

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-14-0351

Applicant: Tu Casa HOA

Agent: David Skelly

Location: 4747 Marina Drive, Agua Hedionda, Carlsbad, San Diego County. APN 207-150-85

Project Description: Repair and maintenance of an existing revetment by relocating dislodged rocks back onto revetment, placement of a maximum of 14.6 cubic yards of new rock, and after-the-fact approval of a maximum of 10.4 cubic yards of new rock.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the subject development with several special conditions addressing public access and recreation, coastal water quality, and biological resources.

The primary concern associated with the proposal is that the revetment, as it exists today, has fallen into disrepair, and numerous stones have migrated off the revetment and into

an existing lateral public access easement. As proposed, the revetment will be completely removed from the public access easement, and the proposed minimal amount of new rock will not expand the footprint of the revetment. However, the revetment was constructed prior to passage of the Coastal Act, and is necessary to protect an existing condominium structure. The proposed work is necessary maintenance and repair with only minimal augmentation. The new rock includes larger toe stones that will allow the revetment to be shored up at a steeper slope, at least two feet inland of the access easement, which will allow for some settling of the revetment rock without encroaching into the access easement. As such, the project will not result in any new or expanded impacts to public access or shoreline sand supply, and will improve the immediate and long-term public access and recreation opportunities over existing conditions.

Additional potential concerns include impacts to water quality, eelgrass habitat located within the general project site, introduction of invasive species *caulerpa taxifolia*, and future encroachment of the revetment within the public access easement. To prevent these potential impacts, Commission staff recommends fourteen special conditions that would require (1) final plans, (2) a long-term revetment monitoring program to avoid further encroachment of the revetment on the beach, (3) a public access sign program to inform the public of the existing public access easement, (4) maintaining the existing revetment in its approved state, (5) no future seaward extension of the existing revetment, (6) as-built plans to identify permanent benchmarks of the shoreward limits of the revetment for monitoring and future maintenance, (7) assumption of risk as the site may be subject to coastal hazards, (8) recordation of a deed restriction or a CC&R's modification to memorialize the findings and conditions of this permit, (9) an invasive species survey to determine if the invasive alga *Caulerpa taxifolia* is present in the project area, (10) eelgrass mitigation and monitoring to avoid impacts to the nearby eelgrass habitat, (11) providing all other required local, state, or federal discretionary permits, (12) consulting the Coastal Commission if site conditions warrant any changes to the approved work, (13) a construction plan identifying construction methods and timing that avoid impacts to biological resources and public access, (14) identification of the disposal site for any export material or construction debris, and (15) compliance with all prior to commencement of construction conditions within 180 days of Commission action on this permit application.

Therefore, Commission staff recommends **approval** of coastal development permit application 6-14-0351 as conditioned. The motion and resolution can be found on page 4.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....4

II. STANDARD CONDITIONS.....4

III. SPECIAL CONDITIONS.....5

IV. FINDINGS AND DECLARATIONS.....11

 A. PROJECT DESCRIPTION.....11

 B. GEOLOGIC CONDITIONS AND HAZARDS.....12

 C. PUBLIC ACCESS/RECREATION.....14

 D. BIOLOGICAL RESOURCES/WATER QUALITY.....18

 E. UNPERMITTED DEVELOPMENT.....20

 F. LOCAL COASTAL PLANNING21

 G. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....21

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Unpermitted Development](#)

[Exhibit 4 – Site Plan](#)

[Exhibit 5 – Site Photos](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-14-0351 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 6-14-0351 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. **Final Plans. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION,** the applicants shall submit to the Executive Director for review and written approval, final plans for the permitted development. Said plans shall be in substantial conformance with the revised plans submitted by Geosoils, Inc., dated January 5, 2015.

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 the coastal development permit unless the Executive Director determines that no amendment is legally necessary.

2. **Long-Term Monitoring Program. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION,** the applicant shall submit for review and written approval of the Executive Director, a long-term monitoring plan for the existing and approved shoreline protection. The purpose of the plan is to monitor and identify damage or changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:

- a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance.
- b. Measurements taken from the benchmarks established in the survey as required in Special Condition No. 6 of CDP #6-14-0351 to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated.
- c. Recommendations on any necessary maintenance needs, changes, or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe.

- d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit and to implement the repairs, changes, etc. approved in any such permit.

The above-cited monitoring information shall be summarized in a report, prepared by a licensed engineer familiar with shoreline processes, submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Carlsbad Engineering Department yearly after each winter storm season but prior to the 1st of May, starting with May 1, 2015 for the first 5 years after completion of construction. After the completion of five (5) annual reports monitoring will be lessened to once every five (5) years, beginning May 1, 2020. Monitoring once every five (5) years shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

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

3. **Public Access Sign Program. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit for review and written approval of the Executive Director, a public access sign program that includes the following:

- a. The “Private Property, No Trespassing” sign, identified in [Exhibit 3](#) of this staff report, shall be permanently removed.
- b. A public access sign of Commission-approved design informing the public of the existing public access easement fronting the existing revetment shall be installed in an easily visible location at the easternmost end of the revetment.

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

4. **Future Maintenance.** The applicant shall maintain the existing revetment in its approved state. Any change in the design of the revetment or future additions/reinforcement of the revetment beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition will require a coastal development permit. **However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the applicant shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if**

required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance.

5. **No Future Seaward Extension of Shoreline Protective Devices.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device, shall be undertaken if such activity extends the footprint seaward of the existing device. By acceptance of this permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

6. **As-Built Plans.** Within 60 days of completion of the project, or within such additional time as the Executive Director may grant for good cause, the applicant shall submit as-built plans for the approved revetment and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the revetment and associated structures have been constructed in conformance with the approved plans for the project (the revised plans submitted by Geosoils, Inc., dated January 5, 2015). The plans shall identify at least three permanent benchmarks from fixed reference point(s) from which the elevation and seaward limit of the revetment can be referenced for measurements in the future.

7. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves, flooding, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. **Deed Restriction/CC&R's Modification. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION,** the applicant homeowners' association (HOA) shall do one of the following:

- a. Submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction in a manner that will cause said deed restriction to appear on the title to the individual condominium units, and otherwise in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as they apply to the HOA, as covenants, conditions and restrictions on the use and enjoyment of the individual condominium units. The deed restriction shall include a legal description of the

entire parcel or parcels against which it is recorded. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property, or;

- b. Modify the condominium association's Declaration of Restrictions or CC&Rs, as applicable, in a form and content acceptable to the Executive Director, to reflect the obligations imposed on the homeowners' association by the special conditions of CDP #6-14-0351. This addition to the CC&Rs shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

9. **Invasive Species. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall provide evidence that the proposed revetment work 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 construction activities authorized under this coastal development permit, the applicant shall undertake a survey of the project area, all other areas where the bottom could be disturbed by project activities, and a buffer 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 Wildlife, 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), via the California Department of Fish and Wildlife or the National Marine Fisheries Service.
 - 3. If *Caulerpa* is found, then the NMFS and DFW contacts shall be notified within 24 hours of the discovery.
- d. If *Caulerpa* is found, the applicant shall, prior to the commencement of any construction activities, provide evidence to the Executive Director for review and written approval either that the *Caulerpa* discovered within the project or buffer area has been eradicated or that the project has been revised to avoid any contact

with *Caulerpa*. No changes to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. **Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicants shall provide to the Executive Director copies of all other required local, state, or federal discretionary permits for the development authorized by CDP #6-14-0351. The applicants shall inform the Executive Director of any changes to the project required by other local, state, or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

11. **Eelgrass Mitigation and Monitoring. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit, for review and written approval of the Executive Director, an eelgrass mitigation and monitoring plan that includes at a minimum the following:

- a. Performance of a pre-construction eelgrass survey of the project area by a qualified biologist less than 72 hours before the start of the proposed revetment work in order to establish the location of all eelgrass habitat.
- b. Marking the location of all eelgrass habitat found in the pre-construction survey. The contractor shall avoid impacting these areas during the proposed revetment work.
- c. Performance of a post-construction eelgrass survey of the project area by qualified personnel no more than 30 days after the completion of the work to determine if any eelgrass habitat was impacted by construction activities.
- d. Performance of mitigation if it is determined by the post-construction eelgrass survey that there has been a loss of eelgrass habitat. This mitigation must be performed in accordance with and subject to the requirements of the Southern California Eelgrass Mitigation Policy (1:1.2 ratio).

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.

12. **Project Modifications.** Only that work specifically described in this permit is authorized. Any additional work requires separate authorization from the Commission or Executive Director, if appropriate. **If, during construction, site conditions warrant changes to the project, the San Diego District office of the Coastal Commission shall be contacted immediately and before any changes are made to the project in the field.** No changes to the project shall occur without an amendment to this coastal

development permit unless the Executive Director determines that no amendment is legally required.

13. **Final Construction Plans. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicants shall submit to the Executive Director for review and written approval, final construction plans for the approved development. Said plans shall be in substantial conformance with the revised plans submitted by Geosoils, Inc., dated January 5, 2015, and shall incorporate but not be limited to the following construction methods and responsibilities:

- a. All equipment shall be removed from the beach areas overnight and during any tidal condition that may inundate work areas.
- b. Construction staging and access corridors shall not impede public access to or along the shoreline, to the maximum extent feasible, and the staging site and access corridors shall be removed and restored immediately upon completion of construction.
- c. New rock shall only be brought in as needed, not to exceed 14.6 cubic yards.
- d. A 5-foot buffer line shall be staked and flagged from existing eelgrass beds to protect them in place.
- e. Spill prevention measures for construction equipment shall be identified and implemented as necessary.
- f. No work shall occur between Memorial Day and Labor Day of any year.

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.

14. **Disposal of Export Material/Construction Debris. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall identify the location for the disposal of any export material and construction debris. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest before disposal takes place.

15. **Condition Compliance.** Within 180 days of Commission action on this coastal development permit application, 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 commencement of construction. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/SITE HISTORY

The project consists of maintenance work to repair an existing rock revetment on the beach fronting an existing 30-unit condominium complex known as Tu Casa, located on the north shore of Agua Hedionda Lagoon, just east of Bristol Cove in the City of Carlsbad ([Exhibit 1](#) and [Exhibit 2](#)). The revetment was originally constructed prior to enactment of the Coastal Act. The work includes the removal of rock that has migrated vertically down the shore slope into Agua Hedionda Lagoon and replacement of the rock on a steepened shore face. Some of the rock will be reused, while some of the material will be removed and replaced with larger revetment stone to prevent further lagoon-ward movement of rock. The work also includes the importation and placement of a maximum of 14.6 cubic yards of new rock, and after-the-fact approval of approximately 10.4 cubic yards of rock that was placed on the site sometime during the years of 1998-1999. As proposed, all rock will be removed from an existing lateral public access easement that is located in front of the revetment ([Exhibit 4](#)).

The area of proposed work totals approximately 0.12 acres. The revetment is on the southerly side of the Tu Casa Condominium development that faces onto Agua Hedionda Lagoon and on a roughly three foot scarp of the adjacent property to the east to prevent further erosion. The project site is surrounded by residential multifamily units to the north, Agua Hedionda lagoon to the south, open space in the form of a sandy beach at low tide as part of a developed multifamily project to the east, and a waterway of the entrance to Bristol Cove to the west. While the project is located in the inner basin of Agua Hedionda Lagoon, the revetment is proposed to protect the existing structure from erosion and waves, mostly formed through the wakes created by recreational boating and wind.

Construction of the existing condominium development was approved by the Coastal Commission in June 29, 1973 (ref. CDP No. F0201). A lateral public access easement was required by the City and the Commission as a condition of approval for the condominium development. The easement area is 15 feet wide, located on the southwesterly portion of the lot, and adjacent to the lagoon waters ([Exhibit 2](#)). The easement was recorded in 1973 and is currently held by the City of Carlsbad. However, the original revetment itself was constructed during the construction of Bristol Cove, a man-made cove constructed prior to enactment of the Coastal Act, prior to development of the condominium development. Bristol Cove is developed with several condominium complexes, such as Tu Casa, lining Cove Drive, Park Drive, and Marina Drive.

Sometime during the years of 1998-1999, a maximum of 10.4 cubic yards of rock was added to the existing revetment ([Exhibit 3](#)). The applicant has indicated that the rock may have been added when neighbors undertook a revetment repair project approved by the Coastal Commission for a revetment immediately adjacent to the subject site and within Bristol Cove (ref. CDP No. 6-98-051). However, this permit did not authorize placement of rock on the subject revetment. The additional rock is generally discernable by being

slightly greater in size than the existing stones, although the precise amount added is unknown.

The applicant has submitted two previous CDP applications that would have addressed the issues of the dislodged rock encroaching on the public access easement and the unpermitted rock. The first was submitted on June 11, 2007 and proposed repair and maintenance including the importation and placement of approximately 10 tons of new rock at the toe of the existing revetment to support a steepened face (ref. CDP No. 6-07-069). However, the application was closed and returned to due inactivity on March 25, 2009. The second was submitted on February 24, 2010 and similarly proposed repair and maintenance including the importation and placement of approximately 25 cubic yards of new rock at the toe of the existing revetment to support a steepened face (ref. CDP No. 6-10-016). The proposal also included an after-the-fact request for approval of the previous augmentation to the existing revetment without benefit of a coastal development permit, and would have removed all revetment rock from the access easement. The proposal was approved with conditions at the January 2012 Commission meeting. However, the “prior to issuance” conditions were never completed by the applicant, thus the permit was never released or vested and expired on January 11, 2014. As such, the unpermitted development is still currently outstanding.

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 yet been certified. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review, with the certified Agua Hedionda Land Use Plan used as guidance.

B. GEOLOGIC CONDITIONS AND HAZARDS

Section 30235 of the Coastal Act addresses shoreline protective devices, and states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger of erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

The Tu Casa condominium complex relies on the existing rock revetment for protection against erosion and wave damage, although the revetment was constructed prior to the construction of the existing structure. The proposed development is repair and maintenance work to the existing revetment with minimal augmentation as a significant amount of the rocks have dislodged from the revetment, thus undermining its structural integrity. The dislodged rocks are now located on the remaining lagoon front and are encroaching upon the beach and affecting the public’s access along the lagoon at this location ([Exhibit 5](#)). The proposed maintenance is intended to ensure that the existing revetment continues to protect the existing residential condominium structures and to

remove the existing encroachment on the public access easement. The applicant proposes to import an additional 14.6 cubic yards of new rock consisting of larger toe stones, as much of the dislodged rocks have settled into the mud in front of the revetment, and thus it is unclear if there is sufficient rock to complete the proposed project without a minor amount of imported rock until construction actually begins.

In reviewing requests for shoreline protection, the Commission must assess both the need to protect private residential development and the potential adverse impacts to public resources associated with construction of such protection. A number of adverse impacts to public resources are associated with the construction of shoreline structures. These include loss to the public of the sandy beach area that is displaced by the structure, "permanently" fixing the back of the beach, which leads to the narrowing and eventual disappearance of the beach in front of the structure, sand loss from the beach due to wave reflection and scour, accelerated erosion on adjacent unprotected properties, and the adverse visual impacts associated with construction of a shoreline protective device on the contrasting natural shoreline. However, in this case the subject site is located on the inner basin of Agua Hedionda Lagoon, and the shoreline is not composed of beach quality sand. Additionally, because of its location on the inner basin, reflection and scour impacts are minimal as the area is not subject to the wave velocities associated with standard or storm ocean waves. Furthermore, in this particular case, the back of the beach is already fixed, and the proposed repair and maintenance of this pre-Coastal Act revetment will result in more sandy beach area becoming available to the public, as the encroachment on the access easement will be removed and restored to its original configuration. Thus, no new or additional impacts to shoreline sand supply are expected to result from the proposed maintenance.

The Commission's staff engineer has reviewed the proposed project and technical reports and concurs that the existing upland residential structure is subject to threat and that the proposed revetment repairs are necessary to protect the existing condominium structure, are the minimum required, and have been designed appropriately to address both scour depth and sea level rise and thus, as proposed, will adequately protect the existing structure, consistent with Section 30235 of the Coastal Act.

Nonetheless, the Commission recognizes the inherent risk of shoreline development. The revetment will be subject to wave action, however minimal due to its location, thus there is a risk of damage to the revetment or damage to property. Therefore, [Special Condition No. 7](#) requires that the applicant acknowledge these risks and indemnify the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit.

While the applicant has submitted preliminary project plans, [Special Condition No. 1](#) requires the submission of final plans for the review and written approval of the Executive Director, to ensure they are in substantial conformance with the preliminary plans. To assure the proposed development has been constructed properly, [Special Condition No. 6](#) requires that, within 60 days of completion of the project, as built-plans and certification by a registered civil engineer be submitted that verify the proposed revetment repairs have been completed in accordance with the approved plans and that

benchmarks be identified from fixed reference point(s) from which the elevation and seaward limit of the revetment can be measured in the future. [Special Condition No. 14](#) requires the applicant to identify a permitted disposal site in the event that any export of rock or construction debris is necessary. [Special Condition No. 2](#) requires the applicant to submit annual monitoring reports to the Commission to determine settling or seaward movement of the revetment to ensure the revetment continues to be configured to minimize impacts to public access, utilizing the benchmarks determined with Special Condition No. 6. Typically, the Commission requires rock revetments along the ocean to be monitored annually as they are subject to storm waves and can be damaged. However, in this case, the Commission is only requiring annual reporting for the first five years, and every fifth year beyond that, as the revetment is not subject to typical ocean scour.

[Special Condition No. 8](#) requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Because the subject property includes multiple owners comprising a Home Owners Association (HOA) the standard language for the deed restriction would require each individual property owner to record its own deed restriction which could be an arduous and expensive responsibility; as such, Special Condition No. 8 provides a second option to amend the HOA's Covenants, Conditions, and Restrictions (CC&R's) to incorporate the findings and conditions of the subject permit, thereby memorializing the findings and requirements of this permit and providing specific notice of permit requirements to owners and potential buyers of the condominium units.

All of these special conditions will ensure that the revetment remains in a configuration that can be considered to minimize impacts to coastal resources, consistent with the Chapter 3 policies of the Coastal Act.

In summary, the Commission finds that the applicant has demonstrated that the existing primary structures continue to be subject to threat from wave action and erosion and that the proposed repair and maintenance of the existing revetment is the minimum necessary to assure continued protection. Therefore, the Commission finds that the proposed repair project, as conditioned, is consistent with Section 30235 of the Coastal Act.

C. PUBLIC ACCESS/RECREATION

The following Coastal Act policies address the protection of 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 30214 of the Coastal Act states, in part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Pursuant to these sections of the Coastal Act, the certified Agua Hedionda Land Use Plan (which the Commission uses for guidance) contains a detailed set of public access policies that state, in part:

Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

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 for all shorefront properties. All accessways 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....

Policy 7.8

All accessways 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.

Policy 7.9

All public use areas shall be clearly identified through a uniform signing program, to be carried out by the City of Carlsbad or as a condition of individual private developments. Signs or other devices on public or private property, which might deter use of public access areas, shall be prohibited within the Agua Hedionda Plan area.

As previously discussed, there are a number of adverse impacts to public resources associated with the construction of shoreline protective structures including loss to the public of the sandy beach area that is displaced by the structure, “permanently” fixing the location of the back of the beach, and narrowing and eventual disappearance of the beach in front of the structure.

The proposed repair and maintenance will extend the life of the existing revetment, and therefore, also extend any associated impacts to public access. However, by the nature of riprap revetments on the beach, it is recognized that periodic maintenance will be necessary. Some of the stones from the existing revetment have rolled off the revetment and others have been moved around and repositioned by waves, such that the revetment is no longer providing adequate protection for the upland residential structures, and is impeding lateral public access. The proposed project will pull back the rock that has migrated beyond the original revetment footprint, thus removing some of the existing access obstruction on the beach and all of the encroachment in the public access easement.

However, there are a number of remaining concerns regarding impacts to public access. These concerns include that the revetment, both pre- and post-construction, is located on a public beach that may otherwise be utilized by beach goers for access or recreational activities. As noted, sometime in the late 1990’s a maximum of 10.4 cubic yards of additional rock was added to the revetment, without benefit of a coastal development permit, further exacerbating these impacts. Lastly, the revetment has fixed the back of the beach at this location and prevented natural beach processes. In this case, the rock revetment not only takes up beach area that could otherwise be used for public access and

recreational opportunities, it also effectively eliminates the beach area in front of the revetment. Currently, the revetment is approximately 182 feet long and 30 feet wide and thus is taking up a significant area, some of which is public beach.

As previously mentioned, sandy beach at this location is limited. The lagoon waters often come up beyond the toe of the revetment, limiting public beach access at this location to times of low tide ([Exhibit 5](#)). Nonetheless, it is clear that the revetment is impeding the natural shoreline processes by fixing the location of the beach, and preventing the natural migration of the beach inland. The property directly to the east is not protected by any type of shoreline protective device, and both the tidal influence and beach area are located further inland ([Exhibit 2](#)). Because the beach hasn't been able to migrate naturally, currently the subject revetment has served to limit the sandy beach available to the public in front of the revetment to times of lower tides. It can be anticipated that sometime in the future the sandy beach area in front of the revetment will be eliminated completely.

However, as discussed above, the existing pre-Coastal Act revetment is necessary to protect an existing structure. The project also includes the reconfiguration of the revetment by adding some new larger rocks at the toe of the revetment. The applicant had originally proposed to construct a cutoff wall and move all rocks larger than 6 inches in diameter that were located in front of the cutoff wall off-site, but has since modified the proposal to more effectively address the existing encroachment on the public access easement. As revised to incorporate the large toe stones, the revetment will be shored up at a steeper slope, supported by the larger stones, thus allowing all revetment rock to be removed from the access easement. In addition, as modified, the revetment will be located at least two feet inland of the access easement to allow for some expected settling of the revetment rock without encroaching into the access easement. As such, the project will improve the immediate and long-term public access and recreation opportunities compared to existing conditions.

The scale of the proposed work is limited repair and maintenance typically associated with rock revetments and does not consist of rebuilding or substantially altering the revetment. While some impacts to public access remain, as the revetment will still be on the beach, the proposed project will not result in any more impacts to public access and recreation than that of the original pre-Coastal Act revetment, and will improve the current situation considerably.

Until recently, there was a "Private Property, No Trespassing" sign located on the eastern end of the revetment, near the public access easement, that was placed without benefit of a coastal development permit ([Exhibit 3](#)). The Agua Hedionda LUP has a very clear policy that prohibits any signage which might deter the use of public access areas, as stated above. After discussions with Commission staff, the applicant removed the sign. [**Special Condition No. 3**](#) requires the applicant to submit a public access sign program that includes permanent removal of this sign and installation of a new public access sign that clearly informs the public of the existing public access easement fronting the revetment.

No impacts to public access are expected during construction, as the applicant has proposed to limit construction timing to outside of the prime beach-going months, from Memorial Day to Labor Day of any year. Additionally, as proposed, construction staging and access corridors will not impede public access to or along the shoreline to the maximum extent feasible, and the staging site and access corridors will be removed and restored immediately upon completion of construction. [Special Condition No. 13](#) requires that these construction responsibilities and timeline be implemented. To further prevent future impacts to public access, Special Condition Nos. 4 and 5 have been added. [Special Condition No. 4](#) requires the applicant to maintain the revetment in its approved condition. The condition also indicates that, should it be determined that additional maintenance of the proposed structures is required in the future, the applicant shall contact the Commission to determine if permits for such maintenance are required. [Special Condition No. 5](#) requires the applicant to waive any rights that might exist for future seaward extension of the revetment. In addition, [Special Condition No. 10](#) requires the applicant to submit a copy of any required permits from other local, state, or federal agencies to ensure that no additional requirements are placed on the applicants that could require an amendment to this permit.

Therefore, as conditioned, the proposed revetment maintenance project can be found consistent with the applicable policies of the Coastal Act and of the certified LUP.

D. BIOLOGICAL RESOURCES/WATER QUALITY

Section 30230 of the Coastal Act addresses protection of biological resources, and 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 addresses protection of coastal water quality, 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 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.

The work to the revetment could result in impacts to both water quality and biological resources. The revetment is located in a lagoon where the invasive *caulerpa taxifolia* has been previously found and is known to be vegetated with eelgrass beds. Eel grass beds

have long been reported to provide crucial fish nursery ground and, as such, any impacts to eel grass beds would require specific mitigation, and the further introduction of *Caulerpa* must be prevented. Specifically, the proposed project will potentially result in impacts to water quality as a result of beach disturbance during the revetment maintenance activities. There is also the potential for petroleum discharges to the lagoon associated with mechanized equipment.

However, construction equipment would access the site from an existing disturbed beach access at the foot of Bayshore Drive located approximately 600 feet east of the project site. Construction work would occur during low tides and equipment would be removed from the intertidal zone during high tide periods. In addition, the project, as proposed, includes requirements to 1) remove all equipment from the beach areas overnight and during any tidal condition that may inundate working areas; 2) bring in only rock needed for the project; 3) stake a 5-foot buffer from existing eelgrass beds; and 4) prevent spills from construction equipment. Therefore, it is anticipated that water quality impacts will be limited to only minor disturbance of beach sediments and limited short-term elevation of turbidity levels, as exposed fine sediments are released from the sands and gravels of the beach, consistent with Section 30231 of the Coastal Act. [Special Condition No. 13](#) requires implementation of this construction plan.

Potential impacts to eelgrass can occur as a result of equipment maneuvering on the beach or excessive displacement of shoreline sands and sediments during construction activities. However, as mentioned, the eelgrass is proposed to be protected in place by staking out a 5-foot buffer area. In addition, the applicant submitted a biological resources assessment dated October 2009 with CDP No. 6-10-016 for which a survey of eelgrass beds was conducted and concluded that there are eelgrass beds located outside and immediately adjacent to the shoreline area on which the work is anticipated to occur. However, it is unlikely that the proposed project will impact the eel grass beds directly, as they are not located in any of the identified work areas. However, since the submitted study is not current, to further ensure impacts to eelgrass are avoided, [Special Condition No. 11](#) requires the application to conduct a pre-construction survey to re-establish the location of existing eelgrass beds, as well as a post-construction survey to determine if any eelgrass habitat was impacted by the repair and maintenance activities. If the reports indicate impacts to eelgrass, mitigation in the form of restoration at a 1.2:1 ratio of eelgrass beds is required.

Lastly, the proposed project is located within an area known to be affected by the invasive species *Caulerpa taxifolia*. *Caulerpa* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species.

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, 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 degrees Fahrenheit. 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.

In order to assure that the proposed project does not cause the dispersal of *Caulerpa*, and adverse impacts to the biological productivity of the Agua Hedionda Lagoon, [Special Condition No. 9](#) requires the applicant, prior to commencement of development, to survey the project area and any other areas where the bottom could be disturbed by project activities, for the presence of *Caulerpa*. If *Caulerpa* is found to be present in the project area, then prior to commencement of any repair and maintenance activities, the applicant must provide evidence that the *Caulerpa* within the project site has been eradicated (the applicant could seek an emergency permit from the Executive Director to authorize the eradication) or that the project has been revised to avoid any disturbance of *Caulerpa*. If revisions to the project are proposed to avoid contact with *Caulerpa*, then the applicant shall consult with the local Coastal Commission office to determine if an amendment to this permit is required. To ensure that both biological resources and water quality will be protected should any unforeseen occurrences arise during repair and maintenance activities, [Special Condition No. 12](#) requires the applicant to contact the San Diego District office of the Coastal Commission before any changes are made to the project in the field.

In summary, the project has been conditioned to require a construction plan and pre-construction surveys that will ensure potential impacts to water quality, eelgrass, and the lagoon ecosystem are avoided. Thus, as conditioned, no impacts to biological resources are expected, and the proposed project can be found consistent with the resource protection policies of Chapter 3 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Unpermitted development, in the form of placement of 10.4 cubic yards of rock added to the existing revetment sometime between 1998-1999 and installation of a "Private Property, No Trespassing" sign, has occurred on the subject site without the required coastal development permit ([Exhibit 3](#)). In addition, errant rocks from the revetment were allowed to migrate into, and remain within, a lateral public access easement required by a previously issued CDP.

The applicants have removed the unpermitted "Private Property, No Trespassing" sign adjacent to the public access path and will submit, for review and approval, a public

access signage plan to inform the public of the existing public access easement fronting the existing revetment as required by [Special Condition No. 3](#). The applicants will also remove all encroachments within the lateral public access easement by hand and will ensure that no future encroachments will occur. Finally, the applicant is seeking after-the-fact authorization for the placement of the 10.4 cubic yards of riprap that were added sometime between 1998-1999 to the pre-coastal riprap revetment. Issuance of the CDP and compliance with all of the Special Conditions will result in resolution of the aforementioned violations of the Coastal Act on the subject property.

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 an admission as to the legality of any development undertaken on the subject site without a coastal permit. Approval of this permit, and undertaking the activities authorized herein, will result in resolution of the unpermitted development described above. 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 180 days of Commission action, as required by [Special Condition No. 15](#). Should the applicant not comply with all of the Special Conditions within the specified timeframe, the applicant may be subject to enforcement actions, pursuant to Chapter 9 of the Coastal Act, to compel 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.

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. As conditioned, the project is consistent with the habitat preservation, scenic preservation and public access policies of the certified Agua Hedionda Land Use Plan and with the corresponding Chapter 3 policies of the Coastal Act. Therefore, approval of the development, as conditioned herein, does not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda Lagoon segment.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as

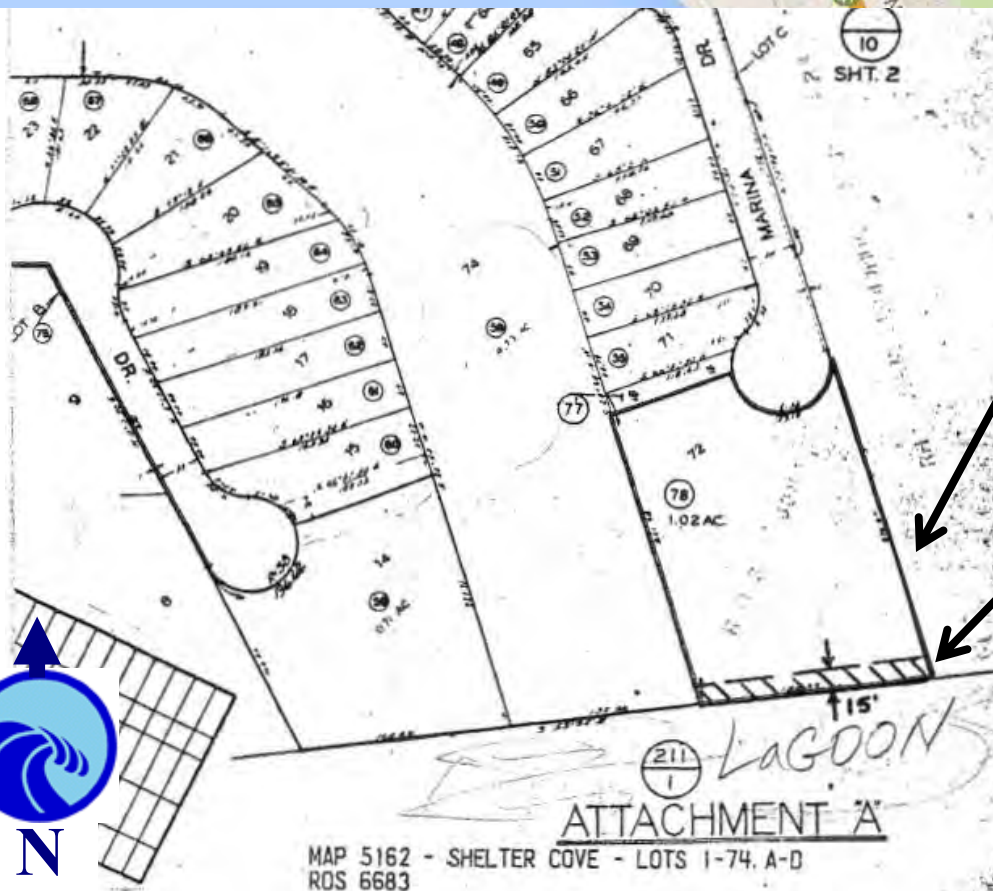
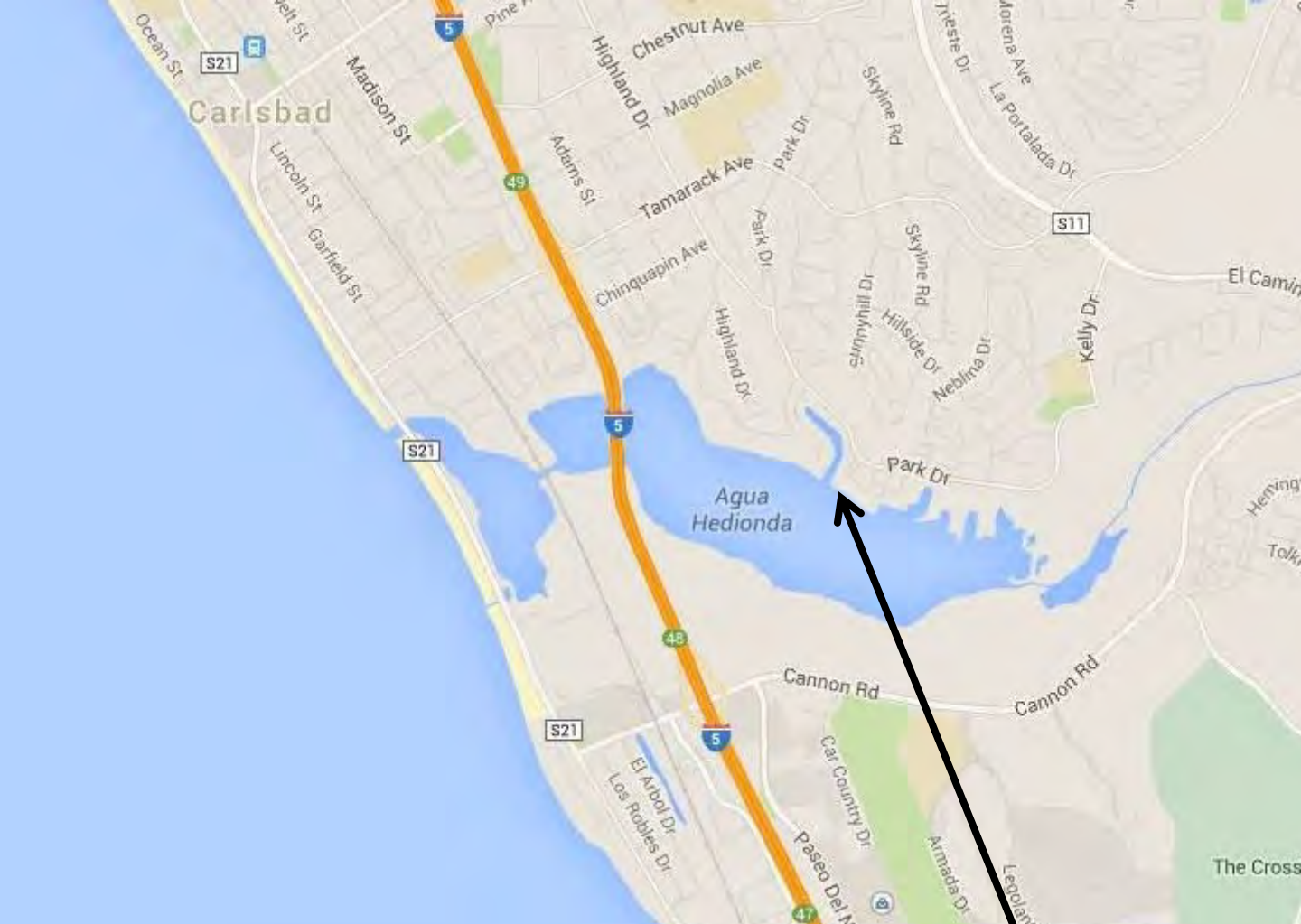
conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- Certified Agua Hedionda Land Use Plan
- CDP #6-10-016
- CDP #6-07-069
- Recorded Public Access Easement Document No. 73-133839
- CDP #F0201
- CDP #6-98-051



Subject Site

**Public Access
Easement**

EXHIBIT NO. 1

APPLICATION NO.

6-14-0351

Vicinity Map



California Coastal Commission



Tu Casa
condominiums

Subject
revetment



EXHIBIT NO. 2

APPLICATION NO.

6-14-0351

Aerial View



California Coastal Commission



Figure 1. Rock believed to be placed in 1998-1999.



EXHIBIT NO. 3

APPLICATION NO.
6-14-0351

Unpermitted

Development



California Coastal Commission

ACCESS ROUTES

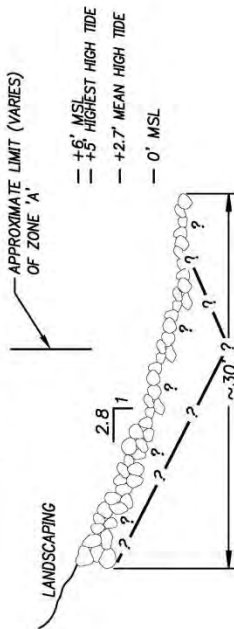
ZONE 'Z', SPECIAL FLOOD HAZARD
AREA PER THE FLOOD INSURANCE
RATE MAP No. 06073C0764 F,
DATED 6-19-1997



LIMITS OF ZONE 'A', SPECIAL
FLOOD HAZARD AREA PER THE
FLOOD INSURANCE RATE MAP No.
06073C0764 F, DATED 6-19-1997

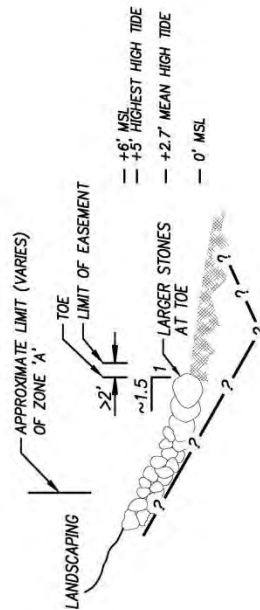
AN EASEMENT TO THE STATE
OF CALIFORNIA FOR THE
PURPOSE OF PUBLIC ACCESS
(INGRESS AND EGRESS)

TU CASA EXISTING CONDITIONS SHORE PROTECTION



KEY CONDITION UNKNOWN AND TO BE DETERMINED
THROUGH FIELD BACKHOE TRENCH TESTING TO BE
PERFORMED BY OWNER'S REPRESENTATIVE PRIOR
TO CONTRACT BIDDING.

TU CASA PROPOSED RESTACKED SHORE PROTECTION



Section A-A'

No Scale

EXISTING SUBSURFACE ROCK KEY TO REMAIN IN
PLACE TO AVOID UNDERMINING EXISTING
REINFORCEMENT OR DAMAGING MUDFLAT. ROCK SHALL
BE ADDED OR RECONFIGURED TO PROVIDE SCOUR
PROTECTION BELOW SURFICIAL LIMIT. ANY
EASEMENT TO AREAS
PUBLIC ACCESS
E STAKED AND NO
SCOUR WITHIN THE

SCOUR PROTECTION SHALL CONSIST OF EXISTING
KEY STONE OR SUPPLEMENTAL STONE IF KEY IS
NOT PRESENT TO EXTEND BELOW DEPTH OF SCOUR
AND AS NECESSARY TO SUPPORT SLOPE ROCK AS
DETERMINED BY PROJECT ENGINEER DURING FIELD
EASEMENT.

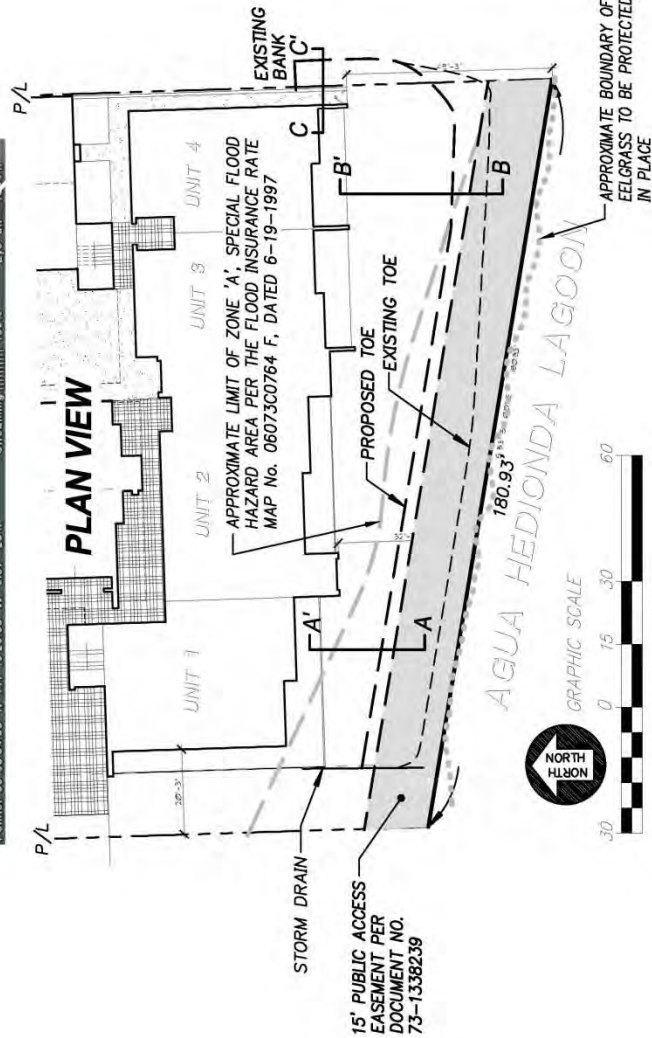


EXHIBIT NO. 4
APPLICATION NO.
6-14-0351
Site Plan



California Coastal Commission

April 3 2011 10:00 AM High 4.6



March 29 2011 1:39 PM Low 0.0



EXISTING CONDITION

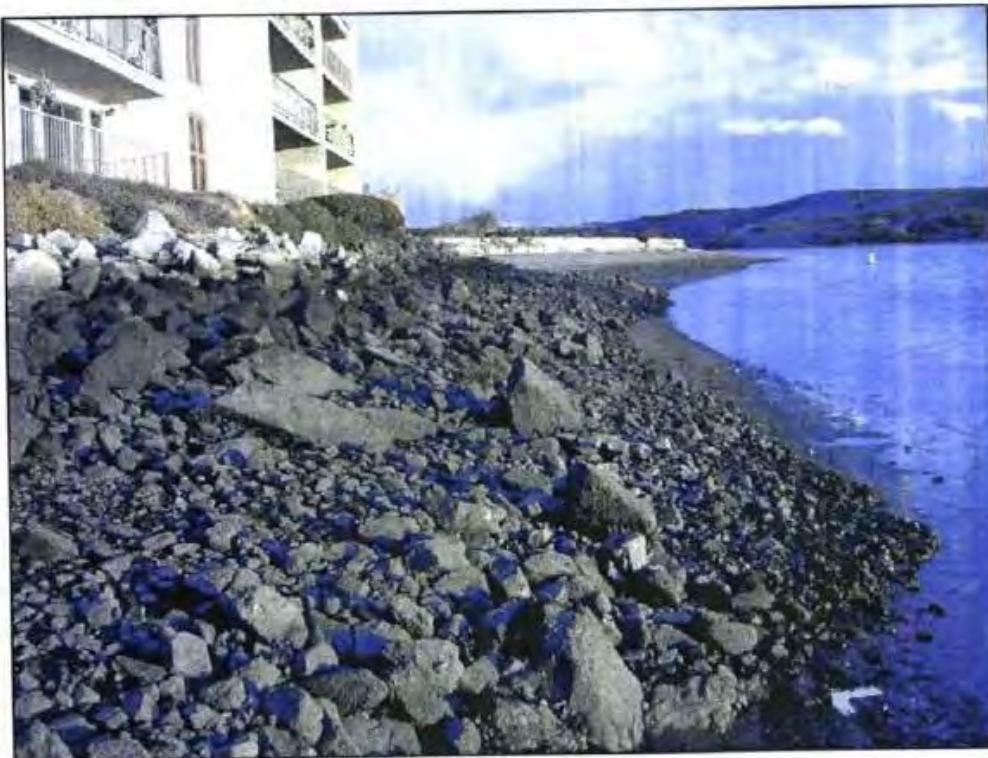


EXHIBIT NO. 5

APPLICATION NO.

6-14-0351

Site Photos



California Coastal Commission

