

CALIFORNIA COASTAL COMMISSION

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**W 22**

Staff: SMR-SF
Staff Report: June 24, 2005
Hearing Date: July 13, 2005

**STAFF REPORT AND FINDINGS FOR AMENDMENT TO
CONSENT AGREEMENT AND CEASE AND DESIST ORDER: CCC-02-CD-02-A**

**CONSENT AGREEMENT AND
CEASE AND DESIST ORDER:** CCC-02-CD-02-A

RELATED VIOLATION FILES: V-1-99-03

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

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.L.C.

AGENTS/REPRESENTATIVES: Bruce J. Russell, CEO
Kenmark Real Estate Group, Inc.
2450 South Cabrillo Highway, Suite 250
Half Moon Bay, CA 94019

Tom Jamison, Esq.
Fenton & Keller, Attorneys at Law
2801 Monterey-Salinas Highway
Monterey, CA 93942

VIOLATION DESCRIPTION: Unpermitted construction of riprap revetment on
bluff face and beach below the 18th Hole of the
Half Moon Bay Golf Links.

SUBSTANTIVE FILE DOCUMENTS: Consent agreement and cease and desist order file
No. CCC-02-CD-02

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15060 (c)(2) and (3),
and Categorically Exempt (CG §§ 15061(b)(2), 15037,
15038 and 15321)

I. SUMMARY

On October 10, 2002, the Commission approved Consent Agreement and Cease and Desist Order No. CCC-02-CD-02 ("Consent Order"), regarding the unpermitted construction of a rock revetment located on the bluff top, bluff face, and on the beach below the 18th Hole at Half Moon Bay Golf Links. The adopted findings for the 2002 staff report and Consent Agreement are attached as **Exhibit 1**, and are incorporated by reference to this staff report and findings for amendment to Consent Agreement and Cease and Desist Order No. CCC-02-CD-02-A. The unpermitted rock revetment was constructed during the winter of 1998/1999. The Consent Order 1) required the property owners, Ocean Colony Partners, L.L.P. (Ocean Colony), to remove approximately half of the unpermitted rock revetment to restore public access along the sandy beach consistent with an approved plan, and 2) authorized interim retention of the remainder of the revetment, conditioned on Ocean Colony's timely submission of a complete CDP application for a proposed replacement shoreline/bluff protective structure. To mitigate in part the adverse impacts on public access that have occurred because of the rock revetment, the Consent Order also requires Ocean Colony to construct a public beach access path and stairway at the end of Redondo Beach Road and to contribute funds for the maintenance of the stairway.

As of the date of this staff report, Ocean Colony has completed the partial removal of the revetment, and a CDP application for a proposed replacement shoreline/bluff protective structure is scheduled for hearing at the Commission's July hearing. Ocean Colony has applied to the City of Half Moon Bay for a CDP for the path and stairway mitigation project. The CDP application is pending and Ocean Colony is working with Commission staff and the City of Half Moon Bay to complete the requirement to construct the path and stairway.

On June 2, 2005 Commission staff met with Ocean Colony representatives to discuss Ocean Colony's stated desire to resolve the outstanding violation regarding the revetment through the complete removal of the riprap that was placed in 1998. In a letter dated June 3, 2005, Ocean Colony memorialized this meeting and reiterated their desire to remove this unpermitted rock revetment (**Exhibit 2**). If the Commission approves the proposed amendment to the Consent Order, under the agreement, Ocean Colony will withdraw the pending application for the proposed replacement shoreline/bluff protective structure.

The terms of the amended Consent Order would require the complete removal of all unpermitted riprap that was placed in 1998. Within 90 days of the issuance of the Consent Order modification, Ocean Colony shall submit for review and approval of the Executive Director, plans for removal of the remaining riprap placed in 1998 and relocations and repairs and modifications to the 18th green within the footprint of the existing golf course. Detailed requirements for plan submittal are included in the text of the proposed amendment to the Consent Order on **pages 7-8** of this staff report. Within 120 days of commencement of approved work, Ocean Colony shall complete the removal of the riprap.

Commission staff is recommending that pursuant to Coastal Act Section 30810 and the California Code of Regulations Section 13188(b), the Commission approve the proposed Consent Order Amendment.

II. HEARING PROCEDURES

The requirements to qualify for and procedures for modifications of Commission Cease and Desist Orders are governed by the California Code of Regulations Section 13188(b), which provides for public hearings to be held on such modifications.

III. MOTION

MOTION: I move that the Commission amend Consent Agreement and Cease and Desist Order No. CCC-02-CD-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 amendment of the Consent Agreement and Cease and Desist Order set forth on pages 5-10 of this staff report.

RESOLUTION TO AMEND CEASE AND DESIST ORDER:

The Commission hereby amends Consent Agreement and Cease and Desist Order No. CCC-02-CD-02, as set forth on pages 5-10 of this report and adopts the findings on grounds that development has occurred without a coastal development permit.

IV. FINDINGS

As noted above, the Findings for the original 2002 Consent Order are attached hereto and incorporated by reference herein, as supplemented by these Findings.

A. DESCRIPTION OF UNPERMITTED DEVELOPMENT

Ocean Colony has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit (CDP) 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 18th Hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999.

B. BASIS FOR MODIFICATION OF CEASE AND DESIST ORDER

The statutory authority for the proposed amendment to the Consent Order is provided in §30810 of the Coastal Act and California Code of Regulations §13188, which state, in relevant part:

Coastal Act §30810:

(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.

California Code of Regulations §13188:

(b) The commission, after public hearing, may rescind or modify a cease and desist order that it has issued. A proceeding for such a purpose may be commenced by ... (2) the executive director or (3) any two members of the commission.

In the present matter, both Ocean Colony (as the person to whom the Cease and Desist Order was directed) and the Executive Director seek Commission approval of this amendment.

C. DEFENSES: MITIGATION FACTORS/REBUTTAL EVIDENCE

In recognition of the value of resolving this matter in a timely manner and for the purposes of agreeing to the amendment of the Consent Order, the parties agree not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183.

Staff recommends that the Commission amend Consent Agreement and Cease and Desist Order No. CCC-02-CD-02 as follows:

AMENDMENT TO CONSENT AGREEMENT AND CEASE AND
DESIST ORDER: CCC-02-CD-02-A

1.0 TERMS AND CONDITIONS

Pursuant to its authority under California Public Resources Code Section 30810 and California Code of Regulations Section 13188(b), the California Coastal Commission (hereinafter referred to as the "Commission"), with the consent and agreement of Ocean Colony Partners, L.L.C. ("Ocean Colony," successor to Ocean Colony Partners, L.P.), hereby amends Consent Agreement and Cease and Desist Order No. CCC 02 CD-02 previously entered into by the Commission and Ocean Colony (hereinafter referred to as the "Consent Order"). This Amendment (hereinafter referred to as the "Consent Order Amendment") is made with reference to the facts and circumstances described herein, which the Commission and Ocean Colony confirm and agree upon.

The Commission and Ocean Colony agreed to the Consent Order in 2002 with respect to certain shoreline protection work undertaken by Ocean Colony in 1998 at the 18th hole at the Old Course at Half Moon Bay Golf Links in Half Moon Bay, California. As of the date of this Consent Order Amendment, Ocean Colony is in compliance with all currently applicable terms of the Consent Order and is working toward completion of the other terms of the Consent Order. In particular, Ocean Colony has completed the removal of a collapsed retaining wall and the partial removal of riprap placed in 1998, and has submitted a complete application to the Commission for a Coastal Development Permit ("CDP") on a proposed permanent shoreline/bluff protective structure (a "Permanent Structure"), all in compliance with the Consent Order. Ocean Colony has submitted a coastal development permit application for the mitigation project to the City of Half Moon Bay. Ocean Colony and Commission staff have been addressing

with the City of Half Moon Bay the processing of this application, and will continue to do so. All remaining requirements from the 2002 Consent Order remain in effect.

The Consent Order allowed the retention of a portion of the 1998 shoreline protection work performed by Ocean Colony on an interim basis (the "Interim Structure") pursuant to plans reviewed and approved by the Executive Director. Under the Consent Order, the Interim Structure was allowed to be retained pending the Commission's decision on the CDP application for a Permanent Structure. Ocean Colony now desires and commits to withdraw its CDP application for a Permanent Structure, and to remove the Interim Structure, subject to and conditional upon the terms of this Consent Order Amendment and Commission approval of this Consent Order. The Commission concurs with the withdrawal of the CDP application for a Permanent Structure, and removal of the Interim Structure, upon the terms of this Consent Order Amendment.

The Commission hereby orders and authorizes Ocean Colony, its employees, agents, and contractors, and any persons acting in concert with any of the foregoing, to undertake the activities specifically required by this Consent Order Amendment at the 18th Hole of the Old Course of the Half Moon Bay Golf Links, to be specified more fully in plans to be submitted under Section 1.1 below and approved by the Executive Director. By its execution of this Consent Order Amendment, Ocean Colony (without admitting that it has violated the Coastal Act) agrees, and agrees to cause its employees, agents, and contractors, and any persons acting in concert with any of the foregoing, to comply with the terms and conditions set forth herein.

1.1 Ocean Colony is authorized to remove the remaining riprap installed in 1998 through work and activities which include (a) crane placement areas, truck turn-arounds, and temporary roadways on the 18th hole near the bluff edge; (b) the presence on the beach of heavy equipment to accomplish the removal, including the building of a temporary ramp (outside the riparian area) for access to the beach for such heavy equipment; (c) removal of all or a portion of the concrete base structure underlying the 18th green and its surroundings in order to address safety during and after the removal process; (d) the temporary installation of a fill "bench" along a portion of the riprap to accomplish the removal; and (e) repairs and

modifications to the 18th green and its surroundings within the existing golf course footprint, a portion of which will be lost due to bluff retreat resulting from removal of the riprap and concrete structure underlying the 18th green and its surroundings. The Executive Director shall review and comment on plans submitted by Ocean Colony consistent with the authorization of the Commission set forth above, and in accordance with the following procedures and timetables. Ocean Colony shall undertake the removal and repairs and modifications in compliance with the final project and erosion control plans as approved by the Executive Director.

Within 90 days of the issuance of this Consent Order Amendment, Ocean Colony shall submit to the Executive Director for review and written approval, plans that provide sufficient detail and address the elements set forth below for removal of the remaining riprap placed in 1998 below the 18th Hole and repairs and modifications to the 18th green and its surroundings within the existing golf course footprint to relocate the 18th green. The plans shall include, but not necessarily be limited to, the following elements:

- a. **Project Description:** A detailed description of the proposed removal project and repairs and modifications, minimizing any impacts to coastal resources and public access, including an identification of: (1) the intended methods and techniques for removal, (2) the proposed means of beach access for construction personnel and equipment, (3) a schedule for all work including completion of all work under this Consent Order Amendment, and the dates and times when removal and other repair and modification activities would take place, (4) a provision that all work to be performed under this Consent Order Amendment shall be done in compliance with all other applicable laws, (5) total amount and location of any fill placement or grading in connection with any proposed, temporary beach access ramp or other project component, and, if applicable, removal of temporary access ramp and (6) ultimate storage and/or disposal plans for the rock removed. If the disposal site is located within the coastal zone, a Coastal Development Permit (CDP) for such disposal shall be issued prior to such disposal. The Executive Director reserves the right to postpone if necessary the permissible dates

and times for construction specified in this Consent Order Amendment based on his/her evaluation and considerations related to protection of the environment.

- b. **Project Plans:** Detailed project plans, certified by a licensed engineer, showing (1) the proposed beach access for construction equipment, (2) equipment and materials staging areas, and (3) repairs and modifications to the 18th green and its surroundings within the existing golf course footprint to relocate the 18th green. For all plans, both large scale plans (1 inch = 10 feet) and reduced (8.5" x 11") copies should be submitted.
 - c. **Erosion Control Plan:** The erosion control plan shall demonstrate that (1) during removal activities, erosion on the site shall be controlled to the extent feasible to avoid adverse impacts on adjacent resources, and (2) temporary erosion control measures such as hay bales and silt fences shall be used during removal activities. The plan shall include a narrative report describing all temporary erosion control measures to be used during removal activities, plans showing the locations of the erosion control measures on large scale (1 inch = 10 feet) 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.
 - d. **Road Impacts:** A description of the timing and estimated number of truck trips on Miramontes Point Road.
 - e. **Submittal of a report with photographs** describing the removal work upon completion of removal work.
- 1.2 After issuance of the Executive Director's written approval of the plans referenced in Section 1.1, at a date mutually agreed upon by the Executive Director and Ocean Colony (at the earliest practical date, but no later than April 15, 2006, unless otherwise agreed), Ocean Colony shall commence work in compliance with the approved plans. Ocean Colony shall undertake the removal and repairs and modifications in compliance with the final project and erosion control plans as approved by the Executive Director.

- 1.3 Within 120 days of commencement of work, Ocean Colony shall complete the removal of the remaining riprap placed in 1998.
- 1.4 If road damage occurs to Miramontes Point Road as a result of the removal activities, Ocean Colony shall restore the road surface to the same conditions that existed prior to the removal of the riprap within 30 days of the completion of the work.
- 1.5 **Withdrawal of Permanent Structure CDP Application.** Upon approval of this Consent Order Amendment by the Commission, Ocean Colony shall withdraw its presently pending CDP application (Application No. 2-02-028) for a Permanent Structure. Such withdrawal shall not be deemed or asserted by the Commission to be a breach of the Consent Order, nor shall such withdrawal entitle the Commission to any enforcement rights or any civil penalties, fines, or damages under the Coastal Act (including Sections 30805, 30820, and 30822, or otherwise). Nothing in this Agreement, however, shall prevent Ocean Colony from submitting a CDP application for a Permanent Structure from and after the date of this Consent Order Amendment; provided, however, that the submission of any such CDP application shall not relieve Ocean Colony of its obligations to fully comply with the Consent Order Amendment.
- 1.6 **Effective Date.** This Consent Order Amendment shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.
- 1.7 **Incorporation by reference.** The remainder of the 2002 Consent Order, from Section 1.9 onward, is incorporated herein by reference and is attached as **Exhibit 1**.

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Ocean Colony
Page 10 of 10

1.8 Stipulation. Ocean Colony and its representatives attest that they have reviewed the terms of this Consent Order Amendment, understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

California Coastal Commission

By: _____
Peter Douglas, Executive Director

Date

Ocean Colony Partners, L.L.C.

By: Whitestar Advisors, L.L.C., its manager

By: James E. Bishop
Managing Director

June 24, 2005
Date

Exhibits

1. 2002 staff report and Consent Agreement for CCC-02-CD-02.
2. June 3, 2005 letter from Kenmark Real Estate Group, Inc. to Commission staff, regarding meeting to discuss complete removal of unpermitted riprap.

CALIFORNIA COASTAL COMMISSION

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Staff: SMR - SF
Staff Report: September 20, 2002
Hearing Date: October 10, 2002
CCC Action: Approved with modifications 9-0

ADOPTED FINDINGS FOR
CONSENT AGREEMENT AND CEASE AND DESIST ORDER

**CONSENT AGREEMENT AND
CEASE AND DESIST ORDER:** CCC-02-CD-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

Tom Jamison, Esq.
Fenton & Keller, Attorneys at Law
2801 Monterey-Salinas Highway
Monterey, CA 93942

VIOLATION DESCRIPTION: Unpermitted construction of riprap revetment on bluff
face and beach below the 18th Hole of the Half Moon
Bay Golf Links.

SUBSTANTIVE FILE DOCUMENTS: Consent agreement and cease and desist order file No.
CCC-02-CD-02
Background exhibits 1 through 17

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

Exhibit 1
CCC-02-CD-02-A
(Ocean Colony Partners)

I. SUMMARY

Commission staff contends that Ocean Colony Partners, L.P. (Ocean Colony) 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 18th Hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999.

The terms of the proposed Consent Agreement and Cease and Desist Order would require the immediate removal of approximately half of the unpermitted riprap to restore public access along the sandy beach consistent with an approved plan, and would authorize interim retention of the remainder of the riprap, conditioned on the timely submission by Ocean Colony of a complete CDP application for a proposed replacement shoreline/bluff protective structure. To mitigate in part the adverse impacts on public access that have occurred because of the riprap, the Consent Agreement and Cease and Desist Order requires Ocean Colony to construct a public beach access path and stairway at the end of Redondo Beach Road and to contribute funds for the maintenance of the stairway as proposed by Ocean Colony.

Commission staff is recommending that pursuant to Coastal Act Section 30810, the Commission issue a consent agreement and cease and desist order (hereinafter referred to as "Consent Order") to resolve the violations.

II. HEARING PROCEDURES

In light of Ocean Colony's desire to resolve the violation through a Consent Order, Ocean Colony has agreed to waive its right to a hearing to contest the Coastal Act violation alleged in the notice of intent (NOI) dated June 20, 2002 and agree to a hearing solely for the purpose of authorizing this Consent Order. The procedures for a hearing on a proposed Cease and Desist Order are outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 9. The hearing procedures are similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

III. RESOLUTION OF ISSUANCE

On October 10, 2002, the Commission voted to issue Consent Agreement and Cease and Desist Order No. CCC-02-CD-02, with the following modifications:

1. Insert to Exhibit 16, Page 5:

New paragraph 1.9(f): If the Executive Director determines it is necessary, Ocean Colony shall work with the Coastal Conservancy, and, if necessary, have the Coastal Conservancy become the applicant for the project. Therefore, the path and stairway project (referenced in this Section 1.9) would be a project of the Coastal Conservancy. In such an event, Ocean Colony's other obligations to fund and construct this project remain in place.

2. Renumber old paragraph 1.9(f) to be 1.9(g).
3. On Page 5 of Exhibit 16, in Section 1.9(e), the reference to 1.7 should be 1.9.

RESOLUTION TO ISSUE CEASE AND DESIST ORDER:

The Commission hereby issues Consent Agreement and Cease and Desist Order No. CCC-02-CD-02 set forth in Exhibit 16 of this report and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and is inconsistent with Chapter 3 policies of the Coastal Act.

IV. ADOPTED FINDINGS

A. DESCRIPTION OF UNPERMITTED DEVELOPMENT

Ocean Colony has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit (CDP) 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 18th Hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999.

B. BACKGROUND AND ATTEMPTS AT ADMINISTRATIVE RESOLUTION

Construction of the 18th Hole of the Half Moon Bay Links in 1973 included a concrete slab along the top edge of the bluff supporting the seaward edge of the 18th Hole turf and a twelve-foot high, 24-foot long, two-foot wide concrete retaining wall at the base of the bluff below the 18th Hole (**Exhibit 2**). 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 Bay¹ granted CDP 08-96 for repairs along the bluff at the 18th Hole, authorizing the placement of riprap backfill behind the concrete retaining wall and on the bluff face, and repair 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 as permitted in 1996, no sandy beach area would be lost and that the approved project limits would not exceed anything originally constructed or currently in place.

In August of 1998, Ocean Colony submitted to the City of Half Moon Bay plans for additional bluff stabilization measures along the 18th Hole. 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 18th 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. A photograph taken in 2002 depicts the extent of the riprap (**Exhibit 5**). In a letter to Ocean Colony 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**). Ocean Colony responded

¹ 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.

in a letter dated January 29, 1999 that it had received an exemption from the City for the repair work (**Exhibit 7**). On February 17, 2000 the Commission sent another letter to Ocean Colony, 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 Ocean Colony 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 Ocean Colony, City staff stated that the repair work performed by Ocean Colony in 1998 was not in compliance with the 1998 plans that the City had determined to be exempted from the coastal permitting requirements of the LCP (**Exhibit 9**). The City found that Ocean Colony 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 Ocean Colony in 1998 was therefore not exempt, but rather was in violation of the City's Municipal Code. The City directed Ocean Colony to apply for a retroactive CDP, and noted that the Coastal Commission staff had also recently contacted Ocean Colony regarding the portion of the unpermitted riprap located in Commission's permit jurisdiction also requiring a CDP.

After correspondence and debate between Ocean Colony and Commission staff regarding the location of the Mean High Tide Line (MHTL) and the location of the respective permit jurisdictions, the Commission staff informed Ocean Colony that the exact location of the MHTL was not a critical point, because the City and the Commission staff 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 staff directed Ocean Colony 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 (**Exhibit 10**). The Commission staff indicated to Ocean Colony that its applications should be for either retention or removal of the unpermitted development.

On March 14, 2001, Ocean Colony 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 Ocean Colony that its 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 Ocean Colony proposed to retain, and 3) the portion it proposed to remove. The City sent a second letter to Ocean Colony on July 23, 2001 informing it that the application was still incomplete (**Exhibit 11**).

On August 30, 2001, Ocean Colony submitted modified plans to the City of Half Moon Bay, proposing to construct a vertical sea wall covered with shotcrete in addition to the plans for partial removal and partial retention of the existing riprap. In October 2001, the Commission staff learned that City staff had determined that Ocean Colony's modified proposal for a vertical seawall 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, Commission staff directed Ocean Colony to submit by April 11, 2002 its application for a CDP for removal or retention of the portion of the riprap in the Commission's jurisdiction to address the outstanding violation, rather than waiting first for local approvals as previously directed (**Exhibit 12**). On December 21, 2001, Ocean Colony submitted a Waiver of Legal Argument form to the Commission staff, stating its 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 Ocean Colony in 1998 was not placed pursuant to a valid CDP.

C. SUMMARY OF PERMITTED DEVELOPMENT

Construction of the 18th Hole of Half Moon Bay Golf Links in 1973 consisted of a concrete slab along the top edge of the bluff supporting the seaward edge of the 18th Hole turf and a twelve-foot high, 24-foot long, two-foot wide concrete retaining wall at the base of the bluff below the 18th Hole. In 1996, CDP 08-96 authorized the placement of riprap behind the concrete retaining wall and on the bluff face. CDP 08-96 also authorized reconstruction of the concrete slab along the top edge of the bluff. Development aside from the 12x24 foot concrete retaining wall, concrete slab supporting the 18th Hole turf, riprap behind the concrete retaining wall and concrete slab repairs performed pursuant to CDP 08-96 is unpermitted development. The 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 ORDER

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 development was performed without obtaining the required CDP. The unpermitted development is also inconsistent with Chapter 3 policies of the Coastal Act, specifically Sections 30210-30211 and 30240(b) (Public Access and Recreation), Sections 30235 and 30253(2) (Natural Shoreline and Landform Alteration), and Section 30251 (Visual Quality).

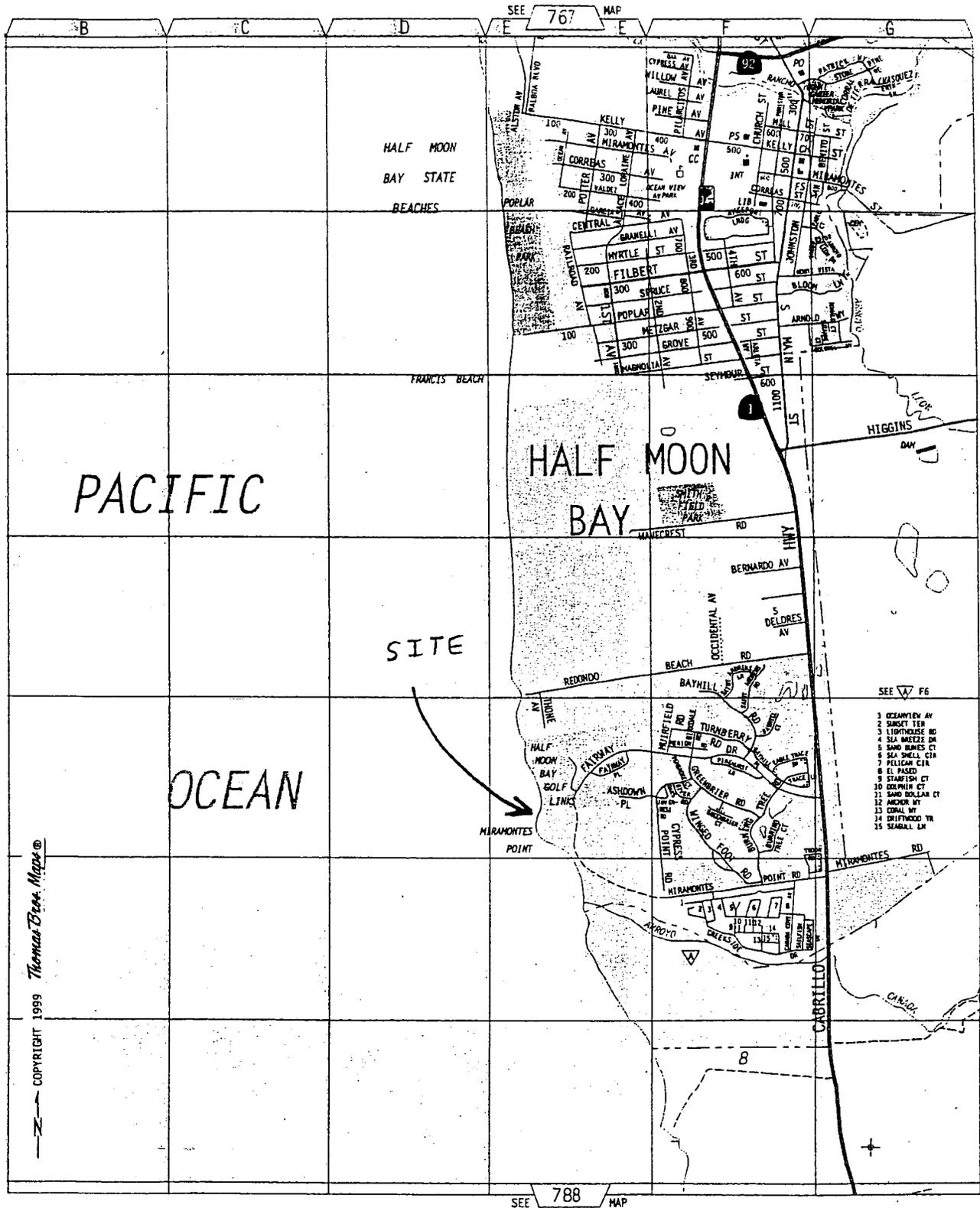
E. DEFENSES: MITIGATION FACTORS/REBUTTAL EVIDENCE

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. While Ocean Colony initially submitted a Statement of Defense form to the Commission in response to the NOI, Ocean Colony representatives and Commission staff met on August 2, 2002 to discuss possible terms for a Consent Order to resolve the Coastal Act violation regarding the riprap. Ocean Colony provided plans drafted by its engineers proposing immediate removal of the maximum amount of riprap possible to

restore public access while maintaining the stability of the concrete slab underneath the 18th Hole. Ocean Colony proposed to grout the remaining riprap for interim retention during the review of its pending CDP application for a proposed replacement shoreline/bluff protective structure. In a letter dated September 19, 2002, (**Exhibit 15**), Ocean Colony subsequently withdrew the Statement of Defense that it had originally submitted in response to the NOI. Commission staff and Ocean Colony have agreed upon terms for the proposed Consent Order (**Exhibit 16**). As part of the Consent Order, Ocean Colony has proposed to construct a public access stairway and improve the existing informal pathway from the parking lot at the end of Redondo Beach Road to the beach in Half Moon Bay as generally depicted in the conceptual plans submitted by Ocean Colony dated September 12, 2002 (**Exhibit 17**). In recognition of the value of resolving this matter in a timely manner and for the purposes of agreeing to the issuance and enforcement of the Consent Order, the parties agree not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183.

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.
5. May 2002 photograph of site showing riprap on bluff face and beach along the 18th Hole of the Half Moon Bay Golf Links.
6. Notice of violation letter dated January 13, 1999 from Commission to Ocean Colony.
7. Letter dated January 29, 1999 from Ocean Colony to Commission claiming that the City of Half Moon Bay exempted 1998 installation of riprap.
8. Letter dated February 17, 2000 from Commission to Ocean Colony requesting that Ocean Colony submit a CDP application to the Commission by March 10, 2000.
9. Letter dated February 24, 2000 from City of Half Moon Bay to Ocean Colony explaining that the riprap placed 1998 was not exempt from coastal development permit requirements.
10. Letter dated February 2, 2001 from Commission to Ocean Colony describing jurisdictional boundaries and requesting that Ocean Colony 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 Ocean Colony reiterating request for completion of CDP application.
12. Letter dated March 11, 2002 from Commission to Ocean Colony requesting that Ocean Colony 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 Ocean Colony 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. Letter from Ocean Colony dated September 19, 2002 withdrawing Statement of Defense.
16. Consent Agreement and Cease and Desist Order No. CCC-02-CD-02.
17. Conceptual plans for proposed public access path and stairs submitted by Ocean Colony dated September 12, 2002.



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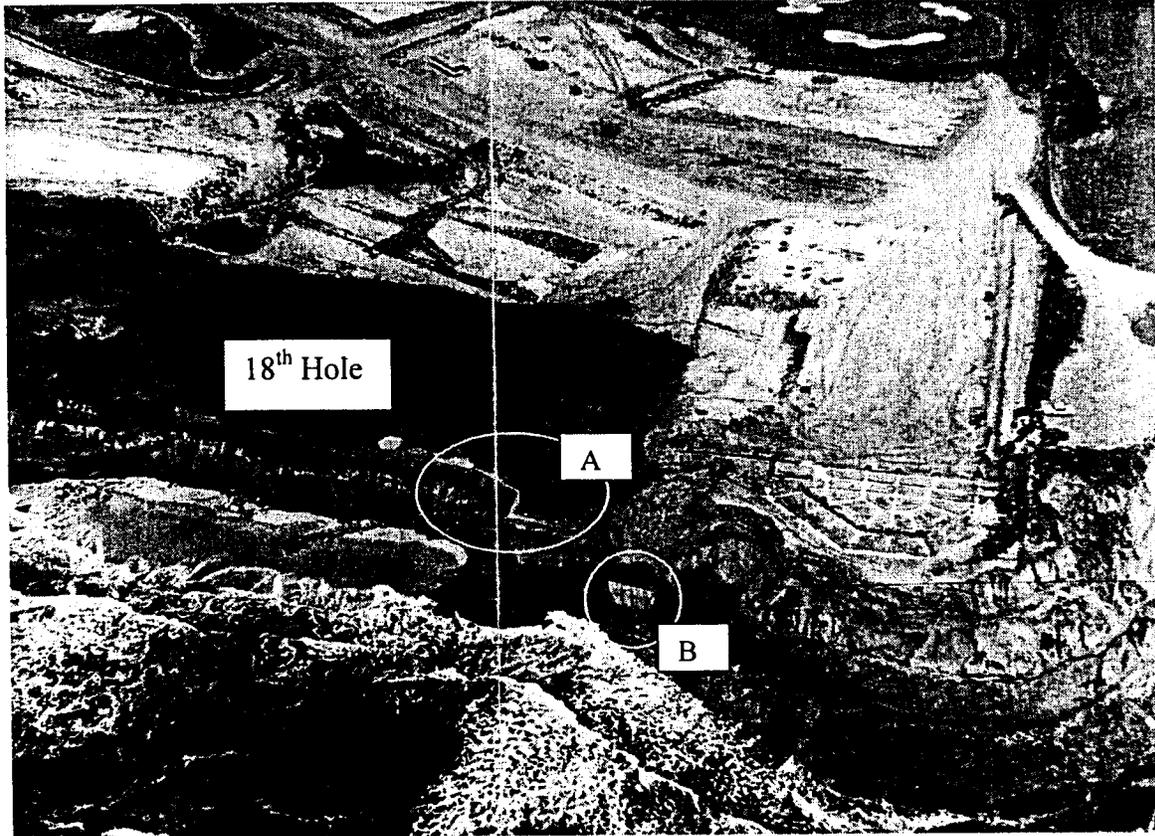


Exhibit 2. 1973 aerial photograph looking generally east towards the 18th Hole at Half Moon Bay Golf Links. The white oval labeled A by staff is drawn around the area where the edge of the concrete slab supporting the 18th Hole turf is visible as a thin gray line. The white circle labeled B by staff 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 18th Hole.

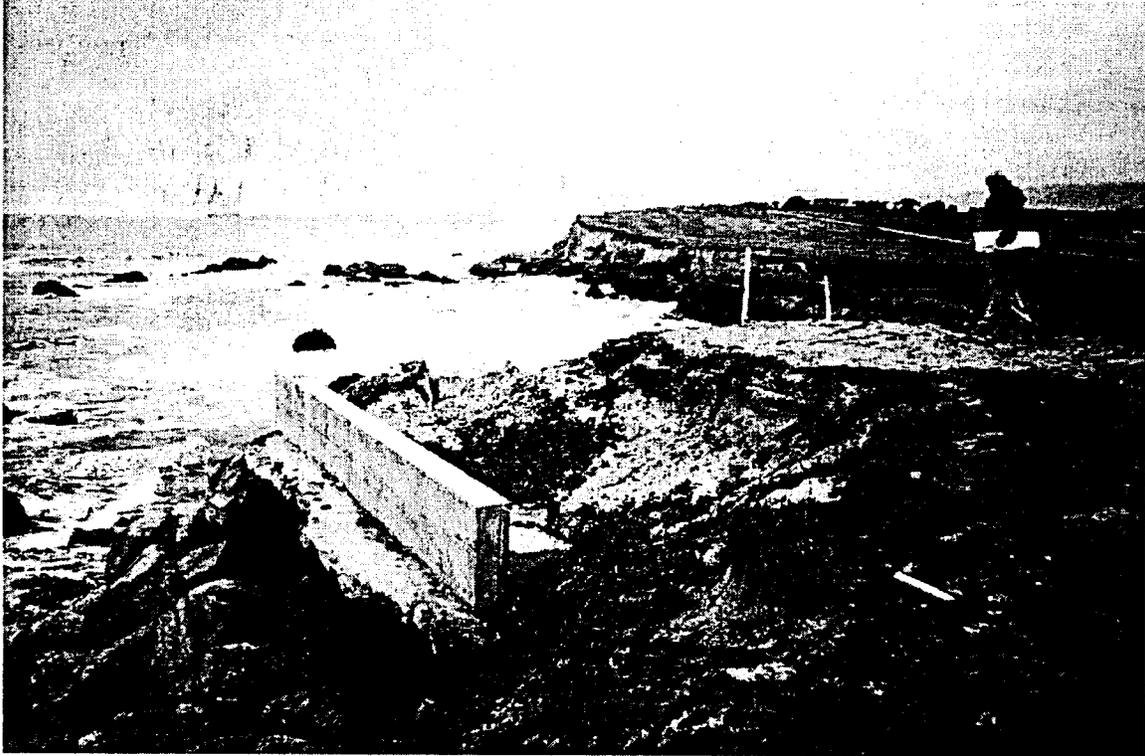


Exhibit 3. 1999 photograph of bluff edge at the southern end of the 18th Hole at Half Moon Bay Golf Links.



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 18th 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 18th tee box and the 18th green of September 8, 1998.

A Coastal Development Permit (CDP-08-96) for repair of storm damage on the 18th 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.

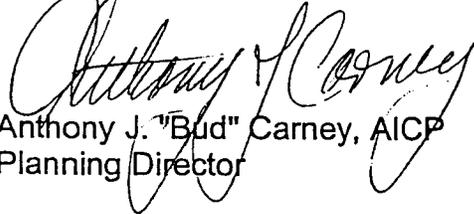
Our records indicate that no coastal permitting has been processed for repair of the 18th tee box. A Coastal Development Permit will be required for this activity. Some part of the tee box repair may be performed below mean high water, an area that is an original jurisdiction of the Coastal Commission.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

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

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, 18th 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 18th 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 or 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,

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.

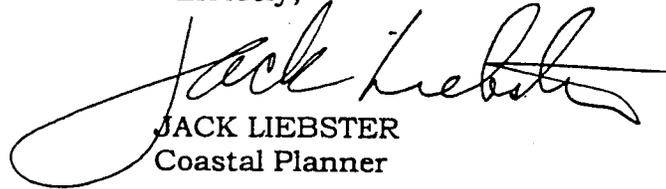
Please note that pursuant to Coastal Act Section 30600, any development in the coastal zone requires a coastal development permit authorizing such development. Unauthorized development without a coastal development permit is a violation of the Coastal Act (PRC Sect. 30000 et.seq.).

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.

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



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 7
CCC-02-CD-02 (Ocean Colony Partners)

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 18th 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 18th 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.

PATRICK FITZGERALD

Page 2

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 violates 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.

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 18th 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

PATRICK FITZGERALD

Page 4

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.

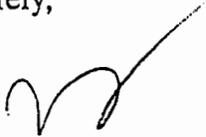
In addition, there is no signage for the public parking lot, or to indicate where the public restrooms are located, or for the access trail so that the public will know that they can use the trail.

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



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 18th 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 18th 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 18th 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."

Mr. Pat Fitzgerald
February 24, 2000
Page 2

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.

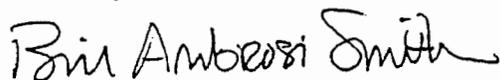
Subsequent to issuance of the repair and maintenance exemption, it became clear that the work that was performed was not in compliance with the plans submitted. In fact, it appeared that a temporary road had been constructed in the riparian corridor in the middle of the 18th fairway to provide access 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 18th 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

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (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 18th 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 18th 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.

- 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.

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 18th 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 18th 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,

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.

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:

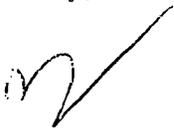
- a. Post additional signage on Highway One indicating that there is public parking;
- b. Post additional signage in the parking lot itself indicating that the lot is for public use;
and
- c. Post additional signage along the lateral trail itself indicating that the trail is for public use.

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

MR. BARRETT
MR. FITZGERALD
Page 5

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

Sincerely,

A handwritten signature in black ink, appearing to be 'Jo Ginsberg', with a long, sweeping flourish extending upwards and to the right.

JO GINSBERG
Enforcement Analyst

Enclosure

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



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 18th 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 18th 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

CALIFORNIA COASTAL COMMISSION

45 FREMONT, 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 18th 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

PAT FITZGERALD

Page No. 2

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

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 18th 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

Patrick K. Fitzgerald
Signature
Patrick K. Fitzgerald

12/21/01
Date



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 18th 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 18th 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

CHARLES R. KELLER
RONALD F. SCHOLL
THOMAS H. JAMISON
LARRY E. HAYES
MARK A. CAMERON
JOHN S. BRIDGES
DENNIS G. MCCARTHY
JACQUELINE F. MCMAHON
CHRISTOPHER E. PANETTA
DAVID C. SWIGERT
VIRGINIA E. HOWARD
DANIEL J. DE VRIES
JENNIFER M. FAVLST
SARA B. ROYNS
CHRISTINE G. BRENN
H. DAVID HWANG

OF COUNSEL

LEWIS L. FENTON

FENTON & KELLER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2801 MONTEREY-SALINAS HIGHWAY

POST OFFICE BOX 791

MONTEREY, CALIFORNIA 93941-0791

TELEPHONE (831) 373-1241

FACSIMILE (831) 373-7219

SANTA CRUZ
COUNTY OFFICE

FIRST NATIONAL BANK BUILDING
633A MAIN STREET
WATSONVILLE, CA 95076
TELEPHONE (831) 761-3494
FACSIMILE (831) 761-2135

FROM SALINAS

TELEPHONE (831) 757-8939

THOMAS H. JAMISON

September 19, 2002

TJamison@FentonKeller.com
ext. 230

VIA FACSIMILE

Peter Douglas, Executive Director
California Coastal Commission
Attn: Lisa Haage, Chief Enforcement Officer
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Ocean Colony Partners - Consent Agreement and Cease and Desist Order
No. CCC-02-CD-02
Our File: 31973.28687

Dear Mr. Douglas:

Our firm is legal counsel for Ocean Colony Partners, L.P. ("Ocean Colony") on the above referenced proceeding. Ocean Colony hereby withdraws its Statement of Defense Form and waives its right to a hearing to contest the factual and legal basis for the California Coastal Commission's issuance and enforcement of Consent Agreement and Cease and Desist Order No. CCC-02-CD-02 based on the agreement between Commission Staff and Ocean Colony on the terms of the Consent Agreement and Cease and Desist Order No. CCC-02-CD-02 attached to the Executive Director's Staff Report and predicated upon the Commission's adoption thereof. Should the Commission not adopt the Consent Order, this withdrawal and waiver will not be effective, and Ocean Colony retains its rights to a full evidentiary hearing and argument on the matters alleged.

Very truly yours,

FENTON & KELLER
A Professional Corporation

Thomas H. Jamison
Thomas H. Jamison

cc: William E. Barrett
Patrick K. Fitzgerald

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
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**CONSENT AGREEMENT AND CEASE AND
DESIST ORDER NO. CCC-02-CD-02**

1.0 TERMS AND CONDITIONS

Pursuant to its authority under Public Resources Code Section 30810, the California Coastal Commission (hereinafter referred to as the "Commission") hereby orders and authorizes Ocean Colony Partners, L.P. (hereinafter referred to as "Ocean Colony"), its employees, agents, and contractors, and any persons acting in concert with any of the foregoing, to undertake the activities specifically required by this consent agreement and cease and desist order (hereinafter referred to as "Consent Order") and to cease and desist from continuing to violate the Coastal Act through its failure to obtain the required coastal development permits for placement of riprap on the bluff face and beach below the 18th Hole of the Half Moon Bay Golf Links except as specifically provided herein. By its execution of this Consent Order, Ocean Colony (without admitting that it has violated the Coastal Act) agrees, and agrees to cause its employees, agents, and contractors, and any persons acting in concert with any of the foregoing, to comply with the following terms and conditions:

- 1.1 Within 45 days of the issuance of this Consent Order, Ocean Colony shall submit to the Executive Director for review and written approval, plans that provide sufficient detail and address the elements set forth below for removal of the old retaining wall that has collapsed onto the beach, partial removal of the riprap below the 18th Hole as depicted on the plans dated September 19, 2002 provided by Ocean Colony and labeled in the legend as "Proposed Rock Removal Area", and for grouting the remaining riprap that is to remain in place pending a decision on an application for a permanent shoreline/bluff protective structure. 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 an identification of: (1) the amount (approximate total volume and weight) of rock to be removed, (2) the proposed method of removal, (3) the proposed method

of grouting the remaining riprap, (4) any proposed means of beach access for construction personnel and equipment, (5) all dates and times when removal and grouting or any other activities would take place, (6) total amount and location of any fill placement or grading in connection with any proposed, temporary beach access ramp or other project component, and, if applicable, removal of temporary access ramp and (7) ultimate storage and/or disposal plans for the rock removed. If the disposal site is located within the coastal zone, a Coastal Development Permit (CDP) for such disposal shall be issued prior to such disposal. The Executive Director reserves the right to postpone if necessary the permissible dates and times for construction specified in this Consent Order based on his/her evaluation and considerations related to protection of the environment.

- b. Project Plans: Detailed project plans, certified by a licensed engineer, are required for all aspects of the project, showing (1) any 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 (3) equipment and materials staging areas. For all plans, please submit both large scale plans (1 inch = 10 feet) and reduced (8.5" x 11") copies
 - c. Erosion Control Plan: The erosion control plan shall demonstrate that (1) during removal 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 removal activities. The plan shall include a narrative report describing all temporary erosion control measures to be used during removal activities, plans showing the locations of the erosion control measures on large scale (1 inch = 10 feet) 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.
 - d. Road Impacts: A description of the timing and estimated number of truck trips on Miramontes Point Road.
- 1.2 Within 30 days from issuance of the Executive Director's written approval of the plans referenced in Section 1.1, Ocean Colony shall commence work in compliance with the approved plans for removal of the old retaining wall that has collapsed onto the beach, partial removal of the riprap and grouting the remaining riprap. Ocean Colony shall undertake the removal and grouting work in strict compliance with the final project and erosion control plans as approved by the Executive Director.
- 1.3 Within 90 days of commencement of work, Ocean Colony shall complete the removal of the old retaining wall that has collapsed onto the beach, the partial removal of the riprap and grouting the remaining riprap.

- 1.4 If road damage occurs to Miramontes Point Road as a result of the removal activities, Ocean Colony shall restore the road surface to the same conditions that existed prior to the removal of the riprap within 30 days of the completion of the work.
- 1.5 Within 90 days of the date of issuance of this Consent Order (by **January 10, 2003**) or other such time as may be agreed to under Section 8.0, Ocean Colony shall submit a complete CDP application to the Commission for a proposed permanent shoreline/bluff protective structure where the grouted rock riprap remains. The Commission has asserted, and Ocean Colony does not contest for purposes of this Consent Order or the CDP referenced herein (as further explained in Section 4.0), that the Commission has jurisdiction to accept, process, and act on the CDP application required by this Section 1.5, and any subsequent amendments to or enforcement of the terms and conditions of such CDP, and Ocean Colony agrees not to contest that jurisdiction. The application shall conform to all applicable requirements of the Coastal Act and any other relevant laws, and 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) total amount and location of material to be used in construction of the proposed protective structure, (2) proposed method of construction of the protective structure, (3) any proposed means of beach access for construction personnel and equipment and (4) all dates and times construction activities would take place.
 - b. **Project Plans:** Detailed project plans, certified by a licensed engineer, are required for all aspects of the project, showing (1) any proposed beach access for construction equipment and personnel, (2) detailed cross-sections of the proposed protective structure and (3) equipment and materials staging areas. For all plans, please submit both large scale plans (1 inch = 10 feet) and reduced (8.5" x 11") copies.
 - c. **Construction Erosion Control Plan:** The erosion control plan shall demonstrate that (1) during construction 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 activities. The plan should include a narrative report describing all temporary erosion control measures to be used during construction activities, plans showing the locations of the erosion control measures on large scale (1 inch = 10 feet) 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.
 - d. **Geotechnical Study:** A geotechnical study of the proposed protective structure by a licensed civil engineer or engineering geologist evaluating the stability of the bluff and historical erosion at this location, the necessity for and adequacy of the proposed structure to insure stability of the bluff, and the effects of the proposed structure on local sand supply and the adjacent bluffs.

- e. Road Impacts: A description of the timing and estimated number of truck trips on Miramontes Point Road.
 - f. Alternatives: A detailed analysis of potential project alternatives including modification and/or relocation of the 18th Hole of Half Moon Bay Golf Links.
- 1.6 This Consent Order and the Commission's agreement to consider a CDP application for a proposed permanent shoreline/bluff protective structure does not in any way indicate whether any structure, including that to be proposed by Ocean Colony, is approvable under the Chapter 3 policies of the Coastal Act or any other relevant authorities, or bind the Commission to approve any CDP application for coastal protection at this site. This Consent Order does not constitute a CDP for the riprap; it allows retention of a portion of existing riprap pending a decision on an application for a shotcrete wall or other permanent shoreline/bluff protective structure. Ocean Colony agrees that it will not argue at any time or in any proceeding that the Commission's issuance of this Consent Order constitutes evidence that the portion of the riprap that is allowed to temporarily remain is consistent with the Coastal Act or is development for which Ocean Colony has a vested right. Ocean Colony retains the rights provided under the Coastal Act, however, to judicial review of any Commission decision with respect to a CDP for a permanent shoreline/bluff protective structure, but will not challenge the Commission's jurisdiction as provided in Section 1.5 above.
- 1.7 If Ocean Colony does not file a complete CDP application for proposed shoreline protection for the 18th Hole by **January 10, 2003**; the Commission does not approve the CDP application; if a CDP is not issued within the time specified in the CDP approval; if Ocean Colony does not timely meet "prior to issuance" conditions specified in the CDP; or if Ocean Colony does not carry out the development authorized in a CDP within the time specified in the CDP, then the issuance of this Consent Order does not in any way waive or limit the Commission's right to take enforcement action seeking removal of the portion of the riprap allowed to remain temporarily pursuant to this Consent Order, or to remedy any violations then existing at the site or any future violations.
- 1.8 Pursuant to California Code of Regulations Title 14, Section 13053, the Executive Director of the Commission hereby waives the requirement for preliminary local approvals, if any, for the proposed permanent shoreline/bluff protective structure.
- 1.9 Ocean Colony shall construct a public access stairway and improve the existing informal pathway from the parking lot at the end of Redondo Beach Road to the beach in Half Moon Bay as generally depicted in the conceptual plans submitted by Ocean Colony dated September 12, 2002 (**Exhibit 17**). Within 60 days of the issuance of this Consent Order, Ocean Colony shall submit to the City of Half Moon Bay a complete CDP application addressing the application requirements for such public access path and stairway in accordance with the following (Ocean Colony shall also submit a copy of the complete CDP application to Commission staff at the time of submittal to the City):

- a. **Project Description and Plans:** The plans shall include (1) total amount and location of material to be used in construction of the path and stairway, (2) proposed method of construction of the path and stairway, (3) any proposed beach access for construction personnel and equipment, (4) equipment and materials staging areas, and (5) all dates and times construction activities would take place.
- b. Within 60 days of issuance of a CDP for the path and stairway, Ocean Colony shall commence their construction.
- c. Ocean Colony shall provide evidence that it possesses sufficient rights to construct the path and stairway and that public use of said path and stairway will be allowed immediately upon completion of construction. If the applicable land on which the improvements are to be constructed is owned by any one or more public entities or agencies and Ocean Colony provides evidence of such ownership by public entities or agencies, this requirement will be satisfied. Ocean Colony will also work diligently with the landowner to make all necessary arrangements for the access to be opened, and will provide evidence of these efforts to the Commission. Upon completion of construction, Ocean Colony shall identify the entity that has accepted responsibility for the long-term maintenance and repair of the path and stairway. If no entity has been designated upon completion of construction, Ocean Colony shall assume such responsibility until such time as such responsibilities are effectively transferred to another entity. Ocean Colony's responsibility for maintenance and repair of the stairway and path shall not exceed three (3) years, irrespective of whether another entity has accepted responsibility.
- d. Ocean Colony agrees to contribute a total of \$50,000 for the long-term maintenance and repair of the public access path and stairway. Upon completion of the construction of the path and stairway, or six months from the effective date of this Consent Order, whichever is sooner, Ocean Colony shall deposit the maintenance and repair funds into an account controlled by the entity that has been designated responsible for the maintenance and repair of the stairway. If no entity has been designated by such time, Ocean Colony shall be responsible for the maintenance and repair of the path and stairway until such time as another responsible entity is designated, but in no event longer than 3 years. If an entity is later designated and accepts responsibility for repair and maintenance of the stairway, Ocean Colony shall transfer \$50,000 to that entity.
- e. Ocean Colony shall have the rights provided under the Coastal Act to seek review of any decision on the CDP referenced in this Section 1.9 without being in violation of the terms of this Consent Order.
- f. If the Executive Director determines it is necessary, Ocean Colony shall work with the Coastal Conservancy, and, if necessary, have the Coastal Conservancy become the

applicant for the project. Therefore, the path and stairway project (referenced in this Section 1.9) would be a project of the Coastal Conservancy. In such an event, Ocean Colony's other obligations to fund and construct this project remain in place.

- g. If, for any reason, this proposed path and stairway project is demonstrated to the Executive Director's satisfaction to not be feasible, Ocean Colony shall, within 60 days of the Executive Director's written determination, propose to the Commission an alternative project that provides equivalent public benefits at a cost no greater to Ocean Colony than \$250,000 (which amount includes expenses equivalent to those described in subparagraph d. above), subject to Commission approval, and shall seek Commission approval for such an alternative to be embodied in an amendment to this Consent Order, and shall implement such alternative project in compliance with the terms of such amendment.

2.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this consent order is described as follows:

2450 South Cabrillo Highway, Half Moon Bay, San Mateo County, APN 066-092-720 and the bluff face and beach below the 18th Hole of the Half Moon Bay Golf Links.

3.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted development consisting of the construction and maintenance of a riprap revetment on the bluff face and beach below the 18th Hole of the Half Moon Bay Golf Links.

4.0 COMMISSION JURISDICTION

The Commission has jurisdiction over this alleged Coastal Act violation pursuant to Public Resources Code Section 30810. The City of Half Moon Bay has formally requested that the Commission assume the primary enforcement role pursuant to Public Resources Code § 30810(a)(1) regarding this alleged Coastal Act violation. In addition, the Commission has asserted, and Ocean Colony does not contest for purposes of the Commission accepting, processing, and acting upon the CDP application required by Section 1.5 (including any amendments to or enforcement of the terms and conditions of such CDP), that the base of the bluff below the 18th Hole of Half Moon Bay Golf Links is at times subject to wave action; that a portion of the proposed permanent structure as depicted in draft project plans is located on public tidelands where the Commission has permit jurisdiction; and because the proposal is for one integrated structure, the Commission has permit jurisdiction over the entire proposed structure, including the portions at the base of the bluff and in front of the bluff, and the portions that extend up the bluff. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has jurisdiction to act as set forth in this Consent Order and Ocean Colony agrees it will not contest the Commission's jurisdiction to issue or enforce this Consent Order.

5.0 HEARING

In light of the intent of the parties to resolve these matters in settlement, Ocean Colony waives its right to a public hearing before the Commission for the purpose of contesting the legal and factual basis, terms and issuance of this Consent Order including the allegations of Coastal Act violations contained in the Notice of Intent to issue a cease and desist order dated June 20, 2002. Ocean Colony previously submitted a Statement of Defense Form, which Ocean Colony has withdrawn solely for the purpose of adoption and issuance of this Consent Order. Ocean Colony's waiver herein is limited to a hearing on the Commission's adoption and issuance of this Consent Order and no other hearing or proceeding, and this Consent Order shall not be deemed an admission by Ocean Colony on any matters including the findings referred to in Section 6.0 below. It is reiterated, however, that Ocean Colony does not contest the Commission's jurisdiction and basis for the purposes of adoption, issuance and enforcement (according to its terms) of this Consent Order.

6.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission on October 10, 2002, as set forth in the attached document entitled "Staff Report for Consent Agreement and Cease and Desist Order No. CCC-02-CD-02."

7.0 EFFECTIVE DATE

This Consent Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

8.0 EXTENSION REQUESTS

Ocean Colony may, prior to the expiration of the deadlines, request from the Executive Director in writing, an extension of the deadlines. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Ocean Colony has diligently worked to comply with its obligations under this Consent Order but cannot meet deadlines due to unforeseen circumstances or other factors beyond Ocean Colony's control.

9.0 COMPLIANCE OBLIGATION

Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order including any deadline contained in this Consent Order will constitute a violation of this Consent Order and may result in the imposition of civil penalties of up to \$6,000 per day for each day in which such compliance failure persists pursuant to Public Resources Code Section 30821.6, and imposition of damages as provided in Public Resources Code Section 30822.

10.0 SITE ACCESS

Access to the sites- both the revetment site below the 18th Hole and the stairway and path site at the end of Redondo Beach Road- shall be provided at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission may enter and move freely about all property at the sites at all reasonable times for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Ocean Colony in carrying out the terms of this Consent Order.

11.0 GOVERNMENT LIABILITIES

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Ocean Colony or related parties specified in Section 1.0 in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Ocean Colony or its agents in carrying out activities pursuant to this Consent Order. Ocean Colony acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, landslide, bluff retreat, erosion and earth movement; (ii) to assume the risks to Ocean Colony and the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

12.0 APPEAL AND STAY

Persons against whom the Commission issues a cease and desist order have the right to seek a stay of the order pursuant to Section 30803(b) of the Coastal Act. This Consent Order does not limit the Commission from taking enforcement action due to other Coastal Act violations at 2450 South Cabrillo Highway. The Commission and Ocean Colony, however, agree that this Consent Order settles all unresolved issues, and all claims for relief for violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, including potential monetary claims, (specifically including but not limited to any claims or actions for civil penalties, fines, or damages under the Coastal Act (including Sections 30805, 30820, and 30822), or otherwise). Accordingly, Ocean Colony agrees to waive whatever right it may have to challenge the issuance and enforceability of this Consent Order in a court of law.

13.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future owners of the property, heirs and assigns of the respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Consent Order.

14.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 8.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

15.0 GOVERNMENTAL JURISDICTION

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

16.0 LIMITATION OF AUTHORITY

- 16.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Consent Order.
- 16.2 Correspondingly, Ocean Colony has entered into this Consent Order and waived its right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms, solely to effectuate a settlement with the Commission through this Consent Order. Ocean Colony has agreed that it does not contest that (a) the Commission has jurisdiction to issue and enforce this Consent Order; and (b) for purposes of the CDP application specified in Section 1.5 of this Consent Order, the Commission has jurisdiction to accept, process, and act on such CDP application (and any amendments to or enforcement of the terms and conditions of such CDP).
- 16.3 Except as to the matters specified in Section 16.2, Ocean Colony is not waiving any legal rights, positions, or defenses, or conceding any factual matters, by entering into this Consent Order, and Ocean Colony retains the right to assert all of its legal rights, positions, and defenses, and present all facts and evidence in support thereof, in any other proceeding for any purpose by or before the Commission (including the CDP application specified in Section 1.5 above), any other governmental agency, any administrative tribunal, or a court of law. The Commission shall not assert in any such other proceeding that Ocean Colony has waived any of its rights, positions, or defenses, or conceded any facts, by virtue of its entering into this Consent Order.

17.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

18.0 STIPULATION

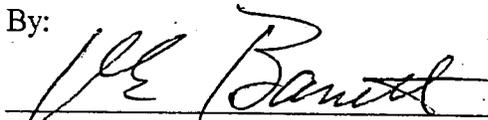
Ocean Colony and its representatives attest that they have reviewed the terms of this Consent Order, understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Ocean Colony Partners, L.P.:

Ocean Links Corporation, its general partner

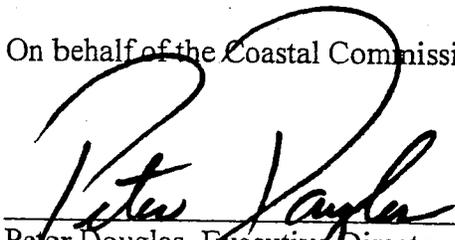
By:



William E. Barrett, President

10/25/02
Dated

On behalf of the Coastal Commission:



Peter Douglas, Executive Director

10/31/02
Dated



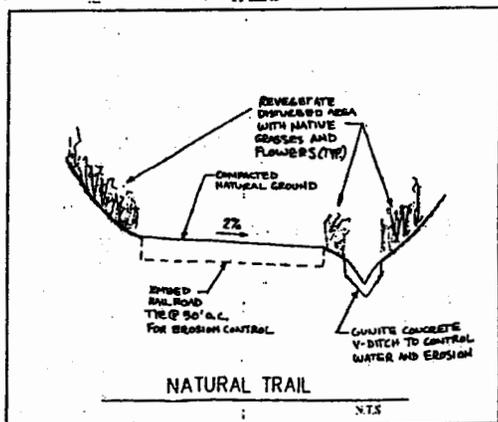
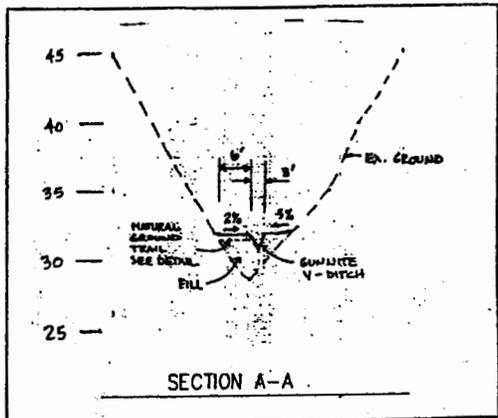
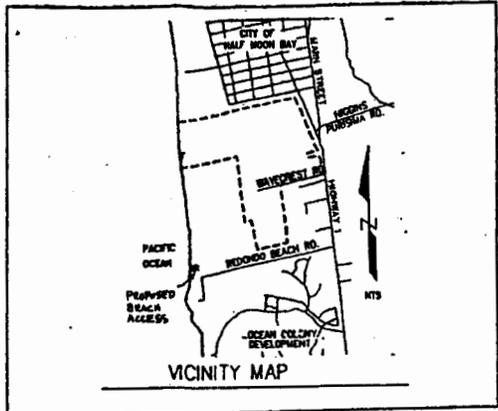
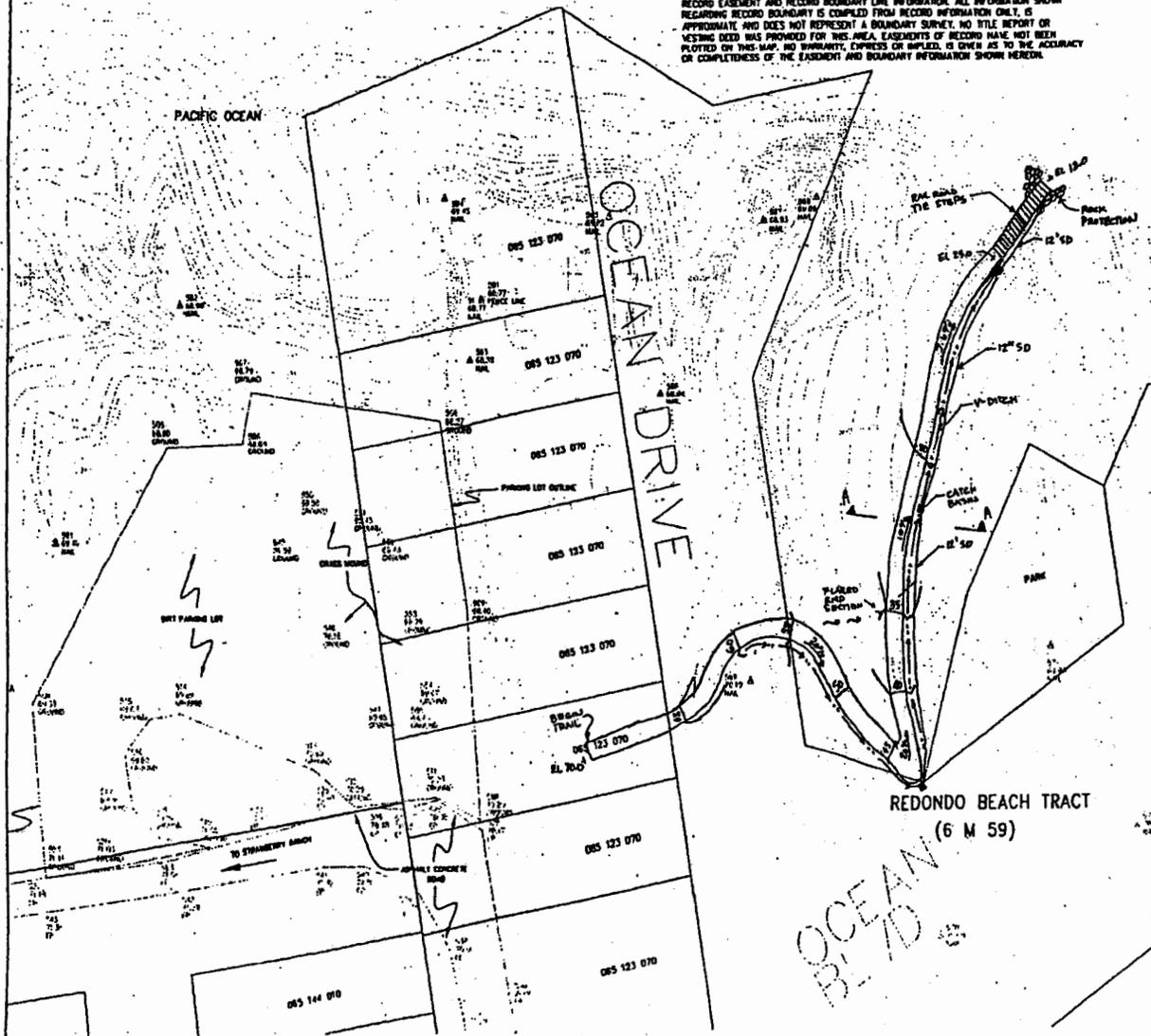
GRAPHIC SCALE



SURVEY NOTES:
FIELD SURVEY PERFORMED 04/21/2001

SET WALLS NEAR BLUFF ARE 3' OFFSET FROM BLUFF EDGE ANGLE POINT

THIS MAP REPRESENTS A PARTIAL TOPOGRAPHIC SURVEY. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY BRIAN KANGAS FOLLO TO DETERMINE RECORD EASEMENT AND RECORD BOUNDARY LINE INFORMATION. ALL INFORMATION SHOWN REGARDING RECORD BOUNDARY IS COMPILED FROM RECORD INFORMATION ONLY, IS APPROXIMATE AND DOES NOT REPRESENT A BOUNDARY SURVEY. NO TITLE REPORT OR MAPPING DEED HAS PROVIDED FOR THIS AREA. EASEMENTS OF RECORD HAVE NOT BEEN PLOTTED ON THIS MAP. NO LIABILITY, EXPRESS OR IMPLIED, IS OWED AS TO THE ACCURACY OR COMPLETENESS OF THE EASEMENT AND BOUNDARY INFORMATION SHOWN HEREIN.



CLIFFORD BROWN & ASSOCIATES
REGISTERED PROFESSIONAL ENGINEERS
CITY OF SAN FRANCISCO
NO. 10000

REDONDO BEACH ROAD
CONCEPTUAL BEACH ACCESS PLAN
HALF MOON BAY, CALIFORNIA

OWNER:	
GRADING & DRAINAGE PLAN	
DATE:	09/12/02
SCALE:	AS NOTED
REVISED:	
DESIGNER:	
CHECKER:	
DATE:	
SCALE:	
REVISED:	
DESIGNER:	
CHECKER:	



KENMARK
Real Estate Group, Inc.

June 3, 2005

Chris Kern, District Manager
Lisa Haage, Chief of Enforcement
California Coastal Commission
State of California
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Re: Ocean Colony Partners

Dear Mr. Kern and Ms. Haage:

Thank you for your time and attention in meeting with us yesterday concerning the remaining rip rap installed as shoreline protection for the 18th hole at Ocean Colony's Old Course. As we indicated, Kenmark has recently assumed management responsibility for Ocean Colony Partners ("OCP") and all of its assets.

As I expressed at our meeting, it is OCP's desire to resolve this ongoing matter and put it behind all of us. We hope to accomplish that by the complete removal of the rip rap placed in 1998, and by implementing associated relocation, repairs and modifications to the 18th green and hole. As suggested in your May 20th Staff Report, those repairs and modifications will help preserve the 18th hole given the damage we know will occur to the 18th green and surroundings from removal of the rip rap protection.

Based on our preliminary assessment, and the prior rip rap removal process, we outlined for you some of the basic technical issues, methods, and intricacies associated with the removal process, which would include:

1. The need for crane placement areas, truck turn-arounds, and temporary roadways on the 18th hole near the bluff edge.

2450 South Cabrillo Highway, Suite 250
Half Moon Bay, California 94019
phone 650.560.0055
fax 650.560.9198



Exhibit 2
CCC-02-CD-02-A
(Ocean Colony Partners) Page 1 of 3

KENMARK

Chris Kern
Lisa Haage
June 3, 2005
Page 2

2. The prospect for access to and presence on the beach, including the building of a ramp to the beach (outside the riparian area), for heavy equipment as necessary to accomplish the removal.

3. The temporary installation of a fill "bench" along a portion of the rip rap to accomplish the removal.

4. Removal of all or a portion of the concrete base structure underlying the 18th green and surroundings in a manner that will address safety during the removal process.

5. The likelihood of some bluff retreat in the locations of removal of the rip rap and concrete structure underlying the 18th green and surroundings resulting from such removal, causing a loss of a portion of the 18th green and surroundings and requiring corresponding repairs and modifications.

6. A time period for the removal process which we presently estimate at 90 days from commencement, but which could take longer depending on our further engineering investigation.

7. A realistic timeframe that the removal process cannot occur until next Spring, given the tasks and further technical work that need to be performed to prepare plans to "do it right," and your related review and comment on those plans, and the fact that the removal cannot effectively or safely be accomplished during the weather conditions of the Winter months.

We also discussed the administrative and procedural issues associated with OCP's desire to comply with and implement the existing Consent Order by completing the rip rap removal according to the concepts described above. OCP's intent would be to withdraw its presently pending application for a "permanent structure" (Application No. 2-02-028) upon authorization to remove the remaining 1998 rip rap in accordance with the concepts described above.

Based on our meeting, we understand that you have no difficulties with our preliminary assessment of the work, repairs and modifications described above. However, we also understand that the ultimate details of the removal process (including associated 18th hole relocation, repairs and modifications) will be subject to plans approved by Commission staff (which we expect to be authorized under the existing Consent Order or any necessary modification to the Consent Order).

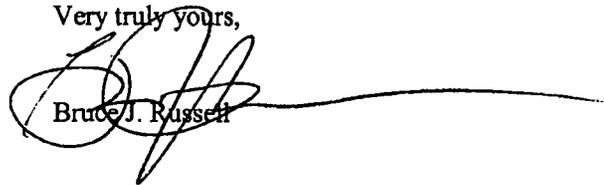
Based on what we consider to be a high probability of achieving an acceptable agreement with you over the next month on the matters associated with rip rap removal and 18th hole repairs and modifications we formally request a postponement of the Commission hearing scheduled for June 8, 2005, on Application No. 2-02-028, to the July 2005 Commission meeting. We understand that Commission staff has the authority to effectuate this postponement, and we request that you do so. OCP will be at Commission staff's disposal during the coming month to reach a mutually acceptable resolution of this matter that can be presented to the Commission at its July meeting, to the extent the Commission needs to act formally.

KENMARK

Chris Kern
Lisa Haage
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We appreciate your ongoing cooperation and assistance.

Very truly yours,

A handwritten signature in black ink, appearing to be "Bruce J. Russell", with a long horizontal line extending to the right.

cc: Sheila Ryan
Al Wanger
Thomas H. Jamison, Esq.

