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Staff Report: May 31, 2019
Hearing Date: June 13, 2019

STAFF REPORT: RECOMMENDATIONS AND FINDINGS FOR CONSENT AMENDMENT TO CONSENT CEASE AND DESIST ORDER AND CONSENT ADMINISTRATIVE CIVIL PENALTY

Consent Cease and Desist Order Amendment No.: CCC-03-CD-14-A

Consent Administrative Penalty No.: CCC-19-AP-01

Related Violation File: V-2-16-0048

Entities Subject to These Consent Orders: SHC Half Moon Bay, LLC

Location: One Miramontes Point Road, Half Moon Bay, San Mateo County (APNs 066-092-780 and 066-092-770).

Violation Description: Failure to implement a public access program required by CDP No 3-91-71/1-95-47 and non-compliance with Cease and Desist Order No. CCC-03-CD-014.

Substantive File Documents:

1. Public documents contained in Cease and Desist Order file Nos. CCC-03-CD-014 and CCC-03-CD-14-A and Administrative Penalty file No. CCC-19-AP-01.
2. Appendix A and Exhibits 1 through 5 of this staff report.

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

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

Commission staff brings this enforcement action to resolve longstanding violations related to the failure to provide public access to the coast at the Ritz-Carlton Half Moon Bay. Historically, before the hotel was built, this location was consistently used by the public to access the coast. Thus, the Coastal Development Permit (“CDP”)¹ that the Commission approved to authorize the hotel development required a comprehensive public access program. This program was designed to help preserve and provide for continuing public use of the immediate and adjacent coastal areas where access would have otherwise been lost due to the construction of the hotel, which would have been inconsistent with the mandates of the public access policies of Chapter 3 of the Coastal Act.

As discussed in greater detail below, compliance with the special condition of the CDP that requires a public access program at this location has already been the subject of one consent cease and desist order (“Original Order”) in 2004, which is incorporated in this Staff Report as Attachment A to Appendix A.² Through this proposed Consent Order (**Appendix A**),³ the owners of the Ritz-Carlton Hotel Half Moon Bay, SHC Half Moon Bay, LLC (“Respondents”) have also agreed to resolve additional Coastal Act violations at the hotel, including violations of the CDP that occurred since the Original Order was issued, as well as violations of the Original Order. The proposed Consent Order before the Commission today contains new, mutually acceptable language to update the obligations of Respondents and to address Coastal Act violations that occurred on property located at One Miramontes Point Road, Half Moon Bay, San Mateo County (“Property”)(Exhibit 1),⁴ including claims for monetary fines and penalties under Chapter 9 of the Coastal Act.

Specifically, as a part of the negotiated resolution of the violations, Respondents have agreed, through the Consent Order, to implement, among other things, a new management strategy for the public coastal access parking spaces located within the hotel garage, expand the number of coastal public access parking spaces available at the nearby Cañada Verde parking lot, add improved coastal access signage at both the garage parking lot and the Cañada Verde parking lot that will provide background information about the area, provide a map for exploring the coastal trails, place improved directional signage to guide members of the public to the Ritz Carlton Half Moon Bay garage parking lot, and pay increased stipulated penalties for any future non-compliance with this Consent Order. Additionally, as a part of the Consent Order, Respondents

¹ CDP No. 3-91-71/1-95-47 - The Central Coast District office processed the original, 1991 CDP application; but by 1995, when the applicant was ready to submit documentation to demonstrate compliance with the permit conditions, the Commission had reorganized its internal operations such that permits for Half Moon Bay were being processed by the Commission’s North Coast District office. The CDP was renumbered to reflect the change in jurisdiction and to clarify for record keeping purposes.

² The term “Original Order” refers to Consent Cease and Desist Order No. CCC-03-CD-014, which was issued by the California Coastal Commission on April 14, 2004, and is included in this staff report as Attachment A of Appendix A.

³ The proposed amendment to the Original Order (Consent Cease and Desist Order Amendment No. CCC-03-CD-014-A) together with the proposed Consent Administrative Penalty Order (No. CCC-19-AP-01) are collectively referred to herein as the “Consent Order.”

⁴ Also identified by Assessors Parcel Numbers 066-092-780 and 066-092-770.

have agreed to pay \$1,600,000. A portion of this money will be directed to the Peninsula Open Space Trust, where it will assist in the purchase of a property located just north of the hotel property, which will provide improved public coastal access, as well as the opportunity to develop a segment of the California Coastal Trail. The remainder of the money will be deposited into the Violation Remediation Account held by the State Coastal Conservancy, consistent with Section 30823 of the Coastal Act.

Permit History

Special Condition 2 of the CDP required Respondents to provide a variety of public access amenities, including a bluff top scenic overlook; a paved pedestrian access path along the length of the property; public restrooms and viewing decks; a vertical accessway to Canada Verde Beach; public parking in two locations; and signage clearly marking for public use all access routes, public parking, Miramontes Point Overlook, and public restrooms. In approving the CDP, the Commission specifically required the provision of two different public parking areas, a 15-car lot located adjacent to the pathway to Canada Verde Beach south of the hotel premises, and 25 parking spaces located on either the hotel premises or at the end of Redondo Beach Boulevard, north of the hotel property. In November 1998, the Commission's Executive Director ("ED") approved public access plans submitted by Respondents as being consistent with this condition. In those plans, Respondents proposed and the ED approved the provision of the 25 public parking spaces as they are currently located within the Ritz-Carlton hotel parking garage (as well as approving the separate 15-car Canada Verde lot).

Violation History

Shortly after the Ritz-Carlton opened in 2001, Commission staff began receiving reports from the public that Respondents were denying the public use of the 25 designated public access parking spaces located in the hotel garage. After numerous attempts by Commission staff to resolve the public access violations informally, staff brought the Commission a formal proposed order. Following a public hearing on April 14, 2004, the Commission issued Consent Cease and Desist Order No. CCC-03-CD-014 (**Attachment A of Appendix A**) to the Ritz-Carlton Hotel Company, LLC, after finding that the Ritz-Carlton had failed to provide public access to the 25 spaces within the hotel garage as required by the CDP.⁵

The Original Order required the owner and operator of the hotel to comply with the CDP and to ensure that 25 easily identified public parking spaces are readily available for public use to access the coast through the hotel premises. In addition, the Original Order also required installation of additional signage designed to alert the public to the location and availability of public coastal access parking, and required the Ritz-Carlton to design and implement a plan for providing unfettered access to the public coastal access parking located in the parking garage, including implementation of an employee training program to ensure compliance with the CDP and Original Order. Additionally, the Original Order also required the design, production, and distribution of a brochure to all members of the public who desire to use the public access

⁵ The adopted findings for the Commission's action, supporting the issuance of the Original Order, are contained within **Exhibit 3** and are hereby incorporated into this staff report.

amenities at the Ritz-Carlton. The brochure identifies and describes all coastal access amenities adjacent to and on the hotel premises, including public parking areas, coastal trails, bike paths, the bluff top overlook and the public restroom facilities. Finally, the Original Order also contained a stipulated penalties provision under which the failure to comply with any term or condition of the Original Order would subject Respondents to agreed-upon penalties in the amount of \$500 per day per violation of the Original Order.

Since the Commission issued the Original Order, Commission staff has received numerous complaints about Respondents' failure to comply with the Permit and the Original Order. Some examples of the violations include the inability of the public to access the public coastal access parking located in the garage, the use of public coastal access parking spaces by the hotel valet service, and the failure by Respondents to provide signage that alerts the public to the access opportunities available on the Property.⁶ In response to these actions inconsistent with the Original Order and CDP, Respondents have been assessed and paid stipulated penalties twice (in 2007 and 2011) since that order was issued. In resolving those instances, Respondents wrote letters to Commission staff both granting further assurances that they would comply with the Original Order and CDP and agreeing to the expansion of some requirements of the Original Order, such as the enlargement of the scope of the employee training requirement.⁷ Despite those assurances, violations continued to occur, with over a hundred documented between 2013 and the present. Each of these violations is significant, as the failure to provide the public access amenities required by the CDP makes it more difficult for the public to reach this stretch of coastline, which includes a segment of the California Coastal Trail and the beautiful Cañada Verde beach from which excellent fishing and beach combing opportunities are enjoyed.

Proposed Resolution

More recently, Respondents have worked closely and cooperatively with Commission staff to resolve all known violations of the CDP and the Original Order to reach this amicable resolution and staff appreciates Respondents' efforts in coming to this conclusion. This resolution includes, as mentioned above, a variety of measures designed to enhance and protect public access here, including to: implement a new management strategy for the public coastal access parking spaces located within the hotel garage; expand the number of coastal public access parking spaces available at the nearby Cañada Verde parking lot (located on Respondents' property); add improved coastal access signage at both the garage parking lot and the Cañada Verde parking lot that will provide background information about the area; provide a map for exploring the coastal trails; place improved directional signage to guide members of the public to the Ritz Carlton Half Moon Bay garage parking lot; and agree to pay increased stipulated penalties for any future non-compliance with this Consent Order. Additionally, Respondents have agreed to pay \$1,600,000 to resolve the civil liabilities and stipulated penalties associated with this matter.

Staff therefore recommends that the Commission **approve** Consent Cease and Desist Order Amendment CCC-03-CD-14-A and Consent Administrative Civil Penalty CCC-AP-19-01. The motions can be found on page 6 of this Staff Report.

⁶ For a more detailed description of the violation history, please see **Exhibit 4**.

⁷ Examples of such letters are contained in **Exhibit 5**.

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APPENDIX

Appendix A Proposed Consent Cease and Desist Order Amendment and Consent Administrative Penalty Action

EXHIBITS

Exhibit 1	Location Map
Exhibit 2	Coastal Development Permit No. 3-91-71/1-95-47
Exhibit 3	Adopted Findings for Consent Cease and Desist Order No. CCC-03-CD-014
Exhibit 4	Notice of Violation letters from CCC staff to Respondent; 9/30/16, 12/22/16, and 2/2/18
Exhibit 5	Letter from CCC staff to Respondents dated 7/23/13 and letters from Respondents to CCC staff dated 8/31/11 and 8/22/13

I. MOTION AND RESOLUTION

Motion 1: Consent Cease and Desist Order

I move that the Commission issue Consent Cease and Desist Order Amendment No. CCC-03-CD-14-A pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Cease and Desist Order Amendment. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order Amendment No. CCC-03-CD-14-A, as set forth below, to the parties identified therein as the Current Owners, and adopts the findings set forth below on grounds that:

(1) development has occurred without the requisite coastal development permit and inconsistent with a previously issued coastal development permit as well as a previously issued Cease and Desist Order, in violation of the Coastal Act, and that the requirements of the Amended Order are necessary to ensure compliance with the Coastal Act; and

(2) changes to the Original Order effected by the Consent Cease and Desist Order Amendment do not alter any of the legal bases for, or findings of the Commission in support of, the issuance of the underlying Original Order, and are necessary to ensure compliance with the Coastal Act, and are mutually agreeable to the parties.

Motion 2: Consent Administrative Civil Penalty Action

I move that the Commission issue Consent Administrative Civil Penalty No. CCC-19-AP-01 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Administrative Civil Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-19-AP-01, as set forth below, and adopts the findings set forth below on the grounds that activities and failures to act have occurred on the Property without a coastal development permit and in violation of CDP No. 3-91-71, Cease and Desist Order No. CCC-03-CD-014, and the Coastal Act, and these activities and failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

II. HEARING PROCEDURES

A. ADMINISTRATIVE CIVIL PENALTY AND CEASE AND DESIST ORDER AMENDMENT

The requisite procedure for imposition of administrative penalties pursuant to Section 30821 of the California Public Resources Code (a section of the Coastal Act) is set forth in Section 30821(b), which specifies that penalties shall be imposed by majority vote of all Commissioners present in the context of a public hearing in compliance with the requirements of Section 30810 (cease and desist orders), 30811 (restoration orders), or 30812 (notices of violation).

The procedures for a hearing on a Cease and Desist Order pursuant to Section 30810 are outlined in the Commission's regulations at California Code of Regulations, Title 14 ("14 CCR") Section 13185. For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the Commission typically invites staff to respond to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above.

Finally, the Commission shall determine, by a majority vote of those present and voting, whether to impose administrative penalties. The Commission shall also determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order Amendment. Passage of the motions above will result in the issuance of the Consent Cease and Desist Order Amendment and Consent Administrative Penalty.

III. FINDINGS FOR CONSENT AMENDMENT TO CONSENT CEASE AND DESIST ORDER NO. CCC-03-CD-014 AND CONSENT ADMINISTRATIVE PENALTY NO. CCC-19-AP-01⁸

Staff recommends the Commission adopt the following findings of fact in support of its action. The findings for the Original Order are hereby incorporated by reference and included in this Staff Report, and are attached hereto as **Exhibit 3**. In that original action, the Commission made the findings that supported issuance of a CDO, including finding, *inter alia*, that Respondents failed to comply with the Special Conditions of the CDP, and, therefore, failed to comply with the Coastal Act. Thus, the Commission has found that the criterion for issuance of a cease and desist order under Section 30810 of the Coastal Act has been met here. Further, for the reasons discussed below, the Commission also finds that the criteria for issuance of administrative penalties under Section 30821 have also been met.

A. DESCRIPTION OF UNPERMITTED DEVELOPMENT

The violations that were addressed through the Original Order were found by the Commission to be unpermitted, inconsistent with a previously issued CDP, and inconsistent with the Coastal Act. More specifically, Respondents failed to comply with Special Condition No. 2 of the CDP, which requires Respondents to ensure that 25 public parking spaces are readily available for public use on the Hotel premises during daylight hours commencing at sunrise and at least until one hour after sunset throughout the year, without charge. This special condition was required in the permit because, in approving the CDP, the Commission found that the public had been using the Property to access the coast for a long period of time and that this public access had to be preserved in order to find the proposed hotel development consistent with the mandates of the public access policies of Chapter 3 of the Coastal Act. While the 25 public parking spaces were constructed as required, the public has often not been able to reach them due to breakdowns in the hotel's procedures for providing access to the public parking. For example, the hotel has failed to reserve the parking spaces for the public. Instead, the parking spaces were often used for non-coastal access parking, including by hotel guests, golfers, and others.

Therefore, in October 2003, the Executive Director sent a formal Notice of Intent to Commence Cease and Desist Order proceedings and, in April 2004, the Commission approved the Original Order, which assessed a penalty and, more importantly, provided for a number of measures designed to protect and ensure that the provision of access envisioned in the CDP was realized and enhanced. The remedial measures contained within the Original Order required the hotel: (1) to adequately train employees regarding the designation of 25 parking spaces solely for public coastal access, (2) to implement a coastal access parking program for the hotel garage parking, (3) to provide adequate signage, and (4) to provide public access brochures so that the public would be aware of their rights regarding the public parking, as well as the other public

⁸These findings also hereby incorporate by reference the section "Summary of Staff Recommendation and Findings" at the beginning of this May 31, 2019 staff report ("STAFF REPORT: Recommendations and Findings for Consent Amendment to Consent Cease and Desist Order and Consent Administrative Civil Penalty") in which these findings appear.

access amenities provided by the original permit, including the public trail system on and adjacent to the hotel.

Unfortunately, Respondents have not complied with the Original Order's remedial measures and Commission staff have continued to document instances of the inability of the public to access the public coastal access parking located in the garage, the use of public coastal access parking spaces by the hotel valet service, and the failure by Respondents to provide signage that alerts the public to the access opportunities available on the Property. Violations of the Original Order and CDP are significant, as there is no other practical way for the public to directly access this part of the coast due to the lack of any other public parking on the hotel premises, among other things.

Since the Original Order was issued just over 15 years ago, a considerable effort was made to address the myriad repetitive violations informally, including numerous phone calls and letters to request compliance. Commission staff even assessed stipulated penalties on two occasions – in 2007 and 2011. Nonetheless, despite repeated assurances from Respondents that systems were being implemented to rectify the recurrent noncompliance, there continued to be problems reported to Commission staff, and discovered during Commission staff site inspections, regarding the access and parking requirements. However, more recently, Respondents have worked together cooperatively, and over the past several months have come to this resolution proposed herein, and staff appreciates the work and effort that Respondents have undertaken to that end.

B. BASIS FOR ISSUANCE AND MODIFICATION OF CEASE AND DESIST ORDERS

The statutory authority for issuance of Cease and Desist Orders under the Coastal Act, including the proposed Consent Cease and Desist Order Amendment, is provided in Section 30810 of the Coastal Act, and amendments to such orders are specifically provided for in 14 CCR Section 13188, which sets forth the specific and limited bases for such amendments, which have been met here.

Section 30810 of the Coastal Act states, in 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...

14 CCR Section 13188 states, in part:

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

Here, the Executive Director, after reaching the proposed settlement with Respondents, has determined that commencing such an amendment proceeding is appropriate and would save both the State and Respondents time, resources and costs by providing an amicable and efficient resolution of this matter. Both the Respondents and the Executive Director seek Commission approval of the proposed Consent Amendment. Through the process for issuance of the Original Order, the Commission already found that the criterion for issuance of a cease and desist order for this matter has been met. This Consent Amendment will replace the previously issued Original Order to incorporate new, mutually acceptable language to address the ongoing violations of the CDP and the Original Order.

Therefore, staff recommends that the Commission issue the Consent Cease and Desist Order Amendment CCC-03-CD-14-A attached as **Appendix A** of this staff report.

C. BASIS FOR ADMINISTRATIVE PENALTY

1. Statutory Provisions

The statutory authority for imposition of administrative penalties is provided in the Coastal Act in Public Resources Code Section 30821,⁹ which states, in relevant part:

(a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of the public access provisions of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

In addition, sections 30820 and 30822 create potential civil liability for violations of the Coastal Act more generally. Section 30820(b) also provides for daily penalties, as follows:

Any person who performs or undertakes development that is in violation of [the Coastal Act] or that is inconsistent with any coastal development permit previously issued by the commission . . . , when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable . . . in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

⁹ All section references in this section, III.C, are to the California Public Resources Code, and as such, to the Coastal Act, unless otherwise indicated.

Section 30822 states:

Where a person has intentionally and knowingly violated any provision of this division or any order issued pursuant to this division, the commission may maintain an action, in addition to Section 30803 or 30805, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Through the proposed settlement, Respondents have agreed to resolve its financial liabilities under all of these sections of the Coastal Act.

2. Application to Facts

The CDP contains conditions requiring Respondents to provide public access amenities with which Respondents have not complied, in violation of the public access provisions of the CDP and the public access provisions of the Coastal Act. The Commission found previously in issuing the CDP for the Ritz-Carlton hotel development that, in order to comply with the public access policies of the Coastal Act, a special condition was required to provide for a comprehensive public access program to help preserve public access and provide continuing public use of the Property and adjacent coastal areas. The access violations at issue in this action include the failure to facilitate public access consistent with the on-site public access program approved by the Commission to meet the requirements of Special Condition 2 of CDP No. 3-91-71/1-95-47 and failure to comply with the additional requirements of the Original Order that were implemented to facilitate the public in accessing the coast at and adjacent to the Property.

Respondents, even after issuance of the Original Order, failed to provide public access to the 25 public parking spaces as required by Special Condition No. 2 of the CDP. While the 25 public parking spaces were constructed as required, the public has often not been able to reach them due to inconsistent use of the hotel's procedures for providing access to the public parking. For example, Respondents have failed to reserve the parking spaces for the public. Instead, the parking spaces have often been used for non-coastal access such as commercial use parking, including by hotel guests, golfers, and others, precluding use by the public for accessing the coast. Also, Respondents did not maintain required signage that is essential to direct members of the public to the coastal public access amenities required by the CDP and the Original Order. These ongoing issues have resulted in an inability of the public to access this area of the coast; all while Respondents have received continued benefit from the CDP and use of the area for its hotel operations that were authorized by the CDP. Thus, Coastal Act Section 30821 is applicable.

a. Section 30821(h) Notice

Under section 30821(h) of the Coastal Act, under certain circumstances, a party who is in violation of the public access provisions of the Coastal Act can nevertheless avoid imposition of administrative penalties by correcting the violation within 30 days of receiving written notification from the Commission regarding the violation. This "cure" provision of Section 30821(h) is inapplicable to the matter at hand. A criterion for 30821(h)'s cure provision to apply

is that the violation must not be a violation of permit conditions. As discussed above, the violations at issue here are for non-compliance of Special Condition 2 of CDP No. 3-91-71/1-95-47 and various provisions of the Original Order. As a cure under 30821(h) is not available for permit violations, that remedy is not available here.

b. Section 30821(f):

Section 30821(f) of the Coastal Act states:

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

Section 30821(f) is also inapplicable in this case. As discussed above and more fully below, the failure to comply with Special Condition No. 2 of the CDP, as well as the Original Order, is significant both because it was an essential access requirement of the CDP, and because loss of access is very significant under the Coastal Act. Therefore, the violation cannot be considered to have resulted in “de minimis” harm to the public.

c. Penalty Amount

Pursuant to Section 30821(a) of the Coastal Act, the Commission may impose penalties in “an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation.” 30820(b) authorizes civil penalties that “shall not be less than one thousand dollars (\$1,000), [and] not more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.” Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation.

Section 30821(a) sets forth the time for which the penalty may be collected by specifying that the “administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.” In this case, Commission staff first received complaints from the public that Respondents were denying public access to the parking spaces located in the hotel garage in 2001, which is a greater time period than the five-year period for which the statute allows penalties to be assessed. Since the time initial complaints about access to the hotel garage were received, the Commission issued Respondents the Original Order in 2004 and assessed stipulated penalties for violations of the Original Order in 2007 and 2011. Thus, the five year period that the staff recommends be used for the assessment of this administrative penalty is July 2013 to July 2018, as it was in July 2013 that Commission staff, yet again, began receiving complaints from the public that access to the public coastal access parking located in the hotel garage was being denied. During this time period, Commission staff also made random order compliance checks during which violations were documented on nearly every inspection, so much so, that based on the consistency with which violations were observed, Commission staff presumes that many more days of violations existed.

For background, below, we provide an analysis of the factors referenced in Section 30821(c) as they apply to this access violation. Section 30821(c), in determining the amount of administrative penalty to impose, incorporates by reference the preexisting penalty factors for all violations and states “the commission shall take into account the factors set forth in subdivision (c) of Section 30820.”

Section 30820(c) states:

In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.*
- (2) Whether the violation is susceptible to restoration or other remedial measures.*
- (3) The sensitivity of the resource affected by the violation.*
- (4) The cost to the state of bringing the action.*
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.*

Section 30820(c)(1): the nature, circumstance, extent, and gravity of the violation; and (3) the sensitivity of the resource affected by the violation.

Applying the factors of Section 30820(c)(1) and (3), the violation at hand should warrant the imposition of substantial civil liability; violations have persisted on the Property for many years and the violation has meant that the public has been effectively denied access to this area of the coast. Furthermore, the resource affected by the violation, access, is an oft threatened and important resource across the State.

Moreover, Section 30213, which serves to promote environmental justice, states “lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.” Environmental justice is defined in Government Code Section 65040.12(e) as “the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” PRC Section 30013 states, among other things, that Section 65040.12(e) applies to the Commission. The CDP conditions related to public access were required to ensure that members of the public with lower incomes that would not typically be able to afford the overnight fees associated with staying at the Ritz-Carlton Half Moon Bay, including those that live further from the coast, would still be able to access and recreate at the coast in this location. The Coastal Act’s requirement to maximize access and promote recreational facilities is critical in providing opportunities for individuals and families from underserved communities who wish to visit the coast when they might not be able to do so otherwise due to costs.

Section 30820(c)(2): Whether the violation is susceptible to restoration or other remedial measures.

With regards to 30820(c)(2), the violation can be remedied and, as the violation is susceptible to remediation, compliance with this Consent Order moving forward will ensure that adequate public access is maintained at this location. On the other hand, there are years of public access losses that can never be recovered, and many public users have been denied public access to the coast that they cannot now regain, and therefore, a substantial penalty is warranted.

Section 30820(c)(4): the cost to the state of bringing the action; and (5) with respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

In terms of subdivision (c)(4) of Section 30820, the costs to the State have been significant relative to other enforcement resolutions, as Commission staff has had to expend its limited resources in order to ensure public access is provided where it should have already existed had Respondents complied with the terms of the CDP and the Original Order. Furthermore, the State has used appreciable resources to bring forward the Original Order in 2004 and to track and document non-compliances, work with the public reporting issues and requesting assistance, and to assess stipulated penalties associated with violations of the Original order in both 2007 and 2011. Commission staff has also spent considerable time addressing order compliance in the form of numerous phone calls, letters and site visits. On the other hand, most recently, Respondents have diligently worked to resolve the matter, and staff time has been spent defining the parameters of the compliance obligations and negotiating settlement documents. While this has also required significant staff time, it has been time dedicated to ascertaining the method and manner of compliance that best provides for public access, rather than in contesting the violation and its resolution. This has allowed the parties to resolve the violation without litigation, and to reach a settlement that includes injunctive measures that would not be as readily available without this settlement, such as improving access to the coast through the expansion of the Cañada Verde lot and the purchase of an adjacent property to help expand the California Coastal Trail. Taking all of this into account for calculating the penalty amount, the immediacy with which Respondents have most recently agreed to comply with the Coastal Act and engage in the resolution process weighs towards a reduction from a maximum penalty allowed under the statute.

With regard to 30820(c)(5), Respondents have a significant history of violations of the public access provisions of the CDP. This violation was already the subject of one Consent Cease and Desist Order for which the Respondents fell out of compliance. Also of significance, Commission staff assessed stipulated penalties for order noncompliance on two separate occasions. Furthermore, Respondents have also developed a pattern of violating the Original Orders, for which additional stipulated penalties are now due, accumulating at \$500 per violation per day, for each day of Order non-compliance. Thus, a substantial civil liability is therefore warranted to deter Respondents from undertaking future violations of the Coastal Act.

Aggregating these factors, the Commission staff concludes that a significant penalty is justified here and is recommending the Commission exercise its prosecutorial discretion and adopt staff's recommendation for the imposition of a penalty in the amount of \$1,600,000.

In sum, while this violation is significant Respondents have worked with Commission staff to rectify the violation and have agreed to the terms of this Consent Order, which will improve the public's ability to access the coast at this location and avoid any litigation in the matter. Therefore, the Commission finds an appropriate penalty amount to be \$1,600,000, of which \$600,000 is to be paid directly to the Peninsular Open Space Trust to help fund the acquisition of an adjacent property known as the "Halsted property," with the remainder to be paid to the Violation Remediation Account of the Coastal Conservancy. The Halsted property is located at the westerly terminus of Redondo Beach Road just north of Respondents property. This 27-acre property contains important habitats, including coastal riparian and grasslands that support numerous birds, such as short-eared owls. Notably, the acquisition of the Halsted property will provide for a future extension of the California Coastal Trail and an ideal location for a new vertical beach access.

In addition, as part of the negotiated penalties, Respondents have agreed to implement a new management strategy for the public coastal access parking spaces located within the hotel garage, expand the number of coastal public access parking spaces available at the nearby Cañada Verde parking lot, add improved coastal access signage at both the garage parking lot and the Cañada Verde parking lot that will provide background information about the area, provide a map for exploring the coastal trails, place improved directional signage to guide members of the public to the Ritz Carlton Half Moon Bay garage parking lot, and pay increased stipulated penalties for any future non-compliance with this Consent Order – all in addition to the monetary amounts listed above.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalty CC-19-AP-01-A attached as **Appendix A** of this staff report.

F. CONSENT ORDER IS CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT

The Consent Order, attached to this staff report as Appendix A, is consistent with the resource protection policies found in Chapter 3 of the Coastal Act and the corresponding policies of the Half Moon Bay LCP. This Consent Amendment requires and authorizes Respondents to, among other things, cease and desist from conducting any further unpermitted development on the Property stemming from actions or inactions of the Respondents that result in a change in the intensity or density of use of the Property, particularly in relation to the actions or inactions that decrease the public's ability to access the coast, and to perform other public access improvements as described in further detail, above. Failure to provide the required public access would result in the continued loss of public access, inconsistent with the resource protection policies of the Coastal Act.

Therefore, this Consent Order is consistent with the Chapter 3 policies of the Coastal Act, and their issuance is consistent with Coastal Act Section 30810(b).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of this Consent Order to compel compliance with the CDP and implementation of this Consent Order is exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 et seq., for the following reasons: first, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 et seq.). Because this is an enforcement action designed to protect and restore public access to the coast: the exemption applies here covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” This Consent Agreement is designed to protect the environment, and it contains provisions to ensure, and to allow the Executive Director to ensure, that it is implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action to protect and restore public access, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

H. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of this Consent Order are located at One Miramontes Point Road, Half Moon Bay, San Mateo County, also identified by Assessor’s Parcel Numbers 066-092-780 and 066-092-770. The Property is located within the Coastal Zone.
2. In its approval of CDP No. 3-91-71/1-95-47, the Commission included Special Condition No. 2 in order to ensure the project would comply with the public access policies of the

Coastal Act and to provide for a comprehensive public access program to help preserve public access and provide continuing public use of the Property and adjacent coastal areas.

3. The Original Order (CCC-03-CD-014) was issued to the Ritz Carlton Hotel Company, LLC, on April 14, 2004, for not providing public access as required by Special Condition No. 2 of CDP No. 3-91-71/1-95-47.
4. SHC Half Moon Bay, LLC, (“Respondents”) is the current owner and/or operator of the Ritz-Carlton, Half Moon Bay.
5. Development inconsistent with the CDP and the Original Order has occurred on the Property and, therefore, the jurisdictional requirement for the issuance of a cease and desist order amendment has been met.
6. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Section 30821 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.
7. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of this Consent Order Amendment, including Section 13188 of the Commission’s regulations, have been met.
8. The work to be performed under this Consent Agreement, if completed in compliance with the Consent Agreement and the plan(s) required therein, will be consistent with Chapter 3 of the Coastal Act.
9. The Respondents have agreed to assume the obligations of this Consent Order, which amends and replaces the Original Order in its entirety and contains new, mutually acceptable language to update the obligations of Respondents and settle all Coastal Act violations related to Special Condition 2 of CDP No. 3-91-71/1-95-47 (“the CDP”) and the Original Order of which the Commission is aware of on the property.
10. As called for in 30821(c), the Commission has considered and taken into account the factors in 30820(c) in determining the amount of administrative civil penalty to impose. The penalty agreed to in this settlement is an appropriate amount when considering those factors.

APPENDIX A
(PROPOSED CONSENT ORDER)