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# TH9

**TO:** California Coastal Commission and Interested Parties

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**DATE:** February 2, 2018

**SUBJECT:** Enforcement Program Progress Report February 2018:  
Coastal Act Section 30821 Implementation

## **Introduction**

On July 1, 2014, the California Coastal Act was amended to add Public Resources Code Section 30821, which provided the California Coastal Commission (“Commission”) with the authority to impose penalties administratively for public access violations of the Coastal Act. Section 30821 was added as part of a budget trailer bill, through the leadership of then-Assembly Speaker Toni Atkins. Earlier proposals to authorize the imposition of administrative penalties would have given the Commission the authority to impose such penalties for all violations of the Coastal Act, but the final bill was narrowed to apply only to public access-related violations. In the first year after enactment, Commission staff developed and began to implement a program to address public access violations of the Coastal Act using Section 30821. Since then, we have continued to identify more public access cases, respond to new reports of public access violations, and work to resolve cases quickly.

In these early years of using the administrative penalty authority, we have been able to resolve significant numbers of those cases quickly and, in the vast majority of cases, amicably. The result of this has been obtaining compliance with the Coastal Act and restoration of public access much more quickly than had been the case prior to this authority. And significantly, we have been able to resolve many cases and restore public access not only quickly, but in many cases without requiring a formal hearing or the imposition of penalties at all. This is consistent with the original, stated goal of the administrative penalty authority, to provide a deterrent to violations occurring in the first place, and when they do, to provide an incentive for violators to resolve violations much more quickly. This is the reason for the notice provisions included in 30821, and for assessing penalties on a daily basis—both to reduce violations and to provide an incentive to resolve cases quickly whenever possible.

Having said that, not all cases can be informally resolved. In some cases, the resolution requires formal action by the Commission to approve or impose an administrative penalty, or to authorize

removal, restoration or mitigation work to be performed under a Cease and Desist or Restoration Order. Therefore, Commission staff also developed a process to bring Section 30821 cases to formal hearings before the Commission. In some cases, through this process, the Commission has approved settlements of significant public access violations and Section 30821 penalties; and in one case, when a settlement was not reached, the Commission imposed a significant administrative penalty on responsible parties for their public access violations.

The addition of Section 30821 to the Coastal Act reflects the Legislature's support for the idea that maximum coastal public access is a core mission of the Commission and that there is a continuing need to secure compliance with the Coastal Act's public access and recreation provisions. The Commission's enforcement program has addressed access in a number of contexts, not only by addressing violations that hinder access, but also by enforcing Commission public access permit conditions and by obtaining funding for public access projects, public land donations, and numerous additional public access easements as part of the resolution of Coastal Act violations. Clearly, our work on access cases is directly relevant to our commitment to environmental justice and to providing maximum coastal access and protecting the rights of all Californians across income and ethnic groups to have secure coastal access.



Exhibit 1: Multiple resolutions under Section 30821 removed impediments to public access like this coastal viewing and parking area in Trinidad that had been blocked by a private gate.

The administrative penalty authority has greatly enhanced the ability of the Commission to secure compliance with the Coastal Act and to protect the ability of all Californians to access and recreate along the entire stretch of the California coast. For a few case examples:

- In Trinidad, a private gate blocked the entirety of a public road preventing access to a state recreation area and views of a coastal lagoon. Using its authority under Section 30281, the Commission was able to quickly have the gate removed and public access restored.

- In Gualala, the Commission secured the removal of a private gate that was preventing the public from reaching an area where the public had historically launched canoes and kayaks.
- In Santa Cruz, the Commission achieved the removal of numerous, illegal, private, no-parking signs that severely limited the public's ability to access the coast at Pleasure Point.
- In San Luis Obispo and Monterey, the Commission obtained the removal of encroachments blocking public easements and compliance with Commission permit conditions requiring public amenities such as public benches.
- In multiple locations in Malibu, the Commission required blockages such as fences and gates to be removed from public accessways, required the placement of "Coastal Access" signs informing the public of the existence of coastal access points, and compelled the cessation of private beach membership fees and the use of private security guards who discouraged public recreation on beaches.



Exhibit 2: Many actions under Section 30821 resulted in reopening public accessways such as this one in Escondido Beach, as well as the installation of public access signage.

- In Escondido Beach, the Commission was able to halt the use of security guards who restricted or prevented public beach use.
- In Venice and Playa del Rey, unpermitted concrete walls and slabs that impaired public recreation areas were removed.
- In Santa Monica and Laguna Beach, Section 30821 was utilized to obtain the removal of encroachments and no trespassing signs blocking the public's use of sandy beach areas.
- In San Diego, multiple public easements were reopened by requiring removal of fences, gates, or encroachments.

These are just a few examples of the many resolutions of public access violations the Commission has achieved in the few years since Section 30821 was added to the Coastal Act. Throughout the state, Section 30821 is proving to be a powerful tool to address and remedy public access violations of the Coastal Act.



Exhibit 3: Section 30821 was utilized to remove many impediments to public access and recreation, such as this private fence in Malibu Lagoon State Beach.

### **Summary of Commission Experience with Administrative Penalties**

In summary, and as we will discuss further herein, because of the Commission's authority under Section 30821, in the majority of public access cases staff are pursuing under the Section 30821 authority, we have been able to achieve a relatively quick resolution of public access violations. These resolutions have reopened public accessways, removed impediments to public access, secured compliance with Commission public access permit conditions, and resulted in the development of additional public access and recreational amenities. These resolutions have been secured in a far shorter time frame than the Commission was historically able to achieve when resolving violations without administrative penalty authority. We have compared the time it has taken to resolve access cases using this authority to both the time it took to resolve access cases prior to the new authority, and the time it took to resolve other types of violation cases not covered by the administrative penalty provisions. In the vast majority of cases, merely providing notice of the violation and the applicability of Section 30821 (along with careful follow up) led to a rapid resolution and compliance with the Coastal Act, even without the Commission imposing penalties at a formal Commission hearing.

That success trend is consistent with the original intent of Section 30821, as well as with the creation of an administrative penalty authority generally, in that the possible imposition of administrative penalties is an incentive for violators to resolve existing violations expeditiously. Indeed, this intent was also the motivation behind providing a brief cure period in the statute that, under certain circumstances, allows violators to promptly resolve the violation without being subject to a penalty under Section 30821. This was also one of the reasons behind the assessment

of penalties on a daily basis—to provide a greater incentive to resolve cases as expeditiously as possible and avoid the accumulation of substantial penalties.

Another important rationale for Section 30821, and administrative penalties generally, is the deterrence effect it has on violations occurring in the first place. We believe this has had a significant impact already and will greatly help to reduce public access violations of the Coastal Act in the future. Thus, the Commission’s administrative penalty authority has worked to greatly increase the resolution of public access cases, the speed at which staff can resolve those cases, and to deter additional public access violations from occurring.

### **30821 Cases Brought to Hearing**

Against the background of successfully resolving many cases without imposing any penalties, the Commission has taken five (4 settlements and 1 unilateral penalty) very significant public access violation cases to a formal Commission hearing to impose or address potential Section 30821 penalties. All of these cases involved significant violations and in all but one case, the parties involved became willing to resolve the matter after they learned of Section 30821 and the potential penalties the Commission could impose on them.

In four cases, the Commission approved amicable settlements that resulted in significant payments to resolve liability for public access violations, payments that will bring substantial gains for the public and their ability to access and recreate on the California coast. In some cases, these “Consent” settlements also brought about the opening of significant portions of the California coast to the public and the placement of formerly private land into public ownership. After more than three years of implementation, the Commission has actually only imposed penalties unilaterally in one matter, which involved a long-standing violation that blocked a public access easement and a party unwilling to settle the matter and open up the public easement. Commission staff had worked to resolve the violation for more than seven years before Section 30821 was enacted. After Section 30821 was enacted and staff provided notice to the party, they continued to negotiate for two more years, but as the violator still refused to resolve the violation, staff brought the important matter to the Commission to impose a Cease and Desist Order and Administrative Penalty.

### **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. 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 or other governmental entities implementing the Coastal Act. 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 such 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 such development when the person does so intentionally and knowingly. 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.

Section 30821, attached as [Appendix A](#), 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 affect public access, including violations of CDP conditions designed to protect or promote public access.<sup>1</sup> 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 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.<sup>2</sup> 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."<sup>3</sup>

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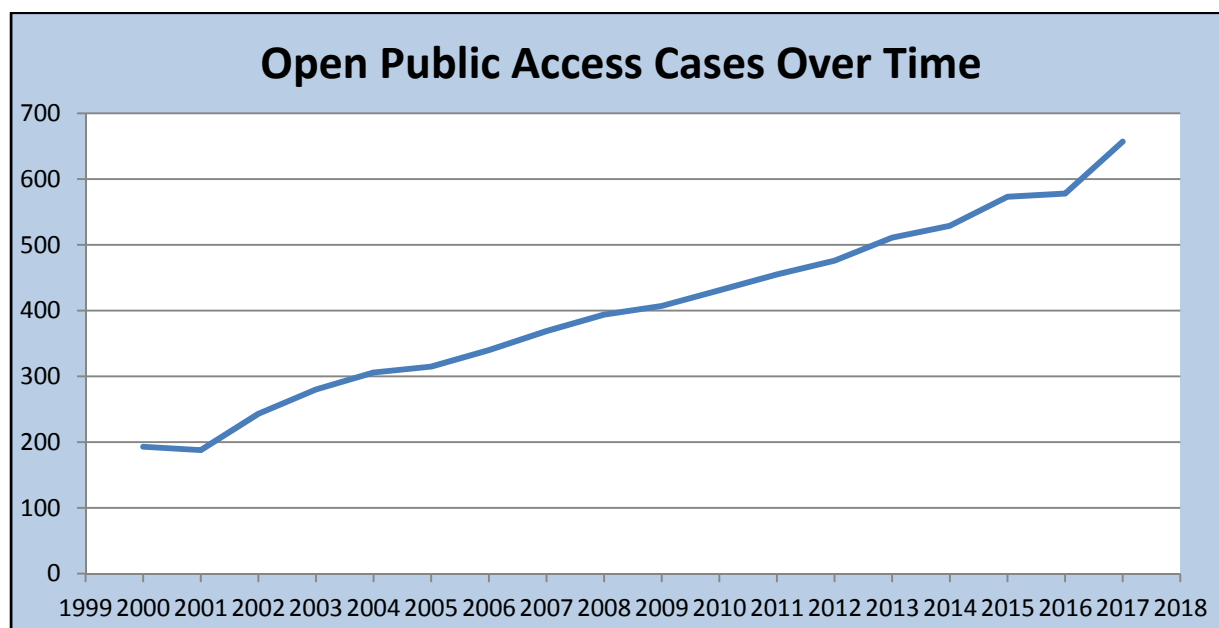
<sup>1</sup> Section 30821 also has provisions to address some *de minimis* violations, and to provide a "grace period" in certain specified instances. First, Section 30821(f) has a general statement that the intent of the statute was that it not be used for violations that are unintentional, minor and 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 some cases, 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

## Section 30821 Violation Open Cases

In the context of the Commission’s enforcement program, violations that involve coastal public access and recreation have long been an important priority. Over time, as cases were discovered more quickly than cases could be resolved, the Commission’s public access case load has grown significantly, as has the enforcement caseload generally. The Commission has been able to resolve many of these public access cases historically, and has addressed many public access violations through unilateral administrative orders and/or litigation. However, as shown in Exhibit 4, our public access violation caseload has continued to increase, due to the increasing pace of reported public access violations over time, the intensification of development along the coast that has affected open space and public access options for the public, the increased pressure on coastal access and recreation brought about by sea-level rise, and our increasing understanding of the importance of maximum public access and recreation as a threshold precept of environmental justice in the coastal zone.

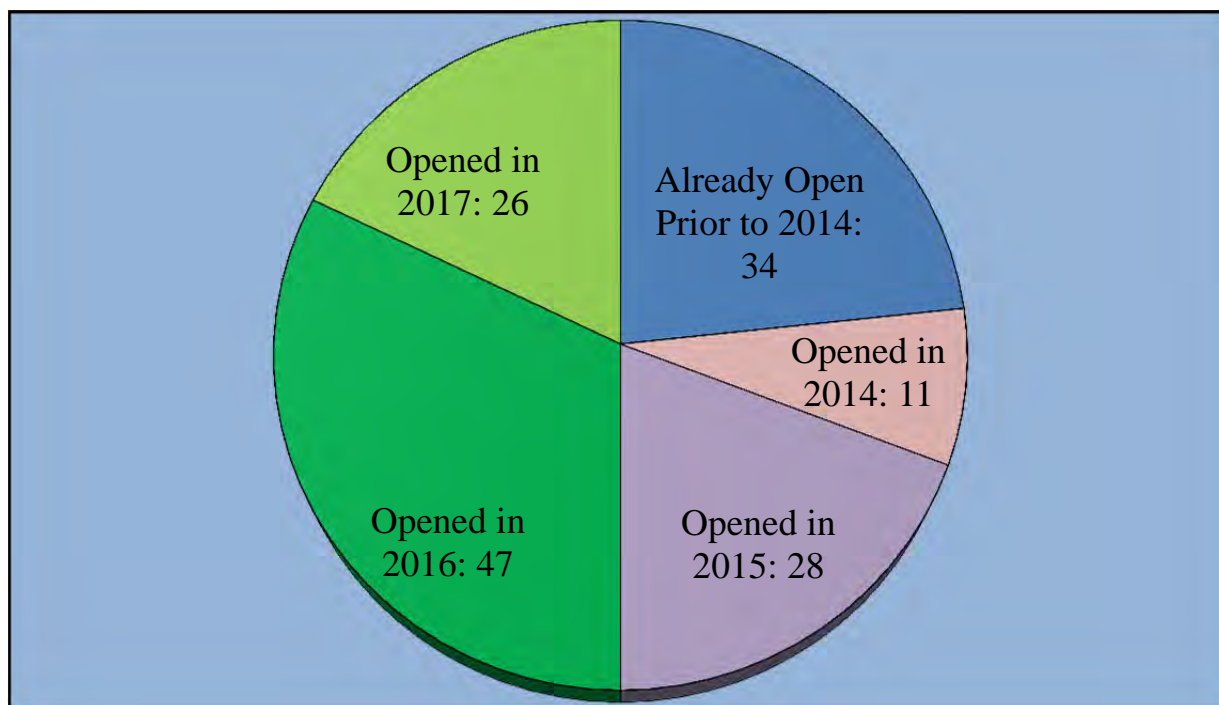


(Exhibit 4: Open Public Access Cases Over Time: 2000-2017)

In the three and one-half years since Section 30821 was enacted, staff have worked to both identify the existing violation cases to which Section 30821 would apply and on which we would focus our initial efforts, and to identify and investigate new potential public access violations, as far as limited staff resources permitted. Commission staff are constantly receiving new reports of public access violations and continue to investigate numerous potential violations.

As a result of this work, Commission staff have expanded the number of public access cases generally that we are investigating and opening. By reviewing the Commission’s public access caseload historically, staff estimates that the enforcement unit opened an average of some 40 cases per year in the 2000s before Section 30821 was enacted. After Section 30821 was enacted, in addition to reviewing existing public access cases, staff expanded the number of newly opened cases with a potential public access issue: 49 in 2014, 56 in 2015, 105 in 2016, and 53 in 2017.

Due to staffing constraints and the nature of some cases, not all of the cases that include a potential public access issue have been included in the Commission's Section 30821 initiative in which we develop the case for action under Section 30821 and provide notice of 30821 to the violating party, at least at this point in time.<sup>4</sup> As shown below in Exhibit 5, the Commission's enforcement unit currently has identified 146 cases involving violations of the public access provisions of the Coastal Act that we have identified as ripe or potentially ripe for action under Section 30821. These cases come from a larger pool of open cases that include some potential public access issue, which varies over time but is approximately 20-25% of our current open case load. This larger pool does include older violations that may still be relevant and may be addressed in time.



(Exhibit 5: Identified Section 30821 Cases Opened Per Year)

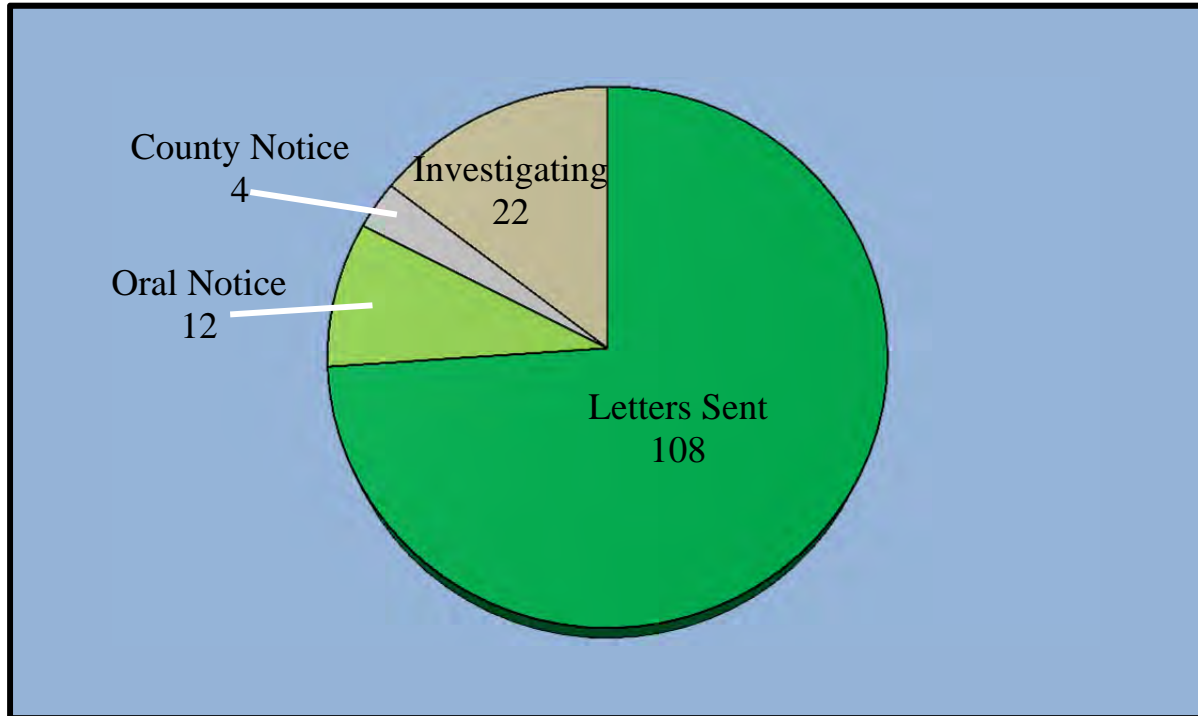
To implement 30821, we initially identified 34 cases that were already open violation cases before Section 30821 was enacted; and we have used, or are using, the new authority to resolve those cases. Staff also opened 11 cases in 2014 that were deemed cases where the Section 30821 authority should be asserted. These cases were opened in only a half-year of the new authority and during which time staff had to develop and begin to implement our administrative penalty authority. In 2015, staff opened 28 new public access cases for which we were citing Section 30821, and in 2016, 47 more such cases. In 2017, staff opened 26 new cases that involved public access and were potential Section 30821 cases. It should be noted that these numbers represent just a subset of the violations we flag and investigate and do not reflect the actual amount of work that goes into access enforcement work. There is obviously substantial, additional staff work that takes place to investigate reported violations, some of which do not result in an open

<sup>4</sup> For instance, some cases involved violations with major impacts to ESHA and in which the public access component is a secondary issue, and other cases involve situations that are being addressed under other state and federal statutes. We anticipate expanding the types and number of access cases in the future, as resources allow.



violation or a case that we determine is appropriate for the application of Section 30821. We anticipate increasing numbers of access cases, but our ability to address these cases is obviously limited by staffing constraints.

### Section 30821 Notice



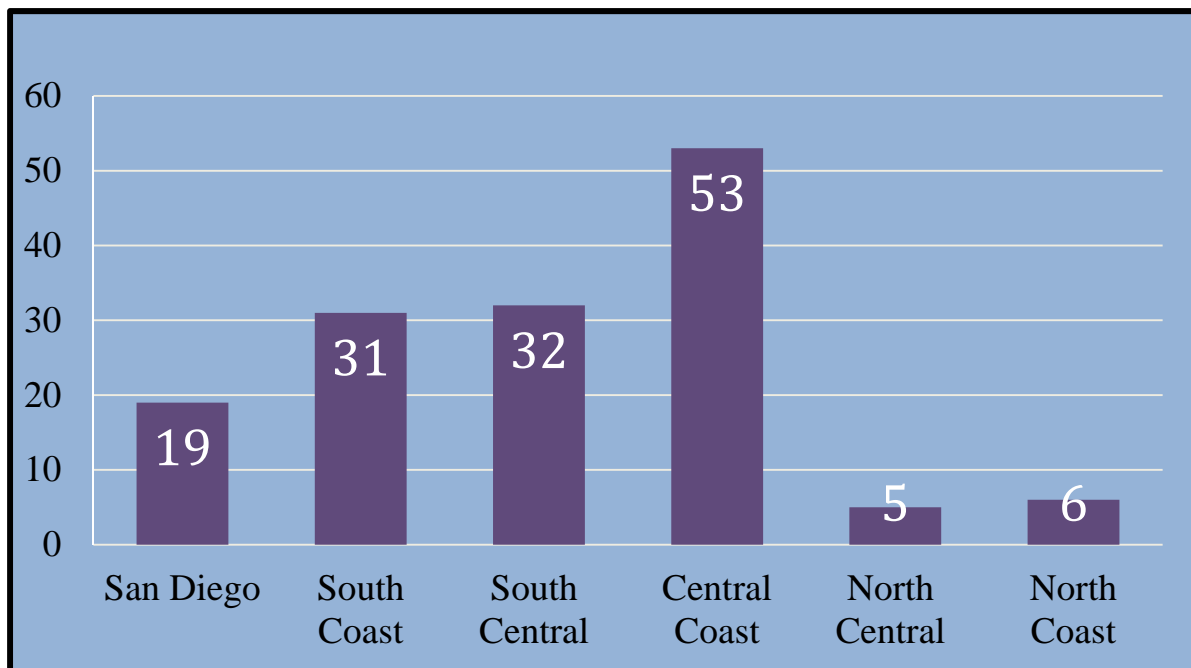
(Exhibit 6: Section 30821 Notice)

In most cases, after a public access violation is identified, a formal letter is sent that notifies the respondent of the Coastal Act violation and indicates the applicability of Section 30821 to the party. As shown above in Exhibit 6, in the past three and a half years, we have sent 108 such letters. In a few additional cases, Commission enforcement staff discussed the matter orally with the party and that was sufficient to encourage a resolution. There are currently 12 cases in this category. And in 4 other cases, staff referred the matter to the local government, as the case was in their certified LCP jurisdiction. There are also a number of cases, 22 at this time, that we have recently opened, but are still investigating the case and determining the extent of the violation, and have not yet sent a Section 30821 notice letter.

### Geographic Distribution of Cases

As shown below in Exhibit 7, the Commission's Section 30821 case load is spread broadly across the state, and we are actively working on public access cases throughout coastal California. For various reasons including urban population density and development patterns, more potential Section 30821 cases have been identified in southern California to date. We also have actively identified a large number of "signage" cases in the Santa Cruz area of the Central Coast, and a variety of types of access cases in all districts. Obviously, for purposes of aggregating numbers and for simplicity sake, we are treating cases as if they were roughly similar, when in fact, some types of cases (including those involving removal of unpermitted and

inappropriate no parking signs) are faster to resolve than others (such as those involving construction or that otherwise require permits or other formal actions to resolve), and other sites involve a number of significant violations rather than just one.



(Exhibit 7: Geographical Distribution of 30821 Cases)

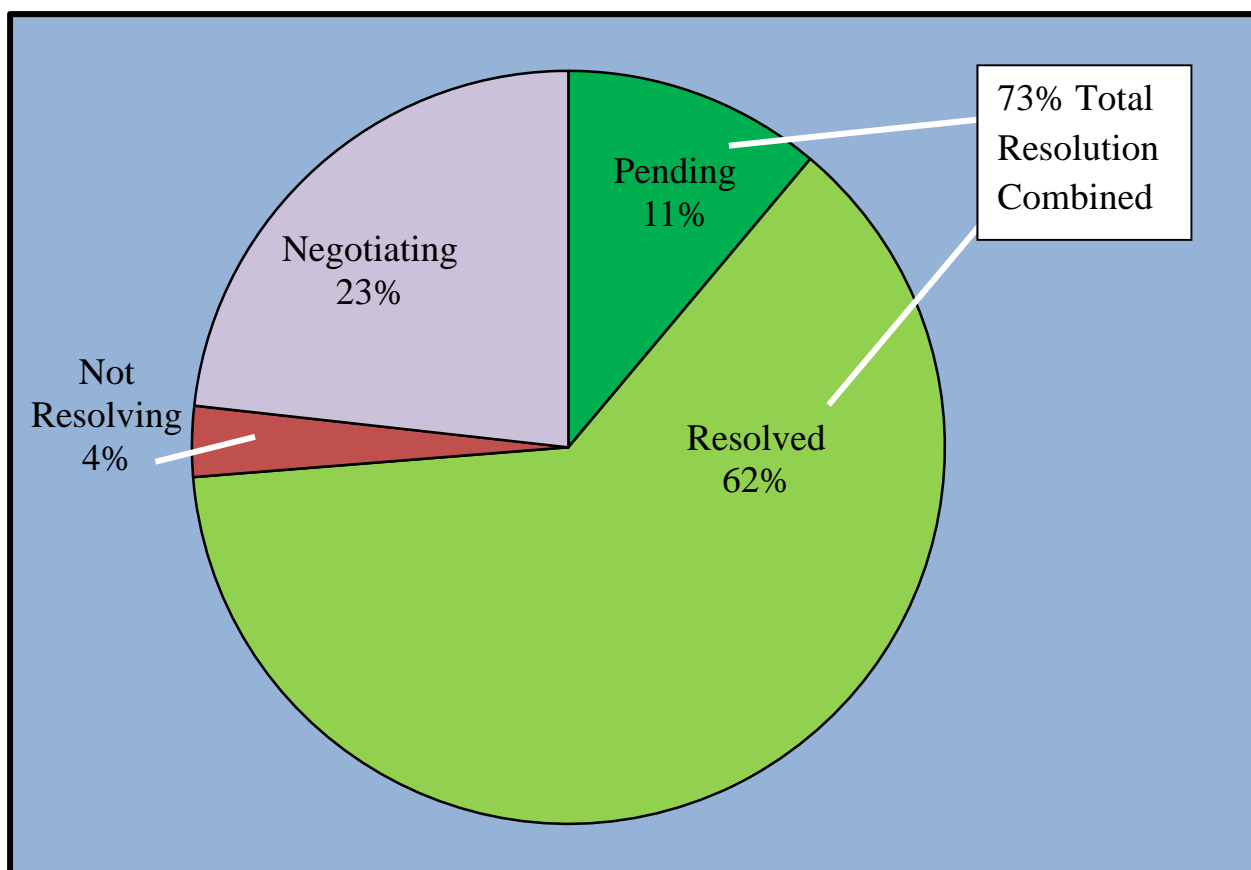
We currently have 19 Section 30821 cases in our San Diego District, which includes San Diego County. There are currently 31 Section 30821 cases in our South Coast District, which includes Orange County and the southern portions of Los Angeles County. Our South Central District, which includes the northern Los Angeles County, Ventura County, and Santa Barbara County has 32 Section 30821 cases. This District includes the City of Malibu, where we have 26 Section 30821 cases alone. Our Central Coast District includes San Luis Obispo, Monterey and Santa Cruz counties and has 53 cases, many of which are in Santa Cruz itself. In our North Central district, which includes the counties of San Mateo, San Francisco, Marin, and Sonoma, staff have currently 5 Section 30821 cases, and there are 6 more cases in our North Coast district which includes Mendocino, Humboldt, and Del Norte counties.

### Section 30821 Case Resolutions Rate

Our work to implement Section 30821 has been very successful. It should be emphasized that, as discussed below, we have resolved a large number of cases without imposing any penalties whatsoever. Instead, in many cases, the notice of the potential for penalties under Section 30821 was enough to rapidly achieve resolution. In other cases, however, the Commission has secured significant payments to resolve the administrative penalty liability under Section 30821, through consensual resolutions, and has also achieved significant other public access enhancements for the California coast as part of those resolutions.

As discussed above, we have given notice to parties that Section 30821 applied to their violation in 124 cases, typically by letter, but also in some cases by oral notice or referrals to counties. As

shown in Exhibit 8, of those 124 cases, we have already resolved 62 percent, including 4 Commission-issued Consent Orders where a formal process is set in place to resolve the matter, and 73 by our district staff without formal Commission action. Along with those cases, we have an additional 11% (13 cases) in which a full agreement for the resolution has been achieved, and the impediments to public access have been removed but the matter is pending some final action, such as a needed follow-up CDP or the approval of a public access improvement plan. Thus, in the aggregate, the Commission has essentially resolved 90 of the 124 cases identified as Section 30821 cases in which we have given notice, or 73% of all cases.



(Exhibit 8: Resolutions Success Rates)

As an example of a pending resolution, a resort in San Diego opened two accessways it had kept closed to the public, but is seeking a CDP for a new third accessway that it is providing as part of the resolution of the past violation, and is seeking a CDP to address other unpermitted development not related to public access. In another case in Orange County, the property owner removed the no-access signs and other encroachments, and installed multiple signs identifying coastal access at the site, but on inspection, the party needs to install one more sign. These matters are marked “Resolution Pending” in the figure above, but again represent public access improvements.

Additionally, 29 of our active 30821 cases, 23% as shown in Exhibit 8, are currently in ongoing negotiations and we believe that a mutual resolution of the matter is likely in these cases. Some of these cases are with our Headquarters Enforcement staff as probable negotiated Consent Order

settlements we hope to bring to you in the near future. Yet, some of the more complicated cases include a number of distinct violations and in some of those cases labelled “negotiating” represent a complicated matter that is already partially resolved. Thus, there are actually some substantial public access successes included in the category of “negotiating.”

For instance, one case in Oceanside labelled “negotiating” in this report involved the failure to comply with a CDP condition to provide lateral public access through a condominium development above a beach. Our district staff successfully negotiated with the party to open up to the public and sign for public use provide a lateral public accessway through the area, providing a much-needed public access improvement. However, the violation also involves a separate issue of an unpermitted revetment on the beach, which remains unresolved. As another example, a case in Carlsbad still labelled in this report as “negotiating,” involved the failure to record a public access easement and the placement of a gate blocking public access. Under Section 30821, we were able to achieve the recordation of the public access easement and removal of the blocking gate – significant gains for public access at the location. However, other violations still remain on the property and are being negotiated. Thus, due to remaining open violations, these cases are marked as “negotiating” in the chart above, but this category does include some significant access successes in addition to those noted in the “Pending” and “Resolved” categories.

In significant contrast to those achievements, we consider only 4% of our cases as not-resolving; that is, where the notice of the Commission’s Section 30821 authority has not resulted in a significant move by the party towards resolution and our negotiations have either failed or do not appear to be likely for success. This number includes the one case, discussed in more detail below, that the Commission has already issued a formal Cease and Desist Order and Administrative Penalty.

### **Historical Resolution Comparisons**

Importantly, and also in stark contrast to historical numbers, these resolutions are being achieved in a far quicker time-frame than the Commission is typically able to resolve cases. For example, of the 73 district level cases fully resolved so far, 33 of those, or 45%, were resolved in 30 days or less from the date a Section 30821 letter was sent.<sup>5</sup> Including those cases, 55 cases, or 75%, were resolved within 100 days of a letter being sent (18 cases took longer than 100 days). Overall, the average time to resolve a case from the date a 30821 letter is sent was 93 days, though if we remove two outlier, atypical, older cases that took more than 600 days for resolution, the average time is only 73 days. In comparison, through a review of the Commission’s historical public access cases, staff estimates that the historical average number of days to resolve a public access case before Section 30821 was approximately 1073 days, significantly more than after the enactment of Section 30821. In further contrast, only about 10% of our public access cases historically are resolved in 30 days or less, and only about 20% in less than 100 days. A review of all historical enforcement cases generally, including both access and non-access cases, estimated an average time of approximately 1090 days to resolve a case.

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<sup>5</sup> These figures do not include the four cases brought to formal hearing for Consent Orders. Those cases required additional time to comply with various Commission administrative regulations and procedures.

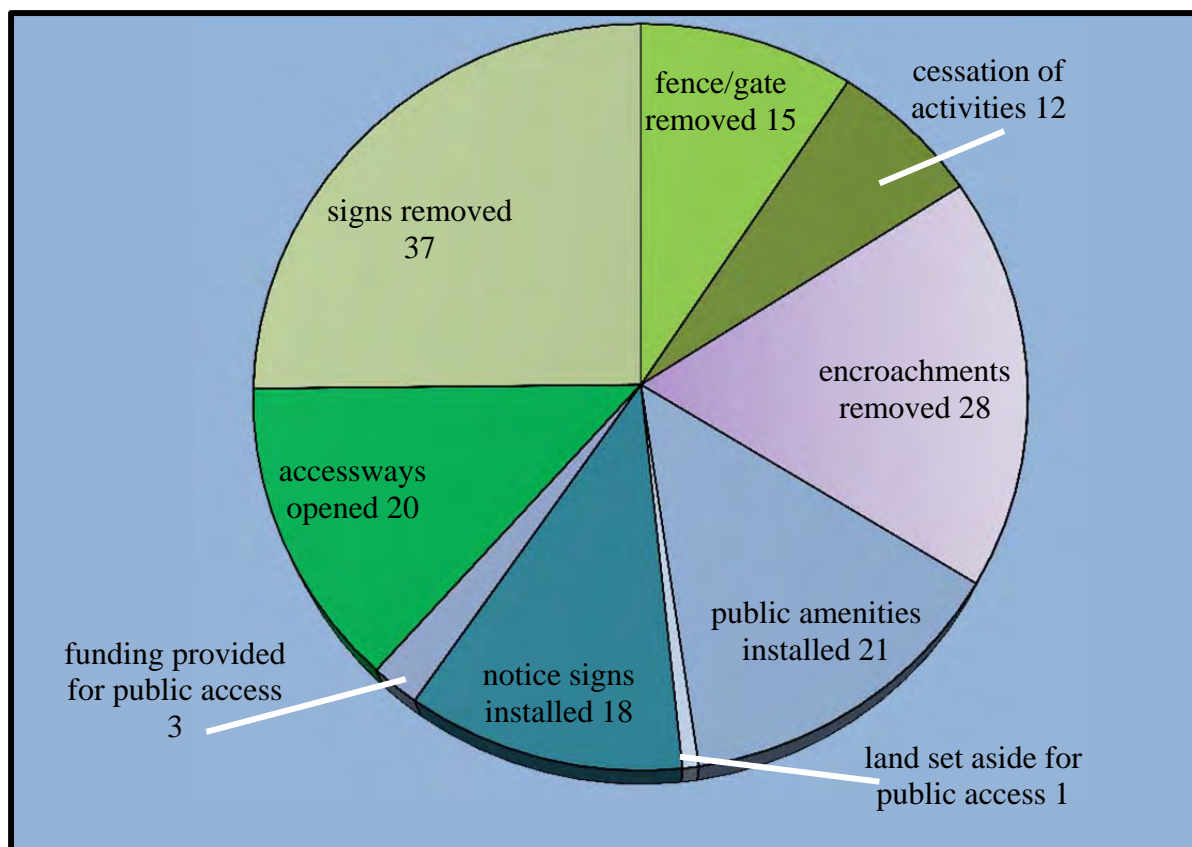
As an example of the speed of our resolutions, four separate homeowners placed no parking signs in adjacent areas of public parking on Pacific Coast Highway in Malibu, all of which were next to a public access stairway at an area known as Big Rock, which severely limited public parking and access to the beach access point. After a 30821 notice letter was sent to the homeowners, the violations were resolved, the signs removed, and public parking restored, all within 10 to 25 days. Similarly, four separate cases in Orange County involving encroachments blocking a public accessway were resolved in 5 to 23 days. These are cases that we have used Section 30821 to resolve quickly, when typically a generic enforcement case can take a long time to resolve, often multiple years. We remain hopeful that the new administrative penalty authority will be expanded to cover all violation types so that all violations can be resolved more quickly and there will be an even greater disincentive to violate the Coastal Act.

### **Unpermitted Development and CDP Violations Affecting Access**

These resolutions have resulted in a number of concrete gains for public access to the California Coast, both by addressing unpermitted development affecting access, and by addressing non-compliance with permit conditions related to public access. Broadly speaking, as shown below in Exhibit 9, our resolutions have resulted in the removal of various forms of illegal development blocking public access, the removal of signs intended to discourage and even prevent public access, and the cessation of various activities that impeded or diminished public access, such as the improper use of private security guards. Some cases have also involved securing compliance with CDP conditions for public access with which the property owner was not complying.

#### *Types of Unpermitted Development Violations Affecting Access*

As shown below in Exhibit 9, the access violations take many forms. A number of our cases involve the improper placement of various signs intended to discourage public access, such as illegal no-parking signs or improper no-trespassing signs. So far, we have resolved 37 such cases in which such signs were removed. For instance, the Commission resolved a large number of cases in the Opal Cliffs area of Santa Cruz and on Malibu Road in Malibu in which residents of these two locations had placed illegal “no-parking” signs in public right-of-ways that substantially impaired the public’s ability to reach beaches in those locations. A large number of cases also involve the improper placement of encroachments into public access easements or access points, and in 28 cases so far we have obtained the removal of that development. For instance, in San Luis Obispo, the Commission resolved a violation by getting the violator to remove rocks, landscaping, and other materials blocking a lateral public easement; and in Playa del Rey, the Commission resolved a violation in which rope and wooden logs blocked a public access path to a beach. All told, through these actions, some 20 public easements or accessways have been opened or reopened to the public.



(Exhibit 9: Types of Resolutions) (Note that a resolved violation may have multiple types of resolutions and therefore these numbers above do not match the total number of resolutions.)

We have also undertaken 15 cases in which fences or gates were placed blocking public access, and the Commission has had the fence or gate removed and the public access route restored. As an example, in Gualala and Trinidad, among other locations, the Commission's North Coast District Enforcement staff obtained the removal of gates that completely blocked public roads and precluded coastal recreation. Likewise, in San Clemente, a number of resolutions involved the removal of gates and fences blocking public accessways. Additionally, a number of our cases involve the posting of private security guards to deter public access where public use properly was allowed, or some other activities that discourage and impede public access to the coast, and we have resolved 12 cases that have brought the cessation of such activities. As one example, in Monterey, a company was preventing public access to a popular coastal public access point and the Commission was able to resolve the violation in just 11 days after a Section 30821 letter.

#### *Types of Permit Violations Affecting Access*

There are also many examples of the failure to comply with CDP conditions related to public access, such as those requiring a public access amenity to be installed or public access signage to be placed. Obviously, the Commission imposed the public access condition because of significant concerns about public access at the site, or in order to make development approved under the permit (which may have otherwise adversely affected public access) consistent with the Coastal Act. Compliance with these conditions is clearly vital. In 18 of our case resolutions to date, the resolution included placement of proper public access signage that was required to be

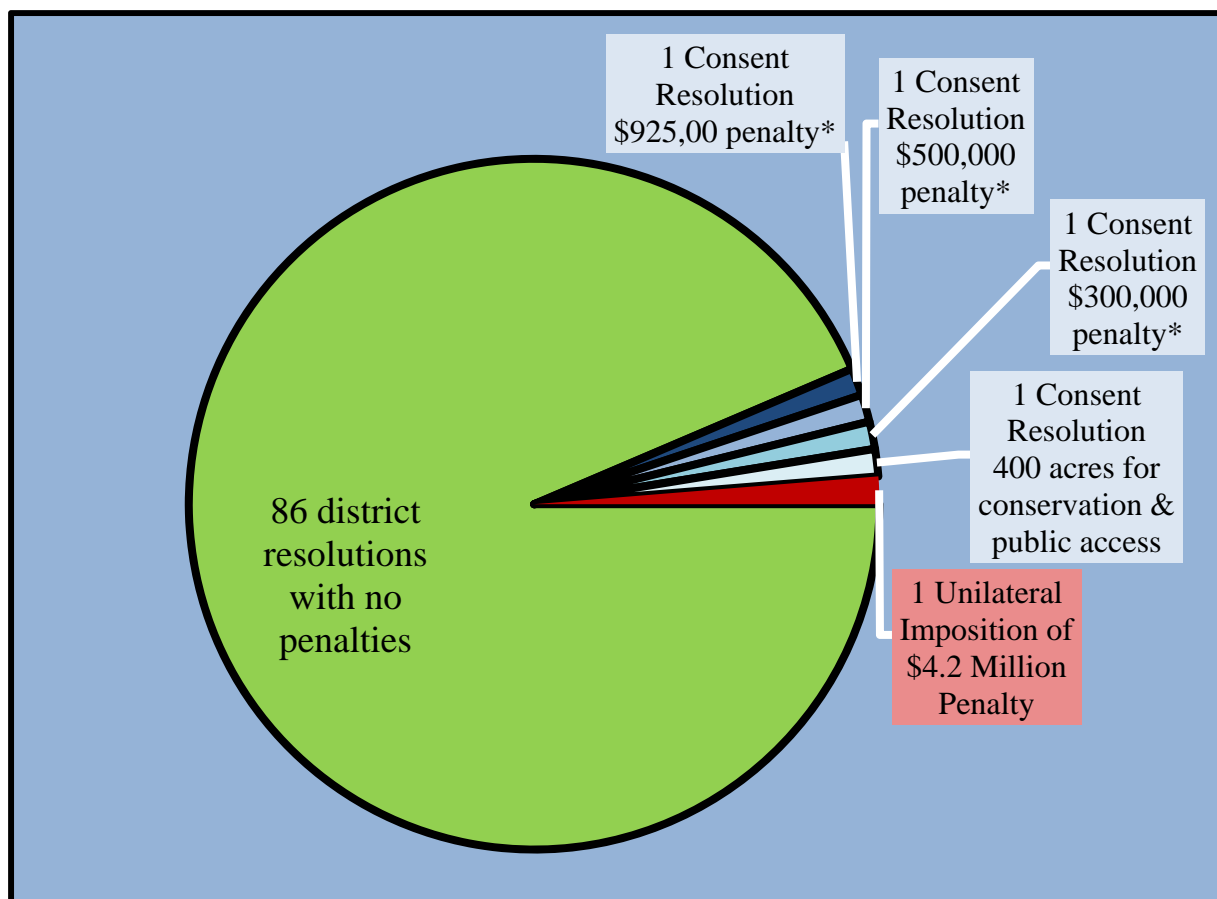
put in place under a CDP. These signs are very important because they often provide the only means by which the public can be made aware of a coastal public access site. In addition, in 21 of our resolved cases, staff secured the installation of a public access amenity that was required by a CDP, such as public benches or paths, or acquired an additional amenity. For example, the Commission resolved a violation in Monterey that resulted in a restaurant installing public access benches that were required in its CDP two years before; and in Oceanside, the owners installed a public access trail that had been required in a CDP issued in 1984. Lastly, as discussed directly below, Exhibit 9 above shows that in 3 cases the Commission obtained significant funding for public access projects, and in one other case obtained a conservation deed restriction placing significant acreage aside for public recreation.

### **Commission Enforcement Orders and Additional Access Improvements**

The Commission has also resolved cases through formal administrative Cease and Desist and/or Administrative Penalty Orders. In these cases, because of the significance of the violations at issue and their nature, Section 30821 penalties were applicable and the matter needed to be resolved through formal Commission action, which was also necessary to formally authorize activities to be undertaken to address the violation. One case involved the unilateral imposition of penalties, discussed in detail below. In the other four cases, the settlements approved by the Commission were what we refer to as “Consent” Cease and Desist Orders and/or a “Consent” Administrative Penalty, in which Commission staff and the parties were able to negotiate an amicable proposed settlement to resolve the violation and agree to a Section 30821 penalty amount to settle civil and administrative liabilities under the Coastal Act and bring the proposal to the Commission for their consideration.

These case resolutions have resulted in significant funds specifically dedicated to use for public access projects specified in the settlement, as well as larger payments made to resolve public access violations that are deposited in the California Coastal Conservancy’s Violation Remediation Account, which is managed with input from Commission staff. Funds dedicated there are used to further the principal goals of the Coastal Act and generally to fund projects related to the type and location of the violations, with an emphasis on public access projects, as well as supporting various habitat restoration projects and/or preserving open space.

As shown below in Exhibit 10, we have essentially resolved 86 cases (73 full resolutions and 13 pending resolutions) to date in which no penalties at all were needed to be imposed by the Commission to achieve full and speedy resolution of the violations—rather, the threat of daily penalties provided the mechanism to achieve a quick resolution and restoration of public access. Through the issuance of these Consent Orders to settle civil and administrative liability in public access cases, the Commission has obtained settlements including commitments to pay approximately \$1,725,000 in 30821 penalty payments. It should also be noted that this amount only represents actual monetary payments or direct funding to public access projects and does not include many other very valuable components of the resolutions which often included significant public access improvements at a significant cost and sometimes of priceless value to the public. Our Consent Order settlements also involved substantial other gains for public access, such as public access improvements and deed restrictions placing land into conservation for the public.



(Exhibit 10: Resolutions and Penalties) (\*Please note that these numbers do not reflect the full settlement of the violation which included other significant enhancements to public access as part of the settlement.)

For instance, a case near Pacifica required a beach-front restaurant to comply with public-access related conditions of its CDP, pay an administrative penalty, and make additional public access improvements in the area. In Malibu, a consent settlement required a hotel to construct a public accessway required by its CDP, pay an administrative penalty, and will make other public access improvements in the area. Another Consent Order settlement required the city of Dana Point to restore public access at a popular beach trail, provide for additional public recreation amenities, and make payments to resolve their administrative and civil liability under the Coastal Act including 30821, although this was done through funding of projects benefitting access rather than the Commission imposing a formal administrative penalty. In another Consent Order settlement, in July 2017, the Commission issued a Consent Cease and Desist Order for the “Cemex” matter, which included direct and indirect benefits to public access and recreation by providing for an end to impacts caused by an ongoing sand mining operation through the phased cessation of all sand mining at the site, and provided for the future protection and conservation of 400 acres of coastal dunes and beach for coastal dune habitat, public access and public recreation.

In addition, as further evidence of the emphasis on public access as a central goal of the Coastal Act, there are other Commission administrative orders that do not directly involve Section



30821, but in which the Commission has obtained resolutions which include very significant benefits to public access. These have included, over the years, multiple dedications of land to the public or significant payments that may be used for public access and recreation projects. As one example, in 2017, the Commission approved a settlement in the Bixby matter, to address violations of various impacts caused by unpermitted development. Although the violations were not directly tied to public access violations, the settlement included the dedication of significant portion of coastline and beach to the public, including the dedication in fee of 36 acres of land immediately adjacent to Jalama Beach County Park, adding an approximately one-mile stretch of coastline to the public ownership, resulting in very significant public access benefits.

To date, the Commission has actually only unilaterally imposed administrative penalties under Section 30821 in one instance. That case involved a very significant and long term violation involving a fence and other unpermitted development directly blocking a public access easement in Malibu, in a dense urban stretch of coastline with very limited public access, and no public access to the beach at hand. It also involved significant private profits stemming from the violations, and the party had resisted resolving the case for over seven years, and an additional two years after being notified of the applicability of Section 30821. In December 2016, the Commission imposed a fine of just under \$4.2 million on the party, which was actually only one-half the applicable penalty the Commission could have imposed under Section 30821, and that also reflected a reduced penalty through conservative approach with a reduced number of days and reduced number of violations from what the Commission could have potentially considered.

## **Conclusion**

The overwhelming majority of our access cases brought under 30821 are resolving quickly and without the need for a formal hearing involving the unilateral imposition of penalties. This is consistent with the rationale for administrative penalties generally—to resolve violations more quickly, to achieve Coastal Act compliance more quickly, to avoid litigation and attendant delays, and to increase protection of the rights of the public for access to and protection for the coast of California.

As a result of our use of administrative penalties and emphasis on access cases, public access is being restored more quickly and in more areas all up and down the coast than was possible prior to the existence of the provision providing for administrative penalties. A few cases, because of their severity, significance, and/or recurrent nature, do require the formal administrative imposition of penalties. Those cases involve some significant fines, and in the case of a unilateral order, can result in the imposition of substantial amounts. Yet, even in those cases, and in recognition of the cooperation of parties who cooperate and agree to resolve their violations, the amount of penalties imposed and obtained has been at levels far below the amounts the statute authorizes, reflecting both a conservative approach to the application of the provision, and the desire to reward parties who resolve their liabilities quickly and creatively. However, the administrative penalties that the Commission has imposed, or collected through a mutual settlement of liability under Section 30821, have also resulted in significant funds that will support public access and recreation projects along the California coast. And, the settlement of Section 30821 penalties has also resulted in significant other gains to public access along the coast, whether through public access amenity projects or significant acres of land being set aside for conservation and public recreation.

Commission staff are still 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 the need to comply with the Coastal Act and its public access provisions, and to both increase the deterrent effects of the potential application of administrative penalties and to assist in more quickly resolving violations that do occur. Nonetheless, the experience of success under Section 30821 has already resulted in significantly increased public access up and down the coast. When the Commission's authority under Section 30281 can be invoked, the potential for administrative penalties has both increased the number of cases that the Commission can resolve and greatly increases the speed at which cases can be resolved. That success has also demonstrated how effective an administrative penalty authority can be to ensure compliance with the Coastal Act generally. While we are very gratified at the success of this program, and of our ability to address access violations, other very important coastal act resources could benefit from this type of provision as well. Our experience with administrative penalties in access cases indicates that we could use such provisions to similarly increase protections for all types of critical coastal resources, such as environmentally sensitive habitat and wetlands, and to ensure compliance with permits issued by the Commission generally.

In summary, this provision has provided us the tools to address more access cases and to address them more quickly. It has also allowed us to work with willing parties to resolve violations quickly and without formal legal action, which is a benefit to all parties. While we are working to increase the numbers of resolutions, we already have been able to provide significant public access benefits and further the Coastal Act's mission in public access and recreation.