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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

SURFRIDER FOUNDATION, a non-profit organization,

Plaintiff,

v.

MARTINS BEACH 1, LLC, a California corporation; **MARTINS BEACH 2, LLC**, a California corporation; and **DOES 1 through 20**, inclusive,

Defendants.

Case No. CIV520336

FINAL STATEMENT OF DECISION

AND RELATED CROSS-ACTION.

Plaintiff SURFRIDER FOUNDATION (“Plaintiff”) filed a citizen enforcement lawsuit under the California Coastal Act against Defendants MARTINS BEACH 1, LLC and MARTINS BEACH 2, LLC (“Defendants”) for alleged unpermitted development of their property. The matter came on for a bench trial on May 8, 12-15, 19, and on July 16, 2014 in Department 22, the Honorable Barbara J. Mallach presiding. The appearances of counsel for each trial day are as noted in the record. On June 30, 2014, pursuant to the Court’s Order, the parties submitted closing trial briefs. On July 16th, the Plaintiff and Defendants presented their closing arguments. The Court took the matter under submission.

The Court issued its Tentative Statement of Decision on September 24, 2014. The decision was mailed to counsel for Plaintiff and Defendants with the traditional Affidavit of Mailing. For the convenience of counsel, copies were also e-mailed and sent by FAX to counsel for Plaintiff and Defendants.

1 The Court, having read and considered the oral and written evidence, having observed the
2 witnesses testifying in court, having considered the supporting and opposing memoranda and
3 briefs of all parties, having heard and considered the arguments of counsel and responses to the
4 Tentative Statement of Decision and good cause appearing therefore, issues the Final Statement
5 of Decision.

6 **I. INTRODUCTION**

7 The Court notes the legal limitations of a final statement of decision. The statement of
8 decision need only apply to the principal controverted issues. *Coachilla v. Riverside County*
9 *Airport Land Use Comm'n* (1989) 210 Cal App. Ed. 1277, 1292. The Court need not make any
10 finding on subsidiary issues. *Wolf v. Lipsey* (1985) 163 Cal App. 3d. 633, 643. A statement of
11 decision is legally adequate if it fairly discloses the Court's determination as to the ultimate facts
12 and material issues in dispute, and no point by point response is necessary. *Golden Eagle Ins. Co.*
13 *v. Foremost Ins. Co.* (1993) 20 Cal. App. 4th 1372, 1380.

14 A material issue is one that is relevant and essential to the judgment and closely related to
15 the trial court's determination of the ultimate issues in the case. *Kuffel v. Seaside Oil Co.* (1977)
16 69 Cal. App. 3d 555, 565. The statement of decision need not discuss issues unnecessary to its
17 decision. *Vukovich v. Radulovich* (1991) 235 Cal App. 3d. 281, 294.

18 The Defendants filed a response to the Court's Tentative Statement of Decision entitled
19 "Objections to Court's Tentative Statement of Decision" which contained thirty-three objections.
20 The Plaintiff filed a "Request for Modification of Limited Portions of the Tentative Statement of
21 Decision." With regard to the Defendants' objections the Court notes that many of the objections
22 by Defendants are either irrelevant or an attempt to re-argue matters already decided by the Court
23 in its tentative decision. The Court will address the Plaintiff's Request for Modification
24 separately. The Court responds to the Defendants objections as follows:

25 • **Defendants' Objections Nos. 1-2:**

26 The Court has read and considered those objections and overrules them.

27 • **Defendants' Objection No. 3:**

28 The Clerk's Minutes from May 8, 2014 are modified to reflect the following:

- 1 - Exhibit 25, pp. 26, 40 and 44 were admitted into evidence.
- 2 - Exhibit 27, pp. 42, 47 and 48 were admitted into evidence.
- 3 - Exhibit 17, pp. 1, 2 and 3 were admitted into evidence.
- 4 - Exhibit 26 was neither identified nor admitted into evidence. There was apparent
5 confusion with Page 26 of Exhibit 25, which was admitted.
- 6 - The final exhibit number for Plaintiff was Exhibit 39. Therefore, there were no
7 Plaintiff Exhibits 40, 44 or 53. Again, there was apparent confusion with the page
8 numbers to Exhibit 25.

9 The Clerk's Minutes from May 13, 2014 are modified as follows:

- 10 - Exhibit 149, p. 3 was admitted into evidence but not reflected in the Clerk's Minutes.

11 The Clerk's Minutes are modified to note that addition.

12 The Clerk's Minutes from May 14, 2014 indicate that Exhibit 5 was not admitted. The
13 Reporter's Transcript indicates that the Defendants had no objection to Exhibit 5 being
14 admitted as "a request for judicial notice." However, Plaintiff did not specifically request that
15 Exhibit 5 be admitted. The Clerk's Minutes are correct regarding the fact that Exhibit 5 was
16 not admitted. (Tr. 541:11-25).

17 The Clerk's Minutes from May 14, 2014 have been modified to reflect:

- 18 - Exhibit 149, p. 7 was admitted into evidence.

19 • **Defendants' Objection Nos. 4-8:**

20 The Court has read and considered those objections and overrules them.

21 • **Defendants' Objection Nos. 9 and 10:**

22 In response to Objection No. 9, the Court clarifies the language of the Tentative Statement of
23 Decision to state: "After purchasing the property in 2008, the Defendants continued the
24 practice of allowing the public to access and use Martins Beach in the daytime upon payment
25 of a fee to park a vehicle." Likewise, in response to the first portion of Objection No. 10, the
26 Court clarifies the language of the Tentative Statement of Decision to state: "After purchasing
27 the property in 2008, the Defendants continued the practice of allowing the public to access
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1 and use Martins Beach in the daytime upon payment of a fee to park a vehicle.” As to the
2 remainder of Objection No. 10, the Court declines to modify its ruling.

3 • **Defendants’ Objection Nos. 11-23:**

4 The Court has read and considered those objections and overrules them.

5 • **Defendants’ Objection No. 24:**

6 In response to this objection, the Court modifies its ruling to state: “Defendants did apply for
7 a permit to construct an emergency rip-rap revetment. The application was deemed
8 ‘incomplete’ and is still pending.” (Tr. 882:9-13).

9 • **Defendants’ Objection Nos. 25-33:**

10 The Court has read and considered those objections and overrules them.

11 • **Plaintiff’s Requests for Modification:**

12 Plaintiff’s Request for Modification of Limited Portions of the Tentative Statement of
13 Decision discusses two of the five factors identified in Public Resources Code Section 30820:
14 (1) whether the violation is susceptible to restoration or other remedial measures, which is the
15 second factor and (2) the sensitivity of the resource affected by the violation, which is the
16 third factor. The Plaintiff requests certain edits to the Tentative Statement of Decision with
17 regard to those factors indicating as to the second factor that there can be no restoration of
18 four years of lost access. As to the third factor, the Plaintiff requests further edits indicating
19 that there was a deprivation of a sensitive coastal resource for four years. As to both those
20 factors, the Plaintiff requests that the Court indicate that it weighs in favor of issuing penalties
21 and fines. While the Court acknowledges Plaintiff’s position that the prior elimination of
22 access cannot be restored by a permit application, it believes that all five factors set forth in
23 Section 30820 should be weighed and considered carefully in terms of the totality of the
24 circumstances in determining whether penalties and fines are justified. Therefore, the Court
25 declines to adopt the Plaintiff’s modifications.

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1 **II. THE PARTIES**

2 Plaintiff SURFRIDER FOUNDATION is a volunteer, non-profit organization whose
3 stated mission is to protect the world’s oceans, beaches and access to them. Tr. 96:26-97:4; 98:8-
4 12; 285:1-7.

5 Defendants MARTINS BEACH 1, LLC and MARTINS BEACH 2, LLC were formed in
6 May 2008 (Ex. 103), and purchased the Martins Beach property (“Property”) for \$32.5 million in
7 June 2008. Tr. 463:19-21, 787:19-21. It is undisputed that Martins Beach is private property.

8 **III. THE CLAIMS AND DEFENSES ASSERTED**

9 **a. Plaintiff’s Complaint**

10 Plaintiff filed its Complaint on March 12, 2013, asserting three causes of action:

- 11 (1) Declaratory Relief that Defendants have engaged in development;
12 (2) Injunctive Relief ordering Defendants to cease the unpermitted development; and,
13 (3) Fines and Penalties under the Coastal Act as provided by law.

14 Defendants make four basic arguments in defense of their conduct: First, access is not
15 development under the Coastal Act; second, waiting for an enforcement action instead of
16 applying for a Coastal Development Permit (“CDP”) is a method of complying with the Coastal
17 Act; third, the Coastal Commission would not have approved a permit to block the public’s access
18 to the coast at Martins Beach; and, fourth, fines are improper because they acted in good faith.

19 **b. Defendants’ Cross-Complaint**

20 Defendants filed their Cross-Complaint on April 25, 2013 asserting two causes of action:

- 21 (1) Declaratory Relief that no Coastal Development Permit is required; and
22 (2) Injunctive Relief to stop Plaintiff from trespassing.

23 Defendants’ First Cause of Action raises the same issues and arguments as Plaintiff’s
24 Complaint. In response to the Second Cause of Action, Plaintiff contends there was no entry
25 constituting a trespass, and, even if there was, there is no evidence that Plaintiff directed or
26 authorized the entry or ratified the conduct of any individual who made such an entry.

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1 **IV. TRIAL**

2 A court trial was held on each cause of action in the complaint and cross-complaint. The
3 trial began on May 8, 2014 and consisted of six court days, including a half-day site visit to the
4 Property. The site visit was requested originally by Defendants and Plaintiff joined in their
5 request. Counsel represented both parties and testimony was taken from seventeen witnesses,
6 including three expert witnesses. Fifty-one exhibits were admitted into evidence. That total does
7 not include the various pages of the exhibits which are delineated in the Reporter’s Transcript and
8 the Clerk’s Minutes. Trial concerned the following issues:

- 9 • Is the Property located in a Coastal Zone?
- 10 • What were the circumstances of the public’s use of and access to the coast at the
11 Property prior to Defendants’ purchase?
- 12 • What changes have Defendants made to the public’s use of and access to the coast
13 at the Property since their purchase?
- 14 • Have Defendants engaged in conduct which has changed the intensity of use of the
15 water at the Property?
- 16 • Have Defendants engaged in conduct which has changed the public’s ability to
17 access the water at the Property?
- 18 • Was closing a gate permanently to the public across Martins Beach Road
19 “development” under the Coastal Act?
- 20 • Was changing the message on the billboard on the Property along Highway 1
21 “development” under the Coastal Act?
- 22 • Was changing signs on and around the gate “development” under the Coastal Act?
- 23 • Was hiring and stationing security guards on the Property intermittently to deter
24 the public from crossing or using the Property “development” under the Coastal
25 Act?
- 26 • Was a Coastal Development Permit obtained for the alleged “development”?
- 27 • Was Defendants’ decision to engage in the alleged unpermitted “development”
28 knowing and intentional under the Coastal Act?
- Did Surfrider Foundation trespass at the Property?
- Did Surfrider Foundation direct, authorize or ratify the conduct of any individuals
who allegedly trespassed at the Property?

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1 **V. THRESHOLD FINDINGS**

2 Defendants contend that they have a constitutional right to exclude the public from their
3 private property. Defendants argue that there was no development under the law and that a
4 change in access either to increase or decrease access is not development. Plaintiff contends that
5 development includes conduct beyond physical changes to property and direct impediments to
6 access. The Court rules as a matter of law that “development” under the Coastal Act does not
7 require any physical change or alteration to land (*see DeCicco v. California Coastal Com.* (2011)
8 199 Cal.App.4th 947, 951), and goes well beyond “what is commonly regarded as development of
9 real property.” *Gualala Festivals Committee v. California Coastal Com.* (2010) 183 Cal.App.4th
10 60, 67.

11 Development includes building gates, fences and signs, regardless of their purpose. *See*
12 *LT-WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770, 804-805. Activities
13 which are not “commonly regarded as development of real property,” such as increasing fees
14 being charged to the public to access the coast, are subject to CDPs under the Act. *See Surfrider*
15 *Foundation v. California Coastal Commission* (1994) 26 Cal.App.4th 151.

16 In that case, Surfrider Foundation sued the California Coastal Commission because the
17 Commission had issued a CDP allowing installation of “fee collection devices” at state beaches,
18 but did not approve the actual “imposition of fees” in the permit. *Id.* at 157. While the court
19 determined that no permit was required because there was no evidence of a change in intensity of
20 use of the beaches at issue, the court concluded that conduct which causes indirect effects on
21 access to the coast falls squarely within the scope of the Coastal Act:

22 Preliminarily, we consider the scope of the Coastal Act’s public access
23 and recreational policies. . . . Is this type of indirect effect within the
24 scope of the act’s policies? We believe so. [¶] . . . [T]he concerns placed
25 before the Legislature in 1976 were more broad-based than direct physical
26 impedance of access. For this reason, we conclude the public access and
27 recreational policies of the Coastal Act should be broadly construed to
28 encompass all impediments to access, whether direct or indirect, physical
or nonphysical.

Id. at 157-58.

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1 Because the Court concludes no physical change is required to prove “development”
2 which triggers the need for a CDP, the Court’s decision and analysis focuses on whether
3 Defendants’ conduct has resulted in a “change in the intensity of use of land,” a “change in the
4 intensity of use of water” or a change in the “ access thereto.” Pub. Res. Code § 30106.¹

5 **VI. PLAINTIFF’S COMPLAINT FOR VIOLATION OF THE COASTAL ACT**

6 **a. Findings of Fact**

7 **i. Defendants Admitted Engaging in Unpermitted Development**

8 During trial, Defendants admitted their conduct changed the intensity of use of the water
9 and the public’s access to the water at Martins Beach. Steven Baugher, the manager of the LLCs,
10 admitted changing the intensity of use of the coast and admitted changing the public’s access to
11 the coast by closing the gate across Martins Beach Road without a CDP. *See* Trial Transcript
12 (“Tr.”) at 456:15-23, 477:3-6, 515:25-516:11.

13 **ii. The Property**

14 **1. The Property is Subject to Jurisdiction Under the Coastal Act**

15 The Property is in the Coastal Zone. Tr. 449:19-20; *see also* Ex. 29 at PE029.0004. The
16 Property is subject to jurisdiction of the County and the Coastal Commission under the Coastal
17 Act, meaning development at the Property requires a CDP. *See* Ex. 2 at PE002.0004 (explaining
18 that the LLCs “concede[] that jurisdiction is controlled by Public Resources Code section
19 30600(a), which applies to any person wishing to perform or undertake development in the
20 coastal zone”); Ex. 29 at PE029.0005 (Defendant’s response to Request for Admission No. 2,
21 admitting that development at the Property requires a CDP, so long as “development” is applied
22 consistent with the United States and California Constitutions); Tr. 221:13-16; § 30600(a).

23 **2. The Gate, Billboard and Signs, Before and After the Purchase**

24 At the time of the purchase, there was a gate that was unlocked and open to the public
25 during the day for a significant period of the year. Tr. 71:3-8, 93:18-21, 131:4-132:2, 141:12-24,
26 546:3-21. Rich Deeney testified that the gate was periodically closed during inclement weather in
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28 ¹ All further citations to code sections are to Public Resources Code unless otherwise noted.

1 the wintertime, when parking attendants were not available and when there were private events.
2 He also testified that the gate was locked at night. The current gate was constructed around 1991,
3 replacing a portion of the original gate that was built in the late 1950s---and in fact motorizing the
4 gate. Tr. 548:21-549:2, 570:23-571:18. There was a billboard inviting the public to access
5 Martins Beach by driving down Martins Beach Road from Highway 1. *See* Ex. 25 at
6 PE025.0024; Tr. 105:12-106:15. The fence, gate in some form and billboard have existed on the
7 Property since at least the 1950's. After purchasing the property in 2008, the Defendants
8 continued the practice of allowing the public to access and use Martins Beach in the daytime upon
9 payment of a fee to park a vehicle. In the summer or fall of 2010, the gate was closed and locked
10 to keep the public out. Tr. 273:19-274:21, 457:20-458:22, 513:26-514:13. After purchasing the
11 Property, the billboard was painted over and is currently a blank, dark green rectangle. *See* Ex.
12 36; *see also* Tr. 93:22-94:11, 105:12-106:3. At the time of the purchase there was a sign attached
13 to the gate stating either "Beach Closed Keep Out" or "Beach Closed, Do Not Enter, No
14 Exceptions" *See* Ex. 25 at PE025.0026; Tr. 489:26-490:5. There was also a sign on the gate
15 stating "No Trespassing." *See* Ex. 25 at PE025.0026; Tr. 489:23-25. There were also signs
16 adjacent to Martins Beach Road, near the gate which stated such things as "Toll Road" and "No
17 Dogs Allowed". Ex. 149 at 149.003; Tr. 494:7-9; 496:26-497:16.

18 After purchasing the property, a sign was added to the gate stating, "Beach Temporarily
19 Closed for Repair." Ex. 25 at PE025.0026; Tr. 491:17-493:4. It also appears that the signs
20 adjacent to the gate were removed. *See* Ex.149-5. Then, in the spring of 2013, Defendants
21 contracted to hire security guards to keep the public off the Property. 460:6-15; Ex. 24. The
22 contract called for those guards to provide a visible presence to deter members of the public from
23 accessing the Coast at the Property, albeit intermittently. Ex. 24 at PE024.0006; Tr. 460:6-25.

24 Defendants did not obtain a CDP to block access to the coast, to close the gate across
25 Martins Beach Road, to change the billboard, to add, remove or change signs attached to the gate,
26 to station security guards on the Property from time to time, or to remove or change the signs
27 adjacent to Martins Beach Road near the gate. *See, e.g.*, Tr. 456:15-457:19.

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1 **iii. The Public’s Use of and Access to Martins Beach has been Changed by**
2 **Defendants’ Conduct**

3 The prior property owners, the Deeney Family, allowed the public to park on the property
4 and access the coast, usually upon payment of a parking fee. Tr. 69:23-70:8, 100:13-18, 141:12-
5 22, 402:6-8, 435:1-9, 557:8-9, 585:26-586:10. The public, on occasion, also accessed and used
6 the coast and the beach at the Property by walking down the Martins Beach Road without
7 payment of a fee. Tr. 99:14-101:1. However, the Deeneys or their employees would ask walk-in
8 visitors to leave the property and return with a vehicle if they were made aware that someone had
9 entered without paying a parking fee. The Deeneys allowed access, at minimum, upon payment
10 of a parking fee, during the daytime and during the summer. Tr. 475:22-476:1.

11 The Deeneys did not permanently block the public’s access to or use of the coast and
12 always allowed the public to use and access the coast after temporary closures. Tr. 578:7-579:8.
13 Prior to 2008, with very limited exceptions for individuals engaging in disruptive or illegal
14 behavior, members of the public were not asked to leave the Property nor were they informed
15 they were trespassing. Tr. 70:9-17, 100:22-101:1, 142:15-20, 361:13-15, 556:24-557:26.

16 As stated previously, for approximately two years after Defendants purchased the property
17 in July 2008, they allowed the public to access and use the coast upon payment of a fee to park.
18 *See Ex. 22; see also* Tr. 502:17-503:11. According to Defendants’ records, from July 2008 to
19 September 2009, 1,044 vehicles paid the fee and accessed the coast. *See Ex. 22.* Defendants did
20 not keep logs for 2010. Tr. 515:8-9. In the summer or fall of 2010, Defendants stopped allowing
21 the public to access the coast. Tr. 457:20-458:22, 513:26-514:13. Since permanently closing the
22 gate and blocking the public’s access to the coast at Martins Beach, the LLCs’ records reflect they
23 have kicked at least 100 individuals off the property for purportedly “trespassing.” *See Ex. 23.*

24 **iv. Defendants’ Lawsuit against San Mateo County and the Commission**

25 In June 2009, after being told by the County that a CDP was required to cease allowing
26 the public to access the coast and after informing the County they would allow the public to
27 access the coast, Defendants sued San Mateo County and the Coastal Commission. *See Ex. 1.*
28 The lawsuit sought a declaration and injunction that the LLCs were not required to maintain

1 public access. *Id.* at PE001.0012-0013. On October 16, 2009, Judge Grandsaert granted the
2 County and Coastal Commission’s demurrers, without leave to amend. *See* Ex. 2.

3 Judge Grandsaert’s Order found the LLCs conceded that jurisdiction is controlled by
4 Public Resources Code Section 30600(a), which applies to any person wishing to perform or
5 undertake development in the coastal zone. The LLCs conceded that “public access to Martins
6 Beach was provided . . . , that [the LLCs] acquired the [Property] in 2008, and that [the LLCs]
7 now seek[] to discontinue allowing public access” *Id.* at PE002.0005. “Before seeking a
8 judicial determination in this Court, [the LLCs] must comply with the administrative process
9 provided by the California Coastal Act.” *Id.* (emphasis added). The determination of whether a
10 permit is required is not a pure question of law because there will be:

11 issues of fact with regard to the precise circumstances under which access
12 was provided by [the LLCs’] predecessors in interest, and therefore issues
13 concerning the extent to which [the LLCs’] proposals constitute a ‘. . .
14 change in the intensity of use of water, or of access thereto’ (Public
15 Resources Code sec. 30106) [and that] the exact circumstances of the prior
16 access, and the extent to which [the LLCs] seek[] to change access, are
17 appropriate factual inquiries to be submitted to the appropriate
18 administrative body.

19 *Id.*

20 **b. Conclusions of Law**

21 Based upon the facts and evidence in this litigation, and in addition to the Court’s
22 threshold finding that development under the Coastal Act does not require any physical change or
23 alteration to land, and goes beyond what is commonly regarded as development of real property
24 (section IV., *supra*), the Court makes the following conclusions of law.

25 **i. Changing the Intensity of Use or the Public’s Access to Water is**
26 **Development**

27 Under the Coastal Act,

28 Development means . . . change in the density or intensity of use of land, .
. . . change in the intensity of use of water, or of access thereto; . . . [¶] As
used in this section, “structure” includes, but is not limited to, any
building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and
electrical power transmission and distribution line. (quoting § 30106.)

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1 In interpreting the statute’s definition, the Court’s “fundamental task . . . is to determine
2 the Legislature’s intent so as to effectuate the law’s purpose.” *In re C.H.* (2011) 53 Cal.4th 94,
3 100. “If the statute’s text evinces an unmistakable plain meaning, [the court] need go no further.”
4 *Id.* Here, the text is unambiguous. Development includes any activity which changes the
5 intensity of use of land or water or the public’s access to the coast. *See* § 30106.

6 The plain meaning is supported by the legislative findings and purposes of the Coastal
7 Act. The Coastal Act “was enacted by the Legislature as a comprehensive scheme to govern land
8 use planning for the entire coastal zone of California.” *Pacific Palisades Bowl Mobile Estates v.*
9 *City of Los Angeles* (2012) 55 Cal.4th 783, 793. This “scheme” was enacted because

10 “the California coastal zone is a distinct and valuable natural resource of
11 vital and enduring interest to all the people”; that “the permanent
12 protection of the state’s natural and scenic resources is a paramount
13 concern”; that “it is necessary to protect the ecological balance of the
14 coastal zone” and that “existing developed uses, and future developments
that are carefully planned and developed consistent with the policies of
this division, are essential to the economic and social well-being of the
people of this state . . .”

15 *Id.* (quoting § 30001(a) and (d); citing *Yost v. Thomas* (1984) 36 Cal.3d 561, 565). The
16 legislature also noted that the “permanent protection of the state’s natural and scenic resources is
17 a paramount concern to present and future residents of the state and nation.” § 30001(b). The
18 Coastal Act is to be “liberally construed to accomplish its purposes and objectives.” § 30009.
19 “Any person wishing to perform or undertake any development in the coastal zone must obtain a
20 coastal development permit.” *Pacific Palisades*, 55 Cal.4th at 794.

21 In 2012, the California Supreme Court ruled on the meaning of “development” under the
22 Coastal Act and rejected the contention that “the Coastal Act is concerned only with preventing
23 an *increase* in density or intensity of use.” *Pacific Palisades*, 55 Cal.4th at 795 (italics in
24 original). The Court explained, “by using the word ‘change’ . . . a project that would decrease
25 intensity of use, such as by limiting public access to the coastline . . . is also a development.” *Id.*

26 Defendants seek to distinguish this statement on the grounds that they are not engaging in
27 a subdivision or “project.” Defendants’ distinction is immaterial. The Court’s statement
28 interpreting the definition of “development” under the Coastal Act was a clear statement of law.

1 The Court’s example of what would constitute development – “limiting public access to the
2 coastline” (*id.*) – is exactly what Defendants have done. The Court rejected the idea a party could

3 avoid the reach of the Coastal Act by asserting that its particular
4 conversion will have no impact on the density or intensity of land use. . . .
5 [T]he act accounts for the possibility a proposed project may not affect
6 coastal resources by conferring authority on the executive director of the
7 coastal commission, after a public hearing, to issue “waivers from coastal
8 development permit requirements for any development that is *de*
9 *minimus*.” (Pub. Resources Code § 30624.7.).

10 *Id.* at 390; *see also Gualala Festivals*, 183 Cal.App.4th at 69-70 (finding the same).

11 **ii. Defendants Engaged in Unpermitted Development**

12 **1. The Legislative History of the Coastal Act**

13 Defendants contend the legislative history of the Coastal Act supports their argument that
14 “access is not development,” based upon the testimony of their expert, Norbert Dall. However,
15 even if the Court were to consider Defendants’ contentions regarding the legislative history, they
16 are misplaced in this context.

17 Mr. Dall testified about changes made during the drafting process to what is now codified
18 at § 30211. That section provides that “Development shall not interfere with the public’s right of
19 access to the sea where acquired through use or legislative authorization, including, but not
20 limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.”
21 Pub. Res. Code § 30211. As Mr. Dall acknowledged, this section has nothing to do with whether
22 the challenged conduct is or is not development, but instead is intended to provide guidance to the
23 administrative agency reviewing a permit application and is distinct from the definition of
24 development, codified in Section 30106. Tr. 853:17-855:4. Section 30211 is simply not relevant
25 to the question presented in this matter, namely, whether a CDP was required. The answer is yes,
26 despite Mr. Dall’s testimony and Defendants’ arguments about Section 30211.

27 The argument puts the cart before the horse. Defendants admitted that “unless and until” a
28 permit application is made, nobody can know how the County or Commission will rule on that
29 application. Defendants’ reliance on the legislative history of § 30211 does not and cannot
30 demonstrate that their conduct is not “development” as defined by § 30106.

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1 deny a permit in a manner which will take or damage private property for public
2 use, without the payment of just compensation therefor. This section is not
3 intended to increase or decrease the rights of any owner of property under the
Constitution of the State of California or the United States.

4 The Coastal Act thus emphasizes the importance of both the public's ability to access and enjoy
5 the coast as well as the protection of private property rights. By directing Defendants to the
6 Coastal Commission for resolution of its coastal development permit application, the Court trusts
7 that the Commission will adhere to its responsibility to fairly balance the competing interests set
8 forth in the Coastal Act.

9 **VII. PENALTIES AND FINES**

10 **A. Penalties and Fines Are Not Justified Under the Facts**

11 Plaintiff claims daily fines should be awarded under Section 30820, which provides that
12 "Civil liability may be imposed...on any person who performs or undertakes development that is
13 in violation of this division..." However, Defendants have established a defense based on the
14 Court's decision in *No Oil, Inc. v. Occidental Petroleum Corporation* (1975) 50 Cal.App.3d 8,
15 29-30. There, the court found that "*a good faith belief reasonably entertained*" is a defense to
16 the penalty provisions in the Coastal Act. The manager of the LLCs, Steve Baugher, repeatedly
17 testified that he had a good faith belief that Defendants were *not* required to apply for a CDP:
18

- 19 • Mr. Baugher testified that he relied on the transcript from the Court's ruling on Surfrider's
20 demurrer to Defendants' Cross-Complaint to support his conclusion that he did not need to
21 apply for a CDP. Tr. 739:21-741.
- 22 • Mr. Baugher testified that he relied on the Court's judgment and written ruling in the
23 *Friends of Martins Beach* case to support his decision in this case that he did not need to
24 apply for a CDP. Tr. 744:4-745:9.
- 25 • Mr. Baugher testified that he relied on the letters Ms. Gallo wrote to the County and the
26 Coastal Commission to support his conclusion that he did not need to apply for a CDP. Tr.
724:1-725:8; 730:9-23; 732:11-734:2; 751:12-752:12.
- 27 • Mr. Baugher testified that County officials expressly admitted that the Red, White & Blue
28 Beach was private property with a paid-for-parking business and closed its gate with no
action by the Coastal Commission or Santa Cruz County. Tr. 704:19-7-8:25.

- San Mateo County responded to a Public Records Act request indicating that it had no records of an application for a CDP for any property owner requesting permission to “cease beach use and/or access” or “cease the operation of a business and did not seek to reopen a new business in its place.” Pl. Exh. 110, 111.

Thus, Defendants’ “good faith” belief that its failure to apply for a CDP was lawful is a complete defense to Plaintiff’s claim that Defendants should be liable for penalties.

Further, Section 30820 sets forth various factors to be considered when determining the amount of civil liability, and each of those factors weighs against the imposition of a fine in any amount. The factors to be considered are:

- (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.

The issue of whether Defendants are required to apply for a CDP to close the gate on its private property presents a legitimate dispute between the parties. While the failure to apply for a CDP here constitutes a violation of the Coastal Act, Defendants permissibly relied and acted upon the information provided by the County management staff (who have extensive Coastal Commission management experience); the Court Order from the *Friends of Martins Beach* case; language in Court rulings from the *Surfrider* case; and letters to and from attorneys and County and Coastal Commission staff.

As to the second factor, to the extent Defendants’ failure to apply for a CDP is considered a violation of the Coastal Act, such violation can be restored or remedied by filing a CDP application. The Court acknowledges Defendants’ concerns and perceptions regarding the

1 outcome of such a permit application. Mr. Baugher and Ms. Gallo both testified that in a meeting,
2 the Coastal Commission told them that they would “never” allow Defendants to obtain a permit;
3 that they “knew how to deal with people like [Defendants]”; and that they would “wrap
4 [Defendants] up in red tape and use their leverage” to make sure they never got a hearing. Tr.
5 726:23-729:22; 616:10-617:17. The cost of making improvements necessary to make beach
6 access to the public possible is not lost on the Court, and once again the Court reiterates its trust
7 that the Coastal Commission will fairly determine the issue of Defendants’ CDP application,
8 keeping in mind the Coastal Act’s requirement that the Commission not “exercise their power to
9 deny or grant a permit in a manner which will take or damage private property for public use,
10 without the payment of just compensation therefor.” § 30010.
11

12 As to the third factor, there has been no loss of a sensitive resource as a result of
13 Defendants not applying for a CDP. As the Court observed during its site visit, and as several
14 witnesses testified during trial, some people are using Martins Beach notwithstanding the posted
15 notices that it is private property. As to the fourth factor, there is no cost to the state of bringing
16 the action, since it is being brought by the Surfrider Foundation. Finally, as to the fifth factor,
17 there is no prior history of violations on the property. Rather, when told that a series of cypress
18 trees mistakenly planted on the CalTrans easement required a permit to be moved and planted on
19 Defendants’ property, Mr. Baugher went to the County to apply for the permit. When he found
20 out the application for the permit would cost \$16,000, he decided not to apply for the permit and
21 removed the trees instead. Tr. 446:21-467:6. Further, Defendants did apply for a permit to
22 construct an emergency rip-rap revetment. The application was deemed “incomplete” and is still
23 pending. (Tr. 882:9-13). For these reasons, the Court finds there is no justification for the
24 imposition of penalties in any amount.
25
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1 **VIII. DEFENDANTS' CROSS-COMPLAINT**

2 Defendants' Cross-Complaint asserts two causes of action, one for declaratory relief that
3 their conduct does not require a Coastal Development Permit, and one for Injunctive Relief
4 seeking to prevent "Cross-Defendants [Surfrider Foundation], its agents, servants and employees,
5 and all persons acting under, in concert with, or for them, from trespassing" at the Property.

6 **a. Declaratory Relief**

7 For the foregoing reasons, Defendants' claim for Declaratory Relief is rejected.
8 Defendants engaged in development under the Coastal Act without a permit. This Court does not
9 and cannot know how the California Coastal Commission would rule on a permit application that
10 has not been made. As Judge Grandsaert explained in his order, the "final decision [of the
11 Commission or County] may be reviewed by this Court by writ of mandamus." Ex. 2 at
12 PE002.0005.

13 **B. Injunctive Relief**

14 There is no evidence to support Defendants' contention that Plaintiff itself engaged in any
15 unauthorized entry onto the Property. Further, there is no evidence that Plaintiff "directed or
16 authorized" any individual to enter Defendants' Property. *See Huntingdon Life Sciences, Inc., v.*
17 *Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1264. Finally, there is
18 no evidence that Plaintiff ratified the conduct of any individual who entered Defendants' Property
19 without permission. The evidence in the record shows that each individual who testified they
20 entered the Property after the Defendants ceased allowing the public to do so, did so of their own
21 volition. Tr. 111:14-20, 151:25-152:1.

22 **IX. CONCLUSION**

23 For the foregoing reasons, Judgment is entered in favor of Plaintiff on the First and
24 Second causes of action in Plaintiff's Complaint, and in favor of Plaintiff on both causes of action
25 in Defendants' Cross-Complaint. Judgment is entered in favor of Defendants on the Third cause
26 of action in Plaintiff's Complaint for penalties and fines.

27 1. Defendants are hereby ordered to cease preventing the public from accessing and
28 using the water, beach and coast at Martins Beach until resolution of Defendants' Coastal

1 Development Permit application has been reached by San Mateo County and/or the Coastal
2 Commission.

3 2. Defendants' desire to change the public's access to and use of the water, beach and
4 coast at Martins Beach constitutes development under the California Coastal Act. *See* § 30106.
5 Consequently, if Defendants wish to change the public's access to and use of the water, beach and
6 coast at Martins Beach, they are required to obtain a Coastal Development Permit prior to doing
7 so.

8 3. Defendants' conduct in changing the public's access to and use of the water, beach
9 and coast at Martins Beach, specifically by permanently closing and locking a gate to the public
10 across Martins Beach Road, adding signs to the gate, changing the messages on the billboard on
11 the property and hiring security guards to deter the public from crossing or using the property to
12 access the water, beach and coast at Martins Beach without a Coastal Development Permit(s)
13 constitutes a violation of the California Coastal Act.

14 4. The Court finds, however, that Defendants' conduct was in good faith, and that
15 penalties and fines are not justified.

16 Plaintiff shall prepare a Judgment that accurately reflects the Final Statement of Decision.

17
18
19
20 Dated: _____

Hon. Barbara J. Mallach
Judge of the Superior Court