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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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

Plaintiffs,

vs.

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,
JR., BRENDON LAMERS, MICHAEL
THIEL, PAUL HUGOBOOM, CASSIDY
BEUKEMA, DEVON DEMARIA; CITY
OF PALOS VERDES ESTATES; and
DOES 9-100,

Defendants.

Case No.: BC629596

ORDER GRANTING DEFENDANT CITY
OF **PALOS VERDES** ESTATES'S
MOTION FOR JUDGMENT ON THE
PLEADINGS WITH LEAVE TO AMEND

Hearing Date: July 9, 2020
Time: 2:00 p.m.
Dept.: 7

1 I. Introduction

2
3 Cory Spencer, Diana Milena Smoluchowska-Miernik, and Coastal Protection Rangers, Inc.
4 (collectively, “Plaintiffs”) allege a single cause of action in their Fourth Amended Class Action
5 Complaint (“FAC”) against Defendant City of Palos Verdes Estates (“City”) for violation of the
6 California Coastal Act (the “Act”). The FAC prays for multiple remedies against City. In addition
7 to an award of attorneys’ fees, it seeks civil penalties and daily fines. (FAC, pp. 25-26.)

8 City now moves for judgment on the pleadings¹ on the following grounds: (1) Plaintiffs
9 fail to allege facts showing that City violated the Coastal Act, and, regardless, Coastal Act section
10 30005 bars their claim; (2) Plaintiffs both lack standing, and fail to assert a viable Coastal Act
11 Equal Justice Amendment claim; (3) Plaintiffs cannot assert a “conspiracy claim” against City
12 because it is a common law claim barred by Government Code section 815; and (4) Plaintiff
13 Coastal Protection Rangers cannot prosecute the action because it is a suspended corporation.
14 (Motion, 2:10-19.) Plaintiffs oppose City’s motion.

15 The Court generally agrees with City that the Coastal Act “does not create any basis for
16 civil liability against a local government entity for failure of a developer to comply with the
17 permitting process [and instead] creates a system of fines and penalties that can be assessed . . .
18 against the developer . . . , not the city who would have issued it.” (Reply, pp. 2-3.) As set for the
19 below, the Court GRANTS City’s motion.

20
21
22
23 ¹ City previously demurred to Plaintiffs’ First Amended Complaint on the following grounds: (1) collateral
24 estoppel, based on Plaintiffs’ unsuccessful federal action against City; (2) the Act’s Equal Justice Amendment does
25 not apply retroactively; (3) Plaintiffs’ pleading is uncertain regarding the groups needing protection from the alleged
26 Coastal Act violations; (4) Plaintiffs improperly seek declaratory relief for past wrongs; (5) the statute of limitations
27 time-bars Plaintiffs’ claims; and (6) the court lacks jurisdiction. On January 28, 2019, the Court overruled City’s
28 demurrer on all grounds except ground (3), uncertain pleading. Accordingly, the Court granted Plaintiffs leave to
amend their complaint “so that it is clearer who is alleged to have been harmed by Defendants, and to clarify that
Plaintiffs are not bringing their [Coastal Act] claim against the City on behalf of a putative class.” (Court’s Ruling on
Submitted Matter (Jan. 28, 2019) 4.)

1 II. Plaintiffs’ Allegations Against City Are Based on Three Categories of Conduct: (A)
2 Allowing Others to Erect Unpermitted Structures, (B) Selective Law Enforcement, and (C)
3 Harassment.

4 Plaintiffs’ only cause of action against City alleges violations of the Coastal Act.² (FAC,
5 19:13-14.) As detailed below, their claims are based on three categories of alleged conduct: (A)
6 allegedly building or allowing others to build unpermitted structures on the beach (e.g., FAC ¶¶ 2,
7 86); (B) selectively enforcing motor vehicle and anti-harassment laws to discourage outsiders
8 (FAC, ¶¶ 16, 52, 56, 61, 94); and (C) harassing or conspiring to harass outsiders with physical
9 assaults, batteries, vandalism, nuisances and other unlawful acts (FAC, ¶ 16).

10
11 A. Allegedly Allowing or Condoning Others to Build Structures on the Beach.

12
13 Plaintiffs complain that City has “allowed” and “condoned” the other Defendants’ beach
14 structure “development” by failing to enforce the Coastal Act’s development permit requirement.
15 Specifically, the FAC alleges:

16 2. The City has violated the Act by: (a) **allowing** unpermitted structures . . . built and
17 maintained by the [Bay Boys] and its individual Defendant members (FAC, ¶ 2
18 (emphasis added).)

19 86. City has impermissibly engaged in or allowed development in the coastal zone **by**
20 **allowing the construction of the Rock Fort, and tacitly permitting and encouraging**
21 **the Bay Boys’ conduct, which changes the density and/or intensity of use** by impeding
access. (FAC, ¶ 86 (emphasis added).)

22 87. On the north side of Lunada Bay, the Bay Boys . . . built and maintained the illegal
23 Rock Fort. The City was long **aware of** [the Rock Fort] and **only removed the structure**
24 **in late 2016**. . . . [T]he Bay Boys have since undertaken efforts to rebuild a structure in its
25 place on City property. (FAC, ¶ 87 (emphasis added).)

26
27
28 ² Although the FAC alleges City conspired with the other Defendants, it specifies that City’s “civil conspiracy
. . . [is] as to the Coastal Act only.” (FAC, ¶ 78.)

1 88. Defendant Bay Boys and Individual Defendants built a campfire ring on City
2 property . . . which was removed by the City in late 2016 . . . (FAC, ¶ 88.)

3 89. Defendants also built and keep [trails and a campfire ring] on City property. (FAC,
4 ¶ 89.)

5 92. [T]here are or were several **unpermitted structures** at [other beaches] on City-
6 owned property. (FAC, ¶ 92 (emphasis added).)

7 64. On January 21, 2016, the **California Coastal Commission [informed the police**
8 **chief]** that . . . City must address unpermitted structures . . . and again **urged the City to**
9 **address public access.** (FAC, ¶ 64 (emphasis added).)

10 65. In response . . . [City] issued a memorandum recommending that a public hearing
11 to discuss removal of the unpermitted Rock Fort. (FAC, ¶ 65.)

12 B. Allegedly Selective Enforcement of Motor Vehicle Laws against Outsiders and
13 Non-enforcement of Anti-Harassment Laws against Bay Boys.

14
15 Regarding the City’s allegedly selective enforcement of motor vehicle and non-
16 enforcement of anti-harassment laws, the FAC alleges:

17 2. The City has violated the Act by . . . (c) **enforcing municipal and other laws in a**
18 **discriminatory manner that deters visitors; and allowing the Bay Boys to unlawfully**
19 **exclude the public.** (FAC, ¶ 2 (emphasis added).)

20 16. . . . **City has long known** about the Coastal Act violations, which continue in
21 Lunada Bay and other areas of PVE [and] . . . has **condoned and conspired with** [the other
22 Defendants] **to exclude underrepresented persons from its coastline by targeting them**
23 **with unfavorable treatment for traffic citations, parking tickets, and towed vehicles.**
(FAC, ¶ 16 (emphasis added).)

24 94. To deter outsiders in violation of the Coastal Act, **the City has targeted outsiders**
25 **with unfavorable treatment [by] deterring outsiders from filing complaints, and in a**
26 **disproportionate manner, issuing traffic citations, parking tickets, towing vehicles,**
27 **and detaining outsiders in disproportionate numbers.** (FAC, ¶ 94.) 46. In or about
28 2015, the City hired a new police chief, Jeff Kepley [who said] . . . [City] would “make an
example out of anyone who behaves criminally” at Lunada Bay. (FAC, ¶ 46 (emphasis
added).)

1
2 47. **[R]ather than hold the Bay Boys accountable**, the City opted for a "community
3 policing" approach to develop an even cozier relationship with the Bay Boys. (FAC, ¶ 47
4 (emphasis added).)

5 52. Also on January 29, 2016, Plaintiff Miernik [was] targeted [and] confronted by
6 Melo, who maliciously confronted them screamed at them . . . **City police officers
observed the incident but took no action** (FAC, ¶ 52 (emphasis added).)

7 56. Also on February 12, 2016, [Defendant] Thiel . . . told City Manager Dahlerbruch
8 that he was aware of an undercover police operation scheduled to occur at Lunada Bay . .
9 . [f]ollowing the meeting, [City] **canceled the operation**. (FAC, ¶ 56 (emphasis added).)

10 62. [City Police Chief Kepley said,] "I wish [Lunada Bay] was safe, but it's not. I
11 wouldn't even tell a man to go down there . . . I view this as a long term problem." (FAC,
12 ¶ 62.)

13 64. On January 21, 2016, the California Coastal Commission [informed the police
14 chief] that . . . "threatening behavior intended to discourage public use of the coastline"
15 amounts to a violation of the LCP. . . . (FAC, ¶ 64.)

16 86. City has impermissibly engaged in or allowed development in the coastal zone by
17 allowing the construction of the Rock Fort and **tacitly permitting and encouraging the
Bay Boys' conduct, which changes the density and/or intensity of use** by impeding
18 access. (FAC, ¶ 86 (emphasis added).)

19 C. Alleged Harassment of Outsiders

20 Regarding the City's alleged harassment of outsiders, Plaintiffs allege:

21 3. The City . . . has long been **aware** of the unlawful exclusion of outsiders and has
22 conspired with the Bay Boys to "protect" Lunada Bay. (FAC, ¶ 3 (emphasis added).)

23 4. **With City knowledge and complicity**, the individual Defendant members of the
24 Bay Boys conspired to keep the public away by: (1) physically obstructing outsiders'
25 access to the beach trails; (2) throwing rocks; (3) running people over with surfboards in
26 the water; (4) punching outsiders; (5) stealing outsiders' wallets, wetsuits, and surfboards;
27 (6) vandalizing vehicles, slashing tires, and waxing pejorative slurs onto vehicle windows;
28 (7) levying threats; and (8) intimidating outsiders with pejorative and other verbal insults,
gestures, and threats of serious injury. (FAC, ¶ 4 (emphasis added).)

1 16. [T]he City has condoned and **conspired with the Individual Defendants’ and**
2 **Defendant Bay Boys’ threatening behavior discouraging outsiders** from accessing
3 Lunada Bay” (FAC, ¶ 16 (emphasis added).)

4 93. **With City complicity, [Defendants] conspire to and do regularly confront,**
5 **attack, harass and assault people attempting to access the beach** [or] pass[ing] through
6 the Lunada Bay area [,] for the primary purpose of preventing those people from accessing
7 the beach area . . . (FAC, ¶ 93 (emphasis added).)

8 D. Civil Conspiracy Allegations

9 In addition to the conspiracy allegations in paragraphs Plaintiffs 4, 16 and 93 quoted above,
10 Plaintiffs allege City “[has] engaged in a civil conspiracy with the other Defendants as to the
11 Coastal Act only.” (FAC, ¶ 78.)

12 79. Defendant Bay Boys’ members . . . [i]n violation of the Coastal Act, municipal
13 ordinances, and other laws . . . regularly confront, harass, assault, and batter people
14 attempting to access the beach, and confront, threaten, assault, vandalize property, and
15 bring harm to other persons who live in, work in, or pass through the Lunada Bay area for
16 the purpose of preventing full and equal access . . . (FAC, ¶ 79.)

17 81. Each of the Defendants [including City] **was aware that members of the Bay**
18 **Boys planned to engage in the illegal activities detailed above, cooperated and/or**
19 **agreed to cooperate with members of the Bay Boys, and intended that the illegal**
20 **activities be committed.** (FAC, ¶ 81 (emphasis added).)

21 82. Based on the circumstances described above, including the nature of the acts done,
22 the relationships between Defendants, and the interests of Defendants, each of the
23 Defendants engaged in a civil conspiracy, which is ongoing. (FAC, ¶ 82.)

24 84. The actions and inaction of the City . . . violate the California Coastal Act . . . [and
25 the] Environmental Justice Amendment . . . (FAC, ¶ 84 (emphasis added).)

26 III. Legal Standard: Motion for Judgment on the Pleadings

27 “A motion for judgment on the pleadings is akin to a general demurrer; it tests the
28 sufficiency of the complaint to state a cause of action.” (*Wise v. Pacific Gas and Elec. Co.* (2005)
132 Cal.App.4th 725, 738; *Kapsimallis v. Allstate Insurance Co.* (2002) 104 Cal.App.4th 667,
672.) A defendant may move for judgment on the pleadings on the ground that the plaintiff’s

1 complaint “does not state facts sufficient to constitute a cause of action” against the defendant.
2 (Cal. Code Civ. Proc. § 438(c)(1)(B)(ii).)

3 The motion’s grounds must “appear on the face of the challenged pleading or from any
4 matter of which the court is required to take judicial notice.” (Cal. Code Civ. Proc. § 438(d).) The
5 court accepts as true all material facts alleged in the challenged pleading, but does not consider
6 legal or factual conclusions, opinions, speculation, or allegations contrary to judicially-noticed law
7 or facts. (*Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103, 1111.)

8 A court must deny a motion for judgment if the pleading states, under any theory, a cause
9 of action. (*Hudson v. County of Los Angeles* (2014) 232 Cal.App.4th 392, 408
10 [citing *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38 (“If the complaint
11 states a cause of action under any theory, regardless of the title under which the factual basis for
12 relief is stated, that aspect of the complaint is good against a demurrer.”)].)

13
14 IV. Plaintiffs Fail to State a Cause of Action Against City for Violating the Coastal Act.

15
16 City contends that Plaintiffs fail to allege facts sufficient to state an actionable claim for
17 violation of the Coastal Act. City advances several arguments to support this contention, but its
18 main argument is that Plaintiffs fail to allege City has performed or undertaken development as
19 defined by the Act. The Court agrees.

20 Coastal Act section 30820 imposes civil liability on “any person” who “performs or
21 undertakes development that is in violation of [the Act].” Section 30804 permits “[a]ny person”
22 to maintain an action to enforce “the duties specifically imposed upon . . . any local government .
23 . . .” by the Act. As noted above, Plaintiffs’ allegations against City describe three categories of
24 conduct: constructing structures, selective code enforcement, and harassment. The Court
25 addresses each category of conduct below.

1 A. Plaintiffs Fail to Allege a Violation of the Coastal Act Based on the Erection of
2 Structures or Failure to Require Permits for Structures.

3
4 1. Plaintiffs Do Not Allege City Itself Performed or Undertook Development of
5 Structures.

6
7
8 Plaintiffs have not alleged City employees either were present or physically participated in
9 erecting the Rock Fort, fire pits, and other structures that other Defendants allegedly built on the
10 beach. Plaintiffs instead seek to hold City liable for passive behavior: condoning or “allowing
11 unpermitted development in the coastal zone.” (Opp., 14:15-16; 18-19.) City counters that “the
12 language and legislative history [of the Coastal Act] demonstrate no intent to impose liability
13 against a coastal city for the acts of private citizens even if those acts deter other private citizens
14 from visiting the coast.” (Motion, p. 9.) The Court agrees with City.

15 In interpreting a statute, a court’s “fundamental task” is to “ascertain the aim and goal of
16 the lawmakers so as to effectuate the purpose of the statute.” (*Gualala Festivals Committee v.*
17 *California Coastal Commission* (2010) 183 Cal.App.4th 60, 67.) Courts first examine the statute’s
18 “usual and ordinary meaning”; if the meaning is not ambiguous, courts “presume that the
19 lawmakers meant what they said, and the plain meaning of the language governs.” (*Ibid.*)

20 The Coastal Act requires “any person . . . wishing to *perform* or *undertake* development”
21 to obtain a Permit. (Pub. Res. Code § 30600(a) (*italics added*.) The words “perform” and
22 “undertake” are reasonably interpreted to mean active participation in development rather than
23 passive “condoning” or “allowing” others to “perform” or “undertake” development. The FAC’s
24 allegations regarding beach structures therefore fail allege that City performed or undertook the
25 development of those structures.

26 Plaintiffs’ conspiracy allegations do state an actionable claim. “The sine qua non of a
27 conspiratorial agreement is the knowledge on the part of the alleged conspirators of its unlawful
28 objective and their intent to aid in achieving that objective.” (*Schick v. Lerner* (1987) 193

1 Cal.App.3d 1321, 1327-78.) Plaintiffs must make “a showing of knowledge of the planned tort
2 and intent to aid in its commission.” (5 Witkin, Summary 11th Torts § 153 (2019) citing *Wyatt v.*
3 *Union Mrtg. Co.* (1979) 24 Cal.3d 773, 784-85.) The FAC’s allegations City condoned or failed
4 to take action *after* the structures were in place are antithetical to the required proof that City tacitly
5 or expressly agreed on a plan to erect the structures *before* they were built. Although the FAC
6 includes an allegation that “[e]ach of the Defendants was aware that members of the Bay Boys
7 planned to engage in the illegal activities detailed above, cooperated and/or agreed to cooperate
8 with members of the Bay Boys, and intended that the illegal activities be committed,” this
9 boilerplate allegation apparently refers to the conduct “detailed” in the preceding sentence which
10 identifies alleged harassment rather than the erection of beach structures. (FAC, ¶ 81.) To the
11 extent Plaintiffs intended to incorporate City’s conduct related to the unpermitted structures, their
12 allegations contradict the more specific allegations and are too vague to state a claim against City
13 based on conspiracy to violate the Coastal Act.

14 Citing *Feduniak v. Coastal Commission* (2007) 148 Cal.App.4th 1346, Plaintiff’s counsel
15 argues City can be liable for unpermitted development on its land even if City was not responsible
16 for constructing it. In *Feduniak*, the Commission issued a cease and desist order requiring
17 homeowners to comply with native vegetation landscaping conditions on a coastal development
18 permit issued to the former owners of the Feduniak’s residential property. The former owners
19 agreed to comply with the conditions but later breached them by building a three-hole golf course.
20 The Feduniaks petitioned for a writ of mandate reversing the cease and desist order. The trial court
21 denied the petition but agreed with the Feduniaks that the Commission’s inaction on the permit
22 conditions for eighteen years estopped the Commission from enforcing them. The appellate court
23 reversed, finding among other things, that the Commission had no duty to inspect the land or take
24 action against the homeowners.

25 *Feduniak* is distinguishable. The Feduniaks were not “strictly liable” for the former
26 owners’ unlawful development. They were responsible because the coastal permit conditions were
27 duly recorded when they were issued and therefore applied to the Feduniaks as well as the former
28 owners.

1 Plaintiff also argue the *Leslie Salt Co. v. San Francisco Bay Conservation & Development*
2 *Commission* (1984) 153 Cal.App.3d 605, provides authority for holding the City liable for
3 development on its land effectuated by third parties. In *Leslie Salt*, the San Francisco Bay
4 Conservation and Development Commission issued a cease and desist order requiring a landowner
5 to remove fill material dumped on its property by unknown third persons. The landowner filed a
6 petition for writ of mandate seeking to reverse the Commission’s order. The court held that the
7 McAteer-Petris Act, which created the Commission, gave it the authority to hold the landowner
8 responsible. This case is distinguishable because it is addresses a writ of mandate for an order not
9 issued by the Coastal Commission and not involving the Coastal Act.

10 Therefore, Plaintiffs’ cause of action against City based on its alleged erection or
11 conspiracy to erect unpermitted structures on the beach fails to state an actionable claim. The Court
12 grants Plaintiffs leave to amend to allege facts supporting an actionable claim, i.e., that City agents
13 or employees built unlawful structures on the beach and/or entered into advance agreements to
14 have other defendants construct them.

15
16 2. *City’s Alleged Failure to Require Development Permits Is Not Actionable*
17 *Under the Coastal Act.*
18

19 Plaintiffs’ allegation that City has failed to enforce the Coastal Act against other
20 Defendants who built structures on the beach is non-actionable because City has no mandatory
21 duty to enforce the Coastal Act. The California Supreme Court in *Yost v. Thomas* (1984) 36 Cal.3d
22 561, 572 concluded the Act “does not mandate the action to be taken by a local government in
23 implementing local land use controls.” Instead, it sets “minimum standards and policies” with
24 which a local government’s local coastal plan must comply, and once the Commission has
25 approved a government’s LCP it then “has discretion to choose what action to take to implement
26 its LCP . . . [and] [t]he act, therefore, leaves wide discretion to a local government not only to
27 determine the contents of its land use plans, but to choose how to implement these plans.” (*Id.* at
28 pp. 572-573; see also *Bottini v. City of San Diego* (2018) 27 Cal.App.5th 281, 317, review

1 dismissed, cause remanded April 10, 2019 [holding that there is no property right in a discretionary
2 permit that has not yet been issued because “[t]he Coastal Act sets only minimum standards and
3 policies and creates no mandatory duty to issue development permits”; *Lindstrom v. California*
4 *Coastal Commission* (2019) 40 Cal.App.5th 73, 91 [the Coastal Act “requires local governments
5 to develop [LCPs], comprised of a land use plan and a set of implementing ordinances designed to
6 promote the act’s objectives . . .”] (bracketing original); contra *Venice Town Council, Inc. v. City*
7 *of Los Angeles* (1996) 47 Cal.App.4th 1547, 1552-1553 [holding that the Mello Act imposes
8 mandatory duties on local governments having coastal zones with its express language that “[e]ach
9 respective local government *shall comply* . . .” and “[t]he conversion or demolition of existing
10 residential dwelling units occupied by persons and families of low or moderate income . . . *shall*
11 *not be authorized* . . .] (italics added).)

12 Government Code section 815.6’s definition of ‘mandatory duty’ informs. That section
13 imposes liability on a public entity for its failure to discharge a statutorily-imposed mandatory
14 duty. A mandatory duty is not created by a statute that requires a public entity to perform a function
15 involving its “exercise of discretion.” (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887,
16 898.) Nor is a mandatory duty created by a statute that “merely recites legislative goals and
17 policies that must be implemented through a public agency’s exercise of discretion” or a statute
18 that commands an act open to “normative or qualitative debate” over whether the act was
19 adequately completed. (*Jacqueline T. v. Alameda County Child Protective Services* (2007) 155
20 Cal.App.4th 456, 470-471; *Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1392.)
21 Affirmatively, a mandatory duty must be statutorily imposed in “explicit and forceful language”
22 that requires the public entity to take a “clear and discrete” action that requires “no evaluation” of
23 whether the public entity took the action. (*Guzman, supra*, at p. 910; *Lawson, supra*, at p. 1392;
24 see also *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 501 [city ordinance imposed
25 mandatory duty by prescribing that “the Superintendent of Building *shall* also file . . .”] (italics
26 added).)

27 Applying these principles, the Coastal Act does not impose a mandatory duty on City to
28 enforce permitting requirements. As discussed above, it leaves “wide discretion to a local

1 government not only to determine the contents of its land use plans, but to choose how to
2 implement these plans.” (*Yost v. Thomas, supra*, 36 Cal.3d at pp. 572-573.) It sets “minimum
3 standards and policies” with which a local government’s local coastal plan must comply. (*Ibid.*)
4 But it lacks “explicit and forceful language” that requires City to take a “clear and discrete action”
5 to ensure “any person . . . wishing to perform or undertake development” obtain Permits. (Cal.
6 Pub. Res. Code § 30600(a).) Instead, it imposes an affirmative duty on the “person . . . wishing to
7 perform or undertake development” by prescribing that any such person “shall obtain a coastal
8 development permit.” (*Ibid.*)

9 In addition, section 30811, “Restoration order; violations” provides, in part, that “a local
10 government that is implementing a certified local coastal program . . . *may*, after a public hearing,
11 order restoration of a site if it finds that the development has occurred without a coastal
12 development permit . . .” (italics added). The word “may” underscores that enforcement is
13 discretionary rather than mandatory.

14 Furthermore, the Coastal Act’s government liability language mirrors Government Code
15 section 815.6’s requirement that a statute impose a mandatory duty in “explicit and forceful
16 language” by permitting “any person” to “maintain an action to enforce the duties *specifically*
17 *imposed* [by the Act] upon . . . any governmental agency . . .” (*Guzman v. County of Monterey,*
18 *supra*, 46 Cal.4th at p. 910; Cal. Pub. Res. Code § 30804 (italics added).)

19 The Court does not agree with Plaintiffs that *Greenfield v. Mandalay Shores Community*
20 *Assn.* (2018) 21 Cal.App.5th 896 establishes that the Coastal Act imposes mandatory enforcement
21 duties on City. In that case, the issue was whether a homeowners’ association had the power to
22 ban its member homeowners from renting out their properties to short term tenants. (*Id.* at p.
23 898.) The homeowners sought to enjoin the association’s ban because it was “development” under
24 the Coastal Act and thus the association first needed to obtain a Permit. (*Ibid.*) The Court of
25 Appeal agreed, relying on Coastal Act section 30803, subd. (a) as requiring *a court* to issue
26 preliminary equitable relief upon a prima facie showing of a Coastal Act violation. (*Id.* at p. 902.)
27 *Greenfield* did not address City’s discretionary decision to enforce or not enforce Act provisions,
28

1 only that the ban was “development” and thus “a matter for the City and Coastal Commission to
2 address” upon the homeowners’ association’s permit application. (*Id.* at p. 901.)

3 Therefore, Plaintiffs’ allegations that City failed to enforce the Coastal Act against the
4 other Defendants who built structures on the beach are not actionable under the Coastal Act.

5
6
7 B. City’s Discretionary Enforcement of Motor Vehicle and Anti-Harassment Laws is
8 Not Coastal Act “Development.”

9
10 1. Motor Vehicle Code Enforcement and Alleged Failures to Enforce Anti-
11 Harassment Laws Are Not Uses of Land.

12
13 The second category of City’s alleged Coastal Act violations includes City’s active law
14 enforcement efforts, specifically its issuance of vehicle citations and towing of cars in a manner
15 that “exclude(s) underrepresented persons from its coastline” and alleged failure to police
16 harassment directed to outsiders. (FAC, ¶¶ 16, 94, 52, 56, 61.) City argues that this conduct is not
17 “development” and the Court agrees.

18 The word “development” is commonly defined as “the process of converting land to a new
19 purpose by constructing buildings or making use of its resources.” (Oxford English Dictionary,
20 www.lexico.com). It is not reasonable to interpret “development” to encompass a City’s
21 enforcement or non-enforcement of vehicle or anti-harassment laws.

22 The Coastal Act’s definition of “development” in section 30106 describes various activities
23 that fit within this common definition of “development.” None of them describe the enforcement
24 or nonenforcement of laws by police agencies.

25 **Development” means, on land,** in or under water, the placement or erection of any solid
26 material or structure; discharge or disposal of any dredged material or of any gaseous,
27 liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any
28 materials; **change in the density or intensity of use of land, including, but not limited
to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410**

1 **of the Government Code), and any other division of land, including lot splits, except**
2 **where the land division is brought about in connection with the purchase of such land**
3 **by a public agency for public recreational use; change in the intensity of use of water,**
4 **or of access thereto;** construction, reconstruction, demolition, or alteration of the size of
5 any structure, including any facility of any private, public, or municipal utility; and the
6 removal or harvesting of major vegetation other than for agricultural purposes, kelp
7 harvesting, and timber operations which are in accordance with a timber harvesting plan
8 submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973
9 (commencing with Section 4511).

10
11 As used in this section, “structure” includes, but is not limited to, any building, road, pipe,
12 flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and
13 distribution line.

14 (Pub. Res. Code § 30106 (emphasis added).) The Legislature’s references to “use of land” and
15 “use of water” underscore its focus on land use.

16 (i) “change in the density or intensity of **use of land** including, but not limited to,
17 subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the
18 Government Code), and any other division of land, including lot splits, except where the
19 land division is brought about in connection with the purchase of such land by a public
20 agency for public recreational use;” and

21 (ii) “change in intensity of **use of water** or access thereto.”

22 As City points out, “[t]he extensive legislative history of the Coastal Act is filled with
23 references to restraining construction on the coast, preserving the last unbuilt coast for the public
24 to enjoy, preserving coastal resources, and providing for access through easements.” (Motion,
25 9:13-15.) According to City, “the legislative history shows the purpose of the Act was to balance
26 construction interests or other private property interests against conservation of resources and
27 provision of easements across private developments . . . [but] demonstrates no intent to impose
28 liability against a coastal city for the acts of private citizens even if those acts deter other private
citizens from visiting the coast.” (*Id.* at 9:21-25.) “There is no doubt that the Coastal Act is an
attempt to deal with coastal land use on a statewide basis.” (*Yost v. Thomas, supra*, 36 Cal.3d at
p. 571.)

1 Moreover, the terms “use,” “land use,” and “use of land” have “generally well-accepted
2 meaning in planning and land use law.” (*Building Industry Legal Defense Foundation v. Superior*
3 *Court* (1999) 72 Cal.App.4th 1410, 1416.) *Building Industry Legal Defense Foundation* analyzed
4 California’s Planning and Zoning Law’s meaning of “use.” Specifically, the court examined
5 Government Code section 65858 which allows a city to adopt, as an urgency measure, an interim
6 ordinance “prohibiting any *uses* which may be in conflict with” a contemplated but not yet adopted
7 general plan. The term “use” was not defined in section 65858. To interpret the term “use,” the
8 court referred to Government Code section 65850 of the Planning and Zoning Law which
9 empowers cities to regulate land based on “the use of buildings, structures, and land” as between
10 competing purposes including “industry, business, residences, open space including agriculture,
11 recreation, enjoyment of scenic beauty, use of natural resources and other purposes” and to
12 “regulate signs and billboards,” “intensity of land use” and “requirements for offstreet parking.”
13 Referring to section 65850, the court defined “use” in section 65858 according to its “generally
14 well-accepted meaning”:

15 Pursuant to its police power, a general law city is permitted to “[r]egulate the use of
16 buildings, structures, and land as between industry, business, residences, open space,
17 including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and
18 other purposes.” (Gov.Code, § 65850, subd. (a).) This provision allows a city to classify,
19 exclude, restrict, and limit what a land owner may do with his or her property, subject of
20 course to certain constitutional constraints. (*Euclid v. Ambler* (1926) 272 U.S. 365, 394–
21 395, 47 S.Ct. 114, 71 L.Ed. 303; see also 8 McQuillin, *Municipal Corporations* (1991)
22 Zoning, §§ 25.119–25.119.10, pp. 462–467; California Zoning Practice (Cont.Ed.Bar
1969) Types of Zones, §§ 6.4–6.32, pp. 200–219.) In day-to-day terms, this means a city
may determine where residential, commercial, industrial, and other uses may be located
within the city.

23 (*Id.* at p. 1416.)

24 “Use,” as interpreted by *Building Industry Legal Defense Foundation*, applies equally to
25 “use” and “use of land” in Coastal Act Section 30106.³ Three reasons support adopting this
26 interpretation. First, the California Supreme Court has identified the Act’s intent and purpose as

27
28 ³ The Coastal Act uses the term “land use” approximately 75 times.

1 regulation of “coastal *land use* on a statewide basis.” (*Yost v. Thomas, supra*, 36 Cal.3d at p. 571
2 (italics added).) Second, the Act requires cities to develop and submit to the Coastal Commission
3 local coastal programs that are comprised of “a *land use plan*” along with “zoning ordinances [and]
4 zoning district maps” (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles,*
5 *supra*, 55 Cal.4th at p. 794 (italics added); Pub. Res. Code §§ 30511, 30512(a), 30108.6 [“The
6 *land use plan* of a proposed local coastal program shall be submitted to the commission”] (italics
7 added); [“Local coastal program” means a local government’s (a) *land use plans*, zoning
8 ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other
9 implementing actions, which, when taken together, meet the requirements of, and implement the
10 provisions and policies of, [the Coastal Act] at the local level”] (italics added).) Third, and as City
11 notes, the Act section 30106 modifies “use of land” with language that references traditional
12 government land use concerns: “including, but not limited to, subdivision pursuant to the
13 Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other
14 division of land, including lot splits, except where the land division is brought about in connection
15 with the purchase of such land by a public agency for public recreational use.” (Motion, 11:20-
16 25.)

17 This Court therefore interprets “use” and “use of land” to mean “use of buildings, structures
18 or land,” erection of signage, provision of off-street parking and other conduct subject to City’s
19 power to regulate land use under Government Code Section 65850. It is not reasonable to interpret
20 “use” or “use of land” to include municipal enforcement of vehicle laws or failure to enforce anti-
21 harassment laws.

22
23
24 2. *Law Enforcement Is Not a “Change in the Intensity of Use” or “Access” to Water.*
25

26 Plaintiffs also fail to allege an actionable claim based on the other potentially applicable
27 provision in the Coastal Act’s definition of development: “change in intensity of use of water or
28 access thereto.” (Pub. Res. Code § 30106.) As a preliminary matter, Plaintiffs’ vehicle code

1 allegations fail because they do not identify conduct by City that blocked or impeded access to
2 water. Selectively enforcing vehicle code laws against “outsiders” may or may not impact access
3 to water; it depends on whether the “outsiders” visited City to go to the water or for some other
4 purpose. As City points out, Plaintiffs do not allege that City’s anti-outsider enforcement efforts
5 “even took place in the coastal zone,” let alone impeded their access to water. (Motion, 14:14-
6 15.) The allegations therefore fail to state a viable claim for violation of the Coastal Act based on
7 “development” defined as “change in intensity of use of water or access thereto.”

8 As noted above, it is also not reasonable to interpret “development” under section 30106
9 to include City’s “selective enforcement” of vehicle and anti-harassment. As with the terms “use”
10 and “use of land” found elsewhere in section 30106, the Court interprets “use of water” in the
11 sense of the “uses” that Govt. Code section 65850 empowers cities to regulate. Water is one of
12 the “natural resources” and source of “scenic beauty” cities may consider as they regulate “the use
13 of buildings, structures, and land as between industry, business, residences, open space . . . ,
14 recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.” (Govt. Code
15 § 65850, subd. (a).) Erection of structures or other tangible barriers are “development” if they
16 physically block or impede access to water. City’s conduct in enforcing or not enforcing vehicle
17 or anti-harassment laws is not “development” because it involves interpersonal contact rather than
18 any physical barrier to access and because these laws regulate personal conduct rather than “the
19 use of buildings, structures and land” as between competing uses.

20
21 3. Case Law Does Not Support Plaintiffs’ Interpretation

22 Plaintiffs have cited no cases interpreting “use of land” or “change in intensity of use of
23 water or access thereto” as embracing selective enforcement of vehicle code or anti-harassment
24 laws. None of the cases cited by Plaintiffs interpret “use of land” or “access to water” under
25 section 30601 to include conduct analogous to City’s alleged conduct in this case. To the contrary,
26 these cases either rest on provisions in section 30601 that do not apply to this case or address
27 conduct typically subject to municipal land use regulation under Government Code section 65850.
28

1 For example, the decision in *Gualala Festivals Committee v. California Coastal*
2 *Commission, supra*, 183 Cal.App.4th 60 rested on a specific phrase in section 30106 defining
3 “development” as the “discharge. . . of any . . . gaseous . . . [or] solid . . . waste.” In that case, a
4 festivals committee challenged the Coastal Commission’s intended order prohibiting the
5 committee from discharging fireworks without a coastal development permit. (*Id.* at p. 63.) The
6 trial court rejected the committee’s contention that the Coastal Commission lacked jurisdiction
7 because a fireworks display was not “development” under the Coastal Act. (*Id.* at pp. 65-66.)
8 Instead, the court found that the prior year’s fireworks display discharged fireworks debris — both
9 solid and gaseous waste — within the coastal zone. (*Id.* at p. 68.) Based on this evidence, the
10 appellate court agreed that the fireworks display met section 30106’s definition of development as
11 the “discharge . . . of any . . . gaseous . . . [or] solid . . . waste.” (*Id.* at p. 71.) That language in
12 the section 30106 “development” definition has no application here.

13 The decision in *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra*,
14 55 Cal.4th 783 also rested on language in the Coastal Act’s “development” definition that is
15 inapplicable to this case. The issue was whether converting a mobile home park from tenancies to
16 resident ownerships was “development” under the Coastal Act. (*Id.* at pp. 792-793.) The Court
17 cited several cases, including *Gualala Festivals Committee*, for the general proposition that
18 “development” under the Coastal Act is “not restricted to activities that *physically alter* the land
19 or water.” (*Id.* at p. 796.) But the court based its holding that the conversion was development on
20 the Coastal Act’s express inclusion of “subdivision pursuant to the Subdivision Map Act” and “any
21 other division of land, including lot splits . . .” in “change in the density or intensity of use of land
22” (*Id.* at p. 794.) The court also relied on language in the Subdivision Map Act that
23 “specifically refers to the conversion of a rental mobilehome park to resident ownership as a form
24 of ‘subdivision’. . . .” (*Ibid.*) These “subdivision” provisions of the Coastal Act and the
25 Subdivision Map Act have no application here.

26 The other cases cited by Plaintiffs are inapposite because they each involved a “structure”
27 “on land” that plainly qualified as “development” under section 30106. In *Surfrider Foundation*
28 *v. California Coastal Commission* (1994) 26 Cal.App.4th 151, 154, there was no dispute that the

1 challenged conduct was “development” “on land.” The Coastal Commission issued a coastal use
2 permit allowing the State to erect small structures for collecting beach parking fees. (*Id.* at pp.
3 154-155.) A nonprofit organization challenged the propriety of the permit, arguing that the fees
4 were inconsistent with policies expressed in other provisions of the Act such as section 30211
5 (“[d]evelopment shall not interfere with the public’s right of access to the sea”) and section 30604,
6 subd. (c) (requiring certain permits to include “a specific finding that the development is in
7 conformity with the Coastal Act’s public access and recreation policies.”) (*Id.* at p. 157.) The
8 court agreed that because parking fees fell within the scope of these policies, the Commission had
9 to consider them when it issued the permit. (*Ibid.*) The court cited provisions in the Coastal Plan
10 of 1975 identifying a broad range of traditional land use concerns: “the erection of fences,
11 buildings, and other structures” and “indirect or nonphysical impediments to access, including
12 reduction of road capacity and off-street parking” (*Id.* at p. 158.) Based on this history, the
13 court “conclude[d] that public access and recreational policies of the Coastal Act should be broadly
14 construed to encompass all impediments to access, whether direct or indirect, physical or
15 nonphysical.” (*Ibid.*) The Court affirmed the Coastal Commission’s permit approving the parking
16 fees because it took these policies into account by making specific findings based on statistical
17 “evidence that completely undermin[ed] . . . arguments that the challenged fees will prevent people
18 from using state park beaches.” (*Ibid.*)

19 The *Surfrider* decision provides no guidance because there was no dispute the parking fee
20 devices were “structures” “on land” that qualified as “development” under section 30106. The
21 court’s comments encouraging broad construction referred to the “public access and recreational
22 policies” of the Act, not to the “development” definition. The decision accordingly provides no
23 guidance on the question whether the City’s allegedly selective enforcement of vehicle code laws
24 or anti-harassment laws qualifies as “development” under section 30106.

25 In *Surfrider Foundation v. Martins Beach 1 LLC* (2017) 14 Cal.App.5th 238, the
26 challenged conduct included a structure on land that physically blocked access to water.
27 Specifically, coastal homeowners erected a physical barrier (i.e., closed a gate), posted a “BEACH
28 CLOSED KEEP OUT” sign on the gate, stationed security guards, and painted over a billboard

1 that previously advertised beach access. (*Id.* at p. 247.) The trial court held “appellants’ conduct
2 in closing public access to Martins Beach was ‘development’ under the Coastal act because it
3 decreased access to the water.” (*Id.*, at 252.) The Court of Appeal agreed. (*Id.* at pp. 248-249.)

4 The appellate court noted that “development” under the Coastal Act is not restricted to
5 activities that physically *alter* the land or water, citing *Pacific Palisades* and *Gualala*. (*Id.* at p.
6 252.) It also relied on *Surfrider Foundation v. California Coastal Commission*’s broad dicta that
7 the Act “should be broadly construed to encompass all impediments to access, whether direct or
8 indirect, physical or nonphysical.” (*Ibid*; see also *LT-WR, LLC v. California Coastal Commission*
9 (2012) 151 Cal.App.4th 427, 443, opn. mod. at 152 Cal.App.4th 770 [finding that metal gates and
10 no trespassing signs are “development” subject to the Coastal Commission’s permitting
11 requirement].)

12 Plaintiffs argue that the landowner’s use of security guards was “development” under the
13 Coastal Act, analogous to City’s alleged law enforcement activities in this case. Nothing in the
14 appellate court’s decision supports this argument. The decision cites no evidence of any conduct
15 by the security guards impeding access to the beach. The issue on appeal was whether the closed
16 gate which physically blocked access to the beach without altering the land – was “development.”
17 The decision did not address the question whether interpersonal conduct can constitute
18 “development” under the Coastal Act.

19 In all of these cases, the conduct subjected to Coastal Act regulation was conduct typically
20 addressed by municipal land use regulations. *Gualala Festivals Committee v. California Coastal*
21 *Commission* upheld the Coastal Commission’s regulation of a land use that deposited debris on
22 land. *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* upheld government
23 regulation of subdivision, a traditional land use concern specifically identified in section 30106.
24 In the two *Surfrider* cases and *LT-WR, LLC*, the appellate courts affirmed government regulation
25 under the Coastal Act of traditional land use concerns: structures closing off access to land or water
26 and the regulation of off street parking. None of these cases supports Plaintiffs’ contention that
27 City’s non-land-use regulatory activity – enforcement of vehicle laws against “outsiders” or non-
28 enforcement of anti-harassment laws – qualifies as “development” under the Act.

1 Plaintiffs’ reliance on City’s law enforcement activities as a violation of the Coastal Act
2 accordingly fails as a matter of law.

3
4
5 C. City’s Allegedly Harassing Conduct Is Not Actionable as a Coastal Act Violation.

6
7 The FAC alleges Individual Defendants engaged in “development” (i.e., assaulted,
8 battered, or otherwise personally harassed outsiders) while City condoned it. As discussed infra,
9 the Coastal Act regulates those who “perform” or “undertake” development. The City’s conduct
10 in merely standing by as others “perform” or “undertake” alleged development is not actionable.⁴

11 Even if Plaintiffs had directly alleged that City employees assaulted or battered Plaintiffs,
12 this Court would conclude that such conduct is not actionable under the Coastal Act because it is
13 not “development” under the Coastal Act even if the perpetrator is motivated by a desire to deny
14 access to or use of water. As noted above, the “uses” the Act was designed to address are
15 reasonably interpreted to refer to the “uses” cities may regulate under Government Code section
16 65860. Such “uses” do not include ordinary criminal or tortious conduct. Plaintiffs have cited no
17 legislative history suggesting that, in addition to the criminal and civil remedies already provided
18 for violent conduct, the Legislature intended to provide Coastal Act remedies for victims of assault
19 or battery based on the attacker’s motive. As detailed in Section B above, none of the cases cited
20 by Plaintiffs supports such an interpretation.

21
22
23 ⁴ The FAC’s boilerplate conspiracy allegations against the City are also not sufficient to state a viable claim.
24 As noted above, allegations of condoning or failing to police unlawful conduct after the fact is antithetical to a
25 conspiracy which requires each participant to agree to the unlawful conduct ahead of time. Furthermore, “‘bare’
26 allegations and ‘rank’ conjecture do not suffice for a civil conspiracy.” (*Choate v. County of Orange* (2000) 86
27 Cal.App.4th 312, 333.) A complaint “must contain more than a bare allegation [that] defendants conspired”
28 (*AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022.) Here, Plaintiffs’ allegations City “has condoned and conspired
with the Individual Defendants’ and Defendant Bay Boys’ threatening behavior discouraging outsiders” and that
“[e]ach of the Defendants was aware that members of the Bay Boys planned to engage in the illegal activities detailed
above, cooperated and/or agreed to cooperate with members of the Bay Boys, and intended that the illegal activities”
are so generalized and factually devoid that they fail to state a viable claim for civil conspiracy as against City. (FAC,
¶ 81.)

1 Plaintiffs’ allegations the City violated the Coastal Act by conspiring to engage in criminal
2 or tortious conduct is not viable as a matter of law.

3
4 V. Plaintiffs Cannot Obtain an Injunction Under the Coastal Act’s Equal Justice Amendment
5 (“EJA”)

6
7 City contends⁵ Plaintiffs both lack standing to assert, and fail to assert, an Environmental
8 Justice Amendment (EJA) claim against City. (Motion, 14:9; 16:1-2.)

9 In 2017, the Legislature supplemented the Coastal Act’s introductory “findings and
10 declarations” with section 30013, the EJA, which reads as follows:

11 The Legislature further finds and declares that in order to advance the principles of
12 environmental justice and equality, subdivision (a) of Section 11135 of the Government
13 Code and subdivision (e) of Section 65040.12 of the Government Code apply to the
14 commission and all public agencies implementing the provisions of this division. As
15 required by Section 11135 of the Government Code, no person in the State of California,
16 on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual
17 orientation, color, genetic information, or disability, shall be unlawfully denied full and
18 equal access to the benefits of, or be unlawfully subjected to discrimination, under any
19 program or activity that is conducted, operated, or administered pursuant to this division,
20 is funded directly by the state for purposes of this division, or receives any financial
21 assistance from the state pursuant to this division.

22 Although the Court rejects City’s argument regarding standing requirements, it finds merit in
23 City’s argument that Plaintiffs fail to state an actionable claim under the EJA.

24 City contends that, to obtain standing under the EJA, Plaintiffs must be “members of
25 underserved and disadvantaged communities who were prevented access to the beach due to their
26 race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color,
27 genetic information, or disability.” (Motion, 17:8-10.) Because the EJA incorporates language

28 ⁵ Additionally, City contends that the EJA does not apply retroactively to its alleged conduct occurring before
the EJA’s January 1, 2017 effective date. (Motion, 17:27.) The Court already addressed, and dismissed, this argument
in overruling City’s demurrer. (Ruling on Submitted Matter (Jan. 28, 2019) 4.) Thus, the Court does not address this
argument again here because a motion for judgment on the pleadings is functionally “akin to a general demurrer.”
(*Wise v. Pacific Gas and Elec. Co.*, *supra*, 132 Cal.App.4th at p. 738.)

1 from Government Code Article 9.5, section 11135(a), City argues that it necessarily also imposes
2 the standing requirements in Government Code section 11139. To have standing to bring a section
3 11139 claim, a claimant must allege that he or she was injured by discriminatory practices.
4 (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1002.)

5 Standing requirements vary by statute based upon the Legislature’s intent and the statute’s
6 purpose. (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000.)
7 The statute’s words are “the most reliable indicator of legislative intent.” (*Absher v. AutoZone,*
8 *Inc.* (2008) 164 Cal.App.4th 332, 339.) If the statute’s language is clear and unambiguous, its
9 plain meaning governs. (*Ibid.*) The court must read the statute as a whole and harmonize its parts,
10 and cannot “insert provisions omitted by the Legislature.” (*Huff v. Securitas Security Services*
11 *USA, Inc.* (2018) 23 Cal.App.5th 745, 759; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.)

12 Here, the Act’s section 30803(a) provides that “[a]ny person may maintain an action for
13 declaratory and equitable relief to restrain any violation of this division . . .” (italics added). First,
14 the Court must interpret the Act as a whole and apply section 30803(a) to the EJA instead of
15 importing Government Code section 11139. The Court must assume that if the Legislature
16 intended Government Code § 11139’s standing requirements to apply to the EJA, it would have
17 expressly incorporated section 11139.

18 The Court must also interpret “any person” to plainly mean “any person” without special
19 standing requirements. Government Code section 11139’s standing requirement would conflict
20 with Act section 30803(a)’s plain meaning that “all persons” may maintain actions under the Act;
21 the Court must read the Act as a whole rather than judicially importing and applying requirements
22 from a different code. Additionally, the Act’s language elsewhere shows that the Legislature
23 considered standing requirements when drafting the Act, but did not apply them to section 11139.
24 For example, Act sections 30801 and 30802 permit “[a]ny person *aggrieved*” to seek judicial
25 review (emphasis added). The Legislature could have likewise limited section 30803(a) to
26 “persons aggrieved” but did not, choosing instead “any person.” The Court must assume the
27 Legislature chose the Act’s language intentionally.

1 Nevertheless, Plaintiffs’ effort to obtain injunctive relief under the EJA fails. The EJA’s
2 plain language allows a court to enjoin a discriminatory “program or activity” that City
3 “conducted, operated or administered pursuant to [the Coastal Act].” (Pub. Res. Code § 30803,
4 subd. (a)) (italics added).) As City notes, all versions of the bill ultimately enacted identified the
5 issuance or non-issuance of coastal development permits as “the point at which environmental
6 justice considerations are to be made.” (Motion, p. 17; RJN, Ex. B, p. 8313⁶ [EJA “[e]liminates
7 prohibition on requiring housing policies and programs in [Local Coastal Programs]” and
8 “[a]llows the [Coastal] Commission to consider environmental justice when acting on a
9 [development permit]”]; see also Act § 30604(h).) Issuing permits is plainly government conduct
10 that operates or administers the Coastal Act. Plaintiffs’ allegations City conspired to build
11 unpermitted beach structures, selectively enforced vehicle laws, engaged in harassment and failed
12 to police harassment fail to identify conduct under a “program or activity” “operated or
13 administered pursuant to” the Coastal Act.

14 As a matter of law, Plaintiffs’ Fourth Amended Complaint fails to allege conduct that
15 provides a basis for injunctive relief under the EJA.

16
17 VI. Plaintiffs Submit Prima Facie Evidence Coastal Protection Ranger’s Corporate Status Is
18 Revived.

19
20 City submits evidence that on October 18, 2018, the California Secretary of State
21 suspended Plaintiff Coastal Protection Ranger’s (“CPR”) corporate status for failure to meet tax
22 requirements.⁷ City contends that CPR cannot prosecute its claim against City and that the Court
23 should strike all documents CPR filed and discovery it served since its suspension date.

24 A California domestic corporation’s “powers, rights, and privileges” may be suspended if
25 it fails to pay certain taxes and penalties. (Rev. & Tax Code § 23301.) While suspended, a
26

27
28 ⁶ The Court GRANTS City’s request for judicial notice of Exhibit B.

⁷ The Court GRANTS City’s request for judicial notice of Exhibit L.

1 corporation may not prosecute or defend an action. (*Center for Self-Improvement and Community*
2 *Development v. Lennar Corp.* (2009) 173 Cal.App.4th 1543, 1552.)

3 A suspended corporation regains its corporate powers by “filing all required tax returns,
4 paying the necessary taxes, penalties, or fees due, and applying to the Franchise Tax Board for a
5 certificate of revivor. (Rev. & Tax Code § 23305.) A certificate of revivor is prima facie evidence
6 of reinstatement. (Rev. & Tax Code § 23305(a).)

7 A certificate of revivor validates “procedural steps” taken by the corporation while
8 suspended and enables it to proceed with prosecuting the action. (*Center for Self-Improvement*
9 *and Community Development v. Lennar Corp., supra*, 173 Cal.App.4th at p. 1553-1554.)
10 Corporate acts such as undertaking discovery and filing and appearing on motions are validated
11 by revivor. (*Benton v. County of Napa* (1991) 226 Cal.App.3d 1485, 1490-1491.)

12 Plaintiffs submit a certificate of revivor for CPR dated March 20, 2020.⁸ Plaintiffs thus
13 have submitted prima facie evidence that CPR’s corporate status has been reinstated. The
14 documents CPR served and discovery it propounded during its suspension are validated.

15 The Court DENIES City’s motion to strike.

16
17 VII. Conclusion

18
19 The Court GRANTS City’s Motion for Judgment on the Pleadings, allowing 30 days leave
20 to amend allegations against the City consistent with this ruling by filing a fifth amended complaint
21 not longer than 25 pages. To state a viable claim, Plaintiffs must allege that City employees
22 constructed unpermitted structures or formed agreements directing others to construct them. As
23 detailed above, the Court finds that the City’s other alleged conduct is not actionable under the
24
25
26
27

28 ⁸ The Court GRANTS Plaintiffs’ Supplemental Request for Judicial Notice in Opposition, Exh. 1.

1 Coastal Act.

2

3 Dated: July 14, 2020

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AMY D. HOGUE
JUDGE OF THE SUPERIOR COURT

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