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## OC DEVELOPMENT SERVICES REPORT

**DATE:** September 25, 2024

**TO:** Orange County Planning Commission

**FROM:** OC Development Services/Planning

**SUBJECT:** Appeal of Planning Application PA22-0227 for a Coastal Development Permit, Variance Permit, Use Permit and Lot Line Adjustment

**GENERAL PLAN DESIGNATION:** 1B "Suburban Residential"

**ZONING:** R1 "Single Family Residence", with a CD "Coastal Development" Overlay and an SR "Sign Restrictions" Overlay, within the Emerald Bay Local Coastal Program (LCP)

**LOCATION:** The project is located in the community of Emerald Bay at 211 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District

**APPLICANT:** The B & K Slavik Family Trust, Property Owner  
Anne Fox, MIG, Agent

**APPELLANT:** Mr. William Cooley

**STAFF** Kevin Canning, Contract Planner

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

### RECOMMENDED ACTIONS

OC Development Services/Planning recommends the Planning Commission:

- a) Receive appeal of PA22-0227 from Laurence Nokes on behalf of William Cooley filed on July 3, 2024; and,
- b) Receive staff report and public testimony as appropriate; and,
- c) Deny the appeal and take the following actions:
  1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA), under the Class 1 (*Existing Facilities*), Class 2 (*Replacement or Reconstruction*) and Class 3 (*New Construction or Conversion of Small Structures*) exemptions pursuant to Sections 15301, 15302 and 15303 of the California Environmental Quality Act (CEQA) Guidelines and County of Orange procedures; and,
  2. Recommend Lot Line Adjustment LLA.2023-17 for approval by the Director; and,
  3. Approve Planning Application PA22-0227 for a Coastal Development Permit, Use Permit, and Variance Permit subject to the attached Findings and Conditions of Approval.

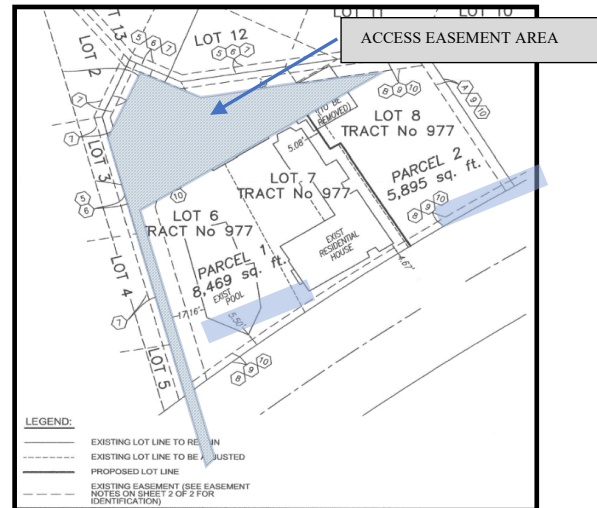
### BACKGROUND AND EXISTING CONDITIONS

The subject property at 211 Emerald Bay (Subject Property) was originally created by a tract map recorded in 1931 as Lots 6, 7 and 8 of Tract 977. The recorded map also included a shared rear-loaded auto court that provides vehicular access to ten residential lots (Lots 2 through 8 and Lots 11 through 13). In May 2019, a previous Planning Application (PA180033) was approved for the subject site, that included a Lot Line Adjustment that merged the original three lots (Lots 6, 7 and 8) into two lots (shown as Parcels 1 and 2 in the diagram below). PA180033 also approved an addition to the existing residence and modifications to the detached garage and pool house that would place all the approved structures on Parcel 1 and leave Parcel 2 vacant for future development. Although the Lot Line Adjustment was recorded (recorded as LLA2019-07), none of the other improvements approved were constructed and PA180033 expired. Currently, a 2,566 square-foot two-level residence and garage exists on Parcel 1 of LLA2019-07, an existing second garage structure straddles Parcels 1 and 2. Both garage entry doors directly abut the rear auto court easement area. All existing structures have nonconforming setbacks, and due to the age of the structures, constructed from the 1930s to the 1950s, there are no records of previous Variance approvals.

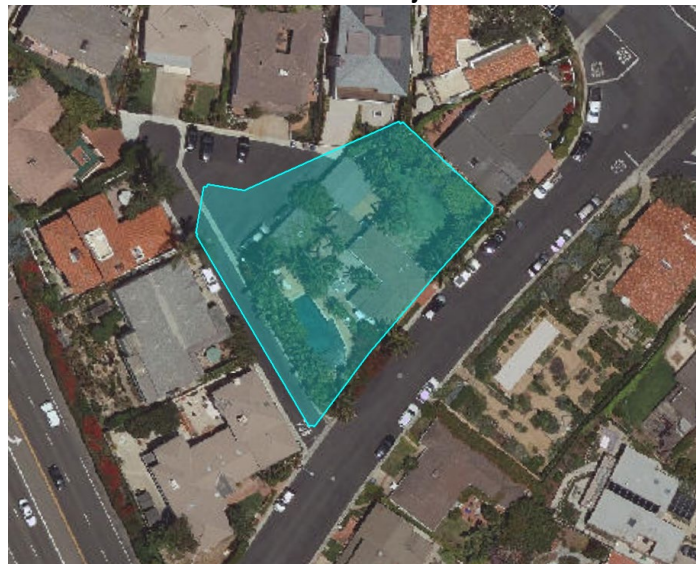
Original Recorded Lots and Access Easement



Existing Structures after LLA2019-07 Adjustment



Aerial View of Project Site



## PROJECT APPLICATION AND APPROVAL HISTORY

Planning Application PA22-0227 was approved by the Zoning Administrator following a public hearing on June 20, 2024 (Proposed Project). The following items were approved by the Zoning Administrator under PA22-0227:

1. A Coastal Development Permit for the demolition of the existing structures and construction of the replacement residence, along with the associated site grading and improvements.
2. A Variance Permit to reduce the front and rear setbacks from standard Zoning Code requirements. The front setback for the main structure and entry gateway/gazebo would be a minimum of 5 feet from the front property line and the rear setback would be 0 feet from the edge of the access easement. Both reduced setbacks would match the existing nonconforming setback conditions of the residence to be demolished. The project also seeks approval of a Variance Permit to allow a (westerly) side yard setback of 2 feet 5 inches from the edge of the access easement for a portion of the pool house.
3. A Use Permit to allow specific proposed over-height structures. A privacy wall is proposed in the front setback area at 5 feet in height (with 6-foot pilasters) where the Zoning Code would otherwise limit the wall to 3 feet 6 inches in height.
4. A recommendation to the Director for approval of Lot Line Adjustment to merge two existing legal building sites into one legal building site.

The Staff Report to the Zoning Administrator (Attachment 4) and the Zoning Administrator's meeting minutes (Attachment 5) are attached.

On July 3, 2024, an appeal was filed by Laurence Nokes, an attorney acting on behalf of Mr. William Cooley, an adjacent property owner at 215 Emerald Bay (Attachment 3). The three bases of the appeal, discussed more fully below in the Basis of Appeal section, are:

1. The Subject Property is the subject of an application for eligibility to list on the California Register of Historic Resources (Register), filed by Mr. Cooley's consultants, and therefore reliance on a CEQA Categorical Exemption for the project is inappropriate. The application for designation is pending and the County should await that decision.
2. The use of variances for this project is not justified.
3. The project improperly blocks views, which appellant argues are protected by the Emerald Bay Local Coastal Program, from the property at 215 Emerald Bay.

## PROPOSED PROJECT

The project proposes the demolition of all the existing structures and merging existing Parcels 1 and 2 into a single building site to accommodate the construction of a new two-level single-family residence with 5,493 square feet of living area and an attached three-car garage, a detached pool house, and an 'entry gate' structure spread across the single lot (or building site). Because the current project proposes the removal of all existing structures and the merging of the lots into a single building site, for discussion purposes below, the descriptions assume a single building site and does not differentiate between either the original three lots of Tract 977 or the reconfigured lots of LLA.2019-07.

**SURROUNDING LAND USE**

The Subject Property is a residential use and is surrounded by existing residential uses all within the Emerald Bay Local Coastal Plan area. The zoning and existing land use for surrounding properties is as follows:

Direction	Zoning District	Existing Land Use
Project Site	“Single-Family Residence” (R1)(CD)(SR)	Single-Family Dwelling
North	“Single-Family Residence” (R1)(CD)(SR)	Single-Family Dwelling
South	“Single-Family Residence” (R1)(CD)(SR)	Single-Family Dwelling
East	“Single-Family Residence” (R1)(CD)(SR)	Single-Family Dwelling
West	“Single-Family Residence” (R1)(CD)(SR)	Single-Family Dwelling

**DISCUSSION/ANALYSIS**

Below is a table comparing the development standards for “Single-Family Residence” District with the proposed project:

**Project Comparison with R1 “Single-Family Residence” District Site Development Standards**

STANDARD	REQUIRED	PROPOSED
Building Site Area(s)	7,200 square feet	14,365 square feet
Maximum Building Height	35 feet maximum	24 feet
Structural Front Setback (minimum)	18.4 feet <sup>1</sup>	5 feet <sup>2</sup>
Structural Rear Setback (minimum)	15 feet <sup>3</sup>	0 feet <sup>2</sup>
Structural Side Setback (minimum)	5 feet	2.5 feet (westerly side)
Wall heights in front setback	3 feet 6 inches maximum	Pilasters up to 6 feet Wall up to 5 feet in height <sup>4</sup>
Parking	3 spaces 2 covered	3-car garage (2 standard spaces, 1 substandard) plus 2 covered spaces

<sup>1</sup> Zoning Code § 7-9-128.2 (Shallow lot) – 91.8 feet avg. depth x 0.20 = 18.4 feet

<sup>2</sup> Indicates Variance requested by the applicant.

<sup>3</sup> Zoning Code § 7-9-24.7 permits lots backing onto an alley or private street to use one-half the accessway width as rear yard setback but setback of no less than 15 feet.

<sup>4</sup> Indicates Use Permit requested by the applicant for over-height structures.

Coastal Development Permit

The approval of a Coastal Development Permit would allow the demolition of all the existing structures and the construction of a new residence with attached garage and other accessory structures, as reflected on project plans (Attachments 8 and 9) . Within the Coastal Development Overlay zone, and specifically within the Emerald Bay Local Coastal Program (LCP), the demolition and the construction of a structure, with the associated site grading, requires the approval of a 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, included within Attachment 2. 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 not within the ‘appealable jurisdiction’ area of the LCP. Projects that are within the appealable jurisdiction area may be appealed to the Coastal Commission following the County’s final action. That option is not available to this project because it is not within the appealable jurisdiction.

#### Lot Line Adjustment (LLA)

As noted, the subject property previously recorded a Lot Line Adjustment to modify the project site from the original three lots to two lots. For the current project, LLA.2023-17 has been filed with OC Survey and is being reviewed to merge the two lots into a single 14,365 square foot lot. Should the Planning Commission recommend approval of the LLA and following compliance with any OC Survey comments or corrections, OC Development Services/Planning would issue a certificate of compliance and the document would be recorded.

#### Variance– Front, Rear and Side Setbacks

The new residence is proposed to match the existing nonconforming condition of the existing residence’s setbacks with a minimum 5-foot front setback. As the frontage street curves slightly away from the property, the front setback increases slightly on the westerly side of the property. The project design also includes a gazebo-like gated entry structure at about the midpoint of the lot’s frontage which would also have a minimum 5-foot setback. The Zoning Code would otherwise require a minimum front setback of 18.4 feet, rather than 20 feet, because the subject lot qualifies as a shallow lot (Zoning Code § 7-9-61.12).

As noted, the rear lot area of all three original lots 6, 7, and 8 included an easement “...for public utility purposes and for driveway for use and benefit of owners of lots 1 to 14 inclusive.” This easement also overlays portions of lots 6, 7, and 8 (or parcels 1 and 2 of the more recent lot line adjustment). This area serves a purpose similar to that of an alley or private street. In similar situations, the Zoning Code (§ 7-9-24.7) allows a rear setback to be reduced by up to one-half of the width of the alley/private street, but in no case may the rear setback be reduced to less than 15 feet. The applicant requests that the rear setback be established at 0 feet, placing the garage at the edge of the access easement, which matches the existing nonconforming setback. In justification and included within the project plans (Attachment 8), the applicant provided diagrams of the necessary turning movements for vehicles exiting the proposed garage. These diagrams have been reviewed and approved as safe and adequate by OC Traffic Engineering.

The required side yard setback within the R1 zoning district is 5 feet. The project meets this criterion except for an approximately 6-foot length of the corner of the proposed pool house along the westerly side yard area. This encroachment (projection) would extend to within 2.5 feet of the edge of the access easement and approximately 3.5 feet from the edge of the existing curb and would generally be in line with the proposed 5-foot wall (with 6-foot pilasters) that runs along this portion of the property. Along this side property line, the 6-foot wall height is permitted as proposed. The minor encroachment of the corner of the pool house would not obstruct vehicular line of sight. It is also noted that the existing condition in this area includes a 6-foot landscape hedge that extends to the very edge of the access easement (See photos below). The proposed project would replace this with lower growing landscaping for improved sight lines.

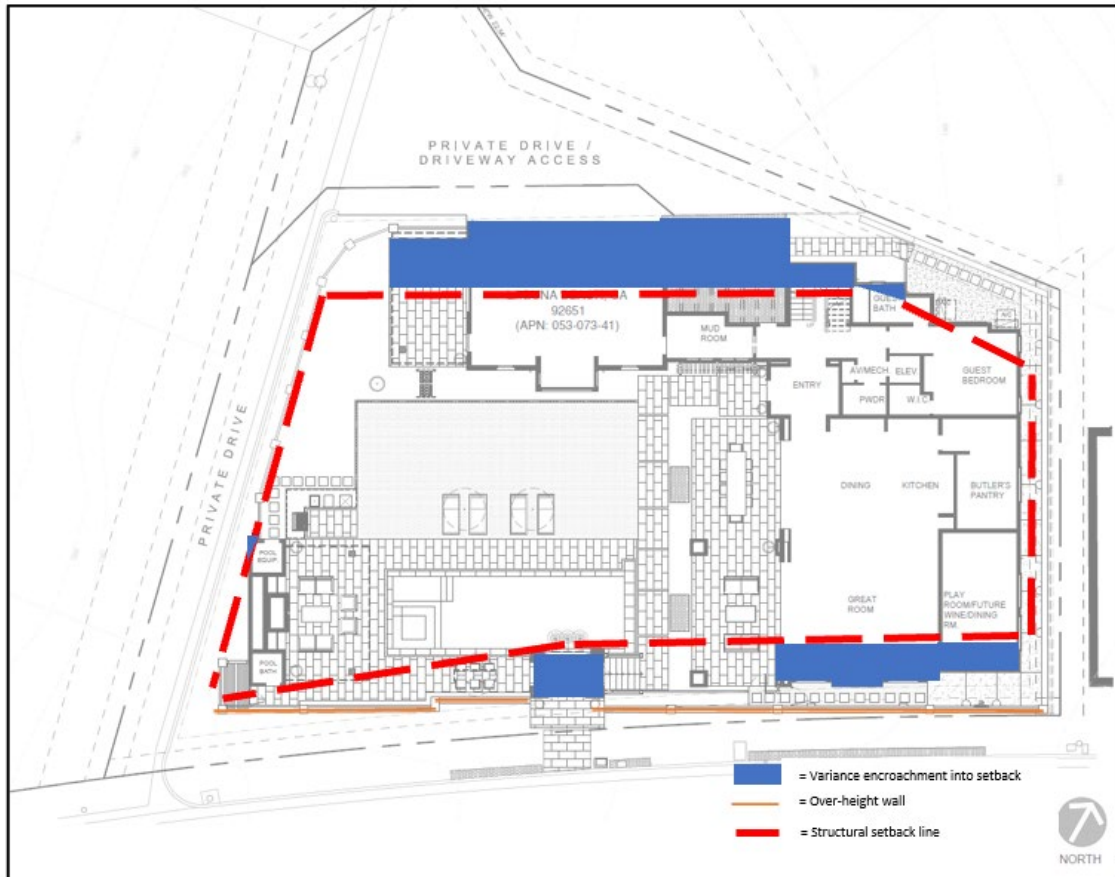
Zoning Code Section 7-9-126.4 requires that certain findings be made to approve a Variance Permit request, as follows:

- a. Special circumstances. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of*

*privileges enjoyed by other property in the vicinity and subject to the same zoning regulations. (The special circumstances shall be specified in the adopted finding.)*

*b. No special privileges. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.*

**Setback Variances and Over-Height Walls**



Staff finds that the special circumstances relating to the property include its shape, its constraints with the rear access easement which results in ‘frontages’ on three sides, and its location in a coastal community with strict architectural guidelines. All of these are unique aspects to the subject lot when compared to other R1 zoned properties within the unincorporated County.

Although there is no available record of the original setback Variance being granted for the existing structures (due to the age of the construction), the property did receive a Variance approval with PA180033, although no construction was performed based upon that approval. The community of Emerald Bay has had many previous variance requests approved for reduced yard setbacks, due to the preponderance of existing lots being under the R1 zoning district minimum standard of 7,200 square feet and the existence of many nonconforming setbacks resulting from the timing of construction before current standards were established. The proposed setback variances would not be a special privilege as it remains consistent with the originally approved mapping and development of this area of Emerald Bay. A total of 32 separate Variance approvals for reduced setbacks have been granted across the sixteen properties within approximately 100 feet of the project site, including a 1988 Variance on the property of the appellant. Only one of these sixteen properties has no previous Variance approval, and

several have three or four Variance approvals. For the Subject Property, the requested side yard setback would be consistent with existing patterns of development within the community. This setback area would not abut any offsite structure but rather the edge of a 20-foot-wide access easement, that includes a 5-foot landscape strip along the Subject Property, which serves as an accessway for ten lots to the rear of the Subject Property. The edge of the pool house would also align with the permitted 6-foot wall that is proposed along this side of the property.

Use Permit – Over-Height Wall in Front Setback

The applicant proposes a privacy wall at 5 feet in height with 6-foot pilasters within the front yard setback area. Other walls proposed for the project conform to required maximum heights. The existing condition has a 6- to 8-foot-high hedge along approximately half of the property's frontage.

**Existing frontage landscaping**



**Existing side yard landscaping**



Zoning Code Section 7-9-64(f) states that exceptions and modifications to the fence and wall height provisions may be permitted by approval of a Use Permit by the Zoning Administrator if the following findings can be made:

- 1) The height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- 2) The location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.

The proposed over-height portions of the walls will be parallel to the roadway and review by OC Traffic did not raise any concern that it could create a traffic hazard. The location, size and design of the walls are consistent with multiple similar improvements throughout Emerald Bay and will not be objectionable, detrimental, or incompatible with other permitted uses within the community. OC Traffic Engineering had no comment on the proposed wall height. Staff recommends that the two required findings to modify permitted wall height can be made. Recommended findings are included in Attachment 1.

#### **REFERRAL FOR COMMENT AND PUBLIC NOTICE**

For the June 20, 2024, Zoning Administrator public hearing, as well as the September 25, 2024, Planning Commission public hearing, a Notice of Hearing was mailed to all property owners of record within 300 feet of the Subject Property and all occupants of dwelling units within 100 feet of the Subject Property (Coastal Development Permit Requirement). Additionally, a notice was posted at the Subject Property, published in a newspaper of general circulation in the area affected by the proposed project (OC Reporter), and made available at the posting kiosk at the County Administration buildings located in Santa Ana. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to County Divisions, Orange County Fire Authority (OCFA), and the Emerald Bay Community Association (EBCA). All comments received have been addressed through incorporation of proposed Conditions of Approval provided as Attachment 2. The project received the approval from the Emerald Bay Community Association (EBCA) Board at its September 9, 2022, Board meeting, and this approval has been granted two extensions.

#### **BASIS OF APPEAL AND STAFF RESPONSES**

While this application was under review by the County, Staff was contacted by the neighbor to the east of the subject site, Mr. William Cooley. This neighbor had also voiced their concerns regarding the previously approved project, PA180033. Mr. Cooley expressed his concerns regarding the currently proposed project during the required community-level review process by appearing before both the Emerald Bay Architectural Committee and the EBCA. Following the Zoning Administrator's approval, Mr. Cooley filed an appeal letter (Attachment 3). The three bases for the appeal are:

1. An application has been submitted, by Mr. Cooley's consultants, for a finding that the Subject Property is eligible for listing on the California Register of Historic Resources (Register), and therefore a CEQA Categorical Exemption cannot be relied upon for the proposed project. The application for designation as eligible for Register listing is pending and the County should await that decision.
2. The use of variances for this project is not justified.
3. The project improperly blocks views, which appellant argues are protected by the Emerald Bay Local Coastal Program, from the property at 215 Emerald Bay.



### Historical Designation by State Registry of Historical Resources

Appellant states that the Subject Property is of historical significance and the Proposed Project would be contrary to the provisions of the LCP and to State law regarding historic sites.

The LCP mentions an architectural historic resources survey of “*Mediterranean Revival style dwellings built circa 1930*” (which is the approximate age of the existing subject residence) conducted by the Environmental Coalition of Orange County in 1981 (LCP, Page II-8). While this survey included five Emerald Bay residences, it did not include the Subject Property. The appellant’s letter mentions that this area of Emerald Bay is traditionally referred to within the community as “Historic Hill.” When contacted by County staff, EBCA staff were not familiar with this reference saying that the only common reference they were familiar with was ‘old hill’ (for the older homes west of Coast Highway) and ‘new hill’ for areas east of Coast Highway). No structure within the Emerald Bay community has been designated as an historic property by the State OHP.

In 2023, the appellant submitted nomination papers on the Subject Property to the State Office of Historic Preservation for designation as an historical property. This information is collectively included within Attachment 11. This information includes a completed application/nomination form prepared by Mr. Cooley’s agent to the State Department of Parks and Recreation’s Office of Historic Preservation (OHP) requesting designation of the existing residence at 211 Emerald Bay as a California Historic Landmark or a California Point of Historical Interest.

This nomination form was sent to OC Development Services in May 2023 along with a statement that it was submitted to the appropriate state and local agencies for review and consideration. However, County staff could not verify that the nomination papers had been properly submitted to the required local County agencies, as required by the state’s process for historic designation. OHP informed County staff that the nomination packet was submitted in October 2023, but not logged into their system for assessment until June 2024, after a revised historical analysis was submitted by the appellant’s consultants. OHP stated that they are not able to estimate any schedule for the review and consideration of the nomination due to staffing shortages.

The project applicant objects to the listing of his property as an historic site and submitted a formal objection to OHP. The project applicant has also prepared and submitted his own historical assessment prepared by Urban Preservation & Planning, Historic Resource Analysis Report (HRAR) (February 2024) (Attachment 10).

The historical assessment submitted to the State by the appellant in May 2023 (and revised in 2024) was, in essence, only a ‘windshield survey’, i.e., only a survey of the structure as viewed externally from the adjacent street. In contrast, the applicant’s February 2024 HRAR was conducted in full compliance with applicable professional standards and state procedures and with full access to the structure and the Subject Property. The February 2024 HRAR report prepared by the applicant and his consultant, included as Attachment 10, concluded that the structure did not qualify under the applicable standards as an historic structure.

Based on all the evidence presented, County staff and the Zoning Administrator concluded that there is a lack of evidence that the structure is an historic property within the LCP.

Regarding the protection of potential historical archaeological and paleontological resources, the LCP addresses this by noting the County’s standard condition of approval requiring that appropriately

trained and County-certified professionals in these sciences be retained to be on-site monitors to observe and protect/preserve any such resources which may be uncovered during grading. Conditions of Approval Nos. 16 and 17 have been included in Attachment 2, Recommended Conditions of Approval, to address this issue.

#### Variance Findings

Findings necessary to support the approval of a variance are based upon a comparison of the Subject Property to all similarly zoned properties within the same zoning district within the entire municipal jurisdiction and compared to similarly zoned properties within the vicinity and subject to the same development standards. The residential properties within the Emerald Bay LCP are zoned R1, Single Family Residential, which generally prescribes a 20-foot front setback, 25-foot rear setbacks and 5-foot side yards and 7,200 square foot minimum lot areas. The appropriate comparison for assessment is not only one Emerald Bay lot to another, but an Emerald Bay lot to all other R1 lots within the County.

The community of Emerald Bay was generally subdivided and developed in the 1930s and 1940s, with smaller lot areas, often with odd shapes, and narrower private streets distributed over a generally sloping terrain down towards the oceanfront. Thus, the typical lot within Emerald Bay is smaller than a typical County R1 lot, and is often also constrained by lot shape, topography, and street patterns. The LCP recognizes this in acknowledging the strict and unique architectural guidelines and the pattern of older development, and thus allows the community association to review and weigh in on a proposed development's conformity with the historical pattern of development as well as the architectural guidelines. Over the course of 2022 and 2023, several meetings of both the EBCA Architectural Review Committee and the full EBCA Board were open to the community, and the project was reviewed and assessed. Both the EBCA committee and full EBCA Board found the Proposed Project consistent with their criteria. Based upon this, staff recommended that the required findings could be made for the subject variance requests.

#### View Blockage

The appellant also alleges that the Proposed Project does not conform to the intent and requirements of the Emerald Bay LCP regarding protection of views. However, staff finds that the Proposed Project conforms to the intent and requirements of the LCP.

Regarding view blockage, the discussions within the approved Emerald Bay LCP include separate provisions for public views versus private views. The Land Use Plan/Resource Component (LCP, Page II-2) states: "*New development must be sited and designed such that views to and along the ocean and scenic coastal areas are preserved...*" (emphasis added). LCP, Page II-3 states, "*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 alteration of natural landforms.*" (Emphasis added).

These provisions concern public views and scenic vistas to and across the Emerald Bay development both to the Pacific Ocean and to the natural, undeveloped park and open space areas inland from the community.

The LCP also requires that all discretionary projects must be referred to the EBCA for review and comment. It is through this local review process that private landowner views are addressed for conformity to the LCP and the community's unique architectural standards. The 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.”*

The community’s architectural review process more specifically addresses potential impacts to private views than the County’s Zoning regulations, including the required placement of story poles prior to approval and construction to visually represent potential view impacts. The EBCA reviews and assesses proposed projects based upon their own Architectural Guidelines and not based upon the County’s Zoning Code restrictions, which has often very different requirements. For example, the architectural review process addresses more specific design parameters such as roof massing and materials, and more restrictive height regulations, etc. The community’s Architectural Guidelines establish the measurement of structure heights based upon a 1960 base topographical map rather than a strict numerical measuring of individual structures, and minimum property line setbacks are generally less than the Zoning Code would require.

The Proposed Project was reviewed by the EBCA Architectural Review Committee and recommended to the EBCA Board for approval which was granted in September of 2022, and extended in September 2023 and August 2024 (Attachment 4d). The appellant, Mr. Cooley participated in those processes and made his concerns known to both the EBCA Architectural Review Committee and EBCA Board. The Proposed Project also lowers the existing grade by approximately four feet to achieve some additional elevational difference between the Subject Property and that of Mr. Cooley’s to the east. As noted above, the LCP empowers the EBCA to assess impacts to private views and it acted to approve the project as consistent with its rules and architectural guidelines. By virtue of the property’s location, no public views “to and along the ocean and other scenic vistas” are impaired by the project. Thus, the provisions of the LCP regarding views, both public and private, have been addressed as required.

## **CEQA COMPLIANCE**

The California Environmental Quality Act (CEQA) categorically exempts projects that have been determined not to have a significant effect on the environment from CEQA review (CEQA Guidelines §15300-15332). Following is a brief analysis of the project’s consistency with Class 1, Class 2, and Class 3 categorical exemptions, as relied upon by the Zoning Administrator. It is noted that the previously approved project, PA180033, was approved and a Notice of Exemption was filed finding PA180033 exempt under Class 1, 2 and 3. Staff’s recommendation for the current project is consistent with this previous finding, with appropriate additional discussion regarding Section 15300.2 Exceptions to Exemptions, specifically regarding potential historical resources.

The appellant states that the use of a Categorical Exemption is not permitted when the Proposed Project would result in an impact to an historical property. Section 15300.2 of the CEQA Guidelines includes criteria where, if applicable to a project, would except (or prohibit) the use of a Class 3 Categorical Exemption specifically. CEQA Guidelines Section 15300.2, Subsection (f) provides: *Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of an historical resource.*

### *Class 1 Categorical Exemption*

The Class 1 (CEQA Guidelines Section 15301) exemption provides for the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of the use beyond that existing at the time of the lead agency's determination. Examples include:

*(l) Demolition and removal of individual small structures listed in this subdivision:*

*(1) One single-family residence. . .*

The project includes the demolition of an existing single-family residence and construction of a new single-family residence with attached garage spaces. Accessory structures are also listed in the Class 1 exemption, and demolition of "Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences" are exempt. The project will include demolition of an existing residence, garage, and fences/walls as well as other hardscape improvements, all of which are addressed in the Class 1 exemption.

### *Class 2 Categorical Exemption*

The Class 2 (CEQA Guidelines Section 15302) exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. As noted in the Class 1 Exemption discussion above, the existing structures will be demolished and a new residence, attached garage and accessory structures will be constructed. The construction of the residence is consistent with the Class 2 Exemption because the new residence will have substantially the same purpose and capacity as the structure replaced.

### *Class 3 Categorical Exemption*

The Class 3 (CEQA Guidelines Section 15303) exemption consists of construction and location of limited numbers of new, small facilities or structures. Examples of the exemption include:

*(a) One single-family residence or a second dwelling unit in a residential zone. . .*

*(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.*

The Proposed Project is eligible for a Class 3 exemption because construction of a single-family residence and the related improvements including the garage, pool, patio, and fences are specifically included in the list of examples of small facilities to which the exemption applies.

### *Section 15300.2 Exceptions*

Section 15300.2 of the Guidelines includes criteria where, if applicable to a project, would except (or prohibit) the use of a Class 3 exemption. None of the exceptions listed in Section 15300.2, such as location in a sensitive environment, cumulative impact, significant effect, scenic highways, or hazardous waste sites, are applicable here. However, further discussion and explanation of the inapplicability of the historic resource exception is appropriate due to concerns raised by appellant.

Section 15300.2, Subsection (f) provides: *Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.*

The LCP does mention an architectural historic resources survey of "Mediterranean Revival style dwellings built circa 1930" (as is the existing subject residence) conducted by the Environmental

Coalition of Orange County in 1981 (Page II-8). While this survey included five Emerald Bay residences, it did not include the Subject Property.

The appellant has submitted information to staff that suggests that the subject residence is qualified to be designated as an historic architectural structure, and thus the use of a Categorical Exemption for the project would be inappropriate, due to the applicability of an exception.

The appellant also references CEQA Guidelines, Section 15054.5(a)(3) (*sic*) (the regulation is actually 15064.5(a)(3)), which sets forth criteria for determining whether a resource is an historical resource for purposes of CEQA. Appellant also cites to *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039 (*Valley Advocates*) for the proposition that the County *must* undertake an analysis under CEQA Guidelines Section 15064.5.

Under *Valley Advocates*, the County has discretion to determine that a resource constitutes an historic resource for purposes of CEQA even if the resource is not listed on the State or local registry. As indicated above, the Subject Property has not been registered as an historical resource by the State. In addition, the County does not have an historical register of properties.

Thus, under Public Resources Code Section 21084.1, the County has discretion to determine whether a property, building, etc., is an historic resource for purposes of CEQA:

For purposes of this section, an historic resource is a resource listed in, or determined to be eligible for listing in the California Register of Historical Resources.... The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, no included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be a historical resource for purposes of this section.

See *Valley Advocates*, 160 Cal.App.4th at p.1058.

In turn, the CEQA Guidelines present factors by which a lead agency may consider a whether a property, building, etc., is an historic resource for purposes of CEQA:

- (3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California 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 (Pub. Res. Code, § 5024.1, Title 14 CCR, Section 4852) 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.

Appellant asserts in the appeal letter that at least two of the four factors – the first and third – have been established in the package submitted by the appellant to the State for consideration for the Historical Registry.

As previously indicated, the February 2024 HRAR prepared for the Proposed Project by the applicant and independently reviewed by the County evaluated each of the criteria for Cultural and Historical Resources significance under CEQA. The authors of the February 2024 HRAR had full access to the entire site and structures (Attachment 10). This analysis concluded that the structure did not qualify under the applicable State standards as an historic structure.

The applicant's February 2024 HRAR reveals that while the Emerald Bay Community is associated with specific historical development trends and architecture, 211 Emerald Bay does not specifically have any such significance. The report notes that the Subject Property developed incrementally over the course of multiple different architectural periods, that there is no evidence the Subject Property was outwardly used as an example of the original vision for or architectural aesthetic of the Emerald Bay planned community, that the Subject Property has already been significantly altered over the years, and it is not directly associated with any event making significant contribution to the broad patterns of local or regional history or the larger cultural heritage of the State. Thus, it does not fit within the first criterion.

The February 2024 HRAR notes that while the residence was occupied over the years by various individuals who were well regarded in their community, there is no information indicating that those persons are of significance to local, State, or national history. Moreover, there is no information indicating that any of the work of these individuals is associated with the Subject Property. Accordingly, there is nothing to place the Subject Property within the bounds of the second criterion.

Finally, the HRAR evaluates whether or not 211 Emerald Bay embodies "distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values." (CEQA Guidelines, Section 15064.5, subd. (A)(3)(c).) While other properties within the Emerald Bay community are definitively associated with significant architects or designers, that is not true of 211 Emerald Bay. Moreover, the residence itself exemplifies a mishmash of various different architectural style elements, without any cohesive presentation of an architectural style that is historically significant, and the construction styles are similarly varied and not historically significant. The lack of any clear association with a significant type, period, region, or method of construction, and absent any connection to any master or high artistic value, means that the Subject Property also fails to fall within this third criterion.

The final criterion pertains to the prehistorical value of a property. There is no evidence of any such value associated with 211 Emerald Bay. Therefore, the Subject Property also fails to fall within the fourth criterion under CEQA.

Thus, given the evidence included in and the conclusion of the February 2024 HRAR, that the structure and Subject Property are not historical resources, the use of a Class 3 Categorical Exemption is both permissible and appropriate under the CEQA Guidelines.

#### *CEQA Compliance Summary*

Each component of the Proposed Project, including the demolition of the existing residence and accessory structures, and the reconstruction of the residence and accessory structures, meets criteria outlined in the Class 1, Class 2, and Class 3 exemptions. The Proposed Project will not result in a cumulative impact, significant environmental effect, and will not damage scenic or historic resources.

Thus, CEQA exemptions are appropriate for this Proposed Project. Following the Zoning Administrator's approval, a Notice of Exemption was filed with the County Recorder's office on July 3, 2024, and with the Governor's Office of Planning and Research on July 3, 2024 (Attachment 6). Standard conditions of approval applied by the County for all construction projects of this nature will address any less than significant short-term construction related concerns.

## CONCLUSION

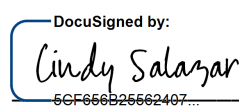
Staff has reviewed the appellant's arguments against the approval of applicant's request for a Coastal Development Permit, Lot Line Adjustment, Variance Permit and Use Permit and found the Proposed Project in compliance with the Emerald Bay LCP, having found no evidence of historical significance and the prior review and approval by the EBCA. Staff recommends denial of the appeal and supports approval of the Proposed Project subject to the Findings and Conditions of Approval provided as Attachments 1 and 2.

Submitted by:

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Kevin Canning, Contract Planner  
OC Development Services/Planning

Concurred by:

DocuSigned by:  
  
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Cindy Salazar, Planning Division Manager  
OC Development Services/Planning

## ATTACHMENTS:

1. Planning Commission Recommended Findings
2. Planning Commission Recommended Conditions of Approval
3. Letter of Appeal dated July 3, 2024
4. June 20, 2024, Staff Report to Zoning Administrator
  - a. Zoning Administrator Findings
  - b. Zoning Administrator Conditions of Approval
  - c. Applicant's Letter
  - d. EBCA Board Approval and Extensions
5. Zoning Administrator June 20, 2024 meeting minutes
6. Notice of Exemption (July 2024)
7. Site Photos
8. Project Plans – Architectural and Site Plans
9. Project Plans – Landscape and Grading Plans
10. Historical Resource Analysis Report (by applicant, 2024)
11. Historical Resource Analysis Report (by appellant, 2023 and revised 2024)
12. Correspondence from or on behalf of appellant