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Staff Report: 6/25/26
Hearing Date: 7/9/26

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

Consent Cease and Desist Order No.: CCC-26-CD-03

Consent Administrative Penalty No.: CCC-26-AP-02

Related Violation File: V-5-20-0035

Violator: Costa Del Sol Homeowners Association (Bay Harbour HOA)

Location: The subdivision now known as Bay Harbour, located at and adjacent to 6177 Cadiz Lane, Long Beach, Los Angeles County, as shown in Tract Map 32277, recorded as Instrument No. 78-447269 on April 27, 1978 (“the HOA Property”)

Violation Description: Development that is inconsistent with Coastal Development Permit (“CDP”) No. A-231-76 and was undertaken without Coastal Act authorization and within a public access easement required by that CDP, including but not limited to: 1) locked pedestrian gates and ‘no trespassing’ signs that blocked all public access to the Greenbelt Accessways, 2) a closed gate at the south end of the Bayfront Walkway that obstructed public access to it, 3) tennis courts and pools built partly within the public access easement; 4) pathways built within the Greenbelt Accessways that are winding and narrow and not useable for bicycles; and 5) signs at the corner of Loynes Drive and Costa Del Sol Road that deter public access to the Public Road leading to Jack Nichol Park; as well as 6) failure to improve and

maintain a public pedestrian and bicycle trail within the Greenbelt Accessways as required by the CDP and public access easement.

Substantive File Documents: Public documents in Consent Cease and Desist Order File No. CCC-26-CD-03 and Consent Administrative Penalty File No. CCC-26-AP-02; Exhibits 1 through 9; and Appendix A of this staff report.

CEQA Status: Categorically Exempt (Cal. Code of Regs., tit. 14, § 15321(a)).

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This matter involves the failure of a homeowners association to provide required public access to pathways through a greenbelt leading to and along Alamitos Bay, as well as to Jack Nichol Park, in Long Beach, as well as the association's maintenance of unpermitted development that privatized and blocked those accessways. Public access has been required here for decades by a Coastal Development Permit ("CDP") which required a large public access easement through and along this residential subdivision. However, the Costal Del Sol Homeowners Association, also known as the Bay Harbour HOA ("Respondent"), obtained the benefits and burdens of this CDP but did not provide the required public access.

In 1976, when considering the permit for this residential project, the Commission recognized that this proposed bayfront subdivision, which was proposed for approximately 28 acres adjacent to Alamitos Bay, could obstruct public access to this part of the bay. Therefore, in the CDP for the development, the Commission required that the permittee record an offer-to-dedicate a public access easement through and along the subdivision to protect and enhance public access in the area. The easement required the permittee to provide multiple public bay access pathways, each hundreds of yards long, through the planned greenbelt of the subdivision ("the Greenbelt Accessways"), as well as along the bay itself ("the Bayfront Walkway").

The public access easement was accepted and the pathways were built, but the Greenbelt Accessways were blocked by locked gates and signs restricting public access, and the Bayfront Walkway was obstructed by closed gates. Instead of providing public access, these pathways were available only to the members of the HOA. In addition, Respondent placed large "Bay Harbour" signs on an adjacent public road leading to Jack Nichol Park ("the Public Road"), which had the effect of making the Public Road appear to be part of a private gated community. Thus, for decades, Respondent has made it more difficult, if not impossible, for the public to enjoy this part of Alamitos Bay, as well as Jack Nichol Park. As is detailed below, though, Respondent has now agreed to finally provide the CDP-required public access, and to undertake major access improvements and mitigation programs in order to provide a penalty for their public access violations, which will all result in great benefits to the public here.

Location

The case involves a part of Alamitos Bay that is located in between Marine Stadium and the Los Cerritos Wetlands (Exhibit 1) in Long Beach, and is a popular area that people visit to fish, boat, walk their dogs, or just enjoy the bay views. On both sides of the Bay Harbour subdivision that face the Bay, the water is filled with boat docks, and the waterfront is characterized by paved walking paths placed atop concrete bulkhead seawalls. Additionally, on the south side of the subdivision, Jack Nichol Park also provides green space with views of the Bay for the public to stop and recreate.

The Bay Harbour subdivision is located between Jack Nichol Park to the south, the bay to the west, and Pacific Coast Highway to the east (Exhibit 2). The development includes approximately 200 single family houses and occupies 28 acres. The subdivision features a cross-shaped greenbelt that runs both north to south and east to west through the development. The greenbelt features pedestrian walking paths and shade trees (the Greenbelt Accessways). On the west side of the subdivision is the Bayfront Walkway. On the east side of the subdivision is Costa Del Sol Way (the Public Road), the only public road that leads to Jack Nichol Park (Exhibit 4).

Permit History

Absent permit conditions protecting access, the construction of the 28-acre Bay Harbour development could have resulted in approximately 700 yards of Los Alamitos waterfront becoming inaccessible to the public. To ensure this did not happen, and to protect and enhance public access to the waterfront here, the City's subdivision approval required the developer to dedicate the bayfront land along the south side of the subdivision to the public. The City later developed this land into what is now Jack Nichol Park.

After the City required that the developer dedicate what would become Jack Nichol Park, the Commission reviewed the developer's CDP application. The Commission then approved a CDP that both authorized the construction of the Bay Harbour development and included conditions required to protect and enhance public access to Alamitos Bay. On February 22, 1977, the Commission issued CDP No. A-231-76 ("the CDP"), which authorized the San Gabriel River Improvement Co. and Loynes-Pacific Corp. ("the developers") to divide a 39-acre parcel into 210 lots, and to construct 194 residences and attendant streets, parking areas, and utilities (Exhibit 7). In order to provide public access to Alamitos Bay, the Commission also required the developers to record irrevocable offers to dedicate public access easements. The Commission found that the proposed easements "involve important public considerations because they provide a form of access to [Jack Nichol Park] that will reduce automobile traffic that would otherwise use PCH [Pacific Coast Highway] and may lessen the need for the use of portions of the park for parking." Special Condition 4 thus required an easement for public use that included the Greenbelt Accessways and the Bayfront Walkway, and which collectively added up to over 1,300 linear yards of accessways.

The State Coastal Conservancy accepted the developers' offer to dedicate, and on

October 20, 1978, the accepted easement was recorded (Exhibit 8). That easement required the construction and maintenance of the Greenbelt Accessways and the Bayfront Walkway. The easement also explicitly stated that the permittee and its successors (i.e., Bay Harbour HOA) are required to maintain and improve the required pathways, and specified that the grantee of the easement (the State Coastal Conservancy) was not obligated to do so.

Also in 1978, the developers created the Costa Del Sol Homeowners Association (now known as Bay Harbour HOA), which subsequently obtained possession of the common areas, including the greenbelt. Bay Harbour HOA therefore succeeded to the permit as well, and as the permittee, received all benefits and burdens, including the requirements of the CDP. The development authorized by the CDP was subsequently constructed; however, the CDP-required public access easement was not complied with, as is described below.

Violation and Enforcement History

By 1983, houses in the development were being bought and sold, and locked gates had been installed. Concrete pedestrian pathways were built within the Greenbelt Accessways; however, no public access was provided. In addition, while the CDP-required public access easement required that the Greenbelt Accessways be 10 feet wide and accommodate bicycles, the Greenbelt Accessways were instead developed with winding, narrow concrete sidewalks that would be difficult or impossible to use with a bicycle. In addition, parts of swimming pools and tennis courts were built within the Greenbelt Accessways, which prevented the Greenbelt Accessways from being easily developed to their full required width.

Although Jack Nichol Park had not yet been opened at this time, the Bayfront Walkway on the west side of Bay Harbour was constructed and in place. Therefore, the blockage of public access to the Greenbelt Accessways deprived the public of a convenient way to reach the public walkway in that part of Alamitos Bay as early as 1983. In addition, unpermitted closed gates were constructed within the Bayfront Walkway that made the area appear private.

In 2006, Jack Nichol Park, adjacent to the Bay Harbor development, was officially opened, and since then, it has included a landscaped grassy area, a walkway, and some benches for the public to enjoy. However, Respondent's failure to provide the Greenbelt Accessways through the Bay Harbor development has made it harder for the public to access that park. While the park could have theoretically been accessed through the Bayfront Walkway, as mentioned just above, that walkway had unpermitted closed gates that made the area appear private. Further, Respondent installed large "Bay Harbour" signs on both sides of the entrance to the Public Road, which provides the only vehicular entrance to Jack Nichol Park. These signs gave the Public Road the appearance of being the entrance to a private gated community, when in fact, the road is public and leads directly to a public park. In addition, as noted above, even Respondent's subdivision itself is not completely private, as the CDP-required public

Greenbelt Accessways run through the center of it.

Notably, during this time, Respondent's members enjoyed private access to the Greenbelt Accessways and the Bayfront Walkway that the CDP required to be public. Meanwhile, Respondent's unpermitted signs adjacent to the Public Road likely deterred many people from driving to Jack Nichol Park. In addition, while members of the public who lived close were more likely to be aware of the park and to drive there in spite of the signs, or to walk there, even those nearby residents would have found it more difficult to access the Bayfront Walkway or Jack Nichol Park given the gates, signs and closed pathways. For persons attempting to walk to Jack Nichol Park, Respondent's unpermitted closed gates on the Bayfront Walkway likely would have deterred them, and Respondent's unpermitted locked gates and signs restricting access certainly would have deterred them from using the Greenbelt Accessways.

Further, for persons using wheelchairs, the impacts of Respondent's violations on public access were exacerbated. While the Greenbelt Accessways required in the CDP could have provided an accessible way for persons with disabilities to reach the bayfront walkway or Jack Nichol Park, Respondent blocked them entirely. Meanwhile, the surrounding area is challenging for persons with disabilities--there is a public sidewalk along the Public Road that leads to Jack Nichol Park; however, it is very narrow and obstructed by streetlights, which are difficult or impossible to pass with a wheelchair. In addition, there is a pedestrian ramp from the Pacific Coast Highway bridge that leads to the park, but it is fairly steep. Persons with disabilities could have theoretically used the Bayfront Walkway, but this was obstructed with Respondent's closed gates. They would also face impediments to driving on the Public Road, since this is the location of Respondent's unpermitted signs, which gave the public road the appearance of being part of a private gated community.

In 2019, Commission enforcement staff received a complaint that the required pathways through the greenbelt were not open to the public, and that unpermitted locked gates and unpermitted signs restricting public access had been installed. After investigating the permit history and site conditions, on May 1, 2020, Commission enforcement staff sent a Notice of Violation to Bay Harbour HOA. In 2020 and 2021, Commission district enforcement staff discussed potential resolutions to the violations with Bay Harbour HOA. During that time, however, Respondent did not remove the unpermitted development and retained the locked gates to the greenbelt and the signs restricting public access. Respondent instead requested that the City of Long Beach build a bike lane along the Public Road leading to Jack Nichol Park, which the City did. This was helpful in providing bike access to the park, but resulted in the City bearing the costs of construction and maintenance of the bike lane.

In order to fully resolve this matter, Commission staff therefore elevated this case to the Commission's Headquarters Enforcement Unit in 2024. On September 18, 2024, staff sent Respondent a Notice of Intent to Issue this Cease and Desist Order and Administrative Penalty. Respondent then responded by immediately removing the unpermitted locked pedestrian gates and unpermitted signs restricting public access to

the Greenbelt Accessways, and removed the gate on the Bayfront Walkway. The Greenbelt Accessways and Bayfront Walkway were thus opened to pedestrians; however, they did not have public access signs. In addition, parts of the Greenbelt Accessways remained difficult to use with a wheelchair, and all of it remained nearly impossible to use with bicycles. Respondent has since worked collaboratively with Commission staff to resolve the remainder of this violation in a way that addresses the loss of public access, provides mitigation for the violations, and addresses other concerns and liabilities under the Coastal Act.

Proposed Resolution

Since the Notice of Intent was issued on September 18, 2024, Respondent has worked efficiently and cooperatively with Commission staff, and Respondent has now agreed to a resolution that would benefit both coastal resources and the public. There are three general components of the agreement, which are provided to ensure compliance with the public access intent of the permit, provide mitigation for lost access over the years, and provide funding for access improvements in lieu of a monetary penalty for the public access violations. These include (as further described below): 1) a Public Access Component to assist the public via many public access signs and other improvements, 2) a Native Planting Component to plant natives in the park to enhance the habitat and access values of the area and as mitigation for the Coastal Act violations, and 3) a Public Amenities Component to fund and/or construct public amenities in the park to enhance public access and use.

1. The first component, the Public Access Component, will be implemented immediately. Respondent already removed the unpermitted locked gates and signs restricting public access over a year ago. Since public information is critical to public access, Respondent will be installing over two dozen new public access signs that let people know about the Greenbelt Accessways and the Bayfront Walkway. Further, while most of the existing Greenbelt Accessways are already generally constructed in a manner that is accessible for wheelchairs, Respondent will undertake any remaining improvements necessary to ensure wheelchair accessibility across the CDP-required public pathways. In addition, Respondent will be implementing a training program to ensure that all contractors of the HOA are aware of the public access easement and are instructed to welcome the public.
2. Second, Respondent will implement the Native Planting Component of the Consent Orders. Jack Nichol Park is located on the bayfront and is close to a number of important habitat areas. Planting native species here can help increase connectivity for native species. For example, just across the channel to the west is Jack Dunster Marine Biological Reserve, a native plant park and aquatic reserve that also provides habitat for wildlife. Across the channel to the east is the Los Cerritos Wetlands, a large and regionally important coastal habitat area. To the north across the subdivision is Sims Pond, a coastal habitat that is required to be protected by Special Condition 2 of the CDP. Jack Nichol Park is

in the center of these three coastal habitat areas, and contains a relatively large landscaped area. However, Jack Nichol Park's landscaping includes many invasive and non-native plants. Much of the landscaping around the grass lawns, while drought-tolerant, is not providing native coastal habitat. There are also few trees, and so there is little shade in the park. In addition, in some areas, there are large stands of highly invasive plants like Pride of Madeira. Commission staff therefore appreciates that Respondent has agreed to implement a five-year program of invasive plant removal and native planting in Jack Nichol Park.

This native planting program would create an important connection between the existing habitats at Jack Dunster Marine Biological Reserve, Sims Pond, and the Los Cerritos Wetlands, and would add another habitat for the native birds, butterflies, and other animals to use, thus helping to make these habitats less fragmented. In addition, while much of the above-described native plantings will directly benefit native wildlife, the Native Planting Component is required as mitigation for Respondent's public access violations, and so this component will also directly benefit the public. While this park currently has little shade, Respondent has also agreed to plant 21 native trees that will not only provide habitat for wildlife, but will also provide some shade for members of the public using the park. Further, Respondent has agreed to install seven interpretive signs around the native plantings to help the public learn about California plants and the importance of this unique coastal ecosystem.

3. Third, Respondent will fund and/or construct a large number of public amenities throughout Jack Nichol Park. The park currently consists mostly of grass lawn, non-native and/or invasive landscaping, sidewalks, and parking, with few other amenities. While the City originally planned to add public restrooms in the 1990's, the City then faced budget shortfalls, which delayed and downsized the plans for construction of the park. In order to finally get the park built, the City obtained money from the Department of Boating and Waterways, which built restrooms in the park, but unfortunately, these restrooms are not public—they are only available to boat owners who pay to lease boat slips just offshore. This lack of public access amenities means that currently, it is not convenient for long-distance visitors to use and enjoy the park. We therefore appreciate that Respondent has agreed to greatly enhance public access in this park by installing new public amenities, including new public restrooms.

Since there are only a few benches currently in the park, Respondent has also agreed to install four additional benches. In addition, as this area is popular with dog walkers, Respondent has agreed to install an additional dog waste bag receptacle. Further, Respondent has also agreed to provide an additional bike rack. Most importantly, Respondent has agreed to fund and/or construct the public restrooms that were originally intended for this park. This will allow people who do not live nearby to enjoy the park and its bay views for as long as they want to, and make this area a much more comfortable place for the public to visit. In addition, Respondent has also agreed to fund the maintenance of the public

restrooms for the first five years of their existence.

In sum, the total combined value to the public of the Public Access Component's sign program and wheelchair accessibility improvements, as well as the Native Planting Component's plants and trees, as well as the Public Amenities Component's public restrooms, park benches, interpretive signs, and other benefits that Respondent has agreed to, is estimated to be over \$2.5 million dollars. This monetary value is in addition to the greater and immeasurable value of substantially improving both the habitat and public access values at Jack Nichol Park, a place with a lot of potential that deserves to be improved and enjoyed. Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Order No. CCC-26-CD-03 and Consent Administrative Penalty CCC-26-AP-02.

The proposed motions can be found on page 10.

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APPENDIX A

Proposed Consent Cease and Desist Order No. CCC-26-CD-03 and
Consent Administrative Penalty CCC-26-AP-02

EXHIBITS

Exhibit 1	Overview Map of Region
Exhibit 2	Overview Map of Public Access Easements
Exhibit 3	Overview Map of Habitat Areas Near Jack Nichol Park
Exhibit 4	Overview Photos of Bay Harbour and Jack Nichol Park
Exhibit 5	Overview Photos of Unpermitted Development
Exhibit 6	Map of Proposed Native Planting Mitigation at Jack Nichol Park
Exhibit 7	CDP A-231-76
Exhibit 8	Accepted Public Access Easement (Document No. 78-1171149)
Exhibit 9	Notice of Intent to Issue a Cease and Desist Order and Administrative Penalty dated September 18, 2024

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-03 to Costa Del Sol Homeowners Association 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-03, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred without the requisite Coastal Development Permit, and in violation of CDP No. A-231-76, and the Coastal Act, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Administrative Civil Penalty Action:

I move that the Commission **issue** Consent Administrative Penalty No. CCC-26-AP-02 to the Costa Del Sol Homeowners Association, 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-02, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities and failures to act have occurred on properties owned by the Costa Del Sol Homeowners Association, without a coastal development permit, and in violation of CDP No. A-231-76, and the Coastal Act, and that these activities or failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order pursuant to Section 30810 are outlined in the Commission's regulations at California Code of Regulations, Title 14 ("14 CCR") Section 13185 and Section 13195. The requisite procedure for imposition of administrative penalties pursuant to Section 30821 of the Coastal Act (Pub. Resources Code, Div. 20) are set forth in Section 30821(b), which specifies that penalties shall be imposed by majority vote of all Commissioners present at a public hearing in compliance with the requirements of Section 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties may be the same as those used for a Cease and Desist Order 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 as determined by the Chair. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the Chair may allow the alleged violators to use any reserved rebuttal time to respond to comments from interested persons and may then allow staff to respond to the testimony and to any new evidence introduced.¹

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 Commission regulations 14 CCR Section 13185 and Section 13195, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above.

Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Consent Cease and Desist Order and impose the agreed-upon Administrative Penalty, 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 Orders and imposition of a Consent Administrative Penalty.

¹ Note that there are in use virtual hearing procedures, available at <https://documents.coastal.ca.gov/assets/virtual-hearing/VIRTUAL-HEARING-PROCEDURES.pdf>.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-26-CD-03 AND CONSENT ADMINISTRATIVE PENALTY ACTION NO CCC-26-AP-02.²

A. Property Location

This part of Alamitos Bay is located in between Marine Stadium and the Los Cerritos Wetlands (Exhibit 2), and people visit to stroll, fish, boat, walk their dogs, or just enjoy the bay views. On both sides of the Bay Harbour subdivision that face the bay, the water is filled with boat docks, and the waterfront is characterized by paved walking paths atop concrete bulkheads. Additionally, on the south side of the subdivision, Jack Nichol Park also provides green space for the public to stop and recreate with views of the bay.

The Bay Harbour subdivision is approximately located between Jack Nichol Park to the south, the bay to the west, and Pacific Coast Highway to the east. The development includes approximately 200 single family houses and occupies 28 acres. The subdivision features a cross-shaped greenbelt that runs north to south and east to west through the development (Exhibit 2). The greenbelt features pedestrian walking paths and shade trees (Exhibit 4). On the west side of the subdivision is the Bayfront Walkway.

B. Permit History

The construction of the 28-acre Bay Harbour development could have resulted in approximately 700 yards of Los Alamitos waterfront becoming inaccessible to the public. To ensure this did not happen, the City's subdivision approval required the developer to dedicate the bayfront land along the south side of the subdivision to the public, and today this is Jack Nichol Park. In order to provide public access to that new park and to all of the bayfront land, the Commission approved a CDP that authorized the construction of the Bay Harbour subdivision pursuant to conditions required to enhance public access to Alamitos Bay, and to approve the dedication of what would become Jack Nichol Park.

On February 16, 1977 the Commission approved CDP No. P-7169 (the CDP), which authorized the San Gabriel River Improvement Co. and Loynes-Pacific Corp. ("the developers") to divide a 39-acre parcel into 210 lots, and to construct 194 single-family residences and attendant streets, parking areas, and utilities. The CDP also approved the dedication of 3.5 acres to the City of Long Beach (the City) as parkland that was

² These findings also hereby incorporate by reference the Summary at the beginning of this June 25, 2026 staff report ("STAFF REPORT: Recommendations and Findings for Cease and Desist Order and Administrative Penalty Action") in which these findings appear, which section is entitled "Summary of Staff Recommendations and Findings."

ultimately developed as Jack Nichol Park. In the staff report for the CDP, the Commission found that:

*The project site is located between the sea and the public road nearest the sea and as such must be consistent with the provisions for public access and recreation in Chapter 3 of the Coastal Act . The provision of easements for pedestrians and bicycle access throughout the proposed greenbelt, within the right-of-way of the extension of Loynes Drive, and in the 5 ft. wide strip along the southwest property line[,] will provide adequate recreational access for the public and will be consistent with the provisions for public access and recreation in the Chapter 3 of the Coastal Act of 1976. **The pedestrian and bicycle easements through the greenbelt and along the southwest property line involve important public considerations because they provide a form of access to the park area³** that will reduce automobile traffic that would otherwise use PCH and may lessen the need for the use portions of the park for parking.*

To meet the requirements of Public Resources Code Section 30212, the park area identified in Exhibit 3 will be dedicated to the City of Long Beach. The area to be dedicated for park purposes should add a meaningful recreation area in a portion of Alamitos Bay that is sorely deficient in park facilities. (emphasis added)

In order to find the project consistent with the public access policies of the Coastal Act, the Commission imposed Special Condition 4, which states:

Prior to commencement of construction the applicants shall record easements in favor of the public for pedestrian and bicycle access throughout the greenbelt and a 5 ft. wide strip along the entire southwest property line extending from the park area to the western edge of Lot #4. Said easements shall be reviewed and recorded in the same manner as provided in Special Condition No. 2.

Special Condition 4 required that the permittee and their successors in interest record easements for public pedestrian and cycling use that approximately add up to over 1,300 linear yards of accessways. These public accessways were required along the waterfront as well as throughout the greenbelt within the permitted subdivision. The public accessways were intended to facilitate access to the Alamitos Bay waterfront, as well as to the future park that was also required by the CDP (now Jack Nichol Park).

On September 28, 1978, the State Coastal Conservancy accepted the required easement, and on October 20, 1978, the easement was recorded as Document No. 78-1171149. That easement required the construction and maintenance of a 10-foot pathway throughout the greenbelt and along the bay, and stated that:

³ This is a reference to what is now Jack Nichol Park.

2. Said 10-foot wide pathway shall be improved and located in such a manner as to provide a continuous pathway between Costa Del Sol and Lot 218, an between Azure Way and Lots 202 and 203, all as more particularly shown on the Map of Tract No. 32277.

The easement also explicitly stated that the permittee and its successors (i.e., Bay Harbour HOA) is required to maintain and improve the easement, and that the grantee of the easement (the State Coastal Conservancy) was not obligated to do so, stating that:

6. Grantee, or its successors in interest, shall not be obligated to maintain, improve, or otherwise expend any funds in connection with the easement as granted herein or as subsequently confined to said 10-foot pathway, all of which costs and expenses shall be borne by Loynes or its successors in interest.

Also in 1978, the developers recorded a Declaration of Restrictions (recorded as Document No. 78-951-750) that created the Costa Del Sol Homeowners Association (now known as Bay Harbour HOA/Respondent), which succeeded in gaining interest in the common areas, including the greenbelt. Respondent therefore succeeded to the permit as well, and as the permittee, received all benefits and burdens, including the requirements of the CDP. The development authorized by the CDP was subsequently constructed, however, the requirements of Special Condition 4 of the CDP and the recorded public access easement were not complied with, as is described below.

C. Violation and Enforcement History

By 1983, houses in the development were being bought and sold, and locked gates had been installed. Concrete pedestrian pathways were built within the Greenbelt Accessways and used by the residents of the subdivision; however, no public access was provided. In addition, while the Greenbelt Accessways were required to be 10 feet wide and accommodate bicycles, the Greenbelt Accessways were developed with winding, narrow concrete sidewalks that would be difficult or impossible to use with a bicycle. In addition, swimming pools and tennis courts built for the private use of the residents of the subdivision were built partially within the Greenbelt Accessways, which prevented the Greenbelt Accessways from being developed to their full required width.

Although Jack Nichol Park had not yet been opened at this time, the Bayfront Walkway on the west side of Bay Harbour was constructed and in place. Therefore, this blockage of public access to the Greenbelt Accessways deprived the public of a convenient way to reach the public walkway in that part of Alamitos Bay as early as the early 1980s. In addition, the Bayfront Walkway within the public access easement included unpermitted closed gates that made the area appear private.

In 2006, Jack Nichol Park, adjacent to the Bay Harbor development, was officially opened, and since then, it has included a landscaped grassy area, a walkway, and some benches for the public to enjoy. However, Respondent's failure to provide the

Greenbelt Accessways though the Bay Harbor development has made it harder for the public to access that park. In addition, while the park can be accessed through the Bayfront Walkway, as mentioned just above, that walkway had unpermitted closed gates that made the area appear private. Further, Respondent installed large “Bay Harbour” signs on both sides of the entrance to the Public Road, which provides the only vehicular entrance to Jack Nichol Park. These signs gave the Public Road the appearance of being part of a private gated community, when in fact, the road is public and leads to a public park. In addition, as noted above, even the subdivision itself is not completely private, as the CDP-required Greenbelt Accessways run through the center of it.

Notably, during this time, Respondent’s members enjoyed private access to the Greenbelt Accessways and the Bayfront Walkway that the CDP required to be public. Meanwhile, Respondent’s unpermitted signs adjacent to the Public Road likely deterred many people from driving to Jack Nichol Park. In addition, while members of the public who lived close were more likely to be aware of the park and to drive there in spite of the signs, or to walk there, even those nearby residents would have found it more difficult to access the bayfront or Jack Nichol Park given the gates, signs and closed pathways. For persons attempting to walk to Jack Nichol Park, Respondent’s unpermitted closed gates on the Bayfront Walkway likely would have deterred them, and Respondent’s unpermitted locked gates and signs restricting access certainly would have deterred them from using the Greenbelt Accessways.

Further, for persons using wheelchairs, the impacts of Respondent’s violations to public access were exacerbated. While the Greenbelt Accessways required in the CDP could have provided an accessible way for persons with disabilities to reach the bayfront walkway or Jack Nichol Park, Respondent blocked them entirely. The area is challenging for persons with disabilities--there is a public sidewalk along the Public Road that leads to Jack Nichol Park; however, it is very narrow and obstructed by streetlights, which are difficult or impossible to pass with a wheelchair. In addition, there is a pedestrian ramp from the Pacific Coast Highway bridge that leads to the park, but it is fairly steep. Persons with disabilities could theoretically use the Bayfront Walkway, but this was obstructed with Respondent’s closed gates. They would also face impediments to driving on the Public Road, since this is the location of Respondent’s unpermitted Bay Harbour signs, which gave the public road the appearance of being part of a private gated community.

In 2019, Commission enforcement staff received a complaint that the required pathways through the greenbelt were not open to the public, and that unpermitted locked gates and unpermitted signs restricting public access had been installed. After doing research into the permit history and site conditions, on May 1, 2020, Commission enforcement staff sent a Notice of Violation to Bay Harbour HOA. In 2020 and 2021, Commission district enforcement staff discussed potential resolutions to the violations with Bay Harbour HOA. During that time, however, Respondent did not remove the unpermitted development and retained the locked gates to the greenbelt and the signs restricting

public access. Respondent instead requested that the City of Long Beach build a bike lane along the Public Road leading to Jack Nichol Park, which the City did.

Commission staff therefore elevated this case to the Commission's Headquarters Enforcement Unit in 2024. On September 18, 2024, staff sent Bay Harbour a Notice of Intent to Issue this Cease and Desist Order and Administrative Penalty (Exhibit 9). Bay Harbour responded by immediately removing the unpermitted locked pedestrian gates and unpermitted signs restricting public access to the Greenbelt Accessways, and removed the gate on the Bayfront Walkway. The Greenbelt Accessways and Bayfront Walkway were thus opened to pedestrians; however, they did not have public access signs. In addition, the Greenbelt Accessways remained difficult to use with a wheelchair, and nearly impossible to use with bicycles. Respondent has since worked collaboratively with Commission staff to resolve the remainder of this violation in a way that would address the loss of public access and address other concerns and liabilities under the Coastal Act and provide enhanced public amenities to enhance the value of the entire area to the public and ecosystem.

D. Basis for Issuing Consent Cease and Desist Orders

1. Statutory Provision

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

- (a) [I]f the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, an activity that (1) requires a permit from the commission without securing the permit, or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist...
- (b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

2. Factual Support for Statutory Elements

The statutory provision requires the Commission to demonstrate that the Respondent either undertook an activity that requires a CDP where Respondent did not secure one, or that Respondent undertook an activity inconsistent with a previously issued CDP.

In this case, both grounds for issuance of a Cease and Desist Order have been met. It is uncontroverted that Respondent does not have a CDP for some of the development at issue here, such as the gates and signs restricting public access, which is the first ground for issuing an order under 30810. The second ground for issuing an order under

30810 is demonstrating Respondent took an action requiring a CDP or inconsistent with a CDP, and it is uncontested that some of the actions and development were inconsistent with the CDP, including the fact that the public amenities required were not provided.

Further, Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. "Development" is broadly defined by Coastal Act Section 30106, in relevant part:

... the placement or erection of any solid material or structure... change in the density or intensity of use of land, ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure...

Under the Coastal Act's definition of development, various development was performed and maintained without the required CDP upon property owned by Respondent, and for which the responsibility under the Coastal Act runs with the land. Moreover, much of the unpermitted development is also directly inconsistent with the permits issued for these properties, as discussed above. This development includes the following acts of "development":

Development that has occurred on the HOA Property and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, including, but not limited to development without a permit and/or which was also inconsistent with previous permit conditions of CDP A-231-76, which includes the following:

- 1) locked pedestrian gates and 'no trespassing' signs that blocked all public access to the Greenbelt Accessways,
 - 2) a closed gate at the south end of the Bayfront Walkway that obstructed public access to it,
 - 3) parts of tennis courts and pools built within the public access easement;
 - 4) pathways built within the Greenbelt Accessways that are winding and narrow and not useable for bicycles
- and 5) signs at the corner of Loynes Drive and Costa Del Sol Road that deter public access to the Public Road leading to Jack Nichol Park.

All of the above items fall clearly within the Coastal Act definition of development and, therefore, required Respondent to secure a CDP to authorize the development. In addition, the change in intensity of use of water, or of access thereto, is expressly listed as development. Respondent's encroachment into the various CDP- required public

access pathways, as well as their unpermitted signs near the pathways, all restricted public access here, including access to the waterfront areas.

None of this development listed above, however, received any such Coastal Act authorization for the development as it was implemented. Therefore, all of these items and activities constituted unpermitted development and/ or violations of Respondent's CDPs, and pursuant to Section 30810, this development constituted an activity that required a permit from the Commission without securing the permit. Thus, this triggered the independent criterion in section 30810(a), therefore authorizing the Commission's issuance of this Cease and Desist Order.

a. The Unpermitted Development is not Consistent with the Terms and Conditions of Previously Issued Permits (CDP No. A-231-76)

As described above in greater detail, unpermitted development was also undertaken that was inconsistent with the conditions of CDP No. A-231-76. This unpermitted development took place on the HOA Property. Moreover, as also noted above, the failure to implement other required measures, such as required bicycle accessibility to the Greenbelt Accessways, also constitutes violations of the permits issued for this development.

In the Greenbelt Accessways, Respondent maintained unpermitted locked gates and signs restricting public access, even though this area was required to be open to the public pursuant to a CDP-required public access easement. In addition, Respondent also maintained unpermitted pools and tennis courts that partially encroach on the 10-foot wide public pathway required by the public access easement. In addition, Respondent also maintained a gate within the Bayfront Walkway that was required by the CDP-required public access easement. Respondent also installed unpermitted signs at the entrance to the Public Road leading to Jack Nichol Park which had the effect of making the Public Road appear to be private.

These violations greatly impeded the ability of the public to use these required public pathways and the adjacent Jack Nichol Park, and also violated the conditions of the CDPs requiring this public access easement.

b. The Unpermitted Development at Issue is not Consistent with the Coastal Act's Access Provisions and Principles of Environmental Justice

The following discussion does not address a required element of Section 30810 of the Coastal Act, and the findings in this section are therefore not required for the Commission to issue a cease and desist order. These findings are, however, important for context, and for understanding the totality of impacts associated with the violations and for analyzing factors discussed in the sections below, and for noting that this proposed resolution would benefit all public users and the impacts noted herein by restoring and improving public access to this area.

Public Resources Code Section 30210 states:

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

Additionally, Section 30013 provides:

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

Section 30107.3 defines Environmental Justice as:

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

The public access violations here present a threat of environmental injustice, given that the public has the right to access the Greenbelt Accessways, the Bayfront Walkway, and Jack Nichol Park, but the unpermitted development and the actions inconsistent with the permits both obstructed public access to them.

People from environmental justice communities may not be able to afford to buy homes within Respondent's HOA, but that does not mean that they should not be able to easily access Alamitos Bay, including the Greenbelt Accessways, the Bayfront Walkway and Jack Nichol Park. It is an important precept of environmental justice in California that all of the public should enjoy access for recreation at coastal areas. Public access and coastal recreation continue to be threatened by unpermitted obstructions to the coast.

E. Consent Administrative Civil Penalty Action

1. Statutory Provision

The statutory authority for imposition of administrative penalties 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, 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 Order and Consent Administrative Penalty, Respondent has agreed to resolve their financial liabilities under all of these sections of the Coastal Act.

2. Application to Facts

This case, as discussed above, includes violations of the public access provisions of the Coastal Act. These provisions include, but are not necessarily limited to, Section 30210, which states in relevant part that “maximum access... and recreational opportunities shall be provided for all the people.” As detailed above, the public was unable to walk through public pathways required by a CDP-required public access easement, due to unpermitted locked gates and signs restricting public access placed at the entrances to the Greenbelt Accessways, as well as a gate on the Bayfront Walkway. Further, Respondent has maintained pools and tennis courts that partially obstruct the Greenbelt Accessways. In addition, Respondent did not provide a pathway wide enough for cyclists, as is required by the public access easement, but instead requested that the City provide a separate bike lane on the Public Road, which the City did. This served to provide a helpful bike route as originally intended by the CDP, albeit one constructed and maintained by the City, not Respondent. Respondent has also installed signs at the entrance to the Public Road that make the only road to Jack Nichol Park appear private.

These actions to block public access constituted unpermitted development and violations of the permit issued for the development in violation of the Coastal Act.

The following findings set forth the basis for the issuance of this administrative penalty by providing substantial evidence that the Unpermitted Development and failure to comply with permit requirements meets all of the required grounds listed in Coastal Act Sections 30821 for the Commission to issue Administrative Penalty Actions.

a. Exceptions to Section 30821 Liability Do Not Apply

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

A Notice of Violation was sent on May 1, 2020 to Respondent. The violations at issue are nearly all permit condition violations. In addition, some violations that were not permit violations were not resolved within 30 days, and some would have required a permit, which are additional reasons the safe harbor provision does not apply here.

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

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

Section 30821(f) is also inapplicable in this case. As discussed above, the unpermitted restriction of public access here is significant because it blocked public access in an area for which the public had little awareness of public access rights, and blocked access to paths that were required and provided essential routes to reach public areas. Therefore, the violation cannot be considered to have resulted in “de minimis” harm to the public.

b. Penalty Amount

Pursuant to Section 30821(a) of the Coastal Act, the Commission may impose penalties in “an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation.” Section 30820(b) authorizes civil penalties that “shall not be less than one thousand dollars (\$1,000), [and] not more than fifteen thousand dollars (\$15,000), per day for each day in which each violation persists.” Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation. Section 30821(a) sets forth the time for

which the penalty may be collected by specifying that the “administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.”

In this case, Commission staff has substantial evidence that Respondent has maintained unpermitted development that blocked public access, such as the unpermitted locked gates within the Greenbelt Accessways, as early as 1983. Therefore, there have been violations during the entire statutory period of five years during which administrative penalties may apply, however, Respondent has agreed to amicably resolve this matter, and agreed to the following penalties, as well as additional public amenities in lieu of greater penalties.

Since the Notice of Intent was issued, Respondent has worked efficiently and cooperatively with Commission staff, and Respondent has now agreed to a resolution that would both include compliance with their permit requirements and the Coastal Act, and also provide and fund a number of public amenities and resource conservation measures that will, if implemented as agreed to, benefit both coastal resources and the public. There are three general components of the agreement that all provide great value to the public in lieu of monetary penalties: 1) a Public Access Component to assist the public via many public access signs and other improvements, 2) a Native Planting Component to plant natives in the park to enhance the habitat value of the area and to enhance the access value of the area, as mitigation for the Coastal Act violations, and 3) a Public Amenities Component to fund and/or construct public amenities in the park to enhance public access and use.

As noted herein, the City has now installed a bike lane which provides bicycle access to the area as was intended in the original permit. Therefore, the proposed settlement includes requirements for the Respondent to provide other public amenities that would be of equal value to public access, and the proposed settlement reflects those amenities.

The first component, the Public Access Component, will be implemented immediately. Portions of this have already been implemented, since Respondent already removed the unpermitted locked gates and signs restricting public access over a year ago. Since public information is critical to public access, Respondent will be installing over two dozen new public access signs that let people know about the Greenbelt Accessways and the Bayfront Walkway. Further, while most of the existing Greenbelt Accessways are already generally constructed in a manner that is accessible for wheelchairs, Respondent will undertake any remaining improvements necessary to ensure wheelchair accessibility across the CDP-required public pathways. In addition, Respondent will be implementing a training program to ensure that all contractors of the HOA are aware of the public access easement and are instructed to welcome the public.

Second, given the location of the site and its value both to public access and to the ecosystem, the proposed settlement includes both access and natural resource components. In addition, because the City built a protected bike lane that now provides

public cycling access to Jack Nichol Park, albeit with the costs of maintenance borne by the City, Commission staff sought to include other significant public access amenities that would be of equal or greater value as that originally required in the CDP.

To complement the public access elements in the Consent Orders, as mitigation for the Coastal Act public access violations, and as a contribution in lieu of monetary payments as part of the administrative penalties element of the settlement, Respondent will implement the Native Planting Component of the Consent Orders. Jack Nichol Park is located on the bayfront, and is close by a number of important habitat areas, and planting natives here can help increase connectivity for native species. For example, just across the channel to the west is Jack Dunster Marine Biological Reserve, a native plant park and aquatic reserve that also provides habitat for wildlife. Across the channel to the east is the Los Cerritos Wetlands, a large and important coastal habitat area. To the north across the subdivision is Sims Pond, a coastal habitat that was protected by Special Condition 2 of the CDP. Jack Nichol Park is in the center of these three coastal habitat areas, and contains a relatively large, landscaped area. However, Jack Nichol Park's landscaping includes many invasive and non-native plants. Much of the landscaping around the grass lawns, while drought-tolerant, is not providing coastal habitat. There are also few trees, and so there is very little shade in the park. In addition, in some areas, there are large stands of highly invasive plants like Pride of Madeira.

Commission staff therefore appreciates that Respondent has agreed to implement a five-year program of invasive plant removal and native planting in Jack Nichol Park. This native planting program would create an important connection between the existing habitats at Jack Dunster Park, Sims Pond, and the Los Cerritos Wetlands, and would add another habitat for the native birds, butterflies, and other animals to use, thus helping to make these habitats less fragmented. In addition, this Native Planting Component will also help to improve public access. While this park currently has little shade, Respondent has also agreed to plant 21 native trees that will also help to provide some shade for both the public and wildlife, and provide additional habitat for wildlife as well as making the area more inviting for the public. Further, Respondent has agreed to install seven interpretive signs around the native plantings to help the public learn about California plants and the importance of this unique coastal ecosystem.

Third, Respondent will fund and/or construct a large number of public amenities throughout Jack Nichol Park. In addition, because the City built a protected bike lane that now provides public cycling access to Jack Nichol Park, Commission staff sought to include other significant public access amenities that would be of equal or greater value as that originally required in the CDP.

The park currently consists mostly of grass lawn, non-native and/or invasive landscaping, sidewalks, and parking, with few other amenities. While the City originally planned to add public restrooms in the 1990's, the City then faced budget shortfalls,

which delayed and downsized the plans for construction of the park. In order to finally get the park built, the City obtained money from the Department of Boating and Waterways, which built restrooms in the park, but unfortunately, these are not public—they are available only to people who lease boat slips just offshore. This lack of public access amenities means that currently, it is not convenient for long-distance visitors to use and enjoy the park. We therefore appreciate that Respondent has agreed to greatly enhance public access in this park by installing new public amenities, including new public restrooms.

Since there are only a few benches currently in the park, Respondent has also agreed to install four additional benches. In addition, as this area is popular with dog walkers, Respondent has agreed to install an additional dog waste bag receptacle. Further, Respondent has also agreed to provide an additional bike rack. Most importantly, Respondent has agreed to fund and/or construct the public restrooms that were originally intended for this park. This will allow people who do not live nearby to enjoy the park and its bay views for as long as they want to, and make this area a much more comfortable place for the public to visit. In addition, Respondent has also agreed to fund the maintenance of the public restrooms for the first five years of their existence. It is often extremely difficult to fund and locate public restrooms, and so this element is of particular value to the public, in addition to the actual cost. The value of these restrooms to the public is estimated to be over \$1m, and combined with the five-year maintenance obligations, as well as the other public amenities such as the public access signs, dog station, and park benches, the Public Amenities Component alone provides well over \$1.5 million in value.

In sum, the total combined value to the public of the Public Access Component's sign program and wheelchair accessibility improvements, as well as the Native Planting Component's plants and trees, as well as the Public Amenities Component's public restrooms, park benches, interpretive signs, and other benefits that Respondent has agreed to, is estimated to be well over two million dollars, in addition to the greater and immeasurable value of substantially improving Jack Nichol Park, a place with a lot of potential that deserves to be improved and enjoyed. Staff therefore recommends that the Commission approve the proposed Consent Cease and Desist Order and Consent Administrative Penalty.

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculation for the Commission's approval, and the Commission finds there is substantial evidence to support staff's analysis. Under 30821(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."

Section 30820(c) states:

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

- (1) The nature, circumstance, extent, and gravity of the violation.
- (2) Whether the violation is susceptible to restoration or other remedial measures.
- (3) The sensitivity of the resource affected by the violation.
- (4) The cost to the state of bringing the action.
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

30820(c) (1): Applying the factors in Section 30820(c)(1) (nature, circumstance and gravity of the violation) to Respondent, the violation at hand should warrant the imposition of substantial civil liability; many different violations have persisted on the HOA Property for many years, and over a large area adjacent to Alamitos Bay. These violations made it impossible to access the Greenbelt Accessways, difficult to access the Bayfront Walkway, and also made it more difficult to access Jack Nichol Park. Therefore, the above factor weighs in favor of a medium to high penalty.

30820(C)(2): With regards to 30820(c)(2) (whether the violation is susceptible of restoration), the violation can be remedied going forward and compliance with these Consent Orders will ensure that adequate public access is maintained at this location. For example, under the proposed Consent Orders, Respondent will be installing over two dozen public access signs and a host of new public amenities at Jack Nichol Park so that the public access experience is more inviting, which will help to restore the public access coastal resources that were impacted and provide enhanced public amenities beyond that required by the original permit. However, there are many years of public access losses that can never be recovered, and many people have been denied public access to the coast that they cannot now regain, and therefore, a moderate penalty is warranted under this subsection.

Section 30820(c)(3) requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by this violation, public access, is an oft-threatened and important resource across the State. Ensuring public access is essential for implementing the Coastal Act, and this violation directly blocked many members of the public from parking and accessing Alamitos Bay. In addition, this is an area with a high population and few public access points along Alamitos Bay where, had the public been able to access it more easily, many people might have enjoyed the coastal resources in previous decades. Therefore, an accessible bayfront here is a relatively sensitive resource in terms of access, and thus, a high penalty is warranted under this factor. However, the proposed resolution would greatly improve

public access amenities here over what the CDP requires, including by providing many more signs and public amenities at Jack Nichol Park.

Section 30820(c)(4) takes into account the costs to the state of bringing this action. In this case, a moderate amount of Commission staff time was spent to bring this matter to a resolution relative to the Commission's other cases that are elevated to Headquarters Enforcement. Moreover, the proposed resolution here would enable the State to avoid litigation entirely and save it the costs and delays to restoring public access that such litigation would entail. Therefore, this factor warrants a low to moderate penalty.

Finally, **Section 30820(c)(5)** requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require. Respondent privatized the Greenbelt Accessways for the exclusive use of their members, who were able to easily use them to access the Bayfront Walkway and Jack Nichol Park. In addition, after receiving a Notice of Violation from the Commission, Respondent did not initially open the Greenbelt Accessways. However, the Respondent did not have a history of prior violations and did not economically profit from the violations, and although the violations did persist for some time once they engaged in negotiations, Respondent was cooperative in designing a resolution that provided significant public benefits. In the aggregate, this weighs toward a moderate penalty.

Aggregating these factors, Commission staff concludes that a moderately high penalty is justified here for Respondent. Staff recommends that the Commission exercise its prosecutorial discretion and adopt staff's recommendation to order Respondent, as a penalty, to implement a Public Access Component by installing public access signs and disability access improvements, to implement a Native Planting Component by replacing non-native and invasive landscaping at Jack Nichol Park with native plants, and to implement a Public Amenities Component including installation of public restrooms and other park improvements at Jack Nichol Park, the total value of which is estimated to be over \$2.5 million dollars. In summary, the proposed resolution represents a significant penalty to be paid by Respondent, in compliance with the criteria set forth in the statute.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalty Actions CC-23-AP-03 attached as **Appendix A** of this staff report.

F. Consent Orders are Consistent with Chapter 3 of the Coastal Act

These Consent Orders, attached to this staff report as Appendix A, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. These Consent Orders require and authorize Respondent to, among other things, cease and desist from conducting any further unpermitted development on the properties, and to perform public access improvements as described in further detail above. Failure to provide the

required public access would result in the continued loss of public access, inconsistent with the resource protection policies of the Coastal Act.

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

G. California Environmental Quality Act

The Commission finds that issuance of these Consent Orders, to compel the removal of the Unpermitted Development and the restoration of the properties, among other things, as well as the implementation of these Consent Orders, are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” *Id.* at § 21084. The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 *et seq.*). Because the Commission’s process, as demonstrated above, involves ensuring that the environment is protected throughout the process, one of those exemptions apply here: the one covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” These Consent Orders are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action that will ensure the environment is protected throughout the process, and since there is no reasonable

possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

III. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of these Consent Orders are located at and adjacent to 6177 Cadiz Lane, Long Beach, Los Angeles County, as shown in Tract Map 32277, recorded as Instrument No. 78-447269 on April 27, 1978 (the HOA Property).
2. Respondent's CDP A-231-76 required a public access easement, which was accepted by the State Coastal Conservancy, and was recorded on October 20, 1978 as Document No. 78-1171149.
3. The permittee developers recorded a Declaration of Restrictions (recorded as Document No. 78-951-750) that created the Costa Del Sol Homeowners Association (now known as Bay Harbour HOA), which succeeded in gaining interest in the common areas, including the area of the Greenbelt Accessways and the Bayfront Walkway. Bay Harbour HOA therefore succeeded to the permit as well, and as the permittee, received all benefits and burdens, including the requirements of the CDP.
4. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit, or (2) is inconsistent with a permit previously issued by the Commission.
5. Development that is inconsistent with Coastal Development Permit ("CDP") No. A-231-76 and was undertaken without Coastal Act authorization and within a public access easement required by that CDP, including but not limited to: 1) locked pedestrian gates and 'no trespassing' signs that blocked all public access to the Greenbelt Accessways, 2) a closed gate at the south end of the Bayfront Walkway that obstructed public access to it, 3) parts of tennis courts and pools built within the public access easement; 4) pathways built within the Greenbelt Accessways that are winding and narrow and not useable for bicycles; and 5) signs at the corner of Loynes Drive and Costa Del Sol Road that deter public access to the Public Road leading to Jack Nichol Park; as well as 6) failure to improve and maintain a public pedestrian and bicycle trail within the Greenbelt Accessways as required by the CDP and public access easement.
6. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Section 30821 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.

7. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of these Consent Orders, including Section 13187 of the Commission's regulations, have been met.
8. The work to be performed under these Consent Orders, if completed in compliance with the Consent Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
9. Respondent has agreed to assume the obligations of their Consent Orders, which settles all Coastal Act violations related to the specific violations described in #5.
10. As called for in Section 30821(c), the Commission has considered and taken into account all the factors in Section 30820(c) in determining the amount of administrative civil penalty to impose. The penalties agreed to in this settlement are an appropriate amount when considering those factors.