

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEALS – DE NOVO

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

Applicant: City of Long Beach

Project Location: Marina Drive between 2nd Street & Studebaker Road, City of Long Beach, Los Angeles County.

Project Description: Relocation of 30 palm trees, addition of 22 new mature palm trees and 23 new native canopy trees, and tree trimming in the public right-of-way along Marina Drive between 2nd Street and Studebaker Road.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

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 2nd Street and Studebaker Road. The subject site is the first public road from the sea (Alamitos Bay) in the Southeast area of Long Beach between 2nd 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, public parking, and waterfront promenades. All of the subject work, including tree relocation, installation, and trimming is proposed within the public right-of-way in the street medians and along either side of the public road.

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 removed the trees, for the violations described above. Suitable heron nesting sites, which play an important role in

A-5-LOB-19-0005
(City of Long Beach)
Appeal – De Novo

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.

On January 23, 2019, Citizens About Responsible Planning (Ann Cantrell, et. al), Anna Christensen, and Melinda Cotton filed three appeals of LCDP No. 1810-12/LCDP18-033, alleging concerns regarding the project's consistency with the general coastal resource protection and public access goals of the certified LCP. Specifically, the appellants contended that any movement of existing mature trees was unnecessary and would adversely impact the trees themselves and birds, including great blue herons, using the trees as habitat.

On March 6, 2019, the Commission, after a public hearing, determined that a substantial issue existed with respect to the grounds on which the appeals had been filed because of concerns relating to adverse impacts of the City-approved work on nesting birds and tree species composition.

Subsequent to the Commission's action, the City of Long Beach (applicant) worked with Commission staff to revise the project to reduce the number of trees proposed to be relocated, add additional canopy trees, and use an assortment of native, low-water use canopy trees. Additionally, the City has agreed to construct development in a manner that will avoid impacts to nesting birds, adhere to tree trimming and relocation best practices, and ensure successful establishment of coastal habitat that can continue to support shore birds and other biological resources.

Therefore, staff recommends that the Commission **approve** Coastal Development Permit No. A-5-LOB-19-0005 with **five (5)** special conditions requiring the applicant to: **1)** adhere to the proposed project, as conditioned; **2)** revise project plans to allow for sufficient spacing between trees and avoid shading; **3)** retain a qualified biologist to survey the project site and adjacent area, monitor construction activities, and follow protocol if nests, courtship, or nesting are observed (e.g. establish a 300-foot buffer area from the sensitive site where no work can be done without approval from the Executive Director); **4)** follow best management practices for tree relocation and tree trimming, require future landscaping be non-invasive, native, and drought-tolerant, and submit plans for any proposed planter boxes to the Executive Director for approval; and **5)** revise and implement a five-year tree monitoring program.

The City is in agreement with the staff recommendation. The motion and resolution to carry out the staff recommendation are on page four of this report.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	4
II. STANDARD CONDITIONS.....	4
III. SPECIAL CONDITIONS.....	5
IV. FINDINGS AND DECLARATIONS.....	10
A. PROJECT LOCATION & DESCRIPTION	10
B. STANDARD OF REVIEW	11
C. BIOLOGICAL RESOURCES.....	11
D. PUBLIC ACCESS & RECREATION	14
E. UNPERMITTED DEVELOPMENT.....	15
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT	16

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Letters with Tree Relocation BMPs](#)

[Exhibit 4 – Marina Drive Tree Monitoring Program](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. A-5-LOB-19-0005 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 the Long Beach certified Local Coastal Program and with the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Permit Compliance.** All development must occur in strict compliance with the proposal as set forth in the permit application, subject to any special conditions. Any deviation from the approved project, including, but not limited to, changes to the tree relocation or planting plans ([Exhibit 2](#)) or the Marina Drive Tree Monitoring Program ([Exhibit 4](#)), must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.

2. **Breeding and Nesting Bird Surveys.** For any construction activities, including tree trimming and relocation, between February 15th and September 1st, the applicant shall retain the services of a qualified biologist with experience in conducting bird behavior, nesting bird, and noise surveys (hereinafter, “biologist”) to conduct said surveys in order to assess bird behavior, the presence nesting birds including, but not limited to, black-crowned night herons, great blue herons, great egrets, and snowy egrets, and to document ambient and project noise levels. The biologist shall also monitor project operations. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit the name and qualifications of biologist, for the review and approval of the Executive Director. All project construction and operations shall be carried out consistent with the following:
 - A. The applicant shall ensure that a qualified biologist shall conduct the surveys 15 calendar days prior to the construction activities, including any tree trimming or relocation, to detect any active bird breeding behavior or active bird nests in all trees within 500 feet of the project and to document ambient and project noise levels. A follow-up survey must be conducted three (3) calendar days prior to the initiation of project activities and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first. All bird breeding behavior, nesting bird, and noise surveys shall be submitted to the Executive Director within two days of completion.

 - B. If an active nest(s) of any song bird is found within 300 ft. of the project, an active nest(s) for any raptor species is found within 500 ft. of the project, or bird nesting or courtship behavior is observed within the project site, the applicant’s biologist shall monitor bird behavior and construction noise levels. The nest(s) and nesting bird(s) shall not be removed or disturbed. The biologist shall be present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. The biologist shall monitor birds and noise every day at the beginning of the project and continuing throughout all periods of significant construction activities. Construction activities may occur only if construction noise levels are at or below the demonstrated ambient noise levels or a peak of 65 dB at the nest site(s). If construction noise exceeds the ambient noise levels or a peak level of 65 dB at the nest site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction shall cease and shall not recommence until either new sound mitigation can be employed or the birds have fledged.

- C. If an active nest of a federally or state-listed threatened or endangered species or bird species of special concern is found within 300 ft. of the project, or an active nest for any species of raptor is found within 500 ft. of the project, the applicant will notify the appropriate State and Federal Agencies within 24 hours, and appropriate action specific to each incident will be developed. The applicant will notify the California Coastal Commission by e-mail within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.
- D. The applicant must cease work if informed by the biologist that proceeding with any development authorized by this permit would adversely affect breeding or nesting birds. The biologist shall immediately notify the Executive Director if activities outside of the scope of the subject Notice of Impending Development occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised or supplemental program to adequately mitigate such impacts.

3. **Landscape Plan.**

- A. Any tree relocation activities shall comply with the following Best Management Practices:
 - 1. At least two months prior to relocation, the applicant shall prune the roots of any trees that will be relocated to reduce the amount of time for new roots to establish in the new location. The two month period can be reduced upon approval by the Executive Director.
 - 2. Prune dead fronds and lower rows of green fronds leaving green fronds in the 11:00 and 1:00 positions up to the horizontal. Tie the fronds together with hemp twine to reduce transpiration during transplanting. Excavate root ball with backhoe a minimum distance of 2' from the base of trunk to capture a 4' x 4' or larger root ball with equal or greater depth. Secure the root ball appropriately. Dig planting pit 1.5' deeper than root ball height and 1' wider.
 - 3. For 40' to 55' palms use nylon sling rated for a minimum of 16,000 pounds in a choker hitch and attach to trunk 1/3 height or as required to allow vertical control of palm. An additional 1/2" rope may be required to prevent sling from sliding up the palm trunk. The rope can be tied off to the base of the trunk with half hitch, additional tag lines are used to control suspended load.
 - 4. Drainage sumps and inspection tubes (see enclosed diagram) can be installed in planting pit using various methods, such as a 4" drain pipe perforated at the bottom and covered with a fabric sock placed vertically in the planting pit and daylighting above grade. Such systems can be an economical and effective means to monitor and evacuate excess water.
 - 5. Immediately after excavation, set the palm plumb in planting pit and backfill with 100% site soil. The palm shall be replanted at the same grade from where it was dug. Water jet in the backfill, which shall be firmly compacted with a high percentage of sand and silt material, while holding the palm plumb with the crane. Air roots shall not be buried. After planting, palms remain tied for (60) days to promote root growth

and lower transpiration rates. Untie palms if rainy weather occurs or if ties do not break on their own in (60) days.

6. Any relocated or newly planted trees shall be irrigated as needed until successfully established.
- B. Any tree trimming activities (minor modifications to foliage, including cutting or removing individual leaves, fronds, flowers, or branches) shall comply with the following best practices:
1. Between February 15th and September 1st (during nesting season), the applicant shall not conduct tree trimming activities unless a threat to public health and safety exists or unless required by Special Condition 4.A.2 of this permit.
 2. If tree trimming cannot feasibly avoid the nesting season because a health and safety danger exists, the following guidelines must be followed:
 - a. A qualified biologist or ornithologist shall conduct surveys and submit a report at least one week prior to the trimming of a tree (only if it is posing a health or safety danger) to detect any breeding or nesting behavior in or within 300 feet of the work area. A tree trimming plan shall be prepared by an arborist in consultation with the qualified biologist or ornithologist and a representative of the Audubon Society. The survey report and tree trimming and/or removal plan shall be submitted for the review and approval of the Executive Director of the Coastal Commission, the Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Director of the Parks, Recreation and Marine. The Department of Parks, Recreation and Marine shall maintain the plans on file as public information and to be used for future tree trimming and removal decisions. The plan shall incorporate the following:
 - i. A description of how work will occur.
 - ii. Work must be performed using non-mechanized hand tools to the maximum extent feasible.
 - iii. Limits of tree trimming and/or removal shall be established in the field with flagging and stakes or construction fencing.
 - iv. Steps shall be taken to ensure that tree trimming will be the minimum necessary to address the health and safety danger while avoiding or minimizing impacts to breeding and nesting birds and their habitat.
 - b. Prior to commencement of tree trimming the City of Long Beach Department of Parks, Recreation and Marine shall notify in writing the Executive Director of the Coastal Commission, the Department of Fish and Game, and the U.S. Fish and Wildlife Service of the intent to commence tree trimming or removal.
 3. The amount of trimming at any one time shall be limited to preserve the suitability of the tree for breeding and/or nesting habitat, including adequate nest support and

foliage coverage, and, in no case, shall trimming exceed 50% of the green fronds on one tree.

4. Any trimming of trees with nests shall be supervised by a qualified biologist or ornithologist and a qualified arborist to ensure that adequate nest support and foliage coverage is maintained in the tree, to the maximum extent feasible, in order to preserve the nesting habitat. Trimming of a nesting tree shall only be permitted if the applicant, in consultation with a qualified arborist, the California Department of Fish and Wildlife, and the Executive Director, determines that such trimming is necessary to protect the health and safety of the public.
5. Trees or branches with a nest that has been active anytime within the last five years shall not be trimmed or disturbed unless a health and safety danger exists.

C. Any future landscaping of the site shall be consistent with the following:

1. Vegetated landscaped areas shall consist of 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>).
2. 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.

D. PRIOR TO CONSTRUCTION AND INSTALLATION OF PLANTER BOXES, the permittee shall submit, for the Executive Director's review and approval, an 11 x 17 set of plans that includes elevations of the planter boxes, materials proposed to be used, and evidence that adverse impacts to the trees' root systems and on-site drainage are avoided. Neither the walls nor the base of the planter boxes shall extend more than 12-inches below natural grade. The permittee shall undertake development in accordance with the approved plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required.

4. **Marina Drive Tree Monitoring Program.**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval by the Executive Director, a final Tree Monitoring Program, consistent with the Marina Drive Tree Monitoring Program received by the Commission on April 22, 2019, except that it shall be revised to:

1. Eliminate any references to the City's voided local coastal development permit.

2. Include and require compliance with the special conditions of Coastal Development Permit No. A-5-LOB-19-0005.
 3. Require that the annual monitoring reports and any intermittent recommendations prepared by the qualified arborist are submitted to the Executive Director within one (1) week of publication.
 4. Require the City send evidence and written verification that the qualified arborist's recommendations have been implemented within six (6) weeks of the City's receipt of the recommendation(s).
 5. Include a section that defines "successful establishment" of relocated, planted, or replaced trees. Trees with a "D" or "F" designation shall be considered unsuccessful and shall be replaced. The applicant shall notify the Executive Director and receive written approval of any proposed tree replacement prior to commencement of replacement activities. Trees with a "C" designation shall not be considered unsuccessful if plan for recovery is to be implemented.
 6. Include a plan for appropriate disposal of trees that require replacement pursuant to the final Tree Monitoring Program.
- B. Five years from the date of issuance of Coastal Development Permit No. A-5-LOB-19-0005, the applicant shall submit for the review and approval of the Executive Director, a monitoring report prepared by a licensed arborist that assesses the health of any trees relocated, planted, or replaced as a result of the approved development, as described in the staff report dated April 25, 2019. The five-year monitoring report shall include:
1. A summary of the results from each annual monitoring report and discussion of implementation of recommendation(s) made by the qualified arborist;
 2. A list and map of any trees that required replacement during the five-year period and a plan for continued monitoring of those trees;
 3. Photographic documentation of the trees' conditions after one year post-relocation or planting and again after five years;
 4. An "A" through "F" designation for each relocated, planted, or replaced tree within the project site using the grading system identified in the final Monitoring Program;
 5. A discussion of successful establishment of the relocated, planted, or replaced trees. If any of these trees have a "D" or "F" designation, then the tree establishment shall be considered unsuccessful and the applicant, or successors in interest, shall submit a Tree Replacement Plan prepared by a qualified arborist to reestablish healthy trees that are suitable for nesting habitat along Marina Drive between 2nd Street and Studebaker Road. The Tree Replacement Plan shall specify measures to remediate the portions of the Program that failed or are not in conformance with the original approved Program and mitigate for any temporal impacts resulting from the Program's failures.
 6. Recommendations for continued tree maintenance, including plans to improve the health of any trees with a "B" or "C" designation and irrigation plans; and

7. A log of any observed bird nesting behavior or bird nests observed in or within close proximity to the relocated, planted, or replaced trees.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION & DESCRIPTION

The subject site is located at the first public road from the sea, East Marina Drive between 2nd 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, public parking, and waterfront promenades. The subject development is located within the public right-of-way, both within the street medians and along either side of the street.

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 removal of 22 palm trees that supported heron nesting habitat and netting of palm fronds (see the section titled Unpermitted Development, below), 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.

On January 23, 2019, appeals of a City of Long Beach Coastal Development Permit 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 2nd Street and Studebaker Road were filed citing concerns regarding the project’s consistency with the general coastal resource protection and public access goals of the certified LCP. Specifically, the appellants contended that any movement of existing mature trees was unnecessary and would adversely impact the trees themselves and birds, including great blue herons, using the trees as habitat.

On March 6, 2019, the Commission, after public hearing, determined that a substantial issue existed with respect to the grounds on which the appeals had been filed because of concerns relating to impacts of the City-approved work on nesting birds and tree species composition. Therefore, the City of Long Beach LCDP was voided and the Commission may consider alternative project design or mitigation measures in its de novo review.

Subsequent to the Commission’s action, the City of Long Beach (applicant) worked with Commission staff to revise the project to reduce the number of trees proposed to be relocated, to add additional canopy trees, and to use an assortment of native, low-water use canopy trees. The proposal before the Commission is the relocation of 30 palm trees, addition of 22 new mature palm trees and 23 new native canopy trees (45 total), and future maintenance and tree trimming in the public right-of-way along Marina Drive between 2nd Street and Studebaker Road. The City’s site plans for the proposed project, received by Commission staff on April 19, 2019 and

attached as [Exhibit 2](#), were prepared in consultation with the City’s biologist, arborist, and landscape architect.

B. STANDARD OF REVIEW

The City of Long Beach has a certified Local Coastal Program that serves as the standard of review for the proposed development. In addition, because the proposed project is located at the first public road from 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.

C. BIOLOGICAL RESOURCES

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.

The City of Long Beach LCP, certified in 1980, contains policies that prioritize the protection of biological resources, especially in areas adjacent to environmentally sensitive habitat areas and recreation areas. The project site is located within 1,000 feet of the Los Cerritos Wetlands and Alamitos Bay; while surrounded by man-made developments, these water resources support biological productivity, including by serving as food sources for birds. The palm trees located at the proposed project site (approximately 193 total) provide habitat for the Alamitos Marina heron colony, which, like other heron colonies in urban environments, has adapted to urbanization by relocating its nesting colony to stands of tall non-native trees the highly developed area including the project site. With the loss of natural wetlands and native trees upon replacement by marinas and other developments, the protection of these street trees is important to preserve remaining suitable habitat for species such as great blue herons.

As proposed, the City will not be permanently removing any trees. Thirty trees, or approximately 15%, of the City’s 193 recorded palm trees on-site, will be relocated within the project site as shown in [Exhibit 2](#) to accommodate new sidewalks, bike lanes and a bus stop, modified medians, and additional free public parking. These street improvements (part of the City’s

Complete Streets project) were 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 and are not presently before the Commission.

Although the project will have some effect on trees potentially used by nesting birds, the City has agreed to reduce the number of trees that will be relocated from 60 to 30, which is the minimum number required to accommodate the City's ADA compliant sidewalks, new free public parking, and other street improvements exempted from CDP requirements by the City as part of the Complete Streets project. Thus, the overall potential to impact resident bird species is reduced. In addition, as conditioned by this permit, the project will be implemented in such a way as to avoid disturbing active nests and to minimize overall impacts to birds that may be in the vicinity. Specifically, the City must comply with the best management practices (BMPs) listed in **Special Condition 3.A**, which includes measures to safely prepare, transport, and replant mature trees of varying heights. **Special Condition 1** requires all development to be carried out per the City's proposal and permit conditions. Similarly, **Special Condition 3.B** only permits tree trimming during nesting season when required for public health and safety or to comply with **Special Condition 3.A** and, when necessary in those cases, trimming must not exceed 50% of the green fronds of a trees, must be monitored by qualified specialists, and must avoid fronds or branches used for nesting within the last five years. Staff identified the recommended BMPs based on the comments received from the public, Commission deliberation following the public hearing on Appeal No. A-5-LOB-19-0005, recommendations prepared by the City's tree relocation contractor ([Exhibit 3](#)), as well as, policies in the Commission's Tree Trimming and Removal Policy (CDP 5-08-187) for projects located on State tidelands in Long Beach. The subject project site is not located on State tidelands; therefore, CDP 5-08-187 does not normally apply to development at the project site.

The tree policy from CDP 5-08-187 was incorporated into the City's LCDP for tree trimming, relocation, and installation along Marina Drive. This policy prohibits any tree trimming and removal during nesting season, unless determined to be necessary for public health and safety reasons. During the City's presentation to the Commission at the hearing on Appeal No. A-5-LOB-19-0005, the City suggested that it intended to move forward with the development during nesting season, inconsistent with CDP 5-08-187. Upon the Commission's Substantial Issue determination, the LCDP was voided; thus, any conditions of that permit (including incorporation of CDP 5-08-187) are no longer in effect. As the project progressed into the De Novo phase, the City proposed a new tree policy that would allow them to relocated, trim, and plant trees during nesting season. This policy was determined by Commission staff to be inadequate to protect nesting birds. Thus, **Special Condition 2** is imposed to avoid impacts to nesting birds including, but not limited to, black-crowned night herons, great blue herons, and snowy egrets, by requiring the City to retain a qualified biologist to survey the site for nests, breeding behavior, and noise and monitor construction operations.

Special Condition 2 does allow some project activities during nesting season, if consistent with all imposed special conditions; however, if nests are found or nesting or courtship behavior is observed during nesting season (February 15th to September 1st), the applicant must adhere to a 300-foot buffer wherein no tree work will be conducted; if nesting birds remain in trees outside of the nesting season, the buffer applies until the observed breeding behavior has ceased, the chicks have fledged, or the applicant has received approval from the Executive Director to

conduct the work. **Special Condition 2** also requires sound mitigation measures to be implemented if noise levels during project activities exceed ambient noise levels. If a qualified biologist determines that work authorized by this permit could adversely affect any sensitive bird species, **Special Condition 2.D** requires the applicant to cease work and notify the Executive Director. As previously mentioned, tree trimming is not allowed during nesting season unless required for public health and safety reasons or to comply with the special conditions of this permit (**Special Condition 3**).

The City is also proposing to plant 23 new canopy trees and 22 30-foot tall palm trees (*Washingtonia robusta*) to replace 22 palms that were removed without the necessary coastal development permit in the fall of 2018 and mitigate for impacts to the older nesting sites in those removed trees and for the temporal gap between their removal and the installation and growth of the replacement trees. To address the Commission’s deliberations on Appeal No. A-5-LOB-19-0005 (3/6/19), the proposed canopy tree species—Catalina Ironwood (*Lyonothamnus floribundus*), Western Sycamore (*Planatus racemosa*), and Western Redbud (*Cercis occidentalis*)—are all native trees that can provide habitat for shore birds and require low water input. Furthermore, **Special Condition 3.C** requires any future landscaping on-site to also be composed of native, low water use species. **Special Condition 3.D** requires the applicant to submit plans for any proposed planter boxes on-site to the Executive Director for written approval prior to construction and installation of such structures to avoid adverse impacts to the trees’ root systems and the drainage on-site.

In order to ensure that the new and relocated trees establish successfully, the City has proposed a five-year tree monitoring program ([Exhibit 4](#)). The City’s five-year monitoring plan includes requirements for a qualified arborist to evaluate the health of each relocated or newly planted tree, provide the City and Commission with recommendations for improved care of the trees to be implemented within six weeks of said recommendation, and report annually to the City with the status of the trees and further recommendation, and protocols for replacing unsuccessful trees. Replacement of unsuccessful trees is authorized by this permit, only if recommended by the arborist and approved by the Executive Director. In addition, **Special Condition 4** requires the applicant to revise its Marina Drive Tree Monitoring Program to include the special conditions imposed on the proposed project, include criteria for successful establishment of trees, and submit annual monitoring reports and a five-year monitoring report prepared by a qualified arborist to the Executive Director that include information on the health of each relocated, planted, or replaced tree, recommendations for improving tree health, and reports on the City’s implementation of the arborist’s recommendations. If the five-year monitoring report indicates that a significant number of the relocated, planted, or replaced trees did not establish successfully, then the applicant must submit a Tree Replacement Plan to ensure that the proposed development will not adversely impact what remains of Southern California wading bird rookeries.

The City is proposing to carry out this development during nesting season to meet deadlines for other related development¹. Moving trees that provide habitat for nesting birds and engaging in

¹ I.e. the commercial development at 2nd Street and Pacific Coast Highway approved a City of Long Beach Local CDP (proposed to open Fall 2019) and the City’s “Complete Streets” project to improve coastal

construction work (adjacent development projects) during the nesting season could cumulatively impact birds in the vicinity of the project because of elevated noise levels during construction or, in this case, movement of potential habitat. Thus, the Commission frequently conditions projects to limit construction-related activities to outside of the nesting season. However, development during nesting season is not necessarily prohibited under State or Federal law. The City’s certified LCP policies discussed above require that marine resources are “maintained, enhanced, and, where feasible, restored.” In addition, in order to approve a coastal development permit, the Coastal Commission must find that there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect which the activity may have on the environment (see Section IV, E of this staff report). In this case,

As conditioned, the proposed development would not adversely impact coastal resources, including nesting shore birds or their habitat, consistent with the certified City of Long Beach LCP.

D. PUBLIC ACCESS & RECREATION

As explained above, under Coastal Act Section 30604(c), every coastal development permit issued to proposed development located between the nearest public road and the sea must include a finding that the project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act.

Relevant LCP Policies

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.

The proposed project is associated with a City project (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, which was not appealed to the Executive Director per the CDP processing policies of the City’s certified LCP. The work implemented pursuant to the City’s exemption determination to improve alternative transportation options on Marina Drive is not before the Commission. However, given the relationship between the proposed project and the Complete Streets project described above, cumulative impacts of both projects together are considered.

access and access to the new shopping center by adding new sidewalks, bike lanes and a bus stop, modifying medians, and additional public parking.

The project site currently contains incomplete sidewalks and automobile traffic lanes used by the public, which may be temporarily impacted by the proposed development. However, adequate public access to and along the waterways and scenic corridors exist in the project vicinity to accommodate temporary impacts to coastal access. In addition, recreational users of the marina and adjacent shops and restaurants will not be restricted from accessing and using those resources and facilities as a result of the proposed development. Furthermore, accounting for the cumulative impacts of the proposed project currently before the Commission and the Complete Streets project (approved by the City), because traffic impacts resulting from the proposed project are temporary and traffic impacts from the elimination of one car lane in each direction is mitigated by the addition of bike lanes, pedestrian paths, and a bus stop; free public parking spaces are added through the Complete Streets project; and the Complete streets project will improve public access by offering alternative modes of transportation to serve members of the public who travel by means other than automobiles; as proposed and conditioned, the development will not impact public access to the coast or beach or recreational opportunities along the coast.

E. UNPERMITTED DEVELOPMENT

Unpermitted development has occurred on the project site, including, but not necessarily limited to, the removal of 22 palm trees that supported heron nesting habitat and netting of palm fronds. For said development, the developer of an adjacent commercial project, who staff understands removed the trees, did not obtain the necessary coastal development permit. 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 enforcement staff sent a notice of violation to the developer for the violations described above. With the loss of natural wetlands and native trees to development along the coast, many heron colonies, including the Alamitos Marina heron colony found at the subject site, have adapted by relocating their nesting 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.

On February 17, 2019, Commission staff received an email from a member of the public 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 had covered the tree canopies with nets before nesting season to discourage nesting that could be interrupted by the pending development project. This netting of the trees, however, was conducted without necessary authorization. After discussing the matter with Commission staff, 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.

As conditioned, the proposed project addresses the unpermitted development described above by authorizing the planting of the same number of trees that were removed (22 trees) to replace the removed trees and for planting of additional native trees (23 trees) to help mitigate for any

impacts resulting from the unpermitted removal of the trees and to comprehensively address the violation at issue. As proposed, the replacement palm trees are of the same species as those used by great blue herons in the area and the new additional native trees, especially the Western Sycamore and Catalina Ironwood, can grow to sufficient heights and have large canopies to be suitable for wading bird nesting. Adherence to **Special Conditions 3 and 4** will ensure that the replacement trees and habitat created through the addition of new native trees will establish successfully. 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.

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.

F. 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 City of Long Beach Department of Development Services is the lead agency for the purposes of CEQA review. On November 8, 2018, the City determined that the project (as approved by the City) is categorically exempt from CEQA review in accordance with State Guidelines Section 15301 (Class 1, Existing Facilities).

The proposed project has been conditioned in order to be found consistent with the City's certified LCP and public access and recreation policies of Chapter 3 of the Coastal Act. Mitigation measures, in the form of special conditions, require the applicant to conduct all development as proposed and conditioned, avoid impacts to nesting birds, adhere to tree trimming and relocation best management practices, design planter boxes to avoid impacts to roots, and implement a five-year tree monitoring program to ensure successful establishment of coastal habitat that can continue to support shore birds and other biological resources.

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.

Appendix A – Substantive File Documents

- *City of Long Beach Local Coastal Program*
- *Coastal Permit Categorical Exclusion 18-10*