



Business Trial Attorneys

July 29, 2008

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South Coast Region

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CALIFORNIA  
COASTAL COMMISSION

**VIA FACSIMILE and U.S. Mail**  
**(562) 590-5084**

Gabriel Buhr, Coastal Program Analyst  
California Coastal Commission  
South Coast District  
P.O. Box 1450  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4416

Re: Appeal from Coastal Permit Decision of Local Government, PA-07-0069  
George A. Lopez

Dear Mr. Buhr:

The Appeal from Coastal Permit Decision of Local Government, PA-07-0069 filed with the California Coastal Commission on behalf of George Lopez (the "Appeal") is scheduled for hearing on August 7, 2008. Our firm represents Dr. Lopez in connection with the Appeal.

The Staff Report published on the California Coastal Commission website purports to attach a copy of the Appeal. However, the version of the Appeal attached to the Staff Report omits all of the Exhibits to the Appeal. While certain Exhibits are merely copies of County documents, the arguments contained in Exhibits B and F are expressly incorporated into the Appeal, and we request that they be included in the Staff Report and posted on-line.

Enclosed for your convenience and reference are additional copies of Exhibits B and F to the Appeal.

Very truly yours,

Laura L. Kohut

LLK:alw

cc: Via U.S. Mail  
Robert Johnson, 164 Emerald Bay, with enclosures  
EBCA, c/o James C. Harkins, IV, Esq., with enclosures  
EBCA, 600 Emerald Bay, with enclosures

**EXHIBIT B**

April 30, 2008

Ronald L. Tippetts, Chief  
County of Orange  
RDMD/Current & Environmental Planning  
300 N. Flower, P.O. Box 4048  
Santa Ana, California 92702-4048

Re: Planning Application PA070069 for a Coastal Development Permit and  
Variance (Johnson Residence, 162/164 Emerald Bay, Laguna Beach)

Dear Mr. Tippetts:

On behalf of Dr. George A. Lopez (166 Emerald Bay), we are writing to appeal the Approval of Planning Application No. PA070069 for a Coastal Development Permit (the "Permit"), granted on April 17, 2008 (the "Permit"). The Permit is for a "Coastal Development permit to demolish two existing one story houses on two lots and construct a new two story home, straddling the two lots, with basement and new site work and a variance from required 20' front setback to 6' 6" per R1 zoning regulations."

The Permit pertains to the construction of a residence spanning two ocean-front lots located at 162 and 164 Emerald Bay, in the gated private community of Emerald Bay (the "proposed residence"). (A depiction of the proposed residence is attached as Exhibit "1.")

The Permit should not have been granted for at least three reasons:

1. The proposed residence would impair beach access and ocean views, by forever blocking an historic community beach walkway access easement (the "Beach Access Easement") and completely filling in an historic ocean view corridor;
2. The proposed residence extends far down the bluff slope and encroaches into the Coastal Commission's 25-foot bluff-top setback; and
3. The stairway on the Beach Access Easement and the cabana at the base of 162 Emerald Bay were constructed without County permits, do not conform to Code, and violate the Coastal Commission's 25-foot bluff-top setback.

1. The Proposed Residence Would Forever Block Community Beach Access.

The Beach Access Easement runs from the street to the beach between 162 and 164 Emerald Bay. (The Beach Access Easement is shown on Exhibit "1;" photographs of a private stairway constructed on it are attached as Exhibit "2.")

The Beach Access Easement was reserved to the community in the original Grant Deed for 162 Emerald Bay to J. Stanley Johnson and Mary Johnson (the parents of the current owner, Bob Johnson), which was recorded on April 13, 1944 in Book 1244, page 356, Official Records of Orange County, California. (The Corporation Grant Deed is attached as Exhibit "3.") It is depicted on a recorded "Record of Survey" dated May 13, 1944. (The Record of Survey is attached as Exhibit "4.")

Since its reservation in 1944, community members of the EBCA have periodically clamored for improvement of the Beach Access Easement for member use. Requests for development of the Beach Access Easement were made in 1948, 1952, 1956, 1974, and 1998. The EBCA consistently has denied members' requests to use and develop the Beach Access Easement.

In early 1998, the current owners of the burdened property, Bob and Alison Johnson, requested that the EBCA extinguish the Beach Access Easement to allow them to combine 162 and 164 Emerald Bay, and construct a residence over the historic Beach Access Easement. When the Johnsons' efforts to extinguish this community asset became known to their neighbors, George and Diana Lopez, the Lopezes' filed suit to, among other things, require the EBCA to open the Beach Access Easement for community beach access. After four years of litigation, the Lopezes and the EBCA settled. Pursuant to the settlement, the EBCA was required to preserve the Beach Access Easement for future use, and not to allow it to be encumbered or developed.

Johnson then commenced a private arbitration proceeding against the EBCA seeking to require the EBCA to extinguish or move the Beach Access Easement, so that he could combine and develop 162 and 164 Emerald Bay. Neither the Lopezes nor the State of California (Coastal Commission) was a party to the arbitration. Ultimately, the arbitrator decided in favor of Johnson and ordered the EBCA to extinguish the Beach Access Easement. Johnson was required to consent to a replacement easement between 162 Emerald Bay, and his brother's property at 160 Emerald Bay. (The arbitration award is attached as Exhibit "5.")

The arbitrator's extinguishment and relocation of the Beach Access Easement violated the rights of the Coastal Commission under the Emerald Bay LCP, the rights of Johnson's neighbors in the view corridor preserved over the historic Easement, and the rights of the Emerald Bay community members to beach access. The construction of the proposed residence similarly would violate those rights.

a. The Emerald Bay LCP.

Emerald Bay is subject to the "Emerald Bay Local Coastal Program" dated September 1989 (the "Emerald Bay LCP"). (The Emerald Bay LCP is attached as Exhibit "6.") With respect to Emerald Bay community beach access, the Emerald Bay LCP provides, in relevant part:

"If public access to the Emerald Bay beach from Pacific Coast Highway is required, it shall consist of a ten (10) foot wide pedestrian and bicycle access easement along the roads and community areas (such as stairways) for the purpose of such public access from Pacific Coast Highway through the Emerald Bay Community to the beach. The public access route to the beach will be determined if and when access becomes available to the public." (Emerald Bay LCP, p. II-23, ¶5(b).)

"Prior to the issuance of a building permit, required offers to dedicate access easements shall be executed and recorded by the Community Association or its successor-in-interest and shall be recorded free of prior liens and encumbrances except for tax liens and shall run in favor of the People of the State of California, binding the Community Association and their successors-in-interest. Any offer to dedicate easements shall be made to a public agency or private associate acceptable to the Coastal Commission and shall be irrevocable for a period of 21 years, such period running from the date of recordation." (Emerald Bay LCP, p. II-24, ¶5(e).)

The Staff Report issued and adopted by the County fails to address the public access nature of the Beach Access Easement.

b. The Historic Ocean View Corridor over the Beach Access Easement.

Historically, the community Beach Access Easement running along the boundary between 162 and 164 Emerald Bay has created an ocean view corridor for 161 and 163 Emerald Bay, which are located across the street and behind 162 and 164 Emerald Bay, and preserved the hillside views and privacy of 166 Emerald Bay.

The proposed residence would completely "fill in" that view corridor. As result, the proposed construction would eliminate the ocean view from 163 Emerald Bay, substantially impair the ocean view from 161 Emerald Bay, and interfere with the lateral view and privacy interests of 166 Emerald Bay.

c. The Community's Right to Beach Access.

The Beach Access Easement is located in the "Point Tract" of Emerald Bay. The "Point Tract" is the northern most beach front area in Emerald Bay. There is no direct beach access for the residents of the Point Tract. The elimination of the Beach Access Easement, and denial of its development for community use, impairs the potential for beach access for the residents of the Point Tract.

The Johnsons have direct beach access – on a stairway that is on the Beach Access Easement. That stairway goes down the bluff to the ocean, and ends at the Johnson's cabana. (See, Exhibit 2.) The elimination of the Beach Access Easement and the construction of the proposed residence would forever defeat the Point Tract residents' right to beach access.

2. The Proposed Residence Violates the 25' Bluff-Top Setback.

The proposed residence encroaches into the 25-foot Coastal Commission bluff-top set back, which impairs the hillside views and privacy of 166 Emerald Bay. (See, Exhibit 1, showing the encroachment into the 25-foot setback.)

The Coastal Commission traditionally has used two methods for reviewing the seaward encroachment of development: (a) a 25-foot setback from the bluff edge; and (b) a string line evaluation. California Public Resources Code §30251 states that scenic and visual qualities of coastal areas shall be protected as a resource of public importance. It also states that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal area, 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 the visual quality in visually degraded areas. California Public Resources Code §30253 similarly provides that new development should not substantially alter natural landforms along bluffs and cliffs.

The seaward encroachment of the proposed residence violates both the 25-foot setback from the bluff edge and the string line established by current development.

3. The Cabana and Private Beach Access Stairway Were Built Without Proper Permits or Coastal Commission Approval.

The Johnsons' private stairway on the historic Beach Access Easement and their cabana at the base of 162 Emerald Bay were both constructed without final County permits. The cabana improperly ties into the slope at 162 Emerald Bay and fails to conform to Code in several respects. It is our understanding that the County issued a Notice of Violation to the Johnsons regarding the cabana in 2001. The stairway and cabana likely did not receive approval from the Coastal Commission.

In connection with the development of 166 Emerald Bay, the Johnsons argued that the cabana was in an unsafe location and jeopardized by the upslope construction. The seaward encroachment of the proposed residence over the cabana similarly will jeopardize its safety.

Very truly yours,



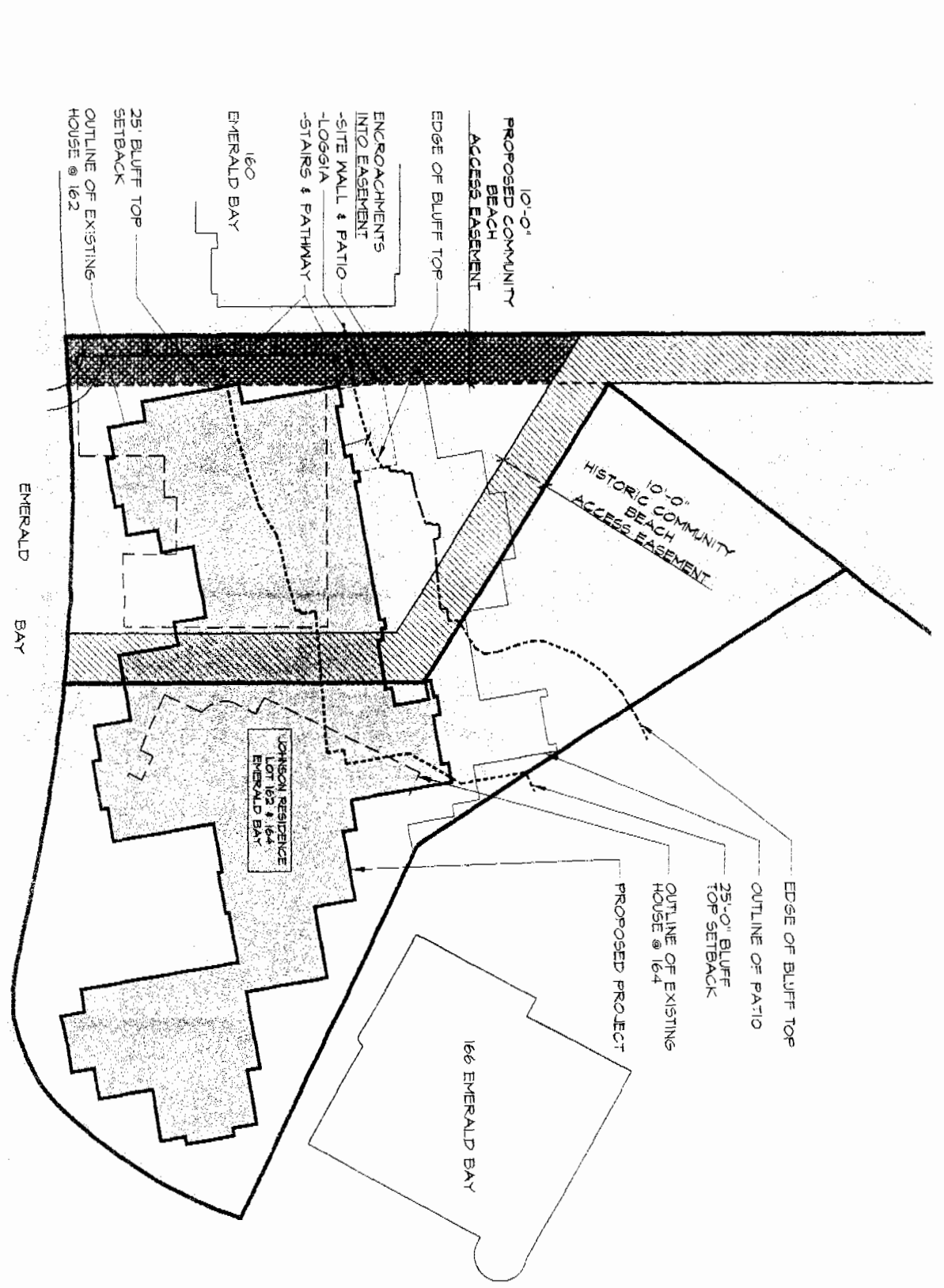
Laura L. Kohut

LLK/alw

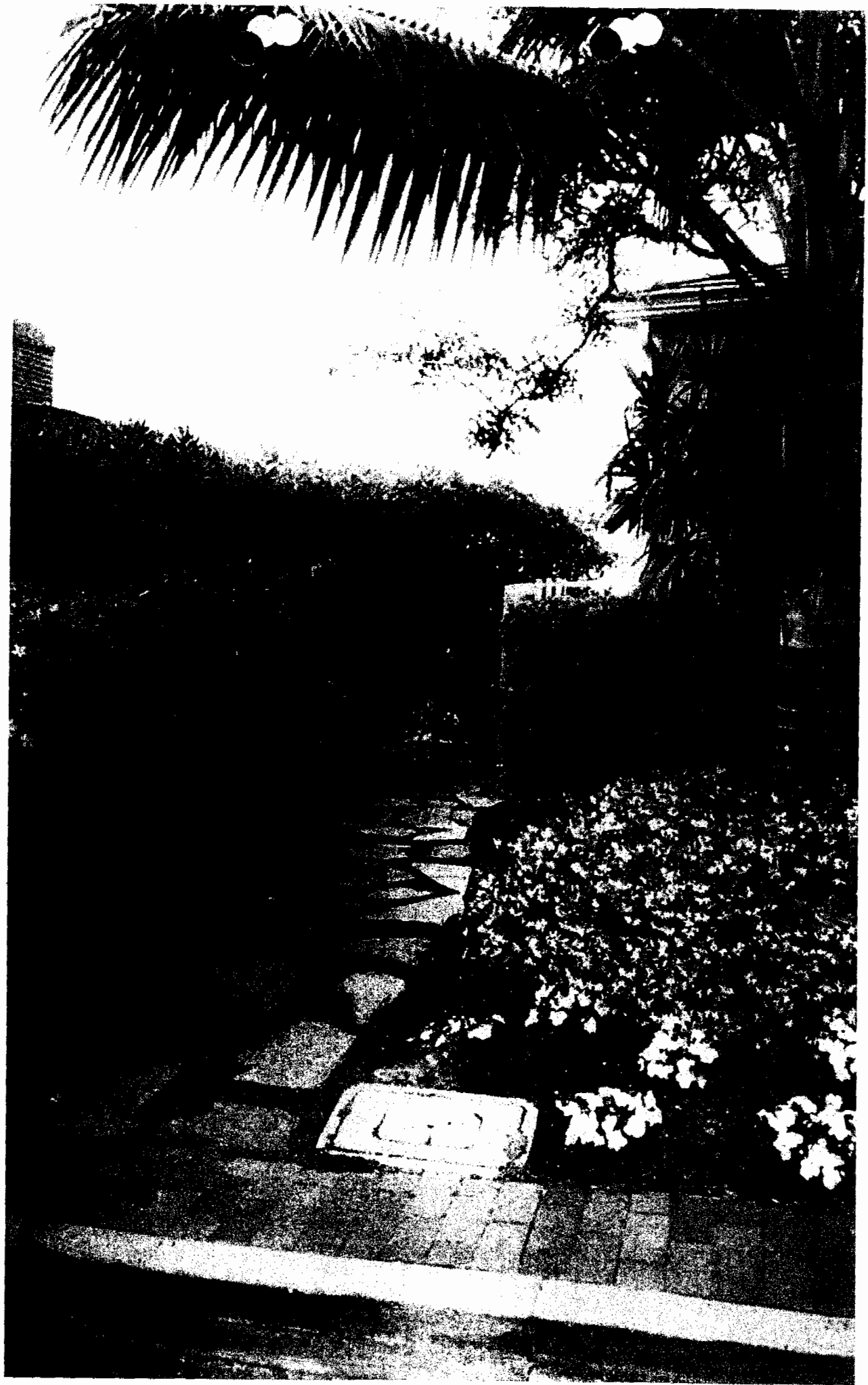
Enclosures

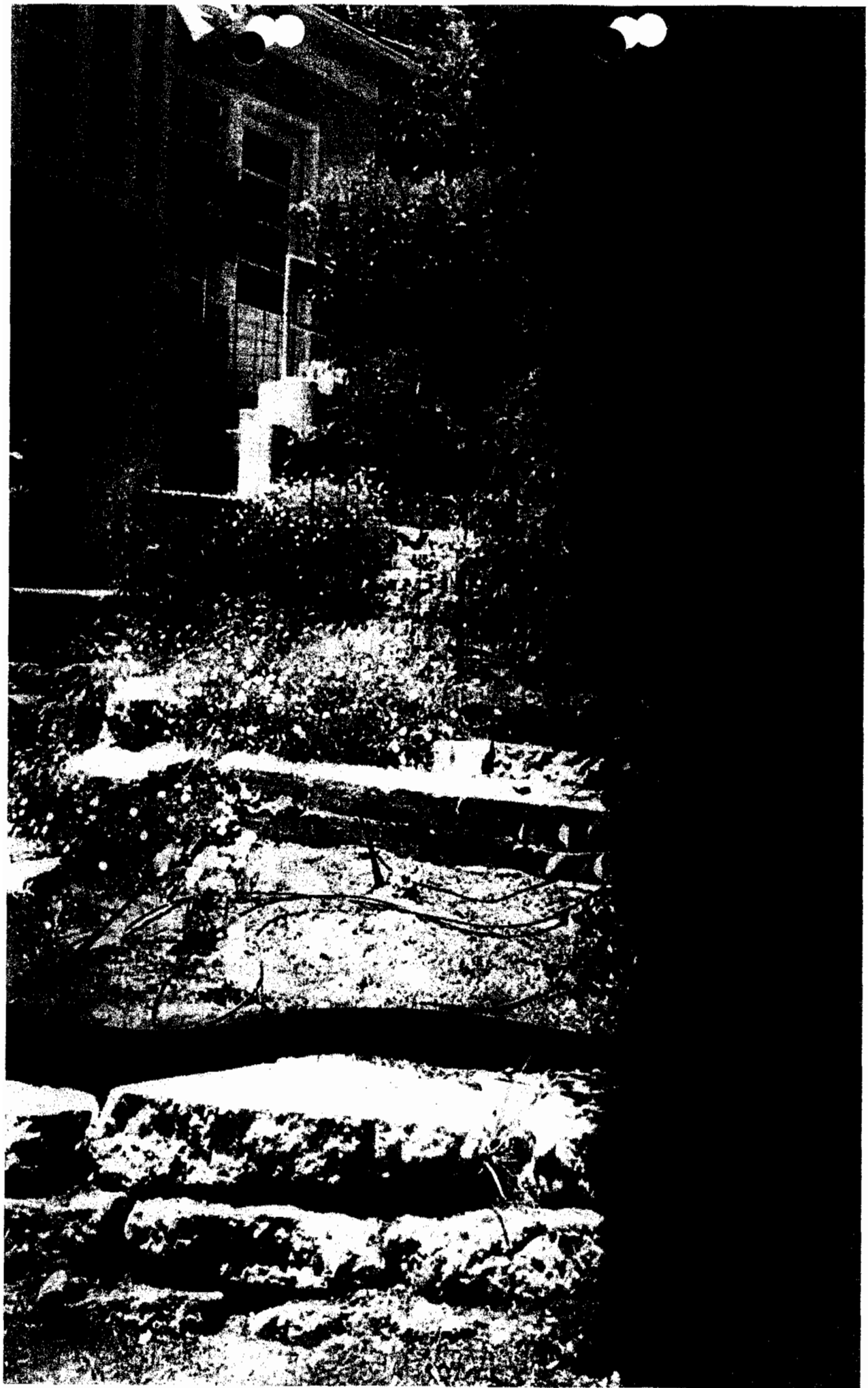
cc: Sherman Stacey, Esq.  
Emerald Bay Community Association

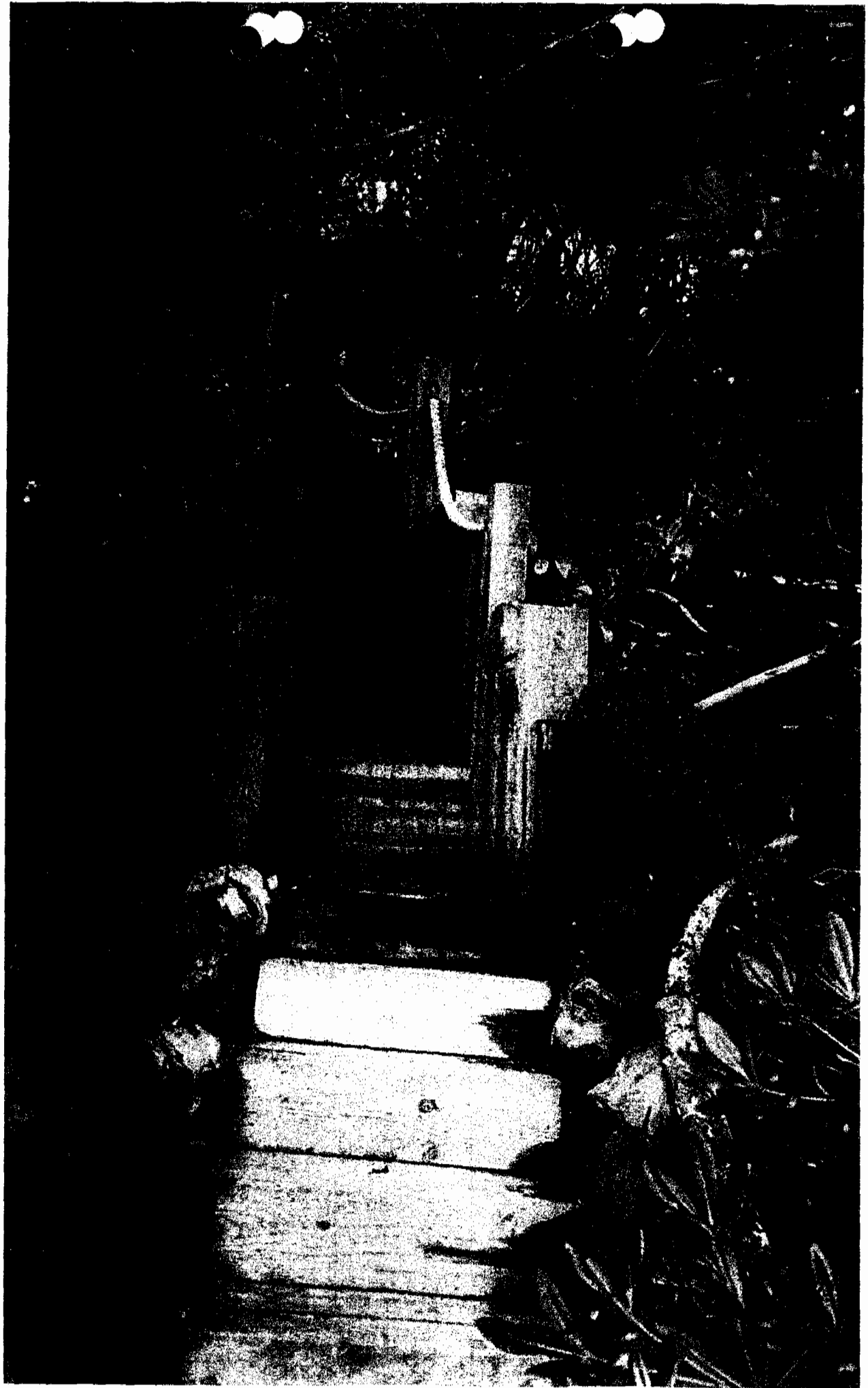
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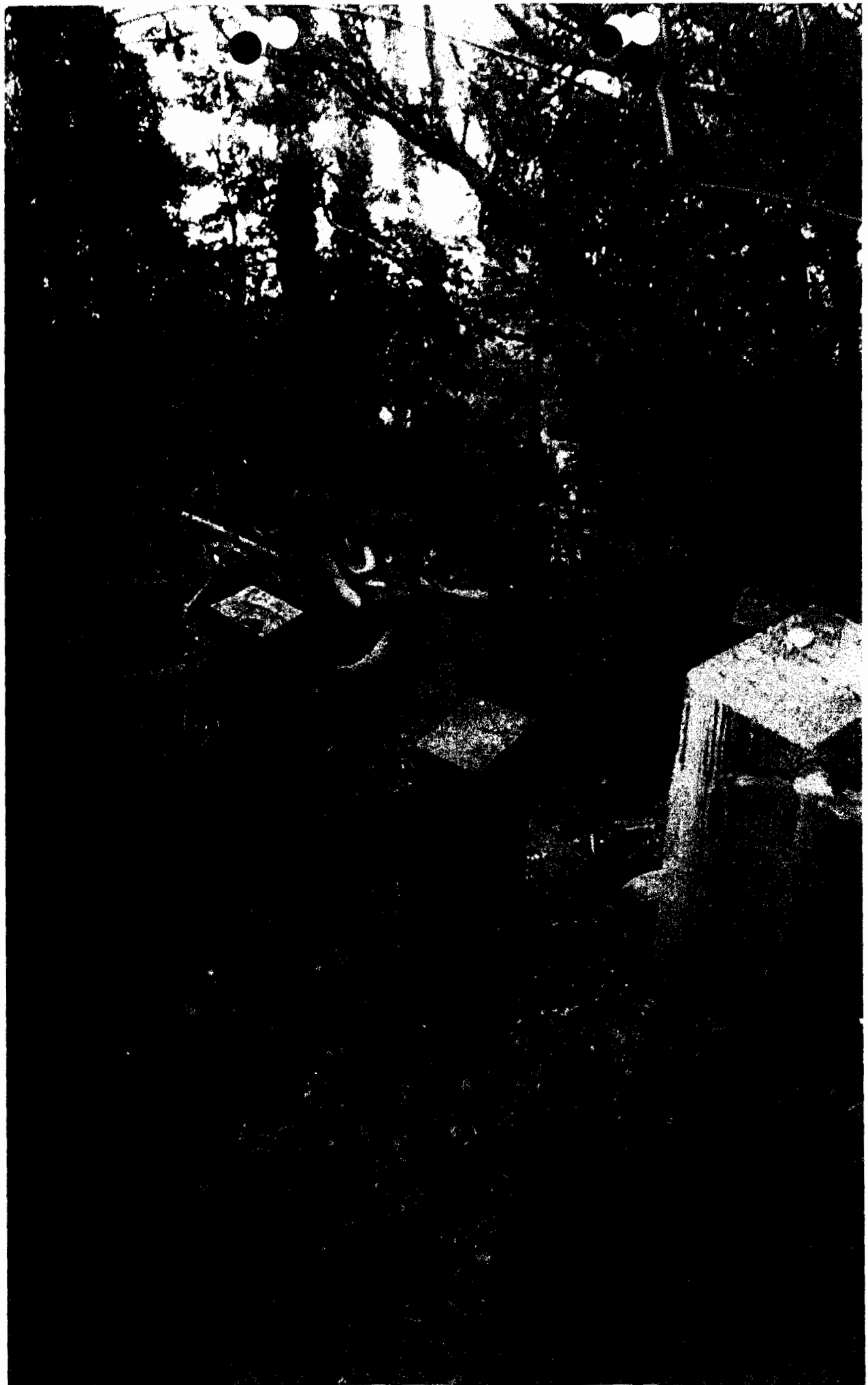


















## CORPORATION GRANT DEED

TITLE INSURANCE AND TRUST COMPANY, a corporation organized under the laws of the State of California, and having its principal place of business at Los Angeles, California, in consideration of TEN AND NO/100 DOLLARS, to it in hand paid, the receipt of which is hereby acknowledged, does hereby Grant to: J. STANLEY JOHNSON and MARY WIG JOHNSON, husband and wife as joint tenants, all that real property situate in the County of Orange, State of California, hereinafter referred to as "said realty" and hereby described as follows: to wit:

Parcel 1. That portion of Lot 164 of Irvine's Subdivision, as shown on a Map recorded in Book 1, page 88 of Miscellaneous maps records of Orange County, California, more particularly described as follows: Beginning at the Northwest corner of Lot 24 of "Tract No. 975, Subdivision E of Emerald Bay", as shown on a Map recorded in Book 31, pages 18 to 21 inclusive of Miscellaneous Maps records of Orange County, California; thence West along a curve concave North, having a radius of 410 feet, a radial line of said curve from said corner of Lot 24 bearing North 26° 16' 47" West (bearings based on Tract No. 975) through an angle of 9° 47' 41" a distance of 70.09 feet, the radial line at the end of the said curve bearing North 16° 29' 06" West; thence South 21° 55' 16" East 72.36 feet; thence South 80° 04' 02" East 70.64 feet; thence South 16° 15' 29" West 84.52 feet; thence North 86° 52' 44" East 65.74 feet to the Southwesterly corner of Lot 23 of "Tract No. 975; thence North 21° 55' 16" West 196.58 feet to the point of beginning.

RESERVING unto the Seller herein a right of way for walkway and utility purposes over a strip of land 10 feet wide, the Westerly line of said strip being described as follows: Beginning at the Northwest corner of the above described parcel; thence along the Westerly line of said parcel South 21° 55' 16" East 72.36 feet; thence along the Southwest line of said parcel South 80° 04' 02" East 70.64 feet more or less to a line parallel with and ten feet Westerly measured at right angles from the West line of said Lot 23; thence Southerly parallel with said West line to the South line of the above described parcel.

Parcel 2. An easement for ingress and egress over that certain land described in the 40th page of Title Insurance and Trust Company to Southern Counties Gas Company of California, recorded November 29th, 1937, in Book 913, Page 410 of Official Records, said Easement not being for the exclusive use of the Buyer herein.

No excavating or grading of said easement incident to the installation or improvement of all walk shall be undertaken without providing adequate lateral support for the portion of the land hereby conveyed abutting on said easement.

SUBJECT TO second installment of taxes for the fiscal year 1943-1944; any taxes and assessments of Laguna Beach County Water District; and to all assessments or bonds levied or imposed on said realty resulting from the installation of public improvements in or upon said tract pursuant to appropriate proceedings of the proper legislative body in accordance with public improvement laws.

IT IS UNDERSTOOD AND AGREED that the Grantee is of legal age, and that said realty has been inspected by the Grantee, or the Grantee's duly authorized agent; that said realty is and has been purchased by the Grantee as a result of such inspection and not upon any representation made by the Grantor, or any selling agent, or other agent of the Grantor; that the authority of Grantor's Agents is limited, and confined to securing purchasers for its property upon the terms and conditions set out in this deed and not otherwise, and no Agent has any right, power or authority to bind the Grantor, and Grantor will not be bound, by any change, alteration, modification, stipulation, representation, inducement or promise of any kind no specifically called for in this deed.

PROVIDED, HOWEVER, that this conveyance is made and accepted upon and subject to each of the following express conditions, restrictions, covenants, reservations, liens and charges hereinafter referred to as "conditions", which shall be and operate as express conditions subsequent and apply to and bind the Heirs, executors, administrators, devisees, lessors, grantees, successors, and assigns of the respective parties, namely:

1. That power to enforce the conditions, restrictions, reservations, liens and charges set forth in this conveyance shall reside in the EMERALD BAY COMMUNITY ASSOCIATION, a non-profit cooperative corporation.

2. That said realty shall be used only for private residence purposes and only one private one-family residence ever shall be erected or maintained thereon; the location and construction of all buildings on said realty shall be made only upon the written approval of the Architectural Committee hereinafter mentioned; and the plans for the location, type, and style of any fence, hedge, or wall shall meet with the written approval of said architectural committee.

3. That any residence erected or maintained on said property shall conform to the general plan of height, type, color, location, and construction of residences projected by the Architectural Committee of the Emerald Bay Community Association for the improvement of parcels in the immediate vicinity; that no portion of the plans of any exterior wall of any building or structure shall be over two stories in height or extend more than 25 feet above the natural level of the adjoining grade, nor shall the ridge pole of said structure extend more than



fifteen feet above the highest natural level of said parcel.

4. That no horses, cows, pigs, sheep, goats, chickens, rabbits, pigeons, or other like barnyard animals, game, or fowl ever shall be kept or maintained thereon.

5. That said realty shall not, nor shall any part thereof be used for the purpose of exploring for, taking therefrom, or producing therefrom gas, oil, or other hydrocarbon substances.

6. That no building, structures, or premises shall be erected, constructed, or placed, altered, or maintained on said realty which shall be used or designed or intended to be used for any purpose other than that permitted under Section "2" of these conditions, and no dwelling house, outhouse, building, fence, posts, awnings, tent, wall or other structure of any kind shall be erected, constructed, placed, altered or maintained on said realty or any part thereof unless and until the written approval of the Association shall first have been obtained as hereinafter provided.

7. That no outhouse, garage, shed, tent, or temporary building of any kind shall be erected and/or maintained on said realty prior to the erection of the principal dwelling house or building thereon; and any private garage must be incorporated in and made a part of the dwelling house unless otherwise permitted by written approval of said Association.

8. That no building or part thereof, including porches, except steps, balconies, or other architectural features approved by the Association, shall ever be erected, placed, permitted, or maintained nearer the exterior boundary lines of said realty than the set-back specified by said Association in its approval of plans as hereinafter provided.

9. That no part of said realty shall be used or occupied in whole or in part by any person not of the White or Caucasian race, except servants in the employ of the occupants thereof.

10. That two complete sets of building plans for each structure of any kind to be erected, placed, or maintained on said realty, accompanied by two sets of specifications for the erection of said structure, together with a diagram of the proposed location thereof on said realty, shall be submitted to said Association, or its successors, and no structure of any kind the plans, elevations, specifications, and proposed location of which have not received the written approval of said Association or its successors, and which does not comply fully with such approved plans and specifications, and proposed location shall be erected, placed, or maintained thereon. Such approval shall be endorsed upon said plans and specifications and a set of such plans and specifications shall then be filed with said Association. Approval of such plans, specifications, and locations of building shall further be evidenced by a proper written instrument signed and acknowledged by said Association or its successors, and such approval shall not be complete or valid until the said instrument has been duly recorded by the owner in the office of the County Recorder of said Orange County; approval by said Association or its successors as to the location and construction of any such building, in accordance with said approved plans and specifications, shall be evidenced by a proper written instrument signed and acknowledged by said Association or its successors which instrument also shall be duly recorded by the owner in the office of the said County Recorder; the last named instrument may be executed at any time after the completion of said building; provided, however, that if said Association, or its successors, shall disapprove of such location and/or construction such disapproval, evidenced by a proper written instrument signed and acknowledged by said Association, or its successors, shall be duly recorded in the office of said County Recorder within ninety (90) days after the recordation in said office, by the owner, of "Notice of Completion" of said construction, and failure on the part of said Association or its successors, to record such notice of disapproval within the said ninety (90) days period shall be deemed to be a waiver of any and all further jurisdiction of said Association, or its successors, as to the said plans and specifications or either of them and of said location and/or construction of said building, but nothing herein contained shall be construed as a waiver on the part of said Association, or its successors, who may be entitled to enforce the conditions recited herein, or the rights to enforce compliance with any of the other conditions imposed by this deed. Upon the recordation of any instrument in the office of the County Recorder of Orange County, as hereinabove provided, the facts therein stated shall conclusively be deemed to be true as to all third parties subsequently acquiring the property upon which such structure was located, or any interest therein, or any lien or encumbrance thereon. The said Association shall not be responsible for any structural defects in said plans and/or specifications nor in any building or structure erected according to such plans and specifications.

Said Association may, from time to time, select and appoint an Architectural Committee, of from three to five persons, to examine said plans, specifications, and proposed location of buildings, before endorsing its approval thereon, said Committee to be known as the Board of Architectural Supervision.

No addition or alteration to any structure already erected, shall be commenced unless and until plans and specifications covering the proposed addition and/or alteration shall have first been submitted to said Association, and by it approved in writing.

No planting of any tree or shrub, which attains ordinarily a height at maturity in excess of twenty (20) feet, shall be made unless and until the written consent of said

Association shall have been held.

It is further provided that any plans and/or specifications covering the construction, alterations, or addition of or to any building or land-scaping on said realty, must be approved or disapproved by said Association within thirty (30) days from and after the date of presentation.

Any agent or officer of the Association or any member of the Board of Architectural Supervision may, at any reasonable time after notice, enter and inspect any property for which plans have been submitted for approval, or upon which construction is in progress, or within thirty (30) days after completion.

11. That the grantee, by the acceptance of this deed, covenants for himself, his heirs, executors, administrators, successors and assigns, that said Association shall have the right and power to do, and/or perform, for the benefit, maintenance, and improvement of said realty, and of the property and subdivisions commonly known as Emerald Bay, and the peace, health, comfort, safety, and general welfare of the owners, of property in Emerald Bay or residents thereon, the following things, to-wit:

(1) Maintain parks and recreation facilities, to purchase, construct, improve, repair, maintain, operate, care for, own and/or dispose of parks, parkways, ball grounds, beaches, boat landings, floats, piers, open spaces and recreation areas, tennis courts, band stands, swimming pools, community buildings, community playgrounds, or any other structures appropriate for the use and benefit of its members and/or for the improvement and development of the said property.

(2) Maintenance and Ornamentation of streets, To improve, light, and/or maintain streets, roads, alleys, courts, walks, parks, gateways, fences, and ornamental features now existing or hereafter to be erected or created, shelters, comfort stations, and/or buildings and improvements ordinarily appurtenant to any of the foregoing, and to maintain and care for grass plots, trees, and plants within the lines of the streets immediately adjoining said property.

(3) To care for any lots and plots in said property, remove and destroy grass, weeds, rodents, and predatory animals and any unsightly or obnoxious thing therefrom and to perform any labor to keep the property clean and in good order.

(4) To provide for the sweeping, cleaning, and sprinkling of streets, walks, etc. and the collection and disposition of street sweepings, garbage, rubbish, ashes, and the like.

(5) To keep records of building permits and/or approvals or disapprovals made or issued by it, and to keep books and records showing all charges, levies, or disbursements made, and to furnish certified copies of any record which the Board of Directors may authorize to be furnished.

(6) To enforce charges, restrictions, conditions, and covenants existing upon and/or created for the benefit of parcels of real property over which the said Association has jurisdiction, and to which said parcels may be subject to the extent that said corporation has the legal right to enforce the same and to pay all expenses incidental thereto, and to enforce the decisions and rulings of the Association having jurisdiction over any of said property to the extent that said corporation is authorized in said restrictions, conditions, and covenants to enforce same, and to pay the expenses in connection therewith.

(7) To pay the taxes and assessments which may be levied by any public authority upon property used or set a part for parks or recreation areas, and improvements thereon, now or hereafter opened, laid out, or established in said property or on such other recreation spaces as shall be maintained for the general benefit and use of the owners of lots in said property, and their successors in interest, and also on ornamental features, tennis courts, community club houses, established in or upon said property, whether taxed or assessed as a part of said property, or separately, and on any property of the Association or which may be held in trust for the Association.

(8) To control property, - To exercise such powers of control, interpretation, construction, consent, decision, determination, modification, amendment, cancellation, annulment, and/or enforcement of covenants, reservations, restrictions, liens and charges imposed upon said property as may be vested in, delegated to, or assigned to said Association.

(9) To approve Plans, - To approve and/or disapprove as provided by the restrictions, conditions, and covenants herein set forth, the plans and specifications for and/or location of buildings, fences, walls, posts, tents, and structures of any kind whatsoever to be erected, placed, repaired, or maintained upon said property or any portion thereof, and to approve or disapprove the kind, shape, height, and material for same and/or the block plan indicating the location of such structure on their respective building sites.

(10) To regulate Signs, - To regulate and/or prohibit the erection, posting, placing, or displaying upon any of said property of bill boards and/or signs of all kinds and character and to remove and/or destroy all signs placed, erected or maintained upon said property without the authority of the Association.

(11) Maximum Levy of Charges and Fees - To establish and levy such charges or fees as may be necessary to carry forth, pay off or otherwise meet the expense of carrying out and performing any of the above enumerated powers and duties or the purposes for which said Association was formed, provided that the amount of such charges or fees levied for all purposes other than

the acquisition or improvement of real property, owned by the Association, or the payment of existing debts of the Association shall not, with reference to any particular lot, parcel or building site, constituting any part of said property, exceed in any one year three percent (3%) of the then assessed value of the respective lot, parcel or building site and all improvements thereon, with reference to which said charge or fee is levied, as established by the Assessor of the County of Orange, State of California, provided further, that fees and charges in an additional amount of not to exceed one per cent (1%) of said assessed value of any of said lots, parcels or building sites and the improvements thereon, may be levied in any year for the purpose of acquiring real property and/or improving real property already owned by the Association, or paying debts owing by the Association, provided further, however, that no such levy for the purpose of acquiring real property and/or improving real property already owned by the Association or paying debts owing by the Association shall be made unless and until such additional levy shall have been first authorized and approved by the vote of holders of memberships in the Association entitled to exercise sixty-six and two-thirds per cent (66-2/3%) of the voting power, and provided further, that in levying any and every charge or fee, the same rate or percentage shall be applied against the assessed value of each and every lot, parcel or building site in said property, and the improvements thereon; to provide that such charges or fees shall be due and payable on the first Monday in the calendar month immediately following the levying and fixing of said charges or fees, and shall become delinquent on the last Monday in the month immediately succeeding; to collect said charges or fees annually or oftener if deemed advisable by the Board of Directors, from the owner or owners or the buyer or Buyers under any contract of purchase of any such lot, parcel or building site in said property.

(12) Lien on Property - To provide in the By-Laws that any labor rendered or materials and supplies used or consumed or equipment, appliances or power furnished for the maintenance, improvement and development of the property or for the general welfare of the owners thereof or residents thereon or for the members of the Association, or in performing or causing to be performed any of the acts specified directly or by inference in the foregoing duties and powers shall be deemed to have been rendered, furnished and supplied by the Association for the benefit and advantage of each lot, parcel or building site in said property and at the special instance and request of the owner or owners or Buyer or Buyers thereof, and that the Association shall have a lien upon each such lot, parcel or building site in said property against which the charges and fees fixed, established and levied pursuant to Paragraph (11) of this Section 11, shall have become delinquent as fully as though said labor had been bestowed on, and materials, supplies, equipment or power furnished directly to said lot or lots, parcel or parcels, building site or building sites; provided however, that the lien so accruing or attaching in any one year shall not exceed the charges or fees fixed or established pursuant to Paragraph (11) of this Section 11 or such years (however, this provision shall not be construed to prevent the Association from holding at one time a lien for more than one year's charges or fees); and, provided further, that such claim or right of lien must be filed in the office of the County Recorder of Orange County within sixty (90) days after the charges or fees contemplated by Paragraph (11) of this Section 11 shall become delinquent; and provided, further, that any action to enforce such lien must be commenced in a proper court within one (1) year after the claim of lien has been recorded; provided further, that in the event any suit or action shall be brought to enforce any such lien, and judgment for the enforcement of such lien rendered, under which said judgment any execution sale or other sale shall be made of any lot or parcel of said property, then the record owner of any such lot or parcel so sold under or pursuant to any such judgment shall have the right of redemption of every such lot or parcel so sold any time within two (2) years from the date of such sale by payment of the principal amount of said judgment, including any costs taxed in any such suit or action and the expenses of such sale, together with interest on said amounts at the rate of seven per cent (7%) per annum from the date of such sale to the date of redemption. The entry of record of a satisfaction of any such judgment or of a certificate executed by Emerald Bay Community Association acknowledging the satisfaction of any such judgment or the redemption of the particular lot or parcel, or lots or parcels, to which such judgment shall have reference, shall wholly free such lot or lots, or parcel or parcels, from the lien of any such judgment, and the owner or owners thereof shall be restored to all rights as the holder or holders of the membership or memberships held by such owner or owners with respect to such lot or lots, parcel or parcels, so redeemed.

(Note: The word "property" as used in this section 11 and in the several paragraphs thereof embraces all of the lots, parcels, and subdivisions of land commonly known as Emerald Bay, of which the parcel hereby conveyed and referred to as "said realty" forms a part, all of which have been or will be placed under the jurisdiction of said Association as a community development progressively as such development takes place; and said realty by this deed is hereby placed thereunder.)

12. That said conditions shall be and remain in full force and effect, except as hereinafter provided, until January 1, 1959, and shall as then in force be continued automatically and without further notice from that time for a period of twenty, (20) years, and thereafter for successive periods of twenty (20) years each without limitation; but by mutual written agreement of the then owners of said realty and the Grantor herein, its successors or

assigns, duly acknowledged and bearing the written approval of said Association, if then existing, after said Association shall first have had a public hearing thereon, said conditions, or any one or more of them, may, at any time and from time to time be amended, modified, changed, altered, supplemented, annulled, or cancelled, effective upon recordation thereof in the office of the Recorder of Orange County, California.

PROVIDED, HOWEVER, that a breach of any of the foregoing conditions shall cause said realty to revert to and re-vest in the Grantor, its successors or assigns, who shall have the right of immediate re-entry upon said realty in the event of such breach, and any violation of said conditions or the continuance thereof may be enjoined, abated, or remedied, and said conditions specifically enforced, by said Grantor, its successors and assigns, or by said Association, but by no other person.

PROVIDED, ALSO, that a breach of any of the foregoing conditions or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value, but said conditions shall be binding upon and effective against any subsequent owner of said realty.

IN WITNESS WHEREOF, the said Title Insurance and Trust Company has this 29th day of March, 1944, herunto caused its corporate name and seal to be affixed by its Vice-President and Assistant Secretary, thereunto duly authorized.

((CORPORATE SEAL))

JAW

TITLE INSURANCE AND TRUST COMPANY,  
By Ben W. Utter, Vice President.  
By H. L. Sheldon, Asst. Secretary.

STATE OF CALIFORNIA )

County of Los Angeles ) ss.

On this 29th day of March, 1944, before me, M. P. Peace, a Notary Public in and for said County, personally appeared Ben W. Utter, known to me to be a Vice President, and H. L. Sheldon, known to me to be an Assistant Secretary of Title Insurance and Trust Company, the Corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same.

WITNESS my hand and official seal the day and year in this certificate first above written.

((SEAL))

U.S.I.R.S. \$5.50  
Cancelled

M. P. Peace Notary Public  
in and for the County of Los Angeles,  
State of California.

10657 Recorded at Request of Grantee, at 9 A.M. Apr. 13, 1944, in Book 1244, Page 356, Official Records of Orange County, California. Ruby McFarland, County Recorder.

Janet LeBar COMPARED Arleen Phelps

I CERTIFY THAT, IF THIS SEAL IS AFFIXED  
IN PURPLE INK, THIS IS A TRUE AND  
CORRECT COPY OF THE PERMANENT RECORD  
FILED OR RECORDED IN THIS OFFICE.

DATE AUG 16 2001 FEE 6.00



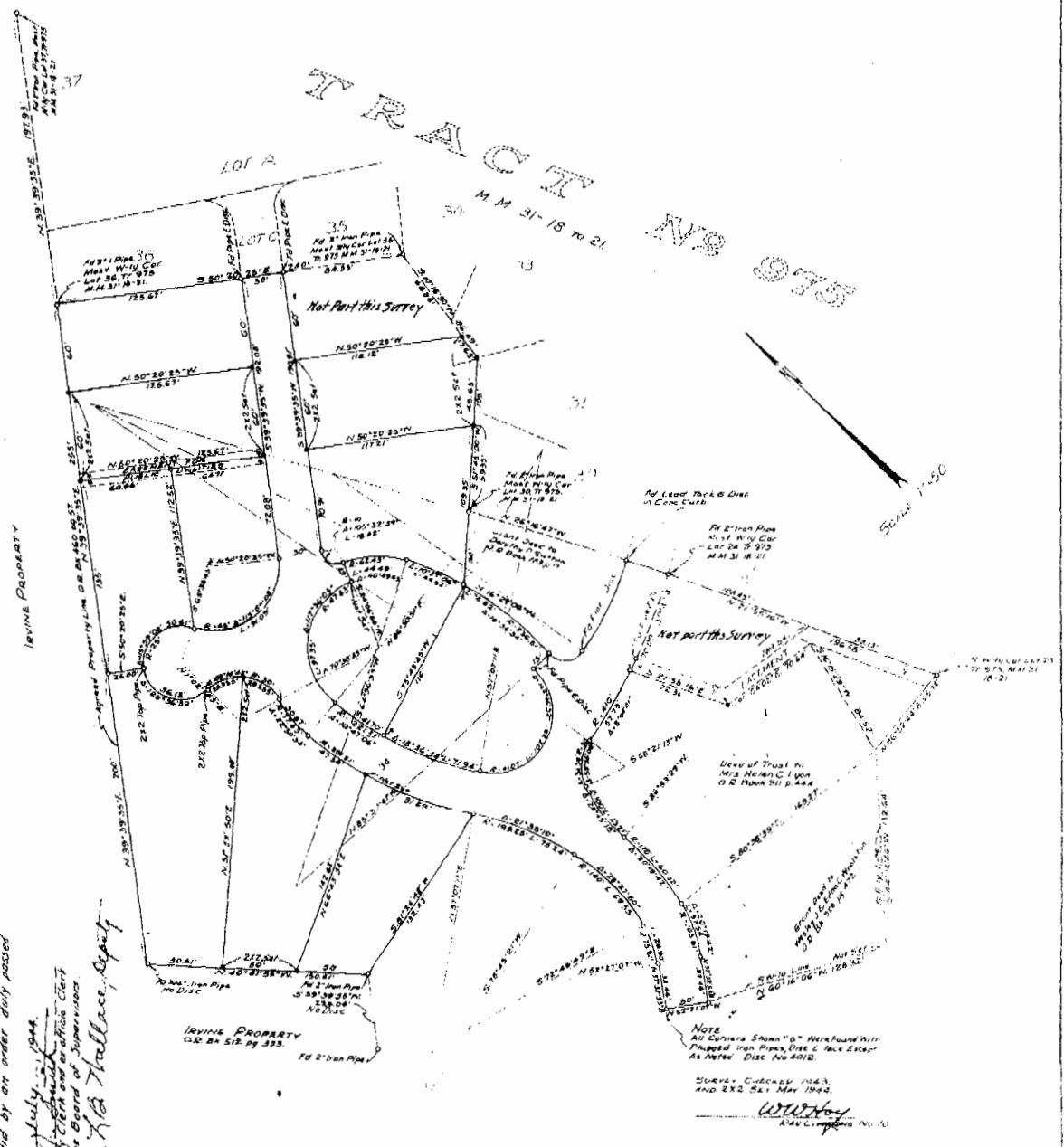
COUNTY CLERK-RECORDER

*Gary L. Geenville*

ORANGE COUNTY STATE OF CALIFORNIA

# TRACT NO 975

M.M. 31-18 to 21



STATE OF CALIFORNIA }  
 COUNTY OF ORANGE }  
 I, B.V. Smith, County Clerk of said County of Orange, do hereby certify that this map was presented for approval to the Board of Supervisors of said County of Orange at a regular meeting thereof held on the 25th day of July, 1944, and that thereupon said Board did by an order duly passed and entered approve said map.  
 Dated this 25th day of July, 1944.  
 B.V. Smith  
 County Clerk and Official Clerk  
 of the Board of Supervisors  
 of the County of Orange, California  
 By: H.B. Wallace, Deputy

## RECORD OF SURVEY

PART OF BLOCK 164, IRVINE SUBDIVISION  
 AS PER MAP THEREOF M.R.M. BK. 1, PG. 88,  
 RECORDS OF ORANGE COUNTY, CALIF.  
 SOUTHWEST OF TRACT NO. 975, M.M. BK. 31,  
 PGS. 18 to 21, RECORDS OF ORANGE COUNTY,  
 CALIFORNIA.

OWNER: TITLE INSURANCE AND TRUST COMPANY  
 SCALE 1" = 50'  
 MAY 13, 1944

I, W.K. Hillyard, County Surveyor of Orange County, California, do hereby certify that I have examined this map and have found it to be substantially the same as the tentative map as filed, amended and approved by the Orange County Planning Commission, and I am satisfied said map is technically correct.  
 Dated this 25th day of July, 1944.  
 W.K. Hillyard  
 County Surveyor

This is to certify that I made a resurvey of the area covered by this map at the request of the owners and that it correctly represents the facts and conditions as found and established on the ground.  
 All monuments are as note and marked.  
 W.K. Hillyard  
 Reg. Civil Eng. No. 70

Note: Boundaries shown on this map show on Tract No. 975.

R3297

July 21, 1944

By: H.B. Wallace, Deputy



American Arbitration Association  
Dispute Resolution Services Worldwide

Western Case Management Center  
John M. Bishop  
Vice President

Jeffrey Gurnis  
Assistant Vice President  
6795 North Palm Ave. 2nd Floor, Fresno, CA 93704  
telephone: 577-523-0880 facsimile: 559-490-1915  
internet: <http://www.adr.org>

December 22, 2005

**SENT VIA FACSIMILE AND FIRST CLASS MAIL**

Don Fisher, Esq.  
Palmieri Tyler Wiener Wilhelm & Waldron  
2603 Main Street, Suite 1300  
Irvine, CA 92614

Jillisa L. O'Brien  
Murtaugh, Meyer, Nelson & Treglia LLP  
2603 Main Street, 9th Floor  
Irvine, CA 92614-6232

Re: 73 115 00555 04 VIAM  
Robert W. Johnson, Trustee  
and  
Emerald Bay Community Association

Dear Parties:

By direction of the Arbitrator we herewith transmit to you the duly executed Interim Award in the above matter. This serves as a reminder that there is to be no direct communication with the Arbitrator. All communication shall be directed to the Association.

Should you have any questions or comments, please do not hesitate to contact the undersigned.

Sincerely,

/s/

L. Garcia for Virginia J. Amaro  
Case Manager  
559 490 1900  
[Amarov@adr.org](mailto:Amarov@adr.org)

Enclosures to parties only

Supervisor Information: Harry L. Hernandez, 559 490 1853, [Hernandezh@adr.org](mailto:Hernandezh@adr.org)

cc: Alfred G. Ferris, Esq.

**AMERICAN ARBITRATION ASSOCIATION**  
**COMMERCIAL ARBITRATION TRIBUNAL**

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In the Matter of the Arbitration between:

ROBERT W. JOHNSON, TRUSTEE,

Claimant,

and

EMERALD BAY COMMUNITY ASSOCIATION,

Respondent.

CASE NUMBER: 73 115 00555 04 VIAM

AAA CASE MANAGER: Virginia Amaro

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association (the "AAA"), upon stipulation by the above-named parties, as the sole neutral arbitrator in this matter in accordance with the binding arbitration provisions of the Amended Master Declaration of Restrictions (the "Declaration" or the "CC&Rs") of the Respondent, Emerald Bay Community Association, to which both of the above-named parties are subject, and having been duly sworn and having duly considered the testimony, exhibits and other proofs and allegations of the parties, as well as the legal authorities cited and arguments made by the parties, does hereby make his DECISION AND INTERIM AWARD as follows:

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT vs EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73 115 00555 04 VIAM

Page 1 of 22



## DECISION

### PARTIES:

Robert W. Johnson, Trustee (the sole "Claimant"), an individual, is represented by Donald Fisher and Elise L. Enamoto of Palmieri, Tyler, Weiner, Wilhelm & Waldron LLP ("Claimant's Counsel"); and Emerald Bay Community Association (the sole "Respondent"), is represented by Richard E. Meyer and Jillisa L. O'Brien of Murtaugh, Meyer, Nelson & Treglia LLP ("Respondent's Counsel"). Claimant is the owner of two (2) homes on adjacent lots 162 and 164 of Emerald Bay, a private, gated coastal enclave of homes south of Laguna Beach, California. Respondent, a California non-profit corporation, is the community association for Emerald Bay. Acting through its duly elected board of directors (the "Board"), it functions as the governing body for the homeowners of Emerald Bay, each of whom is a voting member of the Respondent by reason of their ownership.

### HEARING:

Seven (7) days of hearing were held at the offices of Claimant's Counsel in Irvine, California, on September 19-23, 2005, inclusive, and October 3 and 14, 2005. Numerous witnesses, including experts, were presented by the parties both in person and by deposition. Over three hundred sixty (360) exhibits were offered and received. Extensive briefing was provided by Counsel, and there was extended oral argument by both sides. The hearings were reported, and a transcript was made available to the Arbitrator by the parties.

### HISTORY OF THE PRESENT DISPUTE:

Lots 162 and 164 have been owned by Claimant and, before him, Claimant's parents, for a substantial period of time, over sixty (60) years in the case of Lot 162. For all this time, Lot 162 has been encumbered by a ten (10) foot wide easement for access (the "Easement") in favor of Respondent running from the private, internal Emerald Bay road which fronts both lots to the private beach below owned by the Respondent. The Respondent, as it has with all other residential lots in Emerald Bay, also has a universal five (5) foot easement for utility purposes around the perimeter of each lot (the "Utility Easement"). Lot 162 is steep and shaped somewhat like a reverse "K," having a narrow "waist" about half way to the beach. The Easement

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#### DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73 113 00371 04 VJAM

Page 2 of 22

12/22/2005 THU 16:03 [TX/RX NO 70781] 004

commences at the street on the westerly ten feet of Lot 162, runs along the westerly ten (10) feet of Lot 162 for awhile, then cuts across 162 to the easterly ten (10) feet of 162 at about the waist and continues down to the beach along the easterly line of 162 (adjacent to Lot 160). Lot 164 borders the westerly line of Lot 162. Claimant wishes to develop a single, larger home straddling both Lots 162 and 164, but he is effectively barred from building such a home as long as the Respondent possesses the Easement in its present location unchanged. Claimant has sought, alternatively, on at least three (3) occasions since 1998, to have the Board agree to abandon, sell or relocate the Easement. Most recently, in January 2004, Claimant requested that the upper part of the Easement (from the street down to the waist) be moved to the easterly side of Lot 162 so that the entire easement would border Lot 160. Lot 160 is owned by Claimant's brother, who both parties agree is willing to consent to the Easement being moved to the border of his lot. After some initial questions being raised by Respondent, the parties have determined that the new location, if consented to by Respondent, would be equal to or better than the existing location of the Easement for development of an access stair from the street to the beach. [Ex. 42, pp. 8-9] Alternatively, Claimant has requested that Respondent sell him the Easement at fair market value, which would result in a merger of the two (2) property interests in Claimant and an extinguishment of the Easement. It is also clear, after Respondent had initially raised some doubt, that Respondent has the authority to relocate or sell the Easement if it wishes to do so. [Ex. 9 and Ex.42, p.18] The record indicates and the parties are in accord that the Easement has never been developed by Respondent, Respondent has no plans to do so, and it is the long-standing policy of Respondent not to develop the Easement. There is substantial evidence in the record that, at times between 1998 and the present, significant sympathy has existed on the part of a number of the people who served during that period as members of Respondent's Board (and the Legal Committee appointed by the Board) for granting one or the other Claimant's alternative requests. [See, e.g., Ex. 236] However, the Board has consistently refused to approve either a relocation or sale and has denied that it ever abandoned the Easement. Some additional history is required to understand why.

Between 1998 and 2001, Respondent became embroiled in an intense dispute culminating in litigation with the owners of Lot 166, Dr. and Mrs. George Lopez (collectively "Lopez" or the "Lopezes"), which borders Claimant's Lot 164 on the west. The litigation was commenced by Lopez against Respondent and the then individual Board members after the Board, determining

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DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 75 114 20045 24 0004

Page 3 of 22

that Lopez was not in compliance with Respondent's development guidelines, ordered that work be stopped on the large new home and swimming pool Lopez was building at the edge of the bluff on Lot 166. Apparently, Lopez also was upset that the Board was unsympathetic to Lopez's desire to build or have the Board build a more convenient access stair to the beach, either from his lot directly to the beach or indirectly over the Easement on Lot 162. At some point during the litigation, Claimant was named by Lopez as an additional defendant, alleging that Claimant was obstructing the Easement with a vegetable garden, even though the Easement was undeveloped. [Ex.42, p. 4.] Reputedly, this was the result of Claimant writing a letter to the Board supporting their stoppage of the work on Lopez's new home and opposing the development of the Easement in its existing or any other location. During the dispute, among other things, Lopez strenuously sought to have the long undeveloped Easement improved by the Board. Carrying on the litigation proved to be very expensive and grueling for Respondent, and the Board felt exposed both on behalf of Respondent and individually as Board members. Just prior to trial, during a three (3) day judicial mediation session in November 2001, Respondent settled with Lopez for a large sum of money, an apology and other considerations, and all defendants except Claimant were dismissed with prejudice. The settlement agreement was long and complicated, and we are not here concerned with the merits of that lawsuit or the settlement with two (2) exceptions: Claimant was not a party to the settlement agreement and was directly affected by Section 10 of the agreement, which he objected to when it came to his attention. [Ex. 10.] In Section 10 of the settlement agreement [See Ex. 169], Respondent agreed that it would never abandon, extinguish or relocate the Easement or allow construction over it, absent the consent of Lopez, unless such construction consisted of a walkway and utilities for use by members of Respondent. Lopez voluntarily dismissed Claimant, but without prejudice. Both sides to the present controversy agree that, for whatever reasons, Lopez seems to have cultivated a *vendetta* toward Claimant during the litigation and is not likely to do him or Respondent any favors with respect to the Easement or Section 10 of the settlement agreement.

Claimant's first request to Respondent relating to the Easement, in February 1998, was for abandonment of the Easement, citing the fact that it had never been developed by Respondent in over fifty (50) years and was unlikely to ever be developed given the Board's policy not to develop the Easement. This request took place at a time when the dispute between Lopez and Respondent was heating up. In any event, Claimant's request was quickly denied in April 1998,

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT and ESCALADO BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 79-113-0123-GAYMAN

Page 4 of 22

based upon a letter opinion from Respondent's then counsel to the Board stating as the reason that Respondent's Board did not have the authority to abandon the Easement. [Ex. 142.] Claimant did nothing further at that time.

In March 2002, Claimant requested that the Board approve relocation of the upper portion of the Easement to one side or another of his two (2) lots. [Ex. 172.] However, by that time, the Board by the terms of its settlement felt it had put Lopez in the position of being able to veto any development by Claimant on Lots 162 and 164 which would be built on or across any portion of the Easement. It is reasonably clear, from ample notes in the record of comments made by Board members about Claimant's request during closed sessions of the Board and from the testimony of various witnesses, that the primary, though not only, concern of the Board was what the reaction of Lopez would be if the Board were to approve Claimant's requested relocation. [See, e.g., Ex. 173.] The trauma of expensive and perilous litigation was certainly fresh in the minds of the Board. The Board quickly denied Claimant's request in April 2002, again citing as the reason that the Board did not have the authority to relocate the Easement without a vote of the membership, even though it already had an opinion that it did have such authority [Ex. 9], but also alluding, in circuitous language to concerns over Lopez ("Prior contractual agreements...."). [Ex. 175.] This time Claimant filed with the AAA for mediation and arbitration pursuant to the Declaration. Eventually, the dispute was unsuccessfully mediated in a somewhat drawn out process during which the Board reaffirmed its denial while surfacing concerns for the first time to Claimant about whether relocating the Easement could result, under some set of undefined circumstances, in unspecified action by the California Coastal Commission (the "CCC") to compel public access to Respondent's private beach. But, the issue was explored by Respondent and Claimant only in the context of the mediation [Ex. 182], before the dispute went from mediation to arbitration (the "First Arbitration"). Indeed, the arbitrator in the First Arbitration concluded that Claimant had not been able to make a full presentation on the issue directly to the Board. [Ex. 198.]

Perhaps, Claimant suggests, the Board was simply looking for a reason to deny Claimant's requests in order to avoid a breach of contract action by Lopez if the Easement were relocated or sold, but without having to formally mention Lopez. It does appear that Claimant had run out of easy reasons. Denial of Claimant's first and second requests was based on what had become a discredited legal opinion from Respondent's former counsel about lack of

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT AND EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73 115 00122 04 YEAR

Page 5 of 22

authority. In addition, the Board had determined that the new location was at least as good as the existing location of the Easement. The allusion to the Lopez' settlement agreement contained in the initial denial of the second request as a possible additional reason was problematic at best. At the very least, the Board clearly was deeply and consistently concerned about tangling with Lopez again, if not initially so concerned about the CCC. It was at this point, during the summer of 2002, that the CCC issue was raised seriously for the first time with Claimant, as noted, in the context of the mediation. The mediation was eventually discontinued by Respondent in order to look further into the CCC issue. From this point forward, all substantive references in Board meeting notes to reasons for denying Claimant's requests were to Lopez and the CCC. The Board, after further investigation, *de facto* reaffirmed its denial emphasizing the CCC ground, but without having afforded Claimant a full hearing before the Board on the issue. The discontinuance of the mediation and reaffirmation of the second denial led, as noted, to the First Arbitration in the summer of 2003.

Arbitrator Steven C. Drummy ("Drummy" or "Mr. Drummy") heard the case and issued his decision and award on July 30, 2003 (the "First Arbitration Decision"). [Ex. 198.] The issues raised by Claimant in the First Arbitration were that the Board had breached its fiduciary duty to Claimant by denying his request without conducting a reasonable investigation and by failing to act in good faith and deal fairly in its consideration of the relocation request, and that the true basis of the denial was the Board's concern over getting sued again by Lopez, and further that the Board had exceeded its power by agreeing to Section 10 of the Lopez' settlement agreement. Mr. Drummy found that the Board indeed had exceeded its power by agreeing to Section 10 limiting its discretion to deal with the Easement and, thereby, had effectively modified the CC&Rs without getting membership approval. As a result, he further found that the provisions of Section 10 of the Lopez' settlement agreement were invalid, unenforceable and nonbinding on the Respondent. However, he nevertheless found that Respondent had not breached its fiduciary duties to Claimant or failed to act in good faith in denying the relocation request, apparently relying on the business judgment rule normally applicable in weighing ordinary actions of for-profit corporations, applying it in the instance before him to a non-profit community association. He found further that Respondent had satisfied that rule in its investigation and hearing of the application and ultimately had a right to rely upon the legal analysis and advice of counsel, even if wrong. However, while Mr. Drummy found that

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT vs EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 71115 0035 24 VSAM

Page 6 of 22

12-22-2005 THU 16:03 (TX/RX NO 7078) 2005

Claimant was not entitled to an order of relocation, based upon the record before him and the theories advanced by Claimant, he did find that Claimant was entitled to renew his application to the Board so that there could be a fuller hearing to consider the issue of possible adverse CCC action. This issue, as noted above, had come to flower somewhat belatedly in the context of the mediation which preceded the First Arbitration. Drummy felt that, while questions of the Board's authority and the feasibility of the project had been resolved and fully considered by the Board, even though based in part at least on incorrect assumptions and legal advice, the CCC issues had not. In this connection, it also must be noted that Drummy found the opinions of Claimant's CCC expert, made available for the mediation but not "formally" presented to the Board, "persuasive," and that may have at least partially underlay his finding that Claimant was entitled to make a formal presentation to the Board on the CCC matters.

In the wake of the First Arbitration Decision, the Board and Respondent's Counsel must have realized that the Board could not reasonably continue to base its refusals solely or primarily on its understandable concerns about Lopez suing for breach of the settlement agreement if they were to grant a relocation request. This was especially true given the undeniable fact that the Board had single-handedly created the Lopez veto issue without the consent and over the objection of Claimant. Other seemingly easy excuses also had become problematic. As noted by Drummy, early concerns by the Board that it did not have the authority to relocate the Easement without a vote of the membership, were ultimately resolved in favor of the Board having such power, though the exercise of that power was certainly subject to the requirement of benefit for Respondent's members. So, it was only natural that there might be a feeling that denial could no longer be reasonably based solely or primarily on that ground. Similarly, once it had been determined that the new location proposed by Claimant was as good or better than the location of the existing Easement, the Board perhaps felt it could not reasonably use this as a sole or primary ground for denial. Moreover, the Board, which had initially considered the CCC issues during the Lopez' litigation as an argument against demands by Lopez for development of beach access, first surfaced the threat of CCC action in a serious way in the context of the extended mediation period before the First Arbitration. As articulated by Respondent's Counsel [Ex. 180 and Ex. 182] and Respondent's recently hired CCC expert, Stephanie Dall ("Dall" or "Ms. Dall") in Ex. 190, Respondent was experiencing increasing concerns about whether a relocation might eventually lead to some sort of unfavorable action by the CCC, resulting in

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT AND EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. TD 115 00312 DE VIAM

Page 7 of 22

public access to the Emerald Bay beach being required by the CCC or the 1987 Emerald Bay Local Coastal Plan (the "LCP") being reviewed and revised in a manner unfavorable to Emerald Bay. [See Ex. 2.] Respondent felt and feels that it currently has very favorable language in its LCP with respect to public access to the beach.

In fact, it appears the Board's CCC concern was largely prompted by fear that Lopez himself might be the agent for stimulating CCC interest by, for example, initiating an appeal of a Coastal Development Permit ("CDP") issued for construction of Claimant's planned new house, and that such a move by Lopez could eventually attract the interest of the CCC in compelling public access to Respondent's beach or revisiting the LCP. Respondent seems not to have seriously considered, at least as disclosed by the notes of its closed sessions, whether the other decisions it was routinely taking in approving, facilitating and reviewing Emerald Bay and homeowner developments might also be equally subject to possible review by the CCC. [See, e.g., Exs. 43, 64 and 65]

In January 2004, Claimant renewed his relocation request [See Ex. 203] and eventually added, as a possible alternative to relocation, his purchase of the Easement at fair market value [See Ex. 229]. This time the parties addressed the CCC issue head on, though the Lopez specter never seemed far from the minds of the Board members. As disclosed by the meeting notes of the Board's closed sessions, Claimant's request was discussed at virtually every meeting of the Board from January 2004, to the Board's final denial in April 2005, and Lopez concerns were likewise raised, mentioned or alluded to with equal frequency whenever Claimant's request was addressed. This obsession with Lopez is buttressed by a formal risk assessment [Ex. 202] from Respondent's Counsel to the Board, dealing with the relative costs of what Lopez might do if the Easement were to be relocated or sold as requested by Claimant versus the costs of what Claimant might do if the Board did not grant those requests. The Board also requested on more than one occasion that Respondent's Counsel approach Lopez to determine their position (a step which was never taken). This time around, the Board heard directly from Claimant's CCC expert, Sherman Stacey ("Stacey" or "Mr. Stacey"), as well as its own CCC expert, Ms. Dall. The Board also asked for and received the opinion of its own Legal Committee (the "Committee"), composed of three (3) homeowner-attorneys who were also former Board members on the following very narrow questions framed by the Board: "(1) Is there a probability greater than zero percent that California Coastal Commission action may be triggered

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DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT vs EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73-145-05385-04-VIAM

Page 8 of 22

12/22/2005 THU 16:03 (TX-RX)

by relocation of the easement? [and] (2) Is there a probability greater than zero percent that the value and rights associated with the easement in its current location may be diminished in any way by relocation of the easement?" [Ex.215.] It is interesting to note that the initial framing of this decidedly tough standard took place at the Board meeting of March 2, 2004, immediately after further discussion of concerns over Lopez culminating in the question, "What will Lopez do when we proceed?" [Ex.214.] After studying the issue for two (2) months, interviewing the two (2) CCC experts, meeting with Claimant and listening to Respondent's Counsel, the Committee came to the not surprising conclusion that, indeed, the "...probability the California Coastal Commission action may be triggered by relocation of the easement is somewhere in the range between zero and *de minimis*..." [Ex.232.] They declined to opine on the second question regarding valuation. In addition, the Board ultimately hired the law firm of Latham & Watkins to opine on the CCC issues, presumably to verify Ms. Dall's [Ex. 190] and the Committee's opinions. Latham & Watkins in due course provided their own opinion (the "L&W Opinion") on March 31, 2005. [Ex. 267.] Upon the final denial by the Board [Ex. 48], alluding tangentially to the CCC issue by citing the L&W Opinion, Claimant then moved forward with his pending demand for arbitration. [Ex. 259] And so we arrive at the current arbitration (the "Second Arbitration"), which was heard as indicated above.

#### THE CLAIMS:

Respondent's claims in this second arbitration proceeding generally relate to the conduct of the EBCA Board of Directors following the issuance of the First Arbitration Award on July 30, 2003. The Claimant characterizes his claims and states his issues in various ways, all of which fall ultimately into three (3) broad legal theories. They are as follows:

1. In this Second Arbitration, Claimant has once again raised the question of whether, by denying Claimant's request to relocate or sell the Easement, the Respondent has acted in good faith, dealt fairly with, and honored its fiduciary duty to Johnson since July 30, 2003, in light of the findings of the First Arbitration Award, and whether it is likely that it will continue to act in such a manner following the conclusion of this current hearing.
2. Claimant, as a separate and independent theory, also asserts that Respondent has denied Claimant the Rights to Equal Protection and, in addition, Due Process of

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#### DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 03-115-00355-04-12AM

Page 9 of 22



Law by its refusal to grant his continued requests for relocation or sale. There is no evidence presented to the Arbitrator that this theory was raised or ruled upon in the First Arbitration. However, this theory will be analyzed only in the context of Respondent's actions since the First Arbitration Decision.

3. Claimant also asserts that, independent of any specific theory of breach of fiduciary duty, the Arbitrator has the general power and authority to overrule the Board's decision if their conduct toward Claimant in refusing to relocate or sell the Easement was unreasonable, unsubstantiated or unlawful under the authority of the case of *Fountain Valley Chateau Blanc Homeowners Assn. Dept. of Veteran Affairs*, 67 Cal.App.4<sup>th</sup> 743 (1998). There is no indication that this theory was raised or ruled upon in the First Arbitration. This theory will likewise be analyzed only in the context of the Respondent's actions since the First Arbitration Decision.
4. Claimant also has suggested that an arbitrator may make his or her decision upon broad principles of justice and equity, doing what is just and good and reaching a fair solution of the problem, and is not bound to follow legal rules strictly.
5. Finally, Claimant asserts that Respondent has failed to enforce and act in compliance with its rules and regulations regarding the levying of assessments to homeowners and that these rules are being applied by the Board unfairly and inconsistently.

#### ISSUES RAISED BY CLAIMS:

The asserted claims of breach of fiduciary duty, denial of equal protection and due process, "unreasonable, unsubstantiated or unlawful" conduct, application of broad principles of justice and equity and unfair assessments raise a number of issues which will be answered in the context of the discussion of the individual claims, including the following:

1. Whether the principles of *res judicata* and/or collateral estoppel require the Arbitrator to apply any of the findings in the First Arbitration Decision to any part of the present case;
2. Whether Respondent unfairly or improperly deny the relocation request;
3. Whether Respondent unfairly or improperly deny the purchase request;

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#### DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT vs EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73 118 0033 04 11AM

Page 10 of 22

4. Whether Respondent's denial of these requests was unfairly or improperly based upon its fear of being sued by Lopez;
5. Whether Respondent's stated concerns about the CCC are an improper pretext for the true reasons for denial of the requests and whether the stated concerns are rationally substantiated by fact;
6. Whether Respondent breached its fiduciary duty to Claimant by such denials;
7. Whether Respondent's denials violated Respondent's right to equal protection or due process of law;
8. Whether Respondent failed to comply with any provision of the First Arbitration Decision;
9. Whether the Respondent has acted in compliance with all rules and regulations contained in the CC&Rs pertaining to the levying of assessments to homeowners so as to ensure that such rules are applied in a fair and consistent manner; and
10. Whether and to what extent the Arbitrator shall retain jurisdiction of this matter in order to assure compliance with any orders made by the Arbitrator.

#### DISCUSSION:

##### 1. Breach of Fiduciary Duty:

A threshold question to be answered before addressing this claim is whether and to what degree the Arbitrator must recognize and give weight to any of Mr. Drummy's findings in the First Arbitration Decision. Respondent has argued that Claimant is precluded by both the doctrine of *res judicata* and the principle of collateral estoppel from delving into Board actions which pre-date the First Arbitration Decision. The question is relevant only insofar as Claimant has again asserted a claim of breach of fiduciary duty and is relying in part on actions of the Board occurring before July 30, 2003, the date of the First Arbitration Decision. Since Claimant, in asserting breach of fiduciary duty here, attempts to rely on Board actions occurring both before and after such date, *res judicata* technically does not apply, because Mr. Drummy could not have considered the post-July 30, 2003 actions of the Board in rendering his decision. However, the principle of collateral estoppel does apply, and it would preclude Claimant from attacking Mr. Drummy's finding that the pre-July 30, 2003, actions of Respondent did not amount to breach of fiduciary duty. This, in my opinion, also precludes Claimant from

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#### DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT AND EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 7511A 0024 04 VJAM

Page 11 of 22

cumulating those Board actions together with the post-July 30, 2003, actions of the Board in an attempt to add weight to his present claim of breach of fiduciary duty. However, Claimant also asserts that the Board's post-July 30, 2003, actions, taken by themselves, amount to a breach of fiduciary duty. So, those actions must be examined in order to determine if there was such a breach of fiduciary duty after said date. In doing so, however, that does not preclude the Arbitrator from utilizing events occurring before said date in order to give perspective to events after said date.

I have concluded, after examining the evidence, that Respondent's efforts after July 30, 2003, to investigate and respond to Claimant's requests for relocation or sale of the Easement were carried out in good faith and after a reasonable investigation and, strictly speaking, do not constitute a breach of fiduciary duty toward Claimant. I come to this conclusion even though I think it is reasonably clear that the Board's reluctance to go along with Claimant's requests for relocation or sale, was largely the result of uncertainty and fear by the Board and Respondent's Counsel over what actions Lopez might take against Respondent and its Board members if a relocation or sale were to be approved and what the cost would be to Respondent and perhaps to individual Board members. It was assumed by all concerned that such relocation or sale would be quickly followed by a CDP application by Claimant to Orange County. The Board eventually purported to rest its ultimate denial on its fear of possible CCC action, if there were to be an appeal of a CDP to the CCC, to force public access or to review the 1987 Emerald Bay LCP and revise the currently favorable access provisions. But that announced reason was permanently colored by the Board's obvious concern that the most likely source of triggering CCC interest, if any, in the Easement would be Lopez who, it was reasoned, could appeal an eventual CDP application by Claimant for his new house. The Board also seemed to entertain even greater fear of possible new litigation against Respondent from Lopez. One Board member characterized legal combat with Lopez as "...like going up to Goliath...and punching him in the nose." [RT 696:12-15.] The risk assessment performed by Respondent's Counsel in 2004 [Ex. 202] also makes it abundantly clear that a contest with Claimant, as opposed to one with Lopez, was considered the lesser of two (2) evils. This comment was even made during one of the Board closed sessions. That conclusion is reinforced by the fact that Claimant's application was not the first development event in the post-LCP history of Emerald Bay that could be appealed to the CCC and therefore theoretically trigger CCC interest, either through the CCC's appellate

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 71 315 06334 OR 03AK

Page 12 of 22

jurisdiction or a periodic review of the LCP. Indeed, the record demonstrates they were numerous. There were as many as fifty-nine (59) such development events on the official log of the CCC from the date of the CCC's approval of the LCP in 1987 up to the time of this arbitration. They included numerous homeowner projects, Respondent's own projects, and lot splits or adjustments. [Ex. 50 and Ex. 51] The log reveals that they were all considered "appealable" by the CCC but that an appeal was filed in only one instance from 1987-2005. There was no evidence presented as to what the effect of such appeal, if any, had been on the LCP or the beach access question, so presumably there was no effect. It is also clear from the record, that Claimant was the first Emerald Bay homeowner, other than Lopez himself in the context of defensive ploys raised by Respondent during the Lopez litigation, to whom a fear of CCC action was used as a reason to deny a request ultimately tied to a homeowner development project. Indeed, Claimant was the only homeowner seeking to develop his property to whom the standard of "zero percent chance" of CCC action had ever been articulated and enforced by the Board as the standard that had to be met. [See Ex. 215 and 232] It is impossible to escape the conclusion that, but for the perceived Lopez threat, the CCC issue would likely never have been raised and developed by the Board, and I so find.

Nevertheless, in determining whether Respondent's Board breached its fiduciary duty to Claimant, even if it was seeking to create a pretext for denying the request, I am not persuaded by the legal authorities cited by Claimant that the Board breached that duty, especially if I weigh only the Board's actions since the First Arbitration Decision, which I must. Viewed merely from the perspective of discharging its fiduciary duty to Claimant, the Board had no obligation to be candid with Claimant or to fully disclose its reasoning or motives or to treat him with precise equivalency. Moreover, while Drummy made it clear in the First Arbitration Decision that Section 10 of the Lopez settlement agreement was "unenforceable," that did not necessarily preclude Lopez from suing the Board for breach of contract and, therefore, the Board from weighing the possibilities and cost of renewed combat with Lopez in the balance along with any other reasonable related considerations. Perceived threats from Lopez and the possibility of CCC scrutiny, however infinitesimal, were both legitimate inquiries in the context of treading the path of fiduciary duty in good faith and balancing the Board's fiduciary duty to Claimant against its fiduciary duty to Emerald Bay and the overall membership. Here, the Board would have been unrealistic not to consider the more than nominal possibility that Lopez would go to war again at

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT AND EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73 113 0033 04 VLAH

Page 13 of 22

great cost to Respondent, even though Drummy had ruled Section 10 "unenforceable," though the same can not be said perhaps for the odds of CCC action. The Board's own Committee considered the CCC odds to be "zero to *de minimis*." And the nuanced opinions and analysis of the CCC experts, Stacey, Dall and L&W, lead one to the same conclusion: the possibility of CCC action flowing from a so-called "paper-to-paper" transfer, *i.e.*, a simple relocation of the Easement, is practically non-existent. Here, it is also clear that, whatever the underlying motivation of the Board, the Board's principal concern was the possible adverse effect on Emerald Bay of renewed litigation with Lopez, whether or not the CCC somehow got involved. Claimant was given ample opportunity over an extended period of time to convince the Board to grant his request, and he took full advantage of that opportunity. The Board nevertheless denied his request. In doing so, it relied at least partly upon the opinions of Respondent's Counsel, and I concur with Drummy that, in the context of a fiduciary duty inquiry, it was entitled to do so. In balancing its fiduciary duties toward Claimant and toward the homeowners as a group and Respondent as an entity, it did not breach its fiduciary duty or any duty of good faith and fair dealing toward Claimant.

**2. Denial of Equal Protection or Due Process:**

But, given the same set of facts, it may well have breached its constitutional duties to Claimant to provide equal protection and due process of law. The fact that actions of a board of directors may satisfy ordinary fiduciary standards does not determine the constitutionality of those actions.

If Respondent, as a private, non-profit community association, is treated, under the circumstances of this case, in the same manner as a business corporation, say General Motors, it has no obligation of equal protection or due process. Normally, "government action" is required in order to invoke these provisions of the United States and the California Constitutions. Claimant asserts that government action is involved, that Respondent should be regarded as a quasi-governmental entity under the facts and circumstances of this case, and that the principal authority which should guide us is *Cohen v. Kite Hill Community Assn.*, 142 Cal.App.3d 642 (1983). On the other hand, Respondent asserts that, under the facts and circumstances of this case, Respondent is not acting as a virtual government, no government action is involved, and Respondent should be treated as any business corporation would be, primarily citing the case of *Beehan v. Lido Isla Community Assn.*, 70 Cal.App.3d 858 (1977).

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73 118 06555 04 YJAM

Page 14 of 22

In *Beehan*, Defendant Lido Isle Community Association, acting through its duly elected board of directors, allegedly refused the demand of the Beehans to enforce a setback requirement against the Beehans' neighbors, prompting the Beehans to seek enforcement themselves. They were successful in their effort and sued the Association to recover their attorney fees on a theory of "substantial benefit" frequently allowed in shareholder derivative actions. The trial court found that the Association board did not abuse their managerial discretion, and the appellate court determined that the finding of the trial court was supported by substantial evidence, noting that, "...neither a court nor minority shareholders can substitute their business judgment for that of a corporation where its board of directors has acted in good faith and with a view to the best interests of the corporation and all its shareholders." *Beehan* at 865. It is not clear at all from the opinion that Beehan ever raised the issue of detrimental governmental action. Nor is it obvious, if Beehan had raised the issue, that the actions of the board were so arbitrary and capricious and the treatment of the Beehans so disparate that the quasi-governmental role of the board was implicated. Therefore, the case does not appear to be on point.

In *Cohen*, the appellate court reinstated plaintiff homeowner's complaint against Kite Hill Community Association alleging the Association declined to enforce a view restriction in the CC&Rs against construction of a solid fence by plaintiff Cohen's neighbor. After quoting with approval from a law review article noting the "increasingly 'quasi-governmental' nature of the responsibilities of such associations..." (*Cohen* at 651), the court went on to characterize the modern homeowners associations as follows:

"As reflected in the law review article noted, membership in an association is usually mandatory.... And the powers of such association are extensive, ...because the association is empowered to levy and to collect assessments, to make and enforce rules, and to permit or deny certain uses of the property, the association has the power...to exert tremendous influence on the bundle of rights normally enjoyed as a concomitant part of fee simple ownership of property. With power, of course, comes the potential for abuse. Therefore, the Association must be held to a high standard of responsibility. 'The business and governmental aspects of the association and the association's relationship to its members clearly give rise to a special sense of responsibility upon the officers and directors.... This special responsibility is

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DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT, vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73-115-00559-04-17AM

Page 15 of 22

manifested in the requirements of fiduciary duties and the requirements of *due process, equal protection and fair dealing*. [Citation]" [Emphasis added] (*Id.* at 65).

Finding that California law established a duty on the Association "...to act in good faith and *avoid arbitrary decisions* in approving the plans for construction of a fence on codefendants' property..." [emphasis added] (*id.* at 655), the appellate court determined that the pleadings raised an issue of fact as to whether the Association had so acted and remanded the case to the trial court for trial on the merits. The court commented elsewhere in its opinion (*id.* at 652) on the similarity in responsibility between the manner in which governmental entities must consider zoning variances and the standards to which homeowners associations must adhere in dealing with a homeowner's property, quoting with approval the California Supreme Court case of *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506 (1974).

I find that *Cohen* is in point here and expresses the modern and the better view of the nature of a homeowner's association's relationship with its homeowner-members. That view is simply this: the homeowner's association, other than in the most routine matters, acts in a quasi-governmental capacity, as well as in the capacity of a not-for-profit corporation, when it takes actions or refuses to take actions affecting or potentially affecting a member's property or personal freedom, and it owes a duty to its members to treat there property-related requests with at least a rough equivalency. There is no doubt in my mind that Emerald Bay in fact functions as if it were a small city. For example, it provides all its own services, with the exception of police and emergency services, and it has a significant amount of control over any development project in Emerald Bay. And so the functions are quite analogous to those of a true municipality.

Applying that view to present circumstances results in having to weigh the actions of Respondent under constitutional principles of due process and equal protection. In doing so, we must dispose of a couple of preliminary issues. First there is the sale issue. It is hard to imagine the circumstances under which these constitutional mandates would require the sale of a property interest by Respondent to a private party where there is no contractual or other legally recognized obligation to do so. Respondent, whether viewed as a quasi-government or merely a not-for-profit corporation, is not obligated to sell the Easement under any theory advanced here by Claimant. Next, there is the question of procedural due process. For the same reasons outlined above in rejecting the claim of breach of fiduciary duty, namely the fact that Claimant

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DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 75 115 26153 54 71AM

Page 16 of 22

had every opportunity to present, and did present, his case in extended detail to the Respondent's Board over a long period of time with repeated oral and written presentations to the Board and its Legal Committee, I do not see any denial of procedural due process. Quite the contrary: Claimant had adequate notice, the opportunity to be represented by counsel at every stage and to present expert testimony on his own behalf to the Board and its Legal Committee. The Board generally complied with its own established practices, and it took its time in coming to a final decision. I can not say, therefore, given the record before me, that there were any serious procedural irregularities or denials that would implicate procedural due process considerations.

Finally, we come to equal protection and substantive due process. In order to trigger these protections in what is essentially a property case, it seems to me that Claimant must identify a benefit, right or interest of which he has been deprived. I believe that Claimant has established that such a benefit, right or interest exists here, namely the right and expectation of being treated, with at least a rough equivalency, in the same manner as his fellow homeowners have been treated in the past in substantially similar circumstances by their "municipal government." Much testimony and argument was devoted to whether past treatment of various development requests by other homeowners was truly equivalent to Claimant's request for relocation of the Easement. While one could spend a lot more time on such essentially theological endeavors, the fact remains that Claimant was the first and only homeowner who was ever required to demonstrate, as a condition of his request being granted, that there was no chance whatsoever of there ever being some unspecified "action" by the CCC which "might" lead eventually to either public access being imposed by the CCC on all of Emerald Bay as a condition of CCC approval of some yet to be designed and built home across Lots 162 and 164, or alternatively that it would never lead to the CCC doing a "periodic" review of the Emerald Bay LCP.

To state the new requirement is to immediately focus on the arbitrary and capricious nature of it. Perhaps something had changed to make the new requirement not arbitrary? That is a legitimate inquiry. In fact, something had changed, but what had changed merely highlights the essential arbitrariness of the subsequent actions of the Board toward Claimant. What had changed is that Lopez had traumatized the Board with his lawsuit and threats and, in response, the Board had attempted to contract away its discretion over the Easement at the expense of Claimant. But, what had changed was entirely of the Board's own creation and at the potential

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DECISION AND INTERIM AWARD OF ARBITRATOR

ROBERT W. JOHNSON, CLAIMANT and EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73115 00055 04 VCAN

Page 17 of 22



expense of one homeowner. Now it feared a breach of contract action by Lopez if it agreed to the requested relocation. Respondent can not very well expect Claimant to bear the sole brunt of a new, unannounced requirement never imposed on any other property-related application by a homeowner in the history of the LCP and likely never to be imposed again, except perhaps on Claimant, so long as Lopez is around. None of the evidence introduced at the hearing of this matter gave the slightest indication that the "zero percent" standard was to be applied generally in the future to all appealable development-related matters to come before the Board. We know from the evidence which was received, however, that during the time the current LCP has been in place, there have been numerous homeowner construction or remodel projects in the Coastal Permit Zone to come before the Board for one reason or another requesting Board action of one sort or another. There have also been, as we have seen, lot line adjustments of one sort or another designed to allow larger or additional homes to be built on the same lots in the Coastal Permit Zone. Respondent itself has engaged in projects in the Coastal Permit Zone. Utility easements have been relocated or adjusted to accommodate new construction and remodels within the Coastal Permit Zone. There has even been the deeding of the upper part of an access easement to the adjacent homeowners. [Ex.133.] All of these projects would have failed the "zero percentage" of CCC action standard imposed on Claimant and not survived unscathed from the strict analyses of Respondent's experts.

My opinion might well be different and the resulting analysis more closely aligned to the approach taken with breach of fiduciary duty or the duty of good faith and fair dealing had there been an established policy of requiring some CCC examination in the case of all potential CDP, lot split and lot line adjustment situations, especially for those projects conducted by Respondent itself. Then the usual weighing process in each individual case and application of some risk-benefit analysis would have tolerated some substantial nuanced differences in outcome. A similar "balancing" test is sometimes applied in equal protection and substantive due process cases, and the current case would normally permit of that approach, except for the fact that Claimant appears to have been singled out for disparate treatment without any prior announcement to the membership of a general change requiring a demonstration of zero percent chance of CCC action. Add to this the fact that all other reasons for denial previously given to Claimant have proven to be invalid: Respondent does have the authority to relocate; the new location is equal to or better than the present one; the new location is entirely feasible; and

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT vs EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 72 119 00553 04 15AM

Page 18 of 22

Respondent has absolutely no intention of ever developing the Easement in any event. While Respondent's concerns over Lopez are understandable and pass fiduciary duty muster, they are of Respondent's own making; and to impose this new standard on Claimant alone is both arbitrary and capricious in the constitutional sense. Claimant has therefore been denied equal protection of the laws and substantive due process in the creation and application only to Claimant of the "zero percent" rule.

Accordingly, I find that Respondent should be ordered to exchange deeds with Claimant in order to achieve relocation of the upper part of the Easement so that, after the deeds are recorded, the entire Easement will be located on the easterly ten (10) feet of Lot 162. While I would anticipate that Claimant, once this has been accomplished, will seek to process an appropriate CDP application for his new home, I do not have that matter before me; and I do not believe that I can retain jurisdiction over matters, if any should arise, which have not matured into an actual controversy between Claimant and Respondent as of the time of this hearing. But, I do find, further, that Respondent may not use the relocation or the threat or reality of litigation with Lopez, either alone or in tandem with other reasons, as a reason to deny any future application or approval related to his new home.

**3. General Power to Correct Unreasonable, Unsubstantiated or Unlawful Decisions:**

Claimant has also asserted that the Arbitrator has a general power to correct an erroneous result where a homeowner's association reaches a decision which is "unreasonable, unsubstantiated or unlawful," relying on the *Fountain Valley* case. *Ibid*. I have reviewed this case carefully and conclude that it does not expand the theories which a judge or arbitrator can use to analyze these matters. It appears to me to be just another example of breach of fiduciary duty or the requirement of good faith and fair dealing. At page 754 of the opinion, Justice Sills makes clear that the jury findings were simply that the association acted unreasonably and that the association "did not have a good faith, albeit mistaken, belief in that danger." Here, as indicated above, I find that the Board believed in good faith under advice of counsel that it had a right, under the circumstances, to treat Claimant in a disparate manner and that it was acting reasonably.

**4. Equity and Justice:**

Claimant also has asserted that the Arbitrator has a broad power to decide matters based on principles of equity and justice and is not bound to or limited by legal precedent. While I

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT vs EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
 CASE NO. 73 111 00155 DE VIAM

believe that to be an accurate statement of an Arbitrator's power, unless such power is restricted contractually or legally in the specific instance, I find that it is a principle which is reserved for only the most egregious examples of injustice, and that it is unnecessary to consider or apply such power here in light of the decision on the legal merits.

**5. Improper Levying of Assessments:**

The record fails to demonstrate that Claimant has exhausted his administrative remedies. There is no record presently before the Arbitrator indicating that the Board has ever had the opportunity to consider Claimant's complaints that assessments are not being properly or equitably assessed against all homeowners. Moreover, what record I have of Claimant's complaints regarding the method of assessment is inadequate to analyze or resolve any of his complaints. Accordingly, I find that Claimant's request is premature and I do not presently have jurisdiction to rule on this matter.

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**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. TD 115 0055 04 17 AM

Page 20 of 22

### INTERIM AWARD

THE UNDERSIGNED, ARBITRATOR, hereby finds and awards as follows:

1. Claimant's request for an order compelling Respondent to sell the Easement to Claimant is denied.

2. Claimant's request for an order compelling Respondent to reevaluate its existing methods of calculating and levying assessments on the homeowners of Emerald Bay is denied.

3. Claimant's request for an order compelling Respondent to relocate the Easement is granted; and Claimant and Respondent, by means of reciprocal quitclaim deeds and such other instruments, if any, which may be reasonably necessary or required in order to accomplish the relocation, the costs of which shall be shared equally by the Claimant and Respondent, shall relocate the upper portion of the Easement to the easterly side (ten (10) feet) of Claimant's Lot 162 so that, after such relocation, the Easement will be located entirely on the boundary between Lots 162 and 160 as requested by Claimant. Such relocation shall be consummated in no less than thirty (30) days from the date of receipt of this Interim Decision and Award. Further, Respondent is prohibited from using the relocation itself, the threat of litigation with Lopez, or actual litigation with Lopez, considered alone or in tandem with other reasons, as a reason to deny any future application or approvals related to Claimant's desire to build a new home across Lots 162 and 160.

4. The Arbitrator shall retain jurisdiction over this matter in order to address, in the event that the parties are unable to agree upon and follow through on the precise manner of and procedure for documenting and accomplishing such relocation, any issues which may remain in order to assure the timely relocation of the Easement as ordered. In addition, the Arbitrator shall retain jurisdiction over any request for attorney fees and costs of arbitration, should either party believe it is entitled to be awarded its fees and costs contractually or as a matter of law. Retention of jurisdiction for either purpose shall be subject to the following time limits for invoking such jurisdiction:

- (a) Within thirty (30) days of receipt of this Interim Decision and Award, Claimant or Respondent may submit moving papers to the Arbitrator, not to exceed ten (10) pages, setting forth any issues that remain to be resolved in order to effectuate the relocation of the Easement or dispose of claims of entitlement to attorney fees and costs of arbitration.

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#### DECISION AND INTERIM AWARD OF ARBITRATOR

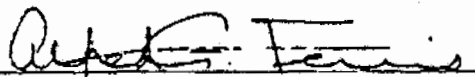
ROBERT W. JOHNSON, CLAIMANT vs. EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
CASE NO. 73-113-00013-01 MIAM

Page 21 of 22

- (b) The Respondent shall have fourteen (14) days from the date of service of Claimant's moving papers either to resolve the issues or to submit papers in opposition, not to exceed ten (10) pages.
- (c) The Claimant shall have seven (7) days from the date of service of Respondent's opposition papers to submit a reply, not to exceed five (5) pages.
- (d) The Arbitrator shall respond to the moving, opposition and reply papers by promptly setting a time, date and place for hearing on and consideration of the issues raised in such papers. Such hearing may, at the discretion of the Arbitrator, be telephonic.
- (e) Any of the time frames set forth in this paragraph 4 may be varied by stipulation of the parties approved by the Arbitrator or by order of the Arbitrator acting on good cause.

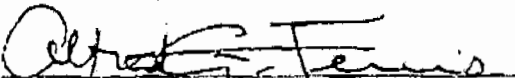
5. The Interim Award shall remain in full force and effect until such time as a Final Award is rendered. The Final Award shall be issued by the Arbitrator no later than thirty (30) days after expiration of the latest time period provided for in paragraph 3 of this Interim Award.

DATED: December 21, 2005

  
 Alfred G. Ferris

I, Alfred Ferris, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Decision and Interim Award.

DATED: December 21, 2005

  
 Alfred G. Ferris, Arbitrator

**DECISION AND INTERIM AWARD OF ARBITRATOR**

ROBERT W. JOHNSON, CLAIMANT and EMERALD BAY COMMUNITY ASSOCIATION, RESPONDENT  
 CASE NO. 72-113-00333-04-VLAN

SEPTEMBER 1989

**EMERALD BAY**  
**LOCAL**  
**COASTAL**  
**PROGRAM** 

ORANGE COUNTY ENVIRONMENTAL MANAGEMENT AGENCY



EMERALD BAY  
LOCAL COASTAL PROGRAM

Approved by:

The Orange County Planning Commission

On January 24, 1989

Approved by:

The Orange County Board of Supervisors

On February 22, 1989 and July 11, 1989

Certified by:

The California Coastal Commission

On September 13, 1989

ORANGE COUNTY PLANNING COMMISSION

First District	A. Earl Wooden
Second District	Alvin M. Coen
Third District	H. G. Osborne
Fourth District	C. Douglas Leavenworth
Fifth District	Thomas Moody

ENVIRONMENTAL MANAGEMENT AGENCY

Ernie Schneider	Director
Michael Ruane	Director of Planning
Kenneth C. Winter	Manager, Coastal & Community Planning Division
Ronald L. Tippetts	Chief, Coastal Planning Section
Patricia F. Shoemaker	Project Manager
Kingston B. Thomas	Project Planner
Frank Munoz	Graphics



TABLE OF CONTENTS

	Page
I. INTRODUCTION	
A. Emerald Bay	I-2
B. Brinderson Property	I-4
II. LAND USE PLAN	
A. Resource Component	II-2
1. Environmentally Sensitive Habitat Areas	II-3
2. Watershed Management	II-4
3. Environmental Hazards	II-4
4. Scenic Resources	II-8
5. Cultural/Scientific Resources	II-8
B. Transportation Component	II-9
1. Regional and Local Circulation	II-10
2. Scenic Highway	II-10
C. Access Component	II-12
1. Emerald Bay	II-13
2. Brinderson Property	II-15
D. New Development Component	II-16
1. Development Intensity	II-17
2. Housing	II-17
3. Infrastructure	II-19
E. Land Use Plan Policies	II-20
III. IMPLEMENTING ACTIONS PROGRAM	III-1
A. Zoning	III-2
B. Appeal Jurisdiction	III-4

LIST OF FIGURES

<u>NUMBER</u>	<u>TITLE</u>	<u>PAGE</u>
1	Regional Location Map	I-3
2	Subareas	I-4
3	Community Features	I-5
4	Geologic Hazards	II-5
5	Flood Hazards	II-7
6	Circulation	II-11
7	Land Use	II-18
8	Zoning	III-3
9	Post-Certification Map	III-5

# *I. Introduction*

**EMERALD BAY**  
LOCAL COASTAL PROGRAM 



## I. INTRODUCTION

This Local Coastal Program (LCP) comprises the Land Use Plan (LUP) and Implementing Actions Program (IAP) for the Emerald Bay Community and adjacent land in southern Orange County (Figure 1).

The Coastal Act of 1976 sets forth state-wide goals concerning the environment within the coastal zone. To achieve these goals the Act mandates each local government to prepare a "local coastal program" for areas within the coastal zone under its jurisdiction. Accordingly, the underlying objectives of the County's Emerald Bay Local Coastal Program are to:

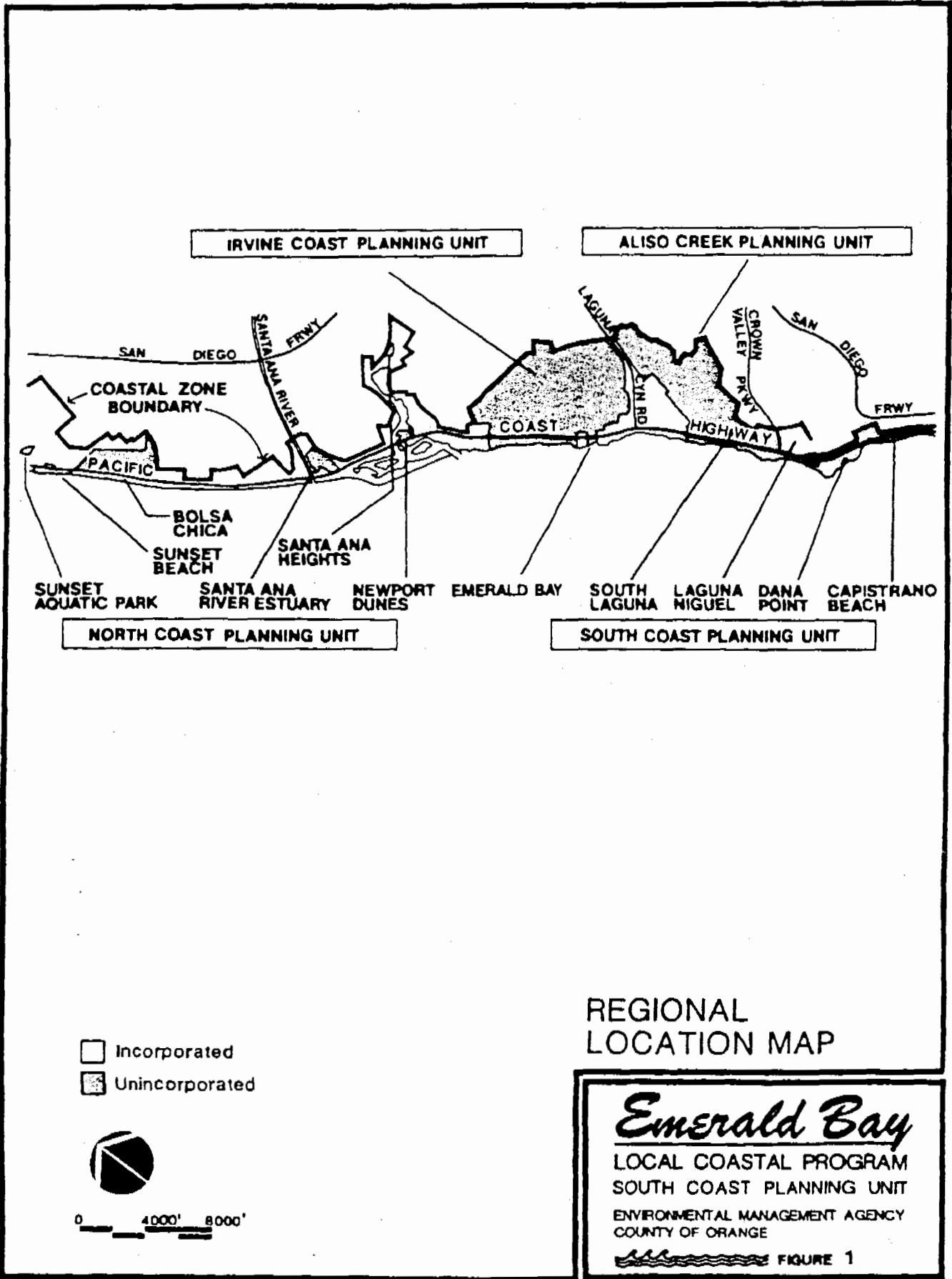
1. Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and man-made resources.
2. Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
3. Maximize public access along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
4. Assure priority for coastal-dependent and coastal related development over other development on the coast.
5. Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

Consistent with the policies of the Act, this LCP focuses on the protection of coastal resources through orderly, comprehensive planning, and the regulation of development in the coastal zone. The LCP consists of a Land Use Plan (LUP) and an Implementing Actions Program (IAP) comprising policy guidelines and regulatory requirements, respectively. The policies contained in Chapter 2 are the core of the Land Use Plan in that they establish parameters for evaluating future development projects within the LCP area. The LUP sets forth the measures that the County should take to achieve the degree of resource protection required by the Coastal Act and serves as the foundation for the IAP (ordinances) which will carry out the land use plan through zoning.

The Emerald Bay LCP area is composed of the Emerald Bay Community and the Brinderson Property (Figure 2). The LCP recognizes these properties as separate and provides specific land use policies accordingly.

### A. Emerald Bay

Emerald Bay is a private, locked gate community of single family custom homes located on the coast at the northern boundary of the City of



REGIONAL  
LOCATION MAP

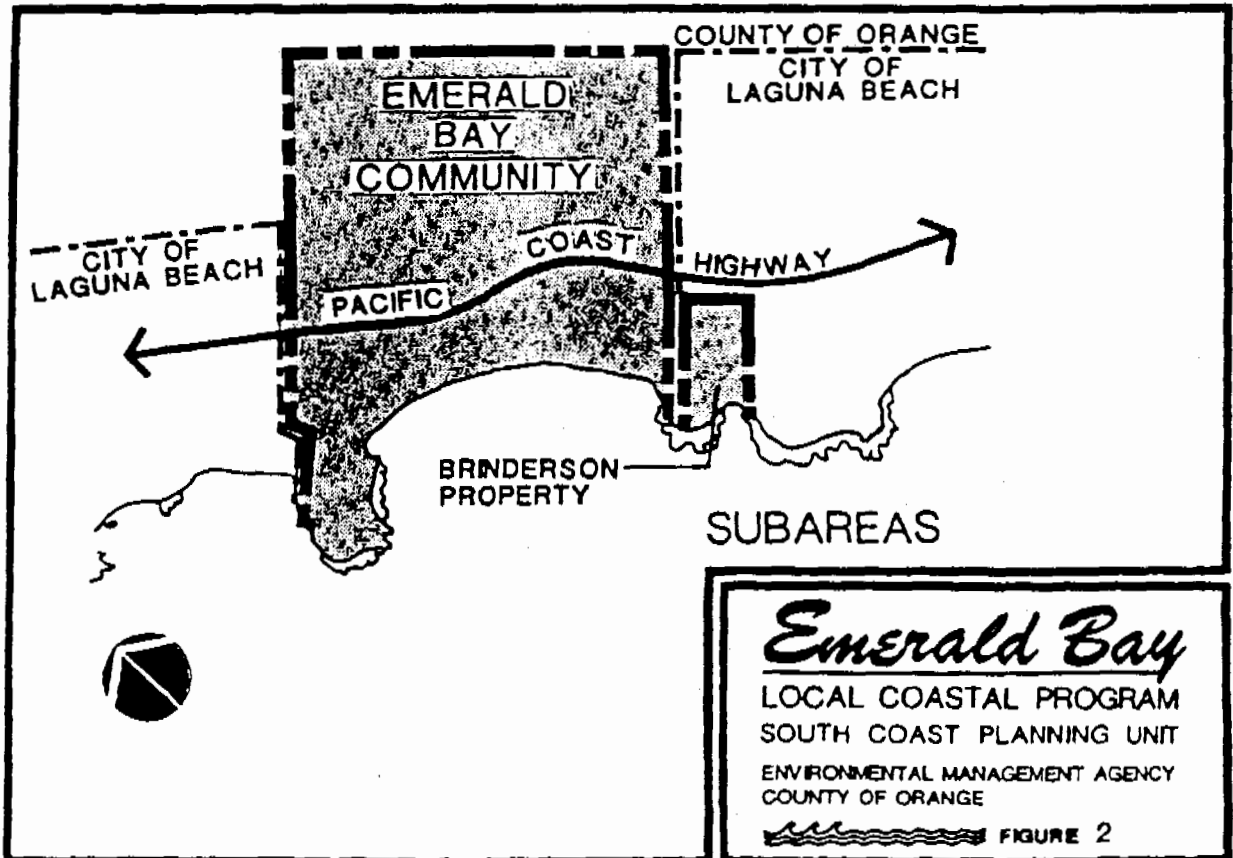
*Emerald Bay*  
 LOCAL COASTAL PROGRAM  
 SOUTH COAST PLANNING UNIT  
 ENVIRONMENTAL MANAGEMENT AGENCY  
 COUNTY OF ORANGE  
 FIGURE 1

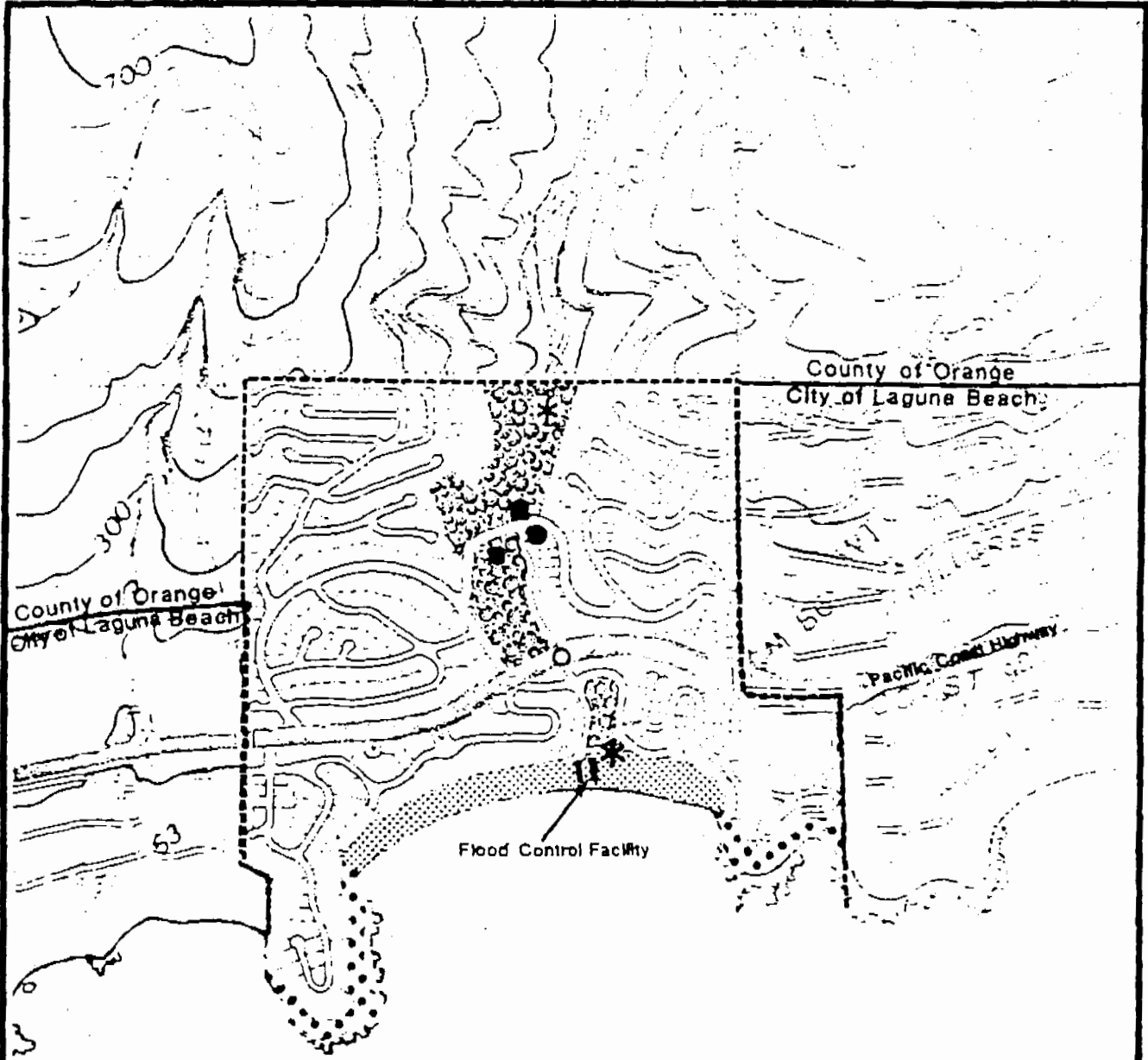
Laguna Beach. All roads within the community as well as the recreational amenities are owned and maintained by the Emerald Bay Community Association.

The dominant feature of the seaward portion of this community is a 2,000-foot long sandy beach which is isolated from adjacent beaches by two points projecting several hundred feet into the ocean (Figure 3). The largest of the two points, located at the west end of the beach, extends approximately 900 feet into the water. From its rocky base, this point ascends at a near vertical angle approximately 100 feet to a level top upon which approximately 20 homes are built. Passage around this point to gain access to the beach from adjacent property outside the Emerald Bay Community is not possible. The eastern point projects approximately 300 feet into the water with an elevation of about 80 feet. Although not as long as the western point, the slope of this less rocky point also restricts passage to the community via the shore.

B. Brinderson Property

The Brinderson Property is a 10-acre parcel located immediately south of the seaward portion of the Emerald Bay Community. The privately owned estate is physically and legally separate from the Emerald Bay Community. Development on the site consists of one single family residence and related, accessory uses.





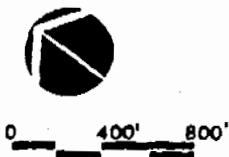
County of Orange  
City of Laguna Beach

County of Orange  
City of Laguna Beach

Pacific Coast Highway  
COAST STREET

Flood Control Facility

- |  |                 |  |                    |
|--|-----------------|--|--------------------|
|  | Park/Open Space |  | Undercrossing      |
|  | Fire Station    |  | Community Building |
|  | Sandy Beach     |  |                    |
|  | Rocky Shore     |  |                    |
|  | Bluff           |  |                    |
|  | Parking         |  |                    |
|  | LCP Study Area  |  |                    |



COMMUNITY FEATURES

*Emerald Bay*  
 LOCAL COASTAL PROGRAM  
 SOUTH COAST PLANNING UNIT  
 ENVIRONMENTAL MANAGEMENT AGENCY  
 COUNTY OF ORANGE

FIGURE 3

**II. Land Use Plan**  
**A. Resources Component**

**EMERALD BAY**  
**LOCAL COASTAL PROGRAM** 





## II. LAND USE PLAN

The Land Use Plan (LUP) consists of four components: Resources, Transportation, Access, and New Development. Each component includes a summary of relevant Coastal Act policies, an identification of issues, a description of existing conditions, and where appropriate, an issue analysis. The last section, Land Use Plan Policies, provides new development guidelines to insure conformity with the Coastal Act.

The LUP is sufficiently detailed to indicate the kinds, locations and intensity of land uses. The plan incorporates relevant portions of the County's General Plan, sets forth appropriate resource protection and development policies and, where necessary, lists implementing actions consistent with Coastal Act Section 30108.5.

### A. Resource Component

The Coastal Act provides policy guidelines for the protection of a broad range of environmental elements including marine, water, biological, cultural and historic, and scenic and visual resources.

Marine resources are protected under Sections 30230 and 30231. The former requires maintenance, enhancement and, where feasible, restoration of marine resources. It also calls for protection of areas and species of special biological or economic significance. Furthermore, it requires that uses of the marine environment be carried out such that the biological productivity of coastal waters is sustained. Section 30231 protects biological productivity and the quality of coastal waters and other water bodies through required control and management of waste water discharges, runoff, surface flows and use of ground water supplies.

Section 30236 promotes water resource protection by limiting substantial alterations of waterways to necessary: (1) water supply projects, (2) flood control projects, and (3) development projects for the improvement of fish and wildlife habitat.

Biological resources, particularly environmentally sensitive habitat areas, are protected under Section 30240. Only those uses dependent upon such biological resources are allowed within sensitive habitat areas. Development proposed adjacent to sensitive habitat areas must be compatible with and designed to prevent impacts to such biological resources.

Cultural and historic resources are addressed in Section 30244 which requires mitigation measures in conjunction with development that will have an adverse impact on archaeological and paleontological resources.

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. Related to these ends is the assurance sought by Section 30253 that new development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way

require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The foregoing Coastal Act policies influence resource management planning for the Emerald Bay LCP area. Five major topics are identified and discussed below.

- o Permanent protection of environmentally sensitive habitat areas; opportunities for location of buffer zones adjacent to sensitive habitat areas and parks.
- o Maintenance and enhancement of marine resources, and ocean and ground water quality.
- o Mitigation measures required for development that may adversely affect archaeological and paleontological resources.
- o Geologic, flood, erosion and fire hazard protection.
- o Protection and enhancement of existing views to and along the ocean and other scenic vistas; measures to ensure that new development will be visually compatible with surrounding areas and will minimize the alteration of natural landforms.

#### 1. Environmentally Sensitive Habitat Areas

Environmentally sensitive habitat areas are defined as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments (Coastal Act, Section 30107.5)." The intent of the Coastal Act is preservation of significant habitat resources.

A report by Donald Bright and Associates indicates that the rocky intertidal habitat areas along the north and south promontory points harbor a highly diverse number of species. The dominate species are California Mussel (*Mytilus californianus*), Ochre Seastar (*Piaster ochraceus*), Barnacles (*Balanus* sp.), periwinkle (*Littorina* sp.), limpets (*Lottia* sp.), chitons (*Nuttalina* sp., *Mopalia*), shore crabs (*Pachygrapsus crassipes*), turban snails (*Tegula*) and sea anemone (*Anthopectura* spp.). A variety of subtidal habitats in the Emerald Bay waters have also been documented. Giant kelp (*Macrocystis pyrifera*) is the dominant organism.

The Bright report concludes that while the oceanographic characteristics of Emerald Bay are not unique, the marine resources, which provide habitat for various marine life, are worthy of protection from 1) overexposure to human activities, 2) air pollution, and 3) pollution from sewage outfalls and storm drainage systems. It should be noted that the quality and value of these habitats is generally less significant than that of the nearby state designated Marine Life Refuge areas of Irvine Coast and Laguna Beach.

No officially recognized rare, endangered, or threatened species are known or expected to exist within the Emerald Bay LCP area.

## 2. Watershed Management

The Emerald Bay area is approximately 95 percent developed and, thus, new development poses minimal threat of degradation to coastal water quality due to runoff. Notwithstanding, vacant infill parcels with development potential may contribute silt and toxic substances through runoff waters from construction, grading and vegetation removal which could cumulatively damage marine resources.

Available survey data indicate that the soil types (e.g., Capistrano, Myford and Cieneba sandy loam) in the LCP area have a moderate to high erosion hazard potential if exposed. Enforcement of the County's Grading and Excavation Code will serve to minimize development impacts on marine water quality through erosion control requirements and procedures.

## 3. Environmental Hazards

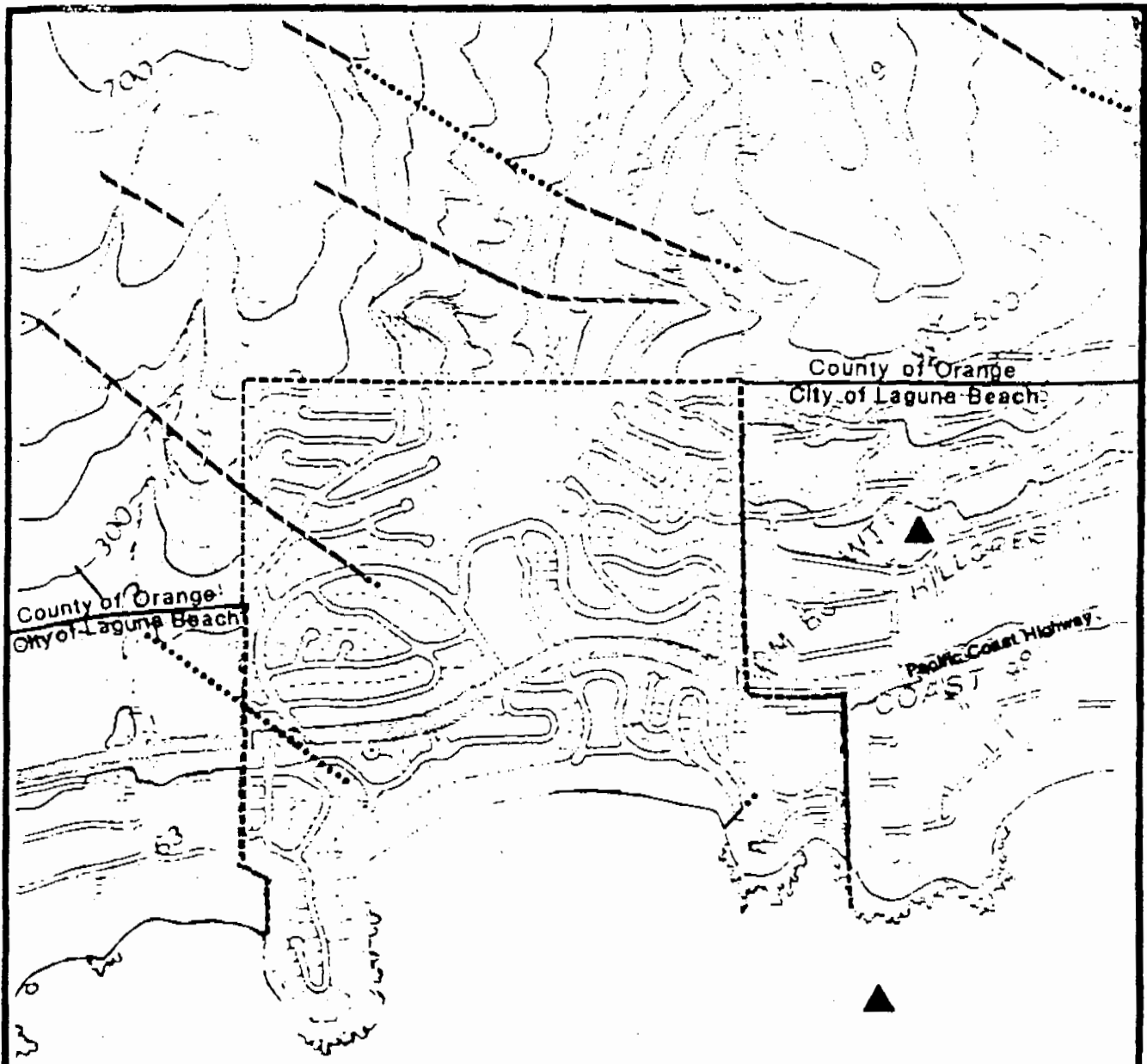
### a. Geologic Hazards



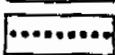

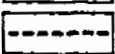
Three geologic units are present in the LCP area: igneous bedrock, sedimentary bedrock, and unconsolidated deposits. There are two kinds of igneous rock. One, the Intrusive Volcanic material from the antesite classification, is found in the promontory points and three other pockets within the LCP area.

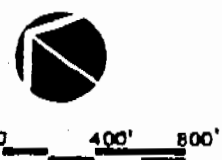
Three sedimentary bedrock units from the Miocene period exist in the area. The Monterey Formation is comprised of shale, siltstone and sandstone. This formation is generally stable and is found in the interior flanks of the points which form Emerald Bay. The San Onofre Breccia is composed of blue-grey and green schist-breccia, sandstone and conglomerates. Landslides have occurred in this formation which is found in the inland portion of the LCP area; however no landslides have been documented. The Bommer member of the Topanga Formation consists of massive sandstone with siltstone interbeds. When exposed, this porous and permeable bedrock will erode into caves. The Topanga-Bommer bedrock is found in the northeastern reaches of the LCP area.

The environmental hazards which may affect new and existing development are faults and earthquake activity (Figure 4). Several faults are thought to exist in this LCP area, none of which are apparent on the surface. Figure 4 indicates the approximate location of two earthquake epicenters. The first was the epicenter of six mild quakes (magnitude equal to 2.0) between 1934 and 1935. A second epicenter, located approximately 1,000 feet offshore, was the site of a moderate trembler (magnitude equal to 4.5) in 1969.

No landslide, soil creep, or mudflow areas have been identified within the LCP area.



-  Approximated Fault
-  Certain Fault
-  Concealed Fault
-  Epicenter
-  LCP Study Area



Source : US Mines and Geology

## GEOLOGIC HAZARDS

### *Emerald Bay*

LOCAL COASTAL PROGRAM  
 SOUTH COAST PLANNING UNIT  
 ENVIRONMENTAL MANAGEMENT AGENCY  
 COUNTY OF ORANGE

 FIGURE 4

b. Flood Hazards

The Emerald Canyon watershed which extends beyond the northeasterly reaches of the LCP area drains through the Emerald Bay Community. No danger from heavy storm runoff is presented to residential structures since they are all built well above the canyon floor. Runoff from the canyon passes under Pacific Coast Highway through a 10 foot wide, circular concrete storm drain. The runoff reaches its ocean destination via a concrete channel extending onto the sandy beach. The County's Development Monitoring Program (Vol. 8, February 1987) indicates that there are no deficiencies in flood control facilities in the area.

The areas subject to flood related hazards are primarily located along the coastline. The County determined flood hazard areas, which are consistent with the Federal Flood Insurance Rate Maps, are shown in Figure 5. The County of Orange Coastal Development Flood Plain Study (prepared by: Moffatt and Nichol, Engineers; January, 1985) provides design standards for new development in these flood prone areas. The study also establishes a stringline beyond which no ocean protection device (OPD) may be constructed. The OPD stringline is coterminous with the flood plain (FP-3) except where indicated in Figure 5.

c. Beach Erosion

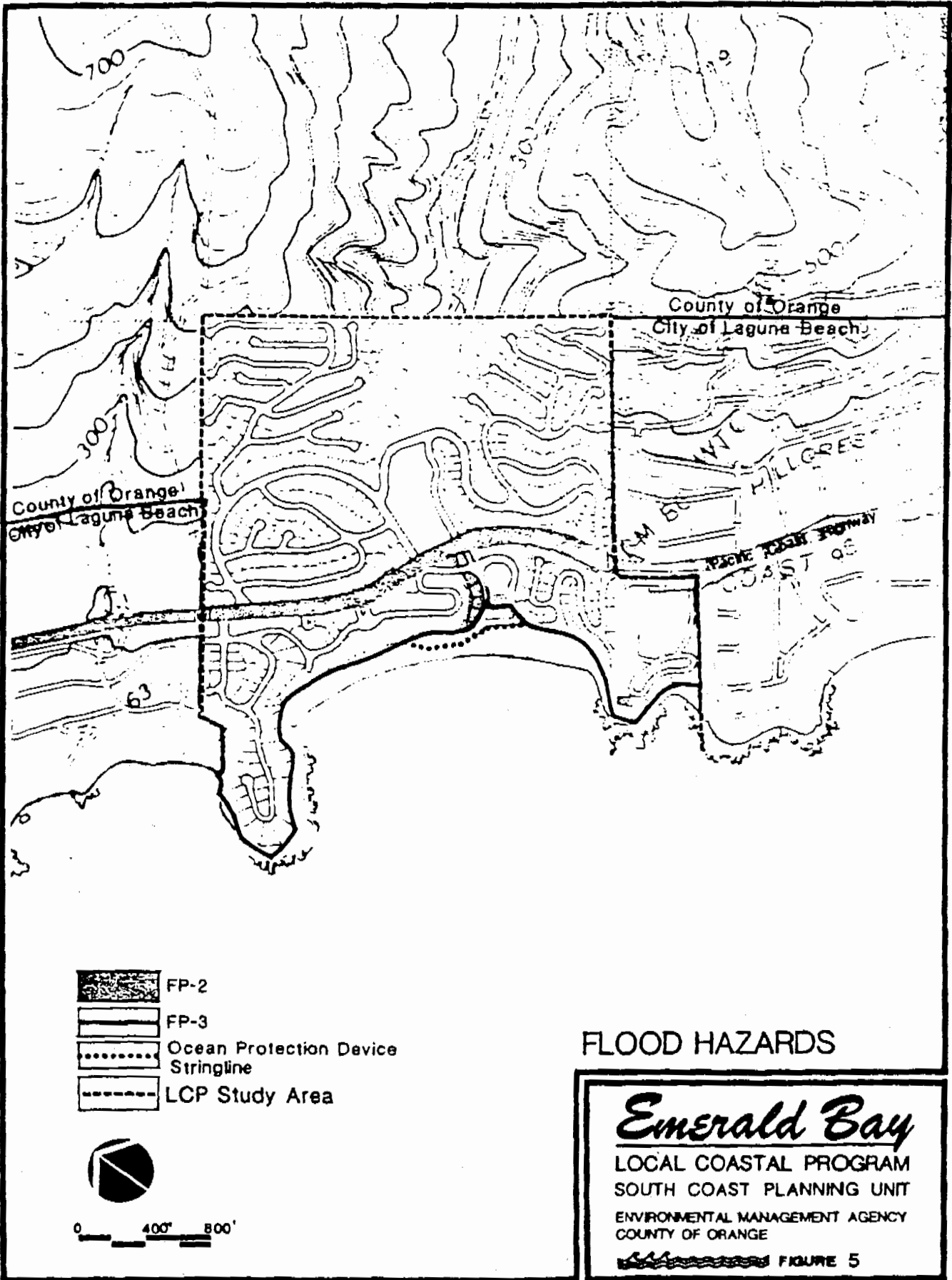
The runoff system described above also allows the transport of sand to the beach. Under normal conditions, slope-wash debris carried through the canyon system and deposited into the ocean provides adequate replenishment of beach sand.

The heavy storm activity during the winter of 1980, however, washed large amounts of sand from the beach. To restore the beach to its prior condition, the Emerald Bay Community Association imported sand. Since that time, no further erosion problems have occurred.

d. Fire Hazard

The Safety Element of the Orange County General Plan identifies the area encompassing Emerald Bay as an area of "High Fire Hazard." An existing fuel modification zone of 400 feet in width serves as a firebreak between the residential units in the Emerald Bay Community and the canyons of the Irvine Coast Wilderness Regional Park. Maintenance of the existing firebreak should serve to safeguard structures. Fire safety is also provided through implementation of existing County ordinances which require use of fire retardant roofing materials in new development and major structural modifications to existing buildings located within 1,000 feet of brush areas.


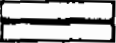

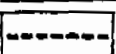
Fire protection for Emerald Bay is provided by the Emerald Bay Volunteer Fire Department in conjunction with the County. The Fire Department has its own firehouse on Emerald Bay property under lease to the County of Orange.



County of Orange  
City of Laguna Beach

County of Orange  
City of Laguna Beach

HWY 163  
HILLCREEK  
HWY 52  
PACIFIC COAST FREEWAY  
COAST OF

-  FP-2
-  FP-3
-  Ocean Protection Device Stringline
-  LCP Study Area



## FLOOD HAZARDS

*Emerald Bay*  
 LOCAL COASTAL PROGRAM  
 SOUTH COAST PLANNING UNIT  
 ENVIRONMENTAL MANAGEMENT AGENCY  
 COUNTY OF ORANGE

 FIGURE 5

#### 4. Scenic Resources

Scenic and visual resources in the LCP area are defined in terms of view opportunities and existing community character. In general, existing public access to these resources is extremely limited.

View opportunities to the ocean and inland canyons of the Irvine Coast Wilderness Regional Park from the LCP area are almost exclusive to the residents of the private community at Emerald Bay. Due to existing development, the ocean and park are not visible to the motoring public utilizing the segment of Pacific Coast Highway through the LCP area.

Much of the existing community character is a reflection of pre-1930s development in Emerald Bay and community-imposed architectural standards. 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 to:

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

#### 5. Cultural/Scientific/Historic Resources

The LCP area is underlain by sedimentary bedrock units from the Miocene period which are considered to be of moderate to high paleontologic sensitivity.

Two archaeological sites are known to the LCP area. The sites, CA-ORA-2 and CA-ORA-3, are located seaward of Pacific Coast Highway. County records indicate that shell midden was found at the ORA-2, and that the site has been destroyed. In addition, a recent report on ORA-3 (Breece, June 1987) indicates that a mano, scraper, a "rubbing stone," a "mawl stone" and various species of marine shellfish were found by J. R. Briggs in 1949 when the site was officially recorded.

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.

All new development is subject to the archaeological and paleontological policy of the Orange County Board of Supervisors (Resolution No. 77-866) which states that:

"all reasonable and proper steps 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 are preserved."

*Land Use Plan*  
*B. Transportation*

*EMERALD BAY*  
LOCAL COASTAL PROGRAM 





## B. Transportation Component

The Coastal Act requires maintenance and enhancement of public access to the coast in conjunction with new development (Sections 30212.5, 30252 and 30253). Section 30212.5 encourages the balanced distribution of public facilities, including parking areas. Section 30252 further encourages alternative modes of transportation, provision of adequate parking and balanced land use planning (i.e., residential, service commercial, employment and recreation). Under Section 30253, new development must be designed to minimize energy consumption and vehicle miles traveled.

Because new development opportunities are curtailed by the near build-out condition of the existing community, maintenance and enhancement of circulation, parking and land uses will be limited to that necessary to support the existing pattern of development. Transportation facilities and services are described below.

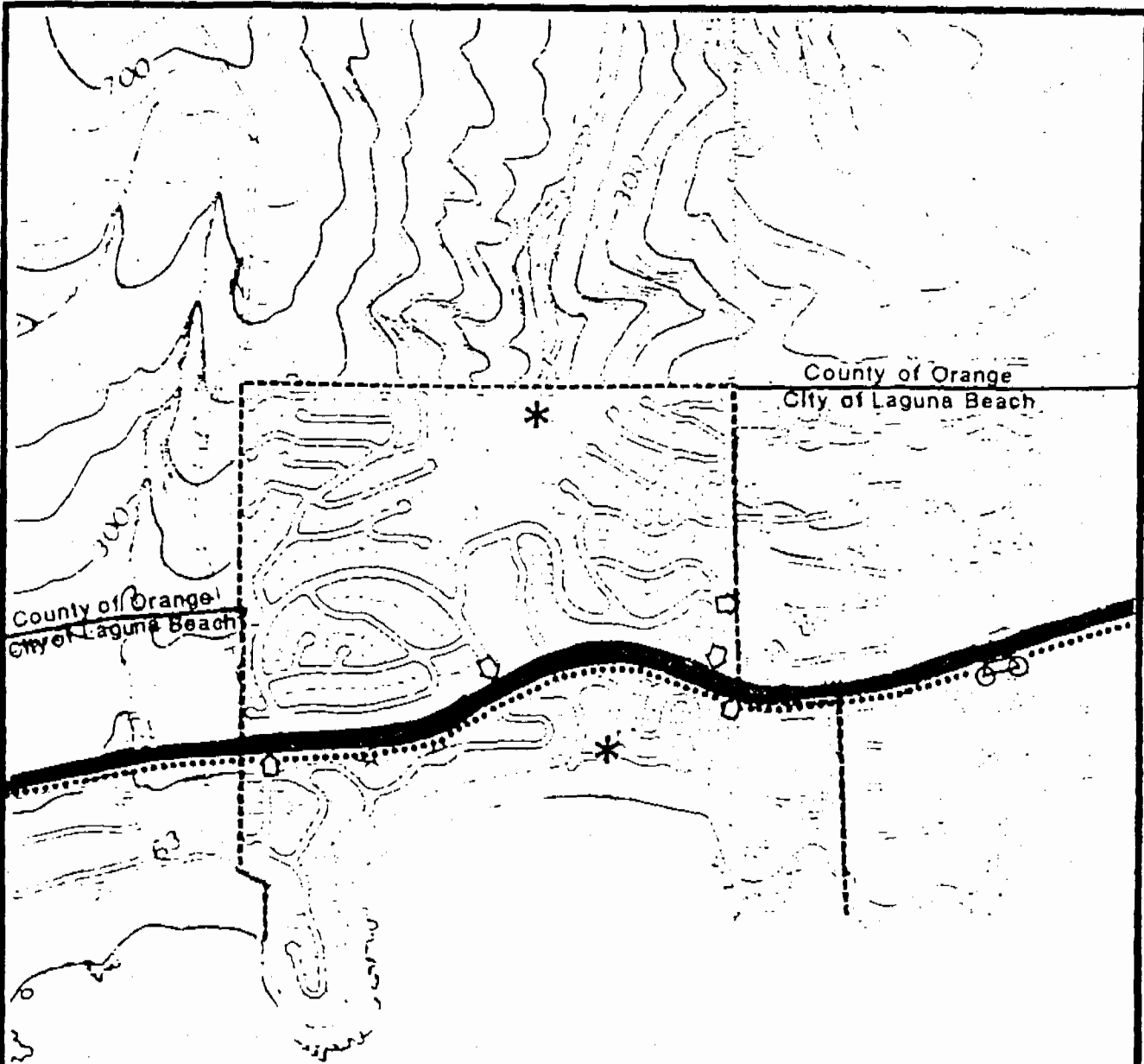
### 1. Regional and Local Circulation

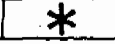
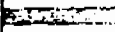
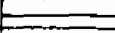


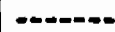
The LCP area is divided by Pacific Coast Highway (PCH), an arterial highway which parallels the entire Orange County coastline and provides regional access to the LCP area (Figure 6). Direct access to the community is via several controlled gates off of Pacific Coast Highway. The streets within the community are owned and maintained by the Emerald Bay Community Association.

In the vicinity of Emerald Bay, PCH consists of four travel lanes and a painted median. The roadway shoulder accommodates bicyclists traveling the Pacific Coast. By definition, the bikeways are Class 2 on-road facilities. Along this segment of PCH, the Master Plan of Countywide Bikeways identifies a Class 1, off-road bikeway. Public parking opportunities along PCH are nonexistent. Private parking facilities are depicted in Figure 6. Transit service is provided by both the Orange County Transit District (OCTD) and the Laguna Beach Municipal Transit Lines.

### 2. Scenic Highway

The entire length of Pacific Coast Highway is designated a Viewscape Corridor on the Master Plan of Scenic Highways. The County's visual resources vary throughout the coastline. Traveling southeast on PCH through the LCP area and adjoining development in Laguna Beach, the view corridor narrows, providing intermittent views to the ocean and inland hillsides. Traveling in a northwesterly direction, the view corridor broadens as it approaches Crystal Cove State Park and the Irvine Coast. Scenic vistas and the visual quality of the Corridor will be maintained and enhanced, consistent with the objectives of the Master Plan of Scenic Highways.

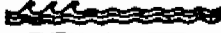


-  Private Parking
-  Primary Arterial
-  Private Streets
-  Controlled Entry Gates
-  Class 2 Bikeway (on road-striped lanes)
-  LCP Study Area



CIRCULATION

*Emerald Bay*  
 LOCAL COASTAL PROGRAM  
 SOUTH COAST PLANNING UNIT  
 ENVIRONMENTAL MANAGEMENT AGENCY  
 COUNTY OF ORANGE

 FIGURE 6

*Land Use Plan*  
*C. Access Component*

**EMERALD BAY**  
**LOCAL COASTAL PROGRAM**



### C. Access Component

Historically the shoreline has been recognized as a valuable resource to be shared by all people. The doctrine that tidelands are held in public trust is embodied in the Commerce Clause of the United States Constitution and has been interpreted by the Courts as giving the public the right to use the Nation's navigable waters. In California, the Constitution guarantees the public right to coastal access. Article 10, Section 4 of the California Constitution states that:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right-of-way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

The Coastal Act of 1976 declares that one of the primary goals of the State for the coastal zone is to "maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners (Section 30001.5)." The Coastal Act contains policies which require that the existing legal rights of public access to the coast be enforced, and that reasonable requirements for public access be established in new developments along the coast. Furthermore, the Coastal Act requires that recreational use of the oceanfront be protected and that support services for recreational visitors be protected and provided, including lower cost services.

This component identifies Coastal Act policies related to shoreline access and visitor-serving and commercial-recreational facilities<sup>1</sup>, and applies them to the particular characteristics and needs of Orange County. The existing developed nature of the LCP area, its long standing as a private community, and the lack of existing visual and physical public access to the ocean, will limit any new opportunities for public access to the coast.

#### 1. Emerald Bay

Emerald Bay is a private, locked-gate community which is characterized by hillside areas and a steep walled canyon on the inland side and a cove beach and bluff/rocky shore areas on the oceanward side of the community.

Access to the community is gained by residents through the use of several electrically controlled, card keyed gates and a guarded main entrance. Once inside the community, residents obtain access to the cove beach by utilizing the private street system, the Pacific Coast Highway undercrossing (from the inland side of Pacific Coast

<sup>1</sup>Refers to Coastal Act Sections 30210, 30211, 30212, 30212.5, 30213, 30214, 30220, 30221, 30222, 30223 and 20250(c).

Highway), and a small parking facility adjacent to the beach. As mentioned earlier, the private street system and all recreation facilities within the community are owned by the Emerald Bay Community Association.

Section 30212(a) of the Coastal Act requires that public access from the nearest public roadway to the shoreline be provided in new development projects except where adequate access exists nearby. Furthermore, Section 30214(a) provides that public access policies shall be implemented in a manner to take into account certain circumstances such as the "need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter."

Coastal development permits are required by this LCP for projects defined by the Coastal Act as new development projects that may not have direct adverse impacts upon existing public access to or along the beach. Examples of such projects which the Emerald Bay Community Association may undertake include, but are not limited to, utilizing different materials in, or changing the size of, existing structures or facilities maintained by the Association, constructing new recreational, administrative or security facilities, planting major new landscaping, internal street improvements, etc. Requiring public access to or along the beach at Emerald Bay as a condition of a permit for such a new development project would violate the Constitutional rights of the Association not to have its property taken without paying just compensation, see Nollan v California Coastal Commission, 87 Daily Journal D.A.R. 3834, decided June 26, 1987.

On the other hand, it is possible that the Association may request development permits for projects between Pacific Coast Highway and the sea that directly adversely impact the existing public access to or along the beach at Emerald Bay. Examples of such projects include, but are not limited to, the construction of ocean protective devices at sea or construction on the beach that adversely affects the public right to approach the beach from the sea or utilize the beach seaward of the high tide line. Also, the construction of major projects that eliminate or limit the use of existing recreational facilities within the Emerald Bay Community could cause residents of the Community to utilize overcrowded nearby public recreational facilities, thus adversely impacting public use of such facilities. The construction of major new residential facilities within the Emerald Bay Community which significantly increase the density or intensity of use could be of such magnitude that they result in substantial overcrowding of the beach at Emerald Bay, thus causing Emerald Bay residents to utilize nearby public beaches, thus adversely impacting public use of these facilities if they are presently overcrowded.

In these cases, approval of the development could have substantial direct adverse impact upon the existing public access to or along the beach. In these situations, access conditions that directly mitigate these adverse impacts would not violate the Association's rights not to

have its property taken without paying just compensation. See Nollan v California Coastal Commission, supra. The access policies contained in Section E reflect this understanding of the Nollan case findings.

2. Brinderson Property

Since the Brinderson Property is not within the Emerald Bay Community proper, public access opportunities for this parcel must be considered independently. The property owner has obtained a coastal development permit (CDP No. 5-86-380, July 10, 1986) for the demolition and reconstruction of a single family residence. The Coastal Commission's findings for approval did not require public access on the basis that the project was not considered a "new development" pursuant to Coastal Act Section 30212.

For more information regarding Brinderson Property access requirements see P.II.24, paragraph 7.a.

*Land Use Plan*  
*D. New Development Component*

**EMERALD BAY**  
LOCAL COASTAL PROGRAM 



## D New Development Component

Coastal Act policy 30205 provides guidance for the location of new development in the Coastal Zone. These guidelines, in concert with the Act's provisions for the protection of scenic and visual qualities (Section 30251), accommodation of alternative modes of transportation (Section 30252), protection against environmental hazards (Section 30253), and provision of adequate public works facilities (Section 30540) serve as the framework for design of the Land Use Plan.

The LCP area is an established residential community with support recreational facilities. The new development opportunities which exist consist of infill parcels comprising approximately five (5) percent of the Emerald Bay Community. The Brinderson Property is an existing single family estate with redevelopment in kind within the foreseeable future. Existing public works facilities will accommodate build-out of the present pattern of development.

### 1. Development Intensity

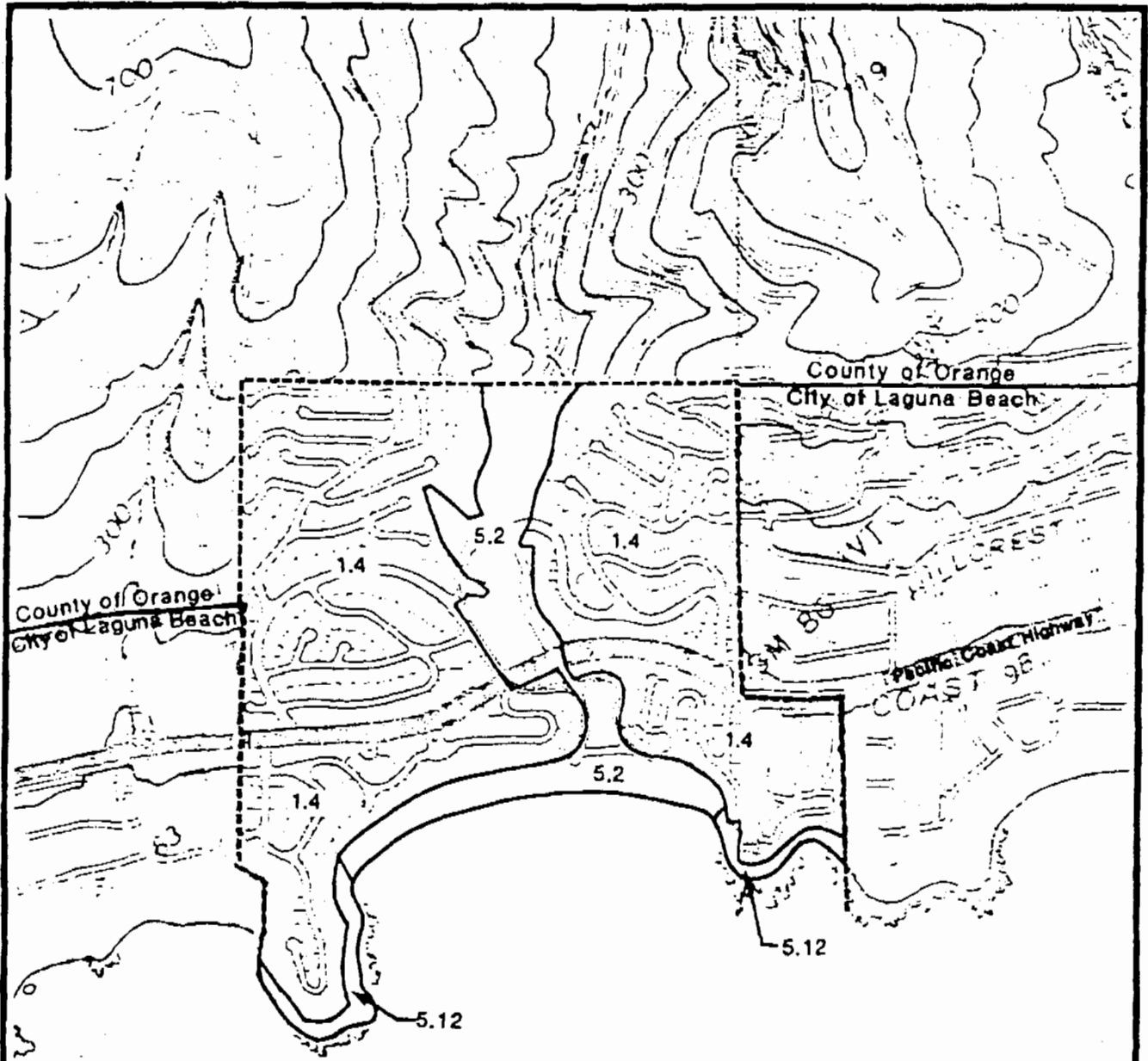
The Land Use Element of the County's General Plan designates the Emerald Bay LCP area, 1B Suburban Residential. Accordingly, this Land Use Plan assigns the following residential and open space designations to specific areas as shown in Figure 7.

- o Medium Density Residential (1.4) which provides for a density range of 3.5 to 6.5 dwelling units per acre and is intended to allow single family detached units on standard size lots with some townhouses or cluster arrangements.
- o Recreation (5.2) which refers to lands primarily suitable to serve the outdoor recreational needs of the residents of an area or region.
- o Conservation (5.12) lands which require preservation in a natural state on behalf of the public interest. It is the intent of this subcategory that only those uses which are of a passive recreational nature (such as viewpoints); of limited active recreational nature (such as hiking and equestrian trails); required for scientific study and interpretation; or those public service, facility and utility uses absolutely required for public safety, health and welfare are to be considered compatible.

### 2. Housing

Development within the Emerald Bay LCP area will be consistent with the County's Housing Element. The applicable housing policy requires new residential development proposals involving thirty or more dwelling units to be twenty-five percent affordable as defined in the Housing Element. The Element's Voluntary Component policies apply to all other residential projects.





- 1.4 Medium Density Residential (3.5-6.5 du/ac)
- 5.12 Conservation
- 5.2 Recreation
- LCP Study Area



**LAND USE**

***Emerald Bay***

LOCAL COASTAL PROGRAM  
SOUTH COAST PLANNING UNIT  
ENVIRONMENTAL MANAGEMENT AGENCY  
COUNTY OF ORANGE

**FIGURE 7**

3. Infrastructure

The LCP area is served by the following agencies:

<u>Service</u>	<u>Agency</u>
Water	Laguna Beach County Water District
Sewer	City of Laguna Beach
Electricity	Southern California Edison Company
Natural Gas	Southern California Gas Company

The Emerald Bay Service District, a community service district organized under the laws of the State of California, provides the Emerald Bay Community with sewer service and police protection. The Service District provides sewer service through an agreement with the City of Laguna Beach, and its involvement as a joint party to the Aliso Water Management Association Agreement. These agreements allow the Emerald Bay Service District to utilize city and Aliso Water Management Agency facilities.

Fire protection is provided by the Emerald Bay Volunteer Fire Department, acting in conjunction with the County of Orange. The Fire Department has its own firehouse on Emerald Bay property, under lease to the County of Orange.

Analysis of future availability of public facilities has been conducted by the County of Orange Development Monitoring Program (DMP). The results of the DMP analysis are summarized below:

The Laguna Beach County Water District, the City of Laguna Beach, and the Southern California Gas Company have indicated that current capacities are sufficient to serve future demand. The Southern California Edison Company possesses current substation capacity to satisfy present needs. The expansion of existing substations will allow the provision of adequate electrical power to serve future demand.

*Land Use Plan*  
*E. Land Use Plan Policies*



**EMERALD BAY**  
**LOCAL COASTAL PROGRAM** 

## E. Land Use Plan Policies

The Policies listed below address the issues identified in the previous components of this Land Use Plan and provide the guidance necessary to fulfill the intent of the Coastal Act within the Emerald Bay LCP.

### 1. Resource Management - Watershed

- a. All construction will be conducted with provisions for the control of sediment transport, and debris originating at the construction site as follows:
  - 1) For necessary grading operations, the smallest practical area of land will be exposed at any one time during development, and the length of exposure will be kept to the shortest practical amount of time. The clearing of land should be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes should be in place before the beginning of the rainy season.
  - 2) Sediment basins (including debris basins, desilting basins, or silt traps) will be installed in conjunction with the initial grading operations and maintained through the development process to remove sediment from runoff waters. All sediment shall be retained on site unless removed to an appropriate dumping location.
  - 3) Temporary vegetation, seeding, mulching, or other suitable stabilization method will be used to protect soil subject to erosion that have been disturbed during grading or development. All cut and fill slopes shall be stabilized immediately with planting of native grasses and shrubs, appropriate nonnative plants, or with accepted landscaping practices.

### 2. Environmental Hazards - Geologic Hazards

- a. Applications for grading and building permits, and applications for subdivision will be reviewed for adjacency to, threats from, and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other geologic hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be required where necessary.

### 3. Environmental Hazards - Fire Hazards

- a. The County will continue to maintain the existing firebreak inland of Laguna Beach and require roofing materials in conformance with existing County ordinances.
- b. Prior to the issuance of any grading permit for development adjacent to open space, including Swanson Park, a fuel modification plan shall be approved by the Fire Chief. The plan shall show the special treatment to achieve an acceptable level of risk in regard

to the exposures of structures to flammable vegetation and shall address the method of removal and installation (mechanical or hand labor) and provisions for its continuous maintenance. The approved fuel modification plan shall be installed under the supervision of the Fire Chief and completed prior to the issuance of applicable use and occupancy permits.

4. Cultural/Scientific/Historic Resources

- 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 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 a first refusal basis. Applicant may retain said finds if written assurance is provided that they will 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 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. In 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 actions, 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. The paleontologist shall submit a follow-up report for approval by the Manager, Harbors, Beaches and Parks/Program Planning Division, which shall include the period of inspection, an analysis of the fossils found, and present repository of the fossils.

5. Public Beach Access - Emerald Bay

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

- 1) That the project for which the permit is sought will have a substantial direct adverse impact upon existing public access to or along the Emerald Bay beach or overcrowding the capacity of nearby public beaches.
- 2) That the requiring of access to or low intensity recreational uses of the beach at Emerald Bay will directly mitigate the adverse impacts on existing public access to, or use of, the beach caused by the project for which the permit is sought.

b. If public access to the Emerald Bay beach from Pacific Coast Highway is required, it shall consist of a ten (10) foot wide pedestrian and bicycle access easement along the roads and community areas (such as stairways) for the purpose of such public access from Pacific Coast Highway oceanward through the Emerald Bay Community to the beach.

The public access route to the beach will be determined if and when access becomes available to the public.

c. If public access along the Emerald Bay beach is required, it shall consist of lateral access and passive recreational use on and along the beach at Emerald Bay from the mean high tide line 25 feet inland from the daily high water line. In no case shall the area available for public use be closer than ten (10) feet from any pre-existing structure. The easement shall also provide that, in the event the area seaward of the 25-foot line described above is impassable, for example, at extreme high tides, the public shall have the right of pass and repass over that 25-foot portion of the beach to the first of terrestrial vegetation.

- 1) If access to the beach at Emerald Bay from the sea is required, it shall consist of enhancing the public's ability to land ashore from the water.
  - d. Nothing in these policies or in the agreement described therein shall be interpreted as affecting the right of the public to use any portion of the beach subject to the public trust.
  - e. Prior to the issuance of a building permit, required offers to dedicate access easements shall be executed and recorded by the Community Association or its successor-in-interest and shall be recorded free of prior liens and encumbrances except for tax liens and shall run in favor of the People of the State of California, binding the Community Association and their successors-in-interest. Any offer to dedicate easements shall be made to a public agency or private association acceptable to the Coastal Commission and shall be irrevocable for a period of 21 years, such period running from the date of recordation.
  - f. The elements of any condition and any access program shall be limited to elements directly mitigating the substantial, direct, adverse impacts of the project upon existing public access to, or along, the beach.
6. Park Maintenance Access - Emerald Bay
- Prior to or concurrent with the issuance of a coastal development permit initiated by the Emerald Bay Community Association, an agreement shall be entered into which allows vehicular access from Emerald Canyon through the Emerald Bay Community to Pacific Coast Highway, for regional park operations and maintenance, and fire and emergency purposes. Said agreement shall limit vehicular access to County Park Rangers and persons working for such Rangers.
7. Pubic Beach Access - Brinderson Property
- a. Concurrent with an application for a coastal development permit for subdivision purposes, the property owner shall provide a vertical, access easement for public pedestrian purposes. The easement shall provide access to a bluff-top, view-point park to be improved by the property owner and conveyed to the County or its designee.
8. New Development
- a. No development shall be permitted on the sandy beach at Emerald Bay except facilities such as lifeguard towers, volleyball nets and similar recreation facilities.
  - b. No development shall be permitted on the bluff face designated 5.12 Conservation on Figure 7, Land Use.

### *III. Implementing Actions Program*

*EMERALD BAY*  
LOCAL COASTAL PROGRAM 





### III. IMPLEMENTING ACTIONS PROGRAM

The Coastal Act mandates inclusion of implementation measures in all local coastal program submittals. The land use plan portion of the Emerald Bay LCP contains a number of policies and land use designations to guide development in the coastal area. These policies, along with the adopted land use designations, require effective regulatory implementing actions in order to provide assurances of future development consistency with Coastal Act policies.

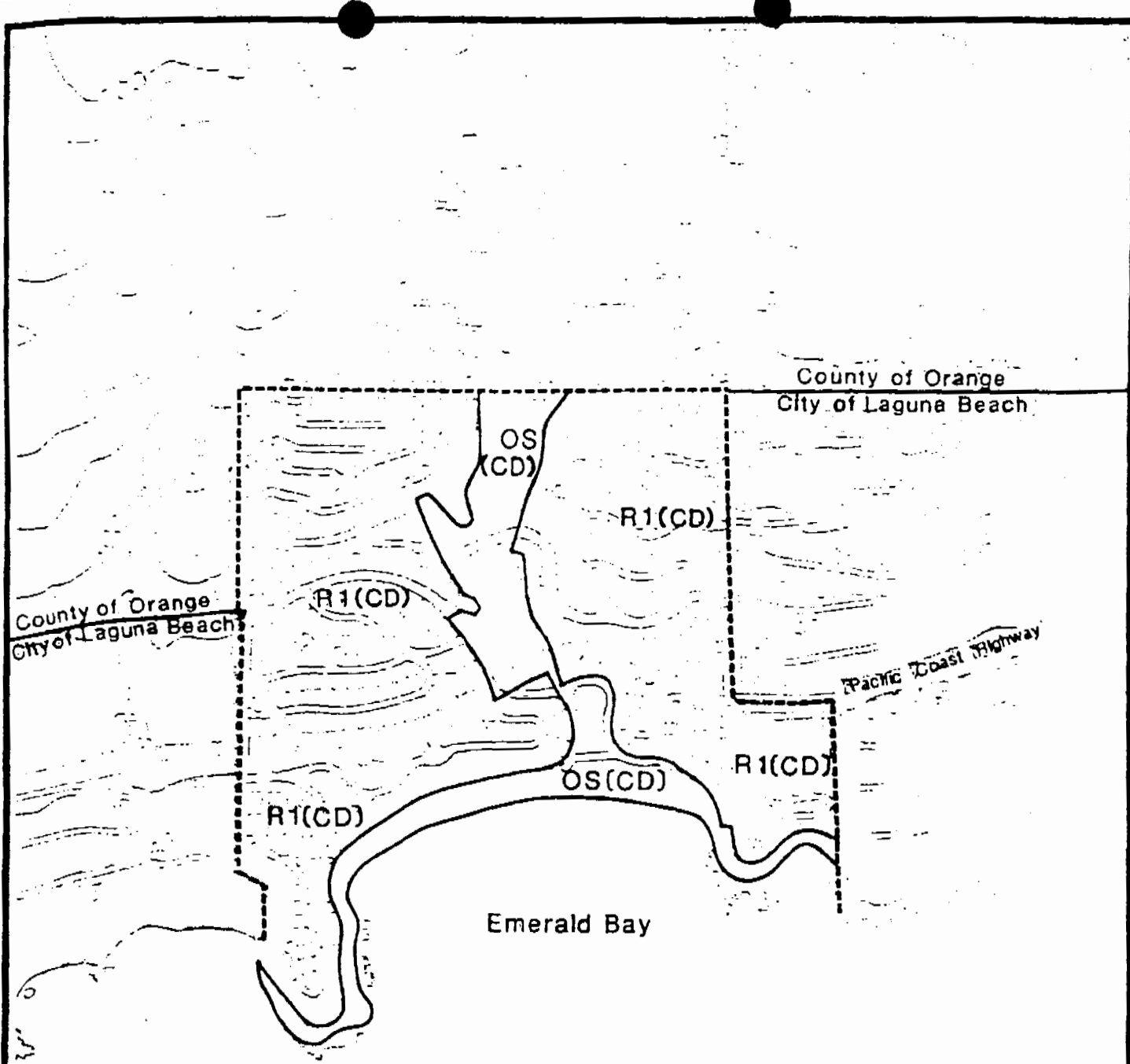
#### A. Zoning

Certain provisions of the Orange County Zoning Code will ensure that new development conforms with the policies of the Land Use Plan. The zoning districts and areas of applicability are depicted in Figure 8. The pertinent Orange County Zone Code (Appendix) districts and permit procedures in effect on the date this LCP is certified shall apply.

The R1, Single-Family Residence district regulations are applicable to new development projects within the Emerald Bay Community and The Brinderson Property. Open space areas including private park, beach and bluff areas are governed by the OS, Open Space district. Three overlay districts, Coastal Development, Flood Plain and Sign Restrictions, and their respective Zoning Code regulations will provide further guidance for new development with designated areas (Figure 8).

Zoning Code Sections 7-9-118 and 7-9-150 set forth the permit procedures. Zoning Code Section 7-9-118.5 lists development projects which are exempt from the coastal development permit requirement. That list is hereby expanded to include the construction of a single-family residence on a vacant lot which meets all of the following:

1. It is not located between the first public road and the sea or immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach.
2. Is a legal lot as of the effective date of LCP certification and conforms with the minimum lot size and lot use designations of the applicable general plan and zoning ordinances.
3. Is not located within an area known to the affected local government, or designated by any other public agency, as a geologic hazard area or a flood hazard area, or, if located within such an area, it has been determined by the affected local government to be a safe site for the construction of a single-family residence.
4. Is no more than 250 feet from an existing improved road adequate for use throughout the year.
5. Can be served by an adequate water supply that is legally available for use either by means of a well or by means of a connection to a water system with sufficient capacity to serve such lot or lots; provided, that no such connection shall require the extension of an existing water main which would have the capacity of serving four or more additional single-family residential structures.



- R1 Single-Family Residence
- OS Open Space
- (CD) Coastal Development Overlay
- LCP Study Area



Note 1: Scenic Highway Overlay (SH) applicable to within 25' of the ultimate ROW for PCH.

Note 2: Floodplain Overlay (FP) applicable as indicated on Flood Insurance Rate Map Community-Panel number 080212 0074A and County SR and FP-2 and FP-3 areas established by Ordinance number 3223.

**ZONING**

***Emerald Bay***

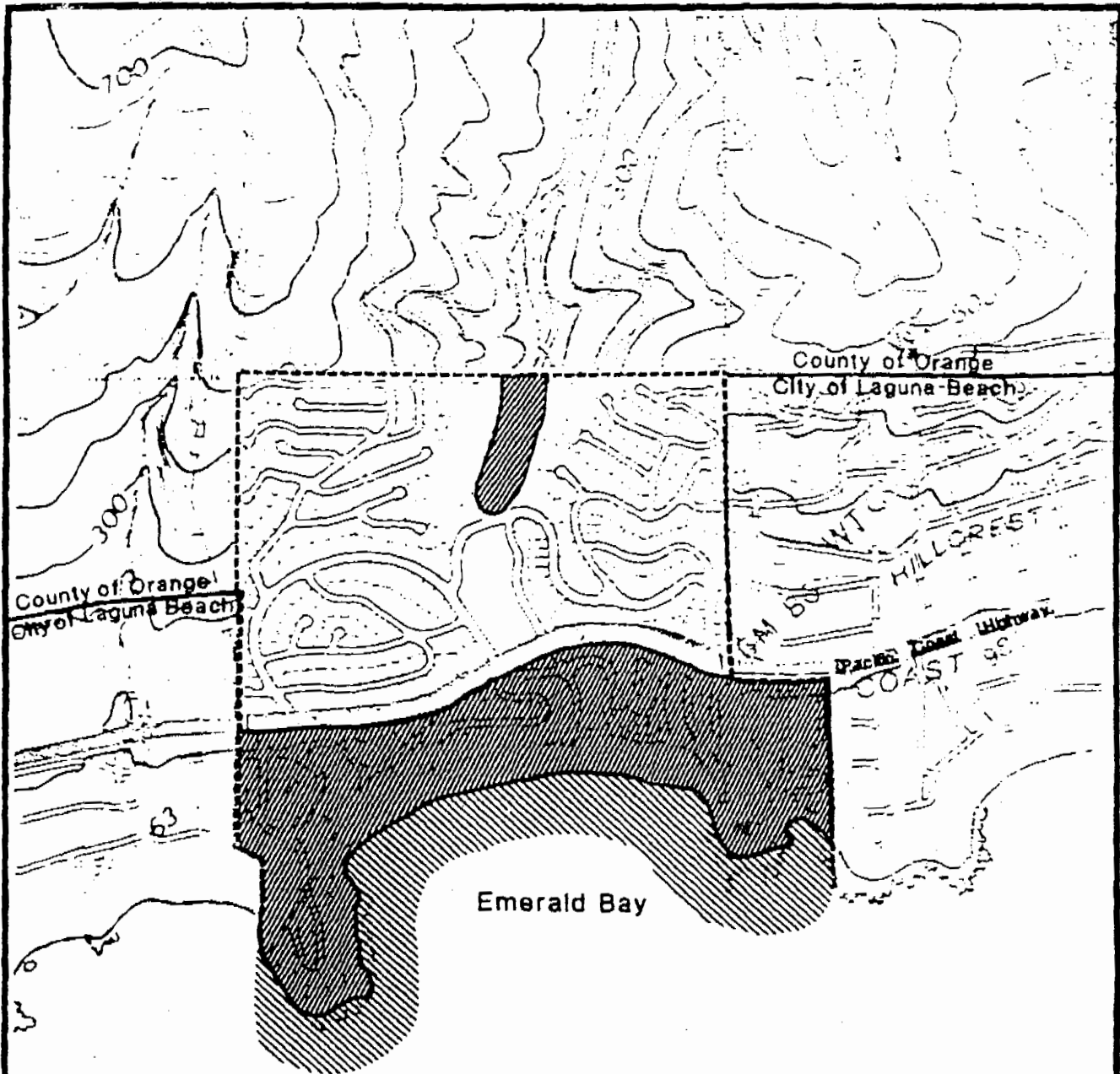
LOCAL COASTAL PROGRAM  
SOUTH COAST PLANNING UNIT  
ENVIRONMENTAL MANAGEMENT AGENCY  
COUNTY OF ORANGE

**FIGURE 8**

The Emerald Bay Community Association shall be referred all discretionary permit applications for review and comment in accordance with Section 7-9-118. No other special requirements or procedures are deemed necessary to carry out the provisions the Emerald Bay Local Coastal Program.

B. Appeal Jurisdiction



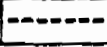
The post LCP permit and appeal jurisdiction is graphically depicted in Figure 9. The Coastal Commission will retain permit jurisdiction after the LCP is certified over tidelands, submerged lands and public trust lands lying within the Coastal Zone. Development projects may be appealed to the Coastal Commission if it is located within any appealable area which includes: lands between the sea and the designated first public road paralleling the sea or: 300 feet from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. The Coastal Commission appeal jurisdiction also includes lands within 100 feet of streams and wetlands and lands within 300 feet of the top of the seaward face of the coastal bluff.



County of Orange  
City of Laguna Beach

County of Orange  
City of Laguna Beach


**Emerald Bay**

-  Coastal Commission Permit Jurisdiction
-  Coastal Commission Appeal Jurisdiction
-  LCP Study Area



**POST LCP  
CERTIFICATION  
PERMIT AND APPEAL  
JURISDICTION**

***Emerald Bay***  
 LOCAL COASTAL PROGRAM  
 SOUTH COAST PLANNING UNIT  
 ENVIRONMENTAL MANAGEMENT AGENCY  
 COUNTY OF ORANGE

 **FIGURE 9**

**EXHIBIT F**



Business Trial Attorneys

May 17, 2001

*Via Facsimile*

John Vansteinberg  
Code Enforcement  
Planning & Development Services Dept.  
Santa Ana, CA 92702

Dear Mr. Vansteinberg:

We have asked the Orange County Code Enforcement to investigate the permit status of a cabana and stairway (running from the beach to the house) on 162 Emerald Bay, Laguna Beach. We are writing to provide you some additional information that might be helpful to your investigation.

With respect to the stairway, we are not aware of any record of any Permit Application or final Permit. The stairway was approved by the Emerald Bay Community Association ("Emerald Bay") and constructed in or about 1987. We have been previously told that Grading, Building, and Coastal Development Permits should have been obtained for the stairway, however you have indicated that such Permits might not have been necessary. After you have an opportunity to view the stairway, please let us know what you determine.

With respect to the cabana, we are not aware of any "final" Permit having been issued by the County. Last Fall, prior to contacting Code Enforcement, we faxed a copy of the attached Permit Application to the Planning & Development Services Departments in both Laguna Hills and Santa Ana, and requested a determination as to whether the Application had ever received final approval. After extensive research by County personnel in both locations, we were told that the County had no record of the Application, much less of its final approval. After the completion of the staff's search, we confirmed with Bob Gill that there is no record of a final Permit on the County's computer.

There is other evidence that the Permit Application never received final approval from the County. First, the owners of the cabana do not have any record of a final approval. Second, the cabana plans are not stamped by the County. Third, the County Assessor has no record of the cabana. We were told by Mr. Gill that if the Permit Application had been finally approved, the County Assessor would have a record of the cabana and the residents at 162 Emerald Bay would have been taxed on the cabana since its final approval. With Mr. Gill's assistance, we checked the Assessor's Records for 162 Emerald Bay and confirmed that the Assessor has no record of the cabana, and that no taxes have ever been paid on it. According to Mr. Gill, this confirms that no final Permit was issued for the cabana. Fourth, there is evidence in the correspondence previously provided to your office that the owners of 162 Emerald Bay were having a dispute

3554 Round Barn Boulevard, Suite 204  
Santa Rosa, CA 95403  
(707) 573-3100  
(707) 573-3101 fax

with the County over certain aspects of the cabana. It is possible that they may have decided simply to forego obtaining the County's final approval instead of addressing those concerns.

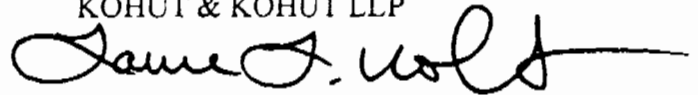
After conducting the above research, we contacted Ben De Mayo of the County Counsel's office, who referred us to Code Enforcement. Margie Wagener was the Code Enforcement Officer assigned to the matter. Ms. Wagener conducted an exhaustive search for any record of a final approval for the Permit Application, including a search of archived files. She determined that no final approval had been given for the Application. Ms. Wagener also visited the site and noted that the cabana is improperly tied into the slope and does not conform to Code in several respects. She contacted Emerald Bay and requested that Emerald Bay provide her with evidence of the County's approval of the cabana. No evidence of the County's approval was provided to her by Emerald Bay. Shortly before her transfer, Ms. Wagener informed us that she was prepared to issue a Notice of Violation to the owner of 162 Emerald Bay.

As we discussed yesterday, our concern regarding the cabana arises from the cabana owner's claim that the cabana is in an unsafe location and is jeopardized by the upslope property. The cabana owner has actively sought to prevent the development and use of the upslope property.

It is our understanding that you intend to visit the site. Please feel free to contact me if you have any additional questions. For your information, I am also enclosing a newspaper article regarding the recent Court decision on the Coastal Commission. It is our understanding that the parties have agreed to stay enforcement of the decision pending appeal.

We look forward to hearing from you.

Very truly yours,  
KOHUT & KOHUT LLP



Laura L. Kohut

LLK:cc

cc: Ben De Mayo, County Counsel's office (via facsimile (714) 834-2359)

Enclosure

COUNTY OF ORANGE DEPARTMENT OF BUILDING AND SAFETY  
**APPLICATION FOR A BUILDING PERMIT AND A CERTIFICATE OF USE & OCCUPANCY**  
 400 W. 8TH STREET, SANTA ANA, CALIFORNIA 92701 PHONE: 834-2626

5

BUILDING ADDRESS: 9585 1/2 (162)		DESCRIPTION OF WORK	
TOWN OR SCHOOL DISTRICT: ...		NEW <input type="checkbox"/> ADD <input type="checkbox"/> ALTER <input type="checkbox"/> REPAIR <input type="checkbox"/> DEMOLISH <input type="checkbox"/>	
OWNER: ...		SIZE SQ. FT.	NO. OF STORIES: 1 NO. OF FAMILIES: 0
MAILING ADDRESS: ...		PROPOSED USE OF STRUCTURE: ...	
CITY: ...		CONSTRUCTION LEADER NAME: ...	
ARCHITECT OR ENGINEER: ...		BRANCH: ...	
ADDRESS: ...		ADDRESS: ...	
CONTRACTOR: ...		GRADING PRE-INSP. FEE \$: 5.00	P.C. FEE \$: 19.00
ADDRESS: 516 EMERALD BAY		VALUATION \$: 8,000.00	B.P.T. FEE \$: 38.00
State Compensation Ins. Policy No. Exp. Date		OCCUPANCY GROUP: I	TYPE OF CONSTRUCTION: ...
"I Certify that the following Contr. Lic. No. ... and Classification ... is in full force and effect"		PLAN CHECKED BY: ...	PERMIT ISSUANCE APPROVED: ...
<input type="checkbox"/> "I Hereby Certify I am exempt from Sec. 7031.5 of the Business & Professional Code, Div. 3, Chap. 9, Contractors' License Law under the following section: Owner-Sec. 7044 ( ); Minor Work Under \$100-Sec. 7048 ( ); or employee working for Wages Only - Sec. 7053 ( );		GRADING PERMIT REQ'D. YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> ROUGH GRADING O.K.	
Other <input type="checkbox"/> "I Certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workmen's Compensation Laws of California"		THIS IS A BUILDING PERMIT WHEN PROPERLY FILLED OUT, SIGNED AND RECEIPTED IN VALIDATION SPACE BELOW.	
"I hereby acknowledge and state that the information I have provided is correct and agree to comply with all County Ordinances and State Laws regulating building construction"		PERMISSION IS HEREBY GRANTED TO DO SUCH WORK AS IS INDICATED HEREON IN ACCORDANCE WITH AND SUBJECT TO ALL THE PROVISIONS OF THE COUNTY OF ORANGE	
Signature: ... Date: ...		THIS PERMIT BECOMES NULL AND VOID IF WORK IS NOT COMMENCED WITHIN SIXTY (60) DAYS FROM DATE OF ISSUANCE, OR IF WORK IS SUSPENDED AT ANY TIME DURING CONSTRUCTION FOR ONE HUNDRED TWENTY (120) DAYS OR IF ANY WORK IS DONE ON THE SAID BUILDING OR STRUCTURE IN VIOLATION OF THE COUNTY ORDINANCES OR STATE LAWS GOVERNING THE SAME.	
ZONING REGULATIONS			
LEGAL DESCRIPTION	TRACT	BLOCK	LOT
(PLEASE ATTACH METES AND BOUNDS)			
ZONE: ...	VARIANCE NO.:		
BUILDING SETBACK: ...	PROPERTY LINE: ...		
SIDE YARD, RIGHT: ...	EAVE PROJECTION: ...		
SIDE YARD, LEFT: ...	EAVE PROJECTION: ...		
REAR YARD (TO P/L): ...	STREET WIDTH: ...		
PARKING SPACE REQUIRED: ...	PROVIDED: ...		
MISC.:			
A.P. 53-0110-36		DIST. NO. 5-1D	
ZONING APPROVED BY: ...		DATE: 12-29-63	
REMARKS:			

1	FEB 10 1964	57,000	33.00	1	38.00
CASHIER	DATE	PERMIT NO.	PERMIT FEE	CODE	TOTAL



July 12, 2001

Via Facsimile  
(714) 834-2359

Ben De Mayo, Esq.  
Dan Shepard, Esq.  
County Counsel's Office  
Santa Ana, CA 92702

Dear Messrs. De Mayo and Shepard:

We are writing to supplement our May 17, 2001, letter regarding the permit status of a cabana and a beach access stairway located at 162 Emerald Bay, Laguna Beach.<sup>1</sup>

The cabana at 162 Emerald Bay is directly adjacent to, and likely tied into, a beachfront slope. Our clients own the uphill property, which is 166 Emerald Bay. The property line of 166 Emerald Bay ends just above the cabana, as shown by the attached plans for the cabana. Our client's concern regarding the cabana arises from the claim of its owners that the cabana is at risk from the use of the property at 166 Emerald Bay, by virtue of its location immediately adjacent to the slope.<sup>2</sup>

We initiated our investigation of the cabana and stairway in November of last year, after receiving information that the owners had not received final permits from the County. Since that time, County personnel have repeatedly confirmed the absence of final permits for the cabana and stairway. Searches by the County for final permits have been undertaken by "Vicky" at the County Planning and Building Department, who conducted a search on or about November 11, 2000; "Meredith," who informed us on November 9, 2000 that she had exhausted all files and archives and had not located final permits; former Code Enforcement Officer Margie Wagener, who searched County files in or about December 2000 and January 2001, and confirmed that no permits had issued for 162 Emerald Bay in connection with the construction of the cabana in 1969, or the construction of the stairway 1987; and John VanSteinberg, who apparently conducted a fourth search of County records after May 26, 2001.

The absence of any final permits for the cabana and stairway is consistent with other evidence referenced in our May 17, 2001, letter to you, including: (1) the absence of any indication of "County approval" on the cabana and stairway plans;<sup>3</sup> (2) the fact that no taxes have ever been paid on the cabana; (3) evidence of a dispute between the County and the builder

<sup>1</sup> For your reference, we are attaching a copy of our May 17, 2001, letter.

<sup>2</sup> See, e.g., the attached letter dated August 10, 1993, to the Emerald Bay Community Association. The owners of 162 Emerald Bay reiterated their safety concerns during their depositions last fall.

<sup>3</sup> Reduced copies of the cabana and stairway plans are attached to this letter. Full-sized copies of the plans and other relevant documents were provided to Margie Wagener, former Code Enforcement Officer, on January 21, 2001, and are now in the possession of Mr. VanSteinberg, who has taken over this matter for Code Enforcement.

regarding certain aspects of the cabana construction at the time that permits were being discussed; (4) admissions by the owners of 162 Emerald Bay that they have no knowledge or information suggesting that final permits for the cabana or stairway were ever obtained from the County; and (5) the failure of Emerald Bay to come up with any evidence of County approval for the cabana and stairway after being requested to do so by Margie Wagener in January 2001.

During our conversations with Margie Wagener between November 2000 and approximately March 2001, we were told that Code Enforcement would be sending out a Notice of Violation with respect to the cabana, and that the cabana owners would be required to either bring the cabana in conformity with current Code requirements or remove it. After viewing the cabana and stairway, Ms. Wagener informed us that there was "no way" that the cabana complies with current Code requirements because, among other things, it is constructed too close to a wall, located too close to the slope, and the patio is buried in the slope. She also indicated that the wood on the cabana appeared to be newer than 20 years old, and must have been placed after initial construction of the cabana. Unfortunately, Ms. Wagener was transferred out of the Code Enforcement division this spring.

Mr. VanSteinberg took over responsibility for this matter from Ms. Wagener. During our initial telephone conversations with Mr. VanSteinberg, we were told that there were obviously violations associated with the cabana and that the County would be issuing a Notice of Violation imminently. On May 14, 2001, however, Mr. VanSteinberg informed us that while the County would normally write a citation in this situation, because of the "political power" of Emerald Bay, it would not be following its normal procedures. He indicated that he had discussed the matter with John Bueses, the Manager of the Planning Department, and all of the "Directors" of the various Departments would be meeting "uptown" to decide how to proceed. On May 16, 2001, Mr. VanSteinberg informed us that he had met with the "Directors" and that they had discovered that there was a permit issued a long time ago that had "Zoning" sign off, but not "Building" sign off. We informed him that we had provided the County with the Permit Application to which he was referring and that exhaustive searches by County personnel had shown that there was no final permit for the cabana. We explained the numerous Code violations associated with the cabana and Ms. Wagener's confirmation of those violations. Mr. VanSteinberg indicated that he would be conducting yet another search for final permits for the cabana and stairway. We asked Mr. VanSteinberg to inform us of the results of his search.

We have been unable to contact Mr. VanSteinberg due to his recent surgery. On Tuesday, we contacted your office to determine how the County intended to proceed. Dan Shepard of your office returned our call and stated that VanSteinberg had told him that the cabana met the Code applicable in the 1930s, and that the property owner had provided him with additional permit information. I informed Mr. Shepard that the cabana was constructed in 1969, not 1930, and that the property owners had testified under oath that they did not know whether

the cabana or the stairway received County approval. Mr. Shepard agreed to request that Mr. VanSteinberg call us from his home.

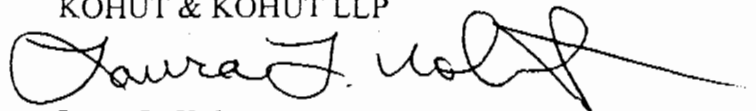
We received a voice-mail from Mr. VanSteinberg yesterday. Contrary to all of the previous statements by him and Ms. Wagener, Mr. VanSteinberg stated that he had viewed the cabana and decided that it was legal and conforming and that the County intended to issue new final permits for the cabana without subjecting it to any of the normal investigations or inspections to ensure its safety and compliance with current Code requirements.

This situation is simply unacceptable. First, the political power of Emerald Bay clearly should not be allowed to compromise the County's processing of this violation. Second, the cabana admittedly violates current Code requirements and, according to its owners, is unsafe. It appears to violate current set back requirements, and apparently ties into the slope. It is even possible that the foundation of the cabana may protrude into our client's property. Similarly, the retaining walls may or may not drain properly, and may or may not be backing water onto our clients' slope and destabilizing their property. It also is unclear how water drains from the wet bar in the cabana, and whether the electrical system conforms to Code requirements. Without proper inspections, the compliance or non-compliance of the cabana cannot possibly be determined.

Our clients cannot be expected to sit idly by while the County issues new permits for an admittedly unsafe and non-conforming cabana at the base of their property. At the very least, proper inspections must be conducted to confirm that the cabana does not present safety risks and complies with current Code requirements prior to issuing any "new permits." Moreover, the absence of any permit requirements for the stairway must be confirmed.

We apologize for troubling you with this matter. However, we have been working with Code Enforcement since November 2000, and it is apparent that nothing will be done to address this unfortunate situation. We look forward to hearing from you.

Very truly yours,  
KOHUT & KOHUT LLP



Laura L. Kohut

LLK:cc

cc: John VanSteinberg, Code Enforcement

162 Emerald Bay  
August 10, 1993.

Members of the Board of Directors  
Emerald Bay Community Association

Dear Members of the Board:

Mrs. Johnson and I understand that you have approved in concept the Lopez' building a swimming pool part way down the bluff below their house. Based on the material that they submitted this might appear to be reasonable. However, the model which they submitted is incorrect and is highly misleading.

Their model shows the property below the pool sloping down to the level beach, which is incorrect. It does not show anything that can be damaged when there is failure associated with the pool, other, of course, than people, should they happen to be there. The fact is that the property slopes down to the lower part of our lot #162, precisely behind our beach terrace and cabana. It is here that we, our children, and our grandchildren spend a good deal of time.

The south corner of lot #166 starts not on the sand, but about 10 feet up the cliff and coincides with the south west corner of our lot #162. The property line goes on up the cliff at an angle behind our beach terrace. Thus any overflow, falling rocks, or crumbling of the cliff will fall directly onto our beach terrace, not onto the sand as the model implies. (Please see the enclosed maps)

One can be absolutely certain that there will be a problem associated with the pool. The only question is when it will occur. Failures could take one of two or more forms. First, there could be a massive failure. This cannot be ruled out, given the very steep slope of the cliff (more precipitous than the model shows) and its unstable nature. Perhaps the Lopez do not know that there was a large rock slide off the bluff very close to their property only two or three years ago. As for cracks and leaks, under these circumstances there is hardly any such thing as a harmless leak. Any water introduced down into the bluff has a good chance of further destabilizing the bluff and precipitating a rock slide down on us. Can any cement subjected to salt air, ocean spray, possible earthquake stress, and just plain weathering be guaranteed forever against cracking and leaking? The enclosed pictures show otherwise.

Altogether, if this project is allowed to proceed it will be like a sword of Damocles suspended over our heads. We object strenuously to being placed in this jeopardy. The risk to us, and to the Bay, is real and considerable. We urgently request that you not give approval to the Lopez request to create this situation.

Very truly yours,

*J. Stanley Johnson*

Plaintiffs EXHIBIT 203  
ELLEN A. GOLDSTEIN, CSR

EB-599

September 21 19 99  
WITNESS Robert Engle

J. Johnson  
LOT A / POINT

L. G. SOUTH  
CONTRACTOR  
516 EMERALD BAY  
LAGUNA BEACH, CALIFORNIA  
TELEPHONE HYATT 4-6890

March 18, 1970

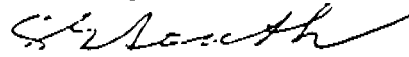
Emerald Bay Board of Directors  
600 Emerald Bay  
Laguna Beach, Calif.

Gentlemen:

This letter is a request for permission to locate a two inch drain line on the ten foot easement at the lower end of my lot (162 Emerald Bay) where I am making a Beach Terrace Development, all as shown on the drawing attached hereto. This request is being submitted in quadruplicate and I believe your stamp or signature in the space indicated below will be all the County Building Dept. requires.

Very truly yours,

J. Stanley Johnson



By L. G. South, Contractor

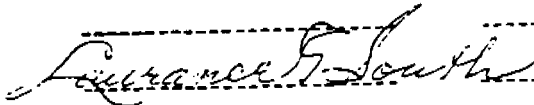
Permission Granted

RECOMMENDED FOR APPROVAL

~~SUBJECT TO APPROVAL OF EXTERIOR COLORS.~~

3/23/70

ARCHITECTURAL COMMITTEE



FOR IDENTIFICATION  
DENISE S. HESS.

9-800

E 003802

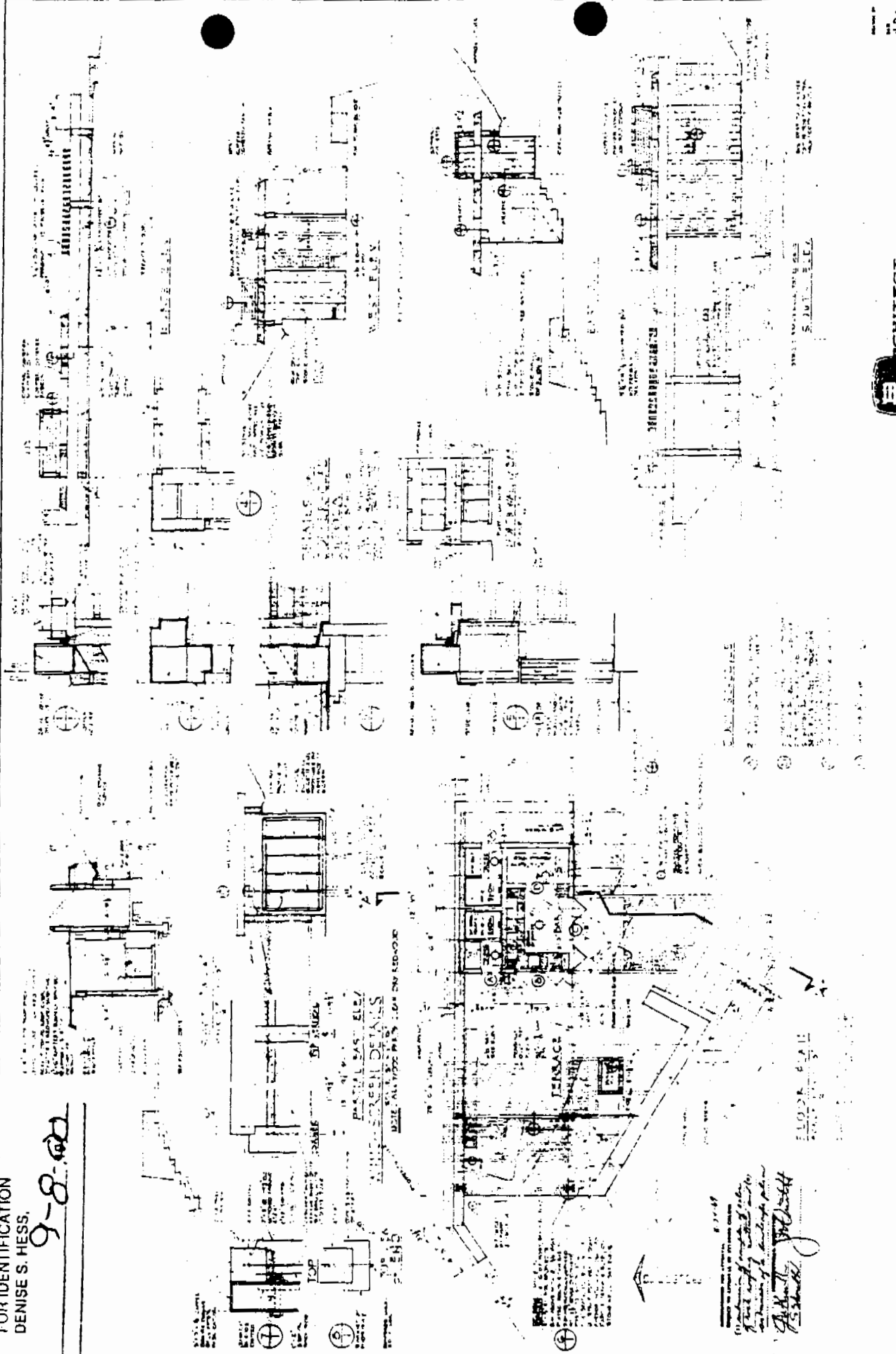
968



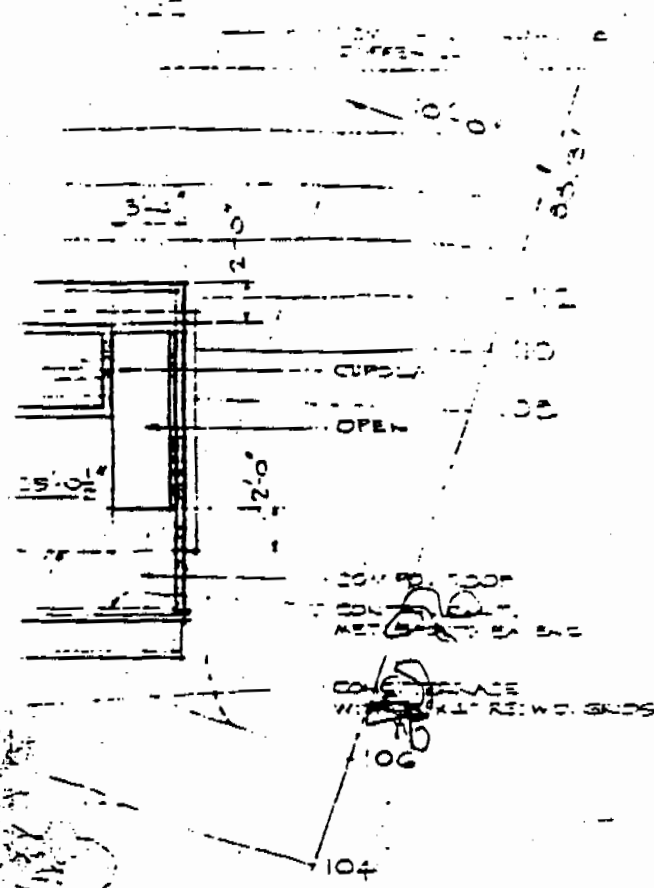
EXHIBIT 969

PORTIFICATION  
DENISE S. HESS.

9-8-68



1. ALL WALLS TO BE CONCRETE  
 2. ALL FLOORS TO BE CONCRETE  
 3. ALL ROOFS TO BE CONCRETE  
 4. ALL CEILING TO BE CONCRETE  
 5. ALL DOORS TO BE WOOD  
 6. ALL WINDOWS TO BE WOOD  
 7. ALL LIGHT FIXTURES TO BE WOOD  
 8. ALL ELECTRICAL TO BE WOOD  
 9. ALL PLUMBING TO BE WOOD  
 10. ALL MECHANICAL TO BE WOOD  
 11. ALL PAINT TO BE WOOD  
 12. ALL FINISHES TO BE WOOD  
 13. ALL MATERIALS TO BE WOOD  
 14. ALL LABOR TO BE WOOD  
 15. ALL SUPPLIES TO BE WOOD  
 16. ALL CONTRACTORS TO BE WOOD  
 17. ALL PERMITS TO BE WOOD  
 18. ALL INSURANCE TO BE WOOD  
 19. ALL BONDS TO BE WOOD  
 20. ALL SCHEDULES TO BE WOOD  
 21. ALL SPECIFICATIONS TO BE WOOD  
 22. ALL DRAWINGS TO BE WOOD  
 23. ALL NOTES TO BE WOOD  
 24. ALL REVISIONS TO BE WOOD  
 25. ALL COMMENTS TO BE WOOD  
 26. ALL APPROVALS TO BE WOOD  
 27. ALL STAMPS TO BE WOOD  
 28. ALL SIGNED TO BE WOOD  
 29. ALL DATED TO BE WOOD  
 30. ALL PROJECT TO BE WOOD



**SPECIFICATIONS:**

\* PAINTING Struct. Steel Tubing: INMEC shop and finish coating...  
 Wd. Siding: 2 coats of mixture of 3 Olympic 901 and 3...  
 Beams and rollers: 2 coats Olympic Stain as selected by...  
 Insulated brs. and pergola members which shall be...  
 CONCRETE shall be 2,000 # concrete for walls and footi...  
 expose 3/4" x 1" screened fack as per sample approved...  
 exposed aggregate matrix with dark brown color approved...  
 shall be oil-rubbed bronze. WOOD SIDING shall be clear...  
 red stained birch faces, overlay construction, pivot coating...  
 detail by architect. Submit shop drawings for approval...  
 PLASTIC LAMINATE shall be Laminart, formica or equal pos...  
 shall be as detailed and scheduled. Butt hinges shall be...  
 pine. ELECTRICAL Allow \$100.00 for electrical fixtures. R...  
 after securing architect's approval of method. PLUMBING water...  
 be Standard Harvest Line St. Steel self-flaming R4150-T unit...  
 as made by All American Manufacturing Co. Los Angeles.

**PLOT E - ROOF PLAN**

SCALE 1/8" = 1'-0"

**LEGAL DESCRIPTION**

LOT A, A PORTION OF LOT 164,  
 IRVINE'S SUBDIVISION, MAP BOOK 1, PG. 38  
 OF MISC. MAPS OF ORANGE CITY, CALIF.

DATUM  
 1" M.P.E. ELEV. 100'-0"

Johnson Beach Terrace  
 162 Emerald Bay

BOYD GEORGI AIA  
 DRAWN BY 11/8/69

ET 000902



11/8/69

PROJECT NO. 102

#3 BRICK 16 02

10"

TO CONTIN

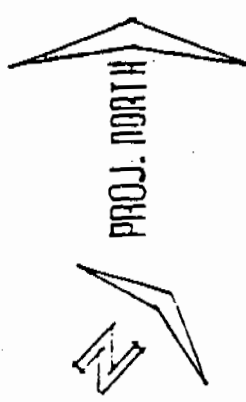
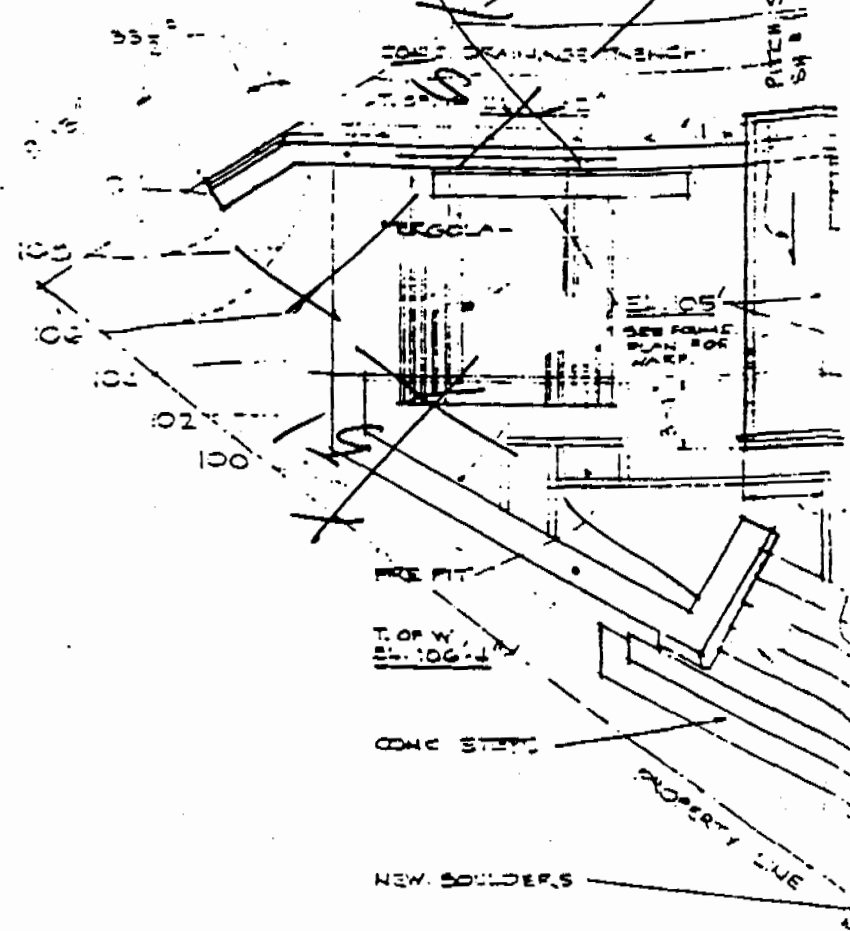
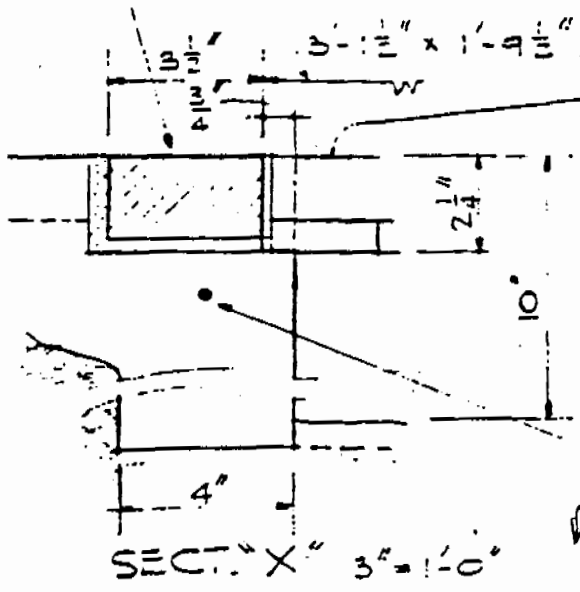


FIG. 570B

RUFFLE FACE BRICK ENDS UP, SAW TO SIZE, SAW EDGES DOWN. FIREPROOF MORTAR.



2" X 6" TEE PLANK TOP, 1" X 3" CEATS ALL AROUND, W/ FREGATED WITH WOOD-LIFE BEFORE BASTER FABRICATION

#4 BR. CONTN.

Jeff LAMAR's EXHIBIT 614 FOR I.D.  
 JEFF LAMAR, CSR # 10510  
 7/26/20 00 NO. PGS. 2  
 WITNESS PEREZAS I

ET 000901

**LEGAL DESCRIPTION**  
 ZONING PERMIT NO. 207 154  
 JENNIFER JOHNSON - MAP BOOK 1 PAGE 88  
 OF REC. MAP OF ORANGE CITY CALIF.

SCALE 1/8" = 1'-0"

OCEAN BEACH

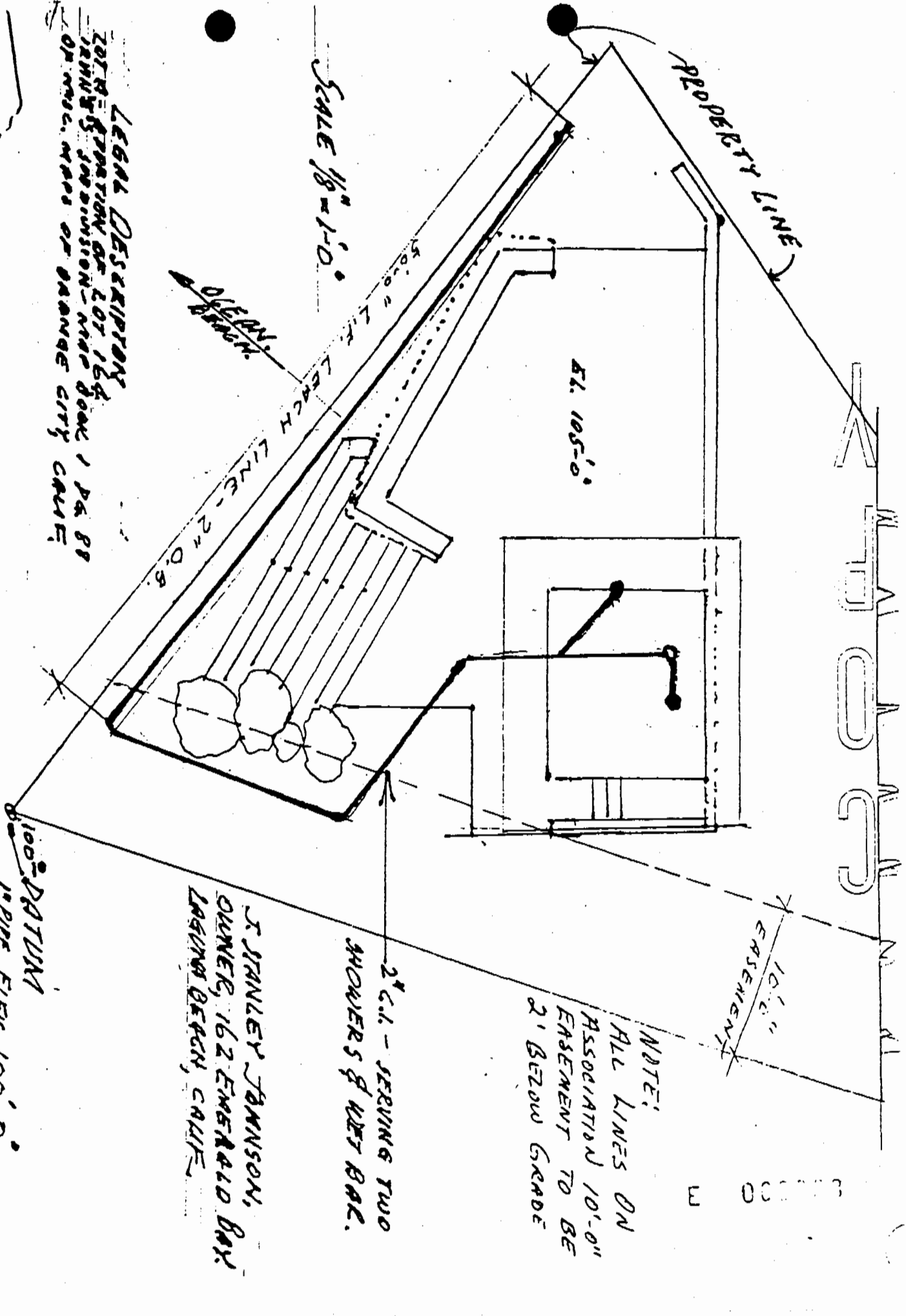
100'-0" PATIUM  
 1" PIPE ELEV. 100'-0"

J. STANLEY JANNSON,  
 OWNER, 162 EMERALD BAY  
 LAGUNA BEACH, CALIF.

2" C.I. - SERVING TWO  
 SHOWERS & WET BATH.

NOTE:  
 ALL LINES ON  
 ASSOCIATION TO BE  
 EASEMENT TO BE  
 2' BELOW GRADE

10'-0"  
 EASEMENT





**County of Orange**  
 PLANNING AND DEVELOPMENT SERVICES DEPARTMENT  
 FOR INSPECTIONS CALL (949)472-7922

**ELECTRICAL PERMIT SUMMARY**  
**(EL001999)**

<b>Legal Desc.:</b> A0361 128 AK NT	<b>Permit Sub Type:</b> 1	<b>Status:</b> Closed
<b>Address:</b> 162 Emerald Bay , Laguna Beach	<b>Census Class:</b>	<b>Issued Date:</b> 10/17/2000
<b>Cross Street:</b>	<b>Thomas Guide:</b>	<b>Revision:</b>
<b>Addl Address:</b>	<b>APN:</b> 053-040-35	<b>Meters:</b> 0
<b>Description:</b> REPLACE 300 FT OF SUBFEED TO DETACHED CABANA		<b>Bldg Code Year:</b> 1998
<b>Present Use:</b>	<b>Fire Final Insp Required:</b> N	<b>Elec Code Year:</b> 1998
<b>Work Authorized:</b> PB:N ME:N EL:N MT:N		<b>Grading Permit Required?:</b> N
<b>Related Permits:</b>		

<b>CONTACTS</b>				
<u>Contact</u>	<u>Contact Person</u>	<u>Role(s)</u>	<u>Address</u>	<u>Phone/E-Mail Address</u>
B E STRONG ELECTRIC		[Contractor]	P.O. BOX 9049 S. LAGUNA BEACH 92652	(949)493-0459
BRIAN STRONG		[Payer]	P.O. BOX 1239 WAIALUA HI 96791	
JOHNSON, BARBARA		[Owner]	164 EMERALD BAY LAGUNA BEACH CA 92651	714 494-5613

License #:538837    Exp. Date:08/31/2002    Carrier:STATE FUND    WC Exp.Date:04/01/2002

<b>APPROVALS/CLEARANCES</b>			
<u>Clearance</u>	<u>Required For</u>	<u>Approved By</u>	<u>Clearance Date</u>
Issuance Approval		Legacy	10/17/2000
Electrical Plan Check		Elie Nasr	10/17/2000

<b>COMMENTS</b>



# County of Orange

PLANNING AND DEVELOPMENT SERVICES DEPARTMENT  
FOR INSPECTIONS CALL (949)472-7922

## RESIDENTIAL BUILDING PERMIT SUMMARY

RS9301130006(RS31130006)

Legal Desc.: A0361 128 AL NT	Permit Sub Type:1	Status: Closed
Address: 162 Emerald Bay , Laguna Beach	Census Class: 434	Issued Date: 01/13/1993
Cross Street:	Thomas Guide:	Revision:
Addl Address:	APN: 053-040-36	
Description: INT ALTERATIONS TO REMODEL EXIST KITCHEN TYPE 05 SQFT: 140 KITCHEN REMODEL TYPE 05 SQFT: 140 KITCHEN REMODEL TYPE SQFT:		Meters: 0
Present Use: GE	Fire Final Insp Required: N	Bldg Code Year:
Work Authorized: PB:N ME:N EL:N MT:N		Elec Code Year:
Related Permits:		Grading Permit Required?:N

CONTACTS				
Contact	Contact Person	Role(s)	Address	Phone/E-Mail Address
BROWN BROTHERS CONSTRUCTION		[Contractor]	160 NEWPORT CENTER, ST. 116 NEWPORT BCH 92660	949-721-0071
BROWN BROTHERS CONSTRUCTION		[Payer, Applicant]	160 NEWPORT CENTER NEWPORT BCH	714 721-0071
JOHNSON, J STANLEY TR		[Applicant, Owner]	162 EMERALD BAY LAGUNA BEACH CA 92651	714 494-1452

License #:561562 Exp. Date:03/31/2003 Carrier:STATE FUND WC Exp.Date:01/01/2003

ZONING & GEO DISTRICT INFORMATION				
Zoning Text: R1/(SH)	Coastal Zone:			
PC/SP:	Flood Plan: FP2	Land Use Element:		
Elem. School District: Laguna Beach Unified	CAA:	Supervisory District: 5		
	Census Tract:			

STRUCTURE INFORMATION				
Center Line Street:	Setback	Eave Projection	# of Units:	# of Stories:
Front Property Line:			1	0
Side Yard Right:			Covered Parking: 0	Uncovered Parking: 0
Side Yard Left:			Setback Comments:	
Rear Yard to PL:				Height(Ft/In):

VALUATION						
Occupancy	UBC	Fire Construction Type	Sq.Feet	A/G/O	Factor	Valuation
Occupancy Group: R3						
Subtotal:0.0	Multiplier:1.0	Adjustment Amount:0.0	Total Valuation:0.0			

APPROVALS/CLEARANCES			
Clearance	Required For	Approved By	Clearance Date
Issuance Approval			
Current Planning/Zoning			
Architectural & Structural Plan Check			

COMMENTS
RELOCATE NON BEARING WALL

# County of Orange

PLANNING AND DEVELOPMENT SERVICES DEPARTMENT  
FOR INSPECTIONS CALL (949)472-7922

## RESIDENTIAL BUILDING PERMIT SUMMARY RS9208180008(RS28180008)

<b>Legal Desc.:</b> A0361 128 AL NT	<b>Permit Sub Type:</b> 1	<b>Status:</b> Expired
<b>Address:</b> 162 Emerald Bay , Laguna Beach	<b>Census Class:</b> NEW	<b>Issued Date:</b>
<b>Cross Street:</b>	<b>Thomas Guide:</b>	<b>Revision:</b>
<b>Addl Address:</b>	<b>APN:</b> 053-040-36	<b>Meters:</b> 0
<b>Description:</b> REROOFTYPE 05 SQFT: 2300 REROOFTYPE 05 SQFT: 2300 REROOFTYPE SQFT:		<b>Bldg Code Year:</b>
<b>Present Use:</b> SFD W/ATT GARAGE	<b>Fire Final Insp Required:</b> N	<b>Elec Code Year:</b>
<b>Work Authorized:</b> PB:N ME:N EL:N MT:N		<b>Grading Permit Required?:</b> N
<b>Related Permits:</b>		

CONTACTS				
Contact	Contact Person	Role(s)	Address	Phone/E-Mail Address
CHAMPION ROOFS, INC.		[Payer, Applicant]	3257 VERDUGO RD. LOS ANGELES CA 90065	213 898-8600
CHAMPION ROOFS, INC.		[Contractor]	3257 VERDUGO RD. LOS ANGELES CA 90065	714 898-8600
JOHNSON		[Applicant, Owner]	162 EMERALD BAY LAGUNA BEACH CA	714 494-1452

License #:429481 Exp. Date:09/30/2002 Carrier:STATE FUND WC Exp.Date:01/01/2001

ZONING & GEO DISTRICT INFORMATION		
<b>Zoning Text:</b> /	<b>Coastal Zone:</b>	
<b>PC/SP:</b>	<b>Flood Plan:</b>	<b>Land Use Element:</b>
<b>Elem. School District:</b>	<b>CAA:</b>	<b>Supervisory District:</b>
	<b>Census Tract:</b>	

STRUCTURE INFORMATION				
	Setback	Eave Projection		
<b>Center Line Street:</b>			<b># of Units:</b> 0	<b># of Stories:</b> 0
<b>Front Property Line:</b>			<b>Covered Parking:</b> 0	<b>Uncovered Parking:</b> 0
<b>Side Yard Right:</b>			<b>Setback Comments:</b>	
<b>Side Yard Left:</b>				<b>Height(Ft/In):</b>
<b>Rear Yard to PL:</b>				

VALUATION						
Occupancy	UBC	Fire Construction Type	Sq.Feet	A/G/O	Factor	Valuation
<b>Occupancy Group:</b>						
<b>Subtotal:0.0</b>	<b>Multiplier:1.0</b>	<b>Adjustment Amount:0.0</b>	<b>Total Valuation:0.0</b>			

APPROVALS/CLEARANCES			
Clearance	Required For	Approved By	Clearance Date
Issuance Approval			
Current Planning/Zoning			
Architectural & Structural Plan Check			

COMMENTS
REROOF W/CAL SHAKE



# County of Orange

PLANNING AND DEVELOPMENT SERVICES DEPARTMENT  
FOR INSPECTIONS CALL (949)472-7922

## RESIDENTIAL BUILDING PERMIT SUMMARY (RS952009)

Legal Desc.: A0361 128 AK NT	Permit Sub Type:1	Status: Closed
Address: 164 Emerald Bay , Laguna Beach	Census Class: 434	Issued Date: 10/18/1995
Cross Street: PCH	Thomas Guide:	Revision:
Addl Address:	APN: 053-040-35	Meters: 0
Description: REPAIR FIREPLACE	Fire Final Insp Required: N	Bldg Code Year:1991
Present Use: SFD		Elec Code Year:1990
Work Authorized: PB:N ME:N EL:N MT:N		Grading Permit Required?:N
Related Permits:		

CONTACTS				
Contact	Contact Person	Role(s)	Address	Phone/E-Mail Address
J C WOLFE CONSTRUCTION		[Applicant, Contractor]	2183 FIRST ST NORCO CA 91760	909 735-8206
J C WOLFE CONSTRUCTION		[Payer]	2183 1ST ST NORCO CA 91760	
JOHNSON		[Owner]	164 EMERALD BAY LAGUNA BEACH CA 92651	714 494-5613
THEODORE J. BECKWITH		[Engineer]	6111 DEL RAY COURT RIVERSIDE CA 92506	909-369-3954

License #:623841 Exp. Date:07/31/1997 Carrier:EXEMPT WC Exp.Date:

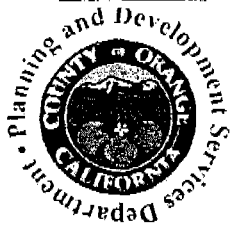
ZONING & GEO DISTRICT INFORMATION		
Zoning Text: R1/	Coastal Zone:	
PC/SP:	Flood Plan:	Land Use Element:
Elem. School District:	CAA:	Supervisory District:
	Census Tract:	

STRUCTURE INFORMATION				
Center Line Street:	<u>Setback</u>	<u>Eave Projection</u>	# of Units: 1	# of Stories: 0
Front Property Line:			Covered Parking: 0	Uncovered Parking: 0
Side Yard Right:			Setback Comments: NO CHANGE IN SETBACKS	
Side Yard Left:				
Rear Yard to PL:				Height(Ft/In):

VALUATION						
Occupancy	UBC	Fire Construction Type	Sq.Feet	A/G/O	Factor	Valuation
Miscellaneous		Other (see Comments)	8.00		110.00	880.00
Occupancy Group:						
Subtotal:880.0	Multiplier:1.0	Adjustment Amount:0.0	Total Valuation:880.0			

APPROVALS/CLEARANCES			
Clearance	Required For	Approved By	Clearance Date
Issuance Approval		Legacy	10/18/1995
Current Planning/Zoning		Bob Gill	09/28/1995
Architectural & Structural Plan Check		Darryl Adams	10/18/1995

COMMENTS



# County of Orange

PLANNING AND DEVELOPMENT SERVICES DEPARTMENT  
FOR INSPECTIONS CALL (949)472-7922

## RESIDENTIAL BUILDING PERMIT SUMMARY (RS951383)

Legal Desc.: A0361 128 AK NT	Permit Sub Type:1	Status: Closed
Address: 164 Emerald Bay , Laguna Beach	Census Class: O/S	Issued Date: 07/19/1995
Cross Street: PCH	Thomas Guide:	Revision:
Addl Address: .	APN: 053-040-35	Meters: 0
Description: REROOF	Fire Final Insp Required: N	Bldg Code Year:1991
Present Use: SFD W/ATT GARAGE		Elec Code Year:1990
Work Authorized: PB:N ME:N EL:N MT:N		Grading Permit Required?:N
Related Permits:		

CONTACTS				
Contact	Contact Person	Role(s)	Address	Phone/E-Mail Address
CURIALE, PAT		[Owner]	164 EMERALD BAY LAGUNA BEACH CA 92651	
SKY HIGH ROOFING SKY HIGH ROOFING		[Payer] [Applicant, Contractor]	15590 PRIMROSE LN. WESTMINSTER CA 92683	714 531-0930

License #:597704. Exp. Date:07/31/1998 Carrier:EXEMPT WC Exp.Date:

ZONING & GEO DISTRICT INFORMATION			
Zoning Text: R1/	Coastal Zone:	Land Use Element:	
PC/SP:	Flood Plan:	Supervisory District:	
Elem. School District:	CAA:		
	Census Tract:		

STRUCTURE INFORMATION					
	Setback	Eave Projection	# of Units:	# of Stories:	Height(Ft/In):
Center Line Street:			1	0	
Front Property Line:			Covered Parking: 0	Uncovered Parking: 0	
Side Yard Right:			Setback Comments:		
Side Yard Left:					
Rear Yard to PL:					

VALUATION						
Occupancy	UBC	Fire Construction Type	Sq.Feet	A/G/O	Factor	Valuation
Reroofing		Composition/Built-Up	2,500.00		0.80	2,000.00
Occupancy Group: R3		Subtotal:2000.0		Multiplier:1.0	Adjustment Amount:0.0	Total Valuation:2000.0

APPROVALS/CLEARANCES			
Clearance	Required For	Approved By	Clearance Date
Issuance Approval		Legacy	07/19/1995
Current Planning/Zoning		Bob Gill	07/19/1995
Architectural & Structural Plan Check		Darryl Adams	07/19/1995

COMMENTS



# County of Orange

PLANNING AND DEVELOPMENT SERVICES DEPARTMENT  
FOR INSPECTIONS CALL (949)472-7922

## RESIDENTIAL BUILDING PERMIT SUMMARY (RS951454)

Legal Desc.: A0361 128 AK NT	Permit Sub Type: 1	Status: Closed
Address: 164 Emerald Bay, Laguna Beach	Census Class: 434	Issued Date: 07/27/1995
Cross Street: P.C.H.	Thomas Guide:	Revision:
Addl Address:	APN: 053-040-35	Meters: 0
Description: RECONSTRUCTION (STRUCT.REPAIR) TO EXIST ATT DECKLOCATED IN REAR OF SFD		Bldg Code Year:1991
Present Use: EXIST SFD W/ATT GARAGE	Fire Final Insp Required: N	Elec Code Year:1990
Work Authorized: PB:Y ME:Y EL:Y MT:N		Grading Permit Required?:N
Related Permits:		

CONTACTS				
Contact	Contact Person	Role(s)	Address	Phone/E-Mail Address
J C WOLFE CONST		[Payer]		
J C WOLFE CONSTRUCTION		[Applicant, Contractor]	2183 FIRST ST NORCO CA 91760	909 735-8206
JOHNSON		[Owner]	164 EMERALD BAY LAGUNA BEACH CA 92651	714 494-5613

License #:623841 Exp. Date:07/31/1997 Carrier:EXEMPT WC Exp.Date:

ZONING & GEO DISTRICT INFORMATION		
Zoning Text: /	Coastal Zone:	
PC/SP:	Flood Plan:	Land Use Element:
Elem. School District:	CAA:	Supervisory District:
	Census Tract:	

STRUCTURE INFORMATION					
	Setback	Eave Projection	# of Units:	# of Stories:	Height(Ft/In):
Center Line Street:			1	0	
Front Property Line:	NO	CHANGE	Covered Parking: 0	Uncovered Parking: 0	
Side Yard Right:	TO	SETBACKS	Setback Comments:		
Side Yard Left:					
Rear Yard to PL:					

VALUATION						
Occupancy	UBC	Fire Construction Type	Sq.Feet	A/G/O	Factor	Valuation
Miscellaneous		Other (see Comments)	420.00		10.00	4,200.00
Occupancy Group: R3						
Subtotal:4200.0	Multiplier:1.0	Adjustment Amount:0.0	Total Valuation:4200.0			

APPROVALS/CLEARANCES			
Clearance	Required For	Approved By	Clearance Date
Issuance Approval		Legacy	07/27/1995
Current Planning/Zoning		Laree Brommer	07/27/1995
Architectural & Structural Plan Check		Darryl Adams	07/27/1995

**COMMENTS**

EMERALD BAY ASSOC. APPROVAL (LDB/TAMARA); PLOT PLAN NOT REQ.CONTRACTOR LICENSE# 623841 EXEMPT EXP. 7/31/95