

CALIFORNIA COASTAL COMMISSION

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



Th10a

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SECOND ADDENDUM

May 9, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **SECOND ADDENDUM TO ITEM Th10a, APPEAL NO. A-5-EMB-16-0044 (SCHAEFER) FOR THE COMMISSION MEETING OF THURSDAY, MAY 12, 2016.**

PUBLIC CORRESPONDENCE

Commission staff received one (1) letter from the applicant, John Schaefer, regarding a conversation with an Emerald Bay employee about the supervision of an archaeologist or paleontologist at a construction site within the Emerald Bay community. (Attachment A)

Commission staff received one (1) letter of opposition for the proposed project from Margarita Jerabek. The letter indicates that there was procedural error in the environmental review process for the project Initial Study (IS) and a historical resources assessment and analysis by a qualified architectural historian should have been conducted to comply with CEQA. (Attachment B)

RESPONSE TO OPPOSITION LETTER

The letter raises issues in regards to CEQA (Attachment B). The Commission has no review authority over the County's CEQA determination. The only recourse would be to challenge the County's CEQA determination in a court of law.

The Initial Study, cited by Ms. Jerabek, and the Revised Mitigated Negative Declaration (MND) both identified potential impacts to cultural resources by this project prior to the Coastal Development Permit (CDP) review, and identified the project as having "no impact" in regards to having a substantial adverse change in the significance of a historical or archeological resource. The County of Orange is the lead agency for California Environment Quality Act (CEQA) review, and on October 15, 2015, the County found that the MND was adequate to address all identified impacts including those to cultural resources, and satisfied the requirements of CEQA. The certified Local Coastal Program for Emerald Bay states that historic resources "shall be considered through the development permit review process in accordance with applicable

federal, state and local laws and policies”; the County of Orange accordingly reviewed and adopted the MND findings, and therefore did not violate the LCP.

The existing single-family residence was constructed in 1931, and, therefore, is over 45 years in age. However, records indicate that the house underwent a remodel in 1950. A second remodel was conducted in 1986 under Coastal Development Permit No. 5-86-691 which included first and second floor additions and an interior remodel. Therefore, the original house has been altered on several occasions and its historic integrity has been diminished. In addition, a historic resources survey has not been produced that lists the subject site, 12 Emerald Bay, as a potentially historic resource.

Oshida, Caitlin@Coastal

From: John Schaefer <jschaeferlb@gmail.com>
Sent: Friday, May 06, 2016 1:55 PM
To: Oshida, Caitlin@Coastal
Cc: David Neish
Subject: Archaeologists and Paleontologists

COASTAL COMMISSION

Categories: Examples

EXHIBIT # A
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Caitlin,

I contacted Jill Chambers, AIA, who is employed by Emerald Bay and who administers their architectural program.

In response to my inquiry, she advised me that to her knowledge neither Orange County nor your Commission has ever required review or supervision of a construction project by an archaeologist or a paleontologist. Currently there are 8 new homes under construction in Emerald Bay between Pacific Coast Highway and the ocean.

If you might want to talk to her, she can be reached at 949 494 8573.

Best to you and have a nice weekend.

John

COASTAL COMMISSION

EXHIBIT # B
PAGE 1 OF 6

PCR

May 6, 2016

Mr. Peter Meltzer
15 Smithcliffs Road
Laguna Beach, California 92651

Re: 12 EMERALD BAY, ORANGE COUNTY, CALIFORNIA

Dear Mr. Meltzer,

It appears, in our opinion, that there was a procedural error in the environmental review process for the 12 Emerald Bay project Initial Study (IS) that analyzed the demolition of the existing residence for construction of a new single-family dwelling. The IS should have included an historical resources assessment and analysis of potential project impacts for 12 Emerald Bay ("subject property") by a qualified architectural historian to comply with CEQA. ESA PCR's Historical Resources Division staff meets and exceeds the Secretary of the Interior's Professional Qualifications Requirements for Historians and Architectural Historians (qualifications are attached).

The residence is over 45 years in age, meets the age consideration of the California Register of Historical Resources, appears to have been identified in a previous survey of pre-1940 buildings in the Laguna Beach area conducted by the Environmental Coalition of Orange County in 1980-1981 and, therefore, is considered a potentially eligible historical resource pursuant to CEQA 15064.5. The subject property was designed by master architect Roland Eli Coate, Sr. (1890-1958) in 1931 as a single-family residence and is a rare surviving example of a residence historically associated with the early history and settlement patterns of the Emerald Bay community near Laguna Beach. The subject property would require evaluation prior to approval of any project that could result in a potentially significant impact to an historical resource, such as substantial material change, alteration, or demolition.

On April 4, 2016, Peter Meltzer appealed Local Coastal Development Permit No. PA150024, filed by owner John Schaefer and previously approved by the County of Orange, for the demolition of the residence. The IS for the proposed demolition appears to have considered potential impacts to archaeological resources from ground disturbing activities such as grading and excavation and did not fully assess potential impacts to historic structures. Pursuant to CEQA, historical resources are defined as buildings, structures and sites including built environment buildings and structures, as well as sub-surface historic and pre-historic archaeological artifacts and remains of human cultural activities. The IS states:

The site is not associated with important historic events or persons and is not likely to yield important historic information or artifacts and therefore is not considered a historical resource per CEQA guidelines. The Emerald Bay Community Associated - ARC reviewed and approved the proposed project, within include the demolition of the existing single family residence. The proposed project will not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5. The project site contains an existing residence, constructed in 1931 which will be demolished and replaced with a new single-family dwelling unit. Since the site was previously developed, any historical resources would likely been removed or destroyed with originally developed. The new project would include minimal grading and no known historical resources exist on the site and therefore no impact will occur.

COASTAL COMMISSION

EXHIBIT # B
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PCR

May 6, 2016 - Page 2

In summary, the Emerald Bay Project Initial Study did not fully assess potential impacts to historic structures and therefore does not comply with CEQA. The subject property would require evaluation prior to approval of any project that could result in a potentially significant impact to an historical resource, such as substantial material change, alteration, or demolition. Therefore, ESA PCR recommends that a qualified architectural historian be commissioned to prepare an historical resources assessment and analysis of potential project impacts for 12 Emerald Bay.

Please feel free to contact us if you have any questions or comments.

Sincerely,

ESA PCR



Margarita Jerabek, Ph.D.
Director of Historic Resources



Margarita Jerabek, Ph.D.

ASSOCIATE PRINCIPAL, DIRECTOR OF HISTORIC RESOURCES

SUMMARY

Margarita Jerabek has 25 years of professional practice in the United States with an extensive background in historic preservation, architectural history, art history and decorative arts, and historical archaeology. She specializes in Visual Art and Culture, 19th-20th Century American Architecture, Modern and Contemporary Architecture, Architectural Theory and Criticism, Urbanism, and Cultural Landscape, and is a regional expert on Southern California architecture. Her qualifications and experience meet and exceed the Secretary of the Interior's Professional Qualification Standards in History, Archaeology, and Architectural History. She has managed and conducted a wide range of technical studies in support of environmental compliance projects, developed preservation and conservation plans, and implemented preservation treatment projects for public and private clients in California and throughout the United States.

EXPERIENCE

Dr. Jerabek has prepared a broad range of environmental documentation and conducted preservation projects throughout the Los Angeles metropolitan area and Southern California counties. She provides expert assistance to public agencies and private clients in environmental review, from due diligence through planning/design review and permitting and when necessary, implements mitigation and preservation treatment measures on behalf of her clients. As primary investigator and author of hundreds of technical reports, plan review documents, preservation and conservation plans, HABS/HAER/HALS reports, construction monitoring reports, salvage reports and relocation plans, she is a highly experienced practitioner and expert in addressing historical resources issues while supporting and balancing project goals.

She is an expert in the evaluation, management and treatment of historic properties for compliance with Sections 106 and 110 of the NHPA, NEPA, Section 4(f) of the Department of Transportation Act, CEQA, and local ordinances and planning requirements. Dr. Jerabek regularly performs assessments to ensure conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and assists clients with adaptive reuse/rehabilitation projects by providing preservation design and treatment consultation, agency coordination, legally defensible documentation, construction monitoring and conservation treatment.

She is a regional expert on Southern California architecture. She has prepared a broad range of environmental documentation and conducted preservation projects throughout the Los Angeles metropolitan area as well as in Ventura, Orange, Riverside, San Bernardino and San Diego counties. Beyond her technical skill, Dr. Jerabek is a highly experienced project manager with broad national experience throughout the United States. She currently manages PCR's on-call preservation services with the City of Santa Monica, County of San Bernardino Department of Public Works, City of Hermosa Beach, Los Angeles Unified School District, and Long Beach Unified School District.

Education

- Ph.D., Art History, University of California, Los Angeles, 2005
- M.A., Architectural History, School of Architecture, University of Virginia, Charlottesville, 1991
- Certificate of Historic Preservation, School of Architecture, University of Virginia, Charlottesville, 1991
- B.A., Art History, Oberlin College, Oberlin, Ohio, 1983

Awards/Recognition

- 2014 Preservation Award, *The Dunbar Hotel*, L.A. Conservancy
- 2014 Westside Prize, *The Dunbar Hotel*, Westside Urban Forum,
- 2014 Design Award: *Tongva Park & Ken Genser Square*, Westside Urban Forum
- 2012 California Preservation Foundation Award, *RMS Queen Mary Conservation Management Plan*, California Preservation Foundation

Professional Affiliations

- California Preservation Foundation
- Santa Monica Conservancy
- Los Angeles Conservancy
- Society of Architectural Historians
- National Trust for Historic Preservation Leadership Forum
- American Institute of Architects (AIA), National Allied Member
- American Architectural Foundation
- Association for Preservation Technology



Amanda Kainer, M.S.

SENIOR ARCHITECTURAL HISTORIAN

SUMMARY

Amanda Kainer has more than eight years of professional and academic experience in the practice of historic preservation and architectural history. Ms. Kainer has conducted extensive archival research, field observation, recordation, and prepared survey documentation and assisted in database management for numerous PCR historic resources projects. She has training and substantial experience in the evaluation and conservation of art and architecture and passion for interior design.

EXPERIENCE

Ms. Kainer has completed and co-authored a wide range of architectural investigations including historic resources assessment and impacts analysis reports for compliance with CEQA, character-defining features reports, plan reviews, investment tax credit applications, Section 106 significance evaluations, and HABS documentations. She has also performed extensive research, survey work, and prepared numerous landmark and preliminary assessment reports as a part of PCR's On-Call Historic Preservation Contract with the City of Santa Monica.

She is involved a diverse set of projects and analyses. These include anything from a California Register nomination for the UCLA Faculty Center to a paint analysis for a Churrigueresque style 1920s commercial building in Santa Monica. She has co-authored Section 106 reports for the residential development in Thousand Oaks, Santa Monica Pier, Avalon Fuel Dock on Catalina Island, and a Mid-Century roadside motel in Bakersfield. For LAUSD, Ms. Kainer authored a character-defining features analysis for seven historic schools, provided historic analysis for an MND, and preliminary resource evaluations and plan reviews for various historic schools.

Historic Resources Assessments: Ms. Kainer has contributed to the research, site inspections, and report preparation of a number of historic resources assessments in the Los Angeles metropolitan area for compliance with CEQA. Ms. Kainer has evaluated a number of different types of potential historical resources, including single-family and multi-family residences, banks, commercial buildings, schools, hotels, and cultural landscapes in Beverly Hills, Venice, Los Angeles, and Santa Monica.

Large Scale Survey Experience: She was a contributing author for three major Community Redevelopment Agency of the City of Los Angeles-Adelante Eastside, Wilshire Center/Koreatown, and Normandie 5 Redevelopment Areas. Ms. Kainer also served as PCR Survey Team Leader and co-author for the comprehensive survey of over 4,000 objects of fine and decorative arts aboard the RMS Queen Mary in Long Beach. Additionally, Ms. Kainer helped complete the district-wide survey and evaluation of the Long Beach Unified School District and a windshield survey of Hermosa Beach for the Historic Resources Chapter of the Hermosa Beach General Plan Update.

Education

M.S., Historic Preservation
(Emphasis: Conservation Science),
Columbia University, New York, New
York, 2008

B.S., Design (Emphasis: Interior
Architecture), University of
California, Davis, 2002

B.A., Art History, University of
California, Davis, 2002

Awards/Recognition

Joel Polsky Academic Achievement
Award, American Society of Interior
Designers, 2008

Continuing Education

CEQA and Historic Resources:
Thresholds, Mitigation & Case
Studies, California Preservation
Foundation Workshop, March 2011

Professional Affiliations

California Preservation Foundation

Los Angeles Conservancy

Santa Monica Conservancy
(Volunteer Docent for the Shotgun
House)

Docomomo SoCal

Association of Preservation
Technology Western Chapter



Christian Taylor, M.H.P.

ASSISTANT ARCHITECTURAL HISTORIAN

SUMMARY

Christian Taylor is a historic resources specialist with academic and professional experience in assessing historic structures and contributing to California Environmental Quality Act (CEQA)-level documents.

With completion of his Master's Degree imminent, Mr. Taylor will continue to hone his skills in Management of rehabilitation and restoration projects, preparation of documentation of historic contexts, and the use of non-invasive material investigation methods.

EXPERIENCE

Working for the California Department of Parks & Recreation (DPR), restoration contractors, and environmental consultants, Mr. Taylor has become versed in the research, writing, and assessment of historic resources from the public and private perspective.

Serving first as a History Intern and then Interpretive Specialist for the DPR, Mr. Taylor served as the lead representative for the Crystal Cove State Historic Park during the second phase of the cottage restoration project program. His primary role was to liaise with contractors ensure the project met both the Parks Department and Secretary of the Interior's Standards. Also with the DPR,

Mr. Taylor worked alongside resident historians to organize the contributing documentation and assist with the historic landscape report documenting La Purisima Mission's structures and their significance in relation to the original restoration work done in the 1930s.

Mr. Taylor also familiarized himself with historic restoration field through the preparation of thousands of pages of documentation associated with the Wilshire Temple and Atascadero City Hall projects.

While with PCR, Mr. Taylor has performed architectural history research, survey and assessment work for the Hermosa Beach General Plan Update, the Capitol Mills project in Los Angeles, and assisted with historic resources assessments for a commercial property and an education center in West Hollywood, as well as multiple residential properties in Venice and Los Angeles.

RESEARCH PROJECTS

Mission La Purisima: Civilian Conservation Corps Historic Garden and Cultural Landscape Report, California Department of Parks and Recreation, January 2011

Manufacturing America: Alexander Hamilton's Efforts to Industrialize the Nation, University of Southern California, November 2009

Sculpting Liberty: Augustus Saint-Gaudens's Standing Lincoln, University of Southern California, May 2010

Googie: Unsavory Design or Tasteless Inspiration?, University of Southern California, May 2009

The Shankland House, 715 West 28th Street: Assessment of Materials and Recommendations for Treatment and Maintenance (Metal), University of Southern California, May 2009

Education

Master's Degree, Historic Preservation, University of Southern California, Los Angeles, 2015

B.A., History, University of Oklahoma, Norman, 2008



Adam F. Rajper

ARCHITECTURAL HISTORIAN TECHNICIAN

SUMMARY

Adam Rajper is an architectural historian experienced in the research and education of cultural resources in the United States and abroad. His combination of degrees provides him with a broad and advantageous skill set, including strong documentation and research skills, as well as the ability to approach preservation from an interdisciplinary perspective.

EXPERIENCE

Mr. Rajper has worked as an assistant in architectural firms throughout Southern California, most recently KTG Group, Inc. in Irvine, as well as a preservation consultant in South Asia and the Middle East. While receiving his architectural training, Mr. Rajper interned at the Los Angeles Conservancy where he helped prepare National Register Nominations.

Mr. Rajper has a strong interest in the history and theory of historic preservation, both in the United States and abroad. In 2012, he completed a course offered by the Critical Conservation Program at Harvard's Graduate School of Design and taught by Philadelphia-based architects and cultural and architectural historians, Susan Snyder and Dr. George Thomas. As part of that course, Mr. Rajper examined the origins of the preservation movement in the American Southwest, including Southern California. Mr. Rajper also has a passion for earthen architecture. As a graduate student, he documented historic mud brick palaces in Tarim, Yemen under the auspices of the Samuel H. Kress Foundation and Columbia University. He has conducted extensive research on adobe buildings throughout Southern California and is currently receiving training in earthen construction through Adobe in Action, a New Mexico-based non-profit organization.

In addition to his experience in architecture and preservation, Mr. Rajper has taught undergraduate and graduate seminars on architectural history in Cairo, Egypt. He has also worked as a research and teaching assistant, under the direction of faculty affiliated with the History, Theory, and Criticism of Architecture Program at the Massachusetts Institute of Technology. At Columbia, he focused on architectural conservation and studied under noted conservators, Dr. George Wheeler and Norman Weiss.

Education

M.S. Historic Preservation, Columbia University, New York, New York, 2008

Bachelor of Architecture, California State Polytechnic University, Pomona, 2004

Professional Affiliations

Preservation Alumni
Society of Architectural Historians

Awards/Recognition

Robert C. Weinberg Award for Excellence in Preservation Planning and Design, 2008

William Kinne Fellows Traveling Prize, 2008

Alpha Rho Chi Medal for Leadership, Service, and Merit, 2004

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Th10a

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ADDENDUM

May 6, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **APPEAL NO. A-5-EMB-16-0044 (Schaefer) FOR THE COMMISSION MEETING OF THURSDAY, MAY 12, 2016.**

PUBLIC CORRESPONDENCE

Commission staff received one (1) letter from the appellant's agent demonstrating opposition for finding a no substantial issue with regard to the grounds on which the appeal was filed. Commission staff received two (2) letters supporting the project and a finding of no substantial issue from the applicant and the applicant's agent.



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C: 949.290.0210 O: 949.494.5141 F: 949.613.7346
EMAIL: STEVEKAWARATANI@ME.COM

April 29, 2016

Via Email : Caitlin Oshida – caitlin.oshida@coastal.ca.gov

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Appeal No. A-5-EMB-16-0044 (12 Emerald Bay)

Dear Commissioners:

This is an addendum to the appeal filed by Peter Meltzer. After review of the Staff Report, I respectfully believe that Staff has erred, and that **Substantial issues** exist.

The Orange County-approved development **does not conform** to the standards set forth in the certified Emerald Bay Local Coastal Program (LCP). **Substantial issues exist** with respect to whether the local government action conforms with the LCP polices addressing cultural resources, scientific resources, historic resources and scenic resources as set forth in the Emerald Bay certified LCP. Further, there was a procedural error in the environment review process for the Initial Study (IS) that analyzed the demolition of the existing Residence for construction of a new single-family dwelling. The IS should have included a historical resources assessment and analysis of potential Project impact for the Subject Property by a qualified architectural historian to comply with the California Environmental Quality Act (CEQA). The IS also should have included an archaeological resources assessment and analysis pursuant to Section 15064.5 of the CEQA Guidelines.

The underlying objectives of the County's Emerald Bay LCP are to:

- Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses.

The Coastal Act provides policy guidelines for the protection of a broad range of environmental elements including cultural and historic resources. Cultural and historic resources are addressed

in Section 30244 which requires analysis and mitigation measures in conjunction with development that will have an adverse impact.

Substantial Issue Analysis

The approved plan does not conform to the standards set forth in the certified Emerald Bay LCP. **Substantial issues** exist with respect to whether the local government action conforms with the policies addressing cultural resources, scientific resources and historic resources as set forth in the Emerald Bay certified LCP for the reason set forth below.

Historic Resource

The Emerald Bay LCP states “The historic resources in the area consist of several Mediterranean Revival style dwelling built circa 1930. These buildings were recognized as **significant** by the Environmental Coalition of Orange County in its 1981 survey of the Laguna Beach area.”

The existing structure is over 45 years in age, meets the age consideration of the California Register of Historical Resources, was identified in a previous survey of pre-1940 buildings in the Laguna Beach area conducted by the Environmental Coalition of Orange County in 1980-81 and, therefore, is considered a potentially eligible historical resource pursuant to CEQA 15064.5. The subject residence was designed by master architect Roland Eli Coate, Sr. (1890-1958 in 1931 as a single-family residence and is a rare surviving example of a beach cottage historically associated with the early history and settlement patterns of the Emerald Bay community. Designed in the Monterey Revival style, the Residence was originally one and two stories and had a shallow, L-shaped plan. Thus, the Subject Property requires evaluation prior to approval of any project that could result in a potentially significant impact to a historical resource, such as substantial material change, alteration or demolition.

Emerald Bay LCP Land Use Policy E 4 (a) entitled “*Cultural/Scientific/Historic Resources*” states “Cultural/Scientific/Historic Resources, including archaeological, paleontological and historic resources shall be considered through the development permit review process in accordance with applicable federal, state and local laws and policies. Said resources shall be identified, evaluated, preserved or investigated accordingly.”

The environment work (IS and Mitigated Negative Declaration) which the County of Orange relied on for the approval of the project **did not address or evaluate these potential cultural and historic resources.**

As noted on page 10 of the Coastal Commission staff report, the referenced “Laguna Beach Historic Resources Inventory” only includes structures located within the jurisdictional boundaries of the City of Laguna Beach. It is believed the Emerald Bay LCP references a different historic assessment. As required by the Emerald Bay LCP policies, historic resources

shall be considered through the development permit review process in accordance with applicable federal, state and local laws and policies. Said resources shall be identified, evaluated, preserved or investigated accordingly.

Pursuant to the Emerald Bay LCP, the Coastal Act and CEQA, historic resources are significant coastal resources, and **were not adequately considered, evaluated, or investigated** during the development permit review process. The IS should have included a historical resources assessment and analysis of potential Project impact for the Subject Property by a qualified architectural historian to comply with the California Environmental Quality Act (CEQA). The County-approved development **does not conform** to the standards set forth in the certified Emerald Bay LCP, the Coastal Act or CEQA, therefore a **substantial issue exists**.

Cultural Resource

Emerald Bay LCP Land Use Plan Section II (A) (5) states “the LCP area is underlain by sedimentary bedrock units for the Miocene period which are considered to be of moderate to high paleontologic sensitivity.” In addition, two archaeological sites are known to exist near the project area. County records indicate that shell midden, a mano, scraper, a “rubbing stone” and a “mawl stone,” and various species of marine shellfish have been found. Pursuant to the Emerald Bay LCP Land Use Plan “all reasonable and proper step be taken to achieve the preservation of archaeological and paleontological remains, or in the alternative, their recovery, identification and analysis, so that their scientific and historical values area preserved.”

Emerald Bay LCP Land Use Policy E 4 (a) entitled “*Cultural/Scientific/Historic Resources*” states “Cultural/Scientific/Historic Resources, including archaeological, paleontological and historic resources shall be considered through the development permit review process in accordance with applicable federal, state and local laws and policies. Said resources shall be identified, evaluated, preserved or investigated accordingly.” Further, Emerald Bay LCP Land Use Policy E 4 (b) requires the project applicant to provided written evidence to the County prior to the issuance of a permit that a County-certified archaeologist has been retained and procedures for archaeological resource surveillance have been established.

Pursuant to the Emerald Bay LCP and the Coastal Act, cultural resources, including archaeological and paleontological resources are significant coastal resources, and were not adequately considered or addressed during the development permit review process. The IS should have included an archaeological resources assessment and analysis pursuant to Section 15064.5 of the CEQA Guidelines. The County-approved development **does not conform** to the standards set forth in the certified Emerald Bay LCP, the Coastal Act or CEQA, therefore a **substantial issue exists**.

Cultural/Scientific/Historic Resources

Emerald Bay LCP and Land Use Plan further addresses cultural, scientific and historic resources, Section II (D) (4) (a-c) requires the following:

- a. Cultural/Scientific/Historic Resources, including archaeological, paleontological and historic resources, shall be considered through the development permit review process in accordance with applicable federal, state and local laws and policies. Said resources shall be identified, evaluated, preserved or investigated accordingly.
- b. Prior to the issuance of a grading permit, the project applicant shall provide written evidence to the Chief, EMA/Regulation/Grading Section that a County-certified archaeologist has been retained, shall be present at the pre-grading conference, shall establish procedures for archaeological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts as appropriate. If additional or unexpected archaeological features are discovered, the archaeologist shall report such findings to the project developer and to the Manager, Harbors, Beaches and Parks/Program Planning Division. If the archaeological resources are found to be significant, the archaeologist observer shall determine appropriate actions, in cooperation with the project developer, for exploration and/or salvage. Excavated finds shall be offered to County of Orange, or designee, on first refusal basis. Applicant may retain said finds if written assurance is proved that they will properly preserved in Orange County, unless said finds are of special significance, or a museum in Orange County indicated desire to study and/or display them at this time, in which case items shall be donated to County, or designee. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Manager, Harbors, Beaches and Parks/Program Planning Division.
- c. Prior to issuance of a grading permit, the project applicant shall provide written evidence to the Chief, EMA/Regulation/Grading Section that a County-certified paleontologist has been retained to observe grading activities and salvage fossils as necessary. The paleontologist shall be present at the pre-grading conference, shall establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils. If major paleontological resources are discovered, which require long-term halting or redirecting of grading, the paleontologist shall report such findings to the project developer and to the Manager, Harbors, Beaches and Parks/Program Planning Division. The paleontologist shall determine appropriate action, in cooperation with the project developer, which ensure proper exploration and/or salvage. Excavated finds shall be offered to County of Orange, or designee, on a first refusal basis. Applicant may retain said finds if written assurance is provided that they will be properly preserved in Orange County, unless said finds are of special significance, or a museum in Orange County indicates desire to study and/or display them at this time, in which case items shall be donated to County, or designee. These actions, as well as final mitigation and disposition of the resources shall be subject to approval by the Manager, Harbors, Beaches and Parks/Program Planning Division, which shall

include the period of inspection, analysis of the fossils found, and present repository of the fossils.

Pursuant to the Emerald Bay LCP and the Coastal Act, cultural, scientific and historic resources, including archaeological, paleontological and historic resources are significant coastal resources, and were not adequately considered or addressed during the development permit review process. As such, the County-approved development **does not conform** to the standards set forth in the certified Emerald Bay LCP, the Coastal Act or CEQA. The IS should have included an archaeological resources assessment and analysis pursuant to Section 15064.5 of the CEQA Guidelines. Therefore, **substantial issues exist** with respect to whether the local government action conforms with the LCP polices, Coastal Act and CEQA by failing to address cultural resources, scientific resources and historic resources as set forth in the Emerald Bay certified LCP, the Coastal Act and CEQA.

Scenic Resources

Scenic and visual qualities of the coastal zone are protected as a resource under Section 30251 of the Coastal Act. New 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. The not adequately considered or addressed during the development permit review process. Section II 4 of the Emerald Bay LCP address scenic resources. The last policy in this section states “Ensure that existing ocean views of surrounding property owners within the community are preserved.” The proposed project significantly blocks white water and ocean views from several homes within the Smithcliffs neighborhood. The significant scenic and visual impact of the project to the Smithcliffs neighborhood was never considered or address during the development permit review process. Therefore, **substantial issues exist** with respect to whether the local government action conforms with the LCP polices, failing to address scenic resources as set forth in the Emerald Bay certified LCP,

California Environmental Quality Act

Section 13096(a) of the Coastal Commission’s administrative regulation requires Commission approve Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5(d) (2) (A) of CEQA prohibits ad proposed development from being approved if there are feasible alternatives or feasible mitigation measures. There was a procedural error in the environment review process for the IS. The IS should have included a historical resources assessment and analysis of potential Project impact for the Subject Property by a qualified architectural historian to comply with CEQA. The IS also should have included an archaeological resources assessment and analysis pursuant to Section 15064.5 of the CEQA Guidelines.

Cultural, scientific and historic resources, including archaeological, paleontological and historic resources were not adequately considered during the CEQA evaluation or addressed during the

development permit review process, therefore the project **does not conform** to CEQA. **Substantial issues exist** with respect to consistency with CEQA requirements.

Conclusion

Pursuant to the Emerald Bay LCP and the Coastal Act, cultural, scientific, historic and scenic resources, including archaeological, paleontological and historic resources are significant coastal resources, and CEQA were not adequately considered or addressed during the development permit review process. As such, the County-approved development **does not conform** to the standards set forth in the certified Emerald Bay Local Coastal Program (LCP), the Coastal Act and the CEQA.

The action of the local government (County of Orange) was inconsistent with numerous policies of the certified LCP, the provisions of the Coastal Act and the California Environmental Quality Act. The facts or lack of facts provided in the application file for the approved development clearly demonstrate that the local government's decision was inconsistent with the legal provisions of the Emerald Bay LCP, the Coastal Act and CEQA.

Substantial issues exist with respect to whether the local government action conforms with the LCP polices addressing cultural resources, scientific resources and historic resources as set forth in the Emerald Bay certified LCP, the Coastal Act and the CEQA. In addition, there were procedural errors in the environment review process for the Initial Study (IS).

In closing, we respectfully request the Coastal Commission determine **substantial issues exists** with respect to the grounds on which the appeal has been filed under the Coastal Act regarding consistency with the certified Local Coastal Plan, the Coastal Act and CEQA.

Sincerely,

A handwritten signature in black ink that reads "Steve Kawaratani". The signature is written in a cursive, flowing style.

Steve Kawaratani

John Schaefer

May 5, 2016

Via Email: Caitlin Oshida -- caitlin.oshida@coastal.ca.gov

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Appeal #A-5-EMB-16-0044 / 12 Emerald Bay, Laguna Beach

Dear Commissioners:

At 11:06 am this morning, my consultant, David Neish, received a six-page letter via email forwarded by Ms. Oshida. The letter was written by Steve Kawaratani on behalf of the Appellant, Peter Meltzer. As has been the case since last October, all appeals have been submitted on the last day.

For the record, during the six-month appeal process in Orange County, the Appellants never included any reference to Historic Resources or Cultural Resources in their three, previous written appeals. Only during the last one minute of verbal testimony before the Orange County Board of Supervisors did Mr. Meltzer's attorney, Larry Nokes, make a passing reference to my home as a "historic" home. Now, this alleged special circumstance is the central focus of this latest, written appeal.

Not only are the issues of Cultural and Historic Resources entirely new, but all of these new claims are either invalid or not applicable. Some specific comments on Mr. Kawaratani's letter follow:

1. Cultural and Historic Resources issues are thoroughly addressed on pages 9 - 11 of the Commission's Staff Report. I completely agree with the Staff's review of the facts and their recommendation.
2. On page 10 of the Staff Report, is the following sentence: "However, the Inventory does not recognize 12 Emerald Bay (project location) as one of the 706 identified structures" (referring to the Laguna Beach Historic Resources Inventory). Apparently Mr. Kawaratani is inventing his own set of facts.
3. My house was completed in 1932. However, it has been through two previous remodels. The most significant remodel was in 1987 where the footprint was greatly expanded -- almost 1000 ft2 of living space was added, new roof line was added, all doors and windows were replaced, and the two-car garage was expanded to a four-car garage. The house today is significantly larger and different than it was in 1932. Does Mr. Kawaratani want us to preserve a 1987 house as a "Historic Resource?"
4. Regarding archaeological and paleontological resources, there is only a passing reference to these resources in the Emerald Bay LCP. And, Mr. Kawaratani's letter states that these two sites are "near" the project area, not within the project area. The proposed house is a remodel. Virtually the entire site was excavated 85 years ago. The proposed house will be built on the same footprint as the existing house, adding only about 200ft of new footprint, and using most of the existing foundations.

12 Emerald Bay, Laguna Beach, CA 92651

5. Regarding the alleged issue of Scenic Resources, were Mr. Kawaratani more forthcoming, he would acknowledge that this seven-month long appeal process has been really about one issue -- Mr. Meltzer's objection to one chimney. The proposed remodel has essentially the same ridge lines as the current house, but the new chimneys are slightly higher due primarily to the impact of modern building codes which are required by the County. Further, regarding alleged view issues:

a. Throughout the process since Mr. Meltzer's first appeal in October, 2015, Mr. Meltzer has failed to provide any proof of view impairment. This was noted for the record by the Chairman of the Planning Commission during that hearing on December 9, 2015.

b. After reviewing all of the facts, the Orange County Planning Department issued several Staff Reports, which were prepared jointly by the Planning Department and County Counsel. Under their section entitled "CEQA issues" were two key findings:

-- "no impact is anticipated on scenic resources (including trees, rock outcroppings and historic buildings) or adjacent residential properties," and

-- "there are no County regulatory documents (e.g. Zoning Code; Emerald Bay Local Coastal Program) that provide the county regulatory oversight for the protection of view sheds or view corridors upon private properties."

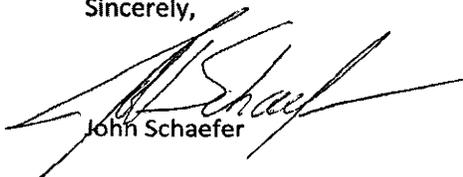
c. The Emerald Bay Architectural Committee specifically reviewed Mr. Nokes February 2, 2015 letter on behalf of Mr. Meltzer and determined that there was no significant view impact (this is noted in the project approval letter from the Emerald Bay HOA). The Emerald Bay HOA is bound by both the LCP and its CC&Rs. Per the Board of Directors of Emerald Bay and the County Staff, this project is in full compliance with all requirements. This project requires no variances of any type.

Since October, 2015 when they filed their first complaint with the County of Orange, the Appellant and his surrogates have explicitly promised to harass me on multiple occasions. They continue to fulfill that commitment. It has been a long, arduous, worrisome and expensive process.

I believe that this is another, meritless appeal and continuation of gross abuse of the administrative review process by the Appellant. Further, it is a sad misuse of valuable State and County resources.

I respectfully ask the each of the Commissioners follow the clear, unqualified recommendations of your Staff and determine that NO SUBSTANTIAL ISSUE exists.

Sincerely,



John Schaefer

12 Emerald Bay, Laguna Beach, CA 92651



May 5, 2016

Caitlin Oshida
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

SUBJECT: ***APPEAL NO. A-5-EMB-16-0044/ 12 EMERALD BAY, LAGUNA BEACH***

Dear Commissioners:

As we have advised the Commission Staff in the Long Beach office, I am representing John Schaefer and his family, owner of 12 Emerald Bay, in his efforts with regard to the referenced appeal of the March 22, 2016 unanimous decision by the Orange County Board of Supervisors regarding Mr. Schaefer's home.

This appeal to the Coastal Commission was filed on April 4, 2016 by a neighbor, Peter Meltzer. A Staff Report was issued on April 21, 2016. We very much appreciate the unqualified recommendation by the Staff that the Commission determine that the appeal raises NO SUBSTANTIAL ISSUE.

We found that the Staff was very thorough in their review of all of the information provided by the County of Orange, including actions taken by the Emerald Bay HOA, in administering their LCP. Further, the Staff investigated the erroneous new claim from the Appellant that Mr. Schaefer's home was an "historic resource" listed in a 1981 survey of the Laguna Beach area. This claim is baseless.

We would also like you to know, throughout the process since Mr. Meltzer's first appeal to the County of Orange in October, 2015, Mr. Meltzer has failed to provide any proof of view impairment.

After reviewing the evidence, the Orange County Staff Report, prepared jointly by the Planning Department and County Counsel, under their "CEQA issues" section included the following language:

-- "no impact is anticipated on scenic resources (including trees, rock outcroppings and historic buildings) or adjacent residential properties," and

-- "there are no County regulatory documents (e.g. Zoning Code; Emerald Bay Local Coastal Program) that provide the county regulatory oversight for the protection of view sheds or view corridors upon private properties."

We are seeking a determination of NO SUBSTANTIAL ISSUE by the Commission at your next hearing, scheduled for May 12, 2016. We are happy to provide any additional information that might be helpful to you or to the Staff.

Sincerely,

A handwritten signature in blue ink that reads "David B. Neish".

David B. Neish
D.B. Neish, Inc.
President

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

Th10a



Appeal Filed: 04/04/16
49th Day: 05/23/16
Staff: C. Oshida-LB
Staff Report: 04/21/16
Hearing Date: 05/12/16

STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal Number: A-5-EMB-16-0044

Applicant: John Schaefer

Local Government: County of Orange

Local Decision: Approval; no special conditions

Appellant: Peter Meltzer

Project Location: 12 Emerald Bay, Emerald Bay, Unincorporated Orange County

Project Description: Appeal of County of Orange approval of Local Coastal Development Permit No. PA150024 for the demolition of 3,833 sq. ft. two-story, single-family residence (except for portions of the existing subterranean garage, driveway, and landscaping); and construction of a 4,348 sq. ft. two-story single-family dwelling. Approximately 180 cu. yds. of grading is proposed.

Staff Recommendation: No Substantial Issue

IMPORTANT NOTE: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that the appeal raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed. The appeal raises no substantial issue regarding whether the City-approved development conforms with the Emerald Bay Local Coastal Program (LCP) because the local government's approval of the proposed project is consistent with the historical preservation and scenic view policies of the certified LCP.

A-5-EMB-16-0044 (Schaefer)
Appeal – No Substantial Issue

The subject site is located on the seaward side of Pacific Coast Highway (PCH) within Emerald Bay, a private, locked gate community of single family residences located on the coast at the northern boundary of Laguna Beach. All roads and recreational amenities within the community are owned and maintained by Emerald Bay Community Association. The subject development is a proposal for the demolition of a two-story, single family residence and construction of a new two-story, single family residence while maintaining portions of the existing subterranean garage, driveway, and street frontage landscaping. The site is located in an area where development approved by the County pursuant to its certified Local Coastal Program (LCP) is appealable to the Coastal Commission and is not located between the edge of the bluff and the first road (**Exhibit 1**).

The appellant contends that the project approved by local action is inconsistent with the Emerald Bay certified Local Coastal Program (LCP) for the following reasons: a) Cultural and historic resources are being replaced by new construction without consideration of whether that replacement will have an adverse impact on the environment; b) Existing views from adjacent properties were not considered and, therefore, were not protected or enhanced; and c) While the structure was identified by the applicant, his architect and his lawyer to be “historic,” the record contains no information at all that it was evaluated as required by the LCP.

In this case, there is factual and legal support for the local government’s decision regarding this project’s impacts on the environment, and policies on private viewsheds and historic resources. Therefore, the appeal raises no substantial issue regarding conformity of the locally approved development with the LCP. Therefore, staff is recommending that the Commission find that no substantial issue exists with respect to the grounds upon which the appeal was filed.

If the Commission adopts the staff recommendation, the Commission will not hear the application de novo and the local action will become final and effective. The **motion** to carry out the staff recommendation is on **page 4** of this report.

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APPENDICES

Appendix A - Substantive File Documents

EXHIBITS

- Exhibit 1 – Project Location & Vicinity Map
- Exhibit 2 – Photo of Subject Site
- Exhibit 3 – Appeal
- Exhibit 4 – Local Government Action/Findings (NOFA)

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-5-EMB-16-0044 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

RESOLUTION:

*The Commission hereby finds that Appeal No. A-5-EMB-16-0044 presents a **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANT’S CONTENTIONS

On March 25, 2016, the Commission received a valid notice of final local action for Local Coastal Development Permit (CDP) No. PA150024, which approves the demolition of a two-story single-family residence, while maintaining portions of the existing subterranean garage, driveway and street frontage landscaping, and constructing a new two-story, 4,348 square foot, single family residence. Approximately 180 cubic yards of grading is also proposed for this project.

On April 4, 2016, within 10 working days of receipt of notice of final local decision, Peter Meltzer filed an appeal of the local CDP alleging that the proposed project poses potentially adverse impacts to the cultural and historic resources at the project site and to ocean views from adjacent properties.

The appellant’s appeal states the following (**Exhibit 3**):

This project does not conform to the standards set forth in the certified Local Coastal Program (“LCP”) for Emerald Bay. The LCP was violated in at least the following respects:

1. Cultural and historic resources are being replaced by new construction without consideration of whether that replacement will have an adverse impact on the environment;
2. Existing views from adjacent properties were not considered and, therefore, were not protected or enhanced, as required by the LCP;
3. The home is one of several Mediterranean Revival-style dwellings built circa 1930. The LCP specifically state that “these buildings were recognized as significant by the Environmental Coalition of Orange County in its 1981 survey of the Laguna Beach area.” According to the LCP. “...historic resources shall be considered through the development permit process in accordance with applicable federal, state and local laws and policies. Said resources shall be identified, evaluated, preserved or investigated accordingly.” While

this structure was identified by the applicant, his architect and his lawyer to be “historic,” the record contains no information at all that it was evaluated as required by the LCP.

No other appeals were received prior to the end of the appeal period on April 11, 2016.

III. LOCAL GOVERNMENT ACTIONS

On March 4, 2015, an application for Coastal Development Permit (CDP) PA150024, for the partial demolition of the existing single family dwelling and construction of a new two-story 4,348 square foot single family residence, which includes maintaining portions of the existing subterranean garage, driveway, and existing street frontage landscaping, was submitted for review (**Exhibit 4**). The project was reviewed by the Emerald Bay Architectural Review Committee on May 26, 2015, and was given final approval by the Emerald Bay Community Association (EBCA) Board of Directors on June 2, 2015. The committee reviews construction and landscape plan proposals to (1) ensure project conformity with recorded restrictions; (2) ensure project compatibility with the architectural design and character of the community; and (3) ensure that existing ocean views of surrounding property owners within the community are preserved. This process is conducted prior to CDP review and processing.

On September 18, 2015, the County prepared a Mitigated Negative Declaration (MND) for CDP No. PA150024 and posted it for public review and comment. The MND presented findings related to the environmental conditions for the project area and included mitigation measures, where necessary, in the project to avoid potentially significant effects.

On October 15, 2015, the public hearing for this project was held by the County of Orange Zoning Administrator. Property owners at 11, 15, and 17 Smithcliffs in Laguna Beach (community known as Smithcliffs located east of the subject property) expressed their objection to the proposed development, stating that the project should be denied based on several key issues, including the Smithcliffs residents did not get notified of the proposed development by the EBCA or as part of the CEQA process and the project will cause significant impact to their private beach and ocean views. After hearing the presentation and testimony on this project, the Zoning Administrator approved the CDP for the development.

On October 29, 2015, the County received a Notice of Appeal from the property owners at 11, 15, and 17 Smithcliffs, Laguna Beach. The appeal letter requested that the Zoning Administrator’s approval of CDP No. PA150024 be overturned on the grounds that (1) noticing regarding the project was flawed since only Emerald Bay residents, and not adjacent Smithcliffs residents were notified of the public hearings regarding the project; (2) the Zoning Administrators findings were flawed because they did not consider the effect of the project on the Smithcliffs residents; and (3) the adoption of the MND was improper because the project results in significant environmental impacts related to aesthetics, specifically that the development will significantly impact the private views of the Smithcliffs residents.

On December 9, 2015, the Orange County Planning Commission held a public hearing for consideration of the appeal of the Zoning Administrator’s approval of CDP No. PA150024. After due consideration of the information presented, the Planning Commission determined that there was not a substantial environmental impact to the Smithcliffs properties and voted unanimously to deny the appeal and uphold the decision of the Zoning Administrator.

On December 24, 2015, the County's Board of Supervisors received a Notice of Appeal from the property owners at 11, 15, and 17 Smithcliffs, Laguna Beach. The appeal was received within the fifteen day appeal period following the Planning Commission's action, and was scheduled for hearing by the Board of Supervisors. On January 11, 2016, the County received a letter from the applicant as a response to the appeal and outlined the applicant's opposition to the appeal and the issues raised by the appellants.

On March 22, 2016, the appeal of the project approved by the Planning Commission was denied by the Board of Supervisors. It was found that the issues raised by the appellants were either not within the purview of applicable County development process/regulations or have been adequately analyzed and addressed through the application review and CEQA processes.

On March 25, 2016, the Commission received notice of local action on CDP No. PA150024. On April 4, 2016, the appellant submitted the appeal to the Commission's South Coast District Office (**Exhibit 3**). The appeal of the local government's action was determined to be timely because it was received prior to the expiration of the ten working-day period in which any action by the County can be appealed to the Commission. On April 5, 2016, a Notification of Appeal was sent to the County and the applicant, notifying them of the appeal of PA150024, and therefore the County's final decision was stayed pending Commission action of the appeal.

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the mean high tide line of beach or top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states:

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

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea. Emerald Bay is an unincorporated area of Orange County and is a private, locked gate community of single family residences located on the coast at the northern boundary of Laguna Beach. All roads and recreational amenities within the community are owned and maintained by Emerald Bay Community Association. The Emerald Bay community has a 2,000-foot long sandy beach which is isolated from adjacent public beaches by two large points projecting several hundred feet into the ocean. The project is located on the eastern point projecting approximately 300 feet into the water with an elevation of about 80 feet **(Exhibit 1)**.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal are that the approved development does not conform to the standards set forth in the certified LCP. The subject site is located between the sea and the first public road.

Qualifications to Testify before the Commission

Staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the appeal has been filed. Therefore, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject

project. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(2) of the Coastal Act require a *de novo* hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. Commission staff recommends a finding of no substantial issue. If the Commission decides that the appellant’s contentions raise no substantial issue as to conformity with the City’s certified Local Coastal Program, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the City’s certified Local Coastal Program, the local coastal development permit is voided and the Commission typically continues the public hearing to a later date in order to review the coastal development permit as a *de novo* matter. [Cal. Pub. Res. Code §§ 30621 and 30625] Section 13321 of the Coastal Commission regulations specifies that *de novo* actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

V. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

On March 25, 2016, the Commission received a valid notice of final local action for Local Coastal Development Permit (CDP) No. PA150024. The County-approved project is the demolition of an existing two-story, approximately 3,833 square-foot single-family residence, and construction of a two-story, 4,348 square foot, single-family residence while maintaining portions of the existing subterranean garage, driveway, and street frontage landscaping (**Exhibit 4**).

The project site is an approximately 4,830 square-foot located at 12 Emerald Bay in unincorporated Orange County, approximately 75 feet from the seaward face of a coastal bluff, but not between the edge of the bluff and the first roadway (**Exhibits 1 & 2**). The site is zoned R1 (Single Family Residence) with a CD (Coastal Development) and SR (Sign Restriction) overlay. Emerald Bay is a private, locked gate community of single family residence located on the coast at the northern boundary of Laguna Beach. All roads and recreational amenities within the community are owned and maintained by Emerald Bay Community Association.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The County of Orange Emerald Bay Local Coastal Program was certified on September 13, 1989. The Emerald Bay LCP is comprised of the Land Use Plan (LUP) and Implementing Actions Program (IAP) comprising policy guidelines and regulatory requirements, respectively, for the Emerald Bay Community and adjacent land in southern Orange County.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30603(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s

regulation simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission had been guided by the following factors:

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

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

Staff is recommending that the Commission find that **no substantial issue** exists with respect to whether the local government action conforms to the provisions of the certified Emerald Bay certified Local Coastal Program for the reasons set forth below.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a Coastal Development Permit issued by the local government after certification of its Local Coastal Program (LCP) are the standards set forth in the certified LCP and the public access policies of the Coastal Act. Public access issues have not been raised in this appeal. The subject coastal development permit is appealable to the Commission due to the project’s location between the sea and the first public road and within 300 feet of the seaward face of a coastal bluff.

1. Cultural and Historic Resources

a. Appellant’s Contentions

The appellant contends that the project does not conform to the standards set forth in the Emerald Bay LCP with respect to: (1) historic resources are being replaced by new construction without consideration of whether that replacement will have an adverse impact on the environment; and (2) while this structure was identified by the applicant, his architect and his lawyer to be “historic,” the record contains no information at all that it was evaluated as required by the LCP (**Exhibit 3**).

b. Analysis

A Mitigated Negative Declaration (MND) was prepared for this project on September 18, 2015, which presented findings related to the environmental conditions for the project area and included

mitigation measures, where necessary, in the project to avoid potentially significant effects on the environment.

However, if by “environment” the appellant is referring to the community character, the site has historically been built with a single-family residence. The project proposes to demolish an existing 3,833 square foot, two-story (35 feet maximum height) single-family residence and construct a new 4,348 square foot, two-story (35 feet proposed height) single family residence in its place. The project site is zoned for single-family residential use and is surrounded by single-family residences with comparable square footage and height. In comparison, the following CDPs were issued on December 17, 2015 in the area: 1) CDP No. PA150056 for 20 Emerald Bay for the construction of a new 5,994 square foot, single-family residence with a height of 35’; (2) CDP No. PA150055 for 22 Emerald Bay for the construction of a new 4,637 square foot, single family residence with a height of 35’; and (3) CDP No. PA150050 for 812 Emerald Bay for the construction of a new 4,154 square foot, single-family residence with a height of 25’.

Also, the issue of community character was addressed in the Orange County Development Services Report to the Zoning Administrator dated October 15, 2015, in accordance to the LCP. Staff stated that the “new construction complies with all applicable current zoning code standards” and determined the following:

The proposed residence is designed to respond to the irregular lot configuration, and maintain the architectural heritage present in the neighborhood and of the existing residence. The design focuses on creating architectural features that increases compatibility with neighboring residences such as stepping front balconies, retaining the lot’s existing open space and landscaping, and curved planters along the front property line. The structure maintains continuity with the existing residence by preserving some aesthetic elements including wraparound porch, wood and plaster siding, and broken roof approach.

This review of the proposed project design follows review standards set forth in the LCP and indicates that the new development will reflect the character of the surrounding neighborhood, using several distinguishing architectural characteristics used in the nearby residences.

The Land Use Section of the Emerald Bay LCP (II(A)(5)), states:

The historic resources in the area consist of several Mediterranean Revival style dwellings built circa 1930. These buildings were recognized as significant by the Environmental Coalition of Orange County in its 1981 survey of the Laguna Beach area.

The “Laguna Beach Historic Resources Inventory” conducted in 1981 (mentioned above in LCP Section II(A)(5)) by Heritage Orange County, Inc., historic preservation firm under contractual agreement with the City of Laguna Beach and the State Office of Historic Preservation, identifies 706 pre-1940 homes and structures that were determined to have most retained their original appearance and architectural integrity and represent the former character of the Laguna Beach area. However, the Inventory does not recognize 12 Emerald Bay (project location) as one of the 706 identified structures.

In addition, the existing single family residence at 12 Emerald Bay is not a “Mediterranean Revival style” dwelling as the appellant claims, but an example of the “Monterey Revival style” of architecture. Mediterranean Revival style architecture is distinguished by (1) red tiled roofs, (2) stucco walls, (3) arches, and (4) ornamental detail such as heavy wooden doors with ornate carvings. In contrast, Monterey Revival architecture is characterized by (1) two story, rectangular plan, (2) low pitched gable roofs with shingles or tiles, (3) projecting cantilevered second floor balconies with wood railings, and (4) plaster walls. The existing structure is more indicative of the latter, Monterey Revival, style of architecture (**Exhibit 2**); and Monterey Revival-style dwellings are not specifically mentioned in the certified LCP for Emerald Bay as designated historic structures. Overall, the certified LCP for this area does not specifically designate this specific site as containing a historical structure.

Section II(E)(5), Land Use Plan Policies of the Emerald Bay Land Use Plan, states:

Cultural/Scientific/Historic Resources, including archaeological, paleontological and historic resources, shall be considered through the development permit review process in accordance with applicable federal, state and local laws and policies. Said resources shall be identified, evaluated, preserved or investigated accordingly.

Records provided by the appellant appear to confirm that this project was not evaluated as a historic resource during the permit review process. However, this project site is not identified or recorded as a historic resource in the Emerald Bay LCP or the Laguna Beach Historic Resource Inventory, and therefore was not reviewed as such under the permit review process. Therefore, the appeal does not raise a substantial issue with respect to the project’s conformity with cultural and historic resource protection policies in the certified LCP.

2. Protection of Scenic Views

a. Appellant’s Contentions

The appellant contends that the project does not conform to the standards set forth in the Emerald Bay LCP and the existing views from adjacent properties were not considered and, therefore, were not protected or enhanced, as required by the LCP (**Exhibit 3**).

b. Analysis

The California Coastal Act provides policy guidelines for the protection of a broad range of environmental elements, including visual resources. The Emerald Bay LCP is consistent with the policies of the Coastal Act and the proposed project is consistent with the adopted LCP.

Section II(A)(4), Scenic Resources of the Emerald Bay LCP, states:

All new development is monitored and influenced by the Emerald Bay Community Architectural Committee. The committee, which comprises members of the Emerald Bay Board of Directors and architects, reviews construction and landscape plan proposals:

- *Ensure project conformity with recorded restrictions;*

- *Ensure project compatibility with the architectural design and character of the community; and*
- *Ensure that existing ocean views of surrounding property owners within the community are preserved.*

As part of the project review process, the project was reviewed by the Emerald Bay Architectural Review Committee and was given final approval by the EBCA Board of Directors. This process is conducted prior to CDP review and processing. In addition, the MND determined that because the proposed development is on a site already developed with a single-family residence and scope of the project, no impact is anticipated on scenic resources or adjacent residential properties.

Section 30251, Scenic and Visual Qualities of the California Coastal Act, states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section II(A), Resource Component of the Emerald Bay LCP, conforms to Section 30251 of the Coastal Act stating:

Scenic and visual qualities of the coastal zone are protected as a public resource under Section 30251. New 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 landforms is minimized.

The Coastal Act does not provide a definition or further clarification of “views to... the ocean.” Given the lack of definition or further clarification in the Emerald Bay LCP, past policy and practices has been to interpret “views to the ocean” as views looking from public vantage points that have ocean views. “Views to the ocean,” in the context of Section 30251, are not interpreted to mean views from private property.

In this particular case, the proposed development will not result in the blockage of any public views to the ocean. As such, the Commission finds that the appeal does not raise a substantial issue regarding conformity of the proposed development with the public view protection policies of the certified LCP.

Conclusion

Applying the five factors listed in the prior section clarifies that the appeal raises “no substantial issue” with respect to Chapter 3 of the Coastal Act, and therefore, does not meet the substantiality standard of Section 30265(b)(2), because the nature of the proposed project and the local government action are consistent with policies of the certified Emerald Bay LCP.

The first factor is the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act. The local government’s conclusion was adequately supported by sufficient evidence and findings. In their October 15, 2015 report, Orange County Zoning Administrator staff detailed the consistency of the proposed project with the required CDP findings in Appendix A of the report, including conformity with the certified LCP and public access policies of the Coastal Act; and stated that “The proposed use of single-family residence is consistent with the LCP and the Coastal Development (CD) District regulations” (**Exhibit 4**). The local coastal development permit contains a high degree of factual and legal support because the structure was not identified as a historic property and the County considered public views during the CDP review.

The second factor is the extent and scope of the development as approved or denied by the local government. The scope of the approved development is for the demolition of a two-story, single family residence and construction of a new 4,348 square foot, two-story, single family residence while maintaining portions of the existing subterranean garage, driveway, and landscaping. The project conforms to development limits for R1 (Single Family Residence) on setback requirements, height limits, parking requirements, walls in structural limits restrictions, and limitations on balconies, decks, porches, terraces, exterior steps and stairways (as shown in the Planning Report, 10/15/2015, **Exhibit 4**). Therefore, the scope of the approved development is consistent with existing policies that govern the allowable extent of development and supports a finding that the appeal raises “no substantial” issue.

The third factor is the significance of the coastal resources affected by the decision. There are no significant coastal resources affected by the decision. The subject site is located seaward of Pacific Coast Highway (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 local government’s CDP approval includes measures to assure that any potential impacts are minimized as required by the LCP.

The fourth factor is the precedential value of the local government’s decision for future interpretations of its Local Coastal Program (LCP). Orange County Zoning Administrator staff reviewed the applicant’s request for a CDP and found it compliant with the Emerald Bay certified LCP (**Exhibit 4**). The project was approved by the Zoning Administrator with no special conditions. Therefore, the precedential value of the local government’s decision is positive.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Impacts to coastal resources are important statewide issues. The local government’s approval considered the factors required by the LCP and its approval of the project is consistent with the certified LCP and therefore does not adversely impact coastal resources and, as a result, does not raise issues of regional or statewide significance.

A-5-EMB-16-0044 (Schaefer)
Appeal – No Substantial Issue

In conclusion, the issues raised by the appellant do not demonstrate that the local government's action is not consistent with the certified LCP. Therefore, Commission staff recommends that the Commission find that the appeal raises no substantial issue.

Appendix A – Substantive File Documents

1. County of Orange Emerald Bay Local Coastal Program (1989)
2. Laguna Beach Historic Resources Inventory (1981)



Vicinity Map: 12 Emerald Bay, Emerald Bay

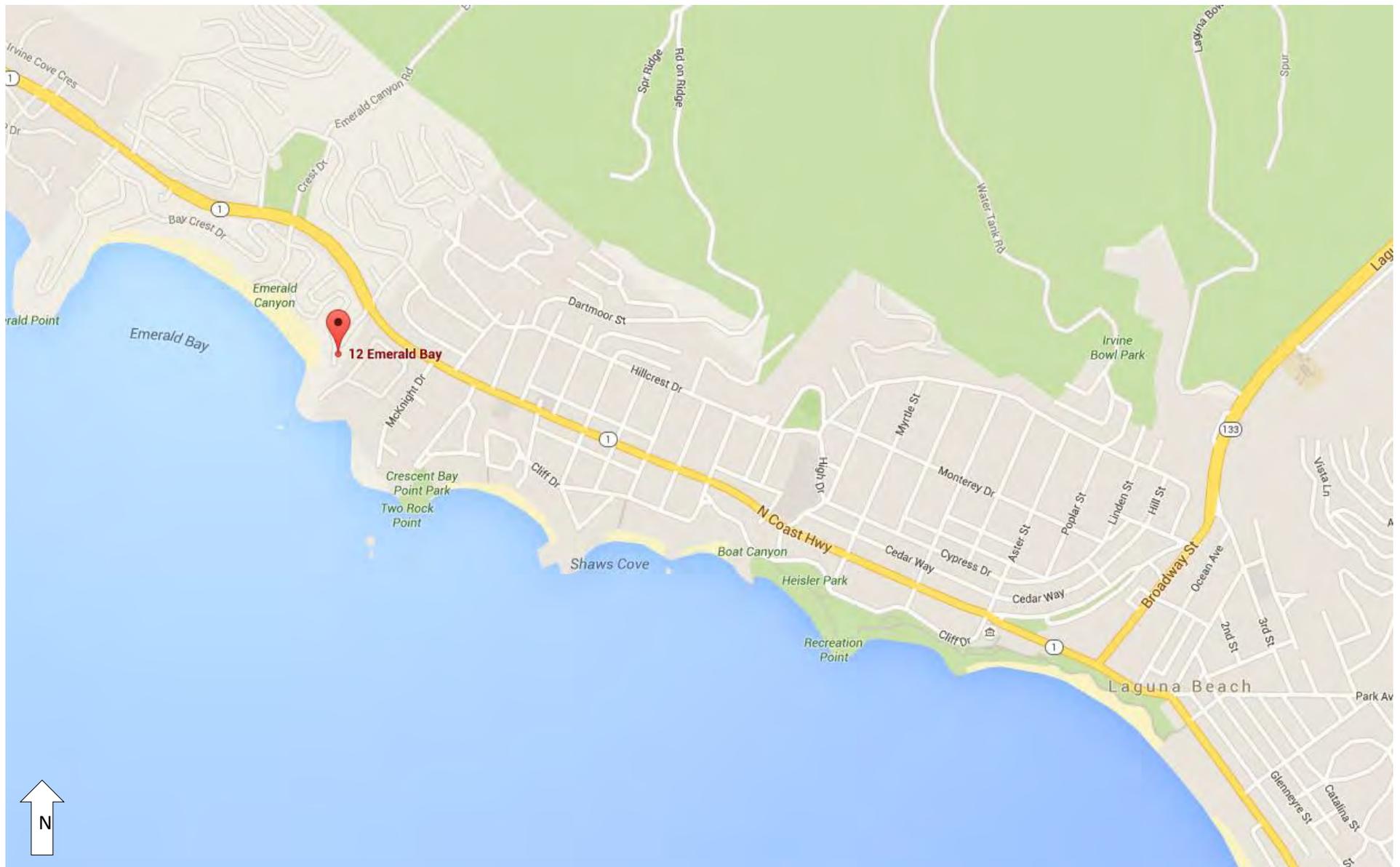


Photo Credit: Google Maps

Location Map: 12 Emerald Bay, Emerald Bay



Photo Credit: Google Maps



Subject Site: 12 Emerald Bay



Photo Credit: Applicant



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APR 04 2016

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084

**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: **Peter Meltzer**

Mailing Address: **15 Smithcliffs**

City: **Laguna Beach** Zip Code: **92651** Phone: **(949) 499-8888**

SECTION II. Decision Being Appealed

1. Name of local/port government: **Emerald Bay, Orange County, Laguna Beach**

2. Brief description of development being appealed: **Approval of a new single-family home in Emerald Bay. The home is historic, and the proposed remodel blocks views from Smithcliffs properties.**

3. Development's location (street address, assessor's parcel no., cross street, etc.):
12 Emerald Bay, Laguna Beach; APN 053-060-59; Cross street: Pacific Coast Highway

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-16-0044

DATE FILED: 4-4-16

DISTRICT: South Coast

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

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

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

6. Date of local government's decision:

March 22, 2016

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

PA150024

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:

**John Schaefer
12 Emerald Bay
Laguna Beach, CA 92651**

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

(1)

John Schaefer, applicant

(2)

**Thomas Davis, Esq.
Davis Law Group
580 Broadway Street
Laguna Beach, CA 92651**

(3)

**Peter Meltzer
15 Smithcliffs
Laguna Beach, CA 92651**

(4)

**Laurence P. Nokes, Esq.
Nokes & Quinn
410 Broadway Street, Suite 200
Laguna Beach, CA 92651**

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****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.

This project does not conform to the standards set forth in the certified Local Coastal Program ("LCP") for Emerald Bay. The LCP was violated in at least the following respects:

- 1. Cultural and historic resources are being replaced by new construction without consideration of whether that replacement will have an adverse impact on the environment;**
- 2. Existing views from adjacent properties were not considered and, therefore, were not protected or enhanced, as required by the LCP;**
- 3. The home is one of several Mediterranean Revival-style dwellings built circa 1930. The LCP specifically states that "these buildings were recognized as significant by the Environmental Coalition of Orange County in its 1981 survey of the Laguna Beach area." According to the LCP, "...historic resources shall be considered through the development permit process in accordance with applicable federal, state and local laws and policies. Said resources shall be identified, evaluated, preserved or investigated accordingly."**

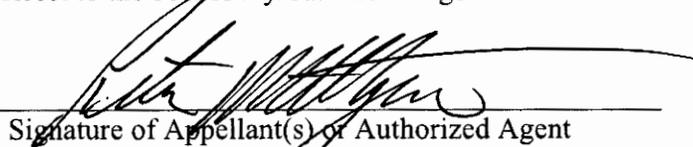
While this structure was identified by the applicant, his architect and his lawyer to be "historic," the record contains no information at all that it was evaluated as required by the LCP.



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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 3/31/16

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____



5-EMP-16-0267

NOTICE OF FINAL DECISION

DATE: March 23, 2016

Coastal Development Permit No.: PA150024

Date of County Action: March 22, 2016 **Action:** Project initially approved by both Zoning Administrator and Planning Commission. Appeal of project approval by the Planning Commission was denied by the Board of Supervisors.

Applicant/Address: John F. Schaefer, Property Owner
PO Box 4974, Laguna Beach, CA 92652

Project Description: A Coastal Development Permit (PA150024) to construct a two-story, 4,348 square foot, single-family residence. The proposed project also involves the demolition of the existing single-family residence, while maintaining portions of the existing subterranean garage, driveway and street frontage landscaping. Approximately 180 cubic yards of grading is proposed.

Project Location: The project is located in the community of Emerald Bay at 12 Emerald Bay within the Fifth (5th) Supervisorial District

X 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.

County contact: Jerry Olivera, AICP – Land Use Manager
OC Public Works/OC Development Services
P. O. Box 4048, Santa Ana, CA 92702-4048
jerry.olivera@ocpw.ocgov.com

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.

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MAR 25 2016

CALIFORNIA
COASTAL COMMISSION



AGENDA STAFF REPORT

ASR Control 16-000020

MEETING DATE: 02/23/16 → CONTINUED TO 3/22/2016
 LEGAL ENTITY TAKING ACTION: Board of Supervisors
 BOARD OF SUPERVISORS DISTRICT(S): 5
 SUBMITTING AGENCY/DEPARTMENT: OC Public Works (Approved)
 DEPARTMENT CONTACT PERSON(S): Shane Silsby (714) 667-9700
 Colby Cataldi (714) 667-8860

SUBJECT: Appeal of Coastal Development Permit PA150024

CEO CONCUR Concur	COUNTY COUNSEL REVIEW No Legal Objection	CLERK OF THE BOARD Public Hearing 3 Votes Board Majority
----------------------	---	--

Budgeted: N/A Current Year Cost: N/A Annual Cost: N/A

Staffing Impact: No # of Positions: Sole Source: N/A
 Current Fiscal Year Revenue: N/A
 Funding Source: N/A County Audit in last 3 years: No

Prior Board Action: N/A

RECOMMENDED ACTION(S):

1. Open the public hearing on appeal of the approval of Coastal Development Permit PA150024, receive public testimony and close the public hearing.
2. Adopt Mitigated Negative Declaration PA150024 and make the following findings:
 - a. There is no substantial evidence in light of the whole record that the project may have a significant effect on the environment and that there is no substantial evidence that supports a fair argument that the project will have a significant impact on the environment.
 - b. The Mitigated Negative Declaration reflects the County's independent judgment and analysis.
3. Deny the appeal and uphold the decision of the Planning Commission to approve Coastal Development Permit PA150024.

SUMMARY:

Approval of recommended action to deny the appeal and uphold the decision of the Planning Commission approval of Coastal Development Permit PA150024 allows for the partial demolition and construction of

a single family residence, located at 12 Emerald Bay, within the Emerald Bay community in the 5th Supervisorial District.

BACKGROUND INFORMATION:

The subject property, 12 Emerald Bay Drive, is located within the Emerald Bay unincorporated area of the County. The building site is approximately 4,622 square feet in size, roughly triangular in shape. The site is situated between Pacific Coast Highway and the Pacific Ocean, within the California Coastal Commission's appeal jurisdiction. The site is zoned R1 "Single Family Residence" District with "Coastal Development" and "Sign Restriction" overlays (R1 (CD) (SR)). The subject building site is currently occupied by an existing 3,833 square-foot single-family dwelling.

On March 4, 2015 an application for a Coastal Development Permit (CDP) PA150024, was submitted for the partial demolition of the existing dwelling and construction of a new two-story 4,348 square foot single family residence, which includes maintaining portions of the existing subterranean garage, driveway, and existing street frontage landscaping (herein referred to as the "Project"). Full details regarding the proposed Project are available in the Zoning Administrator and Planning Commission staff reports (Attachment A).

The proposed Project was reviewed by the Emerald Bay Architectural Review Committee on May 26, 2015, and was given final approval by the Emerald Bay Community Association (EBCA) Board of Directors on June 2, 2015. The EBCA reviews construction and landscape plans to ensure Project conformity with recorded restrictions, Project compatibility with the architectural design and character of the community, as well as ensuring that existing ocean views of surrounding property owners within the community are preserved.

On October 15, 2015, the public hearing for the Project was held by the Zoning Administrator. The hearing was noticed pursuant to the County's standard requirement of a 300 foot radius. The day of the hearing, a letter was received on behalf of the property owners at 11, 15, and 17 Smithcliffs in Laguna Beach, expressing their objection to the proposed development. These property owners live in the adjacent community known as Smithcliffs which is located to the east of the subject property and state that the proposed development will cause a significant impact to their beach and ocean views. The Zoning Administrator received a presentation from staff, and the Project applicant and then heard testimony from members of the public. Key issues raised by the neighbors: 1) that the Smithcliffs residents were not notified of the proposed development by EBCA or as part of the CEQA process; 2) they did not have adequate access to Project plans and documentation at the time the public hearing notice from the County was received; 3) the required findings could not be made to justify approval of the Project, namely the compatibility and impact to general welfare; and 4) there is a substantial impact to the environment due to the diminution of views from neighboring properties. After due consideration of the proposed Project, issues raised, and applicable Zoning Code and Emerald Bay Local Coastal Program provisions, the Zoning Administrator approved the Project subject to the recommended findings and conditions of approval.

On October 29, 2015, the County received a Notice of Appeal, from the property owners at 11, 15, and 17 Smithcliffs, Laguna Beach, California. The appeal letter requested that the Zoning Administrator's approval of Coastal Development Permit PA150024 be overturned because: 1) noticing regarding the Project was flawed since only Emerald Bay residents, and not adjacent Smithcliffs residents were notified

of the public hearings regarding the Project; 2) the findings of the Zoning Administrator were flawed because they did not consider the effect of the project on Smithcliffs residents; 3) the adoption of a Mitigated Negative Declaration ("MND") was improper because the Project results in significant environmental impacts related to aesthetics, specifically that the Project significantly impacts the private views of the Smithcliffs residents.

On December 9, 2015, the Planning Commission held a public hearing for consideration of the appeal of the Zoning Administrator's approval of PA150024. The hearing was noticed pursuant to the County's standard requirement of a 300 foot radius. The Planning Commission received a presentation from staff, and heard testimony from the Project applicant and members of the public. During their testimony, the appellant further elaborated on the issues with the approval/notification processes, the height/elevations of the proposed new structure and the CEQA findings. The appellant claimed the proposed new structure would result in diminished views from the Smithcliffs properties and therefore, would result in a significant environmental impact under CEQA that was improperly analyzed in a MND. The appellant requested that the environmental findings be revisited and reconsidered in light of the potential impacts upon the Smithcliffs properties. A letter of support for the Project was received from an Emerald Bay neighboring resident on December 18, 2015. After receiving testimony, the Planning Commission requested to review several of the exhibits and asked questions of staff pertaining to Emerald Bay, the Emerald Bay Local Coastal Program, CEQA, and County approval procedures. After due consideration of the information presented, the Planning Commission determined that, based on the evidence presented, there was not a substantial environmental impact to the Smithcliffs properties and voted unanimously to deny the appeal and uphold the decision of the Zoning Administrator.

On December 24, 2015, the County received a Notice of Appeal, from the property owners at 11, 15, and 17 Smithcliffs, Laguna Beach, California (Attachment C). This appeal letter was received within the fifteen day appeal period following the Planning Commission's action, and therefore was scheduled for hearing by the Board of Supervisors. Additionally on January 11, 2016, the County received a letter from the applicant as a response to the appeal and outlined the applicants opposition to the appeal and the issues raised by the appellant (Attachment D).

The following is a summary of issues raised as the basis of the appeal by the appellant and the staff analysis for each of the issues:

Issue 1) Noticing and efforts to obtain information - The appellants raise concerns regarding the general noticing of Emerald Bay projects as they are reviewed by the Emerald Bay Architectural Review Committee and by EBCA.

Analysis: Pursuant to EBCA procedures, as a private, gated community, residents outside of the community are not given notice of EBCA or Architectural Review Committee meetings or deliberations on proposed projects. The County does not have jurisdiction over EBCA with regard to their meeting schedules, noticing, meeting agenda items or review of proposed projects that are within the purview of the Architectural Review Committee. The Emerald Bay Local Coastal Program provides guidance and direction to EBCA for approval of proposed development projects. The County complied with the public hearing noticing requirements for all County public hearings pursuant to the County's standard requirement of noticing all residents within a 300' radius of the subject project site. Smithcliffs residents, including the appellants, were properly noticed of each County hearing.

Issue 2) The findings in the staff report are based on incomplete information, as they do not consider the impacts of the proposed development on the Smithcliffs homeowners - The appellants claim that the required findings cannot be made to justify approval of the Project, specifically the findings for

'Compatibility' with the permitted uses in the vicinity and 'General Welfare,' given that the Project is "detrimental to the existing enjoyment of important ocean, white water and beach vistas" for Smithcliff property owners.

Analysis: To grant approval of a Project, the approving authority, must certify that the compatibility finding can be made. The compatibility finding states, "*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.*" To support this finding in the Emerald Bay community, staff primarily relies on two regulatory documents: the County's Zoning Code and the Emerald Bay Local Coastal Program. Both of these provide various prescriptive standards such as setbacks, building heights, lot coverages, permitted uses, parking requirements, etc. to ensure that Project design and uses upon properties are compatible with and similar to other structures and uses within the vicinity. The proposed Project is an allowable principal permitted use, has met the requirements of both the Emerald Bay Community Association and the Emerald Bay Local Coastal Program, as well as the development standards of the R1 (CD) (SR) zone, and has been found to be compatible with adjacent residential uses, including similar previous approvals. Therefore, the finding of compatibility can be made. The approving authority must also make a finding regarding general welfare, which states "*that the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.*" The Project adheres to the requirements of both the EBCA and the Emerald Bay Local Coastal Program, as well as the R1 (CD) (SR) development standards, thus, the general welfare finding can be made. These regulations have been adopted and are enforced to prevent conditions or circumstances that would be contrary to the public health and safety and general welfare of the surrounding community. Thus, compliance with those regulations demonstrates that the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.

Issue 3) CEQA issues - The appellants raise the issue that the proposed new structure will result in diminished private views of the Smithcliffs property owners, and therefore, the Project results in a significant impact under CEQA. The Smithcliffs property owners allege that an MND is insufficient for the Project because of this unmitigated significant impact.

Analysis: CEQA requires the lead agency to consider significant impacts of the Project on public views, not private views. A significant visual impact is one that affects the public in general from public vantage points. The MND analyzed the aesthetic impacts of the Project, including the visual impacts, and whether there would be a substantial adverse impact upon scenic vistas, state scenic highways, or a degradation of the visual character of the site and its surroundings. The MND determined that because Project is proposed on a site already developed with a single-family residence, and due to the Project's scope, no impact is anticipated on scenic resources (including trees, rock outcroppings and historic buildings) or adjacent residential properties. The California Coastal Act provides policy guidelines for the protection of a broad range of environmental elements, including visual resources. The Emerald Bay Local Coastal Program is consistent with the policies of the California Coastal Act and the proposed Project is consistent with the adopted Local Coastal Program. The proposed Project was reviewed by the Emerald Bay Architectural Review Committee and was given final approval by the EBCA Board of Directors. EBCA reviews construction and landscape plans to ensure Project conformity with recorded restrictions, project compatibility with the architectural design and character of the community, as well as ensuring that existing ocean views of surrounding property owners within the community are preserved.

In this case, the minor modification of the roofline (comparing existing versus proposed) and any associated loss of view from nearby private homes is not a significant impact under CEQA. (See

Bowman v. City of Berkeley (2004) 122 Cal.App.4th 572, 586 [“obstruction of a few private views in a project's immediate vicinity is not generally regarded as a significant environmental impact.”]; *Ocean View Estates Homeowners Ass’n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401 [a project that affects “only a few private views” suggests that its impact is insignificant.] Further, there are no County regulatory documents (e.g. Zoning Code; Emerald Bay Local Coastal Program) that provide the County regulatory oversight for the protection of view sheds or view corridors upon private properties.

In summary, staff has reviewed the submitted appeal letter, reviewed the appeal information and has determined that the issues raised are either not within the purview of applicable County development process/regulations or have been adequately analyzed and addressed through the application review and CEQA processes.

Compliance with CEQA: MND No. PA150024 was prepared and posted for public review and comment on September 18, 2015 (Attachment E). It is attached for the Board's consideration and must be approved prior to project approval with a finding that it is adequate to satisfy the requirements of CEQA.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

- Attachment A - Planning Commission - Zoning Admin Staff Reports
- Attachment B - Planning Commission Minutes of 12-9-2015
- Attachment C - Letter from Appellant dated 12-24-2015
- Attachment D - Letter from Applicant dated 1-11-2016
- Attachment E - Negative Declaration PA150024
- Attachment F - Project Location Map
- Attachment G - Zoning Code 7-9-128.2
- Attachment H - Zoning Code 7-9-151



ITEM #2

OC DEVELOPMENT SERVICES REPORT

DATE: December 9, 2015

TO: Orange County Planning Commission

FROM: OC Development Services / Planning

SUBJECT: Public Hearing on Appeal of Planning Application PA150024 for a Coastal Development Permit

PROPOSAL: The appellants are appealing the Zoning Administrator's October 15, 2015 approval of a Coastal Development Permit (CDP) to construct a two-story 4,348 square foot single-family residence at 12 Emerald Bay (PA150024). The proposed project also involves the demolition of the existing single-family residence, while maintaining portions of the existing subterranean garage, driveway and street frontage landscaping. Approximately 180 cubic yards of grading is proposed. Approval of a CDP for the proposed project is required by Section III.A of the Emerald Bay Local Coastal Program and pursuant to Zoning Code sec. 7-9-118.6(a). PA150024 was approved by the Zoning Administrator at a public hearing on October 15, 2015.

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

GENERAL PLAN: 1B "Suburban Residential"

LOCATION: The project is located at 12 Emerald Bay, Laguna Beach, within the Fifth (5th) Supervisorial District.

APPLICANT: Craig Schultz, architect/agent on behalf of John Schaefer, property owner

STAFF CONTACT: Jerome Olivera, AICP – Land Use Manager
Phone: (714) 667-9631 FAX: (714) 967-0895
jerry.olivera@ocpw.ocgov.com

RECOMMENDED ACTIONS

Staff recommends the Planning Commission deny the appeal and uphold the Zoning Administrator approval of Coastal Development Permit PA150024, subject to the attached recommended Findings and Conditions of Approval.

BACKGROUND

The subject property, Lot 6 of Tract 940 (12 Emerald Bay Drive), is located within the Emerald Bay community. The building site is roughly triangular in shape with a rear property line and long curving front property line along the street (Emerald Bay) that intersect at one point at the southernmost tip of the property. The site is situated between Pacific Coast Highway and the Pacific Ocean, within the California Coastal Commission's appeal jurisdiction. The County's appeal process is independent of the Coastal Commission's appeal process. Therefore, if the Planning Commission denies the appeal, appellants may still appeal to the Coastal Commission. The site is zoned R1 "Single Family Residence" District with (CD) "Coastal Development" and (SR) "Sign Restriction" overlays and is located on the coastal side of PCH. The subject building site is currently occupied by an existing 3,833 square-foot single-family dwelling, which will be mostly demolished as part of the project.

The building site is approximately 4,622 square feet in size, and is determined to be a shallow lot with a depth of 30 feet and 10 inches. Pursuant to Section 7-9-128.2 of the Orange County Zoning Code (OCZC), lots with depth less than 50 feet are allowed front and rear yard setbacks of 15% of the lot depth, which is 4.71 feet for the site. On December 23, 1993, the County Zoning Administrator approved Variance 93-028Z to allow an addition to the rear yard setback to be placed at 3.5 feet instead of the required 4.71 feet required for the shallow lot. Building permits for the addition, consistent with the Variance, were issued in 1994. As part of the CDP approval under PA150024, the applicant will preserve existing legal non-conforming sections of the existing house such as the length of the driveway, maneuvering area, 3.5-foot rear yard setback encroachment, and boundary landscaping as indicated on the attached architectural plans. Section 7-9-151 of OCZC allows legal non-conforming structures to remain so long as any additions or enlargement to such structures fully complies with existing development standards. Since the proposed project met applicable zoning code standards, no other discretionary permits were required except for the Coastal Development Permit pursuant to OCZC Sec. 7-9-118.6(a)

The subject application, PA150024, was heard and subsequently approved at a duly noticed public hearing of the Zoning Administrator on October 15, 2015. Shortly before the hearing, staff received a letter addressed to the Zoning Administrator, on behalf of the property owners at 11, 15, and 17 Smithcliffs in Laguna Beach, expressing their objection to the proposed development. These property owners live behind the subject property at 12 Emerald Bay and claim that the proposed development will cause a significant impact to their beach and ocean views (Attachment 1).

During the Zoning Administrator public hearing, Mr. Larry Nokes, an attorney representing the aforementioned Smithcliffs neighbors, addressed several concerns that his clients had regarding the proposed development. Namely, Mr. Nokes indicated that the neighbors were not notified of the proposed development by the Emerald Bay Community Association (EBCA) or as part of the CEQA process, nor did they have adequate access to project plans and documentation at the time the public hearing notice from the County was received. Mr. Nokes further stated that he did not believe the required findings could be made to justify approval of the project, namely the compatibility and impact to general welfare, and also stated that he believed that there is, in fact, a substantial impact to the environment due to the diminution of views from neighboring properties.

Mr. John Schaefer, property owner at 12 Emerald Bay and project applicant, responded to Mr. Nokes comments by explaining that the new house is essentially being built on the same footprint as the

existing house, with the exception of a few minor adjustments. He disagreed with Mr. Nokes' characterization of the loss of view from the Smithcliffs properties and went on to explain his position by presenting an exhibit that he believed to show the view from 17 Smithcliffs is actually increased, not decreased. He further stated that after learning of another neighbor's concerns, he reached out to that neighbor to discuss the concerns regarding a potential loss of view and determined the potential loss of view would be minimal.

Subsequent to the Zoning Administrator's approval of PA150024 on October 15, 2015, County staff received a timely Notice of Appeal on October 29, 2015, from Mr. Laurence P. Nokes, representing the property owners at 11, 15, and 17 Smithcliffs, Laguna Beach, CA. As discussed in the appeal letter (Attachment 3), and Mr. Nokes' testimony before the Zoning Administrator, the basis for the appeal is: 1.) Opposition to the proposed height of the new dwelling structure; 2.) The EBCA and County processes to review and approve the project; and 3.) Disagreement that the required findings can be made to justify approval of the project. This notice was received within the applicable fifteen day appeal window following the Zoning Administrator's action.

The Staff Report presented to the Zoning Administrator for Planning Application PA150024, including the associated analysis and discussion of the project, is included as Attachment 2.

PUBLIC NOTICE

On November 25, 2015, notices of the Planning Commission hearing were mailed to all property owners of record within 300 feet of the subject site. Additionally, a notice was posted at the project site, on the County's website, at the County Hall of Administration (333 W. Santa Ana Blvd., Santa Ana, 92701), and at the H.G. Osborne Building (OCPW Administration Building – 300 N. Flower St., Santa Ana, 92703). These actions constitute compliance with County public hearing noticing procedures.

CEQA COMPLIANCE

Mitigated Negative Declaration (MND) No. PA150024 was prepared and posted for public review and comment on September 18, 2015. The 20-day public comment period ended on October 8, 2015, and no comments were received from the public during the public comment period. The MND document is included with Attachment 2. As part of the Zoning Administrator's approving action, the Zoning Administrator found that the MND document was adequate to satisfy the requirements of CEQA.

DISCUSSION / ANALYSIS

The appellants assert that an MND is not the appropriate environmental document for the project because significant adverse impacts to the visual character of the site and the views from adjoining, private properties exist, since portions of existing sight lines from those properties would be impacted. The proposed new roofline represents an approximately eleven (11") inch increase over the existing roofline for a horizontal distance of approximately twenty-four (24') feet toward the eastern elevation of the structure. Similarly, the new roofline towards the western elevation of the structure decreases in height approximately eleven (11") inches for a horizontal distance of approximately fifteen (15') feet. The overall height of the structure complies with both EBCA and County height allowances for the R1 zone.

CEQA requires the lead agency to consider significant impacts of the project on public views, not private views. Significant visual impact is one that affects the public in general, and from public

vantage points. The Mitigated Negative Declaration (MND) document that was posted for public review, and subsequently found adequate and in compliance with CEQA requirements by the Zoning Administrator, did, in fact, analyze the aesthetics of the project and whether there would be a substantial adverse impact upon scenic vistas, state scenic highways, or a degradation of the visual character of the site and its surroundings. The MND determined that because project is proposed on a site already developed with a single-family residence, and due to the project's scope, no impact is anticipated on scenic resources (including trees, rock outcroppings and historic buildings) or adjacent residential properties. The California Coastal Act provides policy guidelines for the protection of a broad range of environmental elements, including visual resources. The Emerald Bay Local Coastal Program (LCP) is consistent with the policies of the California Coastal Act and the proposed project is consistent with the adopted LCP. The proposed project was reviewed by the Emerald Bay Architectural Review Committee (ARC) on May 26, 2015, and was given final approval by the Emerald Bay Community Association Board of Directors on June 2, 2015. The ARC reviews construction and landscape plans to ensure project conformity with recorded restrictions, project compatibility with the architectural design and character of the community, as well as ensuring that existing ocean views of surrounding property owners within the community are preserved.

In this case, the minor modification of the roofline and any associated loss of view from nearby private homes is not a significant impact under CEQA. (See *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 586 ["obstruction of a few private views in a project's immediate vicinity is not generally regarded as a significant environmental impact."]; *Ocean View Estates Homeowners Ass'n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401 [a project that affects "only a few private views" suggests that its impact is insignificant.]) Further, there are no County regulatory documents (e.g. Zoning Code; Emerald Bay Local Coastal Program) that provide the County regulatory oversight for the protection of view sheds or view corridors upon private properties.

The appellants also raise the issue that because EBCA is a private, gated community, residents outside of the community are not given notice of EBCA Community Association or Architectural Review Committee meetings or deliberations on proposed projects. In the appeal letter of October 29, 2015, Mr. Nokes does acknowledge that he was able to contact Ms. Jill Chambers of the EBCA Architectural Review Committee and that in an email response from Ms. Chambers, she referred all inquiries to the County.

The County does not have jurisdiction over EBCA with regard to their meeting schedules, noticing, meeting agenda items or review of proposed projects that are within the purview of the Architectural Review Committee. The Emerald Bay Local Coastal Program provides guidance and direction to EBCA for approval of proposed development projects. The EBCA approved the project on May 26, 2015 and the meeting minutes are included as part of Attachment 2.

Lastly, the appellants claim that the required findings cannot be made to justify approval of the project, specifically the findings for 'Compatibility' and 'General Welfare'. To grant approval of a project, the Zoning Administrator must certify that the compatibility finding can be made:

"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."

To support this finding, in the Emerald Bay community, staff primarily relies on two regulatory documents: the County's Zoning code and the Emerald Bay Local Coastal Program. Both of these provide various prescriptive standards such as setbacks, building heights, lot coverages, permitted

uses, parking requirements, etc. to ensure that project design and uses upon properties are compatible with and similar to other structures and uses within the vicinity. The proposed project has met the requirements of both the Emerald Bay Community Association and the Emerald Bay Local Coastal Program, as well as the development standards of the R1 zone, and therefore the finding of compatibility can be made.

The Zoning Administrator must also make a finding regarding general welfare, which reads as follows:

"That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare."

Through adherence with the requirements of both the Emerald Bay Community Association and the Emerald Bay Local Coastal Program, as well as the development standards of the R1 zone, the general welfare finding can be made. These regulations have been adopted and are enforced to prevent conditions or circumstances that would be contrary to the public health and safety and general welfare of the surrounding community. Thus, compliance with those regulations demonstrates that the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.

CONCLUSION

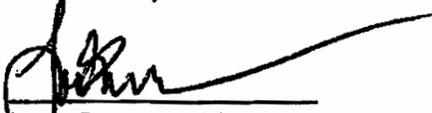
Staff has reviewed the submitted appeal letter and had determined that the issues raised are either not within the purview of applicable County development regulations or have been adequately analyzed and addressed through the application review and CEQA processes. The previous analysis and recommendations for the project, as well as the Zoning Administrator's action, remain valid.

RECOMMENDED ACTION

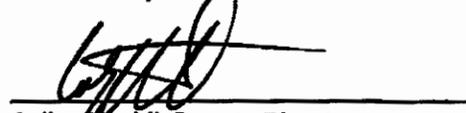
OC Development Services recommends that the Planning Commission:

- A.) Receive staff report and public testimony as appropriate;
- B.) Deny the appeal and uphold the Zoning Administrator's approval of Planning Application PA150024 for a Coastal Development Permit to allow the construction of a 4,348 square-foot single-family residence, the demolition of the existing single-family residence and maintain portions of the existing subterranean garage, driveway, and street frontage landscaping, with 180 cubic yards of proposed grading.

Submitted by:


Laree Brommer, Manager
OC Development Services / Planning

Reviewed by:


Colby Cataldi, Deputy Director
OC Development Services / Planning

ATTACHMENTS:

- A. Opposition letter of October 15, 2015 to the Zoning Administrator
- B. Zoning Administrator Staff Report and attachments
- C. Notice of Appeal letter dated October 29, 2015
- D. Applicant's Response to Appeal of PA150024
- E. Minutes from Zoning Administrator hearing of October 15, 2015

COASTAL COMISSION APPEAL PROCEDURE:

This project is within the Coastal Zone of the Emerald Bay Local Coastal Program and is an "appealable development." The decision on a coastal development permit issued for an appealable development may be appealed directly to the California Coastal Commission, South Coast District Office located at 200 Oceangate, 10th Floor, Long Beach, CA 90802, telephone number (562) 560-5071, in compliance with their regulations including appeal fees.

ATTACHMENT A



LEWIS & CLARK

October 15, 2015

VIA ELECTRONIC MAIL: ruby.maldonado@ocpw.ocgov.com

Ruby Maldonado
Orange County Zoning Administrator
ORANGE COUNTY PUBLIC WORKS
H. G. Osborne Building
300 North Flower Street
Santa Ana, CA 92703-5000

**Re: Planning Application No. PA150024
October 15, 2015 Public Hearing for Coastal Development Permit**

Dear Ms. Maldonado:

These comments are submitted on behalf of the owners of the properties located at 13, 15 and 17 Smithcliffs in Laguna Beach. These properties are situated behind the subject property at 12 Emerald Bay, Laguna Beach and will be significantly impacted by the proposed development by the degradation of their beach, white water and ocean views.

The findings included with the Staff Report and those made by the Emerald Bay Architectural Committee were made without input from these impacted neighbors, as they are excluded by design from participation in the consideration of development in Emerald Bay until the project arrives at the County for consideration. Therefore, all of the approvals and recommendations you have before you have been made without any consideration of the impacts on the properties located outside of Emerald Bay, as they are not permitted by Emerald Bay to participate in the planning process.

NOTICING AND EFFORTS TO OBTAIN INFORMATION

Regarding the noticing of this hearing, the Smithcliffs neighbors received notice of this hearing in the mail last Thursday, October 8, 2015. Efforts were made to contact the Land Use Manager, Mr. Olivera, by the representative of the Smithcliffs neighbors, beginning on Monday, October 12th. Contact was finally made yesterday, October 14, 2015. Efforts were also made by this firm to contact Jill Chambers of the Emerald Bay Architectural Committee. In an email response, Ms. Chambers referred all inquiries to the County

• A Professional

website

for

• FAX

The larger problem concerns the general noticing of Emerald Bay projects. NO NOTICE IS GIVEN BY EMERALD BAY TO PROPERTY OWNERS IMPACTED BY EMERALD BAY PROJECTS WHO ARE LOCATED OUTSIDE OF EMERALD BAY. This is a problem for projects such as this, where the impacted properties are located on the boundary between Emerald Bay and the City of Laguna Beach, but are on the outside of the Emerald Bay property. The result of this policy, which is a policy of Emerald Bay's choosing, is that these affected properties have no voice in consideration of impactful developments until they reach this point of the process.

THE FINDINGS IN THE STAFF REPORT ARE BASED ON INCOMPLETE INFORMATION, AS THEY DO NOT CONSIDER THE IMPACTS OF THE PROPOSED DEVELOPMENT ON THE SMITHCLIFFS HOMEOWNERS.

The OC Development Services Report is characteristically well done. The problem is, it contains specific findings that are based on incomplete data. There is no reference in the report to the view impacts to the Smithcliffs property owners. The report suggests that the proposed structure "... complies with existing development standards." This may be true from the homes within Emerald Bay. However, from Smithcliffs, this proposed development blocks important ocean, white water and beach vistas, and, with its roof extension protuberances, needlessly interrupts beautiful existing views of the ocean and the bluff on the opposite side of the bay. These conditions do not allow the "COMPATABILITY" or "GENERAL WELFARE" findings to be made. The conditions are also inconsistent with the conclusion in the Revised Mitigated Negative Declaration that this project has no significant impact on the environment. Indeed it does.

EMERALD BAY ARCHITECTURAL COMMITTEE REFLECTS ONLY THE CONCERNS OF EMERALD BAY RESIDENTS.

The Emerald Bay Architectural Committee concluded that the "Building Height" ... "does not appear to create a view obstruction." The Architectural Committee was never in the homes of those owners in Smithcliffs impacted by the new proposed construction. As seen by Photo 1.2, this increase in height on the right side of the property, relative to the property at 17 Smithcliffs, cuts off important views of the beach and white water.

While the Architectural Committee considers "Potential Obstruction of View" from a neighbor's home inside the Bay that must not be blocked by trees and shrubs, it does not do anything to avoid the interference of views by the structure from adjacent properties outside the Bay.

CONCLUSION

The primary purpose of a Coastal Development Permit is to ensure that development within the Coastal Zone is consistent with all Local Coastal Program policies, in this case: the Emerald Bay Local Coastal Program (LCP).

Emerald Bay does not include residents of Laguna Beach in their architectural and design review process, even when it impacts adjoining properties. The absence of neighboring input, comments, and concerns will potentially allow impacts – in this case, to scenic, visual, and aesthetic resources currently enjoyed by property owners on Smithcliffs Road. This lack of communication has created a dysfunctional development review process for Laguna Beach neighbors, with oversight limited and dependent on County review.

The approval of the maximum allowable building height is inconsistent with the Emerald Bay LCP, as the finding that visual impacts of the development have been minimized cannot be made. This increase in roofline height only serves to exacerbate the height of the proposed chimneys, which will directly affect views from Smithcliffs.

The County Zoning Administrator granted the existing variance, for a reduced and non-conforming rear setback, in 1993. Variances are granted with care and caution, with the implied understanding that any subsequent development will not create additional impacts to adjacent properties.

It is our belief that the County of Orange must be empowered to protect and preserve the aforementioned resources as a component of their standard of review. This project should be modified to reduce the impacts on the Smithcliffs neighbors.

Respectfully submitted,



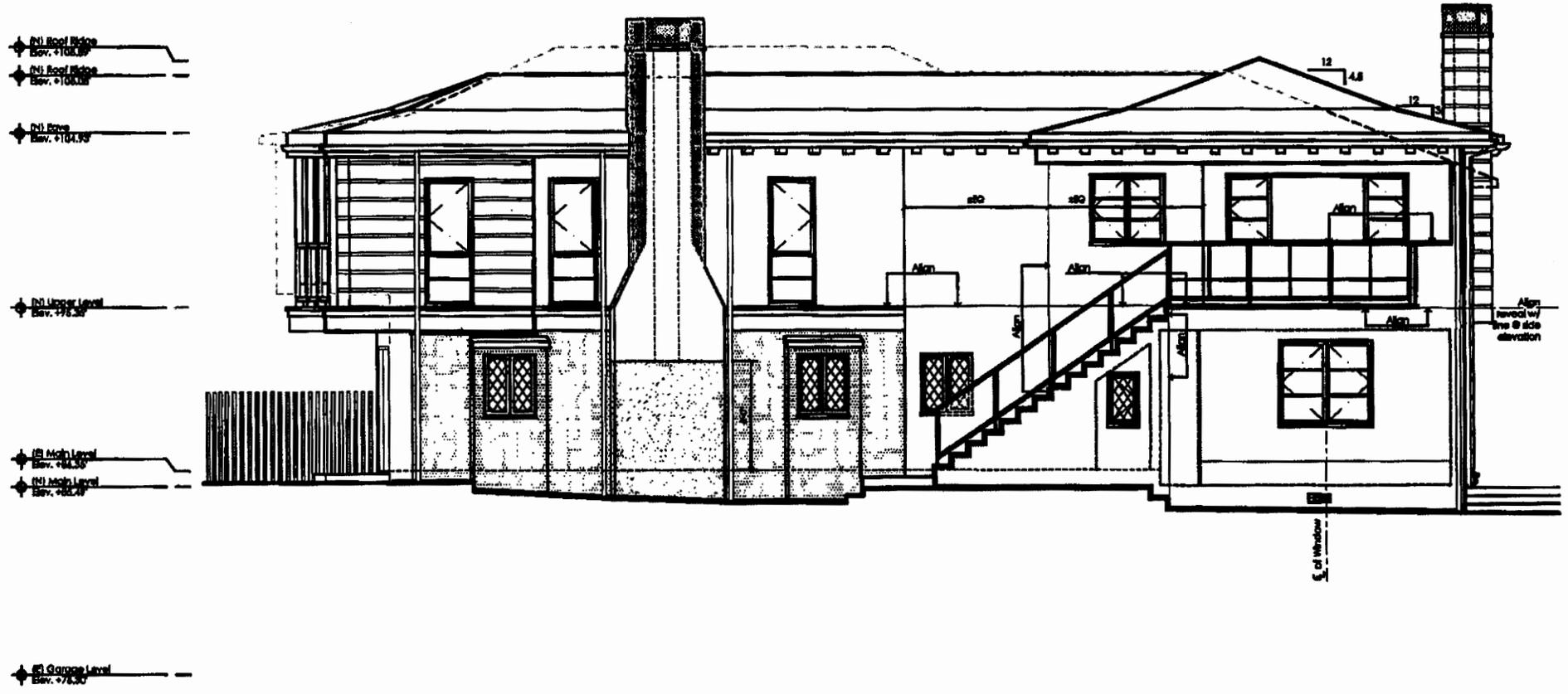
Laurence P. Nokes

LPN/dkc

cc: Jerry Olivera, OCPW (jerry.olivera@ocpw.ocgov.com)
Clients
Steve Kawaratani

Exhibit - Eastern Elevation
 12 Emerald Bay - Schaefer Residence

Lalclaw Schultz architects
 10.14.2015



-  Outline Existing Residence & Chimneys
-  Reducible Area of New Chimneys

ATTACHMENT B

Public Works

Integrity, Accountability, Service, Trust

Shane L. Blisby, Director



ITEM #1

OC DEVELOPMENT SERVICES REPORT

DATE: October 15, 2015

TO: Orange County Zoning Administrator

FROM: OC Development Services / Planning

SUBJECT: Public Hearing for a Coastal Development Permit on Planning Application PA150024

PROPOSAL: The applicant requests approval of a Coastal Development Permit (CDP) as required by Section III.A of the Emerald Bay Local Coastal Program and pursuant to OC Zoning Sec. 7-9-118.6(a) to construct a two-story 4,348 square-foot single-family residence. The proposed project also involves the demolition of the existing single-family residence, while maintaining portions of the existing subterranean garage, driveway, and street frontage landscaping. Approximately 180 cubic yards of grading of proposed.

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

GENERAL PLAN: 1B "Suburban Residential"

LOCATION: The project is located at 12 Emerald Bay, Laguna Beach, within the Fifth (5th) Supervisorial District.

APPLICANT: Craig Schultz, architect/agent on behalf of John Schaefer, property owner

STAFF CONTACT: Jerome Olivera, AICP – Land Use Manager
Phone: (714) 667-9631 FAX: (714) 967-0895
jerry.olivera@ocpw.ocgov.com

RECOMMENDED ACTIONS

Staff recommends Zoning Administrator approval of Coastal Development Permit PA150024, subject to the attached Findings and Conditions of Approval, and further recommends that the Zoning Administrator:

- a) Receive staff report and public testimony as appropriate;
- b) Find that Revised Mitigated Negative Declaration No. PA150024 is adequate and satisfies the

requirements of CEQA

- c) Approve Planning Application PA150024, a Coastal Development Permit to construct a 4,348 square-foot single-family residence, subject to the attached Findings and Conditions of Approval.

BACKGROUND AND EXISTING CONDITIONS

The subject property, Lot 6 of Tract 940 (12 Emerald Bay Drive), is located within the Emerald Bay community. The building site is roughly triangular in shape with a rear property line and long curving front property line along the street (Emerald Bay) that intersect at one point at the southernmost tip of the property. The site is situated between Pacific Coast Highway and the Pacific Ocean, within the California Coastal Commission's Appeal jurisdiction. The site is zoned R1 "Single Family Residence" District with (CD) "Coastal Development" and (SR) "Sign Restriction" overlays on the coastal side of PCH. The subject building site is currently occupied by an existing 3,833 square-foot single-family dwelling, which will be mostly demolished as part of the project.

The building site is approximately 4,622 square feet in size, and is determined to be a shallow lot with a depth of 30 feet and 10 inches. Pursuant to Section 7-9-128.2 of the Orange County Zoning Code (OCZC), lots with depth less than 50 feet are allowed front and rear yard setbacks of 15% of the lot depth, which is 4.71 feet for the site. On December 23, 1993, the County Zoning Administrator approved Variance 93-028Z (Attachment #6) to allow an addition to the rear yard setback to be placed at 3.5 feet instead of the required 4.71 feet required for the shallow lot. Building permits for the addition consistent with the Variance was issued in 1994. The applicant will preserve existing legal non-conforming sections of the existing house such as the length of the driveway, maneuvering area, 3.5-foot rear yard setback encroachment, and boundary landscaping as indicated on the attached architectural plans (Attachment #2). Section 7-9-151 of OCZC allows legal non-conforming structures to remain so long as any additions or enlargement to such structures fully complies with existing development standards.

Proposed Project

The applicant is requesting a Coastal Development Permit as required by Section III.A of the Emerald Bay Local Coastal Program due to the site's location between Pacific Coast Highway and the Pacific Ocean to construct a two-story 4,348 square-foot single-family residence, and the demolition of the existing single-family residence while maintaining portions of the existing subterranean garage, driveway, and street frontage landscaping. Since the proposed project meets applicable zoning code standards, no other discretionary permits are being requested except for the Coastal Development Permit pursuant to OCZC Sec. 7-9-118.6(a)

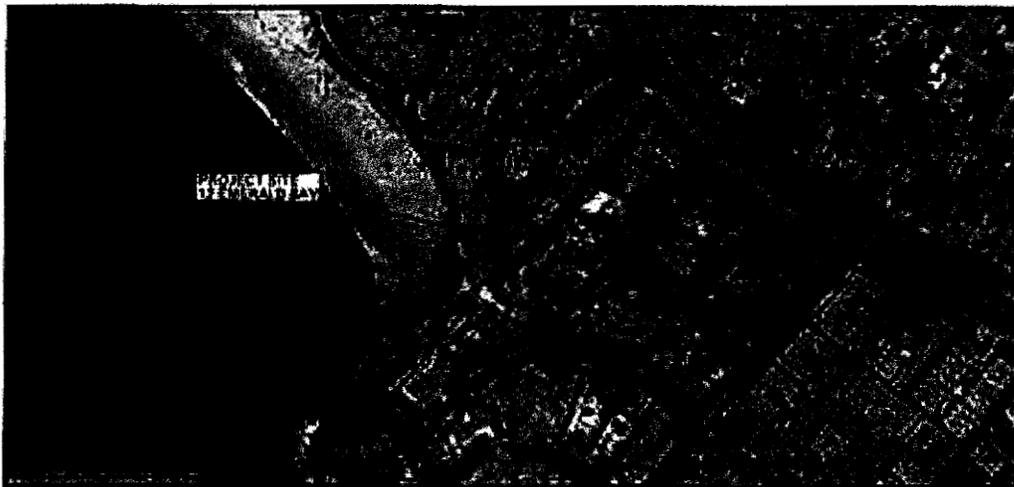
SURROUNDING LAND USE

The project site is zoned for single-family residential use and is surrounded by residential uses. The zoning for surrounding properties is as follows:

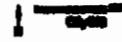
Table 1: Surrounding Land Uses

Direction	Zoning	Existing Land Use
Project Site	Single-Family Residence (R1)(CD)(SR) District	Single-Family Dwelling
North	Single-Family Residence (R1) (CD)(SR) District	Single-Family Dwelling
South	Single-Family Residence (R1)(CD)(SR) District	Single-Family Dwelling
East	R1 zoned properties within the City of Laguna Beach	Single-Family Dwellings
West	Single-Family Residence (R1)(CD)(SR) District	Single-Family Dwelling

AERIAL OF PROJECT SITE



[Illegible text]



REFERRAL FOR COMMENT AND PUBLIC NOTICE

A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to County Divisions: OC Development Services (Planning, Building/Grading Plan Check, Building Official, Right of Way Permits), OC Infrastructure Programs (Traffic Engineering), and Orange County Fire Authority. Through focused meetings and collaborative effort with County staff, the applicant adequately addressed all comments. All comments received from County Divisions have been addressed in the recommended Conditions of Approval, which are provided as Appendix B. The Emerald Bay Community Association approved the project on May 26, 2015, and the meeting minutes are provided as Attachment #4.

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), and the California Coastal Commission on October 2, 2015. Additionally, a notice was posted at the project site, at the County Hall of Administration at 333 W. Santa Ana Boulevard, and in the lobby at the HGO building located at 300 N. Flower Street at least ten days prior to this public hearing as required by County public hearing posting procedures.

CEQA COMPLIANCE

Revised Mitigated Negative Declaration (MND) no. PA150024 was prepared and posted for public review and comment on September 18, 2015. The 20-day public comment period ended on October 8, 2015, and OC Development Services did not receive comments from the public. The MND is attached as Attachment #5 and must be approved prior to project approval with a finding that is adequate to satisfy the requirements of CEQA. A finding for this purpose is provided in Appendix A.

DISCUSSION / ANALYSIS

The proposed single-family residence complies with the uses permitted in the R1 zone. No signs are proposed by the project, and therefore, the Sign Restriction (SR) overlay regulations do not apply. The project is located within the Coastal Development (CD) District and discussion of the project's compliance with the Emerald Bay Local Coastal Program (LCP) and CD regulation is discussed in further detail under "Coastal Development Permit". The new construction complies with all applicable current zoning code standards. No Variances for modifications to site development standards, or Use Permits to modify wall heights and off-street parking standards are being requested.

The proposed residence is designed to respond to the irregular lot configuration, and maintain the architectural heritage present in the neighborhood and of the existing residence. The design focuses on creating architectural features that increases compatibility with neighboring residences such as stepping front balconies, retaining the lot's existing open space and landscaping, and curved planters along the front property line. The structure maintains continuity with the existing residence by preserving some aesthetic elements including wraparound porch, wood and plaster siding, and broken roof approach. The new residence does not propose any setback reduction, and is compatible with the R1 site development standards.

The following table compares the proposed project with the development standards for the R1 "Single Family Residence" Zoning District (OCZC Sec. 7-9-74), and Fence and Wall Heights (OCZC Sec. 7-9-137.5)

Table 2: Project Comparison with R1 "Single Family Residence" Zoning District Development Standards

STANDARDS	PERMITTED	PROPOSED
Structural Front Setback	4 feet 7 inches based on shallow lot criteria, however, not less than 5 feet (OCZC Sec. 7-9-128.2).	7 feet and 1 inch
Structural Side Setback	5 feet minimum	5 feet
Structural Rear Setback	3.5 feet per VA 93-028Z approved in	5 feet and 11 inches proposed for addition.

	1993. Building has existing 3 feet, 5.5 inches portion that will be kept.	
Building Height	35 feet maximum	35 feet proposed.
Off-Street Parking (OCZC Sec. 7-9-145)	2 covered spaces minimum and 28 feet required for maneuvering area	4 spaces provided within existing garage. Existing driveway and maneuvering area will remain.
Walls in Structural Setback Limits (OCZC Sec. 7-9-137.5)	3 feet 6 inches max height in front-yard setback area. 6 feet max height in sides and rear	Proposed walls are outside the 5 feet required front yard setback.
Balconies, decks, porches, terraces, exterior steps and exterior stairways. (OCZC Sec. 7-9-128.6)	If 30" or higher, no more than 3 feet encroachment into required side setback area, and no more than 5 feet to any required rear and front yard setback area.	Exterior steps along the front yard and north side setback are existing and less than 30 inches. No other proposed projections onto required setback areas.

Coastal Development Permit

The project is located in the Emerald Bay LCP area, and is located within the Coastal Commission appealable area of the LCP. Appendix A details the consistency of the proposed project with the required CDP findings. The scope of the project does not qualify it as an exempt project pursuant to OCZC Section 7-9-118.5, and therefore, approval of a Coastal Development Permit is required. The proposed use of single-family residence is consistent with the LCP and the Coastal Development (CD) District regulations.

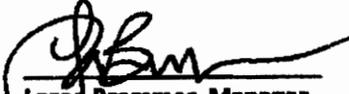
Staff has closely reviewed the applicant's request for a Coastal Development Permit and found it to be compliant with the Emerald Bay Local Coastal Program. Staff supports the project and recommends the following:

CONCLUSION

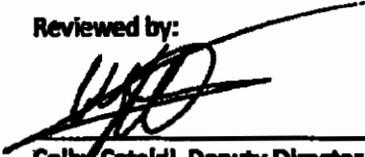
Staff has reviewed the applicant's request for a Coastal Development Permit to allow the construction of a two-story 4,348 square-foot single-family residence, the demolition of the existing single-family

residence, and maintaining portions of the existing subterranean garage, driveway, and street frontage landscaping, with 180 cubic yards of proposed grading and found it to be compliant with the Emerald Bay Local Coastal Program. Staff supports the project and recommends approval, subject to the Findings and Conditions of Approval provided in Appendices A and B.

Submitted by:


Laree Brommer, Manager
OC Development Services / Planning

Reviewed by:


Colby Cataldi, Deputy Director
OC Development Services / Planning

APPENDICES:

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

ATTACHMENTS:

- 1. Site Photos
- 2. Architectural Plans (Site, Demo, Landscape, Elevations, and Sections)
- 3. Applicant's Letter of Explanation
- 4. May 26, 2015 Emerald Bay Board Approval Meeting Minutes
- 5. Revised Mitigated Negative Declaration (MND) No. PA150024
- 6. Variance 93-028Z

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 \$500.00 deposit 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 OC Development Services/Planning.

In addition, this project is within the Coastal Zone of the Emerald Bay Local Coastal Program and is an "appealable development." The decision on a coastal development permit issued for an appealable development may be appealed directly to the California Coastal Commission, South Coast District Office located at 200 OceanGate, 10th Floor, Long Beach, CA 90802, telephone number (562) 560-5071, in compliance with their regulations including appeal fees, without exhausting the County's appeal procedures.

APPENDIX A

APPENDIX B

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. Applicant shall reimburse the County for any court costs and attorney's fees that the County may be required to pay as a result of such action. The County shall promptly notify the applicant of any such claim, action or proceeding.

6 BASIC/APPEAL EXACTIONS PA150024

Pursuant to Government Code Section 88020, 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 GEOLOGY REPORT PA150024

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

8 CONSTRUCTION NOISE PA150024

A. Prior to the issuance of any grading or building permits, the project proponent shall produce evidence acceptable to the Manager, Building and Safety Division, that:

(1) All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet 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.

9 EROSION AND SEDIMENT CONTROL PLAN PA150024

Prior to the issuance of any grading or building permit, the applicant shall submit an Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Building and Safety Division, to demonstrate compliance with the County's NPDES Implementation Program 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 BMPs will be maintained during construction of any future public right-of-ways. The ESCP shall be updated as needed to address the changing circumstances of the project site. A copy of the current ESCP shall be kept at the project site and be available for County review on request.

10 DRAINAGE FACILITIES PA150024

Prior to issuance of grading or building permits, drainage studies that demonstrate the following shall be submitted to and approved by Manager, Building and Safety Division:

1. All surface runoff and subsurface drainage directed to the nearest acceptable drainage facility, as determined by the Manager, Building and Safety Division
2. Drainage facilities discharging onto adjacent property shall be designed to imitate the manner in which runoff is currently produced from the site and in a manner meeting the satisfaction of the Manager, Permit Services. Alternatively, the project applicant may obtain a drainage acceptance and maintenance agreement, suitable for recordation, from the owner of said adjacent property. All drainage facilities must be consistent with the County of Orange Grading Ordinance and Local Drainage Manual.

11 WATER QUALITY MANAGEMENT PLAN PA150024

Prior to the issuance of any grading or building permits, the applicant shall submit for review and approval by the Manager, Building and Safety, a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff. The applicant shall utilize the Orange County Drainage Area Management Plan (DAMP), Model WQMP, and Technical Guidance Manual for reference, and the County's WQMP template for submittal. This WQMP shall include the following:

- Detailed site and project description
- Potential stormwater pollutants
- Post-development drainage characteristics
- Low Impact Development (LID) BMP selection and analysis
- Structural and Non-Structural source control BMPs
- Site design and drainage plan (BMP Exhibit)
- GIS coordinates for all LID and Treatment Control BMPs
- Operation and Maintenance (O&M) Plan that (1) describes the long-term operation and maintenance requirements for BMPs identified in the BMP Exhibit; (2) identifies the entity that will be responsible for long-term operation and maintenance of the referenced BMPs; and (3) describes the mechanism for

funding the long-term operation and maintenance of the referenced BMPs

The BMP Exhibit from the approved WQMP shall be included as a sheet in all plan sets submitted for plan check and all BMPs shall be depicted on these plans. Grading and building plans must be consistent with the approved BMP exhibit.

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RESIDENTIAL SITE PLAN

PA150024

Prior to issuance of a building permit, the applicant shall provide a residential site plan for review and approval by the Fire Code Official.

**Note-refer to the OCFA website to obtain a copy of "Residential Site Review Assistance" form for information regarding the submittal requirements.*

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AUTOMATIC FIRE SPRINKLER SYSTEMS

PA150024

A. If determined applicable by the Fire Chief, prior to the issuance of a building permit, the applicant shall provide the Manager, Permit Services with a copy of the OCFA, or other Local Fire Agency (if applicable), approved Fire Master Plan or site plan indicating that an approved automatic fire sprinkler system will be provided.

B. Prior to the final inspection approval, this system shall be operational in a manner meeting the approval of the Fire Chief.