

**CITY OF DANA POINT
M E M O R A N D U M**

DATE: NOVEMBER 3, 2015

TO: CITY COUNCIL

FROM: URSULA LUNA-REYNOSA, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: ITEM 11 – COASTAL DEVELOPMENT PERMIT 15-0021 AND INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 13.04

This memorandum is provided to address the issues raised in a comment letter received from the Coastal Commission Staff associated with Item #11. City staff's goal is to move on from the legal arguments and disagreements that have existed for some years on this issue, and process a CDP that it thought would not be objectionable based on the fact it mirrors what occurred in Malibu in the last year at the Ackerberg site. The following information is provided for the benefit of the Council understanding City Staff's position on these issues, rather than to engage in further back and forth with the Commission.

Gates and Hours of Operation are not Contrary to the LCP or the Coastal Act

The idea that gates or hours of operation are prohibited by the Coastal Act are contrary to countless approvals by the Commission, including most recently the Ackerberg gate in Malibu which the current CDP is molded after. In fact, no LCPA was used for the Ackerberg gate, and the staff report for the CDP for that gate points out that the gates and operational hours are consistent with Coastal Act Section 30210 which requires a balancing of access with public safety needs, private property rights, and the need to protect natural resources. Moreover, in a memorandum from former Executive Director Peter Douglas to the Commission he explains that the Commission does not have the legal authority to regulate beach curfews and hours of operation on access paths without an amendment to the Coastal Act. That memorandum (attachment A) goes on to lay out a policy for regulating such matters that the Commission Staff was proposing for use with possible changes to the Coastal Act which have never been adopted. City Staff has always believed that the Commission simply does not have the authority to prevent it from setting reasonable hours of operation for its facilities, and means to enforce them (such as gates), including because this is inherently a local, public safety issue.

The Proposed Hours of Operation

Staff disagrees with the assertion that the proposed hours of operation represent the "imposition of unnecessarily restrictive hours of closure to public use." Commission Staff acknowledges that closure hours should "only be approved if the public's constitutionally protected right to access public tidelands remains available in the vicinity." Here, a very

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small beach of approximately ¼ miles is at issue. It has six access points: the Funicular (which is free despite the LCP allowing that a charge be imposed) the North Strand Stairs, the Mid Strand Trail, the Central Strand Trail, the South Switchback Trail and the Revetment Trail. Only the Mid/Central Strand Access points are gated, and only at night. The North Strand Stairs is always open when the beach is open. The access available for this small stretch of beach far exceeds anything that Staff is aware of for any similar stretch of beach in the area. Crystal Cove State Beach, by comparison, is approximately six times bigger at three miles long. It closes at sunset except for a small area which closes at 10pm (compared to Strand Beach which closes at midnight). It only has 8 access points, all of which are regulated by vehicular access gates.

As noted in the staff report, the HDCP specifically provides that the City shall set hours of operation for the features it controls, just as the County and CNLM are authorized to set hours for the features they own (see Item #11 Staff Report Supporting Document G). Commission Staff points to Policy 5.31 of the HDCP as requiring a CDP for "limitations on time of use." City Staff believes this applies to limitations other than those specifically authorized by the HDCP, as evidenced by, among other things, the fact no CDP was obtained for any of the hours at any of the public amenities; yet, the Commission Staff has never had an issue with this fact, except for at the Mid/Central Strand Trails. Even assuming the Commission Staff is correct and 5.31 applies to any restrictions on hours, this position undercuts the idea that an LCPA is needed since the existing LCP allows limitations on hours of use with a CDP.

The LCP and Master CDP allows for Gates

As noted in the staff report (see Figure E) both the LCP and Master CDP depicts the gates in question, and both were approved by the Commission. Commission Staff now asserts that Section 3.4.A.6 prohibits gates based on language that reads "Public pedestrian and bicycle access shall not be restricted." Commission staff ignores the fact this language only applies to Planning Areas 2 and 6 (see Attachment B - Section 3.4.A.6); yet the gates in question are located in Planning Areas 1 and 3 (see Attachment C – HDCP Figure 4.3.1). Even if the gates were in the applicable planning areas, City staff feels there is simply no support for the assertion that the text somehow overrides the depiction of the gates. Moreover, the HDCP must be read as a whole, and sentences cannot be read in a vacuum. The HDCP contemplates that hours of operation will be established for the public facilities (see Supporting Document G and Policy 5.31 for instance.) Whatever the hours may be, when the trails are closed pedestrian and bicycle access are restricted; therefore, suggesting the proper interpretation of the language in question is that access may not be restricted when the facilities are open (but can be when they are closed).

Attachment A – Memorandum date June 23, 1994

Attachment B – Section 3.4.A.6 of HDCP

Attachment C – HDCP Figure 4.3.1

ATTACHMENT A – MEMORANDUM DATE JUNE 23, 1994

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

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June 23, 1994

TO: Commissioners

FROM: Peter Douglas, Executive Director
Linda Locklin, Public Access Program Manager

RE: Proposed Guidance on Actions Limiting Public Access to Beaches and State Waters (Beach Curfews)

I. INTRODUCTION

The following is proposed guidance for review under the Coastal Act of governmental actions limiting public access to and use of beaches and State waters. The principal purpose of this guidance is to identify an approach that minimizes restrictions on the general public's Constitutional and statutory rights of access to beaches and State waters while at the same time ensuring that public safety concerns are adequately addressed. Another purpose is to identify procedures for the review of these actions which are expeditious and which take into account fiscal constraints faced by all governmental agencies.

The "guidance" set forth below, was previously presented and discussed by the Commission at its February meeting. At that time, the Commission directed the distribution of the staff report for public review and comment. The Commission has received several comments on the proposed guidance (copies of letters from local government are enclosed).

Shortly after the Commission asserted jurisdiction over beach curfew ordinances under the Coastal Act last year, a lawsuit was filed against the Commission by the City of Long Beach and three bills were introduced in the Legislature to eliminate the Commission's jurisdiction to review beach curfew ordinances. Since those events, the Commission has acted on two beach curfew ordinances (City of Coronado and the City of Long Beach). The Commission approved both curfew ordinances in large part because they were generally consistent with the "guidance" staff had prepared and had indicated would be used in crafting its own recommendations to the Commission. Both the City of Coronado and Long Beach modified their proposed curfew ordinances to address the major concerns expressed by the Commission and staff. The key elements in both ordinances and the proposed guidance are the following:

- o The presentation of evidence sufficient to enable a reasonable person to conclude that a public safety problem in fact exists warranting the imposition of a beach curfew.
- o An evaluation of alternatives to a sweeping curfew and the exclusion from the curfew of beach areas that could be excluded without compromising public safety.

- o Exemption of the wet sand area along the ocean's edge for fishing, walking, jogging and access to State waters.

- o The inclusion of a "sunset" clause or the guarantee of periodic review, including public hearings, on the need to continue the curfew in effect.

Since the Commission's action on the two ordinances, the City of Long Beach has agreed to drop its litigation and the proposed legislative measures have either been dropped or have not been heard and have missed legislative deadlines for action. Staff continues to recommend Commission approval of the proposed guidance because it is an effective and efficient way to indicate to local government, other public agencies and members of the public the general approach the Commission has taken relative to the review of beach curfew ordinances. In addition, because there are many curfew ordinances and because, based on experience, they will be changed in a number of ways (e.g. hours may be changed and result in an earlier or later closure, certain beach areas may be exempted from the curfew), it is appropriate to develop a procedure for the expeditious handling of such actions under the Coastal Act.

The proposed guidance is modeled after the approach taken two years ago in dealing with the review of temporary events under the Coastal Act. In that case, when the Commission asserted permit jurisdiction over temporary events that were occurring with increasing frequency and occupying larger areas of the beach for longer periods of time, guidelines were adopted that specified which types of events would be subject to coastal permits and which would not. The Commission agreed with staff that the vast majority of temporary events raise no Coastal Act issues warranting coastal permit review. To date the process adopted by the Commission for temporary events is working well.

In attempting to take a similar approach relative to beach curfews, staff was informed by counsel that there is currently no provision in the Coastal Act to enable the Commission to treat beach curfew ordinances in the same way temporary events were dealt with. In order to do that, an amendment to the Coastal Act would be necessary. In fact, when the issue regarding temporary events arose, the Commission supported legislation that provided for the approach now being used. In that regard, the Executive Director has had conversations with Senator Bergeson about the possibility of amending her bill relating to beach curfews to mirror the approach taken for temporary events. She has expressed a willingness to be of assistance but wants to see what sort of guidelines the Commission might adopt. This is another reason staff is recommending that the Commission concur in the proposed guidance. If the Commission concurs, Senator Bergeson and her legislative colleagues can determine if they wish to approve a Coastal Act amendment to enable the Commission to deal with beach curfew ordinances and changes to them in a manner similar to the temporary events procedures.

By concurring in the Staff's recommendation at the July meeting, the Commission would be giving preliminary approval to guidelines that would have to be formally adopted at a future Commission hearing after the Coastal Act has been amended to authorize the approach staff recommends in the proposed guidance. In any event, Commission approval of staff's recommendation would have no formal, legal force or effect. Such action would provide guidance to staff about factors that will be considered in reviewing coastal permit applications for approval of beach curfew ordinances. It would also be an indication to the Legislature of the approach the Commission is prepared to

take if authorized to adopt guidelines and procedures on the subject in the future. Obviously, the proposed guidance set forth below does not constitute regulations requiring review by the Office of Administrative Law.

II. STAFF RECOMMENDATION FOR COMMISSION ACTION:

The staff recommends that the Commission give preliminary approval to the proposed guidance set forth in Section V below.

The staff further recommends that the Commission authorize staff to work with Senator Bergeson and members of the Legislature to secure enactment of legislation to permit implementation of the proposed guidance similar to the manner in which temporary events were handled.

III. GENERAL BACKGROUND

The people of California, through Proposition 20 in 1972, and the Legislature, through the Coastal Act in 1976, have charged the California Coastal Commission, in partnership with local government, with ensuring that "maximum access...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."

The Commission has been involved in balancing these objectives for over twenty years. It has evaluated and resolved countless conflicts among competing uses in a manner that protects coastal access while meeting concerns over public safety and natural resource protection. Many decisions in this area, however, have not come without controversy. Recently, considerable attention has, for various reasons, been focused on Commission review of local government actions to restrict public use of beach parking lots and beaches to protect public safety. Much of this attention has failed to explain accurately the nature of the issues and has distorted the extent of disagreement between the Commission and local government. The Commission, local government and the California Department of Parks and Recreation share common goals in protecting public beach access while ensuring public safety.

ISSUES

The central issues, in brief, are two: first, does the Coastal Commission have the jurisdiction to become involved in actions by local government and the Department of Parks and Recreation to restrict public use of beach parking lots and beaches; and second, what types of controls on the time, place and manner of use are reasonable and appropriate to meet both public access and public safety concerns. The answer to the first question is clearly yes. The answer to the second must be developed on a case by case basis and depends on the unique circumstances applicable to the particular site under consideration.

DISCUSSION

The Coastal Commission is very sensitive to and concerned about public safety as well as the difficulties coastal local governments face in ensuring a safe beach environment for residents and visitors alike. Indeed, the Coastal Act requires that the Commission and local government take public safety into

account when reviewing public beach access issues. Furthermore, any local government that deems it necessary to take immediate action to protect public safety by temporarily closing a beach, may do so without any involvement by the Commission. However, the indefinite or longterm closure to public use of beaches and access to State waters brings into conflict important public policies and interests.

In 1972, voters approved the citizen sponsored Coastal Protection Initiative (Proposition 20) to guard against the loss of public access to the coast resulting from growing population and development pressures. Protection of beach access is among the highest priority policies in the Coastal Act of 1976 and the right of access to State waters is guaranteed in California's Constitution. However, these policies and rights are not absolute. The Commission must balance public access needs with those of public safety and the protection of environmentally sensitive habitat areas, such as wetlands.

The California Coastal Act of 1976 incorporates a careful division of institutional responsibilities for coastal management decisions between local governments and the State, acting through the Commission. Many decisions are delegated to coastal cities and counties, while others of statewide or greater than local importance are retained within the Commission's continuing jurisdiction. The latter include issues dealing with public access and recreation, public works projects and major energy facilities. The Legislature clearly believed that coastal public access and recreation issues are of such importance to all the people of the State, not just to those who live in seaside communities, that permanent state level oversight was warranted. At the same time, however, the Legislature recognized that the time, place and manner in which public access is protected may need to be regulated based on the facts and circumstances in each case (emphasis added, see section 30214 Public Resources Code).

The Commission recently became concerned as a significant number of beach parking lots, accessways and beaches were closed to nighttime public use. The reasons given for these actions are public safety and lack of public funds for police protection and beach patrols after dark. In fact, the reasons are often more complicated. In some instances, early closure proposals stem from complaints by local residents about traffic and noise caused by beach visitors. Such cases present a clash of interests between those who live in close proximity to a beach and inland residents who travel to the beach for recreation. In one case, San Diego's request for early closure of several beach parking lots was not supported by City law enforcement officials citing the absence of crime statistics for the areas in question and expressing concerns that greater public safety problems could result by further reducing the number and geographic distribution of places inland residents can go in the evening for recreational activities. In that case, the Commission approved closures but not as early as had been requested by the City and nearby residents. In Long Beach, a murder which led to a new beach curfew occurred on a public street and not on the beach itself. The Commission approved an early closure of several parking lots but felt that closing all the beaches in the City to all public use, in perpetuity, at 10 pm was not warranted under the circumstances and that it did not appear alternatives to such broad prohibitions had been adequately explored. As mentioned above, the City filed both a lawsuit against the Commission and worked with staff to address Commission concerns. When the City modified its curfew ordinance in the ways previously summarized, the Commission approved the new curfew ordinance and the City agreed to drop its litigation. Similarly, a beach

curfew ordinance for the City of Coronado was approved by the Commission after the city made modifications consistent with the guidance set forth in this and the earlier staff report on this subject.

The Commission is acutely aware of the problems fiscally stressed coastal communities face as they try to cope with threats of crime and violence. The Commission is also sensitive to the importance of prevention and not waiting until crimes have actually been committed to take protective actions. Finding the proper balance between protecting public safety through preventative actions and protecting against unreasonable infringement on fundamental public rights and freedoms of access to public resources, such as beaches and ocean waters, is the challenge. The Commission has experienced situations where local pressures led to actions which, while responsive to local concerns, did not take into account the interests of people outside the local community who have a right to use the beach and have access to ocean waters. Coastal local governments share with the Commission, as a statewide agency, the responsibility to balance conflicting interests and to determine, in each case, if the identified problems truly warrant closing the beach, beach accessway, or beach parking lot or if other alternatives may redress those problems. Because of the historical importance and continuing high value attributed to beaches and ocean waters, and the public's right of access to them, the protection of public access is given special status in the Coastal Act.

In struggling with these issues, the Commission has distinguished between the closure to public use of beaches and of support facilities, such as parking lots, accessways, piers and boat launching ramps. It has given closest scrutiny to the closure of beaches. The Commission considers many factors: whether alternatives to closure have been explored and whether alternative access opportunities exist nearby; whether the closure is longterm or temporary; whether all public uses are prohibited or whether some uses, such as fishing, swimming and walking along the water's edge, are permitted; whether a closure gives preferential treatment to local residents at the expense of visitors; and whether concerns over public safety are legitimate or whether they are merely an excuse to privatize a coastal neighborhood's amenities to the exclusion of those who do not live near the seashore.

Some have asked why the Commission cares if a beach is closed after dark. Again, the Commission examines each case individually. However, in many areas of the coast, law abiding citizens use the beach at all hours of the night for fishing, swimming, scuba diving, walking and jogging, socializing around a ground fire, camping, boat launching and surfing. Their legal right to do so should only be curtailed in very narrow and compelling circumstances. Unfortunately, contemporary urban communities face serious problems involving criminal acts of violence, vandalism and theft. How we, as a society, respond to this threat is one of the most profound challenges of our time. Obviously, we must address root causes. Until we find those answers, however, and because we are a democratic people who cherish our fundamental freedoms, we must be careful not to trample on the rights of honest citizens in our zeal to ensure public safety. Recognizing this, the Commission has, in prior decisions, approved actions by local government to regulate the time, place and manner of access, depending on the factual circumstances in each case.

IV. BEACH USE RESTRICTIONS AND COASTAL ACT REVIEW

A. Public Safety Exemptions to Coastal Act Review:

1. Emergencies: In public emergencies where a law enforcement agency temporarily closes a beach, parking lot, accessway or other coastal recreational facility to protect life or property, no review by the Coastal Commission or pursuant to the Coastal Act is authorized or appropriate. In emergency situations requiring immediate action to protect public safety, these decision are entirely within the discretion of the responsible law enforcement officials. In these situations, the assumption is that the closure will remain in effect only for the duration of the emergency.

2. Public Nuisance Declared: Similarly, in situations where a local government declares a public nuisance the abatement of which requires the closure, no Coastal Act review is required. (Section 30005 (b) Public Resources Code) Obviously, there must be a legally declared nuisance, based on evidence, and a directive must be issued to abate the nuisance by, among other actions, closing the public facility. Examples include, the closure of an unsafe beach access stairway or a beach below a failing structure, such as a house damaged by natural disaster. Again, the assumption is that the closure will remain in effect only until the declared nuisance is abated. Only in cases where there is a clear abuse of the nuisance exemption (e.g., when it is used solely as a means to circumvent Coastal Act review, used to unlawfully discriminate against members of the public, or used to give unfair preferential treatment to residents of the community in which the facility is located) might the Commission become involved by questioning the closure action.

3. Grandfathered Curfews: In cases where a beach curfew or beach use restriction was enacted and has been enforced prior to and since February 1, 1973, such ordinance or action is not subject to Coastal Act review. However, significant changes to such restrictions (i.e., changes not consistent with the guidance set forth below) are subject to review pursuant to the Coastal Act. February 1, 1973 is the date on which the regulatory controls of the Coastal Protection Initiative (Proposition 20) went into effect. The definition of "development" requiring Coastal Commission review in Proposition 20 is, in relevant part, the same as that contained in the Coastal Act of 1976.

B. Cases Where Coastal Act Review Is Required:

In cases where Coastal Act review is appropriate, the following discussion is intended to assist the Commission, Commission staff, local governments, other management agency officials and members of the public in understanding the factors relating to the time, place and manner of public access restrictions that should be given careful consideration.

Some have questioned whether the Commission has legal jurisdiction over locally enacted beach curfews. Indeed, this was the central issue in the litigation filed by the City of Long Beach and was the subject of the proposed legislation previously mentioned. It is the staff's position, based on nearly twenty years of practice and Commission actions, that the Coastal Act, with several very narrow exceptions, clearly confers jurisdiction on the Commission over any action by any party, including a local government, that affects public access to beaches and/or State waters. The imposition of beach

curfews, other than those adopted to abate a legally declared nuisance or in response to an emergency order issued by the appropriate law enforcement agency, obviously has a significant impact on public access to beaches and State waters. Prohibiting public access and use is the very purpose of a curfew ordinance.

Section 30106 of the Public Resources Code defines "development" requiring a coastal permit, in part, as a "change in the intensity of use of water, or of access thereto." Additionally, section 30009 PRC states that "[the Coastal Act] shall be liberally construed to accomplish its purposes and objectives." In the recent case of Surfrider Foundation v. California Coastal Commission (Court of Appeal No. A061659), the Court of Appeal examined the Commission's scope of authority to deal with public access issues that involve actions which may not constitute physical development. The Court stated that many indirect impacts on access were contemplated by the Act's public access policies. The court found that:

"[t]he 1975 [Coastal] plan also warned of indirect or nonphysical impediments to access, including reduction of road capacity and off-street parking, unavailability of low-cost housing and tourist facilities, and proliferation of expensive recreational facilities. (Citation omitted.) Thus, the concerns placed before the Legislature in 1976 were more broad-based than direct physical impedance of access. For this reason, we conclude the public access and recreational policies of the Act should be broadly construed to encompass all impediments to access, whether direct or indirect, physical or nonphysical." (Emphases in original.)

In situations where Coastal Act review is required, a number of issues must be evaluated pursuant to Coastal Act policies. It should be underscored that not every review of a closure action is conducted by the Commission. In many cases such review is undertaken by the appropriate local government having a fully certified local coastal program (LCP) in place and where the coastal development permit-issuing authority has been delegated to that local jurisdiction. However, even in cases where a permit is issued by a local agency, the local action may be appealed to the Commission because it affects land areas located between the first public road and the ocean. (See sections 30603 (a)(1) and (b)(1) Public Resources Code) Determinations as to which entity has review responsibility must be made on a case by case basis and jurisdictional questions should be discussed with Commission staff.

1. Evidentiary Finding and Consideration of Alternatives: Whenever a management agency (e.g., a City Council, Board of Supervisors, local Park and Recreation Department or District, State or federal agency) takes an action to restrict public use of a beach, access to State waters, parking lot or other coastal recreational facility on the basis of public safety, some credible evidence demonstrating the existence of a public safety problem should be provided. The quantity, quality and specificity of the evidence needed to substantiate the existence of a public safety problem is a matter of judgement. One test is whether the evidence is sufficient to enable a reasonable person to conclude that a public safety problem actually exists. The key factor is whether the action was taken for actual public safety reasons (e.g., the protection of person or property against injury or damage) or primarily for reasons associated with complaints by community residents about noise, traffic, or diminution of community amenities. Solutions to these types of problems can often be found through other means, such as

management measures or site planning.

Once a determination has been made that an actual public safety problem exists, issues to be addressed involve whether the proposed solution is commensurate with the nature and extent of the problem. Alternatives should be evaluated and could include such measures as increased police patrols, neighborhood watch programs, lighting, prohibitions on consumption of alcohol, restricting automobile parking, short-term closures of problem areas, and limiting longer-term closures to the problem areas.

2. Hours and Duration of Restrictions: There are several dimensions to this consideration - the hours of closure on any given day (i.e., weekdays, weekends, holidays); change in hours based on the season; and the overall duration of the closure (i.e., How long will it stay in effect? Will it be periodically reviewed?).

Prior Commission actions illustrate the range of management measures the Commission has approved pursuant to the Coastal Act, depending on the facts in each case. Generally, times of closure of beach parking lots range from 8 pm in the winter to midnight and opening about one hour before sunrise. With respect to public beaches, the Commission has only rarely approved any closures. In a few exceptional cases where special circumstances existed, the Commission approved sunset to sunrise closures of some beach access facilities. Factors to be considered in reviewing hours and time-of-year closures include evidence of when the activities that give rise to public safety concerns occur, the amount of public use at particular times (e.g., weekdays, weekends, holidays, summer or winter, mornings or evenings), the availability of alternative parking or access opportunities nearby, and the hours of operation of other, similar public facilities in the same general area.

Many closure ordinances are permanent and impose use restrictions in perpetuity. Because circumstances and conditions change, the Commission has, in its recent actions, limited the duration of coastal permits for closures to a fixed period of time (e.g., 1, 2 or 5 years) with the possibility of subsequent extensions if circumstances warrant. The duration of a permit depends on the circumstances unique to each case. For example, a time-lock gate on a beach accessway was permitted on a trial basis for one year in Carlsbad. Similarly, an early evening parking lot closure was approved in San Diego for two years. At the end of that period the City requested and received a five year extension of its permit based on information (i.e., statistics) showing a significant reduction of crime associated with the use of the parking lot. By placing a limitation on the duration of the closure, a periodic review of the use restrictions is ensured. Periodic reviews offer an opportunity to review the facts to determine whether conditions have improved sufficiently to warrant an easing of the restrictions on public use.

3. Place: In addition to the temporal dimensions of the restriction on use, their spatial reach is also of concern. For example, if a public safety problem exists in a limited and defined geographic area, it may not be necessary or appropriate to impose use prohibitions on all similar facilities throughout the jurisdiction. This was the issue of concern raised by the Long Beach ordinance which prohibited all public use on all the beaches within the City's jurisdiction (i.e., nearly eleven miles of shoreline) despite the absence of any showing of public safety problems on all City beaches. Another example is the City of Coronado's proposed beach closure ordinance which

sought to close six tenths of a mile of beach at 10 pm because of criminal activity primarily concentrated in an area where fire rings are located. Discussions between Commission staff and City representatives led to an agreement limiting the closure to only that portion of the beach that is problematic (i.e., about 1/10 mile). The City subsequently modified its ordinance and, as a result, approximately one-half mile of beach will not be subject to the early closure (if approved by the Commission later during this meeting).

Efforts should be made to focus on the specific area or areas where the problems exist and to craft any closure or curfew ordinance accordingly. This approach avoids an overly broad application of beach use restrictions while addressing public safety problem. At the same time, difficulties in enforcement that may result from a complicated ordinance should be taken into account. Accordingly, it may be acceptable to subject a certain area (i.e., dry sandy beach landward of the wet sand) to a curfew even though it has no history of public safety problems because that is the most feasible way to enforce the ordinance and because doing otherwise would confuse the public about where they can and cannot go. Equally problematic is the situation where a broad closure ordinance is proposed due to lack of fiscal resources to patrol a beach area even though no public safety problems have been identified. Indeed, the rationale for the breadth of several recently enacted curfew ordinances has been represented to be that it is easier to close all the beaches at a given hour than to close them at different times. While the Commission should be open to these arguments as a basis for a broad closure, it should be recognized that enforcement of broad closures (i.e., all the beaches in a jurisdiction) also have cost and feasibility ramifications and alternatives should be considered.

4. Manner and Type of Use: A prohibition on all types of uses during times of closure are problematic. Distinctions between types of uses subject to restrictions are important. For example, fishing, jogging and walking on the wet sand and transiting the beach to get to the wet sand or to enter the water should be exempted from use restrictions in most areas. The greatest concern of law enforcement officials seems to involve the congregation of people after dark in certain locations on the beach or in parking lots whose behavior creates conditions that lead to vandalism or other types of crime and violence. One way to prevent or avoid this type of behavior is to close the problem areas during certain hours. Less intrusive on existing public access rights may be an ordinance that targets the uses that cause the problems. For example, camping on the beach by homeless persons seems to be another concern. Depending on the facts and circumstances of the situation, uses that may lend themselves to some degree of effective control include nighttime parking, stopping or the driving of cars in certain areas, camping, making fires in undesignated areas, barbecuing, picnicking, unlawful assemblies, and loitering.

An ordinance that prohibits the entry of cars into problematic beach parking lots after certain hours accompanied by physical barriers that block vehicular ingress but allow egress may well solve the problem. In this case, people could still walk through the parking area to get to the beach or leave the parking lot in their cars if they remain on the beach after the lot closes.

V. PROPOSED GUIDANCE:

The following guidance is applicable to the review of any legal action by a public agency, other than those actions exempt from Coastal Act review, which prohibits or substantially restricts public use of beaches and access to State waters. If the subject action includes the elements described below, no Coastal Act review would be required.

1. Findings: The action should be supported by a statement of facts and findings that explain the reasons why the action is being taken. Although it is not necessary to cite a list of statistics, a reasonable evidentiary basis is needed to establish the justification for the action limiting public access. The findings should also include a discussion of what alternatives to the prohibitions were considered and why they were not implemented.

2. Place: The geographic area to which the prohibition of public use applies should be specifically identified and should be limited to those beach areas with respect to which the governing body has identified public safety problems warranting the closure action. Considerations relating to enforceability and whether the boundaries of the areas to be closed are readily identifiable to the public can be taken into account. Contained or enclosed beach areas and other suitable areas where law enforcement is feasible, such as beach areas adjacent to or in close proximity to visitor serving commercial uses (i.e., hotels, restaurants, campgrounds), should be considered for longer hours of operation.

The important aspect of this element is that the responsible governing body carefully consider alternatives to sweeping closures of all beaches within its jurisdiction. This consideration is important in determining whether the restrictions on public access are reasonably related and responsive to the public safety problems or concerns which prompted the governing body to take the closure action.

3. Uses: Unless special circumstances warrant it, the prohibition of all public uses during the period of closure should be avoided. At the discretion of the responsible governing body, uses should be specified that are either prohibited or permitted. Whichever way the uses are identified, at a minimum, the following public uses should be allowed: a) Fishing by members of the public having in their possession a valid California fishing license; b) walking or jogging on the wet sand which is that portion of the beach that is wet as a result of the wash of waves or tidal action; and c) special events for which public use has been authorized by the appropriate governmental official. Consistent with fishing and walking or jogging on the wet sand, going to or coming from the wet sand by the most direct route available in any given location would also be permissible.

Actions relating to the closure of beach parking lots should include the installation of tire traps to enable vehicles to exit the lot after closure.

4. Time: As with the elements set forth above, the timing of beach closures can vary depending on the geographic area, the applicable circumstances, the day of the week, holidays, and the season. Hours of closure should be curtailed during periods of high public use (i.e., summer months, holidays and weekends) unless special public safety problems are associated with public use on these days. Given patterns of public use, it is important that variations in hours of operation be considered and that longer hours of use be provided, where possible, during peak use periods.

If any restrictions on public use of a beach are warranted, it is recommended

that hours of closure be limited to the period between 12 midnight and one hour before sunrise. However, if the appropriate governing body determines that public safety concerns warrant an earlier beach closure in the evening, the hour of closure may be lowered to 10 pm without Coastal Act review. An action closing a beach earlier than 10 pm or opening the beach later than one hour before sunrise requires review pursuant to the Coastal Act to determine if special circumstances exist to warrant more restrictive hours of operation.

The hours of closure of beach parking lots can vary, but closure no earlier than one hour after sunset and opening no later than one hour before sunrise would not need Coastal Act review. More restrictive hours may be approved after Coastal Act review depending on the circumstances.

5. Sunset provision: An action by a governing body to impose restrictions on the hours of public use of beaches or access to State waters should be limited in duration and should contain a specific sunset clause (i.e., 1, 2, or 3 years). This provision would require reenactment of a beach closure ordinance or other action on a regular basis thereby allowing public input and a reevaluation of current circumstances that may warrant a relaxation of the hours of closure. It should be clear that hours of operation can be adjusted at any time when circumstances warrant.

6. Notice: When a governing body takes an action to change the hours of operation of a beach, prior notice should be provided the Commission to enable its staff to submit comments for consideration. In any event, notice of any action taken to prohibit public use of a beach should be given to the Commission as soon as possible.

7. Procedure: If the elements set forth above are included in an ordinance or other action by the responsible governing body that limits public access to beaches and State waters or beach parking lots, the action will not be deemed a "development" for purposes of section 30106 of the Public Resources Code and no coastal permit will be required.

Review of the status of every jurisdiction's beach closure ordinance or other action restricting hours of beach or beach parking lot use will occur on a case by case basis. Commission staff will contact each governing agency to arrange for a mutually convenient schedule to meet and discuss the issues and determine what further action, if any, is appropriate. Pending this review, preexisting beach and beach parking lot closure ordinances or other actions will continue in effect, for purposes of the Coastal Act, until and unless the Commission takes legal action to the contrary.

CONCLUSION

The approach and guidance suggested in this report offer a reasonable and efficient way to deal with the issues raised by the closure of beaches and beach parking lots. It addresses concerns about both public access and public safety and avoids costly and divisive arguments over questions of civil liberties, Constitutional rights, police powers and jurisdiction, and the relative rights of seaside residents and inland residents to use beaches that belong to all the people.

ATTACHMENT B – SECTION 3.4.A.6 OF HDCP

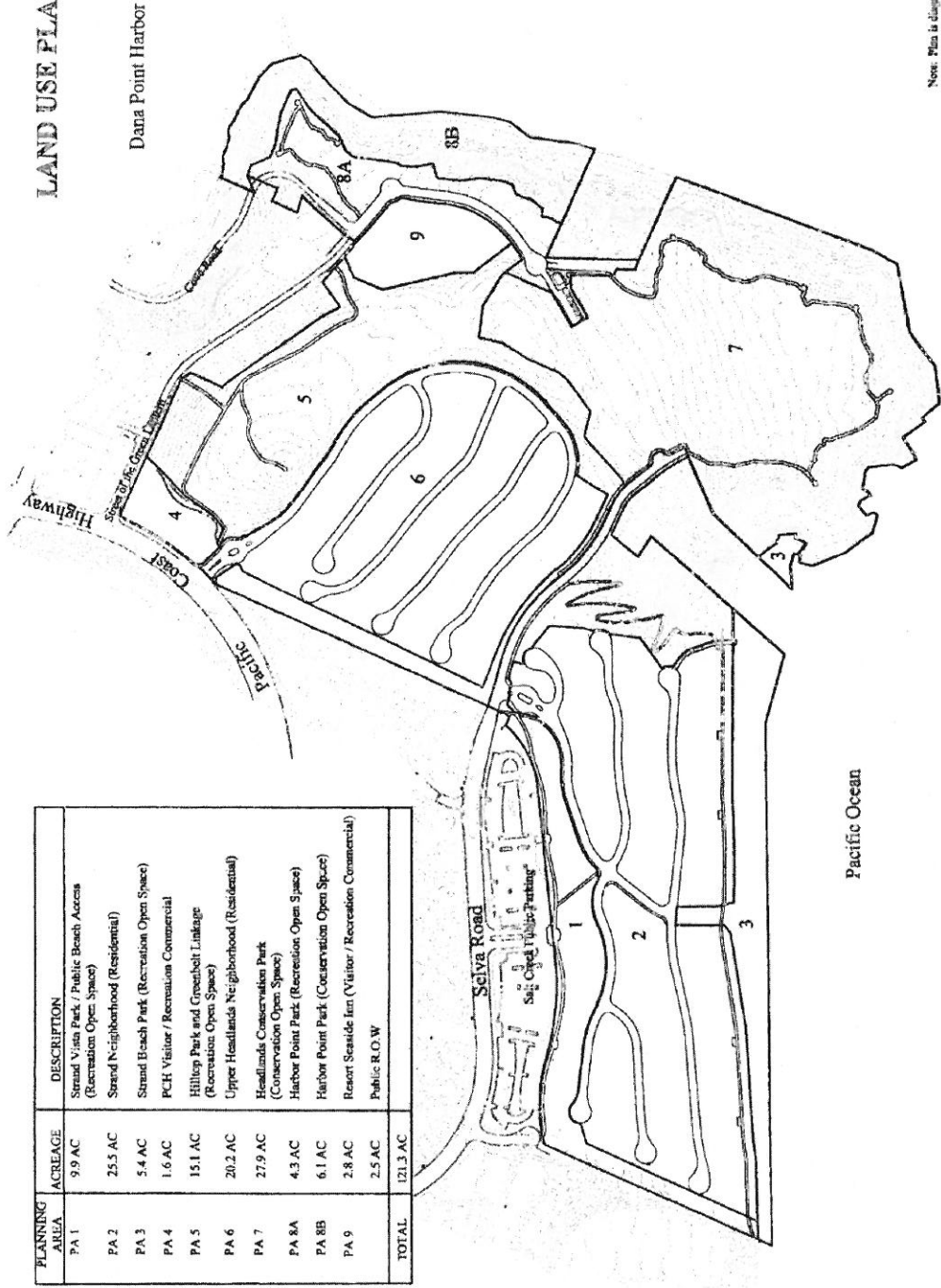
THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN
Section 3.0 Headlands Planned Development District

6. Public Access Restrictions in Planning Area 2 and 6

Gates, guardhouses, barriers or other development designed to regulate or restrict public access shall only be allowed in conjunction with a public funicular in Planning Area 1 providing mechanized public access from the County beach parking lot to the beach. Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted. If the funicular becomes inoperable for more than 3 consecutive scheduled operating days or is closed or made inoperable indefinitely or for any sustained time period for any reason, any gate, guardhouse, barrier or other development that regulates or restricts public vehicular access into Planning Area 2 shall be opened, removed or otherwise made inoperable such that public vehicular access is no longer regulated or restricted for the duration of the period the funicular is unavailable for public use. Signs shall be posted at the entrance to Planning Area 2 declaring the terms leading to the availability of public vehicular access through Planning Area 2. During the periods that Planning Area 2 is required to be open to public vehicular access, signs shall be posted at the entrance to Planning Area 2, and at other locations as reasonably necessary for public notification, that declare the availability of public vehicular access.

ATTACHMENT C – HDCP FIGURE 4.3.1

**LAND USE PLANNING AREAS
FIGURE 4.3.1**



PLANNING AREA	ACREAGE	DESCRIPTION
PA 1	9.9 AC	Strand Vista Park / Public Beach Access (Recreation Open Space)
PA 2	25.5 AC	Strand Neighborhood (Residential)
PA 3	5.4 AC	Strand Beach Park (Recreation Open Space)
PA 4	1.6 AC	PCH Visitor / Recreation Commercial
PA 5	15.1 AC	Hilltop Park and Greenbelt Linkage (Recreation Open Space)
PA 6	20.2 AC	Upper Headlands Neighborhood (Residential)
PA 7	27.9 AC	Headlands Conservation Park (Conservation Open Space)
PA 8A	4.3 AC	Harbor Point Park (Recreation Open Space)
PA 8B	6.1 AC	Harbor Point Park (Conservation Open Space)
PA 9	2.8 AC	Resort Seaside Inn (Visitor / Recreation Commercial)
	2.5 AC	Public R.O.W
TOTAL	121.3 AC	

Note: Plan is illustrative 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**

Scale: 1" = 100' ±

