

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



F23d

Filed: 3/11/18
180th Day: 9/8/18
Staff: F. Sy-LB
Staff Report: 7/26/18
Hearing Date: 8/10/18

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-17-0948

Applicant: Lido Retail Group, LLC

Agent: CAA Planning, Inc., Attention: Shawna Schaffner

Location: 3450 Via Oporto, City of Newport Beach, (Orange County)

Project Description: Replace a 25-foot long x 3.1-foot wide decked accessway at the bayside (northern) boundary of the project site. The existing deck will be replaced with a 3.5-foot wide deck, including a new 6-inch section cantilevered over the water, resulting in a 25-foot long x 3.5-foot wide accessway segment. The applicant has proposed to offer a public access easement along a 47-foot long segment of this bayfront accessway.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project includes development on both private property and public tidelands. Therefore, the proposed development is in both the City's and Coastal Commission's permitting jurisdiction. An LCP for the City of Newport Beach was effectively certified in January 2017, which incorporates Section 30601.3 of the Coastal Act that provides for the issuance of coastal development permits directly by the Commission when the applicant, the local government and the Commission through its Executive Director consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation. The applicant and the City requested a consolidated permit action by the Commission. Consequently,

the standard of review is Chapter 3 of the Coastal Act and the City's LCP is used only as guidance.

Commission staff is recommending **APPROVAL** of the replacement of a bayfronting landside 25-foot long x 3.1-foot wide decked private accessway that fronts the northern-most boundary of the project site. The existing deck will be replaced with a 3.5-foot wide deck, including a new 6-inch section cantilevered over the water, resulting in a 25-foot long x 3.5-foot wide accessway. The major issues raised by this proposed development concern impacts to marine resources, water quality, hazards, and public access. Special conditions are being imposed to address these issues.

The proposed project is adjacent to, and partially above, the bay and presents an opportunity to improve public access to coastal waters, as required by the certified City of Newport Beach Local Coastal Program (LCP). The Commission has worked with the applicant to ensure that this project will extend the LCP-required bayside public accessway to the end of the subject site by making the subject segment publicly accessible. Special conditions, agreeable to the applicant, have been imposed in order to expand and enhance public access: **Special Condition No. 1** requires the applicant, Lido Retail Group, LLC, to irrevocably offer to dedicate a landside public access easement along the proposed landside deck segment (as proposed); **Special Condition No. 2** requires the applicant to provide proof that the landowner(s) (trustee of the public trust lands upon which the deck will be cantilevered over, which in this case is the City of Newport Beach) has appropriately designated use of the boardwalk to unrestricted public access for the life of the development, consistent with public trust values; and **Special Condition No. 3** requires the applicant to submit and implement a coastal public access sign plan identifying the location of the visitor-serving/coastal access directional signage.

The proposed project, because of its location adjacent to, and partially above, the bay has potential for adverse impacts to water quality and marine resources during construction and post construction. Therefore, as a result, special conditions have been imposed in order to minimize any impacts to water quality and marine resources the proposed project may result in: **Special Condition No. 4** requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality during construction; **Special Condition No. 5** requires the applicant to submit a Construction Staging Plan; and **Special Condition No. 6** requires the applicant to submit revised project plans identifying the sealant for the decking material.

The proposed development is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 7**, which requires the applicant to assume the risk of development.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 8**, which requires the property owner record a deed restriction against the project site.

Public trust tidelands are located bayward of the subject site's property line. To preserve and maintain access to the public trust tidelands, the Commission imposes **Special Condition No. 9**, which states that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....4

II. STANDARD CONDITIONS4

III. SPECIAL CONDITIONS.....5

IV. FINDINGS AND DECLARATIONS.....11

A. PROJECT DESCRIPTION..... 11

B. STANDARD OF REVIEW 12

C. PUBLIC ACCESS 13

D. MARINE RESOURCES/WATER QUALITY..... 18

E. HAZARDS..... 22

F. UNPERMITTED DEVELOPMENT 24

G. DEED RESTRICTION 24

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)..... 25

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Site and Elevation Plan](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-17-0948 pursuant to the staff recommendation.*

Staff recommends a **YES** 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:

The Commission hereby approves Coastal Development Permit 5-17-0948 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. 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 will 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Offer to Dedicate for Public Access Easement for Lateral Access

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the applicant shall execute and record a document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private entity, approved by the Executive Director, a public access easement for public access and recreational uses in perpetuity. The easement shall be an approximately 47-foot long x 2.6-foot wide landside public accessway for lateral public access along the waterfront of Newport Bay. Such easement shall be located along the northern-most bayfront portion of the property located 3450 Via Oporto, as generally depicted in Exhibit No. 2, page 2, of the staff report dated July 26, 2018. No development, as defined in section 30106 of the Coastal Act, shall occur within the public access easement area except for the following development authorized by this coastal development permit:

Construction of the public accessway, including paving hardscape, landscape, utilities, public access amenities, and signage as necessary.

The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement or dedicated area. The public access easement shall be ambulatory, and the easement boundaries and amenities (e.g., path, trail, benches, etc.) shall move inland within the permittee's property, if relocation and/or reconstruction of access amenities in the easement area are necessary to retain their continuity and/or utility.

- B. The irrevocable offer to dedicate shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.
- C. The irrevocable offer to dedicate shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity, and shall be irrevocable for a period of 21 years, such period running from the date of recording, and indicate that the restrictions on the use of the land shall be in effect upon recording and remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

2. Cantilevered Public Accessway Deed Restriction

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee and the landowner(s) shall execute and record documents(s) in a form and content

acceptable to the Executive Director, restricting the use and enjoyment of the waterside parcel, and providing public access and recreational uses in perpetuity as described in subsection A.1 of this condition and as generally shown on Exhibit No. 2, page 2, of the staff report dated July 26, 2018.

1. **Public Access Area.** The deed restriction shall reflect that the permittee shall provide public access for recreational uses on the bayfront deck that overhangs the existing bulkhead at 3450 Via Oporto, consistent with the terms and conditions of this coastal development permit, as generally shown in Exhibit No. 2, page, 2 of the staff report dated July 26, 2018, comprised of:
 - a. The existing bayfront deck segment between the project area (northern-most section authorized by CDP No. 5-17-0948) and the public accessway segment approved and protected by CDP No. 5-16-0120; and.
 - b. The bayfront deck segment authorized by CDP No. 5-17-0948 to be replaced and extended resulting in a one-foot cantilevered section located along the most northern portion of 3450 Via Oporto.
2. **Development and Use Restrictions.** No development, as defined in Section 30106 of the Coastal Act, shall occur within any of the public access areas described in subsection A.1 of this condition, and as described and depicted in Exhibit No. 2, page 2 of the staff report dated July 26, 2018, except for the following development authorized by this coastal development permit:

Installation of the 42-inch high steel pipe railing on top of the cantilevered section of new deck. The document(s) shall also provide that public access along the boardwalk shall be uninterrupted at all times.

- B. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated public access area(s) prepared by a licensed surveyor based on an on-site inspection of the public access area(s).
- C. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- D. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant and the landowner(s) during the period that any portion of the development approved under this permit remains in existence on the property, after which the permittee and landowner(s) may request that the Commission approve extinguishment of the restriction.
- E. In the event that the Executive Director determines that the landowner cannot legally record document(s) to restrict the use and enjoyment of the parcel as required in subsections (A) through (D), the Executive Director may allow, in lieu of compliance with subsections (A) through (D), the applicant and the landowner(s) to execute alternative document(s), in a form and content acceptable to the Executive Director, which otherwise satisfy the requirements of subsections (A) through (D).

3. Coastal Public Access Sign Plan.

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two (2) sets of a coastal public access sign plan, as required below:
 - 1. The plan shall show the location of the visitor-serving/coastal access directional sign(s) located in the following area:
 - (a) At the southern end of 3450 Via Oporto fronting the property along the bayfront.
 - (b) At the northern end of 3450 Via Oporto fronting the property along the bayfront along the approximately 3.5-foot wide and 3.1-foot wide unobstructed lateral landside public accessway.
 - (c) The proposed sign(s) shall be in compliance with the Coastal Access Sign Program set forth in the certified City of Newport Beach Local Coastal Plan (LCP).
- B. The permittee shall undertake development in conformance with the approved final updated plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

4. Construction Best Management Practices (BMPs). The permittee shall comply with the following construction-related requirements:

- A. No demolition or construction materials, 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. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. 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;
- E. Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone;
- F. If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity;
- G. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- H. Non buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;
- I. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- J. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- K. 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;
- L. 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;
 - M. 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;
 - N. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - O. 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;
 - P. 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
 - Q. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Construction Staging Plan. PRIOR TO ISSUANCE OF THE COASTAL

DEVELOPMENT PERMIT the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of construction staging plans, which indicate that the construction staging area(s) and construction corridor(s) will minimize public access impacts to the coast and minimize water quality impacts to coastal waters.

- 1. The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;
 - (b) Construction equipment, materials, or activity shall not be placed within any habitat area or within 100-feet of any drainages; and
 - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary.
- 2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) limits of the staging area(s);
 - (2) construction corridor(s); and
 - (3) construction site; and
 - (4) location of construction fencing and temporary job trailer(s); and
 - (b) A narrative that describes and explains the plan

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 to this

Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

6. Revised Plans.

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two (2) full size sets of revised plans that substantially conform with the plans submitted on November 13, 2017 and February 13, 2018, modified as required below:
 - 1. The revised plans shall identify the sealant for the decking material. The identified sealant will be applied at an approved inland facility prior to arrival at the construction site, and kiln-dried, in order to significantly reduce potential leaching of preservative treatments into the water body).
- B. All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
- C. The permittee shall undertake development in conformance with the approved revised plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

7. 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 against the Commission, its officers, agents, and employees for injury or damage 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.

8. 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 landowners have 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.

9. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the properties. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the properties now or in the future.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The subject site is located within an area known as Lido Marina Village, which is a pedestrian-oriented waterfront development that includes visitor-serving commercial uses, specialty stores, and marine uses located within the City of Newport Beach ([Exhibit No. 1](#)). Lido Marina Village includes a parking garage, which provides parking for both land uses and water-related uses in the village. Bayward of Lido Marina Village is the Lido Marina in Newport Bay, which has been continuously operated as a private visitor-serving commercial marina since 1955. The Lido Marina is an extension of Lido Marina Village and they are connected by the Lido Marina Village Patio/Boardwalk ([Exhibit No. 2, page 1](#)).

In May 2017, the Coastal Commission approved CDP No. 5-16-0120 for the redevelopment of the Lido Marina that consisted of the demolition of the existing 49-slip marina and construction of a new 48-slip marina in the same location. The project also included the improvement and substantial expansion of the existing public waterfront boardwalk (the Lido Marina Village Patio/Boardwalk) that included the construction of a 6-foot wide cantilevered public boardwalk above the existing seawall/bulkhead and installation of approximately 155 earthen anchors to strengthen the existing bulkhead (although it did not include any work on the boardwalk or bulkhead on the 25-foot long segment of the bayfront where the currently proposed project is located). More specifically, the expansion of the public waterfront boardwalk consisted of the removal of the existing 6-foot wide landside public boardwalk section and expansion and improvement resulting in a new 12-foot wide public boardwalk comprised of a new 6-foot wide landside public boardwalk section and a new 6-foot wide cantilevered public boardwalk section along the seawall/bulkhead, which begins at the southern portion of the Lido Marina Village before the property line of 3388 Via Oporto and continues to the northern portion of the Lido Marina Village right before the building located at 3450 Via Oporto ([Exhibit No. 2, page 1](#)).

In addition, an existing 6-foot wide pile supported deck located over the water at the southern portion of the property located at 3450 Via Oporto that fronts the bay was also approved to be rebuilt in the same location and was conditioned to be included as a component of the approved proposed landside 6-foot wide unobstructed lateral public accessway and with the 6-foot wide cantilevered public boardwalk that forms a 12-foot wide public boardwalk/accessway ([Exhibit No. 2, page 2](#)). The approved to be rebuilt 6-foot wide pile supported deck does not extend across the entire length of the 3450 Via Oporto property, only along the southern portion. The currently proposed project affects the northern portion of the 3450 Via Oporto property.

To ensure that unobstructed access was continuously provided along the 6-foot wide landside lateral public boardwalk, a special condition (No. 10) was imposed by CDP No. 5-16-0120 that required that an existing landside easement for the public walkway remain. To also ensure the provision of public access along the new 6-foot wide cantilevered public boardwalk and along the rebuilt 6-foot wide pile supported deck located over the water at the 3450 Via Oporto property, a special condition (No. 11) was imposed that required the City of Newport Beach (trustee of the public trust lands upon which the new boardwalk will be cantilevered over) to record a public access document to ensure the provision of unobstructed public access along the

delineated 6-foot wide cantilevered boardwalk. Condition compliance for CDP No. 5-16-0120 is still ongoing and the permit has not yet been issued.

The proposed project consists of removing a bayfronting landside 25-foot long x 3.1-foot wide decked private accessway that fronts the northern-most boundary of the project site located at 3450 Via Oporto and replacing it with a 3.5-foot wide deck, including a new 6-inch section cantilevered over the water, resulting in a 25-foot long x 3.5-foot wide accessway ([Exhibit No. 2, page 2](#)). An approximately 6-inch portion of the existing 3.1-foot wide decked private accessway that is to be replaced already overhangs the bulkhead cap/water. This overhang will be extended by another six inches to widen the accessway to 3.5 feet. Thus, the post project 3.5-foot wide deck will have a one-foot cantilevered section. Along the top of the cantilevered section, a new 42-inch high steel pipe railing will be installed. The applicant has proposed a public access easement along this accessway and an adjacent landside 22-foot long x 3.1-foot wide accessway totaling approximately 47 feet long x 3.1 feet wide.

The city's requirement for the accessway width to be a minimum of 3-feet for private access to the building's mechanical room, which fronts this accessway, is the reason for the proposed 6-inch increase in width. Due to the location of the existing building directly abutting the decked accessway, extending the width of the accessway landward instead of bayward was determined to not be an option by the applicant. Extending the accessway landward would require some demolition of the existing building, which functions as a restaurant and will continue to do so after the project is completed. The applicant has stated that construction will take place from the landside and from an existing dock float adjacent to the bulkhead. The applicant has further stated that construction is anticipated to be completed in approximately one day.

While CDP No. 5-16-0120 approved the replacement of the existing 6-foot wide pile supported deck located over the water at the southern portion of the subject property, the proposed project is taking place on the landside at the northern-most end of the same subject property, the opposite end. Located between these two project areas and still within the 3450 Via Oporto property and fronting the bay is an approximately 22-foot long x 3.1-foot wide bayfronting landside private accessway ([Exhibit No. 2, page 2](#)). Similar to the northern-most section accessway that is being replaced; this approximately 22-foot long landside private accessway section has an approximately 6-inch portion of the existing 3.1-foot wide accessway that overhangs the bulkhead cap/water. No changes are proposed along this intervening 22-foot long segment at this time.

B. STANDARD OF REVIEW

In January 2017, the City obtained certification of their Local Coastal Plan (LCP). The landside portion of the development is within the City's jurisdiction and the portion of the development over the water is located bayward of the mean high tide and is thus within the Commission's original permit jurisdiction. Where a proposed development is located within both the Coastal Commission's and City's coastal development permit jurisdictions, coastal development permits are required by both the City and the Coastal Commission. However if the applicant, the City, and the Coastal Commission consent to consolidate the permit action, the Coastal Commission can process a consolidated coastal development permit application pursuant to the procedures in Public Resources Code, Section 30601.3. The applicant and the City requested a consolidated

permit action by the Commission. Consequently, the standard of review is Chapter 3 of the Coastal Act and the City's LCP is used only as guidance.

C. 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 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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:[...]*
- (2) adequate access exists nearby, ...*

Coastal Land Use Plan Policy, Parking, 2.9.3-2 states,

Continue to require new development to provide off-street parking sufficient to serve the approved use in order to minimize impacts to public on-street and off-street parking available for coastal access.

Coastal Land Use Plan Policy, Parking, 2.9.3-3 states,

Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations of the Zoning Code in effect as of October 13, 2005.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-3 states,

Develop and implement a uniform coastal access signing program to assist the public in locating, recognizing, and utilizing public access trails. Where appropriate, include information advising the public of environmentally sensitive habitats, safety hazards, and to respect adjacent private property.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-13 states,

5-17-0948 (Lido Retail Group, LLC)

Require a direct dedication or an Offer to Dedicate (OTD) an easement for lateral public access for all new shorefront development causing or contributing to adverse public access impacts. Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall/bulkhead, dripline of deck, or toe of bluff).

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-15 states,

Encourage the acceptance, improvement and opening of OTDs to the public by the City, a public agency, a private association, or other appropriate entity.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-16 states,

Require all direct dedications or OTDs for public access to be made to a public agency or other appropriate entity that will operate the accessway on behalf of the public. Require accessways to be opened to the public once an appropriate entity accepts responsibility for maintenance and liability.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-17 states,

Require new development in waterfront commercial areas to provide public access easements to and along the waterfront. Where appropriate, integrate public access easements into the project designs, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-16 states,

Consistent with the policies above, provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby.

Coastal Land Use Plan Policy, Berthing, and Storage, 3.3.2-2 states,

Protect, and where feasible, enhance and expand marinas and dry boat storage facilities.

Coastal Land Use Plan Policy, Berthing, and Storage, 3.3.2-7 states,

Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pump-out stations and other features, through City, County, and private means.

Implementation Plan, Development Standards, 21.30A.020(C)(4) states,

4. Required Lateral Access. New public accessways for any new development in the segments identified in Section 21.30A.050(A)(7)(b) shall be required unless excepted by

subsection (C)(2) of this section or the review authority determines that new public access is not required in pursuant to Section 21.30A.050(J).

Implementation Plan, Development Standards, 21.30A.050(A)(7)(b)(i) states,

- b. Required Segments. Lateral accessway segments shall be provided in the following areas:*
 - i. Lido Marina Village. On all bay front nonresidential and mixed-use lots in Lido Marina Village.*
 - ii. Cannery Village and McFadden Square. On all bay front lots in Cannery Village and McFadden Square from 31st Street to 19th Street.*
 - iii. Mariners' Mile. On all bay front lots in Mariners.' Mile from the Coast Highway/Newport Boulevard Bridge to the Balboa Bay Resort.*

Implementation Plan, Development Standards, 21.30A.050(A)(7)(d)(ii) states,

- d. Minimum Width. Lateral accessways shall be the following minimum widths:*
 - ii. Lots with Shoreline Protective Devices. For lots with shoreline protective devices, a lateral accessway shall be a minimum of ten (10) feet in width as measured landward from the shoreline protective device.*

The proposed project is located bayward of the first public road and within coastal waters, but also at the convergence of the landside and the water on both the landside and waterside (i.e., on both side of the existing marina bulkhead). The proposed project is located within the Lido Marian Village and Lido Marina, which provides opportunities for the public to enjoy the coast.

The proposed project consists of removing a bayfronting landside 25-foot long x 3.1-foot wide decked private accessway that fronts the northern-most boundary of the project site located at 3450 Via Oporto and replacing it with a 3.5-foot wide deck, including a new 6-inch section cantilevered over the water, resulting in a 25-foot long x 3.5-foot wide accessway. An approximately 6-inch portion of the existing 3.1-foot wide decked private accessway that is to be replaced already overhangs the bulkhead cap/water. Thus, the post project 3.5-foot wide deck will have a new 6-inch cantilevered section, as well as an approximately 6-inch wide replaced in kind section over the water for a total of 1-foot wide section over the water post project. The city's requirement for the accessway width to be a minimum of 3-feet for private access to the mechanical room, which fronts this accessway, is the reason for the 6-inch increase in width. The applicant has proposed a public access easement along this accessway and an adjacent landside 22-foot long x 3.1-foot wide accessway totaling approximately 47 feet long x 3.1 feet wide, to be discussed later in the staff report.

At the southern end of the 3450 Via Oporto property is an existing 6-foot wide pile supported deck located over the water that fronts the bay that the Commission approved in May 2017. This pile supported deck was approved to be rebuilt in the same location and was conditioned to be included as a component of a landside 6-foot wide unobstructed lateral public accessway and with the approved 6-foot wide cantilevered public boardwalk that was also approved under CDP

No. 5-16-0120. These two 6-foot sections would form a 12-foot wide public boardwalk/accessway. Located along 3450 Via Oporto between the proposed project area and the area approved under CDP No. 5-16-0120 is an intervening approximately 22-foot long x 3.1-foot wide bayfronting landside private accessway ([Exhibit No. 2, page 2](#)). Similar to the northern-most section accessway that is being replaced; this approximately 22-foot long landside private accessway section has an approximately 6-inch portion of the existing 3.1-foot wide accessway that overhangs the bulkhead cap/water.

Sections 21.30A.050(A)(7)(b)(i-iii) and 21.30A.050(A)(7)(d)(ii) of the City's certified LCP identify Lido Marina Village as one of three areas in the city where a 10-foot wide lateral access shall be provided, with the others being Cannery Village and McFadden Square and Mariner's Mile. Furthermore, the LCP states that lateral accessways will be provided on all bayfront nonresidential and mixed use lots in Lido Marina Village. The goal is to have a public waterfront accessway for the entire length of Lido Marina Village.

Through the approval of CDP No. 5-16-0120 the existing public waterfront boardwalk was expanded and improved and will result in a new 12-foot wide public boardwalk comprised of a new 6-foot wide unobstructed landside lateral public accessway and a new 6-foot wide cantilevered public boardwalk along the seawall/bulkhead. Included as part of this approval and resulting in the expansion and improvement of public access, was the rebuilding of the existing 6-foot wide pile supported deck over the water in the same location along the southern portion of 3450 Via Oporto. To ensure that unobstructed access was continuously provided, CDP No. 5-16-0120 included a condition (No. 10) that required that an existing landside easement for the public walkway remain and another condition (No. 11) was imposed that required the City of Newport Beach (trustee of the public trust lands upon which the new boardwalk will be cantilevered over) to record a public access document to ensure the provision of unobstructed public access along the delineated 6-foot wide cantilevered boardwalk, including the rebuilt 6-foot wide pile supported deck over the water along the southern portion of 3450 Via Oporto.

Immediately north of the project site is the Elk's Club property at 3456 Via Oporto, which currently does not provide any public access, including no public access along the bayfront portion of the property. However, further north of this property is the Central Avenue public dock that was approved by the Commission in November 2016 under CDP No. 5-16-0353. Thus, a continuous lateral public accessway for the northern portion of Lido Marina Village would exist if public access was made available at 3456 Via Oporto and for the remaining portion of the property at 3450 Via Oporto where public access has not yet been provided ([Exhibit No. 2, page 1](#)).

The proposed project presents an opportunity to improve public access, as required by the certified City of Newport Beach Local Coastal Program (LCP). Thus, Commission staff worked with the applicant, which has proposed public access along the proposed 3.5-foot wide deck, and also on the landside accessway (22 foot x 3.1 foot) on the northern portion of the property that would connect with the remaining southern portion of the deck where public access was already approved along the to be rebuilt 6-foot wide pile supported deck. While no work is currently proposed upon the 22-foot x 3.1 foot landside accessway, the applicant has proposed public access along all of its bayfront property as part of the waterfront improvements approved by CDP Nos. 5-16-0120 and 5-17-0948 (this permit). Both the northern-most 25-foot long x 3.1-

foot wide section that will be replaced and the existing adjacent approximately 22-foot long x 3.1-foot wide decked private accessways have an existing approximately 6-inch portion of the existing 3.1-foot wide accessway that overhangs the bulkhead cap/water. This overhang will be extended by another six inches to widen the accessway to 3.5 feet. Thus, the post project 3.5-foot wide deck will have a one-foot cantilevered section. Along the top of the cantilevered section, a new 42-inch high steel pipe railing will be installed. The 22-foot long x 3.1-foot wide adjacent section also has an approximately 6-inch portion of the existing 3.1-foot wide accessway that overhangs the bulkhead cap/water, but no work is proposed on this section.

As a result of the applicant proposing a public access easement along these two sections of the accessways, lateral bayside public accessway along the entire length of the subject site consistent with the goal of the certified LCP in obtaining public access along the bayfront length of Lido Marina Village would be provided ([Exhibit No. 2, page 2](#)). While the maximum proposed 3.5-foot width of the public accessway will be narrower than the minimum 10 feet required by the certified LCP, it serves as an intermediate phase until a full 10-foot wide public accessway can be developed in the future. A 10-foot wide accessway along this segment of the bayfront would require a substantial cantilevered or pile-supported deck to be constructed, at substantial cost; or as an alternative, demolishing portions of the existing landside buildings in order to provide a 10-foot wide easement on the private property. Considering that the proposed project is a relatively minor project (75 sq. ft. deck), the Commission finds that the provision of a 2.6-foot wide easement on the landside private property (where an accessway currently exists, plus the proposed 6-inch added width and the to be replaced in kind 6-inch segment that both overhang the water) is proportionate mitigation for the applicant's proposed extension of the deck six inches into public trust lands. Moreover, the applicant has proposed the easement so that the public accessway can be extended to the end of its property, albeit only a maximum of 3.5-foot wide at this time. Any future development plan for the abutting Elk's Club property at 3456 Via Oporto may provide an opportunity for the City to complete the Lido Marina Village bayfront accessway at the full 10-foot width called for by the certified LCP.

In order to ensure that unobstructed lateral landside public access along the approximately 47-foot long x 2.6-foot wide public accessway is provided and maintained the Commission imposes **Special Condition No. 1**, which requires the applicant, Lido Retail Group, LLC, to irrevocably offer to dedicate a landside public access easement along the proposed landside deck segment. In order to ensure that unobstructed public access is also provided along the 25-foot x 0.5-foot (6 inch) wide cantilevered portion of the deck accessway and the approximately 6-inch wide replaced in kind section over the water and the 6-inch portion of the adjacent existing 22-foot long x 0.5-foot wide (6 inch) accessway that overhangs the bulkhead cap/water and are maintained, the Commission imposes **Special Condition No. 2**, which requires the applicant to provide proof that the landowner(s) (trustee of the public trust lands upon which the decks will be cantilevered over), which in this case is the City of Newport Beach, has appropriately designated use of the boardwalk for unrestricted public access for the life of the proposed development, consistent with public trust values. As conditioned, the project will be consistent with the City's certified LCP requiring that lateral public access be provided in Lido Marina Village.

CDP No. 5-16-0120 included language within Special Condition No. 12 that anticipated public access in the future being provided along the northern portion of 3450 Via Oporto in that it

required that approved rebuild of the 6-foot wide pile supported deck be designed so it could accommodate potential future expansion of the unobstructed lateral public accessway to the northern end of 3450 Via Oporto.

In order to make the public aware of the public access opportunities available along the deck accessways fronting the project site, a public access sign plan is necessary. Currently at this time, no such plan has been provided. Thus, the Commission imposes **Special Condition No. 3**, which requires the applicant to submit a coastal public access sign plan identifying the location of the visitor-serving/coastal access directional signage.

As conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211 and 30212 of the Coastal Act and with the public access policies of the City's certified LCP, as discussed above.

D. MARINE RESOURCES/WATER QUALITY

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

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-4 states,

Provide for the protection of eelgrass meadows and mitigation of impacts to eelgrass meadows in a comprehensive harbor area management plan for Newport Bay.

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-5 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.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-1 states,

Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

- A. Construction or expansion of port/marine facilities.*
- B. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.*
- C. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- D. Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
- E. Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
- F. Sand extraction for restoring beaches, except in environmentally sensitive areas.*
- G. Restoration purposes.*
- H. Nature study, aquaculture, or similar resource-dependent activities.*
- I. In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.*

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-2 states,

Continue to permit recreational docks and piers as an allowable use within intertidal areas in Newport Harbor.

Coastal Land Use Plan, Dredging, Eelgrass Protection and Restoration, Policy 4.2.5-1 states,

Avoid impacts to eelgrass (Zostera marina) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.

Coastal Land Use Plan, TMDLs, Policy 4.3.1-8 states,

5-17-0948 (Lido Retail Group, LLC)

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Coastal Land Use Plan, NPDES, Policy 4.3.2-1 states,

Promote pollution prevention and elimination methods that minimize the introduction of pollutants into coastal waters, as well as the generation and impacts of dry weather and polluted runoff.

Coastal Land Use Plan, NPDES, Policy 4.3.2-6 states,

Implement and improve upon best management practices (BMPs) for residences, businesses, new development and significant redevelopment, and City operations.

Coastal Land Use Plan, NPDES, Policy 4.3.2-7 states,

Incorporate BMPs into the project design in the following progression:

Site Design BMPs.

Source Control BMPs.

Treatment Control BMPs.

Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.

Coastal Land Use Plan, NPDES, Policy 4.3.2-19 states,

Require parking lots and vehicle traffic areas to incorporate BMPs designed to prevent or minimize runoff of oils and grease, car battery acid, coolant, gasoline, sediments, trash, and other pollutants to receiving waters.

Coastal Land Use Plan, NPDES, Policy 4.3.2-22 states,

Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

The proposed project includes no filling or dredging. No work is proposed that would disturb the bottom of the bay.

1. Eelgrass (*Zostera marina*)

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 important to protect because it functions as important habitat for a variety of fish and other wildlife, according to the California Eelgrass Mitigation Policy (CEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (CDFW). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the

California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

An eelgrass survey took place on October 29, 2017 as required by the City of Newport Beach Harbor Resources Division and did not identify the presence of eelgrass. In this case, the proposed project includes no bottom disturbance, and encroaches only 6-inches over the bay. No eelgrass was found near the project site, which is shaded most of the time because of its orientation and presence of dock floats. Therefore, the proposed project will not impact eelgrass.

2. *Caulerpa Taxifolia*

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A *Caulerpa Taxifolia* survey was completed on October 29, 2017 and none was found. In this case, the proposed project includes no bottom disturbance. Therefore, the proposed project will not cause the dispersal of *Caulerpa Taxifolia*.

3. Construction Impacts to Water Quality

Construction will occur on land and partially above coastal waters. As such, there is a possibility that construction phase activities could result in adverse water quality impacts. In addition, there is a possibility that improper staging and storage of equipment could have impacts on water quality.

Potential construction phase impacts include improper storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or in a manner which allows such materials to be discharged into Newport Bay and coastal waters via rain or urban runoff. These actions 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 is proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as: prohibition of

discharge of any hazardous materials into the Newport Bay, disposal of trash in suitable containers on land or on work barges at the end of the construction day, etc.

In order to assure that the proposed project does not result in any accidental or unanticipated discharges, spills or other activities that could harm marine resources and water quality, and to assure the applicant is aware of their responsibility to provide a debris catching device under this coastal development permit, the Commission imposes **Special Condition No. 4**, which requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality during construction.

The applicant has indicated that construction will take place from the landside and the existing floating dock. However, the applicant has not stated where the construction staging area will be for the landside work. Thus, the Commission finds that it is necessary to impose **Special Condition No. 5**, which requires the applicant to submit a Construction Staging Plan for the Executive Director's review and approval.

4. Post-Construction Impacts to Water Quality

Post project, the proposed project will result in a minimal increase of 12.5 square feet of area attributed to the new 6-inch cantilevered section over the water. Thus, this will result in a minimal increase of area that has the potential to affect water quality. Currently, drainage is directed landward and will continue to do so post project. With the minimal increase of surface area as a result of the project, impacts to water quality are minimal.

The applicant has stated that the new deck materials will be made of Douglas fir and IPE (Brazilian walnut wood) and that the Douglas fir will be treated with a chemical preservative treatment, Ammoniacal Copper Zinc Arsenate (ACZA). ACZA is a preservative approved by the Commission. Whenever a wood preservative is used such as ACZA, the wood is usually sealed off from the environment by applying a coating to prevent leaching of the preservative into the water. However in this case, the applicant has not identified that a sealant will be applied. Thus, the Commission imposes **Special Condition No. 6**, which requires the applicant to submit revised project plans identifying the sealant for the decking material.

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, and 30232 of the Coastal Act and with the marine resources and water quality policies of the City's certified LCP, as discussed above.

E. HAZARDS

Section 30253 of the Coastal Act provides in part:

New Development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazards...

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8 1-2 states,

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Coastal Land Use Plan, 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.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-10 states,

Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).

Due to its bay fronting location, the project site may be exposed to coastal hazards from sea level rise, erosion, wave attack, flooding and other coastal hazards. The proposed project consists of removing a bayfronting landside 25-foot long x 3.1-foot wide decked private accessway and replacing it with a 3.5-foot wide deck, including a new 6-inch section cantilevered over the bulkhead and water. No additional work is proposed, including any work to the existing bulkhead. The top of the existing and replaced deck will be at elevation +9.81 feet NAVD88.

To analyze future coastal hazards upon the site, a hazards analysis is necessary. Thus, a sea level rise/seawall concept memorandum that discussed potential sea level rise impacts to the Lido Marina Village bulkhead, including the project site at 3450 Via Oporto, was completed for CDP No. 5-16-0120 that was approved by the Commission in May 2017. This report analyzed future coastal hazards for years 2030 (13 year design life) and 2067 (50 year design life). The year 2030 provides an imminent reference and the year 2067 was selected due to the fact that the buildings at Lido Marina Village have an estimated 50 year lifespan. Based on interpolated sea level rise projections from the National Research Council (NRC) 2012 report, the report states that sea levels may rise between 0.8 feet to 3.2 feet by the year 2067 (50 years). The top of the existing and replaced deck has an initial elevation of +9.81 feet NAVD 88. The project has been designed to be above the highest astronomical tide elevation of +7.2 feet NAVD88 and above the City of Newport Beach design flood height of +9.0 feet NAVD88. If there were to be a 3.2-foot rise (the upper range of the NRC projections for southern California), an extreme high tide still water level of +10.40 feet NAVD88 (+7.20 feet MLLW + 3.2 feet = +10.40 feet NAVD88) could result. Such a rise would exceed the proposed top elevation of +9.81 feet NAVD88, resulting in water up to 0.59-feet higher than the proposed top elevation of the deck.

Since the 2012 NRC report, the California Ocean Protection Council (COPC) has conducted updated research on sea level rise and in April 2017 they produced “*Rising Seas in California: An Update on Sea-Level Rise Science*” report, which is being incorporated into COPC’s 2018 update to the State Sea-Level Rise Guidance. The updated projections in the Rising Seas report suggest sea levels could rise between 1.2 and 3.3 feet by 2070 (52 years), depending on greenhouse gas emissions. The updated science report also includes an extreme scenario (termed the “H++” scenario) of 5.0 feet of sea level rise by 2070 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss. If there were to be a 3.3-foot rise (the upper range of the currently recommended amount of sea level rise to expect, taken from the April 2018 COPC projections for southern California), an extreme high tide still water level of +10.50 feet NAVD88 (+7.20 feet MLLW + 3.3 feet = +10.50 feet NAVD88) could

result. Such a rise would exceed the proposed top elevation of +9.81 feet NAVD88, resulting in water up to 0.69-feet higher than the proposed top elevation of the deck. The proposed development is a 75 square foot deck, attached to an existing bulkhead. If it is threatened by sea level rise, the proposed deck can be removed, or perhaps raised.

Therefore, the proposed development may be impacted by future flooding hazards if sea level rise approaches the interpolated upper range of the NRC projections. To ensure the applicant accepts the responsibility for all hazards associated with coastal development, the Commission imposes **Special Condition No. 7**, which requires the applicant to agree to assume the risk that the development is susceptible to hazards.

As conditioned, the Commission finds that the proposed project is consistent with Sections 30235 and 30253 of the Coastal Act and the hazard policies of the City's certified LCP, as discussed above.

F. UNPERMITTED DEVELOPMENT

Development may have occurred on the subject property without benefit of required coastal development permits including, but not limited to, land side development consisting of changes in intensity of use, outdoor dining locations, street improvements, and a parking management plan. Commission Enforcement staff is currently considering options to resolve the alleged unpermitted development.

Although unpermitted development may have occurred prior to submission of this coastal development permit application, consideration of this application by the Commission has been based solely upon the City's certified LCP and Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation(s) nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit and will endeavor to work with the applicant to resolve this matter, independent of this permit action.

G. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 8**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

Special Condition No. 7 is intended to require the owner of the waterside parcel(s) to record a public access restriction for the waterside portion over which the new deck is cantilevered, and the condition as drafted allows the Commission to work with the applicant and the landowner to determine the appropriate form of that document. To the extent that the Executive Director determines that the landowner cannot record a public access restriction against the waterside portion of the property, the condition allows the Executive Director to accept an alternative form

of non-recorded document that ensures the cantilevered boardwalk area is reserved for unobstructed public access for the duration of any portion of the approved development.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, 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 Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach (Planning Department and Harbor Resources Division) is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerial or categorically exempt under Class 1 and 2 guidelines (CCR § 15301 and 15302) from CEQA on November 7, 2017 (Harbor Resources Division) and on July 17, 2018 (Planning Department). As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources, water quality and public access policies of the Coastal Act. 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: Substantive File Documents

Coastal Development Permit No. 5-16-0120; City of Newport Beach Harbor Resources Division Approval-In-Concept dated November 7, 2017; Letter from CAA Planning, Inc. to Commission Staff dated November 9, 2017; Letter from Ecomarine Consulting LLC to CAA Planning, Inc. dated November 6, 2017; Letters from Anghera Environmental dated November 6, 2017; Letter from Commission staff to CAA Planning, Inc. dated December 13, 2017; March 11, 2016; Letter from CAA Planning, Inc. to Commission staff dated December 22, 2017; Letter from Commission staff to CAA Planning, Inc. dated January 19, 2018; and Letter from CAA Planning, Inc. to Commission staff dated February 9, 2018.