CALIFORNIA COASTAL COMMISSION
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885

W9.1 & 9.2

Staff: Shelby Wayment-SF
Staff Report: 10/23/25
Hearing Date: 11/5/25

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order No. CCC-25-CD-04 and Consent Administrative Penalty No. CCC-25-AP-05

Consent Cease and Desist Order No.:	CCC-25-CD-04
Consent Administrative Penalty No.:	CCC-25-AP-05
Related Violation File:	V-5-18-0106
Respondents:	SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC
Project Location:	Santa Monica Sandbourne Hotel, 1740 Ocean Ave, Santa Monica, Los Angeles County (APN 4290-019-010)
Violation Description:	Failure to provide “Parking, Carpool, and Transit Incentive Program” in violation of Special Condition 2 of Coastal Development Permit No. 5-89-941
Substantive File Documents:	Public documents in Consent Cease and Desist Order and Consent Administrative Penalty File Nos. CCC-25-CD-04 and CCC-25-AP-05; Exhibits 1 through 9; and Appendix A of this staff report.
CEQA Status:	Categorically Exempt (Cal. Code of Regs., tit. 14, §§ 15061(b)(2), 15308, and 15321(a)).

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

Overview

This matter involves the Santa Monica Sandbourne Hotel ("the Hotel") and the long-term failure of the prior lessee of the property located at 1740 Ocean Ave, Santa Monica, Los Angeles County ("Property") to implement a Parking, Carpool, and Transit Incentive Program ("Incentive Program") required in 1990 by Special Condition 2 ("Special Condition 2") of Coastal Development Permit No. 5-89-941 ("Hotel CDP"), a Commission approved permit for the construction of the Hotel on the Property.[1] The purpose of the Incentive Program was to provide a financial benefit and incentive to Hotel employees to use public transit, carpool, or bike to the Hotel, in order to limit the number of vehicles driving and parking in the area and therefore relieve traffic impacts, reduce the impacts of vehicle miles traveled, and increase the public's ability to access the coast. The condition had a number of elements to the Incentive Program designed to ensure it was implemented and effective, including a requirement that the Hotel pay for 50% of Hotel employees' public transit fare for a 30 year period. This condition was required by the Commission in order to find the project (the construction of the Hotel) consistent with the resource protection policies of the Coastal Act, including Section 30252.[2] However, the Hotel failed to ever provide the transit reimbursement subsidy to their employees until after being contacted by Commission Enforcement Staff in 2018, depriving previous Hotel employees of their required transit reimbursement for nearly 20 years.

The Hotel is located in the City of Santa Monica, one block from the Santa Monica Pier and across the street from Santa Monica State Beach (Exhibit 1). The leasehold is currently owned by SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC ("Respondents"). The Hotel was formerly known as the Le Merigot Hotel. Due to the Hotel's location and the popularity of nearby public attractions, there is an abundance of traffic congestion and a lack of public parking in this particular area, making special conditions, like the Incentive Program extremely important to fulfill the Commission's mandate to maximize public access to the coast.

In addition, this case involves environmental justice issues, which are a priority for the Commission. Public access in the coastal zone is innately an environmental justice issue. An individual's race, national origin, income level, gender, sexual orientation, disability, or place of residence should not affect their ability to access the coast. However, despite the Commission's efforts to maximize public access to the coast, the reality is that the cost of living, visiting, and working along the coast is ever increasing

---

[1] The property is owned in fee title by Santee Court PH II LLC and 269 S Lafayette PK PL LLC, but is leased to Respondents (as that term is defined below).

[2] All section references in this Staff Report are to the California Public Resources Code, and as such, to the Coastal Act, unless otherwise indicated.

and disproportionately burdens individuals from low-income communities, communities of color, and other environmental justice communities that have experienced social and physical barriers that disconnect them from the coast. At its core, Special Condition 2 required an incentive structure that subsidized the cost of public transportation, carpools, and biking, which would reduce vehicle use and increase available public parking.

The second concern is that the primary group who would have directly benefited from this program are likely people of low income and people of color. Therefore, Special Condition 2 provided a dual benefit of increasing public access in the surrounding area and providing a financial subsidy for the community of workers at the Hotel.

As will be described below, the violations arose under prior Hotel ownerships and the current owner of the leasehold of the Hotel, the Respondents, worked quickly and cooperatively with Commission staff to reach the proposed resolution, which will provide compliance with the Hotel CDP, as well as both increased public access and protection of coastal resources, via a number of elements. These include an increased transit subsidy for Hotel employees from a 50% transit reimbursement for 30 years (a term that would have expired in 2029) as initially required by the Hotel CDP, to a 100% transit reimbursement in perpetuity; a transit incentive, carpool, and bike program, including a monthly lottery of $500 for all employees who take public transit, carpool, bike, or walk to work; designated bike and carpool parking; a single-use plastics and Styrofoam elimination plan; the addition of two water bottle refill stations in the Hotel available to Hotel guests and the public; installation of eight new EV chargers, which are free of use for Hotel employees and guests; a marine debris reduction plan, including joining the Surfrider Foundation's Ocean Friendly Hotels Program or comparable program in perpetuity; and an increased public access program through the purchase of beach wheelchairs, maintenance and replacement parts for existing beach wheelchairs, outreach materials, and storage expansion funding for the beach wheelchair program run by Heal the Bay, located at the Heal the Bay Aquarium at the Santa Monica Pier.

Background – the CDP

On January 11, 1990, the Commission issued the Hotel CDP to Maguire Thomas Partners Dev. (Exhibit 2). The permit authorized demolition of a 91-unit motel and construction of a six-story, 175-room hotel, with a restaurant and bar, health club and sport court, meeting rooms, retail space, and three levels of subterranean parking for 221 vehicles.

In its approval of the Hotel CDP, the Commission found that the Hotel project had the potential to be inconsistent with Section 30252, which requires new development to maintain and enhance public access to the coast by providing means of serving that development with public transportation, among other options (Exhibit 2). The Commission additionally found that the Hotel was in a densely developed area of Santa Monica that was already well served by public transportation and bike paths.

In order to find the Hotel project consistent with Section 30252, the Commission imposed Special Condition 2, which required the Hotel to create a parking, carpool, and transit incentive program to encourage employees to use public transit, carpool, or bike to work. The program also required the Hotel to reimburse 50 percent of public transit passes for employees for 30 years, after the Hotel opened (Exhibit 2).

After the Commission approved the Hotel CDP on August 23, 1990, as required by Special Condition 2, the applicant recorded the condition in the chain of title to the Property. The Hotel then opened in 1999, was sold in 2005 to JW Marriot, and again in 2010, and then sold again in 2021 to Respondents (the current owner). None of the Hotel's prior owners created or implemented the Incentive Program as required by Special Condition 2 of the Hotel CDP, until sometime after being notified of the violation by Commission staff in 2018.

Enforcement History

On November 20, 2018, Commission Enforcement staff sent the Hotel's prior owners a Notice of Violation letter ("NOV") notifying them of the violations that were occurring on the Property (Exhibit 3). Commission staff continued to negotiate with the Hotel's prior owners to comply with Special Condition 2 of the CDP and address the long-term failure of the Hotel to comply with Special Condition 2. On July 8, 2021, in an attempt to resolve this matter formally, the Executive Director of the Commission sent a Notice of Intent to Commence Cease and Desist Order and Administrative Civil Penalty Proceedings ("NOI") to the prior ownership (Exhibit 4). After negotiations with the prior owner had begun and around the time that the formal NOI was sent, the Hotel was sold to the current owners, the Respondents (Exhibit 5). Unfortunately, the prior ownership did not inform Commission staff of the sale, despite Commission staff's letters to the prior ownership informing them that the violations were not resolved. Upon receipt of the NOI, which was sent directly to the Hotel address itself (along with being sent to the prior owners), Respondents contacted Commission staff to resolve the Hotel's outstanding liabilities.

While Special Condition 2(b) requires that the Hotel ownership must provide a transit fare reimbursement program for a minimum of 30 years, from Commission staff's investigation, it appears that none of the Hotel's prior owners ever provided such a program from when the Hotel first opened in 1999 until sometime after their receipt of the NOV in late 2018. Therefore, the ownership failed to provide the program as required by the permit for the entire time that the Hotel had been in operation — nearly 20 years.

Santa Monia is one of the most popular coastal destinations in the entire State of California with millions of visitors per year.[3] The failure of the prior owners to comply with Special Condition 2 of the Hotel CDP negatively impacted coastal access in Santa

---

[3] *See* City of Santa Monica, APPENDICES Downtown Community Plan Project Final EIR by Amec Foster Wheeler, available at [Downtown Community Plan Nov24_Housing Element.pdf]

Monica. Any impact on coastal access in Santa Monica is particularly acute due to the limited parking and traffic congestion issues near the coast here. Moreover, the Hotel's failure to provide the transit program is inconsistent with the environmental justice provisions of the Coastal Act[4] because the majority of the Hotel employees who would benefit from the entire program are likely from low-income households and/or people of color and likely commute for longer periods to work in Santa Monica.

The Proposed Resolution

Respondents, as the current owner of the Hotel, worked cooperatively with Commission Enforcement staff to reach the proposed resolution, referred to herein as the "Consent Agreement," by agreeing to resolve the violations, as well as providing a resolution of civil liabilities through increasing the beneficial factors of Special Condition 2 of the Hotel CDP. This resolution also ensures that all new lessees of the Hotel are bound by and agree to all of the terms of the Consent Agreement through the "Notice to the Consent Agreement,"[5] which requires any new lessee of the Hotel to become the Respondents, as that term is defined above and in the Consent Agreement, and to affirmatively agree to assume the obligations of the Respondents and carry out and comply with all of the terms of the Consent Agreement.

The first component of the resolution is an increase in the transit subsidy from 50% reimbursement to 100% reimbursement to all the Hotel's employees that take part in the Incentive Program. In addition, Respondents have agreed to implement the program in perpetuity instead of only a 30 year fixed period as originally required by the Hotel CDP. The increased time allows more Hotel workers to benefit from the program and permanently engrains the numerous benefits of the program for as long as the Hotel continues to exist. Respondents have also agreed to create designated bike and carpool parking areas and install and maintain eight EV chargers for Hotel workers and guests, which will be free of charge for all Hotel workers and guests to use.

Additionally, Respondents have agreed to design and implement a bolstered Incentive Program, that will be better disseminated to Hotel workers. The program will be in both Spanish and English, publicized during regular staff meetings and during employee onboarding, and involve a raffle program for all participants in the transit program, which includes all employees who take public transit, bike, walk, or carpool to work, of up to

---

[4] In 2016, the Legislature passed, and Governor Brown signed, Assembly Bill (AB) 2616 (Chapter 578, Statutes of 2016) amending the Coastal Act to add provisions regarding environmental justice. *See* Sections 30013 [policy statement], 30107.3 [definition], and 30604(h) [consideration of environmental justice issues for Coastal Development Permits].

[5] Attached to the Consent Agreement as Attachment 1, "NOTICE TO NEW OWNER OF PROPERTY INTEREST REGARDING CONSENT CEASE AND DESIST AGREEMENT NO. CCC-25-CD-04 AND CONSENT ADMINISTRATIVE PENALTY CCC-25-AP-05.

$500, including cash rewards, gift cards, free hotel stays, and other benefits, to encourage participation in the transit program.

Respondents have also agreed to implement a Plastics and Styrofoam Elimination Plan and to join and participate in the Surfrider Foundation's Ocean Friendly Hotel Program, or another equivalent marine debris elimination program. The Ocean Friendly Hotel program is an expansion of the Surfrider Foundation's Ocean Friendly Restaurants Program and requires that all participating Hotels follow a set of mandatory program criteria designed to reduce solid waste, implement proper recycling practices, and eliminate plastics. Participating hotels are also required to join the Ocean Friendly Restaurants program if they have a restaurant on site, which the Hotel here does. The Ocean Friendly Hotel program also includes a set of criteria that participants are required to implement, including such measures as: water conservation and pollution mitigation efforts, energy efficiency efforts, and outdoor light pollution reduction measures. Respondents have also agreed to eliminate all single use plastics and expanded polystyrene (aka Styrofoam) at the Hotel. In addition, Respondents have agreed to install and maintain two water bottle refill stations available to Hotel guests and the public to further encourage use of reusable bottles and reduce single use plastics.

Last, Respondents have agreed to purchase and provide four new beach wheelchairs to augment the beach wheelchair program run by Heal the Bay, which is located at the Santa Monica Pier, only one block away from the Hotel. They also agreed to purchase and provide wheelchair replacement and maintenance parts for the existing beach wheelchairs located at Heal the Bay Aquarium, fund storage expansion costs for the new beach wheelchairs, and fund outreach and advertising materials so members of the public know about the availability of the beach wheelchairs. Heal the Bay already provides beach wheelchairs to the public, free of charge, and these wheelchairs provide valuable access to the sandy beach and pier for members of the public with disabilities.[6] The existing beach wheelchairs at Heal the Bay Aquarium were purchased through a previous Commission Whale Tail Grant, and today's Consent Agreement will greatly expand the existing program and provides the repair and maintenance parts needed for the existing wheelchairs, of which 75% are currently unable to be used by the public due to the lack of repair and maintenance parts.

Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Order No. CCC-25-CD-04 and Consent Administrative Penalty CCC-25-AP-05, which are found at Appendix A of this Staff Report.

The two motions are found on pages 8 and 9.

---

[6] The Consent Agreement also requires that Respondents will work with Heal the Bay, who will specify the type, model, and design of all wheelchairs, replacement and maintenance costs, and outreach materials, and that Respondents are responsible for coordinating with Heal the Bay to obtain the list of required items.

TABLE OF CONTENTS

APPENDIX A

Proposed Consent Cease and Desist Order No. CCC-25-CD-04 and Consent Administrative Penalty No. CC-25-AP-05

EXHIBITS

Exhibit 1 Region and Area Map
Exhibit 2 Coastal Development Permit No. 5-89-941
Exhibit 3 November 20, 2018, Notice of Violation
Exhibit 4 July 8, 2021, Notice of Intent to Issue a Cease and Desist Order and Administrative Penalty
Exhibit 5 Press Release of Sale of 1740 Ocean Avenue
Exhibit 6 Deed Restriction, Recorded Document No. 1990-1486602
Exhibit 7 March 3, 2020, California Coastal Commission Letter
Exhibit 8 Photos of the Sandbourne Hotel
Exhibit 9 Staff Report, Coastal Development Permit No. 5-89-941

I. MOTIONS AND RESOLUTION

1. Motion 1: Consent Cease and Desist Order

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-25-CD-04 to SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-25-CD-04, as set forth in Appendix A, and adopts the findings set forth below on the ground that SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC has undertaken development in violation of CDP No. 5-89-941 and has otherwise acted and/or failed to act in a manner that is inconsistent with that permit, in violation of the Coastal Act, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act and the Coastal Development Permit.

2. Motion 2: Consent Administrative Civil Penalty Action:

I move that the Commission **issue** Consent Administrative Penalty No. CCC-25-AP-05 to SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Consent Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-25-AP-05, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities and failures to act have occurred on property leased by SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC in violation of the Coastal Act, and that 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

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. The requisite procedure for imposition of administrative penalties pursuant to Section 30821 of the Coastal Act (Pub. Resources Code, Div. 20) 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, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties may be the same as those used for a Cease and Desist Order hearing.

For a Cease and Desist Order hearing and an Administrative Penalty action, 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.[7]

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 Title 14, California Code of Regulations Section 13185, 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 issue the Consent Cease and Desist Order and impose the Consent Administrative Penalty. Passage of the motions above, per the staff recommendation, will result in the issuance of the Consent Cease and Desist Order and imposition of a Consent Administrative Penalty.

---

[7] Note that there are currently in use virtual hearing procedures, available at https://www.coastal.ca.gov/meetings/rules-procedures/

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-25-CD-04 AND CONSENT ADMINISTRATIVE PENALTY NO. CCC-25-AP-05[8]

B. Description of Property

The Santa Monica Sandbourne Hotel is a 175-room hotel located in the City of Santa Monica. The Hotel contains over 10,000 square feet of event spaces, a full-service restaurant, a pool, and 221 parking spaces in a subterranean garage (Exhibit 8). The Hotel is located across the street from Santa Monica State Beach and is one block from the Santa Monica Pier.

C. Coastal Development Permit History

On January 11, 1990, the Commission issued CDP No. 5-89-941 (defined above as, the "Hotel CDP") to Maguire Thomas Partners Dev, which authorized demolition of a 91-unit motel and construction of a six-story, 175-room hotel, with a restaurant and bar, health club and sport court, meeting rooms, retail space, and three levels of subterranean parking for 221 vehicles (Exhibit 2). In its approval of the Hotel CDP, the Commission found (Exhibit 9):

> Section 30252 of the Coastal Act states in part that the location and amount of new development should maintain and enhance public access to the coast by providing substitute means of serving the development with public transportation and assuring the potential for public transit for high intensity uses. The proposed project is well served by both the Santa Monica and greater Los Angeles area regional bus lines. It is also located one block from the 19-mile beach bike path. The Commission in past permit actions in the downtown Santa Monica area has routinely required that high intensity commercial uses provide public transit incentives and on-site bicycle parking programs be incorporated into the new development. The Santa Monica LUP also contains similar requirements. Therefore, the proposed project is required to reimburse employees public transit fares, provide preferential parking for carpool vehicles and to provide secure bicycle parking facilities. As conditioned the proposed development is consistent with the public access provisions of the Coastal Act.

In order to find the Hotel project consistent with Section 30252, the Commission required Special Condition 2, which states (Exhibit 2):

---

[8] These findings also hereby incorporate by reference the Summary at the beginning of the October 23, 2025 staff report ("Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-25-CD-04 and Consent Administrative Penalty No. CCC-25-AP-05") in which these findings appear, which section is entitled, "Summary of Staff Recommendations and Findings."

Parking, Carpool and Transit Incentive Program. Prior to transmittal of this permit, the applicant shall record free of all prior liens and encumbrances except for tax liens, a deed restriction or other document, the form and content of which shall be subject to review and approval by the Executive Director of the Commission, binding the applicant, landowners and successors in interest and assuring the following:

a) The applicant shall *actively* encourage employee participation in the California Transportation Ride Sharing Program and take appropriate measures to ensure that employees utilizing the carpool program are given locational preference for parking with the garage. (Emphasis added)

b) A public transit fare reimbursement program shall be implemented by the applicant. The system shall be in effect for at least a 30-year period. The applicant shall provide for 50 (fifty) percent reimbursement to one hundred percent of the projected employees of the development for public transit fare to and from work.

c) The applicant shall provide a bicycle parking area, free of charge, within the parking garage in a preferred, secure location.

d) The applicant shall agree to implement a publicity program, the contents of which is subject to review and approval of the Executive Director, that indicates how the future occupants of the development will be made aware of the provisions of this special condition. The publicity program shall be implemented during the first month of occupancy for the new development.

On August 23, 1990, the applicant recorded the deed restriction required by Special Condition 2 in the chain of title to the Property, Los Angeles County Recording Number 1990-1486602 (Exhibit 6). The Hotel then opened in 1999, was sold in 2005, and again in 2010, and then sold again in 2021 to Respondents, who are the current leasehold owner (Exhibit 5).

Commission Enforcement staff became aware of the Hotel CDP violations in 2018 and began its investigation. On November 20, 2018, Commission Enforcement staff sent the Hotel's prior owners a NOV notifying the entity that they failed to 1) provide the location for parking within the garage for employees who carpool, 2) implement the public transit fare reimbursement program, 3) provide a bicycle parking area within the garage in a preferred and secure location, and 4) implement a publicity program so that employees are made aware of the Employee Transit Program, all in violation of Special Condition 2 of the Hotel CDP (Exhibit 3). Enforcement staff then began to work with the prior owners to craft a resolution for the outstanding violations. After no resolution was reached, the case was elevated to the Commission's Statewide Enforcement unit to address the matter through formal enforcement proceedings. On March 3, 2020, Enforcement staff requested that the prior ownership comply with the Hotel CDP and address the accrued penalties associated with the failure to comply with the permit conditions and explained that Commission staff preferred to resolve these issues collectively through a Consent Agreement (Exhibit 7). The prior owner acknowledged receipt of the letter during a subsequent phone call with Enforcement staff.

As part of the process to move towards a Consent Agreement, on July 8, 2021, the Executive Director of the Commission sent a Notice of Intent to Commence Cease and Desist Order and Administrative Civil Penalty Proceedings ("NOI") to the prior ownership as a step towards resolving the outstanding permit violations and civil liabilities (Exhibit 4). The Executive Director sent the NOI to the prior owner at their business address, as well as to the prior owner directly at the address of the Hotel itself. Despite the ongoing discussions with the prior owner, that owner did not disclose to Enforcement staff that they were in the process of selling the Hotel and ultimately did so. The new owners, defined herein as the Respondents, after receiving the copy of the NOI sent directly to the Hotel address, reached out to Commission Enforcement staff in an effort to resolve the issues listed in the NOI. Respondents state that the prior owners did not disclose the violations to them before the sale occurred. Special Condition 2(b) states that the applicant/Hotel ownership must provide a transit fare reimbursement program for a minimum of 30 years. From Commission staff's investigation, none of the prior owners of the Hotel ever provided the required program until sometime after Commission Enforcement staff sent the November 2018 NOV that informed owners of the violation and the potential application of Coastal Act penalties.

The previous owners' longtime failure to comply with Special Condition 2 had the effect of impacting coastal access in Santa Monica, including impacts to public access. Any impact to coastal access in Santa Monica is particularly acute due to the limited parking and traffic congestion issues in the City, as it is one of the most popular coastal destinations in the entire State of California with millions of visitors per year.[9] Moreover, the failure to provide the entire transit program is inconsistent with the environmental justice provisions of the Coastal Act[10] because the majority of employees who would benefit from the program likely qualify as low-income and/or are people of color.

C. <u>Basis for Issuing Consent Cease and Desist Order</u>

1. Statutory Provision

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

---

[9] *See* City of Santa Monica, APPENDICES Downtown Community Plan Project Final EIR by Amec Foster Wheeler, available at [Downtown Community Plan Nov24_Housing Element.pdf]

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that . . . (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.

(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.

2. Factual Support for Statutory Elements

The following paragraphs set forth the basis for the issuance of the Consent Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in PRC Section 30810 for the Commission to issue the Consent Cease and Desist Order.

The statutory provision requires the Commission to demonstrate that Respondents undertook an activity that was inconsistent with any permit previously issued by the Commission.

As stated previously, Special Condition 2 of the Hotel CDP requires the owner of the Hotel to prepare and implement a Parking, Carpool and Transit Incentive Program, as described above. Since the opening of the Hotel in 1999, the owners of the Hotel failed to provide this program to the Hotel employees as is explicitly required the Hotel CDP. Therefore, the failure to implement the program is an activity that is inconsistent with a permit previously issued by the Commission and therefore the criterion for issuance of this Consent Cease and Desist Order has been met.

3. The Violations at Issue are not Consistent with the Coastal Act’s Access Provisions and Principles of Environmental Justice

The following discussion does not directly address a required element of Section 30810 of the Coastal Act, and the findings in this section are therefore not essential to the Commission’s ability to issue a Cease and Desist Order. This explanation is, however, important for context, and for understanding the totality of impacts associated with the violations under the Coastal Act and for analyzing factors discussed in the sections to follow and for noting that this proposed resolution would benefit all public users, particularly those who cannot afford to live near the coast, by improving public access to this area. Public access is addressed in a number of sections of the Coastal Act, and the conditions were consistent with the Act generally, including Section 30252 and other related Sections, including those related to public access.

Public Resources Code Section 30210 states:

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

Additionally, the Coastal Act supports consideration of environmental justice issues when evaluating actions under the Coastal Act. Section 30107.3 defines Environmental Justice as:

> ... the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Section 30604 requires:

> (h) When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

Although the Coastal Act's environmental justice provisions were not the standard of review at the time of the 1990 permit approval, as part of implementing the Coastal Act's environmental justice provisions, the Commission adopted an Environmental Justice Policy in 2019[11], committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency's decision-making process and ensuring coastal protection benefits are accessible to everyone. At the time of the issuance of the CDP, Special Condition 2 sought to bring fairness and equity to the Hotel workers' access to the coast; today, findings for a similar condition would specifically refer to the environmental justice provisions of the Coastal Act with regard to equitable public access.

Section 30210, relying on the California Constitution, requires the Commission to maximize access and recreational opportunities, subject to some considerations such as fragile resources, for "all the people." Currently, the Commission considers public access an innate environmental justice issue. Throughout California's history, low-income communities, communities of color, and other marginalized populations have faced disproportionate social and physical barriers that disconnect them from coastal access and recreational opportunities. Equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors,

---

[11] The policy and related material are available at https://www.coastal.ca.gov/env-justice/.

such as discriminatory land use and economic policies and practices.[12] Spatial analysis of 2010 Census data shows a majority of Californians (79.7%) live within roughly 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.[13] The failure to implement this program burdens those who need to access the coast for work, as in this case. Here, the primary population who would have directly benefited from this program are likely people from low-income households and/or people of color. The special condition provided the double benefit of increased public access in the surrounding area and provided a subsidy for the worker community at the Hotel.

D. Basis for Issuing Consent Administrative Civil Penalty Action

1. Statutory Provision

The statutory authority for imposition of administrative penalties is provided in the Coastal Act in Public Resources Code Section 30821, 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.

---

[12] Robert Garcia & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 STAN. J. C.R. & C.L. 143, 153 (2005), available at: www.coastal.ca.gov/coastalvoices/resources/StanfordFreetheBeach.pdf.

[13] Reineman, et al., *Coastal Access Equity and the Implementation of the California Coastal Act*, 36 STAN. ENVTL. L.J., 89, 96-98. (2016), available at: https://oceansolutions.stanford.edu/sites/g/files/sbiybj25061/files/media/file/reineman_et_al_2016_-_selj_36.pdf

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 Consent Agreement, Respondents have agreed to resolve their financial liabilities under all these sections of the Coastal Act.

2. Application to Facts

This case, as discussed above, includes violations of the public access provisions of the Coastal Act. These provisions include, but are not necessarily limited to, Section 30252, which states, in relevant part, "[t]he location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service." As discussed above, Special Condition 2 of the Hotel CDP requires the preparation and implementation of a Parking, Carpool and Transit Incentive Program that would provide employees of the Hotel 50% transit reimbursement for public transit for a 30-year period. Implementation of this CDP condition as required would have had the effect of reducing vehicle miles traveled, consistent with Section 30253 of the Coastal Act. Since the Hotel's opening in 1999, the Hotel failed to provide this program in violation of Special Condition 2 of the Hotel CDP. Therefore, pursuant to PRC Section 30821, the Commission may impose administrative civil penalties for the violations of the public access provisions of the Coastal Act

a. Exceptions to Section 30821 Liability Do Not Apply

Under Section 30821(h) of the Coastal Act, in 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. For 30821(h) to apply, there are three requirements, all of which must be satisfied: 1) the violation must be remedied consistent with the Coastal Act within 30 days of receiving notice, 2) the violation must not be a violation of a permit condition, and 3) the party must be able to remedy the violation without performing additional development that would require Coastal Act authorization.

In this case, the violation is a violation of a permit condition and was not resolved within 30 days, so therefore the cure provision is not available to the Respondents.

In addition, Coastal Act Section 30821(f) 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. Sections 30821(f) is also inapplicable in this case. As discussed herein, the violation includes failure to comply with a Special Condition of the Hotel CDP. The harm in this case was not de minimis. But for this condition, the Commission could not have found the Hotel project consistent with the Coastal Act. This condition was imposed to ensure that new development maintained and enhanced public access to the coast. Therefore, the violation is not unintentional or minor, caused harm that was not de minimis, and Sections 30821(f) is not applicable.

b. 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.” Section 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 each 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.”

While Section 30821 of the Coastal Act provides for the daily assessment of penalties for each day a violation persists, given the facts at hand, including that this matter is being resolved quickly and by a new owner of the Hotel, and nature of the resolution in this case and the fact that this violation is being resolved in the proposed settlement and avoids litigation and the associated costs and delay in implementation, Commission staff recommends a lower penalty assessment and to apply the penalty resolution in a creative way, consistent with the goals of the original Hotel permit. In this specific case, Commission staff’s investigation concluded that the prior owners of the Hotel did not implement the Incentive Program as required by Special Condition 2. To avoid costly litigation and to recognize the efforts of Respondents to endeavor to rectify this violation so quickly, Commission staff recommends that the Commission approve the proposed resolution contained in the proposed Consent Administrative Penalty, which includes a number of projects and benefits to public access and the environment, including: an increase of the transit subsidy from 50% to 100% and continuing the program in perpetuity, rather than the fixed 30 year period in the original Hotel CDP; a $500 monthly lottery system for all Hotel workers who take public transit, carpool, bike, or walk to work; participation in the Surfrider’s Ocean Friendly Hotel Program in perpetuity; elimination of single use plastics and Styrofoam at the Hotel; installation and maintenance of eight EV chargers; designated carpool and bike parking areas; installation and maintenance of water bottle refill stations; purchase of four beach wheelchairs, replacement and maintenance parts for the existing beach wheelchairs, and outreach and advertising materials, and funding for storage expansion for the beach wheelchairs, all of which are for Heal the Bay, located at Heal the Bay Aquarium in Santa Monica.

Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculation for the Commission's approval, and the Commission concurs with staff's analysis. Under 30821(c), in determining the amount of administrative penalty to impose, "the commission shall take into account the factors set forth in subdivision (c) of Section 30820."

<u>Section 30820(c) states:</u>

> 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.

<u>30820(c)(1): The nature, circumstance, extent, and gravity of the violation</u>;
Applying the factors of Section 308210(c)(1), the violation at hand should warrant the imposition of moderate civil liability. The violation persisted for many years and negatively impacted public access in a very popular coastal city. However, these violations occurred prior to Respondents' ownership of the Hotel, and Respondents have worked quickly and collaboratively with Commission staff to address the entire matter including future commitments that benefit public access.

<u>30820(c)(2): Whether the violation is susceptible to restoration or other remedial measures</u>;
With respect to 30820(c)(2), this violation can be remedied going forward with compliance with the Consent Agreement, which would provide additional benefits to the public and Hotel employees beyond the existing Special Condition 2. Respondents quickly complied with providing the required transit program under Special Condition 2 after being alerted by Commission staff. Although the persons who would have benefitted from the 50% subsidy did not do so, the Agreement includes both a higher transit benefit (100%) and a longer timeframe (in perpetuity). Therefore, a lower penalty is warranted under this subsection.

<u>30820(c)(3): the sensitivity of the resource affected by the violation</u>
Section 30820(c)(3) requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by the violation, public access, is an oft threatened and important resource across the State. Ensuring public access to all of California's beaches is promised to the people by the State Constitution and is essential for implementing the Coastal Act, and this violation potentially limited public access to the coastal zone. The population of Southern California has continued to increase, creating additional significance for coastal access points. Therefore, public access in this area is a relatively sensitive resource in terms of access, and thus, a moderate penalty is warranted under this factor.

<u>30820(c)(4): The cost to the state of bringing the action</u>;
Section 30820(c)(4) considers the costs to the state of bringing this action. In this case, due to Respondents' willingness to work with Commission staff to resolve this case relatively quickly and without litigation, the costs have not been as significant compared to many other cases. Due to the cooperation of Respondents, Commission staff have spent less time in meetings and negotiations with Respondents relative to many of our other cases. After Respondents were notified of the violations in a NOI letter sent to the Hotel in July 2021, Respondents have diligently and quickly worked to resolve this matter. While working to craft an amicable resolution took some staff time, it has many benefits for the public and Hotel employees. Therefore, this factor warrants a lower penalty.

<u>Section 30820(c)(5): voluntary restoration or remedial measures, prior history of violations, degree of culpability, economic profits, and such other matters as justice may require.</u>
Section 30820(c)(5) requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result because of, the violation, and such other matters as justice may require. In this case, Respondents purchased the property in May of 2021 and as soon as they became aware of the violation, they immediately agreed to work with Commission staff on this resolution and therefore although there is substantial prior history of violations, the violations under the current ownership were minimal. Therefore, a lower penalty is warranted under this factor.

Aggregating these factors and considering the cooperation and quick resolution offered by this party, Commission staff concludes that a lower penalty is justified here. Staff recommends that the Commission adopt staff's recommendation for the imposition of the monetary penalty to be satisfied through the funding and implementation of projects that further address and enhance the goals of the original permit condition and the Coastal Act generally. These projects include measures designed to provide employee incentives to use alternative transportation, address equity issues, reduce vehicle miles travelled and reduce traffic and congestion and therefore enhance public access.

These projects to be funded under this agreement include a number of projects specifically designed to address both the original permit conditions and to provide additional, valuable measures to provide coastal protection and access for all, including: 1) an increased incentive program for use of alternative, public transportation from 50% for 30 years as originally required by the Hotel CDP to 100% transit reimbursement in perpetuity, 2) create designated bike and carpool parking areas, 3) a $500 monthly lottery system for all employees who take public transit, bike, walk, or carpool to work, 4) a marine debris reduction program to protect coastal and ocean resources, 5) elimination of all single use plastics and Styrofoam at the Hotel, 6) installation and maintenance of eight EV chargers for the free use of guests and employees, 7) installation and maintenance of two water bottle refill stations at the Hotel for the use of Hotel guests and the public to further reduce plastic use and debris, and 8) enhancement of public access to the beach through facilitating the use of beach wheelchairs including via Respondents' purchase of four beach wheelchairs, replacement and maintenance parts, funding for storage expansion for the new beach wheelchairs, and purchase of marketing and outreach materials for the beach wheelchair program at Heal the Bay Aquarium. Heal the Bay will specify the type and model of all beach wheelchairs, replacement and maintenance parts, and outreach materials, and the beach wheelchairs are required to be those that can be used on the sandy beach and Santa Monica Pier.

Although many of the elements of the proposed resolution are difficult to evaluate in monetary terms, some costs that will be incurred by Respondents are clear, including the increase in the transit subsidy from 50% to 100%, the installation of EV chargers, water bottle refill stations, participation in the Surfrider Foundation's Ocean Friendly Hotel Program, and the purchase of beach wheelchairs, storage, replacement parts, and outreach materials for Heal the Bay. Commission staff estimate that this program for enhanced transit subsidies, alone, will provide a value of at least $400,000 based on current employee participation in the transit incentive program. However, the value to the public of the various access and environmental programs and protections required under this Consent Agreement far outweighs the monetary cost.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalty CCC-25-AP-05 attached as **Appendix A** of this staff report.

Consent Agreement is Consistent with Chapter 3 of the Coastal Act

The Consent Agreement, attached to this staff report as Appendix A, is consistent with the resource protection policies found in Chapter 3 of the Coastal Act. This Consent Agreement requires and authorizes Respondents to, among other things, implement a Parking, Carpool, and Incentive Program, Marine Debris Reduction Program, and Public Access Enhancement Program. The Commission imposed Special Condition 2 to be consistent with 30252 of the public access provisions of the Coastal Act which requires new development to "maintain and enhance public access to the coast by providing substitute means of serving the development with public transportation and assuring the potential for public transit for high intensity uses." The proposed resolution will increase the benefits of Special Condition 2 and further effectuate the goals of Special Condition 2.

The other element of the Consent Agreement that requires the elimination of single use plastics and Styrofoam at the Hotel is consistent with and directly promotes the general goals of the Coastal Act to "to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment" as plastic use is a direct threat to ocean resources as well as energy and waste being a direct contributory of global warming that directly harms our coastal and ocean resources.

Therefore, as required by Section 30810(b), the terms and conditions of this Consent Agreement are necessary to ensure compliance with the Chapter 3 policies of the Coastal Act.

E. California Environmental Quality Act

The Commission finds that issuance of this Consent Agreement to compel compliance with permits issued under the Coastal Act, and to provide further steps to protect coastal resources and enhance access to the coast among other things, as well as the implementation of these Consent Agreements, are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Resources 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]." *Id*. at § 21084. The CEQA Guidelines (which, like the Commission's regulations, are codified in Title 14 of the California Code of Regulations) provide the list of such projects, which are known as "categorical exemptions," in Article 19 (14 CCR §§ 15300 *et seq.*). Because the Commission's process, as demonstrated above, involves ensuring that the environment is protected throughout the process, one of those exemptions apply here: the one 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) 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." These Consent Agreements are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are 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 the CEQA guideline 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 that will ensure the environment is protected throughout the process, 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.

IV. SUMMARY OF FINDINGS OF FACT

1. The Sandbourne Hotel Santa Monica, located at 1740 Ocean Ave, Santa Monica, Los Angeles County (APN 4290-019-010) is owned by SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC and is subject to CDP No. 5-89-941.

2. SCP 1740 Ocean Avenue, LLC, SCP 1740 Ocean Avenue Opco, LLC, and their predecessors, failed to implement Special Condition 2 of CDP No. 5-89-941 requiring a “Parking, Carpool and Transit Incentive Program.”

3. Coastal Act Section 30810 authorizes the Commission to issue a Cease and Desist Order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit, or (2) is inconsistent with a permit previously issued by the Commission. The criterion for issuance of this Consent Cease and Desist Order has been met.

4. SCP 1740 Ocean Avenue, LLC and SCP 1740 Ocean Avenue Opco, LLC and predecessors failed to undertake a condition of the permit and therefore performed an activity that is inconsistent with a permit previously issued by the Commission.

5. The Sandbourne Hotel Santa Monica is located within the Coastal Zone. The Hotel was approved with conditions under CDP No. 5-89-941.

6. The statutory authority for imposition of administrative penalties is provided for 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 Agreement, including Section 13187 of the Commission’s regulations, have been met.

8. The elements 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 comply with the obligations of this Consent Agreement, which settles all Coastal Act violations related to the specific violations described above if carried out consistent with the terms and conditions of the Consent Agreement.

10. As required in Section 30821(c), the Commission has considered and taken into account the factors in Section 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.