

**CALIFORNIA COASTAL COMMISSION**

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**W20a**

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**STAFF REPORT: APPEALS – NO SUBSTANTIAL ISSUE**

**Appeal Number:** A-5-LOB-19-0005

**Applicant:** City of Long Beach

**Local Government:** City of Long Beach

**Local Decision:** Approval with Conditions

**Appellants:** Citizens About Responsible Planning (Ann Cantrell et al),  
Anna Christensen, Melinda Cotton

**Project Location:** Marina Drive between 2<sup>nd</sup> Street & Studebaker Road, City of Long Beach, Los Angeles County

**Project Description:** City of Long Beach approval of Permit No. LCDP 18-033 authorizing trimming, relocation, and replacement, if necessary, of 44 trees and addition of 41 new trees in the public right-of-way in conformance with the Commission's adopted Tree Trimming and Tree Removal Policy.

**Staff Recommendation:** No Substantial Issue

**IMPORTANT NOTE:** This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeals do raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

## SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the appeals have been filed because the project, as approved by the City of Long Beach, is consistent with the City's certified Local Coastal Program (LCP) and the public access policies of the Coastal Act.

On December 20, 2018, the City approved Local Coastal Development Permit (LCDP) Case No. 1810-12/LCDP18-033 with conditions for the trimming, relocation and replacement, if necessary, of 44 palm trees, and addition of 41 new trees in the public right-of-way on Marina Drive between 2<sup>nd</sup> Street and Studebaker Road in conformance with the Commission's adopted Tree Trimming and Tree Removal Policy. 142 existing trees on-site would remain undisturbed. The subject project is associated with a Complete Streets project to improve pedestrian access, provide protected bike lanes, add a bus stop, and add 94 free public parking spaces by reducing auto vehicle lanes, modifying the street median, and restriping the street, which the City determined on October 30, 2018 was exempt from the requirement to obtain a coastal development permit pursuant to Coastal Permit Categorical Exclusion (CPCE) No. 18-10.

The appellants and co-signing parties contend that the health of the existing trees, which provide habitat for birds including great blue herons, is jeopardized by the City-approved removal and relocation of the trees. In addition, the appellants contend that the tree removal and relocation is only necessary to accommodate the related Complete Streets project, which the City determined was exempt from the need to obtain a coastal development permit. The appellants further contend that the City did not make adequate findings relating to the unpermitted removal of trees on-site, that proper procedures for public notice and engagement were not followed, that the Complete Streets project (and, therefore, subject coastal development permit) is inconsistent with the EIR for a development project located at 2<sup>nd</sup> Street and Pacific Coast Highway (PCH) and adversely impacts public access, and that the removed trees have not been well cared for.

The subject site is the first public road from the sea (Alamitos Bay) in the Southeast area of Long Beach between 2<sup>nd</sup> Street and Studebaker Road. A variety of coastal resources exist within 1,000 feet of the proposed project site including the Alamitos Bay Marina, the San Gabriel River, the Los Cerritos wetlands, visitor-serving commercial developments, a multi-family residential complex, public parking, and waterfront promenades. All of the subject work, including tree trimming, relocation, and installation, is proposed within the public right-of-way in the street median and along either side of the public road.

Staff believes that violations of the Coastal Act and Local Coastal Program have occurred on the site, including unpermitted removal of 22 palm trees that were documented to have supported great blue heron nesting. On November 21, 2018, Coastal Commission Enforcement staff issued a notice of violation to the developer of an adjacent commercial project, who staff understands removed the trees, for the violations described above. Suitable heron nesting sites, which play an important role in breeding, are scarce in southern California and at least seven active heron nests had been located in trees that were removed. The trees located at the proposed project site provide biologically significant habitat for the Alamitos Marina heron colony.

The City approved the tree relocation project with special conditions to address the unpermitted tree removal, per Commission staff recommendations, and adhere to the Commission-adopted Tree Trimming and Tree Removal Policy to minimize potential adverse impacts to coastal resources. The City's permit addresses the unpermitted development described above by authorizing the tree removal after-the-fact, with terms and conditions that provide for planting of the same number of trees (22 trees) that were removed to replace the removed trees and for planting of additional trees (21 trees) to help mitigate for any impacts resulting from the unpermitted removal of the trees and to comprehensively address the violation at issue. All of the trees to be planted will be suitable for wading bird nesting. Finding no substantial issue with the City's permit pursuant to the staff recommendation, issuance of the permit, and the City's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations going forward.

Pursuant to Section 30603(b)(1), the standard of review for these appeals is the City's certified LCP and the public access policies of the Coastal Act. The proposed tree trimming, relocation, and installation is consistent with these policies and, therefore, does not raise a substantial issue as to its conformity with the certified LCP or the public access policies of the Coastal Act.

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## APPENDICES

City of Long Beach Local Coastal Program

## EXHIBITS

Exhibit 1 – Project Site

Exhibit 2 – Appeals

Exhibit 3 – Site Plans

Exhibit 4 – Tree Trimming and Tree Removal Policy (CDP 5-08-187)

Exhibit 5 – LCDP 18-033 and Staff Report

Exhibit 6 – CPCEs 18-10 & 18-09 (revoked)

Exhibit 7 – Tree Planting Specifications

## I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

### Motion:

*I move that the Commission determine that Appeal No. A-5-LOB-19-0005 raises **NO Substantial Issue** with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act.*

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

### Resolution:

*The Commission hereby finds that Appeal No. **A-5-LOB-19-0005** presents **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act regarding consistency with the City of Long Beach’s certified Local Coastal Program and the public access policies of the Coastal Act.*

## II. APPELLANTS’ CONTENTIONS

On January 23, 2019, Citizens About Responsible Planning (CARP) (Ann Cantrell et al), Anna Christensen, and Melinda Cotton filed three appeals of LCDP No. 1810-12/LCDP18-033 (**Exhibit 2**). Alex Cross, Joe Weinstein, Susan Miller, Corliss Lee, Rae Gabelich, Tami Bennett, and Renee Lawler are co-signing parties. The appellants’ contentions can be categorized broadly into issues surrounding (a) habitat protection, (b) the City’s approval of CPCE 18-10, and (c) public engagement. While the appellants do not explicitly site the conflicts between the City’s action and the policies of the certified LCP, their concerns regarding the protection of natural resources and public access are related to the general goals of the certified LCP.

In terms of habitat protection, the appellants are concerned that any movement of existing mature trees would adversely impact the trees themselves and birds, including great blue herons, using the trees as habitat. Anna Christensen of Protect the Long Beach/Los Cerritos Wetlands Coalition, is particularly concerned with the City Zoning Administrator’s finding that the subject palm trees, *Washingtonia robusta*, do not merit special consideration, even though they support nesting herons and other shorebirds. CARP asserts that, although the City conducted a bird survey (outside of the great blue heron nesting season) and conditioned the LCDP to require another survey be done prior to issuance of the permit, the LCDP should not be approved before the survey is completed. The appellants contend that that the health of the existing trees, which provide habitat for birds including great blue herons, is jeopardized by the City-approved removal and relocation of trees and would not be necessary if the Complete Streets project had not been exempted from CDP requirements.

The appellants contend that the Complete Streets project and the proposed associated tree relocation should not have been processed as two separate actions considering the CPCE, as

approved by the City, necessitates the relocation of trees. Furthermore, the appellants disagree with the City's findings that the Complete Streets project is exempt from LCDP requirements because the project cuts the number of automobile lanes in half and, thus, impacts traffic and public access. The appellants also contend that, as approved, the Complete Streets project is inconsistent with the Environmental Impact Report (EIR) prepared for an adjacent development at 2<sup>nd</sup> Street and PCH. The appellants, therefore, ask that the City's CPCE 18-10 be revoked.

In addition, the appellants contend that the City's engagement with the public was inadequate in a number of ways. First, regarding the subject City-approved LCDP, CARP contends that the City did not make findings in the staff report for the subject LCDP project relating to the unpermitted removal of trees on-site and Anna Christensen provides evidence that the removed trees have not been appropriately cared for. The appellants further contend that proper procedures for public notice and engagement were not followed for the tree trimming, relocation, and installation project and the Complete Streets project. More specifically, the appellants stated that the Complete Streets and tree development project descriptions were confusing because they changed a number of times throughout the process, City staff and public officials denied multiple requests to hold community meetings, there were no public meetings prior to the Zoning Administrator hearing on the tree project, the agenda was only published two hours before the hearing, and known interested parties were not made aware of the City's action on CPCE 18-10 or the following appeal period.

The appellants also propose project alternatives that would modify both the Complete Streets project and the tree trimming and relocation project to be less environmentally damaging. Ann Cantrell of CARP suggests that the Complete Streets project be redesigned to avoid the relocation of any existing trees. Additionally, Anna Christenson recommends that the City follow palm tree transplanting best practices, contract a biologist selected by the Coastal Commission to conduct the bird surveys, establish a rookery in an appropriate location not subject to human disturbance, and mitigate for the loss of palms.

### **III. LOCAL GOVERNMENT ACTIONS**

On September 27, 2018, the City of Long Beach approved CPCE No. 18-09 for a Complete Streets project to improve pedestrian access, provide protected bike lanes, add a bus stop, add free public parking spaces, reduce auto vehicle lanes, restripe the street, and trim, relocate, and plant trees (**Exhibit 6b**). Commission staff received objections from Protect the Long Beach/Los Cerritos Wetlands (Anna Christensen) and CARP (Ann Cantrell) on October 22, 2018 that the tree developments should not be exempt from LCDP requirements. Commission and City staff agreed that the work on the trees was not categorically exempt from LCDP requirements; thus, the City subsequently rescinded CPCE 18-09.

The City then chose to process the street improvement and tree development projects separately. On October 30, 2018, the City of Long Beach approved CPCE 18-10 (**Exhibit 6a**) for the Complete Streets project as described above without tree trimming, relocation, and installation. This action was not appealed. On November 19, 2018, the City Zoning Administrator held a public hearing on Application No. 1810-12 for the tree developments and approved the local CDP, LCDP 18-033, with conditions. The Zoning Administrator's decision was appealed on November 28, 2018 by Anna Christensen and Leslie Rash of the Protect the Long Beach/Los

Cerritos Wetlands Coalition. The appeal, Appeal No. 18-004, was filed within the City's 10-day appeal period. Public hearing notices were then posted and distributed on December 4, 2018. On December 20, 2018, the City of Long Beach Planning Commission held a public hearing for Appeal No. 18-004 and LCDP 18-033. Ann Cantrell, Anna Christensen, Melinda Cotton, and Leslie Rash were among those who gave verbal testimony at the hearing. The City of Long Beach Planning Commission denied the appeal by Anna Christensen and Leslie Rash and upheld the Zoning Administrator's approval of Local CDP No. 18-033 for tree trimming, relocation, and installation along Marina Drive between 2<sup>nd</sup> Street and Studebaker Road with imposed special conditions (**Exhibit 5**). The Planning Commission also heard Categorical Exemption No. CE-18-237 and determined that the tree developments are categorically exempt from CEQA in accordance with State Guidelines Section 15301—Existing Facilities (Class I).

On December 31, 2018, prior to the Commission's receipt of the City's Notice of Final Action, CARP and Protect the Long Beach/Los Cerritos Wetlands submitted appeals of the subject City-approved tree project. The City's Notice of Final Local Action for Local CDP No. 1810-12/LCDP18-033 was received in the Coastal Commission's Long Beach Office on January 8, 2019, and the Coastal Commission's required ten working-day appeal period was established. Appeals of LCDP 18-033 by CARP (revised), Anna Christensen (revised), and Melinda Cotton with co-signing parties were filed on January 23, 2019, within the 10 working-day appeal period.

#### **IV. UNPERMITTED DEVELOPMENT**

Unpermitted development has occurred on the property, including, but not necessarily limited to, the removal of 22 palm trees and netting of palm fronds. For said development, the applicant did not obtain the necessary authorizations from the Coastal Commission. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

On November 21, 2018, Commission staff issued a notice of violation at the subject site for unpermitted removal of 22 palm trees that supported heron nesting. With the loss of natural wetlands and native trees upon replacement by marinas and other developments, many heron colonies, including the Alamitos Marina heron colony found at the subject site, have adapted by relocating their nesting colonies to stands of tall non-native trees in highly developed areas. Suitable great blue heron nesting sites, which play an important role in breeding, are scarce in southern California and at least seven identified great blue heron nests had been located in the palm trees that were removed.

The City's permit addresses the unpermitted development described above by authorizing the tree removal after-the-fact, with terms and conditions that provide for planting of the same number of trees that were removed (22 trees) to replace the removed trees and for planting of additional trees (21 trees) to help mitigate for any impacts resulting from the unpermitted removal of the trees and to comprehensively address the violation at issue. All of the trees to be planted will be suitable for wading bird nesting. Finding no substantial issue with the City's permit pursuant to the staff recommendation, issuance of the permit, and the City's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations going forward.

On February 17, 2019, Ann Cantrell sent an email to the City of Long Beach and the Coastal Commission with evidence that the City had placed material around the palm fronds of trees along Marina Drive. The City subsequently informed Commission staff that the City was intending to implement one of its best management practices (BMPs): covering the tree canopies with bird-safe nets before nesting season. This work, however, was conducted prior to the Commission action on the subject appeal, No. A-5-LOB-19-0005. On February 20, 2019, the City agreed to immediately remove the netting and not re-install the netting until the coastal development permit is issued.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission’s position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

## **V. APPEAL PROCEDURES**

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. 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.

Section 30603 of the Coastal Act specifically 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.*

The project site is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of the beach. Therefore, under Section 30603(a)(1), the project may be appealed to the Commission.

### **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 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 appeals include contentions that the approved development does not protect coastal habitat and species or public access and, thus, does not conform to the policies set forth in the certified LCP and Coastal Act.

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

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, will have three minutes total per side to address whether the appeals raise a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), or those who, for good cause, were unable to oppose the application before the local government, and the local government. 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 the grounds for the appeals raise no substantial issue.

## **VI. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE**

### **A. PROJECT LOCATION & DESCRIPTION**

The subject site is located at the first public road from the sea, East Marina Drive between 2<sup>nd</sup> Street and Studebaker Road inland of Alamitos Bay, in the Southeast area of Long Beach (**Exhibit 1**). A variety of coastal resources exist within 1,000 feet of the proposed project site including Alamitos Bay Marina, San Gabriel River, Los Cerritos wetlands, visitor-serving commercial uses, a multi-family residential complex, public parking, and waterfront

promenades. The subject development is located within the public right-of-way in the street median and along either side of the public road.

The palm trees located at the proposed project site provide habitat for the Alamitos Marina heron colony and are, thus, considered “major vegetation” under the Coastal Act. Given the trees’ biological significance, in order to mitigate and address the unpermitted development (see the section titled Unpermitted Development, above), Commission staff recommended that the applicant submit a coastal development permit application with a tree replacement plan that includes “1) replacement tree location; 2) tree type (the trees you propose must be suitable for great blue heron nesting and approved by a qualified biologist); 3) tree size; 4) planting specifications; and 5) a five year monitoring program with specific performance standards” to restore each tree at a 1:1 ratio.

In response, the City submitted LCDP Application No. 1810-12 for the proposed trimming and on-site relocation of existing trees, and the installation of new street trees in the public right-of-way, and approved LCDP No. 18-033 (**Exhibit 5**). LCDP 18-033 approves the relocation of 44 palm trees and addition of 41 (22 palms and 19 broad-canopy) mature trees (**Exhibit 3**) with six special conditions that require the City to engage a qualified biologist to provide a list of appropriate tree species, require all new palm trees to be of the species *Washingtonia robusta* (existing species), submit a five-year monitoring program, and adhere to the Tree Trimming and Tree Removal Policy adopted for the Tidelands area in 2009 under the Commission’s CDP No. 5-08-187. The Tree Trimming and Tree Removal Policy (**Exhibit 4**) describes in detail the goals of the policy, permitted timing of tree developments, required surveys, and BMPs under different scenarios based on the timing and nature of the work and resources present.

The City-approved LCDP, LCDP 18-033, is the subject of these appeals.

## **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 (IP), which, along with the public access policies of the Coastal Act, are the standard of review for the subject appeals.

## **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 regulations 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 **no substantial issue exists** with respect to whether the local government action conforms to the policies of the certified LCP and the public access policies of the Coastal Act for the reasons set forth below.

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

As provided below, the City of Long Beach’s certified Local Coastal Program 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.*

Southeast Area Development and Improvement Plan – Land Use Policy #1:

*All development shall ensure that marine resources are maintained, enhanced and where feasible, restored.*

Southeast Area Development and Improvement Plan – Land Use Policy #6:

*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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Southeast Area Development and Improvement Plan – Land Use Policy #11:

*All development shall minimize energy consumption and vehicle miles traveled.*

Southeast Area Development and Improvement Plan – Provisions Applying to All Areas #11:

*Public access shall be provided to and along the boundaries of all public right of ways as provided for in the wetlands restoration plan.*

##### **Relevant Coastal Act Policies**

Section 30210 of the Coastal Act states, in part:

*...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, and rights of private property owners, and natural resource areas from overuse.*

Grounds for these appeals are limited to inconsistency with the Long Beach LCP and public access and recreation policies of the Coastal Act. The local coastal development permit that is the subject of this appeal is for the relocation of 44 trees, addition of 41 trees, and maintenance tree trimming within the Marina Drive public right-of-way. This City permit is related to the Complete Streets project for pedestrian path improvements and addition of protected bike lanes, a bus stop, and 94 free public parking spaces through a reduction in auto vehicle lanes, modifications to the street median, and restriping of the street at Marina Drive. The Complete Streets project was determined by the City, on October 30, 2018, to be exempt from the requirement to obtain a coastal development permit pursuant to Coastal Permit Categorical Exclusion (CPCE) No. 18-10.

Section 21.25.906.D of the IP states that development determined by the City to be categorically excluded from CDP requirements may be appealed by requesting the matter be referred to the Executive Director of the Coastal Commission, and a hearing is held only if the ED determination differs from that of the City. In this case, there were no requests for the referral of CPCE 18-10 to the Executive Director and, thus, no proper appeal of CPCE 18-10 for the street improvements described above. However, the subject appeals do challenge CPCE 18-10 and may be treated as a request to refer the matter to the Commission Executive Director. The Executive Director has reviewed CPCE 18-10 and concurs with the City's determination that the Complete Streets project is categorically excluded from CDP requirements as a traffic improvement project that does not alter roadway capacity by more than ten percent, decrease parking, or impair access to the coast (IP Section 21.25.903.C.3) because: (a) the elimination of one car lane in each direction is mitigated by the addition of bike lanes, pedestrian paths, and a bus stop; (b) free public parking spaces are added; and (c) these improvements, if anything, will improve public access by offering alternative modes of transportation to serve members of the public who travel by means other than automobiles. Therefore, even if the applicants had properly invoked LCP Section 21.25.906.D, under the LCP policy there is no hearing on the City's CPCE determination because the Commission Executive Director and City are in agreement. Accordingly, the contentions in the appeal related to the Categorical Exclusion for the Complete Streets project are not presently before the Commission, and are not grounds for finding substantial issue.

The appellants further contend that the Complete Streets project, for reductions in car traffic lanes and additions of pedestrian paths, bike lanes, a bus stop, and public parking, is inconsistent with the EIR prepared for an adjacent development at 2<sup>nd</sup> Street and PCH. The EIR for the nearby development is a separate action by the City that is a requirement of the State's California Environmental Quality Act (CEQA) and the Commission does not have the authority to invalidate a local government's CEQA determination. Inconsistencies between the Complete Streets project and the EIR for the project at 2nd Street and PCH, as described by CARP (**Exhibit 2**), are therefore not valid grounds for appeal.

Additionally, the contentions made by CARP that the City made changes to the project description and misspoke regarding the subject LCP area at the public hearing do not raise questions related to the City-approved project's consistency with the policies of the certified LCP.

In terms of the appellants' contentions that the City did not appropriately engage the public, the question at hand is whether or not the City processed the project in accordance with the policies of the certified LCP. In this case, the procedures listed in the City's certified IP for processing Coastal Development Permits, including required hearings, findings, action notices, and appeals, were followed. The City-approved LCDP, LCDP 18-033, is the subject of these appeals; however, while contentions related to the CPCE are not before the Commission, the procedures listed in the City's certified IP for CPCEs states: "no public hearing or notice shall be required for a project determined to be exempt" (Section 21.25.906.C). Nevertheless, to improve its transparency, the City has recently begun posting CPCE actions on its website.

The subject project is for the trimming, relocation, and addition of mature trees in the public right-of-way in connection with the City-approved Complete Streets project at Marina Drive between 2<sup>nd</sup> Street and Studebaker Road. The replacement of 22 of the street trees is part of the City's effort to address the unpermitted removal of mature palm trees in the fall of 2018. The City also met the requests by Commission staff to produce a tree replacement plan that includes the location and size of proposed replacement trees suitable for great blue heron nesting habitat and planting specifications. As part of the City's record on the subject local coastal development permit, the City provided these plans, which are the site and landscape plans for the proposed project involving tree relocation and addition of new trees within the Marina Drive public right-of-way (**Exhibit 3**), and planting specifications (**Exhibit 7**). The tree replacement plan includes 1:1 replacement of the 22 palm trees that were removed without a permit and the addition of 21 new broad canopy trees. The City also conditioned the project to develop a five-year monitoring program prior to tree trimming or relocation that will be shared with Commission staff (LCDP 18-033, Special Condition 6). As approved by the City, the types of new mature trees must be *Washingtonia robusta* if they are palms (same as existing species) per Special Condition 5 of LCDP 18-033, which are documented to support great blue heron nesting in the urbanized environment at this location. Other canopy tree species must be approved by a qualified biologist (LCDP 18-033, Special Condition 4). The mature palm trees that would replace those that were removed without a permit, which were described by one of the co-signing appellants to have been approximately 50 to 60 feet tall, are proposed to be 30 feet tall (brown trunk height) upon planting; however, palm trees grow quickly and have the potential to reach heights over 120 feet. In addition, Special Conditions 2 and 3 of the City's CDP require the approved work to adhere to the Commission-approved Tree Trimming and Tree Removal Policy, CDP No. 5-08-187, which outlines if and when certain work on trees can be permitted. As approved and conditioned by the City with the relocation, addition, and maintenance of appropriate mature trees consistent with the City's tree replacement plan and monitoring plan and Commission's Tree Trimming and Tree Removal Policy, suitable great blue heron nesting habitat will be restored.

The appellants' main contentions are that any movement of the trees jeopardizes the health of the trees and that the proposed removal and relocation of trees would not be necessary if the Complete Streets project for reductions in automobile lanes and additions of pedestrian paths,

bike lanes, a bus stop, and free public parking, which the appellants' feel was improperly processed and approved, had not been approved. However, the work implemented pursuant to the City's exemption determination to improve alternative transportation options on Marina Drive is not part of the CDP that was appealed to the Commission, and the appeal contentions related to that exemption determination are not before the Commission. Therefore, this staff report addresses the contentions related to the City-issued CDP for the tree trimming and relocation project, although, given the relationship between the CDP and the comprehensive Complete Streets project, cumulative impacts of both projects together are considered where appropriate.

Regarding the appellants' concerns related to tree health, tree trimming and relocation may adversely impact individual trees and any wildlife or nesting sites, therein, if appropriate precautions are not taken. Anna Christensen provided, as part of her appeal, images of the storage of removed trees in poor conditions (**Exhibit 2**). However, City staff has assured Commission staff that the storage site depicted has been cleaned up and fenced off for tree protection, which was confirmed by one of the co-signing appellants. The City has also contracted American Landscape and Senna Tree Company, which specializes in transplanting large trees and holds the world record for the largest tree on record to ever be successfully transplanted. Furthermore, as approved by the City, 227 (85 disturbed and 142 undisturbed) mature trees of the permitted types and sizes are required to exist on-site under Special Condition 1 of the City's LCDP. The five-year monitoring program, required through Special Condition 6 of the City's CDP, will be developed and shared with Commission staff to ensure the habitat's successful establishment. As described above, the project, as approved and conditioned by the City of Long Beach, will not have a significant adverse impact on coastal habitat.

The appellants contend that the City's approval of the tree trimming/relocation project will adversely affect public access to the coast because it is an essential component of the Complete Streets project, which the appellants state involves a reduction in roadway capacity that will increase vehicle traffic along Marina Drive and, thus, impair access to the coast. As stated above, however, the City already approved the pedestrian path, bicycle and bus access, and public parking availability improvements that received the exemption through an LCP Categorical Exclusion. In this case, the Executive Director has reviewed the City's exemption determination for the reduction in automobile lanes, addition of bike lanes, a bus stop, and public parking, modifications to the street median, and restriping of Marina Drive (described as the "Complete Streets Project") and concurs with the City's determination that those elements of the Complete Streets project are exempt from the requirement to obtain a coastal development permit pursuant to the provisions of the City's certified LCP.

Nevertheless, even taking into account the cumulative effects of the tree trimming/relocation project in conjunction with the broader Complete Streets project, the appeals do not raise a substantial issue as to conformity with the LCP or Coastal Act public access policies because the City has found (and the Commission Executive Director concurs) that the Complete Streets project does not impair access to the coast, and there are not expected to be any additional impacts to public access resulting from the City-approved tree trimming project. To the contrary, the Complete Streets project is designed to and will encourage public access to the coast, as it consists of measures to improve pedestrian access, provide protected bike lanes, add a bus stop,

and add 94 free public parking spaces. Therefore, even accounting for the cumulative impacts of the Complete Streets project and the tree trimming project currently before the Commission, the City's approval of Permit No. LCDP 18-033, relating to tree trimming, relocation, and additional tree planting is consistent with the public access policies of the City's certified LCP and the Coastal Act.

For the reasons described above, the subject project, as approved with special conditions by the City of Long Beach, does not adversely affect coastal resources and does not violate the public access policies of the Coastal Act or any policies of the certified LCP and is consistent with these policies. Therefore, the Commission finds that no substantial issue exists with respect to the grounds on which the appeals were filed.

Applying the five factors listed in the prior section clarifies that the appeals raise “no substantial issue” with respect to the public access policies of the Coastal Act and the policies of the certified LCP, and therefore, do not meet the substantiality standard of Section 30265(b)(2).

The first factor is the degree of factual and legal support for the local government's decision that the City-approved development is consistent with the relevant provisions of the certified LCP. The City supported its finding that the proposed tree trimming, relocation, and tree planting would not adversely impact coastal resources with the results of four bird surveys conducted over twelve months, which identified no active or inactive bird nests or special-status bird species at the project site. In addition, LCDP 18-033 includes conditions requiring additional bird surveys prior to initiating development and potential surveys and BMPs, as required by the Commission-approved Tree Trimming and Tree Removal Policy. While the City did not discuss the unpermitted removal of trees in its staff report (as asserted by CARP), the City did follow the requests of Commission staff to address the unpermitted development and proposed the planting of more trees than would otherwise be required. The City also found that the project would not adversely impact public access and, as conditioned, would protect nesting birds consistent with the public access policies and conservation goals of the certified LCP. Therefore, the Coastal Commission finds that the City provided an adequate degree of factual and legal support for the local government's decision to approve the tree work subject to the City-imposed special conditions.

The second factor is the extent and scope of the development as approved or denied by the local government. This project consists of tree trimming, relocation, and planting within the median and along both sides of Marina Drive adjacent to commercial developments. 142 of the trees existing on-site would not be disturbed. Forty-four (less than twenty percent of total trees approved on-site) will be relocated and forty-one will be added to the site. As conditioned by the City, the relocation and installation of these mature trees must adhere to the Commission-approved Tree Trimming and Tree Removal Policy protections. While the local government decision on appeal is for development relating only to trees within the public right-of-way at the subject site, the project is related to the Complete Streets project that includes the addition of public parking, bike lanes, pedestrian paths, and a bus stop, and which mitigates for the loss of auto vehicle traffic lanes by offering alternative modes of transportation to serve members of the public who travel by means other than automobiles and will, overall, improve public access to the coast. In addition, protecting habitat for nesting birds is important and the extent and scope of

the proposed development is significant; however, the City has conditioned the project to protect and enhance habitat for nesting birds. Therefore, the project, as approved and conditioned by the City, minimizes impacts to important habitat and is consistent with the City's certified LCP and the public access policies of the Coastal Act.

The third factor is the significance of the coastal resources affected by the decision. With the development of the coast and loss of natural wetlands, suitable coastal habitat for wildlife use, including great blue heron nesting that has been observed in the project vicinity, is scarce in southern California. Impacts of the proposed tree-related development on coastal resources, as identified by both the City and the appellants could involve adverse impacts to the disturbed trees and any species therein during tree trimming, removal, transport, planting, and management. These impacts are mitigated through the City's imposition of special conditions including adherence to a tree replacement plan that contains BMPs for the selection, handling, storage, planting, and maintenance of appropriate mature trees, a five-year monitoring program, and the Commission-approved Tree Trimming and Tree Removal Policy for tidelands in Long Beach. The City will be sharing the monitoring plan with the Commission to ensure successful establishment of the habitat. Therefore, the project will not adversely affect coastal resources.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. Following the unpermitted removal of trees that had been previously documented to support heron nesting, the City and Commission staff discussed the importance of requiring coastal development permits for any work on trees in the coastal zone. The City's subsequent revocation of a CPCE that included tree work at the subject site and submittal of a CDP application that included a tree replacement plan and proposed the installation of additional new mature trees, corrected the City's prior, incorrect exemption of such work from the requirement to obtain a CDP, thus establishing a precedent for appropriate review and permitting of future developments involving trees in the coastal zone. Similarly, the City agreed to immediately remove the netting placed on palm trees located within the project site to address the City's implementation of a project-related BMP prior to the Commission's action on the subject appeal. In addition, the City's decision to approve tree trimming, relocation, and installation at the project site subject to six special conditions, including required monitoring over a minimum of five years and use of the Commission-approved Tree Trimming and Tree Removal Policy, protects habitat for coastal bird species in the City of Long Beach's coastal development permit jurisdiction area consistent with LCP species and habitat protection policies. The City's action on this project, therefore, does not raise any concerns that the LCP may be interpreted in a manner inconsistent with the Coastal Act.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. These appeals raise regional issues relating to the impacts of development on southern California's stock of suitable heron nesting habitat. With the loss of natural wetlands and native trees upon replacement by marinas and other developments, many heron colonies, including the Alamitos Marina heron colony found at the subject site, have adapted by relocating their nesting colonies to stands of tall non-native trees in highly developed areas. Suitable great blue heron nesting sites, which play an important role in breeding, are scarce in southern California and at least seven identified heron nests had been located in the trees that were removed without a CDP. Thus, the replacement of each tree removed, planting of new trees, and careful management of the trees is necessary to restore and maintain the biological significance



of the trees in this area. These issues were addressed by the City through six special conditions of LCDP 18-033 that provide potential nesting sites for great blue herons and other shorebirds and require monitoring for the successful establishment of such habitat. The City voluntarily conditioned its approval of the proposed tree work on the requirements to conduct the work in accordance with the description in the LCDP, comply with the Commission’s Tree Trimming and Tree Removal Policy, select appropriate tree species, and develop a monitoring program in order to protect nesting bird sites from potential impacts of the City-approved development. Thus, the City-approved project will help prevent further loss of suitable habitat for nesting coastal birds.

In conclusion, the Commission finds that the appeals do not raise a substantial issue as to conformity with the City’s certified LCP or the public access policies of the Coastal Act, and therefore, do not meet the substantiality standard of Section 30625(b)(2), because, as conditioned by the City, the proposed project is consistent with the certified LCP and Coastal Act public access policies.

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

City of Long Beach Local Coastal Program