

**CALIFORNIA COASTAL COMMISSION**

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# Th8a

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## STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE & DE NOVO

**Appeal Number:** A-5-LOB-16-0062

**Applicant:** City of Long Beach

**Local Government:** City of Long Beach

**Local Decision:** Approval with Conditions

**Appellant:** Laurence Goodhue

**Project Location:** Public park, 5605 Boathouse Lane, Long Beach, Los Angeles County

**Project Description:** Appeal of Local Coastal Development Permit 1503-04, to demolish Marine Stadium Restroom 8N and replace with landscaping.

**Staff Recommendation:** Determine that a substantial issue exists and approve a coastal development permit with conditions.

NOTE: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General, or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo hearing will occur following the substantial issue vote or at a future Commission meeting, during which time the Commission will take public testimony.

## **SUMMARY OF STAFF RECOMMENDATION**

The City of Long Beach proposes to demolish a public restroom and replace it with landscaping. The subject location is a public park surrounding a manmade portion of Alamitos Bay designated as Marine Stadium which was constructed in the 1920s and enlarged for the 1932 Olympics, at 5605 Boathouse Lane, Long Beach, Los Angeles County. Marine Stadium is registered as California Historical Landmark #1014. The park is owned and managed by the City and supports public recreational activities including walking, jogging, bicycling, picnicking, bird watching, swimming, sailing, kayaking, and boating.

The City issued a local coastal development permit for the demolition of the restroom in May 2016, but did not specify whether amenities surrounding the restroom including mature trees and the historic Marine stadium sign would be retained or removed. The City also did not provide a landscaping plan. A local resident filed an appeal to the Coastal Commission alleging that the City-approved project would restrict access to an important coastal resource by eviscerating a public building that could be put to public use. The appellant raised primarily public access and recreational issues and expressed a desire for the building to be repurposed as a boat storage facility.

Coastal Commission staff were initially concerned that there were not comparable restroom facilities available to the public on a consistent basis. Since the appeal was filed, the City completed a restoration of one restroom, agreed to improve signage designating the restroom at the Peter Archer Rowing Center, and approved a local coastal development permit for a new restroom at Marina Vista Park. Thus, within a year, the City plans to provide four public restrooms surrounding Marine Stadium, which will better serve the public than the previous configuration.

However, demolishing a public amenity without replacing it with another public amenity would not maximize public access consistent with LCP and Coastal Act policies. The City's Resource Management Plan, a component of its LCP, calls for a balance between human use and ecological concerns. Because the area surrounding the public restroom is already developed, and is directly adjacent to the historic Marine Stadium sign and a free public parking lot, the City has an opportunity to improve the site after demolishing the restroom and provide new public amenities.

Following the appeal and discussions with Coastal Commission staff, the applicant retained a landscape architect, who developed a Landscape and Public Amenities Plan for the site which includes a bike rack, public bench, hydration station, and low water use landscaping including new Coast Live Oak and Peppermint Willow trees. Two palm trees and some turf will be removed, as well as the concrete foundation of the building. The historic Marine Stadium sign will be retained in place at the water's edge and a new drought tolerant landscape garden will be installed. Additionally, the plan includes signage identifying nearby public restrooms at the Peter Archer Rowing Center (.25 miles south) and at Marina Vista Park (.34 miles north).

The staff therefore recommends that the Commission determine that a substantial issue exists with respect to the grounds on which Appeal No. A-5-LOB-16-0062 has been filed because the locally approved permit is not consistent with the City of Long Beach Local Coastal Program or the public access policies of Chapter 3 of the Coastal Act. Staff also recommends approval of a coastal development permit application following the de novo hearing, with conditions requiring the City to implement the new Landscape and Public Amenities Plan and implement construction BMPs.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Photos

Exhibit 3 – Proposed Landscaping and Public Amenities Plan

Exhibit 4 – Local CDP 1503-04

Exhibit 5 – Appeal

## **I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE**

### **Motion:**

*I move that the Commission determine that Appeal No. A-5-LOB-16-0062 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of the majority of the Commissioners present.

### **Resolution:**

*The Commission hereby finds that Appeal No. A-5-LOB-16-0062 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

## **II. APPELLANT’S CONTENTIONS**

The appeal of the local government decision is based on: a) the historic nature of marine stadium and associated public infrastructure; b) the public access and recreational opportunities provided within marine stadium; c) the failure of the applicant to analyze project alternatives; and d) alleged inconsistency with laws and agreements unrelated to the City of Long Beach Local Coastal Program or the Coastal Act. The appellant contends that the local government’s decision would restrict access to an important coastal resource by eviscerating a public building that could be put to public use.

## **III. LOCAL GOVERNMENT ACTIONS**

On February 3, 2015, the City of Long Beach Tidelands Capital Improvement Division submitted an application for a local coastal development permit to demolish Marine Stadium Restroom 8N and replace with landscaping. A City of Long Beach Zoning Administrator held a public hearing on the application on April 13, 2015, but continued the hearing in order to research issues related to the McGrath-Macco Agreement, a 1968 land swap and development plan entered into between previous property owners, the City, and the State Lands Commission. On March 28, 2016, following the conclusion of the public hearing which had previously been continued, the Zoning Administrator approved Local Coastal Development Permit 1503-04.

Mr. Laurence Goodhue appealed the Zoning Administrator’s decision to the Long Beach Planning Commission. On May 19, 2016, the Long Beach Planning Commission held a public hearing and denied the appeal. The Coastal Commission received the Notice of Final Action for the local coastal development permit on May 31, 2016 and Mr. Goodhue filed an appeal to the Coastal Commission on the same day (**Exhibit 5**). No other appeals were filed during the 10 working day appeal period.

#### **IV. APPEAL PROCEDURES**

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the mean high tide line of beach or top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act section 30603(a)].

Section 30603 of the Coastal Act states:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
  - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
  - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea.

#### **Grounds for Appeal**

The grounds for appeal of an approved local CDP in the appealable area are stated in section 30603(b)(1), which states:

- (b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act.

Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the policies set forth in the certified LCP regarding public access and recreation, nor with the public access policies of Chapter 3 of the Coastal Act.

### **Qualifications to Testify before the Commission**

If the Commission, by a vote of three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), persons who opposed the application before the local government (or their representatives), and the local government. In this case, there is no indication of opposition in the City’s record. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

The de novo hearing is scheduled at the same hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

## **V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

### **A. PROJECT LOCATION AND DESCRIPTION**

The subject location is a public park surrounding a manmade portion of Alamitos Bay constructed in the 1920s and enlarged for the 1932 Olympics designated as Marine Stadium, at 5605 Boathouse Lane, Long Beach, Los Angeles County (**Exhibit 1**). The park is owned and managed by the City of Long Beach and supports public recreational activities including walking, jogging, bicycling, picnicking, bird watching, swimming, sailing, kayaking, and boating. Public amenities including bicycle racks, drinking fountains, restrooms, and boat storage facilities are provided throughout the park. Additionally, free public parking is provided at multiple parking lots surrounding the water, including a parking lot immediately south of the subject site. East of the site is a public street, with a row of single family homes in a gated community on the other side. North of the site is a grass-covered section of the public park. There is a historic “Marine Stadium” sign immediately west of the subject site, adjacent to the water (**Exhibit 2**). The proposed project is to demolish Public Restroom 8N and replace it with landscaping. The City’s initial application indicated that the landscaping would be turf. No landscaping plan or identification of existing or proposed public amenities was referenced by the City-approved permit.

**B. LOCAL COASTAL PROGRAM CERTIFICATION**

Long Beach is a coastal city in southern Los Angeles County. In 1980, the Coastal Commission certified the City's LCP. The City's LCP is comprised of a Land Use Plan and Implementation Plan, which, along with the public access policies of the Coastal Act, are the standard of review for the subject appeal.

**C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulation simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission had been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations if its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a substantial issue exists with respect to whether the local government action conforms to the public access and recreation policies of the certified LCP and the Coastal Act for the reasons set forth below.

**D. SUBSTANTIAL ISSUE ANALYSIS**

As provided below, the City of Long Beach certified Local Coastal Program (specifically the Resource Management Plan component of the LCP) contains policies that protect natural resources and public access within the coastal zone. Additionally, Chapter 3 of the Coastal Act includes policies requiring that maximum public access be provided.

**Relevant LCP Policies**

Land Use Plan – Introduction, Coastal Resources:

*The water resources of Alamitos Bay, Marine Stadium, Sims Pond, Colorado Lagoon, and Los Cerritos Wetlands are monitored, preserved, and enhanced by a formal set of policies promulgated by the Resources Management Plan. A balance between human use and ecological concerns is the principal theme of this Plan. The*

*beaches are preserved in perpetuity by the dedication policy, and enhanced by limited development programs which will encourage sensible public use.*

Implementation Plan – Resource Management Plan, Overview:

*Marine Stadium, built in the 1920's and used for the 1932 Olympics primarily for rowing competitions is a long rectangular body of seawater connected to Alamitos Bay. During the last decades, the Stadium has been the site of increasingly frequent commercial water sport events with high-speed powerboat racing. Such commercial events have impacted the surrounding residential areas with noise, trash, congestions, vandalism, and parking problems. This RMP nominates implementing measures for bringing such impacts under control to acceptable levels: permissible noise levels, public hearings on preschedules of proposed events, parking limitations on and clean-up by the commercial events and expanded uses by persons, small craft, local and non-commercial groups. This plan includes the development of the public land at the north end of the stadium into beaches and parks with grassland for field sports. Altogether, the recreational and educational uses of the Stadium and surrounding public land are designed in this RMP toward satisfying simultaneously the statewide requirements as tidelands, the local requirements as "good neighbors" to adjacent residential communities, and City requirements that no fiscal burden be sustained for furnishing non-City amenities and programs.*

Implementation Plan – Resource Management Plan, Section B(4)(a):

*Existing restroom facilities at the northwest end of the stadium must be accessible to the beach and park users.*

Implementation Plan – Resource Management Plan, Section B(3)(e):

*Usage of Marine Stadium for rowing activities should be encouraged.*

Implementation Plan – Resource Management Plan, Conformity with Coastal Act:

*Section 30212.5 Public facilities distribution: Whenever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area.*

**Coastal Act Policies**

Coastal Act Section 30210

*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.*

Coastal Act Section 30211

*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.*

Coastal Act Section 30212.5

*Whenever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area.*

Through its approval of the local coastal development permit, the City of Long Beach found that: 1) the proposed development conforms to the certified Local Coastal Program; 2) the proposed development conforms to the recreation and visitor serving facilities section in Chapter 3 of the Coastal Act; and 3) the proposed development conforms to the visual resources and special communities of Chapter 3 of the Coastal Act.

However, the City's findings (**Exhibit 4**) were brief and did not provide adequate detail to ensure that public access and recreational opportunities were being maximized consistent with LCP and Coastal Act requirements. The findings stated that the building proposed to be demolished, Marine Stadium Restroom 8N, "is no longer functional and has not been used consistently for 20 years." The appellant noted that the building could be repurposed for other uses, including boat storage. Coastal Commission staff noted that the finding was misleading because restroom has been operational at times during the previous 20 years, just not *consistently*, and could be operational again if future demand warranted. The City found that other public restrooms were available at the Peter Archer Rowing Center, at Marina Vista Park, and on the west end of Marine Stadium; the City also provided Exhibit 4 (page 14) identifying those restroom facilities.

Similar to the subject restroom facility, the three alternative public restrooms referenced by the City's findings are not all usable on a consistent basis. The Peter Archer Rowing Center restrooms are inside a larger boating facility and there is currently no signage to indicate that they are open to all members of the public. The restroom facilities (2S) at the north end of Marine Stadium were undergoing a remodel during 2016 when the local coastal development permit was approved, and were not open on a consistent basis. The west end of Marine Stadium is over a mile distance from the east end by foot and supports different public recreational areas – members of the public recreating on one side of the stadium should not have to walk that great a distance to use a restroom. The City's findings did not provide a resolution to any of these issues and did not analyze potential alternative restroom facilities that could ensure an even distribution of public restrooms. Its findings referenced the Resource Management Plan (a component of the LCP), but did not address Coastal Act Section 30212.5 (copied within the Resource Management Plan), which requires that "whenever appropriate and feasible, public facilities... shall be distributed throughout an area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area."

The Tidelands Capital Improvement Division's application submittal did not include a site plan identifying the existing restroom or the proposed landscaping – and did not clarify whether surrounding amenities including mature trees and the historic Marine Stadium sign were to be preserved, replaced, or destroyed. The City's findings did not address these issues either. The City's action to approve a permit for the demolition of the restroom without a clear plan for what was being demolished and what would be established in place raises questions of consistency with the intent of the Resource Management Plan and other visual resource policies of the certified LCP. The LCP Introduction states that "a balance between human use and ecological concerns is the principal theme of this Plan."

A-5-LOB-16-0062 (City of Long Beach)  
Appeal – Substantial Issue and De Novo

The appellant alleges that “the City of Long Beach has created and seeks to perpetuate a near epidemic of constructive denial of access to waters of Long Beach Marine Stadium” and states that the proposed restroom demolition is part of a criminal ruse involving the City Mayor, the State Attorney General, and the Governor in order to enrich a select few investment portfolios and enhance private water views. Those allegations are sensational and unsubstantiated, but the appellant accurately identifies a pattern of the City’s demolition of public restrooms without providing alternative restrooms or other public amenities. The City has previously demolished at least two other public restrooms within public park areas surrounding Marine Stadium without replacing those facilities. The Commission heard Appeal No. A-5-LOB-13-0247 for the demolition of Marine Stadium Restroom 2S, brought by the subject appellant on November 15, 2013, and found that the appeal raised “No Substantial Issue” because there were adequate restroom facilities in the area, including another facility 600 feet to the north. The facility at the north end of Marine Stadium is the Restroom 2N, which is referenced by Resource Management Plan, Section B(4)(a): “Existing restroom facilities at the northwest end of the stadium must be accessible to the beach and park users.” The City is not proposing any changes to Restroom 2N.

The appellant also alleges that demolition of a public building that could be put to another use violates the McGrath-Macco Agreement. That agreement includes a land swap and development plan entered into between previous property owners, the City, and the State Lands Commission in 1968. The agreement pre-dates the Coastal Act and both City staff and Coastal Commission staff have verified that it does not designate specific locations for public restrooms or mandate that public facilities be repurposed. The appellant’s stated preference is for the public restroom to be repurposed into a public boat storage facility. Resource Management Plan, Section B(3)(e) states “usage of Marine Stadium for rowing activities should be encouraged.” However, there is no demonstrated need for additional boat storage in the vicinity of the restroom. Boat storage is available on the concrete at the northeast section of Marine Stadium, approximately 200 feet north of the subject restroom building. Covered boat storage is also available at the Peter Archer Rowing Center, approximately 1,000 feet south. Rowing activities within the water portion of Marine Stadium are currently encouraged as a historic use popular with local and regional coastal visitors; the City is not proposing any changes to the use of the water.

Although not all of the appellant’s contentions are not all valid, the concern for public access does raise a substantial issue with respect to the project’s conformance with the certified LCP for Long Beach and the public access policies of the Coastal Act. The cumulative loss of restrooms could impact the public’s ability to recreate around Marine Stadium and could contribute to the more exclusive environment the appellant is concerned about. Members of the public should feel welcomed and comfortable when visiting the coast – and this coastal amenity in particular, which is nearly 100 years old and registered as California Historical Landmark #1014. The City’s action to approve the demolition of the restroom without a more thorough analysis of the distribution of available restroom facilities may not be consistent with Coastal Act Section 30212.5, which is also copied within the LCP. Additionally, the Tidelands Capital Improvement Division’s failure to include a site plan identifying existing and proposed landscaping and amenities in the vicinity of the restroom, and the Department of Development Services’ decision not to require such a plan, raise an issue with respect to the City’s commitment to maximizing public access as required by the LCP and the Coastal Act.

Applying the five factors listed in the prior section clarifies that the appeal raises “a substantial issue” with respect to Chapter 3 of the Coastal Act, and therefore, does meet the substantiality standard of Section 30265(b)(2), because the nature of the City-approved project and the local government action are not consistent with policies of Chapter 3 of the Coastal Act.

The first factor is the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act. In its findings to approve the development, the City did not cite any specific policies from the certified LCP or the Coastal Act. The City found that the restroom was not in good working condition and that there were other restrooms in the vicinity, but did not tie these findings to any specific policy. The City also did not consider alternatives to the project that would maximize public access consistent with Coastal Act requirements.

The second factor is the extent and scope of the development as approved or denied by the local government. The development is removal of an approximately 1,000 square foot public restroom, a relatively small scope. However, based on the lack of site plan in the application or specific findings and special conditions designating the scope of work, it is not clear whether amenities including mature trees and the historic Marine Stadium sign in the area surrounding the restroom will be removed, replaced, or retained.

The third factor is the significance of the coastal resources affected by the decision. The public restroom is not significant but the historic Marine Stadium sign immediately adjacent to it is. Additionally, the Marine Stadium site and surrounding parks are a historically significant recreational amenity popular with local and regional coastal visitors. Every project within Marine Stadium has a cumulative effect on the character and accessibility of the larger resource.

The fourth factor is the precedential value of the local government’s decision for future interpretations of its LCP. The City’s LCP provides that “a balance between human use and ecological concerns is the principal theme.” In this case, the removal of a restroom and the replacement with landscaping would be consistent with that theme; however, the cumulative removal of public amenities might not be consistent with that theme. Alternatives like replacement of a public amenity with another public amenity might be more consistent with the LCP. If a precedent is established that it is not important to plan for public amenities around Marine Stadium, its character and accessibility may change over time.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. This appeal raises a specific local issue (the demolition of a public restroom), but the Coastal Act requirements for maximum public access and distribution of public facilities are statewide issues. Other local governments work to balance the needs of coastal visitors with the desires of residents and with ecological considerations; the provision and location of public restrooms are matters the Coastal Commission has addressed frequently. Therefore, the City’s approval does raise issues of statewide significance.

In conclusion, issues for the appeal are potential adverse impacts to public access and the character of the Marine Stadium facility. The City’s findings do not confirm the project’s consistency with the certified LCP and the public access policies of the Coastal Act; therefore the Commission finds that the appeal raises a substantial issue as to conformity with the LCP and the Coastal Act.

## VI. MOTION AND RESOLUTION – DE NOVO

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. A-5-LOB-16-0062 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 a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## VII. 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.

## VIII. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Landscaping and Public Amenities Plans.** By acceptance of this permit, the permittee agrees to implement the proposed Landscaping and Public Amenities Plan, which shall be in substantial conformance to the plan submitted to the Coastal Commission's South Coast District office on August 8, 2017 and included as Exhibit 3 of the staff report dated September 22, 2017. The plan shall include and be consistent with the following:
  - a. Signage indicating the direction and distance to alternative public restroom facilities at the Peter Archer Rowing Center and the Marina Vista Park;
  - b. Public bicycle rack;
  - c. Public beach;
  - d. Hydration station;
  - e. Replacement trees at a minimum 1:1 ratio for any trees removed as part of the project;
  - f. Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
  - g. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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 provides a written determination that no amendment is required.

2. **Water Quality.** By acceptance of this permit, the permittee agrees that the approved development shall be carried out in compliance with the following BMPs:
  - A. No construction materials, debris, or waste shall be placed or stored where it may be subject to water, wind, rain, or dispersion;
  - B. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - C. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;

- D. Erosion control/sedimentation Best Management Practices shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters;
- E. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible;
- F. The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- G. The permittee shall develop and implement spill prevention and control measures;
- H. The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
- I. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

## **IX. FINDINGS AND DECLARATIONS – DE NOVO**

### **A. PROJECT LOCATION AND DESCRIPTION**

The findings included in Section V, Subsection A are hereby incorporated by reference.

If the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act, the local coastal development permit is voided and the Commission may consider alternative project designs or mitigation measures in its de novo review.

### **B. PUBLIC ACCESS AND RECREATION**

As a de novo matter, the standard of review for the proposed development is the City of Long Beach certified LCP. Since the proposed project is located between the first public road and the sea, Coastal Act Section 30604(c) applies and any development approved by the Commission must also conform with the public access and recreation policies of Chapter 3 of the Coastal Act.

Policies of the certified Local Coastal Program and the public access policies of the Coastal Act are hereby incorporated from Section V, Subsection D above. The following recreation policies of the Coastal Act also apply:

Coastal Act Section 30220

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Coastal Act Section 30223

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30224

*Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Protecting public access to the coast is one of the highest charges of the Coastal Act. The subject site is a public park in a highly visited coastal area. The park is owned and managed by the City of Long Beach and supports public recreational activities including walking, jogging, bicycling, picnicking, bird watching, swimming, sailing, kayaking, and boating. Public amenities including bicycle racks, drinking fountains, restrooms, and boat storage facilities are provided throughout the park.

The City's initial proposal to demolish Public Restroom 8N without replacing it with another restroom raised a substantial issue because at the time of the application, there were not comparable restroom facilities available to the public on a consistent basis. The Peter Archer Rowing Center restrooms are inside a larger boating facility and as of the appeal in May 2016, there was no signage to indicate that they are open to all members of the public; the City has since proposed to fix this issue by installing a public restroom sign outside the facility. The restroom facilities (2S) at the north end of Marine Stadium were undergoing a remodel when the appeal was filed, but are now open to the public. The City has also approved a local coastal development permit for a new restroom in Marina Vista Park, at the northeast corner, in an area nearer to the subject site than the current Marina Vista Park restroom. That restroom is scheduled to be constructed within the next year. The restroom at the west end of Marine Stadium is over a mile walking distance from the subject site but will remain operational following the proposed project. Thus, within a year, the City plans to provide four public restrooms spaced  $\frac{1}{4}$  to  $\frac{1}{2}$  mile apart surrounding Marine Stadium, which will better serve the public than the previous configuration (**Exhibit 1**).

With the new restrooms in place, the existing Public Restroom 8N, which is in a state of disrepair will not be needed because the public will have access to newer restroom facilities nearby. Demolition of the subject restroom will thus be consistent with Coastal Act Section 30212.5 (copied within the Resource Management Plan component of the certified LCP), which requires that "whenever appropriate and feasible, public facilities...shall be distributed throughout an area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area."

However, demolishing a public amenity without replacing it with another public amenity would not maximize public access consistent with Coastal Act Section 30210. Members of the public should feel welcomed and comfortable when visiting the coast – and when visiting Marine Stadium in particular, which is nearly 100 years old and is listed at Historical Landmark #1014 on the California

Historic Register. The Resource Management Plan for Marine Stadium calls for a balance between human use and ecological concerns. Because the area surrounding the public restroom is already developed, and is directly adjacent to the historic Marine Stadium sign and a free public parking lot, the City has an opportunity to re-develop the area after it is vacated by the restroom and provide new public amenities.

Coastal Commission staff initially suggested that the restroom should be remodeled or replaced with a new restroom. That was not the City's preference due to cost and is no longer necessary to serve the public because there will soon be four other operational restrooms serving Marine Stadium. The appellant's preference was for additional boat storage space, but there is already adequate boat storage approximately 200 feet north of the subject restroom building. Covered boat storage is also available at the Peter Archer Rowing Center, approximately 1,000 feet south. Rowing activities within the water portion of Marine Stadium are currently encouraged as a historic use popular with local and regional coastal visitors; the City is not proposing any changes to the use of the water, which is consistent with Implementation Plan – Resource Management Plan, Section B(3)(e) and Coastal Act Section 30224. Boat storage in the location of the existing public restroom would also be restricted by site constraints including lack of a launch ramp or trailer loading area, and would require additional hardscape in an area currently bordered by grass and water. A new restroom or boat storage in the subject location are therefore not the best use of the subject space.

Based on the initial application filed with the City, the plan was to replace the footprint of the vacated restroom with turf. Following the appeal and discussions with Coastal Commission staff, the applicant retained a landscape architect, who developed a plan for the site which includes a bike rack, public bench, hydration station, and low water use landscaping including new Coast Live Oak and Peppermint Willow trees. Two palm trees and some turf will be removed, as well as the concrete foundation of the building. The proposed Landscaping and Public Amenities Plan (**Exhibit 3**) includes new hardscape for pedestrian and bicycle access to the historic Marine Stadium sign (which the applicant confirms will be retained in place at the water's edge), and a new drought tolerant landscape garden. The new bench and hydration station will encourage passive recreational opportunities and the new bicycle rack will provide an amenity that is otherwise lacking in the vicinity. Additionally, the plan includes signage identifying nearby public restrooms at the Peter Archer Rowing Center (.25 miles south) and at Marina Vista Park (.34 miles north). In order to ensure that public amenities are provided as proposed by the City and described here, the Commission imposes **Special Condition 1** requiring the City to implement the proposed Landscaping and Public Amenities Plan.

The proposed plan is a substantial improvement over the initial description to “replace with turf” and will maximize public access and recreational opportunities consistent with the LCP policies and the Coastal Act. The development, as conditioned, does not interfere with public recreational use of coastal resources and protects coastal areas suited for recreational activities. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the enhancement of public recreational opportunities.

### C. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as required by **Special Condition 2**,

incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with the requirements of the certified LCP for Long Beach regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### **D. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Long Beach Department of Planning and Building is the lead agency for the purposes of CEQA review. On April 13, 2016, the City determined that the project is categorically exempt from CEQA review under Section 15301 (Class 1, Existing Facilities).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require the applicant to provide public amenities at the site, provide landscaping with exclusively native, low water use, non-invasive plant species, and implement construction and operational best management practices to preserve and enhance water quality.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

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#### **Appendix A – Substantive File Documents**

1. City of Long Beach Certified Local Coastal Program, 7/22/80.
2. Appeal No. A-5-LOB-13-0247 (Long Beach Marine Stadium Restroom 2S); 11/15/13
3. Coastal Development Permit 5-96-197 (Long Beach Fieldstone Park Marine Stadium Master Permit), 1/10/97.
4. "Long Beach: Marine Stadium Landscaping Plan." Los Angeles Times; 11/19/92. Retrieved 9/20/17 via <[http://articles.latimes.com/1992-11-19/news/hd-638\\_1\\_long-beach](http://articles.latimes.com/1992-11-19/news/hd-638_1_long-beach)>
5. "Marina Vista Park Restroom Re-Location." Long Beach Councilwoman Suzie Price Newsletter, February 2017.