CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:	5-06-184
APPLICANTS:	Lido Peninsula Company, LLC; Attn: Sean Walsh
AGENT:	Tetra Tech, Inc., Attn: Tracy Stofferahn
PROJECT LOCATION:	End of Anchorage Way, City of Newport Beach (Orange County)
PROJECT DESCRIPTION:	Replace a failing 307-foot long section of a 1,230-foot long bulkhead and associated sidewalk and utilities. The deteriorated sections of the bulkhead will be replaced with epoxy coated interlocking steel sheet piling sections 18-inches landward of the existing bulkhead and embedded 25-feet into the soil. The project will also remove 6 existing soldier piles. Grading will consist of 60-cubic yards of import.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing removal of an existing bulkhead section and replacement of the bulkhead section, but in a more landward configuration. The subject site is subject to tidal action, but not to direct wave attack because the site is located within a protected channel of the Newport Harbor. The proposed bulkhead is necessary to protect existing structures from tidal induced erosion and will have no new impacts upon shoreline sand supply because the device is located more landward location than the existing. The major issues before the Commission relate to hazards associated with the development and the effect of the proposed development on the marine environment and water quality.

Commission staff is recommending <u>APPROVAL</u> of the proposed project with SEVEN (7) SPECIAL CONDITIONS regarding: 1) conformance with geotechnical recommendations; 2) best management practices; 3) location of the disposal site of the demolition and construction debris; 4) epoxy coating monitoring and maintenance; 5) review of the proposed epoxy materials by the California Department of Fish and Game (CDF&G); 6) an eelgrass survey(s); and 7) preconstruction survey for *Caulerpa taxifolia*.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval in Concept (Harbor Permit No. 222-717/Plan Check No. 3000-2005) from the City of Newport Beach Harbor Resources Division dated May 11, 2006; Regional Water Quality Control Board (RWQCB) Clean Water Act Section 401 Water Quality Standards Certification dated July 11, 2006; and letter from the California Department of Fish and Game (CDF&G) dated June 22, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Letter from Tetra Tech, Inc. regarding *effects of Installing a cantilevered sidewalk along the bulkhead at the Lido Peninsula Bulkhead repair Project Site* dated December 28, 2006; Letter to Tetra Tech, Inc. from Commission staff dated June 9, 2006; Letter to Commission staff from Tetra Tech, Inc dated July 12, 2006; and *Geotechnical Investigation for Seawall Replacement at South Terminus of Anchorage Way Lido Peninsula, Newport Beach, California (GPI Project No. 2036.1)* prepared by Geotechnical Professionals Inc. dated September 27, 2005.

LIST OF EXHIBITS

- **1.** Vicinity Map
- 2. Site Plan
- 3. Section
- 4. Sheet Pile Plan

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-184 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a <u>YES</u> vote. 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 the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **<u>APPROVES</u>** a coastal development permit for the proposed development 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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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. <u>Notice of Receipt and Acknowledgment.</u> 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. <u>Expiration.</u> If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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.** <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- **4.** <u>Assignment.</u> 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. <u>Terms and Conditions Run with the Land.</u> 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 CONDTIONS

1. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

- A. All final bulkhead replacement design and construction plans shall be consistent with all recommendations contained in *Geotechnical Investigation for Seawall Replacement at South Terminus of Anchorage Way Lido Peninsula, Newport Beach, California (GPI Project No. 2036.1)* prepared by Geotechnical Professionals Inc. dated September 27, 2005. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- **C.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

2. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

- **A.** No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave wind, or rain erosion and dispersion.
- **B.** Any and all construction material will be removed from the site within 10 days of completion of construction.
- **C.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- **D.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- E. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- **F.** Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

3. LOCATION OF DEBRIS AND DISPOSAL SITE

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed bulkhead and dock work. Disposal shall occur at the approved disposal site. 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.

4. STEEL SHEET PILING MONITORING AND MAINTENANCE

Steel sheet pilings treated with a multi-layer coating consisting of Cottocote Plus epoxy lining and then a Tufsheen II exterior epoxy coating shall be used only if coated **PRIOR TO INSTALLATION**, and in a manner acceptable to the Executive Director as follows:

- **A.** The material used shall be durable and a minimum of one-tenth of an inch thick.
- **B.** All joints shall be sealed to prevent leakage.
- **C.** To prevent the introduction of toxins and debris into the marine environment, the use of Cottocote Plus and Tufsheen II (which are polyurethane/plastic coatings), shall conform to the following requirements:

<u>Inspection and Maintenance Program</u>. The permittee shall exercise due diligence in periodically inspecting the polyurethane/plastic coatings applied on the steel sheet pilings to be installed under this permit, and shall immediately undertake any repairs necessary to maintain the polyurethane/coatings and/or structural integrity of the steel sheet pilings. On an annual basis for all steel sheet piles coated with a polyurethane/plastic material that may come into contact with rubble and other floating debris, and on a biannual basis for those that will not, beginning one and

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two years (as applicable) following the date that the first steel sheet pile with the polyurethane/plastic coatings is installed, the permittee shall conduct an inspection to ensure the integrity of the polyurethane/plastic coatings, and that all corrective actions have or will be immediately undertaken to maintain the polyurethane/plastic coating and/or integrity of the steel sheet piles. The applicant shall provide to the Executive Director the results of the monitoring annually for the life of the steel sheet pilings. The inspections shall be undertaken by boat, SCUBA or other equally effective method. If the monitoring results indicate repairs are necessary, the applicant shall immediately complete those repairs that are exempt from coastal development permit requirements, and shall apply for an amendment to this permit for those repairs requiring a permit. Alternatively, the permittee may submit a different timeline for the piling inspection program that ensures that the polyurethane/plastic coatings and structural integrity of the steel sheet piles are properly maintained; the alternative timeline shall be reviewed and approved by the Executive Director, **PRIOR TO ISSUANCE OF THE PERMIT.**

<u>New Information</u>. If federal or state regulatory agencies, through new or better scientific information, determine that environmentally less damaging materials or methods are available for coating the steel sheet pilings, and are feasible to implement, the permittee shall, after consultation with the Executive Director, revise procedures or use alternative materials consistent with the new information. The substitution of non-plastic piling coating materials may be authorized by the Executive Director if the Executive Director determines that substitute material has no potential for significant adverse impacts upon coastal resources. Other revisions, including but not limited to the use of other preservative-treated, wrapped or coated steel sheet piles, may require an amendment to this permit.

5. <u>STEEL SHEET PILE EPOXY COATING REVIEW BY THE CALIFORNIA DEPARTMENT</u> OF FISH AND GAME (CDF&G)

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written evidence that the proposed Cottocote Plus and Tufsheen II epoxy steel sheet pile coatings or alternatively proposed steel sheet pile coatings are acceptable to the California Department of Fish & Game (CDF&G). If the CDF&G determines that an alternative epoxy coating is needed, the applicant shall identify it in writing and submit it to the Executive Director for the review and approval. No changes to the approved epoxy coatings shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

6. <u>EELGRASS SURVEY(S)</u>

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 prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. 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) business 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.

В. **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 one month after the conclusion of construction, 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 "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP 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 required.

7. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement 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 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 Game, and the National Marine Fisheries Service.
- **C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

D. If *Caulerpa 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 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 determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

1. Project Location

The project site is located at the southwesterly corner of Lido Peninsula, which is the southern end of Anchorage Way in the City of Newport Beach, Orange County (Exhibit #1). The project site is located within a lot that consists of a residential mobile home park (Lido Peninsula Resort), a parking lot and a continuous sidewalk that runs along the waterfront bulkhead. Lido Peninsula is located in the western area of Lower Newport Bay. Lower Newport Bay is a 750-acre small boat harbor comprised of bulkheads and floating docks. The area is heavily urbanized and is comprised of marinas, housing and commercial properties. The waterway adjacent to the project site is where West Lido Channel and Newport Channel intersect. The project footprint is less than 2,500 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Recreational and Marine Commercial and the proposed project adheres to this designation.

The bulkhead section (307-foot long section of a 1,230-foot long bulkhead) where work is proposed is part of a waterfront development and marina area that contains the subject bulkhead as well as homes, floating docks, trash enclosures, utilities, vehicle parking and gangways. This existing bulkhead, comprised of interlocking steel sheet piling, supports the sidewalk, parking lot, the residential mobile home park and gangways that access the adjacent marina docks. A publicly accessible 4-to 6-foot wide sidewalk runs along the length of the existing bulkhead. This sidewalk has uneven surfaces, non-compliant slopes due to bulkhead movement, and obstructions in the walkway path (light poles and a phone booth). As such, it is not compliant with Americans with Disabilities Act (ADA). The elevation of the top of the existing sidewalk concrete is approximately +8.5 Feet MLLW. The bulkhead section was installed pre-1945 and is beyond its useful life. It is in an extremely deteriorated and even failed condition. The failed section of bulkhead, located near the middle section of the bulkhead is approximately 60-feet in length, has been reinforced with six (6) steel pipe piling that have been driven in front of the bulkhead, circa 1970's, to protect it from further collapse or movement.

2. Project Description

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The proposed project will replace a poor and failing 307-foot long section of a 1,230-foot long bulkhead and construct associated sidewalk and utilities (Exhibits #2-4). The proposed project intends to improve access along the shoreline by providing an ADA accessible sidewalk and by stabilizing the shoreline and bulkhead that supports the gangways, sidewalk and parking lot. In addition, by moving the bulkhead landward, as proposed, the project will restore underwater soft-bottom habitat. The landward side of the area is bordered by a sidewalk and a parking lot while the bayside hosts a marina with gangways and floating docks. The bulkhead section to be repaired is angled and has three (3) distinct portions, which are the following lengths: 60-feet (north end), 200-feet (middle), and 47-feet (south end). The deteriorated sections of the bulkhead will be replaced with epoxy coated interlocking steel sheet piling sections 18-inches behind the existing bulkhead and embedded 25-feet into the soil. The existing bulkhead will be cut below the mudline and removed. However, the applicant is also proposing to leave a portion of the existing bulkhead in place (i.e. the part below the mudline) in order to add to the structural integrity of the existing bulkhead. The project will also remove six (6) soldier piles in their entirety located near the middle of the central section of bulkhead. The existing sidewalk will be replaced with an 8-foot, 10-inch wide, by 80-inch thick pre-cast concrete sidewalk which will be cantilevered over the water and will cantilever a maximum of 5-feet beyond the bulkhead (or 42-inches beyond the existing bulkhead) for most of the repair length. The northerly 60foot section of new sidewalk will extend approximately 18-inches from the new bulkhead and therefore would not extend beyond the existing bulkhead line. The middle 200-foot section of new sidewalk will extend approximately 42-inches from the new bulkhead and would therefore extend beyond the existing bulkhead. The south 47-foot section of the new sidewalk will be tapered back to meet the existing sidewalk which is not cantilevered. Cantilevering the sidewalk over the water will make it wider and ADA compliant and will compensate for the dry land area lost from placing the new bulkhead landward of its present alignment. The project will install new railings, utilities and bollard lighting. The existing railing that runs along the sidewalk will be replaced with a new rail that will be mounted on top of the new sidewalk. A new utility trench will be excavated from the existing electrical transformer along the southern end of the parking lot to the to the bulkhead. New utility conduits will be placed in the trench, exiting underneath the new sidewalk. New utilities will be installed using uni-struts and will run along the entire length of the new bulkhead. The adjacent gangways and docks would remain unchanged. New low profile bollard lighting will be installed along the new sidewalk. Parking will be increased by 2 stalls, both of which will be ADA compliant. The elevation of top of the replacement bulkhead and new sidewalk will be 1-foot higher than the existing elevation to ensure the new utility conduits hanging underneath the cantilevered sidewalk will be out of contact with the water during high tide and be consistent with the City of Newport Beach Harbor Resources Division requirements for bulkhead height. The existing elevation of the sidewalk is approximately +8.5 feet MLLW and the new elevation will be +9.5 feet MLLW. Grading will consist of 60-cubic yards of import in order to re-grade the parking lot to match the new bulkhead and sidewalk. The project will take approximately 4 months to complete.

B. PROTECTIVE STRUCTURES AND HAZARDS

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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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...

Site conditions include an existing, aging steel sheet piling bulkhead. In order to analyze the proposed bulkhead replacement, the applicant has submitted a geotechnical investigation: Geotechnical Investigation for Seawall Replacement at South Terminus of Anchorage Way Lido Peninsula, Newport Beach, California (GPI Project No. 2036.1) prepared by Geotechnical Professionals Inc. dated September 27, 2005. The investigation determined the following: "The existing steel sheet pile bulkhead has structurally deteriorated (probably due to corrosion) and in localized areas exhibits significant lateral movement near the mudline. The lateral movement of the bulkhead has also resulted in subsidence in the pavement surface adjacent to the wall." Due to age, corrosion (such as the one at the subject site), poor quality concrete, inadequate steel reinforcement, and deficient tieback systems, aging steel sheet pile bulkheads in Newport Beach are commonly replaced. The proposed development will remove the section of existing deteriorating bulkhead and replace that bulkhead section landward of the original location. In order to ensure that repairs and modifications of the existing bulkhead do not adversely affect adjacent properties, that they minimize risks to life and property, and to assure stability and structural integrity, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit, prior to issuance of the permit, evidence of conformance with geotechnical recommendations.

The bulkhead is required at the subject site to protect the structural integrity of the site from tidal activity. The bulkhead supports the sidewalk, parking lot, the residential mobile home park and gangways that access the marina docks. If the bulkhead were removed and not replaced, tidal activity would erode and destabilize the lot and the development landward of the bulkhead (i.e. parking lot, mobile home park, etc.). Therefore, the proposed replacement of the bulkhead is necessary to protect existing structures. In addition, the proposed bulkhead will be moved 18-inches landward of the existing bulkhead. The proposed bulkhead replacement would not result in new fill of coastal waters or changes to shoreline sand supply/erosion at the site. Conversely, it would open approximately 432 square feet of bay bottom habitat since the new bulkhead section will be placed land ward of the existing location.

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The existing bulkhead does not meet present engineering standards and poses a risk to life and property because lot stability may be threatened by failure of the aging, corroding existing bulkhead. The proposed development will protect lot stability and reduce risks to life and property with a structurally superior bulkhead system. **SPECIAL CONDITION NO. 1** requires incorporation of the recommendations in the bulkhead evaluation. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Section 30235 and 30253 of the Coastal Act.

C. WATER QUALITY AND THE MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project is located in and over the coastal waters of Lower Newport Bay. Newport Harbor (Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include the Lower Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects which could have an adverse impact on water quality should be examined to assure that potential impacts are minimized. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity and water quality.

The construction will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine environment. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, water quality issues are essential in review of this project

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1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. The applicant has stated that they intend to implement the following best management practices (BMPs) to reduce impacts to water quality and biological resources. These measures include: 1) removal of debris that accidentally enters the water; 2) use silt curtains to confine sediments during construction activities; 3) preventing discharges of fuel or oily waste from project equipment into the waters of Newport Bay; 4) institution of surface turbidity monitoring so that levels of turbidity do not excess ambient by more than 20%. If turbidity is more than 20%, work will be stopped temporarily until the water returns to normal. In addition to these BMPs, additional best management practices are necessary. Thus, in order to avoid adverse construction-related impacts upon marine resources, SPECIAL CONDITION NO. 2 has been imposed, which outlines additional construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible. In order to prevent impacts to coastal waters, SPECIAL CONDITION NO. 3 requires that all demolition and cut material debris be disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit.

2. Post-Construction Impacts to Water Quality

The proposed project involves the removal of a deteriorated interlocking steel sheet piling bulkhead section and replacement with epoxy coated interlocking steel sheet pilings. The pilings will be coated with a Cottocote Plus epoxy lining and then a Tufsheen II exterior epoxy coating (both are polyurethane/plastic coatings). It is also necessary to evaluate the material used to treat and coat any steel sheet piles, as certain substances may have an adverse impact on water quality. Water Quality staff reviewed the proposed epoxy and coating materials and determined that they were acceptable. The Commission is concerned about the use of plastic in the marine environment due to the possible deterioration of the pile coating and subsequent increase in marine debris. Both polyurethane/plastic coatings form a hard shell that can possibly break and create flotsam, etc.. Since plastic is an inorganic material, it does not biodegrade, but rather continually breaks down into ever-smaller pieces. The presence of plastics in the coastal and ocean environment is both widespread and harmful to human and marine life. Consequently, it is necessary for the Commission to impose a special condition requiring maintenance of the polyurethane/plastic coatings that encase the steel sheet pilings. SPECIAL CONDITION **NO. 4** requires the applicant to periodically inspect the coatings on all steel sheet pilings installed as part of this project, and shall immediately undertake any repairs necessary to maintain the plastic coating (including patching any holes to ensure that the piles are

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completely encased) and/or the integrity of the steel sheet piles. Every two years following initial steel sheet pile installation, the applicant shall inspect the coatings on the steel sheet piles to ensure their integrity, and to ensure that all corrective actions have been or will be immediately undertaken to maintain the plastic coating and/or the integrity of the steel sheet piles. An alternative maintenance schedule may be approved by the Executive Director if it is found to achieve the same objective.

The California Department of Fish & Game (CDF&G) oversees impacts upon marine resources and habitat in the region. The CDF&G has reviewed the project and is discussed further in the staff report; however, their review did not include an analysis of the epoxy coatings. Thus, the CDF&G should review the proposed epoxy materials to determine if the epoxies would have any adverse impact on marine resources and water quality. Thus, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicant to submit written evidence that the proposed Cottocote Plus and Tufsheen II epoxy steel sheet pile coatings are acceptable to the California Department of Fish & Game (CDF&G).

The placement of the new bulkhead section landward will result in a net gain of 432 square feet of bay bottom habitat. The additional area will provide habitat for benthic fauna and other bottom dwelling species.

3. Eelgrass

Eelgrass (Zostera marina) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and water fowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

Two (2) eelgrass inspections have been performed by the City of Newport Beach on November 29, 2005 and December 28, 2005, which found that no eelgrass is in the vicinity of the project site regarding the bulkhead replacement. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the November 2006 Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since 60-days have passed since the survey was completed. Thus, an up-to-date eelgrass survey must be conducted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5**, which identifies the procedures regarding an eelgrass survey(s) that is necessary to be completed prior to beginning any construction.

4. Caulerpa taxifolia

Also, as noted above, eelgrass is a sensitive aquatic plant species which provides important habitat for marine life. Eelgrass grows in shallow sandy aquatic environments which provide plenty of sunlight. Several years ago, a non-native and invasive aquatic

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plant species, *Caulerpa taxifolia* (herein C. taxifolia), was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies similar habitat. C. taxifolia is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, C. taxifolia is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

Because of the grave risk to native habitats, in 1999 C. taxifolia was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various Caulerpa species including C. taxifolia.

In June 2000, C. taxifolia was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, C. taxifolia has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information if available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga Caulerpa taxifolia introduced into the Mediterranean Sea. Marine Ecology Progress Series 146:145-153.

Gacia, E. C. Rodriquez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of Caulerpa taxifolia from the northwestern Mediterranean. Aquatic Botany 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga Caulerpa taxifolia introduced into the Mediterranean. Aquatic Botany 51:163-169.

¹ References

Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press

Chisholm, J.R.M., M. Marchioretti, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of Caulerpa taxifolia (Chlorophyta). Marine Ecology Progress Series 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga Caulerpa taxifolia in the Mediterranean. Marine Ecology Progress Series 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for Caulerpa species: Fates of fragments and implications for management of an invasive weed. Marine Ecology 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga Caulerpa taxifolia introduced to the Mediterranean Sea. Marine Ecology Progress Series 172:275-280.

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In response to the threat that C. taxifolia poses to California's marine environment, the Southern California Caulerpa Action Team, SCCAT, was established to respond quickly and effectively to the discovery of C. taxifolia 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 C. taxifolia infestations.

If C. taxifolia is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. A C. taxifolia survey for the project site has not been completed. Therefore, in order to assure that the proposed project does not cause the dispersal of C. taxifolia, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of C. taxifolia. If C. taxifolia is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the C. taxifolia, unless the Executive Director determines that no amendment or new permit is required.

5. Regional Water Quality Control Board (RWQCB)

The Regional Water Quality Control Board (RWQCB) oversees impacts upon water quality in the region. Since the proposed project has the potential to affect water quality, the development requires review by the RWQCB. The RWCQB has reviewed the project and has issued a Clean Water Act Section 401 Water Quality Standards Certification dated July 11, 2006 for the proposed project. In addition, if dewatering is required for the proposed project, review and approval of the proposed project would require additional RWQCB approval. However, no dewatering is anticipated with the proposed project.

6. California Department of Fish and Game (CDF&G)

The California Department of Fish & Game (CDF&G) oversees impacts upon marine resources and habitat in the region. Since the proposed project has the potential to affect marine resources and habitat, the development requires review by the CDF&G. The CDF&G in a letter dated June 22, 2006 has reviewed the project and determined that the proposed project, as currently described, would not have significant adverse impacts on existing marine resources and habitats within the area.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **SIX (6) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 2** identifies best management practices. **SPECIAL CONDITION NO. 3** requires that the applicant identify the location of the disposal site of the demolition and construction debris. 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. **SPECIAL CONDITION NO. 4** requires the applicant to periodically inspect all coatings on all steel sheet pilings installed as part of this project, and shall immediately undertake any repairs necessary to maintain the polyurethane/plastic coating (including patching any holes to ensure that the steel sheet piles are completely encased) and/or the integrity of the steel sheet piles. **SPECIAL CONDITION NO. 5** requires the applicant to submit written evidence that the proposed

Cottocote Plus and Tufsheen II epoxy steel sheet pile coatings are acceptable to the California Department of Fish & Game (CDF&G). **SPECIAL CONDITION NO. 6** identifies the procedures regarding an eelgrass survey that is necessary to be completed prior to beginning any construction. **SPECIAL CONDITION NO. 7** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicant provide evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. Only as conditioned does the Commission finds that the proposed project is consistent with Section 30230 and 302310f the Coastal Act.

D. PUBLIC ACCESS

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 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:
 - (2) Adequate access exists nearby, or,
- (b) For purposes of this section, "new development" does not include:
 - (4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

The project site is located within a lot that consists of a residential mobile home park (Lido Peninsula Resort), a parking lot and a continuous sidewalk that runs along the waterfront bulkhead. Gangways, docks and other boating related structures are located bayward of the bulkhead. Public access is available along the continuous sidewalk along the waterfront bulkhead. The proposed project intends to improve access along the shoreline by providing a new public ADA accessible sidewalk and by stabilizing the shoreline and bulkhead that supports the gangways, sidewalk and parking lot. Temporary tenant access to the docks will be provided bayward of the project site. A section of an existing chainlink fence will be removed and a temporary gangway will be installed to access the adjacent slips. Also, a temporary float will be installed at this location to support the gangway. In addition, to connect these adjacent slips to the remaining floating docks, temporary floating headwalk sections will be installed. The existing gangways will be disconnected from the bulkhead and temporarily stored for reuse. Therefore, the Commission finds that the proposed development would be consistent with Sections 30210 and 30212 of the Coastal Act regarding public access.

E. LOCAL COASTAL PROGRAM

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Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Hazards and Protective Devices, Policy 2.8.1-4 states,

Require new development to 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.

Artificial Coastal Protection, Policy 2.8.6-5 states,

Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Water Quality, Policy 4.1.2-1 states,

Maintain, enhance, and, where feasible, restore marine resources.

Water Quality, Policy 4.1.2-5 states,

Continue to require Caulerpa protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.

Eelgrass Meadows, Policy 4.1.4-1 states,

Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.

Eelgrass Meadows, Policy 4.1.4-1 states

Where applicable require eelgrass and Caulerpa taxifolia surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey protocols.

The proposed development, as conditioned, 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

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prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, 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 further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard, water quality, marine environment and public access policies of Chapter 3 of the Coastal Act. Mitigation measures include special conditions requiring conformance with geotechnical recommendations and adherence to best management practices.

As conditioned, there are no feasible alternatives or additional 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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