

CALIFORNIA COASTAL COMMISSION

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Staff: NC-SF
Staff Report: March 26, 2004
Hearing Date: April 14, 2004

STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-03-CD-014

RELATED VIOLATION FILE: V-2-01-011

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

DESCRIPTION OF PROPERTY The hotel premises portion, One Miramontes Drive, seaward of Ocean Colony at Miramontes Point, Half Moon Bay

PROPERTY OWNER and PERSON SUBJECT TO THIS ORDER: The Ritz Carlton Hotel Company, LLC

VIOLATION DESCRIPTION: Non-compliance with the terms of CDP No. 3-91-71/1-95-47: failing to provide 25 public parking spaces, within the Ritz Carlton parking garage as required.

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Development Permit 3-91-71/1-95-47
2. Coastal Development Permit 1-94-04
Background Exhibits

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15061 (b) (3)) and Categorically Exempt (CG §§ 15061(b)(2),(3), 15307, 15308 and 15321)

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve Cease and Desist Order No. CCC-03-014 ("Order") to address the Ritz Carlton Hotel Company LLC's ("Ritz Carlton") non-compliance with past coastal development permit ("CDP") actions by requiring the Ritz Carlton to take affirmative steps to provide 25 public parking spaces within the Ritz Carlton garage that are easily accessible by the public as required by the Commission when it conditionally approved CDP 3-91-71/1-95-47¹. This enforcement action arises after more than three years of complaints regarding noncompliance with the CDP requirements regarding public access parking, and numerous attempts by Commission staff to resolve the situation informally.

As approved by the Commission, the CDP permitted the construction of a 271-room luxury resort hotel facility and the construction of significant public access improvements at One Miramontes Point Road in the City of Half Moon Bay, San Mateo County. Recognizing the existing and future public access use at the subject property, the Commission required the Ritz Carlton and the co-applicant, the City of Half Moon Bay (for that portion involving the extension of Miramontes Point Road to the hotel property) to provide public access amenities which include: a bluff top scenic overlook, a paved pedestrian access path along the length of the property, bike lanes connecting from Highway One to and along the property, public restrooms and viewing decks, and a vertical access way to Canada Verde Beach. The Commission also required the Ritz Carlton to provide two different public parking areas, a 15-car lot located next to the pathway to Canada Verde Beach south of the hotel premises and 25 parking spaces either on hotel premises or at the end of Redondo Beach Boulevard (north of the hotel property). In November of 1998, the Executive Director approved the revised plans submitted by the Ritz Carlton as being consistent with CDP No. 3-91-71/1-95-47. In those plans, the Ritz Carlton proposed and the Executive Director approved the provision of the 25-public parking spaces within the hotel parking garage (as well as the 15-car Canada Verde lot).

Starting in June of 2001, the Commission began receiving reports from the public that the Ritz Carlton was denying the public use of the 25 parking spaces located on the hotel garage. In some instances the public was not informed by Ritz Carlton staff that there was onsite public parking, and they were instead directed to the 15-space Canada Verde parking lot south of the Ritz Carlton property (which is often filled to capacity during prime usage hours such as after work on week-days and on the week-ends and holidays). In at least some instances, Ritz Carlton staff informed members of the public that there was no public parking on the hotel site. Commission staff repeatedly attempted to resolve the situation. Staff telephoned, wrote letters and met with Ritz Carlton staff several times regarding the problem of permit compliance (See letters from

¹ The CDP has combined two Commission District numbers due to two different district offices handling this permit. The Central Coast office processed the original permit application and decision and the North Coast office processed the submittal of CDP condition compliance.

Commission staff to the Ritz Carlton concerning the problem dated June 26, 2001, February 14, 2002, April 17, 2002, and August 7, 2002 (Exhibits 4, 6, 8, and 10). The Ritz Carlton has continually promised the Commission that it would fully comply with the requirements of its CDP (Exhibits 5, 7, 9, and 11). However, the problems continued with new reports during 2003. Commission staff again attempted to resolve the situation without bringing a formal enforcement action. When the reports continued to be filed by the public despite the efforts of Commission staff and continual promises made by the Ritz Carlton, the Executive Director finally notified the Ritz Carlton by letter dated October 23, 2003, of his intent to commence a Cease and Desist Order hearing to ensure compliance with CDP 3-91-71/1-95-47 (Exhibit 12).

In order to issue a Cease and Desist Order under Section 30810 of the Coastal Act, the Commission must find that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. This Order is being brought to address the continuing violations of CDP 3-91-71/1-95-47 by the Ritz Carlton. The Coastal Act violations addressed by this Order are the Ritz Carlton's failures to allow the public to use the 25 public parking spaces within its garage on hotel premises as clearly required by the Permit. The Commission has received at least twelve complaints that demonstrate that the public was prohibited, misled or heavily discouraged from utilizing the 25-parking spaces within the Ritz Carlton garage. While the Commission has documented at least twelve incidents where members of the public or Commission staff has been discouraged or prohibited from accessing the 25-parking spaces, clearly this is only a sampling of what appears to be ongoing and persistent problems. It is very likely there have been additional instances experienced by the public, which have not been reported to the Commission.

The Ritz Carlton's failure to provide the public the required access to the 25 spaces within its garage consists of an ongoing activity that is inconsistent with the terms of CDP 3-91-71/1-95-47. The proposed Order will require the Ritz Carlton to affirmatively act to enable the public to park on its premises as required by the Permit condition by requiring: 1) additional parking signs along Miramontes Point Road and within the existing Canada Verde Beach parking lot that identify the amount of and the location of the 25 spaces within the Ritz Carlton garage; 2) a parking permit machine located at the Ritz Carlton greeter station to provide the public with garage parking permits for entry into the hotel garage parking facility; 3) a machine installed at the entry of the Ritz Carlton garage to receive the issued parking permit from the public when it enters the garage; 4) additional employee training; and 5) the production of and distribution of a public access/parking amenities brochure with copies to be made available to the public at the Ritz Carlton greeter station. The Order would allow the public to access the parking spaces independently without having to solicit assistance from Ritz Carlton staff to obtain entry and would also direct and order the Ritz Carlton to comply with the CDP requirements and avoid future violations of the CDP parking requirements.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are set forth in section 13185 of the Commission's regulations. For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators 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, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13185 and 13186 incorporating by reference section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner 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 Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following motion:

Motion:

I move that the Commission issue Cease and Desist Order No. CCC-03-CD-014 pursuant to the staff recommendation.

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

Resolution to Issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order number CCC-03-CD-014, as set forth below, and adopts the findings set forth below on grounds that the Ritz Carlton has undertaken activity which is inconsistent with CDP 3-91-71/1-95-47 previously issued by the Commission.

IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-03-CD-014

Staff recommends the Commission adopt the following findings of fact in support of its action.

A. History of Commission Permit Actions on Subject Property

In 1991, and later in 1995,² the Commission conditionally approved CDP No. 3-91-71/1-95-47 ("Permit") for the Half Moon Bay Resort Partners and the City of Half Moon Bay for a 350-unit resort hotel complex, land division and extension of Miramontes Point Road (Exhibit 1: location map and Exhibit 3: Signed Notice of Intent to Issue CDP and CDP).³ The Half Moon Bay Resort Partners assigned the Permit to the Ritz Carlton Hotel Company LLC ("Ritz Carlton").

At the time of Commission permit action, the proposed 350-unit resort hotel represented a priority visitor serving use under the Coastal Act and the certified LCP Land Use Plan ("LUP"). The approved project included the extension of Miramontes Point Road to access the site across various intervening property held by differing ownerships within the City's South Wavecrest Redevelopment Area; the City of Half Moon Bay was the co-applicant for this portion of the project. Because only limited sewage treatment capacity is presently available, the Permit was phased to limit hotel room construction to no more than 275 units until such time as additional sewage treatment capacity is available. The existing Ritz Carlton Hotel Half Moon Bay has 271 rooms.

The Commission required the Ritz Carlton to provide a comprehensive public access program both on- and off-site so that a balanced range of high-end as well as more affordable public amenities was provided by the approved project, consistent with the

² The Central Coast District office processed the 1991 CDP application; in 1995 Commission jurisdiction for permits for Half Moon Bay had transferred from the Commission's Central Coast District to its North Coast District. The original CDP has a Central Coast number: 3-91-71. When the applicant was ready to submit condition compliance, permit jurisdiction for the project had transferred to North Coast District. The original CDP was renumbered in 1995 from 3-91-71 to 3-91-71/1-95-47 to reflect the change in jurisdiction and to clarify internal permit record keeping.

³ The City of Half Moon Bay was the co-applicant due to the proposed extension of Miramontes Point Road and their ownership of the land for that road extension. The City was not subject to the permit conditions requirements for the hotel resort complex.

Coastal Act and the approved LUP. Prior to development, the Commission found the existence of public prescriptive use of the subject property and determined that consistent with the public access policies contained in Chapter 3 of the Act, the approved resort hotel project must preserve and provide for continuing public use of the shoreline property.

The Permit required the Ritz Carlton to provide onsite public access amenities such as: 1) creation of a bluff-top scenic overlook for hotel guests and the visiting public; 2) a pedestrian access path between the hotel's parking garage and the bluff-top overlook connecting to the public bikeway located north of the hotel property adjacent to Redondo Beach Road; 3) a coast side bikeway segment connecting the extended Miramontes Point Road, the bluff-top overlook and the southern end of Olive Avenue; 4) bicycle parking areas; 5) roadside bike lanes connecting the hotel site to Highway One; 6) a public parking lot along Miramontes Point Road south of hotel premises for at least 15 cars for Canada Verde beach parking; 7) vertical beach access for Canada Verde Beach; 8) public restrooms; 9) adequate signage clearly marking access routes, public parking, Miramontes Point overlook and public restrooms.

Since there was not adequate room to provide for a satisfactory range of free and/or low-cost recreational facilities on the hotel site, the Permit required the Ritz Carlton to be responsible for providing such facilities offsite, at adjacent and nearby locations. In addition to the extension of Miramontes Pt. Road, the program was to include the establishment of and arrangements for maintenance of public access facilities to and along the shoreline. The Permit required the applicants to either construct the offsite public access amenities or to provide in-lieu fees so that appropriate public or non-profit entities could provide the offsite amenities. The applicants satisfied the offsite public access requirements by paying an in-lieu fee of \$250,000 to the City of Half Moon Bay so that the City could complete the coastal trail system to Redondo Beach Road. The applicants also paid an in-lieu fee of \$350,000 for the creation of off-site low and moderate overnight accommodations.

This action involves the requirements of Special Condition No. 2a of CDP 3-91-71/1-95-47, which states:

Miramontes Pt. parking. A public parking area on hotel premises at Miramontes Pt., min. 25 spaces, as provided by the Ocean Colony Planned Unit Development ordinance (Ordinance No. 4-91). Such parking area shall be open during daylight hours commencing at sunrise and at least until one hour after sunset throughout the year. (With respect to this coastal development permit, permittee may satisfy this condition by demonstrating that a like quantity and quality of parking, along with a paved access road, has been provided as an addition to the required parking at the seaward end of Redondo Beach Road.)

In November of 1998, the Athens Group, the resort hotel project permittee at the time, submitted final revised access plans to Commission staff in compliance with the above-cited public access condition requirements of the Permit. The Executive Director approved these plans. At the time of plan approval, the permittee depicted the provision of 25 public parking spaces within the hotel's parking garage. There is a greeter station that one must pass through to enter the Ritz Carlton premises. As the Commission understands the situation, previously, the intended procedure was that the hotel staff at the greeter station would direct visitors who ask to use the hotel public parking in the garage to either drive to the hotel's main entrance, or to drive directly to the garage entrance, and ask a valet to let them into the garage. More recently, the Commission has been informed that intended procedure was that the hotel staff at the greeter station first writes down the visitor's license plate, then the staff gives the visitor a tag to hang on their rear-view mirror, radios a valet, and asks the valet to meet the visitor at the garage entrance to let them into the garage.

B. History of Violation

In May 2001, Commission enforcement staff began receiving reports that the public was having difficulty getting to the 25 parking stalls within the resort hotel complex. Because of multiple reports, Commission staff independently began to investigate the Ritz Carlton's public access amenities and access to the 25 parking stalls, and to evaluate compliance with the Permit conditions (whenever they had reason to be in the vicinity of the Ritz Carlton). In a visit to the site in May 2001, Commission staff confirmed that there was no one at the greeter station when they arrived, and there were no signs indicating where the parking is located within the Ritz Carlton garage. Two different Ritz Carlton employees stated that they didn't know about any public parking available on the resort hotel property.

Commission access program staff also reported that City of Half Moon Bay residents had told them that they have had similar problems and that the hotel employees had attempted to charge the Half Moon Bay residents \$10 to park within the garage when they arrived to use the coastal trails and the 25 parking spaces. Upon contact, on June 13, 2001, Jeffrey Mongan, for the Ritz Carlton, indicated that steps were being taken to rectify the situation.

On June 22, 2001, another report was received which stated that the person in the Ritz Carlton parking garage knew nothing about public parking, the spots that were formerly designated for public parking were blocked off and posted for "Valet Parking" and the visitor was told that he could park "where the caddies park" in the service area. Enforcement staff wrote the Ritz Carlton on June 26, 2001, concerning the report, and the Ritz Carlton sent a response on July 12, 2001, stating again that they had fixed the problem (Exhibits 4 and 5).

On February 12, 2002, a visitor reported that the hotel greeter station was unattended, and when she followed the signs to the hotel parking structure, there were guard gates in place at all entrances and three "Valet Parking Only" signs posted. The valet on duty at the garage seemed uncertain when she asked to park in the public parking spaces. After she insisted that there were parking spaces for the public within the garage, the valet let her into the garage to park. She was told to park in a space opening up in the service vehicle area. In response, on February 14, 2002, enforcement staff yet again contacted the Ritz Carlton, and on March 25, 2002, the Ritz Carlton again assured Commission staff that they would resolve the problem (Exhibits 6 and 7).

On March 26, 2002, a member of the public contacted enforcement staff and stated he had recently had trouble using the hotel parking spaces when inquiring about public access parking. He was directed by the Ritz Carlton greeter offsite to the 15-car parking lot south of the hotel premises, adjacent to the Canada Verde Beach access way.

On April 10, 2002, Commission enforcement program management and staff visited the Ritz Carlton (in a car with State of California license plates and a State of California decal on the car window), and had trouble accessing the 25 public parking spaces. The Commission staff had not ever been to the hotel or tried to utilize the public parking within the parking garage. The hotel greeter station was unmanned and an existing sign installed on the grass to the right of the greeter station, which stated "Coastal Access Parking" with an arrow, did not direct them to where the parking was located. The Commission staff drove around the premises, could not find the public parking and no hotel employees were available to assist them in their search. The parking garage had security gates in place at all three entrances, fully blocking access. Staff could see some spots dimly marked for Coastal Access Parking on the second floor of the garage, but could not enter the garage and there were no onsite valet staff to allow entry. The Commission staff then drove to the hotel entry round-about, and a staff valet directed them to the 15-space lot located on Miramontes Road. Staff responded that 25 public parking spaces were supposed to be available on hotel premises, and the valet stated that he had been working for the Ritz Carlton since the hotel had opened and he didn't know anything about any public parking on hotel premises. At this point staff identified themselves as Commission employees and handed the valet their business cards. Another valet appeared and told the staff to go to the garage and someone would "buzz" them into the garage.

Around the same time, Commission staff received another report from a member of the public. The report stated that there was no one at the greeter's station when he arrived, and that the existing sign with the arrow stating "Coastal Access Parking" confused him since the arrow did not point to any particular destination. After some time and difficulty, he located a valet near one of the hotel restaurants, Caddy's, who was willing to help him find a spot in the hotel garage after opening up one of the entrance gates. On April 17, 2002, enforcement staff contacted the Ritz Carlton (Exhibit 8). By letter dated

May 1, 2002, the Ritz Carlton again indicated that they would fix the problem and concurred that part of the problem was the lack of staff at the hotel greeter station (Exhibit 9).

However, another Commission staff member visited the hotel on July 14, 2002, and when she stopped at the greeter's station and inquired about public access parking, she was told that there was public parking to the south on Miramontes Point Road (the 15-space Canada Verde parking lot). Only when she persisted and asked specifically about public parking on hotel premises in the hotel parking garage she was told by the greeter that yes, there was public parking in the hotel parking garage, but that the beach access way was located by the 15-space parking lot on Miramontes Point Road and that thus, she should park in that lot.

After receiving this complaint, Commission enforcement staff contacted the Ritz Carlton, giving them 30 days to comply with permit conditions or face formal enforcement action. Staff also set up a meeting with the Ritz Carlton to take place in early August 2002. Once again the Ritz Carlton contacted staff and indicated that they wanted to avoid formal action and that they would take steps to resolve the situation.

On August 6, 2002, Commission staff met with management from the Ritz Carlton in an attempt to finally resolve the situation. At this meeting Commission enforcement staff made it quite clear to the Ritz Carlton that unless the parking problems ceased, the Commission would be forced to issue a Cease and Desist Order to ensure that the Ritz Carlton abided by the permit actions approving the hotel facility. The Ritz Carlton representatives indicated that they had resolved all existing problems with public access, that they had implemented new training for hotel greeter staff, installed new signs, and assured Commission staff that the problems would no longer occur. On August 7, 2002, Commission staff confirmed the commitments made by the Ritz Carlton at the meeting (Exhibit 10). On August 29, 2002, the Ritz Carlton responded to the 7 August 2002 letter, confirming their commitment to agreements made in the meeting (Exhibit 11).

However, on April 1, 2003, Commission staff received an additional report of problems trying to access the public parking at the hotel premises. The reporting party indicated that when they asked hotel staff about public parking, they were told to utilize the 15-space Canada Verde Beach parking lot.

Yet another member of the public reported that on Sunday August 3, 2003, she and a friend approached the greeter station at the Ritz Carlton. The Ritz Carlton staff asked if they were checking into the hotel, and when the visitors indicated that they wanted to use the hotel coastal access trails, the staff told them that parking for all trails was back down Miramontes Point Road at the 15-space Canada Verde parking lot. The staff made no mention of any available parking facilities on Ritz Carlton property. The 15-

space Canada Verde parking lot was full, so the would-be visitors left without utilizing the trail system available at the Ritz Carlton.

On August 21, 2003, the Commission received an additional report from members of the public indicating that they had been turned away at the greeter's station when they attempted to use the onsite parking facilities. On September 4, 2003, two more complaints were received from members of the public who were directed to park in the Canada Verde 15-space parking lot when they inquired about onsite parking at the Ritz Carlton hotel.

Notice of Intent to Commence Cease and Desist Order Proceedings

On October 23, 2003, since Commission staff continued to receive reports from the public stating that they were not able to park on hotel premises as required by the Permit, the Executive Director of the Commission formally issued a Notice of Intent (NOI) to commence Cease and Desist Order proceedings against the Ritz Carlton Hotel Company LLC to compel compliance with the Permit requirements (Exhibit 12).

After receipt of the Commission's NOI, the Ritz Carlton indicated that they wished to reach a settlement of the issue with Commission staff. After several meetings and extensive negotiations which did not result in an agreement, Commission staff contacted the Ritz Carlton by letter dated February 26, 2004 and indicated that the matter would be scheduled for a unilateral Cease and Desist Order hearing (Exhibit 13). The Commission reinstated a deadline for receipt of a Statement of Defense form. The Ritz Carlton met that deadline and submitted their Statement of Defense on March 15, 2004 (Exhibit 14).

C. Description of Permit Noncompliance

The permit noncompliance, which is the subject matter of this Cease and Desist Order proceeding, consists of the Ritz Carlton's failures to provide the public access to 25 public parking spaces on hotel premises as required by the Permit conditions. While the Ritz Carlton maintains that they have provided 25 parking spaces within their hotel garage, the public has, repeatedly and over a period of over three years, not been able to access the spaces at all required times due to continuing problems interacting with various hotel staff (greeters, valets, security, etc.) who must be contacted to gain access to the public parking.

D. Basis for Issuance of Cease and Desist Order

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

- (a) *If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...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...*

As discussed in section C of the findings for this Order, the Ritz Carlton has failed to consistently provide the public access to 25 parking spaces on hotel property. This failure to provide is an activity undertaken by the Ritz Carlton, which is inconsistent with CDP 3-91-71/1-95-47. Therefore, the Commission may issue a Cease and Desist Order under section 30810 of the Coastal Act. Furthermore, as discussed in section C, the need to interact with hotel staff to access the public parking spaces on hotel property has resulted in instances where the public is discouraged or prevented from accessing the public parking spaces. Accordingly, pursuant to Section 30810(b) of the Act:

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...

Therefore, the Commission finds that, to ensure compliance with CDP 3-91-71/1-95-47, it is necessary to order the Ritz Carlton to enact measures that enable the public to locate and access the public parking spaces on hotel property without the assistance of hotel staff.

E. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a Cease and Desist Order to compel the compliance with CDP 3-91-71/1-95-47 is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15061 (b)(2) and (3), 15307, 15308 and 15321 of the CEQA Guidelines.

F. Allegations

The Commission alleges the following:

1. The Ritz Carlton Hotel Company LLC is the owner of the property located at One Miramontes Point Road, Half Moon Bay, San Mateo County (APNs 066-092-780 and 066-092-770).
2. The Ritz Carlton Hotel Company LLC has undertaken activity which is inconsistent with the terms and conditions of CDP 3-91-71/1-95-47 by discouraging and/or preventing the public from parking in the required, free, 25-public parking spaces in the Ritz Carlton parking garage, and failing to both provide such parking and to disclose the availability of the free onsite parking spaces.
3. The Ritz Carlton Hotel Company LLC has not obtained a CDP amendment to change the nature of its Permit parking requirements.
4. In letters dated June 26, 2001, February 13, 2002, April 10, 2002, August 7, 2002 and October 23, 2003, Commission staff informed the Ritz Carlton of its noncompliance with CDP 3-91-71/1-95-47, that its noncompliance constitutes an ongoing violation of the Coastal Act, and requested that noncompliance cease.
5. Despite giving numerous assurances, the Ritz Carlton has failed to consistently provide the public access to the 25 spaces located on Hotel premises, and has violated its Permit condition on an ongoing basis, with at least twelve separate occasions documented by specific complaints.

G. Violators' Defenses and Commission's Response

The Ritz Carlton submitted its Statement of Defense on March 15, 2004. A complete copy of the submitted Statement of Defense is included as Exhibit 14 to this report. To summarize the Statement, the Ritz Carlton disagrees that it continues to violate the terms of the Permit. To address the ongoing problems, the Ritz Carlton proposes to move the parking to another portion of the hotel premises. Their Statement of Defense includes their proposal to move the parking (Please refer to Exhibit 14 for site layout and location of new parking area) and restates their desire to settle this matter with the Commission. However, the North Central District Office, who now has regulatory jurisdiction over this permit, has indicated to Commission enforcement staff that the proposed relocation area will not improve public access to parking at the hotel and will likely make the problem worse, since the new area is both farther within the hotel premises and would be adjacent to other high-use areas subject to special events, hotel guest use and Ocean Colony Association club members within the Ritz Carlton

property. Accordingly, Commission enforcement staff has not been able to reach an agreed-upon settlement with the Ritz Carlton.

Owner's Defense:

1. "From the opening of the Ritz-Carlton hotel in March 2001, the coastal access program implemented by the developer/owner has been extremely well received by members of the public...Over 250,000 visitors have stayed at the Ritz-Carlton, Half Moon Bay since opening..."

Commission's Response:

The Commission agrees with the Ritz Carlton's assertion that the Miramontes Point and Ritz Carlton Hotel coastal access program has been well received by members of the public. The Commission also notes that significant historic and existing public use was demonstrated to have occurred on the property prior to approval of the Permit by the Commission. In light of prior public use and attendant rights, when the original Permit application was considered by the Commission, the Commission could only find the proposed resort hotel consistent with Chapter 3 public access and recreational policies of the Act by requiring the Ritz Carlton to implement a coastal access program of trails, bike paths, bluff top overlooks, public restrooms and support public parking. One aspect of the required public access program has not been successfully implemented by the Ritz Carlton and that aspect consists of the 25 public parking spaces available on hotel premises.

Owner's Defense:

2. "One area of the coastal access program that has not functioned as well as originally contemplated...is the portion of the on-site coastal access parking program located in the hotel's Valet Parking Garage...the owner/developer has not failed to provide any required public access facilities. Rather, based upon the allegations in the NOI, the owner/developer appears to have experienced operational problems from time to time in providing convenient and welcoming public access to the existing Valet Parking Garage...we concede that some operational problems probably did occur although we have not been supplied with specific information related to who filed the complaints and the details of the complaints.

Mr. Ratchford, the new hotel general manager, attended a meeting on March 4, 2004 with Coastal Commission staff ...and outlined steps that have been taken...to assure the hotel's compliance...Steps...include:

- Renewed employee training program...;
- Change in staffing of the hotel greeter station from hotel's ...security department to the more welcoming guest services department;

- Commitment to manning the greeter station during daytime hours seven days a week (as opposed to the previous practice: weekends, holidays and whenever the hotel occupancy exceeded 50%).”

Commission’s Response:

The Ritz Carlton admits there have been reported operational failure to consistently provide 25 onsite parking spaces. The operational failure may be in part due to human staff error and changes in hotel management. The Commission has contacted the Ritz Carlton many times after it has received a complaint from the public, and has documented specifically what has occurred to the Ritz Carlton in several phone calls, letters, and at least three face-to-face meetings, as noted in earlier sections of this report. The Commission is not obligated to disclose the identity of persons who have complained about possible Coastal Act violations concerning the lack of parking availability. In fact, such a requirement could clearly chill the right of the public to report such violations.

The Commission acknowledges that the Ritz Carlton has tried to improve the situation several times over the past three years, but these efforts have proven to be unsuccessful. The public parking must be accessible at all required times and should not depend on which Ritz Carlton staff are working at any given time. The Order will eliminate the possibility of human error by Ritz Carlton staff by making entry to the hotel parking available to the public without staff interaction, through installation of machines that can issue a permit to open the guard gates at the parking structure. The machine to be installed at the garage would receive the issued ticket from the machine to be located at the greeter’s station to allow the public entry (the guard gates automatically raise when one is leaving the garage). The Order also requires implementation of training for all Ritz Carlton staff, so that the Permit’s requirements are met, and requires that if any members of the public inquire about any kind of public access (trails, beach or parking) the Ritz Carlton staff is required to inform the public about the onsite public parking. The Order also requires the Ritz Carlton to produce and make available to the visiting public a brochure that maps and locates all the public access amenities available on the Hotel premises (as well as those immediately adjacent north and south to the Ritz Carlton). Finally, the Order requires the installation of signs to show the public the availability of **both** parking areas: the 15-space lot at the Canada Verde Beach access way and the 25-spaces available in the Ritz Carlton parking garage. The new signs will be placed within the 15-space lot and on Miramontes Point Road adjacent to the 15-space lot. The new signs will indicate that 25 more spaces are available within the Ritz Carlton’s hotel parking garage.

Owner’s Defense:

3. “...In order to eliminate the potential for human error in the future, the hotel owner and manager have recommended that the 25 parking spaces...be

relocated to a new area in the middle of the hotel property adjacent to the coastal trail. These spaces would be designated for coastal access parking only and would provide members of the public the opportunity to self-park without an interface with the hotel valet parking staff...

Commission's Response:

The proposed relocation area is not acceptable to the Commission's North Central District permit staff and management for a variety of reasons, including concerns that it would not meet the intent of the original Permit conditions. The area is farther within the hotel premises and proposed to be located adjacent to the existing Ocean Colony Association club facilities. Some of the existing parking allocated to club usage would be re-designated for public coastal access parking and additional new spaces would be created from existing open lawn space. The proposed relocation area is likely to result in conflict between club members, hotel guest using club facilities and the general public trying to access the coastal trails. In the recent past, the Ritz Carlton has used the lawn area (where they propose to relocate the parking) for overflow parking, and Ocean Colony Association members have objected. The Ritz Carlton has also allowed helicopter landings and the erection of a large tent in this area. During the meeting between Ritz Carlton staff and the Commission staff held on March 4, 2004, the Ritz Carlton general manager, Paul Ratchford, indicated that the Ritz Carlton is pursuing a permit with the City of Half Moon Bay to erect a large tent for eight months of the year, or for short-term special events, such as weddings. The proposed tent location is directly adjacent to the proposed relocation of public parking and would likely result in conflicts.

Despite proposals by the Ritz Carlton to provide more staff to minimize any conflict between user groups and the proposed relocated parking spaces, the Commission cannot find the alternative location to be acceptable under the original Permit. Therefore, the Order requires the Ritz Carlton to implement measures to ensure the consistent availability of the existing 25 public parking spaces in the hotel garage, to assure compliance with the original Permit.

Therefore, the Order requires the Ritz Carlton to implement measures to ensure the consistent availability of the existing 25 public parking spaces in the hotel garage, consistent with the original Permit requirement. The Order will require the Ritz Carlton to eliminate human interface by installing machines to issue and collect permits both at the greeter station and the parking garage. The Order requires all Ritz Carlton employees to receive training on the requirements of the Permit. In addition, the public brochure identifying parking areas as well as the additional signage should eliminate any confusion about where public parking exists on hotel property.

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

CEASE AND DESIST ORDER

Pursuant to its authority under Public Resources Code Sections 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes the Ritz Carlton Hotel Company, LLC (“Respondents”), their employees, agents, and contractors, and any persons acting in concert with any of the foregoing to cease and desist from 1) undertaking on the property identified in Section F any activity or development that is inconsistent with CDP No. 3-91-71/1-95-47 as approved by the Commission; 2) undertaking on said property any development that requires a Coastal Development Permit, without obtaining such a permit, and 3) maintaining on said property any such development. Consistent with Public Resources Code Section 30810(b), the Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the original Permit. Accordingly, through the execution of this Order, the Respondents and all persons identified in Section F hereof are ordered to comply with the following terms and conditions.

TERMS AND CONDITIONS

1.1 Provision of Public Parking Spaces and Public Signage

1. Respondents shall immediately and on an ongoing basis, ensure that 25 public parking spaces are available for public use on the Hotel premises at all times, without charge. Respondents shall clearly identify and isolate 25 contiguous spaces from other available Hotel parking within its parking garage so that the 25 spaces are easily identified and accessible by the public. Additional signage shall be placed adjacent to the 25-space area, showing the way from the parking garage to the public access trails on the hotel premises.
2. Within 30 days of the date of issuance of this Order, Respondents shall prepare and submit, subject to the review and approval of the Executive Director of the Commission, a revised signage plan to be implemented on and adjacent to hotel premises, as originally required by the Permit. The plan shall include, but not be limited to: 1) additional signage adjacent to public parking located in the hotel parking garage as indicated in section 1 of this Order; 2) a sign to be posted on Miramontes Point Drive, adjacent to the existing 15-space lot for Canada Verde beach access. The sign shall indicate that the lot is a public parking lot and that 25 additional public parking spaces are available within the Ritz Carlton garage. The proposed wording and design of the signs must be reviewed and approved by the City of Half Moon Bay prior to submittal to the Executive Director of the Commission; 3) an identical new sign to be placed within the 15-car parking lot at Canada Verde that indicates that 25 additional

public parking spaces are available within the Ritz Carlton parking garage; 4) a new sign to be erected at the intersection of One Miramontes Drive and Highway One that states that Free Public Parking is available within the Ritz Carlton Parking Garage; and 5) revised signage for the Hotel Greeter Station. There shall be two signs placed on the Hotel Greeter station: one that can be viewed from the road as visitors approach the station and one that can be viewed by the driver of a vehicle that stops parallel to the station. The signs shall indicate the availability of the 25 public parking spaces in the hotel garage, and shall explain how to obtain a parking permit for entry into the hotel garage.

3. Within 30 days of receiving notice of the Executive Director's approval of the signage plan, the Respondents shall implement the approved parking and signage. Photographs of the subject property shall be submitted to the Executive Director to document the identified parking area and the placement of required signs.

1.2 Installation of Parking Permit Machines

1. In order to ensure compliance with the original Permit's access requirements, within 30 days of the issuance of this Order, Respondents shall submit, for the review and approval of the Executive Director, a plan for installation of a permit-issuance machine at the hotel greeter station and a similar machine to receive the issued permits and allow entry into the hotel garage to be installed at the public entrance to the Ritz Carlton parking garage. The machines shall allow the public to receive a parking permit and to enter and exit the parking garage without human interface.
2. Respondents shall install the machines and have them working within 30 days of Executive Director approval.

1.3 Public Access Brochure or Pamphlet

1. In order to ensure that the public is knowledgeable of their rights at coastal visitors to the property, consistent with the terms of the original Permit, within 30 days of the date of issuance of this Order, Respondents shall submit, subject to the review and approval of the Executive Director, a draft brochure or pamphlet that identifies and describes all coastal access amenities adjacent to and on hotel premises. The pamphlet shall clearly identify both public parking areas, all coastal trails, bike paths, the bluff-top overlook and the public restroom facilities. The pamphlet shall describe available hours and any limitations on use of any of the facilities consistent with CDP 3-91-71/1-95-47. Finally, the Respondents shall make the brochure or pamphlet available at its greeter station and shall make sure

that copies of the approved brochure are always available for the public at that location.

1.4 Employee Training on Coastal Access Parking and other amenities

1. Within 30 days of the date of issuance of this Order, Respondents shall submit, subject to the review and approval of the Executive Director, its employee-training program for ensuring compliance with the Permit and this Order. The Respondents' employees shall be required to inform anyone who makes **any** inquiry about trails, the beach, coastal access, the bluff-top overlook, or parking about the onsite, free public parking within the hotel garage.

IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is the subject of this Order is the property located at One Miramontes Point Road, Half Moon Bay, San Mateo County, APNs 066-092-780 and 066-092-770.

DESCRIPTION OF ALLEGED COASTAL ACT VIOLATIONS

The violations that are the subject of this Order include the Respondents' failures to provide the public access to 25 public parking spaces as required in CDP No. 3-91-71/1-95-47. Respondents' failures are not in compliance with previously issued CDP No. 3-91-71/1-95-47, which required the provision of 25 public parking spaces and the public's right to access the 25 spaces.

COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these alleged Coastal Act violations pursuant to Public Resources Code Section 30810. The Respondents' failures to provide access to the 25 parking spaces is in non-compliance with previously issued CDP No. 3-91-71/1-95-47. Therefore, for the purposes of issuance and enforceability of this Order, the Commission has jurisdiction to act as set forth in this Order, and Respondents agree that they will not contest the Commission's jurisdiction to issue or enforce this Order.

FINDINGS

This Order is issued on the basis of the findings adopted by the Commission, as set forth in the attached document entitled "Staff Report for Cease and Desist Order No. CCC-03-CD-14."

EFFECTIVE DATE

This 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.

COMPLIANCE OBLIGATION

Strict compliance with this Order by all parties subject thereto is required. Failure to comply with any term or condition of this Order, including any deadlines contained in this Order as approved by the Commission will constitute a violation of this Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which such compliance failure persists.

DEADLINES

The Executive Director for good cause may extend deadlines. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten (10) days prior to expiration of the subject deadline.

APPEAL

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

ACCESS

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Order. Nothing in this 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 staff may enter and move freely about the portions of the subject property on which the violation is located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Order for purposes of inspecting and reviewing the progress of Respondents in carrying out the terms of this Order.

GOVERNMENT LIABILITIES

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Order. Respondents acknowledge and agree (a) to assume the risks to the property that is the subject of this Order and damage from such hazards in connection with carrying out activities pursuant to this Order; and (b) to unconditionally waive any claim of damage

or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

SUCCESSORS AND ASSIGNS

This Order shall run with the land binding all successors in interest, future respondents of the property, interest and facility, heirs and assigns. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Order.

Executed in Santa Barbara on April 16, 2004, on behalf of the California Coastal Commission.

PETER DOUGLAS, Executive Director

EXHIBITS

1. Location Map.
2. Location of onsite free public parking and location of offsite, free Canada Verde parking.
3. Signed Notice of Intent to Issue CDP 3-91-71/1-95-47 and CDP 3-91-71/1-95-47.
4. Letter dated June 26, 2001, from Commission staff to Mr. John Berndt, General Manager for the Ritz Carlton Half Moon Bay.
5. Letter dated July 12, 2001, from Mr. Berndt to Commission staff.
6. Letter dated February 14, 2002, from Commission staff to Mr. Jeffrey J. Mongan, Senior Vice President, The Athens Group, on behalf of the Ritz Carlton.
7. Letter dated March 25, 2002, from Mr. Mongan to Commission staff.
8. Letter dated April 17, 2002, from Commission staff to Mr. Mongan.
9. Letter dated May 1, 2002, from Mr. Mongan to Commission staff.
10. Letter dated August 7, 2002, from Commission staff to Mr. Richard Johnson, Executive Assistant Manager, the Ritz Carlton Half Moon Bay.
11. Letter dated August 29, 2002, from Mr. Johnson to Commission staff.
12. Letter dated October 23, 2003, from the Executive Director of the Commission issuing a Notice of Intent (NOI) to commence Cease and Desist Order proceedings.
13. Letter dated February 26, 2004, from Commission staff re-instating a deadline for the submittal of the Statement Of Defense and notifying the Ritz Carlton of the staff's decision to schedule a hearing for formal Cease and Desist Order proceedings.
14. Statement of Defense received on March 15, 2004.