

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W19b

Click here to go to
original staff report

ADDENDUM

December 5, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **City of Dana Point Local Coastal Program (LCP) Amendment Request No. 2-16 (LCP-5-DPT-16-0044-1) for the Commission meeting of December 7, 2016.**

I. PUBLIC CORRESPONDENCE

Staff received one letter in support of the recommendation to approve the LCP Amendment Request with suggested modifications (Attachment A).

II. EX PARTE DISCLOSURE

Commissioner disclosure of Ex Parte Communications (Attachment B).

ITEM NO: W19b • LCP-5-DPT-16-0044-1

November 25, 2016

Coastal Commissioners,

This letter is in full support of the staff recommendations to:

1. Deny the LUP and IP amendment request as submitted; and,
2. Certify, only if modified, the LUP and IP amendment request as advised in the staff report.

Employees (Security Guards) of the Headlands Residential Development have demonstrated a history of failing to unlock the gates to the Mid Strand Access and Central Strand Access at the times posted on signs (photos attached).

Headlands Security Guards have also been known to lock the gates shut in the afternoon earlier than the times posted on signs.

In some cases, the public has been locked inside. Families and children carrying beach items, including ice chests and surf boards, have had to climb over the gates to return from the beach to their cars parked in the public parking lot. As the fences and gates are armored with upward pointing spiked arrows all along the top, the danger of accidental impalement while attempting to climb over is a real public safety concern.

Reliability and dependency upon timed electronic-controlled sliding gates also raises a red flag. Manual operation of a “rope” or similar device administered by a public employee, rather than a Headlands Development employee, would eliminate the negative impacts of electronic failure.

Please support the recommendations of Coastal Commission Staff to protect public beach access at the Strands Beach in Dana Point.

Respectfully,

Vonne Barnes
13 Montilla
San Clemente, CA 92672

Coastal Access

(Limited to Sidewalk)

8:00 a.m. - 7:00 p.m. May - Sept.

8:00 a.m. - 5:00 p.m. Oct. - April

- No Dogs
- No Skateboards or Bicycles
- No Alcohol or Glass Containers
- No Smoking
- No Trespassing Beyond Public Sidewalk

Picture submitted by Vonne Barnes on 11/28/2016: Mid Strand Access: Headlands Security Guards have a history of failing to unlock the gates at the times posted on signs .



Coastal Access

(Limited to Sidewalk)

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8:00 a.m. - 5:00 p.m. Oct. - April

- No Dogs
- No Skateboards or Bicycles
- No Alcohol or Glass Containers
- No Smoking
- No Trespassing Beyond Public Sidewalk



Beach Access
Free Incline
Elevator
200 Yards →

Picture submitted by Vonne Barnes on 11/28/2016: Headlands Security Guard unlocking the gate in the morning.



Submitted by Vonne Barnes on 11/28/2016: July 22, 2011 5:26 pm. The sign posts the gates are supposed to be open until 7 pm, but they are locked at 5: 26 pm. This family is trapped inside and climbed over the gate to get out to the parking lot



Submitted by Vonne Barnes on 11/28/2016: July 22, 2011 5:26 pm. The sign posts the gates are supposed to be open until 7 pm, but they are locked at 5: 26 pm. This family is trapped inside and climbed over the gate to get out to the parking lot. Note the beach equipment, and the spikes on top of the fence and gate.



Picture submitted by Vonne Barnes on 11/28/2016: July 22, 2011 5:26 pm. The sign posts the gates are supposed to be open until 7 pm, but they are locked at 5:26 pm. Others are trapped inside and climbed over the gate to get out to the parking lot. Other people are waiting outside trying to get inside the gate as it is supposed to be open for several more hours.



Picture submitted by Vonne Barnes on 11/28/2016: July 22, 2011 5:26 pm. The sign posts the gates are supposed to be open until 7 pm, but they are locked at 5: 26 pm. Others are trapped inside and climbed over the gate to get out to the parking lot



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DISCLOSURE OF EX PARTE COMMUNICATIONS

RECEIVED
NOV 28 2016

Name or description of project:

City of Dana Point Local Coastal Program Amendment No. 16-0001 (Public Access in the Dana Point Headlands)

Date and time of receipt of communication:

November 28, 2016 10:00 A.M.

Location of communication:

Phone call by Martha McClure in Crescent city at the request of Dave Neish, applicants representative

Type of communication:

Phone

Person(s) in attendance at time of communication:

Dave Neish

Person(s) receiving communication:

Martha McClure

Detailed substantive description of the content of communication:

I received the briefing booklet and the November 9th letter from the City of Dana Point. We reviewed the settlement between the Commission and the City of Dana Point, which amends the LCP the text of the City's Headlands Development and Conservation Plan (HDCP) and Land Use Element Policy. The issue came down to one primary issue of gates at 2 locations four gates in all. There are several trails open 24/7 and two trails open from 5am to 10pm. Applicant wants to use retractable gates; staff is suggesting a rope to close the area. The applicant suggests that the new gates will be more inviting and wider and the rope will not close the area. Applicant feels that this compromise is a win-win for the Commission and the City of Dana Point.

Date: November 28, 2016

Signature of Commissioner: _____

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W19b

November 23, 2016

TO: Commissioners and Interested Persons

FROM: Karl Schwing, Deputy Director
Charles Posner, Supervisor of Planning
Shannon Vaughn, Coastal Program Analyst

SUBJECT: City of Dana Point Local Coastal Program (LCP) Amendment Request No. 2-16 (LCP-5-DPT-16-0044-1). For public hearing and Commission action at the Commission's December 7, 2016 meeting in Ventura.

SUMMARY OF LCP AMENDMENT REQUEST NO. 2-16

This LCP amendment request relates primarily to the Mid-Strand and Central Strand (upper and lower) public beach accessways at the Dana Point Headlands as described in the City of Dana Point Headlands Development and Conservation Plan (HDCP). Amendment Request No. 2-16 would amend the certified Land Use Plan (LUP Policy 5.31) and Implementation Plan (IP) to memorialize hours of operation for the Mid-Strand and Central Strand public beach accessways (5:00 a.m. to 10:00 p.m.)¹ that were previously authorized with a locally issued coastal development permit (Amended Coastal Development Permit No. 15-00021), and allow the issuance of a coastal development permit for the installation of retractable automated locking gates at the Mid-Strand and Central Strand public beach accessways to enforce the hours of operation. The LCPA also memorializes other accessways providing access to the beach, including the South Strand Switchback Trail, Strand Beach Park and the Strand Revetment Trail shall be open 24 hours per day. The portion of the certified IP that is subject to this LCP amendment request is the HDCP. The City Council submitted the LCP amendment request for Commission certification with City Council Resolution No. 16-08-16-02 (**Exhibit No. 1**). The proposed changes to the HDCP are set forth in City Ordinance No. 16-05 (Exhibit No. 2).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission certify LCP Amendment Request No. 2-16 with suggested modifications that would memorialize existing limited hours of operation for the Mid-Strand and Central Strand public beach accessways (5:00 a.m. to 10:00 p.m.), but prohibit the use of gates for enforcement (*i.e., access closure*) of the hours of operation. The motions and resolutions to carry out the staff recommendation are on **Pages Three and Four**. The suggested modifications to the LCP amendment request are on **Pages Five through Seven**.

The suggested modifications are necessary to carry out the Chapter 3 and LUP's requirements to provide and protect public access to the shoreline. The presence of gates, whether open or closed, can give the

¹ Pursuant to the terms of Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02, described in more detail below, the City agreed, if it desired to establish hours of operation for the Mid-Strand and Central Strand Accessways, to propose and authorize these hours of operation through the local coastal development permit process.

impression that the accessways are not available for public use. The proposed LCP amendment provides a means to equitably regulate the use of the public beach accessways by memorializing existing hours of operation and requiring signs informing the public of those hours of operation, which will continue to allow the public to use the accessways while also reducing neighborhood concerns about the public using the accessways at night, which has been the basis for regulating public use of the subject accessways. The proposed LCP amendment, if modified as suggested, will protect public access and private property rights consistent with the requirements of the public access policies of Chapter 3 of the Coastal Act and the LCP, which are the standards of review.

Therefore, staff recommends that the Commission, after public hearing:

- 1. Deny the LUP and IP amendment request as submitted; and,**
- 2. Certify, only if modified, the LUP and IP amendment request.**

STANDARDS OF REVIEW

The standard of review for the proposed amendment to the Land Use Plan (LUP), pursuant to Sections 30512 and 30514 of the Coastal Act, is that the proposed LUP amendment meets the requirements of, and is in conformance with the Chapter 3 policies of the Coastal Act.

The standard of review for the proposed amendment to the LCP Implementing Ordinances (IP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed IP amendment conforms with, and is adequate to carry out, the provisions of the certified LUP (taking into account the proposed LUP amendment).

LOCAL REVIEW AND DEADLINE FOR COMMISSION ACTION

The City of Dana Point Planning Commission held a public hearing for the LCP amendment on July 25, 2016. The City Council held public hearings on August 16, 2016 and September 6, 2016 (2nd reading of the Ordinance). On September 14, 2016, the City submitted the LCP amendment request for Coastal Commission certification with City Council Resolution No. 16-08-16-02. On September 28, 2016, the submission was deemed complete by Commission staff. As such, the deadline for Commission action on this item, ninety days after the submittal was deemed complete, is December 27, 2016. If needed, additional time for Commission action (up to one year) may be authorized with approval of an LCP time extension.

FOR ADDITIONAL INFORMATION

The file is available for review at the South Coast District office located in the Molina Center at 200 Oceangate, Suite 1000, Long Beach, 90802. The staff report can be viewed on the Commission's website: <http://www.coastal.ca.gov/mtgcurr.html>. For additional information, contact Shannon Vaughn or Charles Posner in the South Coast District office at (562) 590-5071.

EXHIBITS

1. City Council Resolution No. 16-08-16-02
2. City of Dana Point Ordinance No. 16-05
3. Map of Headlands and Strand Beaches and Public Accessways
4. Rendering of retractable automated locking gates
5. Communications
6. Settlement Agreement

I. MOTIONS AND RESOLUTIONS

Motion I:

I move that the Commission certify Land Use Plan Amendment No. 2-16 to the City of Dana Point Land Use Plan as submitted by the City of Dana Point.

Staff recommends a **NO** vote. Failure of this motion will result in denial of the LUP Amendment as submitted and adoption of the following resolution and findings. The motion passes only by affirmative vote of the majority of the appointed Commissioners.

Resolution I:

The Commission hereby denies certification of Land Use Plan Amendment No. 2-16 as submitted by the City of Dana Point and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

Motion II:

I move that the Commission certify Land Use Plan Amendment No. 2-16 for the City of Dana Point if it is modified as suggested in this staff report.

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the LUP Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

Resolution II:

The Commission hereby certifies the Land Use Plan Amendment 2-16 for the City of Dana Point if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan Amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment if modified as suggested 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 plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

Motion III:

I move that the Commission reject the Amendment to the Implementation Program for the City of Dana Point certified LCP as submitted.

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution III:

The Commission hereby denies certification of the Amendment to the Implementation Program submitted for the City of Dana Point certified LCP and adopts the findings set forth below on grounds that the Amendment to the Implementation Program as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

Motion IV:

I move that the Commission certify the Amendment to the Implementation Program for the City of Dana Point certified LCP if it is modified as suggested in this staff report.

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Amendment to the Implementation Program with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution IV:

The Commission hereby certifies the Amendment to the Implementation Program for the City of Dana Point certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Program with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Amendment to the Implementation Program if modified as suggested 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 Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. SUGGESTED MODIFICATIONS

Certification of the LUP and IP amendments are subject to the following modifications to the certified LUP and IP policies. Text proposed by the City to be added to the LUP is underlined. Text proposed to be removed by the City is ~~struck through~~. Text added by the suggested modification is ***bold, italicized and underlined***. The City's proposed text that is deleted by the suggested modification is ~~***struck through, bold, italicized, and underlined***~~. Only those subsections of the LUP and IP for which modifications are being suggested are shown below.

A. Suggested Modification to the LUP

Policy 5.31 – Page 11 (HDCP), page 17 (General Plan)

Recreation and access opportunities at public beaches and parks at the Headlands shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations in time of use or increase in user fees or parking fees shall be subject to a coastal development permit. Strand Vista Park and the entries to the Mid-Strand Access and upper and lower Central Strand Access shall be open and operated and maintained for public ~~pedestrian~~-beach access to and from Strand Vista Park and Strand Beach ***from at a minimum 5:00 a. m. to 10:00 p.m. The entryways may not be gated but a single rope or similar device may be draped across the entryway during authorized hours of closure approved by a coastal development permit ~~Retractable gates operating with an automatic locking mechanism shall be permitted at the entries to the Mid-Strand Access and Central Strand Access only if the access ways are operated and maintained in a fully open position and signed for public access during hours of operation approved by a coastal development permit, and the gates are designed with no potential to limit, deter, or prevent public access to the shoreline.~~*** The entryways must otherwise remain open during approved hours of operation. The South Strand Switchback Trail and Strand Beach Park/Strand Revetment Trail shall be open and operated and maintained for public beach access 24 hours a day. All trails, accessways and entryways shall be identified with appropriate signage.

B. Suggested Modification to the IP: Dana Point Headlands Development Conservation Plan

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Create the Mid-Strand Vista Park Access as a new public path leading from the trail in approximately the middle of the park to the Central Strand Beach Access at the intersection of the first residential cul-de-sac street. The entry to the Mid-Strand Beach Access shall be designed and maintained to encourage public use during hours of operation approved by a coastal development permit, i.e., architectural elements shall be incorporated into the entry to ***accentuate distinguish*** it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The entry may ***not*** be gated ***but a single rope or similar device may be draped across the entryway during authorized hours of closure approved by a coastal development permit and operated with an automatic timer to enforce hours of closure approved by a coastal development permit, but only provided the gate is designed to be fully retractable and the access way is operated and the gate is maintained in a completely open position during approved hours of operation, and the gate has no security enhancements (e.g. spikes, barbed wire, etc.) or other visual obstructions (e.g. wire mesh). Entry must otherwise remain open during approved hours of operation.*** Please see Figure 4.12.10.

Create the Central Strand Beach Access as a new public path to Strand Beach, conveniently located within the Strand Vista Park, near the entry to the Strand residential neighborhood (Planning Area 2). The entry at both ends of the Central Strand Beach Access shall be designed and maintained to encourage public use during ~~approved~~ hours of operation as approved by a coastal development permit, i.e., the architectural elements shall be incorporated into the entry to accentuate ~~distinguish~~ it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The Central Strand Beach Access shall provide direct access to Strand Beach, opening a portion of the property ~~currently~~ historically fenced and restricted from public use. The entry may ~~not~~ be gated at ~~either both~~ ends ~~but a single rope or similar device may be draped across the entryway during authorized hours of closure approved by a coastal development permit and operated with an automatic timer to enforce hours of closure approved by a coastal development permit, but only provided the gates are designed to be fully retractable and the access ways are operated and the gates are maintained in a completely open position during the approved hours of operation, and the gates have no security enhancements (e.g. spikes, barb wire, etc.) or other visual obstructions (e.g. wire mesh).~~ Entry at both ends of Central Strand Beach Access must otherwise remain open during approved hours of operation. Please see figures 4.4.15, 4.12.4, 4.12.11, and 4.12.12.

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The Mid-Strand Vista Park Access shall consist of an 8' wide concrete walkway and shall be constructed in approximately the middle of the park, from the park trail to a connection with the Central Strand Beach Access at the intersection on the residential cul-de-sac. The entry to the Mid-Strand Beach Access shall be designed and maintained to encourage public use during hours of operation approved by a coastal development permit, i.e. architectural elements shall be incorporated into the entry to accentuate ~~distinguish~~ it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The entry may ~~not~~ be gated ~~but a single rope or similar device may be draped across the entryway during authorized hours of closure approved by a coastal development permit and operated with an automatic timer to enforce hours of closure approved by a coastal development permit, but only provided the gate is designed to be fully retractable and the access way is operated and the gate is maintained in a completely open position during the approved hours of operation, and the gate has no security enhancements (e.g. spikes, barb wire, etc.) or other visual obstructions (e.g. wire mesh).~~ Entry must otherwise remain open during approved hours of operation. Please see Figure 4.12.10.

The Central Strand Beach Access shall consist of a concrete walkway 8' wide which will parallel the spine road for the Strand residential neighborhood, as illustrated in Figures 4.4.15 and 4.4.16. Above the beach, at the same level as the lowest row of lots, the access shall be incorporated into a 50' wide landscaped extension of Strand Beach Park and the minimum 8' wide public path that shall be located seaward of the Strand residential development and on top of landward of any shoreline protective device. Within the 50' wide landscaped extension, the trail shall be 10' wide. The entries to the upper and lower Central Strand Beach Access shall be designed and maintained to encourage public use during hours of operation approved by a coastal development permit, i.e., architectural elements shall be incorporated into the entry to accentuate ~~distinguish~~ it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The entries may ~~not~~ be gated at ~~either ends~~ ~~but a single rope or similar device may be draped across the entryway during authorized hours of closure approved by a coastal development permit and operated with an automatic timer to enforce hours of closure approved by a coastal development permit, but only~~

provided the gates are designed to be fully retractable and the access way is operated and the gates are maintained in a completely open position during the approved hours of operation, and the gates have no security enhancements (e.g. spikes, barb wire, etc.) or other visual obstructions (e.g. wire mesh). Entry at both ends of Central Strand Beach Access must otherwise remain open during approved hours of operation. Please see Figures 4.4.15, 4.12.4, 4.12.11 and 4.12.12.

Figures 4.4.15 and 4.12.4

Add call-out for **rope or similar device and remove any indication of a fence or gate across the accessway from the illustration—“Fully Retractable Public Access Gate”**

Page 4-105

“J. Walls, and Fences, and **Rope Gates**”

At bottom, last sentence, modify:

“Figures 4.12.7 through ~~4.12.10~~ 4.12.13 illustrate the design parameters for the various project fences, walls, and **rope gates**.”

New Figure 4.12.10

Mid-Strand Beach Access **Rope Gate**

Remove any indication of a fence or gate across the accessway from the illustration and add a single strand of rope or similar device positioned at approximately 48 inches above the ground surface to the illustration of the ‘closed’ condition.

New Figure 4.12.11

Central Strand Upper Access **Rope Gate**

Remove any indication of a fence or gate across the accessway from the illustration and add a single strand of rope or similar device positioned at approximately 48 inches above the ground surface to the illustration of the ‘closed’ condition.

New Figure 4.12.12

Central Strand Lower Access **Rope Gate**

Remove any indication of a fence or gate across the accessway from the illustration and add a single strand of rope or similar device positioned at approximately 48 inches above the ground surface to the illustration of the ‘closed’ condition.

Existing Figure 4.12.10 for the “Habitat/Safety View Fence”
Renumbered as Figure 4.12.13

III. FINDINGS

The Commission hereby finds and declares:

A. DESCRIPTION OF THE LCP AMENDMENT REQUEST

The City of Dana Point presently has two groups of documents that serve as its certified Local Coastal Program (LCP). There is an older set of documents containing a Land Use Plan (LUP) and Implementation Plan (IP) that were originally certified when Dana Point was unincorporated and operated by the County of Orange and which were adopted by the City when it incorporated that still apply to the central geographic area of the City (i.e. that area generally located between Monarch

Beach to the north and Capistrano Beach to the south). These older documents are referred to as the Dana Point Specific Plan Local Coastal Program or '1986' LCP. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element), the City's Zoning Code the Monarch Beach Resort Specific Plan, the Dana Point Town Center Plan, the Dana Point Harbor Revitalization Plan, and the Headlands Development Conservation Plan (HDCP) which apply to those areas of the City which are not covered by the 1986 LCP. These more recent documents are referred to as the '1996' LCP.

This LCP amendment request, as proposed, applies specifically to the Mid-Strand and Central Strand (upper and lower) public beach accessways at the Dana Point Headlands as described in the City of Dana Point Headlands Development and Conservation Plan (HDCP). Amendment Request No. 2-16 would amend the certified Land Use Plan (Land Use Element Policy 5.31) and Implementation Plan (IP) to memorialize hours of operation for the Mid-Strand and Central Strand public beach accessways (5:00 a.m. to 10:00 p.m.) that were previously authorized by a City-issued coastal development permit, and allow the issuance of a coastal development permit for the installation of retractable automated locking gates at the Mid-Strand and Central Strand public beach accessways to enforce the hours of operation. The amended LUP policy also states that two other public accessways shall be open 24 hours per day: the South Strand Switchback Trail, and the Strand Beach Park/Strand Revetment Trail.

The City's proposed new LUP Policy language read as follows:

Strand Vista Park and the entries to the Mid-Strand Access and upper and lower Central Strand Access shall be open and operated and maintained for public beach access to and from Strand Vista Park and Strand Beach 5:00 a. m. to 10:00 p.m. Retractable gates operating with an automatic locking mechanism shall be permitted at the entries to the Mid-Strand Access and Central Strand Access only if the access ways are operated and maintained in a fully open position and signed for public access during hours of operation approved by a coastal development permit, and the gates are designed with no potential to limit, deter, or prevent public access to the shoreline. The South Strand Switchback Trail and Strand Beach Park/Strand Revetment Trail shall be open and operated and maintained for public beach access 24 hours a day.

The portion of the certified IP that is subject to this LCP amendment request is the HDCP. The City Council submitted the LCP amendment request for Commission certification with City Council Resolution No. 16-08-16-02 (**Exhibit No. 1**). The proposed changes to the HDCP are set forth in City Ordinance No. 16-05 (**Exhibit No. 2**).

B. DENY THE LUP AMENDMENT REQUEST AS SUBMITTED

Amendment Request No. 2-16 would amend the certified Land Use Plan (Land Use Element Policy 5.31) to memorialize hours of operation for the Mid-Strand and Central Strand public beach accessways (5:00 a.m. to 10:00 p.m.) that were previously authorized by a City-issued coastal development permit, and allow the issuance of a coastal development permit for the installation of retractable automated locking gates at the Mid-Strand and Central Strand public beach accessways to enforce the hours of operation. The effects on public access arising from the LCPA must be considered. The standard of review for the amendment to the Land Use Plan is Chapter 3 of the Coastal Act, including the public access and recreation policies of the Coastal Act. The public

accessway subject to this LCP amendment are located in between the sea and the first public road paralleling the sea.

The proposed LCP Amendment, as submitted, is not adequate to carry out the public access and recreation policies of Chapter 3 of the Coastal Act and creates inconsistencies among the City's Land Use Plan policies. The gates limit rather than maximize public access. The following discussion below explains in further detail how the proposed LCP Amendment is not adequate to carry out the Chapter 3 policies of the Coastal Act or the policies of the LUP addressing public access and recreation:

Background

The accessways that are the subject of this LCP amendment are located in an area known as the Dana Point Headlands, in the City of Dana Point, Orange County. In the late 1980s, Dana Point incorporated as a City and soon thereafter, on September 13, 1989, obtained certification of its LCP, which only covered portions of the City. In 2004-2005, the Commission reviewed and approved LCPA 1-03, which amended the Dana Point LCP to certify a new plan (called the Headlands Development and Conservation Plan, or HDCP) for the 121.3-acre Dana Point Headlands project site. That plan, among other things, allowed for development of up to 125 single family residential lots, a maximum of 110,750 square feet of visitor serving commercial land use including a 65-90 room inn, a 35,000 square foot commercial site with visitor information center and 40-bed hostel and 68.5 acres of public parks, coastal trails and open space, and a funicular (inclined elevator) to serve Strand Beach. Shortly after certification, the City approved a coastal development permit (CDP No. 04-23, described below) for the project allowed for under the HDCP and development commenced in April 2005.

The subject trails are located within a portion of the project referred to as "The Strand." This area is comprised of an expansive slope/bluff top area developed with a public parking lot and a linear public view park with walkway along the slope/bluff edge known as Strand Vista Park. A residential enclave has been developed on the slope/bluff face. At the toe of the slope/bluff face is a rock revetment with a public walkway on top of it and a sandy beach seaward and flanking the revetment. These areas are referenced in the LCP as Planning Area 1 (Strand Vista Park), Planning Area 2 (Strand Neighborhood (Residential)), and Planning Area 3 (Strand Beach Park (Recreation Open Space)). The waters offshore are within a Marine Protected Area.

There are four public accessways that provide vertical access to the beach and one lateral accessway along the beach in this area (Exhibit No. 3). Along the slope/bluff edge, above the residences, is a lateral walkway noted above that is within the Strand Vista Park. Strand Vista Park (Planning Area 1) is a linear-shaped public view park, with a trail along its length parallel to the shoreline that has coastal/ocean views, as well as several nodes with picnic areas and benches. An existing public parking lot, the Salt Creek Parking Lot is located inland of the view park. The park and public parking lot are approximately 1,300 feet long (more than 400 yards long or 4 football fields). Thus, multiple access points to the beach are provided along the length of the park. There are four access points that merge into three vertical access corridors that lead from the Strand Vista Park to a lateral walkway along the top of the rock revetment at the toe of the slope through the Strand neighborhood and ultimately to the sandy beach. There is an access point at the northerly end of the Strand Vista Park, known as the North Strand Beach Access that is comprised of a stairway and public funicular to the beach. At roughly the mid-point of Strand Vista Park, is the Mid-Strand Vista Park Access (MSVPA), which is a public stairway that provides a connection between Strand Vista Park and the parking lot to the Central Strand Beach accessway. Next are the Central Strand Beach Access and the South Strand Switchback Trail. The entry point to the Central Strand Beach access is at the southerly end of Strand

Vista Park and the parking lot, adjacent to a private gated roadway that provides vehicular access to the Strand Residential area. The entry point to the South Strand Switchback Trail is located about 500 feet further south of the southerly end of the Strand Vista Park and parking lot.

Except for the existing North Strand Beach Access, all of these publicly accessible improvements were required by the Commission in conjunction with its certification of LCPA 1-03, which certified the HDCP and realized the issuance of CDP No. 04-23. These public improvements were required as offsets necessary to mitigate impacts associated with allowing the developer to restrict through the use of gates on the roadway public vehicular access into the proposed residential community (however, public pedestrian access was required). These public improvements were also part of a package of public benefits the Commission found were necessary to offset impacts caused by that project and to justify a finding that the proposed project (CDP No. 04-23), which has adverse impacts to ESHA, public access, visual resources, shoreline processes, among other impacts, is, on balance, consistent with the Coastal Act.

Commission Enforcement Action

This LCPA has been submitted in part pursuant to Settlement Agreement (**Exhibit No. 6**) and Settlement Cease and Desist Order No. CCC-16-CD-02 (“Settlement Agreement”) issued by the Commission in April 2016 to the City. The Settlement Agreement is described in more detail below, but, in brief, and in relevant part to this LCPA, the City agreed through the Settlement Agreement to remove the existing gates at the entrances to the Mid-Strand and Central Strand Accessways, unless the City obtained Coastal Act authorization for the gates through an LCPA and a CDP. Through this LCPA, the City is seeking to replace the existing gates with a new set of gates. In the interim, the existing gates have been locked open.

The Settlement Agreement was issued by the Commission to address the City’s daily temporal closure of beach accessways located at the Headlands development in Dana Point, which was effectuated by various City actions, including through the adoption of municipal ordinances that established limited hours of use of the beach accessways, and installation and operation of gates at the Mid-Strand and Central Strand entrances to the beach accessways, all of which occurred without the necessary CDPs.

Staff initially learned of the activities noted above in October, 2009 and notified the City by letter that month that it considered the activities to be development that required authorization pursuant to the Coastal Act, and for which no authorization had been obtained. Over the several years since that time, Staff and the City disagreed over the application of the LCP and the Headlands CDP to the activities and whether 2009 and 2010 City ordinances, passed without any Coastal Act review, provided legal authorization for the activities. In 2010, Commission staff took the position that the City’s adoption of the 2010 ordinance and treatment of that ordinance as providing an exemption for the activities was an appealable exemption determination. Appeals were filed, and in May, 2010, the Commission found that exemption determination to be erroneous. The City challenged that action, and Surfriider Foundation separately challenged the City’s nuisance declaration, both in Orange County Superior Court. The cases were consolidated, trials were conducted and judgments were entered and appealed.

The Settlement Agreement arising out of those lawsuits provided a mutually-agreeable path to resolution of the disagreements regarding the application of the LCP and the Headlands CDP to the City’s activities, including by addressing the litigation that ensued from the disagreements. In brief, the City agreed, through the Settlement Agreement, to resolve its liability for all Coastal Act violation

matters addressed by the Settlement Agreement, including resolving civil liability, to the extent applicable, under Coastal Act Sections 30820, 30821 and 30822. By entering into the Settlement Agreement, the City, although not admitting to any wrongdoing or liability under the Coastal Act, agreed, pursuant to the terms of the agreement, to a number of provisions increasing access in the area for the general public, including to do the following: 1) lock in an open position existing gates and refrain from operating gates at the Strand accessways, unless and until authorized pursuant to the Coastal Act, 2) modify gateways at the Strand accessways to make their appearance more welcoming to the public, 3) provide unrestricted access at the Strand accessways, unless and until hours of operation are authorized pursuant to the Coastal Act, 4) otherwise provide, in perpetuity, 24 hour access to Strand Beach; 5) provide a combination of funds to coastal programs for children at Title 1 schools and/or construction of new trails at the Headlands Reserve, 6) install enhanced public access and interpretive signage at the Strand accessways, 7) install bike racks and benches at the Strand accessways, 8) develop web-based coastal access information in cooperation with Commission staff that highlights the public access amenities available at the Headland development, and 9) dismiss the litigation.

Subsequent to execution of the Settlement Agreement, the City has, pursuant to the agreement, 1) issued a CDP to set the hours of operation of the Mid-Strand and Central Strand Accessways at 5:00 a.m. to 10:00 p.m. (the South Strand Switchback Trail and North Strand Accessways, the beach, and beachfront accessway are all open 24 hours a day), 2) removed spikes and mesh from the gates at the Mid-Strand and Central Strand Accessways, 3) begun the process of working with Commission staff to develop a program for Title 1 schools in conjunction with the Surfrider Foundation and Ocean Institute, 4) installed new public access and interpretive signage and bike racks and benches at the Strand accessways, and 5) dismissed the litigation.

As noted above, the Settlement Agreement contemplates that the City may wish to pursue authorization of the gates at the Mid-Strand and Central Strand Accessways. However, as stated in Section 5.1 of the agreement, “Nothing in this Settlement Agreement guarantees or conveys any right to development on the Properties other than the work expressly authorized by this Settlement Agreement” and nothing in the Settlement Agreement limits the discretion of the Commission in acting on this LCPA. If the Commission denies the LCPA, pursuant to the terms of the Settlement Agreement, the City has agreed to submit a plan to remove the existing gates, which are currently locked in an open position 24 hours a day, within 30 days of the date the Commission’s final decision on the LCPA.

The City’s latest action submitting this LCP request would memorialize the hours of operation for the Mid-Strand and Central Strand public beach accessways, which would be from a minimum 5:00 a.m. to 10:00 p.m. daily (closed for no longer than 10:00 p.m. to 5:00 a.m. daily) in the City’s LCP, and would allow for the installation of automatic gates (*retractable gates operating with an automatic locking mechanism*) at the entryways of the Mid-Strand and Central Strand (upper and lower). The LCPA also memorializes other accessways providing access to the beach, including the South Strand Switchback Trail, Strand Beach Park and the Strand Revetment Trail shall be open 24 hours per day.

Public Access and Recreation

Public access and recreation are among the Coastal Act’s highest priorities. The legislature expressly stated in Section 30001.5 of the Coastal Act that one of the state’s primary goals in the coastal zone is to “[m]aximize public access to and along the coast and maximize public recreational opportunities in

the coastal zone.” Limiting such uses must be very carefully considered and only the minimum limitation necessary to protect public safety or to serve some other valid purpose should be allowed.

Coastal Act Section 30210 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 need and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 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.

Coastal Act Section 30213 states:

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

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Further, Coastal Act Section 30212.5 states:

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.

The Coastal Act includes Sections 30220, 30221, and 30223, which promote public recreational opportunities. The gates and hours limit rather than maximize, public access.

Coastal Act Section 30220 states:

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

Coastal Act Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The Coastal Act's protections for public access and recreation, however, are not absolute. Section 30214 provides:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
 - (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
 - (4) *The need to provide for the management of access area so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*
- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

For context it may also be useful to note the following policies that are a part of the certified Land Use Plan.

'1996 LCP'

Land Use Element (LUE) Policy: *Coastal water areas suited for water oriented recreation activities shall be protected for such uses. (Coastal Act/30220)*

LUE Policy 2.10: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. (Coastal Act/30221)*

LUE Policy 2.12: *The location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service, providing non automobile circulation within the development, providing adequate parking facilities or providing substitute means of serving the development with public transportation, and assuring the potential for public transit for high intensity uses. (Coastal Act/30252)*

LUE Policy 3.3: *Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. (Coastal Act/30213, 30222, 30223)*

LUE Policy 3.11: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (Coastal Act/30211)*

LUE Policy 3.12: *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)*

LUE Policy 4.3: *Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210)*

LUE Policy 5.9: *Provide public trails within the Headlands. The system shall provide access to the existing sandy beach areas, including but not limited to a minimum of three (3) public accessways, and an inclined elevator/funicular, from Selva Road, through the Strand area, to the beach, and to the visitor-serving recreational and public places developed within the Headlands.*

LUE Policy 5.13: *Create new public view and coastal access opportunities by establishing additional public shoreline access, and intergraded, on-site public trail system, and coastal recreational facilities. (Coastal Act/30212, 30222, 30251)*

LEU Policy 5.15: *Provide non-vehicular circulation throughout the Headlands by establishing an interconnected network of trails, walkways and bikeways. (Coastal Act/ 30252)*

LEU Policy 5.18: *Provide public recreational opportunities and distribute visitor-serving recreation facilities in appropriate areas compatible with adjacent uses and to minimize the potential for overuse of any single area by the public. (Coastal Act/30212.5, 30252)*

LUE Policy 5.31 [this is the policy proposed to be modified by this LCP amendment]:
Recreation and access opportunities at public beaches and parks at the Headlands shall be

protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in user fees or parking fees shall be subject to a coastal development permit. (Coastal Act/30210, 30212, 30213, 30221)

LUE Policy 5.35: *Except as noted in this policy, gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted upon any street (public or private) within the Headlands where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands. In the Strand residential area, gates, guardhouses, barriers and other structures designed to regulate or restrict public vehicular access into the residential development may be authorized provided that 1) pedestrian and bicycle access from Selva Road and the County Beach parking lot through the residential development to the beach remains unimpeded; 2) a public access connection is provided that gives direct access from approximately the mid-point of the County Beach parking lot to the Central Strand Access; and 3) an incline elevator/funicular providing mechanized access from the County beach parking lot to the beach is constructed, operated and maintained for public use for the duration of the period that public vehicular access through the residential subdivision is regulated or restricted. [emphasis added]*

HDCP Section 3.4.A.6 (in pertinent part): *Gates, guardhouses, barriers or other development designed to regulate or restrict public access shall only be allowed in conjunction with a public funicular in Planning Area 1 providing mechanized public access from the County beach parking lot to the beach. Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted. [emphasis added]*

The coastal resources affected by the proposed LCP amendment, public access and recreation, are significant resources. Strand Beach is a particularly popular recreational beach. The establishment of the Mid-Strand and Central Strand Beach Accessways, pursuant to local CDP No. 04-23, provides an opportunity for the public to access the coast in a location where access was previously limited. Based on the observations of the public, the use of this beach has expanded, especially in the central and southerly parts of the beach (closest to the Headlands promontory), since opening the accessways and support facilities (e.g. restrooms) that are a part of the Headlands development. Also, with the new revetment-top access, more people, of varying physical capabilities, are now able to make use of the central and southerly areas of the beach than were able to do so prior to the construction of that access because there is now easier passage via the hardened walkway (instead of over the sand), and because the walkway provides lateral access to wider areas in the central and southerly parts of the beach that would otherwise become periodically difficult to access or were inaccessible due to high tides and waves striking against the revetment. That access would be diminished by the presence of gates because gates act as a physical and psychological barrier and give the impression that an accessway and the area on the other side of the gate is restricted, even when the gates are open during authorized hours of use. However, limiting the hours that the Mid-Strand and Central Strand accessways are available for public access can be found consistent with the Coastal Act because Sections 30212 and 30214 provide a means for appropriate limitation of public access adjacent to residential uses when adequate LUE access exists nearby, as discussed below.

The North Strand Beach Accessway, which is owned by the County, and the South Strand Switchback Trail Beach Accessway, which is owned by the City, would remain open 24 hours per day. Although

the distance between the two accessways (North and South) is just under ½ a mile, the North and South Strand Switchback Accessways would provide unrestricted access to the shoreline during the hours that the Mid-Strand and Central Strand Beach Accessways could be closed (at a maximum of 10:00 p.m. to 5:00 a.m.) The public County-owned parking lot, Salt Creek Beach Parking Lot, which is the subject of Appeal Nos. A-5-DPT-14-0054 and A-5-DPT-14-0071, is currently open 24 hours per day and sits in between the two 24 hour accessways (North and South). Currently there is no parking fee to park in the lot. The parking lot also provides direct access to the North Strand Beach Accessway and is an approximately 730 foot walk from the parking lot to the start of the South Strand Switchback Trail Beach Accessway. Given the 24-hour operation of the parking lot and the North and South Strand Switchback Trail Accessways and the fact that the number of visitors to the beach tends to decrease during the night and early morning hours, the closure of the Mid-Strand and Central Strand Beach Accessways for a maximum of between 10:00 p.m. and 5:00 a.m. can be found consistent with the public access and recreation policies of the Coastal Act because adequate access to Strand Beach does exist in the vicinity of the site at the North Strand and the South Strand Switchback Trail Accessways. The chosen operating hours of 5:00 a.m. to 10:00 p.m. are also generally consistent with the hours that other City parks are open, which is generally 6:00 a.m. to 10:00 p.m. (see Municipal Code Section 13.04.030). Finally, through a coastal development permit, Table 4.5.4 #2, page 4-53 of the HDCP already allows the City to establish hours of operation for the subject accessways.

The installation of gates at the Mid-Strand and Central Strand Beach Accessways, however, cannot be found consistent with the public access and recreation policies of the Coastal Act. The presence of gates, whether open or closed can give the public the impression that they are not welcome to use the accessways. Furthermore, the use of gates is unnecessary. The hours are what “close” the accessways, whereas the gates are simply a mechanism for enforcing the closure hours (for which there are less aggressive enforcement mechanisms). As part of the Settlement Agreement, the City has posted signs at all of the accessway entrances, which inform the public of the hours of operation of the public beach accessways.

Still, some residents of the housing development have expressed concerns about members of the public ignoring the posted hours of closure and using the Mid-Strand and Central Strand accessways to reach the shoreline when the accessways are closed (see City’s staff report at: <https://www.danapoint.org/Home/ShowDocument/19275> and public comments at: http://danapoint.granicus.com/MediaPlayer.php?view_id=2&clip_id=494.) Some of those residents believe that the installation of gates will provide them with a better sense of security and safety during accessway closure hours. However, the housing development, which the accessways pass through, employs 24-hour private security on the premises. Staff has encountered the private security guards nearly every instance they have conducted site visits. The security guards encountered by staff proactively inform those using the accessways about where they are and are not allowed to walk (e.g., “pedestrians must stay on the sidewalk”) and when the accessways are closed. Further, in a Statement of Decision (Case No. 37-2010-00099827-CU-WM-CIL) in response to the previously described litigation between the City and the Coastal Commission, the judge concluded that the “[City] failed to demonstrate an actual and unnecessary hazard [existing at the site] and thus there was no nuisance condition or prospective nuisance [at the site].” Moreover, the gates are inconsistent with the access policies of the HDCP. HDCP Section 3.4.A.6 expressly prohibits gates or other development that restricts public pedestrian and bicycle access within Planning Areas 2 and 6; Section 3.4.A.6 states in pertinent part:

Gates, guardhouses, barriers or other development designed to regulate or restrict public access shall only be allowed in conjunction with a public funicular in Planning Area 1 providing mechanized public access from the County beach parking lot to the beach. Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted. [underlining added for emphasis]

The gates at issue are proposed to be located at the entrances to accessways that provide direct physical access to Strand Beach Park and the coast through Planning Area 2 (the Strand Residential Neighborhood). The pedestrian gates are thus clearly inconsistent with the HDCP. All development must be consistent and comply with the requirements of the HDCP. Gates on dedicated public accessways where there is no safety or otherwise legitimate countervailing concern are contrary to the public access requirements of the LCP and the Coastal Act. The LCP expressly prohibits gates or other development designed to restrict public access through public accessways through the Strand Residential Neighborhood to Strand Beach.

The City's proposed policy that would authorize the construction of gates at the Headlands undermines the very basis on which the Commission found the HDCP, and the development it describes, to be approved under the Coastal Act. The development contemplated in that plan, and ultimately approved by the City and built by the developer pursuant to CDP No. 04-23, was found to be inconsistent with the Coastal Act in a number of ways (see [Revised Findings adopted in August 2004 in support of the Commission's approval of the HDCP](#)). The Commission found it could approve the HDCP only by invoking the conflict resolution provisions of the Coastal Act (see PRC §§ 30007.5 and 30200(b)). As a result, numerous provisions of the HDCP expressly limit the use of gates to restrict public access within the Headlands. For example, HDCP Policy 5.35 states: "*Except as noted in this policy, gates, guardhouses, barriers, or other structures designed to regulate or restrict access shall not be permitted upon any street (public or private) within the headlands where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands.*" The coastal accessways that are proposed to be gated by the City are the very same accessways that the Commission found to be a substantial benefit of the development and contributed to the HDCP and the development it described as being "...on balance...the most protective of significant coastal resources..." for which the HDCP specifically contemplated protecting against the public access-inhibiting effects of gates. In other words, a fully gated community was not contemplated or approved for the HDCP. Thus, the gates the City would authorize to be placed on these accessways calls into question the consistency of the entire Headlands development with the Coastal Act.

As an alternative to gates at the subject accessways, the City could install simple single-strand ropes, or similar device (e.g. single chain), that can be draped across the accessways and hooked in a "closed" position during hours of closure and that will hang or be hooked in an open position at the accessways during hours of operation. A rope, along with the informational signage the City has proposed, will provide a less confrontational means of informing beach goers of when the accessways are available and not available for use by the public. Additionally, a manually operated rope is much more reliable than a mechanized gate for allowing the public to use the Mid-Strand and Central Strand Accessways. For example, in the event the gates malfunction and are stuck in the closed position or will not completely open, the public accessways will remain unavailable to the public until the mechanical equipment can be fixed, which may take at least a couple of hours or a couple of days. This can translate into a lost opportunity for those visitors to this beach who are unfamiliar with the area or visiting from out of town. The use of manually operated equipment, such as a rope, avoids that

problematic scenario altogether and meets the City's objective of enforcing hours of operation for the Mid-Strand and Central Strand Beach Accessways.

In conclusion, the presence of gates at the Mid-Strand and Central Strand accessways would adversely impact the general public's opportunity to access the coast in this location because the gates could deter or prevent people physically or psychologically from using the accessways even when the gates are in the open position. As such, the LCPA, as submitted by the City, is inconsistent with the public access and recreation policies of the Coastal Act. Therefore, the LCPA Amendment must be denied as submitted.

C. CERTIFY THE LUP AMENDMENT WITH SUGGESTED MODIFICATIONS

Public Access and Recreation

The provisions of public access and recreation are important coastal resources that are highlighted in both of the City's LCP and Chapter 3 of the Coastal Act. The proposed amendment is a means to provide a regulatory structure to the Mid-Strand and Central Strand Beach Accessways, which is not currently explicitly regulated by the LCP. However, the proposed amendment unduly restricts the use of the accessways by the public in a manner that will diminish the public's ability to access and recreate on the coast by constructing gates at the entryways of the subject accessways.

However, limiting the hours that the Mid-Strand and Central Strand accessways are available for public access can be found consistent with the Coastal Act. Coastal Act Sections 30212 and 30214 provide a means for reasonable limitation of public access adjacent to residential uses when adequate access exists nearby. In this case, the Mid-Strand and Central Strand accessways provide direct physical access to the shoreline. On its face, limiting public access to the shoreline by restricting the hours that the public may use the accessways would appear to be inconsistent with Sections 30210, 30211, 30212, 30212.5, 30222, and 30223 Coastal Act. However, the hours that the public is excluded from using the Mid-Strand and Central Strand accessways are from 10:00 p.m. to 5:00 a.m. Those hours typically represent times of reduced public demand for use of the shoreline. Those hours are also generally consistent with the hours that other City parks are closed, which is generally 10:00 p.m. to 6:00 a.m. (see Municipal Code Section 13.04.030). Additionally, daily 24-hour public access exists nearby at the North Strand Beach Accessway and the South Strand Switchback Trail Beach Accessway, which are approximately half of a mile apart from each other and flank the subject area. Therefore, adequate alternative public access exists to reach both Strand Beach and the coast, and the closure hours for the Mid-Strand and Central Strand accessways represent a reasonable regulation of public access to address the residents' safety concerns regarding unrestricted use of the accessways. Furthermore, the City has agreed to post signs informing the public of the alternative accessways available for public use when the Mid-Strand and Central Strand accessways are closed.

While the proposed gates can affect an unwelcoming posture to the public, a single rope or similar device can act as a less aggressive mechanism for enforcing the hours of operation of the accessways, while maintaining a welcoming presence. A rope can be used as a "soft" mechanism to alert the public when the accessways are closed. A simple rope, whether in the open or closed position, does not present the same overbearing message of restriction that a gate does. The need for any sort of physical mechanism, other than informative signage and a simple rope (or similar device), is excessive and redundant. In order to allow the City an opportunity to use a physical barrier mechanism to alert the public when the accessways are closed, staff suggests the following modification to the City's proposal:

The entry may not be gated but a single rope or similar device may be draped across the entryway during authorized hours of closure. Entry must otherwise remain open during approved hours of operation.

As discussed previously, a rope could be draped across the accessways when they are closed to the public for beach access. A rope provides a less intrusive means than a gate for enforcing authorized hours of closure. A rope, in combination with signage at the subject accessways, effectively informs a visitor that the accessways are closed and they must use the North or South Strand Switchback Trail accessways, which will remain open for 24 hours per day. In other words, Commission staff's proposed modification to the LCP amendment to allow for a draped rope achieves the same objective as the City's proposed LCP amendment to be able to enforce hours of authorized closure for the accessways, while minimizing psychological impacts to public access that may result from the gates as proposed in the LCP amendment as submitted. Only as modified, is the LCP Amendment adequate to carry out the public access and recreation policies of the Coastal Act.

D. DENY THE IP AMENDMENT REQUEST AS SUBMITTED

Amendment Request No. 2-16 would amend the certified Implementation Plan (Headlands Development Conservation Plan (HDGP) Pages 4-32, 4-34, and 4-105 and Figures 4.4.15, 4.12.4, 4.12.10, 4.12.11, 4.12.12, and 4.12.10) to memorialize hours of operation for the Mid-Strand and Central Strand public beach accessways (5:00 a.m. to 10:00 p.m.) that were previously authorized by a City-issued coastal development permit, and allow the issuance of a coastal development permit for the installation of retractable automated locking gates at the Mid-Strand and Central Strand public beach accessways to enforce the hours of operation. The effects on public access arising from the LCPA must be considered. The standard of review for the amendment to the Implementation Plan is the Land Use Plan. The proposed IP amendment must conform with, and be adequate to carry out, the provisions of the certified LUP (taking into account the proposed LUP amendment as modified).

Land Use Plan Policies

Policies of the General Plan/Land Use Plan

LUE Policy 3.5: Public facilities including parking areas or facilities shall, wherever appropriate and feasible, be distributed throughout the coastal zone area to mitigate against the impacts, social and otherwise, of overcrowding and overuse by the public of any single area. (Coastal Act/30212.5)

LUE Policy 3.7: Encourage safe and convenient bicycle and pedestrian access throughout the community. (Coastal Act/30210-30212.5, 30250, 30252)

LUE Policy 3.11: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (Coastal Act 30211)

LUE Policy 3.12 Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public

safety, military security needs, of the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)

LUE Policy 4.3: Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210)

LUE Policy 5.9: Provide extensive public trails within the Headlands area. The system shall include access to the existing sandy beach areas and to visitor-serving and public places within the Headlands. (Coastal Act/30250)

LUE Policy 8.2: Assure that adequate public recreational area and public open space are provided and maintained by the developer as part of a new development, (Coastal Act/30210, 30213, 30240, 30251)

UDE Policy 4.3: Develop stronger pedestrian, bicycle, and visual linkages between public spaces and to and long the shoreline and bluffs. (Coastal Act 30210, 30212)

UDE Policy 4.6: Preserve and maintain existing public accessways, and existing areas open to the public located within visitor-serving development in the coastal zone. (Coastal Act 30210, 30212)

COSE Policy 7.3: Preserve public and private open space lands for active and passive recreational opportunities. (Coastal Act/30213)

HDCP Policy 5.8: Provide patterns of land use and circulation in the Headlands that enhance public and private pedestrian access and circulation within the area. (Coastal Act/30250)

HDCP Policy: 5.9: Provide public trails within the Headlands. The system shall provide public access to the existing sandy beach areas, including but not limited to a minimum of three (3) public accessways, and an incline elevator/funicular, from Selva Road, through the Strand area, to the beach, and to the visitor-serving recreational and public places developed within the Headlands.

HDCP Policy 5.13: Create new public view and coastal access opportunities by establishing additional public shoreline access, an integrated, on-site public trail system, and coastal recreational facilities. (Coastal Act/30212, 30222, 30251)

HDCP Policy 5.14: Develop pedestrian, bicycle and visual linkages between public spaces, the shoreline and the bluffs. (Coastal/30210, 30212)

HDCP Policy 5.15: Provide non-vehicular circulation throughout the Headlands by establishing an interconnected network of trails, walkways, and bikeways. (Coastal Act/30252)

HDCP Policy 5.18: Provide public recreational opportunities and distribute visitor-serving recreation facilities in appropriate areas compatible with adjacent uses and to minimize the potential for overuse of any single area by the public. (Coastal Act/ 30212.5, 30252)

*HDCP Policy 5.20: Regulate the time, manner and location of public access to parks and open space containing sensitive biological resources to maintain and protect those sensitive resources and **to protect the privacy rights of property owners while honoring the public's constitutional right of access to navigable waters.** (Coastal Act/ 30214, 30240) [emphasis added]*

HDCP Policy 5.31: Recreation and access opportunities at public beaches and parks at the Headlands shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increase in user fees or parking fees shall be subject to a coastal development permit. (Coastal Act 30210, 30212, 30213, 30221)

*HDCP Policy 5.35: Except as noted in this policy, **gates guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted** upon any street (public or private) within the Headlands **where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands.** In the Strand residential area, gates, guardhouses, barriers, and other structures designed to regulate or restrict public **vehicular** access into the residential development may be authorized provided that 1) **pedestrian and bicycle access from Selva Road and the County Beach parking lot through the residential development to the beach remains unimpeded;** 2) a public access connection is provided that gives direct access from approximately the midpoint of the County Beach parking lot to the Central Strand Access; and 3) an inclined elevator/funicular providing mechanized access from the County Beach parking lot to the beach is constructed, operated, and maintained for public use for the duration of the period that public vehicular access through the residential subdivision is regulated or restricted. [emphasis added]*

HCDP Policy 5.37: A trail of dedication shall be required in new development where the property contains a LCP mapped trail alignment or where substantial evidence that prescriptive rights exist. An existing trail which has historically been used by the public may be relocated as long as the new trail alignment offers equivalent public use. Both new development and the trail alignment shall be sited and designed to provide privacy for residents and maximum safety for trail users.

*HDCP Section 3.4.A.6: Gates, guardhouses, barriers or other development designed to regulate or restrict public access shall only be allowed in conjunction with a public funicular in Planning Area 1 providing mechanized public access from County beach parking lot to the beach. **Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted.** [emphasis added]*

HDCP Pages 4-9 and 4-10:

Planning Area 1: Strand Vista Park/Public Beach Access (Recreational Open Space)

The Strand Vista Park, 9.9 acres, is located adjacent to and seaward of the existing County public parking lot. The park overlooks the Pacific Ocean from an elevation of approximately

*160-feet, providing significant new coastal access and recreation opportunities. **The park forms a major component of the integrated trail system** designed to link Strand beach, four additional parks, the open space, and conservation areas. The park plans are detailed in Section 4.4, Park and Open Space Plan.*

The North Strand Beach Accessway (improved) will be integrated into the off-site County owned beach access. The existing County stairway is narrow with limited views. The North Strand Beach Access will widen and enhance and enhance the stairway, and establish two public view overlooks, providing ocean and coastal views. The developer will construct restrooms and shower facilities adjacent to the pathway above Strand Beach.

*If gates, guardhouses, barriers or other development designed to regulate or restrict public **vehicular access** are approved for Planning Area 2, those regulations or restrictions shall only be allowed in conjunction with the construction, operation and maintenance of a public funicular in Planning Area 1, parallel to the North Strand Beach Access, providing mechanized public access from the County beach parking lot to the beach.*

The Mid-Strand Vista Park Access (new) leads from the trail in approximately the center of the park and connects to the Central Strand Beach Access at the intersection of the first residential cul-de-sac street.

The Central Strand Beach Access (new) establishes direct access to the south Strand Beach, opening a significant area of the site fenced-off from public use. The pathway incorporated a public overlook and rest/landing areas, providing unobstructed ocean and coastline views. [emphasis added]

Planning Area 2: Strand Neighborhood (Residential)

*The 25.7-acre Planning Area 2 allows a maximum of 75 single-family homes on single-loaded streets, terraced for views. The homes will be a maximum of two stories. This area formerly contained the 90-unit mobile home park. The community may be **gated to control vehicle access** provided the mitigation measures outlines below are implemented.*

*If gates, guardhouses, barriers or other development designed to regulate or restrict public vehicular access are approved for Planning Area 2, those regulations or restrictions shall only be allowed in conjunction with the construction, operation and maintenance of a public funicular in Planning Area 1. Parallel to the North Strand Beach Access, providing mechanized public access from the County beach parking lot to the beach. **Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted.** If the funicular is out of service for more than 3 consecutive scheduled operating days, public vehicular access through Planning Area 2 for passenger drop-off shall be available during the period of service outage and any gate, guardhouse, barrier or other development that regulates or restricts public vehicular access shall be opened, removed or otherwise made inoperable during the period of service outage. During periods of funicular service outage signs shall be posted at the boarding area of the funicular, along the public roadway leading to the Strand residential area and at the entrance to the Strand residential area indicating the availability of public vehicular access through the residential area for passenger drop-off at the beach. [emphasis added]*

Planning Area 3: Strand Beach Park (Recreation Open Space)

The 5.2-acre Strand Beach Park is currently privately owned to the mean high tide. The beach will be publicly dedicated and provide significant public passive recreational opportunities, including coastal access, swimming, surfing, fishing, diving, jogging, hiking, picnicking, and related beach activities. Vehicular access will be limited to emergency vehicles or those vehicles used by applicable public agency to maintain and patrol the beach. The Strand Beach Park is detailed in Section 4.4, Park and Open Space Plan.

Pages 4-31 and 4-32, in part:

4. Strand Vista Park/Public Beach Access (Planning Area 1), in part:

Setting

Strand Vista Park is located parallel to and immediately seaward of the existing County Salt Creek Parking Lot (approximately 600 parking spaces). Vehicular access is from Selva Road. Currently this area is fenced and heavily overgrown with mature vegetation such as oleander and acacia. Public views are non-existent. An existing public coastal access stairway owned by the County of Orange (the future North Strand Beach Access) lies just north of the property line. This narrow, steep trail provides the only proximate access to Strand Beach.

Design Concept [this is the policy proposed to be modified by this amendment]:

Create an active park that utilizes the unique site characteristic to provide dramatic coastal access and view opportunities. Establish the integrated trail system as a major feature within the park. Incorporate a series of view overlooks to establish public view opportunities.

Create an improved public beach access, the North Strand Beach Access, by widening the existing County facility, and designing two rest/landing area with view opportunities. Construct a new restroom and outdoor shower facility at the base of the stairs immediately above Strand Beach. If gates, guardhouses, barriers or other development designed to regulate or restrict public access are approved for Planning Area 2, those regulations or restrictions shall only be allowed in conjunction with the construction, operation and maintenance of a public funicular (inclined elevator) in Planning Area 1, parallel to the North Strand Beach Access, providing mechanized public access from the County beach parking lot to the beach.

Create the Mid-Strand Vista Park Access as a new public path leading from the trail in approximately the middle of the park, to the Central Strand Beach Access at the intersection of the first residential cul-de-sac street.

Create the Central Strand Beach Access as a new public path to Strand Beach, conveniently located within the Strand Vista Park, near the entry to the Strand residential neighborhood (Planning Area 2). The entry of the Central Strand Beach Access shall be designed to encourage public use, i.e. architectural elements shall be incorporated into the entry to distinguish it and appropriate signage announcing the presence and encouraging use of the access by the public shall be posted. The Central Strand beach Access shall provide direct access to Strand Beach, opening a portion of the property currently fenced and restricted from public use...

Pages 4-34 and 4-35, in part:

Site Features [this is the policy proposed to be modified by this amendment]:

The Mid-Strand Vista Park Access shall consist of an 8' wide concrete walkway and shall be constructed in approximately the middle of the park, from the park trail to a connection with the Central Strand Beach Access at the intersection of the first residential cul-de-sac street.

The Central Strand Beach Access shall consist of a concrete walkway 8' wide which will parallel the spine road for the Strand residential neighborhood, as illustrated in Figures 4.4.15 and 4.4.16. Above the beach, at the same level as the lowest row of lots, the access shall be incorporated into a 50' wide landscaped extension of Strand Beach Park and the minimum 8 foot wide public path shall be located seaward of the Strand residential development and top or landward of any shoreline protective device. Within the 50' wide landscaped extension only, the trail shall be 10' wide.

HDCP Table 4.5.4: Strand Vista Park/Public Access (9.9 Acres) - Public Access Program Guidelines, in part:

2. The public trails and overlooks in the Strand Vista Park shall be open to the public year-round. The City will determine hours of operation.

The City's LCP amendment request includes provisions to regulate hours of operation of the Mid-Strand and Central Strand Beach Accessways and to allow the installation of automated locking gates at the subject accessways. Table 4.5.4 #2, page 4-53 of HDCP already allows the City, through a coastal development permit, to establish hours of operation for the subject accessways. As discussed above, the City's proposal to establish hours of operation for a minimum of 5:00 a.m. to 10:00 p.m. (closed for a maximum period of 10:00 p.m. to 5:00 a.m.) can be found consistent with the certified LUP because adequate 24 hours access to shoreline exists in two locations nearby (the County-owned North Beach accessway and the Southern Switchback Accessway) and the HDCP allows it. However, the City's proposal to install gates at the Mid-Strand and Central Strand accessways is inconsistent with the access policies of the LUP for the reasons discussed above.

Specifically, Land Use Element Policy 5.35 of the LCP states in part:

In the Strand residential area, gates, guardhouses, barriers and other structures designed to regulate or restrict public vehicular access into the residential development may be authorized provided that 1) pedestrian and bicycle access from Selva Road and the County Beach parking lot through the residential development to the beach remains unimpeded...[emphasis added]

Additionally, HDCP Section 3.4.A.6 expressly prohibits gates that restrict public pedestrian and bicycle access. Section 3.4.A.6 reads in pertinent part:

Gates, guardhouses, barriers or other development designed to regulate or restrict public access shall only be allowed in conjunction with a public funicular in Planning Area 1 providing mechanized public access from the County beach parking lot to the beach. Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted. [emphasis added]

The LCP Amendment must be consistent with and carry out the policies of the certified LUP and must not contradict the existing requirements of the LCP (HDCP). The use of gates at the Mid-Strand Accessway and Central Strand Accessway is clearly inconsistent with the LUP and the HDCP. As submitted, the proposal to install gates at the Mid-Strand and Central Strand accessways would not adequately carry out the public access and recreation policies of the LUP. Therefore, the LCPA Amendment does not carry out the policies set forth in the LUPs and must be denied as submitted.

E. CERTIFY THE IP AMENDMENT WITH SUGGESTED MODIFICATIONS

The provisions of public access and recreation are important coastal resources that are highlighted in the City's LUP. As described above, the LUP expressly prohibits the use of gates at pedestrian accessways in this location. The proposed IP amendment is not consistent with the policies described in the certified LUP. Modifications to the proposed zone text of HC DP are necessary to protect the public's right to maximum access to the shoreline in this location consistent with the public access policies of the City's certified LUP as listed in Section D above. Staff recommends the following modification to the City's proposal to ensure consistency and to preserve the public access protections represented in the City's LUP and certified by the Commission. As such, staff recommends the modifications listed in Section II. B. above and the following modifications to the figures in the HC DP:

Revise Figures of HC DP:

Remove any indication of a fence or gate across the accessway from the illustration and add a single strand of rope or similar device positioned at approximately 48 inches above the ground surface to the illustration of the 'closed' condition.

Only as modified, is the LCP Amendment adequate to carry out the public access and recreation policies of the certified LUP for the reasons listed above.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing environmental review documentation in connection with its activities and approvals necessary for the preparation and adoption of an LCP. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission's review and analysis of the LCP amendment in this staff report satisfies CEQA environmental review requirements. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Dana Point LCP Amendment No. 2-16 consists of an amendment to the City Land Use Element of the certified Land Use Plan and the Implementation Plan (IP) for the '1996' LCP.

As outlined in this staff report, the proposed LCP Amendment if modified as suggested will be consistent with the policies of the LUP and the Chapter 3 policies of the Coastal Act. Thus, the Commission finds that the LCP Amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LCP. Therefore, the Commission finds that approval of the LCP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Furthermore, as modified, there are no other feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the LCP amendment may have on the environment.

RESOLUTION NO. 16-08-16-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA16-0001 AND LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001, WHICH MODIFIES GENERAL PLAN LAND USE ELEMENT POLICY 5.31, AND SUBMISSION OF ZTA16-0001/GPA16-0001 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: City of Dana Point

The City Council of the City of Dana Point does hereby resolve as follows:

WHEREAS, on July 9, 1991, the City of Dana Point adopted its General Plan; and

WHEREAS, on September 22, 2004, the City of Dana Point adopted a General Plan Amendment which added 34 Land Use Policies associated with the Headlands development including Land Use Policy 5.31; and

WHEREAS, the City of Dana Point has prepared a Notice of Exemption for the proposed modifications and has been provided for review and approval by the City Council; and

WHEREAS, the City may amend all or part of an adopted General Plan to promote the public interest up to four times during any calendar year pursuant to Government Code Section 65358; and

WHEREAS, the City of Dana Point adopted a Local Coastal Program, which was certified by the California Coastal Commission and may be amended in whole or in part; and

WHEREAS, the General Plan Amendment GPA16-0001 is the first General Plan Amendment processed for 2016; and

WHEREAS, the proposed amendment would make a change to Land Use Element Policy 5.31 of the General Plan; and

WHEREAS, the amendment is internally consistent with other elements of the General Plan; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act pursuant to Section 21080.9 of the Public Resources Code; and

WHEREAS, the Planning Commission did on July 25, 2016, hold a duly noticed public hearing as prescribed by law to consider the said amendments and recommended the City Council approve the modification to Land Use Policy 5.31 and Local Coastal Program Amendment; and

WHEREAS, the City Council did on August 16, 2016 hold a duly noticed public hearing as prescribed by law to consider the General Plan Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to GPA16-0001 and LCPA16-0001; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dana Point as follows:

- A. That the above recitations are true and correct and incorporated herein by reference;
- B. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- C. That the General Plan Amendment under GPA16-0001 is in the public interest;
- D. That the Local Coastal Program Amendment (LCPA16-0001) is consistent with, and will be implemented in full conformity with the Coastal Act;
- E. That the Planning Commission has reviewed and considered the Notice of Exemption;
- F. The City Council has reviewed the environmental analysis consistent with the California Environmental Quality Act (CEQA) and determined that the project is exempt from CEQA as follows: (1) pursuant to Section 15265(f) of the California Guidelines for Implementation of the California Environmental Quality Act ("CEQA Guidelines"), CEQA does not apply to a local government's preparation of a local coastal program amendment; and (2) pursuant to section 15061(b)(3) of the CEQA Guidelines, the proposed amendments to the HDCP will not result in any physical

change to the environment, and thus the project has no possibility to have a significant effect on the environment. The amendments will allow the use of retractable gates which will remain fully open at three (3) public access ways, the Central Strand (Upper and Lower) and Mid-Strand access ways, during Coastal Development Permit 15-0021 approved hours of operation and closed for enforcement purposes during the approved hours of closure, but does not result in any gates being physically constructed. Should this amendment be approved, a Coastal Development Permit would be required for any gates that may be installed in the future and a CEQA analysis will be completed at that time to ensure there will not be an environmental impact;

- G. That the City Council adopts the following findings:
1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed.
 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act. The amendment to the General Plan Land Use Policy 5.31 is consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources. That the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act and that the amendment to the Land Use Policy is in conformance with and adequate to implement the Land Use Plan.
 3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. As a General Plan Amendment and Local Coastal Program Amendment, no specific development is proposed. Any proposed development will be reviewed for compliance with the City's Local Coastal Program and (in addition) for proposed development located within the Commission's appeal area, the public access policies of the Coastal Act.
 4. That the level and pattern of development reflected in the Land Use Plan, Zoning Code, Zoning Map, and Headlands Development and Conservation Plan (HDCCP) are not being

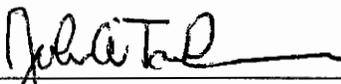
modified by the proposed changes. The applicable Policy being amended is consistent with state law, is internally consistent with the General Plan, and does not represent any threat to the public health, safety, or welfare.

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.
 6. That the HDCP measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The HDCP Section 4.0 is being amended concurrently with the LCP amendment.
- H. That the City Council finds the following:
1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
 2. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 3. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 4. The Resolution of the City Council specifies that Local Coastal Program Amendment LCPA16-0001 be submitted to the Coastal Commission for certification.
- I. That the amendments to the City General Plan are shown in Exhibit "A" of this Resolution, attached hereto and incorporated herein by this reference.
- J. That the currently adopted 1996 Local Coastal Program (City of Dana Point General Plan) be amended as shown in Exhibit "A".
- K. The City Council approves the Land Use Policy 5.31 additional language in its entirety.

- L. GPA16-0001, ZTA16-0001, and LCPA16-0001 and other remaining applicable sections of the City's General Plan and HDCP constitute the LCP for the subject site.

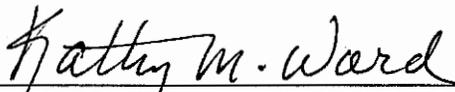
The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 16th day of August, 2016.



JOHN A. TOMLINSON, MAYOR

ATTEST:



KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

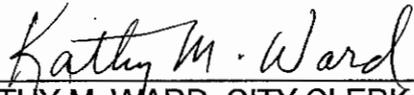
I, Kathy Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 16-08-16-02 was duly adopted and passed at a regular meeting of the City Council on the 16th day of August, 2016, by the following roll-call vote, to wit:

AYES: Council Members Muller, Olvera, Schoeffel, Mayor Pro Tem
 Viczonek, and Mayor Tomlinson

NOES: None

ABSENT: None

ABSTAIN: None



KATHY M. WARD, CITY CLERK

EXHIBIT "A"

General Plan Amendment GPA16-0001

***Deletions are shown as ~~strikeout~~ and additions are underlined**

Policy 5.31 – Page 11(HDCP) Page 17(General Plan)

Recreation and access opportunities at public beaches and parks at the Headlands shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in user fees or parking fees shall be subject to a Coastal Development Permit. Strand Vista Park and the entries to the Mid-Strand Access and upper and lower Central Strand Access shall be open and operated and maintained for public pedestrian beach access to and from Strand Vista Park and Strand Beach from 5:00 a.m. to 10:00 p.m. Retractable gates operating with an automatic locking mechanism shall be permitted at the entries to the Mid-Strand Access and Central Strand Access only if the access ways are operated and maintained in a fully open position and signed for public access during hours of operation approved by a Coastal Development Permit, and the gates are designed with no potential to limit, deter, or prevent public access to the shoreline. The South Strand Switchback Trail and Strand Beach Park/Strand Revetment Trail shall be open and operated and maintained for public beach access 24 hours a day.

ORDINANCE NO. 16-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA16-0001 TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN (HDGP) SECTION 4.0 TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESS WAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: City of Dana Point
File No.: ZTA16-0001/LCPA16-0001

The City Council of the City of Dana Point does hereby ordain as follows:

WHEREAS, in 2004, the City of Dana Point approved, and the California Coastal Commission certified, the Headlands Development and Conservation Plan (the "HDGP") including provisions for providing public access ways to the shoreline; and

WHEREAS, the City seeks to amend the HDGP Section 4.0 to allow for the use of retractable gates at three public access locations, consistent with the hours of operation approved through the Coastal Development Permit 15-0021; and

WHEREAS, the Zone Text Amendment will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan by ensuring appropriate public access to the Strand public beach; and

WHEREAS, the Planning Commission held duly noticed public hearings as prescribed by law on July 25, 2016, to consider the said Zone Text Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, of all persons desiring to be heard, the Planning Commission considered all factors relating to ZTA16-0001 and LCPA16-0001; and recommended the City Council approve the said ZTA and LCPA; and

WHEREAS, the City Council held a duly noticed public hearing as prescribed by law on August 16, 2016, to consider said Zone Text Amendment, and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA 16-0001, and LCPA 16-0001; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

- A. That the above recitations are true and correct and incorporated herein by reference;
- B. The revisions to Section 4.0 of the HDCP are attached hereto as Exhibit "A" and incorporated herein by reference;
- C. That the proposed action complies with all other applicable requirements of state law and local Ordinances;
- D. That the ZTA16-0001 and LCPA16-0001 is in the public interest;
- E. The City Council has reviewed the environmental analysis consistent with the California Environmental Quality Act (CEQA) and determined that the project is exempt from CEQA as follows: (1) pursuant to Section 15265(f) of the California Guidelines for Implementation of the California Environmental Quality Act ("CEQA Guidelines"), CEQA does not apply to a local government's preparation of a local coastal program amendment; and (2) pursuant to section 15061(b)(3) of the CEQA Guidelines, the proposed amendments to the HDCP will not result in any physical change to the environment, and thus the project has no possibility to have a significant effect on the environment. The amendments will allow the use of retractable gates which will remain fully open at three (3) public access ways, the Central Strand (Upper and Lower) and Mid-Strand access ways, during Coastal Development Permit 15-0021 approved hours of operation and closed for enforcement purposes during the approved hours of closure, but does not result in any gates being physically constructed. Should this amendment be approved, a Coastal Development Permit would be required for any gates that may be installed in the future and a CEQA analysis will be completed at that time to ensure there will not be an environmental impact;
- F. The proposed amendment to the HDCP is consistent with the General Plan;
- G. The City Council adopt Zone Text Amendment ZTA16-0001 for the reasons outlined herein including but not limited to: **ensuring**

public access during Coastal Development Permit 15-0021 approved hours of operation, ensuring that there are clear and unobstructed coastal access during approved hours of operation, that retractable gates may be located at three locations, while maintaining two existing 24 hour public access ways to the beach consistent with the General Plan, HDCP, and Coastal Act;

- H. That the City Council adopt the following findings:
1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. **Proper notice in accordance with the LCPA procedures has been followed. Notices were; 1) mailed on July 5, 2016 to notify residents and affected agencies that the proposed changes were available for public review, and on July 14, 2016 public hearing notifications were sent to property owners within a 500-foot radius of the two parcels where the beach access is located and to occupants within a 100-foot radius of the same two parcels, 2) published in the Dana Point News on July 14, 2016, 3) posted at the Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, the Dana Point Library, and on the City's web site on July 5, 2016, and 4) on August 4, 2016 public hearing notifications were sent to property owners within a 500-foot radius of the two parcels where the beach access is located and to occupants within a 100-foot radius of the two parcels where fully retractable gates may be developed.**
 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act. **The amendments to the Zoning Code are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources, by ensuring there is unobstructed public access during Coastal Development Permit approved public operating hours of public trails towards the shoreline. This action will also ensure that even during non-operational times, the retractable gates are designed to minimize coastal view impacts and signs are provided to inform the public with regard to the hours of operation.**

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. **The Zone Text Amendment Amendments do not change any land use provisions contained in the certified Local Coastal Plan or approved through Coastal Development Permit 15-0021 for hours of operation and thereby continues to be consistent with Coastal Act policies.**
 4. That the level and pattern of development proposed is reflected in the Zoning Code. **The level and pattern of development as was approved in the HDCP, and discussed in Land Use Policy 5.31 is not changing and the proposed ZTA and LCPA will ensure unobstructed public access during Coastal Development Permit 15-0021 approved hours of operation to the shoreline. No change of use is proposed.**
 5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. **Procedures and regulations in Chapter 9.61 "Administration of Zoning", constitute minimum standards for ZTAs and LCPAs within the City's Coastal Zone and has been followed. Applicable notification and process requirements (Coastal Development Permit) would be applied to subsequent development requests if this amendment is approved.**
 6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **This amendment further implements goals and policies previously certified in the HDCP and approved Coastal Development Permit to ensure public access to the shoreline during Coastal Development Permit 15-0021 approved operational hours and ensuring that the public has appropriate signage to be informed of the availability of public access and options for public access to the beach.**
- I. That the City Council includes the following findings submitting the LCPA to the Coastal Commission:
1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal

Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.

2. The City include the proposed ZTA and LCPA for Section 4.0 of the HDCP in its submittal to the Coastal Commission and state that the amendment is to both the land use plan and to the implementing actions.
 3. The City certifies that the land use plan is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 4. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 5. The Ordinance of the City Council include the Zone Text Amendment, and Local Coastal Program Amendment numbers ZTA15-0001 and LCPA15-0001 when submitted to the Coastal Commission.
 6. The City finds that the Ordinance is exempt from CEQA pursuant to Sections 15061(b)(3) and 15265(f) of the CEQA Guidelines.
 7. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.
- J. That the City Council adopt ZTA16-0001, which would amend the Dana Point Local Coastal Program pursuant to LCPA16-0001, as shown in the attached Exhibit "A".
- K. That the City Council adopts Zone Text Amendment ZTA16-0001, which would amend the Dana Point Local Coastal Program pursuant to LCPA16-0001. The City Council approves the amendment for the reasons outlined herein, including but not limited to: ensuring public access during Coastal Development Permit 15-0021 approved hours of operation, ensuring that there are clear and unobstructed coastal access during approved hours of operation, that retractable gates may only be located at three locations, the Mid-Strand and Central Strand access ways, and will maintain the 24 hour access ways open to the public thus the proposal is consistent with the General Plan, HDCP, and Coastal Act.

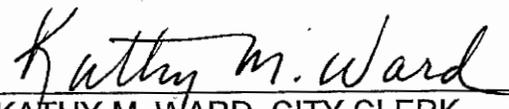
If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this 6th day of SEPTEMBER, 2016



JOHN A. TOMLINSON, MAYOR

ATTEST:



KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, KATHY WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 16-05 was duly introduced at a regular meeting of the City Council on the 16th day of August, 2016, and was duly adopted and passed at a regular meeting of the City Council on the 6th day of September, 2016, by the following vote, to wit:

AYES: Council Members Muller, Olvera, Schoeffel, Mayor
Pro Tem Viczorek, and Mayor Tomlinson
NOES: None
ABSTAIN: None
ABSENT: None



KATHY M. WARD, CITY CLERK

ORDINANCE NO. 16-05

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 16-05, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA16-0001 TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN (HDCP) SECTION 4.0 TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESS WAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

was published in summary in the Dana Point News newspaper on the 25th day of August, 2016, and the 15th day of September, 2016, and, in further compliance with City Resolution No. 91-10-08-1, on the 25th day of August, 2016, and the 8th day of September, 2016, was caused to be posted in four (4) public places in the city of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library

KATHY WARD, CITY CLERK
Dana Point, California

Exhibit "A"

ZONE TEXT AMENDMENT ZTA16-0001

*Deletions are shown as ~~strikeout~~ and additions are underlined

PROPOSED AMENDMENTS TO THE HDCP

Page 4.32

Create the Mid-Strand Vista Park Access as a new public path leading from the trail in approximately the middle of the park to the Central Strand Beach Access at the intersection of the first residential cul-de-sac street. The entry to the Mid-Strand Beach Access shall be designed and maintained to encourage public use during hours of operation approved by a Coastal Development Permit, i.e., architectural elements shall be incorporated into the entry to distinguish it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The entry may be gated and operated with an automatic timer to enforce hours of closure approved by a Coastal Development Permit, but only provided the gate is designed to be fully retractable and the access way is operated and the gate is maintained in a completely open position during the approved hours of operation, and the gate has no security enhancements (e.g. spikes, barb wire, etc.) or other visual obstructions (e.g., wire mesh). Please see Figure 4.12.10.

Create the Central Strand Beach Access as a new public path to Strand Beach, conveniently located within the Strand Vista Park, near the entry to the Strand Residential neighborhood (Planning Area 2). The entry at both ends of the Central Strand Beach Access shall be designed and maintained to encourage public use during hours of operation approved by a Coastal Development Permit, i.e., the architectural elements shall be incorporated into the entry to distinguish it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The Central Strand Beach Access shall provide direct access to Strand Beach, opening a portion of the property currently historically fenced and restricted from public use. The entry may be gated at both ends and operated with an automatic timer to enforce hours of closure approved by a Coastal Development Permit, but only provided the gates are designed to be fully retractable and the access ways are operated and the gates are maintained in a completely open position during the approved hours of operation, and the gates have no security enhancements (e.g. spikes, barb wire, etc.) or other visual obstructions (e.g., wire mesh). Please see Figures 4.4.15, 4.12.4, 4.12.11 and 4.12.12.

Page 4-34

The Mid-Strand Vista Park Access shall consist of an 8' wide concrete walkway and shall be constructed in approximately the middle of the park, from the park trail to a connection with the Central Strand Beach Access at the intersection of the residential cul-de-sac. The entry to the Mid-Strand Beach Access shall be designed and maintained to encourage public use during hours of operation approved by a Coastal Development Permit, i.e., architectural elements shall be incorporated into the entry to distinguish it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The entry may be gated and operated with an automatic timer to enforce hours of closure approved by a coastal development permit, but only provided the gate is designed to be fully retractable and the access way is operated and the gate is maintained in a completely open position during the approved hours of operation, and the gate has no security enhancements (e.g. spikes, barb wire, etc.) or other visual obstructions (e.g., wire mesh). Please see Figure 4.12.10.

The Central Strand Beach Access shall consist of a concrete walkway 8' wide which will parallel the spine road for the Strand residential neighborhood, as illustrated in Figures 4.4.15 and 4.4.16. Above the beach, at the same level as the lowest row of lots, the access shall be incorporated into a 50' wide landscaped extension of Strand Beach Park and the minimum 8 foot wide public path that shall be located seaward of the Strand residential development and on top of landward of any shoreline protective device. Within the 50' wide landscaped extension, the trail shall be 10' wide. The entries to the upper and lower Central Strand Beach Access shall be designed and maintained to encourage public use during hours of operation approved by a Coastal Development Permit, i.e., architectural elements shall be incorporated into the entry to distinguish it and appropriate signage announcing the presence and encouraging the use of the access by the public shall be posted. The entries may be gated at both ends and operated with an automatic timer to enforce hours of closure approved by a coastal development permit, but only provided the gates are designed to be fully retractable and the access way is operated and the gates are maintained in a completely open position during the approved hours of operation, and the gates have no security enhancements (e.g. spikes, barb wire, etc.) or other visual obstructions (e.g., wire mesh). Please see Figure 4.4.15, 4.12.4, 4.12.11 and 4.12.12.

Figure 4.4.15

Added call-out for "Fully Retractable Public Access Gate"

Figure 4.12.4

Added call-out for "Fully Retractable Public Access Gate"

Page 4-105

At top, in heading, add:

"J. Walls, and Fences, and Gates

At bottom, last sentence, modify:

"Figures 4.12.7 through 4.12.10 ~~4.12.10~~ 4.12.13 illustrate the design parameters for the various project fences, walls, and gates."

New Figure 4.12.10

Mid-Strand Beach Access Gate

New Figure 4.12.11

Central Strand Upper Access Gate

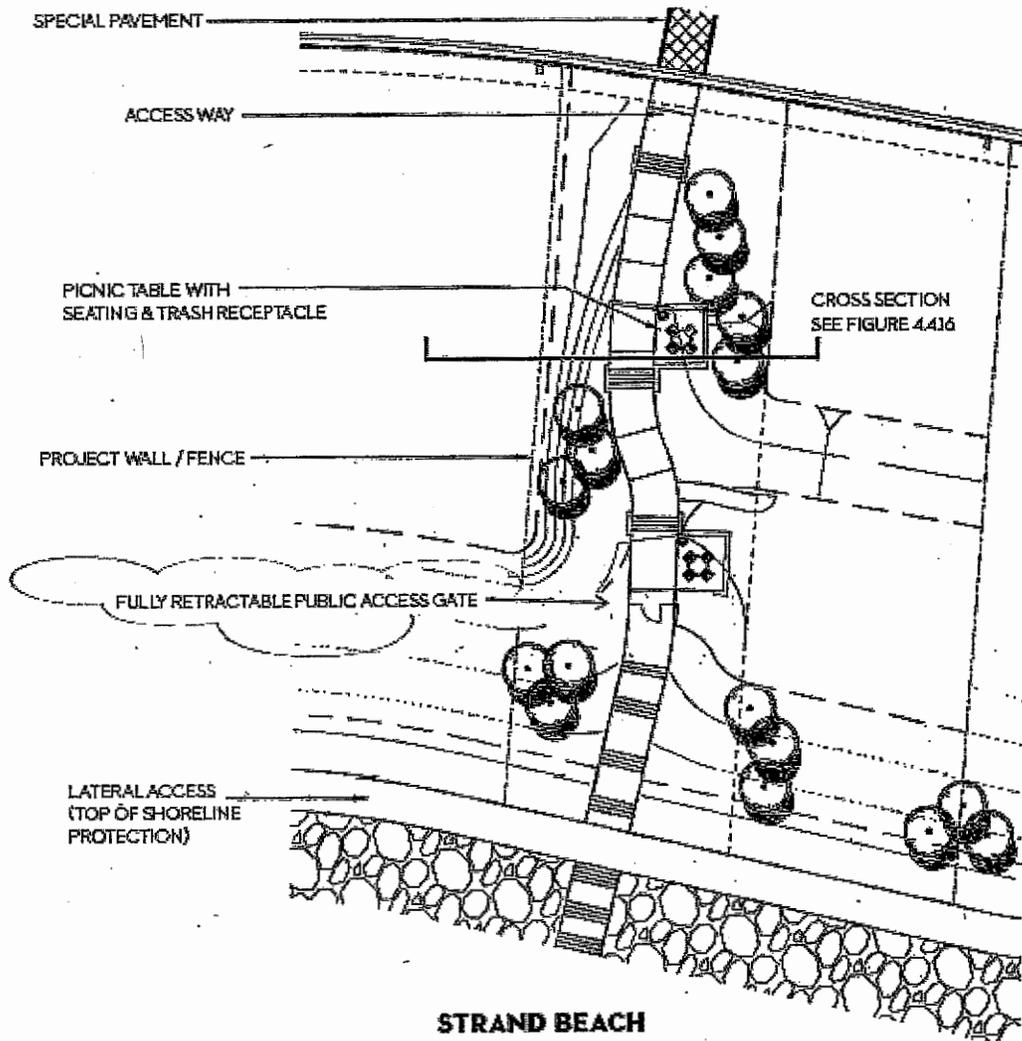
New Figure 4.12.12

Central Strand Lower Access Gate

Existing Figure 4.12.10

Renumbered as Figure 4.12.13

CENTRAL STRAND ACCESS CONCEPTUAL PLAN
FIGURE 4.4.15

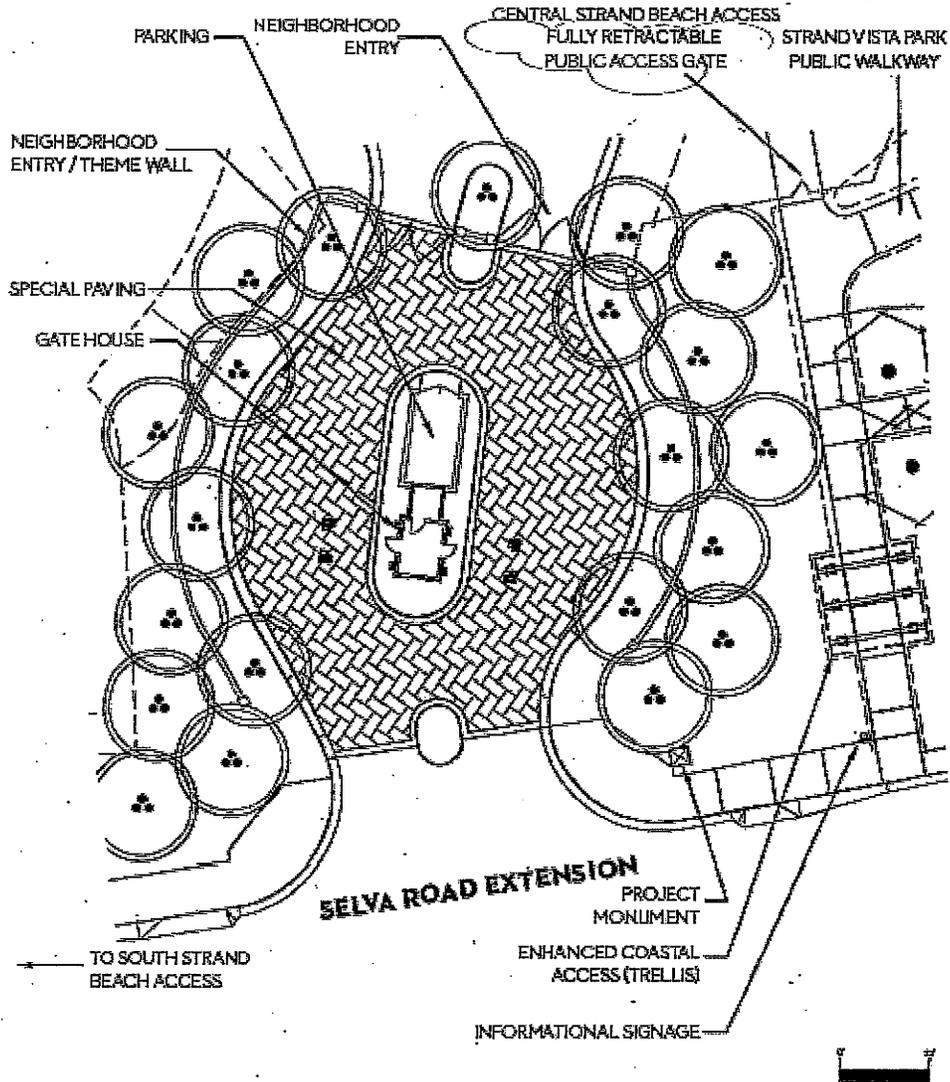


THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN

NOTE: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

NEIGHBORHOOD ENTRY (STRAND RESIDENTIAL)

FIGURE 4.12.4



THE HEADLANDS

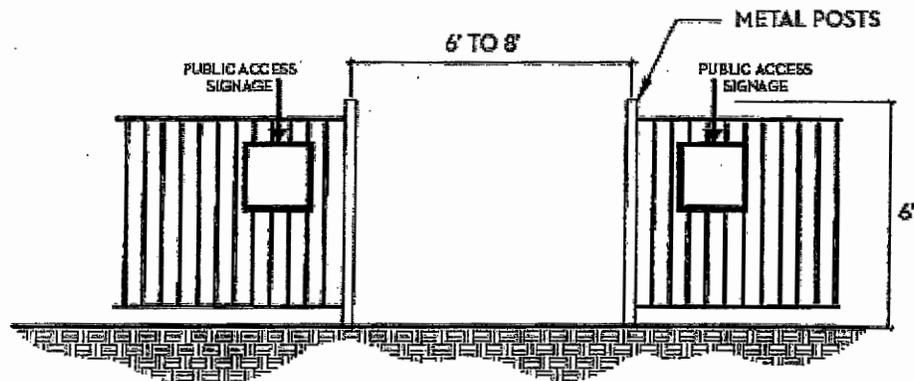
DEVELOPMENT AND CONSERVATION PLAN

NOTE: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

**PUBLIC VIEW FENCE
FIGURE 4.12.10**

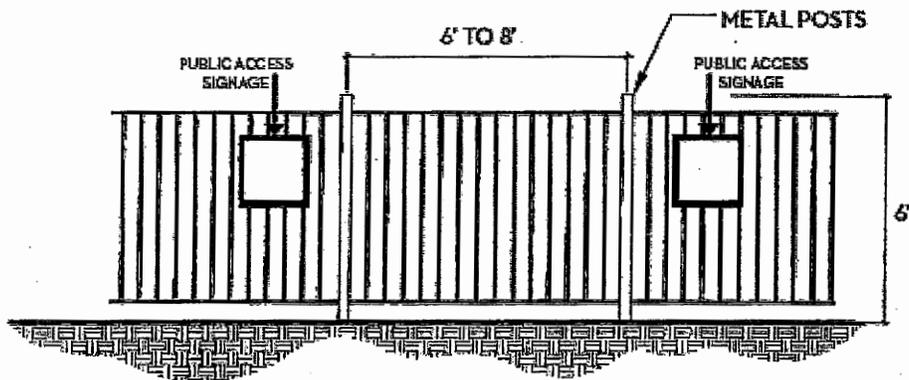
MID-STRAND BEACH ACCESS GATE

FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Mid-Strand Beach Access at entry from Strand Vista Park shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED



CLOSED POSITION: Mid-Strand Beach Access at entry from Strand Vista Park with retractable gate closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

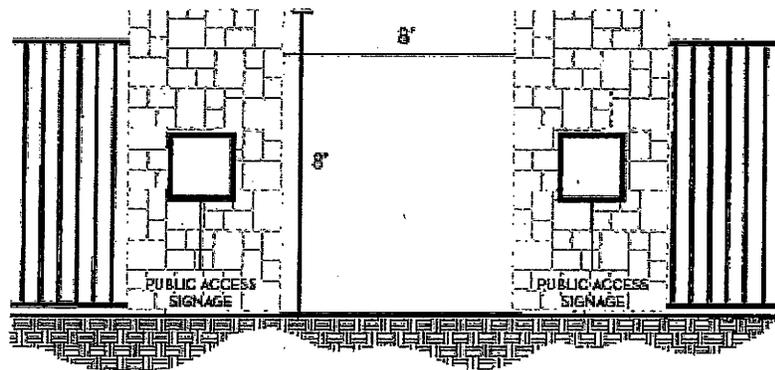
**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

NOTE: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

**PUBLIC VIEW FENCE
FIGURE 4.12.11**

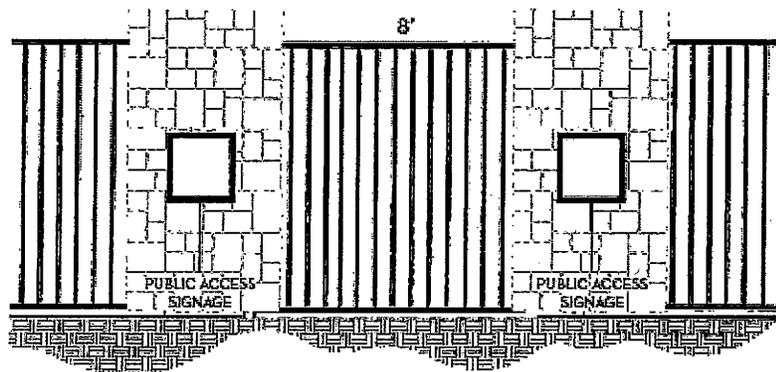
CENTRAL STRAND UPPER ACCESS GATE

FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Upper Central Strand Beach Access shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED



CLOSED POSITION: Upper Central Strand Beach Access shown with retractable gate closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

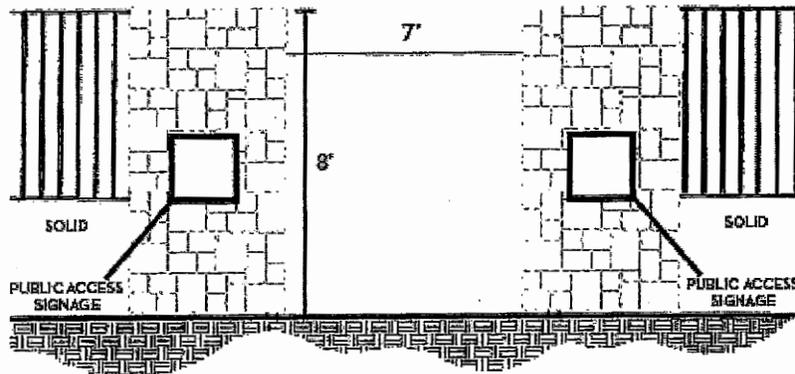
**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

NOTE: Plan is schematic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

**PUBLIC VIEW FENCE
FIGURE 4.12J2**

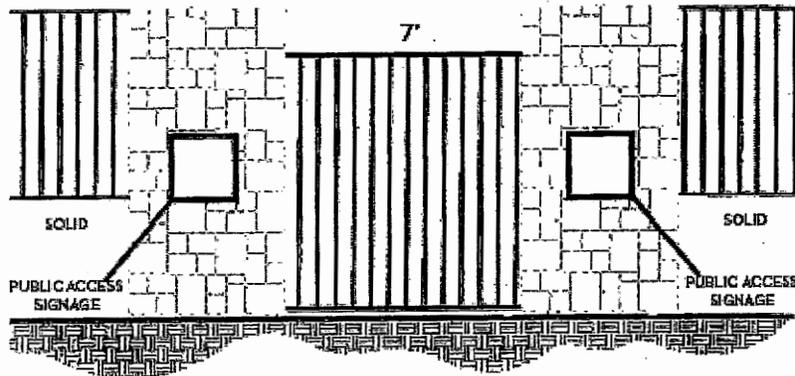
CENTRAL STRAND LOWER ACCESS GATE

FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Lower Central Strand Beach Access shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED



CLOSED POSITION: Lower Central Strand Beach Access shown with retractable gated closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

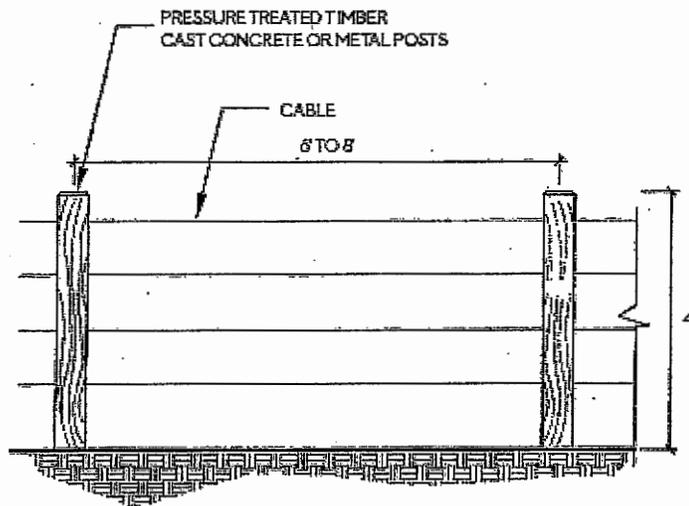
THE HEADLANDS

DEVELOPMENT AND CONSERVATION PLAN

NOTE: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

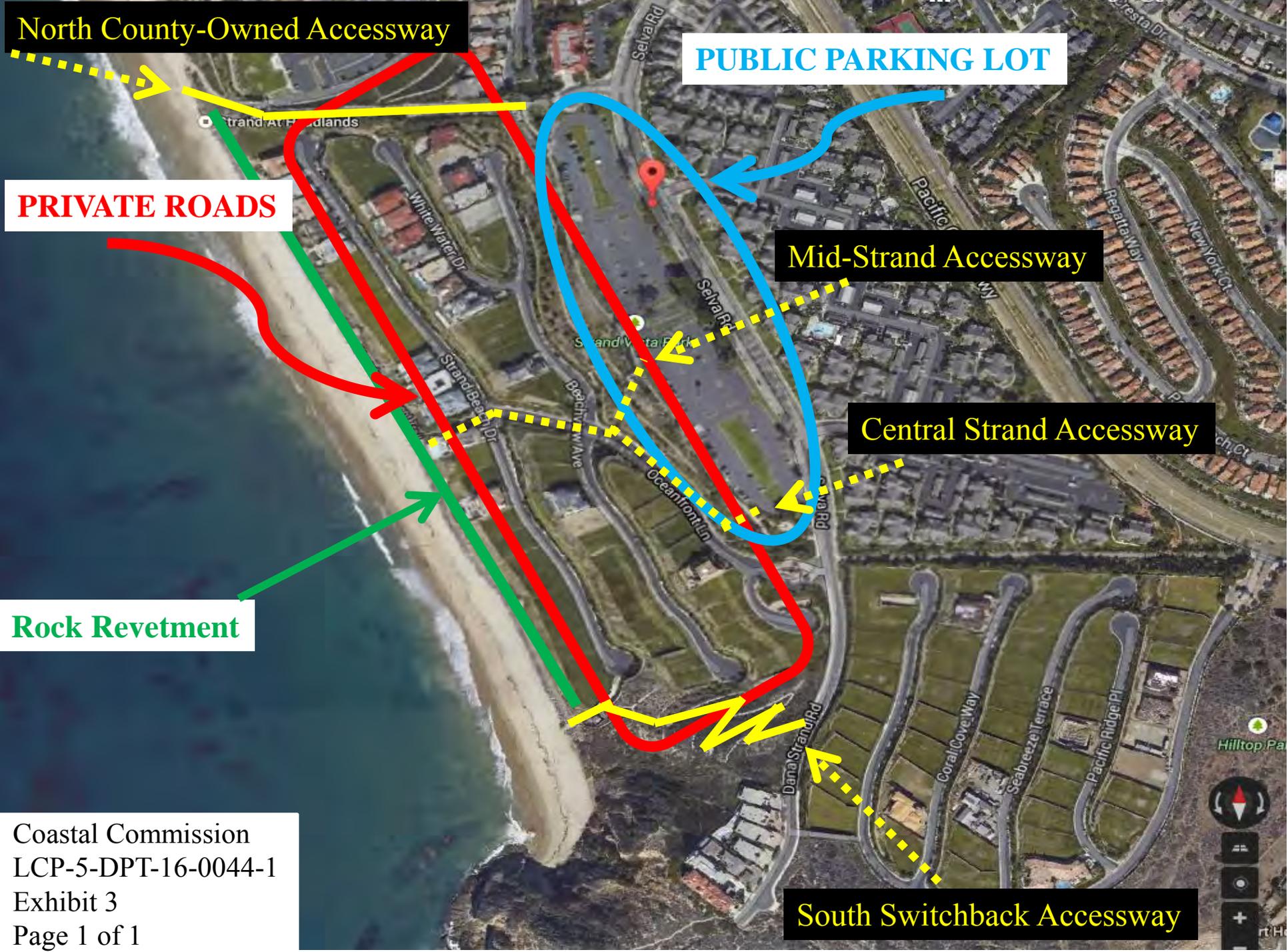
HABITAT / SAFETY VIEW FENCE

FIGURE 4.12.10-4.12.13



THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN

NOTE: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.



North County-Owned Accessway

PUBLIC PARKING LOT

PRIVATE ROADS

Mid-Strand Accessway

Central Strand Accessway

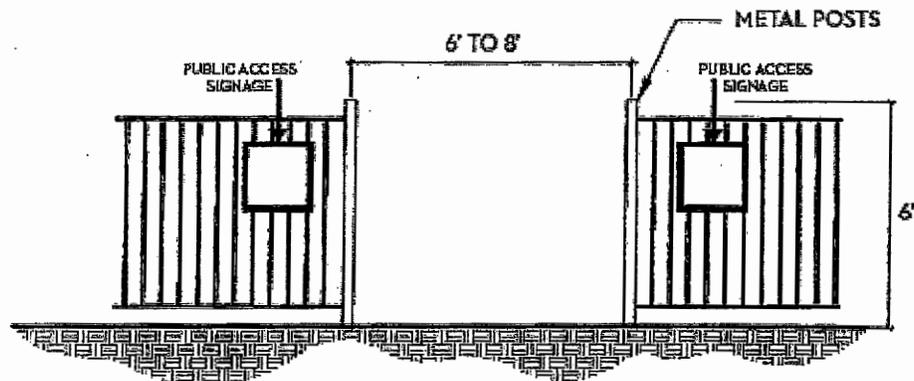
Rock Revetment

South Switchback Accessway

**PUBLIC VIEW FENCE
FIGURE 4.12.10**

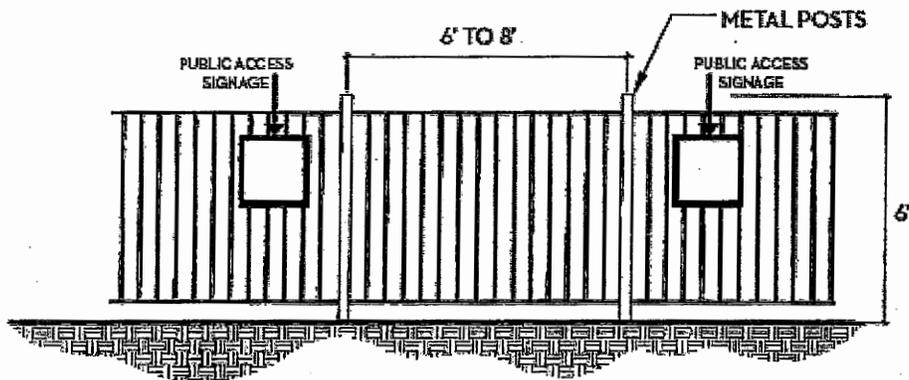
MID-STRAND BEACH ACCESS GATE

FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Mid-Strand Beach Access at entry from Strand Vista Park shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED



CLOSED POSITION: Mid-Strand Beach Access at entry from Strand Vista Park with retractable gate closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

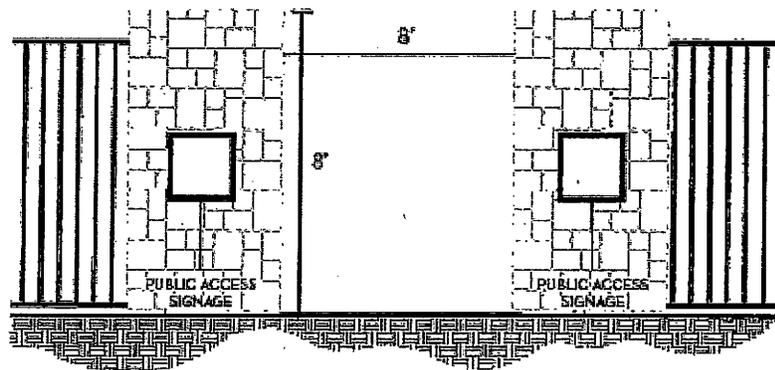
**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

NOTE: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

**PUBLIC VIEW FENCE
FIGURE 4.12.11**

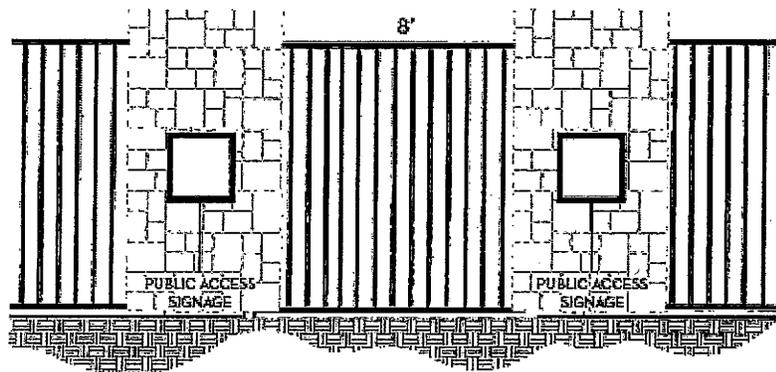
CENTRAL STRAND UPPER ACCESS GATE

FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Upper Central Strand Beach Access shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED



CLOSED POSITION: Upper Central Strand Beach Access shown with retractable gate closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

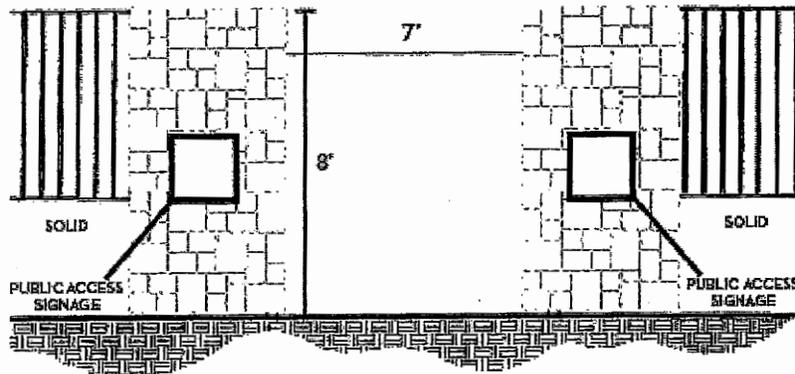
**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

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**PUBLIC VIEW FENCE
FIGURE 4.12J2**

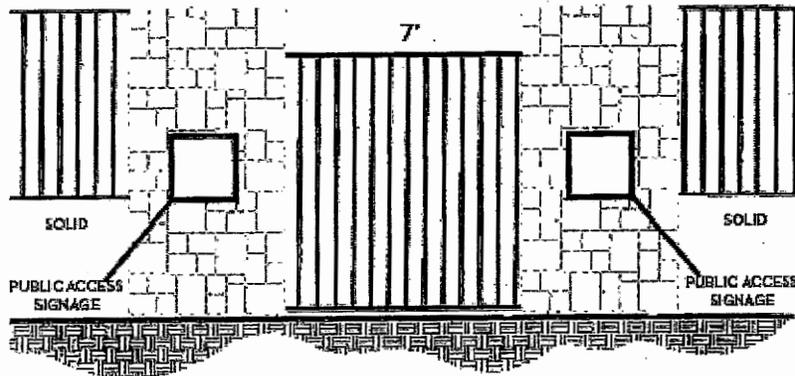
CENTRAL STRAND LOWER ACCESS GATE

FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Lower Central Strand Beach Access shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED



CLOSED POSITION: Lower Central Strand Beach Access shown with retractable gated closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

THE HEADLANDS

DEVELOPMENT AND CONSERVATION PLAN

NOTE: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



August 10, 2016

Ursula Luna-Reynosa
Director of Community Development
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

**Re: CALIFORNIA COASTAL COMMISSION COMMENTS FOR PROPOSED
LOCAL COASTAL PROGRAM AMENDMENT (LCPA) NO. 16-0001.**

Dear Ms. Luna-Reynosa,

Thank you for the opportunity to comment on the City's proposed zone text amendment, LCPA No. 16-0001. The amendment would change the Headlands Development and Conservation Plan, and Land Use Element Policy 5.31, both of which are components of the City's certified Local Coastal Plan. The proposed changes would affect existing public accessways in the Dana Point Headlands area by imposing restrictions on public use and the use of gates to prevent use by the public during nighttime hours.

The public access policies of Chapter 3 of the Coastal Act require maximum public access to the shoreline. The City's proposed LCP amendment would limit public access. The draft language indicates that specific coastal accessways in the Dana Point Headlands area will be open during the "hours of operation" approved by a coastal development permit. Please specify the intended hours of operation and include language that does not exclusively restrict shoreline access to those specified hours.

Additionally, the installation of gates on public accessways would interfere with public access (Coastal Act Section 30211) and a limitation on the rights guaranteed to the public to access the shoreline (Coastal Act Sections 30210, 30212, and 30214). Coastal Commission staff encourages the City to consider innovative access management techniques that do not include gates to enforce possible hours of operation. Gates, whether opened or closed, can deter the public from using accessways by giving the impression that the public is not welcome to use such gated accessways and results in placing the burden of access on the public. We look forward to working with you. Please feel free to contact us if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Posner", written over a horizontal line.

Charles Posner
Supervisor of Planning

cc: Sherilyn Sarb, Deputy Director
Karl Schwing, Coastal Program Manager
Andrew Willis, Enforcement Supervisor

RECEIVED

NOV 18 2016

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication: 11/16/16 3-3:15 PM

Location of communication: CONFERENCE CALL FROM MARIN CIVIC CENTER
(If communication was sent by mail or TO DAVID NEISH
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: STEVE KINSEY @ THE REQUEST OF DAVID NEISH

Identity of person(s) receiving communication: DAVID NEISH, DAVID NEISH, JR.

Name or description of project: DANA POINT LUP AMENDMENT

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

APPLICANT REPRESENTATIVES REFERRED TO COVER LETTER & BROCHURE MAILED TO ME. THEY EMPHASIZED THAT THE AMENDMENT IS INTENDED TO INCORPORATE ELEMENTS OF A SETTLEMENT AGREEMENT WITH THE COMMISSION, APPROVED IN APRIL 2016. THEY STATED THAT MANY OR ALL OF THE OTHER REQUIREMENTS OF THE SETTLEMENT AGREEMENT HAVE BEEN ADDRESSED. THEY ARE SEEKING PERMISSION FOR AN ELECTRONIC GATE AT THE ENTRANCES TO THE TRAIL THAT WOULD BE OPEN FROM 5AM - 10PM

11/16/16
Date

SK Kinsey
Signature of Commissioner

RECEIVED
NOV 22 2016

Wednesday 19B

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Roberto Uranga

1) Name or description of project: LCP Amendment No. 2-16 (LCP-5-DPT-16-0044-1) City of Dana Point Headlands Development Conservation Plan

2) Date and time of receipt of communication: Wednesday, 11/16/16 11:00AM

3) Location of communication: Dana Point, CA

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: D.B. Neish, Inc.

5) Identity of person(s) on whose behalf communication was made: City of Dana Point

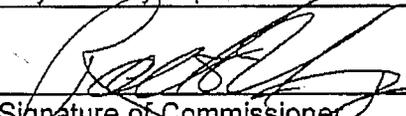
6) Identity of persons(s) receiving communication: Commissioner Uranga, Celina Luna

7) Identity of all person(s) present during the communication: David B. Neish, David J. Neish, Joe Muller, Mike Killebrew, Ursula Luna-Reynosa, Celina Luna, Commissioner Uranga

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I had an onsite visit at the Dana Point Headlands development and met with City representatives at the County parking lot above the strands where we walked down the mid-strand accessway down to the revetment trail above the beach and then back up the north strand accessway. The City of Dana Point discussed all the improvements that have been ongoing since the Settlement Agreement with the CCC including new signage throughout the project, new benches with lighting on the revetment trail, new bike racks, and 24-7 access on both the north and south strand accessway as well as the revetment trail. They then discussed the upcoming LCPA coming before the Commission in December to allow for gates at the central and mid-strand accessways to coincide with the 10 PM to 5 AM hours of closure agreed to in the settlement agreement. They discussed the new gates and how they would be wider and electronically close so as not to appear imposing. The Assistant City Manager also discussed the many access points around the beach and the need to protect public property rights on these two access points for those hours. We then drove up to the nature interpretive center and walked around the headlands trail in the conservation area and discussed all the work being done by the City to preserve this area.

11/22/16
Date


Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

Coastal Commission
LCP-5-DPT-16-0044-1

Exhibit 5

Page 3 of 75



November 9, 2016

Steve Kinsey, Chair
And Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

RECEIVED
South Coast Region

NOV 14 2016

CALIFORNIA
COASTAL COMMISSION

***Subject: City of Dana Point Local Coastal Program Amendment No.16-0001
(Public Access in the Dana Point Headlands)***

Dear Chair Kinsey and Commissioners:

At the upcoming December meeting, as the final piece of the recent settlement between the Commission and the City of Dana Point, the Commission will consider the above LCP amendment (LCPA), which amends the text of the City's Headlands Development and Conservation Plan (HDCP) and Land Use Element Policy 5.31. This focused LCPA ensures public access to Strands Beach over the five existing public accessways that the City maintains in the Dana Point Headlands during the hours of operation now approved by a Coastal Development Permit, while permitting the use of carefully limited, fully retractable gates to enforce the corresponding approved hours of closure through the existing residential area.

As you know, earlier this year, our respective Staffs spent several months working collaboratively to resolve long-standing litigation between the Commission and the City concerning the Headlands access issues. We are very proud of our collective efforts and sincerely appreciate the input and guidance that your Staff has provided.

On April 19, 2016, consistent with the Settlement Agreement between the Commission and the City, the City Council approved CDP 15-0021, which established the hours of operation for public access to Strand Beach. Because there was uniform agreement on the hours of operation, no appeal was filed. As a result, public access to and from Strand Beach is now assured by way of the South Switchback Trail and Strand Revetment Trails 24 hours a day. The Strand Vista Park and two accessways through the Headlands residential area, the Mid-Strand and Central Strand (Upper and Lower) accessways, have been approved to operate from 5:00 a.m. to 10:00 p.m. daily, with corresponding hours of closure from 10:00 p.m. to 5:00 a.m.

Paragraph 7 of the Settlement Agreement further authorizes the City to apply for this LCPA "to make the use of gates in connection with approved hours of operation for the Mid-Strand Beach Access and Central Strand Beach Access . . ." In formulating the LCPA, we were very mindful of your Staff's general concerns regarding gates, and therefore we

A copy of this letter has been provided to the Commission's South Coast District Staff

Harboring the Good Life

Coastal Commission
LCP-5-DPT-16-0044-1
Exhibit 5

took extra care to craft this LCPA in a manner that addresses those concerns while at the same time addressing concerns expressed by the Headlands residents.

The end result is that the LCPA before you provides a “balanced” approach – a win-win for everyone. As requested by your Staff, the LCPA sets forth the hours of operation now approved by the CDP, and thus it provides “maximum access,” as required by the Coastal Act. (Coastal Act Sections 30210-30212.) Furthermore, it does so, again as the Act provides, “consistent . . . with the need to protect . . . rights of private property owners” (Section 30210), and implements the Act’s public access policies “in a manner that takes into account [1] the need to regulate the time, place, and manner of public access” and [2] “the need to provide for the management of [the] access areas so as to protect the privacy of [the] adjacent property owners.” (Coastal Act Section 30214(a)(4).)

A redline of Policy 5.31 is attached. Under the LCPA, the retractable gates – a new feature – will operate with an automatic locking mechanism. Policy 5.31 specifies that the retractable gates are permitted “only if the access ways are operated and maintained in a fully open position and signed for public access during hours of operation approved by a Coastal Development Permit, and the gates are designed with no potential to limit, deter, or prevent public access to the shoreline.” To illustrate the fully retractable gates, both in the fully open and closed positions, the HDCP includes three new figures, Figures 3-5. Thus, the retractable gates provide a complete, wide, and unobstructed opening for public access during the approved hours of operation, with public access signage, instead of the existing gates (which the City, in November 2015, locked in an open position) which have small openings, function more like “doors,” are covered by wire mesh, and are topped by fence spikes. The automated and fully retractable gates will serve to enforce the CDP-approved hours of closure over the two accessways which course through the residential area.

Lastly, the City wishes to take this opportunity to update the Commission as to the milestones negotiated in the Settlement Agreement that it already has met (please see the attached Monthly Status Report provided to your Staff):

- Dismissals of the City’s appeals in the Coastal Commission and Surfrider lawsuits.
- Installation of all required public access and educational signage, benches, and bike racks.
- Removal of wire mesh and fence top spikes from the existing gates.
- Significant progress – working with Staff, Surfrider, and the Ocean Institute in Dana Point Harbor – on the specifics of and funding for a coastal educational program for Strands Beach.

The enclosed Briefing Book provides additional information in support of the LCPA. We look forward to discussing the LCPA with you further at the December 2016 meeting.

A copy of this letter has been provided to the Commission’s South Coast District Staff

Chair Kinsey and Commissioners
Page 3 of 3
November 9, 2016

Sincerely,



Michael A. Killebrew
Assistant City Manager

Enclosures: (1) Redlined Policy 5.31
(2) Monthly Settlement Status Report

cc: Mayor John A. Tomlinson and the Honorable Dana Point City Council
Jack Ainsworth, Acting Executive Director
Sherilyn Sarb, Deputy Director, California Coastal Commission
Karl Schwing, Coastal Program Manager, California Coastal Commission
Charles Posner, Supervisor of Planning, California Coastal Commission
Andrew Willis, Enforcement Supervisor, California Coastal Commission
Ursula Luna-Reynosa, Community Development Director, City of Dana Point
A. Patrick Munoz, City Attorney, City of Dana Point
Steven Kaufmann, Esq.
DB Neish, Inc.

***Deletions are shown as ~~strikeout~~ and additions are underlined**

Policy 5.31 – Page 11(HDCP) Page 17(General Plan)

Recreation and access opportunities at public beaches and parks at the Headlands shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in user fees or parking fees shall be subject to a Coastal Development Permit. Strand Vista Park and the entries to the Mid-Strand Access and upper and lower Central Strand Access shall be open and operated and maintained for public pedestrian beach access to and from Strand Vista Park and Strand Beach from 5:00 a.m. to 10:00 p.m. Retractable gates operating with an automatic locking mechanism shall be permitted at the entries to the Mid-Strand Access and Central Strand Access only if the access ways are operated and maintained in a fully open position and signed for public access during hours of operation approved by a Coastal Development Permit, and the gates are designed with no potential to limit, deter, or prevent public access to the shoreline. The South Strand Switchback Trail and Strand Beach Park/Strand Revetment Trail shall be open and operated and maintained for public beach access 24 hours a day.

NOV 14 2016

CALIFORNIA
COASTAL COMMISSION



CITY OF DANA POINT

MONTHLY STATUS REPORT TO CALIFORNIA COASTAL COMMISSION OCTOBER 2016

DATE: 10/14/2016

SUMMARY

Installation of all signs, as approved in the signage plan, was completed on October 13, 2016. Benches and bike racks pursuant to section 23(4) were installed on October 8, 2016. Please see attached updated signage plan with images of all newly installed signs and amenities.

On September 27, 2016 City staff met with Ocean Institute staff and Surfrider representative to discuss the educational program for Strands beach. Ocean Institute is currently working on the specifics of the program proposal, including budget, and should have a more detailed proposal by the end of October. Educational program is anticipated to begin in January 2017.

STATUS

Section 3: Settlement Cease and Desist Order CCC-16-CD-02, Removal of Wire Mesh and Spikes

On Friday April 15, 2015, City staff removed the wire mesh and fence top spikes from the gates. The spikes were also removed from a 10 foot section of the fencing on both sides of the Mid-Strand gate. See Attachment A for images of gates locked open without spikes and wire mesh.

Section 6: Coastal Development Permit No. A-5-DPT-15-0067 and Local CDP 15-0021 (Hours of Operation), Amend Local CDP 15-0021

Section 6.1: On Tuesday April 19, 2015 the City of Dana Point City Council amended CDP15-0021 to include the approval of designated hours of access. Designated hours of operation for the Strand Access Areas are as follows: Strand Vista Park [5am-10pm], South Strand Switchback Trail [24 hours/day], Strand Beach Park/Strand Revetment Trail [24 hours/day], Central Strand Beach Access [5 am-10pm], Mid-Strand Beach Access [5am-10pm]. They also deleted the approval of the gates in connection with the Mid-Strand Beach Access and Central Strand Beach Access in CDP15-0021.

Section 6.3: The City did not enforce hours of operation of the Mid Strand Access and the Central Strand Access during the appeal period of CDP15-0021.

Section 7: Local Coastal Program Amendment (Gates)

Section 7.1: City amended CDP15-0021 as outline above.

Section 7.2: City staff initiated a Local Coastal Program Amendment (LCPA) 16-0001 in July 2016. City of Dana Point planning commission approved the amendment to the Headlands Development and Conservation Plan to address public access during Coastal Development approved operational hours and potential use of three retractable gates at their meeting on Monday July 25, 2016. On August 16, 2016. The Dana Point City Council, conducted a public hearing; and adopted a resolution approving the GPA16-

001 and requesting certification of LCPA16-0001 from the California Coastal Commission: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REGARDING GENERAL PLAN AMENDMENT GPA16-0001 AND LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 TO AMEND LAND USE POLICY 5.31 AND REQUESTING CERTIFICATION OF LOCAL COASTAL PROGRAM AMENDMENT LCPA16 0001 BY THE CALIFORNIA COASTAL COMMISSION." The Dana Point City Council also introduced for first reading an Ordinance entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA16-0001 TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN; SECTION 4.0 TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESS WAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION." This ordinance will go to the Dana Point City Council for a second reading on September 6, 2016.

Section 8: Removal Requirements

No action to date.

Section 9: Implementation Review

Status report submitted in May.

Andrew Willis of Coastal Commission staff stated City could wait to submit next monthly status report until white paper on Ocean Institute educational program was completed. White paper is submitted with the July progress report.

Section 16: Effect of Pending Litigation and Termination of Settlement Agreement

Per City Attorney Jennifer Farrell, on August 15, 2016 City of Dana Point and Headlands LLC filed dismissals in the CCC case and court dismissed appeal. City of Dana Point filed a dismissal On August 15, 2016 on the Surfrider case and Headlands LLC did not. Court gave Headlands an opportunity to brief why it should not be dismissed.

Section 23: Settlement of Claims

Section 23(1): City met with CNLM preserve staff to determine the feasibility of constructing the "Trail to Selva" on June 17, 2015. CNLM staff encouraged City to speak with U.S. Fish and Wildlife Service pertaining to the federally endangered species the Pacific Pocket Mouse.

Section 23(2): No action to date

Section 23(3): No action to date

Section 23(4): Bike racks and benches have been installed. See attached updated signage plan for images of installed amenities.

Section 23(5): All signs were installed by October 13, 2016. See attached updated signage plan for images of all newly installed signs.

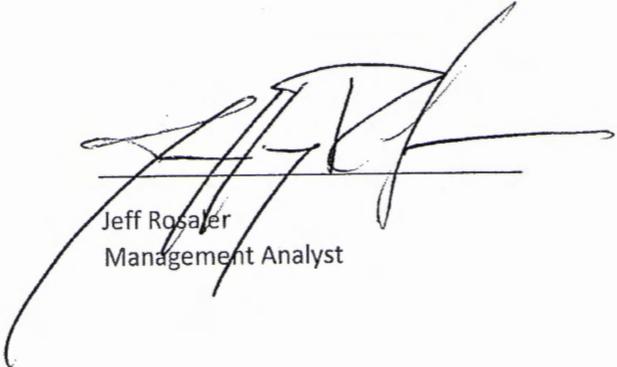
City staff and Coastal Commission staff met with the Ocean Institute on June 15, 2016 to conceptually discuss the educational program for Strands beach. City staff met with the Ocean Institute staff again on July 12, 2016 to develop the program proposal that is included with this report. Andrew Willis stated he

would reach out to California Coastal Commission education staff and Surf Rider Foundation to set up a meeting to get their input. City staff, Ocean Institute staff and Surfrider representative met again on September 27, 2016 to formulate a more detailed proposal.

This report was prepared and submitted on the 14th day of October, 2016 and reflects the City's effort to comply with all sections of the Settlement Agreement.



Douglas Chotkevys
City Manager



Jeff Rosaler
Management Analyst



Strands Signage Plan Per CCC Settlement

Numbers Correspond to Placement of Signs Included in this Document

Sign 1. Replacement sign includes new park hours and language "Access ways provided in cooperation with the California Coastal Commission" and CCC footprint logo.

South Strand Conservation Park
City of Dana Point

Park Hours
Open Daily 24 Hours

Access ways provided in cooperation with the California Coastal Commission
The following rules have been established to protect the rare or endangered plants and animals within the Conservation Park and to enhance your visit.
Your cooperation will be appreciated by our sensitive wildlife and by all visitors.

THE FOLLOWING ACTIVITIES ARE PROHIBITED:

- HIKING OFF DESIGNATED TRAILS**
(DPMC 13.04.015-016)
- DOGS OR OTHER PETS**
(DPMC 13.04.018)
- SMOKING OR FIRES**
(DPMC 13.04.019-020)
- BICYCLES**
(DPMC 13.04.021)
- ALCOHOL OR GLASS CONTAINERS**
(DPMC 13.04.022)
- USE OF UNMANNED AIRCRAFT**
(DPMC 13.04.023)
- COLLECTING OF NATURAL MATERIALS**
(DPMC 13.04.024)
- CAMPING**
(DPMC 13.04.025)
- LITTERING OR DUMPING**
(DPMC 13.04.026)

LEGEND

NO DOGS ALLOWED
By City Ord.

WARNING UNSTABLE CLIFFS. STAY ON THE TRAILS.

VIOLATION OF MUNICIPAL CODE 13.04 IS A MISDEMEANOR PUNISHABLE BY A FINE UP TO \$1,000.00 OR IMPRISONMENT IN JAIL OR BOTH

TO REPORT VIOLATIONS OR FOR MORE INFO CALL:
(949) 770-6011 (949) 248-3527

Sign 2. Existing rules and regulations of South Strand Conservation Park, located at the bottom of the South Strand Switchback trail to beach.



Sign 2. Replacement sign includes new park hours and language "Access ways provided in cooperation with the California Coastal Commission" and CCC footprint logo.



Sign 4. Existing Coastal Access sign, including hours of access, located at the top of the Mid-Strand Beach Access. Sign is located on the fencing adjacent to the locked open gate.



Sign 4. Replacement Coastal Access sign, including new hours of access, located at the top of the Mid-Strand Beach Access. Sign also includes the language "Access ways provided in cooperation with the California Coastal Commission" and the CCC footprint logo.



Sign 4a. New "Free Incline Elevator To the Beach" sign, located at the top of the Mid-Strand Beach. Sign also includes the language "Accessways provided in cooperation with the California Coastal Commission" and the CCC footprint logo.



Sign 5. Existing Coastal Access sign, including hours of access, located at the top of the Central Strand Beach Access. Sign is located on the pilaster adjacent to the locked open gate.



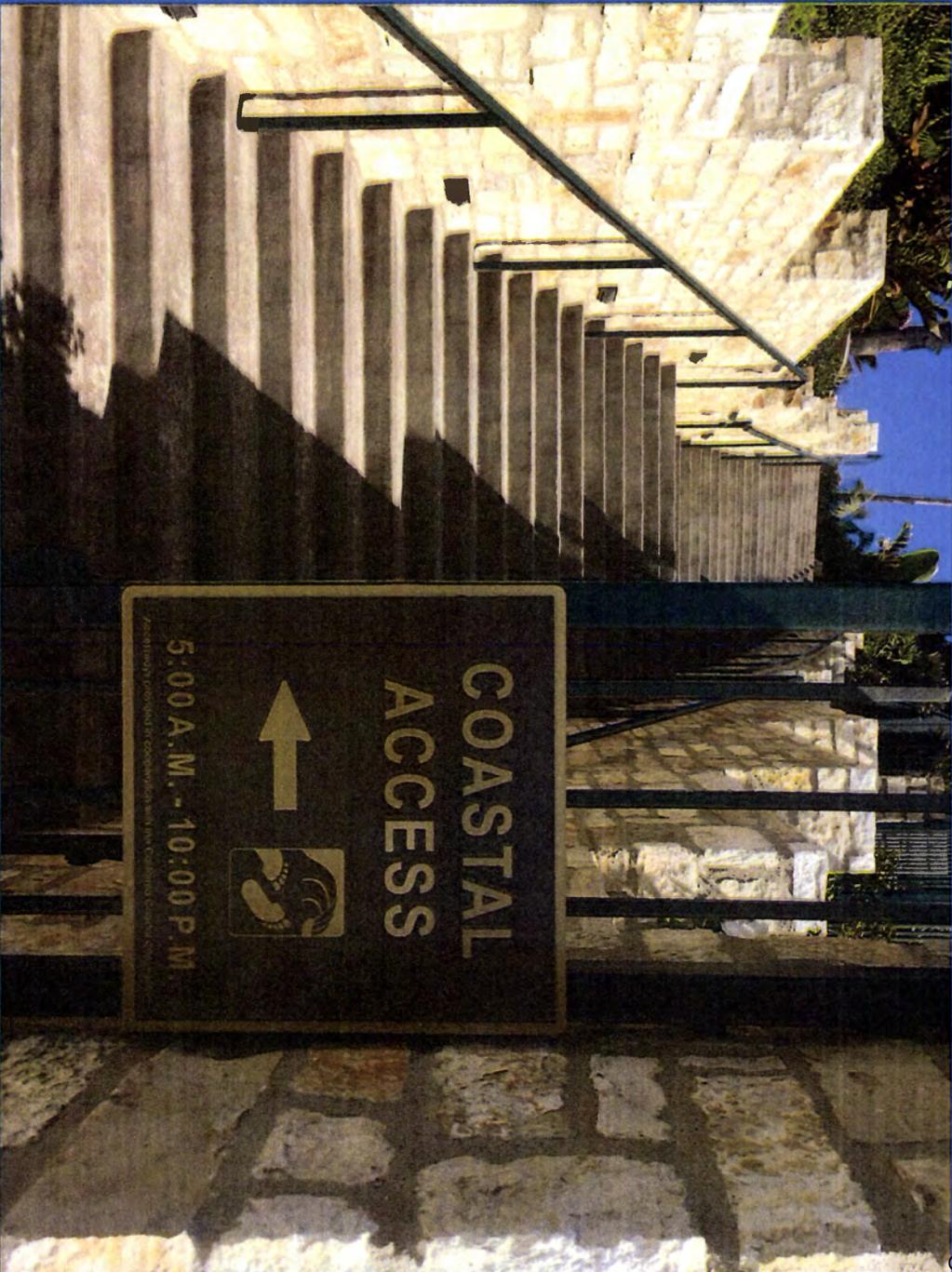
Sign 5. Replacement Coastal Access sign, including new hours of access, located at the top of the Central Strand Beach Access. Sign also includes the language "Access ways provided in cooperation with the California Coastal Commission" and the CCC footprint logo.



Sign 6. Existing Coastal Access sign, including hours of access, located at the bottom of the Mid-Strand Beach Access and Central Strand Beach Access points. Sign is located on the fencing adjacent to the locked open gate.



Sign 6. Existing Coastal Access sign, including hours of access, located at the bottom of the Mid-Strand Beach Access and Central Strand Beach Access points. Sign also includes the language "Access ways provided in cooperation with the California Coastal Commission" and the CCC footprint logo.



Sign 7. New Coastal Access sign, to be located on the back of the traffic control sign post in the median along Selva Rd., directing the public to utilize the North Strands Beach Access.



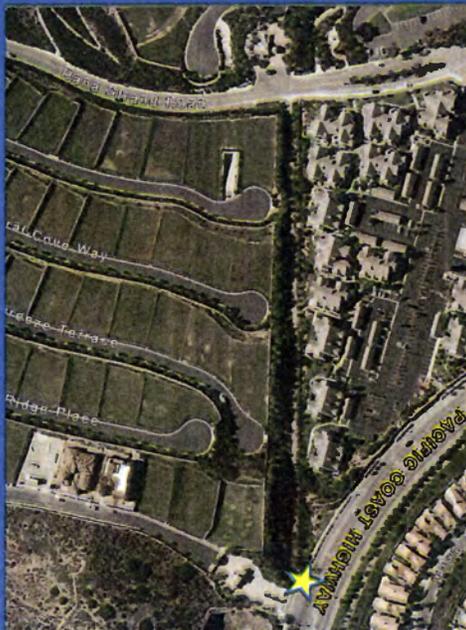
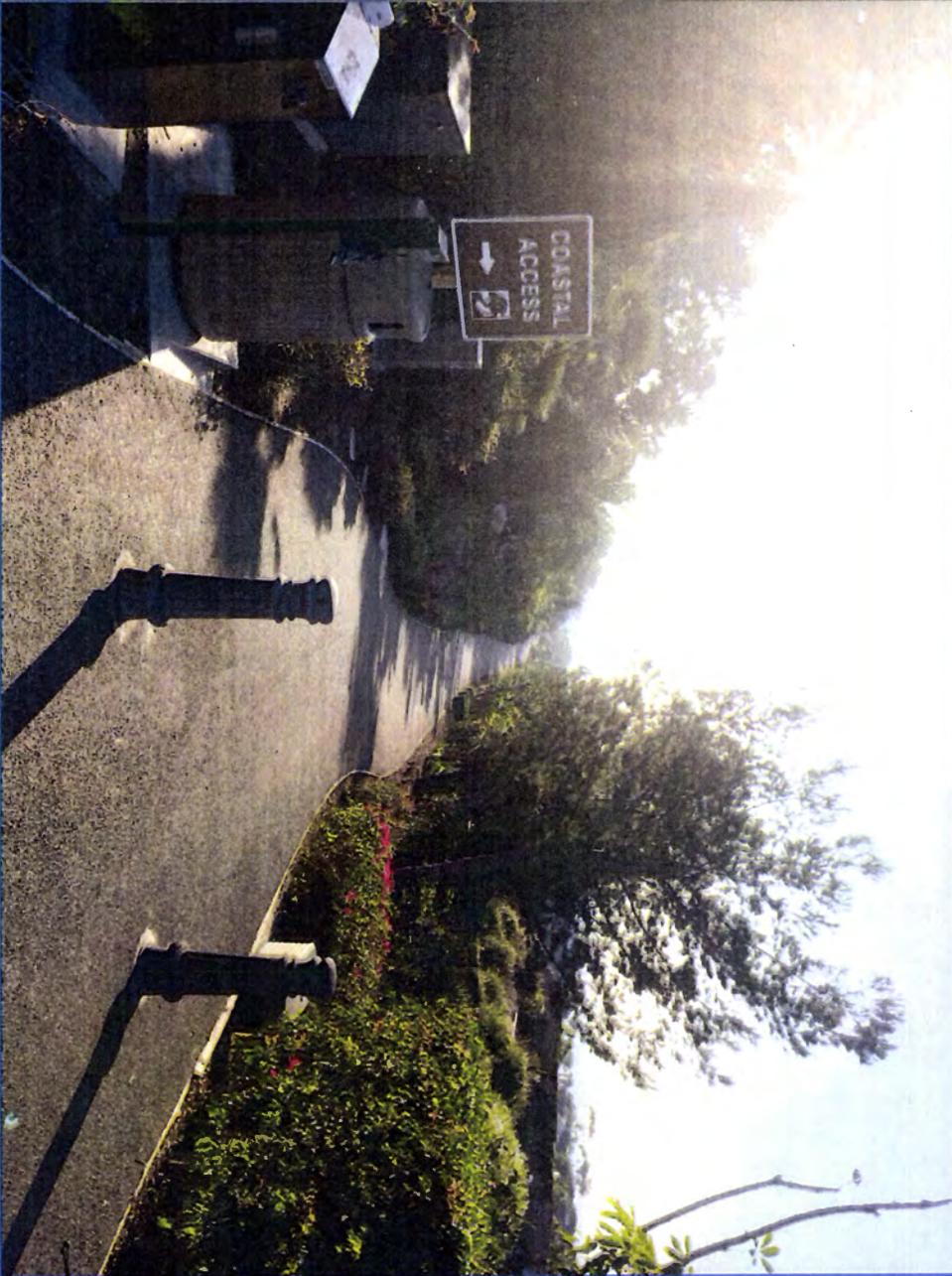
Sign 8. New Coastal Access sign to be located on the back of the traffic control sign post in the median along Selva Rd., directing the public to utilize the Mid Strands Beach Access.



Sign 10. New Coastal Access sign to be located on the back of the traffic control sign post in the median along Selva Rd., directing the public to utilize the Central Strands Beach Access.



Sign 11. New Coastal Access sign, to be located on the intersection of PCH and Shoreline Dr., directing the public to utilize the Strands Beach Access way or "Passage de Palmiers".



Sign 11. New interpretive sign highlighting marine habitats found at Strands Beach.



Dana Point Marine Habitats



Much like the different habitat types found on land, southern California waters are home to a variety of different habitats as well. From this point, one can see several different marine habitats, including sandy and rocky beaches, and kelp forests.



Giant Kelp: *Macrocystis pyrifera* can form dense forests just off shore in water 20 to 100 feet deep. These forests support many of our local commercial and recreational fish and invertebrate stocks, and are very important ecologically.



Rocky Intertidal Beaches: The Dana Point headlands coastline is crowded full of interesting and unusual seaweeds and animal species. Many of these species have also claimed unique geological features like cliffs and grottoes, which are fun to explore.



Sandy Beaches: A healthy sandy beach is not groomed. Washed up seaweeds provide food for many shoreland species. An important fish, the California Clunker, lays five eggs in the sand and burrows into the sand crabs, which feed numerous fish and bird species, also live in the sand.

Kelp Forests

Kelp Forests habitats are home to the majority of our near shore fish and invertebrate species. These forests are dominated by the giant kelp, *Macrocystis pyrifera*, which is an alga that attaches to rocks with its "holdfast". Giant kelp can grow to be over 120 feet tall and can grow over 11 feet in length per day! It is a food source for a variety of organisms, which in turn feed our sport fish and prized invertebrates. For example, calico bass and lobster reside in our kelp forests, and eat animals that rely on giant kelp. Thus, it is important to ensure our kelp forests stay healthy. One way we can easily do that is by keeping our nearby streams and creeks clean!

Rocky Beaches

Rocky intertidal habitats, which are also known as tidepools, are home to hundreds of different animal and "plant-like" species. These "plant-like" species are mostly algae, which are also called seaweeds. The rocky intertidal habitat in Orange County is home to approximately 150 species of seaweed and over 300 species of animals! Rocky intertidal organisms are built to deal with the dynamically harsh intertidal environment, which is covered and uncovered by the sea due to daily tides. Tides are caused by the gravitational force application Earth by the Moon (and less intensely, the Sun). In southern California, we normally experience two tidal cycles per day, which can affect beach access and surfing conditions!

Sandy Beaches

Sandy beach habitats are home to many different types of organisms and can be quite complex. For example, in the summer and fall months, kelp (and other seaweeds) tends to die back as the water warms and wash ashore, the material deposited on the beach is called "wrack". Beach wrack is food and habitat for a variety of smaller invertebrates. These organisms feed many bird species, which have adapted to feed primarily on wrack-associated invertebrates. Some of these birds are very rare or even endangered! For example, the federally threatened Western Snowy Plover is often seen at the north end of Salt Creek (11 miles north of here) in the winter months! Therefore, a stinky, seaweed covered beach that is NOT GROOMED is a much healthier one for wildlife.

Sign 11. Proposed location of interpretive sign is along the east facing wall of the funicular control building located at the top of the North Strands Beach Access and along Strand Vista Park walkway



Sign 12. 2nd new interpretive sign highlighting marine mammals commonly seen off of Strands Beach.

Marine Mammals of Dana Point

Many people visit Dana Point to see marine mammals. Approximately 20 species of marine mammals can be seen in this area! Over the past 10 years, we have commonly seen Blue, Gray, Humpback, and Fin Whales ("baleen" whales) seasonally. In addition, we commonly see several dolphin species (Common, Bottlenose, and White-sided), Killer Whales, and California Sea Lions and Harbor Seals. Please take a minute to learn a little more about these majestic creatures.



Humpback Whale



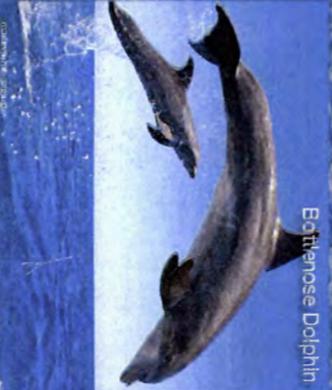
Fin Whale



Blue Whale



California Sea Lion



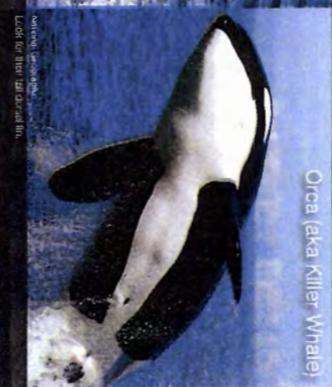
Bottlenose Dolphin



Common Dolphin



Pacific White-sided Dolphin



Orca (aka Killer Whale)



Humpback Whales (175 feet tall by weight, 40,000 lbs) are the largest whales in the world. They are known for their long, curved, baleen. They are found in the North Pacific and North Atlantic Oceans. They are known for their breaching behavior, which can reach heights of up to 40 feet. They are also known for their songs, which can last for hours.

Blue Whales (110 feet tall by weight, 1,100,000 lbs) are the largest animals ever to exist on Earth. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Fin Whales (75 feet tall by weight, 100,000 lbs) are the second largest baleen whales. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

California Sturgeons (10 feet tall by weight, 1,000 lbs) are the largest sturgeons in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Harbor Seals (4 feet tall by weight, 1,000 lbs) are the largest seals in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Common Dolphins (4 feet tall by weight, 1,000 lbs) are the largest dolphins in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Bottlenose Dolphins (4 feet tall by weight, 1,000 lbs) are the largest bottlenose dolphins in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Pacific White-sided Dolphins (4 feet tall by weight, 1,000 lbs) are the largest Pacific White-sided dolphins in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Orca (aka Killer Whales) (10 feet tall by weight, 10,000 lbs) are the largest orcas in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

California Sea Lions (4 feet tall by weight, 1,000 lbs) are the largest California Sea Lions in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Harbor Seals (4 feet tall by weight, 1,000 lbs) are the largest harbor seals in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

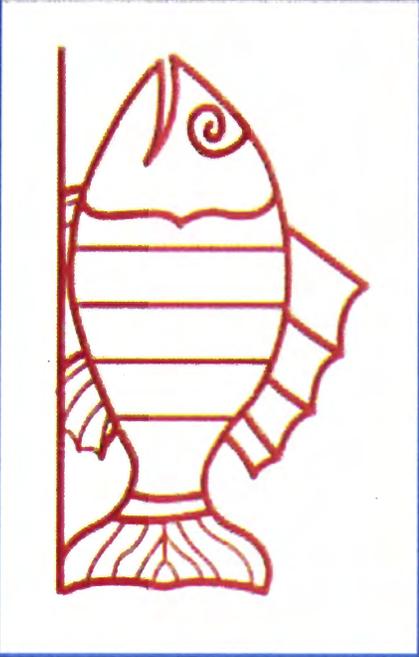
Common Dolphins (4 feet tall by weight, 1,000 lbs) are the largest common dolphins in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

Bottlenose Dolphins (4 feet tall by weight, 1,000 lbs) are the largest bottlenose dolphins in the world. They are found in the North Pacific and North Atlantic Oceans. They are known for their long, curved, baleen. They are also known for their songs, which can last for hours.

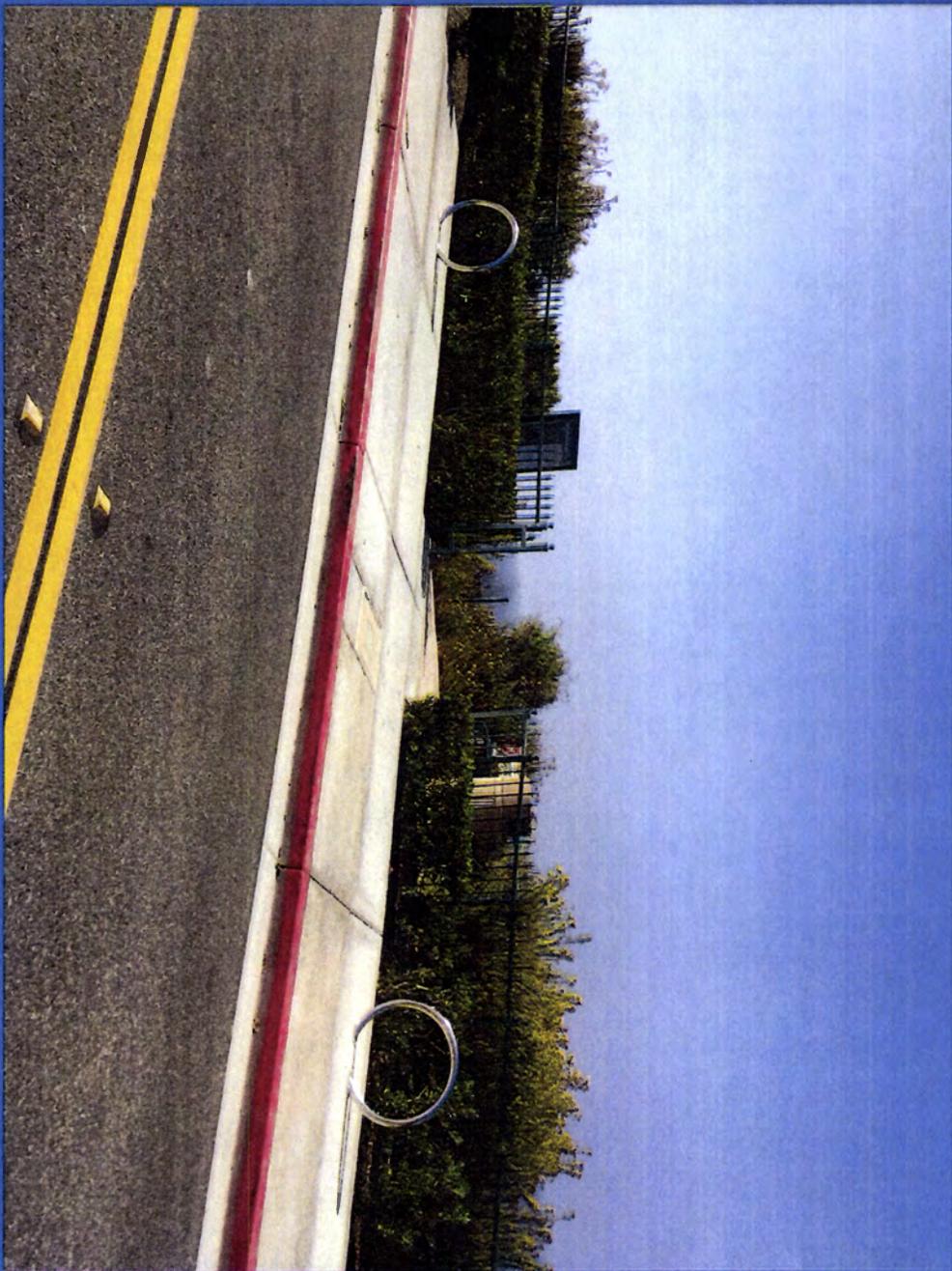
Sign 12. Proposed location of interpretive sign is along the east facing wall of the funicular control building located at the top of the North Strands Beach Access and along Strand Vista Park walkway



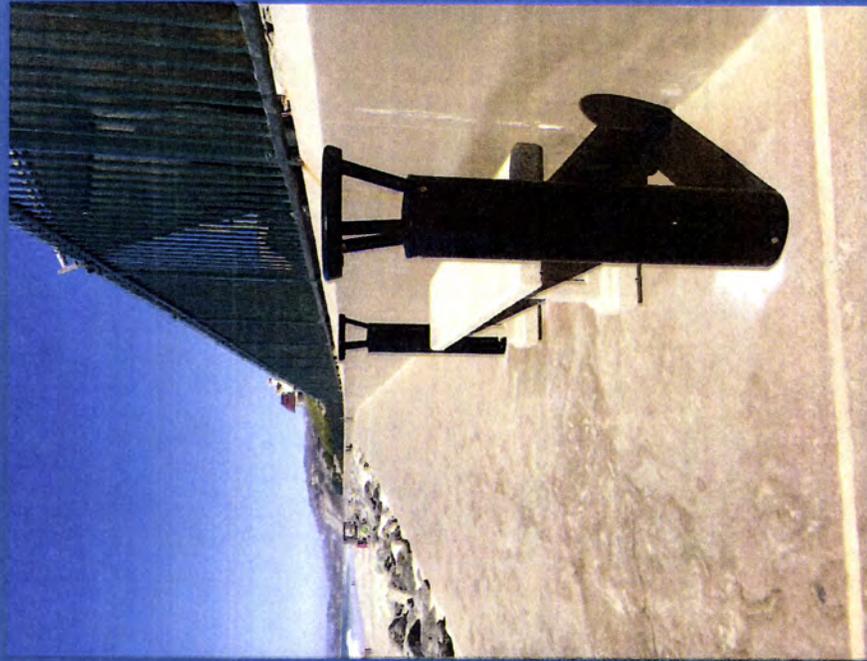
13. New bike rack at Mid Strands Access Way. Bike rack will sit on a 6 foot by 8 foot (approximate) concrete pad that would be in the grass area across from the entrance (indicated by yellow box).



14. Two circular bike racks will be installed on either side of entrance to South Strand Switchback Trail.



6 new benches will be installed along the Strand Revetment Trail (as indicated below) with illuminated bollards on either side of bench.



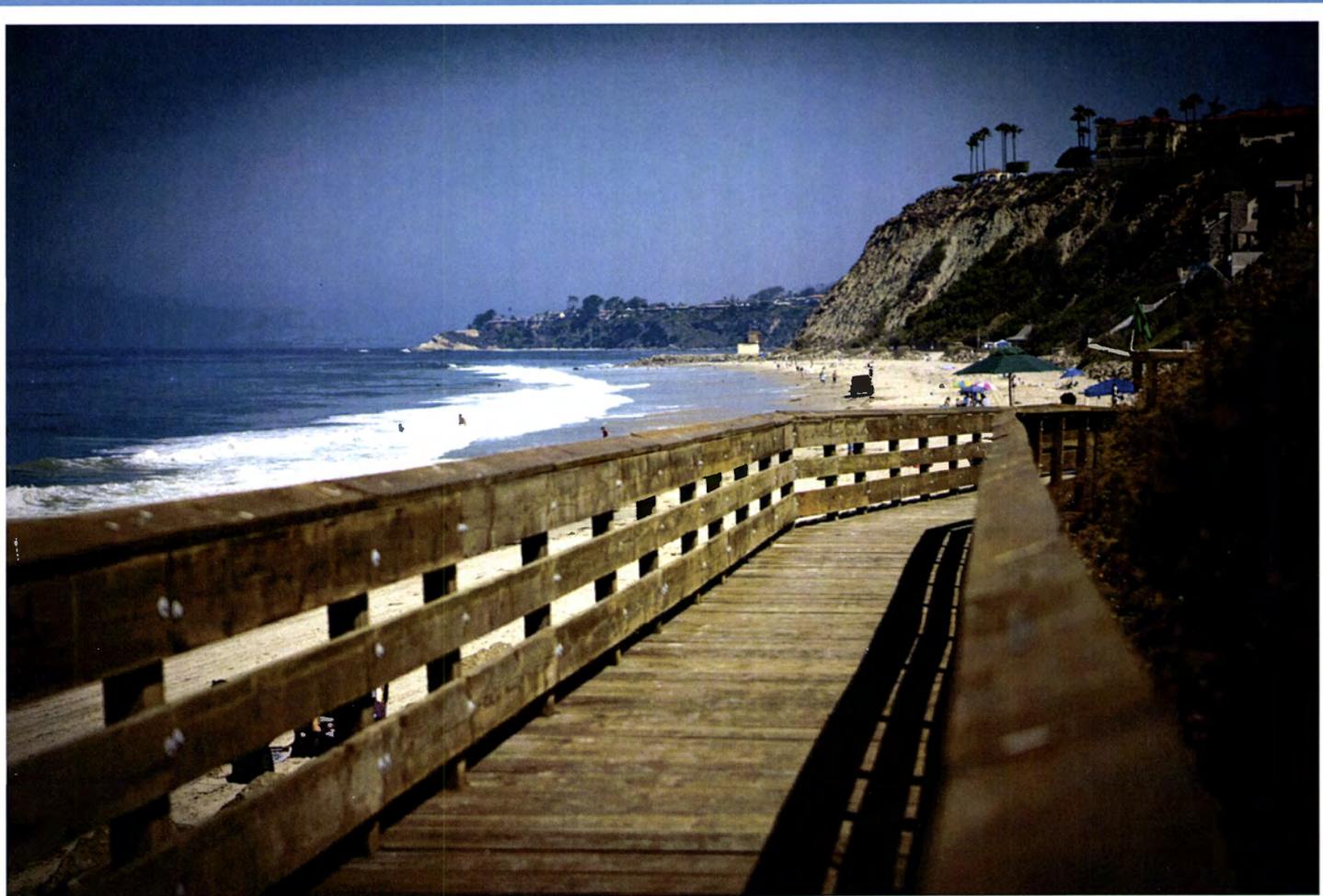
HEADLANDS DEVELOPMENT AND CONSERVATION PLAN COASTAL ACCESS

DANA POINT LCPA16-0001

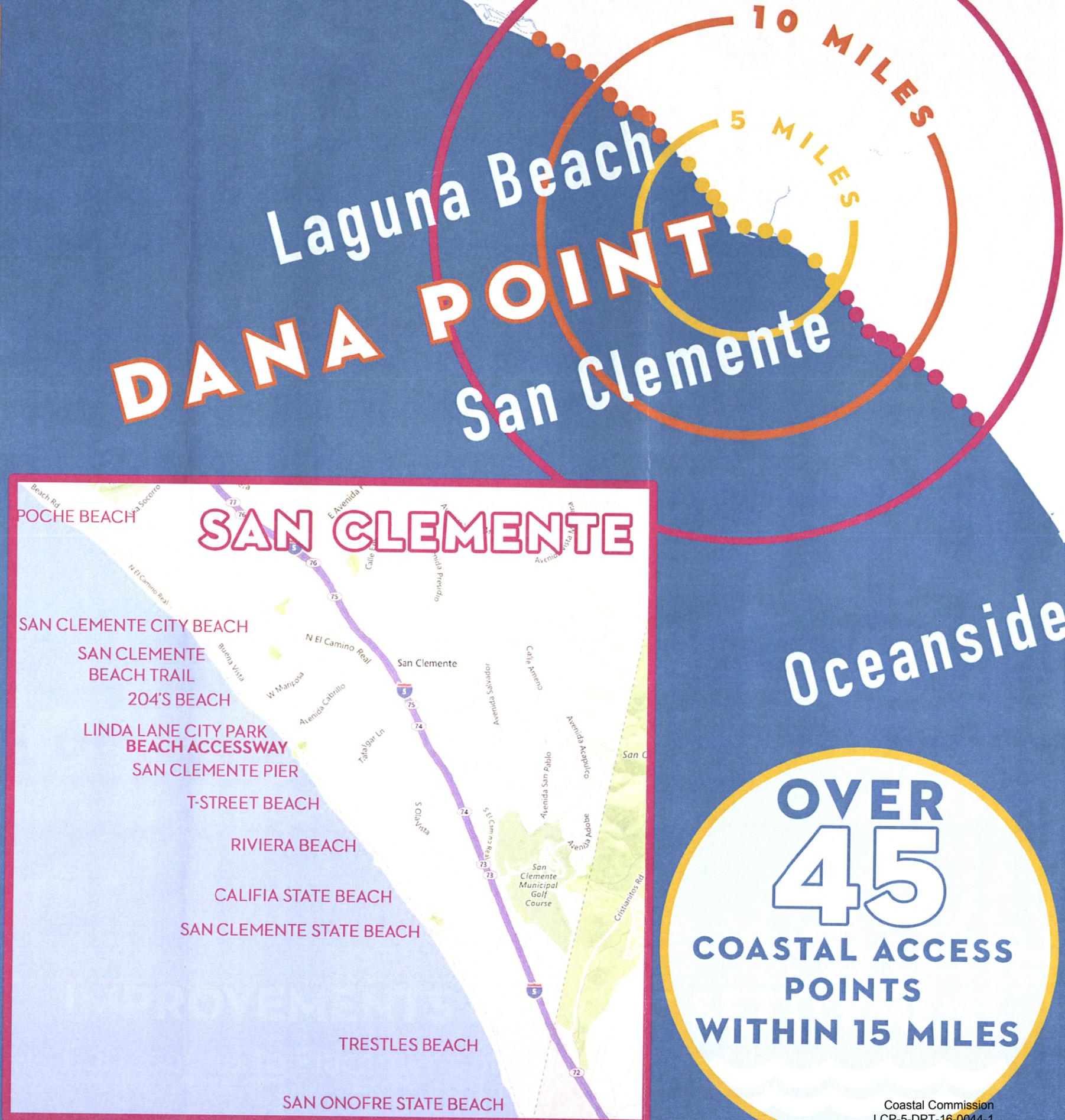
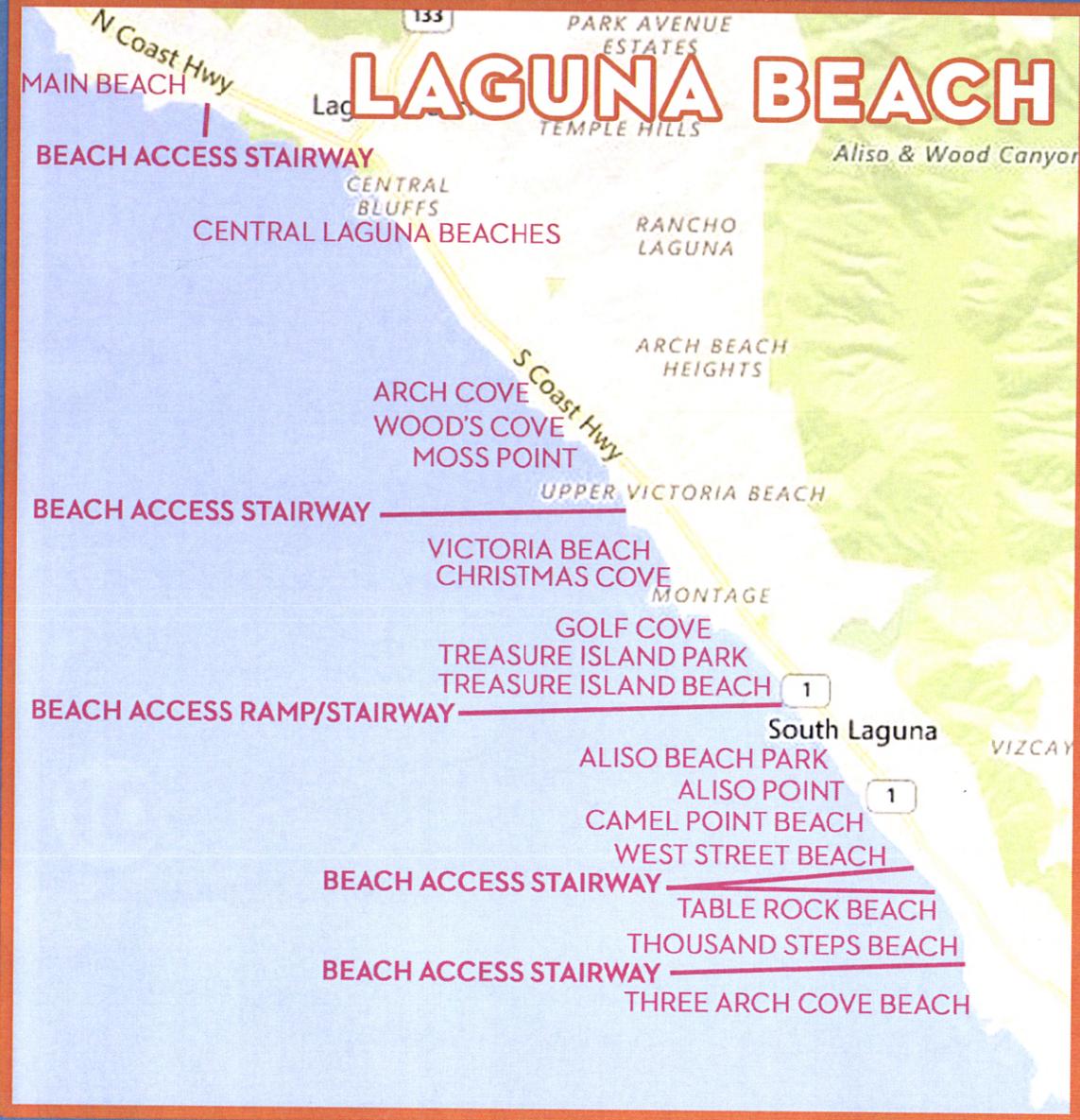
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South Coast Region

NOV 14 2016

CALIFORNIA
COASTAL COMMISSION



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Laguna Beach

DANA POINT

San Clemente

10 MILES

5 MILES

Oceanside

OVER 45 COASTAL ACCESS POINTS WITHIN 15 MILES



IMPROVEMENTS PER CCC SETTLEMENT

Numbers Correspond to Placement of Signs Included in this Document

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SIGN NO. 1

Sign includes new park hours and language "Access ways provided in cooperation with the Coastal Commission" and CCC footprint logo.



Welcome to

South Strand Conservation Park

City of Dana Point



Park Hours

Open Daily 24 Hours



Access ways provided in cooperation with the California Coastal Commission

The following rules have been established to protect the rare or endangered plants and animals within the Conservation Park and to enhance your visit.

Your cooperation will be appreciated by our sensitive wildlife and by all visitors.



THE FOLLOWING ACTIVITIES ARE PROHIBITED:



HIKING OFF DESIGNATED TRAILS

[CPMC 13.04.055 (a)]



DOGS OR OTHER PETS

[CPMC 13.04.095]



SMOKING OR FIRES

[CPMC 13.04.105/130]



BICYCLES

[CPMC 13.04.130]



ALCOHOL OR GLASS CONTAINERS

[CPMC 13.04.170]



USE OF UNMANNED AIRCRAFT

[CPMC 13.04.050 (a)]

COLLECTING OF NATURAL MATERIALS

[CPMC 13.04.050]

CAMPING

[CPMC 13.04.210]

LITTERING OR DUMPING

[CPMC 13.04.100]

TO REPORT VIOLATIONS OR FOR MORE INFO CALL:
(949) 770-6011 (OC Sheriff's Dept.) Or (949) 248-3527 (Nature Interpretive Center)

WARNING UNSTABLE CLIFFS. STAY ON THE TRAILS.

VIOLATION OF MUNICIPAL CODE 13.04 IS A MISDEMEANOR PUNISHABLE BY A FINE UP TO \$1,000.00 OR IMPRISONMENT IN JAIL OR BOTH

SIGN NO. 2

Sign includes new park hours and language “Access ways provided in cooperation with the Coastal Commission” and CCC footprint logo.

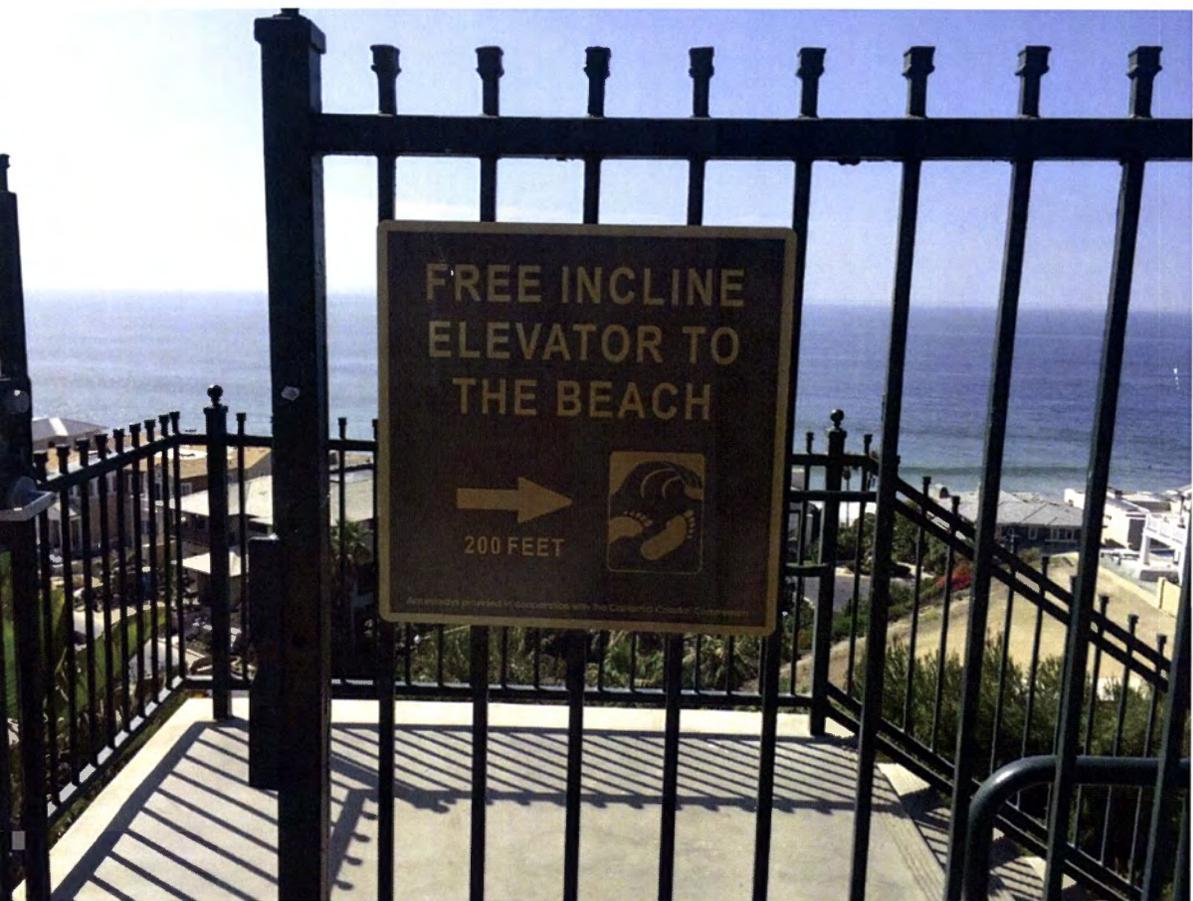




SIGN NO. 3

Sign includes new park hours and language “Access ways provided in cooperation with the Coastal Commission” and CCC footprint logo.





SIGN NO. 4

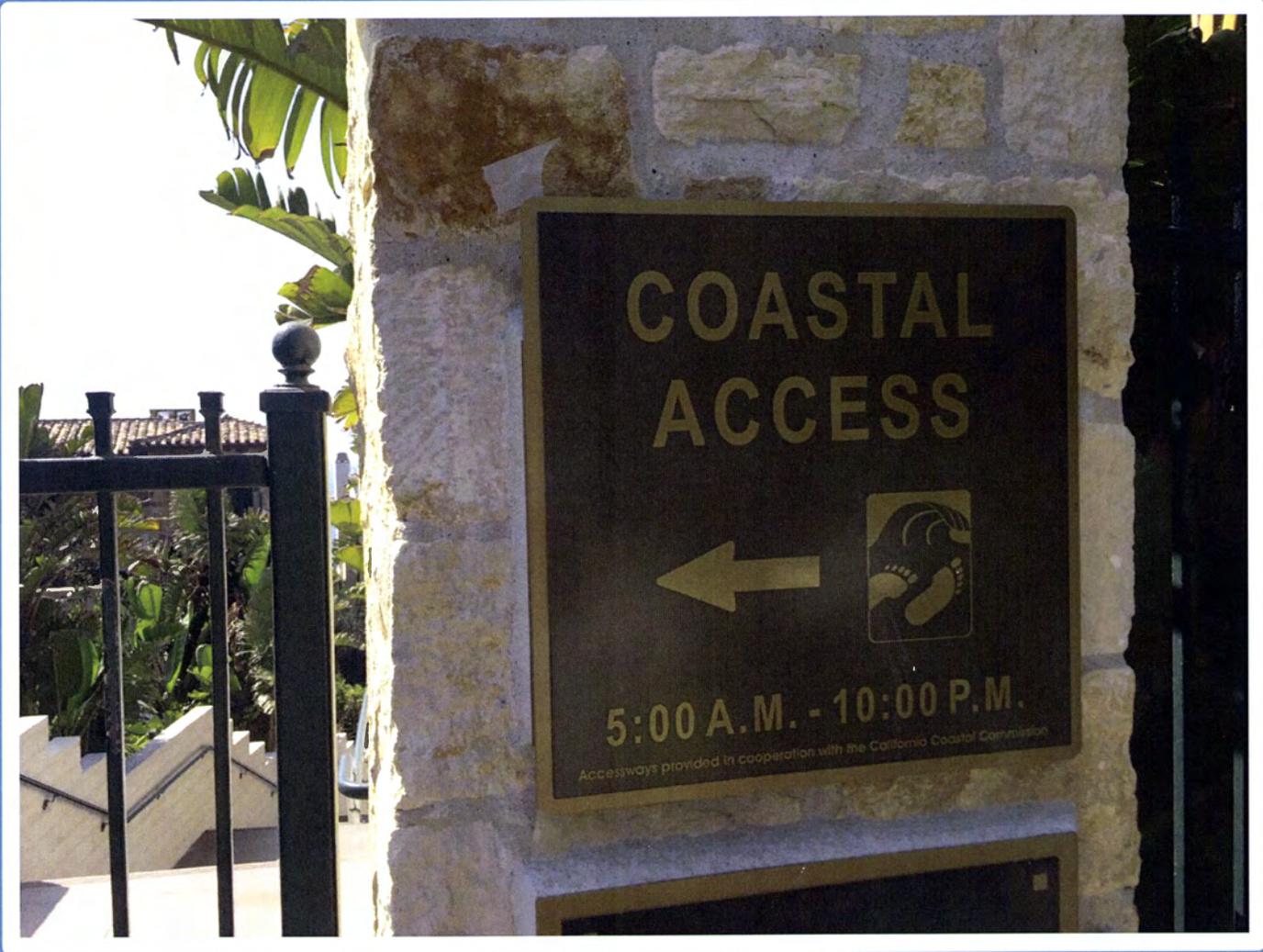
Coastal Access sign, including new hours of access, located at the top of the Mid-Strand Beach Access (proposed gate location, LCPA16-0001). Sign also includes the language “Access ways provided in cooperation with the California Coastal Commission” and the CCC footprint logo.

SIGN NO. 4A

New “Free Incline Elevator to the Beach” sign, located at the top of the Mid-Strand Beach. Sign also includes the language, “Access ways provided in cooperation with the California Coastal Commission” and the CCC footprint logo.

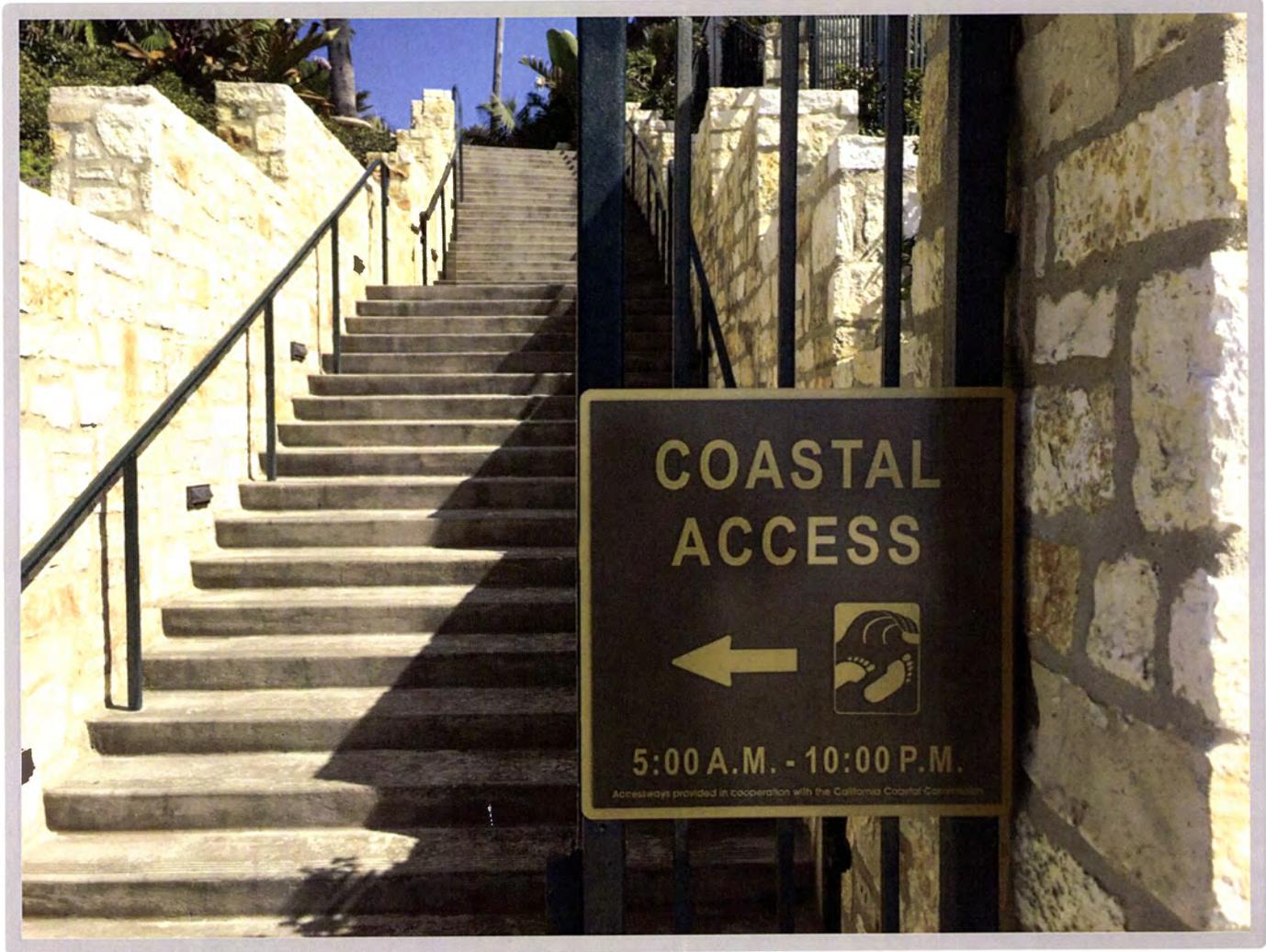
SIGN NO. 5

Coastal Access sign, including new hours of access, located at the top of the Central Strand Beach Access proposed gate location, (CPA16-0001). Sign also includes the language, "Access ways provided in cooperation with the California Coastal Commission" and the CCC footprint logo.



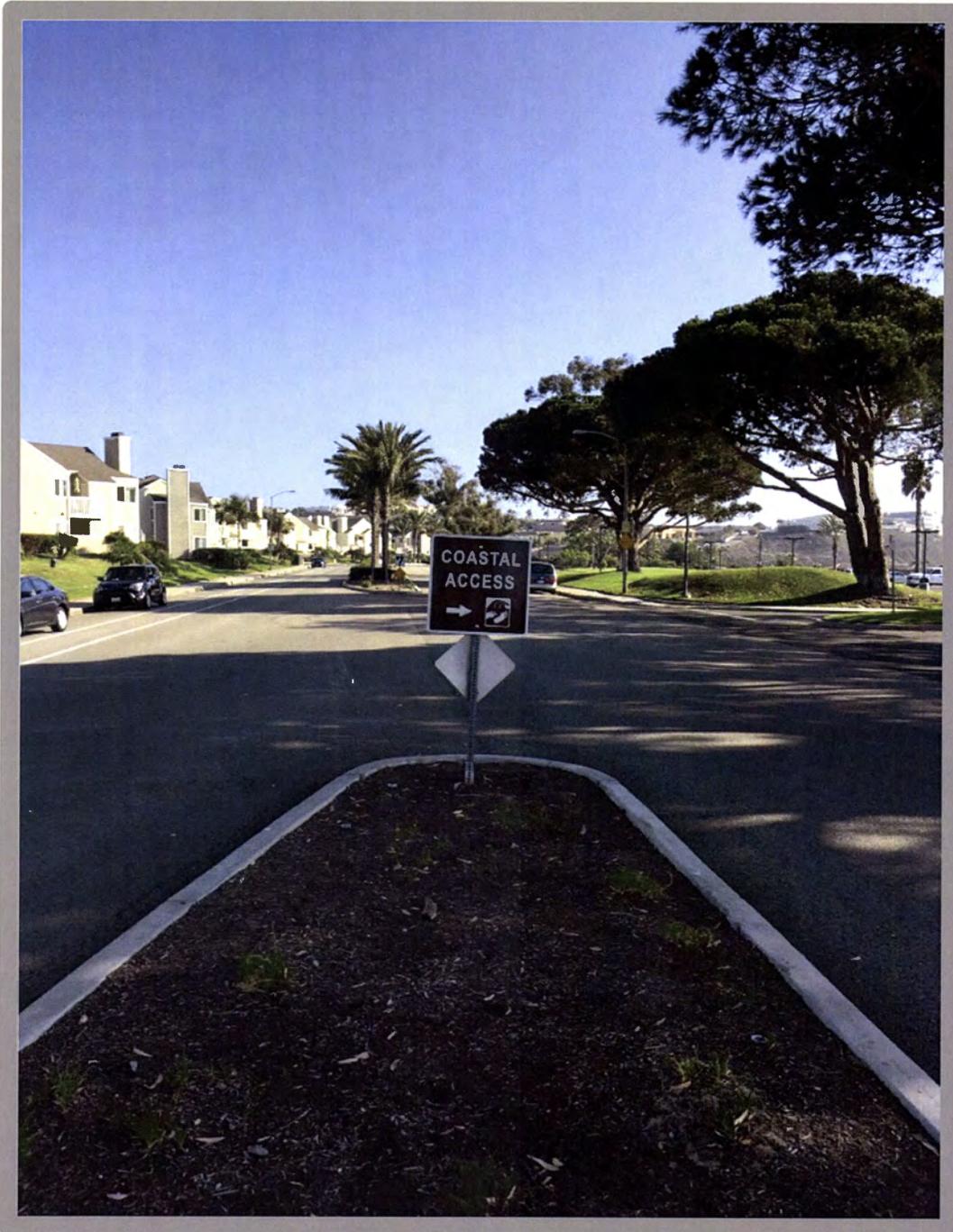
SIGN NO. 6

Coastal Access sign, including hours of access, located at the bottom of the Mid-Strand Beach Access and Central Strand Beach Access points (proposed gate location, LCPA16-0001). Sign also includes the language, "Access ways provided in cooperation with the California Coastal Commission" and the CCC footprint logo.



SIGN NO. 7

Coastal Access sign located on the back of the traffic control sign post in the median along Selva Rd, directing the public to utilize the Mid Strands Beach access.





SIGN NO. 8

Coastal Access sign located on the back of the traffic control sign post in the median along Selva Rd, directing the public to utilize the Central Strands Beach access.

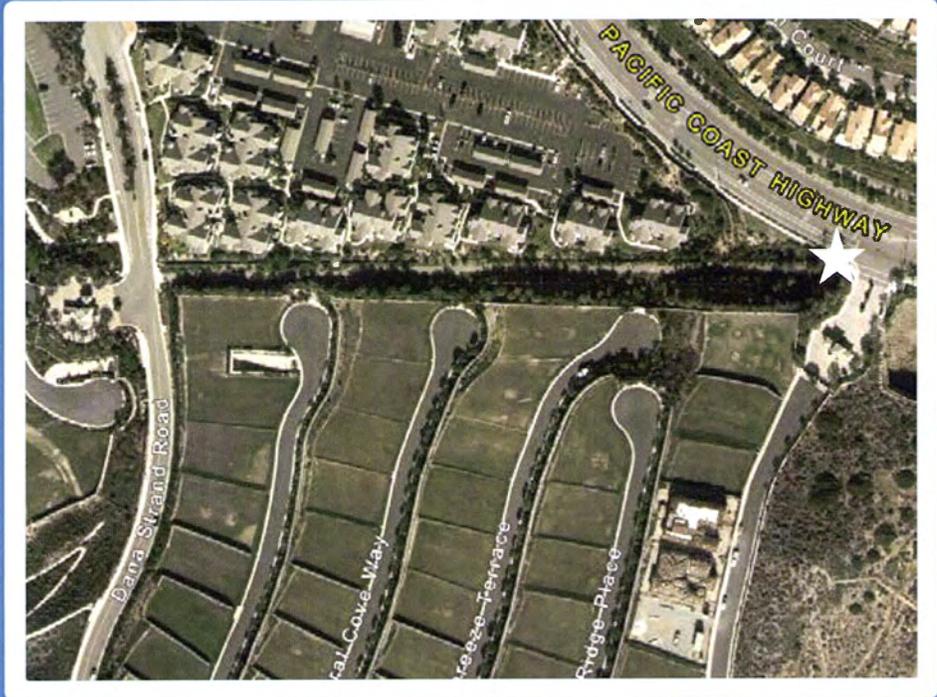




SIGN NO. 9

Coastal Access sign to be located on the intersection of PCH and Shoreline Dr, directing the public to utilize the Strands beach access way or "Passage de Palmiers".





SIGN NO. 10

Location of interpretive sign is along the east facing wall of the unicular control building located at the top of the North strands Beach access and along Strand Vista Park walkway.



Dana Point Marine Habitats

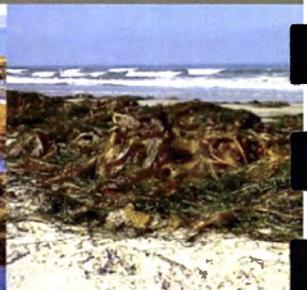
Much like the different habitat types found on land, southern California waters are home to a variety of different habitats as well. From this point, one can see several different marine habitats, including sandy and rocky beaches, and kelp forests.



Giant Kelp: *Macrocystis pyrifera* can form dense forests just off shore in water 20 to 120 feet deep. These forests support many of our local commercial and recreational fish and invertebrate species and are very important economically.



Rocky Intertidal Beach: The Dana Point Headlands tidepools are stocked full of interesting and unusual seaweed and animal species. Years of wave erosion have also created unique geological features like caves and archways, which are fun to explore!



Sandy Beach: A healthy sandy beach is not glamorous. An important fish, the California Grunion, lays its eggs on the beach, which feed numerous fish and bird species, also live here.

Kelp Forests

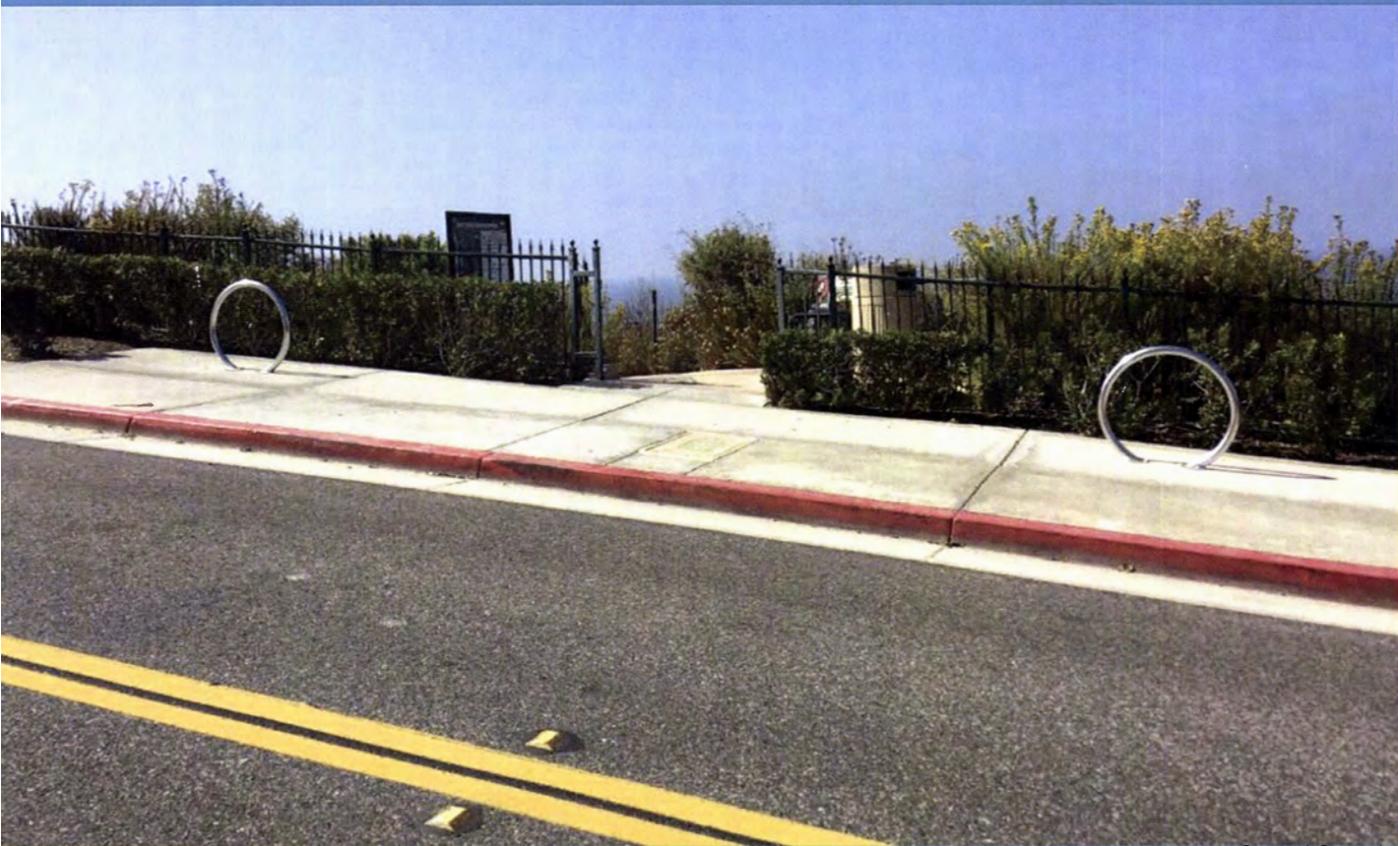
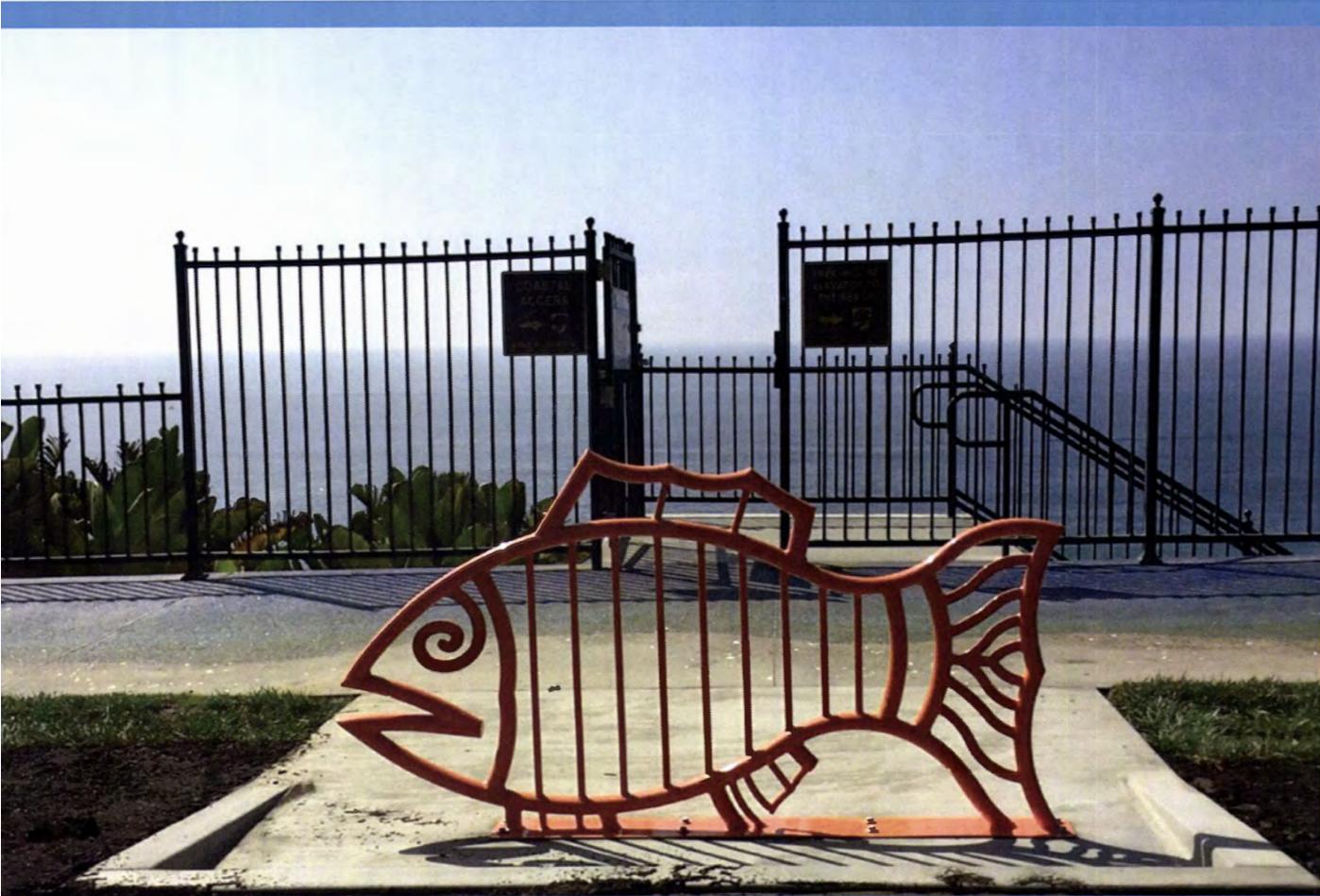
Kelp Forest habitats are home to the majority of our local shore fish and invertebrate species. These forests are dominated by the giant kelp, *Macrocystis pyrifera*, which is an alga that attaches to rocks with its "rootlet" (holdfast) and can grow up to 100 feet tall with long, wavy fronds extending to a full house for a variety of organisms, which include fish, sea urchins and prawns. Other kelps include red and golden kelp, which are also important to our local fish and invertebrate species. Thus, it is important to ensure our kelp forests stay healthy. One way we can do this is to make sure we are not disturbing them with our activities.

Rocky Beaches

Rocky intertidal habitats, which are abundant in our area, are home to a variety of different animal and plant-like species. These "plant-like" species are mostly algae, which are also called seaweeds. The rocky intertidal habitat in Orange County is home to approximately 100 species of seaweeds and more than 100 species of animals. Rocky intertidal organisms are not to be confused with the commonly used term "ecosystem," which is covered and uncovered by the sea due to daily tides. Tides are caused by the gravitational force applied on Earth by the Moon and also by the Sun. In southern California, we normally experience two tide cycles per day, with our highest beach tides and our lowest beach tides.

Sandy Beaches

Sandy beach habitats are home to many different species. For example, in the summer months, the beach warms and warms up, which is called "beach" Beach which is food for many organisms, including fish and birds. These organisms feed many other species, which are called invertebrates. Some of these organisms are the California Grunion and the California Grunion. For example, the federally threatened Woodhouse Sillago (aka. the California Grunion) and the California Grunion (aka. the California Grunion) are both found on our sandy beaches. Thus, it is important to ensure our sandy beaches stay healthy. One way we can do this is to make sure we are not disturbing them with our activities.



Bike rack at Mid Strands access way. Bike rack sits on a 6 foot by 8 foot (approximate) concrete pad in the grass area accros from the entrance.

Two circular bike racks installed on either side of the entrance to South Strand Switchback Trail.

six new benches installed along the Strand Revetment Trail (as indicated below) with illuminated bollards on either side of bench.





HEADLANDS GATES & ACCESS POINTS

VG Vehicular Gate

PG Pedestrian Gate



HDCP TRAIL ACCESS

S1
S2 } Mid-Central Strand Beach Trails / Gates
S3

S4
S5 } South Strand Access Trail

S6 Strands Beach Park / Revetment

S7 Strands Vista Park

S8 Funicular

S9
S10 } CNLM Conservation Park Access
S11

S12 Interpretive Ctr CNLM Parking Lot

S13 Harbor Point Park Access

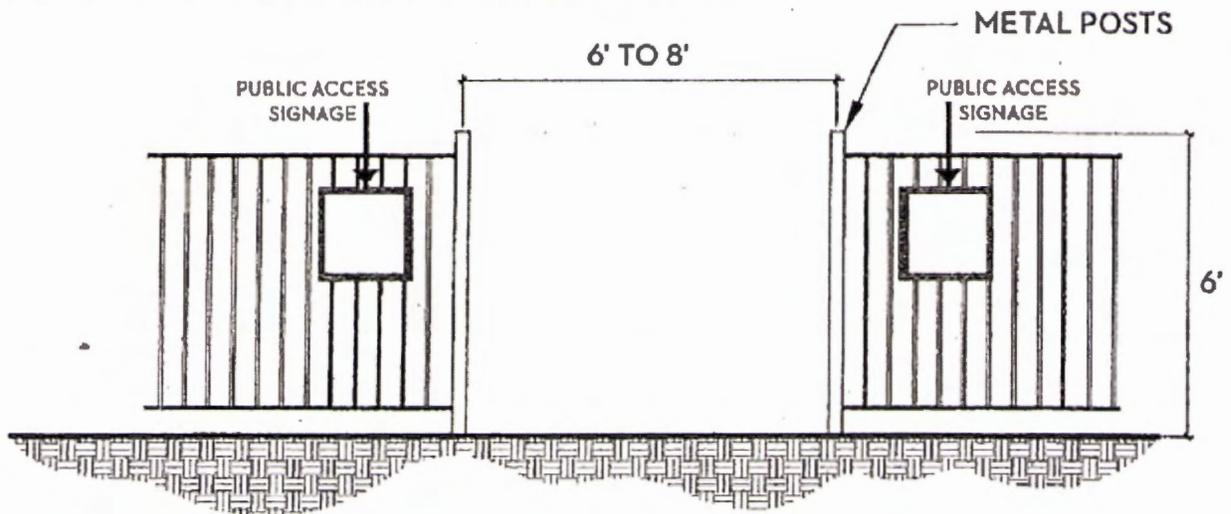
S14
S15 } Hilltop Park Access
S16



MID STRAND BEACH ACCESS GATE

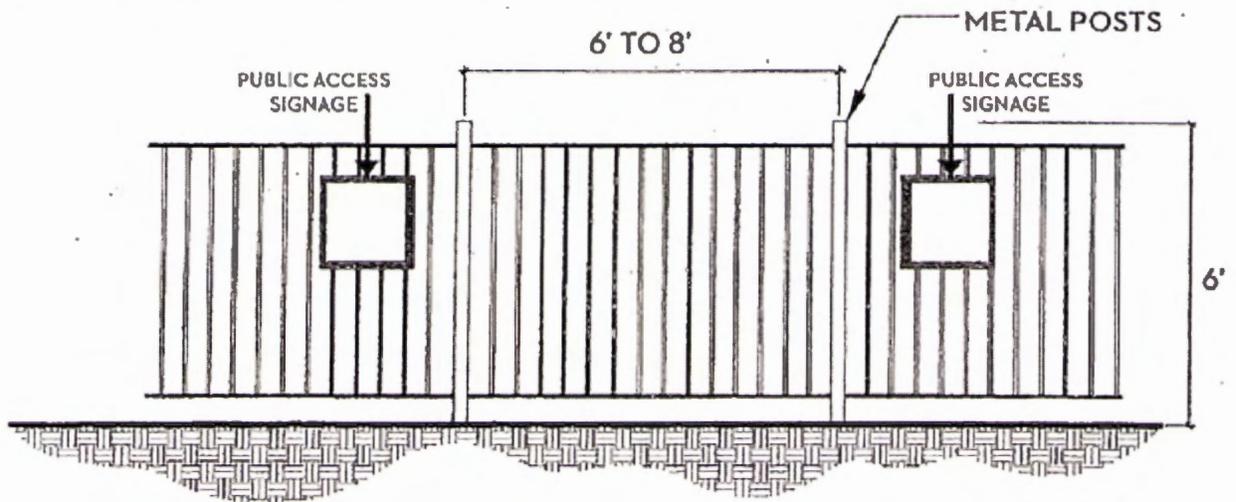


FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Mid-Strand Beach Access at entry from Strand Vista Park shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED

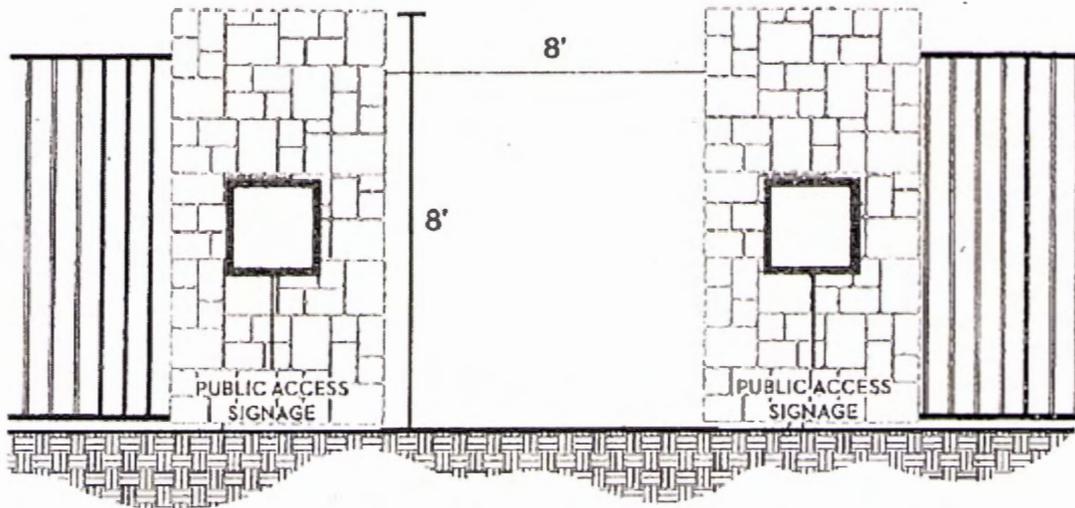


CLOSED POSITION: Mid-Strand Beach Access at entry from Strand Vista Park with retractable gate closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

CENTRAL STRAND UPPER ACCESS GATE

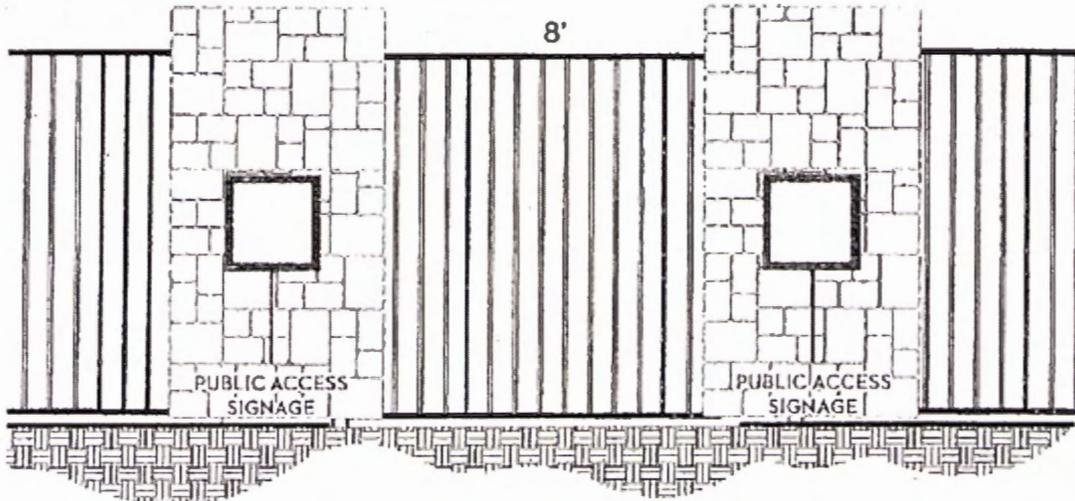


FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



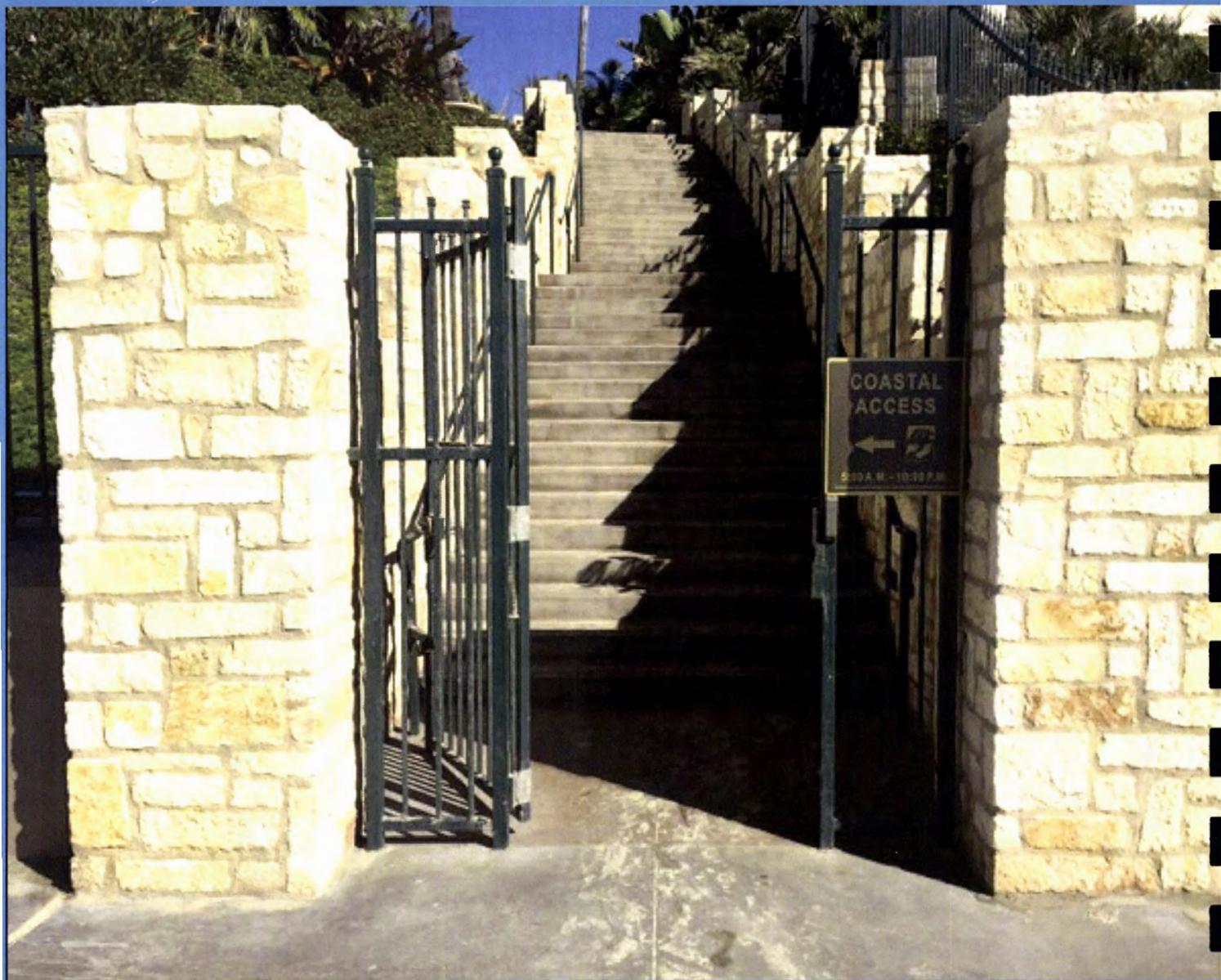
OPEN POSITION: Upper Central Strand Beach Access shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED

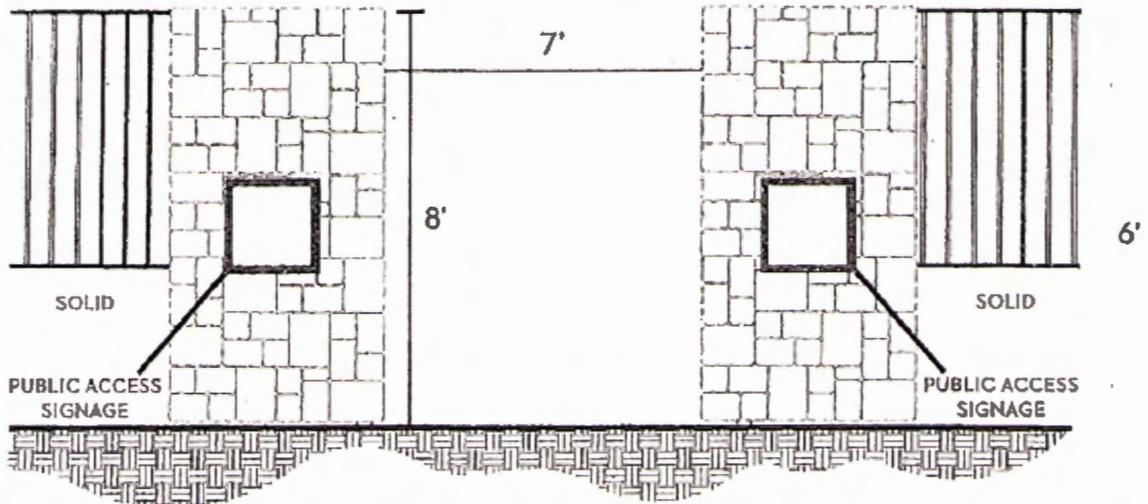


CLOSED POSITION: Upper Central Strand Beach Access shown with retractable gate closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

CENTRAL STRAND LOWER ACCESS GATE

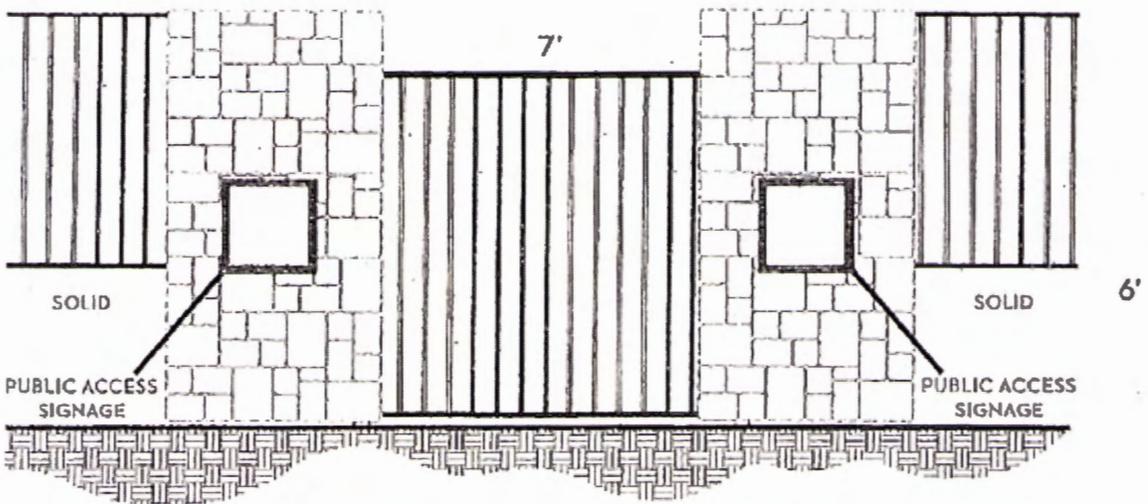


FULLY RETRACTABLE PUBLIC ACCESS GATE - OPEN



OPEN POSITION: Lower Central Strand Beach Access shown with retractable gate fully open during hours of operation approved by a Coastal Development Permit.

FULLY RETRACTABLE PUBLIC ACCESS GATE - CLOSED



CLOSED POSITION: Lower Central Strand Beach Access shown with retractable gated closed with automatic locking mechanism during hours of closure approved by a Coastal Development Permit.

SETTLEMENT AGREEMENT AND SETTLEMENT CEASE AND DESIST ORDER

This Settlement Agreement and Settlement Cease and Desist Order (collectively, the "Settlement Agreement") is entered into by and between (1) the California Coastal Commission (the "Commission") and (2) the City of Dana Point (the "City") (collectively the "Parties"). The Parties have agreed to work collaboratively to facilitate a resolution of: (a) the matters described in the "Notification of Intent to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings" dated November 3, 2015 ("NOI"), (b) the litigation pending between the Parties in *City of Dana Point v. California Coastal Commission*, Fourth Appellate District, Division One, Case No. D069449, and (c) additional litigation pending in *Surfrider Foundation v. City of Dana Point*, Fourth Appellate District, Division One, Case No. D060369 (collectively, "Litigation"). To that end, the Parties have had discussions over the past couple months for the purpose of resolving this matter amicably and through this Settlement Agreement. Through the execution of this Settlement Agreement, the Parties have mutually agreed to resolve with respect to the City all claims asserted in the NOI and to dismiss the Litigation, as described herein.

RECITALS

1.0 In January 2004, the Commission certified an amendment to the City's Local Coastal Program ("LCP"), with suggested modifications, for the Dana Point Headlands ("Headlands"), which became effectively certified in January 2005.

1.1 In February 2005, the City approved Master Coastal Development Permit ("Master CDP") No. CDP 04-23 for the Headlands development. The Master CDP was appealed to the Commission in March 2005, and in April 2005, and the Commission found the appeal to present no substantial issue.

1.2 In May 2009, the City adopted Ordinance No. 09-05 in order to establish hours of operation of parks and public facilities within the City, including Strand Vista Park, the South Strand Switchback Trail, Strand Beach Park, the Mid-Strand Beach Access, and Central Strand Beach Access within the Headlands development.

1.3 In March 2010, the City adopted a Nuisance Abatement Ordinance, No. 10-05 ("Nuisance Abatement Ordinance"), in which the City stated that public nuisance conditions exist in the area of Strand Vista Park. The Ordinance established hours of operation for the South Strand Switchback Trail, Strand Beach Park, the Mid-Strand Beach Access and the Central Strand Beach Access, and reaffirmed hours set for Strand Vista Park by Ordinance No. 09-5, within the Headlands development.

1.4 The Commission found the City's action to be an "exemption determination," appealed it, conducted a public hearing, and found that the Nuisance Abatement Ordinance was not exempt from the permitting requirements of the Coastal Act.

1.5 On May 24, 2010, the City filed a petition for writ of mandate in *City of Dana Point v. California Coastal Commission* (San Diego County Superior Court, Case No. 37-2010-

00099827-CU-WM-CTL)), challenging the Commission's exercise of appellate jurisdiction to review the City's Nuisance Abatement Ordinance. On June 17, 2010, the Surfrider Foundation filed a petition for writ of mandate and complaint for declaratory and injunctive relief in *Surfrider Foundation v. City of Dana Point* (San Diego County Superior Court, Case No. 37-2010-00099878-CU-WM-CTL), challenging the City's Nuisance Abatement Ordinance. The cases were consolidated. On June 2, 2011, the Superior Court entered judgment in the first case, ruling that the Commission lacked jurisdiction to adjudicate the validity of the City's Nuisance Abatement Ordinance. On July 29, 2011, the Superior Court further ruled in the second case that the Nuisance Abatement Ordinance is invalid. The Commission appealed the judgment in the first case, and the City appealed the judgment in the second case.

1.6 On June 17, 2013, the Court of Appeal issued a published decision on the appeal of the first case, in *City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170 ("*Dana Point*"), while holding the appeal of the second case in abeyance. The *Dana Point* decision held that the City's legislative action in adopting the Nuisance Abatement Ordinance was not a claim of exemption over which the Commission had appellate jurisdiction, while simultaneously holding that the trial court erred in restricting the Commission from exercising jurisdiction over the development mandated by the Ordinance without first determining whether the City was acting properly within the scope of the nuisance abatement powers reserved to it under Coastal Act Section 30005(b) and noting that there are other provisions in the Coastal Act, which include enforcement, that the Commission could utilize in the event the trial court concludes on remand that section 30005(b) does not preclude the Commission from exercising jurisdiction. Accordingly, it remanded the case to the Superior Court to further determine whether the City properly and in good faith exercised its nuisance abatement powers in adopting the ordinance.

1.7 On October 6, 2015, following a court trial on remand, the San Diego County Superior Court in Case No. 37-2010-00099827-CU-MC-CTL entered judgment, ruling that the City did not properly and in good faith exercise its nuisance abatement powers and entered judgment for the Commission.

1.8 On November 3, 2015, the Executive Director of the Commission issued the above-referenced NOI. On November 18, 2015, in response to the NOI and to respond to the alleged violations of the public access provisions of the Coastal Act, as addressed in the NOI, the City locked the gates on the Mid-Strand Beach Access and Central Strand Beach Access in a completely open position, suspended all hours of operation with respect to the Strand Accessways, modified signage accordingly, and advised Commission Staff it had done so.

1.9 Also on November 3, 2015, the City approved City CDP 15-0021, authorizing (a) limited operational hours for the Mid-Strand Beach Access, Central Strand Beach Access, South Strand Switchback Trail, and the Strand Beach Revetment Trail ("*Strand Accessways*"), (b) gates for the Mid-Strand Beach Access and Central Strand Beach Access with an automatic locking mechanism to correspond to the operating hours, and (c) signage to advise the public of operating hours and related public information. The City also adopted on first reading a new ordinance to repeal Ordinance No. 10-05 (the Nuisance Abatement Ordinance), and amend the

Municipal Code to expand the hours of operation established by the Nuisance Abatement Ordinance for the Strand Accessways.

1.10 On November 18, 2015, in response to the NOI and to respond to the alleged violations of the public access provisions of the Coastal Act, as addressed in the NOI, the City locked the gates on the Mid-Strand Beach Access and Central Strand Beach Access in a completely open position, suspended all hours of operation with respect to the Strand Accessways, modified signage accordingly, and advised Commission Staff it had done so.

1.11 On November 30, 2015, the City's approval of CDP 15-0021 was appealed to the Commission and assigned Appeal No. A-5-DPT-15-0067.

1.12 On December 2, 2015, the City filed a notice of appeal from the October 6, 2015 Superior Court judgment in Case No. 37-2010-00099827-CU-MC-CTL (4 Civ. D069449).

1.13 The City has disputed and continues to dispute allegations set forth by the Commission in the NOI and prior correspondence and filed a Statement of Defense in response to the NOI on February 2, 2016, in accordance with the deadline set forth, as extended, by the Commission Staff.

1.14 In order to resolve more than five (5) years of litigation and to settle all claims asserted against the City in the NOI, the Parties have negotiated a resolution, as reflected in this Settlement Agreement. To expedite that resolution, the Parties have agreed that Commission Staff will agendaize Commission action on the Settlement Agreement at its April 2016 meeting in Santa Rosa, barring any unforeseen circumstance that necessitates scheduling the matter for a later meeting, and Commission action on pending CDP Appeal No. A-5-DPT-15-0067 at its June 2016 Santa Barbara meeting, barring any unforeseen circumstance that necessitates scheduling the matter for a later meeting. The City, in turn, waived the 49-day requirement in the Coastal Act with respect to that appeal. The Parties also have agreed that the City will modify its local CDP to incorporate designated hours of operation for the Strand Access Areas as agreed to below, and that Commission Staff will recommend that any appeal with respect to said hours of operation raises no substantial issue, or, if substantial issue is found, that the Commission approve said hours of operation on appeal at a meeting no later than June 2016, barring circumstances that warrant scheduling the matter for the July meeting.

1.15 This Settlement Agreement represents a compromise by the Parties to avoid the cost and uncertainty of administrative and judicial proceedings relating to the NOI and the Litigation. The City does not acknowledge any guilt, wrongdoing, or liability with respect to the allegations of the NOI, and this Settlement Agreement shall not be construed to suggest, imply, or establish any guilt, wrongdoing, or liability with respect to those allegations. All Parties continue to maintain their respective factual and legal positions as set forth in the NOI (in the case of the Commission) and in its Statement of Defense (in the case of the City) without any concession to contrary positions taken by other Parties. Nonetheless, to achieve this compromise, the Parties have agreed to the terms and conditions set forth in this Settlement Agreement and to resolve the

differences regarding the Parties' respective positions regarding the activities described in the NOI and the Litigation.

2.0 NATURE OF THE ISSUES

2.1 Commission Staff's Position. Commission Staff notified the City that certain activities have been conducted with respect to the Strand Accessways at the Headlands development that required authorization pursuant to the Coastal Act, but for which no such authorization was obtained. In summary, the primary activities of concern to Staff include the installation of gates and signs restricting public beach access and the establishment and enforcement of "hours of operation" limiting public beach access, as identified in the NOI.

2.2 City's Position. The City's position is set forth in its Statement of Defense. In summary, the City's position is that: (a) Gates installed and maintained open during designated hours of operation at the Mid-Strand Beach Access and Central Strand Beach Access are authorized by the City's certified Local Coastal Program ("LCP"), the certified Headlands Development Conservation Plan ("HDCP"), Master CDP No. 04-23, and City CDP No. 15-0021; (b) the designation of hours of operation for the Mid-Strand Beach Access, Central Strand Beach Access, South Strand Switchback Trail, and Strand Beach Park/Strand Revetment Trail, and public access signs reflecting those designated "hours of operation" are authorized by the City's certified LCP, the certified HDCP, and City CDP No. 15-0021, which is presently pending on appeal before the Commission; and (c) the City timely acted to both address and correct all matters addressed in the NOI by locking the gates completely open and suspending all hours of operation with respect to the Strand Accessways and modifying all signage accordingly.

2.3 Shared Position. All Parties have worked collaboratively to resolve these matters amicably and have mutually agreed to settle their differences through this Settlement Agreement.

3.0 SETTLEMENT CEASE AND DESIST ORDER CCC-16-CD-02

Pursuant to its authority under California Public Resources Code ("PRC") Section 30810, the Commission hereby authorizes and orders the City; and all its successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing to; and the City agrees to:

3.1 Cease and desist from engaging in development, as defined in PRC Section 30106, that would require a coastal development permit ("CDP"), on any of the property identified in Section 4.2 below ("Properties"), unless authorized pursuant to the Coastal Act (PRC Sections 30000 – 30900), including as authorized by this Settlement Agreement, the City of Dana Point Local Coastal Program ("LCP"), or a CDP.

3.2 Refrain from undertaking any activity that physically or indirectly discourages or prevents use of any of the Strand Access Areas, as defined in Section 4.3, below, including, but not limited to, installing gates or maintaining existing gates (unless locked completely open), in any of the Strand Access Areas, enforcing hours of closure of any portion of the Strand Access

Areas, or erecting signs or maintaining existing signs that discourage unimpeded access across the Strand Access Areas, until and unless authorized pursuant to the Coastal Act, the LCP, or a CDP (including Appeal No. A-5-DPT-15-0067 or local CDP 15-0021, if modified pursuant to the terms of this Settlement Agreement and either not appealed to the Commission, or the Commission finds any such appeal not to raise any substantial issues, or if the Commission finds substantial issue and approves the modification) including as authorized by this Settlement Agreement.

3.3 Remove, subject to the terms and conditions of this Settlement Agreement and as set forth in Section 8.0, below, the gates in the Strand Access Areas, all footings or support structures for gates (but not stone pilasters to which they may be attached), signs and references to hours of operation on signs, unless authorized pursuant to the Coastal Act (including as authorized by this Settlement Agreement), the LCP, or a CDP.

3.4 Remove a) the wire mesh from the gates and adjacent fences, and b) the spikes from the top of the gates and gateway fences by no later than 15 days after issuance of this Settlement Agreement.

3.5 Subject to Section 16.2 below, take all necessary steps to rescind or invalidate City ordinances 09-05 and 10-05.

3.6 Fully and completely comply with the terms and conditions of Master CDP No. 04-23, as they may apply to the City, including by providing for public access to the Strand Access Areas without obstruction or limitation, unless authorized pursuant to the Coastal Act, the LCP, or a further CDP, including as authorized by this Settlement Agreement or Appeal No. A-5-DPT-15-0067.

4.0 DEFINITIONS

4.1 Settlement Agreement. This Settlement Agreement and Settlement Cease and Desist Order (Commission file number CCC-16-CD-02) are referred to collectively in this document alternatively as "the Settlement Agreement" or "this Settlement Agreement."

4.2 Properties. The properties in Dana Point, Orange County, on which the Strand Access Areas are located, also identified as Assessor's Parcel Nos. 672-092-03, 672-591-09, 672-641-44, 672-641-45, 672-651-24, 672-651-43, 672-651-44, and 672-651-46, are referred to in this document collectively as the "Properties."

4.3 Strand Access Areas. The public use areas located in Strand Vista Park, South Strand Switchback Trail, Mid-Strand Beach Access, Central Strand Beach Access, and Strand Beach Park at the Dana Point Headlands project site, components of which are alternatively known as "The Strand at Dana Point Headlands," are referred to in this document collectively as the "Strand Access Areas."

4.4 **Subject Activities.** This Settlement Agreement addresses activities, structures and materials on the Properties that Staff has alleged constitute, or are present as a result of, development (as defined by Coastal Act Section 30106) for which authorization under the Coastal Act was not received and the Parties dispute. The alleged unpermitted development activities that are the subject of and encompassed by this Settlement Agreement include closure of the Strand Access Areas including through establishment, via the adoption of Ordinances 09-05 and 10-05, and enforcement of hours of operation including by implementing such enforcement mechanisms as the maintenance of signs indicating hours of operation and the maintenance and operation of gates across the Mid-Strand Beach Access and Central Strand Beach Access, all of which Commission Staff alleges result in the failure to provide for public access to the Strand Access Areas free of limitation and obstruction and are referred to herein as the "Subject Activities."

5.0 NATURE OF SETTLEMENT AGREEMENT

5.1 Through execution of this Settlement Agreement, the Commission agrees to expeditiously process the pending appeal, CDP Appeal No. A-5-DPT-15-0067, regarding hours of operation of Strand Access Areas and an amendment to the City's certified LCP, if prepared and submitted, regarding installation of gates on the Mid-Strand and Central Strand Beach Access, and to act on said appeal no later than the Commission's June 2016 meeting barring any unforeseen circumstance that necessitates scheduling the matter for a later meeting. If the City amends local CDP 15-0021 pursuant to the Settlement Agreement, the Commission agrees similarly to expeditiously process any appeal consistent with the time limits set forth in the Coastal Act and to act on said appeal no later than the Commission's June 2016 meeting barring any unforeseen circumstance that necessitates scheduling the matter for a July 2016 hearing. The City, in turn, agrees to comply with the terms and conditions of the Settlement Agreement, which addresses under Sections 3.0 through 3.6, above, (1) removal of certain physical items and materials from the Properties, as described in the Removal Plan; (2) cessation of activities that interfere with public access across the Strand Access Areas; (3) implementation of public access improvements and programs; and (4) compliance with the other terms of this Settlement Agreement, including dismissal of the pending litigation, rescission of existing ordinances, and compliance with future permits. Nothing in this Settlement Agreement guarantees or conveys any right to development on the Properties other than the work expressly authorized by this Settlement Agreement.

5.2 **Authority to Conduct Work.** By executing this Settlement Agreement, the City attests that it has authority to conduct all of the work required of it by this Settlement Agreement and agrees to obtain all permissions necessary (access, etc.) to complete the obligations set forth herein. The City agrees to cause any employees, agents, and contractors, and any persons or entities acting in concert with any of the foregoing, to comply with the terms and conditions of this Settlement Agreement. The City shall, among other measures, distribute copies of this Settlement Agreement to the aforementioned parties, and incorporate into any contracts with the aforementioned parties a provision which requires compliance with this Settlement Agreement.

6.0 COASTAL DEVELOPMENT PERMIT NO. A-5-DPT-15-0067 AND LOCAL CDP 15-0021 (HOURS OF OPERATION).

6.1 Nothing in this Settlement Agreement precludes the City from seeking authorization from the Commission for prospective hours of operation of the Strand Access Areas, including through, subject to the terms below, CDP Appeal No. A-5-DPT-15-0067, or local CDP 15-0021, if modified pursuant to the terms of this Settlement Agreement. In order to expedite the Commission's processing of Appeal No. A-5-DPT-15-0067, and thus also effect a comprehensive resolution of the issue of hours of operation of the Strand Access Areas, the Parties have agreed to implement this Settlement Agreement and process CDP Appeal No. A-5-DPT-15-0067, or any appeal if the City amends the local CDP as provided by this agreement pursuant to Sections 6.1 and 6.2 and other terms and conditions set forth in the Settlement Agreement, as applicable.

6.2 In connection with Appeal No. A-5-DPT-15-0067¹, the City agrees to, within 15 days of issuance of this Settlement Agreement, modify the local CDP to include approval of designated hours of operation for the Strand Access Areas as follows: Strand Vista Park [5am-10pm], South Strand Switchback Trail [24 hours/day], Strand Beach Park/Strand Revetment Trail [24 hours/day], Central Strand Beach Access [5am-10pm], and Mid-Strand Beach Access [5am-10pm]. The Commission, in turn, agrees that in the event of an appeal, the Commission Staff will recommend that the appeal raises no substantial issue, or, if substantial issue is found, that the Commission approve on appeal said designated hours of operation for the Strand Access Areas. Except in connection with a request to modify the Settlement Agreement pursuant to Section 26.0, the City agrees to support at any time at any judicial or Commission administrative proceeding in any forum the designated hours of operation. Nothing in this Settlement Agreement, however, shall limit the discretion of the Commission in acting on Appeal No. A-5-DPT-15-0067 or an appeal from the amendment of local CDP 15-0021.

6.2.1 The City may at any time subsequent to issuance of this Settlement Agreement modify its application to request to achieve, and Commission staff will recommend approval of, the expansion of the hours of operation of the Strand Access Areas from the hours listed in Section 6.2.

6.3 Until such time as CDP Appeal No. A-5-DPT-15-0067 is acted upon by the Commission, or alternatively, until such time as the appeal period of local CDP 15-0021 (as modified pursuant to this Settlement Agreement) expires without the filing of a non-frivolous appeal, the City agrees it shall cease enforcement of hours of operation of the Strand Access Areas. Subsequent to the Commission action on Appeal No. A-5-DPT-15-0067, or the expiration of the appeal period of local CDP 15-0021 (as modified pursuant to this Settlement Agreement) without the filing of a non-frivolous appeal, and subject to Section 3.2 above, and 15.2 below, any hours of operation for the Strand Access Areas shall be consistent with the outcome of the Commission's

¹ For convenience sake, references hereafter to Commission action on A-5-DPT-15-0067 are intended to include Commission action on any new appeal generated after the City amends the local CDP as required by this agreement.

final decision on Appeal No. A-5-DPT-15-0067 or local CDP 15-0021(as modified pursuant to this Settlement Agreement), if not appealed, as appropriate. Nothing in this Settlement Agreement is intended to limit the City's rights with respect to seeking judicial review of the Commission's action on Appeal No. A-5-DPT-15-0067.²

7.0 LOCAL COASTAL PROGRAM AMENDMENT (GATES)

7.1 The City agrees to amend local CDP No. 15-0021 within 15 days of approval of this Settlement Agreement, to delete its approval of gates in connection with the Mid-Strand Beach Access and Central Strand Beach Access.

7.2 The Parties agree that the City may, if it so desires, prepare and submit a complete application for an amendment to the City's LCP to make the use of gates in connection with approved hours of operation for the Mid-Strand Beach Access and Central Strand Beach Access an allowable use that could be approved through a CDP.

7.3 If the City submits such an application on or before September 15, 2016, the Commission agrees to expeditiously process the LCP amendment application and set the matter for hearing and action by the Commission but in any event not later than the Commission's January 2017 South Coast LA/Orange County meeting, barring any unforeseen circumstances that necessitate scheduling the matter for a later hearing.

7.4 If the Commission approves the LCP amendment application, the City agrees to expeditiously process a CDP for the gates and the Commission, in turn, agrees to expeditiously process and hear any appeal related thereto within the time limits set forth in the Coastal Act but in any event not later than 120 days after the filing of any appeal, or at the next local hearing after the 120 days have run, barring any unforeseen circumstances that necessitate scheduling the matter for a later hearing.

7.5 Nothing in this Settlement Agreement is intended to limit whatever rights the City has with respect to seeking judicial review of the Commission's action on the LCP amendment or the CDP.

8.0 REMOVAL REQUIREMENTS

If the City does not submit an LCP amendment application as provided in Section 7.0 on or before September 15, 2016, or the Commission denies such LCP amendment application or CDP thereon, then the City shall submit a Removal Plan within 30 days of the date the Commission's final decision on an LCP or CDP thereon, if a denial occurs, or by October 15, 2016, if the City does not submit the LCP amendment application by September 15, 2016, for the review and approval of the Commission's Chief of Enforcement or Deputy Chief of Enforcement

² This provision is not intended to imply that the Commission authorizes any action taken by the City pursuant to this provision or concurs with the position taken by the City in taking such action.

(hereinafter "Enforcement Chief/Deputy"). The Removal Plan shall provide for the removal and off-site disposal of all physical items that were placed or have come to rest on the Properties as a result of the Subject Activities unless approved by a CDP, and shall be consistent with the conditions set forth below.

8.1 The Removal Plan shall include a site plan showing the location and identity of all physical items of the Subject Activities and where the photographs will be taken pursuant to Section 8.5, below.

8.2 The Removal Plan shall provide that the City shall obtain property owner permission for any activities that will be undertaken pursuant to this Settlement Agreement on property not owned by the City.

8.3 The Removal Plan shall indicate that removal of all physical items that were placed or have come to rest on the Properties as a result of the Subject Activities will be undertaken in a manner that does not block, impede, or disrupt use of the Strand Access Areas.

8.4 The Removal Plan shall include a description of the methods of removal as well as proposed public access protection measures to be employed during the removal process.

8.5 The Removal Plan shall indicate that removal of all physical items that were placed or have come to rest on the Properties as a result of the Subject Activities shall commence pursuant to the approved Removal Plan within 15 days of approval by the Enforcement Chief/Deputy, and such removal shall be completed with 10 days of implementing the approved Removal Plan.

8.6 The Removal Plan shall provide that the City will submit photographic documentation, from the locations depicted on the site plan described in Section 8.1, showing the former location of, and demonstrating the removal of, all physical items that were placed or have come to rest on the Properties as a result of the Subject Activities to the Enforcement Chief/Deputy within 30 days of approval of the Removal Plan.

9.0 IMPLEMENTATION REVIEW

In order to facilitate coordination regarding implementation, including compliance, the City has agreed that it may submit, at its discretion, monthly status reports describing the City's implementation of the Settlement Agreement, and in turn, Staff agrees to discuss said status reports and any concerns it may have regarding implementation at the request of the City and dependent upon the schedules of the Parties. If Staff raises an issue of implementation in this context, the City agrees to address the issue within 10 days of Staff raising the issue.

10.0 REVISION OF DELIVERABLES

The Enforcement Chief/Deputy may require revisions to deliverables under this Settlement Agreement. The City shall revise any such deliverables consistent with the Enforcement Chief/Deputy's specifications, and resubmit them for further review and approval by the

Enforcement Chief/Deputy, by the deadline established by the Enforcement Chief/Deputy. The Enforcement Chief/Deputy may extend the deadline for submittals upon a written request and a showing of good cause, pursuant to Section 19.0 of this Settlement Agreement.

11.0 RESPONSIBLE PARTIES

The City of Dana Point; and all its successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing, are subject to all the requirements of this Settlement Agreement, and shall undertake work required herein according to the terms of this Settlement Agreement.

12.0 SUBMITTAL OF DOCUMENTS

All documents submitted to the Commission pursuant to this Settlement Agreement must be sent to:

California Coastal Commission
Attn: Andrew Willis
200 Oceangate, Suite 1000
Long Beach, CA 90802

WITH A COPY TO:

California Coastal Commission
Attn: Chief of Enforcement
45 Fremont, 20th floor
San Francisco, CA 94105

13.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these Coastal Act violations pursuant to PRC Section 30810. The City has agreed not to and shall not contest the Commission's jurisdiction to issue or enforce this Settlement Agreement.

14.0 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the Parties to resolve these matters through settlement, and to avoid further litigation, the Parties agree to jointly present this Settlement Agreement to the Commission for its approval and to inform the Commission that this Settlement Agreement settles all claims – whether contested or uncontested – against the City related to Coastal Act violations the Commission may have with respect to the Subject Activities referred to in Section 4.2 presently known or asserted by Staff to have occurred on the Property at any time prior to the Approval Date. The City has submitted a “Statement of Defense” form as provided for in Section 13181 of Title 14 of the California Code of Regulations to state its position as a matter of record, but has agreed not to contest the legal and factual bases and the terms and issuance of the

Settlement Agreement. Specifically, the City has agreed not to contest the issuance or enforcement of this Settlement Agreement at a public hearing or any other proceeding. For the limited purpose of the Commission's administrative process (so that Staff is not legally required to prepare a staff report addressing the City's Statement of Defense), the City hereby withdraws its Statement of Defense for purposes of the Commission's consideration of this Settlement Agreement³ and agrees not to seek a stay pursuant to PRC Section 30803(b) or to challenge the issuance and enforceability of this Settlement Agreement in a court of law or equity.

15.0 EFFECTIVE DATE AND TERMS OF THE SETTLEMENT AGREEMENT

The effective date of this Settlement Agreement is the date this Settlement Agreement is approved by the Commission. This Settlement Agreement shall remain in effect permanently unless and until rescinded in accordance with the standards and procedures set forth in Section 13188(b) and of Title 14 of the California Code of Regulations.

16.0 EFFECT ON PENDING LITIGATION AND TERMINATION OF SETTLEMENT AGREEMENT

16.1 Within 10 days after this Agreement is fully executed, the Commission and City shall jointly move or file a stipulation and proposed order in the Court of Appeal in Case No. 4 Civ. D069449 to stay the appeal until 75 days after Commission action on Appeal No. A-5-DPT-15-0067, or in the event that local CDP 15-0021 is modified pursuant to the Settlement Agreement and no non-frivolous appeal is filed, then no later than 75 days after the close of the appeal period of local CDP 15-0021, or to a date certain if by mutual agreement.

16.2 If the Commission timely acts on CDP Appeal No. A-5-DPT-15-0067 or any appeal from an amendment to local CDP 15-0021, and approves the CDP, or amendment thereto, with terms and conditions to which the City, no later than 75 days thereafter and in writing, agrees, or in the event that local CDP 15-0021 is modified pursuant to the Settlement Agreement and no non-frivolous appeal is filed, or, if an appeal is filed, that the Commission finds that it raises no substantial issue, then no later than 75 days after the City's decision becomes final and effective, the City will (1) request dismissal of its appeal of the Judgment that was entered by the San Diego County Superior Court in Case No. 37-2010-00099827-CU-WM-CTL on October 6, 2015, with each Party to bear its own attorneys' fees in connection with each case and appeal, (2) additionally dismiss its pending appeal in *Surfrider Foundation v. City of Dana Point*, Case No. D060369 that was entered by the San Diego County Superior Court in Case No. 37-2010-

³ In the event a third party challenge is brought against the Commission in connection with the approval of this Settlement Agreement, the Parties agree that the Statement of Defense referenced in Recital 1.12 of this Settlement Agreement shall be made a part of and included in the administrative record of proceedings for said third party judicial challenge. In the event the Commission or Staff decides to reinstate the enforcement proceeding set forth in the NOI, or initiate new enforcement proceedings for alleged Coastal Act violations that have been asserted by the Commission or Staff prior to the effective date of this Settlement Agreement, the Parties agree that the Statement of Defense referenced in Recital 1.12 of this Settlement Agreement shall be made a part of the administrative record for those proceedings.

00099878-CU-WM-CTL, and (3) take all necessary steps to rescind or invalidate its City ordinance 09-05 and 10-05.

17.0 FINDINGS

This Settlement Agreement is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report: Recommendations and Findings for Issuance of Settlement Agreement and Settlement Cease and Desist Order." The Parties agree that the findings shall not prejudice the ability of the City to prepare and submit an application for an LCP amendment to authorize gates on the Mid-Strand Beach Access and Central Strand Beach Access, as provided in Section 7, above. The Parties agree that all jurisdictional prerequisites for issuance of this Settlement Agreement have been met. The activities authorized and required in this Settlement Agreement are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Parties agree that the activities required in this Settlement Agreement are, and the Commission has authorized the activities as being, consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

18.0 COMPLIANCE OBLIGATION

18.1 Strict compliance with this Settlement Agreement by all parties subject thereto is required. Failure to comply with any term or condition of this Settlement Agreement, including any deadline contained in this Settlement Agreement, unless the Enforcement Chief/Deputy agrees to an extension under Section 19.0, below, will constitute a violation of this Settlement Agreement and shall result in the City being liable for stipulated penalties in the amount of \$500 per day per violation resulting in impacts to public access and \$250 per day per violation for all others.

18.2 The City shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether the City has subsequently complied. If the City violates this Settlement Agreement, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including imposition of civil penalties and other remedies pursuant to PRC Sections 30820, 30821, 30821.6, and 30822, to the extent applicable, as a result of the lack of compliance with the Settlement Agreement and for the underlying Coastal Act violations described herein.

19.0 DEADLINES

Prior to the expiration of any of the deadlines established by this Settlement Agreement, including Section 23.0, the City may request from the Enforcement Chief/Deputy an extension of that deadline. Such a request shall be made no fewer than 10 days in advance of the deadline and directed to the Enforcement Chief/Deputy, in care of the Enforcement Official, in the Long Beach office of the Commission.

The Enforcement Chief/Deputy may grant an extension of deadlines upon a showing of good cause, either if the Enforcement Chief/Deputy determines that the requesting party has diligently

worked to comply with their obligations under this Settlement Agreement but cannot meet deadlines due to unforeseen circumstances beyond their control, or if the Enforcement Chief/Deputy determines that any deadlines should be extended if additional time would benefit the success of the obligations under this Settlement Agreement.

20.0 SEVERABILITY

Should any provision of this Settlement Agreement be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but this Settlement Agreement shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

21.0 SITE ACCESS

The City shall provide Staff with access to the Properties. Staff may enter and move freely about the Properties for purposes including, but not limited to, ensuring compliance with the terms of this Settlement Agreement. Nothing in this Settlement Agreement is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

22.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by the City in carrying out activities pursuant to this Settlement Agreement, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by City or its agents in carrying out activities pursuant to this Settlement Agreement.

23.0 SETTLEMENT OF CLAIMS

In light of the intent of the Parties to resolve these matters and the Litigation in settlement, and to coordinate related initiatives of both the City and the Commission, the City will:

(1) process a local CDP within 12 months of issuance of this Settlement Agreement for construction of the "Trail Connection to Selva" and the "Trail Loop Connection" and "Public View Overlook Platform", the general locations of which are depicted on attached Exhibit 1; and implement said CDP, or said CDP as appealed, approved in whole or in part, and conditioned by the Commission as to, including, but not limited to, siting of the improvements and restoration of areas which may be disturbed thereby, if appealed and conditioned as such, within 24 months of issuance of this Settlement Agreement, unless extended pursuant to Section 19.0 above.

A) In the event that a CDP for the trail improvements, in whole, is not approved or issued within 18 months of issuance of this Settlement Agreement, or the underlying property owner, other than the City, does not consent to construction of the improvements approved, and implementation of the trail improvements, in whole, is not possible, or the work authorized by the permit does not occur for some other reason beyond the control of

the City, then in lieu of construction of the trail connections and viewing platform described in the previous paragraph, the City agrees to provide funding in the amount of \$25,000 per year for a six year period (beginning with the next budget year following the 18 month deadline noted in this paragraph) to the Ocean Institute, described below, for the Title 1 program described below, including general programming in support of said program. If the circumstances described immediately above prevent construction of 2 of the trail improvements, the City agrees to pay half this amount, and a quarter of this amount if one is prevented as a result of the described circumstances.

(2) develop as soon as feasible, but by no later than within 12 months of issuance of this Settlement Agreement, a means to link the mobile applications being developed by the City and Commission to identify public beaches, coastal parks and trails, coastal parking and transit programs (e.g., the regional coastal trolley system), and key visitor-serving uses within the City,

(3) develop, in consultation with Commission staff, within 12 months of issuance of this Settlement Agreement, enhanced content for the Commission's web-based application,

(4) install within 6 months of issuance of this Settlement Agreement, 2 bike racks; one each at the upper entrances to the South Strand Switchback Trail and Mid-Strand Accessways, and 6 cement-cast benches along the Strand Revetment Trail for public viewing and use, and

(5) provide enhanced public access and interpretive signage in connection with the Strand Accessways consistent with policies of the certified Headlands Conservation and Development Plan. To that end, the City will submit a signage plan for the review and approval of the Enforcement Chief/Deputy within 12 months of issuance of this Settlement Agreement. At a minimum, the signage plan shall include 1) 2 interpretive signs to be placed in locations at Strand Vista Park that do not interfere with public views of the coast and ocean to display information on coastal issues, such as marine protected areas, whale migration, and sea level rise and erosion, etc., 2) 5 coastal access signs, one each at the entrances, at bluff top and beach level, to the South Strand Switchback Trail and Mid and Central Strand Accessways, that display the traditional footprint logo and the language: "Accessways provided in cooperation with the California Coastal Commission", and (3) a minimum of 4 wayfinding signs, with the footprint logo, installed along the Strand Accessways at appropriate locations. The City shall implement the signage plan within 90 days of approval of the plan by the Enforcement Chief/Deputy. Each of the time limits set forth in this Paragraph may be extended by the Enforcement Chief/Deputy on a showing of good cause pursuant to Section 19.0.

The Parties additionally agree that, in order to enhance public access in the City, if the Commission, on appeal, timely acts (as described in Section 5.1, above) on CDP Appeal No. A-5-DPT-15-0067 or an amendment to local CDP 15-0021 pursuant to Section 6 above with terms and conditions to which the City, no later than 75 days thereafter and in writing, agrees, the City shall submit a plan within 90 days thereafter for the review and approval of the Enforcement Chief/Deputy to fund a public access program or programs to be operated by the Ocean Institute (www.ocean-institute.org) in conjunction with its existing programs. If the City amends local CDP 15-0021 pursuant to Section 6 above (and no non-frivolous appeal is received), or if an

appeal is filed and the Commission finds that the appeal raises no substantial issue, then the City shall submit said plan for review and approval of the Enforcement Chief Deputy within 90 days after the date the City's action becomes final. The exact nature and operation of the program or programs will be determined in collaboration with and on the basis of proposals and/or input from the Ocean Institute, the Commission, the Surfrider Foundation and the City with the objective of providing children from the Southern California area and beyond, and in particular from Title 1 schools, with learning opportunities relating to public access to the Marine Conservation Area at Strands Beach, hands-on marine science, and contemporary oceanographic and related issues (such as the impacts on coastal resources associated with global warming, sea level rise, and marine debris). The City agrees to budget and provide the funding for the program or programs, including transportation costs, in the amount of \$25,000 per year for a six year period, beginning with the next budget year following submittal of the funding plan described herein, and to provide the Enforcement Chief/Deputy of the Commission with an annual report which evidences payment of such funding.

The Parties agree that this Settlement Agreement settles any monetary claims for relief the Commission may have against the City with respect to the Subject Activities referred to in Section 4.4 of the Settlement Agreement (specifically including, to the extent applicable, claims for civil penalties, fines or damages under the Coastal Act, including under Public Resources Code Section 30805, 30820, 30821, and 30822) with the exception that, if the City fails to comply with any term or condition of this Settlement Agreement, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Settlement Agreement.

In addition, this Settlement Agreement does not limit the Commission from taking enforcement action (including seeking monetary relief) to address Coastal Act violations at the Properties or elsewhere, other than those specified herein or which occur after the date of this Settlement Agreement.

Finally, nothing in this Settlement Agreement is intended to limit the Commission from taking enforcement action against other parties for unpermitted development alleged in Section 4.4.

24.0 RELEASE OF CLAIMS

If the City agrees in writing to the terms of CDP No. A-5-DPT-15-0067, or a Commission-approved amendment to local CDP 15-0021 within 75 days of its approval, then each party irrevocably releases all existing claims, demands, liens, and/or causes of action against the other, its members, its staff and its counsel, but such release shall not include the obligations of the Parties under this Settlement agreement or for the costs described in the memorandum of costs filed by the Office of the Attorney General in San Diego County Superior Court in Case No. 37-2010-00099827-CU-WM-CTL.

25.0 SUCCESSORS AND ASSIGNS

This Settlement Agreement constitutes a contractual obligation between the City and the Commission, and therefore shall remain in effect until all terms are fulfilled, regardless of whether the City has a financial interest in the Properties, as defined in Section 4.2, currently owned by the City. The Parties retain all of their rights to enforce this Agreement and to assert factual defenses to any alleged breaches or violations of this Agreement, with the exception that the City may not challenge the issuance or enforceability of the Agreement itself or the legality or enforceability of any specific provision.

This Settlement Agreement shall run with the land, binding the City and its successors in interest, assigns, and future owners of the Properties currently owned by the City. The City agrees that it shall provide notice to all successors, assigns, and potential purchasers of any portion of the Properties of any remaining obligations under this Settlement Agreement.

26.0 MODIFICATIONS AND AMENDMENTS

Minor, non-substantive modifications to this Settlement Agreement may be made subject to agreement between the Enforcement Chief/Deputy and the City. Otherwise, except as provided in Section 19.0, above, this Settlement Agreement may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of Title 14 of the California Code of Regulations.

27.0 GOVERNMENTAL JURISDICTION

This Settlement Agreement shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California.

28.0 NO LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in this Settlement Agreement shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Settlement Agreement.

29.0 INTEGRATION

This Settlement Agreement constitutes the entire agreement between the Parties and may not be amended, supplemented, or modified except as provided in this Settlement Agreement.

30.0 STIPULATION

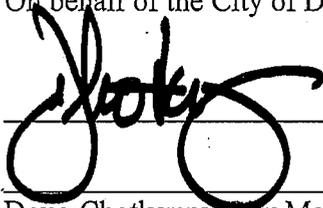
The City and its representatives attest that they have reviewed the terms of this Settlement Agreement and understand that their consent is final and stipulate to its approval by the Commission.

31.0 REPRESENTATIVE AUTHORITY

The signatory below attests that he has the authority to represent and bind in this agreement the City.

IT IS SO STIPULATED AND AGREED:

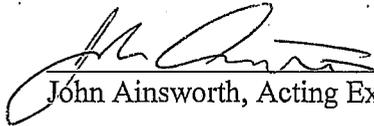
On behalf of the City of Dana Point:



Doug Chotkevys, City Manager

March 29, 2016

Executed in Santa Rosa on behalf of the California Coastal Commission:



John Ainsworth, Acting Executive Director

April 15, 2016

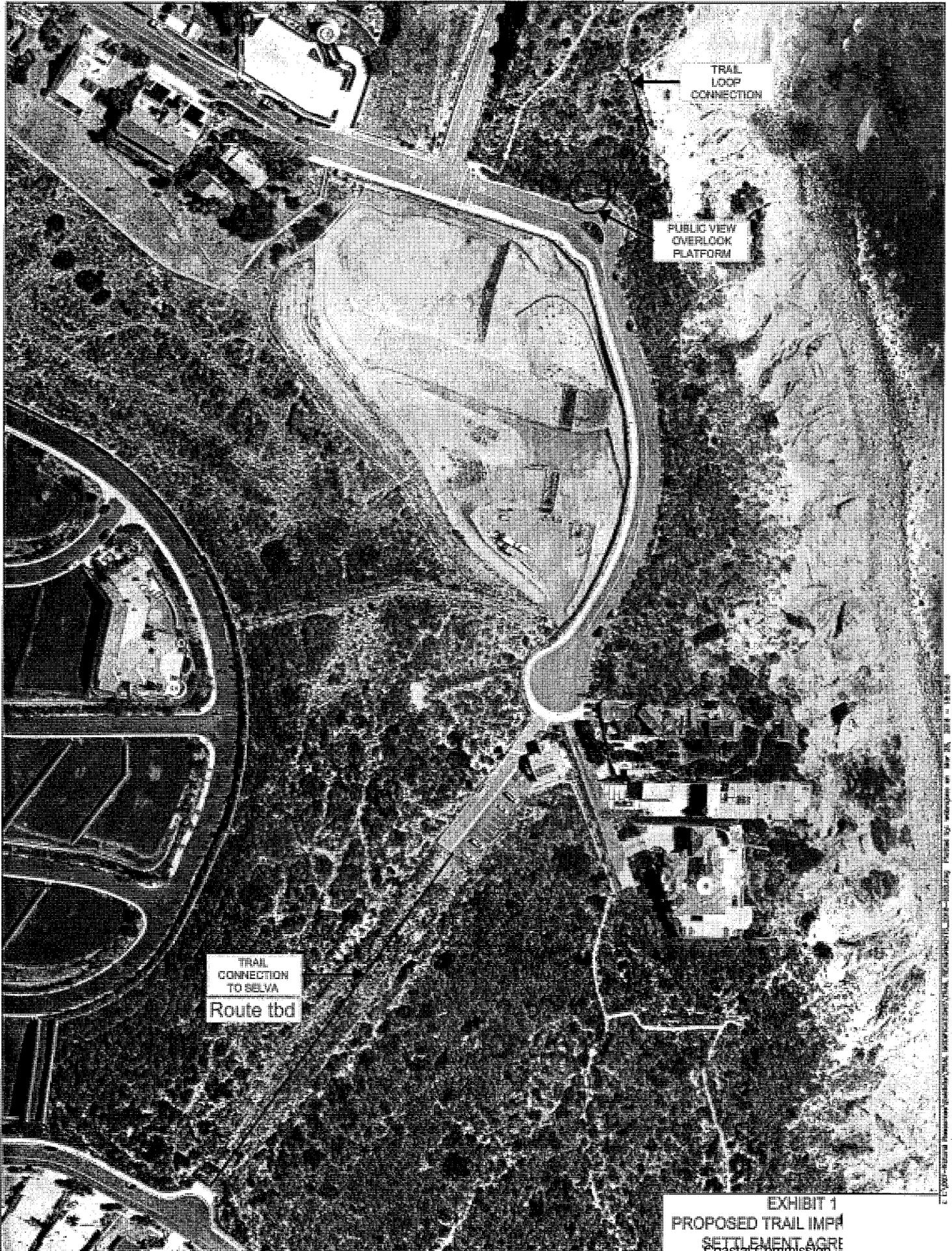


EXHIBIT 1
PROPOSED TRAIL IMPROVEMENTS
SETTLEMENT AGREEMENT
Coastal Commission

LCP-5-DPT-16-0044-1

Exhibit 6

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