

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904- 5200  
FAX (415) 904-5400  
TDD (415) 597-5885  
[WWW.COASTAL.CA.GOV](http://WWW.COASTAL.CA.GOV)



January 15, 2019

The Honorable Gavin Newsom  
Governor

The Honorable Toni Atkins  
Senate President Pro-Tempore

The Honorable Anthony Rendon  
Assembly Speaker

The Honorable Henry Stern  
Chair, Senate Natural Resources and Water Committee

The Honorable Laura Friedman  
Chair, Assembly Natural Resources Committee

**Subject: Coastal Act Section 30821 Administrative Penalties Report**

On behalf of the California Coastal Commission and as required by Public Resources Code Section 30821(i), I am submitting the attached report on the status of the Commission's enforcement program. This report provides information on the Commission's implementation of administrative penalty authority from January 1, 2015 – December 31, 2018.

Specifically, this report provides data collected during the specified time period regarding:

- The number of new violations reported annually
- The number of cases resolved annually
- The number and dollar amount of penalties issued
- Additional data and information related to the Coastal Commission's enforcement efforts

I hope that this report conveys the substantial public benefit derived from the Commission's responsible use of this authority in its public access work. Protecting the coast and the public's right of access to it is a core Coastal Act value.

Additional copies of this report are available at the Coastal Commission's website ([www.coastal.ca.gov](http://www.coastal.ca.gov)). Additional printed copies of this report can be obtained by calling the Coastal Commission's Headquarters office at (415) 904-5220.

Thank you for your continued support of the California Coastal Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Ainsworth".

John Ainsworth  
Executive Director  
California Coastal Commission



# Report to California Legislature on Implementation of Coastal Commission Administrative Penalty Authority From 2015-2018



Report submitted by:  
California Coastal Commission  
Pursuant to Public Resources Code §30821(i)

January 2019

DOCUMENT AVAILABILITY:

This report can be viewed at:  
<https://www.coastal.ca.gov>. Hard copies may be obtained by calling the  
Coastal Commission's office at 415-904-5220.

CONTACTS:

Legislative Director's Office  
1121 "L" Street, Suite 503  
Sacramento, CA 95814  
916-445-6067

Enforcement Unit, Legal Division  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105  
415-904-5220



C A L I F O R N I A  
**C O A S T A L**  
C O M M I S S I O N

(Cover page photograph: Public accessway in City of Pacifica, San Mateo County restored using the Commission's administrative penalty authority. Photograph taken on 1/10/19.)

## I. EXECUTIVE SUMMARY

In 2014, SB 861 (Ch. 35, Stats.2014) amended the Coastal Act by adding Public Resources Code Section 30821<sup>1</sup>, conferring administrative penalty authority on the California Coastal Commission (“Commission”) as a tool for deterring and resolving Coastal Act violations related to public access more quickly. Section 30821(i) requires the Commission to submit a report to the Legislature by January 15, 2019, detailing the Commission’s implementation of Section 30821 over the preceding four-year period. This report provides both the metrics identified in 30821(i) as well as additional analysis of the cases and implementation of the section.

Section 30821(i)(1) requires the Commission to report on the number of new violations opened under this section. As of December 31, 2018, the Commission has approximately 2,500 open violation cases of all types. During the reporting period, the Commission opened a total of 175 new public access cases: 11 cases in July-December of 2014,<sup>2</sup> 28 cases in 2015, 47 cases in 2016, 27 cases in 2017, and 26 cases in 2018, as well as “reopening” 36 older cases under the new authority.<sup>3</sup> Thus far, staff has notified the violators in 137 of these cases. There are 38 remaining Section 30821 cases in which staff has not yet given notice to the relevant party.<sup>4</sup>

Typical access violations include illegal “No Parking” or “No Trespassing” signs on public lands; unauthorized physical barriers such as fences, locked gates, boulders or hedges blocking public rights of way; security guards employed by homeowners to eject visitors from public beach areas, and unfulfilled permit conditions requiring trails, parking spaces and other amenities that were required in connection with the approval of new construction in the coastal zone.

Section 30821(i)(2) requires the Commission to report on the number of public access violations resolved during the time from January 1, 2015 to December 31, 2018, inclusive. During the reporting period, the Commission resolved a total of 102 public access cases. Of these, 96 were resolved at the District level, with full voluntary cooperation of the violator and no penalties. An additional six cases were resolved amicably through formal consent orders, requiring a vote of the Commission and a penalty agreed to by the property owner in addition to an agreement to fully resolve the violation. Only two administrative penalty cases have been contested by the property owner. Both cases are currently in litigation.

Section 30821(i)(3) requires the Commission to report on the number of administrative penalties issued, the dollar amount of the penalties, and a description of the violations. As discussed more fully herein, most of the cases were resolved without any penalties. However, during the

---

<sup>1</sup> Attached as Appendix A. All section references in this report are to the Public Resources Code unless otherwise indicated.

<sup>2</sup> The first half of 2014 is included because the statute was amended on July 1, 2014.

<sup>3</sup> As discussed further in this report, there are other enforcement cases that may have a secondary access component and the Commission may address these cases under Section 30821 in the future as well. (See Section V.B of this report).

<sup>4</sup> Three of these cases are located in certified LCP jurisdictions, and staff has referred them to the appropriate local government for enforcement in compliance with the LCP. In addition, staff is still investigating violations in 35 cases. It is foreseeable, given the historical data, and as resources allow, that staff will notify violators in the vast majority of these “under investigation cases.”

reporting period, penalties were assessed by the Commission in eight cases. A total of \$8.8 million in both monetary and non-monetary (“in lieu”) fines was assessed, with \$3.6 million assessed through six Commission-issued consent orders, and \$5.2 million was assessed through two Commission-issued unilateral orders. More information regarding the types of violations involved in these cases pursuant to Section 30821(i)(3), is found in Section VI.C of this report.

Under Section 30821(j), the monetary penalties are deposited into the State Coastal Conservancy’s Violation Remediation Account, and, upon appropriation by the Legislature, these funds are available to the Conservancy to disperse to a variety of public and private entities for the purpose of addressing access losses due to violations by providing new or enhancing existing coastal public access opportunities. In many enforcement cases, the Commission has also secured non-monetary, in lieu enhancements that provided access improvements, such as enhanced trails, public access signage, a signalized crossing to aid pedestrians, and the development of the coastal access app YourCoast<sup>5</sup>, and, when appropriate and beneficial, the Commission is continuing to seek such creative settlements in its access cases when appropriate and beneficial.

Although Section 30821 allows for penalties to be assessed at a rate of up to \$11,250 per day for each day a violation persists, the Commission has been able to resolve the majority of cases without the need to impose any penalty at all. In addition, since obtaining Section 30821 authority, the average time for case resolution has dropped more than 90%, from 1,073 days prior to 2014, to just 102 days. As a result, the Commission has been able to resolve significantly more public access cases annually and to restore and enhance access throughout the coastal zone statewide.

Maximizing public access to the coast is a core Coastal Act policy. The cases resolved under Section 30821 have provided enhanced public access benefits to the public with improved efficiency for the agency. Virtually all of these cases have made areas of the coast accessible (or more accessible) at no cost to the user, providing access to people of all means and benefiting the population as a whole, but especially benefiting those in minority and low-income communities who can have limited recreational options and have historically been denied access. In addition, protecting access is even more critical in an era of sea level rise, when Coastal Act policies and permits are essential to restore access to the beach and to minimize sand loss so the public has more beach to enjoy.

Conclusion: When compared to the number and rate of resolution for non-public access violations, it is clear that administrative penalty authority achieves increased compliance with the law, improves efficiencies, reduces costs, and provides greater public benefits than attempting to resolve violations without penalty authority.

---

<sup>5</sup> The YourCoast app is a free, informative guide to 1,563 California beaches, trails, parks, and visitor serving destinations, which was launched in December 2018. As of 1/9/19, it has been downloaded 12,882 times. The YourCoast.org web app is available at: <https://www.yourcoast.org>. The mobile app is available on iTunes at: <https://itunes.apple.com/us/app/yourcoast/id1439933107>

## II. OVERVIEW OF COMMISSION ENFORCEMENT

The California legislature enacted the Coastal Act in 1976, declaring, therein, that the California coastal zone is “a distinct and valuable natural resource of vital and enduring interest to all the people,” and that “the permanent protection of the state’s natural and scenic resources is of paramount concern to present and future residents of the state and nation.”<sup>6</sup> Section 30001.5 contains goals for the protection of coastal resources, and Chapter 3 (Sections 30200-30265.5) contains resource protection policies that provide standards by which all proposed development activities are to be assessed to effectuate Coastal Act goals.

When development is undertaken without a permit, or in violation of one or more of the permit conditions placed on the project in order to protect coastal resources, the Commission’s Enforcement Unit is tasked with working to resolve the violation and to restore impacted resources. Enforcement staff makes every effort to resolve violation cases amicably, trying first to secure voluntary compliance through correspondence and face-to-face meetings. If unable to resolve a violation informally, enforcement staff may pursue resolution through the process leading to issuance of cease and desist and restoration orders, which is a more resource-intensive way to proceed, as it requires a formal Commission hearing.<sup>7</sup> Staff attempts to resolve cases amicably at this more formal level as well, pursuing settlement through consent orders if possible. If, after being given all of these opportunities to comply, a violator still does not agree resolve a violation, staff will propose that the Commission issue a so-called “unilateral” order, and, if necessary, seek to enforce them through litigation.



Exhibit 1: Section 30821 is utilized to remove many impediments to public access and recreation, such as this private fence in Malibu. Once removed, the public is once again able to enjoy this stretch of beach, as shown in the second photograph.

Resolving a violation formally through orders, especially unilateral orders, consumes a tremendous amount of time and resources, most often taking many years. With Section 30821

<sup>6</sup> Section 30001(a).

<sup>7</sup> The Commission’s authority to issue cease and desist and restoration orders is provided for in Sections 30810 and 30811.



administrative penalty authority, the Commission now has a tool to address one of the Coastal Act's key goals – maximizing public access to and along the coast – more effectively and efficiently, without the need, in most cases, for the formal enforcement process. Informal resolutions are amicable and are completed more quickly, freeing up resources for enforcement staff to work on additional access cases and projects, and halting the harm—in this case, loss of public access—much more quickly. Section 30821 authority has enhanced the Commission's ability to effectuate the Coastal Act's public access goals and to protect this vital coastal resource.

### **III. THE COMMISSION'S PRE-30821 PENALTY AUTHORITY**

The Commission has long had the authority to seek the imposition of civil liabilities for violations of the Coastal Act through the courts, pursuant to Coastal Act Sections 30805, 30820, 30821.6 and Section 30822. Although it has successfully imposed civil liabilities under these Coastal Act sections, the Commission can only exercise this authority through judicial channels, or via consent agreements with willing parties. When voluntary resolution did not bear fruit, often parties did not feel that there was any risk in delaying resolution and challenging the Commission to take the step of filing litigation. Litigating these cases is an arduous process, requiring a tremendous expenditure of resources by the Commission as well as the Office of the Attorney General, which represents the Commission in court. Given the limited resources of these state agencies, and the increasing amount of cases that need to be addressed to protect coastal resources, a more efficient alternative was needed.

### **IV. SECTION 30821 ADMINISTRATIVE PENALTY AUTHORITY**

Under Section 30821, the Commission is now able to impose civil liability administratively in cases involving violations of the Coastal Act's public access provisions, assessing penalties at a Commission hearing rather than through slow and expensive judicial channels.

Administrative penalty authority is a well-established standard method of resolving the civil liabilities associated with violation of state law; it has been used successfully for years by other California state agencies, including the Department of Fish and Wildlife, Air Resources Control Board and Regional Water Quality Control Boards, enhancing these agencies' enforcement programs.<sup>8</sup> This report details the extent to which Section 30821 has enhanced the Commission's enforcement efforts and in doing so, furthered the Coastal Act's public access goals.

#### *A. Statutory Provision*

On July 1, 2014, the legislature amended the Coastal Act to add Section 30821, providing the Commission with administrative penalty authority.<sup>9</sup> The legislation was originally drafted to

---

<sup>8</sup> California Department of Fish and Wildlife under Fish and Game Code Section 2022(f); California Air Resources Board under Health and Safety Code Section 42402.5; California Regional Water Quality Control Board under Water Code Sections 13323 et seq. and 13385(c). Many other state agencies have similar authority, including San Francisco Bay Conservation & Development Commission, State Lands Commission, State Energy Resources Conservation & Development Commission, Department of Forestry and Fire Protection, County Agricultural Commissions, California Integrated Waste Management Board, State Water Quality Control Board, Department of Toxic Substances Control, Structural Pest Control Board, and State Department of Health Services.

<sup>9</sup> S.B. 861, Chapter 35; Budget Act of 2014, §147 (2014).



grant the Commission the authority to impose administrative penalties for all violations of the Coastal Act, but the final bill, as enacted, applies only to violations of the public access-related provisions of the Coastal Act. Accordingly, Section 30821 applies to access violations, including those involving unpermitted development activities that prevent or impede the public's ability to access the coast, and to violations of permit conditions designed to protect or promote public access. The Commission may impose these penalties by a majority vote at a noticed, public Commission hearing, in compliance with the procedural requirements related to the Commission's other enforcement tools – cease and desist orders, restoration orders, and notices of violation.<sup>10</sup>

Section 30821 sets specific parameters as to what amount of administrative penalties can be sought as well as when the penalties can be imposed. Section 30821 penalties are assessed on a daily basis, and can be assessed for as many days as the violation persists, up to a maximum of five years. The amount of the daily penalty assessed under Section 30821 may not exceed 75% of the penalty possible through judicial means under Section 30820, or \$11,250 per day, and the Commission takes into account the five factors set forth in Section 30820(c) when determining exactly what daily penalty amount to impose.<sup>11</sup>

This authority rewards prompt action. With a few specific exceptions, penalties under Section 30821 shall not be assessed if a violator corrects a violation within 30 days of receiving notice from the Commission and the violation can be corrected without needing a permit.<sup>12</sup> Additionally, Section 30821 penalties do not apply if a violation is unintentional and minor, only causes *de minimis* harm, and the violator has acted expeditiously to correct it.<sup>13</sup> If, however, a violator does not resolve a violation, administrative penalties are assessed, and the violator fails to pay them, the Commission may record a lien on the property or may seek judicial remedies to collect the penalties. This is seldom the case, which is strong evidence that Section 30821 provides an effective incentive to comply.

The last provision of Section 30821 contains reporting requirements, and this report is in fulfillment of that section.<sup>14</sup> The Commission was required to report on the number of new violations reported annually to the Commission from January 1, 2015 to December 31, 2018, the number of violations resolved during that time period, and to provide information about specific administrative penalties imposed during that time period (number and dollar amount of penalties assessed and descriptions of the associated violations). This report as submitted satisfies Section 30821's reporting requirements.

---

<sup>10</sup> Section 30821(b). Procedural requirements for orders are found in Sections 30810 and 30811 and the corresponding sections of the Commission's regulations, found at Cal. Code Regs. tit. 14, §13180-13197 (2018).

<sup>11</sup> Section 30821(c). Two other provisions of Section 30821 are also important to note with regard to the scope of the new authority. First, under Section 30821(g), these administrative penalties cannot be imposed on local governments, special districts, or other agencies, when acting in a legislative or adjudicative capacity. Secondly, under Section 30821(d), a person shall not be subject to both monetary civil liability under the administrative provisions of Section 30821 and monetary civil liability imposed by a court for the same Coastal Act violation.

<sup>12</sup> Section 30821(h). Although the 30-day "cure" period does not apply to violations of a previously issued CDP or to violations that require a CDP to correct, in some cases, Enforcement staff has offered it even in those cases in which it doesn't apply, in order to allow time for resolution and to encourage voluntary resolutions.

<sup>13</sup> Section 30821(f).

<sup>14</sup> Section 30821(i).

## *B. Effect of Section 30821*

The addition of Section 30821 to the Coastal Act reflects the Legislature's support for the idea that maximum coastal public access is a core mission of the Commission and that there is a continuing need to secure compliance with the Coastal Act's public access and recreation provisions. Section 30821 furthers this core mission by increasing the efficiency of enforcement efforts. There are two main goals of administrative penalty authority, and therefore of Section 30821: 1) to provide an effective incentive and 2) to provide an effective deterrent, enabling the Commission to resolve cases more quickly and to reduce the number of future violations. The data and case examples provided in this report show that Section 30821 is indeed having these intended effects, great benefit to the public.

The daily accrual of penalties, coupled with the potential for a high daily penalty amount, provides a strong incentive for a violator to comply quickly, as the total potential liability may increase considerably each day that the violation remains. Any delay in resolving a violation can result in the accrual of a substantial amount of penalties. The inclusion of a brief cure period, under certain circumstances, allows violators to promptly resolve the violation without being subject to a penalty and provides further incentive to comply quickly.<sup>15</sup>

Section 30821 is also intended to deter violations of the Coastal Act's public access provisions from occurring in the first place. A would-be violator who knows that penalties can be imposed in amounts up to \$11,250 per violation per day and that those penalties can now be imposed administratively, might be less inclined to violate.

Given that out of 175 identified Section 30821 cases, penalties have only needed to be imposed in eight cases, with six of the eight cases resulting in voluntary compliance through consent orders, it appears that Section 30821 is having the intended incentivizing effect.

## **V. OPENING SECTION 30821 CASES**

### *A. Access Caseload Continues to Increase*

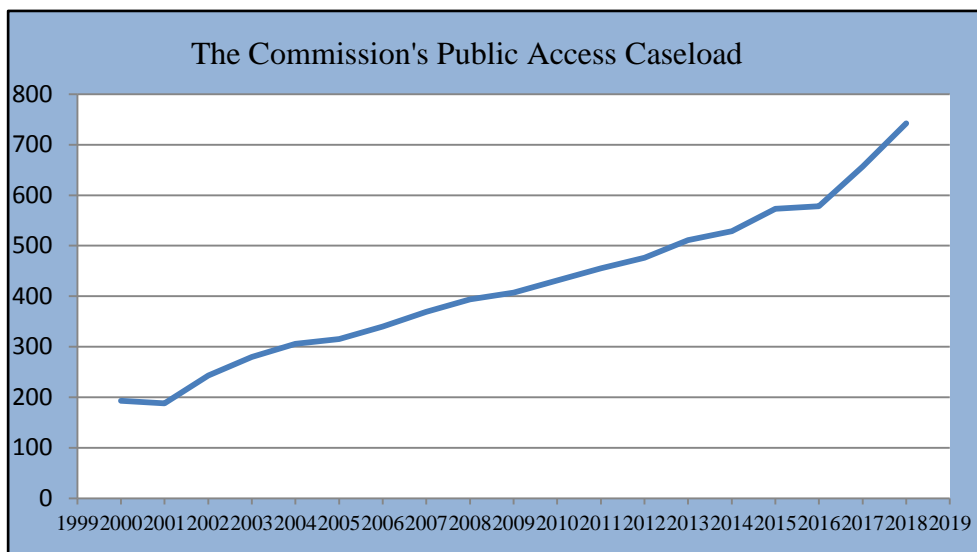
The Commission's Enforcement Unit has always considered violations involving coastal public access and recreation to be a priority, and staff spends a large amount of its resources investigating access cases and pursuing resolution of access violations. The Commission has been able to resolve many of these public access cases, through both informal and formal enforcement processes. Despite these efforts, as shown in Exhibit 2 below, the public access violation caseload has continued to increase, due to a variety of factors including an increase in the number of violation reports from members of the public, the intensification of development along the coast that has increasingly limited open space and public access options for the public, and the increased pressure on coastal access and recreation brought about by sea-level rise. Over time, as more new cases are discovered than can be resolved, the Commission's public access

---

<sup>15</sup> The effectiveness of Section 30821 authority as an incentive is discussed more fully in Section VII.A. of this report, below.

caseload has grown significantly. This trend is observed in non-public access cases as well, and, accordingly, the Commission has seen a similar increase in its overall enforcement caseload.<sup>1</sup>

Upon review of the Commission’s public access caseload prior to Section 30821, staff estimates that the Enforcement Unit opened an average of 40 public access cases per year from 2000 to 2014. Staff has significantly expanded the number of access cases since Section 30821 was enacted. In addition to the 175 cases specifically being addressed under Section 30821, there are other open cases with an access component. Specifically, staff opened a total of 340 cases with a potential public access component (including the 175): 61 in 2014, 55 in 2015, 107 in 2016, 75 in 2017, and 42 in 2018. The Commission’s current caseload with a public access component is 742 cases<sup>2</sup>, which is approximately 30% of the Commission’s current open caseload of approximately 2,500 cases.<sup>3</sup>



(Exhibit 2: Open Public Access Cases From 2000-2018)

The administrative penalty authority provided by Section 30821 has been a critical enforcement tool in the Commission’s efforts to tackle the existing backlog of public access cases and reduce the rate at which that backlog increases each year. In the four years since Section 30821 was enacted, Commission staff has worked diligently to apply Section 30821 – by both identifying existing violation cases (pre-2015) that can now be addressed using this new authority, and identifying and investigating potential new public access violations using the new authority. Staff hopes that as it continues to resolve cases more quickly under Section 30821, it can further address the rising number of cases and reduce backlog.

<sup>1</sup> Between 2015-2018, Commission staff opened 681 cases: 79 in July-December 2014, 121 in 2015, 166 in 2016, 178 in 2017 and 137 in 2018) and closed 199 cases (this includes access and non-access cases).The Commission currently has approximately 2500 total open cases.

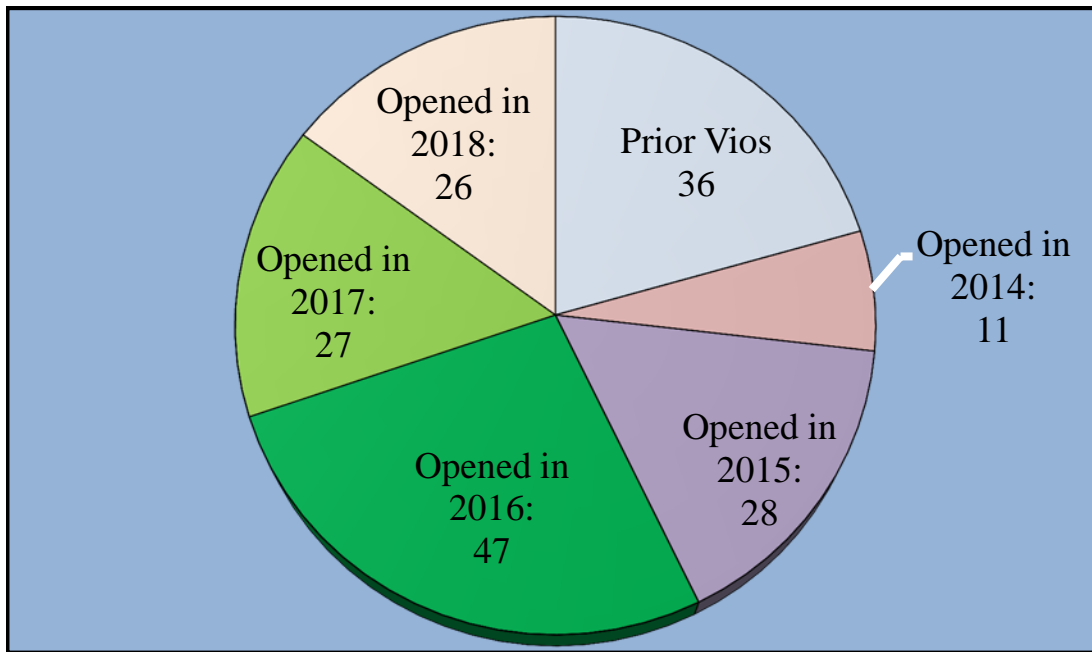
<sup>2</sup> During this time period, the Commission closed 136 access cases: 50 cases in 2015, 25 cases in 2016, 48 cases in 2017, and 13 cases in 2018.

<sup>3</sup> The numerical information in this report provides a snapshot in time based on best available data and will of course change over time as additional cases are opened and closed.

*B. Identifying Section 30821 Cases*

The Enforcement Unit has identified 175 cases involving violations of the public access provisions of the Coastal Act as an initial pool of cases to be addressed under Section 30821: 36 cases opened before Section 30821 was enacted and 139 cases opened by staff in the four years following enactment. Due to both staffing constraints and the nature of certain cases (including cases that involve a number of different types of violations), some cases that include a potential public access component have not been identified in the initial pool, and, therefore, are not being addressed through the Section 30821 program at this time. For instance, some violations involving major impacts to environmentally sensitive habitat areas (“ESHA”) for which the public access component is a secondary, albeit still important issue, or violations that are being addressed under other state and federal statutes, are not currently being addressed through Section 30821 cases. The Commission anticipates expanding the types and number of access cases addressed through Section 30821 in the future, as resources allow.

The breakdown of the number of Section 30821 cases opened per year is shown in Exhibit 3 below. Given the large number of cases opened prior to its enactment, the cases designated under Section 30821 represent approximately 23% of Enforcement’s current, open public access case load, which demonstrates both the importance of public access to the Commission’s enforcement efforts and the potential for applying Section 30821 to older cases as well. Moreover, the number of other open, non-access cases also indicates the potential for similar authority that addresses other resources to have a profound effect on those other cases as well.<sup>19</sup>



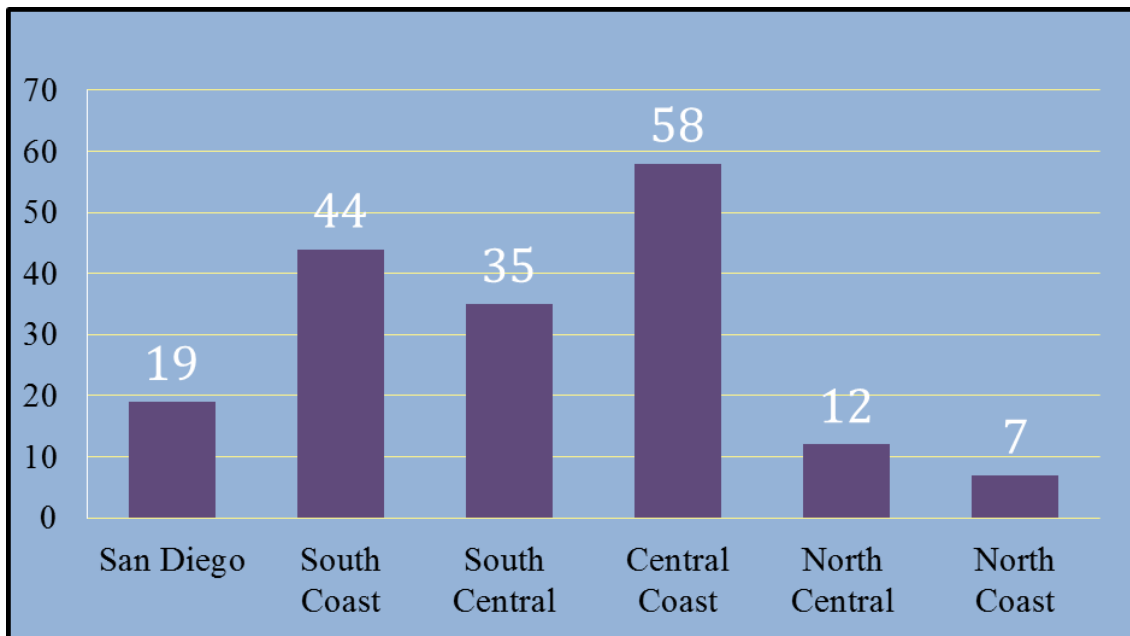
(Exhibit 3: Section 30821 Cases Identified/Opened Per Year)

<sup>19</sup> The numbers listed in Exhibit 2 do not include the access-related violation reports in which staff determines that no violation exists or that a violation exists but that Section 30821 is not applicable. Staff expends a substantial amount of time and resources investigating these reports, but these threshold investigative efforts are not reflected in Exhibit 2. Accordingly, the actual workload is actually higher, and the “cases opened per year” figure represents a subset of the Section 30821-related enforcement work undertaken that year.

### C. Geographic Distribution of Section 30821 Case

As shown in Exhibit 4, the Commission’s Section 30821 cases are spread broadly across the state, and enforcement staff is actively working on a variety of types of public access cases throughout coastal California. For various reasons, including urban population density and development patterns, more potential Section 30821 cases have been identified in southern California to date. The types of access issues that arise differ somewhat by area; however, access is a very significant issue throughout the state and some similar issues arise in various parts of the state. For example, a large number of “signage” cases have been identified in the Santa Cruz area of the central coast as well as throughout southern California.

Of the 175 identified Section 30821 cases, 19 cases are from the San Diego District; 32 cases from the South Coast District, which includes Orange County and the southern portions of Los Angeles County; 33 cases from the South Central District, which includes Ventura County, Santa Barbara County, and the northern Los Angeles County (which includes all of the City of Malibu, where 27 of the 33 cases are located); 57 cases from the Central Coast District, which includes San Luis Obispo, Monterey and Santa Cruz counties; 9 cases from the North Central district, which includes San Mateo, San Francisco, Marin, and Sonoma counties; and 7 cases from the North Coast district, which includes Mendocino, Humboldt, and Del Norte counties.



(Exhibit 4: Geographical Distribution of Section 30821 Cases)

It is important to note that the graphs in this report treat each case equally. The varying amount of resources required to investigate and resolve each individual case is not reflected therein. In actuality, some types of cases (such as those involving removal of unpermitted and inappropriate no parking signs) can require significantly less time and fewer resources to resolve than others (such as those involving removal of structures or that require permits or other formal actions to resolve). Additionally, if a case involves multiple violations, it most often requires more work to resolve. This graph is meant simply to show that public access is an issue of concern in all areas

of the coastal zone, and that the Commission is actively addressing access violations throughout the state.

## VI. RESOLVING CASES USING SECTION 30821

The implementation of Section 30821 has been quite successful. In fact, most Section 30821 cases have been resolved without the need to actually impose a penalty. In these cases, the notice of the potential for penalties under Section 30821 was enough to rapidly achieve resolution. In addition, the Commission was able to settle additional cases, through formal consent orders, with voluntary compliance from the violators. Through these consent orders, the Commission resolved the violations, secured payments to resolve the administrative penalty liability under Section 30821 and compensate the public for lost access, and restored valuable public access, all without requiring any litigation whatsoever.

The Commission has been unable to consensually resolve violations in only two instances, as further detailed in Section VII.D of this report. In these cases, despite efforts over a long period of time, settlement was not reached, and therefore, formal, unilateral orders were required. In both of those cases, the party sued the Commission, and the subsequent litigation is ongoing. Given the nature of these violations, the Commission assessed a total of \$5.2 million in penalties in these unilateral cases (see Exhibit 13). If the Commission prevails in court, these additional funds will be available to restore and enhance coastal resources.



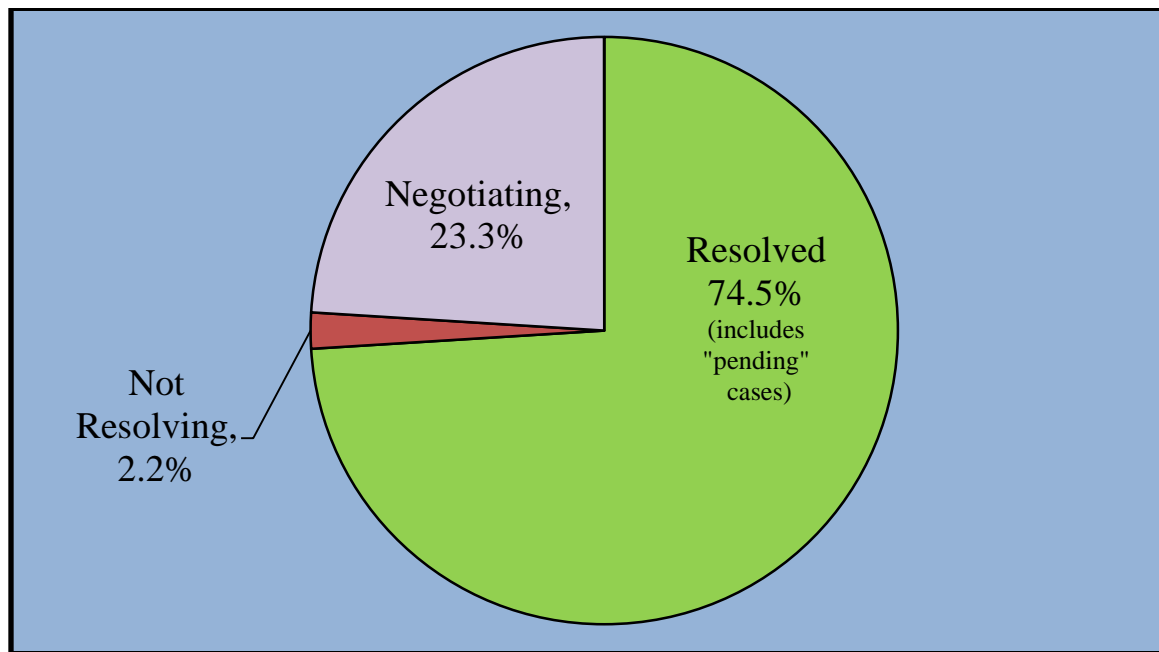
Exhibit 5: The Commission worked to remove unpermitted fencing and signs and to restore access to this beautiful stretch of beach in Malibu.

### A. Number of Cases Resolved

As stated above, since obtaining Section 30821 authority, the Commission has identified 175 cases to be initially addressed under Section 30821, and plans to address additional access cases depending on future staffing and resource allocation. Thus far, staff has notified the violators in

137 of these cases.<sup>20</sup> The vast majority of these noticed cases (96 cases) have been resolved informally. Most often, staff accomplished informal resolution through the use of a violation letter, which notified the relevant party that a Coastal Act violation subject to administrative penalties under Section 30821 existed and contained a deadline for resolution. As a result of this written notice, these violators working with Commission staff to resolve the violation quickly. In a few instances, however, oral notice was sufficient to secure compliance. This rate of informal resolution, and the fact that speaking to a violator was sometimes enough, provides strong evidence that Section 30821 is an effective incentive to resolve violations, as was intended.

Of the 102 cases classified as resolved, 82 have been fully resolved informally. There are 14 cases in which a full agreement for resolution of the violation(s) has been achieved, and the impediments to public access have been removed, but some final action is still pending, such as a needed follow-up permit or the approval of a public access improvement plan. For instance, in one such “pending” case, a resort in San Diego has opened two accessways that it had kept closed to the public, but is still seeking a permit for an additional accessway that it will provide as part of the overall resolution. As this example shows, these “pending” cases are essentially resolved and represent significant access resolutions, but remain “open” so that staff can ensure that all aspects of the resolution are completed. In addition to the 96 cases resolved informally, the Commission was able to secure resolution through formal Commission-issued consent orders in six cases. Thus, in the aggregate, the Commission has resolved 74.5% (102 cases) of noticed Section 30821 cases.



(Exhibit 6: Resolution Rate of Section 30821 Cases)

<sup>20</sup> There are 38 remaining Section 30821 cases in which staff has not given notice to the relevant party. Three of these cases are located in certified LCP jurisdictions, and staff has referred them to the appropriate local government for enforcement in compliance with the LCP. In addition, staff is still investigating violations in 35 cases. It is foreseeable, given the historical data, and as resources allow, that staff will notify violators in the vast majority of these “under investigation cases.”



Section VII. of this report will detail the many benefits that this high rate of resolution has conferred on the public in the form of increased and enhanced access, as well as to the Commission in the form of conserved enforcement resources now available for other cases.

### *B. Status of Other Cases*

In addition to resolved cases, 23.3% of the noticed Section 30821 cases (32 cases) are currently in ongoing negotiations. It is staff's belief that a mutual resolution of the matter is likely in most if not all of these cases. Although not counted as resolved, some of the cases in the "negotiating" category represent multi-violation cases in which the portion of the case involving public access violation has been resolved and public access improvements have been completed. For purposes of tracking, the case remains open and not "pending" because of other, unresolved violations. Thus, there are some substantial public access successes included in the category of "negotiating" category that are not reflected in the data. For example, one such case in Carlsbad involved a failure to record a public access easement as a condition of a permit, the placement of a gate blocking public access and other non-access related violations. Although the violator has recorded the easement and removed the gate, he has not agreed to remedy the other violations and staff continues to negotiate a complete settlement of the case. Thus, despite these cases being categorized as "negotiating," even cases in this category contain some very significant access improvements resulting from the application of Section 30821.

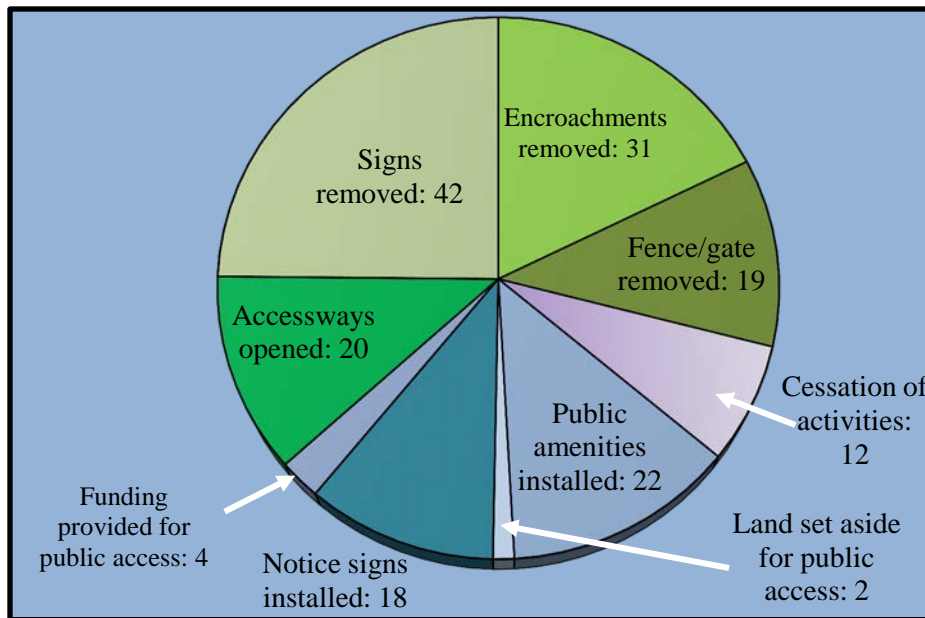
Only 2.2% of noticed Section 30821 cases (3 cases) are labeled "not-resolving" in Exhibit 4. In these cases, notice did not result in a significant move by the violator towards resolution, and negotiations have either failed or do not appear to be likely for success. This number includes the two cases, discussed in more detail below, for which the Commission has already issued formal, unilateral cease and desist and administrative penalty orders and for which litigation is ongoing.<sup>21</sup>

### *C. Types of Violations Resolved*

Resolution of access cases using Section 30821 has greatly improved public access to and along the California coast, both by addressing unpermitted development that impedes access, and by addressing violations of permit conditions designed to protect and provide public access. The Commission has used this authority to remedy a myriad of public access violations. Exhibit 7 below shows a breakdown of the different general types of access resolutions achieved.

---

<sup>21</sup> There are a few cases that are not included in this analysis that do not fit into any of the stated categories and that, due to pending action by local governments or third parties, are in flux and will be included in future reports on the program.



(Exhibit 7: Types of Resolutions (individual violation cases may involve more than one type))

*i. Unpermitted Development Affecting Access*

The Commission has used Section 30821 to address illegal development. These cases involve such things as the placement of unpermitted development (e.g., signs) that impedes or prevents access, as well as unpermitted activities (e.g., the improper use of private security guards) meant to deter the public from accessing the coast. The following are some examples of the various types of unpermitted development cases:

- In 42 cases, unpermitted signs have been removed, including a large number of signs that were put up in the Opal Cliffs area of Santa Cruz and on Malibu Road in Malibu. Residents in these locations placed illegal “no-parking” signs in public right-of-ways, substantially impairing the public’s ability to reach nearby beaches.
- In 30 cases, unpermitted encroachments into public access easements or access points, to block or impede access, have been removed. As an example, in San Luis Obispo, the Commission was able to compel removal of rocks, landscaping, and other materials that directly blocked a lateral public access easement.
- In 19 cases, fences and gates blocking public access have been removed and the public access route restored. As an example, in Gualala and Trinidad, the Commission obtained the removal of gates that completely blocked public roads.
- In 12 cases, activities such as the improper use of private security guards, hired to deter the public from using public accessways, have been stopped.

As an example, the Commission was able to stop a company in Monterey from using a guard to prevent public access to a popular coastal public access point. In this case, staff secured resolution within 11 days of sending a Section 30821 violation letter.



(Exhibit 8: Public access violations can involve unpermitted development that physically obstructs access, such as this locked gate, blocking a public access easement.)

*ii. Permit Violations Affecting Access*

Public access violations may also involve a failure to comply with permit conditions related to public access, such as a requirement for the recordation of a vertical or lateral public access easement or installation of a public access amenity such as a stairway or parking lot. The Commission (and in some instances, the local government) includes public access conditions in permits when significant concerns about public access at the permit site exist, or in order to make development approved under the permit (which may have otherwise adversely affected public access) consistent with the Coastal Act. Compliance with these conditions is essential. The following examples show types of access enhancements obtained in cases involving permit violations:

- In 18 cases, the resolution included placement of proper public access signage that was required under a Coastal Development Permit (“CDP”). These signs are of vital importance because they often provide the only means by which the public can be made aware of a coastal public access site, or that the public has a right to access a site.

- In 22 cases, resolution included the installation of public access amenities that were required by the associated CDP, such as public benches or paths. For example, the Commission resolved a violation in Monterey that resulted in a restaurant installing public access benches that were required under a prior CDP that it received two years before; and in Oceanside, violators installed a public access trail that had been required in a prior CDP dating back to 1984.
- In four cases, the Commission secured significant funding for public access projects, in addition to the penalty amount assessed.
- In one case, the Commission obtained a conservation deed restriction, and in another case the Commission obtained a trail easement, placing acreage aside for public recreation.



(Exhibit 9: Public access signs, such as this one in San Diego, clearly convey to the public that it has a right to access a site.)

By resolving these cases, the Commission has restored public access to many areas along the coast, and improved access by adding new amenities such as benches and trails and opening additional lands for public use and enjoyment through easements and deed restrictions.

## **VII. BENEFITS OF SECTION 30821 IMPLEMENTATION**

Section 30821 has had a profound effect on the Commission’s enforcement of Coastal Act resource protection policies. The Commission has been able to resolve a higher number of public access cases in a shorter amount of time than would otherwise have been possible. Through implementation of its authority under Section 30821, the Commission has reopened public accessways, removed impediments to public access, secured compliance with the public access conditions of coastal development permits, and enabled the construction of new public accessways and recreational amenities. More people are now able to access and enjoy more of

California's beautiful coast as a result of Section 30821. Additionally, resolving access cases more quickly frees up staff time and resources that can be used to resolve additional cases. This section of the report provides specific information related to the many ways in which utilizing its Section 30821 authority has enhanced the Commission's enforcement efforts.

*A. Public Access Cases Are Resolved More Quickly*

Since it began implementing Section 30821 in 2014, the Commission has been able to secure resolution of public access violations far more quickly than before. In the vast majority of Section 30821 cases, providing notice of the violation and the potential for administrative penalties (along with careful follow up and work on a comprehensive resolution) has led to rapid resolution. In these cases, the potential for penalties led to compliance, without a penalty ultimately having to be assessed.

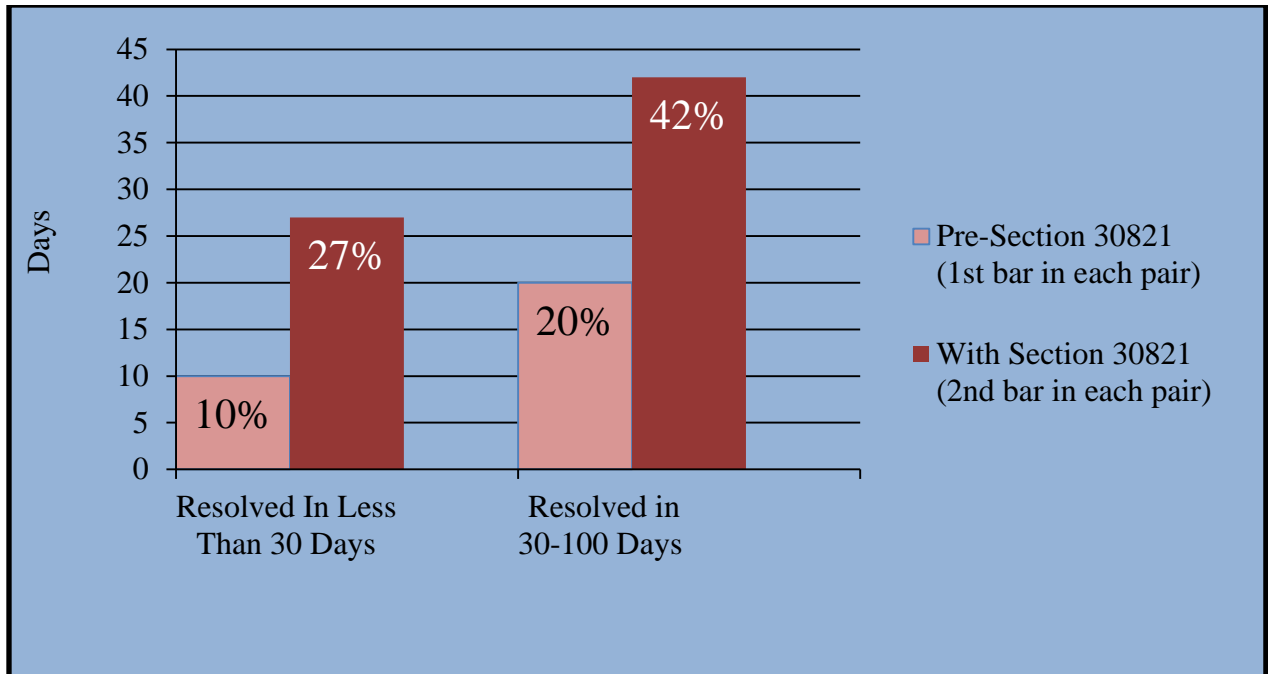
Commission staff was able to resolve 96 of 175 Section 30821 cases informally, at the District level. A review of these cases illustrates the increased efficiency possible with Section 30821. Of the 96 cases, 42% were resolved within 100 days from the date of notice, and 27% were resolved in 30 days or less.<sup>22</sup> The average time to resolve a case from the date of Section 30821 notice was 102 days.<sup>23</sup>

In comparison, through a review of all of the Commission's public access cases, staff estimates that, historically, only about 10% of public access cases were resolved in less than 30 days, and only about 20% of cases were resolved in less than 100 days. The average number of days to resolve a public access case before Section 30821 was approximately 1,073 days, or almost 3 years. Commission staff's efficiency has increased greatly since it began implementing Section 30821 (see Exhibits 10 and 11, on the next page).

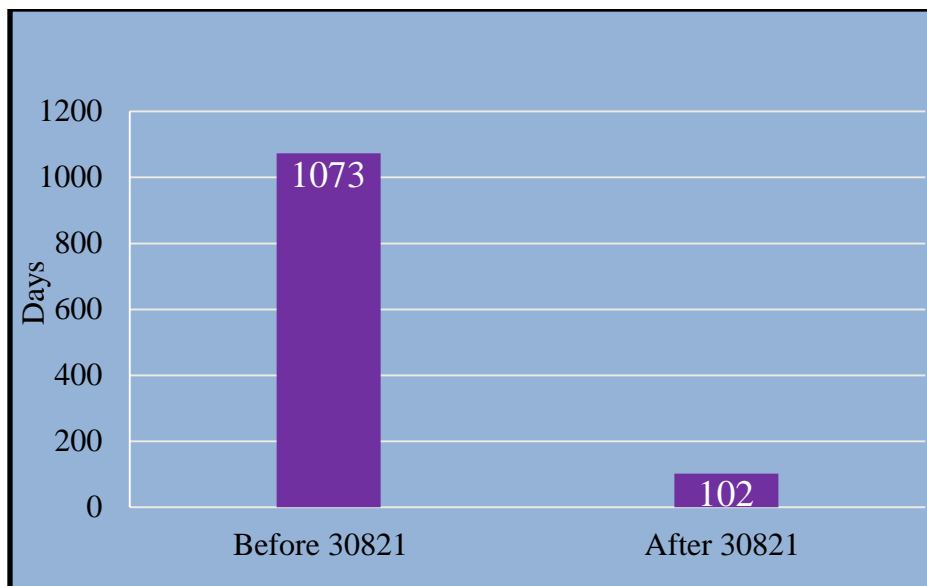
---

<sup>22</sup> These figures for district case resolution do not, by definition, include the four cases brought to formal hearing for Consent Orders. Those cases required additional time to comply with various Commission administrative regulations and procedures.

<sup>23</sup> This average includes two older cases that took more than 600 days each to resolve. Upon review, these two cases appear to be atypical, outlier cases. Removing them from the calculation reduces the average resolution time to only 68 days, or just over 2 months.

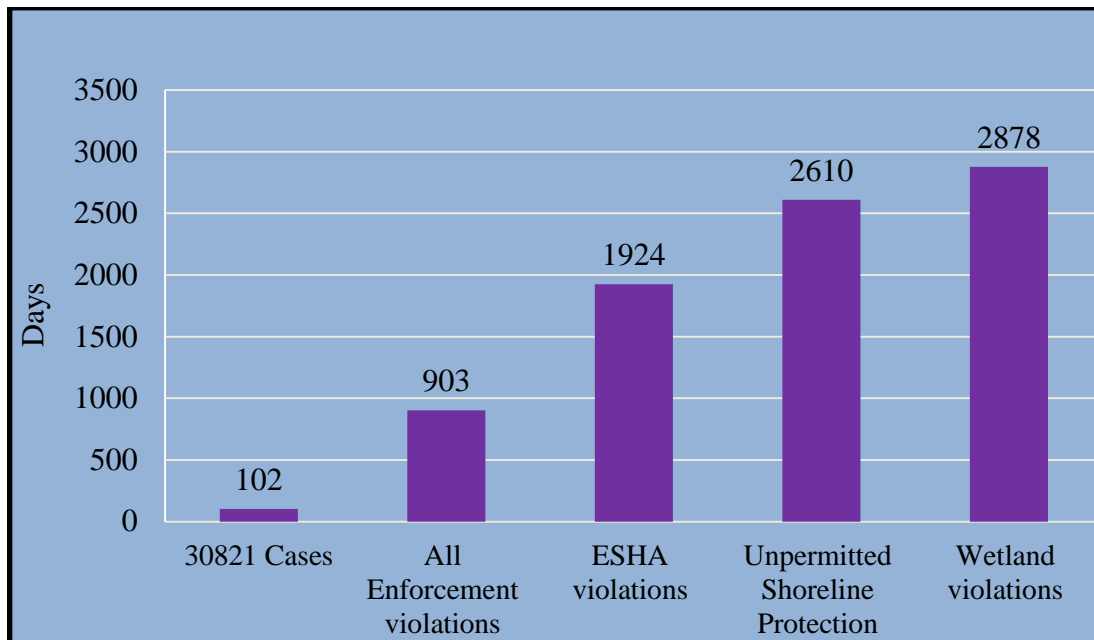


(Exhibit 10: Comparison of Pre-30821 and Post-30821 Cases Resolved in 0-30 and 30-100 Days)



(Exhibit 11: Comparison of Average Number of Days to Resolve Public Access Cases)

Section 30821 cases are also resolving more quickly than other types of cases resolved during the reporting period providing further evidence of the authority’s effectiveness. The average length of time to resolution of a Section 30821 case is 102 days (approximately 3.5 months), compared to 903-2,878 days (2.5-8 years) for other the types of violations addressed by the Commission’s Enforcement Unit during 2015-2018, as shown in Exhibit 12, below.



(Exhibit 12: Average Days to Resolve Different Types of Violations)

A case in Pacifica provides an excellent example of the speed at which staff is now able to resolve violations. Staff was notified on February 7, 2018 that the owner of a nearby parking garage had put up “no public parking” signs in a lot that had historically and continually been used by the public in order to access nearby Linda Mar beach. Enforcement staff sent a Section 30821 violation letter on March 6, 2018, and the violator contacted staff to resolve the violation. Over the next month, staff worked diligently with the party and resolved the matter. Cases like this one, where staff is able to secure a resolution relatively quickly, still require hard work on the part of staff, to research violations, coordinate with local governments, determine what is needed at the site, and to work with the violator to clearly explain all of the legal and factual issues of the case and to ensure that the violator understands what is required to fully resolve the violation and to comply in perpetuity.<sup>24</sup> In these cases, the signs were removed 28 days later. The Commission was able to restore this important parking area, and enable the public to access Linda Mar beach, in less than a month. While such speedy resolution is clearly not always possible, the fact that some cases can be quickly resolved is encouraging and demonstrates that the provision is having the desired effect of spurring faster provision of public access.

<sup>24</sup> It should also be noted that once a violation has been resolved, staff’s work is not done. Staff monitors the remedial work and undertakes site visits to ensure continued resolution and compliance, and coordinates with local governments as necessary. In addition, staff clearly states in its correspondence with violators that any future violation, whether new or a recurrence of the one at issue, is subject to penalties under Section 30821. Therefore, although this report is focused on the resolution rate of Section 30821 cases, not on follow-up, it is likely that Section 30821 also provides an incentive for violators to maintain long-term compliance.



### *B. More Cases Are Resolved Informally*

As stated previously, Commission staff was already able to secure resolution of 102 of the 175 Section 30821 cases. Of these, in 13 cases, the Commission was able to secure resolution after discussing the matter orally with the violator, thus resolving the case in the most efficient way possible and conserving even more resources that can be applied to other enforcement work. In 83 cases, the Commission staff sent a violation letter and was able to secure a resolution of the violations amicably, without needing more formal action through Commission-issued orders or litigation. In total, Commission staff has been able to resolve 55% of all Section 30821 cases informally, at the district level.<sup>25</sup>

The Commission's ability to resolve so many violations at this level is significant because it spares the Commission the inordinate amount of staff time and resources necessary to proceed with these cases more formally: for each case, staff would need to spend time and resources on further investigation, further correspondence, preparation for a public hearing, preparation of formal staff reports and orders and findings, and litigation. In addition to enforcement staff, formal enforcement proceedings also require input from and coordination with other Commission staff members, including other legal and permit staff, biologists, engineers, and geologists. In addition, if a case is litigated, the Office of the Attorney General office becomes involved, and yet more state resources are expended. When Section 30821 is used to resolve matters, the resources conserved through swifter, informal resolution of cases are now available for other enforcement work, including the backlog of access cases that Commission staff has heretofore not been able to adequately address, and the ever increasing number of new access matters up and down the coast.

### *C. Even Most Formal Actions Have Resolved Voluntarily Through Consent Orders*

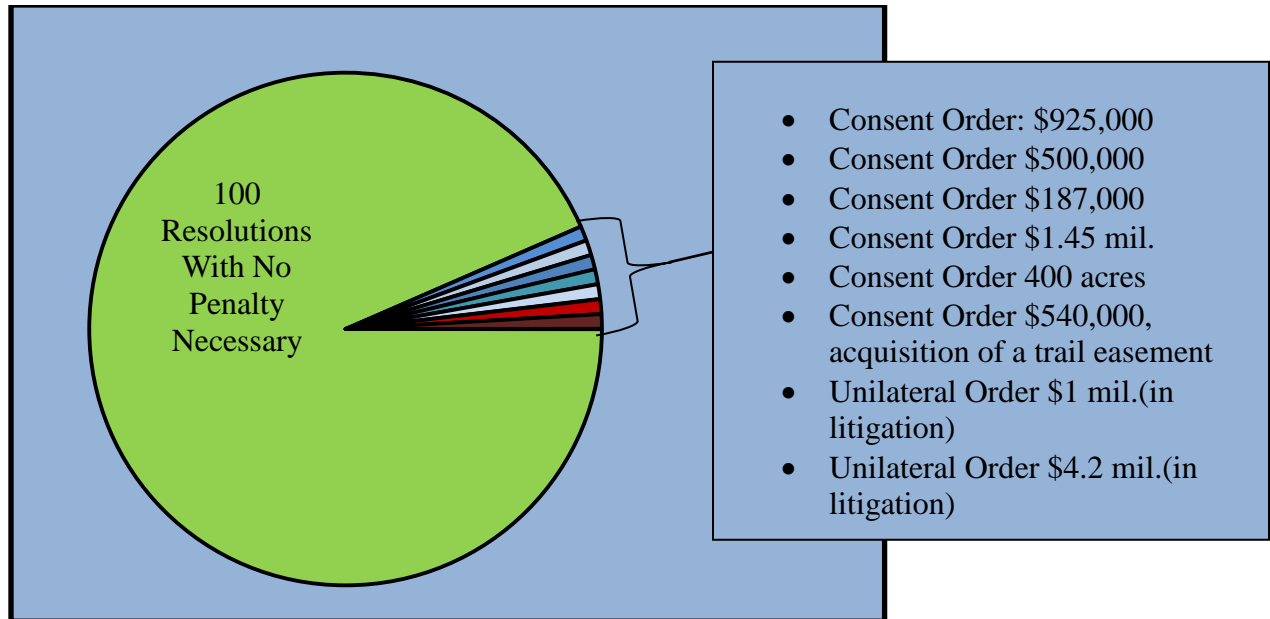
Although, with Section 30821 authority, a large percentage of public access cases are resolved so expeditiously that no formal hearing is necessary, a few cases have required formal Commission action. These cases involve intractable violators and/or more egregious violations, or cases in which Commission authorization is legally needed to correct the violation. In these instances, Commission staff has determined that seeking Section 30821 penalties is warranted, which, pursuant to Section 30821(b), may only be imposed "by a majority vote of the Commissioners present in a duly noticed public hearing."

In six of the eight cases that have proceeded through the formal order process, the Commission and violators were able to reach amicable settlements and the Commission issued consent orders after the public hearing. These settlements were agreed to by all parties and included significant payments to resolve liability for public access violations, which will be used to further advance the Coastal Act's resource protection policies, including provision of maximum public access. As a result of these consent orders, the public is now able to access more of the coast, and in some instances, private lands have been permanently dedicated for public use, further increasing access.

---

<sup>25</sup> The remaining Section 30821 cases are either under investigation or have been referred to local governments for enforcement pursuant to a certified local coastal program. See fn.20).

Taken together, consent orders under Section 30821 have resulted in commitments for approximately \$3.6 million dollars in administrative penalties and projects that can be used to support public access, conservation, and habitat restoration projects throughout California. Exhibit 13, below shows the specific dollar amounts of each Section 30821 penalty assessed. Although unilaterally-imposed penalties are included, these cases and the associated penalties are still being litigated. Some of these penalties have already been designated to further the Coastal Act’s public access goals.<sup>26</sup> For example, a portion of the penalty amount paid by a restaurant in Montara, as part of the consent order resolving a public access violation has been allocated to fund State Park’s construction of an accessway on the up-coast end of Montara State Beach.



(Exhibit 13: Highlights from Orders in Section 30821 Cases Showing Monetary Penalties and In Lieu Projects)<sup>27</sup>

In addition to the monetary penalties, because of the amicable nature of the consent order process, in some cases, staff was able to work with violators to include significant non-monetary public access enhancements as part of their resolutions. Examples include a hotel in Malibu (Los Angeles County) working to install a much-needed signalized crossing on Pacific Coast Highway to enhance pedestrian use and safety, and an HOA in Carlsbad (San Diego County) constructing a public access trail and partnering with a local non-profit to bring children from underserved communities to nearby Batiquitos Lagoon. All six consent agreements resulted in access improvements and resolutions much more quickly than when litigation is required, which is a tremendous benefit to the Commission and the public.

The high percentage of settlement of these formal cases since 2014 can be attributed, in part, to Section 30821. The prospect of daily administrative penalties under Section 30821, which can, theoretically, total over \$4 million per year per violation, provides a strong incentive for violators to settle their cases expeditiously. The data compiled regarding the time it takes to resolve cases

<sup>26</sup> Under Sections 30821(j) and 30823, Section 30821 monetary penalties shall be deposited into the Violation Remediation Account of the Coastal Conservancy Fund and expended to carry out the provisions of the Coastal Act, when appropriated by the Legislature.

<sup>27</sup> Some of the cases listed in this Exhibit included other smaller access amenities in addition to those noted.

with and without the potential for these penalties certainly supports the conclusion that the prospect of daily penalties has resulted in restoration of public access much more quickly. In addition, the fact that Section 30821 penalties are assessed administratively, at the Commission hearing, may factor into a violator's decision to enter into a consent agreement. In the past, prior to administrative penalty authority, the Commission had to sue violators to get penalties. Due to the limited resources and large caseloads of both the Commission and the Office of the Attorney General, the Commission was unable to pursue penalties in all cases. This uncertainty may have played a role in more obstinate violators' noncompliance – there was a chance that a penalty, even though warranted, would never be assessed.

A case in San Mateo County provides a good example of the use of consent orders to resolve a serious access violation. The case involves a property owner who not only failed to properly construct and maintain a public access stairway required by a prior CDP but who also undertook substantial unpermitted construction work on the site, including dumping large boulders (some weighing as much as 6-tons) across the beach, excavating large trenches on the beach, grading on the beach and bluff face, and placing construction equipment on the bluff trail and viewing area. These activities collectively precluded the public from accessing one of the few points of beach public access in the area. Members of the public notified Commission staff as the work was underway, so staff worked quickly to address the situation. Staff contacted the violators, visited the site, and served notice that the actions were violations of an existing permit and the Coastal Act. Staff then worked with the violators to analyze the situation and options, brought in Commission engineering staff to advise, and ultimately, the Commission issued consent orders that addressed the violations. The violators removed the unpermitted development and reopened the public accessway and trails, as required by their permit.<sup>28</sup> As part of the consent resolution, the Commission also assessed a \$1,450,000 penalty to settle the civil liabilities for the Coastal Act violations, which can be used to further the Commission's access efforts.



(Exhibit 14: Some Section 30821 cases, such as this San Mateo case that was described in this section of the report, involve both unpermitted development and permit violations. Commission staff works to resolve all aspects of the violations.)

<sup>28</sup> Under the consent orders, the violators are also required to restore native coastal bluff habitat and impacted beach areas that were impacted by the violation. These restoration efforts are ongoing and the orders require long-term monitoring to ensure success.

#### *D. Very Few Unilateral Orders Are Necessary*

In cases where the Commission has not been able to get the violator to settle, the violations have been resolved through Commission-issued, unilateral orders. Since Section 30821 was enacted, out of 137 noticed cases, the Commission has only had to issue unilateral orders twice. The first case involved violators who intentionally blocked a public accessway with unpermitted development, including a fence, locked gate, and private stairway, for nine years. Commission staff worked to resolve the violation for more than eight years before Section 30821 was enacted. After Section 30821 was enacted, staff notified the violator of the potential for administrative penalties and continued to attempt to secure a resolution for two more years. Despite this tremendous expenditure of staff time and resources, the violator remained recalcitrant. Staff had no choice but to request that the Commission issue unilateral orders to resolve the violation, including the imposition of a penalty under Section 30821, which the Commission ultimately determined should be \$4.185 million, given the length of time that it took to resolve the matter, the resources involved, the economic benefit to the violator, the lack of any other public access to this beach and the other factors set forth in Section 30820(c). The case is still in litigation.

The second case involved violators who refused to remove an unauthorized seawall in front of a home that was completely reconstructed and rebuilt, down to new framing, without a permit. The seawall was also rebuilt and expanded despite permit conditions saying it must be removed if the house were remodeled. It occupied sandy beach area, prevented sand from reaching the beach, and had the effect of accelerating erosion from wave action, thereby reducing the amount of lateral beach available for the public to access. After receiving a violation letter, and before the Commission took any formal action regarding the violation, the violators chose to sue the Commission rather than work with staff. After diverting enforcement and legal staff resources in order to work with the Office of the Attorney General on this preemptive litigation, the matter came before the Commission for a public hearing in which they ultimately issued unilateral cease and desist and administrative penalty orders, which imposed a \$1,000,000 penalty under Section 30821. This case is still in litigation, but will hopefully result in the removal of the unpermitted seawall and a significant amount of funding for public access projects.

Although these unilateral cases are a drain on resources, since Section 30821 was enacted, the Commission is issuing fewer unilateral orders, only needing to utilize this enforcement tool in the most egregious situations. The resources conserved as a result of increased efficiency under Section 30821 can be applied to these few unilateral cases.

#### *E. Resources Are Available for Additional Enforcement Work.*

The benefits of Section 30821 extend beyond public access. By resolving access cases more efficiently, the Commission has more resources available to expend on all of its enforcement work, which involves cases related to access as well as other Chapter 3 resource protection policies (protection of sensitive habitat, scenic and visual resources, water quality, etc.).

#### *F. Section 30821 Furthers the Commission’s Environmental Justice Goals*

In enacting the Coastal Act, the legislature declared the coastal zone to be a vital resource for “all the people (emphasis added).”<sup>29</sup> The Commission always been committed to furthering this intent and works to protect and enhance coastal resources for all, regardless of race, national origin, place of residence, income level or any other demographic category. In 2016, the Coastal Act was amended to specifically authorize the Commission to consider environmental justice in its decision-making, and the Commission sees its work under Section 30821 to be part of this consideration.<sup>30</sup> Enforcing the Coastal Act protections and the permit conditions designed to protect public access opportunities for all is a critical goal of the enforcement program.

Studies have shown that people of minority and low income communities have the least access to California’s coast and beaches, and disproportionately live in the most environmentally degraded communities with greater health vulnerabilities, more exposure to toxics and pollution, and less access to parks and recreation.<sup>31</sup> These communities often cannot afford to live or rent expensive vacation homes and hotel rooms along the coast, so they rely on public accessways to get to the beach or other coastal areas to recreate. Thus, the Commission considers its public access work to play a vital role in furthering its environmental justice goals. Section 30821 authority has enabled the Commission to open up more of the coast to the members of the public who need it the most, and is thereby a key facet of the Commission’s environmental justice work.

## **VIII. CONCLUSION**

Section 30821 has provided the Commission with a powerful, effective tool to address public access violations of the Coastal Act. It has enabled Commission enforcement staff and willing parties to resolve violations quickly and without formal legal action, which saves both parties time and money. Due to the success of Section 30821 to resolve public access cases, the public, both residents of California and visitors to the state, can now access and enjoy more of the beautiful California coast.

The addition of Section 30821 to the Coastal Act reflects the Legislature’s support for the idea that maximum coastal public access is a core mission of the Commission, and that there is a continuing need to secure compliance with the Coastal Act’s public access and recreation

---

<sup>29</sup> Section 30001(a).

<sup>30</sup> Section 30013 states the following: The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.

<sup>31</sup> Coastal Justice and the California Coastal Act: An Equity Mapping and Analysis, Robert García, Cesar De La Vega, and Erica Flores Baltodano, December 08, 2016, at <https://www.cityprojectca.org/blog/wp-content/uploads/2016/12/Policy-Brief-Coastal-Justice-in-California-20161208.pdf> (last viewed January 1, 2019).

provisions. The Commission's enforcement program has addressed access in a number of contexts: addressing violations that hinder access, enforcing Commission public access permit conditions, obtaining funding for public access projects, and securing public land donations and recordation of public access easements, all as part of the overall resolution of Coastal Act violations. Collectively, the Commission's access-related enforcement work assists with the Coastal Act goal of providing maximum coastal access for all.

Using the administrative penalty authority conferred under Section 30821, the Commission has been able to resolve more public access cases more quickly, and in the vast majority of cases, without needing to undertake burdensome litigation, or in most cases, even the formal hearing process. The success of the Commission's Section 30821 program is consistent with the overall goals of administrative penalty authority: to provide an incentive to resolve violations and achieve compliance quickly and to deter future violations. In addition, utilizing the resources freed up as a result of Section 30821, the Commission has been able to address additional cases, and further protect coastal resources.

Moreover, the administrative penalties that the Commission has imposed, or is collecting through a mutual settlement of liability under Section 30821, have also resulted in significant funds that will support public access and recreation projects along the California coast. The settlement of Section 30821 penalties via some in lieu projects has also resulted in significant other gains to public access along the coast, whether through public access amenity projects or significant acres of land being set aside for conservation and public recreation. There continue to be far more new cases than current staff can handle, and the backlog of cases unfortunately continues to grow, but this tool has been essential to the Commission's success thus far with resolving access cases and will be key to future successes.

The success of the Commission's implementation of Section 30821 demonstrates the effectiveness of administrative penalty authority with respect to Coastal Act compliance. The Commission is grateful to have this authority for access cases, and is gratified by the successes under Section 30821.



(Exhibit 15: The public enjoying the beach in Beacon Bay, Newport Beach.)

## APPENDIX A

### Section 30821 Administrative Civil Penalties

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

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

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

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

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

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

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

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

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

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

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

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

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

(Added by: Ch. 35, Stats. 2014)