

CALIFORNIA COASTAL COMMISSION

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Filed: 11/22/19
180th Day: 5/20/20
Staff: E. Prahler-SD
Staff Report: 1/23/20
Hearing Date: 2/14/20

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-18-1228

Applicant: Bret MacInnes

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

Location: 4563 Cove Drive, Carlsbad, San Diego County
(APNs: 207-150-92-01 – 04; 207-150-19-01; 207-15-20-01; and 201-150-20-02)

Project Description: Remove and demolish unpermitted 48 sq. ft. access pier, 72 sq. ft. gangway, 474 sq. ft. floating dock, and four pipe piles. Install two 48 sq. ft. access piers, two 72 sq. ft. gangways, and 429 sq. ft. floating dock. Total water coverage would increase by approximately 27 sq. ft.

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 marine resources and water quality. The proposed project includes the removal and demolition of an unpermitted development consisting of a floating dock, four pipe piles, gangway and access pier and installation of a new dock in its place. As proposed by the applicant, the new dock structure would increase the amount of water coverage by approximately 27 sq.ft., potentially resulting in adverse impacts to marine species and biological productivity.

Therefore, staff worked with the applicant to revise the project to eliminate one of the proposed gangways. As revised, the new dock structures would result in 501 sq. ft. of open water coverage. **Special Condition 1** requires the submittal of revised final plans with only one gangway and access pier to reduce the amount of water coverage 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 pre- and post-construction eelgrass surveys to ensure that if any impacts to eelgrass occur, they will be mitigated for. **Special Condition 5** requires a pre-construction survey to prevent the spread of the invasive green algae, *Caulerpa taxifolia*. **Special Conditions 6 and 7** 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 8** requires the applicant to fulfill the requirements of the conditions within 120 days of Commission approval in order to resolve the violation. Thus, no significant impacts to any coastal resources are anticipated.

Commission staff recommends **approval** of coastal development permit application 6-18-1228 as conditioned.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – 1998 Dock Exhibit](#)

[Exhibit 3 – Aerial Photos](#)

[Exhibit 4 – 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 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. **Revised 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 8/20/18 and the plans prepared by Swift Slip Dock & Pier Builders, Inc. dated 10/31/19, except as follows:

1. Only one access pier and gangway shall be permitted.
2. 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, events, 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 placement of an approximately 48 square foot access pier, 72 square foot gangway, 429 square foot 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. **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.

5. **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).

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.

6. **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;

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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.

7. **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.

8. Unpermitted Development Condition Compliance.

- A. WITHIN 120 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto. Failure to comply with this requirement may result in the institution of enforcement action under the provision of Chapter 9 of the Coastal Act.

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 proposed project involves demolition and reconstruction of a shared dock for residents at 4553, 4555 and 4563 Cove Drive toward the rear of Bristol Cove. In 1998,

the Commission approved maintenance dredging in Bristol Cove that included the removal and replacement of existing docks in the Cove at that time (CDP No. 6-98-051 (Bristol Cove Property Owners' Association)). There was a permitted floating dock with four fingers in this location in 1998 ([Exhibit 2](#)). However, aerial images from Google Earth show that by 2003 the dock had been reconfigured to a three finger design ([Exhibit 3](#)). Although a coastal development permit is required for any dock reconfiguration, no permit was issued for this work. The existing dock structure consists of a 474 square foot floating dock, 72 square foot gangway, and a 48 square foot access pier. The floating dock and gangway cover approximately 546 square feet of lagoon water. The applicant has also identified four 2-inch and 3-inch pipe piles that were hammered into the lagoon bottom to stabilize the floating dock. The existing dock is considered unpermitted and in violation of the Coastal Act. The applicant proposes to resolve the violation by removing the entire floating dock, pipe piles, gangway, and access pier.

The applicant also proposes to install a new approximately 429 square foot floating dock, two 72 square foot gangways, and two 48 square foot access piers with two wooden pier support posts each ([Exhibit 4](#)). Approximately 573 square feet of water coverage would result from the proposed project. No new piles are proposed. Instead, the new dock will be stabilized through the use of "strong-arm" cables connecting the landward side of the floating dock to concrete footings in the riprap lining the cove. The proposed pier posts will also be attached to concrete footings within the riprap. AZEK decking will be used on the floating dock, gangway, and access pier. The new dock, gangways, and access piers 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, and to minimize visual impacts to the cove, the Commission typically requires that new docks be the minimum size necessary to accommodate the recreational use. In this case, the floating dock and gangway portions of the proposed structures will sit directly in or overhang lagoon waters, reducing the open water area available for biological productivity and foraging opportunities. As proposed by the applicant, the new floating dock and gangways will result in approximately 573 square feet of water coverage; an increase of approximately 27 square feet over the 546 square feet in current unpermitted configuration.

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The proposed floating dock will have four fingers, instead of three, and be able to accommodate more boats. However, because the fingers will be reduced to 3 feet wide each, the new floating dock will be approximately 45 square feet smaller than the floating dock currently in the water. The increase in water coverage that will result from the proposed dock structure is associated with the addition of a second 72 square foot gangway overhanging the lagoon waters. While the second gangway provides a more convenient access to the floating dock for some of the owners sharing use of this dock, it is not necessary to facilitate recreational boating use.

Therefore, in order to protect marine resources that rely on open water area and minimize visual impacts to the cove, Commission staff worked with the applicant to revise the project to eliminate one gangway and access pier. As revised, the project will result in total water coverage of 501 square feet and ensure that the dock is the minimum size necessary to accommodate the recreational use. **Special Condition 1** requires the applicant to submit revised final plans eliminating one gangway and access pier. Because of the impacts to marine resources associated with docks, 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.), 6-18-1227 (Burdick), 5-15-0075 (Miller), 5-08-068 (Golovko), 5-07-131 (Dugan)). The Commission imposes **Special Condition 2** requiring that the dock be used solely for boating-related uses in order to avoid adverse impacts to marine resources.

Further, 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. **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 only bottom disturbance associated with the proposed project is removal of the unpermitted pipe piles, opening up bottom area that was previously filled. Barges used to bring materials to the site will tie up to the dock, rather than anchor on the bottom. A survey conducted at this site found no eelgrass habitat around the existing dock; however, the location and extent of eelgrass can change seasonally. Because the proposed dock will change in configuration and location in the water, there is potential that new eelgrass growth could be impacted. Therefore, **Special Condition 4** 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 Program (CEMP). An approval issued for this project by the U.S. Army Corps of Engineers also requires pre- and post-construction eelgrass surveys and mitigation for any impacts consistent with the 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, **Special Condition 5** 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 install wooden posts on concrete footings within the riprap lining the cove to support the new access pier. These support posts will be subject to tidal action and when submerged, may leach preservatives into the water. To avoid impacts from the wood preservative, **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 6** requires the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. **Special Condition 7** 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 removal of an unpermitted dock structure and installation of a new floating dock, gangway and access pier on an inner inlet of Agua Hedionda Lagoon. As conditioned, the proposed development will not have an adverse impact on any sensitive habitat or 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 channel with many residential docks and, as conditioned, will be compatible with the character and scale of the surrounding docks 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.

E. UNPERMITTED DEVELOPMENT

Violations of the Coastal Act have occurred with respect to the subject property including but not limited to reconfiguration of the dock. A permitted dock with four fingers was located at this site in 1998 ([Exhibit 2](#)). However, aerial images from Google Earth show that by 2003 the dock had been reconfigured to have only three fingers ([Exhibit 3](#)). This reconfiguration required a coastal development permit to assess potential adverse impacts to biological productivity and water quality. No permit was issued for this work and the dock is therefore unpermitted in violation of the Coastal Act. The applicant is proposing through this application to remove all unpermitted development that persists at the site.

Although the new dock will be able to accommodate more boats due to the proposed four finger design, it is consistent with the previously approved dock in 1998 which also had four fingers. As conditioned, the new dock will reduce the amount of water coverage by approximately 45 square feet compared to the current unpermitted configuration and will have no adverse impacts on marine resources or water quality.

Approval of this application pursuant to the staff recommendation will require the applicant to remove and demolish the existing unpermitted dock and replace it with a new dock as required by **Special Condition 1**. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the future impacts from the violation(s) noted above.

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 and certified Agua Hedionda Land Use Plan. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit are satisfied and the unpermitted dock is removed.

In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the subject permit will issue upon compliance with all Special Conditions required to be fulfilled within 120 days of Commission action, as required by **Special Condition 8**. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with 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 rea. 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.

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 15303. 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 is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.