

**CALIFORNIA COASTAL COMMISSION**

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| Staff Report: | 10/24/19      |
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## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 6-18-1227

**Applicant:** Alvin Burdick

**Agent:** Swift Slip Dock & Pier Builders, Inc.  
Attn: Andrey Popovich

**Location:** 4627 Park Drive, Carlsbad, San Diego County  
(APN: 207-150-33)

**Project Description:** Remove and replace, in-kind, an approximately 71 square foot stairway, 51 square foot access pier, 72 square foot gangway, 273 square foot "U" shaped floating dock, and two wooden pier posts. Total water coverage would remain approximately 396 square feet.

**Staff Recommendation:** Approval with Conditions

## SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to potential impacts from invasive species and to water quality. The proposed project is the removal and replacement, in-kind, of a stair, access pier, gangway, and "U" shaped floating dock within Bristol Cove, a private residential marina along the north shore of Agua Hedionda Lagoon. A pre-construction eelgrass survey submitted by the applicant indicates that there is no eelgrass habitat around the existing boat dock, and, because there will be no change in dock size or configuration and there will be no disturbance of the lagoon bottom, no impacts to eelgrass will occur, and there will be no shading impacts.

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**Special Condition 1** requires the submittal of revised final plans and wrapping or coating of the pier posts to protect water quality. **Special Condition 2** limits use of the dock to boating-related uses. **Special Condition 3** requires the applicant to obtain a new coastal development permit, or an amendment to this permit, for any future changes to the dock. **Special Condition 4** requires a pre-construction survey to prevent the spread of the invasive green algae, *Caulerpa taxifolia*. **Special Conditions 5** and **6** would prevent or mitigate any negative impacts on water quality associated with construction and use of the dock for as a boating facility. Thus, no significant impacts to any coastal resources are anticipated.

Commission staff recommends **approval** of coastal development permit application 6-18-1227 as conditioned.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial Photo](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Unpermitted Dock Extension](#)

## **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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **III. SPECIAL CONDITIONS**

This permit is granted subject to the following special conditions:

1. **Submittal of Final Plans.**
  - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of revised final plans approved by the City

of Carlsbad that are in substantial conformance with the plans prepared by PMA Consulting, Inc. dated 12/11/17 and the plans prepared by Swift Slip Dock & Pier Builders, Inc. dated 9/19/19, except as follows:

1. The approved ACZA-treated wooden pier posts shall be wrapped in, or coated with, water-tight, UV resistant material to prevent leaching of wood-preservative chemicals into the water column, and to prolong the life of the structural timbers. Wrappings shall be secured with corrosive resistant banding or self-tapping screws. Coatings and/or sealants used shall be products that are inert after they have cured and dried. No coal-tar sealants or coal-tar treated wood shall be used unless coated or wrapped with an inert material or product to isolate it from the marine environment.
  - B. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.
2. **Permit Compliance.**
  - A. By acceptance of this permit, the permittee agrees that the permitted use of the approved development is for boating related uses only (e.g., kayak storage, docking of vessels). Private use of the dock for non-boating purposes (e.g., deck chairs, barbeques, etc.) is not permitted. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved plans, no matter how minor, must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.
3. **Future Permit Restriction.**
  - A. This permit is for the replacement of an approximately 71 square foot stairway, 51 square foot access pier, 72 square foot gangway, 273 square foot “U” shaped floating dock, and two wooden pier posts. All other development proposals for the site, including but not limited to expansion of the dock using removable, floating platforms, shall require review and approval by the Coastal Commission by applying for an amendment to this permit, or shall require an additional coastal development permit, unless the Executive Director determines that no amendment or permit is legally required.
4. **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

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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](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).

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.

5. **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.

6. **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.

## **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. 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 subject site is located at 4627 Park Drive toward the rear of Bristol Cove and is developed with a residence and boat dock in the cove waters adjacent to the lot. The proposed project includes removing and replacing, in-kind, an existing approximately 273 square foot dock, 72 square foot gangway, 51 square foot access pier and two wooden pier support posts, and a 71 square foot stairway ([Exhibit 2 and 3](#)). No new piles

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are proposed and three existing steel piles will be reused. The proposed pier posts will be attached to the existing concrete footings within the riprap lining the cove. AZEK decking will be used on the floating dock, gangway, access pier and stairway. The new dock, gangway, access pier and stair will be constructed offsite at the Swift Slip Dock and Pier Builders facility, barged to the project site and lifted into place.

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. The lagoon waters also provide foraging opportunities for bird species. Bottom disturbance associated with dock construction can adversely impact biological productivity of marine resources when piles are installed, removing benthic organisms and eelgrass habitat. 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.

To avoid adverse impacts to marine resources and protect the biological productivity of these waters, the Commission typically requires that new docks be the minimum size necessary to accommodate the recreational use. In Orange and Los Angeles Counties, the Commission has also routinely required that approved docks be used only for boating recreation purposes, as opposed to more general residential uses such as the enlargement of a resident's outdoor living area (see, e.g., CDP Nos. 5-19-0958 (Warmington, Jr.), 5-15-0075 (Miller), 5-08-068 (Golovko), 5-07-131 (Dugan)). Several docks in Bristol Cove have been used for non-boating related uses, including seating areas, shade structures, barbecues, and fire pits. Therefore, the Commission imposes **Special Condition 2** requiring that the dock be used solely for boating-related uses.

Historic aerial photos of this dock show that a small, removable, floating dock addition was attached to the existing dock in the early 2000s, expanding the area available for storage ([Exhibit 4](#)). This dock extension was never permitted. The applicant indicates that the extension has already been removed from the water and is not proposed as part of this project. Any change in the dock's size, location or configuration requires a coastal development permit in order to evaluate potential adverse impacts to marine resources and water quality. Therefore, **Special Condition 3** requires the applicant to obtain a new coastal development permit, or an amendment to this permit, for any future development at this site.

The proposed project will not affect the lagoon bottom as no work to the existing piles is proposed and the barges used to bring materials to the site will tie up to the dock, rather than anchor on the bottom. In addition, because there will be no change in the size, configuration or location of this dock, there will be no change in the amount of water coverage. An eelgrass survey conducted in October 2017 found no eelgrass habitat around the existing dock. Therefore, there will be no adverse impacts to eelgrass. An approval issued for this project by the U.S. Army Corps of Engineers 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. No pre- or post-construction eelgrass survey condition is

necessary in this coastal development permit because no impacts to eelgrass are expected to result from this project and because another permitting agency has already required eelgrass surveys and mitigation for any impacts that may occur.

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, **Special Condition 4** 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. As conditioned, the proposed development will not have an adverse impact on any sensitive habitat and is consistent with the marine resource protection policies of Chapter 3 of the Coastal Act.

The proposed development will occur on and within coastal waters. The applicant proposes to replace wooden posts on existing concrete footings within the riprap lining the cove to support the access pier that extends over the water. These support posts will be subject to tidal action and when submerged, may leach harmful chemical preservatives into the water. To avoid impacts from the wood preservatives, **Special Condition 1**

requires the applicant to submit revised final plans indicating that the posts will be wrapped or coated. 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 5** requires the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. **Special Condition 6** 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 replacement an existing stairway, access pier, gangway and floating dock on an interior inlet of Agua Hedionda Lagoon. The proposed development will not have an adverse impact on any sensitive habitat, and, as conditioned, 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/RECREATION**

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.

#### **E. 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 that is in conformity with the provisions of Chapter 3.

**F. UNPERMITTED DEVELOPMENT**

Historic aerial photos indicate that unpermitted development occurred on the subject site, including placement of a small removable, floating dock extension attached to the existing permitted dock in lagoon waters, expanding the area available for storage ([Exhibit 4](#)). According to the applicant, the dock extension was never a permanent attachment, has already been removed from the water, and is not proposed to be replaced as part of this application.

No further enforcement action is necessary to resolve the violation. Although the development has taken place prior to the 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 violation identified in this section once the permit has been fully executed and the terms and conditions of the permit complied with by the applicant.

**G. 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 15302. 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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