

5-19-0243 (Bel Air Bay Club)

owned intertidal zone seaward of the site to create the berm and within twenty four (24) hours following high tide and/or swell events, level the berm and restore the beach profile. BABC has experienced periodic inundation and wave uprush due to an advancing shoreline and narrowing beach, which is expected to continue to occur. Berming is an effective soft alternative to hard protective measures and will provide temporary relief from flooding of BABC facilities in order to allow time to determine if the recently repaired groins seaward of the BABC are effective at accreting sand and widening the beach and for the BABC to develop a long-term strategy to address the flooding of on-site facilities that does not include a sand berm or any other form of temporary or permanent shoreline protection.

The subject sand berm will be located on both private and public beach area seaward of the Pacific Coast Highway and fronting the BABC facility, north of Will Rogers State Beach in Pacific Palisades, City of Los Angeles. The project site is situated along the shoreline of Santa Monica Bay, which spans from Point Dume to the Palos Verdes Peninsula. The Santa Monica Bay shoreline is armored with approximately 19 groins from Topanga Canyon to Malaga Cove, including a series of shoreline rock revetments and offshore breakwaters. The standard of review for the proposed project is Chapter 3 of the Coastal Act.

The applicant is also proposing to relocate the palapas dining area and the children's playground approximately 40 ft. landward and adjacent to the eastern seawall fronting the cabanas, as well as utilizing more modular playground equipment for increased transportability. In addition, in order to resolve the Coastal Act violations described herein, which include the unpermitted berming and preclusion of public access through the use of security guards on the public beach, the applicant is proposing to contribute funding to the Boys and Girls Club of Venice Fast and Fun sailing program.

In 2003, the BABC entered into a boundary line agreement with the State Lands Commission. Part of that agreement includes a beach maintenance lease which designated the applicant, BABC, as the responsible party for maintaining the public beach seaward of the BABC facility, including the allowance for constructing temporary sand berms for storm protection.

The proposed berm involves risks of adverse impacts to the environment. Due to its location, which straddles the mean high tide line, the project site is subject to coastal hazards such as flooding from storm events, wave action, and scouring from beach erosion. All of these hazards are anticipated to be exacerbated with predicted sea level rise. In addition, excavation and movement of sand seaward of the site during construction may temporarily impact lateral public access along the shoreline and water quality by increasing turbidity in coastal waters. Therefore, in order to minimize impacts, staff is recommending approval of the proposed coastal development permit with **fifteen (15) special conditions**. The special conditions would require the applicant to: 1) submit and comply with approved plans in which the proposed project would be authorized during specific tidal events; 2) submit a new CDP application in the event that the proposed development exceeds certain thresholds; 3) submit Beach and Sand Berm Monitoring Reports; 4) submit a Berm Alternatives Analysis and Adaptation Plan; 5) incorporate construction best management practices (BMPs) to minimize impacts to coastal waters; 6) monitor for sensitive species, such as Western Snowy Plover, and cease berming

operations when such species are found on site; 7) monitor for California Grunion spawning activities and cease berming operations when spawning California Grunion or Grunion eggs are found on site; 8) ensure public access is provided for the duration of the project; 9) make monetary contributions to the Boys and Girls Club of Venice's Fast and Fun sailing program; 10) implement a security guard protocol; 11) relocate two accessory structures approximately 40 ft. landward; 12) assume the risks of the proposed project; 13) indemnify the Commission; 14) obtain all other necessary State and Federal permits; and 15) record a deed restriction.

The motion to approve the staff recommendation is on **Page Five**.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Sand Berm Design Plans, dated 7/25/2019](#)

[Exhibit 3 – Structures to be Protected by Sand Berm](#)

[Exhibit 4 – Relocation of Two Accessory Structures](#)

[Exhibit 5 – Boundary Lines, 2003 State Lands Commission & Bel Air Bay Club agreement](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit Application No. 5-19-0243 subject to the conditions set forth in the staff recommendations.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

The Commission hereby approves coastal development permit No. **5-19-0243** and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of 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.

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5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Approved Development

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of final plans that conform with the plans dated July 25, 2019 and submitted to the Commission on July 26, 2019 (attached as [Exhibit 2](#) to the staff report for this project). The permittee shall undertake development in conformance with the approved final plans. In addition, the permittee shall comply with the following requirements:

- A. Construction of the sand berm shall occur no more than twenty four (24) hours prior to tides that are predicted to be 6.5 ft. or greater, or when 5.5 ft. tides or greater are predicted to coincide with swell heights of 2 ft. or higher, as forecasted for the Santa Monica tide gauge station 9410840 (using the MLLW datum), in accordance with the approved plans;
- B. Within twenty four (24) hours following the end of such high tides and/or swell events, the permittee shall remove the sand berm by leveling the sand berm and restoring the beach profile, including by returning borrowed sand to its source in the intertidal zone, in accordance with the approved plans;
- C. Where high tide events listed in subsection (A) occur in approximately 24-hour increments, the sand berm may remain in place until the end of such high tide events, wherein the sand berm shall be removed consistent with the removal requirements in subsection (B);
- D. All construction and removal activities shall take place during low tide; and,
- E. All construction and removal activities shall take place during periods of low public recreational use of the sandy beach area to the maximum extent feasible (e.g., during early morning hours or early evening hours).

Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that an amendment is not legally required for any proposed minor deviations.

2. Development Authorization Period

A. This coastal development permit authorizes sand berm construction activities consistent with Special Condition No. 1 from the date of issuance of the coastal development permit and until October 19, 2023 (the date State Lands Commission Leases PRC #8465 and PRC #8466 expire) (see [Appendix A](#)), or until any of the reevaluation trigger events identified in Special Condition No. 2B occurs, whichever happens first. After such time, the authorization for construction of the sand berm shall cease and a new coastal development permit, or an amendment to this coastal development permit, shall be

required for any future sand berm construction activities. However, any sand berm constructed pursuant to Special Condition No. 1 shall be removed prior to expiration of the authorization period or, if one of the reevaluation triggers in Special Condition No. 2B occurs, within seven (7) days of any of the listed events.

B. *By acceptance of this permit*, the permittee agrees that authorization of construction and removal of the sand berm as set forth in Special Condition No. 1 shall immediately cease and a new coastal development permit, or amendment to this permit, shall be required for any future sand berming activities on this property if any of the following occurs:

1. The *Development Authorization Period* expires under Special Condition No. 2A, unless an extension is granted by the Executive Director for good cause consistent with the conditions herein.
2. Lateral Public Access, as described in Special Condition No. 8, is not provided at any time during which the development is undertaken or present at the site.
3. Sea Level Rise, as measured from the Santa Monica tide gauge station 9410840, meets or exceeds 0.8 ft. (25cm) prior to the expiration of this CDP based on the probabilistic projections for the height of sea level rise with respect to a baseline year of 2000 (see Table 25: Projected Sea-Level Rise for Santa Monica in *State of California Sea-Level Rise Guidance 2018 Update* in [Appendix F](#)).
4. Significant wave overtopping, scouring, and/or erosion at the project site, with or without the proposed development, necessitates modifications to the approved plans, including changes to high tide and/or swell event thresholds delineated in Special Condition No. 1A and/or berm dimensions detailed in the approved plans, unless the Executive Director determines that a permit amendment may be issued.
5. State Lands Commission Lease PRC #8465 or PRC #8466 (see [Appendix A](#)) is terminated earlier than its expiration date of October 19, 2023, as provided under the lease terms. The authorization for sand berm construction activities provided by CDP 5-19-0243 shall expire on the date either one of these leases is terminated or is no longer in effect. Lease renewal or amendment shall not constitute additional time for the proposed development authorization period, unless the Executive Director determines that an extension is warranted for good cause.
6. Sensitive species and/or habit are found at the project site and the applicant fails to comply with the requirements of Special Condition No. 6 and/or Special Condition No. 7.

If any one of the events identified in Special Condition No. 2B (1-6) occurs, the permittee shall promptly notify the Commission Executive Director which triggering event(s) has occurred and submit an application for a new coastal development permit or an amendment to this coastal development permit to authorize construction and/or removal of a sand berm. In addition, because the applicant has proposed to resolve violations of the Coastal Act through various actions as part of this coastal development permit, terms and conditions of this permit shall continue to be effective notwithstanding the conclusions of the development authorization period, including Special Condition No. 9 requiring

monetary payment for mitigation of prior unpermitted development, Special Condition No. 10 requiring approval and implementation of a security guard protocol, and Special Condition No. 11 requiring relocation of accessory structures, unless the conditions are modified by a subsequent permit amendment. Special Condition No. 2B (1-6) may be triggered based on the relevant reporting sections of the Beach and Sand Berm Monitoring Reports required under Special Condition No. 3, by notification directly from the permittee, by notification from the environmental monitors or biologists required under Special Condition No. 6 and Special Condition No. 7, or by notification from members of the public (to the Commission) with regard to potential noncompliance with Special Condition No. 2B (e.g., not providing safe lateral public access during berming events). All potential occurrences of noncompliance shall be subject to Commission Executive Director review and determination of evidence of noncompliance, including by discussing the potential noncompliance with the permittee.

3. Beach and Sand Berm Monitoring Reports

By acceptance of this permit, the permittee agrees to submit for review and approval of the Executive Director, Beach and Sand Berm Monitoring Reports (hereafter: Reports). The Reports shall be submitted semi-annually, by March 20th and September 20th, for the duration of the *Development Authorization Period* commencing from the date of Commission action on this permit. Further, a final Report shall be submitted within 30 days of expiration of the *Development Authorization Period* in Special Condition No. 2. The Reports shall be prepared by a qualified engineer with experience in coastal engineering as well as a qualified biologist with experience in coastal ecosystems (where necessary to address relevant biological resource issues), and shall include analysis and conclusions regarding the condition and effectiveness of the proposed development, as well as its impacts to coastal resources. The Reports shall include a brief history of all previous monitoring results to track changes in beach profile conditions and coastal resources. The Reports shall be subject to review and approval by the Executive Director, which may result in revisions and/or additional information where necessary. The Reports shall include the following:

- A. **Beach Profile Survey**: In order to analyze changes to the beach over time, the Reports shall include an assessment of the baseline beach profile from the date of Commission action on this permit, as well as a baseline assessment of the beach profile prior to each berming event¹. The Reports shall also include an assessment of the beach profile subsequent to every berming event for the purpose of documenting shoreline change and coastal resource impacts, including mean low tide and mean high tide. Reports shall address how storm characteristics, sea level rise, groins and berming events may have influenced the beach profile, including assessing sand loss/retention, tidal boundaries, and beach slope. The Reports shall include data, surveys, copies of photos, analysis of change, and the surveyed as-built sand berm plans, as necessary for a complete analysis.

¹ A *Berming Event* shall constitute the construction of the sand berm prior to tidal and/or storm events outlined in Special Condition 1A, the retention of the sand berm during such tidal and/or storm events, and subsequent removal of the sand berm following such tidal and/or storm events outlined in Special Condition 1B. Approximately twelve (12) *Berming Events* are anticipated per year.

- B. Berm Design Specifications: In order to track the efficacy of the proposed development, the Reports shall include the design specifications of each berming event, including but not limited to berm height, width, length, and volume, the duration of each berming event in relation to high tide and/or swell events, and any minor operational changes implemented during construction and removal of the berm. A discussion of the construction and removal times selected for each berming event, including the rationale for the times selected, shall also be included, as well as pertinent data on high tides and/or swell events (e.g., high tide and swell records, mean high tide, etc.).
- C. Assessment of Marine (Biological) Resources: In order to analyze potential impacts to the beach ecosystem, the Reports shall include an assessment of baseline marine resources from the date of permit issuance, as well as an assessment of biological resources within one week prior to each berming event (i.e., within one week prior to commencement of construction activities) and an assessment of biological resources within one day following removal of the sand berm. Surveying of biological resources shall include determining whether any protected or special status plant or animal species or habitat is present on the subject site, such as Snowy Plover Habitat or Grunion. The biological resources component of the Reports shall also address any water quality impacts due to berming events, as well as impacts from beach maintenance activities (e.g., grooming of beach, including removal or disturbance of wrack) related to berming events.
- D. Assessment of Public Access: The Reports shall include an assessment of the availability of lateral public access during the proposed development's authorization period, including lateral public beach access during which the proposed development is being constructed, maintained or demolished (i.e., during each berming event), and the status of lateral public access subsequent to each berming event. A discussion of the provision of lateral public access across the upcoast and downcoast groins, as well as overall public access at the subject site (i.e., on public beach maintenance lands under SLC Lease #8467 and shown in [Exhibit 5](#)) shall also be provided.
- E. Assessment of Club Facilities: In conjunction with the Beach Profile Surveys, the Reports shall include an assessment of impacts to Bel Air Bay Club facilities subject to flooding, scouring, or other tidal processes during and following each berming event. Relevant data, surveys, copies of photos, analysis of change, and the surveyed as-built sand berm plans, as necessary, shall be included for complete analysis.
- F. Inventory of Beach Maintenance Activities: The Reports shall provide a record of all beach maintenance activities (e.g., grooming, trash removal) occurring at the subject site during the *Development Authorization Period*, including a description of the maintenance activities implemented overall and those related to berming events.

In the event this permit expires before October 19, 2023 subject to the reevaluation trigger events identified in Special Condition No. 2B, the Final Report shall be submitted within 30 days of expiration of this permit.

4. Berm Alternatives Analysis and Adaptation Plan

By acceptance of this permit, the permittee agrees to submit, for the review and approval of the Executive Director, a Berm Alternatives Analysis and Adaptation Plan (hereafter: Plan) no later than six (6) months prior to the expiration of this permit. In the event this permit expires before October 19, 2023 subject to the reevaluation trigger events identified in Special Condition No. 2B, the Plan shall be submitted within three (3) months of expiration of this permit. The Plan shall include an analysis of sea level rise at the subject site under current and projected future hazard conditions and a full evaluation of all potential alternatives to the continued construction of temporary sand berms to address tidal-induced erosion, wave uprush and inundation at the subject site. The Plan shall include alternative methods for protection, both hard and soft; removal and/or relocation of the entire (lower) Bel Air Bay Club facility, certain primary structures, and/or certain accessory structures, including the Lanai and all structures seaward of the seawall; accommodation strategies such as elevating all or certain primary or accessory structures, including the Lanai and all structures seaward of the seawall; a sand replenishment approach; a no-action alternative; and any other potential alternatives. All alternatives evaluated shall include an assessment of the economic, operational, technical (e.g., engineering and architectural feasibility), and regulatory feasibility of implementing such alternatives, including through independent approaches and/or local and regional approaches at adaptation. Each alternative shall also consider impacts to public access, biological resources and other coastal resources, and impacts to the beach profile. The Plan shall also discuss the status of the beach in terms of sand loss and/or accretion from the upcoast and downcoast groins. The Plan shall propose a recommended alternative to the continued construction of temporary sand berms to address tidal-induced erosion, wave uprush and inundation at the subject site.

5. Construction Best Management Practices

The permittee shall comply with the following construction related requirements:

- A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- D. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- E. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- F. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place

unless the Executive Director determines that no amendment or new permit is legally required.

- G. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems and any receiving coastal waters.
- H. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- I. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- J. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- K. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

6. Sensitive Species Monitoring

By acceptance of this permit, the permittee agrees to the following:

- A. The applicant shall retain the services of a qualified biologist or environmental resources specialist (hereafter: environmental monitor) with appropriate qualifications acceptable to the Executive Director for the purpose of surveying the subject site for sensitive species, including protected species and habitat, prior to and during berming activities, including construction, maintenance, or removal activities associated with the proposed project. In the event the environmental monitor concludes that the applicant has violated, or is violating, any special condition of this permit, or if any unforeseen sensitive species or habitat issues arise, the applicant must cease work. The environmental monitor shall immediately notify the Executive Director if activities outside of the scope of Coastal Development Permit 5-19-0243 occur or if habitat is removed or impacted beyond the scope of the work indicated in Coastal Development Permit 5-19-0243. If significant impacts or damage occur to sensitive wildlife species, the applicant shall stop all work and be required to submit a revised CDP application to adequately mitigate such impacts.
- B. The environmental monitor shall conduct a visual survey of the project site to determine presence and behavior of the Western Snowy Plover, prior to any excavation, construction, maintenance, or removal activities, associated with the proposed sand berm. Prior to any project activities, the environmental monitor shall examine the beach area to preclude impacts to the federally listed Western Snowy Plover. No excavation, construction, maintenance, or removal activities shall occur until any and all Western Snowy Plovers have left the project area or its vicinity. In the event that the Western Snowy Plover exhibit reproductive or nesting behavior, the applicant shall cease work, and shall immediately notify the Executive Director

and federal, state, and local resource agencies. Project activities shall resume only upon written approval of the Executive Director.

7. Grunion Monitoring and Avoidance Plan

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall submit to the Executive Director for review and written approval, a Grunion Monitoring and Avoidance Plan that provides for the following:

- A. Should construction activities on the beach be necessary between March 1 and May 28, the applicant shall avoid impacts to mature and/or spawning grunion and to grunion eggs. The applicant shall retain the services of a biologist with appropriate qualifications. The annually published California Department of Fish and Wildlife (CDFW) expected grunion runs shall be used to determine possible grunion spawning periods. The plan shall, at a minimum, include:
 1. Construction sites on the beach shall be monitored for grunion runs beginning at least two weeks prior to commencement of construction activities, and throughout the period of any work from March 1 through May 28. Monitoring is not necessary in areas where there is no sand, such as areas supporting 100% cobble or bluff backed beaches with no sand exposed during high tide.
 2. Grunion monitoring shall be conducted by a qualified biologist for 30 minutes prior to, and two hours following, the predicted start of each daily spawning event. Sufficient qualified biologists shall be employed to ensure that the entire proposed construction area on the beach is monitored during the predicted grunion run. The magnitude and extent of a spawning event shall be defined in 300-foot segments of beach using the Walker Scale. Every individual fish (males and females) shall be counted to determine the Walker Scale value (e.g. 0, 1, 2, 3, 4, or 5) of each 300-foot segment within the proposed work area. Construction activities shall be modified according to the following plan:
- B. If a grunion run consisting of 0-100 individual fish per 300-foot segment (Walker Scale 0 or 1) is reported within two weeks prior to, or during, construction activities, the applicant does not need to take any avoidance action for grunion eggs. No mature grunion may be buried or harmed as a result of construction activities.
- C. Within two weeks prior to proposed work, if a grunion run consisting of 100 or more individual fish per 300-foot segment (Walker Scale 2, 3, 4, or 5) is reported, the applicant shall avoid work on the respective project site for a minimum of two weeks, to ensure that no grunion eggs are buried or disturbed². These areas shall be memorialized through multiple GPS coordinates, and marked with irrigation flags for a minimum of two weeks when the next scheduled grunion run will be monitored. The applicant shall adapt the construction schedule to avoid operations on such

² During grunion spawning season, grunion spawn once every two weeks, on several nights, during the highest tides that occur during each month (called spring and neap tides). Grunion eggs take approximately 10 days to mature and hatch during the next high tide. Monitoring for grunion runs must happen, per the annual CDFW published grunion spawning schedule, because one cannot predict where grunion will spawn from one event to another.

beach segments and their associated buffers. No mature grunion may be harmed as a result of construction activities.

- D. If construction activities have already commenced, and a grunion run consisting of 100 to 500 individual fish, in one or more 300-foot segment (Walker Scale 2) in the work area is reported, the applicant shall avoid impacts to grunion eggs to the greatest extent feasible and then shall minimize impacts to grunion eggs through such measures as alteration of the construction access route and relocation of construction activities as feasible, subject to Executive Director approval.
- E. If construction activities have already commenced, and a grunion run consisting of 500 or more individual fish per segment (Walker Scale 3, 4, or 5) is reported, the applicant shall avoid work on the project site for a minimum of two weeks, to ensure that no grunion eggs are buried or disturbed. These areas shall be memorialized through multiple GPS coordinates, and marked with irrigation flags for a minimum of two weeks when the next scheduled grunion run will be monitored. No mature grunion may be harmed as a result of construction activities.

8. Public Shoreline Access and Signage

By acceptance of this permit, the permittee agrees that safe lateral public access shall be provided during all berming events (i.e., during construction and removal, as well as when the berm is in position) in accordance with the approved plans to allow for safe public shoreline access and recreation. The permittee shall use flaggers, cones and posted signage during construction and removal activities of the sand berm to direct public beach users safely along the designated lateral public access route, in accordance with the approved plans. The lateral public access route shall remain visible while the berm is in place, such as through cones, a rollout durable pathway, or other means subject to Executive Director review and approval. In addition, the permittee shall post signage indicating the expected dates of construction and all project operations, in accordance with the approved plans. Signage shall be consistent with the approved signage plan under CDP 5-17-1009. Public parking areas shall not be used for staging or storage of construction or maintenance equipment and materials.

9. Monetary Payments to the Boys and Girls Club of Venice's Fast and Fun Sailing Program

Within three (3) years of issuance of this permit, the permittee shall pay \$382,500 to the Boys and Girls Club of Venice Beach to help fund the operation of the Fast and Fun Sailing Program.

- A. The \$382,500 amount shall be deposited into an interest-bearing account, to be established and managed by the Boys and Girls Club of Venice Beach. The purpose of the account shall be to fund the Fast and Fun Sailing Program which connects underserved youth to the waterways of Los Angeles. The entire fee and accrued interest shall be deposited into the account within three years of issuance of this permit and must be used for the above stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. If any portion of the funds remain ten years after they are deposited, or if the Fast and

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Fun Sailing Program ceases to exist, the permittee shall ensure that the funds are transferred into another interest bearing account managed by the California Coastal Conservancy for use on a similar project that increases coastal access and recreational opportunities for underserved youth.

- B. PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall draft and enter into a memorandum of understanding (MOU) with the Commission and the Boys and Girls Club, which shall include, but not be limited to, the following: 1) a description of how the funds will be used to fund the Fast and Fun Sailing Program; 2) a requirement that the entity accepting the funds must only spend the funds on the Fast and Fun Sailing Program; and 3) the terms provided in subsection A of this condition.

10. Security Guard Protocol

No later than 30 days after the Executive Director approves the protocol described herein, the applicant shall provide verification that Bel Air Bay Club security guards have undergone appropriate training in maintaining public access at all times, including during berming events, including construction, retention, maintenance, and removal of berms, as well as in identifying public and private sandy beach areas.

PRIOR TO ISSUANCE OF THIS PERMIT, a new security guard protocol shall be submitted by the applicant for review and approval of the Executive Director and shall contain the aforementioned training and strict instructions and restrictions for how Bel Air Bay Club security guards may interact with the public, including instructions that Bel Air Bay Club security guards will refrain from: 1) undertaking any activity that discourages or prevents use of public tidelands or public beach or permitted lateral access, including the use of security guards to question any person who is present on such areas and who is not violating any applicable state or local law or regulation, or to attempt to cause any such person who is present on such areas and not violating any applicable state or local law to leave or move; or 2) attempting to delineate the private/public boundary on the beach, other than as permitted to periodically relocate signage as required under CDP 5-17-1009. The protocol shall include a provision that ensures guards will not take any action that interferes with the public's use of public beach or permitted lateral access across the property. Upon approval by the Executive Director, the Bel Air Bay Club shall comply with the security guard protocol.

11. Relocation of Accessory Structures

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall submit Relocation Plans to scale (i.e., site plans) for Executive Director review and approval. The Relocation Plans shall identify the current location and proposed relocation of two accessory structures: the palapas dining area and the children's playground, which include the swing-set and all playground equipment, that are proposed for relocation approximately 40 ft. landward and adjacent to the eastern seawall fronting the eastern cabanas of the Bel Air Bay Club, as shown in [Exhibit 4](#) of this staff report.

No later than 30 days after Commission issuance of this permit, the permittee shall remove and relocate two accessory structures, the palapas dining area, as well as the children's playground and all playground equipment, including the swing-set, approximately 40 ft. landward and adjacent to the eastern seawall fronting the eastern cabanas of the Bel Air

Bay Club, in accordance with the Relocation Plans approved by the Executive Director. In no event shall the permittee relocate these structures seaward of the proposed location, including if the *Development Authorization Period* under Special Condition No. 2 is triggered. In addition, the children's playground shall be converted to a more modular structure for increased transportability.

12. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from erosion, liquefaction, waves, flooding, tsunami, and sea level rise; (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.

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

13. Indemnification by Applicant

By acceptance of this permit, the permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorney's fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorney's fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

14. Required Approvals

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall obtain all other necessary State permits that may be necessary for all aspects of the proposed project (including approvals from the Los Angeles Regional Water Quality Control Board, unless evidence is submitted that such approval(s) are not required). In addition, by acceptance of this permit, the applicant agrees to obtain all necessary Federal permits that may be necessary for all aspects of the proposed project (including, but not limited to, the U.S. Army Corps of Engineers, unless evidence is submitted that such approval(s) are not required).

15. Public Access Deed Restriction

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall record document(s) in a form and content acceptable to the Executive Director, restricting the use and enjoyment of the

parcel owned in fee by the permittee, and requiring the provision of lateral public access as described in Special Condition No. 8, payment to Boys and Girls Club as described in Special Condition No. 9, adherence to the security guard protocol as described in Special Condition No. 10, and relocation of the accessory structures as required by Special Condition No. 11, and including the required MOU (Special Condition No. 9) and approved security guard protocol (Special Condition No. 10) as exhibits. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding all successors and assigns of the applicant or landowner in perpetuity.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant, Bel Air Bay Club (BABC), is proposing to construct a temporary sand berm to protect club facilities from wave uprush and inundation when tides are predicted to be 6.5 ft. or greater, or when 5.5 ft. tides (or greater) are predicted to coincide with swell heights of 2 ft. or higher, as forecasted for the Santa Monica tide gauge station 9410840 (using the MLLW datum). The sand berm would be located between two recently repaired groins and will measure approximately 430 ft. long, 30 ft. wide, and rise to a varying height of 1 ft. to 4 ft. above existing grade (+14 to +17' MLLW), depending on the severity of the high tide and/or surf event ([Exhibit 2](#)). The sand berm will have a footprint of approximately 13,140 sq ft. and will provide protection to the Lanai, an outdoor patio fronting the central portion of BABC, as well as incidental protection to the cabanas, St. Nicolas and Catalina dining rooms, the lobby, and the Anacapa bar and terrace ([Exhibit 3](#)). In addition, the proposed sand berm will protect the palapas dining area and the children's playground, two accessory structures that the applicant has proposed to move approximately 40 ft. landward and adjacent to the eastern seawall fronting the cabanas ([Exhibit 4](#)). The playground will also be converted to a more modular structure for increased transportability.

To construct the berm, a small to medium tractor would push sand from the intertidal zone, which is land held in the public trust, landward up the beach to form a low berm fronting the central portion of the BABC facility no more than twenty four (24) hours prior to high tide and/or swell events. Sand would be removed from the take zone to a maximum depth of 1.5 ft. below ground surface and would subsequently shape the sand berm so that both the landward and seaward sides of the berm would have a slope of 2:1. Running the berm between the upcoast and downcoast groins will allow the groins to provide flank protection to both ends of the sand berm and reduce the potential for wave run up to wrap around the berm and reach the BABC facilities. No more than twenty four (24) hours following the end of the high tide and/or swell event, the tractor would level the berm and restore the beach profile. It is anticipated that the applicant will construct the sand berm approximately twelve times a year and that each sand berm will be left in position between one and seven days.

During construction and removal operations, a flagger would be on site to accompany the tractor and ensure all beach users maintain a safe distance from operating machinery. No

overnight storage of equipment or materials would be permitted to occur on the sandy beach or within the public beach parking lot or on any other public space or within an area subject to wave erosion and dispersion. Sand placement activities would occur at times of low tide such that machinery does not enter coastal waters.

In addition, the applicant has previously constructed sand berms at this location without a valid coastal development permit, from approximately 2002 to 2018. The applicant proposes to pay for up to 50% of the budget of the Boys and Girls Club of Venice's Fast and Fun sailing program for 17 years, totaling \$382,500, as mitigation for impacts of the unpermitted development on public access.

The project site is located on the beach seaward of the BABC at 16800 Pacific Coast Highway, Pacific Palisades, north of Will Rogers State Beach in the City of Los Angeles ([Exhibit 1](#)). The subject site is adjacent to the south flank of the Santa Monica Mountains within the Santa Monica Bay, which spans from Point Dume to the Palos Verdes Peninsula. The sandy beach in between the mean high tide line (MHTL) and the property boundary ranges from approximately 40 ft. wide at the west to approximately 100 ft. wide at the east. The area of the wet and dry sand seaward of the BABC is subject to the public trust, and maintained by BABC under a State Lands Commission lease ([Appendix A](#)). The subject beach is relatively narrow compared to nearby beaches such as Venice and Santa Monica, which are approximately 300 ft. to 500 ft. wide, respectively. Depending on tides and beach sand conditions (typically the beach sand is eroded in the winter season and returns in the summer season), the BABC facilities are between a few feet (at the western end of the property in the winter months) to approximately 225 feet (at the eastern end of the property in the summer months) from the surfline and wet sandy beach. The sand berm will be located on both private and public beach area; however, both the sand berm and excavation area will be located within the beach maintenance area subject to BABC responsibility. BABC entered into a boundary line agreement with the State Lands Commission (SLC) in 2003. Part of that agreement includes a beach maintenance lease which designated the applicant, BABC, as the responsible party for maintaining the public beach seaward of the BABC facility, including constructing temporary sand berms for storm protection and cleaning the beach from debris.

The proposed project consists of constructing a temporary sand berm located on the sandy beach area fronting the central portion of the BABC facility. Therefore, work will occur on tidelands and public trust lands within the Commission's original jurisdiction. The standard of review for the proposed project is Chapter 3 of the Coastal Act. Under Section 30601 of the Coastal Act, the applicant must obtain a CDP from the Coastal Commission.

Historically, the lower BABC facility was constructed in the 1920s as a recreational and social facility. On November 9, 1937, a lease agreement was established between the BABC and the State Lands Commission that determined the boundary line between private property and public trust / state tide lands under the California State Lands ordinary High Water Mark agreement #OR 15482- 23. In 1952, this boundary line was updated to establish the private property lines and sovereign lands. In October 2003, an updated boundary line agreement was signed that established the current boundary lines and included three lease areas ([Exhibit 5](#)). One of the lease areas includes maintenance of the public beach fronting its property (see Lease PRC #8467 in [Appendix A](#)). This beach maintenance lease designated BABC as the responsible party for maintaining the beach

seaward of the BABC facility for public use and identifying through signage this public beach area waterward of the BABC facility. The lease prohibits the BABC from placing its own chairs, equipment, or other property on this public beach area and requires the BABC to maintain the public beach in a clean and unobstructed condition for public recreational use, including by providing a sufficient amount of trash and refuse containers for beachgoers to use that are painted the same color as those containers operated by Los Angeles County, as well as maintaining these containers by disposing of trash and refuse at an authorized landfill or refuse reception facility. Any structure or improvement not specifically authorized by the lease, including boats, fences, signs, stored objects, or other items not naturally occurring on the sandy beach are to be removed within 30 days of the effective date of the lease. However, the lease permitted the BABC to construct a public access facility over the groin adjacent to the northerly boundary of the lease premises to facilitate lateral public access³. In addition, this lease also allows for placement and maintenance of a portable lifeguard structure and provision of lifeguard services to the public consistent with the standards adopted by the Los Angeles County's lifeguard services during the summer season of Memorial Day through Labor Day. Further, this lease allows for the construction of temporary sand berms for storm protection and stipulates that if lateral public access cannot be safely provided during berming events, the applicant (BABC) shall allow the public to pass and repass along the applicant's sandy beach property landward of the sand berms. This lease expires on October 19, 2028.

In addition, two other leases are in effect at the subject site, including for the maintenance of the upcoast and downcoast groins (see Lease PRC #8465 in [Appendix A](#)) and the establishment of a private sandy beach use area on the eastern end of the property (see Lease PRC #8466 in [Appendix A](#)). Under the former, the applicant is required to maintain the existing groins at the site in a manner that does not interfere with lateral public access across the public beach. In the event that physical conditions of the beach preclude safe public access across the groins, the applicant (BABC) is required to allow the public to pass and repass across the applicant's adjacent upland sandy beach property. Under the latter, the applicant may sign, flag or otherwise identify the sandy beach area on the eastern side of its property as private sandy beach area for BABC member use only. The public sandy beach area is to be demarcated with signage, and any lifeguard structure is to be painted the same color as those operated by Los Angeles County and shall not contain the name or other identifying symbols of the BABC, except as approved by the SLC. Both of these leases, PRC #8465 and PRC #8466, expire on October 19, 2023.

The Commission has previously authorized temporary sand berms at Will Rogers State Beach fronting BABC. In November 1992, the Commission approved CDP 5-92-108 with special conditions to allow for the construction of temporary sand berms at BABC in anticipation of certain high tides and storm surges for a period of two years (November 1992 – November 1994) ([Appendix D](#)). CDP 5-92-108 was then amended three times to allow for three additional two-year time extensions, covering the periods of November 1994 to November 1996 (CDP 5-92-108-A1), November 1996 to November 1998 (CDP 5-92-108-A2), and November 1998 to November 2000 (CDP 5-92-108-A3). Following issuance of these extensions, CDP 5-92-108-A3 expired in November 2000 and a new amendment was not authorized. An emergency permit (5-01-007-G) was then issued in

³ According to the applicant, the public access facility was never constructed since adequate public access was available landward of the landward-most section of the groin construction site.

January 2001 to again construct a temporary sand berm to protect BABC structures from high tides and storm surges. In June 2004, CDP A5-PPL-02-162/5-02-099 was approved with special conditions to demolish 60 percent of the lower BABC facility and redevelop the central portion of the Club that, in addition to the Lanai (an outdoor patio fronting the central BABC facility), is currently subject to wave uprush and inundation. The June 2004 approval also permitted the realignment of a seawall that extended nearly the entire length of the BABC, the closing of a gap in the seawall that was present immediately landward of the Lanai, and adding 22 on-site parking spaces ([Appendix C](#)). The seawall described in the 2004 CDP is present on the site today. Following redevelopment of the lower BABC facility, no CDPs were issued for temporary berm construction until four Emergency Coastal Development Permits (ECDPs) were issued, including: G-5-18-0031 in December 2018, which required the applicant to submit a complete CDP application for temporary berm construction and evaluate berming alternatives; G-5-19-0028 in June 2019; G-5-19-0061 in December 2019; and G-5-20-0014 in February 2020, which was extended through August 31, 2020 and could be extended until issuance of CDP 5-19-0243, if CDP 5-19-0243 is approved in a manner that would allow the continuance of such berming. In addition, on December 12, 2018 the Commission approved CDP 5-17-1009 for the repair and reinforcement of two groins seaward of the BABC to their 1947 design footprint and bulk ([Appendix E](#)). That CDP also required, through three special conditions, the submittal of a Public Access Signage Plan, which required conspicuous signage to be posted on the beach adjacent to the BABC that informs the public of the private/public boundary, as well as removal of an unpermitted sand berm. Despite the expiration of the Commission-approved CDPs that permitted sand berming seaward of the BABC, the applicant constructed unpermitted sand berms during the approximate period of 2002 to 2018, as discussed in further detail below.

B. COASTAL ACT VIOLATIONS

Violations of the Coastal Act that are associated with the subject property have been undertaken on the public beach including the unpermitted construction of a sand berm from approximately 2002 to 2018 without benefit of the required coastal development permit and the preclusion of public access to the public beach through the use of security guards. The applicant is proposing to make the monetary payment described herein, and has agreed to implement a security guard protocol, in order to fully resolve the Coastal Act violations described below through this permit.

On December 7, 2018 Commission staff sent the applicant a Notice of Violation (“NOV”) letter to address unpermitted berming that occurred from 2002 to 2018, and, since then, Commission staff have worked with the applicant to resolve the matter amicably. However, in the interim, on June 11, 2020, Commission staff received a report from a member of the public that earlier that same day, BABC security guards informed the member of the public that the entire beach was private, regardless of whether or not the public was recreating on state tidelands, and then instructed those same members of the public to leave the beach because it was “private property of the Bel Air Bay Club”.

On June 25, 2020, Commission staff sent a follow up NOV letter in order to address the security guard issue. In response, on July 15, 2020 the BABC’s representative sent Commission staff a response letter and attached video footage from BABC security cameras that visually captured portions of the exchange between BABC employees and

members of the public that were recreating on the public beach adjacent to the BABC. In the video footage, it is clear that the members of the public were located both on state tidelands and within the BABC's Maintenance Lease area, both of which are public lands available for public use and recreation, when they were approached by BABC staff and Palisades Patrol security guards⁴. According to the BABC response letter dated July 15, 2020, and as seen in the footage, when they contacted members of the public that were recreating on the public beach, both BABC staff and Palisades Patrol security guards were carrying the Beaches and Harbors "Beach Responsibly" flyer, explaining the County's Public Health Order at the time that only permitted active recreation on the beach and required social distancing of six feet between groups and face coverings to be worn when individuals were out of the water and around others. According to the letter, the BABC employee and Palisades Patrol security guard "politely informed the beachgoers, who were sitting on the beach and without masks, that the Los Angeles County Department of Public Health Order in effect at that time prohibited sitting, gathering and sunbathing on the beach". The BABC stated in its letter that it believes that under the Maintenance Lease the BABC serves "a proxy role...on behalf of the State Lands Commission and Los Angeles County Department of Beaches and Harbors to maintain the Maintenance Lease area in a safe and hygienic condition".

In Commission staff's response letter to the BABC dated August 17, 2020, staff told the BABC that while staff is of course supportive of the County's public health order to protect the public from COVID-19, Commission staff does not believe the BABC or its staff has the legal authority to enforce the County's public health order⁵ and, moreover, attempts to do so might illegally discourage public use of public beach and tidelands, which is indeed what has occurred. The August 17 letter explained that Commission staff does not accept the position of the BABC that the club's employees only "politely informed the beachgoers" of the County's Public Health Order. Commission staff have received credible information from a member of the public that during the incident apparently captured in the security footage, BABC security guards informed several groups of people that the entire beach was private, regardless of whether or not the public was recreating on state tidelands.⁶ Commission staff had a follow up call with the BABC and their representatives on August 18, 2020, and during that call, although the BABC maintains that its staff were acting appropriately to implement a public health order, the BABC has agreed to pay \$382,500, as described herein, to resolve both the 1) unpermitted construction of a sand berm from 2002 to 2018, and 2) the public access violation described above. During the negotiation process, staff received input from Robert Garcia, at the time Executive Director of City Project, wherein he suggested that the BABC fund a coastal recreation program for underserved youth. Our staff proposed this idea to the BABC and they identified a local program that fully meets this criteria. Therefore, the monetary payment will fund the Boys and Girls Club of Venice's Fast and Fun Sailing Program, which each summer, introduces sailing to hundreds of underserved youth in Los Angeles County.

⁴ It is our understanding that Palisades Patrol (Gates Security) is hired by the BABC to patrol the Club's premises.

⁵ We note that according to the Beaches and Harbors website, which states in relevant part: "The Department of Beaches and Harbors does not have the authority to enforce the Health Officer's order; it can only educate beachgoers on current rules and restrictions. We rely on our partners in local law enforcement to issue citations, if absolutely necessary. Lifeguards' primary duty is to ensure the safety of people in the water. They are not there to police the beach." Thus, although BABC argues that it has assumed some kind of authority on behalf of Beaches and Harbors, Beaches and Harbors itself does not have the authority to enforce the health order.

⁶ Commission staff's disagreement with the BABC's description of the June 11 incident is in part informed by its experience during an August 11, 2016 site visit during which Commission staff was asked by BABC staff to leave state tidelands, in violation of the Coastal Act.

This amount will fund 8.5 years of the program. Furthermore, the applicant has also agreed to propose a new security guard protocol for review and approval of the Executive Director that contains strict instructions and restrictions for how BABC security guards may interact with the public, including a restriction on BABC security guards entering the sandy beach to confront members of the public. In addition to the above described monetary payment, the new security guard protocol is another component of the resolution of the violation associated with the unpermitted preclusion of public access to the public beach through use of private security guards.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the actions authorized by the permit in compliance with all of the terms and conditions thereof will result in resolution of the violations consisting of unpermitted construction of a sand berm from 2002 to 2018, and 2) the June 11, 2020 and August 11, 2016 instances of obstruction of public access described herein. However, if compliance with the security guard protocol does not occur as proposed, and/or if the monetary penalty is not paid consistent with both **Special Condition No. 10** and **Special Condition No. 9**, enforcement staff will consider action to address the violations of the Coastal Act, including but not necessarily limited to action pursuant to Coastal Act Section 30821, which authorizes the Commission to impose civil penalties for violations of the Coastal Act's public access provisions.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development.

C. OTHER AGENCY APPROVALS

Construction of temporary sand berms at BABC is both authorized and contemplated by one of three leases between BABC and the State Lands Commission (SLC) related to BABC's use and maintenance of the public beach fronting its property ([Appendix A](#)).

As described above, the boundary line established by the 2003 agreement allowed SLC and BABC to "settle forever the location of the seaward boundary of the lands owned by the BABC" and that the "BABC property shall not be subject to the public trust for commerce, navigation and fisheries, except as provided in Public Res. 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..."

California Code, Public Resources Code - PRC § 6339(a) states:

Boundaries established by boundary agreements entered into and recorded pursuant to Section 6336, as to all parties thereto, shall be fixed and permanent without change by reason of fluctuation due to the forces of nature, except that any lands that may thereafter be submerged or become subject to the ebb and flow of the tide, shall, so long as such conditions exist, be subject to the easement in favor of the public for commerce, navigation, and fisheries.

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On May 31, 2019, the SLC issued an approval letter confirming that pursuant to Lease PRC #8467.1, the BABC “may temporarily move sand to create a sand berm on the Lease Premises” ([Appendix B](#)).

U.S. Army Corps of Engineers (USACE) authorization will be required for borrowing sand from below the high tide line, which falls within USACE jurisdiction. BABC has prepared an application for USACE authorization, but the final permit has not yet been issued. Similarly, 401 Certification will be required from the Los Angeles Regional Water Quality Control Board (LARWQCB) and that application is in process. Accordingly, **Special Condition No. 14** requires the applicant to obtain and submit all state and federal agency permits or documentation stating that no permit is necessary prior to issuance of the Coastal Development Permit.

D. PUBLIC ACCESS

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.

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.

The proposed sand berm would be located on the sandy beach area fronting the central portion of the BABC facility, within an area that has moderate to high recreational use during the summer periods. Public access is available along the entire stretch of the approximately 430 ft. long project area, however the public portion of the beach is relatively narrow, measuring from approximately 40 ft. wide at the west to 100 ft. wide at the east when measuring between the mean high tide line and the property boundary. The public beach area is identified in the berm design plans and while it is subject to the public trust, it is maintained by BABC for public beach recreational use under a maintenance lease with the State Lands Commission (see PRC #8467 in [Appendix A](#)). This public beach area includes areas of dry sand, wet sand when the public beach is inundated during high tide, and an area inland of the sand berm when the sand berm is present. As such, during periods of extreme high tide and/or heightened swell conditions, lateral public access may become impeded and even hazardous.

The applicant has submitted a public passage plan in which lateral public access will be provided as a marked pathway running along the BABC facility (see C-102 in [Exhibit 2](#)). The pathway will be located landward of the sand berm, but run seaward of the BABC facility, in some cases situated on private property entirely. The applicant proposes to utilize a small tractor to excavate and push sand landward from the public beach area to create the berm, as well as seaward back into the original source area following berming events. Heavy machinery will be staged at the westernmost portion of the BABC private parking lot, with the construction access route running parallel to the public access route until it crosses the public access route at the head of the upcoast groin, which represents the westernmost edge of the proposed sand berm. In order to minimize impacts to lateral public beach access during berming construction and removal, flaggers and signage would notify beachgoers of the construction zone and the public access route. Further, construction and removal would occur during low tide consistent with the equipment storage and construction access plan.

In the past, the Commission has conditioned permits issued to the BABC to maintain lateral access seaward of their property for use by the public (CDP Nos. 5-92-108 and A-5-PPL-02-162/ 5-02-099). While lateral public access will still be provided seaward of the BABC facilities during berming events, in some areas of the project site, the public access route will run entirely on private property. As such, **Special Condition No. 8** requires lateral public access to be provided at all times during construction (building of the berm), operation (presence of the berm), and removal of the sand berm, including by utilizing signage consistent with prior approved signage plans (see CDP 5-17-1009 in [Appendix E](#)); flaggers during construction and removal activities; and cones, a rollout durable pathway, or other means subject to Executive Director approval, to delineate the public access route during construction, operation, and removal of the berm. **Special Condition No. 1** also requires compliance with the submitted plans, including timing of sand berm construction and removal, the public access plan, and the location of equipment storage. This will help ensure that public access impacts are minimized when berming activities are underway, given that berming events will occur approximately twelve times a year, with the sand berm in position during each berming event for roughly four to seven days.

In the long term, lateral public access at the subject site is under threat given that the public beach has progressively narrowed over time. Since the sandy beach area cannot migrate inland due to the fixed presence of BABC facilities, including a seawall, the subject beach has narrowed considerably and has experienced a general lack of sand supply and high sand drifting. Based on the Ocean Protection Council's (OPC) Sea Level Rise Projections for the Santa Monica Tide Gauge Station ([Appendix F](#)), the subject site will likely experience between 2.3 ft. to 3.3 ft. (or 100 cm) of sea level rise based on low emissions and high emissions by 2100, respectively. Similarly, under the medium-high risk aversion scenario, which the OPC recommends utilizing for development that is less adaptable, there is a 0.5% chance that sea levels will rise between 5.5 ft. to 6.8 ft. by 2100 based on low and high emissions, respectively. The applicant's Beach Preservation Study dated March 2016 and Groin Repair Study dated February 2017 provided under the groin repair permit approved in December 2018 ([Appendix E](#)) confirms that there has been a decrease in the width of the subject beach between 20 ft. to 50 ft. from 1989 to 2002, resulting in an erosion rate of 1.5 to 3.8 ft. per year. With sea level expected to rise over the coming decades, the public beach is expected to disappear in its entirety unless the BABC relocates some or all of its facilities, or alternative adaptation measures are

implemented. One such alternative has been employed through the repair of the upcoast and downcoast groins fronting the BABC, which are anticipated to aid in sand accretion at the subject beach and halt beach narrowing to some extent. Thus, in the short-term, the proposed sand berm will protect the BABC and ensure safe, lateral public access during periods of extreme high tide and/or heightened swell conditions. However, based on a sea level rise assessment provided by the applicant, the projections indicate that beyond 25cm of sea level rise based on the medium-high risk aversion scenario, the Mean High Tide Line will migrate inland and only stop when it reaches the seawall that spans the length of the BABC, virtually eliminating the public beach and lateral public access entirely. Accordingly, in the long-term, the proposed sand berm will not afford the BABC protection from wave uprush and inundation (after approximately ten years) or afford a safe, lateral public access route, unless sand accretion from the upcoast and downcoast groins reverse ongoing beach narrowing. The proposed sand berm is thus a short-term, temporary solution to address flooding of some of the BABC facilities and to ensure safe, lateral public access during periods of extreme high tide and/or heightened swell conditions until a long-term solution is identified. **Special Condition No. 1** is therefore imposed to limit sand berming until October 19, 2023, the date State Lands Commission Lease PRC #8465 and PRC #8466 expire (see [Appendix A](#)). This will provide the applicant a little more than three years to determine whether the recently repaired upcoast and downcoast groins are aiding in sand accretion at the subject beach, and to identify a practical long-term alternative to sand berming that is consistent with the public access policies of the Coastal Act.

In addition to the Coastal Act policies that support public access and equal opportunities for recreation, the Commission has the responsibility to protect the public trust and public trust uses.⁷ Coastal Act regulations⁸ define public trust lands as “all lands subject” to the common law public trust and associated with trust purposes, including recreation. In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation, but has been extended to protect the environment (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260), and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake (*Nat’l Audubon Soc. v. Super. Ct.* (1983) 33 Cal. 419, 436-437). In some jurisdictions, the doctrine explicitly protects “dry sand” recreation adjacent to public trust lands (*Matthews v. Bay Head Improvement Assn.* (1984) 95 N.J. 306, 331-332), on the rationale that “reasonable enjoyment” of the shore and sea cannot be realized without some use of the dry sand area (*id.* at p. 325).⁹ California recognizes access as a component of public trust resources. A July 2017 report by the Stanford Center for Ocean Solutions explains that agencies “may not undertake or authorize uses of uplands without appropriate safeguards for nearby public trust resources and uses.”¹⁰ The State Lands Commission, which administers leases on public trust lands,

⁷ The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds and manages these lands for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine (“public trust”). In coastal areas, the landward location and extent of the State’s sovereign fee ownership of these public trust lands are generally defined by reference to the ordinary high water mark (Civil Code, §670), as measured by the mean high tide line (*Borax Consol. v. City of Los Angeles* (1935) 296 U.S. 10); these boundaries remain ambulatory, except where there has been fill or artificial accretion.

⁸ Cal. Code of Regs., title 14, § 13577(f).

⁹ In a 2005, the same court affirmed *Matthews* and described access over uplands as “integral to the public trust doctrine.” (*Raleigh Ave. Beach Assn. v. Atlantis Beach Club, Inc.* (2005) 185 N.J. 40, 53.)

¹⁰ Center for Ocean Solutions, Stanford Woods Institute for the Environment, *The Public Trust Doctrine: A Guiding Principle for Governing California’s Coast Under Climate Change* (2017), p. 5.

analyzes the entire area of public trust impacts, including impacts on upland recreation.¹¹ Thus, use of dry land adjacent to public trust lands may not interfere with recreation and other public trust uses. The concern is complicated by the effects of sea level rise. As sea levels rise, and beaches and bluffs migrate inland, maintaining development adjacent to the shoreline will in many cases cause the narrowing and eventual loss of beaches, dunes and other shoreline habitats as well as the loss of offshore recreational areas. This narrowing often referred to as the “coastal squeeze,” can occur when shoreline protection or other fixed development prevents the landward migration of the beach that would have otherwise occurred.

Thus far, the beach fronting BABC has maintained a width capable of providing public access during most tide cycles throughout any given year. However, at certain high tides, especially during King Tides, the tide reaches the garden wall around the Lanai and the seawall further landward that protects the eastern and western facilities, resulting in inundation of the public beach. Given that the proposed sand berm would partially occupy the public beach area, these occurrences are likely to occur much more frequently as sea level rises, further limiting the space available for the public to recreate on the beach and access the shoreline, and ultimately interfering with public trust uses.

Recognizing that the proposed sand berm is at best a temporary solution to protecting either the BABC or public access on this beach, and to address impacts to public access and public trust resource caused by the construction of a sand berm at this location –as well as other impacts of the proposed sand berm discussed more fully in the findings below– the Commission finds that it is appropriate to approve the proposed sand berm activities for a limited amount of time to protect the BABC facility and to provide safe lateral access for the public during high tide and/or storm events while the applicant explores alternative solutions for addressing impacts of sea level rise. Therefore, **Special Condition No. 1** imposes a three-year limit for the proposed temporary sand berming in order to provide the applicant additional time to identify a practical long-term alternative to sand berming¹². And while the public beach area is subject to the public trust, it is maintained by the applicant for public beach recreational use under a maintenance lease with the State Lands Commission (see PRC #8467 in [Appendix A](#)), including by allowing for the construction of temporary sand berms for storm protection as long as safe, lateral public access is assured. Therefore, **Special Condition No. 8** is imposed to ensure that safe, lateral public access will be provided behind the proposed sand berm at all times during construction, operation, and removal.

As conditioned, adverse impacts to public access to and along the coast or to nearby recreational facilities in this area has been minimized. Thus, the proposed development conforms with Sections 30210 and 30211 of the Coastal Act.

¹¹ See e.g., Section 3.2.4, Public Trust Impact Analysis, Broad Beach Restoration Project Revised Analysis of Impacts to Public Trust Resources and Values, July 2014, including discussion of long-term impacts on recreational use at pp. 3.2-23 to 26. Available at http://www.slc.ca.gov/Info/Reports/Broad_Beach/3.2_Recreation.pdf.

¹² A three year time limit is imposed as it is akin to past Commission actions on temporary berming at the subject site, in which berming was typically allowed in two-year increments (see discussion of past permits in Project Description section). The three year term provides the applicant with ample time to consider feasible alternatives to continued berming at the subject site, while also determining whether the upcoast and downcoast groins aid in sand accretion.

E. MARINE RESOURCES & WATER QUALITY

Sections 30230, 30231, and 30233 of the Coastal Act address the protection and management of marine resources.

Section 30230 of the Coastal Act states:

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

Section 30231 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 30233 of the Coastal Act states, in pertinent part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (6) Restoration purposes.
- (7) Nature study, aquaculture, or similar resource dependent activities.

Section 30240 of the Coastal Act States:

(a) Environmentally sensitive habitat areas shall be protected against a significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Further, Section 30231 requires that the biological productivity and quality of coastal waters be maintained. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources.

The applicant has proposed constructing a temporary sand berm in anticipation of certain high tide and/or swell events to protect the BABC facility that would otherwise be in danger from inundation, wave uprush and erosion. Accordingly, the proposed project will require the use of construction equipment on the sandy beach, although construction equipment and materials will not be stored on the sandy beach area, but rather on the western parking lot of the lower BABC facility (see C-102 in [Exhibit 2](#)). As such, the Commission finds that construction of the proposed project could result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment and materials on the subject site could pose hazards to beachgoers or swimmers if construction materials are discharged into the marine environment or left inappropriately or unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. Therefore, in order to ensure that adverse hazards are avoided, and effects to the marine environment are minimized, **Special Condition No. 5** prohibits the stockpiling or storage of dirt, construction materials, or equipment on the sandy beach area and that any and all debris that results from the construction period shall be immediately removed from the sandy beach. Further, construction and removal of the berm would occur during low tide and in accordance with the approved plans, including the equipment storage and construction access plan, as required by **Special Condition No. 1**.

Biological Resources

The applicant has submitted a Biological Resources Assessment prepared in September 2018 as part of its groin repair project (see CDP 5-17-1009 in [Appendix E](#)) in which a site survey determined generally that the site contained limited suitable habitat for a number of animal and plant species ([Appendix J](#)). Six special status animal species and one special status plant species were determined to have potential to occur at the project site based on the presence of suitable habitat within two miles of the project site. These include the Western Snowy Plover, California Grunion, Globose Dune Beetle, Sandy Beach Tiger Beetle, and Steelhead, as well as the Ventura Marsh Milk-Vetch. However, no such species were found on the project site itself. Similarly, no nesting birds were observed at the project site or in adjacent vegetation.

While the proposed temporary sand berm is not expected to directly impact the Western Snowy Plover once in place, project activities such as construction and lowering of the sand berms have the potential to adversely impact Western Snowy Plover. The Biological

Resources Assessment suggests that a qualified monitor be present during construction and removal of the berms to ensure that if Western Snowy Plover are present, all construction activity will be temporarily halted until it has been determined that the birds have moved from area on their own accord. In order to ensure that excavation, construction, maintenance, or removal of the proposed sand berms does not adversely affect the Western Snowy Plover, **Special Condition No. 6** requires a qualified resource specialist to examine the beach area immediately prior to excavation or berm construction, maintenance, and removal activities. The resource specialist shall ensure that prior to any excavation, construction, maintenance, or removal activities, there are no Western Snowy Plovers in the project area or its vicinity. Additionally, if Western Snowy Plovers are present within the project vicinity, **Special Condition No. 6** requires that project activities do not commence until the Western Snowy Plovers have left the project area on their own accord.

While the Biological Resources Assessment did not find any California Grunion at the subject site, Grunion typically spawn on sandy beach areas in Southern California immediately following high tides from March to August. The eggs are incubated in the sand until the following series of high tide conditions, approximately 10 to 15 days, when the eggs hatch and are washed into the sea. Thus, project activities associated with berming within the intertidal zone may disturb adult Grunion during their run period and/or may bury incubating grunion eggs. Therefore, the proposed project has the potential to significantly impact California Grunion by excavating or depositing sediment within the intertidal zone during the seasonally predicted protected Grunion run period and egg incubation period. Construction activities can potentially bury grunion eggs or change the beach profile such that juvenile Grunion are unable to return to the ocean. Monitoring for grunion and implementation of impact minimization measures must be required when construction activities are scheduled to overlap or follow within two weeks of a Grunion spawning event.

Accordingly, to ensure that impacts to California Grunion are avoided, **Special Condition No. 7** requires the applicant to prepare and implement a monitoring program that includes the following elements: monitoring runs prior to construction activities; defining spawning events in 300-foot segments; and stopping work if a particular number of fish and their proximities on the beach are observed¹³. This monitoring program would be put into place if construction activities occur between February 28th and May 28th of any given year during which the proposed sand berms are to be in operation. **Special Condition No. 7** further requires that counts be conducted during the peak of each run when the most fish are on the beach, and that counts must include all fish on the beach, not only spawning females. In addition, each 300-foot segment must be memorialized through multiple GPS coordinates and be marked with irrigation flags. Areas of high concentration of grunion and grunion eggs must be avoided, and construction activities must halt in these highly concentrated areas unless a 100-foot buffer on either side of the highly concentrated areas is observed and no work occurs within the 100-foot buffers. The special condition also differentiates between a Walker Scale 2 and 3 (W2 and W3), and allows work to commence in areas where grunion haven't spawned, while avoiding areas where the fish have spawned in the case of a W2. Construction must completely halt if a W3, W4, or W5 is observed. As conditioned, monitoring, GPS mapping, and flagging the runs so that

¹³ In order to monitor California Grunion runs and spawning events, the Walker Scale is used by observing the number of fish and their proximities on a beach. For more information, visit: <http://grunion.pepperdine.edu/sighting.asp>

construction halts will ensure that impacts to egg masses and areas of high concentrations of grunion and grunion eggs are avoided.

Beach Wrack

The Commission finds that regular grooming of beaches can impact the diversity and abundance of invertebrates, plants, and birds present on sandy beaches and intertidal areas. Grooming and beach nourishment can cause removal of kelp washed ashore during high tides and continual removal and disturbance to plants and invertebrates colonizing the sand. A study comparing ungroomed and groomed beaches in Santa Barbara and Ventura counties showed the abundance and species diversity of coastal strand plants to be approximately 15 times higher at ungroomed beaches than groomed beaches¹⁴. Regularly groomed beaches also exhibit reduced richness, abundance, and biomass of many species of invertebrates, including crustaceans and insects¹⁵. This reduction of invertebrates, in turn, impacts shorebirds, including sandpipers, plover, and sanderlings that feed on crustaceans and insects in the sand.

Wrack, the tangles of kelp and sea grass that wash up onto beaches and settle in large clumps along the tide line, are of particular importance for invertebrate, plants, and birds in the intertidal zone of the beach. A diverse macrofauna, including amphipods, isopods, and insects are found in wrack. According to one study at Southern California beaches, wrack associated macrofauna made up an average of greater than 37% of species on ungroomed beaches and comprised 25% or more of the total abundance on half of those beaches¹⁶. The presence and amount of wrack on beaches is, therefore, directly correlated with the abundance and diversity of crustaceans and insects at beaches.

The beach habitat adjacent to the BABC is located at the northwestern-most extent of a series of broad sand beaches that extend 20 miles from Redondo Beach to Will Rogers State Beach. The beaches along this stretch are characterized as low in biodiversity and density relative to other California beaches in terms of benthic invertebrates and insects. The low biodiversity and density of beach invertebrate fauna is due to the fact the County of Los Angeles cleans its beaches of wrack and trash to facilitate beach tourism and recreational use. Overall, wrack is considered low in abundance and percentage of cover at the project site, as the supply from nearshore rocky reef habitat is limited. The beach at the project site narrows considerably from east to west, greatly limiting the potential for wrack to persist along the steep beach face or be washed above the high water mark prior to the next successive tide pulling it back into the water.

While the proposed sand berm construction and removal project does not specifically include any beach grooming activities, the proposed project does include excavation of wet sand for construction and maintenance of the sand berms and recontouring of the sand berm site following berm removal. However, impacts are expected to be minimal given that berming disturbances will be similar to tidal impacts. Moreover, the subject beach is regularly groomed by the BABC as part of a maintenance lease with the State Lands Commission, resulting in the loss of beach wrack at the subject site (see Lease PRC

¹⁴ Dugan, Jenifer E. and David M. Hubbard. Effects of Beach Grooming on Coastal Strand and Dune Habitats at San Buenaventura State Beach. Draft Final Report to California Resources Agency, Department of Parks and Recreation, Channel Coast District. Jan. 4, 2003.

¹⁵ Dugan, Jenifer E., et. Al. Macrofauna Communities of Exposed Sandy Beaches on the Southern California Mainland and Channel Islands.

¹⁶ Dugan, Jenifer E., et. Al. The Response of Macrofauna Communities and Shorebirds to Macrophyte Wrack Subsidies on Exposed Sandy Beaches of Southern California. *Estuarine, Coastal and Shelf Science* 58S pp. 133- 148. 2003

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#8467 in [Appendix A](#)). The Beach Wrack Biological Resource Technical Study prepared in June 2019 ([Appendix K](#)) and provided by the applicant states the following:

The proposed construction of sand berms to protect the BABC facilities would have only localized and temporary impacts to beach wrack and habitat, similar to disturbances facilitated by the high tides and seasonal swell events they are designed to mitigate. The removal of the beach berms after threatening events and sculpting of the project beach to pre-construction condition would allow wrack to accumulate and perpetuate the beach wrack cycles for supplying habitat, food, and a nutrient source to the nearshore ecosystem. Additionally, the beach wrack impacted during the construction of the proposed beach berms would not be removed but rather buried, thus decomposition will still occur providing nutrient flow into the system. Beach wrack and its associated species quickly recolonize and significant impacts to the beach wrack habitat in terms of habitat quality, species diversity, or species densities are not expected.

For the aforementioned reasons, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

F. COASTAL HAZARDS

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures. Section 30253 states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) 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 bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

The Coastal Act contains another provision that specifically requires the approval of shoreline protective devices under the right circumstances. Section 30235 of the Coastal Act states:

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 fishkills should be phased out or upgraded where feasible.

Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, cliff retaining walls, groins and other such hard structural methods designed to forestall erosion may also alter natural landforms and natural shoreline processes. Shoreline protective devices have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately resulting in the loss of beach area available for public use and natural habitat. Therefore, the Commission often disapproves proposed shoreline protective devices. However, notwithstanding inconsistencies with Chapter 3 policies, Section 30235 requires authorization of shoreline protective works when necessary to protect existing structures or public beaches in danger from erosion. In such instances, shoreline protective devices must then be designed to eliminate or mitigate adverse impacts on local shoreline sand supplies.

In the proposed project, the applicant will construct a temporary sand berm in advance of certain high tide and/or swell events to protect an accessory structure (the Lanai/patio) that pre-dates the Coastal Act that would otherwise be in danger from inundation, wave uprush and erosion, as well as incidental protection to redeveloped, principal structures landward of this accessory structure and seawall. The sand berm would be located between two recently repaired groins fronting the central portion of the BABC facility and would provide protection to the Lanai (an outdoor dining patio built on a concrete slab built in the 1950s that is situated seaward of a subgrade sheetpile wall that connects to the eastern and western seawall), and incidental protection to the following structures that were redeveloped in 2004 under CDP A5-PPL-02-162/5-02-099 and constitute new development behind the redeveloped seawall: the St. Nicolas and Catalina Dining Rooms, the Cabanas, the BABC lobby (within the primary BABC building), and the Anacapa Bar and Terrace ([Exhibit 3](#)). In addition, the proposed sand berm would also protect two additional accessory structures in front of the seawall and currently situated to the east of the Lanai: the Palapas dining area and children's playground, which are proposed to be moved approximately 40 ft. landward and adjacent to the eastern seawall in front of the cabanas ([Exhibit 4](#)).

Section 30253(b) of the Coastal Act requires that new development 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 bluffs and cliffs." In the proposed project, the sand berm would be present for approximately one to seven days (depending on high tide events), roughly twelve times per year. The sand berm will absorb wave or uprush energy and will not result in permanent hardening of the shoreline, as the berm will be removed following extreme tidal and/or storm events, with sand redistributed to its source along the beach. Based on the applicant's Berm Monitoring Reports over the past decade, sand berming at the subject site does not impact the beach profile or contribute to loss of sand ([Appendix I](#)). As such, the proposed project will not result in increased erosion or geologic instability at the subject site, as the beach profile will be restored following berming events.

What's more, the applicant recognizes that berming is a temporary solution to tidal inundation and wave uprush. To evaluate the need for and effectiveness of the proposed sand berm under projected future sea level rise, the applicant provided a Sea Level Rise Assessment dated July 25, 2019 (revised December 20, 2019 and February 4, 2020) in

which it was determined that the proposed sand berm would only be effective for approximately ten additional years, unless the beach reverses course and starts to widen (possibly due to sand accretion from the recently repaired upcoast and downcoast groins) ([Appendix G](#)). Utilizing the OPC's probabilistic sea level rise projections for the Santa Monica Tide Gauge Station, the sea level rise scenarios were selected based on the anticipated life of the BABC facility, as well as the sand berm in providing effective protection from coastal hazards. Coastal hazards under each sea level rise scenario were assessed with and without the presence of the proposed sand berm, but without the presence of the recently repaired groins. Each sea level rise scenario was also evaluated under spring tide, 1-year flood, 20-year flood, and 100-year flood conditions. According to the findings of this assessment, flood projections under current conditions without the proposed berm show inundation under a 100-year flood of the Lanai, Palapas dining area, children's playground, eastern cabanas and tennis courts, with flooding reaching the seawall on the western side of the BABC. Under the next scenario, 0.8 ft. of sea level rise without the proposed berm, a spring high tide is projected to extend to within approximately 20 ft. of the Lanai and the Palapas dining area, while a 1-year storm reach the edge of the Lanai, Palapas dining area, and play area. Flood projections under 20-year storm conditions extend further up to and across the Lanai, Palapas dining area, and children's playground, while a 100-year storm show potential impacts to a number of structures, including all outdoor structures, the eastern cabanas, and select portions of main Club structures beyond the eastern seawall. Beyond 0.8 ft. of sea level rise, flooding is expected to intensify to the extent that under such conditions and in the absence of additional adaptation measures, the shoreline is projected to extend landward of the current sand berm footprint. Thus, the proposed sand berm does not have an anticipated life beyond 2030 (0.8 ft. of sea level rise) based on the probabilistic projections for the Santa Monica Tide Gauge Station when using the state-recommended medium-high risk aversion scenario. Accordingly, sand berming at the project site can only represent a temporary, stop-gap measure for shoreline protection while the applicant explores feasible long-term alternatives that do not occupy most of the public's sandy beach area.

The applicant also evaluated alternatives to the proposed project and determined that construction of a temporary sand berm is the only feasible alternative at present. Analysis of alternatives to a sand berm was required by Special Condition No. 4 of emergency permits G-5-18-0031 and G-5-19-0028, and included removal or relocation of at-risk structures (e.g., relocating the Lanai to the private parking lot), accommodation strategies (e.g., elevating the Lanai), and soft armoring approaches and green infrastructure (e.g., importing sand and creating dune systems). In the applicant's Berming Alternatives Analysis dated December 20, 2019 ([Appendix H](#)), most alternatives were found to be infeasible due to site constraints (e.g., existing beach width and slope is not suitable for green infrastructure, such as living shorelines or dune systems), operational issues (e.g., increasing distance from kitchen facilities to dining area), regulatory requirements (e.g., impacts to existing fire lanes or parking incompatibilities with city code), or structural limitations (e.g., roofing standards unable to support additional weight of relocated structures). However, the applicant acknowledged that some of these alternatives require more thorough analyses, including for example undertaking additional structural and architectural review. The applicant also determined that it is feasible to remove and relocate two accessory structures at this time: the Palapas dining area and children's playground, which will be relocated approximately 40 ft. landward and adjacent to the

eastern seawall in front of the cabanas (see **Special Condition No. 11**). Despite relocation of these two accessory structures, sand berming would still be needed to protect the Lanai and the central portion of the BABC during extreme high tide and/or swell events.

While seawalls and other forms of hard shoreline armoring rarely are consistent with Section 30253 or the public access policies of the Coastal Act, sand berms can in some cases be a preferred temporary alternative to hard shoreline armoring because they absorb wave or uprush energy, but do not result in hardening of the shoreline or increased beach erosion. Sand berms are also designed to be removed following tidal and/or swell events, with sand returned to its source along the beach, which is the case with respect to the proposed project. Such provisional solutions to shoreline protection have been approved in the past, including on Zuma County Beach in the City of Malibu (CDP Nos. 4-13-0675 and 4-18-0498) and Carpinteria City Beach (CDP No. 4-05-160). In these cases, sand berms were approved based on the fact that soft solutions—such as sand berms—generally would result in fewer significant environmental impacts than revetments, seawalls, or other hard protective structures.

In this case, given the potential impacts to the beach itself and to public access, which will be exacerbated by expected sea level rise, the proposed sand berming is conditioned to be allowed for a period of approximately three years only, commencing from the date of permit issuance so that the applicant can explore a practical long-term alternative to berming, which occupies most of the public's sandy beach area¹⁷. **Special Condition No. 4** requires that a recommended alternative to temporary berming be proposed by the end of the development authorization period, including possible removal and/or relocation of the threatened portions of the site if necessary. **Special Condition No. 4** also requires the applicant to assess whether recent repairs to the upcoast and downcoast groins aid in sand accretion at the subject site. The proposed project would therefore minimize risks to the property by preventing inundation and scouring, while also providing a safe, lateral public access path behind the berm, as required by **Special Condition No. 8**. Further, **Special Condition No. 11** requires the applicant to remove and relocate the Palapas dining area and children's playground approximately 40 ft. landward and adjacent to the eastern seawall in front of the cabanas as proposed, which would help ensure that berming frequency is minimized, consistent with **Special Condition No. 1**. Long-term impacts to the shoreline, including local sand supply would be negligible as the berm would only be in place for a few days approximately twelve (12) times per year. Moreover, based on the applicant's Berm Monitoring Reports, temporary sand berming at the subject site does not permanently impact the beach profile or contribute to loss of sand ([Appendix I](#)). However, **Special Condition No. 2** requires that if berming dimensions do need to change, or if lateral public access is not provided or if impacts to sensitive species are documented, the proposed project shall cease and a new CDP application shall be required. Likewise, **Special Condition No. 3** requires monitoring of and semi-annual reporting on beach profile dynamics and the effectiveness of the proposed development, as well as on impacts to coastal resources. Based on the information provided by these

¹⁷ A three year time limit is imposed as it is akin to past Commission actions on temporary berming at the subject site, in which berming was typically allowed in two-year increments (see discussion of past permits in Project Description section). The three year term also provides the applicant with ample time to consider feasible alternatives to continued berming at the subject site, while also determining whether the upcoast and downcoast groins aid in sand accretion.

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reports, **Special Condition No. 2** could be triggered requiring cessation of berming activities and the submittal of a new CDP application.

The Commission also notes, based on the information submitted by the applicant, that the proposed development is located in an area of the Coastal Zone that has been identified as subject to potential hazards from wave action during the winter storm season. Although the proposed project will decrease the risk of hazards to the development on the subject site in relation to wave-caused erosion, there remains some inherent risk to development on such sites. The Coastal Act recognizes that certain types of development, such as the proposed project to protect the BABC from storm waves, may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use their property.

In this case, the threatened property is in private ownership and the hazards associated with the development must be considered in conjunction with any impacts to public resources and public beach access seaward of the site. The Commission finds that, in this case, it is appropriate to temporarily use public resources (i.e., sand from the public trust land) to protect these private facilities in the short-term so long as the applicant assumes the risks associated with the unforeseen possibility of storm waves, surges, erosion, and flooding as a condition of approval. Therefore, **Special Condition No. 12** requires the applicant to assume the risks of the development and **Special Condition No. 13** requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant's assumption of risk will demonstrate that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30253.

G. VISUAL RESOURCES

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

Coastal Act Section 30251 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 surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

In the proposed project, the sand berm would be located as far landward as feasible and would front the central portion of the BABC facility. Lateral public access would be available behind and along the entire stretch of the sand berm while it is present, with viewing of the beach and ocean temporarily obstructed by the top of the berm by 1 ft. to 4 ft. above existing grade (+14 to +17' MLLW) (see C-201 and C-202 in [Exhibit 2](#)). As such, the proposed development will result in temporary, partial obstruction to views directly behind the berm. Further, the sand berm will not obstruct public views of the beach and ocean from areas directly inland of the BABC facility. **Special Condition No. 1** ensures that the proposed development will be designed in accordance with the approved plans, including berm dimensions (e.g., width and height) and the removal of the berm following tidal events and restoration of the existing beach profile.

Accordingly, the Commission finds that the proposed project, as conditioned, will not significantly impact visual resources at the project site, and therefore the project is consistent with Section 30251 of the Coastal Act.

H. LOCAL COASTAL PROGRAM (LCP)

The Coastal Act required that the Commission consider the effect on a local coastal program when it approves a project. The Commission is prevented from approving projects that might prejudice the completion of local coastal program.

Section 30604 (a) of the Coastal Act states:

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, and grading and geologic stability. Geologic stability was one of the primary issues because of the number of landslides that had occurred in the sixties and early seventies.

The City has submitted five Land Use Plans (LUP) for Commission review and the Commission has certified three (Playa Vista, San Pedro, and Venice), though the Playa Vista LUP was not accepted by the City. However, the City has not prepared a Land Use Plan for Pacific Palisades. In the early 1970s, 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 and 300-acre tract of land) that 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 decisions remained in the Pacific Palisades. The tracts were approved on appeal by the Commission: 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

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Pedro, and Playa del Rey. To date, the City of Los Angeles has six LCP segments, all of which are uncertified.

With the proposed conditions that address public access, water quality, and hazards related to the project and the general area, approval of the proposed development will not prejudice the City's ability to prepare a local coastal program in conformity with Chapter 3 of the Coastal Act. 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 (CEQA)

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

The Commission has imposed special conditions to minimize temporary and permanent impacts to water quality, lateral public access and beach recreation. The applicant has demonstrated that the sand berms will provide for safe lateral public access during high tides and swell events, and have designed the project to minimize adverse impacts to water quality, biological resources, sea level rise, and erosion. The Commission finds that the proposed project, as conditioned to assume the risk of the development and to avoid impacts to potentially occurring sensitive species, is consistent with the requirements of the Coastal Act and CEQA.

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

APPENDICES – SUBSTANTIVE FILE DOCUMENTS

[Appendix A – Bel Air Bay Club & California State Lands Commission \(SLC\), Title Settlement and Boundary Line agreement BLA 272/ AD455, 10/20/2003](#)

[Appendix B – Letter from State Lands Commission, dated May 31, 2019](#)

[Appendix C – Coastal Development Permit No. A-5-PPL-02-162 / 5-02-099 \(Bel Air Bay Club\)](#)

[Appendix D – Coastal Development Permit No. 5-92-108](#)

[Appendix E – Coastal Development Permit No. 5-17-1009](#)

[Appendix F – Sea Level Rise Projections for the Santa Monica Tide Gauge Station](#)

[Appendix G - Sea Level Rise Assessment, dated July 25, 2019 \(revised December 20, 2019 and February 4, 2020\)](#)

[Appendix H – Berming Alternatives Analysis, dated December 20, 2019](#)

[Appendix I – Berm Monitoring Reports for 2009-2018, dated January 18, 2019](#)

[Appendix J – Biological Resources Assessment, dated September 18, 2018](#)

[Appendix K - Bel Air Bay Club Beach Wrack Biological Resource Technical Study, Pacific Palisades, California, dated June 27, 2019](#)