

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4302
(562) 590-5071



W14c

CDP 5-19-1032 (ORANGE COUNTY DEPT. OF PUBLIC
WORKS)

JULY 8, 2020

EXHIBITS

Exhibit 1—Vicinity Map

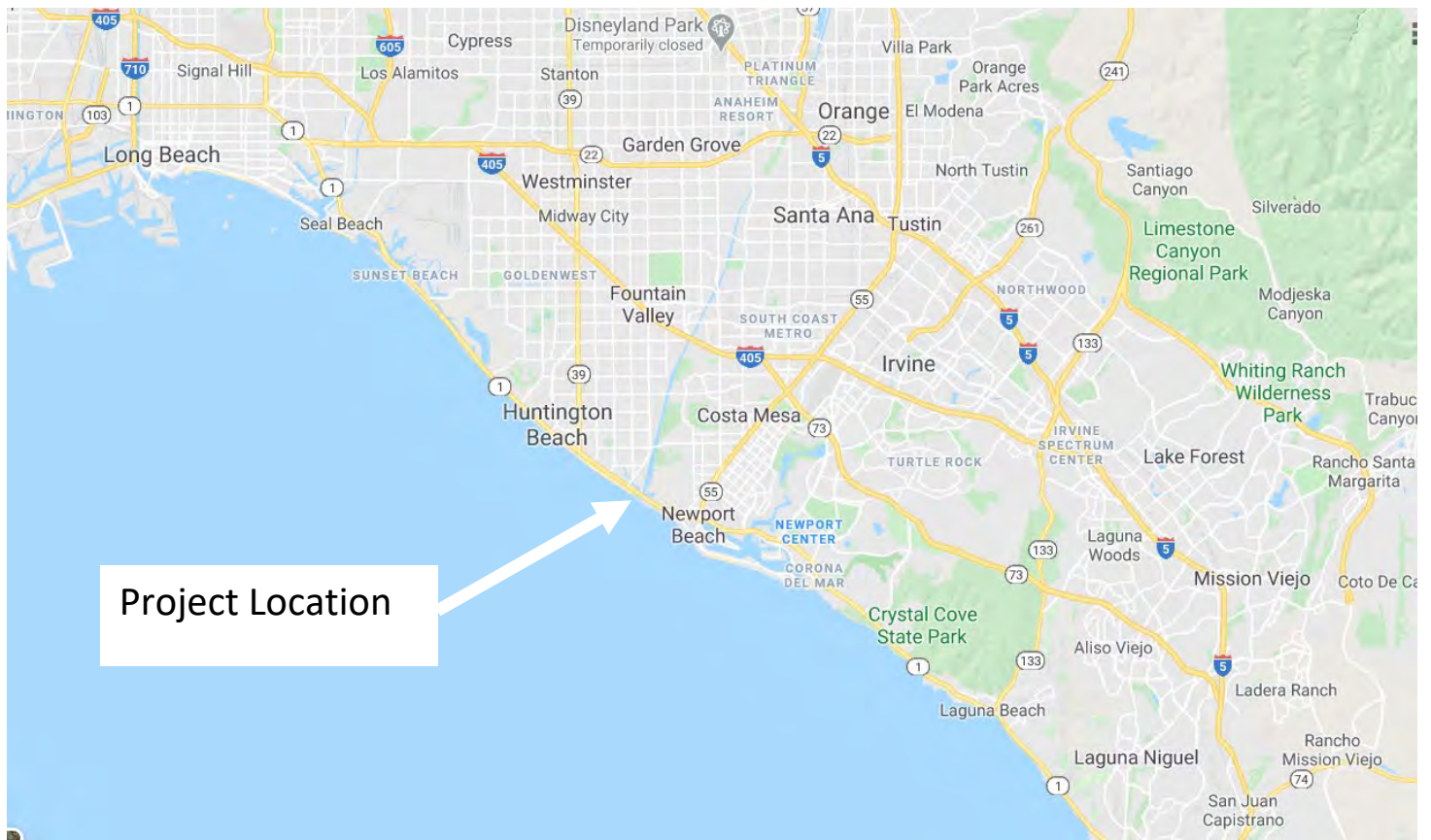
Exhibit 2—Proposed No Trespass and Educational Signage

Exhibit 3 – Jurisdictional Map

Exhibit 4 – Proposed Sign Locations

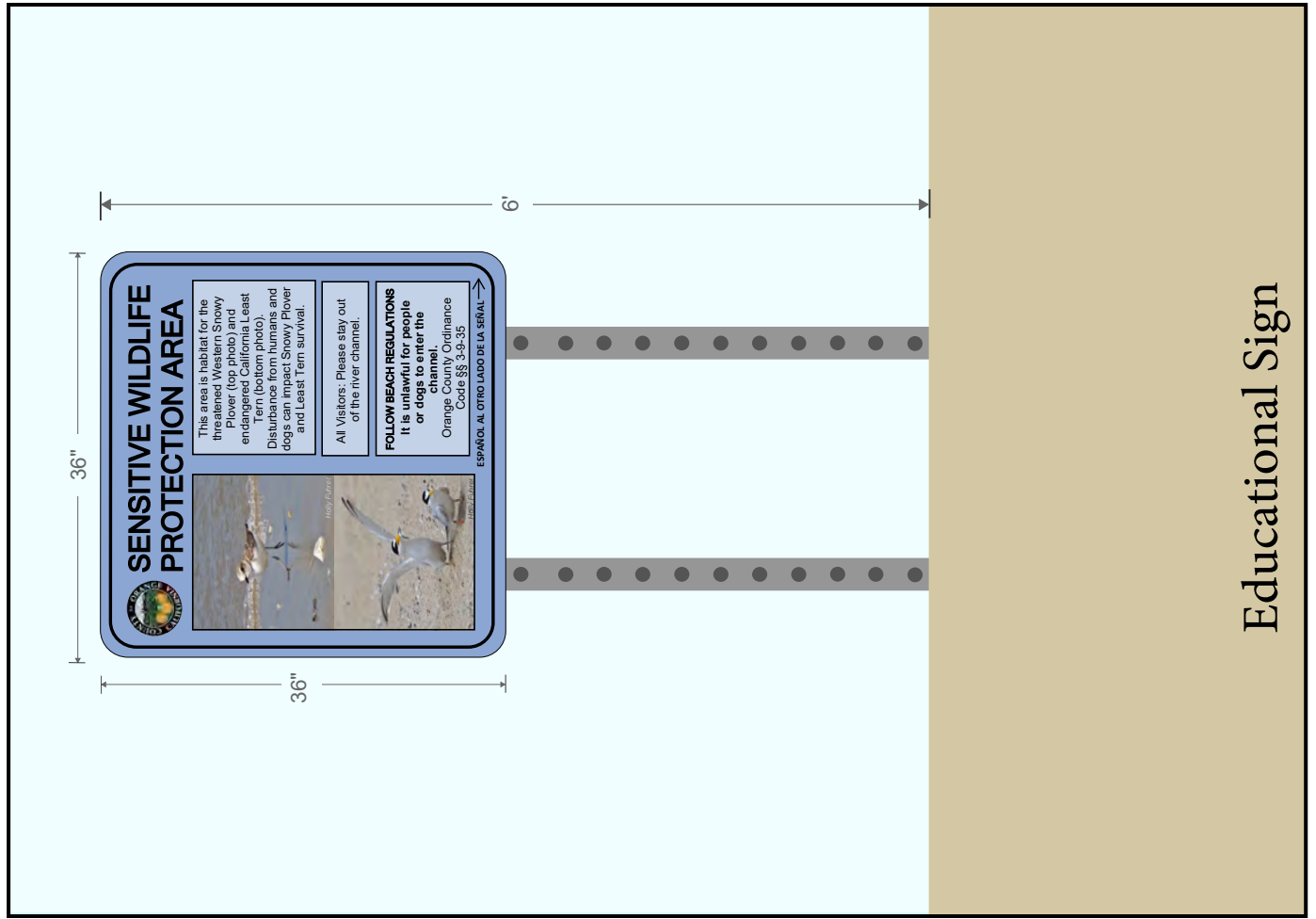
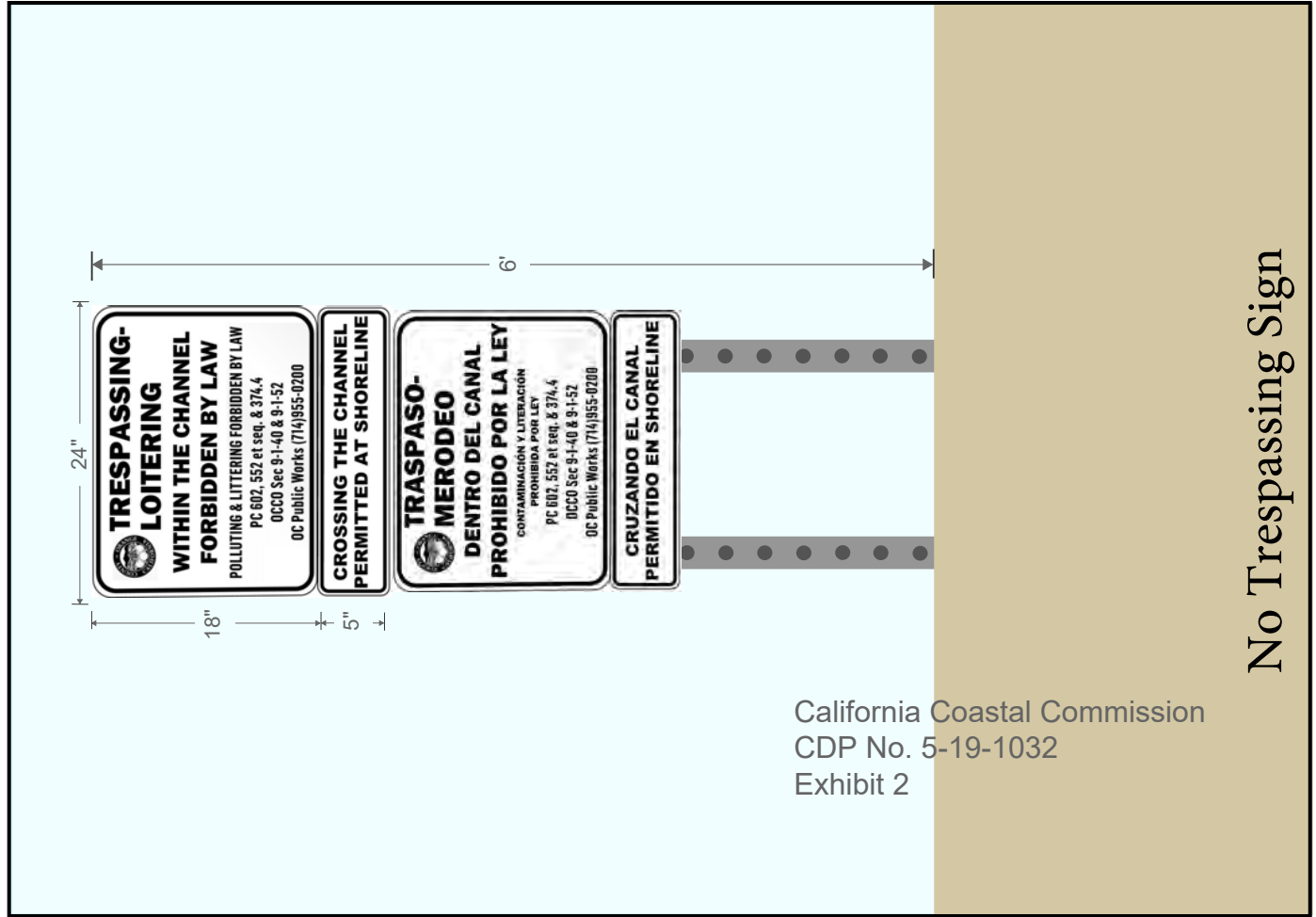
Exhibit 5—CCC Comment Letter re : Orange County's Proposal for Dog Beach

Exhibit 6 – Enforcement Letter to Orange County, June 12, 1019



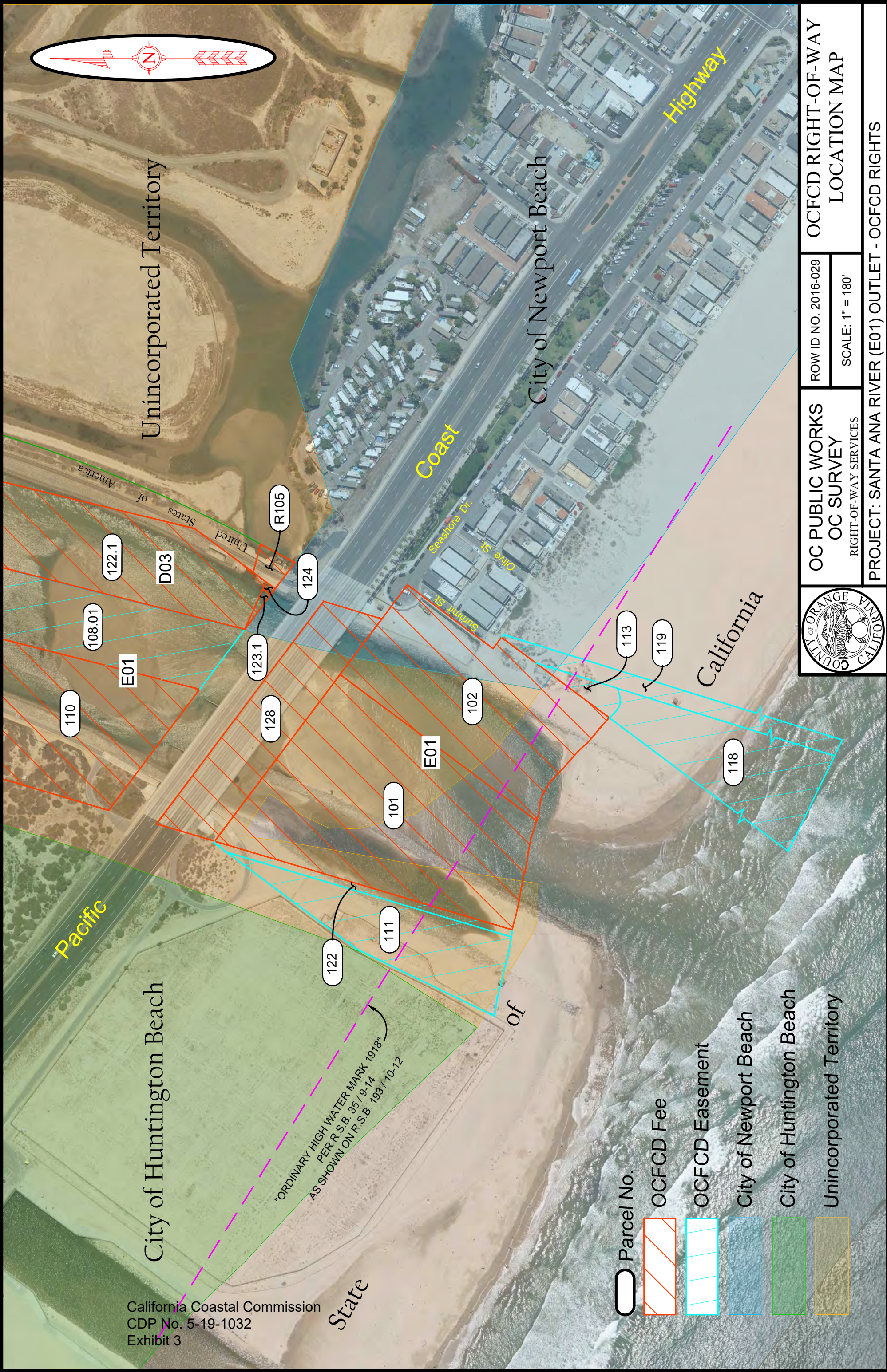
California Coastal Commission
CDP No. 5-19-1032
Exhibit 1

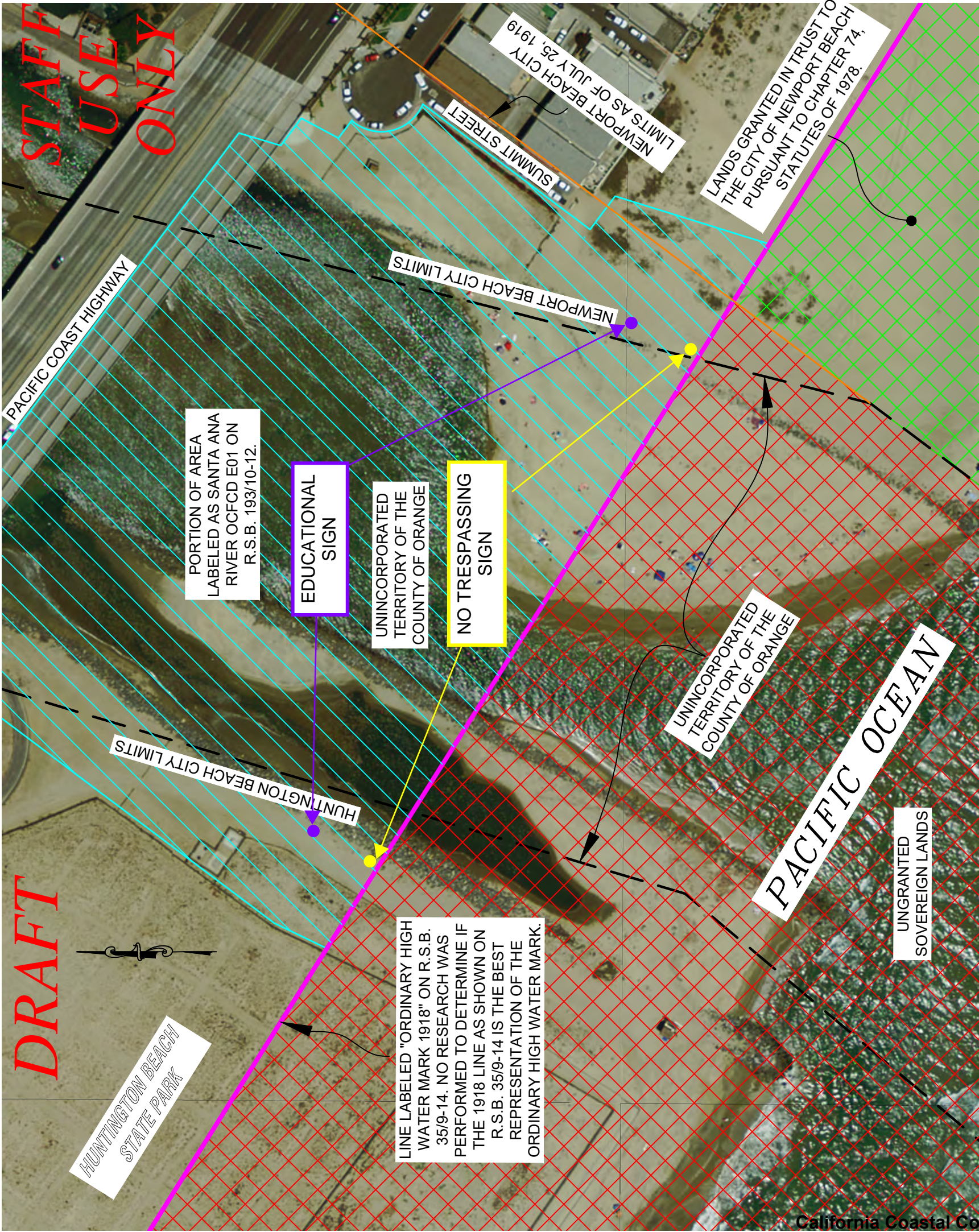
EXAMPLE SIGN DISPLAYS



No Trespassing Sign

Educational Sign





LEGEND

- LINE LABELED AS "ORDINARY HIGH WATER MARK 1918" ON R.S.B. 35/9-14.
- CITY LIMITS HUNTINGTON BEACH AND NEWPORT BEACH
- CITY LIMITS OF NEWPORT BEACH AS OF JULY 25, 1919.
- LANDS GRANTED IN TRUST TO THE CITY OF NEWPORT BEACH PURSUANT TO CHAPTER 74, STATUTES OF 1978. GRANT INCLUDES SOVEREIGN LANDS WITHIN THE CITY LIMITS OF NEWPORT BEACH AS OF JULY 25, 1919.
- UNGRANTED SOVEREIGN LANDS
- PORTION OF AREA LABELED AS SANTA ANA RIVER OCFCD E01 ON R.S.B. 193/10-12.

NOTES

- THIS PLAT IS BASED ON A CURSORY ANALYSIS AND SHOULD NOT BE RELIED ON AS A BOUNDARY DETERMINATION OF ANY PARTICULAR PROJECT LOCATION.
- THIS PRELIMINARY PLAT DOES NOT REPRESENT A THOROUGH ANALYSIS BASED ON A FIELD SURVEY OF ANY OF THE BOUNDARIES OR OTHER LINES SHOWN. IT ALSO DOES NOT CONSTITUTE A COMPLETE SEARCH OF ALL AVAILABLE RECORDS. IT IS TO BE USED AS AN APPROXIMATE GRAPHICAL REPRESENTATION OF RECORD LINES. A THOROUGH AND COMPLETED SURVEY MAY PLACE THESE LINES AND ASSOCIATED POINTS AT DIFFERENT LOCATIONS.
- THIS PLAT HAS NOT BEEN APPROVED BY THE STATE LANDS COMMISSION, AND DOES NOT CONSTITUTE AN OFFICIAL PLAT OF SUCH COMMISSION. NOR DOES IT ESTABLISH THE BOUNDARY LINES OR LIMITATIONS OF ANY STATE-OWNED LANDS DEPICTED HEREON. THIS PLAT CONSTITUTES A PRELIMINARY STAFF-USE-ONLY PLAT AND IS SUBJECT TO CHANGE.

COMPILATION PLAT
SANTA ANA RIVER AREA
ORANGE COUNTY



CALIFORNIA STATE
LANDS COMMISSION

AERIAL PHOTOGRAPHY
PER MAY/JUNE 2014 USGS HIGH
RESOLUTION ORTHOIMAGERY

DRAWING NAME: 11274_SantaAnaRiv_Exb.DWG		
DRAWN BY: J. PORTER, PLS 8266	FILE NO.: 1 1274	
CHECKED BY:	SCALE: 1"=100'	
DATE: 11/12/19		

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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(562) 590-5071



December 14, 2016

Chris Uzo-Diribe
Planner IV, OCPW
OC Planning
300 N. Flower Street, 1st Floor
Santa Ana, CA 92702-4048

**RE: County of Orange Dog Beach Santa Ana River, Comments on Negative Declaration
(IP# 16-234)**

Dear Ms. Uzo-Diribe:

Thank you for the opportunity to comment on the proposed dog park at the Santa Ana River mouth, which would impact biological and other coastal resources (e.g., water quality, public access, scenic resources) that exist at the site in the County of Orange. We appreciate that such uses can be significant to the community, however, we would like to work with the County to find a solution that would have fewer potential negative environmental impacts.

The Coastal Commission has the responsibility to carefully review any development in the coastal zone for compliance with the California Coastal Act of 1976¹. The proposed project (establish a dog park), situated within and adjacent to the Santa Ana River, is located entirely within the Coastal Commission's permitting jurisdiction in the coastal zone. Section 30600(a) of the Coastal Act requires that, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, shall obtain a coastal development permit. The proposed dog park constitutes "development" under the Coastal Act that requires a coastal development permit, as the creation, through the proposed ordinance, of an official dog park in an open space area intensifies the use of the area.

The proposed project is located in an unincorporated area of the county that is presently not part of any local government's certified Local Coastal Program (LCP). Therefore, in the absence of a certified LCP, the County must obtain a coastal development permit from the Coastal Commission prior to proceeding with the proposed project. The Coastal Commission's standard of review for the coastal development permit application would be the Chapter 3 policies of the Coastal Act. The coastal development permit process will ensure that the proposed project is undertaken in a manner consistent with the Chapter 3 policies of the Coastal Act. Therefore, the proposed Negative Declaration should address whether the proposed project is consistent with the Chapter 3 policies of the Coastal Act, specifically Section 30240 of the Coastal Act, which restricts development within Environmentally Sensitive Habitat Areas ("ESHA") to resource dependent uses and requires development adjacent to ESHA be sited and designed to avoid impacts to ESHA.

¹ The Coastal Act is found beginning at Section 30000 of the California Public Resources Code.

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Coastal Commission staff believes that the proposed project would impact the foraging and roosting habitats of the federally and state listed as endangered California Least Tern and federally listed as threatened Western Snowy Plover, as well as the breeding habitat of the Least Tern. In fact, the County's environmental review of the project has identified the project site as habitat for these protected species. Thus, the proposed project appears to be inconsistent with resource protection policies of the Coastal Act. As you probably know, one of the few successful breeding colonies of the Least Tern in Orange County is located on the north side of the Santa Ana River mouth, just up coast from the proposed dog park. The river mouth itself is important foraging habitat for the Least Tern, and the beach along this stretch of coast is foraging and roosting habitat for the Snowy Plover. Habitats for protected wildlife species are termed ESHA by the Coastal Act and are afforded special protection, as noted above.

In fact, the Commission formally determined in a 2006 enforcement action that the dunes on the south side of the Santa Ana River, which are situated in a location immediately adjacent to the proposed dog park, constitute ESHA, in part because they are a component of the Least Tern's local habitat, and required their restoration and preservation. Thus, there are significant questions about the consistency of the proposed dog park in this location with resource protection policies of the Coastal Act, including, but not necessarily limited to, Section 30240. Section 30240 restricts development in ESHA to resource dependent uses and requires that development adjacent to ESHA be compatible with the continuance of the adjacent ESHA and be sited and designed to prevent impacts that would significantly degrade the adjacent ESHA. The dog park is not a resource dependent use (i.e. it does not require the presence of the ESHA to function), and the dog park, where numerous leashed and unrestrained dogs would be present, and which is proposed to be located directly within the foraging areas of the Least Tern and Snowy Plover and adjacent to the breeding area of Least Tern, is not sited or designed to avoid impacts to ESHA.

The Commission will also apply Chapter 3 policies of the Coastal Act to address the proposed project's impacts to, among other things, public access and recreation, scenic resources, marine resources, and biological productivity and water quality of coastal waters. For instance, Section 30230 (Marine Resources) of the Coastal Act states:

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

Also, Section 30231 (Biological Productivity; Water Quality) states:

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

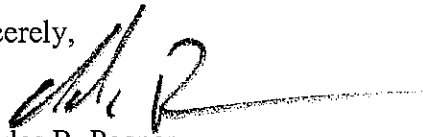
Orange County – Santa Ana River Dog Park
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Creation of an official dog park, and consequent introduction of numerous leashed and unrestrained dogs and the disturbance associated with such use, within an area that the environmental review process has identified as foraging habitat for protected species, which are key to the marine ecosystem, potentially eliminates or significantly degrades the functioning of the area to provide habitat for marine organisms, with attendant negative impacts to biological productivity. Furthermore, the potential for this activity to remove and degrade dune vegetation within and adjacent to the proposed project site, in addition to its impacts to sensitive habitats, may impede the biological productivity and water quality of the wetland at the Santa Ana River mouth through the reduction of the natural vegetation buffering this wetland.

Due to the apparent inconsistency of the proposed project with policies of the Coastal Act, Commission staff suggests that the proponents of the dog park work with County and Commission staff to investigate all possible options for locating such an amenity at a site where adverse impacts to protected wildlife species would be avoided. Commission staff believes additional environmental review is necessary for the proposed project and requests that such review consider alternative project designs and project locations that may reduce or avoid adverse impacts to biological resources. Each of the issues identified in this letter, as well as other environmental impacts identified in the Negative Declaration, should be analyzed in the context of potential alternative project designs and project locations. Could adverse impacts to biological resources be reduced or eliminated if the location of the project was changed?

In closing, we suggest that the County analyze additional alternatives to the proposed project, including alternatives that avoid impacts to ESHA, marine resources, and biological productivity and water quality of coastal waters. Alternative mitigation plans should also be proposed as part of the environmental review. Please note that the comments provided herein are preliminary in nature; more specific comments may be appropriate as the project develops. We hope that these comments are useful, and respectfully reserve the opportunity to comment more specifically at a later date. Commission staff requests notification of any future activity associated with this project or related projects. Please call me at (562) 590-5071 if you have any questions. Thank you for the opportunity to comment on the proposed project.

Sincerely,



Charles R. Posner
Supervisor of Planning

CALIFORNIA COASTAL COMMISSION

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Long Beach, CA 90802
(562) 590-5071

5-191032

**RECEIVED**
South Coast Region

SEP 16 2019

CALIFORNIA
COASTAL COMMISSION

June 12, 2019

Nardy Khan
Orange County Public Works
300 N. Flower Street
Santa Ana, CA 92703

RE: Habitat Protection at the Santa Ana River Mouth

Dear Ms. Khan:

Thank you for meeting with Commission staff at the Santa Ana River Mouth on April 26th, in part to discuss measures that the County can put in place to protect sensitive coastal habitats in the area from the negative effects of use by commercial dog-walking operations. Commission staff is concerned that commercial dog walking groups are releasing groups of unleashed dogs onto County property¹ at the mouth of the Santa Ana River and are also using County property to walk groups of dogs from the street to the beach and also onto sand dunes that line the beach. Commissioners have expressed similar concerns during 'public comment' portions of recent Commission meetings in response to input provided by interested members of the public.

We are trying to find ways to address this ongoing and significant issue and seek your assistance in addressing the Coastal Act issues involved here. At our meeting, you expressed a willingness to install signage at the site, which could help ensure that dog-walking in the area is managed or restricted to protect sensitive dune habitat and habitat for vulnerable bird species, including the Western Snowy Plover and the California Least Tern, which forage and, in the case of the tern, nest in the area. Appropriate signage could also help educate the public about the environmental concerns, since they may not be aware that the dogs can directly threatened species here. Commission staff strongly supports the County's installation of signage and taking necessary measures to curtail commercial dog-walking activities at the river mouth, and as explained below, there is incentive for the County to do so to reduce the County's exposure to liability for violations of the Coastal Act that are occurring on County property at the river mouth.

Significance of Habitat at River Mouth

Dog-walking activities are of great concern at the Santa Ana River Mouth because this is an area relied upon by the federally-listed as threatened Western Snowy Plover, as well as the federally and state-listed as endangered California Least Tern. Due to their statuses as sensitive species, both are protected under state and federal laws. Not only are these birds rare and protected, this area is one of the few supporting their existence,

¹ According to property records, as we read them to indicate, areas of the mouth of the Santa Ana River and beaches at the mouth and along the river are County property.

The mouth of the Santa Ana River is foraging habitat for the Least Tern, and the beach along this stretch of coast is foraging and roosting habitat for the Snowy Plover. Further, one of the few successful breeding colonies of the Least Tern in Orange County is located on the north side of the Santa Ana River Mouth. These birds nest on open beaches in shallow depressions in the sand or with pieces of shells, where they are, unfortunately, highly susceptible to disturbance by human and dog activity. Dogs, and the subsequent disturbances they cause, pose one of the biggest threats to the Least Tern.² While it is possible that some types of human activities can sometimes affect these small bird species, large groups of dogs have a much greater impact on them, and cause much more harm. These activities are of concern year round, since the Snowy Plover and Least Tern engage with the area in different capacities season to season. The health and survival of these sensitive bird species are very much in threat and therefore of paramount importance, which is why the ongoing activities of dog-walking companies in and around the Santa Ana River Mouth are of particular concern.

ESHA Policies

Habitats for protected wildlife species and other rare habitats that are easily disturbed are considered Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act and are therefore afforded special protection under the Coastal Act. Both dune habitats and habitats for endangered species have been determined to be ESHA. Specifically, here the Commission formally determined in a 2006 enforcement action that the dunes on the south side of the Santa Ana River constitute ESHA, in part because they are a component of the Least Tern's local habitat, and the Commission consequently required their restoration and preservation. By the same analysis, the river mouth and adjacent beach would also constitute ESHA because, as previously mentioned, the river mouth is important foraging habitat for the Least Tern, and the beach along this stretch of coast is foraging and roosting habitat for the Snowy Plover. The mere presence of dogs in these areas critically infringes on this protection, to a much greater extent than the presence of humans, in large part because it would be near impossible to prevent dogs from engaging in the instinctive behaviors (*e.g.* flushing birds) that disrupt the functioning of ESHA.

The consistent presence of packs of dogs in these areas negatively impacts the habitat of these sensitive bird species; thus, the commercial dog-walking activities occurring in this area are inconsistent with the resource protection policies of the Coastal Act, including, but not necessarily limited to, Section 30240. This section restricts development activities – as described below, the commercial dog-walking operations at the river mouth constitute development under the Coastal Act - in ESHA to resource dependent uses and requires that development activities adjacent to ESHA be compatible with the continuance of the adjacent ESHA and be sited and designed to prevent impacts that would significantly degrade the adjacent ESHA. The consistent presence of unleashed packs of dogs at this site is not a resource dependent use of the land (*i.e.* it does not require the presence of the ESHA to occur), and the activities are not sited or designed to avoid impacts to ESHA; therefore, they are inconsistent with Section 30240.

As a case in point that dog-walking activities in this location are inconsistent with resource protection policies, it was primarily due to the determination that a dog beach in this location would

² https://www.fws.gov/sacramento/es_species/Accounts/Birds/ca_least_tern/

have significant negative impacts on coastal resources, such as sensitive habitats and species, that the recent proposal before the County Board of Supervisors to develop a dog beach in the area surrounding the Santa Ana River Mouth was not approved by the County.

Coastal Act Violation

Commission staff has documented the release of packs of unleashed dogs into the mouth of the Santa Ana River by dog-walking companies, and has documented commercial operations walking packs of dogs on the beach and sand dunes that abut the river as well; these locations are on County property within the Coastal Zone. These commercial dog-walking operations within the habitat areas described herein constitute “development” under Section 30106 of the Coastal Act which states, in relevant part:

“Development” means, on land, in or under water, the...change in the density or intensity of use of land...[and] change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

The presence of a significant number of dogs at one time, particularly off leash, changes and increases the intensity of use of the beach, sand dunes, and river mouth, which are considered sensitive habitats, and therefore can constitute a violation of the Coastal Act. While an individual walking a single dog along this area may also disrupt the sensitive habitat, it is the scale of the activity undertaken as part of the commercial operations that amplifies the disruption to the point at which we consider the actions of the dog-walking companies to be “development” under the Coastal Act. Additionally, the consistent traversing of numbers of dogs at one time through the sand dunes has the potential to disrupt the integrity of dunes and cause the removal of dune vegetation over time, which could potentially result in a violation of the Coastal Act since the dune vegetation here constitutes major vegetation.

The development activities described above would require a coastal development permit to be legal under the Coastal Act. Commission staff has researched our permit files and concluded that no coastal development permits have been issued for these development activities. Any non-exempt development activities, which include the commercial dog-walking operations at issue, conducted in the Coastal Zone without a valid coastal development permit constitute a violation of the Coastal Act. It appears, given the analysis above of the Coastal Act sections regarding use and ESHA and the impacts of the actions, that staff could not recommend approval of a permit for this activity.

County’s Exposure to Liability

Although the purpose of this letter is to encourage the County to take steps to curb the negative habitat impacts resulting from commercial dog-walking operations at the Santa Ana River Mouth, we should also point out that there are legal provisions that apply as well. The potential for unpermitted activity resulting in impacts to ESHA on County property creates potential liability (under the Coastal Act at a minimum) for the County, as the property owner, even for actions it may not actually perform. Regardless of who performs unpermitted development, such as a change of use, landform alteration, or removal of major vegetation within a dune habitat, the persistence of the resulting change in use, topography, or vegetation coverage, etc., constitute continuing violations of

the Coastal Act and continuing public nuisances that a property owner is liable for correcting. The Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance. (Leslie Salt Co. v. San Francisco Bay Conservation etc. Com. (1984) 153 Cal. App.3d 605, 618; CEEED v. California Coastal Zone Conservation Com. (1974) 43 Cal.App.3d 306, 318.) In Leslie Salt (p. 622), the court held that:

“...liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner's active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question.”

Since property owners are responsible, along with the party that undertook unpermitted development, for unpermitted development that has occurred on their property, it is in the interest of property owners to consider measures to prevent and address such unpermitted development. For that reason, we urge the County to implement appropriate measures to help ensure impacts to habitat on County beaches are avoided and critical resources protected and, at the same time, reduce the County's potential exposure to liability for such damage. Again, we would be more than happy to work with you to discuss such measures.

Habitat Protection Measures

Various measures that the County can put in place to protect the habitat in the Santa Ana River Mouth area and help address the County's exposure to liability for Coastal Act violations are available, including installation of fencing or symbolic fencing around dune areas and wildlife habitat on County property, increased enforcement of dog-leash laws, and installation of signage, to name a few.

Regarding increased enforcement of dog-leash laws, according to the Orange County Code of Ordinances, dogs are strictly prohibited on public beaches in the County. Specifically, Section 4-1-46 states, in part:

No person having the charge of any dog, except a blind, deaf or disabled person with his or her guide dog, signal dog or service dog, or a person training a guide, signal or service dog, shall permit said dog to be under any circumstances within public school property, the county park known as Upper Newport Bay, any public beach, or any building owned or occupied by the County, including any space in buildings partially occupied by the County.


County properties at the Santa Ana River Mouth encompass beach areas that are open to the public, and thus it is our understanding that the county ordinance cited above prohibits dogs in this area, i.e. a public beach. Effective enforcement of this ordinance would no doubt eliminate the commercial dog-walking operations at the river mouth.

In addition, signs might assist with protection of the endangered birds and habitat. To this end, the County should install informational, educational, and regulatory signage at several access points near the river mouth to alert beach users to the existence of snowy plovers, least terns, and their habitats, and dune habitat, and to caution them against actions (e.g., touching or teasing wildlife,

taking dogs onto the beach) that might disturb these habitats. The Commission has found that adequate noticing of restricted areas is essential to protect environmentally sensitive habitats and to inform the public of appropriate use and access, and of the potential harm to wildlife and habitat. Such signs are typically beneficial in nature by also providing adequate notification prior to implementing enforcement actions and by discouraging uses incompatible with the environmentally sensitive habitat areas. These signs can be designed in numerous ways to enhance their educational and information impact, as well as aesthetic quality, and Commission staff is happy to share examples of signage that the Commission has approved for use in similar situations.

Again, we thank you for your cooperation in ensuring protection of the sensitive habitats at the mouth of the Santa Ana River. Our staff is happy to meet again to discuss in more detail options to protect these habitats. So that we may know with some certainty which direction the County is moving in to address this issue, please contact me by July 12, 2019 to discuss the County's plans for habitat protection measures. If you have any questions about this letter, please do not hesitate to call me at 562-590-5071.

Sincerely,



Andrew Willis
Enforcement Supervisor

cc: Grace Leung, City Manager, City of Newport Beach
Lisa Haage, Chief of Enforcement, CCC
Karl Schwing, Deputy Director, CCC