

Staff Report 21

APPLICANT:

Orange County Flood Control District

PROPOSED ACTION:

Termination of a General Lease – Public Agency Use and Issuance of a General Lease – Public Agency Use and Dredging

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Lower Santa Ana River, Orange County.

AUTHORIZED USE:

Use and maintenance of two riprap flood control jetties, one riprap dike, and maintenance dredging in the Lower Santa Ana River.

TERM:

2 years, beginning October 21, 2021.

CONSIDERATION:

The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- County Ordinances.
 - Lessor and Lessee acknowledge that the leased area is public, sovereign land within the territorial boundaries of the County of Orange and within the jurisdiction of the Orange County Flood Control District and that the Orange County Flood Control District may enforce reasonable time, place, and manner restrictions on public use of the Leased Premises to protect public health, safety, and the environment.
 - Lessor agrees that Orange County Code of Ordinances sections 3-9-35, 9-1-40, 9-1-52 may be enforced on the Leased Premises. Lessor further

agrees that Orange County Code of Ordinances sections pertaining to public beaches and other public areas of unincorporated Orange County may be enforced on the Leased Premises to the extent that such sections are found in the future to apply to the Leased Premises and do not conflict with State law or the Public Trust Doctrine.

- Lessee must enforce Orange County Code of Ordinances sections 3-9-35, 9-1-40, and 9-1-52, and any sections pertaining to public beaches and other public areas found to apply to the Leased Premises in the future that do not conflict with State law or the Public Trust Doctrine.
- State enforcement in the Santa Ana River Mouth.
 - Lessee must not interfere with any enforcement by the California Department of Fish and Wildlife, California Department of Parks and Recreation, or any other agency's enforcement of applicable law or regulation in the Lease Premises and adjacent County-owned property (together, the Santa Ana River Mouth).
 - Lessee must not object to enforcement of its ordinances in the Santa Ana River Mouth by an authorized state enforcement agency unless a court rules that such ordinance does not apply to that area.
 - Lessee must not object and must accommodate, to the fullest extent possible, any current or future lease to a state or federal agency for environmental and public trust resource protection purposes over the same property as the Lease Premises.
- Lessee must collaborate and coordinate in good faith in any future applications and agreements for enforcement in the Santa Ana River Mouth. Applications and agreements for enforcement may include, but are not limited to, agreements with the California Department of Fish and Wildlife, California Department of Parks and Recreation, and the California Coastal Commission.
- Lessee must provide annual reports to Commission staff detailing County law enforcement efforts in the Santa Ana River Mouth.
- Terminate, effective October 21, 2021, Lease Number PRC 2171, a General Lease – Public Agency Use, issued to the Orange County Flood Control District.

BACKGROUND:

The mouth of the Lower Santa Ana River (River) is located between Huntington Beach State Park in the city of Huntington Beach, and the city of Newport Beach. The adjacent upland is unincorporated land within Orange County (County). The Applicant began conducting maintenance dredging activities in the River in 1990

to improve flood control capacity, and due to ongoing sediment deposition has continued to conduct dredging activities periodically since that time in order to ensure flood protection. In addition to dredging, the Applicant also maintains flood control jetties and a dike within the Lease Premises. A relatively small portion of dredged material is removed from sovereign land at the River mouth, with the majority of the material removed from the River channel inland and outside of the Commission's jurisdiction. During periods of non-dredging, the accumulation of sand within the flood control channel creates areas that have become popular with dog owners and is used as an informal off-leash dog park.

In May 2016, the County proposed to amend Section 4-1-45 of the Orange County Code of Ordinances to allow dogs in the River mouth. The County prepared an Initial Study/Negative Declaration (IP 16-234) analyzing the environmental impacts of the amendment. Several stakeholders, including the California Department of Parks and Recreation (Parks), California Coastal Commission (CCC), Santa Ana Regional Water Quality Control Board, and local environmental groups wrote letters expressing concern that the County's Initial Study/Negative Declaration did not discuss the impact the dog park would have on California Least Tern and Western Snowy Plover that are known to use the area for habitat. The County Board of Supervisors considered the proposed ordinance amendment on April 26 and October 25, 2016, but it was never approved.

The Huntington State Beach Least Tern Natural Preserve (Preserve), managed by Parks, is located adjacent and upcoast of the River. Dogs are not permitted on the State Beach (except for service dogs) and must be leashed within parking lots and multi-use trails. In the city of Newport Beach, dogs are never allowed on the beach or any beachfront sidewalk between 10 a.m. and 4:30 p.m., including the ocean front beaches and bay front beaches. Off-leash dogs are never allowed in any public spaces including parks and beaches.

County ordinances also prohibit dogs within public beaches (except for service dogs). The Applicant also maintains trespassing restrictions within their jurisdiction and control, including the Santa Ana River Flood Control Channel.

The Applicant maintains that its dog ordinances do not apply to the State-owned land. Specifically, the dog-leash requirement does not apply because the County does not consider the State-owned property to be "public property" (section 4-1-45), and dogs are not prohibited because the County does not consider the State-owned property to be a "public beach" (section 4-1-46).

Until recently, the County believed the limits of Orange County ended at the boundary of its upland fee parcel. The County now agrees that the boundary extends 3 miles into the Pacific Ocean, as described in Government Code section

23130, and that the Flood Control District trespassing ordinances (section 3-9-35) apply within the Lease Premises.

The California coast is a critical habitat for the Western Snowy Plover and the California Least Tern. Plovers are listed as “threatened” under the federal U.S. Endangered Species Act and are listed as a species of “special concern” under the California Endangered Species Act. California Least Tern is listed as “endangered” under both Federal and State laws.

Local environmental groups contacted Commission staff with concerns that the presence of off-leash dogs has and continues to threaten endangered and threatened bird species within the Lease Premises, including the Western Snowy Plover and California Least Tern. Staff consulted Parks, U.S. Fish and Wildlife Service, and the California Department of Fish and Wildlife (CDFW) to discuss the impact dogs have on birds at this location. In addition, staff also consulted local non-profits, including the Sea and Sage Audubon Society, Orange County Habitats, and Orange County Coast Keepers. State, Federal, and local organizations all indicated that the presence of dogs disturbs the foraging grounds of birds and severely degrades habitat area.

The Applicant has provided information detailing the County Sheriff's efforts to enforce County ordinances within the County's Flood Control Channel. However, these efforts have been limited to verbal warnings only, and no fines have been issued. In addition, the warnings have only applied to the County's Flood Control Channel, not land within the Commission's jurisdiction. Members of the public as well as staff from other State agencies indicate that verbal warnings have not been effective and have not reduced use within the Lease Premises.

On July 8, 2020, the CCC approved a County signage plan, including educational and “no trespassing” signage along the up-coast and down-coast rock jetties near the mouth of the River to protect sensitive bird species. CCC also approved an amendment to that permit on March 1, 2021, to add additional signs. The County's Coastal Development Permit (CDP) No. 5-02-031, that authorizes maintenance dredging of various outlets in the County, including the River Mouth expires in 2023.

Commission and CCC staff are exploring opportunities to fund additional CDFW law enforcement positions that would allow for more targeted and frequent enforcement within the Lease Premises and potentially the issuance of citations under both County and CDFW ordinances.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6303, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 22, 2009, the Commission authorized a 20-year General Lease – Public Agency Use to the Applicant for flood control jetties at the Lower Santa Ana River ([Item C26, October 22, 2009](#)). That lease expires May 28, 2027. The Applicant has requested that the lease be terminated and included in a new lease which will also include the Applicant's annual maintenance dredging activities.

The improvements include three structures - an approximately 600-foot-long western jetty, an approximately 530-foot-long eastern jetty, and an approximately 850-foot-long dike running between and parallel to the jetties at a distance of approximately 100 feet from the western jetty.

On August 9, 2016, the Commission authorized a 5-year General Lease – Dredging to the Applicant for maintenance dredging in the Lower Santa Ana River and deposition of dredged materials at a receiver site at North Beach in the city of San Clemente ([Item C31, August 9, 2016](#)). That lease expired on August 8, 2021. The Applicant is applying for a new General Lease – Public Agency Use and Dredging for maintenance dredging in the Lower Santa Ana River. Dredged materials are no longer deposited at the North Beach receiver site so it is not included in the application.

On September 30, 2021, Commission staff issued the County a Letter of Non-Objection for emergency sediment removal at the mouth of the River. County staff provided information, photos and water quality data showing detrimental impacts to plants and wildlife in the Santa Ana River Salt Marsh, including potential die-off of fish, plants, and habitat. To restore tidal flows, the Letter of Non-Objection permitted the County to excavate approximately 6,500-10,000 cubic yards of sand to create a 30-50-foot-wide channel to restore tidal flushing to the Santa Ana River Salt Marsh. The Letter of Non-Objection only allows emergency sediment removal up to October 21, 2021 and does not allow maintenance dredging as contemplated in the proposed lease.

In response to the October 2nd oil spill, offshore of Huntington Beach, the County obtained a waiver of a Coastal Development Permit to construct sand berms across the River mouth to protect onshore coastal habitats and resources. On

October 8th the Unified Command, including CDFW, advised the County that they could breach the berm at the River mouth to restore tidal flows. Work began to breach the berm on October 9th.

Maintenance dredging at this location removes built-up sand and encourages positive flow from the channel to the ocean. Uses along the River channel include wetlands, parks, and well-developed industrial, commercial, and residential property for many miles upstream. Periodic dredging to keep the River mouth open helps improve public safety and limits property damage by reducing flood risk. Additionally, the Huntington State Beach Least Tern Natural Preserve benefits from the dredging by reducing sand encroachment within the Preserve.

Until recently, the County had maintained that its Flood Control District trespassing ordinances (section 3-9-35) did not apply within the Lease Premises. The County is now willing to enforce this ordinance within the Lease Premises to protect public safety and the environment. Under the terms of the lease, the County must enforce its applicable ordinances in the Lease Premises, including no trespassing within the Santa Ana River Flood Control Channel. The application of this ordinance will restrict individuals and dogs from accessing the Lease Premises and reduce impacts to endangered and threatened bird species and their habitat. If funding for additional law enforcement through the CDFW becomes available, it would supplement County enforcement efforts at this location.

The proposed lease does not substantially interfere with Public Trust uses and is for a limited 2-year term. The dredging is intended to promote public health and safety by minimizing flooding threats. Further, staff believes the proposed lease terms provide a framework for continued protection of the Least Terns and Snowy Plovers, important Public Trust resources, from harassment due to the unregulated presence of unleashed dogs and other domestic animals. The limited 2-year lease term will allow the Commission to re-evaluate the effectiveness of this protection and enforcement framework and adaptively manage the situation accordingly.

CLIMATE CHANGE:

Climate change impacts, including prolonged drought, sea-level rise, more frequent and intense storm events, and flooding will likely affect the lease area, structures, and the activity of maintenance dredging.

Orange County, along with other parts of the state, has been in a severe drought for over 2 years, and stream flow for the Santa Ana River is below average, according to the [National Integrated Drought Information System](#) managed by the National Oceanic and Atmospheric Administration. Reduced stream flow can result in less sediment reaching the river mouth and may impact the timing of dredging

and the volume of sediment that needs to be removed for maintaining the open channel.

While the amount of fresh water reaching the river mouth is decreased during the drought, sea water levels are increasing annually at an accelerated rate. The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance in 2018* to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Los Angeles tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for Los Angeles

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 28, State of California Sea-Level Rise Guidance: 2018 Update

Note: Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels, combined with storms or extreme tidal events such as King Tides can produce increased wave heights and intensity, and wash more sediment into the river mouth channel, as well as debris. As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), in addition to sea-level rise, precipitation patterns are becoming more variable. Though the wet seasons are shorter, warmer atmospheric temperatures are generating more powerful storms that release greater amounts of rain, flushing high volumes of freshwater and sediment down the river channel in a short amount of time. These flash floods can cause excessive damage to the lease area structures and land depending on their force and frequency.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea-level rise.

CONCLUSION:

For the reasons stated above, staff believes the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the lease, the Applicant may be required to remove the flood control jetties and dike, and will not be authorized to conduct maintenance dredging. Upon expiration or prior termination of the lease, the Applicant also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. **Termination of the lease** is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Existing Structures:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

5. **Maintenance Dredging:** A Supplemental Environmental Impact Statement (EIS) prepared by the U.S. Army Corps of Engineers was used by the Orange County Flood Control District as a CEQA-equivalent document and approved on November 28, 1989, and an Addendum was prepared by the Orange County

Flood Control District and approved on April 29, 2016, for this Project. The California State Lands Commission staff has reviewed such documents.

The Mitigation Monitoring Program and a Statement of Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) were previously adopted by the Commission on August 9, 2016 ([Item 31, August 09, 2016](#)).

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers
California Coastal Commission
State Water Resources Control Board

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Structures: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Maintenance Dredging: Find that a Supplemental EIS was prepared by the U.S. Army Corps of Engineers, was used by the Orange County Flood Control District as a CEQA-equivalent document and approved on November 28, 1989, and an Addendum prepared for this project by Orange County Flood Control District and

approved on April 29, 2016, and that the Commission has reviewed and considered the information contained therein.

The Commission previously adopted the Mitigation Monitoring Program on August 9, 2016 ([Item 31, August 09, 2016](#)), and it remains in full force.

Determine that the project, as approved, will not have a significant effect on the environment.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that termination of the lease and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Terminate, effective October 21, 2021, Lease Number PRC 2171, a General Lease – Public Agency Use, issued to the Orange County Flood Control District.
2. Authorize issuance of a General Lease – Public Agency Use and Dredging to the Applicant beginning October 21, 2021, for a term of 2 years, for the use and maintenance of two riprap flood control jetties, a riprap dike, and maintenance dredging in the Lower Santa Ana River as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration is the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

EXHIBIT A

LEASE 9358

LAND DESCRIPTION

That certain parcel of tide and submerged lands adjacent to Fractional Section 19, Township 6 South, Range 10 West, San Bernardino Base and Meridian, in the County of Orange, State of California, described as follows: bounded on the north by the line of ordinary high tide of the Pacific Ocean; bounded on the east by the southwesterly prolongation of the westerly boundary of the City of Newport Beach, being also the southwesterly prolongation of the easterly line of Summit Street as per map of Seashore Colony Tract, recorded in Book 7, Page 25 of Miscellaneous Maps, in the Office of the County Recorder of said County; bounded on the northwest and southwest by a line described as follows: commencing at a point on the easterly line of Rancho Las Bolsas, as said line is shown on a map filed in Book 28, Page 17 of Record of Surveys in the Office of said County Recorder, said point being described on said map as "Fd.1" iron rod Sta. 4+28.35"; thence South 15°48'40" West along said Rancho line, 202.47 feet to a point described on said map as "Sta. 6+30.82 Set 1" I.P.", said point being also at the intersection of the southerly line of the Pacific Electric Railway Company right of way as shown on said map; thence North 53°58'30" West along said southerly right of way line, 4.46 feet; thence South 36°01'30" West, 374.00 feet; thence South 24°59'14" West, 650.00 feet; thence South 65°00'46" East to said southwesterly prolongation of the westerly boundary of the City of Newport Beach.

APPROVED

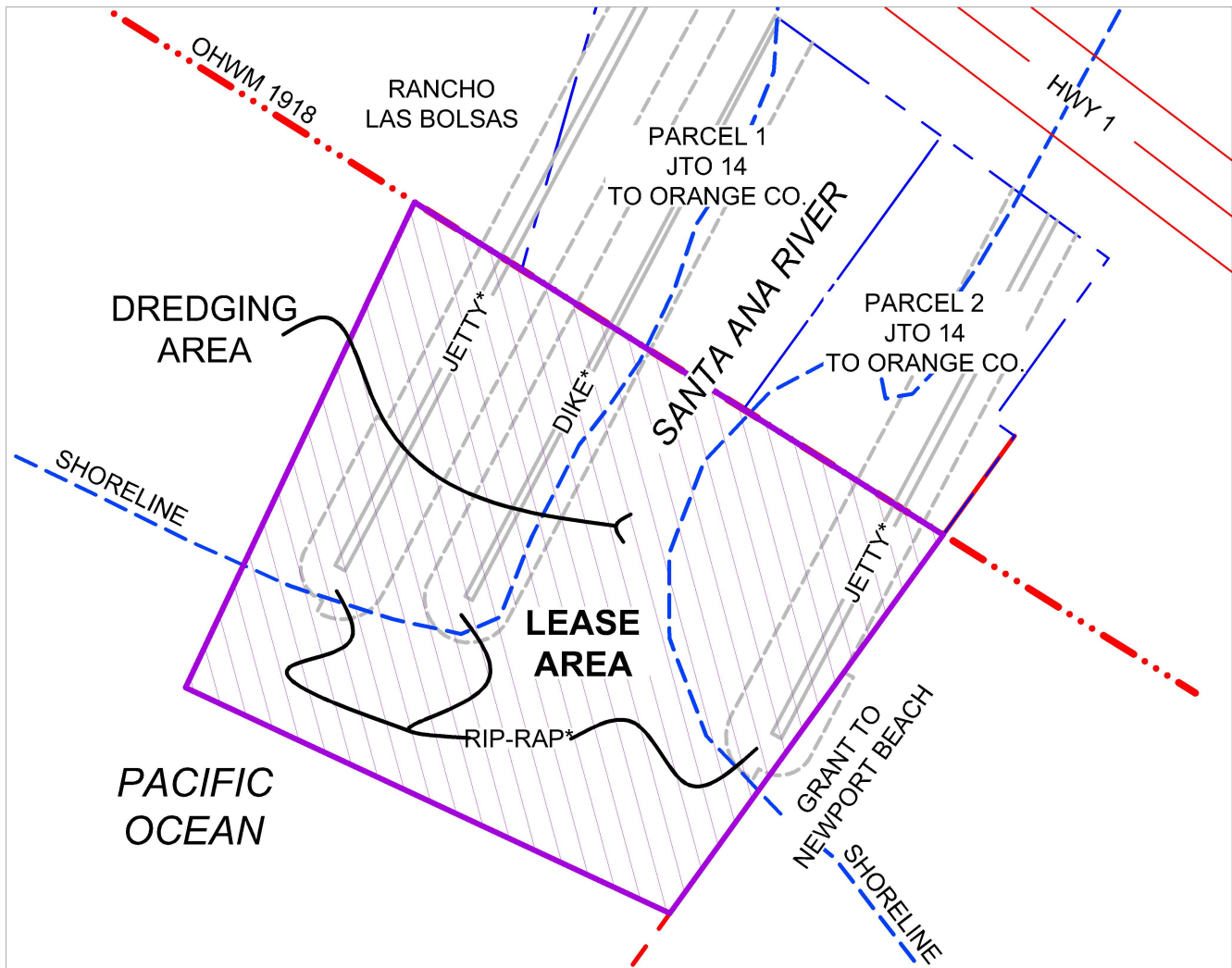
John D. Pavlik Date: 9/28/09
John D. Pavlik L.S. 5168
Expiration Date: June 30, 2011



*The above description is a duplicate of that original description prepared by John D. Pavlik, LS 5168 on 9/28/09 as found in PRC file 2171, Calendar Item 26 approved on 10/22/09.

NO SCALE

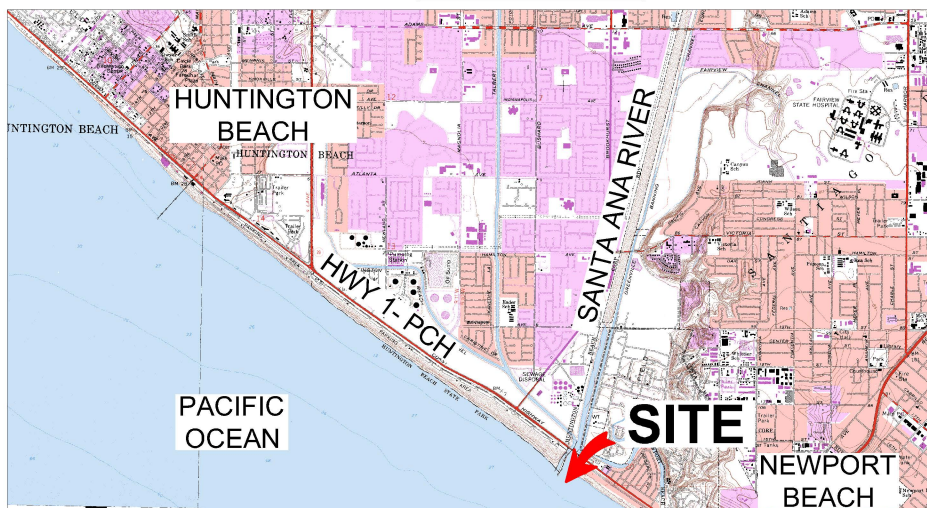
SITE



Santa Ana River at the Pacific Ocean

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

LEASE 9358
ORANGE CO. FLOOD
CONTROL DISTRICT
GENERAL LEASE - PUBLIC
AGENCY USE & DREDGING
ORANGE COUNTY



MJF 9/23/2021