

OC DEVELOPMENT SERVICES REPORT

DATE: April 18, 2024

TO: Orange County Zoning Administrator

FROM: OC Development Services/Planning Division

SUBJECT: Public Hearing on Planning Application PA23-0224 for a Coastal Development Permit

PROPOSAL: A request for a Coastal Development Permit to replace an existing sewage lift station and repair/enhance landscape materials, pedestrian walkways, stairway handrails, swing set, and a public beach shower in the vicinity. Also included is a request to permit an annual holiday lighting display on four existing beachfront palm trees from Thanksgiving through the first week of January.

GENERAL PLAN DESIGNATION: 1B “Suburban Residential”

ZONING: OS “Open Space” with a CD “Coastal Development” Overlay and an SR “Sign Restrictions” Overlay

LOCATION: The sewage lift station is located in the community of Emerald Bay at 9787 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District. (APN 053-060-76). The project site is generally located across from 68 Emerald Bay.

CO-APPLICANTS: Emerald Bay Community Association, Co-Applicant and Property Owner
Emerald Bay Service District, Co-Applicant
CAA Planning, Agent

STAFF Kevin Canning, Contract Planner

CONTACT: Phone: (714) 667-8847 Email: Kevin.Canning@ocpw.ocgov.com

RECOMMENDED ACTIONS

OC Development Services/Planning Division recommends Zoning Administrator:

- a) Receive staff report and public testimony as appropriate; and,
- b) Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA), under the Class 1(b) – Existing Facilities pursuant to Section 15301 and Class 2(c) – Replacement and Reconstruction pursuant to Section 15302; and,
- c) Approve Planning Application PA23-0224 for a Coastal Development Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND AND EXISTING CONDITIONS

PA23-0224 is a co-application from the Emerald Bay Community Association (EBCA), the master homeowner’s association for the community and the Emerald Bay Service District (EBS or District), a California community services district established by the Orange County Board of services in 1961. These are two separate entities that work cooperatively to provide services to the community. The EBCA is funded by association dues and the EBS is funded by property taxes to provide services within the Emerald Bay boundaries, including sewer, water, drainage, fire protection, lifeguard and safety, parks and recreation, security, and law enforcement. The EBS is also a member of the South Orange County Wastewater Authority (SOCWA), which cares for the transport and disposal of sewage in the South County area.

Project Vicinity Aerial

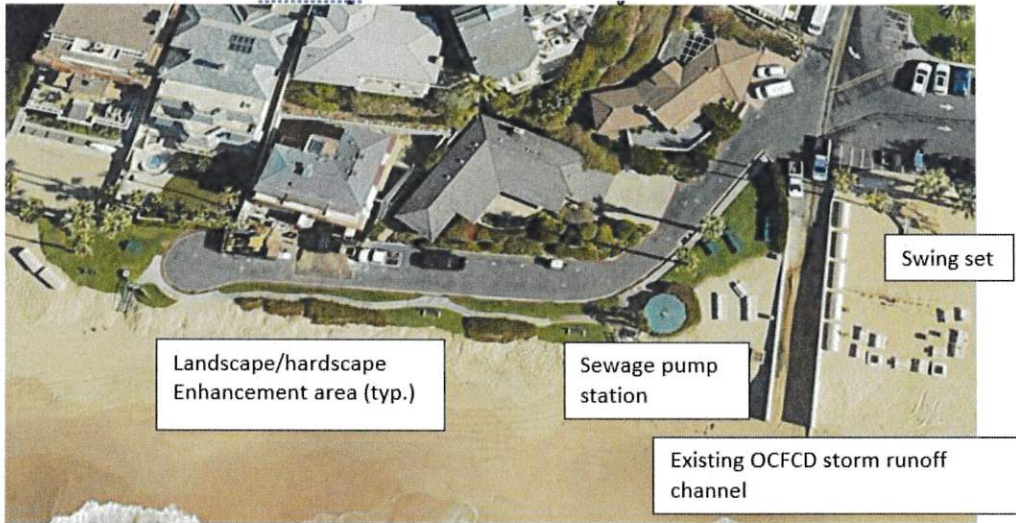


PROPOSED PROJECT

The proposed project has several different but related components (Attachment 3). Primarily, the EBS proposes to remove and replace the subject sewage lift station that they operate and maintain. The subject lift station is located on the beach side of one of the community’s private streets, adjacent to but not located on the sandy beach. It should be noted that the sandy beach in this area is a private beach owned by EBCA except for an adjacent storm runoff channel which is owned by the Orange County Flood Control District storm runoff channel.

Related to this effort, EBCA will also do some maintenance and upgrades to various community amenities in the vicinity. These measures will include an in-kind replacement of a swing set located on the beach, and the replacement of existing non-native landscape with a more native mix of plant materials along the beach edge generally from the pump station site and extending further south to the limit of the community’s private beachfront. Additionally, EBCA will upgrade existing pedestrian stair handrails and an existing public beach shower with a more resilient and attractive wood product. Limited patching of the concrete pedestrian walkways will be done on an as-needed basis. Picnic tables

and storage chests that can be seen in the partial project site aerial are portable and will remain available for the community’s use.



As a corollary request, the EBCA is requesting ‘recognition’ (OCPW staff terminology) of their annual placement of Christmas holiday lighting on several palm trees in this vicinity. This is discussed in further detail below.

SURROUNDING LAND USE

The project site is a landscaped parklike passive area with existing residences to the north with a parking area and sandy beach areas along the other three sides. The zoning and existing land use for surrounding properties is as follows:

Direction	Zoning Description	Existing Land Use
Project Site	“Open Space” (OS)(CD)(SR) District	Utilities/landscaping
North	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwellings
South	“Open Space” (OS)(CD)(SR) District	Sandy beach
East	“Open Space” (OS)(CD)(SR) District	Sandy beach
West	“Open Space” (OS)(CD)(SR) District	Sandy beach

DISCUSSION/ANALYSIS

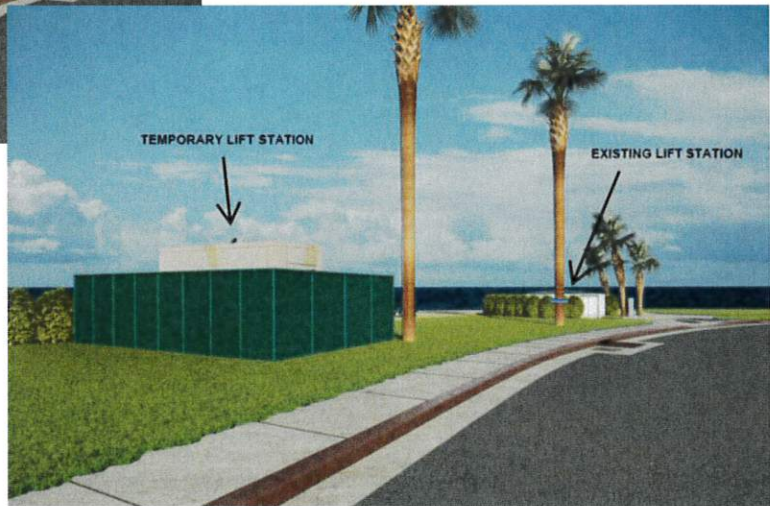
Replacement Sewage Lift Station

The existing lift station is located mostly below grade within a round shed-like structure projecting approximately 5-feet above the grade of the surrounding passive park. The replacement pump station will be located fully below grade with a flat wooden ‘roof’ level with the existing grade of the park area (Attachment 4). There will be three above ground instrument panels to monitor the new pumping station visible to the adjacent passive park. During its replacement, there will be an interim condition with an above-grade temporary pump and a 6-foot safety fence surrounding it.

Existing Condition



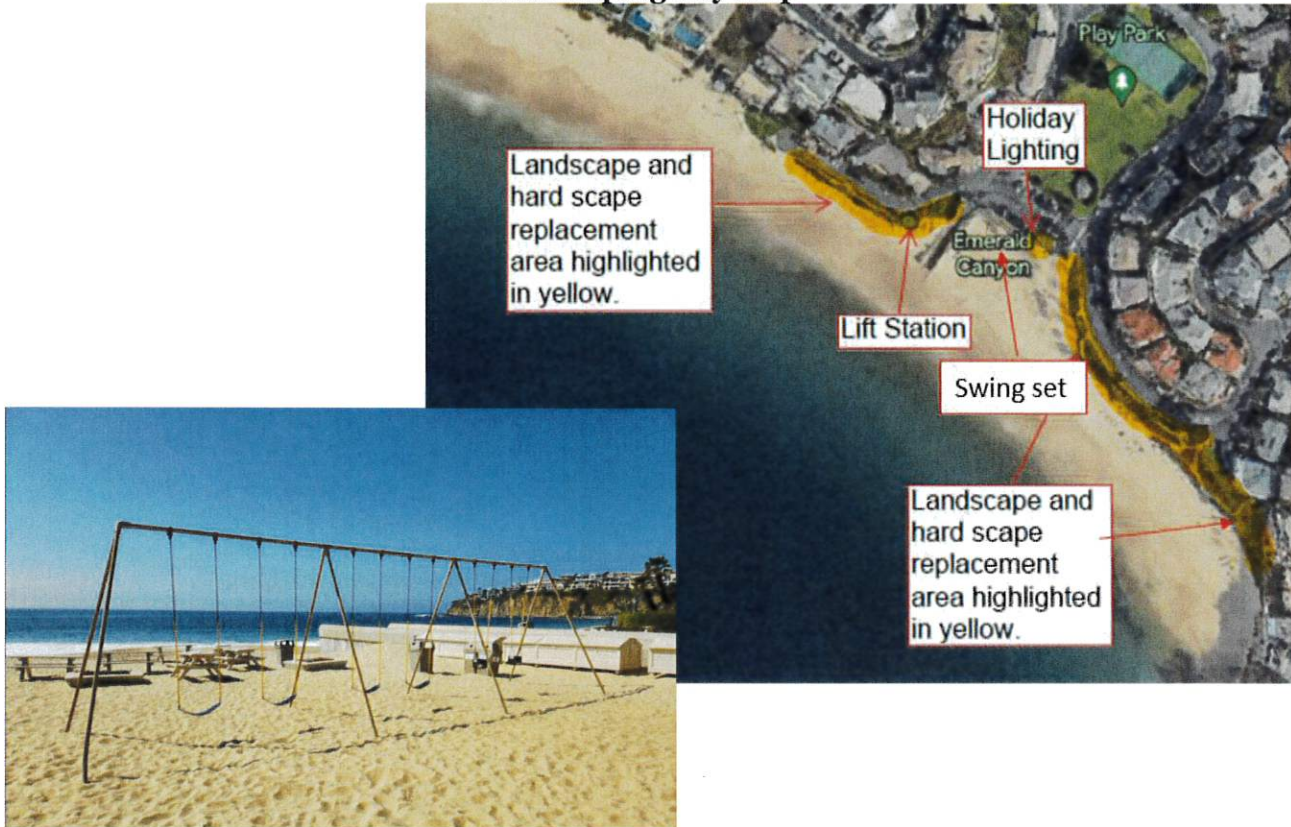
Interim Condition



Landscaping

In the existing landscape areas located between the roadway and the beach, EBCA proposes to replace existing non-native plants with native, non-invasive plants listed on the CalScape website for an approximate 700-foot stretch from the southerly limit of the private beach to the lift station and another 300' north of the sewage lift station. Landscaped areas will be replaced with plant species that include California Buckwheat, Toyon, Giant Wild Rye, Nodding Needlegrass, Cleveland Sage, and Purple Sage. The landscape replacement would begin after the completion of the sewer lift station replacement and is anticipated to take one to two months to complete. The planting plan is included on the attached Landscape Plan (Attachment 5). Where necessary, concrete pedestrian paths will be patched, and stairway handrails and an outdoor shower will be repaired and enhanced with Ipe, a more durable wood product.

Landscaping Key Map

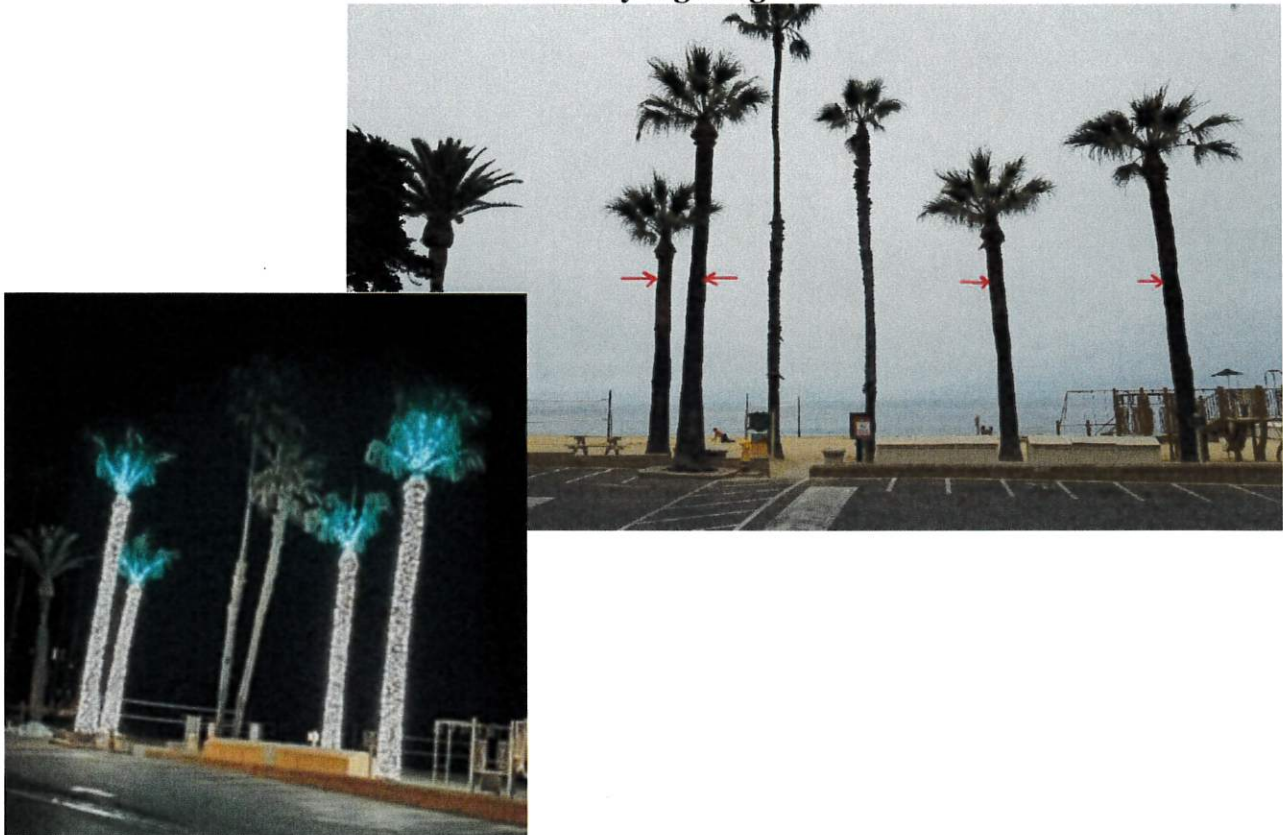


Holiday Lighting

The EBCA has also included their seasonal holiday lighting on four existing palm trees as a part of the EBCA holiday lighting program (Attachment 6). In fact, the EBCA has been lighting the trees for many years, however a nearby resident has expressed their belief that such lighting is a violation of the Coastal Act. In past years, the holiday lighting of this limited area of private community beach has not resulted in any impact to public access of nearby beaches and the project would not lead to overcrowding at nearby public beaches. The trees in question are located at a sufficient distance from the ocean and no sensitive habitats are identified within the immediate area. One of the trees is located within the adjacent community private parking area. The location of the other three trees is on the beach but are approximately 175 feet from the water's edge. There are several homes and other developments that are actually located in closer proximity to the ocean than these trees.

As noted above, the tree lighting has occurred for many years. The lights are installed and removed by hand, and via a boom lift. The boom lift is operated from the paved parking lot and there is no equipment, mechanical or otherwise, placed on the beach. No work is done on the sandy beach. The holiday lights are only present during the holiday season which is outside of bird nesting season. However, in an abundance of caution, the trees undergo a visual inspection to confirm that bird nests are not present prior to the installation of holiday lighting.

Holiday Lighting



In May 2023, The County Planning Department responded to a letter sent on behalf of EBCA wherein the County agreed in the conclusion that the holiday lighting was not subject to the Coastal Act (see Attachment 7). The Recommended Findings (Attachment 1) includes a finding that the holiday tree lighting, as proposed and implemented by EBCA, is not subject to the Emerald Bay Local Coastal Plan (LCP) or the California Coastal Act.

Coastal Development Permit

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.

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.

REFERRAL FOR COMMENT AND PUBLIC NOTICE

A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to County Divisions and Orange County Fire Authority. Staff has reviewed all comments received, and where appropriate, has addressed the comments through incorporation of proposed Conditions of Approval provided as Attachment 2. The Emerald Bay Community Association approved

the proposed project prior to its filing as co-applicant with the Emerald Bay Service District. A minimum of ten days prior to the Zoning Administrator's hearing, public notices were mailed to all property owners of record within 300 feet of the subject site, posted at the project site, published in a newspaper of general circulation in the area affected by the proposed project, and made available at the posting kiosk at the County Administration buildings located in Santa Ana, CA.

CEQA COMPLIANCE

The California Environmental Quality Act (CEQA) allows categorical exemptions for projects that have been determined not to have a significant effect on the environment. (CEQA Guidelines §15300-15332). Following is a brief analysis of why the project is consistent with Class 1(b) and Class 2(c) categorical exemptions.

Class 1 Categorical Exemption

The Class 1(b) (Section 15301) exemption provides for the operation, repair, maintenance of existing public or private structures, facilities, mechanical equipment used to provide public utility services, involving negligible or no expansion of the use beyond that existing at the time of the lead agency's determination. The replacement of the existing lift station and landscaping would not result in the expansion of the sewer system or the lift station itself and the proposed landscaping and hardscape would be within the existing landscape footprint.

The project is exempt under Class 1 Exemption because the lift station and landscaped areas will function in the same capacity as it currently does. The holiday lighting poses no impact to the environment given the installation from the paved parking lot, distance to the mean high tideline, and inspection to ensure bird nests are not disturbed.

Class 2 Categorical Exemption

The Class 2(c) (Section 15302) exemption consists of replacement or reconstruction of existing utility systems where the new facilities will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The new lift station components will occupy the same footprint as the existing lift station and will serve in the same capacity.

CONCLUSION

Staff has reviewed the applicant's request for a Coastal Development Permit and found the proposed project to be compliant with the Emerald Bay Local Coastal Program. It is an allowed Principal Permitted Use and has been found to be compatible with adjacent residential uses, including similar previous approvals. Staff supports approval of the planning application subject to the Findings and Conditions of Approval provided as Attachments 1 and 2.

Submitted by:



Kevin Canning, Contract Planner
OC Development Services/Planning

Concurred by:



Scarlet Duggan, Land Use Manager
OC Development Services/Planning

ATTACHMENTS

1. Recommended Findings
2. Recommended Conditions of Approval

3. Applicant's Letter
4. Sewage Lift Station Plans
5. Landscape Plans
6. Holiday Lighting Main Beach Details
7. OCPW Waiver of CDP for Holiday Lighting – 2023

APPEAL PROCEDURE

Any interested person may appeal the decision of the Zoning Administrator on this permit to the OC Planning Commission within 15 calendar days of the decision upon submittal of required documents and a fee of \$500 filed at the County Administration South building, 601 N. Ross Street, Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to OC Development Services / Planning.



**Attachment 1
Findings
PA23-0224**

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- 1 **GENERAL PLAN** **PA23-0224**
 That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.
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- 2 **ZONING** **PA23-0224**
 That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.
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- 3 **COMPATIBILITY** **PA23-0224**
 That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.
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- 4 **GENERAL WELFARE** **PA23-0224**
 That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
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- 5 **PUBLIC FACILITIES** **PA23-0224**
 That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).
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- 6 **CATEGORICALLY EXEMPT** **PA23-0224
CUSTOM**
 That that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA), under the Class 1(b) – Existing Facilities pursuant to Section 15301 and Class 2(c) – Replacement and Reconstruction pursuant to Section 15302 and County of Orange procedures, as discussed in detail within the project Staff Report. The project will not result in a cumulative impact, significant environmental effect or damage scenic or historic resources. Standard conditions of approval applied by the County for all construction projects of this nature will address any short-term construction related impacts.
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- 7 **FISH & GAME - EXEMPT** **PA23-0224**
 That pursuant to Section 711.4 of the California Fish and Game Code, this project is exempt from the required fees as it has been determined that no adverse impacts to wildlife resources will result from the project.
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- 8 **NCCP NOT SIGNIFICANT** **PA23-0224**
 That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.



Attachment 2
Conditions of Approval
 PA23-0224

1 BASIC/ZONING REGULATIONS PA23-0224

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance or approval of the project regarding any other applicable ordinance, regulation or requirement.

2 BASIC/TIME LIMIT PA23-0224

This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void, unless a valid extension is approved.

3 BASIC/PLAN PA23-0224

If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, OC Planning, for approval. If the Director, OC Planning, determines that the proposed change complies with the provisions and the spirit and intent of the original approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 BASIC/COMPLIANCE PA23-0224

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Zoning Administrator.

5 INDEMNIFICATION PA23-0224

Applicant shall defend with counsel approved by the County of Orange in writing, indemnify and hold harmless the County of Orange, its officers, agents and employees from any claim, action or proceeding against the County, its officers, agents or employees to attack, set aside, void, or annul any approval of the application or related decision, or the adoption of any environmental documents, findings or other environmental determination, by the County of Orange, its Board of Supervisors, Planning Commission, Zoning Administrator, Director of OC Public Works, or Deputy Director of OC Development Services concerning this application. The County may, at its sole discretion, participate in the defense of any action, at the applicant's expense, but such participation shall not relieve applicant of his/her obligations under this condition. The County may, at its sole discretion, require the Applicant to post a bond, enter into an escrow agreement, obtain an irrevocable letter of credit from a qualified financial institution, or provide other security, to the satisfaction of the County, in anticipation of litigation and possible attorney's fee awards. Applicant shall reimburse the County for any court costs and attorney's fees that the County may be required to pay as a result of such action. The County shall promptly notify the applicant of any such claim, action or proceeding.

6 BASIC/APPEAL EXACTIONS PA23-0224

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 GEOLOGY REPORT PA23-0224

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

8 CONSTRUCTION NOISE PA23-0224

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

(1) All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.

(2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).

(3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

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

9 EROSION AND SEDIMENT CONTROL PLAN PA23-0224

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

11 WATER QUALITY MANAGEMENT PLAN PA23-0224

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

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

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

12 LANDSCAPE PLAN PA23-0224

Prior to the installation of the proposed landscape plan, the applicant will submit a detailed landscape plan for a Landscape Permit demonstrating compliance with applicant County regulations regarding landscape and irrigation standards.