

**CALIFORNIA COASTAL COMMISSION**

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**W12b**

**LCP-5-DPT-25-0008-1 (City of Dana Point)**

**May 5, 2025**

**CORRESPONDENCE**

May 2, 2025

California Coastal Commission  
455 Market Street Suite 300  
San Francisco, CA 94105

**Re: City of Dana Point LCP Amendment No. LCP-5-0008-1 (Minor)  
Strand Transit System Language Update**

Dear Chair Cummings and Commissioners:

Thank you for the opportunity to comment on this item.

I respectfully request that Commissioners consider a closer analysis of what is being labeled a minor amendment, given the decades of amendments that have only served to promote misguided management of this very special area along our California coastline.

The following, brief overview of why nothing related to this area should be considered minor is presented for your review and consideration.

• **Decades of LCP amendments**

News of developing this beautiful, undisturbed area originally owned by the Chandler Family (LA Times) began around 1998. Here's a brief backgrounder by the Sierra Club on the Strands Beach and Headlands development through 2010 [Headlands Background](#). However, the saga has continued since then, and not in a good way as it relates to protection and preservation of coastal resources/endangered species, and appropriate public access.

This is just one excerpt from the 2003 LCPA describing the funicular proposal that is the focus of this LCPA 22 years later, but there are many amendments available for your reference.

*In addition, the City and landowner have offered to provide an inclined elevator (e.g. funicular) from the bluff top to the beach, in-lieu of allowing public vehicular access through the residential development to be located in the Strand.*

These amendments have consumed innumerable hours of staff time over the years only to become points of continued debate and argument once approved.

- **Past enforcement action has been necessary to provide public access**

April 15, 2016 - Recommendations and Findings for Issuance of Settlement Agreement and Settlement Cease and Desist Order. Over the years since CCC approval of this development the City has cited “public nuisance” conditions to restrict public use of certain access points. This issue has been the subject of extended legal battles.

**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.

Photo excerpt of North Strand Access and Funicular Station included in the 268-page enforcement staff report (Settlement Agreement/Cease and Desist Order) that is attached for your reference.

North Strand Access and Funicular Station



CCC-16-CD-02  
Exhibit 4  
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- **Enforcement action to protect endangered species at the Headlands remains unresolved**

December 14, 2023 – following is an excerpt from a letter from Andrew Willis, CCC Enforcement Staff Counsel, to City of Dana Point regarding trail hours in the Dana Point Preserve and related impacts to endangered species.

If the City will not allow hours to be established that are consistent with the Local Coastal Program through the HMMP process, we suggest that the City process an application for CNLM's proposed hours through the CDP process. We would appreciate it if you would indicate the City's agreement to engage in the HMMP process or accept a CDP application within 15 days of the receipt of this letter so that Commission staff can consider its options to ensure trail hours that are protective of an endangered species, and consistent with the Local Coastal Program, are established in a timely manner. Thank you very much for your time and attention and I look forward to hearing from you.

To date, the City has not complied with Mr. Willis' request that "within 15 days of the receipt of this letter" the City agree to engage in the proper processes to resolve their ongoing violation. Complete letter attached for your reference.

Instead of compliance with Enforcement's request, the City has engaged in ongoing legal battles with Center for Natural Lands Management (CNLM) to stall the entire CDP process and allow for further impacts to the endangered species that CNLM is attempting to protect. Mr. Willis addresses this in his 2023 letter.

It remains unclear as to how the City defines "public nuisance" as it relates to public access. Is public access a nuisance when it relates to an area through a wealthy neighborhood, but not when it relates to a trail that is impacting and killing endangered species? This continues to be an unanswered question as the City once again requests that the CCC amend the City's LCP to accommodate another public access change.

Also attached is the CNLM March 14, 2023, Plan for Public Access in the Dana Point Preserve.

#### • **Suggested conditions**

With the decades of challenges CCC staff has had attempting to achieve compliance from the City of Dana Point, I respectfully request that conditions be placed on this "minor" amendment in an attempt to actually achieve compliance from the City.

The funicular was opposed by most from the beginning for the majority of reasons that the City is now stating. The unreliability aspect was what most of us expected, but the key here is what exactly is going to replace this system and how long will the public have to wait for the so-called replacement system given the City's track record on public access. Nothing is made clear in this staff report as to what the actual conditions are for this amendment, and there are no guidelines.

With this in mind, please consider the following conditions:

- Set a specific deadline not to exceed six (6) months for the City to provide "options to replace the unreliable funicular system" so that this does not languish into obscurity.
- Set a specific deadline for submittal and guidelines for the proposed CDP that would be heard directly by the Coastal Commission in an effort to avoid the lengthy and often problematic appeal process following a local hearing.
- It appears that very little has been conveyed by the City to staff or the public about the specifics of this language change. From rumor only it is understood that the City is considering some type of street transportation to totally replace the funicular. If this is the scenario, please consider:

- The exact route of this new street transportation given that public vehicular traffic is not allowed through the residential development.
- If this is street transportation it should be separate from the City's existing transit system. This should be an exclusive service to this beach as was the funicular.
- Easy to locate signage for the transportation pick up and drop off locations.
- Marketing and advertising of new transportation to the public.
- Any type of street transportation should be all electrical vehicles.

Thank you for considering these comments and suggestions, and please do keep in mind that there is an outstanding enforcement issue at the Dana Point Headlands Preserve that is also deserving of your attention.

Respectfully submitted,



Penny Elia

Attachments: April 15, 2016 Staff Report – Settlement Cease and Desist Order  
December 14, 2023 – CCC Letter to City from Andrew Willis  
March 14, 2023 – CNLM Plan for Public Access in  
Dana Point Preserve

Copy: Karl Schwing, CCC District Director  
Lisa Haage, CCC Chief of Enforcement  
Andrew Willis, CCC Enforcement Manager

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# 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.<sup>1</sup> 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 Permit<sup>2</sup> (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

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

<sup>2</sup> 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 ordinances<sup>3</sup> 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 25<sup>th</sup> 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.<sup>4</sup> 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

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<sup>3</sup> Nos. 9-05 and 10-05 (**Exhibit 4**, 10-05 only).

<sup>4</sup> In 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 AGREEMENT<sup>5</sup>**

##### **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**).

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<sup>5</sup> 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-1-03<sup>6</sup>. 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*

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<sup>6</sup> 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 20<sup>th</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 170 ("*Dana Point*"), while holding the appeal of the second case in abeyance. The *Dana Point* decision held that the City's legislative action in adopting the Nuisance Abatement Ordinance was not a claim of exemption over which the Commission had appellate jurisdiction, while simultaneously holding that the trial court erred in restricting the Commission from exercising jurisdiction over the development mandated by the Ordinance without first determining whether the City was acting properly within the scope of the nuisance abatement powers reserved to it under Coastal Act Section 30005(b) and noting that there are other provisions in the Coastal Act, which include enforcement, that the Commission could utilize in the event the trial court concludes on remand that section 30005(b) does not preclude the Commission from exercising jurisdiction. Accordingly, it remanded the case to the Superior Court to further determine whether the City properly and in good faith exercised its nuisance abatement powers in adopting the ordinance.

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

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

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

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

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

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

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

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

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

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

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

## **2.0 NATURE OF THE ISSUES**

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

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

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

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

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

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

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

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

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

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

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

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

#### **4.0 DEFINITIONS**

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

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

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

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

## **5.0 NATURE OF SETTLEMENT AGREEMENT**

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

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

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

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

6.2 In connection with Appeal No. A-5-DPT-15-0067<sup>1</sup>, 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

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<sup>1</sup> 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.<sup>2</sup>

## **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

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<sup>2</sup> 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 Agreement<sup>3</sup> 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-

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<sup>3</sup> 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](http://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**

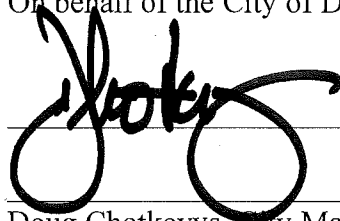
The City and its representatives attest that they have reviewed the terms of this Settlement Agreement and understand that their consent is final and stipulate to its approval by the Commission.

**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



TRAIL LOOP CONNECTION

PUBLIC VIEW OVERLOOK PLATFORM

TRAIL CONNECTION TO SELVA

Route tbd

EXHIBIT 1  
PROPOSED TRAIL IMPROVEMENTS  
SETTLEMENT AGREEMENT  
Exhibit 1

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CGC 16-CD-02



**The Strand at the Headlands**

**Vicinity Map**



County  
Accessway

Walkway at Strand Vista Park

Mid-Strand Beach Access

Central Strand Beach Access

Switchback Trail

Walkway at Strand Beach Park

Strand Access Areas

**CITY OF DANA POINT  
AGENDA REPORT**

Reviewed By:	
DH	<input checked="" type="checkbox"/>
CM	<input checked="" type="checkbox"/>
CA	<input checked="" type="checkbox"/>

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**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**

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**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 5<sup>th</sup> 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 2<sup>nd</sup>, 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 2<sup>nd</sup>, 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 7<sup>th</sup>, 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 7<sup>th</sup> and March 8<sup>th</sup>. 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 1<sup>st</sup>, through September 30<sup>th</sup> 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 2<sup>nd</sup> (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 2<sup>nd</sup>.

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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 2<sup>nd</sup>, 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 2<sup>nd</sup>.

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 1<sup>st</sup> through September 30<sup>th</sup>, 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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Page 2

**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

Ordinance No. 09-05  
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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Page 4

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 11<sup>th</sup> 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 13<sup>th</sup> day of April, 2009, and passed and adopted at a regular meeting held 11<sup>th</sup> 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

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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 7<sup>th</sup> day of May, 2009, and the 21<sup>st</sup> day of May, 2009, and, in further compliance with City Resolution No. 91-10-08-1, on the 30<sup>th</sup> day of April, 2009, and the 14<sup>th</sup> 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 18<sup>th</sup>, 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 18<sup>th</sup> meeting, we are optimistic that we can reach such a resolution.

At our February 18<sup>th</sup> 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

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March 4, 2010  
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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 18<sup>th</sup> 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

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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 Vecsart, Enforcement Supervisor, CCC**  
**Christopher Pederson, Deputy Chief Counsel, CCC**

**SUPPORTING DOCUMENT D**

1. Copies To: Dana Point

**COPY ORIGINAL**

2. Case No. 10-038724

2a. Citation No.

Priority:  Yes  No

SANDRA HUTCHENS, SHERIFF-CORONER

SHERIFF'S DEPARTMENT  
**JSB** ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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. VICTIM NAME [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 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	[REDACTED]
(1)	[REDACTED]	B	[REDACTED]
(2)	[REDACTED]	R	[REDACTED]
		B	[REDACTED]
(3)		R	
		B	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1)	[REDACTED]	2560658	
(2)	[REDACTED]	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 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	34. DATE OF REPORT
		M. Northart #613	3/3/10
		35. APPROVED <i>Sgt. J. Reynolds</i>	

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 <i>Sgt J. Carpenter</i>
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PAGE 2 OF 3

1. COPIES TO:  
Dana Point

2. CASE NO. 10-038724

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

SANDRA HUTCHENS, SHERIFF-CORONER

REPORT CONTINUATION

friends, named "[redacted]" and "[redacted]", who are Dana Hills High School students, had broke several pieces off prior. [redacted] said that [redacted] did nothing wrong and that he was the only one that damaged anything. [redacted] and [redacted] left the location and [redacted] was released to his mother. [redacted] 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 3

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 DEPTO NORTHALE regarding the In Field Show-Up.  
 Yes  No

[Redacted Signature]

(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. Northale 613 DATE / TIME: 3-3-10 1110  
LOCATION OF IN FIELD SHOW-UP: Camino Capistrano / Ave Jacaranda 940 Capistrano  
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. Northale 613	DATE OF REPORT 3-3-10	APPROVED Sgt G Carpenter
------------------------	--------------------------------	--------------------------	-----------------------------

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 SEVIA / PACIFIC COAST HWY SANTA ANA POINT
VICTIM STATE OF CALIFORNIA	DATE OF OCCURRENCE 3-3-10
	GRID 971FB

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

[redacted signature]  
(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. NORTON #103 DATE/TIME: 3-3-10 1110  
LOCATION OF IN FIELD SHOW-UP: Camino Capistrano / Ave. Jacquero Santa Ana  
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. NORTON #103	DATE OF REPORT 3-3-10	APPROVED Sgt J. Campese
------------------------	-------------------------------	--------------------------	----------------------------

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. TIME 1110
8. LOCATION OF ARREST 2800 CAMINO CASTRANO		9. DATE 03-03-10		10. TIME 1110
11. NAME [REDACTED]		12. ALIAS OR NICKNAME		
13. ADDRESS [REDACTED]		14. TELEPHONE		
15. BIRTHDATE [REDACTED]	16. HEIGHT [REDACTED]	17. WEIGHT [REDACTED]	18. HAIR [REDACTED]	19. EYES [REDACTED]
21. OFFENSE CPC 594 FELONY VANDALISM		22. ACTION See Rm 53.	23. DATE	24. HT WT HAIR EYES 5'11 135 BLN BRN
25. ADDITIONAL INFORMATION SEE BOX 49		26. VEHICLE - YEAR, MAKE, BODY TYPE		27. LICENSE #
27. CLOTHING - DESCRIPTION (FILL OUT FOR MISSING, RUNAWAYS, ESCAPES) BROWN JACKET, BLUE T-SHIRT, BCK JEANS, BCK SHOES				
28. OLN#	29. STATE	30. OC #	31. SS#	32. SCHOOL STATUS SOPHMORE
33. PARENTS [REDACTED]		34. ADDRESS BOX 13		
35. CITY		36. ZIP	37. TELEPHONE HOME BUS. Box 14	
38. MOTHER/STEP [REDACTED]		39. ADDRESS BOX 13		
40. CITY		41. ZIP	42. TELEPHONE HOME BUS. Box 14	
43. LIVES WITH: MOTHER & FATHER		44. ADDRESS BOX 13		
45. CITY		46. ZIP	47. TELEPHONE	
48. Released to: PARENTS <input checked="" type="checkbox"/> Released to: PARENTS <input type="checkbox"/> Obtained Juvenile Hall - Parent notified. <input type="checkbox"/> Detained Other (explain Box 49) - Parent notified. <input type="checkbox"/> Released to: [Signature] <input checked="" type="checkbox"/> Released - NOTICE OF VIOLATION: [Signature] (Not an admission of Guilt) (Signed by Juvenile) ISSUED BY Deputy: _____ Application for Pardon Filed: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> School Attending: SAN CLEMENTE H.S. 9 <sup>th</sup> 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 J. 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

SH-F 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 Altoona, Iowa LAST SCHOOL ATTENDED S.C.H.S. CITY S.C. GRADE 10

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

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

FATHER [REDACTED] MOTHER [REDACTED]

GUARDIAN / ATTY. [REDACTED]

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)

ADDITIONAL INFO. FOR PROBATION (PLEASE INCLUDE GANG AFFILIATION)

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.

SIGNATURE [REDACTED] PHONE 714-361-8224 EXECUTED ON 03-03-10 AT San Clemente, CA

TITLE DEPUTY AGENCY O.C.S.D.

PROBATION USE ONLY

IN CUSTODY COMPANIONS  ON ILSR  ON DATE  TIME [REDACTED] TO WHOM [REDACTED] NO. APPS ATTACH [REDACTED] COURT DATE [REDACTED]

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

TYPE HEARING:  DEL  P/T  TRIAL  DISPO. TYPE RET: 601 602 NEW SUB SUP T17WIC T78WIC

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

IF PREVIOUSLY SENT TO DA: FILING DEADLINE [REDACTED] ALLEG. [REDACTED]

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

ADDITIONAL INFO. FOR DA (INCLUDE PRIOR RECORD INFO. OR ATTACH CJJ/WARD CARD)

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

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

CONDITIONS OF 654 WIC / REASON(S) FOR DISMISSAL (INCLUDE SANCTIONS)

INSTRUCTIONS TO CLERICAL

CLERICAL ROUTING	INITIAL	DATE

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

[Signature]

Orange County, California

Affiant's Signature

Defendant's Address: \_\_\_\_\_

Defendant's Auto: Make \_\_\_\_\_ Model \_\_\_\_\_ License # \_\_\_\_\_

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

Height 511 Weight 160 Hair BRN Eyes BRN 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 <b>2560 658</b>	RECEIVING OFFICER <b>WIGGINS #130</b>	DATE <b>03-03-10/1334</b>	SUPPLEMENTAL WARRANTS	HOW MANY
ARREST STATUS: <input checked="" type="checkbox"/> STREET BOOKING (F) <input type="checkbox"/> WARRANT <input type="checkbox"/> COURT ORDER <input type="checkbox"/> OTHER (SPECIFY)				
<input type="checkbox"/> 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 <b>OCSD</b>	OCSD AREA OR CONTACT CITY <b>DANA POINT</b>	AGENCY CASE # <b>OCSD 038724</b>	DATE & TIME ARRESTED <b>3/3/10 1045 Hours</b>
NAME: LAST [REDACTED]	FIRST [REDACTED]	MIDDLE [REDACTED]	
BIRTHDATE [REDACTED]	SEX <b>M</b>	RACE <b>White</b>	HEIGHT <b>5 11</b>
WEIGHT <b>160</b>	HAIR <b>BRN</b>	EYES <b>BRN</b>	STATE & COUNTRY OF BIRTH <b>CA / USA</b>
CITIZENSHIP <b>U.S.A.</b>	DRIVER'S LICENSE NO. & STATE [REDACTED]		
JURISDICTION <b>TPC</b>	WARRANT OR CASE NUMBER <b>10-038724</b>	BAIL <b>120,000</b>	
CHARGE 1 <b>R. 594(b)(1) VANDALISM</b>	CHARGE 4		
CHARGE 2	CHARGE 5		
CHARGE 3	CHARGE 6		

**DNA**

DNA COLLECTED BY OFFICER  N/A  PREVIOUSLY COLLECTED  NOT COLLECTED (EXPLAIN BELOW)

EXPLAIN WHY DNA WAS NOT COLLECTED

OCCUPATION [REDACTED]	MARITAL STATUS [REDACTED]	SOCIAL SECURITY NUMBER [REDACTED]	TELEPHONE NO. [REDACTED]
SCARS, MARKS, TATTOOS, AMP <b>SCAR IN THE MIDDLE OF BACK</b>			
ADDRESS [REDACTED]	CITY <b>SAN CLEMENTE</b>	STATE <b>CA</b>	ZIP <b>92672</b>
NEXT OF KIN: NAME <b>John</b>	RELATIONSHIP [REDACTED]	TELEPHONE NO. [REDACTED]	
ADDRESS [REDACTED]	CITY <b>LAGUNA HILLS</b>	STATE <b>CA</b>	ZIP <b>92657</b>
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. ROEMER** 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. Northing ID# 613 Agency OCSD

SIGNATURE [Signature]

CRIME SUMMARY INFORMATION, PROBABLE CAUSE DECLARATION AND BAIL SETTING INFORMATION

ARRESTEE (LAST, FIRST, MIDDLE) [REDACTED]		BOOKING NO. 2560 658	IR NO. 10-038724
ADDRESS (RESIDENCE) [REDACTED]		DOB [REDACTED]	AGE 18
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. NORTON 103	

FACTS ESTABLISHING ELEMENTS OF CRIME AND IDENTIFICATION OF ARRESTEE.

[REDACTED] AND A 15' OR MORE JUVENILE WERE SEEN THROWING ROCKS AND FIREARMS 4" DECOMPOSED SPIKES OFF OF A WHOLESALE TIRE WAREHOUSE THAT LIES BETWEEN BELLER PARK, WHICH OPENED 1 MONTH AGO. (1) SEVERITY OF THE SPIKES WHICH BROKE OFF OF THE TIRE AND (2) OF THE TIRE COLUMNS WERE BROKEN OFF AT ABOUT 8" BELOW THE TOP. THE TIRE WAS RECENTLY COMPLETED AND THE WHOLESALE WAREHOUSE WAS ESTIMATED AT \$1500.00 [REDACTED] WAS IN A 1999 FORD (4F1H102) AND HE WAS SEEN WITH THE IS AN OLD AND TWO OTHER SUBJECTS. [REDACTED] AS ONE OF THE SUSPECTS, JUDING AND [REDACTED] 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 [Signature]  
 (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)

PROPERTY INVENTORY RECEIPT

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

SHADED AREAS ARE FOR I/O USE ONLY

JRC BOOKING NUMBER: DATE/TIME:

NAME: LAST FIRST MIDDLE DOB:

ARRESTING AGENCY: OCSO COURT: HOC ARRESTING OFFICER: M. Natchez

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.

Table with columns for item types (Belt, Knife, Checkbook, Billfold, Glasses, Keys, Watch, Earrings, Charms, Checks, Bracelet, Rings, Neck Chain, Lighter) and rows for Yellow Metal, White Metal, and Retained.

MISCELLANEOUS PROPERTY (Bulk property will NOT be accepted):

1 IPHONE 1st grade

PROPERTY RELEASED:

RELEASED TO: PRINT NAME/SIGNATURE DATE/TIME:

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

INVENTORY OFFICER: M. Natchez

SIGNATURE & BADGE #: M. Natchez PRINT NAME: M. Natchez AGENCY: OCSO COURT: HOC DATE/TIME: 3-23-10 12:10

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

ARRESTEE'S SIGNATURE: X VERIFIED BY:

MONEY/PROPERTY TRANSFER RECORD

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

RECEIVED BY: PRINT NAME/SIGNATURE AGENCY: DATE/TIME:

DISCREPANCIES (IF ANY):

RECEIVED BY: PRINT NAME/SIGNATURE AGENCY: DATE/TIME:

DISCREPANCIES (IF ANY):

RECEIVED BY: PRINT NAME/SIGNATURE 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: PRINT NAME/SIGNATURE 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	
COMPLETE ON ALL APPLICABLE RELOCES 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 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)	R		
(3)	R		
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1)		2552647	cf
(2)		2552649	cf
(3)		2552646	cf
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	34. DATE OF REPORT
		Deputy John Gomez	1/10/10

PAGE 1 OF 3

APPROVED: *[Signature]* 2004

1. COPIES TO:  
Dana Point

2. CASE NO. 10-006602

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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

2. CASE NO. 10-006602

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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. 2001
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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

2. CASE NO. 10-006602

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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 <i>[Signature]</i> 2004
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PAGE 2

1. Copies To: Dana Point

ORIGINAL  
SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

2. Case No. 10-006602A
2a. Citation No.

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				
COMPLETE ON ALL APPLICABLE FELONIES MISC. SEX AND THEFT	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/B RESIDENCE/BUSINESS ADDRESS-PHONE					
	(1)	R B				
(2)	R B					
(3)	R B					
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 OFFICER: [Signature] DATE: 1-10-10/2011 SUPPLEMENTAL WARRANTS: \_\_\_\_\_ HOW MANY: \_\_\_\_\_

BIO STATUS:  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 - Santa Ana LOCAL AREA OR CONTRACT CITY: \_\_\_\_\_ AGENCY CASE: 10-006602 DATE & TIME ARRESTED: 1/10/10 @ 1625

NAME: LAST: BURKE, FIRST: ALYSSA, MIDDLE: Dawn

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

AKA: North DRIVER'S LICENSE NO. & STATE: [Redacted] CA.

JURISDICTION: HJC WARRANT OR CASE NUMBER: 500.00

CHARGE 1: C/P 148(a) RESIST / OBEY OFFICER 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: M.I.S.D.

OCCUPATION: \_\_\_\_\_ MARITAL STATUS: \_\_\_\_\_ SOCIAL SECURITY NUMBER: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_

SCARS, MARKS, TATTOOS, AMP: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

NEXT OF KIN: \_\_\_\_\_ RELATIONSHIP: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

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 / S. CARROLL 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.

**RECORD OF TELEPHONE CALLS:**

Telephone calls DESIRED: 1 Telephone calls COMPLETED: 1

Location: OCJ Date: 1-10-10 Time: 1645

Witnessing Officer: M. Northrup ID #: 6173 Agency: OCSD

SIGNATURE: [Signature]

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)

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CRIME SUMMARY INFORMATION,  
PROBABLE CAUSE DECLARATION AND BAIL SETTING INFORMATION

ARRESTEE (LAST, FIRST, MIDDLE IN) [REDACTED]	BOOKING NO. 2552649	DR NO. 10-006602
ADDRESS (RESIDENCE) [REDACTED] 10000 Point	DOB 8-16-72	AGE 37
BOOKING CHARGES CIC 148(A) RESIST / PACIFY OFFICER	SUPPL. HOLDS CP	SEX F
DATE / TIME OF ARREST 1-10-10 @ 1625	IN-HR EXP. DATE/TIME 1-12-10 / 0425	
ARRESTING AGENCY OC SO	STATION 18	ARRESTING OFFICER(S) GOMEZ / 142008A

FACTS ESTABLISHING ELEMENTS OF CRIME AND IDENTIFICATION OF ARRESTEE.

ON 1-10-10 I WAS DISPATCHED TO 2110 LIFE HABITAT AREA AT SCENIC  
COURT AND (LAW) CASTER. I HEARD THREE FEMALE'S THAT WERE PASSING IN A  
RESTRICTED AREA. UPON MY ARRIVAL AT APPROXIMATELY 1640 HOURS,  
I CONTACTED DR J. GOMEZ # 2684 WHO WAS TALKING TO HER THREE FEMALE'S  
DATE OF WHICH WAS ALEXIS BROWN BURNS (DOB: 9-16-72). IN  
ADDITION TO [REDACTED] BRING VERBALLY IN CONTACT WITH DR GOMEZ, WHO  
WAS TRYING TO EXPLAIN THEIR OPTIONS TO THEM. [REDACTED] TOLD  
THE OTHER TWO FEMALE'S THAT THEY DID NOT HAVE TO LISTEN TO ALEXIS  
GOMEZ BECAUSE THERE WAS NO BURDEN AGAINST THEM. ALL THREE SUBJECT'S  
DETAINED BY DR J. GOMEZ FACED MISDEMEANOR CHARGES. WHEN DR J. GOMEZ  
ATTEMPTED TO RESCUE BURNS AND THE OTHER TWO FEMALE'S OUT OF  
THE AREA, [REDACTED] TOLD HER OFFICER TOLD FRIGIDE NOT TO COMPLY WITH  
DR J. GOMEZ AND REFUSE TO LEAVE THE AREA. [REDACTED] WAS  
KICKED IN HANDCUFF RESTRAINTS AND ESCAPED OUT OF THE AREA TO AUK PT. 11  
12075. ALTHOUGH THE ONLY FORCE USED AGAINST [REDACTED] WAS HOLDING HER  
HAND AND ARM TO KEEP HER FROM FALLING FROM THE STEEL STAIRS PATH,  
SHE KEPT YELLING THAT SHE WAS BEING ABUSED AND ASSAULTED.

( ) SEE ATTACHED REPORTS, INCORPORATED HEREIN BY THIS REFERENCE. WAS [REDACTED] ARRESTED  
FOR VIOLATION OF CIC 148(A).

(1) WEAPON DESCRIPTION: \_\_\_\_\_ VICTIM'S INJURIES: \_\_\_\_\_  
 (2) VICTIM'S AGE: \_\_\_\_\_  
 (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 [Signature] (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) \_\_\_\_\_

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

I.R.C. BOOKING NUMBER DATE/TIME

NAME: LAST FIRST MIDDLE DOB: 7-16-52

ARRESTING AGENCY: OCJO COURT: NJC ARRESTING OFFICER: J. GUMER

MONEY: \$ RECEIVED: 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.

Table with columns for item types (Belt, Knife, Checkbook, Billfold, Glasses, Keys, Watch, Earrings, Charms, Checks, Bracelet, Rings, Neck Chain, Lighter) and verification status.

MISCELLANEOUS PROPERTY (Bulk property will NOT be accepted):

PROPERTY RELEASED:

RELEASED TO: DATE/TIME:

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

INVENTORY OFFICER: AGENCY: COURT:

SIGNATURE & BADGE #: DATE/TIME:

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:

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

70880-410

COPIES: DANA POINT

CASE NO. 10-006602

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

PRIORITY:  YES  
 NO

SANDRA HUTCHENS, SHERIFF-CORONER

IN FIELD SHOW-UP REPORT

OFFENSE DPM 13.04.055	LOCATION OF OCCURRENCE Cove + Green Lantern 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

[Redacted 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: [Redacted]  
 WITNESSED BY OFFICER: [Redacted] DATE: 1-10-10  
 LOCATION OF IN FIELD SHOW-UP: Cove + Green Lantern Dana Pt. Ca 92727  
 DATE & TIME OF IN FIELD SHOW-UP: 1-10-10 / 1730 HRS.  
 NAME AND DATE OF BIRTH OF PERSON VIEWED: [Redacted]

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

SHP 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 ¼ 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

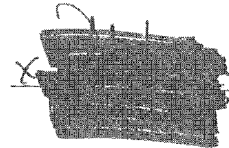
  
Defendant

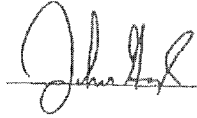
You are hereby requested to take into custody the above named defendant who I have arrested, for the commission of a public offense in my presence, under authority of the Penal Code of the State of California.

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

g Petty

Witnessed:  , Deputy  
Witnessed: \_\_\_\_\_ , Deputy

PAT 7

1. Copies To: Dana Point

In-Custody

Priority:  Yes  No  
SANDRA HUTCHENS, SHERIFF-CORONER

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

Def

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		9. ADDRESS-PHONE	
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	
COMPLETE IN ALL APPLICABLE SECTIONS VIC, CP, SEX AND THERIS	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, CCH OR LIC. NO., AND ANY OTHER IDENTIFYING MARKS 2005, Ford Ranger, truck, black, CA # 7V14762			
30. WITNESSES N/B RESIDENCE/BUSINESS ADDRESS-PHONE			
(1)			
(2)			
(3)			
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR. 2531666	
(1)		M	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 1

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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.

INITIAL CRIME REPORT

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. INTERFERANT		9. ADDRESS-PHONE				
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 (BY RESIDENCE OR BUSINESS ADDRESS-PHONE)					
(1)		R				
		B				
(2)		R				
		R				
(3)		R				
		B				
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR. 2531666				
(1)		7 M W	03-11-88 5'08" 170 bro bro			
			BKG. NBR.			
(2)						
			BKG. NBR.			
(3)						
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						
33. INVESTIGATING OFFICERS Mendoza / Oliva		REPORT BY Deputy E. Oliva # 3905		34. DATE OF REPORT 8/28/09		35. APPROVED 

1. COPIES TO:  
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2. CASE NO. 09-161355B

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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	

PAGE 2 OF 3

1. COPIES TO:  
Dana Point  
In-Custody

2. CASE NO. 09-161355B

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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

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

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

ORDER OF ARREST  
BY  
PRIVATE PERSON

vs

[Redacted Name]  
Defendant (3-11-88)

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 [Redacted 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		[REDACTED]		
10. VICTIM See Box 14	DOB	11. ADDRESS-PHONE See Box 15		
12. BUSINESS ADDRESS-PHONE		13. CONTACT TIME-ADDRESS Weekdays - Box 9		
14. FIRM NAME OF VICTIM State of California		15. BUSINESS ADDRESS-PHONE		
16. VICTIM'S OCCUPATION Public Entity	RACE	SEX	AGE	
17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Public street				
COMPLETE ON ALL APPLICABLE FELONIES MISC., 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 (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.		
(1) [REDACTED]		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 
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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.

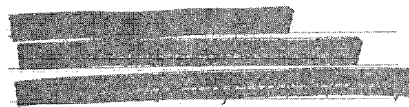
REPORTING DEPARTMENT: CCSD - DANA POINT LOCATION CODE: 97185 DATE / TIME OF REPORT: 8-28-09 NOTICE OF STORED VEHICLE DELIVERED PERSONALLY:  FILE NO.: 09-161355

LOCATION TOWED / STOLEN FROM: SACVA + PCH, DANA POINT ODOMETER READING: 62757 VIN CLEAR IN SVS?  YES  NO DATE / TIME DISPATCH NOTIFIED: \_\_\_\_\_ LOG NO.: \_\_\_\_\_

YEAR: 05 MAKE: FORD MODEL: FANGRAC BODY TYPE: P/U COLOR: BLU LICENSE NO.: 7V14762 ONE MONTH / YEAR STATE: CA

VEHICLE IDENTIFICATION NO.: 1F1TYR1H1U1S1A9179151 ENGINE NO.: \_\_\_\_\_ VALUATION BY OFFICER:  OWNER:  0-500  501-5000  14001 +

REGISTERED OWNER: \_\_\_\_\_ LEGAL OWNER:  SAME AS REG



STORED  IMPOUNDED  RELEASED  RECOVERED - VEHICLE / COMPONENT

TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE): A/C TOWING 180 CALLE DALASCA, SANCCAMITE STORAGE AUTHORITY / REASON: 22651 (H)

TOWED TO STORED AT: (949) 492-3805 AIRBAG?  YES  NO  1  2 DRIVEABLE?  YES  NO  JUNK  UNK VIN SWITCHED?  YES  NO

CONDITION	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	TRES / WHEELS	CONDITION
WRECKED	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEAT (FRONT)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REGISTRATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CAMPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LEFT FRONT	<u>PAID</u>
BURNED HULK (per 431(C) VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEAT (REAR)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ALT / GENERATOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VEHICLE AS LOAD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RIGHT FRONT	
VANDALIZED	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RADIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BATTERY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FIREARMS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LEFT REAR	
ENG / TRANS. STRIP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TAPE DECK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DIFFERENTIAL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OTHER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RIGHT REAR	
MISC. PARTS STRIP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TAPES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TRANSMISSION	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPARE	
BY METAL STRIP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OTHER RADIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	AUTOMATIC	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	H&B CAPS	
SURGICAL STRIP (per 431(D) VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	IGNITION KEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MANUAL	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPECIAL WHEELS	

RELEASE VEHICLE TO:  R/O OR AGENT  AGENCY HOLD  22650.3 VC GARAGE (PRINCIPAL AGENCY) STORING VEHICLE (SIGNATURE): [Signature] DATE / TIME: 8/28/09

NAME OF PERSON / AGENCY AUTHORIZING RELEASE: \_\_\_\_\_ ID. NO.: \_\_\_\_\_ DATE: \_\_\_\_\_ CERTIFICATION: I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM LEGALLY AUTHORIZED AND ENTITLED TO TAKE POSSESSION OF THE ABOVE DESCRIBED VEHICLE.

SIGNATURE OF PERSON AUTHORIZING RELEASE: \_\_\_\_\_ SIGNATURE OF PERSON TAKING POSSESSION: \_\_\_\_\_

STOLEN VEHICLE / COMPONENT  EMBEZZLED VEHICLE  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: \_\_\_\_\_

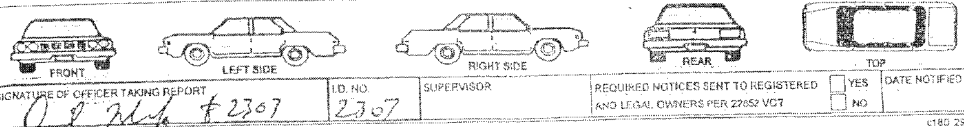
SIGNATURE OF PERSON MAKING REPORT: \_\_\_\_\_

I CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

REMARKS (LIST PROPERTY, TOOLS, VEHICLE DAMAGE, ARRESTS) PCN: 3730924002903

DRIVER'S NAME: \_\_\_\_\_ ARRESTED / SECTION?  YES  NO PC 594 REPORTED BY # 2307 CARGO / TYPE?  YES  NO VALUE \$ \_\_\_\_\_ BILL OF LADING ATTACHED?

DAMAGED NWA - DIRTY  
INVENTORY: MISC. CLOTHING ITEMS IN CAB AREA  
DETAILS: DRIVER ARRESTED AT ABOVE LOCATION FOR  
VANDALISM. DRIVEN TRANSPORT TO CCJ.



SIGNATURE OF OFFICER TAKING REPORT: [Signature] # 2307 I.D. NO.: 2307 SUPERVISOR: \_\_\_\_\_ REQUIRED NOTICES SENT TO REGISTERED AND LEGAL OWNERS PER 22652 VGT:  YES  NO DATE NOTIFIED: \_\_\_\_\_

09/01/09 05:02:50

HMD 0036

H

IH

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

ATTN:EBARGARAYJ, CSS, 09-161355

NO HIT BUREAU OF CRJMINAL IDENTIFICATION FILES

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

ORIGINAL

1. Copies To: DANA POINT  
GRAFFITI

2. Case No. 09-155058  
2a. Citation No.

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

Priority:  Yes  No  
SANDRA HUTCHENS, SHERIFF-CORONER

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 92629</u>		6. GRID <u>471F5</u>	7. DATE-TIME REPORTED			
6. INFORMANT [REDACTED]		9. ADDRESS-PHONE [REDACTED]				
10. VICTIM [REDACTED]		11. ADDRESS-PHONE [REDACTED]				
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 MISC. SEX AND TRIP-ITS	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>5</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						
(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
	<u>DAMAGE: 2' X 30' GRAFFITI READ, "DIE STRAND FUCK MILLIONAIRES."</u>					
33. INVESTIGATING OFFICERS REPORT BY <u>DEPUTY J. GOMEZ #2684</u>				34. DATE OF REPORT <u>8-19-09</u>	35. APPROVED <u>Sgt J. [Signature]</u>	

SHF 010

PAGE 1 OF 2

*page 1 of 2*

1. COPIES TO: DANA POINT

2. CASE NO. 09-155058

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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 (██████████) IS THE ██████████ 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 WITH THE GRAFFITI READ, "DIE STRAND FOLK MILLIONAIRES."

██████████ SAID THE GRAFFITI WAS IN THE PROCESS OF BEING CLEANED UP BY HIS STAFF.

██████████ DESIRED PROSELOTION AND I GAVE HIM MY BUSINESS CARD WITH CASE NUMBER FOR FUTURE REFERENCE.

53. INVESTIGATING OFFICERS	REPORT BY	DATE OF REPORT	APPROVED
	DEPUTY J. GOMEZ #2684	8-19-09	Sgt J. C. [Signature]

PAGE 2 OF 2

page 2 of 2

1. Copies To: Dana Point

ORIGINAL

2. Case No. 09/136043

2a. Citation No.

Priority:  Yes  No

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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 971P6/136	7. DATE/TIME REPORTED				
8. INFORMANT [REDACTED]		9. ADDRESS/PHONE [REDACTED]					
10. VICTIM [REDACTED] 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		H 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.					
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: unknown scribbling (graffiti) on concrete area of construction site, at the bottom of the stairs leading toward the beach						
	Approximately seven broken sprinkler heads to grass area on construction site						
Details: On 7-24-09 at about 0900 hours, I responded to the Hedland'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 Deputy E. Macias #873		34. DATE OF REPORT 7/24/09		35. APPROVED <i>Sgt. Carpenter</i>	

1. COPIES TO:  
Dana Point

2. CASE NO. 09/136043

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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. Carpentier</i>
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PAGE 2 OF 2

1. Copies To: Dana Point

COPY

2. Case No. 09/072257

02

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

2a. Citation No.

Priority:  Yes  No

ANDRA HUTCHENS, SHERIFF-CORONER

INITIAL CRIME REPORT

OFFENSE CPC 487 - Grand Theft		4. DATE-TIME COMMITTED Between Wed.4-22-09 2100 and Thurs.4-23-09 0500	
5. WHERE COMMITTED Selva Rd. / Dana Strand Rd.		6. GRID 971F7	7. DATE-TIME REPORTED
8. INFORMANT		9. ADDRESS-PHONE	
10. VICTIM DOB		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.	
ALL APPLICABLE FELONIES MISD., SEX AND THEFTS CC	18. CRIMES AGAINST PROPERTY POINT OF ENTRY Rd. / Beach Selva		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		
	(2)		
(3)			
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)		BKG. NBR.	
(1) Unknown			
(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
			<b>Total Loss: \$3,000.00</b>
33. INVESTIGATING OFFICERS REPORT BY Deputy J. Pelayo #3716		34. DATE OF REPORT 4/23/09	35. APPROVED APV BY SGT J.C. REYES

COPIES TO:  
Dana 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	RACE W	SEX M	AGE 56
17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Residential Area - Construction area			
18. POINT OF ENTRY Unknown		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		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	
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 

COMPLETE ON ALL APPLICABLE PREMISES  
INSD, SEX AND THEFTS

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.

33. INVESTIGATING OFFICERS	REPORT BY M. Johnson #1546	DATE OF REPORT 2/16/09	APPROVED <i>[Signature]</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. 09/029451

PRIORITY:  Yes  
 No

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

SANDRA HUTCHENS, SHERIFF-CORONER

FOLLOW-UP REPORT

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 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. 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. INCIPIENT		9. ADDRESS-PHONE	
10. VICTIM DOB		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	
28. APPARENT MOTIVE -- TYPE PROPERTY TAKEN To deface property		27. TOTAL VALUE STOLEN \$500.00	
26. 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		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
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 <i>[Signature]</i> 2004	

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.

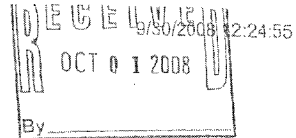
I submitted the pictures to investigations at the Aliso Viejo sub-station for evidence.

39. INVESTIGATING OFFICERS	REPORT BY Deputy J. Pelayo #3716	DATE OF REPORT 1/6/09	APPROVED <i>Sgt. J. S. [Signature]</i> 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 CASE NUMBER: 08SM02679  
 24849 DEL PRADO DEFENDANT: [REDACTED]  
 ATTN: THOMAS ARCONTI INCIDENT DATE: 07/30/2008  
 DANA POINT, CA 92629 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 Sherriff 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 Sherriff 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	11. ADDRESS-PHONE [REDACTED]	
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 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		22. WEAPON OR MEANS USED
	19. INSTRUMENT OR MEANS USED		23. VICTIM'S ACTIVITY AT TIME OF OFFENSE
	20. METHOD		24. EXACT WORDS USED BY SUSPECT
	21. WHERE WERE OCCUPANTS AT TIME 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		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
33. INVESTIGATING OFFICERS		REPORTED BY W. Robb #5959	34. DATE OF REPORT 4-4-07

*[Signature]*

page 1 of 2

22

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 #5059

DATE OF REPORT  
4-4-07

APPROVED

page 2 of 2

1. Copies To: Dana Point / TWEG

ORIGINAL  
SHERIFF'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		9. ADDRESS-PHONE				
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 Contruccion 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				
(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.				
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	34. DATE OF REPORT	35. APPROVED		
		John Gomez #2684	3/16/07			

3/16/07

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

3. Copies To: Dana Point / TWEG *HP*

**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	9. ADDRESS-PHONE	
10. VICTIM	DOB	11. ADDRESS-PHONE
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	

APPLY TO ALL APPLICABLE FELONIES, MISD., SEX AND THIEFS	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)	R	
(1) Unknown	B	
(2)	R	
	B	
(3)	R	
	B	
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)	BKG. NBR.	
(1) Unknown		
(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: Spray Painted (tagged) on Wall.					

33. INVESTIGATING OFFICERS	REPORT BY Deputy John Gomez	34. DATE OF REPORT 2/24/07	35. APPROVED <i>SGT. JIM LEMORE</i>
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*PAGE 1 OF 2*

1. COPIES TO:  
Dana Point / TWEG

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

41 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 # 07-058758. 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. CARDNA, SHERIFF-CORONER

By M. S. Cardna  
F0680-226.3 (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 3
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	
		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
Evidence: 1 disk containing 17 digital photos booked at the Aliso Viejo Station			
33. INVESTIGATING OFFICERS Deputy C. Geary 4998		34. DATE OF REPORT 11/4/06	35. APPROVED SGT JML/ENDRE

PAGE 1 OF 2

1. COPIES TO:  
Dana Point

2. CASE NO. 06-215193

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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 the 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 Deputy C. Geary 4998	DATE OF REPORT 11/4/06	APPROVED SGT JINLEMORE
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PAGE 2 OF 2

ORIGINAL

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

2. Case No. 06-005538

2a. Citation No.

1. Officer's To: Dana Point  
TEWG

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		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	
<b>DAMAGED PROPERTY:</b>				
Project fencing and restroom stall door				
33. INVESTIGATING OFFICERS		REPORT BY S. Meier #3204	34. DATE OF REPORT 1/9/06	
		35. APPROVED <i>Sybil C. Williams</i>		

PAGE 1 OF 2

MH

1. COPIES TO:  
Dana Point

2. CASE NO. 06-005538

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

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		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 #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 ALL APPLICABLE FELONIES, MISD., SEX AND THEFTS

VANDALISM

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			
(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><b>Details:</b> 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. [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 <i>[Signature]</i>
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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	

C. COMPLETE ON ALL APPLICABLE RELIGIONS, MISC., SEX AND THEFTS	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) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS Unknown			

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	
(2)	BKG. NBR.
(3)	BKG. NBR.

32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS														
<table border="1"> <thead> <tr> <th>QUAN.</th> <th>ARTICLE</th> <th>BRAND</th> <th>SERIAL NO.</th> <th>MODEL NO.</th> <th>MISC. DESCRIPTION</th> <th>VALUE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE							
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]
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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] led 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 <i>[Signature]</i>
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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

2346/0227390-0031  
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  
1075182.01 n03/16/10

-2-

## 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

2346/022990-0031  
1075182.01 a03/16/10

-3-

## 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

2346/022390-0031  
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

2346/022390 0031  
1075182.01 03/16/10

-5-

## 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

**SUPPORTING DOCUMENT F**

**Central Accessway Beach Gate**



**North Strand Access and Funicular Station**



### South Strand Switchback Trail



**SUPPORTING DOCUMENT G**

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

**and**

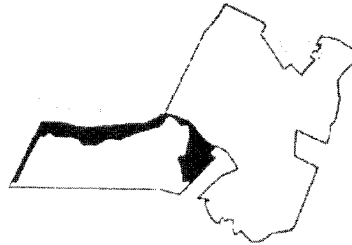
**LOCAL COASTAL PROGRAM AMENDMENT  
LCPA: 01-02**

**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

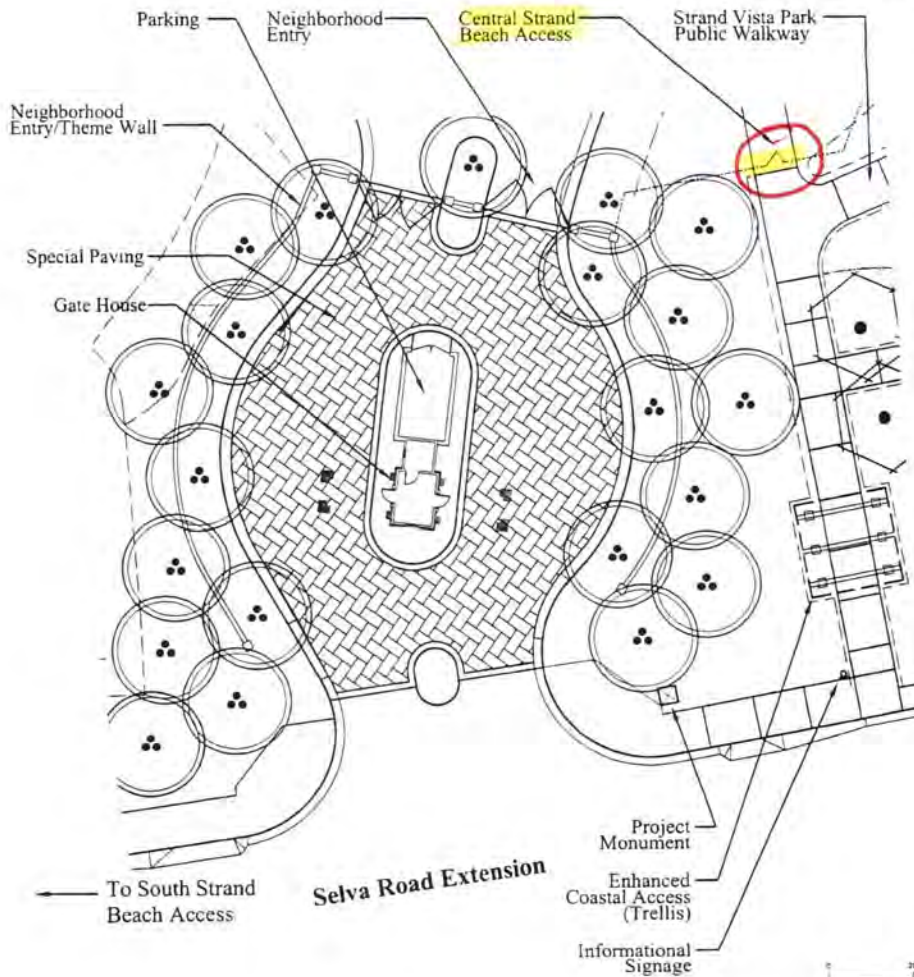


1. Public and coastal access shall be established by a series of public trails and overlooks west of the existing County parking lot, connecting to the Public Trail system and Strand Beach as established in the HDCP
2. The public trails and overlooks in the Strand Vista Park shall be open to the public 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.

LCP

### NEIGHBORHOOD ENTRY (STRAND RESIDENTIAL)

FIGURE 4.12.4

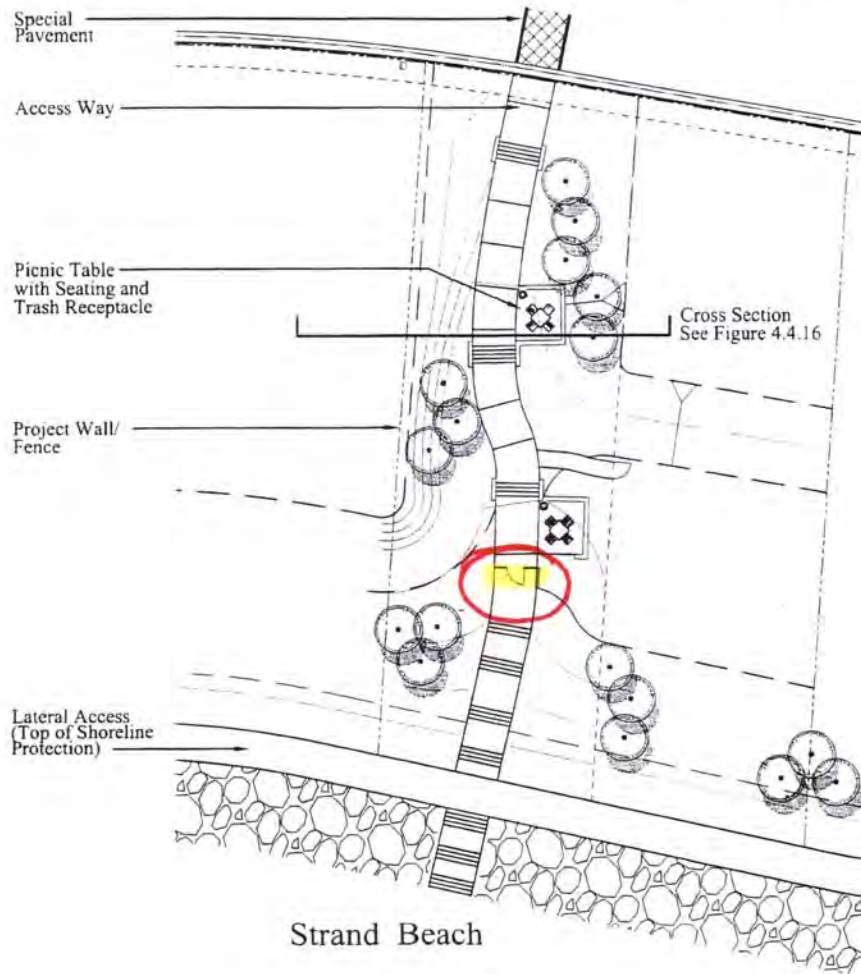


Note: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

## THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN

LCP

### CENTRAL STRAND BEACH ACCESS CONCEPTUAL PLAN FIGURE 4.4.15

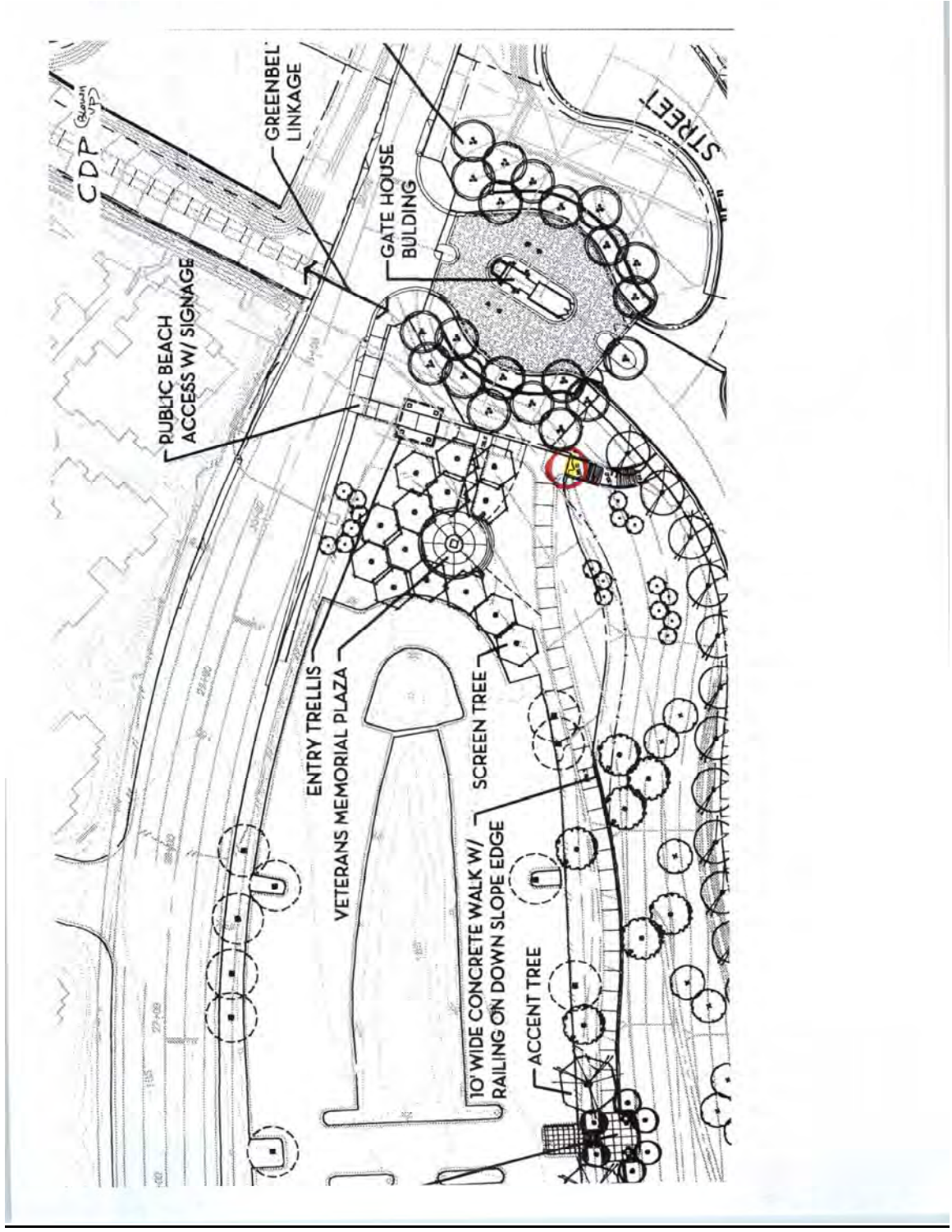


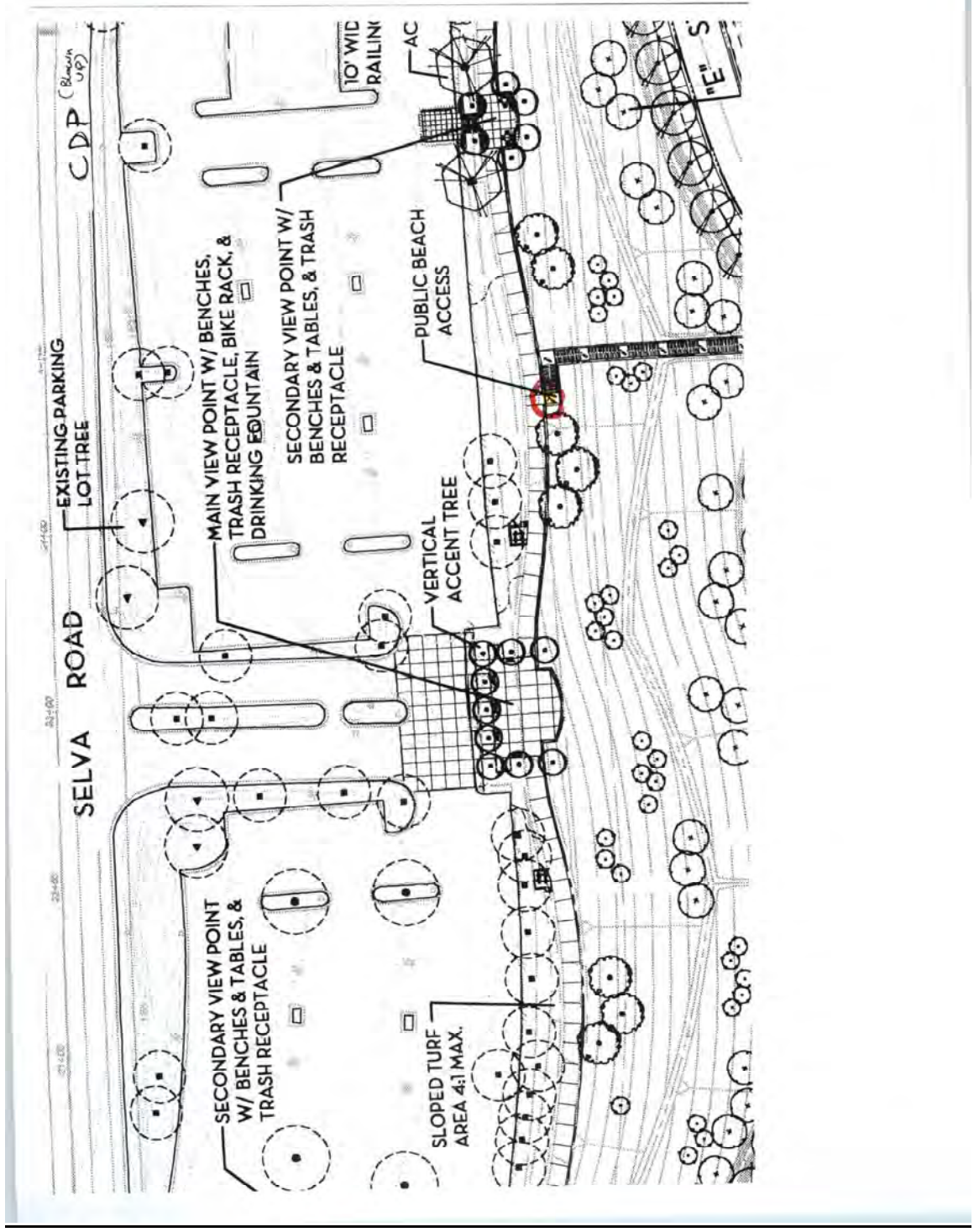
Note: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

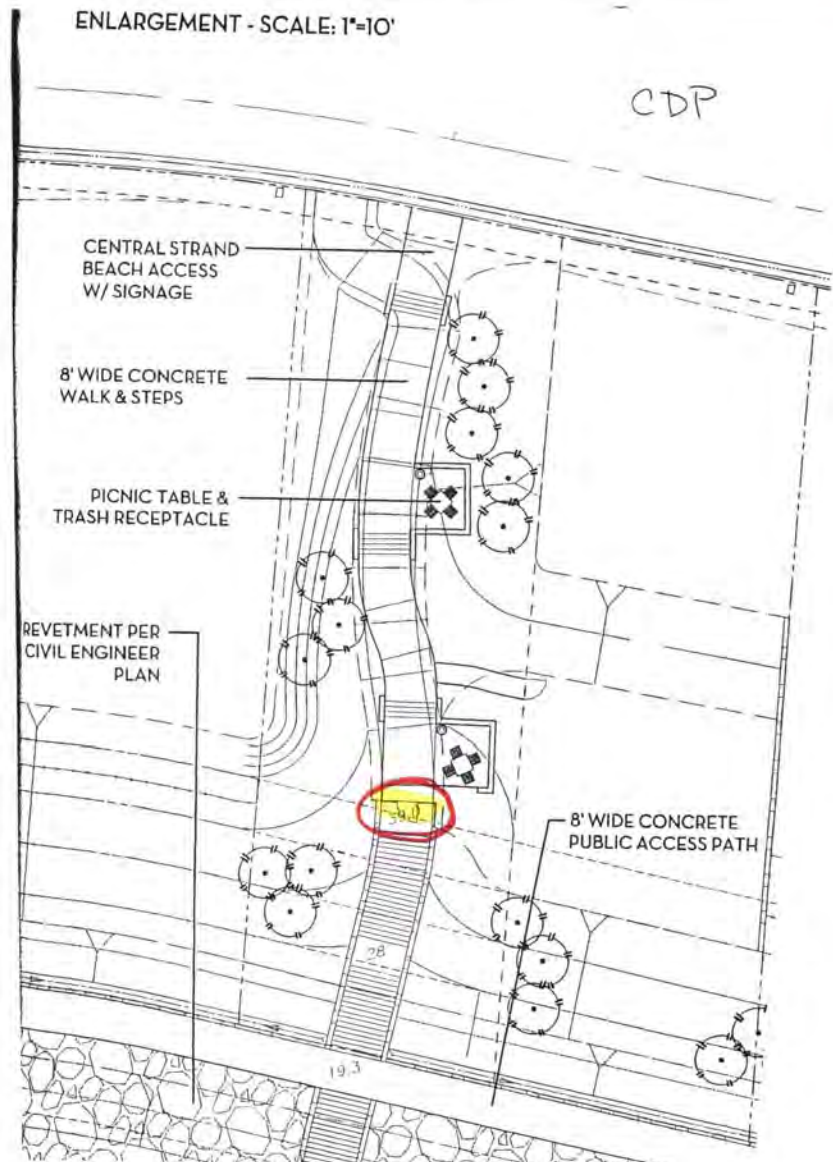
#### THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN

**SUPPORTING DOCUMENT H**









### CENTRAL STRAND BEACH ACCESS

ENLARGEMENT - SCALE: 1"=20'

(ACTUAL SIZE)



**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 7<sup>th</sup> 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

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.

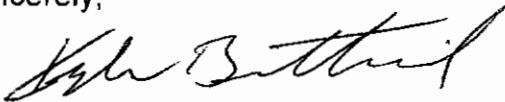
You go on to state that public access "may not be restricted" within Planning Area 2, but this allegation misinterprets the LCP and is contradicted by the underlying facts. The section of the LCP that you reference was intended to define the relationship between the gates that restrict public vehicles 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 Act<sup>1</sup> 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.

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<sup>1</sup> 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

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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 Petitioner and Plaintiff,

15 vs.

16 CALIFORNIA COASTAL COMMISSION, a  
California public agency, and DOES 1 through  
17 5, inclusive,

18 Respondent and Defendant.

19 HEADLANDS RESERVE LLC, a Delaware  
Limited Liability Company, and DOES 6  
through 10, inclusive,

20 Real Parties in Interest.

21 SURFRIDER FOUNDATION

22 Petitioner and Plaintiff,

23 vs.

24 CITY OF DANA POINT; a Municipal  
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

JUN 02 2011

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

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*[Signature]* Deput

1 DANIEL FOSTER (Bar No. 179753)  
2 DAVID M. BECKWITH (Bar No. 125130)  
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Attorneys for Petitioner  
SURFRIDER FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION **BY FAX**

13 CITY OF DANA POINT, a California  
14 Municipal Corporation,

Petitioner/Plaintiff,

v.

17 CALIFORNIA COASTAL COMMISSION,  
18 a California public agency, and DOES 1  
through 5, inclusive,

Defendant/Respondent,

20 HEADLANDS RESERVE LLC, a Delaware  
21 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

~~RECEIVED~~ **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

23 AND RELATED CONSOLIDATED CASE.

25 Petitioner Surfrider Foundation's ("Petitioner") Petition for Writ of Mandate and  
26 Complaint for Declaratory and Injunctive Relief ("Petition and Complaint") came before this  
27 Court for hearing at 1:30 p.m., April 28, 2011. Jennifer Kalnins Temple, David M. Beckwith,  
28 and Brock F. Wilson of McDermott Will & Emery LLP and Angela Howe of Surfrider

McDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
IRVINE

1 Foundation appeared on behalf of Petitioner, Surfrider Foundation. A. Patrick Muñoz, John A.  
2 Ramirez and Jennifer Farrell of Rutan & Tucker, LLP appeared on behalf of the City of Dana  
3 Point (“Respondent”). George M. Soneff of Manatt, Phelps & Philips, LLP appeared on behalf of  
4 Headlands Reserve LLC, which is named in the action as the Real Party in Interest (“Real  
5 Party”). Attorney Jamee Jordan Patterson, Supervising Deputy Attorney General, appeared on  
6 behalf of the California Coastal Commission.

7 Surfrider’s Petition and Complaint was originally filed in the Orange County Superior  
8 Court and designated as Orange County Superior Court Case No. 30-2010-00381725. The City  
9 of Dana Point filed a separate action against the California Coastal Commission, which was  
10 designated as Orange County Superior Court Case No. 30-2010-00374874 (“City Petition”). The  
11 City Petition and the Surfrider Petition were then consolidated and transferred to the San Diego  
12 County Superior Court and designated as San Diego County Superior Court Case  
13 No. 37-2010-00099827-CU-WM-CTL. This Judgment pertains only to the Surfrider Petition and  
14 not to the City Petition.

15 The Court, having read and considered the moving papers, the opposition papers and reply  
16 papers, the Administrative Record prepared by the City of Dana Point, and having heard and  
17 considered all oral argument provided at the hearing held on this matter, and good cause  
18 appearing therefore, finds and determines as follows:

19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that City of Dana Point  
20 Ordinance No. 10-05, codified in part as City of Dana Point Municipal Code 13.04.030(h), (“the  
21 Ordinance”) is invalid and void insofar as there was no properly declared nuisance and/or the  
22 manner of abatement was excessive.

23 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that a  
24 Peremptory Writ of Mandate be issued under seal of this Court commanding the City of Dana  
25 Point, its City Council, its officiates, agents, attorneys, employees and all persons or entities  
26 acting on behalf of, or through or under color of authority of the City of Dana Point, to set aside  
27 and rescind the Ordinance and to not take any actions or further steps to enforce the Ordinance.

28 ~~IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that, to the~~ *Jm*

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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**F I L E D**  
San Diego Superior Court

JUN 0 1 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").

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 185-186<sup>1</sup>] 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

24 ///

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26 \_\_\_\_\_  
27 <sup>1</sup> 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" trails<sup>2</sup> 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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28 <sup>2</sup> 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.

28 ///

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.

28    ///

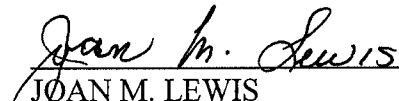
1 At Para. (c) of its prayer, Surfrider sought a declaration that the ordinance is void because  
2 the city failed to apply for prior certification from the Commission for an ordinance which amends  
3 its Certified Local Coastal Program.

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.

13  
14 Dated: 6-1-11

  
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16 JOAN M. LEWIS  
17 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)

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SURFRIDER FOUNDATION,

Plaintiff and Respondent,

v.

CITY OF DANA POINT,

Defendant and Appellant;

HEADLANDS RESERVE LLC,

Real Party in Interest and Appellant.

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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.)<sup>1</sup> The Project includes approximately 125 luxury home sites on an oceanfront slope.<sup>2</sup> 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)).<sup>3</sup>

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

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<sup>1</sup> Unless otherwise specified, all subsequent statutory references are to the Public Resources Code.

<sup>2</sup> At oral argument, counsel for the City stated that the sites are being offered for sale at between \$7 million to \$12 million each.

<sup>3</sup> 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.<sup>4</sup>

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).<sup>5</sup> 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

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<sup>4</sup> 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).

<sup>5</sup> 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.<sup>6</sup> Any future proceedings by the Commission against the City that are authorized by the trial court's ruling on remand in

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<sup>6</sup> 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.<sup>7</sup>

## 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."

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<sup>7</sup> 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.<sup>8</sup>

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."

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<sup>8</sup> 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"<sup>9</sup> 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

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<sup>9</sup> 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.<sup>10</sup>

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<sup>10</sup> 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.<sup>11</sup> 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,'

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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."

<sup>11</sup> 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-judicatory 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.<sup>12</sup> More broadly, while the Commission reads the statute as authorizing

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<sup>12</sup> 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.<sup>13</sup> The Commission appears to theorize that a party may

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"(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.)

<sup>13</sup> 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).

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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.<sup>14</sup>

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.

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<sup>14</sup> 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 division<sup>15</sup> 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.)

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<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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

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<sup>16</sup> 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.

<sup>17</sup> 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.<sup>18</sup> 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.]

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<sup>18</sup> 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 staff<sup>19</sup>] 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.)<sup>20</sup> 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

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<sup>19</sup> 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.

<sup>20</sup> 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)),<sup>21</sup> 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

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<sup>21</sup> 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.<sup>22</sup> 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

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<sup>22</sup> 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).<sup>23</sup>

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<sup>23</sup> 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,<sup>24</sup> and that the development mandated by the City exceeded the amount necessary to abate any actual nuisance.<sup>25</sup> 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

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<sup>24</sup> 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.

<sup>25</sup> 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.<sup>26</sup> 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

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<sup>26</sup> 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).<sup>27</sup>

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

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<sup>27</sup> 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.<sup>28</sup>

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*

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<sup>28</sup> 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.<sup>29</sup>

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

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<sup>29</sup> 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.

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AARON, J.

I CONCUR:

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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 Code<sup>1</sup> 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

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<sup>1</sup> 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.<sup>1</sup>

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

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<sup>1</sup> 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."<sup>1</sup>

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<sup>1</sup> 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?"

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"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."<sup>1</sup> (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

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<sup>1</sup> 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.

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BENKE, Acting P. J.



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 signs 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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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 time<sup>1</sup>(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 hours<sup>2</sup>. 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  
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24 <sup>1</sup> 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)

<sup>2</sup> 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  
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: *A. Shirley*, Deputy

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Additional names and address attached.

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

Page: 1

**CCC-16-CD-02**  
**Exhibit 13**  
**Page 15 of 15**



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 CDP<sup>2</sup>; (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

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<sup>2</sup> 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 ("HDCP"), 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**

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
301 E. Ocean Blvd., Suite 3000  
Long Beach, CA 90802-4302  
(562) 590-5071

**SENT VIA REGULAR MAIL AND EMAIL**

December 14, 2023

Brenda Wisneski  
City of Dana Point  
Director of Community Development  
33282 Golden Lantern  
Dana Point, CA 92629-1805

**Re: Headlands Conservation Park Trail Hours**

Dear Ms. Wisneski:

We received a copy of your letter to Center for Natural Lands Management (“CNLM”) on August 1, 2023, which, amongst other things, suggests that the City of Dana Point is responsible for setting hours for the blufftop trail in the Headlands Conservation Park, which is a position that is not supported by the Commission-certified Local Coastal Program for the City of Dana Point, as described below. Regardless, we are not aware of the City taking action to authorize the trail hours that it has sought in litigation with CNLM<sup>1</sup> – hours that we believe constitute an ongoing inconsistency with the Local Coastal Program.

We understand the importance of public access generally and work to protect it statewide. However, we are also concerned that the City’s insistence upon these hours is endangering the existence of the federally threatened Pacific Pocket Mouse, a small population of which is supported by the Headlands Conservation Park. Managing public use of the Headlands Conservation Park in a way that minimizes impacts on this threatened species is critical to the survival of this species, which is just another piece in protecting the ecosystem and its critical functions. As the United States Fish and Wildlife Service and California Department of Fish and Wildlife put it in their joint March 23, 2022 to CNLM, “Due to the small size and sensitivity of the PPM population, during development of the HDCP and HMMP we emphasized that it would be critical to design and regulate public use to safeguard PPM and other sensitive flora and fauna within the Preserve.”

In order to protect the Pacific Pocket Mouse and undo the inconsistency with the Local Coastal Program with respect to trail hours described herein, we are asking the City to forego its insistence on maintaining the existing hours of operation and process CNLM’s request to establish hours of operation through an amendment to the Headlands Conservation Park management plan or a coastal development permit, as CNLM has requested to do. We are hopeful that such a compromise will allow for both public access and the survival of a threatened species.

---

<sup>1</sup> See, for instance, page 9 of the City’s Cross-Complaint for Civil Fines and Injunctive Relief for Violation of the Coastal Act, which says, in part, that “The City responded on or about June 19, 2020, again requesting the Nature Trail be returned to normal operating hours and advised CNLM of the City’s successful management of its other, opened trails at the Headlands, pointing out COVID had not been a challenge related to such trails.”

### **City Trail Hours are Detrimental to PPM and Inconsistent with the LCP**

The Local Coastal Program requires that trail hours must be found to be consistent with policies of the Local Coastal Program. Table 3.4.5 (Headlands Conservation Park) of the Local Coastal Program describes the balanced approach to access and protecting habitat that must occur at the Headlands Conservation Park. It states, in part, that:

The Headlands Conservation Park includes a limited bluff top trail, spectacular views of the ocean, and limited visitor access to the coastline and natural environment...

Balancing the desire for limited public access and views along the perimeter, this planning area also is designed to protect a number of sensitive flora and fauna, including the Pacific pocket mouse. As a result, and to protect this natural resource area from overuse, only limited portions of the area will accommodate passive uses, such as the bluff top trails, security fencing, overlooks, seating, and signage. The bluff top trail shall be sited to avoid and setback at least 25 feet from coastal bluff scrub in the vicinity of the bluff edge. The receiving agency or nonprofit entity will establish hours of operation for the bluff top trail.

With specific regard to how public access and habitat protection will be balanced with respect to trail hours, Section 4.5.1 of the Local Coastal Program states, in part:

The bluff-top trail in the Headlands Conservation Park shall be accessible to the public year-round, except for any specific period determined by the resources agencies to protect on site resources. The recipient public agency or non-profit entity will determine hours of daily operation.

As is evident from the joint May 15, 2023 letter from the resources agencies, United States Fish and Wildlife Service and California Department of Fish and Wildlife, the resources agencies share the concern here and support CNLM's proposed trail hours to better protect the Pacific Pocket Mouse. For instance, the resources agencies state that "As relayed in our prior comment letter, the status of each of the extant PPM populations warrants a conservative management approach to safeguard them from extirpation, especially at Dana Point, which supports the smallest and most vulnerable PPM population to environmental, demographic and genetic threats. Because public access is one of the few threats to the Dana Point population that can be effectively managed and could appreciably influence the size of the Dana Point population, we continue to support the proposal to more closely monitor and manage public access as a component of the adaptive management plan for the Preserve."

The City's trail hours are inconsistent with this recommendation by the resources agencies to regulate trail use to better protect the pocket mouse, and thus are inconsistent with the Local Coastal Program.

### **Authorize Hours of Operation through a CDP**

As noted in previous correspondence, the Headlands project coastal development permit, CDP No. 04-23, does not authorize specific hours of operation for the trail. Therefore, a coastal development

permit is required to authorize hours of operation for the bluff top trail. This may occur through review and approval of the compliance documents for the existing Headlands coastal development permit, e.g. the Habitat Management and Monitoring Plan, or a new coastal development permit. Regarding the former option, Condition No. 38 of CDP No. 04-23 requires submittal of a habitat management plan (i.e. the Habitat Management and Monitoring Plan), and the preliminary drafts of the Habitat Management and Monitoring Plan HMP do contemplate trail hours. This is consistent with the Dana Point Municipal Code's requirements for management plans, see Section 9.27.030(a)(4)(H), which says:

(H) Management Plan (Minimum Requirements). A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site. Examples include access in areas of sensitive habitats, agricultural resources, or significant hazards, or adjoining residential neighborhoods or military security areas. The plan shall be prepared by the accepting agency and approved by the City of Dana Point prior to the opening of the access to public use. Where applicable, the plan should specify management controls on time and intensity of use, standards for privacy buffers, and requirements for maintenance of aesthetic values through such measures as litter control.

The Habitat Management and Monitoring Plan thus could be an option for CNLM to set hours of operation, as approved by the City, wildlife agencies, and the Coastal Commission.

### **CNLM Sets the Hours of Operation**

The Local Coastal Program identifies CNLM, which is the recipient of fee title to the Headlands Conservation Park, as the entity that sets the trail hours. Table 3.4.5 (Headlands Conservation Park) of the Local Coastal Program says in part that "The receiving agency or non-profit entity will establish hours of operation for the bluff top trail." Table 4.5.1 (Headlands Conservation Park (27.9 Acres) Public Access Program Guidelines) says in part that "The recipient public agency or non-profit entity will determine hours of daily operation."

The Habitat Management and Monitoring Plan, which was prepared by CNLM and a City-hired consulting firm, also designates CNLM as the entity that sets the trail hours. As a preliminary matter, the Habitat Management and Monitoring Plan identifies CNLM as the habitat manager: "Headlands Reserve LLC has entered into an agreement with the Steele Foundation to ensure the perpetual management of the Biological Open Space of the Conservation Park. In turn, the Steele Foundation has selected CNLM as the habitat manager for the Headlands Conservation Park." The Habitat Management and Monitoring Plan then identifies the habitat manager as the entity that controls public access: "The Habitat Manager will be monitoring the consequences of this public access, and making recommendations to the City, which will be responsible for controlling public access for all areas other than the Headlands Conservation Park. Control of public access to the Headlands Conservation Park will be the responsibility of CNLM in consultation with the City of Dana Point. Hours of operation for the Headlands Conservation Park and other areas of Biological Open Space will be 7:00 am to sunset." As noted on numerous occasions in correspondence regarding this matter, CNLM has indeed monitored the consequences of public access and is recommending trail hours to help protect the Pacific Pocket Mouse.

Despite the provisions quoted above, I understand that it is your position that the receiving entity that sets the trail hours is the City. This position is apparently based upon a sentence in the Local Coastal Program, in Section 5.5B, which says in part that “Times of access to the bluff top trail will be determined by the receiving public agency”. Since this sentence refers only to a “public agency”, which CNLM is not, it is your position then that the receiving entity must be the City, and the item being received is the conservation easement over the Headlands Conservation Park, and not the park itself. Notably, recipient is not defined in the section that you cite, or elsewhere in the Local Coastal Program, to refer to the recipient of the conservation easement. In the section that you cite, there is no mention of the conservation easement at all.

Your position does not account for all of the other iterations of this same sentence in the Local Coastal Program, which are quoted herein, that include reference to a public agency *and* a non-profit entity, e.g. CNLM. In fact, in the same section that you cite as evidence for your position, the next paragraph after the sentence that you quote reads as follows:

The Headlands Conservation Park also requires a long-term management program to conserve and enhance the sensitive plants and species. An endowment or annual budget will be established by the recipient public or non-profit agency to ensure the long term maintenance and operations of the Headlands Conservation Park.

That sentence that you rely on is clearly an aberration since in each other instance of the analogous sentence in the Local Coastal Program, it refers to both a receiving public agency or non-profit entity.

### **Conservation Easement does not Transfer Authority to Set the Trail Hours to the City**

The conservation easement over the Headlands Conservation Park is not identified by the Local Coastal Program or the Headlands Coastal Development Permit, which govern development at the Headlands Conservation Park, as a mechanism to set trail hours, nor does the easement purport to set trail hours, and thus the easement cannot confer to the City the authority to set trail hours. In fact, the easement references the Habitat Management and Monitoring Plan (referred to as the “Restoration/Revegetation Plans” in the easement) as the document that specifically regulates access to the Headlands Conservation Park. See Section 5.2(d) of the easement, which identifies the following uses as prohibited uses: “Recreational activities, including but not limited to, walking, hiking, bicycling, horseback riding, or fishing (except as described in Section 5.2(d) or unless specifically provided for in the Restoration/Revegetation Plans).” [underlining added for emphasis]

As described above, the Habitat Management and Monitoring Plan identifies CNLM as the entity that sets the trail hours.

### **Conclusion**

We would appreciate your cooperation and assistance in resolving this matter consistent with applicable law, and to assist us in the delicate balance and protection of this critical ecosystem. CNLM has been attempting to establish trail hours that are consistent with the Local Coastal Program since, to our knowledge, at least January 2022, and the City has rejected CNLM’s attempts

Headlands Conservation Park

December 14, 2023

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to modify trail hours through an amendment to the Habitat Management and Monitoring Program. If the City will not allow hours to be established that are consistent with the Local Coastal Program through the HMMP process, we suggest that the City process an application for CNLM's proposed hours through the CDP process. We would appreciate it if you would indicate the City's agreement to engage in the HMMP process or accept a CDP application within 15 days of the receipt of this letter so that Commission staff can consider its options to ensure trail hours that are protective of an endangered species, and consistent with the Local Coastal Program, are established in a timely manner. Thank you very much for your time and attention and I look forward to hearing from you.

Sincerely,



Andrew Willis  
Enforcement Staff Counsel

cc: Deborah Rogers, CNLM  
Jonathan D. Snyder, USFWS  
David A. Mayer, CDFW  
Lisa Haage, Chief of Enforcement, CCC  
Karl Schwing, Deputy Director, CCC

# 2023 Habitat Management Plan for Public Access for the Dana Point Preserve



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Center for Natural Lands Management  
[www.cnlm.org](http://www.cnlm.org)

DRAFT March 14, 2023

# 2023 Habitat Management Plan for Public Access for the Dana Point Preserve

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## 1. Preface

The Center for Natural Lands Management (CNLM) owns and manages the 29.4-acre Dana Point Preserve (Preserve), located in the City of Dana Point, Orange County, California. CNLM has prepared this habitat management plan (2023 Plan or Plan) for public access for the Preserve pursuant to Master CDP 04-23 for the City of Dana Point, specifically Condition No. 38.

CNLM submits the 2023 Plan focused on public access control at this time because of changing needs based on adaptive management, recent events regarding the management of public access for public health reasons, and the increased sensitivity of the natural resources on the Preserve. CNLM is in the process of preparing a comprehensive habitat management plan governing all aspects of the adaptive decision-making process for the management of the Preserve and long-term vision, continuity, and consistency for habitat management of the Preserve; the 2023 Plan will be incorporated as a component of that upcoming comprehensive habitat management plan.

CNLM acquired the Preserve in 2005 for the purpose of protecting the rare coastal sage scrub community and habitat for the threatened coastal California gnatcatcher (*Polioptila californica californica* or gnatcatcher) and endangered Pacific pocket mouse (*Perognathus longimembris pacificus* or PPM). CNLM's management of the Preserve is overseen by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) through, in part, the Orange County Central and Coastal Subregions Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP)<sup>1</sup>. The NCCP/HCP originally called for a temporary preserve for PPM on a portion of what is now the Preserve property; USFWS and CDFW approved the permanent protection of the Preserve through ownership and adaptive management by

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<sup>1</sup> The previous owner of the Preserve property was a "Participating Landowner" under the NCCP/HCP, which commits the landowners to address impacts to and conservation of PPM, gnatcatcher, and other species on certain property, including the Preserve. The City of Dana Point is also a Participating Landowner.

CNLM, as part of the development of the Headlands area of Dana Point, as described below.

In 2004, the City adopted the Headlands Development and Conservation Plan (HDCP), which implements the Coastal Act for the Headlands area. The HDCP called for the creation of a conservation area to protect environmentally sensitive habitat areas (ESHA) within the project site, and specifically to balance protection of natural resources with public access on the Preserve. HDCP Policy 5.20 calls for “[r]egulat[ing] the time, manner and location of public access to parks and open space containing sensitive biological resources to maintain and protect those sensitive resources and to protect the privacy rights of property owners while honoring the public’s constitutional right of access to navigable waters.” Policy 3.7 provides that ESHA “shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. . . .”. The HDCP called for limited portions of the Preserve to “accommodate passive uses, such as the bluff top trails, security fencing, overlooks, seating and signage. . . .” (HDCP, Table 3.4.5).

The HDCP provides for establishment of the Preserve and designates it for Conservation Open Space, “the most restrictive land use within the [Headlands] project”. Further, the HDCP requires long-term preservation and management of habitat for sensitive species, including the Pacific pocket mouse, provides for a non-profit trust to manage the Preserve in conjunction with USFWS and CDFW, and calls for recording a conservation easement to ensure the Preserve remains permanently conserved open space. Noting that the Preserve will “include[s] a limited bluff top trail . . . and limited visitor access to the coastline and natural environment,” the HDCP provides that “[b]alancing the desire for limited public access and views along the perimeter, the [Preserve] is designed to protect a number of sensitive flora and fauna, including the Pacific pocket mouse” and “[a]s a result, and to protect this natural resource from overuse, only limited portions of the area will accommodate passive uses” and the “non-profit entity will establish hours of operation for the bluff top trail” (HDCP, Table 3.4.5).

Owing to its experience and expertise managing habitat for endangered species, CNLM was selected to be that non-profit entity.

The City authorized development of the Headlands Project, including the Preserve, under the California Coastal Act by issuing Coastal Development Permit 04-23 (Permit or CDP) on January 19, 2005 (City of Dana Point 2005). The CDP specifies that a “pedestrian trail of decomposed granite/gravel shall provide controlled access to the coastal bluff top” and requires all development to “be consistent with and comply with all requirements of the HDCP.” It also calls for preparation of a habitat management plan before disturbance of any environmentally sensitive habitat area (ESHA)<sup>2</sup> and protection of Preserve ESHA by dedication of a conservation easement to the City or other appropriate entity.

On December 20, 2005, CNLM, the owner of the Preserve, granted a Conservation Easement (CE) over the Preserve to the City, which the City accepted as compliance with the CDP condition calling for a conservation easement (CNLM and City 2005). The purpose of the CE is “to ensure that biological values and resources in the [Preserve] continue to exist in perpetuity, and to prevent any use of the [Preserve] that will materially impair or interfere with such values and resources.” The CE prohibits “[u]ncontrolled public access” and public access during non-daylight hours (with limited exceptions), and permits controlled public access to the nature trail and overlook areas for passive recreational uses.

A draft habitat monitoring and management plan for the Preserve and adjacent land now owned by the City of Dana Point was prepared by a consultant for Headlands Reserve, LLC in 2005, but appears to have never been finalized or approved by the City, the Coastal Commission, USFWS, or CDFW. Nevertheless, CNLM has submitted annual reports and work plans for management of the Preserve to the wildlife agencies

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<sup>2</sup> HDCP Policy 3.1 describes the importance of areas designated as ESHA as “areas where plant or animal life of their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities. . . .”

and the City since CNLM acquired the Preserve in 2005, which include comprehensive management and monitoring reporting and planning related to the Preserve. As mentioned above, CNLM is currently working on a comprehensive adaptive management plan for the Preserve, and this Plan covers adaptive management related specifically to public access to the blufftop trail on the Preserve.

The Preserve is small (relative to its intended conservation purpose), has distinct and hard edges on most boundaries (being bounded by the Pacific Ocean on its western boundary and by hardscaped City streets and residential development on most of the rest of its perimeter; Figure 1), and is occupied by two listed species within a fragile and rare suite of landscape features. In accordance with the CDP and HDCP, a trail was designed and created on the Preserve, and initially opened for public access in December 2009.

The Preserve is protected with a wildlife-friendly, six-foot-high iron fence (Figure 2) or concrete wall on all sides except the coastal bluff-tops and the border with Hilltop Park. CNLM's public access trail can be accessed by the visiting public from two locations with clearly marked gates—Scenic and Dana Strand (Figures 2 and 3). The trail is approximately 0.5 miles in length and includes five overlook areas (with benches and/or educational signs). Both the trail and overlook areas are well defined and enclosed by a post-and-cable trail fence. Any off-trail use would require intentionally climbing through or over the fence. Further, the trail meanders through the Preserve exposing the majority of the Preserve to potential public use impacts (i.e., within 100 meters of the trail). Gates are closed at all times except when individuals are entering and exiting the Preserve and are controlled by automatic devices powered by solar panels. The gates are locked when the trail is not open for public access. Signs and interpretive panels provide information about the Preserve, including allowable (e.g., hiking, running, and wildlife viewing) and prohibited (e.g., collecting materials, smoking, off-trail use, drone use, pets, bicycles, etc.) activities for trail use (Figures 2 and 3). Informational kiosks are also located at each gate with maps showing the trail and the list of trail use rules. The public also has access to informational brochures (available in the Nature

Interpretive Center), created by CNLM and the City, that provide allowed and prohibited activities on the trail, a map of the trail, information on the common plant and bird species seen from the trail, and a list of alternative nearby areas where dogs are allowed on trails.



Figure 1. Overview of the CNLM Dana Point Preserve with boundary, trail, and gate features. The trail is the muted line within the Preserve area (bounded by a white line) and shows the overlook areas.

Since the trail was opened to the public in December 2009, it was generally open seven days per week, from approximately 7:00 a.m. to sunset. CNLM staff further controlled access to the trail by closing the trail, in part or in its entirety, from time to time for, among other reasons, protection of nesting locations of gnatcatchers near the trail

(where trail use would risk nest abandonment and the death of nestlings), repair of the trail where storm events have made it unserviceable and/or unsafe, repair and maintenance of fences and other infrastructure, or other preserve management activities that would have been significantly affected by public presence or that may present a public safety risk.

CNLM is required to practice adaptive management with respect to the Preserve, which aims to improve management practices incrementally by designing, adjusting, and implementing plans in ways that facilitate learning from experience. Thus, when the Preserve was created and the trail was established, it was anticipated that changes in public access, among other things, could occur due to adaptive management. The U.S. Department of the Interior describes adaptive management as a decision process that:

promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a “trial and error” process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders (Williams et al. 2009, National Research Council 2004).

CNLM stewardship practices reflect the principles and include the core elements of adaptive management (Rogers 2007). With this Plan, CNLM endeavors to make use of what it has learned since creation of the Preserve in 2005 and opening of the trail in 2009. As described in detail in the Plan, the intensity of public use of the Preserve has increased greatly since the trail was opened, and the Pacific pocket mouse has become more vulnerable to extinction. In addition, in the last 18 years, we have gained a much

better understanding of the impacts of passive recreation on natural resources. As a result of these developments, CNLM is proposing hours of operation for public access to the Preserve trail that are more likely to be protective of the resident species.

## **2. Executive summary**

The approximately 29-acre Dana Point Preserve (Preserve), located within the City of Dana Point in Orange County, California, has been owned and managed by the Center for Natural Lands Management (CNLM) since December 2005. The Preserve, in addition to supporting a rare coastal sage scrub community with considerable biodiversity, provides habitat for (and extant occurrences of) two listed species—the (federal) threatened coastal California gnatcatcher (*Polioptila californica californica*) and the (federal) endangered Pacific pocket mouse (*Perognathus longimembris pacificus*). A management plan for the Preserve was drafted in 2005 but provided little information regarding public access, although noting that excessive or uncontrolled access could result in habitat degradation. A conservation easement, granted to the City by CNLM in 2005, is intended to ensure that biological values and resources in the Preserve continue to exist in perpetuity, and to prevent any use that would materially impair or interfere with such values and resources. For much of the period between 2009—when the trail on the Preserve was first opened to the public—until the COVID-related substantial closure in 2020, the trail was open to the public generally seven days per week, typically 7:00 a.m. to sunset. CNLM staff closed the trail or modified public access as needed for trail maintenance, in particular, and for other reasons including protection of sensitive nesting locations. However, when the trail opened to public access in 2009, there was no underlying research or principles that supported this amount of public access in relation to the need to protect the sensitive onsite natural resources. This 2023 Plan provides evidence-based information pertaining to public use of the Preserve trail, relevant scientific literature, and a proposed schedule and rationale for public access. Although the Preserve contains a multitude of sensitive and rare species, the species of most management concern is the highly endangered Pacific

pocket mouse (PPM) because there are only three populations left in the wild and the Dana Point population is highly important to the persistence of the species.

Hundreds of scientific studies—encompassing both individual research studies and literature syntheses—were reviewed in preparation for this 2023 Plan. The majority of studies concluded that public presence (“passive recreation”) in parks and preserves had negative impacts on wildlife. The sights, sounds, vibrations, movements, and smells of the public can elicit avoidance or stress responses. Other behaviors—bringing dogs on preserves, littering, walking off trail—further compounded the harmful impacts. Studies based on COVID-related park/preserve closures further confirmed that wildlife responded favorably in the absence of the visiting public. When neutral or positive impacts of the visiting public were noted, these were largely the result of financial support from the visiting public or benefits to generalist species (e.g., raccoons, foxes, coyotes) that adjusted to human presence and foraged on trash left behind.

Public visitation data collected on the Preserve shows dramatic increases in the number of visitors since 2011 when monitoring commenced. The number of visitors doubled between 2011 and 2017—from an average of 345 per day to 673 per day (approximately 250,000 visitors per year). In February 2023, the average daily visitation was 800 (~300,000 visitors per year).

Directly studying effects from the visiting public on PPM or other resources is difficult. The most likely effect is stress (with downstream impacts on reproduction, survival, and population persistence) but this is difficult to measure without causing impacts to the species. Data based on live-trapping events indicate that PPM decreased after the trail initially opened in 2009 and increased after the trail was closed to the public in 2020. However, there are many other variables that can affect PPM, including climate change and vegetation condition, and separating all the effects is difficult if not impossible. Some of those variables are more controllable than others and are additive in their impacts. PPM as a species has become more vulnerable over recent decades due to the loss of one of the previously four extant populations. Additional threats to PPM or

other species on the Preserve that are more recent include two deadly viruses (affecting snakes and rabbits), Argentine ants, and the unpredictable and multiple impacts of climate change.

The preponderance of scientific literature pointing to the general negative impacts on wildlife from the visiting public, the increasing number of visitors to the Preserve, the incidents of trespass in the Preserve, and the other (largely uncontrollable) threats to PPM and other species, indicate a greater need to control public access. Without appropriate control, further impacts on PPM and other species seem likely and, at some point, would become irreversible, leading to extirpation. CNLM proposes a public access schedule of four days per week (including weekends, given their popularity with the public) with a summer (10 hours per day) and winter (8 hours per day) schedule. CNLM also proposes to set aside certain times for educational group visits on the trail—to facilitate public education, nature appreciation, and opportunities to engage disadvantaged and underserved communities. This schedule reflects the need to avoid public access during low-light times of the day when PPM is more likely to be active above-ground and engaging in critical activities including feeding, “bathing”, and reproductive behavior. A schedule of four days per week should also serve to provide better control on overall visitation (and related impacts) and address the trends of ever-increasing numbers of visitors. Although the Preserve is a critical home environment for the resident species, particularly PPM, alternatives for public recreation, aesthetic enjoyment, and nature appreciation abound both within the City of Dana Point and Orange County more generally. Within the City limits alone, there are 28 parks (15 with coastal views) and 11 miles of trails. The Dana Point Preserve trail has no access to water or beaches. The proposed schedule of public access to the trail and associated adaptive management activities are consistent with the Coastal Act, the HDCP, the CDP, and the Conservation Easement.

The proposal for public access to the trail on the Dana Point Preserve is accompanied by continuing and additional monitoring of both public visitation and the natural resources to further the goals of adaptive management. The Preserve’s natural

resources will continue to be managed as well to lessen threats and impacts as much as possible. Information will continue to be sought from the visiting public, relevant scientific literature, onsite data and experience, and guidance from the research and regulatory communities. The practice of adaptive management will continue to be implemented to best effect to protect the natural resources and provide controlled public access, revisiting access schedules from time to time as appropriate.



Figure 2. Exterior sign on the Dana Point Preserve's Dana Strand Gate referring to prohibited uses. Some information is also provided on one of the two listed species on the Preserve—coastal California gnatcatcher. The type of fence that surrounds the Preserve can also be seen.



Figure 3. Exterior sign on the Dana Point Preserve’s Scenic Gate referring to prohibited uses. Some information is also provided on one of the two listed species on the Preserve—the Pacific pocket mouse.

### 3. Sources of information regarding public access

Since 2005, when the Preserve was acquired, there has been considerable accumulation of information and experience that is relevant to this 2023 Plan, including:

- CNLM management experience on the Preserve relative to public access
- Changes in use of the Preserve by the public over time
- Changes in vulnerability of PPM at the species and population levels
- Information on PPM and gnatcatcher presence over time

- Changes in threats to the natural resources onsite
- A growing base of scientific literature regarding the relationship(s) between public use (“passive recreation”) of nature preserves and wildlife response

Each of these topics has been explored and is described below.

### 3.1. CNLM management experience on the preserve relative to public access

During CNLM's more than 17 years of experience in managing the natural resources onsite and more than 13 years of experience in controlling public access of the Preserve, considerable insight has been gained into the relationship between these activities. Management activities related specifically to public access include monitoring, prevention of trespass and other prohibited behaviors, and remediation of some of the damage caused by trespass. The primary prohibited activities on the Preserve are using the trail outside of allowed hours, trespassing off the trail, littering, smoking, bringing pets onto the trail, and removing vegetation.

Monitoring of public access has included the use of trail counters to obtain information on the number and timing of visitors (see Section 3.2, below), as well as monitoring by CNLM staff on site. Since the trail opened to the public in 2009, CNLM has continued to hire additional staff to provide an onsite presence. CNLM currently has four staff members on site for an average of six days per week. CNLM staff at the Preserve patrol the trail, provide information and education to interested visitors, ensure that fencing, gates, and signage are intact, and interact with visitors who trespass off the trail or otherwise engage in prohibited activities. CNLM staff also document incidents of trespass and other prohibited behaviors. CNLM staff further plant vegetation or piles vegetation in areas that experience high frequencies of off-trail use (i.e., trespass) by the public to create additional barriers along the trail fence, and coordinate with CDFW Game Wardens and Orange County Sheriff's Department to help patrol and issue citations.

The most prevalent type of observed prohibited behavior (noted as an “incident”) documented on the Preserve is trespass by visitors off the trail. From June 2017 to February 2023, 374 incidents were documented, 59% (220) of those were off-trail incidents (Figure 4). Despite numerous signs, fencing, and the presence of CNLM staff, visitors continue to climb over the fence and go off the trail. The second most common incident at 22% (81) is pet dogs and cats on the trail. These incidents do not include incidents where staff intervened and prevented pets from entering the trail, only those observed on the trail. On average, these instances occurred approximately 15% of the days staff were on site. As an incident can only be recorded when staff is onsite to observe it, this is likely an underestimate as it does not include events that occurred when staff weren’t present. In the first two months of 2023, the number of dogs on the trail had already reached 10 incidents, which is double the observed number of incidents in 2020 and 2021 combined (K. Merrill pers. comm.).

Trespass on the trail after the trail is closed is also frequently observed. In 2022, wildlife cameras were installed at both the Selva and Scenic gates and have become useful tools in documenting trespass after hours and after sunset, in particular. In September and October 2022, when the trail access schedule was eight hours per day for three days per week, the average number of monthly trespass incidents after sunset was 2 ( $\pm 1.1$ ) and 1.6 ( $\pm 0.5$ ) per month, respectively. When the trail schedule was changed to open seven days per week, 7:00 a.m. to sunset, the average monthly trespass after sunset was 2.75 ( $\pm 0.6$ ) in November and 5 ( $\pm 1.1$ ) in December 2022 (Figure 5).

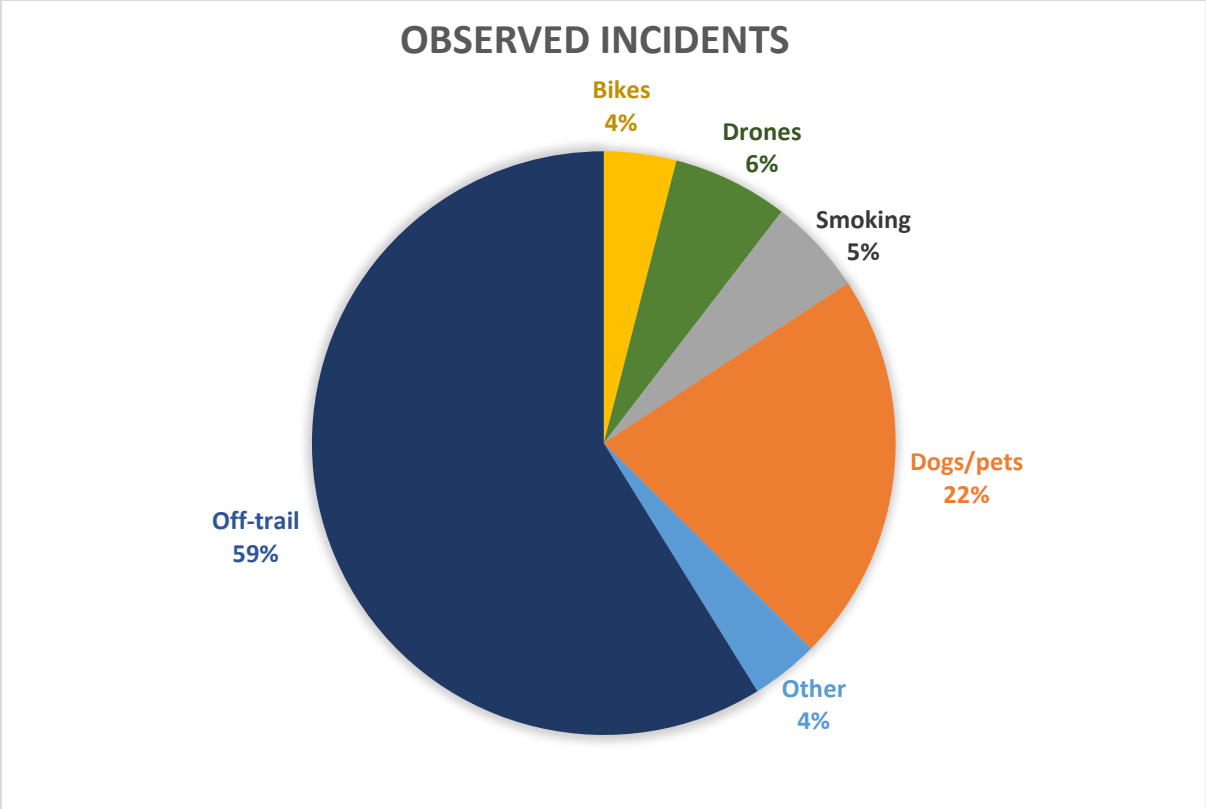


Figure 4. Observed incidents 2017-2023. Incidents observed only include active behaviors (these do not include evidence of trespass such as littering or footprints) observed by CNLM staff. Other includes spreading human remains, harassing wildlife, drinking alcohol, excavation, urination, and littering. Bikes include bicycles, e-bikes, and unicycles. Smoking incidents only include active smoking (does not include evidence of smoking such as cigarette butts). Drones only include drones flown from and over the Preserve (drones flown over the Preserve from the adjacent beach aren't included). Off-trail indicates people stepping off the trail. Dogs/pets only includes those observed on the trail.

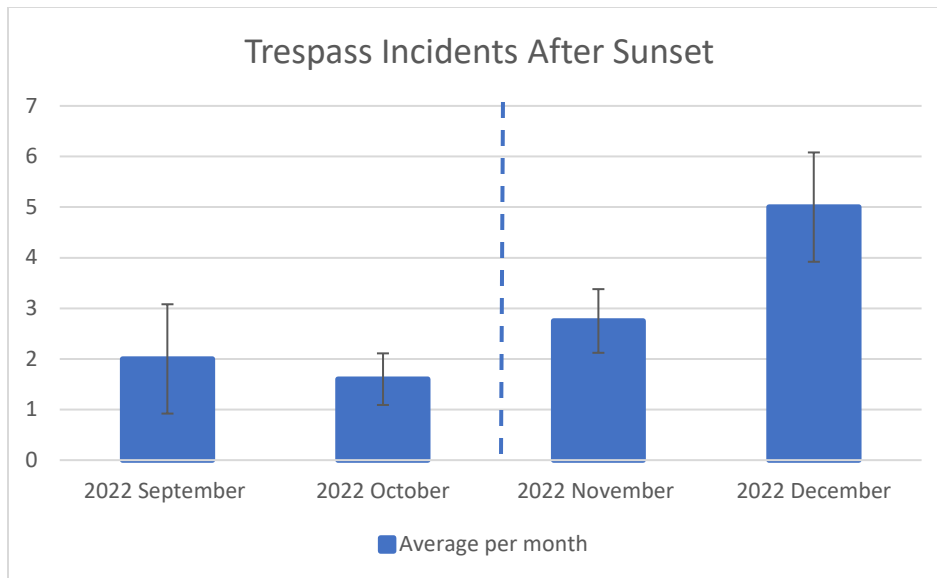


Figure 5. Trespass incidents after sunset. Average number of incidents caught on wildlife cameras at the Scenic and Selva gates for four months (mean, standard error). During September and October 2022 (to the left of the dashed line) the trail schedule was three days a week 8:00 a.m. to 4:00 p.m. and for November and December (right of the dashed line) the trail schedule was 7:00 a.m. to sunset, seven days per week.

Regardless of high levels of staff and volunteer effort, violation of trail rules by the visiting public is not decreasing. For the period November 5, 2022 to February 26, 2023, with a public access schedule of open daily from 7:00 a.m. to sunset, CNLM staff conducted patrols for 49 days and reported 38 incidents with a total of 165 visitors that refused to leave the trail at sunset. These incidents are in addition to those reported above in Figure 5. CNLM staff have called the Orange County Sheriff’s Department’s non-emergency phone line for a few of these incidents and, on one occasion, the Orange County Fire Authority responded. However, as far as reported by CNLM staff, no citations were given to individuals who trespassed after sunset (K. Merrill pers. comm.).

Other examples of destructive behavior by the public not abiding by trail rules include leaving food or trash onsite (may attract predators), bringing pets (usually dogs) onto the Preserve (sights and smells from domestic animals can have serious impacts on resident wildlife), making collections of plant materials for personal or commercial

landscaping purposes (thereby potentially reducing the viability, amount, or reproductive potential of those plant species), and engaging in other activities that can threaten the Preserve or its component biota including geocaching, smoking, playing recorded bird calls/songs, conducting wedding ceremonies, establishing memorials, scattering human cremains, catching insects, and using drones. Even public use of the adjacent parking lot has the potential to cause impacts: in 2010 and 2017, vehicles were driven through the perimeter fence into the Preserve (CNLM 2011, 2018). All these behaviors have been observed by CNLM staff on the Preserve and documented in annual reports since 2010 (CNLM 2011-2021). CNLM staff frequently update signage and trail rules in response to new types of incidents. For example, in 2022 unicycle use was added to the list of prohibited activities because some visitors argued it wasn't a bicycle and therefore was allowed on the trail (K. Merrill pers. comm.).

Regardless of the effort and efficacy in detecting and stopping trail use violations, ultimately it is not feasible to detect and stop all such incidents. Most significantly, harm to the species may already have occurred by the time the activity is detected.

CNLM staff respond to the most immediate and visible signs of impact to the Preserve from off-trail trespass by removing debris and litter, restoring trampled or cleared vegetation, and monitoring for crushed or otherwise impacted gnatcatcher nests and PPM burrows. However, trespass can cause other less observable and difficult to redress cumulative impacts on the species and habitat, such as behavioral changes, including alteration of perceived threats or predator avoidance, especially during low light hours and after sunset.

Public access by visitors who observe trail rules also affects the species, through the sights, sounds, smells, movements, and vibrations of public presence, as discussed below in Section 3.4. Additionally, as further described in Section 3.5, introduction of serious viruses or other pathogens that could be harmful or catastrophic for resident species can often be vectored on footwear and clothing of the visiting public. Efforts to control those threats with trail entrance disinfecting stations are difficult to enforce as

the public typically disregard informational signage at the trail entrances and thus probably have little effect, as experienced with such efforts to control the spread of the rabbit hemorrhagic disease virus serotype 2 (RHDV2) (K. Merrill pers. comm.).

### 3.2. Changes in use of the preserve by the public over time

Since 2011, when public trail use was first monitored, public visitation has steadily increased and, in fact doubled over just a seven-year period. There are no data for trail use for the first year the trail was open to public access. However, in 2011, because of growing scientific evidence, concern over impacts from public access, and apparent increases in public use of the Preserve trail in the past year, CNLM commenced monitoring public visitation. With financial support provided by USFWS, staff installed infrared trail counters at both gated entrances (Dana Strand and Scenic) to the Preserve's trail to collect objective and quantitative data on the amount of public visitation of the Preserve trail over time. For analysis, these data were inspected for any issues that may have resulted from power failures or failures in triggering counts upon entry of the public. For an initial analysis in 2020, all days with reliable data counts were included in the dataset for the year and the average number of visitors per day (i.e., per day of data collection) was calculated. During 2011-2017, there was a high degree of useable data. Data collection during 2018-2019 was affected by a high incidence of no data collected or trigger failures due to dead batteries, corrosion of the electronic plates, and frayed wires. Thus, the 2018-2019 data were very incomplete and considered unreliable as estimates of public use of the trail. Accordingly, a seven-year presentation of visitation is provided for the period 2011 through 2017 (Table 1, Figure 6) and 2020-2023 (Table 2). To be clear, references in this document to "number of visitors" that were recorded on the Preserve is more accurately defined as "number of counts by the infrared trail counters".

There is a significant upward trend over time in average daily visitation, almost doubling in that seven-year (2011-2017) period from 345 per day to 673. If these averages are represented as estimates of annual number of visitors (multiplying by 365 as the trail

was open most days of the year for that period), that would indicate an increase in visitors from over 125,000 in 2011 to over 245,000 in 2017.

Table 1. Average daily trail use counts at the Dana Point Preserve, 2011-2017.

Year	Average Daily Visitation <sup>1</sup>					Annual Visitation Estimate <sup>2</sup>
	Mean	SE	N	Lower 95%CI	Upper 95%CI	
2011	344.5	10.3	185	324.3	364.7	125,740
2012	319.6	9.8	248	300.4	338.7	116,637
2013	361.1	8.5	344	344.3	377.8	131,793
2014	355.8	9.2	306	337.8	373.8	129,851
2015	444.6	16.0	239	413.3	475.9	162,281
2016	612.7	19.3	366	575.0	650.5	223,643
2017	672.5	20.4	302	632.6	712.4	245,465

<sup>1</sup> Average daily trail use counts, which represents average daily visitation and 95% confidence intervals (CI), were calculated as the total counts of reliable data / days of reliable data collection per year. For this representation, data from one gate only (Scenic gate) were used. Although this could lead to an over-representation of visitors (i.e., those who both entered and exited from the Scenic gate), that bias is reasonably assumed to be counter-balanced by the opposite—i.e., visitors exiting and entering from the other gate only. Further, the number of visitors recorded is probably an underestimate of the actual number because the counter counts people passing the sensor with a delay of 1.5 seconds rather than counting all individuals, and visitors not infrequently enter the gate in a group—and thus would be counted as only one visitor.

<sup>2</sup> Estimates of annual visitation were calculated as average daily trail use counts \* 365 days although there were some days that the trail would have been closed to the public for trail maintenance, etc.

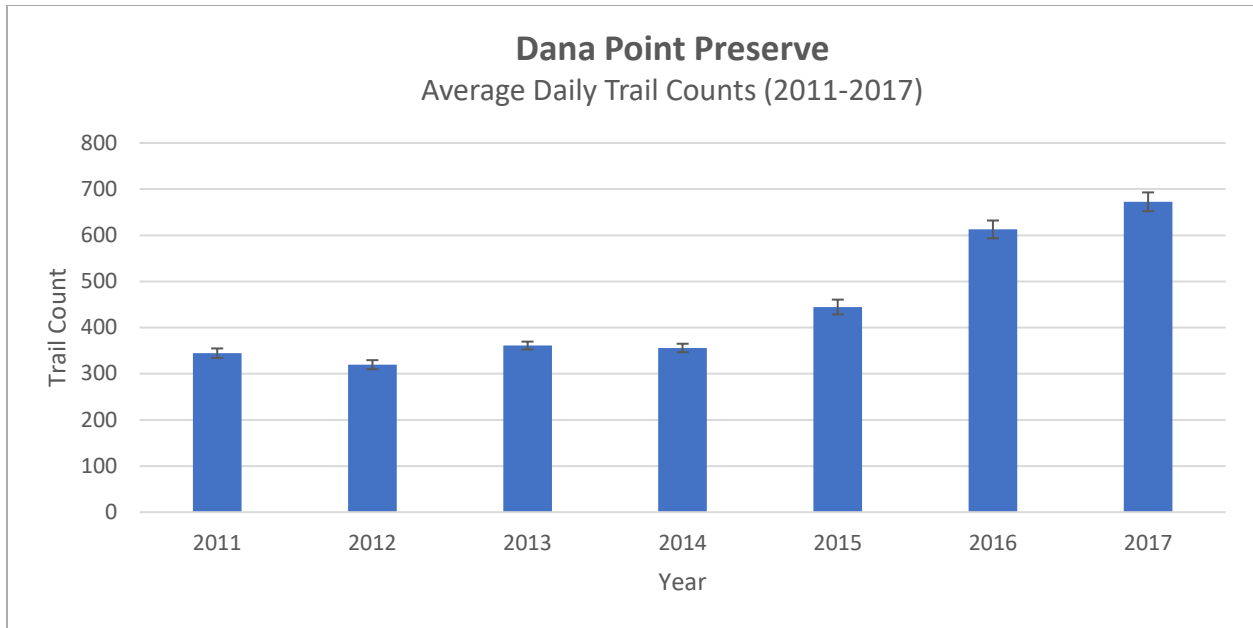


Figure 6. Average (mean, standard error) daily trail use counts (2011-2017) at the Dana Point Preserve.

Commencing in March 2020 to present, the public trail hours for the Preserve underwent intermittent changes, initially due to COVID-19 precautionary measures. As such, the data presented for this time period (2020-2023) have been characterized by schedule types as follows.

January 2020 – March 2020, Pre-COVID public trail use: In early 2020, the trail continued to be open for public use, for the most part, from 7:00 a.m. to sunset, seven days per week until mid-March 2020. Visitation data was collected for these three months.

March 2020 – June 2021 public trail use: The trail was closed in mid-March 2020 to the public—initially for trail maintenance and then longer because of public health directives regarding COVID-19. Although the narrowness of the trail could not accommodate the “social distancing” public directive in effect, the trail was re-opened gradually commencing in mid-October 2020 with a carefully implemented one-way access plan—initially for two days per week, three hours per day. Public compliance with COVID-19 safety rules for the trail was monitored, as were COVID-19 statistics and public health

directives, and, in response, the trail was temporarily closed mid-December 2020 to February 2021. By April 2021, the trail was opened for three days per week for four hours per day, and by mid-June 2021 it was open eight hours per day on those days. Given the multiple changes in the public access schedule, the data for the period of March 2020 to June 2021 are not presented.

June 2021 – November 3, 2022 public trail use: During this period, and with exceptions for trail closures related to weather and trail maintenance, etc., the trail was open to the public for three days per week (Tuesday, Thursday, and Saturday) for eight hours per day on those days (8:00 a.m. to 4:00 p.m.). During that approximately 16-month period, data were collected for 15 months (August 2021-November 2022).

November 4, 2022 – February 27, 2023 public trail use: Due to a preliminary injunction sought by the City of Dana Point and approved by the Orange County Superior Court, CNLM was required to open the trail for public access for 7:00 a.m. to sunset, seven days per week, commencing November 4, 2022 to present. During that 4-month period, trail counter data were collected for 3 months.

Public visitation rates as represented by trail counter data for the times periods described above are presented in Table 2.

Table 2. Average daily trail use counts at the Dana Point Preserve 2020-2023.

Period	Average daily visitation			Annual visitation estimate <sup>4</sup>	
	Access schedule	No. of months <sup>3</sup>	Mean	3 days/week schedule	7 days/week schedule
Jan – Mar 2020 (Pre-COVID)	7 days/week 7:00 a.m. to Sunset	3	713	-	260,245
<sup>1</sup> Aug 2021 – Nov 2022	3 days/week 8:00 a.m. to 4:00 p.m.	15	481	75,036	175,565
<sup>2</sup> Nov 2022 – Feb 2023	7 days/week 7:00 a.m. to Sunset	3	640	-	233,600

<sup>1</sup>The period March 2020 – June 2021 was not included due to the initial closure for seven months, followed by fluctuating public access hours. No trail counter data are available for June or July 2021.

<sup>2</sup> No trail counter data is available for December 2022.

<sup>3</sup> Number of months included in calculation (based on available data within period).

<sup>4</sup> Annual estimate based on access type, daily or three days per week (mean daily visitation \* 3 [days] \* 52 [weeks] or mean daily visitation \* 365 [days]).

Data for January, February, and March 2020 (the period immediately preceding closure related to COVID-19) showed an average of 713±62.0 (SE) visitors per day. This suggests that the upward trend represented during 2011-2017 had continued, with an ever-increasing daily average of visitors on the public trail and had potentially reached over 260,000 visitors per year by March 2020. When the trail was open three days per week for 8 hours a day, the number of visitors per day was, on average, 481.1±18.1 (SE) somewhat higher than the average across 2011-2017 (444 per day), but much reduced from that in 2016 (613 per day), 2017 (673 per day), and the early 2020 observations of 713 per day. Extrapolating to annual visitation, based on three days per week, the estimate is 75,036. Further, if the eight hours per day visitation data are projected to a seven-day-per-week, 365-day schedule, annual visitation is estimated to be over 175,000, considerably higher than in 2011 (125,740).

In November 2022, when the trail was required to be open to the public seven days per week, 7:00 a.m. to sunset, visitation rates started to climb. Based on the three months of data available for this recent period, daily visitation rates had already increased by over 150 visitors per day, on average a 33% increase, with a projection of over 230,000 visitors per year. That number, however, is expected to be significantly exceeded, if that

schedule remains in effect through 2023. Data shows that visitation at the beginning of that period was initially lower than expected for November and January, as the public was still accustomed to the previous schedule. The daily average for public visitation for February 2023, for the 20 days of data available, was 799.9 ±98.4 (SE)—an increase of approximately 12% over the pre-COVID 2020 daily average (713 per day).

The highest, and not just average, number of visitors per day could also be an important measure of impact on natural resources. At the very least, high daily visitor rates contribute disproportionately to annual visitor usage. Peak (one day) visitation can also be determined, although data are not available for every day that the Preserve's trail was open so the peak days for visitation (e.g., annually) cannot be confidently stated. Further, as previously explained, because several people can enter a gate at one time and only be counted as one, and if there are many visitors in a short period of time this is more likely to happen, that suggests that on busy days, the counts are likely to be underestimates of actual visitors. The greatest number of counts recorded on a single day within the period 2011-2017 was 2,896 and occurred on December 26, 2016. The highest daily count for early 2020 (January – March 2020) was 2,175 (February 16, 2020). Peak visitation days may be related to certain holidays and weather, thus there is no direct comparison available between 2016 and 2020 due to Covid-related closures on comparable dates/holidays. The highest daily count for the period August 2021 through November 2022, was 1,537 (January 1, 2022).

### 3.3. Information on Pacific pocket mouse and gnatcatcher presence over time

The two listed species on the Preserve have been monitored to provide information on their presence and changes in presence over time. For the coastal California gnatcatcher, surveys have been conducted annually by CNLM staff following USFWS protocols and permitted by CNLM's 10(a)(1)(A) permits. In addition to indicating presence, the surveys were generally able to detect numbers of individuals and reproductive groupings (pairs). Baseline data for the Preserve's population of gnatcatchers, collected in 2006, suggested a modest presence of perhaps three pairs or

family groups (Table 3). Between 2006 and 2018, that number fluctuated between three and seven pairs—such fluctuations not being surprising for this (sub)species and variations in habitat conditions. There was an increase in 2019 to 14 pairs detected, and an even stronger increase in 2020 of 20 pairs. The results for the 2021 and 2022 monitoring events show a slight decline with 17 and 12 pairs detected, respectively (Table 3).

Table 3. Monitoring results for coastal California gnatcatcher on the preserve 2006-2022.

<b>Reporting Year</b>	<b>Survey Results</b>
2006	3 family groups
2007	3 pairs; 1 nest produced 3 fledglings
2008	4 pairs; all pairs produced 3-4 fledglings each
2009	5 pairs; all pairs produced 3-4 fledglings each
2010	4 pairs; all pairs produced at least 1 fledgling each
2011	5 pairs; 4 pairs produced at least 1 fledgling each
2012	7 pairs; all pairs produced at least 1 fledgling each
2013	7 pairs; 6 pairs produced at least 2 fledglings each
2014	6 pair; 3 pairs produced at least 1 fledgling each
2015	5 pairs; 3 pairs produced at least 1 fledgling each
2016	6 pairs (minimum)
2017	5 pairs (minimum)
2018 <sup>1</sup>	7 pairs (minimum), one nest likely failed due to proximity to trail
2019	14 pairs; at least 8 pairs successful; multiple pairs attempted second nest.
2020	20 pairs; at least 9 pairs successful; multiple pairs attempted second nest
2021	17 pairs; at least 4 pairs successful; multiple pairs attempted second nest.
2022	12 pairs; at least 2 pairs successful; multiple pairs attempted second nest

<sup>1</sup>In 2018, one gnatcatcher nest was observed in a shrub immediately adjacent to the trail at Overlook 4. As a precaution to protect the nest, that small section of the trail was temporarily closed to public use (signs and temporary barriers were placed on both ends of the trail). However, visitors frequently ignored this closure and used that section of trail. Ultimately, that particular nest failed, and that pair did not produce a successful nest in 2018 (CNLM 2019).

For Pacific pocket mouse, detection is more challenging and less precise, given that they are nocturnal, dwell in underground burrows, and surface only for certain essential activities including foraging, mating, and sand baths. Currently, two methods for monitoring the PPM population are used at Dana Point Preserve, track-tube and live-trap.

Starting in 2011, CNLM used track tubes to monitor PPM using methods developed by experts in the field and following the USFWS survey protocols. Track-tube surveys have been used successfully for monitoring PPM (Brehme et al. 2014), providing information on presence/absence, areas occupied, and—depending on survey design—some phenological and demographic data. This information is valuable in guiding short-term management decisions, helping to reduce the risk of harassment or take of PPM, and determining any trends that may be important for the long-term management of the Preserve. Such surveys may also be an indirect indicator of habitat suitability for PPM. In 2020 a revised, more consistent and robust track tube monitoring design was implemented by CNLM on the Preserve. This updated monitoring design will provide spatial and temporal data for short-term and long-term management on the Preserve and has potential to be compared to and analyzed with species-level data from monitoring efforts of the other two wild PPM populations. However, due to the differences in track-tube monitoring efforts and survey design from 2011 to 2019 and the lack of data prior to the installation of the trail, only live-trap data are presented in this plan as a reference for changes in potential population size.

Live-trapping has been conducted from time-to-time on the Preserve and this can provide confirmation of the presence of the (sub)species and can provide some other indicators of population health (such as presence of both sexes, reproductive status, general health of individuals trapped). Although the number of animals trapped has an uncertain relationship to the actual number of mice on the Preserve, live-trapping provides a general indicator of high, medium, or low numbers overall on the Preserve.

Other reasons for trapping have been to provide individuals for the USFWS's captive breeding program and to allow for collection of samples for genetic testing. Fecal samples have also been collected during trapping with the objective of analyzing diet composition.

Preserve staff have kept live-trapping at a minimum given its highly invasive nature. Stress to the trapped animals is inevitable and accidental deaths are possible. Live-trapping has been conducted in six years since 2008, commencing the year prior to the trail opening (2008) and again in May 2009—with the trail being opened to the public later in the year (Table 4). In May 2009, 82 animals (unique individuals) were trapped—up from 30 trapped the year prior. The number of trapped individuals decreased dramatically over the next three trapping events from 2012 to 2019, with only two animals trapped in 2019. Trapping was most recently conducted in summer 2020, after the Preserve had been closed for over three months due to COVID-19, and the number of individuals trapped was dramatically higher: 77 unique individuals.

Although trapping success can also be associated with trapping “effort” (measured here as trap availability—e.g., one trap deployed for one night = one trap night), similar trapping efforts (e.g., 2009 vs 2012) resulted in very different numbers of mice caught, and high levels of trapping effort (e.g., >1200 trap nights) provided results that varied from 6 to 82 (Table 4). Although the trapping effort in 2019 was low relative to that in 2017, even tripling the outcome (i.e., as a rough estimate of effect of increasing the trapping effort to something similar to 2017) would have still resulted in a low number of mice trapped (hypothetically). The trapping effort in 2020 was lower than that in all the previous years but one since 2008 yet had the second highest number of mice trapped. In general, a high level of trapping will not result in significantly more captures if there is a low resident population; conversely, even a lower trapping effort can result in high trapping results if there is a more robust resident population of mice.

Table 4. Results from all live-trap Pacific pocket mouse monitoring events 2008-2020.

<b>Month(s) and Year of Trapping Events</b>	<b>Level of Effort (trap nights)</b>	<b>Trapping Results (unique PPM)</b>
May – June 2008	3280	30
May 2009 <sup>1</sup>	3770	82
May 2012	3330	57
May 2017	2286	6
June 2019	792	2
June 2020 <sup>2</sup>	1254	77

<sup>1</sup> The trail was opened to public access in December 2009.

<sup>2</sup> The trail was closed to public access in March 2020.

Many variables and conditions can affect both the number of Pacific pocket mice onsite and the number of trapped individuals including, but not limited to, food supply, vegetative cover and composition, sex ratio, demographics, and influences on above- and below-ground behavior. The latter could include the influence of the visiting public. For example, data collected in 2020 indicated a significant correlation between vegetation management (in this case, removal of some dead vegetation, primarily shrubs) and location of PPM (Brehme et al. 2020). It is not feasible to have an experimental design that allows changes in PPM (or other species) to be attributed to any single factor, as there are many moving parts in a natural landscape, as well as lag effects for some treatments or influences that may complicate the observed patterns. As USFWS and CDFW have noted, “[r]egardless of the cause of the observed fluctuations in the PPM population, the monitoring results clearly illustrate that this population remains vulnerable to extirpation due to its isolation and small population size.” (USFWS and CDFW 2022).

Although there is limited ability at present to track changes in PPM genetic diversity over time (due to lack of sampling or modest numbers of mice sampled historically), genetic diversity itself is certainly dynamic—changing over time in response to natural processes including adaptation, migration, genetic drift, and mutation. To some extent, genetic diversity can be influenced, although not directly managed, by providing conditions conducive to effective reproduction and with extreme interventions such as removing or introducing mice. Genetic diversity is the basis for long-term adaptation and

very low levels may indicate concern, under certain conditions, for negative effects from inbreeding depression. Recent increased analysis of the mitochondrial genome revealed higher levels of nucleotide and haplotype diversity for the Dana Point PPM population than previously reported (Shier et al. 2022). In fact, the Dana Point population had haplotype diversity almost as high or higher than the other two populations. While this is reassuring information for the Dana Point population of PPM (although this is still based on just a sample from the mitochondrial genome and a sample of Dana Point mice), the information that the Camp Pendleton populations do not have significantly higher diversity (given the size and context of those populations) is somewhat surprising. Further, chromosomal differences that have been detected between the Dana Point population and the two at Camp Pendleton create more challenges in using assisted migration of mice among populations to increase genetic diversity at any of the populations. Although a well-constructed breeding strategy could potentially overcome those barriers, that intervention remains uncertain.

#### 3.4. Changes in vulnerability of Pacific pocket mouse to extinction at the population and species levels

At the time the Preserve was established in 2005, there were only four known populations of the Pacific pocket mouse. In fact, PPM were thought to be extinct beginning in the early 1970s until rediscovered in 1993 at what is now the Dana Point Preserve (Brylski 1993, USFWS 1994). Subsequent to its rediscovery, PPM was found in three additional locations on Marine Corps Base, Camp Pendleton (North San Mateo, South San Mateo, and North Santa Margarita). Although the most recent species-wide status assessment noted that its status has improved since its listing in 1994 with the discovery of those populations (USFWS 2020), PPM, at the species level, has become rarer and hence more endangered since 2005 as PPM have not been documented at one of those three locations (North San Mateo) since 2003 (Natural Resource Assessment Inc. 2003, USFWS 2010). Therefore, it is suspected that this population has since been extirpated, leaving only three wild populations. The PPM population on

Dana Point is the only non-federally owned property where the PPM occurs naturally and has become more important for the persistence of the species.

Further, two of the extant populations—those on Marine Corps Base, Camp Pendleton—are vulnerable to impacts from military training activities. To offset training-related impacts, CNLM and the Department of Defense (DoD) entered into an agreement in 2020, approved by USFWS, to use DoD funding to enhance conditions for PPM on the Dana Point Preserve.

Extinction risk of a species is related to the number of populations and the probability of persistence of each of those populations. With only three populations remaining in the wild, extinction risk of PPM is high even with the efforts towards establishing more populations with captive-bred mice. Establishing new populations of wildlife is challenging and the use of captive-bred mice may provide even more challenges due to some unintended and unavoidable consequences from their more domesticated origin. It will require many years (and PPM generations) before it could be determined whether any new (introduced) populations were truly “established”. Given the current or likely disconnected nature of wild and introduced populations of PPM and the threats that are widespread as well as others that may be more population-specific, all populations would be even more vulnerable to extirpation without professionally implemented adaptive management using all available stewardship tools to avoid, minimize, and control threats.

CNLM has been using stewardship tools to address those threats that can be managed. For example, with respect to vegetation management, increased management resources can be used to best effect for PPM persistence but many factors are largely or totally uncontrollable. While vegetation is manageable to some extent (influencing the amount of ground cover and species composition with trimming and removal, possibly some planting), it is still a function of natural processes and affected by weather conditions and climate change—largely unmanageable factors. Some of the growing threats to the Preserve cannot be directly managed or controlled, such as climate

change, or the spread of certain diseases and viruses. Because of the increasing threats to PPM at the both the population and species level, adaptive management requires measures to address known and manageable threats, which include impacts from public access.

### 3.5. Changes in threats to the natural resources

The Preserve and its habitat and resident species are vulnerable to a number of threats of which we are currently aware. Vegetation condition is somewhat manageable (i.e., is also affected by weather, browsing, insects, and disease, etc.) and both the knowledge base and intensity of management by CNLM have increased over time. As such, vegetation conditions for PPM have likely improved, reducing this somewhat as a threat.

Rabbit hemorrhagic disease virus serotype 2 (RHDV2)—a highly transmissible and frequently fatal disease of rabbits—was documented in California in 2020. RHDV2 has since rapidly spread throughout the state and as of December 2022 the virus has been documented in 20 counties including Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties. This virus can be vectored on shoes and clothing of the visiting public and can persist in the environment for a very long time, making disease control efforts extremely challenging once it is in wild rabbit populations. Infections on the Preserve or its vicinity would not only almost certainly result in the death of the rabbits but have further consequences for the ecosystem. But RHDV2 is just one example of viruses or other causes of extreme disease that will occur from time to time and can be spread by human visitors on the Preserve.

Snake fungal disease (*Ophidiomyces ophidiicola*; SFD) was also recently (2019) confirmed in California (CDFW 2019). SFD affects many snake species and presents a threat to the eight species of snakes found on the Preserve. Cases of SFD can be moderate to fatal. SFD lives in soil and can be transmitted to snakes by direct contact with infected animals or a contaminated environment; spread of the fungus to new

locations may occur when people track contaminated soil embedded in clothing or shoes (Cornell University 2019).

Some inherent life-history characteristics make species more or less vulnerable. For example, a relatively short life-span creates a necessity for frequent and successful reproductive events to avoid extirpation. PPM has a short life-span in the wild—the average being approximately one year, although survival for as long as three to five years is not uncommon (French et al. 1967, 1974). Even with some mice experiencing life expectancies at the longer end of the range, PPM populations are very vulnerable to threats that are constant and may have a depressing effect on successful reproduction, or those that are periodic and may severely reduce or completely undermine reproduction for several consecutive years (e.g., years-long droughts).

Climate change is a continuing and expanding influence with uncertain impacts on the Preserve's natural resources. Across southern California, the average annual minimum and maximum temperature increased during the span of 1918-2006, +0.17 °C and +0.07 °C per decade respectively (EcoAdapt 2016a). In addition to the general warming effect of climate change, the occurrence of extreme weather events has also increased (IPPC 2022). Heat wave activity increased across California between 1950-2010, and heat wave conditions (3 or more days with temperatures above 32°C) are projected to occur more frequently in California by the end of the century (Gurshunov and Guirguis 2012), and are expected to last longer, feature higher temperatures, and affect larger geographic areas (Gershunov et al. 2013). Moreover, the probability of co-occurring extremely warm and extremely dry conditions (1.5 SD anomaly) remains greatly elevated throughout the 21st century (Diffenbaugh et al. 2017). While increased annual temperatures will have impacts to the Preserve, it is likely that changes in annual seasonal variability will have a higher impact on the Preserve. Changes in maximum annual temperatures, rather than increased annual temperatures, have been shown to be correlated with local extinction events (Roman-Palacios and Wiens 2020).

Since 2005, the Preserve has experienced some drought effects. The longer-term influences of rapid climate change on weather patterns influencing the Preserve have some uncertainty. Nevertheless, any significant changes from historic patterns will undoubtedly have consequences for the plants and animals onsite (Table 5). Changes in processes such as nitrogen deposition, decomposition, pollination, and soil water recharge could also have onsite consequences. These changing conditions can be stressors on plant and animal life, and consequences could include depressing effects on the food supply and habitat conditions for the Pacific pocket mouse and gnatcatcher, for example. Sage scrub—the predominant vegetation type on the Preserve—does exhibit plasticity in response to drought and precipitation variability; however, altered precipitation timing, soil moisture, and drought severity may affect composition, distribution, and survival of this community. Many sage scrub species are projected to experience a >50% decline in suitable habitat in southern California by mid-century (EcoAdapt 2016b).

Table 5. Projected climate-driven impacts on sage scrub habitat (EcoAdapt 2016b).

Projected Climate and Climate-Driven Changes	Potential Impacts on Sage Scrub Habitats
<p><b>Variable precipitation, reduced soil moisture, increased drought</b>  <i>Variable annual precipitation; increased climatic water deficit; increased drought frequency and length</i></p>	<ul style="list-style-type: none"> <li>• Altered distribution, species composition, survival, recruitment, germination, productivity, and phenology; potential conversion to more xeric shrub communities and/or non-native annual grassland</li> <li>• Less frequent/larger rainfall events: sage scrub may gain competitive advantage over chaparral and invasive grasses</li> </ul>
<p><b>Increased temperatures and heat waves</b>  <i>+2.5 to +9°C by 2100; increased heat wave frequency and length</i></p>	<ul style="list-style-type: none"> <li>• Altered distribution and species composition</li> <li>• Decreased germination success for some species</li> <li>• Altered susceptibility to exotic invasion</li> </ul>
<p><b>Altered fire regimes</b>  <i>Increased fire size, frequency, and severity</i></p>	<ul style="list-style-type: none"> <li>• Native species declines via resprout mortality and reduced seedbank</li> <li>• Increased exotic species establishment and abundance, potentially exacerbating shifting fire regimes and leading to habitat conversion</li> </ul>

The Argentine ant (*Linepithema humile*, Mayr), a non-native invasive ant species, is considered a threat to many native terrestrial species in California and is listed as a global species of concern (ISSG 2021). In California, Argentine ants are more likely to be in high abundance along the coast than inland areas and in urban and agricultural areas more so than large natural open spaces (Mitrovich et al. 2010, Richmond et al.

2021). It is not surprising that, being coastal and urban, Argentine ants are present throughout the Preserve (CNLM 2019). While it is unknown when the Argentine was established in the Preserve, the infestation does appear to be at higher density than when the first CNLM Argentine ant survey was conducted in 2014. At that time, the Argentine ant naïve occupancy estimate (the number of points with ants detected out of the number of points monitored) was 65.6% (82/125 grids) while in 2018 the naïve occupancy estimate was 94.6% (123/130) with more grids (87/130) having a “high number” of Argentine ants present on bait (i.e., >250 individuals) than in 2014 (32/125) (see CNLM 2014 and 2019).

The impact of Argentine ants on the arthropod community has been widely studied in agriculture and in urban and natural settings. Research has shown a negative relationship between Argentine ant presence and diversity of arthropods including native ant species and pollinators in their introduced range (e.g., Lach 2007, Naughton et al. 2020, Richmond et al. 2021)—both of which can impact pollination success (Rankin et al. 2018), seed set, seed dispersion, and germination success of plant species (Carney et al. 2003, Lach 2007). In addition, research has shown negative impacts of Argentine ant infestations on reptile and avian species (e.g., Suarez et al. 2005, Alvarez-Blanco et al. 2020). Within the Preserve, Argentine ants have been documented in failed gnatcatcher nests (K. Merrill pers. comm.). Direct impacts to mammals are less known. However, during PPM trapping events at Camp Pendleton Argentine ants were found in traps with and on PPM (and other small mammal species) (Brehme et al. 2014). Argentine ants are tramp species, likely drawn to the trap for the seed bait, and can quickly monopolize resources including small vertebrates such as PPM, targeting their vulnerable areas (i.e., nose, mouth, ears, and eyes). Argentine ants were also noted scavenging on two dead PPM, which were casualties associated with a live trapping event in 2020 (K. Merrill pers. comm.). While it is uncertain if the ants were the direct reason for the deaths, the negative impacts of Argentine ants on ecosystem health are known (e.g., Carney et al. 2003, Lach 2007, Rankin et al. 2018). As a result, the threat of Argentine ants has been highlighted in recovery plans for threatened or endangered species, including PPM (USFWS 1998). It is possible that Argentine ants

directly impact PPM through predation in their burrows (Brehme et al. 2019) by foraging on young, and indirectly through harvesting seed caches. Trash left by visitors (i.e., food and beverages) exacerbates the threat by providing additional resources (sugary drinks in particular) to Argentine ants along the trail, in the adjacent parking lot, and within PPM habitat (K. Merrill pers. comm.)

Ongoing and increasing residential development in the vicinity of the Dana Point Preserve has the potential to increase indirect threats to sensitive species on the Preserve. Such threats include an increase in the number of domestic cats and other non-native and native predators generally associated with human development (crows, ravens, raccoons, red foxes, opossums), as well as negative impacts from vibrations, noise, artificial lighting (USFWS 1998, 2010, Brehme et al. 2013-2020, D. Shier pers. comm.), and recreation (USFWS 1998).

### 3.6. Public impacts from trail use: scientific research

#### 3.6.1 *Introduction*

Section 3.8 below describes the challenges in designing an experimental frame that would directly determine impacts of public access on wildlife at the Preserve. As part of adaptive management, CNLM relies on relevant information in the extensive scientific literature on this topic and applies that knowledge and experience to the likely influences and impacts on the Dana Point Preserve.

Given all the influences on species in their natural environments, it is rarely possible to construct an experimental frame that allows one to test the response of a species to a single variable—such as public use of a trail. It is particularly difficult to derive such direct information in a short period of time, or when rare or endangered species are involved (thus limiting the ability to manipulate and place at risk those species). However, science-based information that is relevant to guiding management of conservation areas can be reasonably gained from studies in other locations where the research can be designed more appropriately, conducted over a longer period of time,

or accumulated from many sources. Indeed, selection and application of appropriate scientific principles and peer-reviewed scientific literature are the foundation of managing specific natural areas. From this literature review, there is much evidence and reason for concern about the impacts of public use of the trail.

The topic as framed in the literature: The scientific literature on studies of the relationship between public access and natural areas has not only continued to grow, but is now supported by the discipline of recreational ecology—an interdisciplinary field that studies the ecological impacts of recreational activities and the management of these activities. The most basic principle in that field is that if outdoor recreation is allowed in an area, impacts to that ecosystem are inevitable (D’Antonio 2020). The term “passive recreation” is essentially obsolete. One recent collection of papers on recreational ecology was prefaced by the statement that “an increasing body of evidence is emerging that indicates non-consumptive recreational activities like hiking, which [doesn’t] involve harvesting of resources, can have harmful effects on species, their habitat, and efforts to protect them” (Unger 2020).

Literature inclusion: For the purpose of this Plan, the literature was queried for studies related to public trails and/or recreation and related impacts, if any, on natural resources. The most recent literature to be included has a publication date of 2023, but not all 2023 publications were yet available for inclusion. The amount of literature queried and included is extensive—given that several systematic reviews of effects of recreation on wildlife were included in addition to over 100 other, individual studies. Due to the amount of literature queried, a table was prepared to provide a means of quick access to key results and context (i.e., taxa, location, objectives, results) and is provided in Appendix A. This is not a comprehensive list but a sample of literature pertaining to public access, anthropogenic disturbance, and the effects on natural resources of public use.

Literature reviews/meta-analyses: The increasing awareness of potential effects of recreation on wildlife has not only led to a proliferation of research but further prompted

systematic reviews and syntheses of these studies (e.g., Larson et al. 2016, Larson et al. 2019, Miller et al. 2020, Dertien et al. 2021, Rosenthal et al. 2022). Larson et al. (2016) reviewed 274 scientific articles that were global in geographic scope and included a broad range of taxonomic groups. The objective of that review was to identify knowledge gaps and assess evidence for effects of recreation. In that review, it was found that 93% of published studies documented at least one effect of recreation on animal species and most of those effects were negative (Figure 7).

In 2019, Larson et al. conducted a meta-analysis of recreation effects on vertebrate species richness and abundance. In this analysis, they parse recreation by terrestrial and aquatic and wildlife by carnivores, herbivores, and omnivores, as well as by taxa (Larson et al. 2019). Another review by Miller et al. (2020) investigated the effects of recreation in the context of public lands and recreation management. They categorized recreational activity into five types based on the use/non-use of motorized equipment, season, and location (terrestrial vs. aquatic) and within these categories, synthesized existing research for each of six taxonomic groupings of species. The authors' objectives were to provide a reference for public land planners and managers, describe management principles, and outline priority research and administrative study areas towards better understanding recreation-wildlife interactions and minimizing negative effects on wildlife while maximizing the benefits gained by recreationists. Another review by Dertien et al. (2020), which included 38 years of effect of non-consumptive recreation on wildlife, identified and quantified "effect thresholds", or the point at which recreation begins to exhibit behavioral or physiological change to wildlife. These authors provided quantitative guidelines for various wildlife groupings (wading birds, raptors, songbirds, ungulates, rodents, etc.) that can be used by planners and natural resource managers for the design of recreation infrastructure and management of recreation activities.

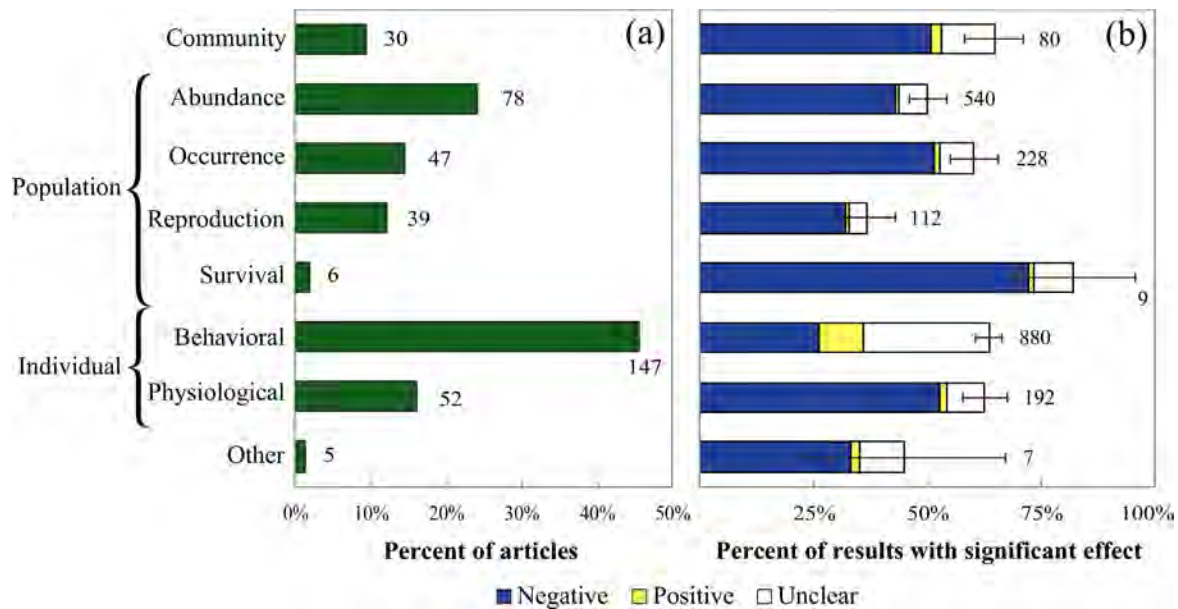


Figure 7. Types of animal responses to recreation from article review (excerpt from Larson et al. 2016). Response types are categorized into community-, population-, and individual-level responses. Panel a) shows the percent of articles in which each response type is tested (numbers of articles follow the bars). Panel b) shows the percent of results in which a statistically significant effect of recreation on an animal species was observed (number of results follow the bars). Total percentages are divided into negative, positive, and unclear effects of recreation. Error bars show standard error for the sum of all effects.

The final systematic study that was reviewed provided a comparison of the threats that affected species at risk. Specifically, a database of Canadian species “at risk” as defined by the Species at Risk Act (2002) was queried and potential threats to 280 “at risk” species (that could include populations or varieties described as species in the database) were compared for relative impact. Recreation activities were one of the five threat categories identified. Although the records for recreational impact for these species ranged from negligible to low, such (recreational) activities affected more species at risk than any other category of threat. When negligible and unknown effects were excluded, recreational activities were the third-greatest threat, after invasive species and roads/railroads (Rosenthal et al. 2022). The authors pointed out that while recreational activities presented no higher than a medium intensity threat to the at-risk species, increases in recreational use and cumulative effects could result in more significant impacts. They further emphasized the importance of managing recreational

activities in natural areas, since recreational activities tend to occur in natural areas often set aside specifically for the protection of rare species and habitats.

Reports on positive effects from public visitation: The literature review affirmed the importance of context when applying research results. The majority of studies reported negative effects on wildlife—see, for example, the meta-analysis by Larson et al. (2016). However, some studies did report “positive effects” from public visitation. For those studies, the reason for positive effects was usually due to one of the following explanations:

- 1) Habituation and/or increases in biodiversity (even if due to increases in non-native species) were considered positive.
- 2) Public visitation was tied to financial support for the conservation area and suffered if tourism was reduced.
- 3) A positive effect was recorded for some species because a negative effect was recorded for another (e.g., large- and medium-sized carnivores were negatively affected, moving away from the human-influenced areas. Small mammals (deer mice and woodrats) evidently benefited, increasing habitat use and foraging (Suraci et al. 2019).

None of these positive effects are relevant to PPM and the Dana Point Preserve. Habituation (see Section 3.7) may not occur and would likely have negative effects if manifest at all. The value of biodiversity in this conservation context would not include the presence of non-native species (e.g., domestic cats, weeds). There is no financial benefit to the Preserve or PPM from public visitation. Relevant PPM predators at Dana Point (e.g., fox, racoon, domestic cat) are attracted to, rather than displaced from, human activity.

Results from COVID-related park closures: More recently, the COVID-19 pandemic, with its associated closures of many public parks and preserves, provided an unprecedented experimental frame in which to evaluate wildlife and other natural

resource responses to exclusion of the public for some time. (The authors acknowledge that the opportunity provided to scientists by COVID-19 closures of natural areas was and remains a tragic occurrence.) Although there were many anecdotal observations of unusual wildlife sightings and interactions when parks and preserves were closed, some formal studies were also undertaken, although all may not yet be assessable given the time typically involved from study initiation to publication in a scientific journal.

In one recently published study, the authors used the “natural experiment” of the COVID-19 closure within a heavily visited and highly protected national park (Glacier National Park, MT, USA) to examine how “low-impact” recreational hiking affects the spatiotemporal ecology of a diverse mammal community. Using camera traps to record wildlife observations when the park was closed and then subsequently open to recreation, the authors found consistent negative responses to human recreation across most of the assemblage of 24 species. Those negative responses were manifest as fewer detections of wildlife, reduced site use, and decreased daytime activity. The authors noted that “the dual mandates of protected areas to conserve biodiversity and promote recreation have potential to be in conflict, even for presumably innocuous recreational activities” (Anderson et al. 2023).

Extent of negative effects from public interactions with wildlife: Negative effects related to recreational disturbance have been documented across a wide variety of species and taxa including, mammals, birds, reptiles, amphibians, and even invertebrates (e.g., Steven et al. 2011, Bennett et al. 2013, Larson et al. 2019). In general, damaging effects on animals resulting from recreation activities include reduced reproductive success (Beale and Monaghan 2005), declines in abundance and occurrence (Reed and Merenlender 2008), modified habitat use (George and Crooks 2006), and altered species richness and community composition (Kangas et al. 2010). Disturbance from recreation may have both immediate and long-term effects on wildlife. The immediate response of many animals to disturbance includes physiological stress, change in behavior (interruption of foraging, fleeing), or altering reproductive behavior (Persons and Eason 2017, Gutzwiller et al. 1994, Arlettaz et al. 2007). Over time, energetic losses

from flight, decreased foraging time, or increased stress levels come at the cost of energy resources needed for individuals' survival, growth, and reproduction. The cumulative, compounding adverse effects of predator-avoidance behaviors can have impacts on fecundity and every component of offspring survival, with long-term implications for population growth (Allen et al. 2021).

Human disturbance on wildlife from non-consumptive recreation can result in altered spatiotemporal habitat use (Kangas et al. 2010), extirpate wildlife from otherwise suitable habitat, or cause animals to shift geographically into areas of lower quality habitat to avoid areas with human activity (Taylor and Knight 2003, Ficetola et al. 2007, Finney et al. 2005, Kangas et al. 2010, Mallord et al. 2007, Dertien et al. 2021). Thus, recreational disturbances can both reduce habitat suitability and ultimately result in functional habitat loss (Gutzwiller et al. 1994, Frid and Dill 2002, Tost et al. 2020). Fragmented habitats may present unique stressors if there is no adjacent habitat for animals to relocate to, forcing individuals to remain in proximity to disturbance that they would otherwise avoid (Frid and Dill 2002).

There is much complexity in studying, and then understanding, the interaction between recreational activities and wildlife response. Conceptual frameworks can assist in structuring such complexity and informing experimental designs. One such framework identifies three important factors or “modulators” in these interactions: wildlife, human, and context (Figure 8, Tablado and Jenni 2017). The framework represents increasing levels of complexity in the mechanisms for wildlife response—from sensory detection; to short-term behavioral changes and physiological responses; to changes in survival, reproduction, spatial use of the habitat, and chronic stress; and finally, changes in population trends and distribution. These levels of complexity also mirror the level at which the effect is occurring: from individual- to population-level, and the latter then also affecting species-level condition. In a review of global literature on wildlife-recreational interactions, many of the articles reviewed reported impacts at both the individual- and population-level, and of the former, the most often noted were behavioral impacts (Larson et al. 2016, Figure 7).

At the individual level, wildlife-recreational interactions can elicit responses that are generally categorized as behavioral or physiological. Behavioral interactions can be both short term and longer term and can be innate (perhaps genetic) or learned, or a combination. Examples of short-term and longer-term behavioral responses have been provided in a recent literature review and analysis of such interactions (Table 6, Miller et al. 2020). The responses are highly variable (from attraction to avoidance, and from habituation to sensitization)—thus emphasizing the complexity of these interactions and their dependence on the specific human, wildlife, and context “modulating factors”.

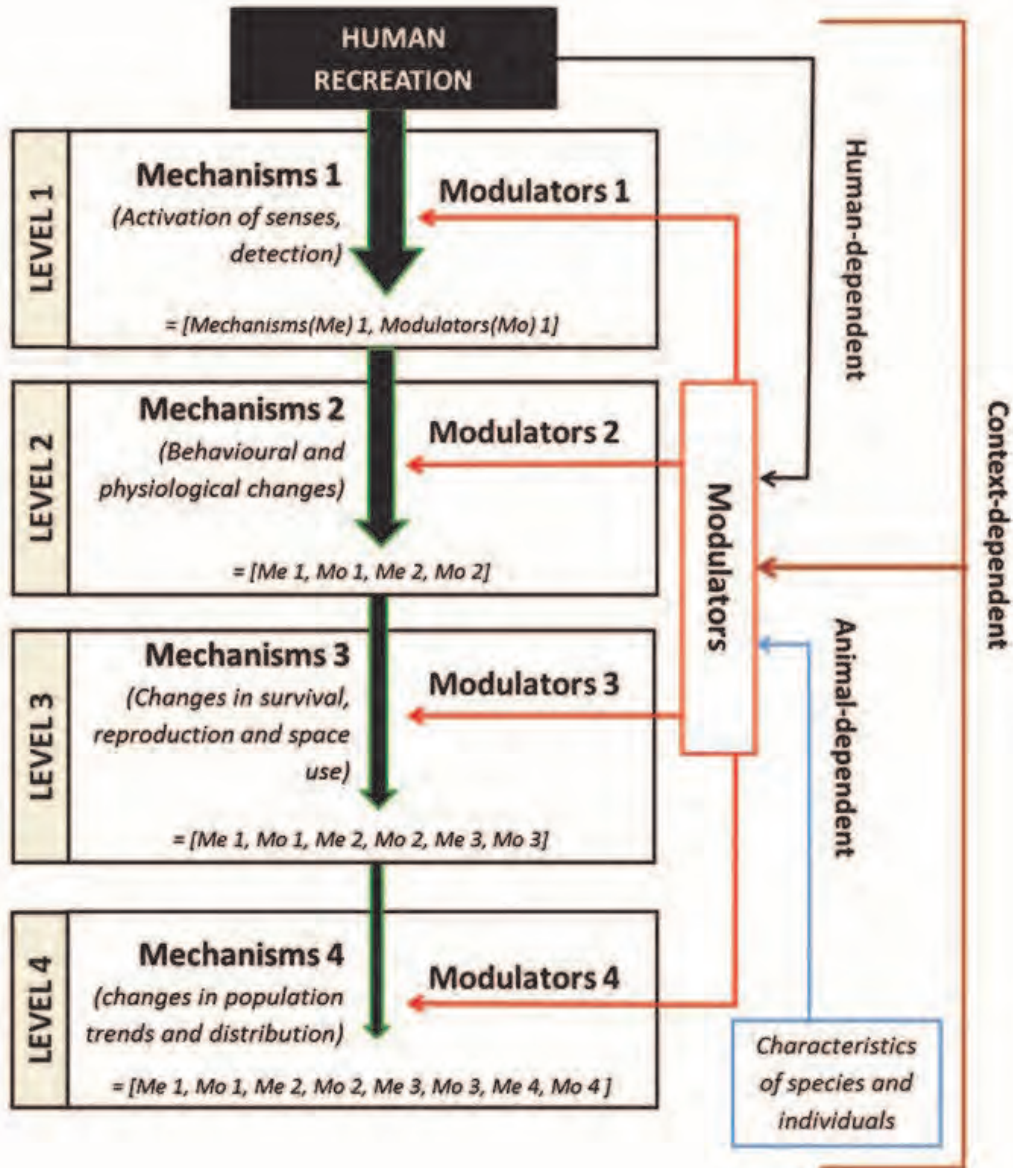


Figure 8. Conceptual framework showing different levels in the processes of human-wildlife interactions (excerpt from Tablado and Jenni 2017).

Table 6. Short-term and long-term learned behavioral responses of wildlife to human activity (excerpt from Miller et al. 2020).

<b>Behavioral response</b>	<b>Definition</b>	<b>Example</b>	<b>Source</b>
Short-term responses:			
Attraction	The strengthening of an animal's behavior because of rewards or positive reinforcement.	A chipmunk is attracted to areas where recreationists leave food.	Knight and Gutzwiller 1995
Avoidance	The strengthening of an animal's behavior because of persecution or negative reinforcement.	Grizzly bears in an area with high human activity levels often flee from people, while those in an area with no or little human activity do not.	Knight and Gutzwiller 1995
Tolerance	Intensity of disturbance that an individual tolerates without responding in a defined way.	Terns ignore heavy vehicle and boat traffic. This is measured in the short term, and evidence of this tolerance increasing over time is absent.	Nisbet 2000
Long-term responses:			
Habituation	Waning of a response to a repeated stimulus that is not associated with either a positive or negative reward.	Birds habituate to stimuli that are predictable and nonthreatening, such as road traffic, but are startled by sudden and unpredictable noises such as gun shots.	Eibl-Eibesfeldt 1970
Sensitization	Increased behavioral responsiveness over time when animals learn that a repeated or ongoing stimulus has significant consequences for the animal.	Avoidance of noise or other stimuli associated with danger; entails an increased energy expenditure to avoid danger.	Richardson et al. 1995

In the following sections, there is continued discussion of the relevant literature, beginning with a description of the ecology of the Pacific pocket mouse so as to better allow connections to be made with potential influences or threats to this subspecies. Following that, the literature has been categorized by general taxonomic groups: vertebrates, invertebrates, and habitat and vegetation communities. Given the likelihood that dogs would be perceived as a threat to PPM and that they are occasionally brought onto the Preserve by visitors, some literature is presented that examines wildlife responses to domestic dogs. Finally, the topic of habituation is explored, given that it is a potential modulator in the response of wildlife to public recreation on the Preserve.

### 3.6.2. *Pacific pocket mouse ecology and impacts from human disturbance*

The Pacific pocket mouse is a nocturnal, aggressively solitary, and semi-fossorial rodent in the family Heteromyidae that is physiologically adapted to warm and dry climates (USFWS 1998). It is the smallest subspecies of the little pocket mouse (*Perognathus longimembris*), generally ranging between 7-9 grams in adult body mass (USFWS 1998). Adults weighing as little as 5 grams and as much as 12 grams have been trapped on the Dana Point Preserve (K. Merrill pers. comm.). Average life expectancy in the wild is approximately 1 year, with survival for as long as 3–5 years not uncommon (French et al. 1967, 1974). This short life expectancy contributes to the population's vulnerability: significant impacts to even one reproductive cycle could have serious consequences for the sustainability of the population.

The onset of breeding is typically in early spring and lasts through July (USFWS 1998). The time period during which a female PPM is in peak estrus can be extremely limited (i.e., as brief as one hour per cycle, D. Shier pers. comm.). Disturbance during this time could dissuade reproductive behavior. Females gestate young for approximately three weeks and wean after 30 days.

Reproduction is also influenced by food availability. In fact, reproduction may not occur in years of low food resources (Brehme et al. 2019) but in high resource years, adult females in the wild may have up to two litters, with their female offspring mating and reproducing concurrently in a single season (Miller and Pavelka 2008). PPM is largely granivorous, specializing on grass and forb seeds (USFWS 1998). A positive relationship was found between forb cover and PPM occupancy at Marine Corps Base Camp Pendleton (MCBCP, Brehme et al. 2014) and at the Preserve (Brehme et al. 2020). Genetic analysis of PPM scat has shown that diet varies across populations and that within one season, regardless of available seed resources from shrubs and grasses, they tend to select a wide variety of forb species (Iwanowicz et al. 2016). Years with low forb growth and early forb die-offs have been associated with PPM declines (Brehme et al. 2019). Food availability is thus related to successful production

of grass and forb seeds (for the most part) on site—which is, in part, weather-related. Considerable research has tied reproduction in heteromyids and other desert rodents to precipitation (Beatley 1969, Kenagy 1973, Reichman and Van De Graaff 1975, Kenagy and Bartholomew 1985). But food availability can also be influenced by competition from other species for the same food resources, loss of food sources from insects and disease, and destruction of plants from trampling or picking.

PPM create and live in burrows beneath the soil surface, and cache seeds below ground and within burrow systems for sustenance throughout the year (e.g., Randall 1993). More recent research has provided evidence that both pit caches and larders may be used (Chock et al. 2019). In sand dunes in Oceanside, CA, burrows were found approximately one foot below the surface under vegetation edges and ended in a single nest chamber (Bailey 1939). Burrows and tunnels can sometimes be even closer to the surface—as little as 1 to 4 inches below ground (D. Shier pers. comm.). As such, sounds and vibrations from above-ground disturbances such as trail users, could affect PPM below ground. In sandy habitats, burrows are particularly vulnerable to compaction by foot traffic. Brehme et al. (2014) reported a strong negative effect of human foot traffic on PPM occupancy. Although much remains to be studied regarding burrow architecture, recent observations have indicated that the height of the burrows may be very shallow (e.g., 1 inch)—further indicating their vulnerability to collapse.

Pacific pocket mice, while remaining below-ground for substantial amounts of time, of course need to conduct life-sustaining activities at the surface including feeding and food collection, selecting mates and mating, territory exploration and expansion, and bathing (i.e., sand baths). The average PPM core home range size is estimated to be 0.017 hectares, or ~13 meters in diameter (Shier 2009) but individuals have been recorded traveling 181 meters in a single night, with average movement distances reported of 10 meters to 30 meters between successive captures (Dodd et al. 1998, 1999, Miller and Pavelka 2008). Mark-and-release studies indicate limited adult movement and juvenile dispersal distances (Swei et al. 2003).

PPM above-ground activities are typically conducted at night or during low-light levels. As such, artificial night-time lighting may cause problems for nocturnal rodents such as the Pacific pocket mouse, through potential modification of predation rates, obscuring of lunar cycles, and/or causing direct habitat avoidance (USFWS 1998, Shier et al. 2020). A study of the effect of different levels and orientation of (artificial) night lighting on PPM at Marine Corps Base Camp Pendleton indicated that anthropogenic light negatively affected foraging of PPM (Wang and Shier 2017).

Additionally, the presence of humans during low-light levels of the day (towards sunset or for some time after sunrise, and as influenced by fog or cloud cover) likely also impacts PPM behavior and shortens or discourages such essential activities by altering their perceived predation risk (Persons and Eason 2017).

PPM use seasonal heterothermy (winter torpor and facultative summer aestivation) in response to environmental stresses of food shortage and/or low temperatures (Chew et al. 1965, Bartholomew and Cade 1957). The onset of torpor is marked by a large drop-off in activity that can occur from June to November and is highly spatially variable within and among years (Meserve 1976a, Shier 2009, Brehme et al. 2014, 2020). During torpor, the mice alternate between periods of dormancy and feeding on cached seeds. Periods of dormancy have neither a daily nor strictly seasonal pattern (Brehme et al. 2014). In captivity, dormant individuals may show some activity each day within their burrows. Emergence typically occurs in late winter to early spring (February-March) and is thought to coincide with seed availability (Meserve 1976b). It has been suggested that the trigger for emergence may be changes in soil temperature (French 1977).

As the beneficial aspect of torpor or aestivation is to reduce energy expenditure, any disturbance that disrupts these states can have a negative effect. Again, such disturbances could include human-caused sounds or vibrations—especially if burrows are shallow and/or close to the surface. Further, because Heteromyids have expanded

middle ears, they are especially sensitive to low frequency sound (D. Shier pers. comm.).

Another variable that may be useful in an experimental framework to study wildlife-recreational interactions is distance from the source of the potential disturbance. The source could be a trail, for example, and potential impacts measured for a variety of species at varying distances from the trail (assuming the trail is regularly used for recreation). Reasonably, the effects may be related to the spatial scale at which various species occupy and use the area, and perhaps also may be seasonally dependent (e.g., populations may be more or less sensitive during certain stages of a life-cycle). In a recent study to examine potential impacts of public access to trails, “threshold buffers” (distances from the trail within which effects might be expected to occur) were determined for three taxonomic groups (perching birds, ungulates, and apex predators) (Dertien and Larson 2018). Given the meandering nature of the public trails, these trail buffers overlapped almost all of the subject property, resulting in no contiguous areas across the property that were free from potential recreation effects.

Using a similar approach for the Pacific pocket mouse population at Dana Point, three “distance zones” (or threshold buffers, using the previous terminology) were superimposed on the Preserve to provide a sense of how this concept might be experienced. Three zones—13, 50, and 100 meters from the trail—were mapped (Figure 9). Given the meandering nature of the trail, even the shortest (potential) impact zone (13 meters) covers a significant portion of the Preserve (16%). That distance was selected on the basis that this may be the average diameter for PPM core home range (Shier 2009). The other two distance zones, 50 and 100 meters, reflects some literature that found that smaller rodent species avoided areas within 50-100 meters of trails or people (Dertien et al. 2021). At 100 meters, almost 90% of the Preserve is included in the potential impact zone, which does not include impacts from the adjacent parking lot and roads. If those (latter) impacts are included the threshold buffer for the Preserve, the entire Preserve would be potentially impacted.



Figure 9. Zones of varying distance (13 meters, 50 meters, 100 meters) from the trail at the Dana Point Preserve. Values show proportion (%) and area (acres) of the Preserve covered by each zone.

### 3.6.3. *Impacts on vertebrates*

Across many vertebrate species, species richness and abundance are lower in association with higher levels of recreation, and the negatives effects of recreation appear to be most pronounced for birds and mammals (Larson et al. 2019). Research on impacts to reptiles and amphibians are less represented but the majority of existing studies have found effects are negative (Miller et al. 2020). Even quiet recreation such as walking and wildlife viewing can have significant negative impacts on vertebrate wildlife (Papouchis et al. 2001, Arlettaz et al. 2007, Reed and Merenlender 2008, Hennings 2017), such as increased time spent in flight and vigilance behaviors (Naylor

et al. 2009). Disturbance increases with intensity (a combination of people per day, noise level, and speed) of recreational activity, and is greater in response to less predictable activities (Shutt et al. 2014, Miller et al. 2020).

Indirect effects of increased human presence can occur when humans create an environment of higher predator pressure or cause animals to temporally shift their activities to avoid human activity. In an urban park, white-footed mice (*Peromyscus leucopus*)—primarily a crepuscular-nocturnal forager—spent less time foraging in areas of high human use even though people were not allowed in this park after dusk, possibly due to increased predator presence along trails (Persons and Eason 2017). Temporal shifts to avoid human activity can cause some species to become more nocturnal; such “diel shifts” can bring predator-prey species into greater overlap, with increase predation risks (Patton et al. 2019), or lead to suboptimal foraging conditions (Wheat and Wilmers 2016)

Artificial illumination (artificial light at night; ALAN) is an increasing form of human-caused disturbance that can affect vertebrate behavior and ecology. Small prey species may be particularly susceptible to ALAN as it makes them more conspicuous and thus more vulnerable to predation by visual predators. A study by Shier et al. (2020) examined impacts of ALAN on foraging decisions of the endangered Stephen’s kangaroo rat (SKR, *Dipodomys stephensi*). ALAN decreased the probability of resource patch depletion compared to controls, indicating that ALAN reduced habitat suitability for this at-risk nocturnal rodent.

The presence of recreational trails in natural areas can limit the abundance or density of some bird communities (e.g., Bötsch et al. 2017), particularly of those species which nest or forage on the ground (Thompson 2015). For birds, impacts associated with trails may be due to interference with breeding behavior (Gutzwiller et al. 1994), a reduction in foraging time (Frid and Dill 2002), alteration to vegetation structure near trails (Fernández-Juricic et al. 2001), the introduction of invasive species (Loss and Blair 2011), or increased presence of nest predators (Miller and Hobbs 2000). A review by

Steven et al. (2011) that included 69 research papers on the effects on birds of non-motorized recreation, found that 88% of these studies reported negative effects, including impacts to physiology, behavior, abundance, and reproduction.

Increased anthropogenic noise can interfere with avian acoustic communication (Slabbekoorn and Ripmeester 2008, Barber et al. 2010). Impaired communication resulting from anthropogenic noise has been linked to altered predator avoidance behaviors (Anze and Koper 2018), lower lek attendance in greater sage-grouse (*Centrocercus urophasianus*) (Blickley et al. 2012), reduced pairing success in ovenbirds (*Seiurus aurocapilla*) (Habib et al. 2007), and impaired nestling development in house sparrows (*Passer domesticus*) (Schroeder et al. 2012), indicating that the impacts of noise on communication have the potential to interfere with reproductive processes. Anthropogenic noise may function as a deceptive signal to wildlife, causing animals to engage in false responses that may be energetically and biologically costly. Evidence of this is provided by a study of endangered SKR, in which traffic noise not only masked but also mimicked foot-drumming signals (Shier et al. 2012). For vulnerable species such as SKR, the combined effects of communication disruption and signal deception may further tax already endangered populations.

#### 3.6.4. *Impacts on invertebrates*

Predator-avoidance responses are not limited to vertebrates. Endangered Karner blue butterflies (*Lycaeides melissa samuelis*) were found to be sensitive to recreational disturbance and responded to recreationists as they would from natural threats, such as predators (Bennett et al. 2013). Through simulations these authors determined that regular disturbance could reduce egg laying potential and significantly restrict host plant choice, which in turn, could impact the butterfly's population dynamics. Invertebrates including butterflies, ground beetles, and spiders can also be affected by changes in vegetative structure (Blair and Launer 1997, reviewed in Miller et al. 2020). Butterfly species richness and diversity were lower in recreational areas as compared with biological reserves where recreation was prohibited (Blair and Launer 1997). Other

general anthropogenic impacts to insect populations can result from light pollution. ALAN strongly reduced moth caterpillar abundance compared with unlit sites, affected caterpillar development, and disrupted the feeding behavior of nocturnal caterpillars (Boyes et al. 2021).

### 3.6.5. *Impacts on habitat and vegetation communities*

Recreation can impact wildlife habitat by altering soil characteristics, water quality, and vegetative communities (Cole 1995, Barros and Pickering 2017, reviewed in Miller et al. 2020). Direct impacts to habitat and vegetation from trail use include through a loss of vegetative cover (Cole 1995, Barros and Pickering 2017), a decrease in vegetation biomass, or damage to tree and shrub seedlings (Sun and Liddle 1993). Recreational trails can function as corridors that facilitate the spread of non-native plant species into wildlands (Underwood et al. 2004, Wells et al. 2012, Liedtke et al. 2020). Trailheads, in particular, have been found to harbor high diversity and abundance of non-native plants within the seedbank and may function as a source point for invasions into protected areas (Wells et al. 2012). Additional indirect effects of recreation on vegetation community can occur when humans facilitate the spread of pathogens. The exotic pathogen, *Phytophthora ramorum*, for example, which is the cause of Sudden Oak Death, is likely spread by humans both within already infected areas and to novel locations (Cushman and Meentemeyer 2008).

### 3.6.6. *Impacts of domestic dogs*

The presence of pets and companion animals in open space and other protected areas may also cause direct and indirect impacts to wildlife species (Reilly et al. 2017). The effects of domestic dogs (*Canis lupus familiaris*) on wildlife have been reviewed extensively and disturbances to wildlife from domestic dogs and dog-walking are well documented (Banks and Bryant 2007, Steven et al. 2011, Hennings 2016, Reilly et al. 2017). Dogs are a domesticated subspecies of wolf and their presence and scent

(which remains after dogs are gone) repels many wildlife species and incites antipredator responses (Epple et al. 1993).

A review by Hennings (2016, 2017) on the effects of dogs concludes that (1) people with dogs on leash, and even more so off-leash, are more alarming and detrimental to wildlife than any non-motorized recreational user group without dogs and that (2) people with dogs substantially increase the amount of wildlife habitat affected. The effects of dogs may be long-lasting and linger after the dog is gone, because the scent of dogs repels wildlife (Epple et al. 1993). It may be, too, that wildlife do not habituate to dogs (particularly off-leash dogs) because wildlife perceive dogs as predators, and because their behavior can be unpredictable (Banks and Bryant 2007, Weston and Stankowich 2014, Hennings 2016, Gomez-Serrano 2021).

People with dogs may represent the highest disturbance type of recreation for birds (Miller et al. 2020, Gomez-Serrano 2021). Dog walking in woodlands lead to a 35% reduction in bird diversity and 41% reduction in abundance, not just in areas where dog walking was common, but also where it was prohibited (Banks and Bryant 2007). Moreover, this study found no evidence of habituation even with leashed dogs and even where dog-walking was frequent; the disturbance was much weaker for people than dogs (Banks and Bryant 2007). Studies in California and Colorado showed that bobcats avoided areas where dogs were present, both in terms of spatial displacement (George and Crooks 2006, Lenth et al. 2008, Reed and Merenlender 2011) and temporal displacement in which bobcats switched to nighttime for most activities (George and Crooks 2006). In Colorado, mule deer showed reduced activity within 66 meters of trails where dogs were prohibited (i.e., response to people only), but within 100 meters of trails where dogs were allowed (Miller et al. 2001). Similar effects were also found for small mammals, including squirrels, rabbits, chipmunks, mice, prairie dogs (Bekoff and Ickes 1999, Lenth et al. 2008), and marmots (Griffin et al. 2007).

### 3.7 Habituation of wildlife to human disturbance

First described in the field of neuroscience, habituation is a concept that should be considered relative to potential impacts of the visiting public on wildlife. As applied to wildlife ecology, habituation has been defined as “a decrease in the strength of a response after repeated presentations of a stimulus that elicits that response” (Mazur 2006). As such, habituation typically is viewed as a negative consequence of human interactions with wildlife due to the likely consequential reduction of population fitness arising from, for example, reduced danger flight response (Higham and Shelton 2011).

Habituation would not be expected to result from all stimuli or impacts. For example, habituation to the presence or activity of dogs is highly limited (Hennings 2017, Gomez-Serrano 2021). This limitation is likely related to the unpredictable, erratic behavior and movements of domestic dogs, which influences three key factors wildlife use to judge the threat of predation: predictability, proximity, and speed (Glover et al. 2011, Weston and Stankowich 2014). Similarly, there is less likelihood of habituation to public use of trails because of the unpredictable and always changing noise levels and quality (e.g., different voices), smells, movements, and vibrations (e.g., different weights of individuals or groups at different times of day).

Habituation, were it to occur, would be very difficult to study. First, given that habituation is experienced at the neural and physiological levels, this results in a poor fit between observable animal behavior and internal state (Ellenberg et al., 2006). In other words, the apparent tolerance of some wildlife species to human presence does not necessarily mean that these wild animals are not being impacted (Higham and Shelton 2011). Further, there is evidence from wildlife studies that propensity toward habituation varies not only by species but by sex, breeding status, and even individual temperament (Papouchis et al. 2001, Martin and Reale 2008), Papouchis et al. 2001, Gómez-Serrano 2021).

Bejder et al. (2009) explain that what may seem like wildlife tolerance of human stimuli may, in fact, arise from various factors including:

- (1) Displacement: e.g., less tolerant individual animals may be displaced, resulting in a bias towards more tolerant animals that remain at a given site.
- (2) Physiology: e.g., reduced responsiveness to human stimuli due to physiological impairment.
- (3) Ecology: e.g., lack of suitable adjacent habitat to which animals may otherwise relocate.

In other situations, exposure to human activity can cause animals to shift temporal activity patterns (e.g., Frid and Dill 2002). In all of these cases, there is actually a negative impact from human presence but the result may appear to be tolerance or habituation.

Species that are more likely to habituate to recreation-related disturbances are often habitat generalists, and some studies have documented habitat generalists moving into a disturbed area while habitat specialists become displaced (e.g., Ballenger and Ortega 2001, Rolando et al. 2013). Some habitat generalist species, such as crows and ravens, may also represent additional predation pressure on the resident community. Predator, meso-predator, and prey species can also be differentially affected by recreation and these dynamics can lead to altered wildlife community composition (Miller et al. 2020). On the Dana Point Preserve, habituation, if it occurs at all in wildlife, may be most expected in some species as foxes and raccoons, predators to PPM.

### 3.8 Experimental design for assessing public use effects

Designing an experiment to study the impact of public access to the trail at the Preserve on the sensitive species at the Preserve faces numerous complications and challenges, including:

1. Masked effects: Many wildlife species may exhibit apparent tolerance to human disturbance, which may mask or mitigate long-term effects of disturbance (Nisbet, 2000, Baudains and Lloyd 2007, Jimenez et al. 2013, Geffroy et al. 2015). See the previous discussion regarding habituation.
2. Internal vs. external response: The effect is likely to be mediated through a physiological reaction and related consequences. The monitoring of physiological responses is very invasive and involves a study design of trapping mice which itself would illicit a physiological response that could not be disentangled from the response to public presence, not to mention the lag time (see next point).
3. Time between public presence and wildlife response: There may be lag in response, thereby further disconnecting the cause from the effect. In some cases, the impacts may be direct and obvious (e.g., vegetation or burrows trampled when by public, birds scared from nests), but many potential effects would extend beyond the time of impact (e.g., stress from public access, that may then manifest in weight loss, abortion, lower reproduction rates, etc.).
4. Cumulative effects: There could be several to many potential stressors which are additive towards a threshold of consequence. There are no doubt other stressors and impacts from natural, introduced, or anthropogenic causes (see previous sections). Disentangling those individual effects—particularly as they may not be apparent and would vary over time—is not feasible.
5. Variation in effects: As previously discussed, the effects from public presence are reasonably not expected to be the same for all individuals (e.g., of PPM) and may additionally vary by sex, time of day, season (i.e., either weather-related or related to life-cycle stage such as breeding season).

6. No treatment option: Determining effects from certain conditions is often investigated as a set of “treatments” for those conditions—typically ranging from control (no treatment) to putatively below-threshold treatments, to above-threshold treatments. If public presence is considered a “treatment” for which we seek a measurable response, we are limited in imposing any treatments or conditions that would potentially cause harm or “take”. This undermines the efficacy of this approach.
7. Small size of the Preserve: Any design that involves contrasting different public use scenarios is limited by the small size of the Preserve. Further, other factors (e.g., vegetation status, microclimate, perhaps distance from parking lot or other disturbances) would need to be controlled for or similar for all the public use scenarios—requiring a much larger area than available. That is, the preponderance of confounding effects would undermine any such approach.
8. Absence of “control” area or plot(s): More than 56% of the Preserve is within 50 meters of the trail and 90% is within 100 meters of the trail. With potential impacts from public presence within those zones, there is little opportunity to establish a “control” or unimpacted area during public access. Further, areas outside of those zones would need to be comparable in habitat quality and known PPM use to be used as control areas. Based on data collected to date on patterns of PPM distribution, there would be no satisfactory control area.

The most direct measurements of PPM presence and impacts on presence from trail use comes from live-trapping data of PPM (less inference than from track-tube monitoring) and from lengthy periods when public was not present as compared to lengthy periods when the public was present. Those data are presented in Table 3. Data collected from before the trail was open to the public probably cannot be reproduced except possibly after very long periods of trail closure. However, other conditions have changed since then as well. These data, although superficially seeming to be the most “black and white” depiction of effects, still are affected by confounding conditions (e.g., changes in site conditions due to management impacts

on vegetation, weather, other stressors) and cannot serve on their own to provide complete information.

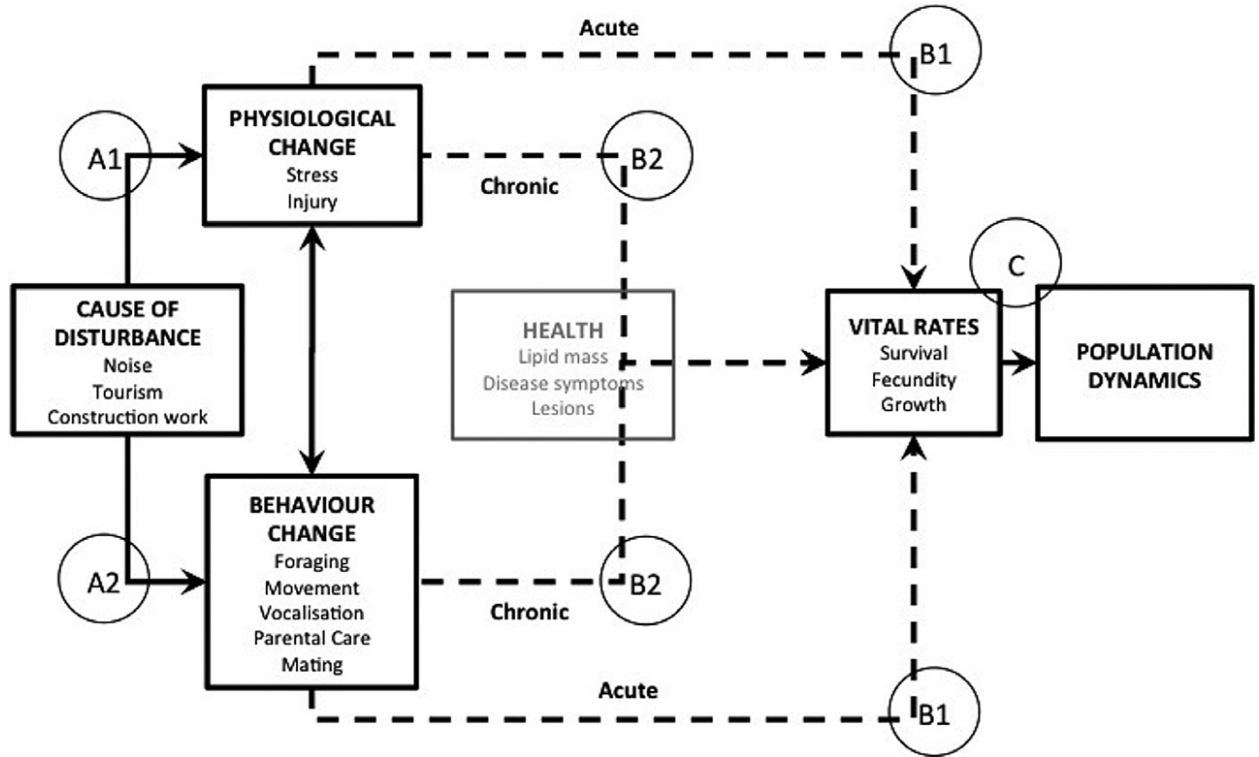


Figure 10. The interim population consequences of disturbance framework (excerpt from King et al. 2015). Circled letters identify transfer functions describing the relationship between the variables at either end of the arrow. Dotted lines indicate transfer functions that have been parameterized using expert elicitation.

Acknowledging the limitations and challenges of experimental design imposed by a small, limited site; a focal species that is endangered; a focal species that is cryptic given its largely under-ground presence; and a history of public access that potentially affects most of the Preserve; we nevertheless sought monitoring guidance from the scientific literature that may be applicable and useful for the context of PPM and the Dana Point Preserve. The authors of a study of potential public trail use impacts on wildlife that was undertaken recently in northern California provide some key elements for monitoring that may be more feasible to implement (Dertien et al. 2018). Their

recommendations for monitoring to assess future changes in recreation and wildlife include the following:

1. Implement long-term monitoring: A long time series of data is needed to document whether wildlife detections, habitat use, or species richness are changing in correlation with increasing or decreasing human recreation and to inform adaptive management decisions.
2. Complete trail maps: The full spatial footprint of human recreation activity on the landscape is essential. For the Dana Point Preserve, this is well described by the current footprint of the trail, but additional data are provided by known instances of trespass (off-trail public use).
3. Monitor human recreation patterns: To assess impacts on wildlife, the potential stressor (human presence/activity) must be documented and measured to the greatest extent practical. In the case of the 2018 study, the authors employed camera traps as well as any other available information. They further recommend the use of on-the-ground technicians directly observing human recreation activity, social surveys of visitors, or expert opinion surveys of land managers who can provide valuable information to guide future management decisions. For the Dana Point Preserve, even more quantitative information on public use is available through the use of counters at the trail entrances. Additional information is available from staff who are frequently onsite and who document compliance with trail rules and incidents of trespass.
4. Compare recreation activities: Types of permitted human recreation activities often vary among parks and open spaces, and these different activities may have variable effects on target wildlife species. Relatively few studies to date have directly compared the effects of different activities at the same time, in the same place, and on the same target species (e.g., Taylor and Knight 2003). While this is a reasonable approach to parsing effects from different activities, it is probably not applicable or valuable in relation to studying public use impacts at Dana Point. The types of activities allowed are well defined and have a relatively

narrow range (i.e., no bicycles, horses or other recreation conveyances are allowed nor are dogs). Further, within the range of allowed uses, these could not be reasonably divided for an experimental purpose (e.g., only walking allowed on some days, only running on another, etc.). This recommended element for studying public use of preserves/parks and impacts on the public is more applicable to large recreational areas with various kinds of allowed recreation, and the ability to compare different uses. Further, such a study would have questionable application because if there were demonstrated differences in impacts from these recreational activities, it would not likely be enforceable to selectively prohibit those (e.g., no running only walking; or no walking only running).

5. Include reference conditions: It is important to include a reference condition or treatment in a study design to establish a baseline to detect potential effects of human recreation activity. For a study of the effects of recreation in general, a reference condition would be protected lands with no public access. For a study of the effects of dog management policy, a reference condition would be protected lands that do not permit dogs (Dertien et al. 2018). In the case of Dana Point, there are no off-site reference conditions due to the limited extant range of PPM and the different conditions at Camp Pendleton. Further, baseline conditions are limited to the data that were collected prior to the initiation of public use of the trail.

In summary, it is infeasible to design a study that would not impact and further endanger PPM, would control for all other variables, and would allow the detection of a direct cause-effect relationship between public use and impacts on PPM. However, specific types of monitoring and data collection can be informative towards detecting patterns and trends and these are largely already in place (see Section 5.3). Conducting such monitoring over a long period of time is essential towards providing an opportunity to account for other co-variates including weather and vegetation management, and other potential stressors.

#### **4. Discussion on public use and impacts**

At the population level, the Dana Point PPM population has been managed since 2005 to minimize the risk of extirpation. The Preserve is managed by dedicated and professional preserve management staff with input from scientists who are conducting research on this species as well as regulatory personnel for guidance in risk management. With such information and guidance, and using available financial resources (primarily the endowment established for the Preserve in 2005, and including the recent additional resources resulting from the agreement with Camp Pendleton), CNLM staff have focused on managing the vegetation for best effect, monitoring vegetative response and wildlife (PPM and gnatcatcher; other species informally), and managing public access.

For much of the period from 2009—when the trail on the Preserve was first opened to the public—until the COVID-related closure in 2020, the trail generally was open to the public seven days per week, 7:00 a.m. to sunset. However, there was no underlying research or principles that supported this amount of public access in relation to the need to protect the sensitive onsite natural resources. Indeed, if the only goal pertaining to the Preserve was to protect the Pacific pocket mouse, the most protective strategy would be to prohibit public access. The Preserve is an exceedingly small area of habitat, only 29 acres, and is surrounded by development that destroyed much of the original similar habitat.

As described above, natural resource impacts from public access may include trampling the burrows of Pacific pocket mouse; damaging plants that serve as food sources, nesting locations, shelter, and protection for wildlife; harassment of wildlife including impacts on reproduction; and interference with wildlife foraging, nesting, and predator avoidance. Although some prohibited activities can be reduced by constant monitoring, it is not feasible to completely eliminate such behaviors or the impacts of allowed public access, without limiting the amount and timing of public access.

In addition to public access to the trail, there are a number of other potential human impacts on the Preserve that cannot be avoided. These uses include first responders, management and monitoring by CNLM, and, to some extent, research activities on the resident species and habitat. This recognition of all human uses—including those that are and are not allowed—is significant because the potential for impacts from all of those uses are cumulative, and potentially additive and interactive.

As described above in Section 3.2, public use of the Preserve has been increasing every year, as reflected in trail use counter data. Average per-day use doubled over a seven-year period (2011-2017) and data from early 2020 indicated that these rates were continuing to increase. Further, plans for a hotel adjacent to the Preserve could result in additional visitation, and associated impacts related to development (e.g., the use of rodenticide, artificial lighting, noise, vibration, and disease/virus transmission).

Impacts from public visitation are also related to the time of year and time of day of public use. Public presence on site during low-light conditions (early morning and late afternoon) have the potential for greater impacts because, as discussed above, PPM are nocturnal and tend to be more active at night and during periods of low light. Certain times of year (for example, corresponding with reproductive activity of certain species), may also be indicative of the potential for greater impact from the visiting public.

The trail use data in 2021-2023 provide some insight into average daily use during periods where different hours and days of operation are used. The data indicate that a reduction in number of days per week and hours per day that the trail is open to the public resulted in a decrease in average daily visitors onsite, as compared to a schedule of seven days per week, 7 a.m. to sunset. CNLM would expect this type of schedule to similarly result in a decrease in the average weekly and annual number of visitors, as compared to a schedule of seven days per week, 7 a.m. to sunset. Although those data indicate that potential visitors do not simply funnel into a shorter time period if the trail is open fewer hours than seven days per week, 7 a.m. to sunset, the average daily visitation rates during a three days per week schedule of eight hours per day remain

higher than the average per-day visitation rates in 2011. While a schedule of public access for three days per week, eight hours per day—has been shown to reduce number of visitors and thus likely impact, data also show that reduced access during those days and hours still allows public use of the trail at a rate similar to or greater than that in 2009 when the trail was first opened to the public.

In considering appropriate means of reducing the impacts from public use of the Preserve, the potential for habituation of wildlife species was researched and considered (i.e., whether a regular and daily schedule of public use would cause fewer impacts to the species than some daily closures). The scientific literature is far from comprehensive on this topic and none of it is based specifically on gnatcatcher or Pacific pocket mouse. However, in both theory and in the case studies that were reviewed, there is little evidence to suggest that there would be habituation to public presence, or that the habituation, if attained, would not cause impacts to the species. Regarding the latter, habituation would not likely cancel the public effect, but, at most, reduce it. Further, habituation could be maladaptive. But most importantly, there is no reason to assume that the public presence is perceived as “one stimulus” to which any species could become habituated. The public presence is a constellation of stimuli—sights, sounds, smells, vibrations, and movements—that change over the course of the day and between days. Further, there is evidence that males and females may habituate differently, if at all. Together, there was no indication that habituation was likely or would be beneficial. As such, the value of relief from such stimuli by designating some days as having no public hours for visitation, remained as a consideration with much merit. Furthermore, this approach would allow for more influence on the degree of public visitation than could be afforded simply by reducing the number of hours per day.

In summary, information on increasing use of the Preserve by the public, combined with the increasing evidence of negative impacts from human use on the natural resources including the listed species onsite, as well as the extreme vulnerability of the Pacific pocket mouse, strongly indicate a need for adaptive management that minimizes the impact of public access on the species on the Preserve. For nature preserves with

public access, there are limited options for adaptive management to address these impacts, namely:

- Controlling types of activities allowed (assuming some have the potential to cause more impacts to the species than others)
- Managing or changing the spatial footprint of recreational trails; and
- Controlling the number and schedule of visitors (Dertien et al. 2018)

At the Dana Point Preserve, the first option is already employed, and monitored as much as possible. The second option is not feasible as there is not a location for the trail within the Preserve that would have a lesser impact. The management tool that is most well-suited to address these challenges is to control the number and schedule of visitors to the Preserve, by adjusting the number of days and number of hours that the trail is open for public access.

## **5. Proposed public access, rationale, adaptive management, and alternatives**

### **5.1 Proposed public access schedule**

The purpose of the proposed public access schedule is to provide appropriate public access to the trail on the Dana Point Preserve while protecting the rare and sensitive (and, in the case of two species, endangered or threatened) species on the Preserve. It is acknowledged that these two objectives are conflicting (e.g., Anderson et al. 2023). As such, the proposed public access schedule and related activities are intended to provide a reasonable compromise informed by scientific studies and current species and site conditions, and that takes into consideration the trajectory of increasing public use of the trail and additional threats to the species. As USFWS and CDFW noted in comments on an earlier version of a similar plan, “[it is critical] to conserve the remaining genetic variation within the Dana Point population by maximizing the size of this population”, which likely requires limitations on the amount and intensity of public access to the Preserve.

Based on the scientific literature, CNLM's experience and expertise, as well as discussions with interested parties (e.g., Wildlife Agencies, California Coastal Commission, the City of Dana Point, visiting public and researchers), the proposed public access schedule is as follows:

- Days of the week the trail will be open:

**Tuesday, Thursday, Saturday, and Sunday**

- The hours the trail will be open will reflect general daylight conditions and be adjusted for two seasons: summer and winter.

**Summer hours:** 8:00 a.m. to 6:00 p.m. Memorial Day weekend (the last Monday of May) to Labor Day weekend (the first Monday of September)

**Winter hours:** 8:00 a.m. to 4:00 p.m. (the first Tuesday of September to the Friday of Memorial Day weekend)

- Hours of public access commence at the time indicated (8:00 a.m.) with the gates being open at that time. Public access ends (i.e., the public should be off the Preserve) at the time indicated, by season (i.e., 4:00 p.m. or 6:00 p.m.).

Exceptions and variation on proposed schedule:

- Dedication of public hours for special uses: Two afternoons (the first and third Tuesday) per month, will be reserved for special uses that serve the purposes of environmental justice, focused educational events, research, or other public interest as overseen by CNLM staff. The trail may be closed to other members of the public for these events.
- Necessary closures: For weather events that affect trail condition and sensitivity, wildlife emergency closures (e.g., nests or PPM burrow(s) adjacent to trail or overlooks), emergency personnel access (e.g., rescue or recovery events, fire threats, health concerns, etc.) and occasional management requirements (e.g.,

fence and trail repairs or installation, vegetation or habitat enhancement or maintenance, etc.). Following guidance from CNLM's past practices, the trail may be closed for up to 72 hours following rain events for public safety and trail sustainability, which has been the status quo for CNLM's management of the trail since the trail was initially opened to controlled public access in 2009.

Management and maintenance activities (e.g., habitat maintenance, fence and trail repairs) also dictate the need for temporary trail closures (e.g., hours or days) as required to maintain public safety, the long-term sustainability of the trail, and the protection of the Preserve—which in turn will maintain or increase the public enjoyment of the trail. When possible, prior notification of closures will be posted for the public onsite and on CNLM's website.

## 5.2 Considerations and rationale

1. Control of amount and timing of public access and related impacts: Controlling public access based on a schedule of four days per week should allow some moderation and overall reduction in visitation (acknowledging that four days will increase annual visitation compared to visitation rates from 2021-2022). This is supported, at least in part, by the public visitation levels under the schedule of three days per week that was in effect from June 2021 to November 2022, which suggested that controlling the number of days and hours of access may result in reduced public visitation.

Further information towards appropriately controlling public access on the Preserve was sought from a query of public access to other preserves and parks in southern California. A number of publicly accessible conserved lands in Southern California only allow controlled public access through a reservation system (e.g., Arroyo Hondo Preserve, Bolsa Chica Ecological Reserve, Seal Beach National Wildlife Refuge, Carpinteria Salt Marsh Reserve), scheduled volunteer and educational events (e.g., Starr Ranch Sanctuary, Irvine Ranch Open Space), or docent-led hikes (e.g., Ballona Wetlands Ecological Reserve,

Jack and Laura Dangermond Preserve, Wren's View Preserve, and Trabuco Rose Preserve). Examples of how public access to these protected lands may be prohibited due to temporal or seasonal risk to public safety or temporary, seasonal, or situational risk to the sensitive biological species, are found throughout the state and within the Coastal Zone. Various recreational opportunities, such as hiking trails and campgrounds, may be closed temporarily or seasonally to protect the integrity of the public facilities (e.g., Palos Verdes Nature Preserve) or reduce the risk of exposing the public to unsafe trail conditions (e.g., Laguna Coast Wilderness Park, Aliso and Wood Canyons Wilderness Park), hazardous weather or environmental exposure (e.g., Malibu Creek State Park, Hollister Ranch Preserve, Huntington Beach, Cabrillo State Beach), or wildfire (e.g., Tumey Hills, Cleveland National Forest). As of February 2023, 16 of the reviewed protected lands have implemented partial or complete closure of publicly accessible trails and campgrounds due to the impacts of the January 2023 storms and are expected to remain closed until maintenance activities are completed. Many conserved lands, such as the Laguna Coast Wilderness Park restrict public access "when necessary to minimize impacts to sensitive habitat, to prevent user conflicts with wildlife" (Laguna Coast Wilderness Park Resource Management Plan, 1998). Cleveland National Forest and Pinnacles National Park implement seasonal restrictions on recreational activities on cliffs that support sensitive nesting raptors. Multiple conserved lands managed by the City of Malibu and the Palos Verdes Peninsula Land Conservancy temporarily close portions of public hiking trails to minimize impacts to nesting birds, such as the federally endangered California least tern (*Sterna antillarum browni*) or the coastal California gnatcatcher. Orange County Parks close sections of their trails during the riparian bird (i.e., to protect the federally and state-listed least Bell's vireo) breeding season (March 15-September 15) per Orange County Ord Sec 2-5-46(a) that allows the County to close recreational areas in the interest of protecting public convenience, public safety, or for protection of natural and cultural resources. Similarly, officials of the City of Lake Elsinore and Riverside County announced on February 2, 2023 that Walker

Canyon will be closed to public access for the duration of the 2023 wildflower bloom season to protect the habitat from environmental damage as seen in 2019 when tens of thousands of visitors arrived to view the “super bloom”. Instead of opening Walker Canyon to visitors, the County of Riverside has installed a live-stream camera to allow the public to view the 2023 bloom (<http://www.lake-elsinore.org/Home/Components/News/News/3754/26>).

Other means of controlling public access were considered for the Dana Point Preserve trail, including restriction of access during critical breeding seasons, limiting the density of visitors on site, and limiting the total number of daily visitors. The first consideration of biologically sensitive seasonal closures, while meaningful and most likely to be best connected with reduction of impacts, was ultimately abandoned as being unacceptable given the large amount of time per year that would necessitate trail closures. Given that PPM could be active above ground much of the year and coastal California gnatcatchers nest February through September, a public access schedule based on species sensitivity would result in closure much of the year.

Limiting the number of visitors or density control by only allowing access through docent/volunteer led hikes or a reservation system (as implemented on OCTA Preserves and the Irvine Ranch Conservancy, for example) was also considered impractical and unacceptable.

Another means of reducing and controlling public access is through imposition of access fees (e.g., day use fees at most County and State parks). However, fees can be exclusionary and would likely make the trail inaccessible to some communities, thus was not further considered as a public visitation control method for the Dana Point Preserve.

2. Days of week: Reflecting observed visitor use and visitor preferences expressed to staff (K. Merrill pers. comm.), data obtained from an informal survey of preferred days and times of trail use (unpublished CNLM data), and input from

California Coastal Commission staff, weekend days were included in the public access schedule. Also considered was overlap with the City's Nature Interpretive Center public hours, currently closed on Mondays and some holidays (K. Merrill pers. comm., website queried 2/23/2023

<https://www.danapoint.org/departments/general-services/parks/natural-resources/dana-point-headlands-conservation-area/nature-interpretive-center>).

3. Hours per day: The proposed hours per day were determined to avoid low-light times of day when PPM is most sensitive and may be above ground or in a more alert state underground (see Section 3.6.2). Also considered was the importance of consistent public hours rather than varying from day to day based on cloud cover or sunrise or sunset conditions. Determination of public access based on those constantly changing hours have been noted to cause confusion and frustration in the visiting public, as well as constant public management and posting of information by Preserve staff. In addition, data collected by staff show increasing incidents of trespass after sunset (Figure 5). This is a crucial time when the public should not be on the Preserve, including the trail, to avoid harassment or harm to PPM that are active above ground at that time (see Section 3.6.2). The most effective way to control public access and prevent trespass after sunset has been to move the closing time further from sunset.
4. Seasonal differences (winter and summer hours): As a compromise between constant daily hours throughout the year, affording maximum predictability for the visiting public, as well as allowing longer visitation hours when daylight hours were longer, CNLM is proposing two seasons with different public access hours: summer and winter. The dates (coincident with Memorial Day and Labor Day) were selected as these are commonly considered the unofficial start and end dates of summer and winter in state, regional, and local parks and thus may be more familiar for the public. Many public parks similarly employ different hours of opening during different seasons.

Seasonal hours were informed by actual sunrise and sunset conditions for Dana Point (timeanddate.com). In summer, the latest sunrise time is approximately 6:27 a.m. and the earliest sunset time is at approximately 7:10 p.m. In winter, the latest sunrise time is approximately 7:13 a.m. and earliest sunset time is approximately 4:42 p.m. Those statistics represent the longest periods of daylight during those two seasons. Some buffer between these times is important to avoid, as much as possible, low-light periods. During the winter schedule—which is the greater part of the year (approximately eight months)—this only provides a buffer of approximately 45 minutes for some days.

5. Alternate public access locations nearby: Given that there is no direct access to the water or the beach from CNLM's Dana Point Preserve trail, the proposed access schedule will not impact the ability of the public to access the water or the beach. Additionally, trail users are still able to use an interconnecting network of City trails during the times that the Preserve trail is closed. The Preserve trail provides coastal views, which can also be enjoyed by the public from other locations within City parks that do not sustain sensitive populations of endangered and threatened species. When the Preserve trail is closed, the public can experience such coastal outlooks at the adjacent Hilltop, Harbor Point, and Strands Conservation Parks, especially for sunset as seen at the City's Harbor Point (Figure 11). Further, there is no direct access from the network of City trails to the ocean/beach east of the Dana Point Preserve, regardless of whether the Dana Point Preserve trail is open. Rather, the public can use the City's pedestrian/bicycle trail to either connect with trails that lead to the beach or with trails that lead to the street that can then be followed to the beach. The closure at certain times of the Dana Point Preserve Trail does not affect the public's ability to get access to the coast or beach nor does it disrupt connectivity to the city-owned trails at Strands, Hilltop or Harbor Point or to the Dana Point Harbor (Figure 12). To access CNLM's coastline (a pebble beach at the bottom of the Preserve's cliffs), the public may do so at low tide, entering from the north

at Strands Beach or from the south via the Ocean Institute. There is never access to this pebble beach from the trail at the Preserve.

According to the City of Dana Point’s website, the City has over 28 parks within city limits for recreation, coastal access, exercise, and nature appreciation. Most of these parks have trails and/or coastal views including, but not limited to, Bluff Top (near the Dana Point Preserve), Hilltop, Harbor Point, Chloe Luke Overlook, Crystal Cove Park (“Ocean Knoll”), and Dana Point Harbor (Table 7).

Table 7. Public open space and trail access opportunities within the City of Dana Point.

<b>Open Space Name</b>	<b>Ownership/ Land Manager</b>	<b>Size (acres)</b>	<b>Trail Length (miles)</b>	<b>Coastal View</b>
Bluff Top Trail	City of Dana Point		0.2	Yes
Chloe Luke Overlook	City of Dana Point	0.4	n/a	Yes
Crystal Cove Park (aka Ocean Knoll)	City of Dana Point	1.6	n/a	Yes
Dana Cove Park	Orange County	5.4	n/a	Yes
Dana Point Harbor Park	Orange County	5.9	2	Yes
Doheny State Beach	California Department of Parks and Recreation	76	7	Yes
Harbor Point	City of Dana Point	9.3	0.3	Yes
Hilltop	City of Dana Point	11.7	0.7	Yes
Heritage	City of Dana Point	16.1	1	Yes
Lantern Bay	Orange County	15	1	Yes
Louise Leydon	City of Dana Point	0.5	n/a	Yes
Palisades Gazebo Park	City of Dana Point	0.7	n/a	Yes
Pines Park	City of Dana Point	4.7	n/a	Yes
Salt Creek Beach County Park	Orange County	45	1.2	Yes
Sea Terrace Park	City of Dana Point	27	Connector trail	No
Sea View Park	City of Dana Point	0.47	0.4	Yes
Strand Vista Park (South Strands Park)	City of Dana Point	16	1.2	Yes
Sycamore Creek Trail	City of Dana Point	n/a	0.5	No
<b>Total</b>		<b>236</b>	<b>16</b>	



Figure 11. View from Harbor Point Conservation Park. Photo taken by CNLM Ranger James Ligoretti, 2022.

Expanding outside of the city limits, in Orange County, within 10 miles of the Dana Point Preserve, there are at least 42 other open spaces located in the California Coastal Zone that provide over 20,000 acres of public access with hiking and recreational opportunities along an estimated 174 miles of trails, boast scenic ocean views, and/or provide beach access, including the Marblehead (“Sea Summit”) Preserve in San Clemente, managed by CNLM (Appendix B). Approximately 3 miles east of the Dana Point Preserve, Doheny State Beach transitions into the Capistrano Beach Park, a 55-acre public beach with over 4 miles of beach trails. Approximately 3 miles northwest of the Preserve lies Aliso Creek County Beach, a 64-acre beach that provides multiple amenities, such as a playground, parking lot, and opportunities for recreational water sports, in addition to beach access, scenic views, and tidepools. One mile inland, the Aliso

and Wood Canyons Wilderness Park, a 4,500-acre park, provides multiple opportunities for recreational activities and exposure to native coastal habitat, through its 50 miles of multi-use trails, scenic views of the ocean, picnic areas, and visitor center. All of these Orange County locations provide immense opportunities for varied recreational activities, outreach and education opportunities, exposure to native coastal habitats, or beach access.

6. Special events: Special events offer a valuable opportunity to provide access to a variety of groups, and community organizations but also may cause a congregation of individuals and increase visitation—either of which could result in concerning conditions for the natural resources onsite or decrease the Preserve experience for individual visitors. As such, CNLM proposes to use a modest amount of public access hours dedicated to special events such as educational tours on the first and third Tuesday of each month from 12:00 p.m. to 4:00 p.m. (see Section 5.1, Proposed public access schedule). On these days and times the trail will be closed to general public access but open to group tours. Individuals and groups will be able to sign up for tours in advance by contacting CNLM staff. If no groups or individuals have signed up for a tour, the trail will revert to being open to the general public access. These tours will be led by CNLM staff or CNLM volunteers and will be education-focused (see Section 5.3.9). Large, organized groups will be prohibited on the trail outside of these hours as the impact on public access would be substantial.

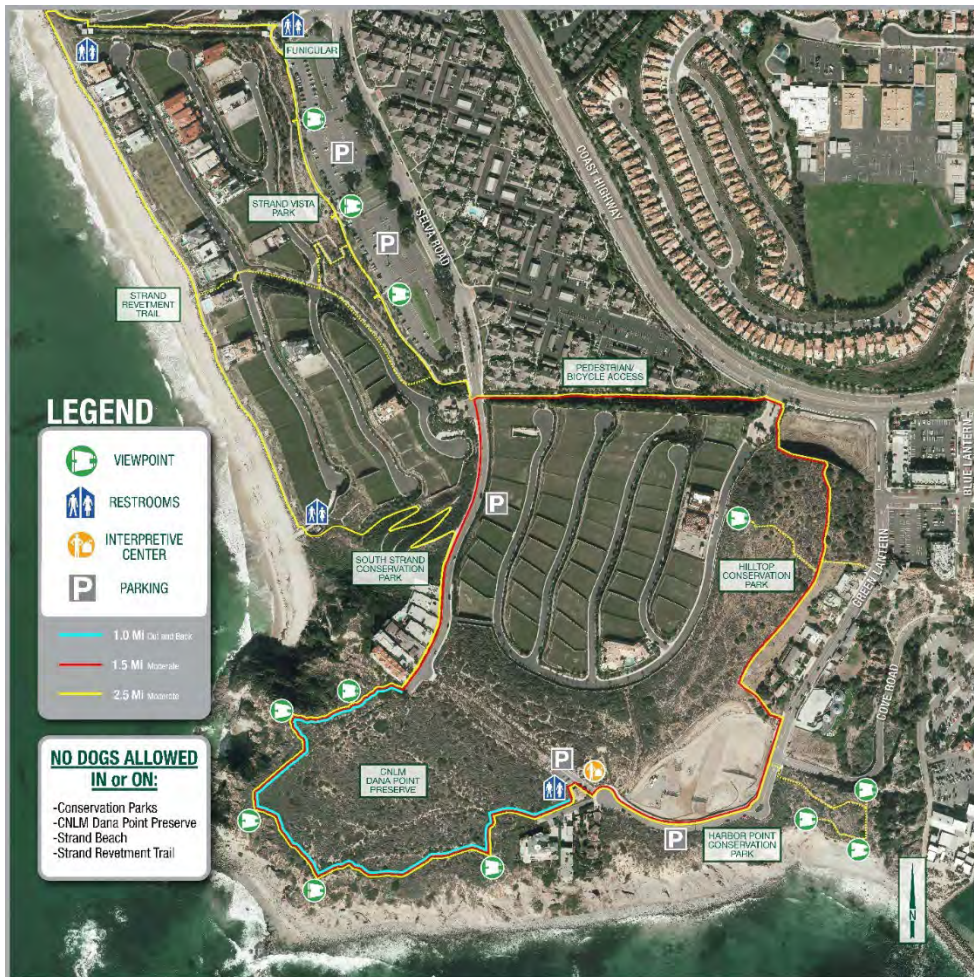


Figure 12. Dana Point Trail Map from the City of Dana Point. (Downloaded from City’s Natural Resources website, 13 February 2023. <https://www.danapoint.org/department/general-services/parks/natural-resources/dana-point-headlands-conservation-area/trail-system>.)

### 5.3 Adaptive management of public access

Information presented in this 2023 Plan represents relevant data, experience, and scientific knowledge to date. To continue to ensure that the most appropriate balance is achieved between controlled public access of the Preserve and protection of the sensitive natural resources onsite, there will be ongoing collection of data, review of scientific literature, and acquisition of experience, with well-considered application to the management of the Preserve.

#### 5.3.1. *Monitoring of amount of public access*

To monitor public visitation, infrared pedestrian trail counters placed near both the Scenic and Selva gates will be maintained (batteries replaced, wire connections secured, corroded parts replaced, etc.), and data collected and analyzed (using the online TRAFx portal, [trafx.net](http://trafx.net), or a CNLM created database) on a quarterly schedule if not monthly. Placement and location of the trail counters will need to be revisited annually to improve utility and the quality of data collected. Staff and volunteers will note in weekly reports unusual or extreme visitation during their patrol shifts, biological monitoring, and management tasks. From this, average daily visitation rates and annual visitation rates can be interpreted and inform management.

#### 5.3.2. *Monitoring of public behavior*

Similar to monitoring the amount of public access, monitoring public visitation behavior (compliance, incidents, impacts, resources used) will take a multi-faceted approach: CNLM staff will continue to use trail counters, trail cameras, and on-the-ground observations to report (e.g., dogs or other pets on the trail), document, and analyze visitation behavior. CNLM staff will continue to be onsite to patrol the trail and provide educational material to the visiting public, enforce trail rules, and report onsite conditions. This information will influence CNLM's updates to signage, rules, education material, and management.

#### 5.3.3. *Monitoring of habitat quality*

As a potential correlate to gnatcatcher and PPM population size, CNLM will continue to monitor the vegetative cover (composition and spatial distribution) of the Preserve (excluding the cliff areas). Since 2006, monitoring of the coastal sage scrub has been conducted using twenty permanent point-intercept line transects. Each year a subset of five of these twenty transects are monitored on a rotating schedule so all twenty are monitored in a four-year period. More PPM-focused habitat suitability monitoring, similar to those conducted in 2020 and 2022 (Brehme et al. 2020, CNLM 2022, 2023), will be conducted every 3-5 years or sooner if a shorter interval is required (e.g., after a fire event, or extreme drought conditions) and as resources allow. Adjustments or changes

to the habitat monitoring schedule or protocol will be evaluated and implemented as new information is learned through CNLM's experience and staff recommendations, collaboration with other researchers (e.g., USGS, SDZWA and wildlife agencies), scientific literature and advances in conservation technologies (i.e., remote sensing technologies).

#### 5.3.4. *Monitoring of Pacific pocket mouse site use (i.e., area occupied)*

Since 2011, CNLM has used track tubes to monitor PPM using methods developed by experts in the field and following USFWS survey protocols. Track-tube monitoring will continue to be conducted annually to provide information on presence/absence, area occupied, and habitat suitability of PPM on the Dana Point Preserve. As previously practiced, CNLM will attempt to coordinate annual monitoring activities with the City of Dana Point to monitor their Hilltop Park adjacent to the Preserve to maximize the data collected and minimize sampling bias.

#### 5.3.5. *Intermittent direct detection of Pacific pocket mouse (live-trapping)*

Live trapping of PPM will continue to be used to supplement track-tube monitoring to provide additional estimates of population size, as well as phenological and demographic data. This type of monitoring carries risks to both PPM as well as non-target wildlife and, as such, is used less frequently than track-tube monitoring. During live-trapping other information can be gathered from supplemental collection/research such as dietary preferences through fecal analysis of collected scat or genetic information through ear-snip collections to name a few. CNLM historically has conducted live trapping every 3-5 years or soon as warranted (e.g., such as in 2019 when limited trapping was conducted to determine the status of PPM reproductive activity, CNLM 2020) and will likely maintain this schedule in the future.

#### 5.3.6. *In situ research*

The limitations on direct research onsite regarding public access effects have been previously described. Factors inherent to the biology and status of the species as well as the Preserve context and lack of temporal (i.e., "before public visitation") and spatial

(reference sites) experimental controls, are some of the limitations. The onsite research that can be conducted is that of long-term monitoring of PPM, gnatcatcher, and certain other site conditions (e.g., vegetation). Although those monitoring results would reflect a composite of all influences, data collected over the long-term may provide patterns that can be interpreted for management purposes. Over time, improvements in the technology for remote sensing and monitoring may provide more intimate insights into PPM status and behavior and allow more direct linkages with other factors.

#### 5.3.7. *Ex situ research*

The growing body of scientific research on public-wildlife interactions, particularly with small nocturnal mammals and birds, will continue to provide information towards understanding the interactions between PPM (and gnatcatchers) and the visiting public and, as such, how to better avoid and minimize any negative impacts. Some research being conducted with captive bred mice on stress-mediated relationships between PPM and certain stimuli could also provide more direct information (D. Shier pers. comm.). However, captive bred mice may also have different or decreased stress response because of exposure to more domesticated conditions and exposure to humans. As such, extrapolation from any studies with captive-bred mice would require careful consideration.

#### 5.3.8. *Summary of information*

Adaptive management requires not only the collection of data (or other representations of conditions and experience) over time, but inspection, analysis, interpretation, and application. It is anticipated that there will be an annual review of this information to determine the general status of PPM on the Preserve, amount and nature of public visitation, and status of other elements of PPM habitat. Relevant scientific literature will be queried to refresh our awareness. Although this information will be assessed for management implications, it is acknowledged that there is some tension between the value or need to change public access hours (increasing or decreasing) and the interest in collecting information. Frequent adjustments in public access schedule have the consequence of reducing the ability to see patterns on public use impacts (or lack of)

PPM over time—that is, it reduces the general experimental frame to detect correlations or other patterns. Further, frequent changes (or changes in direction) in the public access schedule can cause confusion and frustration by the public as well as lessen compliance, leading to drain on staff resources and increased incidence of trespass and potential impacts.

#### 5.3.9. *Outreach and education*

As a current practice that CNLM plans to continue to the extent supported with financial and staff resources, CNLM enhances visitor experience with information provided directly by staff and indirectly with other media. To the extent feasible CNLM will refresh educational signs and interpretive panels, brochures, and website info, provide guided public tours, and increase public awareness of conservation issues through providing more detailed information to the public regarding literature and the science behind it related to public impacts on natural resources. Focus will be to enhance CNLM's current outreach activities through grants and other funding sources. To extend capacity to provide such enhanced experience, CNLM will apply for grants or otherwise seek opportunities to: (1) update existing Dana Point Preserve outreach materials (including signs, pamphlets, and other media) to be more accessible by those for whom English is not the first language (i.e., translations) and underrepresented members of the visiting public and (2) design and develop workshops based on coastal conservation, pollution, climate change, and best stewardship practices using CNLM's Dana Point Preserve for context. If feasible, workshops are expected to foster discussion, utilize multiple educational tools, and provide interactive activities (e.g., onsite and offsite opportunities for public engagement). In addition, CNLM will continue to develop partnerships with outreach and education organizations to increase public outreach across multiple platforms and engage further with underrepresented communities.

If resources become available, CNLM plans to install a camera on the Preserve that would allow live-streaming views of the Preserve (similar to what has been implemented in Walker Canyon, see section above), accessible through the CNLM website. The camera would serve the dual purpose of research, in addition to outreach, providing additional data on activity and use at the Preserve. This visual (and potentially auditory)

platform would provide the public with an additional type of access for a much longer period than direct visitation hours and be available for a more geographically distant public, as well as those with limited mobility who may not be able to access the Preserve trail.

5.3.10. *Other potential use and partner relationships*

CNLM plans to continue to maintain relationships with CDFW's Enforcement branch (i.e., Game Wardens), Orange County Sheriff's Department, and Orange County Fire Authority regarding protection of the Preserve, emergency use, and training. In addition, CNLM will maintain and revise the protocol for any proposed research needing access to the Preserve, including review of research proposals for risks, conservation value, and opportunity to conduct research elsewhere.

5.3.11. *Consistency with the Coastal Act, CDP No. 04-23 and the HDCP*

The adaptive management activities, including the hours of operation for the trail, proposed in this 2023 Plan are consistent with Master CDP No. 04-23 and the HDCP, which, along with the Coastal Act, require a balance between public access and protection of natural resources. As noted in Section 5.1 of the HDCP, "[t]he primary purposes of the Coastal Act are to protect, maintain, and, where feasible, enhance and restore the natural and scenic qualities of the coastal zone resources; assure an orderly and balanced use and conservation of coastal zone resources; maximize public access consistent with conservation principles and constitutionally protected private property rights; assure priority for coastal-dependent and coastal-related development; and encourage state and local cooperation concerning planning and development." This Plan proposes to apply conservation principles to ensure that public access is consistent with protection and maintenance of the natural qualities of the coastal zone resources.

The Coastal Act requires maximum access, "consistent with . . . the need to protect . . . natural resource areas from overuse" (CA Public Resources Code section 30210). The Coastal Act specifically contemplates that public access may not be unlimited, and requires that public access policies be implemented in a way that "takes into account

the need to regulate the time, place, and manner of public access” depending on a number of factors, including “[t]he capacity of the site to sustain use and at what level of intensity. . . and the fragility of the natural resources in the area. . . .” (CA Public Resources Code section 30214). As noted in Section 3.2 above, the intensity of use of the trail on the Preserve has increased dramatically since the trail was planned and first opened to the public in 2009, and the fragility of the natural resources has become more apparent. The HDCP implements these Coastal Act provisions through its policy to “[r]egulate the time, manner and location of public access to parks and open space containing sensitive biological resources to maintain and protect those sensitive resources . . . while honoring the public’s constitutional right of access to navigable waters.” (HDCP Policy 5.20). Additionally, HDCP Policy 3.11 limits uses within the Preserve to “passive public recreational facilities such as trails, benches, and associated safety fencing and interpretive/directional signage provided those uses do not significantly disrupt habitat values.” Similarly, the City’s Municipal Code sections regarding lateral public access and bluff top public access require that “in some cases controls on the time, place and manner of uses may be justified by site characteristics including sensitive habitat values. . . .” (DMPC section 9.27.030(a)(4)(A)(1), (C)(1) and (D)).

The Conservation Easement for the Preserve fulfills Condition No. 36 of CDP No. 04-23, which requires dedication of a conservation easement to preserve environmentally sensitive habitat areas (ESHA). The Conservation Easement implements the intent of the City and CNLM “that the natural habitat, aesthetic, landform, ecological and educational values of the [Preserve] be further protected in perpetuity against any activities that would detrimentally harm the habitats, sensitive species and natural landforms on the Property.” The Conservation Easement itself does not describe the appropriate level of public access to the trail, except to say that such access shall be “controlled” and “limited to the nature trail and overlook areas. . . .” (Conservation Easement, section 5.2(d)). The City and CNLM are required by the Conservation Easement to ensure that public access does not “materially impair or interfere with [the biological] values and resources” of the Preserve (Conservation Easement section 2.).

USFWS and CDFW are third party beneficiaries of the Conservation Easement and have the right to enforce it (Conservation Easement section 10.1.).

Given the small size of the Preserve, the increasing number of visitors on the Preserve trail, the unavoidable instances of trespass off trail and after sunset, and the sensitivity of the species at the Preserve, a conservative and adaptive management approach that takes into account the abundance of information now available on the impacts of passive recreation is needed. A reduction in the number of hours that the trail is open to the public should lead to a decrease in the number of people on the trail, which should result in decreased impact on the species and habitat. Although such reductions and impacts may be difficult to quantify precisely with currently available information, the obligations under the entitlements for the Headlands development project and the NCCP/HCP, as well as the Conservation Easement for the Preserve, require limitations on public access to minimize further adverse effects on the species and habitat.

The proposed hours for operation of the trail and for associated adaptive management activities are consistent with the public access program and the conservation program of the HDCP (see, e.g., Table 4.5.1). The trail will remain in place and open to public access for controlled access and periods of time intended to limit impact on the sensitive species. It shall continue to remain accessible to the public year-round, unless USFWS and CDFW determine that it should be closed for a specific period to protect on site resources. CNLM, the non-profit organization that owns and manages the Preserve, is determining hours of daily operation through the proposals in this Plan. The view overlooks will continue to provide signage, educational material, and other relevant information that is accessible to the public when the trail is open, during times of least impact to the species. Public access to areas outside of the trail and overlooks shall continue to be prohibited and pets will continue to be prohibited in the Preserve. CNLM will continue its efforts to ensure that visitors adhere to these prohibitions.

This Plan also conforms to the Design Concept outlined in the HDCP (See Section 4.4.B.1). The Preserve is and will remain an area “to permanently preserve the

significant landform, and conserve, manage, and preserve the existing flora and fauna. The [Preserve] shall consist of natural open space and be dedicated to the conservation and enhancement of the existing habitat.” The proposed hours of public access and associated adaptive management activities will contribute to the conservation, preservation, and enhancement of the Preserve’s natural resources. This Plan is one component of the “long-term management programs for the study and maintenance of the natural resources,” as required by the HDCP, and serves to “[d]efine an appropriate level of public access along” the trail, as specifically described in the Design Concept for the Preserve (HDCP Section 4.4.B.1). When the trail is open to visitors, it will serve as a throughway connection between trails owned and managed by the City in the Headlands area, as well as other parts of the City of Dana Point. When the trail is closed, recreational users will still be able to access and use the Headlands trails owned and managed by the City. Direct access of recreational users to the beaches and water will not be affected by the Preserve’s trail access schedule since the trail on the Preserve does not provide access to the beaches or the water.

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Appendix A. Summary of literature pertaining to biological impacts of recreational and anthropogenic disturbances.

Author	Taxa or Species	Location	Objectives	Result
Allen et al. 2021	Song sparrows ( <i>Melospiza melodia</i> )	British Columbia, Canada	Experimentally manipulated fear in wild songbird populations over 3 breeding seasons by broadcasting playbacks of either predator or nonpredator vocalizations, quantified effects on components of population growth.	Fear (stimulated by predator call playback) significantly reduced population growth rate through cumulative, compounding adverse effects on fecundity and offspring survival. Parents exposed to predator playback produced 53% fewer recruits to adult breeding population. "Fear" itself was projected to halve the population size in 5 years.
Anderson et al. 2023	Mammals	Glacier National Park, MT, USA	Used a COVID-19 closure within a heavily visited national park to examine how "low-impact" recreational hiking affects the spatiotemporal ecology of a diverse mammal community.	Camera trap data from park closure period and subsequently re-opening to recreation showed consistent negative responses to human recreation across most of assemblage of 24 species, with fewer detections, reduced site use, and decreased daytime activity after re-opening.
Anze and Koper 2018	Savannah sparrows ( <i>Passerculus sandwichensis</i> )	Alberta, Canada	Influence of anthropogenic noise (industrial infrastructure) on anti-predator behavior.	Greatest impacts on behavior were detected at the noisiest treatment; feeding latency was shortened compared with control sites, which may expose nests to greater predation risk.
Arlettaz et al. 2007	Black grouse ( <i>Tetrao tetrix</i> )	Switzerland	Evaluated the physiological stress response (corticosterone levels) after disturbance induced by snow sports.	Birds in disturbed habitat had significantly higher concentrations corticosterone metabolites than those in habitats with no/very limited human disturbance. Corticosterone did not differ between habitats with moderate vs. high human disturbance.
Baharudin et al. 2022	Small mammals	Malaysia	Surveyed non-volant small mammals in a forest preserve unit to inform conservation and management.	Species composition of non-volant small mammals was reduced in areas with greater anthropogenic activity (jogging, hiking and camping).
Banks and Bryant 2007	Birds, multiple species	Australia	Experimentally manipulated dog walking at woodland sites adjacent to urban areas and monitored response of multi-species bird assemblages.	Dog walking in woodlands led to a 35% reduction in bird diversity and 41% reduction in abundance, both in areas where dog walking is common and where dogs are prohibited.
Bar-Ziv et al. 2022	Spur-winged lapwing ( <i>Vanellus spinosus</i> )	Israel	Investigated escape behaviors of lapwings in open space and human dominated habitats (HDH).	Lapwings in HDH were bolder in their predator-avoidance sequence (shorter FIDs, shorter distances fled, and a higher probability of escape by running vs. flying) towards both human and non-human threats; this suggest that HDH impose a broader behavioral change on lapwings, rather than just simple habituation.

Author	Taxa or Species	Location	Objectives	Result
Barber et al. 2010	Multiple species	Multiple	A review of impacts of chronic noise exposure studies on terrestrial organisms.	A broad range of findings that indicate the potential severity of this threat to diverse taxa, and recent studies that document substantial changes in foraging and anti-predator behavior, reproductive success, density, and community structure in response to noise.
Barcelos et al. 2021	Mammals	Cavernas do Peruaçu National Park, Brazil	Used camera traps to surveys trails before and after national park opened to tourists to investigate effects of trail use on mammal species richness, probability of using trails, activity levels, and daily activity patterns.	Overall, results show that the initial years of visitation at the park had limited negative impacts on the target mammal species, although some species were displaced or showed temporal adjustment.
Barros and Pickering 2017	Plant communities	Argentina	Impact of informal trails and off-rail use on plant communities in protected areas of high conservation value.	Vegetation in 90% of valley damaged by visitor use. Informal trails and trampling off-trail can cause landscape-scale damage.
Bateman and Fleming 2017	Multiple species	Multiple	Literature review to compare and contrast different measures of response to tourist activities (avoidance responses, time budgets, and physiological responses).	Most studies reviewed interpret data as negative impacts of tourist activities; this review finds that behavioral data (flight responses and time budgets) often indicated positive effects; time budget data are often ambiguous, while physiological data tended to show negative responses.
Beale and Monaghan 2005	Black-legged kittiwakes ( <i>Rissa tridactyla</i> ), common murre ( <i>Uria aalge</i> )	Scotland	Examined the relationship between daily visitor numbers and daily failure rates of nests in two species of seabirds.	Daily failure rates for kittiwakes increased slightly on days with higher visitor numbers. For murre, failure rate declined seasonally but was not significantly correlated with visitor numbers.
Bejder et al. 2009	Multiple species	Multiple	Reviewed the conceptual framework for the use of habituation, sensitization, and tolerance, and provide a set of principles for their appropriate application in studies of behavioral responses to anthropogenic stimuli.	Describe how cases of presumed habituation or sensitization may actually represent differences in the tolerance levels of wildlife to anthropogenic activity.
Bennett et al. 2013	Karner blue butterfly ( <i>Lycaeides melissa samuelis</i> )	Indiana, USA	Used field surveys and simulations to examine response of butterflies to recreation, including oviposition rate and host plant choice; tested management strategies to alleviate recreation impacts.	Butterflies were sensitive to recreational disturbance and flushed at similar speeds and distances from recreationists as they would from natural threats, such as predators. Simulation models indicated that regular disturbance could reduce egg laying potential and significantly restrict host plant choice.
Blair and Launer 1997	Multiple	California, USA	Butterfly diversity and human land use; Species assemblages along an urban gradient.	Species richness and diversity of butterflies peaked at moderately disturbed sites while relative abundance decreased from natural to urban areas.

Author	Taxa or Species	Location	Objectives	Result
Blickley et al. 2012	Greater Sage-Grouse ( <i>Centrocercus urophasianus</i> )	Wyoming, USA	Experimentally tested effects of chronic noise from human activities on sage grouse at leks.	Peak male attendance (i.e., abundance) at leks experimentally treated with anthropogenic noise from natural gas drilling and roads decreased 29% and 73%, respectively. There was limited evidence for an effect on peak female attendance.
Bötsch et al. 2017	Forest-nesting birds, multiple species	France	Measured disturbance of walking trail activity on birds during territory establishment.	Number of territories and species richness in disturbed (recreational walkers) areas substantially reduced compared with control plots (no walkers). Species most affected were open-cup nesters and above-ground foragers.
Boyes et al. 2021	Moth caterpillars (Lepidoptera)	England	Evaluated the impacts of nighttime lighting on wild caterpillars.	Street lighting strongly reduced moth caterpillar abundance compared with unlit site, affected caterpillar development, and disrupted the feeding behavior of nocturnal caterpillars.
Cassirer et al. 1992	Elk ( <i>Cervus elaphus</i> )	Montana and Wyoming, USA	Measured movements of habituated and unhabituated populations of elk when disturbed by cross-country skiers to assess energy costs and identify factors that might influence elk behavior.	Among habituated elk, “predictability” of disturbance influenced response. Unhabituated elk responded similarly to skiers and logging disturbance; flight distance was related to topographic features. Elk often returned to area following displacement. Estimated energy expenditure from displacement was 5.5% of total daily expenditure, increasing exponentially with snow depth.
Cushman and Meetenmeyer 2008	Forest pathogen ( <i>Phytophthora ramorum</i> )	California, USA	Examined the influence of humans and a range of environmental factors on the distribution of <i>P. ramorum</i> at three distinct spatial scales (along hiking trails, open space with public access, and human population density).	<i>P. ramorum</i> more commonly occurred in soil on hiking trails used heavily by humans than in soil from adjacent areas off trails. Forests on public land open to recreation had higher prevalence of disease than forests on private lands. Probability of disease occurrence increased significantly with population density in the surrounding area.
Derryberry et al. 2020	White-crowned sparrow ( <i>Zonotrichia leucophrys</i> )	California, USA	Compared soundscapes and songs before and during Covid-19 shutdown; evaluated whether a songbird exploited newly emptied acoustic space.	Noise levels in urban areas were substantially lower during the shutdown, characteristic of traffic in the mid-1950s. Birds responded by producing higher performance songs at lower amplitudes, effectively maximizing communication distance and salience.
Dertien et al. 2021	Multiple species	Multiple	Reviewed research on the effect of non-consumptive recreation on wildlife to identify effect thresholds or the point at which recreation begins to exhibit behavioral or physiological change to wildlife.	Threshold distances varied substantially within and amongst taxonomic groups. Threshold distances for wading and passerine birds were <100m, but >400m for hawks and eagles. Mammal threshold distances varied widely from 50m for small rodents to 1,000m for large ungulates.

Author	Taxa or Species	Location	Objectives	Result
Fernández-Juricic 2001	House sparrow ( <i>Passer domesticus</i> ), common blackbird ( <i>Turdus merula</i> ), common wood pigeon ( <i>Columba palumbus</i> ), Eurasian magpie ( <i>Pica pica</i> )	Spain	Examined factors that influence alert distances to pedestrian approaches in five large wooded open space.	Habitat structure modified alert distances: bird tolerance increased with greater availability of escape cover. Alert distances varied among species, with large species being less tolerant of human disturbance than small ones.
Ficetola et al. 2007	Terrestrial vertebrates (small mammals, birds, reptiles, and amphibians)	Italy	Examined recreation disturbance (people presence, trampling) on distribution of animals in urban parks.	Disturbance and forest maturity influenced the distribution of some species and the species richness of amphibians and reptiles; however, the pattern was not consistent across species within taxa or among taxa.
Finney et al. 2005	Golden plover ( <i>Pluvialis apricaria</i> )	United Kingdom	Impact of recreational disturbance (intensity and extent) on the distribution and reproductive success of plovers breeding in proximity to an intensively used trail.	Prior to trail resurfacing, when people strayed from the footpath, plovers avoided areas within 200m of the trail during chick-rearing. After trail resurfacing, >96% of walkers remained on-trail, and plovers avoided areas within only 50m of the footpath. No detectable impact of disturbance on reproductive performance.
Frid and Dill 2002	Multiple species	Multiple	A review of studies where predation and nonlethal disturbance stimuli are proposed to create similar trade-offs between avoiding perceived risk and fitness-enhancing activities (feeding, parental care, mating); provide theoretical framework for human-caused disturbance stimuli as a form of predation risk.	Most literature examples were consistent with predictions of the risk-disturbance hypothesis (human-caused disturbance stimuli as a form of predation risk).
George and Crooks 2006	Bobcat ( <i>Lynx rufus</i> ), coyote ( <i>Canis latrans</i> ), and mule deer ( <i>Odocoileus hemionus</i> )	California, USA	Investigated the relationship between large mammal spatial and temporal activity patterns and human recreation in an urban nature reserve using camera trapping.	Bobcats, and to a lesser degree coyotes, exhibited both spatial and temporal displacement in response to human recreation. No effect was detected for mule deer.

Author	Taxa or Species	Location	Objectives	Result
Gill et al. 2001	Multiple	Multiple	The effect of human disturbance on animals is frequently measured in terms of changes in behavior in response to human presence and the magnitude of these changes in behavior is often used as a measure of the relative susceptibility of species to disturbance. This paper discusses whether such assessments are accurate measures of the relative susceptibility of species to human disturbance.	The authors suggest that the degree of avoidance/durance resulting from human presence may be a misleading measure of impact particularly when a species is constrained in its ability to avoid or relocate in response to disturbance.
Glover et al. 2011	Shorebirds, multiple species	Australia	Measured the distance at which a response (flight initiation distance [FID]) occurred among 28 shorebird species when presented with an approaching human.	FID differed by species; species with higher body masses had longer FIDs. Mean FIDs for species were 18.6–126m. FID was influenced by starting distance of human approach, flock size, previous exposure to humans, and stimulus type (walker, jogger, walker with dog).
Gomez-Serrano 2021	Kentish plover ( <i>Charadrius alexandrinus</i> )	Spain	Estimated the impact of human presence affects breeding birds.	Walkers, when accompanied by dogs flushed plovers 80-93% of the time, whereas pedestrians alone flushed plovers 13-47.6% of the time. Nest return times were shorter on disturbed beaches, suggesting habituation to the human disturbance.
Gutzwiller et al. 1994	Birds, multiple species	Wyoming, USA	Effects of human intrusion on song occurrence and singing consistency in subalpine birds.	Singing by several species was not influenced by intrusion. For some species, song occurrence and singing consistency were higher on controls than on intruded sites, indicating intrusion reduced singing activity.
Habib et al. 2007	Ovenbirds ( <i>Seiurus aurocapillain</i> )	Alberta, Canada	Assessed pairing success and age distribution of birds in boreal forests around noise-generating compressor stations compared with areas around habitat-disturbed, but noiseless, wellpads.	Significant reduction in ovenbird pairing success at compressor sites compared with noiseless sites. Significantly more inexperienced birds breeding for the first time were found near noise-generating compressor stations than noiseless well pads.
Hennings 2016, 2017	Multiple species	Multiple	This document reviews the literature on overall and relative effects of three user groups – hikers, mountain bikers and equestrians – on trails, habitat, and wildlife to help inform ecologically appropriate placement and construction of trails in natural areas.	Trails and trail use can damage natural areas by negatively affecting soils, vegetation, water quality, plants, and animals. Human disturbance increases animals' stress and can cause them to hide, change behavior or flee. Some species, such as those that do well in urban areas, are generalists and can tolerate human disturbance. Other species such as pregnant animals, long-distance migrants, and habitat specialists tend to be more stressed and displaced by trail users. Some species may permanently leave a natural area.

Kamel 2020	Invertebrates	Egypt	Surveyed spatial variation of the diversity of gall-inducing insects at different distances from a hiking trail.	Species richness and abundance of gall-inducing insects were significantly positively correlated with the distance from the trail. In most species, the proportion of galled plants was significantly positively correlated with the distance from the hiking trail.
Kangas et al. 2010	Birds, multiple species	Finland	Examined effects of recreation on forest bird communities in protected areas. Bird data collected along hiking trails and in undisturbed control areas were related to number of visits, area of tourism infrastructure, and habitat variables.	Results indicate that number of visits affects occurrence and composition of bird communities, but not species richness. Open-cup nesters breeding on ground showed strongest negative response to visitor pressure, while open-cup nesters in trees/shrubs were more tolerant. No significant impact detected for cavity-nesting birds.
Larson et al. 2016	Multiple species	Global	Conducted a systematic review of the scientific literature and analyzed 274 articles on the effects of non-consumptive recreation on animals, across all geographic areas, taxonomic groups, and recreation activities. Quantified trends in publication rates and outlets, identified knowledge gaps, and assessed evidence for effects of recreation.	Over 93% of reviewed articles documented at least one effect of recreation on animals, the majority of which (59%) were classified as negative. Studies of amphibians, reptiles, and fish are lacking. Some taxonomic groups (e.g., raptors, shorebirds, ungulates, and corals) had greater evidence for an effect of recreation. Non-motorized activities had more evidence for a negative effect of recreation than motorized activities, with effects observed 1.2 times more frequently.
Larson et al. 2018	Multiple species and subspecies of conservation concern in southern Ca.	California, USA	Modeled visitation rates for regional preserves, exposure of sensitive species, factors driving visitation rates.	Accessibility (numbers of housing units and parking lots) had positive relationships with visitation rates. Orange-throated whiptail ( <i>Aspidoscelis hyperythra</i> ), western spadefoot ( <i>Spea hammondi</i> ), and coastal California gnatcatcher ( <i>Polioptila californica californica</i> ), are likely exposed to high levels of recreational activity.
Larson et al. 2019	Birds, mammals, reptiles	Global	Conducted a global meta-analysis of the effects of recreation on vertebrate richness and abundance. Included 34 articles.	Species richness and abundance were lower in association with higher levels of recreation. In approximately 7 of 10 comparisons, vertebrate richness or abundance is expected to be lower with higher levels of recreation.
Lei et al. 2022	Mammals	China	Assessed taxonomic, phylogenetic, and functional diversity for a mammal community in a protected area to examine how trail use and habitat variables affected sightings and signs of mammals.	More developed and heavily used trail types had greater adverse effect on all diversity richness indices than did less intensively used trail types. Consequently, tourist pressure was associated with a general tendency to homogenize the site's mammal community. The effects of trail types on diversity evenness indices were non-significant.

Liedtke et al. 2020	Native and non-native plants, multiple species	Chile	Evaluated the importance of hiking trails for plant invasion in protected mountain areas.	Hiking trails foster non-native species (NN) spread into mountains; NN at higher elevations are a subset of the lowland source pool and NN number and cover decreases with increasing elevation and distance to trails.
Lucas 2020 (in CDFW 2020)	Multiple species	Multiple locations	A literature review of recreation-related disturbances to wildlife; explores sustainability of dual-role preservation area (those used for conservation and recreation).	Evidence from literature indicates incompatibility between recreation and conservation goals of dual-role protected areas.
Mitrovich et al. 2020 (in CDFW 2020)	Multiple species	USA	Review of effects of recreation on wildlife; Case study of recreation-wildlife conflicts; discussion of options to balance human interest for recreation and the impacts on wildlife.	Authors provide comprehensive list of recommendations to achieve best recreation and conservation outcomes and minimize negative impacts of recreation.
Mallord et al. 2007	Woodlark ( <i>Lullula arborea</i> )	England	Impact of recreational disturbance on population size	Bird density lower on sites with more disturbance. Probability of suitable habitat being colonized s lower in areas with greater disturbance. No relationship between disturbance and daily nest survival rates. Birds on heaths with higher levels of disturbance fledged more chicks (per pair) because of a strong density-dependent increase in reproductive output.
Martin and Réale 2008	Eastern chipmunks ( <i>Tamias striatus</i> )	Quebec, Canada	Investigated the relationship between exploration, grooming-scanning continuum, emotionality, and docility of individual chipmunks and location of their burrow respective to frequentation by humans; assessed the relationship between hair cortisol and both temperament and frequentation by humans.	Explorative or docile chipmunks were more common in frequented areas. Hair cortisol increased with docility but was not related to human frequentation, indicating that temperament may cause animals to distribute themselves in a non-random way in response to human disturbance.
Miller et al. 2001	Birds, multiple species; Mule deer ( <i>Odocoileus hemionus</i> )	Colorado, USA	Assessed the “area of influence” for human disturbance treatment by determining the probability that an animal would flush or become alert (for mule deer only).	For mule deer, the presence of a dog resulted in a greater area of influence, alert and flush distance, and distance moved than when a pedestrian was alone while for grassland and forest birds, the reaction to dogs and people were similar.
Miller and Hobbs 2000	Birds (artificial nests), multiple species	Colorado, USA	Effect of recreational trails on the risk of nest predation and nest predator activity at lowland riparian sites.	Predation rates were high (94%). Vulnerability to predation differed by transect types (on-trail, off-trail, near trail); predation rates tended to increase with distance from trails. Birds predators were more common near trails than away from trails, whereas mammals appeared to avoid nests near trails.

Naylor et al. 2009	American elk ( <i>Cervus elaphus</i> )	Oregon, USA	Measured responses of elk ( <i>Cervus elaphus</i> ) to motorized and nonmotorized off-road recreational disturbance (ATV, mountain biking, horseback riding, hiking).	Elk increased their travel time in response to all disturbance types especially ATVs, followed by mountain biking, hiking, and horseback riding. Feeding time decreased during ATV exposure and resting decreased when elk were subjected to mountain biking and hiking disturbance.
Papouchis et al. 2001	Desert bighorn sheep ( <i>Ovis canadensis nelsoni</i> )	Utah, USA	Compared behavioral responses of sheep to recreational activity between a low visitor use area and a high visitor use area by observing behavioral responses, distances moved, and duration of responses to vehicles, mountain bikers, and humans on foot.	Hikers caused more severe disturbance than vehicles and mountain bikers. There was considerable individual heterogeneity in responses, as well as differences in responses by male and females depending on breeding status. Avoidance of road corridor by some animals represented 15% less use of potential suitable habitat.
Patton et al. 2019	Mammals, multiple species	California, USA	Examined diel shifts in response to human activity; implication for predator-prey dynamics.	Two species, one predator and one prey, avoid human activity via a temporal shift to become more nocturnal—activity was centered near dawn on days without human activity but nearer to midnight on days with human activity.
Pauli et al. 2016	Golden eagle ( <i>Aquila chrysaetos</i> )	Idaho, USA (simulation)	Created a model that incorporated tolerance behaviors and natural selection to simulate interactions between recreationists and nesting raptors to assess effect of human disturbance (hiking and OHV) on raptor populations and test if changes in tolerance to disturbance could mitigate negative consequences.	In the presence of recreation, simulated eagle populations had significantly lower and more variable growth rates, population sizes, and territory occupancy. Annual increases in recreation of 1–2% greatly exacerbated population declines; results suggest that long-lived species that experience encroachment from human activities may not adapt to human disturbance at a rate that compensates for changes in disturbance.
Persons and Eason 2017	White-footed mice ( <i>Peromyscus leucopus</i> )	Kentucky, USA	Effects of habitat and abiotic factors, and human presence on anti-predator behavior of mice foraging in an urban park.	Increased human presence negatively affected foraging behavior across treatments. Human presence and light pollution led to modification of foraging behavior.
Procko et al. 2022	Mammals	British Columbia, Canada	Used camera traps to monitor human activity and terrestrial mammals in protected areas during and after COVID-19 public closures to discern relative effects of various forms of recreation on mammals.	Species responded variably. Negative effects of hikers on weekly bobcat habitat use; increased cougar detection rates in the during the COVID-19 closure; decreased cougar detection rates and increased black-tailed deer detection rates upon reopening of the protected area to public.
Reed and Merenlender 2008	Mammalian carnivores, multiple species	California, USA	Combined noninvasive survey techniques and DNA verification of species identifications to survey for mammalian carnivores in 28 parks and preserves.	Paired comparisons of neighboring protected areas with and without recreation show that presence of dispersed, nonmotorized recreation led to a five-fold decline in the density of native carnivores and a substantial shift in community composition from native to nonnative species.

Reilley et al. 2017	Mountain lion ( <i>Puma concolor</i> ), Virginia opossum ( <i>Didelphis virginiana</i> ), coyote ( <i>Canis latrans</i> ), striped skunk ( <i>Mephitis mephitis</i> )	California, USA	Used camera traps to quantify habitat use and activity patterns of wild mammals and human recreationists in protected areas; modeled habitat use with a multi-species occupancy model.	Habitat use was most associated with environmental covariates. Domestic dog presence was negatively associated with habitat use of mountain lions and opossum. Coyotes were more active at night/less active during day in areas with high levels of recreation. Skunks were more active in late morning in areas with human recreation. Smaller nocturnal carnivores may not be directly affected by daytime recreational activities.
Rolando et al. 2013	Multiple species	Italy	Quantify effects of effect of ski-pistes on birds and small mammals.	Ski-pistes below tree line produce a negative edge effect and were associated with lower bird diversity and species richness; forest plots adjacent to ski-pistes had lower bird abundance; small forest mammals avoid ski-pistes, but open habitat species colonized them.
Rosenthal et al. 2022	Multiple (at-risk) species	Canada	Conducted systematic comparison of threat categories for 300 Canadian species at risk.	Accounting for threat intensity, recreational activities was the third-greatest threat to species at risk in following "Invasive Species" and "Roads and Railroads". Among species for which recreational activities posed at least a low-level threat the second most common recreational threat was hiking (after off-road vehicle use).
Rutz et al. 2020	Multiple species	Global	Discussion of COVID-19 lockdown effects on wildlife and the opportunity this presents for researchers to quantify the effects of human activity on wildlife.	Reduction in human mobility during Covid-19 shutdown ("Anthropause") is unparalleled. Anecdotal observations show wildlife responded by increased movement into new places, etc. Authors encourage and discuss how collaborative research on Anthropause effects can maximize scientific insight and enable detailed, mechanistic understanding of human-wildlife interactions.
Salvatori et al. 2023	Mammals	Italy	Used systematic camera trapping over seven years to examine if tourism affected wild mammals and if it elicited spatial or temporal avoidance; estimated trends in occurrence at community and species levels.	Human presence intensified over 7-year period and both community and most species-level occurrences increased. However, human activities caused a strong temporal avoidance in the whole community, especially in most disturbed sites, while spatial avoidance was observed only for bigger-sized species.
Schroeder et al. 2012	House sparrow ( <i>Passer domesticus</i> )	United Kingdom	Examined how noise might reduce reproductive output in passerine birds: e.g., by impairing mate choice, by reducing territory quality, and/or by impeding chick development.	Nests in areas affected by noise from large generators produced fewer young, of lower body mass, and fewer recruits; females nesting in noisy areas fed young less often. Nest box occupancy, parental body mass, age and reproductive investment did not differ significantly between noisy and quiet areas.

Schrimpf et al. 2021	Birds, multiple species	Canada and USA	Used records of >4.3 million birds observed by volunteers from March to May 2017-2020 to examine how reduced human activity during COVID-19 altered avian land use.	Counts of 80% of focal bird species changed in pandemic-altered areas, usually increasing in comparison to pre-pandemic abundances in urban habitat, near major roads and airports, and in counties where lockdowns were more pronounced or concurrent with peak bird migration.
Shier et al. 2012	Stephen's kangaroo rat ( <i>Dipodomys stephensi</i> ; SKR)	California, USA	Examined response of SKR to playbacks of footdrumming overlaid with experimental and control background noises.	Spectral characteristics of traffic noise overlap extensively with footdrumming signals of SKR. Traffic noise masks, and may mimic, footdrumming signals. Results suggest that anthropogenic noise may function as a deceptive signal.
Shier et al. 2020	Stephen's kangaroo rat ( <i>Dipodomys stephensi</i> )	California, USA	Impacts of artificial light at night (ALAN) on foraging decisions of kangaroo rats.	Artificial light negatively impacted foraging decisions of endangered kangaroo rats; ALAN reduces habitat suitability and may potentially impede the recovery of at-risk nocturnal rodents.
Shutt et al. 2014	Western lowland gorillas ( <i>Gorilla gorilla gorilla</i> )	Central African Republic	Investigated effects of ecotourism on the faecal glucocorticoid metabolites (FGCM) response of wild gorillas.	Two out of three human-contacted groups had higher FGCMs than unhabituated gorillas. FGCMs increased in between contacts up to 21 days in gorillas under habituation.
Slabbekoorn and Ripmeester 2008	Great tits ( <i>Parus major</i> ); additional songbird species covered in review	Western Europe	Reviewed current evidence for whether and how anthropogenic noise plays a role in patterns of decline in bird diversity and density.	Omnipresence of anthropogenic sounds can negatively affect birds. Behavioral flexibility, such as song plasticity, may allow some species more time to adapt to human-altered environments.
Steven et al. 2011	Birds, multiple species	Global	A review of the recreation ecology literature published in academic journals.	Of 69 papers (1978-2010) that examined recreation effects on birds, 61(88%) found negative impacts, including changes in physiology, immediate behavior, changes in abundance, and reproductive success.
Sun and Liddle 1993	Vegetation	Australia	Examined impacts of recreation (vehicles and walkers) on plant species richness, vegetation characteristics, soil penetration, and soil organic matter.	Plant species differed in sensitivity to degrees of trampling. Woody plants occurred only on untrampled areas. Total species and vegetation height and cover were reduced as wear increased. Plant height was reduced dramatically by even light trampling. No clear relationship between soil organic matter content and trampling intensity.
Suraci et al. 2019	Mammals	California, USA	Conducted a landscape-scale playback experiment using a recording of humans speaking to generate a "landscape of fear" and examined behavioral response of wildlife communities.	Large carnivores avoided human voices and moved more cautiously when hearing humans; medium-sized carnivores became more elusive and reduced foraging; small mammals increased habitat use and foraging.

Sytsma et al. 2022	Mammals	Glacier Bay National Park, Alaska, USA	Used camera traps to investigate the spatial and temporal responses of large mammals to experimentally manipulated levels of human activity in a protected area.	Detections did not exceed five per week for any species unless human activity was absent. However, spatial and temporal patterns of wildlife activity in relation to human activity were nuanced and species-specific.
Taylor and Knight 2003	Bison ( <i>Bison bison</i> ), mule deer ( <i>Odocoileus hemionus</i> ), pronghorn antelope ( <i>Antilocapra americana</i> )	Utah, USA	Measured responses of animals to hikers and mountain bikers at a state park by comparing alert distance, flight distance, and distance moved.	Based on a 200-m “area of influence” (7%) of park was potentially unsuitable for wildlife due to disturbance from recreation. Wildlife did not respond differently to mountain biking vs. hiking; there was a negative relationship between wildlife body size and response.
Thompson 2015	Birds, multiple species	Ontario, Canada	Impacts of recreational trails on a forest-dwelling bird community.	Significant positive influence of the area of trail-free habitat on bird density, but not species richness. Birds that nest or forage on the ground exhibited greatest response to presence of recreational trails.
Tost et al. 2020	Black grouse ( <i>Tetrao tetrix</i> )	Germany	Trail use and activity impacts on habitat use of an endangered grouse.	Birds avoided the vicinity of public routes at distances directly related to intensity of human activity. Recreational disturbances appeared to significantly affect the effective habitat availability.
Wells et al. 2012	Native and non-native plants, multiple species	Colorado, USA	Examined distribution of alien plants at trailheads and trails.	Plant communities at trailheads and trails, and seed banks at trailheads, contain substantial diversity and abundance of non-native plants. Recreational trails may function as corridors that facilitate the spread of non-native species into wildlands.
Weston and Stankowich 2014	Multiple species	Global	This book chapter reviews evidence of disturbance to wildlife caused by dogs not accompanied by humans.	Summary of evidence from literature of dog disturbance on wild birds and mammals, as well as reptilian and amphibian species. Provides management recommendations.
Wheat and Wilmers 2016	Brown bears ( <i>Ursus arctos</i> )	Alaska, USA	Tested how habituation and fear drive the foraging ecology of bears feeding on salmon.	Higher human activity was associated with increased nocturnality of non-habituated bears, likely leading to suboptimal foraging, but had no effect on habituated individuals.

Appendix B. Alternatives for public access and recreation in Dana Point and coastal Orange County.

<b>Coastal Open Space / Park Public Access Opportunities in Orange County<sup>1</sup></b>			
<b>Open Space Name</b>	<b>Ownership/ Land Manager</b>	<b>Size (acres)</b>	<b>Trail Length (miles)</b>
<b>Within Dana Point City Limits</b>			
Bluff Top Trail	City of Dana Point	n/a	0.2
Chloe Luke Overlook	City of Dana Point	0.4	n/a
Crystal Cove Park (aka Ocean Knoll)	City of Dana Point	1.6	n/a
Dana Cove Park	Orange County	5.4	n/a
Dana Point Harbor Park	Orange County	5.9	2
Doheny State Beach	California Department of Parks and Recreation	76	7
Harbor Point	City of Dana Point	9.3	0.3
Hilltop	City of Dana Point	11.7	0.7
Heritage	City of Dana Point	16.1	1
Lantern Bay	Orange County	15	1
Louise Leydon	City of Dana Point	0.5	n/a
Palisades Gazebo Park	City of Dana Point	0.7	n/a
Pines Park	City of Dana Point	4.7	n/a
Salt Creek Beach County Park	Orange County	45	1.2
Sea Terrace Park	City of Dana Point	27	0.3
Sea View Park	City of Dana Point	0.5	0.4
Strand Vista Park (South Strands Park)	City of Dana Point	16	1.2
Sycamore Creek Trail	City of Dana Point	n/a	0.5
<b>Total</b>		<b>236</b>	<b>16</b>
<b>Coastal Orange County</b>			
Aliso and Wood Canyons Wilderness Park	Orange County	4,500	30
Aliso Beach Park	Orange County	39	n/a
Aliso Creek County Beach	Orange County	27	n/a
Bolsa Chica Ecological Reserve	California State Lands Commission	1,300	4.5
Buck Gully Preserve	City of Newport Beach	298	4.5
Capistrano Beach Park	Orange County	55	3.9
Corona del Mar State Beach	California Department of Parks and Recreation	35.8	0.5
Crescent Bay Point Park	Orange County	1.5	n/a
Crystal Cove State Park	California Department of Parks and Recreation	3,936	20

<b>Coastal Open Space / Park Public Access Opportunities in Orange County<sup>1</sup></b>			
<b>Open Space Name</b>	<b>Ownership/ Land Manager</b>	<b>Size (acres)</b>	<b>Trail Length (miles)</b>
Heisler Park	City of Laguna Beach	8.47	1.5
Huntington State Beach	California Department of Parks and Recreation	121	15.7
Laguna Coast Wilderness Park	Orange County	7,000	40
Laguna Laurel Ecological Reserve	California Department of Fish and Wildlife	78	3.3
Laguna Niguel Regional Park	Orange County	227	1.8
Lantern Bay	Orange County	15	1
Marblehead (Sea Summit) Preserve	Center for Natural Lands Management <sup>2</sup>	106	4
Newport Beach Marine Life Refuge	Orange County	16	n/a
Pacific Horizon Preserve	Orange County Transportation Authority	151	n/a
San Clemente State Beach	California Department of Parks and Recreation		4.5
Santa Ana River County Beach	Orange County		1
Seal Beach National Wildlife Refuge	United States Fish and Wildlife Service	965	2
Talbert Nature Preserve	Orange County	190	6.7
Treasure Island Park	City of Laguna Beach	10.3	0.9
Upper Newport Bay Ecological Reserve	California Department of Fish and Wildlife	752	8
Upper Newport Bay Nature Preserve	Orange County	135	8
<b>Subtotal</b>		<b>19,967</b>	<b>162</b>
<b>Total</b>		<b>20,203</b>	<b>178</b>

Acreage and mileage estimates are based on information available on agency websites and Esri ArcGIS.

<sup>1</sup> Open space and parks found within the California Coastal Zone in Orange County, does not mean the coastline is accessible at all of these sites and it is not a definitive list.

<sup>2</sup>CNLM is the perpetual land manager, not the landowner.