

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

**ADOPTED FINDINGS****Th14,15, & 16**

Staff: Andrew Willis – LB
Staff Report: 5/28/20
Hearing Date: 6/11/20

**STAFF REPORT: Recommendations and Findings for
Consent Cease and Desist Order, Consent Restoration Order,
and Consent Administrative Civil Penalties**

Cease and Desist Order No.:	CCC-20-CD-02
Restoration Order No.:	CCC-20-RO-01
Administrative Civil Penalty No.:	CCC-20-AP-02
Property Owner:	City of Newport Beach
Location:	Public sandy beach located in Newport Beach, Orange County, also identified by Assessor's Parcel Nos. 048-310-01, 048-170-24, 048-170-38, and 048-320-03.
Violation Description:	Placement of private objects and materials on public sandy beach, including, but not necessarily limited to, landscaping such as lawns, hedges, iceplant, trees, and shrubs; irrigation systems; walkways; stepping stones; fences; and patios, all of which interfere with and supplant public coastal access.

Persons Subject to these Orders: City of Newport Beach and multiple owners of private parcels located immediately landward of the public sandy beach.¹

Substantive File Documents:

1. Public documents in Cease and Desist Order file No. CCC-20-CD-02, Restoration Order file No. CCC-20-RO-01, and Administrative Civil Penalty file No. CCC-20-AP-02.
2. Appendix A, and Exhibits 1 through 8 of this staff report

CEQA Status: Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321)

SUMMARY OF STAFF RECOMMENDATION

The Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Civil Penalty described herein (hereinafter referred to collectively as the “Consent Orders”) are a result of the efforts of the City of Newport Beach (“City”) and numerous homeowners to work diligently with Coastal Commission staff to find an amicable resolution of Coastal Act violations related to the placement of private encroachments on the public beach in the City of Newport Beach. **(Exhibits 1, 2, and 3)** Staff appreciates the efforts of all of the parties to reach this agreement and recommends that the Commission approve the proposed Consent Orders **(Appendix A)**, described in more detail herein.

Background

Commission staff brings this enforcement action to effect a consensual resolution of longstanding violations related to the placement of objects and materials on public sandy beach, including, but not necessarily limited to, landscaping such as lawns, hedges, iceplant, trees, and shrubs; irrigation systems; walkways; stepping stones; fences; and patios (hereinafter referred to collectively as the “Encroachments”)**(Exhibit 4)**, all of which interfere with and supplant public coastal access.

The Encroachments were installed on the public beach in an area of the City of Newport Beach commonly known as Peninsula Point. The Encroachments were largely installed on four City-owned properties, identified on the caption page, above, by their Assessor’s

¹ See Appendix A to these Consent Orders for a list of property owners subject to these orders. The Consent Orders are attached to this staff report as Appendix A.

Parcel Numbers (hereinafter referred to collectively as the “Properties”), by owners of private parcels located immediately landward of the Properties. No coastal development permit has been issued for any of the encroachments; in fact, in 1991, the Commission rejected a portion of a City proposal (contained within Land Use Plan Amendment 90-1) that would have allowed for encroachments on areas of the Properties. **(Exhibit 5)** More recently (in July 2019), the Commission rejected a Land Use Plan Amendment that would have had a similar effect as the 1991 proposal. **(Exhibit 6)**

This enforcement action is directed to both the owners of those private parcels (“Private Parties”), who are responsible for placement or maintenance of Encroachments and who are settling this responsibility in these orders, and to the City, which shares responsibility for the Encroachments as the owner of the properties on which the Encroachments are located. Both the Private Parties and the City have agreed to resolution of these violations through this enforcement action, as described in more detail below. Since Commission staff’s initiation of these formal enforcement proceedings, the City and the Private Parties have unanimously and quickly taken ownership of the violations and have worked diligently with Staff to craft a creative resolution providing for a cost-efficient and consistent means to address removal of encroachments and restoration of public access and dune habitat in the whole area that will be of significant benefit to the public. ~~To the extent that there are additional homeowners along this stretch who have encroachments immediately seaward of their homes and who were not willing to agree to the instant settlement, Commission staff intends to address those homeowners in the future through separate enforcement action, potentially through unilateral enforcement action.~~

Affected Coastal Resources

The encroachments on this beach are especially problematic in the context of the Coastal Act because of their deleterious impacts on public coastal access and dune habitat, which constitutes an environmentally sensitive habitat area (“ESHA”), and which occurs on areas of the Properties. As a result, when the City recently proposed a new Local Coastal Program Amendment to allow for encroachments for a limited amount of this area (Local Coastal Program Amendment No 4-17 Part D), the Commission unanimously rejected that proposal, in July 2019, finding that “[t]he proposed policy changes will adversely impact coastal access and public recreation by effectively privatizing portions of the beach along Peninsula Point. The proposed LCP amendment also has the potential to impact biological resources and sensitive habitat. The Commission finds that the proposed policy changes are not in conformance with the public access policies of Chapter 3 of the Coastal Act, including Section 30210, 30211, 30212 and 30213 and the ESHA protection requirements of Section 30240.”

With expected future sea level rise and resulting coastal erosion, it is likely that future demand for public recreational activities, such as use of the sandy beach, will need to be accommodated on smaller, narrower beaches. In addition, the population is expected to continue to increase. And so, regionally, the area of sandy beach will decrease while the demand for remaining sandy beach areas will only increase. As the

beach narrows as it is expected to do, demands on the public beach will increase significantly, thus emphasizing the need to fully protect existing public beach areas for public use. The Commission recognizes that encroachments on public areas both occupy and displace public access and habitat uses, and in an area such as this, can also exacerbate the effects of sea level rise and the paucity of beach areas for public use.

Furthermore, it is an important precept of environmental justice in California that all members of the public should enjoy access for recreation at coastal areas. Public access and coastal recreation continue to be threatened by private development, such as illegal encroachments and other restrictions on beach or coastal access. While coastal property owners benefit from private development fronting the beach and ocean, those that do not have these means or live far from the coast receive the burdens associated with illegal private development. Securing open public access for all citizens provides low-cost outdoor recreation that can improve the overall quality of life of all members of the public.

Consensual Resolution

There is a long history of Commission staff's efforts to address these violations and to get the homeowners to remove the Encroachments – in fact, the City's submittal of LCPA 4-17 Part D was a reaction to Notice of Violation letters sent by Commission staff in 2012 that directed homeowners with especially extensive encroachments to remove those encroachments and restore the area of the beach impacted by them. With the City's proposal to allow for encroachments in the Peninsula Point area rejected by the Commission in July 2019 after a long process by the City to develop the proposed LCP amendment, Commission staff sent notice to the City to commence formal enforcement proceedings (**Exhibit 7**) and City and Commission staff initiated discussions with the Private Parties to resolve the matter of the Encroachments through formal enforcement action, which have been decidedly productive and have resulted in the proposed orders. (**Exhibit 8**)

As described in the Consent Orders, the City and Private Parties have collectively agreed to settle any claims for relief the Commission has against the City and Private Parties with respect to the Encroachments, as that term is specifically defined in the Consent Orders to refer only to encroachments currently present. More specifically, the City has agreed to (1) remove, at its sole expense, as described in the Consent Orders, all unpermitted Encroachments from the Properties; (2) restore, at its sole expense, as described in the Consent Orders, the areas of the beach impacted by placement of the Encroachments with appropriate native habitat, such as southern foredune or beach strand habitat; and (3) remove any and all future encroachments, meaning ones that may be placed on the Properties in the future. Further, as part of the negotiated penalties, through the Consent Orders, the Private Parties have agreed to pay, in aggregate, an administrative civil penalty that totals \$1,624,706,834.63.

CCC-20-CD-02, CCC-20-RO-01, and CCC-20-AP-02
City of Newport Beach et al.

The agreement to direct the City to remove all of the private encroachments in this area and restore appropriate native habitat and to direct the Private Parties to pay penalties, utilizes the City's unique position as owner of the properties on which all of the encroachments are located to effect a single, comprehensive encroachment removal and habitat restoration project pursuant to the Consent Orders.

Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist No. CCC-20-CD-02, Consent Restoration Order No. CCC-20-RO-01, and Consent Administrative Civil Penalty CCC-AP-20-02.

TABLE OF CONTENTS

I.	MOTIONS AND RESOLUTIONS	7
II.	HEARING PROCEDURES	8
III.	FINDINGS AND DECLARATIONS	9
	A. Description of Properties.....	9
	B. Description of Coastal Act Violations.....	10
	C. History of Commission Action on Properties.....	10
	D. Enforcement Activities.....	12
	E. Basis for Issuing Cease and Desist Order.....	13
	1. Statutory Provision.....	13
	2. Application to Facts.....	13
	F. Basis for Issuing Restoration Order.....	14
	1. Statutory Provision.....	14
	2. Application to Facts.....	14
	G. Basis for Imposition of Administrative Civil Penalties.....	18
	1. Statutory Provision.....	18
	2. Application to Facts.....	18
	a. Inconsistent with Principles of Environmental Justice...	19
	b. Exceptions to 30821 Liability do not Apply.....	20
	c. Penalty Amount.....	20
	H. California Environmental Quality Act.....	24
IV.	SUMMARY OF FINDINGS OF FACT	25

APPENDIX A - Proposed Cease and Desist and Restoration Orders and Administrative Civil Penalty

EXHIBITS

- Exhibit 1 – Area Map
- Exhibit 2 – Encroachments Map
- Exhibit 3 – Aerial Photograph of Sample Encroachments
- Exhibit 4 – Photographs of Sample Encroachments
- Exhibit 5 – Land Use Plan Amendment 90-1
- Exhibit 6 – LCP Amendment Request No. 4 -17 Part D (w/o exhibits)
- Exhibit 7 – Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Civil Penalties Proceedings dated January 30, 2020
- Exhibit 8 – City letter to Commission staff dated July 23, 2019

I. MOTIONS AND RESOLUTIONS

Motion 1: Consent Cease and Desist Order

*I move that the Commission **issue** Consent Cease and Desist Order No. CCC-20-CD-02 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-20-CD-02, as set forth below, and adopts the finding set forth below on the grounds that development has occurred without the requisite coastal development permit, in violation of the Coastal Act, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Restoration Order

*I move that the Commission **issue** Consent Restoration Order No. CCC-20-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-20-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 Action

I move that the Commission issue Consent Administrative Civil Penalty Order No. CCC-20-AP-02 pursuant to staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Consent Administrative Civil Penalty Order. 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 Order No. CCC-20-AP-02, as set forth below, to be paid as described in Section III.F, and adopts the findings set forth below on the grounds the Private Parties have undertaken development on the Properties that have limited or precluded public access and violated the public access policies 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, will result in issuance of the Cease and Desist Order and Restoration Order and the imposition of an Administrative Penalty.

III. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-20-CD-02, RESTORATION ORDER NO. CCC-20-RO-01, AND ADMINISTRATIVE CIVIL PENALTY NO. CCC-20-AP-02²

A. Description of Properties

The Encroachments were installed on public beach between F-Street and Channel Road in an area of the City of Newport Beach commonly known as Peninsula Point. The Encroachments are located on four City-owned properties that are identified by Assessor's Parcel Nos. 048-310-01, 048-170-24, 048-170-38, and 048-320-03.

The City's certified Land Use Plan ("LUP") states that in Newport Beach, southern coastal foredune habitat extends across the Properties along Peninsula Point and that several natural communities, including southern dune scrub, that occur in Newport Beach are designated rare by the California Department of Fish and Wildlife and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of Environmentally Sensitive Habitat Areas ("ESHAs") under the Coastal Act. Areas within the City of Newport Beach containing such habitat are presumed to be ESHA.

Additionally, the Western Snowy Plover, a bird federally listed as threatened under the federal Endangered Species Act has been documented as present on Peninsula Point. Balboa Peninsula, on which Peninsula Point is located, is one of seven primary wintering sites for snowy plovers in Orange County and occasionally supports nesting. In June 2012, the U.S. Fish and Wildlife Service (USFWS) declared 25 acres of beach to be critical habitat for the Western Snowy Plover in an area southeast of Balboa Pier from B Street to G Street between the paved Oceanfront Boardwalk and the mean high tide line. Western Snowy Plovers have been well documented as present in other areas (outside the designated critical habitat area) and have been observed roosting east of the critical habitat, in locations from G-Street to the eastern edge of Peninsula Point at the Wedge.

² These findings also hereby incorporate by reference the Summary at the beginning of the May 28, 2020 staff report ("STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Civil Penalties") in which these findings appear, which section is entitled "Summary of Staff Recommendations".

B. Description of Coastal Act Violations

Numerous encroachments³ have been installed at different points in time on public beaches in the area of Newport Beach commonly known as Peninsula Point. Some of the Encroachments are long-standing violations and were placed on the beach decades ago, while others have been placed on the beach more recently. The Encroachments were largely installed on four City-owned beach properties by owners of private parcels located immediately landward of the City-owned beach properties.

For the most part, the Encroachments effectively serve as illegal “improvements” of the private residences that are located adjacent to the public beach. The individual Encroachments vary in size and scope from very extensive to minimal, though all of the Encroachments interfere with and supplant public coastal access. The nature of the Encroachments is varied as well, with hardscape, such as patios, present adjacent to some residences, and in other locations, the Encroachments consist of ornamental vegetation planted by homeowners, but in all cases, the private Encroachments occupy public beach areas.

C. History of Commission Action on Properties

No coastal development permit has been issued for any of the Encroachments; in fact, in 1991, the Commission rejected a portion of a City proposal (contained within Land Use Plan Amendment 90-1) that would have allowed for encroachments in the most landward areas of Properties. In certifying Land Use Plan Amendment 90-1, the Commission required the City to adopt the following policy:

3. PROHIBITED ENCROACHMENTS...No encroachments are permitted on Peninsula Point.

The current Land Use Plan and Implementation Plan also prohibit encroachments on Peninsula Point (from a point 250 feet southeast of E Street to Channel Road), but provide a limited exception for after-the-fact permitting of landscaping trees installed prior to 1991 and groundcover.

The Land Use Plan says, in relevant part:

³ There is unpermitted development on the public beach adjacent to an estimated 60-70 residences in this area. Under these orders, all such encroachments will be removed; however, not all homeowners will pay a fine. Using a variety of factors, including, but not limited to, the type and size of the encroachment, the length of time it had been place, whether the current owner installed or actively maintained the encroachment, the length of ownership of the private property by the current owner, etc., Commission staff identified only 33 cases that staff believes warrant payment of a fine in this context, and the Commission agrees, even though under a full application of the statutory provisions, a fine could likely attach to owners of any of the 60-70 residences with encroachments. ~~Of these 33, the 332 homeowners listed in Appendix A will pay that fine through these Consent Orders, and one party declined to settle.~~

E Street to Channel Road. No encroachments are permitted from a point 250 feet southeast of E Street to Channel Road, with the exception of landscaping trees existing prior to October 22, 1991 and groundcover. (3.1.3-3. D.)

And the Implementation Plan further says, in relevant part:

- *C. Prohibited Encroachments*

...

2. Encroachments and improvements are prohibited oceanward of any ocean front parcel from a point 250 feet southeast of E Street to Channel Road, with the exception of landscaping trees existing prior to October 22, 1991, and groundcover.

3. Any existing encroachment for which no application has been filed on or before May 31, 1992, and any new encroachment or improvement for which no application has been filed prior to installation is prohibited.

4. Any new or existing encroachment or improvement which, on or after July 1, 1992 is not in conformance with this policy is prohibited.

5. Any new or existing encroachment or improvement for which there is no valid permit [is prohibited].

The beach area is within the area of the Commission's retained permitting jurisdiction. None of the Encroachments were permitted by the Coastal Commission by the July 1, 1992 deadline referenced in the Implementation Plan above, or at any point in time. In addition, pursuant to the provision of the Implementation Plan referenced above, no new encroachments were allowable after May 31, 1992. Moreover, many of the encroachments on this beach include hardscape and ornamental vegetation, none of which is approvable under the Coastal Act, as the Commission determined, as discussed in the next paragraph. Thus, the encroachments constitute unpermitted, and unpermissible, development and violations of the Coastal Act.

As a result, when the City recently proposed a new LCPA to allow for encroachments for a limited amount of this area (Local Coastal Program Amendment No 4-17 Part D), the Commission unanimously rejected that proposal, in July 2019, finding that "[t]he proposed policy changes will adversely impact coastal access and public recreation by effectively privatizing portions of the beach along Peninsula Point. The proposed LCP amendment also has the potential to impact biological resources and sensitive habitat. The Commission finds that the proposed policy changes are not in conformance with the public access policies of Chapter 3 of the Coastal Act, including Section 30210, 301211, 30212 and 30213 and the ESHA protection requirements of Section 30240."

There is a long history of Commission staff's efforts to address these violations and to get the homeowners to remove the encroachments here – in fact, LCPA 4-17 Part D was a reaction to Notice of Violation letters sent by Commission staff in 2012 that directed homeowners with especially extensive encroachments to remove those encroachments and restore the area of the beach impacted by them. With the City's

proposal to allow for encroachments in the Peninsula Point area soundly rejected by the Commission in July 2019, after a long process by the City to develop the proposed LCP amendment, City and Commission staff initiated discussions to resolve the matter of the Encroachments through formal enforcement action.

D. Enforcement Activities

In 2011, Commission staff began a concerted effort to comprehensively address the matter of encroachments in the Peninsula Point area. Staff sent Notice of Violations letter to fifteen homeowners with especially egregious encroachments, that explained that the encroachments constitute violations of the Coastal Act and generally concluded that “due to the fact that the unpermitted private encroachments described above are inconsistent with both the policies of the Coastal Act and the City of Newport Beach LUP the subject encroachments need to be removed and the beach restored for public use.”

In 2012, in an attempt to effect what it viewed as an appropriate resolution of the matter described in the 2011 Notice of Violation letters described above, the City initiated a process to establish a new encroachment zone in the City LUP that would potentially allow for encroachments in the Peninsula Point, despite the fact that the Commission had rejected a similar, if not identical, proposal for this area in 1991. In conjunction with the LUP amendment process, in 2013, the City developed an “Encroachment Removal and Replacement Plan” prepared by Glenn Lukos Associates, Inc. outlining a strategy to remove any portion of the Encroachments located beyond the 15-ft. encroachment zone contemplated in the LUP amendment. Commission staff reviewed the plan and met with the City and many residents on multiple occasions to discuss a path forward to resolve the violations and ultimately informed the City that Commission staff could not support a proposal to allow any encroachments on public beach, particularly in light of the applicable Coastal Act and LUP policies. Despite this input from Commission staff, the City submitted the LCP⁴ amendment request on December 4, 2017.

In June of 2019, Commission staff sent 19 additional Notice of Violation letters to Peninsula Point property owners with the most extensive encroachments, to advise of them of possible exposure to penalties pursuant to Coastal Act Section 30821, which was established in 2014 to give the Commission the ability to impose administrative penalties for violations of the public access provisions of the Coastal Act.

In July 2019, the Commission unanimously rejected the LCP amendment to allow for encroachments for a limited amount of the Peninsula Point area due to adverse impacts to coastal resources.

In letters dated August 12th and 21st, 2019, to all Peninsula Point beachfront homeowners, Commission staff outlined a plan for a global consensual resolution of the

⁴ The LCP had been certified by the Commission during the course of this process, on January 13, 2017. Thus what had been proposed initially as an LUP amendment, became an LCP amendment.

Coastal Act violations on Peninsula Point that would include the involvement of the City, and provisions for both removal of encroachments from, and restoration of, the beach and dune areas as well as, in part, the homeowners paying in settlement an amount based on an encroachment fee for the past years of the encroachments, in lieu of payment of the full monetary penalty for a violation under the Coastal Act that the Commission would seek through a unilateral enforcement action. The encroachment fees were calculated based upon the areal extent of the encroachment a particular homeowner had installed and the length of time that the encroachment had been in place.

After the Commission's denial of the LCP amendment, City and Commission staff initiated discussions to resolve the matter of the Encroachments through formal enforcement action. Commission staff also engaged in discussions with homeowners to negotiate resolution of their liability for the Encroachments adjacent to their properties through formal enforcement action. Those discussions resulted in these proposed Consent Orders.

E. Basis for Issuing Cease and Desist Order

1. Statutory Provision

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, 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 ... 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 or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

2. Factual Support for Statutory Elements

Development, as described in Section V.C, above, has occurred on the Properties without a CDP. 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 defined broadly by Section 30106 of the Coastal Act as follows, in relevant part:

*“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....
(underlining added)*

The activities that are the subject of these proceedings include the placement of objects and materials on public beach, which has also changed access to the coast by interfering with public use of the beach. Although the Commission has certified a Local Coastal Program for the City, the beach remains within the Commission’s permit jurisdiction, and, thus, development on the beach requires a coastal development permit from the Commission. No coastal development permits have been issued for the Encroachments. The Commission therefore has jurisdiction to issue a cease and desist order to address these violations pursuant to Section 30810 of the Coastal Act.

F. Basis for Issuing Consent Restoration Order

1. Statutory Provision

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

The first of the three criteria listed in the excerpt from 30811 above, that is, that the encroachments along this beach have occurred without a coastal development permit, was discussed in the prior section.

b) Encroachments are Inconsistent with the Coastal Act, as well as the City of Newport Beach LCP

Along with being unpermitted, the encroachments along this beach also have resulted in continuing natural resource impacts that are inconsistent with Chapter 3 of the Coastal Act, including impacts to environmentally sensitive habitat areas (“ESHA”) and to public access. As noted above, in denying Local Coastal Program Amendment No. 4-17 Part D, by which the City proposed to allow private encroachments in areas of the Properties, the Commission found that “[t]he proposed policy changes will adversely impact coastal access and public recreation by effectively privatizing portions of the beach along Peninsula Point. The proposed LUP amendment also has the potential to impact biological resources and sensitive habitat. The Commission finds that the proposed policy changes are not in conformance with the public access policies of Chapter 3 of the Coastal Act, including Section 30210, 30211, 30212 and 30213 and the ESHA protection requirements of Section 30240.”

The Coastal Act contains strong policies in favor of protecting maximum public access (30210), prohibiting development from interfering with certain public right of access, including use of the beach (30211), and protecting lower cost visitor and recreational facilities (30213), such as public beaches. In addition, Sections 30220 and 30221 of the Coastal Act require protection of coastal areas such as oceanfront beaches, which are uniquely suited for coastal recreation activities.

The encroachments, which are located on public beach, reduce the amount of sandy beach area available to the general public, thereby decreasing coastal recreation opportunities, which is in direct conflict with the goals of the Coastal Act policies listed above. Furthermore, landscaped areas not only physically exclude the public from using these areas, but they also erroneously present the appearance that these areas are private, therefore deterring the public from using this portion of the City-owned beach.

With regard to the ESHA protection requirements of the Coastal Act, Section 30240(b) of the Coastal Act 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.

Section 30107.5 of the Coastal Act defines ESHA as such:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development.

The Commission found, in certifying the City Land Use Plan, that dune habitat on the beach constitutes ESHA. The LUP contains a list of ESHA that occur throughout Newport Beach, stating:

*The following terrestrial (non-marine) natural communities are known to occur within the coastal zone in Newport Beach and the City's sphere of influence:
Dune habitats, including southern coastal foredunes and southern dune scrub.*

Further, the LUP states that dune habitat here is presumed to be ESHA unless demonstrated otherwise:

Several of the natural communities that occur in Newport Beach are designated rare by the CDFG and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of ESHA under the Coastal Act. These include southern dune scrub... Areas within the City of Newport Beach that are dominated by one of the habitats discussed above are presumed to be ESHA, unless there are strong site-specific reasons to rebut that presumption. Where the habitats discussed above occur in the City of Newport Beach the presumption is that they are ESHA and the burden of proof is on the property owner or project proponent to demonstrate that that presumption is rebutted by site-specific evidence.

The encroachments along this beach displace dune habitat, are not consistent with the perpetuation of dune habitat, and are therefore inconsistent with the ESHA protection policy of the Coastal Act.

Finally, pursuant to Section 30251, the Coastal Act protects the scenic views and visual qualities of coastal areas and requires that development be sited and designed to protect surrounding coastal resources. In addition, the scenic views and visual qualities of coastal areas must be protected as a resource of public importance. Section 30251 states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas....

The resources that must be protected in this area include the scenic qualities associated with the natural beach environment. Sand dunes, an ever-decreasing natural landform, provide a scenic backdrop to the beach setting and buffer the natural beauty of the shoreline from coastal development. In this case, the encroachments along this beach have displaced sand dunes or sand dune formation on the Properties. Thus, they diminish the scenic resources of this coastal area and are not consistent with the protection of natural landforms. The encroachments here are therefore inconsistent with

Section 30251 of the Coastal Act. Moreover, here as elsewhere, dunes can provide a critical natural buffer to soften the effects of sea level rise on the adjacent areas, including development such as the homes adjacent to this beach.

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) Encroachments are Causing Continuing Resource Damage

The third and final criterion for issuance of a restoration order is that the development at issue is causing continuing resource damage.

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 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.

Public access, recreation, and ESHA on the Properties are afforded protection under, collectively, Coastal Act Sections 30210, 30211, 30213, 30220, 30221, and 30240, and are therefore “resources” as defined in Section 13190 (a) of the Commission’s regulations.

In this case, the resource damages caused by the encroachments at this beach include the reduction in quality and abundance of available public access and public recreational opportunities and the increase in adverse impacts to sensitive habitat. As of this time, the encroachments and impacts from the violations remain on the Properties. The encroachments continue to impact the coastal resources. Without removing the encroachments and restoring the impacted areas, including through

restoration of habitat and public 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 Imposition of Administrative Penalties

1. Statutory Provision

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.

2. Application to Facts

The encroachments at this beach constitute violations of the public access provisions of the Coastal Act. As noted above, in denying Local Coastal Program Amendment No. 4-17 Part D, through which the City proposed to allow development that is similar, if not identical in some cases to the violations at issue, that is, private encroachments in areas of the City-owned beach properties, the Commission found that “[t]he proposed policy changes will adversely impact coastal access and public recreation by effectively privatizing portions of the beach along Peninsula Point. The proposed LUP amendment also has the potential to impact biological resources and sensitive habitat. The Commission finds that the proposed policy changes are not in conformance with the public access policies of Chapter 3 of the Coastal Act, including Section 30210, 30211, 30212 and 30213 and the ESHA protection requirements of Section 30240.”

The Coastal Act contains strong policies in favor of protecting maximum public access (30210), prohibiting development from interfering with certain types of public rights of access to the beach (30211), and protecting lower cost visitor and recreational facilities (30213), such as public beaches. In addition, Sections 30220 and 30221 of the Coastal Act require protection of coastal areas, such as oceanfront beaches, that are uniquely suited for coastal recreation activities.

The encroachments, which are located on public beach, reduce the amount of sandy beach area available to the general public, thereby decreasing coastal recreation opportunities, which is in direct conflict with the goals of the Coastal Act policies listed above. Furthermore, landscaped areas, especially those that include vegetation that acts

as barriers, not only physically exclude the public from using these areas, but they also erroneously present the appearance that these areas are private, therefore deterring the public from using this portion of the City-owned beach.

The persistence of the encroachments on the beach limits and prevents public access to, and use of, the beach. The unpermitted development is therefore an ongoing violation of public access provisions of the Coastal Act 30210, 30211, 30213, 30220, and 30221, and Section 30821 is applicable.

a) Inconsistent with Principles of Environmental Justice

The findings in this section are not essential to the Commission's ability to issue an administrative penalty, however, it is important to view the violations in the context of environmental justice in order to understand the breadth of the impacts associated with the violations and to analyze the factors discussed in Section G, below. Indeed, pursuant to Section 30013 of the Coastal Act, the Commission is obligated to consider the principles of environmental justice when taking enforcement actions or executing its other duties. Section 30013 of the Public Resources Code provides:

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....

Environmental justice is defined in Government Code Section 65040.12(e) as “the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies”.

The Coastal Act's mandates to provide maximum access and recreational opportunities for all members of the public, and to protect, encourage, and provide lower-cost visitor and recreational opportunities for all members of the public, regardless of race, ethnicity, income socio-economic status, or place of residence, embody fundamental principles of environmental justice. Precluding or inhibiting public access to a lower-cost recreational facility, such as a public sandy beach, by making the public land appear to be private property, which is the result of the fences, manicured lawns and gardens, and extended private living spaces that make up the encroachments along this beach, is anathema to the principles of environmental justice and the mandates of the Coastal Act to maximize public access opportunities. Removal of these impediments to public access, which will result from these Consent Orders, will return public land to the public for the use of the public and help restore a lower-cost recreational opportunity for the benefit of all the people.

b) Exceptions to 30821 Liability do not Apply

Under 30821(h) of the Coastal Act, under certain limited 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. The safe harbor provided by Section 30821(h) is inapplicable to the matter at hand. There are three requirements for Section 30821(h) to apply that are not met here: 1) the violation must be remedied within 30 days of notice, 2) the violation must not be a violation of permit conditions, and 3) the violation must be capable of resolution without necessitating additional development that would require Coastal Act authorization. None of those is applicable to all of the encroachments here. The private parties with violations on this beach were notified, individually and collectively, of the persistence of the violations on the properties at various times over the past several years. For instance, by letter dated August 12, 2019, Commission staff notified all of the private parties, and the City, of the potential applicability of Section 30821 – any thirty-day period since that date has run. Further, some of the encroachments are inconsistent with previously issued coastal development permits; 30821(h) cure is not available for permit violations. Finally, since resolution of this matter will necessarily involve additional development that will require Coastal Act authorization, such as removal of materials from the beach and restoration of dune and beach habitat; Section 30821(h) does not apply in this instance.

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. As discussed more fully herein, the encroachments along this beach are precluding public access to, and use of, public sandy beach. The loss of public access is considered very significant under the Coastal Act, indeed it is a basic goal of the Coastal Act to “maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone”. Coastal Act Section 30001.5. Therefore, the encroachments cannot be considered to have resulted in “de minimus” harm to the public.

c) 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.” Section 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 impose penalties of up to \$11,250 (\$15,000 x .75) per day for each violation. There are multiple Coastal Act violations at issue here, all of which qualify as violations of the public access provisions

of the Coastal Act. For the purposes of calculating the penalty for this consensual administrative penalty hearing, however, in light of the willingness of the Private Parties and the City to enter into these Consent Orders, and because the Private Parties and the City have, upon receipt of recent correspondence, worked diligently and expeditiously with staff to reach an amicable resolution, in this specific case and under these particular fact patterns, the Commission has calculated a penalty amount for one violation for each of the Private Parties and the City.

Section 30821(a) establishes the time period 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 this case, the Encroachments have been in place, in some instances, for many years, and in other instances, they have been installed more recently. Some of the Encroachments have persisted since the 1990s, many years longer than the five years for which the statute provides penalties. While Section 30821 of the Coastal Act provides for the daily assessment of penalties for each day a violation persists, given the nature of the settlement and the facts at hand, Commission staff recommends a lower penalty assessment.

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculation for the Commission’s approval, and the Commission concurs with staff’s analysis. Under 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) 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.

Section 30820(c)(1) requires consideration of the nature, circumstances, extent, and gravity of the violation. The violations at issue in this case impact a significant coastal resource, the scope and nature of the unpermitted development is broad, and the privatization of valuable public land is of grave concern to the Commission, all of which supports imposition of a higher level penalty.

Application of the factor listed in Section 30820(c)(2) - whether the violation is susceptible to restoration - to the penalty calculation involves an analysis of the extent to which the losses and resource can be restored, and therefore, an evaluation of the temporal losses. In fact, the condition that remains within the physical footprint of the Encroachments is not irremediable; the physical items of the Encroachments can be removed from the public beach and access restored. These actions, however, do nothing to undo the years of lost access and lost days at the beach for the public that resulted from the presence of the Encroachments. Analysis of this factor therefore supports imposition of a penalty in the high-range.

Section 30820(c)(3) requires consideration of the nature of the resource affected by the violation in the assessment of a penalty amount. The resource affected by the violation in this case, public access to the beach, is a scarce and important resource across the State, and in this coastal region specifically. The beaches in the City of Newport Beach provide access opportunities for multiple inland counties that are home to millions of people of all socio-economic backgrounds that rely on public beaches for needed open space. Moreover, the population of southern California has continued to increase, creating additional significance for coastal access points. Analysis of this factor therefore supports imposition of a higher penalty.

Consideration of Section 30820(c)(4) - expense to the state of bringing this action - tends to point to, on one one hand, a more significant penalty, and the other hand, a lower penalty here. On one hand this is a long standing violation that staff has spent years trying to resolve. More recently, in the last two years since enforcement action began anew in earnest in 2019, staff has been continuously dedicating very significant time and effort to trying to resolve this matter and remove the Encroachments from the public beach. This reflects a significant expenditure of time and resources by Commission staff and suggests a higher penalty amount.

On the other hand, a global and unanimous consensual resolution with dozens of violators, each of which could attempt to drag out a resolution through litigation, has significantly reduced the costs to the state to resolve these violations. Although it is true that a violator typically is in a position to challenge an enforcement action, and penalty amounts agreed to through consent orders usually reflect the settling party's willingness to forego legal challenge to the enforcement action, the cost savings to the state is particularly substantial here due to the number of parties that have agreed to this consensual resolution and the unanimity with which the Private Parties have agreed to pay an administrative penalty. The effect of the state comprehensively resolving these violations with one consensual order rather than multiple contested orders with litigation likely to follow is extraordinary cost savings to the state.⁵

Finally, Section 30830(c)(5) requires evaluation of the entities or individuals that undertook and/or maintained the unpermitted development; whether the violator has a

⁵ ~~To the extent that there are additional homeowners along this stretch of beach who have encroachments immediately seaward of their homes and who were not willing to agree to the instant settlement, Commission staff intends to address those homeowners separately in the future.~~

previous history of violations, whether they financially benefited from the violation, the degree of culpability, and whether they undertook any voluntary remedial measures. Perhaps the most salient factor in this list in this situation is the degree of culpability of the Private Parties and the City. With regard to the facts at instance, for instance, many of the Private Parties did not install the Encroachments, and some did not install or maintain the Encroachments, and the City neither installed nor maintained the Encroachments. Thus, although they remain fully liable for these violations of the Coastal Act, their culpability for the violations is less than a party that installed and maintained an illegal encroachment.

Also with respect to culpability, years of representations from the City that it intended to seek legalization of the Encroachments, and its endeavoring to do so through the local coastal program amendment process, has arguably confused the matter of the legality of the Encroachments for some Private Parties, thus diminishing their culpability slightly in the sense that they believed, albeit mistakenly, that the Encroachments were legal. The position of the Commission has been clear though, as established in its actions in 1991 and 2019 to prohibit encroachments in this location, and this diminishment of culpability is slight at best.

Primarily though, in light of the manner in which the City and Private Parties have unanimously and quickly taken ownership of the violations since Staff's initiation of formal enforcement proceedings and have worked diligently with Staff to craft a creative resolution providing for a cost-efficient and consistent means to address removal and restoration in the whole area, that will be of significant benefit to the public, Staff recommends a lower penalty amount.

Analysis of each of the Section 30820(c) factors indicates the significance of this violation, and helps illustrate why Commission staff has continued to work to resolve this matter. However, the appropriate penalty amount for a settlement must be determined in the context of both the settlement, the history and facts under each of the aforementioned factors, and the value to the public and state of the proposed settlement. As noted throughout this document, this proposed settlement would provide for extensive areas of restored beach access and dune habitat and provide funding for potential additional access enhancements and habitat restoration and protection.

All of this was taken into account in evaluating an appropriate penalty amount. Further, while the Coastal Act violations along this beach are significant, longstanding, and have required a good deal of staff time to resolve, these factors are balanced by the changed ownership of the beachfront properties over the time since Encroachments were installed, as well as the fact that the Private Parties have worked assiduously with staff to find a mutually acceptable solution to this matter. The individual facts of each Private Party as they pertain to the factors described above, but in particular the willingness of the Private Parties to resolve this matter consensually, were assessed in the calculation of the penalty for each Private Party. Therefore, staff has recommended a monetary penalty amount totaling \$1,624,706,834.63, to be directed towards the Violation Remediation Account of the State Coastal Conservancy.

H. California Environmental Quality Act

The Commission finds that issuance of these Consent Orders, to compel the removal of the Encroachments, among other things, and implementation of these Consent Agreements is 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 exemption 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 exemption 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 exemption 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 contain provisions to ensure, and to allow the Executive Director to ensure, that it is 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 § 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 not 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 coastal 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 for CEQA.

I. SUMMARY OF FINDINGS OF FACT

1. The City owns the Properties. The Properties are located within the Coastal Zone.
2. The private parties have undertaken unpermitted development on the Properties. This unpermitted development includes: placement of objects and materials on public sandy beach, including, but not necessarily limited to, landscaping such as lawns, hedges, iceplant, trees, and shrubs; irrigation systems; walkways; stepping stones; fences; and patios, all of which interferes with public coastal access.
3. On January 30, 2020 the Executive Director sent a Notice of Intent to Commence Cease and Desist and Restoration Order and Administrative Civil Penalty Proceedings to the City. The Private Parties have agreed not to contest the validity of these Consent Orders by contesting the commencement of proceedings to issue these Consent Orders without their having first received written notice of commencement of cease and desist order and restoration order proceedings pursuant to sections 13181 and 13191, respectively, of the Commission's administrative regulations.
4. The unpermitted development described in #2, above, is inconsistent with Coastal Act Sections 30210, 30211, 30213, 30220, 30221, 30240, and 30251.
5. The Commission recognizes that encroachments on public areas both occupy and displace public access and habitat uses, and in an area such as this, can also exacerbate the effects of sea level rise and the paucity of beach areas for public use.
6. The unpermitted Development described in #2, above, is causing "continuing resource damage" within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
7. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order under specified conditions, and, as is demonstrated by the prior findings, all elements of that section have been met herein.
8. Coastal Act Section 30811 authorizes the Commission to issue a restoration order under specified conditions, and, as is demonstrated by the previous findings, all elements of that section have been met herein.
9. The work to be performed under these Consent Orders, if completed in compliance with the Consent Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
10. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. Sections 30820 and 30822 of the Coastal Act contain general civil liability provisions for Coastal Act violations.
11. The unpermitted development described in #2, above, is inconsistent with the public access provisions of the Coastal Act and therefore subject the City and the private parties to penalties under Section 30821 of the Coastal Act. Through the Consent Orders, the City and Private Parties have agreed to resolve all financial liabilities under the Coastal Act.

12. The City and Private Parties agreed, through the execution of these Consent Orders, to not submit a Statement of Defense form as provided for in 14 CCR Section 13181 and 13191.
13. The City and Private Parties have signed Consent Cease and Desist Order No. CCC-20- CD-02, Consent Restoration Order No. CCC-20-RO-01, and Consent Administrative Civil Penalty No. CCC-20-AP-02, a copy of which is attached to this staff report as Appendix A.
14. Impacts to coastal resources resulting from the unpermitted development described in #2, above, will continue until the requirements of these Consent Orders are completed.