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Staff Report: 8/27/26
Hearing Date: 9/10/26

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Penalty Actions

Cease and Desist Order No: CCC-26-CD-04

Restoration Order No: CCC-26-RO-02

Administrative Penalty Nos: CCC-26-AP-03, CCC-26-AP3-03

Related Violation File No: V-4-24-0099

Violators: 2XMD Partners LLC

Location: 31430 Broad Beach Road, Malibu, CA (Assessor's Parcel Nos. 4470-017-066 and 4470-017-067); 31438 Broad Beach Road (APN 4470-017-065); and adjacent public trust tidelands and submerged lands.

Violation Description: Unpermitted development including: 1) use of an excavator within state tidelands and within public access easements to extract sand, beach cobble, and boulders; 2) grading of intertidal area; 3) maintenance of an unpermitted revetment, including moving it into a public access easement; and 4) maintenance of an unpermitted private beach access stairway within a recorded public access easement; all of which had the effect of blocking and/or impeding use of a public access easement and/or state tidelands.

Substantive File Documents: Public documents in Consent Cease and Desist Order File No. CCC-26-CD-04, Consent Restoration Order File No. CCC-26-RO-02; and Consent Administrative Penalty File Nos. CCC-26-AP-03 and CCC-26-AP3-03; Exhibits 1 through 12; and Appendix A of this staff report.

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

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This matter involves unpermitted extraction of sand, cobbles, and boulders that took place on the beach and in the ocean in a Marine Protected Area (“MPA”), as well as placement of an unpermitted revetment and maintenance of an unpermitted private stairway within Commission-required public access easements, all at the western end of Broad Beach in Malibu. The unpermitted extraction occurred in sensitive rocky intertidal habitat that the Commission has acted to protect in the past, and which is protected by the Local Coastal Program, the Coastal Act, and an MPA. In addition, the unpermitted revetment and stairway encroached within public access easements that the Commission required in other permit actions in order to mitigate the negative impacts of oceanfront development and a seawall there.

As is detailed below, though, under these proposed Consent Orders, 2XMD Partners LLC (“Respondent”) has now agreed to restore the excavated intertidal area and to remove the unpermitted development from the public access easements. In addition, Respondent has also agreed to resolve its civil liability by dedicating a very valuable oceanfront property in eastern Malibu to the public, which would provide rare and unique benefits to the public and to the coastal ecosystem. Although eastern Malibu is within an hours’ drive of millions of people in Los Angeles County, relatively few public accessways exist in the area. Moreover, public acquisitions of property there are an expensive and time consuming process, and very few new public access sites have been acquired in recent decades. Thus, this settlement presents a rare opportunity to greatly benefit public access for the region.

Location

This unpermitted development took place in the Broad Beach area of the city of Malibu in Los Angeles County (Exhibit 1). Broad Beach is located within western Malibu, between Zuma Beach to the east and Lechuza Beach to the west. The properties at issue are located near the very western end of Broad Beach, near Lechuza Point. The west end of the Broad Beach shoreline is characterized by large oceanfront houses built on dunes and bluffs. To reach the beach, the public can use two vertical public access ways that are located downcoast of the properties. Once on the sand, there are several lateral public access easements and deed restrictions recorded on oceanfront

properties that allow beach access along this scenic shoreline, although the beach itself is often narrow due to the large number of seawalls and revetments that have been constructed on Broad Beach. Respondent's properties at issue, 31430 and 31438 Broad Beach Road, are adjacent to each other (Exhibit 2). 31430 Broad Beach is developed with a house, but 31438 is not yet developed (as is detailed below), other than the unpermitted revetment.

In addition to being protected by the Coastal Act and City of Malibu resource protection policies, the ocean in this area is also protected as a Marine Protected Area called the Point Dume State Marine Conservation Area. The western end of Broad Beach also contains a boulder field in the rocky intertidal zone (Exhibit 5). The boulder field is exposed during low tides but is seasonally covered by sand. This rocky intertidal zone is an important ecosystem and provides habitat for species that are specially adapted to this dynamic environment, including algae, barnacles, kelp, surfgrass, and sea stars. (Exhibit 6). The intertidal zone plays a significant role in the larger ecosystem, which includes submerged bedrock reefs farther offshore that provide habitat for eelgrass, kelp, and many species of fish.

Permit History and Initial Violations

The Commission has a long history of working to protect public access in this area. In 1985, the Commission approved Coastal Development Permit ("CDP") 5-85-635, which authorized a subdivision of the largest remaining undeveloped property at Broad Beach into nine residential lots (Exhibit 7). At the time, the property consisted mostly of dunes and bluffs, but, knowing that the area would be developed soon, the Commission acted to protect public access here. Special Condition 1 of that CDP therefore required the recordation of Offers-to-Dedicate ("OTDs") lateral public access easements along the beach portion of the lots, extending from the mean high tide line to a point 25 feet inland. Two of the lots in the subdivision, 31430 and 31438 Broad Beach, would later be bought by Respondent.

In 1993, the Commission approved CDP 4-93-086, which authorized the construction of a new wooden seawall in front of the existing house located at 31430 Broad Beach (Exhibit 8). The Commission found that seawalls negatively impacted public access, and the Commission acted to mitigate those harms in order to find the project consistent with the Coastal Act protection policies for public access. Therefore, Special Condition 2 of that CDP required the recordation of an OTD for a lateral public access easement extending from the mean high tide line all the way to the seawall, thus widening the area of beach protected for public access on this property.

However, while the seawall at 31430 Broad Beach was mitigated by the Commission-required additional public access easement, by 2002, a prior owner of 31438 Broad Beach had constructed an unpermitted revetment there without any CDP. Therefore, the Commission was not able to analyze the situation, and did not determine whether the revetment was legally consistent with the Coastal Act or require conditions on a CDP, such as recording public access easements as mitigation. Also by 2002, a prior

owner of 31430 Broad Beach had constructed an unpermitted private stairway that encroached within the widened public access easement OTD area. That same year, State Lands Commission accepted the public access easements required by CDP 5-85-635 (Exhibits 9 and 10).

In 2007, Respondent bought 31430 Broad Beach, which was already developed with a house, seawall, and an unpermitted private beach access stairway extending off of the seawall and into a public access easement. Respondent did not remove the unpermitted private stairway after purchasing the property. In 2017, Respondent bought the adjacent property at 31438 Broad Beach, which has remained undeveloped except for the unpermitted revetment. In 2019, Respondent obtained local CDP 14-028 from the City of Malibu, which authorized the construction of a house at 31438 Broad Beach, as well as the removal of the unpermitted revetment there. However, Respondent did not remove the unpermitted revetment or build the house, and has instead obtained a number of permit extensions while the unpermitted revetment has remained in place.

Recent Violations and Enforcement History

In 2022, Respondent obtained local Emergency CDP (“ECDP”) No. 22-002 for repair of the vertical wooden seawall at 31430 Broad Beach. Finding 1 of the ECDP notes the limited amount of work authorized, and states, “the proposed development can and will be completed within 30 days as the scope of work only consists of reinforcing the existing seawall with new sheathing walls and outside whalers.” However, by September of 2023, Respondent had begun constructing a crane pad on 31438 Broad Beach to facilitate the work, which had not yet been completed, and in response the City issued a stop work order and instructed Respondent to obtain an additional ECDP. On March 21, 2024, the City issued ECDP No. 24-006 for the crane to facilitate the emergency repair of the seawall at 31430 Broad Beach Road. Finding 5 of both ECDPs stated, “the proposed work will not take place in any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone..... The applicant is working with California State Lands Commission; their review will be completed prior to the issuance of the project’s follow up coastal development permit (CDP).” Condition 6 of both ECDPs stated, “at no time shall any materials or mechanized equipment be located within the tidal zone.”

To prepare the seawall for repairs, Respondent removed the unpermitted private stairway attached to it. However, by July 2, 2024, the unpermitted revetment at 31438 Broad Beach was pushed seaward into a public access easement, for use as a ramp to allow excavators to reach the shoreline (Exhibit 3). Although the conditions of both ECDP Nos. 22-002 and 24-006 specifically prohibit any use of mechanized equipment in the tidal zone, videos also show Respondent’s excavators driving into the ocean within a Marine Protected Area. Respondent’s excavators then extracted sand, beach cobbles, and boulders from the sensitive rocky intertidal habitat, which is also within state tidelands. Respondent then piled the extracted sand, cobbles, and boulders on the

beach, before placing them behind the seawall for use as fill material. Respondent's excavators were also seen digging up sand from the beach and similarly placing it behind the seawall for use as fill (Exhibit 3). On July 3, 2024, the City of Malibu sent a stop work order to Respondent, and Respondent complied. However, the underwater extraction left a hole in the intertidal boulder field (Exhibit 3). In addition, unpermitted revetment boulders remained within the public access easement at 31438 Broad Beach Road, encroaching on public access there.

These violations also caused substantial negative impacts to sensitive rocky intertidal habitat that is also protected by the state as part of a Marine Protected Area. In addition, the Commission has also acted to protect this area in the past. In a November 25, 2014 memo (Exhibit 6) for a nearby proposal (Broad Beach Geological Hazard Abatement District- CDP 4-15-0390), the Commission's Senior Ecologist Dr. Jonna Engel found:

"The rocky intertidal zone is a compact and diverse area located in the transition zone between terrestrial and marine habitats. This area, exposed for part of the day and covered for the rest, is characterized by marine organisms adapted to physical disturbance, severe temperature fluctuations, and predators from both terrestrial and marine environments. In southern California over 1,000 species of algae and invertebrates inhabit this zone.

East of Lechuza Point is a boulder field that is subject to seasonal sand cover and is characterized by species especially adapted to sand inundation including green algae and barnacles in the high intertidal zone, fleshy red algae including *Gracilaria andersonii*, *Ceramium* sp. and *Masaella leptorhynchos* in the mid-intertidal, and feather boa kelp, *Egregia menziesii* and surfgrass, *Phyllospadix* sp. in the low-intertidal. Ochre sea stars, *Pisaster ochraceus*, occur in significant numbers in the mid and low intertidal zones."

Accordingly, the Commission CDP in that matter specifically required that the permittee ensure that the west end of Broad Beach, where the subject properties are located, would not be disturbed, in order to protect the sensitive rocky intertidal and boulder field habitat there (Special Condition 1.A.2). However, the large hole left behind after Respondent's extraction caused a portion of the boulder field habitat to be removed entirely, with only bare sand remaining.

On September 5, 2024, Commission staff sent a Notice of Violation letter to Respondent. On the same day, the California State Lands Commission ("SLC") also sent a letter to Respondent stating that excavation had occurred within state tidelands. On September 12, 2024, the Mountains Recreation and Conservation Authority accepted the OTD for a lateral public access easement that widened the public access area on the 31430 Broad Beach lot (Exhibit 11). On November 28, 2024, Commission staff visited the site and confirmed that the hole in the intertidal boulder field still existed, and that the unpermitted revetment continued to encroach within the public access easement. After coordinating with SLC, Headquarters Enforcement staff sent a Notice

of Intent to Issue a Cease and Desist Order, Restoration Order, and Administrative Penalties on April 30, 2025 (“the NOI”) (Exhibit 12).

After Respondent received the NOI, Commission staff and Respondent began active negotiations that resulted in these proposed Consent Orders. In 2026, Respondent moved the unpermitted revetment out of the public access easement. Photos taken since the NOI, however, continue to show a large hole within the intertidal boulder field. Yet, Commission staff and Respondent have worked expeditiously together to reach a proposed resolution that addresses the lost public access, the harms to the sensitive intertidal habitat, and the corresponding liabilities under the Coastal Act.

Proposed Resolution

Since Respondent received the NOI, Respondent has worked quickly and cooperatively with Commission staff. Respondent has now agreed to a proposed resolution that requires compliance with the Coastal Act by 1) removing unpermitted development that blocks public access, 2) restoring the hole in the intertidal boulder field, and 3) addressing the corresponding liabilities for the violations by dedicating in fee a beachfront property in Malibu to the public for public access, open space, and recreation. Commission staff believes that the proposed resolution, as discussed below, provides a high amount of value to the public and to the coastal ecosystem, as well as a rare opportunity for the public to acquire beachfront land in this area.

More specifically, first, Respondent has agreed to remove all remaining physical items of unpermitted development located on and seaward of Respondent’s properties and to cease and desist from undertaking further unpermitted development. Respondent has already removed the unpermitted private stairway that encroached within the public access easement. Respondent has also already moved the unpermitted revetment farther inland and out of the public access easement, and is now, under the proposed Consent Order, required to remove it entirely during the optimal season and tides.

Second, Respondent is required to restore the hole in the intertidal boulder field. The beach cobbles and boulders that were extracted provided important habitat for a variety of unique algae, barnacles, kelp, and sea stars. Without placement of new rock in the hole, this loss of habitat could persist for many years, and perhaps many decades, until nearby heavy boulders and cobbles are slowly pushed by wave action into the hole, and even then it would be at the expense of habitat elsewhere. Therefore, under the agreement, Respondent is required to find and replace the same types of boulders and beach cobbles that existed there before the violations, and is also required to ensure that the new boulders and beach cobbles are similarly sized to the ones that existed there before, which will then provide habitat for unique marine organisms once again.

Third, Respondent has agreed to address Coastal Act liabilities for the above-described violations by dedicating in fee a very valuable beachfront property in eastern Malibu to the public, and at no cost to the public. The property, located at Big Rock Beach, presents a rare opportunity for a public acquisition of undeveloped beachfront land in

this area, as well as greater protection of the intertidal ecosystem there (Exhibit 4). The eastern portion of Malibu, between Malibu Pier and Topanga Beach, consists of nearly six miles of coastline that is less than an hours' drive for millions of people who live in Los Angeles County, yet for decades has been exceedingly difficult for the public to enjoy. Only a few public accessways exist within this nearly six miles of coastline. Therefore, the addition of an entire beachfront parcel will greatly help to increase opportunities for public enjoyment of the coast.

Once transferred in fee to a public entity, it is likely that the property will be developed in the future with a formal public beach access stairway, however, in the meantime, it could provide informal beach access and provide areas of the beach that was previously private for sunbathing, picnicking, strolling, and otherwise enjoying this stretch of coast, and continue to provide open, public views of the ocean from Pacific Coast Highway ("PCH"). In addition, the property could be used to provide public parking and coastal views. Public parking in this area is extremely limited. The houses on the beachfront side of PCH enjoy private driveways, but very few public spaces exist on this side of PCH.

Also, this part of the coast has historically been developed with houses built to the edges of their lots, in a manner that has not provided many, if any, opportunities for coastal views, or to even catch a glimpse of the ocean. Dedication of this beachfront land would ensure that public access is protected in perpetuity, and would provide many potential public access opportunities for the public to enjoy. Further, use of this property for public access would be more beneficial to the beach environment than if the area were privately developed with structures in the constrained area. However, if this area is protected for public access, even if a public stairway is eventually built, it could be built in a way that is less structurally intensive, and more protective of the natural beach ecology.

Moreover, while dedication of this property would provide many benefits to the public and the environment, it would also provide a high financial value to the public. At the time of posting this Staff Report, the property was listed at \$2 million, and Commission staff believes that the actual value to the public is much higher. Any acquisition of a similar property would necessitate costs to the public for planning, appraisals, negotiations, and the like that could easily run into the hundreds of thousands of dollars of additional costs beyond the cost of a purchase. Respondent's agreement to dedicate this property therefore saves the public time and resources, in addition to the cost of the purchase price itself. Further, although it is often suggested that areas dedicated to public access would be a great amenity, especially in this area, the lots are very expensive and the opportunity rarely presents itself. Thus, Commission staff believes that this proposed resolution provides a rare and unique opportunity that would greatly benefit the public and the coastal environment. Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Order CCC-26-CD-04, Consent Restoration Order CCC-26-RO-02, and Consent Administrative Penalty Actions CCC-26-AP-03 and CCC-26-AP3-03. The proposed motions can be found on **pages 9 and 10**.

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APPENDIX A – Proposed Consent Cease and Desist Order CCC-26-CD-04, Consent Restoration Order CCC-26-RO-02, and Consent Administrative Penalty Actions CCC-26-AP-03 and CCC-26-AP3-03

EXHIBITS

Exhibit 1:	Overview Map of Region
Exhibit 2:	Overview Map of Violations
Exhibit 3:	Overview Photos of Unpermitted Development
Exhibit 4:	Overview Photos of Property to be Dedicated
Exhibit 5:	Map of West Broad Beach Sensitive Marine Resources (CDP 4-15-0390)
Exhibit 6:	Memorandum from Commission Senior Ecologist Dr. Jonna Engel re: CDP 4-15-0390 dated November 25, 2014
Exhibit 7:	Staff Report for CDP 5-85-653 (31430 and 31438 Broad Beach)
Exhibit 8:	Staff Report for CDP 4-93-086 (31430 Broad Beach Seawall)
Exhibit 9:	SLC Acceptance of Lateral Public Access Easement (31430 Broad Beach)
Exhibit 10:	SLC Acceptance of Lateral Public Access Easement (31438 Broad Beach)
Exhibit 11:	MRCA Acceptance of Lateral Public Access Easement (31430 Broad Beach)
Exhibit 12:	Notice of Intent to Issue a Cease and Desist Order, Restoration Order, and Administrative Penalties dated April 30, 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-04 to 2XMD Partners LLC 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-04, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred on the subject properties without the requisite Coastal Development Permit, in violation of the Coastal Act and CDP Nos. 5-85-653 and 4-93-086, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Restoration Order

I move that the Commission **issue** Consent Restoration Order No. CCC-26-RO-02 to 2XMD Partners LLC 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 Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-26-RO-02, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject properties without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

Motion 3: Consent Administrative Civil Penalty Action:

I move that the Commission find that as a result of the actions and failures to act described in the associated findings, 2XMD Partners LLC is in violation of various provisions of the Coastal Act protecting public access, and that the

Commission impose Consent Administrative Civil Penalty No. CCC-26-AP-03 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 attributable to the violations of the public access provisions. 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 Consent Administrative Civil Penalty CCC-26-AP-03, 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 the subject properties, including property owned by 2XMD Partners LLC, in violation of the various provisions of the Coastal Act protecting public access.

Motion 4: Consent Administrative Civil Penalty Action:

I move that the Commission find that as a result of the actions and failures to act described in the associated findings, 2XMD Partners LLC is in violation of various provisions of the Coastal Act, including, but not necessarily limited to, provisions protecting marine resources, biological productivity, and environmentally sensitive habitat areas, and that the Commission impose Consent Administrative Civil Penalty No. CCC-26-AP3-03 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 attributable to violations of Coastal Act provisions unrelated to public access. 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 Consent Administrative Civil Penalty No. CCC-26-AP3-03, 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 the subject properties, including property owned by 2XMD Partners LLC, in violation of the various provisions of the Coastal Act, including, but not necessarily limited to, provisions protecting marine resources, biological productivity, and environmentally sensitive habitat areas.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order pursuant to Section 30810 and 30811 are outlined in the Commission's regulations at California Code of Regulations, Title 14 ("14 CCR") Section 13185 and Section 13195. The requisite procedure for imposition of administrative penalties pursuant to Section 30821 and 30821.3 of the Coastal Act (Pub. Resources Code, Div. 20) are set forth in Sections 30821(b) and 30821.3(b), respectively, 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 and Restoration Order hearing.

For a Cease and Desist Order and Restoration Order hearing and an Administrative Penalty action, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the chair may allow the alleged violators to use any reserved rebuttal time to respond to comments from interested persons and may then allow staff to respond to the testimony and to any new evidence introduced.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 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 Cease and Desist Order and Restoration Order and impose Administrative Penalties, either in the form recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission and agreed upon by Respondent, will result in the issuance of the Consent Cease and Desist Order and Consent Restoration Order, and imposition of the Consent Administrative Penalty.

¹ Note that there are currently 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 CCC-26-CD-04, CONSENT RESTORATION ORDER CCC-26-RO-02, AND CONSENT ADMINISTRATIVE PENALTY NOS. CCC-26-AP-03 AND CCC-26-AP3-03²

A. Property Location

This unpermitted development took place in the Broad Beach area of the city of Malibu in Los Angeles County (Exhibit 1). Broad Beach is located within western Malibu, between Zuma Beach to the east and Lechuza Beach to the west. The properties at issue are located near the very western end of Broad Beach, near Lechuza Point. The west end of the Broad Beach shoreline is characterized by large oceanfront houses built on dunes and bluffs. To reach the beach, the public can use two vertical public access ways that are located downcoast of the properties. Once on the sand, there are several lateral public access easements and deed restrictions recorded on oceanfront properties that allow beach access along this scenic shoreline, although the beach itself is often narrow due to the large number of seawalls and revetments that have been constructed on Broad Beach. Respondent's properties at issue, 31430 and 31438 Broad Beach Road, are adjacent to each other (Exhibit 2). 31430 Broad Beach is developed with a house, but 31438 is not yet developed (as is detailed below), other than the unpermitted revetment.

In addition to being protected by the Coastal Act and City of Malibu resource protection policies, the ocean in this area is also protected as a Marine Protected Area called the Point Dume State Marine Conservation Area. The western end of Broad Beach also contains a boulder field in the rocky intertidal zone (Exhibit 5). The boulder field is exposed during low tides but is seasonally covered by sand. This rocky intertidal zone is an important ecosystem and provides habitat for species that are specially adapted to this dynamic environment, including algae, barnacles, kelp, surfgrass, and sea stars. (Exhibit 6). The intertidal zone plays a significant role in the larger ecosystem, which includes submerged bedrock reefs farther offshore that provide habitat for eelgrass, kelp, and many species of fish.

² These findings also hereby incorporate by reference the Summary at the beginning of the August 27, 2026 staff report ("Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-26-CD-04, Consent Restoration CCC-26-RO-02, and Consent Administrative Penalty Nos. CCC-26-AP-03 and CCC-26-AP3-03") in which these findings appear, which section is entitled, "Summary of Staff Recommendation and Findings."

B. Permit History and Initial Violations

The Commission has a long history of working to protect public access in this area. In 1985, the Commission approved Coastal Development Permit (“CDP”) 5-85-635, which authorized a subdivision of the largest remaining undeveloped property at Broad Beach into nine residential lots (Exhibit 7). At the time, the property consisted mostly of dunes and bluffs, but, knowing that the area would be developed soon, the Commission acted to protect public access here. Special Condition 1 of that CDP therefore required the recordation of Offers-to-Dedicate (“OTDs”) lateral public access easements along the beach portion of the lots, extending from the mean high tide line to a point 25 feet inland. Two of the lots in the subdivision, 31430 and 31438 Broad Beach, would later be bought by Respondent.

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However, while the seawall at 31430 Broad Beach was mitigated by the Commission-required additional public access easement, by 2002, a prior owner of 31438 Broad Beach had constructed an unpermitted revetment there without any CDP. Therefore, the Commission was not able to analyze the situation, and did not determine whether the revetment was legally consistent with the Coastal Act or require conditions on a CDP, such as recording public access easements as mitigation. Also by 2002, a prior owner of 31430 Broad Beach had constructed an unpermitted private stairway that encroached within the widened public access easement OTD area. That same year, State Lands Commission accepted the public access easements required by CDP 5-85-635 (Exhibits 9 and 10).

In 2007, Respondent bought 31430 Broad Beach, which was already developed with a house, seawall, and an unpermitted private beach access stairway extending off of the seawall and into a public access easement. Respondent did not remove the unpermitted private stairway after purchasing the property. In 2017, Respondent bought the adjacent property at 31438 Broad Beach, which has remained undeveloped except for the unpermitted revetment. In 2019, Respondent obtained local CDP 14-028 from the City of Malibu, which authorized the construction of a house at 31438 Broad Beach, as well as the removal of the unpermitted revetment there. However, Respondent did not remove the unpermitted revetment or build the house, and has instead obtained a number of permit extensions while the unpermitted revetment has remained in place.

C. Recent Violations and Enforcement History

In 2022, Respondent obtained local Emergency CDP (“ECDP”) No. 22-002 for repair of the vertical wooden seawall at 31430 Broad Beach. Finding 1 of the ECDP notes the limited amount of work authorized, and states, “the proposed development can and will be completed within 30 days as the scope of work only consists of reinforcing the existing seawall with new sheathing walls and outside whalers.” However, by September of 2023, Respondent had begun constructing a crane pad on 31438 Broad Beach to facilitate the work, which had not yet been completed, and in response the City issued a stop work order and instructed Respondent to obtain an additional ECDP. On March 21, 2024, the City issued ECDP No. 24-006 for the crane to facilitate the emergency repair of the seawall at 31430 Broad Beach Road. Finding 5 of both ECDPs stated, “the proposed work will not take place in any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone..... The applicant is working with California State Lands Commission; their review will be completed prior to the issuance of the project’s follow up coastal development permit (CDP).” Condition 6 of both ECDPs stated, “at no time shall any materials or mechanized equipment be located within the tidal zone.”

To prepare the seawall for repairs, Respondent removed the unpermitted private stairway attached to it. However, by July 2, 2024, the unpermitted revetment at 31438 Broad Beach was pushed seaward into a public access easement, for use as a ramp to allow excavators to reach the shoreline (Exhibit 3). Although the conditions of both ECDP Nos. 22-002 and 24-006 specifically prohibit any use of mechanized equipment in the tidal zone, videos also show Respondent’s excavators driving into the ocean within a Marine Protected Area. Respondent’s excavators then extracted sand, beach cobbles, and boulders from the sensitive rocky intertidal habitat, which is also within state tidelands. Respondent then piled the extracted sand, cobbles, and boulders on the beach, before placing them behind the seawall for use as fill material. Respondent’s excavators were also seen digging up sand from the beach and similarly placing it behind the seawall for use as fill (Exhibit 3). On July 3, 2024, the City of Malibu sent a stop work order to Respondent, and Respondent complied. However, the underwater extraction left a hole in the intertidal boulder field (Exhibit 3). In addition, unpermitted revetment boulders remained within the public access easement at 31438 Broad Beach Road, encroaching on public access there.

These violations also caused substantial negative impacts to sensitive rocky intertidal habitat that is also protected by the state as part of a Marine Protected Area. In addition, the Commission has also acted to protect this area in the past. In a November 25, 2014 memo (Exhibit 6) for a nearby proposal (Broad Beach Geological Hazard Abatement District- CDP 4-15-0390), the Commission’s Senior Ecologist Dr. Jonna Engel found:

“The rocky intertidal zone is a compact and diverse area located in the transition zone between terrestrial and marine habitats. This area, exposed for part of the day and covered for the rest, is characterized by marine organisms adapted to physical disturbance, severe temperature fluctuations, and predators from both terrestrial and marine environments. In southern California over 1,000 species of algae and invertebrates inhabit this zone.

East of Lechuza Point is a boulder field that is subject to seasonal sand cover and is characterized by species especially adapted to sand inundation including green algae and barnacles in the high intertidal zone, fleshy red algae including *Gracilaria andersonii*, *Ceramium* sp. and *Masaella leptorhynchos* in the mid-intertidal, and feather boa kelp, *Egregia menziesii* and surfgrass, *Phyllospadix* sp. in the low-intertidal. Ochre sea stars, *Pisaster ochraceus*, occur in significant numbers in the mid and low intertidal zones.”

Accordingly, the Commission CDP in that matter specifically required that the permittee ensure that the west end of Broad Beach, where the subject properties are located, would not be disturbed, in order to protect the sensitive rocky intertidal and boulder field habitat there (Special Condition 1.A.2). However, the large hole left behind after Respondent's extraction caused a portion of the boulder field habitat to be removed entirely, with only bare sand remaining.

On September 5, 2024, Commission staff sent a Notice of Violation letter to Respondent. On the same day, the California State Lands Commission (“SLC”) also sent a letter to Respondent stating that excavation had occurred within state tidelands. On September 12, 2024, the Mountains Recreation and Conservation Authority accepted the OTD for a lateral public access easement that widened the public access area on the 31430 Broad Beach lot (Exhibit 11). On November 28, 2024, Commission staff visited the site and confirmed that the hole in the intertidal boulder field still existed, and that the unpermitted revetment continued to encroach within the public access easement. After coordinating with SLC, Headquarters Enforcement staff sent a Notice of Intent to Issue a Cease and Desist Order, Restoration Order, and Administrative Penalties on April 30, 2025 (“the NOI”) (Exhibit 12).

After Respondent received the NOI, Commission staff and Respondent began active negotiations that resulted in these proposed Consent Orders. In 2026, Respondent moved the unpermitted revetment out of the public access easement. Photos taken since the NOI, however, continue to show a large hole within the intertidal boulder field. Yet, Commission staff and Respondent have worked expeditiously together to reach a proposed resolution that addresses the lost public access, the harms to the sensitive intertidal habitat, and the corresponding liabilities under the Coastal Act.

D. Statutory Basis for Orders

i. Basis for Issuing Consent Cease and Desist Order

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

(a) 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....

(1) 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. The Commission has direct jurisdiction in this case because the violations here are either violations of permits issued by the Commission or which took place in the Commission retained permit jurisdiction.

ii. Basis for Issuing Consent Restoration Order

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

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

Application to Facts

The following paragraphs set forth the basis for the issuance of the Consent Cease and Desist and Consent Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 for the Commission to issue a Cease and Desist Order and a Restoration Order.

a. Development has occurred without a Coastal Development Permit

In this case, Respondent does not have a CDP for the development at issue. The subsequent step is demonstrating that Respondent took an action requiring a CDP. 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 and states in relevant part as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, ...construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes...

Respondent undertook activities that meet the definition of development under the Coastal Act, as is described more fully below, including:

- 1) extraction and removal of sand, beach cobble, and boulders from state-owned tidelands and public access easements using an excavator;
- 2) grading of intertidal area;
- 3) maintenance of an unpermitted revetment, as well as placement of the unpermitted revetment into a public access easement; and
- 4) maintenance of an unpermitted private beach access stairway within a recorded public access easement;

all of which had the effect of blocking and/or impeding use of a public access easement and/or state tidelands.

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, which was not done. None of this development listed above, however, received any such Coastal Act authorization. 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).

In addition, this development took place in areas where a CDP or CDP amendment from the Commission would be required. As is detailed below, the unpermitted revetment and unpermitted private stairway were located within public access easements required by Commission CDPs. In addition, the unpermitted grading and sand extraction took place in state tidelands, and the unpermitted extraction of cobbles and boulders took place on public trust lands held by SLC, both of which remain within the Commission's retained permit jurisdiction. Therefore, the Commission is fully

authorized to enforce its CDPs and to enforce the Coastal Act within its retained permit jurisdiction in tidelands and public trust lands held by SLC.

b. The Development at Issue is Inconsistent with the Terms of Previously Issued Permits (CDP Nos. 5-85-635 and 4-93-086)

In addition, much of the development described above was inconsistent with the terms of CDP Nos. 5-85-635 and 4-93-086, both of which required lateral public access easements on the beach. Respondent maintained an unpermitted revetment that Respondent later pushed into the lateral public access easement on 31438 Broad Beach that was required by CDP No. 5-85-635. Neither the easement nor the CDP authorized any development obstructing the public access easement, but the revetment did encroach within a significant portion of the public access easement. In addition, seawalls and revetments negatively impact beaches generally, leading them to shrink, which also negatively impacts public access.

Further, Respondent maintained an unpermitted private stairway attached to the seawall at 31430 Broad Beach, which also violated public access conditions of the CDPs issued for development on the property. CDP 5-85-635 required a public access easement that was accepted in 2002. The public access easement extended 25 feet inland from the mean high tide line and so did not extend all the way to the seawall when the beach was wide, however, the beach was often narrower than 25 feet due to the negative impacts of the seawall. Therefore, the unpermitted private stairway would frequently encroach within that public access easement. After CDP 4-93-086 was issued, which required an additional easement that extended all the way to the seawall itself as mitigation for the negative effects of the seawall, the unpermitted private stairway encroached within the public access easement OTD area required by that CDP, as well.

The unpermitted revetment and the unpermitted private stairway both encroached within public access easements required by CDPs, and therefore, both were inconsistent with those CDPs. Thus, much of the unpermitted development was also inconsistent with existing permits, and therefore the jurisdictional requirement for issuance of the Consent Cease and Desist Order has been met, and the first of three jurisdictional requirements for issuance of the Consent Restoration Order have also been met.

c. The Development at Issue is Inconsistent with the Coastal Act

The unpermitted development described herein is inconsistent with several resource protection policies enumerated under the Coastal Act, including:

- a. Section 30230 (requiring protection of marine resources)
- b. Section 30231 (requiring protection of biological productivity and water quality)

- c. Section 30240 (requiring protection of environmentally sensitive habitat areas or ESHA)
- d. Sections 30210 and 30211 (requiring protection of public access)
- e. Section 30221 (requiring protection of recreational use)

The unpermitted development caused significant negative impacts to the above-listed coastal resources. As is detailed above, the unpermitted revetment and unpermitted private stairway encroached within Commission-required public access easements, thus reducing and negatively impacting public access and recreational use in violation of those CDPs. Further, the unpermitted grading on the beach and unpermitted extraction of sand from the beach and boulders and cobbles from the ocean both negatively impacted marine resources, biological productivity, and environmentally sensitive habitat areas. The tidelands and public trust lands held by SLC at issue are very unique and have been protected by the Commission in a prior action. In that prior action, CDP No. 4-15-0390, the Commission specifically required that the west end of Broad Beach be protected in order to save the rocky intertidal habitat there. That same rocky intertidal habitat is the location where the violations occurred.

This area was described in Dr. Jonna Engel's Nov. 25, 2014 Memorandum included as Exhibit 14 in the Staff Report for CDP No. 4-15-0390:

The rocky intertidal zone is a compact and diverse area located in the transition zone between terrestrial and marine habitats. This area, exposed for part of the day and covered for the rest, is characterized by marine organisms adapted to physical disturbance, severe temperature fluctuations, and predators from both terrestrial and marine environments. In southern California over 1,000 species of algae and invertebrates inhabit this zone.

East of Lechuza Point is a boulder field that is subject to seasonal sand cover and is characterized by species especially adapted to sand inundation including green algae and barnacles in the high intertidal zone, fleshy red algae including *Gracilaria andersonii*, *Ceramium* sp. and *Masaella leptorhynchos* in the mid-intertidal, and feather boa kelp, *Egregia menziesii* and surfgrass, *Phyllospadix* sp. in the low-intertidal. Ochre sea stars, *Pisaster ochraceus*, occur in significant numbers in the mid and low intertidal zones.

However, much of the unpermitted excavation and extraction at issue here took place within this very area, and it is still actively impacting this habitat. In addition, the unpermitted development took place in an area of significance from a resources perspective; it took place within a Marine Protected Area offshore, known as the Point Dume Marine Conservation Area. Broad Beach is also located within the boundaries of the State Water Resources Control Board's Mugu-Latigo Area of Special Biological Significance. As guidance, the City of Malibu Land Use Plan Policy 3.74 provides that

“[a]s set forth in Policy 3.4, any marine area that meets the ESHA criteria, including Areas of Special Biological Significance and Marine Protected Areas (as designated by the California Department of Fish and Game) is ESHA, and shall be accorded all of the protections provided for ESHA in the LCP.” This area is also habitat for pismo clams and grunion, both of which may have been impacted. Therefore, the second jurisdictional element for issuance of the Consent Restoration Order has been met.

d. The Development at Issue is Causing Continuing Resource Damage

The unpermitted development remains and the area impacted is unrestored and is causing ‘continuing resource damage’, as those terms are defined by 14 CCR Section 13190.

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

‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas. The unpermitted development here took place in and around environmentally sensitive habitat areas, tidelands, and public trust lands, and so coastal resources were affected here.

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

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

In this case, the damage was to habitat and ecosystem functions provided by the impacted environmentally sensitive habitat areas, biological productivity, and marine resources. The sensitive boulder field habitat within the rocky intertidal zone was excavated, leaving a hole in the habitat. This hole continues to exist, and within the hole, the boulder field habitat is missing. Thus, damage to coastal resources did occur here.

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

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

As of this time, the hole in the boulder field caused by the extraction and excavation in the ocean remains, and has remained since 2024. Therefore, the unpermitted development is causing damage to resources protected by the Coastal Act that continue to occur as of the date of this proceeding, and therefore damage to resources is

‘continuing’ for purposes of Section 30811 of the Coastal Act. The damage caused by the unpermitted development, which is described above paragraphs, satisfies the regulatory definition of ‘continuing resource damage.’ Thus, the third and final criterion for issuance of a Restoration Order is therefore satisfied.

e. The Development at Issue is Negatively Impacting Environmental Justice

The following discussion does not address a required element of Sections 30810, 30811, 30821, or 30821.3 of the Coastal Act, and the findings in this section are therefore not essential to the Commission’s ability to issue a cease and desist order, restoration order, or administrative penalty. This explication is, however, important for context, and for understanding the totality of impacts associated with the violations.

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.

For persons from disadvantaged communities that cannot afford to buy or rent expensive oceanfront property, the public access easements at Broad Beach provide important low-cost recreation and public access opportunities. However, the encroachments by the unpermitted private stairway and the unpermitted revetment reduced the ability of the public to enjoy the coast here. In addition, the unpermitted revetment’s shrinking of the beach in front of it also means that there is less beach for the public to access. Thus, this matter had negative impacts to environmental justice.

iii. Basis for Issuing Consent Administrative Civil Penalties

a. Statutory Provision

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

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

The statutory authority for imposition of administrative penalties for non-public access violations of the Coastal Act is provided for in the Coastal Act in Public Resources Code Sections 30821.3, 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 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 settlement, Respondent has agreed to resolve its financial liabilities under all of these sections of the Coastal Act via the commitments made in the Consent Orders.

b. Application to Facts

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. None of those criteria (all of which must be satisfied for the provision to apply) applies here.

First, a Notice of Violation was sent on September 5, 2024 to Respondent. The violations that negatively impacted public access, including the unpermitted revetment and the unpermitted private stairway, were permit condition violations. In addition, while the unpermitted private stairway was removed prior to the Notice of Violation being sent, the unpermitted revetment remained within a public access easement for more than a year and a half. While the unpermitted revetment was later pushed out of the public access easement, it has still not been removed.

Second, the violations at issue here did involve violations of permit conditions as noted above. And third, removal of the unpermitted revetment and the restoration work are development that would also require authorization under the Coastal Act. Therefore, not just one but all three criterion have not been met, and so the so-called 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, in the case of the unpermitted stairway, it encroached within important lateral public access easements on the beach for many decades. Further, the unpermitted revetment was placed in part within a public access easement for over a year and a half, and before that, it had the effect of reducing the beach, causing negative impacts to public access as well. Therefore, the public access violations cannot be considered to have resulted in “de minimis” harm to the public.

Exceptions to Section 30821.3 Liability Do Not Apply

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

The provisions of Section 30821.3(h) are inapplicable to the matter at hand. 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.

First, the unpermitted excavation and extraction created a hole in the rocky intertidal boulder field that has persisted far longer than sixty days. It has been there for over two years and continues to exist. While the unpermitted grading and extraction of sand from the beach left holes that were quickly filled by incoming waves, no sand has been added to the beach since. The violations are not of permit conditions, and so the second requirement is not relevant. Third, restoring the area impacted by this violation would require restoration involving the placement of many boulders in tidelands and public trust lands, which would require authorization under the Coastal Act. In addition, restoring the lost sand to the beach would also require a CDP. Thus, two out of the three requirements to cure the violations were not met, and so the violation here was not cured pursuant to the above sections.

In addition, Section 30821.3(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.

Sections 30821.3(f) is also inapplicable in this case. As discussed above and below, the unpermitted development at issue consists of a large hole in the intertidal boulder field that remains to this day, and is reducing the amount of sensitive habitat available there. In addition, Respondent extracted a large amount of sand from the beach. This unpermitted development was not unintentional or minor, and it caused significant harm, not de minimis harm.

c. 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. Sections 30821(a) and 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.”

The violations caused negative impacts to public access and recreational resources, marine resources, environmentally sensitive habitat areas, and biological productivity. The unpermitted revetment and unpermitted private stairway negatively impacted public access and recreation and were installed by 2002. The unpermitted private stairway was removed by July 2, 2024. However, by that same day, Respondent had pushed the unpermitted revetment into a public access easement, where it remained until 2026. The unpermitted revetment is now further inland but has not been removed and is continuing to negatively impact the width of the beach, and therefore, public access. On July 2, 2024, Respondent also undertook unpermitted grading of the beach, as well as unpermitted extraction of sand from the beach and boulders and cobbles from the ocean. While the sea naturally restored the areas of unpermitted grading and unpermitted sand extraction, the area of unpermitted extraction of cobbles and boulders resulted in a large hole in the rocky intertidal boulder field. This missing habitat area persists to this day.

Recommendation

The violations were, in the aggregate, serious and in place for a significant amount of time, hence the decision to bring this enforcement action. However, the proposed resolution both provides for full restoration as well as a resolution of the penalty claim that would confer significant benefits to both public access and other coastal resources. Because Respondent has agreed to amicably resolve this matter, to remove the unpermitted revetment and restore the hole in the intertidal boulder field, and to dedicate an oceanfront property worth well over \$2 million in value to the public, Commission staff recommends that the Commission approve the proposed resolution contained in the proposed Consent Cease and Desist Order, Consent Restoration Order and Consent Administrative Penalty.

Background Analysis

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. 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.” Commission staff has analyzed the factors separately for both the public access penalties under Section 30821 that apply to the unpermitted revetment and unpermitted private stairway, as well as the non-public access penalties that apply to the

unpermitted grading and unpermitted extraction of sand from the beach, and cobbles and boulders from the ocean pursuant to Section 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.

Public Access Violations

Applying the factors of Section 30820(c)(1) to the public access violations, the violations at hand should warrant the imposition of significant civil liability; as the violations included encroachment within public access easements for many years for the unpermitted private stairway, as well as encroachment for over a year and a half for the unpermitted revetment. Further, the unpermitted revetment served to narrow the beach for the over two decades it existed outside of the public access easement. However, the unpermitted private stairway was a physically small encroachment, and it has already been removed. Therefore, the above factor weighs toward a moderate to high penalty.

With regards to 30820(c)(2), the public access violations can be remedied going forward. The unpermitted private stairway has already been removed, and also, the unpermitted revetment can be removed. However, it is not possible to restore the lost access due to the unpermitted encroachments. Therefore, a moderate penalty is warranted under this factor.

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 a beach that is very close to millions of people, but also narrow due to the large amount of seawalls. Therefore, the unpermitted encroachments had a disproportionate negative impact on public access here given the relatively limited physical beach space available,

and the high demand for public beach access in this region. Thus, this factor requires a high penalty.

Section 30820(c)(4) takes into account the costs to the state of bringing this action. For this element, Commission staff has spent less time on reaching a resolution than some of the Commission's other cases, as an amicable resolution was reached efficiently, although it did take over two years. Therefore, this factor warrants a moderate penalty.

Finally, Section 30820(c)(5), requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require. Respondent did not initially construct the unpermitted revetment or the unpermitted private stairway, and Respondent has already removed the unpermitted private stairway. However, the unpermitted revetment was not moved out of the public access easement for over a year and a half, and it remains on the beach today, albeit outside of the public access easement. Therefore, this factor weighs toward a moderate to high penalty.

Considering all the factors, Respondent's public access violations warrant a moderate to high penalty. Commission staff also analyzed the non-public access penalties that apply to the unpermitted grading and unpermitted extraction of sand from the beach, and cobbles and boulders from the ocean, which are detailed below.

Non-Public Access Violations

Applying the factors of Section 30820(c)(1) to the non-public access violations, the other resource violations at hand should warrant the imposition of significant civil liability; as the violations included unpermitted grading, unpermitted extraction of sand from the beach, and unpermitted extraction of boulders and cobbles from the sensitive intertidal boulder field habitat. The unpermitted extraction of boulders and cobbles left a hole in sensitive habitat that persists over two years later, however, the unpermitted grading and sand extraction only took place on one day, and the beach appears to have quickly restored itself. Therefore, in the aggregate, the above factor weighs toward a moderate to high penalty.

With regards to 30820(c)(2), some of these resource violations can be remedied going forward. The most visible signs of the unpermitted grading and unpermitted extraction of sand from the beach were quickly washed away by waves. However, this area is too sensitive to undertake a sand addition effort as mitigation, and therefore, the lost sand cannot be restored. Yet, more boulders and cobbles can be added to the extraction hole in the intertidal zone left by Respondent's activities. Therefore, a moderate to high penalty is warranted under this factor.

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 a beach that includes rare and sensitive boulder field habitat area, which, as described above, was already protected by a past Commission CDP action. In addition, the area is protected as a Marine Protected Area. Thus, this factor requires a high penalty.

Section 30820(c)(4) takes into account the costs to the state of bringing this action. As noted above, in this case, Commission staff has spent less time than on resolving this matter than some of the Commission's other cases, as an amicable resolution was reached efficiently, although it did take over two years. Therefore, this factor warrants a moderate penalty.

Finally, Section 30820(c)(5), requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require. The excavation on the beach was done while Respondent owned the property, as part of a seawall repair project initiated by Respondent. The extracted sand, cobbles, and boulders were used as fill behind the seawall, which was presumably done in order to save Respondent the time and expense of bringing fill down the bluff to the seawall repair site. Therefore, this factor weighs toward a moderate to high penalty.

Considering all the factors, Respondent's non-public access violations also warrant a moderate to high penalty. Thus, the public access penalties as well as the non-public access penalties both warrant the same moderate to high penalty. The proposed resolution therefore proposes to split the two penalties equally, and to resolve them by requiring Respondent to dedicate an oceanfront property in eastern Malibu to the public for public access and preservation in perpetuity. The dedicated property would provide many benefits to the public (including beach space, recreation, parking and view opportunities) and the environment, and would also provide a high financial value to the public. The property was listed at \$2 million, and Commission staff believes that the actual value to the public is much higher. Any acquisition of a similar property would necessitate costs to the public for planning, appraisals, negotiations, and the like that could easily run into the hundreds of thousands of dollars. Respondent's agreement to dedicate this property therefore saves the public time and resources, in addition to the cost of the purchase price itself. Further, although it is often suggested that areas dedicated to public access would be a great amenity, especially in this area, the lots are very expensive and the opportunity rarely presents itself. Thus, Commission staff believes that this proposed resolution provides a rare and unique opportunity that would greatly benefit the public and the coastal environment, at a value of well over \$2 million to the public.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalties CCC-26-AP-03 and CCC-26-AP3-03, attached as **Appendix A** of this staff report.

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

The proposed 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 remove unpermitted items of development and restore habitat in the rocky intertidal area. Failure to remove the unpermitted development would result in further loss of public access, inconsistent with the resource protection policies of the Coastal Act.

Failure to restore the area of excavation within the rocky intertidal boulder field would lead to significant loss of sensitive habitat there. Therefore, the activities required and authorized by the Consent Orders are consistent with Sections 30240 (requiring protection of environmentally sensitive habitat areas or ESHA), Section 30230 (requiring protection of marine resources), and Section 30231 (requiring protection of biological productivity and water quality), as well as Sections 30210 and 30211 (requiring protection of public access) and Section 30221 (requiring protection of recreational use). Implementation of the Consent Orders via the removal of unpermitted development and the required restoration will improve public access, marine resources, environmentally sensitive habitat area, and biological productivity.

F. 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 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, multiple exemptions apply here: (1) the one covering actions to assure the restoration or enhancement of natural resources where the regulatory process involves procedures for protection of the environment (14 CCR § 15307); (2) the one 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 § 15308); and (3) 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 and to improve public access.

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.

G. Summary of Findings of Fact

1. The violations that are the subject of these Consent Orders are located at the west end of Broad Beach, on the beach and in public trust tidelands and a Marine Protected Area.
2. Respondent, 2XMD Partners LLC, bought 31430 and 31438 Broad Beach Road and maintained the existing unpermitted revetment at 31430 and the existing unpermitted private stairway at 31438 Broad Beach Road, and later moved the revetment into a lateral access easement. Respondent then undertook unpermitted grading on the beach and unpermitted excavation on public trust tidelands, which left a hole in sensitive intertidal boulder field habitat.
3. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit, or (2) is inconsistent with a permit previously issued by the Commission. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when the Commission determines that any

person has undertaken 1) development without a permit, 2), that the development is inconsistent with the Coastal Act, and 3) that the development is causing continuing resource damage.

4. Unpermitted Development as described above has been undertaken by Respondent and occurred without a CDP, including but not limited to: 1) use of an excavator within state tidelands and within public access easements to extract sand, beach cobble, and boulders; 2) grading of intertidal area; 3) maintenance of an unpermitted revetment, including moving it into a public access easement; and 4) maintenance of an unpermitted private beach access stairway within a recorded public access easement; all of which had the effect of blocking and/or impeding use of a public access easement and/or state tidelands.
5. All of the unpermitted development is located within the Coastal Zone. The unpermitted revetment and unpermitted private stairway were located within public access easements required by Commission-issued CDPs, as were the unpermitted sand extraction and grading. The unpermitted extraction of boulders, cobbles, and sand took place within public trust tidelands within the Commission's retained permit jurisdiction.
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 13181 and 13191 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 plan(s) required therein, will be consistent with Chapter 3 of the Coastal Act.
9. Respondent has agreed to assume the obligations of these Consent Orders, which settles all Coastal Act violations related to the specific violations described in #4, 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 settlement are an appropriate amount when considering those factors.