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

W11, 12, 13, & 14

Staff: Heather Johnston – SF
Staff Report: April 28, 2022
Hearing Date: May 11, 2022

STAFF REPORT: Recommendations and Findings for Cease and Desist Orders and Administrative Civil Penalty Assessments

Cease and Desist Order Nos.:	CCC-22-CD-01 (Wooster) and CCC-22-CD-02 (Headlands)
Administrative Civil Penalty Nos.:	CCC-22-AP-01 (Wooster) and CCC-22-AP-02 (Headlands)
Related Violation File:	V-5-16-0106
Record Property Owner:	1205-1207 Wooster Street LLC
Entities and Persons Subject to these Orders:	1205-1207 Wooster Street LLC; Henri Levy; Headland Properties Associates LLC; Headland Properties Inc.; Headland Properties Associates LP; Cal Coast Companies LLC; Cal Coast Developer Inc.; Edward Miller; and Joseph Guarassi.
Location:	16701 Via La Costa, also identified by Assessor's Parcel Number 4431-039-029, City of Los Angeles, Los Angeles County, and additionally known as the "Trailhead Property".
Violation Description (Headlands[1]):	The failure to maintain a public parking lot and public restroom on the Trailhead Property as

[1] "Headlands" as used here includes Headland Properties Inc., Headland Properties Associates LP, and Headland Properties Associates LLC, as well their principals, Joseph Guarrasi and Edward Miller.

	required by a Coastal Development Permit ("CDP") condition; (2) the failure to transfer the Trailhead Property to the City of Los Angeles or other not-for-profit entity approved by the Commission's Executive Director, as required by a CDP condition; (3) the affirmative transfer of the Trailhead Property from Headland Properties Associates LP to Headland Properties Associates LLC in 2010; and (4) the failure to pay taxes on the Trailhead Property, thereby allowing alienation of the property to a private developer via tax default sale, all in violation of a coastal development permit previously issued by the Commission, and collectively effecting a significant reduction in the intensity of use of the Trailhead Property – from a functioning public park to private land with unmaintained facilities on it.
Violation Description (Wooster[2]):	Unpermitted locking of a gate and placement of appurtenant development that blocked access to a public parking lot and public restroom facility on the Trailhead Property; (2) causing a reduction in the intensity of use of that property (from that of a public park to that of unwelcoming, private land) through the development listed above and also by locking of public restrooms at the Trailhead Property, (3) the failure to transfer the Trailhead Property to the City of Los Angeles or other not-for-profit entity approved by the Commission's Executive Director, as required by a CDP condition; and (4) the failure to maintain the public trailhead, public parking lot, and public restroom, as required by a CDP condition.
Substantive File Documents:	1. Public documents in Cease and Desist Order file Nos. CCC-22-CD-01 and CCC-22-CD-02, and Administrative Civil Penalty file Nos. CCC-22-ACP-01 and CCC-22-ACP-02.

[2] As in the previous footnote, the name "Wooster" is used here as shorthand to reference not only the company (1205-1207 Wooster Street LLC), but also Henri Levy and any other individuals who are responsible for its actions.

2. Appendix A and B, and Exhibits 1 through 84 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 RECOMMENDATIONS

Background

The enforcement matter at hand pertains to Coastal Act violations on a half-acre property in the Pacific Palisades area of the City of Los Angeles, Los Angeles County (Exhibit 1), that adversely impact public access and recreation. The property, colloquially known as the Temescal Ridge Trailhead (also referred to herein as the "Trailhead Property"), is situated high up in the Santa Monica Mountains at the northwest edge of an upmarket development alternately called "The Summit" or the "Palisades Highlands." This large-scale subdivision spans over a thousand acres and consists of around two thousand residential units, commercial facilities, and open space areas (Exhibit 2), permitted by this Commission through a 1979 coastal development permit and a series of amendments thereto. Among myriad other conditions, that permit required the creation of the Trailhead Property to help mitigate for the significant impacts to coastal resources associated with the development of the Palisades Highlands subdivision. Today, the network of hiking trails linking the Trailhead Property to Topanga State Park is incredibly popular and the Trailhead Property is the only location in the entirety of the Palisades Highlands that provides parking access and restroom facilities for the public.

In brief, this case seeks to remedy a situation where, having reaped the benefit of a coastal development permit by building and selling around two thousand residential units, the developer of the Palisades Highlands has now attempted to strip away one of the chief burdens of the permit and profit further from the sale of land which was explicitly required to be protected for conservation and public recreation under the terms of the permit. Specifically, the land that was to be held and maintained for the benefit of the public and coastal ecology was to include a public access parking lot, trailhead, bathroom, hiking trail easements, and other open spaces. The private party who purchased the Trailhead Property has refused to honor the permit conditions that pertain to said property and has instead blocked access to the public parking area, locked the public restroom, and generally failed to maintain the public facility as was required by the Commission's permit.

Since the late 1960s, the owners[3] of the land that would become the Palisades Highlands had planned the development project, and by 1972, they had already graded roads and installed sewer infrastructure in anticipation thereof; however, at that time, they had not yet obtained requisite governmental approvals for the actual development of the Palisades Highlands with homes. After passage of Proposition 20 in 1972, the developers continued work without authorization under that new law, claiming that the work was exempt on the basis that they had a vested right to complete the project. Several years of litigation regarding the vested/exempt status of the development resulted in a negotiated settlement wherein the Commission issued a permit, Coastal Development Permit A-381-78 (hereinafter "the CDP") (Exhibit 3), for a much smaller version of the planned project – albeit one that still ultimately necessitated approximately ten million cubic yards of grading for the construction of around two thousand residential units, among other development (Exhibit 4). As discussed in greater detail below, the CDP has been amended more than a dozen times in the years since its original approval, but the condition to provide for a public trailhead facility and to transfer the land upon which the facility was development has remained, and as discussed herein, was central to the approval of the permit.

For the Palisades Highlands project to be found consistent with the Coastal Act, the Commission required, in the CDP and subsequent amendments, that all development be confined within a specific geographic area; a boundary line called the "urban limit line" was established, outside of which development would be generally prohibited. The Commission additionally required that over a thousand acres of land both inside and outside of the urban limit line be preserved for open space and recreation and mandated the creation and maintenance of a trailhead and appurtenant amenities on the Trailhead Property to provide public access to many miles of hiking trails in the Santa Monica Mountains. These requirements were embodied in key conditions of the CDP, as amended. The conditions pertaining to the Trailhead Property required that the applicant develop a site with trailhead facilities and transfer it for maintenance and management to either the City of Los Angeles ("City") Department of Parks and Recreation or another public or not-for-profit entity approved by the Commission's Executive Director.

In 1981, the City of Los Angeles Department of Recreation and Parks ("City Parks") Commission voted in favor of acceptance of the anticipated future dedication of property resultant from the subdivision, including that which would serve as a parking lot and trailhead (Exhibit 5). At a subsequent board meeting in 1989, City Parks voted to condition acceptance of a trailhead facility upon several items, including that Headlands provide the plans for the property amenities for the review and approval of City Parks prior to construction (Exhibit 6). The Coastal Commission's requirement that Headlands

[3] The Palisades Highlands was initially owned and developed by two entities: Palisades Resources Inc. and Headland Properties Inc. Headland Properties Associates and its related partnerships and companies continue to hold land within and manage the development, including by obtaining permits for work within the development.

dedicate a trailhead to City Parks mirrored Conditions 20 and 24 of the Los Angeles County conditions of approval for Tract Map 32184, which likewise required construction of a trailhead facility and the transfer of that facility to City Parks (Exhibit 7). The plans were subsequently developed by Headlands, approved by City Parks, and the facilities were constructed and completed in 1994 (Exhibit 8). In 1994, Headlands executed a grant deed transferring the Trailhead Property to City Parks (Exhibit 9), which contained easement language that did not precisely reflect the parameters contained within the CDP conditions; the deed was not recorded and ownership was retained by Headlands. Subsequently, in 1995 Headlands executed a second grant deed again transferring the Trailhead Property to City Parks (Exhibit 10). Shortly thereafter City Parks voted at a board meeting to accept and record the deed to the Trailhead Property (Exhibit 11). Unfortunately, the notary stamp was so smudged as to be illegible, and the County Recorder's office consequently rejected recordation of the deed; record ownership was again retained by Headlands, and the County Assessor continued to send tax bills to Headlands, putting Headlands on notice that the conveyance had not been recorded. Headlands took no further action to ensure that the property was successfully transferred to the City or approved not-for-profit entity, as required by the CDP.

To the contrary, Headlands stopped paying taxes on the Trailhead Property, and despite being on notice that the permit condition had not been complied with via the numerous warnings from the County of Los Angeles of tax arrears, tax default, and finally pending tax sale, they allowed the property to be transferred to a private entity for development via tax default sale. However, that buyer immediately recognized that the Trailhead Property it had purchased was a public facility and had the sale reversed. In one of the only affirmative actions that Headlands did take regarding the Trailhead Property after the initial attempted transfer to the City went unrecorded, it quitclaimed the property, in 2010, to another entity that it owned (Exhibit 12), in direct contravention of its obligation to convey the property to the City. Once that quitclaim deed was recorded, it meant that even if City Parks became aware that the 1995 deed to it remained unrecorded and wanted to rectify that situation, they would then have been unable to record it.

The new record owner, which was another incarnation of Headlands, continued to ignore the tax bills. Consequently, the Trailhead Property was once again sold at tax auction in 2013 to Mr. Levy, a private developer (Exhibit 13). However, unlike the party who had purchased the property from a tax default sale in 2006, Mr. Levy did not seek to rescind the sale. In 2014, Mr. Levy deeded the property to 1205-1207 Wooster Street LLC (hereinafter "Wooster"), a limited liability company he had created, and which currently appears as the record title holder (Exhibit 14). Headlands, after having done nothing to rectify the non-transfer of the Trailhead Property to the City of Los Angeles, nor notify the City or Commission of its continued fee ownership of the Trailhead Property, nor to address the tax default, elected to act after the tax auction by filing for, and receiving, an Excess Proceeds Refund of more than $300,000 to recoup the amount that Levy had paid for the property, less the overdue taxes (Exhibit 15). Headlands therefore not only failed to comply with their permit, but instead took

affirmative steps to avoid complying with its terms, and then actually profited from the tax default sale of the Trailhead Property that directly resulted from Coastal Act violations.

Violation Description

As described in greater detail below, by seeking to privatize and develop land that was set aside for preservation and recreation as mitigation for this massive subdivision and development project, the violations at issue in this matter undermine the core requirements of the permit. The developer, Headland Properties Associates LLC[4], through its actions and inactions and in direct conflict with the permit conditions, allowed the Trailhead Property to be sold to Wooster, a private developer. Relatedly, in a violation that will be handled separately, Headlands has also sold other land within the Palisades Highlands that was required to be maintained as open space, both inside and outside of the urban limit line, to another private developer.[5]

Headlands' conveyance of the Trailhead Property to a separate entity that it owns and controls, and its associated abdication of responsibilities to the Trailhead Property, has resulted in Coastal Act and CDP violations, as the effect of such actions and inactions is that the land is no longer being maintained for the benefit of the public. Despite the fact that, by purchasing the Trailhead Property, Wooster became a successor-in-interest to the permittee and is therefore bound by the terms of the CDP, Wooster has in turn refused to honor the protections for the property, and its representatives have argued vociferously that they should be able to develop the land for private residential use. In fact, the City of Los Angeles had been maintaining (Exhibit 16) the Trailhead Property as if they owned the property until Wooster directed it to cease its maintenance activities because the land was now purportedly privately held. Not only did the City invest decades of maintenance into the property, but also as of 2021 the City continued to pay the property's utility bills (Exhibit 17).

Further, Wooster initially closed the property to the public entirely, blocking access to the parking lot and public restroom by locking an iron gate at the entrance to the Trailhead Property. They reopened it only after Commission enforcement staff contacted them and demanded that the impediments to use be removed. While the property now remains somewhat open for public use in that the gate no longer obstructs public access to the parking lot and one of the two restrooms is now open, because Wooster has only undertaken to clean the heavily used area not more than twice in six

[4] Headland Properties Associates Inc. was one of the original developers of these properties and one of the entities to whom the CDP was granted; Headland Properties Associates LP and Headland Properties Associates LLC are successors in interest of Headland Properties Inc. and are owned and operated by the same principals as the aforementioned partnerships and corporations and are thus treated as the same entity for the purposes of this matter.

[5] In addition, the Commission issued a cease and desist order to Headlands in 2004, for selling land that was to be held exclusively for habitat or recreation purposes to a private entity for development (https://documents.coastal.ca.gov/reports/2004/9/W14-17-9-2004.pdf).

years, the one open restroom is so filthy and covered in trash and feces as to be unsanitary and unusable, while the parking lot is similarly strewn with litter and graffiti (Exhibit 18). The actions of Headlands and Wooster have therefore resulted in the Trailhead Property being no longer available for safe use and public recreation, as required by the CDP.

The transfer of the Trailhead Property to Wooster in and of itself constitutes a violation of the CDP as, pursuant to the CDP as amended, the property and facility were required to be maintained for public use and could only be held by the City or a not-for-profit entity approved by the Commission's Executive Director, of which Wooster is clearly neither. Additionally, the privatization of public land has 1) decreased the intensity of use of that land including by precluding public access uses such as parking and use of the trailhead and related access amenities, and 2) resulted in a diminution or extinguishment of public access and recreation; both of these actions are development under the Coastal Act. The transfer and subsequent locking and neglect of the Trailhead Property therefore constitute development under the Coastal Act, and no permit was granted for any such development.

Initial Enforcement Actions

Since being made aware of potential Coastal Act violations relating to the Trailhead Property on July 21, 2016, enforcement staff has attempted to work with both Wooster, the current record owner of the Trailhead Property, and Headlands, the permittee, in an effort to resolve the situation. Soon after learning of the issues, staff sent notice of violation letters to both Wooster and Headlands on August 3 and 10, 2016, respectively, reiterating the CDP requirements as related to the Trailhead Property, discussing remedies available under the Coastal Act, and suggesting potential methods of resolving the violations (Exhibits 19 and 20).

In response to the Commission enforcement letter, Wooster informed staff that they had immediately unlocked and opened the gate to the Trailhead Property that had been blocking public access to the property in its entirety. Wooster additionally opened one of the restrooms but alleged that they did not have a key to the other and therefore could not open it. They also indicated that the property would remain 'open' during the pendency of the enforcement action, while simultaneously insisting that they had a right to develop the property with a single-family residence.

In September 2016, after exchanging correspondence with and speaking to representatives from Wooster, Headlands, and the Los Angeles County Department of Treasurer and Tax Collector ("Tax Assessor"), staff met with one of Headlands' principles; Joseph Guarrasi. During this meeting, staff and Mr. Guarrasi discussed the history of the Trailhead Property, the Coastal Act concerns regarding recent developments related to the property, and potential avenues to remedy these issues. After this meeting staff did not hear from Headlands or any representatives thereof for over a year and a half despite efforts to reach out to them via letter returned with notice that the addressee was no longer at that address; staff was only able to locate them

after extensive efforts, as they had moved and did not update their addresses with the Secretary of State nor notify Commission staff.

In October 2016, after further correspondence with Commission staff, counsel for Wooster informed staff that any transfer of the Trailhead Property to public ownership would require compensation to Wooster in the amount of $1,300,000; translating to nearly a million dollars in profit for Wooster. Commission staff sent additional letters to Headlands and Wooster in 2017, again detailing the Coastal Act violations at issue, discussing possible remedies, and notifying the parties that the matter was being elevated to the Commission's Headquarters Enforcement Division to formally resolve the matter. Since that time, Enforcement staff continued to pursue a consensual resolution of the violations, contacting both parties numerous times, only to be met with either an unwillingness to engage in even a discussion of the issues or complete silence.

Over the several years of contact with Commission enforcement staff regarding this matter, Wooster has raised a number of defenses to the action, all of which are chronicled and responded to in Section III.G, below.[6] While Wooster has been relatively profuse in asserting defenses to the Commission enforcement action, Headlands has only deigned to respond to staff four times over the course of four years and more than a dozen letters and calls from staff. Staff has therefore had to infer defenses from these limited communications; all of which are detailed and responded to below in Section III.G.

After further research into the complicated history of the permit (with over a dozen amendments) and the various documents recorded against title pursuant to that permit (including corrections, duplications, and overlapping recordation related to other permit requirements), efforts to engage the City to assist with resolution, and consideration of alternative enforcement approaches, staff planned to schedule a hearing before the Commission in 2020. However, that hearing was delayed due to the pandemic and mandatory social distancing requirements. During this delay, rather than working with CCC staff to resolve the matter, Henri Levy and Wooster instead filed suit against the City of Los Angeles, the County of Los Angeles, the State of California, and Headlands on May 27, 2021(Exhibit 21). While this suit contains allegations relating to the enforcement matter at hand, in general and among other things, the plaintiff seeks to estop the Commission's enforcement of its permit requirements, declare that plaintiff owns the property outright, declare that the plaintiff can develop the property, require the return of $333,114.56 (the purchase price of the Trailhead Property), and require that the defendants pay Wooster $2,000,000 damages. This litigation is ongoing, but it has been moving very slowly, and as of the publication of this document, no rulings on

[6] Neither Wooster nor Headlands submitted a Statement of Defense Form as provided for in Section 13181(a) of the Commission's regulations; however, both parties have submitted arguments in various correspondence since the first Notice of Violation letter was sent to them, and, as a courtesy and for the record, we are responding to these arguments in Section III.G, below.

the merits have been made; the Commission thus retains its legal authority to enforce its permit requirements.

Proposed Resolution

The unpermitted development that Headlands and Wooster have precipitated through both action and inaction has resulted in the privatization of, and loss to the public of a popular public parking lot and restroom trailhead amenity that was required as a condition of the CDP for a large subdivision and development of around two thousand residential units, among other development. These unpermitted activities, which have resulted in a diminution of access to miles of coastal mountain hiking trails, constitute development and were undertaken without Coastal Act authorization, in direct contravention of the public access provisions of the Coastal Act. Further, this privatization has occurred in violation of conditions of the CDP: in issuing the CDP, as amended, the Commission made it clear that but for these conditions requiring public access, the permit would not be consistent with the Coastal Act.

Thus, staff recommends that the Commission enforce the CDP, as amended, by, among other things, requiring that fee title to, and operation and maintenance of, the Trailhead Property be transferred to the City of LA or another public or not-for-profit entity approved by the Commission's Executive Director. To address these violations, staff recommends that the Commission approve issuance of Cease and Desist Order No. CCC-22-CD-02 and Administrative Penalty No. CCC-22-02 to Headlands (collectively "Headlands Orders"), and Cease and Desist Order No. CCC-22-CD-01 and Administrative Penalty No. CCC-22-AP-01 to Wooster (collectively "Wooster Orders"). The proposed Headlands Orders and Wooster Orders are included as Appendices A and B to this Staff Report and are together referred to herein as "The Orders."

The Headlands Orders would require that they 1) cease and desist from undertaking any unpermitted development or development in violation of the previously issued CDP, as amended; 2) comply with the CDP, as amended; 3) take all steps necessary to ensure that title to the Trailhead Property is vested in the City or another public or not-for-profit entity approved by the Commission's Executive Director; 4) maintain the property for public use to the extent they have control over it in the interim; and 5) pay penalties for violations of the public access provisions of the Coastal Act on the Trailhead Property.

Similarly, the Wooster Orders would require that they 1) cease and desist from undertaking any unpermitted development and development in violation of the previously issued CDP, as amended; 2) comply with the CDP, as amended, including by opening and cleaning the restrooms and remainder of the Trailhead Property and maintaining the Property until transfer to an appropriate entity is made, 3) take all steps necessary to ensure that title to the Trailhead Property is vested in the City or another

public or not-for-profit entity approved by the Commission's Executive Director and 4) pay penalties for violations of the public access provisions of the Coastal Act on the Trailhead Property.

Section 30821 of the Coastal Act requires the Commission to consider specific factors in order to quantify the appropriate administrative penalty to impose. Applying these factors to Headlands' violations supports assessment of a penalty of at least $3,000,000, as detailed in Section III.F.b, below. However, in order to incentivize expeditious compliance, staff is recommending this penalty be reduced to $2,000,000 if Headlands moves quickly to rectify the situation. Similarly, assessing Wooster's violation in light of the enumerated statutory factors for penalty calculation supports imposition of a penalty of at least $1,250,000. However, given Wooster's relatively recent involvement in this matter, and again in order to incentivize expeditious compliance, staff is recommending this penalty be eliminated entirely if Wooster moves quickly to rectify the situation. These recommended penalties have been calculated for each party separately by examining the totality of the violations and determining who it was that was culpable at each juncture on the timeline for this violation case.

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APPENDICES

EXHIBITS

I. MOTIONS AND RESOLUTIONS

Motion 1: Cease and Desist Order (Wooster)

*I move that the Commission **issue** Cease and Desist Order No. CCC-22-CD-01 to 1205-1207 Wooster Street LLC and Henri Levy 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 Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-22-CD-01, as set forth below, and adopts the finding set forth below on the grounds that 1205-1207 Wooster Street LLC and Henri Levy, has undertaken development without the requisite permit and in violation of CDP No. A-381-78, as amended, and has otherwise acted in a manner inconsistent with that permit, in violation of the Coastal Act, and that the requirements of the Cease and Desist Order are necessary to ensure compliance with the Coastal Act and the Coastal Development Permit.

Motion 2: Administrative Civil Penalty Action (Wooster)

*I move that the Commission find that the various actions and failures to act by 1205-1207 Wooster Street LLC and Henri Levy, as described in the Commission's findings, are in violation of the public access provisions of the Coastal Act, and that the Commission **impose** upon them an administrative civil penalty in the amount of $1,250,00, or if they take all necessary steps to remedy the situation as outlined in the Order then no penalty, pursuant to the staff recommendation and Administrative Civil Penalty Order No. CCC-22-AP-01.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the assessment of an administrative penalty against 1205-1207 Wooster Street LLC and Henri Levy in the amount of $ 1,250,000, or if they take

all necessary steps to remedy the situation as outlined in the Order then no penalty, as indicated in proposed *Administrative Civil Penalty No. CCC-22-AP-01*. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Administrative Civil Penalty Order:

The Commission hereby imposes an administrative civil penalty against 1205-1207 Wooster Street LLC and Henri Levy in the amount of $1,250,000, or if they take all necessary steps to remedy the situation as outlined in the Order then no penalty, and adopts the findings set forth below on the grounds that they have undertaken development without a permit and inconsistent with, and otherwise acted in a manner inconsistent with, CDP No. A-381-78, as amended, and the Coastal Act, and these activities have limited or precluded public access and violated the public access provisions of the Coastal Act.

Motion 3: Cease and Desist Order (Headlands)

*I move that the Commission **issue** Cease and Desist Order No. CCC-22-CD-02 to Joseph Guarassi, Edward Miller, Headland Properties Associates LLC, and the related entities listed in the proposed order 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 Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-22-CD-02, as set forth below, and adopts the finding set forth below on the grounds that Headland Properties Associates, which is controlled by Joseph Guarassi, Edward Miller, Headland Properties Associates LLC, and related entities have acted in a manner inconsistent with CDP No.A-381-78, as amended, in violation of the Coastal Act, and that the requirements of the Cease and Desist Order are necessary to ensure compliance with the Coastal Act and the Coastal Development Permit.

Motion 4: Administrative Civil Penalty Action (Headlands)

*I move that the Commission find that various actions and failures to act by Joseph Guarassi, Edward Miller, Headland Properties Associates LLC, and related entities, as described in the Commission's findings, are in violation of the public access provisions of the Coastal Act, and that the Commission **impose** upon them an administrative civil penalty in the amount of $3,000,000, or if they take all necessary steps to remedy the situation as outlined in the Order then $2,000,000, pursuant to the staff recommendation and Administrative Civil Penalty No. CCC-22-AP-02.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the assessment of an administrative penalty against Joseph Guarassi, Edward Miller, Headland Properties Associates LLC, and related entities in the amount of $ 3,000,000, or if they take all necessary steps to remedy the situation as outlined in the Order then $2,000,000, as indicated in proposed *Administrative Civil Penalty No. CCC-22-AP-02*. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Administrative Civil Penalty Order:

The Commission hereby imposes an administrative civil penalty on Joseph Guarassi, Edward Miller, Headland Properties Associates LLC, and related entities in the amount of $3,000,000; and adopts the findings set forth below on the grounds that they have acted in a manner inconsistent with CDP No. A-381-78, as amended, and the Coastal Act, and their actions and inactions have limited or precluded public access and violated the public access provisions of the Coastal Act.

II. HEARING PROCEDURES

The procedures for a hearing in which the Commission issues a Cease and Desist Order under Public Resources Code ("PRC") Section 30810 are described in the Commission's regulations at Section 13185 of Title 14 of the California Code of Regulations ("14 CCR"). Additionally, the Coastal Act (PRC 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 Sections 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties are the same as those for a Cease and Desist Order, and the hearing on these Cease and Desist Orders and Administrative Civil Penalty Actions shall proceed according to 14 CCR section 13185, including the following.

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 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 its report and recommendation to the Commission, after which the alleged violators, or their representatives, may present their positions with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the chair may allow the alleged violators to use any reserved rebuttal time to respond to comments from interested persons and may then allow staff to respond to specific points raised by the alleged violators or any of the other speakers.

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, which incorporates, 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 Orders and impose Administrative Penalties, either in the forms recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission, will result in issuance of the Cease and Desist Orders and imposition of Administrative Penalties.

III. FINDINGS FOR CEASE AND DESIST ORDER NOS. CCC-22-CD-01 AND CCC-22-CD-02, AND ADMINISTRATIVE CIVIL PENALTY NOS. CCC-22-ACP-01 AND CCC-20-ACP-02[7]

A. DESCRIPTION OF PROPERTY

The property subject to this enforcement action (the “Trailhead Property”) is located in the Pacific Palisades, a neighborhood of the City of Los Angeles that is neighbored to the west by Malibu and Topanga Canyon and to the southeast by Santa Monica. More specifically, the Trailhead Property is located in the northeast portion of the Palisades Highlands, a community in the northern portion of the Pacific Palisades at the terminus of Palisades Drive (Exhibit 22). Now bounded on three sides by public land, the Palisades Highlands subdivision was created in the late 1970s and early 1980s and

[7] These findings also hereby incorporate by reference the Summary at the beginning of the April 22, 2022 staff report (“STAFF REPORT: Recommendations and Findings for Cease and Desist Orders and Administrative Civil Penalty Assessments”) in which these findings appear, which section is entitled “Summary of Staff Recommendations.”

developed pursuant to a coastal development permit ("the CDP") that has since been amended more than a dozen times – as described below.

At just under half of an acre in size, the Trailhead Property is situated at the northeast periphery of the Palisades Highlands and is developed with two public bathrooms, trash receptacles, and a 12-car public parking lot (Exhibit 23). These public access amenities were constructed by Headlands[8] pursuant to requirements of the CDP (A-381-78), as amended, and as part of a larger public access and conservation plan to mitigate for the resource impacts the creation of the Palisades Highlands had on public access and the environment. As described below, the Commission found that without this mitigation, including the development of the Trailhead Property for public access and recreational purposes and its transfer to a public or not-for-profit entity for continued management, Proposition 20, the developers performed some initial grading on the site. They then continued to work after the effective date without Coastal Act authorization, claiming that the work was the Palisades Highlands development would not be consistent with the Coastal Act. Currently, the record owner of the Trailhead Property is a private entity known as 1205-1207 Wooster Street, LLC, (hereinafter, "Wooster") a limited liability company that was formed in 2008 for the purpose of real estate development. Henri Levy is the sole manager of the limited liability company.

B. History of Commission Action on the Property

As detailed below, the project that the Commission approved - which would eventually become the Palisades Highlands - was an extremely large development, spanning well over a thousand acres, involving the construction of around two thousand residential units, and necessitating over ten million cubic yards of grading on what was then the periphery of the developed area of the City of Los Angeles. Prior to the passage of the Coastal Act in 1976 or the initiative that was its predecessor (Proposition 20) in 1972, the developers had been planning to undertake this large-scale project for many years, and by 1968, they had received general approvals from the City of Los Angeles for the subdivision of the land but not for the actual construction of structures. Immediately prior to the effective date of exempt on the basis that they had a vested right to complete the project.

In a negotiated settlement to resolve protracted litigation regarding whether or not the developers had a vested right to complete the development, the Commission agreed to issue a permit for a smaller version of the planned project, imposing a variety of conditions designed to protect public recreation and the environment, among other things. On July 17, 1979, the Coastal Commission granted Coastal Development Permit A-381-78 ("the CDP") to Palisades Resources Inc. and Headland Properties Inc. jointly for the subdivision of Tract 31935, one of four new tracts that those two applicants owned and planned to develop, all in what is now the Palisades Highlands (Exhibit 3).

[8] See Footnotes 1 and 4 for explanation of the entities encapsulated within the term "Headlands."

The CDP authorized subdivision of the property, grading of roads and the installation of utilities to accommodate the residential development on the then-undeveloped property. Additionally, this CDP laid the framework for an integrated development plan for all land owned by the applicants in the Palisades Highlands proposed for development; in the findings for the approval of the CDP, the Commission analyzed the maximum number of units that could be approved across all four tracts in the Palisades Highlands in light of Coastal Act concerns regarding cumulative impacts on traffic, beach access, ecology, scenic resources and public recreation.

Open Space Properties

In order to find the development consistent with the Coastal Act, the Commission imposed a number of conditions[9] on the CDP, including requiring that slope areas within the entire development that would be exposed by grading and construction be revegetated with native, fire-resistant vegetation, and that scenic, conservation, or open space easements be created to preserve land within the four tracts that was not to be developed with residential lots. To identify such protected lands, the CDP established an Urban Limit Line ("ULL"), which set a boundary for all four tracts beyond which development would be restricted to minimize alteration of natural landforms, protect ecology, and maintain the scenic and recreational qualities of the area (Exhibit 24). Pursuant to the CDP, only minor development in furtherance of low-intensity public recreational land uses, including public trail construction, was permissible outside of the ULL. Further, the CDP required that the area outside of the ULL (nearly 1,000 acres of land) be dedicated in fee to the California Department of Parks and Recreation ("State Parks").

A major amendment of the project was approved by the Commission in 1980. This amendment ("CDPA1") modified the permit to allow a much greater quantity of grading, increased the total number of residential units in the development, authorized construction of commercial and institutional sites, and expanded the developable area by moving the ULL farther outward in certain locations (Exhibit 25). The findings for the first amendment to the permit state, "[a] firm Urban Limit Line is to be established with permanently preserved buffer areas designed to protect the integrity of the local wildlife systems from both construction and residential impacts." Headlands therefore obtained additional development rights only after specifically recommitting to the protections and limitations associated with the new ULL, without which the amendment could not have been found consistent with the Coastal Act.

[9] Some of these conditions impose ongoing obligations that persist in perpetuity, unless otherwise modified, while others may have imposed more time-limited obligations, and still others were initial created to impose obligations in perpetuity but were later changed. For simplicity, the past tense is used herein for all conditions, but that is not intended to indicate a position one way or the other regarding the continuing application of any condition.

As discussed in detail below, over the years, subsequent amendments to the underlying permit resulted in further modifications to the location of the ULL, refined the identities of the parties to whom the land outside the ULL could be dedicated, established specific protections for those lands, and relied on these conditions to justify concluding that the amendments would be consistent with the Coastal Act. In the findings for CDPA1, the Commission stated, "[f]or it is only with the dedication of these lands for permanent preservation of visual a[n]d landform resources and for public recreational use that the Commission can find the development of the four tracts on balance most protective of significant coastal resources." The Commission made it clear in various findings that the land outside of the ULL was to be preserved for wildlife and ecosystem values and scenic values, and that the finding that the project was consistent with the Coastal Act was predicated upon the dedication of the aforementioned broad swaths of land for preservation.

When, in 1987, the Commission approved a ninth amendment to the CDP, CDP Amendment A-381-A9 ("CDPA9"), the ULL was again adjusted outward to allow grading to protect some unstable slopes that had previously been just outside of the ULL and thus subject to open space restrictions that would have precluded such work (Exhibit 26). The Commission nevertheless elected to retain some of the other protections on this land (now designated "Interior Open Space" lands), and to further restrict use of it to prohibit construction of any structures other than "park and maintenance facilities such as trails, drainage channels, park furniture and vehicle entry gates" (Special Condition 2g of CDPA9). The findings for CDPA9 state that, "…these lots will be maintained by the homeowners association, and the City approval includes conditions to record covenants over these lots to maintain them. In order to reduce the visual impact of cut slopes, fuel modification areas and berms, the Commission is requiring them to be planted with native, fire-resistant vegetation. The Commission is requiring that the applicant demonstrate that this land will be maintained and restricted by the homeowners association."

Trailhead Property

In addition to preserving a portion of the developable land as open space, CDPA1 sought to address impacts that the large-scale development would have on public recreation in the area. As a condition of CDPA1, Headlands was required to identify a site for a trailhead to provide access to an existing trail on Temescal Ridge, to construct trailhead facilities on that site, including a parking lot, restrooms, and signs, and then to transfer the property to State Parks. This is the location of the violations that are being addressed by the recommended Orders. Specifically, Special Condition 7 of CDPA1 states, in relevant part that:

Concurrent with the grading of Lots 86 and 87 of Tract 32184, the applicant shall construct trailhead facilities (including a 6-10 car parking lot, gates and signs) in vicinity of said Lots 86 and 87 substantially as shown in applicant's A-1, so as to provide foot

trial (sic) access to an existing trail on Temescal Ridge. The applicant shall also construct a restroom facility in the vicinity of Palisades Highlands at a location designated by the State Department of Parks and Recreation in Topanga State Park or on the dedicated lands…. All facilities shall be constructed to the usual specifications of the [State of California] *Department of Parks and Recreation, and shall be turned over to the Department for operation and maintenance.* [10]

Two of the subsequent amendments to the CDP contained conditions relevant to the requirements for the Trailhead Property; first, Special Condition 2 of CDPA9, approved December 9, 1987, provided that the aforementioned access improvements were to be planned and approved prior to the construction of the subdivision's residential units and constructed concurrently with the construction of streets and utilities. It also modified Special Condition 7 of CDPA1 to allow the City to accept the Trailhead Property instead of State Parks. Special Condition 2[11] states, in relevant part:
…

(d) The applicant shall construct the improvements proposed for the Temescal Ridge Trail head (sic), including signs parking facility and bathroom concurrent with the construction of streets and utilities approved in this tract. The final designs must be reviewed by the accepting agency prior to construction. The trailhead may be transferred to the City of Los Angeles Department of Recreation and Parks for purposes of maintenance and liability, or other public or non-profit agency approved by the Executive Director….

This condition modified Special Condition 7 of CDPA1, which had required that Headlands dedicate the Trailhead Property to State Parks, now allowing the Trailhead Property to be conveyed to City Parks and Recreation or another approved not-for-profit entity. This condition, expanding the pool of potential recipients of the Trailhead Property, was adopted after State Parks expressed concern regarding accepting property so close to residences in an area with high fire potential. While this condition used the permissive word "may"[12] in relation to the transfer obligation, the

[10] While the language in CDPA1 may be imprecise with respect to the underlying real property in requiring that "facilities . . . be turned over to the Department," subsequent amendments make clear that the condition was intended to require dedication of fee title to the Trailhead property. For example, when adding language to the condition in amendment CDPA9 to add additional possible recipients of the Trailhead Property, the Commission indicated that the amended language would allow the trailhead property itself to be "transferred" to the newly listed potential accepting agency. And indeed, even this original language referred to the "dedicated lands."

[11] Section III of Amendment 9 specifically states that "This amendment pertains to the items specified below only, and does not affect the remainder of the approval or the remainder of the adopted conditions of the Commission. Changes in the permit will be made in conditions identified in brackets and contradictory information deleted." This subsequent amendment was therefore additive and did not change the substance and requirements of Special Condition 7 of CDPA1.

[12] Even assuming that the permissive nature of this condition was to be interpreted to not have mandated the transfer of the Trailhead Property to State Parks or City Parks, at a very minimum it required that

permissiveness was with respect to each individual potential recipient, not the underlying requirement that the property be transferred. In fact, the condition itself presupposes the transfer by requiring that the "accepting entity" review the facility plans prior to construction. Further, subsequent actions by both Commission staff and Headlands reflect a meeting of the minds that the intent of this condition was to require the property transfer to State Parks, City Parks and Recreation, or another approved entity.

In fact, both the City and the Commission eventually required that the Trailhead Property be deeded to the City[13], along with various trail easements, to enhance access in the area as part of their approvals of this development. The City's interest in the property, and its understanding that the property was to be dedicated to it in fee, was reflected in City Ordinance No. 155,203, which was adopted a year later on May 7, 1981(approved by the Mayor on May 8, 1981), still well in advance of the developer dedicating the property, in which the City authorized its Department of Recreation and Parks to receive and record dedication offers and deeds to the real property described for dedication in the CDP (Exhibit 5). Further, Conditions 20 and 24 of the Los Angeles City Planning Advisory Agency's June 3, 1983 approval of Tract Map No. 32184, as modified on July 29, 1987, also required the dedication of the Trailhead Property and trail easements to the City (Exhibit 7).

Finally, Amendment 11 ("CDPA11"), approved August 12, 1993, provided additional details regarding the required construction and maintenance of the signage, parking, restrooms, and trailhead, mostly through the addition of a second paragraph to the language from CDPA9 (Exhibit 27), and added a new condition that further clarified that the transfer of the property was actually mandated by the permit, rather than optional. Specifically, Condition 2[14] of CDPA11 provides, in relevant part:

….
Temescal Ridge Trailhead. Concurrent with the construction of streets and utilities approved in this tract, the applicant shall construct the improvements proposed for the Temescal Ridge Trail [sic] head, including signs, a ten car parking facility and public restroom. The final designs must be reviewed by the accepting agency prior to construction. The trailhead may be transferred to the City of Los Angeles Department of Recreation and Parks for purposes of maintenance and liability, or other public non-profit agency approved by the Executive Director. The applicant or its successor in interest shall maintain the trail and engineered slope to Temescal Ridge from Calle de Nancy as part of the other open space maintenance agreed to in this permit.

Headlands either maintain the property itself, in perpetuity, or transfer it to one of the aforementioned entities for maintenance.

[13] While the original CDP required that the Trailhead Property "facilities" be "turned over" to State Parks, subsequent amendments replaced State Parks with City Parks, thus aligning the conditions of both agencies.

[14] This reference to the "Trail" refers to the nub of the trail that extends from the trailhead facility up to the ridgeline trail.

More specifically, the applicant shall provide a public access/recreation signage program, subject to the review and approval of the Executive Director, that provides that, at a minimum, signs will be conspicuously and appropriately placed to adequately identify the location of the Temescal Ridge Trailhead. The program shall include, as a minimum, posted signs located on both sides of Chastain Parkway West at the intersection of Calle Deborah. Signs shall also be posted at the intersections of Chastain Parkway West/Palisades Road, Calle Deborah/Calle Nancy and Calle Deborah/Calle Alicante.

This condition also required, among other things, that Headlands – or whoever succeeded Headlands in ownership – maintain the trail and slope for open space. CDPA11 also specified that the trailhead facilities would be located on Lot 77 of Tract 32184, which would become 16701 Via La Costa, also identified by APN 4431-039-029 in the upscale 'Enclave' subdivision of the Palisades Highlands development. And Special Condition 4 stated that "[a]ll requirements specified in the foregoing conditions that the applicant (s) [sic] is required to satisfy as prerequisites to the issuance of this permit (including . . . transfer of the trailhead to the City . . .) must be met within 180 days," reflecting that the transfer intended to be a requirement.

Construction of the aforementioned public amenities on the Trailhead Property was undertaken pursuant to the permit requirements, a Certificate of Occupancy for the restroom facility was issued on January 6, 1994, and in February of 1994, Headlands signed a grant deed transferring ownership of the Trailhead Property to the City Department of Parks and Recreation and sent a confirmatory letter to the City (Exhibits 8 and 9). To demonstrate compliance with the CDP, as amended, Headlands sent a letter to Commission staff dated February 16, 1994, with which a copy of the required grant deed that had been made to the City was transmitted. In this letter Headlands states, "Headland Properties Associates will continue to maintain the Temescal Ridge Trailhead Facility and Trail[15] until such time as the City Recreation and Parks Commission Department and City Council have officially recorded the Grant Deed and accepted the conveyances" (Exhibit 28).

While the 1994 grant deed accurately described the Trailhead Property, it also included a legal description of the easement being granted to provide access from the Trailhead Property to the extant hiking trail. This language allowed bicycle access in addition to pedestrian use, although bicycles are in fact not allowed on the portion of the Temescal Ridge Trail to which the easement connects; the grant deed was not recorded. Subsequently, on August 29, 1995, Headlands executed a new grant deed transferring title of the Trailhead Property to the City – this time without the erroneous bicycle language in the easement description (Exhibit 10). Shortly thereafter at a board meeting on October 18, 1995, City Parks voted to accept a grant deed from Headlands for the

[15] Again, this reference to the "Trail" refers to the nub of the trail that extends from the trailhead facility up to the ridgeline trail.

Trailhead Property and trail easement (Exhibit 11). Unfortunately, though Headlands had now executed an accurate grant deed and City Parks had voted to accept it, because the notary stamp on the deed was blurred and illegible the County Recorder's Office rejected the document. Nevertheless, City Parks did take over maintenance of the facilities (Exhibits 16 & 17). Thus, despite the fact that 1) the City had independently required the creation and dedication of the Trailhead Property, 2) the City passed an ordinance to accept property granted by the developer in conjunction with the development of the Palisades Highlands, 3) the City Parks board passed a resolution to accept the Trailhead Property, and 4) City Parks subsequently maintained the Trailhead Property and facilities, the recordation of the grant deed was never effectuated, and Headlands remained the record owner.

Because the County Assessor had received no notice that the property was now in public ownership, it continued to assess taxes against the property. Importantly, Headlands would have been aware of this, as it continued to receive the tax bills. However, it stopped paying those taxes, and its failure to pay those bills eventually caused the property to enter into tax default on June 30, 2000. Headlands ceasing to pay taxes on the property violated the requirement that they ensure the transfer of those properties in a manner that could not subsequently be questioned or undone. Shortly thereafter, in July of 2001, Headlands executed another grant deed (Exhibit 84) - without first seeking or getting the requisite approval from the Commission's Executive Director – attempting to transfer the Trailhead Property and approximately a dozen other properties to the Enclave Community Association. This deed was never recorded; instead, a Notice of Power to Sell Tax-Defaulted Property was recorded against the Trailhead Property on July 28, 2005 (Exhibit 29). The Tax Assessor has attested that all statutorily required steps to inform Headlands of the tax delinquency and pending sale were taken, including the mailing of tax default and subsequent notices for potential auctions.

The Trailhead Property was first sold at public auction on February 13, 2006, to an entity named Entrust Admin Custodian FBO. When the purchaser became aware of the restroom and parking lot development encumbering the property and notified the Tax Assessor, an independent review of the property was undertaken. The Tax Assessor determined that the Trailhead Property was "dedicated and accepted by the City of Los Angeles based on Instrument Numbers 81-631478 and 81-631479[16] recorded on June 24, 1981" (Exhibit 30). Based on this analysis the Tax Assessor rescinded the auction sale and recommended that the parcel be changed to a tax exempt "900" parcel (a numeric identification given to publicly owned property). In subsequent coordination between the Tax Assessor and the City, the City indicated a plan to record documents evidencing ownership of the Trailhead Property. Based upon these representations, the Tax Assessor excluded the Trailhead Property from their 2007, 2009, and 2010 public actions. Unfortunately, the City again failed to record the requisite documentation, which

[16] Open space dedications made by Headlands in 1981 in compliance with the CDP conditions, as discussed above.

per the Tax Assessor prevented them from moving forward with changing the parcel status to a tax exempt 900 parcel (Exhibit 31).

On February 26, 2010, Headlands, still "owner of record" at the time, recorded a quitclaim deed of the Trailhead Property from Headland Properties Associates LP to Headland Properties Associates LLC, an affiliate of Headland Properties Associates LP (Exhibit 12). This action not only further demonstrates that Headlands was fully aware of the vulnerability of its original transfer to the City, but it was an affirmative action in direct contravention of the obligation to transfer the property to a public entity or private non-profit caretaker pursuant to the CDP. In addition, because this subsequent, purported transfer was recorded, whereas the 1994, 1995, and 2001 grant deeds never had been, even if the City had become aware of the unrecorded 1995 deed, it might no longer have been able to rectify the mistake, as there was now a new record owner whose acquisition of the property had been recorded first, a situation that was caused by Headlands' action, which were entirely inconsistent with the conditions of the CDP, as amended.

Pursuant to California Revenue and Taxation Code Section 3692, the Tax Collector must attempt to sell property within four years of the time that the property becomes subject to sale for nonpayment of taxes, and if it is not sold then the Tax Assessor must attempt to sell the property at intervals of no more than six years until the property is sold. Therefore, because of the actions of Headlands which made it impossible for the City to act to register ownership, to comply with State law the Tax Assessor offered the property at public auction in 2012 and 2013; the Property was sold[17] to Mr. Henri Levy on October 21, 2013, for $350,000.00 (Exhibit 13). Headlands did not notify Commission staff that the Trailhead Property was in tax default proceedings or make any attempt to stop the sale, nor was the Commission staff given notice of the pending sale by Headlands or any other entity.

To the contrary, after the property was sold in 2013 for more than the minimum bid amount, Headlands made an "excess proceeds claim" to the Tax Assessor to profit from the sale by recovering some of the sale proceeds. This claim was approved, and the Tax Assessor transferred $329,521.79 to Headlands in June 2016 (Exhibit 15). So not only did Headlands fail to comply with the original requirements of the CDP, as amended, but they reaped six-figure profits from their illegal activities. On January 14, 2014, Mr. Levy deeded the Trailhead Property to 1205-1207 Wooster Street LLC, a California Limited Liability Company (Exhibit 14) controlled by Mr. Levy.

A year after taking ownership of the Trailhead Property, Wooster contacted the City and requested that maintenance of the Property be ceased as it was now privately held (Exhibit 32). Subsequently, Wooster locked the entrance gate – without a CDP or

[17] As discussed above, this sale was only a "purported" sale as there is an argument that the City in fact owned the Trailhead Property (as the Tax Assessor previously found), in which case the County should not have been able to sell it.

amendment to the underlying CDP – blocking public access to the Trailhead Property. While this gate was subsequently re-opened after Commission staff contacted Wooster, as described below, one of the two gendered restrooms remains permanently locked, while the other bathroom has been so neglected that a build-up of trash and human waste has made it completely unusable. As a consequence of neither Headlands nor Wooster maintaining the Trailhead Property, the facilities have fallen into total disrepair with trash, graffiti and waste strewn across it – rendering it unusable by the public (Exhibit 33).

C. DESCRIPTION OF COASTAL ACT VIOLATIONS

By not ensuring the transfer of the Trailhead Property to the City or another not-for-profit entity approved by the Commission's Executive Director and subsequently ceasing to pay property taxes on the Trailhead Property, transferring it to one of its own affiliates, and allowing it to be sold at auction to a private entity, Headlands has failed to comply with Special Conditions of CDP A-381-78, as amended. Having reaped extensive benefits from the development of around two thousand residential units, Headlands not only failed to comply with conditions imposed by this Commission designed to protect public access and recreation, but also sought to doubly profit of the illegal activity by seeking and receiving over $300,000 from the sale of the Trailhead Property, a property that was guaranteed by the CDP to be for the public's use and enjoyment. This violation of the CDP has also resulted in "development," in the form of a change in intensity of use of the Trailhead Property from that of a public recreation area to a private landholding, all of which was effectuated without a CDP and in violation of the Coastal Act.

Wooster is also trebly in violation of the Coastal Act. First, it is liable for having performed unpermitted development by locking the entrance gate to block public access to the public parking lot and restroom facility and locking public restrooms at the Temescal Ridge Trailhead without Coastal Act authorization. In addition, to the extent Wooster claims to be the owner of the Trailhead Property, that makes it a successor in interest to the CDP, which makes it responsible for complying with the terms of the CDP, including the requirement that the property be transferred to the City of Los Angeles or other not-for-profit entity approved by the Commission's Executive Director. Finally, in failing to continue the operation and maintenance of the public facilities on the Trailhead Property, Wooster's actions and inactions have resulted in a substantial diminution of public access without Coastal Act authorization, which is also inconsistent with the CDP, as amended.

D. ENFORCEMENT ACTIVITIES AND ATTEMPTS AT RESOLUTION

In 2016, Wooster put the Trailhead Property on the market for sale and advertised it as being available for residential development. Enforcement staff was made aware of

some of the violations regarding the Trailhead Property on July 21, 2016, when a reporter reached out to the Commission's Public Information Officer to discuss the pending sale of the Trailhead Property for residential development; the reporter wanted to understand whether Commission CDP conditions still applied. Permit staff researched the matter, provided a response to the reporter, and forwarded the case to the Enforcement division. Since that time, Enforcement staff has been dealing with both Wooster, the current record owner of the lot, and Headlands, the original permittee, in an effort to resolve the violations.

After learning of the alleged violations and the possible sale of the Trailhead Property, Enforcement staff contacted Marc Kreif, realtor for Wooster, on August 2, 2016; during this call Mr. Kreif indicated that the property was in escrow to be sold by Wooster to another private entity. Staff conveyed information about the development restrictions on the Trailhead Property due to the underlying CDP, and at the close of the conversation Mr. Krief requested copies of the CDP. The CDP was enclosed with a Notice of Violation letter dated August 3, 2016 – sent to Mr. Krief and then-counsel for Wooster, Adam Rossman – which detailed the permit requirements as related to the Trailhead Property, discussed remedies available under the Coastal Act, and requested that Wooster contact staff to discuss resolution of the matter (Exhibit 19). In response to this letter Mr. Krief canceled the pending escrow on the Trailhead Property, therefore leaving Wooster as the record owner.

The next day, August 4, 2016, staff spoke with a representative of Wooster, Ben Kalaf, who indicated that the Trailhead Property was purchased at a tax default sale in 2013 by Mr. Henry Levy, and that the intention of Wooster was to have the parcel developed with a single-family residence. Staff explained the permit history and generally answered Mr. Kalaf's questions regarding the Coastal Act and the Commission's jurisdiction over the Coastal Zone in the Pacific Palisades. Mr. Kalaf agreed to re-open the gate that blocked access to the Trailhead Property until the matter was resolved, but he claimed that the restroom keys were in the City's possession. Rather than re-keying the lock to which he alleged he had no key, Wooster and Mr. Kalaf instead elected to leave the restroom door shut and locked.

On August 10, 2016, staff sent correspondence to Headlands – the original permitee and owner of the Trailhead Property – detailing the nature of the violation on the Trailhead Property and directing them to contact staff to begin the process of attempting to remedy the Coastal Act violations (Exhibit 20). Subsequently, on September 9, 2016, staff met with Mr. Guarrasi from Headlands, who alleged that they thought that in transferring the property to a non-profit (Headland Properties Associates LLC, an entity created by Mr. Guarrasi) in 2010, they had complied with the terms of the CDP. As detailed above, the express terms of the CDP, as amended, required that the permittee secure approval of the Commission's Executive Director to transfer the property to a non-profit, and no such approval was sought or granted. Furthermore, a review of tax-exempt organizations in California does not reveal any evidence in support of the claim

that Headland Properties Associates LLC is or ever was a not-for profit entity, which is the only type of non-governmental entity that could hold the Trailhead Property per the CDP, as amended. Staff discussed a possible mechanism of resolution being that Headlands could reacquire the property from Wooster, and then transfer it to a public agency pursuant to the CDP. After this meeting staff did not hear from anyone associated with Headlands for over a year and a half, despite sending correspondence that was later returned with notice that the addressee was no longer at that address, and then was only able to do so after extensive work to locate them, as the company had moved and not updated addresses with the Secretary of State or Commission staff.

Mr. Rossman, Wooster's attorney at the time, responded to staff's violation notice on August 18, 2016, indicating that his client, Wooster, had opened the gate to the parking lot but reiterated that they do not have a key to the men's bathroom so that would remain closed, electing not to request a copy of the key or to re-key the lock (Exhibit 34). Mr. Rossman also asserted that prior to purchasing the property, they had obtained written certification from both the City of Los Angeles and Los Angeles County that the lot was buildable. As discussed in greater detail in Section III.G, below, the referenced letter only indicates that the lot is a legal lot and (theoretically) buildable if it could be shown that it wasn't land locked and had adequate access – no warranty or certification was provided indicating what they could build on the lot, nor did the letter convey legal authority under either local or state law to develop the lot. Staff responded on September 23, 2016, again describing salient Coastal Act provisions and legal requirements, detailing the nature of the CDP as applied to the Trailhead Property, enumerating the Coastal Act violations on site, and requesting that the violations be remedied (Exhibit 35). In response, Mr. Rossman wrote Commission staff a dismissive letter dated October 11, 2016, in which he denied that any restrictions applied to the property, citing irrelevant California Real Estate Law (as discussed in Section III.G, below), erroneously alleging that no documents recorded on the title referenced the CDP restrictions, and asserting that Wooster should be able to develop the property with a single-family residence (Exhibit 36).

Staff responded to Mr. Rossman's letter on March 15, 2017, refuting the arguments he had put forward that Wooster was not on notice of the CDP and applicable conditions therein[18] and that the tax default sale somehow operated to vitiate any CDP requirements relating to the Trailhead Property (Exhibit 37). Staff additionally detailed available remedies under the Coastal Act and informed him that the case would be referred to the Commission's Headquarters Enforcement Division for resolution.

On February 28, 2017, staff wrote Headlands another letter, again stating that the transfer of the Trailhead Property to Headland Properties Associates LLC in 2010 was not permitted, and that the failure to either transfer the property as required in the CDP

[18] Pursuant to the original conditions requiring recordation of offers to dedicate large swaths of land as open space, multiple documents were recorded against the property, and those documents included the applicable permit conditions as attachments.

or to maintain it (including by paying property taxes upon it) constituted a continuing violation of the Coastal Act and the CDP, as amended (Exhibit 38).

After several more months passed without any significant progress, on February 15, 2018, the Executive Director of the Commission sent Wooster a "Notice of Intent to Record Notices of Violation, and to Commence Cease and Desist Order Proceedings and Administrative Civil Penalties Proceedings ("Notice of Intent") (Exhibit 39). This Notice of Intent indicated, among other things, that a Notice of Violation would be recorded against the property unless an objection to said recordation was lodged by March 8, 2018. No objection was received, and a Notice of Violation of the Coastal Act ("NOVA") was recorded against the Trailhead Property on April 10, 2018, at the Office of the County Recorder for Los Angeles County (Exhibit 40).

A similar Notice of Intent was also sent to Mr. Guarrasi and another representative of Headlands named Edward Miller, on February 15, 2018, via the addresses of record where staff had been previously corresponding with Headlands. When this document was returned as undeliverable, staff sent an additional copy via electronic mail – again to the email address staff had been using to correspond with Messers Miller and Guarrasi – on March 8, 2018, extending the deadline to respond to the Notice of Intent to March 29, 2018. When the email went unanswered, staff requested support from the Attorney General's Investigative Division to locate Messers Miller and Guarrasi. After both parties were successfully located, on March 30, 2018, staff sent additional copies of the Notice of Intent to the addresses provided; certified mail receipts were returned to staff from Messers Miller and Guarrasi indicating that the notices had been received on April 4, 2018 (Exhibit 41).

In response to the Notice of Intent, Mr. Guarrasi emailed staff and called staff – leaving a voicemail on April 18, 2018. Staff called Mr. Guarrasi on April 20, April 25, and May 1, leaving messages each time to call staff regarding the Trailhead Property. Having received no response to these calls, staff again wrote to Messers Miller and Guarrasi on May 3, 2018, describing efforts to contact them about the ongoing Coastal Act violations relating to the Trailhead Property (Exhibit 42). Staff again emailed and called Mr. Guarrasi on May 4, 2018, leaving a message to contact staff to discuss the pending enforcement matter. On May 9, 2018, Mr. Miller emailed staff stating that Headlands "no longer has any interest in any property in the Palisades Highlands…" (Exhibit 43). Mr. Miller additionally provided an updated business address for Headlands and further stated that a quitclaim of the property was executed to the City of Los Angeles and that "the turnover of the facility was completed when officials of the LA City Department of Parks & Recreation picked up the keys to the trailhead bathrooms and parking lot gate, officially taking over maintenance on 02/08/2000."[19]

[19] Extensive review of the Commission's permit and enforcement files have revealed no reference to this date, and Headlands has not produced any evidence substantiating the relevance of this date or the claims regarding turnover to the City.

Two days later, on May 11, 2018, staff responded to this letter, clarifying that Headlands' obligations with respect to the Trailhead Property had not in fact been satisfied and requesting that Headlands work with Commission staff to craft a mutually acceptable resolution of this matter (Exhibit 44). In this letter, staff additionally raised the issue of the sale of and failure to maintain the Open Space Properties as being Coastal Act violations that would need to be addressed. Staff explained that those additional properties (other than the Trailhead Property) that Headlands had sold to a private developer were required to remain and be maintained as open space pursuant to the CDP, as amended[20]. To ensure Headlands would receive this letter, staff sent this and all future correspondence to Mr. Guarrasi's home and email addresses, Mr. Miller's home and email addresses, and the updated business address Mr. Miller had provided.

Following Wooster's receipt of the Notice of Intent, at the beginning of April, Mr. Rossman contacted staff to discuss the Trailhead Property; after multiple calls and emails, including on April 2, April 5, April 11, and April 17 with Mr. Rossman in which the alleged violations were discussed in addition to potential methods of resolution, staff sent a draft settlement offer, in the form of a Consent Order, on May 8, 2018, for his and his clients' review. The same day staff received a largely inscrutable email from Mr. Kalaf stating that the terms of the settlement offer were rejected and stating that they would close the Trailhead Property and sue the Commission and the County (Exhibit 45). In response, staff called and emailed Mr. Rossman the same day to discuss the matter, and, receiving no response, Commission staff sent a letter dated May 11, 2018, to Mr. Rossman to offer to walk through the draft settlement offer with him and discuss any areas that had been particularly unpalatable to his client (Exhibit 46). Subsequently, on May 25th staff spoke with Mr. Rossman, who indicated that Mr. Kalaf is an associate of his client but is not his client, does not own the Trailhead Property, and does not speak for his client. Staff explained that they would need a response from his client to the settlement proposal by the first week of June.

No substantive response to the draft settlement was ever provided; instead, Mr. Levy, who owns and operates Wooster, sent a letter dated June 19, 2018, to a number of governmental entities, including the Commission's Long Beach Office, containing a variety of factual misstatements and seeking advice in circumventing issues with the Coastal Commission (Exhibit 47). Staff responded to this letter on August 29, 2018, again seeking to discuss the proposed settlement and ascertain whether a mutually acceptable solution could be achieved (Exhibit 48). After receiving no reply to this letter, staff again wrote to Mr. Rossman on November 21, 2018, to renew attempts at dialog about the Coastal Act violations (Exhibit 49). On December 9, 2018, Mr. Rossman emailed staff a copy of a letter (dated November 29th) from his client, Mr. Levy, in which Mr. Levy indicated that they would be happy to meet with staff to discuss the matter and asserted - erroneously - that the Commission and the County had told him that they had erred in the handling of the Trailhead Property (Exhibit 50). Staff sent a letter on

[20] As previously indicated, the violations pertaining to the Open Space Properties will be handled as a separate enforcement case.

December 12, 2018, clarifying a number of points and correcting inaccurate factual and legal assertions made by Mr. Levy (Exhibit 51). Further, staff indicated a willingness to meet in person to discuss the Coastal Act violations but suggested a scheduled phone call in advance to help smooth out previous communication issues – staff requested that Mr. Levy provide dates and times that he would be available to speak.

Mr. Kalaf and Mr. Levy sent a joint response to staff on January 9, 2019, in a letter in which they reiterated many of the same assertions that staff had previously addressed, made a number of additional fallacious assertions, and stated that as Wooster was no longer represented by Mr. Rossman, they were in search of new counsel (Exhibit 32). Staff called Mr. Levy the same day to discuss the matter; he indicated that English is not his first language so phone conversations were difficult and that staff should either speak with Mr. Kalaf or meet in person with Mr. Levy to discuss the matter. Given the language difficulties, staff sent a follow up letter on March 4, 2019, requesting that Messers Kalaf and Levy advise staff when they had secured new counsel (Exhibit 53). In this letter staff additionally refuted many of the factual and legal misconstructions from Mr. Kalaf's January 9th letter and reiterated the severity of the Coastal Act violations and the need to resolve them.

Not having received a response from Wooster after the Commission's March letter, staff again sent a letter to Wooster – dated August 28, 2019 – attempting to restart a dialogue with them in furtherance of a resolution of the Coastal Act violations (Exhibit 54). In this letter staff again expressed that the matter is of great importance, that the impacts of the violation on public access are significant, that daily penalties were accruing, and that staff intended to take the matter to hearing before the Commission in the next several months. Upon again receiving no response to this correspondence, staff sent Mr. Levy and Mr. Kalaf yet another letter dated December 5, 2019, that reiterated the severity of the violations, the possibility of fines, the intent to take the matter to hearing, and the request that Wooster contact staff to discuss a potential negotiated settlement to the violation or that we would be forced to take a "unilateral" order to our Commission (Exhibit 55).

Having similarly not heard from Headlands for over half a year, on November 21, 2018, staff again sent Messers Guarrasi and Miller a letter stating that their obligations with respect to the CDP had not been satisfied and that violations persist on the Trailhead Property (Exhibit 56). In response, on December 5, 2018, Mr. Miller simply forwarded the same May 9, 2018 email he had already sent to staff and offered to help broker a deal between the new owner, the City, and the Commission to resolve the case – failing totally to respond to any of the substantive issues raised by staff in the two intervening letters (Exhibit 57). Staff responded to this email by letter dated January 14, 2019, wherein staff again explained why Headlands was still liable for non-compliance with the CDP, as amended, and directed Headlands to either reacquire the Trailhead Property or otherwise effectuate compliance with the CDP (Exhibit 58). When Headlands failed to respond to this correspondence Commission staff again reached out on August 28,

2019 by letter, in which staff again explained the nature of the violation, potential mechanisms for resolution, the possibility of the imposition of administrative penalties, and entreated Headlands to respond so as to work consensually with staff on a resolution of the Coastal Act violations (Exhibit 59).

On December 5, 2019, after Headlands had still failed to respond to Commission staff correspondence, staff sent yet another letter detailing the repeated attempts staff had made to discuss the matter with Headlands, and again reiterating the potential ramifications of them failing to proactively address the Coastal Act violation by working with staff (Exhibit 60). On February 6, 2020, Mr. Miller again simply forwarded the two emails that he had previously sent to staff and to which staff had already responded more than four times (Exhibit 61). In response, staff sent Headlands a letter dated February 20, 2020, again offering to discuss the matter, urging that they work with staff to construct a proposed consensual resolution, and indicating that the matter would be heard at the Commission's April, 2020 hearing, at which it was possible that they could face the imposition of substantial administrative penalties (Exhibit 62). Similarly, staff sent an additional letter to Wooster again requesting that they contact staff to restart negotiations on a potential resolution of this Coastal Act violation (Exhibit 63) and indicating that the enforcement case would be taken to the Commission at the April, 2020 hearing, at which it was possible that they could face the imposition of substantial administrative penalties.

After the Commission's April 2020 hearing was canceled due to the COVID-19 pandemic, staff sent Headlands a letter on April 2, 2020, indicating that the hearing was to be postponed until such time as mandatory social distancing requirements had been rescinded, and suggesting that Headlands work with staff during this unexpected additional time to try to resolve this matter consensually (Exhibit 64). After receiving several voicemails from Mr. Miller on April 7 and 8, 2020 asking if the Commission hearing was moving forward in April, on April 8, 2020 staff emailed Messers Miller and Guarrasi a copy of the April 2nd letter. By email dated April 8, 2020, Mr. Miller stated that they had not checked their office mail because of the quarantine (even though staff's letter was also sent via email to both Mr. Miller and Mr. Guarassi as well as to their individual home addresses) and indicated that they would be happy to speak to staff about the enforcement case. In response, by email the same day, staff proposed dates for a call and offered to re-send any documents Mr. Miller might need to prepare for the same. Having again not had a response to this email, on April 13, 2020, staff again called and emailed Messers Miller and Guarrasi again trying to set up a time to speak about the Trailhead Property and sent a follow up letter on June 16, 2020 (Exhibit 66). Finally, on July 20, 2020, staff spoke with Mr. Miller who again disclaimed all responsibility with respect to the Trailhead Property and asserted that they never received tax default notices nor did he have any knowledge of an excess proceeds refund application made on behalf of Headlands. After staff provided Mr. Miller with additional information and clarified some inaccuracies in Mr. Miller's assertions, Mr. Miller asked for and received the contact information for Wooster's counsel – and he

stated to staff that he would be in contact with Wooster to try to resolve the matter and would get back to staff once he had. Staff suggested that a potential avenue to resolve the matter would be for Mr. Miller to speak with Wooster's attorney about Headlands returning to Wooster the Excess Proceeds Refund with Wooster then returning the Trailhead Property to a public or non profit entity.

After sending a letter on April 20, 2020 (Exhibit 67) to Wooster advising them of the unforeseen delay of the Commission hearing, staff received an email on April 21, 2020 from a Mr. Daniel Krishel, indicating that his law firm had been retained by Wooster and suggesting a call. Staff had a teleconference with Mr. Krishel and his client Mr. Levy on April 30, 2020, wherein staff provided Wooster's new counsel with a brief history of the enforcement case and the Coastal Act as related thereto. Mr. Krishel requested copies of all correspondence that had previously been sent to his client; staff emailed Mr. Krishel all requested documents the same day. On May 7, 2020, staff sent Mr. Krishel an additional letter (Exhibit 77) following up on the recent call and providing him with additional background information regarding the permit and his client's interaction with staff and the permit file. Following emails from Mr. Krishel on May 12, 2020 and May 28, 2020, staff spoke with Mr. Krishel by phone on June 17, 2020, wherein staff explained the nuances of the legal and factual positions that form the basis for the enforcement case and attempted to discuss potential mechanisms for resolution. Staff sent Mr. Krishel a brief letter on August 26, 2020 (Exhibit 65), spoke with him on August 27, 2020, left him a voicemail on September 3, 2020, wrote another letter to Mr. Krishel on September 21, 2020 (Exhibit 68), and again spoke with him on September 23, 2020, to continue discussing the enforcement matter and resolution thereof.

Staff spoke with Mr. Miller on August 5, 2020, during which communication Mr. Miller stated that he was having his attorney contact Wooster's attorney to help resolve the matter. After leaving a voicemail on August 25, 2020 for Mr. Miller checking in on progress with his interactions with Wooster, staff sent a follow up letter on August 26, 2020 (Exhibit 69), reminding him that this matter would be going to hearing before the Commission and inquiring as to whether his attorney had spoken with Mr. Krishel regarding the return to Wooster of the $329,521.79 Excess Proceeds Refund that Headlands had received. Mr. Miller responded electronically on September 10, 2020, to indicate that he was working on a proposal with the current property owner to effectuate a land swap in an attempt to return the Trailhead Property to City of Los Angeles ownership and control. Staff responded via letter on September 21, 2020 (Exhibit 71), expressing appreciation that Mr. Miller was taking steps to try to help rectify the Coastal Act violation, reminding him of the time-sensitive nature of this enforcement proceeding, and requesting that staff be informed of any proposed mechanism for resolving the issue.

Having not heard from Headlands in over a month, staff left Mr. Miller a voicemail on October 28, 2020, requesting an update on progress made towards resolution. Mr. Miller responded in brief stating that he was still working on an 'exchange' with the

landowner and was waiting to hear back from his attorney. Staff sent Headlands a letter on November 30, 2020 (Exhibit 72), reiterating the need to resolve the Coastal Act violation while also granting additional time for the sole purpose for Headlands to work with Wooster to develop a proposed resolution. Again, not hearing back from Headlands, staff sent an additional letter on January 15, 2021 (Exhibit 75), reiterating the need to resolve this matter in a timely manner, discussing possible paths to doing so, and indicating that failure to adequately address this violation could result in the issuance of a unilateral cease and desist order, as well as the assessment of administrative penalties. As of the date of this staff report Headlands has yet to respond to these various letters.

In January 2021, staff received a notice, dated November 9, 2020 (Exhibit 73), that Mr. Levy through his attorney Mr. Krishel was seeking monetary compensation from the State of California, Los Angeles County, and the City of Los Angeles for alleged negligence and fraud relating to their purchase of the Trailhead Property. Calls took place on January 11, 2021 and March 25, 2021, with Mr. Krishel to continue conferring about facts and law salient to the case as well as potential paths to resolution. Staff sent Mr. Krishel a letter on February 9, 2021 (Exhibit 74), responding to some of the allegations raised in the notice and the January 2021 phone call. During the March 25, 2021 call staff inquired as to whether discussions with Headlands were productive; Mr. Krishel indicated that he had never heard from Headlands or a representative thereof, contrary to numerous statements made by Headlands that they were actively making attempts to contact Wooster. On May 27, 2021, Mr. Levy and Wooster filed suit against the City of Los Angeles, County of Los Angeles, State of California, Headland Properties Associates LLC, and Does 1-100, for damages and to quiet title to the Trailhead Property free of any restrictions. The plaintiffs did not raise any Coastal Act claims in their litigation, and the case has been moving slowly. There has been no order or direction from the court to enjoin the ongoing enforcement action.

E. SEPARATE COASTAL ACT VIOLATIONS - HEADLANDS

In 1983, Headlands conducted unauthorized grading activities in violation of the "Archaeological Site" condition of the CDP. After review, Commission staff elected not to pursue the matter further because a slope failure had precipitated the emergency grading that was undertaken without an archaeologist monitor. By letter dated July 20, 1983, staff informed Headlands of the determination not to pursue the permit violation and admonished Headlands to ensure that in the future all contractors were aware of ongoing Coastal Act obligations (Exhibit 76).

A decade later, in the early 1990s, Headlands constructed three gates, replete with guard houses – without permits – at the entryways of the Enclave subdivision – a small exclusive portion of the Palisades Highlands development within which lies the Trailhead Property. Due to their location, the gates also served to completely block the

public's access to the previously required Temescal Ridge Trailhead and Trailhead Property. After staff contacted Headlands regarding the violations, Headlands agreed to file for a permit amendment to address the unpermitted development; CDPA11 was approved on August 12, 1993. Conditions of approval of CDPA11 required the removal of the gates blocking the entry into the Enclave (and by default into the then under construction Trailhead Property) and instead authorized the placement of gates at the entry to each individual street where they diverge from the main access artery, thereby allowing a gated development while still making it possible for cars and pedestrians to reach the trailhead facility and trail without having to go through gates and security guard shacks.

A few years later, in the late 1990s/early 2000s, Headlands created an unpermitted 1,040 cubic yard debris basin on land that spanned two parcels: Lot G, a dedicated and deed restricted open space lot outside of the ULL, and Lot 41 of Tract 32184, which was to remain as undeveloped Interior Open Space pursuant to the CDP, as amended. Lot 41 also happens to be the parcel upon which the trail leading from the Trailhead Property begins. The debris basin on Lot 41, which was constructed on properties directly adjacent to Topanga State Park, was then partially filled in by Headlands and the concrete liner removed – again without permits. When an adjacent homeowner, Mr. Fryzer, wanted to expand his backyard into Open Space property, Headlands offered to sell him lot 41- an Interior Open Space lot- and a portion of Lot G – which was outside of ULL, and required by the CDP to be given to State Parks or the City of Los Angeles for permanent habitat protection and open space. This attempted sale was undertaken in direct contravention of the Special Conditions of the CDP, as amended, which specified that the land outside of the ULL (including Lot G) be held by the State, the City of Los Angeles, or an approved nonprofit.

Jointly, and without notifying Commission staff, Fryzer and Headlands applied for and (erroneously) obtained a lot line adjustment from the City to redraw the lot boundaries such that lot 41 and a portion of lot G would be incorporated into Fryzer's property. After coordinating with the City, Commission staff directed Fryzer and Headlands to seek authorization from the Commission for any such activities as they were not exempt from the Coastal Act. Subsequently, Fryzer and Headlands applied to amend the underlying subdivision CDP to allow for the lot line adjustment that would allow Headlands to transfer open space land to Fryzer and to fill an unpermitted debris basin. On July 8, 2002, the Commission denied this amendment request on the basis that it would be inconsistent with various provisions of the Coastal Act and the previously issued CDP, as amended. Despite this permit denial, Fryzer then graded for and installed a personal golf "pitch and putt" course on the open space land that Headlands had sought to transfer to him, further degrading habitat, slope stability, and scenic values of the land.

On September 8, 2004, the Commission issued cease and desist and restoration orders[21] to both Headlands and Fryzer for, among other things, the unpermitted construction of a debris basin and then partial refill of the same debris basin – all on land that was both deed-restricted for open space and subject to an outstanding, recorded, irrevocable offer of dedication to State Parks or the City of Los Angeles. In compliance with the Commission-issued orders, Headlands removed the debris basin and undertook restoration, in addition to paying a penalty to the Commission's Violation Remediation Account.

Similarly, while investigating the Coastal Act violations relating to the Trailhead Property, staff discovered that on September 26, 2016, Headlands sold several other properties to a separate private developer. Among the many lots sold for development was the same Lot 41 from the prior enforcement action and the subject of a permit amendment denial over the very same land transfer scheme. Lot 41 is also the property on which the actual connection to the Temescal Ridge Trail is located, which allows for those parking at the Trailhead Property to access the trail system. These properties that were sold were lots that had been brought within the ULL by amendments in the 1980s to allow for stabilization grading, but that were specifically required by the CDP, as amended, to be maintained as open space to mitigate for the impact of the large-scale development on the surrounding environment. The Commission required, in CDPA9 and subsequent amendments, that – but for public recreation – these parcels remain undeveloped and be maintained as slope and open space areas and planted with native, fire-resistant vegetation. Staff sent a notice of violation letter on April 24, 2017, to Headlands, copying the new owner of record, detailing the permit conditions relating to these properties and indicating that even aside from selling the lots to a developer, in failing to maintain the slope and open space areas with native vegetation, Headlands was in violation of the CDP, as amended. Since that time staff has attempted to work with Headlands and the new owners to rectify this Coastal Act violation, thus far to no avail.

F. Basis for Issuing Cease and Desist Orders

1. Statutory Provision

The statutory authority for issuance of these Cease and Desist Orders 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 or (2) is inconsistent with any permit previously issued by the*

[21] Order numbers CCC-04-CD-08, CCC-04-CD-09, CCC-04-RO-02 and CCC-04-RO-03, W14-17-9-2004.pdf (ca.gov).

commission, the commission may issue an order directing that person or governmental agency to cease and desist….

…

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

2. APPLICATION TO FACTS

This section sets forth the basis for the issuance of the proposed Cease and Desist Orders by providing substantial evidence that the events at issue fulfill the criterion enumerated in Coastal Act Section 30810(a) for the Commission to issue a Cease and Desist Order. The first portion of the discussion addresses how the actions and inactions of and by Wooster and Headlands violated the Coastal Act in that development was undertaken without the required coastal development permit. The second part discusses how the activities and the situation that has resulted from those activities violated and continue to violate the conditions of the CDP, as amended. While in the matter at hand both factors have been satisfied, pursuant to 30810(a) these two criteria are of equal significance and distinct, in that the Commission need find only that development was undertaken without a permit OR that activities have occurred in violation of a previously issued permit in order to issue the cease and desist orders.

VIOLATION OF THE COASTAL ACT

The privatization of the Trailhead Property clearly meets the definition of “development” under the Coastal Act. This development required a coastal development permit, but no such permit was applied for or granted.

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;…change in the density or intensity of use of land….

. . .

Wooster’s initial closing of the site, as well as its failure to maintain the Trailhead Property even when re-opened to the public, and to open one of the two restrooms for

use (and by not maintaining the other restroom, which effectively makes it unusable, as well) have all resulted in the privatization of a public area, a change in intensity of use of that land, and the diminution of public access, which meets the definition of development pursuant to Section 30106 of the Coastal Act. Even Wooster's failure to transfer the Trailhead Property to an approved entity, which is arguably more easily understood as a violation of the permit, when combined with Wooster's communications to the City indicating that Wooster was taking over the property, also effected a change in intensity of use of the property, and as such, also counted as development that Wooster undertook without the requisite Coastal Act authorization.

Similarly, Headland's inactions also constituted development under the Coastal Act. By failing to maintain the Trailhead Property, including by failing to pay the property taxes assessed upon the property, Headlands allowed the property to be transferred to a private developer. In addition, Headlands executed a transfer deed to one of its affiliates and had that deed recorded, thus actively precluding the City from memorializing its ownership and facilitating the transfer of the property to a private developer. These actions and failures to act resulted in a diminution and eventual functional elimination of public access, thus changing the intensity of use of the Trailhead Property, which constitutes development pursuant to Section 30106 of the Coastal Act.

Section 30610(d) of the Coastal Act enumerates categories of development that are exempt from the requirement to obtain a permit; the development undertaken by Wooster and Headlands does not fit within these exempt categories and therefore required a coastal development permit.

VIOLATION OF SPECIAL CONDITIONS OF CDP A-381-78, AS AMENDED

The Commission has the authority to issue a Cease and Desist Order to address the parties' actions and inactions relating to the Trailhead Property pursuant to Section 30810(a)(2) of the Coastal Act independently of the analysis listed in the prior section because the actions at issue were in violation of a permit previously issued by the Commission. This section details relevant special conditions of the CDP as well as the manner in which the unpermitted development is violative of those conditions. Additionally, this section addresses Wooster's assertion that all permit conditions relating to the Trailhead Property have been rendered null and void due to the tax default sale.

Special Condition 7 of CDPA1 states, in relevant part that:

Concurrent with the grading of Lots 86 and 87 of Tract 32184, the applicant shall construct trailhead facilities (including a 6-10 car parking lot, gates and signs) in vicinity of said Lots 86 and 87 substantially as shown in applicant's A-1, so as to provide foot trial (sic) access to an existing trail on Temescal Ridge. The applicant shall also

construct a restroom facility in the vicinity of Palisades Highlands at a location designated by the State Department of Parks and Recreation in Topanga State Park or on the dedicated lands…. All facilities shall be constructed to the usual specifications of the Department of Parks and Recreation, and shall be turned over to the Department for operation and maintenance. (emphasis added)

Special Condition 2 of Amendment 11 ("CDPA11") further explicated this requirement by providing that:

….
Temescal Ridge Trailhead. Concurrent with the construction of streets and utilities approved in this tract, the applicant shall construct the improvements proposed for the Temescal Ridge Trail head [sic], including signs, a ten car parking facility and public restroom. The final designs must be reviewed by the accepting agency prior to construction. The trailhead may be transferred to the City of Los Angeles Department of Recreation and Parks for purposes of maintenance and liability, or other public non-profit agency approved by the Executive Director. The applicant or its successor in interest shall maintain the trail and engineered slope to Temescal Ridge from Calle de Nancy as part of the other open space maintenance agreed to in this permit….

Further, Special Condition 4 of CDPA11 stated that "[a]ll requirements specified in the foregoing conditions that the applicant (s) [sic] is required to satisfy as prerequisites to the issuance of this permit (including . . . transfer of the trailhead to the City . . .) must be met within 180 days," reflecting that the transfer intended to be a requirement. CDPA11 also specifies that the trailhead facilities would be located on Lot 77 of Tract 32184, which would become the Trailhead Property at 16701 Via La Costa, also identified by APN 4431-039-029.

As detailed above, Headlands constructed the parking lot and restroom pursuant to these conditions, however they neither maintained it themselves nor completed transfer to State Parks, the City of LA, or a not-for-profit entity approved by the Commission's Executive Director. Instead, although Headlands delivered a grant deed to the City, when it became clear that the deed had not been recorded, Headlands transferred the property to one of its subsidiaries or affiliates, affirmatively insulating the property from being registered as owned by the City, and then allowed the property to go into auction at a tax default sale where it was purchased by another private party for development: Wooster.

Wooster has not maintained the property, per its own admission cleaning it only twice in the six years since it directed the City to stop maintaining it. The property and amenities have fallen into such a state of disrepair that the one open restroom is unusable and the parking lot is covered with litter and graffiti. As a private developer, Wooster owning the property is itself violative of the CDP, as is its failure to complete the required transfer to the City or another public or not-for-profit entity. Further, failing to maintain the property

has essentially resulted in the Trailhead Property no longer being useable by the public, also in violation of the CDP.

As discussed in more detail in Section III.G, below, one of the central tenants of Wooster's argument against its obligation to comply with the CDP, as amended, is its assertion that a tax default sale somehow renders void all conditions and encumbrances on the property and therefore that its activities are not violations of the CDP. This is not the case. The CDP designated the Trailhead Property for public use; this is not an encumbrance to title that could be extinguished if the property were to be sold at tax sale; instead, private ownership of a property required by the CDP to be a public trailhead facility is a change in the use and designation of the property from private to public, and a burden that case law explains must attach to the property as long as the associated benefits of the permit remain in place (see detailed discussion in Section III.G, below).

3. JURISDICTION

The Commission has enforcement jurisdiction over the violations at issue herein. While the City of Los Angeles has established procedures for, and taken jurisdiction over, some coastal development permit review pursuant to Coastal Action section 30600(b), the City does not have a certified local coastal program. Currently, the Palisades Highlands is in an area known as a 'single permit jurisdiction,' where a local coastal development permit from the City of Los Angeles may be the only Coastal Act authorization required. Though the Trailhead Property is subject to City of Los Angeles permitting jurisdiction, the Commission's retained enforcement authority in this situation is predicated, in part, on Section 30810(a) of the Coastal Act, which states the following:

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

By failing to maintain the Trailhead Property as a public amenity, Wooster has effectuated a change in intensity of use to the property as well as a concomitant diminution in public access on the coast – which constitute development under the Coastal Act. No CDP was obtained for this development. While the City does issue its own CDPs, the Commission retains primary enforcement jurisdiction within the Coastal Zone in the City as there is no certified LCP. That said, as a matter of comity and because this property was to have belonged to the City, Commission staff has been in close communication – including via correspondence dated June 2, 2021 (Exhibit 70) -

with staff from various levels and departments within the City of Los Angeles to keep the City apprised of the potential parameters and ramifications of the enforcement action.

The violations addressed in this action also involve actions inconsistent with the CDP, as amended, which was issued by the Commission, and the Commission retains jurisdiction to enforce its own permits pursuant to Section 30810(a)(2) of the Coastal Act, regardless of the LCP status and what entity has current permitting authority. In the matter at hand, the unpermitted actions of Headlands and Wooster have individually and collectively resulted in the privatization of the Trailhead Property and the loss of public access – all of which is unpermitted and in contravention of the Coastal Act and CDP, as amended. Specifically, the findings for CDPA1 explain "[f]or it is only with the dedication of these lands for permanent preservation of visual a[n]d landform resources and for public recreational use that the Commission can find the development of the four tracts on balance most protective of significant coastal resources. The dedication of these lands also provides a conclusion to the issue of continuing development in the area." In other words, not only was it necessary that the designated lands be dedicated to the public and the environment to find the project consistent with the Coastal Act, but the CDP made clear that, but for small changes, this was intended to finalize development in the Palisades Highlands and the CCC did not envision further development would be approvable in the area.

In sum, the activities at issue clearly meet the definition of development under Section 30106, and no exemptions to the Coastal Act's permit requirement apply. Therefore, the unpermitted development required a CDP and no CDP was issued; moreover, these actions and failures to act constitutes failures to comply with conditions of a previously issued permit, in violation of that CDP.

G. Basis for Issuance of Administrative Penalties

1. Statutory Provisions

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

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

(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.

….

(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.

….

(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.

2. APPLICATION TO FACTS

a) Impact of Violations on Public Access

There are numerous "public access provisions" in the Coastal Act the violation of which could trigger liability under section 30821(a). Perhaps the most obvious of these is that the Commission has a statutory directive to maximize public access and recreational opportunities to and along the coast. Coastal Act Section 30210 states:

> *In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Additionally, Coastal Act Section 30213 provides:

> *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Finally, Section 30212.5 of the Coastal Act requires that:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Additionally, 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…*

The two Government Code sections referenced above in Coastal Act Section 30013 provide further guidance: Government Code section 11135(a) states that no one in the state may be "unlawfully denied full and equal access to the benefits of . . . any program or activity that is conducted, operated, or administered by the state or by any state agency", and Government Code Section 65040.12 defines environmental justice to mean "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies." On March 8, 2019, the Commission adopted an environmental justice policy that details that the Commission will use its legal authority to, among other things, ensure equitable access to coastal environments.[22] Public recreation and the ability for the public to access publicly held land along the coast is a major cornerstone of the Coastal Act and an important precept of environmental justice. The Summit/Palisades Highlands development spans hundreds of acres and, but for one road connecting the development with the Pacific Palisades to the south, is entirely surrounded by over a thousand acres of dedicated open space, as required by the CDP, as amended, in addition to the thousands of acres of public park land in and around Topanga State Park. This land, large portions of which were required by the CDP to be held by the State, City, or other not-for-profit entity, contains a network of public hiking trails that afford access to Temescal Ridge, Topanga State Park, and Mulholland Gateway Park. Within the hundreds of acres of the Palisades Highlands development, there are only two trailheads that provide access to this trail system (Exhibit 78). The homeowners in this upscale subdivision may be able to use the washrooms in their own homes and then walk to the trailheads, but for the rest of the general public there is no practical way to get there unless they can use the parking lot and facilities at the Trailhead Property. This is a perfect example of how a trailhead parking lot that is ostensibly available to everyone and is therefore ostensibly neutral with respect to environmental justice concerns is actually critical to ensuring equitable access.

[22] https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf

In the adopted findings for CDPA1, the Commission explained, "[f]or it is only with the dedication of these lands for permanent preservation of visual a[n]d landform resources and for public recreational use that the Commission can find the development…on balance most protective of significant coastal resources [emphasis added]." The Commission therefore made it clear in the adopted findings for the CDP and subsequent amendments that the preservation of the recreation, ecology and scenic qualities of the Palisades Highlands was necessary to offset the subdivision's damaging impacts to coastal resources and thus for finding the project consistent with Chapter 3 of the Coastal Act. Further, the findings in CDPA11 detail that the intent of the permit amendment was to create public benefits; specifically stating "…the recreation lands go to the State, the lands with visual backdrop value and trail-heads go to the City, and lands within the development or immediately adjacent to subdivided lots go to the homeowners, the project that [thus] has recreational benefits for both the residents and the general public." As detailed in Section III.B above, the Commission therefore required a complement of conditions that require the protection of land outside of the ULL for ecology and public access and recreation, the maintenance of Interior Open Space lots for ecology, recreation and slope stability, and finally the creation of the Trailhead Property and amenities to provide support for the public to access these vast areas.

People with means who live in the exclusive Enclave subdivision proximate the natural areas surrounding the Palisades Highlands do not need to avail themselves of the parking and restroom facilities at the Trailhead Property, but for the general public coming from farther away to recreate along the coast as well as those living in other portions of the immense Palisades Highlands development outside of the Enclave, these amenities are essential. Other than transportation costs, hiking is one of the lowest cost ways to recreate on the coast, and rendering unusable the one public restroom/parking facility for miles and a key connection to the Temescal Ridge Trail profoundly impacts accessibility for all but those who live in the immediate Enclave Tract. This effective closure of a parking lot and bathrooms persists in contravention of Section 30213 of the Coastal Act, which mandate the protection of low-cost visitor serving and recreational facilities and prioritize such recreational facilities over private residential development, respectively. Additionally, such closure or diminution in low-cost visitor serving amenities persists in contravention of Section 30013 of the Public Resources Code, which requires the consideration and advancement of principles of environmental justice.

Public access and coastal recreation continue to be threatened by private development, illegal encroachments, and other restrictions on the public's use of the coast. While coastal property owners benefit from the privatization of the public spaces of beaches, parks, coastal areas, and public amenities, the burdens associated therewith are borne disproportionately by low-income, minority, and disabled communities. Securing open public access and appurtenant support amenities for all citizens provides low-cost,

outdoor recreation and access that can improve the overall quality of life of all the public.

As a result of the violations addressed through the proposed Orders, the restrooms and parking lot on the Trailhead Property have become so covered in trash, human waste, and graffiti as to no longer be suitable for use by the public (Exhibits 18 & 33). The public access concerns of the Coastal Act include not just direct impediments to public access, but broadly concern indirect impediments as well. The California Court of Appeal has ruled that the "public access and recreational policies of the Coastal Act should be broadly construed to encompass all impediments to access, whether direct or indirect, physical or nonphysical." Surfrider Foundation v. California Coastal Comm. (1994) 26 Cal.App.4th 151, 158. The actions and inactions that have resulted in this matter not only did not have the benefit of scrutiny by the Commission for consistency with resource protection policies of the Coastal Act prior to being undertaken, but were additionally in direct conflict with permit conditions imposed specifically to protect public access. And in fact, rather than dispersing public access loci across a greater area to diffuse crowding and impacts as would be required by Section 30212.5 of the Coastal Act, the unpermitted development has resulted in a constriction of public access amenities, concentrating use at the other limited points of ingress to the trail system. This action is inconsistent with important public access provisions enumerated in Chapter 3 of the Coastal Act.

The proposed Orders require compliance with the CDP, as amended; Headlands and Wooster are directed to take whatever steps are necessary to ensure that the Trailhead Property is held by the City or another public or not-for-profit entity approved by the Commission's Executive Director. This will ensure that public access is restored and protected, and that the project is brought into compliance with the public access provisions of the Coastal Act and the CDP, as amended.

b) <u>The Violations are Ongoing</u>

As the courts have consistently recognized, the Coastal Act should be interpreted broadly since the Coastal Act and case law says that it is to be "liberally construed to accomplish [the act's] purposes and objectives." (see e.g.,Pacific Palisades Bowl Mobile Estates, LLC. v. City of Los Angeles (2012) 55 Cal.4th 783, 796.) The various actions and inactions by Headlands that have led to the purported transfer of the Trailhead Property to Wooster, and the failure by both Wooster and Headlands to maintain the Trailhead Property and/or to ensure it is transferred to an appropriate recipient, all constitute ongoing violations of the Coastal Act's public access provisions generally. The impact to public access from these actions and inactions is borne by the public every day and will be until this matter is resolved.

c) De Minimis Violations

There are limits on the Commission's ability to impose administrative penalties. One such limit is in Section 30821(f) of the Coastal Act, which provides that:

> *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.*

This language establishes four criteria. The violation must: (1) be unintentional, (2) be "minor," (3) cause only *de minimis* harm, and (4) be corrected expeditiously. None of the Section 30821(f) criteria is applicable to this case. Headlands' failure to transfer the Trailhead Property to the City of Los Angeles or to seek Executive Director approval to transfer it to an approved not-for-profit entity, in addition to the failure to maintain the Trailhead Property by paying property taxes on it, were not unintentional. Moreover, they have resulted in the privatization of public land. These violations have severely impacted public access to the Trailhead Property and facilities and the hundreds of acres of hiking trails to which the Trailhead Property provides support and access; these violations cannot therefore be considered "minor" or to have resulted in "de minimis" harm to the public. Finally, Headlands has not "acted expeditiously to correct the[se] violation[s]."

The unpermitted actions of Wooster, and its independent violations of the permit conditions, equally cannot be considered to be unintentional or minor violations that have resulted in de minimis harm; by installing and closing a gate (albeit for a short period of time), terminating City maintenance of the Trailhead Property, failing to open one of the two restrooms, and allowing the other to fall into such disrepair as to effectively have closed it, Wooster has caused the Property to fall into a state of total neglect that has made it unsafe and unsanitary for the public to use. The damage to public access caused individually and collectively by Headlands and Wooster is therefore significant and does not constitute a de minimis violation. And while the gate was reopened upon request by staff, the remainder of the violations persist and have not been resolved expeditiously.

d) Cure Period

Another limitation on the Commission's ability to impose administrative penalties is set forth in Section 30821(h) of the Coastal Act, which lists circumstances in which a property owner can prevent the imposition of administrative penalties by correcting the violation within 30 days of receiving written notification from the Commission regarding the violation. Section 30821(h) is inapplicable to the matter at hand. For 30821(h) to apply, there are three requirements which must all be met: 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 able to be resolved without requiring additional development that would require Coastal Act authorization. As discussed below, because only one of these conditions is met in this case; Section 30821(h) cannot be applied to this matter to avoid imposition of administrative penalties.

Firstly, Wooster and Headlands received written notice of the Coastal Act violations at issue in this matter on August 4, 2016, and August 10, 2016, respectively; as detailed above, and despite prolonged and mounting efforts from staff to resolve the situation, the violations continue to persist on the Trailhead Property years later. The only portion of the initial violation that was addressed in a timely matter was Wooster's closure of the unpermitted gate, which was re-opened the day after staff contacted Wooster. While the Commission appreciates the prompt attention to this matter, opening the gate resolved but a fraction of the overall public access violation. This action does not therefore remedy the violation so as to make applicable Section 30821(h) of the Coastal Act, though it is considered when quantifying appropriate penalty amounts for Wooster in Sections d and e, below. As of the date of this staff report, no demonstrable steps have been taken thus far by Wooster or Headlands to resolve the underlying ownership and maintenance issues that have rendered the Trailhead Property mostly unuseable to the public.

Secondly, as discussed extensively above, the actions of both Wooster and Headlands not only violate the Coastal Act, but also violate conditions of the CDP, as amended. Because this matter involves violations of CDP conditions, the second requirement for application of the Section 30821(h) cure provision is not met. Headlands failed to comply with the CDP, as amended, by not completing, and then actively undermining, the transfer of the Trailhead Property to the City of Los Angeles or another Executive Director-approved entity. Instead, the actions and inactions of Headlands resulted in purported sales of the Trailhead Property first to one private entity and then to another – Wooster – in direct contravention of the CDP, as amended. Wooster has failed to administer the Trailhead Property for use by the public including by not transferring ownership of the Property to the City of Los Angeles or another public or not-for-profit entity approved by the Commission's Executive Director as required by the CDP, as amended.

The last criterion for applicability of 30821(h) – that the violations can be resolved without additional development that would require Coastal Act authorization – is the only one that is satisfied in this case. Resolution could be achieved by relinquishing any claim of ownership over the Trailhead Property to the City of Los Angeles or an Executive Director approved entity for ongoing operation and maintenance; this does not require a Coastal Act permit, just Executive Director pre-approval. In addition, in the interim, Wooster could have provided new locking mechanisms on the two restrooms that would allow the public to use them and could have easily cleaned them. They could have also removed trash and graffiti from the parking area, which would allow the public to use the parking spaces. This could all be done simply and without any Coastal Act

authorization. Thus, while this matter could be resolved simply and without additional development that would require a Coastal Act permit, because the violation persists and has not been remedied, and because the unpermitted development is inconsistent with a previously issued CDP, cure pursuant to Section 30821(h) is unavailable to either Wooster or Headlands.

e) 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, pursuant to Section 30821(a), the Commission may authorize penalties of up to $11,250 per day for each public access violation.

Section 30821(a) sets forth the maximum 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."*

Finally, 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.*

While Headlands' and Wooster's actions and failures to act to ensure compliance with the Coastal Act and Special Conditions imposed by the CDP, as amended, could reasonably be characterized as comprising multiple violations, for this analysis and in order to take a circumspect approach[23], staff recommends that the Commission choose to calculate the penalty to be imposed by treating this case as involving only two separate violations. Specifically the violations will be condensed and categorized (solely for penalty calculation purposes) as follows; 1) failure (by both Headlands and Wooster) to comply with Special Condition 2 of CDPA11, which required that the operation and maintenance of the Trailhead Property be transferred to the City of Los Angeles or another public or not-for-profit entity approved by the Commission's Executive Director and 2) the failure by Wooster to maintain the two public restrooms and parking lot during the time they have exercised control over the property, allowing them to fall into such disrepair as to make them almost entirely unuseable. Because Wooster quickly opened the gate after receiving notice of the violation from staff, the Commission at this time is not treating the action of closing and locking of the gate at the Trailhead Property to be a separate violation for the purposes of this administrative penalty calculus.

The purported transfer of the Trailhead Property to Wooster in contravention of Special Condition 2 of CDPA11 took place eight years ago and continues to, at a minimum, cloud City's claim to title to this day. Headlands' purported transfer of the Trailhead Property to an unapproved subsidiary entity in 2010 was in direct contravention of Special Condition 2 of CDPA11, as was allowing the Property to become tax-defaulted such that it was auctioned to a third party in 2013. Wooster's ownership of the Property – beginning in late 2013 – likewise occurred in violation of the CDP, as amended, and their failure since 2016 to maintain the Property as a public amenity resulted in an unpermitted diminution in public access in violation of Coastal Act. The Coastal Act limits the period for which a penalty under 30821 is imposed to five years, for a recommended penalty period of 1,827 days. At a rate of $11,250 per day, the Commission could thus impose a maximum penalty of $20,553,750 for each violation. As detailed below, staff recommends that the Commission impose an administrative penalty of $3,000,000 on Headlands and $1,250,000 on Wooster, based upon consideration of the factors enumerated in Section 30820(c), below, with provisions allowing the two entities to reduce their liability significantly if they respond to these orders by bringing the property into compliance quickly.

§30820(c)(1): The nature, circumstance, extent, and gravity of the violation.

Headlands

Section 30820(c)(1) requires consideration of the nature, circumstances, extent, and gravity of the violation. The nature and gravity of the aspect of the violation for which

[23] While the recommended penalty calculus in this administrative action amounts are calculated conservatively, much higher penalties could be appropriate in the context of litigation.

Headlands has responsibility – failure to transfer the Property for operation and maintenance as required by the CDP- are indeed incredibly significant. Headlands was one of the initial permittees for the entire Palisades Highlands development and was therefore aware of the specific permit conditions requiring that the Trailhead Property be constructed, dedicated, and maintained for public use. In fact, Headlands explicitly recognized its obligation to maintain the Trailhead Property in a letter to the Commission dated February 16, 1994 (Exhibit 28) in which Headlands enclosed a copy of the executed grant deed transferring ownership of the Property to the City and specifically stated, “Headland Properties Associates will continue to maintain the Temescal Ridge Trailhead Facility and Trail until such time as the City Recreation and Parks Commission Department and City Council have officially recorded the Grant Deed and accepted the conveyances.”

Further, unlike conditions associated with a permit for a single-family residence, this violation pertains to a critical requirement the Commission found to be necessary to mitigate for impacts associated with the subdivision of several hundred-acres of land for the development of around two thousand residential units. By violating the conditions associated with the CDP requiring that the City or approved not-for-profit entity maintain the property for public use, Headlands has attempted to abrogate a critical element of public access and ecological protections, which the Commission found to be necessary to temper the impacts of this vast development.

Additional factors reflecting the nature and gravity of the violation include the fact that coastal access is a scarce and irreplaceable resource along the entirety of the coast of California and in particular in and around the City of Los Angeles, and that rendering this Trailhead Property unusable through Headlands’ complete failure to uphold their responsibility under the CDP, as amended, impacts the public’s ability to access miles of hiking trails. Further, as with most coastal access violations, elimination of one point of access serves to concentrate the public’s use of other access loci – thereby overburdening already heavily trafficked areas. The homeowners in the upscale Enclave subdivision may be able to use the washrooms in their own homes and then walk to the trailheads, but for the rest of the Palisades Highlands development and the general public there is no practical way to get there unless they can use the parking lot and facilities at the Trailhead Property, a situation which results in inequitable access to an area dedicated to public access. In sum, the Commission finds that the application of this factor warrants a high penalty to Headlands.

<u>Wooster</u>
Evaluation of the nature, circumstances, extent, and gravity of the violations regarding Wooster’s role in these Coastal Act violations could tend toward a low penalty. Wooster was not the permittee and did not therefore reap the benefits associated with developing around two thousand residential units like Headlands did. Instead, they purchased the property at a tax default sale and, since the time that they re-opened the

gates, have not taken any affirmative steps to preclude access – so far it is only their inaction that has resulted in diminution in public access and Coastal Act violations.

On the other hand, Wooster, as the record owner of the Trailhead Property, is the party that has the most readily available path to remediate the issue immediately but persistently refuses to do so. Likewise, as discussed above, by refusing to transfer the Trailhead Property to an appropriate entity for operation and management, Wooster has effectively closed an important public amenity, concentrated the public's use of the only other parking lot and restroom in the area, and greatly reduced the useability of miles of hiking trails that can be access from the Trailhead Property. Consideration of the nature and circumstances of Wooster's role in these violations therefore warrants a mid-range penalty for Wooster.

§30820(c)(2): Whether the violation is susceptible to restoration or other remedial measures.

Headlands

Fundamentally, the violation at issue in this case is, in large part, susceptible to restoration in that title to the Trailhead Property can be vested in the appropriate party – be it the City or another public or not-for-profit entity – for operation and maintenance. Logistically it is difficult to rectify this violation now that a third party, Wooster, has purportedly taken ownership because of the situation that Headlands created by failing to maintain the property, including by failing to pay taxes on it, but it is certainly possible if given the cooperation of all parties.

It is important to note that while it is relatively easy to 'fix' the violation going into the future – simply have the property transferred to appropriate ownership – there is no easy way to mitigate for the years that have gone by where the public has been unable to safely use this facility. This loss has been especially poignant over the last two years given the pandemic, where indoor activities ground to a halt and Californians were heavily utilizing outdoor public spaces and recreation. In such a situation the environmental justice elements of public access cases are highlighted; wealthy residents could easily access the hiking trails from their homes while the remainder of the population would have to drive and park to begin a hike at a place where there is essentially no restroom or public facilities for miles – a situation which is not tenable for most. Thus, while the violation itself can be readily remedied, the years of lost use cannot be.

The Commission therefore finds that application of the Section 30820(c)(2) factors to Headlands' violations warrants the application of a lower penalty amount.

Wooster
As discussed above, the violations at issue can easily be rectified by transferring the Trailhead Property to an appropriate entity for operation and maintenance for the benefit of the public and by simply unlocking or re-keying the restrooms and cleaning and maintaining them and the parking lot. Thus, application of 30820(c)(2) - whether the violations are susceptible to restoration – warrants application of a lower penalty.

Again, it is important to note that simply starting to operate and maintain the facilities now would however do nothing to undo the years of lost access that directly resulted from Wooster's actions; because the property has become so neglected, the public is essentially unable to safely use the restrooms, and even parking in the lot involves dealing with an unsanitary amount of liter, human waste, and graffiti, and therefore, this should also be considered in calculating the penalty amount – although restoration going forward may be quite straight-forward, there is no way to make up for the loss of years of impacts to the public's ability to use this public facility that was explicitly required by the CDP, as amended

§30820(c)(3): The sensitivity of the resource affected by the violation.

Section 30820(c)(3) requires consideration of the nature of the resource affected by the violation in the assessment of the penalty amount. The resource affected by the violations at issue in this case, public access, is a scare and important resource across the State, and in this coastal region specifically. Because living in the affluent Palisades Highlands, and more specifically the Enclave Tract where the Trailhead Property is located, is a far too costly proposition for most, it is only through public access programs and amenities such as those required by the CDP conditions for the Trailhead Property that many less socioeconomically advantaged members of the public will ever see this area of California. Access in this region of the City of Los Angeles is finite, infrequent, and scarce; it is an extraordinarily sensitive resource in this particular region of the State. Because this area is already completely developed – the CDP precludes any development of the Interior Open Space lots or outside of the ULL – it is highly unlikely that any additional public access will be acquired here in the future. This resource is thus scarce and with limited ability to be supplemented, as well as being sensitive; it is essential that the Commission work to protect the limited, hard-won access that the public does have in this area. Therefore, in light of the foregoing, the Commission finds that application of this factor warrants a moderate to high-range penalty.

§30820(c)(4): The cost to the state of bringing the action.

Headlands
The cost to the state of bringing this action against Headlands has been significant; Headlands' nonfeasance and malfeasance dates back decades and has required an

incredible amount of time to unravel. Specifically, because Headlands failed to maintain or transfer the Trailhead Property, the property went into tax foreclosure actions not once but twice– and attempting to unwind the factual and legal history and taking steps to avoid the permanent loss of public access to the Trailhead Property has been extremely time consuming. Moreover, after having corresponded with staff for a year regarding this specific case (not to mention years of corresponding with staff on other violation cases in addition to the years of working with staff on the CDP, as amended), Headlands relocated their offices without notifying Commission staff or the Secretary of State. Staff therefore had to utilize government resources (the State Attorney General's office) to track down Headlands so as to continue to try to correspond with them regarding this enforcement case. Staff has spent an inordinate amount of time attempting to work with them to resolve the violations including meeting in person with them on September 9, 2016, writing them sixteen letters, and calling and emailing them a half dozen times. Even after working to locate Headlands, staff has yet to receive any substantive response – all emails and phone calls have been brief disavowals of ownership or liability despite staff continuing to present legal and factual information refuting these assertions. Headlands' refusal to engage in a meaningful dialogue with Commission staff to even discuss the Trailhead Property has depleted staff time. Their actions and inactions have been the proximate cause of two tax default sales and of the Trailhead Property ultimately ending up in the hands of a third party necessitating an additional enforcement action to try to unwind the resultant disorder.

Further, as mentioned above, at Mr. Miller's request staff provided Headlands with the contact information for Wooster's attorney so that they could speak and attempt to reach an agreement that would resolve the Coastal Act violation and remunerate Wooster for the value of the property. This information was requested and given in July of 2020. On a number of subsequent occasions when contacted by staff, Mr. Miller variously averred that he was having his attorney (whose name he refused to provide to staff) speak with Mr. Krishel, counsel for Wooster, to resolve the violation and that he was "working with the exchange landowner and waiting to hear back from his Atty [sic]." In reliance on these assertions and in an attempt to arrive at a consensual resolution of this matter, staff delayed taking the enforcement case to hearing before the Commission. Unfortunately, this delay bore no fruit as in March of 2021 – a full nine months after providing their contact information to Headlands – Wooster's attorney indicated that he had yet to hear from Headlands. Even absent the assertion that contact with Wooster's counsel was never actually made, Mr. Miller never provided staff with updates or information regarding any such proposal despite repeated entreaties from staff. Regardless of what precipitated such a disconnect, in perpetuating the idea that negotiations between the parties were underway, Headlands unnecessarily consumed additional staff time and further impeded resolution of the matter. The fact that they precipitated the tax sale greatly complicated the case and required the Commission to bring an enforcement case against yet another party completely, which greatly complicated the case and increased the cost to the State of bringing the

action.The Commission therefore finds that consideration of Section 30820(c)(4) as related to Headlands' role in this case warrants application of a high penalty.

Wooster

Consideration of Section 30820(c)(4), expense to the state of bringing this action, tends to point to a more mid-range penalty. This case has been consuming a substantial amount of staff time since 2016, during which time staff consistently spent an enormous amount of resources and time. The inherent complexity of this case, the number and variety of parties involved, and Wooster's unwillingness to work with staff to attempt to find a mutually acceptable resolution of this violation has delayed resolution of this case, resulting in a concomitant expenditure of staff time. When the enforcement case began, staff worked with Wooster's then counsel Mr. Adam Rossman over the course of a year and a half to convey all relevant background documents to him and his client to help unwind the history of the Trailhead Property and to try to come to a mutually acceptable resolution. This effort proved ultimately proved unsuccessful and Mr. Rossman was subsequently fired from his position; after representing themselves for a time Wooster then hired Mr. Daniel Krishel. Staff then spent time again remitting relevant documents to Wooster's attorney, this time Mr. Krishel, to bring him up to speed with the facts of the case as well as the prior work staff had done with Mr. Rossman on the case. Just as with respect to Headlands, staff had over a dozen calls with counsel for Wooster, exchanged numerous emails, and ultimately wrote sixteen letters over the years in an effort to move towards a consensual resolution of the Coastal Act violation. As staff dedicated a substantial amount of time in furtherance of resolving this case, the Commission finds that application of this factor warrants imposition of a moderate penalty amount.

§30820(c)(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.

Headlands

Consideration of Section 30820(c)(5) as related to Headlands' conduct lends the calculus to a high penalty amount. Headlands has succeeded in profiting doubly from the Trailhead Property; having built out around two thousand residential units, they have now sought to escape the burdens of the CDP, as amended having already reaped the benefits and profits of that permit, and instead profit from the sale of the Trailhead Property as if its use were not restricted. Specifically, Headlands received years of notifications from the Tax Assessor that taxes were in arrears and finally that the property was to be sold at tax default auction. Despite this, rather than seeking to rectify the matter and comply with the Special Conditions of the CDP, as amended, Headlands instead transferred it to a separate entity under its organizational umbrella. Further, once the Tax Assessor had sold the property at auction, Headlands filed for and

obtained an excess proceeds refund from the County (the amount paid at auction less unpaid taxes) in the amount of $333,114.65, thereby directly profiting from a Coastal Act violation.

Headlands – a sophisticated developer with a history of working in the Coastal Zone, including as the original applicant and developer of this massive subdivision in what was once completely undeveloped land in the Santa Monica Mountains – was well aware that the Commission, via the CDP, as amended, made clear that but for the conditions imposed providing for public access, recreation, and the environment, the large-scale development could not have been found consistent with the Coastal Act. Headlands was therefore not only conversant with the permit conditions governing the Trailhead Property when they stopped maintaining the property, but they were also aware that they still owned it, in violation of those conditions.

Furthermore, Headlands has a prior history of violations regarding this same development, same CDP, and even some of the same property involved in this enforcement case. In fact, the Commission issued (consent) cease and desist and restoration orders to Headlands in 2004 for unpermitted development on the property that is immediately adjacent to the Trailhead Property, and across which is the trail connecting the trailhead to the Temescal Ridge Trail.

As described above, in brief, Headlands created an unpermitted basin on land that was to remain open space pursuant to the CDP, as amended. Headlands then - again without permits - partially filled the debris basin and attempted to sell the open space land to a neighboring property owner – Fryzer – in direct contravention of the CDP, as amended. Headlands then worked in concert with Fryzer to obtain a lot line adjustment from the City to redraw the lot boundaries to incorporate the purchased land into Fryzer's holding. Headlands thus, without a permit, created and partially filled a debris basin, sold for development land that was to be held as protected open space, and obtained a lot line adjustment. In response, the Commission issued consent cease and desist and restoration orders to Headlands wherein Headlands agreed to remove the debris basin, restore the area, and pay a penalty to the Violation Remediation Account. The Commission's adopted findings for these orders go into great detail describing the CDP, as amended, including conditions of the various amendments as well as the underlying CDP. So even if Headlands had somehow forgotten about the requirements of the CDP, which is unlikely considering Headlands' involvement in the CDP since the mid-1970s up to this point in time, the adopted findings for these particular orders (as well as the adopted findings for the denial of Amendment A13) reacquainted Headlands of the various conditions of the CDP, as amended. This rather extensive history of unpermitted development means that despite being sophisticated developers of property within the Coastal Zone, including this very subdivision, they have elected to repeatedly attempt to evade compliance with Commission issued permit conditions.

Moreover, despite having experiential familiarity with the Coastal Act and the Commission's enforcement program, Headlands has in this case failed to take any voluntary remedial measures or to even engage with staff in a meaningful discussion regarding such. They could have at any time taken simple steps to resolve this and transfer the trailhead to the City or other approved entity as they had originally committed to do and avoided this many-year long legal morass. Headlands has failed to cooperate in any way to help resolve this significant violation case that they themselves created. Thus, in addition to Headlands being involved on a firsthand basis with the CDP conditions at issue in this case, they previously violated the Coastal Act in this same geographic area, they profited off the Coastal Act violation at issue, and they have failed to take any steps to resolve the complicated situation that their actions have wrought. Therefore, the Commission finds that consideration of this factor warrants imposition of a substantial penalty.

Wooster

Finally, Section 30820(c)(5) requires evaluation of the entity or individual that undertook and/or maintained the violation; whether the violator has a previous history of violations, whether they financially benefited from the violation, the degree of culpability, and whether they undertook any voluntary remedial measures. Wooster does not appear to have any history of Coastal Act violations, nor have they yet financially benefited from the violation, though they insist on their right to do so. Additionally, because of the circumstances under which they purchased the Trailhead Property, the degree of culpability is relatively low. While Wooster did in fact open and unlock the gate that completely blocked access to the Trailhead Property, as discussed above, that element of the case is not being considered as the violation upon which these penalties are predicated. On the other hand, rather than re-keying the locked restroom, which would be a nominal cost, Wooster has left it closed and/or unmaintained and unavailable to the public for three years.

The purchase of property at tax auction can result in less up-front familiarity with the limitations relating to the property, but it does not obviate the need for a prospective buyer to do proper due diligence -simply visiting the property would have shown an active and heavily used public parking lot and restroom facility. The situation here was not hidden—the fact that the trailhead property was a public access facility was actually posted on signs in the parking lot and bathroom. It was not a subtle, hidden defect in title. The obvious physical condition of the property gave every notice that there was something profoundly wrong in this offering and certainly would trigger an inspection of the legal issues and permit history on the parcel.

In fact, the Trailhead Property had been purchased at tax auction previously, and that buyer had the sale voided and their money refunded because they saw the public facilities and nature of the property (Exhibit 31). When confronted with this same reality, however, Wooster has instead dug in and demanded that they be able to make a profit

if they were to give the property back to the public, as is required by the CDP, as amended. Thus, while initial claims of ignorance of the condition of, and restrictions upon, the Trailhead Property could be a mitigating factor, Wooster's subsequent actions have, for the most part, nullified this. Importantly, Wooster – by their own admission – contacted the City to direct them to terminate maintenance on the Trailhead Property (Exhibit 32) and subsequently failed to maintain the property themselves, causing and allowing it to fall into a state of total disrepair.

Wooster has not undertaken any steps to rectify this violation, and in fact, they indicated that any transfer of the Trailhead Property to an appropriate entity would require that they be paid $1,000,000 more than they originally paid for the property (in the context of their litigation this demand has been increased to over $2,000,000). Furthermore, even after being explicitly reminded of the permit conditions relating to the Trailhead Property, Wooster failed to take any steps to ensure that the Trailhead Property was compliant while the enforcement matter was being resolved. In fact, over the eight years now since the City stopped maintaining it, Wooster has indicated that they have had it cleaned two times. In totality, the Commission finds that application of this factor warrants imposition of a moderate penalty amount.

Conclusion

Aggregating the findings with respect to all of the factors listed above, the Commission finds that imposition of a lower-range penalty to Wooster would be appropriate. A low range penalty (between 10% and 25% of the maximum daily penalty) would equate to an assessment of between $2,055,375 and $5,138,438. Instead, the Commission imposes on Wooster a penalty that is just 6% percent of the maximum penalty ($684 per day) for the pendency of the violation, which, at 1,827 days, would equate to a total penalty of $1,250,000.

Considering all 30820(c) factors as related to Headlands, the Commission finds that imposition of a mid-range penalty to Headlands would be appropriate. A true mid-range penalty (50% of the maximum daily penalty) would result in imposition of a $10,276,875 penalty. The Commission instead imposes a penalty of $1,642 per day cumulative for Headlands' violation, approximately 15% of the maximum penalty. For the entire 1,827-day pendency of the violation the recommended penalty amount for Headlands is $3,000,000.

While the above-referenced penalty figures are factually and legally appropriate to the respective parties and violations at hand, the proposed cease and desist orders are structured so as to incentivize the return of the Trailhead Property to public ownership and to reflect the value of such an action. Should the Trailhead Property be transferred to the City or another Executive Director-approved public or nonprofit agency within 120 days of the effective date of the cease and desist orders, it is recommended that the penalty amount for Headlands is reduced to $2,000,000 and the penalty for Wooster is

eliminated completely. This recommended conditional diminution would reflect the substantial benefit that the public would gain from expeditious return of the Trailhead Property to public ownership and from the avoidance of costly drawn-out litigation.

f) Property Lien

Section 30821(e) of the Coastal Act provides:

(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 judgement lien.

Therefore, in this case, if the Commission imposes an administrative penalty, and Wooster, as the record owner, fails to pay the penalty, the Commission authorizes the Executive Director to record a lien on the Trailhead Property in the amount(s) of the penalties imposed by the Commission.

H. Defenses Alleged and Responses Thereto

Though given the opportunity, pursuant to 14 CCR §13181, neither Wooster nor Headlands submitted a statement of defense form, and therefore gave up its and their rights under the Commission's Regulations to present such defenses. However, as a courtesy and to ensure that the issues identified by the parties in a timely way in the course of Commission staff's efforts to resolve these matters are addressed and have been considered, we have included the myriad defenses raised by the violators in various communications. Below – broken out by alleged violator – are the various arguments they made, some directly quoted and some summarized for clarity, followed in each case by the Commission's responses thereto:

1. Headlands

a) *"Headlands Properties Associates (HPA) no longer has any interest in any property in the Palisades Highlands and hasn't for some time" (email from Edward J. Miller 5.9.18).*

While having a continuing interest in the property may be relevant to how easily they can rectify the situation, it is not a precondition to the issuance of these orders. Section 30810(a)(2) of the Coastal Act specifies that the Commission may issue a cease and desist order to one who undertakes an activity inconsistent with a permit. In the matter at hand, Headlands ceased paying taxes on the Trailhead Property and transferred it to an affiliate that was neither the City nor an Executive Director approved alternative entity. Both the nonfeasance of failing to pay taxes and the actual act of transferring the property

were inconsistent with the CDP, as amended (and it was only through those offending actions and inactions that Headlands came to be in the position it now cites as a defense – having no interest in the property) – the Commission may therefore issue a cease and desist order to Headlands to address the resultant violation.

Similarly, Section 30821 of the Coastal Act states that… "a person, *including* a landowner, who is in violation of the public access provisions of this division is subject to an administrative civil penalty… [emphasis added]." The Commission's ability to assess administrative civil penalties is therefore not restricted to landowner; current ownership of the Trailhead Property is irrelevant. By securing the permit with a condition requiring transfer of the Trailhead Property and accepting and exercising that permit, Headlands obtained the myriad benefits from the permit while equally being responsible for the burdens carried therewith. When a condition of the permit dictates to whom land must be conveyed, one cannot alienate the property contrary to the terms of the permit and wash their hands of the requirement and thus subvert the limitations proscribed by the permit. While Headlands may not continue to have ownership interest in the Trailhead Property, their obligation to have transferred it consistent with the CDP, as amended, persists until such time as it is complied with.

b) *"The turnover of the [trailhead] facility was completed when officials of the LA City Department of Parks & Recreation picked up the keys to the trailhead bathrooms and parking lot gate, officially taking over the maintenance on 02/08/2000*[24]*" (email from Edward J. Miller 5.9.18).*

The language of Special Condition 2 of CDPA11 specifically provides, "[t]he trailhead may be transferred to the City of Los Angeles Department of Recreation and Parks for purposes of maintenance and liability, or other public non-profit agency approved by the Executive Director," and Special Condition 4 made it clear that completing this conveyance was a requirement of the permit, despite use of the word "may." Simply handing the keys of the facility to City staff did not effectuate the transfer of the Trailhead Property as contemplated by the permit. "Transfer" is defined to mean the taking over of property, a right, or responsibility; the act of giving the keys to the City has not the legality nor the perpetuity required to rise to the level of a true transfer of the property to the City as required by the permit.

Furthermore, it is clear even at the time that the keys were apparently given to the City that Headlands understood that action to not sufficiently fulfill the obligation of the CDP: Headlands executed a quitclaim deed to the City in February of 1994 and a corrected deed in August of 1995. By letter to Commission staff dated February 16, 1994, Headlands stated, "Headland Properties Associates will continue to maintain the

[24] Despite extensive records review Commission staff has been unable to ascertain what bearing if any this date has regarding the history of the Trailhead Property – outside of this email from Mr. Miller no reference is made to this date in Commission permit or enforcement records relating to the Trailhead Property.

Temescal Ridge Trailhead Facility and Trail until such time as the City Recreation and Parks Commission Department and City Council have officially recorded the Grant deed and accepted the conveyance." In executing the grant deed(s) Headlands recognized that the 'transfer' of the property required them to quitclaim their interest in it, and in their letter of transmittal they also recognized that their responsibility with respect to said property would only terminate upon recordation of the quitclaim by the City.

Further, although Headlands did take steps towards doing what was required by the CDP at the time by executing the quitclaim deed and eventually turning over the keys, they were put on notice (by the Tax Assessor delivering notice that the property was in tax default and recording that notice on the property's title) that the condition has not yet been fully complied with--they were still the record owner of the property. It was, and a minimum, at that time, when Headlands was made aware of their continued ownership of the Trailhead Property, that Headlands was no longer in compliance with the CDP.[25] When Headlands was caused to know that the deed remained unrecorded, they became aware that the transfer was subject to being undermined by a new transfer and a classic race to the recorder's office. Finally, Headlands then took two manifest steps to undermine the validity of their transfer to the City by first allowing the property to enter into tax default and by then, in 2010, transferring the Trailhead Property to a subsidiary entity and recording that transfer with the County.

c) *"…[A]fter…over 10 years of maintenance, Parks and Rec discontinued maintaining this area when LA County incorrectly auctioned the property, and it was purchased by an individual" (email from Edward J. Miller 5.9.18).*

Headlands appears to be assigning the blame for the unpermitted transfer of the Trailhead Property to Los Angeles County for having auctioned the property at tax default sale. This ignores the precipitant actions by Headlands that sparked this inevitable chain of events: by failing to comply with the permit or maintain the property – including by failing to pay taxes on it – Headlands created a situation where the property came to be in arrears for unpaid taxes. The Los Angeles County Treasurer and Tax Collector responded to this situation as the law mandates; Section 3692 of the Revenue and Taxation Code requires that the Tax Collector attempt to sell tax-defaulted property within four years of nonpayment of taxes. Therefore, while it is true that the sale by Los Angeles County was, ultimately, the most proximate cause of the purported transfer of the Trailhead Property, granted that Headlands had previously transferred the Trailhead Property in violation of the CDP, as amended, to a subsidiary entity that its principals control, it was Headlands that set this chain of events in motion, leading to the very foreseeable outcome that a third party would take ownership of it. As it was Headlands, as the permittee, that was obligated to ensure that things played out differently, Headlands is the responsible party.

[25] As the Tax Assessor continued to send property tax bills to Headlands (that went unpaid), Headlands would have known of their continued status as record owner of the Trailhead Property long before the Tax Assessor recorded the tax default notice.

Nor can Headlands claim ignorance that this trajectory was being triggered. Prior to the Tax Assessor declaring the Trailhead Property to be tax-defaulted on June 30, 2000, Headlands did not take action to remedy the situation. This despite Tax Assessor records reflecting that Headlands received a number of notices that the property was in tax arrears, that the property had become eligible for tax sale, and finally that the property was being auctioned at tax default sale (Exhibit 31). They had notice and opportunity to avoid the sale and the attendant years of legal proceedings. Instead, Headlands actually facilitated the tax sale process by transferring the property to one of its affiliates and recording that transfer in 2010, diminishing the City's ability to claim ownership, and then allowing the subsequent tax sale to proceed in 2013. The subsequent actions of the County in the sale of the property were therefore not only foreseeable as a result of Headlands' action and inaction but were in fact the legally requisite result thereof.

d) Headlands did everything they could and the City of Los Angeles failed to record the deed.

It is true that as of the end of August 1995, Headlands had taken steps to transfer the property to the City, in compliance with the permit. At that point, Headlands may not have been in violation of the permit condition regarding the Trailhead Property, so long as they continued to maintain it until such time as the deed was recorded and had they ensured that the transfer took place as required. However, as is explained in detail above, the story did not end there. The permit did not simply require that Headlands offer the property to the City. It required that the property actually be transferred to the City, and if not to the City, then to another entity satisfying the standards in the permit condition.

Sometime in the mid-1990s, soon after Headlands executed that grant deed, Headlands was put on notice that something was amiss with the transfer. However, instead of ensuring the completion of the process, Headlands sat on its hands while the situation devolved. Worse yet, when an initial tax default sale went awry in 2006, with the initial buyer returning the property to Headlands, Headlands went out of its way to affirmatively undermine any remaining hope that the 1995 transfer would be finalized, by executing and recording a new transfer in 2010 to its subsidiary entity. Then, when a subsequent tax sale went through, Headlands capitalized on that by seeking the proceeds of the sale. Given this course of events, Headlands can hardly be said to have done "everything they could" to comply with this permit condition.

Even if Headlands erroneously believed that the transfer to the City could not be finalized, as indicated above, the property could have been transferred to a non-profit entity as provided for in the condition language. As discussed above, the CDP contained ample provision for suitable alternative recipients in the event that the City did not take it. The City's failure to record the deed meant that Headlands had an obligation

to comply with the permit by either ensuring the deed was recorded or by seeking to transfer the property to another governmental agency or to a not-for-profit entity approved by the Executive Director.

e) *"…[A] survey done December 29, 2005 by VTN the project Civil Eng of record…the parcel in yellow on the map off of Via La Coast [Trailhead Property] is shown as being deeded to LA Parks and Rec's" (email from Edward J. Miller 12.5.18).*

As a threshold matter, a survey done by a private entity identifying the property as owned by the City of Los Angeles has no bearing on the legal status and ownership of a property; all legal records indicate that in 2005 the Trailhead Property continued to be owned by Headlands. Furthermore, it is important to note that the exhibit to which Mr. Miller refers (Exhibit 57) identifies the property as having been "dedicated to the City of Los Angeles Department of Parks and Recreation [emphasis added]." The document does not state that the property was in fact owned by the City, merely that it had been dedicated, which is not what the CDP, as amended requires.

Additionally, this 2005 exhibit should not be viewed in isolation or as creating an inference that all was well, as it was dated December 29, 2005, a mere five months after the Tax Assessor had recorded a "Notice of Power to Sell Tax Defaulted Property" against the property. This circumstance, not to mention the prior five years of tax arrears and default notices, was sufficient to clearly put Headlands on notice that they, not the City, were still record owners of the Trailhead Property.

f) *Headlands was not aware that the City did not record the deed (email from Edward J. Miller 5.9.18).*

Since executing the deed to the City in 1995, Headlands has acted not less than twice in a manner that belies the assertion that they were unaware that the City had failed to record the deed and legally effectuate the transfer. Firstly, by deed dated February 26, 2010 (recorded document number 2010.262929), Headland Properties Associates transferred the Trailhead Property to Headland Properties Associates LLC.

Secondly, as discussed above, records indicate that Headlands received all notices - as owner of record - from the Los Angeles County Assessor's office indicating first that taxes had been unpaid on the Trailhead Property, and subsequently that the property would be auctioned by the County if the arrears was not rectified. If a public entity like the City had become the record owner of the property, property taxes would not have been assessed, and if anyone other than Headlands were the record owner, tax notices obviously would not have gone to Headlands. Thus, receiving these notices put Headlands on clear notice that according to the formal legal records of property ownership at the County offices, Headlands was still the owner of the property.

Rather than taking action to rectify the situation after receiving these notices and being made aware that they hadn't complied with the permit requirements, Headlands took no steps to ascertain why they were still documented owner of record for the Trailhead Property. Instead, they waited until after the property was sold at tax auction and then filed for - and received - an excess proceeds refund. On March 31, 2016, Headlands was "refunded" $329,521.79 from the tax sale of the Trailhead Property. These actions indicate that not only was Headlands aware of their continued claim to ownership of the Trailhead Property and the failure to comply with the requirement to transfer it to the City or a nonprofit, but also that rather than seeking to remedy the situation, Headlands instead elected to profit from it.

g) *Headlands complied with the permit conditions by transferring the property to Headland Properties Associates LLC.*

As discussed above, Headlands transferred the Trailhead Property from Headland Properties Associates to Headland Properties Associates LLC in 2010. This transfer did not in fact satisfy the conditions of the CDP, as amended, which required that the property be conveyed to a governmental agency or a private not-for-profit entity approved by the Executive Director. Further, among other requirements, an LLC can exist as a nonprofit only if all member owners of the LLC are tax-exempt nonprofit organizations themselves.[26] As the owner of the Headland Properties Associates LLC is in fact Edward Miller (Exhibit 52), this threshold requirement is not met, and Headland Properties Associates is not a not-for-profit entity that would be capable of holding title to the Trailhead Property per the terms of the CDP. Finally, even if Headland Properties Associates were a non-profit entity, which it is not, the Executive Director would have had to give prior approval of the conveyance, which he did not. The transfer of the property to Headland Properties Associates LLC did not satisfy the permit requirements; in fact this transfer is a violation of the CDP in and of itself.

h) *Headlands manages an extensive portfolio of properties and the transactions – including the transfer of the Trailhead Property and the excess proceeds refund claim – were done by rote and therefore cannot be used to impute to Headlands knowledge of the status of the property (phone conversations with Messers Miller and Guarrasi).*

Variations of this claim – including that lawyers handled such property transactions and that they were not involved - were made on several occasions and have no legal bearing on this case. Allowing a company to abrogate responsibility to comply with permit conditions simply because they work en masse is of course not a tenable proposition. In fact, Headlands is a large-scale sophisticated developer that operates extensively in the Coastal Zone, and thus, to the extent its broader practices have any relevance, they show that it has greater cause to be familiar with the development constraints therein. Further, applying for a refund after a tax sale of land you own and

[26] TopicB01.PDF (irs.gov)

declined to pay taxes on is anything but a rote or routine practice and required both knowledge and an affirmative action to effectuate.

2. Wooster

a) Wooster was not on notice of the restrictions on the property: there was nothing recorded on title and in order for a covenant or restriction to run with the land it must be recorded on title to the property pursuant to Civil Code §1468 – this requirement also applies to Coastal Development Permits (letter dated August 18, 2016).

By letter dated August 18, 2016, Mr. Rossman averred that Wooster had no notice of the development restrictions imposed upon the Trailhead Property by the CDP, as amended, and that any covenant or restriction must be recorded on title to run with the land.

Factual Errors. There are a number of errors in this assertion; first, Wooster is wrong about the facts. It did have notice of development restrictions imposed on this property by the CDP. There were two documents recorded on the chain of title for the Trailhead Property that reference the CDP: 1) the Declaration of Restrictive Covenants and Agreement - Los Angeles County Recorder's Office Instrument Number 81-3847 (Exhibit 79), and 2) the Offer of Dedication Agreement - Los Angeles County Recorder's Office Instrument Number 81-3845 (Exhibit 80).

The Declaration of Restrictive Covenants and Agreement, recorded in 1981, specifies that the Commission issued CDP No. 381-78, and (as of the date of the document) had amended it thrice. This document then introduces the cumulative adverse impacts of the development identified in the CDP and indicates that as a consequence the Commission had conditioned the permit on a number of requirements, including that Headlands dedicate a swath of land to preserve coastal ecology and public access. The properties identified – via graphic and legal description - as the "Dedication Area" per Instrument No. 81-3847 include a certain Lot G, which (as corrected by Instrument No. 81-443740) at that time encompasses the Trailhead Property and surrounds. This document identifies specific restrictions on the Dedication Area, including that it be maintained as open space free of development except for minor recontouring, recreational trails, and public facilities. Instrument 81-3847 thus references the underlying CDP and identifies the location that would become the Trailhead Property as being within an area to be set aside for open space and public recreation.

Likewise, the Offer of Dedication Agreement, recorded in 1981, identifies the same CDP, "Dedication Area," and attendant restrictions applicable thereto. This document, Instrument No. 81-3845, also details the timeline upon which Headlands was required to effectuate the dedications of each area and contains graphic and legal descriptions of the areas. As with Instrument No. 81-3847, the Offer of Dedication Agreement identifies Lot G as one such area to be set aside as open space. Unfortunately, while the graphic depiction of Lot G was correct, the legal description was not. What would become the

Trailhead Property was not included in this erroneous legal description of Lot G. However, a Certificate of Correction was recorded as Instrument No. 81-443740 (Exhibit 81) later the same year, correcting the legal description of Lot G so that it once again included the Trailhead Property. That document was therefore on the title by the time Wooster participated in the tax default sale as well. Wooster therefore had constructive notice that a CDP had been issued and that that CDP contained restrictions impacting the Trailhead Property. Importantly, even assuming that these various references to the CDP were not recorded on the title, which they were, permit conditions do not have to be recorded to be effective. Likewise, even a cursory site inspection would have provided Wooster with actual notice of the condition of the Trailhead Property as a public amenity.

Legal Errors. Secondly, Wooster is wrong about the law, for a number of reasons. First, the Civil Code section Wooster cites (Section 1468) expressly applies only to covenants between property owners.[27] It therefore has no applicability to the validity or continuing applicability of the requirements of a coastal development permit or any other governmental mandate. Civil Code Section 1468 applies to agreements entered into by property owners in privity with one another. The requirements of a coastal development permit are regulatory requirements that are quite distinct from this type of covenant, as they are imposed by the Coastal Commission by virtue of its statutory authority, not by virtue of privity with the property owner or real property law.

Second, although Wooster points to secondary authority discussing the potential that that this civil code section applies equally to coastal development permits, that theory wasn't even asserted to apply in this situation. Rather this theory is found in a legal treatise in which the writer specifically states that it is the Commission's Transfer of Development Credit (TDC) program (which, again, involves covenants entered into by land owners) to which they are referring, not coastal development permits writ large. The TDC program requires permittees to seek out third parties who were not involved in the permit process and are not bound by the permit conditions but who nevertheless voluntarily agree to participate (presumably in exchange for remuneration from the permittee) in an independent contractual arrangement with the permittee, in order to help the permittee satisfy its obligations under the permit. Hence, Civil Code Section 1468 would apply to them in their capacity as property owners and voluntary contractors, not in their capacity as permittees. The Headlands development did not participate in the Transfer of Development Credit program nor does that program have any relevance to the permit requirements here at issue. Under the Coastal Act and pursuant to common law, permit requirements run with the land – meaning any person or entity holding title is obligated to comply therewith. See, e.g., *Lent v. California*

[27] Civil Code section 1468 begins with this language: "Each covenant, made by an owner of land with the owner of other land or made by a grantor of land with the grantee of land conveyed, or made by the grantee of land conveyed with the grantor thereof, to do or refrain from doing some act . . . runs with both the land owned by or granted to the covenantor and the land owned by or granted to the covenantee . . ."

Coastal Commission (2021), *citing* Ojavan Investors v California Coastal Commission, (1994) 26 Cap. App. 4th 516, 526-527.

Thirdly, coastal development permit conditions are explicitly created to run with the land and denoted as such. Specifically, Standard Condition 7 of the CDP states, "Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions." This precept is also well established by caselaw - for example, in Ojavan Investors v. California Coastal Commission, (1994) 26 Cal.App.4th 516, 527, the court found that the burdens of permits run with the land once the benefits have been accepted. In this situation, the permitee – Headlands – has benefited immensely from the CDP in creating the Headlands subdivision and associated large-scale development. As a matter of law and equity therefore the "burdens" of the permit, including the designation of certain properties of the community as being for public use or for open space, also run with the land. As discussed in greater detail below, the court in Kretowicz v. California Coastal Commission[28] applied this principle even where there was nothing recorded against the property.

b) Tax default sale clears all conditions and encumbrances under California Real Estate Law 6 Ca. Real Est §16:7 (4th Ed) and California Revenue & Taxation Code § 3712 (letter dated October 11, 2016).

While Section 3712 of the California Revenue and Taxation Code does in fact state that most encumbrances on title are extinguished when an encumbered property is sold at tax sale, the Commission is not aware of any case where this provision has been applied to free a property of burdens associated with permit conditions, nor has it been tested against the body of case law that has consistently reaffirmed the principle that whenever a property is benefitted by a permit, the owner must also adhere to the burdens of that same permit, regardless of other changes. This body of case law includes *Ojavan Investors v. California Coastal Commission* (1994) 26 Cal.App.4th 516, 526 ("It is well settled that the burdens of permits run with the land once the benefits have been accepted"), *citing County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-11, and *Pfeiffer v. City of La Mesa* (1977) 69 Cal. App.3d 74, 78; *Serra Canyon Company LTD v. California Coastal Commission* (2004) 120 Cal.App.4th 663, 666-668 (holding that inverse condemnation claims by successors to permittees will not lie, as those successors are equally bound by the original permittee's failure to seek timely writ review of the burdens imposed by the permit, and must thus accept those burdens); and the recent California Supreme Court decision in *Lynch v. California Coastal Commission*

[28] Kretowicz v. California Coastal Commission, San Diego County Superior Court Case No. 37-2011-00097607-CU-MC-CTL, affirmed, Kretowicz v. California Coastal Commission (2015) *WL 5679642, unpublished.

(2017), 3 Cal. 5th 476-77 (discussing the binding effect of permit conditions once a permit has been accepted). At least one trial court found that this principle applies even where it was conceded that no offer or other indication of the burden had been recorded against the property. *Kretowicz v. California Coastal Commission* (2015) *WL 5679642, unpublished (holding that because the original owner did not challenge the permit condition, not only was it too late for the current owner to do so, but that current owner remained bound by it - *9-*15) (Exhibit 82).

Fundamentally, the CDP designated the Trailhead Property for public use. This is not an encumbrance on title that might be invalidated by tax sale, rather it is a change of the use and designation of the property from private to public. Additionally, violations of the Coastal Act persist on a property after a tax sale as they constitute ongoing public nuisances, not encumbrances of the title. Wooster has converted a popular public amenity, which was required by the CDP and enjoyed by and maintained for the public for over a decade and tried to privatize it by closing the public off from the property and pursuing construction of a single-family residence.

Further, Mr. Kalaf indicated to staff that after he contacted the City to inform them of the change in ownership of the Trailhead Property, the City ceased maintaining it. These actions constitute change in intensity of use of land, which is development under the Coastal Act and requires a permit.[29] As no permit was sought or granted for this "development," the changes persist as violation of the Coastal Act. The Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance. (Leslie Salt Co. v. San Francisco Bay Conservation etc. Com. (1984) 153 Cal.App.3d 605, 618; CEED v California Coastal Zone Conservation Com. (1974) 43 Cal.App.3d 306, 318). The Coastal Act is a "sensitizing of and refinement of nuisance law." (CEED, at 319). A continuing Coastal Act violation is thus also a continuing public nuisance. A property owner is liable for actions of previous owners who may have created the public nuisances on the property based on Civil Code 3483, which states; "Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefore in the same manner as the one who first created it." The nuisance condition - privatization of a public amenity - persists on the property and Wooster, as current record owner, is responsible for abating it regardless of how the property was acquired.

c) *Prior to purchase Wooster paid for written certification from the City that the property is a legal lot with no obstructions to building a single-family residence. They also have "additional material" from Los Angeles City Planning and Zoning departments authorizing them to build a house on the property and no mention was ever made of the Coastal Commission by either department (letter dated August 18, 2016).*

[29] Section 30106 of the Coastal Act defines development as: "….the placement or erection of any solid material or structure;…change in the density or intensity of use of land…."

The correspondence from the City was sent in response to a request from Henri Levy/Ben Kalaf to the City of Los Angeles Department of Building and Safety to verify that the lot in question was "…a legal and buildable lot." In response, the City sent a letter dated January 10, 2014 (Exhibit 83), after the purchase of the property by Wooster, which states that the lot is a legal lot but states that there may be barriers to development, including being potentially land locked due to inadequate access from a public street. The letter from the City goes on to state that *if* the lot is determined to have adequate access *then* it is not considered to be land-locked and would be buildable. This letter appears to be referring to a physical rather than legal determination; it does not state that the Trailhead Property could be developed with a residence or make a legal determination that such would be permissible under applicable law, merely that if access is adequate, it is a "buildable" lot. Neither the inquiry by Messers Levy and Kalaf nor the response from the City contain any reference to the construction of a single-family residence on the property – the inquiry was limited to "buildability." In fact, that the lot is "buildable" is not in dispute; the lot is buildable consistent with the underlying CDP, which proscribes development as being limited to a public parking lot and restroom; the lot has been built consistent with those restrictions.

Wooster's argument appears to be an estoppel argument; there are several reasons why estoppel does not apply here. Estoppel generally requires four elements: (1) the party being estopped must be apprised of the true facts, (2) it must intend its conduct to be relied upon, or act such that the party asserting the estoppel had a right to believe there was such an intent, (3) the other party must be ignorant of the true state of the facts, and (4) that party must rely on the conduct to its injury. Here, before even getting to these factors, Wooster appears to be alleging that actions undertaken by the City can act as a means of estopping the Commission, which is not possible. Even if the City's actions were relevant here, though, Wooster does not appear to have asked about legal restrictions on the use of the property and appears to have misunderstood the import of the information that the City provided. As a result, Wooster did not demonstrate that the department contacted at the City was aware of the CDP, much less that it intended Wooster to rely on its communication as a representation about Coastal Act restrictions. And, as indicated above, the communication with the City was after Wooster had purchased the property, so Wooster could not have relied on any information obtained from the City in making its purchasing decision.

Further, it is not the responsibility of government entities to direct those enquiring about property to all other potentially applicable boards and agencies; it is the job of the purchaser to undertake this work as part of due diligence. The certification from the City or even County that a lot is buildable has no bearing on applicability of the Coastal Act to a property, nor would any failure of either entity to direct Wooster's attention to potential Coastal Act permitting limitations diminish the applicability of said conditions or estop the Commission from enforcing its CDP.

d) Prior to purchase Wooster "contacted the Coastal Commission who assured us they had no record of the property in question" (letter dated November 29, 2018). Prior to the purchase Wooster contacted "an individual at the Long Beach Commission office who stated we would need to submit the standard procedure building 'package' prepared by an architect for Commission review. Nothing else was said regarding any Coastal Commission interest in the property."

In their November 2018 letter, Wooster averred that they had contacted Commission staff and had been told that they had no record of the property in question. In their subsequent letter they claim to have spoken with an unnamed member of the Commission's clerical staff and received general information about the coastal development permit process; apparently explaining that review of a project can only be undertaken once an application has been submitted. Neither of these assertions has any bearing on the applicability of the conditions of a CDP issued by the Commission; an informal conversation with a member of clerical staff about the permitting process does not convey a right to undertake development nor does it vacate decades of applicable coastal act permitting for the site. The onus is on the prospective purchaser to fully and completely investigate a property prior to purchase; including by reviewing applicable permits. Even if a staff member had provided misleading information, which is not supported by the record here, there is case law apposite to the circumstances specifically stating that the Commission is not estopped by staff opining on a matter. The court in *Benson v. California Coastal Commission* (2006) 139 Cal.App.4th 348 stated "[p]redictions and suggestions from staff may be helpful or misleading to a party with a matter before the Coastal Commission…a party should take such advice with caution. Due process is rarely implicated when the prediction or suggestion is wrong."

As above in c), the apparent estoppel argument that Wooster is making is not meritorious as again, estoppel generally requires four elements: (1) the party being estopped must be apprised of the true facts, (2) it must intend its conduct to be relied upon, or act such that the party asserting the estoppel had a right to believe there was such an intent, (3) the other party must be ignorant of the true state of the facts, and (4) that party must rely on the conduct to its injury. The first two criteria do not apply to the matter at hand as the Commission was not apprised of the true facts at issue here and there is no evidence that the Commission intended the clerical staff's conduct to be relied upon.

e) Wooster removed the fence and opened the gate within days of closing it and have cleaned the bathroom once or twice – therefore there is no violation of the permit (letter dated (letter dated January 9, 2019).

The CDP, as amended, included several requirements pertaining to the Trailhead Property, including that State Parks, City Parks, or an approved not-for-profit hold the property. The very claimed holding of the property by Wooster persists in contravention of the CDP and is itself therefore a Coastal Act violation. While it is true that the gate

that physically blocked access to the property for a short time has been reopened, the property is not being maintained for public use. Only one of the two bathrooms is unlocked and the one bathroom that is open is fetid and covered in trash, human waste, and graffiti as a result of not being maintained. Commission staff has received and continues to receive complaints from the public about the nuisance state of the Trailhead Property; trash and graffiti now cover the public facilities. It is for this very reason that the Commission proscribed ownership by all but a limited class of entities that would be bound to maintain the property for its intended use as a public amenity.

Wooster's failure to maintain the public facilities as such also constitutes unpermitted development, as the California Supreme Court has made it clear that a decrease in the intensity of use of land or access to water constitutes development that requires a permit. *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012), 55 Cal.4th 783, 795. The diminished level of access that has resulted from Wooster's ownership of the Trailhead Property is development under the Costal Act and was undertaken without a permit, thus constituting a violation of the Coastal Act.

f) "The Coastal Commission and the County made the same exact error of selling the property and returning the funds to the buyers TWICE before this. We were the third party where the same mistake as, which the County admitted (sic)" (letter dated January 9, 2019).

While it is correct that the County had once previously put the Trailhead Property up for public auction at a tax sale, the Commission had no knowledge of, much less involvement in, any of this activity (not the 2006 sale nor the 2013 sale). Moreover, it is unclear what relevance prior actions by the County would have to the enforceability of the CDP conditions.

The tax sale history shows that the Trailhead Property was first sold at public auction on February 13, 2006, to an entity named Entrust Admin Custodian FBO. When the purchaser became aware of the restroom and parking lot development encumbering the property and notified the Tax Assessor, an independent review of the property was undertaken. The Tax Assessor determined that the Trailhead Property was "dedicated and accepted by the City of Los Angeles based on Instrument Numbers 81-631478 and 81-631479 recorded on June 24, 1981." Based on this analysis the Tax Assessor rescinded the auction sale and recommended that the parcel be changed to a tax exempt "900" parcel (a numeric identification given to publicly owned property). In subsequent coordination between the Tax Assessor and the City, the City indicated a plan to record documents evidencing ownership of the Trailhead Property. Based upon these representations, the Tax Assessor excluded the Trailhead Property from their 2007, 2009, and 2010 public actions.

Unfortunately, per the Tax Assessor, the failure of the City to record the requisite documentation prevented them from moving forward to change the parcel status to a

tax exempt 900 parcel. This failure to act meant that the property continued to be eligible for tax sale, and pursuant to Revenue and Taxation Code Section 3692, the Tax Collector must attempt to sell property within four years of the time that the property becomes subject to sale for nonpayment of taxes and if there are no acceptable bids at the attempted sale, then attempt to sell the property at intervals of no more than six years until the property is sold. Therefore, to ensure compliance with relevant laws, the property was offered for sale and was sold at tax auction in 2013, again without any knowledge on the part of the Commission.

Wooster further alleged that "[t]he government agencies knew the mistake had been made for the third time with us, but went ahead and gave our money to someone who had nothing to do with the property…." This statement reflects both a misunderstanding of how the sale of properties at tax auction works as well as a mischaracterization of the events surrounding this particular tax auction. After selling the property in 2013 for more than the minimum bid amount, the Office of the Assessor received a claim for excess proceeds from the permittee/prior owner Headlands, and approved a payment of $333,114.65 to Headland Properties Associates LLC. Again, the Commission had no knowledge that the sale had even occurred, and a refund of excess proceeds by the County does not reflect collusion or error in the process; the County was complying with the law having received a request for excess funds from the previous record owner. The Office of the Assessor operates regarding tax payment alone and is independent from and unrelated to any environmental or permitting division of the City or State, nor is it reflective of any other legal requirements pertaining to properties. If anything, the prior history shows that Wooster had a remedy available to it to undo the sale and suffer no harm from the mistake. However, rather than avail itself of that option, they elected to try to move forward with attempting to convert the public amenities to private property for development purposes.

g) Wooster has expended funds on an architect, engineers, soil surveys, and related costs and has paid taxes – they are thus entitled to compensation for condemnation/eminent domain proceedings (letter dated August 18, 2016).

Eminent domain is not at issue here. The Commission is merely enforcing regulatory restrictions placed on this property decades ago, not condemning the property. Nor do the Commission's actions constitute inverse condemnation, and in any case, such claims are not timely, as is explained in the discussion of the *Serra Canyon* case above, in Section b. *See also Ojavan,* 26 Cal.App.4th at 524-525 (whether a claim is that permit conditions constitute inverse condemnation or a denial of due process, the underlying challenge is to the validity of the administrative action, and such action must be brought within 60 days of that action or it becomes immune from collateral attack). In any event, the CDP requirements at issue here predate purchase of the Trailhead Property, and between the presence of the facilities on the lot and documents recorded on the title, Wooster should have discovered the conditions during due diligence. If Wooster made a dubious gamble in purchasing and attempting to develop the Trailhead Property without

making even a cursory inspection or researching permit and title history, neither the Commission nor the State is responsible for any losses incurred in the process. That said, this Commission takes no position on whether Wooster may be entitled to compensation from Headlands.

I. California Environmental Quality Act

The Commission finds that imposition and implementation of this Cease and Desist Order, to compel to restore public access to the Trailhead Property and associated public amenities as contemplated by CDP A-381-78, among other things, 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 statue (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 and because the Commission's process, as demonstrated above, involves ensuring that the environment is protected throughout the process, the exemption covering enforcement actions by regulatory agencies (14 CCR § 15321) applies here.

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 cease and desist orders are designed to protect and enhance the coastal resources, and contain provisions to ensure, and to allow the Executive Director to ensure, that they 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 coastal 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.

J. Summary of Findings of Fact

1. 1205-1207 Wooster Street LLC (Wooster) is the current record owner of the property at 16701 Via La Costa, also identified by APN 4431-039-029, or herein as the Trailhead Property. The Trailhead Property is located within the Palisades Highlands development in the City of Los Angeles and in the Coastal Zone.
2. The Palisades Highlands is a large subdivision that was developed pursuant to a coastal development permit obtained in the 1970s by Palisades Resources Inc. and Headland Properties Associates Inc.
3. Headland Properties Associates and its related partnerships and companies continue to hold land within and manage the development of the Palisades Highlands, including by obtaining permits for work within the development.
4. Headland Properties Associates LP and Headland Properties Associates LLC are successors in interest of Headland Property Associates Inc. Cal Coast Companies LLC, which does business in California as Cal Coast Developer Inc., is the name of another company that held and maintained property within the Palisades Highlands and that is owned and operated by the same principals as the aforementioned partnerships and corporations and is thus treated as the same entity.
5. Edward J. Miller and Joseph P. Guarrasi are principles and managers of the entities listed in Number 4, above.
6. Henri Levy is the principal of 1205-1207 Wooster Street LLC.
7. In its approval of CDP A-381-78, as amended, the Commission found development of the Palisades Highlands project consistent with the Coastal Act and approved the CDP, as amended, contingent upon a number of conditions to protect the ecology, slope stability, and public access in the area, among other things. One such condition required that the developer identify a property to be used as a parking lot and entryway to the Temescal Ridge Trail, that the property be developed with a restroom and parking lot, and that it be transferred to the City of Los Angeles or another public or not-for-profit entity approved by the Commission's Executive Director. The permittees later identified the Trailhead Property for this purpose and constructed the required amenities.
8. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit, or (2) is inconsistent with a permit previously issued by the Commission.

9. Actions and inactions by Headlands in violation of conditions of CDP A-381-78, as amended, include: failure to maintain a public parking lot and public restroom on the Trailhead Property as required by a CDP condition; failure to transfer the Trailhead Property to the City of Los Angeles or other not-for-profit entity approved by the Commission's Executive Director, as required by a CDP condition; the affirmative transfer of the Trailhead Property from Headland Properties Associates LP to Headland Properties Associates LLC in 2010; and the failure to pay taxes on the Trailhead Property, thereby allowing alienation to a private developer via tax default sale, collectively effecting a significant reduction in the intensity of use of the Trailhead Property – from a functioning public park to private land with unmaintained facilities on it. As such, these actions and inactions also constitute development, and that development has occurred without a coastal development permit. Jurisdictional requirements for the issuance of a cease and desist order against Headlands have therefore been met.
10. Actions and inactions by Wooster: failure to maintain a public amenity resulting in a reduction in the intensity of use of that property (from public park to private land) and the failure to transfer the Trailhead Property to the City of Los Angeles or other not-for-profit entity approved by the Commission's Executive Director, in violation of the permit requirement. These actions and inactions also constitute development, in that the failure to maintain the public trailhead, public parking lot, and public restroom has reduced the intensity of its use, and this development has also occurred without a coastal development permit and in violation of conditions of CDP A-381-78, as amended. Jurisdictional requirements for the issuance of a cease and desist order against Wooster have therefore been met.
11. The work to be performed under these Cease and Desist Orders, if completed in compliance with the instructions therein, which includes transfer of the Trailhead Property to the City of Los Angeles or a not-for-profit entity approved by the Commission's Executive Director, will be consistent with the CDP, as amended and Chapter 3 of the Coastal Act, and therefore, these Cease and Desist Orders provide Coastal Act authorization to conduct the activities required therein.
12. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. Such penalties may be imposed for the violation of the public access provisions of the Coastal Act.
13. The purported transfer of the Trailhead Property from Headlands to Wooster and the failure to maintain the site for public use violates terms of the CDP that were designed to ensure the larger project would be consistent with the public access provisions of the Coastal Act, among other resource protection policies, and therefore violates the cited public access provisions of the Coastal Act. Headlands is therefore in violation of the public access provisions of the Coastal Act and is subject to penalties under Section 30821 of the Coastal Act.
14. As stated in numbers 1 and 10, above, Wooster is the record owner of the Trailhead Property, and its actions and inactions related that Trailhead Property have violated terms of the CDP that were designed to ensure the larger project

would be consistent with the public access provisions of the Coastal Act, among other resource protection policies, and therefore violates the cited public access provisions of the Coastal Act, Wooster is therefore in violation of the public access provisions of the Coastal Act and is subject to penalties under Section 30821 of the Coastal Act.