

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 6-17-0036

Applicant: KWD Holdings, LLC

Agent: Kyle Stephens

Location: 4745 Cove Drive, Carlsbad, San Diego County
(APN 207-150-15)

Project Description: Construction of a 6,297 sq. ft., three-story, 35 ft. high duplex with two attached 370 sq. ft. garages, rear patios, and associated landscaping on a 4,680 sq. ft. vacant waterfront lot located on Bristol Cove of Agua Hedionda Lagoon

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to coastal views, water quality, and coastal hazards. The proposed condominium would extend several feet closer to the lagoon than the neighboring structures located immediately to the north and south of this site, which would adversely impact views from the water of Bristol Cove. Residential development on a waterfront lot has the potential to result in pollution to the adjacent waterway. Finally, the City's recent draft Sea Level Rise Vulnerability Assessment identifies this site as at risk from flooding due to future storms and sea level rise. To address these potential adverse impacts the Commission staff is recommending six special conditions. **Special Condition 1** requires submittal of revised final plans showing that the building will

6-17-0036 (**KWD Holdings, LLC**)

be constructed consistent with a stringline setback to protect views from the water of Bristol Cove. **Special Conditions 2 and 3** require submittal of final landscape and drainage plans protecting water quality. Because the duplex is proposed in an area that will be subject to flooding in the future, **Special Condition 4** requires the applicant to assume the risk of constructing in a hazardous location. Further, **Special Condition 5** requires the applicant to waive any rights to future shoreline protection. Finally, **Special Condition 6** requires the applicant to record a deed restriction against the property, notifying all future owners of this permit and its conditions.

Commission staff recommends **approval** of coastal development permit application 6-17-0036 as conditioned.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Aerial Image](#)

[Exhibit 3 – Site Plan](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

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.**
 - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval by the Executive Director, revised final plans approved by the City of Carlsbad that

are in substantial conformance with the plans prepared by Kyle Stephens & Associates, received January 10, 2017 and March 20, 2017, except that they shall demonstrate that the proposed project has been modified to conform to the “structural stringline,” which is generally depicted on [Exhibit 3](#) of this staff report.

- B. The applicant 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. **Final Landscape Plans.**

A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a final landscaping plan to the Executive Director for review and written approval. The plans shall be in substantial conformance with the landscape plans prepared by Kyle Stephens & Associates, received January 10, 2017, and shall reflect the following:

- (i) A maintenance plan for the landscaped area that shall describe the herbicide, pesticide and fertilizer practices as well as list the chemical pesticides and fertilizers that will be employed on site. Said chemicals shall not be toxic to fish or wildlife or persistent in the environment. Herbicides and pesticides, if used at all, shall be applied by hand application or by other means that will prevent leakage, percolation, or aerial drift into adjacent lagoon;
- (ii) A plan showing the type, size, extent and location of all plant materials used;
- (iii) Only drought-tolerant native or non-invasive plant materials shall be utilized;
- (iv) The bio-filtration basin areas shall be maintained in good growing condition, and whenever necessary, shall be replaced with new drought-tolerant native or non-invasive plant materials to ensure continued compliance with landscape requirements;
- (v) All landscaping shall be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as ‘noxious weed’ by the State of California or the U.S. Federal Government shall be utilized within the property;

- (vi) If using potable water for irrigation, only drip or micro spray irrigation systems may be used;
- (vii) (a) A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

(b) If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant or successors in interest shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan; and
- (viii) The applicant shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. **Final Drainage Plans.**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT**

PERMIT, the applicant shall submit final drainage plans for review and written approval by the Executive Director that are in substantial conformance with the plans prepared by Kyle Stephens & Associates, received on January 10, 2017.

- B. The applicant 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.

4. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (A) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level

rise; (B) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (C) 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 (D) 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.

5. No Future Shoreline Protective Device.

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-17-0036 including, but not limited to, the residence, foundations, decks/patios, and/or driveways, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence, foundations, decks/patios, and/or driveways, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structures to be removed. If any portion of the development at any time encroaches onto public property, the permittee shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.
- C. Prior to removal/relocation, the permittee shall submit a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Agua Hedionda Lagoon. In the event that portions of the development fall to the lagoon before they are removed/relocated, the landowner shall remove all recoverable debris

associated with the development from the lagoon and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

6. **Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, 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 covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The applicant proposes to construct a 6,297 sq. ft., three-story condominium duplex with two attached 370 sq. ft. garages, rear patios, and associated landscaping on a 4,680 sq. ft. vacant waterfront lot at 4745 Cove Drive, Carlsbad ([Exhibit 3](#)). The project also includes 970 cu. yds. of grading. The duplex is proposed to extend up to 35 feet in height. The site is zoned Residential Waterway (R-W), which is a zone that regulates high-density residential development in Carlsbad. There is an existing, unpermitted private boat ramp and dock on the site, however, the applicant is not proposing any changes to the boat ramp and dock at this time.

The subject site is located on the north side of Cove Drive, and is adjacent to Bristol Cove, a private cove and marina facility located off the inner basin of Agua Hedionda Lagoon ([Exhibit 1](#)). The cove, including the water area, is owned by Bristol Cove Property Owner's Association, and the entire shoreline of the cove is lined with riprap. Although privately owned, the cove is used by the public for paddling and sightseeing on the water. The proposed site is the last remaining undeveloped lot on Bristol Cove and is surrounded by multi-unit condominium complexes and a few single family residences. Since 1972, over three dozen permits have been issued for the construction of single-family residences and condominium complexes and duplexes, ranging in size from 2-unit structures to 100-unit complexes, along Bristol Cove.

Agua Hedionda Lagoon is a "man made" water body that was originally dredged in 1954 to -11 feet MSL (Mean Sea Level), out of a historical 230-acre salt marsh slough to

provide cooling water for the Encina Power Plant. Two settling basins were included in the design: one in the outer lagoon to trap sands carried in from the ocean, and one at the eastern end to trap incoming sediments from Hedionda Creek. Since 1980, the Commission has approved several coastal development permits for the dredging of Bristol Cove and other areas of the lagoon. The site is within the City of Carlsbad's Agua Hedionda Land Use Plan (LUP) area; however, an Implementation Plan for the Agua Hedionda segment has not yet been certified. Therefore, Chapter 3 of the Coastal Act is the standard of review, while the City's LUP is used as guidance.

There is little public access to the shoreline available around the subject site, as the cove is surrounded by existing private development that includes patios and docks that extend out into the water. Because the subject site is the last remaining vacant site in a fully developed residential community, there is no opportunity for providing access along the shoreline through development of this lot. Thus, the proposed project will not adversely impact public access.

Because the project is located along the shoreline of Bristol Cove, the project has the potential to adversely impact views to and along the cove and Agua Hedionda Lagoon. As proposed, the project is consistent with the height limitations imposed by the Agua Hedionda LUP and will not impact views from Adams Street, a designated scenic roadway that runs above the project site and offers expansive views of Agua Hedionda Lagoon. There are views available from the water towards the land, and it is important to ensure that development around the lagoon be set back far enough from the water to avoid a towering or walling effect around the cove. The current pattern of development along Bristol Cove establishes a minimum 20-foot rear yard setback between the shoreline (measured as the MHTL) and the primary building, which the proposed project adheres to.

However, as proposed, the duplex would extend several feet closer to the lagoon than the neighboring structures located immediately to the north and south of this site, adversely impacting views from the water of Bristol Cove. Further, because this is last remaining vacant parcel along Bristol Cove, this project has the potential to change the pattern of development along the cove if the proposed building is located closer to the water than the neighboring structures. Most of the lots fronting on Bristol Cove were developed in the 1960s. As the existing lots are redeveloped in the future, the entire neighborhood could push closer to the water, creating a towering or walling effect around the cove. Therefore, the Commission imposes **Special Condition 1** requiring the applicant to submit revised final plans demonstrating that the duplex will be sited consistent with a "structural stringline" setback as depicted on [Exhibit 3](#) to ensure that existing views are protected and to discourage a new pattern of development closer to the water as neighboring parcels are redeveloped.

Development of the subject site also has the potential to adversely impact water quality of Agua Hedionda Lagoon. To minimize the potential for runoff to the Lagoon, the project is designed to direct runoff into bio-filtration basins onsite and the Commission imposes **Special Condition 3** requiring submission of final drainage plans. To further protect water quality, the Commission imposes **Special Condition 2** requiring the applicant to

submit final landscape plans that require use of only nontoxic fertilizers and herbicides, non-invasive drought tolerant plant species; require maintenance of the bio-filtration areas; and require submission of a landscape monitoring report five years after the issuance of the coastal development permit.

The City of Carlsbad's recent Sea Level Rise Vulnerability Assessment (May 2017 Draft) identifies the neighborhood surrounding Bristol Cove, including this site, as subject to flood risk due to storms and future sea level rise. Given that the applicant has chosen to develop a waterfront lot despite risks from sea level rise and storm flooding, the applicant must assume the risks; therefore the Commission imposes **Special Condition 4**. In addition, the Commission imposes **Special Condition 5**, requiring the applicant to waive any rights to future shoreline protection. Finally, **Special Condition 6** requires the applicant to record a deed restriction against the property to notify future owners of the terms and conditions of this permit.

B. COMMUNITY CHARACTER/VISUAL QUALITY

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views. Therefore, the Commission finds that the development, as conditioned, is consistent with the provisions of the Agua Hedionda LUP and conforms to Section 30251 of the Coastal Act.

C. BIOLOGICAL RESOURCES

Coastal Act policies 30240 and 30251 restrict the alteration of natural landforms and protect sensitive habitats. Section 30231 of the Coastal Act requires that coastal waters are protected and runoff minimized.

The proposed development will not have an adverse impact on any sensitive habitat, and, as conditioned, will not result in erosion or adverse impacts to water quality, as adequate drainage controls will be provided. Thus, the project is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

D. PUBLIC ACCESS

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

E. HAZARDS

Development adjacent to coastal waters is inherently dangerous. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

G. UNPERMITTED DEVELOPMENT

Unpermitted development, in the form of an existing private ramp and boat dock located on the adjacent riprap and in the water, has occurred on the subject site without the required coastal development permit ([Exhibit 2](#)). The current property owner bought the

property with this existing unpermitted development, and is not proposing further improvements to the boat dock. Any future improvements to the boat dock will require a separate application for a 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 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 not resolve the unpermitted development described above. Resolution of this unpermitted development activity may be addressed as through a separate enforcement action.

H. LOCAL COASTAL PLANNING

Although the City of Carlsbad has a certified LCP, the subject site is located in an area of deferred certification, where the Commission retains permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. The policies of the certified Agua Hedionda Land Use Plan are used as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program for this area that is in conformity with the provisions of Chapter 3.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City of Carlsbad found that the proposed project is categorically exempt from the requirements of CEQA pursuant to Public Resources Code Section 15303(b). 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.