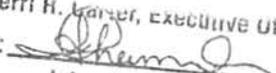


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County of Los Angeles

DEC 09 2015

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JATAUN VALENTINE, and FRANCESCA
12 DE LA ROSA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
15

BC 6 03 6 4 7

17 JATAUN VALENTINE, an individual,
and FRANCESCA DE LA ROSA, an
18 individual,

Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF ARISING
AS A TAXPAYER OF THE CITY OF
LOS ANGELES AND FOR
VIOLATIONS OF THE CALIFORNIA
COASTAL ACT

19 Plaintiffs,

20 v.

21 CITY OF LOS ANGELES, a California
22 Charter City, and LAPD POLICE
CHIEF CHARLIE BECK, an individual
23 in an official capacity, and DOES 1
through 10, inclusive,

24 Defendants.
25
26
27
28

1 1. Plaintiffs Jataun Valentine and Francesca De La Rosa, taxpayers
2 in, and residents of, the City of Los Angeles (often referred to as the “City”), bring
3 this lawsuit to challenge the City of Los Angeles’s unlawful policy of closing access
4 to all 11 miles of the California Coastline within its city limits for five to nine hours
5 every day.

6
7 2. An individual’s right to unobstructed access to the ocean,
8 beaches and waterways has been recognized since the ancient laws of the Roman
9 Empire. Prior to the founding of the United States, England also recognized the
10 right to access the beaches, oceans and waterways. Not surprisingly, the right to
11 beach and ocean access has been adopted in the United States under the common
12 law Public Trust Doctrine, and has been recognized by the United States Supreme
13 Court for over 120 years. Following this tradition, the California Constitution
14 guarantees that everyone shall have access to the coastline, subject only to certain
15 narrow limitations specified in the California Coastal Act and even then, only with
16 the permission of the California Coastal Commission.

17
18 3. Despite the longstanding recognition of the right to access the
19 ocean, the City of Los Angeles has ignored the California Coastal Act and is
20 enforcing an ordinance that illegally limits access to the Los Angeles coastline. Los
21 Angeles Municipal Code Section 63.44(B)(14)(b) (“Beach Closure Ordinance”)
22 makes it a crime to access the coastline anywhere within the City of Los Angeles
23 from Midnight to 5:00 a.m. every day. The City enacted this ordinance without
24 obtaining a Coastal Development permit from the California Coastal Commission,
25 which under state law, has oversight over limitations of access to water or use of
26 land in the Coastal Zone.

27
28

1 has paid, a tax in the City. Hence, Plaintiff has standing within the meaning of Code
2 of Civil Procedure section 526a.

3
4 7. Plaintiff Francesca De La Rosa, was and is, at all material times,
5 a resident of the City and County of Los Angeles. Ms. De La Rosa is assessed for,
6 and is liable to pay, or, within one year before the commencement of this action, has
7 paid, a tax in the City of Los Angeles. Hence, Plaintiff has standing within the
8 meaning of Code of Civil Procedure section 526a.

9
10 8. Defendant City of Los Angeles is a municipal entity, organized
11 as a Charter City under the laws of the State of California. The City is the legal and
12 political governmental entity responsible for the actions of the Los Angeles Police
13 Department (“LAPD”), its officials, agents and employees. The City is sued in its
14 own right and on the basis of the acts of its officials, agents and employees.

15
16 9. Defendant Chief Charles Beck (“Chief Beck” or “Beck”) is an
17 individual, and the LAPD Chief of Police. As such, he is an authorized LAPD
18 policymaker and is responsible for the application and enforcement of the Beach
19 Closure Ordinance.

20
21 10. Plaintiffs are ignorant of the true names of defendants sued under
22 the fictitious names Does 1 through 10. Plaintiffs will give notice of their true names
23 and capacities when ascertained. Plaintiffs are informed and believe and thereon
24 allege that defendants Does 1 through 10 are responsible in some manner for the
25 acts complained of herein.

26
27 11. Plaintiffs are informed and believe and thereupon allege that at
28 all times relevant herein that defendants, and each of them, were the agents, servants

1 and employees of the other defendants and acting within the course and scope of
2 their employment and/or agency.

3
4 **HISTORY AND APPLICABILITY OF THE COASTAL ACT**
5

6 12. In 1972, California voters passed Proposition 20, the California
7 Coastal Zone Conservation Act, which required the State Legislature to create the
8 California Coastal Commission and to empower that Commission to preserve the
9 California Coastline, “a distinct and valuable natural resource belonging to all the
10 people.” The purpose of the newly created Coastal Commission was to give
11 oversight of these resources to a state commission with representatives from
12 throughout the state, therefore ensuring that state policies prevail over the interests
13 of local governments.

14
15 13. In 1976, pursuant to Proposition 20, the State Legislature passed
16 the California Coastal Act, codified at California Public Resources Code § 30000 *et*
17 *seq.* (“Coastal Act”).² The Coastal Act creates a comprehensive scheme to govern
18 land use planning for the entire coastal zone of California.

19
20 14. Explicit in the law is the State’s commitment to ensuring that the
21 coast is protected and that all people have maximum access to it. Cal. Pub.
22 Resources Code § 30001.5. The Act calls for maximizing public access in balance
23 with resource protection and private property rights, and prohibits any new
24 development from interfering with the public’s right of access to the sea where
25 acquired through use or legislative authorization, including, but not limited to, the
26

27 ² All statutory references are to the California Public Resources Code unless
28 otherwise noted.

1 use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.
2 §30211.

3
4 15. Concurrent with the passage of the Coastal Act, the legislature
5 also enshrined in the California Constitution the public's constitutional right to
6 access the coastline and other navigable waters and the state's public policy in favor
7 of allowing public access to shoreline areas:

8
9 No individual, partnership, or corporation, claiming or possessing the
10 frontage or tidal lands of a harbor, bay, inlet, estuary, or other
11 navigable water in this State, shall be permitted to exclude the right of
12 way to such water whenever it is required for any public purpose, nor
13 to destroy or obstruct the free navigation of such water; and the
14 Legislature shall enact such laws as will give the most liberal
15 construction to this provision, so that access to the navigable waters of
16 this State shall be always attainable for the people thereof.

17 Cal. Const. art. X, § 4.

18 16. Under the Coastal Act, the Coastal Commission is given the
19 primary responsibility for implementing and enforcing these coastal resource
20 protection policies. Cal. Pub. Resources Code § 30330. The Commission is
21 empowered to adopt or amend rules and regulations to carry out the purposes and
22 provisions of the Coastal Act. Cal. Pub. Resources Code § 30333.

23 17. The Coastal Act also gives the Coastal Commission oversight of
24 all developments within the Coastal Zone. The Coastal Zone is defined referentially
25 as the land specified on maps identified and set forth in section 17 of Chapter 1330
26 of the Statutes of 1975-1976 Regular Session enacting Division 20 of the Public
27 Resources Code [the Coastal Act] and subsequent Amendments. In significant
28 coastal estuarine, habitat, and recreational areas it extends inland to the first major

1 ridgeline paralleling the sea of five miles from the mean high tide line from the sea,
2 whichever is less, and undeveloped urban areas, the zone generally extends inland
3 less than 1,000 yards. Cal. Pub. Resources Code § 30103(a).

4
5 18. Under Section 30106 of the Act, the definition of development
6 is purposefully broad. It includes not only physical structures commonly understood
7 to be developments, but also all changes to the physical land in the Coastal Zone, as
8 well as “changes in the intensity of use of water, or of access thereto,” and “change
9 in the density or intensity of use of land.”³

10
11 19. Under the Coastal Act, any development within the Coastal Zone
12 must first receive a Coastal Development Permit (hereinafter “CDP”) from the
13 appropriate permitting agency: either the Coastal Commission or a local government
14 that has received approval from the Coastal Commission to issue permits. Cal. Pub.

15
16 ³ Section 30106 of the California Public Resources Code states:

17
18 "Development" means, on land, in or under water, the placement or erection
19 of any solid material or structure; discharge or disposal of any dredged
20 material or of any gaseous, liquid, solid, or thermal waste; grading, removing,
21 dredging, mining, or extraction of any materials; **change in the density or**
22 **intensity of use of land**, including, but not limited to, subdivision pursuant to
23 the Subdivision Map Act (commencing with Section 66410 of the
24 Government Code), and any other division of land, including lot splits, except
25 where the land division is brought about in connection with the purchase of
26 such land by a public agency for public recreational use; **change in the**
27 **intensity of use of water, or of access thereto**; construction, reconstruction,
28 demolition, or alteration of the size of any structure, including any facility of
any private, public, or municipal utility; and the removal or 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 provisions of the Z'berg-Nejedly Forest Practice Act
of 1973 (commencing with Section 4511). §30106(a) (emphasis added).

1 22. The coastal areas within the City limits are diverse: they include
2 heavily-trafficked urban areas; stretches bounded by industrial zoning and under the
3 flight path of the Los Angeles International Airport; low cost recreation areas with
4 RV camping and fire pits; ecologically significant tide pools and cliffs; and pristine
5 beaches bordered by multi-million dollar homes.

6
7 23. The Venice Beach Recreation Area, which is owned by the City
8 of Los Angeles, is a 2.5 mile stretch of land between the City of Santa Monica and
9 Los Angeles-County-owned Marina Del Rey. Venice Beach is the most heavily-
10 visited beach in California; on any given summer weekend, 250,000 visitors come to
11 the beach. It is also one of the largest urban coastlines in the state. It is readily
12 accessible by public transportation and has amenities like street parking and parking
13 lots, hotels, and a range of concessions and restaurants in close proximity to the
14 beach. At the northern end of the beach, it is bordered by Ocean Front Walk, a
15 paved boardwalk known for its street performers and vendors.

16
17 24. In the middle of Venice Beach, the Venice Fishing Pier juts out
18 into the ocean. Unlike the neighboring Santa Monica Pier, which has substantial
19 amenities and concessions, the Venice Fishing Pier is primarily used by anglers and
20 does not have any commercial vendors. The original pier was built in 1965 and
21 partially destroyed by El Niño currents in 1983. After it was declared a safety
22 hazard and closed for ten years, City voters passed a bond measure to pay for its
23 reconstruction. It reopened in 1999 after the City obtained a Coastal Development
24 Permit that required the City to provide free, unobstructed access and recreational
25 fishing access to and on the Venice public fishing pier.

26
27 25. The southern end of Venice Beach is less dense and has none of
28 the public accommodations that make the northern section so popular. Rather than

1 parking lots, commercial development, or an ocean-front walk or bike path, multi-
2 million dollar homes sit directly on the beach; homeowners have unrestricted views
3 of the Pacific Ocean.

4
5 26. The City also controls Dockweiler State Beach and Will Rogers
6 State Beach, which it leases from the State of California. Dockweiler is a three-mile
7 stretch of beach along Playa Del Rey which borders the City of El Segundo. Inland
8 from Dockweiler, the beach is bordered by a wastewater treatment plant and the Los
9 Angeles International Airport. The beach is not readily accessible by transportation
10 or other commercial amenities like hotels; it is however the only beach recreation
11 area in Los Angeles to include low-cost recreational amenities like street parking,
12 fire pits and RV camping, making it an accessible option for low-income residents.
13 Will Rogers State Beach is located between the City of Malibu and the City of Santa
14 Monica. It is fronted by a number of exclusive beach clubs and paid parking lots.

15
16 27. There are also a number of smaller beaches within the City of
17 Los Angeles, including White Point, Royal Palms, Point Fermin and Cabrillo Beach
18 in San Pedro. Each of the beaches has its own unique character: Point Fermin has
19 rocky cliffs and little beach access, but includes a clifftop park with scenic
20 overlooks. Cabrillo Beach in San Pedro is the only recreation area surrounding the
21 busy Port of Los Angeles. Royal Palms is bounded by cliffs, has a rocky beach and
22 includes significant pristine tide pools that host an array of marine life.

23
24 **PASSAGE OF THE BEACH CLOSURE ORDINANCE**

25
26 28. In 1988, the Department of Recreation and Parks requested that
27 the City Council give it the flexibility to change the hours of individual parks in the
28 City on a case-by-case basis, based on the needs of the community and the

1 individual park. At that time, all parks were closed between 10:30 P.M. and 5:00
2 a.m.; beaches and ocean parks were explicitly exempted from this closure. The
3 report on which the Department of Recreation and Parks based its request did not
4 mention beaches or ocean parks at all.

5
6 29. Rather than granting the Department of Recreation and Parks the
7 flexibility to adjust park and closure times as it had requested, the City Council
8 instead adopted Ordinance 164209, which is now codified at Municipal Code
9 Section 63.44(B)(14)(b). The new Ordinance unilaterally closed all beaches within
10 the City's jurisdiction from 12:00 a.m. to 5:00 a.m., except for Royal Palms Beach,
11 which was closed from 8 p.m. to 5:00 a.m. Under the ordinance, it became a
12 misdemeanor to be on any beach owned or operated by the City of Los Angeles
13 between the hours of Midnight and 5:00 a.m.⁵ The only exception to this ban on
14 beach access is for events approved by the City's Recreation and Parks Department
15 or the County Department of Beaches and Harbors. *Id.*

16
17 30. The Beach Closure Ordinance covers the entirety of the City's 11
18 miles of coastline. Other than closing Royal Palms beach at sundown, the ordinance
19

20 ⁵ Los Angeles Municipal Code Section 63.44(B)(14)(b) provides:

21 No person shall enter, remain, stay or loiter in any park which consists of an
22 ocean area, beach, or pier between the hours of 12:00 midnight and 5:00
23 o'clock a.m. of the following day; except that no person shall remain, stay or
24 loiter on Royal Palms Beach between the hours of 8:00 o'clock p.m. and 5:00
25 o'clock a.m. of the following day. On any park which consists of an ocean
26 area, beach, or pier subject to this Section, the supervising employee at such
27 site may extend the 12:00 midnight closing time, or in the case of Royal
28 Palms Beach the 8:00 o'clock p.m. closing time, to accommodate special
events such as grunion runs and other events approved by the Department of
Recreation and Parks or the Los Angeles County Department of Beaches, as
applicable.

1 does not distinguish between any of the City's diverse beaches. Nor does it provide
2 any access to the wet sand or the ocean for the duration of the beach closure every
3 night. As a result, unless one seeks prior permission from the Department of
4 Recreation and Parks for a specific event, there is no place within the City of Los
5 Angeles that an individual can legally access the public trust lands, wet sand, and
6 ocean between the hours of Midnight and 5:00 a.m.

7
8 31. When it was passed, the Beach Closure Ordinance constituted
9 both a change in land use as well as a significant limitation on access to the water.
10 Nevertheless, the City failed to apply for, and did not receive, a Coastal
11 Development Permit from the Coastal Commission. In fact, the legislative history
12 of the Beach Closure Ordinance indicates that the City did not consider its
13 obligations under the Coastal Act.

14
15 32. The Beach Closure Ordinance remains in effect today. The City
16 did not include a sunset provision whereby it would automatically terminate unless
17 renewed, nor did it include any requirement that the City ever revisit the closure
18 times, or the scope of the ordinance, or whether any reasons for beach closure exist
19 at all. Since the City Council passed the Beach Closure Ordinance in 1988, the full
20 City Council has not reviewed the ordinance or adjusted its scope, and it has not
21 determined whether there is or continues to be any reason or justification to close
22 the entire 11 mile coastline every night.

23
24 **ATTEMPTS TO PERSUADE THE CITY TO**
25 **SEEK A COASTAL DEVELOPMENT PERMIT**
26

27 33. In 2009, in conjunction with the City's application for a Coastal
28 Development Permit for an overnight parking district in Venice, the Coastal

1 Commission staff became aware that the City had a Beach Closure Ordinance on the
2 books. Since that time, Coastal Commission staff and members of the public have
3 repeatedly attempted to convince the City to subject its Beach Closure Ordinance to
4 the public participation and state policy considerations required by the Coastal Act.
5

6 34. Since 2009, Coastal Commission staff have repeatedly advised
7 the City that the Beach Closure ordinance is invalid and violates the Coastal Act.
8 (See Exhibits 1 through 10.) Between 2010 and 2011, Coastal Commission staff
9 advised the City that the Beach Closure Ordinance was unlawfully enacted and
10 contravened the Coastal Act. The Coastal Commission outlined a number of
11 provisions necessary to bring the ordinance in line with the Coastal Act, including:

- 12 a. The presentation of credible evidence demonstrating the existence of a
13 public safety problem warranting the imposition of a beach curfew;
- 14 b. Evaluation of alternatives to a sweeping curfew and the exclusion from
15 the curfew of areas that could be excluded without compromising
16 public safety;
- 17 c. Exemption of the wet sand area along the ocean's edge, and of
18 transiting beaches to reach wet sand, to allow for use of the ocean,
19 including for fishing, surfing, walking and accessing state waters;
- 20 d. Inclusion of a sunset clause;
- 21 e. Appropriate signage designating closed areas as subject to the
22 ordinance.

23 *See* Letter from Coastal Commission Executive Director Peter M. Douglas to City
24 of Los Angeles, February 22, 2011 is attached as Exhibit 8.
25

26 35. In response, the City Attorney asserted that the City's authority
27 to close the beach was not subject to the Coastal Commission's jurisdiction, and that
28 the Coastal Commission's position was "an assault on the principles and practices

1 of our representative government.” The City Attorney maintained that the City
2 would “defend the City’s laws and lawmaking process vigorously.” Letter from
3 Gerald M. Sato, Deputy City Attorney, City of Los Angeles, to Peter M. Douglas,
4 dated March 4, 2011, attached as Exhibit 9.

5
6 36. Following the interaction with the Coastal Commission, on
7 information and belief, the City once again stepped up enforcement of the Beach
8 Closure Ordinance and increased its reach to include Ocean Front Walk along the
9 northern stretch of Venice Beach. In response, members of the public, including
10 Ms. De La Rosa and Ms. Valentine, repeatedly called on the City to repeal the
11 Beach Closure Ordinance, or to seek approval from the Coastal Commission.
12 Members of the public attended Coastal Commission meetings, sent letters to City
13 staff and elected officials, and brought media attention to the issue.

14
15 37. In April 2014, the Coastal Commission staff once again reached
16 out to the City to engage in discussions about the City’s Beach Closure Ordinance.
17 *See* Letter from Andrew Willis to Kevin Regan, Assistant General Manager
18 Operations Branch, City of Los Angeles Department of Recreation and Parks, dated
19 April 9, 2014, attached as Exhibit 10. To date, and almost two years later, the City
20 has failed to revise the Beach Closure Ordinance, has not sought a CDP for the
21 existing ordinance, and has not increased coastal access.

22
23 **ENFORCEMENT OF THE BEACH CLOSURE ORDINANCE**

24
25 38. The City continues to enforce the beach curfew, and enforcement
26 has increased steadily over the past four years. According to a Los Angeles Times
27 article, in 2010, the Los Angeles Police Department conducted at least one sweep of
28 Venice Beach while the closure was in effect and arrested 50 individuals.

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39. In 2012, the City announced that Ocean Front Walk, which is a boardwalk that runs along the beach from Santa Monica to Marina Del Rey, would now be considered a part of the beach for purposes of the beach closure. As a result, the LAPD began issuing citations to individuals on the boardwalk after midnight and before 5:00 a.m. Citations jumped to over 475 issued in 2012, and since then, that number has continued to climb. In 2014 the City issued a staggering 1,265 citations in the Venice Beach area alone for violation of the Beach Closure Ordinance.

40. Enforcement of the Beach Curfew has continued in 2015 as well. Between January and June 2015, LAPD issued numerous citations for violations of Los Angeles Municipal Code Section 63.449(B)(14)(b), and data suggest that the City is on a similar pace this year as in 2014.

41. This enforcement of an ordinance passed without appropriate approval from the Coastal Commission constitutes a violation of the Coastal Act, and results in the waste of taxpayer resources.

FIRST CAUSE OF ACTION
(Taxpayer Claim Against All Defendants)

42. Plaintiffs reallege paragraphs 1 through 41 of this Complaint as fully set forth herein.

43. Pursuant to California Code of Civil Procedure §§ 526 and 526(a), Plaintiffs seek declaratory and injunctive relief to prevent continued

1 enforcement of an unlawful ordinance, which enforcement constitutes waste of
2 taxpayer funds.

3
4 44. An actual controversy exists between Plaintiffs and Defendants
5 concerning the enforcement of LAMC § 63.44(B)(14)(b), which completely
6 forecloses Plaintiffs and others from accessing the beach and coastal waters within
7 the City of Los Angeles during a five to nine hour period every day of the year.
8 Plaintiffs desire a judicial determination of their rights and duties and a declaration
9 as to Defendants' obligations under the Coastal Act.

10
11 45. Plaintiffs have no adequate remedy at law to reverse the
12 consequences of Defendants' unlawful acts as alleged herein. Without court
13 intervention, Defendants will continue to enforce the illegal ordinance against the
14 public generally, and will continue to issue improper tickets and collect illegal fines.
15 Plaintiffs will be irreparably harmed in that the City will continue to waste resources
16 enforcing the illegal law.

17
18 46. Plaintiffs are entitled to a temporary restraining order and
19 preliminary injunction to prevent any further development in the affected area while
20 the present litigation is pending. Plaintiffs are further entitled to a permanent
21 injunction preventing Defendants from enforcing the Beach Closure Ordinance
22 unless and until it obtains valid Coastal Development Permits.

23
24 **SECOND CAUSE OF ACTION**

25 **Violation of the Coastal Act**

26
27 47. Plaintiffs reallege paragraph 1 through 46 of this Complaint as
28 though fully set forth herein.

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2. A declaration that the Defendants' continued enforcement of the Beach Closure Ordinance, Los Angeles Municipal Code § 63.44(B)(14)(b) is a waste of taxpayer funds.

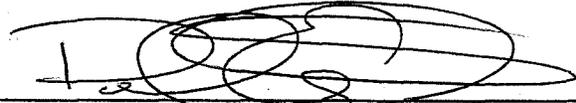
3. A temporary restraining order and/or a preliminary and permanent injunction, enjoining Defendants, their officers, agents and employees, from enforcing Los Angeles Municipal Code § 63.44(B)(14)(b);

4. For costs and attorney's fees for Plaintiffs for prosecuting this action pursuant to Code of Civil Procedure § 1021.5 and/or any other applicable provision(s) of law.

5. For such further relief as the Court deems just and proper.

Dated: December 9, 2015

LEGAL AID FOUNDATION OF LOS ANGELES

By 
PAUL ESTUAR
Attorneys for Plaintiff
JATAUN VALENTINE

Dated: December 9, 2015

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

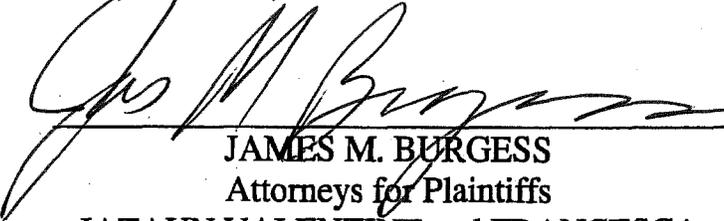
By 
JAMES M. BURGESS
Attorneys for Plaintiffs
JATAUN VALENTINE and FRANCESCA
DE LA ROSA

EXHIBIT 1

EXHIBIT 1

CALIFORNIA COASTAL COMMISSION

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



August 26, 2010

Mark Mariscal
City of Los Angeles, Department of Recreation and Parks
Superintendent, Pacific Region
1670 Palos Verdes Drive North
Harbor City, CA 90710

Subject: Imposition of an ordinance establishing a beach curfew

Dear Mr. Mariscal,

Public access to and along the California coast and coastal waters is a right guaranteed by California's Constitution and the Coastal Act. When public agencies initiate and institute actions designed and intended to place a limitation on public access to the coast, such as, but not limited to imposition of a beach curfew, such limitations must be reviewed before taking effect under the policies of the Coastal Act through the coastal development permit process.

Our staff has confirmed that the City of Los Angeles established a beach curfew, found in City of Los Angeles Municipal Code Section 63.44(B)(14)(b), for city beaches via Ordinance No. 164209, adopted on November 22, 1988. Section 63.44(B)(14)(b) states:

No person shall enter, remain, stay or loiter in any park which consists of an ocean area, beach or pier between the hours of 12:00 midnight and 5:00 o'clock a.m. of the following day or such other hours as the Council may establish for each such park by ordinance. On any park which consists of an ocean area, beach or pier subject to this Section, the supervising employee at such site may extend the closing time to accommodate special events such as grunion runs and other events approved by the Department of Recreation and Parks or the Los Angeles County Department of Beaches, as applicable. Provided, however, that no person shall enter, remain, stay or loiter on Royal Palms Beach between the hours of 8:00 o'clock p.m. and 5:00 o'clock a.m. of the following day.

The imposition of this beach curfew, as is its clearly stated intent, restricts public access to the sea. The Coastal Act defines "development" (Public Resources Code Section 30106) requiring a coastal development permit from either the Commission or local government, where a Local Coastal Program has been certified, or where the local government issues coastal development permits pursuant to the Coastal Act, to include a "...change in the ... intensity of use of land...change in the intensity of use of water, or of access thereto." In addition, the Commission and local governments are mandated under the Coastal Act (Section 30210) to ensure 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."

Commission staff have researched our permit files and concluded that no coastal development permits have been issued for this particular public access restriction. In this particular case, the

City of Los Angeles
August 26, 2010
Page 2 of 2

closure of beaches within the City's coastal development permit jurisdiction would require a local coastal development permit from the City, as well as the Commission, since City beaches are located in the "dual permit jurisdiction." Implementation of an ordinance affecting access to the Commission's area of original jurisdiction, i.e. State tidelands or public trust lands, would also require a coastal development permit from the Commission. In the absence of such Coastal Act review, such restrictions on public access constitute a violation of law exposing the responsible agency to possible enforcement actions.

While the Commission understands and appreciates the many pressures on public agencies, especially local government to ensure public safety, preserve resident convenience and neighborhood amenities, and carry out land management responsibilities within constrained budgets, we are concerned because many of these restrictions on lawful public rights of use have been instituted without benefit of coastal development permits required by the Coastal Act. The Commission has a long history of reviewing these types of public coastal access restrictions and has approved those that are narrowly drawn to effectively address proven public safety issues and concerns. Unfortunately, many access restrictions that infringe on protected legal public rights are drawn and applied in an overly broad manner, often because of political expediency or ease of administration by implementing or enforcing agencies.

Beach curfews or closures have been problematic on occasion in the past. However, working with local agencies in the context of the coastal development permit process, we have usually been able to achieve a mutually acceptable resolution that protects both public safety and public access to beaches and State waters. We want to work in cooperation with you to achieve this dual mission in the most efficient and effective manner and to avoid potential conflict and controversy over law enforcement requirements.

In conclusion, it is the position of Commission staff that implementation of the beach curfew ordinance identified above qualifies as development under the Coastal Act and therefore requires a coastal development permit. If the City wishes to implement a beach curfew, it would first need to obtain authorization for such restriction through issuance of both a local coastal development permit and a coastal development permit from the Commission. Staff feels that by working together within the coastal development permit context, we can achieve a positive resolution to this matter that is consistent with the Coastal Act. Please contact me or South Coast District Manager Teresa Henry at (563) 590-5071 within two weeks of the mailing date of this letter in order to discuss any questions raised by this letter and how we can work together to reach a mutually acceptable solution to this important matter affecting coastal access.

Sincerely,



Andrew Willis
District Enforcement Analyst

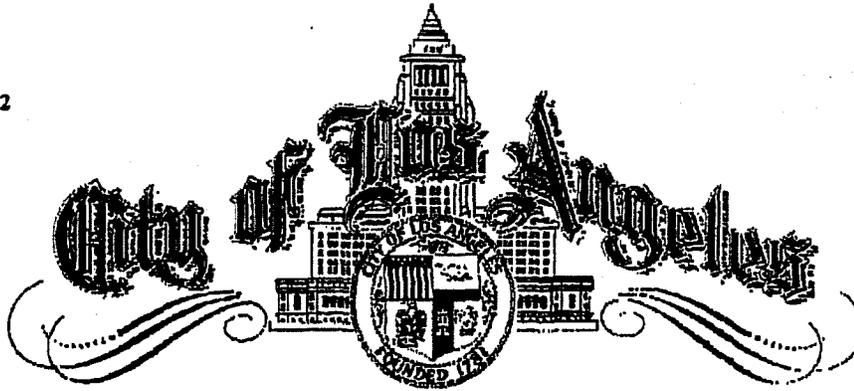
cc: Councilman Rosendahl's office
Jack Ainsworth, Deputy Director, CCC

EXHIBIT 2

EXHIBIT 2

City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

(213) 978-8100 Tel
(213) 978-8312 Fax
C.Trutanich@lacity.org
www.lacity.org/ctzy



CARMEN A. TRUTANICH
City Attorney

September 1, 2010

Andrew Willis
District Enforcement Analyst
California Coastal Commission
South Coast Area Office
200 Occangate
Suite 1000
Long Beach, California 90802-4302

**RE: Your Letter to City of Los Angeles, Department of Recreation and Parks
on 8/26/10**

Dear Mr. Willis:

Your letter dated August 26, 2010 to the City of Los Angeles Department of Recreation and Parks, has been referred to this office for response. Please direct all future communication about this matter to this office. We also strongly suggest that any future communication be through your agency's legal counsel.

We do not agree with you that the Los Angeles Municipal Code section quoted in your letter violates any legal duties, limitations, or policies expressed in the Coastal Act. We also believe that your letter deserves a serious and more complete response than we will be able to provide within the two week deadline specified in your letter. We believe that we can provide such a response by the end of September. Per your letter, our ordinance has been around for at least 22 years and does not appear to be causing any current emergency; quite to the contrary, we believe that the ordinance is a material and substantial safety measure with essential positive consequences for the public. Hence, we hope that the additional time we seek will pose no undue burden for you or the California Coastal Commission.

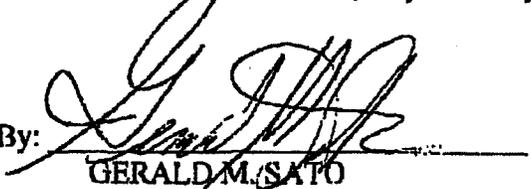
Andrew Willis
September 1, 2010
Page 2

We do ask, however, that you share with us in advance of our reply: (a) whether the present investigation was initiated pursuant to a complaint from a member of the public; (b) the substance or a copy of that complaint; (c) information and records about curfews at beaches operated by other local governments, including any relevant Coastal Commission permit proceedings; (d) what your staff and the Commission believe to be the correct parameters of beach curfews under the Coastal Act; and (e) information on "real life" enforcement proceedings brought before the Commission involving beach curfews.

A prompt response to this letter would be appreciated. Please do not hesitate to have the Commission's staff attorneys contact this office about this matter at any time.

Very truly yours,

CARMEN A. TRUTANICII, City Attorney

By: 

GERALD M. SATO
Deputy City Attorney

GMS:sf

cc: Wyatt Sloan-Tribc, Deputy Attorney General, State of California
Bill Rosendahl, Member of the City Council, City of Los Angeles
Janice Hahn, Member of the City Council, City of Los Angeles
Jon Kirk Mukri, General Manager, Department of Recreation and Parks

EXHIBIT 3

EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

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



September 17, 2010

Gerald M. Sato
Deputy City Attorney
City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

Subject: Imposition of an ordinance establishing a beach curfew

Dear Mr. Sato:

Thank you for your September 1, 2010 response to our letter dated August 26, 2010, addressing the imposition of an ordinance establishing a beach curfew at City of Los Angeles beaches. We remain optimistic that we can achieve a mutually acceptable resolution to this important public access matter through the coastal development permit process. The purpose of this letter is to respond to your request for documents and an extension, contained within your letter dated September 1, 2010, and to follow-up our September 9 telephone conversation joined by Commission Counsel Alex Helperin. The following paragraphs repeat the requests from your September 1 letter and set forth Commission staff's responses:

1. We do ask, however, that you share with us in advance of our reply: (a) whether the present investigation was initiated pursuant to a complaint from a member of the public; (b) the substance or a copy of that complaint...

Our investigation into this matter was initiated in response to City representations to Commission staff (hereinafter "Staff") pertaining to a beach curfew during the Commission's review of an application for a coastal development permit authorizing Overnight Parking Districts ("OPDs") in the Venice area of the City of Los Angeles. In essence, the City asserted that the OPDs would not interfere with coastal access since the beach was already closed at the time of the proposed parking restrictions. The January 2009 staff report to the Commission addressing this application notes the City's position:

The City is also making the assertion that there are no adverse impacts to public access during the hours of the restrictions (2 a.m. to 6 a.m.) because the beach closes at 10 p.m. The City may have passed a curfew ordinance for the public beach, but the Commission has not reviewed or approved any nighttime and early morning beach closure. Page 8.

As Staff believed that the existence of a beach curfew could be germane to its analysis of the proposed OPD project before the Commission, Staff looked into the issue of the beach curfew ordinance. As we mentioned to you during our September 9 conversation, Staff has also received public complaints pertaining to the beach curfew that coincided with the processing of the proposed OPDs at the City and Commission levels. Complaints made during the public comment period of

the June 2009 and June 2010 Commission meetings are available on the archived meetings website. As our counsel explained during our September 9 call, complaints made directly to Staff are not required to be disclosed, pursuant to Government Code Section 6254(k) and Evidence Code Sections 1040 and/or 1041. However, we would note that all such complaints are substantively identical to those made during the public comment period.

2. (c) information and records about curfews at beaches operated by other local governments, including any relevant Coastal Commission permit proceedings...

We do not have a comprehensive list of matters responsive to your request. However, please see Exhibit 1 for examples of various Commission actions regarding accessway closures, beach curfews, and beach parking lot closures. Exhibit 1 is not intended to be an exhaustive list, but rather to provide the City with a general overview of past Commission actions.¹ To provide an example of a coastal development permit that authorized a beach curfew ordinance, I've also attached a recent coastal development permit issued by the City of Laguna Beach authorizing a limited beach curfew. Exhibit 2. Although this local permit was not appealed by the Commission, please remember that review of beach curfew ordinances is on a case-by-case basis, and consequently, the unique circumstances of each case will inform Staff's review of a proposed access restriction.

3. (d) what your staff and the Commission believe to be the correct parameters of beach curfews under the Coastal Act...

The Commission gave preliminary approval to a Beach Curfew guidance document in June 1994. Exhibit 3. Please note that although the Commission preliminarily adopted the Beach Curfew guidance document, thus providing guidance to Staff regarding factors that the Commission is likely to consider when reviewing coastal development permit applications for beach curfew ordinances, the Coastal Act was not amended to give the guidance formal, legal force or effect. Therefore, proposed beach curfew ordinances must undergo Coastal Act review based on the existing, general standards in the Coastal Act.

4. (e) information on "real life" enforcement proceedings brought before the Commission involving beach curfews.

The local coastal development permit attached as Exhibit 2 was the culmination of a cooperative effort by the City of Laguna Beach and Commission staff to resolve a matter involving the earlier unpermitted adoption of a beach curfew ordinance.

We hope that this information will be helpful to you in formulating a response to our letter, as you suggested it would be, and please let us know if you anticipate any impediments to your providing such a response by the end of September. We look forward to working with you to achieve a resolution to this matter through the coastal development permit process that protects both public

¹ The table in Exhibit 1 was prepared by Staff earlier this year in support of the Commission's review of an appeal of a determination by the City of Dana Point that restricting access to a beach accessway was exempt from permit requirements. The Commission determined that the City of Dana Point's actions were not exempt.

City of Los Angeles
September 17, 2010
Page 3 of 3

safety and public rights of access to the coast. Please do not hesitate to contact me at (562) 590-5071 with any questions or concerns regarding this letter or the underlying issue.

Sincerely,



Andrew Willis
District Enforcement Analyst

enclosures: Exhibit 1: Examples of Commission actions
Exhibit 2: Laguna Beach CDP No. 10-12
Exhibit 3: Proposed beach curfew guidance document

cc(w/o enclosures): Councilman Rosendahl
Councilwoman Hahn

**Examples Of Commission Actions Regarding Beach Curfews,
Beach Parking Lot Hours, And Beach Accessway Hours**

Exhibit 1

COUNTY	COMMUNITY	CDP #s	PROJECT TYPE	PROJECT	COMMENTS
Santa Cruz	County of Santa Cruz	A-3-SCO-95-001 Santa Cruz County CSA#2	Accessway Hours	Proposal to close stairway from 10 pm to 6 am at Oceanview Drive, consistent with existing curfew at adjacent Manresa State Beach.	Denied
Los Angeles	City of Long Beach	5-93-232, 5-93-232-A, 5-00-050-A1/A-5-LOB-00-434-A1 City of Long Beach	Beach Curfew & Beach Parking Lot Hours	City made various proposals to extend existing beach curfew and to change periods of closure of beach parking lots	CCC required 24 hour beach use. Allowed beach lots and launch ramps to close from 10 pm to 5 am with exceptions for 8 pm closure at some locations, and 8 am opening at some locations
Orange	Laguna Beach/Emerald Bay (County unincorporated area)	A-5-EMB-91-078 (Brindersen/Smithcliffs)/City Issued CDP CD89-43P	Accessway Hours (in conjunction with subdivision)	Vertical accessway to viewpoint, closed sunset to sunrise (proposed to be gated)	Commission found NSI on appeal, upholding County's permit
Orange	City of Huntington Beach	5-07-127-EDD (Piedmont Cove)/ amendment to P-79-5948/ A-80-6590/ 5-81-401A	Accessway Hours	Vertical and lateral accessway to bayfront required under original permit (no hours or gates identified), proposed amendment to close accessways from sunset to sunrise with gate	Commission upheld Executive Director's rejection of the amendment request, effectively denying the request

**Examples Of Commission Actions Regarding Beach Curfews,
Beach Parking Lot Hours, And Beach Accessway Hours**

Exhibit 1

COUNTY	COMMUNITY	CDP #s	PROJECT TYPE	PROJECT	COMMENTS
Orange	City of Laguna Beach	City-issued CDP No. 10-12 & Ordinance No. 1521	Beach Curfew/closure (and parks)	All beaches and parks closed from 1 a.m. to 5 a.m., with exception for access to and use of wet sand and 20 feet of dry sand while undertaking active recreation (e.g. jogging, walking, diving) and fishing	No appeal filed, City permit final.
Orange	City of San Clemente	Vista Pacifica	Accessway Hours (in conjunction with new development)	Vertical accessway to viewpoint, closed sunset to sunrise (signs only, not proposed to be gated)	
San Diego	City of Oceanside	A6-OCN-93-200 City of Oceanside	Accessway Hours	Proposed time lock gates to close stairway located between two residences from 10 pm to 6 am	Modified to allow 10 pm to 4 am closure
San Diego	City of Carlsbad	6-85-404 City of Carlsbad	Accessway Hours	Proposed installation of time lock gates from 10 pm to 5 am on Cedar Street Accessway (located between two residences), one block south of Beach St access.	Approved; finding that three nearby verticals provide adequate access
San Diego	City of Carlsbad	6-88-374 City of Carlsbad	Accessway Hours	Requested permanent approval of time lock gates (on accessway between two residences) approved per 6-85-404	Approved
San Diego	City of Carlsbad	6-92-132 (R) City of Carlsbad	Accessway Hours	Proposed time lock gates at 3 existing accessways (Ocean St, Grand Ave, Beech Ave) to allow closure from 10 pm to 5 am	Denied, would impact access to the beach
San Diego	City of San Diego	6-88-366 City of San Diego	Beach Parking Lot Hours	Proposed gate at Mariner's Point to close lot from 10 pm to 4 am	Approved

**Examples Of Commission Actions Regarding Beach Curfews,
Beach Parking Lot Hours, And Beach Accessway Hours**

Exhibit 1

COUNTY	COMMUNITY	CDP #s	PROJECT TYPE	PROJECT	COMMENTS
San Diego	City of San Diego	6-85-545 City of San Diego	Beach Parking Lot Hours	Proposed closure of parking lots at South Mission Beach Park (oceanfront) and Mission Point Park (Bay side) from 8 pm to 5 am	CCC modified to allow closure from 8 pm to 4 am in winter and 10 pm to 4 am in summer
San Diego	City of San Diego	6-89-314 City of San Diego	Beach Parking Lot Hours	Proposed to modify 6-88-545 to extend closure during summer	Denied change in hours.
San Diego	City of San Diego	6-89-359, A-6-LJS-90-161, 6-91-146, 6-91-146-A, 6-91-146-A-2, 6-91-146-A-3 City of San Diego	Beach Parking Lot Hours	Various proposals to close beach parking lots between 10 pm to 4 am, either daily or on weekend nights (including installation of gates on the parking lot entry/exit)	Approved in some locations, or approved only between 12am and 4am, and often with requirement for exit only gates for after hours exit, and sometimes with a time limit (e.g. 5 years)
San Diego	City of San Diego	6-02-90 City of San Diego	Beach Parking Lot Hours	Proposal to extend closure of 3 parking lots (769 parking spaces) in Mission Bay from 2 am to 4 am, to 10 pm to 4 am.	Allowed 10 pm closure with requirement to allow exit only after 10 pm. Limited to 2 years
San Diego	City of Coronado	6-93-160, 6-96-22 City of Coronado	Beach Curfew/Parking Restrictions	Implementation of a beach curfew (11 pm to 4 am), removal of fire rings, and parking prohibition (11 pm to 4 am)	Approved with time limits to 2001

**NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS¹**

E x h i b i t 2

Date: April 5, 2010

The following project is located within the City of Laguna Beach Coastal Zone:

Location: City of Laguna Beach

Coastal Development Project No: 10-12

Project Description: Resolution No. 10.019/CDP No. 10-12 & Ordinance No. 1521 - to
establish closing times for beaches and parks

Applicant: City of Laguna Beach

Mailing Address, 505 Forest Avenue, Laguna Beach, CA, 92651

On March 23, 2010 a coastal development permit application for the project was

- approved
- approved with conditions
- denied

Local appeal period ended N/A

This action was taken by: City Council
 Design Review Board
 Planning Commission

The action did did not involve a local appeal; in any case, the local appeal process has been exhausted. Findings supporting the local government action and any conditions imposed are found in the attached resolution.

This project is

- not appealable to the Coastal Commission
- appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111. The Coastal Commission may be reached by phone at (562) 590-5071 or by writing to 200 Oceangate, 10th Floor, Long Beach, CA 90802-4416

Attachments: Resolution No. 10.019/CDP No. 10-12 & Ordinance No. 1521

¹ The City of Laguna Beach believes that the adoption of the ordinance establishing closing times for beaches and parks does not require a Coastal Development Permit because (1) the action does not constitute "development" as defined by the Coastal Act, and (2) the ordinance was adopted to abate a public nuisance, which is exempt from the Act. Nevertheless, the City approved a Coastal Development Permit solely in an effort to work cooperatively with the Coastal Commission, and expressly reserving and not waiving the position that a Coastal Development Permit is not required.

RESOLUTION NO. 10.019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT 10-12.

WHEREAS, the Laguna Beach City Council has adopted an amended ordinance

relating to the establishment of closing times for beaches and parks;

WHEREAS, the City of Laguna Beach believes that adoption of the amended ordinance does not require a Coastal Development Permit because the action does not constitute development, as defined by the California Coastal Act, and because the ordinance is being adopted to abate a public nuisance, which is exempt from the provisions of the Coastal Act; and

WHEREAS, the City Council of the City of Laguna Beach has agreed to consider the approval of a Coastal Development Permit in an effort to work cooperatively with the California Coastal Commission to address the mutual concerns and interests of the City and the Coastal Commission related to the adoption of an ordinance establishing closing times for beaches and parks, with the City reserving the position that a Coastal Development Permit is not required;

WHEREAS, the City Council of the City of Laguna Beach finds that:

1. Adoption of the amended ordinance establishing closing times for beaches and parks is not an action that will result in encroachment upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in the adopted local coastal program land use plan;

2. Adoption of the amended ordinance establishing closing times for beaches and parks will not adversely affect marine resources, environmentally sensitive areas, or known archaeological or paleontological resources;

1 3. Adoption of the amended ordinance establishing closing times for beaches and
2 parks will not adversely affect recreational or visitor-serving facilities or coastal scenic
3 resources;

4 4. Adoption of the amended ordinance establishing closing times for beaches and
5 parks will not adversely impact environmentally sensitive habitats and scenic resources located
6 in adjacent parks and recreation areas or result in the need to provide buffer areas to protect
7 such resources;

8 5. Adoption of the amended ordinance establishing closing times for beaches and
9 parks will not alter natural landforms and will not result in undue risks from geological and
10 erosional forces and/or flood and fire hazards;

11 6. Adoption of the amended ordinance establishing closing times for beaches and
12 parks will not impact the character of surrounding areas or result in the need to restore and
13 enhance visual quality in visually degraded areas;

14 7. Adoption of the amended ordinance establishing closing times for beaches and
15 parks will not result in the need for additional utilities, access roads, drainage and other
16 necessary facilities; and

17 8. Other public services, including but not limited to, solid waste and public
18 roadway capacity have been considered and are adequate to serve activities associated with
19 adoption of the amended ordinance establishing closing times for beaches and parks.

20 WHEREAS, the City Council makes the following Coastal Development Permit findings
21 with regard to the amended ordinance:

22 1. The project is in conformity with all the applicable provisions of the general
23 plan, including the certified local coastal program and any applicable specific plans.

24 2. There is no proposed development between the sea and the first public road

paralleling the sea.

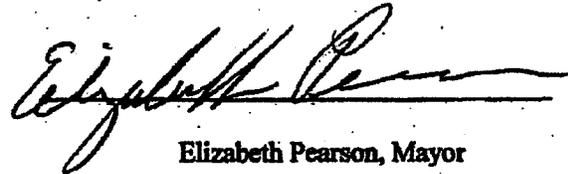
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3. Adoption of the amended ordinance establishing closing times for beaches and parks will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH

does RESOLVE and ORDER that without waiving or abandoning its position that a Coastal Development Department is not required for the adoption of the amended ordinance establishing closing times for beaches and parks within the City of Laguna Beach, Coastal Development Permit 10-12 is hereby approved in conjunction with the adoption of the amended ordinance.

ADOPTED this 23rd day of March, 2010.


Elizabeth Pearson, Mayor

ATTEST:



City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 10.019 was duly adopted at a Regular Meeting of the City Council of said City held on March 23, 2010, by the following vote:

AYES: COUNCILMEMBER(S): Egly, Boyd, Iseman, Pearson

NOES: COUNCILMEMBER(S): Rollinger

ABSTAIN: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach, CA

ORDINANCE NO. 1521

**AN ORDINANCE OF THE CITY OF LAGUNA BEACH
AMENDING CHAPTER 18.05 OF THE LAGUNA BEACH
MUNICIPAL CODE, RELATING TO ESTABLISHMENT OF
CLOSING TIMES FOR BEACHES AND PARKS**

WHEREAS, the City of Laguna Beach experienced a 25% increase in calls for police services to all beaches and parks between midnight and 5 a.m. for the first nine months of calendar year 2009 versus the same time period in calendar year 2008; and

WHEREAS, on September 16, 2009, the City Manager directed that a 24-hour police presence be maintained in Heisler Park, Main Beach Park, and the adjacent beaches in response to escalating complaints and concerns about public safety in these areas; and

WHEREAS, on October 6, 2009, the City Council was presented with over 80 emails, letters and articles describing escalating concerns from citizens, visitors and business owners about public safety concerns and inappropriate activities in beaches and parks; and

WHEREAS, on October 6, 2009, the City Council was provided a listing of over 50 police responses to Heisler Park and Main Beach Park, and the adjacent beaches, between April and September 2009; and

WHEREAS, on October 20, 2009, the City Council was informed of the substantial increase in calls for police services to all beaches and parks between midnight and 5 a.m. for the first nine months of calendar year 2009; and

WHEREAS, there has been an increase in the number of reported and/or observed illegal activities and other conduct and conditions occurring on City beaches and in City parks during the late evening and early morning hours; and

WHEREAS, the City Council desires to protect the health, safety and welfare of residents and visitors to the community by reducing illegal activities and other conduct and conditions taking place during the late evening and early morning hours on City beaches and in City parks;

NOW, THEREFORE, the City Council of the City of Laguna Beach does hereby **ORDAIN** as follows:

SECTION 1: The City Council finds and declares that the above-described activities, conduct and conditions occurring on City beaches and in City parks during the late evening and early morning hours constitute a public nuisance. The City Council further finds and declares that the establishment of closing times for City beaches and parks, as set forth below, is an action necessary to abate such public nuisance.

SECTION 2: Chapter 18.05 of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

CHAPTER 18.05

CLOSING TIMES FOR BEACHES AND PARKS

18.05.010 Closing times.

Except as otherwise provided in this Title 18 of the Municipal Code, all City beaches and parks shall be closed to public use at one a.m. and shall remain closed until five a.m.

18.05.020 Entering, remaining or staying during closing times.

Except as otherwise provided in this Title 18 of the Municipal Code, no person shall enter, remain or stay on any City beach or in any City park at any time when such beach or park is closed to public use.

18.05.030 Signs.

The City Manager, or his or her designee, shall post or cause to be posted appropriate signs in conspicuous locations giving notice of closing times and, as applicable, the exceptions provided in this Title 18 of the Municipal Code.

18.05.040 Exceptions.

(a) The provisions of this chapter shall not apply to the following activities when conducted on the wet sand or within 20 feet inland of the wet sand of all beaches: walking, jogging, fishing (by members of the public having on their possession a valid California fishing license), or grunion hunting. "Wet sand" for purposes of this section means that portion of the beach that is wet as a result of the wash of the waves or tidal action. The provisions of this chapter shall not apply to the following additional activities: scuba diving, surfing, or swimming in the ocean. Individuals may go to or come from the wet sand or the area within 20 feet inland of the wet sand, for any of the purposes allowed in this section, between the hours of one a.m. and five a.m. by the most direct safe route available at any given location.

(b) The provisions of this chapter shall not apply to such activities as may be expressly permitted by preemption of State law or as may be allowed pursuant to a resolution of the City Council.

(c) The provisions of this chapter shall not apply to the performance of official business by any City officer or employee or any other person authorized by the City.

(d) The provisions of this chapter shall not apply to any City-sponsored activity, program or special event.

(e) The provisions of this chapter shall not apply to any activity, program or special event for which a City permit has been issued.

SECTION 3: All ordinances and provisions of the Laguna Beach Municipal Code and sections thereof inconsistent herewith shall be repealed to the extent of such inconsistency and no further. This ordinance is intended to replace and supersede Ordinance No. 1514 in its entirety.

SECTION 4: 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 5: The City Clerk of the City of Laguna Beach shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law in the City of Laguna Beach. This Ordinance shall become effective on the expiration of thirty (30) days from and after the date of its adoption.

Adopted this 23rd day of March, 2010.

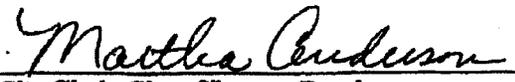

Elizabeth Pearson, Mayor

ATTEST:


City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, certify that the foregoing Ordinance was introduced at a regular meeting of the City Council held on March 2, 2010, and was finally passed and adopted at a regular meeting of the City Council of said City held on March 23, 2010 by the following vote:

AYES:	COUNCILMEMBERS: Egly, Boyd, Iserman, Pearson
NOES:	COUNCILMEMBERS: Rollinger
ABSTAIN:	COUNCILMEMBERS: None
ABSENT:	COUNCILMEMBERS: None


City Clerk, City of Laguna Beach

CALIFORNIA COASTAL COMMISSION

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

Exhibit 3



Tu 9

June 23, 1994

TO: Commissioners

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

EXHIBIT 4

EXHIBIT 4

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CARMEN A. TRUTANICH
City Attorney

October 1, 2010

VIA U.S. MAIL & FAX (562) 590 5084

Andrew Willis
District Enforcement Analyst
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302

RE: LAMC section 63.44(B)(14)(b)

Dear Mr. Willis:

We have considered your letters and accompanying documents regarding your investigation into the laws of the City of Los Angeles concerning beach hours.

Please be advised that LAMC section 63.44(B)(14)(b) is a duly-adopted ordinance and law of the City of Los Angeles. As such, the ordinance is not in need of a coastal development permit or any other written permission of the California Coastal Commission for its continued existence and enforcement. The City of Los Angeles will therefore not be applying for a coastal development permit from the Commission.

You would have the Commission exercise the powers of a super-legislature or court with powers to effectively veto or nullify the laws of Charter Cities. The Coastal Act simply cannot be interpreted that way. Indeed, your interpretation of the Coastal Act is contrary to the separation of powers defined by the Constitution of the State of California.

Andrew Willis, District Enforcement Analyst
RE: LAMC section 63.44(B)(14)(b)
October 1, 2010
Page 2

Additionally, a duly-adopted municipal ordinance or law regardless of its subject matter is not a "development" as that word is used in the Coastal Act. A "development" in the Coastal Act always refers to physical structures and things: buildings, walls, fences, etc.

If the Commission believes that City law violates state or federal law, the Commission has the same civil capacity as individuals and other legal entities to raise that issue in a judicial proceeding. But the Commission is without jurisdiction to adjudicate the merits of its own legal contentions about local law. Again, the Commission is not a court.

We trust that the concept of the democratic process is not completely lost on the Commission and its staff. Therefore, you are respectfully reminded that the Commission and/or its staff can engage the political process in an effort to persuade the City Council of the City of Los Angeles to change its law regarding beach hours or any other subject.

It has not escaped our notice that you have proceeded with your "investigation" into LAMC section 63.44(B)(14)(b) only *after* the City initiated an administrative mandate proceeding in the Superior Court to challenge the Commission's decision regarding overnight parking districts in Venice. If the City had not taken the Commission to court, the Commission and its staff would not now be investigating a law concerning beach hours which has existed in some form for more than three decades. The Commission obviously intends its investigation to harass the City into abandoning its litigation against the Commission. The ongoing investigation is totally unjustified, without any legal merit, and represents retaliation against the City of Los Angeles for exercising its constitutional right to seek redress in the court against the Commission's abuses of discretion. We therefore demand that the investigation be terminated forthwith. *You are requested to send us written confirmation of this termination by the end of business October 11, 2010.*

Andrew Willis, District Enforcement Analyst
RE: LAMC section 63.44(B)(14)(b)
October 1, 2010
Page 3

Please consult legal counsel about the matters discussed above. Your immediate attention to this matter is requested.

Very truly yours

CARMEN A. TRUTANICH, City Attorney

By: 

GERALD M. SATO
Deputy City Attorney

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cc: Wyatt Sloan-Tribe, Deputy Attorney General
Bill Rosendahl, Member of the City Council, City of Los Angeles
Janice Hahn, Member of the City Council, City of Los Angeles
Jon Kirk Mukri, General Manager, Department of Recreation and Parks

EXHIBIT 5

EXHIBIT 5

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2218
VOICE AND TDD (415) 904-6200



November 8, 2010

Gerald M. Sato
Deputy City Attorney
City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

Subject: Imposition of an ordinance establishing a beach curfew without the required coastal development permit

Dear Mr. Sato:

I am writing this letter in response to your October 1, 2010 letter to reiterate what my staff has already expressed regarding our desire to work with the City of Los Angeles to reach an amicable resolution to the issue of the City's imposition of a City beach curfew (via LAMC Section 63.44(B)(14)(b)) without the required coastal development permit. As you know, Commission staff has offered to work with the City to process the required coastal development permit in order to address the City's public safety and/or other concerns while still protecting and preserving public access to public beaches, as required by the Coastal Act. Instead, the City's position, as expressed in your letter, is to dispute the applicability of the Coastal Act in this matter.

You assert in your October 1 letter that imposition of the subject beach curfew ordinance does not require a coastal development permit because an ordinance is not development pursuant to the Coastal Act. You claim that "development" in the Coastal Act always refers to "physical structures and things: buildings, walls, fences, etc." Thus, you argue that in reviewing the beach curfew ordinance, which you assert does not constitute development, through the coastal development permit process, the Coastal Commission would be acting as "super legislature or court," inconsistent with the separation of powers defined by the Constitution of the State of California.

Contrary to the assertions in your October 1 letter, the term "development" in the Coastal Act is not limited to physical structures. The Court of Appeals has repeatedly rejected similar claims, most recently earlier this year. See Gualala Festivals Committee v. California Coastal Comm'n (2010) 183 Cal.App.4th 60, 68, review denied (June 9, 2010). "Development" is broadly defined by Section 30106 of the Coastal Act as:

"Development" means, on land, in or under water, the placement or erection 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 the 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 or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....[underlining added]

Consistent with this definition, the Coastal Commission routinely regulates development that does not involve physical structures, as it is clearly authorized to do, and the courts have routinely upheld this. See, e.g., California Coastal Comm'n v. Quanta Investment Co. (1980) 113 Cal.App.3d 579 (affirming the Commission's jurisdiction over conversion of an apartment complex into a stock cooperative); La Fe, Inc. v. County of Los Angeles (1999) 73 Cal. App. 4th 231 (affirming the Commission's jurisdiction over lot line adjustments); Gualala Festivals Committee, supra (affirming the Commission's jurisdiction over a proposed fireworks display). As a change in intensity of use of land and access to water, a beach curfew ordinance restricting public access certainly is development pursuant to the Coastal Act, and therefore, requires a coastal development permit. Our letter dated September 17, 2010, and its attachments documented some of the Commission's long history of reviewing access restrictions such as beach curfew ordinances.

Imposition of the beach curfew ordinance clearly constitutes development since it restricts public access to the sea. Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. The subject beach curfew ordinance lacks the required coastal development permit. Thus, far from acting as a "super-legislature or court," in notifying the City that its beach curfew ordinance requires a coastal development permit, the Commission is seeking to ensure protection of coastal resources by administering the permit program that state law requires it to implement. Nor do we agree with your contention that if the Commission were able to review the laws of charter cities, it would create a separation of power problem. Indeed, the fundamental structure of the Coastal Act (honored in countless cases over more than 30 years) gives the Commission review authority over local governments' general plans and zoning ordinances. See Chapter 6 of the Coastal Act (Cal. Pub. Res. Code ("PRC") §§ 30500 *et seq.*), and in particular sections 30512, 30513, and 30514 ("ordinances, regulations, and other actions may be amended by the

appropriate local government, but no such amendment shall take effect until it has been certified by the commission"), and PRC sections 30108.6 and 30108.5.¹

Since imposition of the beach curfew ordinance is properly subject to the permit requirements of the Coastal Act, as explained in the previous paragraph, it is unnecessary for the Commission to address this matter through the judicial or political process, avenues to resolution of this issue that your letter suggests the Commission consider. As you know from our prior communications, we are more than willing to work with you via the coastal development permit process to analyze the situation regarding what would be approvable under the relevant Coastal Act provisions. Furthermore, as explained herein, the Commission certainly has the statutory right and responsibility to enforce the permit requirements of the Coastal Act.

You assert in your letter that the Commission is requiring the City to obtain a coastal development permit for development the City has undertaken because the City and Commission are engaged in litigation over the issue of overnight parking districts in Venice. Although it is altogether unfortunate in terms of both of our staffs' time and resources that the permit process did not resolve that issue, despite both of our staffs agreeing to a proposed resolution of the matter, I assure you that the Commission staff's investigation of the instant matter is independent of the Venice overnight parking district dispute and is not intended, as you put it, to "harass the City into abandoning its litigation against the Commission." Again, our September 17, 2010 letter demonstrates the Commission's historical focus on access restrictions such as beach curfew ordinances.

We cannot stress enough that the significance of the coastal resource affected by the subject beach curfew ordinance warrants a considerable effort by our agencies to work together to reach a mutually acceptable solution. Protection of public access in the Coastal Zone is among the highest priority policies of the Coastal Act; the Commission and local governments are mandated under Section 30210 of the Coastal Act to ensure that "...maximum access...and recreational opportunities shall be provided for all people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." As the population in coastal regions continues to grow, beaches and coastal parklands have become more popular and vital everywhere as visitor destinations for recreational use throughout the day, night, and year. Increasingly, coastal communities have experienced an intensification of conflicts between residents and visitors resulting in imposition of a variety of restrictions on public access to or use of public beaches and coastal public recreation areas. The contemporary situation demands the Commission take special care to address local actions pertaining to beach access.

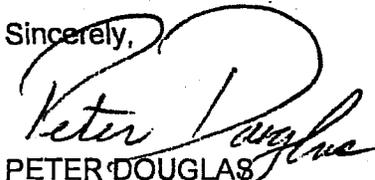
¹ Similar arguments were also raised with respect to the Commission's predecessor's permitting authority (that it was an "invalid state intrusion into municipal affairs of chartered cities") after the passage of Proposition 20 (the predecessor to the Coastal Act) in 1972, and the courts rejected those arguments as well. See CEEED v. California Coastal Zoning Conservation Comm'n (1974) 43 Cal.App.3d 306, 320-324.

Mr. Gerald M. Sato
November 8, 2010
Page 4 of 4

As you are no doubt aware, use of public beach access opportunities along a heavily urbanized coastline such as Los Angeles by its many residents (and visitors) for their recreational needs is intense. Any potential infringement upon these opportunities must be considered as a potentially serious threat to public access to the coast and addressed accordingly. We believe that through the coastal development permit process, the City's concerns can be addressed, and hours of use may be legally established for City beaches consistent with Coastal Act provisions. Should the City decide to pursue the coastal development permit route, Commission staff is immediately available for consultation. However, should the City take the position that no further action is required, or otherwise ignore the coastal development permit requirements of the Coastal Act, Commission staff will have no choice but to pursue formal enforcement action to resolve this matter. Please note that although we strongly prefer to resolve this matter through the coastal development permit process, Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person (defined in PRC section 30111 to include a "local government") or government agency has undertaken, or is threatening to undertake, any activity that requires a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission itself may also issue a cease and desist order.

We remain hopeful that an amicable resolution to this matter can be achieved and are committed to working with City staff to that end. I respectfully request your reply by November 23, 2010 with an indication of how the City intends to proceed. If you have any questions in the interim, please do not hesitate to contact Andrew Willis at (562) 590-5071 or me at (415) 590-5202.

Sincerely,



PETER DOUGLAS
Executive Director

cc: John Ainsworth, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
N. Patrick Veasart, Enforcement Supervisor, Southern Districts, CCC
Andrew Willis, South Coast District Enforcement Analyst, CCC
Alex Helperin, Staff Counsel, CCC
Teresa Henry, South Coast District Manager, CCC
Gary Timm, Coastal Programs Manager, CCC
Councilman Bill Rosendahl, District 11, City of Los Angeles
Councilwoman Janice Hahn, District 15, City of Los Angeles

EXHIBIT 6

EXHIBIT 6

CALIFORNIA COASTAL COMMISSION

46 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



February 3, 2011

VIA FACSIMILE (213-473-6818) AND REGULAR MAIL

Gerald M. Sato
Deputy City Attorney
City Hall East
200 N. Main Street, Room 800
Los Angeles, CA 90012

Re: Los Angeles Municipal Code section 63.44(B)(14)(b)

Dear Mr. Sato,

The last letter in the exchange of correspondence between California Coastal Commission ("Commission") staff and you regarding the above-referenced Los Angeles Municipal Code section (the "Beach Curfew") was a November 8 letter from the Commission's Executive Director. Later that month, you indicated to our Executive Director that you intended to arrange for him to meet with your City Attorney to discuss this matter. However, Commission staff subsequently made several, unsuccessful attempts to reach you to follow up, and we have received no response. It therefore appears that no such meeting is to take place.

Given our apparent stalemate on this issue, and consistent with our Executive Director's statements in his November 8 letter, our Enforcement Division is currently preparing to take the appropriate next steps.

Pending resolution of this matter, this letter is intended to convey our position regarding the status of the Beach Curfew. As we explained in our initial letter (dated August 26, 2010), the adoption, implementation, and enforcement of such a curfew, which restricts access to the sea, constitutes "development" as that term is defined in the California Coastal Act (*see* Cal. Pub. Res. Code § 30106), and any such development must be authorized pursuant to the Coastal Act to be valid (*see id.* at § 30600). Because no such authorization has been granted, it is the position of the Commission's Legal Division that the Beach Curfew is currently of no legal force or effect.

Please contact Andrew Willis (562-590-5071) or me (at the number above) by February 11, 2011, if you would like to discuss an amicable resolution of this matter. And feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Helperin".

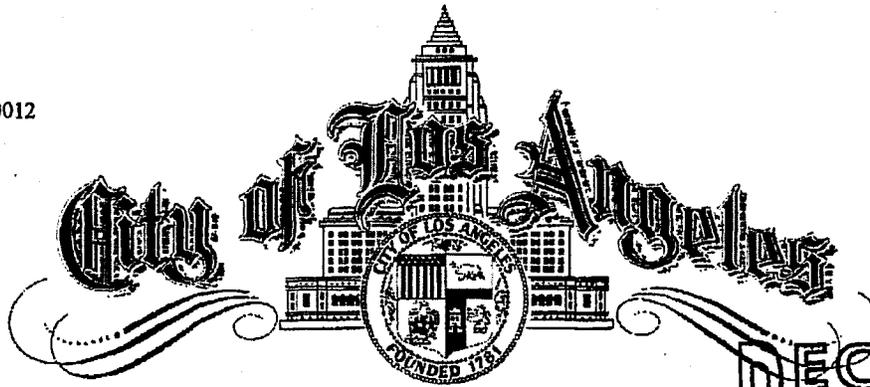
ALEX HELPERIN
Senior Staff Counsel
California Coastal Commission

EXHIBIT 7

EXHIBIT 7

City Hall East
200 N. Main Street
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Los Angeles, CA 90012

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Trutanich@lacity.org
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CARMEN A. TRUTANICH
City Attorney

February 9, 2011

RECEIVED
FEB 11 2011
CA COASTAL COMMISSION
LEGAL DIVISION

Alex Helperin, Esq.
Senior Staff Counsel
California Coastal Commission
48 Fremont Street, Suite 2000
San Francisco, California 94105-2219

BY FAX AND FIRST CLASS MAIL

RE: Your letter dated February 3, 2011

Dear Mr. Helperin

If there is a "stalemate" over LAMC section 63.44(B) (14) (b), the problem lies with the Commission, not the City. Your executive director has stated publicly that the Commission believes that cities may have reasonable restrictions upon the hours of beach access. But we are still waiting for the Commission to explain why it believes the City's existing law to be unreasonable, or to propose an alternative to the City's modest midnight-to-5 a.m. curfew. Neither your letter nor any other written communication from the Commission or its staff has ever bothered to explain why the City's law is not a reasonable exercise of the City's police powers and duties regarding public safety, risk management, and the prevention of nuisances. We cannot conceive of a greater waste of agency resources and the taxpayers' money than for the Commission to commence administrative enforcement proceedings without ever communicating a proposal to change the City's law. If the Commission itself has been unable to reach a consensus as to what it would find an acceptable beach curfew law, and has therefore never given its executive director real settlement authority, the City can hardly be blamed for not responding to proposals never made.

Otherwise, the City sees no reason to change its law. The legal position of the City remains unchanged from my letter dated October 1, 2010 to Mr. Willis. The City's law is not a "development" as that word is defined and used in the Coastal Act; we fully expect several pending lawsuits to result ultimately in the judicial repudiation of your interpretation. The City's law does not offend any right described in the Coastal Act or Article X section 4 of the California Constitution. The City's law is an exercise of police powers expressly reserved to local government by the Coastal Act itself and the California Constitution. The Legislature did not intend to require municipalities to obtain development permits for regulating the hours of

Alex Helperin, Esq.
Senior Staff Counsel
California Coastal Commission
February 9, 2011
Page 2

access to beaches. While the City would give serious consideration to a Commission proposal for a change in City law, and the reasons offered for the change, the City does not intend to apply to the Commission for a permit for existing section 63.44(B)(14)(b). If the Commission has a proposal, it should communicate it, as we do not believe that a court will ever require the City involuntarily to be without a reasonable beach curfew law.

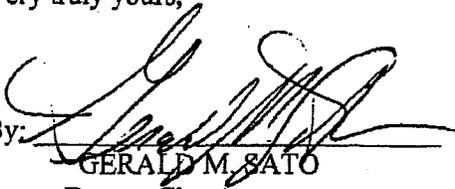
The City strongly disagrees with your statement on behalf of the commissioners that section 63.44(B) (14) (b) is "currently of no legal force and effect": We have two additional responses to that statement:

First, to take your statement at face value, it would appear that the Commission will not commence a "cease and desist" or any other administrative proceeding, as there would be no need to devote precious agency resources in attempting to kill a law which you have already pronounced dead.

Second, your statement is irresponsible and can only have the effect of encouraging disobedience to the City's law. You and everyone else should know that *the City will continue to enforce section 63.44(B) (14) (b) and every other law duly-adopted by the people of the City of Los Angeles*. Someday when you are a judge, you may have the opportunity to declare a law to be "currently of no legal force or effect;" for the time being, unless it is your actual intention to cause disruption of public safety, we respectfully suggest that you publicly set the record straight.

The City is interested only in adopting the best laws for the benefit of the people of the City of Los Angeles and the visiting public. We know that the Commission has approved beach and coastline curfew laws of other local governments; if the Commission has specific alternatives to the City's midnight-to-5 a.m. law, the Commission should authorize its director to communicate them so that a meaningful dialogue can finally commence.

Very truly yours,

By: 

GERALD M. SATO
Deputy City Attorney

GMS: sf
(213) 473-6875

cc: Wyatt Sloan-Tribe, Deputy Attorney General
Bill Rosendahl, Member of the City Council, City of Los Angeles
Janice Hahn, Member of the City Council, City of Los Angeles
Jon Kirk Mukri, General Manager, Department of Recreation and Parks

EXHIBIT 8

EXHIBIT 8

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
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TDD (415) 597-5885



February 22, 2011

Gerald M. Sato
Deputy City Attorney
City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

Subject: Imposition of an ordinance establishing a beach curfew

Dear Mr. Sato:

While we are encouraged by the statements in your February 9, 2011 letter indicating that the City might give serious consideration to a Commission proposal for changes to the existing beach curfew ordinance and that the City may be receptive to meaningful dialogue to resolve this issue consensually (as is certainly our preference), I remind you that it is the coastal development permit process by which these kinds of discussions normally take place. As we have stated in the past, we are more than willing to work with you via the coastal development permit process to analyze the situation and seek consensus regarding what would be approvable under the relevant Coastal Act provisions. Protection of beach access is among the highest priority policies of the Coastal Act¹. Section 30210 charges the Commission, in partnership with local governments, with ensuring that "maximum access...and recreational opportunities shall be provided for all people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." At the same time, Section 30214 recognizes that the time, place, and manner in which public access is protected may need to be regulated based on the facts and circumstances in relation to each proposed restriction on public access, such as the subject beach curfew ordinance.

Over the last several months, Commission staff has made repeated efforts to work collaboratively with the City to reach an amicable resolution of this issue that protects both public safety and public rights of access to the coast. As you'll remember, I scheduled a meeting earlier this year with the City to discuss the potential for Commission staff recommending approval of the City's beach curfew ordinance, however, the City subsequently cancelled that meeting and has been unresponsive to my staff's requests to reschedule such a meeting. If the City is willing to engage in a discussion regarding the substantive issues raised by its curfew ordinance, Commission staff will work with the City to arrange for a mutually convenient schedule to meet and discuss the issue. However, the mechanism through which the Commission would ultimately review such an ordinance is the coastal development permit process.

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Your February 9 letter suggests that the City has not engaged in negotiations with Commission staff because, as you assert, Commission staff has not provided alternatives to the City's beach curfew ordinance. Please note that to ensure that beach curfew ordinances are reasonable and appropriate to meet both public access and public safety concerns, and be in compliance with State law, ordinances must be developed and reviewed on a case by case basis through the coastal development permit process in consideration of the unique circumstances applicable to the particular area under review. Thus, although we are more than willing to explore alternatives with you, again, the appropriate means for the adoption of a beach curfew ordinance ultimately involves the coastal development permit process. That said, several months ago, Commission staff did provide the City with a general guidance document and an example of a permit the Commission approved for another Southern California city's beach curfew ordinance, to indicate to the City the general approach the Commission has taken relative to the review of beach curfew ordinances and in an attempt to spur a productive dialogue. In addition, after you had personally assured me you would facilitate a meeting with the appropriate City officials, the meeting was subsequently cancelled by the City.

The beach curfew guidance document provides for a procedure by which proposed beach curfew ordinances are reviewed and approved, if found to be consistent with the Coastal Act. The document underscores Staff's advice to the City that through the coastal development permit process a beach curfew ordinance for City beaches, including hours of use, may be legally established consistent with the Coastal Act. As the beach curfew guidance document and past coastal development permits authorizing curfews indicate, the key elements of ordinances that are consistent with the Coastal Act include:

- Presentation of credible evidence demonstrating the existence of a public safety problem warranting the imposition of a beach curfew.
- Evaluation of alternatives to a sweeping curfew and exclusion from the curfew of beach areas that could be excluded without compromising public safety. Efforts should be made to focus on the specific area or areas where problems exist and to craft any curfew ordinance accordingly.
- Exemption of the wet sand area along the ocean's edge, and of transiting beaches to reach wet sand, for fishing, walking, surfing, diving, and access to State waters, etc.
- Inclusion of a "sunset" clause or the guarantee of periodic review, including public hearings, on the need to continue the curfew in effect.
- Appropriate signage posted in conspicuous locations giving notice of the closing times and exceptions to the closure.

You ask in your February 9, 2011 letter what staff's concern is with the 12am-5am hours of the City's curfew. We understand your query, given the beach curfew guidance document states that hours of closure, if warranted, should be limited to the period between 12 midnight and one hour before sunrise. However, clearly there are numerous elements to a beach curfew ordinance (such as those noted above) in addition to hours of closure that must be incorporated to ensure its consistency with the Coastal Act. As noted in this letter and in previous correspondence, we are more than willing to meet with you to discuss specific provisions of the City's curfew ordinance, including hours of closure, provisions specifying areas subject to the curfew, exemptions to the curfew for access to State waters, and appropriate signage.

We feel that an amicable resolution to this issue is achievable and see no need to repeat in detail Commission staff's position on the constitutional and jurisdictional issues over which we clearly disagree. As we explained in our November 8, 2010 letter, it remains staff's position that imposition of the beach curfew ordinance clearly constitutes development since it restricts public access to the sea. Development as defined under the Coastal Act, section 30106, is a broad term of art and specifically includes a variety of "nonphysical" actions such as subdivisions of land, and also specifically includes in its definition "changes in the intensity of use of water or of access thereto". The Coastal Act definition of "development" was intentionally drafted in broad language in recognition of the reality that many activities that do not constitute physical development potentially have a significant impact on important coastal resources (e.g., public access). Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. The subject beach curfew ordinance lacks the required coastal development permit. The City is not exempt from these permit requirements of State law and the Commission has the statutory mandate to enforce the law.

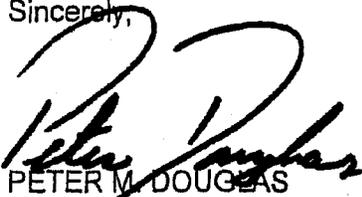
Your February 9 letter mischaracterizes or misconstrues several points from our staff counsel's February 3 letter. For the record, our counsel neither conveyed the position of the Commissioners, as you suggested, nor "declared" your ordinance to be of no force or effect. He clearly stated that he was conveying the position of Commission staff that the ordinance is not legal or enforceable because it lacks necessary approval under State law. Your February 9 letter also suggests that the Commission should not need to take action to enforce the Coastal Act's permit requirements if Commission staff's position is that the ordinance is of no force or effect. However, your letter goes on to state that the City will continue to enforce the beach curfew ordinance, and it is precisely for that reason that Commission staff is now compelled to commence enforcement proceedings to ensure compliance with the permit requirements of the Coastal Act.

As we have stated many times, the Commission does not wish to see taxpayer monies wasted on legal action to ensure compliance with State law. Unfortunately, given the City's uncooperative position we are left little choice. We can avoid such law enforcement action if the City is willing to meet with us to discuss the steps we think are necessary to bring the City's beach curfew ordinance into compliance with the Coastal Act. The Commission and the City share a common goal in protecting public beach access while

City of Los Angeles
February 22, 2011
Page 4 of 4

ensuring public safety. We look forward to hearing from you by March 4, 2011 to schedule a meeting to discuss amicable resolution of this matter that includes balancing public safety with the public's Constitutional and statutory rights of access to beaches and State waters. If you have any questions in the interim, please do not hesitate to contact Andrew Willis at (562) 590-5071.

Sincerely,



PETER M. DOUGLAS
Executive Director

cc: John Ainsworth, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
N. Patrick Veasart, Enforcement Supervisor, Southern Districts, CCC
Alex Helperin, Staff Counsel, CCC
Teresa Henry, South Coast District Manager, CCC
Gary Timm, Coastal Programs Manager, CCC
Andrew Willis, South Coast District Enforcement Analyst, CCC
Councilman Bill Rosendahl, District 11, City of Los Angeles
Councilwoman Janice Hahn, District 15, City of Los Angeles

EXHIBIT 9

EXHIBIT 9

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CARMEN A. TRUTANICH
City Attorney

March 4, 2011

Peter M. Douglas
Executive Director
California Coastal Commission
45 Fremont St., suite 2000
San Francisco, CA 94105-2219

RE: LAMC section 63.44(B) (14) (b)

Dear Mr. Douglas

We have reviewed your letter dated February 22, 2011, received on February 25, 2011, three pages single-spaced, and still no proposal from the Commission for a change in the law of the City of Los Angeles, still no specific criticisms of LAMC section 63.44(B) (14) (b). More than six months have passed since your staff advised us that it was conducting an investigation into the City's 1988 public safety ordinance concerning beach hours. You rejected our demand to terminate the investigation, and all these months later your investigation has produced nothing more than your original complaint that the California Coastal Commission never issued a coastal development permit approving LAMC section 63.44(B) (14) (b).

We cannot responsibly justify the time it would take to point out to you every inaccuracy of fact and mischaracterization of the City's position saturating your letter. We reject your attempt to use correspondence to "memorialize" events that have never occurred, and to attribute to the City positions never taken and statements never made. It would be unethical conduct warranting discipline for an attorney to engage in such sharp practices. We realize that the constraints of our profession do not govern your letters, as you are not a practicing attorney.

I will point out that you did *not* in fact schedule a meeting earlier this year or at any other time "to discuss the potential for Commission staff recommending approval of the City's beach curfew ordinance", thus, the City could not have and did not cancel such a meeting. But frankly, we have learned that, while such a meeting might have revealed your personal recommendations,

Peter M. Douglas
Executive Director
California Coastal Commission
March 4, 2011
Page 2

those views have not proven instrumental because they are not shared by your Commission. As you and I have both previously acknowledged, the City has been down this road with you twice before in extensive and allegedly cooperative and costly proceedings pertaining to the Venice overnight parking district. We cannot repeat such an expensive, time demanding, and ultimately futile experience. Our interest in talking with you would be enhanced if you can show us that you're actually speaking for the Commission. Without this, we have learned that we are simply bargaining against ourselves into an ever-downward spiral of unreasonable demands.

There is nothing new that I can add to the City's legal position set forth in my prior correspondence, and in the City's pleadings in the Venice OPD and Del Rey Lagoon PPD Superior Court cases. Your attorney, Alex Helperin, was recently quoted in *The Argonaut* of February 17, 2011 as saying that the City "refuses to recognize our jurisdiction" over beach curfew laws. He has it exactly right. As I stated in my letter to Mr. Helperin dated February 9, 2011, "While the City would give serious consideration to a Commission proposal for a change in City law, and the reasons offered for the change, the City does not intend to apply to the Commission for a permit for existing section 63.44(B)(14)(b)."

We cannot condone the waste of the taxpayers' money and drain upon the Commission's budget that would be occasioned by a decision by you or the commissioners to initiate an administrative proceeding against the City over LAMC section 63.44(B) (14) (b). At best, you and/or the commissioners may one day issue an inappropriate administrative order which the courts will reject. The City has consistently reminded you that:

1. LAMC section 63.44(B) (14) (b) is not a "development" as that word is used in the Coastal Act. Your construction of "development" is nonsensical as that word appears and is used throughout the Act.

2. LAMC section 63.44(B) (14) (b) is an exercise of police power expressly reserved to cities by the Coastal Act at Public Resources Code section 30004(a) and (b), as well as the state constitution's provisions defining the powers of Charter Cities. If the City's law is otherwise constitutional, it is beyond the Commission's development permit jurisdiction.

3. The City's ordinance as a matter of law cannot violate Article X section 4 of the California Constitution, which does *not*, as you seem to believe, create a presumptive unlimited public right to use the coastline for recreational purposes, but merely codifies the common law public trust doctrine, and therefore only prohibits *private* interferences or government actions which facilitate *private* interferences with access to navigable waters.

4. The Commission is without jurisdiction to declare void any duly-adopted City ordinance; under Article VI §1 of the California Constitution, such power is reserved exclusively to the courts.

Peter M. Douglas
Executive Director
California Coastal Commission
March 4, 2011
Page 3

5. To the extent the Commission can issue a valid administrative order mandating the City of Los Angeles to incur additional costs and expense for, by way of example, the increased costs of public safety and risk management caused by a change in the beach curfew laws, under Article XIII B sections 6(a) and (b), the Commission and the State of California must first make provision for reimbursing the City of Los Angeles for those increased costs and expenses.

6. We would also note that to the extent the Commission can require municipalities to take actions which will have a significant impact on the environment, the Commission must first comply with the review process mandated by the California Environmental Quality Act. While there is no case authority supporting your view that a beach curfew law is a "development" under the Coastal Act, the authority is legion that the impacts upon the environment contemplated by your proposed governmental act to materially increase the public's middle-of-the-night access to the City's beach coastline for recreational and commercial purposes would constitute a "project" under CEQA.

7. It is unavoidable that a court would treat any petition by the Commission to enforce an administrative order against LAMC section 63.44(B) (14) (b) as a "facial" challenge to the ordinance. Inasmuch as the ordinance is more than twenty years old, and actually replaced an ordinance enacted many more decades before, your petition will be rejected by the court for laches and limitation of actions.

Your letter references a "beach curfew guidance document" which "provides for a procedure by which proposed beach curfew ordinances are reviewed and approved, if found to be consistent with the Coastal Act." It is our understanding that the document to which you refer sets forth guidelines that you proposed to the Commission decades ago which the Commission never approved. Thus, these "guidelines" shed no usable light on how or whether the Commission believes its discretion is limited regarding beach curfews. Under well-settled principles of administrative law, if an agency does not define the limits of its discretion, then an exercise of totally "unfettered discretion" by that agency is presumptively an abuse of discretion, and not enforceable by the courts.

Perhaps such beach curfew guidelines, if they were actually adopted by the Commission through its rulemaking authority, might be helpful to the discussion. You have thus far ignored the editorial the Los Angeles Times of November 23, 2010 recommending an alternative to selective enforcement proceedings against individual cities:

The commission has tried this kind of authoritarian approach before and was rebuffed. A smarter approach would be to call a joint meeting of the affected cities to produce guidelines for curfews that prevent crime while ensuring that beach towns aren't abusing their authority.

Peter M. Douglas
Executive Director
California Coastal Commission
March 4, 2011
Page 4

Surely the Commission's money would be better invested in organizing such a meeting than in selective administrative enforcement actions against individual cities.

Judicial rulings which will consider the scope of the Commission's development permit jurisdiction are relatively imminent. Therefore, an entirely new and costly administrative proceeding over this issue would serve no purpose other than to feed a few Commissioners' appetites for political show trials and parochial bashing of the City of Los Angeles.

The will of the people of the City of Los Angeles is expressed in the City's laws adopted by their democratically-elected representatives and by referendum. The attack you've threatened against LAMC section 63.44(b)(14)(b), in which un-elected members of a commission will purport to nullify a City law, is therefore more than a challenge to a particular land use regulation, it is an assault on the principles and practices of our representative government. Please be assured that we will defend the City's laws and lawmaking process vigorously. While the City did not start this fight, we certainly intend to finish it. At all times, we will be guided by the law and the public safety interests of the residents we are honored to represent.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By:


GERALD M. SATO
Deputy City Attorney

GMS: sf
(213) 473-6875

cc: Wyatt Sloan-Tribic, Deputy Attorney General
Christina B. Arndt, Supervising Deputy Attorney General
Janice Hahn, Member of the City Council of Los Angeles
Bill Rosendahl, Member of the City Council of Los Angeles
Jon Kirk Mukri, General Manager, Department of Recreation and Parks

EXHIBIT 10

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CALIFORNIA COASTAL COMMISSION

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



April 9, 2014

Kevin Regan, Assistant General Manager Operations Branch
City of Los Angeles
Department of Recreation and Parks
221 N. Figueroa St., Suite 1550
Los Angeles, CA 90012

Subject: City of Los Angeles beach curfew

Dear Mr. Regan:

As you'll no doubt remember, Commission and City staff have had numerous and often productive discussions concerning the City of Los Angeles's beach curfew, which is codified in City of Los Angeles Municipal Code Section 63.44(B)(14)(b). The Commission and the City share a common goal in protecting public beach access while ensuring public safety, and we have made every effort to work with the City Attorney's office, Department of Recreation and Parks, and police department to achieve a mutually acceptable resolution of the curfew issue that addresses both public safety and public access to the coast through the coastal development permit process. We continue to be hopeful that we can resolve this matter amicably and conclusively through the coastal development permit process and, to that end, we wish to restart our discussions as soon as possible to ensure that the public access requirements of the Coastal Act¹ are met.

Protection of beach access is among the highest priority policies of the Coastal Act. The significance of the coastal resource affected by the beach curfew ordinance thus warrants considerable effort by our agencies to work together to reach a mutually acceptable solution. As California's population continues to grow, beaches and coastal parklands have become more highly sought visitor destinations for recreational use throughout the year, both day and night. As you know, in this particular instance the community is both vocal and passionate about the protections the Coastal Act provides for protecting public access to the coast. The spotlight on this situation, and the influx of information that accompanies such attention, has helped inform Commission staff's continuing evaluation of the situation and appropriate options to address the City's public safety concerns while still protecting and preserving the public access to the coast that is required by the Coastal Act and the public has called for.

As we have stated in the past, we are more than willing to work with you via the City and Commission's coastal development permit process to analyze the situation and seek solutions that could be approvable under the relevant Coastal Act provisions. The access policies of the

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Coastal Act were enacted by the Legislature to advance the goals in Article X of the California Constitution. Specifically, the access policies of Section 30210 of the Coastal Act provide that:

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, and the need to protect public rights, rights of private property owners, and natural resource areas from over use. (emphasis added)

At the same time, Section 30214 recognizes that the time, place, and manner in which public access is protected may need to be regulated based on the facts and circumstances in relation to each proposed restriction on public access, such as the subject beach curfew ordinance.

We understand and appreciate that the subject restriction on public access is intended to address public safety issues. However, such limitations on public access to the coast require thorough review and authorization through the coastal development permitting process. As we explained in earlier correspondence, imposition of the beach curfew ordinance clearly constitutes "development" under the Coastal Act, since it restricts public access to the coast. Development as defined under the Coastal Act, Section 30106, is a broad term of art that specifically includes a variety of "nonphysical" actions such as subdivisions of land, and also specifically includes in its definition "changes in the intensity of use of water or of access thereto." The Coastal Act definition of "development" was intentionally drafted in broad language in recognition of the reality that many activities that do not constitute physical development potentially have a significant impact on important coastal resources (e.g., public access). Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. As you are aware, the subject beach curfew ordinance lacks the required coastal development permits from the City and the Commission.

The Commission has successfully worked with a number of local governments, in the context of the coastal development permitting process, to achieve mutually acceptable resolutions that protect both public safety and public access to beaches, as required by the Coastal Act. To assist in our discussions here, Commission staff provided the City with a Beach Curfew guidance document (attached) and an example of a permit the Commission approved for another Southern California city's beach curfew ordinance, to indicate to the City the general approach the Commission has taken relative to the review of beach curfew ordinances and in an attempt to spur a productive dialogue.

Please note, however, that although the Commission preliminarily adopted the Beach Curfew guidance document (preliminarily adopted by the Commission in 1994), thus providing guidance to staff regarding factors that the Commission is likely to consider when reviewing coastal development permit applications for beach curfew ordinances, the Coastal Act still requires a permit process to evaluate conformance with the Coastal Act policies.

As the beach curfew guidance document and past coastal development permits authorizing curfews indicate, the key elements of ordinances that have been found to be consistent with the Coastal Act include:

- Presentation of credible evidence demonstrating the existence of a public safety problem warranting the imposition of a beach curfew.
- Evaluation of alternatives to a sweeping curfew and exclusion from the curfew of beach areas that could be excluded without compromising public safety. Efforts should be made to focus on the specific area or areas where problems exist and to craft any curfew ordinance accordingly.
- Since there are State waters subject to the California Constitution, there should be an exemption from the curfew of the wet sand area along the ocean's edge, and of transiting beaches to reach wet sand, for fishing, walking, surfing, diving, and access to State waters, etc.
- Inclusion of a "sunset" clause or the guarantee of periodic review, including public hearings, on the need to continue the curfew in effect.
- Appropriate signage posted in conspicuous locations giving notice of the closing times and exceptions to the closure.

Clearly there are numerous elements to a beach curfew ordinance (such as those noted above) in addition to hours of closure that must be incorporated into a beach curfew ordinance to ensure its consistency with the Coastal Act. On the narrow point of hours of closure though, given the beach curfew guidance document states that hours of closure, if warranted, should be limited to the period between 12 midnight and one hour before sunrise, staff is willing to support establishment of a 12 midnight to 5am curfew through the coastal development permit process, if certain provisions are included, including that the curfew is limited to specific locations in the City that warrant such a temporary closure pursuant to the standards noted above, and, in all areas, there are opportunities to access State waters during closure hours. We are more than willing to meet with you to continue to discuss specific provisions of the City's curfew ordinance, including hours of closure, provisions specifying areas subject to the curfew, exemptions to the curfew for access to State waters, and appropriate signage.

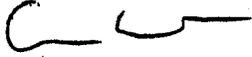
We would like to schedule a meeting to re-start discussions regarding this matter. Our goal is amicable resolution of this matter that includes balancing public safety with the public's Constitutional and statutory rights of access to beaches and State waters. To facilitate a prompt conclusion of this matter, please contact me by April 25, 2014 to schedule a meeting to discuss next steps in the coastal development permitting process.

Again, we were heartened by the collaborative discussions our staffs engaged in in the recent past and feel with renewed collaboration we can ultimately reach a resolution that is consistent

City of Los Angeles
April 9, 2014
Page 4 of 4

with the coastal access protection policies of the Coastal Act, and which the Coastal Commission, the public, and City can similarly support.

Sincerely,



Andrew Willis
Enforcement Analyst

cc: Office of Councilmember Mike Bonin
John Ainsworth, Senior Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
Alex Helperin, Senior Staff Counsel, CCC

Encl: Beach curfew guidance document