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August 13, 2015

TO: California Coastal Commission and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: Enforcement Program Progress Report (August 2015) -  
Coastal Act Section 30821 Implementation

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## Introduction

In June of 2014, the Coastal Act was amended to provide the California Coastal Commission the statutory authority to impose administrative penalties for violations of the Coastal Act's provisions regarding public access. This change was effectuated by the addition of Public Resources Code Section 30821.

Section 30821 was added as part of a 2014 budget trailer bill, through the leadership of Assembly Speaker Toni Atkins. Earlier proposals to establish such an authority would have provided for administrative penalties for all violations of the Coastal Act, but the final bill was narrowed to apply only to public access-related violations. In the year since Section 30821 became law, the Commission's Enforcement program has developed and begun implementing a program to identify and address violations of the Coastal Act's public access provisions using this authority. As part of this effort, the Enforcement program has ramped up its investigation, outreach, and correspondence on identified access-related cases. Additionally, within this first year, we have already managed to resolve many of these cases. We hope that in the next year ahead, we can resolve an even larger number of public access cases under Section 30821.

Our initial experience is that in a significant number of cases, Section 30821 has led to substantial compliance and restored public access in a far faster time frame than might typically be accomplished absent this authority. Indeed, in the early application of Section 30821, we have been able to bring many cases into compliance quickly, without requiring the formal step of the imposition of penalties. That outcome is consistent with the original goals of Section 30821, in which the possible imposition of administrative penalties was always intended both to provide a deterrent to violations occurring, and also, even when violations did occur, to provide an

incentive for violators to resolve existing violations more expeditiously. This was the very purpose of the notice provisions included in Section 30821 and the reason for assessing penalties on a daily basis: to both reduce violations whenever possible and to provide an incentive to resolve these cases as expeditiously as possible.

That said, not all of the Commission's public access cases are easy to resolve. In some cases, the use of Section 30821 has still not led to resolution. These include some older cases in which resolution has long proven difficult because of a variety of complicated issues. The Enforcement program anticipates bringing one of these cases to a hearing before the Commission to impose administrative civil liability in the near future. This progress report, however, focuses on the overall numbers for our Section 30821 efforts thus far, as well as providing a brief summary relevant statutory background as a backdrop to the case discussion.

## **Background Information on the Statutory Provision**

The Commission has long had the authority to seek the imposition of civil liability for violations of the Coastal Act through the courts, pursuant to Coastal Act Sections 30805, 30820, 30821.6 and Section 30822. Most applicable to the discussion of administrative penalties are the provisions of Section 30820. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a Coastal Development Permit (CDP) or that is inconsistent with any CDP previously issued by the Commission. Section 30820(a)(1) provides for liability in an amount not to exceed \$30,000 and not to be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development. Civil liability under Section 30820(b) is to be imposed in an amount not less than \$1,000 per day and not more than \$15,000 per day, for each violation and for each day in which the violation persists.

The new Section 30821, attached as **Exhibit 1**, allows the Commission to impose civil liability administratively, without obtaining a judicial order, after a public hearing, and applies in cases involving violations of the Coastal Act's public access provisions. This provision is similar to those provided in many other state statutes, and provides the Commission with the type of authority long used by many other state agencies.

Section 30821 applies to instances of Coastal Act violations that that adversely affect public access, including violations of CDP conditions designed to protect or promote public access. Under Section 30821(b), the Commission may impose administrative penalties by a vote of the majority of Commissioners at a noticed Commission hearing, in compliance with the sections providing for the issuance of Cease and Desist Orders, Restoration Orders or for the recordation of Notices of Violations of the Coastal Act (Section 30810, 30811, or 30812).

The maximum amount of the penalty that the Commission can impose under Section 30821 is based on 75% of the civil penalties provided for in civil litigation under Section 30820(b), yielding a maximum of \$11,250 per day, for each violation. As in the original judicial penalty provisions in the Coastal Act, the new section assesses penalties on a daily basis, to provide alleged violators the incentive to resolve their violations as quickly as possible. Unlike judicial penalties, however, Section 30821 has a five-year cap on accrual of the administrative penalties.

The amount of penalties is to be determined taking into account the current factors in Section 30820(c) for determining civil liability, which include: the nature, circumstance, extent and gravity of the violation; the possibility of restoration; the sensitivity of the resources impacted; the cost to the state of resolving the violation; the degree to which the violator has voluntarily resolved the violation, their prior history of violations, their degree of culpability and the economic profits flowing from the violation; and “such other matters as justice may require.”

Section 30821 also has provisions to address some *de minimis* violations, and to provide a “grace period” in certain specified instances. First, under Section 30821(f) there is a general statement that the intent of the statute was that it not be used for violations that are unintentional, minor and cause only *de minimis* harm if the violator acts expeditiously to correct the violation. Second, in certain instances, Section 30821(h) also provides a 30-day window in which the violation may be cured and administrative penalties thereby avoided. It should be noted that the 30-day “cure” period does not apply to violations of a previously issued CDP or to violations that require a CDP to correct. In many cases over the past year, Enforcement staff has offered such a “grace period” even when it was not legally required, in order to allow time for resolution and to encourage voluntary resolutions, in part because this is a new statutory authority.

Section 30821 also has some provisions to address the possibility that a party may fail to pay a penalty imposed by the Commission. First, under 30821(e), if a person fails to pay an imposed administrative penalty, the Commission may record a lien on the property in the amount of the penalty assessed by the Commission. Second, 30821(d) also provides that if a person fails to pay an imposed administrative penalty, fails to comply with Orders issued by the Commission, or challenges the Commission actions (orders or administrative penalties) in court, the Commission can turn to the courts to enforce those requirements and to seek any other relief authorized by the other enforcement provisions of the Coastal Act.

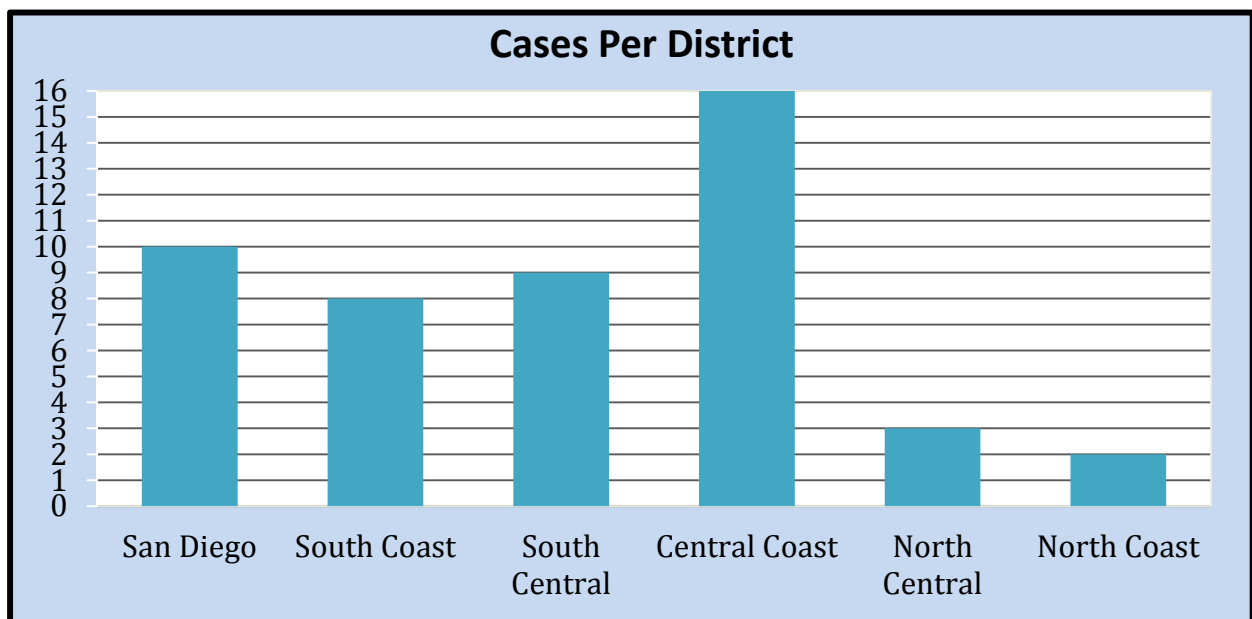
Two other provisions of Section 30821 are also important to note with regard to the scope of the new authority. First, under 30821(g) these administrative penalties cannot be imposed on local governments, special districts, or other agencies, when acting in a legislative or adjudicative capacity. Lastly, under 30821(d), a person shall not be subject to both monetary civil liability under the administrative provisions of Section 30821 and monetary civil liability imposed by a court for the same Coastal Act violation.

## Implementation Overview

Over the first year, Commission enforcement staff worked as quickly as possible to identify, investigate, and to provide a written or oral indication of the applicability of Section 30821 to potential public access violations under which Section 30821 would apply, and to meet with parties to seek resolution. We have applied the provisions of the new authority both to newly identified access-related cases, as well as to some of the access-related cases that had been opened previously, as far as resources permitted. Although this obviously does not include all of the previously opened public access violations, as of August 10, 2015, the Enforcement program had identified and begun to apply the provisions of Section 30821 in forty-eight access-related cases. Eleven of these were newly reported and opened in 2015.

### Geographic Distribution—Cases Per District

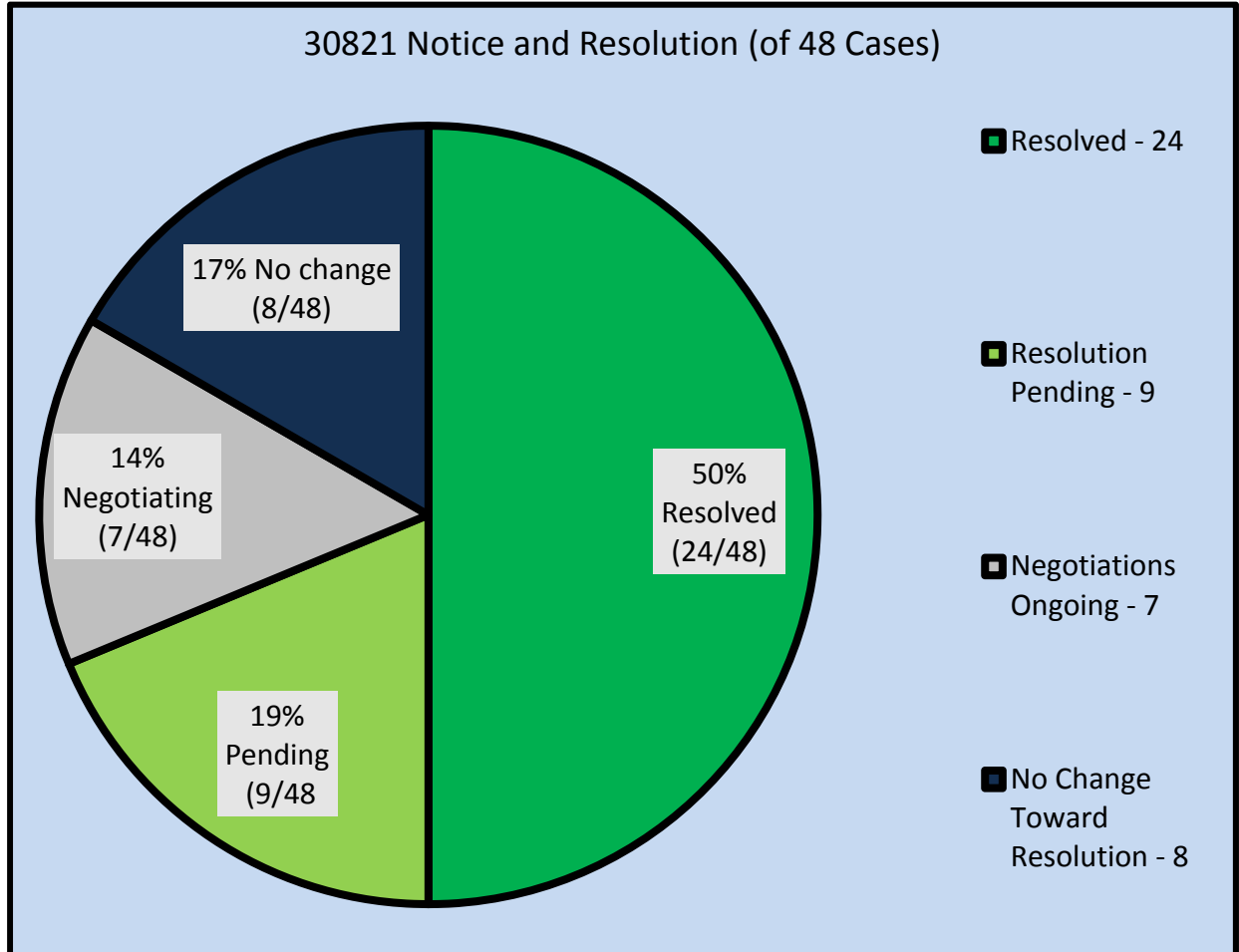
These cases arose in locations across the state, though for various reasons including geography, population density, development patterns, and Commission staffing, more access-related cases were identified, at least initially, in southern California. The number of Section 30821- related cases arising per Commission district in the past year ranged from two new cases in the North Coast district to sixteen in the Central Coast district. In addition to these districts, there are ten such cases in the San Diego district, eight in the South Coast district, which covers central and southern Los Angeles County and all of Orange County, nine in the South Central Coast district, which encompasses Malibu and parts of northern Los Angeles County, as well as Ventura and Santa Barbara counties; and three in the North Central district. The Commission recently hired a district enforcement staff officer for the North Coast, based in Arcata, which is our first enforcement staff in that office in more than ten years. Thus, we will be able to better address access cases (as well as other cases generally) in the North Coast in the future.



### Resolution Success Percentages

It should be noted that we are working on these cases daily, and the numbers and percentages change with each new case opened and each case resolved. This analysis is a snapshot of the current status of the cases and will change as we move forward, but still provides an interesting picture of the effectiveness of the new provision, and allows us to make some initial observations based on the first year of implementation.

Of the forty-eight cases in which we have informed a potential violator of the applicability of Section 30821, in forty cases, Enforcement staff sent a written notice letter advising the party of the applicability of the administrative penalties provisions. In seven additional cases, commission staff verbally advised the alleged violator of Section 30821's applicability, and that has been enough to start negotiations towards compliance. In one other case, Commission staff worked with the local county to resolve the case together.



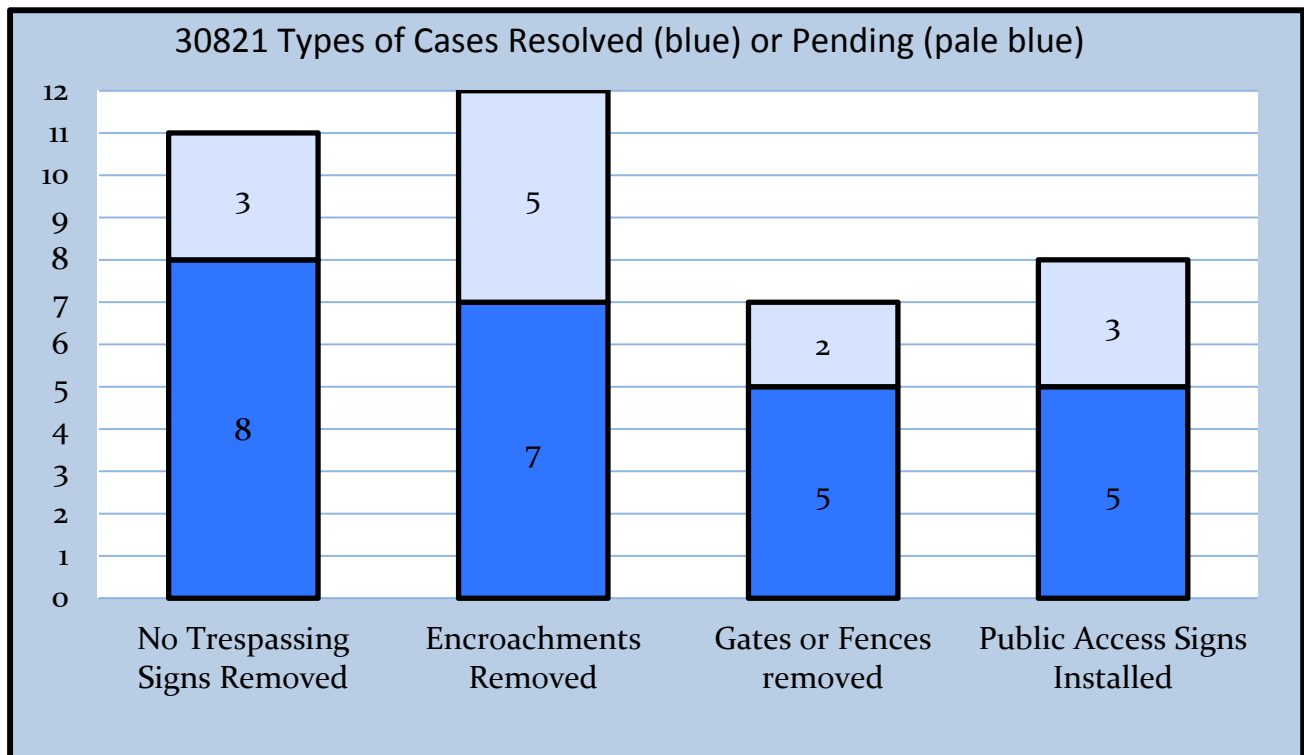
Out of the forty-eight cases, twenty-four, or fifty percent, have been “resolved”— meaning that an agreement to resolve the violation was reached and the violations were principally or completely resolved. Additionally, in nine more cases, Commission staff has secured an

agreement for the resolution of the violation, and the work required is either in progress or due to begin shortly. For the purposes of this status report, and in order to track and distinguish these cases from the cases where the violation is more completely resolved, these cases have been labelled “resolution pending.” Thus, in total, in thirty-three cases, or sixty-nine percent of cases in which notice of Section 30821 was provided, the case is either resolved, or Commission staff anticipates that they are soon to be resolved.

Furthermore, in seven additional cases, Commission enforcement staff is in active negotiations and is hopeful that resolution will soon follow. This means that in forty of the forty-eight relevant cases being addressed herein, which amounts to eighty-three percent, we have either had resolution or are actively working on and continue to move positively towards resolution.

### Types of Cases

The cases resolved so far include a sampling of some of the types of public access cases seen by the Commission’s enforcement unit. There are a broad variety of cases involving access arising under the Coastal Act, and they in turn involve a myriad of issues, but for the purposes of this report, we have grouped the cases addressed so far into a few illustrative categories. This sample is based on the twenty-four cases we have resolved so far and the nine cases in which the final resolution is pending but access has been essentially restored. (Each case may have more than one type of violation so the numbers below do not add up to thirty-three.)



In our set of resolved and pending-resolution cases to date, we have eleven cases in which a no-parking or no-trespassing sign was removed; twelve cases in which physical encroachments (not including fences) blocking a public's right of way were removed; seven cases involving the removal of gates or fences blocking a public accessway; and eight cases in which public access signs or amenities had been required by a permit, and had not been installed, but are now, or shortly will be, in place directing the public to their points of coastal access.

### **Unresolved Cases**

In eight cases, the assertion of Section 30821 has not yet brought the violation to a resolution, and in some, the alleged violators appear to remain opposed to informal resolution of the case. Even in these cases, of course, Commission staff has continued to attempt to resolve the matter with the alleged violators. However, in these cases, at least thus far, Section 30821 has not resulted in a resolution in our negotiations.

### **Elevating Cases to Headquarters Enforcement Unit for Formal Action**

Of these eight unresolved cases, four cases have been with our Statewide Headquarters Enforcement unit for years, have long resisted resolution and continued to do so even after Section 30821 was invoked, and can be expected to remain difficult. The other four of these unresolved cases are new cases, one of which has just been elevated to the headquarters level and three of which staff are in the process of "elevating" to the Statewide Headquarters staff in anticipation of an eventual formal Commission hearing.

As noted above, a significant number of the access-related cases are resolving, and settling rapidly, at the district level, as opposed to being elevated to the Statewide Headquarters unit. In the vast majority of cases, just the leverage provided by the potential for administrative penalties, and the work of district staff, has resulted in compliance with the Coastal Act, including with the conditions of previously issued CDPs.

For those that are not resolved informally, however, we assign the case to Headquarters Enforcement staff to bring to formal hearing, and as noted above, of the access cases, we currently have five cases that are with our Headquarters unit. We anticipate that one of these cases will be brought to the Commission for formal action on the possible imposition of administrative penalties in the near future.

Such a hearing will follow the general procedures used in other enforcement proceedings. The hearing will also include the presentation of staff findings on the matter, including finding to address the relevant issues under Section 30821. The staff findings will also provide an analysis of the factors noted at the beginning of this report found under Section 30820(c) that are in turn cited by 30821 as relevant for determining the amount of the liability.

## **Conclusion—Experience Thus Far**

### 1. We have been able to resolve a relatively high percentage of access-related cases using the potential for imposition of administrative penalties as an incentive.

So far, of the 48 cases in which the Commission's new authority has been invoked, 69% (33 cases) have been resolved or resolution is substantially complete, and in 83% (40 cases) there has been resolution or significant movement towards resolution. Although the total capacity for resolving cases is constricted by a number of factors, especially critical lack of staff resources, and many more complicated cases remain open for years of monitoring, the number of resolved access cases represents very significant progress on public access cases. By reference, although this is during a period when there has been particular emphasis on access cases, over the same time period of July 2014 to July 2015, the total number of enforcement cases newly opened was 146, bringing the total to 2,173 total open cases statewide. During this period, 31 cases, or 1.4% of all of the open cases—not just access cases—were formally closed. This number is low, and it chiefly reflects the fact that we have so many backlogged cases that exceed our staff capacity. It also reflects the fact that many of the other cases are long term projects often requiring years of monitoring, include complex issues and multiple parties, and include cases with recalcitrant alleged violators.

Another indication that 30821 has resulted in resolving more cases is a comparison to the access cases resolved in prior years. An estimate based on cases opened and closed from July 1, 2004 to July 1, 2014, indicates that historically we have resolved approximately 4 to 5 access-related case per year over that decade. Collectively, the available information clearly illustrates the general observation that we have been able to resolve a higher percentage of those cases in which we were able to cite the potential for administrative penalties than we were able to resolve cases without this option.

### 2. The cases in which 30821 has been invoked have been resolved in a significantly shorter amount of time than typical cases where administrative penalties do not apply.

Overall, for the cases that we have resolved statewide in the past year, the average number of days from a letter citing Section 30821 to the resolution of the violation has been 39 days. This compares extremely favorably to the time it took historically to resolve access cases. For instance, we can compare that average time to historical estimates in two districts in which many of our access cases are located: the San Diego and South Coast districts. In San Diego, we estimate that the average time of a normal resolution of an access-related case (that is, the time elapsed between a case being opened and resolution) in the ten years previous to when Section 30821 was enacted was 439 days. In the South Coast district, the average time of a resolution of an access case in the two years prior to the effective date of Section 30821 was 180 days.



As we can see, cases that might once have taken years are now being resolved significantly faster. Another way to illustrate the effectiveness of Section 30821 in both resolving cases and doing so more quickly is to use the example of a San Diego access case that had been open for a long time before Section 30821 became law. That case had been open and unresolved for 1,906 days before the letter citing 30821 was sent in October of 2014. Within ten days after that letter was sent, the property owner had agreed to resolve the violation and submitted an access signage plan. Similarly, a case in Santa Cruz had been open for 3,491 days before a letter referencing Section 30821 was sent in April of 2015. Within 40 days of that letter, the case was resolved and full access restored. Obviously, these cases were not resolved merely with a letter (we are using that as a merely as a measure to calculate the length of time resolution took), but the legal authority of the Commission to assess penalties administratively was critical to providing the incentive to resolve these cases at long last.

Moreover, the total resolved cases included in the report include a number of complicated cases, which serves to make the average resolution time higher. For the more straightforward cases in which improper “no trespassing” signs were removed or missing public access signs were put up, many were resolved in less than 20 days.

### **Future Use**

We also plan to expand the use of 30821 over time, as resources permit. For example, we are planning on conducting more research into commission records, in order to identify public access-related conditions in previous permits, and to generally expand our investigation and identification of additional public access violations. And in order to maximize the deterrent effect of this provision, we are also working to increase the exposure of our public access enforcement program through our updated website, media outreach, and other efforts to raise the public knowledge of this significant new tool the Commission has.

Although there is still much that remains to be done, the experience thus far has been that this new provision is extremely effective and has already borne fruit in the form of increased public access up and down the coast.

## **PUBLIC RESOURCES CODE SECTION 30821**

30821. (a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of the public access provisions of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

(b) All penalties imposed pursuant to subdivision (a) shall be imposed by majority vote of the commissioners present in a duly noticed public hearing in compliance with the requirements of Section 30810, 30811, or 30812.

(c) In determining the amount of civil liability, the commission shall take into account the factors set forth in subdivision (c) of Section 30820.

(d) A person shall not be subject to both monetary civil liability imposed under this section and monetary civil liability imposed by the superior court for the same act or failure to act. If a person who is assessed a penalty under this section fails to pay the administrative penalty, otherwise fails to comply with a restoration or cease and desist order issued by the commission in connection with the penalty action, or challenges any of these actions by the commission in a court of law, the commission may maintain an action or otherwise engage in judicial proceedings to enforce those requirements and the court may grant any relief as provided under this chapter.

(e) If a person fails to pay a penalty imposed by the commission pursuant to this section, the commission may record a lien on the property in the amount of the penalty assessed by the commission. This lien shall have the force, effect, and priority of a judgment lien.

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

(g) "Person," for the purpose of this section, does not include a local government, a special district, or an agency thereof, when

acting in a legislative or adjudicative capacity.

(h) Administrative penalties pursuant to subdivision (a) shall not be assessed if the property owner corrects the violation consistent with this division within 30 days of receiving written notification from the commission regarding the violation, and if the alleged violator can correct the violation without undertaking additional development that requires a permit under this division. This 30-day timeframe for corrective action does not apply to previous violations of permit conditions incurred by a property owner.

(i) The commission shall prepare and submit, pursuant to Section 9795 of the Government Code, a report to the Legislature by January 15, 2019, that includes all of the following:

(1) The number of new violations reported annually to the commission from January 1, 2015, to December 31, 2018, inclusive.

(2) The number of violations resolved from January 1, 2015, to December 31, 2018, inclusive.

(3) The number of administrative penalties issued pursuant to this section, the dollar amount of the penalties, and a description of the violations from January 1, 2015, to December 31, 2018, inclusive.

(j) Revenues derived pursuant to this section shall be deposited into the Violation Remediation Account of the Coastal Conservancy Fund and expended pursuant to Section 30823.