

CALIFORNIA COASTAL COMMISSION

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W14C

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-19-1032

Applicant: Orange County Public Works

Project Location: Santa Ana River Mouth – Huntington Beach and Newport Beach, Orange County

Project Description: Installation of educational and “no trespassing” signage along the up-coast and down-coast rock jetties near the mouth of the Santa Ana River to protect sensitive bird species.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project involves the installation of signage at the mouth of the Santa Ana River to protect the population of western snowy plovers federally-listed as threatened and California least terns federally and state-listed as endangered in this location. The Commission’s Enforcement staff sent a letter to the County of Orange on June 12, 2019, notifying them of potential Coastal Act violations and potential impacts to sensitive bird species related to commercial dog-walking activities taking place within the mouth of the river, which is considered development under Coastal Act section 30106, and is inconsistent with the resource protection policies of the Coastal Act, including but not limited to Section 30240. This use also violates multiple existing Orange County Ordinances banning people and dogs from inside of flood control channels due to safety issues, banning dogs from County beaches, and (to the extent it

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is conducted with the dogs off-leash, as it often is) requiring all dogs on County property to be leashed. Commission enforcement staff has also sent multiple Notice of Violation letters to commercial dog-walking operations that are active in the area that direct the operations to cease in order to avoid further impacts to sensitive bird species.

In response to communications with Commission staff, the County of Orange has proposed to install educational signage to assist with protection of the endangered birds and habitat, and to continue enforcement of existing “no-trespassing” and dog-leash laws to eliminate the commercial dog-walking operations and presence of humans and dogs in the river mouth. Additionally, the County has communicated to staff that Orange County Sheriff’s presence has been increased in the area to regularly enforce these laws on a more consistent basis and to issue citations as necessary.

Two of the four signs are proposed to be located within the City of Huntington Beach permitting jurisdiction and two of the four signs will be located within Newport Beach’s permitting jurisdiction pursuant to their certified Local Coastal Programs (LCPs), but the project proposal affects the flood control channel of Orange County. The proposal to formalize the existing prohibition of public access affects the area of the river mouth in between Huntington Beach and Newport Beach, which is uncertified and unincorporated Orange County and within the Commission’s retained jurisdiction. In order to avoid potential confusion, inconsistent conditions of approval, and a lengthy timeline due to dual application processes, Huntington Beach and Newport Beach support the consolidation of the permitting process. Therefore, the standard of review for the proposed project is Chapter 3 policies of the Coastal Act. The certified City of Huntington Beach and Newport Beach LCPs may be used as guidance.

The “no trespassing” and educational signs do not create new restrictions on public access to the surrounding public beach areas, but rather provide notice of the existing restriction on access to the flood control channel, while still notifying the public of their right to cross the channel along the wet sand at the shoreline (State Lands) within the Commission’s retained permit jurisdiction. As conditioned below, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

The Commission staff recommends **One Special Condition** to ensure that the project is carried out consistent with the coastal access, marine resource, and land resource protection policies of the Coastal Act. **Special Condition One** would require an annual activity report to be submitted by the applicant for the review and approval of the Executive Director, containing data regarding the number of visits by the sheriff and county staff, and the number of warnings and citations given, to assess the effectiveness of the proposed signs and the effectiveness of the enforcement measures.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-19-1032, as conditioned. The motion is on page 4.

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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

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-1032 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

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

II. STANDARD CONDITIONS

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

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

III. SPECIAL CONDITIONS

1. Activity Report

- A. WITHIN ONE YEAR OF COMMISSION APPROVAL on Coastal Development Permit No. 5-19-1032, the applicant shall submit the first annual Activity Report. By acceptance of this permit, the applicant agrees to provide annual enforcement reports. Each report shall include:
1. The number of visits by Orange County Sheriff deputies for the purpose of policing “no trespassing” regulations in the Santa Ana River;
 2. Number of warnings given;
 3. Number of citations given; and
 4. Any other information provided by the sheriff deputies in their incident reports regarding human and dog activity in the Santa Ana River, if applicable.
- B. Based on the reports, the Executive Director will issue a written determination as to the effectiveness of enforcement of existing no-trespassing laws and signage approved with this permit. If the Executive Director determines that the signage and enforcement permitted is not effective for the protection of the sensitive species, additional actions may be implemented in order to increase the success of the enforcement measures and/or the success of the proposed signage (for example, increased visits by the Sheriff or additional/enhanced signage, or other measures as proposed by the County). The County shall respond in writing to implement any necessary additional actions, or provide alternative additional actions that it will undertake to improve enforcement of no-trespassing laws at the Santa Ana River. The Executive Director will determine if an amendment to this permit is needed to undertake any additional implementing actions.
- C. The County shall inform the ED or the Commission’s Enforcement Division if they become aware of any disturbance or impact to the habitat areas and shall provide camera footage or imagery, if applicable.
- D. Nothing in this condition is intended to limit the authority or ability of the Executive Director to investigate compliance with the terms and conditions of

this CDP and take appropriate enforcement action as necessary. The Permittee shall provide, at the request of Executive Director, within 30 days of such a request, all evidence necessary to demonstrate compliance with the terms and conditions of this permit, including, but not necessarily limited to the information described in this condition.

IV. FINDINGS AND DECLARATIONS

A. Project Location and Description

Location and Site History

The project site is located within the mouth of the Santa Ana River, which is a tidal lagoon partially within the boundaries of the City of Huntington Beach to the north, and Newport Beach to the south, and is entirely within the County of Orange Flood Control District ([Exhibit 3](#)). The Santa Ana River Mouth (SARM) and adjacent Talbert Channel have three jetties put in place by the Army Corps of Engineers to stabilize the sand flow at the mouth of the Santa Ana River. Immediately north of the Santa Ana River mouth, flanked by Talbert Channel, is the fenced 13-acre Huntington State Beach Least Tern Natural Preserve. Immediately south of the project site is Santa Ana River Beach, the northernmost public beach in the city of Newport Beach.

The Santa Ana River mouth is relied upon by the federally and state-listed endangered California Least Tern, and the federally-listed threatened Western Snowy Plover. Due to their statuses as sensitive species, both are protected under state and federal laws. The Santa Ana River mouth is used as 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 and other rare habitats that are easily disturbed are considered Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act, and therefore are afforded special protection under the Coastal Act.

Public access to the sandy beach on the Newport Beach side is provided at the terminus of Summit Street, and at various street ends within the residential area seaward of Pacific Coast Highway. Public access to the beach on the Huntington side is available from Huntington State Beach or the Santa Ana River Trail. The sandy beach area along the northwest and southeast sides of the river mouth of the Santa Ana River and seaward of the Mean High Tide Line across the mouth of the river at the shoreline is open to the public.

Dogs are allowed on leash at Santa Ana River Beach in the City of Newport Beach, immediately downcoast of the Santa Ana River Mouth, before 10 am and after 4:30 pm. Dogs are also allowed in Huntington Dog Beach from 5 am to 10 pm along Huntington City Beach between Seapoint and Goldenwest Streets approximately 5 miles upcoast from the Santa Ana River Mouth.

The Santa Ana River is the largest river in Southern California, with a drainage basin of approximately 2,650 square miles. It originates in the San Bernardino Mountains, and flows through San Bernardino and Riverside Counties, through the Santa Ana Mountains, through Orange County, and drains into the Pacific Ocean, partially at the project location. In order to protect urban areas from the river's flood threat, major channelization and damming projects were constructed in the 20th century, resulting in the loss of much of the natural river channel. The lower portion of the Santa Ana River in this location, like many other locations along the Santa Ana River, is considered a flood control channel, and is within the control of the Orange County Flood Control District. Due to the high velocity of storm flows that could potentially carry a person downstream, Orange County has codified several ordinances banning the public from entering the flood control channel, which includes the mouth of the Santa Ana River, which, according to the County and the US Army Corps of Engineers, extends to the State Lands boundary ([Exhibit 3](#)).

In addition to the California law against trespassing and Orange County ordinances prohibiting the public from entering the Santa Ana River mouth, there are several County ordinances in place to protect water quality by prohibiting pollution in Orange County Flood Control District channels, which would include dog waste from being deposited in the River at this location.¹ Furthermore, there is a County ordinance that bans all dogs (leashed or unleashed) on unincorporated or fee title owned Orange County beaches altogether (as opposed to City and State beaches located within Orange County).²

Despite the long-standing County Ordinances prohibiting people and dogs from entering the flood control channel due to public safety and water quality protection, the public has been using the mouth of the Santa Ana River as an unofficial dog beach because the laws, for the most part, have not been enforced. Commission enforcement staff have documented use of the area by companies for off-leash dog walking as early as 2017, when they first became aware of this activity.

In an effort to loosen these restrictions to potentially allow unleashed dogs in the mouth of the river, in March of 2017, the Orange County Board of Supervisors unanimously voted to amend the law regarding the restraint of dogs on public property to allow the county to designate off-leash areas for dogs, which specifically applied to the unincorporated property at the Santa Ana River mouth. However, prior to the County having a second reading of the ordinance, numerous non-governmental organizations and public agencies, including Coastal Commission staff, objected to the adequacy of the County's environmental review of the project because a dog beach in this location would have significant impacts on coastal resources, such as sensitive habitats and protected bird species ([Exhibit 5](#)). As a result, the proposed dog park was not

¹ Orange County Ordinances 9-1-4- and 9-1-52

² Orange County Ordinance No. 2836, § 3, 5-6-75

approved by the County. Nevertheless, the public has continued to use the Santa Ana River mouth as an unpermitted dog park in violation of the Coastal Act and the other relevant laws and ordinances.

The applicant received a letter from Coastal Commission Enforcement Staff dated June 12, 2019, notifying the County of the potential Coastal Act violations and potential negative impacts to sensitive bird species related to the onset of commercial dog-walking activities taking place within the mouth of the river and on the sand dunes that abut the river since approximately 2017, which is considered development under Coastal Act section 30106, as an increase in the intensity of use of the river mouth, sand dunes, and surrounding beach ([Exhibit 6](#)). In addition, the consistent presence of dogs in these areas negatively impacts the habitat of sensitive bird species, which is inconsistent with Coastal Act section 30240. As a means of addressing the County's exposure to liability for Coastal Act violations, the Commission's enforcement staff provided various examples of measures the County could potentially put into place to protect the habitat in the Santa Ana River Mouth area, including the installation of symbolic fencing to protect sensitive wildlife, increased enforcement of dog-leash laws, and installation of educational and regulatory signage.

Project Description

The applicant proposes to install two "no trespassing" signs and two educational signs, one of each on either side of the river mouth along the up-coast and down-coast rock jetties near the mouth of the Santa Ana River outlet. The "no trespassing" signs that state "Trespassing-Loitering Within the Channel Forbidden by Law...Crossing the Channel Permitted at Shoreline" will be placed along the County-owned side of the mean high tide as shown on [Exhibit 4](#). The educational signage informing the public of the presence of Western Snowy Plovers and California Least Tern would be posted approximately 40 feet closer to Pacific Coast Highway within the territory of Orange County, at public access points adjacent to river mouth ([Exhibit 4](#)). The dimensions of the "no-trespassing" and educational signs will be 26 inches by 24 inches, and 36 inches by 36 inches, respectively, and the height of all signage will be approximately six feet high above grade. The languages of all four signs are proposed to be English and Spanish, which is the second most-commonly spoken language in Orange County. No concrete footings for the posts will be installed, and the amount of sand that will be disturbed for installation for each sign will be approximately 8 inches. According to the County, since August of 2019, the Orange County Sheriff's Department has been conducting educational enforcement at the river outlet approximately three times a week, specific days and times subject to change based on the officers' availability.

B. Standard of Review

Coastal Act Section 30601.3 provides the Commission with the authority to act upon a consolidated permit for proposed projects that require a coastal development permit from both a local government with a certified local coastal program (LCP) and the Commission. This authority is triggered if the applicant, local government, and

Executive Director (or Commission) consent to consolidate the permit. The standard of review for such permits is the Chapter 3 policies of the Coastal Act. As discussed, the northern portion of the Santa Ana River mouth in the project location is within the City of Huntington Beach, and the southern portion of the Santa Ana River mouth is within the City of Newport Beach, which both have a certified Local Coastal Program. The area largely in between the jetties is unincorporated territory of Orange County, which is not certified and the proposal is to control access to the area in the channel, which has previously been uncontrolled³. Furthermore, the proposal will formalize the prohibition of public access to the channel, which is within the Commission's retained jurisdiction. In order to avoid potential confusion, inconsistent conditions of approval, and a lengthy timeline due to dual application processes, Huntington Beach, Newport Beach and Orange County support the consolidation of the coastal development permit process in this instance. Therefore, the standard of review for the proposed project is Chapter 3 policies of the Coastal Act. The certified City of Huntington Beach and Newport Beach LCPs may be used as guidance.

C. Marine Resources and Environmentally Sensitive Habitat Area

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

³ The Coastal Act defines development as, in part- a "change in the intensity of use of water, or of access thereto."

Section 30240 states:

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

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

The existing habitats in the project vicinity include estuary, sandy beach, coastal strand transitioning into southern dunes, and dune habitat. As stated, the Santa Ana River mouth is immediately adjacent to the fenced 13-acre Huntington State Beach Least Tern Natural Preserve, and the beach on the upcoast side of the Santa Ana River mouth has been identified as critical habitat for the snowy plover by the United States Fish and Wildlife Service (USFWS), and requires special management consideration and protection. The mouth of the Santa Ana River provides foraging habitat for the federally and state-listed as endangered California Least Tern, and the beach along this stretch of coast is foraging and roosting habitat for pacific coast populations of the federally-listed as threatened western snowy plover. The project area is designated an environmentally sensitive habitat area (ESHA).

The California Least Tern and Western Snowy Plover both nest on open beaches in shallow depressions by scraping the sand with their belly and lining it with pieces of shells or other beach debris, where they are, unfortunately, highly susceptible to disturbance by human-related uses, such as human recreation, beach grooming, vehicle traffic, and domestic pets. Any activity causing a bird to move or fly contributes to increased use of energy, susceptibility to predation, and roost displacement. Of particular concern to the direct mortality of these birds in this location are off-leash dogs.⁴ Dogs in particular, and the subsequent disturbances they cause, pose one of the biggest threats to the Least Tern and Western Snowy Plover.⁵ Dogs may disturb the birds by their proximity, or by instinctively chasing or “flushing” the birds, disrupting the birds ability to rest and feed to build up the fat reserves needed for reproduction and survivorship.⁶ Dog activities are of concern year round, since the Snowy Plover and Least Tern engage with the area in different capacities from season to season.

⁴ http://homes.msi.ucsb.edu/~lafferty/Publications/Snowy%20Plovers_files/Laff.01.biolcons.pdf

⁵ https://www.fws.gov/sacramento/es_species/Accounts/Birds/ca_least_tern/

⁶ Ryan, Tom et al. *Western Snowy Plovers in Los Angeles County and Orange County, California: September 2014 to February 2017*, Final Report, 2017.

As described above, the proposed signage will serve to protect the Western Snowy Plover and Least Tern populations at the Santa Ana River mouth by notifying the members of the public of the presence of the birds, and reminding them that humans and dogs are prohibited from entering the flood control channel. While the “no trespassing” signage reference the County’s ordinances that prohibit access for the safety of the public, the signs will direct the public to the wet sandy portion of the beach below the jurisdictional line demarcating the boundary of the County’s property (owned in fee title by the Flood Control District) and the public beach (public State Tidelands). The educational signs will also notify beachgoers that sensitive birds may be present in the area. The messaging will be enforced by ongoing county sheriff’s presence to remind the public of the prohibition of people and dogs in the channel.

For the on-going protection of the sensitive species by adequately keeping humans and dogs out of the SARM, **Special Condition One** requires the applicant to submit an annual activity report that tracks the number of visits by the sheriff and county staff, number of warnings and citations given, and trends regarding dog visitation to evaluate if the project efforts are effective. If proven to not be effective, additional measures may be implemented, as conditioned.

The Commission finds that the proposed protection measures balance the management of sensitive resources with continued public access to the coast. The program is intended to notify the public that they are prohibited from entering the SARM within the County’s ownership, while maintaining continued use of, and access to, the surrounding stretches of beach for recreation.

For the reasons cited above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

D. Coastal Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30214 elaborates on access management considerations, providing, in relevant part, that:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

...

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area....

Section 30013 Environmental Justice:

The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.

Section 30107.3 Environmental Justice is defined as:

“Environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Coastal Act Section 30210 mandates that maximum public access and recreational opportunities be provided. Section 30214 allows for limits to public access depending on the fragility of natural resources in the area.

Section 30210 and 30214 policies of the Coastal Act require maximum public access consistent with resource protection. In this case, the Least Tern and Snowy Plover roosting and breeding areas have been identified as ESHA and require special management consideration and protection. Unlawful use of the area (i.e. humans and dogs entering into the flood control channel) has been determined to contribute to consistent human-induced disturbance to the terns and plovers which may ultimately impact reproduction and survivorship.

The access policies of the Coastal Act may be restricted in order to protect natural resource areas, such as habitat for threatened species. According to several state and County ordinances, no trespassing is allowed in the SARM, for public safety reasons. As stated by the County, the cross-sectional limit of the flood control channel in this location is the top of the hinge point between the adjacent beach and the rock revetment down to the river invert. Any sand, submerged or exposed, below the mean high tide is ungranted

sovereign state lands, to which the “no trespassing” laws would not apply. The new “no trespassing” and educational signage plan does not create new limitations on public access, but rather is intended to formalize the long-standing prohibition on the public’s right to access the flood control channel, while notifying the public of where they can access the State Lands portion of the beach.

As stated above, almost all of the beach surrounding the river mouth is open to the public. Beach visitors access the portion of the sandy beach surrounding the Least Tern Natural Preserve on the Huntington Beach side in several locations, including the Santa Ana River trail, the Huntington Beach Bike Trail, or from the adjacent Huntington State Beach. The closest parking area to access Huntington Beach is Huntington State Beach parking lot ([Exhibit 1](#)). Downcoast from the SARM, there are a number of pedestrian access points on the Newport Beach side that can be accessed at the terminus of Summit Street, and at various street ends within the residential area south of Pacific Coast Highway. Public parking is also available along Summit Street. None of these access points would be modified as a result of the proposed project. Therefore, the Commission finds that adequate access to the beach is maintained in the area.

The proposed project would include the installation of “no trespassing” and educational signage. “No trespassing” signs would allow the sheriff’s department to enforce the restricted area and issue citations when necessary. Additionally, educational signage informing the public of the presence of Least Terns and Snowy Plovers would be posted at two access points adjacent to the SARM. The Commission finds that adequate noticing of the restricted areas is essential to protect environmentally sensitive resources and to inform the public of appropriate use and access. Such signage is typically beneficial in providing notification prior to implementing enforcement actions, and by discouraging uses incompatible with the environmentally sensitive habitat areas.

The Environmental Justice policies of the Coastal Act require fair treatment of people of all races, cultures, and incomes with respect to implementation and enforcement of environmental regulations. Language presents a barrier for many individuals from underserved communities who have limited English language proficiency. Many communities face language isolation in the Orange County area. Recognizing that removing language barriers is critical to achieving equitable access to available public services, programs, and resources, the County has proposed to include the language of the signs in Spanish, which is the second most commonly spoken language in Orange County.

As proposed, the Commission finds the new “no trespassing” and educational signage plan does not create new limitations on public access, but rather is intended to formalize the long-standing prohibition on the public’s right to access the flood control channel, while notifying the public of where they can access the State Lands portion of the beach. Such enforcement measures will provide for greater protection of the environmentally sensitive habitat while allowing continued access for appropriate uses. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the public access policies of the Coastal Act.

E. Coastal Act Violations

Violations of the Coastal Act have occurred within the flood control channel at the Santa Ana River Mouth, consisting of the unpermitted change in intensity of use of the channel effected by the introduction of a significant number of dogs at one time, which occurs as the result of commercial dog-walking in the area documented as early as 2017, when we first became aware of this activity. While an individual walking a single dog in the channel may disrupt wildlife habitat, it is the scale of the commercial dog-walking business operations that amplifies the disruption to the point at which the activity clearly constitutes development under the Coastal Act, for which no coastal development permit has been issued.

Since a property owner is responsible, along with the parties that undertake an unpermitted development activity, for violations that have occurred on the owner's property, it is in the interest of the property owner to consider measures to prevent and address such unpermitted development activities. In this instance, the County is proposing educational and regulatory signage – said regulations are enforced by the Orange County Sheriff – to help prevent the unpermitted change in intensity of use and associated disruption of wildlife habitat described herein.

A condition of approval of this application requires the County to monitor and report on the effectiveness of the sheriff's enforcement of no-trespassing laws with the intent of curtailing habitat disruption resulting from the presence of dogs in the channel, and to coordinate an effective response with the Commission if Commission staff determines based upon the monitoring reports that increased measures are necessary to curtail the unauthorized use or otherwise protect habitat in the channel.

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

F. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

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As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental impacts have been required as a special condition. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, complies with the applicable requirements of the Coastal Act to conform to CEQA.