



July 3, 2024

**VIA OCPW ONLINE APPEAL SUBMITTAL**

Trung “Joe” Q. Ha, 1<sup>st</sup> District Commissioner  
Maria Ceja, 2<sup>nd</sup> District Commissioner  
Kevin Rice, 3<sup>rd</sup> District Commissioner  
John Koos, 4<sup>th</sup> District Commissioner  
David E. Bartlett, 5<sup>th</sup> District Commissioner  
COUNTY OF ORANGE – OC PUBLIC WORKS  
PLANNING COMMISSION

Re: **211 EMERALD BAY, LAGUNA BEACH (APN: 053-073-41)**  
*Letter of Justification for Appeal*

Dear Honorable Members of the Orange County Planning Commission:

William Cooley, owner of 215 Emerald Bay, appeals the decision of the Zoning Administrator to approve the new development proposed for 211 Emerald Bay. Mr. Cooley’s home is next door to the proposed project. The project at 211 Emerald Bay is proposed over three lots on a corner in an area of Emerald Bay, traditionally referred to in the community as “Historic Hill.” The proposal is to scrape the property of the existing development, which dates back to 1932, and replace the existing structures with a massive program, so large that it cannot be built on three lots without three variances.

Mr. Cooley asserts three bases for appeal:

- **First**, the existing property is nominated for inclusion on the California Register of Historic Resources (“Register”). That nomination is pending with the California State Office of Historic Preservation (“OHP”) and is supported by a nomination package prepared by ESA Environmental Consultants and Historians Dr. Margarita Jerabek, Alison Garcia Kellar and Valerie Smith. The County should allow time for the OHP to complete its consideration of the nomination. If the property is found eligible for inclusion on the Register, it cannot be processed with a Categorical Exemption under CEQA.
- **Second**, the use of variances for this massive project cannot be justified. There is nothing special about the topography of other characteristics of this property that pose any difficulty for development in compliance with the applicable property development standards.

- **Third**, this massive project destroys Mr. Cooley’s views, which are to be protected based on Emerald Bay’s own Local Coastal Program (“LCP”). No effort was made by Emerald Bay to preserve these protections. Mr. Cooley must seek recourse with the County.

## **HISTORIC RESOURCE ISSUES**

The nomination package prepared by ESA contains significant and substantial evidence supporting a finding of historicity of 211 Emerald Bay (“211 Property”). In the event the OHP finds the 211 Property is eligible for inclusion on the Register, the 211 Property will be a “mandatory” historic resource as specified in Cal. Pub. Res. Code § 21084.1. The County has been in possession of the nominating package for months. The County is aware of the supported assertion that the 211 Property satisfies at least two of the four criteria for historicity, set forth in Cal. Pub. Res. Code § 5024.1 and 14 CCR 15054.5(a)(3). Simply stated, when substantial evidence is presented supporting a finding that the project may negatively affect a “historic resource,” CEQA requires the following:

“Any object [or] building ... which a lead agency determines to be historically significant ... *may* be considered to be an historical resource, provided the lead agency’s determination is supported by substantial evidence in light of the whole record. Generally, a resource *shall* be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria for listing on the California Register of Historical Resources including the following:

- (A) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage;
- (B) Is associated with the lives of persons important in our past;
- (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- (D) Has yielded, or may be likely to yield, information important in prehistory or history.”

The above code sections were not cited in the Staff Report to the Zoning Administrator and did not appear to be part of the Zoning Administrator’s consideration in his determination to approve the project as presented. This historic analysis is a necessary part of the CEQA process; the County, as lead agency, should take the path forward ordered by the court in *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4<sup>th</sup> 1039, 1063, as follows:

- (1) acknowledge the lead agency’s discretion to consider whether 211 Emerald Bay is an historic resource for purposes of CEQA;
- (2) expressly elect to exercise that discretion by considering the issue;
- (3) evaluate the issue by, among other things, applying the criteria set forth in subdivision (a)(3) of 14 CCR 15064.5; and
- (4) determine that 211 Emerald Bay is an historic resource.

The County has given no indication that it has satisfied the lead agency’s obligation under CEQA to consider the evidence of historicity presented by ESA Environmental Consultants, as required by CEQA [14 CCR § 15064.5] and by the Court in *Valley Advocates*, cited above.

It is presumed that the County will proceed in the manner required by law and consider the evidence presented relating to the historicity of the 211 Property. Mr. Cooley respectfully requests that the County defer its determination to approve the project until the OHP has completed its consideration of nomination to the Register. In the event the OHP determines the 211 Property is eligible for inclusion on the Register, the property must be treated as an historic resource. In the event it is not deemed eligible, the County must still complete its analysis under 14 CCR § 15064.5, above.

If, based on its own determination, the County concludes that the 211 Property merits historic consideration under the applicable criteria and based on the evidence presented, or if the OHP determines the 211 Property is eligible for inclusion on the Register, a Categorical Exemption may not be used for this project. The law is clear - Categorical Exemptions may not be used for projects that will cause a substantial adverse change to a historic resource [14 CCR § 15300.2].

## ZONING ISSUES

The findings proposed by Staff to justify the variances do not meet the requirements of Government Code Section 65906. The court in *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166 [227 Cal.Rptr. 688, 701–702] observed that:

“... the language of both the Zoning Ordinance and Government Code section 65906 “emphasizes disparities between properties, not treatment of the subject property’s characteristics in the abstract. [Citations.] It also contemplates that at best, only a small fraction of any one zone can qualify for a variance. [Citation.]” (*Topanga Assn. for a Scenic Community v. County of Los Angeles, supra*, 11 Cal.3d at p. 520, 113 Cal.Rptr. 836, 522 P.2d 112, original emphasis.) The facts set forth in the required findings must address “the critical issue whether a variance was necessary to bring the [owner of the subject parcel] into substantial parity with other parties holding property interests in the

*zone. [Citation.]” ... Thus, data focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district. (Ibid; Broadway, Laguna etc. Assn. v. Board of Permit Appeals, supra, 66 Cal.2d at pp. 773–781, 59 Cal.Rptr. 146, 427 P.2d 80.)” [Emphasis added.]*

Staff’s analysis fails to set forth characteristics of the 211 Property ~ a combination of three flat lots with ample street access on two sides ~ that would qualify it as a property presenting a “substantial hardship” when following the property development standards of Emerald Bay or the County. Under Staff’s analysis, applicants should simply disregard the property development standards and design all properties through the use of variances. The end seems to justify the means, rather than enforcing the standards set forth for the vicinity.

## **VIEW AND NEIGHBORHOOD COMPATIBILITY ISSUES**

Finally, the proposed structure on three lots destroys all existing ocean views from 215 Emerald Bay, as illustrated in the attached photos. Its 6,500’ size is a gross departure from the pattern of development and character of this enclave of Emerald Bay. The project is, therefore, incompatible with other permitted uses in the vicinity. As noted in the Staff Report:

“LCP specifically recognizes the community’s architectural guidelines and standards. Page II-8 of the LCP, states:

*“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.”*

Emerald Bay approved a structure for the 211 Property which annihilated the existing ocean and sunset views for 215 Emerald Bay, and which is not compatible with the character of this area of Emerald Bay. Mr. Cooley acknowledges the local approval process for the community but believes that when the community ignores the community’s own state and county approved



written standards, it is left to the County or the courts to ensure that the published standards are followed, lest there be no check on Emerald Bay. At a minimum, Mr. Cooley wishes to preserve this objection for a court challenge, in the event the Planning Commission does not feel it can remedy the problem.

### CONCLUSION

Mr. Cooley incorporates all submittals made to the Zoning Administrator in opposition to the project and is supportive of the consideration of the historicity of the 211 Property. Once this historic property is scraped, it will be no more and nothing can bring it back. It is respectfully requested that the Commission allow the OHP time to complete its consideration of the nomination of the 211 Property to the Register. It is also requested that the Commission evaluate the issues of historicity relating to the 211 Property in compliance with CEQA, as explained in *Valley Advocates* and 14 CCR § 15064.5.

Use of variances to build this proposed, massive 211 Property is not justifiable. There is nothing difficult about this building site that makes development the least bit challenging under property development regulations.

Finally, if Emerald Bay fails to honor its own rules relating to the preservation of views and neighborhood compatibility, Mr. Cooley's only recourse is to appeal to the County and, thereafter, the courts. Mr. Cooley requests that the County acknowledge the standards set forth in the LCP and follow the established standards.

Respectfully submitted,



Laurence P. Nokes

LPN/dkc

Attachments: (i) Photos illustrating impact of 211 Property Project; and (ii) Dr. Margarita Jerabek/ESA Memorandum in Support of Justification for Appeal

cc: Kevin Canning, OCPW  
William Cooley  
Margarita Jerabek, Ph.D., ESA  
Susan Brandt-Hawley, Esq.

















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# memorandum

date July 2, 2024

to Trung “Joe” Q. Ha, 1<sup>st</sup> District Commissioner  
Maria Ceja, 2<sup>nd</sup> District Commissioner  
Kevin Rice, 3<sup>rd</sup> District Commissioner  
John Koos, 4<sup>th</sup> District Commissioner  
David E. Bartlett, 5<sup>th</sup> District Commissioner  
County of Orange – OC Public Works  
Planning Commission

cc J. William “Bill” Cooley, PE, MBA; Lawrence P. Nokes, esq.; Susan Brandt-Hawley, esq.

from Margarita Jerabek, Ph.D.

subject 211 Emerald Bay, Laguna Beach (APN: 053-073-41), Justification for Appeal

Honorable Commissioners,

ESA was commissioned by Mr. J. William Cooley who resides next door at 215 Emerald Bay to evaluate the existing 211 Emerald Bay residence and ancillary beach cottage for eligibility for listing in the California Register of Historical Resources (California Register). As a result, we found the property meets the eligibility requirements for listing in the California Register and prepared a California Register Nomination Form (Nomination), which was submitted to the California Office of Historic Preservation (OHP) in October 2023 and is now under review. ESA provided a copy of the draft nomination to County officials and requested their review comments well over 90 days in advance of the official submittal to OHP, however, we did not receive any comments. The Nomination demonstrates that the single-family residence and ancillary dwelling on the parcel are eligible for listing under Criterion 1 and Criterion 3 in the areas of Events and Architecture, respectively. No property owner signature is required for a California Register nomination and properties can be listed without the owner’s consent, but not over their formal objection to listing. The State Historic Resources Commission (SHRC) can, however, formally determine a property eligible for the California Register if the resource owner objects. Since then, the property owner of 211 Emerald Bay has commissioned an opposing Historic Resources Assessment Report (HRAR), which was used by the Zoning Administrator to support approval of the proposed project with a Categorical Exemption. However, the owner’s opposing HRAR does not provide substantial evidence that the property is not an eligible historical resource and therefore the project cannot be approved with a Categorical Exemption. As ESA demonstrated in our peer review memo submitted to the County on June 18, 2024, the findings of the HRAR are largely unsupported.

The indisputable facts are that the main residence and beach cottage on the 211 Emerald Bay property are associated with the second wave of development in Emerald Bay in a tract called the Casbah. Flat lots and sweeping ocean views sparked new interest in the community designed by master architects and renowned landscape architect Mark Daniels. In addition to its significance as part of the development Emerald Bay under



Criterion 1, ESA documented how the subject property is a rare remaining example of a simplified Mediterranean Revival style home with eclectic features. In addition to features typical of the Mediterranean Revival style, the main residence contains distinctive, unique coastal features characteristic of master architect Roland Coate's work, such as the use of wood lattice for window and door surrounds. As depicted in our June 18, 2024 memo, historic photographs show an almost identical feature on master architect Roland Coate's Emerald Bay beach house that represents a relaxed but fashionable aesthetic popular in the 1930s and 1940s. Distinctive scalloped and hounds-tooth awnings, wood picture windows, and square bays similar to Roland Coate's own house are also present on the 211 Emerald Bay residence. ESA also documented that the ancillary dwelling on the parcel is an example of a vernacular beach cottage, a resource that is historically significant to the region, particularly the Laguna Beach area. The existing features of the residence and ancillary cottage on the property reflect southern California trends by master architects to modernize traditional revival-style homes, and as such, the property is also eligible under Criterion 3. None of these facts that support the property's eligibility were substantially refuted in the owner's opposing HRAR.

The integrity analysis in the opposing HRAR report is flawed. The changes at the rear of the property were made in the 1940s but are still within the early period of construction for the residence. These are minor and acceptable changes within the historic period of significance for Emerald Bay which ended in 1945. County Assessor records show the date of construction as 1931 for the residence, with the effective tax year 1936. The assessor also recorded a construction date of 1934 with an effective tax year of 1934, for the cottage. The 1966 appraisal records show that a bedroom and bathroom had been added to the house by that time. This data demonstrates the property was fully developed by 1936, within the period of significance for Emerald Bay. The bedroom and bathroom addition was a minor change in keeping with the style of the original residence and is not visible from the public right of way. The only publicly visible change to the residence is one replacement window in the southwest corner of the façade, which is located within the original window opening and retains the original wood window surround and is therefore a minor alteration; the majority of the publicly visible facades of the residence remain intact from their original construction. These minor alterations do not detract from the character defining features of the property that convey its eligibility to meet Criteria 1 and 3 of the California Register. Both the residence and cottage currently retain substantial integrity as excellent examples of their type. From the public right of way, the house still reads as a historic period residence and retains the majority of its original character defining features. The design of the home, completed between 1931 and 1936, was approved by the community's design review board of master architects, and the existing residence and cottage are therefore representative of the architecture and design aesthetics of Emerald Bay.

The impacts analysis in the County Staff Report is flawed. The residence is visually prominent looking north along the road from Gate 2. Public views of the residence provide a welcoming visual gateway to the northeast portion of the community in the historic Casbah Tract. There is no doubt that the architectural character of the residence is a well-established part of the streetscape. The visible streetscape characteristics demonstrated by this rare and unique historic period home would be destroyed forever if the project would be approved as proposed and the home demolished. The replacement of this historically and architecturally significant home by a new approximately 6,500 square foot mansion over double its size would result in significant unavoidable impacts to historical resources by demolition. Its demolition would result in a substantial adverse change in the significance of a historical resource as defined in Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5, respectively, and would thus result in significant environmental impacts. Additionally, the proposed new construction represents a substantial adverse change in scale and massing from the existing residence. As such, the new construction would be aesthetically and environmentally incompatible with the surrounding setting and would not conform with the established design aesthetics of Emerald Bay.

We oppose the project because of its significant adverse environmental impacts and we ask that the County wait until the State Historical Commission formally decides on the eligibility of the property for the California Register before proceeding any further. We also request that the project be revised to preserve the historic character-defining features of the property in conformance with the Secretary of the Interior's Standards for

Rehabilitation (Standards), while allowing for necessary upgrades to support its continued use; projects that conform to the Standards are considered to have a less than significant impact on historical resources pursuant to CEQA, which would be a “win-win” outcome for the owner, adjacent residents and the Emerald Bay community.