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Staff Report: 03/01/24
Hearing Date: 03/13/24

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order No. CCC-24-CD-01, Consent Restoration Order CCC-24-RO-01, and Consent Administrative Penalty Nos. CCC-24-AP-01 and CCC-24-AP3-01

Consent Cease and Desist Order No.: CCC-24-CD-01

Consent Restoration Order No.: CCC-24-RO-01

Consent Administrative Penalty Nos.: CCC-24-AP-01 and CCC-24-AP3-01

Related Violation File: V-5-19-0119

Owner and Entity Subject to these Orders and Actions: Legado Companies

Location: Two undeveloped, sandy beach lots located at 6819 Pacific Ave., Los Angeles, immediately landward of Toes Beach in the Playa del Rey neighborhood (Los Angeles County Assessor Parcel Numbers 4116-003-001 and 4116-003-006)

Violation Description: Removal of major vegetation, including native dune vegetation, grading of sand dunes and use of heavy equipment on the beach, and temporarily blocking public access across a public access easement

Substantive File Documents: Public documents in Consent Cease and Desist Order, Restoration Order, and Consent Administrative Penalty File Nos. CCC-24-CD-01, CCC-24-RO-01, CCC-24-AP-01, and CCC-24-AP3-01; Exhibits 1 through 12, and Appendix A of this staff report.

CEQA Status: Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321)

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

Overview

This matter involves unpermitted development that occurred on two, undeveloped, sandy-beach lots located at 6819 Pacific Avenue, Los Angeles, immediately landward of Toes Beach in the Playa del Rey neighborhood, (Los Angeles County Assessor Parcel Numbers 4116-003-001 and 4116-003-006) (“Properties”) (Exhibit 2 and 8), which are owned by Legado Companies (“Respondent”). Between approximately August 9-12, 2019, Respondent used heavy construction equipment, including front loaders and a bulldozer, to grade and flatten existing sand dunes located on the Properties, and in doing so, removed native dune plants and sensitive southern foredune habitat, which is a habitat type identified as rare by the California Natural Diversity Data Base and the California Native Plant Society and considered an environmentally sensitive habitat area or “ESHA.” Dunes not only provide habitat for a number of rare plants and animals, but they also provide a natural buffer between the sea and the built environment, which is critically important in light of sea level rise. The unpermitted activities also temporarily (for the period of time that work was occurring) adversely impacted public access to the coast by blocking a vertical public access path.

As explained in more detail below, to avoid irreparable injury to the resources on the Properties pending any possible action by the Commission under California Public Resources Code (“PRC”) Sections 30810 and 30811 of the Coastal Act, on August 13, 2019, the Executive Director issued Executive Director Cease and Desist Order No. CCC-19-ED-01 (“the EDCDO”) to Respondent, which required Respondent to immediately cease all unpermitted development on the Properties, submit an interim restoration plan to reestablish dunes on the Properties, and implement that plan once approved by the Executive Director within a specified period of time (Exhibit 4).

Soon after the EDCDO was issued and as Respondent began to develop the proposed interim restoration plan, as required by the EDCDO, Respondent also began working closely and cooperatively with Commission Enforcement staff to resolve the violations through what would eventually become the proposed Consent Cease and Desist Order No. CCC-24-CD-01, Consent Restoration Order CCC-24-RO-01, and Consent Administrative Penalty Nos. CCC-24-AP-01 and CCC-24-AP3-01, collectively referred to herein as, “these Consent Orders;”¹ and, through the execution of these Consent

¹ These proposed Consent Orders include two separate administrative penalty actions – one pursuant to Coastal Act Section 30821 and the other pursuant to Coastal Act Section 30821.3. Section 30821 became effective July 1, 2014, and gives the Commission the authority to impose penalties when someone is in violation of the public access provisions of the Coastal Act. Section 30821.3, which

Orders, Respondent has agreed to comply with all the terms and conditions therein. More specifically, these Consent Orders require Respondent to: 1) restore the sand dunes on the Properties; 2) undertake habitat mitigation measures including restoration of other areas on the Properties not impacted by the unpermitted development listed above and restoration of an approximately 6.2 acre portion of Dockweiler State Beach to provide for the creation of dunes in an area completely void of them, which will also lead to a nature-based adaptation strategy in response to sea-level rise; 3) install new public access and educational/interpretive signs; and 4) pay \$600,000 to the Violation Remediation Account; all of which are described in more detail in Section III, below.

Violation History

In late July (on or about July 30, 2019), Commission permit staff in the Commission's South Coast District office received a call from someone who did not disclose their name, requesting information about the requirements for some proposed development on the Legado property, specifically asking about 6819 Pacific Avenue.

The person on the line asked whether the removal of an old fence and use of machinery on the beach was exempt from CDP requirements. The caller stated that the City of Los Angeles said that a CDP was not required for the project (but gave no evidence to support such a claim), but that the caller had to get a "coastal clearance" from the Coastal Commission. Commission staff told the caller that they would need to submit an application to the South Coast District office and have an analyst review the project in more detail for Coastal Act compliance before work could begin. No additional calls were made regarding a proposed development project at the Property and no application was received seeking approval for development under the Coastal Act.

Then, over the weekend of August 10-11, 2019, Commission staff was alerted that unpermitted development was taking place at 6819 Pacific Avenue, through news outlets, social media posts from then City of Los Angeles Councilmember Mike Bonin's office, and by members of the public. Enforcement staff investigated the reports and confirmed that unpermitted development was occurring on the Properties; that heavy construction equipment, including front loaders and a bulldozer, were used to break apart the dunes located on the Properties and to grade the dunes flat; and that in doing so, they had removed native foredune vegetation (in this case rising to the level of "major vegetation"), negatively impacted ESHA, and adversely impacted public access to the coast.

Therefore, on August 13, 2019, in order to stop the ongoing grading of the dunes, the Executive Director of the Commission sent Respondent a Notice Prior to Issuance of an Executive Director Cease and Desist Order as part of a larger Notice of Intent to

became effective on January 1, 2022, gives the Commission the authority to impose administrative penalties when someone is in violation of any provision of the Coastal Act other than public access. In this particular Enforcement matter, the violations include impacts to both public access and natural resources and the Coastal Act has separate provisions for each of these categories.

Commence Cease and Desist and Restoration Order and Administrative Penalty Proceedings (“NOI”) (Exhibit 3). Respondent did not respond to the NOI in “a satisfactory manner,” as required by the regulations in order to avoid the issuance of an EDCDO. Therefore, on the same day, August 13, the Executive Director issued the EDCDO to direct Respondent to cease and desist from undertaking further unpermitted development or maintaining existing unpermitted development on the Properties, submit plans for the interim restoration and remediation of the Properties, and carry out those plans once approved by the Executive Director. These proposed Consent Orders would provide a permanent resolution², by ordering and authorizing Respondent to fully resolve this matter by completing the full restoration of the Properties, undertaking mitigation measures to address the temporal losses of habitat, and resolving the civil liabilities under the Coastal Act.

The Proposed Resolution

Commission enforcement staff entered into negotiations with Respondent and reached this proposed resolution of the enforcement matter, which would, if the proposed orders are issued and complied with, fully resolve the violations at issue. Respondent has worked cooperatively with Commission enforcement staff through this process to reach this proposed consensual resolution.

The proposed Consent Orders have four general provisions. The first requires Respondent to submit and implement a Restoration Plan to restore the southern foredune habitat that was impacted on the Properties, and to monitor the site for a period of at least five years to ensure the long-term success of the restoration plan.

Secondly, the proposed Consent Orders require Respondent to submit a Mitigation Plan to provide mitigation for the temporal losses to habitat caused by the Unpermitted Development. The Mitigation Plan encompasses two distinct locations: 1) an approximately 6.2-acre portion of Dockweiler State Beach around and adjacent to the Gillis Street public restrooms, and 2) portions of the Properties not directly affected by the Unpermitted Development, including a segment of the back dune area currently covered with predominantly non-native, invasive ice plant. One of the goals of the 6.2-acre Dockweiler mitigation work is to create vegetated dune habitat in areas currently graded flat by municipal “beach grooming,” or mechanical raking. The goals also include eliminating non-native, invasive plants, increasing cover of native dune plants, accumulating sand over time to build dune topography and provide an adaptation strategy to sea level rise, and maintaining and enhancing beach and coastal access for the public. The goal of the mitigation in the back dune area of the Properties is to enhance existing dunes on the Properties, beyond that portion of the Properties affected by the unpermitted actions, to provide a more natural dune habitat by removing

² Under Section 30809 of the Coastal Act, EDCDOs generally have a duration of 90 days.

invasive, non-native plants, forming dunes where appropriate, and planting native vegetation.

Thirdly, the proposed Consent Orders require Respondent to provide and improve public access here. The Consent Orders require them to prepare and implement a plan to provide new access paths (unpaved beach paths) and to design and install public access signs at the Properties and the Dockweiler mitigation area, directing the public to public access areas through these sites, providing an opportunity for the public to view the native southern foredune and back dune habitat. The Consent Orders also require Respondent to design and install at least three interpretive signs to educate members of the public about: 1) sand dunes and the unique habitat they provide, 2) sea level rise and the impacts that such events will cause, 3) sandy beach ecosystems, including the integral role of beach wrack on the beach ecosystem, and 4) shore birds, such as western Snowy Plover and California Least Tern, and the measures the public and beach managers can take to protect these birds, such as limiting off-leash dogs and mechanical raking of beaches. These signs will explain the ecological importance of sand dunes, including the benefits of sand dunes to protect against coastal erosion and sea level rise, and how sea level rise will impact the future of this stretch of the Santa Monica Bay.

Finally, the proposed Consent Orders require a payment of \$600,000 to the Violation Remediation Account, which is an account held by the State Coastal Conservancy to fund and support other beneficial projects, such as restoration and public access and recreation projects, and educational programs.

Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Order No. CCC-24-CD-01, Consent Restoration Order No. CCC-24-RO-01, Consent Administrative Penalty CCC-24-AP-01, and Consent Administrative Penalty CCC-24-AP3-01.

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APPENDIX A – Consent Cease and Desist Order No. CCC-24-CD-01, Consent Restoration Order No. CCC-24-RO-01, Consent Administrative Penalty No. CCC-24-AP-01, and Consent Administrative Penalty No. CCC-24-AP3-01

EXHIBITS

Exhibit 1	Overview Aerial Photo
Exhibit 2	Aerial Photo of Toes Beach and the Properties
Exhibit 3	Notice Prior to Issuance of an EDCDO and Notice of Intent to Commence Cease and Desist and Restoration Order and Administrative Penalty Action Proceedings, August 13, 2019
Exhibit 4	Executive Director Cease and Desist Order, August 13, 2019
Exhibit 5	Letter from Respondent requesting 90-day extension of EDCDO, November 11, 2019
Exhibit 6	Interim Restoration Plan approval letter, December 12, 2019
Exhibit 7	Final, approved Interim Restoration Plan
Exhibit 8	Parcel Boundary Map
Exhibit 9	CDP No. 5-97-063
Exhibit 10	Pre-disturbance photos of the Properties
Exhibit 11	Photos pf Unpermitted Development
Exhibit 12	Aerial Photograph, July 2023

I. 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-01 to Legado Companies, 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-01, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred without the requisite Coastal Development Permit, in violation of the Coastal Act, and 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-01 to Legado Companies, 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 Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Approve the Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-24-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 Property without a coastal development permit from the commission, 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 **issue** Consent Administrative Penalty No. CCC-24-AP-01 pursuant to Section 30821 of the Coastal Act to Legado Companies, 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-AP-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities have occurred on properties owned by Legado Companies without a coastal development permit, in violation of the Coastal Act, and that these activities have limited or precluded public access and violated the public access policies of the Coastal Act.

Motion 4: Consent Administrative Civil Penalty Action:

I move that the Commission **issue** Consent Administrative Penalty No. CCC-24-AP3-01 pursuant to Section 30821.3 of the Coastal Act to Legado Companies, 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-AP3-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities have occurred on properties owned by Legado Companies without a coastal development permit, in violation of the Coastal Act, and that these activities have violated the Coastal Act provisions for the protection of coastal resources other than public access, including the protection of environmentally sensitive habitat areas.

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 13915. The requisite procedure for imposition of administrative penalties pursuant to Section 30821 and Section 30821.3 of the Coastal Act (Pub. Resources Code, Div. 20) are governed by Sections 30821(b) and 30821.3(b), which specify that penalties shall be imposed by majority vote of all Commissioners present at a public hearing in compliance with the requirements of Section 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties may be the same as those used for a Cease and Desist Order and Restoration Order hearing.

For a Cease and Desist Order hearing 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.³

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and 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, will result in the issuance of the Consent Cease and

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

Desist Order and Consent Restoration Order and imposition of the Consent administrative Penalties.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-24-CD-01, CONSENT RESTORATION ORDER CCC-24-RO-01, CONSENT ADMINISTRATIVE PENALTY NO. CCC-24-AP-01, AND CONSENT ADMINISTRATIVE PENALTY NO. CCC-24-AP3-01⁴

A. Property Location

The properties that are the subject of these Consent Orders are two, undeveloped, sandy beach lots located at 6819 Pacific Avenue, Los Angeles, immediately landward of Toes Beach in the Playa del Rey community of the City of Los Angeles (Los Angeles County Assessor Parcel Number (“APN”) 4116-003-001 and APN 4116-003-006). One of the lots, an approximately 1.8-acre property, is the location where a majority of the Unpermitted Development occurred. It lies between Pacific Avenue on the inland side and Ocean Front Walk, an unimproved (“paper”) public easement that parallels the coastline, between the Marina del Rey entrance channel and Culver Boulevard (Exhibit 8). The other property is an approximately 1.15-acre lot located immediately seaward of Ocean Front Walk and inland of the public beach (Exhibit 8). This 1.15 acre property is covered in its entirety by a public access and recreation easement established pursuant to a 1992 settlement agreement between the then property owner, the City of Los Angeles, the State Lands Commission, and the State Attorney General, as discussed more fully, below.

Bisecting the Properties is a 10-foot wide vertical access path over a vertical access easement that was also established in the above-mentioned 1992 settlement agreement. While the public has historically crossed the Properties to reach the public beach and ocean from Pacific Avenue, this 1992 settlement agreement affirmed the public’s rights to cross the Properties, which was then further affirmed in CDP No. 5-97-063 (Exhibit 9).

The Properties are located immediately adjacent to a very popular public beach in Playa del Rey, known as Toes Beach. A segment of the 22-mile Marvin Braude Bike Trail is located seaward of the Properties and is used by cyclists, walkers, runners, and roller skaters. The paved bike path connects Will Rodgers State Park on the northern end to

⁴ These findings also hereby incorporate by reference the Summary at the beginning of this March 1, 2024 staff report (“Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-24-CD-01, Consent Restoration Order No. CCC-24-RO-01, Consent Administrative Penalty No. CCC-24-AP-01, and Consent Administrative Penalty No. CCC-24-AP3-01”), in which these findings appear, which section is entitled, “Summary of Staff Recommendations and Findings.”

Torrance Beach on the south end, covering the entire coastline of the Santa Monica Bay.

Prior to the occurrence of the Unpermitted Development, and for decades prior, this area was covered by dunes, specifically southern foredune habitat (See Exhibit 10 for examples). Aerial imagery shows that vegetated dunes covered the entirety of the Properties – hummocks or rises in elevation covered periodically with vegetation and depressions or valleys between the hummocks. As discussed more fully below, dunes provide both habitat and protection from the effects of sea level rise and are both legally protected as environmentally sensitive habitat under the Coastal Act, and increasingly valuable as a critical resource and protective feature.

B. Violation and Enforcement History

1. The Violations

In late July (on or about July 30, 2019), Commission permit staff in the Commission’s South Coast District office received a call from someone who did not disclose their name, requesting information about the requirements related to some proposed development on the Properties, specifically asking about 6819 Pacific Avenue.⁵

The person on the line asked whether the removal of an old fence and use of machinery on the beach was exempt from CDP requirements. The caller indicated that the City of Los Angeles had stated that a CDP was not required for the project (but the caller gave no evidence to support such a claim nor cited any legal basis for such a position), but said that the caller had to get a “coastal clearance” from the Coastal Commission. It was not clear what “coastal clearance” would mean but our staff indicated that before work could occur, we would need fuller information to opine, and suggested that they should submit an application in which plans and proposals would be included and could provide the basis for a discussion. As it came to pass, no such application was received and no further calls or contact was received.

Then, over the weekend of August 10-11, 2019, Commission staff was alerted to the grading of the dunes on the Properties, through evening television news outlets, social media posts from then City of Los Angeles Councilmember Mike Bonin’s office, and by members of the public. Commission Enforcement staff discovered that the grading had actually started on August 9, 2019. Representatives from Councilmember Bonin’s office told the construction crew to stop work on August 9, and the grading activity did stop temporarily, but then early in the morning the next day, on Saturday August 10, 2019,

⁵ Approximately 4 years prior to the time of this conversation, in 2015, Commission staff, including then Deputy Director Jack Ainsworth, Dr. Jonna Engel, and South Coast District Planning staff met with representatives of Legado at the Properties. During this site visit, Commission staff informed Respondent’s representatives that the Properties contained ESHA, among other things.

grading of the dunes with large, mechanized equipment recommenced, which caused even more damage to dune ESHA.

Respondent used heavy construction equipment, including front loaders and a bulldozer, to break apart the dunes located on the Properties and to grade the dunes flat, and in doing so, removed sensitive foredune habitat (Exhibit 11). During the grading activity, the vertical public access path was also blocked and unusable. These activities - using mechanized equipment on the beach, grading, removing major vegetation, and blocking public access (which changes the intensity of use of access to the ocean) clearly constitute "development" as that term is defined in PRC Section 30610 and therefore required a CDP. Thus, the development described above is unpermitted and constitutes a violation of the Coastal Act.

2. The EDCDO

Therefore, to halt the ongoing resource damages and to provide for interim remedial actions, on August 13, 2019, the Executive Director of the Commission sent Respondent a Notice Prior to Issuance of an EDCDO as part of a larger Notice of Intent to Commence Cease and Desist and Restoration Order and Administrative Penalty Action Proceedings ("NOI") for a formal Commission action. (Exhibit 3).

Later that same day, pursuant to the requirements of PRC Section 30809, the Executive Director issued the EDCDO, directing Respondent to cease and desist from undertaking further unpermitted development and to submit plans for the interim restoration of the Properties and to carry out those plans once approved by the Executive Director. Pursuant to PRC Section 30809(e), EDCDOs generally expire 90 days after issuance, which is why the Commission staff also laid the groundwork for a Commission-issued order which provides for long term actions.

3. Compliance with the EDCDO and Interim Restoration of the Properties

After the EDCDO was issued, Respondent and their representatives met with Enforcement staff on a number of occasions to address compliance with the requirements of the EDCDO. Over the next three months, Respondent worked to prepare the interim restoration plan consistent with the requirements of the EDCDO. Because the EDCDO was about to expire and since Respondent desired to work with Enforcement staff to both comply with the EDCDO and address the situation amicably, on November 11, 2019, Respondent granted the consent required under 14 CCR § 13188(a) to extend the expiration period of the EDCDO a period of 90 days, to February 10, 2020 (Exhibit 5). This allowed Respondent to continue to address the immediate needs of preparing and implementing the interim restoration plan consistent with the EDCDO.

On December 2, 2019 (and through a confirming letter on December 12, 2019 (Exhibit 6)), the Executive Director approved Respondent's interim restoration plan. The approved interim plan, in compliance with the EDCDO, provides for the installation of "symbolic fencing" around the Properties to encourage protection of the restoration area

(leaving the public access path unfenced to allow unimpeded access from Pacific Avenue to the public beach), and strategically placed wind fencing to begin the establishment of southern foredunes habitat. Legado implemented the approved interim restoration consistent with the EDCDO. Over time, as designed by the plan, the wind fencing that was installed slowly began the restorative process and dunes eventually formed across the Properties (Exhibit 12). Native foredune plants also have slowly returned to the Properties, likely from the natural seed bank that remained on the Properties from the preexisting native dune plants and potentially from seeds reaching the Properties from wind or wildlife. The areas of the Properties that were impacted by the Unpermitted Development appear to be close to fully recovering. However, in order to fully resolve this enforcement matter including mitigation and penalties, through the proposed Consent Orders, Respondent has agreed to restore all areas impacted by the Unpermitted Development, mitigate for the temporal and permanent losses of habitat caused by the Unpermitted Development, and address the civil liabilities under the Coastal Act.

C. Basis for Issuing Consent Cease and Desist Order

1. Statutory Provision

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

- (a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, an activity that (1) requires a permit from the commission without securing the permit, or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. . . .
- (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 following paragraphs set forth the basis for the issuance of the Consent Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in PRC Section 30810 for the Commission to issue the Consent Cease and Desist Order.

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

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, discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, . . . change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure. . . , and the removal or harvesting of major vegetation other than for agricultural purposes

Any activity that meets the above definition of development without the requisite Coastal Act authorization constitutes a violation of the Coastal Act.

The unpermitted development conducted here includes, but is not necessarily limited to: use of heavy equipment on the Properties; removal of major vegetation, including native dune vegetation, grading of sand dunes on the Properties, and temporarily blocking public access across a public access easement. The unpermitted development clearly constitutes “development” within the meaning of the above-quoted definition and therefore requires a CDP. The Unpermitted Development is also not exempt from the Coastal Act’s permitting requirements under Section 30610 of the Coastal Act or Title 14, Sections 13250-13253, of the California Code of Regulations. The Unpermitted Development is located in the “Dual Permit” jurisdiction in the City of Los Angeles where a CDP is required from both the City and the Commission. No CDP (emergency permit or regular permit) or amendment to an existing CDP has been issued by the Commission to authorize this development. Therefore, the criterion required for issuance of a Cease and Desist Order is met here.

D. Basis for Issuing Consent Restoration Order

1. Statutory Provision

The statutory authority for issuance of this Consent 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 the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and 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 Order by providing substantial evidence that the development meets all of the required grounds listed in PRC Section 30811 for the Commission to issue the Consent Restoration Order.

a) Development has occurred without a Coastal Development Permit

The first of the three criteria listed required in Section 30811 above, that is, that development has occurred without a coastal development permit, has been satisfied, as discussed in section III.C above.

b) Development is Inconsistent with the Coastal Act

As described below, the development at issue here, including use of heavy machinery on the beach, grading, removal of major vegetation, and temporarily blocking public access is inconsistent with PRC Sections 30810 (Maximum Access) and 30240 (protection of ESHA).

Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Coastal Act Section 30107.5 defines ESHA:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development.

Dune-backed beaches account for roughly a quarter of California’s shoreline but together, beach-dune complexes constitute only 2-3% of the State’s landmass (Pickart & Barbour 2007), making them one of the State’s rarest landscapes. Where they do occur, coastal dunes are characterized by their sandy substrate, topographical features, and uniquely adapted vegetation communities.

Southern foredunes, like the ones on the Properties, are a habitat type identified as rare by the California Natural Diversity Data Base and the California Native Plant Society and identified by the Commission in other actions as ESHA. California dune ecosystems have suffered a disproportionately high amount of human impact because the coast is a highly desirable area for residential settlements, industry, tourism, and

recreation.⁶ Undisturbed coastal dunes are becoming rarer and rarer in California. Statewide, coastal dunes have been reduced to less than 25% of the area they originally occupied.⁷ South of Point Conception there was once an estimated 5,100 acres of coastal dunes. Dr. Rudi Mattoni found that in 1990, less than 1,000 acres or 19%, were still recognizable as dunes.⁸ The dunes that remain tend to reflect development impacts including non-native species invasion, erosion due to off-road vehicles and trampling, pollution, and loss of natural morphology due to destruction of vegetation. In spite of these impacts, many remaining dune communities continue to support an array of native plants and animals uniquely adapted to this transition zone between land and sea.

In addition to their habitat and aesthetic values, dune ecosystems are recognized for providing important protection during storm events. Dunes provide a physical barrier against storm waves, reducing the risk of flooding for the natural and anthropogenic features behind them. Dunes are a dynamic buffer; eroding or growing as they are shaped by the seasonal dynamics of storms, wind, and wave action. Sand dunes are essential sand reserves for maintaining natural beach morphology. Dunes are sand reservoirs for the beach and beaches are buffers for dunes.⁹

The southern foredune habitat located on the Properties meets the definition of ESHA under Section 30107.5. The use of heavy machinery, front loaders and bulldozers, to break apart the dunes on the Properties and then grade them flat is clearly inconsistent with Section 30240 of the Coastal Act. The grading also removed the native dune vegetation that had established in the foredune habitat area. What remained of the approximately 1.5 acre portion of the Properties after the Unpermitted Development occurred was a generally flat area devoid of vegetation (Exhibit 11). Therefore, the second of three criteria for issuance of the Consent Restoration Order has been met.

Additionally, the development undertaken by Respondent is inconsistent with the public access policies of the Coastal Act, including Coastal Act Sections 30210 (maximum access). For example,

⁶ Pickart, A.J. and J.O. Sawyer. 1998. Ecology and restoration of northern California coastal dunes. California Native Plant Society, Sacramento, CA. 152 pp.

⁷ Mattoni, R.H.T. 1990. Species diversity and habitat evaluation across the El Segundo Sand Dunes at LAX. Prepared by: Mattoni, R.H.T., Agresearch, Inc. Prepared for: The Board of Airport Commissioners, One World Way West, Los Angeles, California 90009

⁸ Mattoni. 1990. Op cit

⁹ The preceding paragraphs were largely excerpted from a Memorandum from Commission staff Senior Ecologist, Dr. Jonna Engel titled "Southern Foredune Community at 30732 Pacific Coast Highway," May 15, 2008.

Coastal Act Section 30210 states, in part:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided

Public recreation and the ability for the public to access the beach are major cornerstones of the Coastal Act and are critical provisions to enforce in this area. In this case, the Unpermitted Development temporarily blocked a public access path that runs along a 10-foot wide vertical public access easement across the Properties. The access path takes the public from Pacific Avenue across the Properties to the public beach located on the seaward side of the Properties. The path was blocked for an approximately 4-day period while the Unpermitted Development was taking place, and access was somewhat impeded for an additional approximately month until Respondent installed “symbolic fencing” to keep the public out of the dune areas and delineate that vertical public access path. While the unpermitted activity is clearly inconsistent with the public access policies of the Coastal Act – as blocking a public access way, even for a short period of time, does not maximize public access to the coast – public access to the beach and ocean does exist on either side (upcoast and downcoast) of the Properties, and once the physical unpermitted activities ceased, the public could walk up the back dune area and across the flattened dunes (although not necessarily on the public access easement as it was not demarcated for approximately 30 days after the unpermitted activities). Regardless, the Unpermitted Development is inconsistent with 30210 of the Coastal Act; and therefore, the second of three criteria for issuance of the Consent Restoration Order has been met.

c) The Violations are Causing Continuing Resource Damage

The third and final criterion for issuance of a restoration order is that the development at issue is causing continuing resource damage. 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 Section 14 CCR 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.

The term “continuing” is defined by 14 CCR Section 13190(c) of the Commission’s regulations 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.

The ESHA and public access path on the Properties are afforded protection under the Coastal Act, as described above, and are therefore “resources” as defined in Section 13190(a) of the Commission’s regulations. The Unpermitted Development included removal of major vegetation and sand dunes on the Properties. While compliance with the EDCDO has improved the habitat values on the Properties, the lack of fully recovered sand dune habitat remains at the Properties, and thus there is a reduced area of Environmentally Sensitive Habitat Area. In this case, the damage is the continuing degradation of an Environmentally Sensitive Habitat Area.

Without restoration of the areas impacted by the Unpermitted Development, the damages caused by Respondent are continuing and will continue to occur. The persistence of these impacts constitutes “continuing resource damage,” as defined in Section 13190 of the Commission’s regulations. As a result, the third and final criterion for the Commission’s issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 is therefore satisfied.

E. Basis for Issuing Consent Administrative Civil Penalty Actions

1. Statutory Provision

The statutory authority for imposition of administrative penalties is provided in the Coastal Act in Public Resources Code Sections 30821 and 30821.3. The former relates to public access and 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.

The latter section addresses other types of resources and similarly 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.

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 judicial 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 Consent Orders, Respondent has agreed to resolve its financial liabilities under all of these sections of the Coastal Act.

2. Application to Facts

This case, as discussed above, includes violations of both the public access provisions of the Coastal Act, as well as other provisions of the Coastal Act. These provisions include, but are not necessarily limited to, PRC Section 30210, which states in relevant part that “maximum access... and recreational opportunities shall be provided for all the people.” As described above, the unpermitted grading activity temporarily blocked public access across a public access easement. While the actual activity that blocked access was occurring for a short period of time, approximately 4 days, any impediment or closure of public access is access lost forever. Moreover, prior to the Unpermitted Development, the public access path was clearly delineated by a fence, establishing a clear path of access across the Properties. During the unpermitted grading activities, the fencing that delineated the access way was removed and then the dunes adjacent to the path were graded into the established path area, creating a uniform plateau between Pacific Avenue and the public beach, thereby removing the delineation of a public access area. It wasn’t until Respondent fully complied with the interim restoration plan, and erected the symbolic fencing as authorized by that EDCDO, was access fully restored. Therefore, pursuant to PRC Section 30821, the Commission may impose administrative civil penalties for the violations of the public access provisions of the Coastal Act.

In addition, PRC Section 30240 states that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” The unpermitted activities leveled and destroyed approximately 1.5 acres of southern foredune ESHA. Several pieces of heavy equipment were used to break apart the dunes and grade them flat, and in the process removed all the dune vegetation established on the dunes. Clearly, the activities that had occurred were not dependent on or protective of the resource and caused significant disruption to the habitat values on the Properties. Therefore, pursuant to PRC Section 30821.3, the Commission may impose administrative civil penalties for the violations of the Coastal Act other than public access.

a. Exceptions to Sections 30821 and 30821.3 Liability Do Not Apply

Under PRC Sections 30821(h) and 30821.3(h) of the Coastal Act, in certain circumstances, a party who is in violation of the Coastal Act can nevertheless avoid imposition of administrative penalties by correcting the violation within 30 or 60 days of receiving written notification from the Commission regarding the violation, respectively.

These provisions of both PRC Section 30821(h) and 30821.3(h) are inapplicable to the matter at hand. For 30821(h) and 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 30 or 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.

The violations at hand do not meet the requirements for 30821(h) and 30821.3(h) to apply. The violations here were not remedied within 30 or 60 days of receiving notice. Further, restoration of the southern foredune habitat on the Properties that were impacted by the Unpermitted Development will require extensive restoration and mitigation work that requires Coastal Act authorization before it could occur. Therefore, the violations at issue could not be cured pursuant to the above sections.

In addition, Coastal Act Sections 30821(f) and 30821.3(f) state:

(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(f) and 30821.3(f) are also inapplicable in this case. As discussed herein, the Unpermitted Development includes blocking public access and grading approximately 1.5 acres of southern foredune habitat. The harm in this case was not de minimis. In addition, Respondent did not remove sand dunes and vegetation “unintentionally”. Respondent used heavy machinery to break apart dunes, leveling the hummocks and grading the Properties flat. The substantial harm to ESHA occurred through intentional efforts to move sand. Therefore, the Unpermitted Development is not

unintentional or minor, caused harm that was not de minimis , and Sections 30821(f) and 30821.3(f) are not applicable.

b. Penalty Amount

Pursuant to Section 30821(a) and 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 of 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 pursuant to Section 30821(a) (for public access violations) and 30821.3(a) (all other non-public access violations) in a range up to \$11,250 per day for each violation. There are multiple Coastal Act violations at issue here. For the purposes of calculating the penalty for these consensual administrative penalty hearings, however, in light of Respondent’s willingness to enter into these Consent Orders, and because Respondent worked diligently and expeditiously with staff to reach an amicable resolution, in this specific case and under these particular fact patterns, the Commission is treating Respondent’s various items of unpermitted development as a single violation.

Both Section 30821(a) and Section 30821.3(a) set 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.” While Section 30821 of the Coastal Act provides for the daily assessment of penalties for each day a violation persists, given the facts at hand and nature of the resolution in this case and the fact that these violations are being resolved in the proposed settlement and avoid litigation and the attendant costs and delay in implementation, Commission staff recommends a lower penalty assessment. In this case, the Unpermitted Development commenced on August 9, 2019. These violations were extant during the entire statutory period of Section 30821, so administrative penalties may apply for the full period from August 9, 2019. However, Coastal Act Section 30821.3 did not take effect until January 1, 2022, at which point Respondent was well into active negotiations with Commission staff. Therefore, administrative penalties for the impacts to ESHA have not accrued for the full five years.¹⁰ The proposed Consent Orders will not only provide for the restoration of the 1.5 acre portion of the Properties impacted by the Unpermitted Development and extensive mitigation in the form of an additional, approximately 6.5 acres of southern foredune and back dune restoration, they will also provide for the expansion of public access paths and installation of interpretive and public access signs to enhance public use and make obvious the public access opportunities here. Finally, in light of the manner in which Respondent has taken ownership of the violations and has worked diligently and creatively with staff to craft a resolution that will be a net benefit to the

¹⁰ While Section 30821.3 did not take effect until January 1, 2022, Section 30820(a) and (b), among other penalty provisions in Chapter 9 of the Coastal At are applicable prior to this date. For purposes of this case, the Commission is resolving all Respondent’s Coastal Act liabilities through these Consent Orders, including the Consent Administrative Penalty Actions.

public, Staff recommends a lower penalty amount than provided for under Section 30821 and 30821.3. To avoid costly litigation and to recognize the efforts of Respondent to endeavor to rectify this violation, staff recommends assessment of a \$600,000 to the Violation Remediation Account of the State Coastal Conservancy (in addition to providing additional mitigation measures to address temporal losses of habitat and public access). This proposed resolution will satisfy the goals of resolving ESHA and public access violations quickly and creatively, while ensuring that State resources can be used elsewhere rather than being required for contentious and protracted litigation.

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculations for the Commission's approval, and the Commission concurs with staff's analysis. Under Section 30821(c) and 30821.3(c), in determining the amount of administrative penalty to impose, the statute incorporates the elements of Section 30820: "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.

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

Applying the factors of Section 30820(c)(1), the violation at hand should warrant the imposition of substantial civil liability. The violations involve removal of southern foredune habitat, which is a rare and threatened habitat along the California coast and is one of the most fragile and dynamic natural landforms that provide habitat for plant and animal species that cannot survive in any other environment. The violations eliminated approximately 1.5 acres of sand dune formations. The lack of sand dunes persisted on the Properties for an extended period of time, and the violations have meant that land that would otherwise contain native southern foredunes that provide habitat for sensitive species and protect against the effects of coastal erosion and sea level rise has been significantly degraded, with likely losses to the species in this period.

The violations also completely blocked public access across a public access easement for the period of time that the grading occurred and limited access for a period of time until such time as the interim restoration plan was implemented pursuant to the EDCDO. Therefore, this factor warrants a high penalty.

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

With respect to Section 30820(c)(2), the violation can be remedied going forward, and compliance with this Consent Agreement moving forward will ensure that the property is restored through establishment of dune topography, planting of native dune species, removal of invasive species, and ongoing monitoring. These Consent Orders would also require large amounts of additional restoration through the habitat mitigation. Respondent also quickly responded to the EDCDO and implemented the required interim restoration plan, which allowed the dunes to passively return, albeit more slowly and potentially with less native plant cover. While dunes are susceptible to restoration, such activity still involves challenges and will require a number of years before the area fully recovers. With regard to the violations of the public access policies, the violation can be remedied going forward and compliance with these Consent Orders will ensure that adequate public access is maintained at this location. However, while the duration of impacts was limited, the public access lost is not recoverable. Therefore, a low to moderate penalty is warranted under this factor.

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

Section 30820(c)(3) requires consideration of the resources affected by the violation in assessment of the penalty amount. The resources affected by the violation are coastal southern foredune habitat and public access. Foredune habitat is a rare and threatened habitat along the California coastline. Sand dune habitats are considered an Environmentally Sensitive Habitat Area because both the physical dune habitat as well as the associated natural community are rare in California and easily disturbed by human activities. Not only do sand dunes provide shelter and nesting area for several species of birds and provide habitat for rare species such as the California legless lizard and several species of Blue Butterfly, but coastal sand dunes also provide a natural buffer for inland areas from the impacts of sea level rise. The violations negatively impacted large areas of sand dunes on the Properties. Public access to beaches is an oft-threatened and important resource across the State. Ensuring public access to all of California's beaches and public trust lands is promised to the people by the State Constitution and is essential for implementing the Coastal Act, and this violation directly blocked a public access easement, albeit for a short period of time, and limited the access until the implementation of the interim restoration plan pursuant to the EDCDO. While the resources affected by the Unpermitted Development are critically important, the public access violations were limited in time and scope, and, while the dunes haven't yet fully recovered, the actions taken by Respondent to comply with the EDCDO have helped restore the dunes in that impacted area. Therefore, this factor warrants a low to moderate penalty.

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

Section 30820(c)(4) takes into account the cost to the state of bringing this action. In this case, a low to moderate amount of Commission staff time was spent to bring this matter to a resolution. Initially, to stop the immediate destruction of dunes on the Properties, Commission staff had to prepare both the NOI for the EDCDO and the EDCDO, itself. The EDCDO required, among other things, the submittal of an interim restoration plan, which staff had to review and analyze. Staff also spent a great deal of time negotiating and preparing the Consent Orders attached in Appendix A. However, the proposed resolution here would enable the State to avoid litigation entirely and save it the costs and delays to restoring southern foredune habitat and public access that such litigation would entail. Therefore, this factor warrants a low to moderate penalty.

Section 30820(c)(5): voluntary restoration or remedial measures, prior history of violations, degree of culpability, economic profits, and such other matters as justice may require.

Section 30820(c)(5) requires evaluation of the entity that undertook and/or maintained the unpermitted development, whether any voluntary restoration or remedial measures were undertaken, 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. It does not appear that Respondent profited from the Unpermitted Development, nor does it appear that there is a prior history of violations.

As to culpability, Respondent should have been aware that sand dunes are protected as representatives for Legado have met with Commission staff prior to the occurrence of the Unpermitted Development during which time Commission staff informed the representatives that the Properties contains ESHA, and specifically explained the importance of southern foredune habitat. It also appears that another representative of Legado contacted Commission staff just prior to the Unpermitted Development and asked if a permit was needed to bring heavy equipment onto the Properties, at which time Commission staff indicated they would need to submit specific plans so we could first analyze whether a permit was needed. As to restoration and remedial measures, Respondent could not undertake a full restoration without Coastal Act authorization, but, while not voluntarily, Respondent did comply with the EDCDO and implemented an interim restoration plan on the Properties. Therefore, this factor warrants a moderate penalty.

Aggregating these factors, Commission staff concluded that a moderate penalty is justified here. Staff recommends that the Commission exercise its prosecutorial discretion and adopt staff's recommendation for the imposition of a monetary penalty in the amount of \$600,000, and in lieu of the remainder of the penalty, impose the requirement to undertake additional enhancement of the dunes adjacent to those that were impacted by the Unpermitted Development and installing public access and educational/interpretive signs at both the Properties and the 6.2 acre mitigation area at

Dockweiler State Beach as provided in the proposed Consent Orders. The Commission concurs.

Therefore, the Commission issues the Consent Administrative Penalty CCC-24-AP-01 and Consent Administrative Penalty CCC-24-AP-01, attached as **Appendix A** of this staff report.

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

The Unpermitted Development significantly impacted coastal resources, including ESHA and public access. The Unpermitted Development is therefore inconsistent with the resource protection policies of the Coastal Act, and the resource damage caused by the Unpermitted Development will continue unless the unpermitted activities cease and the Properties are properly restored. Issuance of the Consent Orders is essential to resolving the violations and to ensuring compliance with the Coastal Act.

These Consent Orders, attached to this staff report as Appendix A, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. These Consent Orders require and authorize Respondent to, among other things, cease and desist from conducting any unpermitted development, prepare and implement a restoration plan and mitigation plan, and prepare and implement a public access and educational sign plan.

The Restoration Plan required by these Consent Orders includes several components: an Invasive Non-Native Plant Removal Plan; a Topography Plan; a Revegetation Plan; a Mitigation Plan; and a Monitoring Plan. The Consent Orders required specific, detailed measures to ensure the protection of coastal resources as Respondent carries out the approved plans consistent with these Consent Orders.

Failure to provide the required restoration of ESHA, mitigation to address temporal losses of habitat, and the public access and interpretive signs would result in the continued loss of public access and ESHA, inconsistent with the resource protection policies of the Coastal Act.

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

G. California Environmental Quality Act (CEQA)

The Commission finds that issuance of these Consent Orders, to compel the cessation of the unpermitted development, restoration of the Properties, and additional restoration measures, 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 (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 Orders are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

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

IV. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of these Consent Orders are two undeveloped, sandy beach lots located at 6819 Pacific Ave., immediately landward of Toes Beach in Playa del Rey, City of Los Angeles (Los Angeles County Assessor Parcel Numbers 4116-003-001 and 4116-003-006).
2. 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.

3. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when the Commission determines that (1) development has occurred without a coastal development permit from the commission, (2) the development is inconsistent with the Coastal Act, and (3) the development is causing continuing resource damage.
4. Unpermitted Development as defined above has been undertaken by Respondent and occurred without a CDP on the Properties that includes: removal of major vegetation, including native dune vegetation, grading of sand dunes and use of heavy equipment on the beach, and temporarily blocking public access across a public access easement. The Unpermitted Development is inconsistent with the resource protection policies of the Coastal Act including PRC Sections 30210 and 30240, and is causing continuing resource damage. Therefore, the grounds for issuance of a cease and desist and restoration order have been met.
5. On August 13, 2019, the Executive Director of the Commission sent to Respondent a Notice Prior to Issuance of an Executive Director Cease and Desist Order and part of a larger Notice of Intent to Commence Cease and Desist and Restoration Order and Administrative Penalty Proceedings. Because Respondent did not respond to the NOI in “a satisfactory manner,” that same day on August 13, the Executive Director issued to Respondent Executive Director Cease and Desist Order No. ED-19-CD-01.
5. The statutory authority for imposition of administrative penalties is provided in Section 30821 and 30821.3 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Section 30821 and 30821.3 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.
6. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of these Consent Orders have been met.
7. The work to be performed under these Consent Orders, if completed in compliance with these Consent Orders and the plan(s) required therein, will be consistent with the Chapter 3 of the Coastal Act.
9. As called for in Section 30821(c) and 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 penalty agreed to in this settlement is an appropriate amount when considering those factors.