

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0047

Applicant: Bel Air Bay Club / Christopher McGranahan

Agent: Moffatt & Nichol; Armbruster Goldsmith & Delvac, LLP; and McCabe & Company

Location: 16800 Pacific Coast Highway, Pacific Palisades, Los Angeles County (APN 4415-036-001; 4415-036-900)

Project Description: Follow-up to emergency authorization for construction of temporary sand berms (approximately 430 ft. long and 5,700 sq. ft.) between the upcoast and downcoast groins pursuant to four emergency coastal development permits to protect against wave uprush and inundation of Club facilities during extreme high tide and/or swell events; implementation of a security guard training program; and payment of funds to the Boys and Girls Club of West San Gabriel Valley's Fast and Fun sailing program.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant, Bel Air Bay Club (BABC), is requesting follow-up authorization of temporary sand berms constructed pursuant to four emergency coastal development permits between December 2018 and December 2020 for the purpose of protecting against wave uprush and inundation during periods of extreme high tide and/or swell events. The sand berms, which have since been removed, were located between two recently repaired groins fronting the central portion of the BABC facility and measured approximately 430 ft. long, 15 ft. wide, and rose to varying heights of 3 ft. to 7 ft. above existing grade (+17 to

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+24' MLLW) as measured on the landward side of the berm, with a footprint of approximately 5,700 sq. ft. and a volume of approximately 900 cy. to 1300 cy. Approximately twenty four (24) hours prior to extreme high tide or storm events, a tractor pushed sand landward from the public and private beach area seaward of the site to create the berms and approximately twenty four (24) hours following high tide and/or swell events, leveled the berms and restored the beach profile. The subject sand berms were located on both private and public beach area seaward of the Pacific Coast Highway and fronting the BABC facility, north of Will Rogers State Beach in Pacific Palisades, City of Los Angeles. Due to BABC's location, which straddles the mean high tide line, it is subject to coastal hazards such as flooding from storm events, wave action, and scouring from beach erosion. All of these hazards are anticipated to be exacerbated with predicted sea level rise. Berming is an effective soft alternative to hard protective measures and provides temporary relief from flooding of BABC facilities. The standard of review for the proposed project is Chapter 3 of the Coastal Act.

The purpose of the emergency sand berms were to provide temporary protection for development on site while the applicant implemented repairs to two existing rock groins located immediately seaward of the subject site (see CDP No. 5-17-1009) and to allow for an evaluation of the effectiveness of the repaired groins in maintaining an adequately wide beach on site. CDP No. 5-17-1009 was approved by the Commission in December of 2018 and the applicant subsequently completed the groin repair work in January of 2020. This follow-up CDP application originally included the request to allow for future construction of sand berms over a three-year period on an-as needed basis. However, the applicant's coastal engineer has since confirmed that the repaired groins have performed sufficiently to maintain adequate beach width on site so that protection of any development on the applicant's property from wave hazards is no longer necessary.

Thus, the applicant no longer anticipates the need for further sand berming at the subject site and has consequently revised the proposed project to exclude future sand berming activities. During the evaluation of this CDP application, Commission staff worked with the applicant and their coastal engineering consultants to evaluate alternative designs and configurations for the emergency sand berm, including reducing its length and height, and relocating the berm further landward to minimize potential adverse impacts to intertidal habitat. Although this application has been revised to eliminate any future construction of sand berms on site as part of the development approved by this coastal development permit, if, in the future, the applicant does request a permit, emergency or otherwise, to construct sand berms to address coastal hazards, such as flooding, the applicant should expect that consideration for any approval would require this less environmentally damaging (landward) alternative rather than what was approved pursuant to the previous emergency permits unless an alternative with even fewer impacts to coastal resources is identified.

In addition, the subject site has been subject to previous unpermitted development including unpermitted berming at the site between 2002 and 2018 and the preclusion of public access through the use of security guards on the public beach. The applicant has worked cooperatively with the Commission's Enforcement Division to address these violations by incorporating the following public access and recreational components into the project description, including: implementation of a security guard training program and

contribution of \$382,500 in funding to the Boys and Girls Club of West San Gabriel Valley's Fast and Fun sailing program.

Therefore, and in order to ensure that the subject development is consistent with Chapter 3 policies of the Coastal Act relating to coastal hazards, public access, biological resources, water quality, and visual resources, and to resolve Coastal Act violations, staff is recommending approval of the proposed coastal development permit with **six (6) special conditions**. The special conditions would require the applicant to: 1) make monetary contributions to the Boys and Girls Club of West San Gabriel Valley's Fast and Fun sailing program; 2) implement a security guard protocol; 3) submit a Baseline Beach Profile and Intertidal Invertebrate Survey; 4) submit a Berm Alternatives Analysis and Adaptation Plan; 5) obtain all other necessary local, state, and federal authorizations; and 6) indemnify the Commission. As conditioned, the emergency development is consistent with Chapter 3 of the Coastal Act.

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

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Conceptual Emergency Sand Berm Design, dated December 18, 2018](#)

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

[Exhibit 4 – Proposed Seaward Sand Berm Design, dated July 26, 2019](#)

[Exhibit 5 – Proposed Landward Sand Berm Design, dated February 12, 2021](#)

[Exhibit 6 – Boundary Lines, 2003 State Lands Commission & Bel Air Bay Club agreement](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit Application No. 5-21-0047 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

The Commission hereby approves coastal development permit No. **5-21-0047** and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Monetary Payments to the Boys and Girls Club of West San Gabriel Valley's Fast and Fun Sailing Program

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

- A. The \$382,500 amount shall be deposited into an interest-bearing account, to be established and managed by the Boys and Girls Club of West San Gabriel Valley. The purpose of the account shall be to fund the Fast and Fun Sailing Program, which connects underserved youth to the waterways of Los Angeles. The entire fee and accrued interest shall be deposited into the account within three years of issuance of this permit and must be used for the above stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. If any portion of the funds remain ten years after they are deposited, or if the Fast and Fun Sailing Program ceases to exist, the permittee shall ensure that the funds are transferred into another interest bearing account managed by the California Coastal Conservancy for use on a similar project that increases coastal access and recreational opportunities for underserved youth.
- B. PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall draft and enter into a memorandum of understanding (MOU) with the Commission and the Boys and Girls Club, which shall include, but not be limited to, the following: 1) a description of how the funds will be used to fund the Fast and Fun Sailing Program; 2) a requirement that the entity accepting the funds must only spend the funds on the Fast and Fun Sailing Program; and 3) the terms provided in subsection A of this condition.

2. Security Guard Protocol

A. PRIOR TO ISSUANCE OF THIS PERMIT, a new security guard protocol shall be submitted by the applicant for review and written approval of the Executive Director and shall contain training and detailed instructions and restrictions for how Bel Air Bay Club security guards may interact with the public, including instructions that Bel Air Bay Club security guards will refrain from: 1) undertaking any activity that discourages or prevents use of public tidelands or public beach or permitted lateral access, including the use of security guards to question any person who is present on such areas and who is not violating any applicable state or local law or regulation, or to attempt to cause any such person who is present on such areas and not violating any applicable state or local law to leave or move; or 2) attempting to delineate the private/public boundary on the beach, other than as permitted to periodically relocate signage as required under CDP No. 5-17-1009. The protocol shall include a provision that ensures guards will not take any action

that interferes with the public's use of public beach or permitted lateral access across the property. Upon written approval by the Executive Director, the Bel Air Bay Club shall comply with the security guard protocol.

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

C. Within twelve (12) months of Commission approval of CDP No. 5-21-0047, the applicant shall record document(s) in a form and content acceptable to the Executive Director limiting the use and enjoyment of the parcel owned in fee by the applicant and requiring adherence to the security guard protocol as described in Special Condition No. 2, including the approved security guard protocol as an exhibit. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding all successors and assigns of the applicant or landowner in perpetuity. The Commission Executive Director may extend the deadline for recording the deed restriction for good cause.

3. Baseline Beach Profile and Beach Intertidal Invertebrate Survey

By acceptance of this permit, the permittee agrees to submit for review and approval of the Executive Director, a Baseline Beach Profile and Beach Intertidal Invertebrate Survey (hereafter: Survey). The Survey shall be prepared by a qualified professional with experience in coastal beach ecosystems and coastal engineering and shall include a report summarizing the results of the Survey. The Survey shall include the following:

- A. Beach Profile Survey: The Survey shall include an assessment of the baseline beach profile within thirty (30) days from the date of Commission action on this permit for the purpose of documenting the present (summer) condition of the beach. The Survey shall include, but not be limited to, the following: beach topography, including width and length of wet and dry beach areas in between the two repaired groins from mean low tide to the property boundary; tidal boundaries, including mean low tide and mean high tide; beach slope; relevant jurisdictional boundaries, such as private property lines and beach maintenance boundary lines subject to State Lands Commission leases; and the location of the groins. The Survey shall be prepared following industry best practices and standard survey methods, such as using standard vertical datums (i.e., NAVD88). A second assessment of the baseline beach profile shall be conducted approximately six (6) months from the date of the initial (summer) assessment of the beach profile for the purpose of documenting the baseline (winter) beach profile.
- B. Beach Intertidal Invertebrate Survey: The applicant shall retain the services of a qualified biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director for the purpose of surveying the sandy beach intertidal infaunal community. Beach intertidal invertebrate sampling

shall be conducted within thirty (30) days from the date of Commission action on this permit and approximately six (6) months from the date of the initial sampling. Beach sampling shall include two locations: a control site –the beach just west of BABC and the western-most groin– and a potential impact site –the beach directly in front of past berms. At each location, three cores each from the low, mid, and high intertidal zones shall be collected. Beach sampling must employ 10 cm diameter by 20 cm deep cores and a 1.5mm/1.0mm aperture sieve. Sediments will be removed from the cores by sieving. All invertebrates and sediment retained on the sieves will be placed in labeled jars, chilled, and transported to a laboratory for immediate processing or for preservation and processing. If samples are not processed immediately, all invertebrates will be preserved in buffered formalin in seawater for later identification. Beach intertidal infaunal invertebrates collected during the sampling will be evaluated for species richness (number of unique species), species population abundance, and diversity (Shannon's index) for each location and beach zone (low, mid, high) sampled. All animals retained on the sieves will be identified and enumerated. Species richness and diversity will be evaluated for separate beach zones, as well as in aggregate for each location. Statistical analysis shall be conducted to compare the richness and diversity of the separate beach zones of each location and to compare the richness and diversity in aggregate of each location.

4. Berm Alternatives Analysis and Adaptation Plan

By acceptance of this permit, the permittee agrees to submit, for the review and written approval of the Executive Director, a Berm Alternatives Analysis and Adaptation Plan (hereafter: Plan) no later than eighteen (18) months following Commission action on this permit, unless an extension is granted by the Executive Director for good cause consistent with the conditions herein. The Plan shall include an analysis of sea level rise at the subject site under current and projected future hazard conditions and a full evaluation of all potential alternatives to the continued construction of temporary sand berms to address tidal-induced erosion, wave uprush and inundation at the subject site. The Plan shall include alternative methods for protection, both hard and soft; removal and/or relocation of the entire (lower) Bel Air Bay Club facility, certain primary structures, and/or certain accessory structures, including the Lanai and all structures seaward of the seawall; accommodation strategies such as elevating all or certain primary or accessory structures, including the Lanai and all structures seaward of the seawall; a sand replenishment approach; a no-action alternative; and any other potential alternatives. All alternatives evaluated shall include an assessment of the economic, operational, technical (e.g., engineering and architectural feasibility), and regulatory feasibility of implementing such alternatives, including through independent approaches and/or local and regional approaches at adaptation. Each alternative shall also consider impacts to public access, biological resources and other coastal resources, and impacts to the beach profile. The Plan shall also discuss the status of the beach in terms of sand loss and/or accretion from the upcoast and downcoast groins. The Plan shall be subject to review and approval by the Executive Director, which may result in revisions and/or additional information where necessary. The Plan shall propose a recommended alternative to the continued construction of temporary sand berms at the subject site in the event that sand accretion from the upcoast and downcoast groins proves inadequate in protecting the subject site

from tidal-induced erosion, wave uprush and inundation. The recommended alternative shall be subject to concurrence by the Executive Director and may be conditioned as part of any future application for temporary shoreline protection, such as sand berming, at the subject site, if continued shoreline protection of the subject site is necessary.

5. Required Approvals

By acceptance of this permit, the applicant shall obtain all other necessary Local and State permits that may be necessary for all aspects of the emergency development, including approvals from the City of Los Angeles and the Los Angeles Regional Water Quality Control Board, unless evidence is submitted that such approval(s) are not required. In addition, by acceptance of this permit, the applicant agrees to obtain all necessary Federal permits that may be necessary for all aspects of the emergency development, including, but not limited to, the U.S. Army Corps of Engineers, unless evidence is submitted that such approval(s) are not required.

6. Indemnification by Applicant

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant, Bel Air Bay Club (BABC), has submitted this application to comply with the conditions of authorization for temporary sand berms¹ constructed pursuant to four emergency coastal development permits. The temporary sand berms were installed to protect club facilities from wave uprush and inundation while the applicant implemented repairs to two existing rock groins located immediately seaward of the subject site (under CDP No. 5-17-1009) and to allow for an evaluation of the effectiveness of the repaired groins in maintaining an adequately wide beach on site.

The sand berms were installed for specific high tide events, but generally when tides were predicted to be 6 ft. or greater, or when 5 ft. tides (or greater) were predicted to coincide with swell heights of 2 ft. or higher, as forecasted for the Santa Monica tide gauge station 9410840 (using the MLLW datum). The sand berms were located between two recently repaired groins and measured approximately 430 ft. long, 15 ft. wide, and rose to a varying height of 3 ft. to 7 ft. above existing grade (+17 to +24' MLLW) as measured from the

¹ Throughout this staff report, the development described is in plural (i.e., temporary sand berms) because multiple sand berms were constructed and removed over the emergency authorization period of December 2018 to December 2020. However, at any given time, only one sand berm was present at the subject site.

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landward side of the berm, depending on the severity of the high tide and/or surf event ([Exhibit 2](#)). The sand berms had a footprint of approximately 5,700 sq. ft. and a volume of approximately 900 cy. to 1300 cy., and provided protection to the Lanai, an outdoor patio fronting the central portion of BABC, as well as incidental protection to the cabanas, St. Nicolas and Catalina dining rooms, the lobby, the Anacapa bar and terrace, and the palapas dining area and children's playground ([Exhibit 3](#)).

To construct the berms, a small to medium tractor² pushed sand from the public and private beach area seaward of the mean high tide line (MHTL), landward up the beach to form a low berm fronting the central portion of the BABC facility approximately twenty four (24) hours prior to high tide and/or swell events ([Exhibit 2](#)). Sand was removed from the take zone to a maximum depth of 1.5 ft. below ground surface, while the sand berms were shaped so that both the landward and seaward sides would have a slope of 2:1. Running the berms between the heads of the upcoast and downcoast groins allowed the groins to provide flank protection to both ends of the sand berms and reduce the potential for wave run up to wrap around the berms and reach the BABC facilities. Following the end of the high tide and/or swell event, the tractor leveled the berms and restored the beach profile. In total, BABC constructed fifteen (15) sand berms from December 2018 to December 2020.

During construction and removal operations, a flagger was on site to accompany the tractor and ensure all beach users maintained a safe distance from operating machinery. As conditioned by the ECDPs, no overnight storage of equipment or materials was permitted to occur on the sandy beach, while construction materials or debris were prohibited from being stored in areas that could be subject to wave erosion and dispersion. In addition, no heavy machinery was stored in the intertidal zone.

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

The applicant is also proposing to implement a security guard protocol that contains strict instructions and restrictions on how BABC security guards may interact with the public, including a restriction on BABC security guards entering the sandy beach to confront members of the public.

The project site is located on the beach seaward of the BABC at 16800 Pacific Coast Highway, Pacific Palisades, north of Will Rogers State Beach in the City of Los Angeles ([Exhibit 1](#)). The subject site is adjacent to the south flank of the Santa Monica Mountains within the Santa Monica Bay, which spans from Point Dume to the Palos Verdes Peninsula. The sandy beach in between the MHTL and the property boundary ranges from approximately 10 ft. to 60 ft. wide at the west to approximately 10 ft. to 160 ft. wide at the east, totaling approximately 69,296 sq. ft. The area of the wet and dry sand seaward of the BABC property boundary is subject to the public trust and maintained by BABC under a State Lands Commission lease (Appendix A). The subject beach is relatively narrow

² The applicant used its own Cat 939C, which weighs 20,908 lbs. and measures 14.3 ft (with combo blade/bucket) by 6.42 ft.

compared to nearby beaches, such as Venice and Santa Monica, which are approximately 300 ft. to 500 ft. wide, respectively. Depending on tides and beach sand conditions (typically the beach sand is eroded in the winter season and returns in the summer season), the BABC facilities are between a few feet (at the western end of the property in the winter months) to approximately 225 ft. (at the eastern end of the property in the summer months) from the surfline and wet sandy beach. The sand berms were located on both private and public beach area; however, both the sand berms and excavation area were located within the beach maintenance area subject to BABC responsibility. BABC entered into a boundary line agreement with the State Lands Commission (SLC) in 2003. Part of that agreement includes a beach maintenance lease which designated the applicant, BABC, as the responsible party for maintaining the public beach seaward of the BABC facility free from debris, as well as authorizing the construction of temporary sand berms for storm protection. Although the construction of sand berms was authorized by the SLC lease, a Coastal Commission-issued CDP is and was required for the actual construction of any sand berms in this location.

The proposed project consists of authorization for the construction of temporary sand berms located on the sandy beach area fronting the central portion of the BABC facility pursuant to Coastal Commission-issued emergency permits. Such work occurred on tidelands and public trust lands within the Commission's original jurisdiction. The standard of review for the proposed project is Chapter 3 of the Coastal Act. Under Section 30601 of the Coastal Act, the applicant must obtain a CDP from the Coastal Commission.

Historically, the lower BABC facility was constructed in the 1920s as a recreational and social facility. On November 9, 1937, a lease agreement was established between the BABC and the SLC that determined the boundary line between private property and public trust / state tide lands under the California State Lands ordinary High Water Mark agreement #OR 15482- 23. In 1952, this boundary line was updated to establish the private property lines and sovereign lands. In October 2003, an updated boundary line agreement was signed that established the current boundary lines and included three lease areas ([Exhibit 6](#)). One of the lease areas includes maintenance of the public beach fronting its property (Lease PRC #8467 in Appendix A). This beach maintenance lease designated BABC as the responsible party for maintaining the beach seaward of the BABC facility for public use and identifying through signage this public beach area seaward of the BABC facility. The lease prohibits the BABC from placing its own chairs, equipment, or other property on this public beach area and requires the BABC to maintain the public beach in a clean and unobstructed condition for public recreational use, including by providing a sufficient amount of trash and refuse containers for beachgoers to use that are painted the same color as those containers operated by Los Angeles County, as well as maintaining these containers by disposing of trash and refuse at an authorized landfill or refuse reception facility. Any structure or improvement not specifically authorized by the lease, including boats, fences, signs, stored objects, or other items not naturally occurring on the sandy beach were to be removed within 30 days of the effective date of the lease. However, the lease permitted the BABC to construct public access stairs over the groin adjacent to the northerly boundary of the lease premises to facilitate lateral public access.³ In addition, this lease also allows for placement and maintenance of a portable lifeguard structure and provision of lifeguard services to the public consistent with the standards

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

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adopted by the Los Angeles County's lifeguard services during the summer season of Memorial Day through Labor Day. Further, this lease allows for the construction of temporary sand berms for storm protection and stipulates that if lateral public access cannot be safely provided during berming events, the applicant (BABC) shall allow the public to pass and repass along the applicant's sandy beach property landward of the sand berms. This lease expires on October 19, 2028.

In addition, two other SLC leases are in effect at the subject site, including for the maintenance of the upcoast and downcoast groins (Lease PRC #8465 in Appendix A) and the establishment of exclusive (private) use of a public sandy beach use area on the eastern end of the property (Lease PRC #8466 in Appendix A). Under the former, the applicant is required to maintain the existing groins at the site in a manner that does not interfere with lateral public access across the public beach. In the event that physical conditions of the beach preclude safe public access across the groins, the applicant (BABC) is required to allow the public to pass and repass across the applicant's adjacent upland sandy beach property. Under the latter, the applicant may sign, flag or otherwise identify the sandy beach area on the eastern side of its property as private sandy beach area for BABC member use only.⁴ The public sandy beach area is to be demarcated with signage, and any lifeguard structure is to be painted the same color as those operated by Los Angeles County and shall not contain the name or other identifying symbols of the BABC, except as approved by the SLC. Both of these leases, PRC #8465 and PRC #8466, expire on October 19, 2023.

The Commission has previously authorized temporary sand berms at Will Rogers State Beach fronting BABC. In November 1992, the Commission approved CDP No. 5-92-108 with special conditions to allow for the construction of temporary sand berms at BABC in anticipation of certain high tides and storm surges for a period of two years (November 1992 – November 1994) (Appendix D). CDP No. 5-92-108 was then amended three times to allow for three additional two-year time extensions, covering the periods of November 1994 to November 1996 (CDP No. 5-92-108-A1), November 1996 to November 1998 (CDP No. 5-92-108-A2), and November 1998 to November 2000 (CDP No. 5-92-108-A3). Following issuance of these extensions, CDP No. 5-92-108-A3 expired in November 2000, and a new amendment was not authorized. An emergency permit (5-01-007-G) was then issued in January 2001 to again construct a temporary sand berm to protect BABC structures from high tides and storm surges.

In June 2004, CDP No. A-5-PPL-02-162/5-02-099 was approved with special conditions to demolish 60 percent of the lower BABC facility and redevelop the central portion of the Club that, in addition to the Lanai (an outdoor patio fronting the central BABC facility), is currently subject to wave uprush and inundation. The June 2004 approval also permitted the realignment of a seawall that extended nearly the entire length of the BABC, closing the gap in the seawall that was present immediately landward of the Lanai and adding 22 on-site parking spaces (Appendix C). The seawall described in the 2004 CDP is present on the site today.

⁴ While SLC Lease PRC #8466 allowed for signage demarcating the private recreational lease area as a private beach, the Commission subsequently approved CDP No. 5-17-1009 for groin repairs, including special condition No. 11, which required the submittal of a Public Access Signage Plan that prohibited the posting of signage denoting private beach areas for the life of the development.

Following redevelopment of the lower BABC facility, no CDPs were issued for temporary berm construction until four Emergency Coastal Development Permits (ECDPs) were issued starting in December 2018, including: G-5-18-0031 in December 2018, which required the applicant to submit a complete CDP application for temporary berm construction and evaluate berming alternatives; G-5-19-0028 in June 2019; G-5-19-0061 in December 2019; and G-5-20-0014 in February 2020, which was extended through December 31, 2020. In addition, on December 12, 2018 the Commission approved CDP No. 5-17-1009 for the repair and reinforcement of two groins seaward of the BABC to their 1947 design footprint and bulk (Appendix E). That CDP also required, through three special conditions, the submittal of a Public Access Signage Plan, which required conspicuous signage to be posted on the beach adjacent to the BABC that informs the public of the private/public boundary, as well as removal of an unpermitted sand berm.

Following the submittal of the CDP application for temporary sand berm construction required under ECDP G-5-18-0031 in March of 2019, the proposed project was agendized for the September 2020 Commission hearing under CDP application No. 5-19-0243 (Appendix L).⁵ However, this CDP application was postponed on September 8, 2020 and ultimately withdrawn on January 11, 2021, to discuss requested revisions by Commission staff to relocate the sand berm and excavation area landward of the MHTL based on information provided in the applicant's berming relocation analysis. Alternatives discussed under the berming relocation analysis also included use of dry sand on the applicant's property to construct the sand berm. Subsequently, on January 11, 2021, the applicant resubmitted the subject CDP application No. 5-21-0047, which included relocating the sand berm and excavation area above the MHTL, as well as scaling down the volume of the sand berm and using sandbags (filled with dry sand from the applicant's property) to protect against any coastal waters that could potentially overtop the sand berm. However, the applicant no longer anticipates the need for further sand berming at the subject site given that the repaired groins have performed sufficiently in maintaining adequate beach width so that protection of development on the applicant's property from wave hazards is no longer necessary. On March 19, 2021, the applicant revised the proposed project to exclude any future sand berm construction, use of sandbags, and relocation of the palapas dining area and children's playground (which was proposed in conjunction with future sand berming activities). As such, CDP application No. 5-21-0047 as described in this staff report only includes authorization for the temporary sand berm construction undertaken pursuant to the four aforementioned emergency coastal development permits, as well as resolution of the unpermitted sand berms during the approximate period of 2002 to 2018, as discussed in further detail below.

B. COASTAL ACT VIOLATIONS

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

⁵ The staff report for CDP No. 5-19-0243 that was agendized for the September 2020 hearing can be found here: <https://documents.coastal.ca.gov/reports/2020/9/Th19a/Th19a-9-2020-report.pdf>

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

On June 25, 2020, Commission staff sent a follow-up NOV letter in order to address the security guard issue. In response, on July 15, 2020 the BABC’s representative sent Commission staff a response letter and attached video footage from BABC security cameras that visually captured portions of the exchange between BABC employees and members of the public that were recreating on the public beach adjacent to the BABC. In the video footage, it is clear that the members of the public were located both on state tidelands and within the BABC’s Maintenance Lease area, both of which are public lands available for public use and recreation, when they were approached by BABC staff and Palisades Patrol security guards.⁶ According to the BABC response letter dated July 15, 2020, and as seen in the footage, when they contacted members of the public that were recreating on the public beach, both BABC staff and Palisades Patrol security guards were carrying the Beaches and Harbors “Beach Responsibly” flyer, explaining the County’s Public Health Order at the time that only permitted active recreation on the beach and required social distancing of six feet between groups and face coverings to be worn when individuals were out of the water and around others. According to the letter, the BABC employee and Palisades Patrol security guard “politely informed the beachgoers, who were sitting on the beach and without masks, that the Los Angeles County Department of Public Health Order in effect at that time prohibited sitting, gathering and sunbathing on the beach.” The BABC stated in its letter that it believes that under the Maintenance Lease the BABC serves “a proxy role...on behalf of the State Lands Commission and Los Angeles County Department of Beaches and Harbors to maintain the Maintenance Lease area in a safe and hygienic condition.”

In Commission staff’s response letter to the BABC dated August 17, 2020, staff told the BABC that while staff is of course supportive of the County’s public health order to protect the public from COVID-19, Commission staff does not believe the BABC or its staff has the legal authority to enforce the County’s public health order,⁷ and, moreover, attempts to do so might illegally discourage public use of public beach and tidelands, which is indeed what has occurred. The August 17 letter explained that Commission staff does not accept the position of the BABC that the club’s employees only “politely informed the beachgoers” of the County’s Public Health Order. Commission staff have received credible information from a member of the public that during the incident apparently captured in the security footage, BABC security guards informed several groups of people that the entire beach

⁶ It is our understanding that Palisades Patrol (Gates Security) is hired by the BABC to patrol the Club’s premises.

⁷ We note that according to the Beaches and Harbors website, which states in relevant part: “The Department of Beaches and Harbors does not have the authority to enforce the Health Officer’s order; it can only educate beachgoers on current rules and restrictions. We rely on our partners in local law enforcement to issue citations, if absolutely necessary. Lifeguards’ primary duty is to ensure the safety of people in the water. They are not there to police the beach.” Thus, although BABC argues that it is has assumed some kind of authority on behalf of Beaches and Harbors, Beaches and Harbors itself does not have the authority to enforce the health order.

was private, regardless of whether or not the public was recreating on state tidelands.⁸ Commission staff had a follow up call with the BABC and their representatives on August 18, 2020, and during that call, although the BABC maintains that its staff were acting appropriately to implement a public health order, the BABC has agreed to pay \$382,500, as described herein, to resolve both the 1) unpermitted construction of a sand berm from 2002 to 2018, and 2) the public access violation described above. During the negotiation process, staff received input from Robert Garcia, at the time Executive Director of City Project, wherein he suggested that the BABC fund a coastal recreation program for underserved youth. Our staff proposed this idea to the BABC, and they identified a local program that fully meets this criteria. Therefore, the monetary payment will fund the Boys and Girls Club of West San Gabriel Valley's Fast and Fun Sailing Program, which each summer, introduces sailing to hundreds of underserved youth in Los Angeles County.

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

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the actions authorized by the permit in compliance with all of the terms and conditions thereof will result in resolution of the violations consisting of 1) unpermitted construction of a sand berm from 2002 to 2018, and 2) the June 11, 2020 and August 11, 2016 instances of obstruction of public access described herein. However, if compliance with the security guard protocol does not occur as proposed, and/or if the monetary penalty is not paid consistent with both **Special Condition No. 2** and **Special Condition No. 1**, enforcement staff will consider action to address the violations of the Coastal Act, including but not necessarily limited to action pursuant to Coastal Act Section 30821, which authorizes the Commission to impose civil penalties for violations of the Coastal Act's public access provisions.

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

⁸ Commission staff's disagreement with the BABC's description of the June 11 incident is in part informed by its experience during an August 11, 2016 site visit during which Commission staff was asked by BABC staff to leave state tidelands, in violation of the Coastal Act.

C. OTHER AGENCY APPROVALS

Local approval from the City of Los Angeles and 401 Certification from the Los Angeles Regional Water Quality Control Board (LARWQCB) may be required for the emergency development (i.e., construction of sand berms).

Construction of temporary sand berms at BABC is also authorized and contemplated by one of three leases between BABC and the State Lands Commission (SLC) related to BABC's use and maintenance of the public beach fronting its property (Appendix A). As described above, the boundary line established by the 2003 agreement allowed SLC and BABC to "settle forever the location of the seaward boundary of the lands owned by the BABC" and that the "BABC property shall not be subject to the public trust for commerce, navigation and fisheries, except as provided in Public Res. Section 6339(a); restrict, limit and prohibit forever the ability of the State to ever challenge or dispute the validity of the new boundary line...."

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

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

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

Furthermore, under the emergency coastal development permits, the applicant operated heavy machinery to excavate and move sand seaward of the High Tide Line (HTL), or highest predicted tide for Santa Monica station 9410840 in 2019 (identified as 6.8 ft. NAVD88 / 7.08 ft. MLLW). As such, USACE authorization is required given that the HTL or highest predicted tide represents the U.S. Army Corps of Engineers (USACE) most landward jurisdiction. BABC has prepared an application for USACE authorization, but the final permit has not yet been issued.

Accordingly, **Special Condition No. 5** requires the applicant to obtain and submit all local, state, and federal agency authorizations, or documentation stating that no such approvals are necessary.

D. PUBLIC ACCESS

Article X Section 4 of the California Constitution provides:

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

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

The temporary sand berms authorized pursuant to four emergency coastal development permits were located on the sandy beach area fronting the central portion of the BABC facility, within an area that has moderate to high recreational use during the summer periods. Public access is available along the entire stretch of the approximately 430 ft. long project area, however the public portion of the beach is relatively narrow, measuring from approximately 10 ft. to 60 ft. wide at the western half of the property and to 10 ft. to 160 ft. wide at the eastern half of the property when measuring between the mean high tide line and the property boundary. The public beach area is identified in the berm design plans submitted as part of the follow-up CDP application No. 5-19-0243 ([Exhibit 4](#) and [Exhibit 6](#)), and while it is subject to the public trust, it is maintained by BABC for public beach recreational use under a maintenance lease with the SLC (PRC #8467 in Appendix A). This public beach area includes areas of dry sand, wet sand when the public beach is inundated during high tide, and an area inland of the sand berms when the sand berms were present. As such, during periods of extreme high tide and/or heightened swell conditions, lateral public access may become impeded and even hazardous.

Lateral public access was provided during sand berming events authorized under the four emergency permits. The public access pathway was located landward of the sand berm but ran seaward of the BABC facility and in some cases was situated on private property entirely. The applicant utilized a small tractor to excavate and push sand landward from the public beach area to create the berm, as well as seaward back into the original source area following berming events. Heavy machinery was staged at the westernmost portion of the BABC private parking lot, with the construction access route running parallel to the public access route until it crossed the public access route at the head of the upcoast (western) groin, which represented the westernmost edge of the constructed sand berm. In order to minimize impacts to lateral public beach access during berm construction and removal, flaggers and signage notified beachgoers of the construction zone and the public access route. A public access pathway as implemented under the prior ECDPs is shown in the conceptual berm design plans ([Exhibit 2](#)).

While lateral public access was provided during berming events, almost all of the excavation area and approximately half of the constructed sand berm were located on the public beach area subject to the public trust. Following extensive discussions concerning the location of future sand berms under the follow-up CDP application No. 5-19-0243 and No. 5-21-0047, the applicant revised the project to relocate the proposed sand berm as landward as feasible. However, as discussed under the Project Description and Background section, the applicant has since revised the project to exclude future sand

berming activities. Accordingly, staff notes that a more landward location for sand berming activities is feasible, with public access still provided landward of the berm, as shown in the sand berm design plans that have since been withdrawn (see C-102 in [Exhibit 5](#)). This more landward-located sand berm would reduce the use of public trust lands for private interests and should the applicant request authorization for future berming activities, it represents a viable alternative.

In the long term, lateral public access at the subject site is under threat given that the public beach has progressively narrowed over time. Since the sandy beach area cannot migrate inland due to the fixed presence of BABC facilities, including a seawall, the subject beach has narrowed considerably and has experienced a general lack of sand supply and high sand drifting. Based on the Ocean Protection Council's (OPC) Sea Level Rise Projections for the Santa Monica Tide Gauge Station (Appendix F), the subject site will likely experience between 2.3 ft. to 3.3 ft. (or 100 cm) of sea level rise based on low emissions and high emissions by 2100, respectively. Similarly, under the medium-high risk aversion scenario, which the OPC recommends utilizing for development that is less adaptable, there is a 0.5% chance that sea levels will rise between 5.5 ft. to 6.8 ft. by 2100 based on low and high emissions, respectively. The applicant's Beach Preservation Study dated March 2016 and Groin Repair Study dated February 2017 provided under the groin repair permit approved in December 2018 (Appendix E) confirms that there has been a decrease in the width of the subject beach between 20 ft. to 50 ft. from 1989 to 2002, resulting in an erosion rate of 1.5 to 3.8 ft. per year. With sea level expected to rise over the coming decades, the public beach is expected to disappear in its entirety unless the BABC relocates some or all of its facilities, or alternative adaptation measures are implemented. One such alternative has been employed through the repair of the upcoast and downcoast groins fronting the BABC, which are anticipated to aid in sand accretion at the subject beach and halt beach narrowing to some extent. Thus, in the short-term, the constructed sand berms provided protection to BABC facilities and ensured safe, lateral public access during periods of extreme high tide and/or heightened swell conditions. However, based on a sea level rise assessment⁹ provided by the applicant, the projections indicate that beyond 25cm of sea level rise based on the medium-high risk aversion scenario, the Mean High Tide Line will migrate inland and only stop when it reaches the seawall that spans the length of the BABC, virtually eliminating the public beach and lateral public access entirely. Accordingly, in the long-term, any future construction of a temporary sand berm (which is not authorized under this CDP) will not afford the BABC protection from wave uprush and inundation (after approximately ten years) or afford a safe, lateral public access route, unless sand accretion from the upcoast and downcoast groins reverse ongoing beach narrowing. Construction of temporary sand berms was therefore a short-term, temporary solution to address flooding and to ensure safe, lateral public access during periods of extreme high tide and/or heightened swell conditions until a long-term solution was identified. As such, since the applicant no longer proposes to construct a temporary sand berm but may still need to in the future given the conditions of the beach, **Special Condition No. 4** requires the applicant to explore a practical long-term alternative to berming, which occupied a significant portion of the public's sandy beach area. Further, **Special Condition No. 4** also requires the applicant to assess whether recent repairs to the upcoast and downcoast groins aid in sand accretion at the subject site.

⁹ The applicant's Sea Level Rise Assessment made findings based on the proposed sand berm project that was ultimately withdrawn (see Appendix G, as part of CDP application No. 5-19-0243). See Project Description and Background section.

In addition to the Coastal Act policies that support public access and equal opportunities for recreation, the Commission has the responsibility to protect the public trust and public trust uses.¹⁰ Coastal Act regulations¹¹ define public trust lands as “all lands subject” to the common law public trust and associated with trust purposes, including recreation. In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation, but has been extended to protect the environment (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260), and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake (*Nat’l Audubon Soc. v. Super. Ct.* (1983) 33 Cal. 419, 436-437). In some jurisdictions, the doctrine explicitly protects “dry sand” recreation adjacent to public trust lands (*Matthews v. Bay Head Improvement Assn.* (1984) 95 N.J. 306, 331-332), on the rationale that “reasonable enjoyment” of the shore and sea cannot be realized without some use of the dry sand area (*Id.* at 325).¹²

California recognizes access as a component of public trust resources. A July 2017 report by the Stanford Center for Ocean Solutions explains that agencies “may not undertake or authorize uses of uplands without appropriate safeguards for nearby public trust resources and uses.”¹³ The SLC, which administers leases on public trust lands, analyzes the entire area of public trust impacts, including impacts on upland recreation.¹⁴ Thus, use of dry land adjacent to public trust lands may not interfere with recreation and other public trust uses. The concern is complicated by the effects of sea level rise. As sea levels rise, and beaches and bluffs migrate inland, maintaining development adjacent to the shoreline will in many cases cause the narrowing and eventual loss of beaches, dunes and other shoreline habitats as well as the loss of offshore recreational areas. This narrowing, often referred to as the “coastal squeeze,” can occur when shoreline protection or other fixed development prevents the landward migration of the beach that would have otherwise occurred.

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

Recognizing that the construction of temporary sand berms is at best a temporary solution to protecting either the BABC or public access on this beach, and to address impacts to public access and public trust resource caused by the construction of sand berms at this location –as well as other impacts of the constructed sand berms discussed more fully in

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

¹¹ Cal. Code Regs., title 14, § 13577(f).

¹² In a 2005, the same court affirmed *Matthews* and described access over uplands as “integral to the public trust doctrine.” (*Raleigh Ave. Beach Assn. v. Atlantis Beach Club, Inc.* (2005) 185 N.J. 40, 53.)

¹³ Center for Ocean Solutions, Stanford Woods Institute for the Environment, *The Public Trust Doctrine: A Guiding Principle for Governing California’s Coast Under Climate Change* (2017), p. 5.

¹⁴ See e.g., Section 3.2.4, Public Trust Impact Analysis, Broad Beach Restoration Project Revised Analysis of Impacts to Public Trust Resources and Values, July 2014, including discussion of long-term impacts on recreational use at pp. 3.2-23 to 26. Available at http://www.slc.ca.gov/Info/Reports/Broad_Beach/3.2_Recreation.pdf.

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the findings below– the Commission finds that it is appropriate to authorize the prior emergency construction of the sand berms to protect the BABC facility from inundation and to provide safe lateral access for the public during high tide and/or storm events. The applicant is also exploring alternative solutions for addressing impacts of sea level rise. And while the public beach area is subject to the public trust, it is maintained by the applicant for public beach recreational use under a maintenance lease with the SLC (PRC #8467 in Appendix A), including by allowing for the construction of temporary sand berms for storm protection as long as safe, lateral public access is assured. However, as noted above, a more landward location for berming is feasible and shall be considered a viable alternative in the event that berming is proposed in the future ([Exhibit 5](#)).

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

E. MARINE RESOURCES & WATER QUALITY

Sections 30230, 30231, and 30240 of the Coastal Act address the protection and management of marine resources.

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Act States:

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

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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

The applicant constructed temporary sand berms authorized pursuant to four emergency coastal development permits (see Project Description and Background section above). The sand berms were constructed in anticipation of certain high tide and/or swell events to protect BABC development temporarily from inundation, wave uprush and erosion while the applicant implemented repairs to two existing rock groins located immediately seaward of the subject site (see CDP No. 5-17-1009) and to allow for an evaluation of the effectiveness of the repaired groins in maintaining an adequately wide beach on site. However, since completion of the groin repair work and from ongoing discussions regarding future construction of temporary sand berms on an-as needed basis, the applicant notified staff in March of 2021 that the repaired groins have performed sufficiently to maintain adequate beach width on site so that continued protection of any development on the applicant's property from wave hazards is no longer necessary. As such, the applicant no longer anticipates the need for further sand berming at the subject site and has consequently revised the proposed project to exclude future sand berming activities.

As conditioned by the emergency permits, construction equipment and materials were prohibited from being stored where such equipment and materials could potentially be subject to wave erosion and dispersion. Accordingly, the applicant stored such equipment and materials on the western parking lot of the lower BABC facility, as shown in the berm design plans submitted as part of the follow-up CDP application No. 5-19-0243 (see C-102 in [Exhibit 4](#) and see C-102 in [Exhibit 5](#)), which was superseded by CDP application No. 5-21-0047.

Biological Resources

As part of the follow-up CDP application No. 5-19-0243, the applicant submitted a Biological Resources Assessment prepared in September 2018 as part of its groin repair project (Appendix E) in which a site survey determined generally that the site contained limited suitable habitat for a number of animal and plant species (Appendix J). Six special status animal species and one special status plant species were determined to have potential to occur at the project site based on the presence of suitable habitat within two miles of the project site. These include the Western Snowy Plover, California Grunion, Globose Dune Beetle, Sandy Beach Tiger Beetle, and Steelhead, as well as the Ventura Marsh Milk-Vetch. However, no such species were found on the project site itself as determined by the Biological Resources Assessment. Similarly, no nesting birds were observed at the project site or in adjacent vegetation when the survey was undertaken.

Despite these findings, the Biological Resources Assessment suggests that a qualified monitor be present during any future berm construction and removal activities to ensure that if Western Snowy Plover are present, all construction activities will be temporarily halted until it has been determined that the birds have moved from area on their own accord. Similarly, while the Biological Resources Assessment concluded that California

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Grunion were not found at the subject site, staff notes that Grunion typically spawn on sandy beach areas in Southern California immediately following high tides from March to September, and the Assessment was prepared during the last month of this period. Berming activities, including operating machinery in the intertidal zone, may disturb adult Grunion during their run period, may bury incubating grunion eggs, and/or change the beach profile such that juvenile Grunion are unable to return to the ocean. Therefore, berming has the potential to significantly impact California Grunion by excavating or depositing sediment within the intertidal zone during the seasonally predicted protected Grunion run period and egg incubation period.

Staff also notes that under the follow-up CDP application No. 5-21-0047,¹⁵ which has since been revised, the applicant agreed to move any future sand berms further landward, including by locating all excavation landward of the MHTL ([Exhibit 5](#)). While the applicant has since revised the proposed project to exclude any future sand berming activities, including this more landward-located sand berm, staff finds that impacts from a more landward-located sand berm would reduce potential adverse impacts to intertidal infaunal communities by reducing instances where heavy machinery would operate seaward of the MHTL, including excavation of wet sand seaward of MHT.

Accordingly, while the emergency sand berms involved a minimal amount of movement of wet sand, it was the least environmentally-damaging alternative known at the time. Further, the applicant has indicated that the groins repaired under CDP No. 5-17-1009 have contributed to sand accretion at the subject beach, to the extent that sand berming is no longer needed. **Special Condition No. 3** requires the applicant to conduct a summer and winter baseline survey of the beach profile and a summer and winter baseline survey of intertidal infaunal invertebrates at the subject beach. This will provide a baseline record of the beach profile, as well as species richness, species population abundance, and diversity for the subject beach in the event that the applicant applies for additional sand berming activities in the future. Similarly, **Special Condition No. 4** requires the applicant to explore a practical long-term alternative to berming given the impacts associated with the emergency sand berms, the incompleteness of the initial Berming Alternatives Analysis (discussed in more detail under the Hazards section below), and the history of berming, both permitted and unpermitted, at the subject site. In addition, **Special Condition No. 5** requires the applicant to obtain approval from the U. S. Army Corps of Engineers for excavation and fill seaward of the highest predicted tide for the subject beach.

Beach Wrack and Sand Supply

The Commission finds that regular grooming of beaches can impact the diversity and abundance of invertebrates, plants, and birds present on sandy beaches and intertidal areas. Grooming and beach nourishment can cause removal of kelp washed ashore during high tides and continual removal and disturbance to plants and invertebrates colonizing the sand. A study comparing ungroomed and groomed beaches in Santa Barbara and Ventura counties showed the abundance and species diversity of coastal strand plants to be approximately 15 times higher at ungroomed beaches than groomed beaches¹⁶. Regularly

¹⁵ The proposed project under CDP No. 5-21-0047 was initially filed under CDP application No. 5-19-0243, but CDP application No. 5-19-0243 was withdrawn and resubmitted as CDP application No. 5-21-0047.

¹⁶ Dugan, Jenifer E. and David M. Hubbard. Effects of Beach Grooming on Coastal Strand and Dune Habitats at San Buenaventura State Beach. Draft Final Report to California Resources Agency, Department of Parks and Recreation, Channel Coast District. Jan. 4, 2003.

groomed beaches also exhibit reduced richness, abundance, and biomass of many species of invertebrates, including crustaceans and insects¹⁷. This reduction of invertebrates, in turn, impacts shorebirds, including sandpipers, plover, and sanderlings that feed on crustaceans and insects in the sand.

Wrack, the tangles of kelp and sea grass that wash up onto beaches and settle in large clumps along the tide line, are of particular importance for invertebrate, plants, and birds in the intertidal zone of the beach. A diverse macrofauna, including amphipods, isopods, and insects are found in wrack. According to one study at Southern California beaches, wrack associated macrofauna made up an average of greater than 37% of species on ungroomed beaches and comprised 25% or more of the total abundance on half of those beaches¹⁸. The presence and amount of wrack on beaches is, therefore, directly correlated with the abundance and diversity of crustaceans and insects at beaches.

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

Impacts to beach wrack and sand supply are thus found to be minimal given that berming disturbances were similar to tidal impacts. Moreover, the subject beach is regularly groomed by the BABC as part of a maintenance lease with the SLC, resulting in the loss of beach wrack at the subject site (Lease PRC #8467 in Appendix A). The Beach Wrack Biological Resource Technical Study prepared in June 2019 (Appendix K) and provided by the applicant states the following:

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

¹⁷ Dugan, Jenifer E., et. Al. Macrofauna Communities of Exposed Sandy Beaches on the Southern California Mainland and Channel Islands.

¹⁸ Dugan, Jenifer E., et. Al. The Response of Macrofauna Communities and Shorebirds to Macrophyte Wrack Subsidies on Exposed Sandy Beaches of Southern California. *Estuarine, Coastal and Shelf Science* 58S pp. 133- 148. 2003

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For the aforementioned reasons, the Commission finds that the development as authorized under the four emergency permits, and as conditioned herein, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

F. COASTAL HAZARDS

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

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

In the subject project, the applicant is requesting follow-up authorization for temporary sand berms that were constructed pursuant to four emergency coastal development permits for the purpose of protecting against wave uprush and inundation during periods of extreme high tide and/or swell events. The purpose of the emergency sand berms were to provide temporary protection for development on site while the applicant implemented repairs to two existing rock groins located immediately seaward of the subject site (see CDP No. 5-17-1009) and to allow for an evaluation of the effectiveness of the repaired groins in maintaining an adequately wide beach on site. CDP No. 5-17-1009 was approved by the Commission in December of 2018 and the applicant subsequently completed the groin repair work in January of 2020. While this follow-up CDP application originally included the request to allow for future construction of sand berms over a three-year period on an-as needed basis, the applicant's coastal engineer has since confirmed that the repaired groins have performed sufficiently to maintain adequate beach width on site so that protection of any development on the applicant's property from wave hazards is no longer necessary. Nevertheless, a more landward-located sand berm was identified as a feasible alternative during discussions with the applicant on future sand berming activities, and should the applicant request a permit, emergency or otherwise, to construct sand berms in the future to address coastal hazards, the applicant should expect that consideration for any approval would require this less environmentally damaging (landward) alternative.

The constructed emergency sand berms, which have since been removed, were located between two recently repaired groins fronting the central portion of the BABC facility and helped to prevent flooding of the Lanai (an outdoor dining patio built on a concrete slab in the 1950s that is situated seaward of a subgrade sheetpile wall that connects to the

eastern and western seawall), and yielded incidental protection to the following structures behind the existing seawall that were redeveloped in 2004 under CDP No. A5-PPL-02-162/5-02-099: the St. Nicolas and Catalina Dining Rooms, the Cabanas, the BABC lobby (within the primary BABC building), and the Anacapa Bar and Terrace ([Exhibit 3](#)). In addition, the sand berms helped to prevent flooding of two additional accessory beach structures in front of the eastern seawall and currently situated to the east of the Lanai: the Palapas dining area and children's playground, which the applicant had proposed to be moved approximately 40 ft. landward and adjacent to the eastern seawall in front of the cabanas, but has since revised the project to exclude relocation of these accessory structures.

Section 30253(b) of the Coastal Act requires that new development assure stability and structural integrity "and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." Under the emergency project, the temporary sand berms were present for approximately one to seven days (depending on high tide events), for a total of 15 berms from December 2018 to December 2020. The sand berms absorbed wave or uprush energy and did not result in permanent hardening of the shoreline, as the berms were removed following extreme tidal and/or storm events, with sand redistributed to its source along the beach. Based on the applicant's Berm Monitoring Reports for the period of 2009-2018, sand berming at the subject site did not impact the beach profile or contribute to loss of sand (Appendix I). As such, the emergency development did not result in increased erosion or geologic instability at the subject site, as the beach profile was restored following each emergency berming event.

The applicant recognizes that the emergency sand berms were a temporary solution to tidal inundation and wave uprush while alternatives were assessed. To evaluate the need for and effectiveness of sand berming under projected future sea level rise, the applicant provided a Sea Level Rise Assessment dated July 25, 2019 (revised December 20, 2019 and February 4, 2020) in which it was determined that sand berms fronting the central portion of the BABC would only be effective for approximately ten additional years, unless the beach reverses course and starts to widen (possibly due to sand accretion from the recently repaired upcoast and downcoast groins) (Appendix G).¹⁹

Utilizing the OPC's probabilistic sea level rise projections for the Santa Monica Tide Gauge Station, the sea level rise scenarios were selected based on the anticipated life of the BABC facility. Coastal hazards under each sea level rise scenario were assessed with and without the presence of a sand berm, but without the presence of the recently repaired groins. Each sea level rise scenario was also evaluated under spring tide, 1-year flood, 20-year flood, and 100-year flood conditions. According to the findings of this assessment, flood projections under current conditions without the more seaward-located berm show inundation under a 100-year flood of the Lanai, Palapas dining area, children's playground, eastern cabanas and tennis courts, with flooding reaching the seawall on the western side of the BABC. Under the next scenario, 0.8 ft. of sea level rise without a sand berm, a spring high tide is projected to extend to within approximately 20 ft. of the Lanai and the Palapas dining area, while a 1-year storm would reach the edge of the Lanai, Palapas

¹⁹ The applicant's Sea Level Rise Assessment made findings based on a more seaward-located sand berm that was ultimately withdrawn (see Appendix G, as part of CDP application No. 5-19-0243). See Project Description and Background section.

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dining area, and play area. Flood projections under 20-year storm conditions extend further up to and across the Lanai, Palapas dining area, and children's playground, while a 100-year storm show potential impacts to a number of structures, including all outdoor structures, the eastern cabanas, and select portions of main Club structures beyond the eastern seawall. Beyond 0.8 ft. of sea level rise, flooding is expected to intensify to the extent that under such conditions and in the absence of additional adaptation measures, the shoreline is projected to extend landward of the sand berm footprint (as proposed in its more seaward location shown in [Exhibit 4](#)). Thus, a sand berm at the subject site does not have a useful anticipated life beyond 2030 (0.8 ft. of sea level rise) based on the probabilistic projections for the Santa Monica Tide Gauge Station when using the state-recommended medium-high risk aversion scenario. In other words, sand berming at the project site can only represent a temporary, stop-gap measure while the applicant explores feasible long-term alternatives that do not occupy most of the public's sandy beach area and do not require sand berming or the use of other shoreline protective devices.

The applicant also evaluated alternatives to sand berming and determined that construction of a temporary sand berm was the only feasible alternative at the time when emergency berming was undertaken. Analysis of alternatives to sand berming was required by Special Condition No. 4 of emergency permits G-5-18-0031 and G-5-19-0028, and included removal or relocation of at-risk structures (e.g., relocating the Lanai to the private parking lot), accommodation strategies (e.g., elevating the Lanai), and soft armoring approaches and green infrastructure (e.g., importing sand and creating dune systems). In the applicant's Berming Alternatives Analysis dated December 20, 2019 (Appendix H), most alternatives were found to be infeasible due to site constraints (e.g., existing beach width and slope is not suitable for green infrastructure, such as living shorelines or dune systems), operational issues (e.g., increasing distance from kitchen facilities to dining area), regulatory requirements (e.g., impacts to existing fire lanes or parking incompatibilities with city code), or structural limitations (e.g., roofing standards unable to support additional weight of relocated structures). However, the applicant acknowledged that some of these alternatives require more thorough analyses, including, for example, undertaking additional structural and architectural review. The applicant also determined that it is feasible to remove and relocate two accessory structures (i.e., the Palapas dining area and children's playground) approximately 40 ft. landward and adjacent to the eastern seawall in front of the cabanas but has since revised the project to exclude relocation of these two accessory structures (as well as any future sand berming). However, despite the potential relocation of these two accessory structures (which is no longer proposed), sand berming would have still been needed to prevent flooding of the Lanai and the central portion of the BABC during extreme high tide and/or swell events, since the seawall landward of the Lanai is only a subgrade seawall.

While seawalls and other forms of hard shoreline armoring rarely are consistent with Section 30253 or the public access policies of the Coastal Act, sand berms can, in some cases, be a preferred temporary alternative to hard shoreline armoring because they absorb wave or uprush energy but do not result in hardening of the shoreline or increased beach erosion. Sand berms are also designed to be removed following tidal and/or swell events, with sand returned to its source along the beach, minimizing alteration of natural shoreline processes, which is the case with respect to this instance of emergency berming. Such provisional solutions to shoreline protection have been approved in the past,

including on Zuma County Beach in the City of Malibu (CDP Nos. 4-13-0675 and 4-18-0498) and Carpinteria City Beach (CDP No. 4-05-160). In these cases, sand berms were approved based on the fact that soft solutions—such as sand berms—generally would result in fewer significant environmental impacts than revetments, seawalls, or other hard protective structures.

In this case, given the potential impacts to the beach itself and to public access, which will be exacerbated by expected sea level rise, the emergency sand berms were conditioned to be allowed only temporarily so that the applicant could explore a practical long-term alternative to berming, which occupies most of the public's sandy beach area. The Berm Alternatives Analysis that was provided by the applicant as part of the follow-up CDP application No. 5-19-0243 requires additional evaluation as acknowledged by the applicant; as such, **Special Condition No. 4** requires the applicant to explore a practical long-term alternative to berming, including removal and/or relocation of the threatened portions of the site if necessary, given the impacts associated with the emergency sand berms and the applicant's history of berming, both permitted and unpermitted, at the subject site. **Special Condition No. 4** also requires the applicant to assess whether recent repairs to the upcoast and downcoast groins aid in sand accretion at the subject site. The emergency development thus minimized risks to the property by preventing inundation and scouring, while also providing a safe, lateral public access path behind the berm. Long-term impacts to the shoreline, including local sand supply were negligible as the berms were only in place for one to seven days for a total of fifteen (15) berms from December 2018 to December 2020. Moreover, based on the applicant's Berm Monitoring Reports, temporary sand berming at the subject site did not permanently impact the beach profile or contribute to loss of sand (Appendix I). Likewise, **Special Condition No. 3** requires the applicant to conduct a summer and winter baseline survey of the subject beach to provide a record of the baseline beach profile in the event that the applicant proposes future berming activities.

Lastly, the threatened property is in private ownership and the hazards associated with the development must be considered in conjunction with any impacts to public resources and public beach access seaward of the site. The Commission finds that, in this case, it was appropriate to temporarily use public resources (i.e., sand from the public trust and public beach area) to protect these private facilities in the short-term so long as the applicant assumed the risks associated with the unforeseen possibility of storm waves, surges, erosion, and flooding as a condition of approval. Accordingly, the conditions of the emergency coastal development permits required the applicant to assume the risks of the development and to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant's assumption of the risk demonstrated that the applicant was aware of and appreciated the nature of the hazards which existed on the site and which may adversely affect the stability or safety of the emergency development.

Therefore, the Commission finds that the development authorized by the emergency permits, as conditioned, is consistent with Coastal Act Section 30253.

G. VISUAL RESOURCES

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

Coastal Act Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

The applicant constructed temporary sand berms pursuant to four emergency coastal development permits for the purpose of protecting against wave uprush and inundation during periods of extreme high tide and/or swell events. Based on site plans submitted as part of CDP application No. 5-19-0243, the temporary sand berms, which are no longer present, were located just landward of the highest predicted tide for 2019 Santa Monica Station (6.8 NAVD88 / 7.08 MLLW) and fronted the central portion of the BABC facility. Lateral public access was available behind and along the entire stretch of the sand berms while they were in place, with viewing of the beach and ocean temporarily obstructed by the top of the berms by 3 ft. to 7 ft. above existing grade (+17 to +24' MLLW) as measured from the landward side of the berm ([Exhibit 2](#)). As such, the constructed sand berms resulted in temporary, partial obstruction to views directly behind the berms. The sand berms did not obstruct public views of the beach and ocean from areas directly inland of the BABC facility, since BABC facilities are built much higher.

Accordingly, the Commission finds that the constructed emergency development, which has since been removed, did not significantly impact visual resources at the project site, and therefore the project is consistent with Section 30251 of the Coastal Act.

H. LOCAL COASTAL PROGRAM (LCP)

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

Section 30604 (a) of the Coastal Act states:

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

In 1978, the Commission approved a work program for the preparation of Local Coastal Programs in a number of distinct neighborhoods (segments) in the City of Los Angeles. In the Pacific Palisades, issues identified included public recreation, preservation of mountain and hillside lands, and grading and geologic stability. Geologic stability was one of the primary issues because of the number of landslides that had occurred in the sixties and early seventies.

The City has submitted five Land Use Plans (LUP) for Commission review, and the Commission has certified three (Playa Vista, San Pedro, and Venice), though the Playa Vista LUP was not accepted by the City. However, the City has not prepared a Land Use Plan for Pacific Palisades. In the early 1970s, a general plan update for the Pacific Palisades had just been completed. When the City began the LUP process in 1978, with the exception of two tracts (a 1200-acre and 300-acre tract of land) that were then undergoing subdivision approval, all private lands in the community were subdivided and built out. The Commission's approval of those tracts in 1980 meant that no major planning decisions remained in the Pacific Palisades. The tracts were approved on appeal by the Commission: A-381-78 (Headlands) and A-390-78 (AMH). Consequently, the City concentrated its efforts on communities that were rapidly changing and subject to development pressure and controversy, such as Venice, Airport Dunes, Playa Vista, San Pedro, and Playa del Rey. To date, the City of Los Angeles has six LCP segments, all of which are uncertified.

The development (i.e., the temporary sand berms), which is no longer present, was located partially within the Commission's retained permit jurisdiction, where the standard of review is Chapter 3 of the Coastal Act, and partially within City's jurisdiction. Since the City of Los Angeles does not have a fully-certified LCP, the standard of review for that portion of the development within City of Los Angeles jurisdiction is also Chapter 3 of the Coastal Act. Accordingly, the Commission approves the development with conditions that address public access, water quality, and hazards related to the project and the general area such that the project is consistent with Chapter 3 of the Coastal Act. Therefore, pursuant to Section 30604(a) of the Coastal Act, the Commission finds that approval of the development will not prejudice the City's ability to prepare a local coastal program in conformity with Chapter 3 of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The Coastal Commission's review and approval of land use proposals has been certified by the Secretary of the Natural Resources Agency as the functional equivalent of environmental review under CEQA (14 Cal. Code of Regs. § 15251(c)). The preceding findings of this staff report, incorporated herein by reference, discuss the relevant coastal resource impacts of the emergency development, including cumulative effects of the project combined with past, present, and reasonably foreseeable future projects or

activities. Under the emergency permits, the Commission imposed special conditions to minimize temporary and permanent impacts to biological resources, water quality, lateral public access, and beach recreation during the construction, presence, and leveling of the emergency sand berms. The applicant had demonstrated that the emergency sand berms provided for safe lateral public access during high tides and swell events and designed the project to minimize known adverse impacts to water quality, biological resources, sea level rise, and erosion at the time the berms were authorized pursuant to the emergency permits. However, as discussed in more detail in the Project Description and Background section, over the course of the past few years since the first emergency permit was authorized, the applicant did conduct and submit an alternative analysis (i.e., berming relocation analysis) in which a less environmentally damaging alternative was identified. This alternative to the berms that were requested and approved pursuant to the emergency permits was located further landward and would reduce impacts to intertidal habitat, while still maintaining lateral public access landward of the berm ([Exhibit 5](#)). However, the applicant no longer anticipates the need for further sand berming at the subject site and has consequently revised the proposed project to exclude future sand berming activities; thus the necessity to implement a less environmentally damaging alternative sand berm in a further landward location has been eliminated. Nevertheless, if in the future the applicant does request a permit, emergency or otherwise, to construct sand berms to address coastal hazards, such as flooding, the applicant should expect that consideration for any approval would require the less environmentally damaging location identified in the provided alternative analysis rather than what was approved pursuant to the previous emergency permits unless an alternative with even fewer impacts to coastal resources is identified (e.g., removal and relocation of certain accessory structures).

The Commission's findings in support of its approval of the emergency development respond to any significant public comments on the project received to date.

Accordingly, as conditioned at the time of approval of the emergency coastal development permits, there were no known feasible alternatives or known additional feasible mitigation measures available that would have substantially lessened any significant adverse effect that the emergency development may have had on the environment. Therefore, the Commission finds that the emergency development, which has since been removed, as conditioned to mitigate the identified impacts, was the least environmentally damaging feasible alternative known at the time and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDICES – SUBSTANTIVE FILE DOCUMENTS

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

Appendix B – Letter from State Lands Commission, dated May 31, 2019

Appendix C – Coastal Development Permit No. A-5-PPL-02-162 / 5-02-099

Appendix D – Coastal Development Permit No. 5-92-108

Appendix E – Coastal Development Permit No. 5-17-1009

Appendix F – Sea Level Rise Projections for the Santa Monica Tide Gauge Station (available at: <https://tidesandcurrents.noaa.gov/stationhome.html?id=9410840>)

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

Appendix H – Berming Alternatives Analysis, dated December 20, 2019

Appendix I – Berm Monitoring Reports for 2009-2018, dated January 18, 2019

Appendix J – Biological Resources Assessment, dated September 18, 2018

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

Appendix L – CDP No. 5-19-0243 Staff Report Agendized September 10, 2020