

CALIFORNIA COASTAL COMMISSION

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Substantial Hearing	
Date (Appeal):	8/6/02
Staff:	AJP-LB
Staff Report:	5/17/04
Hearing Date:	6/9-11/04

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STAFF REPORT:
DENOVO & REGULAR CALENDAR

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approval with Conditions

APPLICATION NUMBER: A-5-PPL-02-162/5-02-099

APPLICANT: Bel Air Bay Club, Ltd.

PROJECT LOCATION: 16800 Pacific Coast Highway, Pacific Palisades,
 City/County of Los Angeles

PROJECT DESCRIPTION FOR A-5-PPL-02-162/ 5-02-099: Demolition of 30,701 square feet of the existing 51,120 square foot lower Bel Air Bay Club Facility, construction of 40,709 square feet resulting in a 61,128 square foot Club facility, realignment of an existing sea wall and sandwall, and a realignment of the PCH/Bay Club Drive interchange; addition of 22 on-site parking spaces; and offer to dedicate an access easement for pedestrian and bicycle use.

Summary of Staff Recommendation

The major issues of this staff report include construction of private development and a seawall on a beach that are seaward of the present structure and seawall, public access to the beach, views, hazards, and water quality. Staff recommends **APPROVAL** of the proposed development with 14 special conditions that require: 1) a limitation on construction of the structures and seawalls seaward of the presently existing structures; 2), an agreement to construct no future shoreline protective devices except those approved in this permit; 3) an assumption of the risks of development on both private and public property; 4) evidence that the Club bylaws forbid discrimination; 5) that the applicant assure and facilitate public access over the publicly owned beach and along the water on its own property during storm tides; 6) the implementation of water quality Best Management Practices during and after construction; 7) a parking management plan; 8) removal of obstructions to visual and physical access on public property; 9) clearing a fence and trimming a hedge to improve views over the property; 10) recording an offer of an easement that would allow widening the shoulder of Pacific Coast Highway at the

northeast corner of the property to provide for a bike lane; 11) operating a lifeguard service and maintain the public beach seaward of its property as required in the Title Settlement with the State Lands Commission; 12) agree that future development and intensification on the property will require a coastal development permit and; 13) record a deed restriction against the property that incorporates these conditions.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles Local Coastal Development Permit No. 2000-0648 (CDP)
2. City of Los Angeles Planning Department, Administrative Record for 2000-0648 (CDP)
3. Coastal Development Permit Application 5-02-099 (Bel Air Bay Club)
4. Coastal Development Permit No. 5-92-108 (Bel Air Bay Club) as amended
5. Coastal Development Permit 5-85-76, 5-89-627 (Jonathan Club)
6. Coastal Development Permit 5-84-150 (Bel Air Bay Club)
7. Bel-Air Bay Club Title Settlement and Boundary Line agreement BLA 272 /AD455 dated October 20, 2003

Staff Note:

The proposed development is within the coastal zone of the City of Los Angeles. Section 30600(b) of the Coastal Act allows local government to assume permit authority prior to certification of a local coastal program. Under that section, the local government must agree to issue all permits within its jurisdiction. In 1978, the City of Los Angeles chose to issue its own coastal development permits.

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the "Dual Permit Jurisdiction" area, the Coastal Act requires that the development which receives a local development permit also obtain a permit from the Coastal Commission. Section 30601 requires a second coastal development permit from the Commission on all lands located (1) between the sea and the first public road, (2) within 300 feet of the inland extent of a beach, or the sea where there is no beach, (3) on tidelands or submerged lands, (4) on lands located within 100 feet of a wetland or stream, or (5) on lands located within 300 feet of the top of the seaward face of a coastal bluff, or (6) any development which constitutes a major public works project.

The proposed improvements are located between the sea and the first public road. Therefore, the proposed project is a dual permit jurisdiction project. For development within or considered as dual jurisdiction, after the local government approves a permit, a second permit is required from the Commission under the requirements of section 30601, in addition to the Commission's action on this appeal.

The City's approval of the local coastal development permit for the single permit area was appealed to the Commission (A-5-PPL-02-162) by the Executive Director of the California Coastal Commission; Martin J. Murphy; Harold Tuchyner and Robert Locker, representing

Pacific Palisades Residents Association. At the August 2002 Commission hearing, the Commission found that the appeal raised a substantial issue with respect to impacts to coastal access and recreation, scenic public views, character of the surrounding area and potential impacts of developing in an area subject to flooding and erosion from wave impact and storm events and the effects of a seaward encroachment of a new seawall on sand processes and beach erosion. Because the project was in the dual permit jurisdiction area and required a second Coastal Development Permit from the Commission, the hearing on the De Novo portion was postponed until the dual permit application was complete with all requested information, including State Lands Commission approval of the new 2003 Boundary Line Agreement.

Since the substantial issue hearing, and pursuant to numerous meetings with Commission staff, the applicant modified the project from the one approved by the City of Los Angeles. Changes to the proposed development included reduction in the size of the footprint, massing, height and square footage, and a relocation of the proposed seawall alignment locating it no further seaward than the most seaward extent of the existing seawall.

In order to minimize duplication and unnecessary delays, Commission staff has herein combined its analysis for the De Novo review of the permit appealed (A-5-PPL-02-162) and for the Commission's review of the dual permit jurisdiction coastal development permit application (5-02-099) into one staff report and one Commission hearing. However, Commission approval, modifications, or disapproval of this project will require separate actions on the appeal (De Novo) and on the coastal development permit.

I. **MOTION, STAFF RECOMMENDATION AND RESOLUTION FOR COASTAL DEVELOPMENT PERMIT NO. A-5-PPL-02-162:**

Staff recommends that the Commission make the following motion and adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-5-PPL-02-162 pursuant to the staff recommendation*

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 permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of

the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

II. MOTION, STAFF RECOMMENDATION AND RESOLUTION FOR COASTAL DEVELOPMENT PERMIT NO. 5-02-099:

Staff recommends that the Commission make the following motion and adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5--02-099 pursuant to the staff recommendation*

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

III. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

IV. SPECIAL CONDITIONS FOR COASTAL DEVELOPMENT PERMIT NO. A-5-PPL-02-162 and 5-02-099

1. NO SEAWARD ENCROACHMENT OF SEAWALL/SANDWALL

- A.** The applicant is not authorized to move or reconstruct any portion of the seawall or sand wall seaward of its present location. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director revised plans showing that there is no seaward encroachment of any portion of the vertical seawall or sand wall beyond the location of the existing walls, identified in Exhibit no. 3. Pursuant to this condition, the applicant shall either:
- a. Leave the present seawall and garden wall in their current alignments, or
 - b. If the seawall is replaced, the replacement must be located in the existing alignment and location, or
 - c. The applicant may extend the landward most portion of the seawall in a straight line roughly parallel to mean high tide to meet and to be contiguous with the garden wall, to eliminate the existing 90 degree angle in the current alignment; however, the new seawall may not be located further seaward of the most landward portion of the existing seawall (Exhibit no. 3)
- B.** All proposed new and reconstructed structures shall be located landward of the seawall and garden walls as approved by this permit.
- C.** The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal

Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. NO FUTURE SHORELINE PROTECTIVE DEVICE

A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A5-PPL-02-162 and 5-02-099 in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that they shall remove the development authorized by this Permit if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall onto the beach before they are removed, the applicant shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding, landslide, erosion, or earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. NON-DISCRIMINATORY MEMBERSHIP POLICY

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall (1) submit, for the review and approval of the Executive Director, a statement, to be incorporated into the Bel Air Bay Club's By-laws, that states that the Bel Air Bay Club will not discriminate in its membership practices on the basis of race, gender, religion, or sexual orientation and then (2) incorporate the

approved statement into those By-laws. The non-discrimination policy shall remain in effect during the life of the development approved by this permit.

5. PUBLIC SHORELINE ACCESS

A. Prior to issuance of the coastal development permit the applicant shall submit the following plans/ agreement for a comprehensive public access program for the review and approval of the Executive Director that includes the provisions below. The program shall incorporate the access provisions of the Bel-Air Bay Club Title Settlement and Boundary Line agreement BLA 272 /AD455 dated October 2003 and of coastal development permit no. 5-92-108, as amended, including but not limited to the following:

- (1) The applicant shall not interfere with public access and recreational use within the area identified for a maintenance lease under the Bel-Air Bay Club Title Settlement and Boundary Line agreement BLA 272 /AD455 dated October 20, 2003, as generally depicted in Exhibit no.16. The applicant shall submit a written agreement indicating that it and its employees shall not interfere with public access or recreation within the maintenance lease area, or with the public's right to pass and repass on the wet sand when the public beach is inundated, or, when the sand berm is present, inland of the sand berm permitted pursuant to CDP No. 5-92-102, and any subsequent amendment to that permit.
- (2) **Signage.**
 - (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a signage plan showing the size, wording and location of signs. The size of the signs shall be at a minimum 24" in height and 18" in length.
 - (i) Permanent signs shall be located in conspicuous locations at the east and west ends of the property and at least every 250 feet along the applicant's southern property line along the beach, informing the public of the location of the public beach.
 - (ii) Temporary signs of similar dimensions and location shall inform the public of its rights granted under this permit and CDP No. 5-92-102 for lateral access across the applicant's sandy beach property when the applicant has constructed a temporary sand berm.
- (3) **No storage or placing equipment on the beach**

With the exception of a lifeguard tower and lifesaving equipment, the applicant shall not store or place objects, including but not limited to

chairs, benches or recreation equipment on the public beach or on the area subject to the maintenance lease.

B. The permittee shall undertake the development in accordance with the approved plans and agreements. Any proposed changes to the approved plans or agreements shall be reported to the Executive Director. No changes to the plans or agreements shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. ACCESS IMPROVEMENT THROUGH OR OVER THE WESTERLY GROIN

A. Prior to issuance of the permit the applicant shall submit for the review and approval of the Executive Director final engineered plans and a signed agreement for creation of a passage through or over the groin located on and adjacent to the westerly boundary of its property. The City and County of Los Angeles and the California State Lands Commission shall have approved the plans in advance of their submittal. The plans shall show the construction of a pedestrian passage through or over the groin located adjacent to the westerly boundary of the applicant's property. The agreement shall establish the applicants' right to construct such a passage.

Prior to occupancy of any structure approved in this permit, the applicant shall complete construction of such passage consistent with the approved plans and remove the approximately 8 to 10 foot portion of the vertical wall, that is adjacent to the groin and encroaches onto State lands.

B. The permittee shall undertake the development in accordance with the approved plans and agreements. Any proposed changes to the approved plans or agreements shall be reported to the Executive Director. No changes to the plans or agreements shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND REMOVAL OF CONSTRUCTION DEBRIS

A. Prior to issuance of the coastal development permit, the permittee shall provide detailed plans and a list of measures to assure that during demolition and construction the project shall comply with the following construction-related requirements:

1. As part of the initial plans, the applicant shall assess the presence of toxic materials (lead, asbestos, asphalt, etc.) and provide a plan for controlling these substances. The applicant shall follow that plan and shall provide adequate disposal facilities for solid waste and toxic

materials, including excess asphalt, produced during demolition or construction.

2. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction related materials, sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.
3. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to the ocean and beach during construction and consistent with that requirement, the applicant shall do, but shall not be limited to, the following:
 - (a) Place sand bags around drainage inlets and the edge of building pads, to prevent runoff/sediment transport to the beach.
 - (b) Use debris fences as appropriate.
 - (c) Conduct a pre-construction meeting to review procedural and BMP guidelines.
 - (d) Remove all stockpiles in advance of storms and storm tides.
 - (e) No construction materials, debris, or waste shall be placed or stored seaward of the existing seawall and sandwall where it may be subject to wave erosion and dispersion.
 - (f) Develop and implement spill prevention and control measures.
 - (g) Provide sanitary facilities for construction workers.
 - (h) Maintain and wash equipment and machinery in confined areas specifically designed to control runoff.
 - (i) Prevent thinners or solvents from being discharged into sanitary or storm sewer systems.
 - (j) Dispose of washout from concrete trucks at a location that is not subject to runoff and that is more than 50 feet away from any storm drain, open ditch, beach or surface water.
4. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
5. The Construction Best Management Practices plan approved by the Executive Director pursuant to this condition shall be attached to all final construction plans.
6. Any and all debris on the beach resulting from construction activities shall be removed from the project site, or stored in an area landward of the seawall and sandwall, and away from any potential tidal impacts, within 24 hours of completion of construction, and the beach area seaward of the seawall shall be restored to its previous natural condition.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to

the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. WATER QUALITY MANAGEMENT PLAN (WQMP)

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall incorporate structural and non-structural Best Management Practices (BMPs) designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

1. Water Quality Goals

- (a) Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.
- (b) Appropriate structural and non-structural BMPs shall be designed to treat, infiltrate, or filter the runoff from all surfaces and activities on the development site;
- (c) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs;
- (d) Runoff from all roofs and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive. The filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff in excess of this standard from the building site in a non-erosive manner.

2. Parking Lot

- (a) The WQMP shall provide for the treatment of runoff from parking lots using appropriate structural and non-structural BMPs. At a minimum this must include a bioswale and/or filter designed specifically to minimize vehicular contaminants (oil, grease, automotive fluids, heavy metals, hydrocarbons), sediments, and floatables and particulate debris.
- (b) The applicant shall regularly sweep the parking lot at a minimum on a weekly basis, in order to prevent dispersal of pollutants that might collect on those surfaces.
- (c) The detergents and cleaning components used on site shall comply with the following criteria: they shall be phosphate-free, biodegradable, and non-toxic to marine wildlife; amounts used shall be minimized to the maximum extent practicable; no fluids containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye shall be used;
- (d) The applicant shall not spray down or wash down the parking lot unless the water used is directed through the sanitary sewer system or a filtered drain.
- (e) All BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) during each month between October 15th and April 15th of each year and, (3) at least twice during the dry season.
- (f) Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner;
- (g) It is the applicant's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.

3. Restaurant /dining room.

- (a) The applicant shall install grease traps and debris control to reduce runoff and other discharges from the restaurant operation.
- (b) Grease traps shall not discharge to the sewer.
- (c) Interior and exterior wash down areas shall not discharge to the storm drain, beach or parking lot.
- (d) No Styrofoam or other plastics shall be used for take out food or beverages.
- (e) The applicant shall cover all trash cans
- (f) All containers shall be designed to resist scavenging animals.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be

reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

9. **PARKING MANAGEMENT PLAN**

A. Prior to issuance of the permit, the applicant shall provide for the review and approval of the Executive Director, a parking plan showing the methods and locations that it will use to provide no less than 191 on-site attendant stacked parking and/or remote parking spaces, over and above the 164 spaces shown on its plans, during weekends and peak use times during the summer period (Memorial Day weekend through Labor Day weekends) between the hours of 10:00 a.m. and 6:00 p.m.

- (1) If spaces are shown on a remote site, the applicant shall provide evidence of a valid, renewable agreement to use the site. If remote parking is used, the site(s) used cannot be a public beach parking lot, street parking, or a public park.
- (2) If at any time the applicant cannot provide the required number of spaces, it shall notify the executive director within no fewer than 30 days before the expiration of the relevant lease or agreement, and the applicant must provide an alternative site, approved by the Executive Director, to provide the 191 parking spaces.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. **VIEW CORRIDOR ALONG PACIFIC COAST HIGHWAY**

A. In order to provide and maintain a coastal view corridor from Pacific Coast Highway, **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement subject to the review and approval of the executive director in which it agrees to maintain two view corridors across its property from Pacific Coast Highway to the waterline of the Pacific Ocean. The first view corridor shall extend from the easterly property approximately 240 feet west along the northern property line to the most easterly building, as shown on Exhibit No. 11. The second view corridor shall extend from the westerly property approximately 600 feet east along the northern property line to the realigned driveway, generally depicted in Exhibit No. 11. The objective of the view corridor is to enhance and protect views of the shoreline or ocean from the point of view of a motorist on PCH.

1. In support of this agreement the applicant shall submit, for the review and approval of the Executive Director, an encroachment permit from the California Department of Transportation, for the trimming and maintenance of the plantings and fences adjacent to the Club's northern property line in the public right-of-way along Pacific Coast Highway. The encroachment permit shall enable the applicant to maintain the plantings as long as the structures subject to this permit are occupied.
2. To carry out this obligation the applicant shall remove any opaque material or barrier along or on the fence that may obstruct views over the property from PCH, and trim and maintain the plantings and any other vegetation within the view corridor along the northern property line to a height of no greater than three feet, as measured from existing grade. All vegetation within the view corridor shall be trimmed no less than four times each year.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. PACIFIC COAST HIGHWAY ACCESS EASEMENT

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit an irrevocable offer to dedicate an approximately 1,125 square foot wide public access easement that traverses across the property from the northeastern corner, west approximately 150 feet, tapering to join PCH where the shoulder provides adequate width to accommodate foot and bicycle access outside the travel lane, generally depicted in Exhibit No 9. The Executive Director shall determine the exact location in consultation with the California Department of Transportation, County of Los Angeles Department of Beaches and Harbors, Department of Parks and Recreation, and the Bel Air Bay Club.

B. The irrevocable offer shall be of a form and content approved by the Executive Director, free of prior encumbrances, except for tax liens, that the Executive Director determines may affect the interest being conveyed, and shall provide the public the right to improve the access easement for pedestrian and bicycle access. The dedicated access easement shall not be open for public use until a public agency or private association approved by the Executive Director agrees to accept responsibility for maintenance and liability associated with the access easement. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The offer shall run with the land in favor of the State of California binding successors

and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

12. MAINTENANCE AND LIFEGUARD SERVICE

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall agree in writing, for the review and approval by the Executive Director, that the applicant will maintain the portion of State Beach directly seaward of the applicant's property, generally depicted in Exhibit No. 16. Maintenance shall include maintaining the area in a clean and unobstructed condition for public beach recreational use; and the provision and maintenance of trash and refuse containers for public use. The lifeguard tower and all trash containers shall be painted the same color as those operated by Los Angeles County and shall not contain the name or identifying symbols of the Bel Air Bay Club.

- (1) The applicant shall maintain and operate a portable lifeguard structure and provide lifeguard services for the public, consistent with standards adopted by Los Angeles County's Lifeguard. Lifeguard service shall be provided, at a minimum, during the weekends and holidays during the summer period (Memorial Day weekend through Labor Day Weekend).

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

13. FUTURE DEVELOPMENT

This Coastal Development Permit A5-PPL-02-162 and 5-02-099 is only for the development expressly described and conditioned herein. The permittee shall undertake development in accordance with the approved coastal development permit. Any proposed changes to the development shall be reported to the Executive Director. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

14. DEED RESTRICTION

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the

California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

VI. APPROVAL FINDINGS AND DECLARATIONS FOR COASTAL DEVELOPMENT PERMIT A5-PPL-02-162/5-02-099 (Dual Permit Jurisdiction):

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to demolish 30,701 square feet of the existing 51,120 square foot lower Bel Air Bay Club Facility, construct 39,113 new square feet resulting in a 59,532 square foot Club Facility; seaward realignment of approximately 248 linear feet of an existing 812 linear foot sea wall; seaward realignment of approximately 220 linear feet of an existing approximately 464 linear foot garden wall (sandwall); realignment of the Club's driveway with the Pacific Coast Highway (PCH) /Bay Club Drive interchange; and offer to dedicate an access easement for pedestrian and bicycle use.

Approximately 6,600 cubic yards of grading is being proposed. Grading is proposed for the realignment of the driveway approximately 30 feet to the east of the existing location in order for the driveway to be aligned perpendicular with the Pacific Coast Highway and Bay Club Drive intersection, and to raise the elevation of the driveway and adjoining portions of the parking lot, a maximum of approximately 6 feet to eliminate a potential hazardous traffic situation with the facility's egress and ingress.

With the permission of California Department of Transportation (Caltrans), the applicant is also proposing to trim and maintain, the existing hedgerow that runs the approximately 1,200 foot length of the property along Pacific Coast Highway right-of-way, along the easterly portion of the property, or east of the proposed realigned driveway to the eastern property line (576 feet) the applicant is proposing to trim the hedgerow to a height of 6 feet. Along the westerly portion, from the western side of the proposed realigned driveway to the western end of the property (592 feet) the applicant is proposing to trim the hedgerow to 3 feet, which will allow views of the ocean. The purpose of the proposed trimming is to improve the appearance of the area along PCH and provide public views along PCH along western portion of the property.

The applicant is also proposing to dedicate an easement adjacent to the Pacific Coast Highway right-of-way, at the northeast corner of the BABC property. If Caltrans accepts the easement the State could construct a five to six foot wide shoulder to eliminate a narrow (approximately 1 foot wide) and hazardous public access condition along PCH, and provide pedestrian and bicyclists enough room to safely traverse this section of PCH. The offer to dedicate will run for a term of twenty-one years, after which the offer will expire.

The project site is an irregularly shaped site totaling approximately 5.74 acres in size. The proposed project is located seaward (south) of Pacific Coast Highway (PCH), on the sandy beach, and adjacent to Will Rogers State Beach on the east and west facing sides of the property (see Exhibit No. 1). Depending on tides and beach sand conditions (typically the beach sand is eroded in the winter season and returns in the summer season) the existing facility is between a few feet (at the western end of the property in the winter months) to approximately 250 feet (at the eastern end of the property in the summer months) from the surfline and wet sandy beach. Currently, waves and high tides from winter storms overtop the existing seawall and inundate the Club facility.

Portions of the proposed development including the main building, terraces and paving, and new realigned seawall are proposed to be located seaward of the existing seawall. To protect a portion of the new development and to eliminate the existing 90 degree angle in the seawall, a 232 linear foot portion of the existing 825 linear foot seawall that currently protects the central and western portion of the existing development will be realigned a maximum of 40 feet further seaward to eliminate the 90 degree angle. The realigned seawall will connect to the existing southwest corner of the central portion of the seawall and taper back to the west approximately 196 feet and connect with the existing seawall. The realigned wall will enclose approximately 3,650 square feet of sandy beach area located entirely on the applicant's property (Exhibit No. 5). On the eastern portion of the site The proposed two-level cabañas in the eastern portion of the property and the existing sandwall in front of the cabañas would be realigned and encroach a maximum of approximately 15 feet further seaward.

According to the Draft Initial Study (2/16/00), the Bel Air Bay Club was founded in 1927, and consists of two separate facilities: Upper Facility and Lower Facility. The two facilities are located on separate properties and are separated by PCH. The upper facility is located inland of PCH on the bluff face. The Lower Facility consists of various buildings, including cabañas, outdoor recreational courts, patios, and parking. All development proposed under this coastal permit application is proposed for the Lower Facility.

A recently completed boundary line agreement with the State Lands Commission, Bel-Air Bay Club Title Settlement and Boundary Line Agreement BLA 272 /AD455 dated October 20, 2003, recorded on February 27, 2004 in the Official Records of Los Angeles County as instrument #04 0461738, sets a new more landward boundary separating the Club property from public tidelands. The Agreement also includes three leases described in

more detail below. The Title Settlement and Boundary Line Agreement was executed after the applicant submitted the application. The applicant has not amended its project description to include development mandated in the agreement.

B. State Boundary Line Agreements

In 1937, the property was the subject of a Boundary Line Agreement (BLA No. 1) with the State of California. The history of the 1937 Boundary line agreement is set out in detail in the Bel-Air Bay Club Title Settlement and Boundary Line agreement BLA 272 /AD455 dated October 20, 2003. Basically, in 1927 a private company, the Los Angeles Mountain Park Company constructed groins on this part of the coastline. They then leased and subsequently sold this property to the Bel Air Bay Club. In 1937 the Mountain Park Associates and other parties including the Bel-Air Bay Club applied for a boundary line agreement to recognize the new mean high tide line, which was seaward of the MHT line that had been surveyed in 1923. Late in 1937, the Chief of the Division of State Lands of the Department of Finance approved the Boundary Line Agreement. The agreement, later referred to as BLA 1, identified and established a fixed line, designated the ordinary high water mark, as the boundary line between the property of the State of California and upland land owned by the private parties including Bel Air Bay Club. Shortly thereafter in 1938 the Legislature established the California State Lands Commission (CSLC). In 1939 the CSLC "repudiated" the boundary agreement (BLA 1) but no formal action took place.

The Club constructed facilities and occupied the site. In 1952, the State Lands Commission granted a lease to the Club, between the boundary established by BLA 1 and the new shoreline. This lease expired in 1962. The Bel Air Bay Club posted the land and prevented public use of the leased portion of the beach and of the beach inland of the boundary established in the agreement.

In 2002, State Lands and the applicant entered into negotiations to establish a new boundary line. Due to legal and factual issues involving BLA 1, including "uncertainty as to the exact nature, time, location and extent" of natural and artificial influences that have affected the common boundary between public and private lands, and "the applicant's history of use of the property for recreational purposes," State Lands and BABC decided to enter into an agreement to "settle forever the location of the seaward boundary of the lands owned by BABC". In 2003, CSLC negotiated and approved a new Title Settlement and Boundary Line Agreement.

The 2003 Title Settlement and Boundary Line Agreement realigned the common property line (the agreed boundary line) approximately 60 feet landward of the 1937 BLA No. 1 boundary line in the western portion of the site. In the eastern portion of the site, the 2003 line generally follows the 1937 line (see Exhibit No.15).

The Title Settlement provides that to establish the new common boundary line that the Bel-Air Bay Club quitclaim to the State approximately 31,928 square feet of land (on the

beach) and the Club would lease (20 year term) from the State, for private recreation purposes, approximately 12,980 square feet (.298 acres) of beach area in the southeast portion of the project site, adjacent to the Club. At least in the summer, there is expected to be sandy public beach seaward of this recreation lease land. To effectuate the new boundary the State also agreed to quitclaim any and all lands inland of the new line, as shown in Exhibit No. 15, to the Club. No public access will be allowed on the Club's property or on the Recreation Lease property, except that if the condition of the beach area is such that access cannot be safely made across the public beach the Club shall allow the public to pass and repass on the Club's property. The new agreement also included two other leases: one for public beach maintenance and lifeguard tower service to be provided by the Club; and the other for groin maintenance for the three groins that are currently located on the property. The beach maintenance lease (25 year term) will cover the public beach area directly in front of the Club's property, from the Club's western and eastern property lines and extending seaward from the new boundary line to the tide line (see Exhibit No. 16). The Settlement agreement and lease require the Club to allow public access and use of this area, and to place signs on the beach on the boundary line indicating the location of the public beach. The settlement and lease also allow the Club to construct seasonal sand berms on this land, consistent with coastal development permit no. 5-92-108 as amended. Finally the settlement and lease require the Club to remove catamarans, signs, structures and any other objects not specifically authorized from the public beach property and to remove obstructions or construct a facility to provide public access adjacent to the westerly property line.

The State Lands Commission contends that the readjustment of the boundaries between state and private property and the creation of new leaseholds is exempt from the Coastal Act (PRC §30416 (c)). However, the Settlement explicitly states that development within either state or private property in the Coastal Zone is subject to the Coastal Act. The standard of review for this development is the Chapter 3 policies of the Coastal Act.

The applicant has not included the signage of the public beach, removal of fencing from State property, relocation of facilities or the modification to the groin on the west to provide public access or removal or repair of the groins as part of this application. A separate application will be necessary.

C. Coastal Access and Recreation

Article X Section 4 of the California Constitution provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose... and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof.

The Coastal Act contains many policies pertaining to the maximization of public access and public recreational opportunities within the coastal zone.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act 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 30213 of the Coastal Act 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 of the Coastal Act states:

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

1. Physical Access

Since the proposed project is located between the first public road and the sea and on sandy beach, the applicant's project must be assessed for its impacts on public recreation, and public access. The project proposes additions and modifications to a private club. With exception of pedestrian passage along the waterline during storm tides, required in CDP No. 5-92-108, no public access has been historically available or is proposed to any of the new or existing development on the Club's property, or to the beach that is located on its property. The development proposed does not provide maximum access for all the people of the State, there is no area of customary public use, and the Club is not a facility that serves low and moderate income people. In addition, the proposed seaward extension of the development will remove approximately 5,400 square feet of sandy beach from recreation use even by club members, so the proposed development will substitute other private recreation for private beach recreation.

(a) Expansion of public beach as a result of the 2003 Title Settlement and Boundary Line Agreement with the State Lands Commission.

The title settlement is not part of the application, but carrying out the 2003 Title Settlement and Boundary Line Agreement (Settlement) will result in additional sandy beach seaward of the applicant's private beach being available for public use, at least in the summer, when the beach is wide. The Settlement requires some development, including posting of signs, improving access through or over a groin and removal of fences. This development is not part of the application.

The facility was constructed in 1927. In 1937, the Department of Finance agreed on the boundary line between the State and upland property owners (See exhibit No. 14 and section B above.) Relying on the 1937 boundary line agreement, the Club constructed a clubhouse and other amenities and operated the facility. In 1952, the Club leased portions of the beach seaward of its boundary in the eastern down coast portion of its property for private use. The lease expired in 1962. Based on its leases and boundary line agreement, the Club excluded the public from the beach seaward of the Club. With the new Boundary Line Agreement (BLA 2003) the boundary line follows the 1937 line established in BLA No. 1 along the eastern portion of the property, and from the center of the property to the western property line, the new boundary line is located landward a maximum of approximately 60 feet from the 1937 BLA No. 1 line (see Exhibit No. 15). This readjustment of the boundary line results in approximately 33,137 square feet, or approximately .79 acres, being returned to public use.

As part of the 2003 agreement State Lands entered into three leases with BABC. One lease is for beach maintenance, requiring the Club to clean and maintain for the public, and permitting the placement and temporary maintenance of a lifeguard tower and temporary sand berms to protect the BACBC property from storm waters, to the extent authorized by Coastal Commission permits. The applicant agrees that it will provide beach maintenance and lifeguard service for Club members and the general public as part of the lease. The maintenance lease is for all areas seaward of the 2003 BLA line (except for the recreational lease area discussed below), between the BABC's eastern and western property lines. The maintenance lease is for a term of twenty-five years. BABC is not allowed to interfere with public access to and use of this area, and must post signs indicating it is public.

The second lease is a beach recreation lease for an approximately 12,557 square foot (0.298 acres) sandy beach area located in the eastern portion of the site (see Exhibit No. 16). The lease allows exclusion of the public from the lease area. The recreation lease allows only passive recreation (volleyball courts) and storage of portable lifeguard tower and catamarans and maintenance of the area. The lease does not allow for the construction of any structures. The lease is for a term of twenty years with rent of \$50,596 to \$56,921 per year (all monies going to the State's General Fund). The applicant contends that exclusion of the public from this lease area is not a change in use and does

not require approval of the Commission because the public was already excluded from this area under BLA-1.

The third lease is a "Protective Structure" lease. The lease is for a term of 20 years and allows the applicant the right to maintain the three groins currently on the property. (See Exhibit No. 16). According to the State Lands 2003 BLA, the groins were erected prior to 1937. State Lands is requiring the applicant to repair and maintain the groins and remove any hazardous conditions from the groin (this will require the applicant to submit a separate coastal development permit).

(b) Proposed development will include enclosure of approximately 5,394 square feet of sandy beach as a result of seaward extension of the seawall and garden wall.

The applicant proposes to use the area landward of the realigned seawall to accommodate approximately 228 square feet of additional interior building and 1,874 square feet of lanai/patio area. Directly behind the realigned sand wall the applicant will demolish the existing single level of 36 cabanas and construct 67 cabanas within two levels. The cabanas will be aligned with the straightened sand wall.

With the exception of the recreational lease area, the proposed development will be located on the applicant's fee title property and landward of the line established by the 1937 BLA and the recent 2003 BLA. While the development is proposed within the leasehold, the proposal includes new structures (approximately 228 feet of interior space and 1,874 square feet of lanai/patio area) seaward of the present structures. These structures are proposed behind a realigned seawall and a realigned garden wall, which are proposed to be realigned seaward to "smooth out" an angle in both walls. The new seawall is proposed to encroach seaward of the existing alignment a maximum of 38-40 feet. The realigned seawall will connect to the existing southwest corner of the central portion of the seawall and taper back to the west approximately 196 feet and connect with the existing seawall. This realignment of the seawall and new development behind the wall will take up approximately 3,650 square feet of sandy beach area.

The garden wall, located in the eastern portion of the property extends approximately 420 feet from the eastern end of the property to the central portion of the property. As the wall extends to the east a portion of the wall angles landward approximately 16 feet from the most seaward extent of the garden wall, and then angles back out toward the eastern boundary line (see Exhibit No. 3). The applicant is proposing to straighten the wall by removing the angle and realigning that section further seaward to be in line with the rest of the wall. This realignment of the garden wall and new development behind the wall will take up approximately 1,744 square feet of sandy beach area.

Although the new seawall and garden wall are proposed to encroach no further seaward than the most seaward extent of the existing walls, the realigned walls will extend new development further seaward, closer to the public beach and to the water, and take up a total of approximately 5,394 square feet of sandy beach: approximately 3,650 square feet

of sandy beach area behind the new seawall and 1,744 square feet behind the new garden wall.

The proposed seaward encroachment of the seawall will vary from 40 to 70 feet from the public/private property line (2003 BLA). The realigned garden wall will vary in distance from the public/private property line (2003 BLA) from approximately one foot at the eastern corner of the garden wall, to approximately 100 feet along the western portion of the garden wall. Although the proposed encroachments will occur on the applicant's fee title property, the proposed permanent alteration of sandy beach would not maximize public access or promote low cost visitor recreational facilities and would not support public water-oriented recreational purposes. Furthermore, the area behind the wall will provide recreation for Club members, but the recreation that it will provide, dining areas, patios, and bars could equally occur anywhere and is not coastal dependent. Moreover, the seaward movement of the wall will result in the removal of the sandy beach area for beach recreation even for members.

(c) Approval of the new seawall in the proposed locations will affect public access by reducing the sand supply.

With less sand available, the "public" area seaward of the club and down coast of it will diminish in size. Shoreline processes move sand along the beach from one area to another as a result of waves acting on beach sand, irrespective of ownership. The proposed seaward realignment of the seawall encloses more sandy beach area, and that area will no longer be available as a source of sand or serve as an inland storage area for sand for shoreline processes [This shoreline process is discussed in more detail in the Coastal Hazard section (section D.) below]. With the loss of sand and the potential narrowing of the public beach in front of the Club and downcoast, there will be less public area for public use. Therefore, there will be an adverse impact to public access.

The applicant has indicated that the proposed project, pursuant to the 2003 BLA, has public benefits that will improve public access in the area. In the 2003 BLA, the agreement requires that the applicant provide lifeguard service and beach maintenance, including trash and refuse service, for the public beach area directly in front of the Club; provide public access improvements at the groin located immediately to the west of the applicant's property, and provide public signage notifying the public of the availability of the beach for public use.

The groin, in which access improvements are required, is owned by the City of Los Angeles, through a January 1947 agreement with the State Lands Commission. The groin provides an obstacle to continuous lateral beach access due to the riprap and lower sand elevations. Therefore, in order to improve access at the groin, at least two access improvements have been suggested. The first alternative would be a stairway built into the existing groin. The second alternative would be to remove rock along the upland portion of the groin to create an approximately 10-foot wide opening. Both alternatives would be located on the portion of the groin that lies on State property. Any access improvement would be constructed and funded by the BABC, per the 2003 Boundary Line Agreement.

Furthermore, along the western boundary line, adjacent to the groin, there is a concrete vertical wall, approximately 7 to 8-foot high, with a chain link fence at the end and atop the wall, which encroaches approximately 8 feet onto State lands. The wall in combination with the groin further impedes public access across the beach, especially during high tide. Based on the information Commission staff has not been able to determine the date the wall was built; however, pursuant to the 2003 BLA, the BABC is required to remove all private encroachments, including the portion of the wall and fence that extends out onto State Lands in order to free the public beach of all private encroachments and to improve public access.

Providing access across this groin and removing the portion of the vertical wall that encroaches onto public beach, both of which currently pose an obstacle for continuous lateral access across this portion of beach, will improve public access and help mitigate

the Club's private recreational activities within the area of exclusive use (State Lands Recreational Lease) and the seasonal berming of the beach (berming has been addressed under CDP No. 5-92-108). The Los Angeles County's Life Guards, and the Department of Beaches and Harbors have expressed support for the access alternative of providing an opening in the groin which will benefit public safety and maintenance. The City has reviewed the preliminary request and has expressed conceptual approval for the access improvement for the groin. However, at this time, a coastal engineering report or engineering plans have not been prepared for either of the alternatives, so the feasibility of either alternative can not be determined at this time. A report and plans would need to be reviewed and approved by the City's engineering department, State Lands engineering division, and by the Commission's Executive Director.

Therefore, to ensure that the access improvements for the groin are completed and the wall/fence encroachments have been removed from the beach to improve public access, Special Condition no. 6 requires the applicant to provide approved plans and agree to construct the access improvements prior to the issuance of the permit and to complete construction of the improvements prior to occupancy of the proposed development. The access improvement for the groin shall be reviewed and approved by the City's engineering department, State Lands engineering division, and by the Commission's Executive Director,

In addition to the beach access improvements under the State Lands agreement, the applicant is also offering as part of the applicant's proposed project, to record an offer to dedicate a portion of land along the northeast corner of the property adjacent to the PCH right-of-way for future pedestrian and bicycle access improvements to eliminate a hazardous condition. In this area, due to the roadway shoulder narrowing to less than a foot, there is very little room along the roadway for bicyclists and pedestrians to safely pass. There is a narrow area between the guardrail and property fence for pedestrians to walk through, but due to an above-ground water main pipes/valves, access is difficult (see Exhibit No. 18, letter from Los Angeles County Bicycle Coalition, 12/5/03). Therefore, the applicant is proposing to dedicate an area to allow widening of the roadway shoulder to allow an adequate area for pedestrians and bicyclists to safely traverse this section of PCH. The area to be dedicated would be approximately a maximum of 14 feet wide and 150 feet long. The exact distances will be determined once a design has been developed. However, the applicant is not proposing to construct the roadway improvements. The applicant is only offering to dedicate a portion of its property for future improvements by other responsible agencies. Shoulder widening and access improvements would be the responsibility of the California Department of Transportation and would require the cooperation from the County of Los Angeles (Department of Beaches and Harbors) since the County of Los Angeles owns a portion of the adjacent property to the east, which would be needed to improve the access along this area. Both Caltrans and the County have expressed interest in widening the shoulder for improved access. As a condition of this permit, Special Condition No. 11, requires an offer to dedicate a portion of the applicants property, generally depicted in Exhibit No. 9.

Furthermore, because of the historic use of the area by the Club, lateral access concerns, and previous signs that limited access, State Lands has required the applicant to remove existing signs and post new signs at the western and eastern ends of the property and across the property informing the public of the availability of the beach for access and recreational use. Because of the Club's property and improvements extending onto the beach area, the line between private and public beach is unclear and could be a deterrent to the public. Therefore, as required by State Lands, this permit is also conditioned to require the placement of signs along the applicant's property notifying the public of the location of the public beach and the public's ability to use the applicant's property landward of any temporary berming (CDP No. 5-92-108). Signage shall include permanent signs and temporary signs that are placed during berming and removed once the berms are removed. All existing signs shall be removed unless approved as part of the signage plan. The applicant shall submit a signage plan, to be reviewed and approved by the Executive Director, and by State Lands Commission staff. The plan shall include the location, wording, and size of all plans.

As conditioned, the proposed development would prevent the adverse public access impacts associated with development encroaching further seaward, and that will continue to require shoreline protection, and will have private recreational activities on a public area of beach where the Club will have exclusive use. As conditioned, the project will provide substantial public benefits. As conditioned, the proposed project will be consistent with Sections 30211, 30213, and 30220 of the Coastal Act. Furthermore, the permit approved by the Commission will allow the Club to renovate and expand its existing facilities and to utilize approximately 12,679 square feet of leased public land in connection with the facility.

2. Nondiscrimination

The Coastal Act requires the maximization of public access for all the people. Although the circumstances of this application make it appropriate for the Commission to approve some development on public land leased by a private organization, the public access provisions of the Coastal Act can only be fully implemented if membership in the subject private organization is not restricted on the basis of any suspect classification. Accordingly, Special Condition No 5 requires the applicant to certify that it will not discriminate in its membership policies on the basis of race, sex, religion, or sexual orientation during the life of the approved project. By certifying that its membership policies are non-discriminatory, the applicant and its proposed renovated and enlarged facility complex would be consistent with the concerns raised by the cited sections of the California Constitution and the California Coastal Act of 1976.

The Coastal Act is written in terms of public rights, yet the basis of this condition is not limited to the terms of the Coastal Act. Even though there is nothing explicit in the State Lands leases with regards to non-discrimination, as a matter of law the Commission may depend upon the courts to read in such a policy justification. If the only development that was before the Commission was the permit application for the private Club facilities, and

the project did not involve the use of any state lands or properties, this permit would only be the issuance of license and the laws would not support this condition. However, this case is not so limited. Notwithstanding the presence or absence of any specific section in the Coastal Act, as a regulatory State agency, approving the use of public recreational lands for use by an exclusive private Club for an extended period of time, the Commission has the right under the Constitution to assure that the private Club will be open equally to all segments of the public [see Coastal Development Permit No. 5-85-76, 5-89-627 (Jonathan Club), upheld in *Jonathan Club v California Coastal Commission* (1988), 243 Cal Rptr. 168 depublished].

The intent of Special Condition number 10 is to require that the applicant, which is an exclusive membership organization, for a project located partially on state owned land leased to the applicant, certify that it does not discriminate in its membership policies on the basis of race, sex or religion. To have meaning, this certification must be made by the governing body or its fully authorized agent, and must be part of the membership policies of the Club for as long as the project approved in this permit on state leased lands remains in existence. Although the Executive Director does not have approval authority over these membership policies, the membership policies must remain in effect for the life of the project.

In response to this issue, the applicant has indicated that the Club has had a long-standing policy to not consider race, religion, or gender in its membership application process. The applicant has submitted documentation, including the Sponsor's *Guidelines for Regular Membership*, a letter from their current Club President, Ms. Maida Hastings, and the Club's bylaws to show that the Club does not discriminate in their membership practices. In the Sponsor's *Guidelines for Regular Membership*, which according to the applicant is provided to members for sponsoring new members, it specifically states that the "Club does not discriminate with respect to race, religion or gender in the Admissions Process". Furthermore, the letter from Ms. Hastings, President, states that it is the Club's long-standing policy not to consider race, religion or gender in its membership application process. However, despite these two documents, the Club's bylaws do not contain any policy that addresses non-discrimination with regards to membership practices and there is no guarantee in either of the documents supplied that the policies articulated therein will not change.

In order to be effective the nondiscrimination policies must be incorporated into the organization's bylaws. Therefore, Special Condition No. 10 requires that the applicant submit evidence that a non-discrimination policy has been incorporated into the Club's bylaws for the life of the project approved by this permit.

3. Parking

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of on-site recreational facilities to serve the new development.

Because of the project's proximity to the State beach and to public parking lots, development on the site could adversely impact public access to the beach. If the parking demand generated by new development exceeds the supply of parking that is available on site, members/visitors of the Club could potentially utilize the surrounding public parking that is needed to support general beachgoers, strollers, bicyclists, and joggers that depend on and use the public parking that is available in the general vicinity of the site. The surrounding area consists of Will Rogers State Beach and the adjacent beach parking lot that provides approximately 598 public parking spaces. Public parking is also provided west of the club, along the shoulder of PCH. If adequate parking is not provided on-site, it is possible Club members would use the surrounding public parking. This would usurp the limited public parking, especially the nearby street parking, and have an adverse impact on public beach access in the area. Therefore, in order to determine if the proposed project is consistent with the access policies of the Coastal Act, the Commission must find that the parking demand generated by the proposed development is adequately supported by the supply of on-site parking.

The proposed project includes the demolition of 30,701 square feet, or 60%, of the existing 51,120 square foot facility and construction of 39,113 square feet of new building area for a total net gain of 8,412 square feet, or an increase of 16% over the existing facility. According to the submitted plans, of the 8,412 square feet of additional space, approximately 80% is to be used as interior circulation.

According to the City of Los Angeles, in its approval, the City estimates the required parking for the proposed project at 20.3 spaces based on parking ratios applied to the facility's various uses (see Exhibit No. 12).

The Commission, through past Commission permit actions has developed parking standards for various uses within the Coastal Zone. These standards were originally derived from a study commissioned by the City of Los Angeles on the parking generated by various uses in the City. Although the city never adopted the standards, finding that in most areas of the city surplus on street parking could accommodate extra cars, the Commission has applied it in Los Angeles County in areas where under-parked establishments would reduce public parking available for beaches and recreational

facilities. For privately used beach club facilities the Commission has established a parking standard of one parking space for each four persons, based upon maximum capacity (maximum capacity of the facility is based on maximum occupancy standards established by the Los Angeles Fire Department) of all facilities (areas of assembly) capable of simultaneous use as determined by Commission staff, plus one parking space for each two employees. This parking standard has previously been applied to the Jonathan Club in the City of Santa Monica (CDP No. 5-85-076), which is an approximately 56,000 square foot private club facility similar in uses to the BABC.

The areas of simultaneous use, or areas of occupancy, of the new facility will total 25,190 square feet. That amount of square footage would generate a parking demand of 380 spaces attributable to the new or reconstructed facility (see Exhibit No. 13). However, given the nature of the facility and the various uses, there is a potential for shared use of the facilities by the members, where members will use more than one facility at the Club per visit, such as the exercise room, dining area, and locker rooms. Such shared use, would reduce the total parking demand compared to a parking demand based on simultaneous maximum occupancy of each separate use. In the absence of any parking studies and information regarding shared parking and member use of the facility, based on estimates used for other shared use development, there is a potential that approximately 25%, or 95 spaces of the 380 space demand generated by the rebuilt and new square footage would be for shared use. Therefore, the parking demand generated by the new areas of occupancy would be 285 parking spaces.

Furthermore, the applicant indicates the Club employs 40 people during the peak summer period. Estimating the number of employees for the proposed project based on the Club's existing square footage of 51,120, the number of employees for the new development would be approximately 24. Applying the Commission's parking standard of one space for every two employees, 12 parking spaces would be required. Therefore, the total parking demand generated by the proposed project square footage plus the required parking for employees would be 297 parking spaces (285 + 12).

The existing Club currently has 145 on-site parking spaces. Through the redesign of the facility and restriping the applicant is proposing to provide an additional 19 on-site parking spaces for a total of 164 spaces. The applicant asserts that the City's Los Angeles Department of Transportation provides parking space credit for the on-site provision of bicycle parking space. Hence, based on the number of bicycle spaces provided, the City has given the applicant a parking credit of 3 additional spaces for a total of 22 automobile spaces. The Commission however, based on past Commission action on coastal development permits, has considered bicycle spaces separately from automobile parking spaces; therefore, the Commission only recognizes the addition of 19 spaces. Furthermore, the applicant is demolishing 30,701 square feet, or 60% of the 51,120 square foot facility, and leaving 20,419 square feet, or 40% of the existing square footage. Since 60% of the existing square footage will be demolished, 60% of the existing 145 parking spaces, or 87 parking spaces, should be allowed to be applied towards the supply of parking for the new generated demand (new development) and the remaining 58

spaces is support parking for the 20,419 square footage that will not be demolished. Therefore, the total supply of parking provided by the proposed project for the new development will be 106 (87 + 19) parking spaces.

Based on the overall demand of 297 parking spaces required for the proposed new development and the 106 parking spaces that will be available for the proposed new development, the proposed project will be deficient 191 parking spaces.

The applicant has argued that the proposed development would not result in an increase in intensity of use of the existing site. The applicant states that the membership is limited to a maximum of 852 memberships (750 Regular and 100 Junior memberships. Regular membership is based on per family, not on individual members) and the renovation will not substantially increase the facilities overall size, therefore, the development will not substantially increase use. The applicant further contends that the existing facility is rarely heavily used, except during the Fourth of July. The applicant states that recently, during a hot summer weekend in May, the maximum parking demand was 135 spaces. Furthermore, according to the traffic and parking study prepared by Crain & Associates in the Draft Initial Study, during the fall and winter months, based on observations, surplus parking was always available. The report also states that during the summer months, the parking demand is near capacity, but does not state that the demand exceeds the existing capacity.

Although the current situation may indicate that the existing facility has adequate parking, the Commission disagrees that the proposed project will not result in an intensification of the facility even with a limit on the number of memberships. The proposed development involves extensive demolition, over 60% of the existing square footage, and remodeling of the existing facility. The net increase in square footage for the existing square footage will be 8,412 square feet or 16% increase over the existing. The renovation and remodeling, which has not occurred since the Club was first constructed in the 1930's, will expand and improve the existing facility, which would result in an enhanced private recreation beach use facility. With the proposed improvements, the facility can generate more active membership creating greater demand by the existing membership. The Commission strongly believes that the proposed development would result in an increase in intensity of use at the project site.

Furthermore, the applicant has not provided a count of the actual number of individual members or a survey of daily use of the site; hence the Commission is unable to determine the membership usage and what the potential use might be after renovation. Moreover, although the Club's By-laws limit Regular memberships to 750, it allows membership to exceed that number with membership consent, hence, the actual number of memberships can increase which would also increase the parking demand.

Therefore, the Commission must apply the most stringent interpretation of the parking standards to ensure that the project will not have an adverse impact on public access. In previous Commission actions, the Commission has treated proposals similar to the

applicant's proposal, which includes 60% demolition and extensive remodeling of an older facility, as if the entire proposal were a new development, and the Commission has not reviewed such additions/remodeling proposal projects separately from the impact of the existing facility without the addition/remodel proposal. The proposed development is not; therefore, merely an addition that would require a certain number of parking spaces to support only the additional square footage above what previously had existed. The proposed development would result in a greatly altered and enhanced facility that would generate a greater parking demand than currently exists on the site. Thus, the Commission must require adequate parking support for the changed nature of the existing structures due to the increase in actual physical development proposed for the project site.

To address this issue the applicant would need to substantially reduce the size of the proposed project so that the project's parking demand does not exceed the amount of parking the applicant can provide on-site, or provide a parking management plan that includes attendant parking and remote parking to met the projected parking demand. As stated, the applicant is increasing on-site parking through re-striping and redesign of the parking lot to a total of 164 spaces. It appears, based on limited space, the applicant has maximized the parking area and cannot create additional parking, except through an attendant parking system that utilizes on-site stack parking. At this time it is not know how many additional parking spaces would be created through stack parking, but it is apparent, based on the limited size of the parking lot, the applicant could not provide an additional 191 spaces on site.

The applicant has indicated that the Club uses a remote site and shuttle system on July Fourth, which is the Club's most heavily used day. According to the applicant, on July Fourth, the Club utilizes parking at a nearby school on Marquez Avenue (Marquez Avenue Elementary). The school is approximately half mile from the Club. It may be possible that the applicant can use this remote site, or other remote sites, such as the parking lot at the Club's Upper facility, and provide attendant parking to make up the parking deficit, during summer weekends when public and private demand is at the highest. However, at this time, the availability of the remote lots and the number of spaces that would be provided is not known. Therefore, in order to accept these alternatives to mitigate the on-site parking deficit, the applicant would need to provide evidence of the availability and number of spaces that could be provided, and provide long term agreements with owners of the remote sites that allow the applicant to use the lots during the summer period.

Therefore, Special Condition No. 9, requires a parking management plan to require attendant parking on-site and/or remote parking during the summer weekends and summer holidays (Memorial Day weekend through Labor Day weekend) to provide 191 additional parking spaces above the 164 spaces provided as on-site marked stalls. The parking management plan shall show a parking layout for stacked parking prepared by a traffic and parking engineer, providing stacked parking spaces that can be provided above the number of parking stalls on-site, and provide information, such as location and

number of spaces, hours of operation, and operation procedures. The applicant shall also provide long-term parking agreements for any remote site to be used for additional parking. The additional parking shall be provided during summer weekends and holidays (Memorial Day weekend through Labor Day weekend) between the hours of 10:00 a.m. to 6 p.m. As conditioned the Commission finds that the proposed project is consistent with Section 30252 of the Coastal Act.

D. Hazards

Section 30235 of the Coastal Act states in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states:

New development shall:

- (1) Minimize the risk to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along coastal bluffs.*

This site has been subject to storm damage, and part of the site is protected by a seawall. The applicant proposes to reconstruct its seawall as part of its project, extend part of the seawall seaward to "smooth" our a right angle, and construct new structures landward of the reconstructed seawall. This will result in the enclosure of beach sand by the wall, displacing approximately 5,400 square feet of sand area behind the reconstructed seawall and garden wall.

As noted above the Coastal Act limits the construction of new seawalls to two purposes: the protection of coastal dependent facilities and the protection of existing structures or beaches in danger of erosion. While the project is identified as a beach club, and the project is site in this location to take advantage of the beach, with the exception of the cabañas, most of the development on the site is not coastal dependent -- it consist of tennis courts, a patio bar, clubrooms, locker rooms a gym and restaurant -- all of which are recreation facilities, but none of which are coastal dependent. In addition, the plan to reconstruct 60% of the facility makes it difficult to assert unambiguously that the seawall is

necessary to protect existing development. The proposed project includes the reconstruction of 60 percent of the facility. After completion of the project, 40 percent will be an "existing structure," 60 percent will be a new structure. The applicant proposes to construct new structures whose footprints extend into the area captured by extending the seawall seaward. As noted above, and described in more detail below, enclosure of beach sand areas can have impacts on public access if the enclosure results in impacts to the sand supply.

Commission Coastal Engineer Lesley Ewing provided the following analysis of the project::

"SITE DESCRIPTION and PROPOSED PROJECT

"The Bel Air Bay Club is located adjacent to Will Rogers State Beach. Over the years a series of groins were constructed to stabilize the state beach, and the Bel Air Bay Club is immediately east, or downcoast, of one of these groins. The January 31, 2002 Report by Skelly Engineers describes this area and provides a history of the shore protection for the area. According to the Skelly Report, the Club built a vertical seawall along the western portion of the Club property sometime prior to 1962. This wall was damaged in the 1982/83 El Nino storms and was rebuilt in the same location, apparently with a deeper footing than was used initially. The Club is proposing to keep this wall in place. The Skelly Engineering report does not indicate that there will be any changes to this wall and the Burdge demolition plans do not show any changes to the wall or to the facilities immediately landward of this vertical wall.

"There is an existing 355-foot long wall fronting the central part of the Club. According to the Skelly Report, this wall was built sometime prior to 1962 and has not been reconstructed since it was first built. The wall has a shallow foundation and makes a 90-degree angle seaward to extend past one of the Club buildings. Due to the shallow foundation, scour has been a concern whenever this wall is impacted by waves. During the 1982/83 and/or 1997/98 El Niños the wall was undermined and required some shoring. In addition, the section of the wall with the right angle has experienced wave overtopping. As part of the renovation plan, the applicant is proposing to replace this 355-foot long seawall with a one that has a deeper foundation and a straighter alignment. The new wall will follow the existing alignment, except in the vicinity of the jog. At that location, the applicant proposes to "smooth" the wall, replacing a 230-foot long angled section of wall with a more seaward, 198-foot long section. The deepening of the foundation is proposed to reduce the possibility that scour may destabilize the wall. The "smoothing" of the seawall is proposed as a way to reduce the overtopping and additional scour that develops in this corner. The smoothing will also displace¹ approximately an

¹ "Displace landward" is used here to describe the enclosure of beach area that was previously seaward of the seawall by the reconstructed seawall. After construction the area will be landward of the seawall

additional 3,650 sq. ft. of beach landward of the vertical wall (as measured from the Burdge Demolition Plans). All modifications to this seawall are landward of the "Lease Line"².

"The eastern portion of the Club is protected by a low relief garden/sand wall that seems to be a barrier for wind-blown sand and a way to delineate property use and is not protection against storm wave attack. The January 31, 2002 Skelly Engineering Report notes that this wall will be part of both the existing and proposed project, but the only noted change for the proposed wall is that the westernmost portion of the garden/sand wall is proposed to be removed. The Burdge Demolition plans do not show any changes to the westernmost portion of this wall, but propose a generally more seaward realignment of the two-story cabañas on the eastern portion of the Club and a seaward "smoothing" of sand/garden wall fronting these cabañas. From the demolition plans, approximately 220 feet of the garden/sand wall will be "smoothed" to be in line with the rest of the wall. The smoothing will remove a triangular, landward indentation in the alignment; at the peak of the triangle, defining the maximum relocation of this wall, the new alignment will extend approximately 16 feet seaward of the current alignment. The Coastal Engineering Report does not propose any new shore protection for this area, nor does it provide any justification for new shoreline armor in this area. This wall appears to provide little if any storm of flood protection value and the changes to this garden/sand wall do not appear to be done for any storm protection reasons. All garden/sand wall modifications are landward of the "Lease Line".³

ADDITIONAL ACTIVITIES RELATING TO SHORE PROTECTION

In addition to the structural protection, the Club builds temporary sand berms fronting the western and central portions of the Club facilities. The berms are built by moving sand from the lower portion of the beach up closer to the facilities. According to the terms of the permit, the berms can be installed 24 hours before a forecast storm surge and a high tide predicted to be above 6'5". The berm must be removed within 8 hours after the high tide has passed. The staff report, for CDP# 5-92-108-A3 (The initial application to do sand berming was submitted in 1992; #5-92-108-A3 was an application to continue to do sand berming until November 2000) stated that in 1998, the berms were built approximately 6 to 8 times during the rainy winter storm season. According to information, provided by Skelly Engineering (August 6, 2003) in support of the most recent application to continue berming, each berm is in place for about two or three days. During the winter months, the

² When this report was written the Settlement had not been signed. The new walls and development are landward of the Revised boundary between public land and state land, and therefore on the applicant's property.

³ The lease line in this location is the location of the new public/private boundary and therefore on the applicant's property.

Club may berm sand about 15 times a season – as often as 3 or 4 times a month (Skelly Engineering, September 2, 2003). These temporary berms have been built for over a decade; they are a regular winter activity; and, they seem to provide a modest level of protection above what has been provided by the walls alone. Berming activities may be increasing (from 6 to 8 times in 1998 to about 15 times a season by 2003), or these two estimates may indicate that the need for berming activities has varied throughout the years.

SHORELINE CONDITIONS and SITE STABILITY

The Skelly Report notes that the beach seaward of the Bel Air Bay Club has been relatively stable for a number of years. This relative stability appears to be due to the wave conditions in the area, the historic nourishment that has occurred through Santa Monica Bay and to the groin field constructed and maintained to protect Will Rogers State Beach. Through this combination of factors, there has been a fairly nice beach seaward of the Bel Air Bay Club and the Club has been relatively safe from most storm events. However, since the early 1990's the Club has augmented its structural shore protection with an annual program of sand berming. And, even with this berming, there has been overtopping and site flooding perhaps 6 times a year (Skelly Engineers, December 16, 2002) at the central portion of the seawall, where there is the right angle.

Ms Ewing concludes that a seawall is necessary to protect existing structures on the west end of the site.

“While the beach has been “relatively stable” and has not suffered long-term erosion, the beach is not adequate to fully protect the Club facilities from routine combinations of storm surge and high tides. The beach exhibits rather significant short-term fluctuations in width and, fortunately, seems to be able to recover quickly from temporary erosion episodes. Thus, the main storm protection elements for the Bel Air Bay Club are the relatively stable beach, a temporary sand berming program that the Club undertakes annually, through a separate Coastal Development Permit, and the two seawalls.

The Staff coastal engineer indicated that due to adverse effects of seawalls on sand supply, (see below) that the applicants should agree that no future seawalls should be constructed on the eastern, down coast end of the project, where it is prospering to increase the size and number of cabañas.

“EVALUATION OF IMPACTS FROM PROPOSED PROJECT

'GARDEN/SAND WALL: The present project proposes to construct new two-story cabañas on the eastern portion of the property and to move a 220-foot long portion of the existing garden/sand wall up to 16 feet seaward to eliminate an angle in the wall. However, this wall is not a shore protection feature and the two-story cabañas on the eastern end of the property do not now require shore protection

since the wide beach has protected this portion of the property historically. To date, this area has not been exposed to significant impacts from wave attack or flooding due to the protective beach that fronts this portion of the property. Based on historic trends, this portion of the site should be expected to remain relatively safe from wave attack and flooding into the future; however, future conditions do not always follow historic trends.

In the Santa Monica Bay area historically there have been anthropogenic activities (large nourishment projects, construction of beach stabilization structures, etc.) that have greatly influenced historic and current beach stability. The future response of the Santa Monica Bay beaches to on-going or accelerated rise in sea level, storms, or changes in wave climate may be very dependent upon changes in beach nourishment activities, changes in the effectiveness of beach stabilization structures, and others. It is well recognized that coastal wave energies, wave climate, water levels, storm intensity and storm duration may vary significantly over future decades. Added to the uncertainty of these natural variables, there are the uncertainties surrounding the various future human activities that have had so dominant a role in the recent dynamics of Santa Monica Bay. These all contribute to the vagaries of coastal risk and difficult of using historic trends in beach stability to predict continued long-term beach stability.

The eastern portion of the site will be used for cabañas and tennis courts. Cabañas are normally small temporary or portable structures that could be relocated if they are threatened by erosion or flooding. The plans do not provide details about the two-story cabañas, but do show that their alignment will be straightened, with a slightly more seaward alignment, encroaching further onto the beach. The realignment of the Garden/Sand wall will follow the new cabaña alignment. All encroachment will be landward of the "Lease Line" (see above). While it is unlikely that the eastern portion of the project will require shoreline protection over the life of the project, as noted previously, there is a small chance that this area could be threatened in the future by waves and erosion. In the reviewed material, there is no commitment from the applicant to avoid future armoring for this area. If approval of the continued development of this portion of the project site is predicated upon the expectation that this area will not require shore protection, it would be reasonable to consider recommending some form of a no future seawall condition.

Ms Ewing indicates that a seawall is necessary to protect existing development in the central area of the project.

CENTRAL SEAWALL: The present project proposes to make major changes to the Club, to maintain the western seawall, to reconstruct the central seawall, and to eliminate the 90-degree jog in the wall by extending that section of the seawall further seaward. The western and central portions of the Club facilities are in a location where they now need and will continue to need some form of protection

from waves and flooding. The proposed new wall and realignment have been recommended by the applicant as a way to reduce scour, shorten the overall length of the wall, and reduce flooding and overtopping.

"The proposed rebuilt wall and wall realignment will reduce the overall length of seawall by approximately 32' feet, but will increase encroachment onto sand beach area by approximately 3,650 square feet. This encroachment is onto land identified on the demolition plans as being landward of the "Lease Line".

"The central portion of the Club is not now safe from flooding. Currently, the Club addresses the flooding risk with the existing seawall, the sand berms, and site drainage. The new wall will reduce but not stop this flood risk and the new development can expect to be exposed to some flooding over the life of the new development. There is no indication that this wall will alter the need for proper site drainage or the regular construction of sand berms. The sand berms are most effective for a short duration storm and become less effective for long duration or multiple storms. Some type of shoreline armoring is a necessary aspect of the new development for both flood protection and erosion protection. Without the proposed seawall reconstruction, the new facilities would face the same risk from flooding and erosion as the current facilities. For flood protection, an alternative to the seawall would be to build to new or existing facilities on pilings or other elevated foundation elements that would remove them from the direct impact of flooding. The access roads, paths, and ancillary structures would also need to be protected from short-term erosion and flooding events and these structures are more difficult to elevate. Thus, it may not be possible for the Club to maintain its facilities if the proposed central wall were not allowed.

"Alternatives: The Skelly Engineering Letter Report (January 31, 2002) provides an examination of various alternatives to the proposed central seawall. The no project alternative would continue reliance on the existing seawall. This would perpetuate the problems that have been identified for this wall – specifically scour and overtopping. There would continue to be site flooding, and, as noted by Skelly Engineering, there is the risk that the wall could fail due to excessive scour of the foundation. If the building immediately landward of this wall is to be rebuilt, this development would not be safe from the risk of geologic or flooding hazards if it were to rely on the existing seawall.

"The Skelly Engineering Letter Report (January 31, 2002) considered two structural methods to protect the Club facilities and two "soft" alternatives. These were quarry stone shore protection, sheet pile seawall, beach nourishment and berming. The quarry stone revetment was determined to be able to provide adequate protection, but would have a footprint that would be approximately 33' wider than the footprint for a vertical wall. The sheetpile wall was found to be a viable alternative, requiring a concrete cap down to the maximum scour depth to prevent cobble abrasion. Beach nourishment was analyzed within the regional context,

where, despite the presence of groins on the up and down coast sides of this property, a protective beach would need to be 200' wide and 1 mile long. Such a beach would cost approximately \$900,000 and would require re-nourishment. In addition, the Skelly Engineering Report (page 11) determined that even a 200-foot wide beach would not provide effective protection from storms similar to the 1982/83 or 1997/98 El Niños. The analysis did not determine the minimum beach that would be adequate for such events, and determined that beach nourishment "is not a viable alternative" due to the cost and short-term nature of protection. Finally, the Skelly Engineering Report determined that berming provides "protection for about one day of extreme waves but cannot withstand the storms similar to the 1982-83 or 1997-98 El Niño winters. (Page 12)"

"The analysis did not fully consider the possibility of beach nourishment within the groin compartment occupied by the Club. And, while beach nourishment will always have the risk that the beach can be removed by a series of storms, many projects do opt to use a wide beach as storm protection. In fact, that is the historic protection that the Club has used for the more eastern portion of the property. The western and central walls are now needed for protection from flooding and storm waves since the beach in this location is not wide enough to keep waves away from the Club facilities. There are drawbacks to using beach nourishment for shore protection, as noted by the Engineering Report; however, an active beach nourishment program could be a useful complement to an option that would armor the back beach.

"The proposed vertical wall would have less encroachment on the beach than a revetment and should provide backshore protection that has a lower risk of flooding than the option of beach nourishment. Nevertheless, the vertical wall would not preclude the use of beach nourishment to enhance the protective properties of the wall, or as a future substitute for ongoing berming. Furthermore, the Engineering Analysis notes that this proposed vertical wall could be adversely impacted during major storm events⁴, so it is probable that the effectiveness of the proposed wall would be increased by efforts to provide for a protective beach seaward of the wall (a 200' wide beach was the target identified in the Engineering Report). The option that would be most protective of the backshore development would be the proposed wall with beach nourishment. The proposed alternative of a vertical concrete wall, will provide a level of protection adequate to protect against waves and flooding from most storm events. 75 to 100 year recurrence events may result in some overtopping and flooding that must be determined to be an acceptable level of risk for the Club. The proposed alternative, combined with other flood management efforts (drainage, possible sand bagging, etc.) will assure minimal risk from flooding.

⁴ The Engineering Report, page 13, states, "Waves and water levels with a 10 year recurrence interval will not overtop the proposed seawall and wind screen. Waves with a 50 year recurrence interval may slightly overtop the wall. Finally, waves with a 75 to 100 year recurrence interval, the design wave, will overtop the wall."

"The Skelly Engineering Letter Report (January 2002) provides design criteria for a proposed new wall, with a scour depth of $-1.0'$ MSL, and a wall height of about $+18'$ MSL with a windscreen or $+14.5'$. This proposed wall, with the windscreen, will be between $4.5'$ and $6.75'$ higher than the existing wall. Plans for the proposed new wall have not been provided. To provide suitable protection, the proposed seawall must comply with these design criteria. If this seawall is recommended for approval, a recommendation that the final plans be submitted to the Commission for review and approval would be appropriate."

In considering a new wall, the Commission must consider both whether the wall can be approved, and then if it is approved, the impacts of a wall on coastal resources, such as sand supply. If a wall reduces sand supply to the adjacent down coast beach, public access to a coastal resource will be reduced. In fact, Los Angeles County has spent public funds to nourish Will Rogers State Beach.

"Impacts to Coastal Resources: The Skelly Engineering Letter Report (January 31, 2002) notes on page 10 that, "The western end of the club is separated from the adjacent public beach by a groin. The groin isolates the public beach from the Club's seawall. ... The realigned seawall, is too far away from both the east end (about 420 feet) and the west end (about 455 feet) of the club to have any impact on the adjacent properties." While the Club's location does establish some isolation from public areas, the upcoast groin is a public structure, and the beach seaward of the Lease Line is also public beach. Also, public trust lands may go inland as far as the seawall during times that the beach is eroded and the waves are hitting the seawall. Since there may be some uncertainty as to the limits of public trust lands, as well as uncertainties as to the physical extend to some of the known impacts from shoreline protection, the remaining discussion will cover impacts to the shoreline seaward of the seawall.

"The existing wall has several adverse impacts on the shoreline and the new wall will continue these impacts. Both walls encroach onto the beach and are in an area subject to occasional wave action. While the walls are only occasionally exposed to wave attack, there are times when the material landward of the seawall would have become active beach material, if the wall was not there. This supply of beach sand, landward of the seawall, has been greatly modified with the development of the Club facilities; however, historically this area would have served as a stockpile or reserve of sand that would have become active beach material during storms. Under more calm conditions, sand would return to the landward area through wave and wind transport. At present, the seawall prevents the removal of whatever sand remains landward of the wall and likewise, the wall and garden/sand wall minimize the amount of new sand stored inland of the active beach. While this can have significant consequences on an eroding shoreline, the impacts are less significant and more temporary on a relatively stable shoreline.

"The existing wall is subject to wave attack frequently enough in the winter season that it is overtopped about 7 times a year. The applicant has not provided information on the frequency of waves hitting the wall without causing overtopping, or the frequency of wave run-up coming to the base of the wall, however, this would likely exceed the frequency of overtopping. Even with the frequent construction of sand berms (based on information provided by the applicant), the seawall is exposed to rather frequent wave attack, and about 7 times a year, it is exposed to waves with sufficient energy to overtop the wall.

"The new alignment may reduce the frequency of overtopping and flooding landward of the wall, but the seaward encroachment of the wall will result in a comparable or greater frequency of wave attack. This could have significant impact on beach use during times when the beach is narrow and there is little, if any, dry beach seaward of the wall. One area that may provide a temporary point of safe access would be the temporary berm. Since the berm is built using sand that is taken from seaward of the Lease Line and moved to or close to the Lease Line, it would seem that the public should have use of this bermed sand for safe access, regardless of its location relative to the Lease Line. In addition, the opaque wall that has been erected on the upcoast groin could be a barrier to lateral access during these times of the year when there is little if any dry beach seaward of the proposed new wall. Removal of that barrier would allow for a safer transition from one side of the groin to the other, and not force access to move seaward or further off the sand and into the surf and up-rush zone.

"Scour is the removal of beach material from the base of a cliff or seawall due to wave action. When waves impact on the hard surface, some of the energy from the wave will be absorbed by the surface, but most of it will be reflected back seaward. If this reflected energy is directed downward, either by wall design or by interaction with incoming waves, the wave energy can disturb the material at the base of the wall and create erosive or scour trenches in front of and down coast of the hard surface. This phenomenon has been recognized for many years. A 1976 publication entitled, "Shore Protection in California (Department of Navigation and Ocean Development, 1976) stated that:

While seawalls may protect the upland, they do not hold or protect the beach that is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water created by the waves striking the wall rapidly remove sand from the beach.

"This observation was stated again more recently by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions" (Coastal Sediments '87):

"Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring... Under normal wave and tide

conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects onto the active littoral zone.

If armoring is deemed warranted to protect a threatened structure and if rational assessment concludes that installation of the armoring would adversely affect the shoreline, mitigation in the form of periodic additions of beach quality sediment should be considered."

"If the scoured beach material is sand or cobble, it can be pulled away from the beach by the waves and carried off shore or down coast. It can also be pulled along by waves and driven against the bluff, seawall or bulkhead, causing damage to the vertical surface. The material removed by scour normally remains in the littoral system and following a storm event, scour trenches often fill in with new sand carried shoreward by more gentle waves.

"Scour is often a temporary problem, and is difficult to quantify since it is so dependent upon specific wave conditions, and type of beach material. A four-year study of seawall impacts along the Central California Coast (Griggs, Tait, and Scott, 1990), found that the beach recovered independently of the seawall when the low-energy wave conditions of summer returned. Even though it is not normally quantified, scour can be a serious concern, and there are no known ways to correct the erosive trenches which can be created by scour, short of either physically refilling them with beach material or waiting for waves to readjust the beach profile and refill the trench naturally.

"The wall realignment will eliminate the scour hole that developed in the corner of the wall, but the realignment will not alter the scour or end effects that result from the existing wall along the straight portion. All adverse impacts to the beach will continue, or be moved further seaward – due to the proposed seaward realignment of the seawall. The effects of scour will be temporary and most of the effects will occur between the wall and the Lease Line. Impacts from scour seaward of the Lease Line would be slight.

"End effects are the changes to the beach up and downcoast of a seawall. One of the more common end effects comes from the reflection of waves off the seawall in such a way that they add to the wave energy impacting the unprotected coastal areas. Wave refraction and diffraction around the end of a seawall also contributes to increases erosion to the adjacent area. In a report on the literature on the interaction of seawalls and beaches, entitled "Effects of Seawalls on the Beach" (Kraus, 1988), one of the key conclusions was:

"At the present time, three mechanisms can be firmly identified by which seawalls may contribute to erosion at the coast. ... The third mechanism is flanking i.e. increased local erosion at the ends of walls."

"A report of the long-term study of seawalls along the rather sand-rich portions of northern Monterey County, Griggs and Tait found that seawalls could cause a "loss of beach up to 150 m. downcoast from the seawalls due to reflection from end of structure." (Griggs and Tait, 1988) In a follow-up study, they concluded that the "most prominent example of the lasting impacts of seawalls on the shore is the creation of end scour" which "exposes the back beach, bluff, or dune areas to higher swash energies and wave action" (Griggs, Tait, and Scott, 1990).

"A laboratory study by researchers at Oregon State University (McDougal, et al., 1987) found:

"Results to date indicate that erosion at the ends of seawalls increases as the structure length increases. It was observed in both the experimental results and the field data of Walton and Sensabaugh (1978) that the depth of excess erosion is approximately 10% of the structure length. The laboratory data also revealed that the along-coast length of excess erosion at each end of the structure is approximately 70% of the structure length."

"Like scour, it is difficult to quantify the exact loss of material due to end effects. The impacts are often temporary and likely to be greatest during and following storm events. A consequence of removing the right angle from the central seawall, however, is that it will result in an overall increase in the along-coast length of straight wall and possibly increase the end effects at the overall wall terminus – adjacent to the upcoast groin. Based on the research by Walton and Sensabaugh, this longer section of wall could extend the upcoast length where end effects could be identified. While the study by Walton and Sensabaugh use the distance over which the impact can be observed as the key measure, the corollary to this may be that the increase in wall length results in greater the build-up of wave forces that can be translated along the structure. If this is correct, then the upcoast groin would be exposed to greater end effects as the length of straight seawall increases. Since the groin is a perpendicular structure immediately upcoast of the seawall, it would be the key feature impacts by any change in end effects.

"The beach immediately downcoast of the groin and adjacent to the existing seawall is one of the locations that will be most adversely impacted by the temporary impacts from scour and end effects. This area is impacted now by scour and end effects and the impacts could increase slightly when the wall realignment increases the length of straight wall. The most likely changes to this area of beach would be to development of transient scour holes and scour trenches either along the wall or along the base of the groin. These impacts are unfortunate components of linear shore protection and the only possible mitigation is to fill these areas with sand as they develop. Such efforts during a series of storms could prove to be futile since further scour and end effects would quickly remove the new fill material.

Fill following a storm event can be added, but these scour holes and trenches are often the first areas of the beach to recover naturally following a storm. (Seawalls have many of the same characteristics of vertical bluffs; scour trenches develop seaward of bluffs and then disappear as sand is redistributed across the beach area. This restoration process has been observed along natural bluffs as well as constructed seawalls.) These scour holes can create hazardous conditions for beach access during and after storm events. Along the groin, this hazard is increased since pedestrians would not be able to see the conditions on the other side of the groin until they have climbed onto the groin and walked around the opaque fence. Since filling the scour holes following every storm may not be practicable, it could be reasonable to make this temporary hazard more obvious to beach users. If the opaque fence on top of the groin were removed, it could give pedestrians a better opportunity to view the beach and determine whether safe access is possible.

“The proposed new seawall alignment will encroach further onto the beach than the current wall, removing approximately 3,650 sq. ft. of sand beach from public use. The analysis of alternatives did not consider any modifications to the proposed Club facilities that would eliminate or substantially reduce either the need for shoreline protection or the need to “smooth” the alignment through a landward relocation of the seawall. The proposed new Club development seems to be the only limitation to a more landward seawall alignment. The Engineering Report notes that the 90-degree angle in the wall is a significant problem that needs to be corrected to reduce the adverse impacts from scour and overtopping. The Engineering Report did not identify any existing physical constraints to a more linear alignment that would preclude a landward relocation for the new wall. This would likely require the landward relocation of the Club facilities and possibly a small reduction in parking, walkways, patio area, etc. There is nothing in the provided material that indicates that a landward realignment of the seawall to avoid seaward encroachment would necessitate major structural changes to the proposed new club facilities.

However, by limiting the redevelopment of the seawall to the replacement of the existing wall in its current alignment, the current scouring and flooding problems created by the 90-degree angle will still persist. To address this particular issue the applicant will be given the alternative of realigning the existing seawall by relocating the seawall further landward to straighten out the existing alignment and eliminate the 90-degree angle. Since the applicant is proposing to demolish all existing development located in the central area, the applicant can redesign the proposed project and realign the existing seawall that currently protrudes 38 to 40 feet further seaward than the western seawall, and align the seawall with the garden wall located in the eastern portion of the property forming one straight contiguous wall. By relocating the existing seawall further inland, the wall will have less exposure to wave impacts and the area will be available as a source of sand for shoreline processes. This landward realignment of the existing seawall would remove an approximately 3,500 square foot building area from the applicant’s proposed

development area resulting in the loss of approximately 1,044 square feet of proposed interior space, reducing the proposed total new square footage from 40,709 square feet to 39,665 square feet for a total interior building area of 60,084 square feet (existing and new). This would also reduce the proposed new outdoor patio and terrace area by approximately 1,980 square feet, from 5,200 square feet to approximately 3,200 square feet, resulting in a net total of 5,968 square feet (existing and new) of patio and terrace area for the redeveloped facility. Therefore, this alternative will address the applicant's concern with the current alignment of the seawall and still provide the applicant with a viable project and reduce impacts to shoreline processes and minimize hazards associated with building on the beach.

Limiting the proposed development to no further seaward encroachment will provide the applicant a buildable area for a viable project that can be found consistent with Section 30235 and 30253 of the Coastal Act. Therefore, Special Condition No. 1 requires the applicant to submit revised plans showing one of the following: (1) All redevelopment of the facility shall be located landward of the current alignment of the existing seawall and in the event the applicant chooses to reconstruct and replace the central 370 foot section of the existing seawall, the new seawall shall be located in the same location and alignment as the existing, or; (2) realign the 370 foot central wall section by relocating the existing wall landward so that the wall forms a contiguous straight line with the western portion of the seawall and garden wall located to the east.

Based on this analysis the Commission concludes that there is a reasonable case to allow reconstruction of the wall in its existing location, but due to effects on sand supply and increase potential with flooding and structural damage, the wall should not be allowed to be relocated seaward. Moreover, it is apparent that a side effect, if not the purpose, of the seaward relocation of the wall would be the construction of a new structure that would be dependent on the wall, which is inconsistent with Section 30235. Part of the new structure would be located on sand that was previously part of the sand supply that is shared with downcoast public beaches.

There is evidence that the new cabañas can be safely reconstructed in their present location. The Commission finds that under the constraints of Section 30235, it cannot approve a long line of new cabañas if they required a seawall. The Commission also finds that the proposed development can be safely constructed if protected by a seawall reconstructed in its present location. This seawall can be approved because it is necessary to protect the 40% of the development that will continue to exist on the site. Therefore, the Commission approves the reconstructed seawall in its present location, or if straightening is necessary, as an extension the existing wall, and requires that no subsequent shoreline protection be allowed to protect the new development. However, as in the case of the cabañas, the Commission cannot approve the new development behind the existing wall if a new or relocated seawall were necessary for its protection. For the reasons above, the Commission also imposes a special condition requiring the applicant to agree, as a condition of an approval, to construct no future shoreline protective

devices. As conditioned, the development is consistent with section 30235 and 30253 of the Coastal Act.

E. Scenic Resources – Development Adjacent to Parks and Recreation Facilities

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance the visual quality in visually degraded areas.

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

The Coastal Act protects the scenic and visual quality of coastal areas and requires that projects be sited and designed to protect the surrounding coastal resources. Furthermore, Pacific Coast Highway (PCH) is listed as a Designated Scenic Highway on the City of Los Angeles General Plan Scenic Highways Map.

The proposed project is located seaward of the first public road (PCH), on the sandy beach and adjacent to Will Rodgers State Beach. According to the Draft Initial Study (February 16, 2000) the facility is located on a 5.74 acre irregularly shaped site with approximately 1,200 feet of frontage along Pacific Coast Highway.

The existing facility consists of 51,120 square feet of buildings, patio areas, recreational courts, and surface parking. The buildings are one and two stories, and range from 14'-6" to 29'-7" in height. The eastern portion of the property is developed with seven at-grade paddle tennis courts, and a row of beach cabañas lined along the seaward side of the courts and landward of the existing garden wall. The cabañas, at 14'-6" feet in height, as measured from existing grade, are the tallest structures in the eastern portion of the property. To the west of the courts is the Club's only two-story structure, measuring 29'-7", as measured from existing grade. To the west of this two-story structure are one-story structures extending to a height of approximately 14 to 21 feet, as measured from existing grade.

Existing fencing with opaque screening, a property-line hedge, and existing buildings on site obstruct views of the beach area and ocean from PCH. The fence is a chain link fence, but the Club has inserted plastic strips into the openings in the mesh. The Club's elevation ranges from approximately 8 to 10 feet below PCH (elevation 20 feet). The existing hedge and fencing are within Caltrans right-of-way. Current coastal views from PCH are limited to the opening of the 36-foot wide driveway. Views offered from this location are generally a narrow band of blue water. Furthermore, because of the narrow width of the driveway and motorists' speed of travel, motorists' views across the site are of limited duration.

From the beach, the facility is visible for the entire length of the property. Views from the beach looking landward (north) include the Club facility and bluffs landward of PCH. The bluffs immediately behind the Club property are developed with single-family residences and the upper club facility, which are visible from the beach. From the bluffs, views of the existing facility are available only from limited to areas along the residential streets north and northeast of the facility.

The proposed project includes buildings that will vary from 12 to 28 feet above grade, which varies from elevation 8 to 12 feet. The new main building will include a tower element that occupies an area of approximately 100 square feet, and extends to a height of 37 feet above grade. Two level cabañas, measuring to a height of approximately 20 feet, will be located to the east of the main building. The existing 14-foot high cabañas to the west of the main building will remain.

According to the plans and Draft Initial Study, the new two-story elements of the project are limited to the central portion of the main facility and the cabañas to the east. The maximum height of the pitched roof of the central portion of the main facility is 28 feet in height, and steps down to 21.5 and then to 18 feet.

While the proposed project would expand the facility by approximately 10,000 square feet, the building footprint of the proposed project is located primarily within the existing building footprint, with some encroachment further seaward along with the proposed realignment of the seawall and garden wall.

Currently, views from PCH are obstructed and blocked by the existing development on the applicant's property as well as six foot fence and hedge that are located on Caltrans property. Views into and across the project site would remain available from the public beaches east and west of the property. Although proposed improvements would be visible from the beach area to the east and west, and directly in front of the Club, given the distance the facility is setback from the property line and the developed nature of the bluffs behind the facility, the proposed improvements would not have a significant impact on views of the bluffs from the beach.

As stated, coastal views from PCH are limited by existing development and vegetation, which allow views only at the driveway opening. The main views through the driveway

opening are over the western portion of the site and the existing cabañas. There are also limited blue water views over the existing main building, which are partially obstructed by the buildings' roof top structures, such as, air condition ducts and vents. These views will be obstructed by the increased height of the proposed buildings located directly south (seaward) of the realigned driveway.

To mitigate the loss of views along PCH, the applicant has proposed to increase the views along the western portion of the site through the trimming and maintenance of the vegetation along PCH at a height of no greater than three feet and to remove any opaque screening on the fence. Since the existing 14-foot high cabañas along the western portion of the site will not be altered, portions of the ocean and horizon above the cabañas would be visible from PCH if the vegetation along the roadway did not obstruct the views. Maintaining vegetation at three feet will keep vegetation below the roofline of the cabañas and below the view line from PCH. The proposed view corridor over the western portion of the site will open up the views over the cabañas and create an approximately 600-foot view corridor over the Club's facilities for motorists traveling on PCH. Although the existing 6 foot high chain-link fence will remain, the fence, with the opaque screening removed, will allow views through the fence and will not significantly obstruct views.

Opponents of the project, Martin J. Murphy and Harold Tuchyner and Robert Locker, representing the Pacific Palisades Residents Association, contend that the fence and vegetation are located on public property and obstruct scenic coastal views to and along the coastline. The City stated in their findings, "The Zoning Administrator has reviewed, in the case file, a survey conducted by the State Department of Transportation, Engineering Services Branch, on December 13, 2000. The survey shows that all the fences along the Club/Caltrans common property line are on State Lands, except for some fences (chain-link and wooden) in the eastern 200 feet of the site, which are setback from PCH". While it is possible that the fences and landscaping, were constructed and planted by the Bel Air Bay Club, there is no evidence to indicate when the vegetation and fencing were installed. However, the applicant has indicated that Caltrans has conceptually approved the trimming of vegetation along PCH and in staff discussions with Caltrans, they have indicated that they have no objection to trimming the vegetation to create additional views along their Right-of-way. The applicant has proposed to remove any screening on the fence and lower the vegetation on the western portion of the site along PCH, but proposes to only trim and maintain the vegetation at a height of 6 feet along the eastern portion of the site along PCH. However, if the applicant lowered and maintained the vegetation below the sight line from PCH, and removed or lowered all opaque coverings from the sightline along more of the property, more coastal views could be restored. The Commission finds that if visual barriers were lowered to three feet, from the eastern portion of the site approximately 240 feet, to the eastern edge of the first building, views for southbound motorists over the property can be further increased (see Exhibit No. 11). Eliminating these visual barriers would mitigate the impacts of the increased height of proposed development on views. Even if motorists would not see the shoreline due to the angle of view and speed of traffic, there would be less of a "tunnel effect" created by the

mass of vegetation along PCH. Therefore, in addition to the applicant's offer to trim and maintain the vegetation along the northwestern portion of the site and remove all opaque fence covering from the sightline, the applicant shall also trim and maintain the vegetation along the northeastern portion of the site to create an additional view corridor.

As noted, a six-foot high cement fence at the western property line, extending perpendicularly from PCH toward the rock groin, obstructs views along the beach. The State Lands Commission determined that a portion of the cement wall and fence atop the wall are located on State Lands. State Lands required the Club to remove the fence and wall that encroaches onto State Lands. The Commission similarly finds that the fence impedes visual and physical access to the coastline and must be removed as a condition of this permit.

The Commission finds that opening the fence and maintaining the vegetation at a height of no higher than 3 feet along highway property line, will improve coastal views from PCH. The Commission finds that if the applicant decides to trim, rather than remove the vegetation to achieve this, than it must also agree to regularly maintain the hedge at the agreed upon height. Lowering these visual barriers will enhance views and will mitigate view impacts attributable to the increased height of the structures. Therefore the Commission finds that as conditioned, the proposed project will be consistent with Sections 30251 and 30240 (b) of the Coastal Act.

F. WATER QUALITY

The standard of review for development proposed in and adjacent to coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies. Sections 30230, 30231 and 30232 of the Coastal Act require the protection of biological productivity, public recreation, and marine resources.

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored.

Section 30231 of the Coastal Act 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states, in pertinent part:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. Best Management Practices will be implemented to ensure that secondary construction-related impacts to biological resources are minimized during construction. Soil erosion can occur naturally, and may be accelerated during grading and construction when the area cover is removed and bare soil is disturbed. Precautions will be taken to assure that construction runoff and storm water run-off is filtered prior to leaving the site. The measures proposed adequately deal with water quality impacts associated with construction activities. However, in order to verify that the proposed measures listed in the applicant's plans are followed, The Commission imposes Special Condition No. 8, which requires submittal of a Final Runoff and Erosion Control Plan. The Commission finds the proposed project, as conditioned, is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

2. Post Construction Impacts to Water Quality

The proposed development will result in urban runoff entering Santa Monica Bay. Pollutants such as sediments or toxic substances, such as grease, motor oil, heavy metals, hydrocarbons, pesticides and fertilizers are often contained within urban runoff entering the Bay. In this case, the site drains new buildings, a parking lot, walkways and landscaped areas. Therefore, the primary post-construction water quality concerns associated with the proposed project include sediments, trash and debris, grease, motor oil, heavy metals, hydrocarbons, pesticides and fertilizer.

The proposed development would result in the discharge of storm water into the Bay. As such, the amount of pollutants carried through the system would increase proportionally. Therefore, the project has the potential to affect the water quality of the coastal waters. Finally the proposed project includes an 8,841 restaurants and bar. Restaurants can be major sources of pollution if discharges of grease, wastewater and wash down water are allowed to enter sanitary sewers or storm drains.

In order to deal with these post construction water quality impacts, the applicant has submitted a Runoff Control *Plan* prepared by their project engineer. The project site is

located within and adjacent to the beach. Contaminants such as oil and grease, fertilizers, pesticides, and other toxic chemicals typically accumulate on ground surfaces and are then washed into storm drains and waterways by irrigation or rainfall. In order to reduce the level of contaminants leaving the property, the project has been designed to include a stormwater detention basin and water filtration system. Drainage from the "parking areas" will be directed to a series of storage/infiltration systems that will filter the water and provide storage during rain events.

In order to address potential impacts from the reconstructed restaurant the Commission requires that the restaurant include grease traps and that such grease traps be regularly maintained so that the material does not enter the sewer system. Moreover, since plastics and Styrofoam are a major source of debris in the oceans, the Commission requires that the applicant agree not to use Styrofoam and plastics in take out food.

In order to protect water quality impacts associated with parking lot runoff, the BMPs implemented must be designed specifically to minimize and/or treat these pollutants. There will be no significant long-term adverse effects of the siting of the facilities and the associated infrastructure on the adjacent sensitive biological habitats and resources. Long-term effects on water quality are anticipated to be beneficial with the operation of the proposed water quality management system. Currently, there is no filtration or treatment of runoff from the site. If the applicant conforms to the suggested special conditions, the proposed system will discharge low volumes of less toxic waters to the ocean compared to existing conditions. In order to ensure that water quality is adequately protected, Special Condition No. 8 has been imposed, which requires submittal and implementation of a Final Water Quality Management Plan. As conditioned, the proposed project will be consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

G. Unpermitted Development

Opponents of the project, Martin J. Murphy and Harold Tuchyner and Robert Locker, representing the Pacific Palisades Residents Association, have alleged that certain aspects of the existing project were constructed without benefit of a coastal development permit and continue to be inconsistent with the Coastal Act.

- 1) Fence and Hedge along Pacific Coast Highway Property Line. The opponents contend that the Club installed the fence and vegetation along Pacific Coast Highway, and that the fence and hedge are located on State Highway property. City and coastal staff have concluded that the fence does not represent a violation. All the fences along the Club/Caltrans common property line are on Caltrans property, except for some fences (chain-link and wooden) in the eastern 200 feet of the site, which are setback from PCH. The reason the Club PCH boundary fence is located on state land is that the boundary between the Highway and the bluff changed when Caltrans relocated its right-of-way following a major 1980's landslide on the hillside inland of PCH. At that time

PCH travel lanes were relocated closer to the Club, leaving inadequate shoulder on the eastern end of the Club, but not requiring removal of the fence. There is photographic evidence the fence and hedge existed before 1972. Staff determined that there was no violation.

- 2) West, (Upcoast) Property Line Fence and Revetment. There is a revetment on the western property line topped by a wooden fence. The fence and revetment block lateral access along the beach. The revetment, although installed by the original developers (Los Angeles Mountain Park Company, see Section B) is located on the adjacent Los Angeles County beach property. The fence is located on the applicant's property on its inland end, and from there, meanders onto the County beach and state property. The fence and wall were constructed prior to 1972. While they may have expanded after that year, the dimensions and materials of the fence in 1972 and 1997 were not possible to ascertain. The seaward ends of the up- coast property line fence was determined to be located on state lands in negotiations for the 2003 Settlement with the State Lands Commission. The Settlement requires the Club to draft plans and negotiate with adjoining (public) property owners to remove or provide access over the inland part of the groin that obstructs lateral access and to remove parts of the fences that are located on state and County land. A coastal development permit and an agreement with the City and County of Los Angeles are required to partially demolish the fence and remove part of the groin or construct a way over it. The Club has had initial discussions with the City, (the owner of the groin) but has not yet requested a coastal development permit for this activity. Special condition no. 6 addresses this issue.
- 3) East (Down-Coast) Property Line Fence. The applicant installed the fence prior to 1972. While the fence may have expanded after that year, the dimensions and materials of the fences in 1972 and 1997 were not possible to ascertain from aerial photographs. The seaward ends of the down- coast property line fence was determined to be located on state lands in negotiations for the 2003 Settlement with the State Lands Commission. The Settlement requires the Club to remove the parts of the fence that are located on State Land; a coastal development permit is required to partially demolish the fence. The Club has removed parts of the downcoast fence; but has not yet requested a coastal development permit for this activity.
- 4) Thirty-two Shade Structures/Permanent Umbrellas: Approximately 32 umbrella/single-pole shade structures have been installed on the sandy beach. In 1972 there are no development seaward of the seawall and garden wall. In 1975, several apparently movable beach umbrellas were visible on the beach. In 2002 aerial photographs, approximately 32 uniform umbrella structures appear to have been semi-permanently installed/anchored in a designated sitting area on the sandy beach. There is no evidence that the applicant

sought a coastal development permit for installation of the shade structures. The shade structures/permanent umbrellas are located on the sandy beach seaward of the applicant's seawall and garden wall, within the applicant's property as identified in the 2003 Settlement with the State Lands Commission.

- 5) Six Palm Trees with Cement Planters On Sandy Beach: In the 2002 California Coastline aerial photographs, there are 6 palm trees (2 groups of 3). The palm trees and their concrete planters are located on the sandy beach seaward of the applicant's seawall and garden wall. The trees are located within the applicant's property as identified in the 2003 Settlement with the State Lands Commission. The palm trees and planters are not evident in the 1972 or 1986 aerial. There is no evidence that the applicant sought a coastal development permit for this development.
- 6) Volleyball Nets/Courts: One court existed on the sandy beach in 1972. The 2002 aerial photograph showed four courts. Three of the courts were removed between 2002 and the present as a requirement of the 2003 Settlement with the State Lands Commission because they are located on State property. The remaining court is in the location of the court observed in the 1972 aerial photograph. There is no evidence that the applicant has sought a coastal development permit for removal or relocation of the volleyball courts.
- 7) Relocation of boat storage area: The 2003 Settlement with the State Lands Commission required relocation of the boat storage area to leased land. While the boat (catamaran) storage area appears in the 1972 aerial photograph and is regarded as not requiring an after-the-fact permit, the relocation requires a coastal development permit. There is no evidence that the applicant sought a coastal development permit for relocation of the boat storage area.
- 8) Wooden walkway on beach. There is a wooden walkway across the beach toward the surfline located seaward of the main structure clubhouse. It does not appear in the 1972 aerial. There is no evidence that the applicant sought a coastal permit for this development.

As part of this permit the applicant has requested approval for installation of the volleyball courts within the recreation lease area, but did not request approval of other structures located seaward of the seawall.

As part of this approval request the Commission approves development inside the boundary of the garden wall and the seawall—on the applicant's own property. The Commission also approves the volleyball court located on the private recreation lease, and requires removal of a portion of the walls in the western portion of the property that encroaches onto State Lands. The Commission requires the applicant to remove or alter part of a groin immediately west of and adjacent to its property that obstructs lateral access [See Special Condition No. 6A(3)].

The Commission has separately addressed view and access issues resulting from the relocation of the highway and the height and design of the fence and hedge (Special Conditions No. 10). The applicant has not submitted an application to install the shade structures, the walkway or the palm trees on the beach. The Commission will consider the issues raised by this unpermitted development when the applicant submits an application that describes it and its effects on views, public beach access and coastal processes to the City and the Commission.

Commission staff is continuing an investigation into this and other reported development that may be unpermitted. Consideration of this application has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission will act on this application without prejudice.

H. Local Coastal Program

Section 30604 (a) of the Coastal Act states that:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

In 1978, the Commission approved a work program for the preparation of Local Coastal Programs in a number of distinct neighborhoods (segments) in the City of Los Angeles. In the Pacific Palisades, issues identified included public recreation, preservation of mountain and hillside lands, grading and geologic stability. The continued use of Temescal Canyon as a recreation area was also an issue, because at that time the Canyon was in private hands.

The City has submitted five Land Use Plans for Commission review and the Commission has certified two (Playa Vista and San Pedro). However, the City has not prepared a Land Use Plan for Pacific Palisades. In the early seventies, a general plan update for the Pacific Palisades had just been completed. When the City began the LUP process, in 1978, with the exception of two tracts (a 1200-acre tract of land and an adjacent approximately 300-acre tract), which were then undergoing subdivision approval, all private lands in the community were subdivided and built out. The Commission's approval of those tracts in 1980 meant that no major planning decision remained in the Pacific Palisades. The tracts were A-381-78 (Headlands) and A-390-78 (AMH). Consequently, the City concentrated its efforts on communities that were rapidly changing and subject to

development pressure and controversy, such as Venice, Airport Dunes, Playa Vista, San Pedro, and Playa del Rey.

As conditioned, to address the impacts the proposed development will have on public access and coastal views, approval of the proposed development will not prejudice the City's ability to prepare a certifiable Local Coastal Program. The Commission, therefore, finds that the proposed project is consistent with the provisions of Section 30604 (a) of the Coastal Act.

I. 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)(i) 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 impact which the activity may have on the environment.

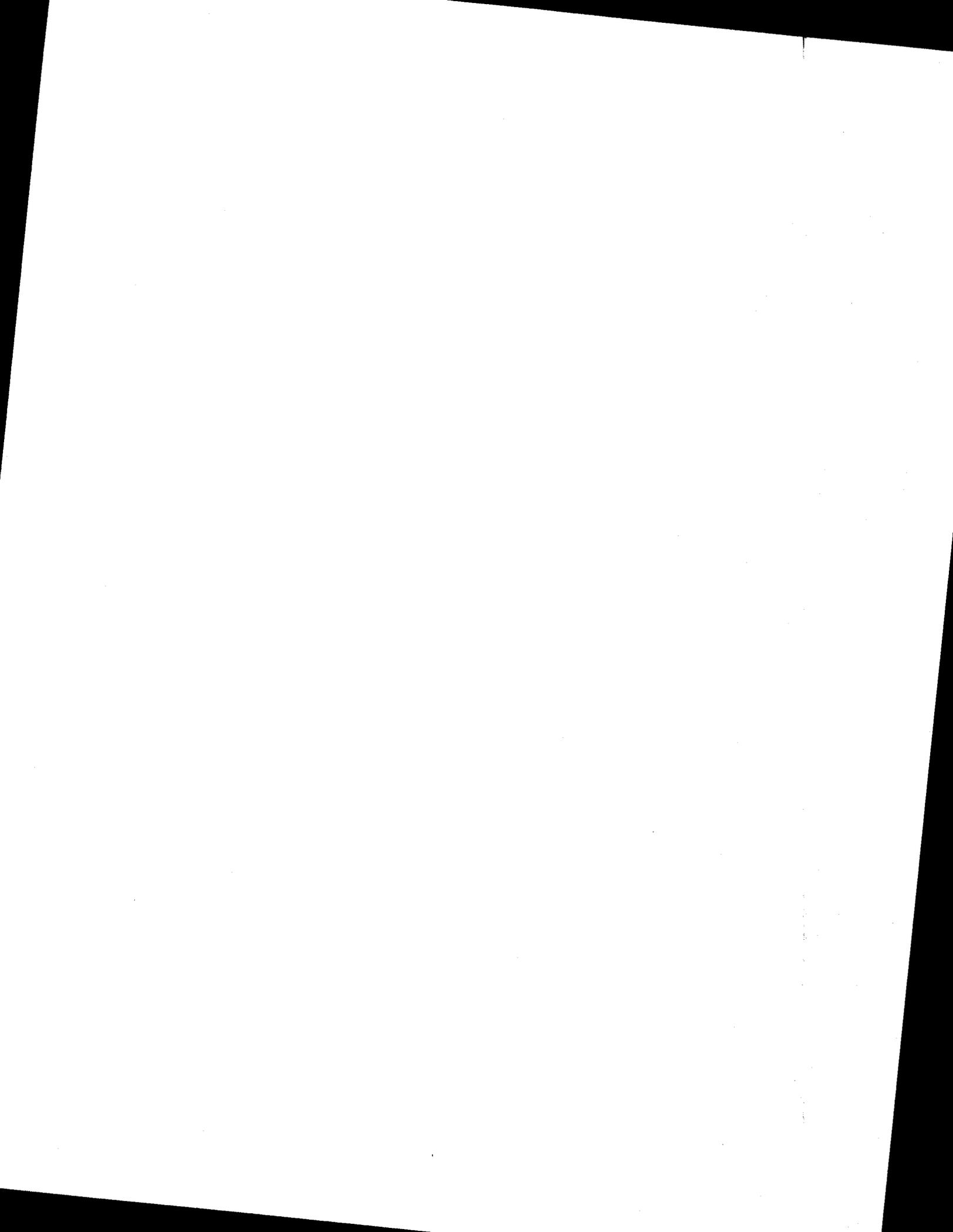
The Commission considered denial of the project. Denial of the project would result in no change in the seawall of the project, and no change in the structures. The Club would continue to be subject to the requirements of the settlement with the State Lands Commission. The unsafe entry from Pacific Coast Highway would not be repaired, and this would perpetuate the problems that have been identified on the seaward side of the seawall – specifically scour and overtopping. There would continue to be site flooding, and, as noted by Skelly Engineering, there is the risk that the wall could fail due to excessive scour of the foundation. If the building immediately landward of this wall were to be rebuilt, this development would not be safe from the risk of geologic or flooding hazards if it were to rely on the existing seawall. However, with the demolition of 60% of the development, including the development directly behind the area of overtopping and flooding, the applicant can redesign the project to set back the development further inland and away from the impacted area.

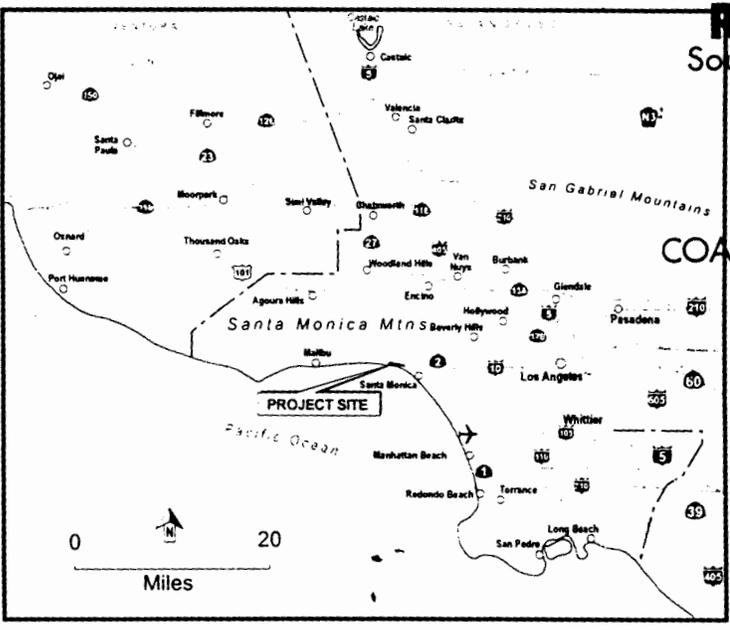
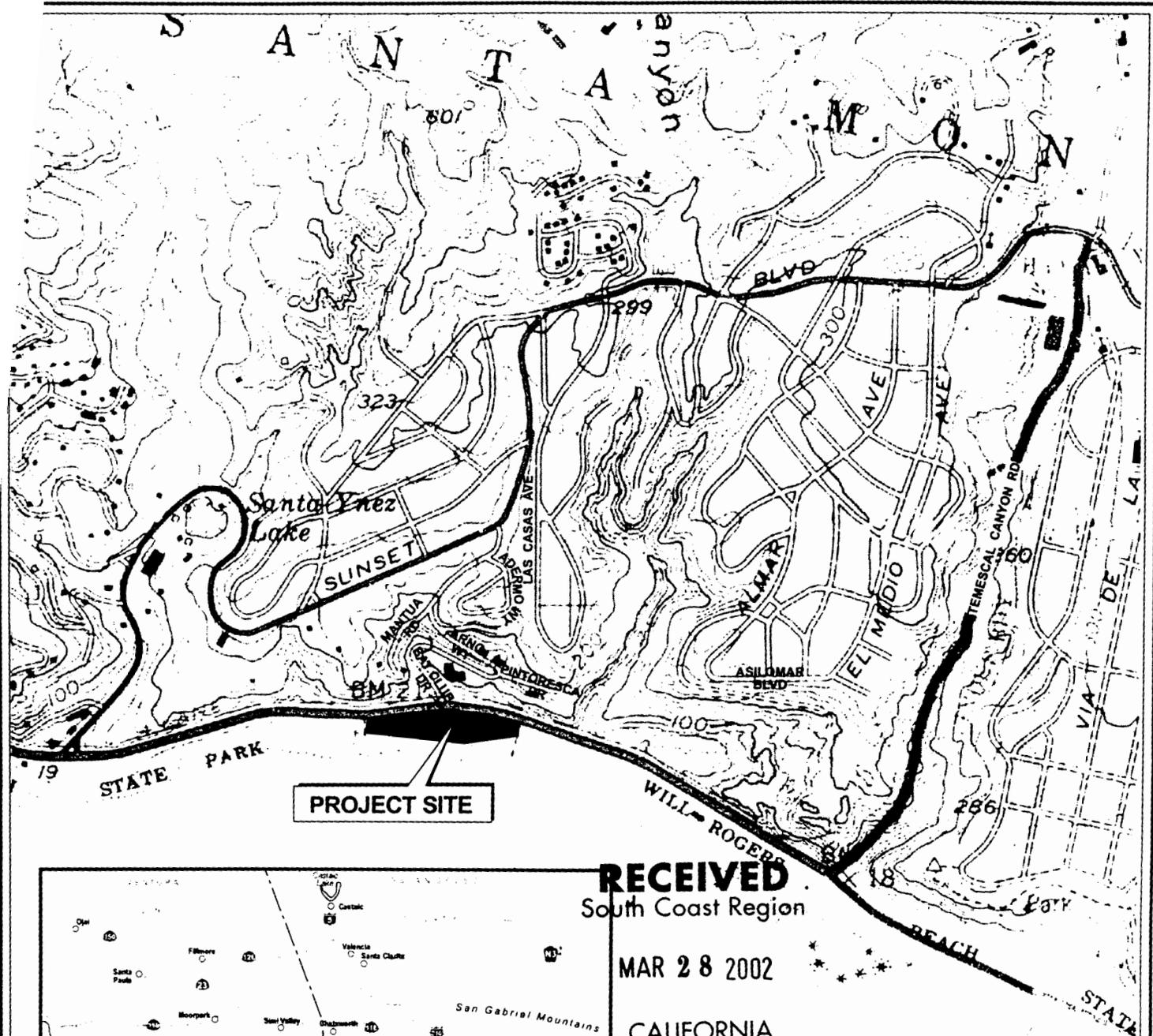
The Commission considered that an alternative to the proposed seawall realignment would be to build the new facilities on pilings or other elevated foundation elements that would remove them from the direct impact of flooding. However, the access road, paths, and ancillary structures would also need to be protected from short-term erosion and flooding events and these structures are more difficult to elevate. Thus, it may not be possible for the Club to maintain its facilities if the proposed central wall were not allowed.

Another alternative the Commission considered was the approval of the project as submitted. This change would result in enclosure of significant sand area, (5,400 sq. ft.) and removal of that sand from the sand supply, which would have a potential long-term effect on the down coast public beaches and on the width of the public beach seaward of

the development, and would place development closer to the water, which would subject the develop to further wave impacts and damage. Therefore, the Commission finds that the alternative that would cause the least amount of adverse impacts would be to limit the development to no further seaward encroachment.

As conditioned, the proposed permit will not cause any significant adverse impacts on the environment. Therefore, the Commission finds that there are no feasible alternatives or additional mitigation measures available which would substantially lessen any significant adverse impact which the activity would have on the environment, and that the project can be found consistent with the requirements of the Coastal Act to conform to CEQA.



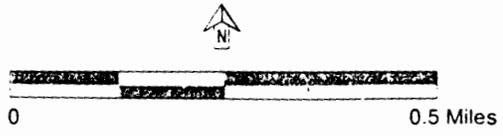


RECEIVED
South Coast Region

MAR 28 2002

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 1
APPLICATION NO. MS-PPL-02-1621 5-02-039
<i>Vicinity Map</i>
California Coastal Commission



Bel Air Bay Club Lower Facility
Regional and Vicinity
Location Map

Source: U S G S Quadrangle Topanga, 1952, Photorevised 1981

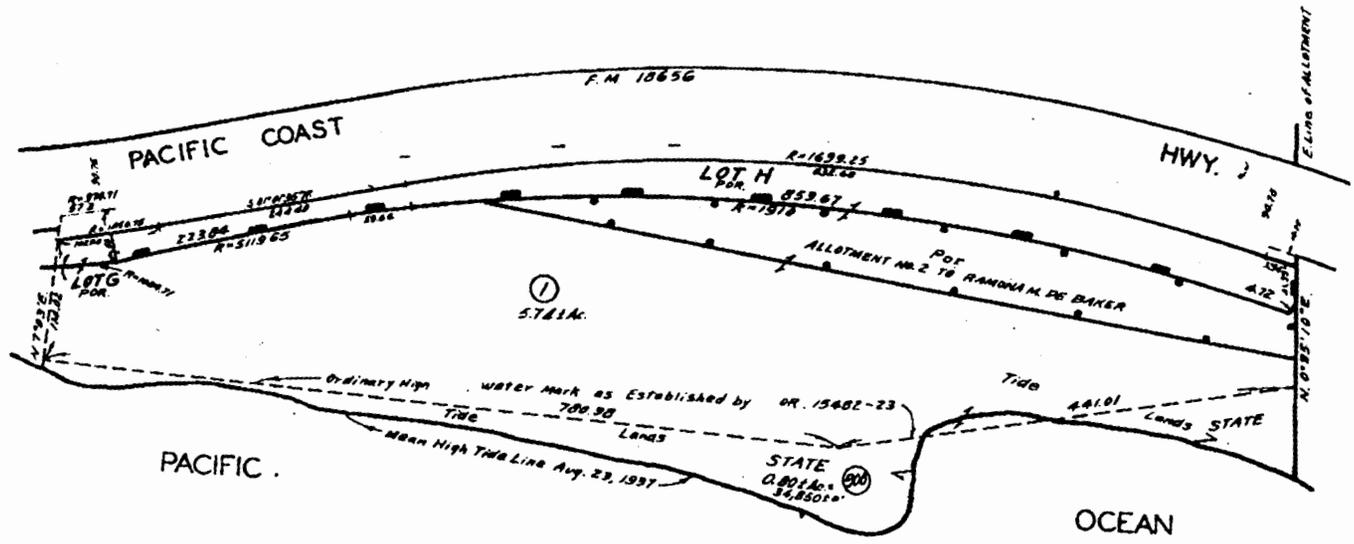
View Enlarged Map

View Printing Instructions

County of Los Angeles: Rick Auerbach, Assessor

4415 36
SCALE 1" = 100'

Revised
8-17-59
3-11-64
8-6-64
3-4-65
750625601



RANCHO BOCA DE SANTA MONICA,
D.C.C. 2405 17TH JUDICIAL DIST.
C.F. 72

TRACT NO. 8940
M.B. 162-42-45

CODE 87

FOR PREV. ASSMT. SEE: 1988-38

ASSESSOR
COUNTY OF LOS ANGELES

EXHIBIT NO. 2
Application Number
AS-177K-02-17-1



FIGURE 1

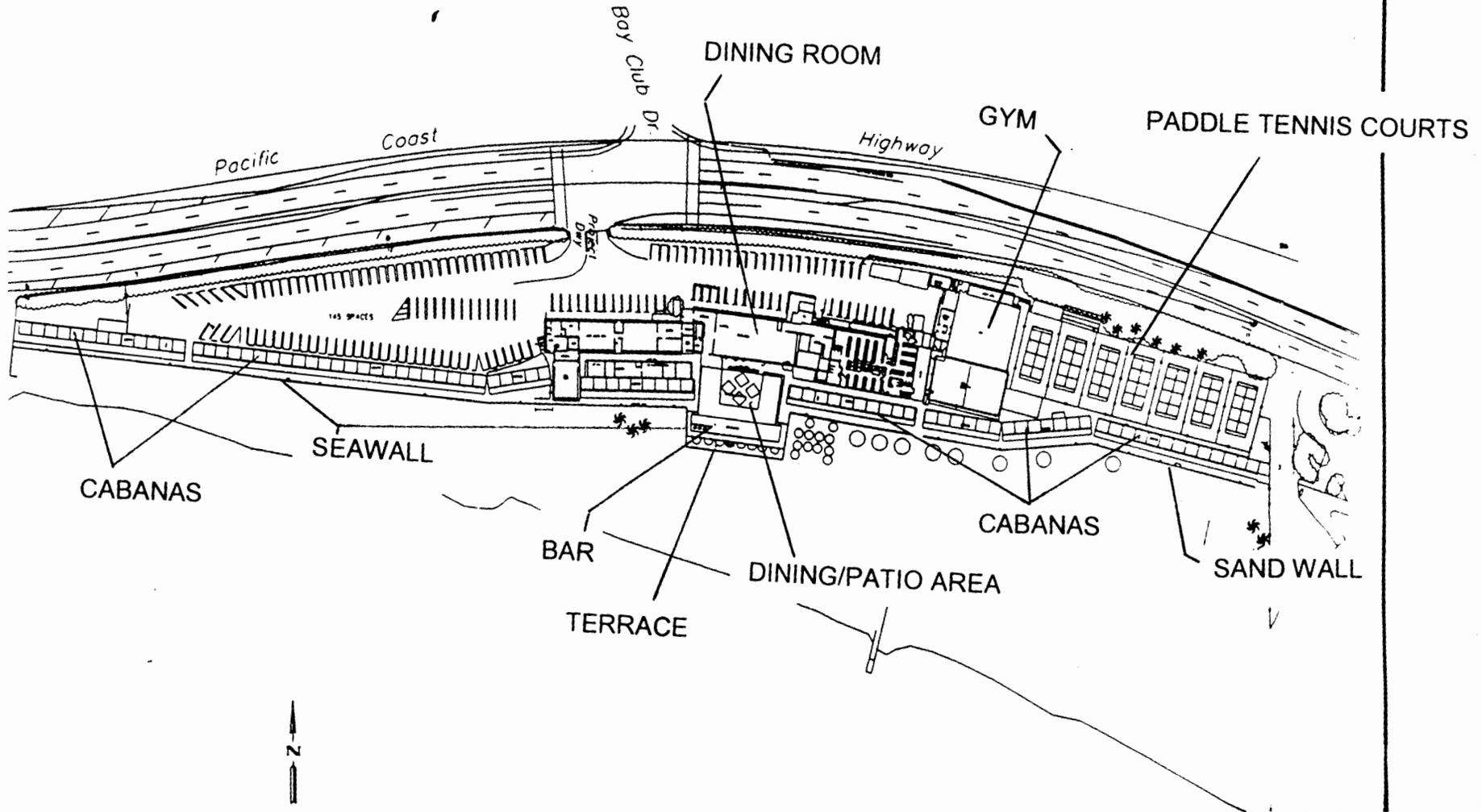


EXHIBIT NO. 3
Application Number A5-PP4-02-1621 5-02-037
<i>Existing Site</i>

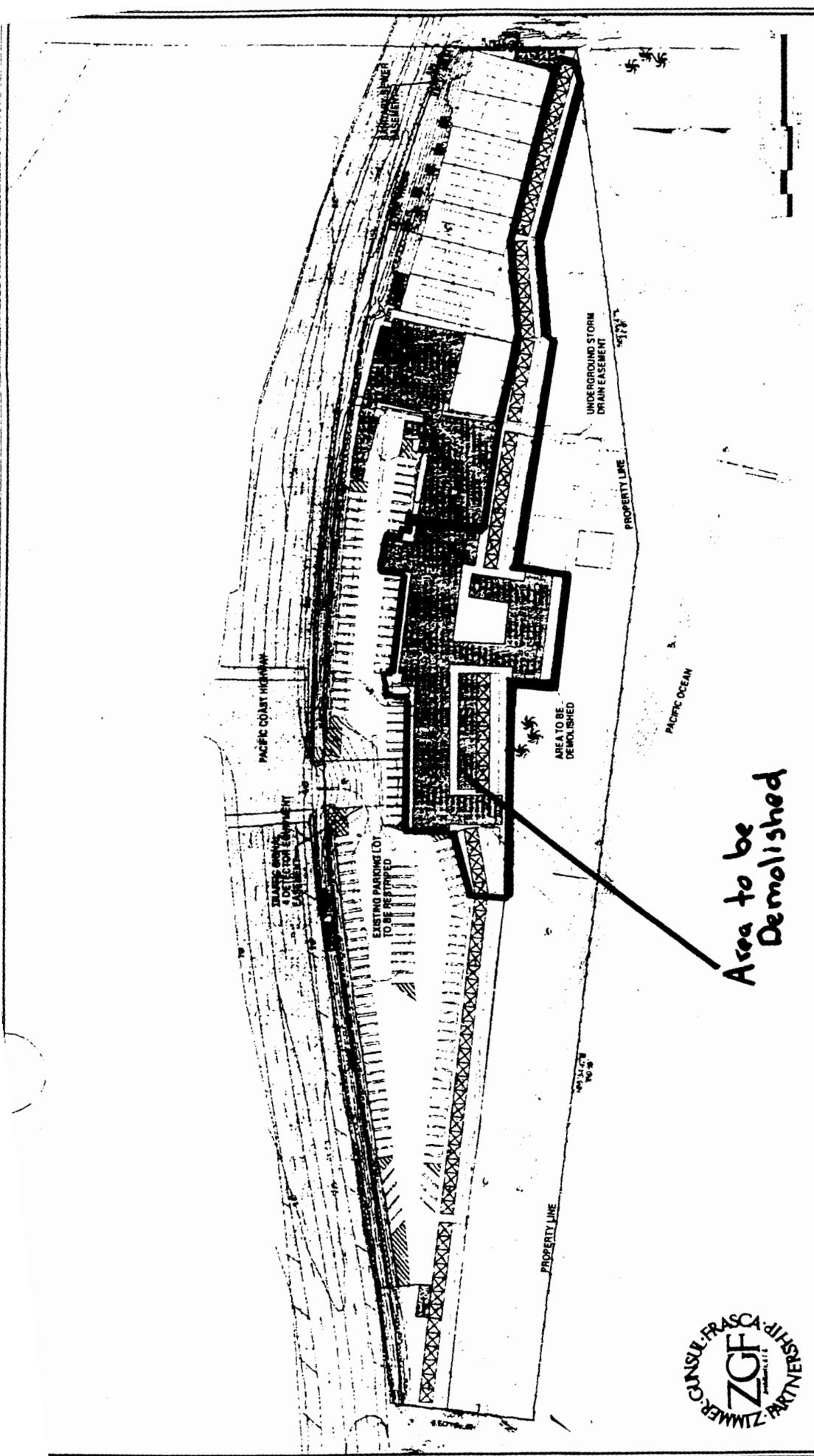


Figure 2
Existing Site Plan

Source: Zimmer Gunsul Frasca Partnership, December 1999

COASTAL COMMISSION

A-5-PPL-02-162

EXHIBIT # 2

PAGE 1 OF 1

EXHIBIT NO. 4

Application Number
A5-PPL-02-162/
5-02-099

Area to be
Demolished

Existing lower Bel Air Bay Club



egor;

310 777 8799;

May-26-04

**THURIDGE
CLATES**

EXHIBIT NO. 5

Application Number

A5-PPK-02-162

5-02-099

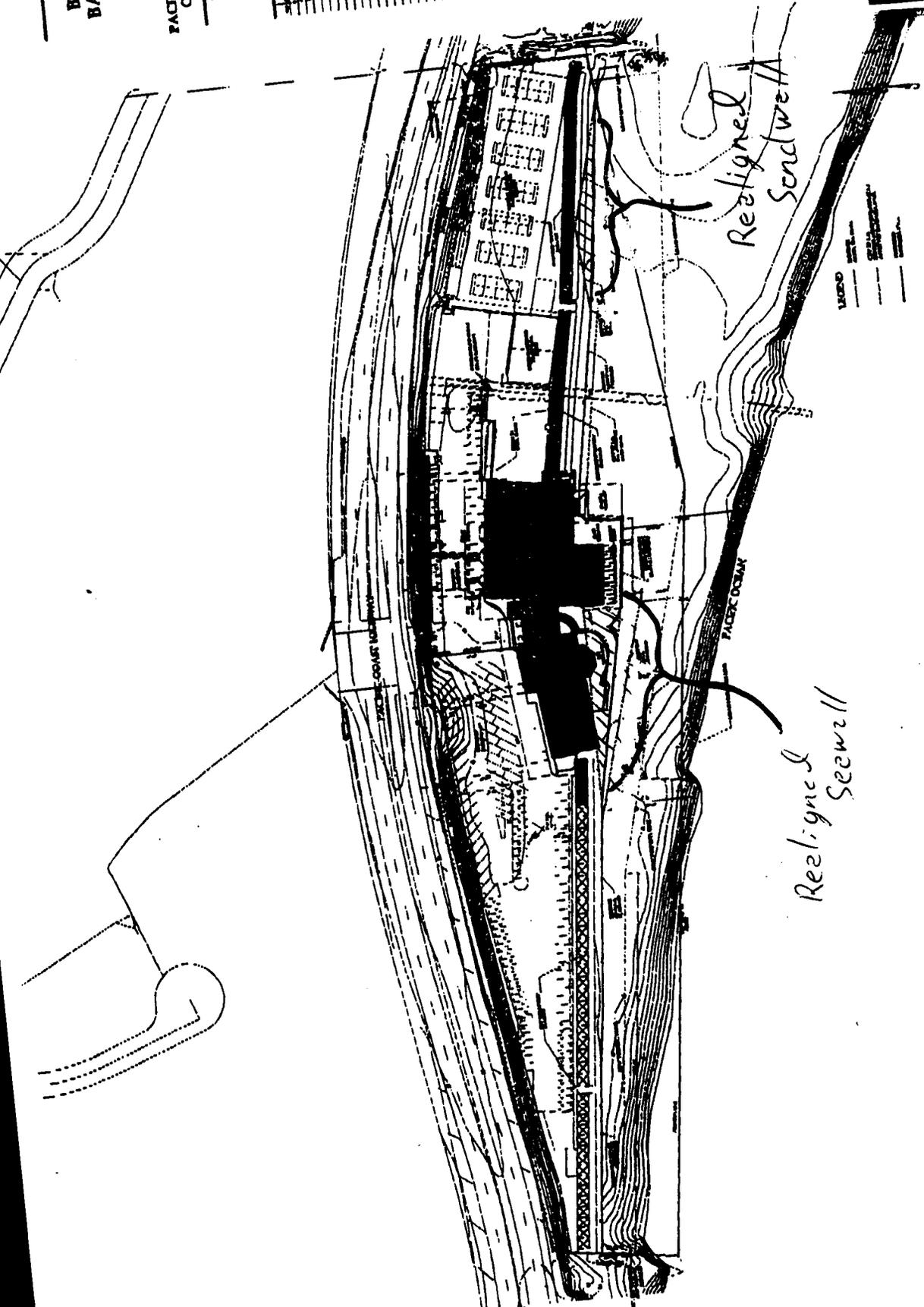
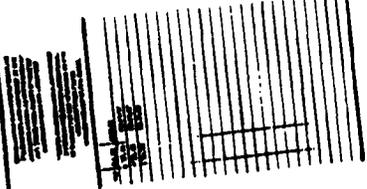
Proposed Site

Plan

California Coastal Com

**BEL AIR
BAY CLUB**

**PACIFIC PALISADES
CALIFORNIA**



Realigned Seawall

Realigned Seawall

PACIFIC OCEAN

- WOOD
- SEAWALL
- PROPOSED

BEL AIR
BAY CLUB

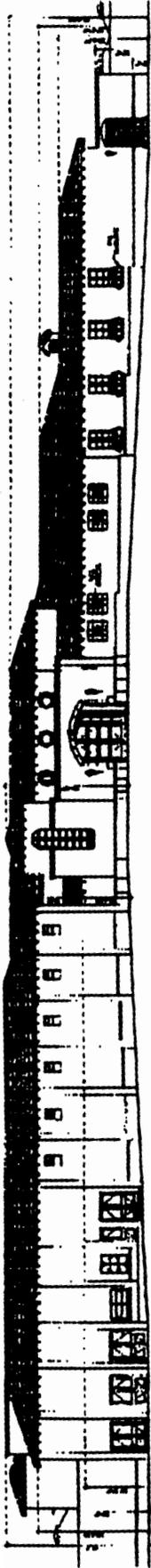
PACIFIC PALISADES
CALIFORNIA

BURDGE
CLATES
PLANNERS

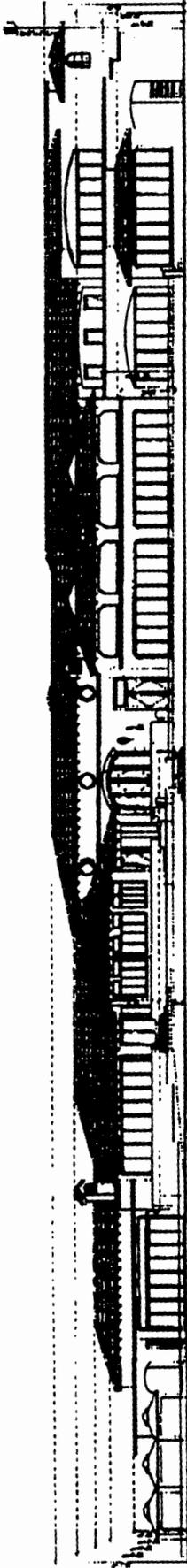
EXHIBIT NO. 6

Application Number
17-5-177-02-162
5-02-099

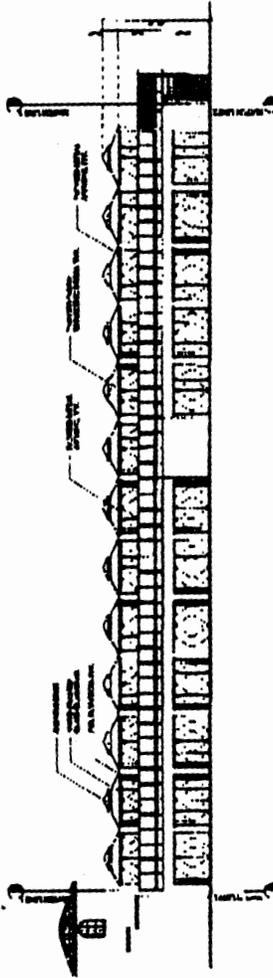
Eleven



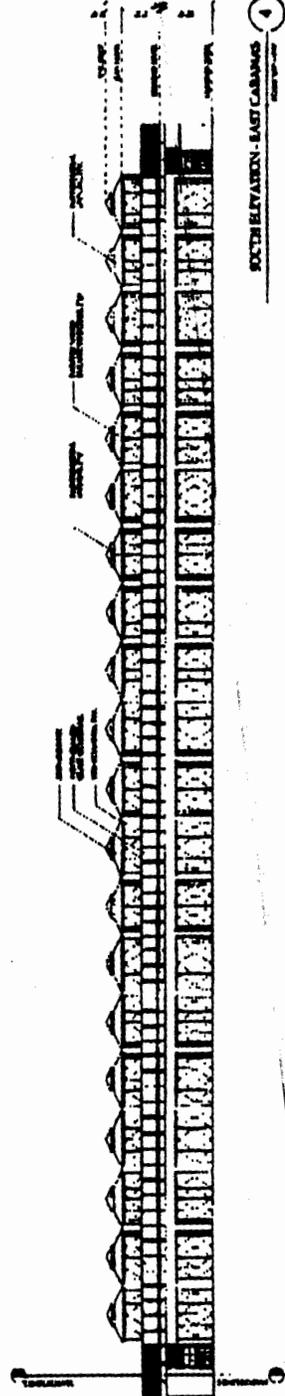
OVERALL NORTH ELEVATION
DATE: 10/1/03



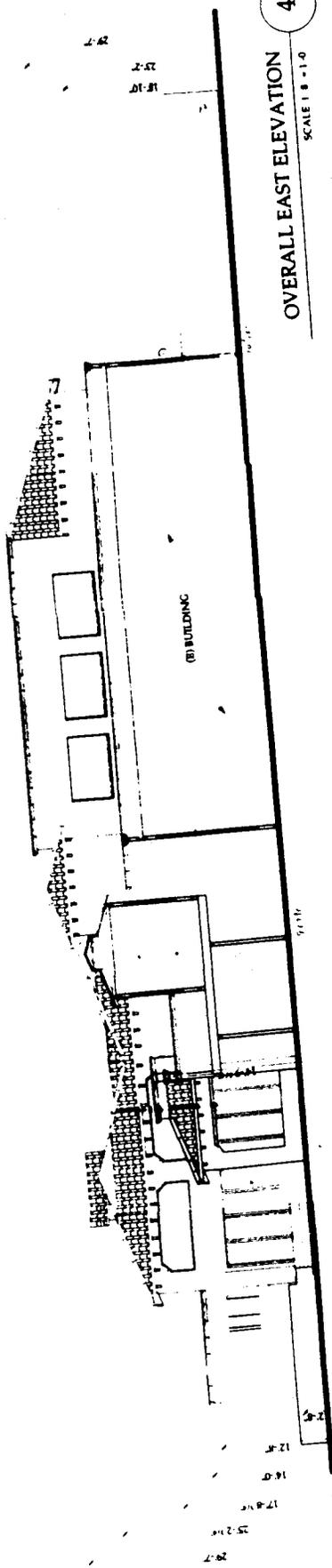
OVERALL SOUTH ELEVATION
DATE: 10/1/03



SOUTH ELEVATION - EAST CABINIS
DATE: 10/1/03



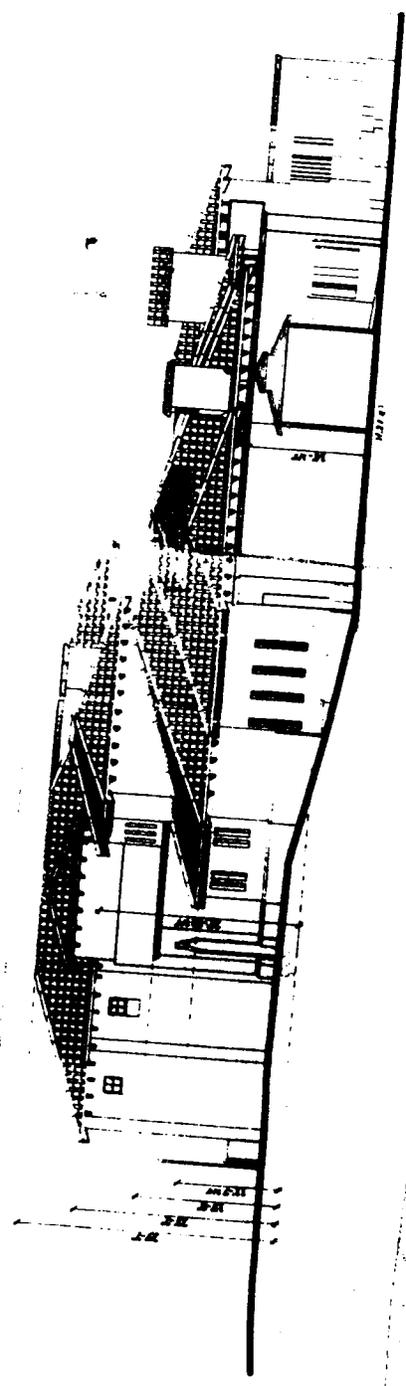
SOUTH ELEVATION - EAST CABINIS
DATE: 10/1/03



OVERALL EAST ELEVATION 4

SCALE 1/8" = 1'-0"

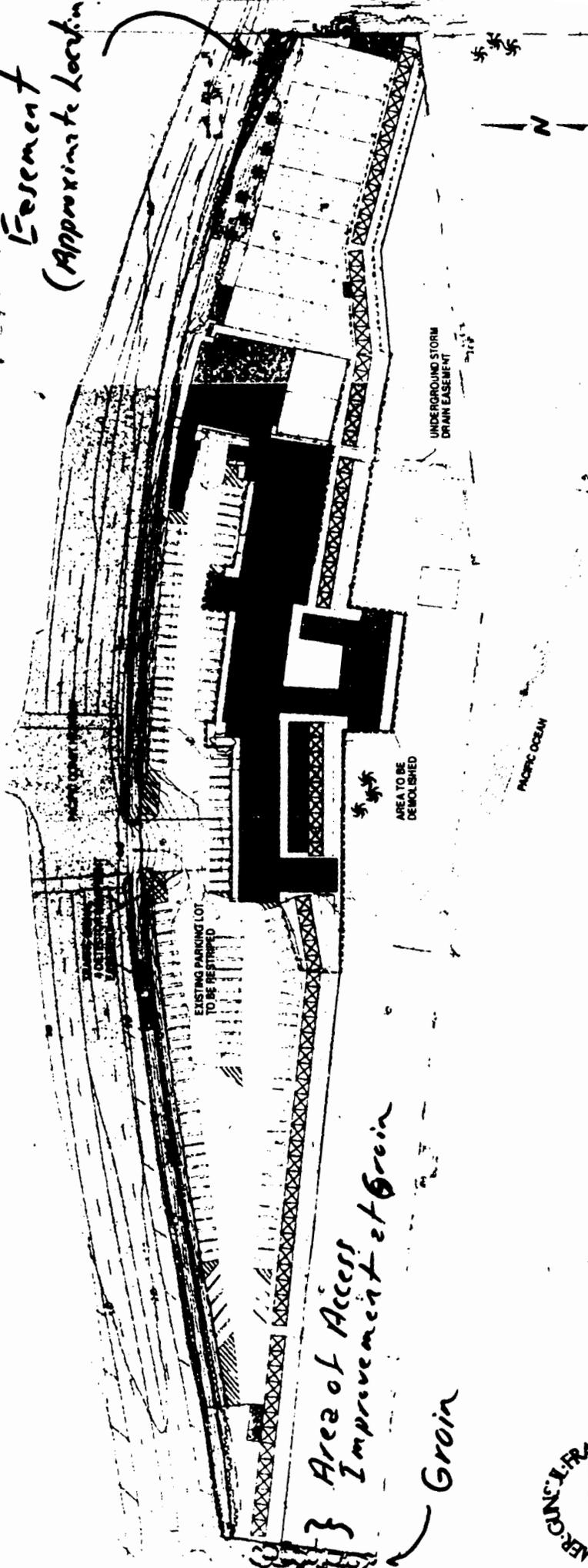
EXHIBIT NO. 7
Application Number 15-1772-02-162
5-02-099
Elevation.
East



OVERALL WEST ELEVATION
SCALE 1/8" = 1'-0"

EXHIBIT NO. 8
Application Number 5-1772-02-1021
5-02-098
Elevation
West

Access Easement (Approximate Location)



} Area of Access Improvement of Groin



EXHIBIT NO. 9
Application Number <i>AS-12-02-1621</i>
<i>502-099</i>
<i>Access Easement</i> <i>and Improvements</i>

Source: Zimmer Guns, Inc. Partnership, December 1999

Driver's
Cone of Vision

Pacific Coast Highway

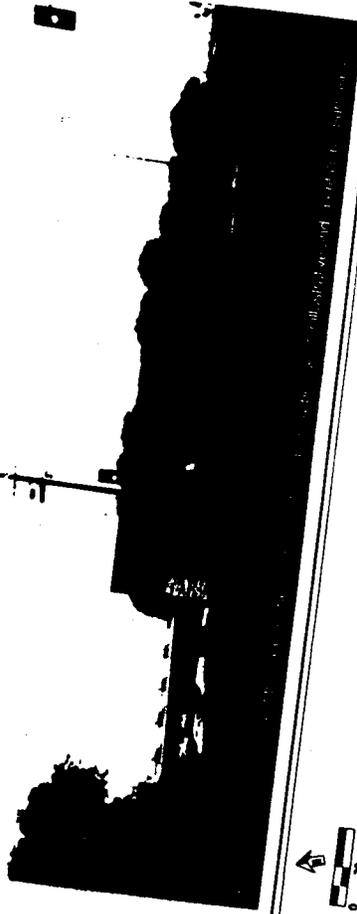
High Tide

LEGEND

-  Existing Building Footprint to Remain
-  Existing Building to be Demolished
-  Proposed Building Footprint
-  Property Line



0 30 60 FEET
Scale: PCR District Com. 10/2000



Driver's Cone of Vision
Northbound on PCH
Project Site with Existing and Proposed Building Footprints

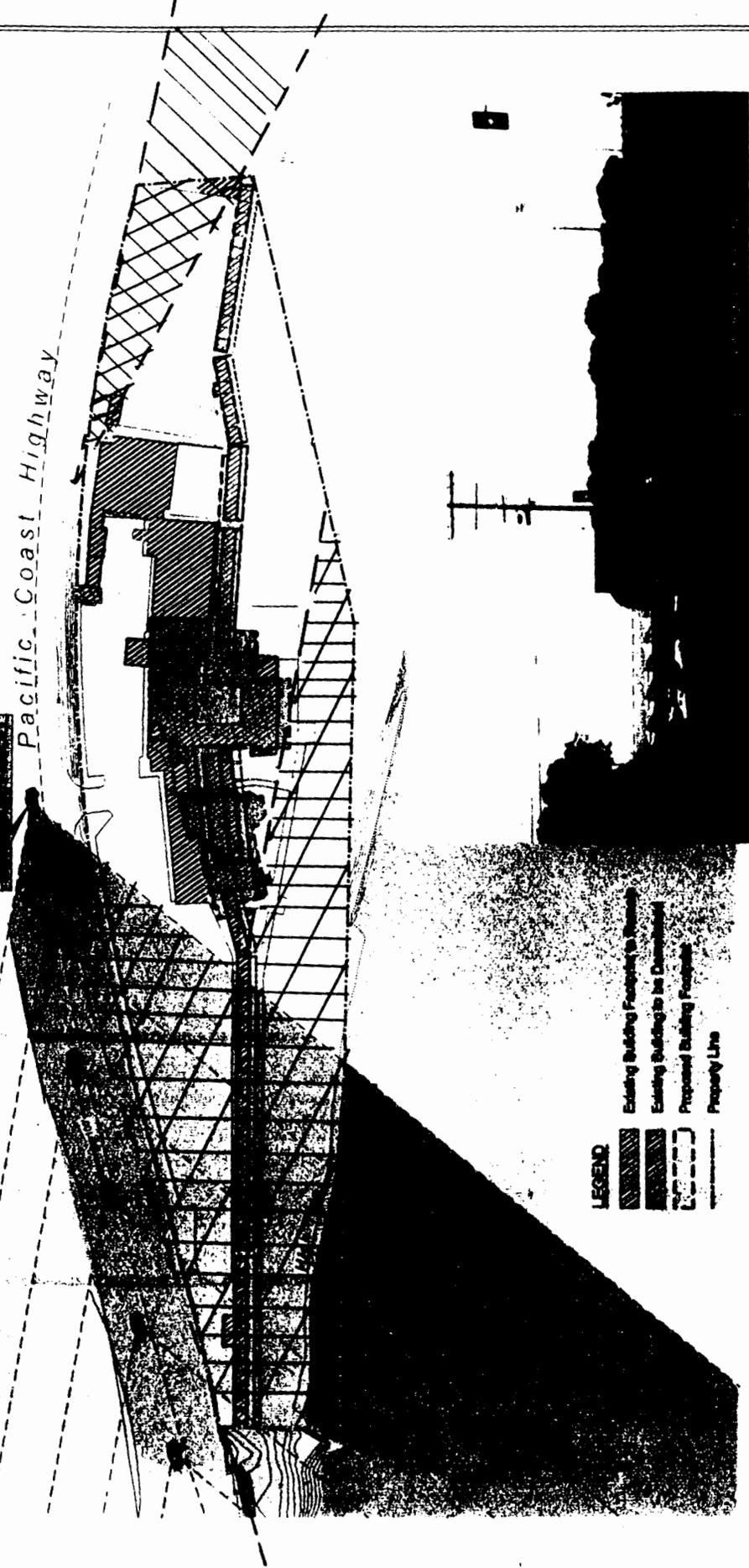
PCR

EXHIBIT NO. 10
 Application Number
 AS-APP-02-162/
 5-02-099
 Applicant's View
 Corridor c.c.

Western View
Corridor

Eastern View
Corridor

Pacific Coast Highway



LEGEND

-  Existing Building Footprints to be Retained
-  Existing Building to be Demolished
-  Proposed Building Footprints
-  Property Line

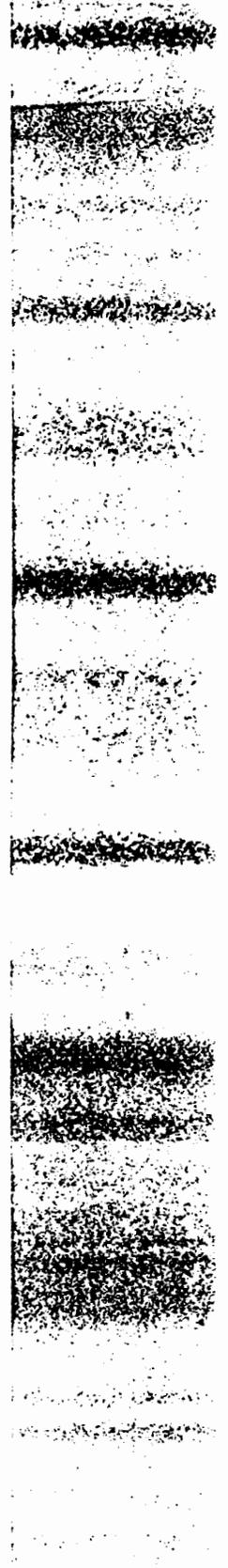


Driver's Course of Vision
Northbound on PCH
Project Site with Existing and Proposed Building Footprints

EXHIBIT NO. 11

Application Number
AS-PPL-02-1021
5-02-099

View Corridor
25 Conditioned



BABC FLOOR AREA ANALYSIS

	Existing Floor Area	Tear Down Floor Area	New Building Floor Area	Total Facilities Floor Area	Additional Floor Area	Parking Requirements
cabanas	11,913	6,775	9,332	14,470	2,557	Prkg Rate 2/1000 ; Add Prkg 5.1
atio/Lanai	7,527	4,786	5,207	7,948	421	Prkg Rate 2/1000 ; Add Prkg 0.4
terior Circulation	658	575	6,724	6,807	6,149	Prkg Rate 0/1000 ; Add Prkg 0.0
en's Locker Room	3,286	3,286	3,237	3,237	(49)	Prkg Rate 0/1000 ; Add Prkg 0.0
ffices	902	902	788	788	(114)	Prkg Rate 3/1000 ; Add Prkg 0.0
orage	3,793	814	2,040	5,019	1,226	Prkg Rate 2/1000 ; Add Prkg 2.4
echanical	371	371	482	482	111	Prkg Rate 0/1000 ; Add Prkg 0.0
ining/Bar/Kitchen	12,251	12,251	8,841	8,841	(3,410)	Prkg Rate 10/1000 ; Add Prkg 0.0
ommon Area Bathrooms	941	544	821	1,218	277	Prkg Rate 0/1000 ; Add Prkg 0.0
mployee Lkr/Din Rooms	656	0	0	656	0	Prkg Rate 2/1000 ; Add Prkg 0.0
omen's Locker Room	4,271	0	0	4,271	0	Prkg Rate 2/1000 ; Add Prkg 0.0
er/Gym/Weight Rooms	4,551	397	1,641	5,795	1,244	Prkg Rate 10/1000 ; Add Prkg 12.4
TOTALS	51,120	30,701	39,113	59,532	8,412	Total Add Prkg Required = 20.3

EXHIBIT NO. 12
Application Number 145-PPL-02-102/ 5-02-099
Floor Area & Parking Analysis

G:/Babc/Exor

**Coastal Commission Parking Analysis based on Los Angeles Fire Department Occupancy Loads,
and a parking ratio of 1 space per 4 persons**

Uses (Area of Assembly)	Total Facilities Floor Area (sq. ft.) Existing and Proposed	New Area of Assembly(sq. ft.)	Occupant Load Factor	Occupant Load	Parking Demand based on 1 space per 4 occupants	Comparable Parking Ratio per SQ. FT.
Cabanas	14,470	9,332	15	622	155	1 per 60 sq. ft.
Patio/Lanai	7,948	5,207	15	347	86	1 per 60 sq. ft.
Men's Locker Room	3,237	3,237	50	65	16	1 per 202 sq. ft.
Dining/Bar	5,773	5,773	15	335	96	1 per 60 sq.ft.
Exer/Gym Rooms	5,795	1,641	15	109	27	1 per 60 sq. ft.
TOTALS	37,223	25,190			380	

EXHIBIT NO. 13
Application Number AS-DPL-C2-162/ 5-02-099
Parking Analysis Coastal Commission

EXHIBIT NO.	14
Application Number	145-APL-02-162/ 5-02-099
	State Lands Commission
	BLA 2003
	California Coastal Commission

195 1-68

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
Attention: Title Unit

STATE OF CALIFORNIA OFFICIAL BUSINESS –
DOCUMENT ENTITLED TO FREE RECORDATION
PURSUANT TO GOVERNMENT CODE SECTION
27383 AND IS EXEMPT FROM DOCUMENTARY
TRANSFER TAX PURSUANT TO REVENUE &
TAXATION CODE SECTION 11922

S.L.C. BLA 272/ AD 455

SPACE ABOVE THIS LINE FOR RECORDER'S USE
APNS # 4415-036-001; 4415-036-900

INSTRUCTIONS TO
COUNTY RECORDER OF LOS ANGELES COUNTY

This document, the BEL-AIR BAY CLUB TITLE SETTLEMENT AND BOUNDARY LINE AGREEMENT ("Agreement"), operates and includes (i) a Boundary Line Agreement on page 17 (paragraph 1) between the Bel-Air Bay Club, Ltd. and the State of California, (ii) a Quitclaim of certain real property interests on page 17 (paragraph 2a) by the State of California to Bel-Air Bay Club, Ltd. and (iii) a Quitclaim of certain real property interests on page 17 (paragraph 2b) by Bel-Air Bay Club, Ltd. to the State of California, all involving lands located within the City of Los Angeles, County of Los Angeles, State of California. State Acceptance and Consent to Recording is found on page 20 (paragraph 9) of this Agreement and also on page 26.

Therefore, please index this document as follows:

<u>GRANTOR</u>	<u>GRANTEE</u>	<u>AGREEMENT PARAGRAPH CONTAINING REAL PROPERTY CONVEYANCES</u>
A. State of California	Bel-Air Bay Club, Ltd.	Page 17 (paragraph 2a) involving lands described in Exhibit "E" attached hereto
B. Bel-Air Bay Club, Ltd.	State of California	Page 17 (paragraph 2b) involving lands described in Exhibit "D" attached hereto

BEL-AIR BAY CLUB SETTLEMENT AND BOUNDARY LINE AGREEMENT

The Parties to this Title Settlement and Boundary Line Agreement (“Agreement”), dated October 20, 2003, are the State of California (“STATE”) acting by and through the State Lands Commission (“CSLC”) and the Bel-Air Bay Club, Ltd., a California corporation (“BABC”), collectively referred to as the “Parties.”

EXHIBITS

- Exhibit “A” – Description Subject Property
- Exhibit “B” – Description of Boundary Line of 1937
- Exhibit “C” – Description of New Boundary Line
- Exhibit “D” – Description of STATE Lands
- Exhibit “E” – Description of BABC Property
- Exhibit “F” – Description of Beach Maintenance Leased Land
- Exhibit “G” – Form of Beach Maintenance Lease
- Exhibit “H” – Description of Protective Structure Lease Lands
- Exhibit “I” – Form of Protective Structure Lease
- Exhibit “J” – Description of Beach Recreation Lands
- Exhibit “K” – Form of Beach Recreation Lease
- Exhibit “L” – Site Map depicting Settlement Agreement
- Exhibit “M” – Site Map depicting Leased Lands

All preliminary recitals of and exhibits to this Agreement, Exhibits “A” through “M”, are hereby incorporated by reference within it.

I.
RECITALS

A. Upon its admission to the Union on September 9, 1850, the State of California, by virtue of its sovereignty, acquired title to all ungranted tidelands and submerged lands within its boundaries, subject to the public trust for commerce, navigation, fisheries, etc. ("Sovereign Lands")

B. Certain uplands known as "Rancho Boca de Santa Monica"¹ (No. 330 of the Jimeno Index) within the County of Los Angeles adjacent to the Sovereign Lands were granted by Mexico on June 19, 1839 to Francisco Marques and Ysidro Reyes.

C. According to the Mexican rancho grant documents, the seaward boundary of Rancho Boca de Santa Monica started at the sea and ran along the beach. The Diseno for Rancho Boca de Santa Monica reflected that the seaward rancho boundary went along the Pacific Ocean.

D. Pursuant to the Treaty of Peace, Friendship, Limits and Settlement of Guadalupe Hidalgo, dated February 2, 1848, between the United States and Mexico, real property rights, granted by Mexico and Spain in California were recognized by the United States. Pursuant to the March 3, 1851 Act of Congress entitled "An Act to Ascertain and Settle the Private Land Claims in the State of California," the United States implemented a procedure whereby real property rights granted by Mexico or Spain were to be confirmed or denied ("Act").

E. Pursuant to the Act, Ysidro Reyes et al. filed on or about November 1, 1852, a claim to confirm private ownership to Rancho Boca de Santa Monica with the Board of Commissioners. The Board was formed for the purpose of ascertaining and settling the private lands claims in the State of California. This claim was docketed as No. 445. The Board of Commissioners on April 4, 1854 confirmed the private claim to ownership of Rancho Boca de Santa Monica.

¹ Rancho Boca de Santa Monica is sometimes also referred to in the historical records as "Rancho Voca de Santa Monica." For purposes of this Agreement, Rancho Boca de Santa Monica is used.

F. On February 27, 1855, the Attorney General of the United States filed a notice of appeal with the Clerk of Federal District Court of the confirmation decision by the Board of Commissioners regarding Rancho Boca de Santa Monica. It was customary for decisions from the Board of Commissioners to be appealed in order to obtain Federal court affirmation of the Board's actions. The Federal District Court case number was S.D. #141. The Federal District Court, on December 10, 1856, affirmed the decision of the Board of Commissioners, and an appeal from such decision was dismissed on March 4, 1858.

G. Following proceedings under Mexican law in 1839 and a confirmatory process under Federal law, title to Rancho Boca de Santa Monica was eventually confirmed in private ownership on July 21, 1882.

H. As part of the Federal procedure to confirm real property grants, a survey of Rancho Boca de Santa Monica was thereafter performed. The first survey was undertaken by G. Howard Thompson, who started his survey on July 6, 1876. According to his Field Notes, he commenced his survey "from a point in a mound of stones standing on the sea shore." The survey of Mr. Thompson was determined to be unsatisfactory and William Minto commenced a new survey of Rancho Boca de Santa Monica on April 7, 1881 and completed it on April 12, 1881. Mr. Minto noted in his Field Notes that he began his survey at:

"the initial point of the Thompson survey. The stone mound described in Thompson's notes is standing but the post is gone and in the old mound I set a sand stone . . . and made a mound of earth and stone 18 inches high. This corner stands on the point of a sandy bluff about 10 feet above high water mark. Thence, I run along the coast of the Pacific Ocean."

I. Based on the descriptions used in the original Mexican rancho grant, the subsequent Federal surveys, and the decision of the United States Supreme Court in *Borax Consolidated v. City of Los Angeles*, 296 U.S. 10 (1935) equating the ordinary high water mark with the mean high tide line, the seaward boundary of Rancho Boca de Santa Monica was to be an ocean boundary with the mean high tide line as the boundary line.

J. The Minto survey together with the United States confirmatory patent for Rancho Boca de Santa Monica was recorded on August 10, 1881, in Patent Book 3, pages 1 et seq. of the Official Records of the County of Los Angeles.

K. BABC holds record title to the Subject Property (Exhibit A) lying landward of the 1937 Boundary Line (Exhibit B). The Bel-Air Bay Club record title lands include property both landward and seaward of the Minto metes and bounds survey of the Pacific Ocean described in the patent and survey of Rancho Boca de Santa Monica including certain accretions thereto.

L. The shoreline along Subject Property has, since 1850, been affected by numerous natural and artificial influences. A number of human activities in the vicinity of the Club have taken place, some or all may have affected the natural conditions of the beach. For example, in 1893, Southern Pacific Railroad constructed its "Long Wharf," which was over 4,720 feet in length near Santa Monica Canyon. Additionally, a village, known locally as the "Japanese Fishing Village," consisting of a row of homes, a church and several hotels was located along the beach between the Long Wharf and the Bel-Air Bay Club; the village was first established in 1899 and was demolished in 1920. An additional illustration with respect to the shore line change is that "as a result of repeated damage to the shore line" and following repeated wash outs of the old stage road and the old Malibu road, in 1914-15 upland owners and the State Highway Commission took protective action. The "State Highway Commission constructed a number of small wooden groins and the upland owners constructed . . . groins . . ." within the area. (Report of the Advisory Board on Beach Protection, Los Angeles County, dated December 15, 1930.)

M. Beginning in 1927, the Los Angeles Mountain Park Company erected four groins on and adjacent to the Subject Property. The Company designated these Groin #1, Groin #2, Groin #3 and Groin #4. Thereafter, the Company conveyed the uplands located adjacent to Groin #1 and Groin #2 to Mountain Park Associates and #3 and #4 to Residential Land Company. Mountain Park Associates conveyed its interest to Alphonzo E. Bell Corporation. BABC acquired title to the Bel-Air Bay Club record title lands from Mountain Park Associates and the Alphonzo E. Bell Corporation after construction of the four Groins.

N. On May 27, 1930 suits were filed in Los Angeles County Superior Court by the California Attorney General and the Los Angeles District Attorney against The Los Angeles Mountain Park Company, and six other defendants alleging that the private groins were a

public nuisance and asked that they be abated. On June 20, 1930 a conference of the parties to the lawsuit and other interested parties (including state, county and city representatives) met. Following this meeting an Advisory Board on Beach Protection, as referred to in paragraph "L" above, was formed. Following nearly six months of study a report was issued recommending that if properly designed, constructed and maintained groins could serve a beneficial purpose to both public and private property. The Report also recommended that the Legislature provide proper authority to a state agency to review and where appropriate permit such structures. The lawsuits were, in due course, dismissed.

O. Within months the Legislature enacted Chapter 402, Statutes of 1931 (Political Code section 690.10) authorizing the Department of Finance, through its Division of State Lands, to accept applications and where appropriate issue permits for maintenance of groins. In 1932 the Los Angeles Mountain Park Company applied to maintain Groins 1 through 4, designated by state application files as 23, 24, 25, and 26 respectively. For a number of years engineers involved in the permit approval process for these groins analyzed and discussed with representatives of the company the most appropriate length, height, materials, signage and other details related to the effectiveness and safety of these structures.

P. Evidence indicates that the construction of these groins in 1927 had an immediate impact on the configuration of the shoreline. As a result of accretions being added to the uplands caused by Groins #1 through Groin #4 and other nearby groins, the question arose as to the location of the ordinary high water mark the legal boundary between the Sovereign Lands of the State and uplands owned by BABC.

Q. In April 1935 a quiet title action was filed in Los Angeles County Superior Court (#385942) by the City of Los Angeles against the Residential Land Corporation, the County of Los Angeles, Mountain Park Associates, Los Angeles Mountain Park Company, Bel Air Bay Club, Alphonzo E. Bell and others claiming that the land waterward of the 1923 mean high tide meander line involved filled and unfilled tide and submerged lands granted to the City by the Legislature pursuant to Chapter 115, Statutes of 1917. The Attorney General had opined in 1932 that Chapter 115 did not grant these lands to the city and that they remained State lands. The trial court ruled against the city. Governor Merriam vetoed legislation granting the state's tidelands to the City in 1937. The Attorney General participated as *Amicus Curiae* on behalf of respondents. The decision of the trial court granting defendants' motion for judgment on the

pleadings was upheld by the Court of Appeal in 1940 in *The City of Los Angeles v. Pacific Land Corporation, Ltd., et al.* 41 C.A.2d 223. A petition to hear the appeal was denied by the Supreme Court on December 16, 1940.

R. On April 5, 1937 the Department of Finance, pursuant to Political Code Section 675 entered into a 25-year lease (designated a "Right of Way Easement") with the BABC for \$50, paid in advance. This lease of lands lying waterward of the 1923 mean high tide line allowed construction and use of recreational facilities and utilities. The lease also provided that it would be modified or extinguished depending on resolution of the boundary with the State.

S. On July 21, 1937 Alphonzo E. Bell either as President of Mountain Park Associates, The Los Angeles Mountain Park Company, the Bel-Air Bay Club, Ltd., and/or Alphonzo E. Bell Corporation applied to alter Groins #1 and #2 and to enter into "an agreement with applicant and all other persons and corporations having an interest in the beach frontage affected by said groins, for the establishment of the ordinary high water of such beach frontage."

T. Pursuant to Political Code Section 690.10 (as amended by Chapter 914, Statutes of 1933) Carl B. Sturzenacker, Chief of the Division of State Lands and representatives of BABC and other parties entered into an Arbitration Agreement, dated October 29, 1937, for the purpose of establishing by arbitration the ordinary high water mark of such lands. In 1941 Political Code Section 690.10 was restated and renumbered as Section 6357 of the Public Resources Code, which provides the SLC with authority to establish the ordinary high-water mark by agreement, arbitration or quiet title action.

U. An arbitration panel consisting of Arthur H. Alexander, state petroleum production inspector and J. McLane Tate, private civil engineer, representing the upland owners, was formed. Pursuant to a written determination, "ARBITRATION OF ORDINARY HIGH WATER MARK OF CERTAIN LANDS AFFECTED BY GROINS", dated November 2, 1937, the arbitrators found and determined that the line, described in Exhibit "B" attached hereto ("1937 Boundary Line"), was "the present location of the ordinary high water mark of said uplands" ("Arbitration Decision").

V. To implement the Arbitration Decision, the State of California by the Chief of the Division of State Lands, BABC and other parties entered into an Agreement dated November 8 and executed and notarized November 9, 1937 (later designated "BLA #1" by CSLC filing clerks in 1962, hereinafter referred to as BLA #1). BLA #1 was recorded on November 23, 1937 in the Official Records of Los Angeles County in Book 15482, pages 23 et seq. Pursuant to BLA #1, the various parties thereto agreed to "the present location of the ordinary high water mark" as described in the Arbitration Decision and that "said ordinary high water mark [the 1937 Boundary Line] is and shall be the line fixed and determined by said arbitrators as hereinabove set forth. It is further understood and agreed that said line of ordinary high water is and shall constitute the boundary line between the property of the State of California and the uplands in which Second Parties [other parties including BABC] have an interest."

W. On November 16, 1937 an attorney for BABC sent a letter with the executed Agreement (BLA #1) to Carl B. Sturzenacker with a request that the State Seal be affixed to it. BLA #1 was returned to the BABC on November 17, 1937 with the seal of the Department of Finance.

X. Governor Merriam convened an Extraordinary Session of the Legislature on March 7, 1938. Item 1 on his agenda was "To consider and act upon an act relating to lands owned by the State, creating a State Lands Commission and prescribing its duties and powers with respect to such lands...." The State Lands Act passed, was approved by the Governor on March 24, 1938 and became effective on June 11, 1938.

Y. On June 16, 1938 the State Personnel Board began an investigation of Charles B. Sturzenacker and Arthur H. Alexander. On August 13, 1938, a complaint was filed with the State Personnel Board alleging improper discharge of duties by Sturzenacker and Alexander, one count involving the establishment of the 1937 Boundary Line at the Belle Aire Bay Club. On August 23, 1938 the CSLC suspended Sturzenacker and Alexander. On April 6, 1939 the State Personnel Board dismissed Sturzenacker and Alexander from office for misfeasance based on various findings; no findings regarding the 1937 boundary line at the club were made. Sturzenacker and Alexander appealed their dismissals, which dismissals were ultimately upheld by the California Supreme Court on May 10, 1943.

Z. On May 3, 1939 the CSLC, by Minute Item #5, voted to "Deny the application of the Bel-Air Bay Club, Ltd. for modification and approval of plans, heretofore given, to enable

the applicant to substitute materials and to repudiate line of ordinary high water mark alleged to have heretofore established by arbitration agreement executed on the 5th of April, 1938, by Carl B. Sturzenacker, Chief of the Division of State Lands." April 5, 1937 was the date of the Right of Way described in paragraph "R" above. The agreement establishing the ordinary high water mark executed by Sturzenacker was executed on November 9, 1937 as described in paragraph "V" above.

AA. On March 26, 1942 the CSLC approved a minute item, which provides "Consideration was given to certain piers located immediately north of Santa Monica adjacent to the Bel Air Bay Club. From the information available, it appeared advisable that before any action was taken in regard to such structures, an effort be made to effect a readjustment with the Bel Air Bay Club of the line of ordinary high water. The Commission issued instructions that a program to that effect be instituted."

BB. BABC contends that based on BLA #1 and the Arbitration Decision, BABC constructed, repaired and modified various physical improvements within the Bel-Air Club record title lands including dining areas, locker rooms, kitchens and various recreational facilities.

CC. Section 6341 of the Public Resources Code states:

"Any boundary line agreement entered into pursuant to Section 6336 or 6357, or any consent recorded pursuant to subdivision (b) of Section 6339, or any exchange of land made pursuant to Section 6307, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of such boundary line agreement or consent or exchange commenced prior to January 1, 1977, or within one year after the execution and recording of such boundary line agreement or such consent or exchange, whichever is later."

DD. Neither on or before January 1, 1977, nor on or before the date of this Agreement, has any action been filed in court to challenge the validity of BLA #1 or the Arbitration Decision.

EE. The CSLC contends that BLA #1 was not entered into pursuant to PRC Section 6357. All agreements entered into pursuant to Section 6357 are approved by the CSLC at a lawfully noticed public meeting and require the Governor's signature pursuant to Public Resources Section 6107.

FF. On February 11, 2002 a representative of the BABC requested a jurisdictional determination by the staff of CSLC for a proposed renovation project by the BABC to be brought before the Coastal Commission. Because of the direction given by the CSLC to its staff in 1939 and 1942, the staff of the CSLC responded to the inquiry by requesting additional information from the BABC and initiated an investigation of the background and status of BLA #1.

GG. As a result of its subsequent investigation of the facts and the law involved CSLC staff determined they should follow the 1942 CSLC directive that there should be a "readjustment" of the 1937 line of ordinary high water (BLA#1).

HH. BABC, in response to the CSLC's staff position on BLA #1 and the Arbitration Decision, raised a number of rebuttal arguments, some of which include the following:

(i) Repudiation has no legal significance and did not nullify nor terminate BLA #1 or the Arbitration Decision.

(ii) Since no action has been commenced within the time limitations imposed by Section 6341 of the Public Resources Code, Section 6341 prohibits the CSLC from challenging the validity of BLA #1 regardless of any grounds.

(iii) The doctrine of *res judicata* applies based on the Arbitration Decision.

(iv) The doctrines of estoppel and laches apply based on subsequent actions by the SLC that indicate that the CSLC had accepted the existence and effect of BLA #1 and the Arbitration Decision.

II. Both the CSLC and BABC have undertaken a comprehensive search to determine the basis of the arbitrators' determination of the 1937 Boundary Line. There has been no direct evidence located in the files of the CSLC or BABC regarding the basis of the

arbitration decision. CSLC and BABC have reached different and conflicting conclusions regarding the basis of the 1937 Boundary Line.

JJ. Due to the quality, quantity and availability of maps, surveys, and other evidence relating to the area, uncertainty exists as to the exact nature, time, location and extent of natural and artificial influences that have over time affected the common boundary between public and private lands along the Bel-Air Bay Club.

KK. The existing evidence and applicable law are not agreed to between the Parties and therefore uncertainty exists as to the precise location of the boundary line separating the private uplands of BABC from the Sovereign Lands of the State to the extent the 1937 Boundary Line is excluded from application. A bona fide dispute has thus arisen regarding the boundary line between the STATE and BABC concerning their respective rights and interests in the Bel-Air Bay Club Lands.

LL. There also currently exists three groins or similar structures (Groin A, B and C), which extend from or adjacent to the Bel-Air Bay Club Lands into the Sovereign Lands of the State. Groin #4 is located adjacent to the Bel-Air Bay Club lands, upcoast of Groins A, B and C. Based on the age of these improvements and the inadequate documentation between the Parties relating to such improvements, there is a need to address such improvements in terms of location and maintenance.

MM. The BABC has in the past utilized lands seaward of the 1937 Boundary Line for recreational purposes. The CSLC in 1952 leased (PRC 736) to BABC 3.42 acres seaward of the 1937 Boundary Line for a term of five years, at \$50 per year, extended by renewal options. The 1937 Right of Way lease and lease PRC 736 expired in 1962. Portions of the area continued to be utilized by the BABC. BABC desires to clean and maintain for public use certain lands that are, or will by this agreement, be State lands, which are described in Exhibit "F" (Beach Maintenance Leased Lands). The BABC also desires to continue to utilize a .298 acre portion of State lands for recreational purposes, which are described in Exhibit "J" attached hereto ("Beach Recreation Leased Lands") and to resolve any State and CSLC claims regarding past use.

NN. The Parties have decided to settle the boundary line dispute and address certain other matters referenced in Recitals LL and MM by entering into this Agreement. The

purposes of this Agreement are to: settle forever the location of the seaward boundary of lands owned by BABC; set the permanent and fixed boundary at the line described in Exhibit C attached hereto ("New Boundary Line") between the STATE owned Sovereign Lands and the lands owned by BABC described in Exhibit "E" attached hereto ("BABC Property"), which BABC Property shall not be subject to the public trust for commerce, navigation and fisheries, except as provided in Public Resources Section 6339 (a); restrict, limit and prohibit forever the ability of the State to ever challenge or dispute the validity of the New Boundary Line; enter into a Lease in the form of Exhibit "G" attached hereto ("Beach Maintenance Lease") to clean and maintain for the public the Beach Maintenance Leased Lands and permit the construction and temporary maintenance of a lifeguard tower and sand berms to protect the BABC Property from storm waters, so long as and in the manner authorized by Coastal Commission permits; enter into a Protective Structure Lease in the form of Exhibit "I" attached hereto; and enter into a Lease in the form of Exhibit "K" attached hereto ("Beach Recreation Lease ") covering club use of the Beach Recreation Lands.

OO. Pursuant to the provisions of Division 6 of the Public Resources Code, the CSLC has exclusive jurisdiction over the State's right, title and interest in ungranted tide and submerged lands owned by the State by virtue of its sovereignty and held in trust for the benefit of the people.

PP. Based on Division 6 of the Public Resources Code the SLC's jurisdiction and authority over tide and submerged lands includes the power to enter into boundary line agreements, exchanges and settlements of title disputes in lieu of litigation and to establish the nature and extent of such sovereign State fee or public trust easement interests with respect to specific parcels of real property, to lease and license the use of Sovereign Lands for public trust purposes and to enter into agreements for the location of groins within Sovereign Lands and the maintenance of such groins.

QQ. With regard to the survey and mapping of ungranted tide and submerged lands, Public Resources Code Section 6332 contains specific considerations, which the SLC shall take into account in determining boundaries pursuant to the article in which it is found. Such consideration includes:

- "Consideration shall also be given to the confirmation of title boundaries of lands claimed to be in private or public ownership, which lands support

improvements of long standing authorized by governmental action.”
(Public Resources Code Section 6332(a)(4).

- “Boundary lines so established and surveyed shall take into consideration any statutes of limitations applicable to the validity of patents, and the finality of boundary line agreements and boundary and exchange agreements adopted prior to, or on or after, January 1, 1976, and whether entered into pursuant to Section 6307 or 6357, or any other statutes of this state, or otherwise.” (Public Resources Code Sections 6332(a)(5).

The Parties, in entering into this Agreement, have taken into account and implemented these considerations in agreeing to the New Boundary Line.

RR. The Parties have independently investigated, researched, and exchanged information, negotiated their respective claims, taken into account a number of considerations in determination of boundary lines such as the factors set forth in Public Resources Code Section 6332 and determined that the New Boundary Line is a reasonable and good faith attempt to settle, compromise, and resolve their respective claims and to locate and fix the legal boundary.

SS. Section 6107 of the Public Resources Code states:

“Whenever the commission, pursuant to authority granted to it by law, enters into any agreement for the compromise or settlement of claims, the agreement shall be submitted to the Governor, and if approved by him shall thereupon, but not before, be binding upon the State and the other party thereto.”

It is the intention of the Parties hereto that this Agreement shall be an agreement entered into pursuant to Public Resources Code Section 6107.

TT. Section 6342 of the Public Resources Code states:

“The commission may enter into boundary line agreements with any person or public entity, describing and defining the boundary line between ungranted tidelands and adjacent uplands owned by

such person or public entity. Such boundary line agreements shall be executed on behalf of the commission, and upon recordation shall be binding and conclusive as between the state and all persons and public entities executing such agreements, and the provisions of subdivision (a) of Section 6339 shall be applicable thereto."

It is the intention of the parties hereto that this Agreement shall be a boundary line agreement entered into pursuant to Public Resources Section 6342.

UU. In accordance with Section 6501.1 of the Public Resources Code, the SLC has the authority to lease Sovereign Lands for specified purposes.

VV. In accordance with Section 6321 of the Public Resources Code the SLC has the authority to grant rights for the construction, alteration and maintenance of groins on Sovereign Lands.

WW. In accordance with Section 6303 and Section 6321 of the Public Resources Code, the SLC has the right to grant privileges and authority to utilize sand on beaches for the construction of temporary sand berms.

XX. By virtue of this Agreement settling title and boundary matters, it is exempt from the provisions of the Subdivision Map Act (Government Code § 66412 (e)), the California Coastal Act (Public Resources Code § 30416 (c)), the California Environmental Quality Act (Public Resources Code § 21080.11).

YY. The SLC has approved and authorized execution and delivery of this Agreement, and the Leases provided for herein at its public meeting of October 20, 2003 in San Diego, California, by Minute Item No 64.

ZZ. This Agreement, among other things, provides for the establishment of a permanently fixed fee boundary line, an exchange of quitclaim deeds, an agreement not to challenge the validity of the 1937 and New Boundary Line and the lease of state land for Beach Maintenance, Beach Recreation, and three Protective Structures involving existing groins.

II.
AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants, conditions and terms contained in this Agreement, the Parties mutually agree and convey as follows:

1. Boundary Line Agreement

a. The Parties, by execution of this Agreement, hereby establish and fix the common boundary at the New Boundary Line dividing the fee title interests of the BABC from the Sovereign Lands of the State.

b. The New Boundary Line is hereby set along those courses and distances more particularly described in Exhibit "C" attached hereto and incorporated herein by reference.

c. The New Boundary Line is intended to be, and shall hereafter be a permanent, certain line and boundary fixed for all time and shall not move by reason of accretion, avulsion, erosion or by any other natural or artificial causes or events.

2. Quitclaims

To implement the Boundary Line Agreement set forth above in paragraph 1 hereof:

a. State Quitclaim

State hereby remises, releases and forever quitclaims all its claims of any and all right, title and interest, based upon its sovereignty, in and to the lands described in Exhibit "E" attached hereto (the "BABC Property") to BABC, including any and all of State's interest held pursuant to the Equal Footing Doctrine of the United States Constitution and by the CSLC pursuant to Public Resources Code Section 6301.

b. BABC Quitclaim.

BABC hereby remises, releases and forever quitclaims any and all right, title and interest in and to the lands described in Exhibit "D" attached hereto (the STATE Lands") to the State.

3. Public Easement in Navigable Waters and Waivers

a. The Parties acknowledge that under California law the public may use ocean water and as an incident thereto the lands underlying them for water oriented recreational purposes regardless of the underlying ownership of the property.

b. Based on the implementation of this Agreement, including the lease for groins described in paragraph 7 below, the CSLC hereby waives and releases any claims it may have based on any prior usage of BABC of Sovereign Lands.

4. BLA #1 and the Arbitration Decision

a. The Parties hereto agree that this Agreement shall not amend, modify, terminate, nullify, reaffirm or otherwise affect BLA #1 or the Arbitration Decision, provided, however, neither BLA #1 nor the Arbitration Decision agreement shall in any way impair the effect of the quitclaims provided for in paragraph 2 of this Agreement. Neither BLA #1 nor the Arbitration Decision are merged into this Agreement and each shall continue to exist and be in full force and effect, to the extent they existed and were in full force and effect prior to the date of this Agreement, subject to the quitclaims provided for in paragraph 2 of this Agreement.

b. As part of the settlement provided for in this Agreement, the BABC and CSLC hereby agree not to challenge nor bring any action attacking the validity of this Agreement and BLA #1 or the Arbitration Decision. The Parties hereby agree that upon the request of any Federal, State, local governmental agency or third party, the Parties shall affirm the validity of the New Boundary Line.

5. Beach Maintenance Lease

The CSLC shall lease to BABC the Beach Maintenance Leased Lands (Exhibit "F") pursuant to the Beach Maintenance Lease, the form of which is attached as Exhibit "G" which will be for a term of twenty-five (25) years for the purpose of beach maintenance, temporary berm construction and maintenance for storm protection and use of a temporary life guard station to be in place during the summer season.

6. Beach Recreation Lease

The CSLC shall lease to BABC the Beach Recreation Leased Lands (Exhibit "J") pursuant to the Beach Recreation Lease, the form of which is attached as Exhibit "K" for a term of twenty (20) years for beach recreation.

7. Groin Lease

The State shall enter into the Protective Structure Lease, in the form of Exhibit "I" for a term of twenty (20) years to provide BABC with the right to maintain the Groins #A, #B and #C within Sovereign Lands.

8. The 1937 Boundary Line and the New Boundary Line

The purpose of this paragraph 8 is to provide both an explanation and background with respect to this Agreement, which sets the New Boundary Line and preserves at the same time the BABC position regarding the 1937 Boundary Line and the Arbitration Decision. The Recitals in this Agreement state that BABC has asserted that the 1937 Boundary Line Agreement and the Arbitration Decision set forth a valid boundary line which may no longer be subject to challenge. This Agreement reflects the settlement originating from CSLC claims regarding the efficacy of the 1937 Boundary Line and the Arbitration Decision. The effect of having the New Boundary Line is that the ownership interests of BABC are different than if its ownership interests were based on the 1937 Boundary Line. In order to implement the desires of BABC, this Agreement does not negate the existence of the 1937 BLA, but at the same time affects ownership by virtue of the agreement setting the New Boundary Line and the consequent confirmation of title by the quitclaim by BABC of its rights in the Exhibit "D" STATE Lands.

From both a conceptual and legal standpoint, BABC believes it is possible, to have two different boundary lines of the same boundary and that BLA #1 and the Arbitration Decision were based on establishment of the "ordinary high-water mark" under statutory authority found in Political Code section 690.10. The New Boundary Line is not based on an attempt to locate the ordinary high-water mark nor on the statutory authority supporting BLA #1 and the Arbitration Decision, but rather is based on statutory authority found in Public Resources Code Section 6342 which permits taking into account additional considerations in resolving the common boundary between ungranted tidelands and adjacent uplands.

Thus, this Agreement recognizes the existence of the recorded 1937 Boundary Line Agreement and at the same time, it establishes a New Boundary Line and as a consequence, confirms land ownership based on the New Boundary Line.

The Parties are both aware and have studied the California Supreme Court decision in *Muchenberger v. Santa Monica* (1929) 206 Cal. 635. The Parties have taken into account in setting the New Boundary Line the discussion of the Court in its decision regarding the ability of the parties to permanently fix a line. The Court at page 642 states in part “[w]hen owners of adjoining property, being uncertain of the true boundary between their lands, agree upon its true location, mark it upon the ground, or build up to it, occupy on each side up to the place so fixed, and acquiesce in such location for a period equal to the statute of limitations, or under such circumstances that substantial loss would be caused by a change of its position, such line becomes in law the true line called for by the respective descriptions, regardless of the accuracy of the agreed location, as it may appear by subsequent measurements. (Citations omitted). We see no reason why a municipality, as well as any other owner, may not by agreement determine the boundary line of its property.”

9. Certificate of Acceptance and Consent to Record

By their execution of this Agreement, the State authorizes acceptance of and does hereby accept the conveyances of the interests in land described herein and consents to recording of this Agreement pursuant to its terms. The State, in addition, has attached a formal Certificate of Acceptance and Consent to Record (Government Code § 27281) on page 24.

10. Additional Provisions

a. Further Assurances

So long as authorized by applicable laws to do so, the Parties hereby will perform such other acts, and execute, acknowledge and deliver all further documents, conveyances and other instruments, that may be necessary to effectuate fully the provisions of this Agreement and to fully assure to the other Parties all of the respective properties, rights, titles, interests, estates, remedies, powers and privileges to be conveyed or provided for by this Agreement.

b. Acknowledgment

All signatures by Parties to this Agreement shall be duly acknowledged before a notary public and a certificate of acknowledgment shall be attached to the respective signature page to which it pertains so as to allow recordation of this Agreement in the Office of the Recorder of the County of Los Angeles.

c. Counterparts

This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as the original and as if all of the Parties to the aggregate counterparts had signed the same Instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages, for the purpose of creating an integrated document.

d. No Effect on Other Property

The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any of the Parties or evidence concerning the boundaries, physical character, or character of title to or interest outside the area of this Agreement.

e. No Effect on Other Governmental Jurisdictions

This Agreement, except as specifically provided for otherwise, has no effect whatsoever on the regulatory, environmental, land use or other jurisdiction of any federal, state, local or other governmental entity not a Party to this Agreement. This Agreement does not exempt BABC from the regulatory, environmental, land use or other jurisdiction of any federal, state, local, or other government.

f. Binding on Successors in Interest

This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties hereto.

g. Modification

No modification, amendment, or alteration of this Agreement shall be valid unless in writing, and signed by duly authorized representatives of the Parties.

h. Gender

As used herein, whenever the context so requires, the neuter gender includes the masculine and the feminine, and the singular includes the plural and vice versa. Defined terms are to have their defined meanings regardless of the grammatical form, number, or tense of such terms.

i. Headings

The title headings of any sections of this Agreement are inserted for convenience only and shall not be deemed to be part of this Agreement or considered in construing the Agreement.

j. Purpose to Perfect Title

The conveyances provided herein are made solely for the purposes of perfecting title to the land involved, and accordingly, for tax purposes, do not involve a change of ownership pursuant to California Revenue and Taxation Code Section 62 (b).

k. Exemptions

This Agreement and all actions required to effectuate this Agreement are exempt from the provisions of the Subdivision Map Act (Government Code § 66412 (e), the California Coastal Act (Public Resources Code § 30416 (c) and the California Environmental Quality Act (Public Resources Code § 21080.11)).

l. Severability

The unenforceability of any provision of this Agreement shall not affect the enforceability of the other provisions of this Agreement. Except that, should either paragraphs 1 or 2 be held invalid or unenforceable then paragraph 4 shall be deleted.

11. Effective Date

The effective date of this Agreement will be its date of recordation in the Official Records of the County of Los Angeles.

Approved as to form:

BILL LOCKYER
Attorney General



By: Nancy A. Saggese
Title: Deputy Attorney General

IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed.

Dated: FEBRUARY 4, 2003

STATE OF CALIFORNIA acting by and through the
STATE LANDS COMMISSION

By: _____

Paul Thayer

Paul Thayer
Executive Officer

Acknowledgement of Signature to Be Attached

L-PURPOSE ACKNOWLEDGMENT

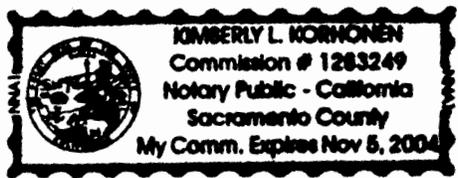
State of California

County of SACRAMENTO } SS.

On February 4, 2004 before me, Kimberly L. Korhonen,
(DATE) (NOTARY)

personally appeared Paul D. Thayer
SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Kimberly L. Korhonen
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: EXECUTIVE OFFICER

DESCRIPTION OF ATTACHED DOCUMENT

BEAR RAY CLUB TIME RETIREMENT AND BOUNDARY LINE AGREEMENT
TITLE OR TYPE OF DOCUMENT

68 pgs including exhibits
NUMBER OF PAGES

February 4, 2004
DATE OF DOCUMENT

APA 4415-036-001
4415-036-900
OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
ON STATE LANDS COMMISSION

RIGHT THUMBPRINT
OF
SIGNER



Dated: Dec 18, 2003

BEL-AIR BAY CLUB, Ltd. a California corporation

By: Jada Hastings
President, Board of
Directors

Acknowledgement of Signature to be Attached

IN APPROVAL WHEREOF,
I, ARNOLD SCHWARZENEGGER, Governor of the State of California, have
set my hand and caused the seal of the State of California
to be hereunto affixed pursuant to Section 6107 of the Public
Resources Code of the State of California. Given under my
hand at the City of ~~Sacramento~~ ^{Burlingame} this 20th day of
February, two thousand and four.

STATE OF CALIFORNIA

GOVERNOR OF THE STATE




KEVIN SHELLEY
SECRETARY OF STATE

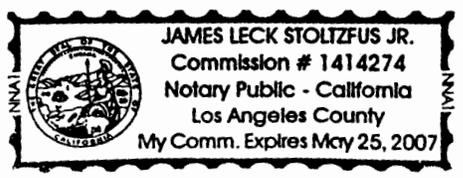
STATE OF CALIFORNIA)
) SS
COUNTY OF L.A.)

On 12-18-03 , before me, the undersigned, a Notary Public in and for said County and State, personally appeared Maida B Hastings , ~~personally known to me or~~ proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ ~~(is/are)~~ subscribed to the within instrument, and acknowledged to me that he~~/she/they~~ executed the same in his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

James Leck Stoltzfus Jr.
NOTARY PUBLIC



CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING
Government Code 27281

This is to certify that the STATE OF CALIFORNIA, acting by and through the State Lands Commission, hereby accepts the right, title and interest in real property conveyed by, and consents to the recording of the conveyances found on page 15 (paragraph 2b) of the attached BEL-AIR BAY CLUB TITLE SETTLEMENT AND BOUNDARY LINE AGREEMENT BLA 272 / AD 455 dated October 20, 2003.

The said interests in real property are accepted by the State of California in its sovereign capacity in trust for the people thereof, as real property of the legal character of tidelands and submerged lands.

This acceptance and consent to recording is executed by and on behalf of the State of California by the State lands Commission, acting pursuant to law, as approved and authorized by its Calendar/Minute Item No. 64 of its regular public meeting on October 20, 2003 by its duly authorized undersigned officer.

Dated: FEBRUARY 4, 2004

STATE LANDS COMMISSION

By: *Paul Thayer*

CAPACITY OF SIGNER ON BEHALF OF THE STATE LANDS COMMISSION

- Executive Officer
- Assistant Executive Officer
- Division Chief
- Other

ACKNOWLEDGEMENT OF SIGNATURE ATTACHED

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento } SS.

On February 4, 2004 before me, Kimberly L. Korhonen

personally appeared Paul D. Thayer

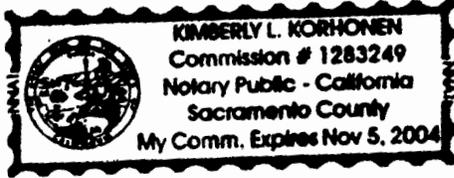
(DATE)

(NOTARY)

SIGNER(S)

personally known to me - OR -

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kimberly L. Korhonen
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: ELECTIVE OFFICER

DESCRIPTION OF ATTACHED DOCUMENT

CERTIFICATE OF ACCEPTANCE AND COVER TO RECORDING
TITLE OR TYPE OF DOCUMENT

Page 24 of 68 PAGES
NUMBER OF PAGES

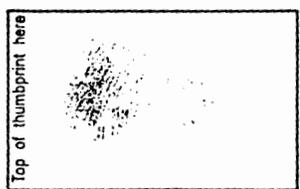
October 20, 2003
DATE OF DOCUMENT

OTHER

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
CA STATE LANDS Commission

RIGHT THUMBPRINT
OF
SIGNER



**EXHIBIT A
LAND DESCRIPTION
SUBJECT PROPERTY**

A parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

A parcel of land designated as PARCEL "C" BEACH in that certain quitclaim deed recorded on March 5, 1945 from MOUNTAIN PARK ASSOCIATES, RESIDENTIAL LAND CORPORATION, et al., to the BEL-AIR BAY CLUB, LTD in Book 21728, Page 259, Official Records of Los Angeles County.

EXCEPTING THEREFROM that portion of said parcel of land conveyed by the deed to the State of California recorded May 8, 1975 as Instrument No. 293, Official Records of Los Angeles County.

END OF DESCRIPTION



**EXHIBIT B
LAND DESCRIPTION
BOUNDARY LINE OF 1937**

A boundary line situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

The line designated as BLA 1 as described in the agreement executed on November 8, 1937 by and between the State of California and Mountain Park Associates, Residential Land Corporation, Alphonzo E. Bell Corporation, Security-First National Bank of Los Angeles, Bel-Air Bay Club, LTD, et al. recorded in Book 15482, Page 23, Official Records of Los Angeles County.

END OF DESCRIPTION



**EXHIBIT C
NEW BOUNDARY LINE**

An agreed boundary line situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

BEGINNING at the easterly terminus of that certain course described as South 82° 58' 38" West, 441.01 feet in Book 15482, at Page 23, Official Records of Los Angeles County; thence along said course South 82° 58' 38" West, 441.01 feet; thence leaving said course North 75° 17' 29" West, 399.96 feet; thence North 83° 59' 09" West, 384.00 feet to the easterly boundary of Parcel No. 1 described in that certain lease and option between Residential Land Corporation and the County of Los Angeles, recorded on February 11, 1937 in Book 14750, Page 148, Official Records of said county.

END OF DESCRIPTION



**EXHIBIT D
LAND DESCRIPTION
STATE LANDS**

All that parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California, bounded as follows:

Bounded on the north by a boundary that begins at the easterly terminus of that certain course described as South 82° 58' 38" West, 441.01 feet in Book 15482, Page 23, Official Records of Los Angeles County; thence along said course South 82° 58' 38" West, 441.01 feet; thence leaving said course North 75° 17' 29" West, 399.96 feet; thence North 83° 59' 09" West to the easterly boundary of Parcel No. 1 as described in that certain lease and option between Residential Land Corporation and the City of Los Angeles, recorded in Book 14750, Page 148, Official Records of Los Angeles County;

Bounded on the east by the southerly prolongation of the easterly line of Allotment No. 2 to Ramona M. de Baker, per Partition of the Rancho Boca de Santa Monica in Case No. 2405 of the 17th Judicial District Court of Los Angeles County;

Bounded on the west by the southerly prolongation of the easterly line of said Parcel No. 1;

Bounded on the south by a boundary 1000 feet southerly of and parallel to the herein described northerly boundary.

END OF DESCRIPTION



8/14/03

**EXHIBIT E
LAND DESCRIPTION
BABC PROPERTY**

A parcel of land situated in the city of Los Angeles, County of Los Angeles, State of California described as follows:

A parcel of land designated as PARCEL "C" BEACH in that certain quitclaim deed recorded on March 5, 1945 from MOUNTAIN PARK ASSOCIATES, et al. to the BEL-AIR BAY CLUB, LTD in Book 21728, Page 259, Official Records of Los Angeles County.

EXCEPTING THEREFROM that portion of said parcel of land as conveyed by the deed to the State of California recorded May 8, 1975 as Instrument No. 293, Official Records of Los Angeles County.

ALSO EXCEPTING THEREFROM any portion of said parcel lying waterward of the following described line:

BEGINNING at the easterly terminus of that certain course described as South 82° 58' 38" West, 441.01 feet in Book 15482, Page 23, Official Records of Los Angeles County; thence along said course South 82° 58' 38" West, 441.01 feet; thence leaving said course North 75° 17' 29" West, 399.96 feet; thence North 83° 59' 09" West, 384.00 feet to the easterly boundary of Parcel No. 1 described in that certain lease and option between Residential Land Corporation and the County of Los Angeles, recorded in Book 14750, Page 148, Official Records of said county.

END OF DESCRIPTION



8/14/03

EXHIBIT F
BEACH MAINTENANCE LANDS
PRC 8467

A parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

BEGINNING at a point at the easterly line of Allotment No. 2 to Ramona M. de Baker, as per Partition of the Rancho Boca de Santa Monica in case no. 2405 of the 17th Judicial District Court of Los Angeles County, said point being distant along said line South 00° 36' 25" East, 72.00 feet from the easterly terminus of that certain course described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; thence leaving said line North 85° 20' 04" West, 352.25 feet to the above described course bearing South 82° 58' 38" West; thence along said course South 82° 58' 38" West, 86.50 feet; thence North 75° 17' 29" West, 399.96 feet; thence North 83° 59' 09" West, 384.00 feet to the easterly boundary of Parcel No. 1 described in that certain lease and option between Residential Land Corporation and the County of Los Angeles, recorded in Book 14750, Page 148, Official Records of said county; thence South 07° 03' 00" West along the southerly prolongation of the said easterly line of Parcel No. 1 to the mean low water line of the Pacific Ocean; thence easterly along said mean low water to the southerly prolongation of said easterly line of Allotment No. 2 to Ramona M. de Baker; thence along said easterly line of Allotment No. 2 North 00° 36' 35" East to the Point of Beginning.

END OF DESCRIPTION

EXHIBIT G

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS

Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 4415-036-900
County: Los Angeles

LEASE PRC 8467

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **Bel-Air Bay Club, Ltd.**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

WHOSE MAILING ADDRESS IS: 16801 Pacific Coast Highway
Pacific Palisades, CA 90272

LEASE TYPE: General Lease – Protective Structure and Beach Maintenance

LAND TYPE: Sovereign Tide & Submerged

LOCATION: Beach area adjacent to 16801 Pacific Coast Highway, Pacific Palisades, Los Angeles County

LAND USE OR PURPOSE: Beach maintenance for public use; temporary sand berm construction for storm protection; use of a portable lifeguard station and provision of lifeguard services, and construction and maintenance of a public access facility.

TERM: 25 years; beginning October 20, 2003, hereinafter the effective date; ending October 19, 2028, unless sooner terminated as provided under this Lease.

CONSIDERATION: The public use and benefit and the public health and safety, with the Lessor reserving the right at any time to set a monetary rent if the Commission finds it to be in the State's best interest. Subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS:

X **EXISTING:** Placement of portable lifeguard station

X **TO BE CONSTRUCTED:** Public access facility and temporary sand berm

CONSTRUCTION MUST BEGIN BY: Public Access Facility - Within one month of Lessee's receipt of all necessary permits.
Temporary Sand Berm – Shall be constructed as outlined in applicable Permits

AND BE COMPLETED BY: Public Access Facility - May 20, 2004
Temporary Sand Berm – As outlined in applicable Permits

LIABILITY INSURANCE: \$10,000,000

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2

SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

1. Lessee shall, at its sole cost and expense, maintain the Lease Premises in a clean and unobstructed condition for public beach recreational use, subject to Lessee's right to maintain three existing groins as authorized by the Lessor under PRC 8465.
2. Lessee is authorized to place and maintain a portable lifeguard structure on the Lease Premises and the adjacent Lease Premises described in Lease No. PRC 8466. However, the lifeguard structure shall only be placed on the Lease Premises for Lease No. PRC 8466 if for reasons of public safety the Lease Premises does not allow for safe monitoring of swimmers by Lessee's lifeguards. The Lessee shall maintain the beach and provide lifeguard services to the public consistent with standards adopted by Los Angeles County's lifeguard services during the summer season of Memorial Day through Labor Day.
3. Lessee may temporarily move sand to create a sand berm on the Lease Premises, which shall be placed as far inland as practicable, for purposes of storm protection as authorized by California Commission Coastal Permit CDP 5-92-108 or similar subsequent permits. If the physical condition of the beach area is such that access cannot be safely made across the Lease premises by the public, Lessee shall allow the public to pass and repass along Lessee's adjacent sandy beach property landward of the berms.
4. Lessee shall remove from the Lease Premises any structure or improvement not specifically authorized by this Lease or authorized by any other lease issued by the Lessor, including any boats, fences, signs, stored objects or other items not naturally occurring on a sandy beach, within 30 days of the effective date of this lease.
5. Lessee, within 90 days of the effective date of this lease, shall provide and install signs at each of the corners of the Lease Premises on the beach and at other intervals, so that no sign is more than 250 feet from the adjacent sign, indicating the area waterward of the signs is public beach open to public use. The language of the signs shall be acceptable to the Executive Officer of the Lessor.
6. Lessee's employees, members and invitees may use the Lease Premises, as do other members of the public. However, Lessee's employees may not occupy the Lease Premises with Lessee's chairs, equipment or other property of Lessee not specifically authorized by this Lease.
7. Within two months of the effective date of this Lease, Lessee will submit plans to the Lessor, for its staff's review and approval, for the construction of a facility that facilitates public access over the groin adjacent to the northerly boundary of the Lease Premises. Lessor's staff shall review the plans within 30 days. Lessee shall immediately thereafter

apply for all necessary permits and shall diligently process them until all approvals have been obtained. Lessee shall begin construction of the facility within one month of Lessee's receipt of all necessary permits and shall actively pursue construction so that the project will be completed by the target date of May 20, 2004.

8. Lessee shall provide containers on or immediately adjacent to the Lease Premises to receive trash and refuse. Refuse containers shall be located so as to be conveniently used by members of the public and shall be of sufficient size and number to contain refuse generated on the Lease Premises. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. The contents of the containers shall be disposed of by Lessee or others acting pursuant to Lessee's direction at authorized landfills or other garbage reception areas as provided under law applicable at the time of collection. Refuse containers shall be painted the same color as those operated by Los Angeles County and shall not contain the name or other identifying symbols of the Lessee, except as approved by the Lessor's Executive Officer in writing.
9. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding, and erosion.
 - b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit (CDP) that is issued to Lessee for development on the leased property, of injury and damage from such hazards in connection with the permitted development and use.
 - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.
 - d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP that is issued to Lessee involving this property or issuance of this Lease, any new lease, renewal, amendment, or assignment by Lessor.
10. Lessee may terminate this lease and quitclaim its interest under this lease to the State upon 90 days written notice.
11. In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

SECTION 3

BEACH MAINTENANCE LANDS

PRC 8467

parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

BEGINNING on a point at the easterly line of Allotment No. 2 to Ramona M. de Baker, as per Partition of the Rancho Boca de Santa Monica in case no. 2405 of the 17th Judicial District Court of Los Angeles County, said point distant along said line South 00° 36' 25" East, 72.00 feet from the easterly terminus of that certain course described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; thence leaving said line North 85° 20' 04" West, 352.25 feet to the above described course bearing South 82° 58' 38" West; thence along said course South 82° 58' 38" West, 86.50 feet; thence North 75° 17' 29" West, 399.96 feet; thence North 83° 59' 09" West, 384.00 feet to the easterly boundary of Parcel No. 1 described in that certain lease and option between Residential Land Corporation and the County of Los Angeles, recorded in Book 14750, Page 148, Official Records of said county; thence South 07° 03' 00" West along the southerly prolongation of the said easterly line of Parcel No. 1 to the mean low water line of the Pacific Ocean; thence easterly along said mean low water to the southerly prolongation of said easterly line of Allotment No. 2 to Ramona M. de Baker; thence northerly along said easterly line of Allotment No. 2 North 00° 36' 35" East, to the Point of Beginning.

END OF DESCRIPTION

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

(1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification

Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and

within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. **RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY**

(a) **Reservations**

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

6. **RULES, REGULATIONS AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. **INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

8. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

Form 51.15 (Rev. 4/96)

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise

transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or
- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or

ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration

shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. PRC 8467

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE: BEL-AIR BAY CLUB, LTD.

LESSOR: STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

ACKNOWLEDGEMENT

This Lease was authorized by the
California State Lands Commission on

EXHIBIT H
PROTECTIVE STRUCTURE LANDS

PRC 8465

A parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

PARCEL A

A forty-foot wide strip of land, the centerline of said strip more particularly described as follows:

BEGINNING at a point on that certain line described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records, distant along said line South 82° 58' 38" West, 38.66 feet from the southeasterly terminous thereof; thence South 14° 07' 15" West, 228.76 feet to the terminus of said centerline.

The sidelines of said 40-foot wide strip of land are to be prolonged or shortened on the north to terminate on said line described as South 82° 58' 38" West, 441.01 feet.

PARCEL B

A forty-foot wide strip of land, the centerline of said strip more particularly described as follows:

BEGINNING at a point on that certain line described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; distant along said line South 82° 58' 38" West, 356.97 feet from the southeasterly terminous thereof; thence South 13° 53' 19" West, 518.65 feet to the terminus of said centerline.

The sidelines of said 40-foot wide strip of land are to be prolonged or shortened on the north to terminate on said line described as South 82° 58' 38" West, 441.01 feet.

PARCEL C

A forty-foot wide strip of land, the centerline of said strip more particularly described as follows:

BEGINNING at a point that bears North 75° 17' 29" West, 304.59 feet from the southwesterly terminus of that certain line described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; thence South 14° 07' 15" West, 228.76 feet to the terminus of said centerline.

The sidelines of said 40-foot wide strip of land are to be prolonged or shortened on the north to terminate on a line bearing North 75° 17' 29" West which passes through said Point of Beginning.

END OF DESCRIPTION

EXHIBIT I

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 4415-036-900
County: Los Angeles

LEASE PRC 8465

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **Bel-Air Bay Club, Ltd.**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

WHOSE MAILING ADDRESS IS: 16801 Pacific Coast Highway
Pacific Palisades, CA 90272

LEASE TYPE: General Lease – Protective Structure Use

LAND TYPE: Sovereign Tide & Submerged

LOCATION: Three groins generally located adjacent to the uplands at 16801 Pacific Coast Highway, Pacific Palisades and as described in Section 3.

LAND USE OR PURPOSE: Maintenance of three existing groins identified as Groins A, B and C that are used for beach erosion control adjacent to 16801 Pacific Coast Highway, Pacific Palisades

TERM: 20 years; beginning October 20, 2003; ending October 19, 2023, unless sooner terminated as provided under this Lease.

CONSIDERATION: \$13,423 per annum (\$2,242 per annum as to Groin A; \$7,702 per annum as to Groin B and \$3,479 per annum as to Groin C); subject to modification by Lessor as specified in Paragraph 3 of Section 2 – Special Provisions and as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS:

x **EXISTING:** Three groins

N/A **TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY:** N/A

AND BE COMPLETED BY: N/A

LIABILITY INSURANCE: \$10,000,000

SURETY BOND OR OTHER SECURITY: \$25,000

**SECTION 2
SPECIAL PROVISIONS**

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

1. The groins shall be maintained in a manner that does not interfere with lateral public access across the public beach. If the physical condition of the beach area is such that access cannot be safely made across the groins, Lessee will allow the public to pass and repass across Lessee's adjacent upland sandy beach property.
2. Upon Lessor's execution of this Lease, Lessee will, within 60 days, contract to have an engineering study conducted, which will include preparation of "as-built" drawings/plans, in order to determine the current condition of the existing groins. The parameters of the study shall be reviewed and approved by Lessor's staff within 30 days of receipt. The study shall be completed prior to February 1, 2004. Upon completion of the engineering study, a report will be prepared and, if needed, will contain recommendations for remediating any problem areas. A copy of the report will be provided to the Lessor. Lessee shall consult with Lessor's staff to determine whether removal of hazards or repairs are required to be made to the groins. Lessee will initiate removal/repair within 60 days of Lessor's staff's approval of plans for removal/repair activities.
3. Should the engineering study determine that certain portions of the groins previously constructed within the Lease Premises described in Section 3 have been removed, Lessee may request a modification of the legal descriptions to reflect the true location of the groins and the Lessor's staff will modify the Lease descriptions. Any rent paid in excess of the true footprint of the groin during the first year will be credited toward the second year payments due.
4. Lessee agrees that the lease description contained in Section 3 of this Lease, which includes a ten-foot use area on each side of each groin, is based upon information provided by Lessee prior to Lessee conducting the engineering study as outlined in Paragraph 2 of Section 2. The consideration provided in Section 1 is based upon an estimated square footage of each groin including a five-foot use area on each side as follows: Groin A is 6,863 square feet, Groin B is 15,560 square feet and Groin C is 5,245 square feet. Upon receipt and review of the engineering study and as-built plans/drawings, as required in Paragraph 2 of Section 2, the consideration in Section 1 will be modified by Lessor's staff based on the actual square footage of the groins including the five-foot use area.
5. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding, and erosion.

- b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit (CDP) that is issued to Lessee for development on the leased property, of injury and damage from such hazards in connection with the permitted development and use.
 - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.
 - d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP that is issued to Lessee involving this property or issuance of this Lease, any new lease, renewal, amendment, or assignment by Lessor.
6. In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

SECTION 3

PROTECTIVE STRUCTURE LANDS

PRC 8465

A parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

PARCEL A

A forty-foot wide strip of land, the centerline of said strip more particularly described as follows:

BEGINNING at a point on that certain line described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records, distant along said line South 82° 58' 38" West, 38.66 feet from the southeasterly terminous thereof; thence South 14° 07' 15" West, 228.76 feet to the terminus of said centerline.

The sidelines of said 40-foot wide strip of land are to be prolonged or shortened on the north to terminate on said line described as South 82° 58' 38" West, 441.01 feet.

PARCEL B

A forty-foot wide strip of land, the centerline of said strip more particularly described as follows:

BEGINNING at a point on that certain line described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; distant along said line South 82° 58' 38" West, 356.97 feet from the southeasterly terminous thereof; thence South 13° 53' 19" West, 518.65 feet to the terminus of said centerline.

The sidelines of said 40-foot wide strip of land are to be prolonged or shortened on the north to terminate on said line described as South 82° 58' 38" West, 441.01 feet.

PARCEL C

A forty-foot wide strip of land, the centerline of said strip more particularly described as follows:

BEGINNING at a point that bears North 75° 17' 29" West, 304.59 feet from the southwesterly terminus of that certain line described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; thence South 14° 07' 15" West, 228.76 feet to the terminus of said centerline.

The sidelines of said 40-foot wide strip of land are to be prolonged or shortened on the north to terminate on a line bearing North 75° 17' 29" West which passes through said Point of Beginning.

END OF DESCRIPTION

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

(1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification

Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and

within sixty (60) days after completing them. Lessee discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. **RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY**

(a) **Reservations**

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

6. **RULES, REGULATIONS AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. **INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

8. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise

transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor:

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or
- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or

ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration

shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

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STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. PRC 8465

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE: BEL-AIR BAY CLUB, LTD. LESSOR: STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

ACKNOWLEDGEMENT

This Lease was authorized by the
California State Lands Commission on

EXHIBIT J

BEACH RECREATION LANDS

A parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

BEGINNING at the southeasterly terminus of that certain course described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; thence along said course South 82° 58' 38" West, 354.51 feet; thence leaving said course South 85° 20' 04" East, 352.25 feet to the southerly prolongation of the easterly line of Allotment No. 2 to Ramona M. de Baker, per Partition of the Rancho Boca de Santa Monica in case no. 2405 of the 17th Judicial District Court of Los Angeles County; thence along said southerly prolongation of the easterly line of Allotment No. 2 North 00° 36' 35" East, 72.00 feet to the Point of Beginning.

END OF DESCRIPTION

EXHIBIT K

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 4415-036-900
County: Los Angeles

LEASE PRC 8466

This Lease consists of this summary and the following attached and incorporated parts:

- | | |
|-----------|---|
| Section 1 | Basic Provisions |
| Section 2 | Special Provisions Amending or Supplementing Section 1 or 4 |
| Section 3 | Description of Lease Premises |
| Section 4 | General Provisions |

SECTION 1
BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **Bel-Air Bay Club, Ltd.**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

WHOSE MAILING ADDRESS IS: 16801 Pacific Coast Highway
Pacific Palisades, CA 90272

LEASE TYPE: General Lease – Recreational Use

LAND TYPE: Sovereign Tide and Submerged

LOCATION: 0.298 acres of beach area adjacent to 16801 Pacific Coast Highway, Pacific Palisades, Los Angeles County

LAND USE OR PURPOSE: Private recreational beach use

TERM: 20 years; beginning October 20, 2003; ending October 19, 2023, unless sooner terminated as provided under this Lease.

CONSIDERATION: \$ 50,596 per annum through October 19, 2006. Rent will be adjusted to \$56,921 per annum effective October 20, 2006 and is subject to modification thereafter by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS:

X **EXISTING:** Volleyball courts and chain link fence; portable lifeguard station

_____ **TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY:** N/A

AND BE COMPLETED BY: N/A

LIABILITY INSURANCE: \$ 10,000,000

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2

SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

1. Lessee may sign, flag or otherwise identify the Lease Premises as private, club use only. Lessee shall sign the public beach area waterward thereof. Signs indicating the public beach area shall be installed within 90 days of the effective date of the lease, as further provided in lease PRC 8467. All signage shall be adopted in a form acceptable to the Executive Officer of the Lessor.
2. Any lifeguard structure shall be painted the same color as those operated by Los Angeles County and shall not contain the name or other identifying symbols of the Lessee, except as approved by the Lessor's Executive Officer in writing.
3. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding, and erosion.
 - b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit (CDP) that is issued to Lessee for development on the leased property, of injury and damage from such hazards in connection with the permitted development and use.
 - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.
 - d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP that is issued to Lessee involving this property or issuance of this Lease, any new lease, renewal, amendment, or assignment by Lessor.
4. In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

SECTION 3

LEASE PREMISES DESCRIPTION

BEACH RECREATION LANDS

A parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California described as follows:

BEGINNING at the southeasterly terminus of that certain course described as South 82° 58' 38" West, 441.01 feet in Book 15482, Official Records, Page 23, Los Angeles County Records; thence along said course South 82° 58' 38" West, 354.51 feet; thence leaving said course South 85° 20' 04" East, 352.25 feet to the southerly prolongation of the easterly line of Allotment No. 2 to Ramona M. de Baker, per Partition of the Rancho Boca de Santa Monica in case no. 2405 of the 17th Judicial District Court of Los Angeles County; thence along said southerly prolongation of the easterly line of Allotment No. 2 North 00° 36' 35" East, 72.00 feet to the Point of Beginning.

END OF DESCRIPTION

GENERAL PROVISIONS

1. **GENERAL**
These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.
2. **CONSIDERATION**
 - (a) **Categories**
 - (1) **Rental**
Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.
 - (2) **Non-Monetary Consideration**
If the consideration to Lessor for this Lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.
 - (b) **Modification**
Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.
 - (c) **Penalty and Interest**
Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.
3. **BOUNDARIES**
This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.
4. **LAND USE**
 - (a) **General**
Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.
 - (b) **Continuous Use**
Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.
 - (c) **Repairs and Maintenance**
Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.
 - (d) **Additions, Alterations and Removal**
 - (1) **Additions** - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.
 - (2) **Alteration or Removal** - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.
 - (e) **Conservation**
Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.
 - (f) **Toxics**
Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.
 - (g) **Enjoyment**
Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. **RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY**

(a) **Reservations**

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

6. **RULES, REGULATIONS AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. **INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

8. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

Form 51.15 (Rev. 4/96)

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise

transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor:

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or
- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or

ordinances relating to issues of Health and Safety or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration

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shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

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STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. PRC 8466

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

**LESSEE: BEL-AIR BAY CLUB, LTD. LESSOR: STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: _____ **By:** _____

Title: _____ **Title:** _____

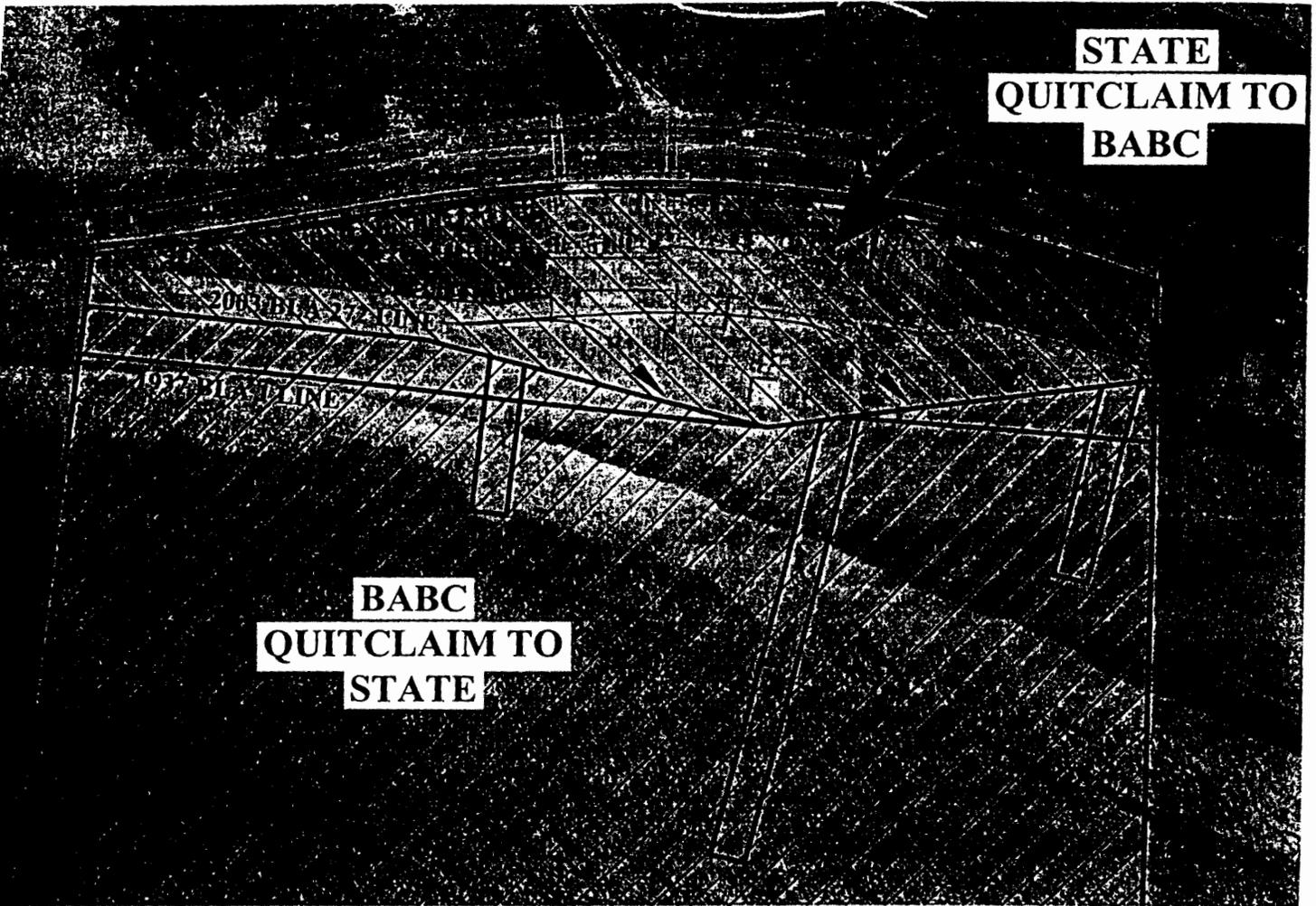
Date: _____ **Date:** _____

ACKNOWLEDGEMENT

This Lease was authorized by the
California State Lands Commission on

NO SCALE

SITE MAP



PLAT OF TITLE SETTLEMENT PARCELS

PHOTO DATE - 5/17/98

NO SCALE

LOCATION MAP

Malibu Coast



Exhibit L
 BLA 1/BLA 272
 APN 4415-036-001
 Malibu Coast
 LOS ANGELES CO.



EXHIBIT NO. 15

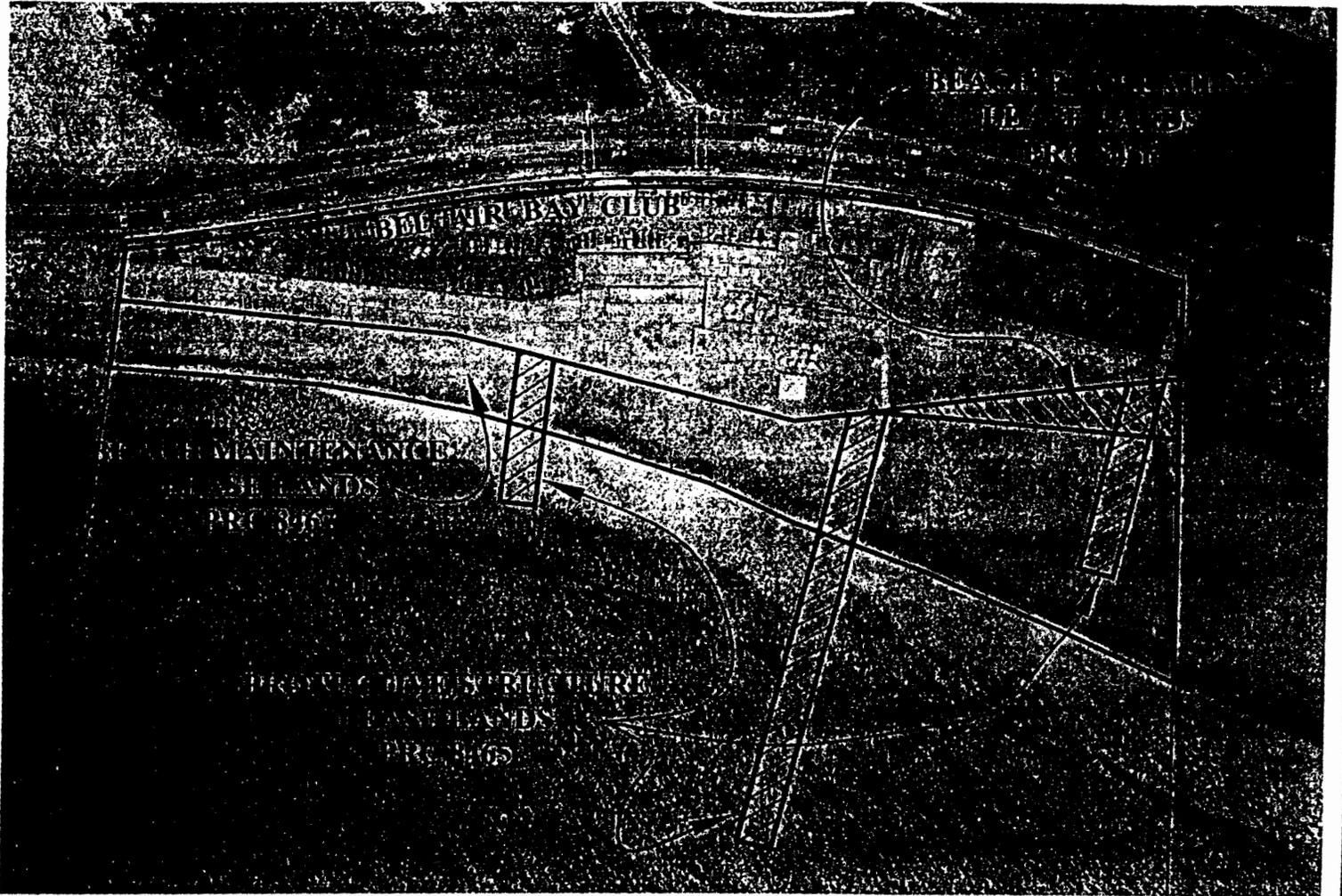
APPLICATION NO.
 15-112-02-1221
 5-02-099

Area of Quitclaim

This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as a waiver or limitation of any State interest in the subject or any other property Final for Signature

NO SCALE

SITE MAP



PLAT OF LEASE PARCELS

PHOTO DATE - 5/17/98

NO SCALE

LOCATION MAP

Malibu Coast



Exhibit M
 BLA 272
 PRC 8465, 8466 & 8467
 APN 4415-036-001
 Malibu Coast
 LOS ANGELES CO.



EXHIBIT NO. 16

APPLICATION NO.
A5-1772L-02-1621
5-02-059

State Lease Map

This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as a waiver or limitation of any State interest in the subject or any other property.



PACIFIC PALISADES COMMUNITY COUNCIL

The Eyes, Ears, and Voice of the Pacific Palisades Community
Serving the residents and businesses of Pacific Palisades since 1973
Post Office Box 1131, Pacific Palisades, California 90272

November 25, 2003

Mr. Al Padilla
California Coastal Commission
200 OceanGate, 10th floor
Long Beach, California 90802

Application #_5-02-099
Bel Air Bay Club, 16800 Pacific Coast Highway, Los Angeles CA

Dear Mr. Padilla:

The Pacific Palisades Community Council (PPCC) supports the renovation permit application of the Bel Air Bay Club ("Club"). At its meeting of December 14, 2000, the PPCC resolved to support the renovation of the Club following the Club's agreement to conditions related to right of way for South Bay Bike Trail ("SBBT") and other issues.

At that time, PPCC Councilmember Barry Kurtz, who is also a traffic engineer with the County of Los Angeles and bicyclist, had pointed out the need to protect the future alignment of the South Bay Bike Trail ("SBBT") across the highway frontage of the Club's property. The City of Los Angeles has a proposal to extend the SBBT from its northerly terminus at Temescal Canyon Road to Coastline Drive. The City had planned the path's future alignment in front of the Club. The Club agreed to plan their renovation in a manner that would be compatible with the implementation of the future extension of the bike path. The Club also agreed to cooperate with the City in the construction of the path and, if needed, grant to the City an easement on, or negotiate the sale to the City, of any portion of its property which is needed to accommodate the City's bicycle plan.

As you know the SBBT extends from Temescal Canyon Road in Pacific Palisades to Torrance Beach in the City of Torrance, a distance of 19 miles. It is a tremendous resource for the citizens of Los Angeles County, facilitating access to the beach. Renovation of the Club's property will help to extend the SBBT to serve residents of and visitors to Pacific Palisades beach areas. Trail access would be available at Sunset Boulevard and Coastline Drive.

The PPCC also supports the Club's renovation because it would enable Caltrans to recreate the shoulder that was lost after the PCH was realigned in 1983. After a landslide in 1983, Caltrans realigned PCH eliminating the shoulder in the vicinity of the south property line of the Club and the north portion of the Will

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South Coast Regi

DEC 3 2003

CALIFORNIA
COASTAL COMMISSION

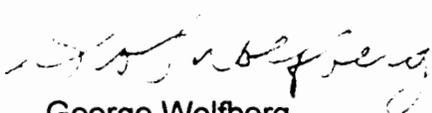
EXHIBIT NO. 17
Application Number 195-PPH-02-102/ 5-02-099
Letter from Pacific Palisades Community Council
California Coastal Commission

Rogers State Beach parking lot. This constriction has become a potential point of conflict for motorists, bicyclists and pedestrians. The restoration of a shoulder would be a significant traffic safety improvement.

In addition, the Club's renovation will improve traffic conditions at their entrance on Pacific Coast Highway. Presently the Club's driveways on each side of Pacific Coast Highway do not line up, resulting in an undesirable jogged signalized intersection. The Club's new plans would line up the driveways and result in a much safer intersection.

Thank you for your consideration.

Yours truly,



George Wolfberg,
Chairman



Barry Kurtz,
Area 2 Alternate



634 S. Spring St., Suite 821
L.A., CA 90014
Phone (213) 629-2142
Fax (213) 629-2259
K@labikecoalition.org
www.labikecoalition.org

December 5, 2003

Mr. Al Padilla
California Coastal Commission
200 Ocean Gate 10th floor
Long Beach, California 90802

S	EXHIBIT NO. 18
	Application Number A5-PPL-C2-1021 5-02-099
CC	Letter from LACBC
	California Coastal Commission

Re: Permit Application No: 5-02-099
Bel Air Bay Club
16800 Pacific Coast Highway
Los Angeles, California 90272

Dear Mr. Padilla:

We are writing you in support of the improvements to Pacific Coast Highway (PCH) as a part of the renovation permit application for Bel Air Bay Club (Club). The Club's renovation permit application is now pending before the Coastal Commission. As you maybe are aware, The Los Angeles County Bicycle Coalition (LACBC) is a non-profit organization representing approximately 200,000 cyclists in the Greater Los Angeles County. A principal purpose of the LACBC is to promote bicycling in Southern California with a special emphasis on safety for its members and the public.

LACBC supports the Club's plans for improved safety and access upgrades for bicyclists and pedestrians to the coastline along northern Santa Monica Bay. These improvements are:

- 1) The realignment of the intersection and the traffic lights in front of the Club's entrance to eliminate a dangerous "jog" intersection.
- 2) Widening the Pacific Coast Highway (PCH) shoulder at the eastern (Santa Monica) end of Club's property; and
- 3) The dedication of an easement for the extension of the South Bay Bicycle Trail.

Further, it appears that the Club's proposal is consistent with the goals of greater coastal access in general. The plan extension of the South Bay Bicycle Trail is especially welcome. Extending this popular off-road bikeway north of its present terminus has long been supported by LACBC and will significantly enhance both recreational and transportation options for cyclists along the coast, and provides greater access to our Coastal Assets.



LACBC would also like to draw your attention to the shoulder widening aspect of the proposed project in particular. When Caltrans realigned PCH in 1983 to avoid the effects of the landslide, it pushed PCH literally up against the Club's property where it is contiguous to the Will Roger State Beach parking lot. The 1983 realignment of PCH eliminated the shoulder for bicyclists and pedestrians, creating a "choke" point. This "choke" point has become notorious as a dangerous area for all seeking coastal access in this area. Bicyclists and pedestrians are required to climb over the guardrail to avoid the large volume of traffic on PCH.

This dedication of property by the Club will enable Caltrans to recreate the shoulder that was lost after the highway was realigned in 1983. From the viewpoint of bicyclists and pedestrians, the recreation of a shoulder in such a dangerous location is a crucial safety improvement. The enhanced safety on PCH and the extension of the South Bay Bicycle Trail is a major benefit for the public and provides much-improved public access along PCH at that location. As a result, the Los Angeles County Bicycle Coalition enthusiastically supports the Bel Air Bay Club's application.

Thank you for your attention on this matter, and your continue stewardship of our Coastal Assets. If you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendell Johnson", written in a cursive style.

Wendell Johnson, P.E.
President
Los Angeles County Bicycle Coalition

cc
Pacific Palisades Community Council (Barry Kurtz)
Bel Air Bay Club (Bill Howard)
Los Angeles County Department of Beaches and Harbors (Stan Wisniewski, Director)
California Department of Transportation (Douglas R. Failing, District 7 Director)

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JUL 29 2003

CALIFORNIA
COASTAL COMMISSION

HAROLD TUCHYNER
324 ADERUD WAY
PACIFIC PALISADES, CA 90272
25 JULY 2003

EXHIBIT NO. 19
Application Number H5-177L-02-1621 5-02-099
Letter from Harold Tuchyner
California Coastal Commission

MR. PETER DOUGLAS
EXECUTIVE DIRECTOR
CALIF COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219

SUBJECT: APPEAL #A-5-PPL-02-162

DEAR MR. DOUGLAS

ENCLOSED IS A COPY OF THE LETTER
I SENT TO THE CALIF STATE LANDS COMMISSION
ON 16 JULY 03.

I APOLOGIZE FOR NOT PUTTING YOU ON
DISTRIBUTION.

AS I UNDERSTAND IT, THE LANDS COMMISSION
IS PLANNING TO LEASE TO THE BEL AIR BAY CLUB
A SIGNIFICANT PORTION OF THE PUBLIC BEACH
WHICH THE CLUB HAS ENCRACHED UPON, AS A
WAY OF GETTING THE CLUB TO AGREE TO ALLOW
FREE AND SAFE PUBLIC PASSAGE TO AND ALONG
THE BEACH. SEEMS LIKE THE PUBLIC IS GIVING
UP A LOT TO HAVE THE RIGHT OF PASSAGE, WHICH
IT ALREADY HAS!

YOURS TRULY
H. Tuchyner
HAROLD TUCHYNER

HAROLD TUCHNER
324 ADELNO WAY
PACIFIC PALISADES, CA 90272
16 JULY, 2003

MR. CURTIS FOSSUM
SENIOR STAFF COUNSEL
CALIFORNIA STATE LANDS COMMISSION (CSLC)
100 HOWE AVE, SUITE 100-SOUTH
SACRAMENTO, CA 95825-8202

CC: MS. LAURIE NEWMAN
FIELD DEPUTY TO SENATOR S. KUEHL

DEAR MR. FOSSUM,

PER MY RECENT TELEPHONE CONVERSATION WITH MS. SUSAN YOUNG OF THE CSLC, I WAS INFORMED THAT SERIOUS CONSIDERATION IS BEING GIVEN TO LEASING PUBLIC LAND ON THE WILL ROGERS STATE BEACH IN PACIFIC PALISADES TO THE BEL AIR BAY CLUB (BABC), A PRIVATE CLUB WITH EXISTING SUBSTANTIAL FACILITIES ON THAT BEACH. IT IS ALSO MY UNDERSTANDING THAT THE CSLC MAY ALSO BE REVIEWING THE ISSUES OF ENCROACHMENT ONTO THE PUBLIC BEACH BY THE BABC, AND THE FACT THAT THE BABC RESTRICTS PUBLIC ACCESS TO AND ALONG THE BEACH. THE CSLC MAY ALSO BE CONSIDERING THE IMPACT OF THE PROPOSED BABC PLAN TO SIGNIFICANTLY EXPAND ITS FACILITY ON THE BEACH, IN TERMS OF ITS NEGATIVE

Since I am recovering from major surgery I will not be able to attend the public hearing, which as I understand it is scheduled for this August. However I would appreciate being informed in a timely manner by mail of all decisions made by the CSLC in this matter. Being that I cannot attend the meeting, I felt that a letter on this matter would be appropriate.

First, let me summarize what I believe to be the main issues, details will follow

- ① For more than 20 years there has not been a valid uncertainty as to the actual location of the boundary between the BABC beach facility and the adjacent public land. Therefore, there is no requirement to redefi this boundary consistent with the purposes and goals of the CSLC.

- ② Leasing of the public land to the BABC would in reality be primarily to afford the BABC more privacy and isolation from the public. This would not be in line with the overall goals and purposes of the public trust.

- ③ Allowing the BABC to continue to encroach on public land, and to restrict the public's scenic views and passage to, from and along the public and private beach is

COUNTER TO THE GOALS OUTLINED IN THE CSLC MISSION AND VISION STATEMENTS.

④ ALLOWING THE BABC TO BUILD A 2 TO 3 STORY FACILITY ON THE BEACH, AND A SEA WALL, AGAIN IS COUNTER TO THE CSLC'S MISSION AND VISION STATEMENTS, SINCE AT MINIMUM IT WOULD ERODE THE FUTURE QUALITY OF THE PUBLIC'S BEACH ENVIRONMENT DUE TO THE REDUCTION IN OPEN AIR BEACH SPACE AND THE DELETERIOUS EFFECT IT COULD HAVE ON THE PUBLIC'S BEACH SAND.

FOR YEARS NOW THE BABC HAS BEEN DOING WHAT IT HAS TO DO TO OBTAIN PERMISSION TO SIGNIFICANTLY EXPAND (BOTH HORIZONTALLY AND VERTICALLY) ITS EXISTING FACILITY ON THE BEACH. SEVERAL LOCAL RESIDENTS AND THE PACIFIC PALISADES RESIDENTS ASSOCIATION HAVE BEEN ATTEMPTING TO BLOCK APPROVAL OF THIS EXPANSION AND INSTEAD LIMIT ANY BABC MODIFICATION PLANS ON THE BEACH TO JUST THOSE ELEMENTS RELATING TO MODIFICATION AND IMPROVED SAFETY AT THE BABC/PCH INTERFACE. THE CITY OF LOS ANGELES EVENTUALLY DID APPROVE THE OVERALL BABC EXPANSION PLAN FOR THIS BEACH FACILITY. SUBSEQUENTLY, AN APPEAL WAS FILED WITH THE CALIFORNIA COASTAL COMMISSION (CCC) OBJECTING TO THIS PLAN (REF: CCC APPEAL No. A-5-PPL-02-162). THE CCC FOUND THAT SUBSTANTIAL ISSUES

EXIST IN THIS APPEAL AND NOTIFIED THE LOS ANGELES ZONING ADMINISTRATION OF THIS ON 9 AUG 02. THE APPELLANTS IS THIS CASE ARE MARTIN MURPHY (RESIDENT), HAROLD TUCHYNER (RESIDENT), ROBERT LOCKER (RESIDENT), THE PACIFIC PALISADES RESIDENTS ASSOCIATION AND PETER DOUGLAS (COASTAL COMMISSION EXECUTIVE DIRECTOR). THE CCC PLANS TO SCHEDULE A DE NOVO HEARING FOLLOWING THE RESOLUTION OF PERTINENT ISSUES BY THE CSLC.

OVER THE YEARS THE BABC HAS APPARENTLY KNOWINGLY ENCROACHED ONTO THE PUBLIC BEACH ADJACENT TO THEIR BEACH FACILITY. THIS ENCROACHMENT HAS TAKEN PLACE AT ITS EASTERN BORDER (TOWARDS SANTA MONICA), AT ITS WESTERN BORDER (TOWARDS MALIBU) AND ALONG ITS NORTHERN BORDER (ALONG THE PACIFIC COAST HIGHWAY, PCH). THIS SITUATION IS OBVIOUS WHEN ONE OBSERVES WHAT IS ON THE BEACH TODAY AND EXAMINES THE BABC'S OWN PLOT PLANS AND THE COPY OF THE STATE OF CALIFORNIA, DIVISION OF HIGHWAYS, R/W MAP # 25086-C, 07-LA-1-38.9, 1973, BOTH OF WHICH WERE PREVIOUSLY SUBMITTED TO THE WEST LOS ANGELES AREA PLANNING COMMISSION BY THE BABC AS PART OF ITS PERMIT APPLICATION. ALL OF THIS WAS RE-CONFIRMED BY A LAND SURVEY (PROMPTED BY SENATOR S. KUEHL'S OFFICE) CONDUCTED BY THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION

IN THE FALL OF 2000. (REF: SURVEY REQUEST 00-292). THE RESULTING SURVEY REPORT IS DATED 9 DEC 2000.

IN ADDITION, THE BABC HAS PREVENTED FREE PUBLIC ACCESS TO/FROM AND ALONG BOTH THE PUBLIC AND PRIVATE SECTIONS OF THE BEACH AT THEIR EASTERN AND WESTERN BORDERS AND FROM THE NORTH, i.e. FROM PCH. THIS HAS BEEN ACCOMPLISHED AT THE EASTERN END BY A BABC FENCE RUNNING APPROXIMATELY 140 FEET ON THE PUBLIC BEACH, WITH "RESTRICTED PUBLIC PASSAGE AND PRIVATE PROPERTY" SIGNS PROMINANTLY POSTED ON THE FENCE. THERE IS ALSO A FENCE (SOME OF WHICH IS ON PUBLIC LAND) WITH A SIMILAR SIGN AT THE WESTERN END. IN ADDITION THERE IS A ROCK BARRIER ON BABC PROPERTY RUNNING ALONG THE WESTERN FENCE. THIS ROCK BARRIER IS DIFFICULT TO CLIMB OVER AND IS POTENTIALLY DANGEROUS, PARTICULARLY AT HIGHER TIDES. AS A RESULT FREE PASSAGE TO/FROM/ALONG THE BEACH IS AGAIN RESTRICTED. NO PEDESTRIAN BEACH ACCESS IS POSSIBLE FROM THE PCH SHOULDER ALONG THE EXTENSIVE BABC/PCH BORDER SINCE THE ONLY REASONABLE PASSAGE FROM THAT DIRECTION WOULD BE THROUGH THE BABC ENTRANCE LOBBY, WHICH HAS A "MEMBERS ONLY" SIGN POSTED, WHICH THE STAFF ENFORCES. OVER THE YEARS THE BABC HAS ERRECTED A

(6)

TALL CHAIN LINK FENCE (COVERED WITH OPAQUE PLASTIC SHEETING) ON STATE PROPERTY ALONG ALMOST ALL OF ITS PCH BORDER. IN ADDITION, THE BABC PLANTED TALL DENSE VEGETATION BEHIND THIS FENCE, WHICH IS MAINTAINED BY THE BABC, AND AGAIN IS ON STATE PROPERTY. EXISTING DOCUMENTATION INDICATES THAT MUCH OF THIS "COMPOSITE FENCE" WAS ORIGINALLY INSTALLED WITHOUT PERMISSION FROM THE STATE. A SMALL LENGTH OF ITS NORTHERN BORDER HAS A TALL WOODEN FENCE WHICH IS ON BABC PROPERTY. HOWEVER, THIS WOODEN FENCE COMBINED WITH THE OPAQUE CHAIN LINK - PLASTIC FENCE AND THE VEGETATION ALL COMBINE TO FORM A VERY EFFECTIVE VISUAL SCREEN WHICH PROVIDES PRIVACY TO THE BABC WHILE AT THE SAME TIME BLOCKS SCENIC VIEWS OF THE OCEAN, COAST LINE AND THE OCEAN/SKY HORIZON FOR THE PUBLIC TRAVELING ALONG PCH AND ITS SHOULDER (VIA CAR OR BIKE OR ON FOOT) ALONG THE ENTIRE LENGTH OF THE PCH/BABC BORDER EXCEPT AT THE ENTRANCE TO THE BABC PARKING LOT.

IT HAS TO BE NOTED THAT IF THE BABC WERE ALLOWED TO BUILD ITS 2-3 STORY FACILITY ON THE BEACH, THESE PUBLIC SCENIC VIEWS FROM PCH (TODAY HIDDEN BY THE FENCES AND VEGETATION) WOULD BE LOST TO THE PUBLIC. THE BABC COULD REALIZE THE SAME

(7)

LEVEL OF PROTECTION AS THAT PROVIDED BY THE EXISTING FENCES/VEGETATION, BY MOVING THESE FENCES AND VEGETATION DOWN HILL (TOWARDS THE OCEAN) ONTO BABC PROPERTY. THIS WOULD ALSO ALLOW THE TOPS OF THESE FENCES/VEGETATION TO BE BELOW THE SIGHT LINES FROM PCH SO NO VIEW BLOCKING WOULD EXIST FROM PCH.

THE PUBLIC ON THE BEACH IS KEPT AT "ARMS LENGTH" FROM THE BABC FACILITY VIA THE ILLEGAL SETBACK PROVIDED BY THE ENCROACHED BEACH AREA AT THE EASTERN END AND BY THE ROCK BARRIER AND FENCE AT THE WESTERN END. AS A RESULT THE BABC ENJOYS AN INCREASED DETACHMENT AND ISOLATION FROM THE GENERAL PUBLIC, WHICH MAY BE GOOD FOR THE BABC BUT NOT FOR THE PUBLIC WHICH IN TURN IS PREVENTED FROM FULLY UTILIZING THE BEACH. IN ADDITION, IF THE BABC PROPOSED 2-3 STORY FACILITY WERE ERECTED ON THE BEACH, IT WOULD FURTHER DETRACT FROM THE PUBLIC'S ENJOYMENT OF THE BEACH SINCE THE PRESENCE OF NEARBY ADJACENT TALL BABC STRUCTURES WOULD HAVE AN OVERBEARING AND VIEW BLOCKING EFFECT ON THE PUBLIC USING THE BEACH IN THE SHADOW OF AND UNDER THE EYES OF THE BABC. THAT SITUATION WOULD BE COUNTER TO THE GOALS OF THE CSLC.

THE ABOVE LEADS TO THE FOLLOWING QUESTIONS:

① DOES THE BABC NEED TO HAVE EXCLUSIVE

USE OF THE PUBLIC LAND IN QUESTION

TO FUNCTIONALLY CONDUCT ITS NORMAL BUSINESS?

(2) DOES THE GENERAL PUBLIC NEED TO REGAIN ITS USE OF THIS PUBLIC LAND IN ORDER FOR IT TO MORE FULLY ENJOY THE RECREATIONAL ADVANTAGES PROVIDED BY THE BEACH?

I BELIEVE THE ANSWER TO QUESTION (1) IS NO, AND IS YES TO QUESTION (2).

OBSERVING THE USE FACTOR IN THE EASTERN SECTION ON PEAK BEACH DAYS, I HAVE NOTICED THAT BABC BEACH GOERS SET UP ON THE SAND AT LEAST 50 FEET OR SO TO THE WEST OF WHAT THE BABC HAS IN THE PAST CLAIMED AS ITS EASTERN BORDER (SUBSEQUENTLY ERECTING THE ILLEGAL FENCE TO DEFINE THIS LINE), WHILE THE PUBLIC IN GENERAL SETS UP RIGHT UP TO THIS LINE. THIS FENCE WITH ITS PRIVATE PROPERTY SIGNS, COMBINED WITH THE FACT THAT THE BABC HAS FOR MANY YEARS LOCATED MUCH OF ITS PRIVATE EQUIPMENT ON THAT PORTION OF THE PUBLIC BEACH, HAS SERVED TO INTIMIDATE THE PUBLIC INTO THINKING THAT THE PORTION OF THE PUBLIC BEACH IN QUESTION IS THE PRIVATE PROPERTY OF THE BABC. THIS HAS BEEN VERY EFFECTIVE IN PREVENTING PUBLIC SPILL OVER ON TO THE "BABC SIDE", EVEN WHEN IT APPEARED THAT THE PUBLIC COULD USE MORE BEACH SPACE.

THE BABC EQUIPMENT NOTED ABOVE INCLUDES THE FOLLOWING: BOATS, PALM TREES, UMBRELLAS

VOLLEY BALL NETS, A LIFEGUARD STATION AND TRASH CANS. THESE NETS ARE CLEARLY MARKED "BABC" WHILE THE LIFEGUARD STATION AND TRASH CANS ARE PAINTED A SAND COLOR, CLEARLY MUCH DIFFERENT IN APPEARANCE FROM THE EQUIVALENT ITEMS ON THE PUBLIC BEACH.

EVEN ON PEAK BEACH DAYS THE BABC BEACH GOERS DO NOT USE ALL OF THE SPACE AVAILABLE, WHILE THE PUBLIC DOES. IN ADDITION, BABC BEACH GOERS CAN USE THE PUBLIC BEACH, WHILE THE PUBLIC CAN NOT USE THE PRIVATE BABC BEACH. BASED ON THIS, IT DOES NOT SEEM APPROPRIATE TO LEASE PUBLIC BEACH LAND TO THE BABC AS THEY HAVE NO FUNCTIONAL NEED FOR IT IN ORDER FOR IT TO CONDUCT ITS NORMAL BUSINESS, NOTWITHSTANDING THE FACT THAT ADDITIONAL LEASED BEACH AREA WOULD PROVIDE THE BABC WITH INCREASED PRIVACY AND ISOLATION FROM THE PUBLIC, AT THE PUBLIC'S EXPENSE!

THE BABC SHOULD BE DIRECTED TO REMOVE ALL OF ITS PROPERTY FROM PUBLIC LAND, IE: ITS 140 FOOT CHAIN LINK FENCE AT ITS EASTERN BORDER, THE SHORTER SECTION OF ITS CHAIN LINK FENCE AT ITS WESTERN BORDER, ALL OF ITS BOATS, TREES, UMBRELLAS, NETS, TRASH CANS AND ITS LIFE GUARD STATION AT ITS WESTERN END, AND ITS CHAIN LINK FENCE AND PLASTIC COVERING AND VEGETATION ALONG PCH. IN ADDITION, THERE SHOULD

BE AN AVAILABLE PASSAGE OVER THE ROCK BARRIER AT THE WESTERN END, SUITABLE FOR ALL TO USE SAFELY. THE PUBLIC PASSAGEWAYS TO/FROM/ALONG THE BEACH SHOULD BE MARKED AND FREE OF ALL RESTRICTIVE SIGNS. THE BABC SHOULD BE DIRECTED TO RELOCATE THE FENCES/VEGETATION ALONG PCH TO LOWER GROUND LEVELS SO AS NOT TO BLOCK ANY SCENIC VIEWS FROM PCH.

I WAS LED TO BELIEVE THAT PART OF THE NEGOTIATION BETWEEN THE BABC AND THE CSLC HAD TO DO WITH NO COST BEACH MAINTENANCE AND LIFE GUARD DUTY TO BE PROVIDED TO THE STATE BY THE BABC. IN REALITY THIS WOULD BE A TRIVIAL EXTRA AND ALMOST MEANINGLESS IN TERMS OF WHAT IT WOULD MEAN TO THE STATE. AT PRESENT THE BEACH MAINTENANCE CREWS SERVICE THE PUBLIC BEACH UP TO THE ILLEGAL BABC FENCE AT THE EASTERN END. IT IS ONLY A MATTER OF GOING A FEW HUNDRED MORE FEET TO THE WEST (OUT OF THE THOUSANDS OF FEET ^{NOW} SERVICED) TO PROVIDE BEACH MAINTENANCE FOR THE "RECLAIMED" PORTION OF THE BEACH. THE SAME HOLDS TRUE OF LIFE GUARD SERVICES. THE LIFE GUARD TRUCKS NOW PATROL UP TO THE EASTERN FENCE AND THERE IS ALREADY A COUNTY LIFE GUARD STATION LOCATED A FEW HUNDRED FEET EAST OF THIS FENCE. I WONDER IF THERE IS SOME POTENTIAL LEGAL RISK FOR THE PUBLIC IF A PRIVATE CONCERN (THE BABC) WERE "CONTRACTED" BY THE STATE TO PROTECT

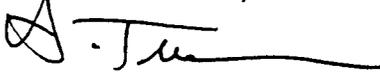
(11)

THE PUBLIC? ON THE OTHER HAND, I DON'T BELIEVE THE PUBLIC IS OBLIGATED TO PROVIDE LIFEGUARD SERVICE TO A PRIVATE CLUB ON A PRIVATE BEACH.

SINCE THE BABC APPEARS TO HAVE KNOWINGLY ENCROACHED ONTO THE PUBLIC BEACH, AND SINCE IT IS QUESTIONABLE IF THE BABC CONSTRUCTED ALL OF ITS EXISTING BEACH CABANAS ETC AND INSTALLED ITS FENCE/VEGETATION COMPLEX ALONG PCH WITH PRIOR STATE APPROVAL, THE QUESTION OF CREDITABILITY SHOULD BE CONSIDERED DURING THE ON GOING NEGOTIATIONS.

IN THE INTEREST OF BREVITY I HAVE NOT INCLUDED ANY OF THE EXISTING SUPPORTING GRAPHICAL/PHOTO MATERIAL WITH THIS LETTER. MOST OF THIS IS ALREADY ON FILE WITH THE APPEAL PACKAGE PREVIOUSLY SUBMITTED TO THE CCC. HOWEVER, IF ADDITIONAL MATERIAL IS REQUIRED PLEASE CONTACT ME.

YOURS TRULY



HAROLD TUCHER