**CALIFORNIA COASTAL COMMISSION**
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885

# Th9.1 - 9.5

Staff: Rob Moddelmog-SF
Staff Report: 11/30/23
Hearing Date: 12/14/23

## STAFF REPORT: Recommendations and Findings for Cease and Desist Orders and Administrative Penalty Actions

| | | |
|---|---|---|
| **Cease and Desist Order Nos:** | CCC-23-CD-05 | CCC-23-CD-06 |
| **Administrative Penalty Nos:** | CCC-23-AP-04 and CCC-23-AP3-01 | CCC-23-AP-05 |
| **Related Violation File Nos:** | V-3-02-042 | V-3-17-0129 |
| **Violators:** | Rio Del Mar Beach Island Homeowners Association | Guarav Singh and Sonal Puri (Singh-Puri Living Trust) |
| **Location:** | Areas known as the 37' Walk and Beach Drive, as shown on the "Map of Subdivision No. 8 Aptos Beach Country Club Properties" recorded in the Official Records of Santa Cruz County in Volume 24 of Maps at Page 26; as well as Seacliff State Beach | 202 Beach Drive, Aptos, Santa Cruz County (APN 043-072-01); as well as the 37' Walk, Beach Drive, and Seacliff State Beach in the immediate vicinity of 202 Beach Drive |

**Violation Description:**

**Rio Del Mar Beach Island Homeowners Association:**

Unpermitted development and violations of conditions of Coastal Development Permit (CDP) No. P-80-87**,** including placement of unpermitted

development within the 37’ Walk, and in violation of Condition 1 of Coastal Development Permit (CDP) No. P-80-87, including:

1) walls, fences, signs, caution tape, and plastic barricades that physically block or dissuade the public from accessing the 37’ Walk where the north and south ends of the 37’ Walk meet Beach Drive;

and

2) patio furniture, patio walls, planters, fences, signs, balconies, and other private encroachments within the 37’ Walk that obstruct and discourage public access;

in addition to unpermitted development on or directly related to the revetment, and in violation of Condition 5 of CDP P-80-87, including:

3) unpermitted placement of concrete stairways and other foreign materials on top of the revetment; and

4) failure to prevent the revetment from encroaching on state parks lands;

as well as violations of Condition 8 of CDP P-80-87, including:

6) failure to submit monitoring reports every two years regarding the condition of the revetment;

and violations of Condition 9 of CDP P-80-87, including:

7) failure to maintain native sand dune plants in good condition covering the revetment;

as well as other unpermitted development, including:

8) multiple unpermitted expansions of the revetment through placement of additional boulders;

9) unpermitted construction of stairways in the revetment not according to the approved plans of CDP P80-87-A; and

10) failure to take all steps possible to direct members to avoid unpermitted installation and use of high-intensity lights;

as well as any development obstructing public access to the public sidewalk on Beach Drive that required a CDP but for which none was obtained, including:

11) failure to take all steps possible to direct members to avoid indefinite placement of objects such as waste containers; and

12) failure to take all steps possible to direct members to avoid placement of waste containers and cones in order to block public parking spaces on Beach Drive.

**Gaurav Singh and Sonal Puri:**

Unpermitted development, including:

1) a vertical seawall extending in front of 202 Beach Drive and the 37’ Walk all the way to the Beach Drive sidewalk;

2) plastic barriers, fencing, and signs restricting access to the 37’ Walk extending from where the vertical seawall intersects with the public sidewalk, along Beach Drive to the 202 Beach Drive parcel, and continuing underneath the house and onto the 202 Beach Drive parcel; and

3) patio furniture, planters, and tile paving on the 37’ Walk between the seawall and 202 Beach Drive.

**Substantive File Documents:** Public documents in Cease and Desist Order File Nos. CCC-23-CD-05 and CCC-23-CD-06; and Administrative Penalty File Nos. CCC-23-AP-04, CCC-23-AP3-01, and CCC-23-AP-05; Exhibits 1

| | |
|---|---|
| | through 107; and Appendices A and B of this staff report. |
| **CEQA Status:** | Categorically Exempt (Cal. Code of Regs., tit. 14, §§ 15321(a))**.** |

## SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

These proceedings address longstanding violations impacting public access to a popular beachfront boardwalk, as well as other permit violations, by the Rio Del Mar Beach Island Homeowners Association (RDMBI HOA or the HOA). The HOA is a beachfront homeowners association in Aptos, Santa Cruz County, consisting mostly of owners of houses operated as vacation rentals. The HOA was formed in connection with a 1980 Coastal Development Permit (CDP) that authorized the installation of a revetment to protect 27 existing beachfront houses, and included a provision, which will be discussed further herein, that also required the preservation of a public access walkway within a 20-foot-wide strip of land between the homes and the revetment. Unfortunately, although RDMBI HOA installed the revetment that the permit authorized, the HOA has not complied with the public access requirements or several other conditions of that CDP related to the management of the revetment, including a requirement to cover the revetment with sand and native dune plants. The HOA has also recently worked with the owners of 202 Beach Drive to block public access to the walkway. Meanwhile, the houses along this stretch are largely operated and advertised as vacation rentals where paying guests use most of the public walkway as private patios, with a portion left for use as a private gated walkway not available to the public. In addition, the revetment is covered with invasive iceplant rather than native plants as required, and also includes private beach access stairways. As will be discussed further below, efforts by Commission staff to address these violations began at least as far back as 2002, without success.

Following storms in 1980, photos show that the walkway was open at both ends, and the public was able to walk along the entire length of an almost quarter of a mile long beachfront walkway. However, the seawardmost eight feet of the 20-foot-wide walkway had been damaged by waves and fallen into the ocean. That same year, the homeowners association applied for a CDP for a revetment immediately seaward of the walkway, to defend the walkway and the houses, and to rebuild the walkway itself. Because the County was understood by all parties involved to hold either fee title or an easement over a 37-foot-wide strip of land that included the walkway and the adjacent area immediately seaward of it, where the revetment was proposed to be placed, the homeowners sought an encroachment permit from the County to allow them to place the revetment in that location. Just prior to the Coastal Commission hearing for the CDP, the County of Santa Cruz authorized an encroachment permit approving the applicants' placement of a revetment on County-controlled property, on the condition that the homeowners association preserve public access to the walkway landward of the revetment.

The Commission then considered a CDP application for the construction of the revetment, and in approving the CDP, the Commission included a condition that required the homeowners association to comply with all local authorizations, specifically incorporating the County's encroachment permit authorization, which required the preservation of public access to the walkway, as part of the CDP. The homeowners association accepted the benefits and burdens of both permits, and did not challenge the County's requirement to preserve public access to the walkway or the subsequent Commission CDP requirement to preserve public access to the same walkway. Indeed, for two years, RDMBI HOA did preserve public access to the walkway, and the public remained able to walk its entire length.

However, beginning in 1982, although it retained the revetment, RDMBI HOA failed to preserve public access to the walkway as required by those legal authorizations. More recently, the HOA and its members have actively sought to block public access to the walkway and have erected a number of makeshift barriers and signs restricting public access. In addition, the HOA also failed to comply with other CDP conditions, as will be discussed below. Meanwhile, the members of the homeowners association have enjoyed private use of this area, have profited from their privatization of this walkway via vacation rentals, and advertise the area as private patios and a private walkway for their paying guests.

These proceedings also concern actions by the owners of the property located at 202 Beach Drive, at the far upcoast end of this stretch of homes, which is also operated as a vacation rental. 202 Beach Drive was not originally part of the homeowners association, and it is unclear whether the owners have since joined, but, as noted above, the current owners have recently worked with the RDMBI HOA to block public access to the required walkway at its upcoast end, and some of the current unpermitted plastic barriers are located on this parcel. 202 Beach Drive has also relied on an unpermitted seawall for decades, part of which also blocks the public from reaching the walkway via a public sidewalk on Beach Drive.

RDMBI HOA and the owners of the house at 202 Beach Drive, Gaurav Singh and Sonal Puri (Singh & Puri), have blocked public access to a nearly quarter mile long beachfront walkway that has been required to be open to the public pursuant to a CDP. In addition, both RDMBI HOA and Singh & Puri have performed unpermitted development and have maintained that development, including that relating to the seawall that blocks public access to the walkway, as well as the plastic barriers and other development blocking the public from walking onto the walkway from the Beach Drive sidewalk. The proposed Cease and Desist Orders would order RDMBI HOA and Singh & Puri to remove their unpermitted obstructions to public access such as barriers, fencing, and signs, as well as order RDMBI HOA to fix the many CDP violations related to their revetment, and order Singh and Puri to remove their unpermitted seawall that is also blocking public access, unless any parts of it are found to be necessary to protect public access to the walkway.

## Background

The houses at issue are located on the beach, immediately inland of Seacliff State Beach, a popular destination in Santa Cruz County. Seacliff State Beach is heavily used and is known for the cement ship just to the north of the houses at issue, which was docked at a pier there since 1929. It is also a popular destination for campers staying at the New Brighton state campground, which is located upcoast as well. Visitors to Seacliff State Beach typically enjoy swimming in the relatively protected and calm waters, sunbathing during the warm summers, and walking the long beachfront boardwalk that extends nearly two miles from Las Olas Beach in the north to "Platforms" Beach in the south. The public, including those in wheelchairs and with strollers, can walk down the beach along a public sidewalk on the inland portion of the beach. However, this ability to use the beachfront walkway is now interrupted for nearly a quarter of a mile by barricades placed and maintained without any Coastal Act authorization by RDMBI HOA and Singh & Puri.

## Permit History

Following major storms in the winter of 1980, RDMBI HOA, which included 27 neighboring beachfront property owners, applied for a CDP for a revetment to protect their existing houses and the replacement of a lateral walkway seaward of the houses. At the time, the public could use the entire length of the walkway. Just prior to the CDP hearing, the Santa Cruz County Board of Supervisors authorized an encroachment permit to allow RDMBI HOA to construct the revetment on top of the seaward portion of a 37-foot-wide public right-of-way. The County included in its encroachment permit a condition that "the public shall have a right to use a walkway parallel to the ocean and Beach Drive along the whole length of the 37 foot easement which shall be preserved."

Less than a week later, at the CDP hearing, Commission staff told the Commissioners about the County's action and assured the Commissioners that because the revetment would be built on the sand seaward of the walkway, it would not "cover up any existing public accessways." Accordingly, the Commission approved CDP P-80-87 ("the 1980 CDP") with Condition 1, which stated that "prior to commencement of construction, applicant shall submit evidence to the Executive Director that all local approvals have been obtained, e.g. Negative Declaration, grading permit, encroachment permit, and shall comply with all necessary conditions." Thus, the Commission authorized the revetment but required that RDMBI HOA comply with all necessary conditions of local approvals, specifically including the encroachment permit that required the public walkway. Photos from 1980 and 1982, and plans from 1981, show that from 1980 to 1982, RDMBI HOA did preserve public access to the walkway, and the public was able to walk its entire length.

The CDP conditions also required that RDMBI HOA record a deed restriction that would require it to assume liability for coastal hazards, among other things. The Commission approved, and RDMBI HOA recorded, the deed restriction, which explained that RDMBI HOA's stated purposes include entering into agreements required as conditions for

approval of the revetment, as well as maintaining the revetment. The CDP conditions also required that RDMBI HOA cover the revetment with sand, maintain native sand dune plants on top of it in good condition, and submit biennial monitoring reports on the state of the revetment. Although RDMBI HOA did record the deed restriction, RDMBI HOA did not comply with many of the other conditions of its CDP. By 1982, the downcoast end of the walkway was blocked by a fence, concrete footing, and gate. The ability of the public to use the walkway for getting up and downcoast along this lateral accessway was effectively negated by this blockage. RDMBI HOA also failed to maintain native sand dune plants on top of the revetment as required by the permit, and instead allowed invasive iceplant to take over. Further, they did not submit the required biennial monitoring reports.

In 1981, the then-owner of 204 Beach Drive (which, at that time, included what is now 202 Beach Drive), the only property owner inland of the walkway who did not join RDMBI HOA and participate in its CDP application, built a large seawall in front of the upcoast end of the boardwalk, with no CDP. In 1989, a subsequent owner of 204 Beach Drive obtained a CDP from the County (which had adopted a Local Coastal Program by that time) to build a house immediately upcoast of the existing house at 204 Beach Drive (at what is now 202 Beach Drive, now owned by Singh & Puri). The County, in issuing the CDP for the house at 202 Beach Drive, required the house to be built on tall pilings so that it could resist coastal flooding, and found that the house would be located adjacent to the public walkway. In 1993, a prior owner of 202 Beach Drive applied for a CDP from the County to use the public walkway as a private parking area, but the County denied their request on the basis that it would be incompatible to use a public walkway for private parking. Subsequent owners continued to park on the walkway anyway, driving their cars through a gap in the wall at the upcoast end of the walkway.

Beginning with the 1998 El Niño winter, major storms once again spurred RDMBI HOA to seek Coastal Act authorization to bolster their revetment. To do so, in the following years, RDMBI HOA placed a number of boulders on the revetment, including pursuant to emergency CDPs granted in 1998 and 2002, as well as placing many unpermitted boulders. Because these emergency CDPs were approved by Commission staff, Commission staff then sought to ensure that RDMBI HOA followed up and obtained standard CDPs for this emergency work, as is required for emergency CDPs. This also brought RDMBI HOA's non-compliance with the conditions of the 1980 CDP to the attention of Commission staff.

**Enforcement History**

Accordingly, in 2002, Commission staff opened a violation case for RDMBI HOA's violations of its 1980 CDP and other unpermitted development. In 2002 and 2003, Commission planning staff wrote letters to RDMBI HOA explaining the ways in which RDMBI HOA remained out of compliance with CDP P-80-87's requirements and requested that RDMBI HOA correct the violations. In 2003 and 2004, RDMBI HOA did not dispute the public access requirements of the 1980 CDP and instead stated that the

walkway was open for public access. However, Commission planning staff were ultimately unable to resolve the violations, including reopening the walkway.

In 2014, the Commission obtained the authority to impose administrative penalties for public access violations and began focusing more on access cases that the Commission had thus far been unable to resolve. In 2017, Commission district enforcement staff sent Notice of Violation letters to all of the owners of the houses adjacent to the walkway, which included all of the members of RDMBI HOA and the owner of 202 Beach Drive, as they were maintaining development within the walkway that was effectively privatizing it. Commission district enforcement staff then reached out to the individual owners, as well as RDMBI HOA, via many letters, phone calls, and site visits, and attempted to resolve the violations amicably, and many HOA members initially removed much of the unpermitted development blocking public access to the walkway, such as private patio furniture. Commission staff also worked with the County of Santa Cruz and RDMBI HOA in their attempts to coordinate an amicable resolution that would have involved the individual house owners paying encroachment fees to the County in order to legalize their use of some of the inland part of the walkway that didn't affect use by the public.

However, a wall continued to entirely block public access at the downcoast end of the walkway, and a wall adjacent the house at 202 Beach Drive impeded public access at the upcoast end, and in November of 2018, talks broke down and RDMBI HOA sued the County, alleging that the HOA owned the land underlying the walkway free of any property interest held by the County. In December of 2018, the County of Santa Cruz removed the walls at both ends of the walkway, arguing that they were illegal encroachments impairing the County's property interest. The litigation between the HOA and the County regarding a dispute over property interests in the land under the accessway remains ongoing, but the question of the County's property interest in the walkway is unrelated to the enforcement of the Commission's CDP conditions, which require public access to the walkway regardless of ownership.

In 2022, these violation cases were elevated to the Commission's headquarters enforcement unit to address the various issues with unpermitted development and violations of permit conditions. In January of 2023, following major storms, RDMBI HOA installed large plastic barriers across both ends of the boardwalk to once again block public access. This time, RDMBI HOA argued that a trial court judge had authorized the barriers months before, and that they were installed in order to stop the public from entering a walkway that was full of marine debris, even though in the hearing on the order, the judge had acknowledged that his ruling would not involve the Coastal Commission. Moreover, after the ruling, in order to head off confusion, Commission staff had informed the HOA that a CDP would still be required for development in this location, including for the barriers. Yet, the barriers remained up even though the walkway was cleaned up of marine debris almost immediately, and even though vacation renters also began using the walkway almost immediately.

In May of 2023, the Commission sent a formal Notice of Intent to Issue these Cease and Desist Orders and Administrative Penalty actions, and indicated a tentative hearing date of August 2023. Commission headquarters enforcement staff then attempted to resolve this case amicably, just as Commission district enforcement staff had attempted to do in 2017, and just as Commission planning staff had attempted to do in 2002. Unfortunately, staff was unable to do so. RDMBI HOA argued that the 1980 CDP did not require RDMBI HOA to provide public access and would not agree to provide such access in compromise. Thus, they declined to commit to come into compliance with Condition 1 of the CDP by agreeing to preserve public access to the walkway as an essential part of a resolution here, and continually rebuffed, delayed, or ignored Commission headquarters enforcement staff's efforts to discuss any potential amicable resolution that involved reestablishing access as required by the permit.

Most recently, RDMBI HOA has insisted that the walkway may be unsafe for public access, which they argue therefore justifies keeping the accessway closed, but the HOA has provided no evidence in support of this contention. To the contrary, RDMBI HOA's members continue to use their houses as vacation rentals and the residents and paying guests continue to use the public walkway as private patios and a private gated walkway. Meanwhile, Singh & Puri have continued to maintain the unpermitted seawall that also blocks public access to the walkway, as well as large plastic barriers underneath and adjacent to their house that block public access. Further, vacation renters have been given keys to a gate maintained by RDMBI HOA and Singh & Puri so that they can use the walkway for themselves, further privatizing this area. Finally, the day before Thanksgiving, the HOA also applied for an emergency permit to restack some of the rocks in the revetment, many of which remain unpermitted. That same day, Commission planning staff responded to RDMBI HOA to explain that based on their preliminary review, it appeared that the ECDP application lacked information demonstrating that there is an imminent threat to life or property, and requested that the applicant provide such information.

## Primary Contested Issues[1]

**Interpretation of the Permit Conditions and the Nature of the Access Instrument.** RDMBI HOA argues that the conditions of the 1980 permit do not explicitly require the provision of public access and that the findings do not support such an interpretation. However, considering the full context, including the County encroachment permit, the conditions of which were incorporated by reference, and the discussion thereof at the hearing, the intent of the conditions is clear. RDMBI HOA further argues that the only way that the Commission can require public access is by requiring a permittee to record an Offer to Dedicate a public access easement, and because the Commission did not require an Offer to Dedicate here, the Commission could not have required public

[1] These issues and many others are more fully addressed in findings Section F, Defenses Alleged and Response Thereto.

access to the walkway via the CDP, and also therefore did not intend to do so. This is not accurate. As discussed in more detail below, the Commission has historically provided for public access via many different types of permit conditions and via different legal instruments. Moreover, in this case, the Commission understood that the public already owned a property interest, and that the area was already open to the public, so there was no need to create a new property interest, and the condition was merely to require the HOA to recognize and preserve the existing and required public access.

**Significance of the Commission's approval of the Reconstruction of "Patios."** RDMBI HOA also argues that because the staff report for CDP P-80-87 refers to the proposed construction of concrete patios and decks, that the Commission therefore intended to authorize RDMBI HOA to repave the entire concrete area for exclusive private patio use, and not for any public walkway. This claim is in direct contradiction to the Commission's staff report and presentation for the 1980 CDP that clearly found that there was a public easement that "has been partially covered by a 20-ft. concrete path (used by the residences as private decks)," and that at the CDP hearing, Commission staff referenced the fact that the County permit had required public access to a walkway there. Nowhere in the staff report, and at no time in the Commission hearing, did the Commission or Commission staff ever endorse or authorize the use of the entire public walkway for private patios, as RDMBI HOA has argued, and instead, the permit as issued includes the incorporation of the access requirement.

**Ownership of the land**. RDMBI HOA continues to argue that they own the area subject to the CDP's public walkway requirement and that the County never held a public easement or any other property interest there. This is simply not at issue here. Whomever owns the land, RDMBI HOA is required to preserve public access to the walkway pursuant to their CDP regardless of the chain of title of the land underlying the walkway. It is common practice for public access easements to be located on private, as well as public land, and here, as is the case in many other places all up and down the coast, the CCC incorporated a requirement for public access in the CDP issued for the revetment. The Commission found at the 1980 CDP hearing that public access to the walkway existed, and in approving the revetment, specifically conditioned the CDP to require that RDMBI HOA preserve public access to that walkway. RDMBI HOA never challenged the Commission's findings or conditions, and instead accepted the permit including both its benefits and its burdens, and the time period in which a challenge to that permit could be brought expired decades ago. In fact, RDMBI HOA preserved public access to the walkway from 1980 to 1982 as required by the CDP. Even if no public easement ever existed over the walkway, this would not change the CDP requirement that RDMBI HOA preserve public access to the walkway.

**Unpermitted Development.** Almost all of the development obstructing the walkway was either installed or replaced after 1972 without the requisite Coastal Act authorization. RDMBI HOA argues that much of this work is permitted, but with one exception regarding one house (and as discussed more fully below), Commission staff has not been able to locate any such Coastal Act authorizations, and despite repeatedly

requesting that RDMBI HOA provide evidence to support their claims, none has been provided.

**Plastic Barriers**. Singh & Puri and RDMBI HOA are represented by the same attorneys, and it is unclear whether Singh & Puri or RDMBI HOA, or both, placed the plastic barriers between the seawall and the house at 202 Beach Drive to block public access. However, Singh & Puri have clearly maintained the barriers that were placed underneath the house at 202 Beach Drive, which also block the public from accessing the walkway. As with the prior point, their attorneys have argued that the wall that once existed at the upcoast end of the public walkway has existed there since prior to the 1980 CDP and Proposition 20, and that therefore RDMBI HOA/ 202 Beach Drive should be allowed to place plastic barriers there to block public access. RDMBI HOA has also argued that the 1980 CDP did not affirmatively require the removal of any development in the walkway.

However, they have not provided any evidence that the wall that used to exist next to the house prior to the County's removal was fully authorized prior to Proposition 20. Further, the wall that existed there prior to the plastic barrier was substantially modified after 1972, without any CDP, when a prior owner added a tall fence on top of the wall. In addition, no wall existed in the location of what is now the 202 Beach Drive house, where a plastic barrier is now located.

Moreover, the 1980 CDP did not explicitly require any particular action with regards to any unpermitted development, such as completely removing an entire wall, and instead only required that RDMBI HOA preserve public access to the walkway. At the time, because the gap in the wall did not yet have a plastic barrier in its place, the public could simply walk through the gap in the wall, even after a house was built over the gap in the wall, and public access was thus preserved and the permit requirement could be complied with. In fact, prior owners of the house at 202 Beach Drive attempted to obtain a CDP from the County to build a wall under their house in 2009, and the County approved a CDP that would have allowed a wall under the house, only on the condition the owner of 202 Beach Drive remove the wall adjacent the house, so that the public could still reach the walkway.

Moreover, with regards to the unpermitted seawall that Singh & Puri have maintained, it was built after Proposition 20 and after the 1980 CDP, and also blocks public access to the public walkway required by the 1980 CDP by physically blocking people from walking from the Beach Drive sidewalk to the walkway.

## Conclusion

The beach boardwalk at Seacliff State Beach is a popular visitor attraction for a wide variety of the public, coming from all over the state, but the public cannot enjoy a beachfront walkway for almost a quarter of a mile in the middle of the boardwalk because of RDMBI HOA's unpermitted development and CDP violations. For this stretch of beach, the public is forced to attempt to walk on a narrow sidewalk landward

of the homes, with no ocean view, past sign after sign advertising the income generating vacation rentals. Moreover, this sidewalk is obstructed by RDMBI HOA members' permanent storage of their large waste containers on the public sidewalk. Due to the closure of the public access walkway, which was flat and accessible, and due to RDMBI HOA members' waste containers further impeding use of even the sidewalk landward of the homes, disabled persons using walkers or wheelchairs cannot access this portion of the coast walkway at all, and instead are forced to go out into the busy road with car traffic, or simply turn around.

The members of RDMBI HOA and Singh & Puri use their houses mostly for vacation rentals and have profited off of the privatization of the walkway from their unpermitted development and non-compliance with a Commission issued CDP. While RDMBI HOA and Singh & Puri argue, without evidence, that the walkway may be unsafe, their paying renters continue to enjoy private access to this beachfront walkway. The vacation rentals are not "affordable", as their base rental rate, without fees, is typically close to $500 per night, and they are more expensive during the summer and holidays. These violations are therefore also an environmental injustice, as persons from disadvantaged communities would face disproportionate hardship affording to stay there and enjoy the privatized public walkway. Moreover, the public beach here and the walkway provide very popular low cost recreational opportunities, and the blocking off of this public access area for private use and rental customers clearly adversely affects low income beach users.

Further, RDMBI HOA has also failed to cover their revetment with sand and maintain native sand dune plants in good condition on top of it as required by their CDP, which has resulted in the total elimination of what otherwise could become important habitat area for native species. This failure to provide these native dune plants has persisted for over four decades over a shorefront area approximately 800 feet in length (the length of the revetment), and this loss of potential habitat is therefore significant.

In addition, Singh & Puri have relied on an unpermitted seawall that has blocked public access to the walkway by physically blocking people from reaching the accessway via the Beach Drive sidewalk, as well as negatively impacted public access at Seacliff State Beach. When waves hit seawalls, their energy refracts backward and scours the beach, which causes the beach to shrink, which also impacts public access. When the County permitted the construction of 202 Beach Drive via CDP 88-0599 in 1989, the County required the applicant to construct the house on elevated piles so that coastal flooding would not endanger the house and therefore, a seawall would not be necessary. However, although their house was specifically built to resist flooding, Singh & Puri have instead retained this unpermitted seawall that blocks public access both to the beach and the public walkway.

**Proposed Cease and Desist Orders and Administrative Penalties**

To address these violations, staff recommends that the Commission begin by issuing Cease and Desist Order No. CCC-23-CD-05 to RDMBI HOA. The proposed order would

require RDMBI HOA to comply with CDP P-80-87, including by: 1) complying, at least in part, with Condition 1 by removing all unpermitted development obstructing an approximately 12-foot-wide area of the public walkway; 2) complying with Conditions 5, 8, and 9 by either submitting a CDP amendment application or submitting a plan to the Executive Director to remove unpermitted materials from the revetment and cover it with sand and maintain native dune plants in good condition; as well as 3) take all steps within the HOA's power to direct the members of RDMBI HOA to stop permanently storing waste containers in the Beach Drive sidewalk and in public parking spaces on Beach Drive, and to stop using high-intensity lighting to illuminate Seacliff State Beach and the ocean at night.[2] Staff also recommends that the Commission impose penalties on the RDMBI HOA as discussed below.

The proposed Cease and Desist Order to RDMBI HOA requires RDMBI HOA to clear all obstructions to public access out of a 12 foot wide area just inland of the revetment. The remaining 8 feet of the walkway, which contains many support beams for balconies, would not be required to be cleared under the terms of this Order, even though much of the development in this area appears to be unpermitted. This means that the public would have access to a walkway that is 12 feet wide. RDMBI HOA would be required to preserve public access to this walkway, and to clear any new obstructions that are placed within it.

Nothing in the proposed Cease and Desist Order would authorize any unpermitted development in the remaining inlandmost 8 feet of the walkway or waive any rights to enforcement related to that development; and conversely, nothing in the proposed order would stop the owners of houses from applying for CDPs or after-the-fact CDPs for development in the inlandmost 8 feet of the walkway.

The proposed order would also require RDMBI HOA to comply with Conditions 5, 8, and 9, by either submitting a CDP Amendment application to modify the revetment without lessening the intent of those conditions, as is required by Commission regulations, or by submitting a revetment condition compliance plan to restore the revetment to how it was approved in 1980. It is Commission staff's understanding that RDMBI HOA wants to modify the revetment to bolster its defenses, however, RDMBI HOA will be required to maintain native dune plants atop the revetment as required, regardless of whether they apply for a CDP Amendment or not.

Staff also recommends that the Commission issue Cease and Desist Order No. CCC-23-CD-06 to Singh and Puri. This proposed order would require Singh and Puri to remove all unpermitted development that they have maintained, including as defined below and in the proposed Order, including the plastic barriers, fencing, and signs restricting public access to the walkway, both underneath and adjacent to their house; the seawall; as well as any development impeding public access to the walkway, such

[2] These violations and other issues are discussed more fully below.

as patio furniture and planters between the house and seawall. The order also provides that if the County or another entity requests to use portions of the unpermitted development (such as the wall) to provide public access to the walkway, the Executive Director may determine those portions of unpermitted development are necessary for preserving public access, and determine that it is not required to remove those portions of unpermitted development under these orders. Staff also recommends that the Commission impose penalties on Singh and Puri as discussed below.

The proposed Cease and Desist Order to Singh & Puri requires the removal of all unpermitted development. This means that Singh & Puri are required to remove the plastic barriers under the house, as well as the unpermitted seawall. However, should an entity managing the walkway, such as the County, make a request to preserve portions of this unpermitted development in order to provide public access to the walkway, the Executive Director may determine that such development not be removed by Singh & Puri under the terms of these Orders.

Applying the factors set forth in the statute for assessing penalties, the Commission could easily impose a penalty of millions more dollars to RDMBI HOA, and in the many millions to Singh & Puri, as is more fully discussed in Section E of this Staff Report. However, staff is recommending a more conservative approach, in the exercise of the Commission's prosecutorial discretion, and thus recommends imposing a penalty far below the maximum. Commission staff is therefore recommending a penalty for public access violations to RDMBI HOA of $2,785,375, as well as a penalty for RDMBI HOA's failure to maintaining native plants atop the revetment, among other CDP condition violations related to the revetment, of $1,996,875, for a total of $4,782,250 in penalties. In addition, Commission staff is recommending a penalty of $500,000 to the Singh & Puri for their unpermitted plastic barriers under the house and their unpermitted seawall's blocking of public access.

There are five motions proposed for the issuance of these orders and the assessment of these penalties, and they can be found on pages 19 to 21.

## TABLE OF CONTENTS

| | |
|---|---|
| Exhibit 8 | Scanned Slides of Emergency Revetment dated February 1980 |
| Exhibit 9 | CCC staff notes regarding emergency rock placement dated February 20, 1980 |
| Exhibit 10 | Staff Report for CDP P-80-87 dated March 24, 1980 |
| Exhibit 11 | Santa Cruz County Board of Supervisors Approval of Encroachment Permit ordered March 25, 1980 |
| Exhibit 12 | Slides shown during March 31, 1980 Hearing for CDP P-80-87 |
| Exhibit 13 | Transcription of March 31, 1980 Hearing for CDP P-80-87 |
| Exhibit 14 | Final Conditions for CDP P-80-87 from Commission Hearing Minutes |
| Exhibit 15 | CDP P-80-87 dated April 15, 1980 |
| Exhibit 16 | RDMBI HOA Incorporation Filing Date of April 15, 1980 |
| Exhibit 17 | Santa Cruz County Encroachment Permit issued May 27, 1980 |
| Exhibit 18 | Submission of Adjoining Landowners Agreement for Commission Approval dated May 27, 1980 |
| Exhibit 19 | Conditional Approval of Adjoining Landowners Agreement by CCC Executive Director dated June 6, 1980 |
| Exhibit 20 | RDMBI HOA Adjoining Landowners Agreement recorded December 2, 1980 |
| Exhibit 21 | RDMBI HOA Bylaws dated December 6, 1980 |
| Exhibit 22 | Letter from Geoffrey Van Loucks to Linda Locklin dated April 20, 1981 |
| Exhibit 23 | CDP P-80-87-A Amendment for rock stairways dated April 23, 1981 |
| Exhibit 24 | Plans submitted for rock stairways pursuant to CDP P-80-87-A |
| Exhibit 25 | Santa Cruz County Building Permit No. 69176 and approved plans dated November 2, 1981 |
| Exhibit 26 | 2016 photo of unpermitted fence at downcoast end of walkway |
| Exhibit 27 | Photos of “1982” inscription in unpermitted fence foundation at downcoast end of walkway |
| Exhibit 28 | 1989 Photographs showing gap in wall at upcoast entrance to walkway |
| Exhibit 29 | Geotechnical File for Santa Cruz County CDP 88-0599 (202 Beach Drive) |
| Exhibit 30 | Santa Cruz County CDP 88-0599 |
| Exhibit 31 | Santa Cruz County CDP 93-0258 |
| Exhibit 32 | Revision to Building Permit Plans (202 Beach Drive) |
| Exhibit 33 | Photos of 202 Beach Drive circa 1993 |
| Exhibit 34 | Emergency CDP 3-98-010-G |
| Exhibit 35 | Letter from Commission staff to RDMBI HOA dated December 23, 2002 |
| Exhibit 36 | Emergency CDP 3-02-109-G |
| Exhibit 37 | Letter from Commission staff to RDMBI HOA dated June 3, 2003 |
| Exhibit 38 | Cover letter from RDMBI HOA for Revisions to CDP Application No. 03-02-99 |
| Exhibit 39 | Letter from RDMBI HOA dated January 8, 2004 |
| Exhibit 40 | Letter from RDMBI HOA dated May 5, 2004 |
| Exhibit 41 | Santa Cruz County CDP Amendment No. 08-0367 (202 Beach Drive) |
| Exhibit 42 | Notices of Violation dated October 17 and 18, 2017 sent to 206-300 Beach Drive, and to 202 Beach Drive |
| Exhibit 43 | Letter from CCC dated November 8, 2017 |
| Exhibit 44 | Letter from Timothy Kassouni dated November 14, 2017 |
| Exhibit 45 | Letter from CCC dated November 16, 2017 |
| Exhibit 46 | Letter from CCC dated December 8, 2017 |

Exhibit 47 Letter from Timothy Kassouni dated December 22, 2017
Exhibit 48 Letter from CCC dated January 12, 2018
Exhibit 49 Letter from Tom Roth dated January 16, 2018
Exhibit 50 Letter from CCC dated January 18, 2018
Exhibit 51 Letter from CCC dated January 23, 2018
Exhibit 52 Vacation Rental Webpage screenshots dated January 28, 2018
Exhibit 53 Letter from Tom Roth dated February 16, 2018
Exhibit 54 Letter from CCC dated February 27, 2018
Exhibit 55 Letter from Timothy Kassouni dated March 2, 2018
Exhibit 56 Letter from CCC dated March 6, 2018
Exhibit 57 Letter from CCC dated December 13, 2018
Exhibit 58 Letter from John Erskine dated January 19, 2019
Exhibit 59 Letter from CCC dated January 24, 2019
Exhibit 60 Letter from CCC dated February 19, 2019
Exhibit 61 Letter from CCC dated December 11, 2020
Exhibit 62 Letter from John Erskine dated December 23, 2020
Exhibit 63 Letter from CCC dated March 12, 2021
Exhibit 64 Letter from CCC dated August 24, 2022
Exhibit 65 Letter from John Erskine dated September 2, 2022
Exhibit 66 Letter from CCC dated September 22, 2022
Exhibit 67 Letter from John Erskine dated October 13, 2022
Exhibit 68 Letter from CCC dated October 26, 2022
Exhibit 69 Letter from Patrick Richard dated December 22, 2022
Exhibit 70 Letter from CCC dated January 26, 2023
Exhibit 71 May 12, 2023 Notice of Intent to Issue Cease and Desist Orders and Administrative Penalties
Exhibit 72 Letter from CCC dated May 26, 2023
Exhibit 73 Letter from John Erskine dated May 26, 2023
Exhibit 74 Letter from CCC dated June 15, 2023
Exhibit 75 Letter from Patrick Richard dated June 20, 2023
Exhibit 76 Letter from CCC dated June 23, 2023
Exhibit 77 Email from Patrick Richard received June 23, 2023
Exhibit 78 Statement of Defense letter from John Erskine dated June 30, 2023
Exhibit 79 Letter from CCC dated July 14, 2023
Exhibit 80 Letter from CCC dated August 14, 2023
Exhibit 81 Letter from CCC dated August 30, 2023
Exhibit 82 Letter from CCC dated September 26, 2023
Exhibit 83 Vacation Rental screenshots dated September 27, 2023
Exhibit 84 Letter from Patrick Richard dated September 29, 2023
Exhibit 85 Letter from CCC dated October 6, 2023
Exhibit 86 Letter from Patrick Richard dated October 13, 2023
Exhibit 87 Letter from CCC dated October 16, 2023
Exhibit 88 Letter from John Erskine dated November 9, 2023
Exhibit 89 Letter from CCC dated November 13, 2023
Exhibit 90 Email from CCC dated November 17, 2023

| | |
|---|---|
| Exhibit 91 | Memorandum from CCC Ecologist Dr. Rachel Pausch dated November 22, 2023 |
| Exhibit 92 | February 1980 Photo showing no wall at downcoast entrance to walkway |
| Exhibit 93 | 1981 Plans showing gap in wall at upcoast entrance to walkway |
| Exhibit 94 | Letter from the Urban Wildlands Group, Inc. dated June 7, 2010 |
| Exhibit 95 | Email from John Erskine date November 20, 2023 |
| Exhibit 96 | Photographs dated October 24, 2023 |
| Exhibit 97 | Email from Commission staff dated November 22, 2023 |
| Exhibit 98 | Emergency CDP application from RDMBI HOA dated November 22, 2023 |
| Exhibit 99 | Survey of Rio Del Mar Beach Island dated November 7, 2016 |
| Exhibit 100 | Memorandum dated March 13, 2009 and associated files for County application 08-0367 (202 Beach Drive) |
| Exhibit 101 | Email re: County application no. 08-0367 dated March 4, 2009 (202 Beach Drive) |
| Exhibit 102 | Photographs of storm damage and unpermitted barriers dated January 17, 2023 |
| Exhibit 103 | Letter from CCC dated June 28, 2023 |
| Exhibit 104 | 202 Beach Drive vacation rental instructions regarding key and gate |
| Exhibit 105 | Letter from John Erskine dated November 29, 2023 |
| Exhibit 106 | Photographs of modified wall at 202 Beach Drive dated February 1, 2018 |
| Exhibit 107 | Letter from CCC dated December 14, 2018 |

# 1. MOTIONS AND RESOLUTION

**Motion 1: Cease and Desist Order**

I move that the Commission **issue** Cease and Desist Order No. CCC-23-CD-05 to Rio Del Mar Beach Island Homeowners Association, pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. 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 Approve the Cease and Desist Order:**

The Commission hereby issues Cease and Desist Order No. CCC-23-CD-05, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred without the requisite Coastal Development Permit, in violation of the Coastal Act and the Santa Cruz County Local Coastal Program; and the party to whom the order is issued has acted and failed to act in violation of CDP No. P-80-87, also 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 Under Section 30821:**

I move that the Commission **issue** Administrative Penalty No. CCC-23-AP-04 pursuant to Section 30821 of the Coastal Act to Rio Del Mar Beach Island Homeowners Association, pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

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

**Resolution to Issue Administrative Civil Penalty Action:**

The Commission hereby assesses an administrative civil penalty by adopting Administrative Penalty No. CCC-23-AP-04, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities and failures to act have occurred without a coastal development permit, or in violation of CDP No. P-80-87, and in violation of the Coastal Act, and that these activities or

failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

**Motion 3: Administrative Civil Penalty Action Under Section 30821.3:**

I move that the Commission **issue** Administrative Penalty No. CCC-23-AP3-01 pursuant to Section 30821.3 of the Coastal Act to Rio Del Mar Beach Island Homeowners Association, pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

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

**Resolution to Issue Administrative Civil Penalty Action:**

The Commission hereby assesses an administrative civil penalty by adopting Administrative Penalty No. CCC-23-AP3-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities and failures to act have occurred in violation of CDP No. P-80-87, and in violation of the Coastal Act, and that these activities or failures to act have violated the Coastal Act provisions for the protection of coastal resources.

**Motion 4: Cease and Desist Order**

I move that the Commission **issue** Cease and Desist Order No. CCC-23-CD-06 to Guarav Singh and Sonal Puri, pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. 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 Approve the Cease and Desist Order:**

The Commission hereby issues Cease and Desist Order No. CCC-23-CD-06, as set forth in Appendix B, and adopts the findings set forth below on the ground that development has occurred without the requisite Coastal Development Permit, and in violation of the Coastal Act and the Santa Cruz County Local Coastal Program, and that the requirements of the Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

**Motion 5: Administrative Civil Penalty Action Under Section 30821:**

I move that the Commission **issue** Administrative Penalty No. CCC-23-AP-05 to Gaurav Singh and Sonal Puri, pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

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

**Resolution to Issue Administrative Civil Penalty Action:**

The Commission hereby assesses an administrative civil penalty by adopting Administrative Penalty No. CCC-23-AP-05, as set forth in Appendix B, and adopts the findings set forth below on the grounds that activities and failures to act have occurred without a coastal development permit, and in violation of the Coastal Act, and that these activities or failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

## 2. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order pursuant to Section 30810 are outlined in the Commission's regulations at California Code of Regulations, Title 14 ("14 CCR") Section 13185. The requisite procedure for imposition of administrative penalties pursuant to Sections 30821 and 30821.3 of the Coastal Act (Pub. Resources Code, Div. 20) are governed by Sections 30821(b) and 30821.3(b), which specify that penalties shall be imposed by majority vote of all Commissioners present at a public hearing in compliance with the requirements of Section 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties may be the same as those used for a Cease and Desist Order hearing.

For a Cease and Desist Order hearing and an Administrative Penalty action, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where 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 the testimony and to any new evidence introduced.[3]

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 13185 and Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to 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.

Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Orders and impose Administrative Penalty actions, either in the form recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission, will result in the issuance of the Cease and Desist Orders and imposition of the Administrative Penalty actions.

## 3. FINDINGS FOR CEASE AND DESIST ORDERS NOS. CCC-23-CD-05, CCC-23-CD-06 ,AND ADMINISTRATIVE PENALTY ACTIONS NOS. CCC-23-AP-04, CCC-23-AP3-01, AND CCC-23-AP-05.[4]

### A. Property Location

The properties at issue are located inland of Seacliff State Beach in Aptos, Santa Cruz County (Exhibit 1). Seacliff State Beach is known for the cement ship just to the north of the houses at issue, which was docked at a pier there for nearly a century. It is also a popular destination for campers staying at the New Brighton state campground, which is located upcoast as well (Exhibit 2). Visitors to Seacliff State Beach typically enjoy swimming in the relatively protected and calm waters, sunbathing during the warm summers, and walking the long beachfront boardwalk that extends nearly two miles, from Las Olas Beach to the north to “Platform” Beach to the south. However, the public’s ability to walk on the beachfront walkway is currently interrupted in the middle for nearly a quarter of a mile by RDMBI HOA and Singh & Puri’s unpermitted development.

There are 29 properties adjacent to the public walkway that the 1980 CDP requires be preserved for public use, and of those, 27 were part of RDMBI HOA when it obtained

[3] Note that there are in use virtual hearing procedures, available at https://documents.coastal.ca.gov/assets/virtual-hearing/VIRTUAL-HEARING-PROCEDURES.pdf.

[4] These findings also hereby incorporate by reference the Summary at the beginning of the November 30, 2023 staff report (“STAFF REPORT: Recommendations and Findings for Cease and Desist Orders and Administrative Penalty Actions”) in which these findings appear, which section is entitled “Summary of Staff Recommendations and Findings.”

the 1980 CDP, extending from 206 Beach Drive to 300 Beach Drive (Exhibit 3). Upcoast of 206 Beach Drive is 204 Beach Drive, which is not part of the HOA and which is not part of this enforcement action. Upcoast of 204 Beach Drive is 202 Beach Drive, which is owned by Singh & Puri. Inland of the houses (from 202 to 300 Beach Drive) is a public sidewalk, and inland of that sidewalk is Beach Drive, which includes public parking spaces. All of the aforementioned development was built on the sand itself, and inland of Beach Drive is the coastal bluff.

## B. Permit and Violation History

In February of 1980, storm waves reached a concrete walkway in front of the houses along Beach Drive and undermined it, causing the seawardmost eight feet of the walkway to break apart and fall into the ocean (Exhibit 7). Photos from 1980 show that at the time, no fence existed to block the downcoast end of (or entry to) the walkway (Exhibit 92), and photos from 1965 (Exhibit 5) and 1979 (Exhibit 6), as well as plans from 1981 (Exhibit 93), show that there was a gap in the wall at the upcoast entrance to the walkway that people could and did walk through. Thus, the public could walk the entire nearly quarter mile length of the walkway at this time and enter the walkway at both the upcoast and downcoast entrances. Photos from February of 1980 (Exhibits 7 and 92) also show only one structure in the walkway that is more than eight feet seaward of the houses is still there today, the balcony at 274 Beach Drive. Although it did not have pilings holding it up in 1980, it does now (Exhibit 96), which extend into the walkway. The balcony at 276 Beach Drive also extends over eight feet into the walkway, but it has never had any pilings holding it up, so the public could pass under it. The balcony at 278 Beach Drive also extends over eight feet into the walkway (Exhibits 96 and 99), but that balcony has been entirely replaced since 1980 (Exhibits 7 and 96).

On March 13, 1980, RDMBI HOA, consisting of 27 of the neighboring beachfront property owners from 206 Beach Drive to 300 Beach Drive, applied for a CDP for a revetment immediately seaward of the walkway and the houses from 206 Beach Drive to 300 Beach Drive. On March 24, 1980, the Commission issued a staff report for the proposed CDP (Exhibit 10). The staff report stated that “the proposed sea wall is located on an existing 37’ wide public easement,” and that “historically, however, this easement has been partially covered by a 20-ft. concrete path (used by the residents as private decks).” The staff report further noted that “the County is exploring their interests in the new easement and staff will report any new information at the Commission meeting.”

The next day, on March 25, 1980, the Santa Cruz County Board of Supervisors authorized an encroachment permit to allow RDMBI HOA to construct the revetment on top of a portion of what was universally accepted as a 37-foot wide public easement (Exhibit 11). The County included in its encroachment permit for the revetment a condition that “the public shall have a right to use a walkway parallel to the ocean and Beach Drive along the whole length of the 37 foot easement which shall be preserved.” The County specified that RDMBI HOA shall preserve the “whole length” of the walkway, and therefore did not limit this requirement to the area adjacent to the RDMBI

HOA members' houses, of which 202 and 204 were not a part, and also did not limit it to the area adjacent the proposed seawall. Thus, RDMBI HOA was required to preserve public access to the "whole length" of the walkway, including the end of the walkway adjacent what is now 202 Beach Drive, as well as the part adjacent 204 Beach Drive.

Days later, at the March 31, 1980 CDP hearing, Commission staff told the Commissioners about the County's action and assured the Commissioners that because the revetment would be built on the portion of the area of the public easement on the sand seaward of the walkway, it would not "cover up any existing public accessways" (Exhibit 13).

Thus, the Commission approved CDP P-80-87 subject to several conditions (Exhibit 14), including Condition 1, which stated that "prior to commencement of construction, applicant shall submit evidence to the Executive Director that all local approvals have been obtained, e.g. Negative Declaration, grading permit, encroachment permit, and shall comply with all necessary conditions." Thus, the Commission authorized the revetment but required that RDMBI HOA comply with all necessary conditions of local approvals, specifically including the encroachment permit that required RDMBI HOA to preserve public access to the walkway.

Also during the hearing, the Commissioners discussed the requirements of Condition 9. Representatives of RDMBI HOA proposed to plant iceplant on the revetment to satisfy this requirement, and several Commissioners objected to this proposal. One of the Commissioners explained that "the applicant's representative mentioned in his presentation that they would be planting the dunes with iceplant, and I don't think that would meet the Condition 9, which calls for species native to the dunes of Monterey Bay." Commission staff agreed that the Commissioner's comment was "on target," and explained that "when we say 'native to the dunes of Monterey Bay,' we're meaning something else than the same old iceplant." The Chair of the Commission then confirmed that "iceplant is not the answer."

Therefore, CDP P-80-87 also included a number of conditions with regards to the revetment. Condition 5 requires RDMBI HOA to use only "clean rock" and not "concrete rubble, dirt, or other foreign materials." It also requires RDMBI HOA to "maintain the wall in such a way that assures the materials shall not encroach on State Park lands" (Seacliff State Beach). Condition 7 required that the revetment be covered with sand, and Condition 9 requires that "the covered seawall shall be vegetated (with plant species native to the dunes of Monterey Bay where feasible) and maintained in good condition thereafter." Condition 8 also requires RDMBI HOA to submit biennial monitoring reports to the Commission regarding the state of the revetment.

Further, Condition 2 of CDP P-80-87 required RDMBI HOA to record a deed restriction, to be approved by the Executive Director, that would require it to assume liability for coastal hazards, among other things. Condition 2 also required that the deed restriction bind the applicants and their successors in interest.

On April 15, 1980, RDMBI HOA filed articles of incorporation with the state of California (Exhibit 16). On May 27, 1980, the County issued the encroachment permit to RDMBI HOA that had been approved by the County Board of Supervisors with its condition that RDMBI HOA provide public access to the walkway (Exhibit 17). Also on May 27, 1980, RDMBI HOA submitted their Adjoining Landowners' Agreement (Exhibit 18), which was intended to ensure that RDMBI HOA assumed liability for coastal hazards pursuant to Condition 2, among other things, for the Executive Director's approval, and on June 6, 1980, the Executive Director wrote to RDMBI HOA to approve it so long as it was duly signed by all of the property owners and recorded (Exhibit 19). On December 2, 1980, the Adjoining Landowners' Agreement was recorded (Exhibit 20). On December 6, 1980, RDMBI HOA's first bylaws were executed, and stated that the revetment "shall be primarily for the benefit of the Benefited Parcels [206 Beach Drive to 300 Beach Drive], and secondarily for the benefit of the public" (Exhibit 21). The public benefit of the revetment was the preservation of public access to the walkway behind the revetment.

On April 1, 1981, RDMBI HOA applied for a CDP amendment for stairways within the revetment to "create access to the beach for the individual homeowners and renters." On April 16, 1981, Commission staff wrote to one of the RDMBI HOA members regarding an unpermitted stairway built into the revetment. That member of RDMBI HOA then wrote to Commission staff on April 20, 1981, and stated that the purpose of his stairway was to provide public access from Beach Drive, to the walkway, and to Seacliff State Beach, as was currently possible and as was required pursuant to the terms of CDP P-80-87 (Exhibit 22). On April 23, 1981, the Commission issued an immaterial amendment to RDMBI HOA to construct rock stairways within the revetment, and plans show that they would extend perpendicularly from the revetment (Exhibit 23).

Following the construction of RDMBI HOA's revetment pursuant to the issuance of CDP P-80-87, the then- owner of 204 Beach Drive, (who was the only property adjacent to the walkway at the time the CDP was issued that was not part of RDMBI HOA and therefore not an applicant for CDP P-80-87) built their own seawall. On November 2, 1981, the County of Santa Cruz issued a building permit for a cinder block wall and footings in front of 204 Beach Drive and the future site of 202 Beach Drive, which at the time was undeveloped (Exhibit 25). The plans for the building permit that were approved by the County show the seawall as it looks today (Exhibit 25), however, no CDPs were obtained from the Commission for the seawall. At the time, the County could not have issued a CDP either, as the Commission did not certify the County's Local Coastal Program until January 13, 1983. The approved plans show that at the time in 1981, there was a wall across the upcoast end of the walkway on the 202 Beach Drive parcel, but there was a large gap in the wall that was approximately 25 feet wide (Exhibits 25 and 93). Thus, throughout 1980 and 1981, and during some part of 1982, RDMBI HOA was in fact preserving public access to the walkway, and both ends of the walkway were open.

However, the Commission has no record of any specific compliance with Conditions 5, 8, or 9 of CDP P-80-87, relating to the revetment. Had RDMBI HOA submitted their biennial monitoring reports as required by Condition 8, Commission staff would have a

record of the condition of the revetment since the early 1980's. However, Commission staff has no evidence that any biennial reports were ever submitted as required by Condition 8. In addition, Commission staff cannot find any photographs or any other evidence that RDMBI HOA ever maintained native dune plants atop the revetment as required by Condition 9. What Commission staff does have evidence of is that RDMBI HOA did not build the straight and perpendicular rock accessways as authorized by CDP P-80-87-A, but did build many makeshift accessways out of concrete into the revetment (Exhibits 4 and 96). In addition, as is discussed in more detail below, RDMBI HOA asserted in 2003 that iceplant has existed there for many decades (Exhibit 38). This iceplant has persisted even though the Commissioners in the 1980 hearing explicitly discussed how the plants atop the revetment should be native plants, and specifically stated that the plants should *not* be iceplant, which is an invasive species that does not provide habitat for native species, but instead, crowds out native plants and habitat that otherwise might exist.

In 1982, a fence, gate, and concrete footing was installed that blocked public access to the downcoast entrance to the walkway. This unpermitted post Coastal Act construction is further evidenced by the inscription of "1982" into the concrete footing underlying the fence (Exhibit 27). However, the public was still able to access and walk along the rest of the walkway from the upcoast end.

On May 5, 1989, the County granted CDP 88-0599 for construction of the house at 202 Beach Drive (Exhibit 30). In Coastal Zone Permit Finding #4, the County explained that there were rights of way adjacent to the site, and in Variance Finding #1, the County explained that the parcel is surrounded on three sides by pedestrian and road easements, one of those being the public access easement on the seaward side of the house. The County also required that the house be elevated on pilings or columns so that the house itself was at least 17 feet above mean sea level so that it could withstand coastal flooding (Exhibit 29). The house was thus built according to these requirements and intended to withstand flooding (Exhibits 29 and 32).

A prior owner of 202 Beach Drive then applied to use the walkway for private parking and to add a solarium, among other proposed development to the upper part of the house. On June 18, 1993, the County approved CDP 93-0258 for the solarium, which included Coastal Zone Permit Finding #2, where the County preserved public access and found that while the applicant had been using the walkway as a private parking area, the County could not permit a lot line adjustment for the purpose of private parking because that area had been dedicated as a public pedestrian walkway, and private parking was inconsistent with that (Exhibit 31). Subsequent owners of 202 Beach Drive disregarded the County's denial of their request to use the area for public parking, and continued to park their cars in the walkway.

During the winter of 1997/1998, a major El Niño impacted the California coast. The resulting storms damaged RDMBI HOA's revetment. On February 9, 1998, the Commission issued Emergency CDP No. 3-98-010-G to RDMBI HOA to authorize repairs to the revetment (Exhibit 34). On June 24, 1998, the Commission approved

follow up Immaterial Amendment 3-98-059 for repair of the revetment from 204 to 300 Beach Drive. In 2002, the Commission issued Emergency CDP No. 3-02-109-G to add more boulders to the revetment (Exhibit 36). However, the revetment remained out of compliance with CDP P-80-87 because additional boulders were added with no CDP authorization, and no follow up CDP was obtained for Emergency CDP No. 3-02-109-G.[5]

Over the years since the 1980 CDP, several of the individual homeowners have built fences, balconies and other structures extending into the walkway without CDPs, as well as placed patio furniture and other semi-permanent items in the walkway. This meant that although the public could reach the walkway by walking under the 202 Beach Drive house at the upcoast end, most of the walkway has been covered with unpermitted development.

In addition, most of the members of RDMBI HOA have permanently stored waste containers in the Beach Drive sidewalk on the inland side of the houses (Exhibits 4 and 96), even though local ordinances here do not allow waste containers in the sidewalk other than immediately before and after waste pickup.[6] This has caused the sidewalk, which has been the only way for persons to walk along the coast in this area because of RDMBI HOA and Singh & Puri's closure of the walkway, to be inaccessible for persons using wheelchairs, walkers, or strollers. The waste containers fill up over half of the width of the sidewalk in many areas and make passage for those persons difficult or impossible. In addition, many of the members of RDMBI HOA have placed waste containers and cones in the street in order to block public parking in front of their houses.

Further, many of RDMBI HOA members' houses have large, unpermitted, high intensity lights that are located high on their houses and aimed directly at the beach and ocean (Exhibit 96). It is common for coastal property owners to install such unpermitted lights in order to have a view of the ocean at night. Yet, these high intensity floodlights have serious impacts to wildlife such as shorebirds, insects, and other animals that naturally live in the nearshore environment, and can greatly affect their biological functions, including their ability to use darkness to find prey and/or escape predation (Exhibit 94).

In sum, while RDMBI HOA initially complied with their CDP requirement to preserve public access, they soon allowed the walkway entrance on the downcoast end to be blocked. In addition, RDMBI HOA allowed patio furniture and structures extending from

[5] Please note that this failure to obtain a follow up CDP means that the boulders authorized by CDP 3-02-109-G remain unpermitted development.

[6] For example, see County code section 7.20.150, which states that "discarded materials containers shall not be placed on curbside or otherwise adjacent to streets or roadways to facilitate discarded materials collection more than 24 hours prior to pick-up time, and they shall be removed from the pick-up site within 24 hours after they have been emptied."

the homes to block public access. Further, they failed to maintain native dune plants in good condition atop the revetment, failed to not place foreign materials in the revetment, and failed to submit biennial reports regarding the state of the revetment. Meanwhile, prior (and current) owners of 202 Beach Drive maintained an unpermitted seawall.

## C. Enforcement History

RDMBI HOA's unpermitted work on the revetment following the El Niño winter of 1997/1998 brought RDMBI HOA's violations of CDP P-80-87 to the attention of Commission staff. In 2002, RDMBI HOA submitted a CDP application, however, it did not propose to resolve many of the violations of CDP P-80-87. Accordingly, on December 3, 2002, Commission staff opened violation case No. V-3-02-042 for RDMBI HOA's violations of their 1980 CDP and other unpermitted development. On December 23, 2002, Commission planning staff wrote to the representative for RDMBI HOA indicating that the CDP application was incomplete (Exhibit 35). In that letter, Commission staff notified RDMBI HOA of their lack of compliance with the 1980 CDP, including "the required dune camouflaging that appears not to have occurred, the required every two years reporting that appears not to have occurred, and the lack of public access walkway between the revetment and the homes." The HOA did not contest any of these accusations or object that Commission staff was misinterpreting the 1980 CDP. On June 3, 2003, Commission planning staff once again wrote to explain their hope that the violations could be resolved, to the extent feasible, through a CDP application (Exhibit 37).

On October 3, 2003, RDMBI HOA responded to Commission staff and argued that the County may not hold a public easement over the area of the walkway, but that regardless, "the walkway is open for public access across its entire length" (Exhibit 38). RDMBI HOA also acknowledged that there were unpermitted boulders on the revetment and that it was covered in invasive iceplant, but stated that the members of RDMBI HOA preferred the iceplant, and also stated that the iceplant had been there for decades, even though the Commissioners at the 1980 hearing specifically explained that the Condition 9 required maintenance of native dune plants, not iceplant. Throughout 2004, the Commission and representatives for RDMBI HOA exchanged more letters (Exhibits 39 and 40), during which RDMBI HOA's representatives still did not dispute that public access to the walkway was required. However, no resolution was reached and RDMBI HOA remained out of compliance with many of the CDP conditions of the 1980 CDP.

The focus by both the County and Commission on providing public access in this area has been consistent over the years. For example, in 2009, a prior owner of 202 Beach Drive applied to the County for a CDP for a gate and fence underneath their house to stop the public from walking underneath the house to reach the walkway (Exhibit 100). A member of the public commented in opposition, explaining that the proposed gate and fence would cut off the only upcoast public access to the walkway (Exhibit 101). On May 1, 2009, the County approved an amendment to CDP 88-069 to allow the prior owner to construct barriers underneath their house, on the condition that they remove the fence

and wall adjacent 202 Beach Drive to allow for public access to the walkway in that location instead (Exhibit 41). Although the CDP application was approved, the prior owner of 202 Beach Drive never exercised the permit and did not build the approved gate underneath their house or remove the fence and wall adjacent to the house. Thus, the public remained able to access the walkway as it had been for decades from the upcoast entrance. While the access remained open at the upcoast end, the public was not able to use the walkway as it was intended due to private patio furniture and other items filling most of the walkway and the fence blocking the downcoast entrance to the walkway.

In 2014, the Commission obtained the authority to seek administrative penalties for public access violations and began working on cases that the Commission had thus far been unable to resolve. In 2017, Commission district enforcement staff sent Notice of Violation letters to all of the houses adjacent to the walkway, which included all of the members of RDMBI HOA and the owner of 202 Beach Drive, informing them that "development placed within the County right-of-way located seaward of your property is unpermitted and, thus, constitutes a violation of the Coastal Act and the Santa Cruz County Local Coastal Program" (Exhibit 42). Commission district enforcement staff then reached out to the individual owners, as well as to RDMBI HOA, via many letters, phone calls, and site visits, and attempted to amicably resolve the violations, and many HOA members initially removed much of the unpermitted development blocking public access to the walkway, such as private patio furniture (Exhibits 43 to 56). Commission staff also worked with the County of Santa Cruz and RDMBI HOA in their attempts to coordinate an amicable resolution that would have involved the individual house owners paying encroachment fees to the County in order to legalize some of the patio furniture in the inland part of the walkway that did not impede public use.

However, walls at both ends of the walkway remained, and in November of 2018, talks broke down and RDMBI HOA sued the County, alleging that they owned the land underlying the walkway (Exhibit 57). In December of 2018, the County of Santa Cruz removed the walls at both ends of the walkway. The litigation between the HOA and the County regarding a dispute over property interests in the land under the accessway remains ongoing, but the question of ownership underlying the walkway is unrelated to the enforcement of the Commission's CDP conditions, which require public access to the walkway under the CDP requirements, regardless of ownership.

In 2022, these violation cases were elevated to the Commission's headquarters enforcement unit (Exhibit 68). Following a trial court judge's ruling for RDMBI HOA with regards to the title of the area underlying the walkway and a ruling on an injunction motion stating that the plaintiffs were "allowed to" replace the fencing at the two ends that the County had removed, on October 6, 2022, Commission staff explained that any barriers would require a CDP, notwithstanding the court's order. In January of 2023, large storms impacted the houses at issue. Shortly after, RDMBI HOA contacted the County and began working to obtain emergency permits for the installation of barriers. However, those efforts suddenly stopped, and on or about January 16, the HOA installed plastic barriers, fencing, and signs restricting public access without any Coastal

Act authorization. The signs stated, and continue to state, “AREA CLOSED BY ORDER OF SANTA CRUZ SUPERIOR COURT,” in spite of the fact that no order was ever issued by the Santa Cruz Superior Court requiring RDMBI HOA to take any action with regards to the walkway (Exhibit 102). On January 26, 2023, Commission headquarters enforcement staff wrote to RDMBI HOA to reiterate that the barriers constituted unpermitted development without any CDP (Exhibit 70).

On May 12, 2023, the Commission sent a Notice of Intent to Issue a Cease and Desist Order and Administrative Penalty to all members of RDMBI HOA, as well as to the owners of 204 and 202 Beach Drive (Exhibit 71). Commission headquarters enforcement staff then attempted to resolve this case amicably, just as Commission district enforcement staff had attempted to do since 2017, and just as Commission planning staff had attempted to do in 2002. On June 8, 2023, Commission staff spoke with the representatives of RDMBI HOA and Singh & Puri and explained that any amicable resolution would have to involve compliance with all conditions of CDP P-80-87, including its requirement for public access to the walkway. However, RDMBI HOA and Singh & Puri’s representatives refused to discuss this possibility (Exhibit 76).

Since the time of that call, Commission staff spent many months attempting to talk with the representatives for RBMBI HOA and Singh & Puri, even going so far as to send a settlement offer on July 14, 2023, offering to discuss ways in which public access could be provided that allowed for maximum privacy for the house owners and their guests (Exhibit 79). RDMBI HOA and Singh & Puri’s representatives, however, declined to discuss resolving compliance with Condition 1 of the CDP by providing public access to the walkway as required by the CDP, and continually rebuffed, delayed, or ignored Commission headquarters enforcement staff’s efforts to discuss potential amicable resolutions.

From June 8, 2023, to September 13, 2023, RDMBI HOA and Singh & Puri’s representatives repeatedly offered to talk only on publicly noticed Commission hearing days when staff was occupied, or did not reply to Commission staff’s emails in a timely manner, or did not reply to Commission staff’s emails at all – which caused a delay of more than three months – as is well documented in Commission staff’s letters from June 15, 2023 (Exhibit 74), June 23, 2023 (Exhibit 76), June 28, 2023 (Exhibit 103), July 14, 2023 (Exhibit 79), August 14, 2023 (Exhibit 80), and August 30, 2023 (Exhibit 81). All six of those letters, and many more emails sent to RDMBI HOA and Singh & Puri’s representatives, detailed Commission staff’s many unsuccessful attempts to engage in settlement discussions during that time.

Finally, two months after Commission enforcement staff sent that settlement offer, RDMBI HOA and Singh & Puri’s representatives talked with Commission staff on September 14, 2023, for the first time in over three months. However, the representatives once again refused to entertain any settlement options that included the provision of access as required by the 1980 CDP. Instead, they requested more time to answer the question of whether they would ever provide public access to the walkway, and stated that they would respond to Commission staff during a videoconference with

Commission staff that they agreed to participate in on September 26, 2023. However, the day before the scheduled videoconference, RDMBI HOA and Singh & Puri's representatives abruptly canceled the videoconference, saying that they had already planned to meet with a consultant that day instead (Exhibit 82).

Since then, RDMBI HOA and Singh & Puri's representatives have insisted that the walkway may be unsafe for public access, but have provided no evidence for this contention. To the contrary, RDMBI HOA's members and Singh & Puri continue to use their houses as vacation rentals and the paying guests continue to use the public walkway as private patios (Exhibit 83). Meanwhile, Singh & Puri have continued to maintain the unpermitted seawall that also blocks public access to the walkway, as well as maintain large plastic barriers underneath and adjacent their house that block public access. Further, vacation renters have been given keys to a gate maintained by RDMBI HOA and Singh & Puri so that they can use the walkway for themselves.

Finally, the day before Thanksgiving, the HOA also applied for an emergency permit to restack some of the rocks in the revetment (Exhibit 98), many of which remain unpermitted. That same day, Commission planning staff responded to RDMBI HOA to explain that based on their preliminary review, it appeared that the ECDP application lacked information demonstrating that there is an imminent threat to life or property, and requested that the applicant provide such information (Exhibit 97).

During this time, RDMBI HOA has also refused to comply with Conditions 5, 8, and 9 of CDP P-80-87. RDMBI HOA has not taken any actions to maintain native dune plants atop the revetment, and the revetment is currently covered by iceplant and other invasive plants (Exhibit 96), even though the Commissioners explicitly stated that iceplant was not acceptable at the 1980 hearing. In addition, there have also continued to be fencing, signs, and concrete atop the revetment, in violation of Condition 5. Moreover, RDMBI HOA has not submitted biennial monitoring reports as required by Condition 8, even though those reports could be submitted regardless of RDMBI HOA's compliance with the other conditions of CDP P-80-87.

The proposed Cease and Desist Order to RDMBI HOA requires RDMBI HOA to comply with Condition 1 and clear all obstructions to public access out of a 12 foot wide area just inland of the revetment.[7] The remaining 8 feet of the walkway, which contains many support beams for balconies (Exhibit 99), would not be required to be cleared under the terms of this Order. This means that the public would have access to a walkway that is 12 feet wide. RDMBI HOA would be required to preserve public access to this walkway, and to clear any new obstructions that are placed within it.

[7] It is not clear that this would constitute full compliance with the permit conditions, however, it would at least restore public access, and in order to be conservative, the Orders provide for this area to be cleared.

Nothing in the proposed Cease and Desist Order would authorize any unpermitted development in the remaining inlandmost 8 feet of the walkway, and conversely, nothing in the proposed order would stop the owners of houses for applying for CDPs or after-the-fact CDPs for development in the inlandmost 8 feet of the walkway.

The proposed order would also require RDMBI HOA to comply with Conditions 5, 8, and 9, by either submitting a CDP Amendment application to modify the revetment without lessening the intent of those conditions, as is required by Commission regulations, or by submitting a revetment condition compliance plan to restore the revetment to how it was approved in 1980. It is Commission staff's understanding that RDMBI HOA wants to modify the revetment to bolster its defenses, however, RDMBI HOA will be required to maintain native dune plants atop the revetment as required, regardless of whether they apply for a CDP Amendment or not.

The proposed Cease and Desist Order to Singh & Puri requires the removal of all unpermitted development. This means that Singh & Puri are required to remove the plastic barriers under the house, as well as the unpermitted seawall. However, should an entity managing the walkway, such as the County, make a request to preserve portions of this unpermitted development in order to provide public access to the walkway, the Executive Director may determine that such development not be removed by Singh & Puri under the terms of these Orders if it is necessary to provide public access.

## D. Basis for Issuing Cease and Desist Orders

### 1. Statutory Provision

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

> (a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, an 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. The order may also be issued to enforce any requirements of a certified local coastal program . . . under any of the following circumstances:
>
> (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.
>
> (2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

(3) The local government or port governing body is a party to the violation.

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

## 2. Factual Support for Statutory Elements

The properties at issue are located within unincorporated Santa Cruz County, within the Coastal Zone. The County has had a certified Local Coastal Program ("LCP") since 1983, so it has had permitting authority in this area landward of the mean high tide line since that date.

Section 30600(a) of the Coastal Act, as well as an analogous section of the County LCP at section 13.20.040, states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act, as well as by the County's LCP at section 13.20.040, in relevant part as follows:

**"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land…; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure…**

**As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.**

Thus, as a general matter, any activity that meets the above definition of development and that occurred in this area after 1976 without the requisite Coastal Act authorization constitutes a violation of the Coastal Act, in the form of "unpermitted development," and any such activity that occurred after 1983 is also a violation of the County's LCP of the same nature.

Unpermitted development, as defined above, has occurred on the properties at issue. For any such development that is a violation of the County's LCP, Commission staff requested the County of Santa Cruz to act to address those violations, and in an email dated March 27, 2023, as well as two additional emails dated April 26, 2023, the County stated to the Commission that the County would not be acting to enforce the LCP in this area at this time (although they reserved the right to do so in the future), conferring jurisdiction to do so on the Commission as per Section 30810(a)(2).). Thus, the

Commission has jurisdiction to pursue enforcement with respect to all of the unpermitted development at issue.

In addition, the Commission continues to have the independent authority to enforce its CDPs, and most of the actions and inactions at issue here involve violations of the 1980 CDP, which was issued by the Commission.

In this case, both grounds for issuance of a Cease and Desist Order have been met for RDMBI HOA, as it has performed and maintained unpermitted development, and it also has acted in a manner inconsistent with the Commission's 1980 CDP, as discussed further herein. Singh & Puri, on the other hand, are liable only for unpermitted development.

RDMBI HOA

Based on the definitions of development listed above, various types of development have been performed and maintained by RDMBI HOA either: (a) without the required CDP, making them violations of the LCP, as "unpermitted development" (designated in the list below as "UD"); (b) in violation of the terms of the Commission's 1980 CDP, with such permit violations also being subject to the Commission's enforcement jurisdiction (designated in the list below as "PV"); or both.[8] In addition, RDMBI HOA's failure to act, even if they did not constitute development, also constituted violations of the 1980 CDP (also demarcated "PV" below). Collectively, these violations include:

The placement and retention of items within the 37' Walk, and in violation of Condition 1 of the 1980 CDP (requiring the 37' Walk be preserved for public access), including:

1) walls, fences, restrictive signs, caution tape, and plastic barricades that physically block the public from accessing the 37' Walk where the north and south ends of the 37' Walk meet Beach Drive (UD, PV);

and

2) patio furniture, patio walls, planters, fences, balconies, and other private encroachments within the 37' Walk that obstruct and discourage public access;

Violations of Condition 5 of the 1980 CDP, including:

[8] If the litigation between the homeowners and the County results in a ruling that the RDMBI HOA owns the 37' Walk, then it would also be liable for any unpermitted development in that area as a result of its ownership of the land, independently of its direct involvement in the installation or maintenance of the materials, as was affirmed in the *Lent* decision. The RDMBI HOA has taken the position that it owns the 37' Walk as recently as November 21, 2023, in an emergency permit application.

3) The placement of concrete stairways, fences, signs, and other foreign materials on top of the revetment (UD, PV); and

4) failure to prevent the revetment from encroaching on state parks lands (UD, PV);

Violations of Condition 8 of the 1980 CDP (requiring reporting), including:

5) failure to submit monitoring reports every two years regarding the condition of the revetment (PV);

Violations of Condition 9 of the 1980 CDP (, including:

6) failure to maintain native sand dune plants in good condition covering the revetment (PV);

Other additional unpermitted development on or adjacent to the revetment, including:

7) multiple expansions of the revetment through placement of additional boulders (UD, PV);

8) construction of stairways in the revetment not according to the approved plans of CDP amendment P80-87-A (UD, PV); and

9) installation and use of high-intensity lights (UD);

Other additional unpermitted development obstructing public access to the sidewalk on Beach Drive, including:

10) indefinite placement of objects such as waste cans on the sidewalk (UD); and

11) placement of waste cans and cones in order to block public parking spaces on Beach Drive (UD).

Singh and Puri

Based on the definitions of development listed above, Singh and Puri have also performed and/or maintained development without the required CDP, in violation of the LCP, resulting in the presence of:

1) a vertical seawall extending in front of 202 Beach Drive and the 37’ Walk all the way to the Beach Drive sidewalk;

2) plastic barriers, fencing, and signs restricting access to the 37’ Walk extending from where the vertical seawall intersects with the public sidewalk, along Beach Drive to the

202 Beach Drive parcel, and continuing underneath the house and onto the 202 Beach Drive parcel; and

3) patio furniture, planters, and tile paving on the 37' Walk between the seawall and 202 Beach Drive.

**a. Inconsistencies with the Terms and Conditions of a Previously Issued Permit (CDP No. P-80-87)**

As indicated above with the PV notation, much of the unpermitted development listed above was also inconsistent with the conditions of CDP P-80-87. Moreover, as also noted above, the failure to undertake certain activities, constitutes violations of CDP P-80-87.

The unpermitted development obstructing public access to the walkway, including plastic barriers, walls, fences, patio furniture, signs, and other makeshift barriers was installed and is currently maintained in violation of Condition 1 of CDP P-80-87, which requires RDMBI HOA to preserve public access to the walkway.

The unpermitted addition of boulders, makeshift stairs, fencing, signs, caution tape, and other items on top of the revetment is in violation of Condition 5, which requires that the revetment be made only of clean rock and free of foreign materials.

RDMBI HOA's failure to maintain native plants atop the revetment in good condition is in violation of Condition 9, which requires that RDMBI HOA do so.

RDMBI HOA's failure to submit biennial monitoring reports on the state of the revetment is in violation of Condition of 8, which requires that RDMBI HOA do so.

These violations either have blocked and continue to block all public access to the walkway, or have caused and continue to cause significant impacts to the beach and shoreline habitat because of the absence of the required native plants atop the approximately 800 foot long revetment.

Thus, RDMBI HOA's violations of the conditions of CDP P-80-87 meet the requirements for Commission issuance of a Cease and Desist Order.

**b. The Violations at Issue are not Consistent with the Coastal Act's Access Provisions and Principles of Environmental Justice**

The following discussion does not address a required element of Section 30810 of the Coastal Act, and the findings in this section are therefore not required for the Commission to issue a cease and desist order. These findings are, however, important for context, and for understanding the totality of impacts associated with the violations and for analyzing factors discussed in the sections below, and for noting that this proposed resolution would benefit all public users and the impacts noted herein by restoring and improving public access to this area.

Public Resources Code 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, Section 30013 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.

Section 30107.3 defines Environmental Justice as:

> ... 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.

The public access violations here present an environmental injustice given that RDMBI HOA and Singh & Puri block the public from accessing the walkway, while the members of RDMBI HOA and Singh & Puri operate vacation rentals that charge for access to the walkway as part of private beachfront patios (Exhibits 52 and 83). In fact, Singh & Puri and RDMBI HOA also provide keys to a gate at the upcoast end of the walkway so that vacation renters can use the walkway themselves (Exhibit 104). Moreover, the public beach here and the walkway provide very popular low cost recreational opportunities, and the blocking off of this public access area for private use and rental customers only clearly adversely affects low income beach users.

People from environmental justice communities may not be able to afford to stay overnight at the vacation rentals at issue, as most exceed an average price of $500 in the off season, and are more expensive in the summer, but that does not mean that they should not be able to easily access the Commission-required walkway. It is an important precept of environmental justice in California that all of the public should enjoy access for recreation at coastal areas. Public access and coastal recreation continue to be threatened by unpermitted privatization of areas that are required to be public.

## E. Administrative Civil Penalty Action

## 1. Statutory Provision

The statutory authority for imposition of administrative penalties is provided for in the Coastal Act in Public Resources Code Sections 30821, 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.

In addition, sections 30820 and 30822 create potential civil liability for violations of the Coastal Act more generally. Section 30820(b) also provides for daily penalties, as follows:

> Any person who performs or undertakes development that is in violation of [the Coastal Act] or that is inconsistent with any coastal development permit previously issued by the commission . . . , when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable . . . . in an amount which shall not be less than one thousand dollars ($1,000), nor more than fifteen thousand dollars ($15,000), per day for each day in which the violation persists.

Through the proposed Cease and Desist Orders and Administrative Penalty actions, RDMBI HOA and Singh & Puri would be required to pay penalties based on the authorities as described above, and as detailed below.

## 2. Application to Facts

This case, as discussed above, includes violations of both the public access provisions of the Coastal Act, as well as other provisions of the Coastal Act. These provisions include, but are not necessarily limited to, Section 30210, which states in relevant part that “maximum access… and recreational opportunities shall be provided for all the people.”

As detailed above, the public has been and remains unable to use a Commission-required walkway due to obstructions placed and maintained by RDMBI HOA, as well as by Singh & Puri. RDMBI HOA’s recent placement of barriers, fencing, and signs restricting access across both ends of the walkway, as well as Singh & Puri’s placement of barriers underneath their house and maintenance of a seawall adjacent their house, all directly block public access to the walkway. Singh & Puri and RDMBI HOA provide keys to their vacation renters, so that their paying guests can exclusively use the walkway for themselves.

In addition, section 30240 of the Coastal Act states that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.”

In addition, RDMBI HOA has failed to maintain the revetment according to conditions 5, 8, and 9 of CDP P-80-87. RDMBI HOA has not maintained native dune plants in good condition atop the revetment, and instead has allowed iceplant to proliferate, in defiance of the Commissioner's explicit comments at the 1980 hearing that iceplant was not acceptable to satisfy the condition. The revetment is 800 feet long and at least 20 feet wide, and had native plants been maintained there, it would have provided habitat for native species, and would likely rise to the level of environmentally sensitive habitat area, as it would have been environmentally sensitive habitat area prior to the construction of the houses, and the area seaward of the revetment still remains environmentally sensitive habitat area (Exhibit 91).

Further, section 30251 states that "permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas."

The 1980 CDP conditions served to greatly protect and enhance visual resources by requiring the revetment to be covered with sand and vegetated with native dune plants. Had the 1980 CDP been complied with, the visual resources of the area would have improved, as the area had been covered by invasive iceplant before. In addition, it would have provided a much more natural visual experience than the current exposed and unnaturally stacked rock and invasive iceplant provides. Moreover, RDMBI HOA has steadily added more foreign materials to the revetment in violation of Condition 5, including concrete, fences, and signs, which have also impacted visual resources. Further, RDMBI HOA has failed to submit biennial monitoring reports on the state of the revetment as require by Condition 8.

The following pages set forth the basis for the issuance of these administrative penalty actions by providing substantial evidence that the unpermitted development conducted by RDMBI HOA and Singh & Puri and failure of the RDMBI HOA to comply with permit requirements meet all of the required grounds listed in Coastal Act Sections 30821 and 30821.3 for the Commission to issue Administrative Penalty Actions.

### a. Exceptions to Section 30821 Liability Do Not Apply

Under section 30821(h) of the Coastal Act, in certain circumstances, a party who is in violation of the public access provisions of the Coastal Act can nevertheless avoid imposition of administrative penalties if they correct the violation within 30 days of receiving written notification from the Commission regarding the violation. This safe harbor provision of Section 30821(h) is inapplicable to the matter at hand, for multiple reasons as outlined below. For 30821(h) to apply, there are three requirements, all of which must be satisfied: 1) the violation must be remedied consistent with the Coastal Act within 30 days of receiving notice, 2) the violation must not be a violation of a permit condition, and 3) the party must be able to remedy the violation without performing additional development that would require Coastal Act authorization.

The violations at hand variously fail to meet all three of the requirements for 30821(h) to apply. A Notice of Intent to Issue a Cease and Desist Order and Administrative Penalty was issued to RDMBI HOA's members, as well as Singh & Puri, on May 12, 2023, many months ago. Many of RDMBI HOA's violations are also permit condition violations, including violations of Conditions 1, 5, 8, and 9. In addition, the violations at issue here that were not permit violations, such as Singh & Puri's unpermitted plastic barriers underneath the house at 202 Beach Drive, or Singh & Puri's unpermitted seawall, were not resolved within 30 days and some, such as the unpermitted seawall maintained by Singh & Puri, would have required a permit, which are additional reasons the safe harbor provision does not apply here.[9]

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

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

Section 30821(f) is also inapplicable in this case. As discussed above and more fully below, the unpermitted restriction of public access here is significant because it blocks all public access to a required beachfront walkway that stretches for approximately a quarter mile, and has continued for decades despite Commission efforts to restore access. Public access is one of the cornerstone resources protected by the Coastal Act[10] and the Act provides various protections for access. Therefore, the violation cannot be considered to have resulted in "de minimis" harm to the public.

### b. Penalty Amount

Pursuant to Section 30821(a) of the Coastal Act, the Commission may impose penalties in "an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation." Section 30820(b) authorizes civil penalties that "shall not be less than one thousand dollars ($1,000), [and] not more than fifteen thousand dollars ($15,000), per day "for each day" in which the violation persists. Therefore, the Commission may authorize penalties in a range up to $11,250 per day for each violation. Section 30821(a) sets forth the time for which the penalty may be collected by specifying that the "administrative civil penalty may be assessed for each day the violation persists, but for no more than five years."

---

[9] Violators are not barred by the Coastal Act from applying for CDPs.

[10] *See, e.g., San Diego Unified Port Dist. v. CCC* (2018), 27 Cal.App.5th 1111, 1129 ("[A] core principle of the [Coastal] Act is to maximize public access to and along the coast").

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in the proposed Administrative Penalty calculation for the Commission's approval, and the Commission finds that the evidence supports staff's analysis. Under 30821(c) and 3082.3(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.

**RDMBI HOA – CCC-23-AP-04 (30821 Public Access Violations)**

**30820(c) (1):** Applying the factors in Section 30820(c)(1) (nature, circumstance and gravity of the violation) to RDMBI HOA, the violation at hand warrants the imposition of substantial civil liability; RDMBI HOA has undertaken many different violations for many years, and over a large area and long duration. RDMBI HOA failed to preserve public access to a beachfront walkway that extends approximately 300 yards for a very long period of time. This created a 300 yard gap in an otherwise popular beachfront walkway that extends for miles in this area. Therefore, the above factor weighs in favor of a high penalty.

**30820(C)(2):** With regards to 30820(c)(2) (whether the violation is susceptible of restoration), the violation can be remedied going forward and compliance with this Cease and Desist Order will ensure that adequate public access is maintained at this location. For example, under the proposed Cease and Desist Order, RDMBI HOA will be required to clear the walkway of obstructions, which will allow the public to use it again. However, there is a long period of public access losses that can never be recovered, and many people have been denied public access to the coast that they

cannot now regain, and therefore, a moderate to high penalty is warranted under this subsection.

**Section 30820(c)(3)** requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by this violation, public access to a beachfront walkway, is an oft-threatened and important resource across the State. Ensuring public access to all of California's coast is promised to the people by the State Constitution and is essential for implementing the Coastal Act, and this violation directly blocked many members of the public from enjoying the coast in this area. In addition, this is an area that is very popular and where, had the public been able to access it easier, many people might have enjoyed the beachfront walkway here. Further, the walkway at issue would allow for persons using wheelchairs or walkers to easily enjoy the coast. However, the lack of this walkway has pushed the public to the sidewalk inland of the vacation rentals, where RDMBI HOA's members have permanently stored waste bins that take up much of the sidewalk and therefore block public access for persons with disabilities (Exhibits 96 and 101). Therefore, the walkway here, including its accessibility for persons with disabilities, is a relatively sensitive resource in terms of access, and thus, a moderate to high penalty is warranted under this factor.

**Section 30820(c)(4)** takes into account the costs to the state of bringing this action. In this case, a high amount of Commission staff time was spent to bring this matter to a resolution relative to the Commission's other cases that are elevated to its Headquarters Enforcement Unit. Commission planning staff attempted to resolve the violations amicably as far back as 2002, and Commission district enforcement then tried to resolve the violations amicably beginning in 2017, and this case was elevated to the Headquarters Enforcement Unit in 2022. The Commission's headquarters enforcement and legal staff also spent many months attempting to resolve this matter amicably. During this time, Commission staff were forced to respond to many letters from RDMBI HOA's representatives, who demanded that Commission staff respond to their many arguments, which took up much Commission staff time. Also, since this case was not able to be resolved amicably, Commission staff dedicated a large amount of time to respond in detail to the Statement of Defense that was submitted on behalf of the HOA for this matter. Therefore, this factor warrants a high penalty.

Finally, **Section 30820(c)(5)** requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has 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. RDMBI HOA is required to preserve the walkway for the public and has instead allowed its members to reserve areas of the walkway for private patios that are exclusively accessible to paying guests of vacation rentals, which have generated significant economic profits for RDMBI HOA's members. In addition, RDMBI HOA has facilitated the provision of keys to the vacation rental guests so that they can use a private gate at the upcoast end of the walkway for themselves, effectively privatizing the

walkway for economic profit. These profits are not insubstantial either, as most of the members of RDMBI HOA rent their houses as vacation rentals for much of the year, and the average rate for the off season appears to be around $500 per night, with the rates higher during summer and holidays. The online advertisements for the vacation rentals all advertise the unpermitted patio furniture on the walkway as being for use by the vacation rental guests, and this privatization is a significant selling point in their pursuit of economic profit (Exhibits 52, 83, and 104). Thus, this weighs toward a high penalty.

Aggregating these factors, Commission staff concludes that a high penalty is justified here for RDMBI HOA for their public access violations. RDMBI HOA has blocked both the upcoast and downcoast entrance to the walkway, expect for the private guests of their vacation rentals, and has placed private patio furniture and other obstructions within the walkway. Imposing 100% of the penalty for the time from January 16, 2023 when the barriers were placed, until December 12, 2023, would result in a maximum penalty of $3,712,500. Imposing 75% of the maximum penalty for January 16, 2023 to December 12, 2023, for one public access violation, would result in a penalty of $2,785,375.

In an effort to be conservative in applying the statutory elements, the Commission adopts staff's recommendation to order RDMBI HOA to pay less than 100% of the maximum penalty, and instead pay $2,785,375 to the VRA for public access violations.

**RDMBI HOA – CCC-23-AP3-01 (30821.3 Non-Public Access Violations)**

**30820(c) (1):** Applying the factors in Section 30820(c)(1) (nature, circumstance and gravity of the violation) to RDMBI HOA, the violation at hand of Conditions 5, 8, and 9 warrants the imposition of substantial civil liability; RDMBI HOA has undertaken many different violations for many years, and over an area 800 feet long and at least 20 feet wide. RDMBI HOA failed to maintain native dune plants in good condition in this area, failed to maintain the revetment free of foreign materials such as concrete, and failed to submit biennial monitoring reports. This created a loss of potential habitat area for many years (Exhibit 91), and impacted visual resources, as the view of the natural coast was marred by rocks and unpermitted concrete. Therefore, the above factor weighs in favor of a moderate penalty.

**30820(C)(2):** With regards to 30820(c)(2) (whether the violation is susceptible of restoration), the violation can be remedied going forward and compliance with this Cease and Desist Order will ensure the revetement is maintained free of foreign materials, and with native dune plants, and that RDMBI HOA will submit biennial monitoring reports. However, it will take RDMBI HOA time to remove the unpermitted material from the revetment and plant native dune plants there, and begin to submit monitoring reports. In addition, it will take time for any potential habitat to take root and be beneficial for visual resources and native plants. Therefore, a moderate to high penalty is warranted under this subsection.

**Section 30820(c)(3)** requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by this violation, the nearshore environment, is a sensitive resource that is often impacted by human development. Dunes are rare in the Aptos area and have been long impacted in northern Monterey Bay, and therefore, a moderate to high penalty is warranted.

**Section 30820(c)(4)** takes into account the costs to the state of bringing this action. In this case, a high amount of Commission staff time was spent to bring this matter to a resolution relative to the Commission's other cases that are elevated to its Headquarters Enforcement Unit. Commission planning staff attempted to resolve the violations amicably as far back as 2002, and Commission district enforcement then tried to resolve the violations amicably beginning in 2017, and this case was elevated to the Headquarters Enforcement Unit in 2022. The Commission's headquarters enforcement and legal staff also spent many months attempting to resolve this matter amicably. In addition, more staff time will be required to ensure that all plans and/or CDP Amendments, in addition to the required biennial monitoring reports, are adequate to maintain the revetement pursuant to the conditions and to maintain native plants in good condition atop it. Therefore, this factor warrants a high penalty.

Finally, **Section 30820(c)(5)** requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has 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. RDMBI HOA built unpermitted and crooked concrete stairways into the revetment even though CDP 80-87-A only allowed for rock stairways in straight lines, and even though the revetment was required to be covered with dune plants pursuant to Condition 9 and free of concrete and other foreign materials pursuant to Condition 5. RDMBI HOA allows vacation rental guests to use these private stairways to the sand, which are adorned with unpermitted signs restricting public access, and so has profited from them (Exhibits 52, 83, and 96). Thus, this weighs toward a moderate to high penalty.

Aggregating these factors, Commission staff concludes that a moderate to high penalty is justified here for RDMBI HOA for their CDP violations relating to the revetment. Imposing 100% of the penalty for the time from January 1, 2022 when section 30821.3 took effect, until December 12, 2023, would result in a maximum penalty of $7,987,500. Imposing 25% of the maximum penalty for the same dates, for one public access violation, would result in a penalty of $1,996,875.

In an effort to be conservative in applying the statutory elements, the Commission adopts staff's recommendation to order RDMBI HOA to pay less than 100% of the maximum penalty for their violations of the CDP conditions related to the revetment, and instead pay $1,996,875 for those violations.

In summary, the Commission is imposing significant penalties to be paid by RDMBI HOA, in compliance with the criteria set forth in the statute.

**Singh & Puri – CCC-23-AP-05 (30821 Public Access Violations)**

**30820(c) (1):** Applying the factors in Section 30820(c)(1) (nature, circumstance and gravity of the violation) to Singh & Puri, the violation at hand warrants the imposition of substantial civil liability; Singh & Puri have maintained multiple violations. Singh & Puri have maintained an unpermitted seawall since they bought the property in 2020. In addition, since January of 2023 and in coordination with RDMBI HOA, Singh & Puri have placed plastic barriers, fencing, and signs restricting access both adjacent to and underneath the house at 202 Beach Drive. The upcoast entrance to the walkway is an important resource, and Singh & Puri have blocked public access to it with their barriers and seawall. Therefore, the above factor weighs in favor of a high penalty.

**30820(C)(2):** With regards to 30820(c)(2) (whether the violation is susceptible of restoration), the violation can be remedied going forward and compliance with this Cease and Desist Order will ensure that adequate public access is maintained at this location. For example, under the proposed Cease and Desist Order, Singh & Puri will be required to remove the seawall and the other unpermitted barriers that block public access to the walkway. However, there are years of public access losses that can never be recovered, and many people have been denied public access to the upcoast entrance to the walkway that they cannot now regain, and therefore, a moderate penalty is warranted under this subsection.

**Section 30820(c)(3)** requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by this violation, public access to a beachfront walkway, is an important resource, especially given that there is no other way for disabled persons to enjoy a coastal walkway here, given that RDMBI HOA's members have blocked disabled access to the inland sidewalk with their waste bins. Ensuring public access to all of California's coast is promised to the people by the State Constitution and is essential for implementing the Coastal Act, and this violation directly blocked many members of the public from enjoying the walkway via the upcoast entrance. In addition, this is an area that is very popular and where, had the public been able to access it easier, many people would have enjoyed the beachfront walkway here. Therefore, the walkway here, including its accessibility for persons with disabilities, is a relatively sensitive resource in terms of access, and thus, a moderate to high penalty is warranted under this factor.

**Section 30820(c)(4)** takes into account the costs to the state of bringing this action. In this case, a moderate amount of Commission staff time was spent to bring this matter to a resolution relative to the Commission's other cases that are elevated to its Headquarters Enforcement Unit. Commission district enforcement attempted to resolve the violations at 202 Beach Drive dating back to 2017, and the Commission's Headquarters Enforcement Unit attempted to resolve this matter amicably this year.

During this time, Commission staff were forced to respond to dozens of letters from RDMBI HOA and Singh & Puri's shared representatives, who demanded that Commission staff respond to their many arguments, which took up much Commission staff time. Also, since this case was not able to be resolved amicably, Commission staff dedicated a large amount of time to respond in detail to the Statement of Defense that was submitted on behalf of Singh & Puri for this matter. Therefore, this factor warrants a moderate penalty.

Finally, **Section 30820(c)(5)** requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has 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. They did not place the original violations on their property and did not own the property during the entire span of the violations, but they have maintained the violations since they purchased the property, and added to them even after notices from the CCC regarding the Coastal Act requirements. Singh & Puri operate their house as a vacation rental and have used the plastic barriers and seawall to block public access to the walkway so that Singh & Puri's paying guests could exclusively use the walkway adjacent to 202 Beach Drive. In addition, 202 Beach Drive has advertised the provision of keys to the vacation rental guests so that they can use a private gate at the upcoast end of the walkway at 202 Beach Drive for themselves, effectively privatizing the walkway for economic profit (Exhibits 52, 83, and 104). The house at 202 Beach Drive appears to be available as a vacation rental for much of the year, and the average rate for the off season appears to exceed $500 per night, with the rates higher during summer and holidays. Thus, this weighs toward a moderate penalty.

Aggregating these factors, Commission staff concludes that a moderate penalty is justified here for Singh & Puri. They have maintained and benefited from the unpermitted seawall since they bought the house over three years ago in 2020, and they have maintained the unpermitted barriers, fencing, and signs under and adjacent 202 Beach Drive since January of 2023.

Imposing 100% of the penalty for 3 years, for only the seawall violation, would result in a penalty of over $12 million. Imposing 50% of the maximum penalty for 3 years, for one public access violation, would result in a penalty of over $6 million. In addition, there are multiple discrete public access violations that have occurred here.

Following the storms of January 2023, Singh & Puri have also taken the separate action of allowing plastic barriers, fencing, and signs restricting access at the upcoast end of the walkway, but have provided keys to vacation renters so their paying guests can use the walkway (Exhibit 104). Commission staff sent Singh & Puri's attorneys a letter on January 26, 2023, which notified Singh and Puri that the barriers were unpermitted development and were accruing penalties under the Coastal Act. Imposing a penalty for just one of the violations, that ran from January 26, 2022, to December 12, 2023, would

impose a maximum penalty of well over $7,706,250. Imposing 25% of the maximum penalty for this one violation would be $1,926,562.50.

Thus, the Commission could issue penalties here of nearly $8 million for 100% of the maximum penalties for just one violation calculated from the dates above, or 25% of the maximum penalties for nearly $2 million for just one violation.

Staff recommends that the Commission exercise its prosecutorial discretion and adopt staff's recommendation to order Singh & Puri to pay less than the maximum, and instead pay $500,000 to the VRA. In summary, the proposed resolution represents a significant penalty to be paid by Singh & Puri, in compliance with the criteria set forth in the statute.

In conclusion, the Commission issues the Administrative Penalty Actions CCC-23-AP-04, CCC-23-AP3-01, and CCC-23-AP-05, attached as **Appendices A and B** of this staff report.

**Potential for Property Lien**

Under Section 30821(e) the Coastal Act states:

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

Therefore, in this case, if the Commission imposes administrative penalties and RDMBI HOA and/or Singh & Puri fail to pay their respective penalties, the Commission authorizes the Executive Director to record a lien on 202 Beach Drive or the parcel upon which the walkway is located, if it is indeed owned by the HOA, as appropriate, in the amount of the penalties imposed by the Commission.

## F. Defenses Alleged and Response Thereto

On May 12, 2023, Commission Executive Director Kate Huckelbridge sent a letter to the Rio Del Mar Beach Island Homeowners Association (the "HOA") and the individual owners of the lots within the area, with the subject line "Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Penalty Proceedings" (the "Notice of Intent" or the "NOI"). The Notice of Intent explained that the addressees had a right to respond to the allegations therein by completing a statement of defense form, and a blank form was included with the NOI. Seven weeks later, on June 30, 2023, John Erskine of Nossaman LLP submitted a letter on behalf of the HOA and "24 of 27 individual Beach Drive Property Owners"[11] that he characterized

[11] As of the drafting of this staff report, neither Mr. Erskine nor anyone else representing Nossaman has ever provided a full list of HOA members (despite requests from Commission staff) or indicated that the

as their "Statement of Defense ('SOD') in response to the [NoI]" and as being submitted "in lieu of the form provided with the NOI." This section summarizes and responds to the arguments raised in that SOD.

**1. Legal Arguments**

After a lengthy "Factual Background" section, the SOD submitted on behalf of the HOA has a section specifically denominated "Legal Arguments," beginning on page 15. These responses will therefore focus on the arguments made in the five subsections in that section, and provide responses to each.

**(a) Adequacy of Notice**

This first subsection (entitled "Inadequate Notice") makes two points asserting that the NOI did not provide adequate notice: (1) the NOI "does not identify purported violations specific to each property. Instead, it is addressed to owners of 28 distinct and separate properties"[12]; and (2) Commission representatives have been unable to confirm whether any individual item constitutes a violation. SOD at 15.

**(i) *Property-Specific Notice***

With respect to the first argument, the HOA states that "Coastal Act section 30812 and basic requirements of fairness and due process compel that the Commission's enforcement be supported by individual and specific notice identifying the alleged unpermitted development by property address." *Id.* The HOA cites no other authority for this proposition. The Commission does not dispute that it has noticing obligations under various laws, including the Coastal Act, the Bagley-Keene Open Meeting Act (the "Bagley-Keene Act"), and the United State Constitution; however, the SOD provides no explanation for how its cursory reference to one section of the Coastal Act, which is not even at issue here,[13] and to "basic requirements of fairness and due process" compel the specific sort of notice demanded, nor that the notice given was at all insufficient.[14]

To the contrary, the actual legal requirements governing notice do not require the degree of specificity the HOA demands. Section 13181(a) of the Commission's

---

firm now represents all of the property owners in the neighborhood. As a result, subsequent letters from Staff have been sent separately to the three individual property owners not represented by Nossaman.

[12] There are 29 properties adjacent the walkway, however, it appears that some individuals may control or own multiple properties.

[13] The section referenced (Coastal Act section 30812) is not at issue in this proceeding.

[14] A version of this defense is evident at the beginning of the SOD as well, in the statement that "the responding homeowners are not required to address the scattershot, non-specific letter sent to over two dozen addresses in the May 12, 2023 NOI. . . . [CCC] declined to provide specific notice of details of asserted violations for each address." SOD at 1. However, that statement does not clearly indicate how it constitutes a defense to the proposed order, instead merely making the conclusory statement that the homeowners "are not required to address" the NOI.

regulations states that the Notice of Intent issued to indicate the Executive Director's intent to commence cease and desist order proceedings must include "the information specified in sections 13187(a)(4), (5), and (6) together with an explanation of the basis of the executive director's belief that the specified activity, threat, or failure to act meets the criteria of section 30810(a)." The information specified in sections 13187(a)(4)-(6) is:

"(4) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

"(5) identification of the property where the activity has been undertaken or may be undertaken;

"(6) a description of the activity;"

The NOI listed the names of the HOA, it identified the property at issue, and it described the activities at issue (Exhibit 71). The relevant regulation required nothing more. Despite this the NOI here provided much more information than legally required, yet they erroneously claim it didn't meet the legal requirements. Finally, to the extent the HOA intended to cite section 30821, rather than 30812, that section merely states that penalties can be imposed "in a duly noticed public hearing." The hearing on this matter was duly noticed in accordance with the Bagley-Keene Act.

In any event, the NOI actually provides a wealth of specific details, including describing the many types of violations at issue and explaining how each one is either a permit violation, unpermitted development, or both. Because it addresses literally dozens of separate properties and violations, extending over a large area, it groups many similar types of violations together and characterizes them based on their common factors; however, this does not render the NOI inadequate to put the recipients on notice of the alleged violations. Pages 11 and 12 of the Notice of Intent provide a detailed bullet list of the development at issue. We adopted this approach, in part, to facilitate an efficient response and hopefully settlement, and to indicate where there were and were not joint issues, in order to be helpful.

The fact that the Notice of Intent was sent to more than two dozen addresses has no relevance to the question of whether the NOI provided sufficient notice of the alleged violations, which it clearly did here. Again, each recipient received the detailed bullet list of types of the development that, if present on their property or placed on the adjacent property to serve their property, constituted an alleged violation of the Coastal Act. In addition, the NOI also begins by referring back to a series of letters that had been sent to individual homeowners since 2017. Thus, the homeowners were on notice of the specific allegations since at least 2017 and the NOIs specifically referred to the prior notices. And notwithstanding all of that, when Nossaman raised this issue in June, after receiving the NOI, Commission staff responded by offering to provide whatever additional information they needed and offering to review any additional information they could provide. See the June 23, 2023 letter at page 4, included as Exhibit 76.

Finally, this order is not directed at individual homeowners, but at the HOA, as the permittee of the 1980 CDP, and is focused primarily on the HOA's violations of that

CDP on the 37' Walk, all of which is a single lot. Thus, the order does not actually apply to dozens of different addresses, so this argument is not only legally incorrect, but it is also inapplicable here.

**(ii) *Confirmation of Specific Violations***

In support of the second argument, the HOA identifies only one example to support the contention that Commission representatives were unable to confirm whether any individual item constitutes a violation. The SOD states "we specifically offered as an example the permitted exterior stairs at 254 Beach Drive —the same stairs identified in 2017 by Mr. Veesart to Paula Pyers,"[15] stating that "the Commission representatives could not even confirm—on June 8, 2023—whether the Commission contends that the permitted stairs violate the Coastal Act."

It is unclear to us why the HOA has focused on this particular stairway, but in their Statement of Defense, they did provide a one-page copy of a County-issued *building* permit for 264 Beach Drive that includes a stairway. The building permit does not state anywhere on it that it is a CDP or CDP exemption. Although we are well aware of their arguments that this document is somehow a CDP or CDP exemption, it is not. Moreover, our Commission staff have not received any Notice of Final Action for a CDP or CDP exemption from the County for the stairway. Therefore, we do not understand why they believe this stairway to be authorized under the Coastal Act via this local building permit.

More generally, Nossaman has argued that the NOI was unclear as to whether it was alleging that any given structure lacked the necessary permits, but, as noted above, the NOI clearly alleges that all of the structures save one did lack the necessary permits. See NOI at 11, n.5, acknowledging the one exception where Coastal Act authorization had been secured, but emphasizing that it was the "one limited exception." As noted above, the NOI also begins by referring back to a series of letters that had been sent to individual homeowners since 2017. Thus, the homeowners were on notice of the specific allegations since at least 2017 (Exhibit 42). And as the NOI explains in that footnote on page 11, there had been an extensive exchange of correspondence between Nossaman and Commission staff about just this issue over the intervening years, with Nossaman arguing that it had provided evidence of permits, and Commission staff repeatedly pointing out that the permits Nossaman had provided were not CDPs and did not provide the requisite Coastal Act authorization for the development. See, e.g., the letters of August 24, 2022 (Exhibit 64 at 5-6 and in footnote 12) and September 22, 2022 (Exhibit 66 at 2-3).

**(iii) *Alleged Delegation of Authority and Consequent Lack of Jurisdiction***

[15] Ms. Pyers's address is 264, not 254, and it was the stairs at 264 that were discussed on June 8, so we assume the reference to 254 is a typo.

The HOA argues that the Commission delegated its enforcement authority to the County, thus somehow depriving the Commission of jurisdiction to issue a cease and desist order. This argument is wrong for myriad reasons. First, there is no process in the Coastal Act by which the Commission can delegate its cease and desist order authority to a local government, much less to do so in a manner that irrevocably waives the Commission's ability to take enforcement action in the future. The procedure the HOA cites as the basis for its delegation argument is not actually a delegation of authority, and is unidirectional, working in the opposite direction as the SOD alleges (i.e., it is a process by which local governments can ask the Commission to take enforcement action, not the other way around). Second, this entire line of argument is based on the second sentence of Sections 30809 and 30810, and as such, even if this argument were valid, which it is not, it would apply only to cease and desist order authority and only for the enforcement of an LCP, not enforcement of a permit. Third, even if there were a legal process of the sort alleged (which there is not), the factual record demonstrates that (a) Commission staff never intended to yield to the County to enforce the Coastal Act in response to the violations at issue here, much less to do so in a manner that would surrender the Commission's authority, and (b) the conduct of all parties involved demonstrated that none of them understood the Commission to be deferring to the County. In fact, the factual record indicates that the HOA was well aware of Commission staff's continued intent to pursue enforcement over these matters. All of this is laid out in more detail in two letters from Commission Assistant General Counsel Alex Helperin – one dated October 16, 2023, and addressed to Patrick Richard, and one dated November 13, 2023, and addressed to John Erskine – both of which are attached as Exhibits 87 and 89, and the arguments from which are hereby incorporated into these findings by reference.

**(iv) *Permit Condition Language and Findings***

The HOA alleges that (1) "there is no language in the permit imposing a condition of public access" and (2) the findings adopted by the Commission in connection with the 1980 CDP indicate that there was no need for such a condition. As is explained in the body of the Commission's findings at Section III.B, both claims are false. Because this issue is thoroughly addressed in the body of the findings, we will not repeat all of that discussion here but incorporate it herein and also briefly summarize the key points here.

With respect to condition language, there is nothing remotely unusual or improper about a legal document incorporating the terms of another document by reference, which is what Condition 1 of the 1980 CDP did. This is a common practice to incorporate requirements imposed by local governments and often serves to help avoid confusion and document agreement amongst the regulators on certain conditions. Here, Condition 1 explicitly required the permittee to "comply with all necessary conditions" of "all local approvals." Moreover, testimony by Commission staff at the hearing explained that the condition did so specifically for the purpose of making sure that the access required by the County's encroachment permit would be an enforceable element of the Commission's CDP.

With respect to the 1980 CDP staff report findings (Exhibit 10), the HOA provides a misleading account by only quoting a portion of the relevant findings. It is true that the

"Public Access" section of the findings begins with an umbrella statement that the project would not affect public access. However, after that initial sentence, the findings explain that conclusion by discussing three different types of access. The first is about impacts to access that can result from direct coverage of sandy beach, noting that the project would "leav[e] the beach normally used by the public free of impediments." The second is about "lateral access *to the beach*" (emphasis added), referring to possible impediments to *reaching* the beach from upcoast or downcoast. The findings note that the project would not block that.

It is the third type of access that deals with access to the Walk, which the findings address specifically because, as they explain, that Walk was understood to be a "public easement" that would be partially covered by the revetment project, raising a potential public access issue. Those findings go on to explain, however, that a 20-foot-wide strip of that 37-foot-wide Walk has been paved to make it useable for public access, and this project will leave that entire 20-foot-wide strip available, so it will not have a public access impact. These findings are fully consistent with the Commission's recognition that that portion of the Walk must remain available for public access. It was specifically *because* of the requirement that the public access walkway be preserved for public use that the Commission findings said that the project would not affect public access here.

The HOA goes on to argue that these findings preclude the sort of finding that would be necessary to satisfy the test established by the U.S. Supreme Court in the *Nollan* and *Dolan* cases to justify an exaction (the "*Nollan*/*Dolan* test"), but there are three problems with this. First, it is based on a misunderstanding of the Commission's findings, as explained above. Second, an exaction test would not be relevant to what the Commission was doing because it was merely requiring that access to an already existing easement be preserved, which is not an exaction. And third, even if the Commission's condition could be characterized as an exaction and the findings were not sufficient to satisfy the *Nollan*/*Dolan* test, neither of which is the case, the permit was issued prior to those decisions, and the post-*Nollan*/*Dolan* case law has consistently held/made it clear that once a permittee accepts a permit condition that was imposed prior to the development of the test in those cases, the condition becomes and remains enforceable and cannot be challenged based on those subsequent decisions. *See, e.g., Serra Canyon Company LTD v. California Coastal Commission* (2004) 120 Cal.App.4th 663, 666-668. Stating the obvious, the permit here was sought by the HOA, agreed to by the HOA and not timely challenged by the HOA and is therefore fully enforceable.

This section of the SOD also makes a brief reference to the lack of an offer to dedicate an easement, and to the idea that the Commission acknowledged that the paved walkway consisted of "private patios." As for the lack of an offer to dedicate, this appears to be a reference to an argument Nossaman has made repeatedly, that the only way that the Commission can provide public access is by requiring a permittee to record an offer to dedicate a public access easement, and because the Commission did not require such an offer to dedicate here, the Commission could not have required

public access to the walkway. This is simply false.[16] The Commission has required public access through many mechanisms, including requirements for deed restrictions (as opposed to easements) and direct requirements that access be provided, among others. For example, at the Commission's September 2023 hearing, the Commission issued a Cease and Desist Order to the Paradise Point resort in San Diego for violations of the public access conditions of various CDPs.[17] In those CDPs, because the resort was built on leased public trust tidelands, the Commission did not require the recordation of public access easements or deed restrictions, but instead simply conditioned CDPs upon provision of public access to various areas of the privately operated resort. These CDP conditions included requirements to provide public access walkways, as well as requirements for the resort to provide public access to parking lots, all of which remain enforceable conditions of those CDPs, and which were recently enforced, even though no easements or deed restrictions were ever recorded. In this case, it would have made no sense to require any sort of recorded document, as the Commission clearly expressed its understanding that the area was already legally a public right-of-way.

As for the alleged "private patios," as Commission staff explained in its letter of October 26, 2022, at 2, nowhere does that permit use the phrase "private concrete patios," and nothing in that permit authorized the exclusive private use of the patios. To the contrary, the permit merely acknowledged that the area had been being "*used by* the residents as private decks" (emphasis added), and only after reiterating that those decks are located on a public easement. Moreover, the findings did so in the context of imposing the requirement that those previously misused patios henceforth be retained for public use. The analysis in that October 26, 2022 letter is hereby incorporated by reference (Exhibit 68).

At various times, the HOA has also argued that if the Commission had intended the conditions of the 1980 CDP to require that the Walk be open for public use, the Commission would have required the removal of the walls at the two ends of the Walk that block public access to the Walk from the public sidewalk along Beach Drive. According to this argument, the fact that the conditions say nothing about the removal of such obstructions demonstrates that the Commission did not intend the permit to create public access. However, this argument is wrong for at least two reasons. First, the Commission could very well have intended the Walk to be open and simply not gone to the trouble of spelling out every impediment that would have to be removed to achieve that. There is no reason to assume that the Commission would necessarily require

---

[16] Both here and elsewhere, Nossaman has cited *Grupe v. CCC* (1985), 166 Cal.App.3d 148, 170, in support of this proposition about an offer to dedicate ("OTD") being the exclusive means by which the Commission can ensure public access, but the case says nothing of the sort. The *Grupe* court merely upheld a condition that the Commission had imposed that required an OTD. It says nothing about that being the exclusive mechanism available.

[17] The staff report for that enforcement action can be found at https://documents.coastal.ca.gov/reports/2023/9/W9.1-W9.2/W9.1-W9.2-9-6-2023-report.pdf .

removal of every impediment and that failure to do so reflects a lack of Commission intent to make the Walk public. But the argument is also flawed for a much more straightforward reason as well. Namely, it is based on the false presumption that there were obstructions at the two ends. In reality, both ends of the Walk were open when the Commission acted on the 1980 CDP. Where the upcoast end of the Walk meets the sidewalk, there was merely a low-lying wall, with a large gap just a few feet to the south (Exhibit 93), and at the downcoast end, there was no wall at all (Exhibit 92). The wall at the downcoast end that the County removed in 2018 had not yet been in 1980. It was installed in 1982 (Exhibit 27). Thus, it is nonsensical to argue that the Commission would have required the removal of structures that did not exist.

Finally, both in this section of the SOD and at page 12, the HOA argues that the interpretation in this report is a "post-hoc rationalization and revision of the CDP," and it references an August 24, 2022 letter from Commission staff member Ellie Oliver (Exhibit 64) as evidence of this. SOD at 18, n.7. The SOD refers to the Oliver letter's reference to staff's "recent review" of a 1980 audio tape of the Regional Commission hearing. However, as the HOA notes, Commission staff only checked those tapes to verify staff's understanding of the permit, and as Ms. Oliver's letter states, Commission staff found that the tapes provided "further evidence" of the interpretation staff already had.[18]

**(v) History and Legal Status of Patio Area Improvements**

The fourth subsection within the "Legal Arguments" section of the SOD is entitled "No Unpermitted Development," but the section does not demonstrate that the development at issue is permitted at all. Instead, it merely refers back to the notice arguments, stating that:

> *Commission staff has declined to provide specific descriptions of the asserted violations for each Beach Drive address as required by Chapter 9 of the Coastal Act (Public Resources Code section 30809(b)(1) and (2)).*

The only actual argument listed in this section is in the following statement:

> *not only were the decks, partitions and other improvements in the patio areas constructed prior to 1972, but were [sic] identified during the Weseloh litigation on County Assessor worksheets from the 1950's and 1960's admitted into evidence, and such pre-Coastal Act structures were assessed for property tax purposes.*
>
> *Moreover, given the County's LCP authority for issuances [sic] of certain CDP's and/or exemptions from the requirement to obtain same[19] (see also Public*

[18] In fact, as is demonstrated in section below, entitled Historical Understanding, the current interpretation has been consistent across the decades since the 1980 CDP was approved.

[19] See Paula Pyers' County-issued 2014 permit and CDP Exemption for a remodel and renovated stairway that extends approximately 11' onto the 20' patio space and 37' strip

*Resources Code section 30624(a)) unless there is evidence of substantial change to the structure (Public Resources Code section 30608). [sic]*

The first statement lumps all of the "improvements in the patio areas" together and claims they were all constructed prior to 1972, but it provides no evidence for this claim, and it strains credulity to suggest that every improvement for every one of more than two dozen properties is more than 50 years old. Even if every structure presently in existence had some analogue that showed up on a County Assessor worksheet from the 1950s or 1960s, that does not mean that the current version of that structure is the same as the one from that era. Virtually all of them have been entirely replaced, making the existence of a similar structure from 75 years ago irrelevant.[20] Moreover, none of the worksheets were included in the Statement of Defense, and the Commission therefore cannot confirm that these worksheets even exist.

The statement goes on to cite evidence from the *Weseloh* trial, but none of that evidence was included, so the statement is nothing more than an assertion that evidence exists and was presented in a trial to which the Commission was not a party. Therefore, Commission staff has never seen this purported evidence and cannot confirm that it even exists. RDMBI HOA and Singh & Puri's representatives included many exhibits to their Statement of Defense, but notably excluded many others that they cited. More importantly, Commission staff conducted a thorough analysis of historical photographs and determined that, of the structures that extend more than eight feet seaward from the homes (which are the only ones the present order requires be removed), only one has been there since at least 1980 (Section III.B and Exhibits 7 and 96). Commission staff also independently obtained and reviewed all photographic evidence from the trial and found no evidence to support any of these claims.

Further, RDMBI HOA and Singh & Puri imply that because they used parts of the area of the walkway as private patios prior to Proposition 20 and the Coastal Act, that these patios are somehow existing structures, yet even this is contradicted by the historical record and their own arguments. They do not dispute that the walkway is 20 feet wide, or that the seawardmost 8 feet of the walkway fell into the ocean in 1980, and was rebuilt pursuant to the 1980 CDP, and in fact make the claim that the Commission permitted RDMBI HOA to build the seawardmost 8 feet of concrete walkway for their exclusive use in 1980, below. Yet how could the seawardmost 8 feet of the walkway be simultaneously contain existing structures pursuant prior to the Coastal Act, but also be fully permitted for their exclusive use via the 1980 CDP? The answer, as can be seen in the photos from February of 1980 (Exhibit 7), is that, at a minimum, nothing on the seawardmost 8 feet of the walkway can be an existing structure, as that portion of the walkway fell into the ocean in 1980 and was entirely rebuilt according to the 1980 CDP (Exhibits 10 and 12). Thus, the seawardmost 8 feet of the walkway cannot contain any existing structure placed their prior to the Coastal Act, or even prior to 1980.

[20] The Coastal Act requires a permit for any "development" (PRC § 30600), and "development" is defined to include the "reconstruction, demolition, or alteration of the size of any structure" (PRC § 30106).

Further, the proposed Order would not require RDMBI HOA to remove any structures within eight feet of the houses. Singh & Puri are required to remove structures within 8 feet of the house at 202 Beach Drive, however, that house and tile paving was installed in the 1990's (Exhibits 30 and 31), long after the Coastal Act, and therefore cannot contain any existing structures either. This means that the only part of the walkway where an existing structure could theoretically exist within the walkway would be the middle 4 feet of the walkway adjacent the houses from 206 to 300 Beach Drive. However, an analysis of photos from 1980 (Exhibits 7 and 8) shows that only three types of structures existed at or near the area seaward of the 8 feet of walkway nearest the houses. Those structures were balconies, movable patio furniture, and partition walls separating parts of the walkway by house. Of the balconies, all but three appear to be within 8 feet of the houses, and the only balcony outside that could be pre-Coastal is not required to be removed by the proposed Order. Of the patio furniture, Commission staff cannot find any photos of patio furniture today that resembles the furniture that existed in 1980, nor have RDMBI HOA provided any photos of the same patio furniture, nor would it be imaginable for the same movable patio furniture to be used for over four decades. With regards to the partition walls, Commission staff again has not seen any partition walls that match the ones documented in the photos from 1980, nor has RDMBI HOA provided any evidence that the partition walls they recently allowed to be installed are the same ones that were there in 1980. Instead, again, RDMBI HOA and Singh & Puri rely not on evidence of structures pre-existing the Coastal Act, but instead continue to argue that because similar structures existed prior to the Coastal Act, that those should somehow become pre-existing structures, even though they are obviously not.

The second statement is not a complete sentence, but it appears to be asserting, directly contrary to the prior claim, that some of the improvements actually did occur after the Coastal Act or its predecessor statute took effect, and that the reason they are not violations is that they were either (1) permitted or (2) exempt (perhaps because they did not constitute a "substantial change" to the pre-existing structure). However, again, no evidence is provided to support these claims. The footnote references what it refers to as a "2014 permit and CDP Exemption" for development at one location along the Walk. However, as Commission staff explained in its October 6, 2023 letter, which is attached as Exhibit 85 and incorporated herein by reference, the documentation provided in association with that claim does not include any reference to the Coastal Act, much less a exemption determination. It is merely a local building permit. The Coastal Act is clear that it requires anyone wishing to perform development to secure a coastal development permits "in addition to obtaining any other permit required by law from any local government." PRC § 30600(a). More generally, again, for years, Commission staff repeatedly asked for any permits or other evidence of Coastal Act authorization and was given nothing, with the one exception noted in the NOI.[21] Despite

[21] Again, see NOI at 11, n.5, acknowledging the one case where Coastal Act authorization had been secured, but emphasizing that it was the "one limited exception;" and earlier letters dated August 24, 2022 (at 5-6 and in footnote 12) and September 22, 2022 (at 2-3), repeatedly explaining that the

this, in an attempt to try and see if any of the HOA assertions were accurate, Commission staff then went to the County and did their own comprehensive records review and found no evidence of any additional Coastal Act authorization (or exemption determinations).

Singh & Puri and RDMBI HOA are represented by the same attorneys, and it is unclear whether Singh & Puri or RDMBI HOA, or both, placed plastic barriers between the seawall and the house at 202 Beach Drive in order to block public access. However, their attorneys have argued that the wall that once existed at the upcoast end of the public walkway has existed there since prior to the 1980 CDP and Proposition 20, and that because the CDP did not explicitly require the wall to be removed, that RDMBI HOA/ 202 Beach Drive should be allowed to place plastic barriers there to block public access. However, they have not provided any evidence that the wall that used to exist there prior to the County's removal action was fully authorized prior to Proposition 20 Further, the wall that existed there prior to the plastic barrier was substantially modified after the 1980 CDP, without any CDP, when a prior owner added a tall fence on top of the wall (Exhibit 106). Therefore, this reconfigured wall was not a structure that predated the Coastal Act.

In any event, none of this is relevant to this order to the extent the order is based on the fact that the HOA is failing to comply with conditions of the 1980 CDP, rather than the fact that any specific structure was installed without the necessary Coastal Act authorization. In addition, the order does not apply to structures within eight feet of the homes from 206 to 300 Beach Drive, and doesn't require their removal, so arguments about their legality, in addition to being unsupported by the evidence, are also irrelevant.

**(vi) Efforts to Resolve Revetment Issues, including CDP Amendment Requests**

The HOA makes four arguments in this section: (1) the alleged violations are merely "purported *de minimis* non-access violations," and there has been "substantial compliance"; (2) changes to the revetment are the result of storm damage; (3) "the alleged failure to provide monitoring updates as to the condition of the sea wall every 24 months has been addressed with detailed correspondence, including a proposed permit amendment in 2019"; and (4) "there were applications for permanent permit amendments after emergency repairs in the 1980s, but the process languished, and was then substantially addressed in subsequent permit applications."

The first "defense" is mere rhetoric with no substance. It provides no explanation for why the violations should be considered *de minimis* or how there has been substantial compliance. To the contrary, the main violation at issue involves the decades-long closure of a walkway that was required to be made available to the public, which has created a nearly quarter mile long gap in a multiple mile beach boardwalk system, forcing the public to walk on a narrow sidewalk that has itself been obstructed

---

documentation provided were not CDPs and did not provide the requisite Coastal Act authorization for the development.

and rendered unusable for persons using walkers or wheelchairs as a result of RDMBI HOA members' unpermitted, regular, and extended storage of trash cans many occupying more than half of the width of the sidewalk. This first "defense" also fails to explain why these should not be considered public access violations, which are substantial violations, as public access is one of the cornerstones of the Coastal Act. *San Diego Unified Port Dist. v. CCC* (2018), 27 Cal.App.5th 1111, 1129 ("a core principle of the [Coastal] Act is to maximize public access to and along the coast . . . ."). The Legislature's particular concern about access violations is also evidenced by the fact that it was the first type of violation over which the Legislature gave the Commission administrative penalty authority. And blockage of public access in the manner at issue here is clearly not "*de minimis*". Furthermore, even if this were not a public access violation, that is not a defense to a proposed cease and desist order, which can be issued for non-access violations. In addition, RDMBI HOA has failed to provide required native sand dune plants across an 800 by 20 foot area for four decades, which has caused significant loss of what would otherwise be habitat area for native plants and wildlife.

The second point (the assertion that changes to the revetment resulted from storm damage) is not a defense. The specific cause of any changes to the revetment does not exempt the HOA from its obligation to comply with the CDP. Moreover, the SOD cites only one storm, earlier this year, with no argument, much less evidence, that prior storms were implicated in the violations that existed consistently over the preceding 42 years. And of course, some of the violations at issue are not even related to the form of the revetment.

The third point (the claim that the monitoring requirements of the permit have been satisfied by "detailed correspondence, including a proposed permit amendment in 2019") acknowledges that monitoring updates were due every 24 months but argues that the HOA was somehow absolved of this responsibility because of some correspondence and a proposed permit amendment in 2019. There is no reference to any specific correspondence, no explanation of how such correspondence sufficed to provide the required information, and no evidence that it was provided with the required frequency. There simply isn't any evidence that they complied with the permit condition, which was intended to ensure ongoing compliance with the permit. Similarly, there is no explanation of how the incomplete 2019 permit amendment application provided the requisite information, or that it in any way was intended to, much less sufficed to, comply with the permit requirement. Further, RDMBI HOA has provided no reason why they cannot submit the required biennial monitoring reports now, without additional correspondence or a CDP application. There is nothing stopping RDMBI HOA from beginning to submit the biennial reports, yet even for this seemingly less substantive CDP condition, they still refuse to comply.

Finally, the fourth argument is not a defense either. The fact that the HOA submitted an incomplete application(s) for a permit amendments that was never granted, much less issued, does not negate the fact that the violations of prior *issued* permits as described above have occurred. To the extent this argument is intended to suggest that the HOA should not or cannot be held accountable for violating its CDP as

long as it has applied for an amendment to address the violations, that is not the law, and the SOD does not even provide an explanation for why the HOA might believe it should be. Moreover, the SOD acknowledges that "the process languished," without noting that the reason the process stalled is that the HOA failed to complete its permit applications.

## 2. Other Potential Legal Arguments and Factual Allegations

Although not included in the "Legal Arguments" section of the SOD, sprinkled throughout the letter are other allegations some of which could be considered defenses. In this section, we attempt to discern any such statements that could constitute additional defenses, and we respond to those.

### (a) Aggressive Enforcement

Page 2 of the SOD includes a claim that an "aggressive Coastal Enforcement push was pursued in complete disregard of the Constitutional protections (Public Resources Code § 30010) and procedural mandates (Public Resources Code §§ 30210 and 30212-30214) contained in the Coastal Act." This statement is made immediately following the statement that "Commission staff lateraled enforcement to County Planning and Parks officials in 2018"[22] and appears to be a criticism of the County's actions, not the Commission's. To the extent it was intended as an allegation that Commission staff did these things, it is unclear to what it is referring, it is far too vague to address specifically, and it is unclear why the HOA characterizes the enforcement actions as being aggressive or what significance the HOA intends to attribute to that, but we note two things.

First, the reference to constitutional protections appears (based on the citation to PRC section 30010) to be a reference to takings law. However, as is explained above, the takings clause is not implicated here because Commission staff was merely seeking to enforce the Coastal Act's permitting requirement and the requirements of a permit that had been accepted and vested more than 35 years earlier. Thus, those efforts involved no attempt to change anyone's property rights, but merely to enforce existing rights and responsibilities.

As for the reference to procedural mandates, it is even more obscure. The SOD cites to PRC sections 30210 and 30212-30214. Section 30210 contains no procedural mandate. It does contain a substantive limitation referencing the rights of private property owners, but that is addressed in the prior paragraph. Sections 30212 and 30214 contain similar limitations. The only provision in any of these sections that is arguably procedural would be section 30212(a)'s statement that dedicated accessways "shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the

[22] The suggestion that Commission staff somehow deferred enforcement to the County is false, as is explained in section I.B.**, above.

accessway." However, in this case, the accessway at issue was claimed by a public agency (the County), which had already required that it be made available for public use. And even if the homeowners were to prevail in their litigation against the County and thereby establish that the County does not have any property interest in the Walk, the County has clearly demonstrated that it is prepared to accept management, maintenance, and liability responsibilities.

**(b) County Demolition and Commission Actions**

Also on page 2 of the SOD, there is a statement that "on December 5, 2018, the Coastal Commission approved in a non-public email, the County's proposed demolition project as exempt from any public review of an exemption or CDP." The SOD goes on to discuss a December 8 message from the Deputy Director of the Commission's Central Coast District Office to County Supervisor Zach Friend about the demolition, quoting the message but also characterizing his reaction to the County's plan and implying that his statements were somehow inappropriate. However, this whole discussion appears to be primarily related to the HOA's grievance with the County over its removal of structures at the two ends of the Walk. The HOA relates this issue to the Commission only on the basis of Commission staff's routine response to a claim of exemption and a comment made by one Commission staff member about the County's plans. The comment includes no explanation as to how the statement or the determination would raise any legal issue, much less how this history could serve as a defense to this order. It is also worth noting that the HOA and the owner of the property at 202 Beach Drive did contest Commission staff's exemption determination at the time, and that process was concluded in January of 2019. In sum, this comment appears to be irrelevant to the Commission's issuance of this order.

**(c) Pat Veesart's Actions Related to County Demolition**

Page 2 of the SOD also contains the following statement:

"On December 14, 2018, Commission Enforcement Officer (Pat Veesart), even though aware of the impending demolitions, wrote to assure the owner of 202 Beach Drive that she had until 'January 31, 2019' before the Commission would commence legal proceedings."

This is both false and misleading, for multiple reasons.

First, this statement assumes that Mr. Veesart was aware of the impending demolitions when he sent his letter on December 14. The HOA has made this accusation many times, without any evidence, and both before and after Commission staff explained that Mr. Veesart was not aware of the impending demolitions when he sent his letter. See October 26, 2022 letter at 4.

Second, neither Mr. Veesart's letter nor anything else attributed to Mr. Veesart sought to or did "assure" the owner of 202 Beach Drive of anything. The December 14, 2018 letter was a standard enforcement letter outlining necessary next steps in the longstanding effort to address unpermitted development at the site that was impairing access in violation of the permit and the Coastal Act, and states:

> *Now that a negotiated, mutually-agreeable solution with the Beach Island property owners appears to be impossible, the Commission intends to enforce the public access policies of the Coastal Act by making the entire area seaward of the Beach Island properties available for public access. Thus, you will now need to remove all of your unpermitted encroachments located within that area by* ***January 31, 2019.***

See Exhibit 107. Thus, the letter provided a deadline for action, with no suggestion as to what plans any other entity might have, much less an assurance or guarantee that the County might not act on its independent claims. To the contrary, almost a year earlier, when negotiations were still ongoing in the hopes of coming to a mutually-agreeable resolution, Mr. Veesart had specifically explained that if agreement was not reached by the end of January, and all encroachments were not removed, it was Commission staff's understanding "that the County may proceed to remove said encroachments and bill the responsible property owners for the cost of removal." The December 14, 2018 letter was merely following up on that previous letter, noting that the compromises offered in settlement appeared to have failed, and settlement no longer appearing to be a viable option, the addressee would need to fully comply with the Coastal Act by removing all unpermitted development. See January 18, 2018 letter, included as Exhibit 50.

Further to that point, it is notable that the SOD states that Mr. Veesart's letter told the owner of 202 Beach Drive "that she had until 'January 31, 2019'," when the word "until" appears nowhere in Mr. Veesart's letter. The HOA introduced the word and began its quotation immediately thereafter.

Finally, even if Mr. Veesart had provided some sort of guarantee that the Commission would not commence legal proceedings prior to January 31, 2019 (which he did not), that would not have been inaccurate, as the Commission did not commence legal proceedings before January 31, 2019, and still has not done so to this day. Thus, nothing in such a statement would have been inaccurate. In fact, the action taking by the County in removing the wall adjacent to 202 Beach Drive was not a legal proceeding, as the homeowners have emphasized in their litigation against the County. However, in any event, the County's actions are separate and apart from anything the Commission did, and based on different legal grounds.

### (d) *Weseloh* Litigation

Still on page 2 of the SOD, it states "the County's enforcement role in this matter proceeded to a trial on the merits," and the court determined "that the County and public had no interest in the [Walk]" and "emphasized due process violations highlighted herein." Once again, this is false, for multiple reasons. First, the County has performed no "enforcement role" here, much less a Coastal Act enforcement role. What went to trial was not any sort of County action at all. It was a trial on a complaint filed by the homeowners, and it was primarily a quiet title action. Although there was a Coastal Act enforcement claim in the operative complaint, far from being a County enforcement action, the claim alleged that it was *the County that was in violation* of the Coastal Act. And that claim does not even appear to have been adjudicated in the trial court's 2022

decision. The present matter involves Coastal Act violations by the HOA, which were not at issue in the *Weseloh* litigation.

Second, though relatedly, in terms of the court's ruling about the County's interest in the Walk, the court's conclusion was solely about the County's property interest. The Commission's action in issuing these enforcement orders is independent of any property rights issues, and, as indicated above, the County has taken no enforcement action related to those Coastal Act violations at issue here.

Third, any due process issues that may have arisen in the *Weseloh* litigation, and any trial court findings on such issues, are not applicable to the Commission's actions, as the Commission had not yet acted when the court issued that ruling and was not a party to that case, so any such rulings would only pertain to alleged due process violations by the County.

Finally, final judgment has not yet been issued in that litigation, and once the trial court does issue its final judgment, that decision will still be subject to appeal.

In sum, even if the issues adjudicated in that matter were relevant here, which they are not, they would not be binding on the Commission as a non-party; and even if they could be binding on the Commission, they would not be so at this stage in the litigation.

On a related note, the HOA has also repeatedly argued that Commission staff's positions and letters ignored the 2022 trial court ruling in the *Weseloh* litigation and that Staff was seeking to launch a collateral attack against that ruling. See, e.g., SOD at 13; **[cite earlier letters where they made this argument, if we can find them easily]. Notwithstanding all of the distinctions listed above, Staff did not ignore that decision, but instead directly addressed it. *See, e.g.,* Staff's August 24, 2022 letter (Exhibit 64). It is true that Commission staff took issue with some of the factual findings in the trial court's decision, but far from ignoring that decision, Staff methodically pointed out factual errors in the ruling, and cited indisputable documentary evidence demonstrating those factual errors. Given that the Commission was not a party to that litigation, there is no reason Staff was precluded from doing so; and in fact, Staff would have been remiss in its obligations to the Commission were Staff not to have brought the true facts to the Commission's attention to enable the Commission to render a fully informed decision.

In any event, the orders being issued today are entirely independent of the court's ruling. The HOA is required to provide public access to the walkway pursuant to the 1980 CDP regardless of the property rights underlying the walkway. The Commission conditioned the CDP to require that the HOA preserve public access to that walkway. The HOA never challenged the Commission's findings or conditions, and instead accepted the permit and its benefits and its burdens. Even if the County holds no interest in the 37-foot Walk (neither fee title nor an easement), this would not change the Commission's requirement that the HOA provide a public walkway as a condition of the CDP. In fact, if the HOA were to own the land underlying the walkway outright, that would only make it easier for the HOA to comply with the CDP requirement to provide public access to that walkway, given that the HOA would then not need to coordinate with any other entity during their provision of public access.

### (e) 2017 Enforcement Letters

On Page 9 of the SOD, the HOA asserts that Commission staff's letters were intentionally intimidating and included knowingly false statements regarding the existence of permits. They also state that the letters erroneously asserted that the 37-foot Walk was a County-owned right-of-way. Finally, on pages 9 and 12, the HOA argues that this erroneous assumption was the sole basis for the enforcement letters.

The enforcement letters contain no false statements regarding the existence of permits. To the contrary, it is the HOA that repeatedly and falsely claimed the existence of the requisite permits – i.e., ones providing the necessary Coastal Act authorization – asserting that somehow local building permits and other types of permits provided such authorization when they clearly do not. As is explained repeatedly throughout these findings, the Coastal Act requires that a *coastal* permit be obtained "in addition to . . . any other permit required by law from any local government." PRC § 30600(a). And although the HOA repeatedly claimed that the development at issue was permitted, Commission staff consistently responded by explaining this point, asking for evidence of *coastal* permits, noting that the HOA had still never provided anything of the sort, and citing back to prior letters where they had gone through the same exchange. One particularly vivid example is in the letter dated September 22, 2022 (Exhibit 66), at 2-3, where staff wrote:

> *We have repeatedly [footnote citing three previous letters omitted] asked you to provide evidence of CDPs for those 'permitted' encroachments and you have yet to do so for the vast majority of the encroachments, [footnote citing one exception omitted] . . . . Once more, we remind you that building permits are not CDPs. We are happy to review any CDPs issued by the Commission or the County that you claim permitted the development within the 37' Walk. For at least the fourth time, we ask that you please provide evidence of any such CDPs should you have it.*

Nor is it true that the legal status of the 37-foot Walk was the basis for the enforcement letters, much less the sole basis. The main basis for those letters was that development had occurred without the requisite Coastal Act authorization. Such "unpermitted development" is a violation of the Coastal Act, regardless of whether it occurred on property owned by the County, property owned by private parties over which the County held an easement, or property owned by private parties on which no easement existed. The references to the right-of-way merely served to identify the location of and importance of these particular violations insofar as they impacted public access. However, it was not a necessary factor in establishing the existence of the violations. Moreover, even if it turns out to be untrue that the County holds a property interest in the 37-foot Walk (a proposition that is still being litigated), the significance of the Walk as a public accessway remains true because of Condition 1 of the 1980 CDP. Thus, the references to the Walk as a public accessway were accurate.

Finally, as to the idea that Commission staff's letters were threatening, Commission staff addressed this in a letter dated October 26, 2022 (included as Exhibit 68), wherein, on page 5, they stated:

*exposure to the potential assessment of such penalties remains a fact whether or not we note it, and as such, far from being intended as intimidation, as you suggest, we believe it is the most responsible course for us to ensure that you are aware of that potential.*

**(f) OTD Process**

On page 13 of the SOD, the HOA states that "the only vehicle for the Commission to impose a condition requiring lateral public access across a beach or bluff area is through the OTD easement process." The HOA provides no authority for this bizarre assertion, which is belied by 50 years of practice. As noted above, the Commission has required access through direct permit conditions requiring that access be provided, conditions requiring deed restrictions, and conditions requiring direct dedications of easements or fee title, all in addition to the OTD process the HOA cites. It is therefore little wonder that, rather than citing any authority for this proposition, the HOA instead cites an "example of the 'OTD easement' process." The Commission does not deny that there are myriad examples of this process, but examples of doing things one way do not amount to prohibitions on doing things other ways as well. Moreover, as also noted above, this matter did not involve the need to "acquire" or "create" property rights, as the Commission clearly understood them already to exist. Thus, the Commission was merely requiring that those rights be actualized and preserved, which was already required by the County's encroachment permit, which is why the Commission merely incorporated that condition by reference. Again, the requirement for access was imposed separate and apart from the issue of ownership and the mechanism used here was both common and valid, as also discussed above and in the summary section of this staff report.

Finally, on page 14 of the SOD, the HOA argues that sections 30212 and 30214 of the Coastal Act "set[] forth the required legal steps for the Commission to impose . . . a lateral (or vertical) access condition." However, neither the word "easement" nor the word "offer" appears anywhere in either of those sections. Thus, nothing in either of those sections discusses the OTD easement process, much less do they establish that process as the exclusive method by which the Commission can ensure public access.

**(g) Permit Project Description**

At page 14 of the SOD, the HOA highlights one part of the project description from the 1980 CDP, in which it says that part of the proposal was to "replace 8 ft. of concrete patio at the rear of each home." The HOA argues that this shows that the Commission acknowledged that the area immediately seaward of the homes comprised private patios. However, nothing in the quoted language says that it was private or suggests that the Commission could not ensure access to the area, as it did. To the contrary, everything from the exhibits to the staff report, which labeled the areas as a public access easement (Exhibit 10), to the discussion at the hearing during which Commission staff showed slides that portrayed the area as a public easement (Exhibit 12), to the conditions imposed (Exhibit 14), makes clear that the Commission considered the area to be public. And as noted above, in the one part of the Commission's findings where it talks about the private use of these areas, it is only that – an acknowledgment that the area had been being "*used by* the residents as private

decks" (emphasis added), immediately after reiterating that those decks are located on a public easement, and in the context of imposing the requirement that those *previously misused* patios henceforth be retained for public use.

Similarly, at page 15, the HOA points out that a location map showed the area as "deck." However, the use of that word, like the word "patio," in no way suggested that the Commission thereby accepted the area as private, and everything else including the specific permit conditions suggests the exact opposite.

**(h) Historical Understanding**

On page 15, the HOA suggests that, given the full context, no one could possibly have understood the Commission to be allowing the applicants "to rebuild a County road." However, the history subsequent to the permit issuance shows that that is exactly how it was understood by the parties involved. As has been stated above, at the time of the Commission's consideration of the CDP, the entrances at both the upcoast and downcoast end of the walkway were open and pedestrians could walk the whole length of the walkway, and remained so until RDMBI HOA allowed the downcoast entrance to be blocked in 1982. Further, on December 6, 1980, RDMBI HOA's first bylaws were executed, and stated that the revetment "shall be primarily for the benefit of the Benefited Parcels [206 Beach Drive to 300 Beach Drive], and secondarily for the benefit of the public" (Exhibit 21). As is explained in the body of these findings, a year after the Commission approved this permit, the HOA applied for an amendment to permit the construction of stairways within the revetment to "create access to the beach for the individual homeowners and renters." On April 16, 1981, Commission staff wrote to one of the HOA members regarding an unpermitted stairway built into the revetment. That member of the HOA then wrote to Commission staff on April 20, 1981, and stated that the purpose of his stairway was to provide public access from Beach Drive, to the walkway, to Seacliff State Beach, as was currently possible and as was required pursuant to the terms of the 1980 CDP (Exhibit 22).

21 years later, in November of 2002, the HOA applied for a new permit for the expansion of the revetment, both in terms of height and footprint. See letter from Dan Carl dated June 3, 2003 (included as Exhibit 37), at 2. Commission staff responded, in part, by noting that the HOA was out of compliance with various requirements of the 1980 CDP, including the requirement to provide the "public access walkway between the revetment and the homes." See letter from Dan Carl dated December 23, 2002 (included as Exhibit 35), at 5. As Commission staff and the applicant continued to exchange letters related to this application, Mr. Carl reasserted this point in June of 2003. See letter from Dan Carl dated June 3, 2003 (included as Exhibit 37), at 1 ("The project as originally approved included requirements for: . . . through public access to be provided directly inland of the revetment"). Throughout this process, no one ever disputed that the 1980 CDP required such access. To the contrary, the applicant sent a letter in October of 2003 responding to Mr. Carl's complaint by stating that the walkway is open for its entire length. See letter from Betty Cost, dated October 3, 2003 (included as Exhibit 38) at 4.

In sum, over the more than forty-year period since the 1980 CDP was approved, the documentary evidence demonstrates that from the beginning (1981) and continuing during the middle of that period (2002-2004), all relevant parties understood the permit to be requiring precisely what the Commission now finds that it required. This stands in stark contrast to the HOA's claims that no one ever did or could interpret the permit that way. It also stands in stark contrast to the HOA's claim that Commission staff concocted this interpretation recently as a post-hoc way to rationalize their attempts to obtain access at this location and/or in response to County requests. To the contrary, Commission staff referenced taking enforcement action related to this violation more than 20 years ago. See letter from Dan Carl dated June 3, 2003 (included as Exhibit 37), at 2 and 3.

**(i) Request for Forbearance**

On page 3 of the SOD, the HOA requests that the Commission hold off on issuing the cease and desist order at issue here, but the only bases given are their assertion that the proposed action is based on "a mistaken interpretation of the 1980 CDP," which has been thoroughly addressed herein, and that the "HOA is confident that the issues regarding the revetment, including the impact of the January storms, can be fully addressed through cooperative discussion." However the latter issue does not address the access issue at all. Moreover, Commission staff provided ample opportunity to discuss settlement, and the HOA has shown itself to be uninterested. In fact, in response to a courtesy notice of this hearing, Counsel for the HOA sent an email message dated November 20, 2023, in which he agreed that the HOA and Commission staff had reached an impasse (Exhibit 95). Finally, the Commission does not settle violations while allowing violators to continue to block public access.

The night before this staff report was posted, counsel for the HOA submitted a short letter in which he largely reiterated points that the HOA had made previously and that are thoroughly addressed in this section III.F. of this report, as well as above. See Exhibit 105. Because this letter was received as this staff report was being finalized, staff has indicated that, if necessary, a more thorough response will be included in an addendum.

In the Conclusion of his letter, counsel for the HOA also makes four specific requests. First, he requests that the Commission not move forward with this hearing at all, based on his claims about the merits and the Commission's jurisdiction. However, those issues are addressed at length above. Next, he reiterates his request for more specific notice. That issue is also addressed at length above. Third, he asks that his letter be provided to the Commission in connection with this staff report. Again, it is attached as Exhibit 105. Finally, he requests that if the Commission proceeds, it "**toll any enforcement** pending the outcome of the County's appeal" in the separate litigation over the legal status of "the same paper easement that Commission staff now seeks to rely on . . ." (emphasis in original). First, as noted above, the Commission is not relying on the easement, but on its own permit condition. Thus, the causes of action at issue there in that litigation are distinct and unrelated to the Coastal Act permit issues being addressed here, and in light of the fact that access is so important under the Coastal Act and in light of the fact there have already been years of delay, the

Commission needs to go ahead with this hearing. However, this request appears to be more of a request to stay enforcement of any order the Commission may issue than a request not to proceed with this hearing. For the same reason that the Commission finds that this hearing should proceed, it also concludes that enforcement of its orders should proceed.

**(j) Factual Inaccuracies**

Although they are not legal arguments, the SOD also contains numerous factual errors and unsupported assumptions in asserted support of its legal arguments. One recurring example is the claim that all of the existing structures were present in their current form prior to the effective date of the Coastal Act or its predecessor. The SOD cites evidence that some sort of structures were authorized or even built prior to the 1970s,[23] but it presents no evidence that those structures are the same structures that exist today. To the contrary, the evidence obtained by staff shows just the opposite. For example, page 6 of the SOD argues that the fence at 300 Beach Drive and other structures at that location have existed "since at least 1963" because they appear in a photograph taken in that year or earlier, but Commission staff found a photograph showing no fence at that location in 1980 (Exhibit 92), and the concrete foundation for the fence that the County removed in 2018 has the year 1982 carved into it (Exhibit 27). At the other end of the Walk, the HOA argues that the Walk was also blocked off, but Commission staff found plans from 1981 showing that the wall was open at what is now 202 Beach Drive (the most upcoast property) (Exhibit 93). Because the house currently at 202 Beach Drive was not built until the 1990's, this meant there was an opening leading from the public Beach Drive sidewalk, across what was then a vacant area, and to the 37-foot Walk, and even after the house was built, people continued to walk under the house to reach the walkway (Exhibit 101). Thus, the Walk was open at both ends. And at page 8, the SOD says the seawall in front of 204 Beach Drive dates back to "the late 1940's or early 1950's," but plans Commission staff found at the County offices show that the wall was replaced in 1981 (Exhibit 25). Again, see footnote 20.

## G. Cease and Desist Orders are Consistent with Chapter 3 of the Coastal Act

These Cease and Desist Orders, attached to this staff report as Appendices A and B, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. These Cease and Desist Orders require and authorize Respondent to, among other things, cease and desist from conducting any further unpermitted development on the properties. Failure to provide the required public access would result in the continued loss of public access, and failure to comply with the permit conditions would also result in the continuing loss of protection of coastal resources, both of which inconsistent with the resource protection policies of the Coastal Act.

[23] Page 5 of the SOD argues that the lots "inclusive of fences, partitions, and other related structures" were developed between 1940 and 1970.

Therefore, as required by Section 30810(b), the terms and conditions of these Cease and Desist Orders are necessary to ensure compliance with the Chapter 3 policies of the Coastal Act.

## H. California Environmental Quality Act

The Commission finds that issuance of these Cease and Desist Orders, to compel the removal of the unpermitted development, among other things, as well as the implementation of these Cease and Desist Orders, are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of "classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA]." *Id*. at § 21084. 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 the Commission's process, as demonstrated above, involves ensuring that the environment is protected throughout the process, one of those exemptions apply here: the one covering enforcement actions by regulatory agencies (14 CCR § 15321).

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

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

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

In sum, given the nature of this matter as an enforcement action that will ensure the environment is protected throughout the process, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

## I. Summary of Findings of Fact

1. The properties that are the subject of these Cease and Desist Orders are located at Areas known as the 37' Walk and Beach Drive, as shown on the "Map of Subdivision No. 8 Aptos Beach Country Club Properties" recorded in the Official Records of Santa Cruz County in Volume 24 of Maps at Page 26; as well as Seacliff State Beach; and 202 Beach Drive, Aptos, Santa Cruz County (APN 043-072-01).

2. CDP P-80-87 requires RDMBI HOA to preserve public access to a walkway located seaward of its members' houses. CDP P-80-87 also requires RDMBI HOA to ensure that RDMBI HOA's revetment does not encroach on Seacliff State Beach, and that it is made of clean rock, and not any foreign materials. It also requires that RDMBI HOA maintain native plants in good condition covering the revetment, and that RDMBI HOA submit biennial monitoring reports on the state of the revetment.

3. At the time of Commission action in 1980, the walkway inland of RDMBI HOA's revetment was open to the public, including at both the upcoast and downcoast entrance. RDMBI HOA continued to preserve public access to the walkway until 1982, when a fence, gate, and concrete footing was constructed across the downcoast entrance of the walkway.

4. 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.

5. Unpermitted development and violations of the conditions of CDP P-80-87, as described above, have been undertaken by RDMBI HOA, including placement of unpermitted development within the 37' Walk, and in violation of Condition 1 of Coastal Development Permit (CDP) No. P-80-87, including: 1) walls, fences, signs, caution tape, and plastic barricades that physically block or dissuade the public from accessing the 37' Walk where the north and south ends of the 37' Walk meet Beach Drive; and 2) patio furniture, patio walls, planters, fences, signs, balconies, and other private encroachments within the 37' Walk that obstruct and discourage public access; in addition to unpermitted development on or directly related to the revetment, and in violation of Condition 5 of CDP P-80-87, including: 3) unpermitted placement of concrete stairways and other foreign materials on top of the revetment; and 4) failure to prevent the revetment from encroaching on state parks lands; as well as violations of Condition 8 of CDP P-80-87, including: 6) failure to submit monitoring reports every two years regarding the condition of the revetment; and violations of Condition 9 of CDP P-80-87, including: 7) failure to maintain native sand dune plants in good condition covering the revetment; as well as other unpermitted development, including: 8) multiple unpermitted expansions of the revetment through placement of additional boulders; 9) unpermitted construction of stairways in the revetment not according to the approved plans of CDP P80-87-A;

and 10) failure to take all steps possible to direct members to avoid unpermitted installation and use of high-intensity lights; as well as any development obstructing public access to the public sidewalk on Beach Drive that required a CDP but for which none was obtained, including: 11) failure to take all steps possible to direct members to avoid indefinite placement of objects such as waste containers; and 12) failure to take all steps possible to direct members to avoid placement of waste containers and cones in order to block public parking spaces on Beach Drive.

6. Unpermitted Development as described above, has been undertaken by Singh & Puri, including: 1) a vertical seawall extending in front of 202 Beach Drive and the 37' Walk all the way to the Beach Drive sidewalk; 2) plastic barriers, fencing, and signs restricting access to the 37' Walk extending from where the vertical seawall intersects with the public sidewalk, along Beach Drive to the 202 Beach Drive parcel, and continuing underneath the house and onto the 202 Beach Drive parcel; and 3) patio furniture, planters, and tile paving on the 37' Walk between the seawall and 202 Beach Drive.

7. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Sections 30821 and 30821.3 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.

8. All jurisdictional and procedural requirements for issuance of and enforcement of these Cease and Desist Orders, including Section 13187 of the Commission's regulations, have been met.

9. The work to be performed under these Cease and Desist Orders, if completed in compliance with the Cease and Desist Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.

10. As called for in Section 30821(c), the Commission has considered and taken into account all the factors in Section 30820(c) in determining the amount of administrative civil penalties to impose. The penalties are an appropriate amount when considering those factors.