

**CALIFORNIA COASTAL COMMISSION**

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**Th15b**

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 Hearing Date: 04/12/2018

**STAFF REPORT: PERMIT AMENDMENT**

**Application No.:** 5-17-0300-A1

**Permittee:** City of Long Beach

**Agent:** Tetra Tech, Rafael J. Holcombe, P.E.

**Location:** 5415 E. Ocean Boulevard, Long Beach, Los Angeles County (APN: 7245010900)

**Description of Original Project Approved 8/11/2017:** Replace a 900 sq. ft. public swim float with a 1,370 sq. ft. swim float in the same location, re-deck existing 620 sq. ft. pier, and install new gangway and bollard lighting. Construct a 277 sq. ft. ADA-compliant landing and walkway ramp on the beach to access the pier, more specifically described in the application filed in the Commission offices.

**Description of Proposed Amendment:** Addition of copper waterline, two play water blasters, a water fountain, four ladders, and signage to Bayshore swim float, installation of a 42 in. high lockable gate with signage at the Bayshore Pier entrance and guardrails along the pier walk, and relocation of swim buoy line approximately 50 ft. bay-ward of existing location.

**Staff Recommendation:** Approval with conditions

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**SUMMARY OF STAFF RECOMMENDATION**

The project site is located at Bayshore Beach, a public beach within Alamitos Bay in the City of Long Beach. The proposed development would alter the design of the previously approved pier guardrails and add a lockable gate at the entrance to the small pier. The project also includes the installation of water toys, a water fountain, and operations signage.

The project is within an area of the Commission's retained permit jurisdiction because it extends over public tidelands/submerged lands and, therefore, the standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Long Beach's certified LCP may provide guidance.

Commission Staff recommends **approval** of the amendment request with **five (5)** special conditions previously approved by the Commission in its prior action on Coastal Development Permit No. 5-17-0300 and continue to apply. These special conditions include requirements for **1)** the use of water quality best management practices; **2)** pre- and post-construction eelgrass surveys; **3)** a pre-construction *Caulerpa taxifolia* survey; **4)** the applicant's assumption of risk and waiver of liability and indemnity; and **5)** a requirement for amendments to CDP No. 5-17-0300 or a new CDP for future developments not described in the subject permit and amendment.

**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. (14 Cal. Code of Regulations Section 13166.)

The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and has the potential to negatively impact coastal resources or coastal access.

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### [EXHIBITS](#)

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Plans](#)

[Exhibit 3 – Swim Line Relocation Range](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission adopt the staff recommendation to **approve** Coastal Development Permit Amendment Request No. 5-17-0300-A1, subject to the conditions set forth in the staff recommendation.*

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

### Resolution:

*The Commission hereby **approves** the coastal development permit amendment for the proposed development and adopts the findings set forth below on the grounds that the development, as amended and subject to conditions, 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

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

**NOTE: Special Conditions 1 through 5**, approved by the Commission in its prior action on Coastal Development Permit No. 5-17-0300, continue to apply.

#### **Prior Conditions (5-17-0300)**

##### **1. Water Quality - Construction Responsibilities and Debris Removal**

- a) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- b) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- c) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- d) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- e) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- f) 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;
- g) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- h) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- i) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- j) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- k) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- l) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;

- m) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- n) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- o) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- p) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

2. **Pre-and Post-Construction Eelgrass Survey(s)**

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre- construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the “California Eelgrass Mitigation Policy and Implementing Guidelines” dated October 2014 (see [http://www.westcoast.fisheries.noaa.gov/habitat/habitat\\_types/seagrass\\_info/california\\_eelgrass.html](http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html)) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) 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.
- B. **Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “California Eelgrass Mitigation Policy” dated October 2014 (see [http://www.westcoast.fisheries.noaa.gov/habitat/habitat\\_types/seagrass\\_info/california\\_eelgrass.html](http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html)) (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 Wildlife. 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 1.38:1 ratio on-site, or at another location, in accordance with the California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.38:1 (mitigation: impact). Any exceptions to the required 1.38:1 mitigation ratio found within the California Eelgrass Mitigation Policy 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.

3. **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:
  - a. for the review and approval of the Executive Director; and
  - b. 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.

4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability from such hazards; and (iv) 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.

5. **Future Development.** This permit is only for development described in amended Coastal Development Permit No. 5-17-0300. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-17-0300-A1. Accordingly, any future improvements to the development authorized by this permit, including, but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-17-0300 from the Commission or shall require an additional coastal development permit from the Commission.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The proposed project involves providing a fresh water supply to the existing Bayshore Pier and the previously approved public swim float by installing a copper waterline connected to an existing on-land waterline. The water supply will provide for a new 36-in. high water fountain in the center of the swim float ([Exhibit 2](#)). The project also involves installation of two play water blasters on opposite sides of the swim float. Hoses will transport sea water from directly below the swim float to the play water blasters for spraying other recreationists. Four stainless steel ladders are proposed to be attached near the four corners of the float. In addition, the Bayshore Pier guardrail approved under the original permit has been redesigned and a new lockable gate is proposed to be installed at the entrance of the pier to address public safety concerns regarding the use of the pier and swim float after hours, including diving off the swim float in the dark without a lifeguard present. Operations signage is proposed to be installed adjacent to the pier's lockable gate listing the hours of operation and restrictions on the objects, substances, and activities allowed on the pier/swim float. Signage is also proposed on the swim float to direct swimmers to the side of the float where diving is permitted. Public access to the pier and swim float will remain free and open to the public during hours of beach operation. The public swim area would also be expanded by relocating the swim buoy line up to 50 ft. further offshore than the existing swim buoy line ([Exhibit 3](#)). The City expects to install and open for public use the proposed recreational amenities (including the previously approved gangway and float) prior to the upcoming Memorial Day weekend.

The project is located at Bayshore Beach, a public beach within Alamitos Bay in the City of Long Beach. The site is a narrow sandy beach facing Alamitos Bay and is developed with a Lifeguard Station, Co-op Pre-School, basketball courts, handball/racquetball courts, roller hockey rink, children's playground, kayak rental concession, and public restrooms ([Exhibit 1](#)). Multi-family and single-family residences and associated private boat dock systems characterize the surrounding area.

The City of Long Beach has a certified Local Coastal Program; however, due to the project location over public tidelands/submerged lands, the project is within an area of the Commission's retained permit jurisdiction. Nonetheless, the City's certified Local Coastal Program may be used as guidance in reviewing the proposed project. The certified zoning designation at the project site is Park. As a water-oriented recreational activity, the proposed development is consistent with the City's certified LCP, which limits uses at the site to those uses that are subject to the Common Law



Public Trust, including navigation, fishing, commerce, public access, water-oriented recreation, open space, and environmental protection.

The proposed improvements will be used for recreation-related purposes serving the general public. The proposed development is located on public tidelands and/or within an area subject to public trust doctrine. The proposed project will continue to provide a public recreational amenity that, as improved, increases access to the water. The hours of operation of the pier and swim float (when the proposed gate would be open) are the same as the hours for the whole of Bayshore Beach and do not further restrict public access to the beach. There is direct public pedestrian access to public tidelands at the subject site. From this beach, members of the public may have direct access to the bay waters for swimming or to launch a small vessel such as a kayak.

Alamitos Bay is known to support eelgrass habitat. Eelgrass habitat has been identified as a sensitive marine resource by the CA Department of Fish and Wildlife, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. Eelgrass habitat provides cover, refuge, and foraging grounds and acts as nurseries for various marine invertebrates and fish. The eelgrass impacts of the swim float were addressed by the underlying permit. The proposed relocation of the swim buoy line bay-ward of its existing location will result in disturbance/turbulence of soft bottom soils during the lifting and replacement of concrete anchors within the bay. The anchors are currently located and are proposed to be located at depths beyond which eelgrass habitat is found. Only the existing anchors beyond depths of 14 feet would be moved; no new fill is proposed. Thus, no direct impact to eelgrass or significant impact to benthic habitat is expected as a result of the amended project. In addition, considering the size and mass of the proposed guardrails and water blasters, no portion of the proposed development would consistently shade potential eelgrass habitat.

The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The underlying permit requires the incorporation of water quality measures to ensure that all impacts (pre- and post- construction) to water quality are minimized and to reduce the potential for construction related impacts on water quality.

## **B. PUBLIC ACCESS**

The proposed development will not negatively affect the public's ability to gain access to and/or use the coast and nearby recreational facilities; rather, it will encourage and maximize public access. Therefore, as proposed and as conditioned, the project conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **C. RECREATION**

The proposed development, as submitted, does not interfere with public recreational use of coastal resources; rather, it expands the recreation area without interfering with recreational boaters and, thus, conforms with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

## **D. LAND/HABITAT**

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or

park areas. Therefore, the Commission finds that the project, as conditioned, conforms to Section 30240(b) of the Coastal Act.

### **E. MARINE RESOURCES**

The proposed development has been conditioned to minimize any significant adverse effect the project may have on the environment by avoiding or mitigating impacts of construction activities on sensitive marine resources, such as, eelgrass and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30224, 30230, and 30231 of the Coastal Act.

### **F. WATER QUALITY**

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

### **G. HAZARDS**

Development adjacent to the ocean or bay is inherently hazardous. Development which may be damaged by waves, exacerbated by sea level rise, should be designed to be removable and safe from hazards and easily removable if necessary. The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act.

### **H. LOCAL COASTAL PROGRAM**

Pursuant to Section 30519 of the Coastal Act, any development located within the Commission's area of original jurisdiction requires a coastal development permit from the Commission. The proposed project is situated over public tidelands/submerged lands within the Commission's area of original permit jurisdiction. Therefore, a coastal development permit must be obtained from the Commission. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Long Beach certified LCP is advisory in nature and may provide guidance. The City of Long Beach LCP was certified by the Commission on July 22, 1980. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act.

### **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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.

### **APPENDIX A - SUBSTANTIVE FILE DOCUMENTS**

- City of Long Beach LCP