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Staff: P. Allen-SF
Staff Report: March 29, 2018
Hearing Date: April 12, 2018

STAFF REPORT: RECOMMENDATIONS AND FINDINGS FOR CONSENT CEASE AND DESIST ORDER, CONSENT RESTORATION ORDER, AND CONSENT ADMINISTRATIVE CIVIL PENALTY

Consent Cease and Desist Order No.: CCC-18-CD-01

Consent Restoration Order No.: CCC-18-RO-01

Consent Administrative Penalty No.: CCC-18-AP-01

Related Violation File: V-2-17-0045

Persons/Entities Subject to These Consent Orders:

(1) FPA/WC Lands End, LLC, FWC Lands End, LLC, FPA Multifamily, and any of their subsidiaries or related business entities with an ownership interest in the below-defined Properties at issue; and (2) Trinity Property Consultants and Redwood Construction, as exclusive affiliates of FPA Multifamily, and any other related business entities acting to manage the Properties at issue.

Violation Description:

Unpermitted development, development inconsistent with a Coastal Development Permit, development in violation of the public access provisions of the Coastal Act, and failure

to comply with the required terms of a CDP. The development at issue includes, but is not necessarily limited to: initial development ostensibly pursuant to CDP No. 2-10-039 but inconsistent with that approval; subsequent grading, trenching, and excavation of a beach and coastal bluff; and the placement of large boulders, construction equipment, and other materials on a public beach and in public access easements. The failures to act include, but are not necessarily limited to, the failure to maintain, monitor, and keep open a public access trail and stairway on the below defined Properties; and the failure to undertake development consistent with CDP No. 2-10-039.

Property Location:

On and adjacent to 100 and 101 Esplanade Avenue, City of Pacifica, San Mateo County (Assessor's Parcel Numbers 009-023-070 and 009-024-010)

Substantive File Documents:

1. Public documents in Cease and Desist Order file No. CCC-18-CD-01, Restoration Order file No. CCC-18-RO-01, and Administrative Penalty file No. CCC-18-AP-01.

2. Appendix A and Exhibits 1 through 32 of this staff report.

SUMMARY OF STAFF RECOMMENDATIONS

These proceedings before the California Coastal Commission ("Commission") address violations of the California Coastal Act resulting from "Unpermitted Development," which include development without a required Coastal Development Permit ("CDP"), development inconsistent with a CDP, and failure to comply with obligations of that CDP, that occurred at and adjacent to 100 and 101 Esplanade Avenue, in the City of Pacifica in San Mateo County. These properties are currently owned by FPA/WC Lands End, LLC, FWC Lands End, LLC, and FPA Multifamily and managed by Trinity Property Consultants and Redwood Construction (collectively, "Respondents"). Through the proposed Consent Orders (see [Appendix A](#)), Respondents have agreed to resolve the violations and address their civil liabilities, and staff recommends that you **approve** these Consent Orders.

Primarily, the violations here concern the collapse and closure, since December 2016, of a public access stairway and trail system that provides public access down a steep coastal bluff. Although some informal dirt bluff trails are approximately one-half mile away, they rough and separated from this beach by seawall development, such that the public stairs here are the only developed public accessway to this lengthy beach that is otherwise largely inaccessible from any developed accessway and the nearby public roads. The violations are inconsistent with the terms and conditions of CDP No. 2-10-039, approved by the Commission in 2013, including those requiring that the public accessway here be monitored and maintained as continuously open, and

promptly restored in the event of erosion events. The violations also include additional Unpermitted Development activities in the form on unauthorized construction, grading, trenching, and the placement of large boulders, which occurred on the beach and coastal bluff. These actions have impacted public access easements on the properties subject to this action, including the closure of a vertical public access easement required by the CDP, and the closure and/or substantial impingement of lateral public access easements on the beach and on the bluff top and face, all of which substantially impeded or precluded public access here. The violations are causing ongoing adverse impacts to public access at the site, in violation of multiple public access provisions of the Coastal Act.

The closures and negative impacts to public access first stemmed from the failure of Respondents to properly construct, monitor, and maintain the public accessway and a seawall structure, as required under the CDP. Because of the improper construction, and subsequent lack of monitoring and maintenance to ensure structural integrity and continuously open public access, the public accessway that was required as part of the permit and built down the coastal bluff collapsed in December 2016 and has remained closed ever since. Respondents assert that the improper construction coupled with significant winter storms and unusual high tide events acted to undermine the seawall structure and collapse the bluff behind it. After the public accessway collapsed, although the CDP required Respondents to immediately restore public access, even if in an interim fashion, Respondents did not repair and restore public access as required by several of the CDP conditions, as discussed in more detail below

As an additional component, the violations here also include subsequent unpermitted activities that were undertaken at the site in early November 2017, including the dumping of large boulders on the beach, grading, and trenching on the beach, the undertaking of construction activities on the beach, and using and storing construction equipment and materials in public access easements both on the beach and on the bluff top. These actions also additionally blocked public accessways, impeded public recreation on the beach, and precluded or impeded public recreation in public easements on the upper portions of the Properties and on the beach. These activities were never authorized by a CDP as is required under the Coastal Act and, moreover, these actions were directly inconsistent with the CDP previously issued by the Commission and are therefore in violation of the Coastal Act. Because of the negative impacts to public access and failure to comply with CDP conditions protecting public access, among other things, the additional unpermitted development also violates the public access provisions, and other resource protection policies, of the Coastal Act.

After Commission staff learned of the Unpermitted Development activities in November, the Executive Director shortly sent a “Notice of Intent” letter in November 2017 describing the Executive Director’s intent to bring these violations before the Commission for formal administrative action. Since that time, the Respondents have worked very cooperatively and quickly to resolve the matter and reach a mutually acceptable settlement. Respondents have also agreed to settle their liability under Section 30821 of the Coastal Act by agreeing to the imposition of a sizeable penalty. Thus, if approved by the Commission, these proceedings will resolve these violations by a mutual settlement agreement through a Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Penalty (collectively, “Consent Orders”).

The Properties and Coastal Access Impacts

The Properties on which the violations occurred are located at and adjacent to 100 and 101 Esplanade Avenue (referred to herein as the “Properties”) in the north end of the City of Pacifica atop a steep coastal bluff approximately 100 feet high, overlooking the ocean, near Highway One. Public access from the coastal bluff adjacent to Esplanade Avenue to the beach, and along the bluff, has long existed in this location, and the public has used different versions of a trail and stairway over time to reach the beach here. Public access easements required by the CDP run along the bluff, including coastal viewing areas, down the bluff for vertical access, and along the beach areas of the Properties for public access and recreation on the beach.

The Unpermitted Development resulted in these easements being entirely or partially blocked, including, significantly, a vertical public easement and access stairs to the beach. The access provided for general public access to the beach in a stretch of coast without public access for significant distances. There is some beach access approximately 1.2 miles to the north, and 0.5 miles to the south via an informal, difficult trail, partially separated from this beach by a seawall, but the next actual coastal public access point downcoast of the site is 1.7 miles to the south at Sharp Park Beach, a beach physically separated from the one at issue. The public access stairs at the Properties provide essentially the only developed access point to this beach area, which extends approximately 4,100 feet in length of sandy beach and is otherwise separated by a seawall to the south and steep bluffs to the north.

This area is a semi-urban area near San Francisco with limited public access generally because of development and the geography of steep coastal bluffs. Because of its location, the access point serves a diverse population of income groups. As recently reflected in the legislature’s addition of Section 30013 to the Coastal Act, environmental justice is a critical issue before the Commission and public access or recreational impacts are an environmental justice issue. There are few open access points providing the general public with beach access and coastal recreation throughout California and especially in denser urban or semi-urban regions such as this. Those few access points that are open are critical for providing unique recreational opportunities to members of the public that are unable to afford owning coastal properties that may provide private coastal access. Ensuring that these existing public accessways remain open to the general public is an important element of securing open public access that provides low-cost, outdoor recreation for all citizens, which can improve the overall quality of life of all the public, including lower income and minority communities.

CDP No. 2-10-039

This coastal area has frequently suffered from significant coastal erosion events that closed or at least adversely affected this public accessway to the beach. To provide a long-term solution to the problems of erosion at the site and in order to ensure open public access, the Commission, in 2013, approved a large seawall structure and new public access stairway and trails in CDP No. 2-10-039.

Given the long history of erosion and public access closures at the Properties, the Commission anticipated such erosion and provided for steps to be taken in the event of erosion. The Commission thereby required a number of conditions in its approval of CDP No. 2-10-039 to ensure public access remained continuously open. The Commission conditions the CDP to

require Respondents to monitor and maintain the seawall and public accessway to the beach to ensure structural integrity, and to require that any repair and maintenance activities were undertaken with prior notice to, and prior approval from, Commission staff. Among other special conditions, specific special conditions of the CDP: 1) prohibit development and uses within the public access areas that would disrupt and/or degrade public access; 2) require that all of the seawall structures and public access components of the project be constructed in a structurally sound manner, be consistent with the CDP, and be maintained in their approved state in perpetuity; and 3) require ongoing monitoring and maintenance of all public access improvements to ensure that public access is always continuous, even if events, such as storms, required the access improvements to be modified, moved, and/or replaced because of changing circumstances.

The CDP also included special conditions to require that for any proposed maintenance of the structures, the Respondents would provide notice to Commission staff and include plans, engineering, and/or geology reports describing the event and construction plans that included specific information identified in the CDP conditions; and that no such maintenance events would commence until approved by Commission staff as being in compliance with the CDP.

Violation History

Unfortunately, the seawall and various other elements of the structural system were not built according to the CDP and Commission approved plans, nor were the monitored or maintained for structural integrity. Because of this, and Respondents believe in combination with significant winter storms and high tide events, in December 2016 the public access stairway collapsed when sinkholes formed behind the concrete stairway, and the trail portion collapsed leaving a significant and deep hole. Their failure to properly monitor and maintain the public access stairway for its structural integrity and to ensure continuously open public access violated CDP conditions and resulted in the closure of the public access stairway. The public's vertical easement to the beach was essentially closed, and the lateral easements on the beach were also substantially impacted since the public had limited or no ability to reach that beach.

Over the next five months, Commission permit staff from the North Central unit endeavored to have Respondents submit plans to restore the public access on the Properties, but essentially received no response to multiple requests. Therefore, in June of 2017, the Commission's enforcement unit opened a violation case for the ongoing closure of public access. Enforcement staff sent a Notice of Violation letter on July 3, 2017. That letter described the violations of the Coastal Act at issue and informed Respondents that they were potentially subject to penalties under Coastal Act Section 30821 because of the ongoing closure of public access at the site. It also requested that Respondents provide a proposal to resolve the violations, a plan to restore public access, and specific construction plans and site surveys. After the Notice of Violation letter, over the next several months, Respondents' principal engineer did provide several letters to permit staff, and claimed that significant storm events had caused significant damage to the seawall and that further time was needed to investigate the matter. However, Respondents still did not provide the information specifically requested or propose a plan to resolve the violation and open public access, even in an interim fashion as required by the permit. Enforcement staff continued to write letters indicating that Respondents had not properly responded and the violations were ongoing.

Instead of providing the requested information or plan to resolve the violations, without obtaining any authorization or complying with the maintenance conditions of the CDP, on or about October 31, 2017, Respondents began substantial construction activities on the of the properties and perhaps onto adjacent areas. These activities included grading on the bluff and beach, trenching and excavating on the beach, placing numerous large boulders up to 6 tons on the beach and extending the length of the properties, using large earth-moving construction vehicles, installing significant fencing that further impeded public access and views, and placing construction materials and storage containers in areas of the public access easements, viewing areas, and public parking areas. Although completely unauthorized and without coordination with the Commission or the City of Pacifica, Respondents apparent intent was to conduct further investigations, place rip-rap, and perform grading to protect the structures from winter storms, hopefully open some interim public access, and ultimately repair the seawall to match the CDP.

However, the impacts from this additional unpermitted development substantially increased the negative impacts to public access, as well as to coastal resources generally. As a result of these actions, further unpermitted items and materials now substantially blocked the lateral and vertical easements on the Properties, including the vertical easement to the beach, the sandy beach areas, and the bluff top trails. Coastal views were also impacted by fencing, construction equipment and materials, and large rock boulders, and coastal marine resources were impacted by the construction activities, equipment, and materials.

As soon as they were aware of additional activities taking place on the beach, Enforcement staff called Respondents and obtained their agreement on November 2, 2017, to cease unauthorized construction operations. On November 15, 2017, Commission staff sent to Respondents a “notice of intent” letter (“NOI”) informing Respondents of the Executive Director’s intent to bring the violations to the Commission for the issuance of a formal Cease and Desist Order, a Restoration Order, and the imposition of an Administrative Penalty. The notice letter also indicated that the Executive Director would issue an Executive Director Cease and Desist Order (“EDCDO”) to more immediately address the ongoing damage to coastal resources if Respondents did not provide certain requested information by certain deadlines, which the Respondents were unable to do. Therefore, the Executive Director issued the EDCDO on November 17, 2017, which required the submittal of an interim restoration plan to clean-up the site, remove the large rocks from the beach, restore and stabilize impacted beach areas, and for Respondents to cease all unpermitted activities.

Proposed Resolution

Since the NOI and EDCDO were issued, Respondents have worked to resolve the violation and do so promptly and have been very cooperative in their efforts. Commission staff and Respondents were able to reach a proposed settlement in only several months since the NOI, and on March 23, 2018, Respondents signed these proposed Consent Orders.

Through the execution of these Consent Orders, Respondents have agreed to, among other things, submit a Restoration Plan to the Commission’s Executive Director for review and approval that will guide the restoration of the Properties. These Consent Orders will require Respondents to: 1) remove all physical items that were placed or came to rest on the Properties as a result of Unpermitted Development, if not already removed pursuant to the EDCDO or

approved by Commission staff as appropriate for re-use in compliance with CDP No. 2-10-039; 2) comply with all terms and conditions of CDP No. 2-10-039, including by repairing the seawall and public accessway to the design approved in the CDP; 3) install temporary erosion control measures; 4) conduct restorative grading on the beach and bluff; 5) revegetate areas impacted by the Unpermitted Development with native plants appropriate for the habitat of the area; 6) undertake five years of monitoring of the restoration work and revegetation to ensure the restoration is successful and public access remains open, in addition to the monitoring already required under their existing CDP; and 7) settle their potential administrative penalties under Section 30821, as well as their other potential civil liabilities, through this action, by making a payment of \$1,450,000 into the Commission's Violation Remediation Account.

Staff believes these Consent Orders provide a means of resolving the matter quickly and without litigation, and recommends that the Commission approve the proposed Consent Orders.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS	9
II. HEARING PROCEDURES	10
III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-18-CD-01, CONSENT RESTORATION ORDER NO. CCC-18-CD-01, AND CONSENT ADMINISTRATIVE PENALTY ACTION NO. CCC-18-AP-01	11
A. LOCATION OF PROPERTIES AND PUBLIC ACCESS IN THE AREA.....	11
B. JURISDICTION.....	12
C. PERMIT AND PUBLIC ACCESS HISTORY	13
D. DESCRIPTION OF UNPERMITTED DEVELOPMENT	18
E. ENFORCEMENT HISTORY (POST CDP No. 2-10-039).....	18
F. BASIS FOR ISSUANCE OF CEASE AND DESIST ORDER AND RESTORATION ORDER	22
1) Statutory Provisions	22
2) Factual Support for Statutory Elements	23
G. BASIS FOR ISSUANCE OF ADMINISTRATIVE PENALTY.....	26
1) Statutory Provisions	26
2) Factual Support for Statutory Elements	27
H. CONSENT ORDERS ARE CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT	31
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	31
J. SUMMARY OF FINDINGS OF FACT.....	32

APPENDIX

Appendix A – Consent Cease and Desist Order No. CCC-18-CD-01, Consent Restoration Order No. CCC-18-RO-01, and Administrative Penalty No. CCC-18-AP-01

EXHIBITS

Exhibit 1:	Vicinity Map
Exhibit 2:	Parcels Overview
Exhibit 3:	View of Public Access Easements and Amenities
Exhibit 4:	CCC- City of Pacifica Letter of Dec. 22, 2017
Exhibit 5:	Coastal Aerial 1987
Exhibit 6:	Coastal Aerial 2002
Exhibit 7:	Coastal Aerial 2005
Exhibit 8:	Coastal Aerial 2008
Exhibit 9:	Coastal Aerial 2013
Exhibit 10:	CDP No. 02-10-039

Exhibit 11:	CDP No. 02-10-039 Exhibit 2 (Approved Plans)
Exhibit 12:	View of Public Staircase Per CDP
Exhibit 13:	View of Collapsed Public Staircase
Exhibit 14:	RJR-CCC Letter of Dec. 14, 2016
Exhibit 15:	CCC-Oceanaire Letter of April 10, 2017
Exhibit 16:	CCC-Oceanaire Notice of Violation Letter, July 3, 2017
Exhibit 17:	RJR-CCC Letter of July 21, 2017
Exhibit 18:	CCC-Oceanaire Letter of August 23, 2017
Exhibit 19:	RJR-CCC Letter of September 14, 2017
Exhibit 20:	CCC-Oceanaire Letter of September 29, 2017
Exhibit 21:	Site Photo of Nov. 2017 Construction Activity
Exhibit 22:	CCC Field Notice of Violation Nov. 3, 2017
Exhibit 23:	Site Photo of Nov. 2017 Construction Impacts
Exhibit 24:	Site Photo of Nov. 2017 Construction Impacts
Exhibit 25:	Site Photo of Nov. 2017 Construction Impacts
Exhibit 26:	RJR-CCC Letter of Nov. 9, 2017
Exhibit 27:	CCC-Oceanaire NOI of November 15, 2017
Exhibit 28:	CCC-Oceanaire EDCDO of November 17, 2017
Exhibit 29:	RJR-CCC Letter of Nov. 27, 2017 Letter
Exhibit 30:	EDCDO Extension of Feb. 14, 2018
Exhibit 31:	City of Pacifica-CCC Letter of March 26, 2018
Exhibit 32:	CCC-City of Pacifica Letter of March 28, 2018

I. MOTIONS AND RESOLUTIONS

Motion 1: Consent Cease and Desist Order

*I move that the Commission **issue** Consent Cease and Desist Order No. CCC-18-CD-01 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-18-CD-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred without the requisite coastal development permit, and in violation of CDP No. 2-10-039, in violation of the Coastal Act, and that the requirements of the Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Restoration Order

CCC-18-CD-01/ CCC-18-RO-01/
CCC-18-AP-01(Oceanaire)

*I move that the Commission **issue** Consent Restoration Order No. CCC-18-RO-01 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-18-RO-01, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

Motion 3: Consent Administrative Civil Penalty

*I move that the Commission **issue** Consent Administrative Civil Penalty No. CCC-18-AP-01 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Administrative Civil Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty Order:

The Commission hereby issues Consent Administrative Penalty No. CCC-18-AP-01, as set forth below, and adopts the findings set forth below on the grounds that (1) development has occurred on the Respondents' properties without the required coastal development permit and (2) the Respondents are responsible for both actions and failures to act that are in violation of CDP No. 2-10-039 and therefore the Coastal Act; and that all of these activities and failures to act have limited or precluded public access and violated the public access provisions of the Coastal Act.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order under Section 30810 of the Coastal Act and a Restoration Order under Section 30811 of the Coastal Act are outlined in Title 14 of the California Code of Regulations (“14 CCR”) in Sections 13185 and 13195, respectively. Additionally, Section 30821(b) states that the imposition of administrative civil penalties by the Commission shall take place at a duly noticed public hearing in compliance with the requirements of Section 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to consider the imposition of administrative penalties may be the same as those employed for a hearing on a proposed Cease and Desist Order or Restoration Order.

Pursuant to the above authorities, for the joint hearing on the proposed Cease and Desist Order, Restoration Order, and Administrative Civil Penalty Action discussed in this report, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record. The Chair shall then have staff indicate what matters are parts of the record already, and the Chair shall announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s), or their representative(s), may present their position(s), with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which time staff typically responds to the testimony and any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186 and 14 CCR Section 13195, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions of any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above. The Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order, and whether to impose an Administrative Penalty, either in the form recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order and the imposition of an Administrative Penalty.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-18-CD-01, CONSENT RESTORATION ORDER NO. CCC-18-CD-01, AND CONSENT ADMINISTRATIVE PENALTY ACTION NO. CCC-18-AP-01¹

A. LOCATION OF PROPERTIES AND PUBLIC ACCESS IN THE AREA

The Properties that are the subject of this action are located in the northern end of Pacifica in San Mateo County ([Exhibit 1](#)) at 100 and 101 Esplanade Avenue (identified as San Mateo County Assessor's Office APN's 009-023-070 and 009-024-010, respectively). These Properties are located seaward of Highway One and adjacent to the ocean. Three groups of 2-story condominium buildings were constructed on these Properties in 1972-1974. The two parcels are split by Esplanade Avenue as it runs east and west, before turning south along an approximately 100-foot high coastal bluff ([Exhibit 2](#)). The northern parcel is approximately 5.6 acres and the southern parcel is approximately 2.4 acres, for a total size of 8 acres. The Properties are located

¹ These findings also hereby incorporate by reference the section "Summary of Staff Recommendations" at the beginning of this March 29, 2018 staff report ("STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Civil Penalty Action") in which these findings appear.

where Highway One comes down from San Francisco and first turns to run parallel to the coast, and are surrounded to the south and east by developed areas of Pacifica. The area is characterized by steep coastal bluffs footed with sandy beach areas.

Access to these beaches is limited due to the development of most of the coastal fronting properties and/or because of the steep nature of the bluffs. To the north of the Properties is one separate parcel with a few residential buildings on it, and beyond that property is a long stretch of undeveloped coastline extending through Daly City to San Francisco's Fort Funston. The area south of the Properties is marked, generally, by residential development, mostly multi-family apartments and condominiums, and commercial development, including a small shopping center south of the Properties.

As detailed below, public access has long been provided at the Properties and served as an important public access point in an area where this stretch of coast is otherwise unreachable by developed accessways (some rough undeveloped trails do provide limited access in the area). This access point is especially important given that it is surrounded by steep and tall coastal bluffs, or areas otherwise blocked by dense development. CDP No. 02-10-039 required, as had prior CDPs here, an ambulatory public access easement along the bluff top, from the bluff top to the beach, and along all the sandy beach areas of the Properties. The access and recreational opportunities here provided the general public access to the beach in a stretch of coast without public access for significant distances. The public access stairs at this location provide essentially the only developed access to this beach area, extending approximately 4,100 feet before the beach is interrupted by jutting bluffs at Mussel Rock Park and a substantial rock revetment for the development currently known as the Aimco Esplanade Avenue Apartments (approved by the Commission on March 13, 2017). The nearest coastal public access point to the north is at Mussel Rock Park Beach, approximately 1.2 miles away. To the south, an informal, difficult dirt trail exists 0.5 miles from the Properties, on the other side of the Aimco seawall, but the next actual public access point is 1.7 miles to the south at Sharp Park Beach.

Along with the public access stairs to the beach, within the other required public easements, a public coastal access trail required by the CDP runs along the top of the bluff the length of the Properties and a public coastal viewing area sits at the southern end of the bluff trail, also required by the CDP ([Exhibit 3](#)). To the north this trail joins with another public access trail running along the bluff for a short distance. To the south, the trail ends in a public viewing area, which is currently blocked by the Unpermitted Development at issue in this matter.

Thus, by providing an important site of developed public access in a limited area, along with coastal recreational bluff trails, viewpoints, and beach recreational areas, the site serves as an important point of public access and recreation in this area and served a broad community from the region and other parts of the State.

B. JURISDICTION

The Commission has enforcement jurisdiction over the violations at issue here. The Properties are located in an area partially governed by the City of Pacifica's Local Coastal Program (LCP), which became effective in 1980, while other portions of the Properties and the violations that occurred on them are in the Commission's retained permitting jurisdiction. Even with a certified

LCP for this area, in this case, the Commission has jurisdiction in this matter because the violations involve actions in conflict with a Commission-issued CDP and all the violations addressed in this action pertain directly to CDP No. 02-10-039, which was issued by the Commission as a follow-up to emergency permits issued by the Commission in 2010 and 2011. The Commission retains jurisdiction to enforce any CDP it has issued. In addition, any development inconsistent with that CDP required an amendment of that CDP, which must be issued by the Commission, and neither a CDP nor a CDP amendment was ever issued by the Commission for the development at issue. Thus, the development activities at issue constitute development that required a permit from the Commission and that occurred without securing such a permit.

Commission staff has also coordinated with the City of Pacifica regarding enforcement of the Commission's permit at this site, discussing the matter with them several times over the year plus since the accessway was closed. In a letter dated December 22, 2017, Commission staff summarized the various actions taken thus far, memorialized a phone conversation with the City of Pacifica planning staff in which Commission staff noted that the Commission had enforcement jurisdiction and would pursue enforcement of this matter, and stated that city staff could contact them with any questions or concerns about the site ([Exhibit 4](#)). Commission staff has continued to communicate with Pacifica Planning staff to keep the city apprised of this pending resolution, and incorporate their requests on various issues, and appreciates their ongoing input on this matter.

C. PERMIT AND PUBLIC ACCESS HISTORY

The "Land's End Apartments", the original name of the residential complex that exists on the Properties, were permitted by the City of Pacifica in 1972, and construction of this complex occurred through 1974. The apartments were therefore originally permitted and construction commenced prior to the effective date of either the Coastal Act or its predecessor, Proposition 20 (i.e., prior to February 1973). The city permit required that the property owners build and maintain a public access staircase down the coastal bluff and provide public coastal access, along with a pathway system on top of the bluffs. In 1981, the City approved a permit for a conversion of the apartment complex into a condominium use, which triggered the need for the property owner to obtain a CDP from the Commission. (The Pacifica LCP was not yet fully certified and in effect.) In 1983, the Commission approved a CDP for the condominium conversion (CDP 3-83-015). This CDP included conditions that required a blufftop setback for development and installation of erosion control measures, and required irrevocable Offer to Dedicate (OTDs) for public access easements on the properties, including to provide public shoreline beach access extending the length of the properties, and to provide public vertical access from Esplanade Avenue to the beach along the public stairway, and for public lateral/blufftop access along a coastal path. The city of Pacifica accepted these OTDs and continues to hold the easements. The CDP also required, as did subsequent CDPs for development on these Properties, that the stairway be maintained and its stability guaranteed. A coastal aerial photograph from 1987 shows the existence of the stairway ([Exhibit 5](#)). A coastal aerial photograph from 2002 also shows the stairway, which remains similar to its original form ([Exhibit 6](#)). In May 2006, a mutual agreement between the city of Pacifica and Respondents amended the prior easements and combined the three easements into one, ambulatory easement.

This site is marked by significant coastal erosion. Coastal bluffs in this area are subject to a high rate of erosion, particularly during winter storm conditions when high wave run up and heavy rains are present. Directly at the southern end of the Properties are three parcels (Tong et. al.) where the condominiums were red-tagged and demolished during the El Nino storms of 2015-2016.

At some point shortly after 2002, the bottom portion of the stairway collapsed as a result of bluff erosion and winter storms. In February 2004, the City issued a CDP (CP-239-03) to repair the stairway. An aerial photograph from 2005 shows the repaired stairway, which then connected to a dirt trail at the bottom of the bluff to reach the beach ([Exhibit 7](#)). However, this trail system would again collapse in 2008, as evident in a aerial photograph at the time, which shows the stairway intact but the bluff trail collapsed below ([Exhibit 8](#)). The stairs remained closed between 2008 through 2010, and the Respondents did not adequately maintain and reconstruct the public access way.

In 2010 and 2011, the Commission issued two emergency CDPs to address erosion and bluff instability. The first emergency CDP (2-10-007-G) temporarily authorized a rock revetment to be installed at the base of the bluff along the length of the properties. This emergency permit also temporarily authorized excavation down to about -5 feet Mean Sea Level (“MSL”) for a 35-foot wide keyway to be dug into weakly cemented marine terrace sand, and the construction of a temporary construction access road down the face of the bluff. Construction began on that temporary revetment but was not completed. In November 2010, there were additional issues related to slope instability that threatened the existing development, leading to the issuance of a second emergency permit (2-11-005-G). This emergency permit temporarily authorized construction of: 1) a 670-foot long by 17.5-foot high tie-back seawall with public access stairs; 2) the placement/retention of the minimal amount of rock necessary for toe scour protection (associated with the rock placed under CDP 2-10-007-G); 3) removal of any rock not needed for toe scour protection; and 4) replacement of the existing public access features with new structures (including blufftop trail, stairway, and vertical trail).

Additionally, in 2010, the City issued an emergency CDP for installation of a buried pier and grade beam retaining wall system and sidewalk along the bluff top. The local CDP application maintained that it was necessary to stabilize the upper bluff due to excess erosion that the applicant claimed could threaten the stability of the buildings, driveways, and utilities at Land’s End. That emergency CDP would be combined with the Commission emergency CDPs for review in a single Commission CDP.

CDP No. 02-10-039

The follow-up CDP to the emergency permits (both those issued by the Commission and the City), CDP No. 02-10-039, permanently authorized the retention of the physical development already completed under the emergency CDPs and authorized the completion of a new seawall and public access stairway system.² These structures would theoretically ensure a continued

² The CDP was reviewed as a consolidated CDP by mutual agreement of the City, the Applicant, and the Commission, as allowed by Coastal Act Section 30601.3. The CDP therefore constitutes the required regular follow up CDP application for the City’s emergency CDP as well as the Commission’s two emergency CDPs.

public access stairway and trail system that would be continuously open and able to withstand, or adapt to, ongoing erosion events. Initially, the structures built pursuant to the CDP, though as discussed below, not in full compliance with that CDP, did provide a new public access system including a new trail and stairs to the beach that were incorporated into the seawall ([Exhibit 9](#)).

Specifically, CDP No. 02-10-039 ([Exhibit 10](#)) authorized: 1) an approximately 650-foot long, 35-foot high and 28-inch thick semi-vertical concrete tie-back seawall that was colored and contoured to approximate a natural coastal bluff, with 8,825 tons of rock for toe protection; 2) 10 to 15-foot riprap “wedges” at the ends of the seawall (approximately 60 tons of riprap at each end); 3) a 530-foot long buried caisson and grade beam retaining wall system along the upper bluff; 4) a new 530-foot long and 5-foot wide public access pathway atop the grade beam system connected to a public access trail originating at the property line to the north and running to the south property line, and a 5-foot wide vertical access switchback path leading down to a concrete stairway encased in the seawall which leads to the beach; 5) the extinguishment of existing public access easement and replacement with an updated, ambulatory public access easement; and 6) installation of site drainage, landscaping, and related development, including public benches, and interpretive public access signage.

The seawall, its toe-protection, and other structures were supposed to be built pursuant to plans approved with the CDP ([Exhibit 11](#)). As noted above, the seawall was to have a system of toe-protection and was designed to accommodate 4.5 feet of sea level rise. During the summer months, it was intended that the sand would accumulate and bury the bottom section of the seawall, extending to approximately +15 MSL. In winter, the sand would erode and likely at times expose the toe-protection at the base of the seawall. Other than the rocks used for toe-protection or the end protection, the Respondents were required to remove all rocks and any other rocks or abandoned debris that could impede public use of the public access easements or lead to unsafe conditions.

Initially, from what could be seen, the Respondents appeared to have built the seawall according to the plans, and the public accessway was opened and functioning in 2013 ([Exhibit 9](#), [Exhibit 12](#)). However, it would soon become clear that the structures were not properly constructed, were not properly monitored during construction or afterwards for structural integrity, and would not be properly maintained in a condition of structural integrity and such that the public access could be continuously open.

Relevant CDP Conditions

Given the history of erosion on the site and the past failures of the public access stairs, the CDP included a number of conditions that address potential erosion events, structural failures, and the need to keep public access open on and across the Properties ([Exhibit 10](#)). They include, but are not limited to the following conditions.

Special Condition 1 imposes a number of requirements related to the shoreline armoring system. **Special Condition 1.d** has specific requirements for the seawall’s toe protection. These requirements included that:

“Such toe protection shall be the minimum necessary to provide scour protection for the base of the seawall and shall be in substantial conformance with the riprap toe protection shown on the plans submitted to the Coastal Commission [Exhibit 2 of the CDP].”

Special Condition 1.e requires that:

“Other than the minimum amount of rock riprap at the upcoast and downcoast edges of the seawall needed to conform the edges of the seawall to the coastal bluff and the rock riprap permitted . . . for toe protection, . . . all other rock riprap and concrete debris . . . in the area extending seaward from the base of the seawall to the mean high tide line and visible from the beach surface;,[sic] and/or . . . placed in the nearby area by the Permittee, shall be removed and properly disposed of at an inland location approved by the Executive Director.”

Special Condition 2 requires a public access management plan with a number of required components. Most relevant here, **Special Condition 2.d** requires that there be no public access disruption and that:

“Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.) [sic] shall be prohibited. The public use areas shall be maintained consistent with the approved Public Access Management Plan and in a manner that maximizes public use and enjoyment.”

Special Condition 2.g requires that the public access areas and amenities be continuously maintained, specifying that:

“All of the public access components of the project shall be constructed in a structurally sound manner and maintained in their approved state in perpetuity including through ongoing maintenance of all public access improvements, including access paths, stairs, and overlooks, to ensure that public access is always continuous from Esplanade Avenue and the adjacent upcoast property across the blufftop portion of the site and to the overlook area, the stairs, and the sandy beach”

The **Special Condition 2.g** further specified that the access areas must be maintained and kept open, “even if that means modifying, moving, and/or replacing access improvements in light of changing circumstances, including damages from storms and changes in sea levels.” The condition also specifies that “Prior to any modification, movement, and/or replacement of access improvements, the Permittee shall obtain an amendment to this coastal development permit to authorize such development.”

Special Condition 4 concerns the recording of the new unified public access easement on the property, which belonged to the city. **Special Condition 4.a** requires that, other than that

authorized by the CDP: “No development, as defined in Section 30106 of the Coastal Act, shall occur within the Amended Easement Area.”

Special Condition 7 includes a number of reporting and monitoring conditions relevant here, including overall that:

“The Permittee shall ensure that the condition and performance of the approved as-built project are regularly monitored and maintained. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact future performance, and identify any structural or other damage or wear and tear requiring repair to maintain in a structurally sound manner and its approved state.”

A subsection of **Special Condition 7.a** requires that:

“The seawall, riprap toe protection, and associated riprap wedges (located at each end of the seawall) . . . shall be monitored by a licensed engineer with experience in coastal structures and processes to ensure structural and cosmetic integrity.”

Special Condition 7.b requires that:

“The public access improvements, including access paths, stairs, and overlooks, shall be monitored to ensure that public access is always continuous from Esplanade Avenue and the adjacent upcoast property across the blufftop portion of the site and to the overlook area, the stairs, and the sandy beach, even if that means modifying access improvements in light of changing circumstances, including damages from storms and changes in sea levels”

Special Condition 8 addressed and addresses future maintenance of the structures. Under that condition, activities to maintain the various approved structures required, under **Special Condition 8.c**, that the owner provide two weeks’ notice to Commission staff, and include:

“(1) a detailed description of the maintenance event proposed; (2) any plans, engineering and/or geology reports describing the event; (3) a construction plan that complies with all aspects of the approved construction plan (see Special Condition 3); (4) other agency authorizations; and (5) any other supporting documentation describing the maintenance event.”

The Condition requires that the maintenance event not commence until authorized by Commission staff as being consistent with the CDP.

Special Condition 8.f also restricts the use of the future maintenance clause:

“If the Permittee is not in compliance with the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the subject Properties at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future

maintenance condition shall not be allowed by this condition until the Permittee is in full compliance with all terms and conditions.”

As described further herein, all of these Conditions were violated by the actions of Respondents or their failures to Act. Respondents’ failure to properly construct the seawall and its toe-protection violated Special Condition 1.d and Special Condition 1.e was potentially violated because not all of the rocks placed pursuant to the emergency permits may have been removed from the beach. The Respondents failed to properly monitor (including during their construction) the structures on the properties built under the CDP, and maintain those structures, in violation of Special Condition 7.b, and possibly Special Condition 7.a. The Respondents failed to properly construct the public accessway, in violation of Special Condition 2.g, and they failed to properly maintain the accessway such that it was kept continuously open, in violation of Special Conditions 2.g. Moreover, the additional undertaking of further Unpermitted Development through the placement of large boulders, construction equipment and materials, and the undertaking of construction activities, all of which occurred in the public access easement on the property, violated Special Conditions 2.d and 4. Lastly, because the Respondents undertook construction activities to repair the seawall without providing any of the required plans to Commission staff or obtaining the authorization from staff, and failed to provide those required materials as specifically requested by staff, the Respondents violated Special Condition 8.c.

D. DESCRIPTION OF UNPERMITTED DEVELOPMENT

As described in further detail below, the Unpermitted Development includes, but may not necessarily be limited to: failure to comply with conditions of CDP No. 2-10-039 that were designed to ensure a continuously open network of public access trails, viewing areas, and beach access stairway, including engaging in development in violation of CDP No. 2-10-039; failure to comply with CDP No. 2-10-039 conditions related to maintenance on the Properties, again including affirmative development in violation thereof; placement of rock on a beach and in public easements; placement of construction equipment and materials on a beach and in public easements; grading; and unpermitted trenching on a beach.

E. ENFORCEMENT HISTORY (POST CDP No. 2-10-039)

After CDP No. 2-10-039 was approved on August 15, 2013, Respondents completed the general projects authorized by the CDP and submitted an as-built survey and several reports that summarized the construction activities that had occurred. However, according to Respondents, it now appears that the construction on the site was not performed in a structurally sound manner or consistent with the requirements of the permit, and as would be subsequently revealed, among other faulty construction work, Respondents have submitted reports and surveys showing that no toe-protection was actually placed below the seawall, drainage pipes were incorrectly installed, and the elevations of the footings for the seawall and public access stairway were incorrectly completed higher than as approved by the CDP. It is also unclear if all rock was properly removed from the emergency trenches dug into the beach seaward of the seawall, as was required under the CDP. The failure to properly construct the seawall and public accessway on the Properties violated several terms and conditions of the CDP ([Exhibit 10](#)). Special Condition 2.g requires that the “public access components of the project shall be constructed in a structurally sound manner and maintained in their approved state in perpetuity.” Special Condition 1.d requires that the toe-protection be constructed in substantial conformance with the

plans approved in the CDP. Special Condition 7 requires that the Respondents ensure that the condition and performance of the approved as-built project are regularly monitored and maintained, including that the structures be monitored to be kept in a “structurally sound manner and its approved state.”

In December 2016, a “sinkhole” formed at the base of the beach access trail behind the concrete stairway, and the public accessway collapsed ([Exhibit 13](#)). On behalf of Respondents, RJR Engineering, an engineering firm working for Respondents, submitted a report on the failure on December 14, 2016 ([Exhibit 14](#)). The report concluded that there was no damage to the seawall overall, and that the sinkhole resulted from improper pipe connections and/or construction of the pipes and pipe cleanout behind the seawall. The report recommended repairing and rerouting the pipe system and backfilling the sinkhole area with concrete. In a telephone discussion and email the same day, the Commission’s North Central District permitting staff informed the Respondents of the relevant CDP conditions in the permit, including the need to promptly restore public access. Specifically quoting Special Condition 8.c regarding maintenance, staff requested the required information: “The notification shall include:(1) a detailed description of the maintenance event proposed; (2) any plans, engineering and/or geology reports describing the event; (3) a construction plan that complies with all aspects of the approved construction plan (see Special Condition 3); (4) other agency authorizations; and (5) any other supporting documentation describing the maintenance event.” Staff therefore requested that Respondents provide “an illustration of how the emergency work relates to the as-built plans, which identifies where the cracked pipe is located, where the disconnection occurred, and where sand will be filled. It is important that any development remain consistent with the design contemplated in the coastal development permit.” Staff also requested the information as soon as possible, that day if possible. However, neither the property owners nor their representatives (RJR Engineering) provided the requested information or a plan to repair the public accessway in response to neither this contact nor multiple follow-up attempts made by Commission permitting staff.

Five months later, on April 10, 2017, the Commission’s North Central District permitting staff sent a letter repeating the request for information ([Exhibit 15](#)). Staff wrote that:

“It is now April 10, 2017, almost five months later, and as of the date of this letter, this information has not been made available to us despite multiple requests made by Commission staff, and the trail and overlook area remain entirely closed despite the obligations of the property owner to maintain maximum public access at this location, pursuant to the Public Access Management Plan required by CDP No. 2-10-039.”

The letter cited Special Condition 2.g, which requires the public access improvements to be maintained to ensure that public access was continuously open. The letter also concluded that: “Your continued failure to communicate with North Central Coast Commission staff leaves us with no other option but to consider elevating this situation to the Commission’s statewide enforcement program for appropriate formal enforcement action, which may include monetary penalties.”

Although Respondents responded to this letter by email stating that they would soon provide the requested information, they did not provide that information or follow-up with any correspondence or submittals. On July 3, 2017, Commission enforcement staff sent a Notice of Violation Letter ([Exhibit 16](#)) citing staff's December 2016 request for the immediate restoration of public access at the site and the need to comply with the CDP and provide a detailed proposed maintenance plan. The letter cited Special Conditions 2.g and 7.b as requiring Respondents to monitor and maintain the public accessways on the Properties as continuously open. The letter stated that: "Since the public accessway and stairs have not been repaired and/or maintained as required, public access is not currently available and the property owner is in violation of the terms and conditions of the Permit." The letter also informed the Respondents that they were in violation of the public access provisions of the Coastal Act and subject to penalties under Section 30821 and that: "Exposure to penalties pursuant to Section 30821 will continue until such time as these violations are resolved." The letter requested a response by July 11, 2017, with a plan to resolve the violations, and that the Respondents provide the required maintenance and construction plans by July 18, 2017, in compliance with special condition 8 of the CDP.

Respondents replied by letter on July 21, 2017, sent to permitting staff and not enforcement staff ([Exhibit 17](#)). The letter now described extensive damage to the seawall caused by winter storms. The letter stated that geotechnical studies were being undertaken and that more time was needed to investigate the damage. However, the letter did not provide any proposal to restore access, which was required under the permit to be open at all times, nor did the letter provide a timeline for repairs or the specific maintenance construction plans needed for compliance with the CDP. In a letter of August 23, 2017, enforcement staff again requested the necessary information and gave a deadline of September 4, 2017 to respond ([Exhibit 18](#)).

Respondents sent a letter on September 14, 2017, again to permitting staff and not enforcement staff and again did not provide the required information ([Exhibit 19](#)). This letter also now indicated that the seawall was not built pursuant to the plans approved by the Commission.

Enforcement staff wrote again on September 29, 2017 ([Exhibit 20](#)) regarding the ongoing non-compliance with the CDP. The letter indicated that Respondents still had not addressed the ongoing violations and the need to mitigate for the ongoing public access losses caused by the violations. The letter stated again that the Respondents still had not provided any of the requested information, including the plan to resolve the violations and restore public access, an analysis of the cause of damage and detailed construction plans and a timeline for the repairs. The letter reiterated that Respondents remained subject to potential penalties under Section 30821 and would be so until the violation was resolved. Enforcement staff did not receive a response to this letter.

Additional Unpermitted Development

Although neither Commission staff nor city staff received any maintenance proposals, proposed construction plans, or other notice, on or about October 31, 2017, without any authorization, Respondents began significant construction activities on the site ([Exhibit 21](#)). On October 31, 2017, planning staff from the City of Pacifica reported to Commission enforcement staff that large boulders were being moved down the bluff and placed on the beach. After several attempts to reach Respondents, on November 2, 2017, district enforcement staff spoke by phone with

Respondents' engineering firm, RJR Engineering, and told them the construction operations needed to stop. Respondents agreed to immediately cease operations.

On November 3, 2017, Commission staff visited the site and posted to the site a "Notice of Violation and Intent to Issue Executive Director Cease and Desist Order ("EDCDO")," otherwise known as a field NOV, combined with a notice of an impending EDCDO, requiring, among other things, that all unpermitted work cease ([Exhibit 22](#)). The site visit revealed that a significant amount of grading, trenching, and excavation work, and dumping of large boulders had occurred on the beach across the length of the property within the public access easement. Open trenches were clearly present on the beach, areas of the bluff had been graded, and large piles of rocks were on the beach ([Exhibit 23](#)). Large earth-moving construction vehicles and materials were on the blufftop, bluff area, and beach area, all within and occupying public access easements ([Exhibit 24](#)). During the site visit, Commission staff also found that the public blufftop viewing area was being used as a staging area for construction equipment and was completely fenced off ([Exhibit 25](#)). Two large construction bins also blocked public parking areas and multiple large signs prohibiting parking were placed along Esplanade Avenue.

On November 9, 2017, RJR Engineering sent a letter to permitting staff requesting an emergency permit to place riprap protection at the base of the seawall along portions of the wall that had been damaged ([Exhibit 26](#)). The letter indicated that apparently the seawall was not built consistent with the approved plans and CDP, and that, in fact, no toe-protection had been placed as approved in the CDP. The letter also indicated that the seawall footing was higher than it was supposed to be placed, as were the public access staircase footings. The letter also ascribed the unpermitted placement of rocks on the beach to a mistake in scheduling and delivery of the rocks.

Enforcement staff then sent a subsequent notice letter on November 15, 2017, providing notice to Respondents of (1) the potential issuance of an EDCDO, and (2) the Executive Director's intent to commence Cease and Desist and Restoration Orders, and Administrative Civil Penalty proceedings before the Commission ([Exhibit 27](#)). The letter requested multiple specific plans by certain deadlines to restore public access, repair and restore the structures on the Properties approved by CDP No. 2-10-039, and requested as-built plans showing how the structures on the properties were built and how they differed from the structures as approved by the CDP.

Respondents were not able to comply with these deadlines as required, and on November 17, 2017, the Commission issued an EDCDO ([Exhibit 28](#)) directing the Respondents to: 1) cease all unpermitted activities, 2) provide a plan for interim public access pending full restoration of the site, 3) provide the as-built plans showing how the structures on the site differed from the CDP approvals, and 4) submit a plan for the interim restoration of the site that would clean-up the site, remove or temporarily relocate all items of Unpermitted Development on the Properties, including the large boulders on the beach, and restore the areas impacted by the trenching and grading on the site.

Respondents first responded by requesting, on November 28, 2017, a lengthy 120-day extension of the EDCDO and proposed plans for a full repair and restoration of the seawall and public accessway, apparently not realizing that the EDCDO was intended to be implemented

immediately as a means of addressing interim restoration work, pending a fuller resolution of the matter before the Commission ([Exhibit 29](#)). After staff wrote on December 15, 2017, denying the 120 day extension request and reiterating that the EDCDO required an interim plan for the restoration of the site and public access, Respondents submitted new plans to comply with the EDCDO. After that, staff requested revisions to those plans because they were inadequate, and Respondents submitted several updated proposed plans that also required revisions.

Given the ongoing need to complete an interim restoration plan, and that the EDCDO would otherwise expire 90 days from its November 17, 2017 issuance, staff and Respondents agreed to extend the authority under the EDCDO to April 12, 2018, as is provided for under Section 13188 of the Commission regulations ([Exhibit 30](#)). On March 26, 2018, the Commission's Executive Director approved an interim restoration plan under the EDCDO, which is scheduled to be implemented by the time of the scheduled hearing for this item. Work to be done under that Interim Plan shall include removal of the large boulders from the beach, removal of other items of Unpermitted Development such as the construction trucks, equipment, and materials, and restoration of an interim system of public access. Those steps will be taken pending a full resolution of this matter by the Cease and Desist, Restoration Orders, and an Administrative Penalty proposed to be issued by the Commission in these proposed actions.

Consent Settlement

After receipt of the NOI, Respondents indicated their desire to resolve the violation amicably. Staff had a number of calls with Respondents in January and February of 2018, to discuss resolving the violations. Respondents again indicated their desire to settle the matter amicably and quickly and that they were willing to resolve the violations through Consent Orders. In March 2018, staff and Respondents had further discussions in an ongoing attempt to resolve the matter. On March 23, 2018, Respondents signed the proposed Consent Orders agreeing to resolve the violations, including civil liabilities associated with the Unpermitted Development (see [Appendix A](#)).

F. BASIS FOR ISSUANCE OF CEASE AND DESIST ORDER AND RESTORATION ORDER

The following pages set forth the basis for the issuance of this Consent Cease and Desist Order and Consent Restoration Order by providing substantial evidence that the Unpermitted Development meets all of the required grounds listed in Coastal Act Sections 30810 and Section 30811 for the Commission to issue a Cease and Desist and Restoration Order.

1) Statutory Provisions

Consent Cease and Desist Orders

The statutory authority for issuance of this Consent Cease and Desist Order is provided in Section 30810 of the Coastal Act, which states, in relevant part:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist...

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

Consent Restoration Orders

The statutory authority for issuance of this Consent Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

2) Factual Support for Statutory Elements

(a) Development has occurred without a Coastal Development Permit, and in violation of CDP No. 2-10-039, which the Commission previously issued

Although only one of the subsections of 30810 needs to be met for issuance of an order, here, the elements of both 30810 (a) and (b) were met. The actions taken here both occurred without a CDP and were inconsistent with a permit issued by the Commission.

The Properties are located in Pacifica in San Mateo County, within the Coastal Zone. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act, as well in the Pacifica LCP, in relevant part as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure...; grading, removing, dredging, mining, or extraction of any materials; ...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

The actions performed by Respondents, as described in [Section D](#) above, clearly constitute "development" within the meaning of the above-quoted definition and therefore those actions are subject to the permit requirements of Section 30600(a) of the Coastal Act. The Unpermitted Development was not exempt from permitting requirements, and required a CDP.

Coastal Act section 30600(d) states that after certification of a local coastal program, CDPs are generally to be obtained from the local government, rather than the Coastal Commission. However, in this case, the Unpermitted Development was also inconsistent with a CDP issued by the Commission in CDP No. 2-10-039, which was a consolidated permit to authorize development as a follow-up to both city- and Commission-issued emergency CDPs. Therefore, that CDP would have had to be amended in order to authorize the work, and that amendment would have to be provided by the Commission. Thus, the work required a permit from the

Commission, and none was obtained, thus satisfying the first, and independently sufficient, criterion of section 30810 (that one took an action that required a permit from the Commission without first securing such a permit).

In addition, the Unpermitted Development violated multiple conditions of the existing CDP related to public access, and monitoring, maintenance, and notice requirements related to the authorized development. No amendment or new permit was approved by the Commission (or the City) for the development subject to this Consent Cease and Desist Order. Therefore, the second, and also independently sufficient, criterion for issuance of the Consent Cease and Desist Order has been met (that one took an action inconsistent with an existing Commission permit); and thus, the Commission has the authority to issue this Consent Cease and Desist Order. In addition, the first of three criteria for issuance of a Restoration Order has been met (that development has occurred without a coastal development permit).

As it is only necessary to find that development has been undertaken without a required permit or in violation of a previously issued permit in order for the Commission to issue a Cease and Desist Order, the following Sections are only relevant for the findings related to the two additional criteria for the issuance of a Restoration Order.

(b) The Unpermitted Development is not Consistent with the Coastal Act and the LCP

The Coastal Act includes policies to protect, maintain, enhance and restore the quality of coastal resources within the coastal environment. The Unpermitted Development is inconsistent with multiple resource protection policies of the Coastal Act, including Section 30210 (maximum public access), Section 30211 (development shall not interfere with the public's right of access), Section 30212 (public access in new development projects), Section 30213 (protection of lower-cost recreation), Section 30221 (protection of oceanfront recreation), Section 30230 (protection of marine resources), Section 30223 (protection of oceanfront recreation on upland areas), Section 30231 (protection of biological productivity and water quality), Section 30240(b) (development in areas adjacent to recreation areas shall limit impacts), Section 30251 (protection of scenic and visual qualities), Section 30253 (hazards/geologic stability), and Section 30013 (environmental justice).

First, the Commission found in its approval of CDP No. 2-10-039 that only as conditioned would the project approved in that CDP be consistent with the Coastal Act. By violating the special conditions of the CDP, the Unpermitted Development is not consistent with the resource protection policies detailed in the adopted findings for the CDP.

Secondly, by impeding public access and failing to maintain and provide continuously open public access as required by the CDP and the Coastal Act, the Respondents' Unpermitted Development also violates the public access policies in Sections 30210, 30211, and 30212. The activities here, including the Respondents' failure to properly monitor and maintain the public access structures and easements and the Respondents' undertaking of Unpermitted Development that closed or impaired the public easements on the Properties, did not comply with the need to a) provide maximum access, b) protect existing public access, or c) provide public access in new development projects. Therefore, the activities are inconsistent with Section 30210, 30211, and 30212.

For the same reasons, the Unpermitted Development undertaken by Respondents also violates the public recreation policies in Sections 30213, 30221, 30223, and 30240(b). Because the public accessway, trails, and public access easements provided free public access and coastal recreation with free (for a period at least) parking, the Respondents' closure and/or impairment of that access and recreation did not protect lower-cost recreation protected under Section 30213. Nor did Respondents' activities protect oceanfront recreation under Section 30223. And, because the Unpermitted Development was development adjacent to recreation areas such as the sandy beach and public trail easements, the negative impacts of that development are inconsistent with Section 30240(b).

The Unpermitted Development, including the dumping of large boulders on a beach, trenching and grading on a beach, and the use of substantial construction equipment on a beach, all are also inconsistent with Sections 30230 and 30231, because the impacts from those activities could likely impair marine resources and/or biological productivity and water quality.

The same Unpermitted Development activities, as well as the placement of fencing and construction materials atop the bluff also block and negatively impact coastal views and are therefore inconsistent with Section 30251, which protects coastal views as a resource. Lastly, the failure to properly construct, monitor, and maintain a seawall as required by the CDP, is inconsistent with Section 30253 because those activities contribute to potential geological instability and erosion and did not assure structural integrity.

Additionally, the closure of a public accessway and impairment of coastal public trails and beach access is inconsistent with the environmental justice provisions of the Coastal Act, as articulated in Section 30013. That section states that no one may be "unlawfully denied full and equal access to the benefits of . . . any program or activity that is conducted, operated, or administered pursuant to [the Coastal Act]." Public access and opportunities for coastal recreation continue to be threatened by private development, illegal encroachments, and other restrictions on beach or coastal access. These burdens of restricted access are borne to a greater extent by low-income and minority communities, while coastal property owners benefit from the privatization of their adjacent public spaces of beaches, coastal areas, and public easements. Securing open public access for all citizens provides low-cost, outdoor recreation that can improve the overall quality of life of all the public, including low income and minority communities. In this case, the public accessway, trails, and public access easements provided free public access and coastal recreation with free (for a period at least) parking. The public accessway and recreation areas served a diverse population of a varied urban region. Although no single access point will solve all environmental justice problems, ensuring that free public access to the coast is maintained and that no new impacts occur, especially by ensuring those accessways already acquired by the State for public recreation remain available, will cumulatively ensure that public access is protected and reduce environmental injustice concerns. The Respondents' closure and/or impairment of that access and recreation did not protect this resource for the benefit of all the public.

Thus, given that activities here are inconsistent with multiple resource protection policies of the Coastal Act, the second of the three criteria for 30811 has thus been satisfied.

(c) Unpermitted Development is Causing Continuing Resource Damage

The Unpermitted Development is causing “continuing resource damage,” as defined in 14 CCR Section 13190. 14 CCR Section 13190(a) defines the term “resource” as it is used in Section 30811 of the Coastal Act as follows:

‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

The public access, recreation, marine resources, and natural landforms qualities of the Properties are afforded protection under Coastal Act Sections 30210, 30212, 30230, 30231, 30251, and 30253, respectively, and are therefore “resources” as defined in Section 13190 (a) of the Commission’s regulations.

The term “damage” in the context of Restoration Order proceedings is defined in Section 14 CCR 13190(b) as follows:

‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.

The term “continuing” is defined by 14 CCR Section 13190(c) of the Commission’s regulations as follows:

‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.

In this case, the resource damages caused by the Unpermitted Development include the reduction in quality and abundance of available public access and public recreational opportunities, the increase in potential adverse impacts to marine resources, and the increase in erosion and the potential for geologic instability. As of this time, the Unpermitted Development and impacts from the violations remain on the Properties (note that pursuant to the EDCDO, Respondents may have temporarily addressed some of the unpermitted items through an approved Interim Restoration Plan). The Unpermitted Development and the results thereof continue to impact the coastal resources. Without removing the physical items of unpermitted development and restoring the impacted areas including restoration of the required access, the foregoing impacts are continuing. The persistence of these impacts constitutes “continuing” resource damage, as defined in Section 13190(c) of the Commission’s regulations. As a result, the third and final criterion for the Commission’s issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 is therefore satisfied.

G. BASIS FOR ISSUANCE OF ADMINISTRATIVE PENALTY

1) Statutory Provisions

The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act, which states, in relevant part:

(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.

Through this proposed settlement, Respondents have agreed to resolve their financial liabilities under Section 30821 of the Coastal Act, as well as potential liability under Section 30820 and the Coastal Act.

2) Factual Support for Statutory Elements

This case, as discussed above, includes violations of the public access provisions of the Coastal Act. These provisions include, but are not necessarily limited to: Section 30210, which states in part that “maximum access . . . and recreational opportunities shall be provided for all the people”; Coastal Act Section 30211 (“Development shall not interfere with the public’s right of access to the sea . . .”); Coastal Act Section 30212, (“Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects....”); Coastal Act Section 30221 (“Oceanfront land suitable for recreational use shall be protected for recreational use and development”); Coastal Act Section 30223 (“Upland areas necessary to support coastal recreational uses shall be reserved for such uses”); and Coastal Act Section 30240(b) (“Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.”)

As discussed above, the Respondents’ failure to properly construct the public accessway and seawall on the properties, the failure to properly monitor and maintain that accessway for structural integrity, such that public access was always continuous and open, impaired or precluded public access and thereby violated Sections 30210, 30211, and 30212 as quoted above. The Unpermitted Development at issue here also closed or impaired public access easements on the properties, in violation of the special conditions of the CDP and the terms of the public access easements on the properties. Therefore, the Unpermitted Development was further inconsistent with the same public access provisions of the Coastal Act. The activities here, including the Respondents’ failure to properly monitor and maintain the public access structures and easements and the Respondents’ undertaking of additional Unpermitted Development that closed or impaired the public easements on the Properties, did not comply with the need to a) provide maximum access, b) protect existing public access, or c) provide public access in new development projects. Therefore, the activities are inconsistent with Section 30210, 30211, and 30212.

Furthermore, by impeding public access and failing to maintain and provide continuously open public access as required by the CDP and thereby by the Coastal Act, the Respondents’ Unpermitted Development also violates the public access and recreational policies in Sections 30221, 30223, and 30240(b). CDP No. 2-10-039 based its public access conditions in part on

Coastal Act Section 30240(b), which states, “Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.” The Respondents undertaking of development that significantly degraded adjacent public recreation areas violated Section 30240(b). It is also clear that in closing access to, or impairing use of, public recreational areas on the beach, on trails to the beach, or on recreational trail on the bluffs above the beach, the Respondents’ development activities did not a) protect oceanfront recreational uses as required in Section 30221; b) reserve upland coastal areas for coastal recreational use as Section 30223 requires; or c) site and design development such that it would limit impacts to recreational areas.

Moreover, in its approval of CDP No. 2-10-039, the Commission already found that those public access provisions of the Coastal Act applied here and required, through conditions of approval, the protection of the “the blufftop access and pathway, the stairway, the beach (and access to and along it) and offshore waters for public access and recreation purposes, particularly free and low cost access.” The Commission also required the recordation of an updated public access easement providing for public access across the bluff top, down the bluff, and laterally across the sandy beach seaward to the mean high tide line, in order to ensure that the public had a right to access and recreate in this area. The CDP also required that no development be placed in the public easements and that no development degrade the use of the public easements. The Unpermitted Development was placed or occurred directly within multiple areas of this easement, blocking and impairing the easement, and resulted in a closed public stairway and vertical easement. The failure to comply with permit conditions pertaining to public access also constitute violations of the public access provisions of the Coastal Act. Therefore, the Unpermitted Development and the negative impacts to public access to the beach and public easements violate those Coastal Act provisions cited by the CDP, Sections 30210, 30211, 30212, 30213, 30221, 30233, and 30240(b).

(a) 30821(h) Notice

Under 30821(h) of the Coastal Act, under certain specified circumstances, imposition of administrative penalties may be avoided when a violation is corrected within 30 days of written notification from the Commission regarding the violation. However, this Section is inapplicable to the matter at hand. There are three requirements for 30821(h) to apply: 1) the violation must be corrected consistent with the Coastal Act within 30 days of notice, 2) the violation must not be a violation of a permit condition, and 3) the violation must be able to be resolved without requiring additional development that would require Coastal Act authorization. None of these requirements is met here; therefore Section 30821(h) does not apply. Respondents were specifically notified of the potential applicability of Section 30821 on July 3, 2017, and did not resolve the violations within a 30 day period since that date. Further, this action is to enforce the terms and conditions of CDP No. 2-10-039, and a 30821(h) cure is not available for permit violations. Finally, repair of the public access trail and stairway, and the repair of the seawall on the property would otherwise require a permit, so the violation cannot be fully resolved without authorization.

Additionally, Section 30821(f) of the Coastal Act states:

(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.

Section 30821(f) is inapplicable in this case. Here the closure, for more than a year, of a public accessway that provides important public access in a critically needed urban area to a stretch of beach otherwise very difficult to reach, cannot be considered to have resulted in “de minimis” harm to the public. Moreover, the undertaking of substantial construction activities without any authorization, and in direct conflict with a CDP, that resulted in numerous large boulders, some up to 6-tons, being placed on the public areas of a beach, along with the placement of large construction vehicles and materials in public beach areas and public easements, precluding their use, cannot be considered to have resulted in “de minimis” harm to the public. Therefore, these violations are not minor violations and they were not resolved expeditiously.

(b) Penalty Amount

Pursuant to Section 30821(a) of the Coastal Act, the Commission may impose penalties 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.” 30820 (b) authorizes civil penalties that “shall not be less than one thousand dollars (\$1,000), not more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.” Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation.³

Section 30821(a) sets forth the time for which the penalty may be collected by specifying that the “*administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.*” In the context of the proposed settlement, Commission staff is recommending that the Commission focus on the closure as the key public access violation and calculate the time period for that violation as commencing on December 14, 2016 – the date staff confirmed the closure of public access in this location and requested the quick restoration of public access and compliance with the terms of the CDP.⁴ The recommended period from December 14, 2016 to the date Respondents signed these Consent Orders (March 23, 2018), is therefore currently 464 days. The Commission could thus impose a maximum penalty as high as \$11,250 per day for a total maximum penalty of \$5,220,000, for that one violation alone.

As discussed immediately below, Commission staff has considered the various factors set forth in section 30820(c) of the Coastal Act in negotiating a settlement proposal for the Commission’s approval. Given the context that Respondents quickly agreed to cooperate after the NOI was sent to them, and have worked diligently and cooperatively with staff to resolve this violation within

³ For the purposes of this calculation, as a conservative measure, and in light of the fact this is being addressed in settlement, the Commission staff is only considering one violation for this matter. However, multiple public access violations could be considered to exist on the properties including, at the very least, the failure to comply with the CDP conditions for public access and the separate actions in November 2017 that further impacted public access.

⁴ It should be noted that the date liabilities commence is the date the violation occurred. While Commission staff may have discovered the access violations on December 14, and are selecting that date for the purposes of calculating terms of a settlement here, the date that such liabilities actually commenced is the date in which the access provisions of the Coastal Act were violated.

four to five months of the NOI, rather than years, and without the need for litigation, a penalty amount less than the total is appropriate. The proposed penalty amount in this proposed settlement is therefore a total of \$1,450,000, which will be satisfied via a payment to the Violation Remediation Account of the California Coastal Conservancy Fund.

For background, we also provide an analysis of the factors referenced in Section 30821(c) as they would apply to an access violation here. Under Section 30821(c), in determining the amount of administrative penalty to impose, “the commission shall take into account the factors set forth in subdivision (c) of Section 30820.”

Section 30820(c) of the Coastal Act states:

In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.*
- (2) Whether the violation is susceptible to restoration or other remedial measures.*
- (3) The sensitivity of the resource affected by the violation.*
- (4) The cost to the state of bringing the action.*
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.*

With regards to 30820(c)(1), the violation involves the closure of a critical public accessway for a year, and the failure to comply with specific CDP conditions regarding public access, including placement of large boulders on the beach, closing off public trails on the upper bluff area, and placing construction equipment and debris directly within the public access easement. On the other hand, the Respondents state they were attempting to address the situation, and were also dealing with the effects of erosion and that they were attempting to investigate the nature of the collapse, which contributed to the delay in responding to Commission staff and their inability to promptly reopen the accessway. However, they failed to properly maintain and monitor the public accessway, or to reopen it promptly. They also undertook significant additional construction activities without any authorization, and in direct violation of CDP conditions that had further significant negative impacts to public access; however, it appears the ultimate intent of those activities was to repair a seawall and the accessway.

With regards to 30820(c)(2), the violation can be remedied and future public access restored, and through these Consent Orders the Respondents have committed to promptly doing so. Full public access will be restored here soon. However, there is no restoration possible for the lost year or more of public access.

With regards to 30820(c)(3), the resource affected by the violation, public access, is a scarce and important resource across the State and under the Coastal Act. This is especially true in this coastal area in particular, which is a dense urban area of residential homes near the greater San Francisco Bay Area. The public access lost here provided one of the few access points in a long stretch of coastline, and the only useable developed access points to this stretch of beach, yet the accessway has been closed for over a full year.

With regards to 30820(c)(4), the costs to the state have been moderate. Respondents initially failed to properly respond to staff requests for information and a plan to resolve the violation, requiring multiple letters from enforcement and permitting staff. The failure to properly construct the seawall and accessway also required analysis from permitting staff and the Commission's senior engineer. On the other hand, the total time of the violation is a year and a half, which is a long time, but comparatively shorter than some of the other public access violation cases in the past. Moreover, since the Executive Director's NOI was mailed, the Respondents have also worked cooperatively to promptly resolve this matter and have been able to reach an agreement to resolve the violations within five months, a relatively short time period.

With regards to 30820(c)(5), the Respondents have voluntarily agreed to undertake restoration (although there was some delay in doing so), and do not appear to have garnered any economic profits from the violation.

Overall, although the violation is a very significant one, the proposed settlement provides for an expeditious resolution of the violation and restoration of access, and the settlement was reached quickly and efficiently with a relatively low amount of time and resources, which is a critical reason for the provision in the first place, and in particular, for the calculation of penalties on a daily basis. A relatively quick settlement here frees staff up to address other important enforcement cases. Staff believes that the proposed penalty reflects the settlement context, and yet provides a significant deterrent to such violations in the future.

H. CONSENT ORDERS ARE CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT

The Consent Orders, attached to this staff report as [Appendix A](#), are consistent with the resource protection policies found in Chapter 3 of the Coastal Act and the corresponding policies of the Pacifica LCP. These Consent Orders require and authorize Respondents to, among other things, cease and desist from conducting any further unpermitted development on the Properties, remove the physical items that were placed or allowed to come to rest as a result of Unpermitted Development, and restore the areas impacted by the Unpermitted Development through, among other things, undertaking restorative grading, removing non-native vegetation, and planting native vegetation. The Consent Orders require Respondents to improve native habitat by replacing non-native and invasive plant species on the Properties with native plant species appropriate to the habitat type, along the bluff face and bluff top. The Consent Orders require Respondents to repair public access trails and stairs and make them available to the public and to not block or impede the public's use of public access easements and State tidelands. The Consent Orders also require Respondents to fully and completely comply with CDP No. 2-10-039. Therefore, these Consent Orders are consistent with the Chapter 3 policies of the Coastal Act, and their issuance is consistent with Coastal Act Section 30810(b).

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of these Consent Orders, to compel the removal of the Unpermitted Development, among other things, and implementation of these Consent Orders are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of "classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA]." The

CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 *et seq.*). Because this is an enforcement action designed to protect, restore, and enhance natural resources and the environment, and because the Commission’s process, as demonstrated above, involves ensuring that the environment is protected throughout the process, three of those exemptions apply here: (1) the one covering actions to assure the restoration or enhancement of natural resources where the regulatory process involves procedures for protection of the environment (14 CCR § 15307); (2) the one covering actions to assure the restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment (14 CCR § 15308); and (3) the one covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” These Consent Orders are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action to protect and restore natural resources and the environment, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

J. SUMMARY OF FINDINGS OF FACT

1. FPA/WC Lands End, LLC, FWC Lands End, LLC, FPA Multifamily, and Trinity Property Consultants and Redwood Construction, as exclusive affiliates of FPA Multifamily, are the owners and/or operators of the Properties located at 100 and 101 Esplanade Avenue, City of Pacifica, San Mateo County, which are designated as San Mateo County Assessor’s Parcel Numbers 009-023-070 and 009-024-010, respectively. The Properties are located within the Coastal Zone.

2. The Commission approved CDP No. 2-10-039 on August 15, 2013. The Commission found that without certain conditions providing for, and protecting, among other things, public access and recreation on the site the project approved in that CDP would violate public access provisions of the Coastal Act. These conditions required Respondents to maintain, monitor, and keep open the public access improvements on the Properties, including the public access trail and stairway to the beach. Other conditions of CDP No. 2-10-039 required Respondents to maintain the seawall and public accessways on the property in a structurally sound manner, and to provide notice of any proposed maintenance activities to Commission staff, and obtain staff's approval that the proposed activities were consistent with the CDP.
3. Respondents did not properly monitor construction of the seawall and public access improvements on the Properties to ensure they were structurally sound, or monitor and maintain those structures in the future to ensure structural stability.
4. Respondents did not properly monitor, maintain, and keep open the public access improvements on the Properties, as required by the CDP.
5. Respondents undertook additional Unpermitted Development by initiating substantial construction activities on the Properties without any authorization, including grading, trenching, the placement of large boulders on a beach, the placement of substantial construction equipment and materials on a public beach and in public easements. Along with being additional Unpermitted Development, these activities violated the CDP conditions against development in the public access easement on the properties and against development that impaired public use of those easements.
6. The Unpermitted Development described herein violated the public access provisions of the Coastal Act. Public Access is a critical resource protected under the Coastal Act and in general, violations involving access violations such as these are important and not *de minimis* violations.
7. Public Access is a critical coastal resource in California to be protected under the Coastal Act. This is especially true in the context of the Coastal Act's mission to support increased Environmental Justice in California because coastal public access and recreation should serve all communities, income groups, and ethnic groups, and access points such as this in broad urban regions serve such populations, especially when they are, as is the case here, free coastal access in an urban region and semi-urban neighborhood.
8. On November 15, 2017, the Executive Director sent Respondents a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings; and Notice of Intent to Commence Administrative Civil Penalty Proceedings.
9. The Commission issued an Executive Director Cease and Desist Order on November 17, 2017, directing Respondents to undertake interim measures to address the violations.
10. Coastal Action Section 30810 authorizes the Commission to issue a Cease and Desist Order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit or (2) is inconsistent with any permit previously issued by the

Commission. The criterion for issuance of a Cease and Desist Order has been met pursuant to Section 30810 of the Coastal Act.

11. Coastal Action Section 30811 authorizes the Commission to issue a Restoration Order when the Commission finds that development has occurred without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage. The criteria for issuance of a Restoration Order has been met pursuant to Section 30811 of the Coastal Act.
12. Coastal Action Section 30821 authorizes the Commission to impose administrative civil penalties in these circumstances. The criteria for imposition of administrative civil penalties pursuant to Section 30821 of the Coastal Act have been met in this case.
13. As called for in 30821(c), the Commission has considered and taken into account the factors in 30820(c) in determining the amount of administrative civil penalty to impose. The penalty agreed to in this settlement is an appropriate amount when considering those factors.
14. The work to be performed under this Consent Cease and Desist and Consent Restoration Order, if completed in compliance with the Consent Orders, will be consistent with Chapter 3 of the Coastal Act.