STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY GAVIN NEWSOM, GOVERNOR

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

February 21, 2024

Mr. Michael Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Mr. Eric G. Parra
Interim City Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Mr. Kevin Elliott
Chief Executive Officer
Code Four
5252 Bolsa Ave
Huntington Beach, CA 92649

Re: October 2023 Pacific Air Show's Privatization of Public Land and Waters in Huntington Beach Without a Requisite Coastal Development Permit

Dear Addressees:

This letter is written to you regarding the October 2023 Pacific Air Show ("the air show"), which is annually authorized by the City of Huntington Beach ("the City") and organized by Code Four. Coastal Commission ("Commission") staff has confirmed that at 2023's air show, and others in previous years, sizeable private bleacher seating was constructed along the shoreline between the Huntington Beach Pier southward to approximately Beach Boulevard, members of the public were prohibited from crossing the shoreline and accessing state tidelands seaward of the bleacher seating, and public access to the entirety of the Huntington Beach pier was blocked for the exclusive private use of ticket purchasers throughout the duration of the event.[1] Commission staff has also confirmed that significant fees were charged for vehicular and RV access to the City's beach parking lots leading up to and during the airshow.[2]

Prior to and after the 2023 air show, Commission staff sent several emails and letters to representatives from the City's Department of Community and Library Services on July 26, 2023, August 7, 2023, and October 13, 2023, raising Commission staff's questions and potential concerns regarding unpermitted privatization of public land at the 2023 air show, which will be discussed in further detail below, and our desire to meet with the City to discuss. Unfortunately, Commission staff never received a substantive response from the City addressing the concerns or demonstrating a willingness to meet and discuss further.

---

[1] Please see Exhibit 1 for reference.
[2] Please see Exhibit 2 for reference.

Please know that Commission staff understands the popularity of this annual event within the Huntington Beach and greater Orange County communities, as well as the economic benefits that such events can produce for local businesses and coastal cities with limited financial resources. Given that context, Commission staff would like to work with the City to appropriately authorize the event and address Commission staff's concerns regarding the 2023 and potential future air show's privatization of public land on Huntington City Beach, state tidelands at and below the mean high tide line ("MHTL"), and the Huntington Beach Pier without a requisite coastal development permit ("CDP"). As such, each concern will be discussed separately in further detail below.

Partial Closure of State Tidelands and State Waters

Commission staff has confirmed that during the October 2023 Airshow: (1) buoys were placed in the ocean south of the Huntington Beach pier to prevent the public from entering and accessing state waters; and (2) fencing and air show personnel were stationed near the shoreline adjacent to the private bleacher seating to prevent the public from accessing adjacent state tidelands.

Commission staff understands that the City has permitting authority over the area of the beach landward of the MHTL. However, the City's Coastal Element, which is part of its certified LCP, provides that the City's LCP policies only apply to the geographic portion of the City that falls within the coastal zone. As such, state tidelands and portions of the Huntington Beach Pier at and below the MHTL remain under the Commission's retained permit jurisdiction. See Section 245.06.B.1 of the City's LCP Implementation Plan ("IP")[3] and Coastal Act Section 30519(b)[4]. Furthermore, Section 245.06 of the City's Municipal Code states:

> *The Coastal Commission's original permit jurisdiction includes all tidelands, submerged lands, or public trust lands whether filled or unfilled unless the Coastal Commission has delegated original permit jurisdiction to the City for areas potentially subject to the public trust but which are determined by the Coastal Commission to be filled, developed, and committed to urban use pursuant to Section 30613 of the Coastal Act.* ***Development located in the Coastal Commission's original permit jurisdiction requires approval of a Coastal Development Permit issued by the Coastal Commission in accordance with the procedure as specified by the California Coastal Act.*** [emphasis added]

In addition, under well-settled state law, the State of California (acting by and through the California State Lands Commission ("SLC")) owns the tidelands and submerged lands seaward of the MHTL, and these tidelands are held in public trust for the public. Article X, Section 4 of the California State Constitution states:

---

[3] LCP IP Section 245.06.B1 states: Coastal Permit Issued by the Coastal Commission. Developments on tidelands, submerged lands, or navigable waterways require a permit issued by the California Coastal Commission in accordance with the procedure as specified by the California Coastal Act.

[4] Coastal Act Section 30519(b) states: Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

> ***No individual, partnership, or corporation, claiming or possessing the frontage of tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for public purpose, nor to destroy or obstruct free navigation of such waters; the Legislature shall enact such as will give the most liberal construction of this provision so that access to the navigable waters of this State shall always be attainable for the people thereof.*** [emphasis added]

Although components of the October 2023 air show within the City's permit jurisdiction may qualify as a temporary event per the City's certified LCP and, thus, may be exempt from CDP requirements, this exemption does not grant the City and/or Code Four the authority to prohibit public access to state tidelands at and below the MHTL at any portion of Huntington City Beach without proper authorization from the Commission.

Partial Closure of Huntington City Beach and Construction of Private Bleacher Seating

As stated above, Commission staff has confirmed that sizeable private bleacher seating was constructed along the shoreline between the Huntington Beach Pier southward to approximately Beach Boulevard. Commission staff has also confirmed that individual ticket prices listed on the air show's website to access Huntington City Beach between the pier and approximately Beach Boulevard during the event varied between $25 and $299, and group seating prices between $1,990 and $4,950 depending on the specific type of seating and accommodations.[5]

The City's certified LCP generally allows temporary events without a CDP if they meet certain criteria per Section 245.08.H of the City's LCP, Implementation Plan ("IP"), and zoning code. However, the City's Downtown Specific Plan ("DSP"), which is also part of the City's LCP IP, and supersedes the City's zoning codes in specific designated areas of Huntington Beach per the City's Coastal Element, requires a CDP for any beach closure in the downtown area. Specifically, the City's DSP Section 3.3.7.15 includes the following requirement regarding the beach area:

> ***Closure to public use of any portion of the beach inland of the mean high tide line is not encouraged and requires a coastal development permit which must maintain the public's right to gain access to State tidelands.*** *Measures that limit public use of the beach shall be limited to those necessary to address documented public safety events that cause a risk or hazard to the general public and shall be the minimum necessary to address the potential risk or hazard to the general public. The need for continuation of safety measures that limit public access shall be reassessed on a periodic basis to assure maximum public access is provided. Limited closure for beach maintenance may be allowable pursuant to a coastal development permit.* [emphasis added]

Commission staff notes that Section 245.08 of the City's Municipal Code exempts certain temporary events from CDP requirements. Temporary events include "exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available for general public use." "Exclusive use" is defined as:

---

[5] Please see Exhibit 2 for reference.

> *A use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other than for or through the event itself. Sandy beach area includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest. Coastal resources include, but are not limited to, public access opportunities, visitor and creational facilities, water-oriented activities*[.]

As stated above, construction of the private bleacher seating on Huntington City Beach and limiting access to this portion of the beach for ticket purchasers occurred without a CDP in violation of the public access protection policies set forth in the City's DSP Section 3.3.7.15. Again, it is Commission staff's position that DSP Section 3.3.7.15 establishes separate and specific requirements for the downtown beach area that supersede other temporary events exemptions that may otherwise be authorized in this jurisdiction. Commission staff also understands the City may be concerned that the public was excluded from these portions of state tidelands and state waters due to safety risks associated with the air show, but despite these concerns, such measures that restrict access to state waters and tidelands require Commission authorization.

Complete Closure of Huntington Beach Pier

Commission staff has also confirmed that the entirety of the public municipal Huntington Beach pier ("the pier") was closed off with fencing and regulated by air show personnel for the exclusive use of air show ticket purchasers leading up to and during the event. Tickets to access the pier during the air show were listed on the event's website for $50 to $75 per day.[6] As referenced above, Section 245.06.B of the City's LCP IP and Section 30519(b) of the Coastal Act provide that the Commission retains permit issuing authority over development undertaken on state tidelands, which includes portions of the pier at and seaward of this designation. In addition, the City's Lease No. PRC 6616.1 ("the lease") with the SLC imposes certain Public Trust and contractual obligations on the City regarding public access to the pier, commercialization of the pier, and pier closures. The lease premises includes all portions of the pier from Boundary Line Agreement 84 and the 1955 MHTL designation seaward.[7]

Special Provision 3 of the lease provides that:

> *Lessee (the City) acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses.* ***Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present.*** [emphasis added]

General Provision 5(g) provides that "use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction

---

[6] Please see Exhibit 3 for reference.
[7] Please see Exhibit 4 for reference.

whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period."

General Provision 6(a)(3) provides that "Lessor (SLC) expressly reserves to the public an easement for convenient access across the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease[.]"

General Provision 6(e) provides that "Lessee (the City) shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with the Lessee's use and enjoyment of the Lease Premises."

Closure of the pier for the private benefit of air show ticket purchasers throughout the duration of the event unreasonably interferes with and limits public trust rights per Special Provision 3 of the lease. Further, this closure was clearly not intended to protect public health and safety during construction related activities per General Provision 6(a)(3), nor did the public's presence on the pier during the air show constitute a material interference with the City's use and enjoyment of the lease premises per General Provision 6(e).

These same concerns regarding the October 2023 air show's unauthorized use of the pier were stated in a letter from SLC to City Attorney Mr. Michael Gates on August 10, 2023. In that letter, SLC requested that the City apply for a lease amendment to utilize the pier in such a private commercial manner during the airshow. Unfortunately, the City never responded to SLC's letter and did not apply for a requisite lease amendment. As such, Commission staff has communicated with SLC, and both agencies have determined that the October 2023 air show's unpermitted closure and privatization of the pier constitutes a breach of the above-mentioned conditions of the lease.

Finally, as stated above, the October 2023 airshow prohibited public access to the entirety of the pier throughout the duration of the event, including portions of the pier at and beyond the MHTL, which falls under the Commission's retained jurisdiction. This closure did not receive the necessary authorization from the Commission, and, thus, constitutes a violation of the public access protection policies of the Coastal Act.

Increase in City Beach RV Parking Lot Rates

As stated above, Commission staff has confirmed that RV camping spots in City beach parking lots were sold for $4,500 to camp between Thursday, September 28 and Monday, October 2, 2023. This adjustment was a 1,630% to 1,025% increase in RV camping spot rates as the City normally only charges between $65 and $100 per night depending on the reservation.[8] Please note that the City's DSP Section 3.3.7.15 provides:

> *Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities.* ***Limitations on time of use or increases in user fees or parking fees shall be subject to coastal development permit requirements in accordance with Chapter 245 of the HBZSO.***

[8] Please see Exhibit 5 for reference.

> ***The implementation of restrictions on public parking along public streets with the potential to impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, physical barriers and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.***
>
> *Public recreation and access opportunities at public beaches and parks shall be protected, and where feasible, enhanced as an important coastal resource . . .* ***All beach amenities available to the general public on the City's public beaches (including those owned and operated by the City and the State) shall be available to all members of the public on an equal basis.*** [emphasis added]

As such, the City's authorization of the substantial increase in RV camping rates during and throughout the air show discussed above contradicts Section 3.3.7.15 of the City's DSP, which, in part, requires lower-cost parking fees at the City's public beaches. Again, please note that the City's DSP supersedes the City's IP or zoning code for development conducted within the Huntington Beach downtown area per the City's Coastal Element, which includes the City beach parking lots. Further, it is assured that many, if not most, of the public is not able to afford such rate increases to access this popular beach amenity, which is supported and maintained by taxpayer dollars.

Potential Changes to Flight Patterns to Avoid Bolsa Chica Ecological Reserve

Through this letter Commission staff would also like to address significant environmental concerns related to flight paths during the air show. Commission staff received a copy of the June 29, 2023, letter from Carstens, Black & Minteer, LLP representing the Bolsa Chica Land Trust, to the City which raises concerns regarding threats to the wildlife and habitat of the Bolsa Chica Ecological Reserve stemming from the airshow. Commission staff has also received a copy of City Attorney Mr. Michael Gates's July 11, 2023, response to that letter.

The City's IP states that the Director of Community Development, or the City Council through direction to the director of Community Development, may determine that a temporary event shall be subject to CDP review, even if the criteria set forth in Section 3 are not met, if the Director or City Council determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances include situations where the event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as described in Section 2. As stated in the Bolsa Chica Land Trust's letter, as well as in an August 10, 2023 letter emailed to the City, Code Four, and the Federal Aviation Administration ("FAA") from SLC and the California Department of Fish and Wildlife ("CDFW"), and in another email sent to the City and Code Four from the United States Fish and Wildlife Service ("USFWS"), airshows have the potential for significant adverse impacts on local coastal resources, including but not limited to, low aircraft passing over the wetlands and the startling noise of jets causing flushing of rare and endangered species of birds from the Bolsa Chica Ecological Reserve. Furthermore, the proximity of the airshow jets to neighboring oil infrastructure and potential for a crash could release contaminants from the oil infrastructure into the wetlands. As such, this potential for significant adverse impacts to local coastal resources triggers the City to review the airshow per the City's IP, and to consider

both alternative flight routes and altitude requirements, regardless of whether the airshow qualifies as a discretionary or ministerial project per the California Environmental Quality Act ("CEQA"). We ask that the City work with SLC and CDFW and other relevant regulatory agencies to review alternative flight routes and altitude requirements in order to best protect wildlife and wildlife habitat for protected species at the Bolsa Chica Ecological Reserve.

Request for Additional Information

Through this letter, to better understand the operational roles of the parties involved, and to help explore options for resolution, Commission staff is also requesting copies of both the City's operating agreement with Code Four for the air show, and the fully executed settlement agreement (not an executive summary) between both parties reached in *Pacific Airshow, LLC v. City of Huntington Beach*. It appears that these would be public documents available for disclosure under the California Public Records Act and Commission staff expects they will be released to help us determine a mutually desirable outcome.

Resolution

Commission staff would like to reiterate that it is not the intent of this letter, or any subsequent meetings between the City, Commission staff, and other involved parties to prohibit future air shows from taking place in Huntington Beach. However, the October 2023 air show's widespread unpermitted privatization of public land discussed in this letter is not compliant with the City's certified LCP, violates public access protection policies of the Coastal Act, and breaches contractual obligations of the City's lease with SLC. As such, to avoid future activities that might expose the City and Code Four to formal enforcement action(s), Commission staff is requesting a meeting with all parties involved to ensure that future air shows may continue operating in a manner compliant with all relevant statutory and contractual requirements. Please contact me via email at spenser.sayre@coastal.ca.gov by **March 5, 2024**, to schedule a meeting and discuss.

Sincerely,

Spenser Sayre, Esq.
South Coast District Enforcement

Cc: Kate Huckelbridge, Executive Director, CCC
Karl Schwing, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
Andrew Willis, Enforcement Counsel, CCC
Meg Vaughn, Coastal Program Analyst, CCC
Wendy Hall, Environmental Program Manager, California State Lands Commission
Kelly Connor, Public Land Management Specialist III, California State Lands Commission
Lucinda Calvo, Senior Attorney, California State Lands Commission

EXHIBIT 1

EXHIBIT 2

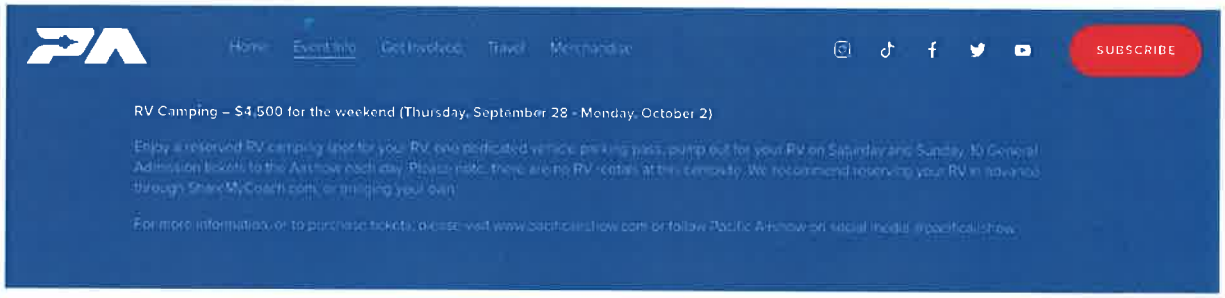
Home
Event Info
Get Involved
Travel
Merchandise
SUBSCRIBE
RV Camping – $4,500 for the weekend (Thursday, September 28 - Monday, October 2)
Enjoy a reserved RV camping spot for your RV, two dedicated vehicle parking pass, pump out for your RV on Saturday and Sunday, 10 General Admission tickets to the Airshow each day. Please note, there are no RV rentals at this campsite. We recommend reserving your RV in advance through ShareMyCoach.com, or bringing your own.
For more information, or to purchase tickets, please visit www.pacificairshow.com or follow Pacific Airshow on social media @pacificairshow

EXHIBIT 3

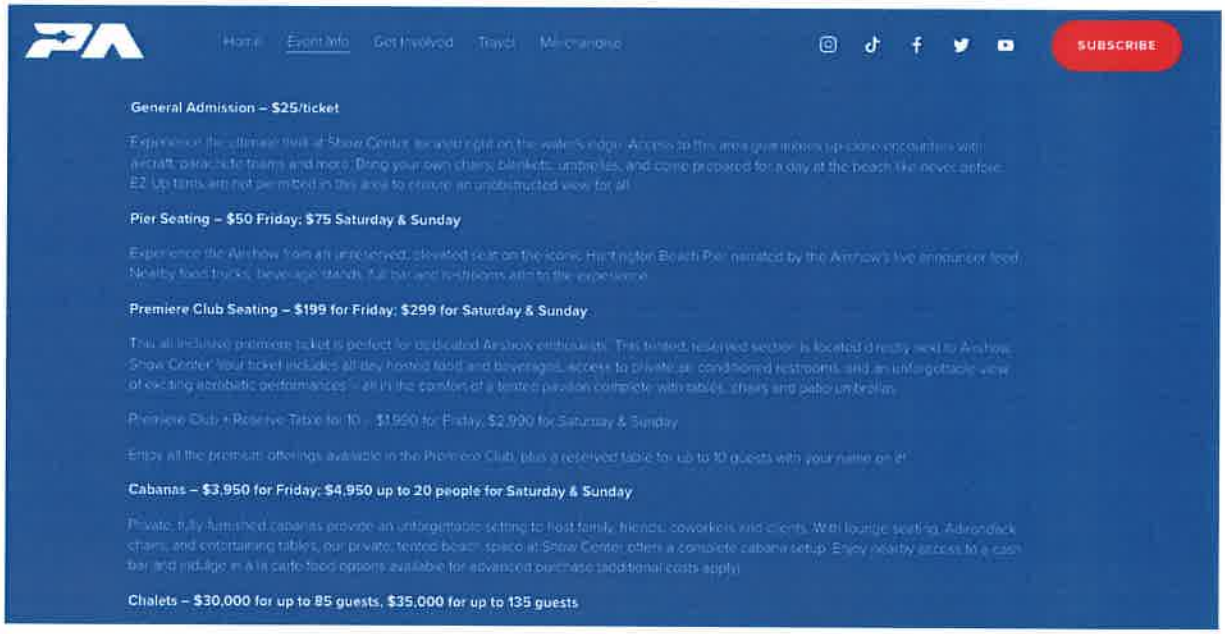
Home
Event Info
Get Involved
Travel
Merchandise
SUBSCRIBE
General Admission – $25/ticket
Pier Seating – $50 Friday; $75 Saturday & Sunday
Premiere Club Seating – $199 for Friday; $299 for Saturday & Sunday
Cabanas – $3,950 for Friday; $4,950 up to 20 people for Saturday & Sunday
Chalets – $30,000 for up to 85 guests, $35,000 for up to 135 guests

EXHIBIT 4

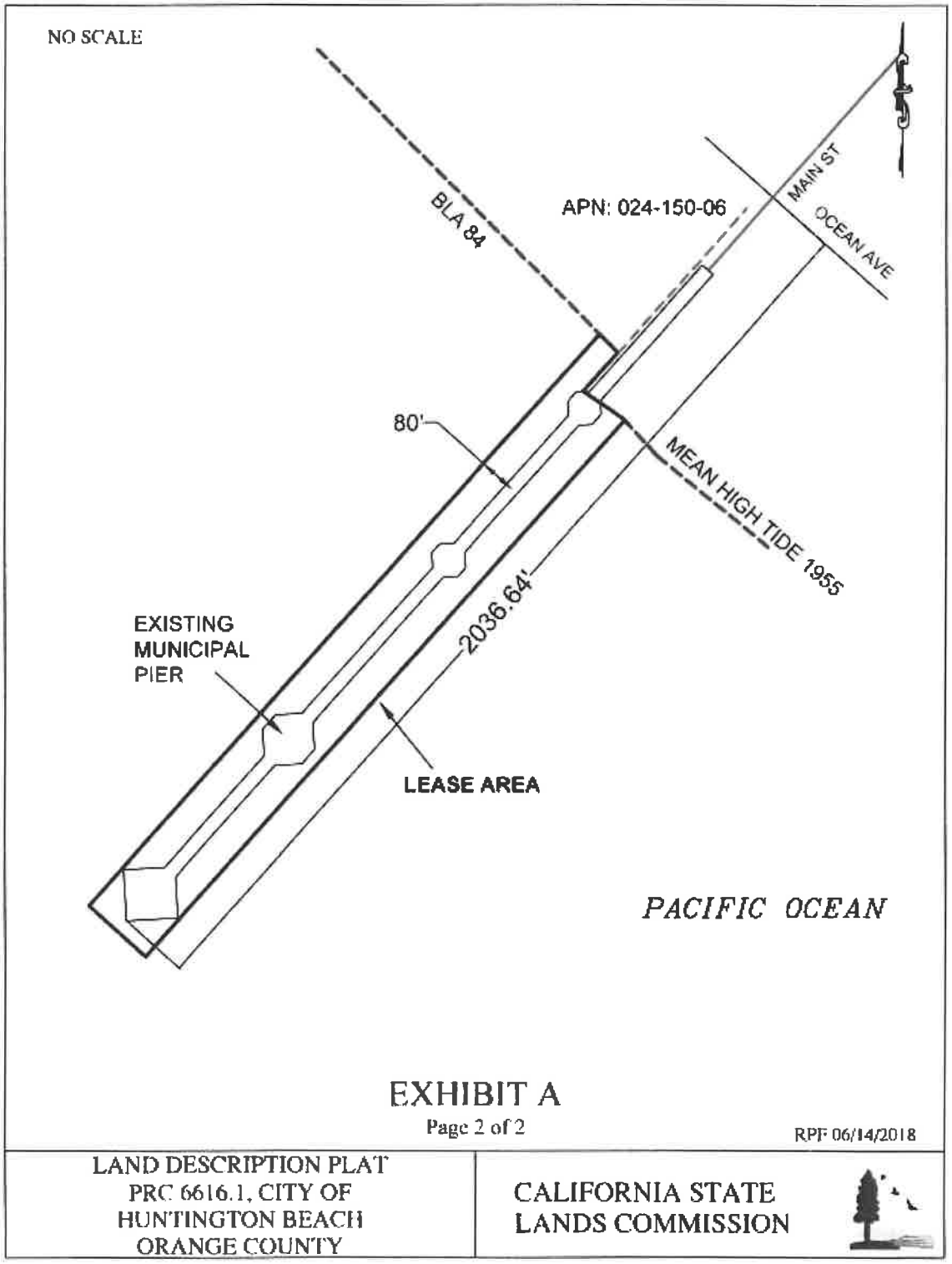

EXHIBIT A

Page 2 of 2

RPF 06/14/2018

LAND DESCRIPTION PLAT PRC 6616.1, CITY OF HUNTINGTON BEACH ORANGE COUNTY	CALIFORNIA STATE LANDS COMMISSION

EXHIBIT 5

WE'RE NOW OPEN IN SEPTEMBER! Visit us starting September 5th, 2021!

Huntington Beach
RV CAMPGROUND

Book Now

STANDARD RATE

Sunday–Thursday: $75 per night

Friday–Saturday: $100 per night

Holidays*: $100 per night

*Holidays include federal holidays, the week leading up to Thanksgiving and the week between Christmas and New Year's Day.

DISCOUNTS AVAILABLE

Senior (62+) / Disabled*

$10 discount per night

*Must show ID for Senior and/or valid placard for Disabled discount. Eligible registered camper must be the occupant of the site in order to receive the discount.

ADDITIONAL FEES

Additional fees include:

- Site lock fee: $10 per night *
- Reservation change fee: $10

Huntington Beach RV Campground (Day after Labor Day - May 31)

All campground information and reservations can be found at www.hbrv.org.

HUNTINGTON BEACH RV CAMPGROUND RATES	
Camper vehicle or auto with trailer	$75.00 per night (Sunday - Thursday)
	$100.00 per night (Friday - Saturday & Holidays*)
Seniors (62+) and campers with Disabled Person placard	$65.00 per night (Sunday - Thursday)
	$90.00 per night (Friday - Saturday & Holidays*)
Extra vehicle fee	$15.00 per calendar day
Reservation Cancellation Fee (Greater than 2-days prior to arrival date)	$25.00
Reservation Cancellation Fee (2 or less days prior to arrival date)	First Night's Daily Rate
Change Fee	$10.00
Site Lock Fee	$10.00 per night
*Holiday Rates: Thanksgiving Week (Sunday preceding Thanksgiving through Saturday night following Thanksgiving), Christmas Week (day preceding Christmas through New Year's Eve), Day preceding Veterans Day (observed), Martin Luther King Jr. Day, Presidents' Day, and Memorial Day.	

Contact us:

Phone: (714) 536-5281 (Option 2)
Email: hbrvcampground@surfcity-hb.org