

CALIFORNIA COASTAL COMMISSION

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Th7.1 – 7.4

Staff: Rob Modellmog-SF
Staff Report: 9/26/25
Hearing Date: 10/9/25

Cease and Desist Order No: CCC-25-CD-03

Restoration Order No: CCC-25-RO-02

Administrative Penalty Nos: CCC-25-AP-04 and CCC-25-AP3-02

Related Violation File No: V-6-16-077

Violators: John C. Levy, Jr., and Jim Kelly, in their individual capacities and/or as Trustees of the John C. Levy, Jr. Revocable Trust dated November 4, 2004, and/or the Buena Vista Revocable Trust

Location: 2401 Mountain View Drive, Carlsbad, also known as San Diego County Assessor's Parcel Numbers ("APNs") 155-190-15, 155-190-16, 155-101-67, and 155-101-68 ("The Levy Property"); an adjacent state-owned parcel designated as APN 155-101-66; and an adjacent parcel owned by the Beach Homeowners Association designated as APN 203-010-21.

Violation Description: Unpermitted development and development inconsistent with existing Coastal Development Permits ("CDPs") including: 1) the maintenance of a locked gate within, and blocking access to, the public access easement and open space easement required by Special Conditions 8 and 6 of Commission CDP No. 6-83-051, respectively, which area connects the public road with North Beach and Buena Vista Lagoon; 2) development of a private parking lot and event staging area, including by clearing vegetation and placing woodchips/mulch, within a wetland buffer setback area required to be protected for habitat conservation and open space by Condition 12 of CDP No. 97-59 and the LCP;

and 3) installation of a paved pickleball court, additional pavement, a locked gate, as well as fencing on state land and in the lagoon.

Substantive File Documents: Public documents in Cease and Desist Order File No. CCC-25-CD-03, Restoration Order File No. CCC-25-RO-02; and Administrative Penalty File Nos. CCC-25-AP-04 and CCC-25-AP3-02; Exhibits 1 through 134; and Appendix A of this staff report.

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

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This case involves violations at Buena Vista Lagoon and North Beach in Carlsbad undertaken by John C. Levy Jr and associated trusts, a local property owner. Mr. Levy has engaged in unpermitted destruction of lagoon habitat that is required to be protected as open space, and he also refuses to open his gate placed within an accepted public access easement. In 1983, the Commission approved a Coastal Development Permit (“CDP”) which required the dedication of a public access easement (the “Beach Access Easement”) and an Open Space Easement on property adjacent to Mr. Levy’s. In 1998, the City of Carlsbad approved Mr. Levy’s CDP application to build a house on property he owns adjacent to Buena Vista Lagoon, as well as a vehicle gate at the entrance to the yet-to-be accepted Beach Access Easement. The City’s CDP required Mr. Levy to protect the part of his property closest to the lagoon for wildlife and open space, and to dedicate another public access easement along the lagoon (the “Lagoon Access Easement”). However, instead of providing public access and protecting the lagoon habitat, by 2000, Mr. Levy had installed an unpermitted locked gate at the entrance to the Lagoon Access Easement, and by 2006, he began using the area required to be protected as open space as an unpermitted wedding venue and parking lot. In addition, although the Beach Access Easement was accepted in 2005, Mr. Levy kept his vehicle gate blocking public access there locked.

Today, if opened, the Beach Access Easement would provide the only public access for persons with disabilities to access the wide North Beach at the mouth of Buena Vista Lagoon, but Mr. Levy has refused to open his gate. In addition, a portion of Mr. Levy’s property is an important buffer habitat for the endangered light foot Ridgway’s rail, but he instead uses the area for an unpermitted parking lot, among other things. In addition, his other unpermitted development, including vegetation clearance, fencing in the lagoon, and a pickleball court have all negatively impacted lagoon habitat, as well. Further, Mr. Levy has installed an unpermitted locked gate and fencing at the entrance to the Lagoon Easement. Thus, staff is recommending the Commission issue enforcement orders requiring Mr. Levy to stop blocking the Beach Access Easement, remove unpermitted development near the lagoon and restore that habitat, and to pay penalties for his years of violations.

Permit History

The area at issue is located on the south side of Buena Vista Lagoon and just inland of North Beach in the City of Carlsbad, in north county San Diego. The property Mr. Levy now owns (“the Levy Property”) was created before Proposition 20 (the precursor to the California Coastal Act) when a prior developer dumped fill into Buena Vista Lagoon to create dry land on which to build. By the early 1980’s, though, nature had retaken much of the area, and the public was using informal trails to access the lagoon and North Beach. Thus, when the Commission approved the segment of the Carlsbad Local Coastal Program (“LCP”) covering this area in 1981, the LCP required public access and protection of sensitive habitat along the lagoon in the area that is now the Levy Property, as well as public access and open space in the upland areas inland of the Levy Property (the area now covered by the Beach Access Easement and Open Space Easement).

In 1983, the Commission issued CDP 6-83-051 to a developer who owned property adjacent to the Levy Property to allow for the subdivision of the area into three lots, as well as the construction of condominiums on the resulting lot on the bluff. As mitigation for the impacts to public access and coastal habitat, the Commission required the permittee to record offers to dedicate a public access easement and open space easement (“the Beach Access Easement and the Open Space Easement”) across a second lot, which covered the area below the bluff. Both lots remain owned by the homeowners association for the condominiums (the “Beach HOA”).

While the area that would become the Levy Property remained undeveloped at this time, a dispute arose related to the legal status of the land, due to its creation by placing fill in the lagoon. In 1984, the then-owners of the area reached a Boundary Line Agreement with the State Lands Commission, which settled the public trust issues. The Boundary Line Agreement set the public trust boundary at the edge of where the fill had been placed in the lagoon, in exchange for public access easements across the beach area to the west, which is still owned in fee by the Beach HOA. Those easements are now held by the State Lands Commission.

However, while the title issues at what would become the Levy Property had been resolved, the land remained undeveloped and used by the public for lagoon access. Mr. Levy bought what is now the Levy Property in 1997 and applied to the City of Carlsbad for a local CDP to develop the area. Mr. Levy’s proposal included a house on the Levy Property, as well as a paved driveway across the adjacent land owned by the Beach HOA, on and across a non-exclusive ingress/egress easement that provides a means of driving from the public road to the Levy Property. The ingress/egress easement crosses the Beach HOA lot that is covered by the Beach Access Easement and Open Space Easement area, though at the time of the CDP approval, the Beach Access Easement and Open Space Easement had not yet been accepted. Mr. Levy’s proposal also included a vehicle gate/fence at the point where the lot owned by the HOA abuts the public road, within the Beach Access Easement and Open Space Easement (“the Vehicle Gate”).

In 1998, the City approved the proposed development via approval of CDP 97-59. The City imposed many conditions of approval in order to find the project consistent with the LCP, including a condition requiring that the permittee record an Offer to Dedicate directly to the City for a public access easement along the lagoon ("the Lagoon Access Easement"). The City's CDP authorized the construction of a time-lock gate at the entrance to the Lagoon Access Easement, so that the trail would be automatically open to the public from dawn to dusk ("the Pedestrian Gate"). In addition, in order to protect the habitat of the endangered light footed Ridgway's rail, among other resource protection concerns, the City required the permittee to record a deed restriction to protect the area along the lagoon for open space and wildlife, and to offer to dedicate fee title of that area to the California Department of Fish and Wildlife.

Two Commissioners appealed the City's permit, but the Commission found the appeal to raise No Substantial Issue, in part because the Beach Access Easement and Open Space Easement were not yet accepted, so the Commission concluded that, at that time, it did not need to address the long-term legality of the Vehicle Gate (referred to interchangeably as a fence) that Mr. Levy was proposing within the areas to be burdened by those easements or the ability of the permittee to maintain that Vehicle Gate after the easements were accepted. The Commission's findings emphasized that the easements had not yet been accepted and then stated:

The Commission finds that at this time, it need not address the legality of the fence or the ability of the landowners to maintain the fence after the offer of dedication has been accepted.

In addition, with regards to the approved Pedestrian Gate at the entrance to Lagoon Access Easement, the Commission's findings noted that the gate would include a time-lock to ensure that it was open to the public during the day, stating:

As approved, the gate would be open from dawn to dusk.

...

Thus, in this case, the Commission finds that the time-lock gate as approved by the City raises no substantial issue as to conformity with the certified LCP or the public access policies of the Coastal Act.

Therefore, while the City approved the two gates at the time, the Commission's findings clarify that the Commission only accepted that because it understood that access was protected here. Specifically, the Commission understood that the Vehicle Gate within the Beach Access Easement was being approved at that time since the easement was not yet accepted and the presence of the Vehicle Gate could be reevaluated later if there was a problem when the easement was perfected. And with respect to the Pedestrian Gate at the Lagoon Access Easement, the Commission explicitly based its findings on the fact that the CDP required public access, and the Pedestrian Gate within the Lagoon Access Easement would be on a time-lock to ensure it was open from dawn to dusk each day, so it was consistent with the Coastal Act because it would still allow

for the public to enter and walk along the easement area during the hours from dawn to dusk.

The Violations

From the start, Mr. Levy began violating the CDPs and Coastal Act. He failed to record the deed restriction to protect habitat along the lagoon as required by Condition 12, and failed to record an offer to dedicate the Lagoon Access Easement as required by Condition 17. Mr. Levy also immediately began undertaking additional unpermitted development. In order to ensure that public access along the lagoon was provided from dawn to dusk, the CDP authorized a time lock on the Pedestrian Gate within the Lagoon Access Easement. However, Mr. Levy installed an unpermitted locked Pedestrian Gate with a chain and padlock that did not and could not automatically open during the dawn to dusk period of time. When the City notified Mr. Levy of the violation in 2000, Mr. Levy argued that he should be able to keep it locked until the easement was accepted, even though Mr. Levy had not even recorded the offer to dedicate that easement, as was required, so there hadn't been any offer to dedicate for anyone to accept. He also argued this even though the CDP did not authorize any locked Pedestrian Gate during the day, or any chain and padlock at all. Regardless, he did not remove the locked Pedestrian Gate or comply with the City's request to remove it.

In 2005, the City accepted the offers of the Beach Access Easement and Open Space Easement, thereby perfecting those easements, yet Mr. Levy also kept his Vehicle Gate in place that blocks public access to those areas. He also kept the Vehicle Gate locked day and night. Mr. Levy later posted an unpermitted sign stating 'Private Property- No Trespassing' on the locked gate within the accepted public access easement.

In 2009, Mr. Levy moved abroad and began renting out the Levy Property, including for short term rentals and weddings. Mr. Levy used an area that was required to be protected for wildlife and open space by CDP 97-59 as a vehicle parking lot, including for his guests. He also removed vegetation throughout the areas along the lagoon that were required to be protected, and cleared native plants that the City's CDP had required him to plant, so he could better facilitate use of the area as a wedding/event venue. This meant that the Lagoon Access Easement, while off limits to the public due to Mr. Levy's unpermitted locked Pedestrian Gate and unpermitted fencing, was open for his paying guests to use for their private events. Mr. Levy also used part of the area covered by the Beach Access Easement and Open Space Easement, near the beach, for private weddings and events. He did all of this without any Coastal Act authorization. In 2016, the City and Commission staff received complaints from the public about this unpermitted development and development inconsistent with the CDPs. Shortly afterward, the City reached an agreement with Mr. Levy whereby he agreed to stop hosting weddings and short term rentals without City authorization. However, the other violations, including the habitat disturbance, all remained.

Enforcement Efforts Begin

In 2017, Commission district enforcement staff began sending Notice of Violation letters to Mr. Levy in an attempt to obtain compliance with CDP 97-59 and the Coastal Act. Initially, Mr. Levy appeared interested in resolving some of the violations. For example, he opened the Pedestrian Gate to the Lagoon Access Easement to the public and posted an unpermitted sign that, while Commission staff objected to some of the text as being inconsistent with the CDPs and Coastal Act, was at least an attempt to notify the public of the public access available there (while also including language likely to discourage that access). In 2018, Mr. Levy also finally worked with the City to record the offer to dedicate the Lagoon Access Easement that he was required to record two decades prior. At this time, City staff was supportive of the Commission's enforcement efforts. That same year, City staff sent emails to Commission staff stating that the City planned to remove the Vehicle Gate within the Beach Access Easement and Open Space Easement entirely. In 2019, the City added all of the easements (public trails) at issue to the City's Trails Master Plan and thereby accepted the Lagoon Access Easement¹, and posted these trails on the City's website. Mr. Levy removed the unpermitted 'Private Property- No Trespassing' sign from the Vehicle Gate within the Beach Access Easement, and it appeared that Mr. Levy was at the point of finally beginning to comply with the CDPs and Coastal Act.

However, neither Mr. Levy (nor the City) ever removed the Vehicle Gate blocking the entrance to the Beach Access Easement, and Mr. Levy never opened it. Instead, in 2023, and unbeknownst to Commission staff, the City and Mr. Levy entered into a 'Gate Access Agreement' whereby Mr. Levy formally agreed to provide the City with the Vehicle Gate code, but nothing else. Meanwhile, Mr. Levy permanently locked the Pedestrian Gate within the Lagoon Access Easement again. By 2024, while Mr. Levy's gates within the two public access easements remained locked, the City's website still advertised both easements as open portions of the publicly available 'North Beach Trail.' Meanwhile, within the areas required to be protected for habitat conservation on The Levy Property, Mr. Levy continued to clear vegetation and use it as a parking lot. Further, Mr. Levy also conducted even more unpermitted development and by 2024 had completed construction of an unpermitted, paved pickleball court and additional paved area on the Levy Property. Because of this and the need to take more formal action to address this ongoing violation case, the case was elevated to the Commission's Headquarters Enforcement Unit for resolution.

On October 2, 2024, the Commission's Executive Director sent a Notice of Intent to commence these enforcement proceedings, including a notice of intent to record a Notice of Violation ("NOVA") on title to the Levy Property, and expressed the Commission's hopes that we could reach an amicable resolution of the violations. Commission staff then began reaching out to Mr. Levy in attempts to resolve the matter.

¹ The City maintains that it has not accepted the Lagoon Access Easement, this is discussed in section G of this staff report, Defenses Alleged and Responses Thereto, at subsection 2.

In 2025, Mr. Levy indicated that he wanted to gather materials rather than discuss settlement with Commission staff, and sent a series of letters to which staff responded. There were various delays during which Mr. Levy sought new counsel, and Mr. Levy placed many conditions on any negotiations, although staff still believed that we could work with him to resolve the violations consensually and without the need for a contested hearing. In response, Mr. Levy additionally argued that he was still looking for new counsel and continued to refuse to enter into confidential negotiations with Commission Headquarters Enforcement staff.

On May 22, 2025, Commission staff talked with City staff and learned that the City now supported some of Mr. Levy's positions, despite the fact that they were inconsistent with the CDPs issued to Mr. Levy as well as with the LCP provisions requiring access here. Commission staff therefore sent multiple letters to the City providing information regarding the violations, noted again the City's past support for the Commission's enforcement efforts, the fact that they asked us to take the lead on enforcement here, and have offered to continue to cooperate in obtaining compliance here. Given the continued recalcitrance of Mr. Levy and the longstanding lack of public access to the public access easements, as well as the continuing negative impacts to important lagoon habitat, Commission staff began preparing for this enforcement hearing.

Primary Contested Issues

As is more fully discussed below in section G, with regards to the Beach Access Easement, Mr. Levy argues that a gate existed within the Beach Access Easement at the time of Commission approval of CDP 6-83-051, and that, because the Commission didn't require its removal at that time, it must have intended to allow an exception for any and all gates in that part of the Beach Access Easement. He further argues that when the Commission appealed CDP 97-59, it failed to require the Vehicle Gate to be opened or removed at any specified future date, and that therefore the Commission cannot require that it be opened ever. In fact, the Commission never mentioned any gate in its 1983 findings, and never included any exceptions for any gate, much less any future gate to impede the very public access the easement being required in that permit was designed to provide, even though the easements do include half a dozen other exceptions. Further, the Commission also clearly stated in 1998 that "the Commission finds that at this time, it need not address the legality of the fence or the ability of the landowners to maintain the fence after the offer of dedication has been accepted." The Beach Access Easement was accepted in 2005, and it must now be opened and made available to the public, as the original CDP condition required.

As is also more fully discussed below, there are many other unresolved violations at the site. For example, with regards to the destruction of lagoon habitat that is required to be protected pursuant to the conditions of CDP 97-59, Mr. Levy has argued that because he failed to record the Open Space Deed Restriction until just before this hearing, he was not required to protect this habitat. Mr. Levy has also argued that his removal of vegetation in the area and use of the area as a parking lot does not constitute unpermitted development, and he has continued to engage in these activities. Mr. Levy has not disputed that the construction of the pickleball court and paved area was

unpermitted but has argued that he can obtain a CDP for that. Mr. Levy has argued that he may keep his unpermitted locked gate and fencing at the entrance to the Lagoon Access Easement because he argues that the easement is not accepted. It is not relevant that Mr. Levy failed to record the required Open Space Deed Restriction until very recently, because, as the City has acknowledged, Mr. Levy appears to have undertaken a variety of unpermitted development activities here either way. All of these activities clearly constitute development as that term is defined in the Coastal Act and the City's LCP, and include grading, placement of solid materials, and change in the intensity of use and land and access to water, as discussed more fully below, and Mr. Levy did not obtain any CDPs to conduct this development. Further, all of this development continues to impact sensitive coastal resources along the lagoon.

Conclusion

Buena Vista means good view in Spanish, but the view from the scenic North Beach at the mouth of the lagoon cannot be accessed by disabled persons. The closest beach that is accessible for wheelchairs or other mobility devices is a mile to the south in Carlsbad, or two miles to the north in Oceanside. Because of the erosive effects of the many seawalls nearby, it is typically impossible to get to North Beach at the mouth of the lagoon from the north, and similarly difficult to get there from the south. This difficulty is exacerbated for persons using beach wheelchairs, and compounded even further for people unable to use beach wheelchairs. Meanwhile, Mr. Levy and his guests drive vehicles up and down this public access easement continually. Further, although North Beach is one of the widest beaches in the area, and adjacent to a scenic lagoon, relatively few people visit. Even for people without disabilities, the public stairway nearby does not accommodate strollers, wagons, or bicycles, so it remains more difficult for families to access and bring beach supplies. However, Mr. Levy and his paying guests are able to easily enjoy North Beach, and have been able to for a quarter century.

In addition, the area along the lagoon on the Levy Property, which was required to be protected for open space and wildlife and public access, has instead been used for private weddings and parking, with the vegetation cleared and driven over. This area was supposed to provide protected buffer habitat for the endangered light footed Ridgway's rail, but it has instead been treated as an unpermitted private parking lot and for-profit wedding venue by Mr. Levy. Moreover, while Mr. Levy and his private guests have been able to enjoy the birdwatching, fishing, and scenic views along this stretch of Buena Vista Lagoon, the public has not.

These violations also affect environmental justice since, because of Mr. Levy's violations, he and his guests are able to access North Beach and the mouth of Buena Vista Lagoon much more easily than disabled persons, as well as much more easily than disadvantaged persons who live further from the coast. Moreover, his violations impact public access to the public beach and impede low cost recreation.

There are many potential ways to further improve public access at North Beach once the Vehicle Gate in the Beach Access Easement is opened to the public, including by

providing designated ADA accessible parking spaces within the Beach Access Easement.² In addition, railing for wheelchairs, or rentable beach wheelchairs, could also be installed. The Levy Property already has a separate gated entrance and so Mr. Levy will not need to undertake any development to secure his private property.

Proposed Cease and Desist Order, Restoration Order, and Administrative Penalties

Orders

To address these violations, staff recommends that the Commission approve Cease and Desist Order No. CCC-25-CD-03, Restoration Order No. CCC-25-RO-02, and Administrative Penalty Nos. CCC-25-AP-04 and CCC-25-AP3-02 (the “Orders and Penalties”). The proposed Orders and Penalties are included as Appendix A to this Staff Report and require, among other things, that Mr. Levy 1) refrain from engaging in further unpermitted development, including by ceasing and desisting from removing vegetation from the habitat area adjacent to the lagoon and from using it as an unpermitted parking area; 2) remove unpermitted development, including the unpermitted locked gate and fencing at the entrance to the Lagoon Access Easement, as well as the unpermitted pickleball court; 3) open the Vehicle Gate at the entrance to the Beach Access Easement pursuant to a public access plan that requires the gate to be open to all persons, mobility devices, and vehicles all day every day, or remove the gate entirely, and generally stop blocking access to the Beach Access Easement area; 4) restore the area where unpermitted development occurred along the lagoon with native plants; and 5) pay penalties for violations of the public access and habitat protection provisions of the Coastal Act.

Penalties

Applying the factors set forth in the statute for determining the size of a penalty to the facts at hand, the Commission could impose penalties for all of the many violation counts listed above for many years. However, Commission staff recommends adopting a conservative approach and invoking the prosecutorial discretion of the Commission, and imposing a penalty far below the maximum. Commission staff recommends that for the four non-public access-related violations, including using lagoon habitat as an unpermitted parking lot, clearing vegetation for use as a wedding venue, constructing an unpermitted pickleball court and paved area, and installing unpermitted fencing on state land and in the lagoon, that the violations be aggregated so that Mr. Levy pays a penalty for only one violation, not four. Measuring the penalty for less than five years, and only from May 19, 2025 (when Mr. Levy made more clear his intent not to comply), to September 25, 2025 (the day before this staff report), as discussed in Section F

² Although the Beach Access Easement and Open Space Easement provide no exceptions for gates, the Open Space Easement does include an exception for public access improvements.

below, Commission staff is recommending that Mr. Levy pay \$1,428,750 for these non-access violations.

For the violation of refusing to open his gate within the accepted Beach Access Easement, Commission staff is again proposing to measure the penalty only from May 19, 2025, to September 25, 2025. Commission staff is also proposing to discount that penalty further, to \$1,071,562, and even to waive it entirely if Mr. Levy cooperates with the orders, thereby making the fine contingent on his lack of cooperation in order to maximize the likelihood of compliance with these Orders and to rectify this matter in the most efficient manner possible, thereby limiting the costs to the state and increasing the potential for accelerated compliance with the Orders and Coastal Act and reducing impacts on resources and to incentivize protection of public access here. Thus, Commission staff is only recommending that Mr. Levy be required to pay that contingent fine if he fails to comply with the Beach Accessway Opening Plan requirements, including the deadlines, detailed in the proposed Cease and Desist Order at Appendix A. Should he be required to pay the additional penalty, Mr. Levy will still be required to comply with the Beach Accessway Opening Plan as well.

There are four motions for the recommended actions today, and they can be found on pages 16-18.

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APPENDIX A

Proposed Cease and Desist Order No. CCC-25-CD-03, Restoration Order
No. 25-RO-02, and Administrative Penalty Action Nos. CCC-25-AP-04 and
CCC-25-AP3-02 (John C. Levy Jr. and associated trusts)

EXHIBITS

- Exhibit 1: Region Map
- Exhibit 2: North Beach Overview Map
- Exhibit 3: Overview Photos
- Exhibit 4: Map of Nearest Open Wheelchair-Accessible Beach Accessways
- Exhibit 5: North (Levy Property) Parcel Map
- Exhibit 6: South (Beach HOA) Parcel Map
- Exhibit 7: Maps of Unpermitted Development and Protected Areas at Levy Property
- Exhibit 8: Aerial Image Compilation of Unpermitted Development at Levy Property
- Exhibit 9: 1972 Aerial Image (California Coastal Records Project)
- Exhibit 10: May 3, 1979 Aerial Image (California Coastal Records Project)
- Exhibit 11: Photos of Levy Property circa 1981
- Exhibit 12: CCC Staff Report for CDP 6-83-051 dated March 11, 1983
- Exhibit 13: Aerial Photo dated April 14, 1983
- Exhibit 14: CDP 6-83-051
- Exhibit 15: Ingress/Egress Easement recorded August 2, 1984
- Exhibit 16: Offer to Dedicate a Public Access Easement recorded August 15, 1984
- Exhibit 17: Offer to Dedicate an Open Space Easement recorded August 15, 1984
- Exhibit 18: May 13, 1993 Aerial Image (California Coastal Records Project)
- Exhibit 19: USFWS April 9, 1996 letter re: Levy Development Proposal
- Exhibit 20: May 1998 Letter from Beach HOA to Levy
- Exhibit 21: City of Carlsbad Resolution No. 4332 dated July 1, 1998 (Local CDP No.97-59)
- Exhibit 22: CCC Staff Report and Recommendation on Appeal for Appeal No. A-6-CII-98-98 dated August 18, 1998
- Exhibit 23: Color Map of Proposed Development Submitted to CCC by John C. Levy Jr. prior to CCC Appeal Hearing
- Exhibit 24: Levy 8.25.98 Response to CCC Staff Report
- Exhibit 25: Unofficial Transcript for September 11, 1998 Commission Substantial Issue hearing re CDP 97-59
- Exhibit 26: CCC Revised Findings for Appeal No. A-6-CII-98-98 adopted December 9, 1998
- Exhibit 27: City of Carlsbad As Built Plans for Levy Driveway
- Exhibit 28: Letter from Levy to City dated November 13, 2000
- Exhibit 29: October 30, 2002 Aerial Image (California Coastal Records Project)
- Exhibit 30: Aerial Image dated December 31, 2002 (Google Earth)
- Exhibit 31: Aerial Image dated March 10, 2003 (Google Earth)
- Exhibit 32: Aerial Image dated September 2, 2004 (Google Earth)
- Exhibit 33: Acceptance of Beach Access Easement and Open Space Easement by the City of Carlsbad recorded July 11, 2005
- Exhibit 34: Aerial Image dated January 31, 2008 (Google Earth)
- Exhibit 35: Aerial Image dated May 24, 2009 (Google Earth)
- Exhibit 36: Photos of Wedding of Levy Property Guests within the Beach Access Easement and Open Space Easement dated August 29, 2009
- Exhibit 37: Aerial Image dated August 23, 2010 (Google Earth)

- Exhibit 38: Quitclaim Deed to Buena Vista Revocable Trust Recorded March 15, 2011
- Exhibit 39: Aerial Image dated October 27, 2012 (Google Earth)
- Exhibit 40: Aerial Image dated November 2, 2012 (Google Earth)
- Exhibit 41: Aerial Image dated September 29, 2013 (California Coastal Records Project)
- Exhibit 42: Aerial Image dated November 13, 2013 (Google Earth)
- Exhibit 43: 2014 Aerial Image and Parcel Map
- Exhibit 44: Aerial Image dated May 11, 2014 (Google Earth)
- Exhibit 45: Aerial Image dated December 23, 2014 (Google Earth)
- Exhibit 46: Aerial Image dated April 14, 2015 (Google Earth)
- Exhibit 47: Aerial Image dated March 22, 2016 (Google Earth)
- Exhibit 48: Code Compliance Agreement between City and Levy Regarding Weddings and Short Term Rentals dated August 31, 2016
- Exhibit 49: Email from City to CCC dated September 12, 2016
- Exhibit 50: Aerial Image dated November 8, 2016 (Google Earth)
- Exhibit 51: Notice of Violation from CCC dated February 6, 2017
- Exhibit 52: Letter from Levy to CCC dated March 24, 2017
- Exhibit 53: Notice of Violation from CCC dated June 29, 2017
- Exhibit 54: Letter from Levy to CCC dated October 17, 2017
- Exhibit 55: Notice of Violation from CCC dated November 15, 2017
- Exhibit 56: Letter from Levy to CCC dated November 22, 2017
- Exhibit 57: Letter from Levy to CCC dated December 1, 2017
- Exhibit 58: Aerial Image dated December 7, 2017 (Google Earth)
- Exhibit 59: Photos from Site Visit on March 20, 2018
- Exhibit 60: Offer to Dedicate the Lagoon Public Access Easement Recorded April 10, 2018
- Exhibit 61: Photos of Vehicle Gate dated May 1, 2018
- Exhibit 62: Email from City to CCC dated June 26, 2018
- Exhibit 63: Email from City to CCC dated July 20, 2018
- Exhibit 64: Aerial Image dated August 13, 2018 (Google Earth)
- Exhibit 65: Email from City to CCC dated September 7, 2018
- Exhibit 66: Carlsbad Trails Master Plan (dated December 2018)
- Exhibit 67: Photos of Permanently Locked Gates dated April 19, 2019
- Exhibit 68: Aerial Image dated August 17, 2019 (Google Earth)
- Exhibit 69: Carlsbad City Council Resolution approving Trails Master Plan
- Exhibit 70: Aerial Image dated December 19, 2020 (Google Earth)
- Exhibit 71: Photos of Permanently Locked Gates dated May 25, 2021
- Exhibit 72: Photo of Fence on State Owned Land in Buena Vista Lagoon dated May 25, 2021
- Exhibit 73: Notice of Violation from CCC dated June 22, 2021
- Exhibit 74: Email from Levy to CCC dated June 30, 2021
- Exhibit 75: Email from Levy to CCC dated July 15, 2021
- Exhibit 76: Email from Levy to CCC dated July 19, 2021
- Exhibit 77: Aerial Image dated August 1, 2021 (Google Earth)
- Exhibit 78: Letter from CCC to Levy dated August 5, 2021

- Exhibit 79: Email from Levy to CCC dated August 13, 2021
- Exhibit 80: Aerial Image dated June 29, 2023 (Google Earth)
- Exhibit 81: Gate Access Agreement between the City of Carlsbad and John C. Levy, Jr. dated July 17, 2023
- Exhibit 82: Aerial Image dated January 27, 2024 (Google Earth)
- Exhibit 83: Notice of Intent from CCC to Levy dated October 2, 2024
- Exhibit 84: Letter from Levy to CCC dated October 14, 2024
- Exhibit 85: Letter from CCC to Levy dated October 17, 2024
- Exhibit 86: Letter from Levy to CCC dated October 21, 2024
- Exhibit 87: Notice of Violation recorded on Levy Property January 27, 2025
- Exhibit 88: Letter from CCC to Levy dated February 3, 2025
- Exhibit 89: Letter from Levy to CCC dated February 5, 2025
- Exhibit 90: Letter from CCC to Levy dated February 6, 2025
- Exhibit 91: Letter from Levy to CCC dated February 7, 2025
- Exhibit 92: Letter from Levy to CCC dated February 11, 2025
- Exhibit 93: Letter from Levy to CCC dated February 18, 2025
- Exhibit 94: Letter from CCC to Levy dated February 20, 2025
- Exhibit 95: Letter from Levy to CCC dated February 25, 2025
- Exhibit 96: Letter from CCC to Levy dated February 26, 2025
- Exhibit 97: Letter from Levy to CCC dated February 26, 2025
- Exhibit 98: No Exhibit
- Exhibit 99: Additional Letter from Levy to CCC dated March 4, 2025
- Exhibit 100: Letter from CCC to Levy dated March 5, 2025
- Exhibit 101: Letter from Levy to CCC dated March 10, 2025
- Exhibit 102: Letter from Levy to CCC dated March 12, 2025
- Exhibit 103: No Exhibit
- Exhibit 104: Screenshots of Carlsbad City Website showing 'North Beach Trail,' Accessed March 13, 2025
- Exhibit 105: Carlsbad Citywide Trails & Parks Map, Accessed March 13, 2025
- Exhibit 106: Letter from CCC to Levy dated March 14, 2025
- Exhibit 107: Letter from Levy to CCC dated March 20, 2025
- Exhibit 108: Letter from CCC to Levy dated March 24, 2025
- Exhibit 109: Letter from Levy to CCC dated March 31, 2025
- Exhibit 110: Letter from CCC to Levy dated April 7, 2025
- Exhibit 111: Letter from Levy to CCC dated April 11, 2025
- Exhibit 112: Letter from CCC to Levy dated May 9, 2025
- Exhibit 113: Letter from Levy to CCC dated May 19, 2025
- Exhibit 114: Letter from CCC to City dated May 23, 2025
- Exhibit 115: No Exhibit
- Exhibit 116: Photos of Area dated June 7, 2025
- Exhibit 117: Letter from CCC to City dated June 24, 2025
- Exhibit 118: Letter from CCC to Levy dated June 24, 2025
- Exhibit 119: Letter from Levy to CCC dated July 9, 2025
- Exhibit 120: Letter from CCC to Levy dated July 21, 2025
- Exhibit 121: Email from Levy to Summerhouse HOA, San Malo HOA, and Beach HOA dated July 24, 2025

- Exhibit 122: Letter from CCC to City dated July 31, 2025
- Exhibit 123: Letter from CCC to Levy dated July 31, 2025
- Exhibit 124: Letter from CCC to Beach HOA dated July 31, 2025
- Exhibit 125: Letter from City Attorney Marissa Kawecki to CCC dated August 1, 2025
- Exhibit 126: Letter from City Community Development Director Jeff Murphy to CCC dated August 1, 2025
- Exhibit 127: Open Space Deed Restriction over part of Levy Property recorded August 14, 2025
- Exhibit 128: Letter from CCC to City dated August 22, 2025
- Exhibit 129: Letter from City to CCC dated September 11, 2025
- Exhibit 130: Letter from Levy to Headquarters Enforcement Counsel Rob Modellmog dated September 11, 2025
- Exhibit 131: Letter from Levy to Executive Director Dr. Kate Huckelbridge dated September 12, 2025
- Exhibit 132: Memorandum by Commission Ecologist Dr. Corey Clatterbuck dated September 24, 2025
- Exhibit 133: Bluff Open Space Easement recorded August 15, 1984.
- Exhibit 134: Aerial Image taken October 21, 2024 (California Coastal Records Project)

1. MOTIONS AND RESOLUTION

Motion 1: Cease and Desist Order

I move that the Commission **issue** Cease and Desist Order No. CCC-25-CD-03 to John C. Levy, Jr., and Jim Kelly, in their individual capacities and/or as Trustees of the John C. Levy, Jr. Revocable Trust dated November 4, 2004, and/or the Buena Vista Revocable Trust, pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-25-CD-03, 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 the Carlsbad Local Coastal Program; and the party to whom the order is issued has acted and failed to act in violation of CDP Nos. 6-83-051 and 97-59, also in violation of the Coastal Act, and that the requirements of the Cease and Desist Order are necessary to ensure compliance with the Coastal Act and the Coastal Development Permit.

Motion 2: Restoration Order

I move that the Commission **issue** Restoration Order No. CCC-25-RO-02 to John C. Levy, Jr., and Jim Kelly, in their individual capacities and/or as Trustees of the John C. Levy, Jr. Revocable Trust dated November 4, 2004, and/or the Buena Vista Revocable Trust, pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Restoration Order:

The Commission hereby issues Restoration Order No. CCC-25-RO-02, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject properties without a coastal development permit, 2) the development is inconsistent with the Coastal Act,

and with CDP 97-59, and 3) the development is causing continuing resource damage.

Motion 3: Administrative Civil Penalty Action Under Section 30821:

I move that the Commission **issue** Administrative Penalty No. CCC-25-AP-04 pursuant to Section 30821 of the Coastal Act to John C. Levy, Jr., and Jim Kelly, in their individual capacities and/or as Trustees of the John C. Levy, Jr. Revocable Trust dated November 4, 2004, and/or the Buena Vista Revocable Trust, pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Administrative Penalty No. CCC-25-AP-04, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities and failures to act have occurred without a coastal development permit, or in violation of CDP No. 6-83-051, and in violation of the Coastal Act, and that these activities or failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

Motion 4: Administrative Civil Penalty Action Under Section 30821.3:

I move that the Commission **issue** Administrative Penalty No. CCC-25-AP3-02 pursuant to Section 30821.3 of the Coastal Act to John C. Levy, Jr., and Jim Kelly, in their individual capacities and/or as Trustees of the John C. Levy, Jr. Revocable Trust dated November 4, 2004, and/or the Buena Vista Revocable Trust, pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Administrative Penalty No. CCC-25-AP3-02, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities and failures to

act have occurred in violation of CDP No. P-80-87, and in violation of the Coastal Act, and that these activities or failures to act have violated the Coastal Act provisions for the protection of coastal resources.

2. 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 13195. The requisite procedure for imposition of administrative penalties pursuant to Sections 30821 and 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 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, 13186 and 131895, 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 Penalty actions, either in the form recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as

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

amended by the Commission, will result in the issuance of the Cease and Desist Order and Restoration Order and imposition of the Administrative Penalty actions.

3. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-25-CD-03, RESTORATION ORDER NO. CCC-25-RO-02, AND ADMINISTRATIVE PENALTY ACTIONS NOS. CCC-25-AP-04, AND CCC-25-AP3-02.⁴

A. Property Location

The area at issue is located on the south side of Buena Vista Lagoon and just inland of North Beach in the City of Carlsbad, in north county San Diego. The City of Oceanside begins on the other side of the lagoon. North Beach is one of the wider beaches in the region, and has a large back beach area that adjoins the mouth of Buena Vista Lagoon. The lagoon is the only freshwater lagoon in the county due to a weir installed there, and there are plans to restore it to a natural saltwater tidal marsh. The area is popular for beachcombing, sunbathing, and fishing. However, the public's ability to access this area is greatly impeded by Mr. Levy's locked vehicle gate within the Beach Access Easement. Currently, the only public accessway is a 45 step stairway that does not provide access for persons with disabilities, or for other mobility devices such as walkers, strollers, wagons, or bicycles.

An overview map of the area is available at Exhibit 2. Starting clockwise from the north, the Levy Property is located at the north end of North Beach, where it meets the lagoon (APNs 155-190-15, 155-190-16, 155-101-67, and 155-101-68) (north parcel map available at Exhibit 5). South of the Levy Property is a parcel owned by the Beach HOA (APN 203-010-21), where the Beach Access Easement and Open Space Easement burden the entire property (south parcel map at Exhibit 6). Across a small portion of that parcel lies the Ingress/Egress Easement. To the southeast of the Ingress/Egress Easement lies property owned by the Army Navy Academy. To the west lies the Summerhouse HOA development, and to the west of that lies the Beach HOA development. To the west of the Beach HOA development is a parcel on the beach itself that is owned by the Beach HOA but burdened by a public access easement held by the State Lands Commission. To the north of the beach is the San Malo HOA development.

⁴ These findings also hereby incorporate by reference the Summary at the beginning of this September 26, 2025 staff report ("STAFF REPORT: Recommendations and Findings for Cease and Desist Order, Restoration Order, and Administrative Penalty Actions") in which these findings appear, which section is entitled "Summary of Staff Recommendations and Findings."

B. Permit History

The property Mr. Levy now owns (“the Levy Property”) was created before Proposition 20 (the precursor to the California Coastal Act) when a prior developer dumped fill into Buena Vista Lagoon to create dry land on which to build. By the early 1980’s, though, nature had retaken much of the area, and the public was using informal trails to access the lagoon and North Beach. Photos of the vegetation and trails can be seen at Exhibits 10 and 11. Thus, when the Commission approved the segment of the Carlsbad Local Coastal Program (“LCP”) covering this area in 1981, the LCP required public access and protection of sensitive habitat along the lagoon in the area that is now the Levy Property, as well as public access and open space in the upland areas inland of the Levy Property (the area now covered by the Beach Access Easement and Open Space Easement).

In 1983, the Commission issued CDP 6-83-051 to a developer who owned property adjacent to the Levy Property to allow for the subdivision of the area into three lots, as well as the construction of condominiums on the resulting lot on the bluff (Exhibits 12 and 14). As mitigation for the impacts to public access and coastal habitat, the Commission required the permittee to record offers to dedicate a public access easement and open space easement (“the Beach Access Easement and the Open Space Easement”) across a second lot, which covered the area below the bluff (Exhibits 16 and 17). Both lots remain owned by the homeowners association for the condominiums (the “Beach HOA”).

While the area that would become the Levy Property remained undeveloped at this time, a dispute arose related to the legal status of the land, due to its creation by placing fill in the lagoon. In 1984, the then-owners of the area reached a Boundary Line Agreement with the State Lands Commission, which settled the public trust issues. The Boundary Line Agreement set the public trust boundary at the edge of where the fill had been placed in the lagoon, in exchange for public access easements across the beach area to the west, which is still owned in fee by the Beach HOA. Those easements are now held by the State Lands Commission.

However, while the title issues at what would become the Levy Property had been resolved, the land remained undeveloped and used by the public for lagoon access. Mr. Levy bought what is now the Levy Property in 1997 and applied to the City of Carlsbad for a local CDP to develop the area. Mr. Levy’s project included a house on the Levy Property, as well as a paved driveway across the adjacent land owned by the Beach HOA, on and across a non-exclusive ingress/egress easement that provides a means of driving from the public road to the Levy Property (“the Ingress/Egress Easement,” Exhibit 15). That easement crosses the Beach HOA lot that is covered by the Beach Access Easement and Open Space Easement area, though at the time of the CDP approval those easements were yet to be accepted, so now all three easements coexist on the lot. Mr. Levy’s proposal also included a vehicle gate/fence at the point where the lot owned by the HOA abuts the public road, within the Beach Access Easement and Open Space Easement (“the Vehicle Gate”).

In 1998, the City approved the proposed development via approval of CDP 97-59 (Exhibit 21). The City imposed many conditions of approval in order to find the project consistent with the LCP, including a condition requiring that the permittee record an Offer to Dedicate a public access easement along the lagoon (“the Lagoon Access Easement”). The City’s CDP authorized the construction of a time-lock gate at the entrance to the Lagoon Access Easement, so that the trail would be automatically open to the public from dawn to dusk (“the Pedestrian Gate”). In addition, in order to protect the habitat of the endangered light footed Ridgway’s rail, among other resource protection concerns, the City required the permittee to record a deed restriction to protect the area along the lagoon for open space and wildlife, and to offer to dedicate that area to the CDFW.

Two Commissioners appealed the City’s permit, but the Commission found the appeal to raise No Substantial Issue, in part because the Beach Access Easement and Open Space Easement were not yet accepted, so the Commission concluded that, at that time, it did not need to address the long-term legality of the Vehicle Gate (referred to interchangeably as a fence) that Mr. Levy was proposing within the areas to be burdened by those easements or the ability of the permittee to maintain that Vehicle Gate after the easements were accepted (Exhibit 26). The Commission’s findings emphasized that the easements had not yet been accepted and then stated:

The Commission finds that at this time, it need not address the legality of the fence or the ability of the landowners to maintain the fence after the offer of dedication has been accepted.

In addition, with regards to the approved Pedestrian Gate at the entrance to Lagoon Access Easement, the Commission’s findings noted that the gate would include a time-lock to ensure that it was open to the public during the day, stating:

As approved, the gate would be open from dawn to dusk.

...

Thus, in this case, the Commission finds that the time-lock gate as approved by the City raises no substantial issue as to conformity with the certified LCP or the public access policies of the Coastal Act.

Therefore, while the City approved the two gates at the time, the Commission’s findings clarify that the Commission only accepted that because it understood that access was protected here. Specifically, the Commission understood that the Vehicle Gate within the Beach Access Easement was being approved at that time since the easement was not yet accepted and the presence of the Vehicle Gate could be reevaluated later if there was a problem the easement was perfected. And with respect to the Pedestrian Gate at the Lagoon Access Easement, the Commission explicitly based its findings on the fact that the CDP required public access, and the Pedestrian Gate within the Lagoon Access Easement would be on a time-lock to ensure it was open from dawn to dusk each day, so it was consistent with the Coastal Act because it would still allow for

the public to enter and walk along the easement area during the hours from dawn to dusk.

C. Violation History

From the start, Mr. Levy began violating the CDPs and Coastal Act. He failed to record the deed restriction to protect habitat along the lagoon as required by Condition 12, and failed to record and offer to dedicate the Lagoon Access Easement as required by Condition 17. Mr. Levy also immediately began undertaking additional unpermitted development. In order to ensure that public access along the lagoon was provided from dawn to dusk, the CDP authorized a time lock on the Pedestrian Gate within the Lagoon Access Easement. However, Mr. Levy installed an unpermitted locked Pedestrian Gate with a chain and padlock that did not and could not automatically open during the dawn to dusk period of time. When the City notified Mr. Levy of the violation in 2000, Mr. Levy argued that he should be able to keep it locked until the easement was accepted (Exhibit 28), even though Mr. Levy had not recorded the offer to dedicate that easement, as required, so there hadn't been any offer to dedicate for anyone to accept, and even though the CDP did not authorize any locked Pedestrian Gate during the day, or any chain and padlock at all. Regardless, he did not remove the locked Pedestrian Gate or comply with the City's request to remove it.

In 2005, the City accepted the offers of the Beach Access Easement and Open Space Easement, thereby perfecting those easements (Exhibit 33), yet Mr. Levy also kept his Vehicle Gate in place that blocks access to those areas. He also kept the Vehicle Gate locked day and night. Mr. Levy later posted an unpermitted sign stating 'Private Property- No Trespassing' on the locked gate within the accepted public access easement (Exhibit 61).

In 2009, Mr. Levy moved abroad and began renting out the Levy Property, including for short term rentals and weddings. Mr. Levy subsequently began using an area that was required to be protected for habitat conservation by CDP 97-59 as a vehicle parking lot, including for his guests, which is visible in the photos at Exhibit 7. He also removed vegetation throughout the areas along the lagoon that were required to be protected, and cleared native plants that the City's CDP had required him to plant to better facilitate use of the area as a wedding/event venue. This meant that the Lagoon Access Easement, while inaccessible to the public due to Mr. Levy's unpermitted locked Pedestrian Gate and unpermitted fencing, was open for his paying guests to use for their private events. Mr. Levy also used part of the area covered by the Beach Access Easement and Open Space Easement, near the beach, for private weddings and events. He did all of this without any Coastal Act authorization (Exhibit 36). In 2016, the City and Commission staff received complaints from the public about this unpermitted development and development inconsistent with the CDPs. Shortly afterward, the City reached an agreement with Mr. Levy whereby he agreed to stop hosting weddings and short term rentals without City authorization (Exhibit 48). However, the other violations, including the habitat disturbance and blocked public access, all remained.

D. Enforcement History

In 2017, Commission district enforcement staff began sending Notice of Violation letters to Mr. Levy in an attempt to obtain compliance with CDP 97-59 and the Coastal Act (Exhibit 51). Initially, Mr. Levy appeared interested in resolving some of the violations. For example, he opened the Pedestrian Gate to the Lagoon Access Easement to the public and posted an unpermitted sign that, while Commission staff objected to some of the text as being inconsistent with the CDPs and Coastal Act, was at least an attempt to notify the public of the public access available there (while also including language likely to discourage that access). In 2018, Mr. Levy also finally worked with the City to record the offer to dedicate the Lagoon Access Easement that he was required to record two decades prior (Exhibit 60). At this time, City staff was supportive of the Commission's enforcement efforts, and City staff sent emails to Commission staff stating that the City planned to remove the Vehicle Gate within the Beach Access Easement and Open Space Easement entirely (Exhibits 49, 62, 63, and 65). In 2019, the City added all of the easements at issue to the City's Trails Master Plan (Exhibit 66) and thereby accepted the Lagoon Access Easement, and posted these trails on the City's website (Exhibit 104). Mr. Levy removed the unpermitted 'Private Property- No Trespassing' sign from the Vehicle Gate within the Beach Access Easement, and it appeared that Mr. Levy was at the point of finally beginning to comply with the CDPs and Coastal Act.

However, neither Mr. Levy (nor the City) ever removed the Vehicle Gate blocking the entrance to the Beach Access Easement, and Mr. Levy never opened it. Instead, in 2023, and unbeknownst to Commission staff, the City and Mr. Levy entered into a 'Gate Access Agreement' whereby Mr. Levy formally agreed to provide the City with the Vehicle Gate code, but nothing else (Exhibit 81). Meanwhile, Mr. Levy permanently locked the Pedestrian Gate within the Lagoon Access Easement again. By 2024, while Mr. Levy's gates within the two public access easements remained locked, the City's website still advertised both easements as open portions of the publicly available 'North Beach Trail.' Meanwhile, within the areas required to be protected for habitat conservation on The Levy Property, Mr. Levy continued to clear vegetation and use it as a parking lot. Further, Mr. Levy also conducted even more unpermitted development and by 2024 had completed construction of an unpermitted paved pickleball court and additional paved area on the Levy Property (Exhibit 115). Because of this and the need to take more formal action to address this ongoing violation case, the case was elevated to the Commission's Headquarters Enforcement Unit for resolution.

On October 2, 2024, the Commission's Executive Director sent a Notice of Intent to commence these enforcement proceedings, including a notice of intent to record a Notice of Violation ("NOVA") on title to the Levy Property, and expressed the Commission's hopes that we could reach an amicable resolution of the violations. Commission staff then began reaching out to Mr. Levy in attempts to resolve the matter (Exhibit 83).

In 2025, Mr. Levy indicated that he wanted to gather materials rather than discuss settlement with Commission staff, and sent a series of letters to which staff responded,

as is discussed in greater detail in Section G, below, Defenses Alleged and Responses Thereto. There were various delays during which Mr. Levy sought new counsel, and Mr. Levy placed many conditions on any negotiations, although staff still believed that we could work with him to resolve the violations consensually and without the need for a contested hearing. In response, Mr. Levy additionally argued that he was still looking for new counsel and continued to refuse to enter into confidential negotiations with us.

On May 22, 2025, Commission staff talked with City staff and learned that the City now supported some of Mr. Levy's positions, despite the fact that they were inconsistent with the CDPs issued to Mr. Levy as well as with the LCP provisions requiring access here. Commission staff therefore sent multiple letters to the City providing information and legal analysis regarding the violations, noted again the City's past support for the Commission's enforcement efforts, the fact that they asked us to take the lead on enforcement here, and have offered to continue to cooperate in obtaining compliance here. Given the continued recalcitrance of Mr. Levy and the longstanding lack of public access to the public access easements, as well as the continuing negative impacts to important lagoon habitat, Commission staff began preparing for this enforcement hearing. As noted above, this history is discussed in more detail in Section G, Defenses Alleged and Responses Thereto, below.

E. Basis for Issuing Orders

1. Statutory Provisions

(i) Cease and Desist Order

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. The order may also be issued to enforce any requirements of a certified local coastal program . . . under any of the following circumstances:

- (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

- (2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

- (3) The local government or port governing body is a party to the violation.
- (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.

The above language establishes three categories of Coastal Act violations subject to CDOs: (1) development that lacked the requisite permit from the Commission, (2) activities inconsistent with a Commission permit, and (3) violations of a local government LCP.

(ii) Restoration Order.

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

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

2. Factual Support for Statutory Elements

The following paragraphs set forth the factual bases for the issuance of the Cease and Desist and Restoration Orders by identifying the evidence of the elements listed in Sections 30810 and 30811 as necessary for the Commission to issue a Cease and Desist and Restoration Order.

(a) Development has occurred without a Coastal Development Permit

The properties at issue (including all of the Levy Property) are located in Carlsbad, within the Coastal Zone. The County has had a certified Local Coastal Program ("LCP") for this area since 1981, although the Levy Property and some of the immediately surrounding area has remained within the Commission's retained permit jurisdiction. Thus, with limited exceptions not relevant here (for exempt development), any development in this area requires a permit from the Commission.⁵

⁵ The fact that the City processed Mr. Levy's CDP application in 1998 and issued him a CDP appears to have been an error. The City does not dispute that this area is within the Commission's retained

Section 30600(a) of the Coastal Act, as well as an analogous section of the City LCP at section 13.20.040, states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act, as well as by the City's LCP at section 13.20.040, in relevant part as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land... 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...

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Thus, as a general matter, any activity that meets the above definition of development and that occurred in this area after 1976 without the requisite Coastal Act authorization constitutes a violation of the Coastal Act, in the form of "unpermitted development," and is subject to a cease and desist order either because it lacked the requisite permit from the Commission, or because it lacked the requisite permit from the City and is thus a violation of the analogous provision of City's LCP.

Unpermitted Development, as defined above, has occurred on the properties at issue. For any such development that Commission staff believed could be a violation of the City's LCP,⁶ Commission staff coordinated with the City of Carlsbad about these violations as early as 2016 and again as recently as August 22, 2025, and the City asked the Commission to take the lead on enforcement here, and as partly discussed in footnote 5, the City also agrees that the violations are within the Commission's jurisdiction. On September 11, 2025, the City sent a letter stating:

"Since 2016, city staff understood that the Coastal Commission agreed to take the lead on any coastal access/easement enforcement efforts concerning 2401 Mountain View Drive, while the city addressed Carlsbad Municipal Code violations. . . "

jurisdiction (Exhibit 126). However, solely for purposes of the current enforcement action, the Commission is not challenging the validity of that permit.

⁶ Commission staff was not initially aware of the extent of the Commission's retained jurisdiction in this area.

Based on the definitions of development listed above, various types of development have been performed and maintained by Mr. Levy without the required CDP, making them violations of the Coastal Act, and potentially the LCP as well (for any unpermitted development that occurred in the City's LCP jurisdiction), as "unpermitted development." Collectively, these violations include:

- 1) development of a private parking lot and event staging area, including vegetation clearance, within an area required to be protected as a wetland buffer setback, which constitutes placement of solid material, change in the density or intensity of use of land, and the removal or harvesting of major vegetation;
- 2) the installation of a paved pickleball court and additional pavement, which constitutes placement or erection of any solid material or structure, grading, and construction of a structure;
- 3) installation of a locked gate, chain, and padlock, where only a "dawn to dusk" gate had been authorized, and the associated curtailment of historic public use, which constitutes placement or erection of any solid material or structure, change in the density or intensity of use of land, change in the intensity of use of water, or of access thereto, and construction of a structure; as well as
- 4) installation of fencing on state land and in the lagoon, which constitutes placement or erection of any solid material or structure, change in the intensity of use of water, or of access thereto, and construction of a structure.

None of these activities had any Coastal Act authorization, as is detailed above. And thus, these activities all constitute unpermitted development subject to a CDO.

(b) Inconsistencies with the Terms and Conditions of Previously Issued Permits (CDP Nos. 6-83-051 and 97-59)

As noted at the end of Section E.1.a, above, Coastal Act section 30810 authorizes the Commission to issue CDOs for three different categories of Coastal Act violations. The last section covered the first of these categories (development that lacked the requisite permit from the Commission) and potentially the third category (development that lacked a needed permit from the local government, as such development constitutes a violation of a local government LCP).

In addition, the Commission also has authority to enforce its CDPs, which is the second category. It can also enforce the local government's CDPs, as violations thereof fall into the third category, as violations of the LCP. Thus, this section addresses violations of the Commission's 1983 CDP for the subdivision of this area (6-83-051) or the City's 1998 CDP for the Levy house and gate (97-59). However, there is some overlap, as some of the unpermitted development listed in the prior section also violates existing permit conditions.

The maintenance of the locked gate at one end of the Ingress/Egress Easement, where Mr. Levy leaves Mountain View Drive and enters the Beach Access Easement (on the

Beach HOA's property) is within, and blocks public access to, that public access easement and open space easement required by Special Conditions 8 and 6 of Commission CDP No. 6-83-051, respectively. As such, the maintenance of that permanently locked vehicle gate is inconsistent with the terms of CDP No. 6-83-051 because it lies within an open space easement that does not allow for such development and blocks public access to an accepted public access easement. As is discussed in Section G, the authorization for that vehicle gate was allowed, in part, because the Beach Access Easement and Open Space Easement had not yet been accepted at that time, and the Commission never authorized and could never have authorized any permanently locked gate within that area, as doing so would have been directly inconsistent with the Commission's condition requiring public access. Thus, the gate is now inconsistent with both CDPs, as well as the Coastal Act.

In addition, two of the elements of unpermitted development listed in the prior section also constitute violations of permit conditions. The development of a private parking lot and event staging area, along with vegetation clearance, mentioned above as unpermitted development is also a permit violation, as it is within a wetland buffer setback area that was specifically required to be protected for habitat conservation and open space by Condition 12 of CDP No. 97-59 and the LCP. Also, the blockage of the Lagoon Access Easement area is inconsistent with Condition 17 of that same CDP, which requires the creation of that public access easement.

As detailed below, and while not a jurisdictional requirement for issuance of the Cease and Desist Order, all of these violations have also caused continuing negative impacts to coastal resources including public access, environmentally sensitive habitat area, biological productivity, water quality, and natural landforms.

Thus, Mr. Levy's violations meet the requirements for Commission issuance of a Cease and Desist Order and the first prong of the requirements for a Restoration Order.

(c) The Violations Described Above Were Inconsistent with the Resource Protection Policies in Chapter 3 of the Coastal Act and the LCP

For the Commission to issue a Restoration Order, not only must the Commission find that there has been a Coastal Act violation, but also that the violation is "inconsistent with [the Coastal Act], and the development is causing continuing resource damage. The violations at issue here are also inconsistent with a number of resource policies of the Coastal Act.

(i) Public Access

Section 30210 states:

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 for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

These policies protect public access, but Mr. Levy's actions to install an unpermitted gate and fencing at the Lagoon Access Easement and in the water itself have blocked public access to the lagoon and the area required for public access. In addition, Mr. Levy's actions to maintain a locked vehicle gate within the Beach Access Easement have also violated the public access provisions of the Coastal Act.

(ii) Natural Resources

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Further, Coastal Act section 30233 provides that filling of wetlands may be permitted only in narrow circumstances, none of which are applicable here:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following...**

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.**

These policies protect marine resources, biological productivity, wetlands, and environmentally sensitive habitat areas and the unpermitted development is inconsistent with the protections required by these sections. The area surrounding the unpermitted development is sensitive marine and coastal habitat that qualifies as wetlands and environmentally sensitive habitat area, and the area of the Levy Property was required to be protected as buffer for these areas so as to avoid harming these areas. The vegetation clearance and bare soil of the parking lot has the potential to increase erosion and sediment discharge into the lagoon, and to slowly fill the adjacent wetlands. The large impermeable surface area of the unpermitted pickleball court also has the potential to increase scour and therefore erosion into the lagoon. The unpermitted development also causes numerous impacts relating to lighting and other pollution. In addition, Mr. Levy's unpermitted fence in wetlands and in the water constitutes fill as well. These issues are also discussed in Commission Ecologist Dr. Clatterbuck's memo at Exhibit 132.

Not only was the unpermitted development inconsistent with the Coastal Act, it was also inconsistent with numerous policies in the Carlsbad LCP. As noted herein, the area at issue here is actually in the Commission's retained jurisdiction, so the Coastal Act is the standard of review, but the LCP for the area is instructive of the types of coastal protections that apply in this general area.

For example, Policy 3-2 of the Carlsbad LCP states, in part that:

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from wetlands shall be required in all development, in order to buffer such sensitive habitat areas

from intrusion unless otherwise permitted pursuant to Policy 3-1. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval. In the event that a wetland area is bordered by steep slopes (in excess of 25%) which will act as a natural buffer to the habitat area, a buffer area of less than 100 feet in width may be permitted.

In addition, the Carlsbad Habitat Management Plan states:

Important habitats associated with Buena Vista Lagoon include areas of freshwater marsh that skirt the edges of the lagoon and large areas of disturbed wetland that dominate the lagoon's eastern half. The lagoon provides habitat for critical populations of the California least tern, western snowy plover, light-footed clapper rail, American peregrine falcon, California brown pelican, and white-faced ibis.

Also, Policy 7-6 states that:

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon (See Exhibit 4.10), to facilitate public awareness of the natural habitat resources of

Mr. Levy's unpermitted development within an area required to be protected as open space and habitat conservation, including unpermitted vegetation clearance and use of the area as a parking lot, is also a violation of the LCP.

Therefore, in the aggregate, the unpermitted development detailed above is inconsistent with both the Coastal Act and the LCP and the second criterion for issuance of a Restoration Order is therefore satisfied.

(d) Continuing Resource Damage

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

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

'Resource' means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, environmentally sensitive wildlife habitat, biological productivity, and water quality. The unpermitted development here affected water quality, biological productivity,

and natural landforms, including within the affected areas as well as in adjacent wetlands and environmentally sensitive habitat areas.

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

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

In this case, the damage caused by the unpermitted development negatively impacted the water quality and biological productivity and natural landforms of the area at issue, as well as in the adjacent environmentally sensitive habitat area that the area at issue was required to be protected in order to provide a buffer for. Thus, damage to coastal resources did occur here.

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

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

As of this time, the unpermitted development that is the subject of these proceedings and the results thereof remains on the Levy Property. As described above, the unpermitted development results in impacts to coastal resources. In addition, Mr. Levy continues to clear vegetation and use the area as a parking lot, which impacts the environmentally sensitive habitat areas. Further, as noted above, the vegetation clearance and bare soil of the parking lot has the potential to increase erosion and sediment discharge into the lagoon. The large impermeable surface area of the unpermitted pickleball court also has the potential to increase erosion into the lagoon. Further, the unpermitted fence remains located within wetlands and within the water of the lagoon, on state land. All of these impacts remain and are continuing.

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

(e) The Violations at Issue are not Consistent with the Coastal Act's Access Provisions and Principles of Environmental Justice

The following discussion does not address a required element of Section 30810 or 30811 of the Coastal Act, and the findings in this section are therefore not required for the Commission to issue a cease and desist or restoration order. These findings are, however, important for context, and for understanding the totality of impacts associated with the violations and for analyzing factors discussed in the sections below, and for

noting that this proposed resolution would benefit all public users and the impacts noted herein by restoring and improving public access to this area.

Public Resources Code Section 30210 states:

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

Additionally, Section 30013 provides:

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

Section 30107.3 defines Environmental Justice as:

... the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

These violations also affect environmental justice since, because of Mr. Levy's violations, he and his guests are able to access North Beach much more easily than disabled persons, as well as much more easily than disadvantaged persons who live further from the coast. Moreover, his violations impact public access to the public beach and impede low cost recreation.

F. Administrative Civil Penalty Actions

1. Statutory Provision

The statutory authority for imposition of administrative penalties is provided for in the Coastal Act in Public Resources Code Sections 30821, which states, in relevant part:

(a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of the public access provisions of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

In addition, sections 30820 and 30822 create potential civil liability for violations of the Coastal Act more generally. Section 30820(b) also provides for daily penalties, as follows:

Any person who performs or undertakes development that is in violation of [the Coastal Act] or that is inconsistent with any coastal development permit previously issued by the commission . . . , when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable . . . in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

Through the proposed Cease and Desist Order, Restoration Order, and Administrative Penalty actions, Mr. Levy would be required to pay penalties based on the authorities as described above, and as detailed below.

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, Section 30210, which states in relevant part that “maximum access... and recreational opportunities shall be provided for all the people.”

As detailed above, the public has been and remains unable to use the Commission-required Beach Access Easement due to Mr. Levy’s continued locking of his gate following acceptance of the easement. Mr. Levy has provided access to his paying guests, but not to the public.

In addition, section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Mr. Levy’s unpermitted development on the Levy Property, including within areas required to be protected by CDP 97-59, consists of an unpermitted parking lot, vegetation clearance, pickleball court and associated pavement, and fencing and locked gate. The unpermitted parking lot creates large areas of bare soil, which causes erosion and sediment discharge into the adjacent lagoon and wetlands. The adjacent vegetation

clearance similarly increases erosion rates and sediment discharge. In addition, the impermeable surface area of the large pickleball court and adjacent paved area causes erosion and sediment runoff that would not normally exist.

Further, the unpermitted fencing and locked gate block public access.

The following pages set forth the basis for the issuance of these administrative penalty actions by providing substantial evidence that the unpermitted development conducted by Mr. Levy and the failure of Mr. Levy to comply with permit requirements meet all of the required grounds listed in Coastal Act Sections 30821 and 30821.3 for the Commission to issue Administrative Penalty Actions.

a. Exceptions to Section 30821 Liability Do Not Apply

Under section 30821(h) of the Coastal Act, in certain circumstances, a party who is in violation of the public access provisions of the Coastal Act can nevertheless avoid imposition of administrative penalties if they correct the violation within 30 days of receiving written notification from the Commission regarding the violation. This safe harbor provision of Section 30821(h) is inapplicable to the matter at hand, for multiple reasons as outlined below. For 30821(h) to apply, there are three requirements, all of which must be satisfied: 1) the violation must be remedied consistent with the Coastal Act within 30 days of receiving notice, 2) the violation must not be a violation of a permit condition, and 3) the party must be able to remedy the violation without performing additional development that would require Coastal Act authorization.

The violations at hand variously fail to meet all three of the requirements for 30821(h) to apply. A Notice of Intent to Issue a Cease and Desist Order and Administrative Penalty was issued Mr. Levy on October 2, 2024, nearly a year ago. Many of Mr. Levy's violations are also permit condition violations, including violations of Condition 8 of CDP 6-83-051 and Condition 17 of CDP 97-59. In addition, the violations at issue here that were not permit violations, such Mr. Levy's unpermitted locked gate and fencing, or his unpermitted parking lot, were not resolved within 30 days and all, such as the unpermitted pickleball court, would have required a permit, which are additional reasons the safe harbor provision does not apply here.⁷

In addition, Section 30821(f) of the Coastal Act states:

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

⁷ Violators are not barred by the Coastal Act from applying for CDPs.

Section 30821(f) is also inapplicable in this case. As discussed above and more fully below, the unpermitted restriction of public access here is significant because it blocks public access to a required Beach Access Easement that would otherwise provide the only public accessway accessible for wheelchairs, disability vans, walkers, strollers, wagons, bicycles, and other mobility devices, to North Beach, as well as to the mouth of Buena Vista Lagoon. In addition, this access would be the only accessway of this type for three miles of coastline. Public access is one of the cornerstone resources protected by the Coastal Act⁸ and the Act provides various protections for access. Therefore, the violation cannot be considered to have resulted in “de minimis” harm to the public.

b. Penalty Amount

Pursuant to Sections 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 that “shall not be less than one thousand dollars (\$1,000), [and not] more than fifteen thousand dollars (\$15,000), per day “for each day” in which the violation persists. Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation. However, Sections 30821(a) and 30821.3(a) also limit the time period for which such daily penalties 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.”

Under 30821(c) and 30821.3(c), in determining the amount of administrative penalty to impose, “the commission shall take into account the factors set forth in subdivision (c) of Section 30820.” As discussed immediately below, Commission staff thoroughly analyzed those factors in generating a proposed Administrative Penalty calculation for the Commission’s approval, and the Commission finds that the evidence supports staff’s analysis.

In an effort to be conservative, Commission staff also recommends to waive the public access penalty entirely if Mr. Levy cooperates with the orders.

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.

⁸ See, e.g., *San Diego Unified Port Dist. v. CCC* (2018), 27 Cal.App.5th 1111, 1129 (“[A] core principle of the [Coastal] Act is to maximize public access to and along the coast”).

- (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.

John C. Levy Jr. – CCC-25-AP-04 (30821 Public Access Violation- Beach Access Easement)

30820(c)(1): Applying the factors in Section 30820(c)(1) (nature, circumstance and gravity of the violation) to Mr. Levy, the violation at hand warrants the imposition of substantial civil liability; Mr. Levy has undertaken and maintained the violations for many years. The Commission required this easement pursuant to CDP 6-83-051 in 1983, and as discussed above, although the Commission didn't object to the placement of the gate in 1998 time given that the easement wasn't accepted and therefore not yet ready to be opened, it was accepted in 2005. The Commission informed him in 2024 that the easement had been accepted and should therefore have been opened. It remains closed as of today.

The Beach Access Easement would have provided important public access to this scenic beach at the mouth of Buena Vista Lagoon for persons with disabilities for many years, or for persons otherwise using walkers or other mobility devices, as well as for persons using strollers, wagons, or bicycles, or who simply were not able to descend a 45 step stairway and then walk through the sand to the mouth of the lagoon. In addition, while John C. Levy Jr. has blocked access to the public, he allowed his paying guests to take advantage of this accessway that provides the only access to this beach for vehicles or other mobility devices. Therefore, the above factor weighs in favor of a high penalty.

30820(c)(2): With regards to 30820(c)(2) (whether the violation is susceptible of restoration), the violation can be remedied going forward and compliance with this Cease and Desist Order will ensure that adequate public access is maintained at this location. For example, under the proposed Cease and Desist Order, John C. Levy Jr. would be required to either submit a public access plan to ensure the vehicle gate is maintained in an open position for all members of the public during the day, or to remove the gate entirely. However, there is a long period of denied public access and losses that can never be recovered, and many persons with disabilities or other would-be users have been denied public access to the coast that they cannot now regain, and therefore, a moderate to high penalty is warranted under this subsection.

Section 30820(c)(3) requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by this violation, public access to a beach accessway that allows for access by persons with disabilities, is an oft-overlooked and important resource across the State. Ensuring public access to all of California's coast for all people, including those who cannot easily use stairways, is essential for maximizing public access as required by the Coastal Act, and this violation directly blocked many members of the public from visiting this beach at all. In addition, the nearest beach accessways that are accessible for persons using wheelchairs, walkers, or vehicles equipped for wheelchairs, are a mile to the south or two miles to the north. It is very difficult or impossible to access this beach from those other access points because of the negative erosive effects of seawalls narrowing the beach in between, and this difficulty is compounded for someone attempting to use a beach wheelchair to do so. Thus, this beach accessway is a relatively sensitive resource in terms of access, and thus, a high penalty is warranted under this factor.

Section 30820(c)(4) takes into account the costs to the state of bringing this action. In this case, a moderate amount of Commission staff time was spent to bring this matter to a resolution relative to the Commission's other cases that are elevated to its Headquarters Enforcement Unit. This case was elevated to the Headquarters Enforcement Unit in 2024. The Commission's Headquarters Enforcement Unit then spent nearly a year attempting to resolve this matter amicably. During this time, Commission staff were forced to respond to many letters from both Mr. Levy and the City, which took up much Commission staff time. Also, since this case was not able to be resolved amicably, Commission staff dedicated a large amount of time to respond in detail to the arguments of Mr. Levy and the City. Therefore, this factor warrants a moderate penalty.

Finally, **Section 30820(c)(5)** requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require. The Beach Access Easement has been accepted since 2005, but during this time John C. Levy Jr. did not open this gate to the public, but did provide access to his paying guests, some of which have used the area for events, which have generated economic profits for John C. Levy Jr. In addition, his paying guests were able to enjoy beach access even if they used mobility devices or could otherwise not use stairs, which is a valuable resource that the public should have been able to enjoy as well. Thus, this weighs toward a high penalty.

Aggregating these factors, Commission staff concludes that a moderate to high penalty is justified here for John C. Levy Jr. for his public access violation at the Beach Access Easement. John C. Levy Jr. refuses to open his gate even though the Beach Access Easement has been accepted for two decades. Although the Commission could impose penalties for up to five of the many years that Mr. Levy has kept the gate closed even though the Beach Access Easement was in effect, Commission staff is recommending that Mr. Levy be penalized from the time Mr. Levy sent a letter on May 19, 2025, which

more clear his intent not to comply. Imposing 100% of the penalty for the time from May 19, 2025, to September 25, 2025, the day before this staff report, would result in a maximum penalty of \$1,428,750.

In an effort to be conservative in applying the statutory elements, the Commission adopts staff's recommendation to order John C. Levy Jr. to pay less than 100% of the maximum penalty for the maximum amount of years, and instead pay \$1,071,562 to the VRA for the public access violation based on a calculation of a violation for less than a year, discounted by 25%. Further, Commission staff is also recommending to waive it entirely if Mr. Levy cooperates with the orders, thereby making the fine contingent on his lack of cooperation in order to maximize the likelihood of compliance with these Orders and to rectify this matter in the most efficient manner possible, thereby limiting the costs to the state and increasing the potential for accelerated compliance with the Orders and Coastal Act and reducing impacts on resources and to incentivize protection of public access here. Thus, Commission staff is only recommending that Mr. Levy be required to pay that contingent fine if he fails to comply with the Beach Accessway Opening Plan requirements, including the deadlines, detailed in the proposed Cease and Desist Order at Appendix A. Should he be required to pay the additional penalty, Mr. Levy will still be required to comply with the Beach Accessway Opening Plan as well.

John C. Levy Jr. – CCC-25-AP3-02 (30821.3 Non-Public Access Violations)

30820(c) (1): Applying the factors in Section 30820(c)(1) (nature, circumstance and gravity of the violation) to John C. Levy Jr., the violation at hand warrants the imposition of substantial civil liability. John C. Levy Jr. has undertaken multiple different violations for many years, and over an area of approximately 1.5 acres, of which approximately 1 acre was specifically identified as sensitive habitat, and legally required to be protected. Mr. Levy used this sensitive lagoon habitat as an unpermitted parking lot,, and regularly cleared vegetation, and built a fence across state land and into the water itself and installed a locked gate, as well as constructed an unpermitted pickleball court and associated pavement. This unpermitted development has created a loss of potential coastal lagoon habitat for many years, including loss of habitat for the endangered light footed Ridgway's rail. Therefore, the above factor weighs in favor of a high penalty.

30820(c)(2): With regards to 30820(c)(2) (whether the violation is susceptible to restoration), the violation can be remedied going forward and compliance with this Cease and Desist Order will ensure that the area is restored and provides important lagoon habitat in the future. However, it will take John C. Levy Jr. time to remove the invasive plants and plant native plants, and begin to submit monitoring reports. In addition, it will take time for any potential habitat to take root and be beneficial, and in the meantime, the biological harm and ecological losses the public has experienced for years will continue. Therefore, a moderate to high penalty is warranted under this subsection.

Section 30820(c)(3) requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by this violation, the land along Buena Vista Lagoon, is a sensitive resource that provides a rare habitat for animals including the endangered light footed Ridgway's rail. This area is a known refuge for birds and other animals, and the lagoon is protected for this purpose. Much of the historic waterfront habitat near the coast has been eliminated by urban development, making this area even more important, and therefore, a moderate to high penalty is warranted.

Section 30820(c)(4) takes into account the costs to the state of bringing this action. In this case, a moderate amount of Commission staff time was spent to bring this matter to a resolution relative to the Commission's other cases that are elevated to its Headquarters Enforcement Unit. As stated above, Commission District Enforcement tried to resolve the violations amicably beginning in 2017, and this case was elevated to the Headquarters Enforcement Unit in 2024. The Commission's Headquarters Enforcement Unit also spent nearly a year attempting to resolve this matter amicably. However, much more staff time will be required to ensure that the Restoration Plan required by the proposed Orders and Penalties, including the required annual monitoring reports, are adequate and will ensure the success of the restoration. This will also require a large amount of work from the Commission's Ecology Unit. Therefore, this factor warrants a moderate to high penalty.

Finally, **Section 30820(c)(5)** requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require. John C. Levy Jr. used the area required to be protected as an unpermitted parking lot in order to provide more capacity for weddings and other events of his paying guests. In addition, even since John C. Levy Jr. apparently stopped holding weddings in 2017, he and his guests have continued to use the area for an unpermitted parking lot. Further, John C. Levy Jr. has also regularly mowed a large area, also for use as an event venue. He also constructed an unpermitted pickleball court and adjacent paved area which greatly increases the impermeability of the site, removing habitat area and affecting water quality. All of this removal of important lagoon habitat area was done in order to provide a more valuable experience for the paying guests of Mr. Levy, and, since he apparently moved back to the Levy Property from abroad in 2025, for Mr. Levy himself. Thus, this factor weighs toward a high penalty.

Aggregating these factors, Commission staff concludes that a high penalty is justified here for John C. Levy Jr. for his violations of removing important lagoon habitat area that was required to be protected in order to provide more facilities for his paying guests. Although there are at least four violations, including the unpermitted parking lot, the unpermitted mowing, the unpermitted pickleball court and associated pavement, and the unpermitted fence on state land in the lagoon itself, Commission staff is recommending, in an effort to be conservative, that penalties be assessed for only one violation. In addition, although these violations have existed for many years,

Commission staff is again recommending that a penalty only be assessed from the time that Mr. Levy sent a letter on May 19, 2025. Imposing 100% of the penalty for the time from May 19, 2025, to September 25, 2025, the day before this staff report, would result in a maximum penalty of \$1,428,750. Because Commission staff is combining many violations into one, Commission staff recommends that the maximum penalty for this time period be imposed, of \$1,428,750. In summary, the Commission is imposing significant penalties to be paid by John C. Levy Jr., in compliance with the criteria set forth in the statute.

Potential for Property Lien

Under Section 30821(e) the Coastal Act states:

(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.

Therefore, in this case, if the Commission imposes administrative penalties and John C. Levy Jr. fails to pay their respective penalties, the Commission authorizes the Executive Director to record a lien on 2401 Mountain View Drive (APNs 155-190-15, 155-190-16, 155-101-67, and 155-101-68), as appropriate, in the amount of the penalties imposed by the Commission.

G. Defenses Alleged and Response Thereto

Defenses Asserted and Responses Thereto

On October 2, 2024, Commission Executive Director Kate Huckelbridge sent a letter to John C. Levy, Jr., and the Buena Vista Revocable Trust, with the subject line “Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Penalty Proceedings; and Notice of Intent to Record a Notice of Violation” (the “Notice of Intent” or the “NOI”) (Exhibit 83). The Notice of Intent explained that Mr. Levy and the Trust had a right to respond to the allegations therein by completing a statement of defense form by October 23, 2024, and a blank Statement of Defense (SOD) form was included with the NOI.

Mr. Levy asked for a time extension to find a new lawyer and to assemble materials in support of his position (Exhibit 84), and Commission staff granted him a time extension (Exhibit 85) to November 22, 2024, but they did not hear from Mr. Levy by that date. Since the time period to respond to the NOI regarding the proposed recordation of the notice of violation had passed without response, Commission staff recorded a Notice of Violation against Mr. Levy’s property in January of 2025 (Exhibit 87), as provided for in the Coastal Act (PRC § 30812(b)) and in the October 2, 2024 letter to Mr. Levy.

Commission staff also reached out to Mr. Levy again on February 3, 2025 (Exhibit 88). Mr. Levy then began sending multiple letters to Commission staff, each raising new arguments (Exhibits 92-97, and 101), but which were not organized as one Statement of Defense, and all of which were received after the Statement of Defense deadline. Although most of the arguments had already been addressed by District Enforcement Officer Marsha Venegas (Letters at Exhibits 53, 55, 73, and 78), Commission staff nevertheless provided substantive responses to the arguments in these letters (Exhibits 118 and 120). In addition, Commission staff sent many more letters to Mr. Levy explaining that they would prefer not to argue any further, given that District Enforcement Officer Marsha Venegas already sent Mr. Levy many letters responding to his arguments, and so they would therefore prefer to enter into settlement discussions (Letters at Exhibits 88, 90, 94, 96, 100, 106, 108, 110, 112, and 122). Mr. Levy refused to talk to Commission staff unless he could record the conversation, so the parties never spoke. Instead, Mr. Levy sent two additional letters (on May 19 and July 9), reiterating his arguments, to which Commission staff also responded.

In addition, on August 1, 2025, the City sent two letters to Commission staff making arguments that largely overlapped with Mr. Levy's arguments, but which provided more detail than many of Mr. Levy's arguments. One of the letters was written by City Attorney Marissa Kawecky and focuses on the Beach Access Easement and Open Space Easement (Exhibit 125). The other, by Community Development Director Jeff Murphy, focuses on the Lagoon Access Easement, the CDP 97-59 conditions, and the general unpermitted development with regards to the Levy Property (Exhibit 126). Finally, on September 11, 2025, Ms. Kawecky sent one final letter, and Chandra Slaven, on behalf of Mr. Levy, also sent a letter (Exhibits 129 and 130). Because the City's letters include and elaborate on many of Mr. Levy's positions, and because Ms. Slaven's September 11, 2025 letter to Commission staff "integrates" the City's August 1 letters into it, the Commission responds, below, to the City's letters as well as to Mr. Levy's.

Because Mr. Levy presented his arguments in various letters sent at different times, and because of the overlap with arguments sent by the City, the Commission responds to the arguments by topic, starting with the Beach Access Easement.

1. The Beach Access Easement

As indicated above, CDP 6-83-051 included two conditions (6 and 8) requiring the applicant to offer to dedicate easements over the area immediately south of Mr. Levy's property for open space and public access, respectively, and those offers were recorded and accepted, so the easements exist. Nevertheless, Mr. Levy and the City argue that Mr. Levy should be able to retain a locked gate within this area, blocking

access to the entrance from the public road, for various reasons. We respond to each below.

(a) CDP 6-83-051 and Public Access

(i) Existing Gate at the Time of CDP 6-83-051

In the City's August 1, 2025 letter from City Attorney Marissa Kawecky, the City argues that Mr. Levy (and the City) do not have to open the gate because "Coastal Commission documents indicate a fenced and locked gate at or near the present-day location of the Mountain View Drive gate was installed at some point long before the approval of the 14-unit subdivision under CDP 6-83-051." As evidence that the Commission knew a gate existed at the time it approved CDP 6-83-051, the City cites to the Commission's staff report for that permit, which states that the subdivision project at issue in there was "consistent with all applicable LCP and Coastal Act policies since adequate vertical access already exists and the project will provide lateral access opportunities." The City further states that "by not requiring removal of the existing gate, the Executive Director implicitly determined the gate would not interfere with the public's right to lateral access to the sea or affect the Beach Access Easement." Mr. Levy's letter from Chandra Slaven, dated September 11, 2025, also states that in 1983, "a vehicle gate exists at/near the current Mountain View Drive location."

Note that the City's cited quote of the Commission staff report in the prior paragraph does not mention a gate. In fact, there is no mention of any gate anywhere in the staff report for CDP 6-83-051 (staff report at Exhibit 12), much less a statement that any such gate could remain in perpetuity. And that is not surprising, since it would be nonsensical for the Commission to require a public access easement but simultaneously make an exception for a gate that renders the easement largely useless. The City's argument is that a gate must have been there, and that Commission staff must have known about it, and that the Commission therefore must have "implicitly" intended for the Beach Access Easement to include an exception for a gate, without saying so. In addition, because Mr. Levy's current gate is a new gate, installed after 1998, for the City to make its case, its argument has to be that in 1983, the Commission not only knew of an existing gate and intended for it to be allowed to stay, but also that it intended for all future gates in the approximate location of an existing gate in 1983 to also be excepted from the requirement to be consistent with the Beach Access Easement (as well as the Open Space Easement over the same area). The City argues this even though no gate is mentioned anywhere in the staff report for CDP 6-83-051 or the recorded offer to dedicate the Beach Access Easement. To follow the City's argument yet further, when the Commission adopted findings in support of its action on the appeal of CDP 97-59, the Commission must have once again implicitly found that the Beach Access Easement had an unwritten exception for gates, including one which made the public access easement largely useless. This would not only be absurd, it is also simply not supported by the facts.

The City argues for an “implicit” and unwritten authorization of the gate by CDP 6-83-051 despite the fact that the Commission never made any findings regarding any gate or any other obstructions to public access that may have existed within the proposed Beach Access Easement and Open Space Easement. In addition, Condition 8 of CDP 6-83-051, which required the recordation of the Beach Access Easement, does not include any exceptions for any gate, and accordingly, neither does the recorded offer to dedicate the Beach Access Easement (easement at Exhibit 16). This makes sense, as including an exception within a public access easement that allows that easement to be blocked off from the public by a gate would render the Commission’s simultaneous imposition of the requirement for the easement itself ineffectual to the point of being meaningless.

In contrast, at the same time that the Commission imposed the requirement for the Beach Access Easement, and did so without listing any exceptions, the Commission demonstrated that when it was aware of existing or potential development that could conflict with the purposes of the easements it was requiring, but which it intended to allow to remain, it could and did acknowledge and provide for that. The Commission specifically included a number of exceptions to the restrictions imposed by the Open Space Easement, both in the condition requiring the easement (Condition 6) and in the resulting offer to dedicate, including the allowance for prospective public access improvements, a continued right of access for necessary maintenance to the existing weir in Buena Vista Lagoon, as well as right to use the area for future dredging or fill removal that might occur to enhance the habitat in Buena Vista Lagoon (easement at Exhibit 17). Yet no past, present, or future gate is included in the list of exceptions to the Open Space Easement or the Beach Access Easement. Further, Condition 2 required a third easement not at issue here, for open space over the bluffs adjacent to the Beach HOA condo development, and the recorded offer to dedicate for that easement also includes three exceptions, relating to maintenance of the vegetation on the bluff (Exhibit 133). Thus, it is nonsensical to believe that while the Commission allowed for six different exceptions to the other two easements it was requiring at the same time, the Commission intended to allow for a seventh exception that would, at a minimum, greatly negatively impact the public access easement, but the Commission declined to mention it in the staff report or any of the required easements, deciding instead to leave that one exception uniquely implicit. Instead, it is clear that the Commission never intended to except any gate from the requirements of Beach Access Easement, and even if it had intended to, which there is no evidence of, it did not except any gate, and the Beach Access Easement and Open Space Easements therefore do not allow for a gate that blocks public access.

(ii) Vertical vs Lateral Public Access Easements

The City also more specifically argues, in a September 11, 2025 letter, that “the Commission’s records show that no vertical accessways were required with the approval of CDP 6-83-051 and CDP 97-59. Only lateral accessways were required by the Coastal Commission” (Exhibit 129). The City therefore appears to be arguing that because the Commission did not explicitly describe the Beach Access Easement as a

vertical access easement (the general name for easements that provide access from an inland area to the sea), but instead referred to it as a lateral access easement (the general name for easements that provide access across a beach upcoast and downcoast parallel to the sea), that this therefore provides more evidence for the City's argument that the Commission intended to create an 'implicit' exception for gates across it that block public access. This is not the case.

Like many public access easements, the area covered by the Beach Access Easement is not a typical lateral access easement or vertical access easement. Most public access easements described as 'lateral' are along the beach, but this one does not directly touch the sea, and it also does not even touch the sandy beach adjacent the sea, which is on a different parcel. Instead, nearly all of the easement consists of back beach or upland areas, with some parts touching the mouth of the lagoon. At the time of consideration of CDP 6-83-051, the developer had still not recorded a public access easement over the parcel west of the Beach Access Easement, which would eventually be required the next year pursuant to the Boundary Line Agreement reached between the developer, the title company, and State Lands Commission in 1984. Therefore, at the time of consideration of CDP 6-83-051 in 1983, the Beach Access Easement dead-ended at dry land on its western edge that the developer asserted was private property. Thus, it makes sense that the Commission did not describe this easement as a vertical access easement given that it did not actually physically reach the ocean, or even a public access easement adjacent the ocean, as it does now. In fact, because the developer considered the dry sand to be privately owned at the time, if you had walked from Mountain View Drive across the area of the Beach Access Easement towards the ocean, you would have encountered dry land, apparently privately owned, between you and the ocean. This context at the time helps to explain why Commission staff chose to characterize the area as 'lateral,' even though that characterization is not typical either.

Moreover, because public access easements described as 'vertical' typically extend from an inland area all the way to the ocean, if the City's logic applied to vertical easements as well, that would mean that the area of beach covered by a vertical access easement cannot be used for lateral access across it. In other areas of the coast where lateral access easements are a patchwork where parcels of private property unburdened by such access stick out like missing teeth, to say that a vertical access easement can only provide one kind of access, from the ocean to the sea, but not parallel to the sea, would have serious implications for the ability of the public to use the beach. This would effectively create much more missing teeth in the patchwork of public access on those beaches. However, the Commission has not interpreted vertical access easements to disallow public access parallel to the sea across them, and vice versa, for precisely this reason. To follow the City's reasoning, an underlying property owner of a vertical access easement could install fencing around it on the sand that blocked the public from accessing it except from below the high tide line, because any other access would be parallel to the sea, which is only allowed for lateral access easements. This absurd result would not be supported by the Commission's decisions on these matters, nor the way beaches are accessed by the public.

Moreover, regardless of what name Commission staff chose to call the uniquely geographically situated Beach Access Easement, the Commission clearly, undisputedly

required the creation of a public access easement over this area. So regardless of how the Commission labeled this easement requirement, it required public access here. And, as described above, the Commission chose to add exceptions to other easements it was simultaneously requiring, allowing for half a dozen other types of development, and could have added a similar exception for gates, but did not do so, and did not even mention any gates at all in the staff report, the Beach Access Easement, or the Open Space Easement.

(iii) Mr. Levy's Ingress/Egress Easements

In Mr. Levy's February 18, 2025 letter (Exhibit 93), he argues that "Public access at the Mountain View Gate was never mandated... [in] the subsequent driveway easement recorded 84-294255 (dated 8/2/84)." Mr. Levy actually holds two ingress/egress easements, both of which overlap with a portion of the Beach Access Easement, but the one recorded on August 2, 1984, is the easement that Mr. Levy uses to access The Levy Property, hereinafter referred to as the "Ingress/Egress Easement" (Exhibit 15). However, a public access easement, the Beach Access Easement, has also been recorded over the same area, and it mandates that public access be allowed through the area. Neither of these easements is an "exclusive" easement, meaning that neither gives the people who are entitled to access based on the easement *exclusive* access. It is very common for a piece of land to be subject to multiple easements, and one non-exclusive easement does not negate another. Public access easements are, by definition, not exclusive, as they apply to the general public, and the Ingress/Egress Easement does not say anything about providing the owner of the Levy Property exclusive access across the area. Thus, there is no conflict between the two easements, and public access and Mr. Levy's vehicular access can easily coexist. In addition, if Mr. Levy had exclusive access over this area, this would be directly inconsistent with the needs of the underlying property owner, the Beach Homeowners Association ("the Beach HOA") to use their land for their own purposes, and for the City to use the area for lifeguard trucks and to repair the weir in Buena Vista Lagoon, which are all uses that have occurred without objection from Mr. Levy. This issue is also discussed in more detail in Commission staff's letter to the City dated June 24, 2025 (Exhibit 117).

(iv) The Commission's Approval of the Offers to Dedicate and the Language of the Offers

The City's August 1, 2025 letter from City Attorney Marissa Kawecky (Exhibit 125) notes that the condition requiring the Beach Access Easement required the easement to be recorded "free of prior liens except tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed." The City then infers, from the Executive Director's approval of the offer, that he must have treated an existing gate as consistent with the easement. However, the quoted language, which refers to liens and encumbrances, is about legal interests and

obligations, such as conflicting easements, not about physical obstructions, which can be, and regularly are, allowed to be left in place at the time of an offer but later required to be removed once an easement is perfected, just as the City has noted to be the case with regards to the Lagoon Access Easement, as is discussed in the next topic section below. Moreover, as is also discussed more fully below at section 1.a(iv), the staff report for CDP 6-83-051 makes no mention of any gate, so there is no evidence that the Commission, including its staff, was even aware of it, and the recorded Beach Access Easement and Open Space Easement make no exception for any gate, even though the Open Space Easement includes several exceptions for historic and prospective uses of the area. So, to the extent the Commission may have been aware of the gate, the evidence actually suggests that, unlike the items the Commission allowed to remain, the Commission did not intend to allow the gate to remain once the easement took effect.

The City also argues that requiring Mr. Levy's gate to be opened to the public would be "inconsistent with the language of the easements, which do not require removal or timed opening of the gate upon acceptance." Mr. Levy also makes substantially the same arguments in his letter dated February 18, 2025 (Exhibit 93). As is detailed above, to the contrary, a locked gate is antithetical to the fundamental purpose of the Beach Access Easement and Open Space Easement, and neither easement make any exception for any gates, past, present, or future. Moreover, as is explained above, there is no evidence that the Commission was aware of any existing gate, and it is unclear how the Commission in 1983 could have predicted that a future gate would be built nearly two decades later within the Beach Access Easement that would obstruct public access there and need to be removed upon acceptance. Further, to the extent that the City and Mr. Levy would require the Commission to have predicted in 1983 that this specific obstruction would need to be removed in 2005, they are effectively arguing that the Beach Access Easement and Open Space Easement cannot be enforced because Mr. Levy installed a gate within it prior to their acceptance. This would create a loophole for all easements required by the Commission, as well as all easements generally, that would allow persons to subvert the purposes of those easements simply by constructing things or engaging in activities there prior to acceptance, which is an absurd result that would render all such easements meaningless. Thus, there was no way for the Commission to include the language the City and Mr. Levy argue was necessary within the Beach Access Easement and Open Space Easement, nor was there any need for the Commission to do so.

It is also important to note that this defense is inconsistent with the position taken by Mr. Levy and the City with respect to the Lagoon Access Easement. Both Mr. Levy and the City have argued that Mr. Levy does not have to open his gate within the Lagoon Access Easement because they argue that the Lagoon Access Easement has not been accepted, but they concede that if they believed it to be accepted, Mr. Levy would have to open his gate there. The City argues in their August 1, 2025 letter from Jeff Murphy that "once the IOD [offer to dedicate] is accepted and the trail improved, the gate hours will be enforced" (Exhibit 126). Mr. Levy makes substantially the same admission in many letters, including in his letter dated March 10, 2025, that states that "When the City is prepared to accept the IOD, it will bear the responsibility of maintaining the alleged access and ensuring the gate remains open during the

appropriate times” (Exhibit 101). Neither Mr. Levy nor the City have argued that the offer to dedicate the Lagoon Access Easement needs to include any language regarding opening of the Lagoon Access Easement gate upon acceptance, nor have they argued that CDP conditions itself needed to include any such language.

(v) Ownership of the Underlying Fee Title by the Beach HOA

In Mr. Levy's February 18, 2025 letter, he also argues that “the Beach Homeowners Association owns the property...I have never owned it and do not have the authority to grant public access” (Exhibit 93). Mr. Levy reiterated this point in his March 20, 2025 letter, where he stated “My access is currently an easement [the Ingress/Egress Easement]. Therefore, it is legally impossible for me to provide public access.” (Exhibit 107). In many other letters, Mr. Levy also requests that the Commission pursue an enforcement action against the Beach HOA instead of him. For example, on July 9, 2025, Mr. Levy stated “If the Coastal Commission believes the HOA is out of compliance, it must direct enforcement toward them. I am not the party responsible” (Exhibit 119). Mr. Levy reiterated this position in his September 11, 2025 letter from Chandra Slaven, which states that “the gate is located on HOA property; therefore, my client cannot open it unilaterally” (Exhibit 130).

In fact, Mr. Levy not only has authority from the Beach HOA to grant public access, he is required to do so per the conditions of the authorization of his gate. The gate is Mr. Levy's gate. He sought and obtained a permit from the City to allow him to build it. As part of that permit application, he had to demonstrate that the owner of the underlying property (the Beach HOA) would allow him to build the gate. Accordingly, in May of 1998, the Beach HOA sent a letter stating that it would allow Mr. Levy to build the gate “subject to the following conditions... 3. The BHA, its designees **and others legally entitled thereto shall have access at all times through the gate** by means of the controlling device used, i.e. key pad, card, lock, or other controller.” (Exhibit 20) (emphasis added). Upon acceptance of the Beach Access Easement in 2005, the public became legally entitled to use the gate, and Mr. Levy was therefore required to open it to the public pursuant to the conditions of the Beach HOA's authorization. Thus, ownership of the underlying fee title is irrelevant. Mr. Levy has not only the legal ability, but an affirmative *obligation*, to open the gate to allow use of the area by the public, since the public is “legally entitled” to access the area, based on the easement.

Moreover, Mr. Levy owns, operates, and maintains the gate; the Beach HOA does not. In fact, when Commission staff reached out to the Beach HOA to discuss this matter in 2025, the Beach HOA informed Commission staff that the HOA Board was not even aware that they owned the land in question, and stated that they did not have the code to the gate (Exhibit 124). Further, Mr. Levy has provided no evidence of, and the Commission is not aware of, any statements by the Beach HOA that purported to block Mr. Levy from opening the gate to the public, and the Beach HOA stated to Commission staff that they also have no evidence that the Beach HOA ever told Mr. Levy he could not open the gate to the public. On July 21, 2025, Commission staff sent a letter to Mr. Levy asking him if the Beach HOA had ever told him that he could not allow public

access (Exhibit 120), but Mr. Levy never answered Commission staff's question. In addition, to confirm that the Beach HOA had never told Mr. Levy that he could not open his gate to the public, Commission staff discussed it with the HOA, who confirmed this, and Commission staff wrote a confirming letter to that effect on July 31, 2025 (Exhibit 124). And as noted above, the Beach HOA's original consent to the very idea of a gate was conditioned upon providing access to all those with legal rights, such as those conveyed by the public access easement here.

In addition, although Mr. Levy claims that he cannot open the gate for the public, he has routinely opened the gate for others besides himself, including his paying guests while he rented his property out while he lived abroad, and the guests of Mr. Levy's guests when Mr. Levy's guests held events and weddings there. This is evident by the City's enforcement action against Mr. Levy to order him to stop using the area for weddings without local permits (Exhibit 48). In addition, Mr. Levy has routinely opened the gate for City staff, and even formally agreed to continually provide the gate access code to the City going forward if he decided to change the gate code, as is detailed in a Gate Access Agreement (Exhibit 81). Just as the Beach HOA was unaware that they owned the land at all when Commission staff reached out to them in 2025, the Beach HOA therefore told Commission staff that they were unaware that Mr. Levy entered into the Gate Access Agreement with the City in 2023, and that they therefore did not give any authorization to Mr. Levy to do so. These issues were also discussed in Commission staff's letter to Mr. Levy dated July 21, 2025 (Exhibit 120).

In sum, Mr. Levy has: (1) the means (because he owns and operates the gate), (2) the legal ability (because it is his gate, he is already opening and closing it, and no one, including the fee title owner, has ever restricted his ability to open it), and (3) an affirmative obligation (because the fee title owner conditioned its allowance for the gate on Mr. Levy opening it to anyone legally entitled to access the area, and the area is now subject to a public access easement), to open the gate to allow use of the area by the public.

(b) CDP 97-59 and Public Access

(i) Existing Access at the Time of CDP 97-59

In support of the City's argument that the Commission intended to allow Mr. Levy to keep his gate locked even beyond when the easements were accepted, the City also states that "the Coastal Commission's Revised Findings discuss a long history of a 'fenced and locked gate.'" However, that was in 1998, long after the Commission had required the easements over this area in 1983, and as stated above, there was no evidence that the Commission was aware of any gate in 1983, and neither the Beach Access Easement nor the Open Space Easement provide any exceptions for any gate. In addition, CDP 97-59 was not an amendment to CDP 6-83-051. Further, the Revised Findings for CDP 97-59 are not for the CDP itself, but for the Commission's decision to find No Substantial Issue, and as such, the discussion regarding a historical gate had no bearing on the status or scope of the easement required 15 years earlier and did not

affect the findings made in CDP 6-83-051 for that reason. Thus, the Commission's discussion of these issues did not change the requirements of CDP 6-83-051 or the Beach Access Easement itself. The discussion of any historical gate was merely for context in leading the Commission's ultimate and explicit conclusion that it need not address the legality of the gate at that time because the easement was not yet accepted. These issues are also discussed above and in Commission staff's letter to the City dated August 22, 2025 (Exhibit 128).

(ii) *The Approval of Mr. Levy's Gate and its Consistency with the Coastal Act*

The City's August 1, 2025 letter from City Attorney Marissa Kawecky also argues that in the Revised Findings for CDP 97-59, the Commission affirmatively found Mr. Levy's gate to be consistent with the Coastal Act because it did not affect "existing access" given the stairway that existed nearby. Mr. Levy makes substantially the same argument in his February 18, 2025 letter (Exhibit 93), and in his September 11, 2025 letter from his agent Chandra Slaven as well (Exhibit 130). In an effort to argue that the Commission intended to allow Mr. Levy to permanently lock his gate even after the easements are accepted, the City cites selected quotes from the Revised Findings. In Mr. Levy's September 11, 2025 letter from Chandra Slaven, he similarly argues that "Re-characterizing that Commission-vetted gate as a violation conflicts with administrative collateral-estoppel principles: agencies acting in a judicial capacity may be bound by prior factual determinations. (People v. Sims, 32 Cal. 3d 468, 479–482; Pacific Lumber Co. v. State Water Res. Control Bd., 37 Cal. 4th 921, 943–944.)"

However, a careful review of the record for this matter reveals that the City's and Mr. Levy's analysis fails to consider the significance of the part of those findings that directly address the conflict between the gate and the future easements, wherein the Commission indicates that this conflict will need to be rectified when the easement is perfected. The Commission's 1998 findings state:

In its approval of CDP #6-83-51, the Commission required Lot 3, the lot over which the applicant must take access to get to the project site, to be reserved as open space The offer of dedication has not yet been accepted. The Commission finds that at this time, it need not address the legality of the fence or the ability of the landowners to maintain the fence after the offer of dedication has been accepted. [Exhibit 26]

In other words, the Commission noted the potential future conflict but found it could allow the permit for the gate *at that time* because the conflict could be resolved later, if and when the easement was perfected. The Commission routinely allows for inchoate easements to be fenced off with gates prior to acceptance of the offer that will effectuate the easement, given that easements are not legally effective until that time. However, the subject easements have now been accepted, and staff rightly determined that the gate is inconsistent with the resulting easements in the Notice of Intent dated October 2, 2024 (Exhibit 83). Through this action, the Commission concurs and imposes a cease and desist order requiring Mr. Levy to remove the obstruction.

However, the Commission is providing one final opportunity for Mr. Levy to avoid paying penalties for this violation. The orders impose no penalties for this violation unless Mr. Levy refuses to open or remove the gate in compliance with the Beach Accessway Opening Plan required by the Cease and Desist Order at Appendix A.

The City further argues that Coastal Act section 30212(a)(2), which provides public access from the nearest public roadway to the shoreline and along the coast, is not required in new development projects when adequate access exists nearby, and that the Commission found the stairway to be providing adequate access in the Revised Findings. However, section 30212 of the Coastal Act, which addresses the general need to protect public access in new development projects, and the limited exception which may apply in some cases if adequate access is found to exist nearby, is irrelevant, given that the Commission already found that a public access easement was necessary here and specific to this case, for the new development project authorized by CDP 6-83-051. That CDP has never been amended, and that easement, the Beach Access Easement, has been duly offered, accepted (with both offer and acceptance having been duly recorded), and improved for access. Moreover, the City points out that the Commission explained that the existing status quo, even given the lack of acceptance of the Beach Access Easement, included “adequate pedestrian access....”. However, it is important to note that “adequate *pedestrian* access” (emphasis added) should not be conflated to mean “adequate access” generally, notwithstanding the context of the Commission’s findings in light of the Beach Access Easement not yet being accepted at that time, because not all members of the public are able to use pedestrian accessways. These issues are also discussed in the Commission’s letter to the City dated August 22, 2025 (Exhibit 128). In any event, that particular finding is irrelevant because the easement was clearly required and now undisputably exists.

(iii) *The Approval of Mr. Levy’s Gate within an Area Covered by Offers to Dedicate*

Similarly to the City and Mr. Levy’s argument with regards to the language of the offers to dedicate not including any specific terms regarding removal of a future gate upon acceptance, the City argues in its August 1, 2025 letter from Marissa Kawecky that Mr. Levy can keep the gate closed after the easement was accepted because “the Coastal Commission’s decision on the appeal [of CDP 97-59] did not require the gate to be removed or to remain open during certain times of day” (Exhibit 125). However, the fact that the Commission did not require removal *at that time* does not change the fact that the gate is in conflict with the easement that arose subsequently. The offers for the Beach Access Easement and Open Space Easement were already recorded in 1998, when the Commission acted on that appeal, and, as is explained above, while the offer for the Open Space Easement provided several exceptions to allow for various historic and ongoing uses, the conditions the Commission imposed on CDP 6-83-051 and the subsequent recorded offers to dedicate did not include any exceptions for any gates once the easements became effective, and those requirements remained unchanged by the Commission’s finding of No Substantial Issue with regards to CDP 97-59.

Moreover, CDP 97-59 did not purport to amend CDP 6-83-051, and even if it had, given the prohibition in 14 C.C.R. section 13166(a), the Commission could not have accepted any amendment that would have “lessen[ed] or avoid[ed] the intended effect of [the existing] permit” by reducing the public access that was already required in the Beach Access Easement there. Therefore, the Commission’s finding of No Substantial Issue could not and did not change the public access requirement in CDP 6-83-051 or the pending offer of the Beach Access Easement already recorded pursuant thereto.

Further, because the unchanged Beach Access Easement and Open Space Easement were not yet accepted, the Commission did not need to address the issue of the proposed gate within them at that time, and said as much. In its findings, the Commission stated that “at this time, it need not address the legality of the fence or the ability of the landowners to maintain the fence after the offer of dedication has been accepted.” This makes sense, because a vehicle gate is not necessarily incompatible with public access. Many public beach accessways have vehicle gates within them, which are often used by State Parks or local governments to close parking lots late at night until the early morning. At the time, there existed the very real possibility that upon acceptance of the Beach Access Easement, the vehicle gate would be used in this way, and if so, no Commission action would have been necessary. Accordingly, the Commission reserved its right to address the vehicle gate if and when the easements were accepted, and if Commission action became necessary. Thus, given the existing unchanged offers to dedicate, combined with the possibility that the gate would simply be opened during the day upon acceptance, the Commission simply reserved the right to address the gate upon acceptance if need be.

Moreover, as is also noted above, the argument raised by Mr. Levy and the City regarding the Beach Access Easement is inconsistent with their positions regarding the Lagoon Access Easement. Both Mr. Levy and the City have argued that Mr. Levy does not have to open his gate within the Lagoon Access Easement because they argue that the Lagoon Access Easement has not been accepted, but they concede that if they believed it to be accepted, Mr. Levy would have to open his gate there. Neither Mr. Levy nor the City has argued that CDP 97-59 needs to include any condition language regarding opening of the Lagoon Access Easement gate upon acceptance, nor have they argued that the offer to dedicate itself needed to include any such language.

c. The Beach Access Easement and Disability Access

In the City’s September 11, 2025 letter, the City notes that “the driveway that runs under the Mountain View Drive gate down to the dirt portion of the North Beach Trail is currently not ADA compliant due to its steep grade” (Exhibit 129). However, the paved road currently there would easily allow vans used by persons with disabilities to access the dirt road below, which is relatively flat and could easily be used by a beach wheelchair or other mobility device, or could also simply be accessed by the vans themselves. This area is regularly driven across by city vehicles and would accommodate vans for persons with disabilities as well. Moreover, many persons using

wheelchairs, walkers, strollers, or other mobility devices are often forced to use non-ADA compliant infrastructure, and many would likely do so here when faced with the choice between this or a stairway. In addition, the Commission would point out that other mobility devices not related to disabilities, such as bicycles or wagons, could also easily be used here.

Finally, the City argues that this area is not “required to be ADA compliant under the Federal Accessibility Standards for Trails, referenced in the California State Parks Trails Guide.” Although not necessary for disabled access as described above, ADA improvements would certainly be a welcome addition for public access, even if done voluntarily.

2. The Lagoon Access Easement and Locked Gate Blocking Access Thereto

(a) Acceptance of Easement Offer

(i) *The Trails Plan*

In a March 10, 2025 letter, Mr. Levy argues that the City has not accepted the offer to dedicate the Lagoon Access Easement, stating that “to date, the City of Carlsbad has refused to accept the IOD” (Exhibit 101). The City makes substantially the same argument in its August 1, 2025 letter from Community Development Director Jeff Murphy. However, the City has in fact accepted the offer to dedicate. By the express terms of the offer, recorded as Instrument No. 2018-0142309 (Exhibit 60), it may be accepted by resolution of the City Council or as authorized by Municipal Code Chapter 11.04.060. The City has accepted it via both means. This code section discusses how the City of Carlsbad is not responsible for maintaining trails until they are formally accepted into the Citywide Trails System. Accordingly, shortly after the offer to dedicate was recorded, on August 27, 2019, the City Council formally accepted this trail into the Citywide Trails System via the adoption of the Trails Master Plan, which included the lagoon public access easement trail (Exhibit 66), via City Council Resolution No. 2019-150 (Exhibit 69). Thus, by the terms of the offer, it has been accepted, and it was even viewable as a public trail on the City’s website (Exhibit 104), until the Commission notified the City of this fact and the City changed the webpage.

Mr. Levy also argues in a July 9, 2025 letter that, “an IOD must be affirmatively accepted either by a resolution of the Carlsbad City Council or as authorised by Carlsbad Municipal Code Section 11.04.060. Neither action has occurred” (Exhibit 119). However, as stated above, both actions have occurred. City Council Resolution No. 2019-150 added the Lagoon Access Easement to the Trails Plan pursuant to Municipal Code Chapter 11.04.060.

Mr. Levy also argues in the same letter that “The City’s Trails Master Plan, adopted in 2019 by Resolution No. 2019-150, merely identifies potential or conceptual trail alignments. It does not constitute formal legal acceptance of the IOD, nor does it

create a binding trail easement over my property.” The City further contends in its August 1, 2025 letter from Jeff Murphy that the Trails Master Plan merely “references” the Lagoon Access Easement, and that the Plan “does not include, however, any language regarding acceptance of easements for specific trails [sic], nor the detailed description of the metes and bounds of those easements.” However, the Lagoon Public Access Easement does not specify that any particular kind of resolution is required, only that the City Council may accept it via resolution, and the resolution that passed clearly adds this trail to the Citywide Trails System. The adopted Trails Master Plan graphically depicts the area of the Lagoon Public Access Easement as part of the North Beach Trail and includes information about it. Also, Chapter 11.04.060 also does not provide any sort of differentiation between types of additions to the Citywide Trail Plan. Moreover, the offer to dedicate (IOD) already includes metes and bounds.

In the City’s letter from Community Development Director Jeff Murphy dated August 1, 2025, the City further argues that “only the City Council or city manager (or designee) has the authority to accept the IOD [offer to dedicate], an easement required as condition of development (see Government Code Section 7050; Carlsbad Municipal Code Section 11.04.050).” Mr. Levy’s letter from Chandra Slaven dated September 11, 2025, similarly asserts that the Trails Master Plan “did not execute the written instrument of acceptance required by the Carlsbad Municipal Code to add any specific trail segment to the Citywide Trail System.” However, the Offer to Dedicate the Lagoon Public Access Easement states that it “may be accepted by resolution of the City Council of the City of Carlsbad or as authorized by Carlsbad Municipal Code Chapter 11.04.060.” It therefore provided two separate means by which the offer could be legally accepted. Carlsbad Municipal Code section 11.04.060, entitled “Delegation of acceptance authority for public trails,” states, in subpart (a), that:

The city shall not be responsible for maintaining, nor shall it be liable for any failure to maintain any trail identified in the Open Space Conservation Resource Management Plan until it has been formally accepted into the Citywide Trail System by written instrument signed by the City Manager or designee as a public trail and only if the acceptance specifies that the trail is to be maintained by the city.

This is the only discussion of a means of acceptance in that section, and this is the only section referenced in the Offer to Dedicate recorded April 10, 2018, as Document No. 2018-014209, and it indicates that acceptance can occur by accepting a trail “into the Citywide Trail System.” As Commission Enforcement staff stated in its May 23, 2025 letter to the City (Exhibit 114), on August 27, 2019, the City Council formally accepted this trail into the Citywide Trails System via the adoption of the Trails Master Plan, which included the Lagoon Access Easement trail (labeled as part of a trail named North Beach Trail), via City Council Resolution No. 2019-150. Therefore, this trail easement was accepted both via City Council Resolution, as well as via acceptance into the Citywide Trails System, pursuant to Carlsbad Municipal Code Chapter 11.04.060. This issue is also discussed in Commission staff’s August 22, 2025 letter to the City (Exhibit 128).

(ii) Other Evidence Allegedly Relevant to Acceptance

Mr. Levy also argues in his July 9, 2025 letter that it is evident that the City has not accepted the Lagoon Access Easement because “There are no trailheads, no signage, no grading, and no improvements made” (Exhibit 119). However, such steps are separate from the legal acceptance that creates a valid easement, and none of this is relevant for the question of easement acceptance. Carlsbad Municipal Code section 11.04.060 does not require the City to install signs or any other improvements in order to accept an easement. In fact, the quote of that code section above shows that it treats acceptance of an offer as separate from and prior to maintenance.

Further, even if evidence of necessary improvements were required to show acceptance here, which it is not, improvements are not needed to access this trail. There is already a sign that advertises public access on the locked gate (albeit staff would not find the sign consistent with the Commission’s public access policies because it also includes language likely to discourage public access). The trail could be found on the City’s website as well, until the Commission notified the City of this and they changed the webpage. The trail is in a natural state, and the Trails Master Plan designates the trail as a Type 1, unpaved “nature trail.” In addition, the Trails Master Plan also designates the trail as maintained by “Volunteers/City Parks.” Moreover, to the extent that any improvements or maintenance would be helpful here, volunteers and City Parks are unable to maintain the area of the Lagoon Public Access Easement due to Mr. Levy’s unpermitted, permanently locked gate.

The City further argues in its August 1, 2025 letter from Community Development Director Jeff Murphy (Exhibit 126) that “to formalize the acceptance of an easement, the city clerk must record a Certificate of Acceptance pursuant to Government Code Section 27281 and Carlsbad Municipal Code section 11.04.050(d).” The City cites Government Code section 7050 for the proposition that the offer could only be accepted in a limited manner, but that is not what that section says. It says that the Recorder’s Office won’t accept an easement for recordation without a signature from the accepting municipal body on a Certificate of Acceptance. However, recordation is not necessary for an acceptance to be effective. Moreover, even if that section did list a particular method, it specifically says that it is providing an “alternative” procedure to “any other procedure authorized by law.” The City created the offer at issue, with its language allowing for acceptance as indicated in the offer. This issue is also discussed in Commission staff’s August 22, 2025 letter to the City (Exhibit 128).

The City also argues in a September 11, 2025 letter (Exhibit 129) that “The city prepared a draft certificate of acceptance of easement and acknowledgement by Coastal Commission then-Staff Counsel Karla Galvez, but neither the city manager, city attorney, city clerk, nor Coastal Commission staff counsel executed this document.” If the City indicated an interest in resolving this issue by clarifying that it had accepted the easement, Commission staff would quickly review any proposed acceptance document and facilitate the acceptance. However, to the contrary, the City has made it clear that they are not interested in perfecting this easement at this time, stating in their August 11, 2025 letter that the City believes that the easement cannot now be

“meaningfully integrated into the city’s trail system.” Although, for the reasons above, the Commission does not believe any further acceptance is necessary, Commission staff has inquired as to what this means and when the City believes it will be ready.

(b) CDP 97-59 Authorizations and Obligations Regardless of Acceptance

(i) CDP 97-59 Conditions

Mr. Levy argues in a March 20, 2025 letter that “CDP 97-59 does not obligate me to provide public access. If and when the City of Carlsbad formally accepts the IOD, they will assume responsibility for providing access, as well as the liability and maintenance of the trail” (Exhibit 107). Mr. Levy reiterates this in his July 9, 2025 letter where he states that “Condition 17 required only one thing of me: to provide an Irrevocable Offer to Dedicate (IOD) to the City of Carlsbad. It did not require me to open or improve a trail, maintain it, or assume any liability for its use” (Exhibit 119). These issues are red herrings with respect to the allegation that the existing gate is an unpermitted obstruction to public access.

The issue is not whether Mr. Levy is required to improve a trail or maintain it or assume liability for its use. The issue is whether he has authorization to block access to an already existing trail. In fact, as was detailed in the staff reports for both CDP 6-83-051 and 97-59, there is a long history of public use of trails on what is now the Levy Property. Moreover, CDP 97-59 never authorized Mr. Levy’s installation of a locked gate, and instead allowed for a gate in reliance on the understanding that the development being authorized would in no way prevent this historic public use of the area from continuing. The Commission’s findings in support of its decision on the appeal of CDP 97-59 clearly state: “As approved the gate would be open from dawn to dusk.” The Commission’s findings also state that the City accordingly approved a “time-lock gate.” Levy’s own submitted plans also show a “dawn to dusk” gate at this location (Exhibit 23). Mr. Levy has provided no record, and the Commission is unaware of any record, of any authorization for a permanently locked gate at any time, nor is such a gate consistent with the Commission’s findings, yet Mr. Levy has installed a gate that is permanently locked with a padlock and chain, in contrast to the gate that was authorized by CDP 97-59.

Installing a permanently locked gate is also changing “the intensity of use of land” and “the intensity of use of water, or of access thereto,” and therefore independently constitutes development as defined by section 30106 of the Coastal Act, and that development is unpermitted and not authorized by CDP 97-59, and is actually inconsistent with the terms of that permit, which require access to the easement. In addition, Condition 1 of CDP 97-59 states that “development shall occur substantially as shown in the approved exhibits,” and the exhibits show a “dawn to dusk” gate.

Thus, even if the easement were not accepted, this gate would be unpermitted development and in violation of both the Coastal Act and CDP 97-59 from dawn to dusk.

This issue is also discussed in Commission staff's June 24, 2025 letter to Mr. Levy (Exhibit 118).

(ii) *The Coastal Act*

In Mr. Levy's May 19, 2025 letter (Exhibit 113), Mr. Levy further argues that Commission staff "demanded that I open up a public access which is specifically addressed in the Coastal Act as not to be opened unless the IOD was accepted," and cites a 1999 "Public Access Action Plan" published by Commission staff, as well as Coastal Act section 30212, for the proposition that Mr. Levy does not have to open his gate until the Lagoon Access Easement is accepted. Mr. Levy further argues, in Chandra Slaven's letter dated September 11, 2025, that Section 30212 of the Coastal Act, which states that "A dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability," means that Mr. Levy does not have to open the Lagoon Access Easement.

However, not only did the Commission find historic public use of this area, as noted above, which, pursuant to Section 30211, would have constrained its ability to allow development that would interfere with such access (staff report at Exhibit 126), but again, the chain and padlock placed by Mr. Levy is both unpermitted and inconsistent with the permits here. Furthermore, the City has accepted responsibility for maintenance and liability. The City added this area to its Trails Master Plan, and the Trails Master Plan states in the "Maintained By" section that this trail is maintained by "Volunteers/City Parks." Moreover, the City has openly advertised that this is a city trail accessible to the public on its website, and the City has also added it to the Trails Master Plan, and therefore accepted the easement.

(iii) *Improvement*

Mr. Levy also argues in his March 10, 2025 letter that "private maintenance... for a public access [sic] by a private homeowner is not viable" (Exhibit 101). With regards to private maintenance, no maintenance or improvement of this trail by Mr. Levy is necessary. The Trails Master Plan designates it as an unpaved "nature trail." In fact, Mr. Levy successfully opened the area to the public for a period during 2018. Since then, the existence of Mr. Levy's locked gate has caused the area to become overgrown. However, should Mr. Levy remove his unpermitted padlock and chain, it would not be difficult for users of the trail to clear the brush out of the way. Further, the City's Trails Master Plan designates this trail as to be maintained by both the City and by volunteers, and if the trail were opened, it is very likely that volunteers would be interested in clearing brush there. In addition, over time, the trail would be made passable by use, just as it was originally. Moreover, it is important to note that to the extent that any brush clearance is necessary at all, it is due to Mr. Levy's unpermitted padlock and chain

blocking use, which allowed vegetation to grow that never existed there before. Either way, though, Mr. Levy would not be required to maintain the trail in any way.

In the August 1, 2025 letter from Community Development Director Jeff Murphy (Exhibit 126), the City argues that although the site plan shows a “dawn to dusk gate,” and Condition 1 of CDP 97-59 states that “development shall occur substantially as shown in the approved exhibits,” this requirement is “not yet enforceable.” The City states that “once the IOD is accepted and the trail is improved, the gate hours will be enforced.” However, the site plans represent that which is being approved, the condition speaks for itself, and regardless of when the easement becomes effective, and the City points to nothing, we are aware of nothing, to indicate that there is some interim period during which something other than what the permit indicates is being approved is authorized.

(iv) Liability

Mr. Levy also argues in his March 10, 2025 letter that “general liability for a public access [sic] by a private homeowner is not viable” (Exhibit 101). Even if it were true that Mr. Levy had no protection against such liability, which, as is explained below, it is not, that would not change the analysis above about what was approved. However, with regards to liability, Mr. Levy has several levels of legal protection associated with those recreating on the trail, first including immunity pursuant to California Civil Code § 846:

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

This protection extends to permittees and trespassers alike (Delta Farms Reclamation District No. 2028 v. Superior Court, 33 Cal.3d 699 (1983)), and applies to lands that are fenced as well as those that are made intentionally accessible (Ornelas v. Randolph 4 Cal. 4th 1095 (1993)). Mr. Levy is therefore insulated from liability associated with persons using the trail on The Levy Property under California law.

Second, California statutory law provides protection for private grantors of recreation easements. California Government Code §831.4 states, in part, that:

A public entity, public employee, or grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal...

(b) Any trail used for the above purposes....

Third, California Government Code § 846.1 provides that private landowners may seek reimbursement of attorneys' fees incurred in defending actions brought by recreational users up to \$25,000. Mr. Levy is thus trebly insulated from liability regarding the use of his property by the public.

(v) Hours of Operation

Mr. Levy also argues in his March 10, 2025 letter that "When the City is prepared to accept the IOD, it will bear the responsibility of maintaining the alleged access and ensuring the gate remains open during the appropriate times." However, regardless of who, if anyone, bears responsibility for maintenance or even whether acceptance of the offer has occurred, the City is not required to bear the responsibility for ensuring the gate is open from dawn to dusk. As is detailed above in section 2.b(i), Mr. Levy was only authorized by CDP 97-59 to construct a time-lock, dawn to dusk gate. Therefore, any other mechanisms Mr. Levy has installed to block public access during the day constitutes unpermitted development that must be removed. It is Mr. Levy's responsibility to remove any unpermitted development there. There is no legal obligation for the City to manage Mr. Levy's gate or to maintain any particular hours of operation, and nothing in the recorded offer to dedicate limits the easement with any particular hours of operation. In fact, all that existed was a legal authorization pursuant to CDP 97-59 for Mr. Levy to install a time-lock gate if he so chose. Further, Mr. Levy can still install one pursuant to the original CDP authorization from CDP 97-59.

3. Other Unpermitted Development at The Levy Property

a. Creation and Use of a Parking Area

In his July 9, 2025 letter, Mr. Levy argues that the Commission's assertion that the area along the lagoon has been "used as a parking lot for many years" is "categorically false" (Exhibit 119). In support of his contention, he argues that "There has been no grading, no paving, no compaction, no parking infrastructure of any kind" and states that "Aerial imagery over the past 20 years confirms this." This is reiterated in his letter from Chandra Slaven dated September 11, 2025, which states that there has been "no conversion to parking or comparable development," and that "there is no evidence of unauthorized grading, compaction, or new paving in the buffer" (Exhibit 130).

In fact, aerial imagery clearly shows that Mr. Levy effectively transformed the area into an unpermitted parking lot and continues to park cars there to this day (Exhibit 7). The aerial images show that prior to an image taken August 23, 2010 (Exhibit 37), the area had not yet begun to be substantially cleared for parking, and included native vegetation, which helped to provide habitat for the endangered light footed Ridgway's rail. This is why CDP 97-59 required this area to have invasive plants removed, native plants seeded, an open space deed restriction recorded, and the area dedicated to CDFW—in order to restore the habitat value of the area, including for the endangered species. However, beginning by August 23, 2010, rather than have the required restoration, the area began to be used for parking and the vegetation began being removed, as is illustrated in Exhibit 7, and many cars can be seen clearly in Exhibit 43, which continues to this day.

It appears that Mr. Levy may not be denying that the area was and is used for parking, though, but instead denying that the area was graded or compacted or paved with heavy equipment for the purpose of making it more suitable for parking. However, it does not require bulldozers to compact an area. Regularly using land to park dozens of cars can easily compact soil that otherwise would provide important wetland or other native habitat. In addition, regular use of vehicles can rip up vegetation that would otherwise grow there, causing removal of that vegetation. Similarly, grading can be done without heavy equipment, and regularly driving in an area, repairing potholes, and otherwise maintaining a parking area causes the area to become more flat and suitable for vehicles, but much less suitable as habitat. Further, photos from a Commission site visit show that mulch was placed in the area, which had the effect of stopping vegetation from growing (Exhibit 59). Moreover, Exhibit 7 shows that there are various times when a large amount of vegetation has suddenly been removed, which appears to be the result of vegetation being manually removed by some sort of equipment, not just by regular vehicle use. Regardless of exactly how it occurred, the parking lot, whether it be characterized as a formal or informal one, constitutes development because it is a change in the intensity of use, as well as grading, and removal of vegetation, all of which are development under Section 30806 of the Coastal Act. These issues caused major negative impacts to the suitability of this area as habitat and is discussed by the Commission's ecologist Dr. Corey Clatterbuck in her memorandum at Exhibit 132. These issues are also discussed in Commission staff's July 21, 2025 letter to Mr. Levy (Exhibit 120).

b. Vegetation Removal

Mr. Levy also argues in his July 9, 2025 letter that "Even if vegetation was trimmed or mowed as part of initial restoration efforts, this activity does not constitute development. There was no change in use, no grading, and no alteration of topography" (Exhibit 119). However, vegetation removal in the area on the west side of the Levy Property that was required to be protected for habitat conservation did constitute the removal of major vegetation, and also constitutes a change in intensity of use of the land, and therefore is development. Moreover, not only was the area required to be

protected for habitat conservation, but Mr. Levy himself insists he removed invasive species and replanted with natives, as required by Condition 16 of CDP 97-59, thus contributing to the ecological importance of this area and reinforcing that the vegetation there would count as “major vegetation” for purposes of Coastal Act section 30106. In sum, Mr. Levy both removed major vegetation and changed the intensity of use the area, to turn it from a relatively wild area along the lagoon, to closer to bare dirt, so that he could use the areas as a wedding and event venue. Evidence of the vegetation removal can be seen at Exhibit 7. This issue is also discussed in Commission staff’s July 21, 2025 letter to Mr. Levy.

c. Installation of a Pickleball Court and Pavement

Mr. Levy installed a pickleball court and pavement area by 2024. In response to the NOI noting this was unpermitted development, Mr. Levy argues in his February 26, 2025 letter (Exhibit 97) that his contractor informed him that “no building permits were required and have attached an affidavit demonstrating that I relied on my contractor’s guidance. The court is located outside the area conditioned by CDP 97-59, well beyond the 100-foot open space setback, and is not within the open space deed restriction.” Mr. Levy also argues in his letter from Chandra Slaven dated September 11, 2025 that construction of the court involved “no grading of the existing flat pad” (Exhibit 130). However, regardless of what Mr. Levy’s contractor may or may not have told him or whether the court is in an area designated for protection in CDP 97-59, the installation of the court is development, and he did not apply for or obtain a CDP for the work. It thus constitutes a Coastal Act violation. Notwithstanding how or where it occurred on the Levy Property, the pickleball court remains unpermitted development.

In addition to being unpermitted, the pickleball court, as well as an associated large, paved area installed next to it, greatly increase the impermeable surface area of the Levy Property, which causes water quality and erosion concerns. Given the unpermitted development that has occurred across the rest of the Levy Property, this unpermitted paved area only exacerbates the impacts to the adjacent sensitive lagoon habitat that was required to be protected. In addition, while Mr. Levy argues that no grading occurred to construct the court, this is absurd. Certainly the area had to be flattened in order to install the perfectly flat court (Exhibit 134). This area must therefore have been graded and cleared in order for it to become flat enough to install the perfectly flat court. In the City’s August 1, 2025 letter from Community Development Director Jeff Murphy, the City concurred with the Commission’s position in this regard, stating, with regards to the pickleball court, that “we agree that the pickleball court was constructed without an approved coastal development permit and nothing authorizes the intensification of a particular land use” here. Dr. Clatterbuck’s memo also notes that the impermeable surface area and lighting associated with such a court also increases the intensity of use and impacts surrounding habitat area (Exhibit 132).

In Mr. Levy’s September 11, 2025 letter from Chandra Slaven, he effectively concedes these points, arguing that he “will obtain a City coastal development permit; removal is not proposed. Under the certified LCP, City processing is the proper path,

with Commission appeal jurisdiction as applicable” (Exhibit 130). However, this, too, is inaccurate, as all of the Levy Property is within the Commission’s retained permit jurisdiction, and it is our understanding the City concurs that this whole parcel is within the Commission’s retained permit jurisdiction. In the City’s August 1, 2025 letter from Community Development Director Jeff Murphy, the City concurred with the Commission’s position on retained permit jurisdiction area, and stated with regards to the pickleball court that “as noted, these potential violations fall within the Coastal Commission’s retained permit jurisdiction and therefore, the City agrees that they must receive Coastal Commission review and approval via a separate coastal development permit” (Exhibit 126).

Moreover, because of the negative impacts of the unpermitted pickleball court and associated pavement on the impermeability of the area as is detailed above, Commission staff is recommending that the unpermitted court be removed under the proposed cease and desist order, consistent with Section 30810 of the Coastal Act. The pickleball court was built approximately 40 feet from the lagoon habitat that is required to be protected, which is very close and likely to cause water quality and erosion concerns given the large impermeable area. Thus, if Mr. Levy were to apply for a pickleball court in the future which he is free to do, under the Coastal Act, it is likely that any pickleball court would need to be sited further inland from the protected area, on the eastern side of the property, near the existing paved driveway turnaround, to minimize intensity of use impacts to water quality and erosion, as well as lighting.

d. Basis for Restoration Order

Mr. Levy’s July 9, 2025 letter also argues that a restoration order here would “be legally defective. There is no evidence of new development, no evidence of continuing resource damage, and no legal or factual justification under Section 30811” (Exhibit 119). As discussed in greater detail in section F of this staff report, as well as in the immediately preceding subsections, the unpermitted use of the lagoon habitat as a parking lot, the unpermitted vegetation removal there, and the placement of the unpermitted pickleball court all constitute development under the Coastal Act. In addition, the resources have never been restored and the habitat has not been restored, so the unpermitted development is therefore causing continuing resource damage. For example, the clearance of vegetation in the area required to be protected as open space and use of the area as an unpermitted parking lot caused the removal of many native plants. Those native plants have been largely supplanted by either bare dirt or non-native invasive plants, such as iceplant and non-native grasses. Those invasive plants have not been removed, and the bare dirt has not been planted with native plants, either. The unpermitted pickleball court was also placed in an area that formerly could have served as habitat or habitat buffer area, but is now covered in pavement and is not home to any animals or plants. Further, Mr. Levy is continuing to park cars in the unpermitted parking lot. Thus, the resources harmed are continuing to be harmed and have not been restored.

4. Other Arguments

a. Commission Staff's Communications with Mr. Levy since Issuing the Notice of Intent

(i) Attempts to Engage in Settlement Discussions

In Mr. Levy's July 9, 2025 letter, he states that "Your letter characterises me as uncooperative and unwilling to engage in settlement discussions. That is not true. I have repeatedly asked for structured, transparent, and on-the-record meetings. You have insisted on confidential, unrecorded conversations, which are neither required nor appropriate for a matter involving public access, penalties, and state enforcement" (Exhibit 119). This contention is repeated in virtually all of Mr. Levy's letters dating back to his March 4, 2025 letter (Exhibit 99), and in many of his letters, including his May 19, 2025 letter, he also cites in support of his contention that he should be allowed to record any conversations with Commission staff based on "The spirit of the California Public Records Act," "Open Government principles," "Fairness and Due Process," "The principles of the Brown Act (Ralph M. Brown Act)," and the "California Rules of Court (Rules 3.672 and 3.1010)."

The Commission also believes in open government principles and fully abides by state transparency laws. Commission staff is now preparing for a public, recorded hearing, during which Mr. Levy will have the ability to speak to the Commission in his defense. Commission staff greatly wished to avoid this contested hearing by reaching a settlement following typical, confidential (i.e., unrecorded) negotiations with Mr. Levy; however, he has refused to engage in such settlement discussions. Commission staff repeatedly reached out to Mr. Levy offering to discuss this case and options for resolution, but he declined to engage in normal settlement discussions and instead wrote many letters, to which staff responded. The Commission is proud of its Headquarters Enforcement staff's record of settling most of the cases they take to hearing. However, in virtually all of those cases, settlements were reached via typical confidential, unrecorded negotiations. Confidential settlement discussions are standard practice in legal contexts because they provide a way for parties to have a more frank discussion of how they might reach a compromise. To date, Mr. Levy has refused to engage in such standard confidential settlement discussions and as a result, Commission Headquarters Enforcement staff has never been able to speak with him.

In addition, in spite of Mr. Levy's refusal to enter confidential settlement discussions, Commission staff still sent many letters to him responding to his substantive arguments and further explaining the bases for their arguments and providing Coastal Act analysis, including the Notice of Intent dated October 2, 2024, June 24, 2025, and July 21, 2025 (Exhibits 83, 117, and 120), as well as numerous other letters responding to his many procedural arguments. In addition, Commission staff also sent many substantive letters to the City, which we understand Mr. Levy is in possession of, including letters dated May 23, 2025, June 24, 2025, and August 22, 2025. In addition, Commission staff sent many more letters to Mr. Levy explaining that we would prefer not to argue any further, given that District Enforcement Officer Marsha

Venegas already sent Mr. Levy many letters responding to his arguments (Letters at Exhibits 53, 55, 73, and 78), and so we would therefore prefer to enter into settlement discussions (Letters at Exhibits 88, 90, 94, 96, 100, 106, 108, 110, 112, and 122).

Commission staff also notes that the Public Records Act is only relevant to this topic of settlement negotiations insofar as public records exist, such as if there were a recording of a non-confidential conversation. With regards to open government principles, Commission Headquarters Enforcement staff is committed to these principles, and brings all of its cases to public hearings where the Commission hears public comment, deliberates on the record, and then votes to approve, amend, or deny the staff recommendation. Commission staff notes that the Brown Act only applies to local governments. The Commission's public hearings do comply with the Bagley-Keene Open Meeting Act, Gov't Code §§ 11120 *et seq.*, but that Act does not apply to confidential settlement negotiations. Further, Commission staff notes that the California Rules of Court do not apply to this context of confidential settlement negotiations either, as they do not apply to non-judicial proceedings such as this one. However, the Commission is following all of its normal enforcement procedures, as set forth in the Coastal Act and the related regulations, which the courts have affirmed satisfy the requirements for due process. *See, e.g., Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 845.

**(ii) The Standard for Daily Penalty Liability and
Commission Staff's Providing Notice Thereof**

In Mr. Levy's July 9, 2025 letter he also argues that sections 30820 and 30821 of the Coastal Act "require findings of wilful [sic] and knowing violations." He further asserts that "[t]hat bar has not been met. There has been no obstruction, no concealment, no refusal to engage. There has been continuous correspondence and documentation from me" (Exhibit 119). In fact, while section 30820 creates liability for a person who "intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit," Mr. Levy does meet this standard. Mr. Levy intended to and knowingly put an unpermitted padlock and chain on the Lagoon Access gate and intentionally and knowingly refused – and continues to refuse – to remove it. Mr. Levy also intended to and knowingly used areas required to be protected as open space as an unpermitted parking lot, intentionally and knowingly constructed an unpermitted pickleball court, and intentionally and knowingly removed vegetation in areas required to be protected as open space, without a CDP. Coastal Act section 30820 does not require that a party engage in concealment, obstruction, refusal to engage, or lack of continuous correspondence in order for that section to apply, as none of that is necessary to prove that a person intentionally and knowingly undertook development without a CDP and/or in violation of an existing CDP, as Mr. Levy did here.

Mr. Levy also argues in the same letter that "Your threats of penalties are not only premature, they are inconsistent with due process." To the contrary, Commission staff has sent multiple letters to inform Mr. Levy that the Commission could potentially

fine him for each day his violations persist, precisely to ensure he was aware of his exposure, to provide as much notice to Mr. Levy as possible, to encourage his compliance, and to further due process. Mr. Levy argues that Commission staff provided this information prematurely, but Commission staff was acting responsibly in ensuring that any penalties assessed against Mr. Levy are imposed with Mr. Levy's full prior knowledge and ability to minimize such penalties. And every letter sent to Mr. Levy again invited him to engage with staff to discuss potential resolutions.

In the same letter, Mr. Levy also argues that "You are attempting to impose penalties not as a last resort, but as leverage to force settlement on your terms." To the contrary, Commission staff mentioned the potential for monetary liability in the interest of transparency and to provide notice, for the reasons listed above, and was, in fact, preparing to recommend the imposition of penalties only as a last resort. The Commission's District Enforcement staff first reached out to Mr. Levy in 2017 in an attempt to reach an amicable resolution that would not involve any formal assessment of penalties by the Commission, as is standard practice for our District Enforcement staff. That was more than 8 years ago, and despite numerous letters between then and now, Mr. Levy has continued to refuse to open the Beach Access Easement and Lagoon Access Easement, or to restore the areas along the lagoon that were impacted by his unpermitted development. Thus, since he declined to resolve the matter informally, it was finally elevated to Commission Headquarters Enforcement Staff in 2024, for the purpose of issuing a formal cease and desist order, restoration order, and assessing penalties. However, Commission staff does not recommend monetary penalties in every settlement, and there was no reason to believe that a settlement with Mr. Levy could not be creative and involve his undertaking other activities that would provide value to the public to offset some or even all of the monetary penalty liability. So even then, Commission staff remained open to such an approach. However, Mr. Levy would not engage in settlement discussions, so Commission staff finally concluded that they were forced to recommend monetary penalties for the violations here.

b. Commission Staff's Communications with Other Parties

(i) Communications with the City

Mr. Levy's July 9, 2025 letter also argues that Commission staff made a "clear effort to pressure a municipal agency into reversing its own record," and accuses Commission staff of omitting from Mr. Levy the fact that Commission staff sent this letter to the City (Exhibit 119).

As to the first point, what Mr. Levy derisively characterizes as a "clear effort to pressure a municipal agency into reversing its own record" was nothing more than Commission staff explaining its position to the City, so as to be clear and transparent about the Commission's reading of the record and permit and Coastal Act requirements here. Moreover, Commission staff noted that the City itself had reversed its own record, and Commission staff was noting that the City had taken the position in 2018 that these were violations, and the City was supportive of Commission staff's enforcement efforts

to restore access here. The Commission regularly keeps local governments informed of the work we are doing. Thus, there was nothing untoward about Commission staff's dealings with the City, no way in which those dealings undermine any of the findings made by staff or by this Commission, and no reason staff would have specifically highlighted to Mr. Levy that it was reaching out to the City to explain the Commission's position, and the Commission's reading of the applicable CDPs and LCP provisions.

As to the second point, again, it is unclear exactly what Mr. Levy meant or how this context is relevant to any of the findings and conclusions at issue here. Moreover, the history that Mr. Levy is emphasizing merely shows that the City agreed with the Commission's position at one point and is currently deferring to the Commission. So, nothing in that history in any way undermines the Commission's actions, and in fact, the Commission believes the City's past actions to support the Commission's enforcement efforts provides support for the Commission's continuing enforcement actions.

Meanwhile, Mr. Levy has 'omitted' information about his own interactions with the City on this matter. We are aware that Mr. Levy recently met with City staff and spoke in public comment at a June 10, 2025 Carlsbad City Council meeting and advocated there against opening the Lagoon Public Access Easement. Mr. Levy appears to have done much more than simply write letters to the City, as Commission staff has done. This is also discussed in our July 21, 2025 letter to Mr. Levy (Exhibit 120).

(ii) Communications with Surfrider Foundation

Mr. Levy's July 9, 2025 letter also argues that Commission staff "failed to disclose that non-public enforcement information was shared with the Surfrider Foundation, which was then used to make false and misleading statements" to the public (Exhibit 119). He further argues that Mitch Silverstein, Senior Policy Coordinator for Surfrider Foundation, "claimed to have communicated directly with Commission staff about ongoing enforcement" and "referenced specific details including the gate code agreement I entered into with the City...These details are not available through public record. They could only have come from direct disclosure by your office." This is not accurate. In fact, the Gate Access Agreement is publicly available on the Carlsbad city website.⁹ Commission staff's Notices of Intent, including the Notice of Intent to Mr. Levy dated October 2, 2025, are also public documents. This is also discussed in Commission staff's July 21, 2025 letter to Mr. Levy (Exhibit 120). It is also worth noting that these accusations, even if valid, which they are not, would not be relevant to the validity of the Commission action at issue, in that they do not even purport to demonstrate that the criteria for the issuance of the instant orders have not been satisfied.

⁹ The link to the Gate Access Agreement is available here:
<https://records.carlsbadca.gov/WebLink/DocView.aspx?id=6439468&dbid=0&repo=CityofCarlsbad>.

Moreover, it appears that many nonrelevant issues are being raised in an attempt to distract from the actual facts and legal elements at issue here. The elements for issuance of cease and desist and restoration orders and administrative penalties under the Coastal Act are found in Sections 30810, 3811 and 30821 and 30821.3 of the Coastal Act and their application to the facts here are found in this staff report, and have been fully analyzed and supported.

(iii) Allegations of Retaliatory Leaks to the Press

Mr. Levy also argues that “Courts have recognised that agency leaks timed to influence public opinion during unresolved enforcement disputes can show improper motive or agency bias (see *Doe v. Regents of University of California*, 891 F.3d 1147 (9th Cir. 2018)).” Mr. Levy appears to imply that a recent San Diego Union Tribune article dated June 22, 2025 regarding this matter was part of an effort by Commission staff to pressure Mr. Levy, or constitute retaliation or bad faith, or is evidence of Commission staff’s lack of belief in its case. In fact, Commission enforcement staff was not involved in the creation of that story and did not speak with the journalist who wrote it, although Mr. Levy did. The Commission also notes that since then, a journalist from Cal Coast News wrote another story, dated August 11, 2025, regarding this matter and that article also did not include any quotes from Commission staff, but again, did include many quotes from Mr. Levy. In any event, press often covers the Commission enforcement actions, but any factual information provided in response to inquiries are not “leaks” but providing public information.

c. Enforcement of the LCP

The City’s September 11, 2025 letter (Exhibit 129) states that it is addressing “a few points” that the City has with Commission staff’s August 22, 2025 letter (Exhibit 128). In that context, the City states that although the Commission may take the position that the gate blocking access to the Beach Access Easement conflicts with LCP Policy 7-3, that policy and other related LCP policies “serve as guideposts for reviewing new development projects, rather than an enforcement mechanism for post-approval issues that may arise in connection with a project.” The City also argues that in this case, the LCP should have been implemented during the CDP hearings at issue here, not now.

In fact, Policy 7-3 is not limited to establishing standards for the review of proposed development projects.¹⁰ While it contains some language regarding proposed projects (such as the requirement that lateral access OTDs be required in conjunction

¹⁰ And even those aspects of the LCP that are designed to govern how the reviewing body responds to permit applications are relevant in that, since they serve as the basis for the permit conditions, they indicate the policies and purposes that those conditions were imposed to further.

with the approval of new development projects), it also contains other language, such as the statement that the “City will cooperate with the State to ensure that lateral beach access is protected and enhanced.” It was this language that Commission staff highlighted in its August 22 letter (Exhibit 128), in pointing out that the City’s arguments against opening the Beach Access Easement and the Lagoon Access Easement appear inconsistent with this broad and general mandate to enhance public access, as is being done here.

However, Commission staff’s point in that section of its August 22 letter was the more general point that its proposed orders are designed to compel Mr. Levy to comply with the policies of the LCP. Section 30810 of the Coastal Act clearly states that cease and desist orders “may also be issued to enforce any requirements of a certified local coastal program.” As such, even those aspects of the LCP that are designed solely to govern how the reviewing body responds to permit applications are relevant in that, since they serve as the basis for the permit conditions, they indicate the policies and purposes that those conditions were imposed to further. Mr. Levy is violating various LCP policies that require habitat protection and public access in this area, as is detailed in this staff report. The area along the lagoon that is required to be protected for open space and habitat conservation by CDP 97-59 was required in order for the development to be in compliance with Policy 3-2 of the LCP. In addition, the Lagoon Access Easement was required in CDP 97-59 in order for the development to be consistent with LCP Policy 7-6. Further, the Coastal Act specifically authorizes the Commission to enforce provisions of LCPs, which would include Policy 7-6, which requires the City to work with the state to ensure that public access is enhanced to the maximum degree feasible. See for example, Section 30810(a) of the Coastal Act (“The order may also be issued to enforce any requirements of a certified local coastal program”). The Commission is therefore also ordering Mr. Levy to comply with not just the CDPs and the Coastal Act, but also the LCP policies, consistent with applicable law.

d. Exactions

In Mr. Levy’s September 11, 2025 letter from Chandra Slaven (Exhibit 130), he also argues that “any new or expanded access obligations must satisfy constitutional limits, including the essential nexus and rough proportionality. (Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994).)” However, the Commission is not requiring any new or expanded access obligations. As is detailed above, in approving CDP 6-83-051, the Commission already made findings for why public access easements were needed and imposed the requirements for the Beach Access Easement and Lagoon Access Easement. Those requirements were never challenged, and the time during which they could be challenged ran decades ago, and those easements are already recorded. Moreover, Mr. Levy never received any Coastal Act authorization for his unpermitted padlock and chain on his gate within the Lagoon Access Easement. The current enforcement orders

do not create or require the creation of any new property interests, so the law regarding exactions is inapplicable.

H. Cease and Desist Order and Restoration Order are Consistent with Chapter 3 of the Coastal Act

This Cease and Desist Order and Restoration Order, attached to this staff report as Appendix A, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. This Cease and Desist Order and Restoration Order require and authorize Respondent to, among other things, cease and desist from conducting any further unpermitted development on the properties. Failure to provide the required public access would result in the continued loss of public access, and failure to comply with the permit conditions would also result in the continuing loss of protection of coastal resources, both of which inconsistent with the resource protection policies of the Coastal Act.

Therefore, as required by Section 30810(b) and 30811, the terms and conditions of this Cease and Desist Order and Restoration Order are necessary to ensure compliance with the Chapter 3 policies of the Coastal Act.

I. California Environmental Quality Act

The Commission finds that issuance of these Cease and Desist Orders, to compel the removal of the unpermitted development, among other things, as well as the implementation of these Cease and Desist 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 Cease and Desist 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.

J. Summary of Findings of Fact

1. The properties that are the subject of this Cease and Desist Order and Restoration Order are located at 2401 Mountain View Drive, Carlsbad, also known as San Diego County Assessor’s Parcel Numbers (“APNs”) 155-190-15, 155-190-16, 155-101-67, and 155-101-68 (“The Levy Property”); an adjacent state-owned parcel designated as APN 155-101-66 ; and an adjacent parcel owned by the Beach Homeowners Association designated as APN 203-010-21.
2. CDP 6-83-051 and the Beach Access Easement and Open Space Easement require that public access and open space be protected within the covered areas, and provide no exceptions for any gates or other structures that block or impede public access.
3. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit, or (2) is inconsistent with a permit previously issued by the Commission. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when the Commission determines that any person has undertaken 1) development without a permit, 2), that the development

is inconsistent with the Coastal Act, and 3) that the development is causing continuing resource damage. All jurisdictional and procedural requirements for issuance of the Cease and Desist Order and the Restoration Order have been met.

4. Unpermitted development and development inconsistent with existing Coastal Development Permits (“CDPs”) have taken place, including: 1) the maintenance of a locked gate within, and blocking access to, the public access easement and open space easement required by Special Conditions 8 and 6 of Commission CDP No. 6-83-051, respectively, which area connects the public road with North Beach and Buena Vista Lagoon; 2) development of a private parking lot and event staging area, including vegetation clearance, within a wetland buffer setback area required to be protected for habitat conservation and open space by Condition 12 of CDP No. 97-59 and the LCP; and 3) the installation of a paved pickleball court, additional pavement, a locked gate, chain, and padlock, as well as fencing on state land and in the lagoon.
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 Sections 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. All jurisdictional and procedural requirements for issuance of and enforcement of the Cease and Desist Order and Restoration Order, including Section 13187 and 13193 of the Commission’s regulations, have been met.
7. The work to be performed under the Cease and Desist and Restoration Order, if completed in compliance with these Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
8. As called for in Section 30821(c) and 30821.3(c), the Commission has considered and taken into account all the factors in Section 30820(c) in determining the amount of administrative civil penalties to impose. The penalties are an appropriate amount when considering those factors.