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STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-5-EMB-23-0023

Applicant: Steve Olson

Agent: Charles D'Arcy, Architect

Local Government: Orange County (Emerald Bay LCP Segment)

Local Decision: Approval with Conditions

Appellants: Neel and Sharlene Grover
Robert L. Labbe, Representing Attorney

Project Location: 52 Emerald Bay, Emerald Bay LCP Segment of
Unincorporated Orange County
(APN: 053-060-92)

Project Description: Appeal of Orange County local Coastal Development Permit PA22-0104 for the demolition of an existing 2,500 square foot, three level single family residence and construction of a new 5,750 square foot, three level, 31 feet high single family residence with an attached two car garage and an attached one car garage. The lowest level is a semi-subterranean basement level.

Staff Recommendation: No substantial issue.

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

SUMMARY OF STAFF RECOMMENDATION

The Orange County-approved project appealed to the Commission is the demolition of an existing 2,500 square foot, three level (including semi-subterranean basement) single family residence and construction of a new 5,750 square foot, three level, 31 feet high single family residence with an attached two car garage and an attached one car garage. The lowest level is a semi-subterranean basement level ([Exhibit 2](#)). The proposed basement is below grade at the south side of the residence and daylight at the north side of the residence. The project site is located at 52 Emerald Bay, in the unincorporated Emerald Bay LCP segment of Orange County. ([Exhibit 1](#)).

The appellants contend that the Emerald Bay LCP requires all discretionary permit applications to be referred to the Emerald Bay Architectural Committee (EBAC) for review and comment, that the EBAC that reviewed this project was improperly constituted, and due to the improper constitution of the EBAC, the EBAC “failed to ‘Ensure project conformity with recorded restrictions’ and failed to ‘Ensure project compatibility with the architectural design and character of the community’ such that the proposed Project will not be aesthetically compatible and harmonious with adjacent homes in the 940 Tract of Emerald Bay, where it is located.”

Staff recommends the Commission find that no substantial issue exists with respect to the grounds on which the appeal was filed and the project’s consistency with the certified Local Coastal Program (LCP). The scope of the County-approved project is limited to the replacement of one single family residence with another single family residence on an existing developed, interior lot within a private, locked gate community. The proposed project will have no impact on public access, public views, sensitive habitat, or other coastal resources. The project site is not an oceanfront lot. Moreover, while the certified Emerald Bay LCP does require review and comment by the EBAC, it does not provide any specific standards for the makeup of the EBAC (those standards are contained within the Covenants, Conditions & Restrictions for the private Emerald Bay community). The project must conform with the LCP, and the EBAC and the County have reviewed the proposed project and found that it does comply with the LCP. The County’s approval of the project will not prejudice the implementation of the LCP in this area because it is minor in scope and routine infill replacement development. The motion and resolution to find that the appeal raises no substantial issue can be found on **Page 4**.

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EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Project Plans
- Exhibit 3 - EMB CDP PA22-0104 NOFA
- Exhibit 4 – County Planning Commission Conditions of Approval
- Exhibit 5 – Appeal of Neel and Sharlene Grover

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

Motion:

I move that the Commission determine that Appeal No. A-5-EMB-23-0023 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

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

Resolution:

The Commission finds that Appeal No. A-5-EMB-23-0023 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On June 30, 2023, Neel and Sharlene Grover filed an appeal of Orange County Emerald Bay local CDP No. PA22-0104 ([Exhibit 5](#)). The appellants raise the following concerns with the County-approved development:

- The Emerald Bay LCP requires all discretionary permit applications to be referred to the Emerald Bay Architectural Committee (EBAC) for review and comment.
- The EBAC that reviewed this project was improperly constituted.
- Due to the improper constitution of the EBAC, the EBAC “failed to ‘Ensure project conformity with recorded restrictions’ and failed to ‘Ensure project compatibility with the architectural design and character of the community’ such that the proposed Project will not be aesthetically compatible and harmonious with adjacent homes in the 940 Tract of Emerald Bay, where it is located.”

III. LOCAL GOVERNMENT ACTION

On March 2, 2023, the Orange County Zoning Administrator approved Coastal Development Permit and Variance (Planning Application PA22-0104) ([Exhibit 3](#)). The Zoning Administrator approved the project with fifteen conditions regarding permit administration and construction management. The Zoning Administrator’s approval was appealed to the County Planning Commission. On June 14, 2023, the Planning Commission denied the appeal and approved CDP PA22-0104, with the 16 special conditions regarding permit administration, construction management, landscape requirements, requirements for building in high fire zones, and requirements for

archaeological and paleontological monitoring ([Exhibit 4](#)). The Zoning Administrator and the Planning Commission determined that the project was categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15303, Class 3 (New Construction).

The County’s Notice of Final Local Action for local Coastal Development Permit No. PA22-0104 was received by the Commission’s South Coast District office on June 19, 2023 and the Commission’s required ten working-day appeal period was established. During the Commission’s appeal period, the subject appeal was received on June 30, 2023. No other appeals were received prior to the end of the Commission’s appeal period on July 3, 2023.

IV. APPEAL PROCEDURES

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

The project site is in an appealable area because it is located between the sea and the first public road paralleling the sea, and is within 300 feet of the inland extent of any beach. (Section 30603(a)(1).) The issues raised in the subject appeal apply to proposed development located in the appealable area.

Grounds for Appeal

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

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

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If the Commission finds that the appellants’ contentions raise no substantial issue, the action of the local government becomes final.

Qualifications to Testify before the Commission

The time limit for public testimony will be set by the chair at the time of the hearing;

applicants, appellants, and the local government are typically given three minutes per side for their presentation. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, the appellants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue question. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The County-approved project appealed to the Commission is the demolition of an existing 2,500 square foot, three level (including a semi-subterranean basement) single family residence and construction of a new 5,750 square foot, three level, 31 feet high single family residence with an attached two car garage and an attached one car garage. The lowest level is a semi-subterranean basement level ([Exhibit 2](#)). The proposed basement is below grade at the south side of the residence and daylights at the north side of the property.

The project site is located at 52 Emerald Bay, in the unincorporated Emerald Bay area of Orange County. The area is covered by the Emerald Bay LCP Segment of this unincorporated area of Orange County. The project site is a 4,598 square foot, relatively flat lot. The LCP land use designation at the site is Medium Density Residential (3.5 – 6.5 dwelling units per acre) and the LCP zoning at the site is R1 Single-Family Residence, with a Coastal Development Overlay. Emerald Bay is a private, locked gate community that extends on either side of North Coast Highway. Emerald Bay is surrounded on three sides by the City of Laguna Beach and by the Pacific Ocean on the fourth side. The site is located in the area of Emerald Bay seaward of North Coast Highway and so is located between the sea and the first public road. However, the site is not an oceanfront lot. The subject site is surrounded on all sides by single family residential development along a cul-de-sac within the private locked gate community.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The County's Emerald Bay LCP was certified on September 13, 1989. The LCP is comprised of a single document that includes both the Land Use Plan (LUP) and an Implementation Plan (IP). The project site is located within the County's certified LCP jurisdiction and is subject to the policies of the certified LCP. The standard of review for this appeal is consistency with the certified Local Coastal Program and with the public access and recreation policies of the Coastal Act.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a). The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. However, Section 13115(c) of the Commission’s regulations lists the following 5 factors as appropriate considerations in determining whether an appeal raises a substantial issue:

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

Staff is recommending that the Commission find that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

Appellants’ Contention: The LCP requires all new development subject to discretionary permit applications to be referred to the Emerald Bay Architectural Committee (EBAC) for review and comment. The appellants assert that the EBAC that reviewed this project was improperly constituted and the improperly constituted EBAC did not appropriately enforce the Architectural and Landscaping Control requirements of the Emerald Bay Community Association’s Covenants, Conditions and Restrictions (CC&Rs).

The LUP includes the following reference, regarding scenic resources, to the Emerald Bay Architectural Committee:

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:

- Ensure project conformity with recorded restrictions;

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

The IP includes the following reference to the Emerald Bay Community Association (EBCA):

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 [of] the Emerald Bay Local Coastal Program.

No other reference to either the EBAC or the Emerald Bay Community Association (EBCA) is made in the LCP. Neither is defined or described in the LCP. The County record refers to the EBAC as EBCA Architectural Committee, so it appears that the Architectural Committee is a component of the Emerald Bay Community Association, rather than a distinct entity, and it is referenced herein as the EBAC. This project was reviewed by the EBAC and received approval in May 2022. In its approval, the EBAC found the proposal consistent with their local architectural and design criteria. The County's public hearing on the CDP before the Zoning Administrator was continued twice (12/1/2022 and 1/19/2023) to allow the appellants to further discuss their concerns with the EBAC. At the March 2, 2023 County Zoning Administrator's hearing, it was reported that the mediation meeting between the current appellants and the EBAC had occurred but did not result in any changes to the project. Thus, the appealed project did receive review and comment from the EBAC, as required by the LCP.

The appellants' contention relies heavily on the requirements of the Emerald Bay Community Association's Covenants, Conditions and Restrictions (CC&Rs). However, the Emerald Bay CC&Rs are not a part of the LCP. The appeal states:

"The Architectural Committee's composition is governed by the Covenants, Conditions and Restrictions (CC&Rs), which are "recorded restrictions" (also as referred to in Section 4 of the LCP) which CC&Rs constitute a contract between Emerald Bay homeowners and the EBCA, of which they are members, and said CC&Rs bind the EBCA and homeowners as would any contract."

The LCP requires that new development discretionary permits be reviewed by the EBAC. The LCP states that the EBAC is comprised of members of the Emerald Bay Board of Directors and architects. According to the appeal, the EBAC that reviewed the project included only one architect, when it should have had at least two. The reference in the LCP does not state how many board members and how many architects be included on the EBAC. It does use the plural for architect, but that could mean the make up over time. It is not specified in the LCP. Therefore, the appellants' contention that the EBAC was improperly constituted does not raise a substantial issue. All other points raised in the

appeal rely on the impropriety of the makeup of the EBAC, which as discussed, is not a valid ground for appeal, because the makeup of the EBAC is not defined in the LCP. However, the additional points, which are predicated upon EBAC decisions being invalid due to the alleged improper make up, are nevertheless discussed below.

The appellants contend that due to the improperly constituted EBAC, the Committee was unqualified to detect an error on documentation provided to the Committee. And that due to the error, the Committee did not recognize that one on-street parking space would be lost due to the location of the new driveway for the two-car garage. The proposed project will provide five enclosed off-street parking spaces. The County reviewed the project for consistency with the required parking, and found it to be consistent. The LCP does not include any requirement for maintenance of on street parking on these private streets. In any case, the parking space is not available to the general public as it is within a private, locked gate community. The community precludes public access through the site to the beach below and so the loss of one on-street parking space will have no impact on public access. The appellants' concern appears to be related to the loss of a street parking space that their guests or service providers may use with the permission of the locked gate community, but this does not raise any issues of public access referenced in the LCP or Chapter 3 of the Coastal Act.

In addition, the appellants contend that due to the improperly constituted EBAC, the project was erroneously deemed to be harmonious with adjacent homes. Regarding whether the proposed home is harmonious with surrounding homes, the Commission often considers whether new development would adversely impact public views. However, there are no public views across this site. Some existing development and vegetation near this site are visible from North Coast Highway, and some of that may block potential views of the sea. Although some portion of the proposed home may be visible from North Coast Highway, it would not block public views, due to the angle as viewed from Coast Highway. The appealed development will not interfere with the brief coastward view near the site. The appealed project will have no impact on public views.

The appeal also contends that the EBAC's approval of the project "failed to 'Ensure project conformity with recorded restrictions.'" This contention could be tied to community character, which the Commission sometimes analyzes in the context of existing residential neighborhoods that are accessible to the public as a coastal resource and visual resource. However, the site subject to the appeal is not in a residential neighborhood accessible to the public, there are other large homes in the private community, and this concern was raised to the County during its review. The County Planning Commission staff report (6/14/2023) responds to this contention as follows:

"County staff did consider the easement(s) that had a potential effect on parking and access to the adjacent (non-appellant) lot. Other easements cited deal with private limitations and restrictions based upon previous settlements between previous private property owners. The County does not enforce such private agreements. Further, the appellants letter lists the easements and cites provisions

within them, but it does not provide any assessment of how the approved project might conflict with such provisions.”

In addition, the Planning Commission staff report (6/14/2023) approving the project finds:

Within the Coastal Development Overlay zone, and specifically within the Emerald Bay Local Coastal Program (LCP), the project requires the approval of a Coastal Development Permit (Zoning Code Section 7-9-40 and Emerald Bay Local Coastal Program Section III.A.). The proposed project conforms to the goals and objectives of the LCP through its design and the application of standard conditions of approval. The project is consistent with the approved intensity of development, as well as the applicable Land Use Policies contained in LCP Section E regarding resources Management - Watershed, Environmental Hazards - Geologic and Fire Hazard.

As required by the LCP, the project was reviewed by the Emerald Bay Community Association (EBCA) and approved in May 2022. The EBCA found the proposal consistent with their local architectural and design criteria. All streets within the community are private and on-street parking is regulated based upon local standards. The project is compatible with surrounding development in its size, design, and massing. The subject property is within the ‘appealable jurisdiction’ area of the LCP, which means after a final determination by the County (here by the Planning Commission), an appeal may be taken with the Coastal Commission.

The appeal does not explain how the recorded restrictions interfere with the project’s consistency with the LCP. This contention was addressed by the County in its review of the CDP, and the County found it did not present any inconsistencies with the LCP.

In its approval, the County considered the project’s consistency with the requirements of the LCP, in addition to other County requirements. The County adopted findings and required conditions to assure that the project is in conformity with the LCP. The contention raised by the appellants, that the EBAC was improperly constituted, does not provide grounds for appeal per Section 30603(b)(1), which limits appeal grounds to an allegation that the development does not conform to the standards set forth in the certified LCP. Moreover, the appellants did not identify any specific LCP standard which the development would not be consistent with; the concerns are more broadly related to a private parking resource and the size and design of private home in a private community. Therefore, the appeal does not raise a substantial issue.

SUBSTANTIAL ISSUE FACTORS:

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act. The

County adequately supported its approval of the project's consistency with the applicable policies of the certified LCP. The County concluded that the project is in conformity with the LCP, including the requirement that the project be reviewed by the EBAC, and that the makeup of the EBAC is not addressed in the LCP. Furthermore, the County found that the LCP does not address on-street parking in this private, locked gate community, and so the loss of this one parking space does not raise any issue with consistency with the LCP. The County also adequately considered whether the project would be harmonious with surrounding development, and considered the question of impacts due to recorded easements, and found none. Therefore, there is a sufficient degree of factual and legal support for the local government's decision, and this factor supports a finding of no substantial issue.

2. The extent and scope of the development as approved by the local government.

The County's CDP allows an existing single family residence to be replaced by another single family residence on an existing lot, surrounded by other single family residences. Replacing one single family residence for another is fairly routine in existing built out areas such as the subject community, especially when, as is the case here, there will be no public access, public view, or other coastal resource impacts. The extent and scope of development is minor. Therefore, this factor supports a finding of no substantial issue.

3. The significance of the coastal resources affected by the decision. The subject site is not an oceanfront lot or a blufftop lot. There are a number of homes between the subject site and the sea. The subject site is surrounded on all sides by other single family residences. No impacts to sensitive habitat are anticipated from the proposed residential replacement project. In addition, as a private, locked gate community, no public access exists through the community to the sea. The proposed project will have no impact on that existing situation. No public views are present across the site, and so no public views would be impacted by the proposed development. Thus, no coastal resources will be affected by this project. Therefore, this factor supports a finding of no substantial issue.

4. The precedential value of the local government's decision for future interpretations of its LCP.

The proposed development will result in replacement of one single family residence with another, on an interior lot, in a private, locked gate community. No impacts to coastal resources are anticipated. As stated above, the County had adequate factual support to approve the project, and the approval of similar infill replacement development on an interior lot would not prejudice the LCP in this area. Therefore, this factor supports a finding of no substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

The appeal raises a local issue related to the neighbor's objections to the loss of one on street parking space, and to the size and design of the replacement residence. The appeal raises the contention that the EBAC was not properly constituted, but the makeup of the EBAC is not addressed in the LCP, thus the contention does not present an inconsistency with the LCP. The appeal does not raise any issues of statewide significance. This factor weighs in favor of a finding of no substantial issue.

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Conclusion

In conclusion, the Commission finds that no substantial issue exists with respect to whether the local government action conforms with the policies of the County's certified LCP and the public access policies of the Coastal Act.

Appendix A – Substantive File Documents

1. Emerald Bay Segment of Orange County certified Local Coastal Program.
2. Orange County CDP PA22-0104 Record.
3. Orange County Notice of Final Action CDP PA22-0104