

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-28

Applicant: Klementyna S. Newkirk

Agent: Tom Jones

Description: Construction of a 948 sq.ft. room addition to an existing single-story 5,300 sq.ft. residence on a 2.11-acre hillside and lagoon fronting lot. Request for after the fact approval to retain the following unpermitted improvements within the approved open space buffer: 10 flagstone steps, 2 palapas (shade structures), several 4" drains. The proposed project also requests after the fact approval to retain a 1,200 sq.ft. railroad tie planter, a 1,600 sq.ft. asphalt apron for boat storage, a 60 sq.ft. detached storage building and the enlargement of a boat launch ramp below the mean high tide line. The applicant requests authorization to remove any already constructed development that is not approved by the Commission in this action.

Site: 4525 Adams Street, Agua Hedionda, Carlsbad (San Diego County)

Substantive File Documents: Certified Agua Hedionda Land Use Plan; Coastal Development Permit 6-96-159

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the permit with special conditions. The proposed development is located adjacent to the Agua Hedionda Lagoon. The applicant at first requested only the 948 sq.ft. room addition. However, upon review of the application, Commission staff discovered a number of unpermitted structures on the site. After discussing this with the applicant's agent, the project was modified to include after-the-fact approval for the unpermitted structures and, if not approved, request for authorization to remove them. Staff is recommending that the proposed improvements in the previously recorded open space easement be deleted and removed. Staff is also recommending that the after-the-fact expansion of the boat launch ramp beyond the mean high tide line not be authorized and be removed. The original permit for construction of the home required that all landscaping on site be native, non-invasive species. A number of non-native plantings

exist on the site and staff recommends they be removed and replaced with native, non-invasive species. Although the applicant is requesting after-the-fact approval for all existing unpermitted development on site, the applicant has also submitted a letter to staff dated July 18, 2002, stating that in the event that the Commission does not grant after-the-fact approval for any components of the existing unpermitted development, then the applicant is also requesting authorization as part of this proposed application to remove those components (Exhibit 3). All other aspects of the development are recommended for approval. As conditioned, the proposed development is consistent with all applicable policies of Chapter 3 of the Coastal Act.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-02-28 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as 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.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final site and landscaping plans that have been approved by the City of Carlsbad. Said plans shall be in substantial conformance with the plans submitted by Paul Weatherly Inc., dated received 4/3/02, except they shall be revised as follows:

- (a) The palapas and flagstone steps within the open space buffer required pursuant to Coastal Development Permit No. 6-96-159 shall be deleted.
- (b) The boat launch ramp shall be modified to delete that portion below the mean high tide line (elevation 2-ft Mean Sea Level).
- (c) Plans shall be included for removal of palapas, flagstone steps, and boat launch ramp.
- (d) Final Landscape plans shall be included which prohibit bamboo within the railroad-tie planter located on the east property line and removal of all unauthorized non-native vegetation on the remainder of the site and replacement with native, non-invasive, drought-resistant landscaping acceptable to the Executive Director in consultation with the Department of Fish and Game. The plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features.

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 an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Removal of Unpermitted Structures/Landscaping. The applicant shall remove all existing non-native, invasive plant species on the site, the existing palapas and flagstone steps within the approved open space buffer and the portion of the boat launch ramp below the mean high tide line within the 30 days of issuance of the coastal development permit consistent with the revised final plans required by Special Condition 1. The Executive Director may grant additional time for good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

3. Condition Compliance. WITHIN 90 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, 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 the issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

4. Invasive Species. Prior to the commencement of removal of the portion of the boat ramp located below mean high tide line, the applicant shall provide evidence that

removing the boat launch ramp can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia* as follows.

- a. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit, the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- b. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- c. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 1. For the review and written approval of the Executive Director; and
 2. To the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (DFG) (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (NMFS) (562/980-4043).
 3. If *Caulerpa* is found, then the NMFS and DFG contacts shall be notified within 24 hours of the discovery.
 - d. If *Caulerpa* is found, prior to the commencement of removal of the portion of the boat ramp located below mean high tide line, the applicant shall provide evidence to the Executive Director for review and written approval either that the *Caulerpa* discovered within the project and/or buffer area has been eradicated
5. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits for the development authorized by CDP #6-02-28. The applicant shall inform the Executive Director of any changes to the project required by other state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.
6. Final Drainage Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final drainage and runoff control plans that have been approved by City of Carlsbad to the Executive Director for review and written approval. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of storm water leaving the developed site.

The plans shall document that the runoff from the roof, asphalt apron and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) or other media filter devices for infiltration and/or percolation to the maximum extent practicable, prior to being conveyed off-site in a non-erosive manner. In addition to the specifications above, the plan shall provide that:

- (a) No maintenance or refueling of vessels is allowed on the boat ramp or apron. Water may be used to rinse off vessels, but no cleaning agents may be used.

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.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. Construction of a 948 sq.ft. room addition to an existing single-story 5,300 sq.ft. residence on a 2.11-acre hillside and lagoon fronting lot. Request for after the fact approval to retain the following unpermitted improvements within the approved open space buffer: 10 flagstone steps, 2 palapas (shade structures), several 4" drain. The proposed project also requests after the fact approval to retain a 1,200 sq.ft. railroad tie planter, a 1,600 sq.ft. asphalt apron for boat storage, a 60 sq.ft. detached storage building and the enlargement of a boat launch ramp below the mean high tide line. The applicant requests authorization to remove any already constructed development that is not approved by the Commission in this action. Although the applicant is requesting after-the-fact approval for all existing unpermitted development on site, the applicant has also submitted a letter to staff dated July 18, 2002, stating that in the event that the Commission does not grant after-the-fact approval for any components of the existing unpermitted development, then the applicant is also requesting authorization as part of this proposed application to remove those components (including the palapas, flagstone steps, 4" drains and a portion of the boat launch ramp) (Exhibit 3).

The site is bounded on the west and north by existing approved single-family homes (CDP #6-96-159, Cade and 6-97-49, Jones) and bounded on the east by a 23-unit condominium complex known as Bristol Cove.

In CDP #6-96-159 the Commission approved creation of the subject lot and construction of the home as part of a two-lot subdivision of a 3.66-acre site. The hillside site contains elevations ranging from 0 to 43 feet above mean sea level (MSL). No grading is proposed. The existing residence is setback approximately 80-feet from the shoreline.

The unpermitted improvements within the recorded open space buffer, a 1,200 sq.ft. railroad tie planter, a 1,600 sq.ft. asphalt apron for boat storage, and the larger boat launch ramp were constructed/installed on the project site by the previous property owner between 1997 and 2001. Commission Enforcement staff confirmed the violations during a site inspection and discovered the construction of the unpermitted storage shed. This application was submitted to the Commission in response to direction by Enforcement staff to both the previous property owner and the current property owner/applicant to resolve the unpermitted development on site.

In approving the home, the Commission included a number of special conditions to find the development consistent with Coastal Act policies. These conditions included, among others, a 25-foot wide lateral access easement along the beach and an open space buffer area between the residential development and Agua Hedionda Lagoon (a public trail, landscaping, a small boat launch ramp, minor drainage improvements and fencing at the edge of the buffer were the only development permitted within the open space buffer). The open space buffer is required to remain free of all structures except as provided in the permit.

Agua Hedionda is one of six segments of the City of Carlsbad's LCP. While most of the city's coastal zone has a fully certified LCP, with the city issuing coastal development permits, an implementation program for the Agua Hedionda segment has not been certified as yet. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review, with the certified Agua Hedionda Land Use Plan used for guidance.

2. Unpermitted Development. Unpermitted development has occurred on site without the required coastal development permit consisting of 10 flagstone steps, 2 palapas (shade structures) and several 4" drains within the recorded open space buffer. The proposed project also includes a request for after-the-fact authorization of a 1,200 sq.ft. railroad tie planter, a 1,600 sq.ft. asphalt apron for boat storage, a 60 sq.ft. detached storage building and the enlargement of a boat launch ramp below the mean high tide line. Commission Enforcement staff investigated a violation report and confirmed the violation during a site visit and the applicant has submitted the current application for resolution of the pending violation in response to the direction by Commission Enforcement staff.

Special Condition #1 requires the applicant to submit revised plans that delete the unpermitted palapas, non-native invasive landscaping, flagstone steps and 4" drains and a portion of the boat launch ramp and provide for the removal of those as-built structures. Although the applicant is requesting after-the-fact approval for all existing unpermitted development on site, the applicant has also submitted a letter to staff dated July 17, 2002, stating that in the event that the Commission does not grant after-the-fact approval for any components of the existing unpermitted development, then the applicant is also requesting authorization as part of this proposed application to remove those components (including the palapas, flagstone steps, 4" drains and a portion of the boat launch ramp). To ensure that the applicant's proposal to remove all existing unpermitted development

not authorized by this permit is implemented in a timely manner, Special Condition #2 requires that the applicant remove the palapas, steps, and portion of the boat launch ramp, consistent with the revised final plans required by Special Condition #1, within 30 days of issuance of the permit, unless additional time is granted by the Executive Director for good cause. In addition, to ensure that the components of this application involving unpermitted development are resolved in a timely manner, Special Condition #3 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action.

Although development has taken place without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

3. Environmentally Sensitive Habitat. The project site is located along the north shore of the inner basin of Agua Hedionda Lagoon. Agua Hedionda has been identified as one of 19 high priority coastal wetland acquisition areas, as referenced in Section 30233 of the Act. [[provide brief description of recreational activities in the lagoon, too]] Section 30240 (b) of the Act is applicable and states:

(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.

Section 30230 of the Act provides:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Act provides:

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 entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In CDP #6-96-159, the Commission required a 60-foot open space buffer between development and Agua Hedionda lagoon as a condition of approval. The Commission found the 60-foot buffer was acceptable (rather than the typical 100-foot buffer) because of the significant elevation difference between the resource and new development. The buffer was required as open space. A vegetative barrier and low fencing between the area of public use and the upland portion of the site was approved as a boundary between private and public use. The Commission also accepted minor drainage improvements (rip-rap energy dissipater) and a boat launch ramp within the buffer.

The site plan indicates that several structures are located within the open space buffer area (several palapas [shade structures], several 4" drains and a stairway down the bluff face) that were not approved by the Commission and are inconsistent with the open space buffer requirements. The Commission permitted the following uses within the buffer: native drought-resistant vegetation, rip-rap energy dissipater, boat launch ramp, a future public trail with its associated improvements and upland fencing and/or landscaping to demarcate public/private use. No other uses were permitted. Buffers serve as physical space between development and a resource (in this case Agua Hedionda Lagoon) to protect the resource from direct and indirect adverse impacts associated with development. The proposed palapas, drains and stairway are not permitted uses and are development that encroaches into the buffer and results in adverse effects to the resources that the buffer had been required to protect, inconsistent with the conditions of approval for CDP # 6-96-159 and Sections 30230, 30231 and 30240(b) of the Coastal Act.

In addition, while approved within the buffer at the eastern end of the subject site, the boat launch is larger than that approved by the Commission as it extends into the water at least 9 feet below the mean high tide line (elevation 2-ft. MSL). The Commission's action authorizing construction of the boat launch ramp required that it terminate at the mean high tide line. The concern was that the applicant wanted to avoid additional permitting. In addition, there was a concern that the ramp would adversely affect benthic organisms that reside under the water and may impact eelgrass resources in the lagoon. DFG indicates that several eelgrass mitigation projects are underway in the Bristol Cove area, including one immediately south of the water entrance to the cove immediately adjacent to the boat launch, but has not concluded that the extended ramp has impacted any eelgrass resources. Additionally, while the Army Corp of Engineers (COE) also approved the boat launch ramp to the mean high tide line, they too prohibited its extension into the lagoon below that point. COE required before/after surveys, photographs and staking to ensure that any eel grass resources were protected. COE also required that within 60 days of completion, a report be submitted which documented that authorized water impacts were not exceeded, which the applicant failed to do. Finally, COE required that if the as built plans show fill below the mean high tide line, that fill must be removed. Similarly, the Commission is requiring its removal. The Commission notes that, based on the available information, it is not possible to determine whether there were resource impacts to eelgrass. Thus, the Commission is not seeking mitigation for possible impacts to eelgrass. Because the unpermitted extension of the ramp is not

permitted by the ACOE, the Commission finds that the portion that extends beyond the mean high tide line must be removed.

Special Condition #1 requires revised plans deleting the palapas, stairway and water drains from the buffer and that portion of the boat launch ramp below the mean high tide line. Although the applicant is requesting after-the-fact approval for all existing unpermitted development on site, the applicant has also submitted a letter to staff dated July 17, 2002, stating that in the event that the Commission does not grant after-the-fact approval for any components of the existing unpermitted development, then the applicant is also requesting authorization as part of this proposed application to remove those components (including the palapas, flagstone steps, 4" drains and a portion of the boat launch ramp). In order to implement the applicant's proposal to remove any existing unpermitted development not authorized by this permit, Special Condition #1 also requires submittal of plans for their removal. In addition, in order to ensure implementation of the applicant's proposal to remove any existing unpermitted development not authorized by this permit in a timely manner Special Condition #2 requires that the applicant remove the palapas, steps, and portion of the boat launch ramp, consistent with the revised final plans required by Special Condition #1, within 30 days of issuance of the permit, unless additional time is granted by the Executive Director for good cause. In addition, this condition requires submittal of plans for their removal. Special Condition #5 requires that other permits associated with the boat launch ramp removal be submitted. As conditioned to require removal of development that encroaches into the open space buffer and the lagoon, the project conforms to Sections 30230, 30231 and 30240(b) of the Coastal Act.

A current issue in Agua Hedionda Lagoon is the eradication program for the invasive green alga, *Caulerpa taxifolia* (referred to hereafter as *Caulerpa*), that has been discovered within inner Agua Hedionda Lagoon. On August 7, 2000 the Executive Director issued an emergency permit (6-00-99-G) regarding the eradication of *Caulerpa* found in a small area of the inner lagoon. The program included placement of tarps over the treated sectors and capping the areas to preclude regrowth.

Caulerpa is a tropical green marine alga that was popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250-ft depth. Because of toxins in its tissues, *Caulerpa* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has also had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing.

Because of the grave risk to native habitats, in 1999 *Caulerpa* was designated a prohibited species in the United States under the Federal Noxious Weed Act. AB 1334, enacted in 2001 and codified at California Fish and Game Code Section 2300, forbids possession of *Caulerpa*. In June 2000, *Caulerpa* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *Caulerpa* has been shown to tolerate water temperatures down to at least 50° F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *Caulerpa* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *Caulerpa* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *Caulerpa* infestations.

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is protected by Coastal Act Sections 30230 and 30231 because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds. If *Caulerpa* were allowed to reproduce unchecked within the outer basin, sensitive eelgrass beds and the wildlife that depend upon them would be adversely impacted. Therefore, eradication of *Caulerpa* would be beneficial for native habitat and wildlife.

If *Caulerpa* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed boat launch ramp removal does not cause the dispersal of *Caulerpa*, the Commission imposes Special Condition #4. Special Condition #4 requires the applicant to conduct a survey to determine if any *Caulerpa* is present prior to removal of the portion of the boat ramp located below mean high tide line. If any *Caulerpa* is discovered, the applicant must notify the resource agencies and must demonstrate that the *Caulerpa* has been eradicated prior to removal of the boat ramp. DFG indicates the removal is acceptable.

In 6-96-159, the Commission required that native, drought-resistant landscaping be planted within the required buffer. Although it is not located within the buffer, a 1,200 sq.ft. railroad planter located immediately upland of the buffer contains bamboo, a non-native invasive plant species that is not drought-resistant. This planter was not approved by the Commission and the applicant is seeking its after the fact approval. While the Commission takes no issue with the planter structure itself, it does take issue with the

bamboo vegetation mainly because it is invasive and could adversely affect the existing vegetation within the buffer and environs. Pursuant to Special Condition #1(d), the Commission does not approve cultivation of bamboo in the planter and requires any vegetation within the planter to be native, drought-resistant vegetation acceptable to the Executive Director in consultation with the Department of Fish and Game.

Although a small storage shed has been installed approximately 250 feet from the water without benefit of a coastal development permit, its location outside the approved buffer raises no Coastal Act concerns.

4. Scenic Preservation. Section 30251 of the Coastal Act is applicable and 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 proposed addition to the home does not raise any Coastal Act issues as it would be sited far from designated open space areas, would be visually unobtrusive and its height would not extend above the centerline of the fronting street, which is the height limit established in the certified Land Use Plan. Therefore, the Commission finds the project is consistent with Section 30251 of the Coastal Act.

5. Public Access. Section 30604(c) of the Act requires that a specific access finding is made for any development located between the sea and the first public roadway:

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

In this particular location, Adams Street serves as the first public roadway and the proposed development is located between Adams Street and Agua Hedionda Lagoon.

In addition, Section 30212 of the Act requires that public access from the nearest public roadway be provided, unless such access would be inconsistent with public safety, military security or resource protection needs.

Section 30212

(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.

In CDP #6-96-159, the Commission required recordation of a lateral access easement along the beach within an open space buffer area between the residential development and Agua Hedionda Lagoon as a condition of approval. The required easement is 25 feet wide along the entire width of the property which fronts the Agua Hedionda Lagoon shoreline. The easement area is ambulatory, meaning it changes over time as the point where the mean high tide meets land fluctuates. The upland extent of the easement will always be 25 feet inland of the location of the mean high tide on the property. Approved signage installed between the site and the Bristol Cove apartments to the east identifies that public access is available across the subject site; a similar sign exists on the adjoining lot to the west. A 5-foot wide public trail was constructed (approved by the Commission) within the area generally utilized by the public which is located within the lateral access easement the majority of the time. The purpose of an ambulatory access easement is to assure area is always available for public lateral access regardless of the location of the water line or trail improvements.

The easement has been accepted by the Agua Hedionda Lagoon Foundation and is open to the public. Landscape planters were permitted to help define the public/private boundary. Fencing at the edge of the buffer was permitted within the upland extent of the buffer to provide additional privacy to the homeowner. Vertical access is provided to the subject site from nearby Cove Drive. No changes to existing access provisions is proposed nor will be affected by the proposed development. Therefore, both lateral and public access are adequate in the subject area and the project is consistent with the above public access policies of the Coastal Act.

6. Water Quality. The following Coastal Act policies are applicable to the proposed development and state:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms

adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

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 entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Sections 30230 and 30231 protect marine water quality from adverse affects associated with new development. Agua Hedionda Lagoon has been identified by the State Department of Fish and Game as one of the 19 highest priority wetland areas for acquisition and, as such, is referenced in Section 30233(c) of the Coastal Act. The adverse impacts of development most often associated with wetland areas are erosion of soils within the watershed and subsequent sediment transport to the wetlands.

Although no grading is proposed, the Commission is concerned existing conditions on site are adversely affecting the water quality of the lagoon. The boat launch ramp directs storm water containing urban pollutants directly into the lagoon. Regarding the 1,600 sq.ft. unpermitted asphalt area (used as a boat rinsing area) that has been constructed upland of the boat launch ramp, the applicant indicates an existing drain at the low point directs storm water to a drum that is filled with porous volcanic stone. According to the applicant this drum filters storm water before it ultimately enters the lagoon. However, these improvements were installed without benefit of a coastal development permit and did not include a detailed drainage and runoff control plan and supporting hydrologic calculations. Therefore, it is difficult to determine whether the existing drainage improvements are adequate to minimize impacts to the water quality of the lagoon. Special Condition #6 requires that the applicant submit to the Executive Director a detailed drainage plan. The plan shall document that the runoff from the roof, asphalt apron and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) or other media filter devices for infiltration and/or percolation to the maximum extent practicable, prior to being conveyed off-site in a non-erosive manner. Because maintenance and refueling activities can result in the spillage of petroleum products, grease, and other pollutants, Special Condition #6 prohibits maintenance or refueling on the boat ramp or apron. In addition, because chemical agents used to clean boats can adversely affect water quality, no cleaning agents may be used on the boat ramp or apron. Vessels, however, may be rinsed with water. Only as conditioned can the Commission find the project has been designed to adequately treat storm water prior to its discharge into Agua Hedionda Lagoon, consistent with sections 30230 and 30231 of the Coastal Act.

7. Local Coastal Planning. Section 30604 (a) 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 Agua Hedionda Land Use Plan (LUP) designates the site for residential development at a maximum density of 4 du/ac. The proposed room addition to an existing single-story residence will not change the site's density. As conditioned, the project is also consistent with the habitat preservation, water quality and scenic preservation policies of the certified Agua Hedionda Land Use Plan and should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda segment.

8. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, is 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 proposed project has been conditioned to be found consistent with the resource and visual policies of the Coastal Act. The attached mitigation measures 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, as conditioned to mitigate the identified impacts, is the least environmentally damaging environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

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.

6-02-028

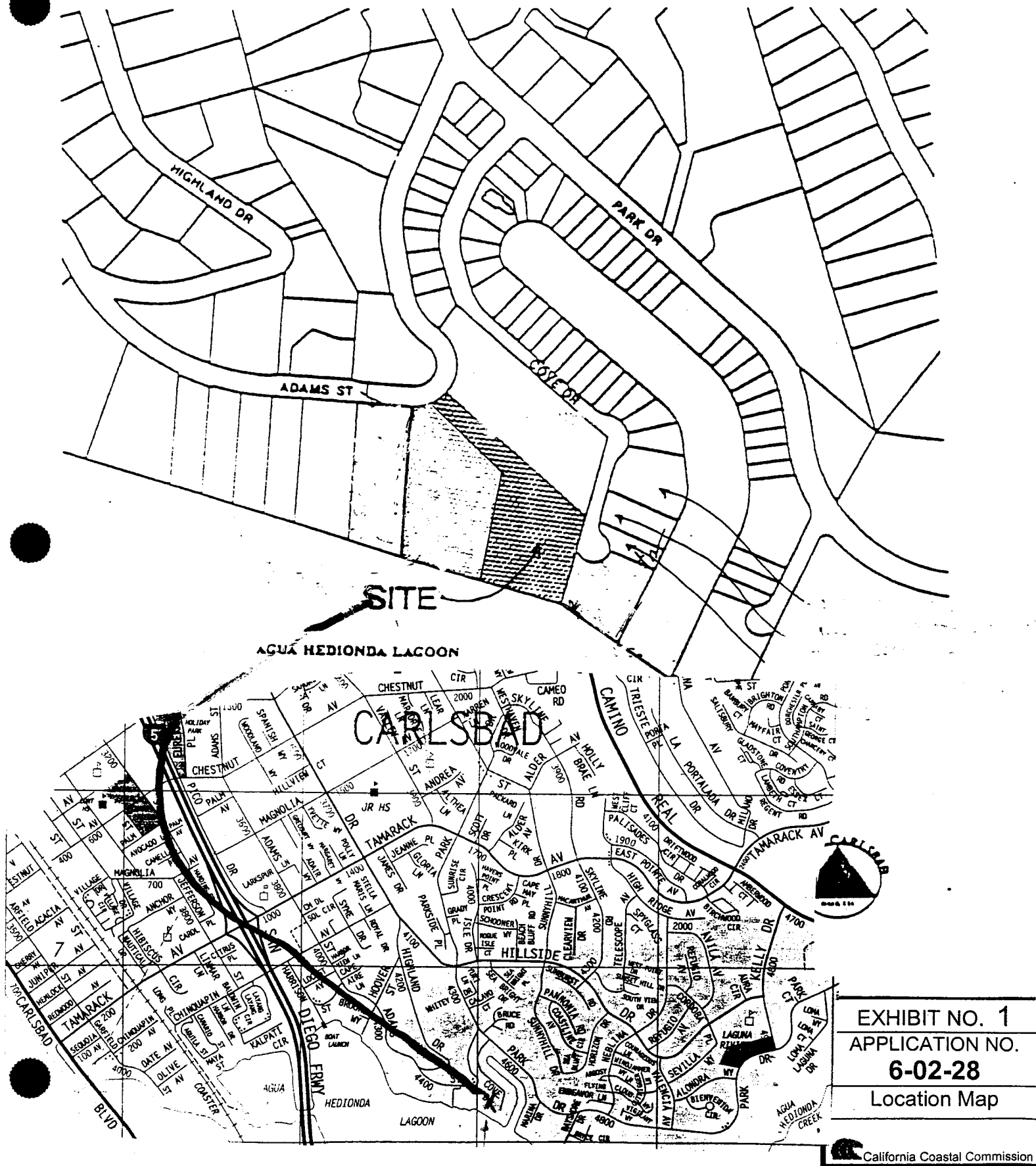


EXHIBIT NO. 1
APPLICATION NO.
6-02-28
Location Map

7-18-02

Bill Ponder
California Coastal Commission
7575 Metropolitan Dr., Suite 103
San Diego, Ca. 92108
FAX 619 767-2384

Re: Coastal Development Permit Application #6-02-28
Newkirk

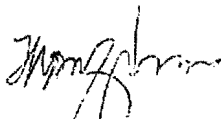
Dear Mr. Ponder,

We propose to amend our application as follows:


1. Any "palapa" shade structures within the 60 foot setback from the mean tide line.
2. Existing flagstone stairs, within the 60 foot setback from the mean tide line.
3. Any portion of the existing boat launch below water level at mean tide.

Also, we request authorization to remove any structures not authorized by the Commission.

Sincerely,



Thomas E. Jones
P.O. Box 2740, Carlsbad, Ca. 92018
760 720-1858 760 720-2081 FAX
agent for Klementyna Newkirk

EXHIBIT NO. 3
APPLICATION NO.
6-02-28
Applicant's Letter
 California Coastal Commission

Wed 9d

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402



RECEIVED

JUL 31 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Attn: Bill Ponder - by fax to (619) 767-2384

Re: Application No. 6-02-28 (Newkirk)

Dear Mr. Ponder,

I thank you for responding to my request for a copy of the staff report and preliminary recommendation regarding the subject application. As the entity responsible for management of the 25 foot lagoon frontage easement across the Newkirk and Cade properties, the Agua Hedionda Lagoon Foundation has an interest in the matter. We can support the request for construction of an addition to the existing residence, provided the conditions proposed by Commission staff are met. Our comments follow.

First, during the one year and five months that the Foundation has been responsible for the easement, we have noted green growth on and below the rip-rap energy dissipater designed to carry runoff from the Newkirk and Cade properties. This growth is indicative of runoff rich in nutrients such as fertilizer. We have also noted erosion of the easement below the rip-rap, an indication that energy dissipation capability is inadequate, particularly when lawn and garden irrigation is taking place. There are other locations where PVC pipes from the Newkirk and Cade properties empty out at the top of the easement, and the easement has eroded below them, although less often and in lesser magnitude than at the rip-rap. These observations have been recorded in the log the Foundation maintains as part of our obligation for annual reporting to the Coastal Commission.

Second, we question the benefit to the lagoon of requiring removal of that portion of the boat ramp below Mean High Tide. As you are well aware, city, state and federal agencies have been attempting to eradicate the "killer alga" *Caulerpa taxifolia* from the lagoon for two years. Boat anchoring and fishing have been banned, out of concern that under-water activities could break off pieces of *Caulerpa* that would relocate and recolonize. We recommend that the Commission contact the Southern California Caulerpa Action Team (SCCAT), headed up by the Department of Fish & Game, before ordering this under-water work.

Thank you for the opportunity to comment on this application.

Sincerely,

Bob Richards, President

shilnewkirk

cc: Linda Locklin, Coastal Commission - by fax (831) 427-4875
Bill Pamokas, Department of Fish & Game - by fax (858) 467-4299

Letters of Comment

EXHIBIT NO. 4
APPLICATION NO.
6-02-28
Letters of Comment
Page 1 of 9
California Coastal Commission

28
Steven P. Cade

4523 Adams Street

Carlsbad, CA 92008

Tel: 760-729-4220 (Mob: 760-822-4529)

FAX: 760-720-3391

Wed 9d

RECEIVED

JUL 29 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

July 26, 2002

California Coastal Commission
ATTN: Commission Staff
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Re: Permit 6-02-028 Newkirk August 7, 2002 hearing

Dear Commissioners,

I am the immediate next-door neighbor to the applicant, residing immediately west and sharing the same Agua Hedionda lagoon frontage.

It appears to me that Staff has done a very thorough job of preparing this application. I wanted to communicate my support of Staff's recommendation for approval.

I would like to note some perspective that might be of importance in your review of this application. Mrs. Newkirk's home is very low density on a large lot. It is a single story home and it is extensively landscaped. Boaters in the lagoon and walkers on the beach trail stop and admire the beautiful natural landscaping. Surrounding this property are multiple high-rise buildings with intensive density that are not very environmentally friendly in visual appearance. Mrs. Newkirk has established a high standard for keeping a property low profile and blended in with the landscape.

The only issue that I would disagree with Staff's analysis is the special recommendation to remove the portion of the boat launch below the mean tide line. There are no environmental benefits to do this. Boats will still be launched at this site (just only at higher tides). There will be expanded environmental damage when boats get stuck at the end of the ramp from someone attempting to launch a boat at a tide too low. It is difficult for a boater to know what tide will work or not work, and thereby it will be easy for a boat to be partially in the water churning up the bottom and unable to pull out into the water.

I would like to point out that this lagoon has been used for public boating for at least 60 years. This is one of four launch ramps on the lagoon. This is the only one of the four launch points that is being required to have 2/3 of a boat ramp. Furthermore, no boat

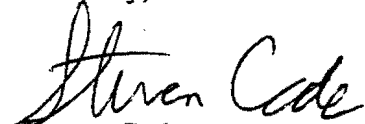
6-02-28

ramps throughout California's many harbors and lakes have boat ramps that extend 2/3 of the way into the water. It is illogical to make the boat ramp partially ineffective and nowhere else has this been done in the state of California.

When the facts are summarized, because there is no environmental benefit (in fact shortening the ramp will cause damage from boats getting stuck in the water), there are only four boat launches in the lagoon, with the fact that this is the smallest of the existing ramps, and it was installed in an environmentally friendly manner I would suggest you consider deleting the requirement for the applicant to shorten this boat ramp by the six feet that was noted in the staff report (to the mean tide mark).

Other than this comment, I fully support this application.

Sincerely,

A handwritten signature in cursive script that reads "Steven Cade".

Steven Cade

SC/bc

Enc.

Wed 9d

July 19, 2002
Agenda # Wed. 9D
OPPOSE
Permit number 6-02-028

Applicant: Klementyna S. Newkirk

Projection Description: Construction of a 948 sq. ft. room addition to an existing single story 5,3000 sq. ft. residence on a 2.11 acre hillside and lagoon fronting lot. The proposed project also includes the request for after the fact approval to enlarge a boat launch ramp below the mean high tide line, construct a 1,600 sq. ft. asphalt apron for boat storage and cleaning, install a 60 sq. ft. detached storage building abd stairway down slope onto the beach and palapas within approved open space.

To: Bill Ponder

From: Dolores A. Kaulbach

Re: Permit # 6-02-028 Agenda Item #Wed 9D

Regretfully I will be unable to attend the August 7, hearing in San Luis Obispo, due to a family vacation that was planned a year ago. Unfortunately, I did not attend a hearing held in Sacramento several years ago. Had I been there you would not be dealing with part of this proposal now. A statement was put forth at that hearing that there was a pre-existing boat launch ramp located in that area. I have lived in Bristol Cove since 1970. There was never a launch there until Mr. Cade purchased the property and placed two metal grids down into the lagoon. One of the Costal Commissioners informed me that post 1970 was not an acceptable time frame in order to prove that there had not been a pre-existing ramp there and that it would be necessary for me to go as far back as fifty years. I did further research and talked to an original owner of the property and a gentleman that worked on the road construction into the Cove area, both stated, that no launch had ever existed there. This information was given to a person that attended that hearing but it did not get presented. He mistakenly assumed that the Coastal Commission would check the veracity of the statement given by Mr. Cade and deny a permit to construct the launch ramp. Later, I spoke with Mr. Bill Ponder in regard to this matter and he informed me that it was too late to do anything about it and that there was no way to rectify the situation. I strongly object to any further work being done on the launch ramp. Permission to build it was granted only because the Costal Commission was given false information. It does not seem that it would be a good decision to further develop the launch ramp under these circumstances. The boat launch should be removed because the permit granting its construction was gotten by deception and the California Coastal Commission was duped by misrepresentation.

I have enclosed part of a copy of a recent newsletter from Bristol Cove Homeowner's Association. I apologize for the poor quality, but the original was printed on colored paper making it difficult to copy. I have retyped some of the information to make it easier for you to read. As you can see we have a very serious problem here in the lagoon. Under the circumstances it might be desirable to delay a decision regarding the launch ramp as nothing should be done toward lengenthing it at this time. This would give the Coastal Commission some additional time to further investigate whether or not the launch ramp should have been allowed at all, much less adding to it.

As for the rest of the proposal, my only objection is that I have looked at a portable toilet (without the required pan under it to prevent run off into the storm drain) and construction trash for five years. I think enough time has passed for completion of this project. If a permit is granted for that portion of the proposal as it relates to an addition to the existing structure, could there be a stipulation that the non-native plants be removed. They were planted on the eastern side in direct violation of the guidelines laid out by the Coastal Commission.

6-02-28

It is understandable that the residents would wish to have access to a launching facility. There is a public launch ramp less than half of a block to the west of the property and a private launch ramp adjacent to the property. The private ramp does not open directly into the lagoon but opens in to a jetty, which is a less invasive approach. It is my opinion that arrangements could be made to use one of these ramps on an ongoing basis. Both launching facilities have strict enforcement of the local laws and codes as they relate to the use of the lagoon. This provides for a lawful and safe use of the lagoon with a method, in cooperation with our police department, to enforce the use restrictions and requirements.

Eel grass is growing in the area where the extension to the launch ramp would be built. I know that in the past the Coastal Commission had concerns about the Eel grass. Perhaps that is no longer an issue.

Please take the time to investigate the ramifications of this proposal before taking action on it.

If you have any questions or would like for me to provide more information or verification, please contact me. I would be happy to assist you in any way possible.

Your interest and attention as it pertains to this matter is appreciated.

Sincerely,



Dolores Kaulbach
4519 Cove Drive #2
Carlsbad, CA 92008
(760)729-8105
e-mail dkaulbach@aol.com

Enclosures- #1 Statement from William Baird
 #2 copy of newsletter with retyped synopsis

Copies to: Bill Ponders
 Commissioners
 Commissioners Alternates
 Non-voting Members

Bristol Cove Property Owners Association

Board of Directors

John Nash

President

Scott Chasin

Treasurer

Tom Frey

Director-at-Large

Marilyn Stemen

Vice President

Jim Petterson

Secretary

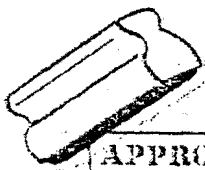
A Quarterly Newsletter

August, 2002

A Quarterly Newsletter for the Bristol Cove Community by CHAMPS/The Kelly Group (760)603-0501

www.champs-sd.com

CITY COUNCIL UNANIMOUSLY APPROVES EMERGENCY LAGOON ORDINANCES



During their June 11th meeting, the Carlsbad City Council unanimously approved an urgency ordinance amending the "Municipal Code" to implement measures to aid in the survey and eradication of Caulerpa taxifolia in the Agua Hedionda Lagoon."

THE ORDINANCE PRESERVES RECREATIONAL USE OF THE LAGOON WITH SOME RESTRICTIONS.

In our May Newsletter, we reported that the Lagoon Committee led by Director Jim Petterson, with the considerable efforts of Wayne Brechtel and all committee members, were successful in negotiating a compromise solution which will keep the lagoon open to recreational use. The City Council's approval of the Ordinance brought to a close, a very important chapter in lives of Bristol residents.



The Police Department is charged with the enforcement of the ordinances which take effect immediately. However, it is in everyone's best interest that we all support the quick and successful eradication of the noxious algae

through ensuring the enforcement of the ordinances. Here is a summary of the ordinances:

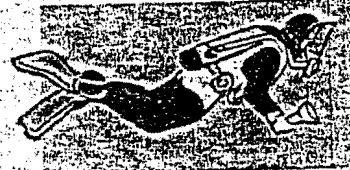
No fishing or anchoring. Fishing and anchoring is not permitted as it might contribute to the spread of Caulerpa taxifolia.



No wakes over 12 inches. While wake altering devices are not specifically prohibited, their effect of generating wakes over 12 inches is strictly prohibited because large wakes can churn up the bottom and might contribute to the spreading of Caulerpa taxifolia.

Portions of the Lagoon may be temporarily closed. As part of the monitoring and eradication plan, portions of the lagoon will be cordoned off and posted as closed. It is unlawful to enter closed areas.

All vessels must remain at least 200 feet from dive boats. Caulerpa is monitored and



eradicated by divers and their safety is paramount. If you see a dive boat during the week, check with the boat operator to avoid any chance of disturbing or endangering the divers. The Caulerpa team are the good guys. Don't argue or create a disturbance with team

6-02-28

FYI - a synopsis of newsletter - retyped for easier reading due to poor quality of the copy of the original

*The Carlsbad City Council approved an ordinance to implement measures to aid in eradication of *Caulerpa taxifolia* in Augua Hedionda Lagoon.*

It is important that we all support the quick and successful eradication of this noxious algae.

No fishing or anchoring as it might contribute to the spread of the algae.

No wakes over 12 inches as large wakes can churn up the bottom and spread the algae.

Parts of the lagoon may be closed temporarily, as part of the eradication process. It is unlawful to enter the closed areas.

All vessels must remain at least 200 feet from the dive boats. The divers safety is paramount as they monitor and eradicate the algae.

Personal note - as you can see, we have a very serious problem. You are aware I'm sure that this is the algae that has all but destroyed the Mediterranean Sea, It is extremely difficult to get rid of it.

6-02-28

13

To: The California Coastal Commission

From: William T. Baird Jr.

Re: Pre-existing boat launch ramp

RECEIVED

JUL 31 2002

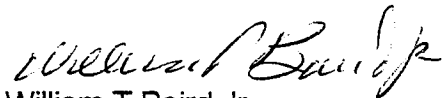
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Wed 9d

I have been a resident of Carlsbad, California since 1948.

In the early 1950's San Diego Gas and Electric proposed putting an electrical facility on the lagoon. The building contractors I worked for were Ken Ebright, Red Robinson and another man named Anderson. They purchased several acres of land on the lagoon. At that time, I lived at 4150 Hillside Drive. Because I had a tractor these gentlemen asked me to cut a road into what they named Pirates Cove. At that time there were no docks or launching facilities on the north side of the lagoon. Shortly after that a gentleman named Whitey poured a cement ramp and called it Whitey's Landing. This facility was west of the property purchased by Mr. Cade. That ramp was the only access to the lagoon at that time, and it is no longer operational. There were no other docks or launching facilities until Fox's came into existence after San Diego Gas and Electric dredged the lagoon. This facility is about one half of a block west of the Cade development, and is a public boat launching facility.

Respectfully Submitted,



William T Baird Jr.
3535 Harding Street
Carlsbad, CA 92008
(760)729-4000

6-02-28

14

DOUGLAS L BOLLINGER, ESQ

August 6, 2002

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

RECEIVED

AUG 06 2002

Attn: Bill Ponder - fax 619/767-2384

Re: Application No. 6-02-28 (Newkirk)

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Mr. Ponder,

I am a resident of Bristol Cove (adjacent to Agua Hedionda Lagoon) and a user of a power wheelchair. It has come to my attention that the Newkirk application for expansion of her property is up for review on August 7, 2002 at the regularly scheduled meeting.

I am writing this letter to request that you add a condition to the conditional approval of any application an easement granted to the Agua Hedionda Lagoon Foundation for a strip of land for wheelchair access to the lagoon.

Currently, the only public access to the lagoon west of the canal is a driveway and steps from the street to the water. Obviously, this is completely impossible for a wheelchair to negotiate and in violation of all Federal and State laws.

There is additional space available for wheelchair access by widening the current public access to provide space for a wheelchair path. Currently, there is an old retaining wall that is used for a large flower bed whose only purpose appears to be to provide a sound and sight barrier between the two properties. By granting the easement and re-locating the flower bed a few feet to the east would provide plenty of space for a wheelchair path and the parking/storage area.

Thank you for the opportunity to comment.

Sincerely,

DOUGLAS BOLLINGER

Cc: Linda Locklin, Coastal Commission fax 831/427-4875
Bill Pasnokas, Department of Fish & Game fax 858/467-4299
Bob Richards, President, Agua Hedionda Foundation

4617 PARK DRIVE, CARLSBAD, CA 92008
TEL (760) 730-7554 FAX (760) 730-0218
E-MAIL dougesq@adelphia.net