroaches into front and side setback areas, intrudes into the Renezeders' viewshed, and interferes with the Renezeders' privacy. The letter indicated that the Initial Study/Addendum omits any analysis of the proposed land use and visual/aesthetics impacts, specifically with the following issues:

- Analysis of whether the construction project conflicts with the adjacent, existing homes or surrounding areas;

- Analysis of the paved “lookout patio” affecting the views available to the public and surrounding homeowners; and
- Analysis of whether the “lookout patio” substantially degrades the existing visual character or quality of the surrounding area, including views from the Renezeders’ residence.

Response: For the record, reference to the lot as an “illegal lot” is not correct. This is a legally subdivided lot (Parcel Map 2005-113). Also, Zoning Code regulations do not have standards specific to floor area ratio for the R1 District; thus the Renezeders’ concern about the mass of the residence in relation to the size of the lot is not an issue upon which the Zoning Administrator would typically base a decision. Regarding the issue of viewshed, the Zoning Code does not include standards on protection of viewshed. The Emerald Bay Local Coastal Program, however, does address scenic resources and states that, “All new development is monitored and influenced by the Emerald Bay Community Architectural Committee.” The Emerald Bay Community Architectural Committee is responsible for reviewing proposals to ensure that “existing ocean views of surrounding property owners within the community are preserved.” (Emerald Bay Local Coastal Program, Section II.A.4). Since the Architectural Committee has already approved the project on September 25, 2007, staff is confident that the Committee has analyzed any potential issues related to preservation of scenic resources.

Determining whether a project may have a significant effect plays a critical role in the CEQA process and calls for a careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. To aid in this exercise Section 15064.7 – Threshold of Significance, “encourages a public agency to use identifiable, quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect will be determined to be less than significant.” Accordingly the factual documents used to determine threshold of Significance for this project were Orange County Zoning Code and the Emerald Bay Local Coastal Program. The project meets the permitted height and setback standards established by the Zoning Code and is a principal permitted use subject to approval of a Coastal Development Permit. The Local Coastal Program concluded that “scenic and visual qualities” of the coastal zone are protected as a public resource under Section 30251 of the State Coastal Act. The program states that new developments must be sited and designed such that views to and along the ocean and scenic coastal areas are preserved. As stated earlier though the zoning code does not include standards on view-shed protection, the Emerald Bay Community Architectural Committee has the responsibility of ensuring that the existing ocean views of surrounding property owners within the community are preserved in accordance with the sited public resource code and CC&R. The Committee in turn makes recommendations to the County decision makers on any particular project within the community. The project received approval from this Committee on September 25, 2007. Secondly, the Initial Study determined that the proposed project is consistent with the Land Use Element 1B (Suburban Residential Community) Land Use Category, and the Emerald Bay zoning. Residential uses in this area consist of single dwellings with a permitted maximum height of 35 feet. The proposed project site is consistent with the regulations for this residential district.

Therefore, the conclusion of the Addendum that the proposed project is not expected to have a significant impact to aesthetic resources is a fair conclusion in view of the factual documents used to determine the threshold of significance. Addendum PA070080 to Negative Declaration ND PA 050022/TTM2005-113 is adequate to satisfy the requirements of CEQA for the proposed project.

II.C. Impacts to Aesthetics were not Considered

The Renezeders contend that the proposed design “of the massive residence is commercial in nature and will conflict with the surrounding residences, thereby substantially degrading the existing visual character and quality of the immediate area.” The letter indicates that the County’s staff report improperly defers the analysis of visual/aesthetic impacts to the Emerald Bay Community Association and also states that the absence of an analysis, compliance, and monitoring components “renders the Initial Study/Addendum inadequate under CEQA.”

Response: The proposed structure is intended for residential use, thus it is not “commercial in nature” as the letter states. Furthermore, the intended residential use is consistent with the surrounding lots and the entire Emerald Bay community. Approval of the project by the Architectural Committee, as mentioned earlier in the response for II.B., suggests that the proposed structure will not substantially degrade the existing visual character and quality of the immediate area as stated by the appellant.

The Initial Study determined that the proposed project is consistent with the Land Use Element 1B (Suburban Residential Community) Land Use Category, a district established to provide for the development and maintenance of medium density residential neighborhoods, and the R1 zoning regulations. Residential uses in this area consist of single family dwellings. Many of these existing, surrounding dwelling units have multiple stories, large square footages to a permitted maximum 35 feet in height. The proposed project was considered in the Initial studies process and found to be within character in size and design of the existing community. Secondly, the project meets the permitted height and setback standards established by the Zoning Code. Therefore, the conclusion of the Addendum that the proposed project is not expected to have a significant impact to Land Use designation is a fair conclusion in view of the factual documents used to determine the threshold of significance. Addendum PA070080 to Negative Declaration ND PA 050022/TTM2005-113 is adequate to satisfy the requirements of CEQA for the proposed project.

II.D. Impacts from Grading Not Properly Considered

The letter states that the grading is “far in excess of the permitted grading allowance of 500 cubic yards on sloped sites” and that “CEQA and several CEQA cases prohibit the County from deferring the analysis and mitigation of known or probable impacts.”

Response: Per Zoning Code Section 7-9-139, grading more than 500 cubic yards on a slope greater than 30% is permitted upon approval of a Site Development Permit; however a Site Development Permit is not required when grading is in compliance with a Coastal Development Permit, which authorizes grading. Subject to the Planning Commission’s ultimate decision on

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the matter, the Gotschalls' proposed grading would be permitted, since the Coastal Development Permit was approved by the Zoning Administrator on December 18, 2008.

The process of Initial Study requires staff to rely on the comments, experience and recommendations of the County's expert technical divisions. In regards to the above comment, staff consulted with the Grading Section, who determined that the nature and size of proposed project would warrant compliance with County Grading Code, which requires further review through a geotechnical report. The applicant's grading quantity is similar to many other projects in the vicinity due to the land formation in the area. Additionally, the project is within the 5,000 cubic yards of dirt threshold of the County Grading and Excavation Code. Grading and Excavation Code Section 7-1-825, Import and Export of Earth Material, lists additional requirements for projects grading in excessive of 5,000 cubic yards; however these are not applicable to the subject project. The Addendum considered the grading not significant with the inclusion of County's mitigation as requested by the technical division to ensure that any unforeseeable geotechnical impacts are mitigated below a level of significance. Therefore, the Initial Study deferred to the Zoning Administrator's approved Condition of Approval No. 9 to mitigate any of these unforeseeable impacts prior to issuance of a grading permit.

II.E. Impermissible Description of Proposed Construction Project

"At page 13, the County's staff report refers to the Gotschall's construction project as the 'remodeling of the existing single-family dwelling,' claiming that the remodel will not 'degrade the existing visual character or quality of the site and its surroundings.' The staff report is incorrect. The property is currently vacant. There is no remodeling occurring. Instead, the Gotschalls are proposing the grading and construction of a massive custom residence that is not suitable for either the site or the immediate surroundings. Importantly, the Initial Study/Addendum omits the analysis of the lot size and massing issues."

Response: For the record, the staff report does not refer to the Gotschall's construction project as a remodel. Page 13 of the environmental document does incorrectly reference the project as a remodel; staff reviewed the Initial Study to assess whether a revision needed to be made and determined that...

The appellant is correct about the "Addendum mistakenly referring to the proposed project," as a remodel". Staff re-checked the Addendum and discovered that the word was inadvertently placed in the paragraph. The sentence has been removed from the Addendum and a copy of the corrected Addendum is attached for your review. It is important to note, that this word has no significant bearing that would substantially alter the analysis and conclusion of the subject Addendum.

II.F. No Analysis of Effects from Other Projects that Could Result in Significant Cumulative Impacts

The appellant states that the Initial Study/Addendum's finding that there are no known effects from other projects that would result in significant cumulative impacts is not substantiated. The December 18, 2008 staff report states that the adjacent lot, 105 Emerald Bay, is currently undergoing construction of a new multi-level custom residence. Thus, "these are known facts of other project

effects that could result in significant cumulative impacts. However, the Initial Study/Addendum omits any analysis of such impacts, in violation of CEQA.”

Response: The adjacent lot, 105 Emerald Bay, is the Renezeder’s property and is currently undergoing construction. Analysis of this project has already been provided as part of the environmental documentation for this previously approved planning application. The appellant’s project, in combination with the proposed Gotschall project, however, would not result in significant cumulative impacts as suggested by the appellant.

Section 15355 of the CEQA Guidelines refers to Cumulative Impacts as two or more individual effects, which, when considered together are considerable or which compound or increase other environmental impacts. The Renezeder’s property has been previously analyzed and approved under a separate application and Negative Declaration (ND) PA000076 on 10/26/00. This approved ND established a finding that due to the mitigation measures described in the ND that there were no known effects of significance.

The Addendum PA070080 for the proposed project established two approved findings that: 1) Due to the project’s small scale and the mitigation measures described in the document, no long term environmental goals would be compromised, and that 2) due to the mitigation measures described in the document there are no known effects from other projects that would result in significant cumulative impacts. Since the environmental document ND from the appellant’s project and the Addendum PA070080 for the proposed project both concluded no significant impacts, the combine of both projects’ effects would not alter the original conclusions reached. Hence no adverse changes in the environment will result from incremental impacts from these two projects.

Addendum PA070080 to Negative Declaration ND PA 050022/TTM2005-113 is adequate to satisfy the requirements of CEQA for the proposed project.

II.G. No Analysis of Lookout Patio

In the appeal letter, the Renezeders expressed concern about the Initial Study/Addendum omitting any analysis of the lookout patio area and state that the “scenic and visual qualities of the coastal zone are protected as a public resource under the California Coastal Act. Thus, existing views to the ocean and other scenic vistas are protected under the California Coastal Act.”

Response: CEQA does not piece meal project elements. The lookout patio was analyzed on the totality of the entire project. The Addendum, as stated in Response 1, properly documented project elements and impacts within the Threshold of the Land Use regulations.

II.H. Project Relies on Inadequate Environmental Documentation

The Renezeders state that the proposed construction project “relies on inadequate CEQA environmental documentation” and sites a few issues in which an analysis was not provided as part of the environmental documentation (see Attachment 1).

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Response: Section 15064(a)(1) of the CEQA Guidelines, states that: "determining whether a project may have a significant effect plays a critical role in the CEQA process. If there is a substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR." Further CEQA Guidelines Section 15064 (b) states: "The determination of whether a project may have a significant effect on the environment calls for a careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data."

Based on the Initial Study, EPSD staff concluded that the impacts of the proposed project were not significant enough to warrant a preparation of a draft EIR; therefore, it was determined that an Addendum PA070080 to a Mitigated Negative Declaration (Attachment 4) is the appropriate means of complying with CEQA. Thus, Addendum PA070080 to Negative Declaration ND PA 050022/TTM2005-113 is adequate to satisfy the requirements of CEQA for the proposed project.

CONCLUSION:

Staff has transmitted to your Planning Commission all materials submitted to the Zoning Administrator for his consideration of Planning Application PA070080 and has presented in this report the elements of the proposed project request. The Zoning Administrator hearing was attended by staff, the applicant, the architect representing the applicant, and the appellant with legal representatives who testified before the Zoning Administrator on December 18, 2008. Planning Application PA070080 was considered and conditionally approved by the Zoning Administrator on December 18, 2008.

Staff has attempted to respond to the items raised in the appellant's appeal (Attachment 1). Staff notes that some of the items were previously expressed at the Zoning Administrator hearing and also addressed by staff at the hearing. Staff believes that all project items have been adequately addressed and that Planning Application PA070080 should be approved subject to the Findings and Conditions of Approval approved by the Zoning Administrator on December 18, 2008. Accordingly, staff makes a recommendation as follows:

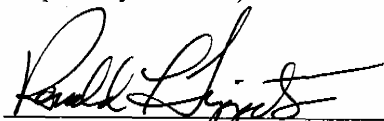
RECOMMENDED ACTION:

OC Planning/Land Use Planning recommends that the Planning Commission:

- a) Receive staff report and public testimony as appropriate;
- b) Finding that Addendum PA070080 (as amended) to Negative Declaration No. PA050022/TPM2005-113 is adequate and satisfies the requirements of CEQA; and
- c) Uphold the Zoning Administrator's approval of Planning Application PA070080 for a Coastal Development Permit, Site Development Permit, and Use Permit, subject to the attached Findings and Conditions of Approval.

OC Planning Report – February 25, 2008
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Respectfully submitted,



Ronald L. Tippetts, *Chief*
RDMD/Current & Environmental Planning

APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

ATTACHMENTS:

1. Appellant's Letter of Appeal, with attachments
2. Zoning Administrator Hearing Minutes of December 18, 2008
3. OC Planning Report, dated December 18, 2008, with attachments
4. Negative Declaration PA050022 & Addendum PA070080
5. Resolution of the Board of Directors, Emerald Bay Community Association, June 11, 2007
6. Statement of Decision of the Orange County Superior Court, filed May 15, 2008



Appendix A Findings PA070080

1	GENERAL PLAN	PA070080
That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.		
2	ZONING	PA070080
That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.		
3	COMPATIBILITY	PA070080
That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.		
4	GENERAL WELFARE	PA070080
That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.		
5	PUBLIC FACILITIES	PA070080
That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).		
6	COASTAL DEVELOPMENT PERMIT 1	PA070080
That the development project proposed by the application conforms with the certified Local Coastal Program.		
7	COASTAL DEVELOPMENT PERMIT 2	PA070080
That the project conforms with the public access and public recreation policies of the California Coastal Act.		
8	COASTAL DEVELOPMENT PERMIT 3	PA070080
That the approval of this application will result in no modification to the requirements of the certified land use plan.		
9	COASTAL DEVELOPMENT PERMIT 4	PA070080
That the approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan.		

NEGATIVE DECLARATION AND

- 10 **ADDENDUM PA070080 (Custom)**
 That the decision-maker has considered Negative Declaration PA050022/TPM2005-113, previously adopted on November 1, 2005, and Addendum PA070080 prior to project approval. The Addendum is approved for the proposed project based upon the following findings:
- a. Together, these documents are adequate to satisfy the requirements of CEQA by the decision-maker; and
 - b. The additions, clarifications, and/or changes to the original document caused by the Addendum do not raise new significant issues that were not addressed by the Negative Declaration; and
 - c. The consideration of the Negative Declaration and the approval of the Addendum for the proposed project reflect the independent judgment of the Lead Agency.
-
- 11 **FISH & GAME - SUBJECT PA070080**
 That pursuant to Section 711.4 of the California Fish and Game Code, this project is subject to the required fees as it has been determined that potential adverse impacts to wildlife resources may result from the project.
-
- 12 **NCCP NOT SIGNIFICANT PA070080**
 That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.
-
- 13 **FENCE AND WALL 1 PA070080**
 That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.
-
- 14 **FENCE AND WALL 2 PA070080**
 That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.
-
- 15 **SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR PA070080**
 That the subject project lies within the area of benefit of the San Joaquin Hills Transportation Corridor. In order to find this project consistent with the General Plan and to ensure that the traffic impacts have been adequately mitigated, it is necessary to adopt a condition requiring the developer to participate in the fee program adopted by the Board of Supervisors.
-
- 16 **GRADING SUBJECT TO A SITE DEVELOPMENT PERMIT PA070080 (Custom)**
 That pursuant to Zoning Code Section 7-9-139(b), this project is subject to a Site Development Permit for grading more than 500 cubic yards on a slope greater than 30%.



Appendix B Conditions of Approval PA070080

-
- 1 CP CP NA BASIC/ZONING REG PA070080**
This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.
-
- 2 CP CP NA BASIC/TIME LIMIT PA070080**
This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.
-
- 3 CP CP NA BASIC/PRECISE PLAN PA070080**
Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.
-
- 4 CP CP NA BASIC/COMPLIANCE PA070080**
Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.
-
- 5 CP CP NA BASIC/OBLIGATIONS PA070080**
Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.
-
- 6 CP CP NA BASIC/APPEAL EXACTIONS PA070080**
Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.
-
- 7 F F RBU AUTOMATIC FIRE SPRINKLER SYSTEMS PA070080 (Custom)**
[Res] Service Codes: PR400
A. Prior to the issuance of a building permit, the applicant shall submit plans for any required

automatic fire sprinkler system in the structure to the Fire Chief for review and approval. Please contact the Orange County Fire Authority at (714) 573-6100 to request a copy of the "Orange County Fire Authority Notes for New NFPA 13 Commercial Sprinkler Systems."

B. Prior to the issuance of a certificate of use and occupancy, this system shall be operational in a manner meeting the approval of the Fire Chief.

8 F F RG FIRE ACCESS ROADS PA070080 (Custom)
[Res] Service Code: PR160 (Emergency Access & Fire Hydrant Locations)

Prior to the issuance of any building permits, the applicant shall obtain approval of the Fire Chief for all fire protection access roads to within 150 feet of all portions of the exterior of the structure. The applicant may contact the OCFA at (714) 573-6100 or visit the OCFA website to obtain a copy of the "Guidelines for Emergency Access."

9 SG SG G GEOLOGY REPORT PA070080

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Subdivision and Grading, for approval. The report shall include the information and be in the form as required by the Grading Manual.

10 BP BP G CONSTRUCTION NOISE PA070080 (Custom)

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permits Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control), subject to the revised daily construction hours scheduled by the Emerald Bay Community Association of 7:30 a.m. to 6:00 p.m., Mondays through Fridays.
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

11 SG SG B ROAD FEE PROGRAM PA070080 (Custom)

Prior to the issuance of building permits, the applicant shall pay fees for one of the Major Thoroughfare and Bridge Fee Program listed below, in a manner meeting the approval of the Manager, Subdivision and Grading.

- a. Coastal Area Road Improvements and Traffic Signals
- b. El Toro Road
- c. Foothill/Eastern Transportation Corridor
- d. Foothill Circulation Phasing Program
- e. Moulton Parkway/Laguna Niguel Area

- f. Plano Trabuco
- g. Santiago Canyon Road
- h. San Joaquin Hills Transportation Corridor

12 SG SG G SIGHT DISTANCE PA070080

Prior to the issuance of any grading permits, the applicant shall provide adequate sight distance per Standard Plan 1117 at all street intersections, in a manner meeting the approval of the Manager, Subdivision and Grading. The applicant shall make all necessary revisions to the plan to meet the sight distance requirement such as removing slopes or other encroachments from the limited use area in a manner meeting the approval of the Manager, Subdivision and Grading Services.

13 BI BI RGB WATER QUALITY MANAGEMENT PLAN PA070080

Prior to the issuance of any grading or building permits, the applicant shall submit for review and approval by the Manager, Inspection Services Division, a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff. This WQMP shall identify, at a minimum, the routine structural and non-structural measures specified in the current Drainage Area Management Plan (DAMP). The WQMP must also:

- Address Site Design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, and conserving natural areas;
- Incorporate applicable Routine Source Control BMPs as defined in the DAMP;
- Include an Operation and Maintenance (O&M) Plan that identifies the mechanism(s) by which long-term O&M of all structural BMPs will be provided.

14 BI BI RGB WQMP FOR PRIORITY PROJECTS PA070080

Prior to the issuance of any grading or building permits, the applicant shall include in the WQMP the following additional Priority Project information in a manner meeting the approval of the Manager, Inspection Services Division:

- Include post-construction Treatment Control BMP(s) as defined in the DAMP;
- For applicants relying on Regional Treatment Controls, discuss applicable regional water quality and/or watershed program;
- Include a Operation and Maintenance (O&M) Plan that (1) describes the long-term operation and maintenance requirements for post-construction Treatment Control BMP(s); (2) identifies the entity that will be responsible for long-term operation and maintenance of the referenced Treatment Control BMP(s); and (3) describes the mechanism for funding the long-term operation and maintenance of the referenced Treatment Control BMP(s).

15 BI BI U COMPLIANCE WITH THE WQMP PA070080

Prior to the issuance of a certificate of use and occupancy, the applicant shall demonstrate compliance with the WQMP in a manner meeting the satisfaction of the Manager, Inspection

Services Division, including:

- Demonstrate that all structural Best Management Practices (BMPs) described in the project's WQMP have been implemented, constructed and installed in conformance with approved plans and specifications;
- Demonstrate that the applicant has complied with all non-structural BMPs described in the project's WQMP;
- Submit for review and approval an Operations and Maintenance (O&M) Plan for all structural BMPs for attachment to the WQMP;
- Demonstrate that copies of the project's approved WQMP (with attached O&M Plan) are available for each of the incoming occupants;
- Agree to pay for a Special Investigation from the County of Orange for a date (12) twelve months after the issuance of a Certificate of Use and Occupancy for the project to verify compliance with the approved WQMP and O&M Plan; and
- Demonstrate that the applicant has agreed to and recorded one of the following: 1) the CC&R's (that must include the approved WQMP and O&M Plan) for the project Home Owner's Association; 2) a water quality implementation agreement that has the approved WQMP and O&M Plan attached; or 3) the final approved Water Quality Management Plan (WQMP) and Operations and Maintenance (O&M) Plan.

**16 BI BI GB EROSION AND SEDIMENT CONTROL PA070080
PLAN**

Prior to the issuance of any grading or building permit, the applicant shall submit a Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Building Permit Services, to demonstrate compliance with local and state water quality regulations for grading and construction activities. The ESCP shall identify how all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into local drainages or coastal waters by wind, rain, tracking, tidal erosion or dispersion. The ESCP shall also describe how the applicant will ensure that all BMP's will be maintained during construction of any future public right-of-ways. A copy of the current ESCP shall be kept at the project site and be available for County review on request.

OC PLANNING REPORT

DATE: December 18, 2008

TO: Orange County Zoning Administrator

FROM: OC Planning/Land Use Planning

SUBJECT: Public Hearing on Planning Application PA070080 for a Coastal Development Permit, Site Development Permit, and Use Permit

PROPOSAL: Coastal Development Permit, Site Development Permit, and Use Permit to the Zoning Administrator for grading more than 500 cubic yards on a slope greater than 30% to develop a custom SFD in Emerald Bay with retaining walls, an outdoor built-in pool and spa, and subterranean garage. Use Permit is for retaining walls with interior heights that exceed 8 feet within the side area setbacks and exceed 3.5 feet within the front area setback, exterior stairways within the front area and side area setbacks that exceed 2.5 feet, and a paved look-out patio that encroaches 3 feet into the side area setback.

ZONING: R1 "Single Family Residence", with a CD "Coastal Development" Overlay and an SR "Sign Restrictions" Overlay

LOCATION: The project is located in the community of Emerald Bay at 107 Emerald Bay, Laguna Beach within the Fifth (5th) Supervisorial District.

APPLICANT: Edward and Susan Gotschall, property owner
Leason Pomeroy, architect

STAFF CONTACT: Channary Leng, staff planner
Phone: (714) 834-5389 FAX: (714) 834-3522

SYNOPSIS: Land Use Planning recommends Zoning Administrator approval of Planning Application PA070080 for a Coastal Development, Site Development Permit, and Use Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The applicant is requesting a Coastal Development Permit, Site Development Permit, and Use Permit to construct a new four-level custom single family dwelling that has a total floor area of 7,524 square feet for the residence and 1,780 square feet for the attached garage. The subject property is located in the Emerald Bay community on the coastal side of Pacific Coast Highway, specifically at 107 Emerald Bay (Parcel 2 of Parcel Map 2005-113).

Existing Conditions

The project site currently is vacant. The southern portion of the project site contains vegetation; however the central to northerly portion of the lot has minimal vegetation due to demolition of a dwelling unit that before had occupied both 107 and 109 Emerald Bay. Previously, this was one

COASTAL COMMISSION

EXHIBIT # 3

legal building site, 109 Emerald Bay. It was subdivided with planning application PA050022 and tentative parcel map TPM 2005-113. The adjacent lot, 105 Emerald Bay, is currently undergoing construction associated with previously approved planning application PA040041 for demolition of an existing single-family dwelling and construction of a new multi-level, 9,176 square foot custom home.

Proposed Project

The site is zoned R1 "Single Family Residence", with a CD "Coastal Development" Overlay and an SR "Sign Restrictions" Overlay. A Coastal Development Permit and Site Development Permit are required for construction of the proposed residence and for the grading of more than 500 cubic yards on slopes greater than 30%. Earthwork quantities are an estimated 4,675 cubic yards of raw-cut and export off-site.

A Use Permit is also requested for over-height side retaining walls along both the easterly and westerly property lines, for the side retaining walls, which exceed three feet, six inches, encroaching into the required 20-foot front area setback and for the lookout patio encroaching three-feet into the side area setback along the eastern side of the project site.

The subject site is approximately 9,017 square feet in size, with a depth of approximately 138 feet. Access to the site is from a private gated cul-de-sac (known as Gate 5) along the northern end from Pacific Coast Highway. The property also has access to a private Emerald Bay street at the rear of the property, Emerald Bay Drive.

The custom home includes a garage located on the first level with access from the rear side of the property, off Emerald Bay Drive. The driveway grade is +5.6%, thus it complies with Zoning Code Section 7-9-145.2(e). This first level, referred to as the second basement on the Site Plans, includes the garage with utility room, half bathroom, and storage area. The second level includes a guest area with two bedrooms, living room, two and one-half bathrooms, laundry room, storage area, and powder room. There is also a proposed lawn and barbeque area on the second floor at the southerly end of the project site.

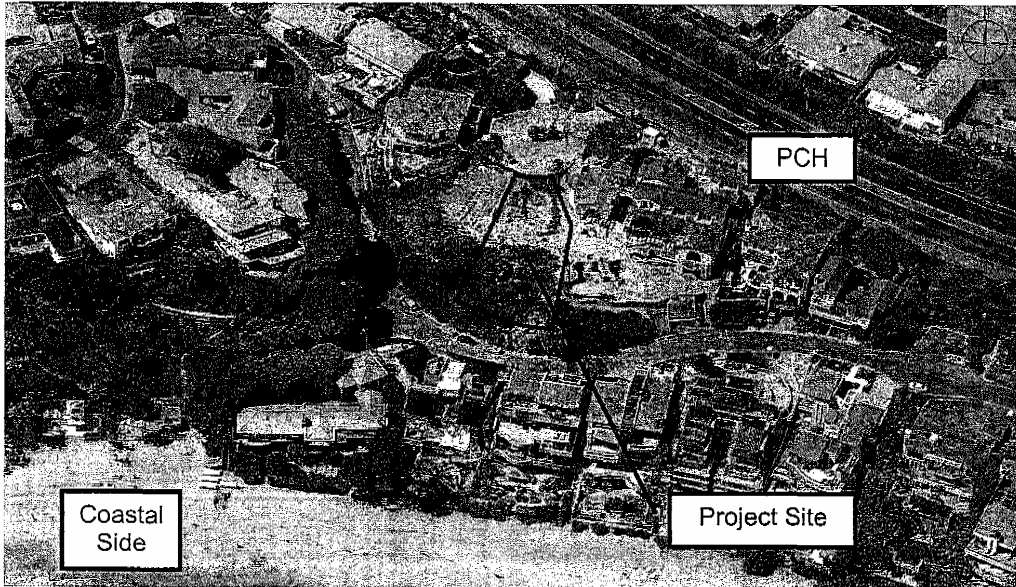
The third level includes a guestroom with full bathroom, a dining area with full kitchen area, pantry room, an office, and the deck, pool and spa. East of the spa is a lookout patio that is elevated slightly higher than the deck, pool, and spa by approximately one and one-half feet and includes glass railing wrapping around the eastern property line, along the front of the lookout patio and western perimeter of the patio. A raised planter separates the paved lookout patio from the glass wall along the eastern property line. The fourth level includes the master bedroom and bathroom with a wardrobe room, an office area, laundry room, and a deck overlooking the south-side of the property. There is a proposed elevator that runs through all four levels. The proposed new dwelling unit complies with the maximum height standard of 35 feet for the R1 District.

SURROUNDING LAND USE:

The subject site and all surrounding properties are zoned R1 "Single Family Residence" District, with a CD "Coastal Development" District Overlay and an SR "Sign Restrictions" Overlay (see photo below). The site is also within a certified Local Coastal Program (Emerald Bay LCP) zoning regulatory area. All properties in Emerald Bay are subject to the CD District of the Zoning Code and development projects are subject to appeal to the Coastal Commission. Surrounding properties are

developed with single family dwellings, with the exception of a vacant lot located to the west, immediately adjacent to the project site.

AERIAL PHOTO OF PROJECT SITE



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REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all property owners of record within 300 feet of the subject site and all occupants of dwellings within 100 feet of the site (Coastal Development Permit requirement) on December 5, 2008. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to County Divisions and the Emerald Bay Community Association. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions. The Emerald Bay Community Association approved the proposal at its September 25, 2007 meeting.

CEQA COMPLIANCE:

Addendum PA070080 to Negative Declaration (ND) No. PA050022/TPM2005-113 has been prepared for the proposed project. Negative Declaration PA050022/TPM2005-113 was approved on November 1, 2005. Both the Addendum and the ND are attached for the Zoning Administrator's consideration (Attachment 2) and must be approved prior to project approval with a finding that it is adequate to satisfy the requirements of CEQA. Appendix A contains the required CEQA finding.

DISCUSSION/ANALYSIS:

Below is a table comparing the development standards for R1 Zoning District with what is being proposed by the applicant:

Project Comparison with “Single Family Residence” District Site Development Standards

STANDARD	PERMITTED	PROPOSED
Building Site Area	7,200 square feet minimum	9,017 square feet
Scenic Roadway Setbacks	None specified	N/A
Structural Front Setback	20'	20'
Structural Side Setback	5' min.	Meets requirement
Structural Rear Setback	25'	Meets requirement
Patio Covers, gazebos	12' in height when within setback areas, 8' in height if within 3' of property line	None proposed
Porches, decks, balconies, exterior steps and stairways	5' less than bldg. front/rear setbacks; 3' less for sides	Lookout patio proposed 2-feet from eastern side property line, exterior stairways greater than 30" proposed in front and side area setbacks.
Maximum Building height	35' max.	Meets requirement
Building Site Coverage	No standard	N/A
Walls in structural setback limits	3.5' max. height in front; 6' max. in sides and rear	Walls greater than 3.5' in front area setback and interior wall heights greater than 8' in side area setbacks.
Walls out of setback limits	35' max. height	Meets requirement
Grading	500 CY max. on sloped sites	4,675 CY raw-cut and export
Height of cut and fill slopes	No standard	N/A
Grading change from natural	No standard	N/A
Contour grading	No standard	N/A
Open space preservation	No standard	N/A
Lighting	Glare limited to site	No light standards requiring a building permit (greater than 6 feet in height) proposed
Parking	2 covered spaces min., plus driveway	Meets requirement
Garage setback	20', or 18' with a roll-up door	Meets requirement

The proposed large customized single family dwelling unit is common in the Emerald Bay community. In addition to a Coastal Development Permit for demolition and construction within the coastal zone, the majority of these applications include a request for a front and/or rear yard setback Variance and a Use Permit for such things as over height walls in the setback area, driveways closer than 20 feet from the right-of-way, etc. In this case, the applicant is not requesting a Variance. However, similar to other applications from residences in the Emerald Bay community, this applicant is requesting a Coastal Development Permit and Site Development Permit for grading more than 500

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PA070080 – Gotschall Residence

Page 5 of 7

cubic yards on slopes greater than 30%, and a Use Permit for over-height walls within the front and side area setbacks and a lookout patio encroaching three feet into the side area setback. A variance is not needed for the proposed project, due to project design and the relatively large lot size.

Potential view impacts are an important consideration in the review of new multi-level homes in Emerald Bay. To ensure protection of view-sheds, Emerald Bay Community Association uses a procedure to establish the location of a structure on a lot based on the location of the structures on either side and to the rear of the property. Moreover, the Scenic Resources section of the Emerald Bay LCP Land Use Plan gives the Emerald Bay Board of Directors the responsibility of ensuring that view opportunities of existing residents are preserved to the maximum extent possible. The proposed structure complies with the R1 District building height limit of 35 feet and the Emerald Bay Community Association approved the proposal at its September 25, 2007 meeting.

Below are design features that planning staff analyzed as part of the review process and wish to bring to the attention of the Zoning Administrator:

Exterior Stairways

The proposed project includes exterior stairways within the front area setback, as well as both side area setbacks. Per Zoning Code Section 7-9-128.6, exterior stairways may not project more than three (3) feet into any required side setback area, and not more than five (5) feet into any required front or rear setback area, but in no event shall such exterior stairways be closer than two (2) feet to any side property line or three feet to any front property line of a building site. The applicant is requesting a Use Permit for the exterior stairways within the front area and side area setbacks because the proposed locations of the stairways exceeds five feet into the required front setback area, and exceeds the allowable three feet into the side setback area (see Attachment 4, Site Plans). As previously mentioned, the Emerald Bay Review Committee approved the design in September 2007. Orange County Fire Authority has also reviewed the project and had no concerns with the proposed exterior stairways.

Lookout Patio

The eastern project site includes a paved lookout patio that is approximately two and one-half (2.5) feet away from the easterly property line at the closest point. The paved lookout patio is separated from the side wall with a raised planter. The patio includes a glass wall that starts from the side wall, wraps around the front of the patio area that overlooks the rear property line, and along the western side of the patio area. There is a raised planter along all three edges of the glass wall. The proposed lookout patio and glass railing are consistent with standards established in the Zoning Code.

Side Walls

The proposed project includes side walls along both the eastern and western property line. At no point will the proposed walls exceed exterior heights of six (6) feet above the adjacent finish grades. However, the interior height will exceed eight (8) feet at various locations. Additionally, the side walls extend into the front setback areas and exceed the allowable height of three and one-half feet within the front setback area. The applicant is requesting a use permit for over-height walls within the front and side setback areas. The applicant submitted a sheet referred to as "Sideyard Wall Requirements" that depicts the wall heights in relation to finish grade for both the neighbors' side and the subject site's finish grade. At one point of the wall along the east side property line, the interior wall reaches a height of approximately 21 feet. This wall height, however, is beyond the

required side setback area, and thus it is consistent with Zoning Code standards. Sheet A-4.1 indicates that it is setback nearly 20 feet from the property line and is above the natural bluff that will be graded to accommodate the proposed residence.

Building Height

The proposed residence is within the maximum allowable height envelope. The sheet titled "Building Height Requirements" indicates that it is just within the 35-foot-height envelope when measured along the west elevation. The eastern side of the project site has a higher topographic elevation, and thus has a higher building height ceiling, ensuring that the proposed residence is well within the allowable height envelope, as depicted on the "Building Height Requirements" sheet (see Attachment 4, Site Plans).

CONCLUSION:

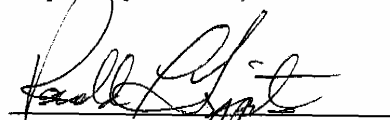
Staff is of the opinion that the design of the applicant's proposed residence is typical of much of the recent construction within the Emerald Bay community. The height meets Zoning Code standards and is within the 35-foot height envelope when measured from the southwestern side (most constrained portion) of the project site, which has the lowest topographic elevation. In conclusion, staff's review determined the applicant's proposed Coastal Development Permit and Site Development for a new single-family dwelling and proposed Use Permit request, subject to the attached Findings and Conditions of Approval, are consistent with other properties previously approved in Emerald Bay. Staff supports the applicant's proposal and makes a recommendation as follows:

RECOMMENDED ACTION:

OC Planning/Land Use Planning recommends that the Zoning Administrator:

- a) Receive staff report and public testimony as appropriate;
- b) Find that Addendum PA070080 to Negative Declaration No. PA070080/TPM2005-113 is adequate and satisfies the requirements of CEQA; and
- c) Approve Planning Application PA070080 for a Coastal Development Permit, Site Development Permit, and Use Permit, subject to the attached Findings and Conditions of Approval.

Respectfully submitted,



Ronald L. Tippetts, Chief
RDMD/Current & Environmental Planning

APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

ATTACHMENTS:

- 1. Applicant's Letter of Explanation
- 2. Environmental Documentation
- 3. Emerald Bay Community Association minutes – September 25, 2007
- 4. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.

In addition, this project is within the Coastal Zone and is an "appealable development". Approval of an appealable development may be appealed directly to the California Coastal Commission, telephone number (562) 560-5071, in compliance with their regulations, without exhausting the County's appeal procedures.



Appendix A Findings PA070080

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- | | | |
|---|---------------------|-----------------|
| 1 | GENERAL PLAN | PA070080 |
|---|---------------------|-----------------|
- That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.
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| 2 | ZONING | PA070080 |
|---|---------------|-----------------|
- That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.
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| 3 | COMPATIBILITY | PA070080 |
|---|----------------------|-----------------|
- That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.
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| 4 | GENERAL WELFARE | PA070080 |
|---|------------------------|-----------------|
- That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
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- | | | |
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| 5 | PUBLIC FACILITIES | PA070080 |
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- That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).
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| 6 | COASTAL DEVELOPMENT PERMIT 1 | PA070080 |
|---|-------------------------------------|-----------------|
- That the development project proposed by the application conforms with the certified Local Coastal Program.
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- | | | |
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| 7 | COASTAL DEVELOPMENT PERMIT 2 | PA070080 |
|---|-------------------------------------|-----------------|
- That the project conforms with the public access and public recreation policies of the California Coastal Act.
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| 8 | COASTAL DEVELOPMENT PERMIT 3 | PA070080 |
|---|-------------------------------------|-----------------|
- That the approval of this application will result in no modification to the requirements of the certified land use plan.
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| 9 | COASTAL DEVELOPMENT PERMIT 4 | PA070080 |
|---|-------------------------------------|-----------------|
- That the approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan.
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NEGATIVE DECLARATION AND

10 ADDENDUM PA070080 (Custom)

That the decision-maker has considered Negative Declaration PA050022/TPM2005-113, previously adopted on November 1, 2005, and Addendum PA070080 prior to project approval. The Addendum is approved for the proposed project based upon the following findings:

- a. Together, these documents are adequate to satisfy the requirements of CEQA by the decision-maker; and
- b. The additions, clarifications, and/or changes to the original document caused by the Addendum do not raise new significant issues that were not addressed by the Negative Declaration; and
- c. The consideration of the Negative Declaration and the approval of the Addendum for the proposed project reflect the independent judgment of the Lead Agency.

11 FISH & GAME - SUBJECT PA070080

That pursuant to Section 711.4 of the California Fish and Game Code, this project is subject to the required fees as it has been determined that potential adverse impacts to wildlife resources may result from the project.

12 NCCP NOT SIGNIFICANT PA070080

That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.

13 FENCE AND WALL 1 PA070080

That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.

14 FENCE AND WALL 2 PA070080

That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

15 SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR PA070080

That the subject project lies within the area of benefit of the San Joaquin Hills Transportation Corridor. In order to find this project consistent with the General Plan and to ensure that the traffic impacts have been adequately mitigated, it is necessary to adopt a condition requiring the developer to participate in the fee program adopted by the Board of Supervisors.



Appendix B Conditions of Approval PA070080

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- 1 CP CP NA BASIC/ZONING REG PA070080**
This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.
-
- 2 CP CP NA BASIC/TIME LIMIT PA070080**
This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.
-
- 3 CP CP NA BASIC/PRECISE PLAN PA070080**
Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.
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- 4 CP CP NA BASIC/COMPLIANCE PA070080**
Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.
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- 5 CP CP NA BASIC/OBLIGATIONS PA070080**
Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.
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- 6 CP CP NA BASIC/APPEAL EXACTIONS PA070080**
Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.
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- 7 F F RBU AUTOMATIC FIRE SPRINKLER SYSTEMS PA070080 (Custom)**
[Res] Service Codes: PR400
A. Prior to the issuance of a building permit, the applicant shall submit plans for any required
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automatic fire sprinkler system in the structure to the Fire Chief for review and approval. Please contact the Orange County Fire Authority at (714) 573-6100 to request a copy of the "Orange County Fire Authority Notes for New NFPA 13 Commercial Sprinkler Systems."

B. Prior to the issuance of a certificate of use and occupancy, this system shall be operational in a manner meeting the approval of the Fire Chief.

8 F F RG FIRE ACCESS ROADS PA070080 (Custom)
[Res] Service Code: PR160 (Emergency Access & Fire Hydrant Locations)

Prior to the issuance of any building permits, the applicant shall obtain approval of the Fire Chief for all fire protection access roads to within 150 feet of all portions of the exterior of the structure. The applicant may contact the OCFA at (714) 573-6100 or visit the OCFA website to obtain a copy of the "Guidelines for Emergency Access."

9 SG SG G GEOLOGY REPORT PA070080

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Subdivision and Grading, for approval. The report shall include the information and be in the form as required by the Grading Manual.

10 BP BP G CONSTRUCTION NOISE PA070080

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permit s Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

11 SG SG B ROAD FEE PROGRAM PA070080 (Custom)

Prior to the issuance of building permits, the applicant shall pay fees for one of the Major Thoroughfare and Bridge Fee Program listed below, in a manner meeting the approval of the Manager, Subdivision and Grading.

- a. Coastal Area Road Improvements and Traffic Signals
- b. El Toro Road
- c. Foothill/Eastern Transportation Corridor
- d. Foothill Circulation Phasing Program
- e. Moulton Parkway/Laguna Niguel Area
- f. Plano Trabuco
- g. Santiago Canyon Road

h. San Joaquin Hills Transportation Corridor

12 SG SG G SIGHT DISTANCE PA070080

Prior to the issuance of any grading permits, the applicant shall provide adequate sight distance per Standard Plan 1117 at all street intersections, in a manner meeting the approval of the Manager, Subdivision and Grading. The applicant shall make all necessary revisions to the plan to meet the sight distance requirement such as removing slopes or other encroachments from the limited use area in a manner meeting the approval of the Manager, Subdivision and Grading Services.

13 BI BI RGB WATER QUALITY MANAGEMENT PLAN PA070080

Prior to the issuance of any grading or building permits, the applicant shall submit for review and approval by the Manager, Inspection Services Division, a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff. This WQMP shall identify, at a minimum, the routine structural and non-structural measures specified in the current Drainage Area Management Plan (DAMP). The WQMP must also:

- Address Site Design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, and conserving natural areas;
- Incorporate applicable Routine Source Control BMPs as defined in the DAMP;
- Include an Operation and Maintenance (O&M) Plan that identifies the mechanism(s) by which long-term O&M of all structural BMPs will be provided.

14 BI BI RGB WQMP FOR PRIORITY PROJECTS PA070080

Prior to the issuance of any grading or building permits, the applicant shall include in the WQMP the following additional Priority Project information in a manner meeting the approval of the Manager, Inspection Services Division:

- Include post-construction Treatment Control BMP(s) as defined in the DAMP;
- For applicants relying on Regional Treatment Controls, discuss applicable regional water quality and/or watershed program;
- Include a Operation and Maintenance (O&M) Plan that (1) describes the long-term operation and maintenance requirements for post-construction Treatment Control BMP(s); (2) identifies the entity that will be responsible for long-term operation and maintenance of the referenced Treatment Control BMP(s); and (3) describes the mechanism for funding the long-term operation and maintenance of the referenced Treatment Control BMP(s).

15 BI BI U COMPLIANCE WITH THE WQMP PA070080

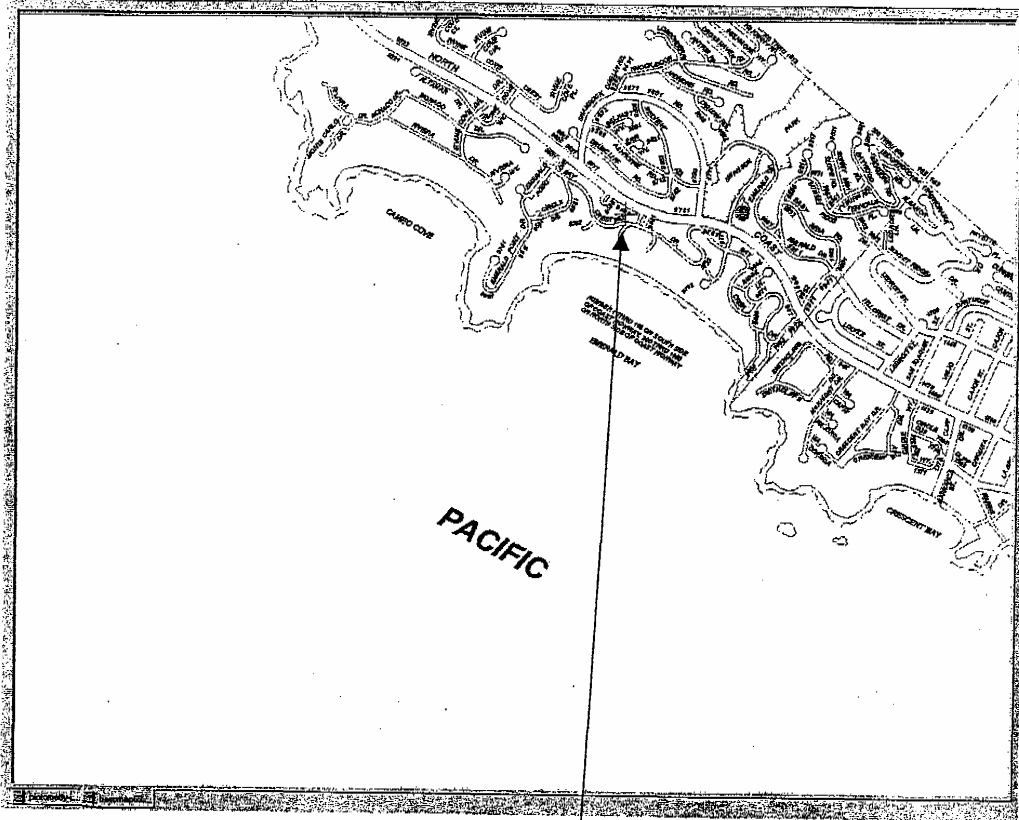
Prior to the issuance of a certificate of use and occupancy, the applicant shall demonstrate compliance with the WQMP in a manner meeting the satisfaction of the Manager, Inspection Services Division, including:

- Demonstrate that all structural Best Management Practices (BMPs) described in the project's WQMP have been implemented, constructed and installed in conformance with approved plans and specifications;
- Demonstrate that the applicant has complied with all non-structural BMPs described in the project's WQMP;
- Submit for review and approval an Operations and Maintenance (O&M) Plan for all structural BMPs for attachment to the WQMP;
- Demonstrate that copies of the project's approved WQMP (with attached O&M Plan) are available for each of the incoming occupants;
- Agree to pay for a Special Investigation from the County of Orange for a date (12) twelve months after the issuance of a Certificate of Use and Occupancy for the project to verify compliance with the approved WQMP and O&M Plan; and
- Demonstrate that the applicant has agreed to and recorded one of the following:
1) the CC&R's (that must include the approved WQMP and O&M Plan) for the project Home Owner's Association; 2) a water quality implementation agreement that has the approved WQMP and O&M Plan attached; or 3) the final approved Water Quality Management Plan (WQMP) and Operations and Maintenance (O&M) Plan.

**16 BI BI GB EROSION AND SEDIMENT CONTROL PA070080
PLAN**

Prior to the issuance of any grading or building permit, the applicant shall submit a Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Building Permit Services, to demonstrate compliance with local and state water quality regulations for grading and construction activities. The ESCP shall identify how all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into local drainages or coastal waters by wind, rain, tracking, tidal erosion or dispersion. The ESCP shall also describe how the applicant will ensure that all BMP's will be maintained during construction of any future public right-of-ways. A copy of the current ESCP shall be kept at the project site and be available for County review on request.

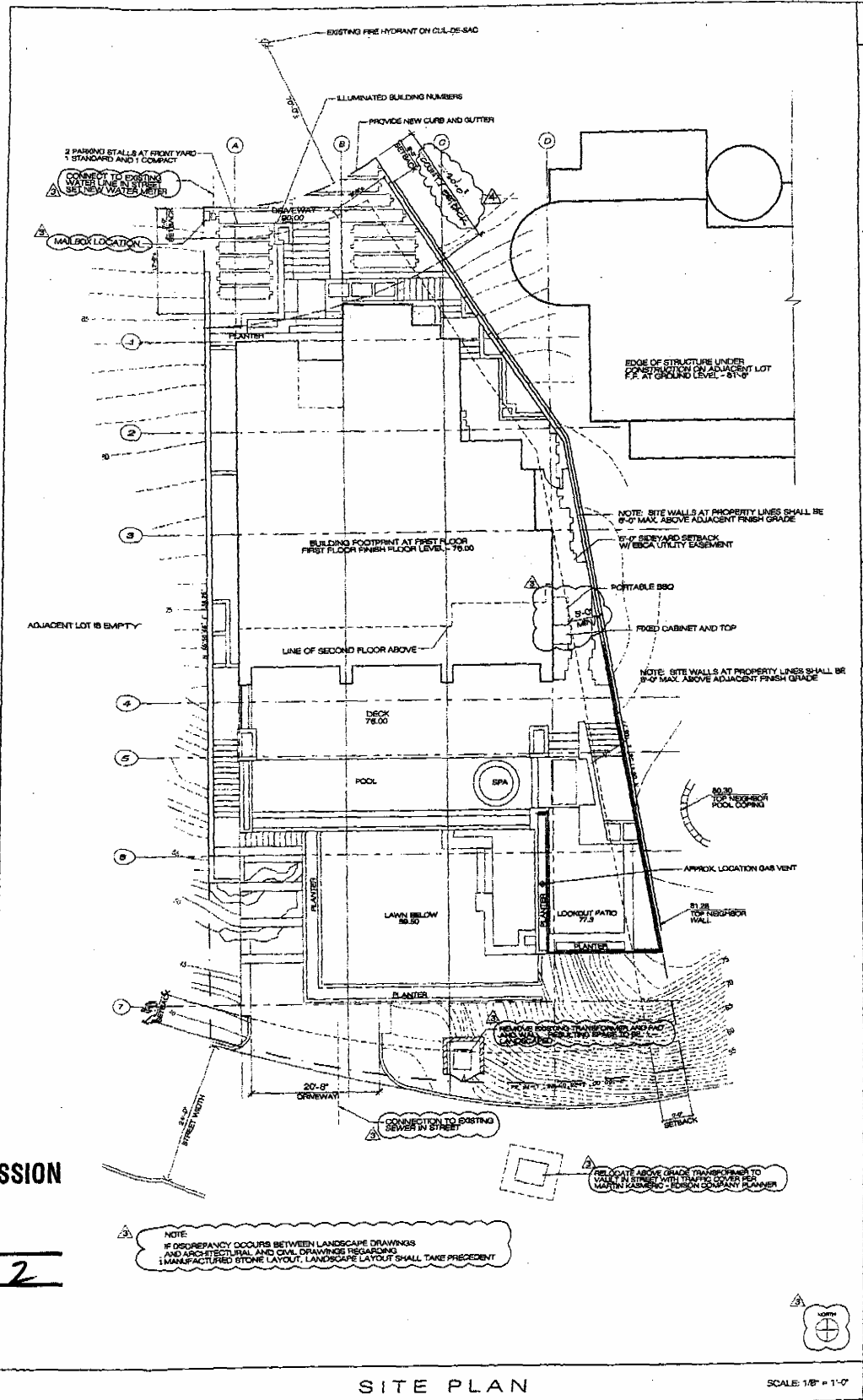
PROJECT LOCATION MAP



PROJECT LOCATION

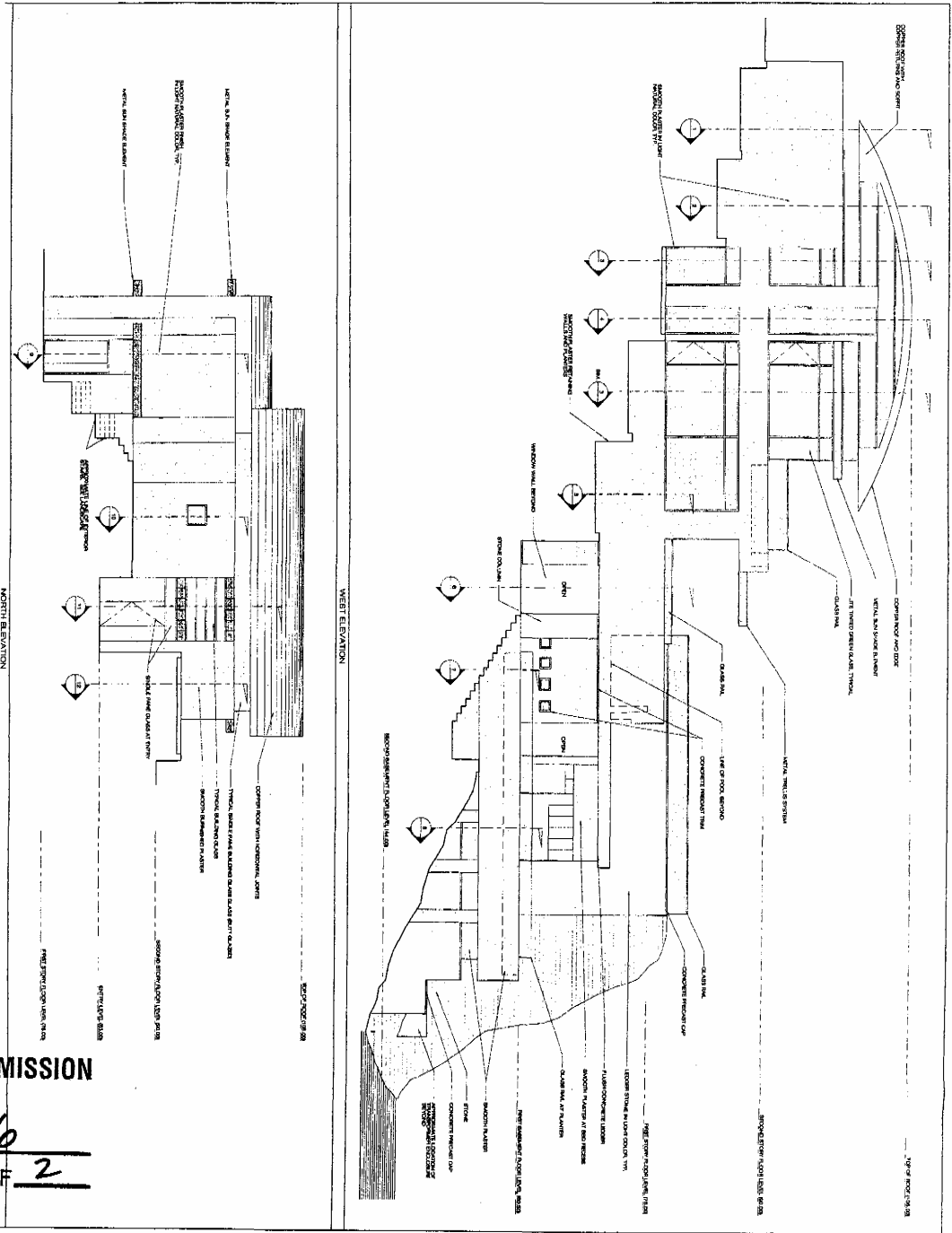
COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 1



COASTAL COMMISSION

EXHIBIT # 5
 PAGE 1 OF 2



COASTAL COMMISSION

EXHIBIT # 6
 PAGE 2 OF 2

<p>PROJECT NO. A-42</p>	<p>PERMISSIONS ELEVATIONS</p>		<p>GOTSCHALL RESIDENCE 107 EMERALD BAY EMERALD BAY LAGUNA BEACH, CA</p>	<p>ARCHITECT LP3 architecture 106 N. COASTAL BLVD. SUITE 201 LAGUNA BEACH, CA 92653 949.433.1100 FAX 949.433.1101 www.lp3arch.com</p>	<p>CONSULTANT</p>	<p>REVISIONS</p>
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