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Staff: Heather Johnston – SF
Staff Report: March 24, 2023
Hearing Date: April 13, 2023

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order

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|---|---|
| Cease and Desist Order: | CCC-23-CD-01 |
| Related Violation File: | V-5-16-0106 |
| Record Property Owner: | 1205-1207 Wooster Street LLC |
| Entity and Person Subject to this Order: | 1205-1207 Wooster Street LLC and Henri Levy. |
| Location: | 16701 Via La Costa, Los Angeles, Los Angeles County, also identified by Assessor’s Parcel Number 4431-039-029, and additionally known as the “Trailhead Property”. |
| Violation Description: | (1) Unpermitted locking of a gate that blocked access to a public parking lot and public restroom facility on the Trailhead Property; (2) unpermitted locking of a public restroom on the Trailhead Property, (3) failure to transfer the Trailhead Property to the City of Los Angeles or other not-for-profit entity approved by the Commission’s Executive Director, as required by a CDP condition; and (4) failure to maintain the public trailhead, public parking lot, and public restroom, as required by a CDP condition. |

Substantive File Documents:

1. Public documents in Cease and Desist Order file Nos. CCC-23-CD-01 and CCC-22-CD-02, and Administrative Civil Penalty file No. CCC-22-ACP-02.

2. Appendix A and Exhibits 1 through 40 of this staff report.

CEQA Status:

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2) and 15321)

SUMMARY OF STAFF RECOMMENDATIONS

Background

The enforcement matter at hand pertains to Coastal Act violations on a half-acre property in the Pacific Palisades area of the City of Los Angeles, Los Angeles County (Exhibit 1), that adversely impact public access and recreation. The property, colloquially known as the Temescal Ridge Trailhead (also referred to herein as the “Trailhead Property”), is situated high up in the Santa Monica Mountains at the northeast edge of an upmarket development alternately called “The Summit” or the “Palisades Highlands.” This large-scale subdivision spans more than a thousand acres and consists of approximately two thousand residential units, commercial facilities, and open space areas (Exhibit 2), permitted by this Commission through a 1979 coastal development permit and a series of amendments thereto.

Among myriad other conditions, that permit required the creation of the Trailhead Property to facilitate public access to a trail network in order to help mitigate for the significant impacts to coastal resources associated with the development of the Palisades Highlands subdivision. Today, the network of hiking trails linking the Trailhead Property to Topanga State Park is incredibly popular, and the Trailhead Property is the only location in the entirety of the Palisades Highlands that provides parking access and restroom facilities for the public. As described below and further in the Staff Report, there is a long and convoluted history of events and issues regarding this public access site, and this Consent Cease and Desist Order is designed to again restore this property to public use. We note that this proposed resolution is totally independent of the Order and penalty action issued against Headlands in an earlier hearing.

The Commission Permit

As of the late 1960s, the owners¹ of the land that would become the Palisades Highlands (hereinafter “Headlands”) had planned the development project, and by 1972, they had already graded roads and installed sewer infrastructure on approximately half of the property in anticipation thereof . However, at that time, they had not yet obtained requisite governmental approvals for the remaining half of the site preparation nor for actual development of the entirety of the site with homes. After passage of Proposition 20 in 1972, the developers continued work without authorization under that new law, claiming that the work was exempt on the basis that they had a vested right to complete the project they had begun. Several years of dispute between the property owners and the Commission regarding the vested/exempt status of the development resulted in a negotiated settlement wherein the Commission issued a permit, Coastal Development Permit A-381-78 (hereinafter “the CDP”) (Exhibit 3), for a much smaller version of the originally planned project – albeit one that still ultimately necessitated approximately ten million cubic yards of grading for the construction of about two thousand residential units, among other development (Exhibit 4).

For the Palisades Highlands project to be found consistent with the Coastal Act, the Commission required, in the CDP and subsequent amendments, that all development be confined within a specific geographic area; a boundary line called the “urban limit line” was established, outside of which development would be generally prohibited. The Commission additionally required that more than a thousand acres of land both inside and outside of the urban limit line be preserved for open space and recreation and required the creation and maintenance of a trailhead and appurtenant amenities (what would eventually become the Trailhead Property) to provide public access to the many miles of hiking trails in the Santa Monica Mountains. These requirements were embodied in key conditions of the CDP, as amended. The Coastal Commission’s requirement that Headlands develop a trailhead property with public access amenities and dedicate it to City Parks mirrored Conditions 20 and 24 of the Los Angeles County conditions of approval for Tract Map 32184, which likewise required construction of a trailhead facility and the transfer of that facility to City Parks (Exhibit 7). The conditions pertaining to the Trailhead Property required that the applicant develop a site with a parking lot and restrooms and transfer it for maintenance and management to either the City of Los Angeles (“City”) Department of Parks and Recreation or another public or not-for-profit entity approved by the Commission’s Executive Director.

Post Permit and Acceptance Issues

In 1981, the City’s Department of Recreation and Parks (“City Parks”) Commission voted in favor of acceptance of the anticipated future dedication of property resulting from the subdivision, including that which would serve as a parking lot and trailhead

¹ The Palisades Highlands was initially owned and developed by two entities: Palisades Resources Inc. and Headland Properties Inc. Headland Properties Associates and its related partnerships and companies continue to hold land within and manage the development, including by obtaining permits for work within the development.

(Exhibit 5). At a subsequent board meeting in 1989, City Parks voted to condition acceptance of a trailhead facility upon several items, including that Headlands provide the plans for the property amenities for the review and approval of City Parks prior to construction (Exhibit 6). The plans were subsequently developed by Headlands and approved by City Parks, and the facilities were constructed and completed in 1994 (Exhibit 8). Also in 1994, Headlands executed a grant deed transferring the Trailhead Property to City Parks (Exhibit 9), but it contained easement language that did not precisely reflect the parameters contained within the CDP conditions; the deed was not recorded, and ownership was retained by Headlands. Subsequently, in 1995 Headlands executed a second grant deed, correcting the easement language and again transferring the Trailhead Property to City Parks (Exhibit 10). Shortly thereafter, City Parks voted at a board meeting to accept and record the deed to the Trailhead Property (Exhibit 11). Unfortunately, the notary stamp was so smudged as to be illegible, and the County Recorder's office consequently rejected recordation of the deed; as a result, unbeknownst to Commission staff, record ownership was again retained by Headlands. The failure of the recording process meant that the County Assessor's office was also unaware of the transfer, and it therefore continued to send tax bills to Headlands, putting Headlands alone on notice that the conveyance had not been recorded. Headlands took no further action to ensure that the property was successfully transferred to the City or an approved not-for-profit entity, as required by the CDP, in order to protect the parcel for public access.

Sales of the Restricted Property

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

The new record owner, which was another incarnation of Headlands, continued to ignore the tax bills. Consequently, the Trailhead Property was once again sold at tax auction in 2013, this time to Henri Levy, a private developer (Exhibit 13). However, unlike the party who had purchased the property from a tax default sale in 2006, Mr. Levy did not seek to rescind the sale. In 2014, Mr. Levy deeded the property to 1205-1207 Wooster Street LLC (hereinafter "Wooster"), a limited liability company he had created, and which currently appears as the record title holder (Exhibit 14). Headlands,

after having done nothing to rectify the failure of the transfer of the Trailhead Property to the City, to notify the City or Commission of its continued fee ownership of the Trailhead Property, or to address the tax default, instead elected to act after the tax auction by filing for, and receiving, an Excess Proceeds Refund of more than \$300,000 to recoup the amount that Levy had paid for the property, less the overdue taxes (Exhibit 15). Headlands therefore not only failed to comply with its permit, but instead took affirmative steps to avoid complying with its terms, and then actually profited from the tax default sale of the Trailhead Property that directly resulted from Coastal Act violations.

Violation Description

By purchasing the Trailhead Property, Wooster became a successor-in-interest to the permittee and is therefore bound by the terms of the CDP. However, Wooster has not maintained the property for the benefit of the public. In fact, Wooster initially insisted that it should be able to develop the property or sell it to another developer. Meanwhile, the City of Los Angeles had been maintaining (Exhibit 16) the Trailhead Property as if it owned the property until Wooster directed it to cease its maintenance activities because the land was now purportedly privately held. Not only did the City invest decades of maintenance into the property, but also, at least as of 2021, the City continued to pay the property's utility bills (Exhibit 17).

Further, Wooster initially closed the property to the public entirely by locking an iron gate at the entrance to the Trailhead Property. However, Wooster reopened that gate and allowed the public to resume use of the parking lot shortly after Commission enforcement staff contacted them and demanded that the impediments to use be removed. While the property now remains somewhat open for public use in that the gate no longer obstructs public access to the parking lot and one of the two restrooms is now open, Wooster has not maintained the heavily used area, and as a result, the one open restroom has become unsanitary and unusable (Exhibit 18). And clearly, neither Headlands nor Wooster has transferred the parcel to the City or a nonprofit entity to manage the site and provide for public access and amenities, as required by the CDP.

The actions of Headlands and Wooster have therefore resulted in the Trailhead Property being no longer available for safe use and public recreation, as required by the CDP. This privatization of public land has 1) decreased the intensity of use of that land including by precluding public access uses such as parking and use of the trailhead and related access amenities, and 2) resulted in a diminution or extinguishment of public access and recreation; both of these actions are development under the Coastal Act. The transfer and subsequent locking and neglect of the Trailhead Property therefore constitute development under the Coastal Act, and no permit was granted for any such development.

Initial Enforcement Actions

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

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

In September 2016, after exchanging correspondence with and speaking to representatives from Wooster, Headlands, and the Los Angeles County Department of Treasurer and Tax Collector ("Tax Assessor"), staff met with one of Headlands' principles; Joseph Guarrasi. During this meeting, staff and Mr. Guarrasi discussed the history of the Trailhead Property, the Coastal Act concerns regarding recent developments related to the property, and potential avenues to remedy these issues. After this meeting staff did not hear from Headlands or any representatives thereof for over a year and a half despite efforts to reach out to them via letter, which was returned with notice that the addressee was no longer at that address; staff was only able to locate them after extensive efforts, as they had moved and did not update their addresses with the Secretary of State nor notify Commission staff.

Commission staff corresponded further with Headlands and Wooster in 2016 and 2017, detailing the Coastal Act violations at issue, discussing possible remedies, and notifying the parties that the matter was being elevated to the Commission's Headquarters Enforcement Division to formally resolve the matter.

After further research into the complicated history of the permit (including over a dozen amendments) and the various documents recorded against title pursuant to that permit (including corrections, duplications, and overlapping recordation related to other permit requirements), efforts to engage the City to assist with resolution, and consideration of alternative enforcement approaches, none of which produced results, staff planned to schedule a "unilateral" enforcement hearing before the Commission in 2020. However, that hearing was delayed due to the pandemic and mandatory social distancing requirements. During this delay, Henri Levy and Wooster filed suit against the City of Los Angeles, the County of Los Angeles, the State of California, and Headlands on May 27, 2021 (Exhibit 21). While this suit contains allegations relating to the enforcement

matter at hand, in general and among other things, the suit seeks to estop the Commission's enforcement of its permit requirements, declare that plaintiff owns the property outright, declare that the plaintiff can develop the property, require the return of \$333,114.56 (the purchase price of the Trailhead Property) to Wooster, and require that the defendants pay Wooster \$2,000,000 in damages. While this litigation is still pending, it has largely been on hold while Commission staff have continued to try to resolve this matter, and no rulings on the merits have been made; the Commission thus retains its legal authority to enforce its permit requirements.

In May of 2022, the Commission issued Cease and Desist Order No. CCC-22-CD-02 and Administrative Civil Penalty Assessment No. CCC-22-AP-02 ("Headlands Orders") to Headland Properties Associates LLC, Headland Properties Associates LP, Cal Coast Companies, Headland Properties Inc, and Edward Miller and Joseph Guarrasi, to specifically address Headlands' liabilities associated with their actions and inactions with respect to the Trailhead Property. These Headlands Orders (Exhibit 22) required that these Headlands-related entities pay \$6,000,000 to the Violation Remediation Account and to the extent possible, that they facilitate the cleanup and transfer of the Trailhead Property to the City of Los Angeles or an Executive Director-approved not for profit entity. While staff had initially agendized both the Wooster and Headlands portions of this case to go before the Commission at the May 2022 hearing, staff postponed the Wooster matter as their counsel had made settlement overtures in the leadup to the hearing. Since that time, Staff has worked assiduously to attempt to find an appropriate entity willing to accept and maintain the Trailhead Property while negotiating a draft Consent Order with Wooster. We note that this proposed resolution is totally independent of the Order and penalty action issued against Headlands in the earlier hearing.

Pursuant to the Headlands Orders, the Commission afforded Headlands the opportunity to reduce their civil liability from \$6,000,000 to \$5,000,000 if they worked with Wooster to: a) clean and maintain the facilities, b) have the property transferred to an appropriate entity, and c) have Wooster dismiss its claims against the Commission in the litigation Wooster had initiated; and thereby restore the use of public amenities while saving all parties time and resources. The terms of the Headlands Orders granted Headlands until September 8, 2022 (120 days from the Orders' effective date) to accomplish these undertakings. Unfortunately, as Headlands failed to avail themselves of this opportunity to lower their liability by working with Wooster within the allotted timeframe (nor did they seek to extend the deadline), Headlands passed on the chance to participate in resolving the issues related to the property, leaving it to Wooster to do so on its own. As such, the Wooster Order is entirely separate from the Headlands Orders and was fashioned only to reflect the liability of Wooster under the Coastal Act and to provide a path wherein Wooster will act alone in ensuring that the property is cleaned and transferred to an appropriate entity.

Proposed Resolution

Although to date, Wooster has not recouped any of the money it spent to purchase the Trailhead Property, it has agreed to dismiss the Commission from its litigation and to relinquish its claim to the property by transferring it to whatever entity the Commission identifies. This is the central basis for the proposed resolution. Thus, Staff recommends that the Commission issue the proposed Consent Cease and Desist Order No. CCC-23-CD-01 (“Consent Order”) to enforce the CDP, as amended, by, among other things, requiring that fee title to, and operation and maintenance of, the Trailhead Property be transferred to the City of LA or another public or not-for-profit entity approved by the Commission’s Executive Director. The Consent Order is included as Appendix A to this Staff Report. The Consent Order would require that Wooster 1) cease and desist from undertaking any unpermitted development and development in violation of the previously issued CDP, as amended; 2) clean the restrooms and remainder of the Trailhead Property and leave the Property open to the public until transfer to an appropriate entity is made, 3) take all steps necessary to ensure that title to the Trailhead Property is vested in the City or another public or not-for-profit entity approved by the Commission’s Executive Director, 4) re-key the restrooms to allow public use of both facilities, and 5) dismiss the litigation against the Commission relating to the Trailhead Property and its quiet title cause of action.

The ultimate goal of this enforcement action is to restore public access to the Trailhead Property and to protect it in perpetuity. By agreeing to take immediate action to clean the facilities and transfer the property to an appropriate entity (in addition to dismissing the litigation), Wooster is ensuring that public access will be restored in weeks rather than the potential years it could take if one were to wait for the issue to be decided in a court, and provides this area will be restored to the public for public uses as intended in the original permit, and protects such public uses permanently.

Staff therefore recommends that the Commission approve the proposed Consent Cease and Desist Order, and the motion is on page 11.

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APPENDICES

Appendix A.....CCC-23-CD-01

EXHIBITS

Exhibit 1.....General Location of Trailhead Property
 Exhibit 2.....Aerial Photograph of Palisades Highlands Development
 Exhibit 3..... CDP A-381-78
 Exhibit 4..... Aerial Photograph of Grading and Development in Palisades Highlands, 1977
 Exhibit 5.....City Ordinance No. 155,203
 Exhibit 6.....Board of Recreation and Park Commission Report 370-89
 Exhibit 7.....Modification of Recorded Map: Tract 32184
 Exhibit 8.....Certificate of Occupancy, January 6, 1994
 Exhibit 9.....Trailhead Property Grant Deed, February 16, 1994
 Exhibit 10.....Trailhead Property Grant Deed, August 29, 1995
 Exhibit 11.....Board of Recreation and Park Commission Report 405-95
 Exhibit 12.....Trailhead Property Grant Deed, February 26, 2010
 Exhibit 13.....Trailhead Property Grant Deed, December 5, 2013
 Exhibit 14.....Trailhead Property Grant Deed, January 14, 2014
 Exhibit 15.....Excess Proceeds Refund Notice, March 31, 2016
 Exhibit 16.....City Maintenance Records Excerpt
 Exhibit 17.....City Utility Records Excerpt
 Exhibit 18.....Photos of Trailhead Facilities, 2017
 Exhibit 19.....CCC Letter to Wooster, August 3, 2016
 Exhibit 20.....CCC Letter to Headlands, August 10, 2016
 Exhibit 21.....Wooster Amended Complaint
 Exhibit 22.....Headlands Orders: CCC-22-CD-02 and CCC-22-AP-02
 Exhibit 23.....Aerial Photograph Depicting Location of Trailhead Property
 Exhibit 24.....Trailhead Property Amenities
 Exhibit 25.....CDPA1
 Exhibit 26.....CDPA9
 Exhibit 27.....CDPA11
 Exhibit 28.....Grant Deed Transmittal Letter to CCC, February 16, 1994
 Exhibit 29.....Notice of Power to Sell Tax-Defaulted Property July 29, 2005
 Exhibit 30.....County Tax Assessor Property Review, March 16, 2006
 Exhibit 31.....County Tax Assessor Correspondence to CCC
 Exhibit 32.....Wooster Letter to CCC, January 9, 2019
 Exhibit 33.....Photos of Trailhead Facilities, 2022

Exhibit 34.....Wooster Letter to CCC, August 18, 2016
 Exhibit 35.....Notice of Intent to Commence Order Proceedings – Wooster, February 15, 2018
 Exhibit 36.....Recorded Notice of Violation
 Exhibit 37.....CCC Letter to Wooster, April 20, 2020
 Exhibit 38.....Wooster Government Claim Forms
 Exhibit 39.....CCC Letter to City, June 2, 2021
 Exhibit 40.....Map Depicting Trailhead Property and Local Trails

I. MOTION AND RESOLUTION

Motion: Cease and Desist Order

*I move that the Commission **issue** Consent Cease and Desist Order No. CCC-23-CD-01 to 1205-1207 Wooster Street LLC and Henri Levy pursuant to the staff recommendation.*

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

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-23-CD-01, as set forth below, and adopts the finding set forth below on the grounds that 1205-1207 Wooster Street LLC and Henri Levy, has undertaken development without the requisite permit and in violation of CDP No. A-381-78, as amended, and has otherwise acted and/or failed to act in a manner inconsistent with that permit, in violation of the Coastal Act, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act and the Coastal Development Permit.

II. HEARING PROCEDURES

The procedures for a hearing in which the Commission issues a Cease and Desist Order under Public Resources Code (“PRC”) Section 30810 are described in the Commission’s regulations at Section 13185 of Title 14 of the California Code of Regulations (“14 CCR”).

The Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record. The Chair shall announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present its report and recommendation to the Commission, after which the alleged violators, or their representatives, may present their positions with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the chair may allow the alleged violators to use any reserved rebuttal time to respond to comments from interested persons and may then allow staff to respond to specific points raised by the alleged violators or any of the other speakers.

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

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER No. CCC-23-CD-01²

A. DESCRIPTION OF PROPERTY

The property subject to this enforcement action (the “Trailhead Property”) is located in the Pacific Palisades, a neighborhood of the City of Los Angeles that is neighbored to the west by Malibu and Topanga Canyon and to the southeast by Santa Monica. More specifically, the Trailhead Property is located in the northeast portion of the Palisades Highlands, a community in the northern portion of the Pacific Palisades at the terminus of Palisades Drive (Exhibit 23). Now bounded on three sides by public land, the Palisades Highlands subdivision was created in the late 1970s and early 1980s and developed pursuant to a coastal development permit (“the CDP”) that has since been amended more than a dozen times – as described below.

² These findings also hereby incorporate by reference the Summary at the beginning of the March 24, 2023 staff report (“STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order”) in which these findings appear, which section is entitled “Summary of Staff Recommendations.”

At just under half of an acre in size, the Trailhead Property is situated at the northeast periphery of the Palisades Highlands and is developed with two public bathrooms, trash receptacles, and a 12-car public parking lot (Exhibit 24). These public access amenities were constructed by Headlands pursuant to requirements of the CDP (A-381-78), as amended, and as part of a larger public access and conservation plan to mitigate for the resource impacts the creation of the Palisades Highlands had on public access and the environment. Currently, the record owner of the Trailhead Property is a private entity known as 1205-1207 Wooster Street, LLC, (hereinafter, "Wooster") a limited liability company that was formed in 2008 for the purpose of real estate development. Henri Levy is the sole manager of the limited liability company.

B. HISTORY OF COMMISSION ACTION ON THE PROPERTY

As detailed below, the project that the Commission approved - which would eventually become the Palisades Highlands - was an extremely large development, spanning well over a thousand acres, involving the construction of around two thousand residential units, and necessitating over ten million cubic yards of grading on what was then the periphery of the developed area of the City of Los Angeles. Prior to the passage of the Coastal Act in 1976 or the initiative that was its predecessor (Proposition 20) in 1972, the developers had been planning to undertake this large-scale project for many years, and by 1968, they had received general approvals from the City of Los Angeles for subdivision of the land and site preparation for approximately half of their property in the area, but had received no approval for actual construction of structures nor for site work/subdivision of the remaining half of their property.

In a negotiated settlement to resolve protracted dispute regarding whether or not the developers had a vested right to complete the development, the Commission agreed to issue a permit for a smaller version of the planned project, imposing a variety of conditions designed to protect public recreation and the environment, among other things. On July 17, 1979, the Coastal Commission granted Coastal Development Permit A-381-78 ("the CDP") to Palisades Resources Inc. and Headland Properties Inc. jointly for the subdivision of Tract 31935, one of four new tracts that those two applicants owned and planned to develop, all in what is now the Palisades Highlands (Exhibit 3). The CDP authorized subdivision of the property, grading of roads and the installation of utilities to accommodate the residential development on the then-undeveloped property. Additionally, this CDP laid the framework for an integrated development plan for all land owned by the applicants in the Palisades Highlands proposed for development; in the findings for the approval of the CDP, the Commission analyzed the maximum number of units that could be approved across all four tracts in the Palisades Highlands in light of Coastal Act concerns regarding cumulative impacts on traffic, beach access, ecology, scenic resources and public recreation.

The CDP established an Urban Limit Line ("ULL"), which set a boundary for all four tracts beyond which development would be restricted to minimize alteration of natural landforms, protect ecology, and maintain the scenic and recreational qualities of the

area. Pursuant to the CDP, only minor development in furtherance of low-intensity public recreational land uses, including public trail construction, was permissible outside of the ULL. Further, the CDP required that the area outside of the ULL (nearly 1,000 acres of land) be dedicated in fee to the California Department of Parks and Recreation (“State Parks”).

The first of over a dozen amendments to the project was approved by the Commission in June of 1980. In addition to a number of other changes, this amendment (“CDPA1”) sought to address impacts that the large-scale development would have on public recreation in the area (Exhibit 25). As a condition of CDPA1, Headlands was required to identify a site for a trailhead to provide access to an existing trail on Temescal Ridge, to construct trailhead facilities on that site, including a parking lot, restrooms, and signs, and then to transfer the property to State Parks. This is the location of the violations that are being addressed by the recommended Order. Specifically, Special Condition 7 of CDPA1 states, in relevant part that:

Concurrent with the grading of Lots 86 and 87 of Tract 32184, the applicant shall construct trailhead facilities (including a 6-10 car parking lot, gates and signs) in vicinity of said Lots 86 and 87 substantially as shown in applicant’s A-1, so as to provide foot trail (sic) access to an existing trail on Temescal Ridge. The applicant shall also construct a restroom facility in the vicinity of Palisades Highlands at a location designated by the State Department of Parks and Recreation in Topanga State Park or on the dedicated lands.... All facilities shall be constructed to the usual specifications of the [State of California] Department of Parks and Recreation, and shall be turned over to the Department for operation and maintenance.³

Two of the subsequent amendments to the CDP contained conditions relevant to the requirements for the Trailhead Property; first, Special Condition 2 of Amendment 9 (“CDPA9”), approved December 9, 1987, provided that the aforementioned access improvements were to be planned and approved prior to the construction of the subdivision’s residential units and constructed concurrently with the construction of streets and utilities (Exhibit 26). It also modified Special Condition 7 of CDPA1 to allow the City to accept the Trailhead Property instead of State Parks. Special Condition 2⁴ states, in relevant part:

³ While the language in CDPA1 may be imprecise with respect to the underlying real property in requiring that “facilities . . . be turned over to the Department,” subsequent amendments make clear that the condition was intended to require dedication of fee title to the Trailhead property. For example, when adding language to the condition in amendment CDPA9 to add additional possible recipients of the Trailhead Property, the Commission indicated that the amended language would allow the trailhead property itself to be “transferred” to the newly listed potential accepting agency. And indeed, even this original language referred to the “dedicated lands.”

⁴ Section III of Amendment 9 specifically states that “This amendment pertains to the items specified below only, and does not affect the remainder of the approval or the remainder of the adopted conditions of the Commission. Changes in the permit will be made in conditions identified in brackets and contradictory information deleted.” This subsequent amendment was therefore additive and did not change the substance and requirements of Special Condition 7 of CDPA1.

...

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

This condition modified Special Condition 7 of CDPA1, which had required that Headlands dedicate the Trailhead Property to State Parks, now allowing the Trailhead Property to be conveyed to City Parks and Recreation or another approved not-for-profit entity. This condition, expanding the pool of potential recipients of the Trailhead Property, was adopted after State Parks expressed concern regarding accepting property so close to residences in an area with high fire potential. While this condition used the permissive word “may”⁵ in relation to the transfer obligation, the permissiveness was with respect to each individual potential recipient, not the underlying requirement that the property be transferred. In fact, the condition itself presupposes the transfer by requiring that the “accepting entity” review the facility plans prior to construction. Further, subsequent actions by both Commission staff and Headlands reflect a meeting of the minds that the intent of this condition was to require the property transfer to State Parks, City Parks and Recreation, or another approved entity.

In fact, both the City and the Commission eventually required that the Trailhead Property be deeded to the City⁶, along with various trail easements, to enhance access in the area as part of their approvals of this development. The City’s interest in the property, and its understanding that the property was to be dedicated to it in fee, was reflected in City Ordinance No. 155,203, which was adopted a year later on May 7, 1981 (approved by the Mayor on May 8, 1981), still well in advance of the developer dedicating the property, in which the City authorized its Department of Recreation and Parks to receive and record dedication offers and deeds to the real property described for dedication in the CDP (Exhibit 5). Further, Conditions 20 and 24 of the Los Angeles City Planning Advisory Agency’s June 3, 1983 approval of Tract Map No. 32184, as modified on July 29, 1987, also required the dedication of the Trailhead Property and trail easements to the City (Exhibit 7).

⁵ Even assuming that the permissive nature of this condition was to be interpreted to not have mandated the transfer of the Trailhead Property to State Parks or City Parks, at a very minimum it required that Headlands either maintain the property itself, in perpetuity, or transfer it to one of the aforementioned entities for maintenance.

⁶ While the original CDP required that the Trailhead Property “facilities” be “turned over” to State Parks, subsequent amendments replaced State Parks with City Parks, thus aligning the conditions of both agencies.

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

....

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

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

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

Construction of the aforementioned public amenities on the Trailhead Property was undertaken pursuant to the permit requirements, a Certificate of Occupancy for the restroom facility was issued on January 6, 1994, and in February of 1994, Headlands signed a grant deed transferring ownership of the Trailhead Property to the City Department of Parks and Recreation (Exhibit 9) and sent a confirmatory letter to the City. To demonstrate compliance with the CDP, as amended, Headlands sent a letter to

⁷ This reference to the “Trail” refers to the nub of the trail that extends from the trailhead facility up to the ridgeline trail.

Commission staff dated February 16, 1994, with which a copy of the required grant deed that had been made to the City was transmitted. In this letter Headlands states, “Headland Properties Associates will continue to maintain the Temescal Ridge Trailhead Facility and Trail⁸ until such time as the City Recreation and Parks Commission Department and City Council have officially recorded the Grant Deed and accepted the conveyances” (Exhibit 28).

While the 1994 grant deed accurately described the Trailhead Property, it also included a legal description of the easement being granted to provide access from the Trailhead Property to the extant hiking trail. This language allowed bicycle access in addition to pedestrian use, although bicycles are in fact not allowed on the portion of the Temescal Ridge Trail to which the easement connects; the grant deed was not recorded. Subsequently, on August 29, 1995, Headlands executed a new grant deed transferring title of the Trailhead Property to the City – this time without the erroneous bicycle language in the easement description (Exhibit 10). Shortly thereafter at a board meeting on October 18, 1995, City Parks voted to accept a grant deed from Headlands for the Trailhead Property and trail easement (Exhibit 11). Unfortunately, though Headlands had now executed an accurate grant deed and City Parks had voted to accept it, because the notary stamp on the deed was blurred and illegible the County Recorder’s Office rejected the document. Nevertheless, City Parks did take over utilities payments and maintenance of the facilities (Exhibits 16 & 17). Thus, despite the fact that 1) the City had independently required the creation and dedication of the Trailhead Property, 2) the City passed an ordinance to accept property granted by the developer in conjunction with the development of the Palisades Highlands, 3) the City Parks board passed a resolution to accept the Trailhead Property, and 4) City Parks subsequently maintained the Trailhead Property and facilities, the recordation of the grant deed was never effectuated, and Headlands remained the record owner.

Because the County Assessor had received no notice that the property was now in public ownership, it continued to assess taxes against the property. Importantly, Headlands would have been aware of this, as it continued to receive the tax bills. However, it stopped paying those taxes, and its failure to pay those bills eventually caused the property to enter into tax default on June 30, 2000. Headlands ceasing to pay taxes on the property violated the requirement that they ensure the transfer of those properties in a manner that could not subsequently be questioned or undone. A Notice of Power to Sell Tax-Defaulted Property was recorded against the Trailhead Property on July 28, 2005 (Exhibit 29).

The Trailhead Property was first sold at public auction on February 13, 2006; when the purchaser became aware of the restroom and parking lot development encumbering the property and notified the Tax Assessor, an independent review of the property was undertaken. The Tax Assessor determined that the Trailhead Property was “dedicated and accepted by the City of Los Angeles based on Instrument Numbers 81-631478 and

⁸ Again, this reference to the “Trail” refers to the nub of the trail that extends from the trailhead facility up to the ridgeline trail.

81-631479⁹ recorded on June 24, 1981” (Exhibit 30). Based on this analysis the Tax Assessor rescinded the auction sale and recommended that the parcel be changed to a tax exempt “900” parcel (a numeric identification given to publicly owned property). In subsequent coordination between the Tax Assessor and the City, the City indicated a plan to record documents evidencing ownership of the Trailhead Property. Based upon these representations, the Tax Assessor excluded the Trailhead Property from their 2007, 2009, and 2010 public actions. Unfortunately, the City again failed to record the requisite documentation, which per the Tax Assessor prevented them from moving forward with changing the parcel status to a tax exempt 900 parcel (Exhibit 31).

Pursuant to California Revenue and Taxation Code Section 3692, the Tax Collector must attempt to sell property within four years of the time that the property becomes subject to sale for nonpayment of taxes, and if it is not sold then the Tax Assessor must attempt to sell the property at intervals of no more than six years until the property is sold. Therefore, to comply with State law the Tax Assessor offered the property at public auction in 2012 and 2013; the Property was sold¹⁰ to Mr. Henri Levy on October 21, 2013, for \$350,000.00 (Exhibit 13). Headlands did not notify Commission staff that the Trailhead Property was in tax default proceedings or make any attempt to stop the sale, nor was the Commission staff given notice of the pending sale by Headlands or any other entity. There is no evidence that Headlands attempted at any point in this process to comply with the permit requirements regarding the property.

To the contrary, after the property was sold in 2013 for more than the minimum bid amount, Headlands made an “excess proceeds claim” to the Tax Assessor, in order to profit from the sale by recovering some of the sale proceeds. This claim was approved, and the Tax Assessor transferred \$329,521.79 to Headlands in June 2016 (Exhibit 15). On January 14, 2014, Mr. Levy deeded the Trailhead Property to 1205-1207 Wooster Street LLC, a California Limited Liability Company (Exhibit 14) controlled by Mr. Levy.

A year after taking ownership of the Trailhead Property, Wooster contacted the City and requested that maintenance of the Property be ceased as it was now privately held (Exhibit 32). Subsequently, Wooster locked the entrance gate – without a CDP or amendment to the underlying CDP – blocking public access to the Trailhead Property. While this gate was subsequently re-opened after Commission staff contacted Wooster, as described below, one of the two gendered restrooms remains permanently locked, while the other bathroom has been so neglected that a build-up of trash and human waste has made it completely unusable. As a consequence of neither Headlands nor Wooster maintaining the Trailhead Property, the facilities have fallen into total disrepair with trash, graffiti and waste strewn across it – rendering it unusable by the public (Exhibit 33).

⁹ Open space dedications made by Headlands in 1981 in compliance with the CDP conditions, as discussed above.

¹⁰ As discussed above, this sale was only a “purported” sale as there is an argument that the City in fact owned the Trailhead Property (as the Tax Assessor previously found), in which case the County should not have been able to sell it.

C. DESCRIPTION OF COASTAL ACT VIOLATIONS

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

D. ENFORCEMENT ACTIVITIES AND ATTEMPTS AT RESOLUTION

In 2016, Wooster put the Trailhead Property on the market for sale and advertised it as being available for residential development. Enforcement staff was made aware of some of the violations regarding the Trailhead Property on July 21, 2016, when a reporter reached out to the Commission's Public Information Officer to discuss the pending sale of the Trailhead Property for residential development; the reporter wanted to understand whether Commission CDP conditions still applied. Permit staff researched the matter, provided a response to the reporter, and forwarded the case to the Enforcement division. Since that time, Enforcement staff spent very significant amounts of time attempting to unravel the history and events, and to work with both Wooster, the current record owner of the lot, and Headlands, the original permittee, in an effort to resolve the violations. As discussed below, Staff's efforts to negotiate a settlement with Headlands were unsuccessful, and the Commission issued Cease and Desist Order No. CCC-22-CD-02 and Administrative Penalty Assessment No. CCC-23-AP-02 to Headlands in May of 2022.

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

letter Mr. Krief canceled the pending escrow on the Trailhead Property, therefore leaving Wooster as the record owner.

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

Mr. Rossman, Wooster's attorney at the time, responded to staff's violation notice on August 18, 2016, indicating that his client, Wooster, had opened the gate to the parking lot but reiterated that they do not have a key to the men's bathroom so that would remain closed (Exhibit 34). Over the years, since this initial notice of violation, staff has corresponded extensively – including over two dozen letters, calls, and emails with Mr. Levy, his realtor, and attorneys in an effort to resolve this matter. On February 15, 2018, the Executive Director of the Commission sent Wooster a “Notice of Intent to Record Notices of Violation, and to Commence Cease and Desist Order Proceedings and Administrative Civil Penalties Proceedings (“Notice of Intent”) (Exhibit 35). This Notice of Intent indicated, among other things, that a Notice of Violation would be recorded against the property unless an objection to said recordation was lodged by March 8, 2018. No objection was received, and a Notice of Violation of the Coastal Act (“NOVA”) was recorded against the Trailhead Property on April 10, 2018, at the Office of the County Recorder for Los Angeles County (Exhibit 36).

After the Commission's April 2020 hearing was canceled due to the COVID-19 pandemic, staff sent a letter (Exhibit 37) to Wooster advising them of the unforeseen delay of the Commission hearing. Staff received an email on April 21, 2020 from a Mr. Daniel Krishel, indicating that his law firm had been retained by Wooster and suggesting a call. Staff had a teleconference with Mr. Krishel and his client Mr. Levy on April 30, 2020, wherein staff provided Wooster's new counsel with a brief history of the enforcement case and the Coastal Act as related thereto. In January 2021, staff received a notice, dated November 9, 2020 (Exhibit 38), that Mr. Levy through his attorney Mr. Krishel was seeking monetary compensation from the State of California, Los Angeles County, and the City of Los Angeles for alleged negligence and fraud relating to their purchase of the Trailhead Property. Calls took place on January 11, 2021 and March 25, 2021, with Mr. Krishel to continue conferring about facts and law salient to the case as well as potential paths to resolution. On May 27, 2021, Mr. Levy and Wooster filed suit against the City of Los Angeles, County of Los Angeles, State of California, Headland Properties Associates LLC, and Does 1-100, for damages and to

quiet title to the Trailhead Property free of any restrictions. The plaintiffs did not raise any Coastal Act claims in their litigation, and the case has been moving slowly.

In May of 2022, after a noticed public hearing, the Commission issued Cease and Desist Order No. CCC-22-CD-02 and Administrative Civil Penalty Assessment No. CCC-22-AP-02 (“Headlands Orders”) to Headland Properties Associates LLC, Headland Properties Associates LP, Cal Coast Companies, Headland Properties Inc, and Edward Miller and Joseph Guarrasi to address Headlands’ liabilities associated with their actions and inactions with respect to the Trailhead Property (Exhibit 22). The Headlands Orders required that these Headlands-related entities pay \$6,000,000 to the Violation Remediation Account and to the extent possible, facilitate the cleanup and transfer of the Trailhead Property to the City of Los Angeles or an Executive Director-approved not for profit entity. On July 8, 2022, two of those entities and the two named individuals collectively commenced litigation to challenge the Headlands Orders issued in May 2022; the case is ongoing at this time.

While staff had initially agendized both the Wooster and Headlands portions of this case to go before the Commission at the May 2022 hearing, after receiving settlement overtures from counsel for Mr. Levy in the leadup to the hearing, staff postponed that portion of the proceedings to provide for settlement discussions. We note that this proposed resolution with Wooster is totally independent of the order and penalty action issued against Headlands in the earlier hearing, which was intended to address Headlands violations associated with their permit violations.

Pursuant to the Headlands Orders, Headlands was given the opportunity to reduce their civil liability by \$1,000,000 if they worked with Wooster to: a) clean and maintain the facilities, b) have the property transferred to an appropriate entity, and c) have Wooster dismiss its claims against the Commission in the litigation Wooster had initiated. The terms of the Headlands Orders granted Headlands 120 days from the Orders’ effective date to accomplish these undertakings; that deadline has since passed and Headlands failed to avail themselves of the opportunity to lower their liability by working with Wooster. As such, the Wooster Order is entirely separate from the Headlands Orders and was fashioned to only reflect the liability of Wooster under the Coastal Act and provide a path wherein Wooster will act alone in ensuring that the property is cleaned and transferred to an appropriate entity.

Since the issuance of the Headlands Orders, Staff has worked assiduously to attempt to find an appropriate entity willing to accept and maintain the Trailhead Property while negotiating a draft Consent Cease and Desist Order with Wooster. Due in part to the incredibly complex and lengthy history associated with this development in general and this Property in particular, it has taken a not insignificant amount of time for staff and Wooster to come to an understanding regarding the factual and legal reality of the Property. Ultimately though, the result is that Wooster is now willing to, without recompense from the Commission, give the Property he purchased to an entity that will hold and manage it for the benefit of the public.

As described above, the proposed Consent Cease and Desist Order would result in Wooster dismissing its litigation against the Commission and its quiet title cause of action, cleaning the Trailhead Property and facilities, re-keying the restrooms so that both are functional, and transferring title of the Trailhead Facility to a not-for-profit entity approved by the Commission's Executive Director.

E. BASIS FOR ISSUING CONSENT CEASE AND DESIST ORDER

1. STATUTORY PROVISION

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

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

...

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

2. APPLICATION TO FACTS

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

VIOLATION OF THE COASTAL ACT--UNPERMITTED DEVELOPMENT

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

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. “Development” is defined broadly by Section 30106 of the Coastal Act as follows, in relevant part:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure;...change in the density or intensity of use of land....

...

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

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

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

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

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

Concurrent with the grading of Lots 86 and 87 of Tract 32184, the applicant shall construct trailhead facilities (including a 6-10 car parking lot, gates and signs) in vicinity of said Lots 86 and 87 substantially as shown in applicant's A-1, so as to provide foot trail (sic) access to an existing trail on Temescal Ridge. The applicant shall also construct a restroom facility in the vicinity of Palisades Highlands at a location designated by the State Department of Parks and Recreation in Topanga State Park or on the dedicated lands.... All facilities shall be constructed to the usual specifications of the Department of Parks and Recreation, and shall be turned over to the Department for operation and maintenance. (emphasis added)

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

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

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

Despite asserting ownership over the Trailhead Property, Wooster has not maintained the property, per its own admission, cleaning it only twice in the six years since it directed the City to stop maintaining it. The property and amenities have fallen into such a state of disrepair that the one open restroom is unusable and the parking lot is covered with litter and graffiti. As a private developer, Wooster owning the property is itself violative of the CDP, as is its failure to complete the required transfer to the City or another public or not-for-profit entity. Further, failing to maintain the property has essentially resulted in the Trailhead Property no longer being useable by the public, also in violation of the CDP.

3. JURISDICTION

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

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

By failing to maintain the Trailhead Property as a public amenity, Wooster has effectuated a change in intensity of use to the property as well as a concomitant diminution in public access on the coast – which constitute development under the Coastal Act. No CDP was obtained for this development. While the City does issue its own CDPs, the Commission retains primary enforcement jurisdiction within the Coastal Zone in the City as there is no certified LCP. That said, as a matter of comity and because this property was to have belonged to the City, Commission staff has been in communication – including via correspondence dated June 2, 2021 (Exhibit 39) - with staff from various levels and departments within the City of Los Angeles to keep the City apprised of the potential parameters and ramifications of the enforcement action.

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

Highlands and the CCC did not envision further development would be approvable in the area.

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

It is only necessary to find that development has been undertaken without a required permit or in violation of a previously issued permit in order for the Commission to issue a cease and desist order. However, the analysis of the manners in which the unpermitted development is inconsistent with Chapter 3 of the Coastal Act in Section F, below, is included for background and to help explain the necessity of the various elements included in the proposed Consent Cease and Desist Orders.

F. CHAPTER 3 POLICIES AND RESOLUTION

The unpermitted development enumerated in this staff report is inconsistent with important public access tenants enumerated in Chapter 3 of the Coastal Act. Perhaps the most obvious of these is that the Commission has a statutory directive to maximize public access and recreational opportunities to and along the coast. Coastal Act Section 30210 states:

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

Additionally, Coastal Act Section 30213 provides:

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

Finally, Section 30212.5 of the Coastal Act requires that:

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

Additionally, Section 30013 of the Public Resources Code provides:

The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division...

The two Government Code sections referenced above in Coastal Act Section 30013 provide further guidance: Government Code section 11135(a) states that no one in the state may be “unlawfully denied full and equal access to the benefits of . . . any program or activity that is conducted, operated, or administered by the state or by any state agency”, and Government Code Section 65040.12 defines environmental justice to mean “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies.” On March 8, 2019, the Commission adopted an environmental justice policy that details that the Commission will use its legal authority to, among other things, ensure equitable access to coastal environments.¹¹ Public recreation and the ability for the public to access publicly held land along the coast is a major cornerstone of the Coastal Act and an important precept of environmental justice.

The Summit/Palisades Highlands development spans hundreds of acres and, but for one road connecting the development with the Pacific Palisades to the south, is entirely surrounded by over a thousand acres of dedicated open space, as required by the CDP, as amended, in addition to the thousands of acres of public park land in and around Topanga State Park. This land, large portions of which were required by the CDP to be held by the State, City, or other not-for-profit entity, contains a network of public hiking trails that afford access to Temescal Ridge, Topanga State Park, and Mulholland Gateway Park. Within the hundreds of acres of the Palisades Highlands development, there are only two trailheads that provide access to this trail system (Exhibit 40). The homeowners in this upscale subdivision may be able to use the washrooms in their own homes and then walk to the trailheads, but for the rest of the general public there is no practical way to get there unless they can use the parking lot and facilities at the Trailhead Property. This is a perfect example of how a trailhead parking lot that is ostensibly available to everyone and is therefore ostensibly neutral with respect to environmental justice concerns is actually critical to ensuring equitable access.

In the adopted findings for CDPA1, the Commission explained, “[f]or it is only with the dedication of these lands for permanent preservation of visual a[n]d landform resources and for public recreational use that the Commission can find the development...on balance most protective of significant coastal resources [emphasis added].” The Commission therefore made it clear in the adopted findings for the CDP and subsequent amendments that the preservation of the recreation, ecology and scenic qualities of the Palisades Highlands was necessary to offset the subdivision’s damaging

¹¹ https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf

impacts to coastal resources and thus for finding the project consistent with Chapter 3 of the Coastal Act. The Commission therefore required a complement of conditions that require the protection of land outside of the ULL for ecology and public access and recreation, the maintenance of Interior Open Space lots for ecology, recreation and slope stability, and finally the creation of the Trailhead Property and amenities to provide support for the public to access these vast areas.

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

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

The proposed Consent Cease and Desist Order requires compliance with the CDP, as amended. Significantly, through the proposed Consent Cease and Desist Order, Wooster has agreed to completely clean the property to return it to a sanitary and

useable state and to re-key the restrooms so that moving forward both facilities will be available to the public. Once these steps have been taken, Wooster has agreed to immediately transfer title to the Trailhead Property to an Executive Director-approved not-for-profit entity. In consenting to take this step, Wooster is concurrently agreeing to not seek compensation from the Commission for the over three hundred thousand dollars that they spent in purchasing the property, while at the same time ensuring that public access to the property is restored and protected in perpetuity. Finally, Wooster dismissing the ongoing litigation against the Commission will result in an immense savings of time and resources while ensuring that the Trailhead Property is brought into compliance with the public access provisions of the Coastal Act and the CDP, as amended.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Commission finds that imposition and implementation of this Consent Cease and Desist Order, to compel restoration of public access to the Trailhead Property and associated public amenities as contemplated by CDP A-381-78, among other things, is exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§15300 *et seq.*). Because this is an enforcement action and because the Commission’s process, as demonstrated above, involves ensuring that the environment is protected throughout the process, the exemption covering enforcement actions by regulatory agencies (14 CCR § 15321) applies here.

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

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

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” This Consent Cease and Desist Order is designed to protect and enhance the coastal resources, and contain provisions to ensure, and to allow the Executive Director to ensure, that they is implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR § 15300.2(c)

does not apply. An independent but equally sufficient reason why that exception in Section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has not significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore coastal resources.

Finally, it is not even clear that this order will not result in a physical change in the environment, as that concept is used in CEQA, rendering the project exempt pursuant to 14 CCR § 15060(c)(2), and it may not constitute a project within the meaning of CEQA, rendering it exempt pursuant to 14 CCR § 15060(c)(3).

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

H. SUMMARY OF FINDINGS OF FACT

1. 1205-1207 Wooster Street LLC (Wooster) is the current record owner of the property at 16701 Via La Costa, also identified by APN 4431-039-029, or herein as the Trailhead Property. The Trailhead Property is located within the Palisades Highlands development in the City of Los Angeles and in the Coastal Zone.
2. The Palisades Highlands is a large subdivision that was developed pursuant to a coastal development permit obtained in the 1970s by Palisades Resources Inc. and Headland Properties Associates Inc.
3. Henri Levy is the principal of 1205-1207 Wooster Street LLC.
4. In its approval of CDP A-381-78, as amended, the Commission found development of the Palisades Highlands project consistent with the Coastal Act and approved the CDP, as amended, contingent upon a number of conditions to protect the ecology, slope stability, and public access in the area, among other things. One such condition required that the developer identify a property to be used as a parking lot and entryway to the Temescal Ridge Trail, that the property be developed with a restroom and parking lot, and that it be transferred to the City of Los Angeles or another public or not-for-profit entity approved by the Commission’s Executive Director. The permittees later identified the Trailhead Property for this purpose and constructed the required amenities.
5. 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.
6. Actions and inactions by Wooster include: failure to maintain a public amenity resulting in a reduction in the intensity of use of that property (from public park to

private land) and the failure to transfer the Trailhead Property to the City of Los Angeles or other not-for-profit entity approved by the Commission's Executive Director, in violation of the permit requirement. These actions and inactions also constitute development, in that the failure to maintain the public trailhead, public parking lot, and public restroom has reduced the intensity of its use, and this development has also occurred without a coastal development permit and in violation of conditions of CDP A-381-78, as amended. Jurisdictional requirements for the issuance of a cease and desist order against Wooster have therefore been met.

7. The work to be performed under this Consent Cease and Desist Order, if completed in compliance with the instructions therein, which includes transfer of the Trailhead Property to the City of Los Angeles or a not-for-profit entity approved by the Commission's Executive Director, will be consistent with the CDP, as amended and Chapter 3 of the Coastal Act, and therefore, this Consent Cease and Desist Order provides Coastal Act authorization to conduct the activities required therein.
8. As stated in numbers 1 and 6, above, Wooster is the record owner of the Trailhead Property, and its actions and inactions related that Trailhead Property have violated terms of the CDP that were designed to ensure the larger project would be consistent with the public access provisions of the Coastal Act, among other resource protection policies, and therefore violates the cited public access provisions of the Coastal Act, Wooster is therefore in violation of the public access provisions of the Coastal Act and is subject to penalties under Section 30821 of the Coastal Act.