

CALIFORNIA COASTAL COMMISSION

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



W9.1 - 9.6

Staff: R. Modelmog - SF
Staff Report: 5/26/23
Hearing Date: 6/7/23

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Orders, Consent Restoration Orders, and Consent Administrative Penalty Actions

Consent Cease and Desist Order Nos.: CCC-23-CD-02 and CCC-23-CD-03

Consent Restoration Order Nos.: CCC-23-RO-01 and CCC-23-RO-02

Consent Administrative Penalty Nos.: CCC-23-AP-01 and CCC-22-AP-02

Related Violation Files: V-4-17-0093 and V-4-17-0092

Violators: Wildman Family Trust and Mancuso Family Revocable Trust

Location: Four adjacent properties located at 27910 Pacific Coast Highway (PCH) ("the Wildman House Property"), 27856 PCH ("the Wildman Cabana Property"), 27920 PCH ("the Mancuso Property"), and 27930 PCH ("the 5S Property") (Assessors' Parcel Nos. 4460-032-018, 4460-032-008, 4460-032-017, and 4460-032-019) as well as CalTrans right of way on PCH and public trust tidelands in the city of Malibu, Los Angeles County.

Violation Description: Development that is inconsistent with Coastal Development Permit ("CDP") Nos P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186, and other development conducted without benefit of a CDP, as follows:

Wildman Family Trust:

Development that is inconsistent with CDP No's P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186, and other development conducted without benefit of a CDP, as follows:

- 1) Development located on the Wildman House Property within portions of the Vertical Public Access Easement, that blocks the public from using the easement, including placement of a locked gate at the entrance to the easement, metal fencing along the easement, a paved driveway across a portion of the easement, electrical equipment, landscaping, walls, and a partial staircase, among other obstructions;
- 2) Development located on the Wildman House Property within the Public Parking Easement, that blocks the public from using the easement, including a fenced and gated area with trash receptacles, a paved driveway with concrete walls, fencing, a landscaping mound and other landscaping, a concrete mailbox, a curb, and orange cones adjacent to Pacific Coast Highway;
- 3) Development located on the Wildman House Property outside the current recorded easements, including a paved driveway and private parking lot, a dog kennel/bird aviary, a garage, part of a shed structure on the sand, fencing and watercraft storage on the sand, and a patio expansion of the Wildman Cabana westerly onto the sand;
- 4) Development located on the Wildman Cabana Property and on the sand, including seasonal installation of a large tent structure, wooden posts, beach chairs, and storage of boats and other watercraft;
- 5) Development located on the Mancuso Property but installed by Don Wildman, including construction of stairs, a stone pathway with stone walls and paving, a large satellite dish, and a gate, shed, and water sports racks within the ravine;
- 6) Development including division of property via an unpermitted lot line adjustment to the lot lines associated with the Wildman House Property and the Mancuso Property.

Mancuso Family Revocable Trust:

Development that is inconsistent with CDP No's P-78-2707 and 5-81-35A, and other development conducted without benefit of a CDP, including, but not limited to:

CCC-23-CD-02 & CCC-23-CD-03, CCC-23-RO-01 & CCC-23-RO-02,
and CCC-23-AP-01 and CCC-23-AP-02 (Wildman and Mancuso)

- 1) Development located on the Mancuso Property within the Vertical Public Access Easement, that blocks the easement holder from improving the easement, blocks the public from using the easement, including locked gates, fencing, a large hedge, various electrical equipment, a drain gate, a landscape light, concrete pavement, and many large trees and other landscaping;
- 2) Development located on the Mancuso Property within the Public Parking Easement, that blocks the easement holder from improving the easement, blocks the public from using the easement, including a concrete wall and associated hedge, a metal fence with vegetation along it, the eastern portion of a concrete U-shaped driveway, and large trees and other landscaping;
- 3) Development located on the Mancuso Property outside the existing easements, including fencing, stairs, a pathway with stone walls and paving, culverts, and a large satellite dish, among other items, all constructed by the owner of the Wildman House Property;
- 4) Development located on the 5 S Property, including a U-shaped driveway for access to the Mancuso house and placement of orange cones blocking public parking on Pacific Coast Highway between the two outlets of the U-shaped driveway;
- 5) Development in the form of an unpermitted lot line adjustment to the lot lines associated with the Mancuso Property and the Wildman House Property.

Substantive File Documents: Public documents in Consent Cease and Desist Order File Nos. CCC-23-CD-02 and CCC-23-CD-03, Consent Restoration Order File Nos. CCC-23-RO-01 and CCC-23-RO-02, and Consent Administrative Penalty File Nos. CCC-23-AP-01 and CCC-23-AP-02; Exhibits 1 through 17; and Appendix 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

This matter centers on the blocking of two public access easements on two adjacent properties at Escondido Beach in Malibu, and is a case which has eluded resolution for four decades due to its convoluted legal history. Escondido means “hidden” in Spanish, and this beach has indeed remained difficult for the public to access well into the 21st century. Yet Escondido Beach is located in a highly popular area of central Malibu, near Paradise Cove and Escondido Falls, and within sight of Point Dume. This is an accessway that the California Coastal Commission (“Commission”) and State Coastal Conservancy (“Conservancy”) have long sought to open. This proposed resolution presents an opportunity not only to finally open this accessway, but also to greatly enhance it and fully construct it with expensive improvements, at no cost to the public.

The first easement at issue was required by the Commission in 1978 in order to protect public access to the beach via an existing trail that extended from Pacific Coast Highway, down the bluff, and through an arroyo to the beach. The second easement was required by the Commission in 1981 to provide a small parking lot along PCH for easy public access to the trail to the beach. Both easements are extremely valuable, as they were required in an area that has little other public access available, which was especially true at the time the coastal development permits were issued. The easements were originally accepted by the Coastal Conservancy and are currently held by the Santa Monica Mountains Conservancy and managed by the Mountains Recreation Conservation Authority (“MRCA”). Until recently, the closest upcoast accessway, at Paradise Cove a quarter mile away, charged a steep entrance fee, and the closest downcoast accessway, at Geoffrey’s a half mile away, was not open at all. Both free accessways are now open due to Commission enforcement efforts.

Over the years, both the Conservancy and the Commission have worked to open the public access easements at issue. However, the Conservancy faced major challenges, primarily from two actions taken in the early 1980’s by the prior owners of the two main properties at issue. First, instead of recording the Commission-required vertical beach access easement along the bottom of the arroyo where the trail was, the prior owners, Ken and Jeannette Chiate and Marilyn and Roger Wolk, recorded it in a location with no regard to topography, in a straight line along a nearly vertical bluff face adjacent the trail. Chiate then applied for and obtained a CDP Amendment to move the easement slightly to an ostensibly better location, but the new alignment actually made it even harder to build a beach accessway because it was even less aligned with the natural topography. The Commission was unaware of the problems presented by the steep grades when the easements were recorded.

Second, these prior owners also performed an unpermitted lot line adjustment, which greatly complicated the situation by creating a zig-zagging property boundary underlying both the beach access easement and the public parking easement, whereas before, the easements were entirely on one property. Shortly after recordation, Chiate then argued to Commission staff that the beach access trail would be too hard to improve in the

recorded easement area and that the easement should therefore be abandoned, despite being part of the original permit requirements.

In the mid-1980's, one of the properties underlying the two public access easements was sold to the late Don Wildman. Don Wildman soon began building encroachments within the recorded easements and rebuffed the Commission and Conservancy's requests to remove his encroachments and open the public access easements. He also argued, like the prior owners, that because the vertical beach access easement had been recorded in such a difficult place to build an accessway, that it should be abandoned, despite the easement being part of the original permit requirements. Yet, he built his own private parking lot just behind the public parking easement, and his own private beach accessway through the arroyo, where the vertical public access easement was originally intended to be. Meanwhile, the Conservancy faced the stark reality of planning to build a beach accessway in a location that would likely require cranes on the sand and pile drivers on the bluff edge to drill caissons for an elevated walkway that would run along the top of the bluff, and to build a staircase down the bluff to the beach below, all of which would be difficult, expensive, and time consuming.

The recordation location of the easement and unpermitted lot line adjustment had not only created engineering and logistical problems for the vertical public access to be built. In addition, in the early 1990's, Chiate and Wolk built an unpermitted U-shaped driveway leading from an adjacent property they owned, 27930 PCH (the current owner of which is not a party to these violations), to 27920 PCH. This double driveway prevented the public from parking in an area of PCH equivalent to at least two parking spaces. They then sold 27920 PCH to Frank Mancuso ("the Mancuso Property"). Mancuso then similarly argued, like Don Wildman and Chiate before him, that the public access easements as recorded should not be opened because it would be so difficult to construct an accessway there.

After the Commission gained the ability to levy administrative fines against Coastal Act violators in 2014, Commission enforcement staff renewed their investigation into the complex violation history here. In 2017, the Commission sent Notice of Violation letters to Don Wildman and Frank Mancuso, the then-owners of the two properties underlying the two public access easements. In 2018, Don Wildman passed away. Commission staff then worked with Don Wildman's heirs (the Wildman Family Trust), and Mancuso to craft a consensual resolution to resolve the violations here and unwind the decades-old actions by the prior owners that have hindered public access for so long.

This case now presents the Commission with an opportunity to finally resolve this matter, and in an amicable way that will provide for much better public access than is currently required by the CDPs at issue, and at no cost to the public. While the trustees of the Wildman Family Trust did not undertake any of the violations, in order to resolve these violations, they have now agreed to construct the public accessway and parking lot, which will be an expensive undertaking. And while Mancuso similarly did not construct the violations on his property, he is now agreeing to pay a monetary penalty

and to participate and cooperate with the Wildman Family Trusts' construction of the public accessway and public parking lot.

More specifically, the Wildman Family Trust has agreed to realign the vertical public access easement closer to its original intended location along a portion of the bottom of the arroyo. The trustees have also agreed to fully construct a public beach accessway from Pacific Coast Highway, down the bluff, through the arroyo and to the sand. This will still involve complex engineering, stairs, and potentially an elevated boardwalk at the bottom of the arroyo. In addition, the Wildman Family Trust has agreed to move the public parking easement entirely onto their property and expand it so that it better accommodates the proposed plans of the MRCA, the current manager of the public access easements here.¹ The Wildman Family Trust has also agreed to build a public parking lot and other improvements, including beach access signs, along PCH in the newly expanded easement. The estimated cost of the Wildman Family Trust's agreement to build the public beach accessway and public parking lot alone, not including the high real estate value of the square footage of their property lost by expanding the parking easement upon it, is over \$3 million.

In addition, Mancuso has agreed to participate and cooperate with the realignment of both easements into improved locations, and much of the realigned easement in the improved location will now be placed on Mancuso's property in the arroyo. He will also participate and cooperate with the construction of the beach accessway and public parking lot by the Wildman Family Trust. Further, Mancuso will remove the unpermitted U-shaped driveway built by the prior owners of his property and apply to amend CDP 5-81-35A to construct a single outlet driveway that will not block public parking spaces, which will result in the restoration of approximately two public parking spaces on PCH. In addition, Mr. Mancuso will pay a \$600,000 penalty to the Violation Remediation Account of the state Coastal Conservancy.

However, it is worth noting that, had the Wildman Family Trust and Frank Mancuso not agreed to relocate the vertical beach access easement close to the location it was originally intended to be through the arroyo, the likely cost to the public of constructing the accessway in the currently recorded easement location is estimated to be much more than the Wildman Family Trust's estimated cost. In addition to this avoided cost to the State of California, construction of an accessway in the currently recorded route would likely have added many years of extra delays due to funding and other logistical work that would have thus further delayed public access over those extra years. Furthermore, this monetary estimate of the value of the settlement does not include Mancuso's monetary penalty of \$600,000. Thus, a conservative estimate of the actual value to the public of the proposed resolutions is well over \$4 million.

¹ Both the vertical public access easement and the public parking easement are held by the Santa Monica Mountains Conservancy, but MRCA will manage and maintain the easements when they are open.

Background

The public access easements at issue are located in Central Malibu, in between two highly visited destinations, and in an area where beach access is highly sought. The beach and pier at Paradise Cove are approximately half a mile to the east of the public access easement entrances on PCH, and the Escondido Falls trailhead is approximately 200 yards to the west, on the other side of PCH. Escondido Beach is particularly popular with people who also want to enjoy the amenities at the Paradise Cove restaurant and pier. The nearest public accessways to the beach are a quarter mile west at Paradise Cove, and a half mile east at Geoffrey's restaurant.

Escondido Beach features remnant sand dunes along the coastal bluffs, and its relatively calm, sheltered waters are popular with snorkelers and standup paddlers. The bluffs along this "hidden" beach remain relatively natural, as the houses above them are built fairly far back from the bluff edge. The beach provides great views of the curving bluffs of Point Dume in the distance, and also provides primarily natural views of the bluffs at Escondido Beach as well. The Commission has lateral public access deed restrictions or easements across most of Escondido Beach above the high tide line, including at the properties at issue, so that once the public is able to reach the water here, there are sandy beaches for them to use and enjoy.

All of the violations at issue have occurred in a part of Malibu that is very popular, but where little public parking is available and there are few public accessways to the beach. Yet, property owners along this stretch of coast have their own private beach accessways, and even their own private parking lots, creating a larger environmental injustice. Escondido Beach means "Hidden Beach" in Spanish, and the lack of public access here kept it hidden from many people that could not find a nearby public trail to the beach, or even a public parking spot, over the decades.

Permitting History²

Public Access Easement

In 1978, a property owner named Ken Chiate³ applied for a Coastal Development Permit ("CDP") to subdivide a 5-acre blufftop property that stretched from Pacific Coast Highway to the ocean. The Commission approved the subdivision and found that there was an existing beach access trail that extended down the arroyo to the beach. The Commission also found that access to the trail was made difficult by recent storm debris, but that the trail could be repaired. Accordingly, the Commission required a ten-

² This property has a complex permitting history involving many parcels, CDPs, recorded documents, and an unpermitted lot line adjustment, and is explained in full detail at section III.B of this staff report.

³ The property was co-owned by Ken and Jeannette Chiate and Roger and Marilyn Wolk, but Ken Chiate acted as the agent for the various CDP applications.

foot wide vertical public access easement to be dedicated on one of the properties, from PCH to the high tide line, along with a lateral public access deed restriction on the beach that extended 25 feet inland from the high tide line. Chiate proposed an easement route that he stated would follow the existing trail along the arroyo floor. However, the vertical public access easement was not recorded along the existing trail in the arroyo. Instead, the vertical public access easement that was recorded followed straight lines adjacent to the curving arroyo. In addition, the easement did not run down along the arroyo floor. Instead, the easement was recorded along the top edge of the arroyo where no trail ever existed. The recorded easement route crossed steep grades and dense vegetation and would now require major engineering efforts to open the accessway for the public. Shortly thereafter, Chiate applied for and received a CDP Amendment to move the easement slightly, to what he called a better location, and based on this representation, his new proposed alignment was approved by the Commission. However, unbeknownst to the Commission, the new route turned out to be even worse for public access use.⁴

The poor easement location was discovered shortly after it was accepted by the Conservancy in 1983. At that time a consultant for the Conservancy visited the property to study the easement and recommended moving it down to the arroyo floor, as was originally intended. However, it was not moved at all. Instead, Chiate then began arguing to Conservancy staff that it would be impossible to construct a trail on the vertical public access easement in its current location and that therefore the easement should be abandoned.

Public Parking Easement

In 1981, Chiate obtained a CDP for the house that is now owned by Mancuso, but the Commission found that there was little public parking available nearby to support use of the vertical public access easement. Therefore, the Commission required the recordation of a public parking easement 25 feet in width across the length of the property fronting PCH at what is now 27920 PCH (“the Mancuso Property”). On the adjacent downcoast parcel that did not initially have any public access easements on it, Chiate also obtained a CDP for the house that would later be sold to Don Wildman, 27910 PCH (“the Wildman House Property”). Chiate and Wolk also undertook a series of other actions,⁵ including an unpermitted lot line adjustment, that resulted in most of the area of the public access easements being moved onto this adjacent parcel that would be sold to Don Wildman.

⁴ It should also be noted that the original permit required an easement, but not the construction of an accessway. Therefore the location and complexity of construction and therefore the cost to the public, as well as the impact on the habitat here is very important.

⁵ These actions are fully described at Section III.A of the staff report.

The Violations

The permits for both the Mancuso and Wildman houses included plans for driveways that reached PCH at a perpendicular angle. These Commission-approved driveways would occupy the minimum area of the public parking easement and allow for the maximum amount of street parking on PCH. However, neither of these driveways were built according to the approved plans.

In 1985, the Commission learned that Don Wildman had bought the property at 27910 PCH that now had nearly the entirety of the public parking easement, and much of the vertical public access easement located on it. The commission also learned that there was now unpermitted development in both public access easements.

Commission enforcement staff visited the Wildman property and took photos of two driveways that snaked through the public parking easement so as to occupy virtually the entire area. They also took photos of a fence blocking access to the vertical public access easement. Commission staff then sent a letter to Don Wildman in 1985 explaining that these were Coastal Act violations. However, Don Wildman did not remove any of the unpermitted development. In 1988, Chiate attempted to obtain an “after the fact” CDP for the unpermitted lot line adjustment he had recorded without Coastal Act permits, but because Don Wildman declined to be a co-applicant the CDP application wasn’t completed and the lot line remained a violation. By 1990, Chiate and Wolk had built an unpermitted U-shaped driveway from PCH to the other house,⁶ which Chiate and Wolk then sold to Frank Mancuso (the Mancuso Family Revocable Trust) in 1991. In addition to being unpermitted, this U-shaped driveway has since blocked access to at least two public parking spaces on PCH.

Throughout the 1990’s and 2000’s, the Conservancy continued their efforts to open these public access easements. However, Don Wildman and Frank Mancuso argued that the vertical public access easement should not be improved due to the difficulty of building in the recorded easement area. They instead argued to the Conservancy that a new accessway should be somehow obtained and built on various different potential properties in central Malibu not owned by either of the parties. Neither the Conservancy nor the Commission supported moving the public access easements off the Wildman or Mancuso properties. In the late 1990’s and 2000’s both Frank Mancuso and Don Wildman sued the Conservancy under separate lawsuits.

In 2014, the Commission obtained the ability to levy administrative fines for violations of public access, and in 2017, the Commission sent notices of violation to both Don Wildman and Mancuso, informing them that their unpermitted development was blocking public access easements in violation of the Coastal Act. As part of the investigation at this time, Commission staff found additional unpermitted development

⁶ As explained in more details in Section III.A, the U-shaped entrance of the Mancuso driveway was actually built mostly on the adjacent property owned by 5S.

installed by Don Wildman, which included the seasonal placement of large tents and other structures on the beach partly within a lateral public access easement.⁷ The unpermitted development also included part of Don Wildman's private beach accessway in and along the arroyo floor,⁸ as well as his private parking lot.

In 2018, the State Coastal Conservancy transferred the easements to the Santa Monica Mountains Conservancy, who hold them today, with MRCA managing the easements, with whom we have coordinated on this matter as noted herein.

Proposed Resolution

In 2018, Don Wildman passed away, and the Wildman Family Trust began to work closely with the Commission. Since 2018, both the Wildman Family Trust and Mancuso have worked closely and collaboratively with Commission staff to resolve this violation in a way that would address the loss of public access and address other concerns and liabilities under the Coastal Act. In Commission staff's proposed Consent Cease and Desist Orders, Consent Restoration Orders, and Consent Administrative Civil Penalty actions, the Wildman Family Trust and Mancuso have now agreed to a proposed resolution that would benefit coastal resources and improve public access beyond what was required in their permits and recorded public access easements.

It should be noted that the original permits required various easements but did not require the property owners to construct the accessway and parking area themselves. This cost was to be borne by the public. However, as a penalty for the years of violations, the Wildman Family Trust has agreed to fully fund and construct a beach accessway in a new vertical public access easement for public use. This will include recording a new vertical public access easement closer to the original location of the beach access trail down the arroyo, as intended by the Commission's original 1978 CDP P-78-2707. In addition, this will include doing all the planning and construction for public use, including engineering, design, and public access signage. It will include building stairs down into the arroyo, grading, and may require an elevated boardwalk. But even with a boardwalk, this new public access easement would cause much less impact on coastal resources than development of the public accessway in the location of the current recorded easement, and it will be much more useful for public access.

Because the current recorded easement runs along the top edge of the arroyo, improving it would likely require drilling multiple large concrete caissons into the side of the arroyo to support an elevated walkway approximately 25 feet above the arroyo floor.

⁷ The full list of unpermitted development both within the easements and outside of the easements can be found above.

⁸ Note that much of the unpermitted development in the canyon was carried out by Wildman but done on Mancuso's property, resulting in the restoration orders for both Wildman and Mancuso, as described in more detail in Section III.B.

These caissons would require large amounts of heavy machinery like pile drivers and cranes drilling piles into and adjacent to the fragile coastal bluffs and sandy beach for many months, if not years, and this will now be avoided. If not for the Wildman Family Trust's and Frank Mancuso's agreement to move this easement, the Mountains Recreation and Conservation Authority and the State of California would likely have had to obtain and spend well over the Wildman Family Trust's estimated cost of \$3 million, in order to design and construct the accessway along the currently recorded easement. In addition, the more difficult recorded easement location would have likely taken MRCA many years to plan and construct the accessway along it. The increased costs and planning and construction time would also have resulted in the public not being able use any accessway for many more years.

In contrast, under the proposed settlement, the Wildman Family Trust expects that constructing the accessway along a realigned easement will take a fraction of the time as it would have to construct an accessway in the location of the currently recorded easement. In addition, the Wildman Family Trust will expand the public parking easement to better fit MRCA's plans for a public parking lot and bathrooms there. The Wildman Family Trust will also pave and improve the public parking easement for use by the public and provide public access signs along the highway and other improvements. Thus, in lieu of a cash payment as a financial penalty, the Wildman Family Trust has agreed to provide an estimated \$3 million minimum worth of design and construction costs with a direct value to the public, which further saves the MRCA and the State of California even greater costs, as noted above.

In addition, under the proposed settlement, Mancuso has agreed to remove his unpermitted driveway (built by Chiate and Wolk) that is currently displacing public parking spaces on PCH. Mancuso has also agreed to allow the Wildman Family Trust to remove unpermitted development placed on Mancuso's property by Don Wildman. Further, Mancuso has agreed to cooperate with the Wildman Family Trust as they build the accessway on both of their properties. Finally, the Mancuso Family Revocable Trust has agreed to pay a penalty of \$600,000 to the Violation Remediation Account of the State Coastal Conservancy.

Because the Wildman Family Trust is building the accessway and parking improvements in a much better location but still estimates it will cost a minimum of approximately \$3 million, and because MRCA and the State of California would likely incur far more costs than that to build an accessway in the currently recorded worse easement location, and because Mr. Mancuso is also paying a \$600,000 monetary penalty, the combined resolution is estimated to be worth well over \$4 million in value to the public for the accessway alone, and presents an opportunity to provide much faster, better beach access for the public that is more protective of coastal resources.

Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Orders No. CCC-23-CD-02, CCC-23-CD-03, Consent Restoration Orders No. CCC-23-RO-01, CCC-23-RO-02 and Consent Administrative Penalties CCC-23-AP-01 and CCC-23-AP-02.

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APPENDIX A –

Proposed Consent Cease and Desist Order No. CCC-23-CD-02, Consent Restoration Order No. CCC-23-RO-01, and Consent Administrative Penalty Action No. CCC-23-AP-01 (Wildman Family Trust).

APPENDIX B –

Proposed Consent Cease and Desist Order No. CCC-23-CD-03, Consent Restoration Order No. CCC-23-RO-02, and Consent Administrative Penalty Action No. CCC-23-AP-02 (Mancuso Family Revocable Trust).

EXHIBITS

- Exhibit 1 Region Map
- Exhibit 2 Properties Overview
- Exhibit 3 Escondido Beach Overview
- Exhibit 4 Wildman Violation Photos
- Exhibit 5 Mancuso Violation Photo
- Exhibit 6 Currently Recorded Vertical Public Access Easement Route
- Exhibit 7 Proposed Vertical Public Access Easement Route
- Exhibit 8 CDP P-78-2707 Staff Report
- Exhibit 9 CDP P-78-2707 Revised Findings and CDP
- Exhibit 10 Memorandum Re: Request for Amendment to Permit No. PE-80-2707
- Exhibit 11 CDP No. 5-81-44(A1)
- Exhibit 12 Recorded Offer to Dedicate a Vertical Public Access Easement and Certificate of Acceptance
- Exhibit 13 CDP 5-81-35
- Exhibit 14 Staff Report for CDP 5-81-35A
- Exhibit 15 Recorded Offer to Dedicate a Public Parking Easement and Certificate of Acceptance
- Exhibit 16 Notice of Intent to Issue a Cease and Desist Order, Restoration Order, and Administrative Penalty Action to the Wildman Family Trust
- Exhibit 17 Notice of Intent to Issue a Cease and Desist Order, Restoration Order, and Administrative Penalty Action to Frank Mancuso

I. MOTIONS AND RESOLUTION

Motion 1: Consent Cease and Desist Order (Wildman Family Trust)

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-23-CD-02 to the Wildman Family Trust, 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 Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Approve the Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-23-CD-02, 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, and in violation of CDPs P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186, the Coastal Act, and the Malibu LCP, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Cease and Desist Order (Mancuso)

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-23-CD-03 to the Mancuso Family Revocable Trust, 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 Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Approve the Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-23-CD-03, 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 CDPs P-78-2707 and 5-81-35A, the Coastal Act, and the Malibu LCP, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 3: Consent Restoration Order (Wildman Family Trust)

I move that the Commission **issue** Consent Restoration Order No. CCC-23-RO-01 to the Wildman Family Trust 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 Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-23-RO-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that 1) development has occurred on the Wildman House Property and the Mancuso Property without a coastal development permit, 2) the development is inconsistent with the Malibu LCP and the Coastal Act, and 3) the development is causing continuing resource damage.

Motion 4: Consent Restoration Order (Mancuso)

I move that the Commission **issue** Consent Restoration Order No. CCC-23-RO-02 to the Mancuso Family Revocable Trust 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 Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-23-RO-02, as set forth in Appendix B, and adopts the findings set forth below on the grounds that 1) development has occurred on the the Mancuso Property without a coastal development permit, 2) the development is inconsistent with the Malibu LCP and the Coastal Act, and 3) the development is causing continuing resource damage.

Motion 5: Consent Administrative Civil Penalty Action: (Wildman Family Trust)

I move that the Commission **issue** Consent Administrative Penalty No. CCC-23-AP-01 to the Wildman Family Trust, 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 Consent Administrative Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-23-AP-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 on properties owned by the Wildman Family Trust without a coastal development permit, and in violation of CDPs P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186, the Coastal Act, and the Malibu LCP, 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 6: Consent Administrative Civil Penalty Action: (Mancuso)

I move that the Commission **issue** Consent Administrative Penalty No. CCC-23-AP-02 to the Mancuso Family Revocable Trust, 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 Consent Administrative Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-23-AP-02, as set forth in Appendix B, and adopts the findings set forth below on the grounds that activities and failures to act have occurred on properties owned by the Mancuso Family Revocable Trust without a coastal development permit, and in violation of CDPs P-78-2707 and 5-81-35A, the Coastal Act, and the Malibu LCP, and that these activities or failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order pursuant to Section 30810 and 30811 are outlined in the Commission's regulations at

California Code of Regulations, Title 14 (“14 CCR”) Section 13185 and Section 13195. The requisite procedure for imposition of administrative penalties pursuant to Section 30821 of the Coastal Act (Pub. Resources Code, Div. 20) are set forth in Section 30821(b), which specify that penalties shall be imposed by majority vote of all Commissioners present in the context of 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 and Restoration Order hearing.

For a Cease and Desist Order and Restoration 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.⁹

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 13195, 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 impose administrative penalties. The Commission shall also determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order and impose an Administrative Penalty, either in the form recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission, will result in the issuance of the Consent Cease and Desist Orders and Consent Restoration Orders, and imposition of Consent Administrative Penalties.

⁹ Note that there are in use virtual hearing procedures, available at <https://documents.coastal.ca.gov/assets/virtual-hearing/VIRTUAL-HEARING-PROCEDURES.pdf>.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO.S CCC-23-CD-02 AND CCC-23-CD-03, CONSENT RESTORATION ORDER NO.S CCC-23-RO-01 AND CCC-23- RO-02, AND CONSENT ADMINISTRATIVE PENALTY ACTION NO.S CCC-23-AP-01 AND CCC-23-AP-02.¹⁰

A. Property Location

The properties at issue are located in central Malibu along Escondido Beach. This coastline is situated between Point Dume and Latigo Beach and is just downcoast of Paradise Cove, a very popular visitor destination. Escondido Beach is also seaward of the Escondido Falls trailhead, which is another very highly visited place. The beach and pier at Paradise Cove are approximately half a mile to the east of the public access easement entrances on PCH at issue here. The Escondido Falls trailhead is approximately 200 yards to the west, on the other side of PCH. Escondido Beach is particularly popular with people who also want to enjoy the amenities at the Paradise Cove restaurant and pier. The nearest public accessways to the beach are a quarter mile west at Paradise Cove, or a half mile east at Geoffrey's restaurant. Neither provided free public access until relatively recently. Both free accessways are the result of Commission enforcement efforts.

The properties at issue in this matter are located adjacent to one another (Exhibit 2). The Wildman House Property (27910 PCH), the Mancuso Property (27920 PCH), and the 5 S Property (27930 PCH)¹¹ were all created by a permitted subdivision and a subsequent unpermitted lot line adjustment undertaken by Chiate and Wolk, as described in greater detail below. All three of these properties are now strips of land a few acres in size that occupy the bluffs and beach in between Pacific Coast Highway and the mean high tide line. The Wildman Cabana Property (27856 PCH) is a smaller property that is located on the sand below the bluffs adjacent to the Wildman House Property.

B. Property and Permit History

The properties at issue have a long and complex history of CDPs and CDP Amendments, recorded documents, and an unpermitted lot line adjustment, all of which

¹⁰ These findings also hereby incorporate by reference the Summary at the beginning of the May 26, 2023 staff report ("STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Orders, Consent Restoration Orders, and Consent Administrative Penalty Actions") in which these findings appear, which section is entitled "Summary of Staff Recommendations and Findings."

¹¹ While violations exist on this property, they were undertaken by Chiate and Wolk, not by the current owner of the 5S Property or Mancuso.

will be discussed in detail now. The violation history discussion will follow this section. In summary, the properties collectively have a number of relevant easements and deed restrictions, including a vertical accessway, lateral accessways and an easement for parking, all as discussed below.

The Vertical Public Access Easement and Lateral Public Access Deed Restriction

In 1978, the Commission approved Coastal Development Permit (“CDP”) P-78-2707, which authorized the subdivision of one parcel into two lots. This permit did not authorize the construction of any structures or the lot line adjustment that created the current configuration of the Mancuso Property; it only authorized that particular subdivision. The land that was subdivided to create the two lots included all of what is now 27930 PCH (currently owned by 5S Properties) and 27920 PCH, most of which is now part of the lot currently owned by Mancuso.¹² At the time, the property now owned by the Wildman Family Trust (27910 PCH) was a smaller, landlocked adjacent parcel that was not owned by the permittees and therefore not yet subject to this CDP.

Special Condition #1 of this CDP required the permittees, prior owners Chiate and Wolk,¹³ to record an Offer to Dedicate (“OTD”) for a 10-foot-wide vertical public access easement from Pacific Coast Highway to the mean high tide line. The OTD was to be recorded over an existing trail that extended from Pacific Coast Highway, across the blufftop and down into the arroyo, and through the arroyo to the beach. The Commission found that access to the trail was made difficult by recent storm debris, but that the trail could be repaired.

Ken Chiate stated in correspondence to Commission staff following the hearing that the easement route would follow the existing trail along the arroyo floor. However, the vertical public access easement was not recorded along the existing trail in the arroyo. Instead, the vertical public access easement as recorded followed straight lines adjacent to the curving arroyo. In addition, the easement ran not down on the arroyo floor, but along the top edge of the arroyo where no trail ever existed. This recorded easement route crossed steep grades and dense vegetation and would require major engineering efforts to open an accessway for the public.¹⁴

¹² Exhibit 3 of CDP P-78-2707 shows Lot 1 (now 27930 PCH), Lot 2 (most of which is now 27920 PCH, and the remainder of which now makes up about half of the Mancuso Property (27920 PCH)), and a rectangular-shaped parcel labeled ‘Not a Part’ of the subdivision (which is now the center part of the Wildman House Property (27910 PCH)).

¹³ The property owners were Kenneth and Jeannette Chiate and Roger and Marilyn Wolk.

¹⁴ It should also be noted that the original permit required an easement, but not the construction of an accessway. Therefore the location and complexity of construction and therefore the cost to the public, as well as the impact on the habitat here is very important.

Special Condition #2 of this CDP required the permittee to record a lateral access deed restriction giving the public the right to pass and repass and passive recreational use in an area covering the width of the beach portion of what is now the Mancuso Property (27920 PCH) and what is now the Wildman House Property (27910 PCH), extending from the mean high tide line to a line 25 feet inland thereof. The permittee recorded the lateral access deed restriction on November 18, 1980.

Shortly thereafter, Chiate bought the adjacent landlocked parcel (that now contains the Wildman House). Chiate then stated to Commission staff that his purchase of this adjacent parcel allowed for a better potential alignment of the vertical public access easement, and applied for a CDP Amendment to move the easement accordingly. On July 22, 1981, based on these representations, the Commission approved CDP 5-81-44-A1, which amended P-78-2707 to relocate the vertical easement such that it now passed over the newly purchased adjacent lot, which is now the center of the Wildman House Property. However, the new route would turn out to be even worse, as noted below. The amended vertical access OTD was recorded on January 28, 1983. The vertical public access OTD was accepted by the Conservancy on February 17, 1983, and the acceptance document was recorded by the Los Angeles County Assessor's Office on April 5, 1983 as Document No. 83-374575.

The poor easement location was discovered shortly after it was accepted in 1983 by the Conservancy. A consultant for the Conservancy who surveyed the easement route recommended moving it down to the arroyo floor, which would provide public access as originally intended. However, the easement was not moved at all. Instead, Chiate began arguing to Conservancy staff that it would be impossible to construct a trail on the vertical public access easement in its new location and that therefore the easement should be abandoned.

The Public Parking Easement and Unpermitted Lot Line Adjustment

On August 19, 1981, the Commission approved CDP 5-81-35, which authorized the construction of a single-family residence on 27920 PCH. This house is now owned by Mancuso, but at the time, this lot included land that is now part of the Wildman House Property.¹⁵ The Commission found in its approval of the permit that without adequate public parking, the public may not be able to easily use the vertical public access easement which had been required by CDP P-78-2707. Therefore, the Commission imposed Special Conditions in the CDP that required the permittee to record an offer to dedicate a 25-foot-wide easement across an area located parallel and adjacent to Pacific Coast Highway that stretches across what is now 27920 PCH and the Wildman House Property, for the purpose of providing an area for the public to park. The public

¹⁵ Exhibit 3 of P-78-2707 shows a parcel labeled 'Lot 2'; this is the land subject to CDP 5-81-35. Lot 2 included about half of what is now the Wildman House Property, including all of the current area of the Wildman House Property that lies adjacent to Pacific Coast Highway. The current house on the Wildman House Property was authorized by CDP SF-80-7554, an entirely separate CDP.

parking easement was recorded on January 6, 1982. It was later accepted by the Coastal Conservancy on December 8, 2003, and the acceptance was recorded on December 23, 2003, as Instrument No. 03-3856271.

On July 20, 1983, Chiate and Wolk received County approval for a lot line adjustment between 27920 PCH and 27910 PCH, and on September 21, 1983, Los Angeles County granted Certificate of Compliance No. 100,105 for the lot line adjustment. The effect of this lot line adjustment was to transfer land from what is now the Mancuso Property (27920 PCH) to what is now the Wildman House Property (27910 PCH). Although lot line adjustments are development under the Coastal Act¹⁶ that therefore requires a CDP, Chiate and Wolk did not obtain any CDP. Before the unpermitted lot line adjustment, what is now the Wildman House Property consisted only of a one-acre parcel that was landlocked from both Pacific Coast Highway and the beach. After the unpermitted lot line adjustment, the Wildman House Property gained a large area adjacent to Pacific Coast Highway, a smaller area of bluff, and a very narrow strip of land extending to the mean high tide line, resulting in the Wildman House Property's current shape. However, no CDP was obtained for the lot line adjustment.

In 1988, the then-owner of 27920 PCH, Chiate and Wolk, applied for an amendment to CDP 5-81-35 (CDP Amendment Application No. A-5-81-35) to authorize relocating the entrance driveway on that property closer to the vertical public access easement and would also provide after-the-fact (ATF) authorization of the 1983 unpermitted lot line adjustment. On May 8, 1988, the new owner of the Wildman House Property, Don Wildman, requested to join as a co-applicant on the application because the unpermitted lot line adjustment for which ATF authorization was being sought involved the Wildman House Property, which he owned. But, shortly thereafter, Mr. Wildman wrote to the Commission on July 6, 1988, rescinding his request to be a co-applicant. Subsequently, on August 11, 1988, the property owner of 27920 PCH withdrew the lot line adjustment portion of the permit amendment application. On September 14, 1988, the Commission approved the relocation of the driveway on 27920 PCH, but specifically found that the lot line adjustment remained unpermitted development. Further, the driveway was not built according to the permit requirements, as is discussed in more detail in the next section.

Special Condition No. 1 in CDP 5-81-35A required the applicant to record a deed restriction that notifies future property owners of the existence of an easement along the side of the house from Pacific Coast Highway to the beach, and explains that the property owner shall obtain a CDP for all future improvements and additions, and that any cost of future improvements to provide privacy or security shall be at the expense of the applicant or their successors. On November 2, 1988, the Deed Restriction was recorded as Document No. 88-1768527, and states that "any future additions or

¹⁶ See *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 234 [lot line adjustment constitutes development under the Coastal Act].

improvements to the property, other than those permitted under the terms and conditions of coastal development permit 5-81-35A, shall require a coastal development permit or amendment from the Commission or its successor agency.”

Therefore, because the unpermitted lot line adjustment transferred some of the land burdened by the various CDP requirements described above from the Mancuso Property to the Wildman House Property, all of the conditions of both CDP 5-81-35A and P-2707 apply to both the Mancuso Property as well as much of the Wildman House Property.

Lateral Public Access at the Wildman Cabana Property

In 1976, the Commission approved CDP P-3-15-76-7428, which permitted the demolition of an existing beach cabana and the construction of a new cabana at 27856 PCH, which would later be bought by the Wildman Family Trust (the Wildman Cabana Property). Special Condition 2 of CDP P-3-15-76-7428 required the permittee to record a deed restriction for a 25-foot wide lateral public access area on the entire portion of the Cabana Property from the mean high tide line inland a distance of 25 feet. The permittee recorded the lateral access deed restriction on February 4, 1977, as Instrument No. 77-129197.

In 1989, the Commission approved CDP 5-89-578 to repair the beach cabana’s septic system and to construct a rock revetment to protect the septic system. Special Condition 2 of this permit required the permittee to record a deed restriction providing that only the approved development was authorized by the CDP, and that any future improvements, design changes, or maintenance shall require an additional CDP from the Commission. The permittee recorded the future development deed restriction on September 11, 1991 as Instrument No. 91-1426069. Special Condition 3 of this permit required the permittee to record an OTD for a lateral public access easement for the entire width of the Cabana Property, from the toe of the revetment to the mean high tide line. The lateral public access OTD was recorded on September 5, 1991, and was then accepted by the State Lands Commission, and the acceptance document was recorded on March 9, 2011, as Instrument No. 20110362207. In 1994, Don Wildman applied for, and the Commission approved, CDP 4-93-186, which permitted some changes to the cabana, including the enclosure of the existing deck, an addition of 280 square feet to the cabana, and an addition of a new deck and spa on the front and western side of the cabana. CDP 4-93-186 also required the removal of an unpermitted deck and shed.

C. Violation and Enforcement History

On June 6, 1984, Chiate and Wolk sold the Wildman House Property to Don Wildman. After purchase, Don Wildman began placing unpermitted development within both the vertical public access easement and the public parking easement. On September 26, 1985, the Commission sent a letter to Mr. Wildman, as the new owner of the Wildman House Property, informing Mr. Wildman of the existence of violations of both CDP P-78-2707 and CDP 5-81-35, including unpermitted placement of a fence and landscaping

which blocked the vertical public access easement, as well as unpermitted placement of a driveway, fence, and landscaping in the public parking easement. However, at that time, Commission staff had not yet learned of the unpermitted lot line adjustment.

On September 14, 1988, the Commission approved the relocation of the driveway on 27920 PCH, but not the lot line adjustment, which remained an item of unpermitted development under the Coastal Act. The Commission specifically found that the permit amendment “does not relieve the applicant of any responsibility to apply for and obtain any necessary coastal development permit or amendment required by law to legalize the lot line adjustment,” and that “neither does the Commission action on this amendment constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.” Accordingly, on February 15, 1990, Commission staff wrote to Chiate to reiterate that a CDP is still required for the lot line adjustment. However, no CDP for the lot line adjustment was ever obtained from the Commission or the City.

By 1990, Chiate and Wolk had built a driveway for the Mancuso Property, but the driveway did not follow the plans authorized by CDP 5-81-35A. The CDP Amendment had approved a driveway on the Mancuso Property that met PCH in a single outlet. This single outlet would have likely removed about one parking space from the public parking along Pacific Coast Highway. However, Chiate and Wolk did not build the approved driveway on the Mancuso Property, and instead built a driveway to the Mancuso Property that reached PCH on the adjacent 5S Property. This unpermitted driveway reached PCH in a double outlet, which not only removed one parking space from PCH as allowed by the CDP, but also removed at least two additional parking spaces where the second outlet reached PCH, as well as between the outlets. At some point, a locked gate was installed within the vertical public access easement on the Mancuso Property. However, this obstruction was behind Don Wildman’s obstructions, as the vertical public access easement currently reaches PCH on the Wildman House Property, which has its own obstructions within the easement.

Later, Don Wildman built more unpermitted development, including an unpermitted private beach accessway that extended onto the Mancuso Property and followed the path of the original trail down the arroyo. At some time between 2002 and 2004, Don Wildman expanded the patio at the beach cabana without a CDP. And beginning in 2007, Don Wildman began seasonally placing large tents, many chairs, and other semi-temporary structures on the sand, including within the lateral public beach access easements and deed restrictions required by the CDPs for the beach cabana.

In 2014, the Commission obtained the ability to levy administrative fines for violations of public access, and in 2017, the Commission sent notices of violation to both Don Wildman and Mancuso, informing them that their unpermitted development was blocking public access easements in violation of the Coastal Act. As part of this investigation, Commission staff discovered the additional unpermitted development undertaken by Don Wildman, including within the arroyo and on the sand. In 2018, Don

Wildman passed away, and both the Wildman Family Trust and Mancuso have since worked closely with the Commission to resolve this matter. Also in 2018, the State Coastal Conservancy transferred the easements to the Santa Monica Mountains Conservancy, and the MRCA began managing the easements.

D. Basis for Issuing Consent 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) [I]f the commission, after public hearing, determines that any person 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...
- (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 statutory provision requires the Commission to demonstrate that the Wildman Family Trust and the Mancuso Family Revocable Trust ("Respondents") undertook an activity that requires a CDP where Respondents did not secure one, or where Respondents undertook an activity inconsistent with a previously issued CDP.

In this case, it is uncontroverted that Respondents do not have a CDP for the development at issue here, and that the unpermitted development is inconsistent with multiple CDPs. The subsequent step is demonstrating Respondents took an action requiring a CDP or inconsistent with a CDP. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP.

"Development" is broadly defined by Coastal Act Section 30106, in relevant part:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ... grading, ... change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits;... change in the intensity of use of

water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure...

Under the Coastal Act's definition of development, the Wildman Family Trust owns property upon which various development was performed and maintained without the required CDP, and for which the responsibility under the Coastal Act runs with the land. Moreover, much of the unpermitted development is also directly inconsistent with the permits issued for these properties, as discussed above. This development includes the following acts of "development":

Development that is inconsistent with CDP Nos P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186, and other development conducted without benefit of a CDP, as follows:

- 1) Development located on the Wildman House Property within portions of the Vertical Public Access Easement, that blocks the public from using the easement, including placement of a locked gate at the entrance to the easement, metal fencing along the easement, a paved driveway across a portion of the easement, electrical equipment, landscaping, walls, and a partial staircase, among other obstructions;
- 2) Development located on the Wildman House Property within the Public Parking Easement, that blocks the public from using the easement, including a fenced and gated area with trash receptacles, a paved driveway with concrete walls, fencing, a landscaping mound and other landscaping, a concrete mailbox, a curb, and orange cones adjacent to Pacific Coast Highway;
- 3) Development located on the Wildman House Property outside the current recorded easements, including a paved driveway and private parking lot, a dog kennel/bird aviary, a garage, part of a shed structure on the sand, fencing and watercraft storage on the sand, and a patio expansion of the Wildman Cabana westerly onto the sand;
- 4) Development located on the Wildman Cabana Property and on the sand, including seasonal installation of a large tent structure, wooden posts, beach chairs, and storage of boats and other watercraft;
- 5) Development located on the Mancuso Property but installed by Don Wildman, including construction of stairs, a stone pathway with stone walls and paving, a large satellite dish, and a gate, shed, and water sports racks within the ravine; and
- 6) Development including division of property via an unpermitted lot line adjustment to the lot lines associated with the Wildman House Property and the Mancuso

Property.¹⁷

Under the Coastal Act's definition of development, the Mancuso Family Revocable Trust owns property upon which various development was performed and maintained without the required CDP, and for which the responsibility under the Coastal Act runs with the land. Moreover, much of the unpermitted development is also directly inconsistent with the permits issued for these properties, as discussed above. This development includes the following acts of "development":¹⁸

Development that is inconsistent with CDP Nos P-78-2707 and 5-81-35A, and other development conducted without benefit of a CDP, including, but not limited to:

- 7) Development located on the Mancuso Property within the Vertical Public Access Easement, that blocks the easement holder from improving the easement, blocks the public from using the easement, including locked gates, fencing, a large hedge, various electrical equipment, a drain gate, a landscape light, concrete pavement, and many large trees and other landscaping;
- 8) Development located on the Mancuso Property within the Public Parking Easement, that blocks the easement holder from improving the easement, blocks the public from using the easement, including a concrete wall and associated hedge, a metal fence with vegetation along it, the eastern portion of a concrete U-shaped driveway, and large trees and other landscaping;
- 9) Development located on the Mancuso Property outside the existing easements, including fencing, stairs, a pathway with stone walls and paving, culverts, and a large satellite dish, among other items, all constructed by the owner of the Wildman House Property;
- 10) Development located on the 5 S Property, including a U-shaped driveway for access to the Mancuso house and placement of orange cones blocking public parking on Pacific Coast Highway between the two outlets of the U-shaped driveway; and
- 11) Development in the form of an unpermitted lot line adjustment to the lot lines

¹⁷ While Chiate and Wolk undertook the unpermitted lot line adjustment, not the Wildman Family Trust, this Coastal Act violation runs with the land, and therefore, the current owner, the Wildman Family Trust, is the responsible party. (See *Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812 [Coastal Act enforcement provisions apply to buyers of property, as the provisions do not distinguish between developers of unpermitted development and "mere" property owners.]

¹⁸ Because violations run with the land and the current owner is therefore responsible for violations undertaken by prior owners, the Mancuso Family Revocable Trust is responsible for violations on the Mancuso Property by both Chiate and Wolk and by the Wildman Family Trust. The Wildman Family Trust will be remedying the violations they undertook on the Mancuso Property.

associated with the Mancuso Property and the Wildman House Property.

All of the above activities fall clearly within the Coastal Act definition of development and, therefore, required Respondents to secure a CDP to authorize the development. In addition, the change in intensity of use of water, or of access thereto, is expressly listed as development and is the prime impact of Respondents' actions. Respondents' filling of the various public access easements with unpermitted development all restricted public access here, especially to public parking, which could have occurred regardless of whether the vertical public access easement was improved or not.

None of this development, however, received any such Coastal Act authorization. Therefore, all of these items and activities constituted unpermitted development, and pursuant to Section 30810, this development constituted an activity that required a permit from the commission without securing the permit. Thus, this triggered the independent criterion in section 30810(a), therefore authorizing the Commission's issuance of this Cease and Desist Order.

a. The Unpermitted Development is not Consistent with the Terms and Conditions of Previously Issued Permits (CDP P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186)

As described above in greater detail, unpermitted development was undertaken in violation of many of the CDP special conditions and recorded public access easements and deed restrictions. This unpermitted development took place on the Wildman House Property, the Wildman Cabana Property, the Mancuso Property, and the 5S Property.

CDP P-78-2707 required the provision of a vertical public access easement from PCH to the beach. However, Don Wildman filled this recorded and accepted easement with unpermitted development, including a putting range and a locked gate. In addition, an unpermitted locked gate was also installed within this easement on the Mancuso Property.

CDP 5-81-35A required the provision of a public parking easement along PCH. However, Don Wildman filled the recorded and accepted easement with a driveway, landscaping, mailboxes, dumpsters, and fencing. In addition, Chiate and Wolk built a wall and part of a driveway at the north end of the public parking easement, on the Mancuso Property.

CDPs P-3-15-76-7428, 5-89-578, and 4-93-186 all authorized various development at the Wildman Cabana Property. CDP P-3-15-76-7428 required the provision of a lateral public access deed restriction, and CDP 5-89-578 required the provision of a lateral public access easement, both on the beach seaward of the cabana. However, Don Wildman seasonally placed unpermitted development including large tents and many chairs on the sand, partly within the recorded deed restriction and recorded and accepted easement. In addition, Don Wildman expanded the cabana's patio without a CDP.

These violations greatly impacted the ability of the public to use these recorded public access easements and deed restrictions, and also therefore violated the conditions of the CDPs requiring these public access easements and deed restrictions.

b. The Unpermitted Development at Issue is 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. This explication is, 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 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.

All of the violations here have occurred in a part of Malibu that is very popular, but where little public parking is available and there are few public accessways to the beach. Yet, property owners along this stretch of coast have their own private beach accessways, and even their own private parking lots, and these properties are no different. In addition, Don Wildman built a private beach accessway where a public beach accessway was supposed to be located, and a private parking lot adjacent to where a public parking lot was supposed to be located. This inequity creates a larger environmental injustice. Escondido Beach means "Hidden Beach" in Spanish, and the lack of public access here kept it hidden from many people that could not find a nearby public trail to the beach, or even a public parking spot, over the decades.

It is an important precept of environmental justice in California that all of the public should enjoy access for recreation at coastal areas. Indeed, as expressed in Section 30210 of the Coastal Act, access for all of the people is a state constitutional right. Every beach accessway and parking space is important, especially when it is blocked by property owners who enjoy their own private parking areas and beach accessways at the expense of public space. The unpermitted development at issue in this matter is therefore inconsistent with the public access policies of the Coastal Act.

E. Basis for Issuing Consent Restoration Orders

1. Statutory Provision

The statutory authority for issuance of this Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

2. Factual Support for Statutory Elements

The following paragraphs set forth the basis for the issuance of the Consent Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 for the Commission to issue Consent Restoration Orders.

Development has occurred Without a Coastal Development Permit

The statutory provision requires the Commission to demonstrate that Respondents undertook an activity that requires a CDP from the commission where Respondents did not secure one.

In this case, it is uncontroverted that neither the Wildman Family Trust nor the Mancuso Family Revocable Trust has a CDP for the development at issue here. The subsequent step is demonstrating that Respondents took an action requiring a CDP. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP.

Under the Coastal Act's definition of development, Don Wildman built an unpermitted private beach accessway on both the Wildman House Property as well as partly on the Mancuso Property.

The above activities fall clearly within the Coastal Act definition of development and, therefore, required Don Wildman to secure a CDP to authorize the development. None of this development, however, received any such Coastal Act authorization. Therefore, all of these items and activities constituted unpermitted development, and pursuant to Section 30810, this development constituted an activity that required a permit from the commission without securing the permit. Thus, this element of 30811 has been met.

Development Inconsistent with the Coastal Act

The second element of 30811 for the Commission to issue a Restoration Order is that the development is inconsistent with the division. The unpermitted development described herein raises concerns with respect to resource protection policies enumerated under the Coastal Act, including Coastal Act Section 30231 (protecting biological productivity and water quality).

The unpermitted private beach accessway was constructed with no regard to water quality, and also included irrigation lines to non-native plants. This installation of unnatural irrigation has unnecessarily caused increased flows in the arroyo, which drains to the beach and the ocean, while the non-native plants have out-competed native plants that otherwise may have existed there.

Continuing Resource Damage

The unpermitted development is causing 'continuing resource damage', as those terms are defined by 14 CCR Section 13190.

14 CCR Section 13190(a) defines the term 'resource' as it is used in Section 30811 of the Coastal Act as follows:

'Resource' means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

The term 'damage' in the context of Restoration Order proceedings is defined in 14 CCR Section 13190(b) as follows:

'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.

In this case, the damage was to the biological productivity and water quality of coastal waterways. The damage caused by the Unpermitted Development includes, among other things, the degradation of water quality and biological productivity.

The term 'continuing' is defined by 14 CCR Section 13190(c) as follows:

‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.

As of this time, the unpermitted development that is the subject of these proceedings and the results thereof remain on the Property. As described above, the unpermitted development is resulting in impacts to coastal resources. The unpermitted installation of non-native plants and irrigation devices unnaturally increased flows in the arroyo and outcompeted native plants.

As described above, the unpermitted development is causing damage to resources protected by the Coastal Act that continue to occur as of the date of this proceeding, and therefore damage to resources is ‘continuing’ for purposes of Section 30811 of the Coastal Act. The damage caused by the unpermitted development, which is described in the above paragraphs, satisfies the regulatory definition of ‘continuing resource damage.’ Thus, the third and final criterion for issuance of a Restoration Order is therefore satisfied.

F. Consent 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 Section 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.

Section 30822 states:

Where a person has intentionally and knowingly violated any provision of this division or any order issued pursuant to this division, the commission may maintain an action, in addition to Section 30803 or 30805, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Through the proposed settlements, Respondents have agreed to resolve their financial liabilities under all of these sections of the Coastal Act.

2. Application to Facts

This case, as discussed above, includes violations of the public access 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 was unable to park in the public parking easement or in multiple spaces along PCH, even though CDPs required that the public parking easement be made available to the public, and that the driveway for the Mancuso Property be single outlet, not a double outlet. In addition, Don Wildman maintained unpermitted development within a public access easement on the sand, and both Respondents maintained unpermitted development within the vertical public access easement. Therefore, these actions to block public access constituted unpermitted development in violation of the Coastal Act.

The following pages set forth the basis for the issuance of this Consent Agreement by providing substantial evidence that the Unpermitted Development and failure to comply with permit requirements meets all of the required grounds listed in Coastal Act Sections 30821 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 by correcting the violation within 30 days of receiving written notification from the Commission regarding the violation. This “cure” 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.

A Notice of Violation was sent on July 7, 2017 to Respondents. The violations at issue are nearly all permit conditions, and the violations that were not permit violations, such

as the construction of an unpermitted garage by Don Wildman, were not resolved within 30 days.

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 blocked public access to many parking spaces, a beach accessway, and the beach in an area with little formal public accessways. 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 each 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.”

In this case, Commission staff has substantial evidence that Don Wildman performed unpermitted development within the vertical public access easement and public parking easement as early as 1985, and that this unpermitted development has been there since then. In addition, Chiate and Wolk built an unpermitted double driveway outlet on the Mancuso Property that has persisted there since at least 1990. Therefore, there have been violations during the entire statutory period of five years during which administrative penalties may apply, but because Respondents have agreed to amicably resolve this matter, including by moving the public access easements to better locations, and by the Wildman Family Trust agreeing to fund and fully construct accessway improvements from PCH to the beach, including a parking lot and other improvements of very significant monetary and public access value, and by Mancuso paying \$600,000 to the Violation Remediation Account,¹⁹ Commission staff recommends that the Commission approve the proposed resolution contained in the

¹⁹ The proposed resolution detailed in the Consent Agreements at Appendices A and B, is discussed below, and is summarized in detail in the summary of this report.

proposed Consent Cease and Desist Orders, Consent Restoration Orders, and Consent Administrative Penalty actions.

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculation for the Commission's approval, and the Commission concurs with staff's analysis. Under 30821(c), in determining the amount of administrative penalty to impose, "the commission shall take into account the factors set forth in subdivision (c) of Section 30820."

Section 30820(c) states:

In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.
- (2) Whether the violation is susceptible to restoration or other remedial measures.
- (3) The sensitivity of the resource affected by the violation.
- (4) The cost to the state of bringing the action.
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

The Wildman Family Trust

Applying the factors of Section 30820(c)(1) (nature, circumstance and gravity of the violation) to the Wildman Family Trust, the violation at hand should warrant the imposition of substantial civil liability; violations have persisted on the Wildman properties for many years and the violations have directly blocked the public from being able to access the public parking easement, as well as hindered the ability of the public to access the beach both via the vertical public access easement as well as on the sand via the lateral public access easement. Therefore, the above factor weighs in favor of a high penalty.

With regards to 30820(c)(2) (whether the violation is susceptible of restoration), the violation can be remedied going forward and compliance with this Consent Agreement will ensure that adequate public access is maintained at this location. For example, under the proposed Consent Agreement, the Wildman Family Trust will be constructing a beach accessway and parking lot for the public and opening the public access

easements accordingly. In addition, the vertical public access easement will be moved to a much better location, greatly improving the beach accessway. However, there are years 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 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 the beach, is an oft-threatened and important resource across the State. Ensuring public access to all of California's beaches 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 parking and accessing the beach. In addition, this is an area with little free public parking and few public accessways, where the public access easements at issue are therefore even more important. Therefore, an accessible beach here is a relatively sensitive resource in terms of access, and thus, a moderately high penalty is warranted under this factor. However, the proposed resolution would actually improve public access amenities here over what the permits require, including by providing additional parking opportunities and an improved public access easement.

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. However, most of the staff time was time spent investigating the complex legal history given the many CDPs, and the unpermitted lot line adjustment undertaken by Chiate here. Therefore, regardless of any actions by the Wildman Family Trust, Commission staff would have had to spend a large amount of staff time investigating the history here. Taking all of this into account for calculating the penalty amount, the immediacy with which the Wildman Family Trust agreed to comply with the Coastal Act and engage in the resolution process weighs towards a moderate range for this element. Moreover, the proposed resolution here would enable the State to avoid litigation entirely, and save it the costs and delays to public access that such litigation would entail.

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. Don Wildman blocked public access to the public parking easement and vertical public access easement even while he built his own unpermitted private beach accessway and unpermitted private parking lot. However, upon his passing, the Wildman Family Trust inherited the violations, of which they played no part in undertaking, and has worked closely with Commission staff to provide public access. Therefore, this also weighs toward a reduction from the more substantial allowable penalty.

Aggregating these factors, Commission staff concludes that a moderately high penalty is justified here for the Wildman Family Trust. Staff recommends that the Commission exercise its prosecutorial discretion and adopt staff's recommendation to order that the Wildman Family Trust, as a penalty, pay to move both the vertical public access easement and public parking easement, and pay to construct and open to both a public beach accessway and public parking lot within them, none of which were required by the permit conditions. As is detailed above, this is estimated to cost the Wildman Family Trust at least \$3 million, and would provide far greater value to the State of California, considering that the proposed settlement would avoid entirely the great cost to the public of building an accessway within the currently recorded vertical public access easement that would otherwise be required. And although it is difficult to put a monetary value on it, the fact that they are going to take on the time and effort to do the design and permitting for this project will also save the State time and resources and provide public access more quickly than if the State had to raise the funds for the construction, and are contributing other elements such as improving the accessway location and providing additional public parking that are also difficult to place a monetary value on but which are of great value to the public. In summary, the proposed resolution represents a significant penalty to be paid by the Wildman Family Trust, in compliance with the criteria set forth in the statute.

The Mancuso Family Revocable Trust

Applying the factors of Section 30820(c)(1) (nature, circumstance and gravity of the violation) to the Mancuso Family Revocable Trust, the violation at hand should warrant the imposition of moderate civil liability; the violations undertaken by Chiate and Wolk to build the unpermitted double driveway outlet blocked approximately two parking spaces for many years. Although there is also unpermitted development within the vertical public access easement on the Mancuso Property, it did not directly prevent public access, given the site conditions at the time. Therefore, the above factor weighs in favor of a moderate penalty.

With regards to 30820(c)(2), the violation can be remedied going forward and compliance with this Consent Agreement will ensure that adequate public access is maintained at this location. For example, under the proposed Consent Agreement, Mancuso will be required to remove the unpermitted double driveway outlet, and to participate and cooperate with the Wildman Family Trust's moving of the public access easements, and the construction and opening of the easements. In addition, the vertical public access easement will be moved to a much better location, greatly improving the beach accessway. However, there have been years of public access losses that can never be recovered, and many people have been denied public parking 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 violation, public access to the beach, is an oft-threatened and important resource across the State.

Ensuring public access to all of California's beaches is promised to the people by the State Constitution and is essential for implementing the Coastal Act, and this violation blocked many members of the public from parking and accessing the beach. In addition, this is an area with little free public parking and few public accessways, where the public access easements at issue are therefore even more important. However, the proposed resolution would improve public access amenities here, including by providing additional parking opportunities and an improved public access easement. Therefore, although an accessible beach here is a relatively sensitive resource in terms of access, the total value of the settlement will provide improved access going forward, and therefore mitigates against the highest penalty here and a moderately high penalty is warranted under this factor.

Section 30820(c)(4) considers 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. However, most of the staff time was time spent investigating the complex legal history given the many CDPs, and the unpermitted lot line adjustment undertaken by Chiate here. Therefore, regardless of any actions by Mancuso, Commission staff would have had to spend a high amount of staff time investigating the history here. Taking all of this into account for calculating the penalty amount, the immediacy with which Mancuso agreed to comply with the Coastal Act and engage in the resolution process weighs towards a reduction from a more substantial penalty allowed under the statute. Moreover, the proposed resolution here would enable the State to avoid litigation entirely and save it the costs and delays to public access that such litigation would entail.

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. Chiate and Wolk built the unpermitted double driveway outlet, not Mancuso. Moreover, once notified of the violations, Mancuso cooperated with Commission staff and offered to remove all encroachments from all public access easements. Therefore, this also weighs toward a reduction from the more substantial allowable penalty.

Aggregating these factors, Commission staff concludes that a moderate to low penalty is justified here for the Mancuso Family Revocable Trust. Staff recommends that the Commission exercise its prosecutorial discretion and adopt staff's recommendation to order that the Mancuso Family Trust, as a penalty, pay \$600,000 to the Violation Remediation Account. In addition, although it is harder to quantify the monetary value of the other aspects of the proposed settlement, Mancuso will also be ordered to participate and cooperate with the Wildman Family Trust's moving of the public access easements to a better location, including on the Mancuso Property, and construction and opening of the easements to the public, all of which are of significant value to the public and the State of California.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalty Actions CC-23-AP-01 and CCC-23-AP-02 attached as **Appendix A and Appendix B** of this staff report.

a. Consent Agreements are Consistent with Chapter 3 of the Coastal Act

These Consent Agreements, 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 Consent Agreements require and authorize Respondents to, among other things, cease and desist from conducting any further unpermitted development on the properties, and to perform public access improvements as described in further detail above. Failure to provide the required public access would result in the continued loss of public access, inconsistent with the resource protection policies of the Coastal Act.

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

G. California Environmental Quality Act

The Commission finds that issuance of these Consent Agreements, to compel the removal of the Unpermitted Development and the restoration of the properties, among other things, as well as the implementation of these Consent Agreements, 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 Consent Agreements 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.

IV. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of these Consent Agreements are located at 27910 Pacific Coast Highway (PCH), 27856 PCH, 27920 PCH, and 27930 PCH (Assessors’ Parcel Nos. 4460-032-018, 4460-032-008, 4460-032-017, and 4460-032-019) as well as CalTrans right of way on PCH and public trust tidelands in the city of Malibu, Los Angeles County.
2. Respondents’ CDPs required public access easements and public access deed restrictions, including a vertical public access easement and public parking easement. These CDPs include CDP Nos P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186.
3. The Wildman Family Trust is the owner of 27910 PCH and 27856 PCH, and the Mancuso Family Revocable Trust is the owner of 27920 PCH, all of which are currently burdened by a vertical public access easement and a public parking easement.
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 as defined above has been undertaken Development that is inconsistent with CDP Nos P-78-2707, 5-81-35A, P-3-15-76-7428, 5-89-578, and 4-93-186, and other development conducted without benefit of a CDP, as follows:

- 1) Development located on the Wildman House Property within portions of the Vertical Public Access Easement, that blocks the public from using the easement, including placement of a locked gate at the entrance to the easement, metal fencing along the easement, a paved driveway across a portion of the easement, electrical equipment, landscaping, walls, and a partial staircase, among other obstructions;
 - 2) Development located on the Wildman House Property within the Public Parking Easement, that blocks the public from using the easement, including a fenced and gated area with trash receptacles, a paved driveway with concrete walls, fencing, a landscaping mound and other landscaping, a concrete mailbox, a curb, and orange cones adjacent to Pacific Coast Highway;
 - 3) Development located on the Wildman House Property outside the current recorded easements, including a paved driveway and private parking lot, a dog kennel/bird aviary, a garage, part of a shed structure on the sand, fencing and watercraft storage on the sand, and a patio expansion of the Wildman Cabana westerly onto the sand;
 - 4) Development located on the Wildman Cabana Property and on the sand, including seasonal installation of a large tent structure, wooden posts, beach chairs, and storage of boats and other watercraft;
 - 5) Development located on the Mancuso Property but installed by Don Wildman, including construction of stairs, a stone pathway with stone walls and paving, a large satellite dish, and a gate, shed, and water sports racks within the ravine;
 - 6) Development including division of property via an unpermitted lot line adjustment to the lot lines associated with the Wildman House Property and the Mancuso Property.
6. Unpermitted Development as defined above has been undertaken Development that is inconsistent with CDP Nos P-78-2707 and 5-81-35A, and other development conducted without benefit of a CDP, including, but not limited to:
- 1) Development located on the Mancuso Property within the Vertical Public Access Easement, that blocks the easement holder from improving the easement, blocks the public from using the easement, including locked gates, fencing, a large hedge, various electrical equipment, a drain gate, a landscape light, concrete pavement, and many large trees and other landscaping;
 - 2) Development located on the Mancuso Property within the Public Parking Easement, that blocks the easement holder from improving the easement, blocks the public from using the easement, including a concrete wall and associated hedge, a metal fence with vegetation along it, the eastern portion of a concrete U-shaped driveway, and large trees and other landscaping;

- 3) Development located on the Mancuso Property outside the existing easements, including fencing, stairs, a pathway with stone walls and paving, culverts, and a large satellite dish, among other items, all constructed by the owner of the Wildman House Property;
 - 4) Development located on the 5 S Property, including a U-shaped driveway for access to the Mancuso house and placement of orange cones blocking public parking on Pacific Coast Highway between the two outlets of the U-shaped driveway;
 - 5) Development in the form of an unpermitted lot line adjustment to the lot lines associated with the Mancuso Property and the Wildman House Property.
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 Section 30821 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. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of this Consent Agreement, including Section 13187 of the Commission's regulations, have been met.
 9. The work to be performed under these Consent Agreements, if completed in compliance with the Consent Agreements and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
 10. The Respondents have agreed to assume the obligations of their respective Consent Agreements, which settles all Coastal Act violations related to the specific violations described in #5 and #6 respectively, above.
 11. 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 penalty to impose. The penalties agreed to in this settlement are an appropriate amount when considering those factors.