

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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original staff report

W28a

Addendum

October 29, 2015

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W28a**, Coastal Commission Permit Application
#6-86-035-A2 (Marsaglia/Murray), for the Commission Meeting of
November 4, 2015.

The purpose of this addendum is to add minor clarification to the staff report to reflect the state's recent water restrictions due to drought conditions. Staff recommends the following changes be made to the above-referenced staff report, with deletions shown in ~~strike through~~ and additions underlined:

1. On Page 7 of the staff report, Special Condition 2(a) shall be revised as follows:

All proposed landscaping shall be drought-tolerant, native, fire resistant, non-invasive plant species that are obtained from local stock, if available. Galveiza speciosa, Erysimum menziesii, Eriogonum arborescens, and Erigeron glaucus shall be replaced with more appropriate coastal Southern Californian native species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.

CALIFORNIA COASTAL COMMISSION

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W28a

Filed: 9/29/15
180th Day: 3/27/16
Staff: B. Laver-SD
Staff Report: 10/15/15
Hearing Date: 11/4/15

STAFF REPORT: AMENDMENT

Application No.: 6-86-035-A2

Applicant: Gina Marsaglia and Ethan Murray

Agent: Tori Jones

Location: 4465 Adams Street, Agua Hedionda, Carlsbad, San Diego County (APN 206-200-02)

Original Project Description: Construction of a 3,400 sq. ft., three-story single family residence with pool and patio area on a 20,000 sq. ft. lot on the north shore of Agua Hedionda Lagoon in Carlsbad.

First Amendment: Construction of a 6-foot high wrought iron/concrete pilaster fence along the east, west and south property lines, construction of a similar 42-inch high fence along the north property line fronting Adams Street. Landscaping screen for the proposed fences.

Proposed Amendment: Amend Special Condition #5 to modify public trail improvement requirements; construct 1,595 sq.ft. addition and 444 sq.ft. garage addition, remove unpermitted encroachments and restore on-site open space.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed amendment with special conditions to avoid impacts to public access, native vegetation, visual resources, and water quality.

The proposed amendment is an addition and improvements to the existing single family residence approved by CDP #6-86-035. The subject property is located on the shores of Agua Hedionda Lagoon in Carlsbad between Adams Street and the lagoon. The site slopes down steeply from Adams Street south towards the lagoon with the majority of the previously undeveloped portion of the site containing slopes in excess of 25% grade. As such, the Commission approved the construction of the existing home with conditions requiring an open space deed restriction that prohibited any development on the southern portion of the site (south of the 41-ft. contour line as determined by a slope analysis), which allowed construction of a reasonably sized home that did not extend above the elevation of or result in view impacts from Adams Street and encroached minimally into the steep, naturally vegetated slopes. As this property fronts the lagoon where public access is a priority, the conditions of approval also required dedication of a 25-ft. wide public access easement and improvements consisting of a 10-ft. wide public trail for pedestrians and bicyclists within the easement.

In review of the proposed addition to the existing residence, staff identifies various inconsistencies with the approved permit and unpermitted development on the site located in the open space area, including ornamental landscaping, a portion of the pool and pool deck, retaining walls, an artificial sandy beach area, and a wooden deck beyond the 41-ft. contour line. In addition, while the public access easement was recorded, the public trail was never constructed. Therefore, after consultation with Commission staff, the subject proposal was revised to include removal of all unpermitted development beyond the 41-ft. contour line, and restoration of the naturally vegetated slope. With regard to the construction of the public trail improvements, the City of Carlsbad has not yet developed a plan establishing the alignment, size, or composition of a contiguous lagoon trail on the north shore of the lagoon. Preliminary plans submitted with the application indicate some impacts to native vegetation and steep slopes could result from construction of a trail on the subject site, and it is unclear at this time how and where to best site a trail to ensure it would align with a future trail on adjacent properties. Thus, Commission staff worked with the applicant to amend the requirement to construct a public trail such that the applicant shall be responsible for trail improvements at the time when the City finalizes their master plan for the north shore of the lagoon, where the subject site is located, rather than making such improvements now. The easement required by the original permit has been accepted by the Agua Hedionda Lagoon Foundation, which will ensure adequate area will remain available for public access and future trail improvements.

To minimize or avoid potential adverse impacts to public access, water quality, visual resources, and native vegetation, Commission staff is recommending several special conditions that require submittal of final erosion and runoff control plans to protect the lagoon's water quality during and post-construction; final landscape and brush management plans to ensure restoration of the slope with native, fire-resistant plant species; final plans to minimize visual impacts from Adams Street across the site; a public access signage program to ensure public access remains available across the existing easement until trail improvements are constructed; and recordation of a deed

restriction against the property to notify future property owners of the conditions of this permit.

Commission staff recommends **approval** of coastal development permit amendment 6-86-035-A2 as conditioned.

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APPENDICES

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

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[Exhibit 3 – Open Space approved by CDP #6-86-035](#)

[Exhibit 4 – Public Access Easement approved by CDP #6-86-035](#)

[Exhibit 5 – Existing Site Plan](#)

[Exhibit 6 – Existing Unpermitted Development](#)

[Exhibit 7 – Proposed Site Plan](#)

[Exhibit 8 – Proposed Elevation Plans](#)

[Exhibit 9 – Approved Public Access Sign Design](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-86-035-A2 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves coastal development permit amendment 6-86-035-A2 and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number 6-86-035-A2. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on Amendment 6-86-035-A2 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in ~~strikeout~~**bold** format. This will result in one set of adopted special conditions.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Erosion/Runoff Control Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and written approval, final erosion and runoff control plans for the project. The plans shall be designed by a licensed engineer, shall assure no increase in peak runoff rate from the developed site as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm), and shall include supporting calculations. Runoff and sediment control shall be accomplished by such means as on-site catchment/desilting basins, revegetation of disturbed areas and energy dissipating measures as necessary.

The permittee shall undertake the development in accordance with the approved final erosion and runoff control plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. **Final Landscape/Brush Management Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and written approval, final landscape and brush management plans approved by the City of Carlsbad and the Fire Department. Said plans shall be in substantial conformance with the landscape plans by Nick Martin dated September 28, 2015, and shall include the following:

- a. All proposed landscaping shall be drought-tolerant, native, fire resistant, non-invasive plant species that are obtained from local stock, if available. Galveiza speciosa, Erysimum menziesii, Eriogonum arborescens, and Erigeron glaucus

shall be replaced with more appropriate coastal Southern Californian native species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.

b. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of residential construction.

c. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure restoration of the on-site open space area with native vegetation.

d. The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) is prohibited.

e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

(Special Conditions 3 and 4 of the underlying permit remain unchanged and in effect.)

5. **Public Access Improvements.** By acceptance of this permit, the applicant agrees to be responsible for future implementation of an improved path of a minimum of ten (10) feet in width, or as specified in the citywide trails plan certified by the Commission

in the future, and suitable for use by pedestrians in the public access easement required pursuant to Special Condition #4 of the underlying permit. Within 90 days of approval of the City of Carlsbad's final trails plan, the applicant shall submit plans for construction of said path across the property for review and written approval of the Executive Director, and shall implement the plans within 90 days of Executive Director approval. Said path shall be constructed in accordance with the City of Carlsbad's final trails plan for the north shore of Agua Hedionda Lagoon, if the trails plan proposes a trail for this property. Until that time, no improvements within the area subject to the public access easement shall be permitted, unless otherwise authorized or required under the Coastal Act, with the exception of the public access signage required pursuant to Special Condition #7 of this amended permit. Future public access trail improvements shall require an amendment to this permit or a separate coastal development permit, unless the Executive Director determines a permit or amendment is not legally required.

6. Final Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and written approval of the Executive Director, final site and building plans approved by the City of Carlsbad which are in substantial conformance with the site plan prepared by Tori Jones dated June 3, 2015 submitted with this application, and shall include the following:

- a. The proposed safety railing on the garage shall be constructed of cable with an open design that maximizes public views across the site towards the lagoon, and shall be the minimum height to comply with building codes.
- b. Removal of all unpermitted development beyond (south of) the 41-foot contour line.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Public Access Sign Program. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and written approval of the Executive Director, a public access sign program that includes the following:

- a. A public access sign of Commission-approved design, consistent with the approved design of the Agua Hedionda Lagoon Foundation signage program as shown in Exhibit #9, and informing the public of the existing public access easement fronting the lagoon at the subject site shall be installed in an easily visible location at the easternmost end of the public access easement.

The permittee shall undertake the development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive

Director. No changes to the program shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Deed Restriction. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. Condition Compliance. WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP AMENDMENT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

A. PROJECT HISTORY/ AMENDMENT DESCRIPTION

The subject property is located on Adams Street the north shore of Agua Hedionda Lagoon in Carlsbad, San Diego County (Exhibits 1 and 2). The site contains steep slopes naturally vegetated with coastal sage scrub and lateral lagoon access, as do many of the surrounding properties. Because Agua Hedionda Lagoon and the viewshed surrounding the lagoon are both an environmentally sensitive area and a major recreational resource, it was the subject of a detailed LCP Land Use Plan prepared by the City and certified by the Coastal Commission. The subject property is within this LUP planning area, but an implementation plan for this area has not yet been certified. Thus, permit responsibility remains with the Commission and Chapter 3 of the Coastal Act is the standard of review, with the certified Agua Hedionda Lagoon LUP used as guidance.

The Commission approved the development of the subject property with a 3,400 sq. ft. single family residence in 1986 with CDP #6-86-035. This development included a pool and patio area, and landscaping. Conditions of approval included landscaping plans that

required revegetation of the slope, an open space deed restricted area over the portion of the property south of the 41-ft. contour line to establish a line of development and protect the majority of the natural slope and vegetation (Exhibit 3), dedication of a public access easement (Exhibit 4), and construction of a public trail within the easement. The 41-foot contour line was determined as the line of development, because it allowed construction of a reasonably sized home that did not extend above the elevation of Adams Street and therefore protected views over the subject site from Adams Street to the lagoon, and also minimized encroachment into the steep, naturally vegetated slopes. The applicant met all the prior to issuance condition requirements and the permit was issued. Shortly after this approval, the same owner/permittee requested an amendment to the permit to allow construction of 6-foot tall fences along the eastern, western, and southern property lines and a 42-inch tall fence along the northern property line. This was approved as an immaterial amendment (ref. CDP #6-86-035-A1) in June 1987.

The property has since changed ownership, and the new owners applied for a coastal development permit for a residential addition and remodel (ref. withdrawn CDP #6-15-0757). At that time, it became apparent that the existing home was constructed with unpermitted development including ornamental landscaping, a portion of the pool and pool deck, retaining walls, an artificial sandy beach area, and a wooden deck in the open space deed restricted area (Exhibit 6). In addition, while the public access easement was recorded, a public trail was never constructed. Therefore, the applicant is requesting an amendment to the original approval that proposes removal of all unpermitted development beyond the 41-ft. contour line, restoration of the naturally vegetated slope, and amendment of the requirement to construct a public trail (Special Condition #5) such that improvements shall take place in the future when the City finalizes their master trail plan, as well as a 1,595 sq. ft. residential addition, 444 sq. ft. garage addition, and interior remodel. The residential work will be located within the already developed portion of the site, outside of the open space restricted area.

B. BIOLOGICAL RESOURCES/STEEP SLOPES

Section 30231 of the Coastal Act requires protection and maintenance of the biological productivity of coastal waters and states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrapment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act is applicable to biological resource protection and states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Relevant policies of the certified Land Use Plan include:

Agua Hedionda Land Use Plan Policy 3-13-1.12 Buffers and Fuel Modification Zones:

Buffers shall be provided between all preserved habitat areas and development. Minimum buffer widths shall be provided as follows:

a. 100 feet for wetlands

Buffer widths shall be measured from the edge of preserved habitat nearest the development to the closest point of development. For wetlands and riparian areas possessing an unvegetated bank or steep slope (greater than 25%), the buffer shall be measured from the top of the bank or steep slope rather than the edge of habitat, unless there is at least 50 feet between the riparian or wetland area and the toe of the slope. If the toe of the slope is less than 50 feet from the wetland or riparian area, the buffer shall be measured from the top of the slope.

Any proposed reductions in buffer widths for a specific site shall require sufficient information to determine that a buffer of lesser width will protect the identified resources.

Such information shall include, but is not limited to, the size and type of the development and/or proposed mitigation (such as planting of vegetation or the construction of fencing) that will also achieve the purposes of the buffer. The California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Coastal Commission staff shall be consulted in such buffer determinations.

No development, grading or alterations, including clearing of vegetation, shall occur in the buffer area, except for:

a. Fuel modification Zone 3 to a maximum of 20 feet for upland and non-riparian habitat. No fuel modification shall take place within 50 feet of riparian area, wetlands or oak woodland.

b. Recreation trails and public pathways within the first 15 feet of the buffer closest to the development, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive

areas. Buffer areas that do not contain native habitat shall be landscaped using native plants. Signage and physical barriers such as walls or fences shall be required to minimize edge effects of development.

The project site is a lagoon-fronting hillside lot, which slopes downward toward the water's edge. Many of the surrounding properties to the west of the project site contain coastal sage scrub (CSS) habitat; however, this particular lot has been cleared, graded and developed and contains only a small community of CSS along the lagoon front.

No wetland vegetation exists on the site and no fill of or direct impacts to wetlands are proposed. However, the site is adjacent to Agua Hedionda Lagoon. Although the site does not contain any wetland vegetation, the Commission typically requires a 100-foot buffer between new development and the water's edge of the coastal lagoon, as does the certified LUP. Historically, the Commission requires that buffer areas remain undeveloped to provide open space between development and environmentally sensitive areas like Agua Hedionda Lagoon. This intervening space is intended to provide an upland area for animal and plant species that use the lagoon and establishes a distance between the lagoon resources and physical development, which reduces the potential for adverse impacts associated with development, such as runoff and siltation from grading, construction debris, and debris generated by disturbance from people and domestic animals.

The existing residential development is located well inland of the 100-foot buffer from the mean high water line, as determined according to the 2012 Caltrans Bridge Optimization Study and City of Carlsbad Survey Control Network topographic survey points. The existing residence was approved with a condition requiring an open space restricted area beyond the 41-foot contour line determined by the topographic survey submitted with the original permit application (Exhibit 3). This area contained slopes in excess of 25% grade and native CSS vegetation, which were intended to be preserved through this requirement. The staff report for the original approval also indicates that earlier brush clearing operations took place on the site prior to the application for the existing residence, and conditions of approval included restoration of this area with native vegetation. However, the site as it exists today has been developed beyond the 41-foot contour line, encroaching on the steep slopes and displacing what should be native vegetation (Exhibit 5 and 6). As mentioned above, this unpermitted development includes ornamental landscaping, an extended pool and pool deck, retaining walls, an artificial sandy beach area, and a wooden deck. These improvements are inconsistent with the original permit requirements and with the resource protection policies of the Coastal Act and the certified LUP. Therefore, the applicant worked with staff to propose a revised project that includes removal of all unpermitted development in the open space area and replanting the slope with native, drought tolerant coastal sage scrub species. The proposed residential additions will occur within the previously developed portion of the site outside of the open space area, and will not cause any impacts to native vegetation or steep slopes.

The proposed landscaping plan for the restored open space area and the front yard consists of a native CSS seed mix, with low fuel load species within the required 60-foot

brush management zone (Exhibit 7). The proposed landscaping plan has been reviewed by the Commission's staff ecologist and determined to be sufficient to restore the native vegetation that was removed without benefit of a coastal development permit, with the exception of four proposed species that are more native to the Channel Islands and the coast north of Point Conception rather than to coastal Southern California. The applicant has indicated that these four species will be replaced with more appropriate native species, and that the proposed landscape plan has been developed in compliance with the Fire Department's preliminary brush management requirements, but has not yet received the Fire Department's final approval. Thus, **Special Condition #2** requires submittal of a final landscape/brush management plan with a revised native plant palette stamped approved by the City and the Fire Department prior to issuance of this permit amendment.

On a steep sloping site adjacent to a coastal lagoon such as the subject site, there is the potential for erosion and stormwater runoff to adversely impact the water quality of the lagoon. The proposed development includes a catch basin system that will capture the majority of any roof runoff, which will be re-used to irrigate the proposed landscaping. The proposed development also includes revegetation of the open space area with natural vegetation, which will provide slope stability and infiltration for any runoff from the developed portion of the site. To further minimize or avoid potential impacts to coastal water quality from erosion or stormwater runoff, **Special Condition #1** requires submittal of final erosion and runoff control plans showing that there will be no increase in peak runoff rate from the developed site as a result of a ten-year frequency storm over a six-hour duration with supporting calculations, as was required in the approval of the original permit.

Therefore, as conditioned, the proposed development will not result in any adverse impacts to coastal biological resources or water quality and can be found consistent with all applicable policies of the Coastal Act and of the certified LUP.

C. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

[...]

The City of Carlsbad's certified LUP for the Agua Hedionda area contains a number of policies that address public access and recreation, many of which are specific to the north shore of Agua Hedionda Lagoon. These include:

Agua Hedionda Land Use Plan Policy 3-13-1.12 Buffers and Fuel Modification Zones:

[...]

No development, grading or alterations, including clearing of vegetation, shall occur in the buffer area, except for:

a. Fuel modification Zone 3 to a maximum of 20 feet for upland and non-riparian habitat. No fuel modification shall take place within 50 feet of riparian area, wetlands or oak woodland.

b. Recreation trails and public pathways within the first 15 feet of the buffer closest to the development, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive areas. Buffer areas that do not contain native habitat shall be landscaped using native plants. Signage and physical barriers such as walls or fences shall be required to minimize edge effects of development.

Agua Hedionda Land Use Plan Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian trail shall be a minimum 10 feet wide.

Agua Hedionda Land Use Plan Policy 7.6

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development approval for all shorefront properties. All access ways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use...

Agua Hedionda Land Use Plan Policy 7.8

Design of Access Easements, Buffer Areas, and Adjacent Development
All access ways should be designed to enhance recreational use, and should include adequate open spaces for light and air, adequate signing, inviting design, and provision of adequate buffer areas and buffer landscaping to minimize conflicts with adjacent private property. All lateral public access easements shall be at least 25 feet in width landward of the mean high tide line, unless infeasible due to extreme topographic limitation. The portion of the easement which is actually developed for access purposes may be less than the complete 25-foot width, provided that the developed area is sufficient to reasonably accommodate anticipated access demand. To meet these objectives, the following design criteria shall apply to all structures proposed to be located within 100 feet of any access easement or other public recreational use area:

- a) All portions of such structures shall be set back from the point nearest any public use area a distance equivalent to twice the height of the structure above finished grade; and*
- b) New development shall provide landscaping adequate to minimize visual intrusion upon public use areas.*

The project site is located on the north shore of Agua Hedionda Lagoon between Adams Street and the water's edge. Thus, the project site is located between the sea and first public roadway, where providing public access to the sea (or lagoon, in this case) is a priority objective of the Coastal Act. Public access along and to the waters of Agua Hedionda Lagoon is an important resource because of the recreational nature of the lagoon—it is the only lagoon in San Diego County where water related recreational uses are permitted.

As described above, the certified Agua Hedionda LUP calls for the construction of a public access path along the shoreline of Agua Hedionda Lagoon. The City of Carlsbad's draft future trails system runs along much of the north shore of Agua Hedionda Lagoon, and includes the subject property as part of the location for a future open space trail. This would tie in with the proposed public access improvements that are part of the Interstate-5 widening project as part of the joint SANDAG and Caltrans North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (PWP/TREP). This plan proposes to replace the bridge located over Agua Hedionda Lagoon and to develop future public trails running north, south, east and west of the bridge. The LUP

states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit if the City or another organization does not build it. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line.

The majority of the public access path that is called for in the certified Agua Hedionda LUP has yet to be constructed, due to the fact that a large number of north shore lagoon-fronting lots between Agua Hedionda Lagoon and Adams Street, the designated first coastal roadway in the area, from 1-5 to Bristol Cove (about 0.2 miles east of the subject site), are still undeveloped. Historically, the Commission's requirements for public access in this area have involved, as part of the conditions of approval of projects, a 25-foot wide lateral access offer to dedicate an easement along the lagoon-fronting portion of the project sites. These easements have been recorded on several north shore sites between Adams Street and the lagoon, including the subject site. In most cases, the Commission has required only that a public access easement be recorded, but in several cases the Commission also required construction of an improved accessway, as with the subject site. However, given the need for the City to finalize their master trail plan for this area and for the entire north shore of the lagoon to be available for public use through acceptance of public access easements, the Commission's more recent practice has been to memorialize in conditions of approval that trail improvements shall take place within the dedicated easement area in the future.

As described above, the previous property owner did record an ambulatory 25-foot wide public access easement on the property that has been accepted by the Agua Hedionda Lagoon Foundation, but did not construct the required public access improvements concurrently with construction of the existing residence as required by the original permit conditions. To resolve this violation, the current owner/applicant originally proposed to construct the required trail improvements. Due to the limited beach area available at high tide, the applicant proposed the trail approximately along the 10-foot contour line, upland of the escarpment where the trail would not be subject to inundation or wave action. However, as the subject site slopes down fairly steeply towards the lagoon until it flattens out at the beach front, the proposed trail would require grading on steep slopes, retaining walls for stabilization, and removal of approximately 300 sq. ft. of native CSS.

The City, while generally supportive of the preliminary trail improvements proposed, has not yet completed its master trail plan for this area of the lagoon. The properties on either side of the subject site have not yet been developed and thus do not yet have public access easements that would align with the easement across the subject site and thus help determine exactly where trail improvements should be made. The property to the west contains native CSS and steep slopes down to the lagoon, similar to the subject site, and trail improvements on this western site that would align with the proposed trail improvements would likely result in impacts to these resources. The property to the east of the subject site has a flatter grade at the toe of the slope adjacent to the lagoon and the site has been previously disturbed and graded, thus trail improvements on this eastern site may be able to minimize or avoid impacts to native vegetation and steep slopes. However, without the complete assessment of the impacts involved with aligning the

north shore trail with the proposed trail improvements on the subject site, without the consent of the adjacent property owners to record public access easements for future trail improvements, and without the City's finalized master trail plan, it would be difficult at this time to ensure a trail constructed on the subject site would align with a trail on either side of the site, minimize impacts to habitat and landform, and be consistent with the ultimate design for the trail as a whole.

Thus, staff worked with the applicant to revise their proposal to amend initial permit Special Condition #5 such that the applicant shall be responsible for constructing trail improvements at the time the City has finalized their plans for ultimate trail alignments along the north shore of the lagoon. With the applicant's acceptance of responsibility for constructing trail improvements in the future, the above-described concerns are resolved and the trail can be constructed in the least impactful location in conjunction with the neighboring property owners and consistent with the City's final trail plans. The Commission recognizes that these various concerns were present at the time the trail improvements were required, but finds that postponing the actual trail construction until the City's trail alignments are finalized and a comprehensive assessment of potential resource impacts is done is preferable to allowing construction of a trail on the subject site at this time that will certainly cause impacts to native vegetation and steep slopes and potentially not align with or be the least impactful alignment for a continuous north shore public trail. Therefore, **Special Condition #5** holds the applicant responsible for future implementation of an improved path in the on-site public access easement, to be constructed in accordance with the City of Carlsbad's final trail plan for the north shore of Agua Hedionda Lagoon. The previous obligation to build a public trail across the subject site is not relieved; rather, the timing of construction is being delayed to allow the City to complete their trail plan and ensure proper design and connectivity while minimizing impacts to sensitive habitat and steep slopes, consistent with the resource protection and public access and recreation policies of the Coastal Act and the certified LUP. The management of the trail will be determined by the Agua Hedionda Lagoon Foundation, as the holders of the easement, at the time the City finalizes their master trails plan.

To notify future property owners of this responsibility, as well as of the other conditions of this permit, in the case that the applicant sells the subject property before the City finalizes their trail plans and the trail improvements on this site are required to be constructed, **Special Condition #8** requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. In addition, to provide an interim public access benefit until the public trail is constructed, **Special Condition #7** requires the applicant to install public access signage that clearly informs the public of the existing public access easement fronting the lagoon across the subject site (Exhibit 9).

Therefore, as conditioned, the proposed development will not result in any adverse impacts to coastal public access and recreation and can be found consistent with all applicable policies of the Coastal Act and of the certified LUP.

D. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The Agua Hedionda LUP also contains policies addressing scenic preservation, including:

Agua Hedionda Land Use Plan Policy 8.1

Park Avenue, Adams Avenue and Carlsbad Boulevard are designated as scenic roadways. Development adjacent to these roads shall maintain a minimum 20-foot landscaped buffer between the street and parking areas. Required landscaped setbacks may include sidewalks and bikeways, but shall not include parking areas. Parking areas shall be screened from the street utilizing vegetation, tree forms, and berms, as appropriate.

Agua Hedionda Land Use Plan Policy 8.3

Development located adjacent to scenic roadways, or located between the road and shoreline, shall be regulated as follows:

- a) Where a significant elevation difference (e.g., 35 feet) exists between the shoreline and the first parallel public road, as in the case of Hedionda Point and Snug Harbor, no portion of a structure in the intervening area shall be permitted to exceed the elevation of the roadway.*
- b) Where no significant elevation difference exists between the shoreline and the first parallel public road, permitted development in the intervening area shall provide a view corridor, of a width equivalent to at least one-third of the road frontage of the parcel, which shall be kept free of all structures and free of landscaping which at maturity would rise above a reasonable view line from vehicles passing on the public road.*
- c) On all property adjoining the shoreline, permitted development shall be designed to "step down" in height, to avoid casting shadows on shoreline areas and to produce a perceived transition from open space areas to developed areas; and*
- d) Any development proposed to be located on or near a significant landform (e.g., Hedionda Point) shall be designed so as to minimize disturbance of natural*

landforms, and shall be developed in a manner that assures its compatibility and harmony with the natural landform through use of such architectural techniques as terraced or pole foundations and variation of roof lines to complement the topography.

[...]

The subject site is located between the lagoon shoreline and Adams Street in the area known as Hedionda Point, which, as described in the above policies, is a designated scenic roadway in an area of scenic preservation. The site slopes steeply down from Adams Street towards the lagoon; as such, public views of the lagoon are available across the site. As previously mentioned, the existing residence was constructed with minor encroachment into the steep slopes to allow construction of a reasonably sized home while preserving the views of the lagoon by siting the residential structure at elevations below that of Adams Street.

The proposed development, while adding a substantial amount of livable space to the existing residence, will not increase the roof line of the existing residence. Thus, the residential structure will remain below the elevation of the adjacent roadway, consistent with the view preservation policies of the certified LUP. However, the proposed development includes conversion of the existing driveway to native landscaping and expansion of the existing garage area to create a two-car roof garage. The roof garage will be accessed from Adams Street, and includes two 18 ft. by 7 ft. lifts that would lower and raise the cars to and from the interior garage space on the upper floor of the residence (Exhibit 7). As the roof will technically become a walkable surface due to this new use, a minimum 42-inch tall safety railing is required around the perimeter of this roof area pursuant to the California Building Code. (Cal. Code of Regs., tit. 24, Part 2.5, R312.1.2.)

As written above, the LUP does not allow for any portion of a structure in the area between the lagoon and Adams Street where a significant elevation difference exists, as is the case here, to extend above the adjacent street elevation. However, as proposed, this safety railing will extend no more than 42 inches above the adjacent street level, dropping slightly in elevation from the north (adjacent to the street) to the south as the roof line of the garage drops slightly below street level (Exhibit 8). The proposed safety railing will extend from the existing 42-inch tall wrought-iron fence that runs along the front property line adjacent to Adams Street, approved by the first amendment to this permit. This amendment also approved native landscaping to screen the approved fencing. Thus, there are already some minor encroachments above street level for these accessory features. Despite these existing developments in the front yard extending above the elevation of Adam's Street, views of the lagoon remain available across the subject site. The proposed railing will be no higher than the existing front yard fence, and is the minimum necessary to meet building codes. The City has reviewed the plans for the proposed development, and indicated that the proposed safety rail was found consistent with the view protection policies of the certified LUP because it will be visually permeable, will not block any existing views of the lagoon from Adams Street, and is required to meet building codes.

To further minimize any potential adverse impacts to public coastal views, **Special Condition #6** requires submittal of final plans showing that the proposed safety railing will be constructed with cable, rather than the proposed glass, in an open design that maximizes public views across the subject site towards the lagoon, and that it will be the minimum height necessary to meet building codes.

Therefore, as conditioned, the proposed development will not result in any adverse impacts to public coastal views and can be found consistent with all applicable policies of the Coastal Act and of the certified LUP.

E. UNPERMITTED DEVELOPMENT

Unpermitted development, in the form of construction of ornamental landscaping, a pool and pool deck, retaining walls, an artificial sandy beach area, and a wooden deck within the open space deed restricted area has occurred on the subject site without the required coastal development permit. Additionally, CDP No. 6-86-035 required that the applicant provide the improvements to the public access trail pursuant to Special Condition #5 concurrently to the construction of the single family residence. The required public access improvements were never constructed. **Special Condition #5** of the subject permit amendment requires the applicant to construct the public access improvements on the subject property within 90 days of the completion of the City of Carlsbad Master Trail Plan. Staff recommends the applicant consult with Commission staff prior to undertaking any improvements to determine if an amendment to this permit or a separate coastal development permit is necessary.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. In order to ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition #9** requires the applicant to fulfill the “prior to issuance” conditions within 90 days of Commission action on the subject application. Only as conditioned is the proposed development consistent with the Coastal Act.

F. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The property is designated for low-medium density residential use in the certified Agua Hedionda Land Use Plan. The proposed development is consistent with that designation.

The project, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act and with the slope preservation, scenic preservation and public access policies of the certified Land Use Plan, and will not prejudice the ability of the local government to prepare a fully certifiable Local Coastal Program.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Carlsbad determined that the project was categorically exempt from requiring a CEQA document. (See Cal. Code of Regs., tit. 14, § 15303 (a), (e) [new construction of a single family residence and accessory structures].)

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing brush management, native landscaping, and water quality protection will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: CONDITIONS OF APPROVAL

PERMIT No. 6-86-035

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. ~~Erosion/Sedimentation and Runoff Control Plans. Prior to the transmittal of the coastal development permit, the applicant shall submit erosion/sedimentation and runoff control plans for the project. The plans shall be designed by a licensed engineer qualified in hydrology and hydraulics, and shall assure no increase in peak runoff rate from the developed site as a result of a ten-year frequency storm over a six-hour duration (10-year, 6-hour rainstorm). Runoff and sediment control shall be accomplished by such means as on-site catchment/desilting basins, revegetation of disturbed areas and energy dissipating measures as necessary. The plans, including supporting calculations, shall be subject to the review and written approval of the Executive Director.~~

~~2. Landscaping Plan. Prior to the transmittal of the coastal development permit, the applicant shall submit a detailed landscape plan for the project. The plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. Drought tolerant plant materials shall be utilized to the maximum extent feasible. The plan shall stipulate that all areas disturbed by grading shall be revegetated immediately following grading operations and replanted if vegetation is not fully established within 90 days of planting. The plan shall include revegetation of the site in areas below the 41-foot contour where earlier brush clearing operation took place with materials similar to those removed. Said plan shall be subject to the review and written approval of the Executive Director.~~

3. Open Space Deed Restriction. Prior to the transmittal of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittees successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit the alteration of natural topography, removal of vegetation or erection of structures of any type unless approved by the California Coastal Commission or its successors in interest on that area shown in attached Exhibit #3 and generally described as that portion of the property lying below (south of) the 41-foot contour line. The recording document shall include legal descriptions of both the applicant's entire parcel and the restricted area and shall be in a form and content acceptable to the Executive Director.

4. Lateral Public Access. Prior to transmittal of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the lagoon shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property along the Agua Hedionda Lagoon shoreline extending from the mean high tide line to a line 25-feet upland of the daily high water line, which is understood to be ambulatory from day to day, and as generally indicated on Exhibit #4 of the staff report.

The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The document shall be in a form and content acceptable to the Executive Director.

~~5. Public Access Improvements. Prior to the transmittal of the coastal development permit, the applicant shall submit a plan for the provision of public access improvements along that portion of the property adjacent to Agua Hedionda Lagoon and subject to the recordation of a public access easement pursuant to special condition #4 of the permit. The plan shall provide for an improved path of a minimum of ten (10) feet in width and~~

~~suitable for use by pedestrians and bicyclists. The applicant shall be responsible for implementation of the plan unless responsibility for construction of the access path is assumed by the City of Carlsbad or other appropriate agency. In the event that no other agency assumes responsibility for implementation of the plan, the applicant shall be required to commence and complete construction of the access improvements concurrent with construction of the proposed residence. Said plans shall be subject to the review and written approval of the City of Carlsbad and the Executive Director.~~

PERMIT AS AMENDED No. 6-86-035-A2

STANDARD CONDITIONS:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

- 1. Final Erosion/Runoff Control Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and written approval, final erosion and runoff control plans for the project. The plans shall be designed by a licensed engineer, shall assure no increase in peak runoff rate from the developed site as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm), and shall include supporting calculations. Runoff and sediment control shall be accomplished by such means as on-site catchment/desilting basins, revegetation of disturbed areas and energy dissipating measures as necessary.

The permittee shall undertake the development in accordance with the approved final erosion and runoff control plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Final Landscape/Brush Management Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, final landscape and brush management plans approved by the City of Carlsbad and the Fire Department. Said plans shall be in substantial conformance with the landscape plans by Nick Martin dated September 28, 2015, and shall include the following:

- a. All proposed landscaping shall be drought-tolerant, native, fire resistant, non-invasive plant species that are obtained from local stock, if available. *Galvezia speciosa*, *Erysimum menziesii*, *Eriogonum arborescens*, and *Erigeron glaucus* shall be replaced with more appropriate coastal Southern Californian native species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.
- b. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of residential construction.
- c. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure restoration of the on-site open space area with native vegetation.
- d. The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) is prohibited.
- e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written

approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Open Space Deed Restriction.** Prior to the transmittal of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittees successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit the alteration of natural topography, removal of vegetation or erection of structures of any type unless approved by the California Coastal Commission or its successors in interest on that area shown in attached Exhibit #3 and generally described as that portion of the property lying below (south of) the 41-foot contour line. The recording document shall include legal descriptions of both the applicant's entire parcel and the restricted area and shall be in a form and content acceptable to the Executive Director.

4. **Lateral Public Access.** Prior to transmittal of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the lagoon shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property along the Agua Hedionda Lagoon shoreline extending from the mean high tide line to a line 25-feet upland of the daily high water line, which is understood to be ambulatory from day to day, and as generally indicated on Exhibit #4 of the staff report.

The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The document shall be in a form and content acceptable to the Executive Director.

5. **Public Access Improvements.** By acceptance of this permit, the applicant agrees to be responsible for future implementation of an improved path of a minimum of ten (10) feet in width, or as specified in the citywide trails plan certified by the Commission in the future, and suitable for use by pedestrians in the public access easement required pursuant to Special Condition #4 of this permit. Within 90 days of approval of the City of

Carlsbad's final trails plan, the applicant shall submit plans for construction of said path across the property for review and written approval of the Executive Director, and shall implement the plans within 90 days of Executive Director approval. Said path shall be constructed in accordance with the City of Carlsbad's final trails plan for the north shore of Agua Hedionda Lagoon. Until that time, no improvements within the area subject to the public access easement shall be permitted, with the exception of the public access signage required pursuant to Special Condition #7 of this amended permit. Future public access trail improvements shall require an amendment to this permit or a separate coastal development permit, unless the Executive Director determined a permit or amendment is not legally required.

6. Final Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and written approval of the Executive Director, final site and building plans approved by the City of Carlsbad which are in substantial conformance with the site plan prepared by Tori Jones dated June 3, 2015 submitted with this application, and shall include the following:

- c. The proposed safety railing on the garage shall be constructed of cable with an open design that maximizes public views across the site towards the lagoon, and shall be the minimum height to comply with building codes.
- d. Removal of all unpermitted development beyond (south of) the 41-foot contour line.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Public Access Sign Program. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and written approval of the Executive Director, a public access sign program that includes the following:

- a. A public access sign of Commission-approved design, consistent with the approved design of the Agua Hedionda Lagoon Foundation signage program as shown in Exhibit #9, and informing the public of the existing public access easement fronting the lagoon at the subject site shall be installed in an easily visible location at the easternmost end of the public access easement.

The permittee shall undertake the development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Deed Restriction. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. Condition Compliance. WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP AMENDMENT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

APPENDIX B: SUBSTANTIVE FILE DOCUMENTS

- Certified Agua Hedionda Land Use Plan
- CDP #6-86-035 and #6-86-035-A1
- Withdrawn CDP #6-15-0757



Subject Site

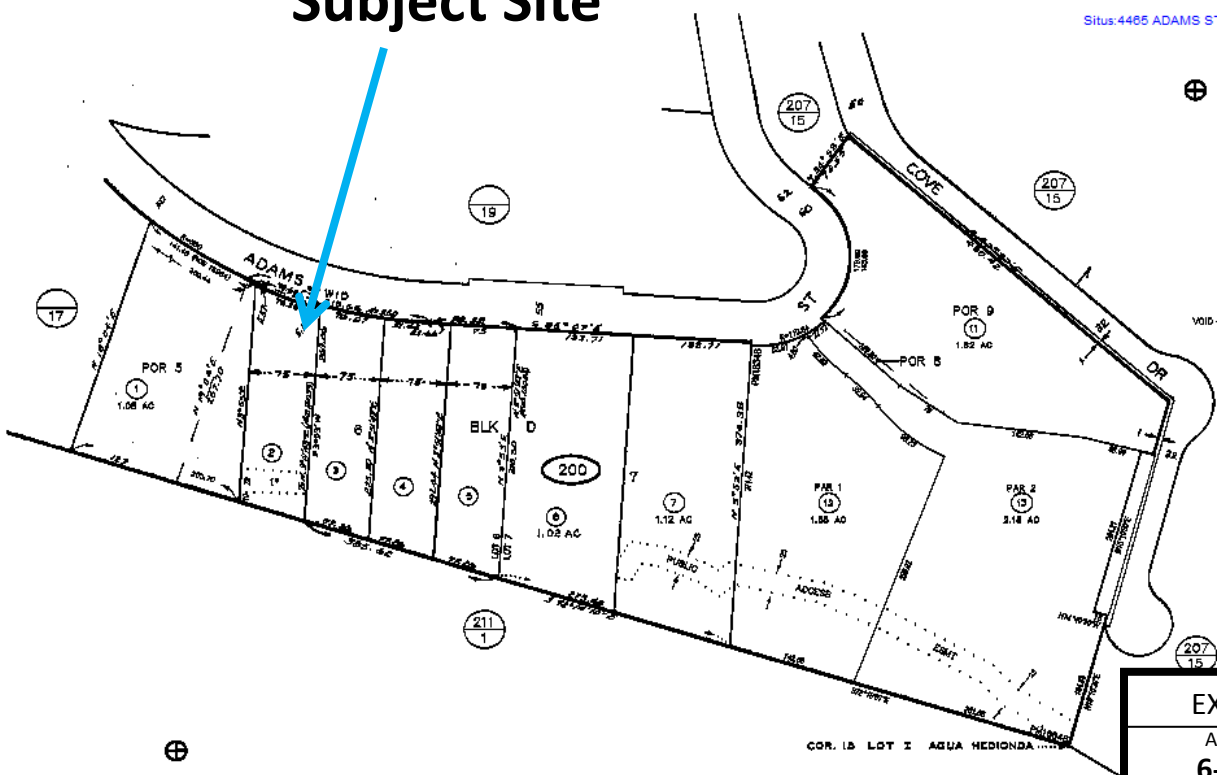


EXHIBIT NO. 1

APPLICATION NO.

6-86-035-A2

Vicinity Map



California Coastal Commission



EXHIBIT NO.2

APPLICATION NO.

6-86-035-A2

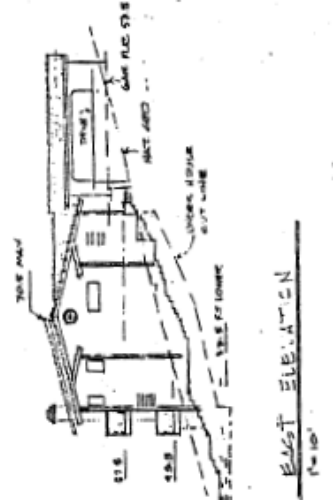
Aerial View



California Coastal Commission

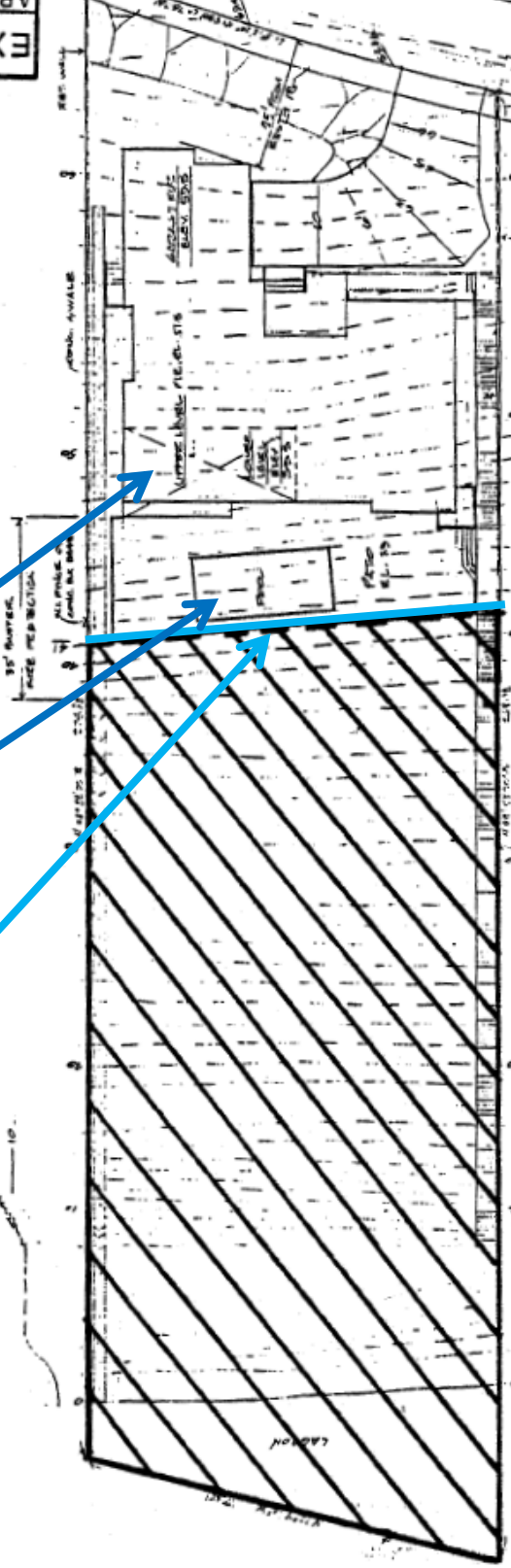
EXHIBIT NO. 3
 APPLICATION NO.
 6-86-35
 Open Space
 for Special
 Condition

Adams Street



Approved SFR
 Approved Pool

41-foot contour line



Open space for special condition #
 Sewer extension, stairs and access improvements
 permitted within the restricted area.



Agua Hedionda Lagoon

EXHIBIT NO. 3
APPLICATION NO.
6-86-035-A2
Approved Open Space
Restricted Area
California Coastal Commission

EXHIBIT NO. 4
APPLICATION NO.
6-86-35
Public Access
Easement for
Special
Condition #4

Adams Street

41-foot
contour
line

Approved SFR
Approved Pool



Agua Hedionda Lagoon

EXHIBIT NO. 4
APPLICATION NO. 6-86-035-A2
Approved Public
Access Easement
 California Coastal Commission

Adams Street ↑

41-foot contour line

**Unpermitted
pool/pool deck,
landscaping,
retaining walls,
deck, and
artificial beach**



Agua Hedionda Lagoon

EXHIBIT NO. 5

APPLICATION NO.

6-86-035-A2

Existing Site Plan



California Coastal Commission



EXHIBIT NO. 6

APPLICATION NO.

6-86-035-A2

Existing Unpermitted

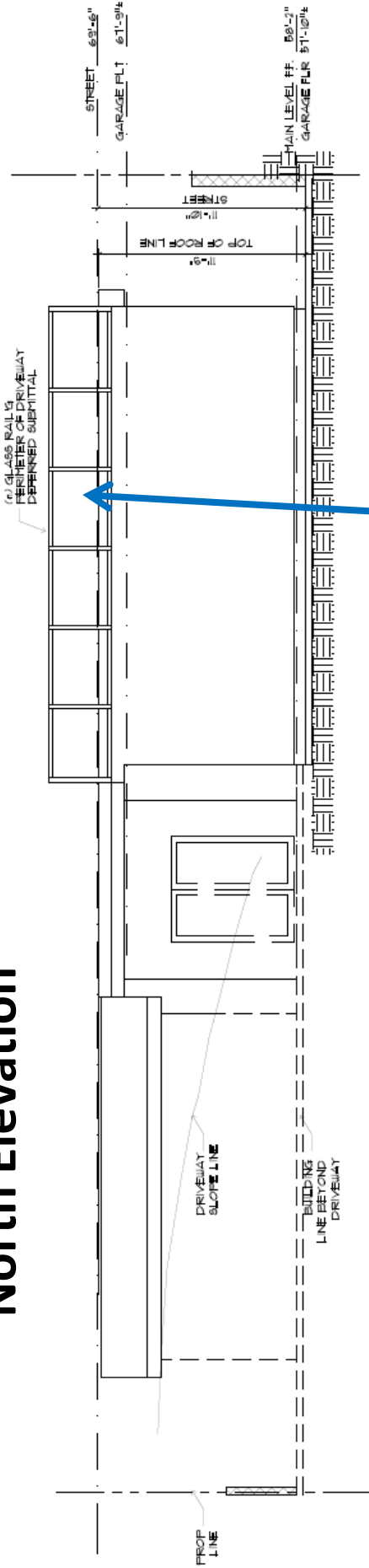
Development



California Coastal Commission



North Elevation



Existing
fence

West Elevation

Proposed Safety
Railing

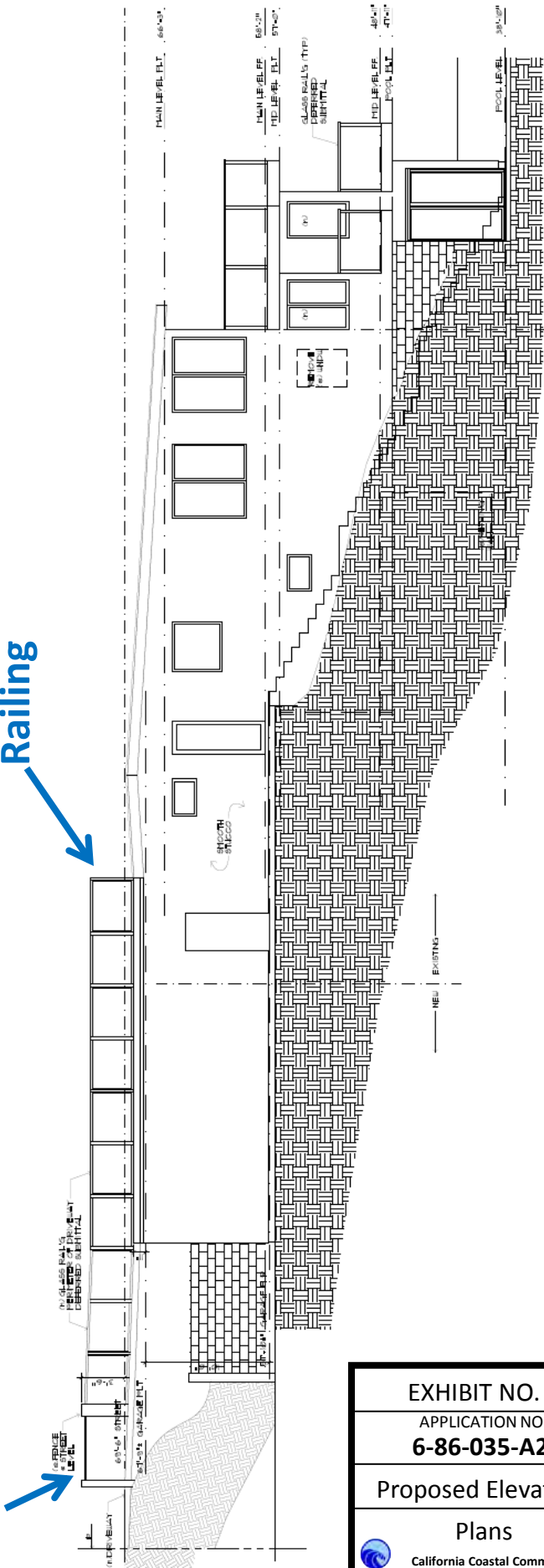



EXHIBIT NO. 8	
APPLICATION NO.	
6-86-035-A2	
Proposed Elevation	
Plans	
	California Coastal Commission

PUBLIC ACCESS TRAIL

Provided in Cooperation with the
CALIFORNIA COASTAL COMMISSION



Managed By
AGUA HEDIONDA LAGOON FOUNDATION



EXHIBIT NO. 9

APPLICATION NO.

6-86-035-A2

Public Access Signage



California Coastal Commission