

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
 (619) 767-2370



W7a

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STAFF REPORT: CONSENT CALENDAR

Application No.: 6-17-0397

Applicant: Mark Oliver

Agent: Merkel & Associates, Inc.,
Attn: Amanda Gonzales

Location: 4541 Cove Drive, Carlsbad, San Diego County
(APNs 207-150-73-00, 207-150-84-01)

Project Description: Remove and demolish an unpermitted wooden access pier and install a new 65 square foot access pier, 105 square foot gangway, and 133 square foot "T" shaped floating dock. Total water coverage would increase by up to 238 square feet.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to potential impacts from increased water coverage, invasive species, and to water quality. The proposed project is the removal and demolition of an unpermitted wooden access pier, and installation of a new access pier, gangway and floating dock within Bristol Cove, a private residential marina along the north shore of Agua Hedionda Lagoon. The originally proposed project would have resulted in 491 square feet of water coverage, however the applicant and Commission staff have worked together to reduce the amount of water coverage to 238 square feet, minimizing

6-17-0397 (**Mark Oliver**)

water coverage to protect marine resources that rely on open water area for biological productivity and foraging opportunities.

A pre-construction eelgrass survey submitted by the applicant indicates that there is eelgrass habitat adjacent to the location the new dock would be installed, however, the dock will not be installed directly over the patches of eelgrass and there will be no disturbance of the lagoon bottom. Therefore, no impacts to eelgrass are expected to occur.

Special Condition No. 1 requires the submittal of final plans. **Special Condition No. 2** requires pre- and post-construction eelgrass surveys to ensure that no impacts to eelgrass occur. **Special Condition No. 3** requires a pre-construction survey to prevent the spread of the invasive green algae, *Caulerpa taxifolia*. **Special Condition Nos. 4 and 5** would prevent or mitigate any negative impacts on water quality associated with construction and use of the dock as a boating facility. Finally, **Special Condition No. 6** requires the applicant to comply with the prior to issuance conditions within 30 days of approval by the Commission. Thus, no significant impacts to any coastal resources are anticipated.

Commission staff recommends **approval** of coastal development permit application 6-17-0397 as conditioned.

TABLE OF CONTENTS

I. MOTION	4
II. STANDARD CONDITIONS	4
III. SPECIAL CONDITIONS	4
IV. FINDINGS AND DECLARATIONS.....	9
A. PROJECT DESCRIPTION	9
B. BIOLOGICAL RESOURCES	12
C. COMMUNITY CHARACTER/VISUAL QUALITY	12
D. PUBLIC ACCESS/PARKING	12
F. LOCAL COASTAL PLANNING.....	12
G. UNPERMITTED DEVELOPMENT	12
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT	13

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial Photo](#)

[Exhibit 3 – Site Plan](#)

I. MOTION

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. **Submittal of Final Plans.**
 - A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review of and written approval of the Executive Director, final site and building plans that substantially conform

with the plans submitted to Commission by Merkel & Associates, Inc., received in the Commission office on May 1, 2018.

- B. The permittee shall undertake the development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Eelgrass Survey(s).**

- A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the *California Eelgrass Mitigation Policy and Implementing Guidelines* (CEMP) dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction if completion of construction occurs within the active growth period, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted by project construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval by the Executive Director, in accordance with the CEMP. Any exceptions to the required 1.38:1 mitigation ratio found within the CEMP shall not apply. Implementation of mitigation shall require

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

3. **Pre-Construction *Caulerpa taxifolia* Survey.**

- A. Not more than 90 days nor less than 30 days prior to commencement or recommencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive green 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 (see http://www.westcoast.fisheries.noaa.gov/habitat/aquatic_invasives/caulerpa_taxifolia.html).
- 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 to the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Wildlife (858-467-4218/William.Paznokas@wildlife.ca.gov) or Bryant Chesney, National Marine Fisheries Service (562-980-4037/Bryant.Chesney@noaa.gov).
- D. If *C. taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and/or buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is legally required.

4. **Water Quality – Construction Best Management Practices.**

- A. All construction must comply with the following provisions:
 1. No demolition or construction materials, equipment, 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;

2. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
3. 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;
4. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
5. If turbid conditions are generated during construction, a silt curtain will be utilized to control turbidity;
6. Floating booms will be used to contain debris discharged into lagoon waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
7. Non-buoyant debris discharged into lagoon waters will be recovered by divers as soon as possible after loss;
8. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
9. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
10. 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;
11. 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;
12. 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;
13. The discharge of any hazardous materials into any receiving waters shall be prohibited;
14. 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;

15. 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; and
16. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. **Water Quality – Marina Best Management Practices.**

- A. By acceptance of this permit, the applicant agrees that the long-term water-borne berthing of boats in the approved dock and/or boat slips will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.
 1. Boat Cleaning and Maintenance Measures
 - a. Where hulls are so fouled that cleaning must be abrasive and is likely to result in paint removal and the discharge of toxic heavy metals, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly;
 - b. Where boat hulls are cleaned in the water: clean bottom paints using non-abrasive methods and avoid creating a colored plume of paint in the water, perform hull cleaning in accordance with the manufacturer's recommendations for the type of hull coating or bottom paint, and perform regular hull maintenance to prevent hard marine growth;
 - c. Detergents and cleaning products for washing boats above the water line shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum; and
 - d. Detergents containing ammonia, sodium hydrochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.
 2. Solid and Liquid Waste Management Measures
 - a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.
 - b. Receptacles shall be provided for the appropriate recycling or disposal of waste materials.
 - c. In order to prevent spillage and loss of sanding debris into the water, no sanding or application of liquid protective materials (e.g., paint, varnish, and teak oil) shall be allowed between the waterline and the deck. Any boat owner intending to sand or apply liquid protective materials to the outside boat surfaces above the deck will be responsible for management practices that ensure proper containment and disposal of sanding debris, spilled paint and used application

materials. Large scale or commercial maintenance of outside boat surfaces shall not be conducted within the marina.

3. Petroleum Control Management Measures

- a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants, or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
- c. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

4. Hazardous Waste Best Management Practices

- a. Areas for collection and proper disposal or recycling of hazardous materials such as old gasoline or gasoline with water, oil absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, and solvents shall be provided in compliance with local hazardous waste storage regulations and shall be clearly labeled.
- b. Signage shall be placed on all regular trash containers to indicate that hazardous materials may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous materials and where to recycle certain recyclable wastes.

6. **Unpermitted Development Condition Compliance.**

WITHIN 30 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 conditions of this permit that are prerequisite to the issuance of this permit.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Agua Hedionda is an artificially created water body that was originally dredged in 1954 to -11 ft. MSL, 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. The project is located within Bristol Cove, a private cove and marina facility located off the inner basin of Agua Hedionda Lagoon ([Exhibit 1](#)). The cove is owned by Bristol Cove Property Owner's Association and the private boat docks are associated with adjacent residential development.

The subject site is located at 4541 Cove Drive along Bristol Cove and is developed with a single family home. The residence on the site was approved in May 2015 (CDP 6-14-1930/Oliver). 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, around Bristol Cove.

The proposed project includes removal and demolition of an existing unpermitted wooden access pier and installation of a new 13 ft. by 5 ft. access pier, 21 ft. by 5 ft. gangway, and 23 ft. by 5 ft. "T" shaped floating dock with 3 ft. by 3 ft. wings. The new floating dock and gangway will result in up to 238 sq. ft. of water coverage ([Exhibit 2](#) and [Exhibit 3](#)). Guy wires extending from the dock to the revetment lining the channel will stabilize the dock and avoid the need for piers to be installed in the lagoon floor. The new access pier, gangway and dock will be constructed offsite, barged to the site and installed.

Larger dock structures that result in additional coverage of water/tideland area reduce the availability of open water area necessary for biological productivity and foraging opportunities. Therefore, the amount of coverage must be minimized in order to protect marine resources. The originally proposed project would have resulted in 491 square feet of water coverage. The applicant and Commission staff have worked together to reduce the amount of coverage to 238 square feet and ensure that the proposed dock is consistent with the configuration and size of other docks permitted in this location. At 5 feet wide, the proposed dock has been reduced to the smallest size necessary to support boating use at the site and thus results in preservation of open water area and protection of marine resources.

Agua Hedionda Lagoon and Bristol Cove are known to support eelgrass habitat. Eelgrass habitat has been identified as a sensitive marine resource by the California Department of Fish and Wildlife, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. Eelgrass habitat provides cover, refuge, and foraging grounds and acts as a nursery for various marine invertebrates and fish. An eelgrass survey conducted in May 2017 identified two patches of eelgrass habitat located east of the proposed dock. However, the proposed project will not affect the lagoon bottom as no in-water work is proposed and the barges used to bring materials to the site will tie up to the revetment or neighboring docks, rather than anchor on the bottom. The proposed dock will not be placed directly over the existing eelgrass; therefore, there should be no direct impact to eelgrass habitat. **Special Condition No. 2** requires the applicant to conduct pre- and post-construction eelgrass surveys to ensure that no impacts occur, and if impacts do occur, they must be mitigated consistent with the California Eelgrass Mitigation Policy (CEMP).

The invasive green alga, *Caulerpa taxifolia* (referred to hereafter as Caulerpa), has proven to be detrimental to native habitats; and, 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 Wildlife Code Section 2300, forbids possession of *Caulerpa*. In June 2000, *Caulerpa* was discovered in Agua Hedionda Lagoon, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Other infestations are likely. Although a tropical species, *Caulerpa* has been shown to tolerate water temperatures down to at least 50 degrees Fahrenheit and will rapidly expand in lagoon environments until endemic species become displaced. 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. If *Caulerpa* were allowed to reproduce unchecked within the lagoon, sensitive eelgrass beds and the wildlife that depend upon them would be adversely impacted.

At this time, it appears that the *Caulerpa* infestation in Agua Hedionda Lagoon has been successfully eradicated. However, there are still concerns about its reemergence. If *Caulerpa* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed project does not cause the dispersal of *Caulerpa*, the Commission imposes **Special Condition No. 3**. **Special Condition No. 2** 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 construction 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.

The proposed development will be occurring on or within coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, **Special Condition No. 4** requires the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. **Special Condition No. 5** requires the use of on-going best management practices following construction.

The City of Carlsbad has a certified LCP; however, development will occur within a deferred certification area, the Agua Hedionda plan area, where the Commission retains

permitting authority. Thus, the standard of review is the Chapter 3 policies of the Coastal Act with the certified Agua Hedionda Land Use Plan as guidance.

B. 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 project involves the installation of a gangway and private dock on an interior inlet of Agua Hedionda Lagoon. As conditioned, the proposed development will not have an adverse impact on any sensitive habitat and will not result in adverse impacts to water quality. Thus, the project is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

C. 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, conforms to Section 30251 of the Coastal Act.

D. PUBLIC ACCESS/PARKING

The proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. There are no opportunities for vertical or lateral public access to or along the shoreline at this location, and as such, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

F. 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 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 and with the certified Land Use Plan for the area. 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.

G. UNPERMITTED DEVELOPMENT

Unpermitted development occurred on the subject site, including a wooden access pier constructed at the rear of the property, adjacent to lagoon waters. This application seeks approval for removal of the unpermitted wooden access pier and then installation of a new access pier, gangway and floating dock.

To ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition No. 6** requires that the applicant satisfy all conditions of this permit within 30 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

The applicant is requesting to remove the unpermitted development noted above and identified in the project description. Although the development has taken place prior to submittal of this application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and as though the development was not in place. Commission review and action on this permit will resolve the violations identified in this section once the permit has been fully executed and the terms and conditions of the permit complied with by the applicant.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City of Carlsbad found that the project is categorically exempt from the requirements of CEQA pursuant to Public Resources Code Section 15301(d). 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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