

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-21-0502

Applicant: KWD Holdings, LLC

Agent: Kyle Stephens

Location: 4547 Cove Drive, Carlsbad, San Diego County.
(APN 207-150-15)

Project Description: Construction of a 3,334 sq. ft., three-story, 34 ft. high single-family residence with attached 772 sq. ft. garage, attached 850 sq. ft. accessory dwelling unit, pool and spa, rear patio, and associated landscaping on a 4,680 sq. ft. vacant waterfront lot located on Bristol Cove of Agua Hedionda Lagoon

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to water quality and coastal hazards. The subject property is located adjacent to Bristol Cove, a privately-owned cove and marina facility located off the inner basin of Agua Hedionda Lagoon. Residential development on a waterfront lot has the potential to result in pollution to the adjacent waterway. The City's 2017 Sea Level Rise Vulnerability Assessment identifies this site as at risk from flooding due to future storms and sea level rise. To address these potential adverse impacts, the Commission staff is recommending six special conditions. **Special Condition #1** requires submittal of revised final plans showing that the lower floor will be flood-proofed and the project will adhere to the recommendations

in the geotechnical report. **Special Conditions #2, 3, and 4** require submittal of final landscape, drainage, and construction pollution prevention plans that protect water quality. Because the residence is proposed in an area that will be subject to flooding in the future, **Special Condition #5** requires the applicant to assume the risk of constructing in a hazardous location. Further, **Special Condition #6** requires the applicant to waive any rights to future shoreline protection. Finally, **Special Condition #7** requires the applicant to record a deed restriction against the property, notifying all future owners of this permit and its conditions.

Unpermitted development, in the form of construction of a private ramp and boat dock located on the adjacent riprap and in the water, has occurred adjacent to the subject site without the required coastal development permit. This permit does not authorize construction, use of, or improvements to the unpermitted dock.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0502, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Proposed Site Plan](#)

[Exhibit 4 – Proposed ADU](#)

[Exhibit 5 – Unpermitted Dock](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-21-0502 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

- 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 applicant 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. 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, final site and architectural plans approved by the City of Carlsbad that are in substantial conformance with the site and architectural plans by Kyle Stephens & Associates, Inc. dated July 13, 2020 and received February 10, 2022, except that they shall comply with the following:
 - i. The lower floor shall be flood proofed.
 - ii. The proposed foundation system and pool/spa dimensions shall be clearly depicted.
 - iii. All recommendations of the report titled "Geotechnical Investigation. Proposed Harle Residence" prepared by CTE Inc. and dated February 26, 2021 shall be adhered to, including recommendations for drainage, use of corrosion-resistant materials, and potential compaction and regrading of the uppermost fill soils. If the site is regraded, it shall be regraded to its existing contours and no grading shall take place between October 1 and April 1.
- 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. Final Landscape Plans

- a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final landscaping plan for review and written approval by the Executive Director. The plans shall be in substantial conformance with the landscape plans prepared by Kyle Stephens & Associates, dated July 13, 2020 and received February 10, 2022, and shall reflect the following:
 - i. A maintenance plan for the landscaped area that shall describe the herbicide, pesticide and fertilizer practices as well as list the chemical pesticides and fertilizers that will be employed on site. Said chemicals shall not be toxic to fish or wildlife or persistent in the environment. Herbicides and pesticides, if used at all, shall be applied by hand application or by other means that will prevent leakage, percolation, or aerial drift into adjacent lagoon;
 - ii. A plan showing the type, size, extent and location of all plant materials used;

- iii. The bio-filtration basin areas shall be maintained in good growing condition, and whenever necessary, shall be replaced with new drought-tolerant native or non-invasive plant materials to ensure continued compliance with landscape requirements;
 - iv. All landscaping shall be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Exotic Pest Plant Council (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.
 - v. If using potable water for irrigation, only drip or micro spray irrigation systems may be used;
 - vi. (a) Five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

3. Final Drainage Plans

- a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final drainage plans for review and written approval by the Executive Director.
- b. The applicant shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Construction and Pollution Prevention Plan

- a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan. The Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:
 - i. Minimize Erosion and Sediment Discharge
 - A. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
 - B. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
 - C. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
 - D. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.

- E. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
- F. Grading shall be prohibited during the rainy season, from October 1 to April 1.

ii. Minimize Discharge of Construction Pollutants and other Impacts of Construction Activities

- A. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
 - 1. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
 - 2. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
 - 3. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
 - 4. Prompt removal of all construction debris from the shoreline.
 - 5. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- B. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

- C. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.
- iii. Construction In, Over, or Adjacent to Coastal Waters and Habitat.
Construction taking place in, over, or adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional BMPs, including:
- A. Construction activity shall not be conducted below the mean high tide line, unless tidal waters have receded and the area is part of the authorized work area.
 - B. All work shall take place during daylight hours, and lighting of the lagoon is prohibited.
 - C. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.
 - D. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the lagoon, waterways, natural drainage swales, and the storm drain system.
- b. The applicant shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 5. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (A) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level rise; (B) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (C) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (D) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

6. No Future Shoreline Protective Device.

- a. By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-21-0502 including, but not limited to, the residence, foundations, pool/spa, decks/patios, and/or driveways, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- b. By acceptance of this Permit, the applicant further agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence, foundations, pool/spa, decks/patios, and/or driveways, if any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to natural hazards and that there are no measures that could make the structures suitable for use without the use of shoreline protective devices. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required. In the event that portions of the development fall to the lagoon before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the lagoon and lawfully dispose of the material in an approved disposal site.

- 7. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project is the construction of a 3,334 sq. ft. single-family residence with an attached 772 sq. ft. garage, attached third-floor 850 sq. ft. accessory dwelling unit (ADU), and pool/spa with a maximum depth of 4 ft. on a 4,680 sq. ft. vacant lot at 4547 Cove Drive, Carlsbad ([Exhibits 3 and 4](#)). The residence is proposed to be approximately 34 ft. tall. The site is designated R-23 and zoned Residential Waterway (R-W), which is a zone that regulates high-density residential development in Carlsbad.

The Commission previously authorized CDP No. 6-17-0036 for a proposed duplex on the subject site, but the permit has since expired. There is an existing, unpermitted private boat ramp and dock directly adjacent to the site that is located on property owned by the Bristol Cove Property Owners Association. The applicant holds an easement to use the ramp and dock for their private use. However, although staff has requested that the applicant include in this application either removal of the dock or to authorize it after-the-fact, the applicant is not proposing to include resolution of the unpermitted development in this application, nor is the applicant proposing any changes to the boat ramp and dock at this time (see Section IV.F for detailed discussion of the violation).

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

Agua Hedionda Lagoon is an artificial water body that was originally dredged in 1954 to -11 feet MSL (mean sea level) out of a historical 230-acre salt marsh slough to provide cooling water for the Encina Power Plant. Two settling basins were included in the design: one in the outer lagoon to trap sands carried in from the ocean, and one at the eastern end to trap incoming sediments from Hedionda Creek. Since 1980, the Commission has approved several coastal development permits for the dredging of Bristol Cove and other areas of the lagoon.

Because Agua Hedionda Lagoon is an environmentally sensitive area and a major recreational resource, the lagoon and the viewshed surrounding the lagoon was the subject of a detailed LCP Land Use Plan (LUP) prepared by the City and certified by the Coastal Commission in 1982. The subject property is within this LUP planning area, but an implementation plan for this area has not yet been certified. Thus, permit responsibility remains with the Commission and Chapter 3 of the Coastal Act is the

standard of review, with the certified Agua Hedionda Lagoon LUP used as guidance.

B. Coastal Hazards

Section 30235 of the Coastal Act states:

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

Section 30253 of the Coastal Act states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The City of Carlsbad's 2017 Sea Level Rise Vulnerability Assessment identifies the neighborhood surrounding Bristol Cove, including this site, as subject to flood risk due to storms and future sea level rise. Commission staff reviewed the proposed project and other flooding information and found that the site could potentially be inundated by marine, fluvial, or groundwater sources either frequently or intermittently towards the end of its lifetime with future sea level rise. In order to protect the development from future flooding, **Special Condition #1** requires the applicant to submit revised final plans that include flood-proofing the lower floor, clearly depicting the foundation plans, and adhering to the recommendations in the applicant's geotechnical report.

The entire shoreline of Bristol Cove currently contains a revetment. However, the proposed project, as new development, is not entitled to shoreline protection and as such, the applicant is required to waive any right to construct a shoreline protective device to protect the development in the future, as outlined in **Special Condition #6**. Further, the landowner must remove the development if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structures to be removed.

Given that the applicant has chosen to develop a waterfront lot despite risks from sea level rise and storm flooding, the applicant must assume the risks of hazardous construction and operation; therefore, the Commission imposes **Special Condition #5**. Finally, **Special Condition #7** requires the applicant to record a deed restriction against the property to notify future owners of the terms and conditions of this permit. As

conditioned, the Commission finds the project consistent with the coastal hazards policies of Chapter 3 of the Coastal Act.

C. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Policy 3-14 of the City of Carlsbad Agua Hedionda Land Use Plan states, in relevant part:

In addition to the requirements of the City of Carlsbad Drainage Master Plan, permitted development shall also comply with the following requirements:

- a. Grading activity shall be prohibited during the rainy season: from October 1st to April 1st of each year.
- b. All graded areas shall be landscaped prior to October 1st of each year with either temporary or permanent landscaping materials, to reduce erosion potential. Such landscaping shall be maintained and replanted if not well-established by December 1st following the initial planting.

[. . .]

Policy 7-12 of the City's certified Habitat Management Plan (HMP) also includes the above-cited language of Policy 3.14.

As proposed, the project includes bio-retention basins to collect and infiltrate runoff from the site. However, proximity of this site to the lagoon poses a risk of erosion into the lagoon during construction, adversely impacting water quality. While the applicant has not proposed grading for the project, **Special Condition #1** requires the applicant to adhere to the recommendations in the geotechnical report. This report states that some grading may be necessary to compact the liquefiable soils at this site. Therefore, **Special Condition #4** requires the applicant to submit a construction pollution prevention plan in order to avoid adverse impacts to the adjacent lagoon during construction and any associated grading activities, and to prohibit grading during the rainy season. As conditioned, the Commission finds the project consistent with Section 30231 of the Coastal Act and the applicable policies of the Agua Hedionda LUP regarding protection of water quality.

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

There is little public access to the shoreline available around the subject site, as Bristol Cove is surrounded by existing private development that includes patios and docks that extend out into the water. Because the subject site is the last remaining vacant site in a fully developed residential community, there is no route for providing access along the shoreline through this lot.

The sidewalk and public street parking along Cove Drive and Park Drive provide adequate access to the north shore of Agua Hedionda Lagoon both east and west of Bristol Cove. The proposed project includes three off-street parking spaces to serve residents of the single-family home and ADU.

Thus, the proposed project will not adversely impact public access and the Commission finds the project consistent with the public access and recreation policies of the Coastal Act.

E. Visual Quality

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Policy 1.9 of the City of Carlsbad Agua Hedionda Land Use Plan states:

Building height shall be limited to a maximum of 35 feet. Building setbacks and lot coverage shall be regulated by the applicable zoning designation, except as specifically modified in this plan.

Policy 8.1 of the City of Carlsbad Agua Hedionda Land Use Plan states, in relevant part:

Park Avenue, Adams Avenue and Carlsbad Boulevard are designated as scenic roadways. [. . .]

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

F. Unpermitted Development

Section 30600 of the Coastal Act states, in relevant part:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

[. . .]

Policy 6.2 of the City of Carlsbad certified Agua Hedionda Land Use Plan states:

Construction of private docks, boat storage and launching facilities shall be subject to approval by the U.S. Army Corp of Engineers, the State Department of Fish and Game, the City of Carlsbad and the California Coastal Commission, consistent with Coastal Act Policies.

Unpermitted development, in the form of construction of a private ramp and boat dock located on the adjacent riprap and in the water, has occurred adjacent to the subject site without the required coastal development permit ([Exhibit 5](#)). Based on satellite imagery, the dock appears to have been constructed in 2004. Commission staff first

identified that this dock was unpermitted during their review of the applicant's coastal development permit (CDP) 6-17-0036, which authorized the construction of a duplex on the subject site in July 2017. That approval expired.

The applicant bought the property in 2016 with the existing unpermitted development at the site and did not propose further improvements to the boat dock in CDP 6-17-0036, nor are they proposing improvements to the dock in the subject project. Because the owner did not agree to include either removal or after-the-fact approval of the dock in the proposed project scope for CDP 6-17-0036, staff directed the applicant in 2017 to submit a separate CDP application to resolve the violation. However, no such application was submitted. Upon receipt of the subject permit application in 2021, Commission staff again requested that the applicant either remove the unpermitted dock or propose after-the-fact approval of the dock. In response, the applicant submitted a survey showing that the unpermitted dock is entirely within the parcel owned by the Bristol Cove Property Owners Association (APN 207-150-58). The applicant asserted that, because they do not own the parcel containing the unpermitted dock, they are not responsible for its removal or authorization through an after-the-fact CDP. However, the applicant shares liability with the Property Owners Association for the unpermitted development by virtue of its control and maintenance of the dock; by design, the dock was constructed for the sole use of the applicant's property. The applicant has exclusive wharfage rights for private use of the dock and is responsible for its maintenance. Staff requested that the applicant resolve the unpermitted boat dock as part of the proposed project or a separate application, and the applicant refused. Thus, even if this application is approved, and the permit is exercised, violations will remain at the site that will not be addressed by the Commission's action on this application. Enforcement staff is investigating and plans to send a Notice of Violation to the property owner and the Property Owners Association regarding the unpermitted dock.

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.

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 the development undertaken on the subject site without a coastal permit, or of any other development, except as otherwise expressed herein.

G. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The Agua Hedionda LUP has been certified by the Commission, but no implementing ordinances have been submitted by the City for this plan segment. Thus, the standard of review for this application is the Chapter 3 policies of the Coastal Act. As conditioned,

the project is consistent with all applicable Chapter 3 policies of the Coastal Act and with the habitat protection, scenic preservation, public access, and water quality policies of the certified LUP. Approval of the project—as conditioned—will not prejudice the ability of the local government prepare a fully certifiable Local Coastal Program.

H. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Carlsbad found that the proposed project is exempt under CEQA as a ministerial project. (Cal. Code of Regs., tit. 14, § 15268.)

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Agua Hedionda Local Coastal Program