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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE and DE NOVO/REGULAR CALENDAR

Appeal / CDP Application No.: A-5-LOB-20-0043/5-20-0508

Applicant: City of Long Beach Department of Public Works (Attn: Brian Polivka)

Local Government: City of Long Beach

Local Decision: Approval with Conditions

Appellants: Citizens About Responsible Planning (c/o Ann Cantrell) and Sierra Club (c/o Anna Christensen)

Project Location: Belmont Pier Plaza (39th Place), Long Beach, Los Angeles County (APN: 7256-041-901)

Project Description: Appeal by Citizens About Responsible Planning and Sierra Club of City of Long Beach action granting permit to Long Beach Public Works with conditions for removal of one tree, planting of two trees, modifications to planters, and installation of a mural and wayfinding signage at Belmont Pier Plaza (39th Place) Long Beach, Los Angeles County. Also includes the coastal development permit application for the proposed development within the Coastal Commission's original jurisdiction including landscaping and signage.

Staff Recommendation: Determine that a substantial issue exists and approve a CDP with conditions.

Important Hearing Procedure Note: For the Substantial Issue 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 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, appellant, 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 appeal does raise a substantial issue, the de novo phase of the hearing will immediately follow, during which the Commission will take public testimony.

This permit will be reported to the Commission on October 7, 2020. PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

SUMMARY OF STAFF RECOMMENDATION

On June 22, 2020, the City of Long Beach approved Local Coastal Development Permit (LCDP) 20-013 with conditions for a City-led project to revitalize the Belmont Pier Plaza by removing one unhealthy coral tree and replacing it with two trees, and providing the following: LED lighting, new planter palette, refurbished irrigation, interpretative land and wayfinding signage, walkway mural, and refreshed paint in the Park (P) Zoning District and Belmont Pier Planning District (PD-2), directly adjacent to the Belmont Pier and public beach.

The appellants contend that the City-approved project would adversely affect coastal resources including shorebirds that depend on the mature tree for habitat because there is evidence of a nest in the tree that is proposed to be removed. The appellants assert that the project is inconsistent with CDP 5-08-187, which approves a tree trimming and removal policy for all state tidelands and beaches within the City of Long Beach. The policy states that no tree used for nesting within the last 5 years shall be trimmed or removed unless it is a danger to public safety. The appellants further contend that the tree is not in imminent need of removal and is not a health and safety danger as an arborist retained by the City classified its risk rating as moderate. The appellants state that the arborist provided four other recommendations to address tree risk instead of complete tree removal. Additionally, the appellants contend that LED lights should not be placed underneath trees as the lights are disruptive to nesting and roosting birds. The appellants provided photographs which suggest that the tree may be used for nesting.

The proposed project on the subject site encompasses both the City of Long Beach's jurisdiction and the Coastal Commission's original permit jurisdiction. The coastal

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development permit referenced by the appellants only applies in the Commission's jurisdiction, where there are other mature trees that support shorebirds within the project area. However, the City frequently references the tree trimming and removal policy as guidance and the City-approved project includes the removal of one coral tree and the replacement with two carrotwood trees within its permit jurisdiction. Removal of a tree with nesting birds in it, specifically including the types of shorebirds which nest in mature trees in coastal Long Beach and are a protected coastal resource, could set an adverse precedent for future mature tree removal in coastal Long Beach. The Commission's standard of review is whether the appeals raise a substantial issue as to conformity with the certified City of Long Beach LCP.

In this case, the appellants' concerns relating to the City-approved development's impact on trees and nesting birds raises a significant question with regard to the project's consistency with the certified LCP. Therefore, staff recommends that the Commission determine that **a substantial issue** exists for the reasons summarized above, and described in greater detail in the body of this report.

Following the appeal and when presented with evidence of potential nesting birds in the tree, the City revised the project to retain the tree, rather than removing it and replacing it. The City notes that the subject tree, and potentially other trees in the project area, may need to be trimmed or removed if they present a public safety hazard in the future, but that any future activities will comply with the tree trimming and removal policy. The City continues to propose other changes to Belmont Plaza including new LED lighting, new planter palettes, refurbished irrigation, interpretative land and wayfinding signage, a walkway mural, and refreshed paint.

Staff recommends the Commission **approve** the de novo coastal development permit A-5-LOB-20-0043 and CDP application 5-20-0508 with five **(5) special conditions**: 1) Final Revised Project Description and Plans; 2) Construction Best Management Practices; 3) Final Lighting Plan; 4) Construction During Nesting Season; and 5) Landscape Plans. These conditions are imposed to ensure that the protective measures of the LCP and the previously approved CDP 5-08-187 are upheld and to ensure the protection of trees and bird habitat therein. The recommended special conditions apply to the portions of the project in the Commission's jurisdiction and the City of Long Beach's jurisdiction.

The motions to carry out the staff recommendations are on Page 4-5 (Substantial Issue) and Page 15 (De Novo review and Coastal Development Permit).

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APPENDIX

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Appeals](#)

[Exhibit 3 – LCDP 20-013](#)

[Exhibit 4 – Project Plans](#)

[Exhibit 5 – Jurisdiction and Project Boundaries](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LOB-20-0043 raises **NO substantial issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

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Staff recommends a **NO** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution: The Commission finds that Appeal No. **A-5-LOB-20-0043** presents a **substantial issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On August 12, 2020, two appeals by Citizens About Responsible Planning and the Sierra Club (**Exhibit 2**) of City of Long Beach Local Coastal Development Permit (CDP) No. 20-013 were submitted in the Coastal Commission's South Coast District office. The appellants contend that the City-approved project is inconsistent with Coastal Development Permit (CDP) 5-08-187, which applies a Commission-approved tree trimming and tree removal policy established specifically to protect trees providing habitat for coastal birds in the Tidelands areas in Long Beach. The appellants also assert that the subject tree in the City-approved project is a tree that is in the Tidelands area in Long Beach and that trees falling under CDP 5-08-187 may only be removed or trimmed during nesting season if they present an imminent threat to public safety and that this tree does not present one. The appellants contend that the arborist from Psomas, who was commissioned to assess the health of this particular tree by the City, stated that the tree is in "good health", presents a "moderate" level of risk and recommends four options other than tree removal. The appellants also assert that there appears to be a nest in the tree and bird droppings around the tree that is to be removed, indicating that it is being used for nesting and roosting. The appellants also suggest that LED lights should not be placed underneath the tree as the light is disrupting to nesting and roosting birds.

III. LOCAL GOVERNMENT ACTION

On June 22, 2020, the City of Long Beach Zoning Administrator held a public hearing on Application No. 2004-14 and approved Local Coastal Development Permit (LCDP) 20-013 with special conditions to revitalize Belmont Pier Plaza by removing one unhealthy coral tree and replacing it with two trees and providing the following: LED lighting, new planter palettes, refurbished irrigation, interpretive land and wayfinding signage, walkway mural, and refreshed paint in the Park (P) Zoning District and Belmont Pier (PD-2) Zoning District (**Exhibit 3**). No appeals were received during the City's local 10-day appeal period.

The City's Notice of Final Local Action for Local CDP No. 20-013 was received in the Coastal Commission's Long Beach Office on July 29, 2020, and the Coastal Commission's required 10 working-day appeal period was established. Two appeals of Local CDP No. 20-013 were received on August 12, 2020, within the 10 working-day appeal period (**Exhibit 2**), one by Citizens About Responsible Planning (CARP, c/o Ann Cantrell) and

one by Sierra Club (c/o Anna Christensen). No other appeals were received before the end of the appeal period at 5:00 PM on August 12, 2020.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development projects 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 top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

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

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

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(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 the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding that a substantial issue does exist, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will conduct the de novo portion of the public hearing on the merits of the project at a later time. A de novo review of the application on the merits uses the certified LCP as the standard of review. (Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (Section 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify before the Commission

If the Commission, by a vote of three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, appellant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue question. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will immediately follow, during which the Commission will take public testimony.

V. Coastal Commission Original Jurisdiction and City of Long Beach Jurisdiction Areas

Section 30604 of the Coastal Act states that development authorized by a local CDP must be consistent with the policies and standards of the certified LCP and, for developments between the first public road and the sea, the public access and recreation policies of the Coastal Act. Development within the coastal zone may not commence until a coastal development permit has been issued by either the Commission or a local government that has a Commission-certified local coastal program. After certification of an LCP, coastal development permit authority is delegated to the appropriate local government, but the Commission retains original permit jurisdiction over certain specified lands (such as tidelands and public trust lands). The Commission also has appellate authority over development approved by local governments in specified geographic areas as well as certain other developments.

The proposed project is located in both the Coastal Commission’s original permit jurisdiction (over Tidelands which are now covered by the public beach and pier) and the City of Long Beach’s jurisdiction which begins inland of the Tidelands. The development within the Commission’s original permit jurisdiction area includes three (3) planters and associated improvements, one (1) interpretive sign at the railing east of the southernmost end of 39th Place, one (1) wayfinding sign (adjacent to stairs near parking lot), and artistic murals on planters and plaza elevation walls. The development within the City of Long Beach’s jurisdiction includes removal of one (1) Coral Tree to be replaced by two (2) coastal appropriate trees, two (2) freestanding wayfinding signs at 39th Place and Midway Street, and the median at E. Ocean Boulevard and Grand Avenue, five (5) planters and associated improvements, a nine (9) space bicycle rack relocation, and painting and walkway murals (**Exhibit 3**).

The applicant submitted a coastal development permit application for the portions of the project within the Coastal Commission’s original permit jurisdiction on September 9, 2020.

VI. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. Project Location and Description

The subject site is located at 39th Place in Long Beach between the first public road and the sea. The project is in the Park (P) Zoning District and Belmont Pier (PD-2) Planned Development District. A variety of coastal resources exist within 1,000 feet of the proposed project site, including, but not limited to, the Belmont Pier, the temporary Belmont Pool, Olympic Plaza, pedestrian walkways and bike paths, and visitor-serving commercial developments such as restaurants, residences, and retail shops. The subject development is located at 39th place and Midway Street and at the median at E. Ocean Boulevard and Grand Avenue (**Exhibit 1**).

The project includes new succulent palettes in the eight (8) existing planters, three (3) wayfinding, freestanding signs, one (1) interpretive sign, walkway mural artwork, relocation of the nine (9) bike racks on site, reinstallation of four (4) security bollards, replacement LED lighting on six (6) existing light poles and new banner arms, replacement in-ground tree up-lighting, in-ground up-lighting for the plaza freestanding sign, and refreshed paint on planters and bike racks in the public right-of-way (**Exhibit 4**). The City’s record includes a document from an independent consultant, Psomas, dated March 11, 2020, which assessed the tree of concern on February 10, 2020 and provided an overall final risk rating of “moderate” for the subject coral tree. The original project description of the City-approved project includes tree removal.

The City’s conditions of approval include compliance with the Migratory Bird Treaty Act (MBTA), including the completion of nesting bird surveys prior to any tree or vegetation removal. Although the subject tree is not in the Tidelands area, the CDP provides a condition to adhere to the California Coastal Commission’s policy objectives for tree work which applies in other areas of the City. The tree trimming and tree removal policy, as approved by CDP 5-08-187 was proposed by and is

implemented by the City to ensure the long-term protection of breeding and nesting habitat of birds in the coastal environment, which are also protected by the Fish and Game Code, the Migratory Bird Treaty Act, and all laws governing bird species of special concern.

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 (LUP) and Implementation Plan (IP) and is the standard of review for the subject appeal. In addition, because the proposed project is located between the nearest public road and the sea, Coastal Act Section 30604(c) applies and any development approved by the Commission must also conform with the public access and recreation policies of Chapter 3 of the Coastal Act.

C. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a). Section 13115(c) of the Commission's regulations lists the following 5 factors as appropriate considerations in determining whether an appeal raises a substantial issue:

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 of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Staff is recommending that the Commission find that **a substantial issue exists** with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the certified LCP. The appellants raise the following contentions.

The appellants assert that the subject coral tree is within the Tidelands Area, subject to the Tree Trimming and Removal Policy (CDP 5-08-187), established specifically to protect

trees providing habitat for coastal birds in the Tidelands Area. CDP 5-08-187 states that trees shall not be trimmed or removed during the breeding and nesting season (January through September) unless the City of Long Beach Department of Parks, Recreation and Marine, in consultation with a qualified arborist, determines that a tree causes danger to public health and safety. The appellants assert that the tree is not in imminent danger of collapse or breaking away. The appellants further assert that Trevor Bristle, certified arborist from Psomas, stated that the tree is in good health and his assessment concludes that the tree presents a moderate level of risk. The appellants assert that the arborist provided four other recommendations to address the tree risk instead of tree removal, including an option which simply includes annual monitoring. Additionally, the appellants contend that the City of Long Beach Public Works is aware of CDP 5-08-187 and the Coastal Commission's designation of all trees that provide habitat for coastal birds in wetlands, along bays, marinas, beaches, and bluffs as "significant vegetation" under the Coastal Act. Furthermore, the appellants provided a photographs from June 22, 2020 of the subject tree, and stated that there appears to be a nest in the tree, and that there were numerous bird droppings around the tree, indicating that it is being used for nesting and roosting. The appellants also contend that LED lighting should not be installed under any trees as they negatively impact birds' sleep patterns.

The appellants do not cite any LCP policies but broadly assert that the project is inconsistent with the resource protection policies of the LCP and Coastal Act. The City's certified LCP does contain policies which require preservation and protection of coastal resources, and recognizes the context of environmental resources in an urban area that also supports public recreational opportunities.

Certified LCP Introduction states:

This LCP recognizes the complex needs of the various coastal neighborhoods, the advantages and limitations of the urban systems, and the conflicting viewpoints of the public. It further acknowledges the need to balance recreational use of coastal resources with the requirements for protection and preservation if they are to remain viable resources into the next century. The plan, therefore, emphasizes some Coastal Act Policies in some areas, and other Policies in other areas where the greatest public benefit can be achieved without traumatic disruption of the existing community fabric.

Certified LCP Belmont Heights Neighborhood (Area C). Visual Resources and Special Communities states:

Large trees, extensive landscaping, and a high level of maintenance of homes and grounds contribute to the visual quality of these communities.

Certified LCP Belmont Pier Planned Development Area. General Development and Use Standards #5 states:

Landscaping. Landscaping shall be lush and shall create a park-like setting.

**Certified Implementation Plan Zoning Code. Chapter 21.42 Landscaping Standards.
21.42.010 Purpose states:**

Landscaping provisions are included to improve the physical appearance of the City by providing visual, ecological and psychological relief in the urban environment. Properly landscaped areas provide an attractive living and working environment, they provide health benefits by improving air quality, they reduce energy consumption, and they offer a buffer between potentially incompatible land uses.

With regard to the location of the subject coral tree, it is not in the Tidelands Area; however, it is in the Coastal Zone, the local coastal jurisdiction, and the appealable area (**Exhibit 5**). The City-approved project does include a condition which states that all special conditions of CDP 5-08-187 that can feasibly be applied to the project that is the subject of this permit shall be adhered to, in order to conform the tree work activities of this project with the City's and the Coastal Commission's policy objectives for tree work in the Tidelands area and State permit jurisdiction area of the Coastal Zone. The City's conditions of approval also state that tree removal shall take place outside of the bird nesting season (generally February 1 through August 31, but variable based on seasonal and annual climatic conditions) and shall follow the recommendations and timeline as provided in the Tree Assessment dated March 11, 2020. The City-approved project also states that if a survey is conducted during the nesting season and the qualified biologist determines that there are no active nests in the subject tree, then the tree can be removed as long as there are no impacts to wildlife that would be in conflict with any local, state, or federal law, regulation, or policy.

The Commission has historically recognized that trees, birds, and wildlife in urban areas of the Long Beach Coastal Zone are resources that need to be protected. Appropriate measures should be taken to ensure the protection and longevity of coastal resources which support biological productivity, including trees in 39th Place and adjacent to the Belmont Pier. Complete removal of the coral tree is the least environmentally protective recommendation provided by the arborist and is inconsistent with the certified LCP which acknowledges the need to balance recreational use of coastal resources with the requirements for protection and preservation to keep them viable resources into the next century. It would also remove a mature tree which the LCP identifies as a visual resource within the area. The trees to be planted would be smaller and would not provide the same habitat or visual resource benefits as the existing tree. Moreover, there are many other trees in the project area which are not currently proposed to be disturbed, but which are subject to the same preservation policies of the LCP and the underlying CDP. As conditioned, the City-approved project would allow for the removal of the tree during nesting season, which is also inconsistent with CDP 5-08-187, of which the applicant is required to adhere to all the conditions that can be feasibly applied to. Thus, the CDP conditions applied by the City are contradictory, do not maximize protection of the coastal resource consistent with the LCP, and could set an adverse precedent for treatment for other trees in the project area and the rest of the Long Beach Coastal Zone.

Regarding the assessment of the health status of the tree, the arborist provided an assessment of the subject tree and concluded that the tree still appears to be in good health despite the patch of sloughing bark and decay observed on the trunk of the tree and the large wound on the branch in the canopy. The arborist report states: “Based on a potential for severe consequences and a somewhat likely estimate of impact, the overall risk rating is moderate during the timeframe of this assessment. For reference, all trees are considered to have inherent low risk that cannot be mitigated for without removing the entire tree; the majority of all trees are within the low risk category.” With regard to the arborist recommendations, the arborist provided a total of five recommendations (also identified as options or alternatives). Option 1 is to stop pedestrian access within the dripline of the canopy through fencing or a similar approach which would remove the factor of individuals present under the tree and would result in low residual risk. Option 2 is complete removal of the tree which would result in no residual risk. Option 3 involves pruning or removing all weakly attached and overextended limbs, reducing the overall size of the canopy, which would reduce the load on the parts of the tree with failure potential and results in moderate residual risk. Option 4 is to install a cable and bracing system to reinforce the parts of the tree with potential for failure. The arborist report states that this is an expensive option and is not likely to reduce the overall risk rating in the long-term and results in a moderate residual risk. Option 5 is to retain the tree and monitor its condition, at a minimum, once a year and after significant weather events and results in a moderate residual risk.

The City record includes a letter from the City of Long Beach which states that the City-certified arborist and the independent arborist from Psomas support the full removal of the tree. As mentioned above, there are other options recommended by the independent arborist which do not include complete tree removal. Considering that there may be a nest in the subject tree, it is most protective of coastal resources to allow the tree to remain in place. In addition, while the proposed project is not in the Tidelands area, the City-approved project does require adherence to any feasible conditions of CDP 5-08-187, which prohibits tree removal as well as the removal or disturbance of any tree or branch with a nest that has been active in the past 5 years during the breeding and nesting season (January through September) unless a qualified biologist deems that a tree is a public health and safety hazard.

There are four arborist-recommended options to reduce tree risk other than tree removal. In addition, complete tree removal would be inconsistent with certified IP Policy 21.42.010 that states landscaping provides visual, ecological and psychological relief in the urban environment. Additionally, complete tree removal would be inconsistent with certified LCP Belmont Pier Planned to Development Area General Development and Use Standards #5 that states landscaping areas shall be lush and provide a park-like setting and certified LCP Belmont Heights Neighborhood (Area C) Visual Resources and Special Communities which states that large trees, extensive landscaping, and a high level of maintenance of homes and grounds contribute to the visual quality of these communities. Further, since the arborist recommended other options to address the tree risk issues, removing the tree is inconsistent with the policies of the certified LCP which aim to provide relief in an urban environmental and maintain lush landscaping and large trees.

Regarding the appellants' concern about an active nest in the tree, the appellants assert that there may be a nest in the tree to be removed and that there are numerous bird droppings around the tree, indicating it is being used for nesting and roosting (**Exhibit 2**). The appellants does not directly cite inconsistencies with the City's action and the certified LCP; however, tree removal and replacement is inconsistent with the referenced LCP policies and the Commission and the City's commitment (expressed through CDP 5-08-187 and several recent Commission actions) to protect and preserve coastal resources, which include mature trees that support shorebirds in the coastal zone.¹

Additionally, regarding the placement of LED lights under the trees, the City-approved project indicates that there will be LED fixtures and tree up-lighting under the proposed tree and landscaping areas. Tree up-lighting may cause impacts to birds in the trees as artificial light may have an adverse impact birds' sleep patterns.²

The City-approved development, as conditioned, is not the alternative that is most protective of coastal resources and does not guarantee avoiding impacts to biological resources.

SUBSTANTIAL ISSUE FACTORS:

The Commission applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

1. The degree of factual and legal support for the local government's decision that the development is consistent with the relevant provisions of the certified LCP.

The City did not substantially support its approval of the project's consistency with reference to all of the applicable policies of the certified LCP. The City's findings state that the project is consistent with the certified LCP; however, the findings of the local CDP do not adequately address the project's impact on biological resources, such as tree removal impacts on nesting birds. The City's record indicates that the independent arborist presents four recommendations other than tree removal to address the tree that is at risk, however, the City selected the alternative that results in full removal of the tree. However, the complete removal of a coral tree, which has an overall risk rating of "moderate" (not "high" or "extreme"), is inconsistent with CDP 5-08-187, which the City also referenced in its findings and which states a tree can only be removed during nesting season if it cannot feasibly avoid the nesting/breeding season because a health and safety danger exists. Therefore, the City provided an inadequate and contradictory degree of factual and legal support for its decision to approve the proposed project and this factor supports a finding of substantial issue.

2. The extent and scope of the development as approved or denied by the local government.

The local government granted a CDP to revitalize the Belmont Pier Plaza by removing one unhealthy coral tree and replacing with two trees, and providing the following: LED lighting, new planter palette, refurbished irrigation, interpretative land and wayfinding signage,

¹ 5-14-1479; A-5-LOB-19-0005; A-5-LOB-20-0012

² <https://www.sciencedaily.com/releases/2020/07/200723115902.htm>

walkway mural, and refreshed paint in the Park (P) Zoning District and Belmont Pier (PD-2). The issue raised by the appeals – the removal of a single tree – is not substantial in scope, however, the overall project covers a large area with many other trees and resources that are subject to the same protections of the LCP and the underlying CDP in the Tidelands area. The removal of the tree would negatively impact coastal and visual resources. Therefore, this factor neither supports nor contradicts a finding of substantial issue.

3. The significance of the coastal resources affected by the decision.

Development of the project as proposed would involve adverse impacts to the subject tree. Trees that support nesting birds are a significant coastal resource in coastal Long Beach and this project has the potential to negatively affect nesting birds and the tree that is approved to be replaced. Therefore, the project could adversely affect coastal resources and supports a finding of substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP.

Allowing the government to remove a mature tree, that may potentially have a nest in it, would set a negative precedent for future interpretations of the City’s certified LCP. The arborist recommended four other options to handle the tree risk, which did not include complete tree removal. The decision of the local government to completely remove the coral tree affiliated with this project could adversely influence future permit decisions made in the City’s coastal zone, including other mature trees in the project site. This factor supports a finding of substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

The appeal raises local and regional issues relating to the impacts of development on urban trees on public property and any nesting habitat therein. Protecting coastal resources is an issue of regional and statewide significance, given that trees and nesting birds are found in mature trees on public land throughout the state, not just in the City of Long Beach. This factor supports a finding of substantial issue.

Conclusion

In conclusion, the Commission finds that the appeal raises a substantial issue with respect to whether the local government action conforms with the policies of the City’s certified LCP.

VII. MOTION AND RESOLUTION – DE NOVO PERMIT

Motion: I move that the Commission approve Coastal Development Permit Application No. A-5-LOB-20-0043 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution: The Commission hereby approves Coastal Development Permit Application No. A-5-LOB-20-0043 and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the Certified Local Coastal Program and 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 will substantially lessen any significant adverse impacts of the development on the environment.

VIII. MOTION AND RESOLUTION – COASTAL DEVELOPMENT PERMIT

Motion: I move that the Commission **approve** Coastal Development Permit Application No. 5-20-0508 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution: The Commission hereby approves Coastal Development Permit Application No. 5-20-0508 and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the Certified Local Coastal Program and 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 will substantially lessen any significant adverse impacts of the development on the environment.

IX. 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.

X. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Revised Project Description and Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a final revised project description and plans that: a). do not reference tree removal and b). update light fixtures as described in **Special Condition 4**.
2. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction related requirements:
 - A. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - B. The permittees shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the sea is protected from sedimentation.
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.

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- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity

3. Final Lighting Plan. PRIOR TO THE ISSUANCE OF THE COASTAL

DEVELOPMENT PERMIT, the applicant shall submit a final lighting plan for the review and approval of the Executive Director, which shall be consistent with the following requirements:

- A. All lighting, including temporary lighting installed around 39th Plaza, shall be downward directed, shielded away from the trees, landscaping, public beach and intertidal habitat area, and shall use best available dark-skies technology to minimize glare and spillover effects to the greatest extent feasible.
- B. The average light intensity within the project area shall be no greater than 1.0-foot candle, as measured from the ground. The applicant shall submit an exhibit or report documenting that the final lighting plan is consistent with this requirement.
- C. The applicant shall undertake and maintain the approved development in compliance with the final plans approved by the Executive Director. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.

4. Construction During Bird Nesting Season.

A. Tree trimming and removal during bird nesting season (January to September) is prohibited unless a threat to public health and safety exists. If tree trimming cannot feasibly avoid the nesting season because a health and safety danger exists, the following guidelines must be followed:

1. A qualified biologist or ornithologist shall conduct surveys and submit a report at least one week prior to the trimming 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 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 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.
2. 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.

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B. For any other construction activities, between January and September, 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 CONSTRUCTION, 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:

1. The applicant shall ensure that a qualified biologist shall conduct the surveys 15 calendar days prior to the construction activities 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.
2. If an active nest(s) of any shore birds or wading birds 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.
3. 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.

4. 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.

5. Landscape Plans for New Development Within the Project Site.

- A. Any landscaping carried out through the proposed project and all 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.

XI. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The project description and location is hereby incorporated by reference from Section VI.A of the Substantial Issue portion of this staff report on page 8. However, following the appeal, the applicant revised the project to preserve the coral tree in place, to extend the life of the tree, and to only remove it in the future if it presents a danger to public health and safety, subject to the requirements of the tree trimming and removal policy. The rest of the revised project description is the same as the original project description.

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 between the first public road and the sea, Coastal Act Section 30604(c) applies and any development approved by the Commission must also conform with the public access and recreation policies of Chapter 3 of the Coastal Act.

The Coastal Act is the standard of review for the portion of the project within the Commission's original jurisdiction.

C. BIOLOGICAL RESOURCES

The Coastal Act contains policies to protect biological resources and water quality.

Section 30230 Marine resources; maintenance states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes

Section 30231 Biological productivity; water quality states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The City of Long Beach LCP, certified in 1980, contains policies that require the protection of biological resources and visual resources.

Certified LCP Introduction states:

This LCP recognizes the complex needs of the various coastal neighborhoods, the advantages and limitations of the urban systems, and the conflicting viewpoints of the public. It further acknowledges the need to balance recreational use of coastal resources with the requirements for protection and preservation if they are to remain viable resources into the next century. The plan, therefore, emphasizes some Coastal Act Policies in some areas, and other Policies in other areas where the greatest public benefit can be achieved without traumatic disruption of the existing community fabric.

Certified LCP Belmont Heights Neighborhood (Area C). Visual Resources and Special Communities states:

Large trees, extensive landscaping, and a high level of maintenance of homes and grounds contribute to the visual quality of these communities.

Certified LCP Belmont Pier Planned Development Area. General Development and Use Standards #5 states:

Landscaping. Landscaping shall be lush and shall create a park-like setting.

Certified Implementation Plan Zoning Code. Chapter 21.42 Landscaping Standards. 21.42.010 Purpose states:

Landscaping provisions are included to improve the physical appearance of the City by providing visual, ecological and psychological relief in the urban environment. Properly landscaped areas provide an attractive living and working environment, they provide health benefits by improving air quality, they reduce energy consumption, and they offer a buffer between potentially incompatible land uses.

Certified Implementation Plan Zoning Code. Chapter 21.42 Landscaping Standards. 21.42.030 General Requirements A. states:

Landscaped area. All required yards and setback areas shall be attractively landscaped primarily with live plant material. Decorative landscape features such as brick, stone, art, fountains and ponds may be used within the landscaped area, provided such materials present an attractive setting consistent with the intent of these landscaping requirements.

Certified Implementation Plan Zoning Code. Chapter 21.42 Landscaping Standards. 21.42.035 Special Requirements – Water Saving Landscaping states:

The City of Long Beach enjoys a temperate climate in a semiarid region where water is recognized as a precious, natural resource. Landscapes that use water intelligently are strongly encouraged and may be reasonably required as a condition of approval of discretionary projects in appropriate cases. Guidelines for the design and care of drought resistant, water saving landscapes may be promulgated from time to time by resolution of the City Council.

Coastal Act Section 30230 requires that trees be maintained for their value as a marine resource that supports species of biological significance. The Coastal Commission has previously designated mature trees within the Long Beach Coastal Zone as "major vegetation," and required that they be protected and preserved, which is consistent with Section 30230 because they are a biological resource unto themselves and they support shorebirds including herons and egrets. Additionally, in recognizing the importance of biological resources in this area, the Commission-approved CDP 5-08-187 applies to the Commission's jurisdiction of the project area to ensure the protection of shore birds by requiring the City to undertake tree trimming activities in a manner that protects nesting birds. Mature trees currently exist within both jurisdictions of the

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project site and some of these trees provide habitat for nesting birds, including great blue herons, black-crown night herons, and egrets. The single tree that motivated the appeal, as well as many other trees within the City's jurisdiction are subject to the referenced LCP policies above. However, the City-approved project includes a condition to abide by CDP 5-08-187 for the portions of the project in its jurisdiction, therefore, both jurisdictions in the project area are subject to CDP 5-08-187.

Coastal Act Section 30231 requires the biological productivity of coastal waters be maintained, and where feasible, restored. The proposed work will be occurring in a location where there is a potential for a discharge of runoff from the project site into coastal waters. Specifically, the proposed development in the Commission's original permit jurisdiction includes the installation of succulent palettes and wayfinding and interpretive signage. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction and post construction related impacts on water quality and to minimize the potential of pollutants entering coastal waters, **Special Condition 2** requires that specific best management practices be implemented in order to ensure that water quality, biological productivity, and marine resources are protected, consistent with Coastal Act Section 30231. As conditioned, the Commission finds that the proposed development in the Commission's jurisdiction conforms with Sections 30230 and 32031 of the Coastal Act.

Following the appeal, and when presented with additional evidence of potential nesting activities in the tree (**Exhibit 2**), the City submitted revised plans and a letter committing to preserve the tree subject to the appeal. According to the revised plans submitted by the City on September 9, 2020, the single coral tree will not be removed; instead, the tree will remain in place for the time being. The revised plans to not remove the tree are consistent with the introductory portion of the certified LCP to protect and preserve viable resources for the next century. The City provided a letter stating that if/when the tree represents an imminent threat to public safety, as verified through an arborist report, the City will proceed with the tree removal and replacement in accordance with the provisions outlined in CDP 5-08-187. In addition, the City will post signage related to tree risk, coordinate the trimming of the tree to reduce excess load, and establish a monitoring schedule of the tree condition. Additionally, any tree trimming will take place outside of nesting season, per the requirements of the tree trimming and removal policy and other laws the City must abide by including the Migratory Bird Treaty Act. Consistent with the City's representations, **Special Condition 1** requires the City to submit final project plans identifying all trees, lighting, and other project elements prior to issuance of the CDP.

The City's decision to keep the tree in place, instead of removing it, contributes to the landscape provisions of the project area and is consistent with certified IP Policy 21.42.010 to provide visual, ecological and psychological relief in the urban environment. In addition, the City's plans also include installation of succulent palettes in the project area, which are low-water usage plants, and is consistent with certified IP Policy 21.42.035 to use drought resistant, water saving landscape. Additionally, the protection and preservation of the subject coral tree, as well as the other mature trees

in the project area, contribute to the lush and live plant material landscaping of the area, consistent with certified IP Policy 21.42.030, certified LCP Belmont Pier Planned Development Area General Development and Use Standards #5, and certified LCP Belmont Heights Neighborhood (Area C) Visual Resources and Special Communities.

Engaging in construction work (no tree modifications) during the nesting season could impact sensitive shore 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. The Commission also conditions projects that include construction activities during nesting season to avoid impacts to nesting birds. 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.

Consistent with the CDP 5-08-187, which applies to development in the Commission's jurisdiction, in order to avoid tree trimming during nesting season, the applicant shall avoid any tree work within a 300-foot radius of nesting or breeding activities, and monitor project activities and tree health. As agreed to by the City, **Special Condition 4** is imposed to prohibit tree trimming or removal during nesting season unless a threat to public health and safety exists. This special condition applies to the tree that motivated the appeal as well as all other trees within the project area subject to the de novo permit and the CDP for the portion of the project in the Commission's original jurisdiction to protect all nesting birds in the project area, including herons, egrets, and other shore birds.

For any other construction during nesting season, a biologist will be required to survey nearby trees and the construction team will be required to avoid impacts to nesting birds including, but not limited to, black-crowned night herons, great blue herons, and snowy egrets. The condition allows for some project activities within the City's permit jurisdiction and the Coastal Commission's original permit jurisdiction area during nesting season, if consistent with all imposed special conditions; however, if nests are found or nesting or courtship behavior is observed during the nesting season (January through September), 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 4** 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 4.B** requires the applicant to cease work and notify the Executive Director. **Special Condition 5** requires the applicant to incorporate vegetated landscaped areas that are native, drought tolerant plants and that are non-invasive throughout the project area and to only install these types of plants in the future.

The project also proposes to repair and replace tree up lighting and replace existing light fixtures with LED fixtures. The City states that the purpose of the LED fixtures is to screen nuisance light for residents. Artificial lighting can adversely affect coastal resources; therefore, to prevent adverse impacts to birds, other animals and humans on the adjacent public beach, the light fixtures should be downward directed and should emit as little light as practicable to meet project objectives including establishing a welcoming plaza. In order to ensure that the proposed project is sited and designed to prevent adverse impacts to the adjacent sensitive biological resources, such as nesting birds, **Special Condition 3** is imposed to require the applicant to provide a final lighting plan which documents that all lighting is directed and shielded towards the ground and that the average light intensity is limited to 1.0 foot candle.

As conditioned, the proposed development would not adversely impact coastal resources, including mature trees, nesting shore birds, wading birds, or their habitat, consistent with the certified LCP and Sections 30230 and 30231 of the Coastal Act.

D. PUBLIC ACCESS

As explained above in Section V, Coastal Act Section 30604(c) states that every coastal development permit issued that proposes development 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 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.

Section 30211 Development not to interfere with access states:

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

Section 30212 New development projects states, in part:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected....

Section 30213 Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220 Protection of certain water-oriented activities states:

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

Section 30221 Oceanfront land; protection for recreational use and development states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 Upland areas states:

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

The proposed development includes the placement of three wayfinding signs and one interpretive sign. The interpretive sign will be placed at the railing along the bicycle and pedestrian path. The City's record indicates that some sign topics for the interpretive signage can include historical images and information, pollution prevention/caring for oceans, and local marine life. These signs will enhance public access in the project area by welcoming and informing visitors.

The project itself is a planned improvement to a public plaza which will be accessible to all people. The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational opportunities. Therefore, as proposed the development conforms to the public access and recreation policies of the Coastal Act.

E. CEQA

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.

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The City of Long Beach Department of Development Services is the lead agency for the purposes of CEQA review. On June 22, 2020, 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 revised project has been conditioned in order to be found consistent with the certified Local Coastal Program and Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the development 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, has no remaining significant environmental effects, and complies with the applicable requirements of the Coastal Act to conform to CEQA.

Appendix A – Substantive File Documents

Coastal Commission approved CDP No. 5-08-187 (Tideland Area Tree Trimming and Removal Policy)