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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

CORY SPENCER, DIANA MILENA
SMOLUCHOWSKA-MIERNIK, COASTAL
PROTECTION RANGERS, INC., a
California non-profit public benefit
corporation,

Plaintiffs,

v.

LUNADA BAY BOYS; THE INDIVIDUAL
MEMBERS OF THE LUNADA BAY
BOYS, including but not limited to DAVID
MELO, CHARLIE MOWAT, SANG LEE,
BRANT BLAKEMAN, ALAN JOHNSTON,
MICHAEL RAE PAPAYANS, ANGELO
FERRARA, FRANK FERRARA, CHARLIE
FERRARA, TOM SULLIVAN, BRENDAN
LAMERS, MICHAEL THIEL; PAUL
HUGOBOOM; CASSIDY BEUKEMA;
CITY OF PALOS VERDES ESTATES; and
DOES 8-100,

Defendants.

Case No. BC629596

Assigned to Honorable Lawrence P. Riff
Department 7

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
ADJUDICATION**

Date: July 8, 2024
Time: 1:45 p.m.
Dept.: 7

Action Filed: August 4, 2016
Trial Date: August 5, 2024

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1 **I. INTRODUCTION**

2 Plaintiffs Cory Spencer, Diana Milena Smoluchowska-Miernik and Coastal Protection
3 Rangers, Inc., move under Code of Civil Procedure §437c(f)(1) for summary adjudication as to
4 each¹ of Defendant City of Palos Verdes Estates (“City”) affirmative defenses. Plaintiffs met and
5 conferred with the City before bringing this motion, but the City declined to drop any defense.²
6 Now, Plaintiffs ask this Court to strike the City’s defenses.

7 First, the City’s prior motion work included a demurrer and motion for judgment on the
8 pleadings. On appeal, the Second District held that Plaintiffs stated a valid California Coastal Act³
9 (“Coastal Act”) claim against the City for illegal development (both physical and non-physical) on
10 City property within the coastal zone. As a property owner, the City is responsible for unpermitted
11 development on its property, whether it’s the Rock Fort, or the Bay Boys’ organized scheme to
12 deter outsiders. For this reason, the City’s First and Second Defenses for “Failure to State Facts”
13 must be stricken as a matter of law.

14 Second, as confirmed by the Second District, a property owner cannot escape Coastal Act
15 liability by claiming unpermitted development was built, created or caused by a different person or
16 entity. Thus, the City’s Fifth Defense of “Caused by Others” must be stricken. It makes no
17 difference who built or maintains a development on a landowner’s property, just that it exists
18 without a Coastal Act permit.

19 Third, this Court has jurisdiction because any person has standing to bring a claim to
20 enforce the Coastal Act. Thus, the City’s Sixteenth “Lack of Jurisdiction” defense must be stricken.

21 Fourth, because the Coastal Act covers public agencies, the City’s governmental entity
22

23 ¹ The City’s answer pleads 16 affirmative defenses that don’t apply to the Coastal Act: (1) Failure
24 to State Facts; (2) Failure to State Facts – Violation of the Coastal Act; (3) Statute of Limitations;
25 (4) Laches; (5) Caused by Others; (6) No Liability for Injury Caused by Issuance of, Failure to Issue a
26 Permit; (7) Not Liable for Failure to Inspect; (8) Adopting or Failing to Enforce Enactment of Law;
27 (9) Public Employee is Not Liable for Act or Omission Where Such was Result of Exercise of
28 Discretion Invested; (10) Defendant Exercised Reasonable Diligence to Discharge Duty; (11)
Misrepresentation by Employee; (12) Not Liable for Act or Omissions in the Execution or
Enforcement of Any Law; (13) Not Liable for Acts or Omissions of Others; (14) Police Power; (15)
Mootness; and (16) No Jurisdiction. If grouped, the City’s sixth through thirteenth affirmative
defenses are inapplicable governmental immunity defenses. See, UMF 7; see also, RJN, Ex. 6.

² Decl. K. Franklin at ¶ 48, Ex. 47

³ Pub. Res. Code §§30000 et seq.

1 defenses fail too. The City cannot assert that the Government Claims Act provides Coastal Act
2 immunity. Thus, the City’s Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and
3 Fourteenth Defenses must be stricken.

4 Fifth, the City’s “Statute of Limitations” and “Laches” defenses fail because the continuing
5 violation doctrine aggregates a series of wrongs or injuries for purposes of the statute of limitations,
6 treating the limitations period as accruing for all of them upon commission of the last violation.

7 Finally, the City’s Fifteenth Defense of “Mootness” must be stricken because (a)
8 unpermitted physical and non-physical development still exists on City coastal-zone property, (b)
9 Plaintiffs seek declaratory and injunctive relief from the Court with respect to unpermitted
10 development, and (c) on behalf of the State, Plaintiffs seek penalties.

11 **II. CALIFORNIA COASTAL ACT BASICS**

12 Under the Coastal Act, all coastal-zone landowners, including public entities like the City,
13 are required to obtain a Coastal Act permit for any development on their property – whether the
14 development is physical, or non-physical.⁴ By failing to obtain a Coastal Act permit for
15 development on City-owned property, the City violated the law. The City ceded control to a local
16 group known as the Bay Boys, which exercised dominion over Lunada Bay. Contrary to the City’s
17 claimed defenses, initial liability under the Coastal Act does *not* require an intent to harm. Instead,
18 liability follows violation of the statutory obligation of a landowner to obtain a Coastal Act permit
19 for any development within the coastal zone. Here are the basics of a Coastal Act claim:

- 20 • All development in the coastal zone requires a permit.⁵
- 21 • All public agencies must comply with the provisions of the Coastal Act.⁶
- 22 • The phrase “development” under the Coastal Act must be interpreted broadly, and includes
23 harassment or any activity that impedes access to the coastline or water.⁷
- 24 • Similar to the word development, the phrase “public access” under the Coastal Act must be
broadly construed. “Public access is not limited to the right to access a particular beach, it

25 ⁴ “There is no structures versus conduct dichotomy for ‘development’ within the meaning of the
26 caselaw. Structures are development, and conduct may be too, if it impacts access.” *Spencer v City
of Palos Verdes Estates* (2023) 88 Cal. App. 5th 849, 872.

27 ⁵ Pub. Res. Code §30600.

28 ⁶ Pub. Res. Code §30003.

⁷ *Spencer v City of Palos Verdes Estates* (2023) 88 Cal. App. 5th 849, 863, 869 to 871.

1 also includes the public's right to access the sea itself...”⁸

- 2 • Any person may maintain an action to enforce the California Coastal Act, and maintain an
3 action to recovery, civil penalties that go to the State of California.⁹
- 4 • A failure to permit development subjects the defendant to declaratory and equitable relief, and
5 penalties that are payable to the State of California.¹⁰

6 Liability and the duty to take affirmative action stems not from the landowners’ active
7 responsibility for the condition of its land, “but rather, and quite simply, from his very possession
8 and control of the land in question.”¹¹ In other words, “[w]hether the improper development was
9 conducted by a prior owner, as in *Lent*, or a trespasser, as in *Leslie Salt*, ‘an owner who maintains a
10 development ‘undertakes activity’ that requires a permit...”¹² Here, the City is a coastal zone
11 landowner that failed to obtain the necessary permits for both physical **and** non-physical
12 development on its land. And, it is the totality of the unpermitted development that has had the
13 effect of privatizing Lunada Bay for the Bay Boy’s use.

14 **III. PROCEDURAL BACKGROUND**

15 To ensure that Lunada Bay is not reserved solely for privileged local residents, Plaintiffs
16 seek to hold the City and other defendants accountable for unpermitted “development” that impedes
17 the public’s right to access the California coast. In the spring of 2016, Plaintiffs initially filed this
18 case in federal court. In response, the City asked the federal court to dismiss the Coastal Act Claim
19 and split the lawsuit based on *Burford*¹³ abstention –arguing that the California Coastal Act is an
20

21 ⁸ *11 Lagunita, LLC v California Coastal Commission* (2020) 58 Cal. App. 5th 904, 937.

22 ⁹ Pub. Res. Code §30803 – 30805.

23 ¹⁰ Pub. Res. Code §30820(a) and (b); *Sanders v Pacific Gas & Elect. Co.* (1975) 53 Cal App. 3d
661 (all of the civil penalty recovered under the Coastal Act must be paid to the state).

24 ¹¹ *Spencer v City of Palos Verdes Estates* (2023) 88 Cal. App. 5th 849, 866; *Leslie Salt Co. v San*
25 *Francisco Bay Conservation & Development Commission* (1984) 153 Cal. App. 3d 605, 611 (“We
26 then determine that the exposure to strict liability that results from such broad interpretation is an
27 appropriate traditional consequence of the possession and control of land.”), 618 (“Leslie's
contention that the broad interpretation we adopt would impose strict liability on landowners
without any express legislative direction to do so, while correct, does not dissuade us.”), 619
28 (“[O]ne may be held in violation of that statute ‘even though his interference with the public right
was purely accidental and unintentional....’”)

¹² *Spencer v City of Palos Verdes Estates* (2023) 88 Cal. App. 5th 849, 867.

¹³ *Burford v. Sun Oil Co.* (1943) 319 U.S. 315.

1 important area of state law that only state courts should decide. “The federal court judge expressed
2 his opinion that the federal court should abstain from deciding the issues before this court as a
3 matter of comity given California’s interest in this matter.”¹⁴ Thus, Plaintiffs also filed a state court
4 complaint under the Coastal Act alone.¹⁵ Later, the City and other defendants demurred, and the
5 court ruled on the demurrers on January 28, 2019. Plaintiffs filed their Second Amended
6 Complaint on February 27, 2019.¹⁶ The court required that Plaintiffs amend their Second Amended
7 Complaint limiting it to 25 pages.¹⁷ On April 5, 2019 Plaintiffs filed their Third Amended
8 Complaint, complying with the 25 page limit.¹⁸ On July 19, 2019, Plaintiffs filed their Fourth
9 Amended Complaint.¹⁹

10 In their Fourth Amended Complaint (“Amended Complaint”), Plaintiffs allege a single
11 cause of action against the City for its violation of the Coastal Act.²⁰ Plaintiffs’ claims against the
12 City are that the City violated the Coastal Act by allowing unpermitted structures on its coastline
13 property, including an unpermitted rock and wood fort (“Rock Fort”), and because of the Bay Boys’
14 harassing and intimidating conduct on City-owned property, which changed the density and/or
15 intensity of use by impeding access to the coastal zone.²¹

16 The City filed an answer to the Amended Complaint, asserting sixteen affirmative defenses.
17 Under the Coastal Act, the defenses are deficient as a matter of law.²²

18 **A. The Court of Appeal’s Decision**

19 Among its many motions, the City filed a motion for judgment on the pleadings with respect
20 to the Amended Complaint, contending that Plaintiffs had not stated a viable cause of action against
21

22 ¹⁴ See, RJN No. 2, Ex. 2, January 28, 2019 Minute Order, Hon. Carolyn B. Kuhl, P. 7 of 13.

23 ¹⁵ Undisputed Material Fact (“UMF”) 1.

24 ¹⁶ UMF 2.

25 ¹⁷ UMF 3.

26 ¹⁸ UMF 4.

27 ¹⁹ UMF 5.

28 ²⁰ UMF 5, 6. The Court may take judicial notice pursuant to Evidence Code section 452(c), (d); see also Request For Judicial Notice (“RJN”) filed herewith, Ex. 6.

²¹ UMF 6.

²² See, above, footnote 1.

1 the City.²³ The trial court granted the City’s motion, entering an order granting it on July 14,
2 2020.²⁴ On October 1, 2020, the trial court entered a Judgment against Plaintiffs (“Judgment”).²⁵
3 But Plaintiffs appealed that Judgment²⁶ and the Court of Appeal reversed it.²⁷

4 The Second District found that Plaintiffs stated a cause of action against the City.²⁸

5 There were two development activities at issue in the Appeal: “(1) the construction of the
6 Rock Fort (‘construction . . . of any structure’) and (2) the harassment conducted by the Bay Boys
7 (activities resulting in a ‘change in the . . . use of water or of access thereto.’).”²⁹ The Court of
8 Appeal held “plaintiffs have sufficiently alleged a cause of action that the City, as landowner,
9 violated the Coastal Act by maintaining the unpermitted Rock Fort on its property for decades.”³⁰
10 The Court of Appeal further held: “We conclude a change in the access to water brought about by
11 an organized scheme of harassment of, or similar impediment imposed on, those seeking access
12 may be just as much a change in access to water as one brought about by a physical impediment”
13 and such harassment and other conduct falls within the language of the Coastal Act.³¹ The Court of
14 Appeal held “plaintiffs sufficiently alleged an unpermitted ‘development’ in the Bay Boys’ denial
15 of access to the beach.”³² Plaintiffs assert that City is strictly liable for all development on its
16 property, and that a conspiracy is not needed to prove liability for “harassment-development” on its
17 land. The Court of Appeal acknowledged “[p]arties can, in fact, be liable for Coastal Act violations
18 under the doctrine of conspiracy” and Plaintiffs “sufficiently alleged an actionable conspiracy in
19 which the City has participated” with the Bay Boys.³³ But for the City, it’s unnecessary for
20

21 ²³ UMF 8.

22 ²⁴ UMF 11.

23 ²⁵ UMF 12.

24 ²⁶ UMF 13.

25 ²⁷ UMF 14.

26 ²⁸ *Spencer v City of Palos Verdes Estates* (2023) 88 Cal. App. 5th 849, 854. UMF 15.

27 ²⁹ UMF 16.

28 ³⁰ UMF 17.

³¹ UMF 18.

³² UMF 19.

³³ UMF 20.

1 Plaintiffs to demonstrate a conspiracy due to the City’s landowner-liability.

2 **IV. SUMMARY OF FACTS**

3 **A. Public Land: City Owns Lunada Bay Bluff, Shore and Submerged Lands But**
4 **Surrendered it to the Bay Boys**

5 The City owns the shoreline and coastal waters within its boundaries.³⁴ Starting in 1923,
6 Palos Verdes Estates’ developers sold it as an exclusive deed restriction community. The
7 developers set aside half of the land for common use, including roads and parks, horse riding paths,
8 a golf course, a beach club, and several miles of coastline. In 1939, Palos Verdes Estates
9 incorporated as general law.³⁵

10 In addition to its striking beauty, Lunada Bay is known worldwide for great surf.³⁶ Its
11 waves often reach as high as 15 to 20 feet during prime season.³⁷ It can host a barreling right-
12 breaking, rock-reef point-break type wave and hold a large swell.³⁸ It is also known for its sheer
13 cliffs, pristine shoreline, beautiful tide pools, snorkeling, fishing, and adjacent to hiking trails.³⁹
14 Given Lunada Bay's proximity to densely populated Los Angeles, one would expect it to be a
15 popular destination for outsiders. But it is not.⁴⁰ This is because Lunada Bay is also known for
16 having the most territorial locals in the world, who practice extreme “localism,” which the City
17 enables.⁴¹

18 **B. Structures, Storage of Materials and Harassment: Unpermitted Development**
19 **Creates De Facto Private Beach that the City Allowed, but Failed to Permit for**
20 **Exclusive Use**

21 The City failed to obtain Coastal Act permits for both physical and non-physical
22 developments on its land. Combined, these unpermitted developments helped cede control to the
23

23 ³⁴ UMF 25.

24 ³⁵ Cal. Gov. Code §§ 34101 and 34102; Cal. Const. art. II § 9(a) and (b).

25 ³⁶ See, e.g., Expert Decl. P. Neushul, ¶ 13; Expert Decl. King, ¶ 15.

26 ³⁷ Decl. P. Neushul at ¶ 17.

27 ³⁸ Id. ¶ 13.

28 ³⁹ Id.; Decl. King, ¶ 16.

⁴⁰ Decl. King, ¶ 17.

⁴¹ Decl. P. Neushul at ¶¶ 13-20.

1 Bay Boys, creating what in essence is a de facto private beach and recreation area. The physical
2 development includes structures (Rock Fort, fire ring, trails, stairs, fire pits, private stairs to the
3 beach and retaining wall at 225 Rocky Point Rd., etc.), and storage of materials (kayaks, crab and
4 lobster pots, barbecue supplies, coolers, chairs, etc.).⁴²

5 Non-physical development includes harassment, policies, and practices. The Bay Boys
6 employ a campaign of harassing conduct toward "outsiders" for the purpose of excluding them from
7 Lunada Bay.⁴³ Through this behavior, the Bay Boys have succeeded in limiting would-be
8 beachgoers from accessing "their turf."⁴⁴ As explained by Defendant Sang Lee: ***"The reason
9 there's a lot of space down here is because we keep it that way. We fucking hassle people. We'll
10 burn you every single wave. There's still fights down here. People will just duke it out, fucking
11 work your car and get in fights."***⁴⁵ In an email, Lee stated, that they protect ***"their turf"*** at all
12 costs and ***"WILL DIE BY"*** the set of "rules" and "term[s] of engagement" that they established in
13 the 1970s by the older boys. The Bay Boys employ various "options to deter [sic] outsiders from
14 surfing our home."⁴⁶ Their goal is to repel outsiders by making them so miserable that they never
15 return. It works, as Defendant Charlie Ferrara stated, "I can't tell you that you can't go surfing, but
16 ***what I can do is make sure you don't have fun out there . . .*** [a]nd then what's the point of that?
17 You're going to come here when the surf's good everywhere else and get bummed and have a bad
18 day?"⁴⁷ Charlie Ferrara went on further, explaining to Plaintiff Smoluchowska-Miernik that the
19 Bay Boys are "like a fraternity" – they haze those who seek to join, including making them "drink
20 frickin' piss to see how bad you want to be in this fraternity."⁴⁸

21 The City has long been aware of the Bay Boy's dominion over City-owned Lunada Bay.⁴⁹
22

23 ⁴² UMF 26; Decls. Smoluchowska-Miernik, ¶ 20-21, 25-27, Nawfal, ¶¶ 4-5, 7-8; Browne, ¶ 3-4.

24 ⁴³ Decl. P. Neushul, ¶¶ 14, 17.

25 ⁴⁴ Id. ¶ 17; Decls. Sisson, ¶ 4; Will, ¶ 4; K. Claypool, ¶ 3; Carpenter, ¶ 5.

26 ⁴⁵ Decl. K. Franklin at ¶ 50, Ex. 48.

27 ⁴⁶ Decl. K. Franklin at ¶ 50, Ex. 49.

28 ⁴⁷ Decl. Smoluchowska-Miernik, ¶ 37.

⁴⁸ Decl. Smoluchowska-Miernik, ¶ 37.

⁴⁹ Decls. Smoluchowska-Miernik, ¶¶ 6, 13-15, 28-29, 31; Spencer, ¶¶ 3, 4, 6, 7, 9, 25; Bacon, ¶¶ 10-11; Browne, ¶¶ 4-11; Conn, ¶ 9; Innis, ¶¶ 5-6; MacHarg, ¶¶ 5, 7; Nawfal, ¶¶ 5-7; Krell, ¶¶ 6-9;

1 **1. Examples of Harassment – Plaintiffs’ Experience**

2 Like scores of others, Plaintiffs Spencer and Smoluchowska-Miernik are victims of the Bay
3 Boys’ harassment scheme. When Spencer arrived to surf in January 2016, he was called a "kook"
4 and told to "fucking go home." In the water, Defendant Brant Blakeman shadowed Spencer,
5 impeded his movement, and prevented him from catching waves.⁵⁰ While Spencer was paddling
6 back out to waves, a Bay Boy caught a wave headed toward shore and steered his surfboard directly
7 toward Spencer, slicing his wrist.⁵¹ Before this date, Spencer – who was a police officer himself –
8 had notified the City’s police in advance and sought extra patrols.⁵² No patrols were present. Also
9 in January 2016, Smoluchowska-Miernik was immediately harassed upon arrival. She was called a
10 "kook," and told she couldn't surf there.⁵³ Defendant Blakeman filmed Smoluchowska-Miernik on
11 the bluffs and made her feel uncomfortable.⁵⁴ When she walked down to the beach, Defendant
12 David Melo screamed "whore" and other profanities at her while City police witnessed the incident
13 and failed to intervene.⁵⁵ After the incident, a City police officer asked her if she wanted to make a
14 citizen's arrest.⁵⁶ When she said she wanted to make a citizen’s arrest, the officer discouraged her
15 from doing so.⁵⁷ A few weeks later, in mid-February 2016, Smoluchowska-Miernik returned to
16 take photos. She called the City in advance seeking protection, but the request was denied. On her
17 arrival, she was again filmed by Defendant Blakeman and told that she was "done."⁵⁸ Later that
18 morning, Defendant Charlie Ferrara watched Defendants Blakeman and Johnston rush into the
19 Rock Fort toward Smoluchowska-Miernik in a hostile manner.⁵⁹ Johnston was loud, seemed drunk,

21 _____
22 Pastor, ¶ 7; Sisson, ¶¶ 8-9; Taloa, ¶¶ 12, 14, 16-17, 22; and Wright, ¶¶ 20, 22-23.

23 ⁵⁰ Decl. Spencer, ¶¶ 9, 20, 24, 25.

24 ⁵¹ Decl. Spencer, ¶ 12.

25 ⁵² Decl. Spencer, ¶ 13.

26 ⁵³ Decl. Smoluchowska-Miernik, ¶ 8; Decl. Spencer, ¶¶ 9, 17, 25.

27 ⁵⁴ Decl. Smoluchowska-Miernik, ¶ 9.

28 ⁵⁵ Decl. Smoluchowska-Miernik, ¶ 11.

⁵⁶ Decl. Smoluchowska-Miernik, ¶¶ 13-14.

⁵⁷ Decl. Smoluchowska-Miernik, ¶ 14.

⁵⁸ Decl. Smoluchowska-Miernik, ¶¶ 16, 18.

⁵⁹ Decl. Smoluchowska-Miernik, ¶¶ 19-20.

1 sprayed beer on Smoluchowska-Miernik, said she was "fucking sexy baby," that he was "big
2 enough to get the job done," and mimicked an orgasm.⁶⁰ He exposed his penis to her while
3 changing into his wetsuit.⁶¹ Blakeman filmed the incident and kept the camera close to
4 Smoluchowska-Miernik. When she asked why he was filming her, Blakeman responded "because I
5 feel like it."⁶² In a familiar pattern, she complained to the police but was discouraged in following
6 up on her complaint. Despite her repeated efforts to contact the police, there was no serious follow
7 up. In short, the efforts to discourage outsiders from going to Lunada Bay are well organized and
8 include emails, text messages, and phone trees. At least one Bay Boy (Blakeman) used a City-
9 owned phone to coordinate the efforts toward Plaintiffs. Defendant Johnston told others that the
10 police were "cool" in their follow up with him. And the investigating officer explained that the Bay
11 Boys were friendly "good guy[s]." Further, the City challenged Smoluchowska-Miernik, asking her
12 why a woman would want to go to Lunada Bay anyways because there are "only rocks" on the
13 shoreline.⁶³

14 2. Examples of Harassment – Other Beachgoers

15 But Spencer's and Smoluchowska-Miernik's experience aren't unique – and the City has
16 long been aware of localism being a problem at Lunada Bay. For decades, outsiders have
17 experienced intimidation, assault, battery and vandalism. Indeed, even with this lawsuit pending
18 now more than eight years, witness still come forward.⁶⁴

- 19 • Bay Boys harass outsiders immediately upon their arrival to Paseo Del Mar – the adjacent
20 street that parallels the bluffs above Lunada Bay.⁶⁵
- 21 • Outsiders who take photographs are blocked, told they cannot photograph
22 surfers or waves, and/or are interrogated.⁶⁶
- 23 • Outsiders' cars are vandalized. Their windows are covered in surfboard wax,

24 ⁶⁰ Decl. Smoluchowska-Miernik, ¶¶ 21-24.

25 ⁶¹ Decl. Smoluchowska-Miernik, ¶ 24.

26 ⁶² Decl. Smoluchowska-Miernik, ¶ 22.

27 ⁶³ Decl. Smoluchowska-Miernik, ¶ 30.

28 ⁶⁴ Decls. I. Nawfal, ¶ 4; T. Long ¶¶ 3-7.

⁶⁵ Decls. K. Claypool, ¶ 18; Taloa, ¶ 20; Smoluchowska-Miernik, ¶ 8; Bacon, ¶¶ 4-5; Gero, ¶¶ 6, 9-11.

⁶⁶ Decls. Innis, ¶ 4; Smoluchowska-Miernik, ¶ 20.

- derogatory words are scrawled across their windshield.⁶⁷ The air in their tires is let out or their tires are slashed.⁶⁸
- Dog feces is smeared on vehicles, door panels are kicked in, windshields are scored, paint is damaged by keys, and taillights and mirrors are broken.⁶⁹ Outsiders hire security guards to watch their cars while they surf or stand guard over friends' vehicles.⁷⁰
 - Bay Boys block the paths to the beach and shout at outsiders, call them "kooks" (a derogatory surfing term), ask them what they're doing there, tell them it's a "private" beach, and tell them to "fucking go home."⁷¹
 - Bay Boys tell outsiders "it's really dangerous," "you shouldn't surf here," and "the people out there will make sure you don't have fun."⁷² Some surfers are punched in the face and told "[t]his is my fucking house and my fucking yard."⁷³ Bay Boys stand guard while others assault outsiders.⁷⁴
 - Boy Boys stand within several feet of outsiders holding a camera in their face and film them in a harassing manner while on the bluffs, walking down the trail, on the beach, and in the Rock Fort.⁷⁵
 - Bay Boys pelt outsiders with rocks, dirt clods, and glass while they navigate the steep and unmarked paths from the bluffs to the shoreline.⁷⁶
 - Bay Boys hurl obscenities at outsiders, calling them "whores" and "fucking faggots," and dare them to go in the water "and see what happens."⁷⁷
 - In the water outsiders are encircled by Bay Boys who intentionally obstruct outsiders' movements, shadow them, block them from surfing, yell racially-charged insults, tell them they're "not fucking welcome," "get the fuck out of here," "we'll beat your ass," drop in on them while surfing, intentionally collide with them, shoot surf boards, and put them at great risk.⁷⁸
 - Bay Boys intimidate and provoke outsiders with aggressive posture and language, stand or sit in the water too close to outsiders, and will throw a first punch.⁷⁹
 - Bay Boys brag about the close relationship they have with City officials, and tell outsiders

⁶⁷ Decl. Jongeward, ¶ 6; K. Claypool, ¶ 6; Carpenter, ¶ 9.

⁶⁸ Decl. Young, ¶ 11; K. Claypool, ¶ 6; Bacon, ¶ 7; Gero, ¶ 7.

⁶⁹ Id.; Decl. Pastor, ¶ 8.

⁷⁰ Decl. Spencer, ¶¶ 10, 21.

⁷¹ Decl. Jongeward, ¶ 4; Spencer, ¶ 10, 11, 21; Wright, ¶ 8; Young, ¶ 6; Conn, ¶ 6; Taloa, ¶ 19; Smoluchowska-Miernik, ¶¶ 8, 9, 19; Will, ¶ 7.

⁷² Decl. Wright, ¶ 8.

⁷³ Decl. Akhavan, ¶ 9.

⁷⁴ Id. ¶ 12.

⁷⁵ Decl. Wright, ¶¶ 8, 18; K. Claypool, ¶¶ 25, 28; Smoluchowska-Miernik, ¶¶ 9, 21; C. Claypool, ¶ 12.

⁷⁶ Decl. Jongeward, ¶ 6; Pastor, ¶ 4; Conn, ¶ 7; S. Neushul, ¶ 8; Gersch, ¶ 5; Gero, ¶ 8; Perez, ¶ 4.

⁷⁷ Decl. Wright, ¶¶ 13, 19; Young, ¶ 9; KClaypool, ¶¶ 5, 20; Smoluchowska-Miernik, ¶ 11.

⁷⁸ Decl. Spencer, ¶¶ 12-14; Taloa, ¶ 18, 20; S. Neushul, ¶¶ 9, 11; Pastor, ¶ 5; Jongeward, ¶ 8; Wright, ¶¶ 9, 11-12, 18; Young, ¶¶ 7-8; K. Claypool, ¶¶ 5, 9, 13, 23-24; MacHarg, ¶¶ 6-7; Will, ¶ 8; Carpenter, ¶ 8; Marsch, ¶ 3; C. Claypool, ¶¶ 9, 11.

⁷⁹ Decl. Spencer, ¶¶ 12, 13, 14; Taloa, ¶ 19; MacHarg, ¶¶ 5-7; T. Long ¶¶ 4, 6.

1 they “own” the police.⁸⁰

2 C. City’s Response to Complaints of Harassment

3 Under the Coastal Act it is possible to obtain a temporary permit for exclusive use of coastal
4 zone property. Examples of exclusive use permits include the annual Grand Prix of Long Beach,⁸¹
5 the Manhattan Beach Open Volleyball Tournament,⁸² and the Mavericks’ Surf Contest.⁸³ At Lunada
6 Bay, no permit exists to give a group dominion over the area. Instead, outsiders visiting City
7 beaches face harassment intended to exclude them.

8 Former City Chief of Police Timm Browne explained it this way: ***“People here do not like***
9 ***outsiders in general.*** Umm, I mean, they pay a price to live here. Umm, they have beautiful views
10 of the ocean from most of the homes in the City . . . so, uh, ***they are protective of their community***
11 ***as a whole, umm, I mean surfers or non-surfers.***⁸⁴ Years later, in response to complaints, a
12 dispatcher from the City’s police department said this: *“We know all of them. They are infamous*
13 *around here. They are pretty much grown men in little mens' mindset. They don't like anyone that's*
14 *not one of the Bay Boys surfing down there. It literally is like a game with kids on a schoolyard to*
15 *them. And they don't want you playing on their swing set. But, you know, it is what it is. If you*
16 ***feel uncomfortable [going to Lunada Bay], you know, then don't do it.***⁸⁵

17 Moreover, not only does the City fail to obtain a Coastal Act permit to give a group control
18 over its land, but also it does not enforce its ordinances designed to improve coastal access, makes
19 it hard for victims to lodge complaints about harassment – and does little to follow up if a coastal-
20 zone complaint is filed.⁸⁶

23 ⁸⁰ Decl. Taloa, ¶ 14.

24 ⁸¹ The Grand Prix was one of the first events to be issued a Coastal permit in 1975 – and has more
25 than 40 years of consecutive permits. The event is typically 3 days, but set up and take down takes
26 weeks. Decl. K. Franklin at ¶ 51, Ex. 50.

26 ⁸² Decl. K. Franklin at ¶ 52, Ex. 51.

27 ⁸³ Decl. K. Franklin at ¶ 53, Ex. 52.

28 ⁸⁴ Decl. T. Browne, ¶ 10.

⁸⁵ Decl. K. Franklin at ¶ 56, Ex. 55.

⁸⁶ Decls. I. Nawfal, ¶ 5, 7, 8 ; Smoluchowska-Miernik, ¶¶ 12-15, 26-31, 35.

1 **V. LEGAL DISCUSSION**

2 **A. Standard of Review**

3 Under Code of Civil Procedure § 437c(f)(1), “if it is contended that...there is no defense to
4 the action or proceeding,” “[a] party may move for summary adjudication as to . . . one or more
5 affirmative defenses . . . if that party contends . . . that there is no affirmative defense thereto, or that
6 there is no merit to an affirmative defense as to any cause of action.”⁸⁷ The Court may summarily
7 adjudicate that an affirmative defense is without merit.⁸⁸

8 **B. The Court Of Appeal Determined That Plaintiffs Have Stated A Cause Of**
9 **Action Against The City For Violation Of The California Coastal Act**

10 Again, the Second District found that Plaintiffs have stated a cause of action against the
11 City. “The trial court granted the City judgment on the pleadings, on the joint bases that: (1) merely
12 allowing the Rock Fort to be built was not actionable against the City, in the absence of allegations
13 that the City itself performed its construction or entered into an advance agreement that it be built;
14 and (2) condoning the Bay Boys’ acts of harassment is not a Coastal Act violation as neither
15 harassment itself, nor standing by while it occurs, is conduct reached by the Act. *We reverse on*
16 *both theories.*”⁸⁹

17 **C. Summary Adjudication Is Proper Here, Because The City Cannot Establish Its**
18 **Affirmative Defenses To Plaintiffs’ Claims**

19 **1. Law of the Case**

20 The doctrine of law of the case deals with the effect of an appellate decision on the
21 subsequent retrial or appeal.⁹⁰ “The decision of an appellate court, stating a rule of law necessary to
22 the decision of the case, conclusively establishes that rule and makes it determinative of the rights
23 of the same parties in any subsequent retrial or appeal in the same case.”⁹¹

24 _____
25 ⁸⁷ Code Civ. Proc. § 437c(a) and (c).

26 ⁸⁸ Code Civ. Proc. §437c(f)(1); *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th
889, 900.

27 ⁸⁹ *Spencer v City of Palos Verdes Estates* (2023) 88 Cal. App. 5th 849, 854 (emphasis added).
UMF 15.

28 ⁹⁰ *Morohoshi v. Pacific Home* (2004) 34 Cal. 4th 482, 491.

⁹¹ *Id.*

1 Under the doctrine of law of the case, any principle or rule of law stated in an appellate
2 opinion must be followed in all subsequent proceedings in the action, whether in trial court or on a
3 later appeal.⁹²

4 **a. The First and Second Affirmative Defenses for Failure to State a**
5 **Claim**

6 Plaintiffs are entitled to summary adjudication on the City’s first and second affirmative
7 defenses for two reasons: (1) failure to state a cause of action is not a proper affirmative defense;
8 and (2) whether Plaintiffs have stated causes of action against the City has already been decided by
9 the Court of Appeal in *Spencer*.

10 A “failure to state a claim” is not a proper affirmative defense, but rather asserts a defect in
11 the plaintiff’s prima facie case. These affirmative defenses and the others, even if they were viable
12 (which they are not), state a legal conclusion that is inappropriate: The City’s purported defenses do
13 not state any “new matter” or fact not raised in Amended Complaint (or, the prior complaints), thus
14 fail.⁹³ Moreover, the defense of failure to state a claim is, in essence, an argument that the plaintiff
15 has not met its burden of alleging the elements of its claims.⁹⁴

16 Here, the City argued a failure to state a claim in its motion for judgment on the pleadings⁹⁵
17 and lost on appeal. The Second District concluded that Plaintiffs had, in fact, stated a Coastal Act
18 cause of action against the City. “The trial court granted the City judgment on the pleadings, on the
19 joint bases that: (1) merely allowing the Rock Fort to be built was not actionable against the City, in
20 the absence of allegations that the City itself performed its construction or entered into an advance
21 agreement that it be built; and (2) condoning the Bay Boys’ acts of harassment is not a Coastal Act
22 violation as neither harassment itself, nor standing by while it occurs, is conduct reached by the
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24

25 ⁹² *Leider v. Lewis* (2017) Cal. App. 5th 1121, 1127; *Sargon Enterprises v. University of Southern*
26 *California* (2013) 215 Cal. App. 4th 1495, 1505-1506.

27 ⁹³ Code. Civ. Proc. § 431.30(b)(2).

28 ⁹⁴ *LL B Sheet 1, LLC v. Loskutoff* (2019) 362 F.Supp. 3d 804, 818; *Zivkovic v. S. Cal. Edison Co.*
(9th Cir. 2002) 302 F.3d 1080, 1088.

⁹⁵ Indeed, it had also filed a losing demurrer before the MJOP. See, January 28, 2019 Minute Order,
Hon. Carolyn B. Kuhl. RJN No. 2, Ex. 2.

1 Act. We reverse on both theories.”⁹⁶ In other words, on appeal the City already lost its arguments
2 regarding the sufficiency of Plaintiffs’ cause of action for the City’s violation of the Coastal Act.
3 Consequently, the law of the case applies, and Plaintiffs are entitled to summary adjudication of
4 these affirmative defenses as a matter of law.

5 **b. The Fifth Affirmative Defense Based on the Fault of Others**

6 If there is development on a coastal-zone landowner’s property without a Coastal Act
7 permit, it is liability without fault for the current landowner like the City. For example, in *Feduniak*,
8 ⁹⁷ a property owner was held liable under the Coastal Act for an earlier owner’s development of an
9 unpermitted three-hole golf course built 18 years earlier. Under the Coastal Act, it did not matter
10 that a prior property owner built the unpermitted development. Similarly, in *Lent*,⁹⁸ in 2002, the a
11 family purchased a beach house where a prior property owner had placed an unpermitted deck,
12 staircase, and gate on the public access easement. Like the defendants in *Feduniak*, the Lent’s were
13 found liable under the Coastal Act for a predecessor’s unpermitted development – and appropriately
14 fined \$4.1 Million. Similarly, in *Leslie Salt Co.*, in evaluating the nearly identical McAteer-Petris
15 Act which applies to the San Francisco Bay, the court rejected a defendant’s fault of others
16 argument whereby the defendant claimed a trespasser caused the harm, reasoning if landowners
17 were not held responsible it would “frustrate the effectiveness of the act.”⁹⁹ The *Leslie Salt Co.*
18 court reasoned that a fault of others defense would diminish the incentive for landowners to manage
19 their property consistent with the applicable law.¹⁰⁰ The same is true here, except we should expect
20 better from a local government.¹⁰¹

21 **c. The Sixteenth Affirmative of Lack of Jurisdiction**

22 To the extent the City is rehashing an argument that the Court has no jurisdiction because
23

24 ⁹⁶ *Spencer v City of Palos Verdes Estates*, supra, 88 Cal. App. 5th at 854.

25 ⁹⁷ *Feduniak v California Coastal Com.* (2007) 148 Cal. App. 4th 1346.

26 ⁹⁸ *Lent v. California Coastal Commission* (2021) 62 Cal. App 5th 812.

27 ⁹⁹ *Leslie Salt Co. v. San Francisco Bay Conservation & Development Commission* (1984) 152 Cal.
App. 3d 605, 617.

28 ¹⁰⁰ *Id.* at 617.

¹⁰¹ Civ. Cod. §3519 (He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.)

1 the action is in rem or quasi in rem, this argument the City raised and lost twice already. As the
2 Court ruled last time, “[t]o the extent that the City is arguing that the court should reconsider its
3 prior ruling, the City provides no basis for doing so. There is no dispute over the ownership of
4 Lunada Bay or any other land, as required for in rem jurisdiction....The cases concern the alleged
5 illegality of the actions of Defendants, and the relief requested is against the Defendants actions, not
6 the property itself.”¹⁰² Moreover, as discussed below, public agency landowners must comply with
7 the Coastal Act with respect to any development on their property.¹⁰³ And any person or entity can
8 bring a claim to enforce the Coastal Act.¹⁰⁴

9 **2. City’s Status as a Public Agency is Not a Defense to the Coastal Act**

10 The Coastal Act must be interpreted broadly to give it effect. Because the Coastal Act
11 specifically covers public agencies that own property in the coastal zone,¹⁰⁵the City’s governmental
12 immunity defenses do not apply.

13 **a. The Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and** 14 **Thirteenth Affirmative Defenses Based on Governmental** **Immunity**

15 In its Answer, the City alleges that it is immune from liability from Plaintiffs’ claim for
16 violation of the Coastal Act under provisions of the Government Claims Act.¹⁰⁶ Specifically, the
17 City alleges immunity under Government Code sections 818.4 and 821.2 (Sixth Affirmative
18 Defense), sections 818.6 and 821.4 (Seventh Affirmative Defense), sections 818.2 and 821 (Eighth
19 Affirmative Defense), section 820.2 (Ninth Affirmative Defense), section 815.6 (Tenth Affirmative
20 Defense), section 818.8 and 822.2 (Eleventh Affirmative Defense), section 820.4 (Twelfth
21 Affirmative Defense), and section 820.6 (Thirteenth Affirmative Defense). However, the
22 Government Claims Act and related time limits and other procedural requirements of the claims

24 ¹⁰² See, January 28, 2019 Minute Order, Hon. Carolyn B. Kuhl, P. 5 of 13.

25 ¹⁰³ Pub. Res. Code §30003 (“All public agencies and all federal agencies, to the extent possible
under federal law or regulations or the United States Constitution, shall comply with the provisions
of this division.”)

26 ¹⁰⁴ Pub. Res. Code §30803 – 30805.

27 ¹⁰⁵ Pub. Res. Code §30003.

28 ¹⁰⁶ Gov. Code §810, et seq.; In 2007, the California Supreme Court said the “Tort Claims Act” is
better called the Government Claims Act. *City of Stockton v. Superior Court* (2007) 42 Cal. 4th
730, 741-42.

1 process, and procedures for filing late and amended claims do not apply to the Coastal Act.

2 First, the public policy of the Coastal Act prevails, as all have access to the coast under both
3 the California Constitution¹⁰⁷ and the Coastal Act.¹⁰⁸ Moreover, the Coastal Act specifically
4 identifies government entities, such as the City here, as being subject to it, and all associated
5 penalties.¹⁰⁹ Second, the Coastal Act gives broad standing for anyone to enforce it.¹¹⁰
6 Furthermore, on behalf of the State, any person may maintain an action for recovery of civil
7 penalties under the Act.¹¹¹

8 *Third, Plaintiffs do not seek money or damages for themselves under the Coastal Act, but*
9 *instead, they seek declaratory and injunctive relief, along with penalties, that go to the State.*¹¹²
10 Actions that don't seek money or damages for plaintiffs are exempt from the Government Claims
11 Act.¹¹³ Other examples of types of claims that are exempt include claims for declaratory relief,¹¹⁴
12 claims for specific relief as to the recovery of a particular property,¹¹⁵ mandamus actions,¹¹⁶ and
13 abatement of a public nuisance by injunction.¹¹⁷ Further – claims by or on behalf of public entities
14 are exempt from the Government Claims Act.¹¹⁸ Here, Plaintiffs are doing the same work as the
15 Coastal Commission and enforcement staff. Next, because Plaintiffs have no means to collect
16 directly for themselves under the Coastal Act, they stand in the shoes of the State (here, the Coastal
17 Commission and California Attorney General).

18 Furthermore, none of these affirmative defenses applies here where the City is being sued as
19

20
21 ¹⁰⁷ Cal. Const. Art. X, § 4.

22 ¹⁰⁸ Pub. Res. Code § 30001.5.

23 ¹⁰⁹ Pub. Res. Code § 30003.

24 ¹¹⁰ Pub. Res. Code §§ 30803, 30804.

25 ¹¹¹ Pub. Res. Code § 30805.

26 ¹¹² Pub. Res. Code §§ 30820, 30821(j); and 30823.

27 ¹¹³ Gov't Code §905; *Hart v. Alameda County* (1999) 76 Cal. App 4th 766.

28 ¹¹⁴ *Otis v City of Los Angeles* (1942) 52 Cal. App. 2d 605.

¹¹⁵ *Holt v Kelly* (1978) 20 Cal. 3d 560.

¹¹⁶ *County of Sacramento v Lackner* (1979) 97 Cal. App. 3d 576, 587.

¹¹⁷ *Los Angeles Brick & Clay Prods. Co. v City of Los Angeles* (1942) 60 Cal. App. 2d 478.

¹¹⁸ Gov't Code §905, but Gov't Code §935.

1 a landowner that failed to permit Coastal Act development on its property. The California Coastal
2 Act is a strict liability statute as to owners of real property within the coastal zone, and all
3 development on a landowner's property within the coastal zone must be permitted.¹¹⁹ Cities are not
4 exempt from this requirement, as Pub. Res. Code § 30003 expressly requires that all public agencies
5 comply with the Coastal Act. This stems from the fact that the California Constitution guarantees
6 public access to California's coast.¹²⁰ "[A]ccess to the navigable waters of this State shall be
7 always attainable for the people thereof."¹²¹ The Coastal Act requires "maximum access, which
8 shall be conspicuously posted, and recreational opportunities shall be provided for all the people "to
9 carry out the constitutional requirements.¹²² It also directs the Coastal Commission to "[m]aximize
10 public access to and along the coast and maximize public recreational opportunities in the coastal
11 zone consistent with sound resources conservation principles and constitutionally protected rights
12 of private property owners."¹²³

13 "Whether the improper development was conducted by a prior owner, as in *Lent*, or a
14 trespasser, as in *Leslie Salt*, 'an owner who maintains a development 'undertakes activity' that
15 requires a permit'¹²⁴ Development includes the physical and non-physical: "Case authority has
16 repeatedly held that certain nonphysical activity negatively impacting access to the beach may
17 qualify as development under the Coastal Act."¹²⁵ Moreover, harassment (*i.e.*, deterring others
18 from accessing the coastline or water) qualifies as "development" under the Coastal Act, *i.e.*,
19 "change in the intensity of use of water, or of access thereto."¹²⁶ This is because the deterrent effect
20 of harassment is equal to or more effective in limiting access to the coast than a locked gate.

21 _____
22 ¹¹⁹ Pub. Resources Code § 30600, subd. (a); *Spencer v City of Palos Verdes Estates*, *supra*, 88 Cal.
23 App. 5th at 864-866.

24 ¹²⁰ Cal. Const. Art. X, § 4.

25 ¹²¹ *Id.*

26 ¹²² Pub. Res. Code § 30210.

27 ¹²³ Pub. Res. Code § 30001.5(c).

28 ¹²⁴ *Spencer v City of Palos Verdes Estates*, *supra*, 88 Cal. App. 5th at 867, citing *Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 832, and *Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal.App.3d 605

¹²⁵ *Id.* at 870.

¹²⁶ *Id.* at 869.

1 **b. The Fourteenth Affirmative Defense Based on Exercise of Police**
2 **Power**

3 Constitutionally based,¹²⁷ the Coastal Act is a land use statute, and, municipal landowners
4 are not exempt from it.¹²⁸ It's intended to "maximize public access to and along the coast and
5 maximize public recreational opportunities with the coastal zone...."¹²⁹ Further, under the Coastal
6 Act, "development" – whether physical, non-physical or in the totality of the circumstances
7 combining both – shall not interfere with the public's right to access the sea.¹³⁰ In sum, the Act
8 requires fair treatment and meaningful involvement of all people with respect to its
9 implementation.¹³¹ As a land use statute, there is no "police power" cloak that shields the City from
10 adhering to the Coastal Act.

11 **3. As a Matter of Law, the City's Cannot Allege Statute of Limitations,**
12 **Laches or Mootness**

13 **a. The Third and Fourth Affirmative Defenses of Statute of**
14 **Limitations and Laches Must be Stricken**

15 The continuing violation doctrine aggregates a series of wrongs or injuries for purposes of
16 the statute of limitations, treating the limitations period as accruing for all of them upon
17 commission or sufferance of the last of them. Unpermitted development that violates the Coastal
18 Act represents "continued resource damage" that frustrates the public's interest in having access to
19 the coast. Similarly, "[l]aches, 'is not available where it would nullify an important policy adopted
20 for the benefit of the public.'" Until a development under the Coastal Act is permitted, removed, or
21 stopped, the harm continues, the public's access is still deterred, and the continuing violation
22 doctrine applies.

23 **b. The Fifteenth Affirmative Defenses of Mootness Must Be Stricken.**

24 Mootness cannot be established here. The City has violated the Coastal Act by failing to
25 permit physical and non-physical unpermitted development. As noted above, the unpermitted

26 ¹²⁷ Cal. Const. Art. X, § 4.

27 ¹²⁸ Pub. Res. Code §30003.

28 ¹²⁹ Pub. Res. Code §30001.5(c).

¹³⁰ Pub. Res. Code §30107.3 (a).

¹³¹ Pub. Res. Code §30107.3 (a).

development includes: (1) the Rock Fort; (2) trails; (3) fire rings; (4) storage of materials (kayaks, fishing gear, etc.); and (5) a staircase and retaining wall at 225 Rock Point Road near Lunada Bay; and (6) the Bay Boys' scheme of harassment.

Most of these illegal developments still exist or have no permit under the Coastal Act, and each subjects the City to separate Coastal Act penalties. Of these Coastal Act violations, the Court has jurisdiction and Plaintiffs have standing because "[a]ny person may maintain an action for the recovery of civil penalties provided for in Section 30820 or 30821.6."¹³² Even for a physical structure like the Rock Fort, fire rings, or storage of materials were removed, these items are not "moot" because the City is still subject to penalties under the Coastal Act. The same is true of non-physical development, if the City now claims the harassment, deterrents or policies have stopped.

For each violation of the Coastal Act, a court shall impose liability of no less than \$500 and no more than \$30,000.¹³³ Further, for each violation that is "intentionally and knowingly" performed the court shall impose liability of "not [to] 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."¹³⁴ In determining the amount of civil liability, the court shall consider: (1) the nature, circumstances, extent, and gravity of the violations; (2) whether the violations are susceptible to restoration or other remedial measures; (3) the sensitivity of the resources affected by the violations; (4) the cost of bringing the action; and (5) with respect to the violator, any voluntary restoration or remedial measures taken, any prior history of violations, the degree of culpability, consequences of the violation, and such other matters as justice may require.¹³⁵

VI. CONCLUSION

Because the City is a landowner with unpermitted development on its property and the Coastal Act is strict liability, Plaintiffs ask the Court to strike the City's non-meritorious defenses.

¹³² Pub. Res. Code § 30805.

¹³³ Pub. Res. Code § 30820 (a)(1) and (2).


¹³⁴ Pub. Res. Code § 30820 (b).

¹³⁵ Pub. Res. Code § 30820(c). Administratively, and without going to court, the Coastal Commission may issue penalties up to 75% of the maximum allowed. In contrast, in court actions brought to enforce the Coastal Act, 100% of the Pub. Res. Code § 30820 penalties are available and the statute of limitations is three years. Code Civ. Proc. § 338(a).

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Dated: April 18, 2024

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