

CALIFORNIA COASTAL COMMISSION

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Staff Report: 11/22/24
Hearing Date: 12/12/24

STAFF REPORT: Recommendations and Findings for Cease and Desist Order, Restoration Order, and Administrative Penalty Action

Cease and Desist Order No: CCC-24-CD-03

Restoration Order No: CCC-24-RO-03

Administrative Penalty No: CCC-24-AP3-03

Related Violation File No: V-5-24-0128

Violators: HMBAP, LLC

Location: Public right of way owned by the City of Los Angeles adjacent to Paseo Miramar, Pacific Palisades, City of Los Angeles, Los Angeles County; and adjacent parcels designated as Assessor's Parcel Numbers ("APNs") 4416-019-029, 4416-019-030, 4416-022-042, 4416-022-043, 4416-022-044, and 4416-022-045, all owned by HMBAP LLC; APN 4416-019-028, owned by Villa Miramar, LLC; and APN 4416-027-904 (Topanga State Park).

Violation Description: Unpermitted development including:

1) grading to provide a vehicular accessway on an area designated as a public right of way in the 1920s but closed to vehicle traffic since the 1940s and that has been more recently used as a trail, as well as on adjacent flat areas, and on slopes;

2) removal of major vegetation including in an environmentally sensitive habitat area;

3) placement of solid materials by stockpiling soil in an environmentally sensitive habitat area and by moving excavated soil, including into areas along the boundary of Topanga State Park; and

4) altering natural landforms and geological stability, including by excavating the toe of a slope with a history of landslides.

Substantive File Documents: Public documents in Cease and Desist Order File No. CCC-24-CD-03, Restoration Order File No. CCC-24-RO-03; and Administrative Penalty File No. CCC-24-AP3-03; Exhibits 1 through 13; and Appendix A of this staff report.

CEQA Status: Categorically Exempt (Cal. Code of Regs., tit. 14, §§ 15061(b)(2), 15307, 15308, and 15321(a)).

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

These proceedings address unpermitted development that took place along a public right of way, as well as on adjacent private parcels that cross steep terrain in the Pacific Palisades, all with stunning views of Topanga State Park and the Pacific Ocean. The public right of way was originally developed as a road nearly a century ago, but a landslide soon made the public right of way impassable for vehicles. Therefore, the City of Los Angeles closed the public right of way to vehicular traffic approximately eight decades ago. Since then, Topanga State Park was created immediately downhill from the subject area, and a riparian area that runs through the properties drains across the public right of way into what is now the state park. Members of the public have long used the public right of way as a walking trail to enjoy views of the park and the ocean. Meanwhile, several privately owned parcels along the public right of way have remained undeveloped.

In 2008, HMBAP, LLC (“Respondent”) bought eight parcels adjacent to the public right of way. In 2022, Respondent contacted the Commission and the City and talked with Commission staff regarding the potential for developing a road within the public right of way and building houses on several of the parcels adjacent to it. However, Respondent did not apply for a CDP, and instead brought large construction vehicles to the site in 2023 and began conducting unpermitted grading in and adjacent to the public right of way. After a few days, members of the public learned of the work and stood within the public right of way, in front of the construction vehicles, in an attempt to stop the work.

One of the members of the Respondent LLC responded to the public by repeatedly attempting to get the public to leave the public right of way. However, after this encounter, it appears that no more unpermitted work was undertaken in 2023, and that Commission enforcement staff was not notified. But in May of 2024, Respondent began work anew.

Again, Respondent did not obtain any CDPs for any development here, but proceeded to grade almost 2 acres within the public right of way and the private parcels adjacent to it, including in environmentally sensitive habitat area. Respondent cut into the toe of slopes that had a history of landslides and graded soil within the public right of way to allow vehicles to pass through. Respondent also graded on several of the private parcels and created soil stockpiles throughout the area. The excavation and grading created a large amount of loose soil, but was done without using Best Management Practices for water quality. The unpermitted work continued until July of 2024.

At the Commission's August hearing, many members of the public spoke in public comment regarding the violations. Commission enforcement staff responded to the situation by quickly investigating the permit history, visiting the site, notifying Respondent of the violations, and working to attempt to reach an amicable resolution. In November, the City instructed Respondent to install BMPs to protect water quality ahead of the rainy season, in an attempt to avoid potentially large erosion and sediment runoff impacts from negatively impacting Topanga State Park and wetlands downhill from the area. Respondent has complied with the City and coordinated with Commission regarding this.

Respondent has also worked quickly with Commission staff to reach the proposed amicable resolution, which will greatly help to minimize the future negative impact the violations would have on coastal resources once winter storms arrive, and which has also saved valuable Commission staff time. Respondent has agreed to work with Commission water quality staff to install any other BMPs necessary to minimize sediment runoff immediately. In addition, Respondent has agreed to implement a larger scale restoration effort that will include remedially grading the land back to more natural slopes, and the revegetation of the area, which will help prevent erosion into Topanga State Park. Respondent has agreed to do a full restoration of the areas of unpermitted development, as well as undertake mitigation in the form of restoration done at a 3 to 1 ratio, i.e., to provide restoration of an area three times the size of the area of unpermitted development. Respondent has also agreed to post signs at both ends of the public right of way that explain that it is public. In addition, Respondent has agreed to pay a penalty of \$500,000 and to permanently protect one of the parcels Respondent owns that is directly adjacent Topanga State Park, and to then transfer the protected parcel to a non-profit or public agency acceptable to the Executive Director of the Commission. Land in this area is very expensive, and it is therefore estimated that the value to the public of the cash penalty along with the dedicated parcel is between \$2.3 and \$3.5 million.

Background

In 1927, a prior developer subdivided this part of the Pacific Palisades and dedicated to the City of Los Angeles a number of rights of way for use as public roads. However, by 1944, a large landslide took out part of one of the roads, Paseo Miramar. The City then closed approximately 400 yards of the public right of way to vehicular traffic, and rerouted traffic on Paseo Miramar around the area. By the 1960s, much of what remained of the paved road within the 400-yard closed area was overgrown, but the public still used the public right of way as a trail to enjoy the views of the ocean and what would soon become Topanga State Park.

On January 1, 1977, the Coastal Act took effect, and any development within or adjacent to the public right of way, including on the properties listed above, required a Coastal Development Permit (“CDP”) from the Commission¹. In the early 1980s, additional landslides impacted the public right of way. A prior owner then applied for a CDP, and On October 13, 1992, the Commission approved a CDP to construct a new paved road partly within and partly adjacent to the public right of way, and to construct several houses. That same day, the Commission issued a Notice of Intent to issue the CDP upon fulfillment of the conditions imposed by the CDP. However, the prior to issuance conditions, including, but not limited to, ones requiring recordation of documents, were never satisfied, and the CDP was not issued and expired long ago.

On April 7, 2008, Respondent bought six of the parcels at issue, which are APNs 4416-019-029, 4416-019-030, 4416-022-042, 4416-022-043, 4416-022-044, and 4416-022-045, as well as two other adjacent parcels not at issue, APNs 4416-022-046 and 4416-022-047 (815 Paseo Miramar). On August 12, 2022, Respondent’s representatives spoke with the Commission’s South Coast planning staff about their desire to develop a road within the public right of way in order to provide vehicular access to undeveloped lots adjacent to the public right of way, which would potentially be developed later as part of their greater planned project. Following the call, on August 17, 2022, one of those representatives, Tony Russo of Crest Real Estate, emailed Commission staff, stating that he understood that a CDP would be required for the work, that the City would need to be a co-applicant because they owned the public right of way, and that a number of studies would be needed as part of the CDP process. Following this email, on December 13, 2022, Benjamin Eshaghian of Crest Real Estate, another representative of Respondent, emailed Commission planning staff and similarly asked to discuss their proposed CDP application. Following Benjamin Eshaghian’s email, Commission staff expected to continue talking with Respondent, but did not receive any further communication from Respondent’s representatives. Instead, Respondent began

¹ On December 26, 1979, the Commission approved Categorical Exclusion Order No. E-79-8 for certain areas of Pacific Palisades in the City of Los Angeles. However, the categorical exclusion was limited to only a few categories of development, and did not exempt development in the first row of lots on the edge of canyons or within 100 feet of a state park. The categorical exclusion also did not exempt grading, construction or expansion of roadways or utilities, or any other public works projects.

undertaking the unpermitted development detailed below.

Violation and Enforcement History

Beginning on February 1, 2023, Respondent's private contractors removed a City-installed vehicle barrier at the south end of the public right of way and began grading within the right of way. They also brought in two excavators and began excavating the toe of the slope in that area. Respondent also undertook some unpermitted major vegetation removal at the north end of the public right of way.

On February 6, 2023, some members of the public noticed construction vehicles in the area continuing to conduct what they believed to be unpermitted development. In an attempt to stop the furtherance of the unpermitted development, some of those members of the public stood in front of the construction vehicles. One of the owners of Respondent LLC responded by arguing with them and by honking at the public. The members of the public then alerted the City to the unpermitted development activities and Respondent discontinued their work for the remainder of the year. However, it appears that Commission enforcement staff were not notified at this time.

Then, in early 2024, Respondent's representatives began emailing the City's Bureau of Street Services, a separate entity under the Department of Public Works, stating that they wanted to "clear" the public right of way of mud and brush. On May 8, 2024, City's Bureau of Street Services issued a temporary permit to "maintain materials or equipment" in the public right of way, "for removing mudslide only." Respondent subsequently undertook months of active grading, excavation, and major vegetation removal both within and adjacent to the public right of way, all without a CDP.

Respondent brought in excavators and dump trucks and created a vehicular accessway within the public right of way, including by excavating the toe of the landslide-prone slope, and by moving excavated soil along the edge of the adjacent Topanga State Park, as well as into areas that the Commission senior ecologist believes to be environmentally sensitive habitat area, and adjacent to both the public right of way and the privately owned parcels. Respondent also altered the slopes adjacent to the public right of way and graded areas on the private parcels they own. In addition, they undertook unpermitted removal of major vegetation, including removal of some trees, including from within most of the public right of way and much of the privately owned parcel area, including in environmentally sensitive habitat areas. They also stockpiled soil in various locations across the parcels and the public right of way. They did not implement BMPs to protect water quality and to avoid erosion and runoff into the wetlands and riparian area of the adjacent Topanga State Park, thus creating potentially far greater impacts from the unpermitted actions.

After members of the public complained to the City, on June 13, 2024, the City issued an order to comply to Respondent, which stated that they were in violation of the City's municipal code and directed them to stop undertaking work without the required grading

permits. However, they did not stop work, and continued work through July 10, 2024. On July 23, the City's Bureau of Engineering issued a memorandum that stated that Respondent should have obtained grading permits from the City.

After members of the public spoke in public comment at the Commission's August hearing regarding these violations and after quickly researching the issues and looking for any permit history for the sites, the next day, on August 8, 2024, Commission enforcement staff went out in the field to observe the site and development that had occurred, and posted a field Notice of Violation at the site. Commission staff then opened a new violation file for this matter, and on August 13, 2024, the Commission sent a written Notice of Violation to Respondent that confirmed the information from the field Notice of Violation. Shortly thereafter, Commission staff began working with Respondent toward this amicable resolution. On October 22, 2024, Commission staff issued a Notice of Intent to issue a Cease and Desist Order, Restoration Order, and Administrative Penalty Actions to Respondent.

From the beginning, Commission staff let Respondent know that because of the upcoming rainy season, it would be imperative to have a mechanism in place to address the site conditions and reduce ongoing effects, and therefore there was a need to get an Order to hearing as soon as possible. Reaching an amicable resolution of violations often takes multiple months if not years, and the rainy season was fast approaching. Commission staff therefore was prepared to bring a unilateral order recommendation at this hearing in order to ensure that adequate BMPs and restoration were undertaken as soon as possible to minimize sediment runoff into Topanga State Park. However, on November 1, 2024, Respondent hired new counsel, and Respondent then immediately began working extremely quickly to make sure that BMPs were installed prior to the rainy season, and that an amicable resolution was reached in time for the December hearing.

Conclusion

This public right of way and parcels along it offer incredible views of Topanga State Park and the ocean. The area of the public right of way and the adjacent parcels owned by Respondent also have high quality habitat that is important to protect, especially given that it is adjacent to the much larger habitat region in the state park. While Respondent undertook violations that were significant and had the potential to become much more high impact if unaddressed during the rainy season, Respondent stepped up and agreed to address the violations and to implement a restoration effort that will ultimately bring the habitat to a better state than existed prior to the unpermitted development.

Respondent has already installed many BMPs out on the site, which will greatly help to minimize harmful sediment runoff during the rainy season. Respondent has agreed to submit a report regarding the BMPs to Commission staff, who will review it in detail and determine if any additional BMPs need to be added. Respondent has also agreed to restore the areas of unpermitted development, including through a plan of remedial

grading to repair the excavated areas to a more natural state, and through a revegetation plan to ensure that habitat and water quality are improved long term. Respondent has also agreed to undertake mitigation in the form of restoration of other land in the Santa Monica Mountains at a ratio of 3 to 1. Further, Respondent has agreed to post public access signs at both ends of the public right away to inform the public that they are allowed to access the right of way.

Respondent has also agreed to pay \$500,000 to the Violation Remediation Account, and to protect and dedicate a parcel adjacent to Topanga State Park to a public agency or non-profit. The parcel has been appraised to have a value of between \$1.8 to \$3 million. This brings the total value of the resolution to between \$2.3 million and \$3.5 million. Further, it is estimated that if fully entitled, the dedicated parcel would be worth approximately \$6 to \$8 million. The lot is adjacent to very intact and high quality habitat in the state park, and the lot also contains mostly intact and high quality habitat. Because of the high financial and habitat resource value of the parcel, it provides a rare opportunity to expand the protected land adjacent to the state park in this area. In addition, this resolution is very significant in that all of these benefits for the public and the environment were negotiated and reached in a very short period of time, so that they can have the maximum benefit by taking effect sooner.

There are three motions proposed for the issuance of these orders and the assessment of the penalty, and they can be found on pages 9 and 10 of this staff report.

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APPENDIX A – Proposed Consent Cease and Desist Order No. CCC-24-CD-03, Consent Restoration Order No. CCC-24-RO-03, and Consent Administrative Penalty No. CC-24-AP3-03

EXHIBITS

Exhibit 1:	Region Map
Exhibit 2:	Map of Subject Area
Exhibit 3:	Views from the Subject Area
Exhibit 4:	Aerial Photo Prior to Unpermitted Development circa July 2019
Exhibit 5:	Aerial Photo of Unpermitted Development dated July 2, 2024
Exhibit 6:	Screenshot of June 16, 2024 CirclingtheNews.com Article Photos
Exhibit 7:	Photos of Unpermitted Development dated August 8, 2024
Exhibit 8:	Map and Photos of Proposed Land Protection and Dedication
Exhibit 9:	Email from Tony Russo, Crest Real Estate to CCC dated August 17, 2022
Exhibit 10:	Email from Benjamin Eshaghian, Crest Real Estate to CCC staff dated December 13, 2022
Exhibit 11:	Photo of one of the Field Notices of Violation posted August 8, 2024
Exhibit 12:	Notice of Violation dated August 13, 2024
Exhibit 13:	Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Penalty Proceedings, dated October 22, 2024

MOTIONS AND RESOLUTION

Motion 1: Consent Cease and Desist Order

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-24-CD-03 to HMBAP, LLC 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-24-CD-03, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred on the subject properties without the requisite Coastal Development Permit, in violation of the Coastal Act, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Restoration Order

I move that the Commission **issue** Consent Restoration Order No. CCC-24-RO-03 to HMBAP, LLC 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-24-RO-03, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject properties without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

Motion 3: Consent Administrative Civil Penalty Action:

I move that the Commission find that as a result of the actions and failures to act described in the associated findings, HMBAP, LLC is in violation of various provisions of the Coastal Act, including, but not necessarily limited to, provisions protecting environmentally sensitive habitat areas, and that the

Commission impose consent administrative civil penalty No. CCC-24-AP3-03 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-24-AP3-03, 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 the subject properties, including property owned by HMBAP, LLC, in violation of the various provisions of the Coastal Act, including, but not limited to, provisions protecting environmentally sensitive habitat area.

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 30821.3 of the Coastal Act (Pub. Resources Code, Div. 20) are set forth in Sections 30821(b) and 30821.3(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.²

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 issue the Cease and Desist Order and Restoration Order and impose Administrative Penalties, 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 and agreed upon by Respondent, will result in the issuance of the Consent Cease and Desist Order and Consent Restoration Order, and imposition of the Consent Administrative Penalty.

FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-24-CD-03, CONSENT RESTORATION ORDER CCC-24-RO-03, AND CONSENT ADMINISTRATIVE PENALTY NO. CCC-24-AP3-03³

A. Description of the Property

i. Property Location

The properties at issue are located in the western portion of the Pacific Palisades area of Los Angeles. They include a public right-of-way owned by the City of Los Angeles (“City”) adjacent to Paseo Miramar and several adjacent parcels, most of which are owned by Respondent, though one is owned by Villa Miramar, LLC and one is within Topanga State Park (collectively, “the Properties”).⁴ All of them feature stunning views

² Note that there are currently in use virtual hearing procedures, available at <https://documents.coastal.ca.gov/assets/virtual-hearing/VIRTUAL-HEARING-PROCEDURES.pdf>.

³ These findings also hereby incorporate by reference the Summary at the beginning of the November 22, 2024 staff report (“Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-24-CD-03, Consent Restoration CCC-24-RO-03, and Consent Administrative Penalty No. CCC-24-AP3-03”) in which these findings appear, which section is entitled, “Summary of Staff Recommendation and Findings.”

⁴⁴ The parcels are designated as Assessor’s Parcel Numbers (“APNs”) 4416-019-029, 4416-019-030, 4416-022-042, 4416-022-043, 4416-022-044, and 4416-022-045, all owned by HMBAP LLC; APN 4416-019-028, owned by Villa Miramar, LLC; and APN 4416-027-904 (Topanga State Park).

of Topanga State Park immediately adjacent to the area, as well as the Pacific Ocean. The public right of way connects to Paseo Miramar on both ends, although the public right of way has been closed to vehicle traffic for eight decades. The six parcels that Respondent owns that are at issue are located adjacent to the public right of way. Topanga State Park is adjacent to some of the parcels, and in some areas, the public right of way itself. The subject area drains down into Topanga State Park, and into mapped wetlands there. The park itself has large amounts of environmentally sensitive habitat area (“ESHA”), and ESHA also exists on the Properties.

ii. Background History

In 1927, a prior developer subdivided this part of the Pacific Palisades and dedicated to the City of Los Angeles a number of rights of way for use as public roads. However, by 1944, a large landslide took out part of one of the roads, Paseo Miramar. The City then closed approximately 400 yards of the public right of way to vehicular traffic, and rerouted traffic on Paseo Miramar around the area. By the 1960s, much of what remained of the paved road within the 400-yard closed area was overgrown, but the public still used the public right of way as a trail to enjoy the views of the ocean and what would soon become Topanga State Park.

On January 1, 1977, the Coastal Act took effect, and any development within or adjacent to the public right of way, including on the properties at issue here, required a Coastal Development Permit (“CDP”) from the Commission.⁵ In the early 1980s, additional landslides impacted the public right of way. A prior owner then applied for a CDP, and on October 13, 1992, the Commission approved a CDP to construct a new paved road partly within and partly adjacent to the public right of way, and to construct several houses. That same day, the Commission issued a Notice of Intent to issue the CDP upon fulfillment of the conditions imposed by the CDP. However, the prior to issuance conditions, including, but not limited to, ones requiring recordation of documents, were never satisfied, and the CDP was not issued and expired long ago.

On April 7, 2008, Respondent bought six of the parcels at issue, which are APNs 4416-019-029, 4416-019-030, 4416-022-042, 4416-022-043, 4416-022-044, and 4416-022-045, as well as two other adjacent parcels that are not at issue here, APNs 4416-022-046 and 4416-022-047 (815 Paseo Miramar). On August 12, 2022, Respondent’s representatives spoke with the Commission’s South Coast planning staff about their desire to develop a road within the public right of way in order to provide vehicular access to undeveloped lots adjacent to the public right of way, which would potentially be developed later as part of their greater planned project. Following the call, on August

⁵ On December 26, 1979, the Commission approved Categorical Exclusion Order No. E-79-8 for certain areas of Pacific Palisades in the City of Los Angeles. However, the categorical exclusion was limited to only a few categories of development, and did not exempt development in the first row of lots on the edge of canyons or within 100 feet of a state park. The categorical exclusion also did not exempt grading, construction or expansion of roadways or utilities, or any other public works projects.

17, 2022, one of those representatives, Tony Russo of Crest Real Estate, emailed Commission staff, stating that he understood that a CDP would be required for the work, that the City would need to be a co-applicant because they owned the public right of way, and that a number of studies would be needed as part of the CDP process. Following this email, on December 13, 2022, Benjamin Eshaghian of Crest Real Estate, another representative of Respondent, emailed Commission planning staff and similarly asked to discuss their proposed CDP application. Following Benjamin Eshaghian's email, Commission staff expected to continue talking with Respondent, but did not receive any further communication from Respondent's representatives. Instead, Respondent began undertaking the unpermitted development detailed below.

iii. Violation History

Beginning on February 1, 2023, Respondent's private contractors removed a City-installed vehicle barrier at the south end of the public right of way and began grading within the right of way. They also brought in two excavators and began excavating the toe of the slope in that area. Respondent also undertook some unpermitted major vegetation removal at the north end of the public right of way.

On February 6, 2023, some members of the public noticed construction vehicles in the area continuing to conduct what they believed to be unpermitted development. In an attempt to stop the furtherance of the unpermitted development, some of those members of the public stood in front of the construction vehicles. One of the owners of Respondent LLC responded by arguing with them and by honking at the public. The members of the public then alerted the City to the unpermitted development activities and Respondent discontinued their work for the remainder of the year. However, it appears that Commission enforcement staff were not notified at this time.

Then, in early 2024, Respondent's representatives began emailing the City's Bureau of Street Services, a separate entity under the Department of Public Works, stating that they wanted to "clear" the public right of way of mud and brush. On May 8, 2024, City's Bureau of Street Services issued a temporary permit to "maintain materials or equipment" in the public right of way, "for removing mudslide only." One of the City's permit conditions stated that a 5-foot wide pedestrian right of way must be maintained at all times. Respondent subsequently undertook months of active grading, excavation, and major vegetation removal both within and adjacent to the public right of way, all without a CDP.

Respondent brought in excavators and dump trucks and created a vehicular accessway within the public right of way, including by excavating the toe of the landslide-prone slope, and by moving excavated soil along the edge of the adjacent Topanga State Park, as well as into areas that the Commission senior ecologist believes to be environmentally sensitive habitat area, and adjacent to both the public right of way and the privately owned parcels. Respondent also altered the slopes adjacent to the public right of way and graded areas on the private parcels they own. In addition, they undertook unpermitted removal of major vegetation, including removal of some trees,

including from within most of the public right of way and much of the privately owned parcel area, including in environmentally sensitive habitat areas. They also stockpiled soil in various locations across the parcels and the public right of way. They did not implement BMPs to protect water quality and to avoid erosion and runoff into the wetlands and riparian area of the adjacent Topanga State Park, thus creating potentially far greater impacts from the unpermitted actions.

After members of the public complained to the City, on June 13, 2024, the City issued an order to comply to Respondent, which stated that they were in violation of the City's municipal code and directed them to stop undertaking work without the required grading permits. However, they did not stop work, and continued work through July 10, 2024. On July 23, the City's Bureau of Engineering issued a memorandum that stated that Respondent should have obtained grading permits from the City.

After members of the public spoke in public comment at the Commission's August hearing regarding these violations and after quickly researching the issues and looking for any permit history for the sites, the next day, on August 8, 2024, Commission enforcement staff went out in the field to observe the site and development that had occurred, and posted a field Notice of Violation at the site. Commission staff then opened a new violation file for this matter, and on August 13, 2024, the Commission sent a written Notice of Violation to Respondent that confirmed the information from the field Notice of Violation. Shortly thereafter, Commission staff began working with Respondent toward this amicable resolution. On October 22, 2024, Commission staff issued a Notice of Intent to issue a Cease and Desist Order, Restoration Order, and Administrative Penalty Actions to Respondent.

From the beginning, Commission staff let Respondent know that because of the upcoming rainy season, it would be imperative to have a mechanism in place to address the site conditions and reduce ongoing effects, and therefore there was a need to get an Order to hearing as soon as possible. Reaching an amicable resolution of violations often takes multiple months if not years, and the rainy season was fast approaching. Commission staff therefore was prepared to bring a unilateral order recommendation at this hearing in order to ensure that adequate BMPs and restoration were undertaken as soon as possible to minimize sediment runoff into Topanga State Park. However, on November 1, 2024, Respondent hired new counsel, and Respondent then immediately began working extremely quickly to make sure that BMPs were installed prior to the rainy season, and that an amicable resolution was reached in time for the December hearing.

B. Statutory Basis for Orders

i. Basis for Issuing Consent Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810 of the Coastal Act, which states, in part:

If the commission, after public hearing, determines that any person ... has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program...under any of the following circumstances.

- (1) The local government ... requests the Commission to assist with, or assume primary responsibility for, issuing a cease and desist order.
- (2) The commission requests and the local government ... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

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. As stated in a footnote above, Categorical Exclusion Order No. E-79-8 was limited to only a few categories of development, and did not exempt development in the first row of lots on the edge of canyons or within 100 feet of a state park. The categorical exclusion also did not exempt grading, construction or expansion of roadways or utilities, or any other public works projects.

Section 30600(b) of the Coastal Act allows local governments to assume permit issuing authority prior to certification of a Local Coastal Program (“LCP”), but the City of Los Angeles is unique in that it is the only local government in the Coastal Zone that has taken advantage of that provision. However, even after a local government assumes such permitting authority, Coastal Act section 30601 requires that, in some areas (known as the “dual permit” jurisdiction), development cannot proceed without a CDP from both the local government *and* the Commission. Portions of the public roadway at issue in this case and some of the parcels are within the dual permit jurisdiction zone, where two CDPs are required, one from the City and one from the Commission. Thus, the work at issue required a permit from the Commission, and of course, none was secured, so section 30810 authorizes the issuance of a cease and desist order. In addition, although there is no LCP in place for the Commission to enforce here, the work was all part of one integrated project, and because some of it occurred outside the dual permit area, and even though the City does not have an LCP, the Commission still did contact the City on October 21, 2024, to see if the City planned to take enforcement action. The City declined to act. Thus, section 30810 authorizes the Commission to issue this order for that reason as well.

ii. Basis for Issuing Consent Restoration Order

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.

Factual Support for Statutory Elements

The following paragraphs set forth the basis for the issuance of the Consent Cease and Desist and 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 a Cease and Desist and Restoration Order.

A. Development has occurred without a Coastal Development Permit

The statutory provision requires the Commission to demonstrate that Respondent undertook or maintained development that requires a CDP from the Commission where Respondent did not secure one.

In this case, it is uncontroverted that Respondent does not have a CDP for the development at issue here. The subsequent step is demonstrating that Respondent 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. "Development" is broadly defined by Coastal Act Section 30106 and states in relevant part as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, ...construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes...

Respondent undertook activities that meet the definition of development under the Coastal Act, as is described more fully below, including:

- 1) grading to provide a vehicular accessway on an area designated as a public right of way in the 1920s but closed to vehicle traffic in the 1940s and that has been more recently used as a trail, as well as on adjacent flat areas, and on slopes; 2) removal of major vegetation including in an environmentally sensitive habitat area; 3) placement of solid materials by stockpiling soil in an environmentally sensitive habitat area and by moving excavated soil, including into areas along the boundary of Topanga State Park; and 4) altering natural landforms, including by excavating the toe of a slope with a history of landslides.

All of the above activities fall clearly within the Coastal Act definition of development and, therefore, required Respondent 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 triggered the independent criterion in section 30810(a), therefore authorizing the Commission's issuance of this Cease and Desist Order.

B. The Development at Issue is Inconsistent with the Coastal Act

The unpermitted development described herein is inconsistent with several resource protection policies enumerated under the Coastal Act, including:

- a. Section 30240 (requiring protection of environmentally sensitive habitat areas or ESHA);
- b. Section 30233 (requiring protection of wetlands);
- c. Section 30231 (requiring protection of biological productivity and water quality);
- d. Section 30251 (requiring protection of visual resources); and
- e. Section 30253 (requiring minimization of risk to life and property, and requiring protection of geological stability and natural landforms)

The unpermitted development caused significant negative impacts to the above-listed coastal resources. The Properties provide environmentally sensitive habitat area including chaparral habitat, and the area also drains into mapped wetlands within Topanga State Park. The unpermitted development included grading and stockpiling soil within areas of ESHA and riparian areas. Also, the unpermitted development created a large amount of loose soil throughout the Properties, some of which has already been pushed into riparian areas and Topanga State Park, and if nothing were done, would run off further into Topanga State Park and greatly negatively impact the water quality of riparian areas and wetlands there. Additionally, the coastal views in this area are largely natural and include scenic views of chaparral and the Pacific Ocean. However, those views are now negatively impacted by the loss of chaparral and replacement of it with loose soil. The unpermitted development also took place in an area with a history of landslides. The unpermitted excavation of the hillsides, as well as grading on top of them, has contributed to geological instability of those hillsides.

C. 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 unpermitted development here took place in and around environmentally sensitive habitat areas, wetlands, areas of scenic visual resources, and so coastal resources were affected here.

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 habitat and ecosystem functions provided by the impacted environmentally sensitive habitat areas, water quality and biological productivity, geological stability and natural landforms, and scenic coastal views.

The damage caused by the unpermitted development includes degradation of environmentally sensitive habitat area, impairing of scenic coastal views, impairing of water quality, and altering of natural landforms and negative impacts to geological stability. Thus, damage to coastal resources did occur here.

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 Properties. As described above, the unpermitted development results in impacts to coastal resources. The grading of environmentally sensitive habitat areas can continue to impact coastal resources by preventing native plants from returning and stimulating growth of invasive weedy species.

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.

D. Environmental Justice

The following discussion does not address any required element of Sections 30810, 30811, or 30821.3 of the Coastal Act, and the findings in this section are therefore not essential to the Commission's ability to issue a cease and desist order, restoration order or administrative penalty. This explication is, however, important for context, and for understanding the totality of impacts associated with the violations.

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.

For persons from disadvantaged communities that cannot afford to buy or rent expensive hillside property, the public right of way provides a low-cost pedestrian trail to enjoy excellent views of Topanga State Park and the ocean. The harming of scenic views and impacts to environmentally sensitive habitat area here therefore negatively impacts environmental justice.

iii. Basis for Issuing Consent Administrative Civil Penalties

Statutory Provision

The statutory authority for imposition of administrative penalties for violations of the non-access provisions of the Coastal Act is provided for in the Coastal Act in Public Resources Code Section 30821.3, 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 any provision of this division other than public access, including, but not limited to, damage to archaeological and wetlands resources and damage to environmentally sensitive habitat areas, 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.

Also, 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 settlement, Respondent has agreed to resolve its financial liabilities under all of these sections of the Coastal Act via the commitments made in the Consent Orders.

Application to Facts

a. Exceptions to Section 30821.3 Liability Does Not Apply

Under section 30821.3(h) of the Coastal Act, in certain circumstances, a party who is in violation of the non- public access provisions of the Coastal Act can nevertheless avoid imposition of administrative penalties by correcting a non-access violation within 60 days of receiving written notification from the Commission regarding the violation.

This provisions of Section 30821.3(h) are inapplicable to the matter at hand. For 30821.3(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 60 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.

Restoring the habitat areas impacted by the violations in this matter would require major restoration, which would require a Coastal Development Permit. Therefore, none of the violations at issue were cured pursuant to the above sections.

In addition, Section 30821.3(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.

Sections 30821.3(f) is inapplicable in this case. As discussed above and below, the unpermitted development at issue includes large areas of grading, which also has the potential to cause larger impacts if BMPs are not installed. None of this unpermitted development was unintentional or minor, and it caused significant harm, not de minimis harm.

b. Penalty Amount

Pursuant to Sections 30821.3(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 30821.3(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.”

The violations caused negative impacts to ESHA, water quality, visual resources, slope stability and natural landforms, and wetlands, which began at approximately May 8, 2024 and have persisted up until the issuance of this staff report on November 22, 2024, for a total of approximately 197 days.

Because Respondent has agreed to amicably resolve this matter, and to pay a \$500,000 penalty and to protect and dedicate to a public agency or non-profit a parcel worth approximately between \$1.8 to \$3 million, Commission staff recommends that the Commission approve the proposed resolution contained in the proposed Consent Cease and Desist Order, Consent Restoration Order and Consent Administrative Penalty.

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. Under Section 30821.3(c), in determining the amount of administrative penalty to impose, “the commission shall take into account the factors set forth in subdivision (c) of Section 30820.” Commission staff has analyzed the factors under Section 30821.3, as is discussed below.

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.

Applying the factors of Section 30820(c)(1), the natural resource violations at hand should warrant the imposition of significant civil liability; as the violations included grading in environmentally sensitive habitat area, grading without BMPs and pushing excavated soil onto the boundary of Topanga State Park, negatively impacting geological stability and natural landforms, and creating a large area of barren soil and degraded habitat that negatively impacts the scenic views adjacent Topanga State Park. However, the violations have only persisted since May of this year, and Respondent is currently placing BMPs there to help reduce the chances of larger continuing impacts from the violations. Therefore, the above factor weighs in favor of a moderate penalty.

With regards to 30820(c)(2), the natural resource violations can be remedied going forward. The areas of exposed loose soil can be restored with native plants, and BMPs will help to stop a lot of the erosion that would have otherwise negatively impacted Topanga State Park. However, chaparral can be difficult to restore, and some soil will still runoff the Properties, even with the BMPs. In addition, the natural landforms that have been altered will be difficult to restore to a natural condition. Therefore, a moderate to high penalty is warranted under this factor.

Section 30820(c)(3) requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by the violation is an area that is habitat for chaparral ESHA and riparian ESHA. The resource is also adjacent to a large wilderness area in Topanga State Park, which will also be impacted, although the park will be much less impacted now that Respondent is installing BMPs. Therefore, this factor warrants a moderate penalty.

Section 30820(c)(4) takes into account the costs to the state of bringing this action. In this case, Commission staff has spent much less staff time than on the Commission's other cases, as an amicable resolution was reached in approximately three months. Therefore, this factor warrants a low penalty.

Finally, Section 30820(c)(5), requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require. Respondent undertook these violations even though their representatives had recently talked with Commission staff about the need for a CDP to do work in this area, and Respondent's representatives had even emailed Commission staff acknowledging the same. Further, Respondent was then told by the public in 2023 that permits were needed to undertake the work here, but Respondent ignored the public and instead honked at them in an attempt to get them to leave the public right of way. Therefore, in consideration of all of the facts, this factor warrants a high penalty.

Considering all the factors, Respondent's violations warrant a moderate to high penalty. Respondent's protection and dedication of a parcel worth approximately between \$1.8 to \$3 million will help to potentially expand Topanga State Park and protect the wilderness in the park by providing more of a buffer area. In addition, the \$500,000 penalty puts the value of the total consensual penalty at approximately between \$2.3 to \$3.5 million, most of which is made up of penalties accrued under the natural resource provisions of the Coastal Act.

In sum, Commission staff believes that the proposed \$1.8 to \$3 million value of the parcel protection and land dedication, along with the \$500,000 penalty, is a great value for the public. Land in the Pacific Palisades area is very expensive and valued for its stunning views of wilderness and the ocean and its proximity to hiking trails and the beach, and it is therefore difficult to protect and dedicate undeveloped parcels in this area. It will be a great benefit to the public and to ESHA and other coastal resources to permanently protect a parcel full of ESHA that is adjacent the ESHA in Topanga State Park. Moreover, the total value of the penalty is approximately \$2.3 to \$3.5 million, which Commission staff believes provides a great value to the public, especially considering how quickly the proposed resolution would take effect, after only three months since Commission staff sent a Notice of Violation.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalties CCC-24-AP3-03 attached as **Appendix A** of this staff report.

C. Consent Agreement is Consistent with Chapter 3 of the Coastal Act

The proposed Consent Agreement, attached to this staff report as Appendix A, is consistent with the resource protection policies found in Chapter 3 of the Coastal Act.

Failure to revegetate areas impacted by unpermitted development has the potential to and in many cases has already lead to invasion of non-native plant species, thus decreasing biological diversity and productivity of the various impacted habitat-types, inconsistent with the resource protection policies of the Coastal Act. In this case, failure to revegetate the areas of unpermitted grading will also lead to very significant runoff and erosion of soil into Topanga State Park, which would negatively impact habitat there. The fundamental objectives of the various restorative and revegetation projects mandated by the Consent Agreement include the restoration and the restoration of ESHA, scenic coastal views, and natural landforms; therefore, the activities required and authorized by the Consent Orders are consistent with Sections 30240 (environmentally sensitive habitat areas or ESHA), Section 30251 (scenic and visual qualities), Section 30233 (wetlands), Section 30231 (biological productivity and water quality), Section 30251 (protection of visual resources), Section 30253 (geological stability and natural landforms). Further, by restoring native vegetation, implementation of the Consent Orders will increase the size of ESHA on the Properties. Implementation of the Consent Orders will improve scenic coastal views, visual resources, water quality, wetlands, natural landforms, and public access as well, by restoring areas of unpermitted grading.

D. California Environmental Quality Act

The Commission finds that issuance of these Consent Orders, to compel the removal of the Unpermitted Development and the restoration of the Property, among other things, as well as the implementation of these Consent Orders, are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute 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, multiple exemptions apply here: (1) the one covering actions to assure the restoration or enhancement of natural resources where the regulatory process involves procedures for protection of the environment (14 CCR § 15307); (2) the one covering actions to assure the restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment (14 CCR § 15308); and (3) the 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 and to improve public access.

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.

SUMMARY OF FINDINGS OF FACT

1. The violations that are the subject of these Consent Orders are located on a public right of way and several private parcels, all immediately near Topanga State Park, within the Pacific Palisades.
2. Respondent HMBAP, LLC bought several private parcels at issue and undertook violations without a CDP. These violations included impacts to natural coastal resources such as ESHA and water quality.
3. 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. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when the Commission determines that any person has undertaken 1) development without a permit, 2), that the development is inconsistent with the Coastal Act, and 3) that the development is causing continuing resource damage.
4. Unpermitted Development as described above has been undertaken by Respondent and occurred without a CDP, including but not limited to: 1) grading to provide a vehicular accessway on an area designated as a public right of way in the

1920s but closed to vehicle traffic in the 1940s and that has been more recently used as a trail, as well as on adjacent flat areas, and on slopes; 2) removal of major vegetation including in an environmentally sensitive habitat area; 3) placement of solid materials by stockpiling soil in an environmentally sensitive habitat area and by moving excavated soil, including into areas along the boundary of Topanga State Park; and 4) altering natural landforms, including by excavating the toe of a slope with a history of landslides; and changing the intensity of use of land by.

5. All of the unpermitted development is located within the Coastal Zone. On December 26, 1979, the Commission approved Categorical Exclusion Order No. E-79-8 for certain areas of Pacific Palisades in the City of Los Angeles. However, the categorical exclusion was limited to only a few categories of development, and did not exempt the first row of lots on the edge of canyons or within 100 feet of a state park. The categorical exclusion also did not exempt grading, construction or expansion of roadways or utilities, or any other public works projects.
6. The statutory authority for imposition of administrative penalties is provided in Section 30821.3 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Section 30821.3 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.
7. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of these Consent Orders, including Section 13187 of the Commission's regulations, have been met.
8. The work to be performed under these Consent Orders, if completed in compliance with the Consent Agreement and the plan(s) required therein, will be consistent with Chapter 3 of the Coastal Act.
9. Respondent has agreed to assume the obligations of these Consent Orders, which settles all Coastal Act violations related to the specific violations described in #4, above.
10. As called for in Section 30821.3(c), the Commission has considered and taken into account 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.