

CALIFORNIA COASTAL COMMISSION

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Staff: Charles Posner - LB
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Hearing Date: January 7, 2009
Commission Action:



W22b

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-08-187

APPLICANT: City of Long Beach

AGENT: Phil Hester, Director of Parks, Recreation & Marine

PROJECT LOCATION: Downtown Shoreline, Alamitos Bay Marina, Marine Stadium, Colorado Lagoon, and other state tidelands and beaches within the City of Long Beach, Los Angeles County.

PROJECT DESCRIPTION: Conduct annual and emergency tree trimming activities consistent with the City of Long Beach Tree Trimming and Tree Removal Policy.

SUMMARY OF STAFF RECOMMENDATION

The City of Long Beach Department of Parks, Recreation and Marine routinely conducts annual and emergency tree trimming activities throughout the shoreline areas of the City. The project area is the State Tidelands administered by the City of Long Beach, which are within the Commission's original permit jurisdiction. The City has recognized the need to establish a policy in order to ensure that the tree trimming activities are conducted in an environmentally friendly manner that minimizes disturbance of bird habitat and that complies with environmental regulations, including the Migratory Bird Treaty Act and the California Coastal Act. The City's originally proposed Tree Trimming Policy was developed with the cooperation of the California Department of Fish and Game, the Audubon Society, the City Council, and interested citizen groups (Exhibit #3). The proposed policy has recently been revised with the assistance of Commission staff in order to include the more protective provisions set forth in the Tree Trimming and Tree Removal Policy that the Commission approved in October 2008 for Channel Islands Harbor.

The City has agreed to implement the Tree Trimming and Tree Removal Policy set forth in Special Condition One of this permit, as recommended by staff (See Page Three). Therefore, staff is recommending that the Commission grant a coastal development permit for the City's tree trimming activities throughout the shoreline areas of the City, consistent with the policy set forth in Special Condition One. As conditioned, this permit for the City's tree trimming activities complies with the habitat protection polices of the Coastal Act. **See Page Two for the motion to carry out the staff recommendation.**

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolutions to **APPROVE** the coastal development permit application with special conditions:

MOTION: *"I move that the Commission approve with special conditions Coastal Development Permit 5-08-187 per the staff recommendation."*

The staff recommends a **YES** vote. Passage of the motion will result in **APPROVAL** of the coastal development permit application with special conditions, and adoption of the following resolution and findings, as set forth in this staff report or as modified by staff prior to the Commission's vote. The motion passes only by an affirmative vote of a majority of Commissioners present.

I. Resolution: Approval with Conditions

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the 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 this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. 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

1. Tree Trimming and Tree Removal Policy

Coastal Development Permit 5-08-187 approves annual and emergency tree trimming activities consistent with the following policy:

The purpose of this policy is to ensure the long term protection of breeding and nesting habitat of birds protected by the Fish and Game Code, the Migratory Bird Treaty Act, and all bird species of special concern (e.g., herons, egrets, terns, raptors, etc.). The trimming or removal of any tree that has been used for breeding and nesting within the past five years, determined by a qualified biologist, shall be undertaken in compliance with all applicable codes or regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the U.S. Migratory Bird Treaty Act.

Tree trimming or tree removal shall be prohibited during the breeding and nesting season of the bird species referenced above (January - September) unless the City of Long Beach Department of Parks, Recreation and Marine, in consultation with a certified arborist, determines that a tree causes danger to public health and safety. A health and safety danger exists if a tree or branch is dead, diseased, dying, or injured and said tree or branch is in imminent danger of collapse or breaking away. Trees or branches with a nest that has been active anytime within the last five years shall not be removed or disturbed unless a health and safety danger exists.

The removal of any breeding and nesting tree shall require mitigation at a 1:1 ratio. A tree replacement planting plan for each tree replacement shall be developed to specify replacement tree location, tree type, tree size (no less than 36" box size), planting specifications, and a five-year monitoring program with specific performance standards. An annual monitoring report for tree replacement shall be submitted for the review and approval of the Executive Director of the Coastal Commission and maintained on file as public information.

A. Tree Trimming During Non-Breeding and Non-Nesting Season (October-December)

1. Prior to tree trimming or removal, a qualified biologist or ornithologist shall survey the trees to be trimmed or removed to detect nests and submit the survey(s) to the City of Long Beach Department of Parks, Recreation and Marine, a representative of the Audubon Society, and the Executive Director of the Coastal Commission. Tree trimming or removal may proceed if a nest is found, but has not been used within the prior five years.

2. In the event that any of the bird species referenced above return or continue to occupy trees during the non-nesting season, trimming shall not take place until a qualified biologist or ornithologist has assessed the site, determined that courtship behavior has not commenced, and given approval to proceed within 300 feet of any occupied tree.

3. Trimming of nesting trees shall not encroach within ten feet of an unoccupied nest of any of the bird species referenced above. The amount of

trimming at any one time shall be limited to preserve the suitability of the nesting tree for breeding and/or nesting habitat.

B. Tree Trimming or Removal During Breeding and Nesting Season (January-September). If tree trimming or removal activities cannot feasibly avoid the breeding season because a health and safety danger exists, the following guidelines must be followed:

1. A qualified biologist or ornithologist shall conduct surveys and submit a report at least one week prior to the trimming or removal of a tree (only if it is posing a health or safety danger) to detect any breeding or nesting behavior in or within 300 feet of the work area. A tree trimming and/or removal plan shall be prepared by an arborist in consultation with the qualified biologist or ornithologist and a representative of the Audubon Society. The survey report and tree trimming and/or removal plan shall be submitted for the review and approval of the Executive Director of the Coastal Commission and maintained on file as public information. The plan shall incorporate the following:

a. A description of how work will occur (work must be performed using non-mechanized hand tools to the maximum extent feasible).

b. Limits of tree trimming and/or removal shall be established in the field with flagging and stakes or construction fencing.

c. Insurance that tree trimming will be the minimum necessary to address the health and safety danger while avoiding or minimizing impacts to breeding and nesting birds and their habitat.

2. Prior to commencement of tree trimming and/or removal the qualified biologist or ornithologist shall notify in writing the Department of Fish and Game and the U.S. Fish and Wildlife Service of the intent to commence tree trimming or removal.

All tree trimming and tree removal shall be conducted in strict compliance with this policy. All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location. Any proposed change or deviation from the approved policy must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.

2. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The City of Long Beach proposes to establish a Tree Trimming and Tree Removal Policy for its annual and emergency tree trimming activities that are conducted throughout the shoreline areas of the City. The project area is the State Tidelands administered by the City of Long Beach, which are within the Commission's original permit jurisdiction (Exhibit #2). The City has recognized the need to establish a policy in order to ensure that the tree trimming activities are conducted in an environmentally friendly manner that minimizes disturbance of bird habitat and that complies with environmental regulations, including the Migratory Bird Treaty Act and the California Coastal Act. The City's originally proposed Tree Trimming Policy was developed with the cooperation of the California Department of Fish and Game, the Audubon Society, the City Council, and interested citizen groups (Exhibit #3). The proposed policy has recently been revised with the assistance of Commission staff in order to include the more protective provisions of a Tree Trimming and Tree Removal Policy that the Commission approved in October 2008 for Channel Islands Harbor.

B. Marine Resources/Environmentally Sensitive Habitat Areas

The policy for the City's annual and emergency tree trimming activities, as set forth in Special Condition One, is protective of nesting birds and their habitat and is in compliance with the following Coastal Act policies that protect marine resources and sensitive habitats.

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 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Trees used by certain species of nesting birds (e.g., herons, egrets, and raptors) have special biological and economic significance. The City recognizes this fact and has agreed to conduct its tree trimming activities in compliance with a policy that has been developed in consultation with the Audubon Society, Commission staff and the California Department of Fish and Game.

The policy, set forth in Special Condition One of this permit, will ensure that the tree trimming activities are conducted in an environmentally friendly manner that minimizes disturbance of bird habitat and that complies with environmental regulations, including the Migratory Bird Treaty Act and the California Coastal Act. The seasonal restrictions on tree trimming and tree removal, and the one-to-one mitigation ratio for removed trees, will protect the bird habitat in the City's shoreline areas from being degraded and will allow the continuance of the habitat. Therefore, as conditioned, the permit for the City's tree trimming activities complies with the habitat protection policies of the Coastal Act.

C. Public Access & Recreation

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The public access and recreation policies of the Coastal Act require that maximum access and recreational opportunities be provided and that development shall not interfere with public access. The proposed development, as conditioned, will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. Development

The proposed development is located within existing developed areas and, as conditioned, will be compatible with the character and scale of the surrounding area, has been designed to avoid cumulative adverse impacts on public access. Therefore, the Commission finds that the development, as conditioned, conforms with Sections 30250, 30251, 30252, 30253 and the public access provisions of the Coastal Act.

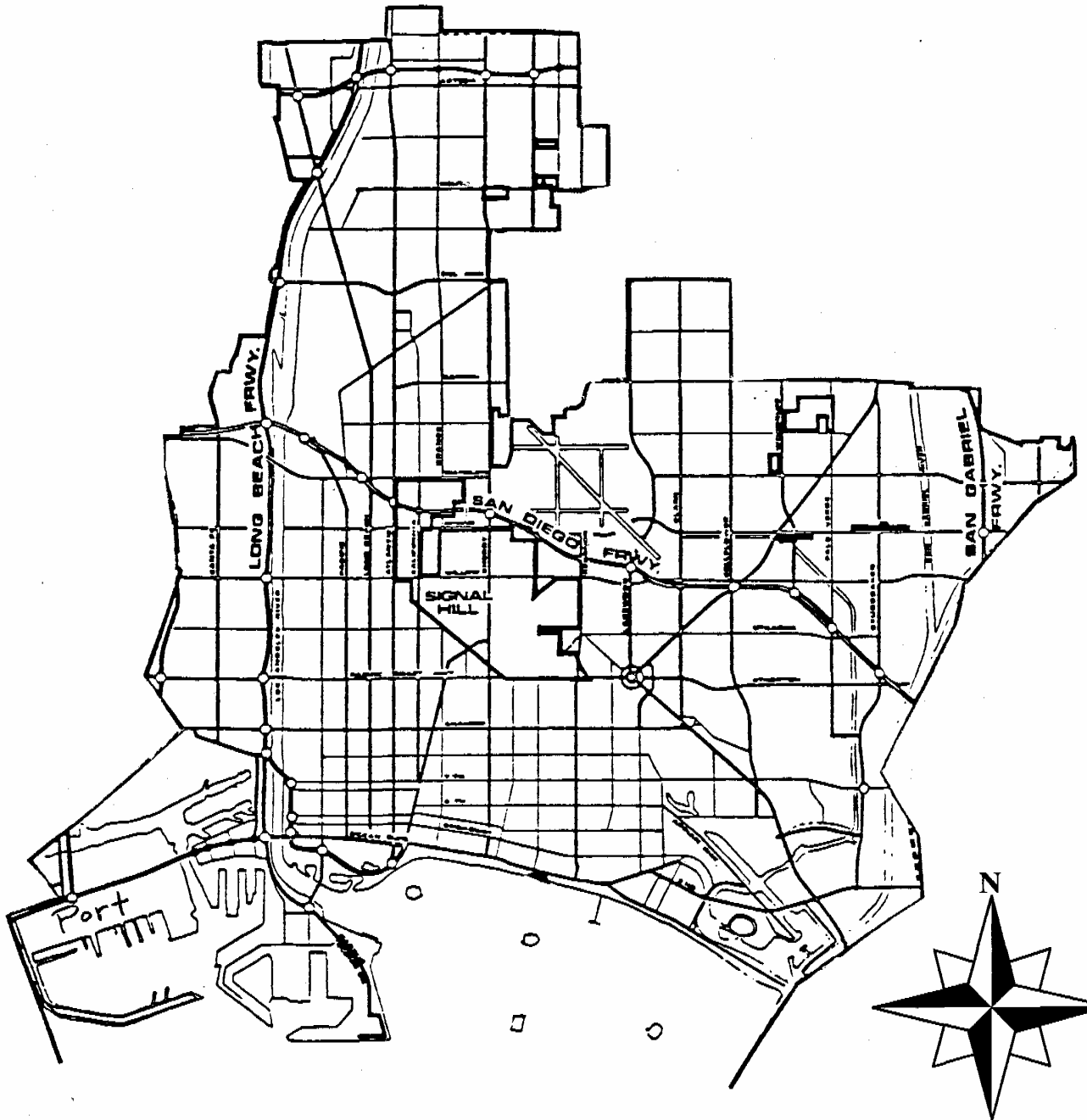
E. Local Coastal Program

A coastal development permit is required from the Commission for the proposed development because it is located within the Commission's area of original jurisdiction. 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 Commission certified the City of Long Beach LCP on July 22, 1980. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

G. California Environmental Quality Act (CEQA)

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, 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.

City of Long Beach

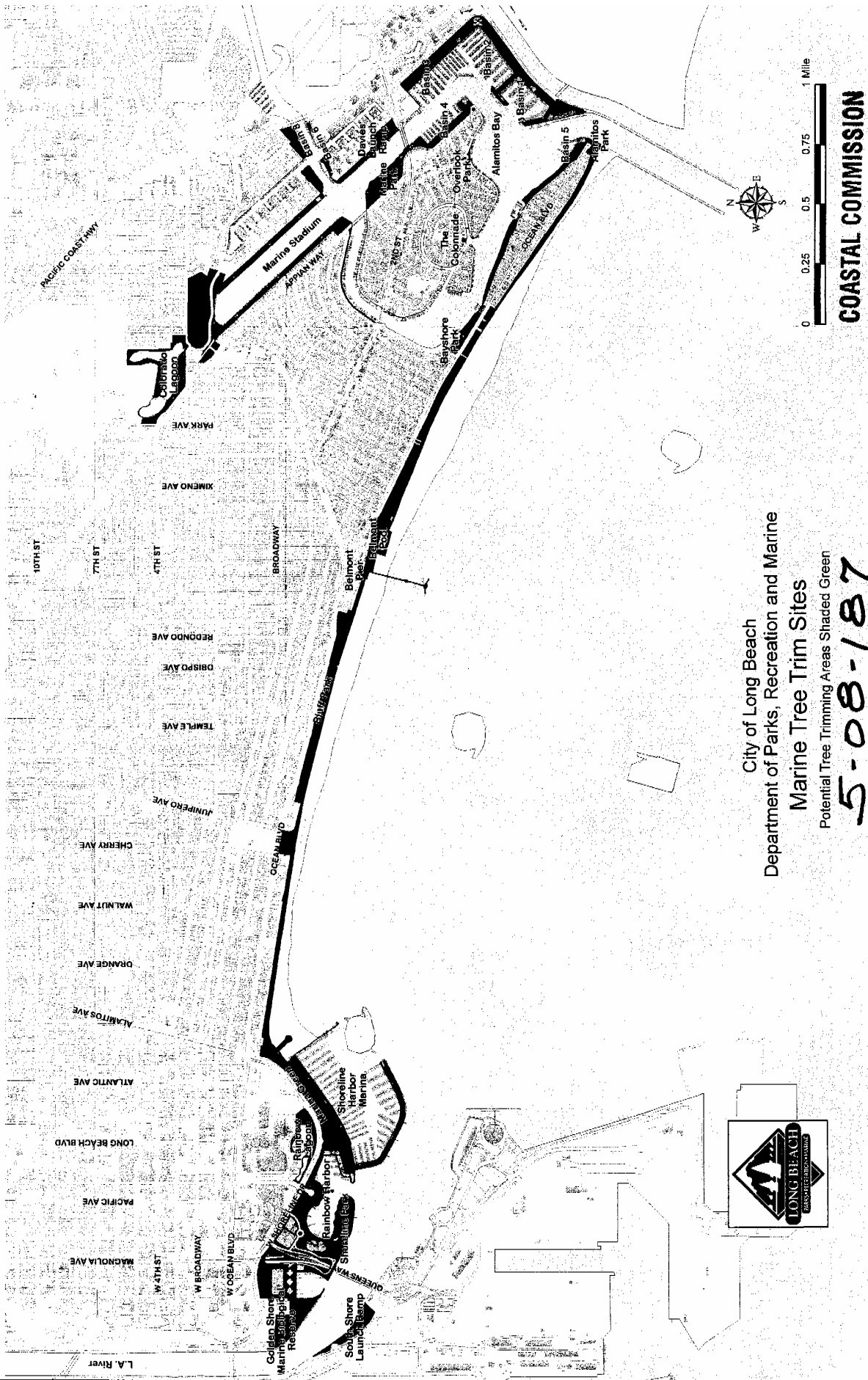


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EXHIBIT # 1

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City of Long Beach
 Department of Parks, Recreation and Marine
 Marine Tree Trim Sites
 Potential Tree Trimming Areas Shaded Green
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EXHIBIT # 2
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Policies and Procedures

Department of Parks, Recreation and Marine

Subject: TREE TRIMMING

Number: PENDING

1.0 TIDELANDS AREA TREE TRIMMING

1.1 PURPOSE

1.1.1 To provide guidelines and procedures for the trimming of any and all trees within the Tidelands area marine environment.

1.2 BACKGROUND

1.2.1 The Department of Parks, Recreation and Marine is obligated to trim trees within the marine environment for the safety of the public and the protection of property. In order to provide proper environmental stewardship, this tree trimming must be conducted in an environmentally friendly manner and in compliance with all environmental regulations, including the Migratory Bird Treaty Act, and as determined by the California Department of Fish and Game (DFG) and the California Coastal Commission (CCC). The procedures, delineated below, were established with the cooperation of DFG, the Audubon Society, Council Office, CCC and interested citizens groups.

1.3 POLICY

1.3.1 Department policy requires that all tree trimming conducted in or adjacent to the marinas, beaches and other city properties in the Tidelands area adhere to the procedures outlined in this document.

1.4 PROCEDURES

1.4.1 No tree trimming may be conducted within 100 feet of any tree containing an active nest or the presence of nesting activity.

1.4.2 The presence of active nests or nesting activity shall be determined by a professional ornithologist under contract to the City in concurrence with representatives of the Audubon Society, immediately prior to any trimming.

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EXHIBIT # 3

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- 1.4.3 Nesting activity is broadly defined as commencing with courtship activity among adults and ending when all fledglings have become juveniles and are able to fly. The nesting period generally falls between January 15 and July 15. As a matter of course, we use January 15 through September 1 as our no trimming period. It must also be noted that juvenile or adult birds occupying a nest do not necessarily constitute nesting activity.
- 1.4.4 Whenever possible annual tree trimming shall be scheduled between September 1 and January 15.
- 1.4.5 Trimming of selected trees by hand for the removal of fruit may be conducted during the period from January 15 through September 1. The City will consult with a professional ornithologist and/or the Audubon Society to assure that the Federally required standoff distance is maintained and that adjacent nesting birds are not distressed.
- 1.4.6 Where possible, trimming shall be conducted in such a way as to avoid damage to existing nests. In those cases where structurally unstable nests or the portion of the tree on which they are located pose an imminent danger to the public, the City may trim to protect the public.

1.5 REVIEW AND REVISION

- 1.5.1 It is the responsibility of the Manager of Maintenance Operations to review and update this policy and procedure on an annual basis or when City policies or procedures change.

1.6 ATTACHMENTS

- 1.6.1 Tree Trimming Flow Chart
- 1.6.2 Map of vicinity

APPROVED:



PHIL T. HESTER
DIRECTOR

AUTHORIZED ON:



2-6-08

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**CITY OF LONG BEACH
TIDELANDS TREE TRIMMING POLICY FLOW CHART**

