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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-14-0296

Applicant: Joshua Cantor, California Watersports

Location: 4215 Harrison Street, Carlsbad, San Diego County
(APN: 206-120-36)

Project Description: Application of California Watersports to demolish existing 169 sq.ft. restroom and construct new 498 sq.ft. restroom; import 4 cubic yards of sand to existing upland area, and after-the-fact approval of construction of 4 12' x 24' covered boat storage tents and removal of non-native vegetation at an existing boat rental and water recreational facility at 4215 Harrison Street, Carlsbad, San Diego County.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed project with conditions. The proposed project is a commercial water sports facility located adjacent to Agua Hedionda Lagoon and within the City of Carlsbad. The proposal is for the demolition of an existing, detached, 169 square foot bathroom, construction of a replacement 498 square foot, detached bathroom and the import of 4 cubic yards of washed sand to an existing upland area, in addition to after-the-fact authorization

for the construction of four 12' x 24' covered boat storage tents and removal of non-native vegetation.

The primary issues raised by the proposed development relate to public access and potential impacts to wetlands. The City of Carlsbad certified Land Use Plan, which is used for guidance in this area, requires a 100-foot upland setback from the edge of the wetland (i.e. Agua Hedionda Lagoon), a 25-foot upland setback from the mean high tide line for a public access easement, along with a recreation trail/public pathway within the first 15 feet of the 100-foot buffer closest to the development (i.e. a setback of 85 feet from the water's edge). As proposed, the project would erect four boat storage tents 80 feet from the wetland, in the required wetland buffer and in an area which should remain available for the future construction of a public recreational trail. Therefore, [Special Condition No. 1](#) requires that the proposed tents be relocated at least 100 feet from the wetlands, to protect the wetlands and ensure that adequate space to site and construct a trail in the future will be available.

Additionally, the project would import 4 cubic yards of sand to cover an area of exposed dirt, following the removal of non-native vegetation. The location of this sand import area is in the southwest corner of the subject property, which abuts the edge of the lagoon bluff, and has the potential to spill into the lagoon itself. This area of sand would be adding to an existing, larger, man-made beach area located along the lagoon-fronting portion of this property. The import of additional sand to the property has the potential to impact the water quality of the lagoon if sand deposits from the property enter the water. [Special Condition No. 1](#) requires the placement of sand upland of the existing revetment on the site, and implementation of water quality BMPs such as requiring the sand deposition to be done by hand and prohibiting mechanized equipment within 100 feet of the water's edge ([Special Condition No. 2](#)).

The proposed project is located within the City of Carlsbad, which has a certified LCP; however the implementation program for the Agua Hedionda segment has yet to be certified. Therefore, the Coastal Commission retains permit jurisdiction in this area and Chapter Three of the Coastal Act remains the standard of review, with the certified Agua Hedionda Land Use Plan used as guidance.

Commission staff recommends **approval** of coastal development permit application 6-14-0296, as conditioned.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Aerial Map

Exhibit 3 – Site Photos

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-14-0296 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 permit 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 6-14-0296 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

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 of 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. **Revised Final Plans.** PRIOR TO THE CONSTRUCTION, the applicant shall submit for review and written approval by the Executive Director, final project plans for the proposed tents and sand placement that have been stamped approved by the City of Carlsbad. Said plans shall be in substantial conformance with both the site plan and the proposed bathroom plans (prepared on 10/5/14) submitted with this application, and date-stamped received on 11/19/14, except they shall be revised to reflect the following:

- (a) The approved boat storage sheds shall be relocated at minimum of 100 feet upland of the average high tide line shown on the 11/19/14 site plan.
- (b) Said plans shall indicate the location of the approved 4 cubic yards of sand, to be located upland of the existing revetment shown on the 11/19/14 site plan.

The permittee shall undertake 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.

2. **Construction/Water Quality BMPs Plan.**

A. PRIOR TO CONSTRUCTION, the applicant shall submit, for review and approval of the Executive Director, a Construction Best Management Practices plan. The plan should be in conformance with the following requirements:

- (a) No excavation shall occur, only spreading the imported sand on the shore/beach shall be allowed.
- (b) Heavy equipment shall not come in contact with the surface water of the lagoon. Parked equipment shall be located at least 100 feet from the water's edge.
- (c) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion. To avoid

disposal of construction materials, debris, or waste into the ocean, appropriate catch basins shall be installed prior to commencement of construction.

- (d) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (e) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (f) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (g) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (h) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (i) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (j) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (k) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (l) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (m) Any fuel or lubricant spills shall be immediately cleaned up.
- (n) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity

- (o) All BMPs shall be maintained throughout the duration of construction activity.

B. The final Construction Best Management Practices plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. **Construction Staging Area** PRIOR TO CONSTRUCTION, the applicant shall submit to the Executive Director for review and written approval, a detailed plan identifying the location of staging areas and access corridors to the construction sites. The plan shall include, at a minimum, the following:

- (a) No overnight storage of equipment, construction materials, or excavated materials shall occur within native vegetation areas or public parking spaces. Stockpiles shall be located away from drainage courses, covered at all times and contained with runoff control measures.
- (b) Storage and staging areas shall be located in a manner that has the least impact on vehicular and pedestrian traffic.
- (c) Staging site(s) shall be removed and/or restored immediately following completion of the development.

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

4. **Sensitive Species/Timing.** To avoid potential impacts to breeding activities of the California gnatcatcher, migratory songbirds, and other sensitive bird species associated with the adjacent open water, wetland, riparian, and coastal sage scrub habitat, construction will not be permitted between the dates of February 15th to August 31st of any year, unless approved in advance in writing by the California Department of Fish and Wildlife and/or the U.S. Fish and Wildlife Service.
5. **Condition Compliance.** WITHIN 60 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 of the subject permit that the applicant is required to satisfy prior to construction.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project is located at 4215 Harrison Street, adjacent to Agua Hedionda Lagoon and within the City of Carlsbad. The proposal is for the demolition of an existing, detached, 169 square foot bathroom, construction of a replacement 498 square foot, detached bathroom and the import of 4 cubic yards of washed sand to an area previously occupied by non-native vegetation, in addition to after-the-fact authorization for the construction of four 12' x 24' covered boat storage tents and removal of non-native vegetation.

The proposed development will occur on the two most westerly parcels of the five lagoon-front parcels that comprise Snug Harbor Marina, which is located in the northeastern portion of the inner lagoon section of Agua Hedionda Lagoon. The entire site slopes southward towards the lagoon, and the majority of the site is undeveloped dirt area used for informal parking. The applicant, California Watersports, operates a commercial recreational boating facility open to the general public for boat and other watercraft rentals, summer camp, and event facilities. The inland portion of the site contains an unimproved and paved parking area, an artificial beach with a volleyball court, four boat storage tents, an open boat storage area, city pump station, enclosed detached garage, office, instructional studio building, snack shack, and a detached bathroom structure. Shoreline facilities include a perched beach area with imported sand located upland of an informal concrete revetment on the western portion of the shoreline. Facilities on the eastern side of the site include a public boat launch ramp, boat docks, and two deck areas. Snug Harbor Marina has been operating as a watersports and boat launch facility for a number of years, dating back to before 1972, as evidenced by aerial imagery and the City of Carlsbad past permits approved on the site, including Administrative Permit No. 6-07-056 for a 162 square foot addition to an existing 162 square foot commercial storage shed, and CDP No. F9631 for cleanup and removal of debris, weeds and dead foliage, the repair of a sewage system, and the sandfill of abandoned septic tanks.

The proposed boat storage tents are located towards the southwest corner of the subject property and are roughly within the footprint of a previous, single, larger boat storage tent (that has since been removed) approximately 80 feet from the shoreline. The vegetation removal occurred at the southwest corner of the property, where the shoreline of the property rises up approximately 4 feet above the waterline, and consisted of the removal of approximately 200 square feet of non-native ice plant. The proposed new sand would be placed over the area of exposed dirt created by the vegetation removal, contiguous with the existing perched beach. No additional landscaping is proposed as a component of this project. The proposed new bathroom would add five new stalls (including one designated for disabled persons) and two new outdoor showers, and would bring the operation's bathroom facilities into compliance with the Americans with Disabilities Act. No utility connections or grading are proposed.

The certified Agua Hedionda Lagoon Land Use Plan (LUP) is one of six segments of the City of Carlsbad's LCP, and Bristol Cove is within the area governed by this document. 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 lagoon 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 Lagoon LUP used as guidance. The upland portion of the site is zoned as Residential Tourist (R-T), with a land use designation of Recreation Commercial (RC), while the lagoon itself has a zoning and land use designation of Open Space (OS).

B. BIOLOGICAL RESOURCES/WATER QUALITY

Relevant policies of the Coastal Act include:

Section 30230 of the Coastal Act states:

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 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 30233 of the Coastal Act states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects...

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 states:

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 southeast of the project site contain coastal sage scrub habitat; however, this particular lot has been cleared, graded and developed, and does not. Thus, the project will not have any direct or indirect impacts on upland environmentally sensitive habitat.

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 applicant is proposing to erect four boat storage tents within the footprint of a single boat storage tent that had fallen into disrepair and has since been removed. Additional proposed development is for the removal of non-native vegetation (ice plant), the import of 4 cubic yards of sand, which is to be placed on an exposed dirt area from where the vegetation has been removed from, and the demolition of an existing 169 square foot bathroom and construction of a 498 square foot replacement bathroom. The new bathroom will be located approximately 190 feet landward of the water's edge, well outside the required buffer. However, the proposed boat storage tents would be located approximately 80 feet from the water's edge, and the proposed vegetation removal and placement of sand would occur as close as 5-20 feet from the water's edge.

However, in this particular case, the subject property has a decades-long history of continuous use as a watersports facility. Existing development within 100 feet of the water's edge includes decks, a boat launch ramp, a dock, imported sand and the paved parking lot. In addition, unlike the other lagoons in San Diego County, recreational activities, such as those provided on the subject site, are permitted in Agua Hedionda. The water and shoreline in this area are well-used and subject to frequent human encroachment. Therefore, given the amount of existing human activity and structures already located in the buffer area, the proposed removal of non-native vegetation and replacement with some additional imported sand is not expected to significantly adversely impact the functional value of the buffer. The Commission's ecologist has reviewed the proposed project, and determined that the proposed importation of a fairly small amount of sand on the site is unlikely to have any adverse impact on lagoon resources, as long as the sand is not placed in a location where it is likely to enter the water. The proposed sand area is located upland of the existing tire/rubble revetment, and thus is not subject to frequent wave action. [Special Condition No. 1](#) requires final plans that indicate the sand will be placed upland of the existing revetment.

However, the construction of new structures within the wetland buffer, such as the proposed boat storage tents, would have a permanence that is inappropriate in an area that should be reserved for the protection of the lagoon's wetland resources. In addition, as discussed in further detail below, the LUP includes requirements for a recreational trail to be constructed along the shoreline in this location, and any such trail would need to be constructed in the upper portion of the buffer away from the shoreline, to limit impacts to biological resources. Construction of the boat storage tents in the buffer could adversely affect the location of this trail.

Therefore, [Special Condition No. 1](#) also requires that the proposed tents be relocated inland to at least 100-feet inland of the water's edge. To ensure that construction activities do not result in runoff-related impacts to the lagoon, additionally, [Special Condition Nos. 2 and 3](#) require the applicant to undertake construction/water quality BMPs. Although the subject site does not contain any coastal sage scrub vegetation, as noted above, many of the surrounding sites do. Thus, to avoid potential impacts to the breeding activities of the California gnatcatcher, migratory songbirds, and other bird species associated with the adjacent sensitive habitat, [Special Condition No. 4](#) stipulates that construction will not be permitted between the dates of February 15th to August 31st of any year.

In summary, the proposed project will not have any direct impacts on wetlands or upland vegetation. The project does involve minor encroachments into the 100-foot buffer from Agua Hedionda lagoon, but given the existing level of activity and structures at the subject site, the removal of non-native vegetation and the placement of a small amount of sand will not result in adverse impact to lagoon vegetation. As conditioned, no new structures would be located within the buffer. Construction and water quality BMPs will mitigate potential impacts to the lagoon and neighboring wildlife. Therefore, the project is consistent with the water quality and resource protection policies of the Coastal Act.

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.*

[...]

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

[...]

Coastal Act Section 30220 states:

Coastal areas suited for water-oriented recreational facilities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Coastal Act Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Coastal Act Section 30224 states:

Increased recreational boating use of coastal waters shall be encouraged in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas and in areas designed by dry land.

Section 30604 of the Coastal Act states, in part:

[...]

- (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).*

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 6.1

Whitey's Landing and Snug Harbor shall be designated for continued recreational-commercial use. Expansion of existing facilities at these locations shall be encouraged (Exhibit "B").

Agua Hedionda Land Use Plan Policy 6.7

The present recreational uses of the lagoon shall be maintained and where feasible, expanded.

Agua Hedionda Land Use Plan Policy 7.1

Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Agua Hedionda Land Use Plan Policy 7.2

Pedestrian access ways shall be located as shown on Exhibit J.

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 at the southwest corner of the inner lagoon area of Agua Hedionda Lagoon, between Harrison Street (to the north) 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.

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 proposed future trails system has designated the subject property as part of a future open space trail, which runs along much of the north shore of Agua Hedionda Lagoon. 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, which abuts the project site. 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. Additionally, the LUP also provides for the creation of recreational trails and public pathways within the first 15 feet of the 100-foot wetland buffer, closest to the development. Other access related requirements for new development in the LUP include design criteria for all structures proposed to be located within 100 feet of any access easement.

At present, 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 1 mile), 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 Chapa (CDP #6-98-40), Remington (CDP #6-90-93), L&R (CDP #6-88-477), Mellgren (CDP #6-87-36), Abeledo (CDP #6-86-035), Kuderna – a 23-unit Bristol Cove condominium project (CDP #F1012), Cade (CDP #6-96-159), Huber (CDP #6-98-14), Gallagher (CDP #6-00-80), and Steward (CDP #6-04-161). In most cases, the Commission has required that a public access easement be recorded, but in several cases, the Commission has required construction of an improved accessway (CDPs 6-86-35, 6-88-37, 6-96-159, and 6-00-80).

However, unlike the other sites where the where the Commission has required a public access easement, the public currently has access to the subject site for commercial recreational uses. The applicant has stated that fees are only charged to people utilizing onsite services/facilities, such as the boat launch or rental of boats or jet skis; otherwise, members of the public are encouraged by California Watersports to visit to the site free of charge. There is extensive onsite parking (enough to accommodate over 80 parking spaces), and the proposed restroom and other

improvements are not expected to increase demand for parking on the site. Thus, the site currently provides a significant amount of public access and recreation.

Because of the extensive amount of shoreline modification which has occurred on the subject site over the years, most particularly the existing tire/rubble revetment located along the shoreline, it is difficult to make a precise mean high tide line determination on the subject site. Therefore, for purposes of determining consistency with the public access requirements of the LUP, the applicant has provided an estimate of the approximate high water mark. As proposed, the project would include construction of four boat storage tents approximately 80 feet from the high tide line, as well as the removal of non-native vegetation and the placement of additional sand as close as 5 feet from the water's edge. (The proposed new restroom will be approximately 190 feet from the high tide line). In addition, as described above, there are numerous existing structures located within 25 feet of the water's edge that are not part of the proposed project.

The proposed vegetation removal and placement of sand are at-grade improvements that would not impede the future siting or construction of a trail on the subject site. The proposed boat storage tents would be located approximately 80 feet from the high tide line, beyond the 25-foot wide easement requirement, but with sea level rise, the necessary area for future construction of a trail is expected to move inland, as would the required 100-foot buffer from wetlands. In addition, permitted trails must typically be located in the upper portion of any required habitat buffer (in this case, the LUP specifies the uppermost 15 feet of the buffer).

Therefore, [Special Condition No. 1](#) requires that the proposed boat storage tents be relocated at least 100 feet inland from the water's edge/ high tide line. As conditioned, the proposed development will not preclude or affect in any way the ability to site or construct a trail on the subject site in the future. The public has and will continue to have access to and along the shoreline on this site. Therefore, it is not necessary to require a lateral public access easement or construction of a shoreline trail at this time. However, the applicant and property owner should be aware of the LUP requirements and goals regarding construction of a public trail along the shoreline of Agua Hedionda Lagoon, and any future development that restricted or encroached into the area necessary for such a trail may not be permitted or could trigger the requirement to provide a public easement or trail.

In summary, the proposed project, as conditioned, will not adversely impact the existing public access and recreational use of the site. All development will be either at-grade, or located far enough away from the lagoon that it will not affect the development of a public access trail along the lagoon shoreline consistent with the requirements of the certified LUP. Therefore, the Commission finds that all access and resource concerns associated solely with the development approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act.

D. VISUAL RESOURCES

Section 30251 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.

City of Carlsbad LUP Policy 8.3 states:

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 are shall be permitted to exceed the elevation of the roadway.*

[...]

- 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 terraces or pole foundations and variation of roof lines to complement the topography.*

The project site is a lagoon-fronting hillside lot, which slopes downward toward the water’s edge. The proposed development will not exceed the elevation of the roadway, due to the significant elevation difference between the street and the proposed development, which is located toward the foot of the downward slope, close to the edge of the lagoon. Additionally, the proposed new bathroom will be just 14 feet 1 inch in height, while the boat storage tents, which are located on an even lower elevation point of the property and are only 12 feet in height. Furthermore, the charcoal grey color of the boat storage tents is visually compatible with the character of surrounding area.

In summary, the Commission finds the proposed project will not result in adverse impacts to public views. The proposed development will not obstruct views from the first public road (Harrison Street) and will blend in with the surrounding development. Therefore, the Commission finds that all public views and scenic resource concerns associated solely with the

development approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Unpermitted development, in the form of construction of boat storage tents and removal of vegetation has occurred on the subject site without the required coastal development permit. 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, the subject permit will issue upon Commission approval, with all Special Conditions required to be fulfilled within 60 days of Commission action, as required by [Special Condition No. 5](#). Should the applicant not comply with all of the Special Conditions, the applicant may be subject to future enforcement action to require compliance with the approved permit conditions. 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 proposed project is within the City of Carlsbad; in the Mello II segment of the LUP, which has been certified by the Commission. However, no implementation plan has been approved for the area, therefore the Coastal Commission retains permit jurisdiction and the Chapter 3 policies of the Coastal Act remain the legal standard of review.

The upland portion of the site is zoned as Residential Tourist (R-T), with a land use designation of Recreation Commercial (RC), while the lagoon itself has a zoning and land use designation of Open Space (OS). The proposed project is consistent with these designations. As conditioned, the proposed project is consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed project will not prejudice the ability of the City of Carlsbad to prepare a full certifiable LCP.

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.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect 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 feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

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EXHIBIT NO. 2

APPLICATION NO.

CDP 6-14-0296

(Cantor)

Aerial Map

California Coastal Commission





EXHIBIT NO. 3
APPLICATION NO. CDP 6-14-0296
(Cantor)
Site Photos
 California Coastal Commission