

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
VOICE: (415) 904- 5200
WEB: WWW.COASTAL.CA.GOV



TH8.1, 8.2, & 8.3

Staff: Andrew Willis-LB
Staff Report: February 27, 2026
Hearing Date: March 12, 2026

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order CCC-26-CD-02 and Consent Administrative Civil Penalties CCC-26-AP-01 AND CCC-26-AP3-02

Consent Cease and Desist Order No.: CCC-26-CD-02

Consent Administrative Civil Penalty: CCC-26-AP-01 and CCC-26-AP3-02

Related Violation File: V-5-24-0062

Location of the Properties: Dana Point Preserve, Dana Point; Orange County Assessor’s Parcel Nos. 672-591-11 and 672-592-17

Owner of the Properties: Center for Natural Lands Management

Violation Description: Non-compliance with Local Coastal Program policies that require establishment of hours of operation of the public trail at the Dana Point Preserve and that require authorization of said hours, and implementation of unpermitted trail hours.

Entity Subject to this Consent Agreement: Center for Natural Lands Management

Substantive File Documents:

1. Public documents in the Cease and Desist Order files No. CCC-26-CD-02 and CCC-26-AP-01 and CCC-26-AP3-02
2. Exhibits 1 through 15 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

Overview

This matter involves the attempt to protect a very imperiled species and to balance concerns between two very important goals under the Coastal Act-- protecting coastal resources such as endangered species, as well as providing public access to the coast. The proposed Consent Cease and Desist Order and Consent Administrative Penalties (collectively referred to as the "Consent Agreement") described herein are a result of the efforts of the Center for Natural Lands Management (CNLM) and Commission staff to work cooperatively together to bring the coastal development permit process envisioned by the Commission-certified Local Coastal Program (LCP) for the City of Dana Point (City)¹ to fruition. That permit process will establish long-term operating hours for the public trail ("Nature Trail")(**Exhibits 2 and 3**) at the Dana Point Preserve (Preserve)(**Exhibits 1 and 2**) that are consistent with the substantive resource protection policies in that LCP, including operating hours that provide additional protections for the federally endangered Pacific Pocket Mouse ("Pocket Mouse")(**Exhibit 4**), while still providing public access to the area. While the permit process is underway, the proposed Consent Agreement establishes interim operating hours for the Nature Trail.

Briefly by way of introduction, the Pocket Mouse exists in only three small known populations globally², including one at the Preserve. The Preserve contains environmentally sensitive habitat area (ESHA), including coastal bluff scrub habitat and habitat for protected plant and wildlife species, such as the Pocket Mouse and the Coastal California Gnatcatcher. CNLM is a non-profit organization formed for the protection and management of natural resources at various preserves throughout the state. It has actively managed the Preserve for natural resource conservation since obtaining fee title to the Preserve in 2005.

The intent of this proposed Consent Agreement is to direct CNLM to obtain authorization for trail hours pursuant to the procedural and substantive requirements of the LCP and to put interim trail hours in place that are protective of the Pocket Mouse and that are consistent with the other resource protection policies of the LCP, including protections for public access to the area. As described in detail below, the LCP

¹ The City's Local Coastal Program incorporates the Headlands Development and Conservation Plan (HDCP). The HDCP provides policies for land use and implementation of the LCP in the Preserve. References to the LCP herein incorporate reference to the HDCP.

² The only other two small populations of the Pocket Mouse are located on the Marine Corps Base Camp Pendleton, thus both populations would similarly be at risk in the event of adverse changes at the base.

specifically calls out the need to protect the Pocket Mouse, requires CNLM to establish trail hours that are protective of the Pocket Mouse, and requires that CNLM obtain authorization for said trail hours. CNLM has applied to the City for a coastal development permit to establish trail hours that are protective of the Pocket Mouse; however, that permit process is not expected to be complete for many months.

In the meantime, the trail hours that are in effect without any of the required authorization under the LCP or Coastal Act (7am-sunset) are also inconsistent with the LCP, since they are not protective of the Pocket Mouse. As a brief history of the trail hours, beginning with its opening to the public in 2009, the Preserve Nature Trail was open to public use from 7am to sunset, seven days a week, although these hours had never been authorized pursuant to the coastal development permit requirements of the LCP. This remained the case for more than a decade. Opening of access to the site was reflected in decline of the Pocket Mouse population at the Preserve. Past monitoring of the Pocket Mouse showed that 82 mice were detected at the Preserve in 2010, which was within a few years of the Preserve opening to the public with 7am to sunset trail hours. By 2017, during which time visitation to the Preserve doubled, the detected population had dropped to just 6 mice.

CNLM closed the trail to comply with Covid-19 prevention measures in 2020. After closure of the Preserve due to coronavirus restrictions, 77 mice were detected in 2020, thus indicating a small but critical rebound in population due to less human disturbance. To protect the Pocket Mouse while also providing public access, once the Covid-19 restrictions were lifted, CNLM reopened the Nature Trail with somewhat more limited hours (Tuesday, Thursday, and Saturday from 8am-4pm). The City sued CNLM over its implementation of these limited hours, and pursuant to a court order obtained at the request of the City, the trail hours were returned to 7am to sunset, seven days a week.

In its action, the court did not find that the pre-Covid 19 trail hours were authorized or consistent with the LCP. The court merely undid the change to the trail hours that CNLM had put in place without a coastal development permit and returned to the prior, also unpermitted, hours. In furtherance of the court's action, this proposed Consent Agreement requires CNLM to follow the normal LCP process to obtain authorization for trail hours that are consistent with the substantive provisions of the LCP, and in the interim, temporarily authorizes trail hours that are consistent with those provisions, thus addressing the court's concern with the lack of permitted trail hours, as well as CNLM's non-compliance with LCP policies that require CNLM to set trail hours that are protective of the Pocket Mouse.

The precariousness of the Pocket Mouse's survival at the Preserve makes it necessary for the Commission to take this action expeditiously to institute appropriate hours. The impending onset of Pocket Mouse breeding season, which is generally considered to begin in March, when avoidance of disruption of Pocket Mouse behavior is especially critical for the health of the population at the Preserve, particularly triggers the need for immediate action. The trail hours approved pursuant to this proposed Consent Agreement are relatively minor modifications of the existing unpermitted trail hours, but

the input of the agencies charged with protecting wildlife, the United States Fish and Wildlife Service and the California Department of Fish and Wildlife (hereinafter referred to as the “Wildlife Agencies”) and Commission ecology staff (**Exhibit 5**), confirms the importance of these modest changes for improving the odds for the survival of the Pocket Mouse. Both the United States Fish and Wildlife Service and California Department of Fish Wildlife have expressed serious concerns with the status of the Pocket Mouse and urged action to protect the species.

The trail hours are intended to be authorized temporarily through the proposed Consent Agreement, pending authorization of trail hours consistent with the normal Coastal Act and LCP procedures. Pursuant to the terms of this proposed Consent Agreement, the trail hours authorized herein will remain in effect until trail hours that are consistent with the LCP are authorized by a final, effectuated coastal development permit or, as discussed more fully below, by a habitat management plan that is fully approved under a coastal development permit. This proposed Consent Agreement is directed to CNLM as the owner and manager of the Preserve, and thus the entity that both has the authority to set trail hours that are consistent with the LCP, and the requirement to do so under the LCP.

Pacific Pocket Mouse

The Preserve is a vital resource for both the coastal access that it provides and sensitive habitats that it protects, and this proposed Consent Agreement is designed to maximize public access to the Preserve consistent with the need to protect the small and vulnerable population of Pocket Mouse at the Preserve. The Preserve supports the federally endangered Pocket Mouse, which is also designated as a candidate for listing as endangered or threatened under the California Endangered Species Act, as well as other rare plant species and communities. The Pocket Mouse is a tiny animal, measuring just over 5 inches from nose to tail, that is endemic to coastal Southern California. There are just two known population areas, one at the Preserve, which is the only population that is not on a military base, and another at two locations on the Marine Corps Base Camp Pendleton. The Pocket Mouse inhabits fine sandy and soil areas within the coastal sage scrub plant community, as well as other coastal plant communities, and its collecting and caching of native plant seeds helps disburse seeds and facilitate plant growth throughout the habitats it occurs in.

The United States Fish and Wildlife Service identified the Preserve as critical for the Pacific Pocket Mouse’s survival in the 1998 Recovery Plan for the Pocket Mouse, stating:

*Unless, or until sufficient, additional viable populations are discovered and/or established and protected, it is imperative that existing populations be protected and expanded through active management. Loss or degradation of any of the populations at the three known extant locales could irretrievably diminish the likelihood of the subspecies’ survival. **All known extant populations are essential, including the Dana Point Headlands population** (Boggs 1997,*

Buck 1997, Price 1997, Silver 1997, Silver and Drumm 1996, Soule' 1996).
[emphasis added] [p. 34.]

One of the threats to the Pocket Mouse, and which is at the heart of this matter, is the threat posed by human disturbance. In the recovery plan, the United States Fish and Wildlife Service identified foot traffic as a contributor to the Pacific Pocket Mouse's precipitous decline, stating:

In summary, habitats within the historic range of the Pacific pocket mouse have been highly fragmented or degraded by highways, roads, structures, lighting, foot traffic, other human activities, and the proliferation of non-native plant and animal species. Fragmented and degraded habitats support smaller populations, which are more susceptible to random extinction events. [p. 26]

Because of the disturbance to the Pocket Mouse caused by foot traffic, the Wildlife Agencies have stated that public access to the Preserve must be carefully managed to reduce impacts to the Pocket Mouse from human disturbance. For instance, a May 15, 2023 joint letter from the Wildlife Agencies (**Exhibit 6**) states, in part, and in reference to the trail hours generally required by this proposed Consent Agreement:

*"[a]s relayed in our prior comment letter, the status of each of the extant PPM populations warrants a conservative management approach to safeguard them from extirpation, especially at Dana Point, which supports the smallest and most vulnerable PPM population to environmental, demographic and genetic threats. Because public access is one of the few threats to the Dana Point population that can be effectively managed and could appreciably influence the size of the Dana Point population, **we continue to support the proposal to more closely monitor and manage public access as a component of the adaptive management plan for the Preserve**".* [emphasis added]

Local Coastal Program Protects the Pocket Mouse

Given the susceptibility of the Pocket Mouse to disturbance and consequent extirpation, the Headlands Development and Conservation Plan (HDCP)(**Exhibit 7**), a component of the LCP, was certified by the Commission with specific protections for the Pocket Mouse within the Preserve included. The purpose and attributes of the Preserve (previously known as the Headlands Conservation Park) and the intended protection of the natural resources, including the Pocket Mouse, are described in the HDCP, including Table 3.4.5 (Headlands Conservation Park – Recreation Open Space and Conservation Open Space Designations), which states, in part:

The Headlands Conservation Park includes a limited bluff top trail, spectacular views of the ocean, and limited visitor access to the coastline and natural environment...

Balancing the desire for limited public access and views along the perimeter, this planning area also is designed to protect a number of sensitive flora and fauna, including the Pacific pocket mouse. As a result, and to protect this natural resource area from overuse, only limited portions of the area will accommodate passive uses, such as the bluff top trails, security fencing, overlooks, seating, and signage. The bluff top trail shall be sited to avoid and setback at least 25 feet from coastal bluff scrub in the vicinity of the bluff edge. The receiving agency or nonprofit entity will establish hours of operation for the bluff top trail. [emphasis added]

With specific regard to how public access and habitat protection will be balanced with respect to trail hours, Section 4.5.1 of the HDCP (Headlands Conservation Park - Public Access Program Guidelines) states, in part:

Public and coastal access shall be established by a trail and a series of overlooks located near the coastal bluff edge consistent with the NCCP/HCP, subject to the approval of the City, the USFWS and the DFG, and California Coastal Commission, and located where the facilities will not degrade environmentally sensitive habitat area.

The bluff-top trail in the Headlands Conservation Park shall be accessible to the public year-round, except for any specific period determined by the resources agencies to protect on site resources. The recipient public agency or non-profit entity will determine hours of daily operation. [emphasis added]

In order to help ensure the survival of the Pocket Mouse at the Preserve, and thus globally, while still maximizing public access at the site, the Wildlife Agencies support limiting the trail hours to the hours of access agreed to by CNLM in the proposed Consent Agreement, which are:

“Days of the week the trail will be open:

Tuesday, Thursday, Saturday, and Sunday

The hours the trail will be open will reflect general daylight conditions and be adjusted for two seasons: summer and winter.

Summer hours: 8:00 a.m. to 6:00 p.m. Memorial Day weekend (the last Monday of May) to Labor Day weekend (the first Monday of September)

Winter hours: 8:00 a.m. to 4:00 p.m. (the first Tuesday of September to the Friday of Memorial Day weekend)”

The trail hours listed above are supported by the Wildlife Agencies since these hours help ensure that human activity at the Preserve is restricted to daylight hours and that human activity is generally reduced to partially limit degradation of habitat and stress to

the Pocket Mouse. The Pocket Mouse is largely nocturnal, foraging along the ground at night in the coastal sage scrub to gather seeds in its cheek pouches (the attribute that gives rise to its name), thus the importance of closing the trail before sunset. In contrast, the trail hours that were proposed in the litigation involving the City (i.e., 7am to sunset) are inconsistent with the recommendation of the Wildlife Agencies regarding hours of trail use to best protect the Pocket Mouse, and, are inconsistent with the LCP. In an October 7, 2025 letter (**Exhibit 8**), CDFW explains that the City trail hours are not protective of the Pocket Mouse, stating that “[i]n CDFW’s view based on our scientific expertise, the public access hours currently being implemented at the [Dana Point Preserve] pose a significant threat to [Pacific Pocket Mouse] and are materially inconsistent with the species protection purposes and requirements of applicable regulatory requirements, including the [Headlands Development Conservation Plan] and the [Conservation Easement].”³

Pursuant to the provisions of the HDCP and LCP excerpted above, as well as others described in more detail below, CNLM must set trail hours that are protective of the Pocket Mouse, and, pursuant to Policy 5.31. of the HDCP, must obtain authorization for said hours in a coastal development permit. Although CNLM is in the process of obtaining a coastal development permit from the City to authorize trail hours that are protective of the Pocket Mouse, the length of time that process is proving to take will subject the Pocket Mouse to continued and potentially catastrophic impacts. Moreover, we are on the threshold of their breeding season which begins around March 1, during which time they are particularly subject to disturbance and impacts to the population. It is therefore very important that the hours are altered as recommended herein during this period of heightened susceptibility to protect the current numbers from falling further. This proposed Consent Agreement provides an expeditious legal mechanism to institute interim trail hours until the coastal development permit process can be completed.

Permit History

This Preserve is a significant component of a large commercial and residential development commonly known as the Headlands. On February 23, 2005, the City approved Coastal Development Permit No. 04-23 (“the CDP”)(**Exhibit 9**), authorizing the larger Headlands development, which included subdivision of 121.3 acres, development of 118 single-family homes, and designation of 4.4 acres of Visitor/Recreational Commercial, a 27.9-acre conservation park (i.e., the Preserve), and approximately 40.8 acres of additional parks and open space. Although the LCP requires setting of hours for the Preserve Nature Trail, and the CDP for the overall development generally authorized controlled access to the Preserve, the CDP did not authorize specific hours of operation for the Nature Trail, nor does any other coastal development permit.

³ CDFW makes three recommendations in its October 7 letter: 1) close the Preserve to public access during Pocket Mouse breeding season (March 1 through July 31); 2) outside the breeding season, allow public access consistent with the seasonal hours listed above, and 3) implement adaptive management of trail hours pursuant to assessment of the Pocket Mouse population.

Proposed Resolution

The proposed Consent Agreement provides a mutually-agreeable path to authorizing trail hours that address the concerns of the Wildlife Agencies to manage public access for protection of the Pocket Mouse, and that are therefore consistent with the Coastal Act and LCP, but which also retain public access to the site. The proposed Consent Agreement requires CNLM to obtain long-term authorization for trail hours through the CDP process and submit, after input from the City and Wildlife Agencies, an interim trail access and vegetation plan for the review and approval of Commission staff to, among other things, establish interim hours of access to the Preserve Nature Trail consistent with the LCP. In conjunction with establishing trail hours that support the Pocket Mouse by limiting human disturbance, the proposed Consent Agreement and the plan developed pursuant thereto will authorize CNLM to maintain vegetation at the Preserve to benefit the Pocket Mouse, specifically by undertaking selective thinning or weeding to open areas within the Preserve to facilitate Pocket Mouse movement and foraging.

In order to resolve monetary penalties under the Coastal Act, the proposed Consent Agreement also requires CNLM to fund educational programs at the Preserve. As more fully described herein, these funds would be used to provide environmental and resource education and weekly guided tours of the Preserve for Title 1 students from the region, as well as for the general public. Given the nature of the Preserve and the fragile species it hosts, it is an excellent opportunity to provide information about the area and the unique role it plays in the ecosystem and environmental issues generally.

CNLM has agreed through this proposed Settlement Agreement to resolve its liability for any and all potential Coastal Act violation matters addressed herein, including resolving civil liability, to the extent applicable, under Coastal Act Sections 30820, 30821, 30821.3, and 30822. By entering into the proposed Consent Agreement, CNLM has agreed, pursuant to the terms of the agreement, to do the following: 1) obtain long-term authorization for trail hours through the CDP process, whether through CNLM's existing application for a CDP or the habitat management plan process that is a component of CDP 04-23, or otherwise; 2) submit and implement an interim trail access and vegetation plan that generally implements the recommendations of the Wildlife Agencies consistent with the LCP; 3) manage vegetation for the benefit of the Pocket Mouse; and 4) fund educational tours to the Preserve.

Staff recommends that the Commission **issue** the proposed Consent Agreement to spur the completion of the process required by the LCP, provide for interim protections, and address CNLM's liability for implementation of unpermitted trail hours and for non-compliance with the LCP described herein.

There are three proposed motions and they can be found on pages 10-11.

TABLE OF CONTENTS

I.	MOTIONS AND RESOLUTIONS	10
II.	HEARING PROCEDURES	11
III.	FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-26-CD-02 AND CONSENT ADMINISTRATIVE PENALTY NOS. CCC-26-AP-01 & CCC-26-AP3-02	12
	A. LOCATION OF THE PROPERTIES	12
	B. BACKGROUND HISTORY AND PRESERVE CHARACTERISTICS	13
	C. VIOLATION HISTORY.....	14
IV.	BASIS FOR ISSUING CONSENT CEASE AND DESIST ORDER ...	18
	A. STATUTORY PROVISION.....	18
	B. FACTUAL SUPPORT FOR STATUTORY ELEMENT.....	19
V.	BASIS FOR ISSUING ADMINISTRATIVE CIVIL PENALTIES	26
	A. STATUTORY PROVISIONS.....	26
	B. APPLICATION TO FACTS.....	27
VI.	CALIFORNIA ENVIRONMENTAL QUALITY ACT	34
VII.	SUMMARY OF FINDINGS OF FACT	35

APPENDIX A – Proposed Consent Cease and Desist Order No. CCC-26-CD-02 and Consent Administrative Penalty Nos. CCC-26-AP-01 & CCC-26-AP3-02

EXHIBITS

Exhibit 1:	Vicinity Map
Exhibit 2:	Dana Point Preserve Overview Photograph
Exhibit 3:	Preserve Nature Trail Photographs
Exhibit 4:	Pacific Pocket Mouse Photograph, Footprint Dimensions, and Range Information
Exhibit 5:	CCC Staff Ecology Memorandum: Dana Point Preserve public access hours for Pacific Pocket Mouse
Exhibit 6:	CDFW and USFWS Letter to the City of Dana Point, May 15, 2023
Exhibit 7:	Headlands Development and Conservation Plan
Exhibit 8:	CDFW Letter to the City of Dana Point, October 7, 2025
Exhibit 9:	Dana Point Headlands Coastal Development Permit No 04-23
Exhibit 10:	2023 Habitat Management Plan for Public Access for the Dana Point Preserve
Exhibit 11:	CCC Enforcement Staff Letter to CNLM and the City of Dana Point, November 4, 2021
Exhibit 12:	CCC Enforcement Staff Letter to CNLM and the City of Dana Point, September 26, 2022
Exhibit 13:	CCC Enforcement Staff Letter to City of Dana Point, December 14, 2023
Exhibit 14:	CCC Staff Letter to the City of Dana Point, April 22, 2024
Exhibit 15:	CCC Staff Letter to City of Dana Point City Council, October 7, 2025

I. MOTIONS AND RESOLUTION

Motion 1: Consent Cease and Desist Order

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-26-CD-02 to CNLM pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-26-CD-02, as set forth in Appendix A, and adopts the findings set forth below on the ground that non-compliance with the City of Dana Point LCP has occurred on the properties at issue, in violation of the Coastal Act and the LCP, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Administrative Civil Penalty Action:

I move that the Commission find that CNLM's institution of unpermitted trail hours described in the associated findings is in violation of the public access provisions of the Coastal Act, and that the Commission impose an administrative civil penalty pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Consent Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-26-AP-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that CNLM has instituted unpermitted trail hours, in violation of public access provisions of the Coastal Act.

Motion 3: Consent Administrative Civil Penalty Action:

I move that the Commission find that CNLM's non-compliance with obligations of the LCP described in the associated findings is in violation of various

provisions of the Coastal Act, including, but not necessarily limited to, provisions protecting environmentally sensitive habitat areas, and that the Commission impose an administrative civil penalty pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Consent Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-26-AP3-02, as set forth in Appendix A, and adopts the findings set forth below on the grounds CNLM's non-compliance with obligations of the LCP is in violation of various provisions of the Coastal Act, including, but not limited to, provisions protecting environmentally sensitive habitat area.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order pursuant to Section 30810 of the Coastal Act (Pub. Resources Code, Div. 20) are outlined in the Commission's regulations at California Code of Regulations, Title 14 ("14 CCR") Section 13185. The requisite procedure for imposition of administrative penalties pursuant to Coastal Act Sections 30821 and 30821.3 are set forth in Sections 30821(b) and 30821.3(b), which specify that penalties shall be imposed by majority vote of all Commissioners present in the context of a public hearing in compliance with the requirements of Section 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties may be the same as those used for a Cease and Desist Order hearing.

For a Cease and Desist 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 Respondent 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 Respondent 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.⁴

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, incorporating by reference 14 CCR 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 impose Administrative Penalties, either in the form recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission, will result in the issuance of the Consent Cease and Desist Order, and imposition of the Consent Administrative Penalties.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-26-CD-02 AND CONSENT ADMINISTRATIVE PENALTY NOS. CCC-26-AP-01 & CCC-26-AP3-02⁵

A. Location of the Properties

The properties on which the matter at issue has occurred are located on the Dana Point Headlands promontory in the City of Dana Point, Orange County, seaward of Pacific Coast Highway. The properties encompass the Dana Point Preserve (Preserve), an approximately 29-acre open space nature preserve that is owned by CNLM. The Preserve contains environmentally sensitive habitat areas (ESHAs), including coastal bluff scrub habitat and habitat for protected plant and wildlife species such as the Pacific Pocket Mouse and the Coastal California Gnatcatcher, as well as the Nature Trail and an interpretive center with public parking. The entire Preserve is fenced for resource protection. Due to the sensitivity of the habitat within the Preserve, the Nature Trail is fenced on either side to discourage users from trespassing off the Nature Trail. The properties are located within the large Dana Point Headlands project, comprised of residential and commercial development, as well as public parks and beach accessways.

⁴ Note that there are currently in use virtual hearing procedures, available at <https://www.coastal.ca.gov/meetings/rules-procedures/>

⁵ These findings also hereby incorporate by reference the Summary at the beginning of the February 27, 2026 staff report (“Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-26-CD-01 and Consent Administrative Penalty Nos. CCC-26-AP-01 & CCC-26-AP3-02”) in which these findings appear, which section is entitled, “Summary of Staff Recommendation and Findings.”

B. Background History and Preserve Characteristics

In 2004, the Commission certified the Headlands Development and Conservation Plan (HDCP) as part of the LCP. The HDCP allowed for residential and commercial development and set aside areas, including the Preserve, for conservation. The HDCP required development of the Nature Trail and required public access to the Nature Trail. Due to the sensitivity of the resources at the site, the HDCP required placement of a conservation easement over the Preserve and required that the recipient of fee title to the land manage the site. The HDCP also provided for public access to the Nature Trail “year-round except for any specific period determined by the resource agencies to protect on-site resources.”

On February 23, 2005, the City approved a CDP for the overall Headlands development project (CDP No. 04-23) that required the preparation of a habitat management plan for the Preserve, referred to in the HDCP as a habitat management and monitoring plan or HMMP (hereinafter, “Habitat Plan”), to be approved by the Coastal Commission, USFW, CDFW, and the City. A draft plan was prepared in 2005 by the Headlands developer, and although Commission staff provided input regarding resource protection, to staff’s knowledge, that input was not incorporated, and a final draft was not prepared by the developer for Commission staff’s approval, which therefore resulted in the habitat plan never being finalized.

Pursuant to another requirement of the Headlands CDP, the Headlands developer transferred the Preserve to CNLM, and CNLM thus became the recipient of fee title to that land in 2005 and, as such, owns and manages the Preserve. Pursuant to another requirement of the CDP, CNLM granted a conservation easement to the City of Dana Point. The Conservation easement prohibits “uncontrolled public access and public access during non-daylight hours, except access during non-daylight hours that has been approved by USFWS...” and allows public access on the Nature Trail and overlook areas only for passive recreational uses. The purpose of the easement is to “ensure that biological values and resources in the [Preserve] continue to exist in perpetuity, and to prevent any use of the [Preserve] that will materially impair or interfere with such values and resources...”

CNLM has managed the Preserve since taking ownership in 2005. CNLM’s primary objectives in managing the Preserve are focused on protecting habitat for the Pocket Mouse, coastal California gnatcatcher, rare plant species, and other sensitive species that utilize coastal sage scrub and coastal bluff scrub. Coordinating with the Wildlife Agencies, CNLM monitors the rare and listed species and habitat on-site to identify and manage for threats, record population dynamics, and establish methods to alleviate problems that negatively affect these species and their habitat within the Preserve. CNLM also coordinates with the United States Geological Survey and the San Diego Zoo Wildlife Alliance when conducting such activities related to the Pocket Mouse. CNLM’s on-the-ground work includes, but is not limited to: patrolling the Nature Trail and providing educational information for visitors; enforcement of prohibitions on off-trail and after-hours Preserve use by the public; conducting maintenance of the Nature Trail, fence, gates and signs; monitoring sensitive plants and animals; conducting vegetation

management, including removing non-native plant species that are detrimental to both coastal sage scrub and coastal bluff scrub habitats and the removal of dead and down material; monitoring other potential threats including Argentine ants and Rabbit Hemorrhagic Disease; and, when possible, working with San Diego Zoo Wildlife Alliance on collection of Pocket Mouse from the Preserve for the Zoo's captive breeding program given the dramatically small population of pocket mice at the Preserve.

The Preserve Nature Trail is a natural surface, non-looping, 0.5-mile pedestrian trail. The Nature Trail is four feet wide and has five overlook points with benches. It is accessible from two points: 1) the Nature Interpretation Center (NIC) Parking Lot off of Scenic Dr., and 2) the terminus of the Dana Strand Road. Both entrances have gates that lock automatically at closing. While the Nature Trail and Preserve and one access point are owned by CNLM, the NIC and Parking Lot and second access point are owned and managed by the City of Dana Point. The NIC is open to the public Tuesday through Sunday from 10:00 AM to 4:00PM. The Parking Lot is open to the public from 7am to sunset, daily.

When the Nature Trail opened in 2009, the Nature Trail was open to the public daily between 7am and sunset, seven days a week; however, no trail hours were authorized, as was required by the LCP. In March 2020, the Nature Trail was closed due to Covid-19 pandemic and State-issued public health and safety requirements to close public beaches, trails, etc. During the time of the trail closure, the population of the Pocket Mouse, an endangered species once thought to be extinct, rebounded, albeit to its previous numbers, which are potentially unsustainably low.

When the Nature Trail re-opened for public access after the lifting of the Covid-19 restrictions, the trail hours were modified by CNLM to 8:00 AM to 4:00 PM on Tuesdays, Thursdays, and Saturdays in order to provide protection for the Pocket Mouse, given the demonstrated benefit of the somewhat shortened hours on the Pocket Mouse. The City challenged the modified hours in court and obtained an injunction to reset the trail hours to 7 days a week, from 7am to sunset.

In 2023, CNLM prepared and circulated a proposed Habitat Plan, which was approved by the United States Fish and Wildlife Service and California Department of Fish and Wildlife, and which proposes to set the days and hours for the Nature Trail to 4 days per week (Tuesday, Thursday, Saturday and Sunday) with seasonal hours to maximize the protection of the Pocket Mouse (8 am – 6 pm in the summer and 8 am – 4 pm in the winter). Despite the Wildlife Agencies' support for the trail hours proposed by CNLM, in an August 1, 2023 letter, City staff declined to approve CNLM's Habitat Plan that included protective trail hours for the Pocket Mouse, reminding CNLM that it had previously advised CNLM that "if CNLM proposed an update to the HMMP that restricted public access to fewer days and hours than is currently permitted, City staff would not recommend that it be approved for a variety of reasons."

C. Violation History

As described herein, the LCP requires CNLM to establish trail hours that are protective of the Pocket Mouse and requires that CNLM obtain authorization for said trail hours. Although CNLM has applied to the City for a coastal development permit to establish trail hours that are protective of the Pocket Mouse, and prepared an Habitat Plan pursuant to CDP 04-23 with proposed trail hours, which City staff has declined to approve, as described below, that permit process is not expected to be complete for many months as a result of the City's October 2025 decision to require a full CEQA analysis of CNLM's proposed hours.

Commission staff became aware of the lack of properly authorized trail hours in 2021, and, by letter dated November 4, 2021, explained that CNLM could apply for a coastal development permit to authorize trail hours. In an attempt to find a means of moving toward compliance with the LCP and CDP, which would be more efficient and streamlined for all parties, including the City and CNLM, Commission staff followed up the November 2021 letter with a letter dated September 26, 2022, in which staff also identified preparation of a Habitat Plan pursuant to the existing coastal development permit for the Headlands development project, which required a habitat management plan for the Preserve, as an alternative, expedited process to establish trail hours consistent with the CDP and LCP.

As noted in staff's November 4, 2021 letter, CDP No. 04-23 (the CDP), which authorized the whole development, did not authorize specific trail hours. However, Condition No. 38 of the CDP does require submittal of a habitat management plan, i.e. Habitat Plan, and preliminary drafts of the Habitat Plan did contemplate hours of operation for the Nature Trail. The Habitat Plan thus is another legal avenue for CNLM to set trail hours pursuant to the approval of the CDP consistent with the LCP and Coastal Act. Therefore, in the September 2022 letter, Commission staff encouraged CNLM to prepare a Habitat Plan to establish trail hours as a faster and more efficient way to comply with the CDP requirements.

Establishing trail hours through the Habitat Plan is consistent with the Dana Point Municipal Code's requirements for management plans, pursuant to Section 9.27.030(a)(4)(H), which says:

(H) Management Plan (Minimum Requirements). A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site. Examples include access in areas of sensitive habitats, agricultural resources, or significant hazards, or adjoining residential neighborhoods or military security areas. The plan shall be prepared by the accepting agency and approved by the City of Dana Point prior to the opening of the access to public use. **Where applicable, the plan should specify management controls on time and intensity of use**, standards for privacy buffers, and requirements for maintenance of aesthetic values through such measures as litter control. **[emphasis added]**

Thus, pursuant to the Dana Point Municipal Code, trail hours may be incorporated into the development authorized by the CDP if the Preserve Habitat Plan is updated to include trail hours, as CNLM has proposed to do.

In response to Commission staff's letters, CNLM prepared both a Habitat Plan and a coastal development permit application. However, City staff has declined to approve CNLM's proposed Habitat Plan, since it contains more limited hours of access, which were intended to be protective of the Pocket Mouse. In contrast, the Wildlife Agencies reviewed and supported the Habitat Plan, stating in a joint letter dated May 15, 2023, that:

"[a]s relayed in our prior comment letter, the status of each of the extant PPM populations warrants a conservative management approach to safeguard them from extirpation, especially at Dana Point, which supports the smallest and most vulnerable PPM population to environmental, demographic and genetic threats. Because public access is one of the few threats to the Dana Point population that can be effectively managed and could appreciably influence the size of the Dana Point population, **we continue to support the proposal to more closely monitor and manage public access as a component of the adaptive management plan for the Preserve.**" [emphasis added]

Despite the Wildlife Agencies' support for the trail hours proposed by CNLM, in an August 1, 2023 letter, City staff declined to approve CNLM's Habitat Plan, as noted above.

In response to City's staff rejection of the proposed Habitat Plan, in a letter dated December 14, 2023, Commission staff asked the City to forego its insistence on maintaining the existing trail hours and to process CNLM's request to establish trail hours, either through an Habitat Plan pursuant to the prior overall CDP or via a new coastal development permit. In order for Commission staff to consider its options to ensure that trail hours that are protective of the Pocket Mouse, and consistent with the LCP, are established in a timely manner, Commission staff asked for confirmation of the City's agreement within 15 days to engage in the Habitat Plan process or act a coastal development permit application.

Instead of doing either requested action to address this matter, the City applied for its own coastal development permit – for trail hours that are not acceptable to the Wildlife Agencies, and therefore not consistent with the LCP, since the LCP requires coordination with the Wildlife Agencies in order to protect natural resources – and set a hearing for April 22, 2024, despite Commission staff's earlier confirmation to the City that CNLM, not the City, needed to apply for a CDP, since they were the managing entity of the Preserve. In an April 22, 2024 letter, in an attempt to explicate the situation and to avoid the current conflict, Commission staff reiterated to the City that it does not have authority to manage the trail hours under the LCP and in addition, since they do not own the land, and nor does the conservation easement grant the City the authority to establish hours, the City does not have the legal interest in the property to apply for a CDP for the subject activities on the Preserve, which is a requirement for obtaining a

coastal development permit pursuant to Section 13053.5(b) of the Commission's regulations. Therefore, the City's coastal development permit would have no effect on the trail hours and its application for the coastal development permit in the end only served to delay a resolution of this matter. In the April 2024 letter, Commission staff again requested that the City consider CNLM's proposed trail hours either through an amendment to a Habitat Plan or a coastal development permit amendment.

The City declined to change course and the City took action on their own permit application (CDP No. 24-0023), and issued itself a permit that identified trail hours of 7:00 AM to sunset, seven days a week, with nautical twilight used for sunset. On May 23, 2024, CNLM and two Commissioners filed appeals of Local CDP No. 24-0023. In general, the appeals contended that the CDP is not compliant with LCP policies that specify how hours of operation and access to the Nature Trail are to be established and managed and be protective of the resources on site including the Pocket Mouse, and also that the CDP is not consistent with the public access policies of Chapter 3 of the Coastal Act, which require public access be regulated in such a way as to protect sensitive resources. The appeals also contended that the City does not have the authority to set trail hours. The City subsequently withdrew the CDP application.

On October 1, 2024, CNLM applied to the City for a CDP for trail hours that are consistent with the recommendations of the Wildlife Agencies. On October 7, 2025, Commission staff wrote to the City Council (**Exhibit 15**) to request expeditious processing of the CNLM's CDP application for the sake of the Pocket Mouse, but, more than a year after CNLM's filing of the application, the City has not brought the CDP application to hearing. Instead, in October 2025, the City made a final decision to require a full CEQA process, which will require many months to complete.

Parallel to the history described above, the City sued CNLM over its implementation of the more limited hours, and pursuant to a court order obtained at the request of the City, the trail hours were returned to 7am to sunset, seven days a week. In its action, the court did not find that the pre-Covid 19 trail hours were authorized or consistent with the LCP. The court merely undid the change to the trail hours that CNLM had put in place without a coastal development permit and returned to the prior, also unpermitted, hours.

In the meantime, the trail hours that are in effect without any of the required authorization under the LCP or Coastal Act (7am-sunset), are also inconsistent with the requirements of the LCP, since they are not protective of the Pocket Mouse. The precariousness of the Pocket Mouse's survival at the Preserve makes it necessary for the Commission to take this action expeditiously to institute appropriate hours. The impending onset of Pocket Mouse breeding season, which is generally considered to begin in March, when avoidance of disruption of Pocket Mouse behavior is especially critical for the health of the population at the Preserve, particularly triggers the need for immediate action.

In furtherance of the court's action described above, this proposed Consent Agreement requires CNLM to follow the normal LCP process to obtain authorization for trail hours that are consistent with the substantive provisions of the LCP, and in the interim,

temporarily authorizes trail hours that are consistent with those provisions, thus addressing the court's concern with the lack of permitted trail hours, as well as CNLM's non-compliance with LCP policies that require CNLM to set trail hours that are protective of the Pocket Mouse.

IV. Basis for Issuing Consent Cease and Desist Order

A. STATUTORY PROVISION

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

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

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

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

(3)...(emphasis added)

Related to the jurisdictional element of Coastal Act Section 30810, in this situation, Commission staff has requested that the City address the LCP non-compliance at issue in the failure to establish hours of daily operation or limitations on time of use through the coastal development permit process, and the City has declined to do so in a timely manner.

In order to address the LCP non-compliance, in a letter dated December 14, 2023, Commission staff asked the City to process CNLM's request to establish trail hours, either through a Habitat Plan amendment or coastal development permit. As described in detail in the section above, the City declined to do either requested action to address this matter, and instead the City applied for its own coastal development permit for trail hours that are not acceptable to the Wildlife Agencies, and therefore not consistent with the LCP, since the LCP requires coordination with the Wildlife Agencies. For a number of reasons, again as described in detail above, the City's application was not a potential way forward to resolve the situation.

Roughly contemporaneous with the City's application, at the suggestion of Commission staff, in order to move to resolve the matter of the LCP non-compliance, CNLM had prepared both a proposed Habitat Plan and a coastal development permit application. However, City staff has indicated that it would not approve a proposed Habitat Plan that contains hours that are protective of the Pocket Mouse, as noted above, and finalizing a coastal development permit appears to be many months away due to the CEQA-related steps that the City has required CNLM undertake.

In addition, the City's requests to the court in the pending litigation related to this matter would not result in authorization of trail hours that are consistent with the LCP, or any Coastal Act-consistent authorization of the trail hours for that matter, and, thus, the litigation will not resolve the LCP non-compliance at issue either.

Commission staff understands from a February 19, 2026 phone call with City staff that the City is not inclined to direct CNLM to institute LCP-compliant hours, that is, hours that the Wildlife Agencies have recommended for protection of the Pocket Mouse. Commission staff confirmed their understanding of the situation by letter dated February 23, 2026.

In response to the February 23 letter from Commission staff, the City sent a letter on February 26 stating that the City was "aggressively pursuing enforcement" against CNLM, and that Commission enforcement "is unnecessary in light of the City's enforcement activities . . . and that it would be beyond the Commission's authority." As indicated above, the Commission is aware of the City's enforcement activities. However, all of those enforcement activities were responding to the violation consisting of CNLM's unpermitted implementation of operating hours. That is a different violation from the failure to complete the mandated process, including coordinating with the Wildlife Agencies and securing a coastal development permit to authorize operating hours protective of the ecological resources of the site. Thus, not only would the City's enforcement litigation not result in compliance with the LCP through the institution of operating hours supported by the Wildlife Agencies, as indicated above, but the City's enforcement actions are not targeting the violation that is at issue in this action. Because the City has not acted in a timely manner to address the LCP non-compliance at issue at staff's request, or acted to do so at all, the Commission has jurisdiction to do so under Section 308101(a) of the Coastal Act.

B. Factual Support for Statutory Element

The following paragraphs set forth the basis for the issuance of the Consent Cease and Desist Order by providing substantial evidence that the LCP non-compliance at issue meets the required grounds listed in Section 30810 for the Commission to issue a Cease and Desist Order.

1. Requirements of the LCP have not been met

Coastal Act Section 30810(a) authorizes the Commission to act to enforce any requirements of a certified local coastal program, and to act if the Commission requests and the local government does not act or does not take action in a timely manner. Here CNLM has not complied with a requirement of the LCP. Under the LCP, CNLM must set trail hours that are protective of the Pocket Mouse and must obtain authorization for said hours. Although CNLM is in the process of attempting to obtain a CDP from the City to authorize trail hours that are protective of the Pocket Mouse, no such authorization will be obtained in a timely manner.

i. Trail hours must be set by CNLM in conformance with the Wildlife Agencies' recommendations

As general matter, HDCP Policy 5.20 requires provision of access to the Preserve in keeping with protection of natural resources within the Preserve. It states:

Regulate the time, manner and location of public access to parks and open space containing sensitive biological resources to maintain and protect those sensitive resources and to protect the privacy rights of property owners while honoring the public's constitutional right of access to navigable waters. (Coastal Act/30214, 30240)

Specifically with respect to CNLM's obligation to set trail hours, pursuant to the LCP , given the susceptibility of the Pocket Mouse to disturbance and consequent extirpation, the HDCP was certified by the Commission with specific protections for the Pocket Mouse within the Preserve, including provisions to regulate access to the Preserve and use of the Nature Trail. The purpose and attributes of the Preserve (previously known as the Headlands Conservation Park), and the intended protection of the natural resources, including the Pocket Mouse, are described in the LCP, including Table 3.4.5 (Headlands Conservation Park) of the HDCP, which states, in part:

The Headlands Conservation Park includes a limited bluff top trail, spectacular views of the ocean, and limited visitor access to the coastline and natural environment...

The area will require a long-term management program to help facilitate the survival of the sensitive plants and animal species. These uses and programs onsite must be coordinated with the U.S. Fish and Wildlife Service, which has issued an Endangered Species, Section 10(a) permit and the California Department of Fish and Game, in conjunction with the landowners' participation in the Central/Coast Orange County Natural Communities Conservation Program and Habitat Conservation Plan, Implementation Agreement...

Balancing the desire for limited public access and views along the perimeter, this planning area also is designed to protect a number of sensitive flora and fauna, including the Pacific pocket mouse. As a result, and to protect this natural resource area from overuse, only limited portions of

*the area will accommodate passive uses, such as the bluff top trails, security fencing, overlooks, seating, and signage. The bluff top trail shall be sited to avoid and setback at least 25 feet from coastal bluff scrub in the vicinity of the bluff edge. **The receiving agency or nonprofit entity will establish hours of operation for the bluff top trail. [emphasis added]***

In addition, Development Guidelines Section 4.3 of the HDCP highlights the importance of the area being designated for preservation purposes, and even calls it a “Pacific pocket mouse preserve”, and states, in part:

In conjunction with the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDGF), the Headlands Conservation Park also provides for the long-term preservation and management of habitat for sensitive species, including the Pacific pocket mouse, and other flora and fauna. The 22.0 acre temporary Pacific pocket mouse preserve established by the NCCP will be expanded by 5.9 acres, and a greenbelt buffer has been designated in adjoining Planning Area 5. A non-profit trust will be established to manage the Park in conjunction with the USFWS and CDFG. The recording of easements, deed restrictions, and additional measures ensure that the Headlands Conservation Park remains permanently designated as conservation open space. [emphasis added]

With specific regard to how public access and habitat protection will be balanced with respect to trail hours, Section 4.5.1 of the HDCP states, in part:

Public and coastal access shall be established by a trail and a series of overlooks located near the coastal bluff edge consistent with the NCCP/HCP, subject to the approval of the City, the USFWS and the DFG, and California Coastal Commission, and located where the facilities will not degrade environmentally sensitive habitat area.

The bluff-top trail in the Headlands Conservation Park shall be accessible to the public year-round, except for any specific period determined by the resources agencies to protect on site resources. The recipient public agency or non-profit entity will determine hours of daily operation. [emphasis added]

Section 4.13.A.1(Responsibilities) of the HDCP identifies habitat management responsibilities for the Preserve, stating, in part:

For the Headlands Conservation Park, a non-profit trust/conservation entity will be established to implement the long-term resource protection guidelines pursuant to the requirements of the Natural Communities Conservation Plan and Habitat Conservation Plan Implementation Agreement and the Dana Point Local Coastal Program in cooperation with the U.S. Fish & Wildlife Service and

California Department of Fish and Game. The non-profit will retain an experienced natural resource manager and a non-wasting endowment will be established for the perpetual maintenance of the Conservation Park.

Section 4.13.A.3 (Long-Term Management Guidelines) clarifies that the City will not manage the Preserve trails, stating, in part:

Except for the Headlands Conservation Park and the Strand Beach Park, the City will provide the long-term management of all of the public parks and trails. The parks and trails are part of the Headlands Coastal Access Plan that provides public access to coastal resources throughout the project site. Management will be pursuant to the Parks and Open Space Management Plan which is incorporated into the HDCP. The Headlands Conservation Park will be managed through an endowment by a private foundation established for its perpetual protection.[emphasis added]

Finally, Section 4.13.A.4 identifies guidelines for long-term management of the Preserve, stating, in part:

Open space resources designated for conservation on the Headlands shall be protected to the extent feasible from ongoing impacts. These potential impacts include:

- *Wildlife disturbance and habitat degradation due to human intrusion;*

...

The following guidelines will minimize these impacts:

...

- *Define public access and increase public education through signage and visitor information programs;...*

Pursuant to these provisions, CNLM, as the entity that received fee title of the Preserve from the Headlands developer⁶, must both set hours of daily operation for the Nature

⁶ The City has asserted in litigation regarding this matter that the City is the “recipient public agency” that sets the trail hours. However, that appears to be incorrect since the City does not own the Preserve, and thus the “recipient” descriptor cannot be applied to it. Moreover, there need not be a “recipient agency” to give the LCP policies meaning, as the City seems to suggest. The only reasonable reading of the LCP policies with the “recipient public agency or non-profit entity” language is that the entity that receives ownership of the Preserve, whether it is a public agency or non-profit entity, will be the entity that sets the hours. CNLM, a non-profit entity, has received ownership of the Preserve, and, therefore, is tasked with setting the hours. The City also points to one section of the LCP which identifies “the receiving public agency” as the entity that sets the hours, without including reference to a “non-profit entity” as another possible recipient. However, there can be no question that a *non*-public, non-profit entity can serve as the

Trail and, in doing so, must consider the determinations of the resource agencies, which include the Wildlife Agencies, with respect to periods of time that the Nature Trail should be closed to protect on site resources.

ii. Recommendations of the Wildlife Agencies for trail hours

In the course of making their determinations to protect site resources pursuant to HDCP Section 4.5.1, cited above, the Wildlife Agencies have determined in numerous communications on this matter that public access to the Preserve must be carefully managed to avoid impacts to the Pocket Mouse from human disturbance. For instance, with respect to the impacts of usage of the Nature Trail on the Pocket Mouse, the October 7, 2025 letter from the California Department of Fish and Wildlife states, in part:

The DPP [Dana Point Preserve] population has the lowest genetic variation and highest inbreeding depression when compared to the other populations (Wilder et al., 2020). As such, the DPP population of PPM is highly susceptible to local extinction. This trail is the main contributor to fracturing PPM habitat by facilitating frequent recreation. Presence and density of trails are a significant predictor of PPM occupancy of an area, whereby PPM occupancy decreases sharply with increased trail density (Brehme et al., 2015).

Further, the Wildlife Agencies have explained in previous correspondence that the Nature Trail hours demanded by the City in litigation are unfortunately not protective of the Pocket Mouse. For instance, the October 7, 2025 California Department of Fish and Wildlife letter states that “[i]n CDFW’s view based on our scientific expertise, the public access hours currently being implemented at the DPP pose a significant threat to PPM [Pocket Mouse] and are materially inconsistent with the species protection purposes and requirements of applicable regulatory requirements, including the HDCP and the CE.”

In contrast, the Wildlife Agencies reviewed, analyzed and supported a Habitat Plan prepared by CNLM that contains hours consistent with those hours ordered by this proposed Consent Agreement, stating in a joint letter dated May 15, 2023 that:

“[a]s relayed in our prior comment letter, the status of each of the extant PPM populations warrants a conservative management approach to safeguard them from extirpation, especially at Dana Point, which supports the smallest and most

recipient, as that has already occurred. In any event, as noted above, the City is not a recipient agency, thus this provision does not apply to it. Moreover, this formulation is unique to this one section and is outnumbered by the more typical “recipient public agency or non-profit entity” language used throughout the LCP. Thus, it appears to be an outlier and therefore likely a drafting oversight. Finally, the formulation that the City cites to is contained within a section of the LCP that merely describes the consistency of the HDCP policies with the Coastal Act, but does not present development guidelines or land use designations, as the other sections that contain the “recipient public agency or non-profit entity” formulations do. Thus, the section that the City cites to, even if it was applicable to the City, which it is not, should be afforded less weight than the other substantive sections that contain the “recipient public agency or non-profit entity” language.

*vulnerable PPM population to environmental, demographic and genetic threats. Because public access is one of the few threats to the Dana Point population that can be effectively managed and could appreciably influence the size of the Dana Point population, **we continue to support the proposal to more closely monitor and manage public access as a component of the adaptive management plan for the Preserve.***” [emphasis added]

As the Wildlife Agencies have stated, trail hours must be limited to protect the Pocket Mouse from the human disturbance facilitated by expanded hours of access.

iii. Trail hours require authorization

HDCP Policy 5.3.1 requires a coastal development permit for changes to trail hours. It states:

Recreation and access opportunities at public beaches and parks at the Headlands shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in user fees or parking fees shall be subject to a coastal development permit. (Coastal Act/302 10, 302 12, 302 13,30221)

More generally, the LCP requires a coastal development permit for all development. Section 9.69.020 of the LCP states that:

A Coastal Development Permit shall be required for all development, as defined in Section 9.75.040, located within the Coastal Overlay District, except for development specifically exempted pursuant to Section 9.69.040. Coastal Development Permits may be required for development which does not require any other approvals, discretionary or otherwise, from the City. A Coastal Development Permit shall also be required for any proposed development in the area of "Coastal Commission Permit Jurisdiction" as delineated on the Dana Point Local Coastal Program Post Certification Permit and Appeal Jurisdiction Map, filed with the City, or as subsequently amended, in which case the coastal development permit shall be obtained directly from the California Coastal Commission.

Section 9.75.040 of the LCP defines development to include, for the purposes of the LCP, a change of access to water and a change of intensity of use of land. Changing or establishing hours of operation of a coastal access trail on a Preserve that provides for recreational uses changes access to water and the intensity of use of land, and, thus, constitutes development.⁷

⁷ See e.g., *Stanton v. San Diego Coast Regional Com.* (1980) 101 Cal.App.3d 38, 47, which specifically addressed pedestrian traffic; *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012),

The coastal development permit for the overall Headlands project (CDP No. 04-23) for the large residential and commercial development, which includes the Preserve, does not authorize hours of operation for the Nature Trail, nor does any other coastal development permit. The establishment of trail hours required a coastal development permit and no such coastal development permit was issued for said development. Therefore, CNLM must obtain authorization pursuant to a coastal development permit for establishing trail hours, but it has not done so yet.

Collectively, the LCP policies identified above require CNLM to secure authorization pursuant to a coastal development permit for trail hours that are consistent with the recommendations of the Wildlife Agencies. Although CNLM is pursuing authorization of such hours, no such authorization has been obtained. Thus, CNLM's obligation to obtain authorization of trail hours pursuant to the LCP remains outstanding, supporting issuance of the proposed Consent Agreement.

2. Terms and conditions are necessary to ensure compliance with the Coastal Act

Section 30810(b) allows the Commission to attach terms and conditions to a cease and desist order to ensure compliance with the Coastal Act. In order to ensure compliance with CNLM's obligation under the LCP to set trail hours that are consistent with the LCP, this Consent Agreement requires (1) CNLM to obtain authorization of Preserve trail hours (a) through a procedure consistent with the LCP and (b) that satisfy the substantive, resource-protection requirements of the LCP; and (2) authorizes CNLM's establishment of interim trail hours that are consistent with the LCP pending completion of the authorization described in point 1.

The requirement for establishment of interim hours is necessary to ensure compliance with the substantive, resource-protection provisions of the LCP, pending a final coastal development permit. In addition, the requirement for interim hours is necessary to ensure compliance with the Coastal Act, and, thus, is appropriately a component of the Consent Agreement for this reason as well. If the Consent Agreement were limited to undoing the current hours that have been put in place without the required coastal development permit and in non-compliance with the substantive requirements of the overall Headlands coastal development permit, including the requirement that trail hours be consistent with the recommendations of the Wildlife Agencies, there could be significant questions as to what restrictions would apply. As can be inferred from the numerous comments of the Wildlife Agencies quoted above, that stress the importance of managing access to the site for the benefit of the Pocket Mouse, the lack of clear access management could be significantly disruptive of the Pocket Mouse, as it would subject the Pocket Mouse to disturbances at all hours of every day, without respite or opportunity to forage or undertake other critical life sustaining activities without

55 Cal.4th 783, 795, which specifically states that reductions in intensity are covered just as much as increases; and *Surfrider Foundation v. CCC* (1994), 26 Cal.App. 4th 151 (for the idea of regulation of other non-physical, organized impedances).

interruption from human intrusion. Such disruption would be inconsistent with resource protection policies of the Coastal Act, including with respect to ESHA (30240). Therefore, interim trail hours, as opposed to the lack of any hours, are necessary to ensure compliance with the Coastal Act.

V. Basis for Issuing Consent Administrative Civil Penalties

A. Statutory Provisions

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

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

In addition, the Coastal Act uses similar language to authorize the imposition of administrative penalties for violations of the non-access provisions of the Coastal Act. Specifically, Public Resources Code Section 30821.3 states, in relevant part:

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

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

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

Section 30822 states:

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

Through the proposed Consent Agreement, CNLM has agreed to resolve its financial liabilities under all of these sections of the Coastal Act via the commitments made in the Consent Agreement.

Before assessing the applicability of these provisions to the instant case, we briefly address the jurisdictional issue raised by the City. As noted in the prior section, the City sent a letter on February 26 in which it stated that the Commission lacked authority to take enforcement action because the City was already "aggressively pursuing enforcement." The City's letter does not specify whether this assertion was intended to be limited to the Commission's ability to issue a cease and desist order or whether it was intended to refer to any type of enforcement. As discussed above, there are steps the Commission must take before issuing a cease and desist order for certain types of violations in areas that are covered by certified LCPs. That issue is addressed in the prior section. However, the Commission notes that the limitations discussed above, in the context of cease and desist orders, do not apply to the administrative imposition of penalties. While section 30810 confers jurisdiction on the Commission to issue cease and desist orders in three circumstances (failure to secure a required permit from the Commission, actions inconsistent with an existing permit, and enforcing a certified LCP), and there are limits on the Commission's jurisdiction over the third of those three categories of violations, as is demonstrated by the quotations above, Sections 30821 and 30821.3 contain no similar language. Instead, those sections broadly empower the Commission to assess administrative penalties to anyone "who is in violation of any provision of [the Coastal Act]." Thus, any enforcement action the City is undertaking is not a limitation on the Commission's ability to assess administrative penalties.

B. Application to Facts

1. 30821 Applicability

Coastal Act Section 30821, which provides for the administrative assessment of penalties for public access violations, is applicable to CNLM's institution of limited trail hours, beginning in March 2020, and extending until November 3, 2022, when the trail hours were returned to 7am-sunset, seven days a week, by court order requested by the City.

Section IV, above, discussed the basis for the Commission's issuance of the proposed Consent Agreement to resolve CNLM's non-compliance with the requirement of the

LCP to obtain authorization for trail hours that are protective of the Pocket Mouse. In addition, as described below, CNLM is also liable for its affirmative actions to set trail hours without the necessary authorization. CNLM's actions affected access to the coast, and, in this instance, also changed the intensity of use of a property dedicated for public recreation. Changes of access to water and changes of intensity of use of land, as have occurred here, constitute development under the LCP that require a coastal development permit. Since CNLM undertook unpermitted actions that changed access to water and use of land designated for recreation, these actions were inconsistent with the public access provisions of the Coastal Act, and, thus Section 30821 is applicable.

Commission staff became aware of the lack of properly authorized trail hours in 2021, and, by letter dated November 4, 2021, explained that CNLM could apply for a coastal development permit to authorize trail hours, which CNLM ultimately did. As described herein, CNLM had instituted the limited trail hours in an effort to protect the Pocket Mouse, as it is required to do so pursuant to the LCP.

2. 30821.3 Applicability

Coastal Act Section 30821.3, which provides for the administrative assessment of penalties for other violations aside from public access, did not take effect until January 1, 2022. Therefore, although the LCP non-compliance at issue here has occurred for many years, the application of 30821.3 to that non-compliance, and associated potential penalties, is limited to only the past four years.

In this case, CNLM has managed the Preserve for the purpose of providing public access and for the conservation of wildlife and plant species since taking ownership of the Preserve in 2005. CNLM opened the Nature Trail on the Preserve to the public on December 15, 2009, and daily hours of operation from 7:00 a.m. to sunset were established, although without authorization pursuant to the LCP. The continued failure to satisfy the outstanding obligation to establish authorized trail hours that would meet the resource-protection provisions of the LCP and pursuant to the procedures required in the LCP constituted non-compliance with the LCP.

Calculating the number of days to which a penalty should attach is somewhat complicated by the facts of this matter, given that, for the last few years, CNLM has been trying to obtain a CDP to legally authorize imposition of hours and has been unable to do so. Commission staff became aware of the lack of properly authorized trail hours in 2021, and, by letter dated November 4, 2021, explained that CNLM could apply for a coastal development permit to authorize trail hours. Commission staff followed up the November 2021 letter with a letter dated September 26, 2022, in which staff identified preparation of a Habitat Plan pursuant to the existing coastal development permit for the Headlands development project, which required a habitat management plan for the Preserve, as an alternate, expedited process to establish trail hours.

In response to Commission staff's letters, on March 14, 2023, CNLM proposed a Habitat Plan to establish trail hours that are consistent with the LCP as an expedited

means to comply with the LCP. However, as noted above, City staff declined to approve CNLM's proposed Habitat Plan, since it contains more limited hours of access than the City wanted.

Since City staff had not approved CNLM's habitat management plan proposal, on October 1, 2024, CNLM applied to the City for a CDP for trail hours that are consistent with the recommendations of the Wildlife Agencies, and the provisions in the LCP regarding the Preserve. Over a year later, the City has not brought the CDP application to hearing at all. Instead, in October 2025, the City made a final decision to require a full CEQA process, which will require many months to complete.

As described herein, CNLM has applied to the City for a coastal development permit to establish trail hours that are consistent with the LCP, and, thus, satisfy its obligation under the LCP to establish authorized hours; however, that permit process is not expected to be complete for many months. The time periods of noncompliance with the LCP are therefore somewhat difficult to determine.

3. Exceptions to Section 30821 and 30821.3 Liability Do Not Apply

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

These provisions of Section 30821(h) and 30821.3(h) providing exceptions to the penalty provisions are inapplicable to the matter at hand. These two sections have very similar threshold requirements, none of which have been met. For 30821.3(h) to apply, there are three requirements, all of which must be satisfied: 1) the violation must be remedied consistent with the Coastal Act within 60 days of receiving notice, 2) the violation must not be a violation of a permit condition, and 3) the party must be able to remedy the violation without performing additional development that would require Coastal Act authorization. For 30821(h) to apply, 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.

Establishment and authorization of trail hours in compliance with the procedural and substantive requirements of the LCP has not occurred. Therefore, the LCP non-compliance that is the subject of Section 30821.3 penalties has not been cured, and, thus, the exception for curing the violation within the prescribed timeframe does not apply. With respect to the development activity that is subject of Section 30821 penalties, that is, as described below, CNLM's implementation of reduced public access hours in March 2020, although CNLM undid these modified hours in November 2022,

this was more than 60 days after Commission staff had notified CNLM of the requirement for a CDP for the modified hours in November 2021, thus this unpermitted development activity was not cured within the 60 day cure period.

Finally, Sections 30821(f) and 30821.3(f) of the Coastal Act have similar provisions to each other which each state:

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

Sections 30821(f) and 30821.3(f) are also inapplicable in this case. As discussed herein, the non-compliance and development activity affected environmentally sensitive habitat areas and public access, which are coastal resources with significant value and protections. Therefore, the non-compliance and development activity at issue cannot be described as minor violations, or causing de minimis harm, so Sections 30821 and 30821.3 do apply here.

4. 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 each violation persists.” Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation. Both Section 30821(a) and Section 30821.3(a) set forth the time for which the penalty may be collected by specifying that the “administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.”

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculation for the Commission’s approval, and the Commission concurs in this analysis. Under Sections 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.” The analysis below separately analyzes the factors under both Sections 30821 and 30821.3.

Section 30820(c) states:

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

(1) The nature, circumstance, extent, and gravity of the violation.

(2) *Whether the violation is susceptible to restoration or other remedial measures.*

(3) *The sensitivity of the resource affected by the violation.*

(4) *The cost to the state of bringing the action.*

(5) *With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.*

4a. Application of Factors for a Public Access Penalty (30821)

(1) *The nature, circumstance, extent, and gravity of the violation.*

Applying the factors of Section 30820(c)(1), the violation at hand should warrant the imposition of limited civil liability; the imposition of unpermitted hours, inconsistent with the permit requirements of the LCP, persisted at the Preserve for roughly two years; however, the unpermitted hours were implemented to comply with unique LCP provisions that contemplate limiting public access to protect specific sensitive species at the site, and the hours were generally consistent with said provisions, which suggests that the nature, circumstance, and gravity of the unpermitted hours should not be considered analogous to a gratuitous public access closure, or one done under flimsy pretext.

(2) *Whether the violation is susceptible to restoration or other remedial measures.*

With regards to 30820(c)(2), the unpermitted hours at issue will generally be authorized by this proposed Consent Agreement going forward. Therefore, a low penalty is warranted under this factor.

(3) *The sensitivity of the resource affected by the violation.*

Section 30820(c)(3) requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by the violation is public access to a popular site that provides dramatic coastal views and immersion in nature. The resource is sensitive to impacts: the public's enjoyment of access imbues it with its value, and development activity can prevent the public's enjoyment of the resource. However, the extreme sensitivity of the resource that the limitation on access was intended to protect, that is the habitat and survival of the Pocket Mouse, must be continually considered as a mitigating factor when calculating this penalty.

(4) *The cost to the state of bringing the action.*

Section 30820(c)(4) takes into account the costs to the state of bringing this action. In this case, CNLM has worked cooperatively with Commission staff to reach the proposed Consent Agreement, a low penalty is warranted.

- (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.*

Finally, Section 30820(c)(5) requires evaluation of the entity that undertook the unpermitted development regarding access and whether the Respondent 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. CNLM is a non-profit organization operating for the protection and management of natural resources. Its stated intent for the unpermitted hours was to protect the Pocket Mouse, which it is obligated to do under the LCP. Therefore, the culpability of CNLM for the unpermitted hours, in acting in furtherance of compliance with the LCP and protection of an endangered species teetering on extinction, is negligible to non-existent.

Aggregating these factors and applying them to the facts of this case and this party, the Commission has determined that the unpermitted hours warrants a low penalty for violations of the public access provisions of the Coastal Act.

CNLM has agreed to fund and implement a program for public access in lieu of payment of a monetary penalty. The program will provide numerous free educational visits to the Preserve for the public and for students from Title 1 schools, thus enhancing the public's enjoyment of the Preserve by providing expert commentary and insight into the natural resources at the site.

Next, the Commission has analyzed the penalty factors for the natural resource violations covered by Section 30821.3.

4b. Application of Factors for Natural Resource Penalty

- (1) *The nature, circumstance, extent, and gravity of the violation.*

The factors of Section 30820(c)(1), in this case pertain to the natural resources affected by lack of compliance with the obligation to institute trail hours that are protective of the Pocket Mouse, e.g., the habitat and survival of the Pocket Mouse. Coastal resources pertaining to endangered species are clearly significant and exceedingly sensitive. However, there are mitigating factors in this case that warrant a low penalty. Although CNLM has been obligated to obtain authorization for trail hours for many years, the nature of the non-compliance is not characterized by willful disregard for its obligation.

In fact, as the vital importance of setting trail hours became evident as a result of CNLM's careful monitoring of the Pocket Mouse population at the Preserve, it immediately acted to institute hours that are protective of the Pocket Mouse, in compliance with the intent of its obligation under the LCP to set trail hours that are protective of the Pocket Mouse.

(2) *Whether the violation is susceptible to restoration or other remedial measures*

With regards to 30820(c)(2), efforts to remedy the impacts to natural resource resulting from the LCP non-compliance can be made going forward, and, in fact, CNLM has initiated the process to do so almost three years ago through its preparation and submittal of a Habitat Plan with hours that are protective of the Pocket Mouse to the City, which City staff have declined to approve.

(3) *The sensitivity of the resource affected by the violation.*

Section 30820(c)(3) requires consideration of the sensitivity of the resource affected by the LCP non-compliance at issue. The resource affected is the habitat and persistence of the extremely rare Pocket Mouse, which occurs in only two areas globally. The sensitivity of the resource thus cannot be overstated, and, for this reason, CNLM acted voluntarily to come into compliance with its obligations to set trail hours consistent with the LCP, which complemented its numerous existing and ongoing actions to protect the Pocket Mouse at the Preserve.

(4) *The cost to the state of bringing the action.*

Section 30820(c)(4) takes into account the costs to the state of bringing this action. In this case, CNLM has worked with Commission staff towards an amicable resolution, and therefore has saved the state costs of litigation or a contested hearing.

(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.*

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. As noted herein, CNLM's mission as an entity is to manage and protect coastal resources, including habitat for the Pocket Mouse. To that end, when the Pocket Mouse population at the Preserve dropped and then rebounded with fluctuations in visitation, thus illustrating the critical need to consider the responsiveness of the Pocket Mouse to hours of access, CNLM moved quickly to implement hours that are protective

of the mouse and to satisfy its obligation under the LCP to establish authorized hours. CNLM is also a nonprofit entity that did not profit from this situation and clearly had no economic profits as a result of their actions.

Considering all of the factors, the administrative penalty under 30821.3 should be low. Regardless, in order to resolve their potential penalty liability, CNLM has agreed to a significant commitment to fund and implement free tours for the public and students from Title 1 schools, which will help enhance public knowledge and stewardship of the resources at the Preserve, including habitat for the Pocket Mouse, thus helping to address the impacts of the LCP non-compliance at issue. In sum, the Commission believes that the proposed public access program is of greater value, especially over time, than what a small nonprofit such as CNLM might have otherwise provided via monetary penalties.

Therefore, the Commission issues the Consent Administrative Penalties CCC-26-AP-01 and CCC-26-AP3-02 attached as **Appendix A** of this staff report.

VI. California Environmental Quality Act

The Commission finds that issuance of this Consent Agreement, as well as the implementation of this Consent Agreement, to compel CNLM to implement interim trail hours, and obtain authorization for long-term trail hours, that are protective of the mouse, while also providing for public access to the Preserve, and to manage vegetation for the benefit of the Pocket Mouse, is consistent with the policies of the LCP and is exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code Sections 21000 *et seq.*, for the following reasons. First, the CEQA statute provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” *Id.* at Section 21084. The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects in Article 19 (14 CCR Sections 15300 *et seq.*). Those projects are exempt from CEQA on that basis, and these are known as “categorical exemptions.” Because the Commission’s process for the development and issuance of these orders involves ensuring that the environment is protected throughout the process, as demonstrated above, multiple of these categorical exemptions apply here, as follows: (1) the exemption covering actions to assure the restoration or enhancement of natural resources where the regulatory process involves procedures for protection of the environment (14 CCR Section 15307); (2) the exemption covering actions to assure the restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment (14 CCR Section 15308); and (3) the exemption covering enforcement actions by regulatory agencies (14 CCR Section 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR Section 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.” This Consent Agreement is designed to protect and enhance the environment, and it contains provisions to ensure, and to allow the Executive Director to ensure, that it is 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.

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.

VII. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of this Consent Agreement are located on an oceanfront promontory in Dana Point, Orange County.
2. CNLM is the owner in fee of the property at issue and did not meet its obligation under the LCP to obtain authorization for trail hours that are protective of the Pocket Mouse. This non-compliance with the LCP included impacts to ESHA.
3. CNLM implemented trail hours that limited access to the Preserve without the required authorization under the LCP.
4. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order to enforce any requirements of a certified LCP in certain circumstances, including when the Commission requests that the local government address that LCP non-compliance at issue and the local government fails to do so or does not do so in a timely manner. Commission staff requested that the City address the LCP non-compliance at issue, but the City has not done so in a timely manner.
5. The LCP non-compliance and unpermitted development described in points Nos. 2 and 3 above are located within the Coastal Zone. The LCP non-compliance and unpermitted development is within the Dana Point LCP area and is in violation of the LCP.
6. The statutory authority for imposition of administrative penalties is provided in Sections 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.

7. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of these Consent Orders, including Section 30810 and Section 13187 of the Commission's regulations, have been met.
8. The work to be performed under this Consent Agreement, if completed in compliance with the Consent Agreement and the plan(s) required therein, will be consistent with the LCP and Chapter 3 of the Coastal Act.
9. CNLM has agreed to the obligations of this Consent Agreement, which settles all of the Commission's claims for monetary penalties related to the specific violations described in points Nos. 2 and 3, above.
10. As called for in Sections 30821(c) and 30821.3(c), the Commission has considered and taken into account the factors in Section 30820(c) in determining the amount of administrative civil penalty to impose. The penalties agreed to in this Consent Agreement are an appropriate amount when considering those factors.