

**CALIFORNIA COASTAL COMMISSION**

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# W19c

Filed: August 31, 2012  
180th Day: February 27, 2013  
Staff: J. Rabin - LB  
Staff Report: January 25, 2013  
Hearing Date: February 6, 2013

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-12-154

**Applicant:** California Department of Parks & Recreation  
Brian Ketterer, Orange Coast District Superintendent

**Location:** Crystal Cove State Park, Newport Beach, Orange County

**Project Description:** Install automated payment machines (APMs) and implement an automated fee payment program at five locations: Reef Point, Pelican Point, Los Trancos, Moro Day Use and Moro Campground parking lots; retain flat rate of \$15 per day year-round; establish a new rate of \$20 a day on summer holidays, Memorial Day, July 4<sup>th</sup>, and Labor Day; offer an hourly rate of \$5 Monday through Friday at all lots. No hourly rates are proposed for holidays or weekends, except off-season weekends at the Moro Day Use lot.

**Staff Recommendation:** Approval with conditions.

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### SUMMARY OF STAFF RECOMMENDATION:

The California Department of Parks & Recreation is seeking a coastal development permit to install five Automated Payment Machines or APMs at Crystal Cove State Park in Orange County. The APMs would collect fees for vehicles entering the park at five locations – Reef Point, Pelican Point, Los Trancos, Moro Day Use and Moro Campground parking lots. The machines accept credit and

debit cards and cash, but do not make change. Fees are currently collected at all locations through some means, such as staffed kiosks or entry stations.

State Parks also proposes a flexible or “floating fee schedule,” including hourly, daily, and seasonal rates. The Department would retain the existing flat rate of \$15 per day for parking year-round; establish a new rate of \$20 a day on the Memorial Day, July 4<sup>th</sup>, and Labor Day summer holidays; and offer an hourly rate of \$5 Monday through Friday at all lots. No hourly rates are proposed for holidays or weekends in most cases.<sup>1</sup> The machines are also capable of assisting the public in renting a campsite and selling annual State Park visitor passes.

Installation of the machines and new fee schedule constitutes development under the Coastal Act Section 30106 (as both installation of a structure and a change in intensity of use and of access to water) and requires a CDP. State Parks is seeking after-the-fact approval for APMs that have already been installed and are operating at Reef Point, Pelican Point, Moro Day Use and Moro campground.

The standard of review for this project is Chapter 3 policies of the Coastal Act. Commission staff is recommending approval of the CDP with a series of conditions to maximize public access and protection of lower cost visitor and recreational opportunities on public land, while recognizing recent legislative direction to State Parks to create new revenue streams to fund facility management and operations throughout the State Park system. Commission staff specifically recommends that State Parks prepare a revised parking management program for the five Crystal Cove parking lots covered by this application. To encourage increased visitation, the condition, among other provisions, requires State Parks to provide hourly rates seven days a week, including holidays.

Staff is recommending the \$20 holiday rate be approved for the three summer holidays, and also that hourly rates be offered on those days. Provision is made to eliminate the hourly rate on the three holidays after one year if at least 75% of those holiday visitors purchase all-day passes.

State Parks acknowledges that the APMs “can be reprogrammed to increase or decrease fees.” The proposed daily, hourly, and holiday rates are maximums. Other provisions require Executive Director review of further fee increases to determine whether an amendment or a new CDP is required. State Parks also is encouraged to explore the sale of annual regional passes and the means to maximize the availability of discount rates for seniors, the disabled, veterans, and low-income persons through the APM program or through park staff.

The flexible fee schedule likely will result in an increase in visitation by the public, which will further maximize public access, thereby enabling State Parks’ to achieve its intended result of increasing revenue. Staff is recommending monitoring and data collection protocols to determine the effects of offering different parking rate options and to use that information to devise an updated parking management program that addresses any impacts to access and visitation patterns identified through analysis of the data.

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<sup>1</sup> Hourly rates would be available weekends during the off-season (Oct.1 through May 15) at the Moro Day Use lot.

The staff recommendation also addresses the hours of operation of the parking lots, new fee schedule and beach closures. Reef Point and Pelican Point, the two large parking lots on the coast side of Pacific Coast Highway and an inland lot at the Moro Day Use area (Visitor Center) have the earliest closing time – sunset – of any state beach parking lot in Orange County. The hours of operation of these parking lots have not been authorized through a coastal development permit or the Public Works Plan and are particularly critical because these lots provide virtually all the beach parking for more than three miles of coastline extending from the Newport Beach community of Corona del Mar to Laguna Beach.

Staff is recommending that State Parks extend the ingress hours of the three parking lots with lot closing time at sunset, noted above, until one hour after sunset, at a minimum, and provide egress only (without penalty) for visitors who wish to stay beyond sunset. Extending the hours of operation of the three lots will expand opportunities for the public to access and enjoy the beach. Two other inland parking areas, the Los Trancos lot, which serves the Historic District and its restored cottages, restaurant and bar, and the Moro Campground lot shall remain open from 6 a.m. until 10 p.m. at a minimum.

Commission staff also recommends another condition concerning access to state tidelands. Consistent with Article X, Section 4, of the State Constitution and Section 30210 of the Coastal Act, State Parks may regulate the hours and use of parking lots, but not in a manner that prohibits all public access to the shoreline. Some existing signs make no distinction between “park” closure hours and constitutionally protected access to the shoreline. As conditioned, any existing signage that indicates or suggests the beach itself is closed at any time shall be removed and allow the public to gain pedestrian access to state waters for recreational activities after the parking lots have closed.

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### APPENDICES

Appendix A - Substantive File Documents

### EXHIBITS

**Exhibit 1** – Site map

**Exhibit 2** – Photograph of Automated Payment Machine

**Exhibit 3** – Memorandum of Peter Douglas Re: Coastal Development Permit Required When Imposing or Increasing Fees or Modifying the Hours of Operation of Public Beaches or Public Beach Parking Lots, Piers or Boat Launching Ramps, Dated October 29, 1993.

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-12-154 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. 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:

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

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Parking Management Program.** Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, a revised parking management program for the subject parking lot(s), which shall include the following elements:
  - a. Provide hourly rates seven days a week at each facility where parking fees are charged through an automated pay machine (APM). In no case, shall a visitor paying hourly rates pay in excess of the flat day use fee.
  - b. Allow flat day use parking fee (\$15 maximum) per day year-round (except as allowed in sub-part "c" below of this special condition).
  - c. The proposed holiday rate of \$20 per day may be offered for the three summer holidays— Memorial Day, the Fourth of July and Labor Day only. An hourly rate option, with the same hourly rates offered during non-holiday periods, shall also be provided on those holidays for the first year the permit is valid. Based on the results of monitoring (as outlined in Special Condition No. 2 below), if data indicates 75 percent of visitors choose the all-day option upon arrival, the hourly rate option may be eliminated on only those summer holidays and at only those parking lots that reflect the 75 percent threshold in the subsequent years this permit is valid;
  - d. Fees may be reduced or eliminated at any time; however, any changes that would exceed the maximums set forth in this application shall be reported to the Executive Director to determine whether an amendment or new coastal development permit is required. Specific consideration should be given to reduced fees during off-peak periods;
  - e. Explore the sale of annual regional passes and the means to maximize the availability of existing discount rates for seniors, the disabled, veterans and low-income persons through the APM program or through park staff;
  - f. Implement supplemental means to increase visitation including extending park hours, parking lot hours and operation. At Crystal Cove State Park, the parking lot hours for Pelican Point, Reef Point, and the Moro Day Use Area (Visitor Center) shall be 6 a.m. until one hour after sunset, at a minimum, and State Parks will provide the option for vehicles to stay later (without penalty) through measures that prohibit ingress, but allow egress only. At Los Trancos and the Moro Campground, the parking lots hours shall be 6 a.m. to 10 p.m., at a minimum. Operating hours may be expanded at any time; however,

any changes that would reduce operating hours below those outlined above shall be reported to the Executive Director to determine whether an amendment or new coastal development permit is required;

- g. Include monitoring and data collection protocols to determine how or whether parking fees affect public use over the long term pursuant to Special Condition #2 below.

The applicant shall undertake development in accordance with the approved final parking management program. Any proposed changes to the approved final parking management program shall be reported to the Executive Director. No changes to the approved final parking management program shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

- 2. **Permit Expiration and Monitoring Requirements.** CDP #5-12-154 shall be valid for a period of three years from date of Commission action and subject to the following monitoring and reporting requirements during the three-year permit validation period:

- a. The goal of the monitoring is to determine the effects of offering different parking rate options (e.g. hourly, flat fee, holiday, etc.) through the Automated Payment Machines (APMs) on park visitation, access and revenue on weekdays, weekends, peak and off-peak periods and holidays. Data to be collected from APMs must demonstrate parking lot usage in both peak (May 16 to September 30) and off-peak periods (October 1 to May 15) and includes, but is not limited to, the following:

- 1) Paid attendance figures
- 2) Revenue collected
- 3) Turnover rates
- 4) Type of fee paid – hourly, daily, holiday, discount pass, other.
- 5) Quantity and type(s) of parking violations issued

- b. Data shall be submitted annually to the Executive Director, with the first annual period beginning from the date of permit issuance;

- c. Prior to expiration of the CDP, the applicant shall submit an application for a permit amendment or new CDP for an updated parking management program which has been revised to address the impacts to access and visitation patterns identified through analysis of the data from the submitted monitoring information. The updated submittal shall include measures to eliminate any identified adverse impacts to coastal access and to maintain and/or increase visitation and revenue based on the submitted data.

- 3. **State Tidelands Access.** This permit shall regulate hours and use of the parking lots, but does not authorize a prohibition of all public access to the shoreline. The applicant shall remove any existing signage that indicates or suggests that the beach itself is closed at any time and shall allow the public to gain access to state waters for recreational activities after the parking lots have closed.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION, BACKGROUND AND DESCRIPTION

#### 1. Project Location

Crystal Cove State Park is located in Orange County at the southern end of Newport Beach between the community of Corona del Mar in Newport Beach and the City of Laguna Beach (**Exhibit 1**). The 2,791-acre State Park includes a 3.25-mile long coastal section west of Pacific Coast Highway (PCH) and several inland areas. The coastal strip includes sandy beach, rocky tide-pools, an underwater park, bluffs and bluff-top trails, Historic Area cottages, and a beachfront restaurant and bar. The interior portion includes a Visitor Center, campground, and upland trails that extend into interior canyons and ridges. The park provides a large amount of open space surrounded by urbanized areas and is a major recreational and environmental resource.

#### 2. Project Description:

The California Department of Parks & Recreation is proposing to install five Automated Payment Machines or APMs at Crystal Cove State Park in Orange County. The APMs would collect fees for vehicles entering the park at five locations - Reef Point, Pelican Point, Los Trancos, Moro Day Use and Moro Campground parking lots (**Exhibit 2**). The machines accept credit and debit cards and cash, but do not make change. Fees are currently collected at staffed kiosks or entry stations.

In their application and subsequent correspondence, State Parks also proposes a flexible or “floating fee schedule,” including hourly, daily, and seasonal rates. The Department would retain the existing flat rate of \$15 per day for parking year-round; establish a new rate of \$20 a day on the Memorial Day, July 4<sup>th</sup>, and Labor Day summer holidays; and offer an hourly rate of \$5 Monday through Friday<sup>2</sup> at all lots. No hourly rates are proposed for holidays or weekends in most cases.<sup>3</sup> The machines are also capable of assisting the public in renting a campsite and selling annual State Park visitor passes.

Following initial submittal of the application, Commission staff asked the applicant to explain the need for the automated pay machines and revised fee schedule. In response to those questions, the applicant explained:

“State Parks, under the direction of the Legislative and Executive Branches of State government is required to be entrepreneurial in how it collects revenue. With that direction, the Orange Coast District is investigating separate payment options for all park units to not only maintain or increase revenue, but to increase visitation as well.”

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<sup>2</sup> State Parks proposed an hourly rate of \$4 in its application, but has been charging \$5 per hour. This was confirmed in a recent conversation with the applicant.

<sup>3</sup> Hourly rates would be available weekends during the off-season (Oct.1 through May 15) at the Moro Day Use lot.



The July 23, 2012 letter from the applicant also stated: “The Orange Coast District is substantially lowering off-season camping rates, instituting an hourly fee schedule at many park units, and is not seeking to increase the current regular flat day rate charged at any park unit. Again, the District believes it is adequate to provide the Coastal Commission the highest price point fee which may be used at these park units and describe what a floating fee schedule is. However, it should not be the Commission’s decision to dictate what fee schedules will be adopted by State Parks when coastal access and view shed issues are not diminished.”

The applicant has indicated the APMs are currently not capable of honoring long standing State Parks discounts designed to assist visitor groups such as seniors, disabled, and veterans.<sup>4</sup> At entry kiosks staffed by park workers, senior citizens 62 years of age or older are able to obtain an immediate \$1 discount on day use fees and \$2 on camping. Disabled persons with a special pass, issued by the department, are entitled to receive a 50% discount on day use fees. Other discounts are available for seniors, distinguished veterans, the aged, blind, disabled and low-income Californians on welfare through an application process. For example, distinguished veterans with a special pass are not charged for either day use or camping. The APM is not capable of recognizing these specific user groups and therefore cannot provide the long-standing discounts. However, State Parks staff has indicated they will continue to provide the discounts when staff are present and will explore ways to offer the discounts through the APMs if feasible.

State Parks has applied for a coastal development permit to install and operate the machines. At Reef Point, Pelican Point, Moro Day Use (Visitor Center) and the Moro Campground, the new APMs already have been installed, where fees traditionally have been collected by park staff. Therefore, State Parks is seeking after-the-fact approval for installation and operation of those machines. At this time, State Parks says funding is not available for the APM proposed for the Los Trancos parking lot and there are no immediate plans to install that machine; however, authorization to install the APM when funding is available is being sought through this permit application.

## **B. COASTAL DEVELOPMENT PERMIT JURISDICTION**

Pursuant to the California Coastal Act a coastal development permit is required for any “development”, unless specifically exempted under a variety of provisions or procedures set forth in the Coastal Act or pursuant to other provisions of law. The Coastal Act defines “development” as including, among other things, a “change in the intensity of use of water, or of access thereto....” (Public Resources Code Section 30106.) A coastal development permit is required even if little or no physical construction is necessary to implement the action calling for a fee, a fee increase or a change in hours of operation.

A coastal development permit also is required for development that includes construction of a structure. Installation of an APM requires physical improvements to the infrastructure at the site. In some cases, minor trenching is needed to install conduit to carry electrical power and

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<sup>4</sup> A list of existing State Park passes and discounts is available on the Department website and can be viewed at: [http://www.parks.ca.gov/?page\\_id=1049](http://www.parks.ca.gov/?page_id=1049) Page viewed by Coastal staff on January 15, 2013.

communications lines. In some cases, minor grading may be necessary to install the concrete pad on which the machine is placed. Some APMs operate on solar power and have a Wi-Fi connection.

Beyond the physical installation, the APMs and their associated fees program have the potential to affect the intensity of use and access to beaches and state waters.

In October 1993, former Commission Executive Director Peter Douglas issued a memo to Planning Directors of Coastal Cities and Counties and other interested persons (**Exhibit 3**) describing circumstances when a coastal development permit is required when imposing or increasing fees or modifying the hours of operation of public beaches or public beach parking lots, piers or boat launching ramps.

The memo states: “Because the imposition or substantial increase of a user fee for beach access parking...would, in our opinion, result in a change in access to state waters, a coastal development permit is required.” The memo says a ‘substantial increase’ means any fee increase of 25% or more in any given year or 50% or more on a cumulative basis over any three consecutive year period.”

In a number of cases, the Commission has applied the guidance provided in the memo. For instance, in 1997, the Commission approved CDP 5-96-268 for construction of a five-level “Queensway Bay” parking structure in downtown Long Beach. A permit amendment 5-96-268-A1 was later approved with a special condition requiring an amendment to the coastal development permit for any parking fee increase that exceeds 25% in any one-year period or 50% in any three-year period.

In 1998, the Commission approved a proposed project to install metered parking at the Marina Green public parking lots and new curbside spaces with parking meters along Shoreline Drive in downtown Long Beach. CDP 5-98-042 also contained a special condition requiring a permit amendment for any parking fee increase that exceeded 25% in any one-year period, or 50% in any three-year period.

At Crystal Cove, State Parks’ proposed increase in the day use fee from \$15 to \$20 on the three summer holidays represents a 33.3 percent increase within a one year period and constitutes a substantial increase requiring a permit. In addition, the operating hours for the fee machines and parking lots are subject to Commission review and have not been authorized through a coastal development permit. Such activities meet the definition of development contained in Section 30106 of the Coastal Act as they result in a change in the intensity of use of the land and/or a change in intensity of use of water, or of access thereto.

### **C. CHAPTER 3 STANDARD OF REVIEW/CRYSTAL COVE PUBLIC WORKS PLAN AS GUIDANCE**

Section 30605 of the Coastal Act provides, in pertinent part, that:

*Where a plan for a public works or state university or college or private university development project has been certified by the commission, any subsequent review by the commission of a specific project contained in the certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1.*

Section 30606 of the Coastal Act states:

*Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college or private university shall notify the Commission and other interested persons, organizations, and governmental agencies of the impending development and provide data to show that it is consistent with the certified Public Works Plan or Long Range Development Plan. No development shall take place within 60 working days after the notice.*

Section 13359 of the Commission's Administrative Regulations states:

*(b) The Commission shall...determine whether the proposed development is consistent with the certified public works plan...*

The Crystal Cove Public Works Plan (PWP) was approved by the Commission with conditions on May 20, 1982. Conditions were met on August 26, 1982. A few amendments to the PWP have occurred since its initial approval. The most recent PWP amendment was authorized in June 2003 (PWP-4-82-A2) and involved an update that replaced the Crystal Cove Historic District Development and Public Use Plan and On-Site Maintenance Program with the Crystal Cove Historic District Preservation and Public Use Plan. The PWP includes the Crystal Cove State Park General Plan, the On-Site Maintenance Plan and the Crystal Cove State Park Historic District Development and Public Use Plan. Section 30605 of the Coastal Act, cited above, establishes the standard of review. The first threshold question is whether the specific project is contained in the PWP. If it is, then the Commission's review is limited to the imposition of conditions. The Commission cannot deny a project that it previously certified as part of the PWP; however, the Commission can regulate the manner in which the project is carried out to bring it into conformance with the PWP. Once it is determined that a project is contained in the PWP, the second question is whether or not the project is consistent with the PWP.

The applicant, in consultation with Commission staff, determined that the proposed project is not contained in the PWP. The applicant chose to submit the project for a coastal development permit. The Commission finds that the proposed project was not previously contemplated and is therefore not contained in the PWP. Chapter 3 policies of the Coastal Act will serve as the standard of review for the proposed project, with the Crystal Cove Certified PWP serving as guidance.

## **D. PUBLIC ACCESS AND RECREATION**

The California Coastal Act requires the Commission to maximize opportunity for coastal access and contains the following relevant policies:

***Section 30210:** 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 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:** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212.5:** Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

***Section 30213:** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

***Section 30220:** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

***Section 30221:** Oceanfront land suitable for recreational use shall be protected for recreational use and development ...*

Other Coastal Act policies also are relevant to the public recreational access issues presented by the proposed project, including:

***Section 30240 (b):** Development in areas adjacent to...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...recreation areas.*

***Section 30252:** The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation,....*

Among the most important goals and requirements of the Coastal Act is the mandate to protect,

provide, enhance, and maximize public recreational access opportunities to and along the coast consistent with strong resource conservation principles. Within this guiding framework, the protection of and priority for lower cost visitor and recreational facilities is explicitly identified. A significant portion of the land that comprises Crystal Cove State Park was purchased in the late 1970s from the Irvine Company. At the time it was one of the most expensive state park acquisitions. Additional land was later added to the park in conjunction with further development by the Irvine Company. The park provides a wide variety of recreational opportunities for visitors of all sorts, including hikers, strollers, joggers, swimmers, surfers, scuba divers, cyclists, photographers, campers and guests at the restored cottages on the beach and bluffs. There are also lower cost dormitory-style (hostel) accommodations. The park is bisected by Pacific Coast Highway. The coastal portion west of the highway includes sandy beaches, rocky tide-pools, an underwater park, bluffs and bluff-top trails, the Historic Area cottages, a beachfront restaurant and bar, and several parking lots. At Pelican Point there is a series of four lots linked together by a common entrance point and road. There is another parking lot farther down coast at Reef Point. The interior portion inland of PCH includes the Los Trancos parking lot (which is the primary parking area for the Historic District), a Visitor Center with a day use parking lot (Moro Day Use lot), a campground with another day use parking lot (Moro Campground lot), and upland trails that extend into interior canyons and ridges. The park provides a large amount of open space surrounded by urbanized areas of Orange County and is a major recreational and environmental resource.

According to California State Park System Statistical Reports, Crystal Cove has seen a steady rise in paid day use from 368,957 in fiscal year 2005-06 to 691,471 in 2010-11.<sup>5</sup> In the summer of 2009, the day use fee was increased from \$10 to \$15. In an August 30, 2012 letter to Commission staff, State Parks explained that paid day use visitation and revenue has increased at Crystal Cove due to the rental of restored cottages in the Historic District and the opening of the Moro campground.

The parking lots at Crystal Cove are used by the public to gain access to beaches, state waters, and inland areas. The availability of public parking and the cost of that parking is critically important at Crystal Cove because there is no alternative parking available either along the entire three-mile stretch of Pacific Coast Highway from the Corona del Mar area of Newport Beach to Laguna Beach or at adjacent inland neighborhoods (mostly private gated communities which do not allow public access or parking). State Parks controls the only legal parking areas for Crystal Cove State Park. Transit service on Pacific Coast Highway is infrequent with only one Orange County Transportation Authority bus per hour in each direction on weekends. Long-distance hikers and cyclists can access the park on foot or by bike, but the overwhelming majority of park visitors arrive by car.

Prior to this application, State Parks offered only one parking rate at Crystal Cove – a flat \$15 a day charge, regardless of the length of stay. No hourly rates were available. The flat fee program offers visitors no alternative to access the park by motor vehicle for less than the full day rate. On a summer weekend last August, Commission staff observed motorists pulling up to the entry kiosk at Pelican and Reef Point entrances, on the coast side of Pacific Coast Highway, to watch the sun set.

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<sup>5</sup> The source reports for this data are unclear as to whether the units counted were vehicles or some other unit.

After being informed by park staff that it would cost \$15 to enter and view the sunset, most of the motorists immediately turned around and left the park. In that instance, the lack of a short-term rate discouraged public access and visitation and represents lost revenue for the park.

In their application, the Department says the automatic pay machines will allow State Parks to provide more flexible fee schedules including hourly, daily and seasonal fee schedules rather than just the current flat fee schedule....” State Parks believes the proposed floating fee schedule will further increase visitation.<sup>6</sup>

This application includes an hourly rate of \$5 Monday through Friday; however, no hourly rates are proposed for holidays or weekends at Crystal Cove except off-season (Oct. 1-May 15) weekends at the Moro Day Use lot.

The Commission believes an hourly parking rate would allow short-term visitors the opportunity to enjoy the sunset or engage in recreational activity such as a walk or jog on the beach, without incurring the expense of the full day fee. It is advantageous that the proposed APMs will allow State Parks to offer an hourly fee option to maximize access and provide the opportunity for visits of a brief duration such as surfing in the morning, walking on the beach, or viewing the sunset. The parking lots with hourly rates are inherently a lower-cost visitor and recreational facility since they would offer a one-hour visit for \$5 rather than a one-hour visit that costs \$15 if only a full-day fee was offered at the facility. Therefore, the current full-day flat rate parking program does not maximize public access or provide a low-cost option.

State Parks is offering hourly rates at many state beaches in San Diego County, including Carlsbad, South Carlsbad, San Elijo, Cardiff, Torrey Pines North, and Silver Strand in Coronado. State Parks announced the move in a November 2011 press release, which states:

“If visitors want a short visit, like a run on the beach or a sunset, they would not pay for the whole day, but rather just for the time they select and that’s how they would be given a price break. Also, State Parks thinks this will help with revenue because it may encourage more people to take advantage of the opportunity for shorter visits, quite possibly creating more turnover of visitors and therefore more revenue. In addition, visitors may choose to use the state lots at hourly rates rather than park further away from the beach.”

The \$5 hourly rate has been implemented at the four Crystal Cove locations where APMs are currently installed and operating. In a November 23, 2012 letter to Commission staff, State Parks indicates data collected in October showed visitors purchasing varying amounts of parking time depending on the parking lot location. At the Moro Campground Day Use area, over 98 percent of visitors purchased two hours or less. At other locations, more day use passes were purchased, including by 63 percent of visitors at Pelican Point. This very preliminary data suggests there is demand for parking options, including a less-than-full-day flat rate.

To ensure that maximum access is provided, the Commission is requiring **Special Condition 1** which requires State Parks to submit, prior to issuance of the CDP, a revised parking management program for the five Crystal Cove parking lots covered by this application. State Parks current

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<sup>6</sup> August 30, 2012 letter from State Parks to Commission staff.

proposal includes hourly rates on weekdays, but not on weekends or holidays (except at the Moro Day Use visitor center parking lot in the off-peak season). To encourage increased visitation, the condition requires State Parks to provide hourly rates daily (i.e. Monday through Sunday and holidays) at every Crystal Cove facility where parking fees are charged through an automated pay machine. To paraphrase the State Parks press release involving hourly rates at San Diego state beaches, this will provide maximum flexibility for users, provide a lower rate for shorter visits, and potentially create more turnover and revenue. This provision is consistent with Section 30213 of the Coastal Act which states that “Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...”

The special condition indicates a visitor paying hourly rates shall not be required to pay in excess of the flat day use fee. The purpose of this provision is to ensure that State Parks will provide an opportunity for an hourly ticket to be upgraded to a full day ticket without exceeding the maximum cost of the day use fee.

The Department’s application proposes to retain the flat rate of \$15 per day year-round except on certain summer holidays where they are proposing to establish a new rate of \$20 a day on Memorial Day, July 4<sup>th</sup>, and Labor Day.

**Special Condition 1** also provides that State Parks may only require the proposed \$20 holiday rate on the three summer holidays—Memorial Day, Fourth of July, and Labor Day. At \$20, the holiday rate would be among the highest charged by a state beach operated by the Department.<sup>7</sup> Day use fees for all State Parks are shown on the Department’s website at: [http://www.parks.ca.gov/pages/737/files/Current\\_GeoLoc%20web\\_day%20use.pdf](http://www.parks.ca.gov/pages/737/files/Current_GeoLoc%20web_day%20use.pdf) Page visited by Commission staff on January 15, 2013.

Summer holidays are high demand periods and State Parks in their application views those days as an opportunity to increase revenue, in part to offset higher costs for law enforcement, public safety, housekeeping and customer service, while still providing the same accessibility to all patrons.

To provide an opportunity for some visitors to access the park at a lower rate for a short-term visit, **Special Condition 1** requires State Parks to offer an hourly rate on the three summer holidays during the first year of this permit. Based on monitoring results, if data indicates that 75 percent of visitors choose the all-day option upon arrival, the hourly rate option may be eliminated on only those summer holidays and at only those parking lots that reflect the 75 percent threshold in the subsequent years this permit is valid.

The proposed daily, holiday and hourly rates are maximums. State Parks acknowledges that the automated payment machines “can be reprogrammed to increase or decrease rates.” In order to ensure that changes are reviewed for consistency with the Coastal Act, **Special Condition 1** provides that fees may be reduced or eliminated at any time, however, any changes that would

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<sup>7</sup> In a letter dated November 23, 2012, State Parks states that the Commission has already authorized fees of \$25 and above on specific holidays and during special events at other parking lots. Commission staff has not yet identified any such approvals granted by the Commission through a coastal development permit.

exceed the maximums set forth in this application shall be reported to the Executive Director to determine whether an amendment or new coastal development permit is required. Specific consideration should be given to reduced fees during off-peak periods. As discussed above, providing the flexible fee schedule should result in increased visitation and therefore increased revenue. The actual impact of the new fee structure on visitation and revenue will be more evident after the APMs have been operating and user data is analyzed.

To provide additional opportunities for visitation, State Parks shall explore the sale of annual regional passes. At kiosks staffed by park workers, the Department provides discounts for certain groups of visitors, including an immediate \$1 discount for senior citizens over 62 and a 50 percent discount for disabled persons who have a Department-issued pass. These discounts are not available through the Automated Payment Machines. To preserve these discounts, State Parks is encouraged to explore the means to maximize the availability of discount rates for seniors, the disabled, veterans, and low-income persons through the APM program or through park staff.

**Special Condition 2** establishes a 3 year validation period for this permit and requires monitoring and data collection protocols. Data to be submitted annually to the Executive Director includes, but is not limited to: paid attendance figures, revenue collected, turnover rates in parking lots, and the type of fee paid – hourly, daily, holiday, or other (for example, camping fees or annual pass purchases.) The goal of the monitoring is to determine the effects of offering different parking rate options (e.g. hourly, flat fee, holiday, etc.) through the Automated Payment Machines (APMs) on park visitation, access and revenue on weekdays, weekends, peak and off-peak periods and holidays. With that information, the applicant would submit an application for a permit amendment or new CDP for an updated parking management program prior to expiration of this permit which has been revised to address any impacts to access and visitation patterns identified through analysis of the data from the submitted monitoring information. The updated submittal for reauthorization would include measures to eliminate any identified adverse impacts to coastal access and to maintain and/or increase visitation and revenue based on the submitted data.

### **Hours of Operation/Beach Closures:**

One of the Commission's most fundamental legislative mandates is to protect and expand public access to and along the coast and to guarantee the public's Constitutional right to access state tidelands through the implementation of the Coastal Act. The Commission has a long history of assuring through our planning and regulatory process that existing public access to the sea is not closed or adversely impacted by new development; that where appropriate, new access and recreation is provided, including as mitigation for development impacts; and that prescriptive public rights to access the shoreline are protected. We also have a mandate to assure that public access is provided and managed in relation to the needs of all citizens, and to protect private rights, natural resources, and public safety. Hence, the Commission has long been involved in evaluating and resolving conflicts between competing uses, and in evaluating proposals that might affect the public's ability or costs of getting to the coast, to assure that the public's fundamental rights of coastal access, and the legislative mandates of the Coastal Act, are met.

In dealing with these issues, the Commission has distinguished between the closure of public use of beaches and of support facilities, such as parking lots, accessways, piers and boat launch ramps.



The closest scrutiny is given to the closure of beaches; however, limiting hours of beach parks and parking lots is especially critical in terms of impacts to access when the park access or parking lot serves as the only means for the public to reach the shoreline, as is the case at Crystal Cove.

To ensure consistency with Section 30210 of the Coastal Act, maximum access to the navigable waters for the purpose of recreation must be provided for all people that is in harmony with public safety needs. Working with the City of Laguna Beach on its coastal development permit (Resolution No. 10.019/CDP No. 10-12) for an ordinance (No. 1521) establishing a beach curfew, the City decision to approve beach closure between 1 a.m. and 5 a.m. was not appealed to the Commission because the ordinance states the closure shall not apply to activities such as walking, jogging, fishing, grunion hunting, scuba diving, surfing, or swimming and specifically acknowledges that individuals may go to or come from the wet sand or the area within 20 feet inland of the wet sand, for any of the allowed uses by the most direct safe route available at any given location.

In the Huntington Beach downtown area Specific Plan amendment (HNB-MAJ-1-10), the Commission certified the following language to assure public access to State tidelands is provided:

3.3.7.15: A public beach closure/curfew cannot apply to the area of Coastal Commission original jurisdiction (State tidelands, submerged lands and public trust lands) including but not necessarily limited to the area seaward of the mean high tide line. Public access to the water's edge and at least 20 feet inland of the wet sand of all beaches shall be permitted at all times. Closure to public use of any portion of the beach inland of the mean high tide line is not encouraged and requires a coastal development permit which must maintain the public's right to gain access to State tidelands. Measures that limit public use of the beach shall be limited to those necessary to address documented public safety events that cause a risk or hazard to the general public and shall be the minimum necessary to address the potential risk or hazard to the general public. The need for continuation of safety measures that limit public access shall be reassessed on a periodic basis to assure maximum public access is provided. Limited closure for beach maintenance may be allowable pursuant to a coastal development permit."

Each State Park Superintendent is authorized by the Department Director to adopt Posted Orders to manage activities such as park hours within each park unit. The Posted Order (No. 925-12-003 issued July 1, 2012) sets closing times for all State Park units in the Orange Coast District. In Crystal Cove State Beach, the two large parking lots located on the ocean side of Pacific Coast Highway (Pelican Point and Reef Point), close at sunset. Two other parking lots inland of PCH at Los Trancos, which serves the Historic District (guest cottages, restaurant and bar), and the Moro Campground lot, remain open until 10 p.m. A third inland lot, the Moro Day Use Area (Visitor Center), closes at sunset. These parking lot hours have not been authorized through a coastal development permit or through the Public Works Plan for Crystal Cove State Park.

The order states that: "All areas within the park units of the Orange Coast District designated for day use, such as, parking areas, picnic areas, trails, bluff areas, beach (except as in Article V[sic]<sup>8</sup> of the State Constitution involving fishing) and other areas not designated as authorized camping

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<sup>8</sup> The correct citation is to Article X, Section 4 of the state Constitution.

areas are closed to public use, entry and occupancy and all traffic, to include vehicle, foot, bicycle or other human powered vehicles, mopeds or other forms of transportation other than administrative or emergency vehicles....”

The sunset closure is the earliest closure time of any state beach in Orange County. During late November and December, sunset at Crystal Cove is as early as 4:45 p.m. A sign posted at the Pelican Point entry says park hours are 6 a.m. – Sunset. Another sign in the Reef Point lot says: “Park and Beach Hours 6 a.m. to Sunset.” Due to the relationship of the parking lots to beach access points, signage posted at State Park facilities that establish beach or beach parking hours at sunset or 10 p.m. effectively prevents the public from using the beach after park hours, which is inconsistent with Section 30210 of the Coastal Act.

As part of **Special Condition 1** for this permit, the Commission is requiring that State Parks implement supplemental means to increase visitation, including extending park hours, parking lot hours and operation. As noted, the current parking lot hours for Pelican Point, Reef Point and the Moro Day Use Area are from 6 a.m. until sunset. Currently, any vehicle remaining in the parking lot after sunset is given a citation by State Parks. Depending on which lot the visitor has chosen to park in, there is between about 900 feet to over 2,000 feet to walk up from the beach to the parking lot. These strict citation measures require visitors to leave the beach well in advance of the sunset in order to avoid a citation. In order to maximize access at these three locations, the Commission is requiring that parking lot hours be extended to at least one hour after sunset, at a minimum, and State Parks will provide the option for vehicles to stay later (without penalty) through installation of measures that prohibit ingress, but allow egress only. Given that one of the most sought after moments on the California coast is witnessing the sun setting over the Pacific Ocean, extending the operating hours at the parking lots would help provide maximum access to the coast by allowing visitors the chance to enjoy the sunset at the beach and/or continue to enjoy and then conclude their recreational activities within a reasonable time period before either relocating their vehicle to the Los Trancos lot (which stays open later) or leave the park. These expanded hours and methods of operation, along with the shorter hourly rate option, will serve to maximize public access opportunities along this segment of the coast which are constrained by the management of State Parks’ parking lots.

At Los Trancos and the Moro Campground parking lots, inland of Pacific Coast Highway, parking lot hours shall be 6 a.m. to 10 p.m., at a minimum.

With later hours, these parking lots provide an important place where visitors can choose to park (or relocate) their vehicle and continue to enjoy recreational opportunities at the beach, such as nighttime scuba diving, fishing, stargazing, etc.; and/or to enjoy the beachside restaurant and bar at the Historic District. The Commission’s special condition reflects the importance of retaining the later operating hours at the Los Trancos and Moro Campground parking lots.

In order to ensure that changes are reviewed for consistency with the Coastal Act, **Special Condition 1** provides for operating hours to be expanded at any time; however, any changes that would reduce operating hours below those outlined above shall be reported to the Executive Director to determine whether an amendment or new coastal development permit is required.

**Special Condition 3** concerns access to state tidelands. Consistent with Article X, Section 4, of the State Constitution and Section 30210 of the Coastal Act, State Parks may regulate hours and use of parking lots, but not in a manner that prohibits all public access to the shoreline. Some existing signs make no distinction between ‘park’ closure hours and constitutionally protected access to the shoreline. Therefore, the Commission finds removal of any existing signage that indicates or suggests that the beach itself is closed at any time will allow the public to gain access to state waters for recreational activities after the parking lots have closed. This is an essential part of an overall program to ensure that, in the context of these proposed changes to the fee collection system and the fee structure itself, that any potential adverse impacts on public access are ameliorated by expanded parking lot hours and the correction of existing inconsistencies with Section 30210 of the Coastal Act.

### **CONCLUSION**

As conditioned, the proposed project to install Automated Payment Machines and institute a new floating fee schedule, including hourly rates, has the potential to expand visitation, improve public access, and increase revenue. State Parks has an opportunity to demonstrate whether or not the public will take advantage of alternatives to the existing \$15 flat fee day use parking rate, particularly for shorter length visits. Data collected during the three-year life of this permit will provide some evidence about the demand of state park visitors for a variety of parking options and provide a tool to help devise the best approach to maximize public access to the coast and increase visitation and, therefore, revenue at Crystal Cove.

Changes in the hours and operation of three Crystal Cove parking lots that currently close at sunset will expand opportunities for the public to access and enjoy the beach. Signs indicating that the beach is closed after hours will be removed to ensure that existing rights of access to State tidelands are honored.

Prior to expiration of the CDP, the applicant shall submit an application for a permit amendment or new CDP for a updated parking management program which has been revised to address the impacts to access and visitation patterns identified through analysis of the data from the submitted monitoring information. The updated submittal shall include measures to eliminate any identified adverse impacts to coastal access and to maintain and/or increase visitation and revenue based on the submitted data.

The Commission finds that the proposed project, as conditioned, is consistent with the public access and recreational policies of the Coastal Act.

## **E. VISUAL IMPACTS**

Coastal Act Section 30251 requires that “the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas....”

The Automated Payment Machines would be installed at the entrance to or in paved parking lots. The machines stand about 54 inches off the ground. In some cases, the APMs are accompanied by a 12-foot-tall pole to mount informational signs and provide a location for solar collectors, which power some of the machines. At Pelican Point, Reef Point, and Moro Campground, the machines have been placed near existing entry kiosks. At the Moro Day Use Site, the APM is near the Visitor Center. The APM proposed for Los Trancos would be placed near the entry kiosk. As such, none of the structures involve a visual impact that would affect public views of the shoreline, view corridors or the scenic or visual qualities of coastal areas. Therefore, installation of the proposed APMs is consistent with Coastal Act Section 30251.

## **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of 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 Department of Parks & Recreation, acting as lead CEQA agency, determined that the proposed project was categorically exempt from CEQA review, and thus the Department did not identify any significant adverse environmental effects from the proposed project. The Coastal Commission’s review and analysis of coastal development permit applications has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate conditions to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, as conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

## **APPENDIX A**

### **Substantive File Documents:**

Coastal Permit Application File Number 5-12-154

Crystal Cove State Park Public Works Plan and amendments

California State Park System Statistical Reports 2003/04 through 2010/11 Fiscal Years

California State Parks – Pass Descriptions – Department website:

[http://www.parks.ca.gov/?page\\_id=1049](http://www.parks.ca.gov/?page_id=1049) Viewed by Commission staff on January 15, 2013.

California State Parks – Day Use Fees by Geographical Region – Department website:

[http://www.parks.ca.gov/pages/737/files/Current\\_GeoLoc%20web\\_day%20use.pdf](http://www.parks.ca.gov/pages/737/files/Current_GeoLoc%20web_day%20use.pdf) Viewed by Commission staff on January 15, 2013.

California Department of Parks and Recreation, Orange Coast District, District Superintendent's Posted Order No. 928-12-003, dated July 1, 2012.

Coastal Permit Application Numbers 5-96-268, Coastal Permit Amendment 5-96-268-A1 and 5-98-042, involving parking in coastal areas of the City of Long Beach.



5-12-154, Exhibit 1





  
**Not yet in service.**  
**Please pay fees at Kiosk.**  
In the near future, this machine will offer our visitors the ability to pay fees and purchase annual passes using credit cards or cash. A receipt will be issued for all transactions which will serve as proof of payment.  
If you have questions about this device, or Crystal Cove State Park, please contact us at 949-494-3539.

**DIGITAL**  
Business Building Solutions

RECEIPT

Crystal Cove APM

CDP # 5-12-154  
Exhibit #2

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
 SAN FRANCISCO, CA 94105-2219  
 VOICE AND TDD (415) 904-5200



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CALIFORNIA  
 COASTAL COMMISSION  
 CENTRAL COAST OFFICE

October 29, 1993

TO: Planning Directors of Coastal Cities and Counties, and Other Interested Persons

FROM: Peter Douglas, Executive Director *Peter Douglas*

SUBJECT: COASTAL DEVELOPMENT PERMIT REQUIRED WHEN IMPOSING OR INCREASING FEES OR MODIFYING THE HOURS OF OPERATION OF PUBLIC BEACHES OR PUBLIC BEACH PARKING LOTS, PIERS OR BOAT LAUNCHING RAMPS

The Coastal Commission has received numerous inquiries as to whether the imposition or increase of fees or making a change in operating hours of public beaches, shoreline parks or public beach parking lots, piers or boat launching ramps requires a coastal development permit. It appears these inquiries result from increasing pressures on local governments to charge fees and/or change the hours of operation of such facilities based on budgetary and public safety concerns. In addition to these inquiries, the Commission has taken action on several specific coastal development permit applications for such activities of which you should be aware. We think it appropriate to respond on a statewide basis and apologize for our delay.

The answer is yes, in most cases. For purposes of this communication, it is important to distinguish between the various types of facilities and actions being discussed. The descriptions below of the types of facilities referred to in this memorandum are not intended to constitute any sort of legal definition but rather provide the context for the discussion that follows. Public beaches refers to all sandy beach areas under public ownership or control, whether or not subject to the public trust. Shoreline parks are public recreation areas that may or may not include sandy beach located immediately adjacent to or in close proximity to state waters and which can be used by the public to gain access to such waters. Public parking facilities include any parking areas or portions of such areas (eg. parking lots, on-street or curbside parking spaces, parking structures) open to the public that are used by the public to gain access to public beaches or state waters. Public piers and public boat launching ramps are self-explanatory.

Pursuant to the California Coastal Act a coastal development permit is required for any "development", unless specifically exempted under a variety of provisions or procedures set forth in the Coastal Act or pursuant to other provisions of law (eg. the doctrine of vested rights). The Coastal Act defines "development" as including, among other things, a "...change in the intensity of use of water, or of access thereto..." (Public Resources Code Section 30106.) After a local coastal program (lcp) has been fully certified



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for a city or county, the coastal development permit issuing responsibilities of the Commission are delegated to that local government. Coastal permitting responsibilities stay with the Commission for any development on any land or water areas subject to the public trust. In addition, certain coastal permit actions by local government are appealable to the Commission, including those for the types of facilities and actions that are the subject of this memo. Local coastal programs (lcps) have incorporated the Coastal Act definition of "development" requiring a coastal development permit from the local government implementing a fully certified lcp.

It is the Commission's position that any action which has the effect of changing the intensity of use of state waters or of access to such waters is a "development" for purposes of the Coastal Act and requires a coastal development permit from the Commission or, in appropriate circumstances, from a local government implementing a fully certified lcp or the Commission on appeal. Because the imposition or substantial increase of a user fee for beach access parking, pier or boat launching ramp use, or for beach or shoreline park use would, in our opinion, result in a change in access to state waters, a coastal development permit is required. For purposes of this memo and for purposes of guidance, "substantial increase" means any fee increase of 25% or more in any given year or 50% or more on a cumulative basis over any three consecutive year period. Similarly, any action changing the hours of operation or availability for public use of, for example, any beach, shoreline park, parking facility, pier or boat launching ramp or facility requires a coastal development permit. A coastal development permit is required even if little or no physical construction is necessary to implement the action calling for a fee, a fee increase or a change in hours of operation.

As mentioned before, whether the coastal development permit must be obtained from the Commission or the appropriate local government depends on whether the local government has in place a fully certified lcp and has been delegated the coastal development permit issuing authority pursuant to the Coastal Act. In some cases, even where a fully certified lcp is in place, the Commission may have retained coastal development permitting authority because the affected lands are subject to the public trust or otherwise fall into a category of retained permit jurisdiction. If there is a question about whether the Commission or the local government is responsible for processing and acting on a coastal development permit, please contact the appropriate Coastal Commission office. Even where a local government has coastal development permit issuing responsibility, it is important to know that the action is probably appealable to the Coastal Commission and, because the issue involves public access and is of vital concern to the Commission, may well be appealed.

The fact a coastal development permit is required for the type of actions described above does not mean a permit application will necessarily be denied. Rather, each case must be evaluated in light of the particular applicable facts and circumstances. The Coastal Commission has already reviewed and acted on several proposals to change the hours of operation of public beaches, parking facilities, accessways, boat launching ramps, and a pier. These proposals involved the cities of San Diego, Carlsbad and Long

Planning Directors of Coastal Cities  
and Counties, and Other Interested  
Persons

October 29, 1993

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Beach. It is our intent to prepare a memo on this subject that will provide guidance to local government, other public agencies and members of the public relative to the type of factors the Commission has considered and examples of concerns that should be taken into account when these types of proposals are being formulated. The Commission is extremely sensitive to the budgetary and public safety concerns of local governments. At the same time, the Commission must carefully balance those concerns against broader public interests relative to public use of and access to public coastal resources such as beaches and state waters. It is for this reason, among others, that the Commission has not approved any request to close public beaches to the public on a continuing basis. On the other hand, the Commission has approved the closure of public beach parking lots at certain hours during the night. Finally, it should be remembered that because these types of actions requiring coastal development permits involve questions of public access, the legal standard of review is the Chapter 3 policies of the Coastal Act relating to public access.

Relative to public safety concerns, we want to emphasize that nothing in what we have said here interferes with or prevents a law enforcement agency from taking any and all actions it deems appropriate to address a particular public safety emergency, including any action to close to all public use a beach, parking facility or park. Similarly and pursuant to the Coastal Act, if a local government takes an action to close a public facility pursuant to a legally approved declaration of "public nuisance", no coastal development permit is required. We should caution however, Commission staff will look carefully at any action using the "public nuisance" exception to the coastal development permit requirement when the result of such action is to close to public use for any extended period of time a public beach, parking facility or any other facility providing public access to the beach or state waters.

Because there has been some ambiguity and uncertainty about the coastal permit requirements for the types of actions covered by this memo, it is not our intent to pursue any coastal act violation actions at this time. However, we ask every entity that has taken any action described here as requiring a coastal development permit and for which such a permit has not been approved to contact our office to determine the appropriate steps to complete and process a coastal permit application. We realize that in some cases the action requiring a coastal permit may have been taken some time ago. Notwithstanding the passage of time, a coastal permit will still be required and must be secured. We also understand there have been many instances where local jurisdictions have increased parking fees. We recognize that not every increase in parking fees requires a coastal permit. Accordingly, please contact our office for clarification on how we intend to proceed in these cases.

We would appreciate your passing this memo on to anyone you think may have an interest in the matter. We are particularly anxious that this memo get to the responsible people in your jurisdiction who manage your parking and recreation programs. Thank you for your cooperation and attention to this matter.

2641E

Exhibit #3

CDP # 5-12-154

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