CALIFORNIA COASTAL COMMISSION
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2421
VOICE (415) 904-5200

April 11, 2024

The Honorable Gavin Newsom and Members of the Legislature

Subject: Coastal Act Section 30821.3 Administrative Penalties Report

On behalf of the California Coastal Commission and as required by Public Resources Code Section 30821.3(i), I am submitting the attached report on the status of the Commission's enforcement program. This report provides information on the Commission's implementation of administrative penalty authority from January 1, 2023 – December 31, 2023.

Specifically, this report provides data collected during the specified time period regarding:

- The number of new violations reported annually
- The number of cases resolved annually
- The number and dollar amount of penalties issues
- Additional data and information related to the Coastal Commission's enforcement efforts

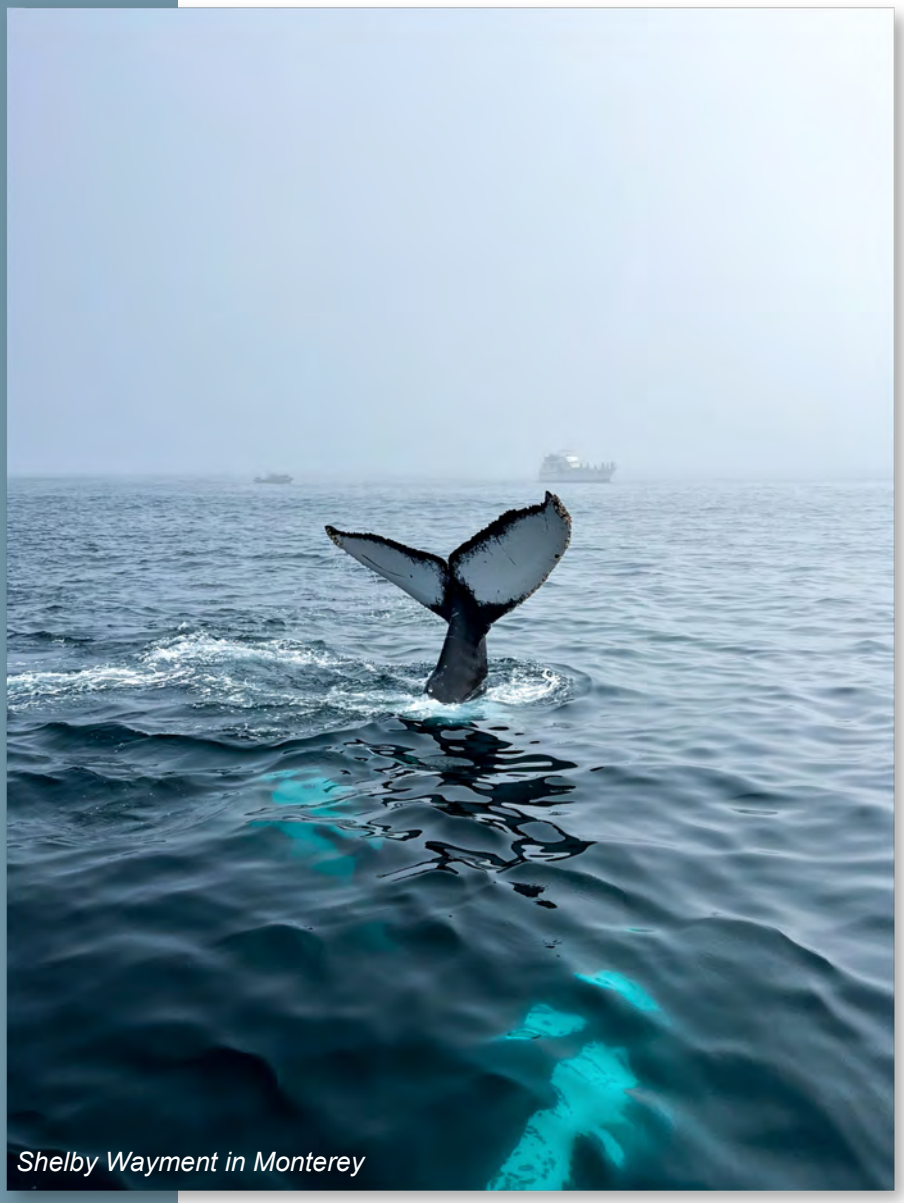
I hope that this report conveys the substantial public benefit derived from the Commission's responsible use of this authority in its resource protection work. Protecting the coast and its precious natural resources is a core Coastal Act value.

Additional copies of this report are available at the Coastal Commission's website (www.coastal.ca.gov). Additional printed copies of this report can be obtained by calling the Coastal Commission's Headquarters office at (415) 904-5200. Thank you for your continued support of the California Coastal Act.

Sincerely,

Lisa Haage
Chief of Enforcement
California Coastal Commission

Report on Implementation of Coastal Commission 30821.3 Penalty Authority in 2023



Shelby Wayment in Monterey

Report submitted by:
California Coastal Commission
Pursuant to Public Resources Code 30821.3(i)

April 2024

April 11, 2024

TO: California Coastal Commission and Interested Parties

FROM: Lisa Haage, Chief of Enforcement and Enforcement Staff

SUBJECT: Enforcement Program Progress Report (2023) – Coastal Act Section 30821.3 Implementation

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Introduction

In October of 2021, the Coastal Act was amended to provide the California Coastal Commission the statutory authority to impose administrative penalties for violations of the Coastal Act not related to public access. This change, resulting from the passage of SB 433 authored by Senator Allen, was effectuated through the addition of Public Resources Code Section 30821.3.[1] Section 30821.3 became effective on January 1, 2022.

The Coastal Act had previously been amended by the addition of a similar provision (Section 30821) in June of 2014, which provided the Commission the statutory authority to impose administrative penalties only for violations of the Coastal Act's provisions relating to public access. Earlier proposals to allow administrative penalties would have provided for administrative penalties for all violations of the Coastal Act, but the final version of the bill, SB 861 authored by Senator Atkins in 2014, only applied to public access related violations. The addition of Section 30821 has been highly effective to help resolve a high percentage of public access-related cases and has led to increased public access to the coast throughout the state, and the hope is that this success can be replicated for other violations such as those involving wetlands, cultural resources, or habitat for flora and fauna, including endangered or threatened species.[2]

With the passage of Section 30821.3, the Commission now has the authority to impose administrative penalties for all violations of the Coastal Act that were not previously covered by Section 30821, which we will refer to as "resource violations" in this report (to distinguish them from public access violations which are addressed by Section 30821). These resource violations include cases such as damage to some of our state's most precious natural resources, such as wetlands, coastal forests, beaches, dunes, and threatened and endangered plants and animals. These critical resources not only are important to the ecosystem and play a vital role in our state's economy and tourism, but also play an increasingly important role in protecting both our built and natural

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[1] All references herein to a Section are to the Public Resources Code, unless stated otherwise.
[2] *See* https://documents.coastal.ca.gov/reports/2018/Report-to-CA-legislature/Coastal-Commission-Report-of-Administrative-Penalty-Authority-1.15.19.pdf

environment from the effects of climate change and sea level rise. Protecting these resources is a critical goal of the Coastal Act.[3]

Initial implementation indicates that Section 30821.3 has provided a meaningful tool to resolve violations that are harming coastal resources and has allowed the Enforcement program to resolve cases more quickly and efficiently than was possible without this statutory authority. The Enforcement program anticipates resolving more cases informally using this authority as a tool to encourage case resolution, as well as bringing more cases under Section 30821.3 to a hearing before the Commission in the future as we work to resolve the existing backlog of open enforcement cases.

However, critically, it should be noted that neither the original legislation creating the administrative penalty authority under 30821, nor this later legislation expanding the authority, included funding for either positions or staff to implement the new programs. These cases involve collecting information and pursuing elements that are often complex and require information beyond just the site conditions and technical analyses. Given the number of open cases and the lack of additional staff, fully pursuing these cases is a challenge. Obtaining additional resources is an important element to enable us to make use of these authorities. Having said that, the mere existence of the legal authority has provided the impetus for some parties to settle, and we have attempted to apply the new authority in the most efficient and useful ways possible.

This progress report provides a summary of the relevant statutory background, followed by some summary information and analysis of the cases in which it has been employed, case examples, and a summary of the information to be reported pursuant to Section 30821.3, which is attached as **Exhibit 1.** Under Section 30821.3(i), Commission staff are required to report the number and type of new violations investigated and identified, the number of violations resolved, the number of administrative penalties, and the number of days from the initial notice of violation to resolution to both the Commission and the Legislature.[4]

Background Information on the Statutory Provision

As noted above, Section 30821 allows the Commission to impose civil liability administratively, following a noticed public hearing for violations of the Coastal Act's public access provisions, including violations of Coastal Development (CDP) conditions designed to protect or promote public access. The new Section 30821.3, attached as **Exhibit 2,** expanded the Commission's authority to assess administrative penalties for

[3] The purpose of administrative penalties is not to be punitive. The main purposes are three-fold; first, to provide fairness, and to make a more level playing field such that those who comply with the law are not financially worse off than those who violate it; second, to create a motivation to comply with the law; and third, to provide an efficient and cost effective means to resolve violations without the cost and delays of litigation.

[4] Commission staff has provided additional background information here in this report given that it is the first year of reporting on 30821.3 and to provide some case examples of its use. In future years a report will be generated that reflects the reporting elements outlined in the statute, which is included at the end of this report, titled Exhibit 1, 30821.3 Required Reporting – 2023.

other types of violations of the Coastal Act, also after a formal noticed public hearing. The provision is similar to those provided for many other state agencies, and provides the Commission with the type of authority other state agencies have long used to be able to resolve cases without litigation, which saves all parties time and resources. As Section 30821 and Section 30821.3 are nearly identical in their operational provisions, this report will only discuss the operative provisions of 30821.3 and highlight the key differences between Section 30821 and 30821.3.[5]

Section 30821.3 applies to violations of the Coastal Act not relating to public access (which as noted above were previously covered by the earlier adoption of Section 30821), referred to here as "resource violations." By expanding the Commission's administrative penalty authority, Section 30821.3 provides the same incentive to resolve violations for those who violate the public access provisions of the Coastal Act and parties who violate its other provisions. Under Section 30821.3(b), the Commission may impose administrative penalties by a vote of the majority of the Commissioners present in a duly noticed public hearing with the same procedural measures as used in other Orders under the Coastal Act.[6]

The maximum amount of the penalty that the Commission can impose under Section 30821.3 is based on 75% of the civil penalties provided for in civil litigation under Section 30820(b), which results in a maximum of $11,250 per day, per violation. 30821.3 provides for daily penalties, which was designed to incentivize alleged violators to resolve their violations quickly and to benefit those who do. Additionally, Section 30821.3 includes a five-year cap on the accrual of the administrative penalties. The amount of penalties is determined by taking into account the factors of Section 30820(c) for determining civil liability, which includes: the nature, circumstance, extent and gravity of the violation; the possibility of restoration; the sensitivity of the resources impacted; the cost to the state of resolving the violation; the degree to which the violator has voluntarily resolved the violation; their prior history of violations; their degree of culpability and the economic profits flowing from the violation; and "such other matters as justice may require."

Section 30821.3 has a number of elements to guide and, in some cases, limit its application. It includes provisions addressing *de minimis* violations and includes a "grace period" in certain instances. Section 30821.3(f) includes a general statement that the intent of the Legislature was not to use the Commission's administrative penalty authority for violations that are unintentional, minor, and cause only *de minimis* harm if the violator acted expeditiously to correct the violation.

Next, in order to encourage quick resolution of violations and reward parties who quickly address violations, Section 30821.3(h) states that administrative penalties

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[5] Unless stated otherwise, for the purposes of this report, any operative provisions of Section 30821.3 that are discussed are identical to 30821.

[6] In compliance with the requirements of Sections 30810, 30811, or 30812 (Cease and Desist Orders, Restoration Orders, or the recordation of Notices of Violations of the Coastal Act), respectively.

shall not be assessed if the property owner corrects the violation within 60 days of receiving written notification from the Commission regarding the violation and if the violation can be corrected without additional development that requires a CDP. (The 60-day "grace period" does not apply to violations of permit conditions incurred by a property owner, since they already had notice of the requirements via the permit.)[7] Historically, Enforcement staff has often offered a "grace period" even if not legally required, to allow time for resolution and encourage voluntary resolution, since the Commission's goal is to settle these cases whenever possible. Overall, the Commission enforcement program has resolved approximately 75% of its cases informally at the district level over the years, and even of those elevated for formal action, the majority of the cases have been resolved via consent orders. Finally, in cases where the Commission imposed administrative civil penalties unilaterally (i.e., in cases where Enforcement staff and the violator were unable to reach agreement on a consensual resolution), those parties may choose to seek judicial review of the Commission's imposition of administrative penalties.

If a party fails to pay a penalty imposed by the Commission, under Section 30821.3(e), the Executive Director of the Commission may record a lien on the property in the amount of the penalty, which has the force, effect, and priority of a judgment lien. Also, 30821.3(d) provides that if a person fails to pay an imposed administrative penalty, fails to comply with Orders issued by the Commission, or challenges the Commission actions (either orders or administrative penalties) in court, the Commission can turn to the courts to enforce those requirements and seek any other relief authorized by the Coastal Act.

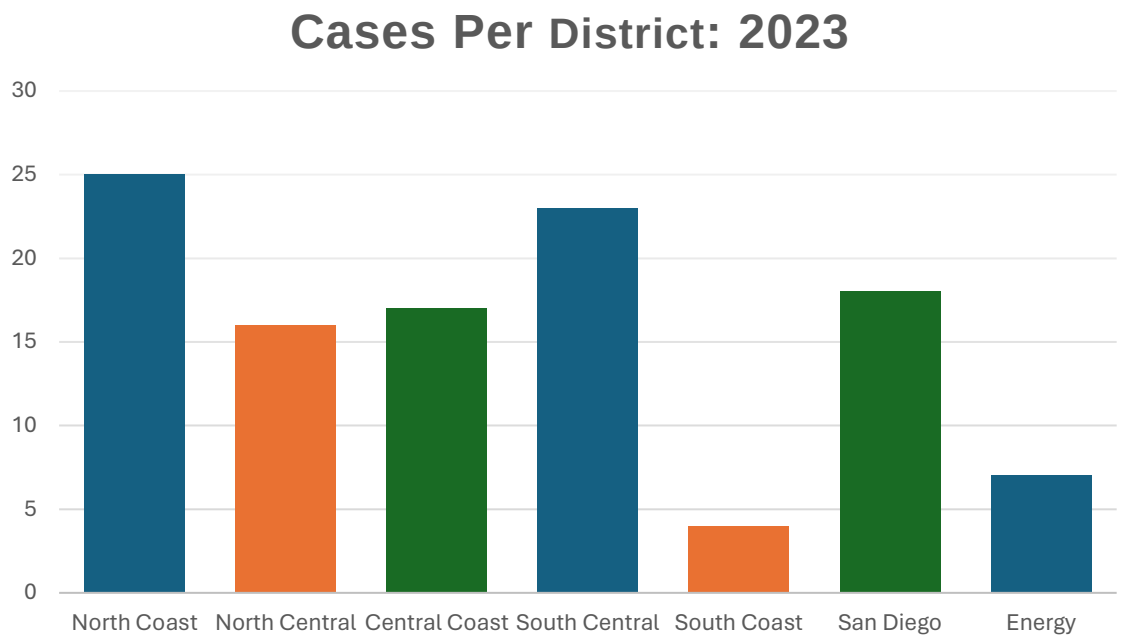
Implementation Overview

After the passage of 30821.3, Commission Enforcement staff worked to identify, investigate, and determine the applicability of Section 30821.3 to potential Coastal Act violation cases and worked with parties to seek resolution. Enforcement staff has applied the provisions of the new authority of 30821.3 both to newly identified Coastal Act violations and to previous enforcement cases that were already open, which required looking anew at significant numbers of open cases. In 2023, the Enforcement program identified and initiated the application of the provisions of Section 30821.3 in 110 district enforcement cases.

[7] Section 30821 included only a 30-day "grace period," compared to the 60-day "grace period" of 30821.3.

Geographic Distribution – Total 30821.3 Cases Per District

Our 2023 Enforcement cases under this section arose throughout all seven districts in the state. District Commission staff opened a total of 110 violation cases where Section 30821.3 was applicable in 2023.[8]

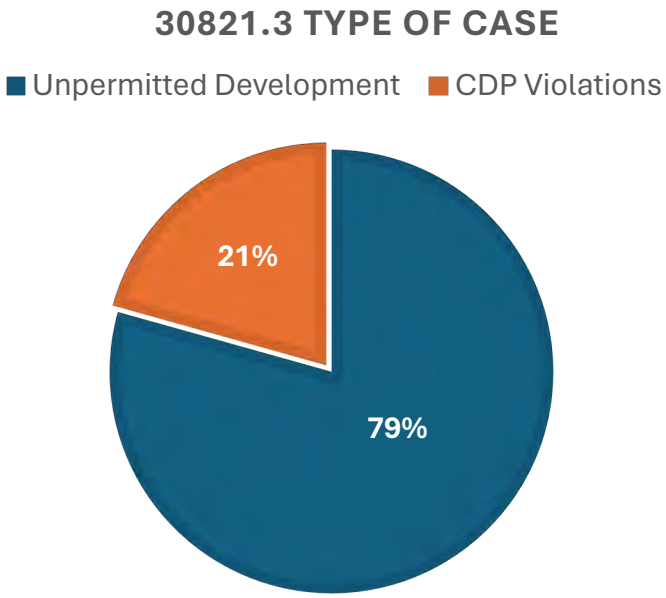


Commission staff opened 25 violation cases in which 30821.3 played a role in the North Coast District,16 cases in the North Central district, 17 cases in the Central Coast District, 23 cases in the South Central District, 4 cases in the South Coast District, 18 cases in the San Diego District, and 7 cases in our Energy, Ocean Resources, and Federal Consistency enforcement program.

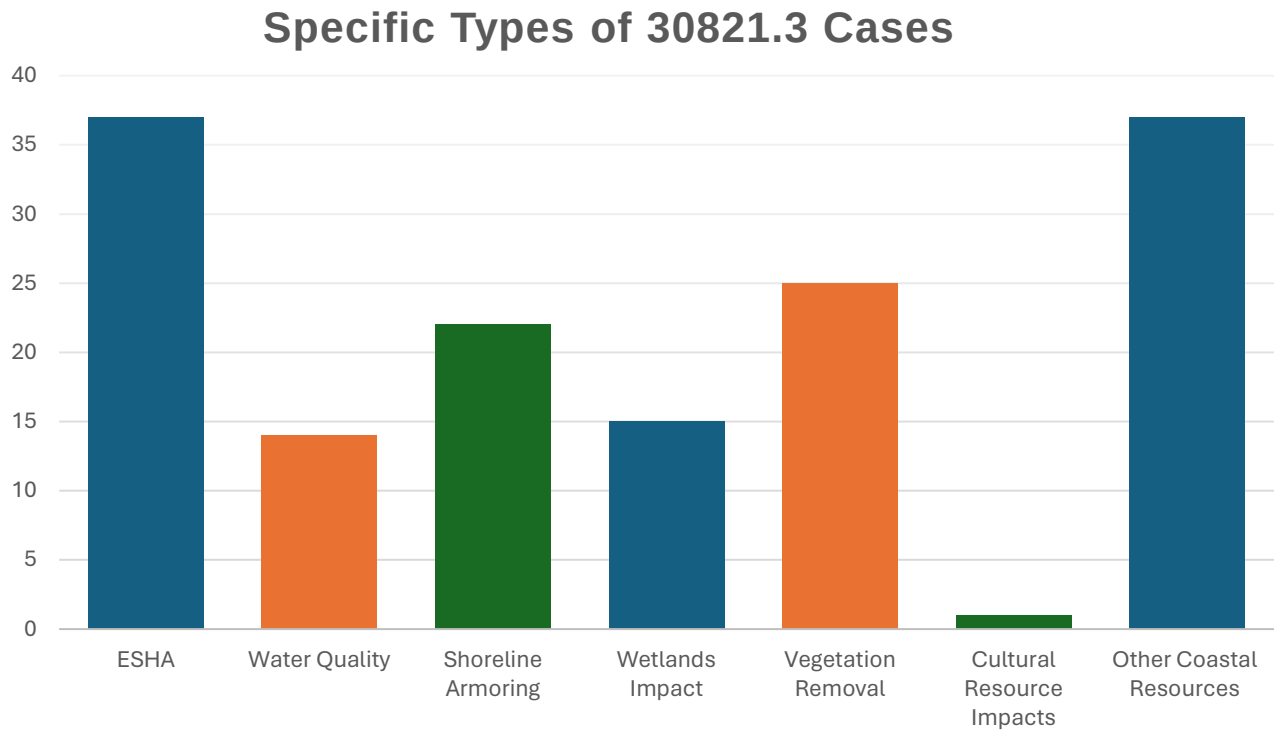
[8] Many of these cases involve both public access and resource violations under 30821 and 30821.3.

Types of Cases

The 30821.3 cases opened in 2023 involve a myriad of issues and any one case may raise a number of resource issues. In 2023, we had 96 cases that involved unpermitted development and 25 cases that involved a violation of an existing CDP. Some cases involve both types of violations, and this is reflected in the above numbers totaling greater than 110 cases.



Additionally, for the purposes of this report, we have grouped the cases commenced so far into a few illustrative categories to demonstrate the wide range of Coastal Act types of cases that occur, including those that have impacts involving: 1) Environmentally Sensitive Habitat Areas (ESHA), 2) Water Quality, 3) Shoreline Armoring, 4) Vegetation Removal, 5) Cultural Resource Impacts, and 6) Harm to Other Coastal Resources.

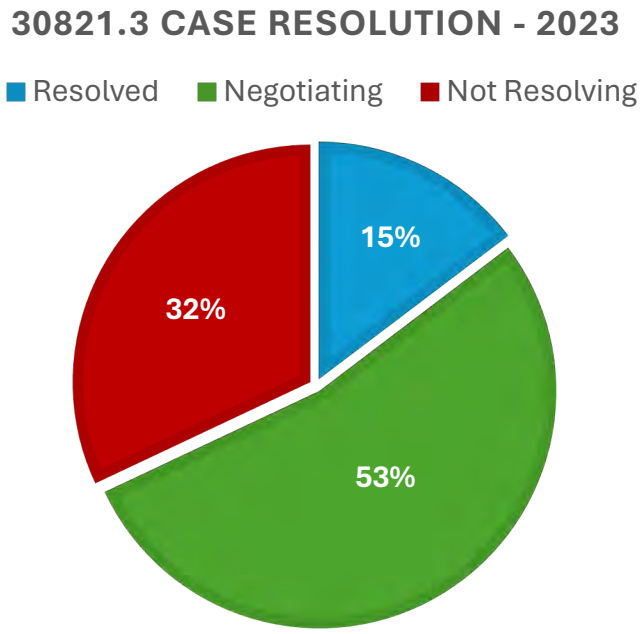


The catch-all category of harm to other coastal resources includes a wide variety of less common types of cases such as those that impact visual resources, like the unpermitted placement of signs on highly protected visual corridors, and cases involving harm to marine life, such as when debris was deposited onto a beach and negatively impacted elephant seals. This case type division is based on the 110 resource cases opened in 2023. Each case may have more than one type of violation, so the total number of cases add up to more than 110 cases.

In the 30821.3 cases opened in 2023, we had 37 cases where development occurred in ESHA, 14 cases impacting water quality, 22 cases involving shoreline armoring, 15 cases impacting wetlands, 25 cases involving vegetation removal, 1 case impacting cultural resources, and 37 cases involving other harms to coastal resources.

Resolution Success

Section 30821.3 was designed to assist in resolution of Enforcement cases, and the early indications is that this provision is proving effective in resolving violations, even when no penalty is collected, as the existence of 30821.3 still incentivizes the violator to work with us to resolve the issue.

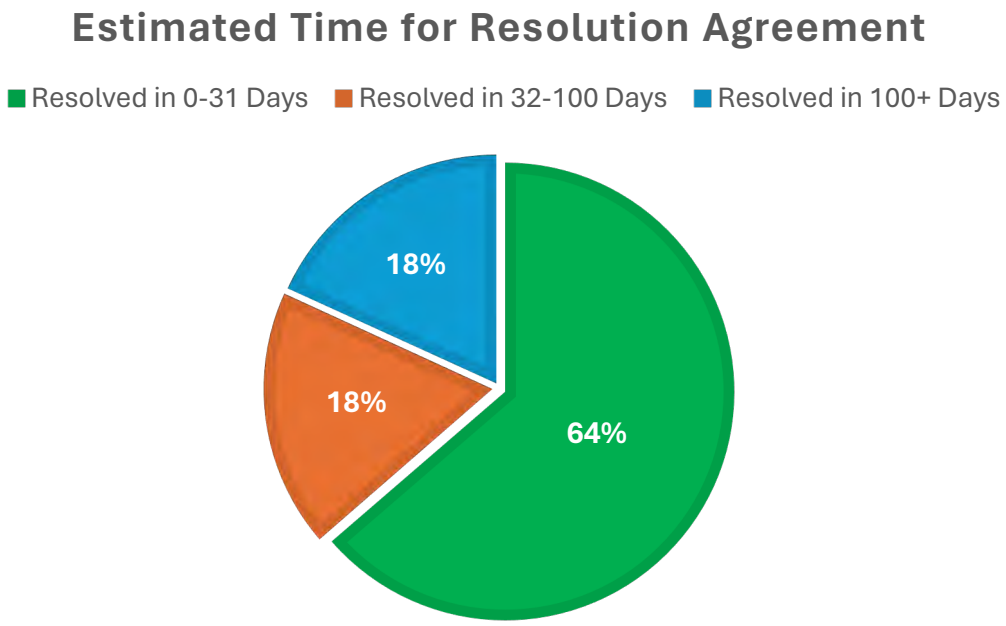


In 11 cases, Commission staff has secured an agreement for resolution, but due to the complex and lengthy nature of some resource cases, in many of the cases there is more on the ground work required that is currently either in progress or due to begin shortly. For purposes of this numerical analysis, these cases are resolved in the sense that the provision has helped reach an agreement to address the Coastal Act resource issues and work may have commenced, but the work isn't complete and field oversight

is continuing. Enforcement actions that have a restoration component often include a five-year monitoring period that runs after initial restoration efforts are completed to ensure that the habitat is properly restored and will be viable going forward, even after securing a commitment to restore the property from the violator.

Restoration work also often requires a CDP, or some other type of Coastal Act authorization, which can take time to be approved and implemented, meaning that while a significant number of our cases are resolved in practice, they are not "fully resolved" on the ground due to the ongoing monitoring and restoration work to be completed in the field. To ensure that habitat is properly restored and all mitigation efforts are complete, Commission Enforcement staff will only define a case as "fully resolved" after all monitoring efforts are complete, the damaged habitat has been restored and has been determined to be viable going forward, and any necessary CDPs were properly obtained.

Because there is still ongoing restoration or mitigation work in these 11 cases, it is difficult to calculate how long these cases were open from inception to conclusion of all work. However, we have provided an estimate in the chart below of how long it took between the violator receiving notice of the violation and reaching an agreement with Enforcement staff for resolution.



Commission staff resolved 7 cases in less than 31 days, 5 of which involved unpermitted development, 1 of which involved a CDP violation, and 1 of which involved both a CDP violation and unpermitted development. Commission staff resolved 2 cases in 32-100 days, both of which involved unpermitted development. Commission staff resolved 2 cases in 100+ days, 1 of which involved unpermitted development and 1 of which involved a CDP violation.

Commission staff “fully resolved” one 30821.3 case in 2023, which means that an agreement to resolve the violation was reached, the violations were completely resolved, and all restoration or mitigation work was completed. In this case, the owner undertook development without a CDP. After working with district staff, the party agreed to apply to the County, which has permitting authority here under its certified Local Coastal Program, for a CDP to address the unpermitted work. The County issued a CDP in 2023, which, once implemented by the violator, addressed the violations and required removal of unpermitted development. This violation was ultimately resolved through the issuance of the County’s CDP and the violator’s subsequent compliance with that CDP, and not through a Commission-imposed administrative penalty. The case was resolved within 577 days after Section 30821.3 became effective on January 1, 2022.

Given that the administrative penalties under 30821.3 are new for the Enforcement Program, and the full resolution takes time as outlined above, we anticipate that we will fully resolve more cases under 30821.3 in the future. However, again, the number of resolved cases where an agreement is reached demonstrates the success of 30821.3 in incentivizing violators to comply whether or not formal administrative penalties are ultimately imposed.

In 40 other cases, Enforcement staff is actively negotiating with the violator to reach an agreement, and we hope to resolve those cases as staffing resources allow. In 24 of the cases, Enforcement staff either does not have the current staffing capacity to negotiate a resolution of the case yet or have been unable to have productive negotiations with the violator. Additionally, in 29 cases, Enforcement staff has referred the case to the local government. This is done in some cases where the violation is located in an area where the local government has a certified Local Coastal Program and they are the most appropriate entity to handle it.

Elevating Cases to Headquarters Enforcement Unit for Formal Action

While the majority of Enforcement actions are resolved and settled informally at the District level, for a variety of reasons, some cases require formal Enforcement action by the Commission and therefore are assigned to Headquarters Enforcement staff to bring to a formal hearing. Some of these types of cases involve such large habitat damage that they require a formal Commission order or in some cases the violator refuses to remedy the violation without the imposition of formal administrative penalties and action by the Commission. Even for the “elevated cases”, the vast majority are resolved through a settlement agreement and consent order, however we had one case in 2023 where the violator refused to settle and the case went to a contested hearing before the Commission.

Currently, our Headquarters unit is working on many cases, including under 30821.3 (including some of which are in litigation). We anticipate that some of these cases will

be brought to the Commission for formal action and the possible imposition of administrative penalties in the near future.

Some Case Examples Under 30821.3 As Applied

Using 30821.3 for resource violations assisted us in resolving and negotiating numerous cases in both district and order cases being brought by the Headquarters Enforcement staff. For example, Commission Headquarters Enforcement staff recently sent an amended NOI to an alleged violator describing their liability under 30821.3, which has led to the violator being more cooperative and more concerned about their liability under the Coastal Act and makes resolution both more likely and faster.

Laguna Beach

One notable case where an agreement has been reached (and monitoring and restoration are still ongoing) is a case arising out of Laguna Beach. After removing significant native vegetation without a permit, the property owner has now applied for and obtained a coastal development permit to restore the portion of the property impacted by the violations and carry out significant additional habitat work as mitigation for the temporal losses of habitat caused by the violations. The conditions of the coastal development permit require the applicant to plant all areas of the site with appropriate native plant species, including the rare big-leaved crownbeard; remove 900 square feet of non-native bougainvillea on the slope and replace it with native plant species; and provide an additional 3,636 square feet of habitat restoration. Overall, the habitat restoration, once fully implemented, will be mitigated at a 35:1 ratio, which greatly exceeds the typical ratio the Commission has required in cases where an applicant applied for a CDP *before* conducting development, which is generally 3:1 for these types of habitat impacts.

View from the street facing the site, showing a system of wattles installed to protect against erosion. Photo also shows native shrubs preserved during weed-management activities during the in-process restoration work.

View from the street after the violation showing the flat building pad that was graded without a CDP and then planted with non-native vegetation.

Santa Barbara County

Another case where Commission staff is actively working with a violator to reach an agreement on a restoration plan is in Santa Barbara County. In this matter, the violator removed native riparian vegetation along an 825-foot reach of the Atascadero Creek, graded and widened an existing access road, and placed fill on the expanded road, all without Coastal Act authorization. Riparian vegetation is essential to protecting water quality and reducing soil erosion and flood damage, and it provides necessary habitat for many wildlife species, including several brilliantly colored warblers such as the Yellow and Wilson's Warbler, Common Yellowthroat, and Warbling Vireo. All of this unpermitted work occurred in ESHA. The property owner obtained a CDP from the Commission that requires the property owner to remediate the impacts to ESHA at a 4:1 ratio, which is, in order to fully resolve this matter, above and beyond the typical ratio for these types of habitat impacts had the applicant applied for and obtained a CDP prior to conducting such work, which helps create a disincentive for violations.

Unpermitted development, including widening and grading of an existing access road and removal of native vegetation along the Atascadero Creek in ESHA.

San Luis Obispo County

After receiving numerous reports from the public, District Enforcement Staff investigated and confirmed that unpermitted drilling was occurring in a highly scenic agricultural area of San Luis Obispo County. The drilling and associated staging of equipment was visible from Highway 1 in a designated Scenic View Corridor, and in an area designated for agricultural use. Enforcement Staff sent a Notice of Violation, including a notification of their potential liability under 30821.3, to the property owner and the energy company

undertaking the project, informing them of the necessity for a CDP for the drilling and of the permitting pathway required for the projects, as well as the legal constraints on the property. The company agreed to cease the drilling and then agreed to restore the site to its previous condition by filling the boreholes and replanting the disturbed areas with native plant species, thereby restoring the scenic and agricultural value of the area.

Picture showing the location of unpermitted drilling in a Scenic View Corridor in San Luis Obispo

Rio Del Mar Beach Island HOA, Santa Cruz County

On December 14, 2023, following a formal public hearing, the Commission invoked its authority under Section 30821.3 to impose a $1,996,875 administrative penalty on the Rio Del Mar Beach Island Homeowners Association (the "HOA") for violations of the Coastal Act and a CDP that had impacts on biological and visual resources that are protected under the Coastal Act. While most of our cases are settled through an amicable agreement, Rio Del Mar is an example of a case where the violator declined to resolve their violations consensually and Enforcement Staff was required to bring the matter before the Commission in a contested hearing. The orders also require the HOA to remove obstructions to public access within a CDP-required public beachfront walkway, direct their members to remove waste containers currently located within the inland public sidewalk, and vegetate the sand-covered revetment with native sand dune plants as required by the CDP, among other actions. The HOA and the other party to whom the orders were directed have since sued the Commission, and

Dune area covered in predominantly non-native, invasive iceplant

Headquarters Enforcement staff will continue to work on this case with the State Attorney General's office through the litigation.[9]

Conclusion

The addition of 30821.3 has significantly expanded the Commission's ability to effectively resolve cases. The potential for assessment of administrative penalties for a broader set of types of cases has assisted our efforts to get parties "to the table" and to agree to resolve the matters and restore the resources. This has proven to be particularly useful at the district level, where even when no penalties are assessed or paid, the potential for such fines has assisted in early resolution of some cases and improved our ability to go back and resolve some others that had remained unresolved for some time. Such administrative settlements save both the State and the alleged violators time and resources and allows a focus on accelerated site restoration rather than litigation.

Due to the time-consuming nature of many Coastal Act investigations, negotiations, and resolutions, we expect to fully "resolve" more cases under 30821.3 in the future. Although our total capacity for fully resolving cases is constricted by numerous factors, principally including lack of staff capacity, and the length of monitoring, the number of opened cases under 30821.3 in 2023 represents very significant progress on resolving Coastal Act violations that involve resource issues. As 110 of 171, or roughly 64%, of total Enforcement cases opened in 2023 involved violations under 30821.3 (i.e., those that were primarily Resource issues), much of Commission staff's work involve resolving these cases, which is significantly more effective with the expanded administrative penalties of 30821.3.

Future Use

We plan to expand the use of 30821.3 over time — to both resolve violations informally, or when not possible, to address them more formally — as we conduct more research and generally expand our investigation and identification of additional or previously opened resource violations and use the new provision to help resolve cases. As we have filled outstanding vacancies in our Enforcement team in the past few months, we

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[9] In July of 2022, Enforcement Staff also brought a case before the Commission against Reservation Ranch involving administrative penalties under 30821.3 (CCC-22-CD-02, CCC-22-RO-01, CCC-21-AP3-01). Resolution of the case ultimately involved restoration to the tidal sloughs and surrounding wetlands and providing critical fish passages and protection of cultural resources. The expanded penalty authority of 30821.3 was very helpful as it incentivized the violator to resolve the case more expeditiously, and this case involved precisely the types of resources intended to be protected with this new provision.

In September of 2023, Enforcement Staff also brought an order before the Commission against Paradise Point involving administrative penalties under 30821 for violations of public access (CCC-23-CD-04 and CCC-23-AP-03). The orders include a provision that allows for administrative penalties to be imposed under 30821.3 for violations of the Consent Orders, although no 30821.3 penalties were included in the order.

hope to be able to identify more violations and work to resolve our existing backlog of cases at a faster pace. However, the lack of additional funding in 30821.3 for Enforcement staff to implement this new program has meant that the Enforcement team is resolving a wider range of cases without adequate staffing.

Although there are many Coastal Act violations to resolve, the experience thus far has been that Section 30821.3 is extremely effective and has greatly contributed to Commission staff's ability to identify, negotiate, and resolve violations that affect sensitive coastal habitat and resources.

The successful implementation of Section 30821.3 demonstrates the effectiveness of administrative penalty authority with respect to Coastal Act compliance, and the commitment by staff and the Commission to protect the coast and our precious natural resources in a steadfast and thoughtful manner. These critical resources not only are important to the ecosystem and play a vital role in our state's economy and tourism, but also play an increasingly important role in protecting both our built and natural environment from the effects of climate change and sea level rise. Protecting these resources is a critical goal of the Coastal Act.

Due to the success of Section 30821.3 in resolving non-access cases, more sensitive habitat, endangered plants and species, and other natural resources are protected, which ensures that our beautiful California coast remains protected and available for future generations and visitors to access and enjoy. All of this is made more efficient and possible through the resource cases being resolved under 30821.3.

McWay Falls in Big Sur, photograph by Shelby Wayment

Exhibit 1

30821.3 REQUIRED REPORTING – 2023

1. **Number and Type of Cases**

Commission staff opened 110 cases, identified as potentially being subject to penalties, under 30821.3 in 2023. 96 cases involved unpermitted development and 25 cases involved a violation of an existing CDP. This number adds up to more than 110 because some cases involved both unpermitted development and a violation of an existing CDP.

2. **Number of Resolved Violations**

As is discussed above, fully resolving resource violations, which can involve harm to habitat and species, including full restoration and monitoring is complicated and, depending on the facts, can take some time, even after agreement has been reached on the legal framework for the resolution. Commission staff fully resolved one case under 30821.3 in 2023, which means that an agreement was reached, all restoration or mitigation work was completed, and no further monitoring is needed.

In addition, Commission staff effectively resolved 11 additional cases under 30821.3 in 2023, which means that an agreement was reached, but restoration work is still ongoing or the violator is in the process of getting legal authority for the work, such as applying for a Coastal Development Permit (CDP) to resolve the violation or authorize restoration work. Commission staff are in the process of actively negotiating a resolution in 40 additional 30821.3 cases opened in 2023.

3. **Number of Administrative Penalties**

The Commission issued a penalty under 30821.3 against the Rio Del Mar Beach Island HOA for habitat damage, including allowing the proliferation of invasive species in direct contravention of a permit condition, in the amount of $1,996,875, as part of the case which also involved violations involving public access . The Commission's order also required the HOA to revegetate and restore the sand dunes. This case is currently in litigation.

In many of our district cases, we sent a Notice of Violation letter describing the violator's potential financial liability under 30821.3, but often resolve the violation by requiring additional restoration or additional habitat mitigation in lieu of at least some of the potential monetary penalties, when that would provide more efficient and sufficient public benefits.[10]

[10] Such restoration or mitigation is "additional" in that the Commission can and does regularly require restoration and mitigation independently, pursuant to other provisions of the Coastal Act that are separate from section 30821.3.

4. Number of Days from Initial Notice to Resolution

In 11 cases, Commission staff were able to effectively resolve the cases under 30821.3. 7 cases were open for 0-31 days, 2 cases were open for 32-100 days, and 2 cases were open for longer than 100 days.

District staff fully resolved one case under 30821.3 in 2023, which was resolved through an after the fact CDP for fencing and landscaping and removal of the unpermitted development. This case was resolved within 577 days after Section 30821.3 became effective in 2022.

Exhibit 2

PUBLIC RESOURCES CODE SECTION 30821.3

(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.

(b) All penalties imposed pursuant to subdivision (a) shall be imposed by majority vote of the commissioners present in a duly noticed public hearing in compliance with the requirements of Section 30810, 30811, or 30812.

(c) In determining the amount of civil liability, the commission shall take into account the factors set forth in subdivision (c) of Section 30820.

(d) A person shall not be subject to both monetary civil liability imposed under this section and monetary civil liability imposed by the superior court for the same act or failure to act. If a person who is assessed a penalty under this section fails to pay the administrative penalty, otherwise fails to comply with a restoration or cease and desist order issued by the commission in connection with the penalty action, or challenges any of these actions by the commission in a court of law, the commission may maintain an action or otherwise engage in judicial proceedings to enforce those requirements and the court may grant any relief as provided under this chapter.

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

(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.

(g) “Person,” for the purpose of this section, does not include a state agency, or a local government, a special district, or an agency thereof, when acting in a legislative or adjudicative capacity.

(h) Administrative penalties pursuant to subdivision (a) shall not be assessed if the property owner corrects the violation consistent with this division within 60 days of

receiving written notification from the commission regarding the violation, and if the alleged violator can correct the violation without undertaking additional development that requires a permit under this division. This 60-day timeframe for corrective action does not apply to previous violations of permit conditions incurred by a property owner.

(i) The commission staff shall prepare and present a written report to the full commission at its first public hearing after January 1, 2024, and annually thereafter at the first hearing of the year, that includes all of the following related to the implementation of this section:

(1) The number and type of new violations investigated and identified that were reported the previous year.

(2) The number of violations resolved from the previous year, including a description of those resolved without the imposition of an administrative civil penalty.

(3) The number of administrative penalties issued pursuant to this section, the dollar amount of the penalties, and a description of the violations that resulted in the imposition of a penalty the previous year.

(4) The number of days from initial notice to resolution of violations for those resolved in the previous year.

(j) The commission staff shall provide the written report described in subdivision (i) annually to the relevant policy and budget committees in both houses of the Legislature.

(k) Revenues derived pursuant to this section shall be deposited into the Violation Remediation Account of the Coastal Conservancy Fund and expended pursuant to Section 30823.

(l) The commission shall provide an opportunity for a local government with a certified local coastal program to enforce violations of its building codes in compliance with that local coastal program.

(Added by Ch. 643, Stats. 2021).