



*Monarch Bay Association*

# Architectural Guidelines

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These criteria were compiled, revised and edited by Keisker & Wiggle Architects, Inc. This edition of the Monarch Bay Association Architectural Guidelines was approved by the Board of Directors and the Architectural Control Committee in October, 1997.

## **1.0 PURPOSE**

**1.1** The purpose of these Architectural Guidelines is to provide a procedure and establish guidelines for assisting each Owner in obtaining approval of construction, landscaping, additions, or alterations to his or her Lot and the improvements thereon.

**1.2** These Architectural Guidelines shall form the basis for evaluation of plans and specifications submitted for review and approval to the Monarch Bay Architectural Control Committee (ACC).

## **2.0 APPLICABILITY**

**2.1** Every new home built within Monarch Bay subsequent to demolition of an existing home, as well as any and all additions and/or modifications to homes previously approved and constructed within Monarch Bay, is subject to the terms and conditions of the Architectural Guidelines.

**2.2** Approval and conformity of plans as specified in Bylaws shall prevail and must be adhered to. Please refer to the Bylaws for general use restrictions. In the event of a conflict between these standards and the Bylaws, the Bylaws will prevail. Any condition or material not defined within these guidelines shall become a matter of judgment on the part of the ACC unless described in the Bylaws.

**2.3** Any and all approvals given by the ACC are site specific. The approval goes with the property, not the Owner.

**2.4** No approval, including the approval of a variance, is precedent setting. All requests are reviewed and approved on their own merits.

**2.5** Except as may be warranted in a specific situation, the ACC will not be responsible for establishing criteria for views across lots, other than as described in these Architectural Guidelines.

**2.6** By way of illustration, but without limitation, submission to the ACC for approval shall be required for the following:

A. New exterior construction or installations including but not limited to dwellings, accessory buildings, garages, fences, retaining walls, steps, awnings, canopies, poles, trellises, patio overheads or decks, gazebos, sun decks, wind screens, swimming pools, fountains, spas, hot tubs, recreational apparatus, antennas, satellite dishes, exterior lighting, sound or solar energy systems, pumps and electrical equipment.

B. Installation or revision of landscaping, hardscaping or surface improvements including ground covers, trees, shrubs, plants, irrigation or drainage systems, recreation areas or courts, and surface drainage revisions.

C. Reconstruction, exterior additions, changes or alterations on any building, structure, fence, wall or other improvement including changes of color, material or exterior surface.

### **2.7 Other Approvals**

Approval of any project by the ACC does not waive the necessity of obtaining the required City of Dana Point or other jurisdictional permits. Obtaining a City of Dana Point or other jurisdictional permit does not waive the need for ACC approval. The ACC will not knowingly approve a project which is in violation of the City or other jurisdictional building or zoning codes.

**2.8** In reviewing any plans submitted to them, the ACC and/or the Consulting Architect are not rendering and cannot render any opinion as to whether such plans meet and/or comply with any applicable rules or requirements of any appropriate governmental agency such as the City of Dana Point. Granting approval to any particular plan is strictly limited to a statement as to conformity with the rules and guidelines set forth herein, with variances permitted if appropriate. Absolutely no responsibility or liability whatsoever, expressed, implied, or imputed, is intended or to be inferred or construed as to the project itself. Further, should a variance be granted by the ACC, this in no way guarantees a similar variance by the City, should it be required, will be granted. It is the applicant's responsibility to research and comply with all governing agency regulations.

**2.9** The provisions of these Architectural Guidelines shall not be construed to repeal, amend, modify or otherwise impair with an existing ordinance or code enacted by governmental agencies having jurisdiction over the site, nor on any existing Sublease agreement legally executed between Lessor and Lessee. In case of conflict between the specifications of these Architectural Guidelines or codes legally adopted by governmental agencies, the most restrictive will apply. In case of conflict between these Architectural Guidelines and the provisions of existing Sublease agreements, the provisions of said Sublease shall apply.

## **3.0 DESIGN REVIEW & THE APPROVAL PROCESS**

### **3.1 Required Submittals**

**3.1.1** The review process in Monarch Bay is set up to allow the ACC to review proposed projects during the Design Phase. A rather complete Preliminary Design Submittal is required so that the ACC can adequately review the project before Construction Documents begin. This can save the Owner time and the possible extra expense of changes to complete working drawings. If the Owner wants to submit more detailed drawings than are required, that is done at the Owner's sole risk and expense. It is the Owner's responsibility to get current and proper information to his or her design team, including a current copy of the Application and Agreement Form, the Submittal Checklist and the Architectural Guidelines.

**3.1.2** A complete submittal must include all plans, specifications, color and materials board, applications and fees as outlined in these guidelines and in the Submittal Checklist and Application and Agreement.

**3.1.3** All submittal drawings shall be clearly labeled with the name, address and phone number of the person who prepared the documents. Each sheet shall be labeled with the current date, and the date shall be changed with all subsequent revisions.

**3.1.4** Any submittal for "New Home Construction" or "Additions and Major Remodels" shall be prepared by an architect who is licensed in the state of California.

**3.1.5** Care must also be taken to observe the submittal cutoff dates or the submittal can be delayed by up to one month.

**3.1.6** Except for informal submittals under Section 3.2, all submittals must be made through the Management Company. Submitting directly to the Consulting Architect, an ACC member or at an ACC meeting will only delay the approval process.

**3.1.7** Two plan approvals are required:

**A. Preliminary Plan Approval.**

The preliminary drawings are meant to be a design level submittal; however all information requested must be on the drawings.

**B. Final Plan Submittal.**

The final drawings shall be the completed working drawings that will be submitted to the City for plan check. Any plan check changes that affect the exterior of the building shall be resubmitted to the ACC for approval.

**3.1.8** The fee paid by the Owner includes a specified number of plan reviews. If further reviews are required, additional fees will also be required. Incomplete submittals are returned unchecked and count as one of the included reviews.

### **3.1.9 Application and Agreement Form**

The Owner is required to submit one signed copy of the current, completed Application and Agreement along with the appropriate fee. The Owner's signature, **(not an agent)** must be on the application form. Applications for properties in escrow will not be reviewed until the close of escrow.

### **3.1.10 Architectural Review Fee**

Refer to the Application and Agreement for the current fee schedule. Plans will not be accepted for review unless accompanied with the appropriate fee. The Architectural Review Fee is non-refundable.

**3.1.11** If an application for "New Home Construction" or "Additions and Major Remodels" is accompanied by the required Landscape/Hardscape submittal, the basic review fee of the building application covers the total project. If the Landscape/Hardscape submittal is made separately, then an additional review fee will be assessed. Major design changes or additions made during the approval process will require an additional fee.

**3.1.12** Once an application has received Final Plan Approval by the ACC, all subsequent submittals will require a new application and additional submittal fees.

## **3.2 Submittals not requiring Submittal Fee or Formal Review**

**3.2.1** Minor alterations without structures, pool or spa, may, at the discretion of the ACC, be exempt from submittal fees and formal review by the ACC. This includes fencing at any height, and plant material that will not exceed 3' in height at maturity. If the Owner believes that his or her project will have no impact on neighbors and will cause no visual detriment to the neighborhood, an Application & Agreement Form, accompanied by a sketch of the proposed work, shall be submitted directly to the Chairman of the ACC for informal review.

**3.2.2** Exterior Color Change may be exempt from formal review by the ACC. An Application & Agreement Form, accompanied by color samples, shall be submitted directly to the Chairman of the ACC for informal review.

## **3.3 The Submittal Checklist**

The Submittal Checklist has been prepared as an aid to the Owner and architect in preparing the Preliminary Plan and Final Plan Submittals. The checklist is not a substitute for the full Architectural Guidelines and therefore both should be used in the assembly of the submittal package. All items shown with a check in the appropriate column must be submitted. Following is a brief outline of the requirements outlined on the Submittal Checklist.

### **3.3.1 Survey and Topographic Map**

Every site plan must show current and correct topographic information. Every survey and topographic map must be prepared and signed by a licensed land surveyor or Civil engineer. The map should show sufficient topographical information to show abrupt changes of grades, slope banks and natural flow lines. The top of curb height at the two street corners should be clearly indicated. Refer to the Submittal Checklist for the specific requirements. No assumed datum points will be accepted. The grades

shown on Tracts #3839 and #3748 shall be based on Orange County datum so that each topographic map can be compared with that on the original grading plan. Maximum roof heights will be measured using Orange County Datum.

### **3.3.2 Site Plan**

All building and landscape submittals require an accurate site plan. The site plan shall clearly show the dimensioned locations of all the existing and proposed components of the project. The scale and grade information must match the Survey and Topographic Map and the Grading Plan. All grading plans shall be prepared by a Civil Engineer or Architect licensed in the State of California. Refer to the Submittal Checklist for the specific requirements.

### **3.3.3 Floor Plans**

Every plan submittal of building plans shall include floor plans of all structures. Specific requirements are listed in the Submittal Checklist.

### **3.3.4 Roof Plan**

All building plan submittals shall include a roof plan. Clearly indicate all materials, pitches and colors. Actual samples will be required for the Color/Materials Board. Refer to the Submittal Checklist for specific requirements.

### **3.3.5 Building Sections**

All building plan submittals shall include at least one section, drawn at the same scale as the floor plans. At least one section must be taken through the highest portion of the structure. The site must be accurately depicted on every section. Refer to the Submittal Checklist for specific requirement

### **3.3.6 Exterior Elevations**

All walls visible from the exterior of the structure must be shown. The maximum allowable height should be shown on the exterior elevations. See Sections 5.2 and 5.3. For a color change only, photographs of the exterior walls may be substituted for drawings. However, it is necessary to clearly indicate where each color will be used. Again, actual samples will be required for the Color/Materials Board. Refer to the Submittal Checklist for the specific requirements. The "Materials and Colors Legend for Building and Hardscape" from the Submittal Checklist should be included within the drawings and keyed appropriately to the elevations. All materials shall be clearly indicated.

### **3.3.7 Colors, Finishes and Materials**

The submittal shall be 8 1/2" x 11", rigid mounted (foam core, double weight illustration board) with actual material and color samples. No printed stucco or wood samples are acceptable. All samples shall be minimum 1" x 2", clearly labeled with manufacturer, color name and color number, and where used on the building. All exterior materials must be represented on the board (or boards). For large materials such as roof tiles and bricks, submit only a small sample piece, not the full size sample. Submittals shall be clearly labeled with lot number, address and Owner's name.

### **3.3.8 Building Details**

The details as required by the Submittal Checklist shall be included within the submittal and keyed to the appropriate plans and elevations.

### **3.3.9 Hardscape Plan**

All heights and materials shall be clearly indicated. Separate plans of all structures are required. Refer to the Submittal Checklist for specific requirements. Show all slopes, important spot grades and location of top and toe of slopes on plans.

### **3.3.10 Planting Plan**

In general, a plan showing the total design concept, clearly labeling plant materials and sizes is required. Plant palettes are not acceptable. This plan must address the whole lot. Sketches or larger scale drawings indicating proposed planting features where necessary to communicate the concept may be submitted.

### **3.3.11 Photographs**

Color photographs of all sides of existing building exteriors are required for addition and remodel applications. Only one copy of each photograph is required. The photos should include any existing landscape, hardscape and walls fences. For Variance submittals additional photographs may be required.

### **3.3.12 Perspective, Isometric, Rendering or Model**

Not specifically required, however, this can help the ACC to understand the proposal more easily. The ACC reserves the right to request a rendering or model at their discretion.

### **3.3.13 Soils Report, Pool Plans**

It is mandatory that the services of a Soils Engineer be retained to review pool plans and specifications prior to plan submission for pools proposed on bluff lots. A letter from the engineer must accompany all submittals for pools, located within 10' of the top of any slope bank.

## **3.4 Staking**

**3.4.1** The ACC may request that owners of projects that involve new construction, alterations of existing rooflines, or modifications to the building footprint, to clearly mark with appropriate survey stakes all corners of the proposed footprint and the heights of corners of the highest proposed ridgeline as a condition of preliminary plan approval.

**3.4.2** Stakes and any corresponding strings shall be color coded to clearly differentiate ridge markers and building footprint markers.

**3.4.3** Position and heights of stakes demarcating proposed rooflines shall be site verified by a licensed California civil engineer or land surveyor.



### **3.5 Variance**

**3.5.1** A Variance is required if plans call for exceeding the height or footprint of the existing structure in tract #4472 (Mall). The Variance shall not be granted if there is a written objection from an owner in Tract #4472 unless the ACC (or the Board in the event of an appeal) finds the objection is arbitrary, capricious or clearly unreasonable.

**3.5.2** A Variance is required if plans call for encroaching into the setback requirements or exceeding the height limits in Tracts #3839 and #3748. The Variance shall not be granted if there is a written objection from an owner in either Tract #3839 or #3748 unless the ACC (or the Board in the event of an appeal) finds that the objection is arbitrary, capricious or clearly unreasonable.

**3.5.3** The Owner submits a letter explaining the reasons(s) for the Variance request, copies of which are sent to all Monarch Bay owners for comment.

**3.5.4** Approval or denial of Variances by the ACC shall be subject to appeal to the Board by any owner for any reason. Following approval or denial of a Variance by the ACC, proponents and opponents to the Variance shall be notified of their right to file a written appeal with the Board within fifteen (15) days of the date of the ACC's written notice. On an appeal to the Board, the Board shall exercise its independent judgment on the merits of the Variance request. The Board's decision on the matter shall be final.

### **3.6 Neighbor Awareness**

The Owner may be required to obtain comments from nearby owners on Neighbor Awareness Forms when deemed appropriate by the ACC.

### **3.7 Preliminary Plan Approval**

**3.7.1** The Owner submits to the Management Company an Application & Agreement Form, the appropriate number of sets of Preliminary Design Documents and the required fee.

**3.7.2** The ACC reviews the preliminary plans for conformance with the Architectural Guidelines and either approves the plans as submitted or recommends changes. If plans are not approved, the Owner shall resubmit revised plans addressing the concerns of the ACC.

**3.7.3** The ACC shall take action on plans within 60 days of their submittal.

**3.7.4.** The Preliminary Plan Approval is valid for one year. Completed working drawings must be submitted for Final Plan Approval within that time period. If the final drawings are not received, the approval shall be automatically terminated. After expiration any renewal request or resubmittal shall be treated as a new application and subject to the current guidelines in force.

**3.7.5** A request for a one year extension of the approval must be received at least 30 days prior to the expiration date to be considered by the ACC. A letter of justification requesting the extension shall be submitted to the ACC. Time extensions will be granted for only the original Owner.

### **3.8 Final Plan Approval**

**3.8.1** From the approved Preliminary Plans, the Owner prepares complete Construction Documents for the project. Final Landscape Plans shall be submitted concurrently with Final Building Plans. Final Plan Approval will only be granted to plans that include both the Building and Landscape Submittal. Both sets of plans shall conform to the requirements of the Submittal Checklist. The applicant then submits to the Management Company the required number of sets of drawings.

**3.8.2** The ACC reviews the final plans for conformance with the approved preliminary plans and the Architectural Guidelines and either approves the plans or recommends changes. If plans are not approved, the Owner shall resubmit revised plans addressing the concerns of the ACC.

**3.8.3** Final plan approval is valid for one year. A request for a one year extension of the approval must be received at least 30 days prior to the expiration date to be considered by the ACC. A letter of justification requesting the extension shall be submitted to the ACC. Time extensions will be granted for only the original Owner.

### **3.9 Submittal to Public Agencies**

The Owner shall submit the approved Final Plans to all applicable Public Agencies within 6 months of the date of Monarch Bay's approval. Failure to do so may, but not necessarily will, result in a re-review by the ACC. Any changes required by Public Agencies which have not been approved by the ACC must be returned to the ACC for review and final approval prior to issuance of a Building Permit.

### **3.10 Resolution of Disputes**

If an Owner who submits plans and specifications to the ACC, not involving a Variance, is dissatisfied with the action of the ACC and contends that the ACC acted in an unjust, unreasonable, arbitrary or capricious manner in reviewing and acting on such plans and specifications, such Owner shall have the right to file a written appeal with the Board of the Association within fifteen (15) days of the date of the ACC's written notice. The Board's decision on the matter shall be final.

## **4.0 SITE DESIGN CRITERIA**

### **4.1 Setbacks**

**4.1.1** On lots in Tract # 3839 and Tract 3748, the building shall be constructed within the standard required setback limits, or the City of Dana Point required limits, whichever is more restrictive. The standard property setbacks are:

- a. Front yard setback between the front property line and the face of any building wall or column is no less than 20'.
- b. Rear yard setback between the rear property line and the face of any building wall or column is no less than 25' for lots up to 125' in depth; or no less than 20% of the lot depth for lots greater than 125' deep.
- c. For interior lots, the setback between the side property line and the face of any building wall or column is no less than 5'.
- d. For corner lots, the setback between the side street property line and the face of any building wall or column is no less than 10'.

**4.1.2** Any structure over 30 inches in height must be within setback lines, except for chimneys (See Section 5.1.4).

**4.1.3** Eaves, cornices, or cantilevered roofs may project a maximum of forty (40) percent into any required side setback and twenty-five percent into any required front or rear setback, but in no event shall such eaves, cornices, or cantilevered roofs be closer than three (3) feet to any side property line.

**4.1.4** Chimneys, no greater than 6'-0" wide, may project into any required front, side or rear setback area a maximum of twenty-four (24) inches, but in no event shall such chimney project into any required setback area so as to be closer than three (3) feet to any side property line.

**4.1.5** Approval of a setback different than the setbacks prescribed herein does not in anyway guarantee that the City of Dana Point will also approve the different setback. Conversely, approval by the City of a setback different than those herein in no way guarantees that the ACC will also approve the deviation.

**4.1.6** All pools and spas shall be a minimum of five (5) feet from the rear Lot line or top of slope. Special fencing is required by the City for pool and spa enclosures.

**4.1.7** See Section 5.3 for Tract # 4472 (The Mall) setbacks.

## **4.2 Open Space**

**4.2.1** Building Footprint shall not exceed 40% of the lot area. Building Footprint shall mean the area covered by house, garage, interior courtyards that are enclosed on four sides, porches, and balconies, but shall not include terraces or decks less than 30 inches above finished grade.

**4.2.2** The City of Dana Point has minimum open space requirements. The applicant is responsible for verifying the requirements and conforming with them.

## **4.3 Ground-mounted Mechanical Equipment**

All ground mounted mechanical equipment, such as air conditioner condensers and pool and spa equipment, shall be permanently screened from view from the street or neighboring properties with a wall or solid gate. Mechanical equipment is not allowed

within any front setback. Air conditioner compressors and pool/spa/fountain pumps shall be located to minimize noise infiltration to neighboring lots and sound attenuated to meet or exceed all City standards. All equipment must be shown on the site plan and installed per the approved plan.

#### **4.4 Utilities**

Each Residence is served with underground electricity, TV cable, telephone, sewer, gas line and water line. The location of these utilities shall be confirmed in the field by the Owner. It is the responsibility of the Owner to protect all utilities in place during construction. Refer to 6.12.

#### **4.5 Garages and Off-Street Parking**

**4.5.1** Every residence shall have a two-car garage, minimum. A residence with 5 or 6 bedrooms shall have a 3-car garage, minimum. A residence with more than six bedrooms shall have a 4-car garage, minimum. Garages and off-street parking shall conform to the City of Dana Point Standards.

**4.5.2** Every residence shall also have a minimum of two off-street parking spaces in addition to the two required garage spaces. Either additional garage spaces or exterior 9' x 20' spaces will satisfy this requirement.

**4.5.3** The garage must be attached to the house, or may be separated from the house by a space such as a breezeway only if it is attached to the main structure with architectural forms that make the garage appear to be a part of the main structure.

#### **4.6 Site Preparation**

**4.6.1** All demolition, clearing, grubbing, stripping and stockpiling of soil, excavation, compaction and grading shall be performed within the pre-approved grading limit of the lot area. No site work may take place without Final Approval of the Association and a valid building permit.

**4.6.2** Site grubbing, through use of chemical treatment of existing vegetation, if necessary, shall be accomplished through recommendations by a State Licensed Pest Control Advisor and work performed by a State Licensed Qualified Applicator (QAL).

**4.6.3** Adequate provisions shall be made to prevent any surface water related damages to private or public property from excavations, cutting, filling and earth berming. Any resulting damage shall be the responsibility of the Owner to restore.

#### **4.7 Site Drainage**

**4.7.1** *There shall be no interference with the established drainage pattern over any Lot within Monarch Bay as to affect the Common Area, Association Maintenance Areas, or adjacent lots, unless adequate alternative provisions are made for proper drainage and is approved in writing by the ACC and the Public Agencies. For purposes hereof, "established" drainage is defined as the drainage which exists at the time such Lot was conveyed to a sublease holder, or later grading changes that are shown on plans approved by the ACC and the Public Agencies. (Bylaws 11.22)*

#### **4.7.2 Surface Site Drainage**

Surface sheet drainage of paved areas shall be minimum of one percent of slope, except swimming pool deck areas which shall be two percent and directed to deck drains and underground drainage provisions. Surface sheet drainage of soil areas shall be two percent.

#### **4.7.3 Sub-surface Site Drainage**

All sites without the ability to produce these minimum surface drainage rates shall be provided with the following minimum standards through the use of catch basins and/or french-drains in conjunction with underground drain tiles which transport drainage water to acceptable dispersion locations at the street. Drainage water spill will not be permitted to sheet flow on to or over slope areas.

A. All subterranean drainage provisions shall contain approved collection and underground transporting facilities. "Dry well" drainage facilities are not acceptable.

B. Catch basins shall be completely encased concrete cistern with a cast iron or other appropriate grate or one piece PVC basins with PVC grates.

C. All french-drains (drains consisting of a trench filled with loose stones and covered with earth) shall be constructed as to provide a minimum encasement of one cubic foot of gravel per lineal foot of perforated drain pipe. At least nine inches of suitable growing media shall be provided for plant materials on top of any french-drain provision.

D. All transporting underground drain lines shall have a minimum drain rate of one percent. The point of drain pipe dispersion shall be constructed in a permanent manner as to eliminate erosion. No drain lines shall be permitted to spill out onto a slope or into a concrete v-ditch on a slope. All drain line material shall be a minimum rigid Polystyrene, 1000 lb. crush strength or equal except when cast iron may be required. Flex or ribbed drain line material is not acceptable. Solvent shall be used for all fitting installation per the manufacturer's recommendations.

#### **4.8 Fence and Wall Guidelines**

**4.8.1** Heights of fences and walls shall conform to the City of Dana Point Standards. The maximum height for fences and walls shall not exceed 6 feet in height measured vertically from the average finished grade at the base of the fence or wall, except within the required front setback where it shall be a maximum of 3'-6".

**4.8.2** For bluff lots, the allowed 6 foot height for sideyard walls and fences shall be reduced to 3'-6" in proximity to the bluff edge, where ocean views of neighboring homes are involved. The ACC will review each such condition and make its determination based upon the ocean views and privacy of the properties concerned. Walls and fences will not be allowed to cross or descend any ocean bluff.

**4.8.3.** All pools and bodies of water 18" or deeper shall be contained by a minimum 5'-0" wall or fence and in conformance with City of Dana Point Standards.

**4.8.4** Fences and walls shall be stained, painted or left natural to match, or to be integrated with, colors established elsewhere on the site.

**4.8.5** Tops of all fencing and walls installed on level ground shall be level. Tops of fencing and wall installed on slopes (where permitted) may be parallel with the slope, or may be stepped.

**4.8.6** *All clotheslines, refuse containers, woodpiles, storage boxes, bulk material, tools and equipment shall be prohibited from any Lot unless obscured from view by a fence or appropriate screen approved by the ACC. (Bylaws 11.8)*

**4.8.7** Acceptable materials for new or additional fences and walls are:

- a. Wood.
- b. Wrought iron bars.
- c. Glass panels.
- d. Landscaping materials.
- e. Masonry or stucco if materials conform to type, quality and color used elsewhere on the property.
- f. Standard slump stone, plain or painted.
- g. Painted or powder-coated aluminum bars.

**4.8.8** Unacceptable materials for new or additional fences, but not specifically limited to the following, are:

- a. Clear aluminum or sheet metal.
- b. Chicken wire or other types of woven wire, including plastic coated wire and expanded metal.
- c. Chain link or plastic chain link.
- d. Reed or straw-like materials.
- e. Plastic or fiberglass sheets or panels.
- f. Rope or other fibrous strand elements.
- g. Glass block.

## **4.9 Sports and Play Equipment**

### **4.9.1 Basketball Backboards**

All basketball backboards, whether attached to the property or simply allowed to stand in an area visible from another lot, the street or the common area, are subject to review and approval by the ACC.

### **4.9.2 Playground Equipment**

Swing sets, climbing structures, etc. above 8 feet high from grade are subject to review and approval by the ACC. In general, they should be located to be out of view from the street and neighbors' homes.

## **4.10 Ocean Bluffs**

**4.10.1** It is the policy of the Monarch Bay Association to preserve the ocean bluffs in their natural state. Therefore, no new paths, walks, decks, steps, landings or handrails may be built on the bluffs, unless replacing exactly in kind old such hardscape that has fallen into disrepair. ACC approval is required for any replacement.

**4.10.2** No planting may be added to the bluffs except California native plants, or other planting approved by the ACC.

**4.10.3** For those lots which front on the ocean, a geology and soils report, prepared by a qualified geologist and/or soils engineer shall be required to verify that the proposed construction will not adversely affect the natural ocean bluffs.

### **4.11 Signs**

The temporary or permanent display of signs or other advertising devices is prohibited except as may be otherwise permitted by the laws of the State of California.

### **4.12 Air conditioning**

*No "through-the-wall" or "window" style air conditioning unit shall be installed in any structure within Monarch Bay, nor shall any air conditioning unit be installed upon the roof of any structure in Monarch Bay. All air conditioning compressors, condensers and other air conditioning equipment shall be located at ground level along side or behind the structure being serviced by such unit, concealed within such screen or other structure as may be deemed appropriate by the ACC, in order to totally obscure such unit from the view of other persons in Monarch Bay. The ACC shall have the right to approve or disapprove the size, shape, style, noise level and location of any air conditioning equipment within Monarch Bay. (Bylaws 12.12.7)*

## **Height Limit Guidelines**

Each lot in Tracts 3829 and 3738 has a pre-established height limit (a combination of pad elevation and house height). (Lots in Tract 4472, the Mall, are restricted to their existing heights.)

The Bylaws allow the Architectural Control Committee (ACC) to take many factors into consideration when deciding to approve or reject plans, submissions and variance requests. These criteria include, scale of site, aesthetic conformity, consideration of unreasonable blockage of view, and conformity of external design to neighboring structures. So, the height limit should not be construed to be overreaching nor does it take superiority over the other factors.

A plan submittal, while conforming to the height restriction, could be rejected by the ACC if it violates any of the other criteria. In short, the ACC has the right to determine that, even if an owner's home conforms to the height criteria referenced, the ACC can determine that the specification is not acceptable, so long as it's decision is neither arbitrary, capricious nor clearly unreasonable and follows the established criteria.

As also provided by the Bylaws, actions of the ACC can be appealed to the Monarch Bay Association Board, whose decision is final.

### **Clarification of Height Limits in Tracts 3839 and 3748.**

The Monarch Bay Bylaws and the Monarch Bay Declaration of Subleasehold Restrictions for Tracts 3839 and 3748 prescribe finish grade elevations for lots, and limit the building heights above those finish grade elevations.

Section 12.12.5.1 of the Bylaws reads as follows: "in Tract 3839 and 3748 the height shall be based upon finished grade elevations as shown on the original grading plan, a copy of which is on file in the office of the Monarch Bay Association, and the Improvements shall not exceed the height set forth in each of the original subleases, and as set forth in the height limitation memorandum of Cabot, Cabot & Forbes, Inc., dated January 23, 1962. The maximum building height shall not exceed the limits herein set forth, or the City maximum, whichever is more restrictive."

Based upon available data, in 1997 The Architectural Control Committee compiled a list of finished grade (pad) elevations and allowable building heights for Tracts 3839 and 3748. The Committee found thirteen of the pad heights on the original grading plan to be missing or not legible, and four building heights (these have since been clarified based on sublease documents) in the Cabot, Cabot & Forbes memorandum to be missing or not legible.

In an effort to avoid misunderstandings between Owners and the Association, it is recommended that the following restrictions be enforced for future Type 1 (new construction following demolition) and Type 2 (additions and major remodel) submittals:



- In situations in which the pad height is missing or not legible, the pad height for new construction shall not exceed the pad height of the existing lot. "Pad height" shall be defined as the average grade elevation adjacent to the main living level.
- All submittals must be accompanied by a topographical survey of the property prepared by a California licensed surveyor or authorized, registered Civil Engineer. The surveyor shall use either "MGVD29" datum or "NAVD88" datum and this shall be specified on the survey drawing.

As information has become available, the Table of Pad Elevations and allowable Building Heights has been revised. Attached is a copy of the current Table.

## **5.0 ARCHITECTURAL DESIGN CRITERIA**

### **5.1 Building Design Philosophy**

**5.1.1** Custom homes in Monarch Bay shall be designed as "whole buildings". Designs that simply decorate a front elevation wrapping the decoration just a few feet around the sides are unacceptable. All elevations shall be designed carefully, relating the same attention to detail and consistency of design on all sides of the house. Additionally, the roof shall incorporate on all sides, the type of design and style that is intended for the front of the house.

**5.1.2** Additions and remodels to existing homes in Monarch Bay shall be designed to be integral parts of the existing structures. All materials and colors from the host structure shall be continued in the new work. The details and roofs shall be designed with the same level of attention and continuity as the original project. If an addition or remodel lacks the continuity and design quality of the original structure the ACC may deny the application.

### **5.2 Height Restrictions for Tracts # 3839 and #3748**

**5.2.1** *In Tract #3839 and #3748 the heights shall be based upon finished grade elevations as shown on the Original Grading Plan, ..... and the Improvements shall not exceed the height set forth in each of the original Subleases, and as set forth in the height limitation memorandum of Cabot, Cabot & Forbes, Inc., dated January 23, 1962. The maximum building height shall not exceed the limits herein set forth, or the City maximum, whichever is more restrictive. (Bylaws. 12.12.5.1)*

**5.2.2** Refer to Appendix "A" for the table of approved building heights for Tracts #3839 and #3748. All heights are to be based on Orange County Datum.

**5.2.3** Any proposal to exceed the height limit shall require a variance.

### **5.3 Restrictions for Tract #4472 (The Mall)**

In Tract #4472, any proposed improvement to exceed the height of the existing structure or to expand laterally beyond the existing structure, shall require a variance. A variance may allow a roof height to be increased by a maximum of 12", in order to comply with State of California energy requirements.

### **5.4 Sight Line Photographs**

If any proposed structure exceeds the permitted height set forth herein, or in Tract #4472 exceeds the existing roof height or building footprint, and thereby may potentially block or restrict an existing neighbor's view, the Owner shall submit a photograph, taken at seated eye level from each affected neighbor's lowest living area which shows the height of the proposed structure. The photo shall include a pole or other marker simulating the roof ridge in plan and elevation at its highest point with reference to the horizon. A licensed surveyor may be required to certify all elevations on the photographs. Please reference Section 3.4 for staking requirements.

## **5.5 Roofs**

**5.5.1** Simply articulated rooflines are encouraged.

**5.5.2** The use of artificial mansard roofs to hide a flat roof is discouraged. The use of true sloping roofs of wood shingles or shakes, concrete tile or clay tile at a minimum 4:12 pitch is preferred.

**5.5.3** A parapet or thickened fascia is encouraged to hide flat roofs and accessory vents and skylights which are visible from the street. Where possible, vents, skylights and solar panels should be placed on the elevations away from the street.

**5.5.4** Chimneys may extend above the maximum roof height by 2'-0", or in minimum conformance with all applicable codes.

**5.5.5** Penetration of sloping roofs by plumbing vents, flues, etc. should be confined to hidden sides of the roof, and whenever possible, set low enough on the roof so as to not penetrate the silhouette of the roof form. All roof vents shall be colored to match the adjacent roof material. No roof mounted HVAC equipment or exposed ducting shall be allowed on any roof. See Sec. 6.4 and 6.5.

**5.5.6** Generally acceptable roof materials are:

- a. Fire treated wood shingles or shakes.
- b. Composition shingles.
- c. Concrete tile.
- d. Clay tile.
- e. Copper.
- f. Gravel on flat roofs.

## **5.6 Gutters and Downspouts**

**5.6.1** All gutters shall be concealed unless designed as a continuous architectural design feature. Exposed gutters used as an architectural feature shall be colored to match or contrast with the surface to which attached, unless copper is used.

**5.6.2** Downspouts may be exposed or concealed. Exposed downspouts shall be colored to match surface to which attached unless copper is used. Downspouts shall be carefully placed on the elevation and considered as a detail similar to any fenestration or trim.

## **5.7 Skylights**

**5.7.1** Skylights are acceptable, but not to exceed 10% maximum of entire roof area. The frame of the skylight shall be colored to coordinate with the adjacent roofing material.

**5.7.2** White skylight lenses will not be allowed. Clear, solar gray or solar bronze lenses-in glass or plastic are allowed. No reflective glazing is allowed.

**5.7.3** No up-lighting from below a skylight will be allowed.

**5.7.4** Skylights are to be installed within the overall allowable height of the building. The highest point of the lens will be the point of measurement for skylights.

**5.7.5** Clear aluminum frames are not acceptable. Frames may be bronze, gray or painted to match the roof.

## **5.8 Solar Panels**

No solar heating panels or other solar energy collection equipment shall be installed on any portion of any Lot, or any Improvement thereon, unless such equipment is installed in such location and in such manner as to be obscured from the view of other persons in Monarch Bay to the greatest degree practicable without significantly increasing the cost of the system or significantly decreasing its efficiency or specified performance. No person shall install any such panels or equipment without the prior written consent of the ACC, which shall have the right to reasonably restrict and determine the size, shape, color, style, materials, or location of any such panels or equipment within Monarch Bay, subject to the provisions of California Civil Code, Section 714, or any similar law then in effect.

## **5.9 Antennas and Satellite Dishes**

No satellite dish greater than 36 inches in diameter or antenna with a diagonal measure in excess of 36 inches is allowed in Monarch Bay. No satellite dish or antenna of any dimension which is visible from any street or common area within Monarch Bay is permitted. Satellite dishes with a diameter of less than 36 inches which are not visible from any street or common area within the development, will be permitted to the extent and upon the conditions set forth in Civil Code No. 1376 as it presently exists or may subsequently be amended.

## **5.10 Fenestration**

The design of each elevation shall carefully study the location and relationship of all fenestration. Well organized, simple walls are encouraged. The design shall incorporate similar details, organization and scale on all sides of the building.

**5.10.1** Head heights of openings shall be consistent and shall produce an ordered arrangement and composition within the total wall surface of an elevation. Again, this applies to all elevations.

### **5.10.2 Window and Door Openings**

Openings are to be consistently designed on all elevations. While front elevation openings may have additional details, the following details are required on all sides of the building on all window and door openings. Window openings for windows within stucco wall surfaces and all door openings shall be treated in one of the following ways:

- A. Trim surrounds on all sides.
- B. Windows recessed into a thickened wall.
- C. Windows projected forward of the wall plane.
- D. Combinations of a, b, and c.
- E. An alternate design treatment which achieves scale, order, proportion and depth of opening.

### **5.10.3 Windows**

Generally, high quality wood or clad windows are preferred for incorporation into design at Monarch Bay. If wood windows are used, the factory applied stucco mold is an acceptable surround detail. While further detail is encouraged, it is not required.

### **5.10.4 Greenhouse Windows**

The use of greenhouse windows is allowed if they are an integral part of the building design. The structure of the greenhouse shall be of the same material as the other windows, and the details of its attachment to adjacent materials will be reviewed. Added on greenhouse structures for room additions are generally unacceptable. No reflective glazing, reflective film or reflective window coverings are allowed.

### **5.10.5 Garage Doors**

A. Wood overhead sectional garage doors are encouraged in Monarch Bay. If a single piece garage door is used, panelized materials such as T-111 are not allowed. The submittal drawings shall clearly show the design, materials and finish of the garage door.

B. If a conflict in garage door opener frequencies exists, the person having the most recent Certificate of Occupancy date shall be required to have his or her frequency changed. It shall be the responsibility of the Owners involved along with their garage door opener representatives to resolve any problems relative to this item.

### **5.11 Balconies, Sundecks and Roof Decks**

New balconies and sundecks will not be approved where neighbors' views and/or privacy may be impacted. Roof decks are not permitted.

### **5.11.1 Definitions**

For purposes of these criteria, a **balcony** is a platform on a building directly accessible from a space in the living unit on the same level as the balcony. A balcony is sometimes supported from below, sometimes cantilevered, and enclosed with a railing or balustrade. A **sundeck** is a balcony that is built over a living space directly accessible from a space in the living unit on the same level as the sundeck. A **roof deck** is an outdoor living area located on a roof, and accessed from below.

### **5.11.2 Balcony Design**

Balcony design shall be an extension of the architecture of the house. Where they are allowed, balconies may be used to break up the flat appearance of the rear of a house. To that end, balconies that are the full width of the building with no horizontal offset are discouraged. The use of tile as a paving material is encouraged. If an elastomeric material is proposed, a color sample must be submitted for approval. Drainage from a balcony must be conveyed via a drain system or gutter system. The railings shall be in a style that complements the style of the house. Railing height will be subject to the overall building heights of the lot.

### **5.11.3 Sundeck Design**

In addition to the balcony design requirements, no sundecks are permitted on or over any portion of a two story roof. Railing height will be subject to the overall building heights of the lot. It is encouraged to use a paving material that is harmonious in color to the roofing material. A sample of the proposed paving will be required.

## **5.12 Utilities and Utility Meters**

### **5.12.1 Electric Meters**

All exterior electric meter panels shall be recessed in a manner acceptable to the local power company. Contact the utility company for the enclosure requirements. No meters shall be on the street elevation of the building. All exterior meters or enclosures shall be painted to match the color of the wall into which they are recessed.

### **5.12.2 Gas Meters**

All gas meters shall be installed in underground enclosures or in an alternate location acceptable to the ACC, not visible from the street. Any exterior meter or enclosure that is exposed to view shall be painted to match the color of the wall onto which it is attached.

### **5.12.3 Water Valves**

No water shut-off valves (SOV) shall be on the street elevation of the building. All exposed piping shall be painted to match the color of the wall into which they adjoin.

### **5.12.4 Pavement Markings**

Prior to digging up the street, building contractors must notify Underground Service Alert so that they may notify concerned utilities to mark the street pavement to show where their pipes, cables, etc., are located. Chalk paint shall be used for street marking.

## **6.0 EXTERIOR MATERIALS AND FINISHES**

The following criteria indicate and define the generally accepted materials and finishes for the custom homes in Monarch Bay. Refer to Section 8.0 for allowable hardscape materials. Exterior colors and finishes of building, fences, walls, structures, and patio covers shall not be changed or altered without the approval of the ACC.

### **6.1 Exterior Walls**

**6.1.1** Generally acceptable building materials are:

- a. Wood siding.
- b. Wood shingles.
- c. Stucco (minimum texture). Heavy troweled finishes are discouraged.
- d. Masonry.

The use of more than two major materials is discouraged, as well as too many small areas of an accent material.

**6.1.2** The use of earth tone and other subtle colors is encouraged. Trim should be in low contrast to the major color. Samples will be required for Final Approval.

**6.1.3** Generally unacceptable materials are:

- a. Any reflective glass.
- b. Vinyl or aluminum siding.
- c. Sheet metal.
- d. Plastic or fiberglass panels.

### **6.2 Glass and Glazing**

**6.2.1** All non-decorative glass and glazing material shall be clear, solar gray or solar bronze. Obscure glass is allowed where needed, but a decorative obscure glass is strongly encouraged. No reflective glass or reflective tinting is allowed in any window. Consideration should be given to the style and exposure of the opening.

**6.2.2** Glass block is acceptable. Glass block openings shall be detailed consistent with other window and door openings.

### **6.2.3 Decorative, Colored and Stained Glass**

The use of decorative, colored and stained glass that is visible on the outside of the building will require approval by the ACC. If a colored glass is to be used, the colors of the building will need to be harmonious with the colors of the glass. Submittals for decorative glass shall include the locations, design, colors and patterns clearly labeled, and samples of each type or color of glass proposed. Decorative glass used in doors has the same requirements. Any decorative glass installed without ACC approval may be required to be altered or removed at the discretion of the ACC.

### **6.3 Sash and Doors**

Exterior doors shall accentuate the entry and be of an architectural grade or higher. The use of high quality paneled wood doors for both entry and garage doors is encouraged. Painted metal doors are not permitted except at utility rooms. All painted metal doors and frames shall be galvanized or approved resistant coating.

### **6.4 Louvers and Vents**

Exposed louvers and vents shall be constructed of copper, stainless steel, or galvanized sheet metal. Unless used as a design element, all louvers and vents shall be painted out to match the adjacent surface. All air vents or other metallic items that are mounted on the house roof must be painted to blend in with the roof color. See Section 5.5.5.

### **6.5 Roof Accessories**

Roof vents and exhausts shall be kept to an absolute minimum. Whenever possible, all vents shall be taken through the least exposed roof areas. Refer to Sections 5.8 and 5.9.

### **6.6 Flashing and Sheet Metal**

Exposed flashing shall be copper, stainless steel, galvanized sheet metal or bonderized or prefinished sheet metal. Exposed galvanized sheet metal shall be painted to match the color of the surrounding material. All exposed roof and parapet flashing shall be installed straight and true, free from waves, wrinkles and other similar defects. Flashings not meeting these criteria may be rejected by the ACC.

### **6.7 Roofs**

For roof materials refer to Section 5.5.6. No roof mounted HVAC equipment or ducting shall be allowed on any roof. Refer to Section 5.5.5.

### **6.8 Painting**

Painting shall be in accordance with the submittal documents and the colors and materials board as approved by the ACC.

### **6.9 Awnings**

Awnings must be approved by the ACC. Colors shall be harmonious with the building colors. When more than one awning is used on a single building, all of the awnings must be of the same fabric, color and design. A house design that is dependent upon awnings as a major design element is discouraged. Any color change of existing awnings requires approval by the ACC.



### **6.10 Wrought Iron**

Gates, balustrades and railings of decorative wrought iron are acceptable. It is suggested that the material be metalized, galvanized or treated with epoxy based paint systems in an effort to minimize rusting. The design of the wrought iron must be specifically approved by the ACC.

## **7.0 HARDSCAPE DESIGN CRITERIA**

Hardscape includes all exterior paved areas such as slabs, flatwork, steps and stairs, driveways, patios, decks, and improvements such as fountains, pools, spas, sports equipment, flagpoles, miscellaneous site structures, fences and walls. The design of the hardscape should complement the building design. Excessive hardscape is discouraged, as this takes away from available landscape area.

### **7.1 Paving**

**7.1.1** Asphalt driveways are not permitted. All driveways and paving that is exposed to the street shall be one of the following:

- A. Integral color concrete.
- B. Textured or exposed aggregate concrete.
- C. Masonry or tile units.
- D. Natural stone.
- E. Combinations of the above.

**7.1.2** Large expanses of concrete such as driveways shall utilize bands or changes in materials and/or textures in order to break down the scale. Control joints shall be tooled and laid out in a manner that will minimize potential cracking and enhance the design of the hardscape. The layout of control joints, banding, etc. should relate to the layout of the building, and the hardscape materials should be complementary to the building materials.

### **7.1.3 Gravel**

No gravel will be allowed as groundcover, except in sideyard areas and in conjunction with tree and shrub planting. In no case will gravel be permitted in areas where the gravel will be viewed from the street.

### **7.2 Steps and Stairs**

The design of the steps should reflect the design of the hardscape. Steps in the front yard should utilize cantilevered concrete treads, brick bull nose treads, stone details, or some other enhanced design to blend with surrounding hardscape.

### **7.3 Patios and Decks**

A patio is an on-grade paved outdoor space adjacent to or adjoining the building. A deck is a similar space that is built generally above grade. Neither is required to have access directly from a space in the living unit on the same level.

**7.3.1** Patios are allowed to be built anywhere on the lot except the sideyard setbacks. A patio may be allowed in a sideyard setback with the specific approval of the ACC. No deck higher than 30 inches above adjacent grade may be built in any setback area.

**7.3.2** For patios, the use of the paving materials suggested in paragraph 8.1 is encouraged.

**7.3.3** Decks that are not a part of the building structure will be reviewed carefully for location on the site and privacy issues as they relate to all adjacent properties. If any portion of the deck is high enough above finish grade to require a guardrail, the combined height of the deck and the guardrail will be measured to verify the maximum height. Decks shall have a skirting to the ground that is an integral part of the deck design. The handrails should also be a harmonious design element.

**7.3.4** Drainage from a deck or patio must be conveyed via a drain system or gutter system.

### **7.4 Shade Structures, Arbors and Gazebos**

#### **7.4.1 Definitions**

A shade structure is defined as an overhead structure of open grating or latticework and beams, constructed of wood, supported by columns and/or by attachment to the building. A shade structure has no side enclosure. An arbor is a similar structure, usually linear in design, and free standing. A gazebo is a shade structure that has partial enclosure on the sides.

**7.4.2** Shade structures, arbors and gazebo construction shall be permitted only within the allowable building setbacks as detailed in Sec. 5.1. They shall be designed to continue and/or complement architectural features of the dwelling. Heights may be varied subject to the criteria and approval of the ACC, but may not exceed the maximum allowable height for the lot.

**7.4.3** Structure or framework, including any overhead portions shall be of wood construction only, with the exception of vertical support members which may be metal, but must be completely encased by wood or ACC approved accent materials. Roofing materials shall be of open wood construction or, if covered, match the roof material of the dwelling. Non-reflective flat glass panels are also allowed with specific approval of the ACC. Any other roofing materials are unacceptable.

**7.4.4.** No objects such as urns, pots, planters, etc., shall be placed on top of the structures discussed in this section. All such "adornment" shall be located under, around or suspended within the structure.

## **7.5 Fences and Garden Walls**

Refer to Section 4.8

## **7.6 Storage Sheds**

No sheds, equipment or storage spaces shall be visible from streets or present an objectionable view to neighbors. All sheds and storage spaces shall require specific approval of the ACC.

## **7.7 Flagpoles**

All flagpoles require specific approval of the ACC.

## **7.8 Swimming Pools**

**7.8.1** All pool and/or spa construction including equipment, drains, fences and gates must be per applicable government standards.

**7.8.2** Any swimming pool, fish pond, or other body of water which contains water eighteen (18) inches or more in depth, for use in connection with any permitted use shall be at least five (5) feet from any side or rear property line. No such body of water shall be permitted in any required yard space when the enclosing fence required by this section cannot be erected as permitted.

**7.8.3** A non-climbable fence or wall per State of California standards is required completely enclosing any swimming pool, fish pond or any body of water, which contains water eighteen (18) inches or more in depth, and all gates shall be self-latching, openable from the inside only. A building wall may be part of such enclosure.

**7.8.4** All pool equipment shall be located or sound attenuated in a manner so as not to disturb the occupants of adjacent or nearby properties.

**7.8.5** All swimming pool heaters shall be of the stackless type.

**7.8.6** All pool equipment shall be permanently screened from the view of adjacent property and any public right-of-way.

**7.8.7** *Prohibition Against Pools in Tract #4472. No swimming pool, fish pond, reflection pool, fountain or the artificial body of water shall be constructed, kept or maintained on any lot or portion of Tract #4472; except, however, such artificial bodies of water may be constructed, kept and maintained in the interior of the single-family residential dwelling unit on such Lots. (Bylaws 11.24).*

## **7.9 Fountains**

All fountains shall be submitted to the ACC for review and approval. The design of the fountain should complement the style of the residence. Fountains installed in the front yard setbacks are subject to the same height restrictions as fences and walls. All pumps shall be quiet operating submersible type. Lighting shall not impact any neighboring property. See Section 8.9.2.

## **7.10 Outdoor Lighting**

**7.10.1** All lighting must meet the City standards including maximum foot-candles.

**7.10.2** Above-grade floodlights for lighting of trees and plantings shall be concealed by shrubs or low walls to prevent daytime visibility. These fixtures are not allowed in grass areas. Any fixtures in grass areas shall be flush mount type. Only low voltage landscape lighting bearing UL approval should be used. An attempt to conceal the source of light is recommended.

**7.10.3** Walk lights placed in grass areas or adjacent to walkways in shrub or groundcover areas may use above grade junction boxes provided they will be hidden from view by shrubbery to minimize the daytime visibility of the hardware.

**7.10.4** Building mounted lighting shall be carefully designed to not allow stray light beyond the property lines. Bullet type spotlights are not generally allowed, and will need specific approval of the ACC for installation. Care must be taken to not shine lights onto neighbors' houses.

**7.10.5** Flashing, glaring or revolving lights shall not be used.

## **7.11 Outdoor Furniture and Accessories**

The installation of sculpture, statues, pots, benches, etc. that are visible from the street are subject to the review and approval of the ACC when plans are submitted. Care should be taken to complement the style of the house with any accessory items.

## **7.12 Barbecues**

The committee encourages the design of barbecue units that are integral with the design of the Residence.

# **8.0 LANDSCAPE DESIGN CRITERIA**

## **8.1 Allowed Height**

*No tree, bush, shrub, hedge or other planting over three feet in height, or which is of the type which may grow to over three feet in height shall be planted or grown without prior approval of a landscape plan by the ACC. (Bylaws 12.12.6.1)*

## **8.2 View Obstruction**

*No owner shall permit any tree or other planting to grow to the point of obstructing the view from any other Lot, obstruction being defined as impact on seated view from the affected neighbor's lowest living level. In the event that any Owner shall violate the provisions hereof, the Association may enforce the provisions hereof as provided in paragraph 12.15.2. (Bylaws 12.12.6.2)*

## **9.0 CONSTRUCTION**

### **9.1 Construction Set-up**

**9.1.1** The Owner shall supply the Management Company with the name of the General Contractor and Sub-Contractors to be used on the project. An owner may act as general contractor. Upon submittal of this list and the completion of all requirements for Final Approval, the Management Company will notify the ACC Chairman and the access gate to allow construction workers and equipment to enter Monarch Bay property.

**9.1.2** The Owner and his or her general contractor or superintendent are responsible for familiarizing themselves and complying with all portions of the Bylaws which affect construction. Each general contractor or superintendent is responsible for familiarizing his or her employees, subcontractors and suppliers with all relevant construction requirements. The Owner and his or her general contractor or superintendent are required to construct the Residence and surrounding improvements according to the plans specifications and revisions approved in writing by the ACC and the City.

### **9.2 Commencement and Completion of Work**

**9.2.1** Issuance of a building permit from the City of Dana Point is required prior to any site preparation or demolition of building structures. The Owner shall submit a copy of the building permit to the Management Company.

**9.2.2** Except upon written permission from the ACC, construction shall proceed continuously and expeditiously in accordance with the permitted construction hours. The total construction period from the time the building permit is issued until construction is complete (except for landscaping) may not exceed one year without written approval from the ACC. If construction is not completed within one year from the date ground is first broken, the Owner shall forfeit any security deposited with the Association. In the event of any such forfeiture, Owner understands that Association shall retain any and all rights and causes of action it may have in law or equity to proceed against the Owner or any of the Owner's agents, for any violation of the approved plans or any representations made to the Association, or as a result of a violation of the Bylaws and Architectural Guidelines of the Association, as amended from time to time.

**9.2.3** If a time extension is required, a written request must be submitted to the ACC 30 days prior to the expiration date. A letter outlining a new time line should accompany the request.

### **9.3 Notification of Completion and Inspection**

*The ACC shall have the right, upon reasonable notice and during reasonable daylight hours, to make periodic inspections of any work in progress. Upon the completion of any Improvement, the Owner shall give written notice thereof to the ACC. Within sixty (60) days after receipt of such notice the ACC, or its duly authorized representative, may inspect completed Improvement to determine whether it was constructed, erected or installed in substantial compliance with the approved plans. In the event the ACC*

*fails to respond to the notice within a sixty (60) day period following receipt of such notice, then the completed Improvement shall be deemed approved. If, however, the ACC shall inspect the completed Improvement and determine that such Improvement was not constructed, erected or installed in compliance with the approved plans, it shall notify the Owner, in writing, of such noncompliance within ten (10) days after the date of the inspection, specifying the particulars of noncompliance. (Bylaws 12.15.1)*

#### **9.4 Noncompliance**

In the event the Owner has performed any work without appropriate approvals, or contrary to approved plans, and has failed to remedy any alleged noncompliance within thirty (30) days from the date the Owner is notified of such noncompliance, the ACC shall notify the Board, who shall then set a date on which a hearing shall be held regarding the matter. Said date shall not be less than twenty (20) days no more than sixty (60) days after said notice of noncompliance was given to the Owner. Written notice of the hearing date shall be given by the Board to the Owner at least ten (10) days prior to the hearing. At the hearing, the Owner, the ACC and the Board, and any other interested persons, may present information relevant to the question of the alleged noncompliance. After considering all such information, if the Board shall determine that there is in fact a noncompliance, the Board shall specify the exact nature of the noncompliance, the estimated cost of correcting or removing same and shall specify a reasonable period of time the Owner shall have to remedy or remove the same after the date of the Board's ruling. Failure by the Owner to comply shall bring action against the Owner. Refer to Section 12.15.2 of the Bylaws.

#### **9.5 Insurance**

Each Owner shall cause his or her contractor to provide to the Association a copy of its liability policy designating the Association as an additional insured in an amount not less than \$1,000,000 (one million dollars) to protect the Association against any loss, damage or injury which may occur as the result of entry and activity by such contractor or its agent.

#### **9.6 Construction Damage and Completion Deposit**

**9.6.1** A Construction Damage and Completion Deposit is collected prior to the beginning of the construction period. The purpose of this deposit is to develop a reserve that will assure an expeditious completion of the project and to have funds to pay for any damage that may be caused to personal or Association property during the course of construction or to compensate for site maintenance violations. Deposits are required per the amounts on the current Application and Agreement. Any unused portion of a Construction Damage and Completion Deposit will be returned after all construction activity, including clean up, has been completed.

**9.6.2** If the Construction Damage and Completion Deposit reserve is reduced at any time during the course of construction to pay for any damage that may have occurred, it must immediately be restored to the original amount. The full amount must be on deposit before the ACC will perform their inspection for the purpose of giving final approval to the project.

**9.6.3** The Construction Damage and Completion Deposit shall be used to cover the cost of restoring or repairing any property that is damaged or destroyed as a result of the construction activity of any Owner or an Owner's contractors, subcontractors, suppliers, or any employees of any of the foregoing.

### **9.7 Restricted Access**

Access will be permitted only during normal working hours. Access will not be allowed after hours or on weekends when no work is being done. No one shall be permitted to bring with them children, friends, guests, relatives or anyone else who has not been cleared through the Guard Gate. Dogs and other animals are not permitted on construction sites. The use of property adjacent to Lots under construction for vehicular access purposes, parking or equipment and material storage will not be permitted without the written permission of the adjacent property Owner.

### **9.8 Site Conduct And Safety Precautions**

The general contractor, job superintendent, employees, subcontractors and suppliers shall:

- A. Comply with all of the construction provisions established in the Architectural Guidelines and applicable Bylaws;
- B. Follow the directives of the Monarch Bay Gate Access staff and the ACC;
- C. Not consume alcoholic beverages on the site;
- D. Not damage or disturb the work of others;
- E. Not play radios, CD players, tape players or other audio equipment at any time, unless inside an enclosed structure, and never so loud as to disturb neighbors.
- F. Take all necessary precautions for the safety of all persons, materials and equipment on or adjacent to the site; furnish, erect and maintain approved barriers, lights, signs and other safeguards to give adequate warning to everyone on or near the site of dangerous conditions during the work. There will be no exceptions to any of the above conditions and all Owners will inform their architects; contractors, job superintendents, subcontractors, suppliers and delivery truck drivers of these Architectural Guidelines.

### **9.9 Compliance**

The ACC and the Board reserve the right to stop construction and deny site access to any general contractor, job superintendent, subcontractor, supplier or their employees who are in violation of these Guidelines and any other relevant provision hereof.

### **9.10 Construction Hours**

All construction operations shall be limited to: Mondays through Fridays from 7 a.m. to 5:30 p.m. and Saturday 8:30 a.m. to 4:30 p.m., but no excavation or earth moving shall be allowed on Saturdays. No construction activities are allowed on Sundays or federal or state holidays. All contractors, subcontractors, suppliers and employees must be off the job site prior to 6 p.m.

### **9.11 Construction Bins**

All construction bins, building equipment, building materials and temporary toilets used in connection with new construction or remodeling must be placed on the owner's property behind the curb and off the street. If this is not possible, written permission must be obtained from the ACC prior to placing any of the above items on the paved street area. Construction bins, if placed in street, must have a 3/4" plywood plate under each foot, or other adequate protection to prevent damage to the street.

### **9.12 Site Maintenance**

The general contractor, job superintendent, employees, subcontractors, and suppliers shall comply with the following rules established for the daily maintenance and cleanliness of the site.

A. Maintain the site daily in a neat and clean condition, neatly stockpiling all materials delivered for or generated by the work and immediately removing any waste material or debris generated by the work to a dumpster or off-site.

B. All debris generated by employees, i.e. paper, cans, bottles and litter shall be removed and properly disposed of from the job site on a daily basis.

C. Remove all equipment, materials, supplies and temporary structures when any phase of the work is complete, leaving the area neat and clean. Equipment not in daily use must be removed from the job site.

D. Keep the streets, gutters and adjacent property clean and free of dirt, trash, debris or other material related to or caused by the work.

E. Maintain continuous dust control on the Lot during construction operations.

F. Dirt, gravel, cement powder, wet concrete, and other contaminants that spill onto the street shall be removed from the street at the end of each day of work. The contaminant must be swept, shoveled or otherwise removed from the street and taken away by the contractor or placed in a trash bin. Application of water to dilute the contaminant and wash it down the street where it deposits in front of adjacent homes is not permitted. If the Owner does not adhere to this guideline, the Board may have the contaminant removed, and the cost of such contaminant removal will be paid by the Owner from the construction deposit or from additions to the construction deposit.

G. No construction equipment shall be parked in the streets of Monarch Bay over weekends or holidays without prior written approval from the ACC.

### **9.13 Disposal Of Site Spoils**

**9.13.1** Any spoils generated from the site grading must be placed on the Owner's Lot. No material may be placed on the street or common area.

**9.13.2** Storage of spoils on adjacent property will not be permitted.

**9.13.3** All excess spoils shall be removed promptly and disposed in accordance with City and County rules and regulations at controlled dumpsites.



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## **Height Limit Guidelines**

Each lot in Tracts 3829 and 3738 has a pre-established height limit (a combination of pad elevation and house height). (Lots in Tract 4472, the Mall, are restricted to their existing heights.)

The Bylaws allow the Architectural Control Committee (ACC) to take many factors into consideration when deciding to approve or reject plans, submissions and variance requests. These criteria include, scale of site, aesthetic conformity, consideration of unreasonable blockage of view, and conformity of external design to neighboring structures. So, the height limit should not be construed to be overreaching nor does it take superiority over the other factors.

A plan submittal, while conforming to the height restriction, could be rejected by the ACC if it violates any of the other criteria. In short, the ACC has the right to determine that, even if an owner's home conforms to the height criteria referenced, the ACC can determine that the specification is not acceptable, so long as it's decision is neither arbitrary, capricious nor clearly unreasonable and follows the established criteria.

As also provided by the Bylaws, actions of the ACC can be appealed to the Monarch Bay Association Board, whose decision is final.

### **Clarification of Height Limits in Tracts 3839 and 3748.**

The Monarch Bay Bylaws and the Monarch Bay Declaration of Subleasehold Restrictions for Tracts 3839 and 3748 prescribe finish grade elevations for lots, and limit the building heights above those finish grade elevations.

Section 12.12.5.1 of the Bylaws reads as follows: "in Tract 3839 and 3748 the height shall be based upon finished grade elevations as shown on the original grading plan, a copy of which is on file in the office of the Monarch Bay Association, and the Improvements shall not exceed the height set forth in each of the original subleases, and as set forth in the height limitation memorandum of Cabot, Cabot & Forbes, Inc., dated January 23, 1962. The maximum building height shall not exceed the limits herein set forth, or the City maximum, whichever is more restrictive."

Based upon available data, in 1997 The Architectural Control Committee compiled a list of finished grade (pad) elevations and allowable building heights for Tracts 3839 and 3748. The Committee found thirteen of the pad heights on the original grading plan to be missing or not legible, and four building heights (these have since been clarified based on sublease documents) in the Cabot, Cabot & Forbes memorandum to be missing or not legible.

In an effort to avoid misunderstandings between Owners and the Association, it is recommended that the following restrictions be enforced for future Type 1 (new construction following demolition) and Type 2 (additions and major remodel) submittals:

- In situations in which the pad height is missing or not legible, the pad height for new construction shall not exceed the pad height of the existing lot. "Pad height" shall be defined as the average grade elevation adjacent to the main living level.
- All submittals must be accompanied by a topographical survey of the property prepared by a California licensed surveyor or authorized, registered Civil Engineer. The surveyor shall use either "MGVD29" datum or "NAVD88" datum and this shall be specified on the survey drawing.

As information has become available, the Table of Pad Elevations and allowable Building Heights has been revised. Attached is a copy of the current Table.

### Monarch Bay-Tract 3748

This information is compiled from previously archived sources, and is subject to verification. All Measurements rounded to the nearest 0.1 foot.

All Pad Elevations are based upon "MGVD29" datum.

- indicates missing datum

? indicates partially obscured or illegible datum

?? indicates totally obscured or illegible datum

Lot	Addr	Maximum Height	Pad Elev
1	142	16.5'	163.0'
2	144	14.0'	162.0'
3	146	14.0'	161.0'
4	150	13.0'	160.0'
5	152	14.0'	162.0'
6	154	15.0'	165.0'
7	156	15.0'	166.0'
8	158	15.0'	165.0'
9	160	13.0'	161.0'
10	162	11.5'	158.0'
11	216	10.0'	155.0'
12	218	12.5'	162.0'
13	220	16.5'	166.0'
14	222	16.0'	166.0'
15	224	16.0'	165.0'
16	226	16.0'	165.0'
17	228	16.0'	164.0'
18	230	16.0'	162.3'
19	232	16.0'	160.0'
20	234	16.0'	159.0'
21	236	16.0'	158.0'
22	238	16.0'	158.0'
23	240	16.0'	152.0'?
24	242	12.0'	148.0'
25	206	12.0'	149.0'
26	208	14.0'	153.0'
27	210	16.0'	161.0'
28	212	16.0'	165.0'
29	214	16.0'	168.0
30	211	14.0'	158.0'
31	207	14.0'	152.0'
32	205	12.0'	147.5'
33	203	12.0'	146.7'
34	201	12.0'	146.4'
35	199	12.0'	146.0'
36	197	13.0'	146.0'
37	195	12.0'	145.1'
38	109	12.0'	-
39	107	12.0'	-
40	105	13.0'	144.0'
41	103	13.0'	140.7'
42	101	11.0'	136.1'

Lot	Addr	Maximum Height	Pad Elev
43	99	12.0'	132.0'
44	97	11.0'	127.5'
45	95	12.0'	123.0'
46	93	12.0'	118.0'
47	91	13.0'	113.0'
48	89	13.0'	110.0'
49	87	13.0'	108.1'
50	85	13.0'	108.1'
51	75	15.0'	108.6'
52	73	15.0'	109.1'
53	73	15.0'	110.8'
54	69	15.0'	111.7'
55	67	15.0'	112.8'
56	65	15.0'	114.4'
57	63	15.0'	116.0'
58	68	12.0'	117.0'
59	70	12.0'	112.5'
60	74	12.0'	111.0'
61	78	15.0'	120.5'
62	80	15.0'	122.0'
63	82	13.0'	121.0'
64	86	12.0'	109.0'
65	88	11.0'	110.0'
66	92	15.0'	116.0'
67	141	14.0'	129.0'
68	139	15.0'	133.0'
69	137	15.0'	138.0'
70	135	15.0'	143.0'
71	133	14.0'	148.0'
72	129	14.0'	152.0'
73	127	14.0'	151.0'
74	119	14.0'	142.0'
75	117	13.0'	132.0'
76	115	13.0'	122.0'
77	64	14.0'	118.0'
78	116	15.0'	126.0'
79	118	14.0'	138.0'
80	120	14.0'	152.0'
81	122	14.0'	156.5'
82	124	15.0'	160.0'
83	126	12.0'	160.0'
84	128	15.0'	158.5'

Lot	Addr	Maximum Height	Pad Elev
85	130	14.0'	154.5'
86	132	14.0'	150.0'
87	134	12.0'	145.0'
88	136	14.0'	140.0'
89	138	15.0'	135.0'
90	140	12.0'	130.0'
91	100	12.0'	139.0'
92	102	12.0'	143.0'
93	104	15.0'	146.0'?
94	106	15.0'	??
95	108	15.0'	147.0'?
96	196	13.0'	145.0'?
97	198	13.0'	146.1'
98	200	12.0'	146.5'
99	241	12.0'	147.8'
100	237	12.0'	150.0'
101	233	11.0'	157.3'
102	231	12.0'	159.8'
103	229	13.0'	162.5'
104	227	14.0'	164.3'
105	225	14.0'	164.7'
106	217	14.0'	161.0'
107	215	15.0'	151.2'
108	172	15.0'	150.0'
109	186	15.0'	149.4
110	188	15.0'	148.0'
111	190	15.0'	147.0'
112	189	14.0'	??
113	187	14.0'	150.0'?
114	183	12.0'	151.7'
115	181	12.0'	153.5'
116	179	12.0'	154.0'
117	177	12.0'	154.0'
118	175	14.0'	150.0'?
119	171	14.0'	150.3'
120	169	14.0'	150.9'
121	167	14.0'	152.0'
122	165	14.0'	154.0'
123	163	14.0'	156.1'
124	149	14.0'	157.5'
125	147	10.0'	159.5'
126	145	12.5'	161.2'

**Monarch Bay-Tract 3839**

This information is compiled from previously archived sources, and is subject to verification. All Measurements rounded to the nearest 0.1 foot.

All Pad Elevations are based upon "MGVD29" datum.

- indicates missing datum

? indicates partially obscured or illegible datum

?? indicates totally obscured or illegible datum

Lot	Addr	Maximum Height	Pad Elev
1	17	15.0'	162.0'
2	19	15.0'	156.0'
3	21	15.0'	152.0'
4	23	14.0'	147.0'
5	25	15.0'	141.0'?
6	27	12.0'	135.0'
7	29	11.0'	129.0'
8	31	11.0'	123.0'
9	318	15.0'	106.0'?
10	33	15.0'	??
11	35	15.0'	114.0'
12	37	15.0'	118.5'
13	39	15.0'	122.0'
14	41	15.0'	126.0'
15	43	15.0'	130.3'?

Lot	Addr	Maximum Height	Pad Elev
16	53	15.0'	132.2'
17	55	15.0'	128.2'
18	57	15.0'	125.0'
19	59	15.0'	121.2'
20	61	15.0'	118.2'
21	16	12.0'	130.0'
22	14	11.0'	138.0'
23	12	11.0'	148.0'
24	10	15.0'	157.0'
25	8	15.0'	162.0'
26	6	15.0'	162.0'
27	4	15.0'	165.0'
28	3	15.0'	162.0'
29	5	15.0'	160.0'
30	7	15.0'	156.8'

Lot	Addr	Maximum Height	Pad Elev
31	11	12.0'	142.0'
32	15	11.0'	134.0'
33	56	11.0'	136.0'
34	52	11.0'	138.0'
35	50	12.0'	149.0'
36	48	13.0'	149.0'
37	46	12.0'	145.0'
38	42	12.0'	136.0'
39	40	12.0'	127.0'
40	28	12.0'	133.0'
41	24	11.0'	140.0'
42	22	15.0'	150.0'
43	20	14.0'	151.0'
44	1	15.0'	163.0'