

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



F7.5

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original staff report

ADDENDUM

April 13, 2016

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NO. 7.5** – SETTLEMENT AGREEMENT &
SETTLEMENT CEASE AND DESIST ORDER NO. CCC-16-CD-02
(CITY OF DANA POINT) FOR THE COMMISSION MEETING OF **April 15,**
2016

This addendum serves three purposes. Section I updates the record by supplementing it with correspondence and other documents that Commission staff received after the staff report was issued. Section II provides responses to some of the issues raised in the recent correspondence, which Commission staff proposes the Commission incorporate into its findings. Finally, Section III adds some text that was inadvertently omitted.

I. DOCUMENTS RECEIVED:

Documents included in this addendum are the following letters that support issuance of the proposed Settlement Agreement & Settlement Cease and Desist Order (hereinafter referred to as the “Settlement Agreement”), and additionally a letter from the Center for Natural Land Management³ that generally expresses support for avoiding impacts to protected wildlife and plant species during the implementation of the Settlement Agreement, as discussed below:

1. Surfrider Foundation letter dated April 7, 2016.
2. Sierra Club letter dated April 6, 2016.
3. Vonne Barnes letter dated April 6, 2016.
4. Center for Natural Land Management Letter (“CNLM”) dated April 7, 2016.

³ CNLM is a non-profit organization that owns and manages The Dana Point Headlands Conservation Area, and other nature reserves.

II. SELECT RESPONSES TO DOCUMENTS RECEIVED

As noted above, correspondence received by staff supports issuance of the Settlement Agreement, and staff thanks the letter writers for their involvement in this issue. We especially acknowledge the efforts of the Surfrider Foundation. The history of their legal involvement is set forth in the Staff Report, and Surfrider's efforts have been instrumental in getting us to this point of recommending a settlement of this enforcement case. Thus, the support of Surfrider here for this settlement is particularly significant.. Below, staff provides specific responses to issues raised in certain letters.

A. RESPONSE TO LETTER FROM SIERRA CLUB LETTER DATED APRIL 6, 2016 AND CNLM DATED APRIL 7, 2016

We appreciate Sierra Club's written support for the Settlement Agreement and the support that CNLM staff have verbally conveyed to Commission staff, and we share their wish that any trail that is built pursuant to this Settlement Agreement is designed and constructed to avoid impacts to coastal resources, in particular habitat for the Pacific Pocket Mouse in the Headlands Conservation Park. Indeed, Section 23.0 of the Settlement Agreement provides for an alternative access improvement option if a trail(s) cannot be built, including due to habitat constraints. As described in more detail in the agreement, in the event that trail(s) cannot be built due to habitat constraints, to the extent that the trails cannot be built, the City has agreed to alternate contributions to public access. They have agreed to provide funds, in addition to those funds described in other provisions of the Settlement Agreement, to a program for Title 1 school children that will be developed in consultation with Commission and City staff, Surfrider Foundation, and the Ocean Institute. Staff included this contingency in the Settlement Agreement for the very purpose of planning ahead for the potential situation presented by CNLM's letter, and to provide flexibility in providing public access improvements in connection with this Settlement Agreement if needed.

Commission staff has discussed CNLM's letter with them, described the alternative public access options to CNLM, and received CNLM's support for both the Settlement Agreement in general and the alternative public access improvement options. Commission and City staff will continue to work with CNLM to explore options for a trail at the CNLM-owned Headlands Conservation Park, which constitutes one of three trail improvements proposed pursuant to the Settlement Agreement, and planning for the two proposed trail improvements on City property will continue pursuant to the Settlement Agreement as well.

III. CHANGE TO STAFF REPORT FOR CCC-16-CD-02

Commission staff hereby revises its March 30, 2016 staff report and, thereby its recommended findings in support of the Settlement Agreement & Settlement Cease and Desist. This change does not change the commitments made in the proposed settlement documents. Language to be added is shown in *italic and underlined*, as shown below, and corrects an inadvertent omission to the sentence.

- 1) The following language in the 3rd full paragraph of page 4 is modified as follows:

This Settlement Agreement does not resolve the Commission's claims against the Developer or the HOA for the alleged Coastal Act violations described herein or associated alleged violations. Commission staff is open to working with Headlands and the HOA to reach a full resolution. Staff has met and discussed options for resolution with the Developer and the HOA, but if efforts going forward are not fruitful, Staff will evaluate future options to address the Developer and the HOA.



April 7, 2016

Chair Steve Kinsey

California Coastal Commission

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105- 2219

Via email Andrew.Willis@coastal.ca.gov

RE: Support for Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02 (Item F7.5 on April 15, 2016 Agenda)

Dear Chair Kinsey and Honorable Commissioners,

Surfrider Foundation writes this letter in strong support of the Coastal Commission staff's recommendation to approve and sign the Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02 (hereinafter "Settlement Agreement" or "Agreement"). This issue has been ongoing since Surfrider Foundation's first appeal to the Commission in 2010 and has been in litigation for six years. The current Settlement Agreement would put the issue of beach access at the Strands to bed and allow coastal advocates to focus on other more pressing issues. Through diligent efforts, expertise, and dedication demonstrated by the Coastal Commission, coastal advocates, and other concerned citizens, this issue has finally come to a favorable settlement which honors the Coastal Act's intent to maximize access to precious coastal resources.

I. The Terms of this Agreement Benefit the City of Dana Point, Parties to the Litigation, and Most Importantly, the Public At Large

This Agreement allows for sufficient beach access hours for the public to enjoy the coastal resources at Strands Beach and requires the rescission of the permit for the dangerous and psychologically deterring gates that were illegally erected at the accessways. Importantly, the Agreement now provides for certainty for the residents that live in and around the Dana Point Strand Headlands development. After years of uncertainty and controversy surrounding the issue of beach access at Strands Beach, now beachgoers and development residents alike will know how and when the accessways will be open. This has been an obvious and pervasive problem that has riddled the Strands Beach experience. As depicted in the attached flyer, there have been countless times where the public has either been locked out of the most heavily used and convenient accessway or locked in at the top of the access so that they climb over the dangerous spiked gates. (See Attachment A). The previously posted hours also excluded the public for several daylight hours during the day, especially during the summer. (See Attachment B).

RESTRICTED DAYLIGHT USE JUNE 25, 2011

TOTAL DAYLIGHT: 14.3 HOURS

8.4 HOURS - 58% OPEN

5.9 HOURS - 42% CLOSED



STRANDS GATE

BEACH ACCESS IS YOUR RIGHT!



Specifically, the Agreement settles the hours and gates on the controversial Central and Mid-Strands access ways. The settlement ensures that there will be access from 5am until 10pm on the Mid-Strand and Central Strand accessways, which were at the heart of the controversy. Also, the gate at the Mid-Strand accessway must be either removed altogether or locked open 24 hours a day with the wire mesh and spikes at the top of the gates removed. The settlement also guarantees public access on the South Strand Switchback Trail and on the lower Strand Revetment Walkway to be open for 24 hours a day. The Strand Vista Park will be open from 5am to 10pm, as well. The City will delete its prior approval of gates on the Mid-Strand and Central Strand Beach Access, but may go before the Commission to seek a Local Coastal Plan Amendment for the gates.

Additionally, the terms of the agreement benefit the beachgoers and residents, alike, with the City's agreement to supply over \$300,000 in other benefits under the Agreement to settle their past years of violation of the Coastal Act. This includes:

- Construction of two more connector trails, the "Trail Connection to Selva" and the "Trail Loop Connection" for access and a public view overlook platform;
- Installation of two new bike racks at the top of the Mid-Strand Accessway and the top of the South Strand Switchback Trail and install six cement-cast benches along the Revetment Trail;
- Development of a mobile applications linkage to Coastal Commission beach access and public amenity information, as well as enhancement of the Commission's web-based application;
- The CCC is requiring additional signage, including two informative signs regarding coastal issues, five coastal access signs and four wayfinding signs;
- At least \$25,000 per year for six years to fund an educational program in conjunction with Surfrider Foundation at the Ocean Institute, with the objective of providing children from Southern California, and in particular from Title 1 schools, with learning opportunities relating to public access and marine conservation at Strands Beach, such as the impacts on coastal resources associated with global warming, sea level rise, and marine debris.

Finally, the City agrees to dismiss their appeal of their legal battle against the Coastal Commission challenging the agency's oversight authority. Specifically, this sets an important precedent for Coastal Act Section 30005(b) regarding public nuisance abatement authority of local municipalities, and ensures that the cities cannot abuse that authority. Additionally, the Agreement provides for dismissal of Surfrider Foundation's case that has been stayed at the Appellate Court since 2011 after the City's appeal of the strongly-worded lower court decision in favor of Surfrider's challenge of the City's so-called nuisance ordinance. As part of the Agreement, the City agrees to rescind the underlying urgency nuisance ordinance that was passed illegally in an effort to usher in the overly restrictive hours and gates at the Headlands Strand development. In the most recent court ruling on the *City of Dana Point v. Coastal Commission* case in September 2015, Judge Randa Trapp ruled that the City acted with "pretext"

in issuing the urgency nuisance ordinance as the original justification for the locked gates and restrictive hours at Strands Beach. The City has now lost at the lower court to Surfrider's challenge of the urgency ordinance, lost at the Appeals Court regarding CCC jurisdiction to regulate the beach access at Strands, lost their petition for Supreme Court review and have now lost again in the Superior Court on the current remanded case that found the City also acted with pretext in deciding to pass the Urgency Nuisance Ordinance. Despite these four losses in the first five years of litigation, the City could still continue to appeal the litigation. However, this Settlement Agreement ensures that will not happen. This will help conserve judicial resources as well as the resources of all of the parties involved.

II. Surfrider Strongly Supports Staff's Recommendation

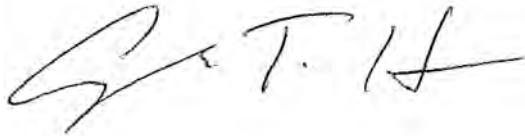
In order to put this issue to rest, there have been vast and diligent efforts by the City of Dana Point and Coastal Commission staff. Each party should be lauded for their willingness to come to the table and act in the benefit of the public good. The Coastal Commission staff acted responsibly and professionally in their dealings with the City, and the City, for their part, hired special counsel Stephen Kaufman to see the process through. Surfrider Foundation also spent time reviewing and analyzing the terms of the Settlement Agreement. The fruit of this labor is a very sound contract that the City, the Commission and public interest groups like Surfrider Foundation can strongly support. The Agreement provides ample beach access and several other public benefits that will serve residents, visitors, and school children in Orange County.

III. Surfrider Foundation Will Dismiss Appeal of CDP 15-0021 if this Settlement Agreement is Signed and CDP 15-0021 is Duly Amended

Not only will the signing of this Settlement Agreement resolve years of conflict over the access hours and restrictions at Strands Beach, and the associated litigation, but also under Sections 3.2 and 3.6 of the Settlement Agreement, it appears that Agreement will also modify Appeal No. A-5-DPT-15-0067 or local CDP 15-0021 in such a way that conforms to the terms of the Settlement Agreement. This appeal is presently pending before the Commission and Surfrider Foundation is one of the Appellants. (See Attachment C). However, Surfrider Foundation will dismiss our appeal if this Settlement Agreement is signed by the Commission and the concerns relayed in our appeal are no longer relevant.

Again, we thank the Coastal Commission and the City of Dana Point for their hard work and harmonious efforts to see this resolution through and strongly urge the Commission to take the final step in putting the terms of this Settlement Agreement into effect. An “aye” vote on this Settlement Agreement will ensure the public has ample access to a treasured public beach, and that future generations of Dana Point beachgoers will be able to enjoy the natural and scenic resources that are duly protected by the California Coastal Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela T. Howe". The signature is fluid and cursive, with the first name "Angela" written in a stylized, looped manner, followed by "T." and "Howe".

Angela T. Howe, Esq.
Legal Director
Surfrider Foundation



...“entirely lacking in evidentiary support for declaring a nuisance.”
 ...“that the City acted arbitrarily and capriciously in making such a decision.”

SUPERIOR COURT JUDGE JOAN LEWIS - June 1, 2011

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Surfrider Foundation

Mailing P.O. Box 6010
Address:

City: San Clemente Zip 92674-6010 Phone: (949) 492-8170
Code:

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Dana Point

2. Brief description of development being appealed:

Placement of gates and signs restricting public beach access, establishment and enforcement of "hours of operation" limiting public beach access.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

In the vicinity of Strand Vista Park, including South Strand Switchback Trail, Mid-Strand Beach Access, Central Strand Beach Access, and Strand Beach Park, Dana Point Headlands project, Dana Point, Orange County, also identified by 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.

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____
DATE FILED: _____
DISTRICT: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: November 3, 2015

7. Local government's file number (if any): Coastal Development Permit 15-0021

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Angela T. Howe, Esq.
Legal Director
Surfrider Foundation
P.O. Box 6010
San Clemente, CA 92674

(2) Denise Erkeneff
Surfrider Foundation
South Orange County Chapter
34145 Pacific Coast Hwy, #619
Dana Point, CA 92629-2808

(4) Susan Whittaker
34006 Selva Road #389
Dana Point, CA 92629

(5) Lynne Taylor
Address not available to Surfrider Foundation

(6) Kevin Darnell
Address not available to Surfrider Foundation

- (7) Carol Kandura/Cordura (sp.?)
Address not available to Surfrider Foundation
- (8) Buck Hill
34771 Doheny Place
Capistrano Beach, CA 92629
- (9) Christine Lindenfelzer
Address not available to Surfrider Foundation
- (10) Hal Brice
The Headlands Development Resident
Address not available to Surfrider Foundation
- (11) Mrs. Brice
The Headlands Development Resident
Address not available to Surfrider Foundation
- (12) Hal Brice's Daughter
The Headlands Development Resident
Address not available to Surfrider Foundation
- (13) Councilman Muller
Address not available to Surfrider Foundation

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

On November 3, 2015, the City of Dana Point ("City") approved Coastal Development Permit CDP15-0021 ("CDP") regulating the hours of operation of public accessways, including the mid-strand beach access and central strand beach access at the Dana Point Headlands. The CDP represents the latest efforts by the City in what has been a multi-year campaign to avoid compliance with the Coastal Act.

In addition to the following, please see the attached comment letter sent to the Dana Point Mayor and City Council on November 3, 2015, from Angela Howe of the Surfrider Foundation.

1. Background

In 2002, the City proposed to amend its certified Local Coastal Program ("LCP") to allow development of the Headlands. In 2003, the City submitted the LCP Amendment ("LCPA") to the California Coastal Commission ("Commission") for its review and certification.

In January of 2004, the Commission reviewed and approved the LCPA with modifications necessary to bring the LCPA into conformity with the Coastal Act. The modifications included maximizing the hours of use of public beaches and parks, requiring that any development provide a minimum of three public accessways and an inclined elevator/funicular to the beach and requiring that any limitation on the time of use of public beaches and parks be subject to a coastal development permit ("CDP").

The Commission allowed gates in the Strands area to restrict vehicular access so long as (1) pedestrian and bicycle access through the residential development to the beach remained unimpeded; (2) a direct connection is provided between the mid-point of the beach parking lot and the central Strand; and (3) an inclined funicular provided mechanized access to the beach instead of public vehicular access. Gates in the residential subdivision were to only preclude public vehicular access.

As modified, the Commission found the LCPA was consistent with the public access policies of the Coastal Act. The City accepted the Commission's modifications and the City's 2004 "The Headlands Development and Conservation Plan" ("HDCP") included the modifications. The HDCP required a permit for limitations on time of use of beaches and parks and prohibited gates from interfering with public pedestrian access. The City subsequently approved a Coastal Development Permit for the Headlands project.

One of the public parks constructed as part of the project is Strand Vista Park, which is located above a beach known as Strands Beach. As part of the project, Headlands constructed four new access ways and reconstructed the fifth. It is the "Mid-Strand" and "Central Strand" trails that are the subject of the CDP hereby appealed. These additional access trails were a condition of the Commission approving the City's LCPA. This was done to bring the LCPA into conformity with the Coastal Act.

In May of 2009, after the construction of Strand Vista Park, the City adopted an Ordinance No. 09-05 to set restrictive access hours for the new parks and trails. The City set the hours for opening of the trails at 8:00 a.m., and, depending on the time of year, the trails close at either 5:00 p.m. or 7:00 p.m. The hours are and/or were enforced by

locking gates. On the other hand, the North Strand Beach trail is open from 5:00 a.m. until midnight, the same hours as Strands Beach. Strand Vista Park is open from 6:00 a.m. to 10:00 p.m. throughout the year.

In October 2009, after the hours of operation had been set and before the park, trails, and other public amenities were opened, the Commission staff wrote to the City to tell the City that they did not have the ability to limit the park hours as it had. The Commission demanded that the City revoke the hours and remove the gates based on the fact that no CDP authorized them.

Dana Point's City Council then adopted, as an urgency measure, Ordinance No. 1 0-05 (the "Ordinance") declaring the existence of a nuisance at the site and mandating the enforcement of closure hours for the Strand Vista Park and the access ways, as well as maintenance of the gates on the trails. Appeals of the Ordinance (including the Surfrider Foundation appeal) were received and heard by the Commission. The Commission voted unanimously to deny the City's urgency ordinance that heavily restricted public beach access. The Commission's actions with respect to those appeals became the subject of multi-year litigation between the City and the Commission, as well as Surfrider Foundation and the City.

On June 1, 2011, Superior Court Judge Joan Lewis issued a final ruling regarding the Ordinance. Judge Lewis did not mince words, finding that "the record was entirely lacking in evidentiary support for declaring a nuisance and that the City acted arbitrarily and capriciously in making such a declaration." [*City of Dana Point v. Cal. Coastal Commission*, No: 37-2010-00099827-CU-WM-CTL, Order Granting Surfrider's Request for Declaratory Relief, 6:13-14] Judge Lewis held that the Ordinance should be set aside. [Id. at 6:20-21] Judge Lewis further held that "[t]o the extent the City – in response to this ruling – continues to maintain the gates and/or signage then the Court believes the matter would more *appropriately be in the jurisdiction of the Commission for further action.*" (emphasis added) [Id. at 7:6-8]

The City did not comply with Judge Lewis's Order, and pursued further litigation.

On September 17, 2015, Superior Court Judge Randa Trapp issued a final ruling regarding the Ordinance. Judge Trapp found in favor of the Commission, specifically holding that "Dana Point was not acting within the scope of [] the Coastal Commission Act in adopting the Nuisance Abatement Ordinance," and that "[t]he City's enactment of the Nuisance Abatement Ordinance was a pretext for avoiding the requirements of its local coastal program." [*City of Dana Point v. Cal. Coastal Commission*, No: 37-2010-00099827-CU-WM-CTL, Statement of Decision, 3:16-19] Judge Trapp characterized the underlying evidence used by the City to support the Ordinance as "sheer speculation amounting to nothing more than the conclusory opinions of staff and law enforcement experts." [Id. 13:11-13]

In summary, in 2011 Judge Lewis found that the City acted "arbitrarily and capriciously" in enacting the Ordinance and held that the Ordinance should be set aside. Then in 2015, Judge Trapp similarly found that the City presented insufficient evidence establish the existence of a nuisance justifying the access restrictions. Judge Trapp further characterized the City's decision to enact the Ordinance as pretext for avoiding the requirements of the LCP.

On November 3, 2015, the City Council approved the CDP that is the subject of this appeal. The CDP authorizes the gates and signs restricting public beach access at the mid-strand beach access and central strand beach access, as well as establishes "hours of operation" limiting public beach access.

The following sections establish that the approval of the CDP is an appealable decision, that the CDP does not conform to the standards set forth in the LCP or the policies set forth in the Coastal Act, and that exhaustion of local appeals is not necessary because, among other things, the City charges a fee for filing or processing appeals.

2. Approval of the CDP is an Appealable Decision

Any decision within the geographical appeals area specified in Public Resources Code § 30603 is appealable. (Pub. Res. Code § 30603) Specifically, this timely appeal is brought pursuant to Public Resources Code § 30603(a)(1), and the grounds for the appeal are set forth in § 30603(b)(1). The City of Dana Point website also provides a Commission-adopted Permit and Appeal Jurisdiction map defining the geographical appeals area.

The City of Dana Point sent the Commission a Coastal Development Permit Application Notice Of Final Action ("NOFA") corresponding to the CDP that lists the project address as "[t]he vicinity of Strand Vista Park, including South Strand Switchback Trail, Mid-Strand Beach Access, Central Strand Beach Access, and Strand Beach Park, Dana Point Headland." The project address falls entirely within the geographic appeals area specified in Public

Resources Code § 30603. Additionally, the Permit and Appeal Jurisdiction map confirms that the project address falls within the geographic appeals area. Finally, Dana Point concedes that the CDP is appealable to the Commission because the City checked the corresponding box in the NOFA and cited as a reason: “Appeals Jurisdiction per the Post LCP Certification Map 2/6/91 and the HDCP/LCP.”

Thus, the decision by the City approving the CDP is appealable to the Commission.

3. The CDP Does Not Conform To The Standards Set Forth In The Certified LCP Or The Policies Set Forth In The Coastal Act

For appeals challenging a project approval, the grounds for an appeal shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in the Coastal Act. (Pub. Res. Code § 30603)

i. *The CDP Does Not Conform To The Standards Set Forth In The City’s Certified LCP*

As discussed above, the City amended the certified LCP in 2004 in order to obtain approval by the Commission for the Headlands project. Specifically, the amended LCP states in Policy 5.31:

Recreation and access opportunities at public beaches and parks at Headlands shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-coast user fees and parking fees, and *maximize hours of operation* to the extent feasible, in order to *maximize public access* and recreation opportunities. (emphasis added)

Further, as discussed above, Judge Trapp explicitly found that the City’s enactment of the Ordinance requiring the gates and public access restrictions was merely “a pretext for avoiding the requirements of its local coastal program.”

The CDP does not maximize hours of operation or maximize public access at the mid-strand and central strand access. Additionally Judge Trapp held that the City’s attempts to restrict public access was a pretext for avoiding the requirements of its Local Coastal Program. The City’s latest attempt to set restrictive hours still does not conform with the hours of beach access set by the County that govern the Strands Beach (midnight to 5am). Therefore, the CDP clearly does not conform to the standards set forth in the City’s certified LCP.

ii. *The CDP Does Not Conform To The Standards Set Forth In The Coastal Act*

It is the City’s responsibility to uphold the Coastal Act § 30210 requirements for maximum public access protection and enhancement. As discussed above, the City and the Commission negotiated amendments to the certified LCP as a condition for the Commission’s approval of the Headlands project. These amendments included public access requirements that maximize hours of operation and maximize public access. These amendments were required by the Commission in order to bring the City’s LCP into conformity with the Coastal Act.

The CDP specifically violates the very amendments to the LCP intended to bring the LCP into compliance with public access policies set forth in the Coastal Act. Therefore the CDP does not conform to the standards set forth in the Coastal Act.

iii. *The CDP Does Not Conform To The Precedent Set By Other California Coastal Cities*

During the November 3rd City Council meeting, the City continuously likened this project to the Ackerberg beach access in Malibu, relying on the precedent in that case despite the fact that the Commission had already sent a letter distinguishing Ackerberg from this Strands Beach Headland development issue. In Ackerberg, the settlement of the ten-year litigation with individual property owner Lisette Ackerberg resulted in a wheel-chair accessible accessway from Pacific Coast Highway to Carbon Beach in Malibu and her payment of over \$1.1 million to resolve the Coastal Act claims. The large 121-acre development at the Strand at Headlands planned for over 115 individual residences is situated very differently than the single house at issue in Ackerberg. The Mid and Central Strand Accessways are a road and pathway, respectively, intended and built for public, joint use by many families and beachgoers to benefit the Dana Point Community at large. In short, this is a large subdivision accessway with a designated parking lot at the top end and not a one-off house off of PCH.

Furthermore, the circumstance at Strands Beach is distinguishable from Ackerberg because there is a designated Local Coastal Program Amendment that provided for the construction of the entire development project, only if the required extensive accessways and hours were allowed for by the City and Developer. The Ackerberg property is far from the master-planned development at Strands Beach, and there were no extensive LCPA beach access requirements in the Malibu case. In the Strands Beach Headlands development, the extensive beach access was a requirement imposed by the Commission in order for the developer to obtain a permit to build the large development in the first place.

Finally, the beach access hours provided by the County of Orange (which regulates Strands Beach) is from 5 a.m. to midnight. Other beaches in Southern California have hours similar to these or from 6 a.m. to 10 p.m. in some more restrictive instances. (For instance, the neighboring City of Laguna Beach CDP 10-12 and Ordinance No. 1521 provides for beach access from 5 a.m. to 1 a.m. with an exception for access to and use of wet sand and 20 feet of dry sand while undertaking recreation activities). California coastal municipalities are well aware of their constitutionally-mandated responsibility to maximize public beach access, and strive to do so at other beaches up and down the California coast.

4. Exhaustion Of Local Appeals Is Not Necessary Because The City Charges A Fee For The Filing Or Processing Of Appeals

The process of appealing a local decision to the Commission cannot begin until all possible appeals to local appellate bodies first have been made and exhausted, unless exhaustion is not required pursuant to an expectation under Cal. Code Regs. § 13573. (Cal. Code Regs. §13111). Pursuant to Cal. Code Regs. §13573(a)(4), exhaustion of all local appeals shall not be required if the local government jurisdiction charges an appeal fee for the processing of appeals.

The City of Dana Point maintains a website with information related to coastal development permits and the corresponding appeals process. The website provides, in pertinent part:

Decisions by the Planning Commission regarding a CDP may be appealed to the City Council. The fees for appeal of a Coastal Development Permit are \$250.00 for projects involving a single-family residence and \$500.00 for all other types of projects.¹

Thus, the requirement that local appeals procedures be exhausted prior to appealing to the Commission does not apply since the City charges an appeal fee for the filing or processing of appeals.

In addition to the regulatory exemption which allows for direct appeal to the Commission, two judges have explicitly ruled against the City's efforts to restrict beach access here, finding the City's action to be in violation of the Coastal Act and the LCP. Judge Lewis specifically held that if the City continued to maintain the gates and/or signage then the matter is appropriately within the jurisdiction of the California Coastal Commission.

The Surfrider Foundation objected to the current CDP before the City Council of Dana Point and is now appealing to the Commission, as the state agency charged with protection of public beach access.

5. Conclusion

As demonstrated above, the City's approval of the CDP is an appealable decision. Additionally, the CDP does not conform to the standards set forth in the applicable LCP or the beach access policies of the Coastal Act.

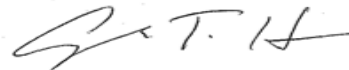
For the above stated reasons we respectfully request a hearing on this matter and denial of the CDP.

¹ See: <http://www.danapoint.org/index.aspx?page=267#52>

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Angela T. Howe, Esq.

Signature of Appellant(s) or Authorized Agent

Date: 11/30/2015

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____



April 6, 2016

California Coastal Commission
45 Fremont St.
San Francisco, CA 94105

**Re: Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02
(City of Dana Point, Orange Co.)**

Dear Members of the Coastal Commission:

As an organization participating in advocacy for coastal conservation issues on the California Coast, the Sierra Club strongly supports the Coastal Commission staff recommendation to approve and sign the Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02. This issue has been ongoing since the first appeal to the Commission in 2010 and has been in litigation for six years. The current Settlement Agreement would bring closure to the issue of beach access at the Strands and allow coastal advocates to focus on other more pressing issues. Through diligent efforts, expertise, and dedication demonstrated by the Coastal Commission staff, coastal advocates, and other concerned citizens, this issue has finally come to a favorable settlement which honors the Coastal Act's intent to maximize access to precious coastal resources.

Specifically, this agreement:

- Ensures that there will be access from 5am until 10pm on the Mid-Strand and Central Strand accessways, which were at the heart of the controversy.
- Stipulates that the gates over the access ways must be either removed or locked open. The City of Dana Point has agreed to delete its prior approval of gates on the Mid-Strand and Central Strand Beach Access. However, the City of Dana Point may go before the Commission to seek a Local Coastal Plan Amendment for the gates.
- Guarantees public access on the South Strand Switchback Trail and on the lower Strand Revetment Walkway to be open for 24 hours a day.

As for other benefits of the Settlement Agreement, the City of Dana Point has agreed to the following:

- Construction of two more connector trails, the "Trail Connection to Selva" and the "Trail Connection" for access and a public view overlook platform. It will be important to monitor Pocket Mouse populations and habitat value in this area before completing this trail connector.

- Installation of two new bike racks at the top of the Mid-Strand Accessway and the top of the South Strand Switchback Trail and install six cement-cast benches along the Revetment Trail. We would also suggest considering bike racks at the Interpretive Center.
- Development of a mobile applications linkage to Coastal Commission beach access and public amenity information, as well as enhancement of the Commission's web-based application.
- Additional signage, including two informative signs regarding coastal issues, five coastal access signs and four way finding signs.
- At least \$25,000 per year for six years to fund an educational program in conjunction with Surfrider Foundation at the Ocean Institute, with the objective of providing children from Southern California, and in particular from Title 1 schools, with learning opportunities relating to public access and marine conservation at Strands Beach, such as the impacts on coastal resources associated with global warming, sea level rise, and marine debris.

Special thanks to the Coastal Commission staff for their diligent efforts in coming to a reasonable and beneficial settlement that upholds the Coastal Act. The Sierra Club's Headlands task force worked hand-in-hand with Surfrider for many years and appreciate all their hard work over the past six years to resolve this issue.

Respectfully,



David Grubb, Chair, Sierra Club California Coastal Committee

Copy: Jack Ainsworth, CCC
Andrew Willis, CCC
Lisa Haage, CCC
Angela Howe, Surfrider
Celia Kutcher, Sierra Club/California Native Plant Society

Item F 7.5 Settlement Agreement and Settlement Cease and Desist Order
No. CCC-16-CD-02 (City of Dana Point, Orange Co.) April 15, 2016

April 6, 2016

Honorable Commissioners and Coastal Commission Staff,

As an active participant, I submitted the original appeal and produced and presented the Barnes Exhibits at Dana Point City Council and Coastal Commission sessions; and attended district and appeals hearings in Orange County and San Diego.

Barnes Exhibits used in Coastal Commission and Surfrider Foundation litigation (photographs, maps, charts, graphs, police logs, police reports, spreadsheet(s) daily, monthly, and yearly daylight hours that gates were locked shut), held steadfast and prevailed throughout all of the judgments of this litigation.

Through diligent teamwork, expertise, and perseverance as demonstrated by the Coastal Commission, Surfrider Foundation, and concerned citizens, public access to the beach will be protected and preserved, an honorable legacy for generations to come.

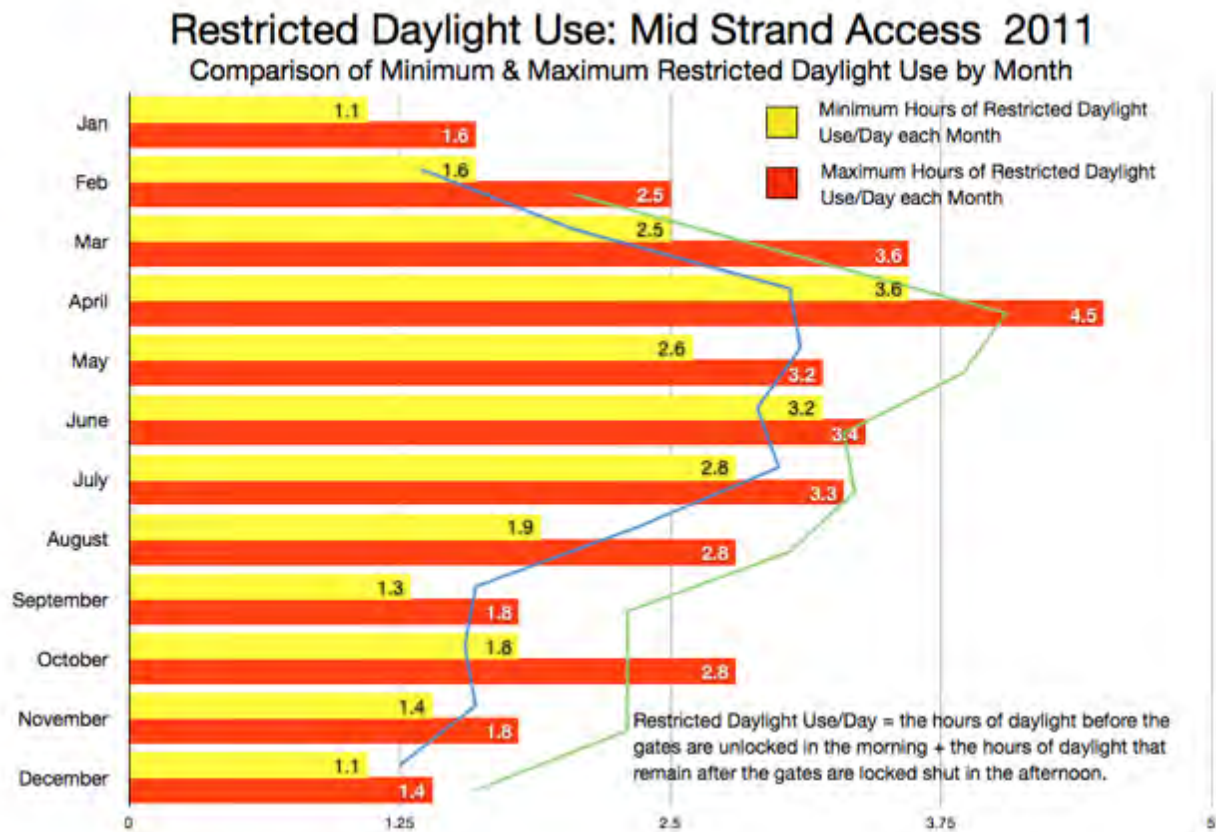
Special thanks to the Coastal Commission and Surfrider Foundation for upholding the Coastal Act.

Please approve and sign the Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02.

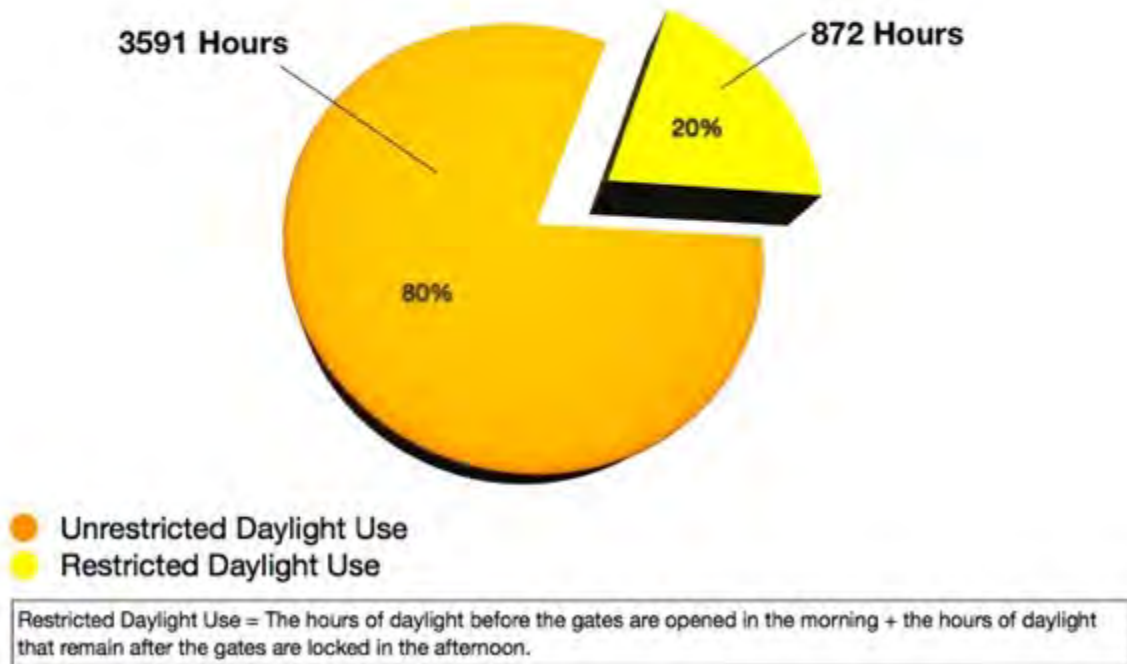
Respectfully,



Vonne Barnes
13 Montilla
San Clemente, CA 92672



Restricted Daylight Use: Mid Strand Access 2011
Total Daylight: 4463 Hours



Center for Natural Lands Management

A non-profit organization for the protection and management of natural resources

27258 Via Industria, Suite B
Temecula, CA 92590-3751
Phone: 760.731.7790
Fax: 760.731.7791
www.cnlm.org



April 7, 2016

Andrew Willis
Southern California Enforcement Supervisor
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Settlement Agreement/Settlement Cease and Desist Order No. CCC-16-CD-02;
Notice Regarding Possible Construction of "Trail Connection to Selva Road"

Dear Mr. Willis:

The Center for Natural Lands Management (CNLM) owns the Dana Point Preserve (Preserve) property in the City of Dana Point, CA (City). Our nonprofit mission is to protect imperiled species and their habitats in perpetuity. The Preserve was acquired through a generous charitable contribution to CNLM from the Harry and Grace Steele Foundation for that purpose.

I have recently become aware that one of the proposed settlement terms between City and the California Coastal Commission states, at Section 23.0 (Settlement of Claims), that, as an alternative mitigation measure, the City may process a local coastal development permit, in part, for the '...construction of the "Trail Connection to Selva"...' on CNLM's Preserve.

In brief, given our mission and obligations as the property owner, CNLM will neither participate in a permit application nor consent to the construction of such an "improvement" on our Preserve.

I understand this letter will be placed on record for the above matter.

Please advise if you should have any questions.

Sincerely,

David R. Brunner
Executive Director

CALIFORNIA COASTAL COMMISSION

200 OCEANGATE, SUITE 1000
LONG BEACH, CA 90802
TELEPHONE (562) 590-5071
FAX (562) 590-5084



March 22, 2016

Headlands Reserve LLC
c/o Craig Collins
707 Wilshire Blvd., Suite 4880
Los Angeles, CA 90017

Subject: Dana Point Headlands Coastal Access

Dear Mr. Collins:

We are in receipt of your letter dated March 7, 2016, which, amongst other things, asks again why Commission staff is not placing the matter of your client's alleged Coastal Act violations on the Commission's next agenda.¹ As you know, we have previously responded to this both in writing and in our telephone conversations. In further response, I note that our general practice is not to bring a contested proposed order to the Commission without first exploring the possibility of a collaborative approach. As the City of Dana Point has actively engaged in discussions with staff to resolve the Commission's claims against the City through a consensual agreement, and as we prepare to bring such an agreement to the Commission for approval at the Commission's April meeting, we have, as of late, focused our efforts on working with the City.

As we work with the City, we continue to await a response from you as to whether you wish to answer the sorts of questions that staff posed in our letter to you dated March 3, 2016 (top of page 2) or otherwise engage with us over the possibility of a collaborative approach that addresses your client's liability for the Coastal Act violations at issue in a way that is consistent with the Coastal Act. As we stated in that letter, we are willing to consider information relevant to the liability of your client, and to that end, posed questions that would assist us in analyzing those issues. We have not heard back from you on those questions.

However, our top priority regarding this site is ensuring that maximum public access remains available, not resolving the various liabilities of every potentially liable party. As to your question regarding outstanding issues, we would again refer you to the top of page 2 of our last letter for an explication of some of the more critical factual issues. To briefly contextualize and summarize our questions posed in that letter, which we repeat in large part herein, we noted that we issued a notice of intent to commence enforcement proceedings to your client based on the understanding that your client installed gates across accessways at the Headlands development and had at least some role in the maintenance and management of the gates. We noted then, and this remains the case, that we are happy to review any evidence that you would like to provide to the contrary. In particular, we would be interested in information regarding who had ownership

¹ You also continue to assert that your client has a "statutory right to a timely hearing." I assume this is a reference to your belief that Coastal Section 30812 provides your client with such a right. Please see our letter dated January 29, 2016 for an explanation as to why Section 30812 does not provide such a right in this case. In short, we reiterate that the time period provided by that section has not been triggered.

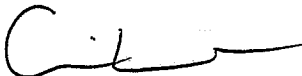
and control of the real property and the gates at all relevant times since the installation of the gates, including who retained the services of, or exercised control over, any party involved in maintaining and/or operating (including locking and unlocking) those gates. Please note that although we asked in our March 3rd letter for information regarding the installation of the gates, to flesh out any additional details, the record appears to be clear that, on your client's own admission, your client installed the gates at issue. As staff has explained throughout the extensive communications regarding this issue, the required coastal development permit for installation and operation of these gates was not applied for (prior to commencement of these proceedings) nor obtained, and we have seen no persuasive evidence to the contrary. Indeed, part of the proposed settlement with the City includes an agreement to now seek authorization of these gates after the fact.

You also suggest in your letter that staff is making representations regarding your client's position to the Commission and in doing so attempting to prejudice the Commission. To be clear, Commission staff is not communicating with the Commission on the issue, as it is a pending enforcement case, and in that context, the Coastal Act does not authorize communications with Commissioners outside of a public proceeding, as will be explained in greater details in a forthcoming letter responding to your March 10 letter.

As we have noted in multiple letters and discussions, we are open to a genuine discussion of a consensual resolution of this matter, i.e. one that would comprehensively resolve the Commission's claims against your client for the Coastal Act violations at issue. However, as of yet, we have not received any indication from you of a willingness to enter meaningful discussions.

Despite this, although time is of the essence, as the April Commission hearing is fast approaching, if the terms of an agreement with the City can be modified to include resolution of your client's liabilities, without disrupting the fundamental intentions of such an agreement, we'd be happy to discuss your client's involvement in such an agreement. Please do not hesitate to contact me at (562) 590-5071 to discuss options for a consensual resolution.

Sincerely,



Andrew Willis
Enforcement Supervisor

cc:

Lisa Haage, Chief of Enforcement, CCC
Alex Helperin, Senior Staff Counsel, CCC

CALIFORNIA COASTAL COMMISSION

200 OCEANGATE, SUITE 1000
LONG BEACH, CA 90802
TELEPHONE (562) 590-5071
FAX (562) 590-5084



April 1, 2016

Strand Homeowners Association
c/o Timothy V. Kassouni
621 Capitol Mall, Suite 2025
Sacramento, CA 95813

Subject: Dana Point Headlands Coastal Access

Dear Mr. Kassouni:

Thank you for your patience while staff worked toward preparing this response to your March 3rd and March 17th letters. As the City of Dana Point has actively engaged in discussions with Coastal Commission staff to resolve the Commission's claims against the City for public access violations at The Strand at the Headlands through a consensual agreement, our priority has been to work with the City to address access issues and resolve impediments to public access. Therefore, as the City has been engaging with us, and we have had an opportunity to address these issues and are preparing to bring such an agreement with the City to the Commission for approval at the Commission's April meeting, we have, as of late, focused our efforts on working with the City.

No NOI for a NOVA

In your letters you assert that the Commission was obligated to schedule a hearing on recordation of a Notice of Violation of the Coastal Act ("NOVA") at its March 2016 meeting, pursuant to Public Resources Code section 30812. Section 30812 does not apply in the way in which you assert, for the reasons below, and in fact, the Commission is not obligated to schedule a hearing on recordation of a NOVA at this time. That said, it is certainly our preference to resolve this matter quickly and amicably. As we have said in past communications, we are happy to meet with you to see if we can reach a consensual resolution of this matter through a "consent order" that we would present to the Commission. The consent order option is described in more detail in our November 3, 2015 Notification of Intent ("NOI") to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings.

Regarding your assertion related to Section 30812, first, the Commission's November 3, 2015 NOI provides notice of the Executive Director's intent to begin specific proceedings (those arising under Sections 30810 and 30821) – it does not include a notice of intent to record a NOVA. Nowhere in the letter does staff state that the Executive Director is commencing the process to record a NOVA. This silence stands in contrast to explicit statements that the Executive Director is commencing proceedings to issue a cease and desist order and administrative penalty proceedings. For instance, see page 4, "I am issuing this notice of intent to commence cease and desist order proceedings...", and page 8, "Please consider this letter to reiterate those concerns, and to constitute notice of our intent to pursue remedies, including administrative penalties pursuant to Section 30821."¹

¹ Please note that a NOVA does not constitute a "remedy" under the Coastal Act. Instead, it is a mechanism for providing notice that a violation of the Coastal Act exists on a property, and is purely informational.

In addition, under the provisions of Section 30812(a), formal proceedings under Section 30812 begin with the issuance of a "notification of intention to record a notice of violation." However, 30812(g) states that the Executive Director may not invoke the procedures of the section "until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation." That states two preconditions to commencement of the formal NOVA process. Accordingly, Commission staff often sends out a preliminary notice (to make a property owner aware of the potential for the recordation of a NOVA) and encourages informal resolution (as a way of seeking to utilize administrative methods to resolve the violation) before invoking the formal procedures of 30812, which, again, begin with the "notification of intention to record a notice of violation" described in Section 30812(a). The November 3, 2015 NOI was intended to provide that preliminary notice with respect to the possibility of recording a NOVA, but not to trigger any formal hearing process. Notice that the subject line of the November 3 letter states that it is a "Notification of Intent to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings." It intentionally says nothing about recordation of a NOVA. By contrast, the last full section on page 8 states "Notice of Violation of the Coastal Act," without any reference to an intention to begin formal proceedings.

For your reference, an actual notification of intent to record a NOVA would take a much different form than the single sentence in the NOI that references the Executive Director's authority to record a NOVA. Perhaps most notably, it would, as provided for in the Coastal Act, include language that Section 30812(b) requires in an effective notification of intent to record a NOVA, including language that identifies the response procedure if a property owner objects to recordation of a NOVA, and indicates that if the property owner fails to object, the NOVA will be recorded in the county in which the violation at issue is located.

The NOI to commence cease and desist order and administrative penalty proceedings does not include the language required by Section 30812 noted above, which is the case since the NOI to commence cease and desist order and administrative penalty proceedings does not constitute, nor was it staff's intent for it to constitute, an NOI for a NOVA. Instead, the purpose of the references to a NOVA in the November 3rd NOI was to, pursuant to Section 30812(g), make the property owner aware of the potential to record a NOVA prior to commencing proceedings to record a NOVA.

Avenues for resolution

Although proceedings to record a NOVA pursuant to Section 30812 have not been formally initiated here, that section deals with one limited means (i.e. objection to recordation of a NOVA) for an alleged violator to represent their position before the Commission. Other, avenues, which are indeed available to the Strand Homeowners Association ("HOA"), have been made available to HOA, as described below. You assert in your letter that Commission staff said in an email that it has no intention to agendize this matter. Staff said no such thing. We did not schedule the matter for March hearing, and conveyed as much to you in the email.

It is staff's position that the HOA has undertaken unpermitted development activities that constitute violations of the Coastal Act, including the use of private security guards to enforce illegal public access restrictions. Based on our understanding of the facts, we have notified the HOA of our intent to initiate cease and desist order and administrative penalty proceedings with respect to these violations pursuant

to Section 30810 and 30821 of the Coastal Act, and have therefore provided the HOA with the opportunity to respond to these allegations, and would be happy to discuss this with you further. If there were to be a hearing on these matters including the HOA, your client will further be provided the opportunity to participate as provided for in the Coastal Act and the Commission's regulations.

Ample time provided for a response

You also assert in your March 3rd letter that you were not given adequate time to submit an Statement of Defense ("SOD") form in response to the NOI. The Commission's regulations provide for a specific length of time to respond to an NOI via an SOD (20 days)(see Section 13181 of the Commission's regulations, which are in Title 14 of the California Code of Regulations). The response deadline set in November 3rd NOI (November 24, 2015) complied with this standard. Moreover, in response to your requests, staff extended this deadline twice, ultimately to February 12th 2016. Thus, you have been provided with more than sufficient time to respond. Although staff did not simultaneously commit to scheduling this matter for a hearing, it was eventually necessary to forego any further extensions, in order for staff to consider the evidence provided by the parties and to determine the best option and timing for going forward and addressing the impacts to public access that have occurred as a result of the violations at the site. Indeed, with a full set of facts at our disposal, staff was able to reach an agreement with the City to resolve the Commission's claims against the City in an expedited fashion.

As we have noted in multiple letters and discussions, we are open to a genuine discussion of a consensual resolution of this matter, i.e. one that would comprehensively resolve the Commission's claims against your client for the Coastal Act violations at issue. However, as of yet, we have not received any indication from you of any willingness on the part of your client to enter meaningful discussions. Despite this, although the April Commission hearing is fast approaching, if the terms of an agreement with the City can be modified to include resolution of your client's liabilities, without disrupting the fundamental intentions of such an agreement, we'd be happy to discuss your client's involvement in such an agreement. Of course, if we are able to reach a consensual resolution of the Coastal Act violation at issue with the HOA, a contested hearing will not be necessary, and Commission staff and the HOA would be in the position to jointly present a consent order to the Commission.

Please do not hesitate to contact me at (562) 590-5071 to discuss options for a consensual resolution.

Sincerely,



Andrew Willis
Enforcement Supervisor

cc:

Lisa Haage, Chief of Enforcement, CCC
Alex Helperin, Senior Staff Counsel, CCC

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904- 5200
FAX (415) 904- 5400



F7.5

Staff: A. Willis-LB
Staff Report: March 30, 2016
Hearing Date: April 15, 2016

STAFF REPORT: RECOMMENDATIONS AND FINDINGS FOR ISSUANCE OF SETTLEMENT AGREEMENT AND SETTLEMENT CEASE AND DESIST ORDER

Settlement Cease and Desist Order No.: CCC-16-CD-02

Related Violation File: V-5-09-026

Location of Properties: Public parks and accessways, including Strand Vista Park, South Strand Switchback Trail, Mid-Strand Beach Access, Central Strand Beach Access, and Strand Beach Park, located on numerous properties within the Dana Point Headlands project, Dana Point, Orange County, also identified by 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.

Owners of the Properties: **City of Dana Point, County of Orange,
and The Strand Homeowners Association**

Description of Alleged Violations: Closure of public beach accessways through establishment, via the adoption of municipal ordinances, 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 certain accessways; all of which affects access to the coast.

Entity Subject to this Order: City of Dana Point

Substantive File Documents:

1. Public documents in the Cease and Desist Order file No. CCC-16-CD-02.

2. Exhibits 1 through 14 of this staff report.

CEQA Status:

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

SUMMARY OF STAFF RECOMMENDATION

The Settlement Agreement and Settlement Cease and Desist Order (“Settlement Agreement”) described herein is a result of the efforts of the parties to this Settlement Agreement to work diligently to find an amicable solution to address and resolve various access-related issues at the Dana Point Headlands site. Staff appreciates the efforts of the City of Dana Point to reach this agreement and recommends that the Commission approve the proposed Settlement Agreement (**Exhibit 1**) described in more detail herein.

The Settlement Agreement addresses the daily temporal closure of beach accessways located at the Headlands development in Dana Point, which was effectuated by various activities, 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 entrances to the beach accessways, all of which occurred without the necessary coastal development permits.

These activities occurred within and adjacent to the residential subdivision component of the Headlands development known as The Strand at the Headlands (**Exhibit 2**). The history of planning and enforcement activities at the site is extensive, with many parties involved, but, by way of a brief background, in January 2004, the Commission certified an Amendment to the Dana Point Local Coastal Program.¹ This Amendment provides comprehensive policies for the Headlands development, including the requirement for providing the accessways that are the subject of these proceedings, and which are described in more detail below. The Headlands development also includes subdivision of 121.3 acres, grading and construction for 118 single-family homes, and parks and open space. Subsequent to certification of the HDCP, the City of Dana Point (“City”) approved a Coastal Development Permit² (the “CDP”) in February 2005, which authorized Headlands Reserve LLC (“the Developer”) to build The Strand at the Headlands, and other components of the Headlands development. Conditions of the CDP required construction of the accessways at issue and their dedication to the City.

The Developer completed construction of the parks and accessways at the Headlands development in 2009 and dedicated the parks and accessways as built to the City, some in the form of dedication in fee and some in the form of dedication of easements. These accessways

¹ Amendment No. DPT-MAJ-1-03. This amendment is largely captured in one document, the Headlands Development and Conservation Plan or “HDCP”.

² CDP No. 04-23.

cross property within The Strand at the Headlands residential subdivision now owned by The Strand Homeowners Association (“HOA”). The accessways affected by the closures at issue are the walkway in Strand Vista Park, Mid and Central Strand Beach Accessways, South Strand Switchback Trail, and the revetment top walkway at Strand Beach Park (collectively, Strand Access Areas) (**Exhibit 3**). The Strand Access Areas generally were designed to provide public access to the coast at The Strand at the Headlands.

The closure of the Strand Access Areas was effectuated, in part, through the adoption of City ordinances³ in May 2009 and March 2010. These ordinances established hours of operation for the Strand Access Areas that restricted coastal access, including during daylight hours, and were put in place without the necessary authorization under the Coastal Act or City of Dana Point Local Coastal Program. The hours set by the ordinances were as follows: Strand Vista Park, which is a bluff top park and walkway [6am-10pm], Mid and Central Strand Accessways [8am-5pm from October to April and 8am-7pm from May to September], South Strand Switchback Trail [sunrise to sunset], and Strand Beach Park [sunrise to sunset]. Thus, as an example, on June 25th each year, the most accessible beach accessways from the center of the public parking lot at The Headlands were not unlocked in the morning until 2 hours and 47 minutes after dawn, and were locked closed again in the evening 1 hour and 33 minutes before dark.⁴ That means that more than 4 hours of daylight access via these accessways was being lost to the public.

The limits on the hours of operation were enforced through, amongst other actions: 1) installation of gates at the Mid and Central Strand Accessways by the Developer, 2) daily locking of said gates; and 3) installation of signs displaying the limited hours when the gates would be open (**Exhibit 5**). These activities, along with the establishment of the hours of closure created via the ordinances, constitute the activities that are the subject of this Settlement Agreement (hereinafter referred to collectively as the “Subject Activities”).

Staff initially learned of the Subject Activities in October, 2009 and notified the City by letter that month that it considered the activities noted above to be development that required authorization pursuant to the Coastal Act, and for which no authorization had been obtained. Over the several years since then, Staff and the City have disagreed over the application of the HDCP and the CDP to the Subject Activities and whether the 2009 and 2010 City ordinances, passed without any Coastal Act review, provided legal authorization for the Subject 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 Subject Activities was an appealable exemption determination. Appeals were filed, and in May, 2010, this Commission found that exemption determination to be erroneous. The City challenged that action, and Surfrider Foundation (“Surfrider”) challenged the City’s nuisance declaration, both in Orange County Superior Court. The cases were consolidated, trials were conducted, judgments were entered and appealed, and litigation is still ongoing. A more detailed history of that discourse

³ Nos. 9-05 and 10-05 (**Exhibit 4**, 10-05 only).

⁴In addition, this example of the number of daylight hours when the accessway was closed does not even account for the nighttime hours during which the public commonly makes use of the coast, for night diving, surfing, fishing walking and exercising, etc. In no way though is this intended to discount the value of nighttime access to the coast.

and associated actions, as well as notice of the alleged violations provided to the Developer and HOA, is summarized below in Section V.

The proposed Settlement Agreement provides a mutually-agreeable path to resolution of the disagreements regarding the application of the HDCP and the CDP to the Subject Activities, including by addressing the litigation that ensued from the disagreements. In brief, the City has agreed, through this Settlement Agreement, to remove the gates, unless they obtain Coastal Act authorization for the gates. In the interim, the gates will be locked open 24 hours a day, and components of the gates that increase their visual mass will be removed to make the gateways less imposing to pedestrians and to provide a more obvious accessway. Also, the proposed Settlement Agreement provides for unrestricted access at the Strand Access Areas, unless and until hours of operation are authorized under the Coastal Act. Moreover, agreement provides that if the City seeks such authorization, the City will propose expanded hours for access that greatly increase the hours, in terms of length of time the accessways will be open to the public, from those put in place through the municipal ordinances passed by the City and which gave rise, in part, to this action. In fact, pursuant to the agreement, certain accessways, as well as the coast fronting the Headlands development, will be open to the public 24 hours a day.

More specifically, the City, through this Settlement Agreement, has agreed to resolve its liability for all Coastal Act violation matters addressed herein, 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, has 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 open existing gates and refrain from operating gates at the Strand Access Areas, unless and until authorized pursuant to the Coastal Act, 2) modify gateways at the Strand Access Areas to make their appearance more welcoming to the public, 3) provide unrestricted access at the Strand Access Areas, unless and until hours of operation are authorized pursuant to the Coastal Act, 4), 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 Access Areas, 7) install bike racks and benches at the Strand Access Areas, 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 pending litigation.

This Settlement Agreement does not resolve the Commission's claims against the Developer or the HOA for the alleged Coastal Act violations described herein or associated alleged violations. Commission staff is open to working with Headlands and the HOA to reach a full resolution. Staff has met and discussed options for resolution with the Developer and the HOA, but if efforts going forward are not fruitful, Staff will evaluate future options to address the Developer and the.

Staff recommends that the Commission **issue** the Settlement Agreement to address the City's liability for the Subject Activities and to set a path of future cooperation with the City.

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EXHIBITS

Exhibit 1	Proposed Settlement Agreement
Exhibit 2	Vicinity Map of The Strand at the Headlands development
Exhibit 3	Map of Strand Access Areas
Exhibit 4	Ordinance No. 10-05 and Staff Report
Exhibit 5	Photographs of Unpermitted Sign and Gate
Exhibit 6	CCC Letter October 20, 2009
Exhibit 7	City Letter November 5, 2009
Exhibit 8	CCC Letter November 20, 2009
Exhibit 9	June 2, 2011 Trial Court Judgment in City v. CCC
Exhibit 10	July 29, 2011 Trial Court Judgment in Surfrider v. City
Exhibit 11	June 1, 2011 Trial Court Order in Surfrider v. City
Exhibit 12	June 17, 2013 Appellate Court Decision in City v. CCC
Exhibit 13	September 17, 2015 Trial Court Statement of Decision in City v. CCC
Exhibit 14	November 3, 2015 Notification of Intent to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings

I. MOTION AND RESOLUTION

Motion 1: Settlement Cease and Desist Order

*I move that the Commission **issue** Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02, pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Settlement Agreement and Settlement Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Settlement Agreement and Settlement Cease and Desist Order:

The Commission hereby issues Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02, as set forth below, and adopts the findings set forth below on grounds that development has occurred without the requisite coastal development permit, in violation of the Coastal Act.

II. JURISDICTION

The Commission has certified a Local Coastal Program (“LCP”) that covers the Properties. Once the Commission has certified an LCP, the local government obtains jurisdiction for issuing Coastal Development Permits (“CDPs”) under the Coastal Act, and it has inherent (police power) authority to take enforcement actions for violations of its LCP.

In areas where a local government obtains permitting authority under the Coastal Act through the Commission’s certification of an LCP, the Commission retains enforcement authority to address violations of the local government’s LCP under the conditions set forth in and as specified in Coastal Act Section 30810(a)(1)-(3). In this situation, the local government is a party to the violation, and, thus, pursuant to Section 30810(a)(3), the Commission has jurisdiction over the enforcement matters at issue.

III. COMMISSION’S AUTHORITY

As described in more detail in Section V.D.2 of this staff report, the Subject Activities that have occurred on the Properties meet the definition of “development” set forth in Coastal Act Section 30106 and LCP Section 9.75.040. Coastal Act Section 30600 and LCP Section 9.27.010 state that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. The Subject Activities are not exempt from permitting requirements, nor has a permit been obtained them, and thus the Subject Activities were undertaken without a CDP, in violation of Coastal Act Section 30600 and LCP Section 9.27.010.

As such, the Commission has jurisdiction, and notwithstanding the acknowledgement by all Parties that a disagreement exists with regard to the application of the HDCP and the CDP to the

Subject Activities, the City agrees not to contest the legal and factual bases, the terms, or the issuance of the attached Settlement Agreement.

IV. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order are outlined in 14 CCR Section 13185.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Settlement Agreement and Settlement Cease and Desist Order. Passage of the motions below will result in issuance of the Settlement Agreement and Settlement Cease and Desist Order.

V. FINDINGS FOR SETTLEMENT AGREEMENT⁵

A. DESCRIPTION OF THE PROPERTIES

The Strand Access Areas are located within and adjacent to the residential community component of the Headlands development known as The Strand at the Headlands. The Strand Access Areas span the following properties located in Dana Point, Orange County: 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. The Strand Access Areas generally descend from public areas, including roads, parks and a parking lot located on top of a coastal bluff, thread through The Strand at the Headlands residential subdivision constructed on the bluff slope, and outlet at the beach at the toe of the bluff known as Strand Beach (sometimes referred to simply as Strands)(See **Exhibit 3**).

⁵ These findings also hereby incorporate by reference the preface of this staff report ("STAFF REPORT: Recommendations and Findings for Settlement Agreement and Settlement Cease and Desist Order") in which these findings appear, which section is entitled "Summary of Staff Recommendation."

The Strand Access Areas consist of the following individual parks or accessways: Strand Vista Park, Mid and Central Strand Accessways, South Strand Switchback Trail, and Strand Beach Park. Strand Vista Park is a walkway and green strip that provides lateral access along the top of the bluff, just inland of The Strand at the Headlands, as well as coastal views and recreational opportunities. The South Strand Switchback Trail is an improved hiking trail that originates at Selva Road and switchbacks down the natural bluff to the south of the residential subdivision. It outlets at the south end of Strand Beach. The Mid and Central Strand Accessways descend from Strand Vista Park through the residential subdivision. The Mid and Central Strands Accessways join in the center of the subdivision. The accessways consist of staircases in the upper and lower portions of its length and a sidewalk along an internal road in the center. These two accessways join together part way down the bluff slope, and the combined accessway outlets at the center of Strand Beach on the revetment top walkway designated by the HDCP as Strand Beach Park. Strand Beach Park provides lateral access along the entire length of Strand Beach. The beach is accessible via several staircases that link the revetment top walkway with the sand.

B. DESCRIPTION OF THE 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, though the City does not agree. The alleged unpermitted development activities that are the subject of and encompassed by this Settlement Agreement include closure of the Strand Access Areas 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, including locking them closed on a daily basis, often before sunset, and often unlocking them after sunrise; 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.”

C. PLANNING AND ENFORCEMENT HISTORY FOR THE PROPERTIES AND SURROUNDING AREA

Select permit and enforcement matters pertaining to the Subject Activities and/or Properties are described below. This section outlines the, at times contentious, but ultimately collaborative, progression of the parties from contrary positions to partnership.

In January 2004, the Commission certified Dana Point Local Coastal Program Amendment No. DPT-MAJ-1-03⁶. This document provides comprehensive policies for the Headlands development, including the requirement for the accessways that are the subject of these proceedings. In certifying the HDCP, the Commission included the following policy in the LCP:

(Public Access) LUE, Goal 5, New Policy: Recreation and access opportunities at

⁶ This amendment is largely captured in one document, the Headlands Development and Conservation Plan or “HDCP”.

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)[underlining added for emphasis]

The City of Dana Point approved CDP No. 04-23 in February 2005, which authorized the Developer to build The Strand at the Headlands and other components of the Headlands development. Conditions of this CDP required construction of the Strand Access Areas and their dedication to the City.

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 the Strand Access Areas. Commission staff has maintained throughout this progression to settlement that the City did not undergo any of the required Coastal Act-related procedures in conjunction with the adoption of this ordinance, nor did it coordinate with the Coastal Commission or issue itself a CDP for the change in intensity of use of the area and change in access to the water that would flow from the implementation and enforcement of the ordinance.

On October 7, 2009, during a site visit with the City, Commission staff observed that gates had been installed at the Mid-Strand and Central Strand Beach accessways. Staff also observed several signs that restricted public use of the Strand Access Areas to specific daylight hours.

By letter dated October 20, 2009 (**Exhibit 6**), and a Notice of Violation letter dated November 20, 2009 (**Exhibit 8**), Commission staff explained the reasoning behind its position that the Subject Activities are inconsistent with the City's LCP and the Coastal Act and that, in any event, they required a CDP.

The City responded to Commission staff's October 20th letter by letter dated November 5, 2009 (**Exhibit 7**), in which it explained its position that the Headlands project had been implemented in full conformance with the HDCP, that no CDP was necessary to establish hours of operation of the Strand Access Areas as the City's authority to set hours was acknowledged in the HDCP, and that no violations of the HDCP had occurred.

On December 16, 2009, Commission staff met with representatives of the City and the Developer to discuss resolution of the matter. Commission staff again met with the City on February 18, 2010, at the Headlands project site to discuss the Subject Activities. Staff subsequently mailed to the City a letter, dated March 4, 2010, in which staff memorialized the meeting and restated its concerns about the Subject Activities.

Nuisance Abatement Ordinance

On March 22, 2010, the City adopted a Nuisance Abatement Ordinance, No. 10-05 ("Nuisance Abatement Ordinance"), as an "urgency ordinance", in which the City concluded that public

nuisance conditions exist in the area of the Strand Access Areas. 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. The City staff report for the Nuisance Abatement Ordinance removed any doubt as to the purpose, saying the action was designed to eliminate “any question as to whether the Council’s adoption of Ordinance 09-05 and this Urgency Ordinance are exempt from the Coastal Act [based on the nuisance exemption in 30005(b)].”

Commission staff determined, in part on the basis of the staff report statements cited above, that the City’s March 2010 action included an “exemption determination.” Because Section 30625(a) of the Coastal Act states that “. . . any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission,” Commission staff opened an appeal period for appeals of the City’s exemption determination. Appeals were filed both by members of the public and by Commissioners, and the Commission conducted a public hearing on May 13, 2010, and found that the Nuisance Abatement Ordinance was not exempt from the permitting requirements of the Coastal Act.

Litigation History

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 and seeking to enjoin the Commission’s exercise of its authority. 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 (**Exhibit 9**), ruling that the Commission lacked jurisdiction to adjudicate the validity of the City’s Nuisance Abatement Ordinance, but further ruled, in the second case (**Exhibit 10**), that the Nuisance Abatement Ordinance was, in fact, invalid, and in the associated order (**Exhibit 11**), the Court granted declaratory relief to Surfrider, that to the extent the City continued to maintain the gates/and or signage, the matter would be within the Commission’s jurisdiction for further action. The Commission appealed the judgment in the first case, and the City appealed the judgment in the second case.

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 (**Exhibit 12**). The *Dana Point* decision held that the City’s legislative action in adopting the Nuisance Abatement Ordinance was not the sort of 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). It thus held that the Commission may take enforcement

action to address the City's Nuisance Abatement Ordinance if the City's action in declaring the nuisance was a pretext for avoiding its obligations under the LCP. 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.

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 for the Commission (**Exhibit 3**), ruling that the City did not properly and in good faith exercise its nuisance abatement powers. Specifically, the court found that the City "was not acting within the scope of section 30005, subdivision (b) of the Coastal Commission Act in adopting the Nuisance Abatement Ordinance... The court further finds that there was not, in fact, a nuisance or prospective nuisance at the time the Nuisance Abatement Ordinance was enacted."

In order to move this matter toward resolution, on November 3, 2015, the Executive Director of the Commission issued a Notification of Intent to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings to the City, the Developer and the HOA (**Exhibit 14**). The NOI further set forth a suggested framework to legally resolve the violation via "consent orders". In the NOI, Staff reiterated a strong desire to resolve this matter through a negotiated agreement with the City, Developer and the HOA.

In accordance with 14 CCR Sections 13181 and 13191, the letter was accompanied by a Statement of Defense ("SOD") form, and established a deadline for its completion and return. Thus, the parties were provided the opportunity to respond to the allegations contained within the Notice of Intent letter, to raise any affirmative defenses that they believed may exonerate them of legal liability for the alleged violations, or to raise other facts that might mitigate their responsibility.

Finally, through the NOI, Staff pointed out to the City, Developer and the HOA that should they settle the matter, the parties would not need to expend time and resources filing an objection to the assertions made in the NOI in the form of a Statement of Defense.

Later, in the evening of the same date, 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 establish new hours of operation for the South Strand Switchback Trail, Strand Beach Revetment Trail, and the Mid and Central Strand Beach Accesses as follows: one hour before sunrise to one hour after sunset. Pursuant to the terms of this Settlement Agreement, these proposed hours of operation will be further extended, and, in fact, certain accessways will be open 24 hours/day.

After the NOI was sent, the City, Developer, and HOA requested and were granted extensions to the deadlines for submitting a completed Statement of Defense form, and Staff continued

discussions with each of the parties for the purpose of reaching a comprehensive resolution of this matter.

On November 18, 2015, in response to the NOI and to respond to the alleged ongoing 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.

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

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).

In subsequent meetings and telephone conversations, the City expressed its interest in agreeing to a consent order that would comprehensively resolve this matter and working towards settlement rather than submitting a SOD. Although the City ultimately submitted a SOD during the period of discussions with the Commission staff, after reaching a proposed settlement with the Commission, the City agreed to withdraw that SOD for purpose of this consent administrative process. Thus, it does not currently constitute part of the record for these consent proceedings. Staff and the City have worked collaboratively towards an amicable resolution of the Subject Activities. The City signed this Settlement Agreement on March 29, 2016. In order to amicably resolve the violations through this Settlement Agreement, the City agrees not to contest the legal and factual bases for, the terms of, or the issuance of this Settlement Agreement, or to contest issuance of this Consent Order. Specifically, the City agrees not to contest the issuance or enforceability of this Consent Order at a public hearing or any other proceeding, and, along with Staff, supports issuance of this Settlement Agreement to resolve the matters addressed therein.

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. The resolution includes reliance on the permitting process to settle specifics of how public access at the site will be provided.

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.

This Settlement Agreement does not resolve the Commission's claims against the Developer or the HOA for the alleged Coastal Act violations described herein or associated alleged violations. Commission staff is open to working with the Developer and the HOA to reach a full resolution, and staff has met and discussed options for resolution with the Developer and the HOA, but if efforts going forward are not fruitful, Staff will have to evaluate future options to address the Developer and the HOA.

This Settlement Agreement is a result of a collaborative effort of City and Commission staff to reach a consensual resolution that maximizes public access to the coast at The Strand at the Headlands, which the Settlement Agreement does, including by providing unrestricted access to the coast via certain accessways at the site. For this reason, amongst others, staff recommends that the Commission issue the Settlement Agreement.

D. BASIS FOR ISSUANCE OF ORDER

1) Statutory Provisions

The statutory authority for issuance of Cease and Desist Orders, referred to herein in this instance as the Settlement Agreement and Settlement Cease and Desist Order (and abbreviated as the Settlement Agreement), is provided in Section 30810 of the Coastal Act, which states, in relevant part:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstance:

(1)...

(2)...

(3) The local government or port governing body is a party to the violation.

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

2) Factual Support for Statutory Elements

The following pages set forth the bases for the issuance of the proposed Settlement Agreement and Settlement Cease and Desist Order by providing substantial evidence that the Subject Activities were inconsistent with the requirements of the certified LCP.

The City of Dana Point Zoning Code, which constitutes the implementation policies of the City's LCP, Section 9.27.010, provides that a CDP, subject to the standards of the specific zoning designation, is required for all "development" within the Coastal Overlay District.

"Development" is defined in Section 9.75.040 of the City's zoning code as:

Development, Coastal - the placement or erection, on land, in or under water, of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto, construction, reconstruction, demolition, or alteration of the size of any structure; including any facility of any private, public, or municipal utility; and the removal of harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provision of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (underling added for emphasis)

The Subject Activities are: 1) development as defined above, 2) located within the Coastal Overlay District, so that the CDP requirement of Section 9.27.010 applies; 3) not authorized by Master CDP No. 04-23 (or any other CDP); and 4) not exempt. Any non-exempt development activity (including the Access Restrictions) conducted in the Coastal Overlay District without a valid CDP constitutes a violation of the City's LCP.

With respect to points #3 and 4 above, in making its ruling, the trial court in the initial decision in the litigation described above held "The City cannot act to abate the nuisance – i.e., limit hours of access/place gates – in a manner that is in excess of that necessary without obtaining a coastal permit." And with regard to the existence of a nuisance, the court held that "the record was entirely lacking in evidentiary support for declaring a nuisance...". The City disagreed and appealed the decision. Nonetheless, the City and the Commission wish to resolve this matter in a spirit of cooperation, and thus, although the Parties continue to maintain their respective positions regarding the activities described in litigation, the Parties have agreed to the terms and conditions set forth in this Settlement Agreement.

With respect to the last point, above, for the reasons that the Commission set forth in the above-referenced litigation, the Commission finds that the activities at issue were not exempt on the basis of any legitimate nuisance declaration pursuant to Section 30005 of the Coastal Act. The Commission agrees with the conclusion of the third trial court decision, on remand in 2015, that "Petitioner/Plaintiff City of Dana Point was not acting within the scope of section 30005, subdivision (b) of the [Coastal Act] in adopting the Nuisance Abatement Ordinance. The City's enactment of the Nuisance Abatement Ordinance was a pretext for avoiding the requirements of

its local coastal program. The court further finds that there was not, in fact, a nuisance or prospective nuisance at the time the Nuisance Abatement Ordinance was enacted.” Therefore, as the court noted, the activities were neither authorized nor exempt.

Anticipating that this would be the decision of the trial court on remand, the appellate court had held that

If the court determines that the City adopted the Nuisance Abatement Ordinance solely as a pretext for avoiding obligations under the local coastal program and/or that the development mandated by the Nuisance Abatement Ordinance exceeds the amount necessary to abate the nuisance, the court is directed to enter a new judgment in favor of the Commission. The court's judgment shall deny the City's request for a peremptory writ of mandate insofar as it seeks to prohibit the Commission from exercising jurisdiction over development that the court determines to be outside the scope of section 30005, subdivision (b).

The appellate court contemplated how the Commission might exercise jurisdiction, noting that

...although we have concluded that the Commission lacked jurisdiction under section 30625 to attempt to prohibit such development (see pt. III.A.2., ante), there are other provisions of the Coastal Act that the Commission could utilize in the event the trial court concludes on remand that section 30005, subdivision (b) does not preclude the Commission from exercising jurisdiction. For example, pursuant to section 30810, the Commission may enter an order "to enforce any requirements of a certified local coastal program . . . or any requirements of this division which are subject to the jurisdiction of the certified program . . . under any of the following circumstances: [¶] . . . [¶] (3) The local government or port governing body is a party to the violation.

Although it is the finding of the Commission that the Subject Activities required authorization pursuant to the Coastal Act, but did not receive such authorization and therefore the Commission has authorization to undertake this action, the City disagrees with this determination, and has appealed the decisions of the courts that have supported the Commission’s determination. However, the Parties have come to agreement on a means to move forward, as embodied in the terms of the Settlement Agreement, and both the City and Commission staff seek Commission approval of the proposed Settlement Agreement. Given the finding that unpermitted development has occurred in violation of the City’s LCP, in the form of the Subject Activities, the key criterion in section 30810 has been satisfied, and this Commission has jurisdiction to issue the Settlement Agreement.

E. ORDER IS CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT

The Settlement Agreement attached to this staff report as **Exhibit 1** is consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Settlement Agreement requires the City to: 1) lock open existing gates and refrain from operating gates at the Strand Access Areas, unless and until authorized pursuant to the Coastal Act, 2) modify gateways at the Strand Access Areas to make their appearance more welcoming to the public, 3) provide

unrestricted access at the Strand Access Areas, unless and until hours of operation are authorized pursuant to the Coastal Act, 4), provide, in perpetuity, 24 hour access to Strand Beach; 5) provide a combination of funds to coastal programs for children at Title 1 schools children and/or construction of new trails at the Headlands Reserve, 6) install enhanced public access and interpretive signage at the Strand Access Areas, 7) install bike racks and benches at the Strand Access Areas, 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 pending litigation.

F. SETTLEMENT AGREEMENT IS CONSISTENT WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of this Settlement Agreement to compel compliance with the Coastal Act through restoration of public coastal access at the Properties is exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 et seq., for the following reasons. First, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 et seq.). Because this is an enforcement action designed to protect, restore, and enhance natural resources and the environment, and because the Commission’s process, as demonstrated above, involves ensuring that the environment is protected throughout the process, three of those exemptions apply here: (1) the one covering actions to assure the restoration or enhancement of natural resources where the regulatory process involves procedures for protection of the environment (14 CCR § 15307); (2) the one covering actions to assure the restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment (14 CCR § 15308); and (3) the one covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” These Consent Orders are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances”

within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action to protect and restore natural resources and the environment, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

G. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of this Settlement Agreement (the “Properties”) are located adjacent to the 34000 block of Selva Road in Dana Point and are referred to by the Orange County Assessor’s Office as APNs 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. The Properties are located within the Coastal Zone. There is a certified LCP applicable to the Properties.
2. The City of Dana Point, County of Orange, and The Strand Homeowners Association separately own parcels that collectively constitute the Properties.
3. The activities undertaken on the Properties that are the focus of this Settlement Agreement (“Subject Activities”) included, but may not have been limited to, activities, structures and materials 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 required but not received, and were not exempt, including on the basis of the ordinances described herein that were adopted as a pretext for avoiding requirements of the LCP – points on which the Parties have disagreed, in violation of the City of Dana Point LCP. The alleged unpermitted development activities that are the subject of and encompassed by this Settlement Agreement include closure of the Strand Access Areas 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.
4. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order (herein referred to as a Settlement Agreement) under these circumstances, to enforce the terms of a certified LCP. In areas where a local government obtains permitting authority under the Coastal Act through the Commission’s certification of an LCP, the Commission retains enforcement authority to address violations of the local government’s LCP under the conditions set forth in and as specified in Coastal Act Section 30810(a)(1)-(3). In this situation, the local government is a party to the violation, and, thus, pursuant to Section 30810(a)(3), the Commission has jurisdiction over the enforcement matters at issue.
5. The actions to be performed under this Settlement Agreement, if done in compliance with the Consent Order and the plans approved therein, will be consistent with Chapter 3 of the Coastal Act.

CCC-16-CD-02 (Dana Point)

Staff recommends that the Commission issue Settlement Agreement and Settlement Cease and Desist Order No. CCC-16-CD-02. CCC-16-CD-02 attached hereto as **Exhibit 1**.

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 agendize 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

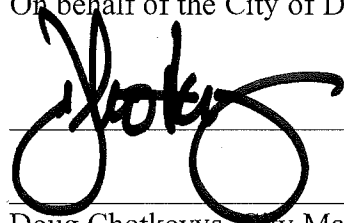
The City and its representatives attest that they have reviewed the terms of this Settlement Agreement and understand that their consent is final and stipulate to its approval by the Commission.

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 _____ on behalf of the California Coastal Commission:

John Ainsworth, Acting Executive Director

April __, 2016





**The Strand at the
Headlands**

Vicinity Map



**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	<u> X </u>
CM	<u> X </u>
CA	<u> X </u>

DATE: MARCH 22, 2010

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CITY ATTORNEY, CHIEF OF POLICE SERVICES, DIRECTOR OF COMMUNITY DEVELOPMENT, NATURAL RESOURCES PROTECTION OFFICER

SUBJECT: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA DECLARING THE EXISTENCE OF PUBLIC NUISANCE CONDITIONS IN THE VICINITY OF STRAND VISTA PARK AND ORDERING THE PROHIBITION AND ABATEMENT THEREOF BY AMENDING CHAPTER 13.04 OF THE DANA POINT MUNICIPAL CODE SO AS TO ADOPT OPERATIONAL HOURS AND ORDER THE IMPLEMENTATION OF ENFORCEMENT DEVICES

RECOMMENDED ACTION:

That the City Council adopt the attached Urgency Ordinance entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA DECLARING THE EXISTENCE OF PUBLIC NUISANCE CONDITIONS IN THE VICINITY OF STRAND VISTA PARK AND ORDERING THE PROHIBITION AND ABATEMENT THEREOF BY AMENDING CHAPTER 13.04 OF THE DANA POINT MUNICIPAL CODE SO AS TO ADOPT OPERATIONAL HOURS AND ORDER THE IMPLEMENTATION OF ENFORCEMENT DEVICES

BACKGROUND:

In anticipation of the dedication of new public park facilities associated with the Headlands development, in May 2009, the City Council adopted Ordinance 09-05 (Supporting Document B) for the purpose of prohibiting and abating public nuisances that would otherwise exist by setting operating hours, as it does for all of its parks, during which the public may utilize the public parks dedicated by the Headlands development including the "South Strand Switchback Trail," the "Mid Strand Beach Access" and the "Central Strand Beach Access." The Dana Point City Council approved Local Coastal Program Amendment 01-02 (the "LCP") and Master Coastal

Development Permit 04-23 (the "CDP") for the Headlands project which specifically included gates at the various entry points to the residential development from which public beach access may occur, as a means by which to enforce hours of operation and thereby prohibit and abate public nuisances that would otherwise exist. The California Coastal Commission (the "CCC") certified the LCP following its approval by the City Council.

Since the adoption of Ordinance 09-05, Police Services, the City's Natural Resources Protection Officer, and Community Development staff (which includes Code Enforcement) have reported an inordinate amount of enforcement activities that have occurred, and that continue to occur at an alarming pace at the project site. In the last 13 months there have been over 130 documented calls for police services at the site. This call level far exceeds the amount of calls to any other localized area of the City, including areas that have traditionally received the heaviest level of calls for service. Most troubling is that 35, or nearly 1/3 of these calls for police services, have occurred since the fencing came down at the site and the Mid-Strand Beach Access and Central Strand Beach Access were opened to the public. City staff has observed innumerable violations of City ordinances at the site which have not been the subject of documented calls for police services, and these are estimated to at least equal, and more likely exceed the documented calls for police services. Police Services estimates that an unprecedented number of calls for a localized area of the City (expected to exceed 400) will be received for the area this year based on the number of calls received to date.

In October, just prior to the opening of the various public amenities associated with the Headlands, the City received a letter from CCC staff suggesting that the City did not have the legal authority to set the hours of operation, that signs at various locations were inappropriate, and that the above noted gates are not permitted. Staff has attempted to work with CCC staff to resolve these issues since that time. Notably, City staff disagrees with the CCC staff's analysis including for the following reasons: (i) the Coastal Act specifically allows the City to take actions to declare, prohibit and abate public nuisances as has already occurred here; (ii) the LCP specifically authorizes the City to set hours of operation for the parks and trails in question; (iii) the LCP and the CDP specifically authorize the gates; and (iv) public access to the beach can be accommodated during times of closures via adjoining alternate access routes at the South Strand Switchback Trail and the North Strand Access, which are not gated and are open from sunrise to sunset and 5:00 AM to Midnight, respectively.

After several months of working with CCC staff to resolve these issues, on March 5th the City received a letter from the CCC staff (Supporting Document C) in which it threatens to commence legal action against the City for purportedly violating the Coastal Act and the LCP. The basis of the letter is the assertion that: (i) the City may not set hours of operation without processing a CDP, (ii) the gates in question (even though shown in drawings that are part of the LCP and CDP) are a violation of the LCP and require both a LCP and CDP; and (iii) signage at various access points may have the unintended effect of restricting public access. Importantly, the CCC staff's letter requires that the gates and signs be removed, and that the City stop enforcing "nighttime closures" as dictated by the City's hours of operation, by April 2, 2010.

Police Services, the City's Natural Resources Protection Officer, and Community Development staff (which includes Code Enforcement) are very concerned about the CCC staff's position in light of the high volume of unlawful activity that has taken place on and adjacent to the access points in question, and especially given that Spring Break is about to commence on April 2.

As discussed further below, the recommended action, adoption of the attached Urgency Ordinance, will: readopt and reaffirm Ordinance 09-05; once again declare the existence of public nuisance conditions in the vicinity of Strand Vista Park that Ordinance 09-05 and the LCP/CDP were intended to prohibit and abate; and order the prohibition and abatement of such nuisance conditions by the adoption of operational hours and the implementation of gates and signage as a means of enforcement. The Urgency Ordinance would take effect immediately upon adoption, and is necessary in order to prohibit and abate the threat to public health, safety and welfare, and nuisance conditions, that would immediately come into existence if the City were to comply with the demands set forth in the letter from CCC staff.

ISSUE:

Based on overwhelming evidence of ongoing unlawful activity, Police Services, the City's Natural Resources Protection Officer, and Code Enforcement are very concerned that absent the recommended action a significant and immediate threat to public health, safety and welfare will exist, and specifically that such threat constitutes a public nuisance. This situation requires that there be limited hours of operation and access to all the trails in question, the implementation of signage, and the implementation of the gates in question to prevent unfettered public access to the residential neighborhood and existing construction site during nighttime and early morning hours.

Of particular concern, and driving the need to act by an urgency ordinance which will become effective immediately, are two factors. The first is the dramatic increase in the number of police calls since January 7, 2009, when the construction fence in Strand Vista Park was removed. The second is the fact the Capistrano Unified School District (and many other school districts) will commence "Spring Break" on April 2nd, the date the CCC staff has demanded that the gates be removed and the "nighttime closures," which result from the City's current hours of operation, cease. Based on past experience, Police Services believes that a significant increase of beach activity by young people will coincide with Spring Break, and that this will result in an increase of both actual incidents, and opportunities for potential incidents (such as trespassing, graffiti, and vandalism), particularly during evening and nighttime hours. Police Services and Code Enforcement both believe that in order to prohibit and abate nuisances that will inevitably occur, and those that would otherwise occur, it is imperative to both have hours of operation in place to effectuate nighttime closures and to have gates at the entry points to the residential neighborhood (which is still primarily an active construction site). In addition, signs are needed to advise the public of the operational hours, as without signs the public cannot be expected to know and comply with applicable operational hours.

City staff disagrees with the CCC staff's assessment that the signs, hours of operation, and gates violate the LCP or the Coastal Act. There is no need to engage in a debate or controversy over these issues, however, in as much as Section 30005 of the Coastal Act provides that nothing in the Coastal Act is a limitation on the power of any city to declare, prohibit, and abate nuisances. Accordingly, to abate and prohibit the imminent threat to public health, safety and welfare, and the public nuisance that would otherwise immediately exist if the CCC staff's demands were met, City staff recommends adoption of the accompanying Urgency Ordinance (Action Document A) which declares the existence of public nuisance conditions, and orders the prohibition and abatement of such conditions through the adoption of hours of operation (which result in closures during hours when City enforcement resources are most limited, and the existing residences, undeveloped acreage and construction sites are most vulnerable) and the continued use of gates to be locked open during operating hours to encourage public access and locked closed during closure hours to prohibit and abate nuisance conditions. Notably, the recommended action is for all practical purposes declarative of existing law and approvals, and is duplicative of existing Ordinance 09-05 which unquestionably was adopted for the purpose of prohibiting and abating public nuisances. Nevertheless staff proposes the recommended action since during the adoption of Ordinance 09-05 the fact its purpose was prohibiting and abating nuisance conditions was not expressly set forth. Staff recommends the adoption of the accompanying Urgency Ordinance to clarify the purpose and intent of Ordinance 09-05 so that there can be no dispute about this issue.

Typically, an ordinance requires two meetings to be adopted, one for a first reading and one for a second reading; and, an ordinance is not effective until 30 days following its adoption. An urgency ordinance, in contrast, is adopted and becomes effective upon its first reading and no second reading is required. Here, an urgency ordinance is necessitated by: (i) the dramatic increase in calls for police services at the Headlands site in general, and the increased level of enforcement needs that has occurred since the opening of Strand Vista Park, in particular; (ii) the fact Spring Break is scheduled to commence April 2nd, the exact date the CCC staff is demanding the cessation of nighttime closures and the removal of the gates in question; combined with (iii) the fact Police Services and Code Enforcement believe that if as of April 2nd nighttime closures cease and the gates in question are removed, as demanded by CCC staff, public nuisance conditions will immediately increase, posing additional threats to public health, safety and welfare, especially because of the commencement of Spring Break that day; (iv) the fact time does not permit the adoption of an ordinance through the typical process that would be effective as of April 2nd so as to abate the nuisance conditions that would commence on that date if the CCC staff's demands were met; and (v) the important goal of eliminating the risk of unnecessary, expensive litigation with the CCC which might exist as of April 2nd absent effectuation of a clear means to abate the identified public nuisance conditions that unquestionably complies with the Coastal Act.

DISCUSSION:

In anticipation of the opening of the public beach access points, on May 11, 2009 the City Council adopted Ordinance 09-05. This Ordinance amended Title 13 the City's Municipal Code, which is the Section of the Municipal Code that sets forth hours of operation and other regulations for the City's various parks. In pertinent part, Ordinance 09-05 set the hours during which the public may use the South Strand Beach Access (also called the South Strand Switchback Trail) as sunrise until sunset; and set the hours during which the public may use the Mid-Strand Vista Park Access (also known as the Mid-Strand Beach Access) and the Central Strand Beach Access as 8am to 7pm from Memorial Day through Labor Day and 8am to 5pm the rest of the year.

Ordinance 09-05 was adopted pursuant the City's broadly defined "police powers" by which, pursuant to Article XI, Section 7 of the California Constitution, it may adopt rules to promote and protect the general health, safety and welfare of the community. Anything that is injurious to the general health, safety and welfare of the community, or any neighborhood is defined as a public nuisance. More specifically, a public nuisance is something that affects an entire community or neighborhood, or any considerable number of persons at the same time (Cal. Civ. Code § 3480; Cal. Penal Code § 370) and is an act or omission which interferes with the interests of the community or the comfort or convenience of the general public and interferes with the public health, comfort and convenience. (*Venuto v. Owens Corning Fiberglass Corp.*, (1971) 22 Cal. App. 3d 116). Just as it provides the City the power to adopt ordinances to protect public health, safety and welfare, the "police power" also grants the City the authority to declare what activities or uses constitute a nuisance, and to enact regulations designed to eliminate or reduce the occurrence of a nuisance in an effort to protect the general welfare. (Cal. Const. art. XI, § 7; Cal. Gov't Code § 38771 [a city legislative body may, by ordinance, declare what constitutes a nuisance].) It seems self evident, therefore, that by adopting an ordinance that imposes regulations to promote and protect public health, safety and welfare, the Council is at the same time taking action to prohibit and abate conditions that are injurious to public health, safety and welfare (i.e., taking an action to prohibit and abate nuisance conditions.)

In light of the foregoing, staff thinks it is obvious that the purpose of adopting Ordinance 09-05 pursuant to its police power (as well as the purpose of the LCP expressly granting the City the right to set hours of operation) was to prohibit and abate public nuisance conditions (i.e., conditions injurious to public health, safety and welfare) that would otherwise exist, such as loitering, drinking, vandalism, trespassing, and similar activities which could otherwise easily occur (in particular during nighttime and early morning hours) without some form of municipal regulation. Although in adopting Ordinance 09-05 the Council did not make any specific nuisance findings, the fact the adoption was an exercise of its police powers for the general promotion of health, safety and welfare of the community would seem to make clear nuisance prevention and abatement was at its core. Indeed, the City's Municipal Code specifically provides that any violation of the Municipal Code or any violation of any ordinance adopted by the City Council shall constitute a public nuisance. (DPMC Section 1.01.240.)

The proposed action accomplishes two critical objectives: (i) it assures that the nuisance conditions will be prohibited and abated as Spring Break approaches, and (ii) it eliminates any question as to whether the Council's adoption of Ordinance 09-05 and this Urgency Ordinance are exempt from the Coastal Act as a result of the fact the Council is declaring, prohibiting and seeking to abate public nuisance conditions, and thereby avoid further disputes and possible litigation with the CCC concerning Coastal Act compliance. Towards that end, the Council is being requested to declare the existence of public nuisance conditions, and to order that they be prohibited and abated by the setting of hours and use of pedestrian gates and signs, based on the facts set forth below.

Loitering, trespassing, vandalism and similar concerns at the South Strand Switchback Trail, Central Strand Beach Access and Mid-Strand Beach Access.

Since construction began at the Headlands project, it has been a target of vandalism, graffiti and trespassing. Between 2005 and 2008 numerous police reports were taken by the Orange County Sheriff for such acts. The severity of some of these actions has led to specialized police activities, including assistance from the FBI. A redacted sampling of some of these reports (ones which Police Services indicates would not compromise security concerns) is included as Supporting Document D, and demonstrates significant graffiti and vandalism problems at the site. Between February 15, 2009 and January 7, 2010, there were 96 calls for police services at the property. Police Services reports that this is an extraordinary number of calls for any localized area of Dana Point, and exceeds the number of calls for service in areas generally considered as areas of high crime incidents by City standards. Since January 7th, 2010, when the construction fence in Strand Vista Park was removed, allowing for the opening the Mid-Strand Beach Access and the Central Strand Access, there has been a **dramatic increase** in the number of police calls, with 35 calls for service being received in the two month period between January 7th and March 8th. Police Services reports they estimate over 400 calls will be received in 2010 based on the current level of calls for service. Supporting Document E is a summary of calls for police services between February 15, 2009 and March 8, 2010, which demonstrates a significant number of calls for trespassing, vandalism, loitering by suspicious persons, drinking, drug use and other nefarious activities. Staff reports having seen many instances of unlawful activity that are not included in the recorded police calls, such as trespassing in ESHA, trespassing on private property within the Headlands residential development, and drinking; and, it is estimated that the number of such instances which are not recorded as calls for police services exceed the documented calls for service. For instance, the City has created a new position to assist with policing the Headlands' public amenities, a Natural Resources Protection Officer. He alone reports issuing verbal warnings for issues such as trespassing violations on a regular basis, estimated at more than twice per week.

Some of the instances of unlawful conduct are worthy of note. Police Services has dealt with ongoing vandalism to the fence that surrounds the residential area, including specifically along the South Switchback Trail. At least two of these instances have involved acts that constitute felonies which are currently being criminally prosecuted, and the fencing around the entire project site has been subject to significant damage.

Several women were observed by staff having a picnic of sorts and drinking alcoholic beverages in an area of ESHA and are being prosecuted for not only trespassing, but also for resisting arrest. Staff has observed individuals having sunset picnics on vacant residential lots. In this regard, staff has observed individuals sitting on ledges and dangling their legs over drops that exceed 50 feet in some cases. Accordingly, staff is concerned that a significant threat to public safety exists.

It is also worth noting that a significant threat to public safety exists by virtue of the fact most of the residential sites have not yet been developed, and will not be for years. In the interim, there is active construction occurring and no physical barrier within the project's residential boundaries to keep the public out of the construction areas (other than the gates in question). Not only is the public subject to personal injuries associated with wandering around on a construction site, but also a security threat exists with regards to persons who may wish to steal from or damage such sites (something that occurred with alarming frequency during the site preparation portion of the project).

The Chief of Police reports that it is his professional opinion that unless the Mid-Strand Beach Access and Central Strand Beach Access are closed to nighttime and early morning use, and gated to ensure that there is no public access during the closures, public nuisance conditions will continue to exist and will increase within the residential area. He reports that based on his experience, combined with the exorbitant number of calls for service that already exist in the area in general, it is his professional opinion that without gates the two unlit Access trails, the residential area and the undeveloped acreage will become a mecca for unlawful activities such as trespassing, drug use, drinking, loitering, thefts, underage parties and similar mischief, vandalism, and other crimes. He reports that resources simply do not exist to allow for the type of Sheriff patrols in the nighttime and early morning hours which would be needed to combat these unlawful activities. In addition, he reports that the City can anticipate a significant increase in the demand for, and cost of police services as a result of the enforcement activities that will be the result of unlawful acts at the site if gates do not exist to restrict access during these hours.

The Police Chief reports that it is his professional opinion that the South Switchback Trail needs to be closed to the public from sunset to sunrise. He believes that if the public is allowed access to this area during nighttime hours the types of public nuisance conditions noted above will exist, and that the recommended hours of closure are necessary to prohibit and abate public nuisance conditions. It is his opinion that based on the available lines of sight from the existing roadway, adequate enforcement should be possible so as to prohibit nuisance conditions if hours of closure are set at sunset to sunrise as is the case under Ordinance 09-05.

City staff, including the Police Chief, Code Enforcement, and Community Development staff, have collaborated to analyze the conditions within the gated confines of the Mid-Strand Beach Access and Central Strand Beach Access. Staff's collective conclusion is that conditions at this location are different than at the South Switchback Trail, and hence different hours of operation are needed to prohibit and abate nuisance

conditions. It is noted that there are not clear lines of sight to observe the Mid-Strand Beach Access or the Central Strand Beach Access from either the roadway or parking lot, as is the case with the South Switchback Trail. Importantly, no physical barriers exist within the gated confines to keep the public from wandering off the two Access trails, and hence an ability to access the entirety of the developed residential area and the undeveloped acreage exists and must be monitored. Staff feels it is reasonably necessary to allow for a certain limited amount of daylight to remain after the gates are closed in order to allow the site to be secured.

An additional difference is the existence of the gates in question. Practical concerns exist once it is determined, as is the case here, that gates are needed. First, personnel must be available to perform the task of both opening and closing the gates and securing the City's two access trails that exist within them. In addition, it is important to for members of the public have a clear, objective closing time so as to ensure they do not become locked within the gates. For instance, if all gates closed suddenly at 7pm, members of the public using the trails might be trapped inside. In terms of a procedure, the current plan and procedure is to cause the gates at the easterly (parking lot) end of the two Access trails to be locked first, and then walk the site, clearing any remaining members of the public out of the westerly (beach) end before locking the gates at that end. The recommended hours of operation for the Mid-Strand Beach Access and the Central Strand Beach Access were determined by taking into account the need for a fixed, objective time for the reasons noted above, combined with a desire to attempt to keep the trails open as late in the day as reasonable, while still generally allowing for daylight to clear and secure the area. Staff recognizes that at certain times in the year there may no longer be daylight at closing time, just as at other times there may be some daylight remaining after the gates are closed. Ultimately, the times recommended were selected after balancing the need for clearly stated, objective time frames and the availability of personnel to open and close the gates and secure the site, against the vagaries of when sunset/sunrise occurs.

In terms of signage, staff feels it is imperative that signs indicating operational hours be posted in order for the proposed method of nuisance prohibition and abatement to be effective. Absent such signs, members of the public will have no practical way of knowing when the trails are closed. Police Services reports that signs are needed to advise the public of this information (in particular at the un-gated South Switchback Trail). In the absence of signs at the South Switchback Trail, Police Services reports it is their experience that the public will use the trail at all hours, and will likely be resistant to compliance with oral instructions to leave at times when the trail is closed. Moreover, Deputies will be hampered in enforcement efforts as the courts will be less likely to uphold citations absent clear notice of operating hours. While less of an issue due to the gates, some of the same concerns exist with regards to the Mid-Strand Beach Access and Central Strand Beach Access.

Staff notes that public access to Strand Beach is not impacted by the recommended action. To ensure public access during times when the Mid-Strand Beach Access and Central Strand Beach Access are open, the proposed Ordinance requires that the gates be locked open during operating hours. (Supporting Document F is attached for

reference and is comprised of photos of the site, including specifically photos depicting the gates in both their locked open and locked closed positions.) In addition, a newly improved, lighted County stairway exists in close proximity to the South Strand Switchback Trail and Mid-Strand Beach Access and Central Strand Beach Access. (Note that the City's inclined elevator/funicular is adjacent to the County Stairway [Supporting Document F includes photos that depict the County stairway, the funicular landing, and the South Strand Switchback]). This County stairway will continue to provide access to Strand Beach during such hours when the County allows public use and access to the beach and the City's trails are closed. Notably, to ensure the public is aware of alternate access points when the Mid-Strand Beach Access and Central Strand Beach Access are closed, signs at the easterly gates on the Mid-Strand Beach Access and Central Strand Beach Access point out the alternate routes provided via the South Strand Switchback Trail and the County stairway -- as well as their respective hours of operation (See Supporting Document F).

Finally, staff points out one substantive matter contained in the proposed Urgency Ordinance that is a change from existing Ordinance 09-05. Specifically, the hours of operation for the Mid-Strand Beach Access and Central Strand Beach Access are recommended to be from 8am to 7pm from May 1st, through September 30th each year, as opposed to being from Memorial Day through Labor Day each year. This will add nearly 60 days to the "summer season" during which the two access points remain open until 7pm, rather than closing at 5pm. Staff feels as though these time frames are consistent with the goals and constraints it evaluated in recommending the operational hours for these two access trails and can be supported by available resources.

Additional concerns at South Strand Switchback Trail.

In addition to the issues noted above, Staff believes site conditions at the South Strand Switchback Trail require that it be closed between sunset and sunrise for the forgoing reasons. The South Strand Switchback Trail is a steep, winding, unlit trail. The City was not able to require the installation of lights due to the adjacent ESHA conditions. (See photos, Supporting Document F.) These site conditions require that the trail be closed between sunset and sunrise in order to prohibit and abate existing nuisance conditions, and due to the need to prohibit and abate nuisances that would pose a threat to habitat, and which stem from both liability and safety concerns. Staff is concerned that if used at night this trail poses a threat to public health, safety, and welfare, and will interfere with the interests of the general community and adjacent natural habitat. Notably, this trail has already been the site of one felony. While the trail is safe for use during daylight hours—it was built as designed and approved by qualified professionals—if used between sunset and sunrise the public may be subjected to injuries and the likelihood of the nuisance activities that have been previously noted will continue unabated. Accordingly, the public health, safety, and welfare are being harmed as a result of both the existing nuisance conditions, and the potential for injuries with the costs of litigation related thereto. Additionally, the adjacent habitat, which has been deemed ESHA by the CCC, requires that public access be controlled and moderated to ensure the preservation of existing flora and fauna. Staff believes these factors

constitute public nuisance conditions that should be prohibited and abated by adopting an ordinance setting hours which effectively close this trail between sunset and sunrise.

Comment re Coastal Commission Staff's Legal Position

City staff is at a loss to understand how the CCC staff can take the position a violation of some sort exists as a result of either: (i) the City setting hours for the South Strand Beach Access, the Mid-Strand Vista Park Access, and Central Strand Beach Access, or (ii) the City effectuating nighttime/early morning closures which are enforced by the gates in question. The LCP relevant to the Headlands development (also known as the Headlands Conservation and Development Plan or HDCP) requires five means of public beach access. It specifically contemplates that gates regulating public access will exist, and only requires the fifth access point (a funicular) if such regulatory barriers are approved. The HDCP also specifically provides that the City will set the hours of operation for these public beach access points. The HDCP (portions of which that are relevant to this staff report have been included collectively as Supporting Document G) specifically reads in pertinent part as follows:

“Strand Vista Park Shall include five vertical public beach access pathways – South Strand Beach Access, Mid-Strand Vista Park Access, Central Strand Beach Access, North Strand Beach Access, and if gates, guardhouses, barriers, or other development designed to regulate or restrict public access are approved for Planning Area 2, a public funicular (inclined elevator).”

(HDCP pg. 4-53, Item 5 of Table 4.5.4)

“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.”

(HDCP pg. 4-53, Item 5 of Table 4.5.4.).

The LCP/HDCP approved by the City Council and the CCC for the Headlands additionally depict pedestrian access gates at the easterly (parking lot side) side of the Central Strand Beach Access and the westerly side (beach side) of the Central Strand Beach Access/Mid-Strand Vista Park Access. [See, Supporting Document G, HDCP Figures 4.4.15 and 4.12.4.] The CDP approved by the City also depicts gates at these two points, and in addition depicts gates at the easterly side of the Mid-Strand Vista Park Access. [See relevant graphics from CDP collectively included as Supporting Document H.] Notably, the CDP was appealed to the CCC for a so called “substantial issue determination” -- a process by which the CCC decides if there is enough of a chance that the CDP is out of compliance with the LCP that a further hearing and investigation by the CCC is warranted. The CCC staff report on the matter asserted that, among other things, a substantial issue existed as to whether public access as approved in the CDP is consistent with the LCP. After the hearing, the CCC determined there was no substantial issue, or, stated otherwise, it determined the CDP (which includes the graphics which comprise Supporting Document H) was consistent with the LCP. Accordingly, City staff has determined the City is in compliance with the Coastal

Act (and the LCP), and would be even absent taking action to declare, prohibit and abate nuisance conditions as it did in adopting Ordinance 09-05 and as contemplated by the current recommended action. This information is simply provided for reference in as much as Coastal Act restrictions which might otherwise apply if CCC staff were legally correct are not pertinent to nuisance declaration, prohibition and abatement actions such as are represented by Ordinance 09-05 and the proposed Urgency Ordinance.

Urgency Conditions

As noted above, in the last two months since construction fencing in Strand Vista Park was removed, there has been an alarming increase in the number of police calls for service at the Headlands site. In addition, Spring Break commences on April 2nd (the same date as the CCC staff is demanding that the City cease enforcing nighttime closures and remove the gates and signs.) Police Services and Code Enforcement report that the City will have an influx of activity at the beach as a result. Of particular concern is the fact that removal of the gates and signs, and cessation of enforcement of nighttime closure of the trails in question, would create unrestricted, unlit, access to the general public, including underage individuals looking for places to loiter, drink, "party" and engage in other unlawful acts. The existence of unsecured construction sites within in the residential area presents a grave concern to Police Services in that without gates significant vandalism is likely to occur when unsupervised, underage persons have an opportunity to be out of school at night in the area. The Police Chief has reported that in his professional opinion, and based on the level of police activity already occurring at the site, the combination of removing gates and signs, the cessation of enforcement of the existing nighttime closure hours, and the introduction of Spring Break would be a law enforcement disaster. He reports that the level of activity at the site under these conditions would create an immediate threat to public health, safety and welfare. The Police Chief and City staff recommend that the proposed ordinance be adopted on an urgency basis so as to ensure it becomes effective immediately and prior to Spring Break so that the nighttime closures and gates in question can remain in place during that period. Otherwise, it is their opinion that significant public nuisance conditions will continue, and will increase during Spring Break, for all the reasons noted above.

By adopting the recommended ordinance as an urgency measure, the City will be able to ensure that a clear means to prohibit and abate the identified public nuisance conditions will exist, and that this abatement process will unquestionably comply with the Coastal Act. At the same time it will achieve the important goal of eliminating the risk of unnecessary, expensive litigation with the CCC that would otherwise exist as of April 2nd.

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Action Document A**ORDINANCE NO. 10 - XX****AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF DANA POINT, CALIFORNIA DECLARING
THE EXISTENCE OF PUBLIC NUISANCE CONDITIONS IN
THE VICINITY OF STRAND VISTA PARK AND
ORDERING THE PROHIBITION AND ABATEMENT
THEREOF BY AMENDING CHAPTER 13.04 OF THE
DANA POINT MUNICIPAL CODE SO AS TO ADOPT
OPERATIONAL HOURS AND ORDER THE
IMPLEMENTATION OF ENFORCEMENT DEVICES**

WHEREAS, City of Dana Point (the "City") City Council has been advised by Police Services and other staff that (1) public nuisance conditions exist at the Headlands project (the "Project"), and (2) the ability to close certain pedestrian access ways (the South Strand Switchback Access, the Mid-Strand Beach Access and the Central Strand Beach Access) during specified hours, as well as maintenance of gates and appropriate signage at these locations is necessary to abate these conditions;

WHEREAS, The California Coastal Commission (the "Commission") has asserted that (1) the City is presently unauthorized to restrict hours for public use of the Project pedestrian access ways because establishment of such hours constitutes "development" under the California Coastal Act for which the City would be required to obtain a Coastal Development Permit, and (2) gates restricting public use of the Mid-Strand Beach Access and Central Strand Beach Access are not authorized by the Coastal Act; and

WHEREAS, Division 20 of the California Coastal Act, Section 30005 provides, in pertinent part that no provision of the Coastal Act is a limitation on the power of any city to declare, prohibit, and abate nuisances; and

WHEREAS, City's City Council has previously declared that public nuisance conditions exist at the Project in the absence of nighttime closures of the access ways in question, and specifically the South Strand Switchback Trail, the Mid-Strand Beach Access, and the Central Strand Beach Access, as more fully set forth in Ordinance 09-05; and

WHEREAS, City's City Council desires to exercise the authority vested in it by Article XI, Section 7, of the California Constitution, and California Government Code Section 38771 (which power is specifically confirmed by Section 30005 of the Coastal Act), and leave no doubt that it has and hereby does declare nuisance conditions exist at the Project (as more fully described herein) and has and hereby does order that such

conditions be prohibited and abated by the implementation of closures, gates and signs (as more fully described herein); and,

WHEREAS, on March 5, 2010, the City received a notice from the Commission that, in order to avoid legal action, on or before April 2, 2010 the City is required to cease enforcing the hours of operation for the parks specifically closures of the Mid-Strand Beach Access, the Central Strand Beach Access and the South Strand Switchback Access as required by Ordinance 09-05, and further that the City must remove the pedestrian gates and signs located in the related area; and

WHEREAS, City's City Council finds and determines that based upon the facts presented to it by staff in the consideration of this matter (which information the Council has considered, has determined is accurate, and adopts as a basis for adopting this Ordinance), conditions exist which require the adoption of this Ordinance as an "urgency ordinance" such that it will be adopted and become effective immediately upon its introduction pursuant to Government Code Sections 36934 and 36937; and

WHEREAS, adoption of this Ordinance will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings related to public nuisances at the Headlands Parks including the South Stand Switchback Trail, Central Stand Beach Access and Mid-Strand Beach Access.

Based upon the staff report accompanying this matter and evidence presented to the City Council in connection with its consideration of this Ordinance, the City Council finds as follows:

1. Since construction began at the Headlands project, it has been a target of vandalism, graffiti, trespassing, loitering, and other unlawful activity.
2. The police calls for services at the Project are at an extraordinary level exceeding the level of calls with any other localized area in the City.
3. Persons are committing unlawful acts within the parks along the South Strand Switchback Trail, which constitute public nuisance conditions, including but not limited to loitering, trespass, drinking, graffiti, drug use and vandalism to area fences.
4. Persons are committing unlawful acts along the Mid-Strand Beach Access and Central Strand Beach Access and within the gated portions of the residential area of the Project, including but not limited to drinking, loitering, vandalism, graffiti, and trespass.

5. Persons are committing unlawful acts in the general vicinity of the South Switchback Trail, the Mid-Strand Beach Access, and the Central Strand Beach Access, including but not limited to loitering, drinking, drug use, vandalism, graffiti, and trespass, and, for all the reasons presented to the City Council during its consideration of this matter, in the absence of regulations closing the parks including these access points as provided in this Ordinance, gating the access points that traverse through the Headlands residential neighborhood, and utilizing signs to display the hours of operation for these facilities, such activities will occur and continue to occur unabated.

6. In the absence of the closure regulations, signage, and gates restricting public access during closures, all as specified by this Ordinance; and, due to the lack of physical barriers to keep members of the public on the Mid-Strand Beach Access and Central Strand Beach Access, unlawful activities such as trespassing, drug use, drinking, loitering, and vandalism, and theft of private property have occurred and will continue to occur upon the common areas, homes, and lots in the Headlands residential neighborhood. Moreover, these activities pose a substantial risk of injury to members of the public, and expose the City to liability and litigation costs.

7. In the absence of closure regulations, signs, and gates restricting public access during closures, all as set forth in this Ordinance, unlawful activities will occur within the parks including at the South Strand Switchback Trail and the general area of the Mid-Strand Beach Access and the Central Strand Beach Access, and sufficient recourses do not exist to allow for the type of Sheriff patrols which would be needed to combat these unlawful activities; moreover, a significant increase in the demand for and cost of police services will occur as a result of the enforcement activities that will be needed as the result of unlawful acts at the Project if closures do not occur and signs and gates do not exist as set forth in this Ordinance.

8. Public health, safety and welfare considerations are negatively impacted if the South Strand Switchback Trail is open for use by the public at night in as much as it is unlit and potentially unsafe for nighttime use, and is adjacent to Environmentally Sensitive Habitat Area which must be protected from light, noise, trespassing and other disturbances in order to preserve flora and fauna.

SECTION 2. Declaration of Public Nuisance due to Conditions Described in Section 1.

Based upon the staff report accompanying this matter and evidence presented to the City Council in connection with its consideration of this Ordinance, the City Council declares as follows:

The findings set forth in Section 1 above constitute a threat the general health, safety and welfare of the entire community, as well as the Headlands neighborhood, and the conduct and activities described interfere with the interests of the community at large, and the comfort and convenience of the general public. Accordingly, the findings

in Section 1 above constitute public nuisance conditions which are to be prohibited and abated as set forth in this Ordinance.

SECTION 3. *Order for prohibition and abatement of public nuisance conditions.*

Based upon the staff report accompanying this matter and evidence presented to the City Council in connection with its consideration of this Ordinance, the City Council hereby finds, determines, orders and declares as follows:

1. The public nuisance conditions declared to exist in Section 1 hereof are to be prohibited and abated by the implementation of hours of operation for the parks and the South Stand Switchback Trail and the placement of signage advising the public of such hours of operation, as more fully set forth in Section 6 hereof. The closure between sunset and sunrise is deemed to be reasonable and necessary to accomplish the prohibition and abatement of the aforesaid nuisance conditions. While signs are to be utilized as set forth herein, City staff is directed to continue to work with the Commission to endeavor to address its concerns regarding appropriate language to be included on such signs.

2. The public nuisance conditions declared to exist in Section 1 hereof are to be prohibited and abated by the implementation of hours of operation for the Mid-Strand Beach Access and the Central Strand Beach Access, and the use of signs and gates, as more fully set forth in Section 6 hereof. The hours of operation as set forth in Section 6 and the resulting closure hours are deemed to be reasonable and necessary to accomplish the prohibition and abatement of the aforesaid nuisance conditions. The Council specifically finds that it is reasonable and necessary to have clear and objective closing times and signage in order to both prohibit and abate the nuisance conditions in question and to deal with practical considerations related to the use of gates, which it deems essential to nuisance prohibition and abatement. While signs are to be utilized as set forth herein, City staff is directed to continue to work with the Commission to endeavor to address its concerns regarding appropriate language to be included on such signs.

SECTION 4. *Findings related to Public Access*

Although not relevant to a public nuisance determination and order of abatement, the Council specifically finds and determines that the implementation of this Ordinance will not impact, impede, or otherwise change the intensity of public access to Strand Beach since: (i) to ensure unrestricted public access during the operating hours when the Mid-Strand Beach Access and Central Strand Access are open, this Ordinance will require that the gates at issue be locked open, and (ii) since a newly improved, lighted County stairway exists in close proximity to the South Strand Switchback Trail, the Mid-Strand Beach Access, and the Central Strand Beach Access, and will continue to provide access to Strand Beach during such hours when the County allows public use and access to Strand Beach and the City's trails are closed. The Council notes that to ensure the public is aware of alternate access points when the Mid-Strand Beach

Access and Central Strand Beach Access are closed, signs at the easterly gates on the Mid-Strand Beach Access and Central Strand Beach Access point out the alternate routes provided via the South Strand Switchback Trail and the County stairway -- as well as their respective hours of operation (sunrise until sunset, and 5:00 a.m. until Midnight, respectively.)

SECTION 5. Findings related to adoption of this measure as an urgency ordinance.

Based upon the staff report accompanying this matter and evidence presented to the City Council in connection with its consideration of this Ordinance, the City Council finds and determines as follows:

1. Data presented by City staff demonstrates that reports of unlawful activity in and around the Headlands Parks, the Mid-Strand Beach Access, the Central Strand Beach Access, the residential areas of the Project, and the South Strand Switchback Trail have greatly increased since the opening of Strand Vista Park and the above noted trails in January, 2010.

2. As warmer weather approaches, public visits to the Strand Vista Park and the above noted trails are expected to further significantly increase. Spring Break commences on April 2nd, the same date as the Commission staff is demanding that the City cease enforcing closures and remove the gates and signs in question.

3. The City will have an influx of activity at the beach as a result a significant increase of beach activity by young people will coincide with Spring Break, and this will result in an increase of both actual incidents, and opportunities for incidents of illegal activities (such as trespassing, graffiti, and vandalism), particularly during hours during which City enforcement resources are limited, such as evening, nighttime and early morning hours.

4. Removal of the gates and signs, and cessation of enforcement of closures of the parks and trails in question, would create unrestricted, unlit, access to the general public, including underage individuals looking for places to loiter, drink, "party" and engage in other unlawful acts.

5. In the absence of the gates in question and signage, the residential area abutting the Mid-Strand Beach Access and Central Strand Beach Access presents a significant opportunity for unlawful activity, which is increased due to the occurrence of Spring Break.

6. Based on the level of police activity already occurring at the site, the combination of removing gates and signage, the cessation of enforcement of the existing closure hours, and the introduction of Spring Break would result in a significant negative impact on public safety, and the level of unlawful activity at the Project under these conditions is likely to create an immediate threat to public health, safety and welfare.

7. This ordinance must be adopted on an urgency basis so as to ensure it becomes effective prior to Spring Break so that the nighttime closures and gates in question can remain in place during that period; and, since absent such action significant public nuisance conditions will exist during Spring Break for all the reasons noted in above, as well as those and presented to the Council during its consideration of this matter.

8. This ordinance must be adopted on an urgency basis so as to ensure it becomes effective prior to April 2, 2010, in order to: (i) allow the City to ensure that a clear means to prohibit and abate the identified public nuisance conditions exists which abatement process will unquestionably comply with the Coastal Act; and (ii) at the same time enable the City to achieve the important goal of eliminating the risk of unnecessary, expensive litigation with the CCC that would otherwise exist as of April 2nd.

9. Each of the recitals to this Ordinance is true and correct, and, pursuant to Government Code Section 36937(b), the adoption this Ordinance is required for the immediate preservation of the public health, safety, and welfare.

SECTION 6: The text of Title 13, Chapter 13.04, Sections 13.04.030 (h) and (g) of the City's Municipal Code are hereby amended so as to read in their entirety as follows:

(h) Mid-Strand Beach Access and Central Strand Beach Access will be open from 8:00 a.m. to 7:00 p.m. from May 1st through September 30th, and from 8:00 a.m. to 5:00 p.m. the rest of the year. Gates which can be locked in the open position, as presently existing on the Mid-Strand Beach Access and Central Strand Beach Access, shall be maintained and utilized to control pedestrian access to the Mid-Strand Beach Access and Central Strand Beach Access, so as to limit such access to operating hours. Said gates shall be locked open during such hours as the Mid-Strand Beach Access and Central Strand Beach Access are open. Signage advising the public of the above hours of closure, as well as the alternative access ways to the beach, shall be posted at or near the above noted gates at all times.

(g) Strand Beach Park and South Strand Switchback Trail will be open from sunrise to sunset throughout the year. Signage advising the public of the hours of closure applicable to South Strand Switchback Trail, as well as the alternative access ways to the beach, shall be posted at or near the access points to said trail at all times.

All text of Title 13, Chapter 13.04, which remains unchanged by this Ordinance, including specifically text adopted by the passage of Ordinance 09-05, is hereby readapted and reaffirmed, and the entirety of the text (as amended hereby) is deemed to be necessary to prohibit and abate public nuisances that would otherwise exist. All ordinances and provisions of the Dana Point Municipal Code and sections thereof

inconsistent herewith shall be repealed to the extent of such inconsistency and of no further force or effect.

SECTION 7: This urgency ordinance is enacted pursuant to the authority conferred on the City Council of the City of Dana Point by Government Code Sections 36934 and 36937, and shall be adopted, enacted and in full force and effect immediately upon its introduction and approval by a four-fifths vote of the City Council.

SECTION 8: If any section, subsection, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 9: The City Clerk shall certify the passage of this Ordinance and cause it to be published as required by law.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2010.

STEVEN H. WEINBERG, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

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

I, Kathy M. Ward City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. ____ was adopted on an urgency basis at a regular meeting of the City Council on the _____ day of _____, 2010, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

I KATHY M. WARD
CITY CLERK

Supporting Document B

ORDINANCE NO. 09-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING CHAPTER 13.04, PARKS AND RECREATIONAL FACILITIES REGULATIONS, OF THE MUNICIPAL CODE TO ADDRESS THE NEW PARKS AND FACILITIES IN THE CITY INCLUDING SEA TERRACE PARK AND THE DANA POINT HEADLANDS AND IN SUPPORT OF THE MARINE PROTECTED AREAS.

WHEREAS, the City of Dana Point ("City") has determined that Chapter 13.04 of the Dana Point Municipal Code needs to be amended to address the new parks and facilities at the Dana Point Headlands, Sea Terrace Park and support of the Marine Protected Areas.

THE CITY COUNCIL OF THE CITY OF DANA POINT DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 13.04.020 of the Dana Point Municipal Code is hereby amended to read in its entirety as follows:

13.04.020 Definitions.

The following words shall have the meaning indicated when used in these regulations:

- (a) "Alcoholic beverage" means alcohol, spirits, liquor, wine, beer and every liquid or solid containing one-half of one (0.5) percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.
- (b) "Amplified sound" means music, sound wave, vibration, or speech projected or transmitted by electronic equipment, including amplifiers.
- (c) "Park" means any community park, neighborhood park, conservation or recreational area maintained by the City. (Ord. 94-12, 8/23/94)
- (d) "Natural Open-Space" consists of Hilltop Park, Harbor Point Park and the South Strand Open Space as defined in the conservation easement approved by the City on November 30, 2005 and other conservation areas as may be designated by the City Council.

SECTION 2. Section 13.04.030 of the Dana Point Municipal Code is hereby amended to read in its entirety as follows:

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13.04.030 Hours of Use.

It shall be unlawful for any person to enter, loiter or remain in any park at any time between the hours of 10:00 p.m. and 6:00 a.m. or in any City building between the hours of 11:00 p.m. and 6:00 a.m. except as follows:

- (a) City employees or agents and peace officers when engaged in official business;
- (b) Persons with permits issued by the City Council or the City Manager or his/her designee;
- (c) Persons and/or spectators participating in City-sponsored or City-approved programs which take place outside posted hours of operation;
- (d) Shipwreck Park will be closed at sunset throughout the year;
- (e) Hilltop Park and Harbor Point Park will be open at 7:00 a.m. and closed at sunset throughout the year;
- (f) The Nature Interpretive Center is considered part of Harbor Point Park; therefore all municipal codes for the Harbor Point Park also apply to the facility and parking lot of the Nature Interpretive Center, with the exception of hours of operation for the facility and parking lot which will be open Tuesday-Sunday (closed on Monday) from 10:00 a.m. to 4:00 p.m.
- (g) Strand Beach Park and South Strands Switchback trail will be open from sunrise to sunset throughout the year;
- (h) Mid/Central Strand Beach Access will be open from 8:00 a.m. to 7:00 p.m. from Memorial Day through Labor Day, and from 8:00 a.m. to 5:00 p.m. the rest of the year;
- (i) Strand Funicular Beach access will be open daily from sunrise to sunset from Memorial Day through Labor Day; and, from sunrise to sunset on weekends and holidays the rest of the year.

SECTION 3. Section 13.04.050 of the Dana Point Municipal Code is hereby amended to read in its entirety as follows:

13.04.050 Care of Natural Resources.

- (a) It shall be unlawful for any person to damage, cut, carve, transplant or remove any tree, plant, algae, wood, turf in a park, or pick the flowers, seeds or fruit of any tree or plant in a park without written authorization from the City Manager or designee. (Ord. 94-12, 8/23/94)
- (b) It shall be unlawful to take, possess or disturb specimens of live or dead organisms from any Natural Open-Space or the Marine Protected Areas

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Page 3

set aside for conservation within city limits other than those deemed permissible by the U.S. Fish and Wildlife or the California Department of Fish and Game with appropriate permits or licenses or written authorization from the City Manager or designee.

- (c) No person shall willfully injure, destroy or alter the Natural Open-Space of the Headlands and the Marine Protected Areas within city limits.
- (d) It shall be unlawful for any person to disturb, take or injure geological or cultural resources within the Dana Point Headlands open space recreational parks and Natural Open-Space.

SECTION 4. Section 13.04.055 of the Dana Point Municipal Code is added to read in its entirety as follows:

13.04.055 Trespassing in Natural Open-Space Areas.

It shall be unlawful for any person to leave the designated trail and trespass on protected habitat without consent from the Natural Resources Protection Officer or written authorization from the City Manager or designee in the Hilltop Park, Harbor Point Park and South Strand Switchback Trail's Natural Open-Space.

SECTION 5. Section 13.04.065 of the Dana Point Municipal Code is added to read in its entirety as follows:

13.04.065 Throwing Items in Headland Recreational and Conservation Parks.

It shall be unlawful for any person to throw any item (e.g. rocks, bottles, other refuse, trash or litter) in the Hilltop Park, Harbor Point Park, South Strand Switchback Trail, Strand Beach Park including the revetment trail, Mid/Central Strand Access Trail and the Funicular Beach Access.

SECTION 6. Section 13.04.095 of the Dana Point Municipal Code is added to read in its entirety as follows:

13.04.095 Pets in the Headland Recreational and Conservation Parks.

It shall be unlawful for dogs, with the exception of service dogs, or any other pet to be on the trails or in the park at Hilltop Park, Harbor Point Park, South Strand Switchback Trail, Strand Beach Park including the revetment trail, Mid/Central Strand Access Trail and the Funicular Beach Access.

SECTION 7. Section 13.04.130 of the Dana Point Municipal Code is hereby amended to read in its entirety as follows:

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13.04.130 Bicycles, Skateboards, Rollerblades and Similar Items.

It shall be unlawful for any person to bicycle, skateboard, rollerblade or use a similar item of any type on tennis courts, handball courts, ball diamonds, patios, porches, play apparatus areas, and all other areas which are not designed or customarily used for such a purpose. A bicyclist shall be permitted to wheel or push a bicycle by hand over any grassy area or path reserved for pedestrian use. (Ord. 94-12, 8/23/94; amended by Ord. 06-07, 9/13/06)

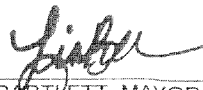
It shall be unlawful for any person to bicycle, skateboard, rollerblade, or use a similar item of any type on the trails or on any other area of Hilltop Park, Harbor Point Park, South Strand Switchback Trail, Strand Beach Park including the revetment trail, Mid/Central Strands Access Trail and the Funicular Beach Access.

It shall also be unlawful for any person to skateboard or rollerblade in Sea Terrace Park

SECTION 8. If any Section, Subsection, Subdivision, 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.

SECTION 9. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 11th day of May, 2009.



LISA A. BARTLETT, MAYOR

ATTEST:



KATHY M. WARD, CITY CLERK

Ordinance No. 09-05
Page 5

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

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 09-05 introduced at a regular meeting of the City Council held this 13th day of April, 2009, and passed and adopted at a regular meeting held 11th day of May, 2009, by the following roll call vote:

AYES: Council Members Anderson, Schoeffel, Mayor Pro Tem Weinberg,
 and Mayor Bartlett

NOES: None

ABSENT: None

RECUSE: Council Member Bishop

(SEAL)


KATHY M. WARD, CITY CLERK

Ordinance No. 09-05
Page 6

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

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY M. 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. 09-05, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING CHAPTER 13.04, PARKS AND RECREATIONAL FACILITIES REGULATIONS, OF THE MUNICIPAL CODE TO ADDRESS THE NEW PARKS AND FACILITIES IN THE CITY INCLUDING SEA TERRACE PARK AND THE DANA POINT HEADLANDS AND IN SUPPORT OF THE MARINE PROTECTED AREAS.

was published in summary in the Dana Point News newspaper on the 7th day of May, 2009, and the 21st day of May, 2009, and, in further compliance with City Resolution No. 91-10-08-1, on the 30th day of April, 2009, and the 14th day of May, 2009, 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 M. WARD, CITY CLERK

SUPPORTING DOCUMENT C

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5371

**RECEIVED****MAR -5 2010****CITY OF DANA POINT
COMMUNITY DEVELOPMENT
DEPARTMENT**

March 4, 2010

Kyle Butterwick
Community Development Director
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Violation File Number:

V-5-09-026

Property Location:

Dana Point Headlands - Strand Beach accessways
City of Dana Point, County of Orange

Unpermitted Development:

Placement of gates and signs restricting public beach
access; establishment of "hours of operation" limiting
public beach access.

Dear Mr. Butterwick:

Thank you (and City staff) for taking time to meet with Commission staff Sherilyn Sarb, Karl Schwing, Teresa Henry, Pat Veesart and myself on February 18th, to discuss the gates, signage, and hours of operation at the site of the Dana Point Headlands project. We appreciate your time and efforts and hope that we can resolve this quickly and amicably. As you know, we are concerned that the unpermitted gates, signs, and posted hours of operation at issue are restricting public access opportunities to the coast. You'll remember that public access was a critical component of the Commission's certification of the LCP which includes the Headlands Development and Conservation Plan ("HDCP") and the subsequent approval of the project by the City pursuant to Coastal Development Permit No. 04-23. We understand and appreciate that the subject restrictions on public access might be originating from pressure on the City to address perceived public safety issues. However, as we explained, the gates, signs, and hours of operation require authorization through the coastal development permitting process. Thus, we would like to work with the City to achieve a mutually acceptable resolution that addresses both public safety and public access to the coast through that process. Based on discussions during our February 18th meeting, we are optimistic that we can reach such a resolution.

At our February 18th meeting, we discussed the unpermitted development at issue, which is described in more detail below, including installation of gates on public coastal accessways, closure of the beach accessways through establishment of hours of operation by ordinance, and installation of signs displaying the hours of closure. Hours of closure have been established for the Mid-Strand Vista Park Access, Central Strand Beach Access, Strand Beach Park Lateral Access, and South Strand Beach Access. Gates and signage displaying the hours of closure are

V-5-09-026 (City of Dana Point)
March 4, 2010
Page 2 of 5

installed at the Mid-Strand and Central Strand accesses. Signage displaying the hours of closure is installed at the North Strand Beach Access, Strand Beach Park Lateral Access, and South Strand Beach Access.

The gates on the accessways are not authorized by a valid coastal development permit and are expressly prohibited by the HDCP. In addition, the hours of closure of the accessway, as well as the signs displaying the closures, are also unpermitted and apparently inconsistent with the public access protection policies of the HDCP and Coastal Act. In order to resolve this matter, we are requesting that the City remove the gates and replace the signs displaying the hours of closure with public access signage that does not display hours of closure. We would be glad to work with the City through the coastal development permit process to establish hours of operation that effectively address proven public safety issues and maximize public access to the coast.

We also discussed issues with existing signage installed on the accessways that is confusing and misleading, and by staff's own observations, is hindering access. Finally, we briefly discussed vegetation at the overlooks on the North Strand Beach Access that is obstructing views of the coast; I will address this issue under separate cover.

Access Closures and Signage

In authorizing the Dana Point Headlands project, and the subject beach accessways, Coastal Development Permit ("CDP") No. 04-23 does not establish hours of closure for the accessways; under the terms of the CDP then, the hours during which the public may enter the beach accessways are unrestricted. The ordinance establishing hours of operation for the accessways, and the signage displaying the hours, close the Mid-Strand and Central Strand, and South Strand Beach Accesses to the public, from 5 or 7pm to 8am, depending on the season, and sunset to 7am, respectively. The Strand Beach Park Lateral Access is closed from sunset to sunrise. Each of these accessways individually and separately provides access to the beach and coast. The ordinance and signage thus restrict public access to the coast.

As noted in our previous correspondence with the City of Dana Point, pursuant to Section 9.75.040 of the City's zoning code, the definition of "development" includes a "change in the intensity of use of water, or of access thereto." Therefore, the ordinance and signage restricting access to the coast constitute development. All development within the Coastal Overlay District that is not otherwise exempt requires a CDP pursuant to Zoning Code Section 9.27.010. The closure of the accessways and the signs depicting the closures: 1) constitute development, 2) are located within the Coastal Overlay District, 3) are not authorized by CDP No. 04-23 (or any other CDP), and 4) are not exempt.

You asserted at our February 18th meeting that Table 4.5.4, entitled "Strand Vista Park/Public Access Guidelines," of the Headlands Development and Conservation Plan ("HDCP") authorizes the beach access closures. Item 2 of Table 4.5.4 states "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." As noted above, establishing hours of operation constitutes development and all development within the Coastal Overlay District requires a CDP. The HDCP is not a CDP, and no provision of the Coastal Act, the HDCP, or any other section of the City Local Coastal

V-5-09-026 (City of Dana Point)
March 4, 2010
Page 3 of 5

Program ("LCP"), provides for authorization of development solely through certification of an LCP.

Instead, LCPs are planning tools that set policies concerning development. The definition of an LCP, found in Coastal Act Section 30108.5, describes an LCP as a bundle of documents for implementing the provisions and policies of the Coastal Act at the local level. Within the LCP's bundle of documents, there may be documents, such as a land use plan ("LUP"), that are sufficiently detailed to provide specific standards of review for development within the LCP area; an LUP is defined in relevant part within the Coastal Act as, "the relevant portion of a local government general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies, and where necessary, a listing of implementing action." Section 30108.5. As noted above, all development that is not otherwise exempt requires a CDP in order to ensure consistency with these detailed policies of the LCP. The process to ensure a proposed development's consistency with these detailed policies of the LCP is the coastal development permit process, hence, the requirement in the City's LCP for all development to be authorized by a CDP.

Here, the LCP provisions at issue are the "guidelines" in Item 2 of Table 4.5.4. The guidelines identify the City as the managing entity of the Mid-Strand, Central Strand, Strand Beach Park, and South Strand Beach Accesses, as opposed to the County or a non-profit, which the HCP identifies as the managing entities of the North Strand Beach Access and Headlands Conservation Park, respectively. As explained above, these guidelines do not authorize development. Rather, the guidelines provide a standard of review, together with LCP policies that require maximizing public access, particularly HDCP Section 4.4, which specifies that trails will maximize public coastal access, for any proposed development affecting the accessways, such as establishing hours of closure. Staff emphasized at our meeting that we believe the closures and signage are inconsistent with the public access policies of the LCP and Coastal Act that provide for maximizing public access because the access closures and signage prohibit access even during daylight and twilight hours.

Beach Access Gates

The gates erected at the entrances to the beach accessways clearly constitute development; "development" is defined in Section 9.75.040 of the City's zoning code, in relevant part as "the placement or erection, on land, in or under water, of any solid material or structure." You have referred staff to an unidentified icon in the location of the subject gates on the approved Headlands project plans, asserting that the icon is an indication of approval of the gates. The icon is not identified on the plans as a symbol for gates. In contrast, on the same project plans where gates are consistent with the HDCP and were authorized by CDP 04-23, namely, at the entrances to trails within the Headlands Conservation Park to reduce impacts to ESHA, gates are specifically identified and labeled.

Moreover, the gates are inconsistent with the access policies of the HDCP. HDCP Section 3.4.A.6 expressly prohibits gates or other development in Planning Areas 2 and 6 that restrict public pedestrian and bicycle access. Section 3.4.A.6 reads in pertinent part:

V-5-09-026 (City of Dana Point)
March 4, 2010
Page 4 of 5

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]

General Condition No. 3 of CDP 04-23 requires all development to be consistent and comply with the requirements of the HDCP. Since the gates are inconsistent with the HDCP, they could not be validly authorized by the CDP.

Existing Signage

During our visit to the site, staff noted several signs on the project site that may have the unintended effect of restricting public access:

- 1) Signs at the top and foot of the North Strand Beach Access displaying the hours of operation of the funicular read: beach access hours 8am to 5pm. This may give the public the mistaken impression that access to the beach is limited to 8am to 5pm. The signs should be clear that the hours listed on the signs are solely the hours of operation of the funicular.
- 2) Signs labeled "Alternate Public Beach Access" recently installed at the Mid-Strand and Central Strand Beach Accesses direct the public to alternative accessways to the north and south of the Strand Vista Park "when gate is closed", but do not identify that beach access is available at the Mid-Strand and Central Strand Beach Accesses at all other times. While on site, staff witnessed two members of the public mistakenly interpret one of these signs to mean that no beach access was available at the Central Strand Beach Access, where the sign in question was located, even though the gate was open. This mistaken impression could be counteracted by replacing the sign with a map of all the available accessways on the site, including, but not limited to the Mid-Strand and Central Strand Beach Accesses, along with removal of the gates as discussed above.
- 3) Another sign at the Mid-Strand Beach Access reads: Public Beach Access, Free Inclined Elevator, 200 Yards (an arrow points towards the funicular). This sign suggests the public access is only located at the funicular, instead of at the Mid-Strand, Central Strand, and South Strand Beach Accesses.
- 4) A sign located at the foot of the Mid-Strand access directs the public to remain on the sidewalk, however, there is no sidewalk in this location. Depicting the course of the accessway with the familiar "barefeet" public access icon used to identify accessways in California may be more appropriate in this location.
- 5) A sign on the landward side of the fence at the foot of the Central Strand Beach Access states access is restricted to the sidewalk. This gives the false impression that access is restricted to the Strand Beach Park Lateral Access. However, as you know, the entirety of Strand Beach Park, including at the foot of the Central Strand Beach Access, is a public beach.

Signs, such as those listed above, erroneously mislead the public to believe public access is unavailable or restricted and these signs should be removed. The City is authorized through the

V-5-09-026 (City of Dana Point)
March 4, 2010
Page 5 of 5

CDP to install signage that details public access availability, although as detailed above, signs that establish hours of closure of accessways or restrict public access are unpermitted. Thus, replacement signs that make clear the public access opportunities that are available may not require a CDP if they do not restrict public access; however, we would like the opportunity to coordinate with City staff regarding the signage that may be acceptable to accurately direct public use of these accessways to the beach. As indicated, signage which establishes hours for access and/or beach use would require a CDP.

As we have noted in prior communications, any development activity conducted in the Coastal Zone/CO District without a valid CDP which requires a permit, as does the subject installation of gates on public coastal accessways, closure of the beach accessways through establishment of hours of operation by ordinance, installation of signs displaying the hours of closure of accessways, and installation of signs that deter access by misrepresenting the available public access opportunities, constitutes a violation of the Coastal Act and the City's LCP. While we remain confident that this matter can be resolved amicably and strongly prefer to do so, please be advised that Public Resources Code Section 30810(a)(3) authorizes the Commission to issue a cease and desist order to enforce any requirement of a certified LCP if the local government is a party to the violation (as in this instance where the City owns the property upon which the Coastal Act violation is located and operates the subject gated accessways). In order to resolve this matter, we are requesting that the City remove the gates and replace the signs displaying the hours of closure with public access signage that do not display hours of closure by **April 2, 2010**. Please contact me by **March 19, 2010** regarding how the City intends to resolve this matter.

Thank you for your attention to this matter and for taking the time to meet with us onsite. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071. We look forward to working with you and your staff to resolve this matter in the near future.

Sincerely,



Andrew Willis
District Enforcement Analyst

cc: Sherilyn Sarb, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
Karl Schwing, Orange County Planning Supervisor, CCC
Alex Helperin, Staff Counsel, CCC
Teresa Henry, District Manager, CCC
N. Patrick Veesart, Enforcement Supervisor, CCC
Christopher Pederson, Deputy Chief Counsel, CCC

SUPPORTING DOCUMENT D

1. Copies To: Dana Point

COPY ORIGINAL

2. Case No. 10-038724

SHERIFF'S DEPARTMENT
JSB ORANGE COUNTY
SANTA ANA, CALIFORNIA

2a. Citation No.

Priority: ☒ Yes ☐ No

SANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE PC 594(b)(1) Vandalism		4. DATE-TIME COMMITTED Wednesday 3-3-10 0957	
5. WHERE COMMITTED Selva / PCH Dana Point, Ca 92629		6. GRID 971F6/135	7. DATE-TIME REPORTED
8. NAME OF SUSPECT [REDACTED]		9. ADDRESS PHONE [REDACTED]	
10. VICTIM DOB	11. ADDRESS PHONE		
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS	
14. FIRM NAME OF VICTIM City of Dana Point		15. BUSINESS ADDRESS-PHONE 33368 Golden Lantern Dana Point, Ca 92629	
16. VICTIM'S OCCUPATION	RACE	SEX	AGE
17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Wrought Iron Fence lining Dana Strand Park			
18. POINT OF ENTRY		22. WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN			27. TOTAL VALUE STOLEN
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)			
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS 1999 Ford Explorer Sport black (Cal. Lic. 4FIN102)			
30. WITNESSES (BY RESIDENCE/BUSINESS ADDRESS-PHONE)		R B	
(1)	[REDACTED]	[REDACTED]	
(2)	[REDACTED]	[REDACTED]	
(3)	[REDACTED]	[REDACTED]	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR. 2500658	
(1)	[REDACTED]	BKG. NBR.	
(2)	[REDACTED]	BKG. NBR.	
(3)	[REDACTED]	BKG. NBR.	
NAME ADDRESS SEX RACE DOB HT. WT. HAIR EYES			
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO.
			MODEL NO.
			MISC. DESCRIPTION
			VALUE
Damage to Wrought Iron fence lining Dana Strand Park:			
(70) Broken wrought iron spires off of fence columns			
(2) Broken wrought iron pieces off of fence columns			
Evidence Collected:			
(3) wrought iron pieces and photos of damage.			
33. INVESTIGATING OFFICERS		REPORT BY M. Northart #613	34. DATE OF REPORT 3/3/10
		35. APPROVED <i>Sgt. J. Carpenter</i>	

PAGE 1 OF 3

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 10-038724

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

Narrative: I responded to Pacific Coast Highway and Dana Strand Beach Park reference four subjects throwing rocks at the fence line and breaking the decorative tops off the fence. While driving to the call I was told the subjects were leaving the area. I patrol checked the area and was ultimately notified the subjects were stopped in their 1999 Ford Explorer (Cal. Lic. 4FIN102) at Avenida Vaquero and Camino Capistrano by Deputy B. Stephenson.

I then contacted the [REDACTED] in the Dana Strand Beach parking lot. She told me that she was walking near the south end of the park area and she saw two subjects throwing rocks at the wrought iron fence that leads to the south beach trail off Selva road. [REDACTED] said that several people were yelling at the subjects asking them to stop. [REDACTED] said that there were four male teen-aged subjects who got into the black Ford Explorer and they drove away toward Pacific Coast Highway. [REDACTED] provided me the license number of the car. I obtained her identification information and provided her this case number on my card.

I then drove to the area where [REDACTED] said the damage had occurred and I found the listed damage. I photographed the damage and collected three of the broken spires. I then drove to where Deputy Stephenson stopped the Ford Explorer. I also had [REDACTED] drive to the location where I conducted an In-Field show up. She identified [REDACTED] and [REDACTED] as the two seen throwing rocks and damaging the fence. [REDACTED] signed the In-Field Show Up forms and she left the location.

I then handcuffed [REDACTED] and read him the Miranda Advisement from my department issue card. He answered "Yes" to all questions and agreed to talk to me. [REDACTED] told me that the three went to Strands Beach to check the surf, after being involved in a surf contest, close by. He said that he did not throw rocks or damage the fence and was only looking at the surf. He said that people who were walking on the trail and sidewalk saw them and started yelling at them because [REDACTED] was throwing rocks and causing the damage.

[REDACTED] admitted that [REDACTED] told him some of his friends had thrown rocks at the fence prior and it was easy to break the tops off the wrought iron. He continually denied that he had done any damage and said no one but [REDACTED] was responsible.

I then spoke to [REDACTED] who said that the Ford belongs to his parents. He admitted that they were at Strands Beach and that [REDACTED] threw rocks at the fence. He told me that they all drove away when people started yelling at them about the damage [REDACTED] was causing. [REDACTED] so told me that [REDACTED] said he had other friends who had done damage to the fence. [REDACTED] said that [REDACTED] did nothing wrong.

I also spoke to [REDACTED] who said that they went to look at the surf and was throwing rocks at the fence along Selva road. He said that [REDACTED] admitted that a friend named [REDACTED] had done damage to the fence and that [REDACTED] told them how easy it was to break the wrought iron tops off the fence line.

I read the Miranda Advisement to [REDACTED]. He answered "Yes" to all questions and agreed to talk to me. [REDACTED] said that they were at the beach to check out the surf. He said he was the only one of the four who broke anything with a rock today. He said that he had only broken one top piece off the fence. I questioned him how he knew that rocks would break off the wrought iron and he ultimately admitted that two of his

33. INVESTIGATING OFFICERS	REPORT BY M. Northart #613	DATE OF REPORT 3/3/10	APPROVED Sgt J. Carpenter
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PAGE 2 OF 3

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 10-038724

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

friends, named "██████" and "██████", who are Dana Hills High School students, had broke several pieces off prior. ██████ said that ██████ did nothing wrong and that he was the only one that damaged anything.

██████ and ██████ left the location and ██████ was released to his mother. ██████ was booked in to Orange County Jail.

13. INVESTIGATING OFFICERS	REPORT BY M. Northart #613	DATE OF REPORT 3/3/10	APPROVED <i>Sgt J Carpenter</i>
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PAGE 3 OF 8

COPIES: DANA POINT

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

CASE NO.

10-038724

PRIORITY: ☒ YES
☐ NO

SANDRA HUTCHENS, SHERIFF-CORONER

IN FIELD SHOW-UP REPORT

OFFENSE PC 594(b)(1) VANDALISM	LOCATION OF OCCURRENCE SILVA / RCH DANA POINT CT	
VICTIM STATE OF CALIFORNIA	DATE OF OCCURRENCE 3-3-10	GRID 971F6

ADMONITION OF VICTIMS AND WITNESSES:

It is requested that you look at an individual who has been temporarily detained by the Police. This person may or may not have committed the crime. It is just as important to eliminate an innocent person from suspicion, as it is to identify the person who committed the crime. You are under no obligation to identify this person. The fact that the person has been detained, may be handcuffed, seated in a Police car, or surrounded by Police Officers should not influence your decision. While viewing this individual, be aware of the possibility that the person being detained may have altered his/her appearance by using a disguise or by changing clothing since the time of the reported crime. The possibility should be considered in your final identification or elimination of the individual being detained. Please do not discuss the case with other witnesses or indicate in any way that you have or have not identified someone.

I fully understand the admonition presented to me by Officer DAVID NORTHALL, regarding the In Field Show-Up.
☒ Yes ☐ No

(Signature of Witness)

IDENTIFICATION:

<input type="checkbox"/>	I cannot identify this individual as the suspect.
<input checked="" type="checkbox"/>	I can identify this individual as the suspect.

ADDITIONAL COMMENTS OF VICTIM / WITNESSES:

SIGNATURE OF WITNESS: X [REDACTED] DATE: 3-3-10
 WITNESSED BY OFFICER: M. Northall 613 DATE / TIME: 3-3-10 1110
 LOCATION OF IN FIELD SHOW-UP: Carmelo Carmelo / Ave DANA DANA Santa Clemente
 DATE & TIME OF IN FIELD SHOW-UP: 3-3-10 1110
 NAME AND DATE OF BIRTH OF PERSON VIEWED: [REDACTED]

INVESTIGATING OFFICERS	REPORTED BY <u>M. Northall 613</u>	DATE OF REPORT <u>3-3-10</u>	APPROVED <u>Sgt G Carpenter</u>
------------------------	---------------------------------------	---------------------------------	------------------------------------

COPIES:

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

CASE NO. 10-038724

PRIORITY: ☒ YES
☐ NO

SANDRA HUTCHENS, SHERIFF-CORONER

IN FIELD SHOW-UP REPORT

OFFENSE PC 594(b)(1) VANDALISM	LOCATION OF OCCURRENCE SEANA / PACIFIC COAST HWY DANA POINT
VICTIM STATE OF CALIFORNIA	DATE OF OCCURRENCE 3-3-10
	GRID 971 F6

ADMONITION OF VICTIMS AND WITNESSES:

It is requested that you look at an individual who has been temporarily detained by the Police. This person may or may not have committed the crime. It is just as important to eliminate an innocent person from suspicion, as it is to identify the person who committed the crime. You are under no obligation to identify this person. The fact that the person has been detained, may be handcuffed, seated in a Police car, or surrounded by Police Officers should not influence your decision. While viewing this individual, be aware of the possibility that the person being detained may have altered his/her appearance by using a disguise or by changing clothing since the time of the reported crime. The possibility should be considered in your final identification or elimination of the individual being detained. Please do not discuss the case with other witnesses or indicate in any way that you have or have not identified someone.

I fully understand the admonition presented to me by Officer [redacted] regarding the In Field Show-Up.
☒ Yes ☐ No

(Signature of Witness)

IDENTIFICATION:

<input type="checkbox"/>	I cannot identify this individual as the suspect.
<input checked="" type="checkbox"/>	I can identify this individual as the suspect.

ADDITIONAL COMMENTS OF VICTIM / WITNESSES:

SIGNATURE OF WITNESS: [redacted] DATE: 3-3-10
 WITNESSED BY OFFICER: M. Northcutt #103 DATE/TIME: 3-3-10 1110
 LOCATION OF IN FIELD SHOW-UP: Camino Capistrano / Ave Jacaranda SAN ANTONIO
 DATE & TIME OF IN FIELD SHOW-UP: 3-3-10 1110
 NAME AND DATE OF BIRTH OF PERSON VIEWED: [redacted]

INVESTIGATING OFFICERS	REPORTED BY M. Northcutt #103	DATE OF REPORT 3-3-10	APPROVED Sgt 9 Campese
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1. Copies To: DANA POINT

2. Case No. 10-038729

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

SANDRA HUTCHENS, SHERIFF-CORONER

JUVENILE INVESTIGATION REPORT

3. OFFENSE W & I 602		4. SIND 971FS		5. DATE/TIME COMMITTED 03-03-10 / 1110	
6. LOCATION WHERE OFFENSE WAS COMMITTED SELVA AT PACIFIC COAST HWY, D.P. CA		7. DATE/TIME REPORTED 03-03-10 / 1110		8. DATE 03-03-10	
8. LOCATION OF ARREST 2800 CAMINO CAPISTANO		9. DATE 03-03-10		10. TIME 1110	
11. NAME [REDACTED]		12. ALIAS OR NICKNAME [REDACTED]		13. ADDRESS [REDACTED]	
14. BIRTHDATE [REDACTED]		15. BIRTHPLACE [REDACTED]		16. MARKS - SCARS [REDACTED]	
17. OFFENSE CPC 594 FELONY VANDALISM		18. ACTION See Rinc 53.		19. DATE 5'11	
20. ADDITIONAL INFORMATION SEE BOX 49		21. YES <input type="checkbox"/> NO <input type="checkbox"/>		22. VEHICLE - YEAR, MAKE, BODY TYPE COLOR LICENSE #	
23. CLOTHING - DESCRIPTION (FILL OUT FOR MISSING, RUNAWAYS, ESCAPES) BROWN JACKET, BLUE T-SHIRT, BCK JEANS, BCK SHOES		24. STATE 25. OC #		26. SCHOOL STATUS SOPHOMORE	
27. FATHER/STEP [REDACTED]		28. ADDRESS BOX 13		29. CITY [REDACTED]	
30. MOTHER/STEP [REDACTED]		31. ADDRESS BOX 13		32. CITY [REDACTED]	
33. LIVES WITH MOTHER & FATHER		34. ADDRESS BOX 13		35. CITY [REDACTED]	
36. DATE [REDACTED]		37. ADDRESS BOX 13		38. CITY [REDACTED]	
39. LIVES WITH [REDACTED]		40. ADDRESS BOX 13		41. CITY [REDACTED]	
42. LIVES WITH [REDACTED]		43. ADDRESS BOX 13		44. CITY [REDACTED]	
45. LIVES WITH [REDACTED]		46. ADDRESS BOX 13		47. CITY [REDACTED]	
48. Released to <input checked="" type="checkbox"/> PAROLE <input type="checkbox"/> Detained Juvenile Hall - Parent notified. <input type="checkbox"/> Detained Other (explain Box 49) - Parent notified. <input type="checkbox"/> Released to <input checked="" type="checkbox"/> Released - NOTICE OF VIOLATION: (Not an admission of Guilt) (Signed by Juvenile) ISSUED BY Deputy: [Signature]		Application for Petition Filed <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO School Attending: SAN CLEMENTE H.S. 9th Date: 03-03-10 Time: 1210		49. ADDITIONAL INFORMATION AND REMARKS:	

50. INVESTIGATING OFFICER M. Hernandez 653	51. DATE OF REPORT 3-3-10	52. APPROVED Sgt. Carpenter
53. FINAL DEPARTMENT DISPOSITION C <input type="checkbox"/> I <input type="checkbox"/> P <input type="checkbox"/> D <input type="checkbox"/>	54. INV.	55. CJI OPERATOR

SHF 065 (03/06)

ORIGINAL - DEPARTMENT - COPY - JUVENILE

PLEASE ATTACH 3 COPIES OF CRIME ARREST REPORTS (4 IF REQUESTING ARREST WARRANT)

APPLICATION FOR PETITION

SEND TO PROBATION OFFICE
P.O. BOX 10260, SANTA ANA, CA 92711-0260

REF. AGENCY O.C.S.D. **POLICE USE ONLY** CASE NO. 10-038729

MINOR'S LEGAL NAME [REDACTED] AKA [REDACTED]

MINOR'S ADDRESS [REDACTED]

DOB [REDACTED] AGE [REDACTED] ETHNICITY [REDACTED] SEX [REDACTED] HAIR BRN EYES BRN HGT. 5'11 WGT. 135

PLACE OF BIRTH ALABAMA LAST SCHOOL ATTENDED S.C.H.S. CITY SC GRADE 10

OFFENSE CPC 594 FELONY VANDALISM LOCATION SCHOOL AT P.C.H.D.P. DATE 03-03-10 TIME 0955

PLACE OF ARREST/CUSTODY 2810 CAMPBELL LANE DATE 03-03-10 TIME 1130 OFFICER [REDACTED]

FATHER [REDACTED] (name) (address) (phone) (cell ph.)

MOTHER [REDACTED] (name) (address) (phone) (cell ph.)

GUARDIAN / ATTY. [REDACTED] (name) (address) (phone) (cell ph.)

CUSTODY CASES ONLY: PERSON NOTIFIED OF MINOR'S DETENTION
DELIVERED TO J.H. BY [REDACTED] DATE [REDACTED] TIME [REDACTED] NOTIFYING OFFICER [REDACTED]

COMMENTS: (INCLUDE POSSIBLE CUSTODIAL PROBLEMS) [REDACTED] ADMITTED BY [REDACTED]

ADDITIONAL INFO. FOR PROBATION (PLEASE INCLUDE GANG AFFILIATION): [REDACTED]

AFFIDAVIT: I REQUEST COMMENCEMENT OF PROCEEDINGS IN JUVENILE COURT. I DECLARE UNDER PERJURY THAT THE ABOVE FACTS AND THOSE CONTAINED IN THE ATTACHED REPORTS ARE TRUE.

PRINTED NAME [REDACTED] PHONE 949-361-8224 EXECUTED ON 03-03-10 AT SA, CA

SIGNATURE [REDACTED] TITLE DEPUTY AGENCY O.C.S.D.

NTAKE: **PROBATION USE ONLY**

APPR. REC'D. DATE [REDACTED] TIME [REDACTED] NCIDL [REDACTED] CUST. DL. FEL. [REDACTED] MISD. [REDACTED]

IN CUSTODY COMPANIONS [REDACTED] ON H.S.R. [REDACTED] ONE DATE [REDACTED] TIME [REDACTED] TO WHOM [REDACTED] NO. APP'S ATTACH. COURT DATE [REDACTED]

QDA: DATE [REDACTED] TIME [REDACTED] INT. P.O. [REDACTED] PH. [REDACTED] ASS'D P.O. [REDACTED] PH. [REDACTED]

RECOMMENDED ALLEG. [REDACTED] MINOR ADMITS TO [REDACTED]

TYPE HEARING: [REDACTED] DET. [REDACTED] P/T [REDACTED] TRIAL [REDACTED] DISPO. [REDACTED] TYPE RET: 601 602 NEW SUB. SUP. 777WIC 778WIC

END NOTICE OF HEARING TO: [REDACTED] PARENTS [REDACTED] GUARDIAN [REDACTED] ATTORNEY [REDACTED] REQUEST WARRANT (PROB/POLICE) [REDACTED]

PREVIOUSLY SENT TO DA: FILING DEADLINE [REDACTED] ALLEG. [REDACTED] TYPE OF HEARING [REDACTED] DATE OF HEARING [REDACTED]

IF ALREADY PENDING: ALLEG. [REDACTED] TYPE OF HEARING [REDACTED] DATE OF HEARING [REDACTED]

ADDITIONAL INFO. FOR DA (INCLUDE PRIOR RECORD INFO. OR ATTACH CJI/WARD CARD): [REDACTED]

POSITION: P.O. [REDACTED] DATE [REDACTED] SPO. APPROVAL [REDACTED]

REFER TO DA [REDACTED] 654 WIC ADMIN./DIV./FIELD [REDACTED] DISMISS [REDACTED] OTHER [REDACTED]

REASONS OF 654 WIC / REASON(S) FOR DISM (SEAL INCLUDE SANCTIONS): [REDACTED]

INSTRUCTIONS TO CLERICAL: [REDACTED]

CLERICAL ROUTING	INITIAL	DATE
<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, HARBOR JUSTICE CENTER

DECLARATION IN SUPPORT OF ARREST WARRANT MADE UNDER 2015.5 CCP

The undersigned hereby declares, upon information and belief:

That (s)he is currently employed as a Peace Officer and Deputy for the County of Orange, California, and has been so employed throughout this investigation.

That pursuant to his/her employment, (s)he has been assigned to investigate allegations that

did violate PC Sect (b)(1) VANDALISM

That pursuant to this assignment, your affiant has contacted witnesses, obtained their statements, and received reports and statements prepared by others known to your affiant to be law enforcement officers, all of which are included in a report consisting of _____ pages, which is attached hereto as Exhibit 1 and incorporated by reference as fully set forth.

I declare under penalty of perjury that the foregoing facts and attached reports are true and correct.

DATED: 3-3-10

Orange County, California

[Signature]
Affiant's Signature

Defendant's Address: _____

Defendant's Auto: Make _____ Model _____ License # _____

Description of Defendant: Sex M DOB 2-4-92 Race W

Height 5'11 Weight 160 Hair Brown Eyes Brown Age 18

Distinguishing Features: _____

Additional Information: _____

F0232-299.2(R-8/09)

Medical Temp. No: _____ ORANGE COUNTY JAIL
Santa Ana, California

☐ EXPEDITE BOOKING
☐ MEDICAL BOOKING
☒ NORMAL BOOKING
PRE-BOOKING RECORD

FOR JAIL USE ONLY PLEASE PRINT OR TYPE

BOOKING NUMBER: 2560 658 RECEIVING OFFICER: WIGGINS # 5130 DATE: 03-03-10/1934

STREET BOOKING ☒ WARRANT ☐ COURT ORDER ☐ OTHER (SPECIFY) _____

COMMITMENT ☐

TO BE COMPLETED BY ARRESTING OR TRANSPORTING OFFICER
PLEASE FILL IN ALL OF THE BOXES BELOW THIS LINE PRIOR TO SUBMITTING TO THE RECEIVING GUARD STATION

ARRESTING AGENCY: OCSO OCSO AREA OR CONTRACT CITY: DANA POINT AGENCY CASE: 10-038724 DATE & TIME ARRESTED: 3/3/10 1045 HOURS

NAME: LAST: [REDACTED] FIRST: [REDACTED] MIDDLE: [REDACTED]

BIRTHDATE: [REDACTED] SEX: M RACE: WHITE HEIGHT: 5'11" WEIGHT: 160 HAIR: BRN EYES: BRN STATE & COUNTRY OF BIRTH: CA / USA CITIZENSHIP: U.S.A.

AKA: [REDACTED] DRIVER'S LICENSE NO. & STATE: [REDACTED]

JURISDICTION: HCC WARRANT OR CASE NUMBER: 10-038724 BAIL: \$20,000

CHARGE 1: PC 594(b)(1) VANDALISM CHARGE 4: _____

CHARGE 2: _____ CHARGE 5: _____

CHARGE 3: _____ CHARGE 6: _____

DNA ☐ DNA COLLECTED BY OFFICER ☒ PREVIOUSLY COLLECTED ☐ NOT COLLECTED (EXPLAIN BELOW)
EXPLAIN WHY DNA WAS NOT COLLECTED: N/A

OCCUPATION: [REDACTED] MARITAL STATUS: [REDACTED] SOCIAL SECURITY NUMBER: [REDACTED] TELEPHONE NO.: [REDACTED]

SCARS, MARKS, TATTOOS, AMP: SCAR IN THE MIDDLE OF BACK

ADDRESS: [REDACTED] CITY: SAN CLEMENTE STATE: CA ZIP: 92672

NEXT OF KIN: NAME: [REDACTED] RELATIONSHIP: [REDACTED] TELEPHONE NO.: [REDACTED]

ADDRESS: [REDACTED] CITY: LAGUNA HILLS STATE: CA ZIP: 92657

ARRESTED EMPLOYER NAME: [REDACTED] BUSINESS ADDRESS: [REDACTED]

OFFICER'S ADDITIONAL INFORMATION—CHECK BOX IF YOU BELIEVE THE ARRESTEE WILL REQUIRE MEDICAL ATTENTION OR SPECIAL MANAGEMENT.
☐ MEDICAL (ILL OR INJURED) ☐ MENTAL ☐ INTOXICATED ☐ PROTECTIVE CUSTODY ☐ HIGH SECURITY

EXPLAIN: _____

ARRESTING OFFICER: M. ROETHMANN ID# 613 MANDATORY FOREIGN CONSULAR NOTIFICATION MADE PER CPC 834c ☐ YES ☐ NO ☒ N/A

PERMISSION TO USE TELEPHONE AFTER ARREST (Pursuant to Penal code Section 851.5)
I have been given the opportunity to make three (3) FREE telephone calls within the LOCAL DIALING area, or at MY OWN EXPENSE IF OUTSIDE the Local dialing area.

RECORD OF TELEPHONE CALLS:
Telephone calls DESIRED: 1 Telephone calls COMPLETED: 1

Location: TPC Date: 3-3-10 Time: 1305

Witnessing Officer: M. Northrup ID# 613 Agency: OCSO

SIGNATURE: [REDACTED]

CRIME SUMMARY INFORMATION, PROBABLE CAUSE DECLARATION AND BAIL SETTING INFORMATION

ARRESTEE (LAST, FIRST, MIDDLE) [REDACTED]		BOOKING NO. 2560 658	DR NO. 10-038724	
ADDRESS (RESIDENCE) [REDACTED]		DOB [REDACTED]	AGE 18	SEX M
BOOKING CHARGES PC 594(b)(1) VANDALISM		SUPPL. HOLDS		
DATE/TIME OF ARREST WED 3-2-10 1045		36-HR EXP. DATE/TIME 03-04-20 2245		
ARRESTING AGENCY OCSO		STATION 18	ARRESTING OFFICER(S) M. NATHAN 103	

FACTS ESTABLISHING ELEMENTS OF CRIME AND IDENTIFICATION OF ARRESTEE.

[REDACTED] AND A 15 YR OLD JUVENILE WERE SEEN THROWING ROCKS AND BREAKING 4" DECORATIVE SPIKES OFF OF A WHOLESALE TROV FENCE THAT LINES DUNEGROVE BEACH PARK, WHICH OPENED 1 MONTH AGO. (70) SECURITY OF THE SPIKES WERE BROKEN OFF OF THE FENCE AND (2) OF THE METAL COLUMNS WERE BROKEN OFF AT ABOUT 8" BELOW THE TOP. THE PARK WAS RECENTLY COMPLETED AND THE WHOLESALE WAS A MULTI-MILLION DOLLAR PROJECT. REPAIRS FOR THE DAMAGE WAS ESTIMATED AT \$1500.00. [REDACTED] WAS IN A 1999 FORD (4F1H102) AND HE WAS SEEN WITH THE 15 YR OLD AND TWO OTHER JUVENILES. [REDACTED] AS ONE OF THE SUSPECTS, DURING AND AFTER SHOW UP.

() SEE ATTACHED REPORTS, INCORPORATED HEREIN BY THIS REFERENCE.

(1) WEAPON DESCRIPTION: _____
 (2) VICTIM'S AGE: _____ VICTIM'S INJURIES: _____
 (3) VALUE OF PROP. LOSS: \$ _____ TYPE OF PROP.: _____
 (4) TYPE OF NARCOTICS: _____ QTY: _____
 (5) WHOLESALE VALUE: \$ _____ STREET VALUE: \$ _____

I DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

EXECUTED ON 3-3-10 AT ORANGE COUNTY, CALIFORNIA, BY [REDACTED] (DATE) (SIGNATURE)

ON THE BASIS OF ☐ THE OFFICER'S DECLARATION ☐ REPORTS REVIEWED, I HEREBY DETERMINE THAT THERE
☐ IS ☐ IS NOT ☐ PROBABLE CAUSE TO BELIEVE THIS ARRESTEE HAS COMMITTED A CRIME.

(DATE) (TIME) (SIGNATURE OF JUDICIAL OFFICER)

F0369-2219

White - Jail; Blue - Detention Release; Pink - Court; Goldenrod - Arresting Agency

Revised 12-15-99

PROPERTY INVENTORY RECEIPT

THIS FORM MUST BE COMPLETED ON ALL ORANGE COUNTY JAIL BOOKINGS.

SHADED AREAS ARE FOR I.R.O. USE ONLY

IR# BOOKING NUMBER: _____ DATE/TIME: _____

NAME: _____
 LAST FIRST MIDDLE DOB: _____

ARRESTING AGENCY: OCJ COURT: HOC ARRESTING OFFICER: M. Naithe

MONEY: \$ 5

This form is to be completed in the presence of the arrestee. List all items by amount and color. If property is not removed, indicate RETAINED in the appropriate box. List jewelry by either yellow or white metal, indicate color of stones only. Complete even if NO PROPERTY is received.

			YELLOW METAL	WHITE METAL	
BELT	1				
KNIFE					
CHECKBOOK					
BILLFOLD					
GLASSES					
KEYS	2				
WATCH					
		EARRINGS			
		CHARMS			
		CHECKS			
		BRACELET			
		RINGS			
		NECK CHAIN			
		LIGHTER			

MISCELLANEOUS PROPERTY (Bulk property will NOT be accepted):

1 IPHONE 1st side

PROPERTY RELEASED:

RELEASED TO:

PRINT NAME/SIGNATURE

DATE/TIME:

ITEMS RETAINED BY ARRESTING AGENCY (EVIDENCE OR SAFEKEEPING):

INVENTORY OFFICER: M. Naithe

SIGNATURE & BADGE #:

PRINT NAME

AGENCY: OCJCOURT: HOCDATE/TIME: 3-23-10 1310

I HAVE REVIEWED THIS INVENTORY AND IT ACCURATELY REFLECTS THE PROPERTY IN MY POSSESSION AT THIS TIME.

ARRESTEE'S SIGNATURE: XVERIFIED BY: [Signature]

MONEY/PROPERTY TRANSFER RECORD

TO BE COMPLETED ON ALL AGENCY-TO-AGENCY TRANSFERS/SIGNATURE INDICATES RECEIPT OF PROPERTY

RECEIVED BY: _____ AGENCY: _____ DATE/TIME: _____

DISCREPANCIES (IF ANY): _____

RECEIVED BY: _____ AGENCY: _____ DATE/TIME: _____

DISCREPANCIES (IF ANY): _____

RECEIVED BY: _____ AGENCY: _____ DATE/TIME: _____

DISCREPANCIES (IF ANY): _____

TO BE COMPLETED AT TIME OF RELEASE

I HAVE REVIEWED MY PROPERTY AND I ACKNOWLEDGE RECEIPT OF ALL MONEY AND ARTICLES LISTED ABOVE EXCEPT THAT PORTION THEREOF PREVIOUSLY RELEASED BY ORDER.

SIGNATURE: _____ DATE/TIME: _____

RELEASED BY: _____ AGENCY/COURT: _____

COMMENTS: _____

Original - File

Yellow - Property

Pink - Inmate

Gold - Agency

1. Copies To: Dana Point

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 10-006602

2a. Citation No.

Priority: ☐ Yes ☒ No
SANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE
CPC 148(a)(1) Resist / Delay Peace Officer

4. DATE-TIME COMMITTED
1-10-10 / 1620 hours / Sunday

5. WHERE COMMITTED
Cove & Green Lantern, Dana Point Ca 92629

6. GRID
971G6

7. DATE-TIME REPORTED

8. INFORMANT
Deputy John Gomez

9. ADDRESS-PHONE
550 N. Flower Santa Ana Ca 92703 714-647-7000

10. VICTIM
DOB

11. ADDRESS-PHONE

12. BUSINESS ADDRESS-PHONE

13. CONTACT TIME-ADDRESS

14. FIRM NAME OF VICTIM
State of California

15. BUSINESS ADDRESS-PHONE

16. VICTIM'S OCCUPATION RACE SEX AGE

17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED
City Park

18. POINT OF ENTRY
CRIMES AGAINST PROPERTY

19. INSTRUMENT OR MEANS USED

20. METHOD USED

21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?

22. WEAPON OR MEANS USED
CRIMES AGAINST PERSONS

23. VICTIM'S ACTIVITY AT TIME OF OFFENSE

24. EXACT WORDS USED BY SUSPECT

25. FORCE OR METHOD USED

26. APPARENT MOTIVE - TYPE PROPERTY TAKEN

27. TOTAL VALUE STOLEN

28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)

29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS
None

30. WITNESSES R/B RESIDENCE/BUSINESS ADDRESS-PHONE

(1) Deputy D. Mendoza R B 550 Flower Santa Ana Ca 92703 714-647-7000

(2)

(3)

31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)

(1) BKD. NBR. 2552647

(2) BKD. NBR. 2552649

(3) BKD. NBR. 2552646

32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS

QUAN. ARTICLE BRAND SERIAL NO. MODEL NO. MISC. DESCRIPTION VALUE

Evidence: (1) Palm Cellular Phone

33. INVESTIGATING OFFICERS REPORT BY
Deputy John Gomez

34. DATE OF REPORT
1/10/10

APPROVED
Sgt. J. J. [Signature] 2004

PAGE 1 OF 3

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 10-006602

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

Narrative:

On Sunday (1-10-10), at 1620 hours, Sgt. McLemore called me on my cellular phone and told me to respond to Hill Top Park at Cove and Green Lantern, Dana Point. The [REDACTED] had reported to Sgt. McLemore that three females were trespassing outside a walking trail; in violation of DPMC 13.04.055.

Hill Top Park is owned and maintained by the city of Dana Point. There is a sign posted at the entrance to the walking trail of the park. This entrance is located at the bottom of the trail located off Green Lantern and Cove Road. The sign states "you must walk on the trail." It also has DPMC Section 13.04 posted. This indicates "it shall be unlawful for any person to leave the designated trail and trespass on protected habitat, without consent from the Natural Resources Protection Officer or Written authorization from the City Manager or designee in the Hilltop Park."

I arrived on scene and spoke with [REDACTED]. [REDACTED] told me the following: On 1-10-10, at 1615 hours, he was walking near the top of the trail with his wife [REDACTED]. They saw three females about 30' outside the walking trail, each holding a clear plastic cup containing alcohol. He identified himself as the city manager and told them they were trespassing. All three females became belligerent and began yelling profanities at him. [REDACTED] said he took a picture of the three females, while they were outside the designated walking trail. They still refused to leave and continued to yell profanities at him.

[REDACTED] requested prosecution for all three females. [REDACTED] described all three females of having dark hair. He said they were still near the top of the trail.

I walked to the top of the trail where I met three females who all had dark hair. There was no other pedestrian traffic on the walking trail upon my contact with the females. One female (later identified as [REDACTED]) had an empty clear plastic cup. Another female (later identified as [REDACTED]) was holding a cellular phone and pointing the camera lens at me. I asked her if she was recording me and she said she was. I asked the three females if they just had a verbal altercation with a city staff member. They said a "fat guy" was harassing them and they just reported the incident with the sheriff's dispatch. I explained to them the male was the [REDACTED] and he observed them trespassing. One of the females (later identified as [REDACTED]), admitted they walked out of the walking trail only because they had a lot on their minds. I told the three females they were being detained and not free to leave. I explained to them I was going to issue them a citation for trespass. At this time Deputy Mendoza arrived to assist me.

While talking with the three females, I noticed all three subjects had symptoms of alcohol intoxication. They had the odor of an alcoholic beverage on their breaths and clothes.

I asked the three females to walk down the trail to my patrol car. I explained to them I would be issued them a citation for trespass. All three females refused to walk to my car. [REDACTED] then became belligerent. She demanded proof and refused to walk down the trail. [REDACTED] and [REDACTED] followed [REDACTED] lead not to comply with my instructions and also refused to walk to my patrol car. All three began screaming that their rights were being violated. I told all three females if did not comply with my directives I would arrest them.

33. INVESTIGATING OFFICERS	REPORT BY Deputy John Gomez	DATE OF REPORT 1/10/10	APPROVED Sgt. J. S. [Signature]
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PAGE 2 OF 3

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 10-006602

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

(CPC 148). [REDACTED] continued to be belligerent. She told Deputy Mendoza she would only walk if we allowed her to walk directly behind us. Deputy Mendoza tried to explain to her he could not follow her request. She then said she was not going and she placed her hands behind her back away from us. The other two females then said they were not going unless I showed them proof they were trespassing. I ordered all three women again to walk to my patrol car or they would be arrested. They refused and began arguing. I told them they were now being arrested obstructing a peace officer. I placed handcuffs on [REDACTED] and [REDACTED]. Deputy Mendoza handcuffed [REDACTED]. I collected a clear plastic cup [REDACTED] had in her hands. I noticed the contents she had in her cup had the odor of an alcoholic beverage.

We escorted all three women back to my patrol car. All three females continued to be belligerent. [REDACTED] then started screaming for help and threatened us with a lawsuit. [REDACTED] and [REDACTED] again followed her lead and threatened us with lawsuits.

We placed each female in the backseat of three different patrol cars. I asked [REDACTED] for her name and she refused to provide it to me. [REDACTED] then said she was pregnant. I asked [REDACTED] and [REDACTED] if [REDACTED] was pregnant and they said no. I asked [REDACTED] again if she was pregnant and this time she said no. [REDACTED] said she lied because the handcuffs were hurting her.

I spoke with [REDACTED] again. He told me the following regarding the incident. He identified himself to the women he was the [REDACTED]. He told them they were in an area that was a "protected habitat" and they need to get back on the trail. [REDACTED] was the most obnoxious and belligerent of the three. [REDACTED] replied, "fuck you. I pay taxes; you're probably a democrat and voted for Obama." [REDACTED] then she hoped he die by having a heart attack or die in a traffic accident. [REDACTED] and his wife decided to de-escalate the situation by walking away. [REDACTED] followed [REDACTED] and continued to scream at him. [REDACTED] contacted Sgt. McLemore and reported the incident.

[REDACTED] identified the three females who he saw trespass (see infield show-up forms). [REDACTED] signed a private person's arrest form for prosecution (see attached).

I looked at [REDACTED] cellular phone. I checked the photos on the phone and saw my picture. I could not determine if she recorded the incident, therefore, I collected the phone for evidence.

Deputy Northhart transported the three women to the Orange County Jails and they were booked for the listed charges.

33. INVESTIGATING OFFICERS	REPORT BY Deputy John Gomez	DATE OF REPORT 1/10/10	APPROVED Sgt. J. S. [Signature]
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PAGE 3 OF 3

1. COPIES TO:
Dana Point

In Custody

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 10-006602

PRIORITY: ☒ Yes
☐ No

3. ☐ INITIAL NON-CRIMINAL
4. ☐ INITIAL CRIMINAL
5. ☒ FOLLOW-UP CRIMINAL
6. ☐ CONTINUATION REPORT NO. FOLLOW-UP REPORT

SANDRA HUTCHENS, SHERIFF-CORONER

7. OFFENSE CPC 148(a)(1), Resist/delay/interfere officer	8. LOCATION OF OCCURRENCE Cove Road and Green Lantern, Dana Point 92629
9. VICTIM/INFORMANT Informant: Deputy D. Mendoza #2303	10. DATE AND TIME OF OCCURRENCE 1-10-10 @ 1620 hours
	11. GRID 971G6

12. DETAILS OF OFFENSE:

Details: On 1-10-10 I was dispatched to "Hilltop Park" to assist Deputy J. Gomez #2684 with trespassers inside the natural wildlife preserve in violation of Dana Point 13.04.055, trespass in natural open space areas. Hilltop Park is located at the intersection of Cove Road and Green Lantern in Dana Point.

Upon my arrival at approximately 1640 hours, I contacted Deputy Gomez at the top of the hiking trail. Deputy Gomez was talking with the three trespassers in question:

Subject #1) [redacted] a white female, 5-7 tall, 135 lbs., brown hair, brown eyes.
Subject #2) [redacted] a white female, 5-4 tall, 140 lbs., brown hair, brown eyes.
Subject #3) [redacted] a white female, 5-2 tall, 120 lbs., brown hair, hazel eyes.

Deputy Gomez was explaining why he was dispatched to the area. All three subjects appeared to be intoxicated and had the strong odor of alcohol on their breaths. They remained verbally uncooperative with Deputy Gomez throughout the duration of this incident. [redacted] appeared to be the primary agitator in by demanding to see any evidence (and video) against them before they were willing to listen or comply with Deputy Gomez. [redacted] and [redacted] made similar statements regarding their unwillingness to comply adding they wanted to see proof before they would listen to Deputy Gomez.

[redacted] remained uncooperative by yelling for assistance from (unknown name) passerby's that her rights were being violated. Deputy Gomez told all three subjects they needed to follow him to his patrol unit where they would be issued citations for trespassing in natural open areas.

Deputy Gomez instructed all three subjects to walk down the hiking path but all hesitated and yelled out loud that their rights were being violated. [redacted] refused to comply with Deputy Gomez and started to walk away in the opposite direction (away from the patrol units parked on Green Lantern). I then stood in front of [redacted] so she could not walk away. [redacted] refused to walk in front of me insisting that I walk in front of her. I told [redacted] I would not walk in front of her because it was unsafe to do so. [redacted] started to wave her hands in what appeared to be an angry manner so I brought it to the attention of Deputy Gomez. We both decided that additional safety precautions would be needed because [redacted] was clearly becoming angry and noncompliant.

Deputy Gomez and I agreed that [redacted] needed to be placed in handcuff restraints for officer safety and to deescalate hostilities. [redacted] and [redacted] also began to yell that their rights were being violated and tried to solicit support/attention from (unknown) passerby's in the area. [redacted] and [redacted] were also placed in handcuff restraints for delaying/resisting Deputy Gomez and I in the performance of our duties.

INVESTIGATING OFFICERS J. Gomez #2684	REPORT BY D. Mendoza #2303	DATE OF REPORT 1/10/10	APPROVED [Signature]
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PAGE 1 OF 2

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 10-006602

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

In an attempt to deescalate the situation Deputy Gomez and I walked all three subjects down the hill towards Green Lantern. Deputy Gomez escorted [REDACTED] and I escorted [REDACTED]. Deputy T. Mangus also arrived on scene and assisted in escorting [REDACTED] down the hill.

Since [REDACTED] remained verbally belligerent and was walking down a steep hill, I held on to her arm to keep her from breaking away from me and to keep her from losing her balance on the steep decline to the roadway. Although no force, physical or otherwise, was used against [REDACTED] she kept yelling out loud that I was deliberately hurting her. [REDACTED] possibly put unnecessary force on her own arms/wrists when she tried to turn around (handcuffed) to communicate with [REDACTED] and [REDACTED].

I could hear all three subjects make repeated comments how they were going to sue Deputy Gomez and I for false arrest. All three subjects were arrested for violation of CPC 148(a)(1) because they deliberately resisted and delayed us in the performance of our duties. Refer to initial crime report this DR by Deputy Gomez for complete details.

INVESTIGATING OFFICERS J. Gomez #2684	REPORT BY D. Mendoza #2303	DATE OF REPORT 1/10/10	APPROVED Sgt. J. E. 2004
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PAGE 2

1. Copies To: Dana Point

2. Case No. 10-006602A

2a. Citation No.

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

Priority: ☒ Yes ☐ No
SANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE DMPC 13.04.055 Trespass in Protective Habitant		4. DATE-TIME COMMITTED 1-10-10 / 1615 hours / Sunday	
5. WHERE COMMITTED Cove & Green Lantern, Dana Point Ca 92629		6. GRID 971G6	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE 33282 Golden Lantern Dana Point Ca 92629	
10. VICTIM DOB	11. ADDRESS-PHONE		
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS	
14. FIRM NAME OF VICTIM City of Dana Point		15. BUSINESS ADDRESS-PHONE 949-248-3500 Business Hours	
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED City Park	
18. POINT OF ENTRY CRIMES AGAINST PROPERTY		22. WEAPON OR MEANS USED CRIMES AGAINST PERSONS	
19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN		27. TOTAL VALUE STOLEN	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)			
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC NO., AND ANY OTHER IDENTIFYING MARKS None			
30. WITNESSES R/R RESIDENCE/BUSINESS ADDRESS-PHONE			
(1)	R	[REDACTED]	
(2)	R	[REDACTED]	
(3)	R	[REDACTED]	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)			
(1)	[REDACTED]		BKG. NBR. 2552647
(2)	[REDACTED]		BKG. NBR. 2552649
(3)	[REDACTED]		BKG. NBR. 2552646
32. DETAILS OF OFFENSE. EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO. MODEL NO. MISC. DESCRIPTION VALUE
See original report for details.			
33. INVESTIGATING OFFICERS REPORT BY		34. DATE OF REPORT	35. APPROVED [Signature]

PAGE 1 OF 1

Medical Temp. No: _____ ORANGE COUNTY JAIL
Santa Ana, California

☐ EXPEDITE BOOKING
☐ MEDICAL BOOKING
☒ NORMAL BOOKING
PRE-BOOKING RECORD

FOR JAIL USE ONLY PLEASE PRINT OR TYPE

BOOKING NUMBER 2551649 RECEIVING OFFICE 8213 DATE 1-10-10/2011 SUPPLEMENTAL WARRANTS _____ HOW MANY _____

☒ STREET BOOKING ☐ WARRANT ☐ COURT ORDER ☐ OTHER (SPECIFY) _____

☐ COMMITMENT

TO BE COMPLETED BY ARRESTING OR TRANSPORTING OFFICER
PLEASE FILL IN ALL OF THE BOXES BELOW THIS LINE PRIOR TO SUBMITTING TO THE RECEIVING GUARD STATION

ARRESTING AGENCY OCSD - DNA Pkt LOCAL AREA OR CONTRACT CITY 10-006602 AGENCY CASE 170-10 @ 1625 DATE & TIME ARRESTED

NAME: LAST BURKE FIRST ALYSSA MIDDLE DAWN

BIRTHDATE 9-16-72 SEX F RACE W HEIGHT 5-4 WEIGHT 140 HAIR BW EYES BW STATE & COUNTRY OF BIRTH CALIF CITIZENSHIP US

AKA North DRIVER'S LICENSE NO. & STATE CA

JURISDICTION HJC WARRANT OR CASE NUMBER 500.00

CHARGE 1 CR 148(a) ROBST / POCY OFFICE CHARGE 4 _____

CHARGE 2 _____ CHARGE 3 _____

CHARGE 3 _____ CHARGE 6 _____

DNA ☐ DNA COLLECTED BY OFFICER ☒ PREVIOUSLY COLLECTED ☒ NOT COLLECTED (EXPLAIN BELOW)
EXPLAIN WHY DNA WAS NOT COLLECTED MISD.

OCCUPATION _____ MARITAL STATUS _____ SOCIAL SECURITY NUMBER _____ TELEPHONE NO. _____

SCARS, MARKS, TATTOOS, AMP _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

NEXT OF KIN NAME _____ RELATIONSHIP _____ INTERESTED PARTY NO. _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

ARRESTEE EMPLOYER NAME _____ BUSINESS ADDRESS _____

OFFICER'S ADDITIONAL INFORMATION—CHECK BOX IF YOU BELIEVE THE ARRESTEE WILL REQUIRE MEDICAL ATTENTION OR SPECIAL MANAGEMENT.
☐ MEDICAL (ILL OR INJURED) ☐ MENTAL ☐ INTOXICATED ☐ PROTECTIVE CUSTODY ☐ HIGH SECURITY
EXPLAIN _____

ARRESTING OFFICER D. HANFORD / J. CAMPBELL MANDATORY FOREIGN CONSULAR NOTIFICATION MADE PER CMC 834C
☐ YES ☐ NO ☒ N/A

PERMISSION TO USE TELEPHONE AFTER ARREST (Pursuant to Penal Code Section 851.5)
I have been given the opportunity to make three (3) FREE telephone calls within the LOCAL DIALING area, or at MY OWN EXPENSE IF OUTSIDE the Local dialing area.

Telephone calls DESIRED 1 **RECORD OF TELEPHONE CALLS:** Telephone calls COMPLETED 1

Location CR 5 Date 1-10-10 Time 145

Witnessing Officer M. Northrup ID # 613 Agency OCSD

SIGNATURE CUTLER

FO580-186 (J) (R09/08)

To be completed upon a physical arrest for any misdemeanor, pursuant to Penal Code Section 853.6.

The person arrested:

1. ☐ was so intoxicated that he could have been a danger to himself or others.
2. ☐ required medical examination or medical care or was otherwise unable to care for his own safety.
3. ☐ was charged with one or more of the offenses listed in section 40302 of the Vehicle Code.
(Note Paragraphs five and eight)
4. ☐ had one or more outstanding arrest warrants issued.
5. ☐ could not provide satisfactory evidence of personal identification.
6. ☐ If released immediately would jeopardize the prosecution of the offense or offenses for which he was arrested or the prosecution of any other offenses.
7. ☐ would be reasonable likely to continue the offense or offenses, or the safety of persons or property would be imminently endangered if immediately released.
8. ☐ demanded to be taken before a magistrate or refused to sign the Notice to Appear.
9. ☐ was not released for one or more of the reasons specified in paragraphs one through eight. Specifically state reason

SYNOPSIS: (For Officer's Use Only)

CRIME SUMMARY INFORMATION, PROBABLE CAUSE DECLARATION AND BAIL SETTING INFORMATION

ARRESTER (LAST, FIRST, MIDDLE) [REDACTED]		BOOKING NO. 2552649	DR NO. 10-006602	
ADDRESS (RESIDENCE) [REDACTED]		DOB 8-16-72	AGE	SEX F
BOOKING CHARGES CIC 148(a) RESIST / PACIFY		SUPPL. HOLDS CP		
DATE / TIME OF ARREST 1-10-10 @ 1625		16-HR EXP. DATE / TIME 1-12-10 / 0425		
ARRESTING AGENCY OCSO		STATION 18	ARRESTING OFFICER (S) GOMEZ / 142008A	

FACTS ESTABLISHING ELEMENTS OF CRIME AND IDENTIFICATION OF ARRESTEE.

ON 1-10-10 I WAS DISPATCHED TO 1420 LEE HABITAT AREA AT SCENE
ONE AND LPAI CANTONMENT. THEREAFTER THREE FEMALE THAT TRANSFERRING IN A
RESTRICTED AREA. UPON ARRIVAL AT A PROXIMITY 1640 HOURS,
I CONTACTED DR J. GOMEZ @ 2684 CMO WAS TALKING TO ALL THREE FEMALE
DATE OF WHICH WAS ALEXIA BROWN BURNS (DOB: 9-16-72). IN
ADDITION TO [REDACTED] BEING VERBALLY IN CONSPIRACY WITH VAP GOMEZ, WHO
WAS TRYING TO EXPLAIN THEIR OPTIONS TO THEM. [REDACTED] TOLD
THE OTHER TWO FEMALE THAT THEY DID NOT HAVE TO LISTEN TO VAP
GOMEZ BECAUSE THERE WAS NO EVIDENCE AGAINST THEM. ALL THREE SUBJECT'S
DETAINED BY DEPUTY GOMEZ FACED MISDEMEANOR CHARGES. WHEN DEPUTY GOMEZ
ATTEMPTED TO RESCUE BURNS AND THE OTHER TWO RESISTED OUT OF
THE AREA. [REDACTED] TOLD HER OTHER TWO FRIENDS NOT TO COMPLY WITH
DEPUTY GOMEZ AND REFUSE TO LEAVE THE AREA. [REDACTED] WAS
PLACED IN HANDCUFF RESTRAINTS AND RESCUE OUT OF THE AREA TO OUR PATROL
UNITS. ALTHOUGH THE ONLY FORCE USED AGAINST [REDACTED] WAS HOLDING HER
HAND AND ARM TO KEEP HER FROM FALLING DOWN THE STEEP STAIRS PATH,
SHE KEPT YELLING THAT SHE WAS BEING ABUSED AND ASSAULTED.
() SEE ATTACHED REPORTS, INCORPORATED HEREIN BY THIS REFERENCE. WAS ~~FOR~~ ARRESTED
FOR VIOLATION OF CIC 148(a).

(1) WEAPON DESCRIPTION: _____
(2) VICTIM'S AGE: _____ VICTIM'S INJURIES: _____
(3) VALUE OF PROP. LOSS: \$ _____ TYPE OF PROP.: _____
(4) TYPE OF NARCOTICS: _____ QTY: _____
(5) WHOLESALE VALUE: \$ _____ STREET VALUE: \$ _____

I DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

EXECUTED ON 1-10-10 (DATE) AT ORANGE COUNTY, CALIFORNIA, BY [REDACTED] (SIGNATURE)

ON THE BASIS OF ☐ THE OFFICER'S DECLARATION ☐ REPORTS REVIEWED, I HEREBY DETERMINE THAT THERE
☐ IS ☐ IS NOT ☐ PROBABLE CAUSE TO BELIEVE THIS ARRESTEE HAS COMMITTED A CRIME.

(DATE) _____ (TIME) _____ (SIGNATURE OF JUDICIAL OFFICER) _____

FD360-2219

White - Jail; Blue - Detention Release; Pink - Court; Goldenrod - Arresting Agency

Revised 12-15-09

PROPERTY INVENTORY RECEIPT 10-006602

THIS FORM MUST BE COMPLETED ON ALL ORANGE COUNTY JAIL BOOKINGS.

SHADED AREAS ARE FOR I.R.C. USE ONLY

IR/C BOOKING NUMBER: **DATE/TIME:**

NAME: **DOB:** 7-16-52

LAST FIRST MIDDLE

ARRESTING AGENCY: OCJO **COURT:** 1116 **ARRESTING OFFICER:** J. GUMER

MONEY: \$ **RECEIVED BY:**

THIS FORM IS TO BE COMPLETED IN THE PRESENCE OF THE ARRESTEE. LIST ALL ITEMS BY AMOUNT AND COLOR. IF PROPERTY IS NOT REMOVED, INDICATE RETAINED IN THE APPROPRIATE BOX. LIST JEWELRY BY EITHER YELLOW OR WHITE METAL. INDICATE COLOR OF STONES ONLY. COMPLETE EVEN IF NO PROPERTY IS RECEIVED.

	UNVERIFIED/IR/C	YELLOW METAL	WHITE METAL	UNVERIFIED/IR/C
BELT				
KNIFE				
CHECKBOOK				
BILLFOLD				
GLASSES				
KEYS				
WATCH				
		EARRINGS		
		CHARMS		
		CHECKS		
		BRACELET		
		RINGS		
		NECK CHAIN		
		LIGHTER		

MISCELLANEOUS PROPERTY (Bulk property will NOT be accepted):

PROPERTY RELEASED:

RELEASED TO: **DATE/TIME:**

PRINT NAME/SIGNATURE

ITEMS RETAINED BY ARRESTING AGENCY, (EVIDENCE OR SAFEKEEPING):

INVENTORY OFFICER: **AGENCY:** **COURT:**

SIGNATURE & BADGE #: **DATE/TIME:**

PRINT NAME

I HAVE REVIEWED THIS INVENTORY AND IT ACCURATELY REFLECTS THE PROPERTY IN MY POSSESSION AT THIS TIME.

ARRESTEE'S SIGNATURE: **VERIFIED BY:**

MONEY/PROPERTY TRANSFER RECORD

TO BE COMPLETED ON ALL AGENCY-TO-AGENCY TRANSFERS/SIGNATURE INDICATES RECEIPT OF PROPERTY

RECEIVED BY: **AGENCY:** **DATE/TIME:**

PRINT NAME/SIGNATURE

DISCREPANCIES (IF ANY):

RECEIVED BY: **AGENCY:** **DATE/TIME:**

PRINT NAME/SIGNATURE

DISCREPANCIES (IF ANY):

RECEIVED BY: **AGENCY:** **DATE/TIME:**

PRINT NAME/SIGNATURE

DISCREPANCIES (IF ANY):

TO BE COMPLETED AT TIME OF RELEASE

I HAVE REVIEWED MY PROPERTY AND I ACKNOWLEDGE RECEIPT OF ALL MONEY AND ARTICLES LISTED ABOVE EXCEPT THAT PORTION THEREOF PREVIOUSLY RELEASED BY ORDER.

SIGNATURE: **DATE/TIME:**

RELEASED BY: **AGENCY/COURT:**

PRINT NAME/SIGNATURE

COMMENTS:

Original - File Yellow - Property Pink - Inmate Gold - Agency

70880-410

COPIES: DANA POINT

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

CASE NO. 10-006602

PRIORITY: ☒ YES
☐ NO

SANDRA HUTCHENS, SHERIFF-CORONER

IN FIELD SHOW-UP REPORT

OFFENSE DPM 13.04.055	LOCATION OF OCCURRENCE Cove + Green LAUTEM DANA PT Ca
VICTIM CITY OF DANA POINT	DATE OF OCCURRENCE 1-10-10/1615 HRS
	GRID SUNNY 97166

ADMONITION OF VICTIMS AND WITNESSES:

It is requested that you look at an individual who has been temporarily detained by the Police. This person may or may not have committed the crime. It is just as important to eliminate an innocent person from suspicion, as it is to identify the person who committed the crime. You are under no obligation to identify this person. The fact that the person has been detained, may be handcuffed, seated in a Police car, or surrounded by Police Officers should not influence your decision. While viewing this individual, be aware of the possibility that the person being detained may have altered his/her appearance by using a disguise or by changing clothing since the time of the reported crime. The possibility should be considered in your final identification or elimination of the individual being detained. Please do not discuss the case with other witnesses or indicate in any way that you have or have not identified someone.

I fully understand the admonition recited to me by Officer Gomez regarding the In Field Show-Up.
☐ Yes ☐ No

(Signature of Witness)

IDENTIFICATION:

<input type="checkbox"/> I cannot identify this individual as the suspect.
<input checked="" type="checkbox"/> I can identify this individual as the suspect.

ADDITIONAL COMMENTS OF VICTIM / WITNESSES:

"YES THATS THE OTHER ONE"

SIGNATURE OF WITNESS:

WITNESSED BY OFFICER:

DATE: 1-10-10

DATE / TIME: 1-10-10/1730 HRS

LOCATION OF IN FIELD SHOW-UP:

DATE & TIME OF IN FIELD SHOW-UP: 1-10-10/1730 HRS

NAME AND DATE OF BIRTH OF PERSON VIEWED:

INVESTIGATING OFFICERS	REPORTED BY J. GOMEZ #2684	DATE OF REPORT 1-10-10	APPROVED Sgt. J. [Signature]
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SRP 070.1

IN-FIELD SHOW-UP PROCEDURE

Even though proper In-Field Show-ups have been approved, a show-up, which is impermissibly suggestive, is still impermissible. To be sure your show-up identification will not be excluded at trial as unfair, follow these guidelines.

1. Take a detailed description of the suspect from the witness before the witness sees the detained suspect.
2. Read the Admonition Statement to the witness and have him sign the Admonition part of the report.
3. Transport the witness to the detained suspect's location.
4. Do not tell the witness any incriminating facts about the circumstances of the detention, such as - "We caught him running away", "He had your purse in his car", etc.
5. Do not offer any personal opinions about whether the detainee is, or is not, the perpetrator.
6. If safety permits, reduce the inherent suggestiveness by displaying the detainee outside the police car or without handcuffs.
7. If you have two or more witnesses, separate them before the show-up viewing, so they will be giving their independent opinion on the identification.
8. Display the detainee to the witness.
9. If possible, record the witness' exact words, such as, "That's him", "I think it's him", "I'm sure that's the guy."
10. Have the witness complete the identification and additional comments sections and sign and date the report.
11. The officer who witnessed the signature shall record the date and time of it.
12. Interview the witness about whether the suspect changed his clothing to disguise his appearance.
13. Display the weapon, vehicle or any stolen property to the witness for identification and record the witness' comments.
14. The officer shall complete the rest of the In-Field Show-Up report.
15. After the In-Field Show-Up, transport the witness back to his original location.
16. Be specific about your articulable suspicion to have detained the suspect for the show-up. Instead of saying, "He fit the description", say, "He was a white male in his twenties with dark hair, wearing blue coveralls, as described in the dispatch or broadcast, and he was approximately 1/4 mile away from the scene and within fifteen minutes of the crime."
17. Book the original In-Field Show-Up report as evidence, and attach copies of it to your report.

ORIGINAL

OR 101006602

SHERIFF'S DEPARTMENT, ORANGE COUNTY
Santa Ana, California

TO: Sandra Hutchens, Sheriff-Coroner

PEOPLE OF THE STATE OF CALIFORNIA

ORDER OF ARREST
BY
PRIVATE PERSON

vs

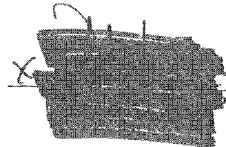

Defendant

You are hereby requested to take into custody the above named defendant who I have arrested, for the commission of a public offense in my presence, under authority of the Penal Code of the State of California.

I will further, in the interest of Justice, appear at the Department of the Sheriff in and for Orange County when summoned by Sheriff Investigators to swear to a complaint against said defendant, and will appear as a witness for the people in any subsequent action when my presence is necessary to the prosecution of said defendant.

I understand that having started these proceedings, I must follow through as above stated, and if I do not, I may be brought into Court by process so that the case may be properly disposed of.

Date 1-10-10 Time 1725


X _____
g PettyWitnessed:  , Deputy

Witnessed: _____ , Deputy

PAT 7

1. Copies To: Dana Point

In-Custody

Priority: ☒ Yes ☐ No

SANDRA HUTCHENS, SHERIFF-CORONER

Def

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 09-161355

2a. Citation No.

INITIAL CRIME REPORT

3. OFFENSE CPC 602.8(a) - Trespassing		4. DATE-TIME COMMITTED 08-28-09 / 0645 hours	
5. WHERE COMMITTED Selva / Dana Strand, Dana Point		6. GRID 97116	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]	
10. VICTIM See Box 14	DOB	11. ADDRESS-PHONE See Box 15	
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS Weekdays - Box 15	
14. FIRM NAME OF VICTIM Headlands Reserve LLC		15. BUSINESS ADDRESS-PHONE 24849 Del Prado, Dana Point 92629- (949)488-8800	
16. VICTIM'S OCCUPATION Developer	RACE SEX AGE	17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Construction site	
18. CRIMES AGAINST PROPERTY: POINT OF ENTRY Fenced area		22. CRIMES AGAINST PERSONS WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED Hands & feet		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED Climbed over		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? Construction workers on duty		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN To trespass		27. TOTAL VALUE STOLEN \$	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) Suspect climbed over fence			
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, CO, OR LIC. NO., AND ANY OTHER IDENTIFYING MARKS 2005, Ford Ranger, truck, black, CA # 7V14762			
30. WITNESSES N/B RESIDENCE/BUSINESS ADDRESS-PHONE		[REDACTED]	
(1)	[REDACTED]	[REDACTED]	
(2)	[REDACTED]	[REDACTED]	
(3)	[REDACTED]	[REDACTED]	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR. 2531666	
(1)	[REDACTED] M W	03-11-88 5'08" 170 bro bro	
(2)	[REDACTED]	BKG. NBR.	
(3)	[REDACTED]	BKG. NBR.	
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	GRAND	SERIAL NO.
			MODEL NO.
			MISC. DESCRIPTION
			VALUE
33. INVESTIGATING OFFICERS Mendoza / Oliva		34. DATE OF REPORT 8/28/09	
REPORT BY Deputy E. Oliva # 3905		35. APPROVED [Signature]	

PAGE 1 OF 1

1. Copies To: Dana Point

In-Custody

Priority: ☒ Yes ☐ No

SANDRA HUTCHENS, SHERIFF-CORONER

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 09-161355A

2a. Citation No.

3. OFFENSE CPC 549 (b)(1) - Vandalism		4. DATE-TIME COMMITTED 08-28-09 / 0705 hours				
5. WHERE COMMITTED Selva / Dana Strand, Dana Point		6. GRID 971F6	7. DATE-TIME REPORTED			
8. INTERVIEW [REDACTED]		9. ADDRESS-PHONE [REDACTED]				
10. VICTIM See Box 14		11. ADDRESS-PHONE See Box 15				
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS Weekdays - Box 9				
14. FIRM NAME OF VICTIM County of Orange		15. BUSINESS ADDRESS-PHONE				
16. VICTIM'S OCCUPATION RACE SEX AGE Public Entity		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Public parking lot				
COMPLETE ON ALL APPLICABLE FELONIES, MISD., SEX AND THEFTS	18. CRIMES AGAINST PROPERTY 18. POINT OF ENTRY		22. WEAPON OR MEANS USED			
	19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE			
	20. METHOD USED		24. EXACT WORDS USED BY SUSPECT			
	21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?		25. FORCE OR METHOD USED			
	26. APPARENT MOTIVE - TYPE PROPERTY TAKEN		27. TOTAL VALUE STOLEN \$			
	28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)					
	29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC NO., AND ANY OTHER IDENTIFYING MARKS 2005, Ford Ranger, truck, black, CA # 7V14762					
	30. WITNESSES BIG RESIDENCE BUSINESS ADDRESS-PHONE					
	(1)	R B	[REDACTED]			
	(2)	R B	[REDACTED]			
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)						
(1)	[REDACTED] 7 M W	BKG. NBR. 2531666	03-11-88 5'08" 170 bro bro			
(2)		BKG. NBR.				
(3)		BKG. NBR.				
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS						
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE

Damage: 8 plants uprooted from planter

23. INVESTIGATING OFFICERS Mendoza / Oliva	REPORT BY Deputy E. Oliva # 3905	34. DATE OF REPORT 8/28/09	35. APPROVED [Signature]
---	-------------------------------------	-------------------------------	-----------------------------

PAGE 1 OF 2

1. COPIES TO:
Dana Point
In-Custody

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 09-161355B

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

Details:

On Friday, 08-28-09, at approximately 0645 hours, Deputy Mendoza and I were initially dispatched to the "Headlands Reserve" construction site located at Selva and Dana Strand in Dana Point reference trespassing.

I spoke with [REDACTED] who I've met on a prior incident of vandalism to the site. [REDACTED] is the construction manager for the development project.

[REDACTED] said he started to drive around to check the site as he started his work day. He said that two males had trespassed into the site and were next to the restrooms. [REDACTED] showed Deputy Mendoza and me the restrooms.

[REDACTED] said the two males had apparently climbed over from outside the fence and into the restroom area. It should be noted that the site is surrounded by wrought iron fencing. The fence was approximately six feet in height. Several signs, warning against trespassing, were affixed and very visible on the outside of the fence in the area by the restrooms. The signs had an interval of approximately thirty feet from each other. The signs were approximately two feet by three feet in size. The signs had a white background with blue letters. [REDACTED] said both males climbed out of the fence upon realizing that he was going to confront them. He explained that the males disappeared from his view as they ran westbound along the beach sand. It should be noted that the ocean is on the south side of the development.

[REDACTED] described the males to be in their twenties. One had brown hair and the other had blonde hair. Both were wearing shorts and "flip-flops".

At approximately 0705 hours, Deputy Mendoza and I were re-dispatched by the pedestrian beach access at Selva and Dana Strand. Sheriff's Dispatch advised that [REDACTED] was detaining one of the male trespassers from earlier.

Deputy Mendoza was already at the scene and a male was seated on the curb. The male was identified by his California license as [REDACTED] (03-11-88) and a male, identified as [REDACTED] (07-04-63), were standing nearby. [REDACTED] said that [REDACTED] was one of the trespassers from earlier.

[REDACTED] vehicle, 2005 Ford Ranger pick-up truck, was in the middle of the street. It had California plate 7V14762. Deputy Mendoza would later tow the vehicle under authority CVC 22651(h)-Driver Arrested. It was towed from the scene by A.C. Towing (180 Calle Iglesia, San Clemente-phone # 949-492-3805). See attached copy of CHP-180 form.

I found out from [REDACTED] that [REDACTED] was part of the maintenance staff which works under contract with "Headlands". [REDACTED] said that he worked for "Valley Crest Landscape" based out of Santa Ana.

33. INVESTIGATING OFFICERS	REPORT BY	DATE OF REPORT	APPROVED
Mendoza / Oliva	Deputy E. Oliva # 3905	8/28/09	[Signature]

PAGE 2 OF 5

1. COPIES TO:
Dana Point
In-Custody

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 09-161355B

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

I tried to speak with [REDACTED]. He was sweaty and he emitted bad body odor. He was wearing nothing but his swimming trunks.

[REDACTED] appeared to be under the influence of drugs. He could not seem to focus his eyes on me as I spoke to him. His demeanor alternated from being calm to agitated. His alternated back and forth from talking fast to slow. [REDACTED] talked about matters which did not make sense. There were times when he breathed very hard. I decided to handcuff [REDACTED] for safety reasons. [REDACTED] acted scared upon seeing that I was going to handcuff him. He tried to slide away from me while being seated on the curb. [REDACTED] complied after being reassured and I placed him in the back seat of Deputy Mendoza's patrol unit.

[REDACTED] said that at approximately 0705 hours, he saw [REDACTED] in the (Dana Strand Beach) public parking lot. [REDACTED] was towards the southwest corner of the parking lot and standing just outside the construction fence line. He said that [REDACTED] even said, "Hi" to him.

[REDACTED] said as he was walking northbound on the inside of the same fence line, he saw three or four plants "flying" over the fence. [REDACTED] looked through the (chicken-wire type) fence to see what was happening. He saw [REDACTED] with an uprooted plant on one hand and he then threw the plant over the fence. [REDACTED] said he asked [REDACTED] what he was doing. [REDACTED] told him, "I hate plants." He said that [REDACTED] was uprooting the plants from a raised concrete planter form the parking lot. [REDACTED] then drove away from the parking lot and out to Selva. He then notified his supervisor and went back to work.

[REDACTED] told me that [REDACTED] pulled out seven plants called "Star Jasmine" and three plants called (similar to) "Raphalytus". [REDACTED] said that it would cost five hundred dollars to replace the plants plus labor. [REDACTED] said that even though the parking lot belonged to the County of Orange, the "Headlands" was responsible for maintaining the lot including the planters.

[REDACTED] said that he was notified by [REDACTED] supervisor, [REDACTED] that someone was pulling out plants. [REDACTED] said he immediately responded and he saw [REDACTED] by the pedestrian beach access. He said [REDACTED] walked towards him and spontaneously said, "I'll replace the plants. I'm a billionaire. I'll replace the plants." [REDACTED] said [REDACTED] was "talking jibberish" and felt that [REDACTED] was "off".

[REDACTED] took photographs of the damaged plants and planter. He saved the images on a compact disc and had copies of the photographs on a print paper. I later booked the items at Aliso Viejo Sheriff's Station as evidence.

[REDACTED] said he wanted [REDACTED] prosecuted for the trespassing. [REDACTED] signed a citizen's arrest form in my presence to have [REDACTED] arrested for the vandalism. See attached private person's arrest form.

I went back to [REDACTED], who was still in the backseat of Deputy Mendoza's unit. I told him that he was under arrest and that I was going to read him his Miranda rights. I repeatedly attempted to read [REDACTED] his rights but he would not look at me or give me a reply. He just grinned and looked away from me. [REDACTED] stuck his tongue out and made funny faces. I stopped reading the advisement. As a precautionary, I requested for Orange County Fire Department to respond and check [REDACTED] to ensure he was not having an emergency.

33. INVESTIGATING OFFICERS Mendoza / Oliva	REPORT BY Deputy E. Oliva # 3905	DATE OF REPORT 8/28/09	APPROVED 
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PAGE 3 OF 5

1. COPIES TO:
Dana Point
In-Custody

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 09-161355B

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

medical problem. The Fire Department personnel responded and they deemed that [REDACTED] did not require emergency medical treatment.

I told [REDACTED] that I needed to move him to my patrol unit. I repeatedly asked [REDACTED] to step out of the Deputy Mendoza's unit. He stiffened his body and said he would not get out. I pulled on his left arm to get him out but he pulled away from me and raised his feet in my direction. Unknown if he was going to kick or try to jump out of the unit, I pulled my taser gun out. [REDACTED] yelled, "Please don't shoot me with the taser!" I requested over my radio to have one more deputy respond to assist in the event [REDACTED] becomes more aggressive. Sergeant Greenwood and Sergeant Irish responded and stood by while I convinced [REDACTED] to voluntarily comply to step out of Deputy Mendoza's unit and into mine. [REDACTED] subsequently complied.

I initially transported [REDACTED] to the Dana Point City Hall to fill out his booking forms and from there transported him to the Orange County Jail in Santa Ana.

In an unrelated incident, Deputy Macias transported another arrestee who appeared to have mental problems. For safety reasons, we followed one another to the jail since our arrestees were potentially volatile.

The transportation to the jail was without incident but I notified the jail staff that Deputy Macias and I were bringing in potentially combative arrestees. Several deputies and two sergeants met us outside the sally port door of the arrestee intake area. After the medical triage procedure, [REDACTED] became uncooperative and he refused to walk willingly with the jail staff. He curled his body to resist and he started to scream. Deputies placed [REDACTED] in a holding cell as a booking hold because of his behavior. It took several deputies to control [REDACTED]. The jail staff recorded the incident with a video camera.

Deputy Macias' arrestee became agitated and also resisted deputies after witnessing what was occurring with [REDACTED]. The arrestee was placed in another holding cell as a booking hold.

[REDACTED] was charged with CPC 602.8(a)-Trespassing, CPC 594(b) (1)-Vandalism, and CPC 148(a) (1)-Resisting and Delaying.

I did not attempt to have [REDACTED] checked for being under the influence of drugs by a D.R.E. (drug recognition expert) because of his potentially assaultive behavior.

33. INVESTIGATING OFFICERS Mendoza / Oliva	REPORT BY Deputy E. Oliva # 3905	DATE OF REPORT 8/28/09	APPROVED 
---	-------------------------------------	---------------------------	---

PAGE 4 OF 5

DR 09, 161055

SHERIFF'S DEPARTMENT, ORANGE COUNTY
Santa Ana, California

TO: Sandra Hutchens, Sheriff-Coroner

PEOPLE OF THE STATE OF CALIFORNIA

VS

Defendant

(3-11-88)

ORDER OF ARREST
BY
PRIVATE PERSON

You are hereby requested to take into custody the above named defendant who I have arrested, for the commission of a public offense in my presence, under authority of the Penal Code of the State of California.

I will further, in the interest of Justice, appear at the Department of the Sheriff in and for Orange County when summoned by Sheriff Investigators to swear to a complaint against said defendant, and will appear as a witness for the people in any subsequent action when my presence is necessary to the prosecution of said defendant.

I understand that having started these proceedings, I must follow through as above stated, and if I do not, I may be brought into Court by process so that the case may be properly disposed of.

Date 8/28/09 Time 8:00 A.M.

X [Signature] Signature of Arresting Party

Witnessed: OLIVA, Deputy #3208

Witnessed: _____, Deputy

1. Copies To: Dana Point

In-Custody

Priority: ☒ Yes ☐ No

SANDRA HUTCHENS, SHERIFF-CORONER

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 09-161355B

2a. Citation No.

INITIAL CRIME REPORT

3. OFFENSE CPC 148 (a)(1) - Resisting / Delaying		4. DATE-TIME COMMITTED 08-28-09 / 0800 hours	
5. WHERE COMMITTED Selva / Dana Strand, Dana Point		6. GRID 971F6	7. DATE-TIME REPORTED
8. INFORMANT A/O		9. ADDRESS-PHONE See Box 15	
10. VICTIM See Box 14		11. CONTACT TIME-ADDRESS Weekdays - Box 9	
12. BUSINESS ADDRESS-PHONE		13. BUSINESS ADDRESS PHONE	
14. FIRM NAME OF VICTIM State of California		15. BUSINESS ADDRESS PHONE	
16. VICTIM'S OCCUPATION Public Entity		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Public street	
18. CRIMES AGAINST PROPERTY POINT OF ENTRY		22. WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE -- TYPE PROPERTY TAKEN		27. TOTAL VALUE STOLEN \$	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)			
29. VEHICLE USED BY SUSPECT(S) -- YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS 2005, Ford Ranger, truck, black, CA # 7V14762			
30. WITNESSES (RUB RESIDENCE/BUSINESS ADDRESS-PHONE)		R	
(1) Deputy D. Mendoza		P 11 Journey, Aliso Viejo CA 92656 949-425-1800	
(2)		R	
(3)		R	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR. 2531666	
(1)		W 03-11-88 5'08" 170 bro bro	
(2)		BKG. NBR.	
(3)		BKG. NBR.	
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO.
			MODEL NO.
			MISC. DESCRIPTION
			VALUE

33. INVESTIGATING OFFICERS
Mendoza / Oliva

REPORT BY

Deputy E. Oliva # 3905

34. DATE OF REPORT

8/28/09

35. APPROVED

PAGE 1 OF 5

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
VEHICLE REPORT
P 180 (Rev. 2-89) OPI 051

NOTE: CHP 180 IS FURNISHED TO ALL PEACE
OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

REPORTING DEPARTMENT OCSO - DANA POINT		LOCATION CODE 97185	DATE / TIME OF REPORT 8-28-09	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input type="checkbox"/>	FILE NO. 09-161355
LOCATION / TOWED / STOLEN FROM SECNA + PCO - DANA POINT		ODOMETER READING 64787	VIN CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH NOTIFIED	LOG NO.
YEAR 05	MAKE FORD	MODEL FANGRE	BODY TYPE P/U	COLOR BLU	LICENSE NO. 7V14762
VEHICLE IDENTIFICATION NO. 1B7TYR1H4U55P1A9129151			ENGINE NO.	VALUATION BY <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> OWNER	ONE MONTH / YEAR <input type="checkbox"/> TWO <input checked="" type="checkbox"/> STATE 8-31-10 CA
REGISTERED OWNER			LEGAL OWNER		

<input checked="" type="checkbox"/> STORED		<input type="checkbox"/> IMPOUNDED		<input type="checkbox"/> RELEASED		<input type="checkbox"/> RECOVERED - VEHICLE / COMPONENT	
TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE) A/C TOWING 180 CHIC DALLAS, SAN ANTONIO						STORAGE AUTHORITY / REASON 22651 (H)	
TOWED TO / STORED AT (949) 492-3805						VIN SWITCHED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
CONDITION		YES	NO	ITEMS	YES	NO	ITEMS
WRECKED	<input checked="" type="checkbox"/>			SEAT (FRONT)	<input checked="" type="checkbox"/>		REGISTRATION
BURNED HULK per 431(c) VC	<input checked="" type="checkbox"/>			SEAT (REAR)	<input checked="" type="checkbox"/>		ALT / GENERATOR
VANDALIZED	<input checked="" type="checkbox"/>			RADIO	<input checked="" type="checkbox"/>		BATTERY
ENG / TRANS. STRIP	<input checked="" type="checkbox"/>			TAPE DECK	<input checked="" type="checkbox"/>		DIFFERENTIAL
MISC. PARTS STRIP	<input checked="" type="checkbox"/>			TAPES	<input checked="" type="checkbox"/>		TRANSMISSION
BY METAL STRIP	<input checked="" type="checkbox"/>			OTHER RADIO	<input checked="" type="checkbox"/>		OTHER
SURGICAL STRIP per 431(b) VC	<input checked="" type="checkbox"/>			IGNITION KEY	<input checked="" type="checkbox"/>		MANUAL
RELEASE VEHICLE TO:		<input checked="" type="checkbox"/> R/O OR AGENT	<input type="checkbox"/> AGENCY HOLD	<input type="checkbox"/> 22650.3 VC	DATE / TIME 8/28/09		
NAME OF PERSON / AGENCY AUTHORIZING RELEASE				ID. NO.	DATE		
SIGNATURE OF PERSON AUTHORIZING RELEASE				SIGNATURE OF PERSON TAKING POSSESSION			

<input type="checkbox"/> STOLEN VEHICLE / COMPONENT		<input type="checkbox"/> EMBEZZLED VEHICLE		<input type="checkbox"/> PLATE(S) REPORT	
DATE / TIME OF OCCURRENCE	DATE / TIME REPORTED	NAME OF REPORTING PARTY (R/P)	DRIVER LICENSE NO. / STATE		
LAST DRIVER OF VEHICLE	DATE / TIME	ADDRESS OF R/P	TELEPHONE OF R/P		
I CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.		SIGNATURE OF PERSON MAKING REPORT			

REMARKS (LIST PROPERTY, TOOLS, VEHICLE DAMAGE, ARRESTS) PCN: 3730924002903			
DRIVER'S NAME [REDACTED]	ARRESTED / SECTION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO PC 594	REPORTED BY D. MENDOZA	VALUE \$ [REDACTED]
DAMAGE: NONE - DIRTY			
EVIDENCE: MISC. CLOTHING ITEMS IN CAB AREA			
DETAILS: DRIVER ARRESTED AT ABOVE LOCATION FOR VANDALISM. DRIVER TRANSFERRED TO CCJ.			

FRONT	LEFT SIDE	RIGHT SIDE	REAR	TOP
SIGNATURE OF OFFICER TAKING REPORT [Signature]		ID. NO. 2307	SUPERVISOR	REQUIRED NOTICES SENT TO REGISTERED AND LEGAL OWNERS PER 22652 VC? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
				DATE NOTIFIED

09/01/09 05:02:50

HMMD 0036

HH

HH

RE: CHA. [REDACTED] DATE:20090901 TIME:05:02:50

ATTN:EBARGARAYJ,CSS, 09-161355

NO HIT BUREAU OF CRIMINAL IDENTIFICATION FILES

* * * * * END OF MESSAGE * * * * *

ORIGINAL

1. Copies To: DANA POINT
GRAFFITI2. Case No. 09-155058
2a. Citation No.Priority: ☐ Yes ☒ No
SANDRA HUTCHENS, SHERIFF-CORONERSHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

INITIAL CRIME REPORT

3. OFFENSE <u>CPC 594(A)(2) VANDALISM</u>		4. DATE-TIME COMMITTED <u>BETWEEN 8-18-09 1830 THRU 8-19-09 0600</u>				
5. WHERE COMMITTED <u>34352 DANA STRANDS DANA POINT</u>		6. GRID <u>437</u>	7. DATE-TIME REPORTED <u>4715</u>			
8. INFORMANT <u>[REDACTED]</u>		9. ADDRESS-PHONE <u>[REDACTED]</u>				
10. VICTIM <u>[REDACTED]</u>		11. ADDRESS-PHONE <u>[REDACTED]</u>				
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS				
14. FIRM NAME OF VICTIM <u>HEADLANDS RESERVE SAME BOX #5</u>		15. BUSINESS ADDRESS-PHONE <u>949-254-2852 ANY TIME</u>				
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED <u>CONSTRUCTION SITE / BOARDWALK</u>				
COMPLETE ON ALL APPLICABLE FELONIES, MISD., SEX AND TRIFTS	18. POINT OF ENTRY <u>N/A</u>		22. WEAPON OR MEANS USED			
	19. INSTRUMENT OR MEANS USED <u>SPRAY PAINT</u>		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE			
	20. METHOD USED <u>GRAFFITI</u>		24. EXACT WORDS USED BY SUSPECT			
	21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? <u>AWAY FROM BOARDWALK</u>		25. FORCE OR METHOD USED			
	26. APPARENT MOTIVE - TYPE PROPERTY TAKEN <u>DAMAGE PROPERTY - NONE</u>		27. TOTAL VALUE STOLEN <u>\$ 0</u>			
	28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) <u>SUSPECT(S) SPRAY PAINTED WALL</u>					
	29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS <u>UNKNOWN</u>					
	30. WITNESSES FOR RESIDENCE/BUSINESS ADDRESS-PHONE					
(1) Unknown		R B				
(2)		R B				
(3)		R B				
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.				
(1) Unknown		BKG. NBR.				
(2)		BKG. NBR.				
(3)		BKG. NBR.				
32. DETAILS OF OFFENSE EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS						
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE
	DAMAGE: 2' X 30' GRAFFITI READ, "DIE STRAND FUCK MILLIONAIRES."					
33. INVESTIGATING OFFICERS		REPORT BY		34. DATE OF REPORT		35. APPROVED
SHF 010		DEPUTY J. GOMEZ #2684		8-19-09		Sgt J. Cagente

PAGE 1 OF 2

PAGE 1 OF 2

1. COPIES TO: DANA POINT

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 09-155058

SANDRA HUTCHENS, SHERIFF - CORONER

REPORT CONTINUATION

NARRATIVE:

ON WEDNESDAY (8-19-09), AT 1600 HOURS, I WAS DISPATCHED TO THE HEADLANDS RESERVE CONSTRUCTION SITE AT 34352 DANA STRANDS, DANA POINT, REFERENCE A VANDALISM REPORT.

THE INFORMANT (REDACTED) IS THE (REDACTED) WHO TOLD ME THE FOLLOWING: ON 8-18-09, AT 1830 HOURS, HE LEFT THE CONSTRUCTION SITE. ON 8-19-09, AT 0600 HOURS, HE RETURNED AND SAW GRAFFITI ON THE BOARDWALK WALL. THE GRAFFITI READ, "DIE STRAND FOLK MILLIONAIRES."

(REDACTED) SAID THE GRAFFITI WAS IN THE PROCESS OF BEING CLEANED UP BY HIS STAFF.

(REDACTED) DESIRED PROSECUTION AND I GAVE HIM MY BUSINESS CARD WITH CASE NUMBER FOR FUTURE REFERENCE.

33. INVESTIGATING OFFICERS	REPORT BY	DATE OF REPORT	APPROVED
DEPUTY J. GOMEZ #2684		8-19-09	Sgt J. Caputo

PAGE 2 OF 2

PAGE 2 OF 2

1. Copies To: Dana Point

ORIGINAL

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 09/136043

2a. Citation No.

Priority: ☐ Yes ☒ No

SANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594 Vandalism		4. DATE-TIME COMMITTED 7-22-09 at about 1200 and 1300 hours	
5. WHERE COMMITTED Hedland's Reserve, PCH @ Selva DP, 92629		6. GRID 971F6/136	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]	
10. VICTIM DOB		11. ADDRESS-PHONE [REDACTED]	
12. BUSINESS ADDRESS-PHONE #9 (949) 488-8800		13. CONTACT TIME-ADDRESS 0900-1700 #9	
14. FIRM NAME OF VICTIM Hedland's Reserve LLC		15. BUSINESS ADDRESS-PHONE #9 (949) 488-8800	
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Construction Site	
COMPLETE ON ALL APPLICABLE RELOSINES MISD, SEX AND THEFTS	18. POINT OF ENTRY Opened gate		22. WEAPON OR MEANS USED
	19. INSTRUMENT OR MEANS USED Spray paint		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE
	20. METHOD USED Sprayed paint on the concrete		24. EXACT WORDS USED BY SUSPECT
	21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? Away		25. FORCE OR METHOD USED
	26. APPARENT MOTIVE - TYPE PROPERTY TAKEN To deface property - none		27. TOTAL VALUE STOLEN \$0.00
	28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) Vandalized a construction site		
	29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS Unknown		
	30. WITNESSES R/O RESIDENCE/BUSINESS ADDRESS PHONE		
	(1) Unknown		
	(2)		
(3)			
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1) Unknown		BKG. NBR.	
(2)		BKG. NBR.	
(3)		BKG. NBR.	
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO.
Damage: unknown scribbling (graffiti) on concrete area of construction site, at the bottom of the stairs leading toward the beach		MODEL NO.	MISC. DESCRIPTION
Approximately seven broken sprinkler heads to grass area on construction site		VALUE	
Details: On 7-24-09 at about 0900 hours, I responded to the Headland's Reserve construction site regarding a vandalism report. I met with Construction Foreman [REDACTED]. He told me someone sprayed graffiti on a concrete area at the bottom of the stairs that lead to the beach. [REDACTED] also told me someone			
33. INVESTIGATING OFFICERS		REPORT BY	34. DATE OF REPORT
		Deputy E. Macias #873	7/24/09
		35. APPROVED	Sgt. Carpenter

PAGE 1 OF 2

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 09/136043

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

broke some sprinkler heads to a grassy area (by Selva and PCH) within the construction site. [REDACTED] said he took a photograph of the graffiti prior to having it removed. He showed me the picture of the graffiti but neither one of us were able to decipher the graffiti. [REDACTED] told me the sprinkler heads had been replaced prior to my arrival. He said he would email a photo of the graffiti to the case investigator. [REDACTED] told me he needed a case number for this incident to be reimbursed for damage.

I provided him with a business card and case number for this incident. I did not request the Sheriff's identification bureau respond to collect any physical evidence.

33. INVESTIGATING OFFICERS	REPORT BY Deputy E. Macias #873	DATE OF REPORT 7/24/09	APPROVED <i>Sgt. A. Carpenter</i>
----------------------------	------------------------------------	---------------------------	--------------------------------------

PAGE 2 OF 2

1. Copies To: Dana Point

2. Case No. 09/072257

2a. Citation No.

COPY

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

Priority: ☐ Yes ☒ No

ANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

4. DATE-TIME COMMITTED Between Wed. 4-22-09 2100 and Thurs. 4-23-09 0500		6. GRID 971F7				
5. WHERE COMMITTED Selva Rd. / Dana Strand Rd.		7. DATE-TIME REPORTED				
8. INFORMANT		9. ADDRESS-PHONE				
10. VICTIM		11. ADDRESS-PHONE				
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS				
14. FIRM NAME OF VICTIM Headlands Reserve LLC		15. BUSINESS ADDRESS-PHONE 24849 Del Prado, Dana Point 488-8800				
16. VICTIM'S OCCUPATION RACE SEX AGE Land Development		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED South beach access pedestrian walkway off Selva Rd.				
ON ALL APPLICABLE FELONIES, MISC. SEX AND THEFTS	18. CRIMES AGAINST PROPERTY Rd. / Beach		22. WEAPON OR MEANS USED			
	19. INSTRUMENT OR MEANS USED Hands		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE			
	20. METHOD USED Damaged / Stole		24. EXACT WORDS USED BY SUSPECT			
	21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? Unknown		25. FORCE OR METHOD USED			
	26. APPARENT MOTIVE -- TYPE PROPERTY TAKEN To damage and permanently deprive - Sprinklers		27. TOTAL VALUE STOLEN \$3,000.00			
	28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) None					
	29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS Unknown					
	30. WITNESSES R/B RESIDENCE/BUSINESS ADDRESS-PHONE					
(1) Unknown		R B				
(2)		R B				
(3)		R B				
31. SUSPECT(S) (IF ARRESTED: NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.				
(1) Unknown		BKG. NBR.				
(2)		BKG. NBR.				
(3)		BKG. NBR.				
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS						
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE
Damages: 6	Sprinklers	Rain Bird	5000 Plus		Gear driven fixed 6" with pipes and rebar.	\$600.00
Loss:	24 Sprinklers	Rain Bird	5000 Plus		Gear driven fixed 6" and damaged pipes	\$2,400.00
Total Loss:						\$3,000.00
33. INVESTIGATING OFFICERS		REPORT BY Deputy J. Pelayo #3716		34. DATE OF REPORT 4/23/09		35. APPROVED APV BY SGT J. G. REYES

PAGE 1 OF 2

COPIES TO:
Lana Point

COPY

2. CASE NO. 09/072257

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

ANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

On Thursday 4-23-09 at 1145 hours, I contacted Construction Manager [REDACTED] at the Headlands Project construction site. [REDACTED] said someone had damaged the sprinkler system along the south Selva pedestrian beach access trail between Wed. 4-22-09 2100 hours and Thurs. 4-23-09 0500 hours. [REDACTED] said 30 sprinkler heads with attached pipes and rebar were damaged. Out of those 30, about 24 sprinkler heads were screwed off and stolen. [REDACTED] took pictures of the affected area and had the walkway cleaned from the mud runoff. [REDACTED] desired prosecution for the damages and the loss. I gave him a business card with this report number.

I later booked the disc with photos and affected area sketch map into Sheriff's evidence.

33. INVESTIGATING OFFICERS	REPORT BY Deputy J. Pelayo #3716	DATE OF REPORT 3/3/09	APPROVED
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PAGE 2 OF 2

1. Copies To: Dana Point

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

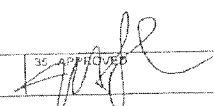
2. Case No. 09-029451

2a. Citation No.

Priority: ☐ Yes ☒ No

SANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594(a)(1) Vandalism				4. DATE-TIME COMMITTED 2-15-09/1600 - 2400 hrs			
5. WHERE COMMITTED Whitewater Dana Point CA 92629				6. GRID 971E6/135		7. DATE-TIME REPORTED	
8. INFORMANT Same as Box # 10				9. ADDRESS-PHONE Same as Box # 11			
10. VICTIM [REDACTED]		DOB 9-16-52		11. ADDRESS-PHONE [REDACTED]			
12. BUSINESS ADDRESS-PHONE				13. CONTACT TIME-ADDRESS Mon - Fri on cell (714) 448-9835			
14. FIRM NAME OF VICTIM				15. BUSINESS ADDRESS-PHONE			
16. VICTIM'S OCCUPATION Contractor		FACE W		SEX M		AGE 56	
17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Residential Area - Construction area							
18. CRIMES AGAINST PROPERTY 16. POINT OF ENTRY Unknown				22. CRIMES AGAINST PERSONS 22. WEAPON OR MEANS USED			
19. INSTRUMENT OR MEANS USED Unknown				23. VICTIM'S ACTIVITY AT TIME OF OFFENSE			
20. METHOD USED Broken window				24. EXACT WORDS USED BY SUSPECT			
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? Off site				25. FORCE OR METHOD USED			
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN Damage Property						27. TOTAL VALUE STOLEN \$200.00	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) Unknown subjects entered home under construction and broke a window that was not installed							
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC NO., AND ANY OTHER IDENTIFYING MARKS Unknown							
30. WITNESSES R/B RESIDENCE/BUSINESS ADDRESS-PHONE (1) Unknown				R B			
(2)				R B			
(3)				R B			
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER) (1) Unknown				BKG. NBR.			
(2)				BKG. NBR.			
(3)				BKG. NBR.			
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS							
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE	
	Damage: (1) oval shaped window with wood frame broken estimated value at \$200.00						
33. INVESTIGATING OFFICERS REPORT BY M. Johnson #1546				34. DATE OF REPORT 2/16/09		35. APPROVED 	

PAGE 1 OF 2

1 COPIES TO:
Dana Point

2 CASE NO. 09-029451

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

On Monday 2-16-09 I was working patrol in the City of Dana Point. At about 1000 hours I was sent to [REDACTED] reference a possible vandalism report. I arrived at about 1015 hours and contacted the victim [REDACTED] at the residence. [REDACTED] told me that someone entered this residence that is under construction and broke a window.

[REDACTED] told me that his construction crew had been at the residence on Saturday. The window that was broken had not yet been installed and was lying on a stack of dry wall in the main living area of the first floor of this residence. The window had been broken. No object was located that could have broken the window. No other damage was noted. Plauche estimated the replacement cost of the window at \$200.00.

This residence is still in the framing portion of construction. Some of the windows had been installed. There is an 8 foot chain link fence surrounding the construction site. No forced entry was noted. No evidence was located at the scene.

I gave [REDACTED] a business card with this case number for his reference.

30. INVESTIGATING OFFICERS	REPORT BY M. Johnson #1546	DATE OF REPORT 2/16/09	APPROVED 
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PAGE 2 OF 2

1. COPIES TO:
Dana Point

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 09/029451

PRIORITY: ☐ Yes
☒ No

3. ☐ INITIAL NON-CRIMINAL

4. ☒ INITIAL-CRIMINAL

5. ☐ FOLLOW-UP CRIMINAL

6. ☐ CONTINUATION REPORT NO.
FOLLOW-UP REPORT

SANDRA HUTCHENS, SHERIFF-CORONER

7. OFFENSE Information Report	8. LOCATION OF OCCURRENCE Headlands Project, Selva / Dana Strand - Dana Point
9. VICTIM/INFORMANT Dep. J. Pelayo #3716	10. DATE AND TIME OF OCCURRENCE Bct. Sat. 2-14-09 1400/Tue. 2-17-09 0700
	11. GRID 971F6

12. DETAILS OF OFFENSE:

On Tuesday 2-17-09 at 0710 hours, I was dispatched to the Headlands Project at Selva Rd. and Dana Strand. I contacted Project Manager [REDACTED] who said Dep. Johnson had taken a vandalism report the day prior (DR# 09/029451) reference some broken windows. Today (2-17-09) at 0700 hours, [REDACTED] noticed additional damages from the vandalism. He noticed 3 broken light fixtures at the new restrooms along the trolley rail between Dana Strand and the beach. [REDACTED] said they were not noticed yesterday because nobody worked on the restrooms because of the rain.

I took pictures of the three broken light fixtures. [REDACTED] estimated the damages to the fixtures at about \$1,000.00. I told [REDACTED] was going to add these damages to report DR# 09-029451.

The disc with photos was later booked into evidence at the Aliso Viejo sub-station.

INVESTIGATING OFFICERS	REPORT BY Dep. J. Pelayo #3716	DATE OF REPORT 2/17/09	APPROVED <i>Sgt. J. Carpenter</i>
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FO880 104-3

PAGE 1 OF 1

1. Copies To: Dana Point

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 09/003104

2a. Citation No.

Priority: ☐ Yes ☒ No

SANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594(a)(1)- Vandalism		4. DATE-TIME COMMITTED Between 12-21-08/1000 and 12-26-08/1000	
5. WHERE COMMITTED Ocean Front Lane, Dana Point 92629		6. GRID 971F6	7. DATE-TIME REPORTED
8. INCOMPLAINANT		9. ADDRESS-PHONE	
10. VICTIM		11. ADDRESS-PHONE	
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS	
14. FIRM NAME OF VICTIM Headlands Reserve LLC		15. BUSINESS ADDRESS-PHONE 24849 Del Prado, Dana Point 92629 (949)489-1135	
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Beach access trail through Headlands construction project	
18. POINT OF ENTRY Beach Access Trail		22. WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED Red spray paint		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED Sprayed paint		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? Unknown		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE -- TYPE PROPERTY TAKEN To deface property		27. TOTAL VALUE STOLEN \$500.00	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) None			
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS Unknown			
30. WITNESSES R/O RESIDENCE/BUSINESS ADDRESS-PHONE			
(1) Unknown	R B		
(2)	R B		
(3)	R B		
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1) Unknown		BKG. NBR.	
(2)		BKG. NBR.	
(3)		BKG. NBR.	
NAME ADDRESS SEX RACE DOB HT. WT. HAIR EYES			
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO. MODEL NO. MISC. DESCRIPTION VALUE
Damages:	1-"Greed"	written with red spray paint on two stay on trail signs.	\$300.00
	2-"Rocks go home" and "Beat it spongers"	written with grey crayon on trail Concrete floor near entrance from Selva.	\$75.00
	3-"Greed"	written with red spray paint on trail concrete floor.	\$75.00
	4-"Strand"	written one time with red spray paint onto green screen of fencing at Strands Beach parking lot.	\$50.00
33. INVESTIGATING OFFICERS		REPORT BY Deputy J. Pelayo #3716	34. DATE OF REPORT 1/6/09
		35. APPROVED Sgt. J. [Signature] 2004	

PAGE 1 OF 2

1. COPIES TO:
Dana Point

2. CASE NO. 09/003104

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

On Tuesday 1-6-09 at 0850 hours, I was dispatched to the Headlands Project area at Ocean Front Rd. reference a vandalism. I contacted assistant project manager [REDACTED] who said she needed a police report for a vandalism that was brought to her attention by [REDACTED] with Dana Point City Code Enforcement. A citizen notified the Graffiti Hot-Line of the incident and [REDACTED] responded to the area and took pictures.

I saw the pictures and walked through the affected area which was the Headlands Project beach access trail off of Selva Road. I saw on the concrete floor near the beginning of the trail "Rocks go Home" and "Beat it Spongers" written with grey crayon. I saw "Greed" written with red spray paint on two "Stay on Trail" signs and on the concrete trail floor. I also saw "Strand" written with red spray paint onto the green screen of the fence surrounding one side of Strands Beach Parking lot.

[REDACTED] desired prosecution for the vandalism. I gave her a business card with this report number.

I spoke to [REDACTED] and she said the informant for the graffiti was a [REDACTED] who left a message on the Hot-Line.

I contacted Yord on Wed, 1-7-08 and she said she walks the beach access trail frequently. There was no graffiti when she walked on the trail on Sunday 12-21-08 at about 1000 hours. When she returned to the trail on Friday 12-26-08 at about 100 hours, she noticed the red graffiti.

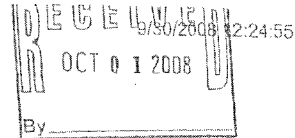
I submitted the pictures to investigations at the Aliso Viejo sub-station for evidence.

39. INVESTIGATING OFFICERS	REPORT BY Deputy J. Pelayo #3716	DATE OF REPORT 1/6/09	APPROVED Sgt. J. S. 2004
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PAGE 2 OF 2



VICTIM/WITNESS ASSISTANCE PROGRAM
HARBOR JUSTICE CENTER/ LAGUNA NIGUEL
30143 CROWN VALLEY PARKWAY
LAGUNA NIGUEL, CA 92677
949-249-5037



HEADLANDS
24849 DEL PRADO
ATTN: THOMAS ARCONTI
DANA POINT, CA 92629

CASE NUMBER: 08SM02679
DEFENDANT: [REDACTED]
INCIDENT DATE: 07/30/2008
POLICE REPORT NO: 08-144304

DEAR: HEADLANDS
RE: VANDALISM

Indicate here if there is no loss _____, or here if you do not desire restitution _____. If you have filed an application with the California Victim Compensation and Government Claims board, please provide the claim number. _____

To forego completing this questionnaire on the reverse side, please sign and date, and return to the address shown above. Thank you. Sign: _____ Date: _____

As part of a probation order, the Court ordered the above named defendant to our department to pay restitution. The police report indicates you were a victim in this case. You may be eligible to receive reimbursement for your loss through restitution. If so, our office will forward the defendant's payments to you in the form of money orders or cashier's checks. The defendant may make monthly payments during the term of his/her probation.

Please complete and return this Restitution Questionnaire by 10/30/2008. You must enclose copies of bills, receipts, or estimates for necessary repairs or services. If you are seeking reimbursement for future repairs, you must obtain and provide our office with three estimates for each repair. If you request restitution for medical services, your doctor must provide written verification that the treatment was related to the crime. If you are requesting restitution for lost wages, your employer must provide written verification, on company letterhead, stating how many days you missed and the amount of your lost earnings (net loss). In addition, you must provide us with a copy of your most recent pay stub. Please provide complete answers in the insurance portion of the questionnaire, even if no claim is, or will be, filed. Our office will retain your completed questionnaire as an official document of loss.

You may elect to proceed civilly and seek the assistance of an attorney, or you may wish to contact your local small claims court. If you receive collection from a civil judgement, you cannot re-collect through Victim Witness Assistance Program.

Please respond by the date listed above to ensure that your statement is fully considered by our department and the Court. Include the defendant's name and case number on all correspondence. It is in your best interest to notify us of any mailing address changes.

Sincerely,

Restitution Department



VICTIM/WITNESS ASSISTANCE PROGRAM
HARBOR JUSTICE CENTER/ LAGUNA NIGUEL
30143 CROWN VALLEY PARKWAY
LAGUNA NIGUEL, CA 92677
949-249-5037

9/30/2008 12:24:55

Defendant: ZACHARY ASBURY

Case Number: 08SM02679

RESTITUTION QUESTIONNAIRE

Victim's Name _____ Home Phone: _____
Address _____ Work Phone: _____
Zip _____ Other Phone: _____

Note: You may attach additional pages if needed.

LIST ALL BILLS INCLUDED (attach a copy of each)

Bill From: _____	Phone _____	Amount \$ _____
Explanation _____		
Business _____	Phone _____	Amount \$ _____
Explanation _____		
Business _____	Phone _____	Amount \$ _____
Explanation _____		

LIST ALL BILLS INCLUDED (attach 3 estimates for each repair)

Explanation _____		
Business _____	Phone _____	Amount \$ _____
Business _____	Phone _____	Amount \$ _____
Business _____	Phone _____	Amount \$ _____

YOUR INSURANCE INFORMATION:

Insurance Company _____ Policy # _____
Name on claim _____ Claim # _____ your deductible \$ _____
Phone _____ Address _____
Amount of claim presented? _____ Amount Insurance Company paid? _____
Name of Adjuster _____ Check here _____ If you are not going to present a claim to your insurance company.

OTHER INSURANCE INFORMATION:

Please list any other insurance companies you are in contact with as a result of the crime.

Insurance Company _____ Policy # _____
Name on claim _____ Claim # _____ your deductible \$ _____
Phone _____ Address _____
Amount of claim presented? _____ Amount Insurance Company paid? _____

VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD INFORMATION:

Have you filed a Crime Victim Compensation Claim? _____ No _____ Yes _____
If yes, what is the claim number? _____

CIVIL ACTION INFORMATION:

Do you have a civil action pending? _____ Have you received a settlement? _____ Amount \$ _____

TOTAL LOSS

Please state your total out-of-pocket loss \$ _____ and explain below how you arrived at this figure.
Explanation (You may add pages if needed): _____

THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNED: _____

DATE: _____

We have people daily trying to enter the Headlands property just to look at the buildings, landscaping, and views. If it wasn't for the presence of the CPS Security guard we would have a lot more trouble. CPS escorts many persons off of the property and has to chase them down to do so. This could be a potential problem when we have residents/occupants. Orange County Sheriff is called out, but usually arrives as the perpetrators are racing off of the property.

At night we have had security breeched many times as soon as it gets dusk. So we have a roving Security guard that escorts many trespassers off the property and has had to call the Sheriff on numerous occasions. The night guard cannot be everywhere at once. This could be a potential problem if the Headlands property is accessible after the sun sets.

✓ Three people in March, 2008 talked one of the contractor's subs into driving them down and onto the property. The CPS guard escorted them off the property, the Contractor was notified and the sub was fired.

We have several incidents of dirt bike riders being escorted off the property after they have taken a joy ride. We have many realtors who race by the gate guards and are chased down and escorted off the property.

The trailer was covered with graffiti in February 2008, which was a costly repair academy

ORIGINAL
SHERIFF DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

1. Copies To: Dana Point

2. Case No. 07-059359
2a. Citation No.Priority: ☐ Yes ☒ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594(e)(1) - Vandalism		4. DATE-TIME COMMITTED Between 3-30-07/0900 Hrs. and 3-31-07/0400 Hrs.				
5. WHERE COMMITTED Selva Rd. @ Dana Strand Rd.		6. GRID 971F6	7. DATE-TIME REPORTED			
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]				
10. VICTIM [REDACTED]	DOB [REDACTED]	11. ADDRESS-PHONE [REDACTED]				
12. BUSINESS ADDRESS-PHONE [REDACTED]		13. CONTACT TIME-ADDRESS [REDACTED]				
14. FIRM NAME OF VICTIM Headlands Reserve LLC		15. BUSINESS ADDRESS-PHONE 24849 Del Prado, Dana Point CA 92629 / (949)489-1135				
16. VICTIM'S OCCUPATION RACE SEX Corporation		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Construction site				
COMPLETE ON APPLICABLE FELONIES, MISC., SEX AND THEFTS	18. POINT OF ENTRY [REDACTED]		22. WEAPON OR MEANS USED [REDACTED]			
	19. INSTRUMENT OR MEANS USED [REDACTED]		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE [REDACTED]			
	20. METHOD [REDACTED]		24. EXACT WORDS USED BY SUSPECT [REDACTED]			
	21. WHERE WERE OCCUPANTS AT TIME OFFENSE? [REDACTED]		25. FORCE OR METHOD USED [REDACTED]			
	26. APPARENT MOTIVE - TYPE PROPERTY TAKEN [REDACTED]		27. TOTAL VALUE STOLEN \$ [REDACTED]			
	28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) [REDACTED]					
	29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS [REDACTED]					
	30. WITNESSES RB RESIDENCE/BUSINESS ADDRESS-PHONE (1) Unknown R B [REDACTED] (2) R B [REDACTED] (3) R B [REDACTED]					
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER) (1) Unknown BKG. NBR [REDACTED] (2) BKG. NBR [REDACTED] (3) BKG. NBR [REDACTED]		NAME ADDRESS SEX RACE DOB HT. WT. HAIR EYES				
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS						
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE
33. INVESTIGATING OFFICERS SHF 010 (05/05)		REPORTED BY W. Robb #5059		34. DATE OF REPORT 4-4-07		35. APPROVED [Signature]

page 1 of 2

DR. No. 07-059359

REPORT CONTINUATION - NARRATIVE

Damage:

The black mesh attached to the chain link fence had been painted on in nine separate areas. Estimated Value: Unknown

Narrative:

On 3-31-07 at about 1230 hours, I was dispatched to the construction site at Selva Rd. and Dana Strand Rd., reference a vandalism report. When I arrived, I met the informant, [REDACTED], at the guard shack on the construction site. [REDACTED] was one of the security guards assigned to that construction site.

[REDACTED] told me that on 3-31-07 at about 0400 hours, as he walked the perimeter of the construction site, he noticed graffiti on the fence that surrounds the site. The graffiti was on the North side of the fence and at the North end of the construction site. The graffiti had been painted with white paint on the black mesh that was attached to the temporary chain link fence. The graffiti was illegible, but it appears that the same thing had been painted on nine different spots on the fence. [REDACTED] told me that the last time he saw that area of the fence was on 3-30-07 at about 0900 hours. There was no graffiti on the fence at that time. [REDACTED] did not know who painted the graffiti on the fence. He did not know how much it would cost to replace the black mesh that had been painted on.

I gave [REDACTED] a business card with the case number on it reference this incident.

INVESTIGATING OFFICERS

REPORTED BY
W. Robb #5059DATE OF REPORT
4-4-07APPROVED


page 2 of 2

1. Copies To: Dana Point / TWEG

ORIGINALSHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 07-048765

2a. Citation No.

Priority: ☐ Yes ☒ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594(a)(2) Vandalism		4. DATE-TIME COMMITTED Between 3-15-07 / 2000 hrs thru 3-16-07 / 0715 hrs	
5. WHERE COMMITTED 34352 Dana Strand Dana Point Ca 92629		6. GRID 971F6/137	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]	
10. VICTIM DOB		11. ADDRESS-PHONE	
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS	
14. FIRM NAME OF VICTIM Headlands Reserve LLC / Sec box #9		15. BUSINESS ADDRESS-PHONE 714-742-0138	
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Confection Site	
18. POINT OF ENTRY N/A		22. WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED Spray paint		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED Spray painted walls, signs, and fences		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? Away from construction site		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN Damage property / None		27. TOTAL VALUE STOLEN \$0.00	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) Suspect(s) are upset over construction site to headlands			
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS Unknown			
30. WITNESSES P/B RESIDENCE/BUSINESS ADDRESS-PHONE		R B	
(1) Unknown		R B	
(2)		R B	
(3)		R B	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1) Unknown		BKG. NBR.	
(2)		BKG. NBR.	
(3)		BKG. NBR.	
NAME		ADDRESS SEX RACE DOB HT. WT. HAIR EYES	
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO. MODEL NO. MISC. DESCRIPTION VALUE
Damage:			
1. Spray paint, "Save Strands Free"			
2. Spray paint, "Save Strands"			
3. Spray paint, "Free"			
4. Spray paint, "Free!"			
5. Spray paint, "Free Save" (there was other graffiti, but unable to make out wording)			
6. Spray paint, "Save Strands"			
33. INVESTIGATING OFFICERS		REPORT BY John Gomez #2684	34. DATE OF REPORT 3/16/07
		35. APPROVED <i>[Signature]</i>	

PAGE 1 OF 2

1. COPIES TO:
Dana Point / TWEG

2. CASE NO. 07-048765

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

MICHAEL S. CARONA, SHERIFF-CORONER

REPORT CONTINUATION

7. Spray paint of graffiti (unable to make out wording)
8. Spray paint of graffiti (unable to make out wording)
9. Spray paint of graffiti (unable to make out wording)
10. Spray paint, "Fuck This" on sign
11. Spray paint, "Fuck This" on sign

Evidence: (10) Photographs of graffiti taken by informant

Narrative:

On Friday (3-16-07), at 1015 hours, I was dispatched to the Headlands construction site at 34352 Dana Strands, Dana Point, reference a vandalism report.

The informant [REDACTED] and told me the following: On 3-15-07, at 2000 hours, he left the worksite. On 3-16-07, at 0715 hours, he was driving on Pacific Coast Highway in front of the worksite and discovered graffiti on a sign his company displayed there. He drove into the worksite and discovered more graffiti scattered throughout the work area.

There was graffiti on a concrete beach walk, stairwell leading to beach and two signs owned by the company. Most of the graffiti was done with blue paint, but two locations also had red paint. I did not find anything that the suspect(s) left behind.

[REDACTED] told me he did not see who conducted the graffiti, but desired prosecution. I gave [REDACTED] my business card with case number for future reference.

INVESTIGATING OFFICERS	REPORT BY John Gomez #2684	DATE OF REPORT 3/16/07	APPROVED 
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PAGE 2 OF 2

1. Copies To: Dana Point / TWEG

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 07-035294

2a. Citation No.

Priority: ☐ Yes ☒ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594 Vandalism		4. DATE-TIME COMMITTED Between 2-22-07 / 1700 hrs thru 2-23-07 / 1200 hrs				
5. WHERE COMMITTED 34352 Dana Strand Dana Point Ca 92629		6. GRID 971F6/137	7. DATE-TIME REPORTED			
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]				
10. VICTIM DOB		11. ADDRESS-PHONE [REDACTED]				
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS				
14. FIRM NAME OF VICTIM Headlands Reserve LLC. See box #9		15. BUSINESS ADDRESS-PHONE 714-742-0138				
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Concrete Boardwalk				
18. POINT OF ENTRY N/A		22. WEAPON OR MEANS USED				
19. INSTRUMENT OR MEANS USED Spray paint		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE				
20. METHOD USED Tagged wall		24. EXACT WORDS USED BY SUSPECT				
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? Away from area		25. FORCE OR METHOD USED				
26. APPARENT MOTIVE -- TYPE PROPERTY TAKEN Damage property / None		27. TOTAL VALUE STOLEN \$0.00				
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) Suspect(s) tagged new development						
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS Unknown						
30. WITNESSES R/B RESIDENCE/BUSINESS ADDRESS-PHONE (1) Unknown		R B				
(2)		R B				
(3)		R B				
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER) (1) Unknown		BKG. NBR.				
(2)		BKG. NBR.				
(3)		BKG. NBR.				
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS						
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE
	Damage: Spray Painted (tagged) on Wall.					
33. INVESTIGATING OFFICERS Deputy John Gomez		34. DATE OF REPORT 2/24/07		35. APPROVED SGT. JIM LEMORE		

PAGE 1 OF 2

1. COPIES TO:
Dana Point / TWEQ

2. CASE NO. 07-035294

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

MICHAEL S. CARONA, SHERIFF-CORONER

REPORT CONTINUATION

Narrative:

On Saturday (2-24-07), at 1100 hours, I was dispatched to the Headlands Development at 34352 Dana Stands, Dana Point, reference a vandalism report.

The informant [REDACTED] and told me the following: On 2-22-07, at 1700 hours, his employees left the worksite. On 2-23-07, at 1200 hours, his employees returned to the site and discovered tagging on the concrete boardwalk.

[REDACTED] told me his company is currently building homes on the Headlands and had prior vandalism incidents from environmentalists who are upset over the new development. [REDACTED] does not know who tagged the boardwalk, but desired prosecution.

I looked at the damage. The suspect(s) used gold spray paint and tagged three separate areas of the boardwalk. I was not able to make out what the tagging stated, but believed it had something to do with the new development on the Headlands.

Arconti provided me copies of the damage (see attached). I gave [REDACTED] my business card with case number for future reference.

INVESTIGATING OFFICERS	REPORT BY Deputy John Gomez	DATE OF REPORT 2/24/07	APPROVED SSA J. WELLS
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PAGE 2 OF 2

3-30-07

SHERIFF-CORONER DEPARTMENT
COUNTY OF ORANGE☐ P.O. Box 449, Santa Ana, CA 92702☒ 44 Journey, Aliso Viejo, CA 92656

Should additional information develop concerning your losses, please send this information, in writing, to the address indicated above. Please include your name, address and this Case # 07-058358. To assist us in recovering your property, please submit a detailed description to include the following information: item, quantity, serial and model numbers, color special identifying marks or characteristics and the value.

MICHAEL S. CARONA, SHERIFF-CORONER

By M. Carona
FD680-226.3 (Rev. 03/99)

1. Copies To: Dana Point

ORIGINAL

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 06-215193

2a. Citation No.

Priority: ☐ Yes ☒ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE P.C. 594 (b)(1) Vandalism		4. DATE-TIME COMMITTED Btwn 11/3/06 at 1800 & 11/04/06 at 0800 hours	
5. WHERE COMMITTED The Headlands, 33900 blk of Selva Rd Dana Point		6. GRID 971F6	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]	
10. VICTIM DOB		11. ADDRESS-PHONE	
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS	
14. FIRM NAME OF VICTIM The Strand at Headlands		15. BUSINESS ADDRESS-PHONE 33971 Selva Rd #100 D.P. 949/487-2500	
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED New land development project/The Headlands	
18. POINT OF ENTRY		22. WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN		27. TOTAL VALUE STOLEN \$	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)			
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS			
30. WITNESSES R/W RESIDENCE/BUSINESS ADDRESS-PHONE		R	
(1) Unknown		B	
(2)		R	
(3)		B	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1) Unknown		BKG. NBR.	
(2)		BKG. NBR.	
(3)		BKG. NBR.	
NAME		ADDRESS SEX RACE DOB HT. WT. HAIR EYES	
32. DETAILS OF OFFENSE EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO. MODEL NO. MISC. DESCRIPTION VALUE
Evidence: 1 disk containing 17 digital photos booked at the Aliso Viejo Station			
33. INVESTIGATING OFFICERS		REPORT BY Deputy C. Geary 4998	34. DATE OF REPORT 11/4/06
		35. APPROVED SGT JIM MORE	

PAGE 1 OF 2

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 06-215193

MICHAEL S. CARDNA, SHERIFF-CORONER

REPORT CONTINUATION

On November 4, 2006 at approximately 0935 hours, I was dispatched to the Headlands Reserve at the 37900 block of Selva Rd. in Dana Point reference a vandalism report. When I arrived I spoke to he informant, [REDACTED] for The Strand at Headlands project. [REDACTED] told me when he came to work this morning he noticed the security camera in the closed parking lot had been cut down. [REDACTED] also said there was some graffiti on the main construction signs located on Pacific Coast Highway and Green Lantern. [REDACTED] showed me pictures of the graffiti which said "Fuck this" because he had covered the graffiti. While I was talking to [REDACTED] a construction worker told me there was also graffiti down by the beach and guided me to it.

Down on the beach there is a new 600-foot boardwalk with a 4-foot cement wall adjacent to the boardwalk. Approximately 425-feet of the wall are covered with graffiti which was done in black and blue paint. The graffiti had numerous statements such as "Earth Liberation, Leave it alone, t.l.c., resist this shit, act out, fight back, destroy this development, fuck Sanford Edward." There were other comments and symbols which were documented in the digital photos taken at the scene.

I also observed the surveillance camera which was cut down. I took digital photos of damaged camera and booked them into evidence.

While I was at the construction site, [REDACTED] who is in charge of the project, arrived at the scene. [REDACTED] said the FBI has already been working with them and he would notify them on Monday.

INVESTIGATING OFFICERS	REPORT BY	DATE OF REPORT	APPROVED
	Deputy C. Geary 4998	11/4/06	SGT J. N. LEMORE

PAGE 2 OF 2

1. Callers To: Dana Point
TEWG

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 06-005538

2a. Citation No.

Priority: ☐ Yes ☒ No
MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594 Vandalism		4. DATE-TIME COMMITTED Bet. Friday 1-6-06/1800 to Saturday 1-7-06/1130	
5. WHERE COMMITTED 24200 Selva Rd., Dana Point, CA 92626		6. GRID 971FS/136	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]	
10. VICTIM Box 14		11. ADDRESS-PHONE Box 15	
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS Mon-Fri 0700-1700 Box 15	
14. FIRM/NAME OF VICTIM Headlands Reserve LLC		15. BUSINESS ADDRESS-PHONE 24200 Selva Rd. Dana Point (949) 488-8800	
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Headlands Reserve LLC development project site	
COMPLETE ON ALL APPLICABLE FELONIES, MISC., SEX AND THEFTS	18. POINT OF ENTRY		22. WEAPON OR MEANS USED
	19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE
	20. METHOD USED		24. EXACT WORDS USED BY SUSPECT
	21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?		25. FORCE OR METHOD USED
	26. APPARENT MOTIVE - TYPE PROPERTY TAKEN		27. TOTAL VALUE STOLEN \$
	28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)		
	29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS		
	30. WITNESSES R/B RESIDENCE/BUSINESS ADDRESS-PHONE		
(1) Unknown	R B		
(2)	R B		
(3)	R B		
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1) Unknown			BKG. NBR.
(2)			BKG. NBR.
(3)			BKG. NBR.
32. DETAILS OF OFFENSE. EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	GRAND	SERIAL NO.
DAMAGED PROPERTY:		MODEL NO.	MISC. DESCRIPTION
Project fencing and restroom stall door		VALUE	
33. INVESTIGATING OFFICERS REPORT BY S. Meier #3204		34. DATE OF REPORT 1/9/06	
		35. APPROVED [Signature]	

PAGE 1 OF 2

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 06-005538

MICHAEL S. CARONA, SHERIFF-CORONER

REPORT CONTINUATION

NARRATIVE:

On Monday 1-9-06 at approximately 1010 hours, I was dispatched to 24200 Selva Rd regarding a report of vandalism at the Headlands Reserve construction site. I spoke the [REDACTED] of construction, [REDACTED] for the developer Headlands Reserve LLC. The Headlands Reserve project is controversial and has been subjected to numerous acts of vandalism.

Sometime between Friday 1-6-06/1800 to Saturday 1-7-06/1130, unknown suspects graffiti approximately 100 feet of the perimeter chain-link fence and a restroom stall door. The suspects used white spray paint. [REDACTED] gave me eight color photographs of the graffiti. The Graffiti on the beach fencing read, "EARTH LIBERATION, tear down the fences, tear down the wall."

I gave [REDACTED] my business card with the case number. I collected and booked the eight printed photographs into evidence at the Sheriff's Aliso Viejo Station.

33. INVESTIGATING OFFICERS	REPORT BY S. Meier #3204	DATE OF REPORT 1/9/06	APPROVED <i>S. A. T. W.</i>
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PAGE 2 OF 2

1. Copies To: Dana Point

ORIGINAL
SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 05-197624

2a. Citation No.

Priority: ☐ Yes ☒ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE P.C. 594 Vandalism		4. DATE-TIME COMMITTED Between 10-6-05 / 10-7-05	
5. WHERE COMMITTED Dana Strands / Selva, Dana Point		6. GRID 971	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]	
10. VICTIM DOB		11. ADDRESS-PHONE [REDACTED]	
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS	
14. FIRM NAME OF VICTIM Headlands Reserve LLC		15. BUSINESS ADDRESS-PHONE #9	
16. VICTIM'S OCCUPATION RACE SEX AGE		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Development project site	
18. POINT OF ENTRY		22. WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN		27. TOTAL VALUE STOLEN	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S)		\$	
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS Unk.			

COMPLETION OF ALL APPLICABLE FELONIES
 OR MISDEMEANORS
 OR SEX AND THEFTS

30. WITNESSES R/R RESIDENCE/BUSINESS ADDRESS-PHONE		R	
(1) Unknown		B	
(2)		R	
		B	
(3)		R	
		B	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1) Unknown		BKG. NBR.	
(2)		BKG. NBR.	
(3)		BKG. NBR.	
NAME	ADDRESS	SEX	RACE DOB HT. WT. HAIR EYES

32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS						
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE
<p>Details: On 10-7-05 at 1145 hours, I met with informant [REDACTED] at the Headlands development project site off Dana Strand road [REDACTED] is the [REDACTED] of construction for the company. Sometime during the previous night, an unknown suspect using white spray-paint wrote the following graffiti on the outside of the perimeter fence: "Values?", "Fuck Greed" and "Fuck development". The section of fence is directly adjacent to the public stairs leading to Strands beach.</p> <p>[REDACTED] said that due to the controversy over the project, the company is reporting all vandalism to the site.</p>						

33. INVESTIGATING OFFICERS	REPORT BY R. Hassett #717	34. DATE OF REPORT 10/8/05	35. APPROVED [Signature]
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PAGE 1 OF 1

1. Copies To: Dana Point

ORIGINAL

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. Case No. 05-160143

2a. Citation No.

Priority: ☐ Yes ☒ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 594(b)(1) Vandalism		4. DATE-TIME COMMITTED Sunday, 08-15-05 / Unknown	
5. WHERE COMMITTED 23920 Selva Road, Dana Point CA 92629		6. GRID 971F6	7. DATE-TIME REPORTED
8. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]	
10. VICTIM See Box #14		11. ADDRESS-PHONE See Box #15	
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS	
14. FIRM NAME OF VICTIM Headlands Reserve LLC		15. BUSINESS ADDRESS-PHONE 24849 Del Prado, Dana Point 92629, 714-742-0138	
16. VICTIM'S OCCUPATION Private Entity		17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Beachfront property	
18. POINT OF ENTRY Unknown		22. WEAPON OR MEANS USED	
19. INSTRUMENT OR MEANS USED Blue and white spray paint		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE	
20. METHOD USED Graffiti		24. EXACT WORDS USED BY SUSPECT	
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE? N/A		25. FORCE OR METHOD USED	
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN To cause permanent damage		27. TOTAL VALUE STOLEN \$	
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) None			
29. VEHICLE USED BY SUSPECT(S) Unknown		YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS	
30. WITNESSES R/R RESIDENCE/BUSINESS ADDRESS-PHONE (1) Unknown		R	
		B	
(2)		R	
		B	
(3)		R	
		B	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER) (1) Unknown		BKG. NBR.	
		BKG. NBR.	
(2)		BKG. NBR.	
(3)		BKG. NBR.	
NAME		ADDRESS	SEX RACE DOB HT. WT. HAIR EYES
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS			
QUAN.	ARTICLE	BRAND	SERIAL NO. MODEL NO. MISC. DESCRIPTION VALUE
33. INVESTIGATING OFFICERS Thomas		REPORT BY Deputy M. Thomas	34. DATE OF REPORT 8/16/05
		35. APPROVED [Signature]	

PAGE 1 OF 2

1. COPIES TO:
Dana Point

SHERIFF'S DEPARTMENT
ORANGE COUNTY
SANTA ANA, CALIFORNIA

2. CASE NO. 05-160143

MICHAEL S. CARONA, SHERIFF-CORONER

REPORT CONTINUATION

On Monday, 08-15-05 at about 1525 hours, I was dispatched to a vandalism report at the dead end of Dana Strand at Selva Road. At the dead end of Dana Strand is a gate which provides access to The Headlands Wildlife Preserve. This preserve is about 50 acres of land and is currently under construction for a new housing community. This property is enclosed by a 6 foot tall green fence. We have taken several vandalism reports in this area due to environmentalist groups not wanting the preserve to be developed.

I spoke to the [REDACTED] of Construction of the Headlands, [REDACTED] and he led me to the west fence of the property. This fence blocks the Headlands property from the public beach. On about 40 feet of the fence there was graffiti spray painted with blue and white paint. The graffiti was spray painted in 3 sections. The first section on the far left had the letters "RELEK" painted in block style writing. The letters in this section were about 5 1/2 feet tall. The middle section had the words "Now we're both illegal" spray painted on it. The letters in this section were about 3 feet tall painted in cursive style writing. The far right section had the letters "ALKA" painted in block style writing. The letters in this section were about 6 feet tall.

[REDACTED] told me Sunday, 08-14-05 at about 1230 hours, there were several construction workers working at the Headlands and they told him the graffiti was not there at that time.

I gave [REDACTED] a business card with the case number on it. I contacted Investigator Kirby who is in charge of investigating all vandalism as well as other crimes associated with the Headlands project. I also contacted Sheriff's Identification who responded to the scene and took photographs.

INVESTIGATING OFFICERS
Thomas

REPORT BY
Deputy M. Thomas

DATE OF REPORT
8/16/05

APPROVED
[Signature]

PAGE 2 OF 2

SUPPORTING DOCUMENT E**HEADLANDS POLICE CALL AND POLICE REPORT SUMMARY**

DATE	TIME	LOCATION	DESCRIPTION	CALL/REPORT
03/08/10	10:30 am	Cove Road and Green Lantern	Asst – Citizen Assist	Call
03/06/10	4:38 pm	Green Lantern	Suspicious Persons and Circumstances	Call
03/06/10	10:16 am	Dana Strand Road	Assist Outside Agency	Call
03/05/10	11:57 pm	Green Lantern	Burglary Alarm	Call
03/03/10	9:57 am	Selva and Pacific Coast Hwy	Vandalism	Police Report
02/28/10	4:11 pm	Dana Strand Road	Assist Outside Agency	Call
02/26/10	6:34 pm	Green Lantern	Burglary Alarm	Call
02/25/10	1:37 am	Scenic Drive and Cove Road	Suspicious Vehicle	Call
02/23/10	7:30 pm	Scenic Drive and Marguerite Ave	GB – general broadcast	Call
02/23/10	12:18 pm	Dana Strand and Selva	Traffic Stop	Call
02/20/10	11:25 am	Dana Strand Road	Vandalism Report	Call
02/19/10	12:04 pm	Green Lantern and Cove Road	Warrant Arrest	call
02/19/10	7:17 am	Green Lantern	Keep the Peace	Call
02/17/10	5:35 pm	Green Lantern and Scenic Drive	Trespassing	Call
02/16/10	7:25 pm	Green Lantern	N/A	Call
02/15/10	10:48 pm	Green Lantern	Suspicious Persons and Circumstances	Call
02/15/10	2:33 pm	Dana Strand Road	Hit and Run Parked Car Report	Call
02/15/10	12:46 pm	Dana Strand Road	Disturbance	call
02/15/10	1:52 am	Cove Island Place	Keep the Peace	Call
02/13/10	4:42 pm	Dana Point Harbor Drive and Cove Road	Vandalism in Progress	Call
02/12/10	10:00 pm	Dana Strand Road and Selva	Vandalism Report	Call
02/12/10	5:36 pm	Green Lantern and Pacific Coast Hwy	Trespassing	Call
02/10/10	8:38 am	Dana Strand Road	Municipal Code Violations	Call
02/08/10	2:39 am	Dana Point Harbor Drive and Cove Road	Traffic Stop	Call
02/06/10	11:51 am	Dana Point Harbor Drive and Cove Road	Suspicious Persons and circumstances	Call

2346/027390.0031
1075182.01 #03/16/10

-1-

HEADLANDS POLICE CALL AND POLICE REPORT SUMMARY

DATE	TIME	LOCATION	DESCRIPTION	CALL/REPORT
02/03/10	2:22 pm	Scenic Drive and Marguerita Ave	Trespassing	Call
02/02/10	9:58 pm	Dana Point Harbor Drive and Cove Road	Suspicious Vehicle	Call
01/25/10	10:29 pm	Dana Strand Road	Suspicious Person in Vehicle	Call
01/25/10	9:51 pm	Scenic Drive and Marguerita Ave	Suspicious Person in Vehicle	Call
01/23/10	5:52 pm	Selva Road and Dana Strand Road	Event -- Special Event	Call
01/23/10	1:53 pm	Selva Road and Dana Strand Road	Asst -- Citizen Assist	Call
01/17/10	7:44 am	Dana Strand Road and Selva Road	Fwup -- Follow up report	Call
01/16/10	3:40 pm	Dana Strand Road and Selva Road	Asst -- Citizen Assist	Call
01/10/10	4:20 pm	Cove and Green Lantern	Trespassing, Resisting Arrest	Police Report
01/10/10	3:26 pm	Scenic Drive and Green Lantern	PTCK -- Patrol Check	Call
01/04/10	3:54 pm	Scenic Drive and Cove Drive	Illegally Parked Vehicle	Call
01/03/10	9:00 pm	Dana Strand Road	Suspicious Vehicle	Call
01/03/10	2:50 pm	Green Lantern and Scenic Drive	Trespassing	Call
01/02/10	9:00 am	Dana Strand Road	Disturbance	Call
01/01/10	10:41 pm	Scenic Drive	Trespassing	Call
12/29/09	9:09 pm	Dana Strand Road	Suspicious Person in Vehicle	Call
12/29/09	2:03 pm	Scenic Drive and Marguerita Ave	Suspicious Person and Circumstances	Call
12/18/09	N/A	N/A	Vandalism (broken window at gate)	Police report
12/15/09	4:44 pm	Scenic Drive	Burglary Alarm -- Residence	Call
12/13/09	8:29 am	Scenic Drive and Green Lantern	Traffic Accident	Call
12/13/09	8:28 am	Scenic Drive	Medical Aid (relating to accident)	Call
11/30/09	9:16 am	Dana Strand Road	Abandoned Vehicle	Call
11/22/09	1:22 am	Dana Strand and Selva Road	Traffic Stop	Call
11/06/09	7:55 am	Dana Strand and	Traffic Stop	Call

2346/022390 0031
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HEADLANDS POLICE CALL AND POLICE REPORT SUMMARY

DATE	TIME	LOCATION	DESCRIPTION	CALL/REPORT
10/29/09	2:45 pm	Selva Road Cove Drive and Scenic Drive	Suspicious Vehicle	Call
10/29/09	4:14 am	Cove Drive and Scenic Drive	Drunk Driving (car over cliff)	Call
10/27/09	12:08 am	Dana Strand and Selva Road	Suspicious Person and circumstances	Call
10/10/09	9:24 am	Dana Strand Road	Disturbance	Call
10/09/09	5:44 pm	Dana Strand and Selva Road	N/A	Call
10/07/09	4:16 pm	Green Lantern and Cove Drive	Misdemeanor Narcotics Violations (3 cited)	Call
10/04/09	9:23 am	Dana Strand Road	Suspicious persons and circumstances	Call
10/02/09	11:01 pm	Dana Strand Road	Asst – Citizen Assist	Call
09/18/09	1:08 pm	Dana Strand Road	Petty Theft	Call
09/17/09	1:36 am	Dana Strand Road	Disturbance	Call
09/09/09	12:09 pm	Dana Strand and Selva Road	Burglary	Call
08/30/09	6:58 pm	Dana Strands Parking Lot	N/A	Call
08/30/09	5:09 pm	Dana Strand Road	Disturbance	Call
08/30/09	10:06 am	Dana Strand Road	Suspicious person and circumstances	Call
08/28/09	6:45 pm	Dana Strand and Selva Road	Trespassing, vandalism, and resisting arrest	Police report
08/28/09	1:16 pm	Dana Strand and Selva Road	Follow up report	Call
08/28/09	7:14 am	Dana Strand and Selva Road	Trespassing	Call
08/25/09	7:42 am	Dana Strand and Marguerita	Foot patrol	Call
08/23/09	3:57 pm	Dana Strand and Selva Road	N/A	Call
08/19/09	3:53 pm	Dana Strand Road	N/A	Call
08/18/09	6:30 pm – 6:00 am	Dana Strands Road	Vandalism (graffiti)	Police report
08/17/09	1:03 pm	Dana Strand Road	Information request	Call
08/16/09	2:56 pm	Dana Strand Road	Disturbance	Call
08/15/09	1:20 am	Dana Strand and Selva Road	Misdemeanor Narcotics Violation	Call
08/14/09	9:14 am	Dana Strand Road	Asst – Citizen	Call

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1075182.01 a03/16/10

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HEADLANDS POLICE CALL AND POLICE REPORT SUMMARY

DATE	TIME	LOCATION	DESCRIPTION	CALL/REPORT
08/14/09	8:29 am	Dana Strand Road	Assist Disturbance – Mechanical	Call
08/03/09	7:54 pm	Dana Strand and Selva Road	Trespassing	Call
07/30/09	8:54 pm	Dana Strand Road	N/A	Call
07/28/09	9:35 pm	Scenic Drive	Firework Violation	Call
07/24/09	8:45 am	Dana Strand Road	Vandalism Report	Call
07/22/09	8:35 pm	Dana Strand Road	Drunk in Public	Call
07/22/09	12:03 am	Dana Strand and Selva Road	Suspicious person in vehicle	Call
07/22/09	12:00pm – 1:00 pm	Headlands Reserve (PCH and Selva Road)	Vandalism (graffiti)	Police report
07/20/09	2:08 am	Dana Strand Road	Suspicious person and circumstances	Call
07/18/09	2:33 am	Dana Strand and Selva Road	Trespassing	Call
07/17/09	5:17 pm	Dana Strand Road	Disturbance	Call
07/10/09	9:21 pm	Dana Strand and Selva Road	Trespassing	Call
07/10/09	5:26 pm	Dana Strand and Selva Road	Trespassing	Call
07/04/09	1:29 pm	Dana Strand and Selva Road	Suspicious person and circumstances	Call
06/29/09	3:49 pm	Dana Strand and Selva Road	Trespassing	Call
06/28/09	11:30 pm	Dana Strand and Selva Road	Suspicious person and circumstances	Call
06/28/09	2:27 pm	Marguerita Ave and Scenic Drive	Illegally Parked Vehicle	Call
06/26/09	10:07 pm	Dana Strand and Selva Road	Suspicious person and circumstances	Call
06/15/09	10:55 pm	Dana Strand Road	Foot patrol	Call
06/15/09	8:04 pm	Dana Strand Road	Vandalism Report	Call
06/15/09	12:24 pm	Marguerita Ave and Scenic Drive	Disturbance	Call
06/13/09	11:09 am	Dana Strand Road	Battery	Call
06/11/09	2:57 pm	Marguerita Ave and Scenic Drive	Suspicious Person and Circumstances	Call
06/06/09	6:58 am	Dana Strand Road	Disturbance	Call
06/02/09	10:41 pm	Scenic Drive	Suspicious Person in Vehicle	Call
06/02/09	10:28 pm	Dana Strand Road	Disturbance – Auto Involved	Call
05/26/09	5:54 pm	Marguerita Ave	Suspicious Person	Call

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1075182 01 a03/16/10

HEADLANDS POLICE CALL AND POLICE REPORT SUMMARY

DATE	TIME	LOCATION	DESCRIPTION	CALL/REPORT
05/26/09	7:24 am	and Scenic Drive	in Vehicle	
05/24/09	1:20 pm	Dana Strand and Selva Road	Illegally parked vehicle	Call
05/20/09	9:00 am	Dana Strand and Selva Road	Trespassing	Call
05/14/09	5:32 pm	Dana Strand Road	Suspicious Person in Vehicle	Call
05/01/09	9:13 am	Ocean Front Lane and Dana Strand Road	N/A	Call
04/23/09	11:26 am	Dana Strand and Selva Road	Vandalism Report	Call
04/22/09 – 04/23/09	9:00 pm – 5:00 am	Dana Strand and Selva Road	Vandalism report	Call
04/19/09	6:34 pm	Dana Strand and Selva Road	Grand theft, vandalism	Police report
04/18/09	2:33 pm	Dana Strand and Selva Road	Traffic accident – non injury	Call; police report
04/18/09	1:58 pm	Dana Strand Road	Trespassing	Call
04/12/09	3:31 pm	Dana Strand Road	Illegally Parked Vehicle	Call
04/10/09	9:58 pm	Dana Strand Road	Suspicious person and circumstances	Call
04/06/09	5:16 pm	Marguerita Ave and Scenic Drive	Suspicious Person and Circumstances	Call
04/05/09	7:02 pm	Dana Strand Road	Disturbance	Call
04/05/09	12:39 pm	Dana Strand and Selva Road	Vehicle Code Violation	Call
03/31/09	1:20 am	Dana Strand and Selva Road	Hit and run parked car	Call
03/23/09	11:30 am	Dana Strand and Selva Road	Traffic stop	Call
03/17/09	2:22 pm	Dana Strand Road	Suspicious person and circumstances	Call
03/14/09	11:02 am	Shoreline Drive and Dana Strand Road	N/A	Call
03/08/09	6:39 pm	Dana Strand Road	Welfare check	Call
03/07/09	4:06 pm	Scenic Drive	Trespassing	Call
03/07/09	10:37 am	Scenic Drive	Trespassing	Call
03/04/09	9:21 pm	Dana Strand and Selva Road	Assist – Outside agency	Call
03/04/09	7:58 am	Dana Strand and Selva Road	Traffic stop	Call
03/04/09	7:58 am	Dana Strand and Selva Road	Vandalism report	Call

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HEADLANDS POLICE CALL AND POLICE REPORT SUMMARY

DATE	TIME	LOCATION	DESCRIPTION	CALL/REPORT
03/02/09	11:38 pm	Dana Strand and Selva Road	Suspicious person in vehicle	Call
02/28/09	1:24 am	Marguerita Ave and Scenic Drive	PTCK - Patrol Check	Call
02/28/09	12:55 am	Scenic Drive and Marguerita Ave	Suspicious Person in Vehicle	Call
02/19/09	5:33 pm	Dana Strand and Selva Road	Indecent exposure	Call
02/14/09 - 02/17/09	2:00 pm - 7:00 am	Dana Strand and Selva Road	Vandalism (restrooms and home)	Police report
02/15/09	4:00 pm - 12:00 pm	Whitewater Road	Vandalism (home)	Police report
12/21-12/26/08	10:00 am - 10:00 am	Ocean Front Lane	Vandalism (graffiti)	Police report
03/08/08	N/A	N/A	Trespassing	Police report
02/08/08	N/A	N/A	Vandalism (graffiti)	Police report
03/30/07 - 03/31/07	9:00 am - 4:00 am	Dana Strand and Selva Road	Vandalism (graffiti)	Police report
03/15/07 - 03/16/07	8:00 pm - 7:00 am	Dana Strand Road	Vandalism (graffiti)	Police report
02/22/07 - 02/23/07	5:00 pm - 12:00 pm	Dana Strand Road	Vandalism (graffiti)	Police report
11/03/06 - 11/04/06	6:00 pm - 8:00 am	Selva Road	Vandalism (graffiti)	Police report
01/06/06 - 01/07/06	6:00 pm - 11:30 am	Selva Road	Vandalism (graffiti)	Police report
10/06/05 - 10/07/05	N/A	Selva Road	Vandalism (graffiti)	Police report
08/15/05	N/A	Selva Road	Vandalism (graffiti)	Police report

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SUPPORTING DOCUMENT F**Central Accessway Beach Gate****North Strand Access and Funicular Station**

South Strand Switchback Trail



SUPPORTING DOCUMENT G

**GENERAL PLAN AMENDMENT
GPA: 01-02**

and

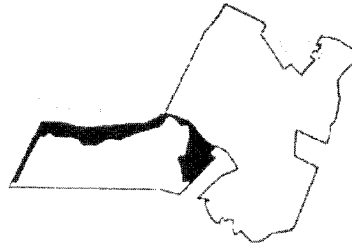
**LOCAL COASTAL PROGRAM AMENDMENT
LCPA: 01-02**

September 22, 2004
Clarifications Added

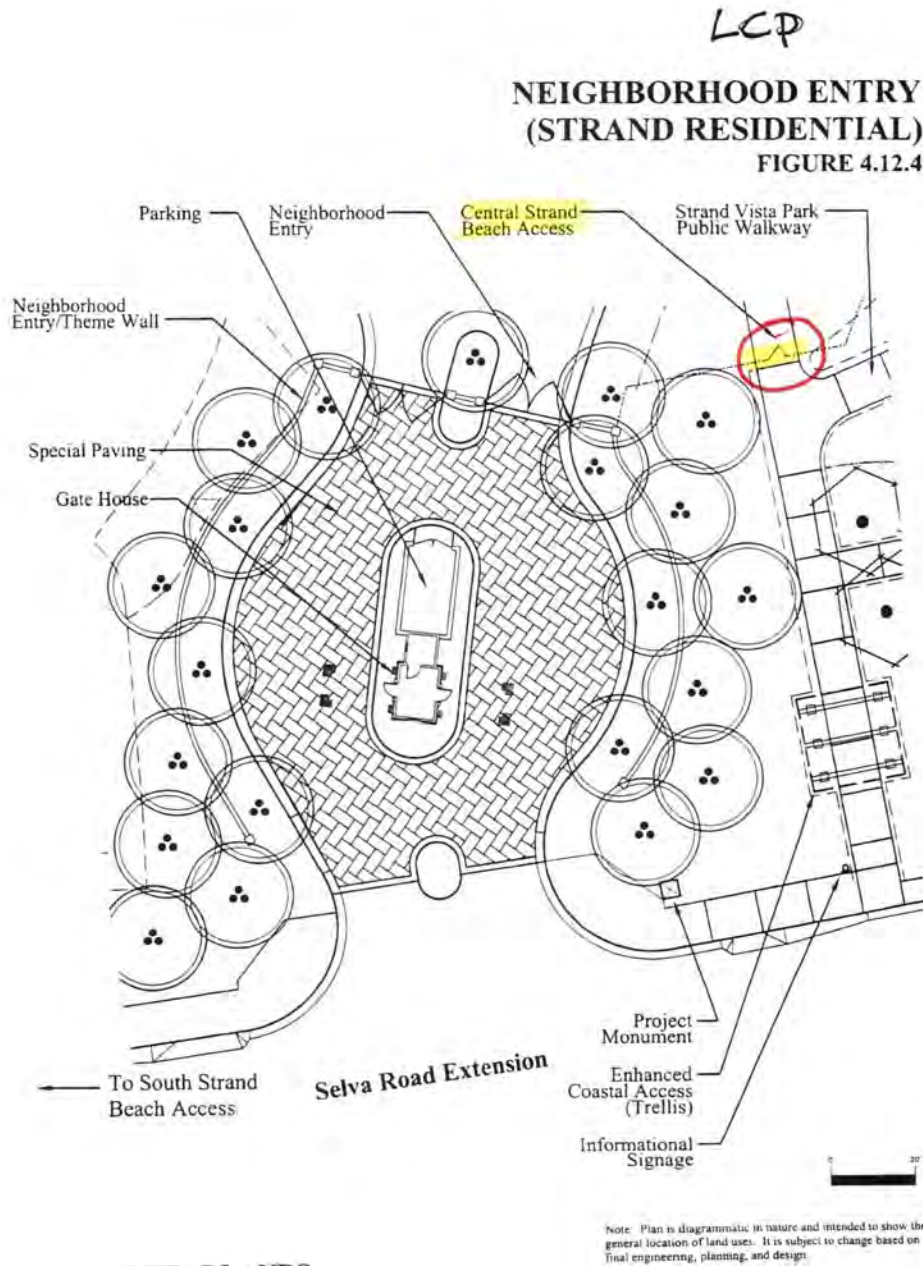
Note: LCPA: 01-02 consists only of the following elements of the General Plan: Land Use Element, Urban Design Element, and Conservation and Open Space Element.

HEADLANDS DEVELOPMENT AND CONSERVATION PLAN
Section 4.0 Development Guidelines

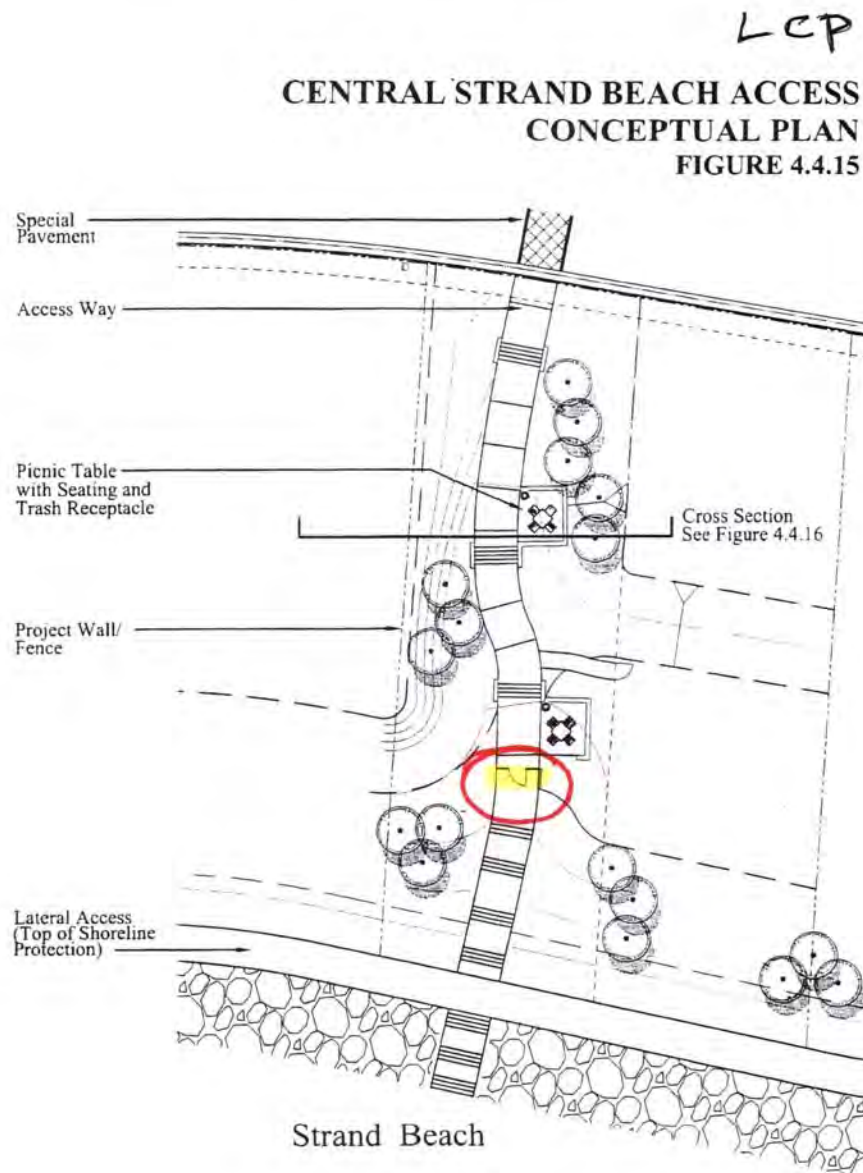
TABLE 4.5.4
STRAND VISTA PARK/PUBLIC ACCESS (9.9 ACRES)
PUBLIC ACCESS PROGRAM GUIDELINES



1. Public and coastal access shall be established by a series of public trails and overlooks west of the existing County parking lot, connecting to the Public Trail system and Strand Beach as established in the HDCP
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.
3. The view overlooks shall provide seating, interpretive signage, public art, or other relevant information as determined by the City.
4. The Strand Vista Park shall include active recreation uses that complement the public trail and overlooks, such as landscaped seating areas, picnic facilities, kiosks, and other amenities that may be appropriate for coastal viewing and related public activities.
5. The Strand Vista Park shall include five vertical public beach access pathways—South Strand Beach Access, Mid-Strand Vista Park Access, Central Strand Beach Access, North Strand Beach Access, and if gates, guardhouses, barriers or other development designed to regulate or restrict public access are approved for Planning Area 2, a public funicular (inclined elevator). Lateral coastal access shall be provided along the top or landward of the shoreline protective device seaward of the Strand residential development.
6. The Strand Vista Park proposes two public visitor recreation facilities (restroom and shower facilities) to be constructed by the Landowner/Developer as part of the North and South Strand Beach Access, just above Strand Beach.
7. Parking shall be accommodated in the adjacent County public parking lot and on Selva Road.
8. Appropriate signage identifying the location of public coastal accessways will be displayed in conspicuous locations.



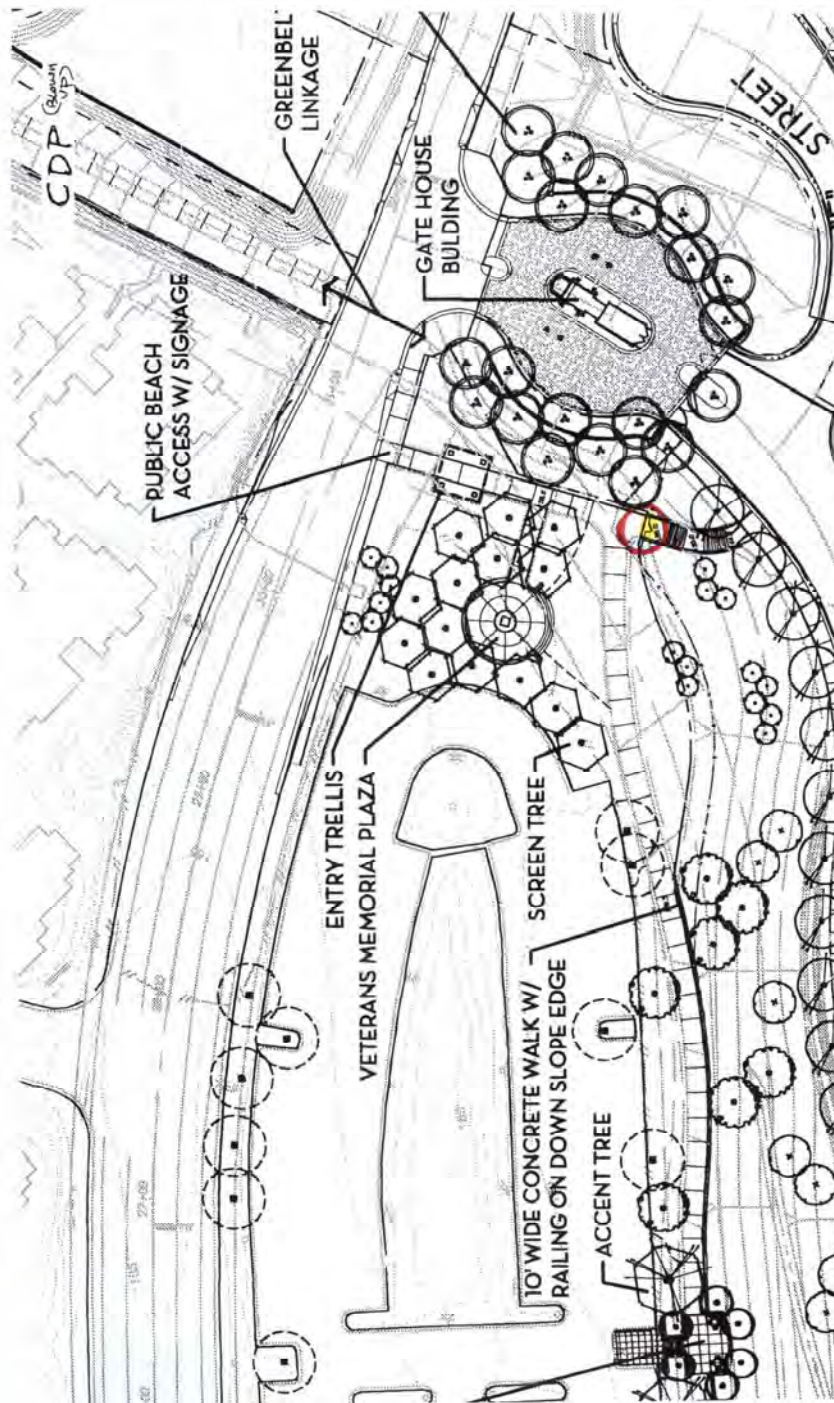
**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

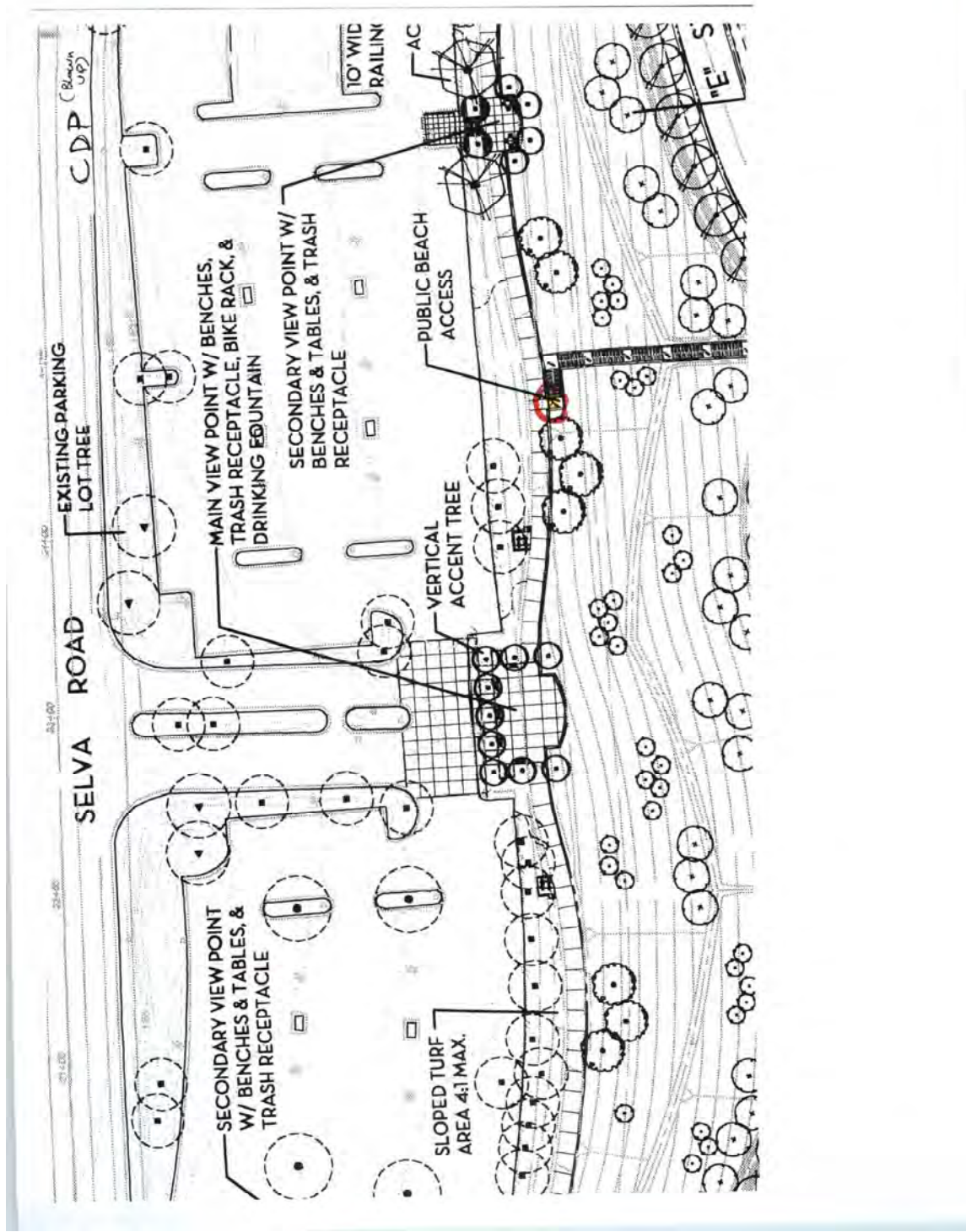


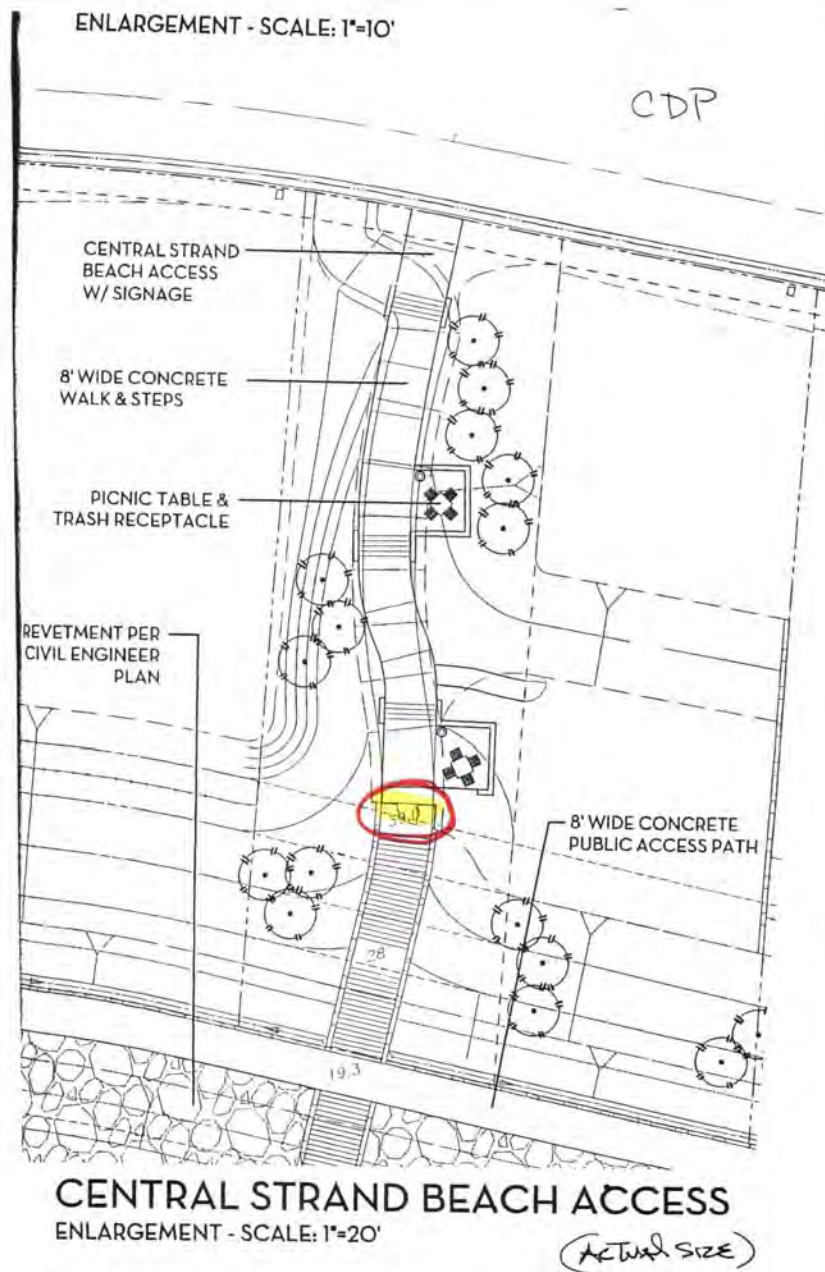
Note: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

SUPPORTING DOCUMENT H









Sign Displaying Unpermitted Hours at Central Strand Beach Access



Unpermitted Gate at Mid Strand Beach Access

CALIFORNIA COASTAL COMMISSION

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



October 20, 2009

Mr. Brad Fowler
Director of Public Works and Engineering Services
City of Dana Point
Public Works & Engineering
33282 Golden Lantern
Dana Point, CA 92629

Re: DANA POINT HEADLANDS
Local CDP No. CDP04-23
Summary of Reconnaissance Survey of Improvements on 10/7/09

Dear Mr. Fowler:

On October 7, 2009, Commission staff, including myself and Mr. Andrew Willis, met with you at the site of the Dana Point Headlands project, approved pursuant to City of Dana Point Master Coastal Development Permit No. CDP04-23. We met, at your invitation, for a reconnaissance level survey of the public improvements that, pursuant to the Local Coastal Program and CDP, are required to be constructed by the developer and ultimately managed by a public entity. I would like to take this opportunity to thank you for the invitation and for meeting with us. We are pleased to see the progress toward completion of the parks, trails, and beach accesses, the funicular, nature interpretive center, and the ongoing habitat restoration efforts. We look forward to the opening of these public benefits which will be enjoyed by so many who recreate along our coastline. However, at the same time, we do have some concerns with the state of some of the improvements and believe the conditions now present will have a long lasting adverse impact to coastal access and resources if they are not corrected. Therefore, this letter also serves to memorialize staff's observations during our meeting and some additional issues staff has identified.

For the sake of completeness, let me also document the circumstances under which we met and those we encountered during our visit. As indicated by you, we observed completed or nearly completed public facilities at the site. We did not seek to conduct, or allow time for, a complete review of all public facilities on the entire site. In addition, we did not review City-approved project plans in conjunction with this meeting. This was, instead, a reconnaissance-level observation of some of the public facilities at the site regarding which you asked staff to identify any concerns that we saw during the site visit.

Commission staff met with you at the top of the North Strand Beach Access stairs, from which we proceeded down the steps to the landing point of the funicular. Access to and use of the funicular or its related facilities was not available at that time as final engineering certification had yet to be completed. From there we walked along the Strand Vista Park, observing conditions in the park from the Salt Creek Parking lot as access into the park was not available due to construction fencing and the absence of any construction personnel to provide entry. We were ultimately able to gain access into Strand Vista Park through an unlocked construction fence at the mid-point of the park, where we proceeded to its easterly end, observing the entry point to the Mid-Strand Vista Park Access and the Central Strand Beach Access, along the way, and ultimately ended that walk at the 'Veteran's Memorial' park. We then went by vehicle to the end of the newly constructed extension of Selva Road that leads to both the entry point to the South Strand Beach Access and the entry to the westerly end of the Headlands Conservation Park loop trail. From there we headed over to the terminus of Scenic Drive, stopping along the way to look at the entry to the steps leading from Green Lantern to the Hilltop Park. We concluded our meeting at the terminus of Scenic Drive in the cul de sac adjacent to the Interpretive Center building and parking lot at the Headlands Conservation Park. These facilities were closed and gated at the time and we did not gain entry to any trails, the parking lot, or the interpretive center.

Following is a summary of the issues we identified with regard to those public facilities we viewed on October 7th and some additional issues that have come to our attention after reviewing our photographs from the site visit and the requirements of the LCP:

1. **Obstruction of Public Views Along the North Strand Beach Access Stairs and the southerly end of the Strand Vista Park.** During our site visit, we observed several rows of vegetation planted along the length of the North Strand stairs that obstruct public views of the ocean and Dana Point Headlands from the stairs. Similarly, there is vegetation planted seaward of the Strand Vista Park walkway at its southerly end that obstructs public views of the ocean and Headlands. For the most part, there is no ocean view with the vegetation planted. Where views are not completely obstructed, it appears that such views will ultimately be obstructed once the vegetation fills in some more. There are numerous policies in the LCP requiring the protection and enhancement of public views to and along the ocean, and of significant landforms like the Dana Point Headlands. There are also very specific narrative, policies and graphics discussing the planned improvement of views from the North Strand stairs and from the Strand Vista Park area. For example, the LCP contains a map, Figure 4.5.3 (Coastal View Opportunities) that describes in detail the view conditions that are required along the North Strand access and the southerly end of the Strand Vista Park access (Planning Area 1), among other locations. In these areas, Figure 4.5.3 shows that views are to be "intermittent", as opposed to "unobstructed" or "no view", in recognition of the fact that homes constructed in the South Strand residential area (Planning Area 2) would create some view obstructions of the ocean and Headlands. The vegetation currently planted along these areas creates a "no view" condition.

During our site visit you argued that "intermittent" views could mean "no view" in those locations if one 'averaged' in the 'unobstructed' views that were present elsewhere along the Strand Vista Park access. We don't believe such interpretation is reasonable. There are three distinct view condition categories in the LCP: 'unobstructed view', 'intermittent view', and 'no view'. Had the Commission decided it was appropriate to obstruct views along the southerly part of the Strand Vista Park access, it would have applied the 'no view' category instead of the 'intermittent view' category.

Therefore, we believe the vegetation planted along these areas is not compliant with the requirements of the LCP, or the CDP which incorporates the provisions of the LCP. Vegetation should be removed or replaced with vegetation that grows low to the ground, such that individuals using these accessways have the best possible view of the ocean and Dana Point Headlands. If there is a desire to screen the homes with vegetation, this preferably should be accomplished with landscaping on the residential lots and could be reviewed by the City in conjunction with its review of landscape plans for those properties. If that screening isn't adequate, in places where the 'intermittent view' category applies, some vegetation could be used where it will screen views of homes, but only where this can be done without adversely impacting public views of the ocean and Headlands.

2. **Gates & Hours of Operation at the Entryway to the Mid-Strand, Central Strand, and South Strand Beach accessways.** During our site visit we observed that gates had been installed at the entry points to the Mid-Strand and Central Strand beach accessways. Signs posted at the entry state that the hours the public may use these accessways are 8am to 7pm May through September, and 8am to 5pm October through April. You stated that the gates would be locked/opened with a time lock mechanism. In addition, there is a sign indicating 'trail hours' of 7am to Sunset at the South Strand Beach Access and you indicated the City's intent to install a gate at the entry to the South Strand Beach Access if one can be devised that is resistant to vandalism.

Gates and restrictive access hours on dedicated public accessways are contrary to the public access requirements of the LCP and the Coastal Act. The local coastal program expressly prohibits gates or other development designed to restrict public access except in conjunction with the funicular. Furthermore, there is nothing in the City-issued CDP that authorizes gates on the public access entryways. Again, the presence of gates on these accessways is contrary to the public access improvement goals of both the Coastal Act and the Local Coastal

Program. Both a local coastal program amendment and coastal development permit would be needed to authorize such gates. It is Commission staff's position that, based on the inconsistency of such gates with the Coastal Act, it is not likely such gates would be approved by the Commission. In any event, until, authorized, the gates must be removed.

Furthermore, the coastal permit for the Headlands development which was approved by the City and subject to appeal by the Commission did not authorize the establishment of hours of operation for the accessways. The hours identified at the Mid and Central Strand accessways, 8am to 5/7pm, prevent the public from gaining access to State tidelands via these accessways even during daylight hours, which can be as early as 5am and as late as 9pm during some times of the year. In fact these hours are far more restrictive even than the hours listed on the sign for Strand Vista Park, which are 6am to 10pm. We recognize that the LCP states that the City will determine hours of daily operation for the facilities it will own in the Headlands project area. However, it is Commission staff's position that the proposed hours of operation limit public access to a greater degree than anticipated or allowed by the policies of the certified LCP and the public access and recreation policies of the Coastal Act and should not be permitted. Establishment of such a restriction on public access is a change in intensity of use and access to the water and requires a coastal permit.

Again, the City-issued coastal permit did not authorize the establishment of hours of operation that restrict the public's ability to gain access to the coast seaward of the Headlands development. In addition, the LCP specifically prohibits the residential development from being a gated community for similar reasons. Preferably, there should be no restriction on the hours of operation on a coastal accessway. People wish to access the beach, which there are State tidelands, at all hours for walking, fishing, scuba diving and other such activities. Limiting the operating hours of beach accessways limits public beach access. At this stage, these limitations need to be removed since there is no coastal permit authorizing them. If the City wishes, it may seek a coastal permit for the establishment of hours of use though Commission staff is not encouraging the establishment of such hours.

You stated a concern about safety and a need for lighting to make the accessways safe at night. If this is a concern, then the developer should install the required lighting. However, such lighting should be minimized and directed downward and away from sensitive habitat areas. All applicable coastal permit requirements should be followed.

3. **Public coastal access signage in Planning Area 2.** A comprehensive sign program is a requirement of the LCP. We note that the signs at the Mid and Central Strand accessways, which pass through Planning Area 2, state that coastal access is "limited to sidewalk" and "no trespassing beyond public sidewalk". First, this restriction is confusing and misleading, especially considering the lack of public access signage (e.g. directional signs) within the lower residential area. It is necessary for the public to leave the sidewalk and cross two streets to reach the access point to the beach. Furthermore, this is contrary to LCP requirements which state that "[o]nly public vehicular access may be restricted" in Planning Area 2, if a funicular is installed and operating. The LCP says that "Public pedestrian and bicycle access shall not be restricted" in Planning Area 2 (and 6) (see Section 3.4.A.6, page 3-19). Thus, signs which limits access to the sidewalk only restrict public access in a manner that is contrary to the LCP. These signs should be removed and may be replaced only if coupled with directional public access signage that makes clear where the public is allowed and also protects private property within the Headlands.
4. **Screen wall at the lower restroom/funicular station at the North Strand Stairs.** Near the bottom of the North Strand Stairs, where a new restroom and funicular station were constructed, we pointed out the public view obstructions created by a wall newly installed in the vicinity of the new showers. You explained that the screen wall was necessary to create visual separation between the restroom facilities and the adjacent nearby home site. If screening is necessary, ideally that screening would be located on the home site where public view blockage would be minimized instead of at the North Strand stairs where public view blockage is most extreme. Vegetation in lieu of a wall would also be preferable (planted on the home site). Furthermore, it appears that the wall that was installed obstructs more public view than is

necessary to create a visual separation between the restroom and the home site. If the wall is retained, it ought to be stepped/lowered and/or removed in the areas nearest to the steps where a visual separation is not necessary. Thus, we request that the City revisit the need for this wall for screening purposes and look at alternative methods for creating visual separation between the restroom/funicular and the adjacent home site that minimize/avoid public view impacts.

As you explained in the field, we recognize the City's actions to allow the installation of vegetation and a wall which blocks public views and the identified access limitations were undertaken to address privacy issues and perceived safety concerns. Similar arguments are often made in other areas along our coast where privacy is a concern. However, these actions which favor a few individuals to the detriment of the many members of the public who wish to gain access to the State tidelands is inconsistent with the Coastal Act and the Commission's certification of the LCP which applies to this area. We don't believe the vegetation, gates, and signs that are at issue in this letter are either authorized by a coastal permit or consistent with the local coastal program. Development undertaken without a valid coastal permit constitutes a violation of the Coastal Act and the certified LCP. We hope that you will address these issues immediately so that the public may fully realize all the benefits it was promised when the Headlands project was approved. Also, we have exchanged some correspondence regarding vegetation clearance within ESHA at the Hilltop Park. We will address that with you as a separate matter.

Again, thank you for taking the time to meet with us to review site conditions. Please let me know if you have any questions, or wish to discuss further.

Sincerely,



Karl Schwing
Supervisor, Regulation & Planning

Cc: Kyle Butterwick, City of Dana Point
Sanford Edward, Headlands Development LLC
Andrew Willis, CCC
Teresa Henry, CCC
Sherilyn Sarb, CCC
Chris Pederson, CCC



November 5, 2009

RECEIVED
South Coast Region

NOV 9 2009

Karl Schwing, Supervisor
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, Ca 90802-4302

**CALIFORNIA
COASTAL COMMISSION**

Re: Dana Point Headlands
Local CDP 04-23
Response to Commission Staff Letter of October 20, 2009

Dear Mr. Schwing:

The City is in receipt of the above referenced letter, wherein the California Coastal Commission ("CCC") staff raises concerns regarding the recently completed public improvements for the Headlands project. The City of Dana Point ("City") has reviewed the issues raised and, in general, finds that your concerns are not based on a complete and thorough analysis of the physical characteristics of the site, nor the actual conditions and terms of the underlying Local Coastal Program 01-02 ("LCP") and Coastal Development Permit 04-23 ("CDP"). Our response to the specific issues is found below, formatted in the same order as referenced in your letter. Your letter also makes several reference to requirements of the Coastal Act, however, following the certification of the LCP, the standard of review for the Headlands project has been the certified LCP and not the Coastal Act.

1. Obstruction of Public Views along the North Strand Beach Access Stairs and the southerly end of Strand Vista Park.

Your letter states that vegetation (i.e., project landscaping) has created the "obstruction" of public views from the North Strand Beach Access Stairs and the southern end of the Strand Vista Park, or as you put it: "The vegetation currently planted along these areas creates a 'no view' condition." As the attached photographs demonstrate, extensive ocean views (even white water views) are available from both the North Strand Access Stairs and the southerly end of Strand Vista Park in the exact areas you are describing (see Exhibit 1). Ocean views will remain from these locations even after the landscaping matures. Hence, your conclusion that a "no view condition" exists is inaccurate.

More importantly, the suggestion that these specific areas were intended to provide specific public views of the ocean and the Headlands, to the west and the south, is inconsistent with the certified LCP. As noted in LCP Figure

CCC-16-CD-02

Exhibit 7

Page 1 of 5

Harboring the Good Life

4.5.3, *Coastal View Opportunities*, these areas were designated as having "Intermittent" view conditions. Apparently, your definition of intermittent is at odds with common standards. For example, the 2009 Merriam-Webster Dictionary defines intermittent as: "Coming and going at intervals: not continuous," the synonym given is "occasional." The 2008 American Heritage Dictionary defines intermittent as "Stopping and starting at intervals." Thus the LCP clearly anticipated that in those areas identified as "intermittent" coastal views would not be continuous and, in fact, may not occur at all in certain portions. The fact, as confirmed in Exhibit 1, that numerous ocean views do occur in these areas contradicts your "no view" v. "intermittent" view analysis.

The LCP Figure 4.5.3 also provides an anticipated "Direction of View" for the view opportunities depicted through the use of arrows. This is particularly relevant to areas where "intermittent" views are identified. The requisite arrows as found in Figure 4.5.3 clearly indicate that the views you are claiming, i.e., views of the Headlands, were never intended or required in the referenced areas. For the North Strand Beach Access, the direction of view is west, straight out and parallel to the stairway. No direction of view is shown on Figure 4.5.3 to occur towards the Headlands project or the Headland landform as you allege in your letter, which is to the south. The views to the south in this area were always limited due to the proposed landscaping and height of the homes in the project. Ironically, the views in this area truly exceed those required by the LCP because the neighboring community, Niguel Shores, chose to have us remove the vegetation that blocked the ocean views to the north. Hence, this area actually contains significantly more public ocean views than the LCP required.

The exact same condition exists at the southern end of Strand Vista Park. No view or direction arrows are shown for this area of the Strand Vista Park, and in particular, no arrows designate views to the west or the south as they do along the rest of the Park. Rather, the entire southern section is designated as providing "intermittent" views, which it clearly does as illustrated in the above referenced Exhibit 1, where ocean views occur to the north. View blockage to the west and the south was anticipated and authorized in the LCP. Again, the reason is that the homes, which have a 28' height in this area, will completely obscure the ocean and the Headlands landform, hence no public views to the west or south will ultimately exist.

Hence, a close examination of the facts and underlying approvals, including the attached photographs, reveals that the coastal views afforded from the North Strand Beach Access and the southern end of the Strand Vista Park exceed the requirements in the LCP. Therefore, the City does not agree with your conclusion that the existing conditions are inconsistent with or in violation of the LCP.

2. Gates and Hours of Operation at the Entryway to the Mid-Strand, Central Strand and South Strand Beach Accessways.

Your letter raises several concerns regarding the posted public access hours for the Mid-Strand, Central Strand and South Strand Beach Accessways. To clarify matters, the City has established the hours of operation for these public facilities as explicitly authorized by the LCP. Please see LCP Table 4.5.4, *Strand Vista Park/Public Access, Public Access Program Guidelines*. Item 2 from the referenced Table 4.5.4 requires the City to make sure that the Accessways are "open to the public year-round" and further requires that the "City will determine hours of operation." Hence, the LCP clearly and properly gives the right and places the responsibility upon the City to administer the public access program, since the City is the agency that is going to ultimately own, maintain, police, and assume liability for these facilities. To suggest that the City now needs a separate Coastal Development Permit to determine the hours of operation for the parks and public trails is in direct conflict with the certified LCP, which solely authorizes the City to determine the hours, and the approved CDP that authorizes the construction of the parks and trails.

In determining the hours of operations, the City has reviewed and considered a number of public health, safety and welfare factors to create a comprehensive program. Two of the public trails, the South Strand Beach Access and the North Strand Beach Access are open year round from sunrise to sunset and from sunrise to 12:00 pm, respectively. Therefore, your observations that the public is being restricted from the beach to a "greater degree than anticipated or allowed in the policies of the LCP" are without merit. Exactly what "anticipated" hours are you referencing? The LCP, other than giving the City the specific authorization to set the hours, makes no reference to any hours of operation for the parks and public trails. The Mid-Strand and Central Strand Beach Access, given that they are located within a residential community which potentially creates significant safety issues, are open year round from 8:00 am to 5:00 pm in the winter and from 8:00 am to 7:00 pm in the summer.

Your letter also incorrectly alleges that by not allowing 24 hour public beach access the City has violated the LCP. This comment makes no sense, as it is an established legal right that local agencies routinely limit public beach access via public trails as the potential for crime and criminal activities, as well as public accidents both at the beach and on the trails, goes up exponentially after daylight hours. This is why virtually every city and county in the state of California places restrictions on coastal access.

Your letter also takes issue with the gates that were built in conjunction with the Mid-Strand and Central Strand Access paths. These gates are intended to restrict access during non-operating hours. As such, to clarify the intent we

will have the developer install a feature that requires that the gates remain in an open position during operating hours. However, without the gates to serve as controls for access, hours of operation would be meaningless. This is an important feature for the City and its citizens. Unfortunately, as a beach community, the City and the Headlands site in particular attract some visitors who have little respect for public safety or private property. Over the past several years there have been dozens of instances of vandalism, trespassing, theft, etc. and threats of violence from individuals and groups in regard to the Headlands property. A number of these incidents required police reports, and have occurred as recently as last week. Several of these incidents have involved felonies. It is extremely important that the City have the tools to properly protect its citizens, their safety and welfare, as well as their property. This can be done in a way that also provides public coastal access.

Thus, the public will have several coastal and tidelands access options available throughout the Headlands project (six counting the funicular and the revetment path). The above described City regulations for coastal access are based on clear legal precedents established throughout the State. In fact, the State of California itself sets hours restricting use of State beaches, adjoining parking lots and related facilities, and uses gates and similar structures where required to enforce its regulations. Conspicuously missing from your letter was any acknowledgement that each of the beach access entry signs, besides noting the hours of operation, included two inch bold lettering announcing "Coastal Access." Such signage was designed to openly invite public access, while informing the public that the City has set the hours of operation in a manner that enhances the public health, safety and welfare.

3. Public Coastal Access Signage in Planning Area 2.

The City agrees with your observation that additional signage is necessary to clearly depict the public beach access within Planning Area 2. As such, we will require the developer to provide the appropriate Beach Access directional signage. A photograph of such sign is included as Exhibit 2.

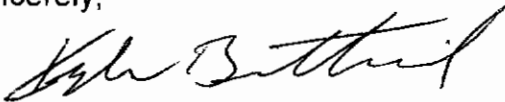
You go on to state that public access "may not be restricted" within Planning Area 2, but this allegation misinterprets the LCP and is contradicted by the underlying facts. The section of the LCP that you reference was intended to define the relationship between the gates that restrict public vehicles and the funicular. Planning Area 2 consists entirely of private property, including the streets, except that the City retains a public easement on the sidewalk for public beach access. The easement obviously runs over that portion of the streets that connect the sidewalk. Nothing in the LCP authorizes the public to trespass on private property. Moreover, there is no reason for the public to go outside of any areas that are not specifically designated for public use, as none of these areas provide beach access. Thus, the signs that inform the public of this restriction are proper and consistent with the LCP.

4. Screen Wall at the Lower Restroom at the North Strand Stairs.

The letter alleges that the North Strand stairs screen wall next to the showers results in "coastal view" blockage and that vegetation would be a preferable screen. Please see the response provided above in item No. 1. Public views to the south from this location are not required in the LCP. Expansive coastal views to the west and north do occur from this location and will remain. The wall creates an appropriate buffer between the adjoining residential uses and the public shower area. Unlike vegetation alone, the wall will also help attenuate noise and light. Moreover, similar to the conditions in the southern end of the Strand Vista Park, the residential homes directly behind this area will completely obscure all views. Prior to the construction of the wall, the City had the developer's surveyor install story poles and a string line to demonstrate the building envelope of the home on the adjoining lot (see attached Exhibit 3). The allowable height of the home, at 28 feet, exceeds the height of the existing wall by over a foot.

As detailed above, the vast majority of the public amenities and improvements for the Headlands project have been implemented in full conformance with the LCP requirements. In the couple of instances where CCC staff has requested additional clarity, the City will make the requested changes as noted above. However, the City does not agree with the basic premise of the CCC staff letter when it suggests that violations of the LCP have occurred, and that amendments to the LCP or the CDP may be required. As the above response clearly details, these allegations cannot be supported by the underlying facts and permits. Please call if you have any further questions related to these matters.

Sincerely,



Kyle Butterwick
Director of Community Development

Enclosures

cc: Doug Chotkevys, City Manager
Patrick Munoz, City Attorney
Brad Fowler, Director of Public Works & Engineering Services
Sanford Edward, Headlands Development LLC
Andrew Willis, California Coastal Commission
Teresa Henry, California Coastal Commission
Sherilyn Sarb, California Coastal Commission
Chris Pederson, California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**

November 20, 2009

Kyle Butterwick
Community Development Director
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Violation File Number: V-5-09-026

Property location: Dana Point Headlands - Strand Beach accessways
City of Dana Point, County of Orange

Unpermitted Development: Placement of gates and signs restricting public beach access; establishment of "hours of operation" limiting public beach access.

Dear Mr. Butterwick:

I am in receipt of your letter dated November 5, 2009 in response to Karl Schwing's October 20, 2009 letter. I am writing to address the issue of the gates, signs, and establishment of hours of operation of the accessways discussed in the two above-mentioned letters.

As detailed in Mr. Schwing's letter, our staff has confirmed that the placement of gates and signage has occurred on property owned by the City of Dana Point at the Mid-strand and Central Strand Beach Accessways and that signage has been placed at the South Strand Beach Access. The subject gates and signs (the signs establish "hours of operation") restrict public access to the beach at these locations which are located within the Coastal Zone and the City's Coastal Overlay (CO) District.

Pursuant to Section 9.27.010 of the City of Dana Point Zoning Code (Title 9), a coastal development permit, subject to the standards of the specific zoning designation, is required for all "development" within the Coastal Overlay District. "Development" is defined in Section 9.75.040 of the City's zoning code as:

Development, Coastal — the placement or erection, on land, in or under water, of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any

materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto, construction, reconstruction, demolition, or alteration of the size of any structure; including any facility of any private, public, or municipal utility; and the removal of harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provision of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (emphasis added)

The above-mentioned gates and signs which limit or restrict public beach access are: 1) located within the CO District; 2) are not authorized by Coastal Development Permit ("CDP") No. 04-23 (or any other coastal development permit) and; 3) are not exempt. Therefore, they constitute development under the Coastal Act¹ and the City's local coastal program ("LCP") and require a coastal development permit or an amendment to CDP No. 04-23. Any development activity conducted in the Coastal Zone/CO District without a valid coastal development permit which requires a permit, as does this activity, constitutes a violation of the Coastal Act and the City's LCP.

In addition, Section 9.27.030 of the City's zoning code states:

In addition to the development standards for the base zoning districts described in Chapters 9.09-9.25, the following standards apply to all applicable projects within the CO District.

(a) Coastal Access.

(1) The purpose of this section is to achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act; to implement the public access and recreation policies of Chapter 3 of the Coastal Act; and to implement the certified land use plan of the Local Coastal Program which is required by Section 30500(a) of the Coastal Act to include a specific public access component. In achieving these purposes, the provisions of this subsection shall be given the most liberal construction possible so that public access to the navigable waters shall always be provided and protected consistent with the goals, objectives and policies of the California Coastal Act and Article X, Section 4, of the California Constitution.

In your letter to Mr. Schwing, you assert that the City's LCP authorizes the City to determine hours of operation. Just to clarify, the LCP identifies standards by which to review a request for a permit, and is not a permit itself. In fact, the City's LCP requires a coastal development permit for all development within the CO District. Therefore, a coastal development permit is required in order to authorize the development at issue here.

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

In addition, the presence of language in the LCP indicating that the City may determine hours of operation does not also imply that the City may erect gates to enforce those hours - the City of Dana Point has numerous parks with hours of operation that are not gated -, nor does it somehow exempt such development from the application of Coastal Act and LCP policies, including those pertaining to public access, and the concomitant permit requirements. In fact, as described further below, the construction of gates to obstruct pedestrians from public accessways in the subject locations is expressly prohibited in the City's LCP.

You also state that you have set the hours of operation at 8:00 am to 5/7:00 pm (depending on the season) because the presence of public accessways in a residential community creates significant safety issues. The mere presence of a public accessway in a residential neighborhood is not a public safety issue. As you are no doubt aware, there are many such accessways in residential neighborhoods along the California coast that present no more of a safety issue than accessways located in non-residential areas. If free of view obstructing vegetation, the accessways are accessible to monitoring from multiple vantage points during daylight hours, and if adequately lit, at all hours. In addition, the hours you have set - which don't even include all daylight hours - are much more restrictive than the hours the City uses at other City-owned facilities. Nor are the hours consistent with public access policies of the Headlands Development and Conservation Plan, including Section 4.4, which specifies that trails will maximize public coastal access.

Therefore, in order to resolve this violation and reduce the possibility of further enforcement action by the Coastal Commission, we ask that you remove the above-mentioned gates and signs. If, at a later date you wish for gates and/or signs to be installed that restrict public access, you would first need to obtain authorization for them through issuance of a coastal development permit (or by amending CDP No. 04-23). If you choose to authorize the gates and signs through the coastal development permitting process, an amendment to the City's LCP will also be required as Section 3.4.A.6 of the Headlands Development and Conservation Plan (part of the City's certified LCP) expressly prohibits gates or other development that restrict public pedestrian and bicycle access. As Mr. Schwing advised you in his letter, because the gates and signs appear to be inconsistent with the public access policies of the Coastal Act and the City's LCP, it is not likely that Commission staff would recommend approval of the subject gates, signs, and hours of operation by the Coastal Commission (which would review the issue in an LCP amendment and/or likely hear the matter on appeal) as currently configured and/or proposed. We would therefore prefer to work with you to address the situation in a way which is consistent with the LCP and Coastal Act.

Please note that Mr. Schwing raised some additional issues in his letter regarding view obstruction and there are other ongoing issues that have been previously identified relative to sensitive habitat clearance elsewhere on the site. That is not the subject of this letter, but resolution of those issues remains important. We urge you to continue to work with staff to resolve those issues and appreciate your cooperation.

While we remain confident that this matter can be resolved amicably and strongly prefer to do so, please be advised that Public Resources Code Section 30810(a)(3) authorizes

the Commission to issue a cease and desist order to enforce any requirement of a certified LCP if the local government is a party to the violation (as in this instance where the City owns the property upon which the Coastal Act violation is located and operates the subject gated accessways). Please contact me by **December 7, 2009** regarding how the City intends to resolve this matter.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071. We look forward to speaking with you and resolving this matter in the near future.

Sincerely,



Andrew Willis
District Enforcement Analyst

CC: Sherilyn Sarb, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
Karl Schwing, Orange County Planning Supervisor, CCC
Alex Helperin, Staff Counsel, CCC
Teresa Henry, District Manager, CCC
N. Patrick Veesart, Enforcement Supervisor, CCC
Christopher Pederson, Deputy Chief Counsel, CCC

1 RUTAN & TUCKER, LLP
A. Patrick Muñoz (State Bar No. 143901)
2 pmunoz@rutan.com
John A. Ramirez (State Bar No. 184151)
3 jramirez@rutan.com
Jennifer Farrell (State Bar No. 251307)
4 jfarrell@rutan.com
611 Anton Boulevard, Fourteenth Floor
5 Costa Mesa, California 92626-1931
Telephone: 714-641-5100
6 Facsimile: 714-546-9035

7 Attorneys for Petitioner and Plaintiff
CITY OF DANA POINT, a California Municipal
8 Corporation

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO
11 CENTRAL DIVISION

12 CITY OF DANA POINT, a California
13 Municipal Corporation,

14 vs. Petitioner and Plaintiff,

15 CALIFORNIA COASTAL COMMISSION, a
16 California public agency, and DOES 1 through
5, inclusive,

17 Respondent and Defendant.

18 HEADLANDS RESERVE LLC, a Delaware
19 Limited Liability Company, and DOES 6
through 10, inclusive,

20 Real Parties in Interest.

21 SURFRIDER FOUNDATION

22 vs. Petitioner and Plaintiff,

23 CITY OF DANA POINT; a Municipal
24 Corporation,

25 Respondent and Defendant.

26 HEADLANDS RESERVE LLC, a Delaware
Limited Liability Company,

27 Real Party in Interest.

F I L E D
Clerk of the Superior Court

JUN 02 2011

By: R. LANDSEY-COOPER, Deputy

Case No. 37-2010-00099827-CU-WM-CTL
(Consolidated with Case No. 37-2010-
00099878)

Judge: Joan M. Lewis, Dept. C-65

**[PROPOSED] JUDGMENT REGARDING
THE PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FILED BY
THE CITY OF DANA POINT AGAINST
THE CALIFORNIA COASTAL
COMMISSION**

Trial Date: April 28, 2011

1 [PROPOSED] JUDGMENT

2 Petitioner and Plaintiff City of Dana Point's ("Petitioner") Petition for Writ of Mandate
3 and Complaint for Declaratory and Injunctive Relief ("Petition and Complaint") came before this
4 Court for hearing at 1:30 p.m., April 28, 2011. City Attorney A. Patrick Muñoz, John A. Ramirez
5 and Jennifer Farrell appeared on behalf of City. Attorney George M. Soneff appeared on behalf of
6 Headlands Reserve LLC, which is named in the action as the Real Party in Interest ("Real Party").
7 Attorney Jamee Jordan Patterson, Supervising Deputy Attorney General, appeared on behalf of the
8 California Coastal Commission ("Respondent"), Respondent and Defendant in the above action.

9 Petitioner's Petition and Complaint was originally filed in Orange County Superior Court
10 and designated as Orange County Superior Court Case Number 30-2010-00374874 (defined above
11 as "Petition and Complaint" and now alternatively as "City Petition"). Thereafter, the Surfrider
12 Foundation filed a separate action against Petitioner, which was designated as Orange County
13 Superior Court Case Number 30-2010-00381725 ("Surfrider Petition"). The City Petition and the
14 Surfrider Petition were then consolidated and transferred to the San Diego Superior Court and
15 designated as San Diego Superior Court Case Number 37-2010-00099827-CU-WM-CTL. This
16 Judgment pertains only to the City Petition and not to the Surfrider Petition.

17 The Court, having read and considered the moving papers, the opposition papers and the
18 reply papers; the Administrative Record prepared by the California Coastal Commission; and
19 having heard and considered all oral argument provided at the hearing held on this matter; and
20 good cause appearing therefor, finds and determines as follows:

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the California Coastal
22 Commission's actions taken on May 13, 2010 (i) determining that City Ordinance No. 10-05
23 ("Nuisance Abatement Ordinance"), an urgency ordinance adopted by the City Council of the City
24 of Dana Point, raised a substantial issue under the Coastal Act, and (ii) determining that the
25 Nuisance Abatement Ordinance is not exempt from the Coastal Act's permit requirements
26 (collectively the "Commission's May 13, 2010 Actions"), are invalid and void insofar as the
27 California Coastal Commission lacks any jurisdiction over the City's Nuisance Abatement
28 Ordinance pursuant to Public Resources Code section 30005(b).

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a Peremptory Writ of
2 Mandate be issued under seal of this Court commanding the California Coastal Commission, its
3 Commissioners, its Executive Director, its officials, agents, attorneys, employees and all persons
4 or entities acting on behalf of, or through or under color of authority of the California Coastal
5 Commission, to set aside and rescind the Commission's May 13, 2010 Actions and not to take any
6 action or further steps to attempt to assert the jurisdiction of California Coastal Commission over
7 Ordinance No. 10-05.

8 JUDGMENT IS HEREBY ENTERED, in FAVOR OF the City of Dana Point and
9 Headlands Reserve LLC, and AGAINST the California Coastal Commission on all causes of
10 action set forth in the Petition and Complaint.

11 IT IS SO ORDERED:

JOAN M. LEWIS

12 Dated: JUN 02 2011

Honorable Joan M. Lewis
Judge of the Superior Court

JUL 29 2011

[Signature] Deputy

DANIEL FOSTER (Bar No. 179753)
DAVID M. BECKWITH (Bar No. 125130)
JENNIFER KALNINS TEMPLE (Bar No. 258637)
BROCK WILSON (Bar No. 248018)
McDERMOTT WILL & EMERY LLP
18191 Von Karman Avenue, Suite 500
Irvine, CA 92612-7108
Telephone: 949.851.0633
Facsimile: 949.851.9348

Angela Howe (Bar No. 239224)
SURFRIDER FOUNDATION
P.O. Box 6010
San Clemente, CA 92674
Telephone: 949.492.8170
Facsimile: 949.492.8142

Attorneys for Petitioner
SURFRIDER FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

BY FAX

CITY OF DANA POINT, a California
Municipal Corporation,

Petitioner/Plaintiff,

v.

CALIFORNIA COASTAL COMMISSION,
a California public agency, and DOES 1
through 5, inclusive,

Defendant/Respondent,

HEADLANDS RESERVE LLC, a Delaware
Limited Liability Company, and DOES 6
through 10, inclusive,

Real Party in Interest.

CASE NO. 37-2010-00099827-CU-WM-CTL
(Consolidated with Case No. 37-2010-00099878)

Assigned for all purposes to:

Honorable Joan M. Lewis
Department C-65

~~PROPOSED~~ JUDGMENT REGARDING
PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF FILED BY
SURFRIDER FOUNDATION AGAINST THE
CITY OF DANA POINT

Action Filed: May 24, 2010

AND RELATED CONSOLIDATED CASE.

Petitioner Surfrider Foundation's ("Petitioner") Petition for Writ of Mandate and
Complaint for Declaratory and Injunctive Relief ("Petition and Complaint") came before this
Court for hearing at 1:30 p.m., April 28, 2011. Jennifer Kalnins Temple, David M. Beckwith,
and Brock F. Wilson of McDermott Will & Emery LLP and Angela Howe of Surfrider

Foundation appeared on behalf of Petitioner, Surfrider Foundation. A. Patrick Muñoz, John A. Ramirez and Jennifer Farrell of Rutan & Tucker, LLP appeared on behalf of the City of Dana Point ("Respondent"). George M. Soneff of Manatt, Phelps & Philips, LLP appeared on behalf of Headlands Reserve LLC, which is named in the action as the Real Party in Interest ("Real Party"). Attorney Jamee Jordan Patterson, Supervising Deputy Attorney General, appeared on behalf of the California Coastal Commission.

Surfrider's Petition and Complaint was originally filed in the Orange County Superior Court and designated as Orange County Superior Court Case No. 30-2010-00381725. The City of Dana Point filed a separate action against the California Coastal Commission, which was designated as Orange County Superior Court Case No. 30-2010-00374874 ("City Petition"). The City Petition and the Surfrider Petition were then consolidated and transferred to the San Diego County Superior Court and designated as San Diego County Superior Court Case No. 37-2010-00099827-CU-WM-CTL. This Judgment pertains only to the Surfrider Petition and not to the City Petition.

The Court, having read and considered the moving papers, the opposition papers and reply papers, the Administrative Record prepared by the City of Dana Point, and having heard and considered all oral argument provided at the hearing held on this matter, and good cause appearing therefore, finds and determines as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that City of Dana Point Ordinance No. 10-05, codified in part as City of Dana Point Municipal Code 13.04.030(h), ("the Ordinance") is invalid and void insofar as there was no properly declared nuisance and/or the manner of abatement was excessive.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that a Peremptory Writ of Mandate be issued under seal of this Court commanding the City of Dana Point, its City Council, its officiates, agents, attorneys, employees and all persons or entities acting on behalf of, or through or under color of authority of the City of Dana Point, to set aside and rescind the Ordinance and to not take any actions or further steps to enforce the Ordinance.

~~IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that, to the~~ *Jan*

1 ~~extent that the City of Dana Point continues to maintain the gates and/or signage at the Mid-~~
2 ~~Strand and Central Strand Access Ways to Strands Vista Beach, the City must apply to the~~
3 ~~California Coastal Commission for a permit for such gates and signage.~~ *JML*

4 JUDGMENT IS HEREBY ENTERED, in FAVOR OF Surfrider Foundation, and
5 AGAINST the City of Dana Point and Headlands Reserve LLC.

6 IT IS SO ORDERED.

7 Dated: *July 29*, 2011

Joan M Lewis
Honorable Joan M. Lewis
Judge of the Superior Court

MCDERMOTT WILL & EMERY LLP
ATTORNEYS AT LAW
IRVINE

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**[PROPOSED] JUDGMENT REGARDING PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF FILED BY SURFRIDER FOUNDATION AGAINST
THE CITY OF DANA POINT**

SEE ATTACHED SERVICE LIST

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Quite-Marie Smith

ANITA-MARIE SMITH

DM US 28985774-1.099749.0411

SERVICE LIST

A. Patrick Munoz, Esq.
John A. Ramirez, Esq.
Rutan & Tucker, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626-1931

Attorneys for Petitioner and Plaintiff
CITY OF DANA POINT

Telephone: 714.641.5100
Facsimile: 714.546.9035
pmunoz@rutan.com
jramirez@rutan.com

Kamala D. Harris, Esq.
Attorney General of California
Jamee J. Patterson, Esq.
Supervising Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

Attorneys for Respondent and Defendant
CALIFORNIA COASTAL COMMISSION

Telephone: 619.645.2023
Facsimile: 619.645.2012
Jamee.Patterson@doj.ca.gov

George M. Soneff, Esq.
David T. Moran, Esq.
Manatt, Phelps & Philips, LLP
11355 W. Olympic Boulevard
Los Angeles, CA 90064-1614

Attorneys for Real Party in Interest
HEADLANDS RESERVE, LLC

Telephone: 310.312.4000
Facsimile: 310.312.4224
gsoneff@manatt.com
dmoran@manatt.com

DM_US 28985774-1.099749.0411

F I L E D
San Diego Superior Court

JUN 01 2011

Clerk of the Superior Court
BY: H. HENSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CITY OF DANA POINT, a California
Municipal Corporation,

Petitioner and Plaintiff,

v.

CALIFORNIA COASTAL COMMISSION, a
California public agency, and DOES 1 through
5, inclusive,

Respondent and Defendant,

HEADLANDS RESERVE LLC, a Delaware
Limited Liability Company, and DOES 6
through 10, inclusive,

Real Party in Interest,

AND RELATED CONSOLIDATED CASE.

Case No. 37-2010-00099827-CU-WM-CTL
(Consolidated with Case No 37-2010-00099878)

**ORDER GRANTING SURFRIDER'S
REQUEST FOR DECLARATORY RELIEF**

Judge: Joan M. Lewis
Dept.: 65

Petitioner Surfrider Foundation's ("Surfrider") petition for writ of mandate and for declaratory and injunctive relief came on regularly for hearing April 28, 2011, at 1:30 p.m., in Department 65 of the above-entitled Court, the Hon. Joan M. Lewis, judge presiding. A. Patrick Munoz, Esq., John A. Ramirez, Esq. and Jennifer Farrell, Esq., appeared on behalf of the City of Dana Point (the "City" or "Dana Point"). Jennifer Kalnins Temple, Esq., Brock F. Wilson, Esq., Angela Howe, Esq. and David Beckwith, Esq., appeared on behalf of Surfrider. George M. Soneff, Esq., appeared on behalf of Real Party in Interest Headlands Reserve, LLC ("Headlands").

ORDER GRANTING SURFRIDER'S REQUEST FOR DECLARATORY RELIEF

CCC-16-CD-02

Exhibit 11

Page 1 of 7

1 Also heard on April 28, 2011, was the consolidated matter *City of Dana Point v. California*
2 *Coastal Commission*. Attorneys Munoz, Ramirez and Farrell appeared on behalf of Petitioner and
3 Plaintiff, Dana Point. Jamee Jordan Patterson, Supervising Deputy Attorney General, appeared on
4 behalf of the California Coastal Commission (the "Commission"), the Defendant and Respondent.
5 Attorney Soneff appeared on behalf of Real Party in Interest Headlands Reserve, LLC.

6 On April 28, 2011, the Court confirmed its tentative ruling granting the City's petition for
7 writ of mandate in its case against the Coastal Commission. As to Surfrider's petition, the Court
8 took the matter under submission and now rules as follows.

9 This action concerns two beach access trails (the "trails") in the area of "The Strand at
10 Headlands" (the "project" or "Headlands") and Dana Point's finding of a nuisance that it believed
11 necessitated the closure and gating of the trails during certain portions of the day.

12 In 2002, the City proposed to amend its certified Local Coastal Program ("LCP") to allow
13 development of the Headlands. [1 CCC AR 185-186¹] In 2003, the City submitted the LCP
14 Amendment ("LCPA") to the Commission for its review and certification. [1 CCC AR 186]

15 In January of 2004, the Commission reviewed and approved the LCPA with modifications
16 necessary to bring the LCPA into conformity with the Coastal Act. [1 CCC AR 175] The
17 modifications included maximizing the hours of use of public beaches and parks, requiring that any
18 development provide a minimum of three public accessways and an inclined elevator/funicular to
19 the beach and requiring that any limitation on the time of use of public beaches and parks be subject
20 to a coastal development permit ("CDP"). [1 CCC AR 205, 207]

21 The Commission allowed gates in the Strand area to restrict vehicular access so long as
22 (1) pedestrian and bicycle access through the residential development to the beach remained
23 unimpeded; (2) a direct connection is provided between the mid-point of the beach parking lot and

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27 ¹ Both the Commission and the City submitted administrative records. A reference to "CCC" is a reference to
28 the Commission's administrative record ("AR") with the number preceding CCC referring to the volume of the record
and the number following CCC AR referring to the page number. Similarly, a reference to "DP" is to the City's
administrative record with the number preceding DP being the volume of the City's record and the number following a
reference to the specific page number.

1 the central Strand; and (3) an inclined funicular provided mechanized access to the beach instead
2 of public vehicular access. [1 CCC AR 208, 234, 253] Gates in the residential subdivision were to
3 only preclude public vehicular access. [1 CCC AR 352-353]

4 As modified, the Commission found the LCPA was consistent with the public access
5 policies of the Coastal Act. [1 CCC AR 333, 354] The City accepted the Commission's
6 modifications and the City's 2004 "The Headlands Development and Conservation Plan" ("Plan")
7 included the modifications. The Plan required a permit for limitations on time of use of beaches
8 and parks and prohibited gates from interfering with public pedestrian access. [1 CCC AR 421-422
9 (Policy 5-31, Policy 5-35).] The City subsequently approved a Coastal Development Permit for the
10 Headlands project. [2 CCC AR 1286]

11 Headlands developed and still owns major portions of the project. The project is located on
12 121 acres of oceanfront property in Dana Point above Strand Beach and included over 93 acres
13 reserved for parks and open space. [See, e.g., Headlands' opening brief in consolidated matter.]

14 One of the public parks constructed as part of the project is Strand Vista Park, which is
15 located above a beach known as Strand Beach. [1 CCC AR 195; 561-563] As part of the project,
16 Headlands constructed four new access ways and reconstructed the fifth. [1 CCC AR 460-461;
17 506-508; 2 CCC AR 1286-1287] It is the "Mid-Strand" and "Central Strand" trails² that are the
18 subject of this action. The additional access trails was a condition of the Commission approving
19 the City's Local Coastal Program Amendment. [1 CCC AR 205; 207] This was done to bring the
20 LCPA into conformity with the Coastal Act.

21 In May of 2009, after the construction of Strand Vista Park, The City adopted Ordinance
22 No. 09-05 to set hours for the new parks and trails. [2 CCC AR 1361-1366; 8 DP AR 2514-2519]
23 The City set the hours for opening of the trails at 8:00 a.m., and, depending on the time of year, the
24 trails close at either 5:00 p.m. or 7:00 p.m. The hours are enforced by locking gates. [1 CCC AR

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27 _____
28 ² Unless otherwise indicated, future references to the "trails" are specifically to the Mid-Strand and Central
Strand trails.

1 703] On the other hand, the North Strand Beach trail is open from 5:00 a.m. until midnight, the
2 same hours as Strand Beach. Strand Vista Park is open from 6:00 a.m. to 10:00 p.m. throughout the
3 year.

4 In October 2009, after the hours of operation had been set and before the park, trails and
5 other public amenities were opened, the Commission staff wrote to the City of Dana Point asserting
6 that the City did not have the ability to limit the park hours as it had. The Commission demanded
7 that the City revoke the hours and remove the gates based on the fact that no CDP authorized them.
8 [1 CCC AR 701-705]

9 Dana Point's City Council then adopted, as an urgency measure, Ordinance No. 10-05) (the
10 "ordinance") declaring the existence of a nuisance at the site and mandating the enforcement of
11 closure hours for the Strand Vista Park and the access ways, as well as maintenance of the gates on
12 the trails. [2 CCC AR 1072-1079]

13 Appeals of the ordinance were received and heard by the Commission. [See, e.g., 9 DP
14 AR 2957] The Commission's actions with respect to those appeals were the subject of the
15 consolidated matter brought by the City that has now been ruled upon by this Court.

16 The matter currently pending is the petition brought by Surfrider challenging the City's
17 finding of a nuisance and the resulting restrictions of access to the trails.

18 In seeking relief, Surfrider makes various arguments. It accuses the City of attempting to
19 "create a private enclave for its tax-generating benefactor, the Headlands . . ." Surfrider contends
20 that the record shows that a nuisance has never existed and that the ordinance goes above and
21 beyond nuisance abatement. Moreover, Surfrider argues, the City relied on "rank speculation" by
22 law enforcement as a basis for passage of the ordinance.

23 Generally, Surfrider argues that the closure of the trails violates the Coastal Act and the
24 "maximum access" requirements of the California Constitution and the constitutional rights of
25 freedom of association and assembly.

26 The City, on the other hand, with similar arguments being made by Headlands, suggests that
27 there was ample support for its Council's adoption of the ordinance and that Surfrider's
28 constitutional arguments lack merit.

1 In support of the City's argument that the Council had a basis for declaring and abating a
2 nuisance, the City in part cites to the testimony from Sgt. James Greenwood, the supervisor of the
3 community based policing team [2 CCC AR 1205, 1215; 8 DP AR 2686-9; 2691]; the number of
4 crime reports from the Sheriff's Department [2 CCC AR 1205; 1215; 8 DP AR 2573-2633]; a Staff
5 Report jointly prepared by the City Attorney, the Chief of Police Services [2 CCC AR 1341-1351; 8
6 DP AR 2542-52]; a log entitled "Headlands Police Call and Police Report Summary" [2 CCC AR
7 1433-1438; 8 DP AR 2634-2639]; and testimony from law enforcement personnel, City officials
8 and others [e.g., 2 CCC AR 1204-1210; 1215; 8 DP AR 2668-2678].

9 The City's declaration of a nuisance appears to principally be based on the crime reports.
10 These begin as early as 2005 and continue to 2010. [8 DP AR 2573-2633] However, it appears
11 to the Court that the majority of these reports predate the trails being opened to the public and/or
12 occurred outside of the trails. *Id.* [See also 2 CCC AR 1482-1492] Most of the calls related to
13 traffic violations or vandalism at the Headlands' development and the Court notes it found no
14 reports of injuries to persons.

15 The LCPA provided that "[t]he City will determine hours of operation." However, the
16 LCPA also, as modified, provided for the subject trails and required the maximization of hours of
17 use of public beaches and parks that those trails accessed.

18 The City could point the Court to no police activity that supported the Council's
19 determination that the trails should be closed 13 to 15 hours of the day. And, as indicated above,
20 the gates in the area were only to preclude public *vehicular* traffic.

21 The City did argue that opening the trails (by way of unlocking the gates) any earlier than
22 8:00 a.m. or closing the trails any later than 5:00 p.m. or 7:00 p.m. (depending on the time of the
23 year) would be a drain on resources. However, the gates locked and opened with a time lock
24 mechanism. [1 CCC AR 703]

25 Additionally, and importantly, the gates were erected and restrictive hours determined
26 *before* the public was given access to the trails. Therefore, the City never had before it any
27 information as to what would occur if the public was given greater access to the trails.

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1 Moreover, the support for closing the trails was also based on pure speculation. For
2 example, Sgt. Greenwood's comments addressing his "broken window theory" that "when we take
3 the fences and the gates and the hours of operation down, *my fear* is that we will turn the Headlands
4 development into basically an amusement park There will be teenage drinking, teenage
5 smoking, sex parties, sex, drugs, rock and roll. . . ." [8 DP AR 2688]

6 In deciding this matter the Court believes the proper standard of review is the rational basis
7 standard.

8 The Court agrees that the City has the right to declare and abate a nuisance. See Pub.
9 Resources Code Sec. 30005(b). However, the City cannot act to abate the nuisance – i.e., limit
10 hours of access/place gates – in a manner that is in excess of that necessary without obtaining a
11 coastal permit. See, for example, 2 CCC AR 1222.

12 Having reviewed the record and considered the arguments of the parties, the Court believes
13 the record was entirely lacking in evidentiary support for declaring a nuisance and that the City
14 acted arbitrarily and capriciously in making such a declaration. Additionally, *even if* a nuisance
15 existed the Court finds the City acted arbitrarily and capriciously in the manner in which it abated
16 the purported nuisance and that the manner of abatement was entirely lacking in evidentiary
17 support.

18 Surfrider sought various forms of relief in its petition and complaint. [See Petition and
19 Complaint's prayer.] For the reasons indicated, the Court believes that Surfrider is entitled to a
20 declaration that the City's record fails to support a public nuisance. [*Id.*, at Para. (d)] The Court
21 makes such a declaration and finds that the nuisance ordinance should be set aside.

22 Based on this finding the Court does not believe it need reach Surfrider's constitutional
23 arguments or requests for relief relative thereto.

24 In its prayer, at Paras. (a)(b) and (g), Surfrider requests a writ of mandate and/or
25 declarations from the Court directing the City to remove the gates and signs at the trails and to
26 apply for a CDP prior to the enactment of any other gates, impediments or signage relating to
27 public beach access at the trails.

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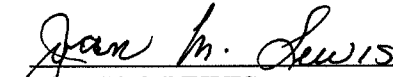
1 At Para. (c) of its prayer, Surfrider sought a declaration that the ordinance is void because
2 the city failed to apply for prior certification from the Commission for an ordinance which amends
3 its Certified Local Coastal Program.

4 The Court believes its finding that there was no properly declared nuisance and/or that the
5 manner of abatement was excessive sufficiently adjudicates the matters pending before this Court.
6 To the extent the City – in response to this ruling – continues to maintain the gates and/or signage
7 then the Court believes the matter would more appropriately be in the jurisdiction of the
8 Commission for further action.

9 In ruling on this matter, the Court granted Surfrider's motion to strike those portions of tab
10 21 of the City's administrative record that relate to police reports that post-date the date on which
11 the ordinance was passed.

12 IT IS SO ORDERED.

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14 Dated: 6 - 1 - 11


15 JOAN M. LEWIS
16 Judge of the Superior Court
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CERTIFIED FOR PUBLICATION
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

CITY OF DANA POINT,

Plaintiff and Respondent,

v.

CALIFORNIA COASTAL COMMISSION,

Defendant and Appellant;

HEADLANDS RESERVE LLC,

Real Party in Interest and Respondent.

D060260

(Super. Ct. No.
37-2010-00099827-CU-WM-CTL)

SURFRIDER FOUNDATION,

Plaintiff and Respondent,

v.

CITY OF DANA POINT,

Defendant and Appellant;

HEADLANDS RESERVE LLC,

Real Party in Interest and Appellant.

D060369

(Super. Ct. No.
37-2010-00099878-CU-WM-CTL)

APPEALS from judgments of the Superior Court of San Diego County, Joan M. Lewis, Judge. As to No. D060260, affirmed in part; reversed in part; remanded with directions; as to No. D060369, held in abeyance.

Kamala D. Harris, Attorney General, John A. Sauerenman, Senior Assistant Attorney General, Jamee Jordan Patterson, Deputy Attorney General for Defendant and Appellant California Coastal Commission in No. D060260.

Rutan and Tucker, Anthony Patrick Munoz, John A. Ramirez and Jennifer J. Farrell for Plaintiff and Respondent in No. D060260, and for Defendant and Appellant in No. D060369.

Manatt Phelps & Phillips, George Michael Soneff, Michael M. Berger and Benjamin G. Shatz for Real Party in Interest and Respondent in No. D060260, and Real Party in Interest and Appellant in No. D060369.

McDermott Will & Emery, Jennifer N. Kalnins-Temple, Daniel R. Foster, David M. Beckwith; Angela Tiffany Howe for Plaintiff and Respondent in No. D060369.

I.

INTRODUCTION

These appeals stem from two consolidated cases related to a project to develop a large parcel of coastal land (the Project) within the City of Dana Point (the City). The parcel on which the Project is located is subject to the California Coastal Act of 1976

(Coastal Act) (Pub. Resources Code, § 30000 et seq.)¹ The Project includes approximately 125 luxury home sites on an oceanfront slope.² The home sites are to be situated between a newly created public park at the top of the slope and a newly dedicated public beach at the bottom of the slope. Public access trails run through the residential portion of the Project, linking the public park at the top of the slope with the beach below.

As portions of the Project neared completion, including the new public park at the top of the slope, the City adopted an ordinance that mandated limited hours of operation for the trails at the Project site that traverse the partially completed residential subdivision, and the installation of pedestrian gates on those trails. Several individuals and an entity filed administrative appeals of the ordinance with the Commission (the Commission). In ruling on the appeals, the Commission concluded that the limited hours of operation for the trails and the gates require a coastal development permit under the Coastal Act (§ 30600, subd. (a)).³

The dispute in this case centers around whether the installation of the gates and the limited hours of operation for the trails fall within the City's nuisance abatement powers

¹ Unless otherwise specified, all subsequent statutory references are to the Public Resources Code.

² At oral argument, counsel for the City stated that the sites are being offered for sale at between \$7 million to \$12 million each.

³ For ease of reference, we will refer to the gates and hours of operation as the "development mandated by the ordinance." The term "development" for purposes of the Coastal Act includes, "[T]he placement or erection of any solid material or structure . . . [or the] change in the intensity of use of water, or of access thereto." (§ 30106.)

under the Coastal Act and therefore does not require a coastal development permit, or instead, exceeds those powers and thus requires that the City seek a coastal development permit in order to undertake such development.

The City filed an action (City's Case) seeking to set aside the Commission's decision and restrain any future attempt on the part of the Commission to exercise jurisdiction over the development mandated by the ordinance. The City contended that the Commission lacked jurisdiction over its actions because the limited hours of operation and installation of the gates were required to abate nuisance conditions at the site, and the Coastal Act provides that no provision of the Act is a limitation on "the power of any city or county or city and county to declare, prohibit, and abate nuisances." (§ 30005, subd. (b)). The City argued that the statute deprived the Commission of all jurisdiction under the Coastal Act to prohibit development mandated by the nuisance abatement ordinance for the sole reason that the City claimed that it was acting pursuant to section 30005, subdivision (b). The City sought declaratory relief, including declarations that "the Coastal Commission lacks jurisdiction under Coastal Act section 30005[, subdivision] (b) to place limitations on the enforcement of the Nuisance Abatement Ordinance," and that "the adoption of the Nuisance Abatement Ordinance did not require any City 'coastal development permit application.' " The City also requested that the trial court enjoin the Commission "from undertaking any enforcement action arising from said ordinance." In sum, the City asked the trial court to rule that the City was legitimately exercising nuisance abatement powers under section 30005, subdivision

(b) and that the Commission therefore lacked jurisdiction to restrict any action that the City might take pursuant to those powers.⁴

Surfrider Foundation (Surfrider), a nonprofit environmental organization, filed a separate action (Surfrider Case) against the City in which Surfrider claimed that the Commission had jurisdiction over the development mandated by the ordinance, and that the development violated the Coastal Act and various land use regulations governing the Project, including the City's local coastal program (see § 30500).⁵ Surfrider also claimed that the City lacked a rational basis for adopting the ordinance and that the ordinance impinged on various state and federal constitutional rights of the public.

In the City's Case, the trial court invalidated the Commission's determination that the development mandated by the ordinance required a coastal development permit. The trial court reasoned that section 30005, subdivision (b) divests the Commission of jurisdiction over such development, "regardless of the merits" of the validity of the City's nuisance declaration. The court granted the City's request for declaratory relief, and stated, "[T]he . . . Commission lacks jurisdiction under Coastal Act section 30005[, subdivision] (b) to place limitations on the enforcement of the Nuisance Abatement Ordinance," and "the adoption of the Nuisance Abatement Ordinance did not require any city 'coastal development permit application.' " The court also issued a judgment and a

⁴ At oral argument in this court, the City's counsel acknowledged that the City asked the trial court to declare that the City had legitimately exercised its nuisance abatement powers under section 30005, subdivision (b).

⁵ The City and Surfrider each named the developer of the Project, Headlands Reserve LLC (Headlands), as a real party in interest.

writ of mandate against the Commission. The Commission filed an appeal in the City's Case.

In the Surfrider Case, the trial court concluded that the City had acted arbitrarily and capriciously in the manner by which it declared a nuisance at the Project. The court entered a judgment stating that the ordinance was "invalid and void insofar as there was no properly declared nuisance and/or the manner of abatement was excessive." Both the City and Headlands appealed in the Surfrider Case.

In its appeal, the Commission claims that it had administrative appellate jurisdiction pursuant to section 30625 to consider the appeals of the City's ordinance. Section 30625 provides that "any appealable action on a coastal development permit or claim of exemption for any development by a local government . . . may be appealed to the commission by an applicant, any aggrieved person, or any two members of the commission." The Commission also contends that the trial court erred in interpreting section 30005, subdivision (b) as restraining the Commission from taking future actions with respect to the development mandated by the ordinance.

We conclude that the trial court properly invalidated the Commission's determination that the development mandated by the ordinance requires a permit. The Commission lacked administrative appellate jurisdiction under section 30625 to consider the appeals of the ordinance because a municipality's enactment of an ordinance does not amount to an "appealable action" (§ 30625, subd. (a)) from which an administrative appeal to the Commission may be taken. However, we also conclude that the trial court erred in restricting the Commission from exercising jurisdiction over the development

mandated by the ordinance without first determining in the City's Case whether the City was acting properly within the scope of its nuisance abatement powers reserved to it pursuant to section 30005, subdivision (b). Because the City asked the trial court to order the Commission to halt any action that would interfere with the City's nuisance abatement measures, the City was required to establish that it was exercising that authority legitimately. More specifically, we hold that before a municipality may obtain a writ of mandate restraining the Commission from exercising jurisdiction over development that the municipality has authorized pursuant to section 30005, subdivision (b), the municipality must demonstrate that it has exercised its nuisance abatement powers in good faith, in that the municipality has not utilized these powers as a pretext for avoiding its obligations under its own local coastal program. We remand the matter to the trial court for a determination of whether the City properly exercised its nuisance abatement powers in this case, in light of our interpretation of section 30005, subdivision (b).

The trial court's conclusion in the Surfrider Case that the City acted arbitrarily and capriciously in enacting the ordinance suggests that on remand in the City's Case, the court is likely to conclude that the City's claim that it enacted the ordinance in order to abate a nuisance is pretextual, and thus, that the Commission may exercise jurisdiction over the gates and hours of operation on the trails.⁶ Any future proceedings by the Commission against the City that are authorized by the trial court's ruling on remand in

⁶ We do not intend in any way to suggest what the trial court *should* do on remand in the City's Case. We offer this observation merely in order to explain our decision to hold the appeals in the Surfrider Case in abeyance in order to permit the trial court to apply our interpretation of section 30005, subdivision (b) in the City's Case.

the City's Case are likely to moot the constitutional issues raised in the Surfrider Case. For this reason, we conclude that the appeals in the Surfrider Case should be held in abeyance pending a final resolution of the issues in the City's Case.⁷

II.

FACTUAL AND PROCEDUAL BACKGROUND

A. *The Project*

In 2002, the City proposed amending its local coastal program to allow the development of the Project.

In January 2004, after requiring modifications to bring the local coastal program amendment into conformity with the Coastal Act, the Commission approved the local coastal program amendment. The modifications included a provision that states, "Public beaches and parks shall . . . maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use . . . shall be subject to a coastal development permit."

⁷ Our dissenting colleague takes issue with three aspects of the majority opinion: our purported mischaracterization of the relief that the City sought in the trial court; our "alteration of the clear separation of powers set forth in section 30005, subdivision (b)"; and our election to hold in abeyance the appeal in the Surfrider Case pending further proceedings in the City's Case.

We think that the majority opinion adequately addresses these issues. For the convenience of the reader, we point out that we discuss the relief that the City sought on page 13 and pages 15 through 17; we explain the showing that the City must make on remand in order to obtain a writ of mandate prohibiting the Commission from exercising jurisdiction over development mandated by the Nuisance Abatement Ordinance on pages 52 through 54; and we discuss the reasons for our decision to refrain from deciding the constitutional questions raised in the appeal in the Surfrider Case in light of the likelihood that those questions may become mooted by final resolution of proceedings related to the City's Case on pages 54 through 57.

The local coastal program amendment required that the Project include various trails from the park to the beach, including two trails, referred to as the Mid-Strand and Central Strand trails (beach access trails), that run from the park, along streets through the proposed housing development, to the beach. With respect to gates, the local coastal program amendment provided:

"Except as noted in this policy, gates, guardhouses, barriers, or other structures designed to . . . 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 [at the top of the Project near the park] and the County Beach parking lot through the residential development to the beach remains unimpeded . . .*" (Italics added.)

The City subsequently adopted a plan entitled "The Headlands Development and Conservation Plan," which incorporated the local coastal program policies pertaining to the hours of use of the beaches and gates at the Project, mentioned above. The City later approved a coastal development permit for the Project.

B. *The City sets hours for the beach access trails and installs pedestrian gates at the entrance to the trails*

In May 2009, prior to the public opening of the park and beach access trails, the City established that the trails would be open from 8:00 a.m. to either 5:00 p.m. or 7:00 p.m., depending on the time of year. The City also installed gates at the top of the beach access trails that precluded pedestrian access to the trails during hours that the trails were closed. In October 2009, the Commission discovered that the City had installed gates and

that it intended to restrict the hours that the trails would be open to the public. The Commission informed the City that its adoption of restrictive hours of operation for the beach access trails and its installation of pedestrian gates at the trail heads constituted violations of the Coastal Act, the local coastal program, and the coastal development permit. The Commission demanded that the City rescind the restrictive hours of operation for the beach access trails and remove the gates. The Commission also informed the City that the City would have to seek an amendment to the local coastal program and a coastal development permit if it wished to adopt such restrictive hours of operation or install gates in the future.

C. The City adopts the Nuisance Abatement Ordinance

In November 2009, the Commission sent a notice of violation letter to the City, informing the City that it could be subject to enforcement proceedings concerning the gates and the hours of operation on the trails. After the City and the Commission engaged in further communications in an unsuccessful attempt to resolve the issue, the City Council held a meeting on March 22, 2010, at which it considered evidence pertaining to public safety issues at the Project. At this meeting, the City adopted an ordinance, Ordinance No. 10-05 (Nuisance Abatement Ordinance), which declared that public nuisance conditions existed in the area of the beach access trails. The Nuisance Abatement Ordinance states, "In the absence of closure regulations, signs, and gates, restricting public access during closures . . . unlawful activities will occur within . . . the general area of Mid-Strand Beach Access and Central Strand Beach Access." The Nuisance Abatement Ordinance reestablished that the trails would be open from 8:00

a.m. to either 5:00 p.m. or 7:00 p.m., depending on the time of year, and that pedestrian gates would be used to enforce the hours of operation.

D. *The Commission's hearing*

Three days after the City adopted the Nuisance Abatement Ordinance, the Commission issued a "Notification of Appeal Period," advising the public that the ordinance could be appealed to the Commission. Three appeals were filed: one from a private citizen, Vonne M. Barnes, a second from Surfrider, and a third from two members of the Commission.

The City filed a letter brief in opposition to the appeals. In its brief, the City argued that the Commission lacked appellate jurisdiction to review a local government's enactment of an ordinance. The City also argued that under section 30005, subdivision (b), the Commission lacked jurisdiction to review a local government's nuisance abatement measures. In addition, the City argued that its enactment of the Nuisance Abatement Ordinance had been prompted by public safety conditions, and that the measures required by the ordinance were necessary to abate the nuisance conditions near the beach access trails.

On May 13, 2010, the Commission held a hearing at which it considered the appeals and the City's opposition. At the hearing, the Commission considered whether "the installation of gates, and the establishment of hours of operations that restrict . . . accessways to the beach" in the Project were exempt from coastal permitting requirements under the Coastal Act. The Commission heard oral presentations from

several individuals, including the Commission's executive director, the city attorney for the City, Barnes, and representatives of Surfrider.

The city attorney argued that the Commission lacked jurisdiction to "second guess" the City's Nuisance Abatement Ordinance, and that the concerns addressed by the ordinance represented a "real public safety issue." The Commission's executive director stated that the Nuisance Abatement Ordinance represented "a flagrant attempt to circumvent the public access policies of the Coastal Act, and circumvent the public access requirements that the Commission imposed on this project" The executive director added, "[B]ut for the public access that the City is now saying constitutes a nuisance, this project, I would guess[,] would not have been approved."

Several commissioners made comments indicating their agreement with the executive director. For example, Commissioner Sara Wan stated:

"[T]his Commission allowed the destruction of important environmentally sensitive habitat, it allowed the construction of a seawall, and the benefit was public access. [¶] But, from day one, the developer has made every attempt to close that access, and in fact, to never build it, and he came to this Commission in an attempt to get permission not to build it, and this, in my opinion, was a [w]ay for the City to get around the Commission's requirement for that access [¶] And, that is the danger of this kind of precedent, that any time a community decides they don't want a public accessway, this is the pathway they can take, so it is very important we send a strong message, . . . if you want to close the public accessway, you need to come to this Commission and need to appeal it in a way that if there are legitimate concerns, those concerns are dealt with, but also the public's rights are protected, and that is the key here."

At the conclusion of the hearing, the Commission unanimously denied "the claim of exemption for the proposed development, on the ground that the development is not exempt from the permitting requirements of the Coastal Act."

On May 17, the Commission sent the City a letter instructing the City to remove the gates and suspend the restrictive closure hours. The letter stated that if the City failed to comply with the Commission's directives, "Commission staff will have no choice but to pursue formal enforcement action to resolve this matter."

E. *The City's petition and complaint*

On May 24, the City filed a petition for writ of mandate and complaint for declaratory and injunctive relief in the Orange County Superior Court. In its petition and complaint, the City reiterated the arguments that it had made at the May 13 Commission hearing concerning its contention that the Commission lacked jurisdiction to consider the Nuisance Abatement Ordinance. The City maintained that the Commission's assertion of jurisdiction over the "enforcement, scope or legality of the City's nuisance abatement legislation" violated the separation of powers doctrine.

The City brought causes of action for traditional and administrative mandamus and sought declaratory and injunctive relief. In its prayer for relief, the City requested that the trial court order the Commission to vacate and set aside its actions taken on May 13, 2010, and issue a writ of mandate restraining the Commission from undertaking any future actions to submit the City's Nuisance Abatement Ordinance to the Commission's jurisdiction.

The City also requested that the court declare that the Commission "lacks jurisdiction under Coastal Act section 30005[, subdivision] (b) to place limitations on the enforcement of the Nuisance Abatement Ordinance." In addition, the City sought a declaration that the adoption of the Nuisance Abatement Ordinance did not require a coastal development permit application. Finally, the City requested a "stay and/or temporary restraining order, preliminary injunction and permanent injunction" barring the Commission from "undertaking any enforcement action arising from [the Nuisance Abatement Ordinance]."

F. *The Surfrider petition and complaint*

On June 17, Surfrider filed a petition for writ of mandate and complaint for declaratory and injunctive relief in which it argued that the City had violated the Coastal Act and its local coastal program by undertaking the development mandated by the Nuisance Abatement Ordinance. Surfrider raised numerous arguments in support of its contention that the Commission had jurisdiction over the development mandated by the Nuisance Abatement Ordinance, including that "[s]ection 30005 is not a limitless exemption from Coastal Act permitting requirements declared in the name of 'nuisance abatement.' " Surfrider also requested that the court declare that the "record fails to establish a public nuisance" In addition, Surfrider contended that the Nuisance Abatement Ordinance should be subjected to a heightened standard of judicial scrutiny because the ordinance violated both a state constitutional guarantee to "maximum beach access" as well as the right to free assembly guaranteed under the First Amendment to the United States Constitution.

Surfrider brought causes of action for traditional and administrative mandamus and sought declaratory and injunctive relief. Surfrider requested that the trial court direct the City to remove the gates as well as the signs advising the public of the restrictive hours at the Mid-Strand and Central Strand trail heads. Surfrider also requested that the court declare the Nuisance Abatement Ordinance void. In addition, Surfrider asked the court to order the City to apply to the Commission for a coastal development permit prior to attempting to undertake the development mandated by the Nuisance Abatement Ordinance.

G. *The court's consideration of the petitions/complaints*

The trial court consolidated the City's Case and the Surfrider Case and transferred the consolidated matter from the Orange County Superior Court to the San Diego County Superior Court. The parties lodged the administrative record related to the City's adoption of the Nuisance Abatement Ordinance and the appeals of the ordinance before the Commission, and submitted additional briefing on the petitions/complaints. On April 28, 2011, the court held a hearing on the petitions/complaints.

H. *The trial court's rulings*

1. *The City's petition and complaint*

Two days before the hearing on the petitions/complaints, the trial court issued a tentative ruling that stated:

"The City's petition sought a writ of mandate commanding the . . . Commission to vacate and set aside its actions taken on May 13, 2010, and restraining the . . . Commission from undertaking any further actions to enforce the . . . Commission's May 13, 2010, decision.

"The Court's tentative ruling is to grant this request finding that the . . . Commission lacked the jurisdiction to make a determination as to the appropriateness of the City's finding of a nuisance. In reaching this result, the Court concludes that the . . . Commission's actions in this regard were contrary to the express language of . . . section 30005[, subdivision] (b) providing that no provision of the Coastal Act shall limit 'the power of any city . . . to declare, prohibit, and abate nuisances.'

"In this case, the City has declared a nuisance in the area of Strand Vista Park and mandated enforcement of closure hours for the Mid-Strand and Central Strand access trails. The . . . Commission disagrees with the City's findings of a nuisance and the manner of abatement.

"Regardless of the merits of the Commission's arguments concerning the finding of a nuisance, the Court believes that the . . . Commission lacks jurisdiction to adjudicate this matter and that such issues are reserved for adjudication by the courts.

"Based on this finding, the Court believes the writ of mandate should issue as requested and further makes the findings at [paragraphs 2 and 3] of the City's 'Request for Relief' . . . of its petition."

Through its incorporation of the City's request for relief, the trial court indicated its intent to grant the following declaratory relief:

"a. [T]he . . . Commission lacks jurisdiction under Coastal Act section 30005[, subdivision] (b) to place limitations on the enforcement of the Nuisance Abatement Ordinance;

"b. [T]he . . . Commission lacks jurisdiction under [the] California Constitution, pursuant to the separation of powers doctrine, to adjudicate whether the City's adoption of the Nuisance Abatement Ordinance was a legitimate and proper exercise of the City's police power; and

"c. [T]he . . . Commission lacked jurisdiction to proceed with the 'appeal,' and thus lacks jurisdiction to proceed with any subsequent actions based upon the 'appeal,' because the adoption of the

Nuisance Abatement Ordinance did not require any city 'coastal development permit application.' "

The court also indicated its intent to restrain the Commission from taking "any further action to proceed with or to act upon the appeal of the Nuisance Abatement Ordinance or from undertaking any enforcement action arising from said ordinance."

At the conclusion of the April 28 hearing on the petitions/complaints, the trial court confirmed its tentative ruling on the City's writ petition and complaint, thereby granting the declaratory and injunctive relief described above.⁸

On June 2, the court entered a judgment that states in relevant part:

"[T]he . . . Commission's actions taken on May 13, 2010 (i) determining that City Ordinance No. 10-05 ('Nuisance Abatement Ordinance'), an urgency ordinance adopted by the City Council of the City of Dana Point, raised a substantial issue under the Coastal Act, and (ii) determining that the Nuisance Abatement Ordinance is not exempt from the Coastal Act's permit requirements (collectively the 'Commission's May 13, 2010 Actions'), are invalid and void insofar as the . . . Commission lacks any jurisdiction over the City's Nuisance Abatement Ordinance pursuant to . . . section 30005[, subdivision] (b)."

That same day, the court issued a peremptory writ of mandate ordering the Commission to set aside its May 13, 2010 actions pertaining to the Nuisance Abatement Ordinance, and directing the Commission to "cease and desist from any actions to enforce or otherwise attempt to submit the City's Nuisance Abatement Ordinance to the jurisdiction of the . . . Commission."

⁸ The trial court took Surfrider's petition under submission.

2. *The Surfrider petition and complaint*

After taking the Surfrider petition/complaint under submission, the trial court entered an order granting Surfrider's request for declaratory relief. In its June 1 order, the court stated that an application of the "rational basis standard"⁹ revealed that the "City's record fails to support a public nuisance," and that "the [Nuisance Abatement Ordinance] should be set aside." The court reasoned:

"Having reviewed the record and considered the arguments of the parties, the Court believes the record was entirely lacking in evidentiary support for declaring a nuisance and that the City acted arbitrarily and capriciously in making such a declaration. Additionally, even if a nuisance existed the Court finds the City acted arbitrarily and capriciously in the manner by which it abated the purported nuisance and that the manner of abatement was entirely lacking in evidentiary support."

On July 29, the Court entered a judgment that stated that the Nuisance Abatement Ordinance is "invalid and void insofar as there was no properly declared nuisance and/or the manner of abatement was excessive." That same day, the court also issued a peremptory writ of mandate directing the City to set aside the Nuisance Abatement Ordinance and not to take any further actions to enforce that ordinance.

I. *The appeals*

The Commission appealed from the judgment on the City's writ petition/complaint and the City and Headlands each appealed from the judgment on Surfrider's

⁹ In its order, the trial court stated that it did not have to consider "Surfrider's constitutional arguments." As noted in part II.F., *ante*, in addition to contending that the City's Nuisance Abatement Ordinance lacked any rational basis, Surfrider had argued, in the alternative, that a heightened standard of scrutiny should be applied in reviewing the ordinance because of its purported effect on various constitutional rights.

petition/complaint. Pursuant to the parties' stipulation, this court consolidated the appeals.

III.

DISCUSSION

A. *The Commission's appeal*

The Commission claims that it had administrative appellate jurisdiction pursuant to section 30625 to consider the three administrative appeals of the Nuisance Abatement Ordinance. The Commission also contends that the trial court erred in concluding that section 30005, subdivision (b) deprived the Commission of jurisdiction to find that the placement of gates at the Mid-Strand and Central Strand trail access points and the adoption of hours of operation for these trails mandated by the Nuisance Abatement Ordinance required a coastal development permit.

We conclude in part III.A.2., *post*, that the Commission did not have administrative appellate jurisdiction *pursuant to section 30625* to consider whether the development mandated by the Nuisance Abatement Ordinance required a permit. However, we conclude in part III.A.3., *post*, that the trial court erred in determining that *section 30005, subdivision (b)* precludes the Commission from finding that such development required a coastal development permit and in restraining the Commission from taking any future action to submit the development to the Commission's jurisdiction. In part III.A.4., *post*, we explain how the trial court shall proceed on remand.

1. *Overview of the Coastal Act*

One of the core principles of the Coastal Act is to maximize public access to the coast, to the extent feasible (§ 30000 et seq.):

"The . . . Coastal Act was passed in 1976. In it, the Legislature announced five 'basic goals of the state for the coastal zone.' (§ 30001.5.) One of these is to '[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.' (*Id.*, subd. (c).)" (*City of Malibu v. California Coastal Com.* (2012) 206 Cal.App.4th 549, 553.)

The Coastal Act has several provisions that implement the Act's public access goals. (See, e.g., § 30210 ["In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse"]; § 30212, subd. (a) [subject to certain exceptions, "Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects"].)

In *Citizens For A Better Eureka v. California Coastal Com.* (2011) 196 Cal.App.4th 1577, 1580-1581 (*Citizens*), the court provided an overview of the regulatory framework contained in the Coastal Act:

"A [coastal development permit] is generally required for a development within the coastal zone as defined in the Coastal Act. (§§ 30103, subd. (a), 30600, subd. (a).) A local government within the coastal zone is required to prepare a local coastal program . . . for the portion of the coastal zone within its jurisdiction. (§ 30500, subd. (a).) When the Commission has certified a[] [local coastal

program] and actions to implement the [local coastal program] have become effective, authority to issue [coastal development permits] within the certified area is delegated from the Commission to the local government, subject to appeals to the Commission. (§ 30519, subd. (a).)

"Local government actions on [coastal development permit] applications for certain types of developments, e.g., those within 100 feet of any wetland, are appealable to the Commission (§ 30603, subd. (a)), and the Commission has appellate jurisdiction to determine whether a [coastal development permit] is consistent with the [local coastal program] and coastal access policies (§ 30603, subd. (b)). In an appeal, the Commission first determines whether a substantial issue as to such consistency has been raised. (§ 30625, subd. (b).) If a substantial issue is presented, the Commission reviews the [coastal development permit] application de novo. (§ 30621, subd. (a); Cal. Code Regs., tit. 14, § 13115, subd. (b).)"

In *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162

Cal.App.4th 1068 (*Charles A. Pratt Construction Co., Inc.*) the Court of Appeal

explained that a fundamental purpose of the Coastal Act is to ensure that state policies under the Act take precedence over the concerns of local governments, notwithstanding the involvement of local governments in the Act's implementation:

"Although local governments have the authority to issue coastal development permits, that authority is delegated by the Commission. The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state's Coastal Act. In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. (See *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 489 [Commission exercises independent judgment in approving [local coastal program] because it is assumed statewide interests are not always well represented at the local level].) The Commission applies state law and policies to determine whether the development permit complies with the [local coastal program]." (*Charles A. Pratt Construction Co., Inc., supra*, at pp. 1075-1076; accord *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012)

55 Cal.4th 783, 794 (*Pacific Palisades*), citing *Charles A. Pratt Construction Co., Inc.*)

2. *The Commission lacked administrative appellate jurisdiction under section 30625 to consider the three appeals of the City's ordinance*

The Commission contends that that it had jurisdiction pursuant to section 30625 to consider the three appeals of the City's adoption of the Nuisance Abatement Ordinance. Because the Commission's claim raises an issue of statutory interpretation, we apply the de novo standard of review. (See *Doe v. Brown* (2009) 177 Cal.App.4th 408, 417 ["We apply the de novo standard of review to this claim, since the claim raises an issue of statutory interpretation"].)

- a. *The Commission's appellate administrative jurisdiction over local government decisions pursuant to section 30625*

Section 30625 provides:

"(a) Except as otherwise specifically provided in subdivision (a) of Section 30602, any *appealable action* on a coastal development permit or claim of exemption for any development *by a local government* or port governing body may be *appealed* to the commission by an applicant, any aggrieved person, or any two members of the commission. The commission may approve, modify, or deny such proposed development, and if no action is taken within the time limit specified in Sections 30621 and 30622, *the decision of the local government* or port governing body, as the case may be, shall become final, unless the time limit in Section 30621 or 30622 is waived by the applicant.

"(b) The commission shall hear an *appeal* unless it determines the following:

"(1) With respect to *appeals* pursuant to subdivision (a) of Section 30602, that no substantial issue exists as to conformity with Chapter 3 (commencing with Section 30200).

"(2) With respect to *appeals* to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

"(3) With respect to *appeals* to the commission after certification of a port master plan, that no substantial issue exists as to conformity with the certified port master plan.

"(c) Decisions of the commission, where applicable, shall guide local governments or port governing bodies in their future actions under this division." (Italics added.)

b. *Application*

The plain language of section 30625 indicates that the statute grants the Commission administrative *appellate* jurisdiction to hear an *appeal* of a *decision* rendered by a local government that has *adjudicated* a claim related to either a coastal development permit or a claim of exemption from Coastal Act permitting requirements. The statute's references to "*appeals* pursuant to subdivision (a) of Section 30602" (§ 30625, subd. (b)(1), italics added), and "*appeals* to the commission after certification of a local coastal program . . . pursuant to Section 30603" (§ 30625, subd. (b)(2), italics added), support that conclusion. Sections 30602 and 30603 provide that the Commission has appellate jurisdiction to review certain quasi-adjudicatory actions taken by local governments in the context of coastal development applications.¹⁰

¹⁰ Section 30602 provides in relevant part, "Prior to certification of its local coastal program, any action taken by a local government on a coastal development permit application may be appealed . . . to the commission."

Section 30603 provides in relevant part, "(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of

A municipality's legislative action in adopting an ordinance is *not* a quasi-adjudicatory administrative decision as to which the Commission has appellate jurisdiction pursuant to section 30625. The City's enactment of the Nuisance Abatement Ordinance thus did not constitute a quasi-adjudicatory "appealable action" (§ 30625, subd. (a)) by a "local government" from which *an appeal* pursuant to section 30625 could be taken.

Not surprisingly, there is nothing in the Commission's administrative regulations implementing the Coastal Act that suggests that the Commission has ever interpreted section 30625 as granting it appellate jurisdiction to consider whether development mandated by a local government's nuisance abatement ordinance, or by any other local ordinance, requires a permit.¹¹ Even the administrative forms used by the Commission in this case indicate that the only matters over which the Commission exercises appellate jurisdiction pursuant to section 30625 are *permitting decisions* made by a local government. A form entitled "Commission Notification of Appeal" informed the City that "the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to . . . Sections 30603 and 30625." The Commission's "Notification of Final Appeal Action" states in relevant part, "Where the Commission vote is 'substantial issue,' and then 'approval' or 'approval with conditions,'

developments: [¶] (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance."

¹¹ These regulations are codified in a chapter entitled "Exclusions from Permit Requirements." (Cal. Code. Regs., tit. 14, § 13200 et. seq., div 5.5, ch. 6.)

or 'denial' on the de novo application, the Commission decision *replaces the local coastal permit decision.*" (Italics added.) In this case, the City made *no* coastal development permit decision, but instead, acted in a legislative capacity in adopting the Nuisance Abatement Ordinance.

The Commission contends that the City's action in adopting the Nuisance Abatement Ordinance amounted to a "claim of exemption for any development by a local government" within the meaning of section 30625, and is therefore appealable to the Commission. We disagree. The City and Headlands persuasively argue that this portion of section 30625 authorizes the Commission to exercise appellate jurisdiction over quasi-adjudicatory decisions made by a local government on applications for exemptions that are specifically referred to in the Coastal Act, including emergency projects pursuant to section 30610.2, and the construction of certain single-family residences pursuant to section 30600.¹² More broadly, while the Commission reads the statute as authorizing

¹² Section 30610.2 provides: "Any person wishing to construct a single-family residence on a vacant lot within an area designated by the commission pursuant to subdivision (b) of Section 30610.1 shall, prior to the commencement of construction, secure from the local government with jurisdiction over the lot in question a written certification or determination that the lot meets the criteria specified in subdivision (c) of Section 30610.1 and is therefore *exempt* from the coastal development permit requirements of this division." (Italics added.)

Section 30600 provides in relevant part:

"(e) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the commission within 14 days from the date of the commencement of the project:

"[¶] . . . [¶]

review of a *local government's* claim of exemption, the statute actually authorizes the Commission to exercise appellate jurisdiction over "an appealable action . . . by a local government" (§ 30625, subd. (a)). Thus, section 30625, subdivision (a) authorizes the Commission to review the decision of a local government on an *applicant's* claim of exemption, not a *local government's* claim of exemption. In sum, we conclude that when a municipality acts legislatively in an attempt to exercise nuisance abatement powers pursuant to section 30005, subdivision (b), this municipal action does not constitute a "claim of exemption" as that term is used in section 30625, subdivision (a).

Finally, we reject the Commission's suggestion, raised in its reply brief, that the Commission was authorized to review the City's enactment of the Nuisance Abatement Ordinance because the Commission is authorized to directly adjudicate certain claims for exemptions from the Coastal Act's permit requirements, such as vested rights claims pursuant to section 30608.¹³ The Commission appears to theorize that a party may

"(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway . . . damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not *exempt* from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide." (Italics added.)

¹³ Section 30608 provides: "No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972 (former Division 18 (commencing with Section 27000)) shall be required to secure approval for the development pursuant to this division.

directly challenge a local government's assertion of abatement authority under section 30005, subdivision (b) before the Commission, pursuant to section 30625, because "vested rights claims are made directly to the Commission." We reject this argument because the Commission has not demonstrated that in adjudicating a section 30608 claim brought "directly to the Commission" it is exercising appellate jurisdiction pursuant to section 30625.

In sum, section 30625 grants the Commission appellate administrative jurisdiction over certain appeals. In this case, the City took no "appealable action" (§ 30625, subd. (a)) from which an appeal could be taken. Thus, the Commission did not have jurisdiction pursuant to section 30625 to consider the validity of the development mandated by the Nuisance Abatement Ordinance. Accordingly, the actions that the Commission took at the May 13 hearing were unauthorized and, therefore, void.

Notwithstanding our conclusion that the Commission did not have jurisdiction pursuant to section 30625 to consider whether the development mandated by the Nuisance Abatement Ordinance constituted a violation of the local coastal program and required a coastal development permit, we consider below whether the trial court erred in restraining the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance without first determining whether the City was acting within the scope of section 30005, subdivision (b).

However, no substantial change may be made in the development without prior approval having been obtained under this division."

3. *The trial court erred in restraining the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance without first determining whether the City was properly acting within the scope of section 30005, subdivision (b)*

The Commission claims that the trial court erred in restraining the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance without first determining whether the City was acting within the scope of section 30005, subdivision (b). In order to resolve the Commission's claim, we must address three subsidiary issues. First, was the City permitted to seek a writ of mandate to preclude the Commission from exercising jurisdiction over the City's actions on the ground that those actions are necessary to abate a nuisance? In part III.A.3.a., *post*, we conclude that under the unusual circumstances of this case, in which the Commission has already indicated its intent to direct the City to cease implementing the development mandated by the Nuisance Abatement Ordinance, the City was entitled to seek a writ of mandate in the trial court to restrain the Commission from exercising jurisdiction over the City's efforts to implement the Nuisance Abatement Ordinance. Second, what was the City required to demonstrate in order to obtain injunctive or writ relief restraining the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance? In part III.A.3.b., *post*, we conclude that the City, as the petitioner/plaintiff in this action, was required to demonstrate that it had exercised its nuisance abatement powers under section 30005, subdivision (b) in good faith, and that it had not adopted the Nuisance Abatement Ordinance as a pretext for avoiding its obligations under the City's local coastal program. Third, did the trial court err in

concluding that the City demonstrated that it was entitled to a writ restraining the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance? In part III.A.3.c., *post*, we conclude that the trial court erred in ordering the Commission to cease and desist exercising jurisdiction over development mandated by the Nuisance Abatement Ordinance without first determining whether the City's enactment of the ordinance was a pretext for avoiding the requirements of its local coastal program.

- a. *The City was entitled to seek a writ of mandate to preclude the Commission from exercising jurisdiction over its actions on the ground that those actions were necessary to abate a nuisance*

In light of our affirmance of the trial court's conclusion that the action taken by the Commission at the May 13, 2010 hearing was void because section 30625 did not grant the Commission jurisdiction to hold such a hearing, we first consider whether the doctrine of exhaustion of administrative remedies requires us to reverse the trial court's rulings insofar as the court ordered the Commission to cease and desist taking any *future* actions to exercise jurisdiction over the development mandated by the City's Nuisance Abatement Ordinance. Specifically, we consider whether the exhaustion doctrine requires that we direct the trial court to order the City to submit its contention that the Commission lacks jurisdiction under section 30005, subdivision (b) to the Commission, in the event that the Commission attempts to institute any further proceedings concerning development mandated by the Nuisance Abatement Ordinance. We conclude that under the circumstances of this case, the exhaustion doctrine did not preclude the City from seeking writ relief to restrain the Commission from taking future actions to exercise

jurisdiction over the development mandated by the City's Nuisance Abatement Ordinance.

"In general, a party must exhaust administrative remedies before resorting to the courts. [Citations.]" (*Coachella Valley Mosquito and Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080 (*Coachella*)). "The doctrine requiring exhaustion of administrative remedies is subject to exceptions. [Citation.] Under one of these exceptions, '[f]ailure to exhaust administrative remedies is excused if it is clear that exhaustion would be futile.' [Citations.] 'The futility exception requires that the party invoking the exception "can positively state that the [agency] has declared what its ruling will be on a particular case." ' [Citations.]" (*Id.* at pp. 1080-1081.)

At its May 13 hearing, the Commission rejected the City's section 30005, subdivision (b) jurisdictional claim and concluded that the development mandated by the Nuisance Abatement Ordinance required a coastal development permit. In a May 17 letter, the Commission advised the City that the development mandated by the Ordinance "lacks the required Coastal Development Permit and constitutes a violation of the [local coastal program] and the Coastal Act." The Commission further instructed the City that "the unpermitted gates . . . need to be removed, and the hour restrictions should be suspended."

Under these circumstances, notwithstanding that the action taken by the Commission at the May 13 hearing was void due to the Commission's lack of jurisdiction (see pt. III.A.2., *ante*), the Commission has fully and clearly declared "what its ruling will

be" (*Coachella, supra*, 35 Cal.4th at pp. 1080-1081), with respect to the development mandated by the Nuisance Abatement Ordinance. The futility exception to the exhaustion doctrine therefore applies (*ibid.*), and the City was permitted to seek writ relief to restrain the Commission from taking future actions to exercise jurisdiction over the development mandated by the City's Nuisance Abatement Ordinance.¹⁴

Accordingly, we agree with the City and Headlands that, under the circumstances of this case, the City was permitted to seek a judicial determination as to whether it was properly acting within the scope of section 30005, subdivision (b) in enacting the Nuisance Abatement Ordinance. However, for the reasons discussed in parts III.A.3.b. and III.A.3.c., *post*, we conclude that the trial court erred in concluding that the City demonstrated that it was acting within the scope section 30005, subdivision (b) in this case.

¹⁴ In light of our conclusion that any further action on the part of the City to exhaust administrative remedies would be futile under the circumstances of this case, we need not consider whether, in general, a local government may seek to restrain the Commission from exercising jurisdiction over a development on the ground that the local government's actions are within the scope of section 30005, subdivision (b), without the Commission having first adjudicated the claim. (See *Coachella, supra*, 35 Cal.4th at pp. 1081-1082 ["exhaustion of administrative remedies may be excused when a party claims that 'the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties,' " and stating that "[i]n deciding whether to entertain a claim that an agency lacks jurisdiction before the agency proceedings have run their course, a court considers three factors: the injury or burden that exhaustion will impose, the strength of the legal argument that the agency lacks jurisdiction, and the extent to which administrative expertise may aid in resolving the jurisdictional issue"].)

- b. *A local government may not order the abatement of a nuisance as a pretext for avoiding the requirements of the local government's own local coastal program*

In considering whether the trial court erred in concluding that section 30005, subdivision (b) precludes the Commission from exercising jurisdiction over development mandated by the Nuisance Abatement Ordinance, we are required to interpret the scope of section 30005, subdivision (b). We consider this issue de novo. (See *Doe v. Brown*, *supra*, 177 Cal.App.4th at p. 417.)

i. *Section 30005*

Section 30005 provides:

"No provision of this division¹⁵ is a limitation on any of the following:

"(a) Except as otherwise limited by state law, on the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with this act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone.

"(b) *On the power of any city or county or city and county to declare, prohibit, and abate nuisances.*

"(c) On the power of the Attorney General to bring an action in the name of the people of the state to enjoin any waste or pollution of the resources of the coastal zone or any nuisance.

"(d) On the right of any person to maintain an appropriate action for relief against a private nuisance or for any other private relief."
(Italics added.)

¹⁵ The "division" in section 30005 refers to the Coastal Act. (See § 30000 ["This division shall be known and may be cited as the California Coastal Act of 1976."])

ii. *The parties' arguments concerning the scope of section 30005, subdivision (b)*

The City and Headlands argue that section 30005, subdivision (b) should be interpreted to permit a city to abate a nuisance in any manner within the scope of its police powers, even if the abatement is in conflict with the Coastal Act and/or the City's local coastal program.¹⁶ However, neither the City nor Headlands appears to contend that section 30005, subdivision (b) should be interpreted to permit a city to exercise its nuisance abatement powers for the specific purpose of avoiding complying with the city's own local coastal program.¹⁷ Indeed, the City states in its brief, "The courts . . . are the appropriate forum for an argument about whether a city is abusing its nuisance powers."

The Commission contends that section 30005 clarifies that the Coastal Act does not occupy "the field of land use regulation," but maintains that the statute cannot reasonably be interpreted as authorizing a city to "evade the Coastal Act access requirements by simply declaring some isolated and weakly documented instances of unlawful conduct to be nuisances and imposing abatement measures that drastically restrict lawful public access." In other words, the Commission maintains that section

¹⁶ The City states in its brief, "[T]he Coastal Act does not limit a city's police powers to declare, abate and prevent nuisances, *even if those measures conflict with Coastal Act provisions.*" (Italics added.) Headlands implicitly takes the same position throughout its brief.

¹⁷ Both the City and Headlands forcefully contend as a *factual* matter that the City's adoption of the Nuisance Abatement Ordinance was not a pretext for avoiding local coastal program obligations. We need not consider arguments pertaining to these contentions in the context of deciding the statutory interpretation question presented in this appeal. However, the trial court may consider them on remand. (See pt. III.A.4., *post.*)

30005, subdivision (b) should not be interpreted to permit a city to exercise its nuisance abatement powers to avoid complying with the city's own local coastal program.¹⁸ The Commission argues that this interpretation "would effectively allow a local government to amend its [local coastal program] without Commission certification."

iii. *Applicable principles of statutory interpretation*

In *Doe v. Brown*, *supra*, 177 Cal.App.4th at pages 417-418, this court outlined the following well-established principles of statutory interpretation:

" 'In construing any statute, "[w]ell-established rules of statutory construction require us to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law." [Citation.] "We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context." [Citation.] If the statutory language is unambiguous, "we presume the Legislature meant what it said, and the plain meaning of the statute governs." [Citation.]' [Citation.]

" 'If, however, the statutory language is ambiguous or reasonably susceptible to more than one interpretation, we will "examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes," and we can " "look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." ' " [Citation.]' [Citation.]

¹⁸ In its brief, the Commission also states, "The Commission had substantial evidence to conclude the [Nuisance Abatement Ordinance] was essentially a ruse" and that "[t]he City . . . misused its nuisance authority to evade the Coastal Act and its [local coastal program]."

" ' "We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]" [Citation.] Further, 'We presume that the Legislature, when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules. [Citation.]" [Citation.]"

Section 30005, subdivision (b) is a "savings clause" (*Citizens, supra*, 196 Cal.App. at p. 1584). Generally speaking, a savings clause preserves some preexisting legal authority from the effect of some newly enacted legal authority that contains the savings clause. "Saving clauses are usually strictly construed. . . ." (2A Norman J. Singer et al., *Sutherland Statutory Construction*, §§ 47.12 (7th ed. 2008) (hereafter *Sutherland*); see also *In re Lifschultz Fast Freight Corp.* (7th Cir. 1995) 63 F.3d 621, 628 [citing *Sutherland* and stating that courts should "resolve doubts about the scope of statutory provisions and exceptions against those provisions"].)

iv. *Relevant case law*

In *Citizens, supra*, 196 Cal.App.4th 1577, the Court of Appeal addressed the Commission's jurisdiction to consider an appeal of the City of Eureka's (Eureka) issuance of a coastal development permit for an "extensive marina project" on a site for which Eureka had previously issued several nuisance abatement orders. (*Id.* at p. 1580.) The permit authorized both site remediation and wetland restoration. (*Id.* at pp. 1581-1582.) Several appeals of the permit were filed with the Commission. (*Id.* at p. 1582.) Prior to the resolution of those appeals, a citizens group that supported the pollution remediation mandated by the permit filed a petition for writ of administrative mandate in the trial court, arguing that the Commission lacked jurisdiction to consider the permit appeals

because Eureka had issued the permit pursuant to its power to abate nuisances under section 30005, subdivision (b) and that the Commission's exercise of jurisdiction over the appeals would " 'entail[] delay[s] in [the] cleanup.' " (*Citizens, supra*, at p. 1583.) The trial court ruled that the actions authorized in the permit went " 'far beyond just nuisance abatement,' " and that section 30005 did not prevent the Commission from asserting jurisdiction under these circumstances. (*Citizens, supra*, at p. 1583.)

On appeal, in addressing the proper application of section 30005, the *Citizens* court began by reviewing *City of Monterey v. California Coastal Com.* (1981) 120 Cal.App.3d 799 (*Monterey*) in which the Court of Appeal stated, in dicta, that a coastal development permit is required where a project exceeds the scope of the "nuisance exception" in section 30005, subdivision (b). (*Citizens, supra*, 196 Cal.App.4th at p. 1585.) The *Citizens* court also discussed a 1978 indexed advice letter from the Attorney General to the Commission (Cal. Atty. Gen., Indexed Letter, No. IL 78–73 (May 18, 1978)), that stated that "neither a local government nor a person acting under order of a local government [i]s required to obtain a [coastal development permit]," prior to undertaking "abatement of a nuisance declared by a local government, where the abatement would otherwise constitute a development under the Coastal Act," but that " '[i]f the owner's activity exceeds the amount necessary to abate the nuisance, the owner of course must obtain a coastal permit for that additional work.' [Citation.]" (*Citizens, supra*, at p. 1585.)

After reviewing these authorities, the *Citizens* court stated:

"These authorities point to an appropriate and workable rule that has been endorsed by Commission staff¹⁹] and which we adopt here: '[W]here a local government properly declares a nuisance and requires abatement measures that are narrowly targeted at abating the declared nuisance, those measures do not require a [coastal development permit].' On the other hand, a [coastal development permit] is required if the development 'activity exceeds the amount necessary' [citation] 'simply to abate the nuisance.' [Citation.]" (*Citizens*, *supra*, 196 Cal.App.4th at p. 1585, fns. omitted.)

In applying this law to the facts of that case, the *Citizens* court concluded that there was substantial evidence to support the trial court's conclusion that the development authorized by the permit went " 'far beyond just nuisance abatement.' " (*Citizens*, *supra*, 196 Cal.App.4th at p. 1586.)²⁰ The *Citizens* court affirmed the judgment and summarized its holding as follows:

"Under section 30005, subdivision (b), application of the Coastal Act turns on whether a development is limited to nuisance abatement. If it is not so confined, then a [coastal development permit] is required. If a [coastal development permit] is required, the procedures provided for [coastal development permits] including appeals to the Commission, must be followed. We have concluded that a [coastal development permit] is required here, and accordingly reject [appellant's] argument that the Commission lacks jurisdiction

¹⁹ In a footnote, the *Citizens* court stated, "We are quoting here from a May 2010 Commission staff memorandum pertaining to another development, which has been included in the record in this case." (*Citizens*, *supra*, 196 Cal.App.4th at p. 1585, fn. 4.) It appears that the memorandum to which the *Citizens* court was referring was a Commission staff memorandum prepared for the Commission's May 2010 hearing at issue in this appeal.

²⁰ In reaching this conclusion, the *Citizens* court focused in particular on the wetland activities authorized by the permit. (*Citizens*, *supra*, 196 Cal.App.4th at p. 1587 ["the wetlands aspects of phase 1 involve environmental and regulatory issues significantly beyond those presented in the 'site remediation' portion of the development in which the nuisances identified by the City—contaminated soil, rubbish, and overgrown vegetation—would be abated"].)

to determine the [coastal development permit] appeal in this case."
(*Citizens, supra*, at p. 1589, fn. omitted.)

In *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139 (*Big Creek*) and *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921 (*Pacific Lumber*), our Supreme Court discussed two savings clauses that are similar, but not identical, to section 30005. Former section 4514 provided in relevant part:

"No provision of [the Forest Practice Act] or any ruling, requirement, or policy of the [Board of Forestry] is a limitation on any of the following: [¶] (a) On the power of any city or county or city and county to declare, prohibit, and abate nuisances. [¶] . . . [¶] (c) On the power of any state agency in the enforcement of administration of any provision of law which it is specifically authorized or required to enforce or administer."

In *Pacific Lumber*, the Supreme Court rejected a timber company's contention that the Forest Practice Act (§ 4511 et. seq.) precluded the Regional Water Quality Resources Control Board and the State Water Control Board (Water Boards) from imposing water quality monitoring requirements that the California Department of Forestry and Fire Protection (Department of Forestry) had deemed unnecessary in approving the company's timber harvest plan amendment. (*Pacific Lumber, supra*, 37 Cal.4th at p. 926.) Citing the savings clause contained in former section 4514, subdivision (c), the *Pacific Lumber* court reasoned, "In light of the Forest Practice Act's *express* disclaimer of any interference with agency responsibilities, and the *absence of any irreconcilable conflict between the savings clause and other provisions of the Forest Practice Act*, we cannot accept Pacific Lumber's argument that the act *implicitly* allocates to the Department of Forestry exclusive responsibility for protecting state waters affected by timber harvesting,

in derogation of the Water Boards' statutory prerogatives." (*Pacific Lumber, supra*, at p. 926, italics added.)

In the course of its ruling, the *Pacific Lumber* court emphasized that the case did not present a scenario in which the Department of Forestry and the Water Boards had issued orders that directly *conflicted* with each other:

"We are not faced here with a situation in which it would be literally impossible for a timber harvester to simultaneously comply with conflicting directives issued by the Department of Forestry and the Water Boards. We trust that agencies strive to avoid such conflicts, and express no opinion here regarding the appropriate outcome in a case involving irreconcilable orders. (Cf. *State Personnel Bd. v. Fair Employment & Housing Com.* [(1985)] 39 Cal.3d 422, 442, fn. 20 [noting that 'any conflicts which may arise in this area can be resolved either by administrative accommodation between the two agencies themselves or, failing that, by sensitive application of evolving judicial principles'].)" (*Pacific Lumber, supra*, 37 Cal.4th at p. 936, fn. 5.)

In *Big Creek*, the Supreme Court concluded that a county ordinance that regulated the location of helicopter staging, loading, and servicing facilities associated with timber operations was not preempted by a provision of the Forest Practice Act (§ 4516.5, subd. (d)) that prohibited counties from "regulat[ing] the conduct of timber operations." (See *Big Creek, supra*, 38 Cal.4th at p. 1162.) The *Big Creek* court supported its preemption conclusion by citing the savings clause contained in former section 4514, subdivision (a). (See *Big Creek, supra*, at p. 1162 ["In the case of the helicopter ordinance, which County apparently enacted to address citizens' fears created by helicopters transporting multi-ton logs by air over or near their neighborhoods, and citizen concerns with throbbing and unbearable noise, the conclusion is buttressed by the fact that . . . the [Forest Practice

Act] . . . expressly contemplate[s] the survival of localities' power to abate nuisances endangering public health or safety"].) The *Big Creek* court did suggest that the nuisance abatement savings clause did not entirely eviscerate the effect of the preemption provision in the statute, noting, "County concedes it lacks authority to prohibit timber removal by helicopters or to regulate the manner in which any such removal is conducted." (*Ibid*; accord *Kanter v. Warner-Lambert Co.* (2002) 99 Cal.App.4th 780, 791 ["a savings clause should not be interpreted in such a way as to undercut or dilute an express preemption clause"].)

- v. *The savings clause of section 30005, subdivision (b) should not be interpreted so broadly as to authorize a local government to avoid the requirements of its local coastal program through a pretextual exercise of its nuisance abatement powers*

In interpreting the scope of section 30005, subdivision (b), we consider an issue not directly addressed in the cases discussed above, namely, whether the Legislature intended to authorize a local government to avoid the requirements of its local coastal program by merely declaring a nuisance and prescribing abatement measures, regardless of whether those measures are an artifice for avoiding those requirements. For the reasons discussed below, we conclude that section 30005, subdivision (b) may not be so broadly interpreted. In our view, if a trial court finds that a local government has abated a nuisance *for the specific purpose of avoiding its local coastal program obligations*, the local government is not acting within the scope of section 30005, subdivision (b). We conclude that when a local government undertakes development that is directed at a true nuisance, and those abatement measures are narrowly targeted at abating the nuisance

(*Citizens, supra*, 196 Cal.App.4th at p. 1585), the declaration of the nuisance and the abatement measures must be undertaken in good faith, and not as a pretext for avoiding local coastal program obligations.

We begin with the language of the savings clause at issue. Section 30005, subdivision (b) clearly does not expressly permit a local government to avoid the requirements of its local coastal program through a *pretextual* exercise of its nuisance abatement powers. Despite the City's and Headlands's apparent recognition that section 30005, subdivision (b) should not be interpreted to permit a municipality to exercise its nuisance abatement powers for the specific purpose of avoiding complying with the municipality's own local coastal program, the City and Headlands suggest that this court should interpret the statute as stating that no provision of the Coastal Act is a limitation on the power of any city to declare, prohibit, and abate nuisances for any reason whatsoever. However, the statute is not so broadly worded.

The City and Headlands ask this court to infer from the lack of express language restricting the scope of a city's abatement powers preserved under section 30005, subdivision (b), that the Legislature intended for cities' abatement powers to be unrestricted. In support of this contention, the City and Headlands note that section 30005, subdivision (a) authorizes cities to adopt certain additional regulations "not in conflict with this act," while section 30005, subdivision (b) contains no such limitation. The City and Headlands suggest that by negative implication, the Legislature adopted section 30005, subdivision (b) primarily for the purpose of permitting cities to abate nuisances in ways that *are* in conflict with Coastal Act policies. Yet, even though the

Legislature intended to permit local governments to engage in legitimate nuisance abatement activities without a coastal development permit, we are not persuaded that the Legislature intended that section 30005, subdivision (b) authorize a city to evade its local coastal program obligations under the guise of nuisance abatement.

To begin with, this court has offered (albeit without considerable discussion), an interpretation of the statute that directly conflicts with this proposition. (See *Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78, 87 (*Conway*) [stating that through the enactment of section 30005, subdivisions (a) *and* (b), "the Legislature clearly intends that local governments retain authority to regulate land or water uses in the coastal zone when necessary to protect coastal resources. *This authority exists so long as the regulations enacted are 'not in conflict' with the purposes of the Coastal Act*" (italics added)].) Further, neither section 30005, subdivision (a) *nor* (b) suggests that the Legislature intended that a city be allowed to utilize its abatement powers in ways that conflict with Coastal Act policies when a court determines that the local government's abatement is a *pretext* for avoiding local coastal program obligations.

A careful comparison of the text of the savings clause at issue in this case with the clauses discussed in *Big Creek* and *Pacific Lumber*, suggests a second textual limitation on the scope of section 30005. As adopted in 1973, former section 4514 of the Forest Practice Act stated in relevant part:

"No provision of this chapter *or any ruling, requirement, or policy of the board* is a limitation on any of the following:

"(a) On the power of a city or county or city and county to declare, prohibit, and abate nuisances." (Italics added.)

Three years later, in 1976, in adopting section 30005, the Legislature used language nearly identical to that contained in former section 4514, but *narrowed* the textual scope of the savings clause by stating:

"No provision of *this division* [i.e. the Coastal Act] is a limitation on any of the following:

(b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances." (*Italics added.*)

The Coastal Act requires *local governments* within the coastal zone to adopt their *own* local coastal programs (§ 30500, subd. (a)),²¹ and, after certification of such local coastal programs by the Commission, authorizes those governments to issue permits consistent within these local coastal programs (§ 30519, subd. (a)). Thus, a strong textual argument can be made that the savings clause in section 30005, subdivision (b) does *not* preserve the authority of a city to exercise abatement powers as a means to avoid its *own* local coastal program because such local coastal programs are not "provision[s] of the [the Coastal Act]" (§ 30500). To conclude otherwise would be to say that the Legislature intended that section 30005 be interpreted as broadly as former section 4514, notwithstanding the expressly narrower language in section 30005. In any event, the fact that section 30005 specifically refers to the *Coastal Act* is consistent with our conclusion that in order to obtain injunctive or writ relief restraining the Commission from enforcing

²¹ Further, unlike administrative regulations implementing a statute, which derive their authority from the statute (*Selby v. Department of Motor Vehicles* (1980) 110 Cal.App.3d 470, 474), it is clear that under the Coastal Act, *local governments* determine the content of such programs in the first instance. (See § 30500, subd. (c).)

the Coastal Act, a municipality must demonstrate that it is not exercising its nuisance abatement powers for the purpose of avoiding the municipality's obligations under its own *local coastal program* in order to demonstrate that its abatement activities are within the savings clause in section 30005, subdivision (b).

In addition to the statutory text, the apparent purpose of section 30005, subdivision (b) supports a narrower interpretation of the statute. Section 30005, subdivision (b) preserves the authority of local governments to abate nuisances. Given that a nuisance is something that is "injurious to health, . . . offensive to the senses, . . . or interfere[s] with the comfortable enjoyment of life or property" (Civ. Code, § 3479), a local government's efforts to abate a nuisance will often be fully consistent with the Coastal Act's central purpose of "[p]rotect[ing], maintain[ing], and, where feasible, enhanc[ing] and restor[ing] the overall quality of the coastal zone environment and its natural and

artificial resources." (*Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 840.) It is for this reason that Headlands's citation to *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370 (*Napa Valley*) is unpersuasive. In *Napa Valley*, the Supreme Court concluded that an exemption in the California Environmental Quality Act (CEQA) for projects that increased passenger rail services for rail lines already in use should be given effect, despite the fact that the project would have a significant impact on the environment. (*Napa Valley, supra*, at p. 377.) In rejecting an argument that the exemption should apply only to projects that would *not* have a significant impact on the environment, the *Napa Valley* court reasoned, "It is precisely to

avoid that burden for an entire class of projects that the Legislature has enacted the exemption." (*Id.* at p. 381.)

In *Napa Valley*, the entire *purpose* of the exemption at issue was to permit projects to be undertaken in a manner *contrary* to CEQA (i.e. to permit projects to be undertaken without the environmental review specified under CEQA). In this case, in contrast, despite the fact that the Legislature authorized cities to conduct legitimate nuisance abatement activities *without* a coastal development permit, there is nothing in the Coastal Act that suggests that the Legislature enacted section 30005, subdivision (b) for the specific *purpose* of ensuring that cities could abate nuisances in ways that *would conflict* with the Coastal Act's goals, including maximization of public access to the coast.

The context in which the nuisance abatement savings clause appears supports the conclusion that the Legislature likely envisioned that section 30005, subdivision (b) would most often be used by cities to abate nuisances in the coastal zone in ways that *further* the purposes of the Coastal Act. More specifically, the fact that the *other* provisions of section 30005 authorize actions that are generally taken in a manner *consistent* with the Coastal Act, suggests that the primary purpose of subdivision (b) is to make clear that the Commission does not have *exclusive* jurisdiction to take action to protect the coast, and that municipalities may act to legitimately abate a nuisance within the coastal zone without having to obtain a coastal development permit. (See, e.g., § 30005, subd. (a) [Coastal Act is no limitation on certain regulations concerning "activity which might adversely affect the resources of the coastal zone"]; § 30005, subd.

(c) [Coastal Act is no limitation on certain actions to "enjoin any waste or pollution of the resources of the coastal zone or any nuisance"].)

Further, construing the generic savings clause in section 30005, subdivision (b) to permit cities to adopt pretextual nuisance abatement measures would have the potential to undermine a host of other California environmental statutes that contain generic nuisance abatement savings clauses similar to section 30005, subdivision (b). (See e.g., § 2715 [mining]; Health & Saf. Code, § 5415, subd. (b) [sewage waste]; and Health & Saf. Code, § 41509, subd. (a) [air pollution].) For example, Health and Safety Code section 5411, which governs sewage waste, provides, "No person shall discharge sewage or other waste, or the effluent of treated sewage or other waste, in any manner which will result in contamination, pollution or a nuisance." Health and Safety Code section 5415, subdivision (b) states that no provision in the chapter governing sewage waste is a limitation on "[t]he authority of any city or county to declare, prohibit, and abate nuisances." Just as Health and Safety Code section 5415 cannot reasonably be interpreted as permitting a City to abate nuisance conditions at a landfill by discharging waste as a pretext for avoiding waste discharge obligations under Health and Safety Code section 5411, Public Resources Code section 30005 cannot reasonably be read to authorize a City to abate a nuisance in the coastal zone by authorizing development as a pretext for avoiding local coastal program obligations.

Excluding the pretextual use of nuisance abatement powers from the scope of the safe harbor of section 30005, subdivision (b) is also fully consistent with the narrow construction given the statute in *Citizens*. (See *Citizens*, *supra*, 196 Cal.App.4th at p.

1586 [acknowledging that it was adopting a "narrow construction" of section 30005, subdivision (b) and stating, "Given the breadth of conditions that can be deemed to constitute nuisances . . . , a contrary conclusion that exempted all projects involving some nuisance abatement from Coastal Act requirements would undo the statutory scheme"; accord *Big Creek, supra*, 38 Cal.4th at p. 1162 [declining to interpret savings clause as to permit city to take actions that would conflict with express preemption provision].)

Interpreting section 30005, subdivision (b) as not authorizing cities to abate nuisances in ways that are a pretext for avoiding Coastal Act policies is also consistent with the general rule that "[s]avings clauses are usually strictly construed" (*Sutherland, supra*, at § 47.12). This interpretation is also consistent with case law in which courts have refused to interpret savings clauses in a manner that would authorize activity that directly conflicts with the statutory scheme containing the savings clause. (See *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 926 (*Dowhal*) ["The United States Supreme Court has *never* interpreted a savings clause so broadly as to permit a state enactment to conflict with a federal regulation scheme" (italics added)]; *Geier v. American Honda Motor Co.* (2000) 529 U.S. 861, 869 ["this Court has repeatedly 'decline[d] to give broad effect to saving clauses where doing so would upset the careful regulatory scheme established by federal law' [citation]"]; accord *Pacific Lumber, supra*, 37 Cal.4th at p. 936, fn. 5 [applying savings clause where application of clause would not result in "conflicting directives" by two agencies].) Although section 30005, subdivision (b) has been interpreted to permit local governments to engage in

nuisance abatement activities without having to obtain a coastal development permit (*Citizens, supra*, 196 Cal.App.4th at p. 1585), we decline to interpret the provision so broadly as to permit cities to exercise their nuisance abatement authority in a *pretextual* manner, to avoid local coastal program obligations.

The Commission's interpretation of section 30005, subdivision (b) is also consistent with several rules of statutory construction contained in the Coastal Act itself. (See § 30007.5 ["The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources"] and § 30009 ["This division shall be liberally construed to accomplish its purposes and objectives"].) Such an interpretation is also consistent with the fact that " 'a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government.' [Citation.]" (*Pacific Palisades, supra*, 55 Cal.4th at p. 794.)

Accordingly, we conclude that, where a city seeks a court order restraining the Commission from taking enforcement action against the city on the ground that the city is properly exercising its nuisance abatement powers under section 30005, subdivision (b), a court should conclude that the abatement is not within the scope of section 30005, subdivision (b) if it determines that the city's action in declaring a nuisance, or in prescribing the alleged abatement actions, is a pretext for avoiding its obligations under

the local coastal program.²² We emphasize that because most development within the coastal zone requires a permit (§§ 30103, subd. (a), 30600, subd. (a)), a trial court cannot conclude that a city is acting outside the scope of its nuisance abatement powers *merely* by finding that it is taking actions that are in conflict with the Coastal Act. To do so would be to conclude that a City must obtain a coastal development permit *any time* it abates a nuisance in a coastal zone, contrary to the holding in *Citizens*. (*Citizens, supra*, 196 Cal.App.4th at p. 1585 [concluding that a coastal permit is not required " '[w]here a local government properly declares a nuisance and requires abatement measures that are narrowly targeted at abating the declared nuisance . . . ' [citation]"].) However, where a local government *improperly* declares a nuisance as a pretext for avoiding its own local coastal program obligations, section 30005 does not provide a safe harbor from the Commission's jurisdiction.

- c. *The trial court erred in ordering the Commission not to attempt to exercise jurisdiction over development mandated by the Nuisance Abatement Ordinance, without first determining whether the City's enactment of the ordinance was a pretext for avoiding the requirements of its local coastal program*

The trial court concluded that "[r]egardless of the merits of the Commission's arguments concerning the finding of a nuisance, . . . the Coastal Commission lacks

²² We reject the City and Headlands's contention that such an interpretation would violate the separation of powers doctrine, by permitting the Commission to "review[] the legal validity of the [Nuisance Abatement Ordinance]." Our interpretation of section 30005, subdivision (b) does not authorize the Commission to review the legal validity of ordinance. Rather, we interpret section 30005, subdivision (b) as requiring that a trial court not prevent the Commission from exercising jurisdiction over development mandated by an ordinance where the court finds that the local government adopted the ordinance as a pretext for avoiding the local government's local coastal program.

jurisdiction to adjudicate this matter and . . . such issues are reserved for adjudication by the courts." The trial court also ruled that "the . . . Commission lacks jurisdiction under Coastal Act section 30005[, subdivision] (b) to place limitations on the enforcement of the Nuisance Abatement Ordinance." The court issued a peremptory writ of mandate directing the Commission to "cease and desist from any actions to enforce or otherwise attempt to submit the City's Nuisance Abatement Ordinance to the jurisdiction of the . . . Commission." Through these rulings, it appears that the trial court concluded that the City's mere declaration that it was exercising nuisance abatement powers pursuant to section 30005, subdivision (b) deprived the Commission of any jurisdiction over the development mandated by the Nuisance Abatement Ordinance. Alternatively, the trial court may have intended to conclude that the Commission could assume jurisdiction over the development mandated by the Nuisance Abatement Ordinance only if the trial court were subsequently to invalidate the ordinance in the Surfrider Case. In either instance, the court erred in granting a petition for writ of mandate restraining the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance without first determining, *in the City's Case*, whether the City was acting properly within the scope of its nuisance abatement powers pursuant to section 30005, subdivision (b).²³

²³ The trial court was required to interpret section 30005, subdivision (b) without the benefit of any directly applicable appellate authority. *Citizens* was decided after the trial court ruled in this case, and there are apparently no other cases on point.

Consistent with our interpretation of section 30005, subdivision (b) in part III.A.3.b., *ante*, prior to granting the City relief and ordering the Commission to refrain from exercising jurisdiction over development mandated by the Nuisance Abatement Ordinance, the trial court was required to determine whether there was an actual nuisance, and if so, whether "the development 'activity exceeds the amount necessary' [citation] 'simply to abate the nuisance.' [Citation.]" (*Citizens, supra*, 196 Cal.App.4th at p. 1585.) The trial court was also required to determine whether the City's enactment of the ordinance was a pretext for avoiding the requirements of its local coastal program. In the companion Surfrider Case, the trial court reviewed a considerable amount of evidence bearing on the issue of pretext and the scope of the abatement measures that the City enacted in the Nuisance Abatement Ordinance. For example, the trial court considered evidence pertaining to the conditions that allegedly support the nuisance declaration and the measures that the City claimed were necessary to abate the alleged nuisance. The trial court also heard evidence concerning whether the City's chosen abatement measures conflicted with the City's obligations under the local coastal program. The court was presented with evidence pertaining to provisions in the local coastal program concerning trail access, and evidence that the Commission had rejected a previous request from Headlands to be relieved of some of the requirements in the local coastal program pertaining to such access based on alleged geotechnical and engineering difficulties. The court also heard evidence that the City adopted the Nuisance Abatement Ordinance only after the Commission "demanded that the City revoke the hours and remove the gates."

Based on the trial court's statements in its order granting the petition for writ of mandate in the Surfrider Case, it appears that the trial court is likely to find on remand in this case that the City's enactment of the ordinance was a pretext for avoiding the requirements of its local coastal program,²⁴ and that the development mandated by the City exceeded the amount necessary to abate any actual nuisance.²⁵ However, because the trial court did not consider these precise issues in the context of the City's writ petition/complaint, we conclude that the trial court should be afforded that opportunity in the first instance on remand, in accordance with our directions in part III.A.4., *post*.

4. *Proceedings on remand*

In part III.A.2., *ante*, we concluded that the Commission lacked appellate jurisdiction pursuant to section 30625 to consider the validity of the development mandated by the Nuisance Abatement Ordinance. The portion of the trial court's judgment and the preemptory writ of mandate declaring the Commission's May 13 actions invalid are therefore affirmed.

In part III.A.3., *ante*, we concluded that the trial court erred in determining that section 30005, subdivision (b) precludes the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance without first determining whether City's enactment of the Nuisance Abatement Ordinance was a

²⁴ At oral argument in this court, the City's counsel acknowledged that the trial court implicitly found in the Surfrider Case that the City's adoption of the Nuisance Abatement Ordinance was pretextual.

²⁵ We again emphasize that we do not intend to suggest what the trial court *should* do on remand.

pretext for avoiding the requirements of its local coastal program. That portion of the trial court's judgment stating that the Commission lacks jurisdiction over the City's Nuisance Abatement Ordinance pursuant to section 30005, subdivision (b), and that portion of the trial court's peremptory writ of mandate ordering the Commission to "cease and desist from any actions to enforce or otherwise attempt to submit the City's Nuisance Abatement Ordinance to the jurisdiction of the . . . Commission" are reversed.

On remand, the trial court is directed to determine whether the City was acting within the scope of section 30005, subdivision (b) in adopting the Nuisance Abatement Ordinance.²⁶ In making this determination, the trial court shall decide whether the City's enactment of the Nuisance Abatement Ordinance was a pretext for avoiding the requirements of its local coastal program *and*, if the court determines that there is an actual nuisance, whether the development mandated by the Nuisance Abatement Ordinance exceeds the amount necessary to abate that nuisance. If the court determines that the City adopted the Nuisance Abatement Ordinance solely as a pretext for avoiding obligations under the local coastal program and/or that the development mandated by the Nuisance Abatement Ordinance exceeds the amount necessary to abate the nuisance, the court is directed to enter a new judgment in favor of the Commission. The court's judgment shall deny the City's request for a peremptory writ of mandate insofar as it

²⁶ As the petitioner/plaintiff on the writ petition/complaint, the City shall bear the burden of proof on remand in establishing that it was acting within the scope of section 30005, subdivision (b).

seeks to prohibit the Commission from exercising jurisdiction over development that the court determines to be outside the scope of section 30005, subdivision (b).²⁷

If the court determines that the City has established that it did *not* act enact the ordinance as a pretext to engage in development that would otherwise be subject to the Commission's jurisdiction, or that it did not mandate development in excess of that necessary to abate the nuisance, the court is directed to grant judgment in favor of the City and to issue a peremptory writ of mandate prohibiting the Commission from exercising jurisdiction over development mandated by the Nuisance Abatement Ordinance.

The trial court is free to determine the procedural manner by which it will address these issues, including whether to order supplemental briefing and/or to hold additional hearings.

B. *The City's and Headlands's appeals*

In their appeals, the City and Headlands contend that the trial court erred in declaring the Nuisance Abatement Ordinance "invalid and void insofar as there was no properly declared nuisance and/or the manner of abatement was excessive." Surfrider contends that the trial court properly determined that the Nuisance Abatement Ordinance lacks any rational basis. In the alternative, Surfrider contends that the ordinance infringes on various constitutional rights. For the reasons stated below, we elect to hold the City's

²⁷ If the trial court enters judgment in favor of the Commission, the Commission will bear the burden of proof in any potential future proceedings to prohibit or limit development mandated by the Nuisance Abatement Ordinance. (See fn. 27, *post.*)

and Headlands's appeals in abeyance, since the final resolution of the issues in the related consolidated case may moot the issues raised in the City's and Headlands's appeals.

In the Commission's appeal in the City's Case, we held that the trial court erred in concluding that section 30005, subdivision (b) precludes the Commission from exercising jurisdiction over the development mandated by the Nuisance Abatement Ordinance. We also determined that the case must be remanded for further proceedings that may, and likely will, permit the Commission to exercise jurisdiction over the development mandated by the Nuisance Abatement Ordinance. Further, to the extent that the Commission is permitted to exercise such jurisdiction, the Commission has made it clear that it intends to prohibit the development in question.²⁸

Under these circumstances, it is likely that a final resolution of the issues in the City's Case will moot the controversy in the City's and Headlands' appeal in the Surfrider Case. In fact, the City essentially made this argument in the trial court, stating, "[I]f the Lead Action [i.e. the City's Case] is resolved in favor of the Commission, [Surfrider's] claims will be *moot*, since the Commission has already taken the action necessary to prevent the enforcement of the City's Ordinance." (See *Wilson v. Los Angeles County*

²⁸ In addition, although we have concluded that the Commission lacked jurisdiction under section 30625 to attempt to prohibit such development (see pt. III.A.2., *ante*), there are other provisions of the Coastal Act that the Commission could utilize in the event the trial court concludes on remand that section 30005, subdivision (b) does not preclude the Commission from exercising jurisdiction. For example, pursuant to section 30810, the Commission may enter an order "to enforce any requirements of a certified local coastal program . . . or any requirements of this division which are subject to the jurisdiction of the certified program . . . under any of the following circumstances: [¶] . . . [¶] (3) The local government or port governing body is a party to the violation."

Civil Service Com. (1952) 112 Cal.App.2d 450, 453 ["although a case may originally present an existing controversy, if before decision it has, through act of the parties or other cause, occurring after the commencement of the action, lost that essential character, it becomes a moot case or question which will not be considered by the court"].)

Under these unusual circumstances, we exercise our discretion to hold the appeals in the related Surfrider Case in abeyance pending resolution of the issues on remand in the City's Case. (See e.g., *People v. Bennett* (1998) 17 Cal.4th 373, 381 ["The Court of Appeal issued an order to show cause returnable before the Orange County Superior Court, and it ordered that the appeal be held in abeyance pending the outcome of the hearing on the order to show cause"]; *Eddins v. Redstone* (2005) 134 Cal.App.4th 290, 302, fn. 6 ["This court deferred consideration of the appeal plaintiffs filed from the trial court's ruling denying class certification, and that appeal will become moot upon the finality of this decision"]; *Mediterranean Exports, Inc. v. Superior Court of San Mateo County* (1981) 119 Cal.App.3d 605, 611 ["The matters pending on Mediterranean's related appeal . . . have been held in abeyance pending the disposition of its petition in this proceeding"].)

Holding the appeals in the Surfrider Case in abeyance has the virtue of permitting the potential resolution of these related matters without the need to decide the constitutional questions raised in the City's and Headlands's appeals. (See, e.g., *Lyng v. Northwest Indian Cemetery Protective Ass'n.* (1988) 485 U.S. 439, 445 ["A fundamental and long-standing principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them"].) Such an

approach also allows for the possibility that any future litigation over the validity of the Commission's exercise of jurisdiction over the development mandated by the Nuisance Abatement Ordinance will be unencumbered by what might well become essentially an advisory opinion from this court concerning the related, but distinct, issues raised in the City's and Headlands's appeals.²⁹

Accordingly, we will hold the City's and Headlands's appeals in abeyance, pending a final resolution of the issues in the City's Case, including any future action taken by the Commission for the purpose of directing the City to cease and desist undertaking the development mandated by the Nuisance Abatement Ordinance.

IV.

DISPOSITION

With respect to D060260, the trial court's June 2, 2011 judgment and accompanying writ of mandate are affirmed insofar as the court concluded that the Commission's actions taken at its May 13, 2010 hearing are invalid and void. The trial court's June 2, 2011 judgment and accompanying writ of mandate are reversed insofar as the trial court concluded that the Commission lacks jurisdiction over the City's Nuisance

²⁹ The trial court's resolution of the two cases demonstrates the extent of their interrelatedness. For example, notwithstanding the trial court's issuance of a peremptory writ of mandate in the City's Case *restraining the Commission from exercising jurisdiction over the development mandated by the ordinance*, the court's order in the Surfrider Case states, "To the extent the City—in response to this ruling—continues to maintain the gates and/or signage then *the Court believes the matter would more appropriately be in the jurisdiction of the Commission for further action.*" (Italics added.) Holding the City's and Headlands's appeals in abeyance allows the issues of the Commission's jurisdiction over the development to be resolved in the first instance in the context of litigation concerning the City's petition/complaint against the Commission.

Abatement Ordinance pursuant to section 30005, subdivision (b) and directed the Commission to cease and desist attempting to exercise jurisdiction over development mandated by the ordinance. The matter is remanded to the trial court with directions to conduct further proceedings as outlined in part III.A.4., *ante*. Each party is to bear its own costs on appeal in No. D060260.

The City's and Headlands's appeals in No. D060369 are held in abeyance. Within 60 days of this opinion being final, the parties are each directed to file an application with this court informing this court of the status of the City's Case. Upon the consideration of such applications, this court will determine the appropriate manner by which to proceed in No. D060369.

AARON, J.

I CONCUR:

O'ROURKE, J.

BENKE, J., Dissenting.

I disagree with three aspects of the majority's opinion. First, the majority mischaracterizes the relief the City of Dana Point (the City) sought in its petition for a writ of mandate and complaint for injunctive relief. The face of the City's petition and complaint is quite clear: it only seeks a determination that under Public Resources Code¹ section 30005, subdivision (b), the California Coastal Commission (the Commission) lacks the power to determine the validity of the City's nuisance ordinance. Nothing in the City's petition can be interpreted as requesting the trial court determine the ultimate question of whether the ordinance is valid.

Second, and more importantly, the majority improperly requires the City establish that its ordinance was valid. The City's ordinance is presumptively valid, and the City was not required to establish the validity of its ordinance before enforcing the separation of powers principles embodied in section 30005, subdivision (b). Rather, by its terms, section 30005, subdivision (b) plainly placed that burden on the Commission. I note the Commission could have brought a cross-complaint challenging the validity of the City's ordinance or joined the Surfrider Foundation's action (the Surfrider case), which directly challenged the validity of the nuisance ordinance. However, the Commission chose not to take either course.

As a practical matter, by depriving the municipalities of the presumption that their

¹ All further statutory references are to the Public Resources Code.

nuisance ordinances are valid, the majority's opinion will require that municipalities either obtain the approval of the Commission before exercising the power expressly and unconditionally provided to them by section 30005, subdivision (b) or be prepared to litigate their right to declare and abate nuisances. That circumstance improperly infringes on the City's well-established constitutional and statutory prerogatives.

Third, I am baffled by the majority's unwillingness to address and dispose of the issues raised in the City's appeal from the judgment entered by the trial court in the Surfrider case. The City's appeal in the Surfrider case, on a fully developed record, presents what will no doubt appear to the parties and the public to be precisely the issue the majority are requiring the trial court revisit in the City's case against the Commission. Not only do considerations of judicial economy suggest that we consider and determine the validity of the City's ordinance at this point, but also the public's substantial interest in access to the beach at the Headlands will continue to be burdened with what the trial court has determined were unlawful limitations while the trial court and the parties are compelled to again address issues we could and should resolve in the Surfrider case.

We should affirm the judgment in the City's case against the Commission and directly address the merits of the issues presented in the Surfrider case.

I

The majority's statement that "[i]n sum, the City asked the trial court to rule that the City was legitimately exercising nuisance abatement powers under section 30005, subdivision (b) and that the Commission therefore lacked jurisdiction to restrict any

action that the City might take pursuant to those powers" is at direct odds with what the City asked for in its action against the Commission. In fact, the City only asked the trial court to determine that the Commission had no jurisdiction to determine the validity of its ordinance and therefore the trial court need not determine whether the nuisance ordinance was valid.¹

I note that in moving for judgment on the pleadings, the City argued the Commission had no authority to review the validity of the nuisance and that instead only the courts have that power. In opposing the City's complaint and petition, the

¹ In its declaratory relief action, the City alleged:

"55. There is an actual, present and continuing controversy between the City and the Coastal Commission in that the City contends the Coastal Commission lacks jurisdiction to take any action to place limitations on the establishment and enforcement of the Nuisance Abatement Ordinance, for the reasons set forth above. The Coastal Commission denies the City's contention, and, as set forth above, has announced its intention to take further administrative action against the City designed to limit and prevent the City's enforcement of the Nuisance Abatement Ordinance.

"56. It is appropriate and necessary, therefore, that the Court issue an Order declaring that:

"a. the Coastal Commission lacks jurisdiction under Coastal Act section 30005(b) to place limitations on the enforcement of the Nuisance Abatement Ordinance;

"b. the Coastal Commission lacks jurisdiction under [the] California Constitution, pursuant to the separation of powers doctrine, to adjudicate whether the City's adoption of the Nuisance Abatement Ordinance was a legitimate and proper exercise of the City's police power; and

"c. the Coastal Commission lacked jurisdiction to proceed with the 'appeal,' and thus lacks jurisdiction to proceed with any subsequent actions based upon the 'appeal,' because the adoption of the Nuisance Abatement Ordinance did not require any City 'action taken . . . on a coastal development permit application.'"

In the City's prayer for relief, it asked for a declaration determining that the Commission lacks jurisdiction to: place limitations on enforcement of the nuisance abatement ordinance; adjudicate whether the nuisance abatement ordinance was a legitimate exercise of the City's police power; and proceed with the "appeal" the Commission acted upon.

Commission relied on the factual record developed in Commission proceedings to argue that the nuisance ordinance was arbitrary and capricious. In responding to the Commission's factual presentation on the merits of the ordinance, the City stated: "The issue in this case . . . is *not* whether the Commission's decision was supported by any (let alone substantial) evidence. Rather, the issue in front of this Court is whether the Commission had the *legal* jurisdiction to act in the first place. The Commission's factual evidence is irrelevant." The City went so far as to assert not only that the Commission's factual presentation was irrelevant but that "[t]he factual evidence supporting the City's decision is likewise unrelated to the issue of whether the Commission's actions were in excess of its jurisdiction."¹

¹ This is largely the argument the City made in its briefs in this court in the Commission case. I note the majority rely on what they believe was a concession by the City's counsel at oral argument that the City had asked for a declaration that the nuisance ordinance was valid. Such a concession, if it was made, was erroneous, because, as I have explained, the City's complaint and petition contain no such request. However, after listening to a recording of the oral argument, I am not at all certain that such a concession was ever intended by counsel at argument in this court. The discussion of what was litigated in the City's action was as follows:

"Justice Aaron: . . . What if the trial court in the Commission versus the City case, in determining whether there was a nuisance and whether the activities were limited to actual abatement, whether there was a legitimate nuisance and whether the remediation was actually abatement?

"City Attorney: That case was never before the trial courts. Nobody sued and said -- What happened is the Commission took the position they got to decide, and so we sued them saying you don't get to do that. Surfrider sued and said it was a nuisance. Nobody sued and said what you did exceeded nuisance and became development.

"Justice Aaron: Didn't the City ask for a declaration that it was legitimately exercising its nuisance abatement powers?

"City Attorney: Correct.

"Justice Aaron: Wouldn't that be part of that analysis?

"City Attorney: That question was never analyzed because the coastal --

"Justice Aaron: It wasn't, but could it have been?

"City Attorney: It could've been. It was not. The Coastal Commission took the position that it got to decide, and I would encourage you to decide that question and publish an opinion. I think it's an important question, and you know our thought on that. We put that in our brief, that that court gets to decide.

"Justice Benke: If we conclude that they do get to decide, then where does that leave you?

"City Attorney: That the Commission gets to decide?

"Justice Aaron: Yes.

"City Attorney: I'd be sad. (laughter and some inaudible comments) In terms of this case, it would reverse the trial court's decision and, I'd have to think that one through. I'm not sure what the impact would be. I guess it would reverse the writ that was issued against the Commission and would send it back to the trial court for further proceedings.

"Justice Benke: I thought the trial court had made a conclusion. Maybe I'm wrong. I'd have to go back and look at the language again. That the trial court had made an actual determination that the manner of enforcing policing power was overbroad.

"Justice Aaron: But that was in the Surfrider case.

"Justice Benke: That was in Surfrider. Yeah, that's what I mean. I'm addressing Surfrider.

"City Attorney: Surfrider -- I'm sorry, I didn't mean to interrupt you.

"Justice Benke: No, I think it just got straightened out. I think you were originally addressing the Commission case.

"City Attorney: The Commission never sued saying we've ceded nuisance. They sued saying --

"Justice Aaron: Yeah, but the City did ask for a declaration that it was legitimately exercising its nuisance abatement.

"City Attorney: And the court said -- Surfrider said it wasn't a nuisance. The court agreed that it wasn't a nuisance. The court said it's a rational basis standard as to whether it was a nuisance or not. The question of is it nuisance or development, which is kind of the issue that the . . . case throws out there you were inquiring about before, would really be a factual inquiry, and that factual inquiry never occurred.

"Justice Benke: That's why I asked about the record. Where do we go for a record on that question?

"City Attorney: That question was never addressed. We certainly never argued it before the trial court because it never came up in the context of this case."

As I read these remarks, counsel makes it fairly clear that in the City's action against the Commission the validity of the ordinance was not litigated but that the issue was fully considered in the Surfrider action.

I also note that at oral argument, the Commission's counsel suggested if we affirm the trial court's order in Surfrider, the jurisdictional question we consider in the City's case would be moot.

The trial court agreed with the City and determined the Commission had no power to pass upon the validity of the ordinance.

Given this record, it is simply not fair to the City or the trial court to attribute to the City a claim it did not make.

II

However, more important than the majority's mischaracterization of the relief the City requested, is the majority's alteration of the clear separation of powers set forth in section 30005, subdivision (b).

By its terms, section 30005 states: "No provision of this division *is a limitation . . . : [¶] . . . [¶] (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances.*"¹ (Italics added.) In light of this provision, which expressly and unconditionally permits local regulation of nuisances, we cannot imply the Coastal Act nonetheless somehow limits or preempts the City's power to declare, prohibit and abate nuisances: "There can be no preemption by implication if the Legislature has expressed an intent to permit local regulation or if the statutory scheme recognizes local regulation." (*Delta Wetlands Properties v. County of San Joaquin* (2004) 121

¹ In light of *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 794, 810-811 (*Pacific Palisades*), it is now clear a municipality's local coastal program is itself a provision of the Coastal Act. In *Pacific Palisades*, the fact a local coastal program was part of the Coastal Act meant that the provisions of a local coastal program were not preempted by another state law, Government Code section 66427.5. (*Pacific Palisades*, at pp. 810-811.) Here, because the City's local coastal program, including the prohibition on gates, is also a part of the Coastal Act, like all the other provisions of the Coastal Act, the program is subject to the limitations of Public Resources Code section 30005.

Cal.App.4th 128, 143, citing *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485.)

Although Public Resources Code section 30005, subdivision (b) expressly and without limitation preserves the traditional police power of municipalities over nuisances (see Cal. Const., art. XI, § 7; Gov. Code, § 38771), the majority's opinion substantially impairs that power. The impairment arises out of the majority's holding that as a condition of obtaining the protection expressly provided by Public Resources Code section 30005, subdivision (b), the City must show that its ordinance is valid and not pretextual. Nothing on the face of the Coastal Act places such a burden on a municipality, and important principles of municipal and constitutional law suggest that any burden with respect to the validity of a municipal nuisance ordinance rests with the Commission, not the municipality.

Initially, I note the City's adoption of the nuisance ordinance was presumptively valid. "In determining whether a particular ordinance represents a valid exercise of the police power, the courts 'simply determine whether the statute or ordinance reasonably relates to a legitimate governmental purpose.' [Citation.] Every intendment is in favor of the validity of the exercise of the police power, and even though a court may differ from the determination of the legislative body, the ordinance will be upheld so long as it bears substantial relation to the public health, safety, morals or general welfare." (*Ensign Bickford Realty Corp. v. City Council* (1977) 68 Cal.App.3d 467, 474.) Thus, "where no right of free speech or any other fundamental right is involved or presented . . . the

burden is upon the one who attacks an ordinance valid on its face and enacted under lawful authority, to prove facts to establish its invalidity." (*City of Corona v. Corona Etc. Independent* (1953) 115 Cal.App.2d 382, 384; see also Evid. Code, § 664 [presumption official duty has been regularly performed].)

Secondly, the specific power to declare and abate nuisances is provided to municipalities both by article XI, section 7 of the California Constitution, which recognizes that municipalities may make and enforce "all local, police, sanitary, and other ordinances and regulations not in conflict with general laws," and Government Code section 38771, which gives city legislative bodies the power to declare "what constitutes a nuisance." (See *City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 383.) Because a municipality's police power is inherent, rather than delegated from the state, our Supreme Court has been ""reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is significant local interest to be served that may differ from one locality to another." [Citations.]" (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 744 (*City of Riverside*).)

In its quite recent decision in *City of Riverside*, the Supreme Court found no conflict between a local ordinance which declared that any operation of a marijuana dispensary could be abated as a nuisance and the express or implied provisions of the Compassionate Use Act (CUA; Health & Saf. Code, § 11362.5 et seq.) and the Medical Marijuana Program (MMP; Health & Saf. Code, § 11362.7 et seq.), which shield

individuals from criminal prosecution for possessing medical marijuana or operating a collective which dispenses it. (*City of Riverside, supra*, 56 Cal.4th at pp. 744-745.) In interpreting the CUA and MMP in a careful and restrained manner, which focused on their operative provisions rather than their far broader purposes, the court noted that: ""The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption." [Citations.]" (*City of Riverside*, at p. 744.)

I think the majority here err in failing to interpret the California Environmental Quality Control Act (CEQA) in the careful and restrained manner employed by the Supreme Court in *City of Riverside* and, more importantly, in failing to give the City the benefit of the presumption that its ordinance was valid. In particular, the majority's use of the general overall goals of CEQA as grounds for limiting the City's historical police powers is incongruent with the deference *City of Riverside* requires that we give the City's exercise of those very same powers.

I do not by any means suggest that a municipality has unfettered power to declare a nuisance when it has no basis for doing so. Notwithstanding its constitutional, common law and statutory powers to abate nuisances, a municipality may not by a mere "declaration that specified property is a nuisance, make it one when in fact it is not." [Citation.]" (*Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 718.) However, while any affected party may certainly challenge the validity of an ordinance, assigning

the burden of proof to the appropriate party has tremendous practical implications. If, as the majority hold, a municipality must bear the burden of establishing the validity of a nuisance ordinance, as a practical matter the City must either obtain the concurrence of the Commission before acting or be prepared to bear the considerable expense of establishing the validity of its action rather than simply defending it. In short, the rule announced by the majority creates a substantial disincentive to exercise the inherent police power recognized in our constitution and expressly preserved by section 30005, subdivision (b).

As I noted at the outset, the Commission could have, but chose not to, bring a cross-complaint in the City's action against it, and it could have, but chose not to, join in Surfrider's action against the City. In litigating such claims, the Commission could have vigorously attacked the validity of the City's ordinance, but importantly consistent with the deference owed to the City's exercise of its police power, the Commission would have borne the burden of proof.

I also observe the Commission has plenary power over the City's adoption of a local coastal program. (*Pacific Palisades, supra*, 55 Cal.4th at p. 794.) Arguably, in light of the gates the City required under its nuisance powers, the Commission could have reconsidered its approval of the City's local coastal program and the power it gave the City to issue coastal development permits. However, in light of section 30005, the Commission may not directly interfere with the City's well-established and well-protected nuisance powers.

In sum, because the City was not required to show that its ordinance was valid, it was entitled to the relief the trial court provided to it under section 30005, subdivision (b). Thus, I would affirm the trial court's judgment in the City's action against the Commission.

III

My third area of disagreement with my colleagues is their unwillingness to reach the City's appeal of the trial court's judgment in the Surfrider case. Rather than staying the City's appeal in the Surfrider case, I think it is imperative that we reach the merits of the City's appeal of the trial court's judgment in the Surfrider case.

As I noted at the outset, in the Surfrider case the trial court determined that the City's ordinance is invalid; that the gates required by the ordinance are unlawful because there was no evidence of a nuisance; and that City's use of gates to abate any nuisance was arbitrary and capricious. If the trial court was correct, the public's interest in unfettered access to the beach in the Headlands will continue to be impaired while (1) the trial court once again determines the precise issue it determined in the Surfrider case, and (2) we are once again presented with an appeal on the merits of the City's nuisance ordinance. I fail to understand what public or jurisprudential interest is served by such a multiplicity of proceedings.

BENKE, Acting P. J.

FILED
Clerk of the Superior Court

SEP 17 2015

By: Anthony Shirley, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF DANA POINT, a California) CASE NO: 37-2010-00099827-CU-WM-CTL
Municipal Corporation)
)
Petitioner and Plaintiffs,) **STATEMENT OF DECISION [CCP**
) **§632, Cal. Rules of Court, Rule 3.1590]**
)
vs.) Dept.: 70
) Judge: Randa Trapp
CALIFORNIA COASTAL COMMISSION,)
a California public agency, and DOES 1)
through 5, inclusive.)

This matter came before the Court on remand from the Court of Appeal, Fourth District, Division 1, California. *City of Dana Point v. California Coastal Commission, Headlands Reserve LLC, Surfrider Foundation v. City of Dana Point, Headlands Reserve LLC.* (2013) 217 Cal. App.4th 170. On remand, this Court was directed as follows: “to determine whether the City was acting within the scope of section [Public Resources Code] 30005, subdivision (b) in adopting the Nuisance Abatement Ordinance. In making this determination, the trial court shall decide whether the City’s enactment of the Nuisance Abatement Ordinance was a pretext for avoiding the requirements of its local coastal

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1 program *and*, if the court determines that there is an actual nuisance, whether the
2 development mandated by the Nuisance Abatement Ordinance exceeds the amount
3 necessary to abate that nuisance." *Id at 207*.

4 On May 5, 2014, this court granted petitioner/plaintiff City of Dana Point's request to
5 introduce evidence as to whether the City was acting properly within the scope of its
6 nuisance abatement powers under the Coastal Act, including whether the abatement
7 ordinance was enacted in good faith or was a pretext for avoiding coastal program
8 obligations. (*See, City of Dana Point v. California Coastal Commission (2013) 217*
9 *Cal.App.4th 170, 176-177, 191,199, 204-207*)

10 However, the court did limit the extra-record evidence it would allow. Generally,
11 extra-record evidence is admissible only in those rare instances in which (1) the evidence in
12 question existed *before* the decision, and (2) it was not possible in the exercise of reasonable
13 diligence to present this evidence *before* the decision was made so that it could be considered
14 and included in the administrative record. (*Western States Petroleum Assn. v. Superior Court*
15 *(1995) 9 Cal.4th 559, 578*)

16 As any evidence of nuisance at the site in question after the enactment of the
17 ordinance would not have existed before the enactment of the ordinance, the court
18 determined it would not allow evidence of nuisance at the site that was not considered when
19 the ordinance was considered and enacted.

20 The court acknowledged that the Court of Appeal directed the trial court to determine
21 whether the nuisance abatement ordinance was a pretext for avoiding coastal program
22 obligations. In that regard, testimony from the City representatives on this issue could have
23 been elicited before the ordinance enactment, but it was not relevant until after the Court of
24 Appeal issued its opinion. Thus, the court determined it would allow testimony/evidence
25 from City Council members and Council Staff to demonstrate the City did not act with an
26 improper motive and to show the ordinance was the minimum abatement action to address
27 the nuisance. Respondent/Defendant was allowed to depose those witnesses.

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1 The court determined that it was a question of fact as to whether the City's enactment
2 of the Ordinance was pretextual. Petitioner/Plaintiff requested a court trial and the court
3 determined it would hear the case as a bench trial. (*See, CCP §§ 1094, 1090; English v. City*
4 *of Long Beach (1952) 114 Cal.App.2d 311, 316*)

5 Accordingly, this cause came on regularly for a bench trial on August 24, 2015
6 through August 27, 2015 in Department 70, the Honorable Randa Trapp, Judge Presiding.
7 A. Patrick Munoz and Jennifer Farrell appeared as counsel for Petitioner and Plaintiff.
8 Supervising Attorney General Jamee Jordan Patterson and Deputy Attorney General Blaine
9 P. Kerr appeared on behalf of Respondent and Defendant. Petitioner/ Plaintiff City of Dana
10 Point timely requested a Statement of Decision.

11 At the conclusion of the trial, the Court, having heard and considered the opening
12 statements of counsel, viewed the video tape of the May 22, 2010 City Council Meeting
13 where the Urgency Ordinance was enacted, heard and considered the testimony of witnesses,
14 the arguments of counsel and having reviewed the exhibits including the designated portions
15 of the Administrative Record, took the matter under submission. The Court now rules as
16 follows: Petitioner/Plaintiff City of Dana Point was not acting within the scope of section
17 30005, subdivision (b) of the Coastal Commission Act in adopting the Nuisance Abatement
18 Ordinance. The City's enactment of the Nuisance Abatement Ordinance was a pretext for
19 avoiding the requirements of its local coastal program. The court further finds that there was
20 not, in fact, a nuisance or prospective nuisance at the time the Nuisance Abatement
21 Ordinance was enacted.

22 SUMMARY OF FACTS

23 Based upon the evidence presented by the parties in their pleadings, the testimony of
24 the witnesses, exhibits admitted into evidence including designated portions of the
25 Administrative Record, and the oral argument of counsel, this Court finds the following facts.

26 There are numerous facts that are not in dispute. The Dana Point Headlands
27 (Headlands) was one of the last undeveloped coastal promontories in Southern California
28 and inaccessible to the public. In 2002, the City proposed to amend its certified local coastal

1 program (LCP) to allow development of the Headlands. On January 15, 2004, the
2 Commission approved the LCP Amendment (LCPA) with modifications necessary to bring
3 the LCPA into conformity with the Coastal Act.

4 The Headlands project included public parks and trails in the area known as the
5 Strand. The Strand is an expansive slope/bluff top area with a public parking lot and linear
6 view park. A residential development with multi-million dollar homes is being developed
7 on the slope/bluff face and a public beach lies at the toe of the bluff. Several public access
8 ways, three of which are owned by the City and two of which are at issue here, provide public
9 access though the development to the beach. The two access ways that are at issue here are
10 the Mid-Strand and Central Strand access ways.

11 The parks and trails officially opened to the public on January 7, 2010.

12 The Court took judicial notice of the following facts pursuant to Evidence Code
13 Section 452(h): On December 21, 2014, the sun rose at 6:55 a.m. and set at 4:48 p.m. and
14 twilight was from 6:27 a.m. to 5:16 p.m. On June 21, 2015, the sun rose at 5:42 a.m. and set
15 at 8:08 p.m. and twilight was from 5:13 a.m. to 8:37 p.m.

16 In addition to these facts, the Court finds as follows:

17 In 2008, the developer of the Dana Point Headlands asked the Defendant/Respondent
18 Commission (Commission) to eliminate the Mid-Strand access way due to geotechnical and
19 engineering difficulties. The Commission denied the request.

20 On May 11, 2009, the City enacted Ordinance No. 09-05 to address the new parks
21 and facilities including those at the Headlands. The staff report was void of any mention or
22 discussion of a nuisance condition or prospective nuisance condition at the Mid-Strand and
23 Central-Strand access ways. Pertinent to this case, Ordinance 09-05 merely amended the
24 existing Ordinance to set the hours of use for the new facilities. At the time Ordinance 09-
25 05 was passed, the gates in controversy had already been installed.

26 On October 7, 2009, the Commission staff and City staff meet at the development
27 site. During the site visit, Commission staff observed that gates had been installed at the
28 entry points to the Mid-Strand and Central Strand beach access ways and that signed had been

1 posted listing public hours from 8 a.m. to 5 p.m. October through April and from 8 a.m. to 7
2 p.m. May through September. The signs also directed users to other access ways for beach
3 access when the gates were closed. After the site visit, Commission staff followed up with
4 a letter to the City advising that the gates and restrictive hours of operation were contrary to
5 the LCPA and Coastal Act. Commission Staff further advised that an LCP amendment and
6 permit were required for the gates.

7 On November 5, 2009, the City responded that it disagreed with Commission staff
8 contending that it had not violated the LCPA or permit requirements. On November 20,
9 2009, the Commission sent a letter of violation to the City advising that the City could be
10 subject to enforcement proceedings.

11 On February 18, 2010, the parties met but were unable to resolve the matter. On
12 March 4, 2010, the Commission sent a letter requesting that the gates be removed and that
13 the signs be replaced by April 2, 2010. Subsequently, the Commission learned that the City
14 planned to adopt an urgency ordinance to declare the existence of a public nuisance condition
15 at the Strand. On March 22, 2010, the Commission sent the City a letter advising that
16 Commission staff had reviewed the staff report and supporting documentation regarding the
17 proposed urgency ordinance and found that the police reports the City relied on did not
18 provide adequate support for a claim of nuisance.

19 On March 22, 2010, the City Council met to enact Urgency Ordinance 10-05, the
20 Nuisance Abatement Ordinance. In the attendant staff report and at the City Council
21 meeting, staff informed the City Council members that Coastal Act 30005(b) gave the City
22 the ability to declare a public nuisance. Staff further informed the council members that the
23 purpose of the meeting was to "set a clear record of nuisance which is exempt from the
24 Coastal Act." (Exh. 6, pg. 3) On March 24, 2010, the Commission was advised that the
25 Urgency Ordinance had been passed on March 22, 2010.

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ISSUES

The following issues were submitted to the Court at trial:

1. Whether the City's enactment of the Nuisance Abatement Ordinance was a pretext for avoiding the requirements of its local coastal program.
2. Whether there was an actual nuisance.
3. If there was an actual nuisance, whether the development mandated by the Nuisance Abatement Ordinance exceeded the amount necessary to abate that nuisance.

LAW

Nuisance

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. *Civil Code section 3479.*

A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. *Civil Code section 3480.*

"The public nuisance doctrine is aimed at the protection and redress of community interests and, at least in theory, embodies a kind of collective ideal of civil life which the courts have vindicated by equitable remedies since the beginning of the 16th century." (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1103 [60 Cal.Rptr.2d 277, 929 P.2d 596].)

In determining whether something is a "public nuisance," the focus must be upon whether an entire neighborhood or community or at least a considerable number of persons are affected in the manner and by the factors that make the thing a nuisance under the Civil Code section defining nuisance; i.e., a private nuisance does not become a public nuisance merely because the public may be said to be affected in some tangential manner, rather than

1 specifically in the manner set forth in that Civil Code section. *Beck Development Co. v.*
2 *Southern Pacific Transportation Co.* (App. 3 Dist. 1996) 52 Cal.Rptr.2d 518, 44 Cal.App.4th
3 1160, 1213 review denied.

4 Although a Civil Code section sets forth the acts which constitute a nuisance in the
5 present tense, an affected party need not wait until actual injury occurs before bringing an
6 action to enjoin a nuisance, but where the demand for injunctive relief is based upon the
7 potential or possibility of future injury, at least some showing of the likelihood and
8 magnitude of such an event must be made. *Beck Development Co. v. Southern Pacific*
9 *Transportation Co.* (App. 3 Dist. 1996) 52 Cal.Rptr.2d 518, 44 Cal.App.4th 1160, 1213.
10 review denied.

11 "A mere possibility or fear of future injury from a structure, instrumentality, or
12 business which is not a nuisance per se is not ground for injunction, and equity will not
13 interfere where the apprehended injury is doubtful or speculative; reasonable probability, or
14 even reasonable certainty, of injury, or a showing that there will necessarily be a nuisance, is
15 required." *Beck Development Co. v. Southern Pacific Transportation Co.* (App. 3 Dist. 1996)
16 52 Cal.Rptr.2d 518, 44 Cal.App.4th 1160, 1213 citing (66 C.J.S., Nuisances, § 113, p.
17 879.) And the proof required cannot be speculative and must amount to more than the
18 conclusory opinions of experts. *Id at 1213 citing (Jardine v. City of Pasadena (1926) 199*
19 *Cal. 64, 75, 248 P. 225.)* Thus, while no one has the right to inflict unnecessary and extreme
20 danger to the life, property and happiness of others (*County of San Diego v. Carlstrom (1961)*
21 *196 Cal.App.2d 485, 491, 16 Cal.Rptr. 667*), to establish a nuisance the plaintiff must
22 demonstrate an actual and unnecessary hazard. *Beck Development Co. v. Southern Pacific*
23 *Transportation Co.* (App. 3 Dist. 1996) 52 Cal.Rptr.2d 518, 44 Cal.App.4th 1160, 1213
24 citing (*People v. Oliver (1948) 86 Cal.App.2d 885, 889-890, 195 P.2d 926.*)

25 A prospective nuisance may be enjoined, yet facts must be alleged to show the danger
26 is probable and imminent. *Helix Land Company, Inc. v. City of San Diego (1978) 82*
27 *CalApp3rd 932, 961 citing Nicholson v. Getchell, 96 Cal. 394, 396, 31 P. 265.* In *Baldocchi*
28 *v. Fifty Four Sutter Corp., 129 Cal.App. 383, 393, 18 P.2d 682, 687*, the court imposed this

1 prerequisite to injunctive relief against nuisance: "The injury, it is true, may be only slight,
2 but it must be real and ascertainable as distinguished from fanciful and imaginary." Here
3 there is a distinct lack of fact allegation from which it can be reasonably concluded that the
4 prospective nuisance (not committed by either of these defendants) is either probable or
5 imminent. *Helix Land Company, Inc. v. City of San Diego* (1978) 82 CalApp3rd 932, 961.

6 DISCUSSION

7 Plaintiff/Petitioner City of Dana Point failed to meet its burden of proof to show the
8 passage of the Nuisance Abatement Act was in response to a nuisance or prospective
9 nuisance in the area of the Mid-Strand gate and the Central Strand gate. As such, it was not
10 a legitimate exercise of its police powers under Coastal Commission Act 30008.5.

11 Assuming there was a nuisance or prospective nuisance, the City clearly exceeded the
12 amount of action necessary to simply abate the nuisance. The evidence in this case clearly
13 shows that the City's enactment of the Nuisance Abatement Ordinance was pretextual and
14 designed to avoid the requirements of the Coastal Act and the City's Local Coastal Program.

15 Plaintiff's evidence and arguments were specious. The City argued pursuant to the
16 LCP, it had the authority to set hours for the trails and pursuant to that authority, on May 11,
17 2009, the City Council acted on that authority and set the hours at 8 a.m. – 5 p.m. and 8 a.m.
18 – 7 p.m. in what was entitled an "Ordinance Amending Chapter 13-04 to Address New Parks
19 and Facilities in the City". Neither the staff report for Ordinance 09-05 nor any other
20 portions of the record indicated that the 09-05 Ordinance was in response to a nuisance or
21 prospective nuisance. There was no mention of nuisance whatsoever. Additionally, it is
22 noteworthy that the gates in question had already been installed at the time of the meeting.
23 The argument, however, that the gates were "specifically authorized" based on icons on the
24 drawings was not advanced until after the 90-05 ordinance was passed. In fact, there was no
25 mention of gates in the 09-05 Ordinance. The fact that the City would vigorously maintain
26 the position that it was "specifically authorized" to install the gates based on icons on the
27 drawings which is in contravention of the express language of the LCP which prohibits gates
28 undermines the City's credibility.

1 The follow-up Ordinance, entitled, "Nuisance Abatement Ordinance 10-05" was the
2 result of a hastily called meeting to address the Coastal Commissions' threat of litigation.
3 The timing of the Ordinance in such close proximity to the Coastal Commission's "threat of
4 litigation" coupled with the staff representation to the City Council that declaring a nuisance
5 would avert the costly litigation is revealing.

6 The staff report and commentary on which the City Council relied, indicated that the
7 meeting was called as a follow-up to the previous action in Ordinance 09-05 which set the
8 hours for the new amenities. Further, the meeting was to clarify that the City Council was
9 using its police powers in both Ordinance 09-05 and Ordinance 10-05 to abate a nuisance.
10 The staff report (Exh. 6, pg. 2) states, "Since the adoption of Ordinance 09-05, Police
11 Services, the City's Natural Resources Protection Officer, and Community Development
12 staff (which includes Code Enforcement) have reported an inordinate amount of enforcement
13 activities that have occurred, and that continue to occur at an alarming pace at the project
14 site. In the last 13 months there have been over 130 documented calls for police services at
15 Dana Strands. This call level far exceed the amount of calls to any other localized area of the
16 City, including areas that have traditionally received the heaviest levels of calls for service."
17 At the meeting, City staff emphasized these statements as facts and the Council was provided
18 with impassioned commentary as to the urgent necessity to abate a nuisance. The fact is,
19 however, there was no discussion regarding any specific facts to support the assertion that
20 there was an "inordinate amount of enforcement activity" in the area of the access ways in
21 questions. Moreover, the staff report did not contain any such supporting documentation.
22 The one document that was included in the staff report and displayed at the City Council
23 Meeting was the chart which showed that Dana Strands had 139 calls in the preceding 12
24 months - 80 more than the next closest number of calls in the City. The total numbers were
25 discussed and the witnesses testified that they relied on the chart, the numbers, and staff
26 recommendation in voting to enact the Nuisance Abatement Ordinance. As will be
27 discussed below, the failure of the City Council to look behind the total numbers to
28 determine if, in fact, a nuisance existed is further evidence that the Council's actions was a

1 pretext. And the after-the-fact testimony from the witnesses at trial that they *thought* there
2 was a nuisance situation or prospective nuisance situation when there clearly was no effort to
3 confirm the existence of a nuisance or prospective nuisance was not persuasive.

4 What was persuasive to the court was the fact that the chart in the staff report and
5 displayed at the City Council meeting (Exh. 6 pg. 121) and relied upon by the City Council
6 in making its decision, conveniently omitted the one park in the area that had hundreds of
7 calls within the same time frame, La Plaza Park. Interestingly, law enforcement admitted
8 leaving out this area as it would skew the results. And that it did. That same law
9 enforcement representative testified at the May 22, 2010 City Council meeting that the La
10 Plaza Park area had hundreds of calls and was one of the three areas he would deem a
11 nuisance. The City Council, however, never took any action to declare a nuisance in the La
12 Plaza Park area or in the other two areas the officer would deem a nuisance. Moreover, the
13 law enforcement representative admitted that despite the hundreds of calls related to La
14 Plaza Park, law enforcement and the community worked together to control the activity
15 rather than declare a nuisance.

16 In the instant case, the City Council, whether intentional or unintentional, failed to
17 look behind the numbers in the Dana Strand area or to compare that situation with the La
18 Plaza Park area opting instead to exercise its police powers and declare a nuisance in the
19 Mid-Strand and Central Strand access ways. There was simply no rational basis for the
20 Council's action.

21 There was mention in the staff report and at the Council meeting of the increase in
22 calls since the opening of the amenities in January 2010. Law enforcement was represented
23 to have facts to back up the statistics, however as mentioned previously, there was no
24 discussion of the nature and extent of the 139 calls in the Strand area. During the public
25 comment session, two of the three members of the public who offered testimony alleged
26 there was no police evidence to support the urgency measure. One of the speakers suggested
27 that only two of the calls were in the vicinity of the trails at issue. (Exh. 8 pg 21-22) The
28 allegations went unchallenged by the City. The response from City staff was to comment on

1 the Council's ability to "prohibit a nuisance" thus appearing to concede, as it also appeared
2 to do at trial, that there was no nuisance condition that existed at the time¹(Exh. 8 pg. 23).

3 At trial, none of the civilian witnesses who voted on the Ordinance provided any
4 evidence of a nuisance or prospective nuisance that was known to them at the time they
5 enacted the Nuisance Abatement Ordinance. Rather, the witnesses offered conclusory
6 comments regarding protecting the public safety and a belief that nuisance existed or would
7 exist if the gates were not installed and locked during the proscribed hours². Additionally,
8 no evidence was advanced to indicate that public safety concerns necessarily equates to a
9 nuisance or prospective nuisance. There was nothing more than speculation, conjecture and
10 fear mongering.

11 Without looking behind the total numbers, and with the knowledge that there were
12 other areas in the City with far more calls and police activity yet no declaration of nuisance,
13 the City relies on the increase in calls and increase in police activity as a basis for enacting
14 the Urgency Ordinance. The fact is, there is no evidence in the staff report, from the City
15 Council meeting, or the testimony of the witnesses that the calls were in the area of the Mid-
16 Strand and Central Strand trails. Additionally, an overwhelming number of the calls were
17 during the day when the gates were open. (Exh. 6 pg. 93 – 98) And, the calls were generally
18 for relatively minor offenses such as suspicious persons, vandalism, suspicious vehicles,
19 illegally parked cars, and trespassing. Similarly, the evening calls were for equally minor
20 activity including burglar alarms, suspicious persons, vandalism, trespass, traffic stops,
21 suspicious persons in vehicles and miscellaneous narcotics. Few, if any, of the calls were
22 even close to the vicinity of the Mid-Strand and Central Strand trails. A review of actual
23

24 ¹ Further evidence of staff's apparent concession that there was no known nuisance at the time was the insistence in
25 the City's closing argument that the court must find that pretext was the "sole" reason for the enactment of the Nuisance
26 Abatement Ordinance. Additionally, Counsel admitted that the City was "fed up" with the Commission and took
27 advantage of a provision where they did not have to work with the Commission. He further conceded that the urgency
28 aspect of the Ordinance was because of the threat of litigation by the Commission. Counsel also made similar comments
at the City Council meeting set to enact the Nuisance Abatement Ordinance. He informed the Council that the
Commission had threatened to sue and that enacting the ordinance would avoid unnecessary litigation. (Exh. 8, pg. 4
City Council meeting transcript)

² One witness testified that she may not have agreed with the hours chosen by the council but believed that they had
the right to set the hours.

1 police reports, presumably chosen by staff because they are the most egregious acts
2 necessitating the Nuisance Abatement Ordinance, reveals a vandalism on March 10, 2010 at
3 approximately 9:57 a.m. wherein four teens were observed "throwing rocks at the fence line
4 and breaking the decorative tops off the fence." (Exh. 6 pg. 32 -42); a resisting arrest and
5 trespassing into protected habitat some two months earlier on January 10, 2010 at 4:20 in the
6 afternoon related to veering off the trails at Cove and Green Lantern (Exh. 6 pg. 43-55); and
7 four months earlier, a trespass on August 28, 2009 at 6:45 a.m. wherein two individuals
8 climbed the fence to enter a construction zone and uprooted eight plants from a planter.
9 (Exh. 6 pg. 56- 64). The infrequency of the reports coupled with the remoteness in time and
10 the relatively minor offenses shows that there was no nuisance or prospective nuisance in the
11 reference area.

12 It should also be noted that, Mr. Greenwood, the law enforcement representative,
13 who participated in developing the staff report, testified at the City Council meeting as well
14 as at trial and was expected to provide the statistical and professional support for the
15 Urgency Action. In fact, however, he offered no specifics either in the report, at the City
16 Council meeting or at trial. At the City Council meeting as well as at trial, he emphatically
17 declared that the council must maintain the gates and the hour as to do the otherwise, in his
18 opinion, would result in "vandalisms, burglaries, thefts, trespassing. There will be teenage
19 drinking, teenage smoking, sex parties, sex, drugs, rock and roll." (Exh. 8, Transcript, pg.
20 11)

21 Mr. Greenwood was correct when he acknowledged at the City Council meeting that
22 he was "not a soothsayer." (Exh. 8, Transcript, pg. 12) Clearly, there was no basis in fact for
23 the predictions. The number of calls nor the summary of police reports supports the
24 conclusion that failure to maintain the gates and the restrictive hours would result in "sex,
25 drugs, rock and roll". It made for good theatre against the backdrop of threatened litigation
26 from the Coastal Commission. It was not, however, rooted in reality and there was no
27 showing of anything more than a mere possibility of fear of future injury. *See Beck at 1213.*
28 It was simply hyperbole to support a previous decision in Ordinance 09-05 to install gates

1 and set hours which was clearly not based on nuisance or the threat of nuisance. Neither
2 was the Urgency Ordinance. Clearly, then, the passage of the Urgency Ordinance was a
3 pretext and designed to avoid the requirements of the Coastal Act and the City's Local
4 Costal Program. As summarized by City staff at the Council meeting where the Urgency
5 Ordinance was enacted, "[r]ather than have to fight them [Commission] and deal with their
6 threat of litigation, staff concluded that the best thing to do, the most cost efficient thing to
7 do for the City is to go through a much more formalized process this evening so that we can
8 set forth a very clear record as to why we believe that there's a need to declare a public
9 nuisance at the location, to prohibit those nuisances and to abate those nuisances, and leave
10 no question as to that having been the previous action." (Exh. 8, pg. 4). The record,
11 however, is clearly devoid of any such evidence. What we have here is sheer speculation
12 amounting to nothing more than the conclusory opinions of staff and law enforcement
13 experts. *See, (Jardine v. City of Pasadena (1926) 199 Cal. 64, 75, 248 P. 225.)* Plaintiffs
14 failed to demonstrate an actual and unnecessary hazard and thus there was no nuisance
15 condition or prospective nuisance. *See, (People v. Oliver (1948) 86 Cal.App.2d 885, 889-
16 890, 195 P.2d 926.)* Accordingly, the Court finds the Urgency Ordinance was a pretext for
17 avoiding the City's obligations under the local coastal program.

18 In addition to the designated portions of the Administrative Record, the Court's
19 findings are also supported by the Court's observations of the manner and demeanor of the
20 witnesses while testifying. The Court finds that the Petitioner/Plaintiff failed to meet its
21 burden of proof and therefore finds in favor of Respondent/Defendant.

22 Respondent/Defendant is the prevailing party.

23 IT IS ORDERED, ADJUDGED, AND DECREED that:

- 24 1. Judgment shall issue in favor of Respondent/Defendant.
- 25 2. The Petitioner/Plaintiff's request for a peremptory writ of mandate to prohibit the
26 Commission from exercising jurisdiction of the development resulting from the
27 Urgency Ordinance is denied.

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Conclusion

This proposed statement of decision shall become the Court's statement of decision, unless within the time provided by law either party specifies additional controverted issues, or makes proposals which are not covered in the proposed statement of decision. Counsel for the Respondent/Defendant shall prepare the proposed order.

Dated: Sept. 17, 2015 Randa Trapp
RANDA TRAPP
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO


Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: City of Dana Point vs. California Coastal Commission

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2010-00099827-CU-MC-CTL

I certify that I am not a party to this cause. I certify that a true copy of the Statement of Decision was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 09/17/2015.

Clerk of the Court, by: , Deputy

SURFRIDER FOUNDATION
% ANGELA HOWE, ESQ.
P.O. BOX 6010
SAN CLEMENTE, CA 92674

PATRICK MUNOZ
RUTAN & TUCKER LLP
611 ANTON BLVD., 14TH FLR.
COSTA MESA, CA 92626-1931

JENNIFER K TEMPLE
4 PARK PLAZA, SUITE 1700
IRVINE, CA 92614-2559

GEORGE M SONEFF
MANATT, PHELPS & PHILIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA 90064-1614

JAMEE J PATTERSON
OFFICE OF THE ATTORNEY GENERAL STATE OF
CALIF
600 W BROADWAY SUITE 1800
SAN DIEGO, CA 92101

☐ Additional names and address attached.

CLERK'S CERTIFICATE OF SERVICE BY MAIL

Page: 1

CCC-16-CD-02
Exhibit 13
Page 15 of 15

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**Via Certified and Regular Mail**

November 3, 2015

A. Patrick Muñoz
City Attorney
City of Dana Point
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626

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

Headlands Reserve LLC
c/o Sanford Edward
24949 Del Prado
Dana Point, CA 92629

The Strand Homeowners Association
Attn.: Cary Treff
16775 Von Karman, Suite 100
Irvine, CA 92606

**Subject: Notification of Intent to Commence Cease and Desist Order
and Administrative Civil Penalties Proceedings**

Subject Properties: In the vicinity of Strand Vista Park, including South Strand Switchback Trail, Mid-Strand Beach Access, Central Strand Beach Access, and Strand Beach Park, Dana Point Headlands project, Dana Point, Orange County, also identified by Assessor's Parcel Nos. 672-092-03, 672-591-09, 672-641-44, 672-641-45, 672-651-24, 672-651-43¹, 672-651-44, and 672-651-46.

Unpermitted Development: Placement of gates and signs restricting public beach access, establishment and enforcement of "hours of operation" limiting public beach access.

¹ Property records indicate that this property was transferred to the County of Orange.

Dear Mr. Muñoz, Ms. Luna-Reynosa, Mr. Edward, and Ms. Treff:

Coastal Commission staff would like to work cooperatively with you to reach a resolution of the above-referenced unpermitted development undertaken in the vicinity of Strand Vista Park, including the erection and operation of gates at South Strand Switchback Trail, Mid-Strand Beach Access, Central Strand Beach Access, and Strand Beach Park, (hereinafter referred to collectively as the “Strand Access Areas”), which occurred on numerous separate properties, listed above, within the Dana Point Headlands project, Dana Point (hereinafter referred to collectively as the “subject properties”).

We are aware of the City’s plan to hold a hearing on a local coastal development permit to authorize public access restrictions at the subject properties. However, that action is not yet final, may not be final for some time if appeals are filed, appears to be inconsistent with the City of Dana Point Local Coastal Program, and in the interim while the action is pending, the unpermitted development remains. We are therefore initiating this process in hopes of instituting a framework for both an interim resolution of this matter and a long-term resolution that will apply regardless of the outcome of that specific action, as well as to address the fact that the unpermitted restrictions on access have been in place for more than six years already.

As we have stated in previous correspondence and other communications, we would like to work with you to resolve these issues amicably and remain willing and ready to discuss options that could involve agreeing to a consensual resolution to the Coastal Act violations on the properties at issue, such as through the issuance of a consent cease and desist order. In order to resolve the violations through formal enforcement actions, whether through a consent or regular order proceeding, the purpose of this letter is to provide you with formal notice of my intent, as the Executive Director of the California Coastal Commission (“Commission”) to commence proceedings for issuance of a cease and desist order to address unpermitted development at the site.

Background and Coastal Act Violations

The parks and accessways that are the subject of these proceedings were required by the Commission in conjunction with its certification of Dana Point Local Coastal Program Amendment No. 1-03, and specifically were related to this residential development. These public amenities were required as offsets necessary to mitigate impacts associated with allowing the developer, Headlands Reserve LLC, to prohibit public vehicular access into the proposed residential community (however, public pedestrian access was required). These public improvements were also part of a package of environmental and other public benefits the Commission found were necessary to offset impacts caused by the residential project and to justify a finding that the proposed project, which the Commission found to have adverse impacts on Environmentally Sensitive Habitat Areas, public access, visual resources, shoreline processes, and other resources, would, on balance, be most protective of significant coastal resources. Thus, it is with great anticipation that staff is looking forward to removing impediments to the public’s full use of the parks and accessways at issue, and of the beaches to which the accessways connect.

The unpermitted development at issue in this matter, as discussed more fully below, includes the installation of gates on the accessways, closure of the accessways through establishment and enforcement of hours of operation and locking of said gates by the City of Dana Point and Headlands Reserve LLC, and the installation of signs displaying the hours of closure (hereinafter referred to collectively as the “Access Restrictions”). Each of these actions constitutes “development” as that term is defined in the Dana Point Local Coastal Program (“LCP”). Unless otherwise exempt, development within the Coastal Zone (including the City’s Coastal Overlay district) requires a coastal development permit (“CDP”). The Access Restrictions are not exempt, and a CDP has not been issued to authorize the Access Restrictions. Therefore, the Access Restrictions are unpermitted and are violations of the Coastal Act and the LCP.

Both before and after the commencement of the litigation (discussed below) related to the City’s assertion that it closed the accessways to abate a nuisance, Commission staff made several attempts to work with City staff and Headlands Reserve LLC to identify alternative mechanisms for achieving the City’s stated intent of addressing public safety concerns, while also conforming to the resource protection policies of the LCP and Coastal Act. For instance, we have suggested that the City remove the gates and process a CDP for less restrictive hours of operation, as well as placement of gates across the interior streets, which would help secure the homes in the community without interfering with public access.

These attempts to reach a workable alternative to gating the accessways have not born fruit. Moreover, the Coastal Act violations remain unresolved and coastal access continues to be denied by the unpermitted development at issue. In order to move this matter toward a conclusion and effect a formal resolution of this matter, I am commencing cease and desist order proceedings. Prior to bringing an order to the Commission, be it a consent or contested order, our regulations provide for notification of the initiation of formal proceedings. In accordance with those regulations, this letter notifies you of my intent, as Executive Director of the Commission, to commence formal enforcement proceedings to address the Coastal Act violations at issue by issuing either a consent or regular cease and desist order. The intent of this letter is not to discourage settlement discussions; rather it is to provide formal notice of our intent to resolve these issues through the order process, which in no way precludes a consensual resolution. My staff remains ready and willing to continue working with you towards a mutually acceptable outcome. However, please note that should we be unable to reach a consensual resolution in a timely manner, this letter does lay the foundation for Commission staff to initiate a hearing before the Commission unilaterally, during which a proposed order, including an assessment of civil penalties, against the City, Headlands Reserve LLC, and The Strand Homeowners Association (“HOA”) would be presented for the Commission’s consideration and adoption.

Litigation History

On May 24, 2010, the City of Dana Point filed a petition for writ of mandate challenging the Commission’s action on Appeal No. A-5-DPT-10-082, in which the Commission found that the Access Restrictions are not exempt from permitting requirements pursuant to the Coastal Act’s nuisance abatement provision (Section 30005). On June 17, 2010, Surfrider Foundation filed a petition for writ of mandate challenging the City of Dana Point’s adoption of Urgency Ordinance 10-05, which purported to establish hours of operation for the South Strand Switchback Trail,

Strand Beach Park, and the Mid and Central Strand Beach Accessways. Although the Superior Court ruled that the Coastal Commission lacked the jurisdiction to adjudicate the propriety of the City's nuisance declaration, it also ruled, on the basis of its own review, that the nuisance declaration was, in fact, invalid. It held that "the record was entirely lacking in evidentiary support for declaring a nuisance and that the City acted arbitrarily and capriciously in making such a declaration." (June 1, 2011 "Order Granting Surfrider's Request for Declaratory Relief" at 6:13-14) Thus, the court ruled, the subject development is not exempt from Coastal Act permitting requirements. The court therefore concluded that to the extent the City continues to maintain the gates, hours of operation, and/or signage, "the matter would more appropriately be in the jurisdiction of the Commission for further action." (*id.* at 7:7-8) The City subsequently appealed the decision.

The Court of Appeal ruled 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 its nuisance abatement powers pursuant to section 30005(b). It held that that determination should be made pursuant to a slightly different standard than the one the trial court had invoked. The Court of Appeal ruled that if the trial court were to find that the newly-articulated standard was satisfied, the Commission would have jurisdiction over the development at issue.

After the appeals court remanded the case for a new analysis under this slightly revised standard, a second superior court judge found that the City "was not acting within the scope of section 30005, subdivision (b) of the Coastal Commission Act in adopting the Nuisance Abatement Ordinance...The court further finds that there was not, in fact, a nuisance or prospective nuisance at the time the Nuisance Abatement Ordinance was enacted." (September 17, 2015 "Statement of Decision" at 3:16-21). The litigation has therefore clearly confirmed the Commission's jurisdiction here.

Cease and Desist Order

As the Executive Director of the Commission, I am issuing this notice of intent to commence cease and desist order proceedings to require the City of Dana Point, Headlands Reserve LLC, and the HOA to: (1) remove all existing unpermitted physical development, including but not limited to gates in the Strand Access Areas and references to operational hours from signs in the Strand Access Areas; (2) rescind ordinances 09-05 and 10-05; (3) cease and desist from all attempts to limit or interfere with public use of the subject properties including, but not limited to, by placing signs, fences, and/or gates that give the impression that any accessway is closed to public use or otherwise enforcing restrictions on access until and unless authorized by a final, effective CDP²; (4) cease and desist from undertaking any further development or impeding access via unpermitted development taken on the subject properties until and unless authorized by a final, effective CDP or by other means consistent with the LCP and Coastal Act, including by refraining from enforcing any access restrictions that have not received the requisite

² A CDP issued by a local government for development located within an appeals area, as the Access Restrictions are, does not become final and effective unless the local CDP is not appealed, the Commission finds the appeal raises no substantial issue regarding the development's consistency with the LCP, or the Commission issues a CDP after de novo review.

authorization; and (5) take all steps necessary to ensure compliance with the LCP and Coastal Act.

The Commission's authority to issue cease and desist orders is set forth in PRC Section 30810(a), which states, in relevant part, the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of [the Coastal Act] which are subject to the jurisdiction of a certified program or plan, under any of the following circumstances... [¶] (3) The local government or port governing body is a party to the violation.

The activities that are the subject of these proceeding (i.e. the Access Restrictions) include the closure of beach accessways in the vicinity of the Strand Access Areas through establishment, via the adoption and enforcement of ordinances 09-05 and 10-05, and enforcement of hours of operation, including through the use of private security guards, for the Strand Vista Park, South Strand Switchback Trail, Mid-Strand Beach accessway, Central Strand Beach accessway, and Strand Beach Park; installation of signs to enforce those closures; and installation of gates across the Mid-Strand Beach accessway and Central Strand Beach accessway that are locked by the city of Dana Point and/or Headlands Reserve LLC to enforce the hours of operation. The City's and Headlands Reserve LLC's actions are in direct conflict with numerous LCP and Coastal Act resource protection policies, as described below.

The City of Dana Point Zoning Code, which constitutes the implementation policies of the City's LCP, Section 9.27.010, provides that a CDP, subject to the standards of the specific zoning designation, is required for all "development" within the CO District. "Development" is defined in Section 9.75.040 of the City's zoning code as:

Development, Coastal - the placement or erection, on land, in or under water, of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto, construction, reconstruction, demolition, or alteration of the size of any structure; including any facility of any private, public, or municipal utility; and the removal of harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provision of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (emphasis added)

Section 9.27.010 of the City's zoning code clearly states, in relevant part: "A Coastal Development Permit, subject to the standards of the specific zoning designation is required for all 'development', as defined in Section 9.75.040." The Access Restrictions are: 1) development as defined above, 2) located within the CO District; 3) not authorized by Master CDP No. 04-23 (or any other CDP); and 4) not exempt. With respect to that last point, as noted above, the litigation has established that the activities at issue were not exempt on the basis of any legitimate nuisance declaration pursuant to Section 30005 of the Coastal Act. Any non-exempt development activity (including the Access Restrictions) conducted in the CO District without a valid CDP constitutes a violation of the City's LCP.

In addition, although it is not a necessary criterion for the Commission's issuance of a cease and desist order, it is worth noting some of the potential conflicts between the substantive protections listed in the City's LCP and the Access Restrictions. For example, Section 9.27.030 of the City's zoning code states:

In addition to the development standards for the base zoning districts described in Chapters 9.09-9.25, the following standards apply to all applicable projects within the CO District.

(a) Coastal Access.

(1) The purpose of this section is to achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act; to implement the public access and recreation policies of Chapter 3 of the Coastal Act; and to implement the certified land use plan of the Local Coastal Program which is required by Section 30500(a) of the Coastal Act to include a specific public access component. In achieving these purposes, the provisions of this subsection shall be given the most liberal construction possible so that public access to the navigable waters shall always be provided and protected consistent with the goals, objectives and policies of the California Coastal Act and Article X, Section 4, of the California Constitution. (emphasis added)

The Access Restrictions limit and adversely impact, rather than maximize, public access to the coast and public recreational opportunities. As such, the Access Restrictions are not only in conflict with the substantive access protection provisions in the LCP, but also with those in Chapter 3 of the Coastal Act, which are relevant to the permitting process for development in this location pursuant to Coastal Act Section 30604(c), which requires that all development permitted for the area between the nearest public road and the sea must be in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. By limiting the public's access and recreational opportunities, the Access Restrictions are inconsistent with Sections 30210, 30212, 30220, 30221 and 30223 of the Coastal Act, and possibly others.

The unpermitted development at issue here is also inconsistent with numerous policies of the Land Use Element ("LUE") of the City's General Plan, and the Headlands Development and Conservation Plan ("HDGP"), both of which are part of the LCP. For example, LUE Policy 5.31 provides for maximum public access to and hours of use at parks and beaches at the Headlands Project site, to the extent feasible, and states that "limitations on time of use or increases in user fees or parking fees shall be subject to a coastal development permit" (emphasis added). Similarly, LUE Policy 5.35 prohibits the placement of "any barriers or structures designed to

regulate or restrict access” on any street within the Headlands “where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands” (emphasis added). In addition, HDCP Section 3.4.A.6 expressly prohibits gates or other development in Planning Areas 2 and 6 that restrict public pedestrian and bicycle access. Similarly, Section 4.4 of the HDCP specifies that trails within the Headlands will maximize public coastal access.

As described herein, the criteria of Section 30810(a) of the Coastal Act have been met, and I am sending this letter to initiate proceedings for the Commission to determine whether to issue a cease and desist order. Based on Section 30810(b) of the Coastal Act, the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate requirements for removal of the unpermitted development.

In accordance with Sections 13181(a) of the Commission’s Regulations, you have the opportunity to respond to the Commission staff’s allegations as set forth in this notice of intent to commence cease and desist order and proceedings by completing the enclosed Statement of Defense (“SOD”) form. The completed SOD form, including identification of issues and materials for Commission consideration, and documents and issues that you would like the Commission to consider, must be returned to the Commission’s Long Beach office, directed to the attention of Andrew Willis, no later than **November 24, 2015**.

However, should this matter be resolved via a consent order, an SOD form would not be necessary. In any case and in the interim, staff would welcome any information you wish to share regarding this matter and may extend the deadline for submittal of the SOD form to allow additional time to discuss terms of a consent order and to resolve this matter consensually. Commission staff currently intends to schedule hearings of the cease and desist order, and potentially administrative penalty proceeding, for an upcoming local Commission hearing.

Civil Liability

Under Section 30821 of the Coastal Act, in cases involving violations of the public access provisions of the Coastal Act, the Commission is authorized to impose administrative civil penalties. In this case, as described above, there are significant violations of the public access provisions of the Coastal Act; therefore the criterion of Section 30821 has been satisfied. The penalties imposed may be in an amount of up to \$11,250, for each violation, for each day the violation has persisted or is persisting, for up to five years. If a person fails to pay an administrative penalty imposed by the Commission, under Section 30821(e) the Commission may record a lien on that person’s property in the amount of the assessed penalty. This lien shall be in equal force, effect, and priority to a judgement lien.

Section 30821(h) states the following:

(h) Administrative penalties pursuant to subdivision (a) shall not be assessed if the property owner corrects the violation consistent with this division within 30 days of receiving written notification from the commission regarding the violation, and if the alleged violator can correct the violation without undertaking additional development that requires a permit under

this division. This 30-day timeframe for corrective action does not apply to previous violations of permit conditions incurred by a property owner.

As you know, we have communicated previously with the City and Headlands Reserve, LLC, about the unpermitted development described above, including in letters sent to the City and/or the City and Headlands Reserve LLC dated October 20, 2009, November 20, 2009, March 4, 2010, June 21, 2011, August 12, 2011, and August 19, 2011, and requested resolution consistent with the Coastal Act and LCP. Please consider this letter to reiterate those concerns, and to constitute notice of our intent to pursue remedies, including administrative penalties pursuant to Section 30821. In order to stop the further accrual of monetary penalties, the parties must (1) remove the gates and references to operational hours from signs in the Strand Access Areas (which we hope the parties would do by **November 18, 2015**, if not sooner), and (2) immediately cease and desist from all attempts to limit or interfere with public use of the subject properties including, but not limited to, by placing signs, fences, and/or gates that give the impression that any accessway is closed to public use or otherwise enforcing restrictions on access, including through the use of security guards.

Furthermore, please be advised that the Coastal Act also provides for alternative imposition (variously described as fines, penalties, and damages) by the courts for violations of the Coastal Act. Section 30820(a) provides for civil liability to be imposed on any person (defined, in Coastal Act Section 30111, to include local government) that performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission, when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists.

Once again, it is our hope that, with your cooperation, we may resolve these issues consensually.

Notice of Violation of the Coastal Act

Finally, I am authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812, to record a Notice of Violation against the subject properties.

Resolution

As my staff has communicated to you, we would like to work with you to resolve these issues consensually through the consent order process. As we have previously indicated, a consent order would provide you the opportunity to have more input into the process and timing of addressing the violations on the subject properties. If we do not come to agreement on an approach and present a consent order to the Commission, staff will also recommend that the Commission impose, as appropriate, an administrative penalty pursuant to Section 30821 of the Coastal Act. If these matters are resolved amicably through a consent order, any such resolution would include settlement of monetary claims associated with the City, Headland Reserve LLC,

and the HOA's civil liability. The consent order process could potentially allow the parties to negotiate a penalty amount with Commission staff in order to fully resolve the violations addressed in the consent order without further formal legal action.

Another benefit of the a consent order that the parties should consider is that in a consent order proceeding, Commission staff will be promoting the agreement between the parties, either collectively or individually, as circumstances warrant, and staff, rather than addressing the violations through a disputed hearing, which could only highlight the City, HOA, and developer's violations of the public access and recreation policies of the Coastal Act and the City's LCP.

If the City, Headlands Reserve LLC, or HOA is interested in negotiating a consent order, please contact Andrew Willis at (562) 590-5071 or send correspondence to his attention at the Commission's Long Beach office when you receive this letter to discuss options to resolve this case.

It is staff's goal to resolve the Coastal Act violations described herein consensually and as quickly as possible so that all parties can move forward. If you have any questions about this letter or the pending enforcement case, please do not hesitate to contact Andrew Willis as soon as possible. We appreciate your time and input and look forward to discussing this matter further and working together on a consensual resolution.

Sincerely,



CHARLES LESTER
Executive Director

cc: **Orange County Parks**
 Lisa Haage, Chief of Enforcement
 Sherilyn Sarb, Deputy Director
 Aaron McLendon, Deputy Chief of Enforcement
 Alex Helperin, Senior Staff Counsel
 Jamee Patterson, California Department of Justice
 Andrew Willis, Enforcement Supervisor

Enc. **Statement of Defense Forms for Cease and Desist Order and Administrative Penalty Proceedings**