

**ITEM # 1**

**OC DEVELOPMENT SERVICES REPORT**

**DATE:** August 6, 2015

**TO:** Orange County Zoning Administrator

**FROM:** OC Development Services /Planning

**SUBJECT:** Public Hearing on Coastal Development Permit PA150041

**PROPOSAL:** Coastal Development Permit (PA150041) to allow for the recordation of Lot Line Adjustment (LLA) No. 2014-008 based upon a determination by the California Coastal Commission that a Coastal Development Permit is required for a lot line adjustment. The lot line adjustment will divide one lot equally between three existing, adjacent lots. No new construction is proposed or authorized with this application.

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

**ZONING:** R1 (CD) (SR), "Single-Family Residence" District

**LOCATION:** The project area is located in the community of Emerald Bay at 120, 156, 158 and 160 Emerald Bay, Laguna Beach, CA within the Fifth (5<sup>th</sup>) Supervisorial District.

**APPLICANT:** Donald Johnson, Alison Davis, Turner Newton, Property Owners

**STAFF CONTACT:** Kevin Canning, Contract Planner  
Phone: (714) 667-8847 [kevin.canning@ocpw.ocgov.com](mailto:kevin.canning@ocpw.ocgov.com)

**RECOMMENDED ACTIONS:** OC Planning Services recommends the Zoning Administrator:

- A. Receive staff report and public testimony as appropriate; and
- B. Find that proposed project is Categorically Exempt (Class 3 – New Construction or Conversion of Small Structures, and Class 5 – Minor Alterations in Land Use Limitations) from CEQA per Sections 15303 and 15305 of the CEQA Guidelines; and,
- C. Approve Planning Application PA150041 for a Coastal Development Permit for a lot line adjustment setback subject to the attached Findings and Conditions of Approval.

**BACKGROUND AND EXISTING CONDITIONS**

The subject properties, Lots 23, 24, 25 and 26 of Tract 975, lie along the bluff facing the ocean and extend down toward the sandy beach. The properties are designated as “Single-Family Residence” District with “Coastal Development” and “Sign Restriction” District overlay zones within the Emerald Bay community.

The three properties on the bluff top at 156, 158 and 160 Emerald Bay are all developed with single family homes. The lower parcel, at 120 Emerald Bay, is located abutting the sandy beach and is developed with three beach storage cabanas structures. No building permits or records could be located for the cabanas; however County Tax Assessor records indicate a 1941 construction date.

Lot Line Adjustment (LL) 2014-008, discussed below, was approved by the County on March 23, 2015. The California Coastal Commission staff has since determined that the lot line adjustment constitutes development, and is now requiring a Coastal Development Permit.

**SURROUNDING LAND USE**

The zoning and uses for surrounding properties is as follows:

Direction	Zoning Description	Existing Land Use
Project Sites	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
North	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
East	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
South	“Open Space” (OS)(CD)(SR) District within FP3 Zone	Open space, sandy beach
West	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling

**AERIAL OF PROJECT SITE**



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

A copy of the planning application and the proposed project were distributed for review and comment to County Divisions; OC Development Services (Planning, Building, Building Official), and Orange County Fire Authority. All comments received from County Divisions have been addressed in the recommended Conditions of Approval, where applicable and appropriate. On July 2, 2015, a notice of a scheduled July 16<sup>th</sup> hearing was mailed to all property owners of record within 300 feet of the subject site, as well as all occupants of homes within 100 feet. Additionally, a notice was posted at the site, at the County Hall of Administration at 10 Civic Center Plaza, and at the HGO Building at 300 N. Flower, as required by County public hearing posting procedures. At the July 16<sup>th</sup> hearing, the hearing was opened and the item was continued at the request of staff to a continued hearing date of August 6.

## **CEQA COMPLIANCE**

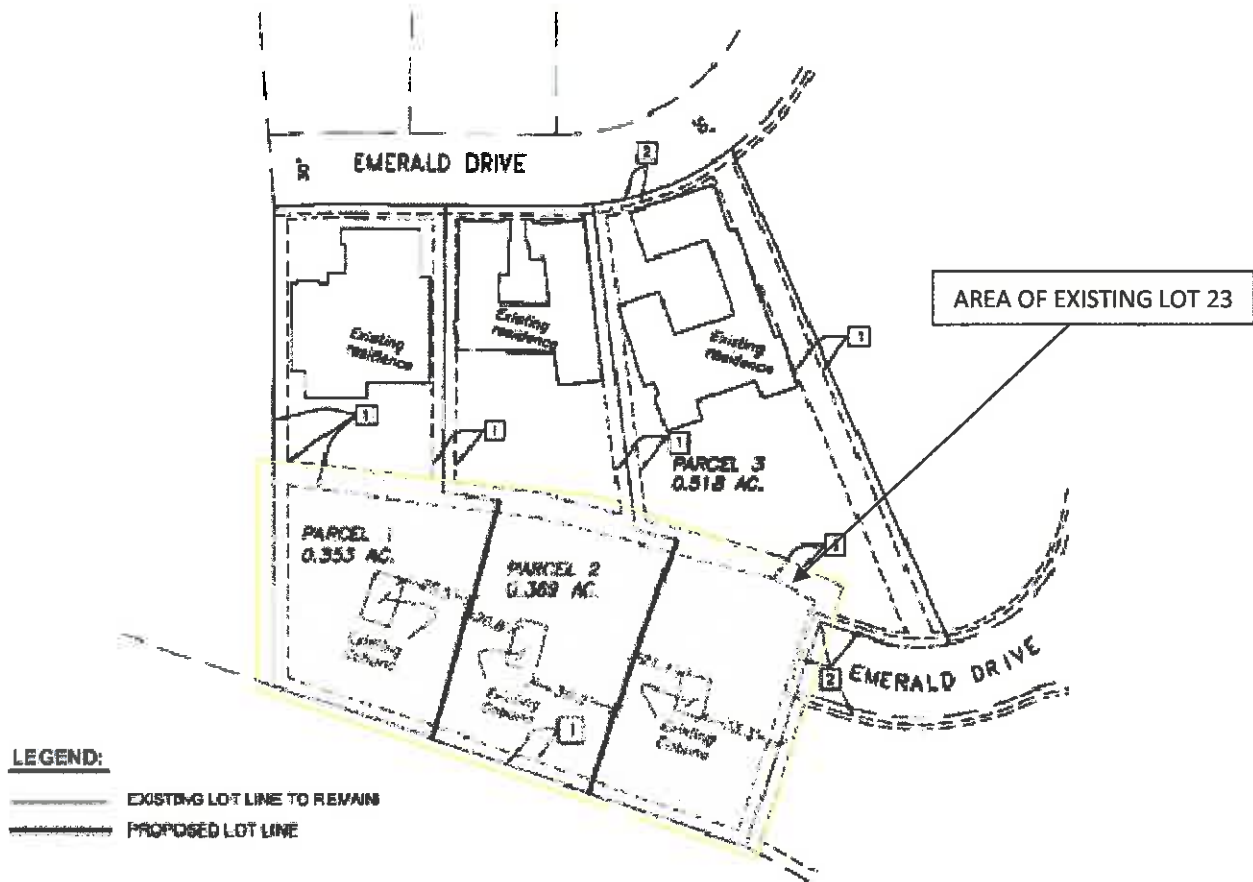
Lot Line Adjustment LL2014-008, approved on March 23, 2015, was determined to be Categorically Exempt (Class 3 – New Construction or Conversion of Small Structures, and Class 5 – Minor Alterations in Land Use Limitations) from CEQA per Sections 15303 and 15305 of the CEQA Guidelines. These classes of exemption address conversion of small accessory (appurtenant) structures, such as the conversion or adjustment of the cabanas from one parcel in shared ownership to each merge with one of the three shared owners' lots; and also address minor lot line adjustments. The proposed project would comply with these limitations and thus is qualified for these exemptions. In that PA150041 is a component of that approval, the same exemptions apply. Prior to project approval, the Zoning Administrator must confirm the adequacy of this determination. A finding for this purpose is provided in Attachment A and the environmental documentation is provided as Attachment D.

## **DISCUSSION/ANALYSIS**

The applicants proposed a lot line adjustment to merge one-third partitions of one lot into each of the three other lots. On March 23, 2015, the County of Orange approved a lot line adjustment (LL 2014-008) that would accomplish this. However, prior to recordation of the approved adjustment, the Coastal Commission staff determined that the lot line adjustment constituted "development" and was subject to Coastal Development Permit requirements.

Three cabanas are currently located on a single separate parcel (existing Lot 23). Historically, each of these structures has been used exclusively by one of the three property owners above. The proposed lot line adjustment would amend property lines such that the lower lot would be equally divided among three existing, resulting in each lot extend to include one of the cabanas. No change in use nor any construction or physical improvements or alterations are proposed. Following the recordation of the lot line adjustment, the cabana structures would still observe all proper accessory structure setbacks from the adjusted lot lines. Property lines along the existing single family homes above would not be affected and existing setbacks for the homes would not change.

### LOT LINE ADJUSTMENT LL2014-008



The applicants will record a private deed restriction (Declaration of Covenants and Restrictions, Attachment F) regarding future use and improvement limitations to the cabana structures and their current area (Lot 23), including:

- No residence or any portion thereof may be located on the Lot 23 area
- Only the three cabana uses may be located on the Lot 23 area
- A cabana is not to be used for overnight occupancy or accommodations
- Specified limits for any cabana structure regarding the height (12 feet maximum), area (450 square feet maximum) and location (no closer than 35 feet from beach property line)
- No new fencing, except for the maintenance and repair of the existing fence along the easterly boundary of Lot 23.

These proposed private land use restrictions would be more restrictive than standards within the Zoning Code and the Emerald Bay Local Coastal Program. From a zoning/land use regulatory standpoint, the cabana structures would currently be categorized as accessory buildings on a single family lot, although future conversion of one of the structures to either a guesthouse or second residential unit could be permitted under the County's Zoning Code and pursuant to Government Code Section 65852.2 (dealing with second residential units). A typical floorplan of the cabanas is included within Attachment C.

Lot 23 is within the permitted residential development area of the Emerald Bay Local Coastal Program, and therefore the use of the cabana structures as guesthouses or second residential uses would be consistent with land use regulations. However, the required deed restrictions would limit the permitted uses and development criteria and would therefore meet or exceed the requirements of the Emerald Bay Local Coastal Program for this area.

## CONCLUSION

Staff has reviewed the applicant's request for a Coastal Development Permit to allow the lot line adjustment and found it to be compliant with the Emerald Bay Local Coastal Program. Staff supports the project and recommends approval subject to the Findings and Conditions of Approval provided in Attachments A and B.

Submitted by:



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Laree Brommer, Planning Manager  
OC Development Services

Concurred by:



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Colby Cataldi, Deputy Director, Manager  
OC Development Services

## ATTACHMENTS:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Zoning Code Excerpts and Cabana Typical floorplan
- D. Applicant's Letter of Explanation
- E. Environmental Documentation
- F. Site Photographs and Plans

## 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 filing fee of \$500 filed at the Development Processing Center, 300 N. Flower St., 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.



## Appendix A Findings PA150041

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- |   |                                     |                 |
|---|-------------------------------------|-----------------|
| <b>1</b>  | <b>GENERAL PLAN</b>                 | <b>PA150041</b> |
| <p>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.</p>  |                                     |                 |
| <hr/>   |                                     |                 |
| <b>2</b>  | <b>ZONING</b>                       | <b>PA150041</b> |
| <p>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.</p> |                                     |                 |
| <hr/>   |                                     |                 |
| <b>3</b>  | <b>COMPATIBILITY</b>                | <b>PA150041</b> |
| <p>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.</p> |                                     |                 |
| <hr/>   |                                     |                 |
| <b>4</b>  | <b>GENERAL WELFARE</b>              | <b>PA150041</b> |
| <p>That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.</p>  |                                     |                 |
| <hr/>   |                                     |                 |
| <b>5</b>  | <b>PUBLIC FACILITIES</b>            | <b>PA150041</b> |
| <p>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.).</p>                               |                                     |                 |
| <hr/>   |                                     |                 |
| <b>6</b>  | <b>COASTAL DEVELOPMENT PERMIT 1</b> | <b>PA150041</b> |
| <p>That the development project proposed by the application conforms with the certified Local Coastal Program.</p>  |                                     |                 |
| <hr/>   |                                     |                 |
| <b>7</b>  | <b>COASTAL DEVELOPMENT PERMIT 2</b> | <b>PA150041</b> |
| <p>That the project conforms with the public access and public recreation policies of the California Coastal Act.</p>   |                                     |                 |
| <hr/>   |                                     |                 |
| <b>8</b>  | <b>COASTAL DEVELOPMENT PERMIT 3</b> | <b>PA150041</b> |
| <p>That the approval of this application will result in no modification to the requirements of the certified land use plan.</p>   |                                     |                 |

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**9 COASTAL DEVELOPMENT PERMIT 4 PA150041**  
That the approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan.

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**10 COASTAL DEVELOPMENT PERMIT 4 PA150041**  
That the project is Categorically Exempt (Class 3 – New Construction or Conversion of Small Structures, and Class 5 – Minor Alterations in Land Use Limitations) from CEQA per Sections 15303 and 15305 of the CEQA Guidelines

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**11 FISH & GAME - EXEMPT PA150041**  
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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**12 NCCP NOT SIGNIFICANT PA150041**  
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.

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**Attachment B**  
**Conditions of Approval**  
 PA150041

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**1** **PA150041**  
**BASIC/ZONING REGULATIONS**

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.

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**2** **PA150041**  
**BASIC/TIME LIMIT**

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.

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**3** **PA150041**  
**BASIC/PRECISE PLAN**

Except as otherwise provided herein, this permit is approved as a precise plan. 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, Development Services, for approval. If the Director, Development Services, 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.

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**4** **PA150041**  
**BASIC/COMPLIANCE**

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.

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**5** **PA150041**  
**INDEMNIFICATION**

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 Director of Planning concerning this application. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition. 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.

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**6 BASIC/APPEAL EXACTIONS PA150041**

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.

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**7 RESTRICTIONS (CUSTOM) PA150041**

Prior to the recordation of LL 2014-008, the applicant shall prepare a Declaration of Covenants and Restrictions addressing the restrictions on the use and improvements to the cabana structures and area as was discussed within the project staff report. The document will be reviewed by the Planning Manager, Development Services, and a copy of the recorded document provided thereafter.

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## Orange County Zoning Code and Government Code excerpts

**Orange County Zoning Code**

*Accessory building:* A subordinate building located on a building site, the use of which is customarily ancillary to that of a main building or to the use of the land.

*Dwelling unit:* One or more rooms in a structure including a kitchen of any size, designed for occupancy by one family for living and sleeping purposes, and including a mobilehome when such mobilehome bears an insignia of approval issued by the California Department of Housing and Community Development or a housing seal number from the Federal Department of Housing and Urban Development (HUD).

*Guesthouse:* A detached building having no kitchen facilities, which is used primarily for sleeping purposes for members of the family occupying the main dwelling and their nonpaying guests.

**Sec. 7-9-146.5. - Guesthouse or second residential unit.**

In any district, including planned community and specific plan areas, where a single-family unit exists on a parcel zoned for such purposes, the property owner may establish a guesthouse or second residential unit (one per building site), subject to the following:

## (a) Guesthouse.

The guesthouse shall be located so as not to encroach into any setback area required of the main residence. Guesthouses six hundred forty (640) square feet or less in floor area shall not require a discretionary permit unless it is required for the main residence. Guesthouses over six hundred forty (640) square feet in floor area on building sites of one (1) acre or larger shall require a site development permit. Guesthouses over six hundred forty (640) square feet in floor area on building sites less than one acre shall require a use permit approved by the Zoning Administrator.

## (b) Second residential unit.

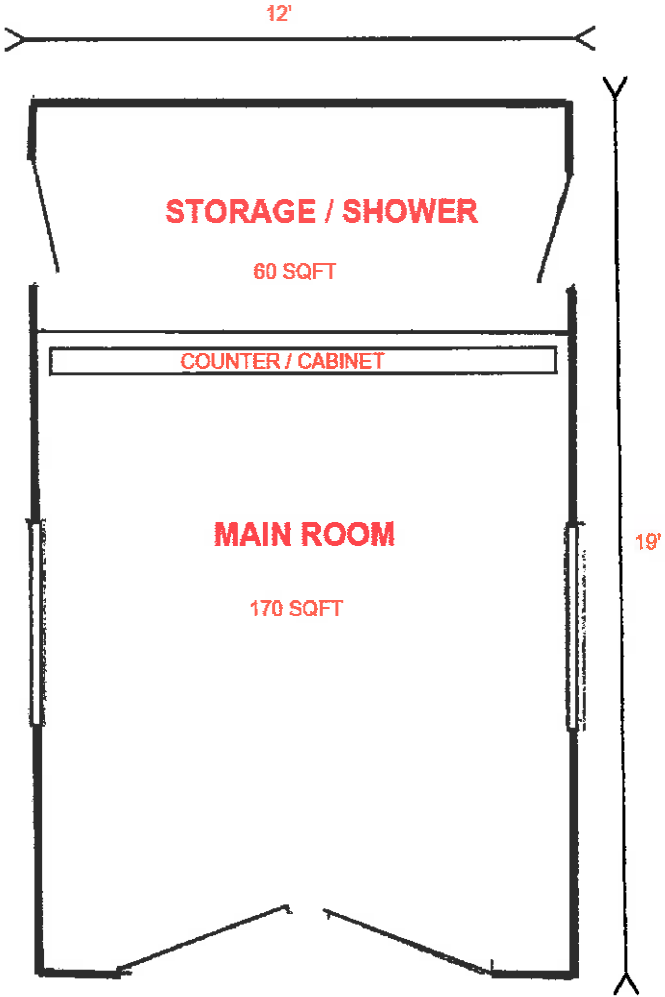
In conformance with California Government Code section 65852.2, in any district, including planned community and specific plan areas, where a single-family unit exists on a building site zoned for single-family or multi-family residential purposes, the property owner may establish a second residential unit (dwelling unit) subject to the following criteria:

- (1) No second residential unit shall already exist on the building site.
- (2) The unit is not intended for sale but may be rented.
- (3) The unit shall not exceed one thousand two hundred (1,200) square feet in floor area or thirty (30) percent of the existing floor area if the unit is attached to the existing single-family unit.
- (4) The unit shall comply with the site development standards of the zoning district in which it is located, including, but not limited to, height, setback area, and lot coverage as well as building code requirements applicable to detached buildings as appropriate.
- (5) Adequate water and sewage service is available. If a private sewage system is proposed, such private sewage system shall comply with the Orange County Plumbing Code.
- (6) One (1) additional uncovered parking space per the standards set forth in section 7-9-145 is provided is required.

**Government Code Section 65852.2**

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

- (A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.



**TYPICAL CABANA FLOOR PLAN**  
APPROX. 12 FT X 19 FT = 230 SQFT

FRED GAINES  
SHERMAN L. STACEY  
LISA A. WEINBERG  
REBECCA A. THOMPSON  
NANCI S. STACEY  
KIMBERLY RIBLE  
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LAW OFFICES OF  
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May 4, 2015

BY FEDERAL EXPRESS

Mr. Jerry Olivera  
County of Orange  
Land Use Planning  
300 North Flower Street  
Santa Ana, CA 92703

Re: Application for Coastal Development Permit  
for Lot Line Adjustment No. 2014-008  
Lots 23, 24, 25 and 26, Tract 975, Emerald Bay

Owners: H. Turner Newton, et al.  
Donald P. Johnson  
Alison Davis

Dear Jerry:

I have enclosed a Planning Permit Application for a Coastal Development Permit for the Lot Line Adjustment No. 2014-008 approved by the County Engineer on March 23, 2015. The Coastal Commission staff has advised the property owners that a coastal development permit is required for a lot line adjustment as it constitutes development as a "division of land" as defined in Public Resources Code §30106 and in County Code §7-9-118.3. As the County of Orange has a certified Local Coastal Program for Emerald Bay, the County is the permitting agency for a coastal development permit under County Code §7-9-118, et seq.

The following documents are enclosed:

1. Planning Permit Application.
2. Agent Authorization and Notarization Form (one for each of three applicants).
3. OC Public Works determination of Class 3 and 5 categorical exemption from CEQA.
4. Four copies of County of Orange Lot Line Adjustment LL2014-008.
5. Orange County Fire Authority Service Request Form.
6. Two photographs of Lot 23 cabanas with residences on Lots 24, 25 and 26 shown above.
7. Susan W. Case, Inc. Notice List and Radius Map.

Mr. Jerry Olivera  
May 4, 2015  
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8. Stamped envelopes addressed to all parties shown on Notice List.
9. Designation of Financially Responsible Party.
10. Check in the amount of \$5,000 as initial deposit for fees.
11. A flash drive with copies of this letter and all of Items 1 through 7 and 9 above.

The proposed Lot Line Adjustment No. 2014-008 would adjust the boundaries between 4 parcels such that one of the four parcels is divided into three parts and each of the three parts is added to one of the other parcels. No construction or changes of use are proposed.

The parcel to be divided is Lot 23. Lot 23 has had three rustic beach storage cabanas which were constructed during the mid 1940's or early 1950's. Each of the owners/applicants owns a lot abutting Lot 23 on which there are existing single family residences. Each portion of Lot 23 contains one of the three beach storage cabanas. The resulting three lots will then each have a single family residence and a beach storage cabana.

The owners have entered into a written agreement that provides that concurrently with the recording of the lot line adjustment, they will record a restriction which will limit the three portions of Lot 23 to be used only for beach cabana uses, including limits on size and height. No change in the design of any of the existing structures and no construction is contemplated at this time. Lot 23 will continue in the form, use and condition that has existed for the past 60+ years.

When Lot Line Adjustment No. 2014-008 is completed, each of the resulting parcels will exceed the required 7,200 square feet of area. The dividing lines for the portions of Lot 23 provide the required side and rear yard setbacks for each cabana. Each cabana has existed for 60+ years without any impact upon the public health and safety and are consistent with the general welfare.

The applicants request that the County approve a coastal development permit for Lot Line Adjustment 2014-008.

Sincerely,

*Sherman L. Stacey*  
SHERMAN L. STACEY

SLS/dc

cc: H. Turner Newton  
Donald P. Johnson  
Alison Davis  
Al Clark, Esq.  
Jeffrey Gonzalez, Esq.



**Lot Line Adjustment**  
**LLA 2014 – 008**

The General Plan designates the subject property as 1B (Suburban Residential). It is zoned R1 (CD) (SR), Single Family Residence, in the California Coastal Zone. The Lot Line Adjustment described herein is found consistent with all relevant planning policies and zoning regulations and is categorically exempt from CEQA (Class 3 and 5).

As allowed by and in conformance with the California Subdivision Map Act (Section 66412d) and the Orange County Subdivision Code and Subdivision Manual (Subarticle 16 and Chapter 7, respectively) the Lot Line Adjustment described herein is approved.

County of Orange  
 OC Public Works  
 Shane L. Silsby, Director

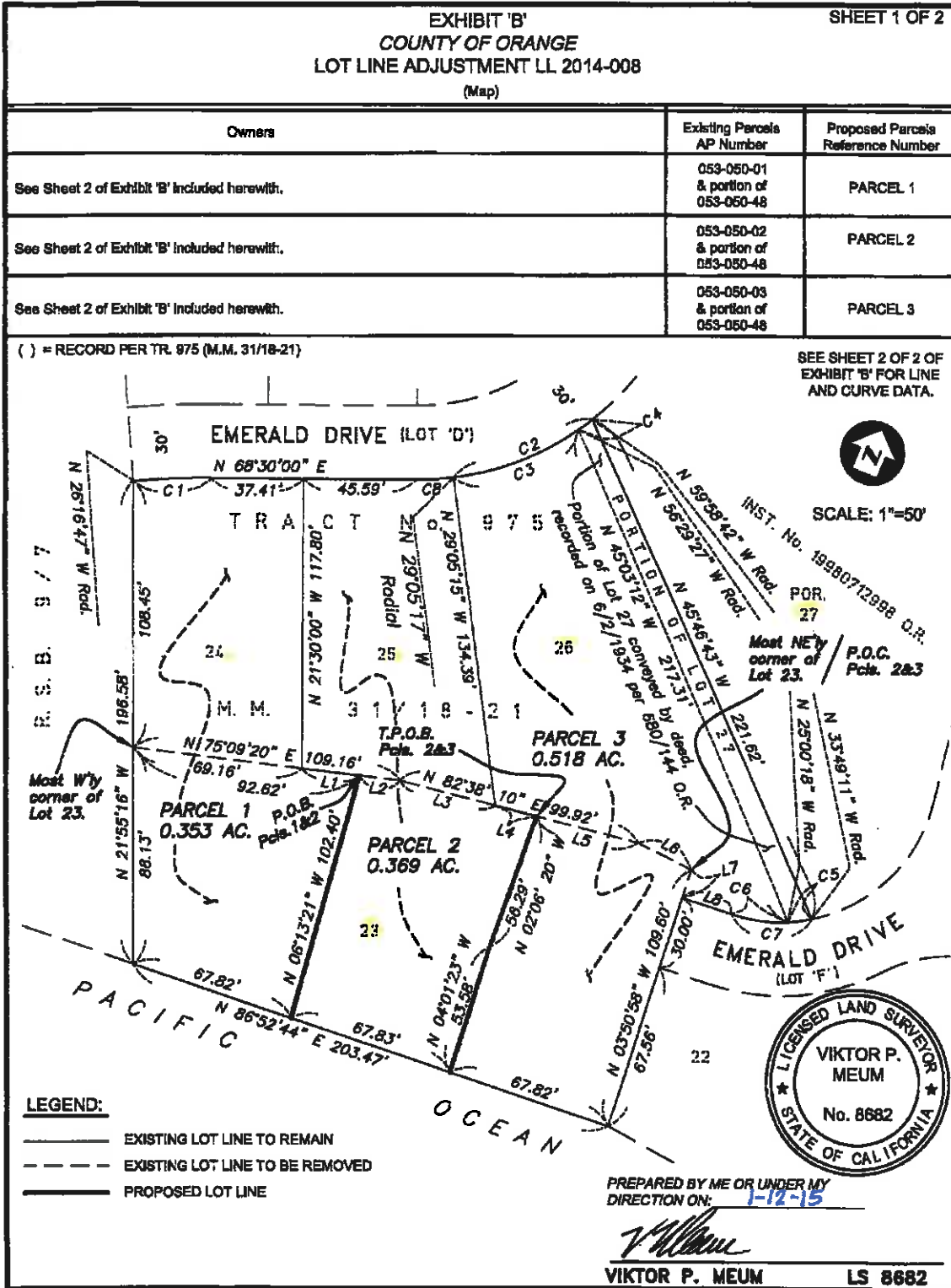


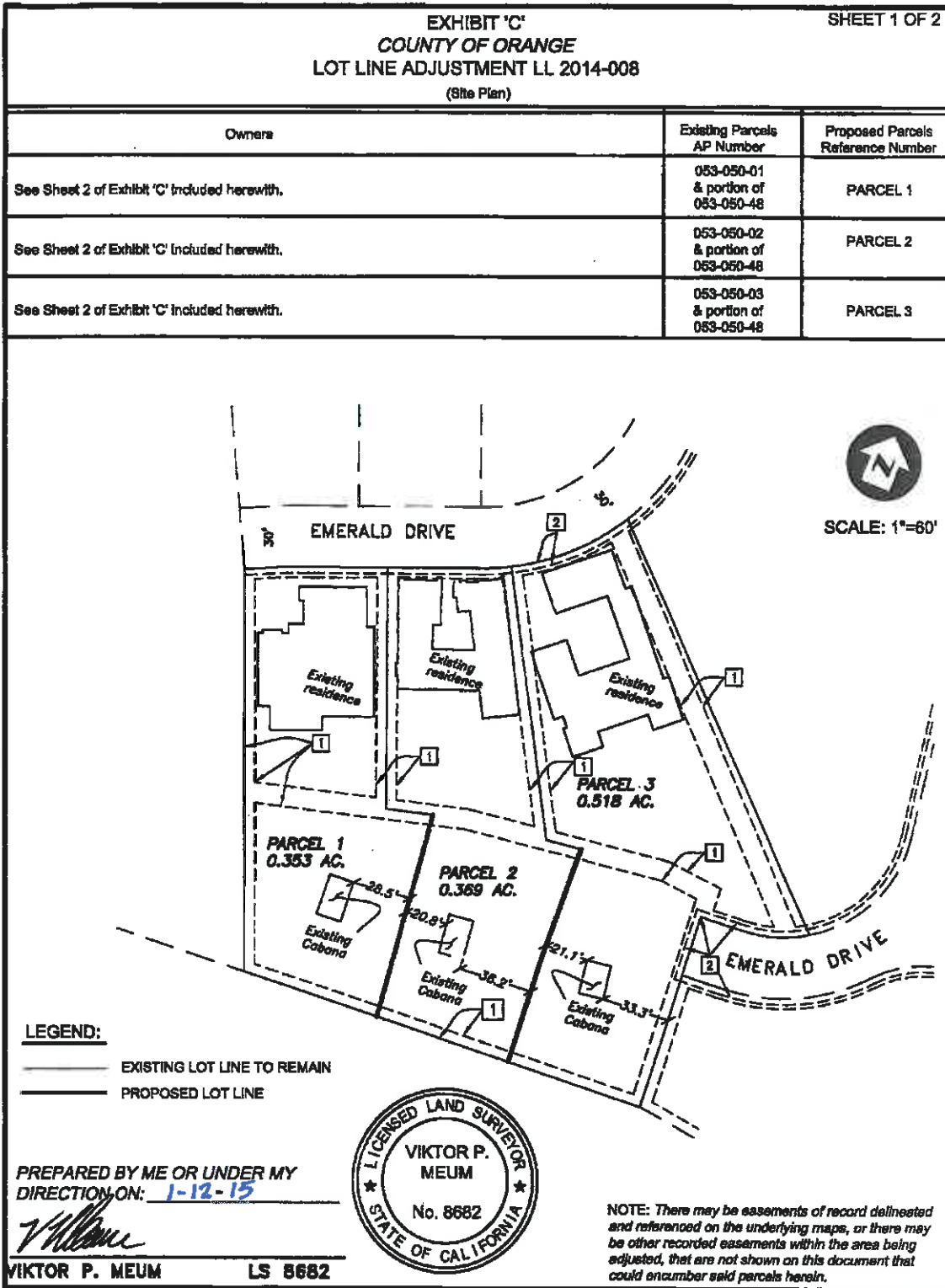
By: Mahrooz Ilkhanipour  
 Mahrooz Ilkhanipour, P.E.  
 Manager, Permitting Division

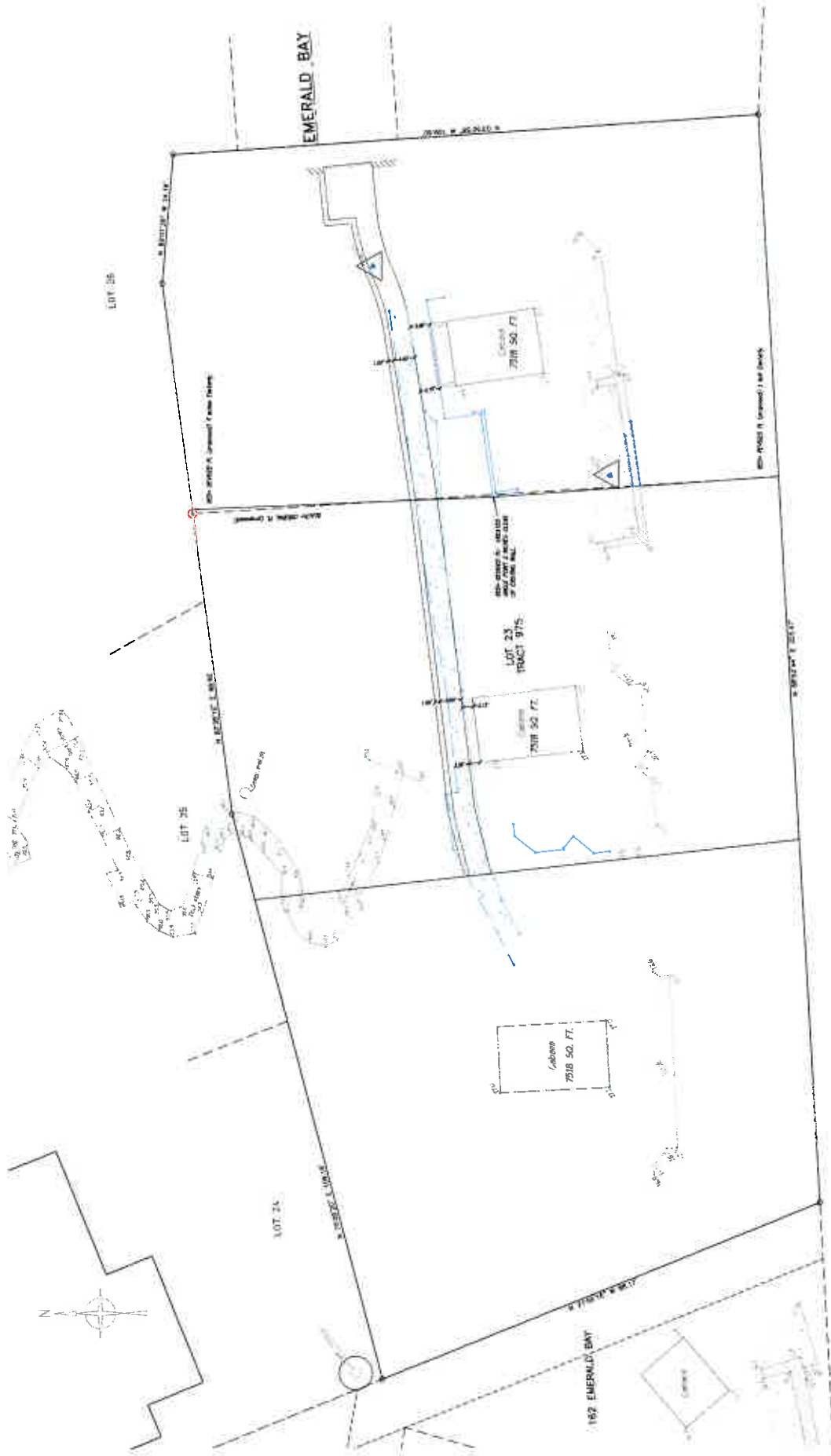












ASAP