

CALIFORNIA COASTAL COMMISSION

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W 22

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

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

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

RELATED VIOLATION FILES: V-1-99-03

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

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

PROPERTY OWNER: Ocean Colony Partners, L.L.C.

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

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

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

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

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

I. SUMMARY

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

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

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

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

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

II. HEARING PROCEDURES

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

III. MOTION

MOTION: I move that the Commission amend Consent Agreement and Cease and Desist Order No. CCC-02-CD-02 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present will result in amendment of the Consent Agreement and Cease and Desist Order set forth on pages 5-10 of this staff report.

RESOLUTION TO AMEND CEASE AND DESIST ORDER:

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

IV. FINDINGS

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

A. DESCRIPTION OF UNPERMITTED DEVELOPMENT

Ocean Colony has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit (CDP) in violation of Section 30600 of the Coastal Act. This development consists of the construction of an unpermitted rock revetment located on the bluff top, bluff face, and on the beach below the 18th Hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999.

B. BASIS FOR MODIFICATION OF CEASE AND DESIST ORDER

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

Coastal Act §30810:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the

commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

California Code of Regulations §13188:

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

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

C. DEFENSES: MITIGATION FACTORS/REBUTTAL EVIDENCE

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

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

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

1.0 TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

- b. **Project Plans:** Detailed project plans, certified by a licensed engineer, showing (1) the proposed beach access for construction equipment, (2) equipment and materials staging areas, and (3) repairs and modifications to the 18th green and its surroundings within the existing golf course footprint to relocate the 18th green. For all plans, both large scale plans (1 inch = 10 feet) and reduced (8.5" x 11") copies should be submitted.
- c. **Erosion Control Plan:** The erosion control plan shall demonstrate that (1) during removal activities, erosion on the site shall be controlled to the extent feasible to avoid adverse impacts on adjacent resources, and (2) temporary erosion control measures such as hay bales and silt fences shall be used during removal activities. The plan shall include a narrative report describing all temporary erosion control measures to be used during removal activities, plans showing the locations of the erosion control measures on large scale (1 inch = 10 feet) and reduced (8.5" x 11") site plans, and a description of the proposed schedule for installation and removal of the temporary erosion control measures.
- d. **Road Impacts:** A description of the timing and estimated number of truck trips on Miramontes Point Road.
- e. **Submittal of a report with photographs** describing the removal work upon completion of removal work.

1.2 After issuance of the Executive Director's written approval of the plans referenced in Section 1.1, at a date mutually agreed upon by the Executive Director and Ocean Colony (at the earliest practical date, but no later than April 15, 2006, unless otherwise agreed), Ocean Colony shall commence work in compliance with the approved plans. Ocean Colony shall undertake the removal and repairs and modifications in compliance with the final project and erosion control plans as approved by the Executive Director.

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

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

IT IS SO STIPULATED AND AGREED:

California Coastal Commission

By: _____
Peter Douglas, Executive Director

_____ Date

Ocean Colony Partners, L.L.C.

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

By: _____
Managing Director

_____ Date

Exhibits

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

CALIFORNIA COASTAL COMMISSION

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

ADOPTED FINDINGS FOR
CONSENT AGREEMENT AND CEASE AND DESIST ORDER

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

RELATED VIOLATION FILES: V-1-99-03

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

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

PROPERTY OWNER: Ocean Colony Partners, L.P.

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

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

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

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

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

I. SUMMARY

Commission staff contends that Ocean Colony Partners, L.P. (Ocean Colony) has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit in violation of Section 30600 of the Coastal Act. This development consists of the construction of an unpermitted rock revetment located on the bluff top, bluff face, and on the beach below the 18th Hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999.

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

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

II. HEARING PROCEDURES

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

III. RESOLUTION OF ISSUANCE

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

1. Insert to Exhibit 16, Page 5:

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

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

RESOLUTION TO ISSUE CEASE AND DESIST ORDER:

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

IV. ADOPTED FINDINGS

A. DESCRIPTION OF UNPERMITTED DEVELOPMENT

Ocean Colony has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit (CDP) in violation of Section 30600 of the Coastal Act. This development consists of the construction of an unpermitted rock revetment located on the bluff top, bluff face, and on the beach below the 18th Hole at Half Moon Bay Golf Links. The rock revetment was constructed during the winter of 1998/1999.

B. BACKGROUND AND ATTEMPTS AT ADMINISTRATIVE RESOLUTION

Construction of the 18th Hole of the Half Moon Bay Links in 1973 included a concrete slab along the top edge of the bluff supporting the seaward edge of the 18th Hole turf and a twelve-foot high, 24-foot long, two-foot wide concrete retaining wall at the base of the bluff below the 18th Hole (**Exhibit 2**). Bluff erosion gradually undermined the concrete slab and by 1995 portions of the concrete slab were exposed and hanging over the beach. Portions of the hanging slab broke off and fell to the beach during the winter of 1995-1996. Portions of the original concrete slab are still evident in a 1999 photograph of the site (**Exhibit 3**).

On July 27, 1996, the City of Half Moon Bay¹ granted CDP 08-96 for repairs along the bluff at the 18th Hole, authorizing the placement of riprap backfill behind the concrete retaining wall and on the bluff face, and repair of the blufftop concrete slab as originally constructed. Project plans indicated that the area approved in CDP 08-96 for riprap covered an area of approximately 1,700 square feet, and no riprap was to be placed on the beach. The City staff report indicated that as permitted in 1996, no sandy beach area would be lost and that the approved project limits would not exceed anything originally constructed or currently in place.

In August of 1998, Ocean Colony submitted to the City of Half Moon Bay plans for additional bluff stabilization measures along the 18th Hole. A September 10, 1998 letter from the City's planning director at that time indicated that the work as proposed was exempt from coastal permitting because it "would not result in an addition to, or an enlargement or expansion of, the green repair authorized by CDP 08-96" (**Exhibit 4**).

The Coastal Commission initially received reports of an alleged Coastal Act violation near the 18th Hole of Half Moon Bay Links in January 1999. Commission staff visited the site and verified that riprap had been placed on the beach, apparently within the Commission's permit jurisdiction, and along the bluff face. A photograph taken in 2002 depicts the extent of the riprap (**Exhibit 5**). In a letter to Ocean Colony dated January 13, 1999, Commission staff explained that any portion of the development within the Commission's jurisdiction required a CDP from the Commission (**Exhibit 6**). Ocean Colony responded

¹ The Implementation portion of the City of Half Moon Bay's Local Coastal Program (LCP) was certified on December 13, 1995 and it assumed permit-issuing authority on April 24, 1996.

in a letter dated January 29, 1999 that it had received an exemption from the City for the repair work (**Exhibit 7**). On February 17, 2000 the Commission sent another letter to Ocean Colony, explaining that the portion of the riprap on the beach at the base of the bluff required a permit from the Coastal Commission and requesting that Ocean Colony submit a CDP application to the Commission by March 10, 2000 (**Exhibit 8**).

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

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

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

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

In a letter to the Commission dated May 22, 2002, the City of Half Moon Bay formally requested that the Commission assume the primary enforcement role in resolving the violation regarding the unpermitted riprap that had been installed in 1998 in both the City's and the Commission's jurisdictions (**Exhibit 14**).

The City reiterated that the riprap installed by Ocean Colony in 1998 was not placed pursuant to a valid CDP.

C. SUMMARY OF PERMITTED DEVELOPMENT

Construction of the 18th Hole of Half Moon Bay Golf Links in 1973 consisted of a concrete slab along the top edge of the bluff supporting the seaward edge of the 18th Hole turf and a twelve-foot high, 24-foot long, two-foot wide concrete retaining wall at the base of the bluff below the 18th Hole. In 1996, CDP 08-96 authorized the placement of riprap behind the concrete retaining wall and on the bluff face. CDP 08-96 also authorized reconstruction of the concrete slab along the top edge of the bluff. Development aside from the 12x24 foot concrete retaining wall, concrete slab supporting the 18th Hole turf, riprap behind the concrete retaining wall and concrete slab repairs performed pursuant to CDP 08-96 is unpermitted development. The riprap placed in 1998 is not permitted development and is not exempt from permitting requirements. Additionally, it should be noted that even if the original development is exempt, repair and maintenance work to that structure requires a CDP.

D. BASIS FOR ISSUANCE OF CEASE AND DESIST ORDER

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

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

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

E. DEFENSES: MITIGATION FACTORS/REBUTTAL EVIDENCE

By letter dated June 20, 2002, Commission staff issued a notice of intent (NOI) to conduct cease and desist and restoration order proceedings for the unpermitted revetment on the property. While Ocean Colony initially submitted a Statement of Defense form to the Commission in response to the NOI, Ocean Colony representatives and Commission staff met on August 2, 2002 to discuss possible terms for a Consent Order to resolve the Coastal Act violation regarding the riprap. Ocean Colony provided plans drafted by its engineers proposing immediate removal of the maximum amount of riprap possible to

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

Exhibits

1. Site Map and Location.
2. 1973 photograph of site showing 12-foot tall, 24-foot wide concrete seawall at base of bluff.
3. January 1999 photograph of site showing concrete slab at top of bluff.
4. Letter dated September 10, 1998 from City of Half Moon Bay to Ocean Colony.
5. May 2002 photograph of site showing riprap on bluff face and beach along the 18th Hole of the Half Moon Bay Golf Links.
6. Notice of violation letter dated January 13, 1999 from Commission to Ocean Colony.
7. Letter dated January 29, 1999 from Ocean Colony to Commission claiming that the City of Half Moon Bay exempted 1998 installation of riprap.
8. Letter dated February 17, 2000 from Commission to Ocean Colony requesting that Ocean Colony submit a CDP application to the Commission by March 10, 2000.
9. Letter dated February 24, 2000 from City of Half Moon Bay to Ocean Colony explaining that the riprap placed 1998 was not exempt from coastal development permit requirements.
10. Letter dated February 2, 2001 from Commission to Ocean Colony describing jurisdictional boundaries and requesting that Ocean Colony submit a CDP application to the City of Half Moon Bay by March 15, 2001.
11. Letter dated July 23, 2002 from City of Half Moon Bay to Ocean Colony reiterating request for completion of CDP application.
12. Letter dated March 11, 2002 from Commission to Ocean Colony requesting that Ocean Colony apply to the Commission for removal or retention of the portion of the unpermitted riprap within the Commission's permit jurisdiction.
13. Waiver of Legal Argument form sent by Ocean Colony to Commission dated December 21, 2001.
14. Letter dated May 22, 2002 from City of Half Moon Bay to Commission, formally requesting that Commission enforce permit requirements for the riprap located in both the City's and the Commission's jurisdictions.
15. Letter from Ocean Colony dated September 19, 2002 withdrawing Statement of Defense.
16. Consent Agreement and Cease and Desist Order No. CCC-02-CD-02.
17. Conceptual plans for proposed public access path and stairs submitted by Ocean Colony dated September 12, 2002.

CONSENT AGREEMENT AND CEASE AND DESIST ORDER NO. CCC-02-CD-02

1.0 TERMS AND CONDITIONS

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

- 1.1 Within 45 days of the issuance of this Consent Order, Ocean Colony shall submit to the Executive Director for review and written approval, plans that provide sufficient detail and address the elements set forth below for removal of the old retaining wall that has collapsed onto the beach, partial removal of the riprap below the 18th Hole as depicted on the plans dated September 19, 2002 provided by Ocean Colony and labeled in the legend as “Proposed Rock Removal Area“, and for grouting the remaining riprap that is to remain in place pending a decision on an application for a permanent shoreline/bluff protective structure. The plans shall include, but not necessarily be limited to, the following elements:
 - a. Project Description: A detailed description of the proposed project is required, including an identification of: (1) the amount (approximate total volume and weight) of rock to be removed, (2) the proposed method of removal, (3) the proposed method of grouting the remaining riprap, (4) any proposed means of beach access for construction personnel and equipment, (5) all dates and times when removal and grouting or any other activities would take place, (6) total amount and location of any fill placement or grading in connection with any proposed, temporary beach access ramp or other project component, and, if applicable, removal of temporary access ramp and (7) ultimate storage and/or disposal plans for the rock removed. If the disposal site is located within the coastal zone, a Coastal Development Permit (CDP) for such disposal shall be issued prior to such disposal. The Executive Director reserves the right to postpone if necessary the permissible dates and times for construction specified in this Consent Order based on his/her evaluation and considerations related to protection of the environment.

- b. **Project Plans:** Detailed project plans, certified by a licensed engineer, are required for all aspects of the project, showing (1) any proposed beach access for construction equipment, (2) exact present location in plan view and cross-section of the rock to be removed in relation to the beach and (3) equipment and materials staging areas. For all plans, please submit both large scale plans (1 inch = 10 feet) and reduced (8.5" x 11") copies
 - c. **Erosion Control Plan:** The erosion control plan shall demonstrate that (1) during removal activities, erosion on the site shall be controlled to avoid adverse impacts on adjacent resources, (2) temporary erosion control measures such as hay bales and silt fences shall be used during removal activities. The plan shall include a narrative report describing all temporary erosion control measures to be used during removal activities, plans showing the locations of the erosion control measures on large scale (1 inch = 10 feet) and reduced (8.5" x 11") site plans, and a description of the proposed schedule for installation and removal of the temporary erosion control measures.
 - d. **Road Impacts:** A description of the timing and estimated number of truck trips on Miramontes Point Road.
- 1.2 Within 30 days from issuance of the Executive Director's written approval of the plans referenced in Section 1.1, Ocean Colony shall commence work in compliance with the approved plans for removal of the old retaining wall that has collapsed onto the beach, partial removal of the riprap and grouting the remaining riprap. Ocean Colony shall undertake the removal and grouting work in strict compliance with the final project and erosion control plans as approved by the Executive Director.
 - 1.3 Within 90 days of commencement of work, Ocean Colony shall complete the removal of the old retaining wall that has collapsed onto the beach, the partial removal of the riprap and grouting the remaining riprap.
 - 1.4 If road damage occurs to Miramontes Point Road as a result of the removal activities, Ocean Colony shall restore the road surface to the same conditions that existed prior to the removal of the riprap within 30 days of the completion of the work.
 - 1.5 Within 90 days of the date of issuance of this Consent Order (by **January 10, 2003**) or other such time as may be agreed to under Section 8.0, Ocean Colony shall submit a complete CDP application to the Commission for a proposed permanent shoreline/bluff protective structure where the grouted rock riprap remains. The Commission has asserted, and Ocean Colony does not contest for purposes of this Consent Order or the CDP referenced herein (as further explained in Section 4.0), that the Commission has jurisdiction to accept, process, and act on the CDP application required by this Section 1.5, and any subsequent amendments to or enforcement of the terms and conditions of such CDP, and Ocean Colony agrees not to contest that jurisdiction. The application shall conform to all applicable requirements of the Coastal Act and any other relevant laws, and shall include, but not necessarily be limited to, the following elements:

- a. **Project Description:** A detailed description of the proposed project is required, including (1) total amount and location of material to be used in construction of the proposed protective structure, (2) proposed method of construction of the protective structure, (3) any proposed means of beach access for construction personnel and equipment and (4) all dates and times construction activities would take place.
 - b. **Project Plans:** Detailed project plans, certified by a licensed engineer, are required for all aspects of the project, showing (1) any proposed beach access for construction equipment and personnel, (2) detailed cross-sections of the proposed protective structure and (3) equipment and materials staging areas. For all plans, please submit both large scale plans (1 inch = 10 feet) and reduced (8.5" x 11") copies.
 - c. **Construction Erosion Control Plan:** The erosion control plan shall demonstrate that (1) during construction activities, erosion on the site shall be controlled to avoid adverse impacts on adjacent resources, (2) temporary erosion control measures such as hay bales and silt fences shall be used during construction activities. The plan should include a narrative report describing all temporary erosion control measures to be used during construction activities, plans showing the locations of the erosion control measures on large scale (1 inch = 10 feet) and reduced (8.5" x 11") site plans, and a description of the proposed schedule for installation and removal of the temporary erosion control measures.
 - d. **Geotechnical Study:** A geotechnical study of the proposed protective structure by a licensed civil engineer or engineering geologist evaluating the stability of the bluff and historical erosion at this location, the necessity for and adequacy of the proposed structure to insure stability of the bluff, and the effects of the proposed structure on local sand supply and the adjacent bluffs.
 - e. **Road Impacts:** A description of the timing and estimated number of truck trips on Miramontes Point Road.
 - f. **Alternatives:** A detailed analysis of potential project alternatives including modification and/or relocation of the 18th Hole of Half Moon Bay Golf Links.
- 1.6 This Consent Order and the Commission's agreement to consider a CDP application for a proposed permanent shoreline/bluff protective structure does not in any way indicate whether any structure, including that to be proposed by Ocean Colony, is approvable under the Chapter 3 policies of the Coastal Act or any other relevant authorities, or bind the Commission to approve any CDP application for coastal protection at this site. This Consent Order does not constitute a CDP for the riprap; it allows retention of a portion of existing riprap pending a decision on an application for a shotcrete wall or other permanent shoreline/bluff protective structure. Ocean Colony agrees that it will not argue at any time or in any proceeding that the Commission's issuance of this Consent Order constitutes evidence that the portion of the riprap that is allowed to temporarily remain is consistent with the Coastal Act or is development for which Ocean Colony has a vested right. Ocean Colony retains the rights provided under the Coastal Act, however,

to judicial review of any Commission decision with respect to a CDP for a permanent shoreline/bluff protective structure, but will not challenge the Commission's jurisdiction as provided in Section 1.5 above.

- 1.7 If Ocean Colony does not file a complete CDP application for proposed shoreline protection for the 18th Hole by **January 10, 2003**; the Commission does not approve the CDP application; if a CDP is not issued within the time specified in the CDP approval; if Ocean Colony does not timely meet "prior to issuance" conditions specified in the CDP; or if Ocean Colony does not carry out the development authorized in a CDP within the time specified in the CDP, then the issuance of this Consent Order does not in any way waive or limit the Commission's right to take enforcement action seeking removal of the portion of the riprap allowed to remain temporarily pursuant to this Consent Order, or to remedy any violations then existing at the site or any future violations.
- 1.8 Pursuant to California Code of Regulations Title 14, Section 13053, the Executive Director of the Commission hereby waives the requirement for preliminary local approvals, if any, for the proposed permanent shoreline/bluff protective structure.
- 1.9 Ocean Colony shall construct a public access stairway and improve the existing informal pathway from the parking lot at the end of Redondo Beach Road to the beach in Half Moon Bay as generally depicted in the conceptual plans submitted by Ocean Colony dated September 12, 2002 (**Exhibit 17**). Within 60 days of the issuance of this Consent Order, Ocean Colony shall submit to the City of Half Moon Bay a complete CDP application addressing the application requirements for such public access path and stairway in accordance with the following (Ocean Colony shall also submit a copy of the complete CDP application to Commission staff at the time of submittal to the City):
 - a. Project Description and Plans: The plans shall include (1) total amount and location of material to be used in construction of the path and stairway, (2) proposed method of construction of the path and stairway, (3) any proposed beach access for construction personnel and equipment, (4) equipment and materials staging areas, and (5) all dates and times construction activities would take place.
 - b. Within 60 days of issuance of a CDP for the path and stairway, Ocean Colony shall commence their construction.
 - c. Ocean Colony shall provide evidence that it possesses sufficient rights to construct the path and stairway and that public use of said path and stairway will be allowed immediately upon completion of construction. If the applicable land on which the improvements are to be constructed is owned by any one or more public entities or agencies and Ocean Colony provides evidence of such ownership by public entities or agencies, this requirement will be satisfied. Ocean Colony will also work diligently with the landowner to make all necessary arrangements for the access to be opened, and will provide evidence of these efforts to the Commission. Upon completion of construction, Ocean Colony shall identify the entity that has accepted responsibility for the long-term maintenance and repair of the path and stairway. If no entity has

- been designated upon completion of construction, Ocean Colony shall assume such responsibility until such time as such responsibilities are effectively transferred to another entity. Ocean Colony's responsibility for maintenance and repair of the stairway and path shall not exceed three (3) years, irrespective of whether another entity has accepted responsibility.
- d. Ocean Colony agrees to contribute a total of \$50,000 for the long-term maintenance and repair of the public access path and stairway. Upon completion of the construction of the path and stairway, or six months from the effective date of this Consent Order, whichever is sooner, Ocean Colony shall deposit the maintenance and repair funds into an account controlled by the entity that has been designated responsible for the maintenance and repair of the stairway. If no entity has been designated by such time, Ocean Colony shall be responsible for the maintenance and repair of the path and stairway until such time as another responsible entity is designated, but in no event longer than 3 years. If an entity is later designated and accepts responsibility for repair and maintenance of the stairway, Ocean Colony shall transfer \$50,000 to that entity.
 - e. Ocean Colony shall have the rights provided under the Coastal Act to seek review of any decision on the CDP referenced in this Section 1.9 without being in violation of the terms of this Consent Order.
 - f. If the Executive Director determines it is necessary, Ocean Colony shall work with the Coastal Conservancy, and, if necessary, have the Coastal Conservancy become the applicant for the project. Therefore, the path and stairway project (referenced in this Section 1.9) would be a project of the Coastal Conservancy. In such an event, Ocean Colony's other obligations to fund and construct this project remain in place.
 - g. If, for any reason, this proposed path and stairway project is demonstrated to the Executive Director's satisfaction to not be feasible, Ocean Colony shall, within 60 days of the Executive Director's written determination, propose to the Commission an alternative project that provides equivalent public benefits at a cost no greater to Ocean Colony than \$250,000 (which amount includes expenses equivalent to those described in subparagraph d. above), subject to Commission approval, and shall seek Commission approval for such an alternative to be embodied in an amendment to this Consent Order, and shall implement such alternative project in compliance with the terms of such amendment.

2.0 IDENTIFICATION OF THE PROPERTY

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

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

3.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

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

4.0 COMMISSION JURISDICTION

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

5.0 HEARING

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

6.0 FINDINGS

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

7.0 EFFECTIVE DATE

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

8.0 EXTENSION REQUESTS

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

9.0 COMPLIANCE OBLIGATION

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

10.0 SITE ACCESS

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

11.0 GOVERNMENT LIABILITIES

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

12.0 APPEAL AND STAY

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

13.0 SUCCESSORS AND ASSIGNS

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

14.0 MODIFICATIONS AND AMENDMENTS

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

15.0 GOVERNMENTAL JURISDICTION

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

16.0 LIMITATION OF AUTHORITY

16.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Consent Order.

16.2 Correspondingly, Ocean Colony has entered into this Consent Order and waived its right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms, solely to effectuate a settlement with the Commission through this Consent Order. Ocean Colony has agreed that it does not contest that (a) the Commission has jurisdiction to issue and enforce this Consent Order; and (b) for purposes of the CDP application specified in Section 1.5 of this Consent Order, the Commission has jurisdiction to accept, process, and act on such CDP

application (and any amendments to or enforcement of the terms and conditions of such CDP).

16.3 Except as to the matters specified in Section 16.2, Ocean Colony is not waiving any legal rights, positions, or defenses, or conceding any factual matters, by entering into this Consent Order, and Ocean Colony retains the right to assert all of its legal rights, positions, and defenses, and present all facts and evidence in support thereof, in any other proceeding for any purpose by or before the Commission (including the CDP application specified in Section 1.5 above), any other governmental agency, any administrative tribunal, or a court of law. The Commission shall not assert in any such other proceeding that Ocean Colony has waived any of its rights, positions, or defenses, or conceded any facts, by virtue of its entering into this Consent Order.

17.0 INTEGRATION

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

18.0 STIPULATION

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

IT IS SO STIPULATED AND AGREED:

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

Ocean Links Corporation, its general partner

By:

William E. Barrett, President

Dated

On behalf of the Coastal Commission:

Peter Douglas, Executive Director

Dated