

**CALIFORNIA COASTAL COMMISSION**

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Staff: SMR - SF  
Staff Report: July 19, 2002  
Hearing Date: August 9, 2002

**STAFF REPORT AND RECOMMENDED FINDINGS**  
**FOR**  
**CEASE AND DESIST and RESTORATION ORDER**

**CEASE AND DESIST  
AND RESTORATION ORDER:**

CCC-02-CD/RO-02

**RELATED VIOLATION FILES:**

V-1-99-03

**PROPERTY LOCATION:**

2450 South Cabrillo Highway,  
Half Moon Bay, San Mateo County  
APN 066-092-720 (**Exhibit 1**)

**DESCRIPTION OF PROPERTY :**

Coastal property in Half Moon Bay west of Highway 1,  
between Redondo Beach Drive and Miramontes Point  
Road.

**PROPERTY OWNER:**

Ocean Colony Partners, L.P.

**AGENTS/REPRESENTATIVES:**

Patrick Fitzgerald  
Executive Vice President  
Ocean Colony Partners  
2002 Fairway Drive  
Half Moon Bay, CA 94019

**VIOLATION DESCRIPTION:**

Unpermitted construction of riprap revetment on bluff  
face and beach below the 18<sup>th</sup> hole of the Half Moon Bay  
Golf Links.

**SUBSTANTIVE FILE DOCUMENTS:**

Cease and desist and restoration order file No. CCC-02-  
CD/RD-02  
Background exhibits 1 through 18

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15061 (b) (1) and  
(3)) and Categorically Exempt (CG §§ 15061 (b) (2),  
15037, 15038 and 15321)

## **I. SUMMARY**

Commission staff has determined that Ocean Colony Partners (OCP) has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit in violation of Section 30600 of the Coastal Act. This development consists of the construction of an unpermitted rock revetment located on the bluff top, bluff face, and on the beach below the 18<sup>th</sup> hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999. OCP did not apply for a Coastal Development Permit (CDP); this construction was not authorized by a CDP.

The unpermitted revetment is causing continuing resource damage, as defined in Section 13190 of the California Code of Regulations, by adversely affecting public access, marine and aquatic resources, and the visual quality of the coastal area in which it is located, and is inconsistent with the Coastal Act and the certified Local Coastal Plan of Half Moon Bay.

The proposed Cease and Desist Order would require OCP to refrain from engaging in any further development activities on the subject property without a CDP and submit to the Commission by a specified deadline detailed project plans for removal of the riprap. The proposed Restoration Order would require OCP to remove all unpermitted riprap from the subject property and restore the site to its pre-violation condition within a specified period of time.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are outlined in Sections 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 9, respectively. The hearing procedures are similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a Cease and Desist or Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, at any time before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff shall respond to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence according to the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13186, incorporating by reference section 13065. After the Chair closes the hearing, the Commission may ask questions as part of its deliberations on the matter, including, if any Commissioner chooses, any question proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by majority vote, of those present and voting, whether to issue the Order, either in the form recommended by staff or as amended by the Commission. The motion, per staff recommendation or as amended by the Commission, as the case may be, if approved by a majority of the Commission, would result in issuance of the order.

### **III. MOTION**

**MOTION:** I move that the Commission issue Cease and Desist and Restoration Order No. CCC-02-CD/RD-02 pursuant to the staff recommendation.

#### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. An affirmative vote by a majority of the Commissioners present will result in issuance of the Cease and Desist and Restoration order set forth in Section V of this report.

#### **RESOLUTION TO ISSUE CEASE AND DESIST AND RESTORATION ORDER:**

The Commission hereby issues Cease and Desist and Restoration Order No. CCC-02-CD/RD-02 set forth in Section V below and adopts the findings on grounds that development has occurred without a coastal development permit, is inconsistent with Chapter 3 of the Coastal Act, and is causing continuing resource damage.

### **IV. FINDINGS**

Staff recommends that the Commission adopt the following findings in support of the action:

#### **A. DESCRIPTION OF UNPERMITTED DEVELOPMENT**

Ocean Colony Partners (OCP) has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit in violation of Section 30600 of the Coastal Act. This development consists of the construction of an unpermitted rock revetment located on the bluff top, bluff face, and on the beach below the 18<sup>th</sup> hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999. OCP did not apply for a CDP for this development; this construction was not authorized by a CDP.

The unpermitted revetment is causing continuing resource damage, as defined in Section 13190 of the California Code of Regulations, by adversely affecting public access, marine and other aquatic resources, and the visual quality of the coastal area in which it is located, and is inconsistent with the Coastal Act.

#### **B. BACKGROUND AND ATTEMPTS AT ADMINISTRATIVE RESOLUTION**

In 1973, existing development at the 18<sup>th</sup> Hole of the Half Moon Bay Links included a concrete slab along the top edge of the bluff supporting the seaward edge of the 18<sup>th</sup> Hole turf and a twelve-foot high, 24-foot long, two-foot wide concrete seawall at the base of the bluff (**Exhibit 2**). This development pre-dated the Coastal Act and did not require a CDP. Bluff erosion gradually undermined the concrete slab and by 1995 portions of the concrete slab were exposed and hanging over the beach. Portions of the hanging slab broke off and fell to the beach during the winter of 1995-1996. Portions of the original concrete slab are still evident in a 1999 photograph of the site (**Exhibit 3**).

On July 27, 1996, the City of Half Moon Bay<sup>1</sup> granted CDP 08-96 for repairs along the bluff at the 18<sup>th</sup> hole, authorizing the placement of riprap backfill behind the concrete seawall and on the bluff face, and

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<sup>1</sup> The Implementation portion of the City of Half Moon Bay's Local Coastal Program (LCP) was certified on December 13, 1995 and it assumed permit-issuing authority on April 24, 1996. The unpermitted rock revetment straddles the coastal development permit jurisdictions of the City of Half Moon Bay and the Commission.

restoration of the blufftop concrete slab as originally constructed. Project plans indicated that the area approved in CDP 08-96 for riprap covered an area of approximately 1,700 square feet, and no riprap was to be placed on the beach. The City staff report indicated that no sandy beach area would be lost and that the approved project limits did not exceed those originally constructed or currently in place. Findings of the City permit are relevant to this proceeding.

The **Coastal Access Findings** of the City permit stated, in relevant part, that "Individual and cumulative burdens will not be imposed on public access and recreation opportunities, based on the fact that the project involves placing riprap behind an existing sea wall to protect the bluff face and to repair the existing 18<sup>th</sup> hole of the golf course." Regarding shoreline processes, the permit stated that "Because the project does not involve any new sea walls or other shoreline protective devices but places riprap behind the existing seawall to protect the bluff face and the existing 18<sup>th</sup> hole, it would not substantially affect the shoreline processes or conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, or the location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter). Regarding public use, the permit stated, "There would be no potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use). There would be no physical aspects of the development which would block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline."

In August of 1998, OCP submitted to the City of Half Moon Bay plans for additional bluff stabilization measures along the 18<sup>th</sup> hole. The plans included a vertical soldier-beam wall covered with shotcrete (sprayed concrete), and riprap at the base of the proposed vertical wall. A September 10, 1998 letter from the City's planning director at that time indicated that the work as proposed was exempt from coastal permitting because it "would not result in an addition to, or an enlargement or expansion of, the green repair authorized by CDP 08-96" (**Exhibit 4**).

The Coastal Commission initially received reports of an alleged Coastal Act violation near the 18<sup>th</sup> hole of Half Moon Bay Links in January 1999. Commission staff visited the site and verified that riprap had been placed on the beach, apparently within the Commission's permit jurisdiction, and along the bluff face, apparently within the City's permit jurisdiction. A photograph taken in 2002 depicts the extent of the riprap (**Exhibit 5**). In a letter to OCP dated January 13, 1999, Commission staff explained that any portion of the development within the Commission's jurisdiction required a CDP from the Commission (**Exhibit 6**). OCP responded in a letter dated January 29, 1999 that they had received an exemption from the City for the repair work (**Exhibit 7**). On February 17, 2000 the Commission sent another letter to OCP, explaining that the portion of the riprap on the beach at the base of the bluff required a permit from the Coastal Commission and requesting that OCP submit a CDP application to the Commission by March 10, 2000 (**Exhibit 8**).

In a letter dated February 24, 2000 from the City of Half Moon Bay to OCP, City staff stated that the repair work performed by OCP in 1998 was not in compliance with the 1998 plans that the City had reviewed and exempted from coastal permitting (**Exhibit 9**). The City found that OCP did not install the work as proposed, but installed riprap only, covering a substantially more extensive area than was indicated on the proposed plans. The City stated that the work performed by OCP in 1998 was therefore not exempt, but rather was in violation of the City's Municipal Code. The City directed OCP to apply for a retroactive CDP, and noted that the Coastal Commission had also recently contacted OCP regarding the portion of the unpermitted riprap located in Commission's permit jurisdiction also requiring a CDP.

After correspondence and debate between OCP and the Commission regarding the location of the Mean High Tide Line (MHTL) and the location of the respective permit jurisdictions, the Commission informed OCP that the exact location of the MHTL was not a critical point, because the City and the Commission were in concurrence that all of the riprap placed in 1998 was unpermitted and required a CDP. In a letter dated February 2, 2001, the Commission informed OCP that for permitting purposes, the Commission considered the bluff top and bluff face to be within the City's jurisdiction, and the beach area to be within the Commission's jurisdiction (**Exhibit 10**). The Commission directed OCP to submit a CDP application to the City by March 15, 2001 for the portion of the development located in the City's jurisdiction, and then within 60 days of permit action by the City, to submit a CDP application to the Commission for that portion of the development located in the Commission's jurisdiction. The Commission indicated to OCP that their applications should be for either retention or removal of the unpermitted development.

On March 14, 2001, OCP submitted a CDP application to the City of Half Moon Bay, proposing partial removal and partial retention of the riprap that was installed in 1998. On April 5, 2001, the City informed OCP that their application was incomplete and requested (among other information) project plans indicating 1) the amount and location of riprap initially placed in 1996 pursuant to CDP 08-96, 2) the portion of the riprap subsequently placed in 1998 that OCP proposed to retain, and 3) the portion they proposed to remove. The City sent a second letter to OCP on July 23, 2001 informing them that their application was still incomplete (**Exhibit 11**).

On August 30, 2001, OCP submitted modified plans to the City of Half Moon Bay, proposing to construct a vertical soil nail wall covered with shotcrete in addition to the plans for partial removal and partial retention of the existing riprap. In October 2001, the Commission learned that City staff had determined that OCP's modified proposal for a vertical seawall, shotcrete, and riprap would require California Environmental Quality Act (CEQA) review, and that the City would not be able to act on issuing a permit for approximately one year. Since this would significantly delay resolution of the violation, on March 11, 2002, the Commission directed OCP to submit by April 11, 2002 their application for a CDP for the portion of the riprap in the Commission's jurisdiction, rather than waiting first for local approvals as previously directed (**Exhibit 12**). On December 21, 2001, OCP submitted a Waiver of Legal Argument form to the Commission, stating their wish to resolve the matter administratively (**Exhibit 13**).

In a letter to the Commission dated May 22, 2002, the City of Half Moon Bay formally requested that the Commission assume the primary enforcement role in resolving the violation regarding the unpermitted riprap that had been installed in 1998 in both the City's and the Commission's jurisdictions (**Exhibit 14**). The City reiterated that the riprap installed by OCP in 1998 was not placed pursuant to a valid CDP.

OCP submitted a CDP application to the Commission on May 28, 2002 for removal of 67 percent of the riprap and construction of a shotcrete seawall. In a letter dated June 20, 2002, the Commission returned the application to OCP for reasons of inconsistency in the application form and application cover letter, OCP's assertion that the Commission's acceptance of the application would constitute acceptance of OCP's assertions regarding the location of the MHTL and the location of Commission and City permit jurisdictions, and the fact that OCP contended the Commission did not have jurisdiction over the work for which the permit was sought (**Exhibit 15**).

By letter dated June 20, 2002, Commission staff issued a notice of intent NOI to conduct cease and desist and restoration order proceedings for the unpermitted revetment on the property (**Exhibit 16**). OCP submitted their Statement of Defense to the Commission on July 15, 2002 (**Exhibit 17**).

### **C. SUMMARY OF PERMITTED DEVELOPMENT**

In 1973, existing development at the 18<sup>th</sup> Hole of Half Moon Bay Golf Links consisted of a concrete slab along the top edge of the bluff supporting the seaward edge of the 18<sup>th</sup> hole turf and a twelve-foot high, 24-foot long, two-foot wide concrete seawall at the base of the bluff. This development pre-dated the Coastal Act and did not require a CDP. In 1996, CDP 08-96 authorized the placement of riprap behind the concrete seawall and on the bluff face, covering an area of approximately 1,700 square feet. CDP 08-96 also authorized reconstruction of the concrete slab along the top edge of the bluff. Development aside from the 12x24 foot concrete seawall, concrete slab supporting the 18<sup>th</sup> hole turf, and the riprap placement and concrete slab repairs performed pursuant to CDP 08-96 is unpermitted development. The additional riprap placed in 1998 is not permitted development and is not exempt from permitting requirements. Additionally, it should be noted that even if the original development is exempt, repair and maintenance work to that structure requires a CDP.

### **D. BASIS FOR ISSUANCE OF CEASE AND DESIST AND RESTORATION ORDERS**

The statutory authority for issuance of the proposed cease and desist order is provided in §30810 of the Coastal Act, which states, in relevant part:

- (a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:*
  - (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*
- (b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

The statutory authority for issuance of the proposed restoration order is provided in §30811 of the Coastal Act that states:

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

A restoration order is the functional equivalent of a coastal development permit for authorizing development for the purpose of restoring a property to the condition it was in prior to the performance of unpermitted development. Accordingly, Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

As noted above, the development was performed without obtaining the required CDP. In further support of the issuance of the cease and desist and restoration orders, the following section provides substantial evidence that the development is inconsistent with the Coastal Act and is causing continuing resource damage.

## **E. RESOURCE IMPACTS**

The unpermitted revetment is causing continuing resource damage, as defined in Section 13190 of the California Code of Regulations, by adversely affecting public access and recreation, marine and other aquatic resources, and the visual quality of the coastal area in which it is located, and is inconsistent with the Coastal Act and the policies of the certified Half Moon Bay LCP.

### **1. Consistency with Coastal Act Section 30235**

Section 30235 of the Coastal Act states "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures in danger from erosion. In addition, the Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection only for existing principal structures. The Commission must always consider the specifics of each individual project, but has found in many instances that accessory structures such as patios, decks and stairways are not required to be protected under Section 30235 or can be protected from erosion by relocation or other means that do not involve shoreline protection. The Commission has historically permitted at grade structures within the geologic setback area recognizing they are expendable and capable of being removed rather than requiring a protective device that alters natural landforms along bluffs and cliffs.

In this case, OCP has constructed the unpermitted revetment to protect the 18<sup>th</sup> hole of Half Moon Bay Links. First, it is not clear whether the 18<sup>th</sup> hole qualifies as a structure within the meaning of Section 30235. Second, even if the 18<sup>th</sup> hole is a structure, it appears that it could be relocated. Thus, a shoreline protective device is not required because a feasible alternative, i.e., relocation, can protect the 18<sup>th</sup> hole without resulting in the significant adverse impacts caused by the revetment. Finally, if shoreline protection is required to be permitted under Section 30235, the device must be designed to eliminate or mitigate adverse impacts on sand supply and cannot be approved if there are feasible alternatives or mitigation measures that would substantially lessen and significant adverse impact on the environment (see CEQA Section 21080.5(d)(2)(A) and California Code of Regulations Title 14 Section 13057 (c) (2)). The unpermitted revetment is having significant adverse impacts on coastal resources, as discussed more fully below, and has not been designed to mitigate adverse impacts. Therefore, the Commission finds that the unpermitted revetment is inconsistent with Coastal Act Section 30235.

### **2. Public Access and Recreation**

The project is located between the first public road and the sea. As such, the project is subject to the

access and recreation policies of the Coastal Act. Sections 30210-30214 of the Coastal Act state that maximum access and recreation opportunities be provided, consistent with, among other things, public safety, the protection of coastal resources, and the need to prevent overcrowding. Coastal Act Sections 30210 and 30211 protect the public's right of access to the sandy beach in front of the Half Moon Bay Links; Section 30240(b) further protects these recreational areas from degrading impacts:

*30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

*30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

*30240(b): Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The major public access and recreation area associated with the vicinity is the lateral access along the beach at the base of the bluff. The beach area is a mixed sandy/rock terrace beach backed by high bluffs, generally accessible at lower tides. The nearest vertical access to the area in front of the bluffs is Francis Beach to the north, and Canada Verde Beach to the south. Historic public use of this stretch of coast, including the beach area in front of the 18<sup>th</sup> hole of the golf course, is well established. As the City previously found in its staff report for CDP 08-96 regarding historic public use, "adequate evidence exists to preserve the lateral access at the sandy beach." The beach area and available lateral public access way constitutes a significant public access resource and visitor-destination point used by local residents and visitors.

The unpermitted rock revetment covers a total area of approximately 11,300 square feet, and of that approximately 7,000 square feet of recreational beach area at the base of the bluffs below the 18<sup>th</sup> hole is covered with riprap. As a result, a significant portion of the beach is no longer available for public access and recreation. At higher tides, the adverse impact on public use of the beach is exacerbated given that tidal influence foreshortens the beach at these times. Another effect is that the public's ability to gain access both up and down coast laterally along the beach is impaired, particularly at higher tides. Furthermore, the rocks that make up such riprap revetments tend to migrate farther onto the beach and into the intertidal zone and present a public access and public safety impediment. In addition, the existing revetment is inconsistent with the findings of CDP 08-96 issued by the City of Half Moon Bay, which had found no impact to access only because the proposed repairs were to be located on the bluff face, not on the sandy beach.

The existing revetment negatively impacts public beach access and recreation with the direct loss of approximately 7,000 square feet of recreational beach area. The revetment limits the public's ability to gain access both up and down coast laterally along the beach, particularly at higher tides; would eventually result in the migration of rocks further seaward onto the beach and into the intertidal zone where they represent a public access impediment and safety hazard; would eventually result in a loss of useable beach area by fixing the back beach location, retaining potential beach materials, contributing to beach scour, potentially alter the longshore transport of materials, and contributing to erosion and steepening of the shore profile, all to the detriment and availability of tidelands. As such, the Commission finds that the existing revetment is inconsistent with the beach access policies of Coastal Act Sections 30210, 30211, and 30240. The Commission also finds that the revetment is causing ongoing



resource damage through public access impediments and the loss of approximately 7,000 square feet of recreational beach area.

### 3. Marine and Aquatic Resources

Sections 30235 and 30253 of the Coastal Act apply to impacts to shoreline processes and marine and aquatic resources, and the need to evaluate the potential impacts of the existing revetment on sand supply, structural stability, and natural landform impacts:

*30235: Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

*30253(2): New development shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs or cliffs.*

The City of Half Moon Bay LCP policies also address the need to protect marine and aquatic resources from potential impacts of seawall and shoreline structures on local shoreline sand supply, structural stability issues, and potential impacts on natural landforms:

*4-1: Seawalls and cliff retaining structures shall not be permitted unless the City determines they are necessary for preservation of existing structures, and has determined there are no other less environmentally damaging alternatives for protection of existing development. If such structures are permitted, they shall be designed to preserve the maximum amount of existing beach, to ensure lateral access along the shoreline, and to assure that all existing endangered development within the area of the improvement is protected as a part of the project; such structures shall not be designed so as to encompass an area larger than that necessary to protect existing structures. An applicant for such a structure shall include a geologic report indicating that the structure will succeed in stabilizing that portion of the shoreline which is subject to severe erosion and will not aggravate erosion in other shoreline areas.*

*4-2: Revetments, groins, pipelines, outfalls, and other such construction that may alter natural shoreline processes shall be permitted when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and so as not to block lateral beach access.*

*4-6: No development shall be permitted on the bluff face, except for engineered accessways to provide public beach access. Drainage pipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drain pipes are designed and placed to minimize impacts to the bluff face, toe, and beach. Drainage devices extending over the bluff face shall not be permitted if water can be directed away from the bluff face.*

These requirements are mirrored by the City of Half Moon Bay Zoning Code Section 18.38.065 regarding bluffs and sea cliffs, which states in applicable part:

*18.38.065D: Conditionally Permitted Uses. Where no other less environmentally damaging alternatives are available, and when required to serve coastal dependent uses, to protect existing structures, or to protect public beaches in danger from erosion, the following are permitted by Use Permit with CEQA compliance.*

1. *Sea walls and cliff retaining structures.*
2. *Revetments, breakwaters, groins, harbor channels, pipelines, outfalls, and other such construction that may alter natural shoreline processes.*

**18.38.065F: Development standards.**

1. *Sea walls and Cliff Retaining Structures. These structures are permitted by Use Permit under the following standards or conditions: a) the structure is designed to preserve the maximum amount of beach, b) the structure is designed to ensure lateral access along the shoreline, c) the structure is designed so that all existing endangered development within the area of the improvement is protected as a part of the project, d) the structure is not designed so as to encompass an area larger than that necessary to protect existing structures, and e) the project is designed to eliminate or mitigate all significant adverse impacts on local shoreline sand supply.*
2. *Revetments, groins, pipelines, outfalls, and other construction that alter natural shoreline processes. These projects are permitted by Use Permit under the following standards or conditions: a) the installation is designed so as not to block lateral beach access, b) drain pipes shall be designed and placed so as to minimize impacts to the bluff face, toe and beach, and c) the project is designed to eliminate or mitigate all significant adverse impacts on local shoreline sand supply.*

### **Sand Supply Impacts**

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Even though the precise impact of a shoreline structure on the beach is a persistent subject of debate within the discipline of coastal engineering, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile whether it is a vertical bulkhead or a rock revetment. The main difference between a vertical bulkhead and rock revetment is their physical encroachment onto the beach (i.e., a vertical wall generally takes up less beach space). Additionally, rock revetments, such as the existing revetment, dissipate the wave energy and typically result in less localized beach scour. However, it has been well documented by coastal engineers and coastal geologists that shoreline protective devices or shoreline structures in the form of either a rock revetment or a vertical seawall will adversely impact the shoreline as a result of beach scour, end scour (the beach areas at the end of the seawall), the retention of potential beach material behind the wall, the fixing of the back beach and the interruption of longshore processes. In addition, seawalls and revetments directly encroach on the beach. The Commission finds that the unpermitted revetment is having adverse impacts on sand supply. First, the revetment is occupying approximately 7,000 square feet of beach, blocking the movement of material from the bluff face that would normally contribute sandy material to the beach. Second, the revetment may reflect waves in a manner that adds to the wave energy that is impacting the unprotected coastal areas on either end of the revetment, causing accelerated erosion in areas adjacent to the revetment. Third, a portion of the revetment is subject to wave action, effectively functioning as a headland extending into the ocean and interrupting the longshore transport of sand. Therefore, the existing revetment is causing a number of ongoing adverse effects on shoreline sand supply, and the Commission finds that the existing revetment is inconsistent with Section 30235 of the Coastal Act and is causing ongoing resource damage. Additionally, the revetment is inconsistent with the City of Half Moon Bay development standards outlined above.

### **Structural Stability Impacts**

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It is unclear whether the existing revetment has been keyed, or anchored, into the underlying bedrock. The rocks installed in 1998 have apparently been placed directly on top of the sandy beach and bluff face without a key, or anchor, at the base of the riprap. As the beach profile changes and scouring takes place, and as regular wave attack takes its toll, an un-keyed structure is more liable to shift on the sand. Individual rocks are more likely to migrate out onto the beach or into the intertidal area, sometimes migrating just under the sand, where these rocks can become a public access impediment and a public safety hazard.

Although placement of rock without a key may be successful if the rock is large enough to resist ocean wave forces, as a general rule, an un-keyed structure is more liable to have stability problems than would a keyed structure. These problems generally manifest themselves in terms of subsidence, upsurge, and rock migration. A keyway, and a maintenance program designed both to retrieve migrating rocks and to re-evaluate (and re-engineer as necessary) the structure at least one time per year following the winter storm season, is necessary to mitigate adverse impacts of a revetment. The existing revetment has apparently not been designed to minimize risks or to assure stability and structural integrity. As such, the Commission finds that the existing revetment is inconsistent with Section 30253(2) of the Coastal Act and is causing ongoing resource damage.

### **Natural Landform Impacts**

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The overall result of installing a rock revetment, vertical wall, or other shoreline protection is to alter the natural landforms of the shoreline. The existing revetment substantially alters the natural landform of the bluffs, and there has clearly been no effort to adapt the project to the natural bluff landform. As such, the Commission finds that the existing revetment is inconsistent with Section 30253(2) of the Coastal Act and is causing ongoing resource damage.

## **4. Visual Quality**

Sections 30251 and 30240 of the Coastal Act address the protection of the scenic and visual qualities of the public viewshed:

*30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

*30240(b): Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The City of Half Moon Bay LCP policies also address the protection of the scenic and visual qualities of the coast:

*7.2: Blufftop structures shall be set-back from the bluff edge sufficiently far to ensure that the structure does not infringe on views from the beach and along the blufftop parallel to the bluff edge except in areas where existing structures on both sides of the proposed structure already impact public views from the beach or along the blufftop.*

This requirement is mirrored by the City of Half Moon Bay's Zoning Code Section 18.37.025 (Beach Viewshed Area Standards) that states, in applicable part:

*18.37.025(A): Structures shall be set back from the bluff edge far enough to ensure that the structure does not infringe on views from the beach and along the bluff top parallel to the bluff edge.*

The existing revetment has introduced a large, unnatural pile of rocks into an otherwise natural shoreline vista. The revetment adversely impacts views from the beach while traversing the site laterally and when using the beach north and south of the revetment. There are direct adverse impacts on the public viewshed due to the existing revetment. The revetment has not been designed to protect views, has not been designed to minimize the alteration of natural landforms, is not visually compatible with the character of the surrounding area, and is not designed in any way that is sensitive to the need to prevent significant scenic degradation of a publicly used recreational area. As such, the Commission finds that the existing revetment is inconsistent with Chapter 3 policies of the Coastal Act and is causing ongoing resource damage.

#### **F. ALLEGATIONS**

The Commission alleges and finds the following:

- 1) Ocean Colony Partners, Limited Partnership, (OCP) is the owner of the property located at 2450 South Cabrillo Highway, Half Moon Bay, San Mateo County, APN 066-092-720.
- 2) 1996 Coastal Development Permit 08-96 allowed placement of riprap on the bluff face only, covering an area of approx. 1,700 square feet. No riprap was to be placed on the beach.
- 3) In 1998, OCP constructed a riprap revetment on the bluff face and beach below the 18<sup>th</sup> Hole of the Half Moon Bay Golf Links, covering approximately 7,000 square feet of beach area and a total area of approximately 11,300 square feet. This development was not authorized by the required Coastal Development Permit.
- 4) OCP continues to maintain the unpermitted riprap on the bluff face and beach below the 18<sup>th</sup> Hole of the Half Moon Bay Golf Links.
- 5) The unpermitted riprap is inconsistent with Chapter 3 policies of the Coastal Act.
- 6) The unpermitted riprap is causing continuing resource damage, as defined in Section 13190 of the California Code of Regulations.
- 7) No exemption from the permit requirements of the Coastal Act applies to the unpermitted revetment on the property.

**G. VIOLATOR'S DEFENSE AND COMMISSION RESPONSE**

On June 20, 2002, Commission staff sent to OCP, via certified mail, a Notice of Intent to commence Cease and Desist and Restoration Order proceedings (**Exhibit 16**) along with a Statement of Defense form. The Notice required the Statement of Defense form to be completed and returned no later than July 10, 2002. On June 26, 2002, OCP requested an extension of several weeks for filing the Statement of Defense. Commission staff extended the deadline until July 15, 2002. OCP submitted their Statement of Defense form to the Commission on July 15, 2002 (**Exhibit 17**).

OCP denies all allegations of the Commission except as admitted as follows in their July 15, 2002 Statement of Defense:

"Ocean Colony Partners (OCP) admits that OCP has maintained shoreline protection work to protect the 18<sup>th</sup> hole of Half Moon Bay Golf Links consistent with its legal rights. OCP further admits that the letters from the California Coastal Commission (the Commission) referenced in the Commission's letter of June 20, 2002, were received by OCP and that meetings took place on March 31, 2000, and April 3, 2002, but does not admit anything else. The letters received by OCP from the Commission, and the responses of OCP to those letters, speak for themselves."

OCP specifically asserts the following concerning the proposed cease and desist and restoration orders:

**OCP's Defense:**

"The proceedings are unconstitutional as a violation of the doctrine of the separation of powers."

**Commission's Response:**

The Commission disagrees with the assertion that it is acting in violation of the United States and California Constitutions. The actions taken herein of issuing a cease and desist order and restoration order are specifically authorized by the Coastal Act. Although, in the *Marine Forest Society vs. California Coastal Commission* case, a Sacramento County Superior Court judge ruled that the appointment of the Commissioners violates the separation of powers provision of the California Constitution, a stay of this decision has been issued and an appeal of this decision is pending before the California Court of Appeal.

**OCP's Defense:**

"The proceedings are a violation of OCP's constitutional right to due process of law."

**Commission's Response:**

The Commission disagrees with the assertion that it has violated OCP's due process rights. OCP does not specify how they believe their due process rights have been violated, other than to state that the proceedings themselves are a violation of due process rights. All proceedings relative to the proposed orders and the scheduling of a hearing before the Commission on this matter are in accordance with the statutory authority granted to the Commission under Public Resources Code §§30810-30811 (the California Coastal Act) and are in accordance with California Code of Regulations Title 14, Division 5.5, specifically §§13185, 13186, 13187, 13191, 13195 and 13196.

**OCP's Defense:**

"The Commission does not have jurisdiction over the work."

**Commission's Response:**

The Commission disagrees with the assertion that it does not have permit jurisdiction over the subject violation. First, as previously discussed in Section B of this report, in a letter dated February 2, 2001, the Commission informed OCP that for coastal development permit purposes, the Commission considered the bluff top and bluff face to be within the City's permit jurisdiction, and the beach area to be within the Commission's permit jurisdiction. As defined in CCR Title 14, Division 5.5, Section 13300(a), the Commission retains permit jurisdiction over any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled. In this location, the exact location of the Mean High Tide Line and the exact boundary of the public trust lands are not clear. There is currently wave uprush onto portions of the revetment. The Commission clearly has permit jurisdiction over the portion of the riprap located on the beach. Furthermore, to the extent that those portions of the revetment along the bluff face rest on the portion located on tidelands, those portions can also be considered to be within the Commission's permit jurisdiction.

Second, regardless of whether the Commission has permit jurisdiction over the entire revetment or only a portion, it clearly has enforcement jurisdiction over the entire revetment. In a letter to the Commission dated May 22, 2002, the City of Half Moon Bay formally requested that pursuant to Section 30810(a) of the Coastal Act, the Commission assume the primary enforcement role in resolving the violation regarding the unpermitted riprap that had been installed in 1998 in both the City's and the Commission's jurisdictions. Therefore, the Commission has enforcement jurisdiction over the riprap, including any portions that might be under the permit jurisdiction of the City.

**OCP's Defense:**

"The claims asserted by the Commission are barred by the statute of limitations and/or laches."

**Commission's Response:**

The doctrine of laches does not apply in this case. It is well settled that the equitable defense of laches "will not ordinarily be invoked to defeat policy adopted for the public protection" (*City of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 646.<sup>2</sup>) In this case, the cease and desist order proceedings were initiated to bring the subject violation into compliance with the Coastal Act, which was adopted to protect coastal resources.

Even if the doctrine were applicable to this proceeding, it is well-established that "laches is an equitable defense that requires *both* unreasonable delay *and* prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors." (*Mt. San Antonio Comm. Coll. Dist. v. Pub. Emp. Rel. Bd.* (1989) 210 Cal.App.3d 178.) In their Statement of Defense, OCP fails to explain either 1) why they believe the Commission's enforcement actions against them involved delay that should be considered to be "unreasonable," or 2) how any such delays have operated to their prejudice. Moreover, not only have they failed to show the delay prejudiced OCP, it appears that

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<sup>2</sup> Accord: *Morrison v. California Horse Racing Board* (1988) 205 Cal.App.3d 211, 219 ("Where there is no showing of manifest injustice to the party asserting laches, and where application of the doctrine would nullify a policy adopted for the public protection, laches may not be raised against a governmental agency.")

any delay would have only operated to the detriment of the public, since the violation has remained in place, and the resource impacts have persisted.

OCP's statute of limitations defense is equally unavailing. Limitations periods are applicable, if at all, only to judicial enforcement proceedings. They have no applicability to administrative enforcement proceedings such as a cease and desist or restoration order proceeding brought by the Commission. In *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4<sup>th</sup> 810, the Court of Appeal ruled that statutes of limitations are products of legislative authority and control. At p. 816, the court noted that the law which governed the administrative enforcement proceeding at issue in that case:

*noticeably lacks a statute of limitations. The legislature is presumably aware that there are statutes limiting the right to bring action in other, arguably analogous situations. Yet the legislature chose not to impose any limitation on the Board in this precise situation.*

Similarly, the Coastal Act's limitation provision in Section 30805.5 does not on its face apply to the issuance of the cease and desist and restoration order. Rather, it applies only to actions to recover civil fines and penalties. The Commission is issuing this cease and desist and restoration order to remedy a violation of the Coastal Act, not to collect fines and penalties.

Finally, Civil Code § 3490, which states, "no lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right" contravenes OCP's laches and statute of limitations defenses.

#### **OCP's Defense:**

"OCP has a vested right to perform and maintain the work."

#### **Commission's Response:**

OCP asserts that the decision in Sierra Club v. Coastal Zone Conservation Commission, 58 Cal. App. 3<sup>rd</sup> 149 (**Exhibit 18**) granted OCP a vested right for a shoreline protection system and that OCP may repair and maintain it for protection of the 18<sup>th</sup> hole of the Half Moon Bay Links. The City of Half Moon Bay specifically referred to the Half Moon Bay Country Club, which includes the Half Moon Bay Links, in its Local Coastal Program, and acknowledges in Specific Planned Development Policy 9.3.16 that "Half Moon Bay Country Club is a 267-acre residential, recreational, and commercial Planned Unit Development (Country Club PUD) which was fully approved by the City in compliance with all applicable State land use and environmental statutes and local ordinances prior to the adoption of Proposition 20 in 1972."

LCP Policy 9.3.16 states that "In Sierra Club v. Coastal Zone Conservation Commission, 58 Cal. App. 3<sup>rd</sup> 149, the courts of the State of California held that the developer had obtained a vested right to develop free of any coastal Act (and, therefore, LCP) requirements those improvements which, as a practical matter, dictate the density, location, and other parameters for completion of the Country Club PUD. The exempt improvements include the golf course, the hotel, golf and tennis pro shops... retaining walls...and the sewage treatment facility (58 Cal. App. 3<sup>rd</sup>, at 153). As a consequence of the existing exempt development, conditions imposed by land use approvals granted prior to adoption of Proposition 20, and the residential development heretofore approved by the Coastal Commission, the Country Club PUD has been committed to build-out in accordance with the existing Country Club PUD Approvals. **However, any material change in development from that heretofore approved by the City may require approvals from the City...including a Coastal Development Permit** (emphasis added)."

Under the Coastal Act, where a vested right has been established, no substantial change in such development may be made without obtaining approval under the Coastal Act (Public Resources Code Section 30608 and CCR Section 13207). Similarly, new development requires authorization under the Coastal Act.

The approved project plans for the 1996 CDP issued by Half Moon Bay indicate that the retaining wall originally constructed in 1973 was a 12-foot high, 24-foot long, 2-foot wide concrete wall, located at the base of the bluff just south of the end of the 18<sup>th</sup> green. CDP 08-96 authorized placement of riprap behind this existing wall, on the bluff face directly above the wall and on the bluff face extending north of the wall, covering an area of approximately 1,700 square feet. According to proposed plans submitted by OCP to the City of Half Moon Bay in 2001, the unpermitted riprap placed in 1998 covers an area of approximately 11,300 square feet, or 9,600 square feet more than the amount permitted in 1996. Moreover, the riprap covers additional bluff face areas and beach areas that were not approved for any placement of riprap at all under the 1996 permit. This is clearly a substantial change to both the original retaining wall development and the subsequent repairs permitted in 1996, and therefore is not exempt from permitting requirements under the vested rights that have been established for the Country Club PUD.

**OCP's Defense:**

"All of the work is permitted by valid permits and/or exemptions under the terms of the California Coastal Act."

**Commission's Response:**

OCP has asserted that the riprap placed in 1998 was exempted by the City of Half Moon Bay, and required no CDP. While it is true that the City initially indicated to OCP that the work as proposed was exempt from coastal permitting, subsequent communication from the City to OCP confirmed that the actual work done was substantially different from the proposed work. The City explained in its February 24, 2000 letter to OCP that the repair and maintenance exemption granted on September 10, 1998 was based upon examination of plans that were substantially the same as the plans submitted in 1996 for the repair work permitted by CDP 08-96. The City's analysis of the differences and similarities of the 1996 and 1998 plans had suggested that no new material would be required to complete the proposed repairs. The City noted, however, that it subsequently became clear that the work that was actually performed was not in compliance with the plans submitted.

The City noted that a temporary road appeared to have been constructed in the riparian corridor in the middle of the 18<sup>th</sup> fairway to provide access to the beach and that rock had been placed from the beach as well as from above, consequently causing impacts to the beach from construction. As noted by the City, the riprap extended "considerably further" seaward than the plans showed, resulting in a limitation on lateral beach access. This is clearly inconsistent with the findings of CDP 08-96, in which the City granted OCP a permit for riprap repairs to the bluff face only after noting that lateral access along the beach would not be impaired.

The City concluded that the repair work performed in 1998 was not exempt from coastal permit requirements and clearly exceeded any permitted development authorized under its prior CDP 08-96, and therefore required CDPs from the City and the Commission for the development located in the respective jurisdictions (**Exhibit 9**).

Staff recommends that the Commission issue the following Cease and Desist and Restoration Order:



**V. CEASE AND DESIST AND RESTORATION ORDER**

Pursuant to its authority under Public Resources Code §§30810 and 30811, the California Coastal Commission hereby orders Ocean Colony Partners, its members, managers, officers, employees, and agents, and any persons acting in concert with the foregoing to fully comply with the following:

- 1) Refrain from engaging in any further development activity on the site, other than that development previously performed pursuant to CDP 08-96 without a Coastal Development Permit;
- 2) Within 30 days of the issuance of this order, or within such additional time as the Executive Director may for good cause grant, submit to the Executive Director for review and approval, plans that provide sufficient detail and address the elements set for the below for removal of the rock revetment and restoration of the beach and bluff areas to their pre-violation conditions. The plans shall include, but not necessarily be limited to, the following elements:
  - a. Project Description: A detailed description of the proposed project is required, including (1) the amount (approximate total volume and weight) of rock to be removed, (2) the proposed method of removal, (3) proposed means of beach access for construction personnel and equipment, (4) all dates and times when the removal/restoration activities would take place, (5) total amount and location of any fill placement or grading in connection with any proposed, temporary beach access ramp or other project component, (6) method of site restoration and, if applicable, removal of temporary access ramp and (7) ultimate disposal plans for rock removed.
  - b. Project Plans: Detailed project plans, certified by a licensed engineer, are required for all aspects of the project, showing (1) proposed beach access for construction equipment, (2) exact present location in plan view and cross-section of the rock to be removed in relation to the beach and Mean High Tide Line (MHTL) and (3) equipment and materials staging areas. For all plans, please submit both full-size plans and reduced (8.5" x 11") copies.
  - c. Erosion Control Plan: The erosion control plan shall demonstrate that (1) during construction and removal/restoration activities, erosion on the site shall be controlled to avoid adverse impacts on adjacent resources, (2) temporary erosion control measures such as hay bales and silt fences shall be used during construction and removal/restoration activities. The plan should include a narrative report describing all temporary erosion control measures to be used during construction and removal/restoration activities, plans showing the locations of the erosion control measures on full-sized and reduced (8.5" x 11") site plans, and a description of the proposed schedule for installation and removal of the temporary erosion control measures.
- 3) Within 30 days of the date of the Executive Director's approval of the plans for removal of the revetment and restoration of the site, or within such additional time as the Executive Director may for good cause grant, commence work in compliance with the approved plans to remove the unpermitted rock revetment.
- 4) Within 60 days of the date of the Executive Director's approval of the plans for removal of the revetment and restoration of the site, or within such additional time as the Executive Director may for good cause grant, complete the removal of the unpermitted rock revetment and complete restoration of the site to its pre-violation condition.

### **IDENTIFICATION OF THE PROPERTY**

The property that is the subject of this cease and desist order is described as follows:

2450 South Cabrillo Highway, Half Moon Bay, San Mateo County, CA APN 066-092-720

### **DESCRIPTION OF UNPERMITTED DEVELOPMENT**

The unpermitted development consists of the construction of a riprap revetment on the bluff face and beach below the 18<sup>th</sup> hole of the Half Moon Bay Golf Links.

### **TERM OF THE ORDER**

This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

### **FINDINGS**

This order is issued on the basis of the findings adopted by the Commission at the August 9, 2002 hearing, as set forth in the staff report dated July 19, 2002, entitled "**Staff Report and Recommended Findings for Cease and Desist and Restoration Order**".

### **COMPLIANCE OBLIGATION**

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists. The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

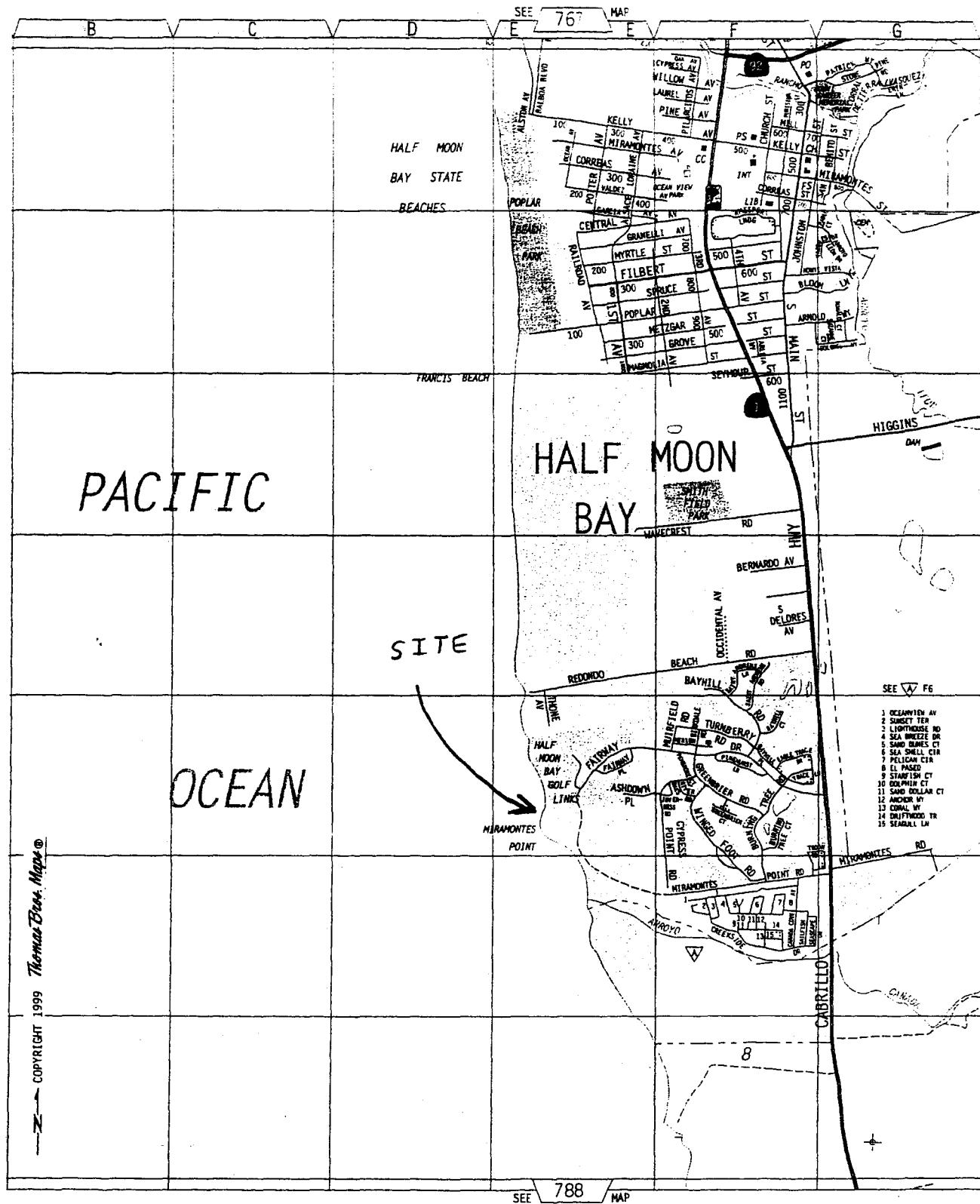
### **APPEAL**

Pursuant to Public Resources Code section 30803(b), any person or entity against whom/which this order is issued may file a petition with the Superior Court for a stay of this order.

**Exhibits**

1. Site Map and Location.
2. 1973 photograph of site showing 12-foot tall, 24-foot wide concrete seawall at base of bluff.
3. January 1999 photograph of site showing concrete slab at top of bluff.
4. Letter dated September 10, 1998 from City of Half Moon Bay to Ocean Colony Partners (OCP).
5. May 2002 photograph of site showing riprap on bluff face and beach along the 18<sup>th</sup> hole of the Half Moon Bay Golf Links.
6. Notice of violation letter dated January 13, 1999 from Commission to OCP.
7. Letter dated January 29, 1999 from OCP to Commission claiming that the City of Half Moon Bay exempted 1998 installation of riprap.
8. Letter dated February 17, 2000 from Commission to OCP requesting that OCP submit a CDP application to the Commission by March 10, 2000.
9. Letter dated February 24, 2000 from City of Half Moon Bay to OCP explaining that the riprap placed 1998 was not exempt from coastal development permit requirements.
10. Letter dated February 2, 2001 from Commission to OCP describing jurisdictional boundaries and requesting that OCP submit a CDP application to the City of Half Moon Bay by March 15, 2001.
11. Letter dated July 23, 2002 from City of Half Moon Bay to OCP reiterating request for completion of CDP application.
12. Letter dated March 11, 2002 from Commission to OCP requesting that OCP apply to the Commission for removal or retention of the portion of the unpermitted riprap within the Commission's permit jurisdiction.
13. Waiver of Legal Argument form sent by OCP to Commission dated December 21, 2001.
14. Letter dated May 22, 2002 from City of Half Moon Bay to Commission, formally requesting that Commission enforce permit requirements for the riprap located in both the City's and the Commission's jurisdictions.
15. Filing letter from Commission to OCP dated June 20, 2002
16. Notice of Intent to commence cease and desist and restoration order proceedings letter dated June 20, 2002.
17. Statement of Defense submitted by OCP to Commission on July 15, 2002.
18. Court decision in Sierra Club v. Coastal Zone Conservation Commission, 58 Cal. App. 3<sup>rd</sup> 149, dated April 26, 1976.





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EXHIBIT NO. 1

APPLICATION NO.  
 CCC-02-CD/R0-02

Ocean Colony Partner

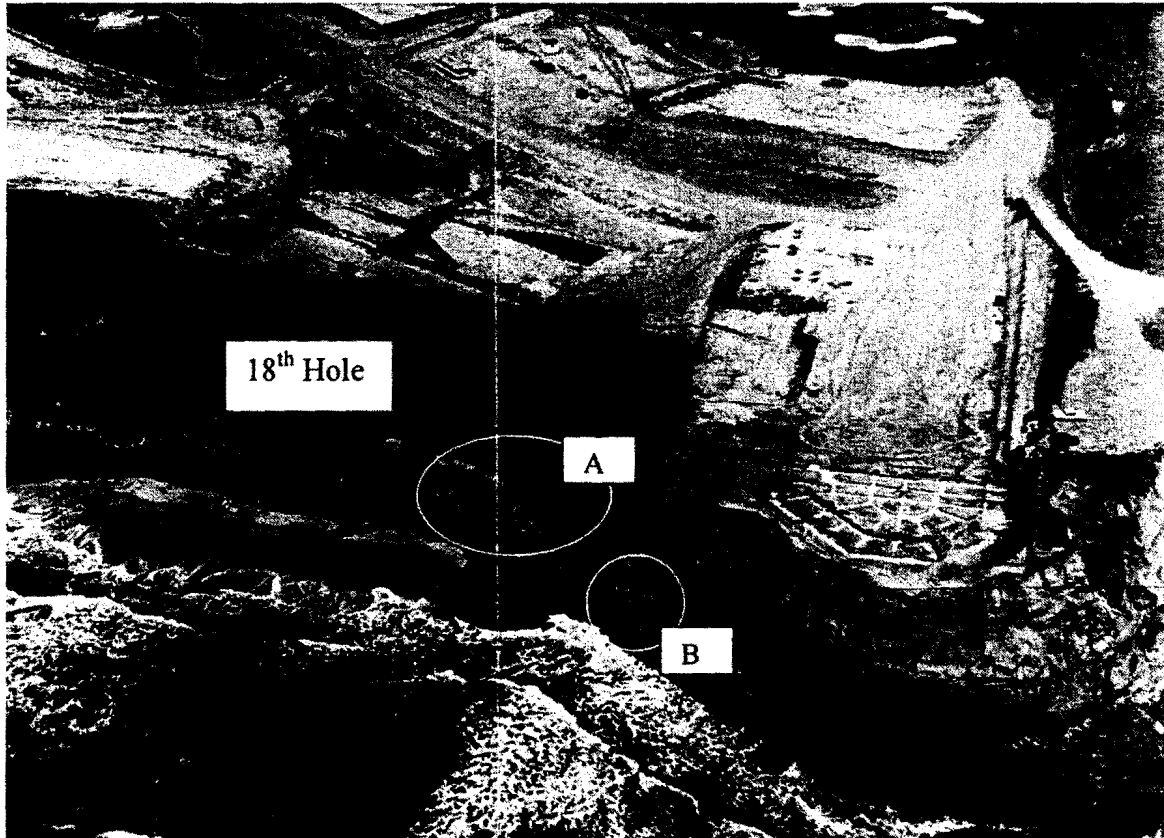


Exhibit 2. 1973 aerial photograph looking generally east towards the 18<sup>th</sup> Hole at Half Moon Bay Golf Links. The white oval labeled A by staff is drawn around the area where the edge of the concrete slab supporting the 18<sup>th</sup> Hole turf is visible as a thin gray line. The white circle labeled B by staff is drawn around the 12-foot high, 24-foot long concrete retaining wall at the base of the bluff, below the south end of the 18<sup>th</sup> Hole.

EXHIBIT NO.	2
APPLICATION NO.	CCC-02-CD/RO-02
Ocean Colony Partner	

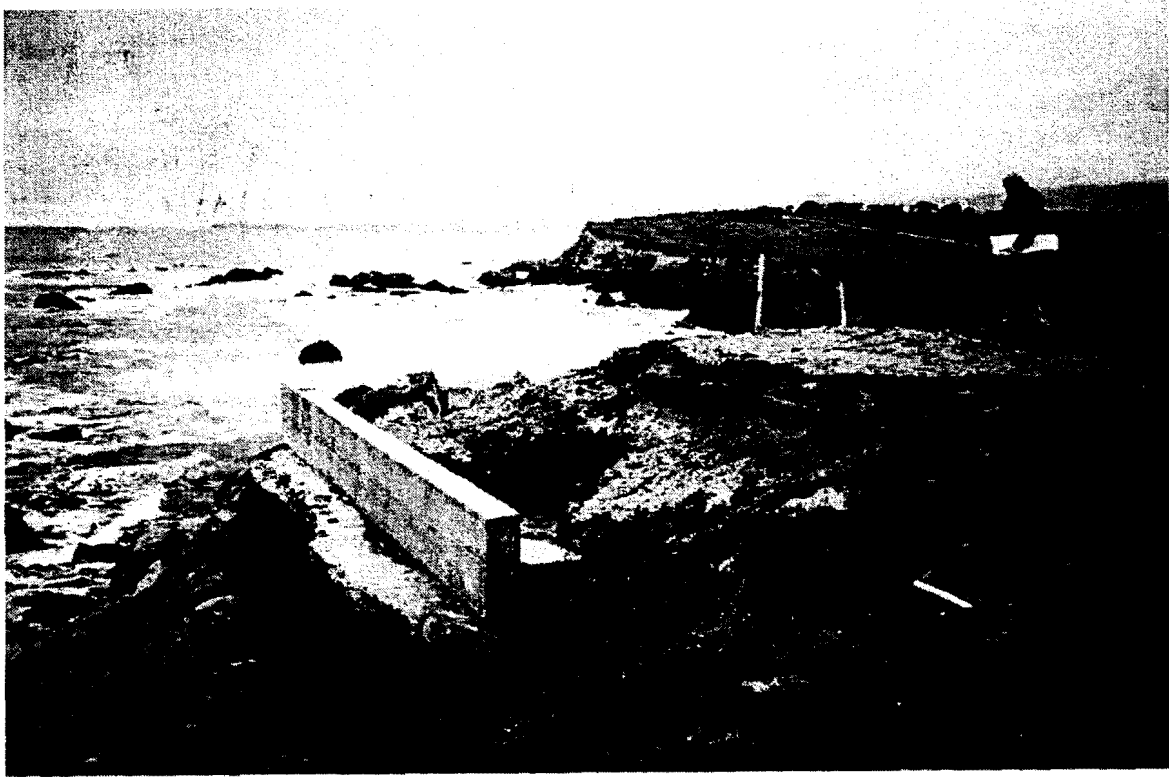


Exhibit 3. 1999 photograph of bluff edge at the southern end of the 18<sup>th</sup> Hole at Half Moon Bay Golf Links.

EXHIBIT NO. 3

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner



## CITY OF HALF MOON BAY

City Hall, 501 Main Street  
Half Moon Bay, CA 94019

September 10, 1998

Mr. Bill Barrett  
Ocean Colony Partners  
2002 Fairway Drive  
Half Moon Bay, CA 94019

Subject: Coastal Development Permits for the 18<sup>th</sup> Green and Tee  
Reconstruction

Dear Mr. Barrett:

The purpose of this letter is to follow up on the conversation about the Coastal Development Permit processing for the repair and maintenance of the 18<sup>th</sup> tee box and the 18<sup>th</sup> green of September 8, 1998.

A Coastal Development Permit (CDP-08-96) for repair of storm damage on the 18<sup>th</sup> green was processed on June 27, 1996. The Planning Department has determined that the current requested storm damage repair would not result in an addition to, or enlargement or expansion of, the green repair permitted in CDP-08-96, and is exempt from further coastal permitting.

Please submit the technical drawings to the Building Department for a determination of whether a grading permit will be required for this activity prior to commencement of the work.

Our records indicate that no coastal permitting has been processed for repair of the 18<sup>th</sup> tee box. A Coastal Development Permit will be required for this activity. Some part of the tee box repair may be performed below mean high water, an area that is an original jurisdiction of the Coastal Commission. We need to

EXHIBIT NO. 4

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner

Page 1 of 2

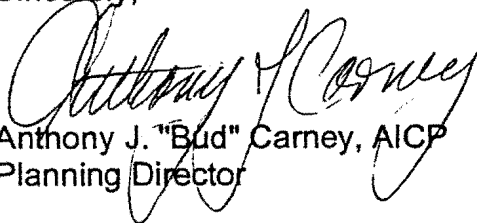


Mr. Bill Barrett  
September 10, 1998  
Page 2

schedule a meeting to determine whether the Coastal Development Permit will be processed by the Coastal Commission or the City of Half Moon Bay.

If you have any questions, please feel free to call.

Sincerely,



Anthony J. "Bud" Carney, AICP  
Planning Director

AJC/bas

Cc: Gary Whelan, Half Moon Bay Building Official

EXHIBIT NO. 4

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner

Page 2 of 2



Exhibit 5. 2002 aerial photograph looking generally east towards the 18<sup>th</sup> Hole at Half Moon Bay Golf Links. Note that riprap extends across sandy beach.

EXHIBIT NO. 5

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260



**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**

January 13, 1999

CERTIFIED and REGULAR MAIL

Pat Fitzgerald  
Ocean Colony Partners  
2002 Fairway Drive  
Half Moon Bay, CA 94019

**PROPERTY LOCATION: Ocean Colony Golf Course, 18<sup>th</sup> hole**  
**VIOLATION FILE NO. V-1-99-02**

Dear Mr. Fitzgerald:

We have received several reports of apparently unpermitted placement of rock in the vicinity of the 18<sup>th</sup> hole of the Ocean Colony Golf Course. On Thursday, January 7, 1999 Bill Smith of Half Moon Bay City Planning and I visited the site and confirmed that a large amount of rock had been placed on the beach and up the bluff north of the area covered in the previously issued City Coastal Development Permit (CDP) # 08-96. The placement of this material constitutes a development under the Coastal Act.

Development is defined under the Coastal Act (Section 30106) as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density of intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Ziberg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line,

**EXHIBIT NO. 6**

**APPLICATION NO.**  
**CCC-02-CD/RO-02**

**Ocean Colony Partner**

**Page 1 of 3**

and electrical power transmission and distribution line. (PRC sect. 30106).

The development site appears to be bisected by the boundary between the City's and the Coastal Commission's coastal development permit jurisdiction. The Commission's jurisdiction includes any tidelands or public trust lands at the base of the bluff. The City has jurisdiction over areas landward of the Commission's jurisdiction. This development requires Coastal Development Permits from the City of Half Moon Bay for the portion within its jurisdiction and from the Coastal Commission for the portion within our permanent jurisdiction.

**Please do not proceed with any additional unpermitted work, and immediately begin the process of completing Coastal Development Permit applications for the work already undertaken, and any future related work planned.**

Mr. Smith has informed me that you have presented plans for construction of a new vertical seawall in the area behind where the unpermitted rock has been placed. Your applications should address the entire scope of proposed work in this area. For example, if the unpermitted rock is intended as some sort of interim measure eventually to be replaced by a new vertical seawall, your applications should describe the phasing of the project, including where, when and how the vertical seawall will be built, how and when the unpermitted rock will be removed, and any restoration planned for the bluff or beach.

For your convenience, I have enclosed an application form for Commission-issued CDPs, as well as a description of the additional information required for shoreline development projects such as yours. The application for the City's CDP can be obtained from Mr. Smith at the Half Moon Bay Planning Department. Commission regulations require that local CDP approval be obtained and submitted before the Commission can file as complete its CDP application. To expedite your application process, Mr. Smith and this office will coordinate our reviews as much as possible.

Please note that pursuant to Coastal Act Section 30600, any development in the coastal zone requires a coastal development permit authorizing such development. Unauthorized development without a coastal development permit is a violation of the Coastal Act (PRC Sect. 30000 et.seq.).

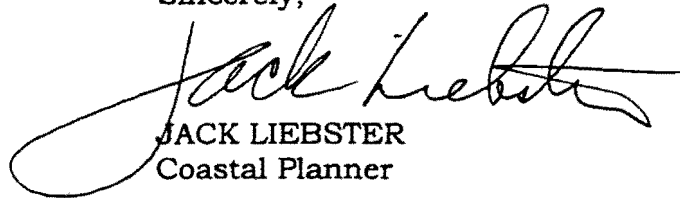
Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Section 30820(b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

EXHIBIT NO. 6
APPLICATION NO. CCC-02-CD/RO-02
Ocean Colony Partner
Page 2 of 3

Letter to Pat Fitzgerald  
January 13, 1999  
Page #

Please contact me at our North Coast Area Office, (415) 904-5267, to discuss the next steps in this matter.

Sincerely,



JACK LIEBSTER  
Coastal Planner

Enclosures.

cc: Nancy Cave, Statewide Enforcement Supervisor  
Bill Smith, Half Moon Bay City Planning  
Jon Van Coops, Mapping

H/Nor Co/Oc Col

EXHIBIT NO. 6

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner

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Ocean Colony Partners  
Limited Partnership

RECEIVED  
FEB 16 1999  
CALIFORNIA  
COASTAL COMMISSION

January 29, 1999

Mr. Jack Liebster  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105-2219

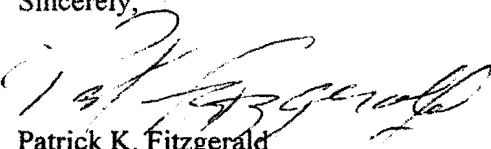
Dear Mr. Liebster:

This letter serves to follow up our conversation and your letter of January 13, 1999. As I stated to you it was our understanding that the City of Half Moon Bay had reviewed our plans and approved the work at our 18th green. Enclosed please find two letters to Bill Barrett from the City of Half Moon Bay. The first letter dated September 10, 1998 followed a discussion between Bill Barrett of Ocean Colony Partners and Anthony "Bud" Carney, the City's Planning Director regarding the work proposed at the 18th green. As described in the letter, he states that the proposed work "would not result in an addition to, or enlargement or expansion of, the green repair permitted in CDP-08-96, and is exempt from further coastal permitting." He also states that Ocean Colony Partners should submit drawings to the City to determine if a grading permit is required.

The second letter is from Gary Whelan, Chief Building Official with the City of Half Moon Bay to Bill Barrett regarding the grading permit application. It was determined that a grading permit for the work was not required.

I hope this correspondence aids in your review of the issue. To summarize, it was our understanding from Bill Barrett's discussion with the City and the letters enclosed that the work was authorized by the City and not in violation of any permit. Please let me know how you would like to move forward from this point.

Sincerely,

  
Patrick K. Fitzgerald  
Executive Vice President

Cc: Bill Barrett  
Bruce Russell

EXHIBIT NO.
APPLICATION NO. CCC-02-CD/RO-02
Ocean Colony Partner

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



17 February 2000

**SENT BY CERTIFIED MAIL**

No. P 121 002 852

Patrick K. Fitzgerald  
Executive Vice President  
Ocean Colony Partners  
2002 Fairway Drive  
Half Moon Bay, CA 94019

RE: Alleged violations on Ocean Colony Partners Property:

V-1-99-03, unpermitted rock revetment at 18<sup>th</sup> green of golf course at Ocean Colony

V-2-00-02, condition compliance with CDP 1-94-04 regarding access improvements at  
South Wavecrest

Dear Mr. Fitzgerald:

I am writing concerning several alleged Coastal Act violations on property owned by Ocean Colony Partners, as described below.

1. **Ocean Colony**. We understand that the City of Half Moon Bay issued a coastal permit or a coastal permit exemption to you for repair of an existing seawall on the bluff at the 18<sup>th</sup> green of the Ocean Colony golf course. We further understand that what was constructed included a rock revetment on the bluff face, not just on the bluff, and that this revetment is blocking public access to the beach. It is our conclusion that this rock revetment, as constructed, is sited within the Coastal Commission's area of original permit jurisdiction, and not within the City's coastal permit jurisdiction. Thus, we consider the rock revetment to be unpermitted development within the Coastal Commission's permit jurisdiction. As such, it constitutes a Coastal Act violation.

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Ocean Colony Partner

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Pursuant to the definition of "development" in section 30106 of the Coastal Act, development "means, on land, in or under water, the placement or erection of any solid material or structure;...grading, removing...or extraction of any materials; change in the density or intensity of the use of land,...change in the intensity or use of water, or of access thereto..." As such, the construction of a rock revetment constitutes development under the Coastal Act. Section 30600(a) requires that any person wishing to perform or undertake development in the coastal zone must obtain a coastal development permit, in addition to any other permit required by law. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act.

I am obligated to inform you that the Coastal Act contains many enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the executive director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the executive director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit from the commission, is inconsistent with the Coastal Act, and is causing continuing resource damage.

Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violations any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act section 30820(a)(2) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

The reported activity has the potential to result in significant resource damage as the rock revetment appears to block public beach access, and may have adverse impacts on visual resources. In addition, this rock revetment could potentially create a geologic hazard by causing or exacerbating erosion.

To resolve this violation on your property, you may follow one of two main courses of action. You may choose to apply for a permit to remove the unpermitted rock revetment, or you may choose to apply for an after-the-fact coastal development permit to authorize the unpermitted development. A permit application is enclosed.

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Ocean Colony Partner
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Should you seek approval to retain the unpermitted structure, please note that it is likely that the Commission would not approve a permit for a rock revetment that blocks public access. In addition, the Commission may only approve shoreline or bluff protective devices necessary to protect existing structures, and it does not appear that the unpermitted rock revetment is protecting a "structure" as such. Furthermore, it would have to be demonstrated to the Commission that this protective device is the least environmentally damaging alternative.

Please indicate in writing which course of action you wish to pursue. Please respond by March 1, 2000. Please submit by March 10, 2000 a complete permit application either for after-the-fact authorization for retention of the rock revetment, or for removal of the structure. Your failure to comply with either of these provisions will force us to elevate this case to our Statewide Enforcement Unit for appropriate enforcement action.

In addition, please submit a copy of the City's coastal permit or permit exemption for repair of the existing seawall, and copies of any other local permits you may have authorizing construction of the rock revetment near the 18<sup>th</sup> green.

2. **South Wavecrest.** Coastal Permit No. 1-94-04 for development of an 18-hole public golf course included in its project description a number of public access improvements, plus a special condition requiring submittal of a final public access plan showing the designs, locations, and construction schedule for the various proposed access improvements. The relevant portion of the approved project description reads as follows:

- (11) *Constructing public access improvements (including a 15-car public parking lot off Miramontes Point Road, two portable toilets permanently located near the parking lot, vertical trails between the parking lot and the bluff, and a lateral blufftop trail with three scenic overlooks and a connecting stairway to beach).* (Emphasis added)

Special Condition No. 3 of the Coastal Permit requires project conformance with "the various proposed access improvements as described by the applicant (section IV.B. of the December 2, 1994 staff report) in the proposed Public Access Component's items 1 through 3." This Public Access Component was proposed by the applicant and approved by the Coastal Commission. Item 1.c describes (on pages 9 and 10 of the 12/94 staff report) "three blufftop observation areas connected to the lateral blufftop trail located along the north and south portions of the trail and at the site of the vertical accessway to the beach." Item 3 states that "all access improvements will be constructed concurrent with project completion and opening."

The golf course and trails have been open for at least two years now. However, it has been reported to us that some of the required access improvements have not been completed. The lateral blufftop trail has been constructed, but apparently only one of the three required scenic overlooks has been completed—the one at the top of the stairs. The scenic overlooks with viewing platforms that were to be constructed at the north and south ends of the trail have not yet been constructed. This is inconsistent with the approved Public Access Plan, with Special

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PATRICK FITZGERALD

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Condition No. 3 of the coastal permit, and with the project description proposed by the applicant and approved by the Commission, constituting a Coastal Act violation.

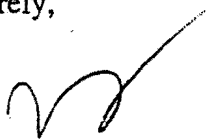
In addition, there is no signage for the public parking lot, or to indicate where the public restrooms are located, or for the access trail so that the public will know that they can use the trail.

To resolve this violation, you must complete the required coastal access improvements immediately. If these improvements are not constructed by April 1, 2000, we will elevate this case to our Statewide Enforcement Unit for appropriate enforcement action.

Furthermore, in the plans approved by the Commission (Exhibit No. 5 of CDP 1-94-04), the access stairway is shown to be wooden, while the actual stairway that was constructed is concrete. In addition, there is some unpermitted rip-rap at the base of the stairs that was not shown on the approved plans. I understand that there is a coastal permit amendment currently pending to address some additional unpermitted development at this site, including unpermitted landscaping, construction of an unpermitted restroom in the middle of the golf course, and unpermitted grading in association with the golf maintenance facility. To resolve the violation created by the placement of unpermitted rip-rap, and the construction of a concrete rather than wooden stairway, you could revise the project description of your pending amendment request to include a wooden stairway rather than concrete stairs, and to include rip-rap at the base of the stairs (if not already included). However, please be aware that the Coastal Commission may not approve these proposed changes, and, if that is the case, any existing unpermitted development would need to be removed.

If you have any questions, please don't hesitate to call. Thank you for your cooperation.

Sincerely,



JO GINSBERG  
Enforcement Analyst

Enclosure: Coastal Permit Application

cc: Nancy Cave  
Chris Kern  
Bill Ambrosi Smith

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CCC-02-CD/RO-02

Ocean Colony Partner

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## CITY OF HALF MOON BAY

City Hall, 501 Main Street  
Half Moon Bay, CA 94019

CERTIFIED MAIL

February 24, 2000

Mr. Pat Fitzgerald  
Ocean Colony Partners  
2002 Fairway Drive  
Half Moon Bay, CA 94019

Subject: Notice of Required Correction of an LCP/Zoning Violation - Rip Rap  
on 18<sup>th</sup> Green of the Original Golf Course at Ocean Colony

Dear Mr. Fitzgerald,

The purpose of this letter is to inform you that the existing rip rap placed on the 18<sup>th</sup> green during the winter of 1998/1999 was not placed pursuant to a valid Coastal Development Permit and to direct OCP to submit a retroactive Coastal Development Permit application for the work.

The history of permit activities on the 18<sup>th</sup> green is as follows. In 1996 the original support structure of the green failed and a Coastal Development Permit (CDP-08-96) was processed. The permit authorized a matrix of retaining wall and tiebacks that were intended to support the green. It appears that at this time the location of the green was also slightly modified. In the winter of 1998/1999, the structure that was approved in 1996 also failed. Ocean Colony Partners requested and received a repair and maintenance exemption under Chapter 18.20.030.C.2.a. of the Zoning Code (Coastal Development Permit Implementation Ordinance):

"repair and maintenance necessary for on-going operations of an existing facility which does not expand the footprint, floor area, height, or bulk of an existing facility, and the minor modification of existing structures required by governmental safety and environmental regulations, where necessary to preserve existing structures which does not expand the footprint, floor area, height, or bulk of an existing structure."

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Mr. Pat Fitzgerald  
February 24, 2000  
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The plans submitted to support this repair and maintenance exemption were substantially the same as those submitted in 1996. Analysis of the differences and similarities of the two plans suggested that no new material would be required to complete the repair.

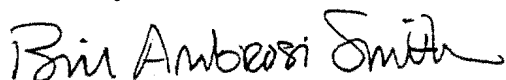
Subsequent to issuance of the repair and maintenance exemption, it became clear that the work that was performed was not in compliance with the plans submitted. In fact, it appeared that a temporary road had been constructed in the riparian corridor in the middle of the 18<sup>th</sup> fairway to provide access to the beach and that rock had been placed from the beach as well as from above. As a consequence, there was impact to the beach from the construction. In addition, the rip-rap extended considerably further seaward than the plan showed. This modification has resulted in a limitation on lateral beach access.

Please be advised that any development undertaken without first obtaining a Coastal Development Permit for said development constitutes a violation of Section 18.20.025 of the Half Moon Bay Municipal Code. In order to begin the process of correction of this violation, you must apply for a retroactive Coastal Development Permit within 30 days of the receipt of this letter. Please be aware that the issuance of this permit is dependent on a finding that the project is consistent with the Half Moon Bay Certified Local Coastal Program. Significant redesign of the project may be required in order for the project to comply with the Policies of the LCP. You should especially review the Policies of Chapters 2, 3, 4, and 7 in this regard.

The City of Half Moon Bay has received a copy of the letter sent to Ocean Colony Partners from the Coastal Commission Enforcement Division on February 17, 2000, regarding two issues, one of which is the rip rap placed on the 18<sup>th</sup> green. Since it appears that there is joint jurisdiction between the City and the Coastal Commission, we believe that it would be beneficial to have a meeting in the near future to resolve these inter-jurisdictional matters in order to facilitate your submission of a Coastal Development Permit application within the required 30 days. A site plan showing the exact work that was performed will be necessary for this meeting.

If you have any questions, please feel free to call me at (650) 726-8251.

Sincerely,



Bill Ambrosi Smith  
Senior Planner

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APPLICATION NO.	CCC-02-CD/RO-02
Ocean Colony Partner	
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**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
X (415) 904-5400



2 February 2001

Bill Barrett, President  
Patrick K. Fitzgerald,  
Executive Vice President  
Ocean Colony Partners  
2002 Fairway Drive  
Half Moon Bay, CA 94019

RE: Alleged Coastal Act violations on Ocean Colony Partners Property:  
V-1-99-03, unpermitted rock revetment at 18<sup>th</sup> green of golf course at Ocean Colony  
V-2-00-02, condition compliance with CDP 1-94-04 and CDP 1-95-47 regarding access  
improvements at South Wavecrest

Dear Mr. Barrett and Mr. Fitzgerald:

I am writing in response to your most recent letters (one dated 12/29/00, one undated) concerning the above-referenced alleged Coastal Act violations on property owned by Ocean Colony Partners (OCP), including unpermitted riprap at the 18<sup>th</sup> green of the Ocean Colony golf course and lack of conformance with terms and conditions of Coastal Permit No. 1-94-04 for development at South Wavecrest.

1. **Jurisdiction:** In our letter of 6 April 2000, we requested that OCP submit to the Commission a site plan showing the topography of the subject site prior to the 1998/99 installation of the riprap, so that our cartography staff could do a precise boundary determination, delineating the exact location of the Commission's area of original permit jurisdiction. You did not provide us with this information, without which it is not possible for our staff to do a precise boundary determination, since the unpermitted placement of riprap altered the natural topography and altered the landfall of the mean high tide line. Since we do not have the necessary requested information, our mapping staff has concluded that the Commission's area of original permit jurisdiction is the beach, and the City's permit jurisdiction is the blufftop and bluff face.

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In your recent letter, you disagree with this Commission staff assertion, and indicate that you believe only a small portion of the riprap lies within the Commission's area of original permit jurisdiction, as you believe that the current mean high tide line establishes the limits of the Commission's original permit jurisdiction, and that the mean high tide line is located approximately two feet above sea level in the vicinity of the 18<sup>th</sup> green. You also assert that the vast majority of the riprap is landward of this mean high tide line and "was the subject of the City's 1996 coastal development permit or the 1998 exemption determination." In other words, OCP believes that most of the riprap was previously approved by the City, and that only a small portion of it is unpermitted development within the Coastal Commission's area of original jurisdiction.

However, the City of Half Moon Bay has already determined that the riprap placed by OCP near the 18<sup>th</sup> green within the City's jurisdiction was NOT previously approved by the City's 1996 coastal permit or 1998 permit exemption determination, contrary to OCP's assertion (see attached letter from Bill Smith). I have also confirmed with Ken Curtis, the City's Planning Director, that this is still the City's position. It is our understanding that the City approved some kind of revetment on the bluff, but never approved riprap down the bluff face or on the beach. Thus, the as-built riprap within City jurisdiction is a violation of the City's certified LCP and requires a coastal development permit from the City for removal or retention, just as the portion of the riprap within the Coastal Commission's permit jurisdiction is a Coastal Act violation and requires a coastal permit from the Commission for removal or retention.

Since the City is in agreement with the Commission staff concerning the need for coastal permits from both the City and the Commission for removal or retention of the unpermitted riprap, we do not feel that it is crucial to determine the exact boundary between the City's and the Commission's permit jurisdiction. The City concurs with Coastal Commission staff that for purposes of coastal permitting, we will consider the portion of the unpermitted riprap located on the beach to be within the Commission's coastal permit jurisdiction, and the portion of the unpermitted riprap placed on the blufftop and bluff face to be within the City's coastal permit jurisdiction, and that since a coastal development permit is necessary from both the City and the Commission, that determining the exact boundary is not necessary.

2. **Alleged Coastal Act and LCP Violations:** Pursuant to Coastal Act Section 30810(a)(1), the City of Half Moon Bay has requested that the Coastal Commission take the lead on the above-referenced alleged Coastal Act and LCP violation, which is located on lands situated within the coastal permit jurisdictions of both the City of Half Moon Bay and the Coastal Commission. The Commission, thus, now has primary responsibility for pursuing appropriate enforcement of the alleged violation in both jurisdictions.

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As we have previously indicated, you may follow one of two main courses of action to resolve this violation. You may choose to apply for a permit to remove the unpermitted riprap, or you may choose to apply for an after-the-fact coastal development permit to authorize the unpermitted development. Since we are taking the lead on enforcement for the violation, we are requesting that you submit to the City by March 15, 2001 a complete coastal permit application for removal or retention of the portion of the riprap within City permit jurisdiction (blufftop and bluff face). Please send us a copy of this application. Please note that any approval by the City would be appealable to the Coastal Commission.

We are further requesting that a complete coastal permit application be submitted to the Commission for the portion of the riprap within the Commission's permit jurisdiction (beach) within 60 days of permit action by the City. As we have previously mentioned, should you seek approval to retain the unpermitted riprap, it is likely that the Commission would not approve a permit for any development that blocks public access.

If OCP does not submit these applications within the deadlines as requested, Commission staff is prepared to seek a cease and desist order from the Commission ordering OCP to obtain compliance with our mutual permit requirements.

3. **South Wavecrest:** In your correspondence of 28 April 2000, you indicated that you had been unable to find a copy of the court decision in the Sierra Club lawsuit concerning whether a coastal permit was necessary for construction of the original golf course and hotel. You stated that you would send us a copy as soon as you found it within your archives. We have still not received this material. Please send us this material as soon as possible.

Concerning the overlooks at South Wavecrest, please let us know when the northern overlook has been completed, and when the benches for the southern overlook have been replaced.

Concerning signage at South Wavecrest, in your letter of 19 May 2000 you indicate that you believe the access signage in place at South Wavecrest is "consistent with or exceeds the requirements" of your permit. We have discussed your position with North Central permit staff and Commission staff does not agree and believes additional signage is necessary. In your letter of 29 December 2000, you indicate that there are two brown coastal access signs on Highway One, which adequately meets the requirements of Coastal Permit No. 1-94-04 for signage visible from Highway One denoting public access. However, there is still the matter of signage denoting public parking, and signage on the trail itself denoting public access.

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APPLICATION NO.  
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Ocean Colony Partn

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Special Condition No. 3 of CDP 1-94-04 requires the submittal of a final access plan depicting various access improvements described in Section IV.B of the December 2, 1994 staff report for 1-94-04. This section describes the public access component of the project, and provides for, among other things, **"signs located along Highway 1 and all public accessways identifying access routes and public parking, as provided in condition 4 of the City's vesting parcel map approval."**(Subsection 1(g)) (Emphasis added.) Condition 4(a) of the City's vesting parcel map approval requires that **"all vertical and lateral public accessways shall have clearly posted signs specifying the public's right to use these areas,"** and Condition 4(b) requires that **"signs visible from Highway 1 shall be provided identifying the access routes and public parking."** (Emphasis added.) Further, the Comprehensive Public Access Plan submitted by OCP in compliance with Special Condition No. 3 of CDP 1-94-04 depicts signage on Highway One with a notation that states **"Directional signage located on Highway 1 near site denotes public coastal access and public parking."** (Emphasis added.)

In addition, Coastal Permit No. 1-95-47-E3 (formerly CDP 3-91-71) for what is now the Ritz-Carlton Hotel Resort contains a special condition concerning public access. Special Condition No. 2(h) of CDP 1-95-47 concerns signage for public access, and requires that **"Access routes, public parking, Miramontes Pt. overlook, and public restrooms shall be clearly marked for public use."** (Emphasis added.)

It is thus our conclusion that Coastal Permit No. 1-94-04 for the golf course and Coastal Permit 1-95-47 for the hotel require signs denoting public parking. As far as I can tell, the public access signs on Highway One do not denote public parking, and there is no sign *in* the parking lot itself designating that the lot is for public use. Furthermore, it is our conclusion that CDP 1-94-04 requires clearly posted signs *on* the public accessways (trails) specifying public access. As far as I can tell, the beach access signs along the trail do not indicate that the trail is for public use as well as for use by golf carts.

We thus request that to comply with the requirements of CDP No. 1-94-04 and CDP No. 1-95-47, OCP shall do the following:

- a. Post additional signage on Highway One indicating that there is public parking;
- b. Post additional signage in the parking lot itself indicating that the lot is for public use;  
and
- c. Post additional signage along the lateral trail itself indicating that the trail is for public use.

Please indicate in writing when such signage will be erected. We expect the signage to be in place no later than March 15, 2001.

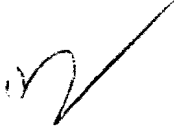
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Ocean Colony Partner
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MR. BARRETT  
MR. FITZGERALD  
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If you have any questions, please don't hesitate to call. Thank you.

Sincerely,



JO GINSBERG  
Enforcement Analyst

Enclosure

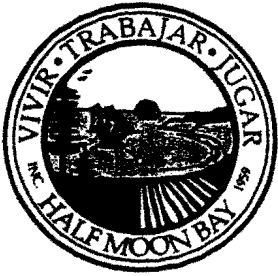
cc: Ken Curtis  
Chris Kern  
Nancy Cave  
Linda Locklin  
Virginia Esperanza

EXHIBIT NO. 10

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner

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## CITY OF HALF MOON BAY

City Hall, 501 Main Street  
Half Moon Bay, CA 94019

July 23, 2001

Pat Fitzgerald  
Ocean Colony Partners  
330 Purissima Street  
Half Moon Bay CA 94019

**Subject: PDP-38-01 – Placement of Riprap at the 18<sup>th</sup> Green**

Dear Mr. Fitzgerald:

The purpose of this letter is to remind you that the City has still not received information required to process your Coastal Development Permit application for the retention and/or removal of riprap at the 18<sup>th</sup> green. Attached is a copy of the letter dated April 5, 2001 that list the material necessary to complete the application.

Given the history of the project, you must pursue the Coastal Development Permit application with all due diligence. If the required materials are not received by September 14, 2001, the matter will be scheduled for the Planning Commission as an incomplete application. If you have any questions or would like to discuss this matter, please contact me at (650) 726-8251, or come by City Hall at 501 Main Street.

Sincerely,

Michael Martin  
Associate Planner

cc: Jo Ginsberg  
California Coastal Commission  
43 Fremont St., STE 2000  
San Francisco, CA. 94105

EXHIBIT NO. 17
APPLICATION NO. CCC-02-CD/RO-02
Ocean Colony Partner

## CALIFORNIA COASTAL COMMISSION

400 MONTELEONE, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



11 March 2002

Patrick K. Fitzgerald  
Executive Vice President  
Ocean Colony Partners  
2002 Fairway Drive  
Half Moon Bay, CA 94019

RE: Alleged Coastal Act Violation No. V-1-99-03, unpermitted rock revetment below the 18<sup>th</sup> hole at Half Moon Bay Golf Links

Dear Mr. Fitzgerald:

I am writing to you regarding the above-referenced alleged Coastal Act violation. I would like to change the direction we previously have given to you with respect to desired resolution of this case. You have submitted an incomplete coastal development permit (CDP) application to the City of Half Moon Bay for retention of the portion of the unpermitted rock revetment located in the City's coastal permit jurisdiction. Our understanding is that you wish to modify the existing revetment and install a vertical seawall, which will require extensive environmental review by the City. Should the City approve a coastal permit for a seawall or retaining wall at this site, it would be appealable to the Coastal Commission.

As you know, part of the existing unpermitted revetment is located in the Coastal Commission's area of original jurisdiction and is subject to Coastal Commission coastal permitting authority. As we have previously discussed, it is unlikely that Commission staff would ever support approval of any shoreline armoring at this site, including a request to retain the existing unpermitted revetment.

We had directed that within 60 days of final coastal permit action by the City for the portion of the unpermitted riprap in City coastal permit jurisdiction, you submit a coastal permit application to the Coastal Commission for retention or removal of the portion of the unpermitted riprap on the beach, which is within the Coastal Commission's area of original jurisdiction. Since we gave you this direction, you have decided to change the nature of your pending permit request to

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Ocean Colony Partner

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PAT FITZGERALD

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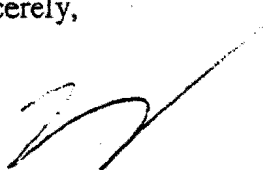
include consideration of a wholly different shoreline armoring project from the existing unpermitted rock revetment. City consideration of this new design will take substantially more time than we envisioned when we directed you to submit a CDP application for Commission review within 60 days of City action on your permit request. Therefore, since Commission staff is unlikely to ever support approval of a coastal development permit for retention of the existing rock revetment, we now recommend that you submit a CDP application to the Commission, proposing removal of the riprap located within the Commission's permit jurisdiction.

Commission staff requests that you expedite resolution of this matter by applying directly to the Coastal Commission at this time for any portion of the proposed unpermitted development that is located seaward of the mean high tide line.

We are thus requesting that you submit to the Commission within 30 days of the date of this letter a coastal permit application for retention or removal of the portion of the riprap on the beach, within the Coastal Commission's area of original permit jurisdiction. I am enclosing a coastal development permit application for you to fill out and return by April 11, 2002. If you have any questions concerning this application, you may contact Peter Imhof at (415) 904-5268. If you have questions about the alleged violation, please contact me at (415) 904-5269.

Thank you.

Sincerely,



JO GINSBERG,  
Enforcement Analyst

Enclosure: Coastal Development Permit Application

cc: Chris Kern  
Peter Imhof  
Ken Curtis

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Ocean Colony Partner	
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## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

WAIVER OF LEGAL ARGUMENT

Coastal Commission staff determined that unpermitted development had been undertaken below the 18<sup>th</sup> hole at Half Moon Bay Golf Links in Half Moon Bay, San Mateo County. The unpermitted development is described as the placement of a rock revetment on the beach. Commission staff notified Ocean Colony Partners ("OCP") of the unpermitted status of this activity by letter dated January 13, 1999.

Commission staff has informed OCP that they would prefer to resolve this matter administratively, but may have to pursue resolution through a court of law should OCP fail to agree on an administrative resolution to the alleged violation.

OCP has stated that OCP does not want the Commission to institute enforcement litigation to resolve this alleged Coastal Act violation pending the conduct of settlement negotiations with Commission staff. Accordingly, OCP hereby waives its right to rely upon any time subsequent to the date of OCP's execution of this document, as noted below, up to the date of OCP's termination of this waiver as a basis for any argument or defense in a court of law, including, but not limited to: (1) any applicable statute of limitation; (2) laches; and/or (3) estoppel.

In exchange for OCP's agreement to such a waiver, OCP understands that the Commission staff will not submit this Coastal Act violation file to the Office of the Attorney General for appropriate legal action until, at minimum, the earlier to occur of the following events: (1) the expiration of 30 days written notice to the other party by either the signatory hereto or the Commission staff of an intent to terminate this waiver; or (2) the date of final Commission disposition of any application OCP may submit for a coastal development permit or amendment thereto (or OCP's withdrawal of that application, if OCP so chooses) pursuant to agreement arising out of the aforementioned settlement negotiations.

Ocean Colony Partners  
Property Owner

[Signature]  
Signature

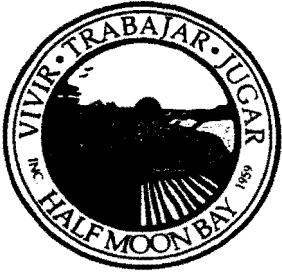
MARK K. FITZGERALD

12/21/01  
Date

EXHIBIT NO. 13

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner



## CITY OF HALF MOON BAY

City Hall, 501 Main Street  
Half Moon Bay, CA 94019

May 22, 2002

Ms. Jo Ginsberg  
Enforcement Manager  
Statewide Enforcement Program  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Dear Ms. Ginsberg:

This letter is being sent pursuant to Government Section 30810(a) (1), to authorize the California Coastal Commission to act on behalf of the City of Half Moon Bay with respect to the violation of the Coastal Act regarding the placement of rip-rap granite below the 18<sup>th</sup> green of the Ocean Colony golf course properties during the winter of 1998/1999. The placement of such rip-rap was not pursuant to a valid Coastal Development Permit.

It is hoped that the enforcement proceedings of the Coastal Commission may prompt the property owner or his representative to correct this violation.

The City hereby requests the Coastal Commission to act on behalf of the City pursuant to section 30810(a) (1) regarding the violation of the Coastal Act at the 18<sup>th</sup> green of the Ocean Colony properties.

The Half Moon Bay City Council would like to be kept informed of these proceedings. Thank you for your assistance in this matter.

Sincerely,

Peter A. Cosentini  
City Manager

cc: City Council  
Ken Curtis  
Adam Lindgren

EXHIBIT NO. 14

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partner

## CALIFORNIA COASTAL COMMISSION

450 MARINER, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



June 20, 2002

**VIA FACSIMILE AND CERTIFIED MAIL**

Patrick Fitzgerald  
Ocean Colony Partners, L.P.  
2450 South Cabrillo Highway, Suite 200  
Half Moon Bay, CA 94019

**RE: CDP 2-02-014, Half Moon Bay Golf Links Revetment and Seawall**

Dear Mr. Fitzgerald:

Thank you for your coastal development permit application, received May 28, 2002, for removal of 67 percent of the existing, unpermitted rock revetment below the eighteenth hole at Half Moon Bay Golf Links and construction of a sculptured architectural shotcrete seawall at the same location. The application for removal of a portion of the revetment is intended to resolve in part outstanding, alleged Coastal Act Violation No. V-1-99-03, involving the unpermitted rock revetment. We are unable to process the application because (a) the application form and the application cover letter are inconsistent with each other and the application form includes development which you assert in your application cover letter is not in our permit jurisdiction; (b) the application cover letter purports to impose certain conditions to which the Commission, by acceptance of the application, would be deemed to have agreed; and (c) the permit application is in any case incomplete and cannot be filed in accordance with 14 CCR Section 13056.

**Permit Jurisdiction**

Preliminarily, as noted in enforcement analyst Jo Ginsberg's May 3, 2002 letter to you, the Coastal Commission cannot process a coastal permit for a project or portion of a project not within the Commission's area of original permit jurisdiction. Ms. Ginsberg's May 3, 2002 letter indicated that the Commission could process a permit application for either or both the proposed shotcrete wall and the unpermitted revetment to the extent you could demonstrate that either or both of these project components are essentially located within tidelands and thus within the Commission's area of original jurisdiction by showing that the upper portions of either or both of these project components are resting upon a base which is located within State tidelands.

The coastal development permit application form you submitted describes the proposed project as a proposal "to remove rip rap and construct a shotcrete soil nail wall along the bluff at the 18<sup>th</sup> hole of the old course at Half Moon Bay Golf Links - See letter of the May 27, 2002 [sic] to Ms.

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APPLICATION NO.  
CCC-02-CD/R0-02

Ocean Colony Partners

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Ginsberg." However, your May 28, 2002 permit application cover letter to Jo Ginsberg contests Commission permit jurisdiction over the proposed shotcrete wall because it states, "We also provided an exhibit indicating . . . the mean high tide line and the location of the our proposed new work indicating that this new work was above the mean high tide line." Information submitted with your application, in particular, Drawing 1, labeled "Ocean Colony 18<sup>th</sup> Green Erosion Control Rock Rip-Rap Removal Exhibit," prepared by Brian Kangas Foulk, dated August 8, 2001, shows the footprint of the proposed sculptured architectural shotcrete seawall to lie entirely landward of the depicted 1997 mean high tide line ("MHTL").

Your May 28, 2002 cover letter to Jo Ginsberg also contests the Commission's jurisdiction over portions of the unpermitted revetment. It states, "[T]his application, insofar as acknowledging the Commission's original jurisdiction in any respect, applies only to the removal of the rip rap below the mean high tide line as determined and located by our engineers." However, the above-identified drawing shows that the existing, unpermitted revetment extends below the depicted 1997 MHTL and that upper portions of the revetment rest upon lower portions within the tidal zone.

Thus, you have submitted an application form for construction of a shotcrete wall and removal of rip rap but at the same time your application cover letter asserts that the Commission lacks jurisdiction over the former and some of the latter. Further, not only does your application cover letter contest the Commission's jurisdiction, it is conditioned upon the Commission's acceptance of your assertion regarding the Commission's jurisdiction. As a result, we are unable to process your permit application as submitted and return it to you enclosed herewith. A refund check for the amount of your application fee is being processed and will be sent under separate cover. We do not concede that the boundary of the Commission's permit jurisdiction is the location of the depicted 1997 MHTL. You have not provided us with sufficient information to evaluate your assertion of the location of the MHTL and the proposed shotcrete wall's location in relation to the MHTL. In order to determine the location of the boundary, we require at a minimum, survey sheets and data used to derive the 1997 MHTL as well as similar information for the current MHTL at the site. Once your application evidences the most landward extent of the MHTL at the site at any time during the year, you are free to apply to the Commission for the portion of the proposed shotcrete wall that is seaward of the most landward extent of such MHTL.

Note that since removal of the unpermitted revetment can be completed separately from the construction of any proposed shotcrete wall at the site, it is more appropriate to address these two projects separately. Note also that although you are free to reserve your legal rights when you submit a coastal development permit application, the Commission staff cannot agree to be bound with respect to factual or legal questions that will be before the Commission in its consideration of a permit application.

#### **Additional Required Information**

In any case, your coastal development permit application for the referenced project remains incomplete and cannot be filed in accordance with the Commission's regulations (14 CCR §

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Ocean Colony Partner	
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June 20, 2002

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13056). Certain additional information, listed below, is required under Sections 13053.4 and 13054 of the Commission's regulations and is necessary to analyze the application for consistency with the Coastal Act:

1. Project Description: A detailed description of the proposed project is required, including (1) the amount (approximate total volume and weight) of rock to be removed, (2) the proposed method of removal, (3) proposed means of beach access for construction personnel and equipment, (4) total amount and location of any fill placement or grading in connection with any proposed, temporary beach access ramp or other project component, (5) total amount and location of material to be used in construction of the proposed shotcrete seawall, (6) proposed method of construction of the proposed shotcrete seawall, (7) method of site restoration and, if applicable, removal of temporary access ramp and (8) ultimate disposal plans for rock removed.
2. Project Plans: Detailed project plans, certified by a licensed engineer, are required for all aspects of the project, showing (1) proposed beach access for construction equipment, (2) exact present location in plan view and cross-section of the rock to be removed in relation to the beach and MHTL and (3) equipment and materials staging areas. For all plans, please submit both full-size plans and reduced (8.5" x 11") copies.
3. Revetment Survey Information: All data recording sheets for surveys upon which plans for location of existing rock revetment are based, including surveys upon which depictions of the MHTL are based.
4. Ownership and Occupancy Within 100 Feet of Property Boundaries: Please provide a list of the names and addresses of all owners and occupants of all properties within 100 feet of the subject parcel together with stamped envelopes for each such property owner and occupant. Please provide Assessor's parcel map(s) showing the subject property and all other properties within 100 feet of the property lines of the project site.
5. Geotechnical Study: A geotechnical study of the proposed shotcrete seawall by a licensed civil engineer or engineering geologist evaluating the stability of the bluff and historical erosion at this location, the adequacy of the proposed seawall to insure stability of the bluff, and the effects of the proposed seawall on local sand supply and the adjacent bluff.
6. Construction Erosion Control Plan: Please provide a description of all best management practices (BMPs) proposed to be in place prior to and during revetment removal. Please show the locations of the erosion control measures on full-size and reduced (8.5" x 11") site plans.
7. Previously Existing Structures: A description of the site conditions and any shoreline protection devices or structures which existed on the site prior to construction of the existing revetment, the date(s) when such structure(s) were built and any evidence you have of such site conditions and pre-existing structure(s).

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June 20, 2002

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8. Other Permits: Copies of any permits received for any portion of the existing rock revetment or any previously existing shoreline protection structures on the site.

In addition to the foregoing information, we may identify additional required information pending determination of the MHTL and review of any resubmitted permit application. Please contact me at (415) 904-5268 if you have any questions.

Sincerely,



Peter T. Imhof  
Coastal Planner  
North Central Coast District

enclosure

cc: Ms. Jo Ginsberg (w/o enclosure)  
Enforcement Analyst

Mr. Ken Curtis (w/o enclosure)  
Director, Half Moon Bay Planning Department

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CCC-02-CD/RO-02

Ocean Colony Partner

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**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**VIA FAX TO (650) 726-5831  
and REGULAR AND CERTIFIED MAIL  
No. 7001 2510 0008 1925 4506**

20 June 2002

Patrick K. Fitzgerald  
Executive Vice President  
Ocean Colony Partners, L.P.  
2450 South Cabrillo Highway, Suite B  
Half Moon Bay, CA 94019

**RE: Notice of Intent to commence Restoration and Cease and Desist Order proceedings;  
Coastal Act Violation File No. V-1-99-03  
Property Owner: Ocean Colony Partners, L.P.  
Property Address: 2450 South Cabrillo Highway, Half Moon Bay, San Mateo  
County, APN 066-092-720**

Dear Mr. Fitzgerald:

In my capacity as Executive Director of the California Coastal Commission ("Commission"), I am hereby notifying Ocean Colony Partners ("OCP") of our intent to commence a Commission Cease and Desist and Restoration Order proceeding to address unpermitted development on OCP's above-referenced property. Pursuant to this action, a hearing before the Commission will be scheduled for the purpose of determining whether to issue a Cease and Desist Order and Restoration Order directing OCP to cease and desist from maintaining the unpermitted development on its property and to restore the site.

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Ocean Colony Partner

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Commission staff has determined that OCP has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit in violation of Section 30600 of the California Coastal Act. This development consists of the construction of an unpermitted rock revetment located on the blufftop, bluff face, and on the beach below the 18<sup>th</sup> hole at Half Moon Bay Golf Links. The rock revetment was placed in 1998/99. This construction was not authorized by a Coastal Development Permit ("CDP").

The unpermitted revetment is causing continuing resource damage, as defined in Section 13190 of the California Code of Regulations, by adversely affecting public access, marine and other aquatic resources, and the visual quality of the coastal area in which it is located, and is inconsistent with the Coastal Act.

### **History of the Violation Investigation**

The Commission staff first learned of the alleged violation on OCP's property in early 1999, and since that time has attempted to resolve this matter with OCP administratively before commencing a formal enforcement proceeding.

At a meeting sometime between September of 1994 and April of 1996, Coastal Commission staff informed you that a coastal permit would be necessary for any bluff stabilization or shoreline protective device, and also informed you that Coastal Act Section 30233 limits the types of development that can even be considered for fill in coastal waters.

In letters dated January 13, 1999, February 17, 2000, April 6, 2000, November 9, 2000, February 2, 2001, March 30, 2001, September 13, 2001, March 11, 2002, and May 3, 2002, and at meetings on March 31, 2000 and April 3, 2002, Commission staff informed you that the placement of the rock revetment requires a CDP, and that OCP's failure to obtain a CDP prior to construction activities constitutes a violation of the Coastal Act. In these letters, staff also pointed out that the Coastal Act grants a right to construct shoreline or bluff protective devices only where such devices are necessary to protect existing structures, and where there is no less environmentally damaging feasible alternative. Commission staff also informed you that it is unlikely that staff would ever support approval of any shoreline armoring at this site, including a request to retain the existing unpermitted revetment.

In the above-cited letters and meetings, Commission staff indicated that the development site appeared to be bisected by the boundary between the respective coastal permit jurisdictions of the City of Half Moon Bay and of the Commission. By letter of November 9, 2000, staff informed you that based upon the information available to our cartography staff, it appeared that any riprap located on the sand was in the coastal permit jurisdiction of the Coastal Commission, and any riprap located on the blufftop or bluff face was in the coastal permitting jurisdiction of the City of Half Moon Bay.

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In a letter dated February 24, 2000, City Planning staff informed you that the existing riprap placed on the 18<sup>th</sup> green during 1998/99 "was not placed pursuant to a valid Coastal Development Permit," and that the work that was performed was not in compliance with the plans submitted to the City and constituted a violation of the Half Moon Bay Municipal Code. City of Half Moon Bay Planning Director Ken Curtis subsequently reaffirmed the conclusions set forth in that letter.

Commission staff initially requested that OCP submit a coastal permit application to the City of Half Moon Bay for removal or retention of the portion of the revetment within the City's permit jurisdiction, to be followed within 60 days of permit action by the City by submittal to the Commission of a CDP application for removal or retention of the portion of the revetment in the Commission's area of original permit jurisdiction. In a letter dated May 22, 2002, the City of Half Moon Bay formally requested the Commission to take appropriate action to enforce the requirements of the City's LCP.

In March of 2001, OCP submitted to the City a coastal development permit application for removal of riprap extending seaward of the Mean High Tide Line ("MHTL") and retention of riprap from the MHTL to the bluff face. On March 30, 2001, Commission staff sent you a letter noting that since the City's coastal permit jurisdiction includes only the area above the MHTL, the City cannot process a coastal permit for the portion of the riprap below the MHTL; therefore, the CDP application to the City should be only for retention or removal of the portion of the riprap above the MHTL.

Sometime after submittal to the City of a CDP application for partial removal/partial retention of the revetment, OCP then submitted new plans to the City for construction of a new vertical seawall with a riprap component at its base, rather than seeking after-the-fact authorization for partial removal/partial retention of the existing, unpermitted revetment. This application proposes to remove 67% of the existing riprap and to construct a soil nail wall of sculpted architectural shotcrete on the remaining portion of the riprap, drilling tiebacks into the bluff to support the wall, and placing riprap at the base of the completed wall. This application to the City remains incomplete. Commission staff wrote you a letter on September 30, 2001, asserting that this appeared to be a completely new proposal for shoreline armoring, rather than an after-the-fact application to authorize existing, unpermitted development. The City determined that additional environmental review would be necessary for the new project, including an EIR, which would take a substantial amount of time. Commission staff thus requested in a letter to OCP dated March 11, 2002 that to expedite resolution of the long outstanding Coastal Act violation, OCP submit forthwith a CDP application to the Commission, proposing removal of the riprap located within the Commission's permit jurisdiction, which the Commission would process without first receiving local approval.

Subsequent to a meeting with you and other OCP representatives on April 3, 2002, in a letter dated May 3, 2002 Commission staff requested that OCP apply to the Coastal Commission by May 27, 2002 for a coastal permit to remove all the existing unpermitted riprap on the site, and

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Ocean Colony Partner.

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that OCP's pursuit of a coastal permit for a new, vertical seawall with a riprap component at the base should be handled separately from the removal application.

On May 28, 2002, OCP submitted to the Commission a CDP application that proposes removal of only 67% of the existing unpermitted riprap, plus construction of a new shotcrete soil nail wall along the bluff at the 18<sup>th</sup> hole of the Half Moon Bay Golf Links. This application also includes a cover letter with reservations of rights as well as certain "understandings" to which by acceptance of the application for processing the Commission would be deemed to have agreed.

As noted in a letter dated June 20, 2002 from Peter Imhof of the Commission's North Central Planning staff, the Commission cannot accept a CDP application for development for which the jurisdictional boundaries are unclear, or which has not been demonstrated to be in the Commission's permit jurisdiction, when the applicant is simultaneously contesting the Commission's jurisdiction. Furthermore, the Commission cannot agree to be bound by "understandings" that are related to issues that will be before it in its consideration of the permit applications.

By letter of March 30, 2001, Commission staff also clarified that the Court of Appeal's decision in *Sierra Club v. California Coastal Zone Conservation Commission* (Court of Appeal, First Appellate District, April 26, 1976) does not include a seawall among the various components of development on the site that were found exempt from coastal permit requirements based on the existence of vested rights, and that under the Coastal Act, where a vested right has been established, no substantial change in such development may be made without obtained approval under the Coastal Act. Thus, the placement of riprap on the beach and bluff below the 18<sup>th</sup> green of the golf course in 1996 and 1998 constitutes either new development, or a substantial change to the vested development on the site, and, in either case, therefore requires authorization under the Coastal Act. In addition, staff pointed out that any portion of the riprap not authorized by the City's 1996 coastal permit constitutes a violation of the City's LCP and thus of the Coastal Act.

In letters dated September 13, 2001 and May 3, 2002, staff expressed its disagreement with your argument that the placement of riprap consisting of large rocks and boulders in front of an existing vertical wall on the bluff and on the beach below the 18<sup>th</sup> green of the golf course in 1996 and 1998 constitutes repair and maintenance of this seawall and is therefore exempt. Staff again pointed out that even if a former bluff retaining wall itself is considered exempt development, the placement of rock riprap in a different location on the bluff and beach more than 20 years later constitutes "a substantial change" that requires a coastal permit, and that, in any case, repair and maintenance of any shoreline protection device involving the placement of riprap requires a CDP.

Despite the Commission staff's discussions and correspondence, the CDP application submitted by OCP to the Commission does not represent meaningful progress toward resolution of the outstanding violation as 1) it is for removal of only 67% of the unpermitted riprap; 2) it includes a component over which the applicant asserts the Commission has no coastal permit jurisdiction;

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3) it is combined with an incomplete application for a new project which could significantly slow the resolution of this longstanding violation; and 4) it includes filing pre-conditions to which Commission staff does not have the power to agree. The unpermitted riprap at the site has been there for approximately four years. Our goal is to resolve this violation in a timely fashion and to bring the site into compliance with the Coastal Act. Consequently, the Executive Director intends to schedule a hearing before the Commission to determine whether to issue a Cease and Desist Order and Restoration Order directing OCP to remove all existing unpermitted riprap on the subject site and to restore the site.

### Steps in the Cease and Desist Order Process

Pursuant to Coastal Act Section 30810, the Commission has the authority to issue an order directing any person to cease and desist if the Commission, after a public hearing, determines that such person has engaged in "any activity that requires a permit from the commission without securing one or is inconsistent with any permit previously issued by the commission." Additionally, pursuant to Section 30810(b), the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Pursuant to Section 30811, the Commission has the authority to issue an order directing restoration of a site if it finds that "the development has occurred without a coastal development permit from the commission...the development is inconsistent with this division, and the development is causing continuing resource damage."

An order issued pursuant to Section 30810 and Section 30811 would require that OCP: 1) refrain from engaging in any further development activities on the subject property without a CDP; 2) submit to the Commission by a specified deadline detailed project plans for removal of the riprap and revetment survey information; 3) remove all unpermitted riprap from the subject property; and 4) restore the site to its pre-violation condition within a specified period of time.

Please be advised that if the Commission issues a Cease and Desist Order and Restoration Order, Section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties of up to \$6,000 per day for any intentional or negligent violation of the order for each day in which the violation persists.

At this time, the Commission is tentatively planning to hold a hearing on the issuance of a Cease and Desist Order and Restoration Order in this matter at the Commission meeting that is scheduled for August 2002 in Huntington Beach.

In accordance with the California Code of Regulations, Title 14, Section 13181(a), OCP has the opportunity to respond to the Commission's staff allegations as set forth in this notice by completing the enclosed Statement of Defense form. **The completed Statement of Defense form must be returned to this office no later than July 10, 2002.** Should you have questions

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CCC-02-CD/RO-02

Ocean Colony Partner

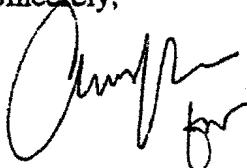
Page 5 of 9

PAT FITZGERALD

Page No. 6

concerning the filing of the Statement of Defense form or any enforcement matters, please contact Jo Ginsberg at (415) 904-5269.

Sincerely,



PETER DOUGLAS  
Executive Director

Enclosure: Statement of defense form

cc: Lisa Haage, Assistant Chief of Enforcement  
Jo Ginsberg, Enforcement Analyst  
Chris Kern, North Central Coast District Supervisor  
Peter Imhof, Coastal Planner

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CCC-02-CD/RO-02

Ocean Colony Partner

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## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
(415) 904-5400

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than July 10, 2002 to the Commission's enforcement staff at the following address:

Jo Ginsberg  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

If you have any questions, please contact Jo Ginsberg at (415) 904-5269.

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order):

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**EXHIBIT NO.** 16**APPLICATION NO.**  
CCC-02-CD/RO-02

Ocean Colony Partner.

Page 7 of 9

2. **Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in the order):**

3. **Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the order):**

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CCC-02-CD/RO-02

Ocean Colony Partner

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

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5. Any other information, statement, etc. that you want to offer or make:

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

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EXHIBIT NO. 16

APPLICATION NO.  
CCC-02-CD/RO-02

Ocean Colony Partners

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## FENTON &amp; KELLER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2801 MONTEREY-SALINAS HIGHWAY

POST OFFICE BOX 791

MONTEREY, CALIFORNIA 93942-0791

FACSIMILE (831) 373-7219

TELEPHONE (831) 373-1241

## FACSIMILE TRANSMISSION

DATE: July 15, 2002

FILE NUMBER: 31973.28687

To:

NAME	FAX NO.	PHONE NO.
Ralph Faust, Esq. Amy Roach Lisa Haage Sheila Ryan <i>Please distribute</i>	415-904-5235	

FROM: Thomas H. Jamison PHONE: ext. 230

RE: Notice of Intent to Commence Restoration and Cease and Desist Order  
Proceedings on Alleged Coastal Act Violation (Ocean Colony Partners);  
Coastal Commission Coastal Act Violation File No. V-1-99-03

NUMBER OF PAGES WITH COVER PAGE: 6 ORIGINAL WILL NOT FOLLOW

MESSAGE:

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## CAUTION - CONFIDENTIAL

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**OF COUNSEL**

LEWIS L. FENTON

July 15, 2002

THOMAS H. JAMISON

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ext. 230

Peter Douglas, Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**VIA FACSIMILE**

Re: Notice of Intent to Commence Restoration and Cease and Desist Order  
Proceedings on Alleged Coastal Act Violation (Ocean Colony Partners);  
Coastal Commission Coastal Act Violation File No. V-1-99-03  
Our File: 31973.28687

Dear Mr. Douglas:

Attached to this letter is Ocean Colony Partners' completed Statement of Defense Form in connection with the above proceeding.

As counsel for OCP, and with much experience in Coastal Act issues and permit proceedings before the Commission, I must tell you frankly that I am amazed by where the Commission and my client now find themselves. I feel strongly that the path which the Commission staff has chosen on this matter is totally unproductive and defeative of the interest of both the Commission and OCP. I am encouraged by my conversation earlier today with Amy Roach of the Commission's legal division concerning a meeting that we hope to arrange to discuss further a resolution of this matter. I and OCP look forward to such a meeting.

Very truly yours,

FENTON & KELLER  
A Professional Corporation

*Thomas H. Jamison*  
Thomas H. Jamison

Enclosure

Cc: Ralph Faust  
Amy Roach  
Lisa Haage  
Sheila Ryan

Bill Barrett  
Pat Fitzgerald  
Bruce Russell  
Charles Keller, Esq.

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## Statement of Defense Form

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIALED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form as fully and accurately as you can and as quickly as you can and return it no later than \_\_\_\_\_ to the commission's enforcement staff at the following address:

California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

If you have any questions, please contact as soon as possible \_\_\_\_\_ of the commission enforcement staff at telephone number 415-904-5200.

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):

Ocean Colony Partners ("OCP") admits that OCP has maintained shoreline protection work to protect the 18th hole of Half Moon Bay Golf Links.  
consistent with its legal rights. OCP further admits that the letters from the California Coastal Commission (the "Commission") referenced in the Commission's letter of June 20, 2002, were received by OCP and that meetings took place on March 31, 2000, and April 3, 2002, but does not admit anything else. The letters received by OCP from the Commission, and the responses of OCP to those letters, speak for themselves.

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2. Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to the paragraph number in such document):

See answer to No. 1 above. All allegations of the Commission  
are denied except as admitted above.

3. Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to the paragraph number in such document):

OCP has no personal knowledge of the nature and extent of discussions  
between Commission staff and representatives of the City of Half  
Moon Bay concerning the alleged violation.

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can):

Over the past 3-1/2 years, OCP has responded to all inquiries of the Commission, and the City of Half Moon Bay, and has submitted volumes of documents, photographs, maps, letters, and other evidence relevant to OCP's position, to the Commission and the City of Half Moon Bay, in an effort to resolve this matter. These are contained in the Commission's and the City's files. OCP incorporates them in their entirety, and all other materials contained in the Commission's and the City's files relating to development on the OCP site and the vicinity, whether or not presently owned by OCP.

5. Any other information, statement, etc. that you want to offer or make:

OCP submits and asserts the following contentions concerning this proceeding:

- A. The proceedings are unconstitutional as a violation of the doctrine of the separation of powers.
- B. The proceedings are a violation of OCP's constitutional right to due process of law.
- C. The Commission does not have jurisdiction over the work.
- D. The claims asserted by the Commission are barred by the statute of limitations and/or laches.
- E. OCP has a vested right to perform and maintain the work.
- F. All of the work is permitted by valid permits and/or exemptions under the terms of the California Coastal Act.

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title and enclose a copy with this completed form):

OCP incorporates all documentary and other materials previously

submitted by OCP to the Commission and the City of Half Moon Bay

on this matter. Additional evidence for the administrative record

will be submitted by OCP to the Commission prior to or at the hearing.

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**SIERRA CLUB, Plaintiff and Appellant, v. CALIFORNIA COASTAL ZONE  
CONSERVATION COMMISSION et al., Defendants and Respondents**

Civ. No. 36712

Court of Appeal of California, First Appellate District, Division Four

58 Cal. App. 3d 149; 1976 Cal. App. LEXIS 1558; 129 Cal. Rptr. 743

April 26, 1976

**SUBSEQUENT HISTORY:**

[\*\*1]

Appellant's petition for a hearing by the Supreme Court was denied July 8, 1976. Tobriner, J., did not participate therein. Mosk, J., was of the opinion that the petition should be granted.

**PRIOR HISTORY:**

Superior Court of the City and County of San Francisco, No. 663901, Ira A. Brown, Jr., Judge.

**DISPOSITION:**

The judgment is affirmed.

**COUNSEL:**

Greene, Kelley, Halloran & Tobriner, Greene, Kelley & Halloran, Maribeth Halloran and Laurens H. Silver for Plaintiff and Appellant.

Evelle J. Younger, Attorney General, Carl Boronkay and Robert H. Connett, Assistant Attorneys General, Roderick Walston and Richard C. Jacobs, Deputy Attorneys General, Brobeck, Phleger & Harrison, Robert S. Daggett and Moses Lasky for Defendants and Respondents.

**JUDGES:**

Opinion by Christian, J., with Caldecott, P. J., and Rattigan, J., concurring.

**OPINIONBY:**

CHRISTIAN

**OPINION:**

[\*153] [\*\*\*745] The Sierra Club appeals from a judgment denying relief from a determination by respondent California Coastal Zone Conservation Commission that part of a development proposed by respondent Half Moon Bay Properties, Inc. (hereinafter "HMBP") is exempt from the commission's control.

HMBP had claimed exemption from the requirement of obtaining [\*\*2] a permit for development within the coastal zone permit [\*\*\*746] area of a 270-acre recreational community at the southern end of the City of Half Moon Bay. The proposed development consisted of a golf course, lakes, open space, 567 townhouses, 61 single family lots, an apartment complex, and a hotel complex. Approximately half the development, including the apartment complex, 200 townhouses, 29 single family lots, and half of the golf course are outside the coastal zone permit area. The Central Coast Regional Commission granted HMBP an exemption from the permit requirement on the basis that, prior to November 8, 1972, HMBP had obtained a vested right in developing the property.

On appeal to the California Coastal Zone Conservation Commission, the exemption was approved as to the construction of the golf course, main lodge, seven guest houses, golf and tennis pro shops, a perimeter fence, streets, utilities, retaining walls, steps from the development to the beach, tennis courts, a swimming pool, a gate house, and a sewage treatment facility for which a building permit had already been obtained. The exemption was annulled as to the construction of any other residential units. [\*\*3]

Appellant thereafter sought judicial review of the state commission's action, and the present appeal followed.

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58 Cal. App. 3d 149, \*; 1976 Cal. App. LEXIS 1558, \*\*;  
129 Cal. Rptr. 743, \*\*\*

Appellant contends that the trial court erred in reviewing the action of the state commission by a substantial evidence standard instead of [\*154] exercising independent judgment and reweighing the evidence in light of the whole record. Where the order or decision of an administrative agency affects a fundamental vested right, the reviewing court must exercise independent judgment to reweigh the evidence. But if the administrative order or decision does not substantially affect a fundamental vested right, judicial review is limited to a determination of whether the findings are supported by substantial evidence. (Code Civ. Proc., § 1094.5, subd. (c); *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32 [112 Cal.Rptr. 805, 520 P.2d 29].) Appellant argues that on either of two theories fundamental vested rights were involved in the present case: (1) that the public has a fundamental vested right to maintain the coast in its present state, or (2) the fact that HMBP was claiming a fundamental vested right required the trial court [\*\*4] to exercise its independent judgment although appellant, not the developer, was seeking review of the administrative decision.

State policy is expressed in the California Coastal Zone Conservation Act as follows:

"The people of the State of California hereby find and declare that the California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction; that it is the policy of the state to preserve, protect, and, where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations; and that to protect the coastal zone it is necessary:

"(a) To study the coastal zone to [\*\*5] determine the ecological planning principles and assumptions needed to ensure conservation of coastal zone resources.

"(b) To prepare, based upon such study and in full consultation with all affected governmental agencies, private interests, and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the [\*155] [\*\*\*747] coastal zone, to be known as the California Coastal Zone Conservation Plan.

"(c) To ensure that any development which occurs in the permit area during the study and planning period will be consistent with the objectives of this division.

"(d) To create the California Coastal Zone Conservation Commission, and six regional coastal zone conservation commissions, to implement the provisions of this division." (Pub. Resources Code, § 27001. Appellant argues that this policy statement establishes a fundamental vested right in all the members of the public that the California coastal zone will be preserved and maintained in its present state. Inasmuch as "the California coastal zone is a distinct and valuable natural resource belonging to all the people" and "the permanent [\*\*6] protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation" (§ 27001), there appears to be no doubt that the interests of the people of California in the preservation of the coastal zone are, within the meaning of *Strumsky*, fundamental. But the act does not establish any present possessory interest of the people of the State of California in property lying within the coastal zone. Although such possessory interest may be established over at least part of the coastal zone as a result of the planning function established by the act (see § § 27300 et seq., 27320), the only actual control over the coastal zone which has been vested in the public by the Act has been by way of the permit-granting function of the regional and state Commissions within the coastal zone "permit area." (§ § 27104, 27400 et seq., 27420 et seq.) If the public's rights in the coastal zone were presently vested, the result would have constituted a taking of property from all landholders within the coastal zone. (See *State of California v. Superior Court (Veta Co.)* (1974) 12 Cal.3d 237, 252-255 [115 Cal.Rptr. [\*\*7] 497, 524 P.2d 1281]; *CEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 324-325 [118 Cal.Rptr. 315].) Appellant, as part of the public, has no vested right in the coastal zone.

Even so, appellant asserts that because HMBP was claiming to have a fundamental vested right to develop its property, the trial court should have exercised independent judgment in reviewing the administrative decision. But a party has no standing to assert that an independent judgment review rather than a substantial evidence review is required unless it possesses a fundamental vested right on its own behalf [\*156] which was involved in an administrative agency's action. (See *Northern Inyo Hosp. v. Fair Emp. Practice Com.* (1974) 38 Cal.App.3d 14, 23, fn. 9 at p. 23 [112 Cal.Rptr. 872].) The Sierra Club has no fundamental vested right of its own; therefore, it cannot assert the existence of HMBP's fundamental vested right to obtain an independent judgment review.

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58 Cal. App. 3d 149, \*, 1976 Cal. App. LEXIS 1558, \*\*;  
129 Cal. Rptr. 743. \*\*\*

Appellant contends that the trial court should have made findings of fact as requested by appellant. But in administrative mandate proceedings in which the trial court is required to exercise a [\*\*8] substantial evidence, rather than an independent judgment review of the record, findings of fact are not required. (*Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 518 [113 Cal.Rptr. 539].)

Appellant contends that where a building permit has been issued which would authorize the construction of several structures, and construction of some but not all of the structures had commenced prior to February 1, 1973, the structures not yet started are subject to the development permit requirement of the act. As a general rule, development permits are required for any new construction within the coastal zone permit area commencing on or after February 1, 1973. (§ 27400; *San Diego Coast Regional Com. v. See the Sea, Limited* (1973) 9 Cal.3d 888, 891 [109 Cal. \*\*\*748] Rptr. 377, 513 P.2d 129.) There are two major exemptions from the permit requirement. The first exemption is the "vested rights" exception, created by section 27404, whereby a developer who has obtained a building permit and in good faith reliance upon the permit has diligently commenced construction activity and performed substantial work on the development, is not required [\*\*9] to secure a permit from the regional commission. (§ 27404; *See the Sea, supra*, 9 Cal.3d at p. 893.) The second, or "See the Sea," exemption exists for developers who have obtained building permits and have in good faith commenced actual construction of the structures, performed substantial work, and incurred substantial liability. (9 Cal.3d at p. 892; *Aries Dev. Co. v. California Coastal Zone Conservation Com.* (1975) 48 Cal.App.3d 534, 551 [122 Cal.Rptr. 315].) Both types of exemption, although subject to different quanta of construction work completed and different dates of vesting of the right to complete construction, fall within the general rule that one who in good faith reliance upon a building permit performs substantial work and incurs substantial liability in reliance thereon acquires a vested right to complete construction notwithstanding any intervening changes in the law that would otherwise preclude the construction. (*County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 691 [\*157] [234 P.2d 972]; *Aries Dev. Co. v. California Coastal Zone Conservation Com., supra*, 48 Cal.App.3d at p. 543.)

A building permit was issued July [\*\*10] 19, 1972, allowing HMBP to erect a "commercial hotel and golf and recreation structures." By November 8, 1972, the following work had been completed: the lake, sprinkler system, drainage, planting, foundation of the golf pro shop, foundation of guest lodge number five, one fourth of the pilings for the foundation to the main lodge, and

the perimeter fence. By February 1, 1973, the following additional work had been completed: plumbing for the pro shop, slab and walls of guest lodge number five, all pilings for the foundation for the main lodge, a portion of the steps to the beach, the paving of the main road, the 18th and 19th tees. Of the remainder of the project which the state commission determined was exempt, by February 1, 1973, construction had not commenced upon six of the seven guest houses within the hotel complex, the tennis pro shop within the hotel complex, the tennis courts, a swimming pool, and a sanitary sewage pumping facility.

Whether the buildings within the development which were authorized by the building permit, but upon which no actual construction had commenced, were so interdependent with those buildings within the development which were under construction [\*\*11] by February 1, 1973, that the actual construction was sufficient to also exempt the authorized but as yet unconstructed buildings, is initially a question of fact. (*See Environmental Coalition of Orange County, Inc. v. AVCO Community Developers, Inc.* (1974) 40 Cal.App.3d 513, 523-524 [115 Cal.Rptr. 59].) The trial court evidently determined that substantial evidence supported the State Commission in its determination that an exemption existed on behalf of HMBP. The commission's action, in turn, imports an implied finding that although part of the project was not yet under construction, that part was sufficiently interdependent with the part already under construction to exempt the whole. The state commission determined that part of the project claimed exempt by HMBP was not interdependent, and denied the exemption for that part. There is evidence in the record to support this conclusion; therefore, it is to be upheld on appeal. (*See 6 Witkin, Cal. Procedure* (2d ed. 1971) Appeal, § 245, p. 4236.)

Appellant additionally contends that the building permit was void; a void permit will not establish a vested right to develop the property. It is contended that had the trial [\*\*12] court properly taken judicial [\*158] notice [\*\*\*749] of provisions of the Uniform Building Code, it would have so held.

At the time the building permit was issued (Apr. 19, 1972), cities and counties were required to have adopted ordinances or regulations imposing the same requirements as a number of uniform building codes, including the 1970 Uniform Building Code, within one year of November 23, 1970 (Health & Saf. Code, § § 17922 [now 17922, subd. (a)(2)], 17958). However, any building regulations adopted by a city or county prior to November 23, 1970, were left unaffected by section 17922 (Health & Saf. Code, § 17958.7; *People v. Wheeler* (1973) 30 Cal.App.3d 282, 290-291 [106

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*Cal.Rptr. 260*). Moreover, "a city or county may make such changes or modifications in the requirements contained in regulations adopted pursuant to section 17922 as it determines are reasonably necessary because of local conditions" (Health & Saf. Code, § 17958.5). Appellant did not offer the relevant ordinances of the City of Half Moon Bay, but instead requested that the trial court take judicial notice of the provisions of sections 301 and 302 of the Uniform Building Code; this the [\*\*13] court refused to do. Section 301, subdivision (a), provides that separate building permits must be obtained "for each such building or structure" which is to be constructed. The permit issued to HMBP provided for construction of a "commercial hotel and golf and recreation structures"; appellant asserts that this permit violates section 301. Because appellant failed to offer the city's relevant ordinances, the court could not determine whether the city had adopted ordinances prior to November 23, 1970, permitting the form of permit issued, or whether the city had modified Uniform Building Code section 301 to allow such permits. Although the permit stated it was "issued subject to sections 301 and 302 UBC 1967," that statement does not establish that the city had not amended the 1967 edition of the Uniform Building Code as adopted in the city's ordinances. \* Appellant, as the party asserting alleged illegality of the building permit, bore the burden of producing proof in support of that assertion; because appellant failed to establish that the city's ordinances were identical with the Uniform Building Code, or, if not identical, were not excepted by Health and Safety Code sections [\*\*14] 17958.5 or 17958.7, the court properly refused to judicially notice the Uniform Building Code.

\* Sections 301 and 302 of the 1967 edition of the Uniform Building Code are virtually identical to those sections in the 1970 edition.

By the same reasoning, appellant's assertion concerning the expiration of building permits where work has not commenced within 60 days, [\*159] provided for in Uniform Building Code section 302, subdivision (d), also lacks merit.

Appellant contends that there was insufficient proof of the expenditures incurred by the developer in reliance upon the building permit to establish an exemption from the development requirement. An applicant for a development permit carries the burden of proof, whether he is claiming exemption from the development permit requirement by reason of vested rights (§ 27404), or *See the Sea* (*San Diego Coast Regional Com. v. See the Sea, Limited, supra*, 9 Cal.3d 888, 893). Appellant appears to be asserting that proof of the actual amount of money [\*\*15] spent for the work which had been done in reliance upon the building permit is necessary for the developer to establish his right to an exemption. No authority requires such proof; it is sufficient to show that the work completed and the liabilities incurred have been "substantial." The evidence well supports the agency findings that by both November 8, 1972, and February 1, 1973, significant and substantial work had been done by HMBP upon the project authorized in the building permit.

The judgment is affirmed.

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