

**CALIFORNIA COASTAL COMMISSION**

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 4-21-0227

**Applicant:** City of Santa Barbara Parks and Recreation Department

**Project Location:** Andrée Clark Bird Refuge (1400-1700 East Cabrillo Boulevard), the Municipal Tennis Center (1414 Park Place), and the lagoon and beach area south of the Andrée Clark Bird Refuge, between East Cabrillo Boulevard and the Pacific Ocean, in the City of Santa Barbara, Santa Barbara County.

**Project Description:** Removal and replacement of the weir and weir gate located between the lake at the Andrée Clark Bird Refuge and the lagoon on the beach; restoration of approximately 2 acres of willow scrub, coastal sage scrub, and salt marsh habitat and 1.6 acres of infill planting around the lake; restoration of 1.4 acres of dune and salt marsh habitat on the beach and around the lagoon; implementation of a Beach Elevation Management Plan, for a period of five years, in order to enhance the water quality of the lagoon and prevent flooding of Cabrillo Boulevard; and construction of a water quality treatment wetland at the Municipal Tennis Center.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed development with eleven (11) special conditions regarding: (1) best management practices, (2) sensitive species surveys, (3) tidewater goby protection plan, (4) beach elevation management plan responsibilities, (5) removal of excess excavated material, (6) habitat restoration and monitoring program, (7) public access program, (8) term of permit approval, (9) required agency permits and approvals, (10) assumption of risk, waiver of liability, and indemnity, and (11) information/educational signage.

The project sites include the Andrée Clark Bird Refuge (“Bird Refuge”), a portion of East Beach south of the Bird Refuge, and a small open field within the City Municipal Tennis Center north of the Bird Refuge. The Bird Refuge is a 42-acre open space park containing a 30-acre brackish lake, with three islands, that is an artificially modified estuary-supporting brackish water. The Bird Refuge was created in the 1920s and provides passive recreation opportunities to bird watchers, hikers, and bikers through onsite trails, viewing platforms, and 15 parking spaces. The current watershed for the Bird Refuge is approximately 817 acres. Runoff from the watershed enters the lake at various locations but the primary water source is from a large culvert that travels from the City Municipal Tennis Center, under Highway 101 and the Union Pacific Railroad where it empties into the lake through a concrete channel on the north shore. The water flows from the lake into the ocean underneath Cabrillo Boulevard via five 36-inch concrete culverts. Before reaching the ocean, the water flows into a lagoon on the beach side of Cabrillo Boulevard. As seen in [Exhibit 2](#), the enclosed water surface that constitutes the Bird Refuge north of East Cabrillo Boulevard will hereinafter be referred to as the lake, and the small water surface located south of the lake, between East Cabrillo and the beach will hereinafter be referred to as the lagoon.

Currently, there is a malfunctioning weir located under Cabrillo Boulevard between the lake and the lagoon. The weir and weir gate were originally installed to control waterflow between the lake and the lagoon by opening and closing the weir gate at times. Due to current malfunctioning of the weir and weir gate, water flow is restricted between the larger lake north of Cabrillo Boulevard and the smaller beach lagoon. Before the lake and lagoon can drain into the ocean, flood waters have to breach the natural sand berm on the beach at the mouth of the lagoon. Breaching of this sand berm under current conditions is rare and takes extreme rain events. The berm has only breached in three of the last ten years. Since the berm sometimes restricts flow into the ocean, the sand elevation contributes to flooding on Cabrillo Boulevard when water levels are high. Furthermore, poor water quality conditions and strong odors at the lake have been problematic at the Bird Refuge. In the past ten years, the poor water quality, as reflected in the low dissolved oxygen levels, cyanobacteria blooms, poor water clarity, and strong odor, has continued to deteriorate due to the accumulation of nutrients, lack of flushing storm events, and drought conditions.

The City of Santa Barbara Parks and Recreation Department is proposing the subject project to improve water quality of the Bird Refuge lake, to mitigate flooding impacts to

surrounding development, and to restore habitat of the Bird Refuge. Specifically, the project involves (1) construction of a 6,000 sq. ft. low flow water treatment wetland adjacent to the Municipal Tennis Courts, (2) removal and replacement of the concrete weir and weir gate that controls waterflow between the lake and the lagoon, (3) restoration of 1.4 acres of dune, salt marsh, and mudflat habitat around the beach lagoon that involves expansion of the lagoon and placing excavated sand adjacent to the lagoon for dune restoration, (4) implementation of a Beach Elevation Management Plan (BEMP) in the area between the lagoon and the ocean to allow breaching of the lagoon for no more than four times in one winter season, and (5) restoration of habitat around the perimeter of the lake, which involves removal and revegetation of approximately 2 acres of non-native plant species, infill planting of 1.6 acres of native vegetation, and placement of two clusters of turtle basking rocks in the northwest portion of the lake. In total, the project will involve the installation of 10,000 native plants.

Environmentally sensitive habitat areas, as well as sensitive species such as California least tern, western snowy plover, and tidewater goby have been documented within, and in the vicinity of, the project site. As such, the primary coastal resource issue of concern relates to potential adverse impacts to sensitive species and their habitat from project activities. In order to ensure that project activities protect sensitive species and habitats, **Special Condition Two (2)** requires that an environmental resource specialist survey the project area for sensitive species prior to implementation of any project activities. Furthermore, **Special Condition Four (4)** limits the beach elevation management activities to no more than four times between October 1<sup>st</sup> and May 1<sup>st</sup> each winter storm season, designates the access routes, and limits beach elevation management activities to a 30 ft. by 120 ft. area. To avoid impacts to tidewater gobies during weir and weir gate replacement activities and lagoon expansion activities, **Special Condition Three (3)** requires that an environmental resource specialist clear all fish, including tidewater gobies, from the area to be disturbed, and conduct post-work surveys. **Special Condition One (1)** requires best management practices for all project activities, including removing debris from construction activities immediately and controlling erosion from disturbed areas. Finally, **Special Condition Six (6)** requires a Habitat Restoration and Monitoring Program, which includes a baseline assessment of the current ecological conditions of the lake, lagoon, and surroundings, restoration goals and objectives, detailed restoration plan maps and figures, proposed habitat boundaries, plant palettes, a restoration program schedule, a detailing monitoring program (including sampling methods, success criteria for the lake, lagoon, and restored habitats, annual monitoring reports for the first four years, and a fifth year final monitoring report), and provisions for adaptive management if success criteria are not met.

Since the project sites are located near public parking lots, viewing platforms, a bicycle/pedestrian trail, and a public beach, the project could have impacts to public access and recreation. Specifically, there may be temporary blockage of public parking spaces and temporary disruption of the public's ability to use the bicycle/pedestrian trail on site. The Commission requires the applicant to submit a public access plan pursuant

to **Special Condition Two (2)** to ensure the safety of recreational users of the project site and to ensure that the interruption to public access of the project site is minimized.

Excavated material from the bioretention basin and lagoon expansion work is proposed to be temporarily stockpiled in the three designated staging and stockpiling areas ([Exhibit 3](#)) before disposal. In order to minimize potential impacts to water quality from erosion and to minimize landform alteration, **Special Condition One (1)** requires that any stockpiled materials shall be located as far from wetland areas on site as feasible and in no event shall materials be stockpiled less than 30 ft. in distance from the top edge of the lake and lagoon. Furthermore, in order to ensure the dredged material is disposed of in appropriate locations, **Special Condition Five (5)** requires that the applicant provide evidence to the Executive Director of the location and method of disposal to an approved disposal location either outside the coastal zone or to a site within the coastal zone permitted to receive such fill prior to disposal of excess excavated material.

Although the Commission has previously certified a Local Coastal Program (LCP) for the City of Santa Barbara, a portion of the proposed project is located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits. Pursuant to Section 30601.3 of the Coastal Act, a consolidated permit was requested by the City of Santa Barbara, and the Executive Director agreed to consolidate the permit action. Thus, the subject CDP is a consolidated permit for which the standard of review is the Chapter Three policies of the Coastal Act, with the applicable policies of the City of Santa Barbara LCPs used as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act. Therefore, Commission staff recommends that the Commission **APPROVE** coastal development permit application 4-21-0227, as conditioned. The motion and resolution are on **page 6**.

## Table of Contents

I. MOTION AND RESOLUTION.....	6
II. STANDARD CONDITIONS.....	6
III. SPECIAL CONDITIONS .....	7
IV. FINDINGS AND DECLARATIONS .....	16
A. Project Description and Background .....	16
B. Biological Resources and Water Quality .....	22
C. Public Access and Visual Resources .....	34
D. Hazards and Geologic Stability .....	37
E. California Environmental Quality Act .....	38
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....	40

## **EXHIBITS**

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial Photo](#)

[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Beach Elevation Management Activities Plan](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal development permit No. 4-21-0227 pursuant to the staff recommendation.

### Staff Recommendation of Approval:

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

### Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

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 applicant 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.

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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

1. **Best Management Practices.** It shall be the applicant's responsibility to assure that the following occurs concurrent with, and after the completion of, all project operations:
  - A. Construction materials, debris, or waste shall be located as far from the lake (the enclosed water surface that constitutes the Bird Refuge north of East Cabrillo Boulevard) and lagoon (the small water surface located south of the lake, between East Cabrillo and the beach) on the designated site as feasible and in no event shall materials be stockpiled less than 30 feet in distance from the top edge of lake or lagoon, or where it may be subject to erosion and dispersion.
  - B. Temporary erosion control measures and best management practices (BMPs) shall be implemented for all stockpiled material. These temporary erosion control measures shall be required at the site prior to or concurrent with vegetation/silt removal operations and shall be monitored and maintained until all stockpiled fill has been removed from the project site. Successful implementation of erosion control measures will ensure that the material is completely stabilized and held on site.
  - C. No equipment shall be stored in the project area, including designated staging and/or stockpile areas, except during active project operations.
  - D. No construction material, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion. Any and all debris resulting from construction activities shall be removed immediately. Any debris inadvertently discharged into coastal waters (the lake, the lagoon, or the ocean) shall be recovered immediately and disposed of consistent with the requirements of this coastal development permit.
  - E. Construction equipment and materials shall be stored only in designated staging and stockpiling areas as depicted on the project plans in [Exhibit 3](#).
  - F. Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas. Mechanized heavy equipment and other vehicles used during the construction process shall not be refueled or washed within 100 feet of coastal waters.

- G. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up.
- H. Best Management Practices (BMPs) shall be implemented to control erosion from the disturbed areas and prevent sediment and potential pollutants from entering coastal waters and/or native habitat plant communities during project activities.
- 2. Sensitive Species Surveys.** The applicant shall retain the services of a qualified biologist or environmental resource specialist (hereinafter, "environmental resources specialist") with appropriate qualifications acceptable to the Executive Director, to conduct sensitive species surveys (including birds and other terrestrial and marine species) and monitor project operations associated with all project activities. The applicant shall ensure that the environmental resources specialist performs all of the following duties, and the applicant shall observe the following requirements:
- A. At least 30 calendar days prior to commencement of any project activities, the applicant shall submit the name and qualifications of the environmental resource specialist, for the review and approval of the Executive Director. The applicant shall have the environmental resource specialist ensure that all project activities are carried out consistent with the following:
1. The environmental resource specialist shall conduct sensitive species and nesting bird surveys (e.g. southwestern pond turtle, globose dune beetle, western snowy plover, raptors, California least tern, black-crowned night herons, great blue herons, snowy egrets, or other sensitive species) no more than 7 calendar days prior to the listed activities to detect any active sensitive species, reproductive behavior, and active nests within and near the project site.
  2. Should the Executive Director authorize any construction activities during bird nesting season (January 15 – September 15), the environmental resources specialist shall conduct nesting bird surveys 7 calendar days prior to the listed activities to detect any active sensitive species, reproductive behavior, and active nests within and near the project site. Follow-up surveys must be conducted on a weekly basis throughout the nesting season or until the project is completed, whichever comes first.
  3. In the event that any sensitive species are present in the project area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the environmental

resource specialist with the required sensitive species permits shall either: (1) initiate a salvage and relocation program prior to any construction activities to move sensitive species by hand to safe locations elsewhere along the project reach or (2) as appropriate, implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The applicant shall also immediately notify the Executive Director of the presence of such species and which of the above actions are being taken. If the presence of any such sensitive species requires review by the United States Fish and Wildlife Service and/or the California Fish and Wildlife Department, then no development activities shall be allowed or continue until any such review and authorizations to proceed are received, subject to the approval of the Executive Director.

4. If an active nest of a federally or state-listed threatened or endangered species or bird species of special concern is found, the applicant shall notify the appropriate State and Federal agencies within 24 hours, and shall develop an appropriate action specific to each incident. The applicant shall notify the California Coastal Commission in writing by facsimile or e-mail within 24 hours and consult with the Commission regarding the determinations of State and Federal agencies.
5. If an active nest of any song bird or raptor is found within 300 feet of construction activities (500 feet for raptors), the applicant shall retain the services of an environmental resources specialist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The applicant shall ensure that the environmental resources specialist is present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. The applicant shall ensure that the environmental resources specialist monitor birds and noise during all periods of Beach Elevation Management Plan (BEMP) activities. Activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest site(s). If construction noise exceeds a peak level of 65 dB at the nest site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction within 300 ft. (500 ft. for raptors) of the nesting trees/areas shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.
6. The applicant shall ensure that the environmental resources specialist shall be present during all construction activities, including the construction of the water treatment wetland, replacement of the weir, vegetation removal,

habitat restoration, and beach elevation management activities. If the environmental resource specialist becomes aware of any breach in permit compliance or any unforeseen sensitive habitat issues, the environmental resources specialist shall so inform the applicant, and the applicant will cease work. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised, or supplemental, program to adequately mitigate such impacts. The revised, or supplemental, program shall be submitted to the Executive Director for review and approval.

3. **Tidewater Goby Protection Plan.** The applicant shall retain the services of a qualified environmental resource specialist with experience handling tidewater gobies or other sensitive aquatic species and with the requisite permit(s) and experience in the application of standard survey, capture, and handling methods for tidewater gobies and other sensitive aquatic species. At least 30 days prior to commencement of any work, the applicant shall submit the name and qualifications of the qualified environmental resources specialist, for the review and approval of the Executive Director. When weir replacement and lagoon expansion activities are occurring, the applicant will exclude tidewater gobies and other sensitive aquatic species from the project area by following the actions:
  - A. The applicant shall ensure that the qualified environmental resource specialist retained by the applicant conducts a training session for all operations and maintenance personnel prior to the onset of work. The training shall include a description of the tidewater goby, and other sensitive aquatic species; their habitats; the specific measures that are being implemented to protect sensitive aquatic species during all project activities; and the project limits.
  - B. The applicant shall ensure that the qualified environmental resource specialist and a crew working under his/her direction clears all fish, including tidewater gobies, from the area to be disturbed for project activities. The capture, handling, exclusion, and relocation activities identified by the qualified environmental resource specialist will be completed no earlier than 48 hours before construction activities begin in order to minimize the probability that listed species will recolonize the affected areas during the work.
  - C. Following project activities, the applicant shall ensure that the qualified environmental resource specialist completes post construction activity surveys, for the review of the Executive Director, for tidewater gobies and other sensitive aquatic species.

4. **Beach Elevation Management Plan Responsibilities.**

By acceptance of this permit the applicant agrees that:

City of Santa Barbara Parks and Recreation Department

A. Beach Elevation Management Plan (BEMP) activities shall be implemented pursuant to the following criteria:

1. BEMP activities shall occur only between October 1 through May 1 of each year prior to rain events with a National Weather Service forecasted rain total of a minimum of 1 inch and no more than a total of four times per winter season.
2. BEMP activities shall occur only within the 30 ft. by 120 ft. area between the lagoon and the ocean, as generally shown on [Exhibit 4](#).
3. BEMP activities shall occur only if the lagoon mouth is in a closed condition and the elevation of the sandy beach is higher than 2.1 ft. above sea level (NGVD) within the 30 ft. by 120 ft. area between the lagoon and the ocean, as generally shown on [Exhibit 4](#).
4. The elevation of the sandy beach within the 30 ft. by 120 ft. area sand may not be lowered to less than 2.1 ft. in elevation above sea level (NGVD) or less than one foot above the water level in the lagoon, whichever is higher.
5. Access for construction vehicles/tractors to the area of the beach where BEMP activities will occur shall be limited to only the designated routes shown on [Exhibit 4](#).

B. The applicant shall undertake all BEMP activities in accordance with Part A of Special Condition Four (4). No BEMP activities shall occur if the above criteria have not been met, or if the applicant has already completed four previous management activities in a winter storm season, unless the Executive Director authorizes additional management activities for good reason.

**5. Removal of Excess Excavated Material.** Permanent stockpiling of material on site shall not be allowed. Sediment shall be retained at the designated temporary stockpile area, up to approximately three months, until removed to an appropriate approved disposal location either outside the coastal zone or to a site within the coastal zone permitted to receive such fill.

**Prior to the issuance of the Coastal development permit**, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

**6. Habitat Restoration and Monitoring Program.**

A. Prior to the issuance of the Coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a Habitat

Restoration and Monitoring Program for the proposed habitat restoration areas. This program shall be prepared by a qualified biologist or environmental resource specialist and shall include, but not be limited to, the following:

1. Introduction. Including purpose of restoration, overview of the proposed project, figures and exhibits including location map, proposed project site plan, map of existing biological resources, and map comparing existing vs. future site conditions.
2. Goals and Objectives of the Restoration. A clear statement of the goals of the restoration project, including the desired habitat types, major vegetation components, hydrological improvements (e.g. dissolved oxygen, cyanobacteria levels, water clarity), and wildlife support functions. There should be a clear narrative description of the desired characteristics of the restored and created habitat types (improvements to the lake and lagoon and created/significantly restored southern foredune, salt marsh and mudflat habitats) that the project is intended to provide.
3. Grading Plan. If the restoration requires topographic alterations, a formal grading plan shall be included in the program.
4. Non-Native Invasive Species Removal. The habitat restoration shall include, at a minimum, the removal of all invasive plant species and revegetation of all disturbed areas with appropriate native species of local genetic stock, including areas where invasive and non-native plants were removed. Plans must indicate that invasive plant species shall be removed from all development and restoration areas for the life of the project. Non-native or invasive species shall be removed by hand where feasible. If herbicide use is proposed, rationale for use must be submitted, the herbicide employed must be appropriate for the proposed use, certification for use in California must be verified, herbicide application must be performed by a certified user, herbicide application must follow exact label instructions, and lowest effective application rate must be employed. Any proposal of herbicide use in the approved project will require a permit amendment pursuant to the requirements of the Coastal Act and the Division of the California Code of Regulations implementing the Coastal Act.
5. Vegetation Removal. The plan shall specify that no vegetation removal shall occur during the period from January 15 through September 15, unless authorized by the Executive Director for good cause.
6. Fencing. Location, type, and height of any temporary fencing that will be used for revegetation shall be included in the program. The plans shall also indicate when this fencing is to be removed.

7. Maintenance. Documentation of the necessary management and maintenance requirements, and provisions for timely remediation should the need arise shall be included.
  8. Planting Palette. A planting palette (seed mix and container plants), planting design, source of plant material, and plant installation shall be included in the program. The planting palette shall be made up exclusively of native plants that are appropriate for the local region and respective habitat to be restored. They shall be grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.
  9. Implementation. Sufficient technical detail on the restoration program including, at a minimum, a restoration project schedule and a planting plan including a description of planned site preparation, method and location of exotic species removal, timing of planting, plant locations and elevations on the baseline map, and maintenance timing and techniques shall be included. Additionally, the program shall include a plan for documenting and reporting the physical and biological "as built" condition of the site within 30 days of completion of the initial restoration activities, and shall include a description of implementation of the approved restoration program in narrative and photographs, and report any problems in the implementation and their resolution.
- B. Monitoring Program. The restoration monitoring program shall include the proposed sampling design and qualitative and quantitative methods for monitoring the physical and biological aspects of the restoration. The restoration monitoring program shall also include success criteria for the physical and biological aspects of the restoration and the statistical methods by which the success of the restoration shall be determined. The monitoring program shall include but not be limited to the following:
1. Monitoring Plan. The monitoring plan shall include separate sections for the physical and biological monitoring that include the sampling design, qualitative (photographs, descriptions) and quantitative methods (measurements, quadrats, transects), and success criteria for each of the restoration goals and objectives. The physical monitoring should include, at a minimum, plans for assessing restored water quality (dissolved oxygen, water clarity) and restored habitat topography. The biological monitoring shall include, at a minimum, the native plant species richness and percent

cover for the respective restored habitats. In general, qualitative monitoring should be quarterly for the first year and annually thereafter. Weeding should be frequent, with a “zero tolerance” policy throughout the monitoring period. Photographs should be taken from fixed points on fixed azimuths during each monitoring period. Quantitative monitoring should take place once a year, typically in the spring.

2. **Success Criteria.** Generally, success criteria will be for interim and final time periods and include fixed standards for physical attributes (dissolved oxygen, water clarity, habitat topography) and either fixed standards (often based on the peer-reviewed literature) for native plant species richness and percent cover or relative standards comparing specific factors (species richness, percent cover) of the respective restored habitats to native reference sites.
3. **Interim Monitoring Reports.** The applicant shall submit, for the review and approval of the Executive Director, on an annual basis, for a period of five (5) years, a written monitoring report, prepared by a qualified environmental resource specialist indicating the progress and relative success or failure of the restoration on the site. This report shall also include further recommendations and requirements for additional restoration activities within the scope of the subject permit in order for the project to meet the success criteria. This report shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. Each report shall be cumulative and shall summarize all previous results. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the success criteria.
4. **Final Monitoring Report.** At the end of the five-year period, a final detailed report on the restoration shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has, in part, or in whole, been unsuccessful, based on the success criteria specified in the Habitat Restoration and Monitoring Plan, the applicant shall submit within 90 days a revised or supplemental restoration and monitoring program to compensate for those portions of the original program which did not meet the approved success criteria.
5. **Monitoring Period and Mid-Course Corrections.** During the five-year monitoring period, all artificial inputs (e.g., irrigation, soil amendments, plantings) shall be removed except for the purposes of providing mid-course corrections or maintenance to insure the survival of the restoration site. If these inputs are required beyond the first two years, then the monitoring program shall be extended for every additional year that such inputs are required, so that the success and sustainability of the restoration

is insured. The restoration site shall not be considered successful until it is able to survive without artificial inputs.

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

- 7. Public Access Program.** Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a Public Access Program and Plan that describes the methods (including signs, fencing, posting of security guards, etc.) by which safe public access around all project activity areas and staging areas shall be maintained during all project operations. The Public Access Plan shall also include signs directing the public to alternative parking areas for the duration of all project construction activities. Where public paths or bikeways will be closed during active operations, a person(s) shall be on-site to detour traffic or adequate fencing and signage shall be used to direct the public to alternative paths or bikeways. Where use of public parking spaces is unavoidable, only the minimum number of public parking spaces that are required for the staging of equipment, machinery, and employee parking shall be used. The applicant shall maintain public access pursuant to the approved version of the Public Access Program. Any proposed changes to the approved Public Access Program shall be reported to the Executive Director. No change to the Public Access Program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.
- 8. Term of Permit Approval.** This coastal development permit authorizes implementation of the approved Beach Elevation Management Plan (BEMP) activities on a temporary basis only for a period of five (5) years from the date that Coastal development permit 4-21-0227 is approved by the Commission, after which time all activities shall cease unless either a new coastal development permit, or amendment to this permit, authorizing additional future BEMP activities is approved and issued by the California Coastal Commission.
- 9. Required Agency Permits and Approvals.** Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, all State and/or Federal permits that may be necessary for all aspects of the proposed project (including U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Fish and Wildlife Service) or evidence that no such approvals are required. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the

requirements of the Coastal Act and the Division of the California Code of Regulations implementing the Coastal Act.

- 10. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wave action, flooding, erosion, 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 commencement of development**, 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.

- 11. Informational/Educational Signage.** Prior to issuance of the Coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, an informational/educational signage plan, that describes the location, number, size, and contents of signs to be placed. The signs shall be installed by the applicant in the manner described in the approved signage plan.

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Background

#### Project Description

The project sites include the Andrée Clark Bird Refuge (Bird Refuge), a portion of East Beach (approximately 1.8 acres) extending from the eastern end of the volleyball courts to the western border of the Clark Estate, and a small open field adjacent to an existing drainage area (7,000 square feet) within the City Municipal Tennis Center. As seen in [Exhibit 2](#), the enclosed water surface that constitutes the Bird Refuge north of East Cabrillo Boulevard will hereinafter be referred to as the lake, and the small water surface located south of the lake, between East Cabrillo and the beach will hereinafter be referred to as the lagoon.

The City of Santa Barbara Parks and Recreation Department proposes improvements both onsite and off site of the Andree Clark Bird Refuge, including constructing a water treatment wetland, removing and replacing a concrete weir and weir gate, restoring habitat around the perimeter of the lake and beach lagoon, and periodically lowering the elevation of the sand berm at the mouth of the lagoon. The goals of the proposed project are to improve wildlife habitat and water quality, while maintaining flood protection and recreational opportunities. The proposed project will improve water quality of the lake and lagoon by improving the hydrologic connection between the lake, lagoon, and ocean through a combination of drainage modifications and management of the beach sand.

The five components of the project include:

1. Construction of a 6,000 sq. ft. low flow water treatment wetland located immediately adjacent to the Municipal Tennis Center on Old Coast Highway north of the Bird Refuge lake ([Exhibit 2](#)). The wetland will be adjacent to an existing storm drain, and will be designed to capture dry season low flows from the large culvert that moves water from the Tennis Center to the Bird Refuge lake and allow for vegetation to uptake nutrients from the water prior to flowing into the lake. This is intended to improve water quality within the lake. The construction of the wetland will involve removal of 0.15 acres of non-native vegetation, planting of native vegetation, removal of 750 cu. yds. of material, and placement of 30 cu. yds. of slope protection rock. The vegetation within the water treatment wetland will be maintained periodically, a maximum of two times per year (mid-summer-July and late Fall-November), and removed with a push mower, hand-held equipment (e.g., weed whackers, machetes, and shovels), or by hand. No heavy equipment will be used for vegetation maintenance.
2. Removal of the existing non-functioning concrete weir and weir gate, and replacement with a new concrete weir and weir gate, located below Cabrillo Boulevard, between the lake and lagoon ([Exhibit 3](#)). The new weir and weir gates will occupy the same approximate footprint as the existing weir. The existing weir currently blocks lake water from flowing into the lagoon/ocean except during extreme rain events when water overtops the weir and flows through culverts beneath Cabrillo Boulevard into the ocean. Replacement of the weir and installation of two new weir gates would create better water flow between the lake and the lagoon/ocean and improve water quality within the lake. It would also allow for adaptive management related to sea level rise and habitat conditions within the lake as the water level could be adjusted through opening or closing the weir. The goals of the adaptive management allowed by the replacement weir gate are to improve circulation of the lake and to maintain a certain water level in the lake. 15 cubic yards of approximately 6 inch diameter rock will be added to the approximately 10 cubic yards of existing rock located adjacent to the weir on the lagoon side to avoid erosion or scouring of the foundations.

3. Restoration of approximately 1.4 acres of dune, salt marsh, and mudflat habitat around the beach lagoon. Approximately 1.2 acres of non-native dominated vegetation will be cleared, grubbed, and replanted. All species planted will be native to Southern California dunes and wetlands. Dune habitat is proposed to be restored on the west and east side of the lagoon, and salt marsh habitat is proposed to be restored immediately east of the lagoon ([Exhibit 3](#)). In addition, the beach lagoon will be reshaped and re-contoured to provide better refugia for tidewater goby during breaching events. 1,425 cu. yds. of sand will be cut to expand the lagoon and 800 cu. yds. of the material will be reused on site for dune restoration. The restored dunes will be fenced to discourage trampling, but public access and viewing will be allowed around the perimeter. Interpretive signage will be installed.
4. Periodic management of the sand berm elevation on the beach located at the mouth of the lagoon. The sand management will involve mechanically lowering the elevation of the sand berm, using a small bulldozer or similar equipment, prior to rain events. The sand management will not breach the lagoon but is designed to allow the lagoon to fill, overtop, and flow into the ocean when there is enough precipitation. In addition to increasing tidal exchange in the lake and lagoon, this would help reduce flooding of Cabrillo Boulevard. Beach Elevation Management Plan (BEMP) activities would occur up to four times per rainy season (depending on rain events) prior to rain events with a National Weather Service forecasted rain total of a minimum of 1 inch. The berm will be lowered to an elevation of no less than 1 foot above the current water level in the beach lagoon or 2.1 ft. NGVD, whichever is higher.
5. Restoration of willow scrub, coastal sage scrub, and salt marsh habitat around the perimeter of the lake. This will include removal of approximately 2 acres of non-native plant species including non-native trees and replacement with native species. Specifically, 0.55 acres of non-native vegetation will be removed along the northwestern shore of the lake, 0.14 acres of non-native vegetation will be removed along the northeastern shore of the lake, and 1.3 acres of non-native vegetation will be removed along the southern shore of the lake. Approximately 1.6 acres of infill planting consisting of native species will be planted within vacant areas amongst existing native vegetation. Salt marsh habitat is proposed to be restored along the northern perimeter of the lake. Willow scrub and coastal sage scrub is proposed to be restored further inland along the northern shoreline of the lake. Coastal sage scrub is proposed along the southern perimeter of the lake. Willow scrub is proposed to be restored along a section of the southwestern perimeter of the lake. Two clusters of turtle basking rocks will be placed in the lake near the northwestern shore. They will consist of stacked un-grouted sandstone boulders. Each turtle basking cluster will include 20 sandstone boulders approximately 1 foot in diameter and weighing approximately 100 pounds. The total surface area covered by each cluster will be 25 square feet. The clusters will be 2-3 feet tall. The rocks will be placed by hand. Exclusion

fencing is proposed around a habitat restoration site on the northwest side of the lake to prevent access to the area. Interpretive signage will be installed.

A total of approximately 10,000 native plants will be installed. Total grading quantities will be approximately 2,175 cu. yds. of cut and 800 cu. yds. of fill. No soil will be imported to the site and 1,375 cu. yds. will be exported. The 800 cu. yds. of fill refers to the materials removed for the lagoon expansion and placed on the east of the lagoon for dune restoration. The construction equipment and supply staging areas will be on the beach east of the lagoon that will be restored with dune habitat following construction, along the existing dirt trail on the north side of the Bird Refuge, and within the storage yard adjacent to the Municipal Tennis Courts. Construction work will be sequenced so that it will be used as a staging area in the early stages of construction, as the construction progresses, equipment and materials will be removed incrementally from the staging areas to set the area up for landscaping. Temporary stockpiling of cut material may occur at the staging areas.

Surface water is typically present in the lake and beach lagoon during the dry season; therefore, minor temporary dewatering of portions of the lake and beach lagoon will be required for replacement of the existing weir and gate. The dewatering area will be approximately 1,500 sq. ft. (a 20 ft. by 50 ft. wide area in the lake and a 10 ft. by 50 ft. area in the lagoon). The dewatering will require installation of a temporary barrier such as sheetpile or a cofferdam adjacent to the weir and the existing culverts under Cabrillo Blvd. The culverts will also be temporarily plugged to allow the workspace to be dewatered more efficiently. Surface and ground water within the work area will be removed from the work site and discharged into a settling tank placed on the staging area adjacent to the weir. If an additional tank is required on for the beach lagoon area, the tank will be located within the existing staging area on the beach. The water will then be discharged back into the lake outside of the work area. All discharged water will be clear and free of excessive sediment loads. Prior to work, turbidity curtains will be installed around the weir location and the grading areas within the beach lagoon to prevent sediment from migrating outside the work zones.

## **Background**

The Bird Refuge is a 42-acre open space park containing a 30-acre brackish water lake, with three islands. The Bird Refuge was created in the 1920s, prior to the effective date of the Coastal Act, and provides recreational opportunities to bird watchers, hikers, and bikers through onsite trails, viewing platforms, and 15 parking spaces. It is bounded on the north by the Union Pacific Railroad; on the west by the Santa Barbara Zoo; on the south by East Cabrillo Boulevard and the Clark Estate; and on the northeast by Los Patos Way and commercial development. Access to the Bird Refuge is from East Cabrillo Boulevard and Los Patos Way.

The Andrée Clark Bird Refuge, including the 30-acre lake and its associated upland habitat areas, contains wetlands and provides habitat for sensitive species, including tidewater goby, southwestern pond turtle, and nesting birds. Habitats at the Bird Refuge

include native marsh, riparian and upland, as well as non-native habitat and bare areas (roads, paths).

Historically, the Bird Refuge was connected to Sycamore Creek (located to the west) via a lagoon on the beach. Construction of Cabrillo Boulevard modified the shape of the lagoon and restricted water flow. Except for a small remnant, the lagoon on the beach has been replaced by Cabrillo Boulevard and the East Beach volleyball courts. Under the historic configuration, there was more freshwater input into the lake. The Sycamore creek watershed is almost four times larger than the current Bird Refuge lake watershed. This resulted in more frequent breaching of the beach berm during rain events, which resulted in more frequent freshwater and tidal exchange.

The current watershed for the Bird Refuge is approximately 817 acres. Runoff from the watershed enters the lake at various locations but the primary water source is from a large culvert that travels from the City Municipal Tennis Center, under Highway 101 and the Union Pacific Railroad where it empties into the lake through a concrete channel on the north shore. The water flows from the lake into the ocean underneath Cabrillo Boulevard via five 36-inch concrete culverts. Before reaching the ocean, the water flows into a lagoon on the beach side of Cabrillo Boulevard. Water flow is restricted between the larger lake north of Cabrillo Boulevard and the smaller beach lagoon by a concrete weir/dam. High flows overtop the weir and travel through the culverts when the lake is filled during rain events. The restricted flow can cause flooding on Cabrillo Boulevard during very large rain events. Before the lake and lagoon can drain into the ocean, flood waters have to breach the natural sand berm on the beach at the mouth of the lagoon. Breaching of this sand berm under current conditions is rare and takes extreme rain events. The berm has only breached in three of the last ten years. Since the berm sometimes restricts flow into the ocean, it contributes to flooding on Cabrillo Boulevard.

Poor water quality conditions and strong odors at the lake have been problematic at the Bird Refuge since the 1920's when it was dredged and disconnected from Sycamore Creek. In the past ten years, the poor water quality, as reflected in the low dissolved oxygen levels, cyanobacteria blooms, poor water clarity, and strong odor, has continued to deteriorate due to the accumulation of nutrients, lack of flushing storm events, and drought conditions.

The Bird Refuge is unique when compared to other small lagoons/lakes for three primary reasons: 1) it is very shallow; 2) it does not flush on a regular basis; and 3) nutrient levels are very high. Because of these characteristics, most of the water quality improvement techniques that often work for small lagoons/lakes would be, or have proven to be, ineffective in the Bird Refuge.

For these reasons, the proposed project was designed to replace the weir and weir gate and periodically lower sand elevation at the mouth of the lagoon to increase water flow between the lake and the lagoon/ocean and improve flushing of nutrients from the lake, to construct a water treatment wetland in the Municipal Tennis Center to improve the

4-21-0227

City of Santa Barbara Parks and Recreation Department

quality of runoff that flows into the lake, and to improve water quality through habitat restoration.

### **Permit History**

In July 2006, the Commission approved Emergency Permit No. 4-06-084-G for the one-time removal of vegetation located in the lake of the Bird Refuge to facilitate mosquito abatement. In December 2008, the City applied for another emergency permit (4-08-094-G) to remove vegetation from a culvert north of the Bird Refuge; however, the application was withdrawn upon determination that the culvert was within the City's jurisdiction. In December 2011, the Commission approved Emergency Permit No. 4-11-066-G for the one-time removal of vegetation and silt located at the Bird Refuge to facilitate mosquito abatement. The follow-up coastal development permit for Emergency Permit No. 4-11-066-G, CDP No. 4-11-043, was approved by the Commission on April 12, 2012 and allowed for implementation of an annual desilting and vegetation management and enhancement program for portions of the Bird Refuge for a period of five years for the purpose of flood control, mosquito abatement, and habitat enhancement. The permit was amended by 4-11-043-A1, which was approved on December 8, 2016. The amendment extended the permit for an additional five years and modified the areas for vegetation removal.

### **Project Jurisdiction and Consolidated Review**

The proposed project includes components that are located within both the City of Santa Barbara's LCP jurisdiction and the retained jurisdiction of the Coastal Commission. The City of Santa Barbara would typically have jurisdiction over the portions of the project within its coastal development permit jurisdiction. However, Section 30601.3 of the Coastal Act authorizes the Commission to process a consolidated coastal development permit application, when certain criteria are satisfied, for the entirety of a proposed project that would otherwise require separate coastal development permits from both a local government with a certified local coastal program and the Commission. Pursuant to Section 30601.3(a)(2), the applicant, appropriate local government, and the Commission may agree to consolidate a permit action for a project that spans local and state jurisdictions. In this case, the City of Santa Barbara is both the applicant and appropriate local government. The City submitted a letter to Commission staff dated July 2, 2021, requesting that the Commission assume jurisdiction over all activities associated with the proposed project.

The standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3(a) is Chapter Three of the Coastal Act (commencing with Section 30200), with the appropriate local coastal program used as guidance. Thus, the standard of review for this project is the Chapter Three policies of the Coastal Act, with the applicable policies of the City of Santa Barbara Local Coastal Program as guidance.

## **B. Biological Resources and Water Quality**

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 and LUP policy 4.2-21 (Biological Productivity and Water Quality), states that:

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 and LUP policy 4.1-7 (Diking, Filling, or Dredging of Coastal Waters and Wetlands) state in relevant part:

- a) 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.

4-21-0227

City of Santa Barbara Parks and Recreation Department

(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.

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Section 30240 of the Coastal Act affords protection of environmentally sensitive habitat areas as follows:

- a) Environmentally sensitive habitat areas shall be protected against any 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.

City of Santa Barbara LUP Policy 4.2-9 (Maintain, Enhance, and Restore Andrée Clark Bird Refuge) states:

Ensure that the Andrée Clark Bird Refuge shall be maintained, enhanced, and restored to a healthy and viable aquatic habitat; shall provide a sanctuary for migratory waterfowl; and shall be preserved as open space or other public area.

LUP policy 4.1-3 (Protection of Coastal Waters, Wetlands, and Marine Resources) states:

Protect, maintain, and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, wetlands, estuaries, lakes, and marine resources.

LUP policy 4.1-4 (Protection of ESHAs) states:

As outlined in Coastal Act Section 30240, ESHAs shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

LUP policy 4.1-8 (Protection of Lagoons and Estuaries) states:

Breaching or pumping water from coastal lagoons or estuaries shall be prohibited, except where: necessary for public health or safety (including flood control purposes), repair and maintenance of existing structures, or as part of an activity allowed in lagoons and estuaries pursuant to Policy 4.1-7 Diking, Filling, or Dredging of Coastal Waters and Wetlands; there is no feasible less environmentally

damaging alternative; and all feasible mitigation measures will be implemented to minimize adverse environmental effects.

LUP policy 4.1-33 (Avoidance of Sensitive Species on Beaches) states:

New development, including but not limited to grooming and other disturbance activities, on the beach shall be designed to avoid impacts to any western snowy plovers, grunion (including grunion eggs), least terns, or other sensitive species present through timing of implementation, biological surveys, signage, temporary fencing, or other avoidance measures recommended by a qualified biologist and which are consistent with the policies of the Coastal LUP, including policies protecting public access to and along the shoreline.

LUP policy 4.1-35 (Motorized Vehicle Access to Beaches) states:

Access to beach areas by motorized vehicles, including off-road vehicles, shall be prohibited, except for permitted beach grooming, emergency services, lifeguard services, or for construction, maintenance, or flood control activities approved through a Coastal development permit. Emergency services shall not include routine patrolling by private security forces.

Coastal Act Section 30230 requires that new development within 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, Coastal Act Section 30231 requires that the biological productivity and quality of coastal waters be appropriate to maintain optimum populations of marine organisms and for the protection of human health. Section 30233 of the Coastal Act states that diking, filling, and dredging of coastal waters and wetlands may be permitted for incidental public service purposes and restoration purposes. Section 30240 of the Coastal Act and City of Santa Barbara LUP Policy 4.1-4 requires that environmentally sensitive habitat areas (ESHA) must be protected against disruption of habitat values and that only resource dependent uses may be allowed within ESHA. Additionally, Section 30240 further requires that development adjacent to ESHA must be sited and designed to prevent impacts that would significantly degrade or destroy the ESHA. City of Santa Barbara LUP Policy 4.2-9 mandates that the Andrée Clark Bird Refuge be maintained, enhanced, and restored to a healthy and viable aquatic habitat. LUP policy 4.1-3 requires that biological productivity and the quality of coastal waters, wetlands, and lakes be protected and maintained. LUP policy 4.1-8 allows breaching of coastal lagoons where necessary for public health or safety (including flood control purposes) and where there is no feasible less environmentally damaging alternative. The policy also mandates that lagoon breaching activities implement all feasible mitigation measures to minimize adverse environmental effects. LUP policy 4.1-33 requires that new development on the beach be designed to avoid impacts to any western snowy plovers, grunion (including grunion eggs), least terns, or other sensitive species present through timing of implementation, biological surveys, signage, temporary fencing, or other avoidance measures recommended by a qualified biologist. Finally, LUP policy

4-21-0227

City of Santa Barbara Parks and Recreation Department

4.1-35 allows motorized vehicles access beach areas for beach grooming and flood control activities approved through a CDP.

### **Habitat Areas**

The proposed project's construction and habitat restoration activities will occur in the Andrée Clark Bird Refuge and a portion of the sandy beach area on East Beach adjacent to the lagoon. The Bird Refuge is a 42-acre open space park containing a lake supporting brackish wetland habitat, with three islands. Sensitive habitats that meet the definition of ESHA are present at the project site, and include upland habitat (coastal brackish marsh, coastal salt marsh, freshwater marsh, arroyo willow scrub, coastal sage scrub, and southern foredunes), open water of the Bird Refuge and riparian habitat. Wetland habitat is also present and provides habitat for endangered and rare species including tidewater goby, a federally endangered and a California Species of Concern; southwestern pond turtle, a California Species of Concern; and several bird species protected by the Migratory Bird Treaty Act.

Historically, the Bird Refuge was a salt marsh that received fresh water from Sycamore Creek. However, construction of the railroad north of the subject site in the 1880s resulted in the rerouting of Sycamore Creek and isolation of the salt marsh. In 1920, the area was dammed to create a permanent reservoir. The lake is now an artificially modified estuary that supports palustrine wetlands. The lake is considered a brackish marsh because salinity is above 0.5 parts per thousand (ppt), most likely due to leaching of salts from the former salt marsh sediments and evaporation. Since the rerouting of Sycamore Creek in the 1880s, the Bird Refuge has received stormwater from a separate 817-acre watershed comprised of predominantly urban development. Runoff from the watershed, including from U.S. Highway 101, enters the lake via several open channels and storm drains to the north and east. The lake is connected to the Pacific Ocean through a weir gate system located adjacent to and passing under Cabrillo Boulevard. A closed weir gate in the outflow channel separates the lake from a coastal lagoon at the Pacific Ocean. The weir gate has been kept open at times in the past, but, after the gate malfunctioned, it was replaced by a board that currently keeps the channel closed at all times.

The Bird Refuge has poor water quality during the dry months when there is little to no precipitation. During this period evaporation increases, leading to a decrease in water levels and stagnation. Currently, the water quality can change dramatically leading to strong odors and strange colors with little aquatic vertebrate life and an overabundance of aquatic invertebrates. Based on the 2016 benthic macroinvertebrates (BMI) survey, the aquatic system consists of "a highly disturbed BMI community" compared to other local brackish water bodies.

The project site includes seven vegetation communities as well as turf between the refuge and the bike path and ornamental landscaping between the bike path and Cabrillo Boulevard and the northeast corner of the site. On the beach near the lagoon there are patches of freeway iceplant (*Carpobrotus edulis*) on the west side, along with

some small areas of southern foredune habitat dominated by beach bur (*Ambrosia chamissonis*) and beach evening primrose (*Camissoniopsis cheiranthifolia*). Southern foredune habitat was also observed in July 2019 at the southern end of the non-native vegetation area east of the lagoon. The non-native vegetation on the east side of the Bird Refuge consists of a large area that is dominated by Bermuda grass (*Cynodon dactylon*) and gradually shifts to areas dominated by saltgrass (*Distichlis spicata*) along the southern edges of the estuary. Small patches of coastal brackish marsh habitat dominated by California bulrush (*Schoenoplectus californicus*) and saltmarsh bulrush are present in the estuary primarily on the east side. California bulrush continues as a dominant species throughout much of the perimeter of the ponded area of the refuge and islands. It is intermixed with occasional patches of southern cattail (*Typha domingensis*) and saltmarsh bulrush. The islands are dominated by non-native species, particularly myoporum (*Myoporum laetum*). Several non-native ornamental species are present along the western portion near the zoo. The north shore west of the parking lot consists of coastal salt marsh dominated by pickleweed (*Salicornia pacifica*), alkali heath (*Frankenia salina*), saltgrass, and jaumea (*Jaumea carnosa*). The northern perimeter of the Bird Refuge is dominated by big saltbush (*Atriplex lentiformis*) and coastal bush sunflower (*Encelia californica*) with a few arroyo willows. East of the parking lot consists of a mix of iceplant and ornamental trees and shrubs. There are a few native trees within the project site including a patch of arroyo willow on the western shore, a few scattered on the northern boundary and a stand in the northeastern corner, a patch of coast live oak on the northern project boundary, and several Monterey cypress trees near Cabrillo Boulevard at the southern portion of the project area. The general health of all the native tree species on site is good. The location of the proposed low-flow water treatment wetland north of the tennis courts is adjacent to an existing drainage and consists of a few cattails (*Typha sp.*) in the wetted channel and ornamental trees along the road with ruderal understory consisting of a mix of non-native grasses and weeds such as sow thistle (*Sonchus sp.*) and bristly ox-tongue (*Helminthotheca echioides*) that is kept mowed.

The proposed project involves creation of the low-flow water treatment wetland, replacement of the weir, restoration of willow scrub, coastal sage scrub, and salt marsh habitat located around the lake and of the dune habitat around the lagoon, expansion of the lagoon, and periodic beach sand elevation management. Creation of the proposed low-flow water treatment wetland would involve removing vegetation and 750 cu. yds. of material adjacent to an existing storm drain to create an 0.08-acre shallow wetland adjacent to the existing channel to remove nutrients from dry season low flow and improve water quality within the lagoon. This water treatment wetland would be periodically maintained and trimmed, a maximum of two times per year (once in mid-summer and once in late Fall), to remove trash and excess vegetation and to maintain water conveyance capacity. Vegetation removal will be done with a push mower, hand-held equipment (e.g., weed whackers, machetes, and shovels), or by hand. No heavy equipment will be used for vegetation maintenance.

The lagoon expansion and dune restoration component of the project will involve removing invasive species covering 1.2 acres of beach area and restoring 1.4 acres of

dune, salt marsh, and mudflat habitat around the beach lagoon. The expansion of the beach lagoon will involve 1,425 cu. yds. of cut in order to create 0.2 acres of open water/intertidal mudflat habitat. As the area to be graded consists of beach sand, 800 cu. yds. of the cut will be placed to the east of the lagoon for the proposed dune restoration.

Restoration of habitat along the shoreline of the lake will involve removal of 2 acres of non-native plant species, including non-native trees, and replacement with native species. A total of 45 non-native myoporum laetum bushes, 19 myoporum laetum trees, and one Acacia melanoxylom will be removed as part of the restoration project. The proposed planting plan includes 130 native trees and 800 large bushes. The footprint of the new weir is expected to be approximately the same size as the existing weir.

The primary purpose of the proposed removal of 2 acres of non-native vegetation along the shoreline of the lake is for it to be replanted with native vegetation for habitat restoration to maintain and enhance biological productivity and habitat value within the Bird Refuge. Proposed removal of non-native southern foredune habitat in the area next to the lagoon is also for the purpose of habitat restoration. The habitat restoration proposed in the subject application is consistent with Coastal Act Sections 30230 and 30231 and City of Santa Barbara LUP policy 4.1-3 because it will restore marine resources and will help sustain the biological productivity of these coastal waters. Additionally, habitat restoration is a resource dependent use under Section 30240. While the City has submitted draft plan of habitat restoration, to ensure that proposed habitat restoration is consistent with Coastal Act Sections 30230, 30231, and 30240, and City of Santa Barbara LUP policy 4.1-3 and is properly implemented and successful, **Special Condition Six (6)** requires the applicant to submit a Habitat Restoration and Monitoring Program that provides additional details on the restoration program, including its success criteria. The special condition also requires planting of native plant species of local genotype on all disturbed areas and monitoring of all restoration areas for five years.

In addition, wetland and riparian habitats within the Bird Refuge may be subject to potential adverse impacts as a result of the implementation of project activities by unintentionally introducing sediment, debris, or chemicals with hazardous properties. Therefore, to ensure that construction material, debris, or other waste associated with project activities does not enter the water and that the quality of coastal waters are kept appropriate to maintain optimum populations of marine organisms and for the protection of human health as required by Section 30231, **Special Condition Five (5)** prohibits permanent stockpiling of material. Additionally, **Special Condition One (1)** requires that construction materials, debris, or waste to be located as far from the lake on the designated site as feasible and in no event shall materials be stockpiled less than 30 ft. in distance from the top edge of lake or lagoon, or where it may be subject to erosion and/or dispersion. Moreover, **Special Condition Five (5)**, requires that the applicant provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal

Zone, the disposal site must have a valid coastal development permit for the disposal of fill material.

### **Wildlife**

Surveys performed by Kisner Restoration and Ecological Consulting (KR&EC) in 2017 and 2018 identified a variety of wildlife that is present within the Bird Refuge. The surveys observed mosquito fish, crayfish, red-eared sliders, and southwestern pond turtles. Other wildlife observed at the Bird Refuge include brush rabbit, deer mouse, Coast Range fence lizard, and Eastern Fox Squirrel.

As indicated by Cardno Entrix's 2011 Biological Assessment, tidewater gobies are also present and were first reported in the lagoon on the beach side of Cabrillo Boulevard in 1993 and 1995. A survey for tidewater goby was performed on April 5, 2011, which confirmed that tidewater gobies are present in the Bird Refuge lake as well near the Bird Refuge parking area, at the northeast end of the lake where there was a small beach and vegetation-free area. The population size and distribution of individual tidewater gobies in the lake is unknown, including whether the population persists over time or whether they only occur in the lake periodically, possibly entering from the lagoon during limited periods through the weir gate connection. The Restoration Science's eDNA report (2018) indicated that the most concentrated area of tidewater goby is likely the weir outfall. According to the Cardno ENTRIX Biological Assessment (2011), habitat for tidewater gobies in the Bird Refuge lake appears to be adequate to support foraging and possibly breeding, although the lake does not provide optimal breeding habitat due to a more silty/muddy substrate rather than the preferred sandy substrate and water that is stagnant and poor quality at times. Adults and juveniles could use benthic open water habitat as well as emergent vegetation habitat.

According to KR&EC's May 2020 Biological Site Assessment, tidewater goby is likely most abundant in the beach lagoon and would be potentially impacted by vegetation and sediment removal activities associated with the widening of the lagoon, and could become stranded during dewatering activities associated with the weir replacement. Surface water is typically present in the lake and beach lagoon during the dry season. Therefore, minor temporary workspace dewatering will be required for replacement of the existing weir and gate. Portions of the lake and beach lagoon will also be dewatered. The dewatering area will be approximately 1,500 sq. ft. (a 20 ft. by 50 ft. area in the lake and a 10 ft. by 50 ft. area in the lagoon). Vibrations and noise underwater plus turbidity from the aquatic construction equipment would tend to disperse fish, including tidewater gobies, out of the work area. Due to the potential for tidewater goby to be injured by equipment for weir removal and replacement and for removal of vegetation if present in the work locations and thus to be consistent with Section 30233's requirement that feasible mitigation measures be provided to minimize adverse environmental effects during the diking, dredging, or filling of coastal waters, **Special Condition Three (3)** requires the applicant to submit the name of the qualified biologist or natural resource specialist 30 days prior to any onset of construction work, and requires the capture, handling, exclusion, and relocation of any gobies present

within the lagoon area to be completed no earlier than 48 hours before lagoon construction activities begin. **Special Condition Three (3)** also requires the applicant to obtain from the qualified biologist or environmental resource specialist a post-project monitoring report documenting the measures that were implemented to protect the goby, and the effects that those measures had on the goby population.

Biological surveys of sensitive bird nesting, foraging, and habitat within the refuge performed by KR&EC in 2017-2018 detected a total of 106 bird species at the Bird Refuge. Fifty-one different species of birds were detected in the open water areas and on the three islands. The habitat removal operations, including the removal of 20 non-native trees, may result in unintentional adverse impacts to sensitive bird species if they are located within the vegetation removal area when such work occurs. The most likely species that might be found foraging in or near the emergent vegetation to be removed by maintenance activities include: pied-billed grebe, great blue heron, black-crowned night heron, green heron, mallard, ruddy duck, American coot, marsh wren, common yellowthroat, song sparrow, red-winged blackbird, and brown-headed cowbird. The potential start of nesting for these species varies from January 15th to April 30th and can extend through mid-September.

Therefore, since all areas of the site, including along the lake shoreline where vegetation will be removed, as well as the area adjacent to the tennis courts where wetland construction is proposed, have the potential to provide habitat for sensitive bird species, it is necessary to ensure that nesting/foraging bird species are protected during construction activities. To ensure that bird species of special biological significance are protected, **Special Condition One (1)** requires that all vegetation removal operations occur between September 16<sup>th</sup> and January 14<sup>th</sup> each year in order to avoid bird nesting season. Furthermore, **Special Condition Two (2)** requires that the City implement a bird nesting survey prior to the removal of any trees or vegetation on site during the nesting season (if authorized by the Executive Director for good cause) for sensitive birds.

In addition, to ensure that no breeding activity is present in the project vicinity, **Special Condition Two (2)**, Sensitive Species Surveys, requires that a survey by a qualified environmental resources specialist be conducted for sensitive species prior to the commencement of any project activities and that a biological monitor be present during all vegetation removal activities. Additionally, the biological monitor or environmental resources specialist shall have the responsibility and authority to require the applicant to cease work should any breach in the scope of work occur, or if any unforeseen sensitive habitat issues arise. The environmental resources specialist shall immediately notify the Executive Director if activities outside of the scope of CDP No. 4-21-0227 occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised or supplemental program to adequately mitigate such impacts.

The proposed project will require other regulatory approvals such as the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California

Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service. The applicant has been coordinating with these agencies for permits and approvals. **Special Condition Nine (9)** requires the applicant to provide all necessary state and federal permits and/or approvals for all aspects of the proposed project, or evidence that no authorization is required, for the review and approval of the Executive Director. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations implementing the Coastal Act.

### **Water Quality**

The proposed project includes removing 750 cu. yds. of material from the Municipal Tennis Court site for construction of the bioretention basin and removing 1,425 cu. yds. of material from the lagoon for lagoon expansion (850 cu. yds. will be used onsite as new dune habitat berms and 625 cu. yds. will be used at other construction sites). Cut material may be temporarily stockpiled in three designated staging areas. One of the designated areas is on the south shoreline of the lake, another is on the east side of the lagoon, and the third area is to the east of the Municipal Tennis Court. However, excavated materials that are placed in stockpiles are subject to increased erosion and may lead to potential adverse effects to the water quality of adjacent wetland areas from entry of material into open water and increased turbidity. Furthermore, additional landform alteration would result if the excavated material were to be retained on site. Therefore, in order to be consistent with Section 30231's requirement to control runoff and ensure that dredged material will not be permanently stockpiled on site and that erosion and entry of sediment into open water on site are minimized during any temporary stockpiling activities, **Special Condition One (1)** requires that any stockpiled materials shall be located as far from wetland areas on site as feasible and in no event shall materials be stockpiled less than 30 ft. in distance from the top edge of the lake. Temporary erosion control measures (such as sand bag barriers, silt fencing, swales, etc.) shall be implemented in the event that temporary stockpiling of material is required. These temporary erosion control measures shall be monitored and maintained until all stockpiled fill has been removed from the project site. Permanent stockpiling of material on site shall not be allowed.

The material will be hauled to a suitable disposal site as provided for by **Special Condition Five (5)**. Staff notes that a suitable dump site is one that has all the necessary federal, state, and local approvals to receive such material. Therefore, **Special Condition Five (5)** requires that, prior to disposal of excess excavated material, the applicant shall provide evidence to the Executive Director of the location and method of disposal to an approved disposal location either outside the coastal zone or to a site within the coastal zone permitted to receive such fill.

### **Beach Elevation Management Plan Activities**

The proposed BEMP activities aim to increase flushing of the Bird Refuge lake and the lagoon to improve water quality through the periodic lowering of a 30 ft. by 120 ft. area of sand located between the lagoon and the Pacific Ocean. Throughout much of the year the lagoon south of the Bird Refuge remains in a closed state. The program would involve lowering the level of the beach to no less than one foot above the water level in the lagoon or no less than 2.1 ft. in elevation above sea level (NGVD), whichever is higher, to allow the lagoon to overflow to the ocean. The typical beach sand height in the area is around 8 ft. NGVD. The height of the midpoint of the existing 36" culverts is 2.1 ft. NGVD. The water level in the lagoon has always remained above 2.1 ft. NGVD even during the last major drought. Therefore, setting the lower limit of beach lowering to 2.1 ft. NGVD or one foot above the water level, whichever is higher, will prevent artificial breaching of the berm to occur. Implementation of these BEMP activities would be limited to no more than four times between October 1<sup>st</sup> and May 1<sup>st</sup> each winter storm season. The beach berm height will be measured using a self-leveling rotary laser. Sand removed in the process of lowering the elevation would be placed on the beach adjacent to the activity area east of the lagoon. The sand will be spread along the beach in an area not to exceed 30 feet in width, 150 feet in length, and 2 feet in height. The transition between the berm excavation site and the surrounding beach (including the sand deposition zone) will not exceed a 35% slope.

Due to the current weir gate malfunction, the gate has been replaced with a board that keeps the weir closed at all times, thereby restricting waterflow between the larger lake north of Cabrillo Boulevard and the smaller beach lagoon. The restricted flow can cause flooding on Cabrillo Boulevard during very large rain events. The high berm contributes to the flooding issue on Cabrillo Boulevard since flood waters have to breach the natural sand berm on the beach at the mouth of the lagoon before the water from the lake and lagoon can drain into the ocean. Therefore, the proposed weir replacement and the BEMP is necessary to prevent flooding of existing development on Cabrillo Boulevard due to restricted flow of water from the lake and the lagoon. In order to ensure that implementation of the proposed BEMP activities maintain the quality of marine resources and protects species of special biological significance consistent with Section 30230 and to avoid impacts to sensitive species on beaches as required by City of Santa Barbara LUP policy 4.1-33, **Special Condition Four (4)** outlines the criteria that will be utilized to determine when implementation of the BEMP activities may be allowed and the responsibilities of the applicant to ensure that they are carried out in such a way to give special protection to species of special biological significance. This also ensures consistency with City of Santa Barbara LUP policy 4.1-8's requirement that projects such as this incorporate the best mitigation measures feasible and be limited to flood control projects. Pursuant to **Special Condition Four (4)**, lowering the sand elevation between the lagoon and the ocean would occur no more than four times between October 1<sup>st</sup> and May 1<sup>st</sup> each winter storm season prior to rain events with a National Weather Service forecasted rain total of a minimum of 1 inch, which would avoid the peak breeding seasons of tidewater goby, grunion, snowy plover, and least tern.

Additional BEMP activities and/or BEMP activities outside of the October 1<sup>st</sup> and May 1<sup>st</sup> window can be requested for authorization by the Executive Director as needed.

Additionally, in order to ensure that unnecessary breaching events do not occur, **Special Condition Four (4)** provides that BEMP activities shall occur only if the lagoon mouth is in a closed condition and the elevation of the sandy beach is equal to or above 2.1 ft. above sea level (NGVD) within the 30 ft. by 120 ft. area between the lagoon and the ocean, as generally shown on [Exhibit 4](#). The elevation of the sandy beach within the 30 ft. by 120 ft. sand elevation management area may not be lowered to less than 2.1 ft. in elevation above sea level (NGVD) or less than one foot above the water level, whichever is higher.

Although there are areas that are proposed for dune habitat restoration near the beach elevation management area and access route, the proposed BEMP activities have been designed to avoid those areas. As depicted on [Exhibit 4](#), the proposed access route and the 30 ft. by 120 ft. beach elevation management area have been sited outside of habitat restoration areas. In order to protect adjacent dune habitat restoration areas against disruption of habitat values as required by Coastal Act Section 30240 and City of Santa Barbara LUP policy 4.1-4, and to only allow beach access by motorized vehicles for permitted flood control activities as required by City of Santa Barbara LUP policy 4.1-35, **Special Condition Four (4)** requires that all BEMP activities shall occur only within a 30 ft. by 120 ft. area between the lagoon and the ocean. As proposed, access to the designated 30 ft. by 120 ft. activity area would occur from an existing access gate to the west of the lagoon depicted in [Exhibit 4](#). Since the access route was specifically designed to avoid dune restoration areas that may constitute ESHA consistent with Section 30240 of the Coastal Act and City of Santa Barbara LUP policy 4.1-4 (Protection of ESHAs), **Special Condition Four (4)** restricts access for construction vehicles/tractors to the BEMP site to only the designated route shown in [Exhibit 4](#) to prevent potential impacts that would significantly degrade adjacent ESHA restoration areas. Further, to protect areas and species of special biological significance under Section 30230 and to avoid impacts to sensitive species on beaches under City of Santa Barbara LUP policy 4.1-33, **Special Condition Two (2)** requires that an environmental resource specialist shall be present during all activities. The applicant must cease work if the environmental resource specialist finds any breach in permit compliance, or if any unforeseen sensitive habitat issue arises. The applicant shall immediately notify the Executive Director if the environmental resource specialist(s) finds that activities outside of the scope of the subject permit occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised or supplemental program to adequately mitigate such impacts. The revised or supplemental program shall be submitted to the Executive Director for review and approval.

In addition, the proposed BEMP activities will involve the use of construction equipment. As such, 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. Such discharge to the marine environment could potentially impact offshore habitat from

increased turbidity caused by erosion and siltation of coastal waters. To maintain the biological productivity and quality of coastal waters as required by Coastal Act Section 30231 and City of Santa Barbara LUP policy 4.1-3, **Special Condition One (1)** requires the applicant to ensure that no construction materials, debris or other waste is placed or stored on the beach or where it could be introduced to coastal waters and that any and all debris that results from the construction period shall be immediately removed from the sandy beach. Further, construction equipment shall not be cleaned on the beach or in the beach parking lots.

The proposed BEMP activities are designed and conditioned to ensure that activities related to facilitating breaches of the lagoon will not result in disruption of habitat values and that the quality of marine resources are maintained. However, in order to consider any potential changes in circumstances that may be discovered at some future point in time, such as new information regarding sensitive habitat and wildlife resources on site or new impacts from the BEMP activities, **Special Condition Eight (8)** specifically limits the duration of all BEMP activities approved by this permit to a period of no more than five (5) years from the date of Commission action, unless a new coastal development permit, or amendment to this permit, authorizing future BEMP activities is approved by the California Coastal Commission.

### **Fill of Coastal Waters**

Section 30233(a) of the Coastal Act limits the fill of open coastal water to specific, enumerated uses and requires that any project which results in fill of open coastal waters provide adequate mitigation and that the project be the least environmentally damaging alternative. Section 30108.2 of the Coastal Act defines "fill" as earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area. The proposed development proposes to replace the weir and weir gate, which will be partially submerged, and to place 15 cu. yds. of erosion protection rock apron consisting of rocks that are approximately 6 inches in diameter in the water of the lagoon adjacent to the culvert. The fill for the proposed development is consistent with the requirements of Section 30233(a), as follows:

Allowable Use - Section 30233(a)(4) of the Coastal Act allows fill of open coastal waters for incidental public service purposes and for restoration purposes. The board that has replaced the malfunctioning weir gate currently blocks lake water from flowing into the lagoon and ocean except during very large rain events. The proposed weir and weir gate replacement are necessary to improve the water quality of the lake and lagoon at the Bird Refuge by allowing for better management of water flow between the lake and the lagoon and ocean, and for improved flushing of nutrients. The erosion protection rock apron is necessary to maintain the function of the replacement weir and weir gate. Peak flow velocities will increase with the new weir and weir gate, because the new gates will allow a larger volume of water to enter the five existing culverts under Cabrillo Boulevard. Due to the increase in flow velocities, additional erosion protection from the proposed rock apron at the beach lagoon culvert outlet is required to prevent undercutting of the

headwall. Therefore, the proposed project components constitute an allowable use under Section 30233(a)(4).

Least Environmentally Damaging Alternative – The proposed project, as conditioned, is the least environmentally damaging feasible alternative of several alternatives considered, as it minimizes adverse impacts to the lagoon area and provides habitat enhancement. The proposed rock apron would prevent scour at the headwall without degrading the habitat quality of the beach lagoon. Existing rocks at the beach lagoon would be reused to provide bank erosion protection as it does currently. The small rocks proposed for the rock apron would be consistent with cobbles that occur naturally in beach lagoons in Southern California and would provide additional habitat complexity within the lagoon. In this way, the scour apron would serve dual purposes of habitat enhancement and erosion protection. Other alternatives that would prevent scour of the culvert that were considered by the applicant include using grouted rock and a concrete apron. However, neither of those two alternatives provide habitat value and neither have smaller impact compared to the proposed rock apron. Therefore, as conditioned, the proposed project is the least environmentally damaging alternative.

Adequate Mitigation - Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. The project will not generate any permanent habitat impacts. No estuarine habitat or other sensitive habitat will be displaced, and the proposed rocks for weir protection will ensure the water quality and habitat quality in the lagoon and lake are maintained. Temporary impacts to wetland and intertidal habitat will be mitigated by restoration to pre-project conditions and construction best management practices will protect water quality. Thus, adequate mitigation is provided by the proposed project in that there will be no loss of open coastal waters and no permanent adverse impacts to habitat.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30230, 30231, 30233, and 30240, and City of Santa Barbara LUP policies 4.1-3, 4.1-4, 4.1-8, 4.1-33, and 4.1-35.

### **C. Public Access and Visual Resources**

Coastal Act Section 30210 and LUP policy 3.1-1 (Maximum Public Access) 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.

Coastal Act Section 30211 and LUP policy 3.1-21 (Public Access and Development) states:

4-21-0227

City of Santa Barbara Parks and Recreation Department

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.

Coastal Act section 30251 states that:

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.

LUP policy 4.3-6 (Obstruction of Scenic View Corridors) states:

Development shall not obstruct public scenic view corridors of scenic resources, including those of the ocean viewed from the shoreline and of the upper foothills and mountains viewed respectively from the beach and lower elevations of the City.

Coastal Act Sections 30210 and 30211 as well as City of Santa Barbara LUP policies 3.1-1 and 3.1-21 mandate that maximum public access and recreational opportunities be provided and that development shall not interfere with the public's right to access the coast. Coastal Act Section 30251 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. In addition, City of Santa Barbara LUP policy 4.3-6 require development not to obstruct public scenic views of scenic resources, including the views of the ocean from the shoreline.

As depicted on [Exhibit 2](#), the proposed project will be located adjacent to and within public recreational areas including the Andrée Clark Bird Refuge and East Beach. A public parking lot, viewing platforms, a bicycle/pedestrian trail, and a public beach are located where project activities will occur. The proposed project activities will result in temporary disruption of the public's ability to use the bicycle/pedestrian trail on site. Permanent fencing is proposed around habitat restoration site on the northwest side of the lake and to the east and west of the lagoon to prevent trampling of and to protect restored habitat ([Exhibit 3](#)). However, a pathway from Cabrillo Boulevard to the beach and ocean will be left available for public access to the east of the dune habitat restoration area east of the lagoon. Additionally, some parking spaces on Cabrillo Boulevard may be temporarily closed to load/unload materials and move heavy equipment; however, such disruption will be limited to less than one hour per day and will include signage and professional traffic control. Furthermore, alternative parking will

be available along Los Patos Way and on East Cabrillo Boulevard, near the East Beach volleyball courts. Disruptions to public access would be minor and temporary in nature. Nevertheless, to ensure the safety of recreational users of the project site during project construction and to ensure that the subject project's interference with public access to the sea is minimized, the Commission requires the applicant to submit a public access program, pursuant to **Special Condition Seven (7)**, to the Executive Director for review and approval. **Special Condition Seven (7)** requires a description of the methods (including signs, fencing, posting or security guards, etc.) by which safe public access to and around the BEMP activity areas shall be maintained during all project operations. Where use of public parking spaces is unavoidable, the minimum number of public parking spaces that are occupied for the staging of equipment, machinery and employee parking shall be used.

The Bird Refuge and East Beach, where beach elevation management and dune restoration are proposed to take place, are scenic resources with views to and from scenic highways, including Highway 101 and East Cabrillo Boulevard. The impact of project construction on the public view of the Bird Refuge and East Beach from Highway 101 is temporary and the change in view due to the proposed BEMP, vegetation removal and planting will be minimal. Additionally, pursuant to **Special Condition Six (6)**, the applicant is required to submit a Final Habitat Restoration and Monitoring Program, for the review and approval of the Executive Director, that identifies the species, extent, and location of all plant materials to be planted. Habitat restoration around the Bird Refuge lake and on the beaches adjacent to the lagoon, including revegetation with appropriate native species in existing vegetated areas, will protect views along that section of the coast, minimize alteration of natural land forms, and enhance visual quality of the area. During implementation of BEMP activities, impacts to visual resources and public access associated with the sand movement and construction equipment would occur; however, these impacts would be temporary in nature and would not obstruct public scenic views or degrade the visual quality of the coast. Thus, there will be no significant impacts to visual resources from the habitat restoration aspects of the proposed project.

Excavated materials that are placed in stockpiles are subject to increased erosion, and additional landform alteration would result if the excavated material were to be permanently retained on site. The resulting landform alteration and increased erosion on site could temporarily impact public views along the Andrée Clark Bird Refuge. Therefore, in order to ensure that views to and along the ocean in the project area are protected and that alterations to natural land forms are minimized **Special Condition One (1)**, Best Management Practices, requires that stockpile sites be temporary. In addition, stockpiled materials shall be located as far from the lake or wetland areas on site as feasible and in no event shall materials be stockpiled less than 30 ft. in distance from the top edge of the lake. Temporary erosion control measures and BMPs shall be implemented in the event that temporary stockpiling of material is required. These temporary erosion control measures shall be monitored and maintained until all stockpiled material has been removed from the project site. Permanent stockpiling of material on site shall not be allowed. Pursuant to **Special Condition Five (5)**, the

applicant shall provide evidence to the Executive Director of the location of the permanent disposal site for all excavated material prior to removal of the material from the project site. Should the dump site be located in the Coastal Zone, the site shall be required to have a coastal development permit authorizing it to accept the fill.

The proposed project also includes the installation of interpretive and educational signs associated with the restoration of dune habitat near the lagoon and the restoration of willow scrub, coastal sage scrub, and salt marsh habitat around the perimeter of the lake. Although the applicant has proposed to install the subject signs, the location, number, and sizes of the signs, as well as the exact language that will be used on these signs has not been submitted. In order to ensure that the subject signs do not have an adverse effect on the ability of the public to access public trails and open space, the Commission finds it necessary to impose **Special Condition Eleven (11)**, which requires the applicant to submit an informational/educational signage plan that describes the location, number, size, and contents of signs to be placed. This condition also requires that the signs are installed in the manner described within the approved signage plan.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30211, and 30251 of the Coastal Act and City of Santa Barbara LUP policies 3.1-1, 3.1-21, and 4.3-6.

#### **D. Hazards and Geologic Stability**

Section 30253 of the Coastal Act and LUP Policy 5.1-18 (Hazard Risk Reduction) states, in pertinent part, that new development shall:

- (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.

Section 30253 of the Coastal Act and LUP Policy 5.1-18 (Hazard Risk Reduction) mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. In addition, Section 30253 of the Coastal Act also mandates that new development provide for geologic stability and integrity and minimize risks to life and property.

The project site and surrounding area has been subject to periodic flooding. One of the goals of the proposed project is to prevent flooding of Cabrillo Boulevard and other development by lowering the sand elevation of the beach to facilitate a breach of the lagoon. The proposed weir and weir gate replacement will allow for adaptive management of the water level and habitat conditions within the lake by enabling control of connectivity between the lake, lagoon, and ocean, which will serve to minimize

potential flooding hazards and to maintain the water level of the lake. Specifically, the water level, water quality, and salinity could be adjusted through opening or closing the weir in anticipation of rain events.

As described above, the proposed development is located in an area of the Coastal Zone which has been identified as subject to potential hazards from flooding and erosion. The areas surrounding the Bird Refuge have previously been subject to damage as the result of seasonal flood events during the winter storm season. Although the proposed development is intended to reduce the potential for flooding of the developed areas immediately upland of the project site, there remains some inherent risk. The Coastal Act recognizes that certain types of development, such as the proposed project, 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. As such, the Commission finds that due to the unforeseen possibility of erosion and flooding, the applicant shall assume these risks as a condition of approval. Therefore, **Special Condition Ten (10)** requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk will show 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.

## **E. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified 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 approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to any public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. **Special Conditions One (1) through Eleven (11)** are required to assure the project's consistency with Section 13096 of Title 14 of the California Code of Regulations. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any

4-21-0227

City of Santa Barbara Parks and Recreation Department

significant adverse impacts that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Coastal development permit No. 4-11-043 and associated file documents.

Andrée Clark Bird Refuge Biological Site Assessment, prepared by Kisner Restoration and Ecological Consulting (KR&EC), May 2020.

Coastal Hazards Analysis for Andrée Clark Bird Refuge, prepared by Anchor QEA, December 2019.

City of Santa Barbara Community Development Department Final Mitigated Negative Declaration PLN2019-00425 SCH #2020100594.

City of Santa Barbara Planning Commission Resolution No. 012-20. 1100 E. Cabrillo Boulevard & 1414 Park Place. Agreement to Consolidated Coastal Development Permit. December 17, 2020.

Phase 1 Archaeological Resources Investigation Andrée Clark Bird Refuge Restoration Project. 1400-1700 East Cabrillo Boulevard. Santa Barbara, California. APN 017-381-001; 017-382-001. Prepared by Wood Group Environmental & Infrastructures Solutions, Inc. January 2020.